



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

August 1, 2005

Docket No. 03036681

License No. 45-30965-01

Mark A. Viola, Sr., P.E.
President and Owner
Mark A Viola, P.E.
P.O. Box 575
Broadway, VA 22815

SUBJECT: INSPECTION 03036681/2005001, MARK A VIOLA, P.E., BROADWAY,
VIRGINIA SITE AND NOTICE OF VIOLATION

Dear Mr. Viola:

On July 15, 2005, Jenny Johansen of this office conducted a safety inspection at the above address of activities authorized by the above listed NRC license. The inspection was an examination of your licensed activities as they relate to radiation safety and to compliance with the Commission's regulations and the license conditions. The inspection consisted of observations by the inspector, interviews with personnel, and a selected examination of representative records. The findings of the inspection were discussed with of you at the conclusion of the inspection.

Based on the results of this inspection, it appears that your activities were not conducted in full compliance with NRC requirements. A Notice of Violation is enclosed that categorizes each violation by severity level. You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. After reviewing your response to this Notice, including your proposed corrective actions and the results of future inspections, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

Current NRC regulations are included on the NRC's website at www.nrc.gov; select **Nuclear Materials; Medical, industrial, and academic uses of nuclear material**; then **toolkit index page**. The Current General Policy and Procedure for NRC Enforcement Actions are included on the NRC's website at www.nrc.gov; select **What We Do, Enforcement**, then **Enforcement Policy**. Or you may obtain these documents by contacting the Government Printing Office (GPO) toll-free at 1-888-293-6498. The GPO is open from 7:00 a.m. to 9:00 p.m. EST, Monday through Friday (except Federal holidays).

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and your 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). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> (the Public Electronic Reading Room).

M. Viola
Mark A Viola, P.E.

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Your cooperation with us is appreciated.

Sincerely,

Original signed by John D. Kinneman

John D. Kinneman, Chief
Security and Industrial Branch
Division of Nuclear Materials Safety

Enclosure:
Notice of Violation

cc:
Commonwealth of Virginia

M. Viola
Mark A Viola, P.E.

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| OFFICE | DNMS/RI | N | DNMS/RI | N | DNMS/RI | | | |
| NAME | JJohansen | | JDKinneman | | | | | |
| DATE | 08/01/2005 | | 08/01/2005 | | | | | |

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NOTICE OF VIOLATION

Mark A Viola, P.E.
Broadway, VA

Docket No. 03036681
License No. 45-30965-01

During an NRC inspection conducted on July 15, 2005, five violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. 10 CFR 30.34 (i) requires that each portable gauge licensee shall use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee.

Contrary to the above, as of July 15, 2005, a second independent physical control that forms a tangible barrier to secure the licensee's portable gauge from unauthorized removal was not present and the gauge was not under the control and constant surveillance of the licensee

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

- B. 10 CFR 71.5(a) requires that a licensee who transports licensed material outside of the site of usage, as specified in the NRC license, or where transport is on public highways, or who delivers licensed material to a carrier for transport, comply with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation (DOT) in 49 CFR Parts 170 through 189.

1. 49 CFR 172.202(a) and (b) require in part, with exceptions not applicable here, that the shipping description of a hazardous material on the shipping paper include, in the following sequence: (1) the proper shipping name prescribed for the material in 172.101 (2) the hazard class prescribed for the material as shown in Column 3 of the 172.101 Table, and (3) the identification number prescribed for the material as shown in Column 4 of the 172.101 Table. Pursuant to 49 CFR 172.101, radioactive material is classified as hazardous material.

Contrary to the above, between October 28, 2004 and April 30, 2005, the licensee transported licensed material on public highways in Virginia and a shipping paper was not included with the shipment.

2. 49 CFR 172.403 requires, in part, with exceptions not applicable here, that each package of radioactive material be labeled, as appropriate with two RADIOACTIVE WHITE-I, RADIOACTIVE YELLOW-II, or RADIOACTIVE YELLOW-III labels on opposite sides of the package. The contents, activity, and transportation index must be entered in the blank spaces on the label using a legible and durable, weather resistant means. The contents entered on the label must include the name of abbreviation (e.g., ⁹⁹Mo) of the radionuclides as taken from the listing in 49 CFR 173.435, or for mixtures of radionuclides, those

nuclides determined in accordance with provisions of 49 CFR 173.433(f), with consideration of space available on the label. The activity must be expressed in terms of the appropriate SI units (e.g., Becquerel, Terabecquerel etc...), or in terms of appropriate SI units followed by customary units (e.g., curies, millicuries, or microcuries)

Contrary to the above, from October 28, 2004 until July 15, 2005, there were no Yellow II labels on a carrying case used to transport a Troxler Model 3430, Serial No. 13043 containing 8 mCi of cesium-137 and 40 mCi of americium-241 on the public highways in Virginia

3. 49 CFR 172.702 requires that each Hazmat employer shall ensure that each Hazmat employee is trained and tested, and that no Hazmat employee performs any function subject to the requirements of 49 CFR Parts 171-177 unless trained, in accordance with Subpart H of 49 CFR Part 172. The terms Hazmat employer and Hazmat Employee are defined in 49 CFR 171.8. 49 CFR 172.704(c)(2) states that a Hazmat employee shall receive the training required by this subpart at least once every three years.

Contrary to the above, as of July 15, 2005, the licensee, a Hazmat employer, did not ensure that its Hazmat employee, who performed functions subject to the requirements of 49 CFR Parts 171-177 during the years 2004-2005, had received the required training at least once every three years. Specifically, the last training was received in 2000.

These are a Severity Level IV violations (Supplement V).

- C. Condition 14 of License No. 45-30965-01 requires, in part, that sealed sources containing licensed material be tested for leakage and/or contamination at intervals not to exceed six months.

Contrary to the above, as of July 15, 2005, sealed sources containing approximately 8 millicuries of Cesium-137 and 40 millicuries of Americium-241 in a Troxler Model 3430, Serial No. 13043, gauging device were not tested for leakage and/or contamination at intervals not to exceed six months. Specifically, the gauge was used during the periods of October 2004, March and April 2005 and the leak tests required by April 30, 2005 were not performed, as required.

This is a Severity Level violation (Supplement).

Pursuant to the provisions of 10 CFR 2.201, Mark A Viola, P.E. is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555, with a copy to the Regional Administrator, Region I, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each violation: (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 to avoid further violations, and (4) the date when full compliance will be achieved.

Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as to why the license should not be modified, suspended, or revoked, or why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

If you contest this enforcement action, you should also provide a copy of your response to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, any response which contests an enforcement action shall be submitted under oath or affirmation.

Your response will be placed in the NRC Public Document Room (PDR) and on the NRC Web site. To the extent possible, it should, therefore, not include any personal privacy, proprietary, or safeguards information so that it can be made publically available without redaction. However, if you find it necessary to include such information, you should clearly indicate the specific information that you desire not to be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public.

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

Dated This 1st day of August 2005