



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

March 29, 2013

EA-13-012

Brian Turk
Vice President of Operations
Bruker Detection Corporation
40 Manning Road
Billerica, MA 01821

SUBJECT: BRUKER DETECTION CORPORATION - NOTICE OF VIOLATION - NRC
Inspection Report Nos. 03037315/2012001 and 15000020/2013001

Dear Mr. Turk:

This letter provides you the U.S. Nuclear Regulatory Commission's (NRC) enforcement decision for the apparent violation identified during an inspection conducted on August 28, 2012, at your facility in Billerica, Massachusetts, and a subsequent in-office follow-up that was completed on January 10, 2013. Both the onsite inspection and in-office review evaluated your licensed activities within NRC jurisdiction as they relate to radiation safety and to compliance with NRC regulations. The NRC discussed its findings during a telephonic exit with you, Mark Beland, and George Gleason, of your organization on January 10, 2013. The findings were also described in the NRC inspection report (ML13045A798¹) which was sent to you by letter (ML13045A646) dated February 12, 2013.

In the February 12, 2013, letter transmitting the inspection report, the NRC indicated that an apparent violation of the NRC reciprocity requirement was identified. Specifically, the NRC grants a general license that allows an Agreement State licensee to conduct activities authorized by the Agreement State license in non-Agreement States provided, in part, that the licensee files for reciprocity. However, Bruker Detection Corporation (Bruker) used ion mobility spectrometry devices at a temporary jobsite within the State of Indiana (a non-Agreement State) between April 16 and April 21, 2012, without filing for reciprocity. In the same letter, we provided you the opportunity to address this apparent violation by either attending a predecisional enforcement conference or by providing a written response before we made our final enforcement decision.

In a letter (ML13065A074) dated February 27, 2013, you provided a response to the apparent violation in which you acknowledged the violation and indicated that it occurred because the Bruker staff responsible for filing for reciprocity had misinterpreted the NRC regulations and

¹ Designation in parentheses refers to an Agencywide Documents Access and Management System (ADAMS) accession number. Documents referenced in this letter are publicly-available using the accession number in ADAMS.

mistakenly believed Bruker was exempt from this requirement. Therefore, based on the information developed during the inspection and the information that you provided in your February 27, 2013, letter, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding it are described in detail in the subject inspection report.

The violation has been categorized at Severity Level (SL) III in accordance with the Enforcement Policy because the NRC was not informed of the activities occurring in Indiana, and therefore, was not provided an opportunity to conduct inspections of licensed activities. In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$3,500 is considered for a SL III violation. Because Bruker has not been the subject of escalated enforcement action within the last two years or 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. The NRC has concluded that credit is warranted for Bruker's corrective actions taken to address the violation. Specifically, Bruker developed procedures for filing reciprocity when scheduled demonstrations are held in locations under NRC or Agreement State's jurisdiction. Bruker is also taking action to contact other Agreement States where trade shows will be conducted to determine reciprocity requirements, maintain a list of requirements for each Agreement State, and provide training for all sales agents in reciprocity requirements.

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 SL III violation constitutes an escalated enforcement action that may subject you to increased inspection effort in the future should you decide to reapply for reciprocity or for a specific NRC license.

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 was achieved is already adequately addressed on the docket in this letter, in NRC Inspection Report Nos. 03037315/2012001 and 15000020/2013001, and in your February 27, 2013, letter. 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 enclosure, 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

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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,

/RA/ David C. Lew for:

William M. Dean
Regional Administrator

Docket Nos. 03037315; 15000020
License Nos. 20-32465-02E; MA 38-0257

Enclosure: Notice of Violation

cc: w/enclosure
George Gleason, Radiation Safety Officer
Commonwealth of Massachusetts

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cc: w/enclosure
George Gleason, Radiation Safety Officer
Commonwealth of Massachusetts

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*HQ to perform a quick review. **See previous concurrence.

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NOTICE OF VIOLATION

Bruker Detection Corporation
Billerica, MA

Docket Nos. 03037315; 15000020
License Nos. 20-32465-02E; MA 38-0257
EA-13-012

During an NRC inspection conducted from August 28, 2012, through to January 10, 2013, for which an exit meeting was held on January 10, 2013, one violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 30.3 requires, in part, that except for persons exempt as provided in this part and Part 150 of this chapter, no person shall manufacture, produce, transfer, receive, acquire, own, possess or use byproduct material except as authorized in a specific or general license issued pursuant to the regulations in 10 CFR Part 30.

10 CFR 150.20(a) provides, in part, that any person who holds a specific license from an Agreement State is granted an NRC general license to conduct the same activity in non-Agreement States provided that the provisions of 10 CFR 150.20(b) have been met.

10 CFR 150.20(b)(1) requires, in part, that any person engaging in activities in non-Agreement States shall, at least 3 days before engaging in each such activity, file a submittal containing an NRC Form 241, "Report of Proposed Activities in Non-Agreement States," a copy of its Agreement State specific license, and the appropriate fee, with the Regional Administrator of the appropriate NRC regional office.

Contrary to the above, from April 16 to April 21, 2012, Bruker Detection Corporation, a licensee of the Commonwealth of Massachusetts, possessed and used byproduct material in Indiana, a non-Agreement State, without filing for reciprocity. Specifically, Bruker used ion mobility spectrometer devices containing 2.7 millicurie Nickel-63 sealed sources in Indianapolis, Indiana, without submitting an NRC Form 241, a copy of the Agreement State license, and the appropriate fee to the NRC.

This is a Severity Level III violation (Section 6.9).

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 the letter transmitting this Notice of Violation (Notice), in NRC Inspection Report Nos. 03037315/2012001 and 15000020/2013001, and in the letter from Bruker Detection Corporation dated February 27, 2013. Therefore, you are not required to respond to this Notice. 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-13-012, 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 I, 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 document system (ADAMS),

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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 two working days of receipt.

Dated this 29th day of March 2013