

November 8, 2011

EA-11-209

Mark Gabriel  
Quality Control Manager  
Warner Brothers, LLC  
P.O. Box 5821  
Holliston, MA 01746

SUBJECT: NOTICE OF VIOLATION - NRC Inspection Report No. 15000020/2011001

Dear Mr. Gabriel:

This letter provides you the U.S. Nuclear Regulatory Commission (NRC) enforcement decision for the apparent violation identified during the NRC inspection conducted between July 21 and September 29, 2011, at Warner Brothers, LLC's (WB's) office in East Deerfield, Massachusetts. The inspection consisted of an examination of your licensed activities within NRC jurisdiction as they relate to radiation safety and to compliance with NRC regulations. In addition to the on-site review, the inspection also involved in-office review of additional information WB provided in telephone conversations between the NRC and WB's Radiation Safety Officer (RSO), Wilfred Clough, on July 21, 2011 (ML112020414),<sup>1</sup> July 22 and 25, 2011 (ML112130147) and August 16, 2011 (ML112280439). This information related to locations within NRC jurisdiction at which WB had used radioactive materials. The NRC discussed its findings during a telephonic exit meeting with you and Mr. Clough on September 29, 2011. The findings were also described in the NRC inspection report sent to you with a letter dated October 14, 2011 (ML112901167).

During the September 29, 2011, inspection exit meeting, Mr. Blake Welling of my staff informed you that one apparent violation was identified and was being considered for escalated enforcement. You were also informed that the NRC had sufficient information regarding the apparent violation and WB's corrective actions to make an enforcement decision without the need for a pre-decisional enforcement conference (PEC) or a written response from WB. You indicated that a PEC would not be necessary, and that WB did not plan to submit a written response.

Therefore, based on the information developed during the inspection and the information that WB provided in its communications noted above, the NRC has determined that the violation occurred. The violation is cited in the enclosed Notice of Violation (Notice), and the circumstances surrounding it are described in detail in the subject inspection report issued on October 14, 2011. The violation involved the failure by WB to file for reciprocity prior to working in a non-Agreement State.

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<sup>1</sup> Designation in parentheses refers to an Agencywide Documents Access and Management System (ADAMS) accession number. Documents referenced in this letter are publicly-available using the accession number in ADAMS.

WB is the holder of a license issued by the Commonwealth of Massachusetts (an NRC Agreement State) that authorizes the possession and use (within the Commonwealth) of byproduct radioactive material in a portable nuclear gauge. Such licenses do not authorize use of radioactive material in non-Agreement States or other areas of exclusive federal jurisdiction. Title 10 of the Code of Federal Regulations (CFR) Section 150.20 grants an NRC general license to Agreement State licensees allowing them to conduct the licensed activities authorized by the Agreement State in non-Agreement States provided, in part, that the Agreement State licensee files with the NRC, using NRC Form-241, "Report of Proposed Activities in Non-Agreement States," at least three days prior to engaging in such licensed activities. However, during the NRC inspection, the NRC identified that on December 6, 2006, and July 7, 2008, WB used a portable nuclear gauge containing a cesium-137 sealed radioactive source at temporary jobsites within the State of Connecticut (a non-Agreement State) without having filed Form-241. WB indicated to the NRC that it had not recognized there was a requirement to file for reciprocity.

The violation impacted the NRC's regulatory process because the NRC was not provided an opportunity to conduct inspections of licensed activities since the NRC was not informed that a portable nuclear gauge was being used on these occasions. Therefore, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level (SL) III. 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 WB 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 2.3.4 of the Enforcement Policy. The NRC has concluded that credit is warranted for WB's corrective actions taken to address the violation. Namely, WB revised its operating procedures to prohibit use of its portable nuclear gauge outside of the Commonwealth of Massachusetts. Also, WB informed its authorized gauge users of this issue and the procedure change, trained its authorized gauge users on reciprocity requirements, and marked both the gauge transport container and the utilization records with bold print stating that the gauge was not to be taken out of the Commonwealth.

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 in the future should you decide to reapply for reciprocity or for a specific NRC license.

The NRC has concluded that information regarding: (1) the reason for the violation; (2) the actions planned or already taken to correct the violation and prevent recurrence; and, (3) the date when full compliance was achieved, is already adequately addressed on the docket in this letter, in the records of telephone conversations between the NRC inspector and the WB RSO on July 21, 22, and 25, and August 16, 2011, and in Inspection Report No. 15000020/2011001. Therefore, you are not required to respond to this letter unless the descriptions in the aforementioned correspondence do not accurately reflect 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 as well as your response, if you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room and from the NRC's Agency-wide Documents Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. The NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>.

To the extent possible, your response, if you choose to provide 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).

Sincerely,

*/RA/*

William M. Dean  
Regional Administrator

Docket No. 15000020  
MA License No. 48-0380

Enclosure: Notice of Violation

cc w/encl:  
Wilfred Clough, Radiation Safety Officer  
Commonwealth of Massachusetts  
State of Connecticut

M. Gabriel

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In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and its enclosure as well as your response, if you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room and from the NRC's Agency-wide Documents Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. The NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>.

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Sincerely,  
**/RA/**  
William M. Dean  
Regional Administrator

Docket No. 15000020  
MA License No. 48-0380

Enclosure: Notice of Violation

cc w/encl:  
Wilfred Clough, Radiation Safety Officer  
Commonwealth of Massachusetts  
State of Connecticut

Distribution:

See next page

SUNSI Review Complete: MMM

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## NOTICE OF VIOLATION

Warner Brothers, LLC  
Holliston, Massachusetts

Docket No. 15000020  
MA License No. 48-0380  
EA-11-209

During an NRC inspection conducted between July 21 and September 29, 2011, as well as an in-office review of information provided by the licensee in telephone conversations between the NRC inspector and Warner Brothers, LLC staff on July 21, 22, 25, and August 16, 2011, for which a telephonic exit meeting was held on September 29, 2011, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 30.3(a) states, in part, that no person shall own, possess, or use byproduct material except as authorized in a specific or general license issued in accordance with the regulations in this chapter.

10 CFR 150.20(a) states, in part, that any person who holds a specific license from an Agreement State is granted an NRC general license to conduct the same activity in non-Agreement States, subject to the provisions of 10 CFR 150.20(b).

10 CFR 150.20(b)(1) requires, in part, that any person engaging in activities in a non-Agreement State shall, at least three days before engaging in each such activity for the first time in a calendar year, file four copies of NRC Form-241, "Report of Proposed Activities in Non-Agreement States," with the Regional Administrator of the appropriate NRC regional office.

Contrary to the above, on December 6, 2006, and July 7, 2008, Warner Brothers LLC, which only holds a Massachusetts (Agreement State) license, engaged in activities involving the use of byproduct material in a non-Agreement State without, at least three days before engaging in each such activity for the first time in the calendar year, filing NRC Form-241, "Report of Proposed Activities in Non-Agreement States," with the NRC Region I Regional Administrator, the Regional Administrator of the appropriate NRC regional office. Specifically, WB used a portable gauge containing a cesium-137 sealed source, at temporary jobsites within the State of Connecticut, without obtaining a specific license issued by the NRC or filing NRC Form-241 with the NRC, as required.

This is a Severity Level III violation (Example 6.9).

The NRC has concluded that information regarding: (1) the reason for the violation; (2) the actions planned or already taken to correct the violation and prevent recurrence; and, (3) the date when full compliance was achieved, is already adequately addressed on the docket in the records of telephone conversations between the NRC inspector and the WB RSO July 21, 22, 25, and August 16, 2011, in Inspection Report No. 15000020/2011001, and in the letter transmitting this Notice of Violation (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-11-209," 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, within 30 days of the date of the letter transmitting this Notice.

If you choose to respond, your response will be made available electronically for public inspection in the NRC Public Document Room and from the NRC's Agency-wide 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 of receipt.

Dated this 8th day of November, 2011