



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
REGION III
2443 WARRENVILLE RD. SUITE 210
LISLE, IL 60532-4352

March 3, 2022

EA-21-146

Ms. Kim LeBlanc
Director of Administration
Somat Engineering, Inc.
26445 Northline Road
Taylor, MI 48180

**SUBJECT: CONFIRMATORY ORDER RELATED TO NRC ROUTINE AND REACTIVE
INSPECTION REPORT NO. 03029146/2021001(DNMS) – SOMAT
ENGINEERING, INC.**

Dear Ms. LeBlanc:

The enclosed Confirmatory Order is being issued to Somat Engineering, Inc., as a result of a successful Alternative Dispute Resolution (ADR) mediation session. As the representative of the licensee, you made the enclosed commitments as part of a settlement agreement between Somat Engineering, Inc. and the U.S. Nuclear Regulatory Commission (NRC) concerning apparent violations of NRC requirements. The apparent violations were discussed in the enclosure to our letter dated November 2, 2021.

Our November 2, 2021, letter provided to you the results of the inspector's review of circumstances surrounding a lost gauge in Waterford Township, Michigan, and of onsite observations of your facility in Taylor, Michigan, and two temporary job sites in Detroit, Michigan. Based on the results of this inspection, three apparent violations of NRC requirements were identified.

Our letter also informed you that the apparent violations were being considered for escalated enforcement action in accordance with the NRC's Enforcement Policy and provided you with the option of: (1) providing a written response to the violation; (2) attending a Predecisional Enforcement Conference; or (3) requesting an ADR mediation session with the NRC.

In response to our letter, you requested ADR. An ADR mediation session was held on January 11, 2022, and a preliminary settlement agreement was reached. The elements of the preliminary agreement were formulated and agreed to at the mediation session. At the session, you agreed that a Confirmatory Order would be issued in a settlement of the apparent violations to avoid further action by the NRC. In light of the corrective actions you took and agreed to take, as described in the Confirmatory Order (Enclosure 1), the NRC is satisfied that its concerns will be addressed by making your commitments legally binding. As evidenced by your signed "Consent and Hearing Waiver Form" (Enclosure 2), dated February 23, 2022, you agreed to the issuance of the Confirmatory Order.

Pursuant to Section 223 of the Atomic Energy Act of 1954 as amended, any person who willfully violates, attempts to violate, or conspires to violate any provision of this Confirmatory Order shall be subject to criminal prosecution, as set forth in that section. Violation of this Confirmatory Order may also subject the person to civil monetary penalties.

In accordance with Title 10 of the *Code of Federal Regulations* (CFR) § 2.390 of the NRC's "Rules of Practice," a copy of this letter, along with its enclosures, 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>. The Confirmatory Order will be published in the *Federal Register*. The NRC also publishes Confirmatory Orders on its Web site under Significant Enforcement Actions at <http://www.nrc.gov/about-nrc/regulatory/enforcement.html>.

Sincerely,



Signed by Shuaibi, Mohammed
on 03/03/22

Mohammed A. Shuaibi
Deputy Regional Administrator

Docket No. 030-29146
License No. 21-24685-01

Enclosures:

1. Confirmatory Order
2. Consent and Hearing Waiver

cc w/encls: Mr. Matthew Richardson,
Radiation Safety Officer,
Somat Engineering
State of Michigan

Letter to K. LeBlanc from M. Shuaibi dated March 3, 2022

SUBJECT: CONFIRMATORY ORDER RELATED TO NRC ROUTINE AND REACTIVE
INSPECTION REPORT NO. 03029146/2021001(DNMS) - SOMAT ENGINEERING,
INC.

DISTRIBUTION:

RidsSecyMailCenter

OCADistribution

Daniel Dorman

Catherine Haney

Mark Lombard

Tania Martinez-Navedo

Juan Peralta

Carmen Rivera-Diaz

Jack Giessner

Mohammed Shuaibi

David Lew

Laura Dudes

Scott Morris

Brooke Clark

Mauri Lemoncelli

John Lubinski

Robert Lewis

Kevin Williams

Michele Burgess

Robert Sun

Raymond McKinley

Mark Kowal

Jeremy Groom

Russell Chazell

Shelbie Lewman

Holly Harrington

Tracy Higgs

Meghan Blair

Jessie Quichocho

Robert Williams

Linda Howell

Kathryn Brock

Joseph Nick

Michael Kunowski

MIB Inspectors

Allan Barker

Harral Logaras

Darren Piccirillo

Viktoria Mitlyng

Prema Chandrathil

Kenneth Lambert

Sarah Bakhsh

RidsOemailCenter Resource

ADAMS Accession No.: ML22025A039

| OFC | RIII-EICS | RIII-DNMS | RIII-ORA | RIII-DNMS | NMSS | OE | OGC |
|------|------------|-----------|-----------|-----------|-----------|----------|-------------|
| NAME | SSpicer:bw | MKunowski | RChazell | JNick | KWilliams | MLombard | TSteinfeldt |
| DATE | 1/25/2022 | 1/27/2022 | 1/27/2022 | 1/27/2022 | 2/1/2022 | 2/1/2022 | 2/11/2022 |
| OFC | RIII-EICS | RIII-ORA | | | | | |
| NAME | SLewman | MShuaibi | | | | | |
| DATE | 2/23/2022 | 3/2/2022 | | | | | |

OFFICIAL RECORD COPY

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

| | | |
|-------------------------|---|-------------|
| |) | |
| |) | 030-29146 |
| In the Matter of |) | |
| |) | 21-24685-01 |
| Somat Engineering, Inc. |) | |
| |) | EA-21-146 |

CONFIRMATORY ORDER MODIFYING LICENSE
(EFFECTIVE UPON ISSUANCE)

I

Somat Engineering, Inc. (Somat or the licensee) is the holder of Nuclear Materials License No. 21-24685-01 renewed on September 24, 2021, by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to Part 30 of Title 10 of the *Code of Federal Regulations* (10 CFR). The license authorizes the operation of portable moisture/density gauges containing licensed radioactive materials for measuring physical properties of materials at temporary job sites in NRC jurisdiction in accordance with conditions specified in the license. The licensee's facilities are located in Grand Rapids and Taylor, Michigan.

This Confirmatory Order (CO) is the result of an agreement reached during an Alternative Dispute Resolution (ADR) mediation session conducted on January 11, 2022, in Lisle, Illinois.

II

On November 2, 2021, the NRC issued Inspection Report 03029146/2021001(DNMS) to Somat, which documented the identification of three apparent violations that were being considered for escalated enforcement action in accordance with the NRC Enforcement Policy. The apparent violations concerned: (1) the loss of a portable moisture density gauge due to the failure to control and maintain constant surveillance of the gauge after failing to secure it as required by 10 CFR 20.1802 and 10 CFR 30.34(i); (2) the failure to secure this gauge from shifting during transportation as required by 10 CFR 71.5(a) and 49 CFR 173.448(a); and

(3) the failure to secure a second portable moisture density gauge from unauthorized removal or access as required by 10 CFR 20.1801 and 10 CFR 30.34(i).

The NRC notified Somat by letter, dated November 2, 2021, (Agencywide Documents Access and Management System (ADAMS) Accession No. ML21302A205) of the results of the inspection with an opportunity to: (1) provide a response in writing, (2) attend a predecisional enforcement conference, or (3) to participate in an ADR mediation session in an effort to resolve this matter.

In response to the NRC's offer, Somat requested the use of the NRC's ADR process to resolve differences it had with the NRC. On January 11, 2022, the NRC and Somat met in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. The ADR process is one in which a neutral mediator, with no decision-making authority, assists the parties in reaching an agreement on resolving any differences regarding the dispute. This Confirmatory Order is issued pursuant to the agreement reached during the ADR process.

III

During the ADR session, Somat and the NRC reached a preliminary settlement agreement.

The NRC recognizes that immediately following each incident, Somat took corrective actions. As a corrective action with respect to the lost gauge, Somat made a concerted effort to recover the gauge, suspended the technician responsible for the loss without pay and required him to retake all company training related to gauge use, and reiterated policies and expectations for gauge use to all technicians. As a corrective action with respect to the unsecured gauge, Somat's management sent a memo to all technicians reiterating requirements and expectations for maintaining control of vehicles and their contents.

Therefore, the parties agree to the following terms and conditions:

1. Somat commits to create and implement an electronic form that will be used by Somat field personnel to verify the presence and security of licensed gauges any time prior to leaving the storage location of the gauges or a job site where gauges are used. The form will be completed electronically and submitted with a photo of the secured gauge in the vehicle (except for rare occurrences, e.g., inoperable phone camera). An independent Somat representative will review the forms on a random basis, and there will be no fewer than 3 reviews per week when gauges are in use. This commitment will be implemented no later than May 1, 2022. Somat will evaluate the effectiveness of this commitment and develop a report no later than one year following the date of this Confirmatory Order, to be made available to NRC inspectors for review.
2. Somat commits to engage with the Michigan Department of Transportation (MDOT) to propose a lessons-learned summary of these incidents for inclusion in MDOT's initial and refresher training of moisture density gauge technicians. This summary need not identify Somat's company information or that of its personnel. This contact will occur no later than December 31, 2022.
3. Somat commits to engage with InstroTek Incorporated to propose a lessons-learned summary of these incidents for inclusion into InstroTek's periodic "lunch and learn" seminars. This summary need not identify Somat's company information or that of its personnel. This contact will occur no later than December 31, 2022.
4. Somat commits to include a discussion of these incidents, with lessons learned, at its Annual Pre-Season Construction Field Staff Meeting(s) occurring no later than June 30, 2022.
5. Somat commits to include a discussion of these incidents, with lessons learned, at one of its bi-weekly management meetings occurring no later than May 1, 2022.

6. Somat commits to include a discussion of these incidents, with lessons learned, at its next Health and Safety Committee Meeting no later than May 1, 2022. The minutes from the Health and Safety Committee Meeting will include the discussion of the incident and will be provided to all company personnel. These minutes will be provided no later than May 1, 2022.
7. Somat commits to enhance its job site audit program—specific to the use of gauges—to perform audits of job sites more frequently. Specifically, one audit will occur each week at a job site chosen at random when gauges are in use. These enhanced audits will begin no later than May 1, 2022.
8. Somat commits to an independent review, to be performed by a Somat employee not engaged in the day-to-day operations of moisture density gauge use, of the two 2022 bi-annual program audits. This review will be completed no later than December 31, 2022.
9. Somat commits to incorporate tracking devices to enhance its ability to track the location of moisture density gauges. In addition to three existing gauges with internal tracking capability, one additional gauge with internal tracking capability will be procured and fielded no later than December 31, 2022. Additionally, for a trial period, 50 percent of Somat's remaining gauges or their transport cases will be fitted and fielded with aftermarket tracking devices no later than August 1, 2022. The trial period will end no later than November 30, 2022. At that time, Somat will prepare a report available for NRC inspector review with the results of the trial period and recommendations for future use of aftermarket tracking devices. This report will be completed no later than one year following the date of this Confirmatory Order.

Based on the completed actions and commitments described above and the license modifications described in Section V below, the NRC agrees not to pursue any further enforcement action in connection with the apparent violations described in NRC's letter dated November 2, 2021, and relating to Inspection Report 03029146/2021001(DNMS). In further consideration of the commitments delineated above, the NRC agrees to refrain from issuing a notice of violation or proposing a civil penalty. However, the NRC will consider this Confirmatory Order as an escalated enforcement action.

This agreement is binding upon successors or assignees of Somat. The terms and conditions set forth herein shall accordingly continue to apply to Somat and survive any transfer of ownership or license.

On January 11, 2022, Somat consented to issuing this Confirmatory Order with the commitments as described in Section V below. Somat further agreed that this Confirmatory Order is to be effective upon issuance, the agreement memorialized in this Confirmatory Order settles the matter between the parties, and that it has waived its right to a hearing.

IV

I find that Somat's actions completed as described in Section III above, combined with the commitments as set forth above and in Section V are acceptable and necessary, and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that Somat's commitments be confirmed by this Confirmatory Order. Based on the above and Somat's consent, this Confirmatory Order is effective upon issuance.

By no later than thirty (30) days after the completion of the commitments specified in Section V, Somat is required to notify the NRC in writing and summarize its actions.

V

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Parts 20, 30, and 71, and in 49 CFR Part 173, IT IS HEREBY ORDERED, EFFECTIVE UPON ISSUANCE, THAT License No. 21-24685-01 IS MODIFIED AS FOLLOWS:

1. No later than May 1, 2022, Somat will create and implement an electronic form that will be used by Somat field personnel to verify the presence and security of licensed gauges any time prior to leaving the storage location of the gauges or a job site where gauges are used. The form will be completed electronically and submitted with a photo of the secured gauge in the vehicle (except for rare occurrences, e.g., inoperable phone camera). An independent Somat representative will review the forms on a random basis, and there will be no fewer than 3 reviews per week when gauges are in use. Somat will evaluate the effectiveness of this commitment and develop a report no later than one year following the date of this Confirmatory Order, to be made available to NRC inspectors for review.
2. No later than December 31, 2022, Somat will engage with the Michigan Department of Transportation (MDOT) to propose a lessons-learned summary of these incidents for inclusion in MDOT's initial and refresher training of moisture density gauge technicians. This summary need not identify Somat's company information or that of its personnel.
3. No later than December 31, 2022, Somat will engage with InstroTek Incorporated to propose a lessons-learned summary of these incidents for inclusion into InstroTek's periodic "lunch and learn" seminars. This summary need not identify Somat's company information or that of its personnel.
4. No later than June 30, 2022, Somat will include a discussion of these incidents, with lessons learned, at its Annual Pre-Season Construction Field Staff Meeting(s).

5. No later than May 1, 2022, Somat will include a discussion of these incidents, with lessons learned, at one of its bi-weekly management meetings occurring.
6. No later than May 1, 2022, Somat will include a discussion of these incidents, with lessons learned, at its next Health and Safety Committee Meeting. The minutes from the Health and Safety Committee Meeting will include the discussion of the incident and will be provided to all company personnel no later than May 1, 2022.
7. No later than May 1, 2022, Somat will enhance its job site audit program—specific to the use of gauges—to perform audits of job sites more frequently. Specifically, one audit will occur each week at a job site chosen at random when gauges are in use.
8. No later than December 31, 2022, a Somat employee who is not engaged in the day-to-day operations of moisture density gauges will perform an independent review of two bi-annual program audits.
9. Somat will incorporate tracking devices to enhance its ability to track the location of moisture density gauges. In addition to Somat's three existing gauges with internal tracking capability, Somat will procure and field one additional gauge with internal tracking capability no later than December 31, 2022. Additionally, for a trial period beginning no later than August 1, 2022, 50 percent of Somat's remaining gauges or their transport cases will be fitted and fielded with aftermarket tracking devices. The trial period will end no later than November 30, 2022. At that time, Somat will prepare a report available for NRC inspector review with the results of the trial period and recommendations for future use of aftermarket tracking devices. This report will be completed no later than one year following the date of this Confirmatory Order.

This agreement is binding upon successors or assignees of Somat. The terms and conditions set forth hereunder shall continue to apply to Somat and survive any transfer of

ownership or license. The Regional Administrator, Region III may, in writing, relax or rescind any of the above conditions upon demonstration by Somat or its successors of good cause.

VI

In accordance with 10 CFR 2.202 and 10 CFR 2.309, any person adversely affected by this Confirmatory Order, other than Somat, may request a hearing within thirty (30) calendar days of the date of issuance of this Confirmatory Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene, any motion of other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by an interested State, local governmental body, Federally-recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as discussed below, is granted. Detailed guidance on electronic submissions is located in the Guidance for Electronic Submissions to the NRC ([ADAMS Accession No. ML13031A056](#)) and on the NRC Web site at <https://www.nrc.gov/site-help/e-submittals.html>.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at hearing.docket@nrc.gov, or by telephone at 301-415-1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and

(2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at <https://www.nrc.gov/site-help/e-submittals/getting-started.html>. After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format (PDF). Guidance on submissions is available on the NRC's public Web site at <https://www.nrc.gov/site-help/electronic-sub-ref-mat.html>. A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail confirming receipt of the document. The E-Filing system also distributes an e-mail that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the "Contact Us" link located on the NRC's public Web site at <https://www.nrc.gov/site-help/e-submittals.html>, by e-mail to MSHD.Resource@nrc.gov, or by a toll-free call at 1-866-672-7640. The NRC

Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)-(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at <https://adams.nrc.gov/ehd>, unless excluded pursuant to an order of the presiding officer. Participants who do not have an NRC-issued digital ID certificate as described above may click "cancel" when the link requests certificates and they will be automatically directed to the NRC's electronic hearing dockets where they will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the

Presiding Officer. A notice granting a hearing will be published in the *Federal Register* and served on the parties to the hearing.

If a person other than Somat requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final thirty (30) days from the date of this Confirmatory Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

For the Nuclear Regulatory Commission



Signed by Shuaibi, Mohammed
on 03/03/22

Mohammed A. Shuaibi
Deputy Regional Administrator
NRC Region III

Dated this 3rd day of March, 2022

Attachments: As stated

MICHIGAN FACILITIES LEASED AND OPERATED BY SOMAT ENGINEERING, INC. WITH
MOISTURE DENSITY GAUGES

Somat Engineering, Inc.
Docket No. 030-29146
License No. 21-24685-01

Mr. Matthew Richardson
Radiation Safety Officer

26445 Northline Road
Taylor, MI 48180

4039 40th St. SE, Ste. 4
Grand Rapids, MI 49512

CONSENT AND HEARING WAIVER FORM

Somat Engineering, Inc., hereby agrees to comply with the terms and conditions of Confirmatory Order arising out of an alternative dispute resolution process to be issued relating to enforcement action No. EA-21-146. The Confirmatory Order will be immediately effective upon its issuance. By signing below, Somat Engineering, Inc., consents to the issuance of the referenced Confirmatory Order, effective immediately upon its issuance and, by doing so, agrees to waive the right to request a hearing on all or any part of the Confirmatory Order.



Kim LeBlanc
Director of Administration
Somat Engineering, Inc.

2/23/2022

Date