

June 11, 2010

EA-10-060
NMED No. 070214

Victor E. Rivera Roldan, P.E.
President
Victor E. Rivera Associates
Geotechnical Engineers
Box 198, Station #6
Ponce, Puerto Rico 00732-2198

SUBJECT: NOTICE OF VIOLATION - NRC Inspection Report No. 03030301/2010001

Dear Mr. Rivera:

This refers to the inspection conducted on March 4, 2010, at the Victor E. Rivera Associates, Geotechnical Engineers (Victor & Associates) facility at 5 Reparto Industrial, El Tuque, Ponce, Puerto Rico, to examine your licensed activities, and to review the circumstances surrounding the event that occurred at your temporary job site in Ponce, Puerto Rico on April 10, 2007. Additional information provided during the telephone conversation on March 10, 2010, between Jose Rivera Nazario of your organization and Dr. Sattar Lodhi of this office was also examined as part of this inspection. The findings of the inspection were discussed with you and Mr. Rivera Nazario of your organization on March 4, 2010, at the conclusion of the site inspection, and in a final exit meeting on March 10, 2010, with Mr. Rivera Nazario. The results of the inspection were sent to you in the NRC inspection report dated April 9, 2010.

In the letter transmitting the inspection report (ML100990276), we provided you with the opportunity to address the apparent violations identified in the report by either attending a predecisional enforcement conference or by providing a written response before we made our final enforcement decision. In a letter dated April 30, 2010, you provided a response to the apparent violations. After reviewing your response, we also conducted a telephone conversation with you on May 13, 2010, to clarify our understanding of your position on the violations, during which you expressed that the apparent violations were not conducted intentionally by Victor & Associates, but also indicated that you agree that the apparent violations occurred as stated in our inspection report.

Based on the information developed during the inspection and information that you provided in your response to the inspection report, the NRC has determined that two violations of NRC requirements 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. The first violation involves the failures to: (1) maintain constant surveillance of licensed material that was in an unrestricted area; and, (2) use a minimum of two independent physical controls that form tangible barriers to secure a portable gauge from unauthorized removal whenever the portable gauge was not under the licensee's control and constant surveillance. Specifically, on April 10, 2007, Victor & Associates' authorized user (AU) did not maintain constant surveillance of, or properly secure, a portable gauge while it was in use at a temporary job site in Ponce,

Puerto Rico. As a result, the gauge was damaged when soil compaction machinery operating at the site ran over the gauge. After this event, Victor & Associates notified the NRC Headquarters Operations Officer by filing an information-only report, based on its review of the issue, which resulted in its conclusion that the safety function of the gauge was unaffected.

Although there is no evidence that any member of the public was exposed to radiation as a result of the event, such occurrences have the potential to spread contamination and expose members of the public to radiation if the sources become damaged. Therefore, the first violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level (SL) III (Violation A in the Notice).

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$3,500 is considered for a SL III violation. 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. Immediate corrective actions completed after the event included promptly ensuring that the gauge sources were shielded and determining that there was no spread of contamination or exposure pathway to members of the public. Other corrective actions completed by March 2010 included providing refresher training to the AU involved in the event and discussing the event with all of Victor & Associates' AUs, reminding them to maintain constant surveillance of the gauges at job sites.

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 this SL III violation constitutes escalated enforcement action, that may subject you to increased inspection effort.

Additionally the NRC identified a violation involving the failure to limit possession and use of radioactive material to material specifically listed on the license. This violation is categorized at SL IV and is detailed in Violation B of the Notice. The violation is being cited in the Notice because it was identified by the NRC inspector.

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. 03030301/2010001, in your letter dated April 30, 2010, and in this letter. 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, and its enclosure 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, if you choose to submit one, 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/about-nrc/regulatory/enforcement/current.html>.

Sincerely,

/RA/ Original Signed By: Marc L. Dapas for

Samuel J. Collins,
Regional Administrator

Docket No. 03030301
License No. 52-19885-02

Enclosure: Notice of Violation

cc.:
Commonwealth of Puerto Rico
Jose R. Rivera Nizario, P.E., Radiation Safety Officer

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cc.:
Commonwealth of Puerto Rico
Jose R. Rivera Nizario, P.E., Radiation Safety Officer

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SUNSI Review Complete: AEP (Reviewer's Initials)

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NOTICE OF VIOLATION

Victor E. Rivera Associates
Geotechnical Engineers
Ponce, Puerto Rico

Docket No. 03030301
License No. 52-19885-02
EA-10-060

During an NRC inspection conducted March 4 – 9, 2010, for which an exit meeting was held on March 10, 2010, violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. 10 CFR 20.1802 requires that the licensee control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage.

10 CFR 30.34(i) requires, in part, that each portable gauge licensee shall 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, on April 10, 2007, the licensee did not maintain constant surveillance of licensed material, a portable gauge, that was in an unrestricted area and that was not in storage, or use a minimum of two independent physical controls that form tangible barriers to secure the gauge from unauthorized removal. Specifically, the gauge, which contained licensed material in excess of 1000 times the quantity specified in Appendix C to 10 CFR Part 20, was not under constant surveillance or secured by two independent physical controls while it was in use at the licensee's temporary job site in Ponce, Puerto Rico. The gauge was damaged when machinery operating at the site ran over the gauge and broke the source rod.

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

- B. NRC license No. 52-19885-02, authorizes the licensee to possess and use licensed material in Campbell Pacific Nuclear (CPN) Corporation Model MC Series portable gauges.

Contrary to the above, between October 13, 2009 and March 4, 2010, the licensee possessed licensed material in a Troxler Model 3430 portable gauge that was not authorized on the license. Although the licensee was authorized to possess materials in the quantity contained in the unauthorized gauge, it was not authorized to possess that specific model of gauge.

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

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 NRC Inspection Report No. 03030301/2010001, a letter from the licensee dated April 30, 2010, and in the NRC letter transmitting 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, EA-10-060," 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, 475 Allendale Rd., King of Prussia, Pennsylvania, within 30 days of the date of the letter transmitting this Notice of Violation (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 of receipt.

Dated this 11th day of June 2010