



ADAMS Accession# ML23103A472

12 April 2023

606B Thimble Shoals Boulevard, Suite B2
Newport News, VA 23606

VIA Electronic Mail

Lizette Roldán-Otero, PhD, Chief
Materials Inspection Branch
Division of Radiological Safety and Security
US NRC Region IV (email: Lizette.Roldan-Otero@nrc.gov)

Re: Reply to Notice of Violation (NOV)

Dear Dr. Lizette Roldán-Otero:

By letter dated February 15, 2023, the NRC notified BSX, LLC (BSX) of two Severity Level IV violations that the NRC determined to have occurred. The two violations involve the failure to:

- A. Notify the NRC at least 14 days before initiating activities under license at a temporary job site and provide the NRC with a copy of the written agreement between BSX and the customer, and
- B. Ensure that licensed materials were only used by, or under the supervision of individuals that were designated in writing by the Radiation Safety Officer (RSO).

This letter is our official reply to the NOV. BSX does not contest the violation regarding the failure to notify the NRC at least 14 days before initiating activities under license at a temporary job site and provide the NRC with a copy of the written agreement between BSX and the customer. However, BSX contests the second violation regarding the failure to ensure licensed materials were only used by, or under the supervision of individuals that were designated in writing by the RSO.

BSX's response to each violation includes: (1) the reason for the violation, or, if contested, the basis for disputing the violation; (2) the corrective steps that have been taken and the results achieved; (3) the corrective steps that will be taken; and (4) the date when full compliance will be achieved.

Violation A. License Condition 15 of NRC license No. 50-35484-01, license issued May 1, 2018, and Amendment No. 1, issued December 15, 2021, requires, in part, that the licensee shall notify the NRC in writing at least 14 days before initiating activities under this license at a

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temporary job site. This notification shall include: a copy of the written agreement between the licensee and the customer as described in License Condition 16.

The NOV cites two examples of BSX's failure in this regard. The BSX response to each example follows.

1. On July 1, 2019, the licensee did initiate activities under NRC license No. 50-35484-01, but failed to notify the NRC in writing at least 14 days before initiating the activities under the license at a temporary job site, and the notification failed to include a copy of the written agreement between the licensee and the customer. Specifically, on July 1, 2019, the licensee initiated activities under NRC license No. 50-35484-01 at a temporary job site at the former Hunters Point Naval Shipyard, in San Francisco, California, and failed to notify the NRC in writing until September 20, 2022. The licensee's September 20, 2022, notification failed to include a copy of the written agreement between the licensee and the customer as described in License Condition 16.

BSX Response: BSX wishes to clarify certain facts stated in the cited example. By notice dated June 25, 2019, BSX informed the NRC of license activities at the former Hunters Point Naval Shipyard (HPNS) estimated to begin on July 1, 2019. By notice dated January 8, 2020, BSX informed the NRC that license activities were completed. This second notice was in error. As a result, the NRC was not aware of license activities by BSX continuing at HPNS until the BSX letter of September 20, 2022. A written agreement between the licensee (BSX) and the customer (US Army Joint Munitions Command) was in place for the duration of license activities conducted at HPNS; however, a copy of that agreement was not included in the notification as required by License Condition 15, but subsequently was made available to the NRC.

2. On May 27, 2022, the licensee submitted a notification to the NRC before initiating activities under the license at a temporary job site and failed to include a copy of the written agreement between the licensee and the customer as described in License Condition 16. Specifically, on May 27, 2022, the licensee submitted a notification to the NRC before initiating NRC licensed activities on June 14, 2022, at a temporary job site at Picatinny Arsenal, New Jersey, and failed to provide to the NRC a copy of the written agreement between the licensee and the customer as described in License Condition 16 until June 21, 2022.

BSX Response: BSX wishes to clarify that a written agreement between the licensee (BSX) and the customer (US Army Joint Munitions Command) was in place for the duration of license activities at Picatinny Arsenal; however, a copy of that agreement was not included in the notification as required by License Condition 15, but subsequently was made available to the NRC.

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Reason for the violation, or, if contested, the basis for disputing the violation:

BSX does not contest this violation. The reason for the violation is the confusion of the BSX RSO regarding: (1) concurrent implementation of both our NRC and State of California licenses at the same time on the same temporary job site, particularly with the NRC license initially being invoked under reciprocity with the State of California until an Agreement State license was issued to BSX; and (2) the relationship of BSX to its customer, who does not hold an NRC or Agreement State license at the temporary job site and the government entity who does hold a license, but who is not the BSX customer.

Corrective steps that have been taken and the results achieved:

Extensive discussions among BSX, its customer, and the license holders at its temporary job sites have resulted in a consensus understanding and expectations regarding future licensing actions.

Corrective steps that will be taken:

No further corrective steps are necessary.

Date when full compliance will be (was) achieved:

January 10, 2023. The written agreement between BSX and JMC was provided to NRC via upload to Box.

Violation B. License Condition 12 of NRC license No. 50-35484-01, license issued May 1, 2018, and Amendment No. 1, issued December 15, 2021, requires that licensed material shall only be used by, or under the supervision of individuals who have received the training described in the application dated March 23, 2018, and have been designated in writing by the Radiation Safety Officer (RSO).

The NOV cites two examples of BSX's failure in this regard. The BSX response to each example follows.

1. During June 14-24, 2022, licensed material was used by, or under the supervision of, individuals that had not been designated in writing by the RSO. Specifically, during June 14-24, 2022, while conducting licensed activities at a temporary jobsite at Picatinny Arsenal, New Jersey, individuals who used licensed materials were not designated in writing by the RSO and were not under the supervision of individuals designated in writing by the RSO.

BSX Response: The cited example is incomplete in its stated facts. The BSX RSO was physically present and personally directing license activities at the temporary job site. Because licensed material was being used under his direct supervision, no need existed for the RSO to designate any other individual in writing.

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2. During October 26 – November 2, 2022, licensed material was used by, or under the supervision of, individuals that had not been designated in writing by the RSO. Specifically, during October 26 – November 2, 2022, while conducting licensed activities at a temporary jobsite at the former Hunters Point Naval Shipyard, San Francisco, California, individuals who used licensed materials were not designated in writing by the RSO and were not under the supervision of individuals designated in writing by the RSO.

BSX Response: The cited example is incomplete in its stated facts. On October 24, 2022, the individual designated in writing by the RSO as the authorized user communicated to BSX via email that she could “...*no longer be the shipper of the bins, or the CA RSO...*”. When queried regarding when her last day of work would be, she responded stating she would be unable to participate in the NRC inspection scheduled for Nov 2, but did not provide a resignation date. Of note is that no action was initiated by her at that time to terminate the contract under which her services were being provided. She continued to provide support to BSX through early December at which time BSX was able to secure the services of a replacement waste broker. Also of note is the fact that she acknowledged and agreed in writing to remain as RSO on BSX’s State of California license until such time as the license was amended (see attached). To conclude that the designated authorized user was no longer providing functional oversight effective October 26, 2022, until a replacement authorized user was designated in writing on November 2, 2022, is not supported by either the actions (or lack thereof) taken contractually or the written acknowledgment and agreement to remain as RSO until the State of California license was amended (attached).

Reason for the Violation, or, if contested, the basis for disputing the violation or severity level:
BSX contests this violation. The bases for disputing the violation are presented above.

Corrective steps that have been taken and the results achieved:
Preventive action taken by BSX precluded the need for corrective action.

Corrective steps that will be taken:
Not applicable.

Date when full compliance will be achieved:
Not applicable.

In summary, BSX does not contest the violation regarding the failure to notify the NRC at least 14 days before initiating activities under license at a temporary job site and providing the NRC with a copy of the written agreement between BSX and the customer. However, BSX contests the second violation regarding the failure to ensure that licensed materials were only used by, or under the supervision of individuals that were designated in writing by the RSO, and disputes the examples cited as incomplete in their presentation of the facts.

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BSX appreciates the timely and thorough feedback from the NRC and the opportunity to respond. Please reach out directly with any questions or needed clarifications.

Sincerely,

A handwritten signature in black ink, appearing to read 'Marc Dauteuil', written in a cursive style.

Marc Dauteuil
Deputy Director, Technical Services

Enclosure: Signed Acknowledgement and Agreement – RSO Duties and Responsibilities

Copy (hardcopy via US mail):

Director, Office of Enforcement
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

U.S. Nuclear Regulatory Commission
ATTN: Document Control Desk,
Washington, DC 20555-0001

Regional Administrator, Region IV
1600 E. Lamar Blvd
Arlington, TX 76011-

Copy (via electronic mail):

Janine F. Katanic, PhD, CHP, Senior Health Physicist
Materials Inspection Branch
Division of Radiological Safety and Security
US NRC Region IV (email: Janine.Katanic@nrc.gov)

Kyle Bischoff, Health Physicist
Materials Inspection Branch
Division of Nuclear Materials Safety
U.S. NRC Region IV (email: Kyle.Bischoff@nrc.gov)

License Number: **8314-0**

Licensee Name: **Hunters Point Naval
Shipyard**

Duties and Responsibilities of the Radiation Safety Officer (RSO)

A Radiation Safety Officer (RSO) has the duty and responsibility to the licensee to oversee and ensure safe operation of the licensee's radiation protection program. The items below are not a complete list of requirements. A licensee must comply with the conditions of the license and regulations specified in Title 17, California Code of Regulations (17 CCR), Title 10, Code of Federal Regulations (10 CFR), Part 20, and the U.S. Department of Transportation (DOT).

The RSO has the duty and responsibility to:

1. Stop any licensed material activities that the RSO considers unsafe. (17 CCR 30253)
2. Secure licensed material from unauthorized access or removal. (10 CFR 20.1801 and 20.1802)
3. Use radiation protection procedures and controls to ensure occupational doses and doses to the public are as low as reasonably achievable (ALARA) as defined in 10 CFR 20.1003.
4. Develop, document and implement a radiation protection program (RPP) that is consistent with the scope of the activities included in the license and ensures compliance with the regulations and license conditions. Review RPP content and implementation annually. (10 CFR 20.1101)
5. Demonstrate by measurement or calculation that any member of the public is not likely to receive radiation exposures exceeding the regulatory limit. (10 CFR 20.1301)
6. Ensure individuals installing, relocating, maintaining, or repairing devices containing radioactive materials or sealed sources are trained and authorized by the State of California, the U.S. Nuclear Regulatory Commission (NRC) or Agreement State license.
7. Establish and maintain a personnel monitoring program. Provide personnel monitoring equipment, such as film badges or thermoluminescent dosimeters (TLD), to individuals who are likely to receive more than 10% of the allowable radiation dose in one year. (10 CFR 20.1501 and 20.1502)
8. Confirm personnel monitoring equipment is used and exchanged at the proper intervals as recommended by the manufacturer, and records are maintained to demonstrate the RPP is followed. (10 CFR 20.1501 and 20.1502)
9. Instruct individuals, working with or frequenting areas with radioactive materials, on the potential health risks, effective use of protective devices, procedures required to minimize exposure to radioactive materials, and their responsibility to promptly report any conditions that may cause unnecessary exposures. (17 CCR 30255)
10. Comply with 17 CCR 30295 and immediately notify California Department of Public Health (CDPH) of any incidents involving exposure to radiation or radioactive materials, violations of regulations or license conditions. Follow-up with a written report that includes the corrective actions taken, preventive actions planned and the results of any evaluation.
11. Dispose, return to manufacturer or transport licensed material in accordance with all applicable DOT requirements. Obtain receipts acknowledging such activities. (17 CCR 30373)
12. Maintain up-to-date licenses. Ensure amendment and renewal requests are submitted prior to the license expiration date. (17 CCR 30194)
13. Post documents such as license information, operating procedures, and form RH- 2364 (Notice to Employees) in conspicuous places. (17 CCR 30255)

License Number: 8314-0

Licensee Name: Hunters Point Naval Shipyard

14. Ensure all equipment used and activities performed are limited to those specified in the license, the regulations, the Sealed Source and Device Registry (SSDR) certificate(s), and the manufacturer's recommendations and instructions.
15. Ensure sealed sources are tested for leakage with the frequency specified in the license. (17 CCR 30275)
16. Review dose records and surveys to identify if trends indicate that operations are not being performed safely, staff training is inadequate or engineering controls are unacceptable. (10 CFR 20.1502 and 20.2103)
17. Maintain a sufficient supply of properly calibrated and operable radiation survey instruments sensitive enough to detect low radiation and contamination levels. (10 CFR 39.33)
18. Act as licensee's primary liaison with the CDPH Radiologic Health Branch (RHB) on license or inspection matters.
19. Submit to RHB a written 30-day notification, a completed CDPH 5314 form (Certificate of Disposition of Materials) and a final survey prior to vacating a facility. (17 CCR 30256)

Note: *In the event that the licensee proposes a change in its RSO or to terminate the license, you acknowledge and agree to remain the licensee's RSO until RHB amends the license reflecting this change or terminates the license.*

I hereby acknowledge and have read the above duties and responsibilities:

Gaye Nelson

Signature of Radiation Safety Officer

Gaye Nelson

Print Name

09/13/21

Date