

October 13, 2009

EA-09-253

Leonard D. Savino, P.E.
Senior Associate/Radiation Safety Officer
Langan Engineering & Environmental Services, Inc.
River Drive Center 1
Elmwood Park, NJ 07407

SUBJECT: NOTICE OF VIOLATION - NRC Inspection Report No. 03020730/2009001

Dear Mr. Savino:

This letter refers to the NRC inspection conducted at the Langan Engineering & Environmental Services, Inc. (Langan) temporary job site in Newark, Delaware, on July 1, 2009, with a follow-up at the Langan office in Elmwood Park, New Jersey on September 10, 2009. The purpose of the inspection was to review the circumstances associated with the damage of a Troxler Model 3440 portable moisture/density gauge on June 29, 2009. Langan reported the damaged gauge to the NRC Operations Center on June 30, 2009 (Event No. 45715). Sattar Lodhi of my staff discussed the preliminary inspection findings with you and Arthur Roesler of your organization during a telephone conversation on September 15, 2009. The inspection report related to this action was issued on October 2, 2009.

In a telephone conversation on September 22, 2009, Marie Miller of my staff informed you that the NRC was considering escalated enforcement for one apparent violation involving Langan's failure to control and maintain constant surveillance of a portable gauge that was in an unrestricted area, and not in storage. Ms. Miller also informed you that the NRC had sufficient information regarding the apparent violation and your corrective actions to make an enforcement decision without the need for a predecisional enforcement conference (PEC) or a written response from you. However, Ms. Miller offered your organization an opportunity to attend a PEC or submit an additional written response. You indicated that Langan did not desire a PEC and did not plan to submit a written response.

Based on the information developed during the inspection, the NRC has determined that a violation of NRC requirements occurred. This violation is cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding it are described in detail in the subject inspection report.

On June 29, 2009, Langan failed to control and maintain constant surveillance of licensed material, as required by 10 CFR 20.1802, resulting in a Troxler Model 3440 portable moisture/density gauge being damaged by construction equipment. An authorized user (AU) had been using the gauge at a temporary job site in Delaware. After completing a set of measurements in an unrestricted area, the AU left the gauge (with its source rod in the shielded position) to inspect a second location approximately 50 feet away. During the time the AU was away from the gauge, a smooth drum roller ran over the gauge and damaged it. Langan

immediately cordoned off the area to prevent exposure to members of the public. The AU estimated that the gauge was left unattended for approximately 30 seconds and that during this time, the gauge was not in his direct line of sight. This failure to control and maintain constant surveillance of the licensed material constitutes a violation of 10 CFR 20.1802.

In assessing the significance of this violation associated with Langan's failure to control the licensed material, the NRC considered that even though the gauge was not in use at the time and the sources within the gauge were in the shielded position, the index rod was snapped when the drum roller ran over the gauge, which could have resulted in the sources moving from the shielded position. The quantity of material in one of the sources in the gauge was greater than 1,000 times the quantity specified in Appendix C to 10 CFR Part 20. Therefore, the NRC has categorized this violation at Severity Level (SL) III in accordance with the NRC Enforcement Policy. In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$3500 is normally considered for a Severity Level III violation.

Because your facility has not been the subject of escalated enforcement actions within the last two years, or the last two inspections, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy. The NRC has concluded that corrective action credit is warranted. Corrective actions taken at the job site included: (1) warning other persons in the area of the event; (2) cordoning off the area around the damaged gauge to prevent possible exposure of members of the public to radiation; (3) securing the source rod in its shielded position; (4) removing the damaged gauge from the area, having the gauge leak tested, and performing radiological surveys of the area (the leak test and survey results indicated that there was no leakage of licensed material from the gauge); and, (5) counseling the AU and providing the AU additional refresher training in the requirement for the security of gauges at temporary jobs sites. These actions were documented in the 30-day written report that you submitted to the NRC on August 27, 2009 [ADAMS Accession No. ML092470496]. In addition to these actions, you stated during the inspection that your refresher training program was revised to include strong emphasis on the security of portable gauges at job sites, and that all AUs will be required to complete this refresher training at least annually.

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 SL III violation constitutes escalated enforcement action that may subject you to increased inspection effort.

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence, and the date when full compliance was achieved is already adequately addressed on the docket in this letter, Inspection Report No. 03020730/2009001, and in your August 27, 2009, 30-day written report. 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, its enclosure, and your response, if you choose to provide one, 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>. To the extent possible, your response 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/ Original signed by Marc L. Dapas for

Samuel J. Collins
Regional Administrator

Docket No. 03020730
License No. 29-15786-02

Enclosure:
Notice of Violation

cc:
State of New Jersey

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response, if you choose to provide one, 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>. To the extent possible, your response 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/>).

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Enclosure:
Notice of Violation

cc:
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NOTICE OF VIOLATION

Langan Engineering & Environmental Services, Inc.
Elmwood Park, NJ

Docket No. 030-20730
License No. 29-15786-02
EA-09-253

During an NRC inspection conducted on July 1, and September 10, 2009, for which an exit meeting was held on September 15, 2009, one violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 20.1802 requires that the licensee control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage.

Contrary to the above, Langan Engineering & Environmental Services, Inc. (Langan) did not control and maintain constant surveillance of licensed material that was in an unrestricted area and not in storage. Specifically, on June 29, 2009, the licensee's authorized user left unattended a Troxler Model 3440 portable moisture/density gauge in an unrestricted area for a short period of time. During the time that the licensee did not maintain control and constant surveillance of the gauge, it was damaged by construction equipment that was operating in the unrestricted area.

This is a Severity Level III violation (Supplement IV.C.11 (a)).

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed on the docket in Inspection Report No. 03020730/2009001, in the 30-day written report that the licensee provided to the NRC on August 27, 2009 [ADAMS Accession No. ML092470496], and in the letter transmitting this Notice. Therefore, you are not required to respond to the letter transmitting this Notice unless the description therein does not accurately reflect Langan's corrective actions or position. In that case, or if you choose to respond, clearly mark the response as a "Reply to a Notice of Violation, EA-09-253," 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, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

If you choose to respond, the 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.

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

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

Dated this 13th day of October 2009