



~~OFFICIAL USE ONLY – SECURITY-RELATED INFORMATION~~

**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

Region III
2443 Warrenville Road, Suite 210
Lisle IL 60532-4352

June 25, 2012

EA-12-008

Mr. John A. Newland, CEO
JANX Integrity Group, Inc.
8550 E. Michigan Avenue
Parma, MI 49269

SUBJECT: NOTICES OF VIOLATION AND PROPOSED IMPOSITION OF
CIVIL PENALTIES – \$49,000; JANX INTEGRITY GROUP, INC;
NRC INSPECTION REPORT NOS. 03011772/2011005(DNMS) AND
03011772/2011006(DNMS) AND INVESTIGATION REPORT NO. 3-2012-003

Dear Mr. Newland:

This refers to the U.S. Nuclear Regulatory Commission (NRC) inspection conducted on July 27, 2011, at a temporary jobsite on Spy Island, Alaska, with continued in-office review through November 3, 2011, and an NRC investigation conducted from October 31 to December 29, 2011, concerning radiographic activities conducted by JANX Integrity Group, Inc., (JANX). The circumstances surrounding the apparent violations, the significance of the issues, and the need for lasting and effective corrective action were discussed with you and members of your staff during a telephonic inspection exit meeting on November 3, 2011, and during the final exit providing the results of the investigation on March 2, 2012. The NRC provided you the details of the inspection in NRC Inspection Report Nos. 03011772/2011005(DNMS) and 03011772/2011006(DNMS) dated December 1, 2011, and provided you the results of the investigation in a letter dated March 15, 2012.

On May 1, 2012, a predecisional enforcement conference was conducted in the Region III office with you and members of your staff to discuss the apparent violations, the significance and root causes of the violations, and your corrective actions. Enclosure 1 provides a list of attendees and the major agenda items addressed by both the NRC and JANX. In addition, you provided to NRC the results of your internal investigation and the corrective actions you had taken in letters dated July 29, August 1, and August 17, 2011.

Based on the information developed during the inspection and the investigation, information you provided to the NRC in letters dated July 29, August 1, and August 17, 2011, and the information that you provided during the conference, the NRC has determined that safety and security violations of NRC requirements occurred. These violations are cited in the enclosed Notices of Violation (Notice), and the circumstances surrounding them are described in detail in the subject inspection and investigation reports. The safety violations are cited in Enclosure 2; whereas the non-public security-related Notice is Enclosure 4.

Enclosures 3 and 4 contain Sensitive Unclassified Non-Safeguards Information. Upon separation, this cover letter and Enclosures 1 and 2 are decontrolled.
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The first safety violation involves the deliberate performance of radiographic operations at a temporary job site with only a single qualified person present. Specifically, on July 27, 2011, an NRC inspector witnessed a JANX employee continuing to take radiographic exposures after the second JANX employee left the vicinity of the radiographic operations. The NRC, through both inspection and investigation, determined that a second qualified person was not present while radiographic exposures were made, contrary to the requirements of Title 10 of the Code of Federal Regulations (10 CFR), Section 34.41(a). This violation is of concern to the NRC because the second qualified individual was not available to provide immediate assistance to the individual conducting radiography and to prevent unauthorized entry into the area where the radiographic exposures were being made. This could have resulted in significant health and safety consequences not only to the individual involved but also to members of the general public. Therefore, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level III.

The second safety violation involves the deliberate failure to afford the NRC inspector the opportunity to complete his inspection. Specifically, on July 27, 2011, the JANX employee, after being approached by the NRC inspector and questioned about the presence of a second qualified radiographer, left the location where the radiographic exposures had occurred. Furthermore, when the inspector approached the vehicle where the second radiographer was working, this individual then left the inspector to look for the first radiographer and did not return. The NRC, through both inspection and investigation, determined that the first individual deliberately avoided the NRC inspector, contrary to the requirements of 10 CFR 30.52(a). This violation is of concern to the NRC because of the high importance the NRC places on our regulatory responsibility to observe licensed activities and review records to ensure compliance with NRC requirements. Therefore, this violation has also been categorized in accordance with the NRC Enforcement Policy at Severity Level III.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$7,000 is considered for each Severity Level III violation. Because your facility has been the subject of escalated enforcement action within the last two years¹, the NRC considered whether credit was warranted for *Identification* and *Corrective Action* in accordance with the civil penalty assessment process in Section 2.3.4 of the Enforcement Policy.

The NRC determined that credit was not warranted for *Identification* as the violations were identified by the NRC. The NRC determined that credit was warranted for *Corrective Action* based on corrective actions taken by the licensee which included: (1) relieving both radiographers of their duties and returning them to the JANX office in Michigan, (2) sending the Radiation Safety Officer to Alaska to conduct an independent investigation into the events, (3) informing all JANX auditors, managers and supervisors about the importance of safety, security, and compliance with NRC and State regulations, JANX procedures, and the need for complete cooperation with NRC and State inspectors via a letter from the JANX President, and (4) sending a safety bulletin to all JANX staff sharing the lessons learned from the events.

¹ On November 30, 2010, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalties – \$21,000 to JANX Integrity Group, Inc., for security violations (EA-10-162). This document is not publicly available.

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JANX also conducted audits at other sites to ensure compliance, revised its audit checklist, and enhanced its annual refresher training program to emphasize the need for cooperation during inspections and investigations. Finally, JANX was creating an electronic distribution list for all employees so that it could send notices of safety issues directly to each employee.

Since credit was warranted for *Corrective Action* but not *Identification*, the two Severity Level III safety violations would result in civil penalties of \$14,000. Notwithstanding the normal application of the Enforcement Policy, the NRC has the authority, under Section 3.6 of the Enforcement Policy, to use discretion to either escalate or mitigate the civil penalty. In this case, the NRC determined that escalation of the civil penalty was warranted based on JANX's particularly poor past performance as evidenced by its enforcement history and recent willful violations. Furthermore, the NRC noted the licensee's accountability for the actions of its employees; the lack of interaction between JANX and its parent company, Applus, Inc., who provided the individuals overseeing the job to ensure that JANX's safety standards were being upheld; the lack of increased oversight that JANX applied to the radiographers after one of the radiographers was reprimanded by JANX for not following the "two-man rule" in 2010; and the impact that the radiographers' actions had on the NRC's ability to inspect JANX's operations at Spy Island, Alaska. Accordingly, the NRC is escalating the civil penalty for each of these violations by the base civil penalty amount resulting in civil penalties of \$28,000.

In addition to the two Severity Level III violations, a third safety violation of lesser significance was identified. Specifically, on July 27, 2011, the inspector observed that the high radiation area was not posted with a conspicuous sign or signs bearing the radiation symbol and the words "Caution, High Radiation Area" or "Danger, High Radiation Area" during the radiography at Spy Island, Alaska. Because this Severity Level IV violation was identified by the NRC, it is also being cited in Enclosure 2.

In addition to the safety violations, security violations were also identified. The violations are of concern to the NRC for the reasons stated in Enclosure 3 (non-public). Therefore, the security violations have also been categorized in accordance with the NRC Enforcement Policy at Severity Level III.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$7,000 is considered for Severity Level III violations. As previously stated, your facility has been the subject of escalated enforcement action within the last two years. Therefore, the NRC considered whether credit was warranted for *Identification* and *Corrective Action* in accordance with the civil penalty assessment process described in Section 2.3.4 of the Enforcement Policy. The NRC determined that credit was not warranted for *Identification* as the violations were identified by the NRC. The NRC assessed whether credit was warranted for *Corrective Action* and whether use of discretion to either escalate or mitigate the civil penalty was warranted in accordance with Section 3.6 of the Enforcement Policy. As described in Enclosure 3, this assessment resulted in a proposed civil penalty of \$21,000.

Therefore, to emphasize the importance of complying with NRC requirements and to encourage prompt and comprehensive correction of violations, and in recognition of your previous escalated enforcement actions, I have been authorized after consultation with the Director, Office of Enforcement, to issue the Safety and Security-Related Notices of Violation and Proposed Imposition of Civil Penalties in the amounts of \$49,000 as described in Enclosure 2

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and Enclosure 4 (non-public). In addition, issuance of these Notices constitute escalated enforcement action that may subject you to increased inspection effort.

In NRC Inspection Report Nos. 03011772/2011005(DNMS) and 03011772/2011006(DNMS) dated December 1, 2011, the NRC identified six unresolved items. Four of those unresolved items have been determined to involve violations of NRC requirements, as discussed in this letter and in the enclosures. For the remaining two unresolved items, the NRC was unable to obtain sufficient information through either inspection or investigation to make a determination as to whether or not violations of NRC requirements had occurred. These items involved providing each individual conducting industrial radiographic operations an operating alarming rate meter as required by 10 CFR 34.47(a) (unresolved item 4) and maintaining copies of records as required by 10 CFR 34.89(b) (unresolved item 6). All of the unresolved items are considered closed.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. If you have additional information that you believe the NRC should consider, you may provide it in your response to the Notice. The NRC review of your response to the Notice will also determine whether further enforcement action is necessary to ensure compliance with regulatory requirements. When you respond, please separate the response to the security violations into a different document marked as "Security-Related Information – Withhold from Public Disclosure under 10 CFR 2.390." In accordance with 10 CFR 2.390(b)(1)(ii), the NRC will waive the affidavit requirements for response to the security violations in the enclosures to this letter. However, to the extent possible, your responses should not include any personal privacy, proprietary, or safeguards information.

Although the initial corrective actions you have implemented and/or described appear adequate to address the specific violations in the enclosed Notices, we remain concerned regarding JANX's overall performance. Specifically, given your poor escalated enforcement history over the last three years and the safety culture weaknesses which contributed to the current violations, we are concerned regarding your ability to sustain compliance with NRC requirements. As such, in addition to the required response, we request that you provide any additional corrective actions you plan to implement to ensure your long term commitment to being in compliance with NRC requirements. We also request your perspectives on the safety culture of your organization, which includes both radiological safety and security.

Additionally, you may request alternative dispute resolution (ADR) with the NRC if you disagree with the enforcement outcome. ADR is a general term encompassing various techniques for resolving conflict outside of court using a neutral third party. The technique that the NRC has decided to employ is mediation. In mediation, a neutral mediator with no decision-making authority helps parties clarify issues, explore settlement options, and evaluate how best to advance their respective interests. The mediator's responsibility is to assist the parties in reaching an agreement. However, the mediator has no authority to impose a resolution upon the parties. Mediation is a confidential and voluntary process. If the parties to the ADR process (the NRC and the licensee or individual) agree to use ADR, they select a mutually agreeable neutral mediator and share equally the cost of the mediator's services. Generally, the NRC is willing to discuss the resolution of three potential issues: 1) whether violations occurred; 2) the appropriate enforcement action; and 3) the appropriate corrective actions for the violations.

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Additional information concerning the NRC's ADR program can be found at <http://www.internal.nrc.gov/OE/ADR/post-invest-adr-home.html>. The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program as an intake neutral. Intake neutrals perform several functions, including: assisting parties in determining ADR potential for their case, advising parties regarding the ADR process, aiding the parties in selecting an appropriate mediator, explaining the extent of confidentiality, and providing other logistic assistance as necessary. Please contact the ICR at 877-733-9415 within 10 days of the date of this letter if you are interested in pursuing this issue through the ADR program. You may also contact Steven Orth, at 630-810-4373 for additional information.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and Enclosures 1 and 2 will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's Agencywide Documents Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. However, because of the Security-Related Information contained in Enclosures 3 and 4, in accordance with 10 CFR 2.390, copies of these enclosures will not be available for public inspection. The NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>.

Sincerely,

/RA by C. Pederson for/

Charles A. Casto
Regional Administrator

Docket No. 030-11772
License No. 21-16560-01

Enclosures:

1. Summary of Predecisional Enforcement Conference
2. Safety-Related Notice of Violation and Proposed Imposition of Civil Penalties
3. Discussion of Security Violations, Assessment
of Corrective Action Credit and Discretion Factors (Non-Public)
4. Security-Related Notice of Violation and Proposed
Imposition of Civil Penalties (Non-Public)
5. NUREG/BR-0254 Payment Methods (Licensee only)

cc w/encls: State of Michigan
State of Alaska

SUMMARY OF PRE-DECISIONAL ENFORCEMENT CONFERENCE
MAY 1, 2012

LIST OF ATTENDEES

JANX

John A. Newland, President
Mike Porter, Vice President
Steven C. Flickinger, Safety Director
William D. Reeve, Radiation Safety Officer

NRC

Cynthia D. Pederson, Acting Regional Administrator, Region III (RIII)
Anne T. Boland, Director, Division of Nuclear Materials Safety (DNMS), RIII
Tamara E. Bloomer, Branch Chief, Materials Inspection Branch, DNMS, RIII
Deborah A. Piskura, Health Physicist, Materials Inspection Branch, DNMS, RIII
Ricardo Muñoz, Health Physicist, Nuclear Materials Safety Branch A, DNMS, RIV
Steven K. Orth, Enforcement Officer, Enforcement and Investigation Coordination Staff, RIII
Jared K. Heck, Regional Counsel, Region III

PREDECISIONAL ENFORCEMENT CONFERENCE SUMMARY

The predecisional enforcement conference was held to discuss the apparent violations presented in NRC Inspection Report Nos. 03011772/2011005(DNMS) and 03011772/2011006(DNMS) dated December 1, 2011, and the results of the NRC Investigation Report No. 3-2012-003 summarized in a letter dated March 15, 2012. The NRC outlined its enforcement process and then presented the apparent violations. The licensee then discussed its view on the apparent violations, the significance of the violations and the corrective actions it had taken in response to the violations. The licensee initially stated the job site had high radiation area postings. However, after further reviewing the photographs taken by the inspector at the time of the inspection which showed an unposted access point to the radiographic operations, the licensee stated it did not dispute any of the violations. The licensee provided a document describing the violations, their significance and the corrective actions taken. This document has been entered into the NRC's Agencywide Document Access and Management System (ADAMS) as non-public document ML12143A155 because it discusses JANX's actions on the security violations.

ENCLOSURE 1

SAFETY-RELATED NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTIES

JANX Integrity Group, Inc.
Parma, Michigan

Docket No. 030-11772
License No. 21-16560-01
EA-12-008

During an NRC inspection conducted on July 27, 2011, with continued in-office review through November 3, 2011, and an NRC investigation conducted from October 31 through December 29, 2011, violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the NRC proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular safety-related violations and associated civil penalties are set forth below:

I. Violations Assessed a Civil Penalty

- A. Title 10 of the Code of Federal Regulations (10 CFR) Section 34.41(a) requires, whenever radiography is performed at a location, other than a permanent radiographic installation, the radiographer must be accompanied by at least one other qualified radiographer. The additional qualified radiographer shall observe the operations and be capable of providing immediate assistance to prevent unauthorized entry. Radiography may not be performed if only one qualified individual is present.

Contrary to the above, on July 27, 2011, the licensee performed radiographic operations at a temporary job site (a location other than a permanent radiographic installation) located in Spy Island, Alaska with only one qualified radiographer present. Specifically, the other radiographer was located at the parked vehicle approximately 200 yards away and not able to observe the radiographic operations.

This is a Severity Level III violation (Section 6.3).
Civil Penalty - \$14,000

- B. Title 10 CFR 30.52(a) requires that each licensee afford to the Commission at all reasonable times opportunity to inspect byproduct material and the premises and facilities wherein byproduct material is used or stored.

Contrary to the above, on July 27, 2011, the licensee failed to afford to the Commission the opportunity to inspect radiographic operations utilizing byproduct material at a temporary job site in Spy Island, Alaska. Specifically, once the NRC inspector announced himself, the radiography crew left the immediate work site and did not return for approximately two hours.

This is a Severity Level III violation (Section 6.3).
Civil Penalty - \$14,000

ENCLOSURE 2

Safety-Related Notice of Violation and
Proposed Imposition of Civil Penalties

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II. Violations Not Assessed a Civil Penalty

- A. Title 10 CFR 34.53 requires that all areas in which industrial radiography is being performed must be conspicuously posted as required by Section 20.1902(a) and (b).

Title 10 CFR 20.1902(b) requires that the licensee post each high radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "Caution, High Radiation Area" or "Danger, High Radiation Area."

Contrary to the above, on July 27, 2011, at a temporary job site in Spy Island, Alaska, the high radiation area was not posted with a conspicuous sign or signs bearing the radiation symbol and the words "Caution, High Radiation Area" or "Danger, High Radiation Area."

This is a Severity Level IV Violation (Section 6.7).

Pursuant to the provisions of 10 CFR 2.201, JANX Integrity Group, Inc., is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalties (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation (EA-12-008)" and should include for each alleged violation: (1) admission or denial of the alleged violation; (2) the reasons for the violation if admitted, and if denied, the basis for denying the validity of the violation; (3) the corrective steps that have been taken and the results achieved; (4) the corrective steps that will be taken; and (5) 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, the NRC may issue an order or a Demand for Information requiring you to explain why your license should not be modified, suspended, or revoked or why the NRC should not take other action as may be proper. Consideration may be given to extending the response time for good cause shown.

Within the same time provided for the response required under 10 CFR 2.201, you may pay the civil penalties proposed above or the cumulative amount of the civil penalties if more than one civil penalty is proposed, in accordance with NUREG/BR-0254 and by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, a statement indicating when and by what method payment was made, or may protest imposition of the civil penalties in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission. Should you fail to answer within 30 days of the date of this Notice, the NRC will issue an order imposing the civil penalties. Should you elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalties, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation" and may: (1) deny the violations listed in this Notice, in whole or in part; (2) demonstrate extenuating circumstances;

Safety-Related Notice of Violation and
Proposed Imposition of Civil Penalties

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(3) show error in this Notice; or (4) show other reasons why the penalties should not be imposed. In addition to protesting the civil penalties in whole or in part, such answer may request remission or mitigation of the penalties.

In requesting mitigation of the proposed penalties, the response should address the factors addressed in Section 2.3.4 of the Enforcement Policy. Any written answer addressing these factors pursuant to 10 CFR 2.205 should be set forth separately from the statement or explanation provided pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the licensee is directed to the other provisions of 10 CFR 2.205, regarding the procedure for imposing civil penalties.

Upon failure to pay any civil penalties which subsequently have been determined in accordance with the applicable provisions of 10 CFR 2.205 to be due, this matter may be referred to the Attorney General, and the penalties, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The responses noted above, i.e., Reply to Notice of Violation, Statement as to Payment of Civil Penalties, and Answer to a Notice of Violation, should be addressed to: Roy P. Zimmerman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to Charles A. Casto, Regional Administrator, U.S. Nuclear Regulatory Commission, Region III, 2443 Warrenville Road, Suite 210, Lisle, IL 60532-4352.

Because your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's Agencywide Documents Access and Management 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>. 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 that such material is withheld from public disclosure, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(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 of receipt.

Dated this 25th day of June, 2012