October 16, 2009

EA-09-260

Mr. Jeremy Waller
Niles Steel Tank Company
P.O. Box 728
1701A Terminal Road
Niles, MI 49120

SUBJECT: NRC INSPECTION REPORT NO. 030-04829/2009-001(DNMS) AND NOTICE OF VIOLATION - NILES STEEL TANK COMPANY

Dear Mr. Waller:

On September 15, 2009, a Nuclear Regulatory Commission (NRC) inspector conducted a routine inspection at Niles Steel Tank Company. Our inspection findings were discussed with you on September 22, 2009. The enclosed report presents the results of this inspection.

The inspection was an examination of activities conducted under your license as they relate to radiation safety and compliance with the Commission's rules and regulations and with the conditions of your license. Within these areas, the inspection consisted of selective examination of procedures and representative records, interviews with personnel, independent radiation measurements, and observations of licensed activities.

Based on the results of this inspection, one apparent violation of 10 CFR 20.1801 was identified and is being considered for escalated enforcement action in accordance with the NRC Enforcement Policy. The current Enforcement Policy is included on the NRC's Web site at http://www.nrc.gov/about nrc/regulatory/enforcement/enforce-pol.html. The apparent violation involved your staff's failure to secure an iridium-192 sealed source from unauthorized removal or access while the radiography source was stored within your permanent radiographic installation because a former member of your staff retained the capability to gain access to your installation and, ultimately, to the source.

The circumstances surrounding the apparent violation, the significance of the issues, and the need for lasting and effective corrective action were discussed with you during the exit meeting on September 15, 2009 and by phone with you on September 22, 2009. As a result, it may not be necessary to conduct a predecisional enforcement conference in order to enable the NRC to make an enforcement decision.

In addition, since your facility has not been the subject of escalated enforcement actions within the last two inspections, and based on our understanding of your corrective action, a civil penalty may not be warranted in accordance with Section VI.C.2 of the Enforcement Policy. The final decision will be based on your confirming on the license docket that the corrective actions previously described to the staff have been or are being taken.

Before the NRC makes its enforcement decision, we are providing you an opportunity to either: (1) respond to the apparent violation addressed in the inspection report within 30 days of the

date of this letter or (2) request predecisional enforcement conference. If a conference is held, it will be open for public observation. Please contact Tamara E. Bloomer at (630) 829-9627 within 7 days of the date of this letter to notify the NRC of your intended response.

If you choose to provide a written response, it should be clearly marked as a "Response to an Apparent Violation in Inspection Report No. 030-04829/2009-001; EA-09-260" and should include for the apparent violation: (1) the reason for the apparent violation, or, if contested, the basis for disputing the apparent 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. In presenting your corrective actions, you should be aware that the promptness and comprehensiveness of your actions will be considered in assessing any civil penalty for the apparent violation. The guidance in the enclosed 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. 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 or schedule a predecisional enforcement conference.

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.

Based on the results of this inspection, the NRC determined that two Severity Level IV violations of NRC requirements also occurred. The first violation involved your failure to obtain the NRC's consent to your company's change of ownership transaction in 2002 as required by 10 CFR 30.34(b). The second violation involved your failure to retain security information.

The Severity Level IV violations are cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding them are described in detail in the subject inspection report. The violations are being cited in the Notice because they were identified by NRC staff.

The NRC has concluded that information regarding the reason for the Severity Level IV violations the corrective actions taken and planned to correct the violations and prevent recurrence, and the date when full compliance will be achieved, is already adequately addressed on the docket in the enclosed inspection report. Therefore, you are not required to respond to the violation unless the description in our report does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, you should follow the instructions in the enclosed Notice.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response, if any, will be made available electronically for public inspection in the NRC Public Document Room or from the NRC Agencywide Documents Access and Management System (ADAMS), accessible from the NRC Web site at http://www.nrc.gov/reading rm/Adams.html. If you choose to provide a written response to this letter, to the extent possible it should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction.

Sincerely,

/RA by Patrick L. Louden Acting For/
Steven A. Reynolds, Director
Division of Nuclear Materials Safety

Docket No. 030-04829
License No. 21-04741-01

Enclosures:
1. Notice of Violation
2. Inspection Report No. 030-04829/2009-001(DNMS)
3. NRC Information Notice 96-28

cc w/encls: State of Michigan

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response, if any, will be made available electronically for public inspection in the NRC Public Document Room or from the NRC Agencywide Documents Access and Management System (ADAMS), accessible from the NRC Web site at http://www.nrc.gov/reading rm/Adams.html. If you choose to provide a written response to this letter, to the extent possible it should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction.

Sincerely,

/RA By Patrick L. Louden Acting For/
Steven A. Reynolds, Director
Division of Nuclear Materials Safety

Docket No. 030-04829
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cc w/encls: State of Michigan

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DATE	10/14/09		10/14/09		10/15/09		10/16/09	

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NOTICE OF VIOLATION

Niles Steel Tank Company
Niles, Michigan

Docket No. 030-04829
License No.21-04741-01(terminated)
EA-09-260

Based on a Nuclear Regulatory Commission inspection conducted on September 15, 2009, violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

NRC's Order Imposing Increased Controls, EA-05-090, (Order) dated November 14, 2005, requires, in part, that licensees who hold licenses issued by the NRC authorizing possession of radionuclides of concern, including Niles Steel Tank Company, Niles, Michigan, at or above threshold limits, identified in Table 1, "Radionuclides of Concern," shall implement the requirements identified in Attachment B of the Order, "Increased Controls for Licensees that Possess Sources Containing Radioactive Material Quantities of Concern" (IC). Section III. A of the Order requires, in part, that licensees implement the requirements of the Order by May 13, 2006.

A. IC-5(e) requires that the licensee shall retain all documentation required by the increased controls for three years after the license is terminated or amended to reduce possession limits below the quantities of concern.

   Contrary to the above, between August 24, and September 14, 2009, the licensee had not retained all documentation for three years required by the increased controls for three years after the license was amended to reduce possession limits below the quantities of concern. Specifically, the former radiation safety officer had sole possession of all the documentation required after he was relieved from duty on August 24, 2009.

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

B. 10 CFR 30.34(b) requires, in part, that no NRC licensee nor any right under the licensee shall be transferred, assigned or in any other manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of the Act and shall give its consent in writing.

   Contrary to the above, in 2002, control of NRC License No. 21-04741-01 was transferred from Niles Steel Tank Company to Bradford White Corporation through Bradford White's purchase of Niles Steel Tank Company without prior written consent from the Commission.

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

If you contest this enforcement action, you should provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken and planned to correct the violations and the date when full compliance was achieved, is already adequately addressed on the docket in Inspection Report No. 030-04829/2009-001(DNMS) and your NRC Form 314 dated September 15, 2009. Therefore, you are not required to respond to this 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," 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 and the Enforcement Officer, Region III, within 30 days of the date of the letter transmitting this Notice of Violation.

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 Agencywide Documents Access and Management 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 16th day of October 2009

U.S. NUCLEAR REGULATORY COMMISSION

REGION III

Docket No.	030-04829
License No.	21-04741-01
Report:	030-04829/2009-001(DNMS)
Licensee:	Niles Steel Tank Company
Location Inspected:	1701A Terminal Road Niles, Michigan
Dates:	September 15, 2009
Final Exit Meeting:	September 22, 2009
Inspector:	Deborah A. Piskura, Health Physicist
Approved by:	Tamara E. Bloomer, Chief Materials Inspection Branch

Enclosure 2

EXECUTIVE SUMMARY

Niles Steel Tank Company
Niles, Michigan
NRC Inspection Report No. 030-04829/2009-001(DNMS)

Niles Steel Tank Company (licensee) possessed one portable radiography camera containing an iridium-192 sealed source. The licensee used its camera within an approved shielded facility.

The inspector identified one apparent violation and two Severity Level IV violations of NRC regulatory requirements that involved failure to: (1) secure a radiography camera in accordance with 10 CFR 20.1801; (2) retain sensitive security information; and (3) obtain the NRC's consent to the licensee's change of ownership transaction in 2002.

The licensee transferred its radiography camera and source to a licensed firm and filed a license termination request on September 14, 2009. The NRC terminated the license on October 7, 2009. The licensee's director of operations stated that he did not foresee directly using licensed material in the future and would utilized the services of another licensed radiography firm to perform its non-destructive examinations.

Report Details

1 Program Scope and Inspection History

Niles Steel Tank Company (licensee) is a manufacturer of large industrial tanks/vessels that employs approximately 30 individuals. The licensee possessed one radiography camera that contained an iridium-192 sealed source. Radiographic operations were conducted weekly within the licensee's approved permanent radiographic installation (PRI) by certified radiographers. The last use of licensed material was on April 6, 2009. During the summer 2009, licensee management decided to utilize the services of another firm for its non-destructive examinations.

The last inspection was conducted on November 15 and 16, 2007, and included a review of the Increased Controls (IC). One SL IV violation of IC 6(b) was identified and two additional violations of the ICs were identified ((IC-1(b) and IC-1(d)) but not cited based on "good faith" effort. No violations were identified for the routine safety inspection conducted concurrently with the IC inspection. No violations were identified during the previous routine inspection on September 12, 2005.

2 Security of Byproduct Material

2.1 Inspection Scope

The inspector reviewed security of licensed material by interviewing the selected licensee personnel, observing selected licensee activities, reviewing selected records, and touring the licensee facilities.

2.2 Observations and Findings

On August 24, 2009, the licensee terminated the Radiation Safety Officer (RSO)/ Trustworthy and Reliability (T&R) Official from its employ. However, between August 24, and September 9, 2009, the former RSO still possessed the keys and the security access code to the radiography cell permitting him access to the licensed material. The former RSO also possessed the keys to the camera storage bin within the radiography cell as well as the keys to the business doors. Between August 24, and September 9, 2009, the iridium-192 source activity was 4.2 to 3.4 curies, a quantity in excess of 1000 times Appendix C to Part 20. During this time, the source activity was approximately 3.4 curies.

On August 27 and 28, 2009, the locks to the business were changed. The company changed the locks to the PRI (where the radiography equipment was stored) on September 9, 2009. On September 14, 2009, the licensee transferred its source and camera to another NRC licensee for disposal and submitted a request to terminate its NRC license. The licensee's president stated that he did not foresee use of licensed material in the future.

Title 10 Code of Federal Regulations (CFR) 20.1801 requires that the licensee secure from unauthorized removal or access licensed materials that are in storage in controlled areas. The NRC defines a controlled area as an area outside of a restricted area but inside the site boundary, access to which can be limited by the licensee for any reason. The licensee's failure to secure from unauthorized removal or access a nominal 3.4 curies iridium-192 source that was in a controlled area and was in storage is an apparent violation of 10 CFR 20.1801.

2.3 Conclusions

The inspector identified an apparent violation of 10 CFR 20.1801 regarding the licensee's failure to secure a radiography camera containing an iridium-192 source from unauthorized removal or access. The licensee subsequently transferred the radiography camera and iridium-192 source to another licensed firm for disposal and took actions to terminate its NRC license.

3 Retention of Sensitive Information

3.1 Inspection Scope

The inspector reviewed the licensee's implementation of IC 5 by interviewing the director of operations and other personnel, observing select licensee activities, and reviewing select records.

3.2 Observations and Findings

An individual without an established need to know sensitive physical protection information (the former RSO/T&R Official), who was no longer employed by the licensee as of August 24, 2009, possessed the licensee's only copy of its physical protection information on his personal laptop computer at his residence between August 29, and September 14, 2009. The former RSO / T&R Official agreed to remove the sensitive information from his laptop computer, save it to a CD, and return the sensitive information to the licensee. On September 14, 2009, the former RSO provided the CD to an employee of the licensee who had been determined as T&R. The inspector confirmed that the licensee possessed its sensitive physical protection information.

Increased Control 5(e) requires, in part, that the licensee retain its physical protection information required by the ICs for three years after they are no longer in effect. The licensee's failure to retain its physical protection information between August 24, and September 14, 2009, is a violation of IC 5.

3.3 Conclusions

The inspector identified a violation of IC 5 involving the licensee's failure to retain its sensitive physical protection information.

4 Management Organization and Ownership of the License

4.1 Inspection Scope

The inspector reviewed the management organization and ownership of the license through interviews with selected licensee personnel and a review of select records.

4.2 Observations and Findings

The inspector reviewed the licensee's organization with the director of operations. The director of operations had assumed his current position in March 2008. In 2002, the assets of Niles Steel Tank were acquired by Bradford White Corporation. A review of the license file and the NRC's Agencywide Documents Access and Management System (ADAMS) determined that the licensee had not requested NRC's consent to the change of ownership to date. The director was unaware of this requirement and could not speculate why previous licensee management had not informed the NRC of the change of ownership transaction.

Title 10 CFR 30.34(b) requires, in part, that no NRC licensee nor any right under the licensee shall be transferred, assigned or in any other manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of the Act and shall give its consent in writing. The transfer of control of the license issued to Niles Steel Tank Company to Bradford White Corporation in 2002 without obtaining the NRC's consent, in writing is a violation of 10 CFR 30.34(b).

4.3 Conclusions

The inspector identified a violation of 10 CFR 30.34(b) involving the change of ownership of the license without obtaining NRC consent.

5 Other Increase Controls Areas Inspected

5.1 Inspection Scope

The inspector evaluated the licensee's implementation of ICs 1, 2, 3 and 6 through interviews with selected licensee personnel, observations of licensed activities and review of selected records.

5.2 Observations and Findings

The licensee only permitted individuals who had undergone a criminal background check and determined the individuals as trustworthy and reliable to have unescorted access to the radiography device. A list of the approved authorized individuals was maintained by the former RSO/ T&R Official. The licensee maintained its documented program to monitor, immediately detect, assess, and respond to unauthorized access to its radioactive material of concern and devices. The licensee equipped the PRI room with

an intrusion detection system. The intrusion detection system was monitored by a commercial security service firm. The licensee maintained an agreement with the local law enforcement agency as required by IC 2. A commercial shipper delivered new sources and returned depleted sources to the manufacturer. The licensee was notified by the source vender for delivery dates. The licensee documented its policies for identifying, controlling, processing, handling, protecting, removing, shredding, and limited access to sensitive information.

5.3 Conclusions

Notwithstanding the violations described in previous sections of this report, the inspection determined that the licensee continued its implementation of the other requirements of the Order.

6 Other Areas Inspected

6.1 Inspection Scope

The inspector interviewed the RSO and selected radiography personnel and reviewed selected records for other aspects of the radiation safety program. The inspection included review of other radiation safety program areas including, survey instrument calibration; radiation surveys; maintenance of the exposure device; depleted uranium contamination tests and sealed source leak tests.

6.2 Observations and Findings

At the time of this inspection, the licensee possessed several survey meters (range 0 -1 Roentgens per hour), calibrated every 6 months by an authorized service company. The licensee maintained copies of the calibration certificates on file. The inspector found a sampling of these survey meters to be calibrated within the required frequency and operable. The inspector also reviewed a selected sample of utilization logs which indicated surveys performed during radiographic operations.

The inspector reviewed selected daily safety check records and quarterly inspection records for the exposure device. The licensee identified no malfunctions with the device or the radiation monitoring equipment for the PRI. The inspector reviewed the specific items that are to be examined during the quarterly maintenance checks with the licensee.

The radiography source was leak tested every 6 months. The last leak test was conducted on April 1, 2009, and the results were less than 0.005 µCi. The inspector reviewed a sampling of leak test records for 2008 and 2009 and found that the sources were tested at the appropriate frequency. The leak tests for the exposure device were noted to include depleted uranium contamination tests.

6.3 Conclusions

No apparent violations of NRC regulatory requirements were identified for the above program areas.

7 Exit Meeting Summary

The inspector discussed the preliminary conclusions with licensee management during the exit meeting conducted at the licensee's facility on September 15, 2009 and by telephone on September 22, 2009. The licensee did not identify any information reviewed during the inspection and proposed for inclusion in the inspection report as proprietary in nature.

List of Personnel Contacted

*# Jeremy Waller, Director of Operations
Terry Wood, Sales Manager, Acting T&R Official
*# Art Bustos, Acting RSO

Individual(s) present at entrance meeting
* Individual(s) present at exit meeting