



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

REGION I
2100 RENAISSANCE BLVD., SUITE 100
KING OF PRUSSIA, PA 19406-2713

March 20, 2014

EA-13-244

Alan Rogers
Plant Manager
Kuehne Company
PO Box 294
1645 River Road
Delaware City, DE 19706

SUBJECT: KUEHNE COMPANY NOTICE OF VIOLATION - NRC INSPECTION REPORT
NO. 99990001/2013005

Dear Mr. Rogers:

This letter provides you the U.S. Nuclear Regulatory Commission's (NRC) enforcement decision for the apparent violation identified during the onsite NRC safety inspection conducted on November 26, 2013, at the Kuehne Company (Kuehne) facility in Delaware City, Delaware. In addition to the onsite review, the inspection also involved a discussion of additional information provided by Kuehne during a telephone conference on December 16, 2013. Inspection activities were limited to the review of the circumstances surrounding the loss of a fixed gauge containing sealed source serial number 959-4-88, which was found at a scrap yard in Coatesville, Pennsylvania on October 31, 2013. The apparent violation was described in the NRC inspection report sent to you with a letter dated January 13, 2014 (ML14014A005).

In a telephone conversation on February 14, 2014, Mr. Blake Welling of my staff informed you that the NRC was considering escalated enforcement for the apparent violation involving the improper transfer or disposal of a generally-licensed fixed gauge. Mr. Welling also informed you that we had sufficient information regarding the apparent violations and your corrective actions to make an enforcement decision without the need for a predecisional enforcement conference or a written response from you. You indicated that Kuehne Company did not believe that a predecisional enforcement conference or written response was needed.

Based on the information developed during the inspection, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding it are described in detail in the subject inspection report. As noted above, the violation involved the improper transfer or disposal of a device containing sealed source serial number 959-4-88, which was found in a Coatesville, Pennsylvania scrap yard, a facility not authorized to receive the sealed source. Specifically, in 1988, Chloramone Corporation received a device containing sealed source serial number 959-4-88. In 1989, Chloramone Corporation was purchased by Kuehne, a transfer that met the requirements set forth in 10 CFR 31.5(c)(9) for transfer of a device in use at a location. However, Chloramone did not notify the NRC of the transfer and, based on a review of Kuehne records, there is no evidence that Chloramone informed Kuehne of the existence of the device.

During the search of Kuehne records for information pertaining to source serial number 959-4-88, Kuehne found two documents related to the source: (1) a record of a leak test from 1989, and (2) a July 16, 1990, response to an NRC "Survey of General Licensees." Based on the records, the NRC determined that a former Chloramone employee, with knowledge of the device, responded to the NRC survey and included the leak test. All further inquiries referenced a different device and source serial number. Therefore, the NRC determined that Kuehne staff were unaware of the existence of the device and did not account for the device. The device was transferred at an unknown date and was not accounted for until its source, serial number 959-4-88, was discovered at the scrapyards in October 2013. Accordingly, this violation has been categorized at Severity Level (SL) III.

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$3,500 is considered for a SL III violation. Because your facility has not been the subject of escalated enforcement action within the last two years, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section 2.3.4 of the Enforcement Policy. The NRC has concluded that credit is warranted for Kuehne's corrective actions taken to address the violation. Specifically, the Kuehne Company: (1) conducted a search of all product lines to determine if any other generally-licensed devices existed at the facility; (2) performed a records search for information related to the source found in the scrapyards and provided that information to the Pennsylvania Department of Environmental Protection (PADEP) and NRC; and (3) is planning to provide the funds for disposal of the source (disposal arranged through PADEP).

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, not to propose a civil penalty in this case. However, significant violations in the future could result in a civil penalty. In addition, issuance of this Severity Level III violation constitutes escalated enforcement action that may subject you to increased inspection effort.

The NRC has concluded that information regarding: (1) the reasons for the violation; (2) the actions planned or already taken to correct the violation and prevent recurrence; and, (3) the date when full compliance was achieved, is already adequately addressed on the docket in Inspection Report No. 99990001/2013005 and in this letter. Therefore, you are not required to respond to this letter unless the description therein 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 2.390 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 NRC's document system (ADAMS), accessible from the NRC Website at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response, if you choose to provide one, should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, 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 information, 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 2.390(b) to support a request for withholding confidential commercial or financial information). The NRC also includes significant enforcement actions on its Web site at (<http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>).

Sincerely,

/RA/

William M. Dean
Regional Administrator

Docket No. 99990001

Enclosure: Notice of Violation

cc w/enclosure:
Frieda Fisher-Tyler, Administrator
Division of Public Health
State of Delaware

David Allard, CHP, Director
PA Dept. of Environmental Protection
Bureau of Radiation Protection

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Sincerely,

/RA/

William M. Dean
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Docket No. 99990001

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Frieda Fisher-Tyler, Administrator
Division of Public Health
State of Delaware

David Allard, CHP, Director
PA Dept. of Environmental Protection
Bureau of Radiation Protection

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* See previous concurrence page ** OE to perform a quick review

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RII, RIII, RIV (C Evans; S Orth; V Campbell)

C Scott, OGC

H Harrington, OPA

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Region I OE Files (with concurrences)

NOTICE OF VIOLATION

Kuehne Company
Delaware City, Delaware

Docket No. 99990001
EA-13-244

During an NRC inspection conducted between November 26, 2013, and December 16, 2013, which included an on-site inspection as well as an in-office review of information provided by Kuehne Company, for which an exit meeting was conducted on December 16, 2013, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 31.5(c)(8) requires, in part, that any person who acquires, receives, possesses, uses or transfers byproduct material in a device pursuant to a general license shall, except as provided in 10 CFR 31.5(c)(9), transfer or dispose of the device containing byproduct material only by transfer to persons holding a specific license pursuant to 10 CFR Parts 30 and 32 or from an Agreement State to receive the device.

Contrary to the above, prior to October 31, 2013, Kuehne did not transfer or dispose of a device containing byproduct material to persons holding a specific license pursuant to 10 CFR Parts 30 and 32 or to an Agreement State. Specifically, sealed source serial number 959-4-88, formerly possessed by the Kuehne Company, was found in a scrapyard located in Coatesville, Pennsylvania on October 31, 2013. Kuehne Company did not properly transfer or dispose of the device containing the source to a facility authorized to receive it.

This is a Severity Level III violation (Enforcement Policy Example Section 6.7).

The NRC has concluded that information regarding: (1) the reason for the violation; (2) the actions planned or already taken to correct the violation and prevent recurrence; and (3) the date when full compliance was achieved, is already adequately addressed on the docket in Inspection Report No. 99990001/2013005 and in the letter transmitting this Notice. Therefore, you are not required to respond to this Notice. 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 EA-13-244," 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 I, 2100 Renaissance Boulevard, Suite 100, King of Prussia, PA 19406, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

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.

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

Dated this 20th day of March, 2014