



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
1600 EAST LAMAR BOULEVARD
ARLINGTON, TEXAS 76011-4511

October 25, 2018

EA-18-060

David Scanlon
Professional Testing & Inspection
P.O. Box 383525
Waikoloa, HI 96738

SUBJECT: NOTICE OF VIOLATION, EXERCISE OF ENFORCEMENT DISCRETION,
NRC INVESTIGATION REPORT 4-2017-007

Dear Mr. Scanlon:

This letter refers to the inspection conducted by the U.S. Nuclear Regulatory Commission (NRC) Region IV staff on September 19, 2016, and the subsequent investigation (Investigation Report 4-2017-007) conducted by the NRC Office of Investigations at your facility in Waikoloa, Hawaii. The purpose of the inspection was to verify compliance with your license and with NRC regulations. The purpose of the investigation was to determine whether an employee of Professional Testing & Inspection willfully provided incomplete and inaccurate information on a license application during the license application process and during a pre-licensing visit, and willfully possessed byproduct material prior to applying for and receiving an NRC-specific license to possess the material. The investigation was initiated on November 4, 2016, and was completed on May 22, 2018.

In a telephone conversation on August 30, 2018, Mr. Michael Hay of my staff informed you that the NRC was considering escalated enforcement for apparent violations that involved providing incomplete and inaccurate information to the NRC and for the possession of byproduct material prior to applying for, and receiving, an NRC-specific license to possess the material. Mr. Hay also informed you that we had sufficient information regarding the apparent violations and your corrective actions to make an enforcement decision without the need for a predecisional enforcement conference or a written response from you. You indicated that Professional Testing & Inspection agreed with the violations and that a predecisional enforcement conference or written response was not necessary, and that you understood the significance and importance of following NRC regulations.

Based on the information developed during the inspection and investigation, the NRC has determined that two violations of NRC requirements occurred. These violations are cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding them are described in the enclosed Factual Summary. The violations included: (A) a failure to provide complete and accurate information to the NRC; and (B) the possession of byproduct material prior to applying for and receiving an NRC-specific license to possess the material.

The NRC considers these to be significant violations. Although no actual safety or security consequences were identified, the NRC's ability to effectively perform its regulatory function was compromised, because the NRC was unaware that Professional Testing & Inspection possessed byproduct material. These violations are significant because a Professional Testing & Inspection employee deliberately provided incomplete and inaccurate information to the NRC (Violation A) and demonstrated careless disregard for NRC regulations by possessing byproduct material prior to applying for and receiving an NRC-specific license to possess the material (Violation B). Therefore, in accordance with the NRC Enforcement Policy, these violations are categorized collectively as a Severity Level III problem.

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$7,250 is considered for a Severity Level III problem. Because your facility is the subject of a willful escalated enforcement action, the NRC considered whether credit was warranted for *Identification* and *Corrective Action* in accordance with the civil penalty assessment process in Section 2.3.4 of the NRC Enforcement Policy. The NRC determined that credit is not warranted for *Identification* because the NRC identified the violations. The NRC determined that credit is warranted for *Corrective Action* since: (1) you appropriately transferred all byproduct material to another licensee, (2) you terminated your NRC license, and (3) you acknowledged that you understand the significance and importance of following NRC regulations. In recognition of your actions to transfer all byproduct material to another licensee and the fact that you terminated your license, the NRC has decided to exercise enforcement discretion, in accordance with Section 3.6 of the NRC Enforcement Policy, to refrain from proposing the base civil penalty of \$7,250 in this case.

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 the NRC letter to you, dated June 15, 2017 (Agencywide Documents Access and Management System (ADAMS) ML17171A028), regarding the termination of NRC Materials License 53-35245-01, and the corrective actions documented above. 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 "Agency Rules of Practice and Procedure," a copy of this letter, its enclosures, 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 ADAMS, accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

If you have any questions concerning this matter, please contact Mr. James Thompson at 817-200-1538 or Ms. Linda Howell at 817-200-1287.

Sincerely,

/RA/

Kriss M. Kennedy
Regional Administrator

Docket No. 030-38840
License No. 53-35245-01

Enclosures:

1. Factual Summary
2. Notice of Violation

NOTICE OF VIOLATION, EXERCISE OF ENFORCEMENT DISCRETION, NRC
 INVESTIGATION REPORT 4-2017-007 - DATED OCTOBER 25, 2018

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ADAMS ACCESSION NUMBER: **ML18299A270**

SUNSI Review: ADAMS: Non-Publicly Available Non-Sensitive Keyword:
 By: JGK Yes No Publicly Available Sensitive

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FACTUAL SUMMARY
NRC INVESTIGATION REPORT 4-2017-007

On November 4, 2016, the U.S. Nuclear Regulatory Commission (NRC) Office of Investigations (OI) initiated an investigation to determine whether: (1) an employee of Professional Testing & Inspection willfully provided incomplete and inaccurate information on an NRC license application and during a pre-licensing visit; and (2) an employee willfully possessed byproduct material, prior to applying for, and receiving, an NRC-specific license to possess the material. The NRC completed its investigation on May 22, 2018.

Background

The Energy Policy Act of 2005 amended the Atomic Energy Act of 1954 to expand the NRC's jurisdiction over certain naturally occurring and accelerator-produced radioactive materials (NARM), including radium, and became effective on November 30, 2007. Section 651(e) of the Act authorized the NRC to issue time-limited waivers, which allowed continued use and possession of NARM while the Commission developed regulations specific to NARM.

Title 10 CFR 30.3(c)(3) provides that a person who possesses accelerator-produced radioactive material or discrete sources of radium-226 may continue to use such material until the date of the NRC's final licensing determination, provided that the person submits a license application within 12 months from the waiver expiration date of August 7, 2009, or within 12 months from the date of an earlier termination of the waiver as noticed by the NRC, whichever date is earlier.

In the license application dated April 10, 2015, an employee of Professional Testing & Inspection stated, "It is my desire to possess two Seaman Nuclear Corp model C-300 Portable nuclear gauges," but did not state that he had already owned two gauges. Additionally, on November 4, 2015, during the pre-licensing visit, the employee of Professional Testing & Inspection told the NRC inspector that he used to be a gauge user and stored gauges at his premises, but that he was not currently in possession of any gauges. On November 24, 2015, the NRC issued a materials license to Professional Testing & Inspection based on the submitted license application and the results of the pre-licensing visit. On September 19, 2016, during an inspection of Professional Testing & Inspection's NRC-specific license, the NRC learned that an employee was in possession of two portable density gauges containing radium-226 prior to the issuance of the NRC Materials License.

Investigation Results

1. Determine whether an employee of Professional Testing & Inspection willfully provided incomplete and inaccurate information on a license application during the license application process and during a pre-licensing visit.

By his own admission, the employee provided incomplete and inaccurate information to the NRC in both his application and to the NRC inspector during the pre-licensing visit, because he stated that he was trying to take the "quickest path to get compliant." He acknowledged during his interview that he already had the gauges at the time he submitted his application, and that he knew he was not compliant at that time. Later, referring to the pre-licensing visit, the employee explicitly stated, "Yeah, I didn't give complete information."

Based on the evidence obtained by OI, the NRC determined that the employee of Professional Testing & Inspection deliberately provided incomplete and inaccurate

information on a license application and during a pre-licensing visit, causing the licensee to be in violation of 10 CFR 30.9(a).

2. Determine whether an employee of Professional Testing & Inspection willfully possessed byproduct material, prior to applying for, and receiving, an NRC-specific license to possess the material.

In September 2009, during radiation safety officer training provided by Seaman Nuclear Corporation, the employee was informed that the NRC would be assuming jurisdiction for radium gauges at some point in the future, which establishes that the employee had knowledge that the requirement would exist. By relying on Seaman Nuclear Corporation to notify him when that change took place, he demonstrated careless disregard by not inquiring when the changes went into effect.

Based on the evidence obtained by OI, the employee of Professional Testing & Inspection willfully possessed byproduct material prior to applying for, and receiving, an NRC-specific license to possess the material. Therefore, the employee caused the licensee to be in violation of 10 CFR 30.3(c)(3).

NOTICE OF VIOLATION

Professional Testing & Inspection
Waikoloa, Hawaii

Docket No. 030-38840
License No. 53-35245-01
EA-18-060

During an NRC investigation conducted from November 4, 2016, to May 22, 2018, two violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. 10 CFR 30.9(a) requires, in part, that information provided to the Commission by an applicant for a license shall be complete and accurate in all material respects.

Contrary to the above, from April 10 through November 24, 2015, information provided to the Commission by an applicant for a license was not complete and accurate in all material respects. Specifically, statements provided in the application for an NRC-specific license and during an on-site pre-licensing visit did not disclose that Professional Testing & Inspection, the license applicant, was in possession of byproduct material without a current or valid license.

- B. 10 CFR 30.3(a) requires, in part, that no person shall 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 10 CFR Chapter I.

10 CFR 30.3(c)(3) requires, in part, that persons who possess and use discrete sources of radium-226 for which a specific license is required in 10 CFR 30.3(a), may continue to use such material for uses permitted under this part until the date of the NRC's final licensing determination, provided that the person submits a license application within 12 months from the waiver expiration date of August 7, 2009.

Contrary to the above, from August 7, 2010, to November 24, 2015, Professional Testing & Inspection possessed and used byproduct material (radium-226) without an NRC license and without submitting a license application to the NRC within 12 months of August 7, 2009. Specifically, Professional Testing & Inspection possessed and used radium-226 gauges and failed to obtain the required license within 12 months of August 7, 2009.

This is a Severity Level III problem (NRC Enforcement Policy Section 2.2.1.d).

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 was achieved, is already adequately addressed on the docket in the NRC letter to you dated June 15, 2017 (ADAMS ML17171A028), regarding the termination of NRC Materials License 53-35245-01. 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-18-060" 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 IV, 1600 E. Lamar Blvd., Arlington, TX 76011-4511, 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 document 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.

If personal privacy or proprietary information is necessary to provide an acceptable response, please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such information, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information).

Dated this 25th day of October 2018