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Director, Office of Enforcement
U.S. Nuclear Regulatory Commission
One White Flint North
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November 17, 2010

Answer to a Notice of Violation (EA-10-077)

Director:

This correspondence is provided by Superior Well Service, Ltd. (SWS) in response to the Notice of Violation dated October 21, 2010:

I. Violations associated with temporary loss of licensed material

A. 10 CFR 71.5(a) requires, in part, that each licensee who transports licensed material where transport is on public highways, shall comply with the applicable requirements of the Department of Transportation regulations in 49 CFR Parts 107, 171 through 180 and 390 through 397, appropriate to the mode of transport.

49 CFR 173.448(a) requires that each shipment of Class 7 (radioactive) materials must be secured to prevent shifting during normal transportation conditions.

Contrary to the above, on September 20, 2008, while transporting licensed material on a public highway, SWS did not secure a shipment of radioactive materials (sealed well-logging sources, consisting of a cesium-137 source and an americium-241 source, each greater than 1000 times the quantity specified in Appendix C to Part 20) to prevent shifting during normal transport conditions.

SWS Response:

Superior Well Services acknowledges that the shipment of licensed material became dislodged due to shifting during transit. SWS has taken steps as described during the PEC to ensure that this will not happen again.

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

Contrary to the above, on September 20, 2008, licensed materials fell out of a transport truck and onto a public highway (an unrestricted area) where SWS failed to control and maintain constant surveillance of the licensed material for at least ninety minutes, until SWS located and retrieved the sources.



SWS Response:

Superior Well Services' management and employees are well aware of the security requirements related to the possession and transport of licensed material. However in this case nobody was immediately aware that the material had fallen out of the vehicle. It appears to Superior Well Services' management that this violation is redundant since violations are issued for failing to secure and failure to report the loss of licensed material.

- C. 10 CFR 20.2201(a) requires, in part, that each licensee shall make a report by telephone to the NRC Operations Center immediately after its occurrence becomes known to the licensee, any missing licensed material in an aggregate quantity equal to or greater than 1000 times the quantity specified in Appendix C to Part 20 under such circumstances that it appears to the licensee that an exposure could result to persons in unrestricted areas.

Contrary to the above, on September 20, 2008, when it became known to SWS that licensed material was missing and that an exposure could result to persons in unrestricted areas, SWS did not immediately make a report by telephone to the NRC Operations Center. Specifically, SWS failed to notify the NRC Operations Center of the missing licensed material until July 23, 2009, ten months after identifying the event.

SWS Response:

Superior Well Services Corporate was unaware of the incident until July 2009. The notification was made as soon as practical from the time that the information became available.

II. Other violations of NRC requirements

- A. 10 CFR 39.67 requires, in part, that before transporting licensed materials, the licensee shall make a radiation survey of the position occupied by each individual in the vehicle and of the exterior of the vehicle used to transport the licensed materials. The results of the surveys must be recorded, and the licensee shall retain records of surveys for inspection by the Commission for three years after they are made.

Contrary to the above, on an unspecified number of occasions prior to July 22, 2010, before transporting licensed materials, SWS did not make radiation surveys of the positions occupied by each individual in the vehicle and of the exterior of the vehicle used to transport the licensed materials.

SWS Response:

Superior Well Services contends that documented surveys on Superior Well Services' shipping papers are available for all openhole jobs. This is a requirement of the DOT, the USNRC and SWS. Documentation in support of this issue, specifically shipping paper surveys from September 2008, are being forwarded by certified mail to the attention of Dr. Lodhi.



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- B. 10 CFR 30.9(a) requires, in part, that information required by the Commission's regulations to be maintained by the licensee shall be complete and accurate in all material respects.

Contrary to the above, on an unspecified number of occasions prior to July 22, 2010, SWS did not ensure that information required by the Commission's regulations to be maintained was complete and accurate in all material respects. Specifically, SWS recorded survey results that were obtained by copying from previous survey records.

SWS Response:

Superior Well Services field personnel did not have direct access to previous shipping papers and survey records to copy the results. Shipping papers are turned in to dispatch on a daily basis and then transferred to the LRSO's office. The LRSO's office is locked when the LRSO is not present. It would be much more difficult for an employee to pick a lock to obtain previous survey records than it would be to simply conduct a survey. Without previous survey records, employees would not be able to copy the data from one survey record to another.

Superior Well Services contends that this specific accusation was provided by former employees that became disgruntled and un-rightly accusatory following job termination.

As discussed during the pre-decisional enforcement conference (PEC) as well as subsequent conversations Superior Well Services has always stressed regulatory compliance with all employees. It is the intent of our company to learn from this situation and maintain full regulatory compliance.

Respectfully,

A handwritten signature in black ink, appearing to read "Lew Cessna".

Lew Cessna
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