



**UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
REGION IV  
611 RYAN PLAZA DRIVE, SUITE 400  
ARLINGTON, TEXAS 76011-4005**

July 1, 2003

EA-03-006

Mr. Paul DesFosses, Project Manager  
Structural Testing and Inspection  
53 North Arthur, No. 7  
Pocatello, Idaho 83204

**SUBJECT: NOTICE OF VIOLATION AND EXERCISE OF ENFORCEMENT DISCRETION  
(NRC INSPECTION REPORT 999-90004/02-04 AND INVESTIGATION  
REPORT 4-2002-045)**

Dear Mr. DesFosses:

This refers to the predecisional enforcement conference conducted with you on March 26, 2003. The conference was conducted to review the circumstances surrounding Structural Testing and Inspection's (STI) apparent failure to obtain a specific license from the NRC or an Agreement State prior to possessing and using byproduct material. Specifically, STI possessed and used two Troxler Model 3411 gauging devices each containing about 10 millicuries (mCi) of cesium-137 and about 50 mCi of americium-241. The NRC was also concerned that this apparent violation of 10 CFR 30.3 may have involved willfulness on the part of STI's proposed Radiation Safety Officer (RSO). These findings were discussed with Mr. Lowell Trujillo on February 3, 2003, and with you on March 7, 2003, and were documented in the subject NRC inspection report dated March 10, 2003.

Based on the information developed during the inspection and investigation, and the information provided during the predecisional enforcement conference, the NRC has determined that a violation of NRC requirements occurred. The violation is described in the enclosed Notice of Violation (Notice), and involves your failure to obtain a specific license from the NRC or an Agreement State prior to acquiring and using byproduct material from August 28 to September 26, 2002. In addition, the NRC concluded that STI's proposed RSO deliberately violated NRC requirements.

The NRC considers a violation of 10 CFR 30.3 important because it prevents the NRC from conducting inspections and ensuring that licensed radioactive material is being used safely and in accordance with NRC regulations. In addition, this violation has added significance given the NRC's conclusion that your proposed RSO intentionally violated NRC requirements. Therefore, this violation has been categorized in accordance with the current General Statement of Policy and Procedure for NRC Enforcement Actions (Enforcement Policy), NUREG-1600, at Severity Level II.

In accordance with the Enforcement Policy, a civil penalty is considered for a Severity Level II violation. However, in this case, the NRC is not considering a civil penalty based on the fact that the gauges have been returned to an authorized NRC licensee, and STI has withdrawn its

application for an NRC license. Thus, the NRC is exercising discretion as described in Section VII.B.6 of the Enforcement Policy, and is not assessing a civil penalty for this violation.

Based on the above, you are not required to respond to this letter. If you choose to provide additional information, you should follow the instructions specified in the enclosed Notice. It should be noted that, if STI should apply in the future for an NRC license, you will be expected to address why the NRC should have confidence that STI will conduct activities in accordance with NRC requirements.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response (if any) 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 Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response (if any) should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction.

Sincerely,

*/RA/*

Thomas P. Gwynn  
Acting Regional Administrator

Docket No.: 999-90004

Enclosure: Notice of Violation

cc w/Enclosure:  
Idaho Radiation Control Program Director

## **ENCLOSURE**

### **NOTICE OF VIOLATION**

Structural Testing and Inspection  
Pocatello, Idaho

Docket No. 999-90004  
EA-03-006

During an NRC inspection and investigation which concluded on March 7, 2003, one violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the violation is listed below:

10 CFR 30.3 requires, in part, that except for persons exempted, no person shall possess or use byproduct material except as authorized by a specific or general license issued pursuant to Title 10, Chapter 1, Code of Federal Regulations.

Contrary to the above, from August 28 through September 26, 2002, Structural Testing and Inspection (STI) possessed and used byproduct material without a valid NRC license, and was not exempt from the requirements for a license. Specifically, STI possessed and used two Troxler Model 3411 gauging devices, each containing about 10 millicuries (mCi) of cesium-137 and about 50 mCi of americium-241.

This is a Severity Level II violation (Supplement VI).

The NRC has concluded that information regarding the reason for the violation, 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 in Inspection Report 999-90004/02-04. 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," 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, 611 Ryan Plaza Drive, Suite 400, Arlington, TX 76011-4005 within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

If you choose to respond, your response 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 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.

Dated this 1<sup>st</sup> day of July 2003

bcc w/Enclosure (via ADAMS distrib):

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 RIDSEDOMAILCENTER      RIDSOEMAILCENTER  
 RIDSOGCMailCENTER      RIDSNMSSIMNS  
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 TPGwynn  
 D Chamberlain  
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 RIV Docket Files (5<sup>th</sup> Floor)  
 OE Web

ADAMS:-☒ Yes      ☐ No      Initials: \_\_GMV\_\_☒ -Publicly Available      ☐ Non-Publicly Available      ☐ Sensitive      ☒ Non-Sensitive

DOCUMENT NAME: ML031820562.wpd

ES	C:NMIB	D:DNMS	D:ACES	RC
M Vasquez	M Shaffer	E Collins	G Sanborn	K Smith
/ RA /	R Brown for	/ RA /	/ RA /	/ RA /
5/11/03	5/12/03	5/22/03	5/27/03	6/ 3 /03
Acting DRA	Acting RA	D:OE		
D Chamberlain	P Gwynn	F Congel		
/RA/	/RA/	N. Bhalla for - E		
06/03/2003	6/4/2003	6/26/2003		

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