



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

October 11, 2012

IA-12-033

Mr. Christopher N. Rhoads
[HOME ADDRESS DELETED
UNDER 10 CFR 2.390(a)]

SUBJECT: NOTICE OF VIOLATION (NRC INSPECTION REPORT 030-37817/2011-001
AND INVESTIGATION REPORT 4-2011-060)

Dear Mr. Rhoads:

This letter refers to an investigation conducted by the NRC's Office of Investigations regarding your activities at a temporary jobsite in Casper, Wyoming, while you were employed by DBI, Inc., during 2011. The purpose of the investigation was to review whether willfulness was involved for apparent violations related to: (1) failing to ensure that you were being supervised by a qualified radiographer as required by 10 CFR 34.46; and (2) failing to have at least one other qualified individual present while performing industrial radiographic operations, as required by 10 CFR 34.41.

On August 8, 2012, the NRC informed you by letter of the results of the investigation. In that letter, we provided you the opportunity to address the apparent violations identified in the report, by attending a predecisional enforcement conference or by participating in an alternative dispute resolution session before we made our final enforcement decision. In a telephone conversation on September 4, 2012, with Mr. Michael Vasquez, Chief, Nuclear Materials Safety Branch A, you stated that a conference or alternative dispute resolution process was not necessary and you chose to not provide a written response. Therefore, the NRC is proceeding with its enforcement action based on the results of the investigation by the NRC Office of Investigations and NRC inspection.

Based on the information developed during our inspection and investigation, the NRC has determined that two violations of NRC's rule prohibiting deliberate misconduct, 10 CFR 30.10, occurred. These violations are cited in the enclosed Notice of Violation (Notice) (Enclosure 1). The first violation involves you deliberately performing radiographic operations without a supervising radiographer present, which caused DBI, Inc. to be in noncompliance with NRC radiography requirements (10 CFR 34.41(a) and 34.46(c)). The second violation involves you deliberately providing incomplete and inaccurate information to the NRC inspectors on July 1, 2011, by stating that you were not aware of the two-man rule requirement in 10 CFR 34.41(a), when in fact you were knowledgeable of the requirement.

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Specifically, on July 1, 2011, two NRC inspectors observed you performing radiographic operations at a temporary jobsite in Casper, Wyoming, while the supervising radiographer was in the darkroom, with the door closed. At that time, you informed the NRC inspectors that you were not aware of the two-man rule as required by 10 CFR 34.41(a).

During the Office of Investigations interview on November 8, 2011, you admitted to knowledge of both rules and to providing inaccurate and incomplete information to the two NRC inspectors. Furthermore, you admitted to previously performing unsupervised radiographic operations, while employed by DBI, Inc. During the previous occasion you were told not to perform unsupervised radiographic operations, yet you subsequently performed unsupervised radiographic operations on July 1, 2011, while employed by DBI, Inc.

These two violations are significant in several respects. First, the requirement of 10 CFR 34.41(a) to have an additional qualified individual observing operations at the point where radiographic operations are being conducted is to assure safety and to provide immediate assistance to prevent unauthorized persons from entering the area. Second, the requirement under 10 CFR 34.46 to have a supervising radiographer directly observe the radiographer's assistant is to assure safe use of equipment associated with radiographic operations, in order to protect personnel, the public and the environment. Finally, the violations involved a conscious decision on your part to violate these requirements. Because the NRC cannot always be present when radiographic operations are being conducted, we must be able to rely on licensees and their employees to comply with all NRC safety requirements.

Your deliberate actions caused DBI, Inc., to be in violation of 10 CFR 34.49(b), 34.41, 34.46, and 30.9(a). A copy of the letter and Confirmatory Order issued to DBI, Inc., as a result of your actions, is enclosed. Given the significance of the underlying issue and the deliberate nature of your actions, these violations have been categorized in accordance with the NRC Enforcement Policy at Severity Level III.

In determining the appropriate sanction to be issued in this case, the NRC considered issuing an Order prohibiting your involvement in NRC-licensed activities as a result of your actions. However, after consultation with the Director, Office of Enforcement, and after considering the circumstances of this case, the NRC decided to issue the enclosed Notice of Violation. The factors that were considered include: (1) you were in a non-supervisory position; (2) you are no longer employed by DBI, Inc.; (3) your actions did not result in any actual safety consequences; and (4) you were forthright in addressing this issue during our investigation.

You should be aware that if you are involved in NRC-licensed activities in the future, additional deliberate violations could result in more significant enforcement action or criminal action.

Because you verbally indicated, during telephone conversations with NRC Region IV staff on August 30, 2012, and September 4, 2012, that you do not plan to seek further employment in the radiography industry, you are not required to respond to this Notice, unless you contest the violation. In that case, or if you choose to provide additional information that you believe the NRC should consider, you should follow the instructions specified in the enclosed Notice.

If you disagree with this enforcement sanction, you may request alternative dispute resolution with the NRC in an attempt to resolve this issue. The NRC is offering this option to you because your actions rose to a Severity Level III, which the NRC considers particularly significant. Alternative dispute resolution employs various techniques for resolving conflict outside of court using a neutral third party. The technique that the NRC has decided to employ is mediation. In mediation, a neutral mediator with no decision-making authority helps parties clarify issues, explore settlement options, and evaluate how best to advance their respective interests. The mediator's responsibility is to assist the parties in reaching an agreement. However, the mediator has no authority to impose a resolution upon the parties. Mediation is a confidential and voluntary process. If the parties to the alternative dispute resolution process (the NRC and the licensee/individual) agree to use the mediation process, then they select a mutually agreeable neutral mediator and share equally the cost of the mediator's services.

Generally, the NRC is willing to discuss the resolution of three potential issues: 1) whether a violation occurred; 2) the appropriate enforcement action; and 3) the appropriate corrective actions for the violation(s). If you decide to pursue alternative dispute resolution, please contact Ms. Browder at 817 200-1121 within 10 days of the date of this letter. The alternative dispute resolution session should be held within 45 days of the date of this letter. Additional information concerning the NRC's program can be obtained at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>. The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program as a neutral third party. Please contact ICR at 877-733-9415 within 10 days of the date of this letter if you are interested in pursuing resolution of this issue through the alternative dispute resolution process.

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 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.

The NRC also includes significant enforcement actions on its Web site at (<http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>). In addition, this letter will be maintained by the Office of Enforcement in an NRC Privacy Act system of records, NRC-3, Enforcement Actions Against Individuals. The NRC-3 system notice, which provides detailed information about this system of records, can be accessed from the NRC website at <http://www.nrc.gov/reading-rm/foia/privacy-systems.html>.

Should you have any questions concerning this matter, please contact Ms. Rachel Browder of my staff at (817) 200-1121.

Sincerely,

/RA/

Elmo E. Collins,
Regional Administrator

Enclosures:

1. Notice of Violation
2. Confirmatory Order issued to DBI, Inc.

DISTRIBUTION:

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Christian.Einberg@nrc.gov; Duane.White@nrc.gov;
Silas.Kennedy@nrc.gov;
R4ALLEGATION.resource@nrc.gov;
 RIV Materials Docket File

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ADAMS	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> SUNSI Review Complete	Reviewer Initials: RSB	
<input checked="" type="checkbox"/> Publicly Available		<input type="checkbox"/> Non-publicly Available		<input type="checkbox"/> Sensitive	<input checked="" type="checkbox"/> Non-sensitive
Category			- KEYWORD: SUNSI Review complete		
ACES	DNMS:NMSBA:BC	RC	ACES:BC	D:DNMS	
RSBrowder	GMVasquez	KDFuller	HJGepford	AVegel	
/RA/	/RA/	/RA/	/RA/	/RA/	
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OE	OGC	RA			
NHilton	MClark	EECollins			
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10/03/12	09/26/12	10/11/12			

OFFICIAL RECORD COPY

NOTICE OF VIOLATION

Christopher N. Rhoads
[HOME ADDRESS DELETED
UNDER 10 CFR 2.390]

IA-12-033

During an NRC inspection conducted on July 1, 2011, and an investigation completed on November 8, 2011, two violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. 10 CFR 30.10(a)(1) requires, in part, that any employee of a licensee may not engage in deliberate misconduct that causes or would have caused, if not detected, a licensee to be in violation of any regulation issued by the Commission.

10 CFR 34.41(a) requires, in part, that whenever radiography is performed at a location other than a permanent radiographic installation, the radiographer must be accompanied by at least one other qualified radiographer or an individual who has met, at a minimum, the requirements of § 34.43(c).

10 CFR 34.46 requires, in part, that whenever a radiographer's assistant uses radiographic exposure devices, associated equipment, or sealed sources, or conducts radiation surveys required by § 34.49(b) to determine that the sealed source has returned to the shielded position after an exposure, the assistant shall be under the personal supervision of a radiographer. The personal supervision must include: (c) the radiographer's direct observation of the assistant's performance of the above referenced operations.

Contrary to the above, on July 1, 2011, Mr. Christopher Rhoads engaged in deliberate misconduct that caused his employer, DBI, Inc., an NRC licensee, to be in violation of 10 CFR 34.41(a) and 10 CFR 34.46(c). Specifically, while conducting radiographic operations at a temporary jobsite in Casper, Wyoming, Mr. Rhoads, who was a radiographer's assistant, deliberately conducted radiographic operations unaccompanied while the supervising radiographer was in the closed darkroom and was not present to directly observe the radiographic operations.

This is a Severity Level III violation (Section 6.3)

- B. 10 CFR 30.10(a)(2) requires, in part, that any employee of a licensee may not deliberately submit to the NRC, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

10 CFR 34.41(a) requires, in part, that whenever radiography is performed at a location other than a permanent radiographic installation, the radiographer must be accompanied by at least one other qualified radiographer or an individual who has met, at a minimum, the requirements of § 34.43(c).

10 CFR 34.46 requires, in part, that whenever a radiographer's assistant uses radiographic exposure devices, associated equipment, or sealed sources, or conducts radiation surveys required by § 34.49(b) to determine that the sealed source has returned to the shielded position after an exposure, the assistant shall be under the personal supervision of a radiographer. The personal supervision must include: (c) the radiographer's direct observation of the assistant's performance of the above referenced operations.

Contrary to the above, on July 1, 2011, Mr. Christopher Rhoads deliberately provided incomplete and inaccurate information to the two NRC inspectors conducting the inspection. Specifically, when interviewed by the inspectors, Mr. Rhoads denied knowledge of the two-man rule (10 CFR 34.41(a)) and the supervision rule (10 CFR 34.46(c)). However, during Mr. Rhoads interview under oath by the Office Investigations on November 8, 2011, he admitted to knowledge of both rules and to deliberately providing inaccurate and incomplete information to the NRC inspectors on July 1, 2011.

This is a Severity Level III violation (Section 6.3)

The NRC has concluded that information regarding the reasons for the violations, the initial corrective actions taken by the licensee and your statement that you do not plan to seek nuclear employment in the future, is adequately addressed in NRC Inspection Report 030-37817/2011-001, and in the NRC letter to you dated August 8, 2012.

However, you are required to submit a written statement or explanation pursuant to the provisions of 10 CFR 2.201, if the description does not accurately reflect the facts or your position. In that case, or if you otherwise choose to respond, you should clearly title your response as a "Reply to a Notice of Violation; IA-12-033" and send it to the U.S. Nuclear Regulatory Commission, ATTN: Regional Administrator, Region IV, 1600 East Lamar Blvd., Arlington, Texas 76011-4511, in an envelope marked "Open by Addressee Only - Response to a Notice of Violation; IA-12-033" within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, 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 or from the NRC's Agencywide Document 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.

If personal privacy or proprietary information is necessary to provide an acceptable response, then 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 material, 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).

This Notice, along with its accompanying cover letter, will be made available electronically for public inspection from ADAMS, (ADAMS), unless you provide a sufficient basis to withdraw the Notice within the 30 days specified above for response. The NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>. In addition, this Notice will be maintained by the Office of Enforcement in an NRC Privacy Act system of records, NRC-3, Enforcement Actions Against Individuals. The NRC-3 system notice, which provides detailed information about this system of records, can be accessed from the NRC Web site at <http://www.nrc.gov/reading-rm/foia/privacy-systems.html>.

Dated this 11th day of October 2012

CONFIRMATORY ORDER
Issued to DBI, Inc.