

March 9, 2010

EA-09-082

Mr. William F. Troxler, Jr.
President
Troxler Electronic Laboratories, Inc.
3008 Cornwallis Road
P.O. Box 12057
Research Triangle Park, NC 27709

SUBJECT: TROXLER GENERAL LICENSE EXPORT ACTIVITY – NOTICE OF VIOLATION

Dear Mr. Troxler:

This letter refers to a Nuclear Regulatory Commission (NRC) in-office evaluation of your reported activities during Calendar Year 2008 relative to the export of nuclear gauges containing Americium-241 (Am-241) from Troxler Electronic Laboratories, Inc. (TEL), located in Research Triangle Park, NC, as provided in a January 5, 2009, letter to the NRC with additional information provided to NRC in your letter dated January 29, 2009. Subsequently, in our October 5, 2009, letter we informed you of an apparent violation of the general license requirements contained in 10 CFR 110.23 and 10 CFR 110.28 and provided you with the opportunity to address the apparent violation by either attending a predecisional enforcement conference or by providing a written response before we made our final enforcement decision. In a letter dated October 9, 2009, you provided a response to the apparent violation and affirmed implementation of the corrective actions described in your letter dated January 29, 2009.

Based on the information developed during the NRC evaluation and the information that you provided in your January 29, 2009 and October 9, 2009 letters, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding it are described in detail in our October 5, 2009 letter. Specifically, TEL had exported 40 mCi of Am-241 contained in a moisture density gauge to a destination in Iraq on November 21, 2008. However, TEL violated the requirements of 10 CFR 110.23(a)(1) because this section does not authorize the export of byproduct material to any country listed in 10 CFR 110.28, and Iraq is listed in 10 CFR 110.28 as an embargoed destination. Such an export shipment could only have been authorized by a specific license with appropriate regulatory reviews. TEL failed to apply for a specific license as required by 10 CFR 110.20(a)(2) for this specific export activity. TEL identified a number of causes for the violation, including inadequate training, inadequate procedures and computer-based export activity controls, and a lack of internal export reviews and audits. TEL initiated corrective actions for these deficiencies in January 2009 and based on NRC in-office review of the aforementioned letters, full compliance was achieved in March 2009.

The NRC determined that the apparent violation had low safety significance since the export involved a single moisture density gauge. However, the violation had regulatory significance because of the impact that it had on the NRC's ability to perform its regulatory function. This particular export activity to Iraq should only have occurred after NRC approved a specific license authorizing such per 10 CFR 110.20(a)(2). Further, this would have required an Executive Branch review in accordance with the requirements of 10 CFR 110.41(a)(9). Therefore, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level III. In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$16,250 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. The NRC determined that *Corrective Action* credit was warranted based on TEL's prompt and comprehensive corrective actions, which included: conducting an immediate root cause analysis for the violation in January 2009; training all TEL personnel and supervision involved in export activities in the requirements of the NRC general license; developing export compliance procedures and policies especially regarding shipments to end users in embargoed or restricted countries; developing computer-based export shipment controls to help prevent future similar violations; and, revising the annual radiation protection program audit to include a review of byproduct material export compliance.

Therefore, to encourage prompt and comprehensive correction of violations, and in recognition of the absence of previous escalated enforcement action, I have decided not to propose a civil penalty in this case. However, significant violations in the future could result in a civil penalty.

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken to correct the violation and prevent recurrence and the date when full compliance was achieved is already adequately addressed on the docket in your letters dated January 29, 2009 and October 9, 2009. 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 enclosures, and your response, if you choose to respond, 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

W. Troxler

3

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/

Roy P. Zimmerman, Director
Office of Enforcement

Enclosure: Notice of Violation

cc: (See page 4)

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/

Roy P. Zimmerman, Director
Office of Enforcement

Enclosure: Notice of Violation

Electronic DISTRIBUTION:

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S. Moore, OIP
J. Owens, OIP
S. Baker, OIP
R. Zimmerman, OE
B. Sosa, OE
N. Hilton, OE
J. Wray, OE
G. Kim, OGC
M. Barkman, OGC/MLE
D. McIntyre, OPA
J. Luehman, FSME
M. Burgess, FSME
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R. Wharton, NMSS
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OFFICE	OIP	OIP/ECIOB :BC	OGC	OGC/MLE
NAME	S. Baker	J. Owens*	G. Kim**	M. Barkman**
DATE	02/24/2010	02/17/2010	02/18/2010	02/23/2010
OFFICE	OE	OE :BC	OIP :DD	OE :D
NAME	J. Wray*	N. Hilton*	S. Moore	R. Zimmerman
DATE	02/25/2010	02/25/2010	03/03/2010	03/09/2010

OFFICIAL RECORD COPY

cc:

Letter to Mr. William F. Troxler, Jr.

Mr. Stephen A. Browne, TEL, Inc.
Corporate Radiation Safety Officer

National Nuclear Security Administration
Office of International Regimes and
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U.S. Department of Energy
ATTN: Sean Oehlbert, Team Leader
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National Nuclear Security Administration
Office of International Regimes and
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National Nuclear Security Administration
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U.S. Department of Energy
ATTN: Ms. Jessica Norles
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LSS Technical Data Assessment
& Teleforensics Center, DHS/CBP
Attn: Christopher Baugues, MSC Physical
Scientist
12825 Worldgate Plaza, Bldg 3
Herndon, VA 20170

Office of Nuclear and Missile Technology
Bureau of Industry and Security
U.S. Department of Commerce
ATTN: Steve Clagett, Room 2631
14th Street & Penn Avenue, NW,
Washington, D.C. 20230

NAC International/Nuclear Materials
Management Safeguards System
ATTN: Peter Dessauls, Program Manager
DOE/NMMSS
1000 Independence Ave., SW
Washington, D.C. 20585-1290

Office of Nuclear Energy, Safety
and Security Affairs, Room 3320 HST
Bureau of International Security and
Nonproliferation
U.S. Department of State
ATTN: Robin DeLaBarre
2201 C Street, NW
Washington, D.C. 20520

Dept. of Environment & Natural Resources
Division of Environmental Health
Radiation Protection Section
Attn: Lee Cox, Acting Chief
3825 Barrett Drive
Raleigh, NC 27609-7221

NOTICE OF VIOLATION

Troxler Electronic Laboratories, Inc.
Research Triangle Park, NC

EA-09-082

During the review of information you provided to the NRC on January 5, 2009, as supplemented by your letter dated October 9, 2009, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 110.20(a)(2) states that a person must file an application with the Commission for a specific license in accordance with 10 CFR 110.31 through 10 CFR 110.32 if an export or import is not covered by the NRC general licenses described in 10 CFR 110.21 through 10 CFR 110.30. 10 CFR 110.23(a)(1) states that a general license is issued to any person to export byproduct material listed in Appendix L except to an embargoed country listed in 10 CFR 110.28.

10 CFR 110.41(a)(9) states that the Executive Branch will review an application for a license to export to any country listed in 10 CFR 110.28.

Contrary to the above on November 21, 2008, Troxler Electronic Laboratories, Inc., (TEL) failed to apply for a specific license and exported byproduct material listed in Appendix L to an embargoed country listed in 10 CFR 110.28. Specifically, TEL shipped a moisture density gauge containing Am-241 to a destination in Iraq, which was an embargoed country listed in 10 CFR 110.28. Further, this failure to apply for a specific export license prevented an Executive Branch review of the export activity as required by 10 CFR 110.41(a)(9).

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

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken to correct the violation and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed on the docket in your letters, dated January 29, 2009 and October 9, 2009. 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-09-082)" 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 II.

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

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 of receipt of this Notice.

Dated this 9th day of March 2010