



**UNITED STATES  
NUCLEAR REGULATORY COMMISSION**

REGION IV  
1600 E. LAMAR BLVD.  
ARLINGTON, TX 76011-4511

March 2, 2017

EA-16-145

Mr. Doug Miskell  
Radiation Safety Officer  
Applus RTD USA, Inc.  
34920 Petrol Road  
Bakersfield, CA 93308

SUBJECT: NOTICE OF VIOLATION AND EXERCISE OF ENFORCEMENT DISCRETION;  
NRC INSPECTION REPORT 030-38291/2016-001

Dear Mr. Miskell:

This refers to the routine, unannounced inspection conducted on February 9 and 11, 2016, at your facility in Manchester, Connecticut. This inspection examined activities conducted under your license as they relate to public health and safety, the common defense and security, to confirm compliance with the U.S. Nuclear Regulatory Commission's (NRC's) rules and regulations, and with the conditions of your license. A final telephonic exit briefing to discuss the results of the inspection was conducted with you on August 25, 2016. The NRC Inspection Report 030-38291/2016-001, dated September 12, 2016 (Agencywide Document Access and Management System (ADAMS) ML16256A330), details the results of the inspection.

In the letter transmitting the inspection report, we provided you with the opportunity to address the apparent violations identified in the report by either attending a predecisional enforcement conference, requesting alternative dispute resolution, or by providing a written response before we made our final enforcement decision. By letters dated September 19 and 29, 2016, (ML16274A450 publicly available and ML16274A453 not publicly available, respectively), you provided responses to the apparent violations.

Based on the information developed during the inspection and the information that you provided in your written response, the NRC has determined that violations of NRC requirements occurred. These violations were evaluated in accordance with the NRC Enforcement Policy. The current Enforcement Policy can be found on the NRC's Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>. These violations are cited in two Notice of Violation (Notice) enclosures, and the circumstances surrounding them are described in detail in the inspection report listed above. Enclosure 1 is publically available and identifies two Severity Level IV violations: (1) failure to ensure that a radiographer demonstrated understanding of the Applus license, and operating and emergency procedures, by successful completion of a written

**Enclosure 2 contains Security-Related Information. When separated from Enclosure 2, this letter and Enclosure 1 are DECONTROLLED.**

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or oral examination prior to acting as a radiographer; and (2) failure to administer a practical examination to a radiographer after 6 months passed since the radiographer's last job performance inspection. Enclosure 2 identifies the security-related violation(s) that are not publicly available.

During our review of the information associated with the apparent violation of 10 CFR 34.47(a), the NRC considered whether enforcement discretion should be exercised. The NRC requirements in 10 CFR 34.47(a) state, in part, that "the licensee may not permit any individual to act as a radiographer or a radiographer's assistant unless, at all times during radiographic operations, each individual wears, on the trunk of the body a direct reading dosimeter, an operating alarm ratemeter, and a personnel dosimeter that is processed and evaluated by an accredited National Voluntary Laboratory Program (NVLAP) processor." Further, the NRC has generally considered the replacement of the direct reading dosimeter and alarming ratemeter by a single electronic device, the RadEye™ in this case, to fulfill the requirement for only one of the three required forms of monitoring in 34.47(a). The NRC position was based on the information in the final rule published on May 28, 1997, volume 62 of the *Federal Register* (FR), page 28948: "those electronic personal dosimeters that also have alarm ratemeter capabilities are not to be used as a substitute for alarm ratemeters at the present time." Based on its review of the applicable information from this case, the NRC determined that a violation has occurred.

The failure to use the required personnel monitoring identified in 10 CFR 34.47(a) is normally considered for escalated enforcement pursuant to the NRC Enforcement Policy. However, in consideration of the circumstances of this case, the NRC determined that it is appropriate to exercise enforcement discretion in accordance with Section 3.5, "Violations Involving Special Circumstances," of the NRC Enforcement Policy and refrain from citing the violation. Specific consideration for this determination included, but was not limited to the following areas: (1) the device met all the functionality that was specified in the regulations and was properly calibrated; (2) the situation that existed where the regulation of such dual function dosimetry changed from an Agreement State to NRC jurisdiction for the individual involved; and (3) the current NRC evaluation of a 2016 petition for rulemaking, which addresses 10 CFR 34.47(a) personnel monitoring devices.

The NRC has concluded that information regarding: (1) the reason for the violations; (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 NRC Inspection Report 030-38291/2016-001, and in your written responses dated September 19 and 29, 2016. 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 Notice.

In accordance with 10 CFR 2.390 of the NRC's "Agency Rules of Practice and Procedure," a copy of this letter and Enclosure 1 will be made available for public inspection in in the NRC's Public Document Room or from ADAMS, accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. However, in accordance with 10 CFR 2.390(d)(1), Enclosure 2 contains security-related information and its disclosure to unauthorized individuals could present a security vulnerability. Therefore, the material in Enclosure 2 will not be made available electronically for public inspection in the NRC Public Document Room or from ADAMS.

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If you have any questions concerning this matter, please contact Mr. Ray L. Kellar, Chief, Nuclear Materials Safety Branch A, at (817) 200-1191.

Sincerely,

/RA/

Mark R. Shaffer, Director  
Division of Nuclear Materials Safety

Docket No. 030-38291  
License No. 04-29076-02

Public Enclosure:

1. NRC Inspection  
Report 030-38291/2016-001;  
Notice of Violation

Non-public Enclosure:

2. NRC Inspection  
Report 030-38291/2016-001;  
Security Related Notice of Violation

cc w/enclosures:

California Radiation Control Program;  
Gonzalo L. Perez, Branch Chief  
Radiologic Health Branch  
Div. of Food, Drug & Radiation Safety  
CA Department of Health Services  
P.O. Box 997414, MS-7610  
Sacramento, CA 95899-7414

Connecticut Radiation Control Program;  
Jeffrey D. Semancik, Director  
Dept. of Energy and Environmental Protection  
Radiation Division  
79 Elm Street  
Hartford, CT 06106-5127

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NRC INSPECTION REPORT 030-38291/2016-001 DATED MARCH 2, 2017

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Mark.Shaffer@nrc.gov;	Bill.Maier@nrc.gov;	Francis.Peduzzi@nrc.gov;
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Jeremy.Bowen@nrc.gov;	R4DNMS_MS-B;	Robert.Sun@nrc.gov;
Jenny.Weil@nrc.gov;	R4DNMS_MS-A;	Scott.Morris@nrc.gov;

ADAMS ACCESSION NUMBER – Public Enclosure 1 - Notice of Violation: **ML17062A741**

<b>Letter and Public Notice of Violation:</b> X SUNSI Review by: <b>JCD</b>		ADAMS X Yes <input type="checkbox"/> No	X Publicly Available <input type="checkbox"/> Non-Publicly Available	X Non-Sensitive <input type="checkbox"/> Sensitive	Keyword: EA-16-145		
<b>Security Related Notice of Violation:</b> X SUNSI Review by: <b>JCD</b>		ADAMS X Yes <input type="checkbox"/> No	<input type="checkbox"/> Publicly Available X Non-Publicly Available	<input type="checkbox"/> Non-Sensitive X Sensitive	Keyword: MD A.3		
OFFICE	NMSB-A	Region I HP	C:NMSB-A	RIV:ACES	TL:ACES	RC	OE
NAME	JCDykert	JMiller	RLKellar	CAlldredge	MCHay	KSF Fuller	PHolahan
SIGNATURE	/RA/	/RA-E/	/RA/	/RA/	/RA by JKramer acting for/	/RA/	/RA-E JPeralta Acting for/
DATE	01/26/17	01/23/17	01/30/17	01/31/17	02/08/17	02/07/17	03/01/17
OFFICE	NMSS	D:DNMS					
NAME	MBurgess	MRS Shaffer					
SIGNATURE	/RA-E/	/RA/					
DATE	02/23/17	03/02/17					

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NOTICE OF VIOLATION

Applus RTD USA, Inc.  
Bakersfield, California

Docket No.: 030-38291  
License No.: 04-29076-02  
EA-16-145

During a U.S. Nuclear Regulatory Commission (NRC) inspection conducted on February 9 and 11, 2016, at your facility in Manchester, Connecticut, two violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. 10 CFR 34.43(b)(2) requires, in part, that the licensee not permit any individual to act as a radiographer until the individual has demonstrated understanding of the licensee's license and operating and emergency procedures by successful completion of a written or oral examination covering this material.

Contrary to the above, from November 7, 2015, to February 1, 2016, the licensee permitted an individual to act as a radiographer before the individual demonstrated understanding of the licensee's license and operating and emergency procedures by successful completion of a written or oral examination covering this material.

Specifically, the licensee permitted an individual to act as a radiographer on 15 different occasions from November 2015 to February 2016, before the individual demonstrated understanding of the license, and operating and emergency procedures by successfully completing a written or oral examination covering that material.

This is a Severity Level IV Violation (NRC Enforcement Policy Section 6.3.d).

- B. 10 CFR 34.43(e)(2) requires, in part, that if a radiographer has not participated in an industrial radiographic operation for more than 6 months since the last inspection, the radiographer must demonstrate knowledge of the training requirements of 10 CFR 34.43(b)(3) by a practical examination before a radiographer can next participate in radiographic operations.

Contrary to the above, on November 7 and 21, 2015, a radiographer had not participated in an industrial radiographic operation for more than 6 months since the radiographer's last inspection and the radiographer did not demonstrate knowledge of the training requirements of 10 CFR 34.43(b)(3) by a practical examination before the radiographer next participated in radiographic operations.

Specifically, the licensee's radiographer participated in radiographic operations and no job performance evaluation had occurred since 2014, and no practical examination was given before their participation in those radiographic operations on November 7 and 21, 2015.

This is a Severity Level IV Violation (NRC Enforcement Policy Section 6.3.d).

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken to correct the violations and prevent recurrence, and the date when full compliance was achieved is already adequately addressed on the docket in your written response dated September 19, 2016. However, you are required to submit a written statement

Enclosure 1

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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-16-145,” and send it to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville, Pike, Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV, 1600 East Lamar Blvd., Arlington, Texas 76011; and a copy to the Document Control Desk, Washington, DC 20555-0001 within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

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 are required to post this Notice within 2 working days of receipt.

Dated this 2<sup>nd</sup> day of March 2017