



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

December 21, 2015

EA-15-196

Mr. Marvin Sternberg
JOMA Shop
Army Terminal Building
140 58th Street, Unit 3B
Brooklyn, NY 11220

**SUBJECT: NOTICE OF VIOLATION - JOMA SHOP; U.S. NUCLEAR REGULATORY
COMMISSION INVESTIGATION REPORT NO. 1-2014-011**

Dear Mr. Sternberg:

This letter refers to the investigation conducted by the U.S. Nuclear Regulatory Commission's (NRC) Office of Investigations (OI) initiated in March 2014, and written communication and discussions between NRC and JOMA Shop from April 2012 to date. The purpose of the investigation was to determine whether JOMA Shop was in compliance with regulatory requirements related to importation and distribution of watches containing radioactive material.

Based on the results of this investigation, although the investigation did not reveal any wrongdoing, two apparent violations (AV) were identified. The significance of the issue and the need for lasting and effective corrective actions were discussed with you during an October 21, 2015, telephonic exit meeting.

In a letter dated October 21, 2015, we provided you with the opportunity to address the identified AVs by providing a written response, requesting a pre-decisional enforcement conference, or requesting alternative dispute resolution. In a letter dated November 5, 2015, submitted by your attorney on your behalf, you provided a written response to the AVs. You acknowledged AV1, regarding distribution of tritium watches without the required license. You disagreed with AV2, regarding import of tritium watches, acknowledging that although you did import tritium watches, you did not import any during the specific date range listed in the AV, and you disagreed with the specific number of watches listed in the date range.

We reviewed your disagreement with AV2 and agree that the dates listed do not accurately represent the actual dates during which the watches were imported. We acknowledge that the watches listed were imported prior to the NRC instructing you to cease import operations in April 2014. Based on the information developed during the inspection, and the information that you provided in your response dated July 31, 2015, the NRC determined that a violation of the NRC requirements occurred; however the dates listed in AV2 do not accurately represent the dates the watches were actually imported, and therefore should be corrected. The violation is cited in the Notice of Violation (Notice) and the circumstances surrounding it are also described in detail in our inspection report dated July 7, 2015.

The NRC considers these violations significant because the requirements in 10 CFR 30.3(a) and 10 CFR 110.5 provide reasonable assurance that transfers and the products intended for use by unlicensed persons meet the applicable requirements. The failure to obtain appropriate license authorization to import byproduct material and the failure to obtain a license before distributing these products, is significant because it resulted in the NRC not being able to conduct its regulatory responsibilities to ensure that the products were safe for distribution to members of the general public. Therefore, these violations are categorized collectively in accordance with the NRC Enforcement Policy as a Severity Level III problem. The NRC Enforcement Policy may be found on the NRC website at www.nrc.gov/aboutnrc/regulatory/enforcement/enforce-pol.html.

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$7,000 is normally considered for a Severity Level III problem. 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. In your letter dated November 5, 2015, you described the corrective actions taken to correct the violation, and to prevent recurrence. Your corrective actions included ceasing import and distribution of tritium watches upon your understanding of those requirements, commitment that before re-starting import and/or distribution of these products, you will complete the process of obtaining the proper licenses from the NRC and the New York State authorities, and commitment to implement a "NRC Compliance Improvement Program" to ensure that neither these violations, nor any other, occurs in the future. Based on these corrective actions, the NRC has determined that Corrective Action credit is 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 not to propose a civil penalty. 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 the reason for the violation, the corrective actions taken and planned to correct the violation, and the date when full compliance was achieved, was adequately addressed on the docket in your response dated November 5, 2015. 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 Title 10 of the *Code of Federal Regulations* (CFR) 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response, if any, 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, 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. The NRC also includes significant enforcement actions on its Web site at (<http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>).

M. Sternberg

3

Should you have any questions regarding this letter or the enclosed Notice, please contact Mr. Hipolito Gonzalez, at (301) 415-5637.

Sincerely,

/RA/

Patricia K. Holahan, Director
Office of Enforcement

Enclosure:
Notice of Violation

cc: State of New York

M. Sternberg

3

Should you have any questions regarding this letter or the enclosed Notice, please contact Mr. Hipolito Gonzalez, at (301) 415-5637.

Sincerely,

/RA/

Patricia K. Holahan, Director
Office of Enforcement

Enclosure:
Notice of Violation

cc: State of New York

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See Next Page

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Letter to M. Sternberg from P. Holahan dated December 21, 2015

SUBJECT: NOTICE OF VIOLATION - JOMA SHOP; NRC INVESTIGATION REPORT
NO. 1-2014-011

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NOTICE OF VIOLATION

JOMA Shop
Brooklyn, NY

EA-15-196

During an NRC investigation initiated in March 2014, and written communication and discussions between NRC and JOMA Shop from April 2012 to date, violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

Violation 1:

10 CFR 30.3(a) provides, in part, that "no person shall manufacture, produce, transfer, receive, acquire, own, possess, or use byproduct material except as authorized in a specific or general license issued in accordance with the regulations in this chapter."

10 CFR 30.15(a)(1) grants an exemption from the license requirement in 10 CFR 30.3(a) to persons who receive, possess, use, transfer, own or acquire timepieces or hands or dials containing not more than specified quantities of byproduct material and not exceeding specified levels of radiation. However, the exemption in 10 CFR 30.15(a)(1) excludes "persons who initially transfer for sale or distribution" such timepieces or hands or dials.

10 CFR 30.15(b) provides, in part, that any person who desires to initially transfer for sale or distribution the products exempted in 10 CFR 30.15(a) should apply for a specific license pursuant to 10 CFR 32.14, which license states that the product may be distributed by the licensee to persons exempt from the regulations pursuant to 10 CFR 30.15(a).

Contrary to the above, JOMA Shop distributed byproduct material to persons exempt from the regulations without an NRC license to distribute. Specifically, beginning on or around May 2013, JOMA Shop initially transferred, for sale or distribution, 7617 tritium watches containing byproduct material to unlicensed persons without obtaining a specific license pursuant to 10 CFR 32.14 authorizing such transfers.

Violation 2:

10 CFR 110.5 states, in part, that "no person may . . . import any nuclear equipment or material listed in § 110.9a, unless authorized by a general or specific license issued under this part."

10 CFR 110.9a includes byproduct material. Byproduct material includes tritium (H-3).

10 CFR 110.20(a) states that "A person may use an NRC general license as authority to export or import nuclear equipment or material, if the nuclear equipment or material to be exported or imported is covered by the NRC general licenses described in §§ 110.21 through 110.27. If an export or import is not covered by the NRC general licenses described in §§ 110.21 through 110.27, a person must file an application with the Commission for a specific license in accordance with §§ 110.31 through 110.32."

Enclosure

10 CFR 110.27(a) (2010) states that "Except as provided in paragraphs (b) and (c) of this section, a general license is issued to any person to import byproduct, source, or special nuclear material if the U.S. consignee is authorized to receive and possess the material under a general or specific NRC or Agreement State license issued by the Commission or a State with which the Commission has entered into an agreement under Section 274b. of the Atomic Energy Act."

Contrary to the above, JOMA Shop imported byproduct material into the United States without being authorized by a general or specific license issued under the regulations in 10 CFR Part 110. Specifically, prior to April 2012, JOMA Shop imported 7617 watches, manufactured in Switzerland, and containing tritium, without having a possession license issued by the State of New York, or without first obtaining a specific import license.

This is a Severity Level III problem (Section 6.3 and 6.15).

The NRC has concluded that information regarding the reason for the violations, 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 NRC Investigation Report No. 1-2014-011 dated August 6, 2015, and in your written response letter dated November 5, 2015. However, you are required to submit, within 30 days of the date of the letter transmitting this Notice of Violation (Notice), 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-15-196)," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001, with a copies mailed to Patricia K. Holahan, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, MD 20852, and to Pamela Henderson, Acting Director, Division of Material Safety, State, Tribal, and Rulemaking Programs, Office of Nuclear Material Safety and Safeguards, 11555 Rockville Pike, Rockville, MD 20852.

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, 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 21st day of December, 2015