



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
612 EAST LAMAR BLVD, SUITE 400
ARLINGTON, TEXAS 76011-4125

January 29, 2009

EA-08-237
NMED No. 080128

Mr. Clinton Lingren, President
SABIA, Inc.
7944 Convoy Court
San Diego, California 92111

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$13,000 [NRC INSPECTION REPORT 030-35997/08-001]

Dear Mr. Lingren:

This refers to the predecisional enforcement conference conducted in the NRC Region IV office on November 10, 2008. The conference was conducted to review the facts and circumstances surrounding a radioactive contamination event that occurred at your facility in Idaho Falls, Idaho, on February 29, 2008. The conference focused on two apparent violations identified by the NRC, their significance, their root causes, and your corrective actions.

Previously, the NRC had dispatched an inspector the day of the event and the inspection consisted of onsite reviews and subsequent in-office reviews. At the conclusion of the inspection, a telephonic exit briefing was conducted with you and Mr. James Miller, Radiation Safety Officer, on September 18, 2008, in which we identified two apparent violations being considered for escalated enforcement action. The subject inspection report dated October 18, 2008, documented the results of the inspection (ADAMS ML082940325).

During the November 10, 2008, conference, these two apparent violations were discussed with you: (1) an apparent violation of 10 CFR 20.1101 involving the failure to develop, document, and implement a radiation protection program commensurate with the scope and extent of licensed activities and sufficient to ensure compliance with the provisions of 10 CFR Part 20; and (2) an apparent violation of your NRC license involving the failure to perform a leak test of the sealed source when it was removed from storage and prior to being used.

In discussing the apparent violation of 10 CFR 20.1101, you acknowledged weaknesses in your gauge dismantling program and agreed that a violation of 10 CFR 20.1101 occurred. However, during the conference you communicated that, despite the weaknesses in your program, you believed that the radioactive material contamination event could not have been prevented. At the conference, SABIA, Inc., (SABIA) also articulated its position that it had performed a leak test prior to dismantling the gauge containing the radioactive source and asserted there was no

violation of the particular leak test required by the SABIA license. After reviewing the information gathered during the inspection and the additional information presented at the conference, the NRC has concluded there was no violation of the leak test requirement.

During the conference, you also discussed several corrective actions that SABIA had taken in response to the event. These corrective actions included: stating that SABIA would no longer accept gauges for disposal and would not ship gauges to its Idaho Falls facility for indefinite storage; stating that SABIA would cease most, but not all, disassembly activities; transferring the remaining gauges to be dismantled to another licensed service provider where the sources would be removed and returned to SABIA for disposal; hiring an employee with experience in training to improve the company's training program; conducting a company-wide safety audit; developing a process for new projects which includes inputs from different company departments; developing a feedback program for employees to raise concerns; developing or revising procedures; and conducting training on the new/revised procedures.

The NRC requested that SABIA provide certain documents and information so that the NRC could evaluate the effectiveness and completeness of your corrective actions. The requested documents included: (1) the results of SABIA's corporate-wide safety review; (2) a copy of your new/revised emergency and operating procedures; and (3) the training materials that were presented to SABIA's employees regarding the new/revised emergency and operating procedures. The NRC summarized the results of the conference in a document entitled Predecisional Enforcement Conference Summary, which also contains SABIA's letter dated November 8, 2008 (ADAMS ML083170738).

Based on the information developed during the inspection, the information that you provided during the conference, and the information you submitted after the conference, the NRC has determined that a violation of NRC requirements occurred. A violation for failure to comply with the provisions of 10 CFR 20.1101 is cited in the enclosed Notice of Violation and the circumstances surrounding it are described in detail in the subject inspection report. The violation involved a failure to develop, document, and implement a radiation protection program commensurate with the scope and extent of licensed activities and sufficient to ensure compliance with the provisions of 10 CFR Part 20. Specifically, during gauge dismantlement operations on February 29, 2008, your staff did not use, to the extent practical, procedures and engineering controls based on sound radiation protection principles. As a result, your facility became extensively contaminated with radioactive material; one of your employees had considerable external contamination and received an intake of radioactive material; and three other employees were contaminated to a lesser extent, resulting in occupational doses that were not as low as is reasonably achievable (ALARA). Although your contractor's dose assessment for the affected employees did not indicate radiation exposures in excess of any NRC limit, the NRC has determined that the doses obtained by the employees were avoidable and were not ALARA.

In evaluating the significance of the violation, the NRC has concluded that although no actual exposures in excess of regulatory limits occurred, SABIA's actions in leading up to the contamination event and its inadequate actions in responding to the event created a substantial potential for exposures or releases in excess of the applicable NRC regulatory limits. Therefore,

this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level III. The current Enforcement Policy is included on the NRC's website at www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$6,500 is considered for a Severity Level III violation. Because your facility has not been the subject of escalated enforcement actions within the last 2 years, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy.

In reviewing your immediate and long-term corrective actions, the NRC has determined that SABIA has not provided adequate corrective actions and, consequently, corrective action credit is not warranted. Regarding SABIA's immediate corrective actions, considerable prompting on the part of the NRC was required to ensure SABIA took appropriate actions, such as notifying local responders and commencing biological sample collection for assessing internal radiation doses to personnel, in response to the contamination event. Additionally, a Confirmatory Action Letter (CAL) was issued by the NRC on March 5, 2008 (ADAMS ML080650799), which described SABIA's agreement to take specific actions including conducting thorough dose assessments for the affected employees and hiring an appropriately licensed service provider to perform surveys and decontamination of SABIA's Idaho Falls facility before SABIA could resume certain licensed activities.

Notwithstanding SABIA's intent to cease most gauge disassembly activities at its Idaho Falls facility, the NRC has concluded that the long-term corrective actions taken by SABIA in response to this event have not been sufficient in scope and detail. Specifically, the NRC was unable to evaluate the thoroughness and scope of your company-wide safety audit because you failed to provide it to the NRC as requested at the conference, and the information you provided regarding the training did not sufficiently explain the scope and content of the training or demonstrate that all appropriate staff received the training. Additionally, the revised operating and emergency procedures that you provided did not address a number of essential actions. For example, Procedure 1002002, "ALARA Practices Policy," contains no prohibition that the user refrain from further handling the source until the results of the leak test analysis are obtained (an issue during this event which contributed to the spread of contamination). Also, Procedure 1002000, "Emergency Procedures, Nuclear Gauges," provides no instructions for how personnel should address nose or mouth contamination and has no provisions for or discussion of the availability of decontamination supplies at locations of source storage or use.

The NRC has determined that comprehensive corrective actions are still needed to adequately address several issues including: planning and procedures to conduct licensed activities, providing oversight of non-routine maintenance of gauges, conducting appropriate training, planning and preparing (both equipment and procedures) to respond to emergency events, and understanding radiation hazards associated with the various sources authorized by SABIA's NRC license. Because SABIA has revised some procedures tied to its NRC license, and because SABIA's procedures therefore differ from those stated in its license, the NRC expects that comprehensive corrective actions will include submitting the revised procedures to the NRC in the form of a license amendment request for NRC review and approval.

Because of SABIA's particularly poor performance in planning for the gauge dismantling activities, in responding to the contamination event, and in developing and implementing comprehensive corrective actions to prevent recurrence, the NRC is exercising enforcement discretion in accordance with Section VII.A.1 of the NRC's Enforcement Policy to double the base civil penalty amount.

Therefore, to emphasize the need to ensure compliance with the provisions of 10 CFR Part 20, and to emphasize the importance of prompt and comprehensive correction of violations, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of \$13,000 for the Severity Level III violation. In addition, issuance of this Notice constitutes escalated enforcement action that may subject you to increased inspection effort.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. The NRC expects an adequate response will address the factors listed above related to the causes and prevention of future occurrences, and will also address the need for a licensed amendment related to revised procedures. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response 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 www.nrc.gov/reading-rm/pdr.html or www.nrc.gov/reading-rm/adams.html. The NRC also includes significant enforcement actions on its Web site at www.nrc.gov/reading-rm/doc-collections/enforcement/actions.

Sincerely,

/RA/

Elmo E. Collins
Regional Administrator

Docket No. 030-35997
License No. 11-27727-01

Enclosures:

- 1) Notice of Violation and Proposed Imposition of Civil Penalty
- 2) NUREG/BR-0254 Payment Methods (Licensee only)

SABIA, Inc.
EA-08-237

- 5 -

cc (Enclosure 1 only):
James F. Miller, Radiation Safety Officer
SABIA, Inc.
7944 Convoy Court
San Diego, California 92111

Mark Dietrich
Technical Services Administrator
Idaho Dept. of Environmental Quality
1410 North Hilton
Boise, Idaho 83706

David Jones
State of Idaho
Department of Environmental Quality
900 North Skyline Drive, Suite B
Idaho Falls, Idaho 83402

Mike Taysom
Bonneville County Emergency Management
605 North Capital Ave.
Idaho Falls, Idaho 83402

Steven Morreale
Regional Response Coordinator
U.S. Department of Energy
Idaho Operations Office
1955 Freemont Avenue
Idaho Falls, Idaho 83401

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RIV Materials Docket File (5th Floor)

SUNSI Review Completed: msh ADAMS: Yes No Initials: msh
 Publicly Available Non-Publicly Available Sensitive **Non-Sensitive**

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Inspector	Branch Chief	AC:MS-A	ACES	RC	Div Dir
Katanic	Whitten	Vasquez	Haire	Fuller	Howell
/RA/	/RA/	/RA/	/RA/	/RA/	/RA/
12/15/08	12/16/08	12/17/08	12/11/08	12/18/08	12/31/08
RA/DRA	OGC	FSME	OE		RA
Casto	MClark for Marco	MBurgess	NHilton		Collins
/RA/	/RA/	/RA/	/RA/		/RA/
12/31/08	01/23/09	01/23/09	01/26/09		01/27/09

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T=Telephone

E=E-mail

F=Fax

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

SABIA, Inc.
Idaho Falls, Idaho

Docket No. 030-35997
License No. 11-27727-01
EA-08-237

During an NRC inspection conducted between February 29, 2008, and September 18, 2008, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the NRC proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violation and associated civil penalty are set forth below:

10 CFR 20.1101(a) requires that each licensee shall develop, document, and implement a radiation protection program commensurate with the scope and extent of licensed activities and sufficient to ensure compliance with the provisions of 10 CFR Part 20.

10 CFR 20.1101(b) requires that the licensee shall use, to the extent practical, procedures and engineering controls based on sound radiation protection principles to achieve occupational doses and doses to members of the public that are as low as is reasonably achievable (ALARA).

Contrary to the above, during February 25-29, 2008, the licensee conducted gauge dismantlement activities and did not develop, document, and implement a radiation protection program commensurate with the scope and extent of this licensed activity, which created a substantial potential for exposures or releases in excess of the applicable NRC regulatory limits. In addition, the licensee's radiation protection program for the gauge dismantlement activities was not sufficient to ensure that occupational doses were as low as is reasonably achievable (ALARA). The licensee dismantled gauges that contained radioactive sources, and the licensee did not use, to the extent practical, procedures and engineering controls based on sound radiation protection principles to achieve occupational doses that were ALARA. As a result, on February 29, 2008, four individuals were contaminated and received occupational doses that were not ALARA.

This is a Severity Level III violation (Supplement IV).
Civil Penalty - \$13,000 (EA-08-237)

Pursuant to the provisions of 10 CFR 2.201, SABIA, Inc. (Licensee) is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation; (EA-08-237)" and should include for each alleged violation: (1) admission or denial of the alleged violation; (2) the reasons for the violation if admitted, and if denied, the basis for denying the validity of the violation; (3) the corrective steps that have been taken and the results achieved; (4) the corrective steps that will be taken to avoid further violations; and (5) the date

Enclosure 1

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, the NRC may issue an order or a Demand for Information requiring you to explain why your license should not be modified, suspended, or revoked or why the NRC should not take other action as may be proper. Consideration may be given to extending the response time for good cause shown.

Within the same time provided for the response required under 10 CFR 2.201, the Licensee may pay the civil penalty proposed above or the cumulative amount of the civil penalties if more than one civil penalty is proposed, in accordance with NUREG/BR-0254 and by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, a statement indicating when and by what method payment was made, or may protest imposition of the civil penalty in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission. Should the Licensee fail to answer within 30 days of the date of this Notice, the NRC will issue an order imposing the civil penalty. Should the Licensee elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation" and may: (1) deny the violation(s) listed in this Notice, in whole or in part; (2) demonstrate extenuating circumstances; (3) show error in this Notice; or (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty in whole or in part, such answer may request remission or mitigation of the penalty.

In requesting mitigation of the proposed penalty, the response should address the factors addressed in Section VI.C.2, "Civil Penalty Assessment," of the Enforcement Policy. Any written answer addressing these factors pursuant to 10 CFR 2.205, should be set forth separately from the statement or explanation provided pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the Licensee is directed to the other provisions of 10 CFR 2.205, regarding the procedure for imposing a civil penalty.

Upon failure to pay any civil penalty which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205 to be due, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The responses noted above, i.e., Reply to Notice of Violation, Statement as to payment of civil penalty, and Answer to a Notice of Violation, should be addressed to: Cynthia A. Carpenter, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV, 612 E. Lamar Blvd., Ste. 400, Arlington, TX 76011-4122

Because your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS) to the extent possible, it should not include any personal privacy or proprietary information so that it can be made available to the public without redaction. ADAMS is accessible from the NRC website at www.nrc.gov/reading-rm/pdr.html or www.nrc.gov/reading-rm/adams.html. If personal privacy

or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request that such material is withheld from public disclosure, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

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

Dated this 29th day of January 2009