

March 30, 2012

EA-11-242

Ali Regimand, President
InstroTek, Inc.
5908 Triangle Drive
Raleigh, NC 27617

SUBJECT: NOTICE OF VIOLATION (NRC INVESTIGATION REPORT NO. 4-2010-058,
CPN INTERNATIONAL, INC)

Dear Mr. Regimand:

This letter provides you the U.S. Nuclear Regulatory Commission's (NRC) enforcement decision for the apparent violations identified during the NRC's investigation conducted from June 7, 2010 through September 23, 2011, at the InstroTek/CPN International (CPN) facility in Concord, CA. The purpose of the investigation was to evaluate CPN's export of NRC regulated materials to embargoed destinations on two occasions and CPN's failure to make annual reports of exports on 10 occasions.

In a telephone conversation on January 19, 2012, and in the NRC letter transmitting the investigation results of January 20, 2012, 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 February 15, 2012, you provided a response to the apparent violations and summarized your corrective actions to prevent recurrence.

Based on the information developed during the investigation and the information that you provided in your response dated February 15, 2012, the NRC has determined that a violation 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 Enclosure 1 of NRC's January 20, 2012 letter to you.

The NRC considers these violations of the requirements in Title 10 Code of Federal Regulation (CFR) 110.5 and 10 CFR 110.23 to be significant because the NRC was not able to make the requisite finding that the exports of radioactive material by CPN were not inimical to the common defense and security of the United States and precluded review of intended foreign recipients. The failure to obtain appropriate license authorization to export byproduct materials is significant because it resulted in two exports to embargoed destinations without authorization, and impacted the NRC's ability to perform its regulatory function in this regard. The failure to submit annual reports of americium exports was significant in that it impacted the NRC's ability to perform its regulatory function with regard to exports of this radioisotope and precluded identification of improper exports. Therefore, these violations are categorized collectively in accordance with the NRC Enforcement Policy as a Severity Level III problem. The NRC

Enforcement Policy may be found on the NRC website at 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 \$7,000 is considered for this Severity Level III problem. 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 2.3.4 of the Enforcement Policy. Based on its assessment of CPN's corrective actions, the NRC has determined that *Corrective Action* credit is warranted. CPN performed an internal investigation to determine the causes that led to these violations and implemented corrective actions with a nexus to the identified causes. Corrective actions included communication and training of export and shipping requirements for all personnel involved with nuclear gauges, increased and centralized controls for exports, implementation and update of export procedures, implementation of computer controls on exports, and updates to the annual radiation protection audit and ISO management audit checklists.

Therefore, to encourage prompt and comprehensive correction of violations, and in recognition of the absence of previous escalated enforcement action, NRC is not proposing 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 problem constitutes escalated enforcement action that may subject you to increased inspection effort.

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken and planned to correct the violation and prevent recurrence, and the date when full compliance was achieved is already adequately addressed in your letter dated February 15, 2012. 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 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 withholding confidential commercial or financial information).

Regimand

3

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 Zimmerman, Director
Office of Enforcement

Enclosure: Notice of Violation

cc:

State of North Carolina
State of California

Regimand

4

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 Zimmerman, Director
Office of Enforcement

Enclosure: Notice of Violation

cc:

State of North Carolina
State of California

DISTRIBUTION:

Stephen Dembek, OIP
Janice Owens, OIP
Brian Wittick, OIP
Joseph Ulie, OI

Roy Zimmerman, OE
Nick Hilton, OE
Tison Campbell, OE
Leelavathi Sreenivas, OE

Catherine Scott, OGC
Christopher Hair, OGC
Robert Goetz, OI
Marjorie McLaughlin, RI

OEMail Resource;
RidsSecyMailCenter Resource;
RidsEdoMailCenter Resource;
RidsFsmeOd Resource;
RidsOpaMail Resource;
RidsOigMailCenter Resource;
RidsRgn1MailCenter Resource;
RidsRgn4MailCenter Resource

OEWEB Resource;
RidsOcaMailCenter Resource;
RidsOgcMailCenter Resource;
RidsNmssOd Resource;
RidsOiMailCenter Resource;
RidsOcfoMailCenter Resource;
RidsRgn3MailCenter Resource;

ADAMS Accession Number: ML12080A161

■ Publicly Available ■ Non-Sensitive

OFC	OIP	OIP	OIP	OE	OE
NAME	BWittick	BSmith	SDembek	TCampbell	RZimmerman
DATE	3/13/12	3/16/12	3/13/12	3/29/12	3/30/12

OFFICIAL RECORD COPY

NOTICE OF VIOLATION

InstroTek, Inc.
Raleigh, NC 27617

EA-11-242

Based on NRC evaluation of InstroTek/CPN's (CPN) export activity associated with moisture density gauges containing byproduct material (americium-241 and cesium-137), including an investigation conducted by the NRC's Office of Investigations, violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. 10 CFR 110.5 states, in part, "no person may export any nuclear equipment or material listed in § 110.8 and § 110.9, or import any nuclear equipment or material listed in § 110.9a, unless authorized by a general or specific license issued under this part."

10 CFR 110.9, "List of nuclear equipment and material under NRC export licensing authority," includes byproduct material (e.g., americium-241 and cesium-137).

10 CFR 110.20(a) states "A person may use an NRC general license as authority to export or import nuclear equipment or material, if the nuclear equipment or material to be exported or imported is covered by the NRC general licenses described in §§ 110.21 through 110.27. If an export or import is not covered by the NRC general licenses described in §§ 110.21 through 110.27, a person must file an application with the Commission for a specific license in accordance with §§ 110.31 through 110.32."

10 CFR 110.23(a), as in effect at the time of the violation, states, in part, "A general license is issued to any person to export byproduct material (see Appendix L to this part) except that: (1) This section does not authorize the export of byproduct material listed in § 110.28..."

10 CFR 110.28 identifies Cuba, Iran, Iraq, North Korea, Sudan, and Syria as embargoed destinations.

Contrary to the above, on November 20, 2008, and May 5, 2010, CPN exported americium 241 and cesium-137 byproduct materials subject to NRC licensing jurisdiction, to embargoed destinations (i.e. Iraq and Sudan), without a specific license as required by 10 CFR 110.5.

- B. 10 CFR 110.23(b), as in effect at the time of the violation, states, in part, "Persons making exports under the general license established by paragraph(a) of this section shall submit by February 1 of each year one copy of a report of all americium and neptunium shipments during the previous calendar year..."

Contrary to the above, CPN failed to make annual reports of americium exports for calendar years 2000 - 2009, during which years americium was exported.

Violations A & B constitute a Severity Level III problem (Section 6.3)

The NRC has concluded that information regarding the reason for the violations, 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 CPN's letter dated February 15, 2012. 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-11-242" and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001, 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, CPN may be required to post this Notice within two working days of receipt.

Dated this 30th day of March 2012