



**UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
REGION I  
2100 RENAISSANCE BOULEVARD, SUITE 100  
KING OF PRUSSIA, PA 19406-2713**

May 20, 2019

EA-19-003

Donald J. Sipher, P.E.  
President & Chief Operating Officer  
Froehling & Robertson, Inc.  
3015 Dumbarton Road  
Richmond, VA 23228

**SUBJECT: FROEHLING & ROBERTSON, INC - NOTICE OF VIOLATION - NRC  
INSPECTION REPORT NO. 03006580/2018001**

Dear Mr. Sipher:

This letter provides you the U.S. Nuclear Regulatory Commission's (NRC's) enforcement decision for apparent violations identified during a routine inspection conducted at the Froehling & Robertson, Inc. (F&R) facility in Roanoke, Virginia and at a temporary jobsite in Virginia Beach, Virginia (Inspection Report No. 03006580/2018001). The purpose of the inspection was to examine F&R's licensed activities as they relate to radiation safety and to compliance with the Commission's regulations and the conditions of F&R's license. The NRC discussed the apparent violations with Mr. Brett Clarke of your organization during a telephonic exit meeting on March 27, 2019. The apparent violations were also described in the NRC inspection report sent to you with a letter dated April 15, 2019 (ML19105A098).<sup>1</sup>

In the NRC letter transmitting the inspection report, we provided you the opportunity to address the apparent violations by either attending a pre-decisional enforcement conference (PEC) or by providing a written response before we made our final enforcement decision. In the letter, we also informed you that we had sufficient information regarding the apparent violations and F&R's corrective actions to make an enforcement decision without the need for a PEC. In a telephone call on April 23, 2019, you informed Arthur Burritt, Chief, Commercial, Industrial, R&D, and Academic Branch, that F&R did not request a PEC and did not intend to provide a written response.

Therefore, based on the information developed during the inspection, the NRC has determined that violations of NRC requirements occurred. The violations are cited in the enclosed Notice of Violation (Notice) and were described in detail in the subject inspection report. The most significant violations are related to F&R's temporary loss of control of a portable nuclear gauge on February 27, 2017. Specifically, the gauge fell from the back of a truck during transport

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<sup>1</sup> Designation in parentheses refers to an Agency-wide Documents Access and Management System (ADAMS) accession number. Unless otherwise noted, documents referenced in this letter are publicly-available using the accession number in ADAMS.

between work locations at a temporary jobsite at U.S. Army Fort Bragg. Within approximately 20 minutes, the gauge was found by another contractor working at the site and returned to the F&R authorized user (AU). An F&R radiation safety officer responded to the site and verified that the sources had not been compromised and that there was no external contamination on the gauge as a result of the event.

The NRC determined that until it was recovered, the gauge was not under the licensee's control and constant surveillance and was also not secured from unauthorized removal with two independent physical controls. Because the event involved a failure to secure licensed material of a quantity greater than 1,000 times the quantity specified in Appendix C to 10 CFR Part 20, "Standards for Protection Against Radiation," and could have resulted in unintended public radiation exposure had the sources been accessed, these violations have been categorized at Severity Level III (SL III) in accordance with the NRC Enforcement Policy. In consideration that the violations involve the same event, the NRC categorized them collectively as a single, SL III problem.

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$7,250 is considered for a SL III problem. Because your facility has not been the subject of escalated enforcement action within the last 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. The NRC determined that corrective action credit is warranted because F&R mandated re-training of all personnel that included discussion of this event and review of the methods for securing portable gauges during transport. In addition, F&R took disciplinary action against the AU involved in this incident. Therefore, to encourage prompt and comprehensive correction of violations of NRC requirements, 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 SL III problem constitutes an escalated enforcement action that may subject F&R to increased inspection effort.

The NRC also identified that F&R failed to immediately report the event to the NRC and, instead, described it to the NRC inspector approximately two years after the occurrence. As a result, the NRC was prevented from inspecting and assessing the issue in a timely manner. The NRC evaluates the severity level of violations involving the failure to make required reports based on the significance of the matter that should have been reported. Therefore, the NRC categorized this violation at SL III.

As discussed above, in accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$7,250 is considered for a SL III violation. Because your facility has not been the subject of escalated enforcement action within the last 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. The NRC determined that corrective action credit is warranted because, upon being made aware of the requirement, F&R formally reported the event (EN 53799) and conducted training for its personnel on the requirements for reporting events to the NRC. Therefore, to encourage prompt and comprehensive correction of violations of NRC requirements, 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 SL III violation

constitutes an escalated enforcement action that may subject F&R to increased inspection effort.

An additional violation involving F&R's failure to provide emergency procedures at a temporary jobsite in Virginia Beach, Virginia was categorized in accordance with the NRC Enforcement Policy at SL IV. The circumstances surrounding this violation are documented in detail in the Notice as well as in the aforementioned inspection report. The violation is cited because it was identified by the NRC.

The NRC has concluded that information regarding: (1) the reasons for the violations; (2) the actions planned or already taken to correct the violations and prevent recurrence; and, (3) the date when full compliance was achieved, is already adequately addressed on the docket in Inspection Report No. 03006580/2018001. 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 and its enclosure will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Website at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response, if you choose to provide one, should not include any personal privacy, proprietary, or safeguards 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).

The NRC also includes significant enforcement actions on its Web site at (<http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>).

Sincerely,

**/RA by Raymond Lorson Acting for/**

David C. Lew  
Regional Administrator

Enclosure:  
Notice of Violation

cc w/enclosure: Brett D. Clarke, Radiation Safety Officer  
Commonwealth of Virginia

SUBJECT: FROEHLING & ROBERTSON, INC. - NOTICE OF VIOLATION - NRC  
INSPECTION REPORT NO. 03006580/2018001 DATED MAY 20, 2019

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DOCUMENT NAME: S:\Enf-allg\Enforcement\Proposed-Actions\Region1\F&R temp lost gauge NOV-III EA-19-003.docx

X SUNSI Review/		X Non-Sensitive □ Sensitive			X Publicly Available □ Non-Publicly Available	
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DATE						5/20/19

## NOTICE OF VIOLATION

Froehling & Robertson, Inc.  
Richmond, VA 23228

Docket No. 03006580  
License No. 45-08890-02  
EA-19-003

During an NRC inspection conducted on September 24 and November 30, 2018, with continued in-office review through March 27, 2019, violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

### I. ESCALATED VIOLATIONS

- A. 10 CFR 20.1802 requires that the licensee shall control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and is not in storage.

Contrary to the above, on February 27, 2017, the portable gauge licensee did not control and maintain constant surveillance of licensed material, a portable gauge, that was in an unrestricted area and that was not in storage. Specifically, an authorized gauge user left a portable nuclear moisture density gauge containing licensed material in the bed of a pickup truck while transporting it to another site. The gauge fell out of the truck and was unattended. The gauge was recovered in approximately 20 minutes.

- B. 10 CFR 30.34(i) requires, in part, that each portable gauge licensee shall 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, on February 27, 2017, the portable gauge licensee did not use a minimum of two independent physical controls that formed tangible barriers to secure the gauge from unauthorized removal. Specifically, an authorized gauge user left a portable nuclear moisture density gauge containing licensed material in the bed of a pickup truck while transporting it to another site. The gauge fell out of the truck and was unattended. The gauge was recovered in approximately 20 minutes.

This is a Severity Level III Problem. (Enforcement Policy Sections 6.7 and 6.3)

- C. 10 CFR 20.2201(a)(i) requires that each licensee shall report by telephone immediately after its occurrence becomes known to the licensee, any lost, stolen, or missing licensed material in an aggregate quantity equal to or greater than 1,000 times the quantity specified in appendix C to part 20 under such circumstances that it appears to the licensee that an exposure could result to persons in unrestricted areas.

Contrary to the above, on February 27, 2017, the licensee did not report by telephone immediately after its occurrence becomes known to the licensee, any lost, stolen, or missing licensed material in an aggregate quantity equal to or greater than 1,000 times the quantity specified in appendix C to part 20 under such circumstances that it appears to the licensee that an exposure could result to persons in unrestricted areas. Specifically, an authorized gauge user had lost a portable gauge

containing a quantity greater than 1,000 times the quantity specified in appendix C to part 20 in which the exposure could result to persons in unrestricted area.

This is a Severity Level III Violation. (Enforcement Policy Section 6.9)

## II. NON-ESCALATED VIOLATION

Condition 18 of Amendment 23 of NRC License No.45-08890-02 requires that the licensee shall conduct its program in accordance with the statements, representations, and procedures contained in the documents, including electronic mail attachment received March 8, 2012 (ML120690394)<sup>2</sup>.

The electronic mail attachment received March 8, 2012, states, "We will implement and maintain the operating and emergency procedures in Appendix H of NUREG-1556, Volume 1, Rev. 1, dated November 2001, and provide copies of these procedures to all gauge users and at each jobsite."

Contrary to the above, on November 30, 2018, the licensee did not implement and maintain the operating and emergency procedures in Appendix H of NUREG-1556, Volume 1, Rev. 1, dated November 2001, and provide copies of these procedures to all gauge users and at each jobsite. Specifically, the licensee did not have the emergency procedures in Appendix H of NUREG-1556, Volume 1, Rev. 1, dated November 2001 at the jobsite in Oceanic Naval Air Station, Virginia Beach, Virginia.

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

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken and planned to correct the violations and prevent recurrence, and the date when full compliance was achieved is already adequately addressed on the docket in Inspection Report No. 03006580/2018001. 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-19-003)" 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, U.S., Nuclear Regulatory Commission, Region I, 2100 Renaissance Boulevard, King of Prussia, PA 19406, within 30 days of the date of the letter transmitting this Notice of Violation.

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 Agency-wide 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 20<sup>th</sup> day of May 2019.

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<sup>2</sup> This document is non-public because it contains security-sensitive information.