

May 9, 2008

Docket No. 71-0102

EA No. 08-039

Richard D. Dicharry, President
Source Production and Equipment Co., Inc.
113 Teal Street
St. Rose, LA 70087

SUBJECT: NRC OFFICE OF INVESTIGATIONS REPORT NO. 4-2005-004

Dear Mr. Dicharry:

On March 2, 2006, the U. S. Nuclear Regulatory Commission (NRC), Office of Investigations (OI), Region IV (RIV), initiated an investigation to determine whether a Source Production and Equipment Co., Inc. (SPEC) consultant/contract employee deliberately violated the NRC Certificate of Compliance (CoC) requirements regarding the use of a Model No. 5979 shipping package, serial number 1B. A factual summary of OI Investigation 4-2005-004 is enclosed.

Based on the results of the OI investigation, two apparent violations of 10 CFR 71.3, "Requirements for license," were identified and are being considered for escalated enforcement action in accordance with the "NRC Enforcement Policy" (Enforcement Policy). The current Enforcement Policy is included on the NRC's web site at www.nrc.gov; select **About NRC, Organization and Functions, Office of Enforcement, About Enforcement**, then **Enforcement Policy** and select **"(Enforcement Policy)"** to open the full document.

First, on or about July 15, 2003, December 4, 2003, and May 20, 2004, SPEC, an NRC licensee pursuant to Part 110, delivered for transport and transported licensed material in an NRC CoC No. 5979 transportation package without a license. 10 CFR 71.3, "Requirement for license", provides that no NRC licensee may deliver licensed material or transport licensed material without a license. In accordance with 10 CFR 71.17(c)(2), "General license: NRC-approved package", a general license to transport or deliver for transport is issued to NRC licensees only if the licensee complies with the CoC. SPEC did not comply with the CoC because the end caps had been modified by Alpha Omega Services (AOS), the seller of the package, and as a result the package did not conform to the CoC drawings, in that the end caps were physically (weight and materials) and dimensionally (end cap thickness and length of bolts) different from the approved end caps. The NRC issued a Notice of Violation and Proposed Imposition of Civil Penalty --\$19,200 to AOS in EA 077-215 (December 20, 2007) and an Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) to the former Operations Manager and Assistant Radiation Safety officer of AOS in IA-07-048 (December 20, 2007).

Second, SPEC, an NRC licensee pursuant to Part 110, delivered for transport and transported licensed material in an NRC CoC No. 5979 package without a license because SPEC did not comply with the CoC, due to the fact that the inspection required by the CoC before each shipment of the package was not performed as specified by the CoC. There are three examples of this violation:

- (1) For the July 15, 2003, December 4, 2003, and May 20, 2004, shipments, the inspection was limited to the steps specified in the abbreviated checklist prepared by Foss Therapy Services (FTS). The FTS checklist excluded certain steps specified in the AOS maintenance procedure and the CoC;
- (2) For the July 15, 2003, and December 4, 2003, shipments, the consultant/contractor of SPEC who performed the inspections deliberately did not perform certain steps in the abbreviated FTS checklist. The consultant/contractor's deliberate actions are attributable to SPEC; and
- (3) For the May 20, 2004, shipment, steps 2.4- 2.8 of the abbreviated FTS maintenance inspection checklist were not performed.

Before the NRC makes its enforcement decision, we are providing you with the opportunity to participate in a predecisional enforcement conference (PEC) at the NRC Headquarters office to discuss the apparent violations.

If you agree to attend a PEC, it would be closed to the public and transcribed. The decision to hold a PEC does not mean that the NRC has determined that a violation has occurred or that enforcement action will be taken. This conference would be held to obtain information to assist the NRC in making an enforcement decision. This may include information to determine whether violations occurred, information to determine the significance of each violation, information related to the identification of the violations, and information related to any corrective actions taken or planned. The conference would provide you an opportunity to present your perspective on these matters and any other information that you believe the NRC should take into consideration in making an enforcement decision. In presenting your corrective action, you should be aware that the promptness and comprehensiveness of your actions will be considered in assessing any civil penalty of the apparent violations. The guidance in the enclosed excerpt from NRC Information Notice 96-28, "SUGGESTED GUIDANCE RELATING TO DEVELOPMENT AND IMPLEMENTATION OF CORRECTIVE ACTION," may be helpful. Your response may reference or include previously docketed correspondence, if the correspondence adequately addresses the required response.

Please contact David Pstrak at (301) 492-3299 within 10 days of the date of this letter to notify the NRC of your decision to participate in the PEC. If an adequate response is not received within the time specified or an extension of time has not been granted by the NRC, the NRC will proceed with its enforcement decision.

In addition, please be advised that the number and characterization of apparent violations described in the enclosed inspection report may change as a result of further NRC review. You will be advised by separate correspondence of the results of our deliberations on this matter.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and its enclosures will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction.

Your cooperation is appreciated.

Sincerely,

/RA/

E. William Brach, Director
Division of Spent Fuel Storage and Transportation
Office of Nuclear Material Safety
and Safeguards

Enclosures:

1. Factual Summary of OI Investigation
Report No. 4-2005-004
2. Excerpts from NRC Information Notice 96-28,
"SUGGESTED GUIDANCE RELATING TO
DEVELOPMENT AND IMPLEMENTATION
OF CORRECTIVE ACTION"

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and its enclosures will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction.

Your cooperation is appreciated.

Sincerely,

/RA/

E. William Brach, Director Division of Spent Fuel Storage and Transportation
Office of Nuclear Material Safety and Safeguards

Enclosures:

1. Factual Summary of OI Investigation
Report No. 4-2005-016
2. Excerpts from NRC Information Notice 96-28,
"SUGGESTED GUIDANCE RELATING TO DEVELOPMENT AND IMPLEMENTATION OF CORRECTIVE ACTION"

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FACTUAL SUMMARY
OFFICE OF INVESTIGATIONS REPORT NO. 4-2005-004

An investigation was initiated by the Nuclear Regulatory Commission (NRC), Office of Investigations (OI), Region IV, on May 4, 2005, to determine if a consultant/contracted employee for Source Production and Equipment Company (SPEC), St. Rose, Louisiana, a registered user of Model No. 5979 shipping package and an NRC-approved Quality Assurance Program holder, deliberately violated the Certificate of Compliance (CoC) requirements regarding its use of a Model No. 5979 shipping package, serial number 1-B.

During an inspection conducted at Alpha Omega Services (AOS) on November 18, 2004, NRC inspectors were made aware by the President of AOS that a Model No. 5979 package, serial number 1-B, that had been sold previously by AOS to Foss Therapy Services (FTS), was returned to AOS for periodic inspection, and that during the AOS inspection, several deficiencies were identified which made the package non-compliant with the CoC referenced drawings. Specifically, the inner cask assembly end caps had been modified in that each of the two end caps had a spacer inserted in the end cap flange area and longer bolts were used to attach the end caps to the inner cask assembly. As a result, the end caps were physically (weight and materials) and dimensionally (end cap thickness and length of bolts) different than the approved end caps in AOS, Inc., Drawing No. 0092, Revision 1.

When AOS sold the package to FTS in 2001, AOS performed a maintenance inspection of the package and documented the results on an AOS maintenance inspection checklist specific to the CoC No. 5979 shipping package. On May 21, 2001, the AOS President signed the bottom page of the checklist stating that the container (package) was approved for use. Similarly, on January 8, 2003, when FTS returned the same package for a periodic maintenance inspection by AOS, the AOS President signed the 2003, checklist, again stating that the package was approved for use. However, at the time the package was sold to FTS, and when the package came back to AOS in 2003 for inspection, the end caps were in the same non-compliant condition noted above. AOS supplied the incomplete and inaccurate maintenance inspection checklists to FTS.

During the OI investigation, the AOS President testified that he believed and knew that FTS would use the above referenced package for transportation purposes and that the end caps on the package sold to FTS in 2001 were not in compliance with the CoC. The AOS President further testified that when he performed the maintenance inspection of the package on January 8, 2003, he purposely did not note, report or otherwise identify the non-compliance concerning the end caps on the maintenance checklist.

The consultant/contractor, who as an owner and employee of FTS was in possession of the AOS maintenance checklist, in turn, did not perform his own inspection on receipt of the package. Instead, he relied on the 2003 maintenance checklist to assure package acceptance for export shipping purposes when he supplied the CoC No. 5979 package to SPEC. FTS developed an abbreviated inspection checklist for use in pre-shipment inspections. The FTS checklist included Sections 2.4 through 2.8 of the AOS inspection checklist, and excluded steps 2.1 through 2.3 and steps 2.9 through 2.12.

During his inspection of the package on July 15, 2003, and on December 4, 2003, the consultant/contractor signed "OK" on all applicable steps of the abbreviated FTS prepared inspection checklist, and certified on the bill of lading that the package conformed to all national governmental regulations, signifying that he had performed all steps of the inspection as required by the CoC.

The consultant/contractor then provided the checklists and bills of lading to SPEC. In fact, the consultant/contractor did not perform step 2.4.A. of the FTS inspection checklist. During the consultant/contractor's inspection, he did not ask Southwest Research Institute (SWRI) to, and SWRI did not, remove the six cask screws. As a result, the consultant/contractor could not have performed step 2.4.A.

The consultant/contractor testified that with respect to a package inspection on May 20, 2004, he was not present and did not perform any of the inspection. Nonetheless, he signed "OK" on the inspection checklist and certified on the bill of lading that the package conformed to all national governmental regulations, signifying that he had performed all steps of the inspection as required by the CoC. The person who inspected the package was not qualified to do so and did not perform all required steps of the inspection, including Sections 2 and 3.1 of the CoC maintenance procedures. The consultant/contractor then provided the checklist and bill of lading to SPEC.

The consultant/contractor testified that he knew that not complying with the requirements of the CoC would render the Model No. 5979 cask non conforming.