

Airgas Specialty Gases, Inc.

REPLY TO NOTICE OF VIOLATION (EA-16-167)

Introduction & Background

Below is the response of Airgas Specialty Gases, Inc. ("ASG") to the Notice of Violation (EA-16-167) ("NOV") issued by the U.S. Nuclear Regulatory Commission ("NRC") dated December 5, 2016, and the two (2) violations noted therein.

For ease of reading, each Violation cited is repeated below in full as it appeared in the NOV, and the response of ASG immediately follows.

The circumstances giving rise to the asserted violations arise from two separate events. The first was that on April 1, 2016 ASG was merged into an affiliated company, Airgas USA, LLC, with Airgas USA, LLC being the surviving entity. At the time, both ASG and Airgas USA, LLC were subsidiaries of Airgas, Inc., the publically traded parent company.

The second event was on May 23, 2016, Airgas, Inc. and all of its subsidiaries were acquired by L'Air Liquide, S.A. ("Air Liquide")¹. The May 23, 2016 closing of the foregoing occurred following, inter alia, shareholder approval, approval by the U.S. Treasury, Committee on Foreign Investment in the United States (CFIUS) and approval by the U.S. Federal Trade Commission ("FTC"). The last approval obtained was that of the FTC, which was given on Friday, May 13, 2016. The transaction documents required that closing occur within five (5) business days thereafter, on Monday, May 23, 2016.

Violations

Violation A

A. Title 10 of the Code of Federal Regulations (10 CFR) Section 110.50(d) states that a "specific license may be transferred, disposed of or assigned to another person only with the approval of the Commission by license amendment." Section 184 of the Atomic Energy Act (A EA) of 1954, as amended (42 U.S.C. § 2234), states, in part, that no NRC license shall be transferred, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of this Act, and shall give its consent in writing.

Contrary to the above, on April 1, 2016, NRC export license XMAT 427 was effectively transferred to another entity without the prior approval of the Commission by license amendment. Specifically, on April 1, 2016, Airgas Specialty Gases ceased to exist and its specific license was effectively transferred to Airgas USA, LLC, without the prior approval of the Commission by a license amendment.

ASG Response

¹ In the transaction, Air Liquide formed a Delaware acquisition corporation which was merged with and into Airgas, Inc. with Airgas, Inc. surviving the merger. As a result, Airgas, Inc., and its direct and indirect subsidiaries (e.g., including ASG and Airgas USA, LLC), became wholly owned indirect subsidiaries of Air Liquide.

On April 1, 2016 ASG did merge with and into Airgas USA, LLC, with Airgas USA, LLC as the surviving entity. ASG was the holder of NRC Export License XMAT427. The foregoing merger was part of a restructuring done by Airgas, Inc. in advance of the closing with Air Liquide. At the time, it was not known when all of the necessary approvals would be obtained.

On March 31, 2016 an application to transfer Export License XMAT427 to Airgas USA, LLC was submitted to the NRC. On April 1, 2016, ASG's broker Shipping International confirmed that the application appeared complete and would be posted for thirty (30) day public comment. It was subsequently learned that due to an error, the application was not timely published for public comment. Airgas USA, LLC did not make any exports under XMAT427 from the period of April 1, 2016 to May 9, 2016.

On May 9, 2016 Airgas USA, LLC shipped 31 kilograms of deuterium gas to China. Airgas USA, LLC had not obtained written approval from the Commission to use XMAT 427 for this export, although its agent, Shipping International, did receive verbal permission from OIP staff to proceed with the export. At the time of the export, it was erroneously thought by Airgas and its agent, Shipping International, that this verbal permission was sufficient to proceed with the export.

Violation B

B. Section 184 of the AEA states, in part, that no NRC license shall be transferred, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of the Act, and shall give its consent in writing. Contrary to the above, on May 23, 2016, L'Air Liquide, S.A. ("Air Liquide") completed an indirect transfer of control of NRC export license XMAT427 by acquiring Airgas, Inc., without the prior consent of the Commission in writing. Airgas, Inc., was the parent company of the Airgas Specialty Gases, and is now the parent company of Airgas USA, LLC.

This is a Severity Level IV Problem (NRC Enforcement Policy, Sections 6.3 and 6.15).

ASG Response

Air Liquide did acquire indirect ownership of Airgas, Inc. and all of its subsidiaries including Airgas USA, LLC on May 23, 2016. As noted above, closing only occurred following shareholder approval, approval by the U.S. Treasury, CFIUS and approval by the U.S. FTC. The last approval obtained was that of the FTC, which was given on Friday, May 13, 2016. When the proposed acquisition was entered into in November 2015, FTC review and approval was estimated to take anywhere from six (6) to nine (9) months, and was possible to take even longer. The May approval was just six months after submission and among the earliest time period estimated. Under the acquisition agreement, closing was required to occur within five (5) business days of the FTC's approval. Accordingly, closing took place on Monday, May 23, 2016.

Unfortunately, this occurred while the preceding application was still pending before the Commission. Airgas USA, LLC's agent informed the Commission of the closing and was advised that the prior application required changes and resubmission. Compounding the situation communication delays were encountered in gathering and verifying the additional information necessary to prepare a revised application. This direction has been followed. Airgas USA, LLC did not intend to transfer control without prior consent; Airgas USA, LLC has never sought to offer any material for export pursuant to export license XMAT427 since the May 23 closing date.

Corrective Measures Completed

No export shipments will take place under License XMAT427 until written approval has been received from the Commission. A completed application has been submitted and is pending before the Commission for review and approval.

Airgas USA, LLC's agent Shipping International advises that it has incorporated into its procedures, according to ISO:9001, to only accept and act upon written approvals from the Commission and follow the strict guidelines of the 10 CFR with special reference to section 110.50 (d) and part 2.390 in accordance with the AGENCY RULES OF PRACTICE AND PROCEDURE along with the Atomic Energy Act (AEA) of 1954 as Amended with special reference to Section 184 for any actions concerning NRC licensing or shipments done within the jurisdiction of the Nuclear Regulatory Commission.

Additional Corrective Actions

As noted, no export shipments will take place under License XMAT427 until written approval has been received from the Commission.

Full Compliance

Airgas USA, LLC will achieve full upon approval of the pending application before the Commission.