

Date: 27 July 2007

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To: U.S. Nuclear Regulatory Commission
ATTN: Document Control Desk
Washington, DC 20555-0001

From: James Blute, CHP
Radiation Safety Officer
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Subject: Reply to a Notice of Violation: EA-07-146

Dear Ms. Carpenter and To Whom It May Concern:

This letter is a formal response to both the Notice of Violation (NOV # EA-07-146 dated 6/28/07 and the associated letter dated 6/28/07 from the Director of the NRC Office of Enforcement.

The letter from the Director contains statements that Thermo NITON Analyzers LLC (the licensee) believes are not factual. Thermo NITON Analyzers LLC is respectfully contesting these statements and the decision to issue a Level IV Notice of Violation for an issue that was self-identified by the licensee. Specifically, it is stated in Paragraph 2 of the referenced letter that...

"...and the criteria in section VI.A on the NRC Enforcement Policy were not met in that THERMO NITON Analyzers LLC (a) failed to initiate prompt and comprehensive corrective actions to prevent recurrence, and (b) the violation was repetitive as a result of inadequate corrective actions"

Thermo NITON Analyzers LLC is not in agreement with these statements. The regulation requiring annual reporting of Am-241 exports was unknown to this licensee until an informal review of the regulations in 10 CFR Part 110 was conducted last year (in 2006) by the Radiation Safety Officer. As a result of this review, the RSO identified the requirement to report exports of Am-241 and, upon further research, recognized that this was a non-compliance issue that needed corrective action. Prompt and comprehensive corrective action was taken by first performing an intensive review of all Am-241 exports which go back to 2002. This data was compiled and our first report was developed and submitted at the earliest possible date on February 21, 2007. With the exception of the referenced NOV and the associated letter from the Director of the Office of Enforcement, no representative of the NRC has ever made any contact with, or collected any information from, Thermo NITON LLC regarding this report. Given these facts, thermo NITON Analyzers LLC does not understand what is meant by the statements that there was a failure to "initiate prompt and comprehensive corrective actions to prevent recurrence, and (b) the violation was repetitive as a result of inadequate corrective actions". A licensee is unable to initiate corrective actions to a violation that is unidentified to them. Thermo NITON Analyzers LLC clearly initiated prompt and comprehensive corrective action to this violation once it was identified, as evidenced by the report filed February 21st. Further, while the licensee is in agreement that non-compliance with the reporting requirement was repetitive (since the report is required annually and four years of exports passed without report), the licensee does not agree

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that this was a result of inadequate corrective action. Thermo NITON Analyzers LLC did not neglect corrective action. The cause of the repetition was that the requirement was unknown to the licensee.

Thermo NITON Analyzers LLC requests that this NOV be considered for disposition as a Non-Cited Violation (NCV) in accordance with NRC's Enforcement Policy Section VI.A. This request is based on the fact that this violation was self-identified and properly investigated, and then prompt and comprehensive corrective action was implemented.

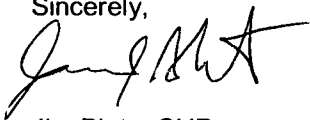
To support the request for consideration as a NCV, as well as any other actions necessary to close out this issue, Thermo NITON Analyzers LLC offers the following information and commitments.

Thermo NITON Analyzers LLC understands the importance and seriousness of the reporting requirement in 10 CFR 110.23(b) and has taken action to, not only bring our reporting status up-to-date, but also to ensure that future reports are submitted as required. This report has been added to our reporting matrix which is the list of the various other reports that we perform routinely. Customized reporting features have been developed and added to the company database that is used to support all of our reporting requirements. Lastly, electronic appointments have been added to the calendars of the RSO and Assistant RSO that will automatically remind each staff member to prepare the report 30 days prior to the report due date every year. Thermo NITON Analyzers LLC is committed to reporting all exports of Am-241 annually as of February 1st of each year as required by 10 CFR 110.23(b). It is the position of Thermo NITON Analyzers LLC that they are now in full compliance with the reporting requirement of 10 CFR 110.23(b).

As a final point of clarification, the Subject line on the letter from the Director of the NRC Office of Enforcement (dated 6/28/07) identifies this issue as "Unreported Shipments of Well Logging Sources Containing Americium-241". Thermo NITON Analyzers LLC is not involved in the manufacture or distribution of Well Logging Sources. The devices containing Am-241 sources that we reported as having exported are Portable X-Ray Fluorescence devices, not well logging sources.

If you have any questions regarding this response, please contact me at the address/telephone number above.

Sincerely,



Jim Blute, CHP
Radiation Safety Officer
Thermo NITON Analyzers LLC

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cc:

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