



Troxler Electronic Laboratories, Inc.

3008 Cornwallis Rd. • PO Box 12057 • Research Triangle Park, NC 27709
Phone: +1.919.549.8661 • Fax: +1.919.485.2250 • www.troxlerlabs.com

January 29, 2009

Mr. Stephen Baker
Office of International Progress
U. S. Nuclear Regulatory Commission
Washington, DC 20555

Re: Violation of General License for Export of Byproduct Material

Dear Mr. Baker:

This letter is in response to your notification (by telephone) to Troxler regarding the violation of NRC export rules with respect to one nuclear moisture-density gauge transferred to Iraq. We have investigated this incident and would like to explain how it occurred, what the underlying causes were, and what actions we are taking to prevent recurrence.

Description of Occurrence

On 11/21/08 Troxler shipped one (1) model 3430 moisture-density gauge, serial number 61672, under sales order S6108, to a distributor in Jordan for resale and shipment to an end-user (ALMCO) in Iraq. The order was checked by Troxler against Bureau of Industry and Security, US Department of Commerce website (www.bis.doc.gov) to confirm that Iraq was not on any restricted/prohibited list. It was found not to be. The list used was the License Exceptions list, Supplement No. 1, Part 740 of the Export Administration Regulations, Country Group E, column E:1, Terrorist Supporting Countries. The countries on the list are Iran, Cuba, N. Korea, Sudan, and Syria, which corresponds to the NRC list of embargoed countries in 10 CFR 110.28 with exception of Iraq, which was removed from the EAR list by the President. Troxler also contacted its freight forwarding service, Dey Air Freight, and inquired if there were any US airline restrictions for shipping to Iraq. The freight forwarder advised that there were no embargoes to Iraq, however as there were not all-cargo flights available (the package requires shipment on cargo only aircraft), the gauge was shipped to the distributor's office in Jordan. From there it was, to the best of Troxler's knowledge, forwarded on to the end-user in Iraq.

On 1/5/09 Troxler submitted the annual americium export report required by 10 CFR 110.23(b) to the NRC. The report included the shipment to Iraq on 11/21/08 of model 3430 #61672. On 1/26/09, Troxler (S. Browne) was notified by telephone call from the NRC (S. Baker) that the export of the nuclear gauge to Iraq constituted a violation of the general license for export of byproduct material granted in 10 CFR 110.23.

Causes

Upon being advised of the violation, an investigation was promptly initiated by Troxler to determine the underlying causes for the error that led to the general license export violation. The following causes were identified.

1. Inadequate training of export personnel
One individual at Troxler handles all international orders. This individual had received export compliance training provided by Alloca Enterprises, Inc. in 2006. The training covered Department of Commerce Export Administration Regulations, but not NRC export regulations. The individual and her supervisor assumed that the training encompassed all applicable U.S. government export requirements and restrictions and were unaware of the separate NRC export regulations.
2. Lack of written export compliance procedures and policy
Troxler does not have formal written policies and procedures for ensuring compliance with all export regulations, including the NRC general license for export of byproduct material.
3. Lack of computer-based controls on export orders
Troxler uses a computer-based system for clearing sales orders to U.S. destinations prior to shipment. The purpose is to verify that the recipient of the byproduct material has a valid license that authorizes possession of the material. This system has worked very effectively for domestic shipments. However, the computer system does not include controls on clearing international sales orders to prevent shipments from being made to embargoed countries.
4. Lack of export review or audit of export practices and program
The export program and practices have not been previously reviewed or audited for compliance with all applicable regulations, including NRC regulations.

In addition, while not a cause of the event, it was noted that the procedures for review of the annual export report prior to submittal to the NRC were not adequate in that the shipment made to an embargoed country violation was not discovered by Troxler and self-reported.

Corrective Actions to Prevent Recurrence

Corrective actions to prevent recurrence of this or a similar situation have been identified and responsibility for timely completion assigned. The corrective action plan outlined below will be tracked until all corrective actions are completed. The target for completion of all actions is March 31, 2009.

1. All Troxler personnel and supervision involved in the export activities will be trained on the requirements of the NRC general license pertaining to export shipments of nuclear devices and sources.
2. Export compliance procedures and policies will be developed and documented to address NRC export rules. The procedures will address both direct shipments to end-users in embargoed or restricted countries, as well as indirect shipments where the end-user is known to be located in an embargoed or restricted country.
3. Computer-based controls will be implemented to help prevent international orders for nuclear gauges from being cleared for shipment in violation of the general license for export of byproduct material requirements. These controls will automatically place nuclear gauge orders on hold, thus preventing shipment, when the content of the gauges or the shipment

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destination do not conform to the NRC general license export restrictions described in 10 CFR 110.23(a).

4. The annual radiation protection program audit checklist will be revised to include a review of byproduct material export compliance with the general license requirements.
5. The procedure for preparation of the annual americium export report to the NRC will be revised to require a detailed review of shipments for compliance with the general license for export of byproduct material. If any discrepancies are noted, an investigation will be initiated and appropriate corrective actions taken.

We regret the inadvertent violation of the general license for export of byproduct material requirements and hope that you will take this information into consideration in your evaluation of the violation.

Sincerely,



Stephen A. Browne
Corporate Radiation Safety Officer