

Rosemount Nuclear Instruments

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April 1, 1994

Chief, Vendor Inspection Branch
Division of Reactor Inspection and Licensee Performance
Office of Nuclear Reactor Regulation
Nuclear Regulatory Commission
Washington, D.C. 20555-0001

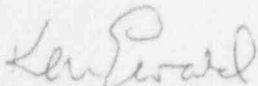
SUBJECT: Reply to a Notice of Violation

Dear Sir:

Please find enclosed Rosemount Nuclear Instruments, Inc. (RNII) responses to the Notice of Violation found in NRC Inspection Report No. 93-01, docket no. 99900271. Please also note, that certain supporting documentation is being provided to the NRC that is considered proprietary in nature by RNII. These documents are identified and submitted under the encompassing affidavit executed 4-1-94, by RNII.

Please feel free to contact the under signed or Mr. Jerry Valley at (612) 681-5825 with any questions.

Sincerely,



Ken Ewald
Business Unit Manager
Rosemount Nuclear Instruments, Inc.

cc: Jay Silberg
Mike Schneider
Mark Van Sloun

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AFFIDAVIT PURSUANT
TO 10 C.F.R. § 2.790 AND 10 C.F.R. § 9.17

State of Minnesota)
)ss:
County of Hennepin)

I, Kenneth E. Ewald, depose and say that I am Business Unit Manager of Rosemount Nuclear Instruments, Inc., duly authorized to make this Affidavit, and have reviewed or caused to have reviewed the information which is identified in the attachment to this Affidavit. I am making this Affidavit in conformance with the provisions of 10 C.F.R. § 2.790 and 10 C.F.R. § 9.17 in conjunction with Rosemount Inc.'s application for withholding the information identified in the attachment to this Affidavit.

I have personal knowledge the criteria and procedures utilized by Rosemount Inc. in designating information as a trade secret, privileged, proprietary or as confidential commercial or financial information.

Pursuant to the provisions of 10 C.F.R. § 2.790(b)(4) and 10 C.F.R. § 9.17(a)(4), the following is furnished for consideration by the Commission in determining whether the information sought to be withheld from public disclosure should be withheld.

1. The information sought to be withheld from public disclosure is owned and has been held in confidence by Rosemount Inc.

2. The information is of a type customarily held in confidence by Rosemount Inc. and not customarily disclosed to the public. Rosemount Inc. has a rational basis for determining the types of information customarily held in confidence by it and, in that connection, utilizes a framework to determine when and whether to hold certain types of information in confidence. The application of that framework and the substance of that framework constitutes Rosemount Inc. policy and provides the rational basis required.

Under that framework, information is held in confidence if it falls in one or more of several types, the release of which might result in the loss of an existing or potential competitive advantage, as follows:

- a. The information reveals the distinguishing aspects of a process (or component, structure, tool, method, etc.) where prevention of its use by any of Rosemount Inc.'s competitors without license from Rosemount Inc. constitutes a competitive economic advantage over other companies.
- b. It constitutes of supporting data, including test data, relative to a process (or component, structure, tool, method, etc.), the application of which data secures a competitive economic advantage, e.g., by optimization or improved marketability.
- c. Its use by a competitor would reduce his expenditure of resources or improve his competitive position in the design, manufacture, shipment, installation, assurance of quality, or licensing a similar product.
- d. It reveals cost or price information, production capacities, budget levels, or commercial strategies of Rosemount Inc., its customers or suppliers.
- e. It reveals aspects of past, present, or future Rosemount Inc. funded development plans and programs of potential commercial value to Rosemount Inc.
- f. It contains patentable ideas, for which patent protection may be desirable.
- g. It is not the property of Rosemount Inc. but must be treated as proprietary by Rosemount Inc. according to agreements with the owner.

There are sound policy reasons behind the Rosemount Inc. framework which include the following:

- a. The use of such information by Rosemount Inc., gives Rosemount Inc. a competitive advantage over its competitors. It is, therefore, withheld from disclosure to protect the Rosemount Inc. competitive position.
 - b. It is information which is marketable in many ways. The extent to which such information is available to competitors diminishes Rosemount Inc.'s ability to sell products involving the use of the information.
 - c. Use by our competitors would put Rosemount Inc. at a competitive disadvantage by reducing their expenditure of resources at our expense.
 - d. Each component of proprietary information pertinent to a particular competitive advantage is potentially as valuable as the total competitive advantage. If competitors acquire components of proprietary information, any one component may be the key to the entire puzzle, thereby depriving Rosemount Inc. of a competitive advantage.
 - e. Unrestricted disclosure would jeopardize the position of prominence of Rosemount Inc. in the world market, and thereby give a market advantage to the competition of those countries.
 - f. The Rosemount Inc. capacity to invest corporate assets in research and development depends upon the success in obtaining and maintaining a competitive advantage.
3. The information is being transmitted to the Commission in confidence and, under the provisions of 10 C.F.R. § 2.790 and § 9.17, it is to be received in confidence by the Commission.

4. The information sought to be protected is not available in public sources or available information has not been previously employed in the same original manner or method to the best of our knowledge and belief.
5. The proprietary information involves the characteristics, design, manufacture, operation, reliability, testing, commercial terms and conditions associated with certain pressure transmitters used in nuclear power plants and other industrial applications. The information has substantial commercial value in that Rosemount Inc. can continue to sell its transmitters. Public disclosure of this information is likely to cause substantial harm to the competitive position of Rosemount Inc. because it would enhance the ability of competitors to sell similar transmitters without commensurate expense.

The development of the technology described in part by the information is the result of applying the results of many years experience in an intensive Rosemount Inc. effort and the expenditure of a considerable sum of money.

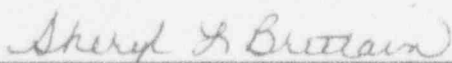
In order for competitors of Rosemount Inc. to duplicate this information, similar technical programs would have to be performed and a significant manpower effort, having the requisite talent and experience, would have to be expended.

Further the affiant sayeth not.

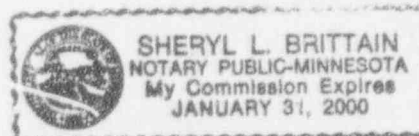


Kenneth E. Ewald

Sworn to before this 1st day of
April, 1994.



Notary Public



RESPONSE TO NOTICE OF VIOLATION

REFERENCE NRC: DOCKET NO. 99900271
REPORT NO. 93-01

Following are the responses to violations identified by the NRC during an inspection conducted at the Rosemount Nuclear Instruments, Incorporated(RNII) facilities on February 1-4 and March 8-12, 1993.

Violation A(93-01-01)

Section 21.21 of 10 CFR Part 21 requires that each individual, corporation, partnership, or other entity subject to the regulations in this part adopt appropriate procedures to evaluate deviations and failures to comply.

Contrary to the above, as of March 12, 1993, Rosemount failed to establish or implement a procedure to evaluate deviations and failures to comply at its Chanhassen facility.

Reason for Vliolation

- Chanhassen is a Rosemount Measurement Division production facility established in December 1989 and located in Chanhassen, Minnesota. This facility is dedicated to the manufacture of pressure transmitters sold to the commercial process industries and also provides the pressure sensor cells used in Rosemount Models 1151(Commercial Grade) and Models 1152, 1153 and 1154 sold to the Nuclear industry by Rosemount Nuclear Instruments, Inc.
- Rosemount first initiated formal guidance to implement 10 CFR Part 21 in May of 1980 with Industrial Group Marketing Procedure MP 5808, (Attachment 93-01-01 "A").(Note: The Industrial Group, of which RNII was then a Product Line, evolved into what is today organized as the Rosemount Measurement Division, of which RNII was a part until December 1992. Currently, the Nuclear Group of Rosemount is organized as Rosemount Nuclear Instruments, Incorporated.)
- On 3-18-81, the then Rosemount Industrial Division released QIP-126N as the implementing document for 10 CFR Part 21.(Attachment 93-01-01 "B") This document, through several revisions, was the implementing document in use by the Rosemount Measurement Division and the Nuclear Group up until April 1992.
- In April of 1992, the Rosemount Measurement Division converted its quality system to ISO-9001. Prior to this, the Rosemount Measurement Division and the Nuclear Group operated under the

same quality system.

- As a result of this change by the Rosemount Measurement Division to ISO-9001, the Nuclear Group was required to develop a separate Quality System and implementing procedures to comply with 10 CFR 50 Appendix B. This Quality System was documented in Rosemount Nuclear Quality Assurance Manual D9000115, Revision A. With respect to Part 21, QIP-126N was rewritten and became Nuclear Department Procedure N-1626, Revision "A". (Attachment 93-01-01"B") The Nuclear Group continued to behave as it had prior to the ISO-9001 conversion by the Rosemount Measurement Division by posting this as the implementing document at the Eden Prairie and Chanhassen facilities. (Note: At this time, the Nuclear Group was a part of the Measurement Division and this relationship contributed to the belief that the Part 21 implementation was compliant with the regulations.)

- While Rosemount acknowledges that a unique document developed to implement Part 21 for the Chanhassen facility did not exist at the time of the audit, our behavior demonstrates that we acted in good faith and with the full intent of being in compliance with the requirements of 10 CFR Part 21.

- Even prior to the time of the NRC inspection, all personnel associated with Nuclear production at the Chanhassen facility had been trained to the requirements of 10 CFR Part 21. This was verified by a check of the training records and is supported by the statements contained in Enclosure 3, Page 26, Para. 4.2 of the NRC Inspection Summary, in which most employees queried at Chanhassen by the NRC Inspectors answered in the affirmative that they had been trained, knew of the posting, that it listed the names of personnel to be contacted, and that they were to bring to the attention of their supervisor or those persons listed on the posting any unsatisfactory conditions of which they were aware in Nuclear sensor cells or other Nuclear products.

Corrective Measures That Have Been Taken And Results Achieved

In March of 1994, DP-N-1626 was revised to add Paragraph 3.8 which spells out RNII Basic Component Supplier obligations under Part 21. This change will preclude a supplier, including Chanhassen, having to prepare an additional procedure. Suppliers will be able to implement our procedure in lieu of developing their own. (Attachment 93-01-01"D").

The Date When Full Compliance Will Be Achieved

Revision D of DP-N-1626 will be implemented in the Rosemount Measurement Division Chanhassen facility not later than April 15, 1994.

Summary

We believe the foregoing strongly supports that Rosemount has always acted in good faith and with the full intent of being in compliance with the requirements of 10 CFR Part 21 at the Chanhassen facility. Further, this modification to our current DP-N1626 procedure will allow RNII to bring Chanhassen in to full compliance with the letter of the requirements of 10 CFR Part 21.

Violation B (93-01-02)

Section 21.6, "Posting Requirements", of 10 CFR Part 21, requires that each corporation or entity subject to the regulations in Part 21 post current copies of 10 CFR Part 21, Section 206 of the Energy Reorganization Act (ERA) of 1974 and procedures adopted pursuant to the regulations in 10 CFR Part 21, or, if posting of the regulations in Part 21 or procedures is not practicable, the licensee or firm subject to the regulations in Part 21 may, in addition to posting Section 206 of the ERA, post a notice which describes the regulations/procedures, including the name of the individual to whom reports may be made, and states where they may be examined.

Contrary to these requirements, as of March 12, 1993, the postings at Rosemount's Eden Prairie and Chanhassen facilities did not adequately describe either 10 CFR Part 21 or the procedure adopted to implement it. In addition, the postings were found to contain outdated names and telephone numbers of personnel to whom reports were to be made.

Reason for Violation

Just prior to the NRC Inspection, a number of organizational changes affecting the Nuclear Group had occurred, causing some of the descriptive information to be out of date. However, Rosemount believed that the postings met the intent of 10 CFR Part 21 because section 206 of the Energy Reorganization Act of 1974, 10 CFR Part 21, and our implementing procedure DP-N-1626 were all posted at numerous locations throughout Rosemount, and specifically in the Eden Prairie and Chanhassen facilities. Additionally, the style of posting was the same as Rosemount had traditionally used. This style has been present through literally hundreds of outside audits conducted by our Nuclear Utility Customers, NUPIC and the NRC. Never, to our knowledge, have there been any documented findings.

Corrective Steps That Have Been Taken And Results Achieved

- Even as the NRC Audit was in progress, Rosemount personnel took steps to begin the revision of DP-N-1626. This task was completed and the procedure released in April 1993. All postings at Rosemount Eden Prairie and Chanhassen were changed to the 1-1-93 edition of 10 CFR Part 21 and Revision B of DP-N-1626 (Attachment "E")
- Personnel involved with Nuclear activities have been retrained in the revised DP-N-1626.
- DP-N-1626 was again revised in February of 1994 to reflect changes in the Nuclear Review Committee membership and to reflect the incorporation of the Nuclear Group as Rosemount Nuclear Instruments, Incorporated, which occurred in December of 1993. (Attachment "F")
- Results achieved: 1.) Heightened awareness of the reporting time requirements of the regulation; 2.) More thorough documentation of Committee meetings and evaluations; 3.) Clearer understanding of Basic Component Supplier obligations under Part 21; 4.) Increased sensitivity to potential deviations and failures to comply.

The Corrective Steps That Will Be Taken To Avoid Further Violations

- Rosemount Nuclear Instruments, Inc., will continue to revise DP-N-1626 as necessary to reflect changes in 10 CFR Part 21.
- A new Procurement Specification, PS01, is currently being developed to be imposed on suppliers of Basic Components, including the Chanhassen facility. Appendix "A" of this document will contain RNII procedure N-1626 which applies in the event a supplier does not have a Part 21 reporting procedure of their own. This requirement will become an auditable item when supplier audits are conducted.
- Because DP-N-1626 is an RNII implementing procedure internally for Part 21, it will periodically be audited for compliance as a part of our regular internal audits.

The Date When Full Compliance Will Be Achieved

- Rosemount believes it is fully compliant with the requirements of 10 CFR Part 21, (Edition 1-1-93) at the present time.

Summary

- While Rosemount acknowledges that the violation, as stated, did exist at the Eden Prairie and Chanhassen facilities at the time

of the NRC audit, we feel that there were several mitigating circumstances as noted under "Reason for Violation" which should be taken into consideration by the NRC. Rosemount does not believe that, as a result of this violation, there was any negative impact on the effectiveness of our Part 21 reporting process.

Violation C (93-01-03)

Section 21.51, "Maintenance and inspection of records," of 10 CFR Part 21 requires, in part, that each individual, corporation or other entity shall maintain such records as may be required to accomplish the purpose of 10 CFR Part 21.

Contrary to this requirement, Rosemount records regarding a review of suspect resistors in Rosemount Model 710 DU product did not contain adequate information to accomplish the purpose of Part 21. In particular, the records were insufficient to demonstrate whether Rosemount customers were appropriately informed of the deviation.

Basis For Disputing The Violation

- Rosemount disputes this claimed violation. RNII believes it resulted from a misunderstanding between the NRC Inspector and the RNII employee who was interviewed regarding the resistor issue. The employee informed the Inspector that the information requested was available in the adjacent office if he wanted to review it. The Inspector declined at the time, stating that he did not have to see it, or words to that effect. All of the information was, and is, contained in two clearly marked one inch ring binders and is available for NRC review.

- The facts are; Rosemount notified customers initially on August 17, 1989 (Attachment 93-01-03 "A"). This notification was for the Model 414 E/F Resistance Bridges. Then on October 10, 1989, December 7, 1989, and again on January 19, 1990, customers were also notified as the scope of the problem expanded to cover additional values of resistors and additional models, specifically the Model 710 DU Trip Calibration Units. Examples of these subsequent notifications are shown as Attachments 93-01-03 "B", "C" and "D" respectively. In total, 49 notification letters were sent to our customers.

- Each of these notifications was sent by Certified Mail, as is our practice, and copies of all receipt acknowledgements are on file for review by the NRC.

- Mr Thomas Murley, Director, Office of Nuclear Reactor Regulation, was notified by letter on August 17, 1989 (Model 414 E&F) and on December 1, 1989 (Model 414 E&F and Model 710 DU). (Attachments 93-01-03"E"&"F")

- On September 13, 1989, there was a teleconference between Mr. Vince Thomas, Instrument and Control Systems Branch, NRC, and Mr. Les Anderson, Rosemount Design Engineer, in which Mr. Thomas requested a Model 414 E&F Specification Drawing as well as a Model 414 Product Data Sheet. These, along with a schematic showing resistor location and effects of resistor failure were forwarded to Mr. Thomas by Jane Sandstrom on September 20, 1989. (Attachment 93-01-03"G")

Summary

- Given the aforementioned supporting documentation, Rosemount respectfully requests that this violation 93-01-03 be deleted from the report.

The following supporting documentation is provided with our response as attachments.

ATTACHMENT

- 93-01-03"A" Group Marketing Procedure MP-5808, dated May 1980
- "B" Industrial Division Quality Implementation Procedure 126N, Dated March 1981
 - "C" Nuclear Department Procedure DP-N-1626, Rev. A, Dated April 1992
 - "D" Same as above, Rev. D, Dated March 1994
 - "E" Same as above, Rev. B, Dated April 1993
 - "F" Same as above, Rev. C, Dated February 1994
- 93-01-03"A" Sample 10 CFR Part 21 notification on Model 414, Dated August 17, 1989
- "B" Sample 10 CFR Part 21 notification on Model 710 DU, Dated October 10, 1989
 - "C" Sample 10 CFR Part 21 notification on Model 710 DU, Dated December 7, 1989
 - "D" Sample 10 CFR Part 21 notification on Model 414 E&F, dated January 19, 1990
 - "E" Notification letter to Mr. Thomas Murley, NRC, dated August 17, 1989
 - "F" Notification letter to Mr. Thomas Murley, NRC, dated December 1, 1989
 - "G" Letter to Mr. Vince Thomas, NRC, from Jane Sandstrom, dated September 20, 1989