[redacted]

BURGESS & NIPLE

4160 Pleasant Valley Road ■ Chantilly, VA 20151
703 631.9630 ■ Fax 703 631.6041

US Nuclear Regulatory Commission
ATTN: Document Control Desk
Washington, D.C. 20555

-Re- **Reply to a Notice of Violation, EA-08-073**
Docket No. 03014478
License No. 45-18100-01

May 12, 2008

To Whom It May Concern;

On February 6, 2008, Mr. Sattar Lodhi of the NRC Division of Nuclear Materials Safety conducted an inspection of the Burgess & Niple, Inc. (B&N) facility, located in Chantilly, Virginia. The inspection found two Severity Level IV violations, as were outlined in the Notice of Violation (EA-08-073), dated April 23, 2008. Pursuant to the requirements of the above-referenced Notice of Violation letter, our written statements and/or explanations are attached. A copy of the Notice of Violation letter is attached for your reference.

Violation A:

10 CFR 30.34(i) requires that each portable gauge licensee use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal whenever portable gauges are not under the control and constant surveillance of the licensee.

Contrary to the above, the licensee did not use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from authorized removal. Specifically, on February 6, 2008, 12 portable gauges were stored at the licensee's facility in Chantilly, Virginia, and a lock at the storage entrance was the only physical control that formed a tangible barrier to secure the gauges from unauthorized removal. The gauge containers were not secured within the storage area.

This is a Severity Level IV violation (Supplement VI)

Response to Violation A:

1) Reason for the Violation: The RSO (Darryl Keating) was not aware of the requirement of maintaining a minimum of two independent physical controls that form tangible barriers to secure portable gauges from authorized removal. For this reason, the room that houses the portable gauges was secured using one lock at the door to the storage room. After normal business hours, the room would be additionally secured by means of the exterior door locks being locked. However, at the time of the above-referenced inspection, the room housing the gauges was secured by one lock at the storage room door.

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2) Corrective Steps that have been taken and the results achieved:
   - On February 19, 2008, an additional (second) lock was added to the storage room door.
   - On February 27, 2008, the RSO completed a memo titled "*Summary of Procedures and Policies for Signing Out and Transporting Nuclear Density Gauges*". This memo, in part, detailed the updated lock requirements, including the addition of the second independent lock at the storage room door. This memo was provided to each authorized user employed full-time with B&N.
   - Effective May 5, 2008, the office manager at this office mandated that the doors to the building (other than the main entrance) remain locked at all times as additional security measures. This mandate was not in response to the NRC violation. However, with the two independent locks at the storage room door, this does provide a total of three tangible barriers to secure portable gauges from authorized removal.

3) Corrective steps that will be taken to avoid further violations: The RSO will continue to monitor the storage room, by continuing on a monthly schedule to check that the door to the storage room remains properly secured using the two independent locks at the door.

4) Date when full compliance will be achieved: Full compliance with 10 CFR 30.34 (i) was achieved on February 19, 2008. On this day, an additional independent lock was added to the storage room door. As indicated above, approximate bi-weekly inspections by the RSO thus far (since the addition of the second lock) have indicated that the two independent locks have remained in place on the door.

Violation B:

Condition 16 of License No. 45-18100-01 requires, in part, that each portable nuclear gauge or its container be locked when in storage or when not under direct surveillance of an authorized user.

Contrary to the above, the licensee did not lock each portable gauge or its container while the gauge was in storage and not under the direct surveillance of an authorized user. Specifically, on February 6, 2008, a Troxler Model 4640B with serial Number 1555 and a CPN MC1 with serial number 15035921 were stored in the storage facility and neither the gauges nor their containers were locked.

This is a Severity Level IV violation (Supplement VI)

Response to Violation B:

1) Reason for the Violation: It is, and always has been, a B&N company policy that the gauges be secured by use of a trigger lock, and that the storage containers be secured using a lock. During previous inspections and maintenance conducted by the RSO, the gauges were typically found to be properly secured. Unfortunately, the storage area had not been inspected by the RSO in approximately 2 months. During this time, several of the storage container locks had been removed by authorized users. Evidently, some of the trigger locks had been removed, and not replaced.

2) Corrective Steps that have been taken and the results achieved:
   - On the day following the above-referenced inspection, the RSO completed an inspection of each of the portable gauges. Any gauges that were found to not be secured with both a lock at the trigger handle and at the outside of the storage container were secured with

additional locks so that they were in compliance (the RSO keeps additional locks in stock).

- Over the next two days, the RSO spoke with each of the authorized users employed full-time with B&N at that time, and discussed the findings from the inspection.
- On February 27, 2008, the RSO completed a memo titled "*Summary of Procedures and Policies for Signing Out and Transporting Nuclear Density Gauges*". This memo, in part, detailed the lock requirements. This memo was provided to each authorized user employed full-time with B&N.
- Following this inspection, the RSO has inventoried the gauges on an approximate bi-weekly basis, and has found the gauges to be properly locked with the trigger and storage case locks.

3) Corrective steps that will be taken to avoid further violations: The RSO will continue to monitor the storage room, by continuing on a monthly schedule to check that gauges are properly secured using both the storage container and trigger locks.

4) Date when full compliance will be achieved: Full compliance with this License requirement was achieved on February 7, 2008. On this day, any missing locks were replaced. As indicated above, approximate bi-weekly inspections thus far by the RSO have indicated that the locks have remained in place on the gauges.

We trust that you shall find our responses to the above notices of violation to be satisfactory. If you have any questions or require anything further, please contact either of the undersigned.

Very truly yours,

BURGESS & NIPLE, INC.

Darryl Keating, EIT
Radiation Safety Officer

Michael C. Sun, P.E
Geotechnical Section Director

DBK/MCS: dbk

cc: Regional Administrator, United States Nuclear Regulatory Commission, Region I, 475 Allendale Rd, King of Prussia, PA 19406-1415 (1)
File (1)

Attachment: Notice of Violation EA-08-073

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

April 23, 2008

Docket No. 03014478 License No. 45-18100-01
EA-08-073

Michael C. Sun, P.E.
Director, Geotechnical Section
Burgess & Niple, Inc.
4160 Pleasant Valley Road
Chantilly, VA 20151

SUBJECT: INSPECTION 03014478/2008001, BURGESS & NIPLE, INC., CHANTILLY, VIRGINIA AND NOTICE OF VIOLATION, EXERCISE OF ENFORCEMENT DISCRETION

Dear Mr. Sun:

On February 6, 2008, Sattar Lodhi of this office conducted a safety inspection at the above address of activities authorized by the above listed NRC license. The inspection was an examination of your licensed activities as they relate to radiation safety and to compliance with the Commission's regulations and the license conditions. The inspection consisted of observations by the inspector, interviews with personnel, and a selective examination of representative records. The findings of the inspection were discussed with you and Darryl Keating of your organization at the conclusion of the inspection.

Based on the results of this inspection, it appears that your activities were not conducted in full compliance with NRC requirements. A Notice of Violation (Notice) is enclosed that categorizes each violation by Severity Level. Item A of the Notice describes a violation of 10 CFR 30.34(i). Although such violations are normally categorized at Severity Level III and are considered for escalated enforcement, we are exercising enforcement discretion to categorize the violation at Severity Level IV because: (1) one physical control existed to prevent loss or theft of the portable gauge; (2) you retained possession of the gauge; (3) you took appropriate action to correct the violation and prevent recurrence of similar violations in the future, and (4) the violation was not willful. However, any future violations of 10 CFR 30.34(i) will be categorized at Severity Level III and evaluated for a civil penalty in accordance with Section VI.C. of the Enforcement Policy.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. After reviewing your response to this Notice, including your completed corrective actions and the results of future inspections, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

Current NRC regulations are included on the NRC's website at www.nrc.gov; select **Nuclear Materials; Medical, Academic, and Industrial Uses of Nuclear Material;** then **Regulations, Guidance, and Communications.** The current Enforcement Policy is included on the NRC's website at www.nrc.gov; select **About NRC; Organization and Functions; Office of Enforcement; About Enforcement;** then **Enforcement Policy.** You may also obtain these documents by contacting the Government Printing Office (GPO) toll-free at 1-866-512-1800. The GPO is open from 7:00 a.m. to 8:00 p.m. EST, Monday through Friday (except Federal holidays).

Please contact Sattar Lodhi at (610) 337-5364, if you have any questions regarding this matter.

Sincerely,

Brian E. Holian, Director
Division of Nuclear Materials Safety

Enclosure:
Notice of Violation

cc:
Darryl Keating, Radiation Safety Officer
Commonwealth of Virginia

NOTICE OF VIOLATION

Burgess & Niple, Inc.
Chantilly, VA

Docket No. 03014478
License No. 45-18100-01

During an NRC inspection conducted on February 6, 2008, two violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

A. 10 CFR 30.34(i) requires that each portable gauge licensee use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal whenever portable gauges are not under the control and constant surveillance of the licensee.

Contrary to the above, the licensee did not use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal. Specifically, on February 6, 2008, 12 portable gauges were stored at the licencess's facility in Chantilly, Virginia, and a lock at the storage entrance was the only physical control that formed a tangible barrier to secure the gauges from unauthorized removal. The gauge containers were not secured within the storage area.

This is a Severity IV Level violation (Supplement VI).

B. Condition 16 of License No. 45-18100-01 requires, in part, that each portable nuclear gauge or its container be locked when in storage or when not under the direct surveillance of an authorized user.

Contrary to the above, the licensee did not lock each portable gauge or its container while the gauge was in storage and not under the direct surveillance of an authorized user. Specifically, on February 6, 2008, a Troxler Model 4640B with serial number 1555 and a CPN Model MC1 with serial number 15035921 were stored in the storage facility and neither the gauges nor their containers were locked.

This is a Severity Level IV violation (Supplement VI).

Pursuant to the provisions of 10 CFR 2.201, Burgess & Niple, Inc. Is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555, with a copy to the Regional Administrator, Region I, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation, EA-08-073" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as to why the license should not be modified, suspended, or revoked, or why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

If you contest this enforcement action, you should also provide a copy of your response to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, any response which contests an enforcement action shall be submitted under oath or affirmation.

Your response will be placed in the NRC Public Document Room (PDR) and on the NRC Web site. To the extent possible, it should, therefore, not include any personal privacy, proprietary, or safeguards information so that it can be made publically available without redaction. However, if you find it necessary to include such information, you should clearly indicate the specific information that you desire not to be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public.

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days.

Dated This 23rd day of April 2008