



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

REGION III
2443 WARRENVILLE RD. SUITE 210
LISLE, IL 60532-4352

February 12, 2020

EA-19-079

Mr. Dennis Bittner, President
Bittner Engineering, Inc.
113 South 10th Street
P.O. Box 713
Escanaba, MI 49829

**SUBJECT: BITTNER ENGINEERING, INC. - NOTICE OF VIOLATION; NRC ROUTINE
INSPECTION REPORT NO. 03030982/2019001(DNMS)**

Dear Mr. Bittner:

This letter refers to the Nuclear Regulatory Commission (NRC) inspection conducted on May 23, 2019, with continued in-office review through August 1, 2019, at your Escanaba, Michigan location. The purpose of the inspection was to review activities performed under your NRC license to ensure that activities were being performed in accordance with NRC requirements. During the inspection, four apparent violations of NRC requirements were identified. The circumstances surrounding the apparent violations, the significance of the issues, and the need for lasting and effective corrective actions were discussed with you during an exit meeting on August 15, 2019. Details regarding the apparent violation were provided in NRC Inspection Report No. 03030982/2019001 (DNMS), dated September 13, 2019. The inspection report can be found in NRC's Agencywide Documents Access and Management System (ADAMS) at accession No. ML19259A116. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

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 or providing a written response before we made our final enforcement decision. In a letter dated October 10, 2019, you provided a written response to the apparent violations (ML19295D309).

Based on the information developed during the inspection, and the information you provided in your response to the inspection report, dated October 10, 2019, the NRC has determined that four violations of NRC requirements occurred. The violations involved the failure to: (1) ensure that the individual named on the license as Radiation Safety Officer (RSO) was the RSO; (2) perform leak tests of sealed sources every 12 months; (3) perform a review of the content and implementation of your radiation safety program at least annually; and (4) provide hazmat employees with hazmat refresher training at least once every 3 years. These violations are cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding them are described in detail in the subject inspection report. The failure to have an RSO is of regulatory concern because there was a lack of sufficient management oversight of the radiation safety program, which was determined to be a root cause of the violations listed. Therefore, these violations are categorized collectively in accordance with the NRC Enforcement Policy as a Severity Level III problem.

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$7500 is considered for a Severity Level III problem.

Because your facility has not been the subject of escalated enforcement actions 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 considered the information you provided to the NRC inspectors during the inspection and in your response dated October 10, 2019, and determined that credit for *Corrective Action* is warranted. Your corrective actions included requesting an amendment to your license on July 24, 2019, to appoint a new RSO, which was subsequently issued by the NRC as Amendment 6, dated October 15, 2019. Additional corrective actions included: (1) performing leak tests on all the gauges; (2) completing the annual audit of the radiation protection program (on August 1, 2019); (3) conducting hazmat training for all gauge users; and (4) planning to conduct gauge user meetings on a 10-day to 2-week interval with minutes prepared for each meeting. To prevent recurrence of the violations, you indicated that you have gained a better understanding and awareness of the requirements and responsibilities of gauge ownership and usage through follow up communications with the inspectors. As a result, in your response you indicated that more focused and frequent discussions have been held among the Bittner engineering team and any noted deficiencies were corrected.

Therefore, to encourage prompt and comprehensive correction of violations, 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 Severity Level III problem constitutes escalated enforcement action that may subject you to increased inspection effort.

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 Inspection Report No. 03030982/2019001(DNMS), in your response dated October 10, 2019, and this letter. 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, its enclosure, and your response will be made available electronically for public inspection in the NRC Public Document Room and 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>. The NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions>.

Sincerely,

/RA/

John B. Giessner
Acting Regional Administrator

Docket No. 030-30982
License No. 21-26010-01

Enclosure:
Notice of Violation

cc w/encl: State of Michigan

Letter to Mr. D. Bittner from John B. Giessner, dated February 12, 2020.

SUBJECT: NRC ROUTINE INSPECTION REPORT NO. 03030982/2019001(DNMS) BITTNER ENGINEERING, INC.

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DATE	1/30/2020	1/30/2020	2/4/2020	2/10/2020
OFFICE	OGC	OE	RIII	RIII
NAME	LBaer NLO	LSveenivas	JCameron JKH for	JGiessner
DATE	2/10/2020	2/10/2020	2/11/2020	2/12/2020

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NOTICE OF VIOLATION

Bittner Engineering, Inc.
Escanaba, Michigan

Docket No. 030-30982
License No. 21-26010-01
EA-19-079

During a U.S. Nuclear Regulatory Commission (NRC) inspection conducted May 23, 2019, at your Escanaba, Michigan location, with continued in-office review through August 1, 2019, violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. License Condition 12 of Amendment No. 5 of NRC License 21-26010-01 states the Radiation Safety Officer (RSO) for the license is a specifically named individual.

Contrary to the above, between approximately 2014 and May 23, 2019, the licensee failed to have the named individual on the license serve as the RSO. Specifically, the RSO named on the license retired in 2014 and the licensee had not requested an amendment to its license to name a new RSO as of the date of the inspection on May 23, 2019.

- B. License Condition 13.A of Amendment No. 5 of NRC License 21-26010-01 required the licensee to test sealed sources for leakage and/or contamination at intervals not to exceed the intervals specified in the certificate of registration.

Certificate of Registration NC-646-D-130-S and NC-646-D-830-S states, in part, the device shall be leak tested by the user following the instructions in the "Manual of Operation and Instruction" at intervals not to exceed twelve months.

Contrary to the above, between December 2014 and May 23, 2019, the licensee failed to test the sealed sources of Cesium-137 and Americium-241 for leakage and/or contamination at intervals not to exceed 12 months, as specified in certificates NC-646-D-130-S and NC-646-D-830-S. Specifically, three portable gauges containing sealed sources were last leak tested on December 15 and 24, 2014, and had not been leak tested again as of May 23, 2019, an interval exceeding 12 months and the gauges were not in storage.

- C. Title 10 of the *Code of Federal Regulations* (CFR) Part 20.1101(c) requires the licensee to periodically (at least annually) review the radiation protection program content and implementation.

Contrary to the above, between approximately 2014 until May 23, 2019, the licensee failed to perform a required review of the content and implementation of the radiation safety program.

- D. Title 10 CFR 71.5(a) requires, in part, that a licensee who transports licensed material where transport is on public highways comply with the applicable requirements of the regulations of the Department of Transportation (DOT) in 49 CFR Part 172.

Enclosure

Title 49 CFR 172.704(c) requires, in part, that a hazmat employee receive initial training, and recurrent training at least once every 3 years.

Contrary to the above, between January 2014 and May 23, 2019, the licensee failed to provide recurrent training once every 3 years for its hazmat employees that satisfies the requirements in Subpart H to 49 CFR Part 172.

This is a Severity Level III problem. (Section 6.3.C.11(d))

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. 03030982/2019001(DNMS) dated September 13, 2019, in your response dated October 10, 2019, and the letter transmitting this Notice of Violation (Notice). 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-19-079" 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 III, Suite 210, 2443 Warrenville Rd, Lisle IL, 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 may be required to post this Notice within two working days of receipt.

Dated this 12th day of February 2020.