

May 6, 2009

EA-09-034

Kurt A. Miller, P.E.  
President  
KAM Engineering Services, P.C.  
P.O. Box 1046  
Fayetteville, North Carolina 28302

SUBJECT: NOTICE OF VIOLATION - NRC Inspection Report No. 15000032/2009001

Dear Mr. Miller:

This refers to the inspection conducted on January 21 and 28, 2009, at the KAM Engineering Services, P.C. (KAM-ES) main office in Benson, North Carolina, as well as at a field site located at Camp Lejeune, North Carolina. The purpose of the inspection was to examine general licensed activities as they relate to radiation safety and compliance with the Commission's regulations. The inspector conducted a preliminary exit at the conclusion of the inspection at the main office. KAM-ES' application for an NRC license, submitted to the NRC on January 28, 2009, was also reviewed as a part of this inspection. The findings of the inspection were discussed with you by telephone during a final exit meeting on March 16, 2009. The NRC sent KAM-ES a letter, dated April 10, 2009, which enclosed the referenced inspection report.

The April 10, 2009, letter stated that the NRC was considering escalated enforcement for two apparent violations. The first apparent violation involved the failure of KAM-ES, holder of a specific North Carolina Agreement State License, to file NRC Form 241 at least three days prior to engaging in activities in an area of exclusive Federal jurisdiction within an Agreement State, as required by 10 CFR 150.20(b). Specifically, from March 1, 2008, through January 21, 2009, KAM-ES stored or used portable gauges at Camp Lejeune, an area under NRC jurisdiction, without filing Form 241 or obtaining a specific NRC license. The second apparent violation involved the failure of KAM-ES to use two independent physical controls that formed tangible barriers while storing portable gauges, when the gauges were not under control and constant surveillance, as required by 10 CFR 30.34(i). Specifically, from March 1, 2008, through January 21, 2009, KAM-ES periodically stored two portable gauges in a trailer-type container at the Camp Lejeune field site, and the trailer only had a single lock on the door to secure the gauges from unauthorized removal, whenever they were not under the control and constant surveillance of KAM-ES. Although the gauges were stored in locked transport boxes within the trailer, these did not constitute an additional physical barrier, because an individual could carry away the portable gauges in their transport boxes.

During the final exit conducted by telephone on March 16, 2009, Ms. Marie Miller of my staff informed you that the NRC was considering escalated enforcement for the two apparent violations involving the failures to meet the requirements of 10 CFR 150.20(b) and 10 CFR 30.34(i). Ms. Miller also informed you that we had sufficient information regarding the apparent violations and your corrective actions to make an enforcement decision without the need for a predecisional enforcement conference (PEC) or a written response from KAM-ES.

You indicated that a PEC would not be necessary, and that KAM-ES did not plan to submit a written response.

Therefore, based on the information developed during the inspection, the NRC has concluded that the violations occurred. These violations are cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding them are described in detail in the subject inspection report issued on April 10, 2009.

With respect to the first violation, involving the failure to file for reciprocity, the NRC determined that KAM-ES management had been unaware that Camp Lejeune was an area of federal jurisdiction that required KAM-ES to have received NRC authorization to work with portable gauges there. Apparently, the KAM-ES Radiation Safety Officer (RSO) did not inform the Camp Lejeune RSO of the specific type of work planned to be conducted, so neither licensee realized the need for KAM-ES to have met the requirements of 10 CFR 150.2(b). Since the NRC was unaware that portable gauges were being used at Camp Lejeune, this violation impacted the NRC's regulatory process, because the NRC was not provided an opportunity to conduct inspections of licensed activities. The NRC has categorized this violation at Severity Level (SL) III.

With respect to the second violation, the NRC considered that, while KAM-ES stored portable gauges in the trailer-type container at the Camp Lejeune field site, an unauthorized person could have gained access to the gauge transport boxes by defeating only one physical, tangible barrier, namely, the locked trailer door. The NRC considered that during the time of this violation an unauthorized individual could have gained access to the portable gauges more easily than if a second, independent and tangible barrier had been in place, and that such unauthorized access could have resulted in an unsafe use of the radioactive material and public exposure to radiation. The NRC has categorized this violation at SL III.

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$ 3,250 is considered for SL III violations. Because your facility has not been the subject of escalated enforcement actions within the last two years, or the last two inspections, 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. The NRC has concluded that, for both of the SL III violations, corrective action credit is warranted. Corrective actions taken to address the violations include: (1) immediate removal of the portable gauges from the Camp Lejeune work site, until KAM-ES obtained authorization to store and use them there; (2) the KAM-ES RSO meeting the Camp Lejeune RSO to discuss KAM-ES work requirements the day after the initial inspection; (3) briefings to all KAM-ES employees on the reciprocity and portable gauge storage requirements; and (4) requesting an NRC license on January 28, 2009, to allow KAM-ES to use and store the gauges at areas of federal jurisdiction. (NRC License No. 32-31355-01 was issued on February 6, 2009.) Therefore, to encourage prompt and comprehensive correction of violations, and in recognition of the absence of previous escalated enforcement action, I have been authorized, after consultation with the Director, Office of Enforcement, not to propose a civil penalty in this case. However, significant violations in the future could result in a civil penalty. In addition, issuance of these SL III violations constitutes escalated enforcement action that may subject you to increased inspection effort.

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken to correct the violations and prevent recurrence, and the dates when full compliance was achieved is already adequately addressed on the docket in this letter and in

Inspection Report No. 15000032/2009001. Therefore, you are not required to respond to this letter unless the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response, if you choose to provide one, 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. If personal privacy or proprietary information is necessary to provide an acceptable response, 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 withholding of such information, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (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). The NRC also includes significant enforcement actions on its Web site at (<http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>).

Sincerely,

*/RA/*

Samuel J. Collins,  
Regional Administrator

Docket No. 150-00032  
License No. 051-1335-1 (North Carolina)

Enclosure: Notice of Violation

cc w/encl:  
State of North Carolina

Inspection Report No. 15000032/2009001. Therefore, you are not required to respond to this letter unless the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response, if you choose to provide one, 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. If personal privacy or proprietary information is necessary to provide an acceptable response, 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 withholding of such information, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (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). The NRC also includes significant enforcement actions on its Web site at (<http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>).

Sincerely,

/RA/

Samuel J. Collins,  
Regional Administrator

Docket No. 150-00032  
License No. 051-1335-1 (North Carolina)

Enclosure: Notice of Violation

cc w/encl:  
State of North Carolina

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\*HQ to perform a quick review. \*\* see previous concurrence page

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## NOTICE OF VIOLATION

KAM Engineering Services, P.C.  
Fayetteville, North Carolina

Docket No. 150-00032  
License No. 051-1335-1  
(North Carolina)  
EA-09-034

During an NRC inspection conducted between January 21, 2009, and January 28, 2009, for which an exit meeting was held on March 16, 2009, violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. 10 CFR 150.20(a) provides, in part, that any person who holds a specific license from an Agreement State is granted an NRC general license to conduct the same activity in non-Agreement States subject to the provisions of 10 CFR 150.20(b).

10 CFR 150.20(b)(1) requires, in part, that any person engaging in activities in non-Agreement States shall, at least three days before engaging in each such activity, file four copies of NRC Form-241, "Report of Proposed Activities in Non-Agreement States," with the Regional Administrator of the appropriate NRC regional office.

Contrary to the above, from March 1, 2008, until January 21, 2009, KAM Engineering Services, P.C. (KAM-ES), a holder of a North Carolina (Agreement State) license, stored or used portable gauges containing cesium-137 and americium-241 sealed sources, at Camp Lejeune, North Carolina, an area of exclusive federal jurisdiction, without a specific license issued by the NRC, and KAM-ES did not file Form-241 "Report of Proposed Activities in Non-Agreement States," with the Regional Administrator of the appropriate NRC regional office.

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

- B. 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, from March 1, 2008, until January 21, 2009, KAM-ES stored two portable gauges containing cesium-137 and americium-241 sealed sources in an unrestricted area at the Camp Lejeune, North Carolina site (an area under exclusive Federal Jurisdiction), and KAM-ES did not use a minimum of two independent physical controls that form tangible barriers to secure the portable gauges from unauthorized removal. Specifically, KAM-ES periodically stored two portable gauges in a trailer-type container at Camp Lejeune, and the trailer only had a single lock on the door to secure gauges from unauthorized removal, whenever they were not under the control and constant surveillance of KAM-ES.

This is a Severity Level III violation.

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken and planned to correct the violations and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed on the docket in Inspection Report No. 15000032/2009001, and, in the letter transmitting this Notice of Violation (Notice). However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation, EA-09-034," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001 with a copy to the Regional Administrator, Region I, within 30 days of the date of the letter transmitting this Notice.

If you choose to respond, 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 <http://www.nrc.gov/reading-rm/adams.html>. Therefore, to the extent possible, the response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

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

Dated this 6th day of May 2009