



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
2100 RENAISSANCE BOULEVARD, SUITE 100
KING OF PRUSSIA, PENNSYLVANIA 19406-2713

July 13, 2012

Docket No. 15000031
EA-12-025

NY License No. NYDOH C2638

Carl de Stefanis
IVI Environmental, Inc.
55 West Red Oak Lane
White Plains, NY 10604

SUBJECT: EXERCISE OF ENFORCEMENT DISCRETION: IVI ENVIRONMENTAL, INC.

Dear Mr. de Stefanis:

We are sending you this letter to document our discussions regarding your possession of a portable lead paint analyzer containing byproduct material in the form of Cobalt-57 (Co-57), and to provide our conclusions regarding IVI Environmental, Inc.'s compliance with NRC regulations for the device.

During a telephone conversation on January 10, 2012, between Charles Schwartz, President of Environmental Assessment and Solutions, Inc. (EAS), located in Ardsley, NY, and Scott Wilson of my staff, we learned that EAS rented a portable lead paint analyzer (analyzer) from IVI Environmental, Inc. (IVI), and used it under the authorization of your license listed above. The analyzer contained a single, 12-millicurie cobalt-57 sealed source. We also learned that the analyzer had been infrequently used by EAS in the State of Connecticut, a non-Agreement State under NRC jurisdiction for such devices. During a January 25, 2012, telephone conversation between IVI's radiation safety officer, Charles Montgomery, and Scott Wilson, Mr. Montgomery confirmed the above information.

We informed Mr. Montgomery that this material is considered byproduct material, and requires an NRC license to use and/or possess in NRC jurisdiction. We discussed the change to NRC regulations that occurred with the enactment of the Energy Policy Act of 2005 (Act), and the NRC regulations resulting from the Act, which became effective on November 30, 2007. Specifically, we indicated that, effective August 7, 2009, individuals were required to have an NRC license, or file for reciprocity, prior to using and/or possessing byproduct material in NRC jurisdiction.

We also informed Mr. Montgomery that NRC authorization in the form of a specific license or reciprocity is required *prior* to working in NRC jurisdiction with the analyzer. Mr. Montgomery stated that IVI was previously unaware of the new regulation and that IVI would: 1) immediately inform authorized users not to possess or use the analyzer in NRC jurisdiction; and 2) apply for an NRC license, or for reciprocity, prior to possessing the device within NRC jurisdiction. We noted that use of the analyzer in NRC jurisdiction had been limited to once or twice a year, for durations of one day in each instance, since August 7, 2009, the effective date of the requirement. Mr. Montgomery stated that he understood the requirements described to him and that IVI is committed to compliance with all regulations.

Based on the above information, the NRC has determined that a violation of NRC requirements occurred. The violation involved the possession and use of byproduct material without a specific NRC license or a reciprocity agreement issued in accordance with NRC regulations. Specifically, on an unspecified number of occasions between August 7, 2009, and January 10, 2012, IVI Environmental, Inc. used and/or possessed one RMD Model LPA-1 lead paint analyzer containing byproduct material (cobalt-57 sealed source; 12 millicuries) in NRC jurisdiction, without obtaining a specific NRC license or filing for reciprocity.

This violation would normally be categorized at Severity Level III; however, in accordance with NRC Enforcement Guidance Memorandum (EGM) 09-004, "Interim Guidance for Dispositioning Violations of Naturally Occurring and Accelerator-Produced Radioactive Materials (NARM) Requirements," dated May 13, 2009, the NRC will exercise discretion and not issue a violation. Specifically, the NRC considered that IVI is authorized to use and possess byproduct material contained in the analyzer through a license issued by the State of New York (an NRC Agreement State). Prior to issuance of the Act, many states (including New York) regulated NARM under their own radiation programs. Upon issuance of the Act, the NRC issued a waiver permitting states to continue to regulate NARM until NRC regulations were codified. States were also provided the opportunity to enter into agreements with the NRC to regulate byproduct material themselves. Existing Agreement States (like New York) were permitted to amend their agreements to include NARM regulation, which New York did. While some non-Agreement States did elect to enter into agreements with the NRC, others (including Connecticut) did not, and the NRC assumed regulatory authority for NARM in those states upon expiration of the waiver. For IVI, the enactment of the Act had no obvious impact, since New York retained regulatory authority for the material. Further, the transition of regulatory authority in Connecticut from the State to the NRC would not likely have been known by IVI. The NRC found that, on the occasions on which IVI used and/or possessed the analyzer in Connecticut both before and after the enactment of the Act, it appropriately filed with that state for authorization to do this work, which was required and would have been all that was required prior to the NRC assuming regulatory authority for NARM in that state.

Consequently, I have been authorized, after consultation with the Director, Office of Enforcement, and the Regional Administrator, to use discretion to not cite this as a violation in accordance with EGM 09-004 because this inspection was the first interaction between you and the NRC, and because the failure to file for reciprocity before conducting activities in NRC jurisdiction met the following criteria: 1) the failure did not result in an actual safety, health, or security consequence; 2) the failure was not willful; 3) IVI was unaware of the change in requirements; and 4) IVI agreed to obtain NRC authorization by submitting an application for license, or a Form 241 requesting reciprocity, prior to possessing or using byproduct material within NRC jurisdiction on any future occasion.

On January 25, 2012, Scott Wilson of my staff informed Mr. Montgomery of this conclusion by telephone. No further action or response is necessary on your part.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, 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 document system (ADAMS), accessible from the NRC website 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.

Current NRC regulations and guidance are included on the NRC's website at www.nrc.gov; select **Nuclear Materials; Med, Ind, & Academic Uses**; then **Regulations, Guidance and Communications**. The current Enforcement Policy is included on the NRC's website at www.nrc.gov; select **About NRC, Organization & Functions; Office of Enforcement; Enforcement documents**; then **Enforcement Policy (Under 'Related Information')**. You may also obtain these documents by contacting the Government Printing Office (GPO) toll-free at 1-866-512-1800. The GPO is open from 8:00 a.m. to 5:30 p.m. EST, Monday through Friday (except Federal holidays).

Please note that the office of the Region I USNRC Division of Nuclear Materials Safety has moved effective May 9, 2012. Our new address is:

U.S. Nuclear Regulatory Commission
Region I
2100 Renaissance Blvd, Suite 100
King of Prussia, PA 19406-2713

Please contact Scott Wilson at 610-337-5136 if you have any questions regarding this matter.

Sincerely,

/RA/

Raymond K. Lorson, Director
Division of Nuclear Materials Safety

cc:
State of Connecticut
State of New York

Mr. Charles Schwartz, President
Environmental Assessment and Solutions, Inc.
144 Euclid Ave.
Ardsley, NY 10502

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Raymond K. Lorson, Director
Division of Nuclear Materials Safety

cc:
State of Connecticut
State of New York

Mr. Charles Schwartz, President
Environmental Assessment and Solutions, Inc.
144 Euclid Ave.
Ardsley, NY 10502

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ADAMS ACCESSION NUMBER: [ML12200A398](#)

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