



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

Region III
2443 Warrenville Road, Suite 210
Lisle IL 60532-4352

January 27, 2014

EA-13-220

Mr. Ali Regimand
President
InstroTek, Inc.
4495 44th Street S.E. Suite A
Grand Rapids, MI 49405

SUBJECT: NOTICE OF VIOLATION - INSTROTEK, INC.
NRC REPORT NO. 03037525/2013001(DNMS)

Dear Mr. Regimand:

This refers to the inspection conducted on September 25, 2013, at InstroTek's Grand Rapids, Michigan facility. The purpose of the inspection was to determine whether activities authorized under your license were conducted safely and in accordance with Nuclear Regulatory Commission (NRC) requirements. During the inspection, an apparent violation of NRC requirements was identified. The significance of the issue and the need for lasting and effective corrective actions were discussed with Mr. Steve James during a final telephonic exit meeting that was held on October 4, 2013. Details regarding the apparent violation were provided in NRC Inspection Report No. 03037525/2013001(DNMS) dated November 1, 2013.

In the letter transmitting the inspection report, we provided you with the opportunity to address the apparent violation identified in the report by either attending a predecisional enforcement conference or by providing a written response before we made our final enforcement decision. In a letter dated December 5, 2013, you provided a response to the apparent violation.

Based on the information developed during the inspection, including the information that you provided in your written response on December 5, 2013, we have 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.

Specifically, during a routine inspection on September 25, 2013, the NRC identified a violation involving the failure to use a minimum of two independent physical controls to form tangible barriers to secure portable gauges from unauthorized removal whenever the portable gauges are not under the control and constant surveillance of the licensee contrary to the requirements in Title 10 of the Code of Federal Regulations (10 CFR) 30.34(i). The NRC considered the information that you provided in your December 5, 2013, letter about the height and width of the vault wall and the weight of the gauges being a sufficient second barrier. The NRC factored information obtained during the inspection about how the gauges were stored, including their location relative to the top and sides of the vault walls. As noted in NUREG 1556, Appendix H, Volume 1, Revision 1, "Errata to Consolidated Guidance about Materials Licenses Program – Specific Guidance about Portable Gauge Licenses," the objective of the tangible barriers is to reduce the opportunity for unauthorized removal or theft by providing a delay and deterrent mechanism. The NRC concluded that the combination of the vault wall height, stacked portable gauge cases on the outside of the wall that could aid in climbing, and the location of the gauges

relative to the top and sides of the wall failed to provide a sufficient second barrier to delay and deter someone attempting to remove a gauge. The root cause of the violation was that you believed that the original vault wall height and width was sufficient to provide a second tangible barrier. The failure to secure the gauges is a significant regulatory concern because of the potential for theft or diversion of the gauges that could adversely impact the health and safety of the general public. Therefore, the NRC has categorized the above violation in accordance with the NRC Enforcement Policy at a Severity Level III.

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$3,500 is normally considered for a Severity Level III violation. Because your facility has not been the subject of escalated enforcement actions within the last 2 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. Your staff took immediate corrective action and secured all gauges with a sufficient second, tangible barrier. The staff at the facility provided photographs to the inspector to confirm that the gauges had been secured. Later, you increased the height of the vault wall to provide a more substantial barrier while reducing potential radiation exposure. The Radiation Safety Officer (RSO) also discussed the requirement and the corrective action plans with members of the Grand Rapids staff. On the basis of your corrective actions, the NRC determined that *Corrective Action* credit was warranted.

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 Severity Level III violation constitutes escalated enforcement action that may subject you to increased inspection effort.

The NRC has concluded that information regarding: (1) the reason for the violation; (2) the corrective actions that have been taken and the results achieved; and (3) the date when full compliance was achieved is already adequately addressed on the docket in the inspection report and in your letter dated December 5, 2013. 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, if you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room and in the NRC's

A. Regimand

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Agencywide Documents Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. The NRC also includes significant enforcement actions on its Web site at (<http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>).

Sincerely,

/RA/

Cynthia D. Pederson
Regional Administrator

Docket No. 030-37525
License No. 32-32666-01

Enclosure:
Notice of Violation

cc w/encl: State of Michigan
Steven James, RSO

NOTICE OF VIOLATION

InstroTek, Inc.
Grand Rapids, MI

Docket No. 030-37525
License No. 32-32666-01
EA-13-220

During an NRC inspection conducted on September 25, 2013, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

Title 10 of the Code of Federal Regulations (10 CFR) 30.34(i), "Security requirements for portable gauges," requires that each portable gauge licensee use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee.

Contrary to the above, between October 29, 2007 and September 25, 2013, InstroTek, Inc., did not use a minimum of two independent physical controls to secure portable gauges from unauthorized removal. Specifically, the licensee used only one independent physical control, during non-business hours that formed a tangible barrier to secure portable gauges in its possession when it did not maintain control and constant surveillance of the gauges.

This is a Severity Level III violation (Section 6.3).

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken to correct the violation and prevent recurrence, and the date when full compliance was achieved, was adequately addressed on the docket in NRC Report No. 03037525/2013001(DNMS), dated November 1, 2013, and in your December 5, 2013, letter outlining your corrective actions. 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-13-220," 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 III, 2443 Warrenville Road, Suite 210, Lisle, IL 60532 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, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

If you choose to respond, your response will be made available electronically for public inspection in the NRC Public Document Room or in the NRC's Agencywide Documents 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 or proprietary 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 of Violation within two working days of receipt.

Dated this 27th day of January, 2014

Enclosure

Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. The NRC also includes significant enforcement actions on its Web site at (<http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>).

Sincerely,

/RA/

Cynthia D. Pederson
Regional Administrator

Docket No. 030-37525
License No. 32-32666-01

Enclosure:
Notice of Violation

cc w/encl: State of Michigan
Steven James, RSO

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SEE PREVIOUS CONCURRENCE

FILE NAME: G:\ORAI\IEICS\ENFORCEMENT\Cases\Enforcement Cases 2013\EA-13-220 InstroTek Gauge\EA-13-220 InstroTek draft Final Action.docx

OFFICE	RIII	RIII	RIII	D:OE	RIII	RIII
NAME	Anderson	McCraw	Louden Stone for	Zimmerman ¹ KDay	Orth	Pederson
DATE	01/13/14	01/14/14	01/14/14	01/22/14	01/23/14	01/27/14

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1 OE concurrence received via email from K. Day on January 22, 2014.