



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION II
SAM NUNN ATLANTA FEDERAL CENTER
61 FORSYTH STREET SW SUITE 23T85
ATLANTA, GEORGIA 30303-8931**

August 28, 2003

EA-03-121

Tamfelt, Inc.
ATTN: Jack Faling
Radiation Safety Officer
520 24th Avenue
Longview, Washington 98632

SUBJECT: NOTICE OF VIOLATION (NRC INSPECTION REPORT NO. 99990002/2003003)

Dear Mr. Faling:

This refers to an initial onsite inspection conducted on December 27, 2002, at the offices of Daniel Kaidel in Chesapeake, Virginia. The purpose of the inspection was to examine activities conducted under the NRC license issued on July 12, 2002, with respect to radiation safety and compliance with NRC regulations and the conditions of the license. During the inspection, it was determined that Mr. Kaidel, while an employee of Tamfelt, Inc., had been operating under Tamfelt's Washington State license in NRC jurisdiction prior to the issuance of the NRC license. The results of the inspection, including the identification of two apparent violations, were discussed with you on June 26, 2003, and the inspection report was transmitted to you by letter dated July 11, 2003.

You were informed at that time that the NRC was considering escalated enforcement action for the two apparent violations involving the possession and use of a portable gauge in areas of NRC jurisdiction without a specific or general NRC license, and the failure to file an NRC Form 241 to authorize work within NRC jurisdiction under State of Washington License Number WN-I0492-1. Additionally, you were informed that the NRC had sufficient information regarding the apparent violations to make an enforcement decision without the need for a predecisional enforcement conference or a written response from you. You indicated during a subsequent telephone conversation that you wished to provide a written response to the apparent violations, which you forwarded to the NRC by letter dated July 31, 2003.

Based on the information developed during the inspection and your response, the NRC has determined that two violations of NRC requirements occurred. The violations are described in the enclosed Notice of Violation (Notice), and the circumstances surrounding them are described in the subject inspection report. Violation A involved the possession and/or use of a portable gauge between March 22, and July 12, 2002, in areas of NRC jurisdiction without a specific or general NRC license as required by 10 CFR 30.3. Violation B involved the failure to file an NRC Form 241 to authorize work within NRC jurisdiction under State of Washington License Number WN-I0492-1, as required by 10 CFR 150.20. Based on a review of the circumstances and your response, the cause of the violations was your lack of awareness and/or training in the applicable regulatory requirements in this case.

Your failure to obtain a specific or general license resulted in the NRC being unaware that a representative of your company possessed and used a portable gauge containing licensed material in Virginia, which is an area of NRC jurisdiction. Notification of the NRC is important because the NRC, rather than the State of Virginia, regulates the use of licensed material in that state. Because of your failure to notify the NRC, we were denied an opportunity to verify that your use of byproduct material was in compliance with NRC regulatory requirements. Based on the interrelationship of the two violations, violations A and B have been categorized collectively as a Severity Level III problem, in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600.

In accordance with the Enforcement Policy, a civil penalty with a base value of \$3,000 is considered for a Severity Level III problem. Because you have not been the subject of escalated enforcement action or inspections by the NRC previously, the NRC considered whether credit was warranted for corrective action in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy. The corrective actions included your prompt acquisition of the proper licenses to permit use in all areas where the gauges will be used, and a commitment to ensure that in the future, Tamfelt will ship its gauges only to individuals who are properly licensed to receive such licensed material. Based on this, the NRC has determined that credit was warranted for corrective actions.

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, to propose that no civil penalty be assessed in this case. However, you are on notice that 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 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 adequately addressed on the docket in this letter and in your response of July 31, 2003. Therefore, you are not required to respond to this letter unless the description herein 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 2.790 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 Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> (the Public Electronic Reading Room).

Tamfelt, Inc.

3

If you have any questions regarding this matter, please contact Douglas M. Collins, Director, Division of Nuclear Materials Safety, at 404-562-4700.

Sincerely,

/RA/

Luis A. Reyes
Regional Administrator

Docket No. 99990002

License No. WN-10492-1(State of Washington)

Enclosure: Notice of Violation

cc w/encl:
State of Virginia

State of Washington

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NOTICE OF VIOLATION

Tamfelt, Inc.
Longview, WA

Docket No. 99990002
License No. WN-10492-1(Washington)
EA-03-121

During an NRC inspection conducted on December 27, 2002, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, (Enforcement Policy), the violations are listed below:

- A. 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, between March 22 and July 12, 2002, Tamfelt Inc., possessed and/or used a portable moisture density gauge containing approximately 150 millicuries of Americium-241 without a valid NRC license, and was not exempt from the requirements for a license.

- B. 10 CFR 150.20(a) provides in part that any person who holds a specific license from an Agreement State is granted an NRC general license to conduct the same activity in non-Agreement States, provided that the provisions of 10 CFR 150.20(b) have been met.

10 CFR 150.20(b)(1) requires, in part, that any person engaging in activities in non-Agreement States shall, at least 3 days before engaging in each activity for the first time in a calendar year, file a submittal containing an NRC Form 241, "Report of Proposed Activities in Non-Agreement States," four copies of its Agreement State specific license, and the appropriate fee as prescribed in 10 CFR 170.31.

Contrary to the above, the licensee did not file a submittal containing an NRC Form 241, file copies of its Agreement State specific license, or file the appropriate fee prior to performing well logging services in a non-Agreement State. Specifically, between March 22 and July 12, 2002 the licensee possessed and used a portable moisture density gauge containing approximately 150 millicuries of Americium-241 in Virginia, a non-Agreement state.

This is a Severity Level III problem (Supplement VI).

The NRC has concluded that information regarding the reason for the violation, 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 the letter transmitting this Notice of Violation (Notice), and your response of July 31, 2003. 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 with a copy to the Regional Administrator, Region II within 30 days of the date of the letter transmitting this Notice.

Enclosure

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.

Because any response will be made available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS), to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> (the Public Electronic Reading Room). If personal privacy or proprietary information is necessary to provide an acceptable response, then 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 material, 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 2.790(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days.

Dated this 28th day of August 2003

Enclosure