



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

January 10, 2013

EA-2010-226

Mr. Edward J. Wolbert
President/CEO
Transco Products, Inc.
55 East Jackson Blvd
Suite 2100
Chicago, IL 60604

SUBJECT: U.S. NUCLEAR REGULATORY COMMISSION INVESTIGATION REPORT
NO. 3-2011-005; NOTICE OF VIOLATION

Dear Mr. Wolbert:

This letter refers to the U. S. Nuclear Regulatory Commission (NRC) investigation completed on December 22, 2011, at the Transco Products, Inc. (TPI) Chicago, IL facility; the voluntary self-disclosures submitted by TPI on March 25, 2010 and February 1, 2012; a predecisional enforcement conference held on May 31, 2012; and supplemental information packages the NRC received regarding TPI's activities during calendar years 2000 through 2011.

Based on the information developed during our review of these activities, the NRC has determined that two violations of NRC requirements occurred. These violations were evaluated in accordance with the NRC Enforcement Policy. The current Enforcement Policy is available on the NRC's Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>.

The first violation involved TPI's failure to meet the requirements of 10 CFR 110.54(c) (formerly §110.26(e)) by not providing the required annual reports for exports of generally licensed components in calendar years 2005, 2008 and 2009. This violation is being treated as a Non-Cited Violation (NCV) because all the criteria in Section 2.3.2 of the NRC's Enforcement Policy are met: (1) you identified the violation, (2) you initiated prompt and comprehensive corrective actions to prevent recurrence, (3) the violation was not repetitive as a result of inadequate corrective actions, and (4) the violation was not willful. Specifically, TPI identified the cause of the violations as inadvertent errors made in good faith, including a lack of knowledge of the NRC's jurisdiction over exports of metallic reflective insulation (MRI) until 2006 and a lack of understanding of NRC reporting requirements for the general license in §110.26. TPI initiated corrective actions for these deficiencies upon identifying the potential violations described in its voluntary self-disclosure.

The second violation involved TPI's failure to meet requirements of 10 CFR 110.5 when exporting MRI to Brazil in July 2011 without obtaining a specific NRC license, as required by 10 CFR 110.20(a). This violation is cited in the enclosed Notice of Violation (NOV).

Under 10 CFR 110.5, no person may export equipment or material listed in §110.8 or §110.9 unless authorized by a general or specific license. Section 110.8(a), in turn, states that the NRC's export licensing authority extends to "[n]uclear reactors and especially designed or prepared equipment and components for nuclear reactors. (See Appendix A to this part.)" Under Appendix A of 10 CFR Part 110, a nuclear reactor "includes the items within or attached directly to the reactor vessel."

The MRI that TPI produces is a multi-use product that has applications in both nuclear reactors and other areas of nuclear plants, as well as in non-nuclear settings. The MRI that TPI exported to Brazil, however, was especially cut and arranged for use on a reactor pressure vessel head. This MRI was therefore "especially prepared" for TPI's client. Further, TPI prepared the MRI so that it could be attached directly to the reactor vessel head. Because Appendix A states that a nuclear reactor includes the items attached to the reactor vessel, this means that the MRI was prepared for a nuclear reactor. In sum, the MRI that TPI sent to Brazil was an especially prepared component for a nuclear reactor, which brings the MRI within the NRC's export licensing authority in 10 CFR 110.8.

Because TPI's export of MRI to Brazil fell within the NRC's licensing authority, under 10 CFR 110.5 a license was required. TPI did not have a specific license for its export to Brazil, nor is Brazil a country covered by the general license in §110.26. Thus, TPI's export of MRI to Brazil was in violation of NRC requirements.

Although the NRC finds that TPI violated 10 CFR 110.5 by exporting MRI to Brazil without a license, we are not asserting that every export of MRI requires an NRC license. Where the MRI is exported for balance-of-plant usage, rather than for use on the reactor vessel, it may fall outside the NRC's licensing authority. As an example, the NRC has not at this time identified any violation with respect to various MRI exports that TPI had sent to Slovenia in 2000 and 2007. For TPI's exports to Slovenia, there is no evidence the MRI was designed or prepared especially for use on a nuclear reactor. To the contrary, the MRI appears to have been used for other plant applications. The Slovenia exports therefore did not fall under the NRC's authority, and there was no violation associated with those shipments.

The NRC has determined that TPI's violation of 10 CFR 110.5 has regulatory significance because of the impact it had on the NRC's ability to perform its regulatory function. This particular export to Brazil should only have occurred after the NRC issued a specific license authorizing the export pursuant to 10 CFR 110.20(a) and (f). Further, this export would have required obtaining government-to-government assurances that the components would have been used only for peaceful purposes. As such, this violation would normally be considered for escalated enforcement as a Severity Level (SL) III violation consistent with the NRC's Enforcement Policy; however, because the specific export of MRI was of very low safety significance and did not pose a proliferation risk, the NRC has determined this to be a SL IV violation of NRC requirements.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. The NRC will use your response to the Notice to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

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 respond, will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system Agencywide Documents Access and Management System, 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, proprietary information or safeguards 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). The NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions>.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Nick Hilton', written in a cursive style.

Nick Hilton, Chief
Enforcement Branch
Office of Enforcement

Enclosure: Notice of Violation EA-2010-226

cc: (See attached list)

cc:

National Nuclear Security Administration
Office of International Regimes and
Agreements
U.S. Department of Energy
ATTN: Sean Oehlbert, Team Leader
1000 Independence Avenue, SW
Washington, D.C. 20585-1615

National Nuclear Security Administration
Office of International Regimes and
Agreements
U.S. Department of Energy
ATTN: Mr. Richard S. Goorevich, Director
1000 Independence Avenue, SW
Washington, D.C. 20585-1615

National Nuclear Security Administration
Office of International Regimes and
Agreements
U.S. Department of Energy
ATTN: Ms. Jessica Norles
1000 Independence Avenue, SW
Washington, D.C. 20585-1615

Customs and Border Protection
LSS Technical Data Assessment &
Teleforensic Center
ATTN: Christopher Baugues
12825 Worldgate Drive
Herndon, VA 20170

Bureau of Industry and Security
U.S. Department of Commerce
Office of Nuclear and Missile Technology
ATTN: Steve Clagett, Room 2631
14th Street & Penn Avenue, NW,
Washington, D.C. 20230

NAC International/Nuclear Materials
Management Safeguards System
ATTN: Peter Dessaulles, Program Manager
DOE/NMMSS
1000 Independence Ave., SW
Washington, D.C. 20585-1290

Office of Nuclear Energy, Safety
and Security Affairs, Room 3320 HST
Bureau of International Security and
Nonproliferation
U.S. Department of State
ATTN: Robin DeLaBarre
2201 C Street, NW
Washington, D.C. 20520

Dept of Environment & Natural Resources
Division of Environmental Health
Radiation Protection Section
ATTN: Lee Cox, Acting Chief
3825 Barrett Drive
Raleigh, NC 27609-7221

NOTICE OF VIOLATION

Transco Products, Inc.
Chicago, IL

EA-10-226

During the review of information you provided to the U.S. Nuclear Regulatory Commission (NRC) on December 15, 2011, February 1, 2012, and May 31, 2012, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

Section 110.5 of 10 CFR states, in part, that no person may export any nuclear equipment or material listed in Sections 110.8 and 110.9, unless authorized by a general or specific license issued under this part.

Section 110.20(a) of 10 CFR states that a person must file an application with the Commission for a specific license in accordance with 10 CFR 110.31 through 10 CFR 110.32 if an export or import is not covered by the NRC general licenses described in 10 CFR 110.21 through 10 CFR 110.27. Section 110.26(a) of 10 CFR states that a general license is issued to any person to export nuclear reactor components listed in paragraphs (5) – (9) of Appendix A to the countries listed in 10 CFR 110.26(b).

Contrary to the above, on July 21, 2011, Transco Products, Inc (TPI) exported nuclear reactor components listed in paragraphs (5) – (9) of 10 CFR Part 110, Appendix A to a country not authorized under 10 CFR 110.26(b) without obtaining a specific NRC license. Specifically, TPI shipped metallic reflective insulation that was especially designed and prepared to be attached directly to a reactor vessel in Brazil, which is not listed as an authorized destination under 10 CFR 110.26(b). This failure to apply for a specific export license prevented the NRC from performing its regulatory and statutory obligations in making the determinations as required under 10 CFR 110.42(b)(1) – (4).

This is a Severity Level IV violation.

Pursuant to the provisions of Title 10 of the Code of Federal Regulations (10 CFR) 2.201, TPI is hereby required to submit a written statement or explanation to the Deputy Director, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, within 30 days of the date of this Notice of Violation. This reply should be clearly marked as a "Reply to a Notice of Violation: EA-10-226" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation or severity level; (2) the corrective steps that have been taken and the results achieved; (3) any additional corrective steps that will be taken; and (4) the date when full compliance will be or was achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, the NRC may issue an Order or a Demand for Information requiring you to explain why your license should not be modified, suspended, or revoked or why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

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, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

Any response will be made available electronically for public inspection in the NRC Public Document Room or from the NRCs 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, may be required to post this Notice within 2 working days.

Dated this 12th day of January 2013