



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION III
2443 WARRENVILLE RD. SUITE 210
LISLE, ILLINOIS 60532-4352
October 28, 2014

EA-14-113

Mr. Otto J. Kruger, President
Kruger Technologies, Inc.
14705 West 114th Terrace
Lenexa, KS 66215

SUBJECT: CONFIRMATORY ORDER INVOLVING NRC ROUTINE INSPECTION
REPORT NO. 03038660/2014001(DNMS) – KRUGER TECHNOLOGIES, INC.

Dear Mr. Kruger:

The enclosed Confirmatory Order is being issued to Kruger Technologies, Inc., as a result of agreements reached during a successful Alternative Dispute Resolution (ADR) mediation session between you and the U.S. Nuclear Regulatory Commission (NRC). The mediation session was associated with an apparent violation of the NRC's portable gauge security requirements.

On July 24, 2014, the NRC sent you a letter providing the results of the May 21, 2014, routine inspection and informing you that an apparent violation was being considered for escalated enforcement action in accordance with the NRC's Enforcement Policy. The apparent violation of Section 30.34(i) of Title 10 of the *Code of Federal Regulations* (10 CFR) was identified during the inspection and involved the failure to secure a portable gauge with a minimum of two independent physical controls while not under the control or constant surveillance of your staff. The letter provided you with the option of: (1) providing a written response; (2) attending a Predecisional Enforcement Conference; or (3) requesting ADR.

In response to the letter, you requested ADR. An ADR mediation session was held on September 3, 2014, at which time a preliminary settlement agreement was reached. The Confirmatory Order in Enclosure 1 confirms the commitments made as part of the settlement agreement. As evidenced by your signed "Consent and Hearing Waiver Form" (Enclosure 2), dated October 20, 2014, you agreed to the issuance and terms of the Confirmatory Order.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Confirmatory Order shall be subject to criminal prosecution, as set forth in that section. Violation of this Confirmatory Order may also subject the person to civil monetary penalties.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, along with its enclosures, will be made available electronically for public inspection in the NRC Public Document Room or from 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>.

O. Kruger

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The Confirmatory Order will be published in the Federal Register. The NRC also includes Confirmatory Orders on its Web site under Significant Enforcement Actions at <http://www.nrc.gov/about-nrc/regulatory/enforcement.html>.

Sincerely,

/RA/

Darrell J. Roberts
Deputy Regional Administrator

Docket No. 030-38660
License No. 15-35082-01

Enclosures:

1. Confirmatory Order
2. Consent and Hearing Waiver

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

In the Matter of)	
)	
Kruger Technologies, Inc.)	Docket No. 030-38660
Lenexa, Kansas)	License No. 15-35082-01
)	EA-14-113

CONFIRMATORY ORDER MODIFYING LICENSE

I

Kruger Technologies, Inc., (KTI or Licensee) is the holder of Materials License No. 15-35082-01 issued by the U.S. Nuclear Regulatory Commission (NRC) pursuant to part 30 of Title 10 of the *Code of Federal Regulations* (10 CFR), on August 1, 2013. This license superseded Materials License No. 24-25827-01, originally issued on October 5, 1987, due to a change in licensee location. KTI operates a construction consulting and testing service with its headquarters in Lenexa, Kansas. The license authorizes KTI to use or store portable gauges at the licensee's facilities located at Knob Noster, Missouri, and McConnell Air Force Base in Wichita, Kansas. The license also authorizes the use of portable gauges at temporary job sites anywhere the NRC maintains jurisdiction.

This Confirmatory Order is the result of an agreement reached during an alternative dispute resolution (ADR) mediation session conducted on September 3, 2014.

II

On May 21, 2014, during a routine inspection of licensed activities involving the use of byproduct material (cesium-137 and americium-241) for measuring physical properties of materials with portable nuclear gauging devices, the NRC identified an apparent violation of NRC requirements for securing portable gauges when not in use or under the control and

constant surveillance of the licensee. Specifically, upon arriving at the licensee's Knob Noster, Missouri, facility, the inspector observed an unsecured portable gauge in the bed of a KTI pickup truck parked in front of the building. There were no licensee personnel in the immediate vicinity to provide control or constant surveillance of the gauge. The gauge transportation case was chained to the bed of the truck with a single chain; however, the lid of the transportation case was not locked and would not have prevented unauthorized removal of the gauge. A padlock was looped through one of the hasps to the lid of the case, but the lock was not engaged. The second hasp on the lid of the case was not secured, and no other physical control secured the lid. This was contrary to the requirements in 10 CFR 30.34(i), which require portable gauge licensees to use a minimum of two independent physical controls that form tangible barriers to secure a portable gauge from unauthorized removal when the portable gauge was not under the control or constant surveillance by the licensee.

On July 24, 2014, the NRC provided KTI with an inspection report detailing the results of the inspection. In the letter transmitting the inspection report, the NRC offered KTI the choice to: (1) respond in writing to the apparent violation addressed in this inspection report within 30 days of the date of the letter; (2) request a Predecisional Enforcement Conference (PEC); or (3) request ADR.

On September 3, 2014, KTI and the NRC met in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. The ADR process is one in which a neutral mediator, with no decision-making authority, assists the parties in reaching an agreement on resolving any differences regarding the dispute. This confirmatory order is issued pursuant to the agreement reached during the ADR process.

III

In response to the NRC's offer, KTI requested use of the ADR process to resolve differences it had with the NRC. During the ADR session, KTI described corrective actions it had taken prior to the ADR session. These included a training session for all KTI employees on the requirements of 10 CFR 30.34(i) and the provision of additional locks and chains to the Knob Noster facility as well as to all users, such that each user had an additional set. At the end of the ADR session, a preliminary settlement agreement was reached. The elements of the agreement, as signed by both parties, consisted of the following:

A. Policy and Training on Controlling of Nuclear Gauges:

1. By November 1, 2014, Kruger Technologies, Inc., (KTI) will review and revise the company-wide policy to describe implementation of NRC safety and security requirements for portable gauges. The policy will address subjects such as: (1) gauge safety and security at permanent storage locations, temporary job sites (short and long term), and during transportation, (2) actions to be taken by KTI staff if equipment becomes damaged, malfunctioning, or missing, including expectations for notification, provision for extra equipment, and promptness of repair and replacement; and (3) initial and annual refresher training of KTI staff on gauge safety and security.
2. By January 1, 2015, KTI will conduct training for all authorized users on the company-wide policy described in item A.1. KTI will maintain documentation discussed and the individuals in attendance until January 1, 2022.

3. By January 1, 2015, KTI will revise the company-wide training program to require training on the company-wide policy described in item A.1 to new gauge users prior to certification as an authorized gauge user.

B. Management Oversight of the Nuclear Gauge Security Program:

1. By November 1, 2014, KTI will establish a process to periodically conduct field inspections of portable gauges in use to ensure compliance with the company safety and security policy.
 - a. By November 1, 2014, KTI will develop an inspection form, which will include the date of the inspection, the location, the technicians observed, the activities observed, and performance observations.
 - b. The KTI inspection process will include observations at each permanent storage facility and long-term temporary job-site at least once each calendar quarter on a random, unannounced basis and will include short-term job sites.
 - c. The KTI inspection process shall ensure that each gauge technician is observed at least annually.
 - d. The KTI inspections shall be conducted by persons who are trained as a Radiation Safety Officer.

- e. The KTI corporate Radiation Safety Officer will inspect each facility at least annually.
2. By January 1, 2015, KTI management will conduct the first quarterly inspection described in item B.1 and will continue those inspections through December 31, 2016.
3. KTI will retain inspection forms for NRC inspection until January 1, 2022.
4. KTI will discuss issues discovered during the inspections during the routinely scheduled annual safety meetings.
5. By December 1, 2015, KTI will provide Radiation Safety Officer training for an additional gauge user at the Knob Noster, facility. Radiation Safety Officer training will include commercially-provided instructor-led training that includes an examination.

C. Reports of Activities:

By January 31, 2016, and January 31, 2017, KTI will provide a written letter to the Director, Division of Nuclear Materials Safety, Region III. The KTI written report will describe the results of the activities in Items A and B, results of the field inspections, and any enhancements to the KTI gauge program.

D. Administrative Items:

1. The NRC and KTI agree that the issue described above (in Section II) resulted in a violation of NRC requirements contained in 10 CFR 30.34(i).
2. The NRC considers the corrective actions discussed above to be appropriately prompt and comprehensive.
3. In consideration of the commitments delineated above, the NRC agrees to refrain from issuing a Notice of Violation or proposing a civil penalty for the apparent violation of 10 CFR 30.34(i) discussed in the NRC's Inspection Report No. 03038660/2014001(DNMS) dated July 24, 2014. However, the NRC will consider the Confirmatory Order as an escalated enforcement action.
4. This agreement is binding upon successors and assigns of KTI.

On October 20, 2014, KTI consented to issuing this Confirmatory Order with the commitments, as described in Section V below. KTI further agreed that this Confirmatory Order is to be effective 30 days after issuance of the Confirmatory Order and that it has waived its right to a hearing.

IV

Since the licensee has agreed to take additional actions to address NRC concerns, as set forth in Section III above, the NRC has concluded that its concerns can be resolved through issuance of this Confirmatory Order.

I find that KTI's commitments as set forth in Section V are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that KTI's commitments be confirmed by this Confirmatory Order. Based on the above and KTI's consent, this Confirmatory Order is effective 30 days after issuance of the Confirmatory Order.

V

Accordingly, pursuant to Sections 81,161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 30, IT IS HEREBY ORDERED THAT LICENSE NO. 15-35082-01 IS MODIFIED AS FOLLOWS:

A. Policy and Training on Controlling of Nuclear Gauges:

1. By December 1, 2014, Kruger Technologies, Inc. (KTI) will review and revise the company-wide policy to describe implementation of NRC safety and security requirements for portable gauges. The policy will: (1) address gauge safety and security at permanent storage locations, temporary job sites (short and long term), and during transportation; (2) describe actions to be taken by KTI authorized gauge users if equipment used to provide physical controls for portable gauges becomes damaged, malfunctioning, or missing, including expectations for notification, provision for extra equipment, and promptness of repair and replacement; and (3) provide for initial and annual refresher training of KTI authorized gauge users on gauge safety and security.

2. By January 1, 2015, KTI will conduct training for all authorized users on the company-wide policy described in item A.1. KTI will maintain documentation of the topics discussed and the individuals in attendance until January 1, 2022.
3. By January 1, 2015, KTI will revise the company-wide training program to require training on the company-wide policy described in item A.1 for new gauge users prior to certification as an authorized gauge user and for all authorized gauge users on an annual basis.

B. Management Oversight of the Nuclear Gauge Security Program:

1. By December 1, 2014, KTI will establish a process to periodically conduct field inspections of portable gauges in use to ensure compliance with the company-wide policy for safety and security requirements for portable gauges described in Item A.1.
 - a. By December 1, 2014, KTI will develop an inspection form, which will include the date of the inspection, the location, the technicians observed, the activities observed and performance observations.
 - b. The KTI inspection process will include observations at each permanent storage facility and long-term temporary job-site at least once each calendar quarter on a random, unannounced basis and will include short-term job sites.

- c. The KTI inspection process shall ensure that each authorized gauge user is observed at least annually.
 - d. The KTI inspections shall be conducted by persons who are trained as a Radiation Safety Officer.
 - e. The KTI corporate Radiation Safety Officer will inspect each facility at least annually.
2. By January 1, 2015, KTI management will conduct the first quarterly inspection described in item B.1 and will continue those inspections through December 31, 2016.
 3. KTI will retain inspection forms for NRC inspection until January 1, 2022.
 4. KTI will discuss issues discovered during the inspections during the routinely scheduled annual refresher training in 2015 and 2016.
 5. By December 1, 2015, KTI will provide Radiation Safety Officer training for an additional authorized gauge user at the Knob Noster, facility. Radiation Safety Officer training will include commercially-provided instructor-led training that includes an examination.

C. Reports of Activities:

By January 31, 2016, and January 31, 2017, KTI will provide a written letter to the Director, Division of Nuclear Materials Safety, Region III, 2443 Warrenville Road, Lisle, IL, 60532. The KTI written report will describe the results of the activities in Items A and B, results of the field inspections, and any enhancements to the KTI gauge program.

D. Administrative Items

This agreement is binding upon successors and assigns of KTI.

The Regional Administrator, Region III, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than KTI, may request a hearing within 30 days of the issuance date of this Confirmatory Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the

NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended by 77 FR 46562; August 3, 2012), codified in pertinent part at 10 CFR Part 2, Subpart C. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at hearing.docket@nrc.gov, or by telephone at 301-415-1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/getting-started.html>. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange (EIE) System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene through the EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time (ET) on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC's Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail at MSHD.Resource@nrc.gov, or by a toll-free call at 1-866-672-7640. The NRC Meta System Help Desk is available between 8:00 a.m. and 8:00 p.m., ET, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must, in accordance with 10 CFR 2.302(g), file an exemption request with their initial paper filing showing good cause as to why they cannot file electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first-class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is available to the public at <http://ehd1.nrc.gov/ehd/>, unless excluded pursuant to an order of the Commission or the presiding officer. Participants are requested not

to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, participants are requested not to include copyrighted materials in their submission, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application.

If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue a separate Order designating the time and place of any hearings, as appropriate. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be effective and final 30 days after issuance of the Confirmatory Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

Dated at Lisle, Illinois this 28th day of October, 2014.

For the Nuclear Regulatory Commission,

/RA/

Darrell J. Roberts,
Deputy Regional Administrator

CONSENT AND HEARING WAIVER FORM

Kruger Technologies Inc. (Kruger) hereby agrees to comply with the terms and conditions of Confirmatory Order arising out of an alternative dispute resolution process and mediation session conducted on September 3, 2014, to be issued relating to enforcement action No. EA-14-113. The Confirmatory Order will be effective 30 days after its issuance. By signing below, Kruger consents to the issuance of the referenced Confirmatory Order, effective 30 days after being issued, and, by doing so, agrees to waive the right to request a hearing on all or any part of the Confirmatory Order.



Otto J. Kruger
President
Kruger Technologies Inc.

20 Oct 14
Date

The Confirmatory Order will be published in the Federal Register. The NRC also includes Confirmatory Orders on its Web site under Significant Enforcement Actions at <http://www.nrc.gov/about-nrc/regulatory/enforcement.html>.

Sincerely,

/RA/

Darrell J. Roberts
Deputy Regional Administrator

Docket No. 030-38660
License No. 15-35082-01

Enclosures:

1. Confirmatory Order
2. Consent and Hearing Waiver

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¹ NMSS concurrence provided via email from M. Burgess on October 22, 2014

² OGC concurrence provided via email from D. Cylkowski on October 22, 2014

³ OE concurrence provided via email from K. Norman on October 23, 2014

Letter to Otto J. Kruger from Darrell J. Roberts dated October 28, 2014

SUBJECT: CONFIRMATORY ORDER INVOLVING NRC ROUTINE INSPECTION REPORT
NO. 03038660/2014001(DNMS) – KRUGER TECHNOLOGIES, INC.

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