



UNITED STATES  
**NUCLEAR REGULATORY COMMISSION**  
REGION IV  
1600 EAST LAMAR BLVD  
ARLINGTON, TEXAS 76011-4511

February 2, 2012

EA-09-328

Steve Twilley  
Director, North America  
Roxar Flow Measurement, Inc.  
3300 Walnut Bend Lane  
Houston, Texas 77042

**SUBJECT:** NOTICE OF VIOLATION, NRC INSPECTION REPORT 030-36402/09-001, AND  
OFFICE OF INVESTIGATIONS ASSIST REPORT 4-2009-057F

Dear Mr. Twilley:

This refers to the inspection and inquiry performed by the Office of Investigations, Region IV Field Office, conducted from February 2, 2009, through July 15, 2011. This inspection examined activities conducted under your license as they related to radiation safety, to compliance with the Commission's rules and regulations, as well as the conditions of your license. Within these areas, the inspection consisted of a selected examination of procedures and representative records and interviews with personnel. The inspectors discussed the inspection findings with you and others members of Roxar Flow Measurement, Inc., during a final telephonic exit briefing on July 15, 2011. An inspection report identifying the apparent violation was issued on August 5, 2011 (ADAMS Accession Number ML11217A075). On November 15, 2011, a predecisional enforcement conference (PEC) was conducted in the Region IV office with members of your staff to discuss the apparent violation, its significance, its root causes, and your corrective actions. A copy of the handout you provided at this meeting was attached to the meeting summary (ADAMS Accession Number ML 12032A296).

Based on the information developed during the inspection and the investigation staff's inquiry, the information that you provided during the conference, and the information provided in your letter dated November 30, 2011 (ADAMS Accession Number ML11334A160), the NRC has determined that a violation of NRC requirements occurred. This violation is cited in the enclosed Notice of Violation (Notice), and the circumstances surrounding it were described in detail in the inspection report dated August 5, 2011. The violation involved multiple transfers of radioactive material in fixed gauges to entities that were not authorized to receive or possess the material at the time of the transfers. These transfers occurred from 2003 through 2007. The root cause of the violation was an apparent misunderstanding of NRC regulations.

The NRC considers an improper transfer of licensed radioactive material a significant regulatory and safety concern because of the potential for possession or use of licensed radioactive material by individuals without the proper training and experience. Therefore, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level III. The Enforcement Policy can be found on the NRC's Web site at [www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html](http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html).

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$ 3,500 is considered for a Severity Level III violation. Because your facility has not been the subject of escalated enforcement actions within 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. Based on your comprehensive corrective actions, the NRC determined that credit was warranted for *Corrective Action*. Corrective actions included, but were not limited to, ceasing to improperly transfer fixed gauges to entities not authorized to receive them, ensuring that all improperly transferred gauges were appropriately registered with or licensed by the NRC, and developing, implementing, and maintaining policies and procedures to ensure that radioactive material is only transferred to entities that are authorized to receive it. In addition, you retained counsel with regulatory experience and a consultant. Further, you reviewed applicable NRC regulations and created a "regulatory compliance package" to give to each of your customers to ensure each customer understands the requirements for NRC general licensees. 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 Severity Level III violation constitutes escalated enforcement action that may subject you to increased inspection effort.

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence, and the date when full compliance will be achieved is already adequately addressed on the docket in Inspection Report 030-36402/09-001, in your PEC handouts, and in your letter dated November 30, 2011. 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 provide one, will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's Agencywide Documents Access Management 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 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

Roxar Flow Measurement, Inc.  
EA-09-328

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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/reading-rm/doc-collections/enforcement/actions/>.

Should you have any questions regarding this letter or the enclosed report, please contact Mr. Michael Vasquez, Chief, Nuclear Materials Safety Branch A, at 817-200-1130.

Sincerely,

/RA/ by ATH

Elmo E. Collins  
Regional Administrator

Docket: 030-36402  
License: 42-27765-01

Enclosure: Notice of Violation

cc with Enclosure:  
Richard A. Ratliff, P.E., L.M.P., Chief  
Radiation Safety Licensing Branch Manager  
Division for Regulatory Services  
TX Dept. of State Health Services  
P.O. Box 149347-Mail Code 2835  
Austin, TX 78714-9347

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| RIV ETA ( <a href="mailto:Lydia.Chang@nrc.gov">Lydia.Chang@nrc.gov</a> ) |  |  |

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| <input checked="" type="checkbox"/> Publicly Available |               | <input type="checkbox"/> Non-publicly Available |   | <input type="checkbox"/> Sensitive                        | <input checked="" type="checkbox"/> Non-sensitive |
| Category – <b>KEYWORD</b> :                            |               |   |   |   |   |
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| JMRazo   | GMVasquez     | MCMaier   | KSFuller                                | HGepford  |   |
| <b>/RA/</b>  | <b>/RA/</b>   | <b>/RA/ E</b>                                   | <b>/RA/ E</b>                           | <b>/RA/ E</b>   |   |
| 12/1/11  | 12/5/2011     | 01/24/2012                                      | 01/24/2012                              | 01/24/2012  |   |
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| 1/25/2012  | 01/26/2012    |   | 01/31/2012                              | 02/02/2012  |   |

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## NOTICE OF VIOLATION

Roxar Flow Measurement, Inc.  
Houston, Texas

Docket: 030-36402  
License: 42-27765-01  
EA-09-328

During an NRC inspection and inquiry performed by the Office of Investigations, Region IV Field Office, conducted from February 2, 2009, through July 15, 2011, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 30.41(a) and (b)(5) require, in part, that no licensee shall transfer byproduct material except as authorized in Section 30.41. Licensees may transfer byproduct material to any person authorized to receive such byproduct material under terms of a specific license or a general license issued by the Commission or an Agreement State.

Contrary to the above, on numerous occasions between September 2003 and August 2007, the licensee transferred byproduct material to persons not authorized to receive such byproduct material under the terms of a specific license or a general license issued by the Commission or an Agreement State. Specifically, the licensee transferred fixed gauges, with sources containing 0.030 Curies of cesium-137, to unauthorized persons. The gauges were used subsea in the Gulf of Mexico within areas of exclusive Federal jurisdiction.

This is a Severity Level III violation (Section 6.12).

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence, and the date when full compliance will be achieved, is already adequately addressed on the docket in Inspection Report 030-36402/09-001 (ADAMS Accession Number ML11217A075), in your letter dated November 30, 2011 (ADAMS Accession Number ML11334A160), and in your PEC handouts (ADAMS Accession Number ML 12032A296). 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-09-238," 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 IV, 1600 East Lamar Blvd., Arlington, Texas 76011-4511, 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's Agencywide Documents Access 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 2 working days of receipt.

Dated this 2nd day of February 2012

Enclosure 1