

December 9, 2009

EA-09-260

Mr. Jeremy Waller
Director of Operations
Niles Steel Tank Company
P.O. Box 728
1701A Terminal Road
Niles, MI 49120

SUBJECT: NOTICE OF VIOLATION – NILES STEEL TANK COMPANY
NRC INSPECTION REPORT NO. 030-04829/2009001(DNMS)

Dear Mr. Waller:

This refers to the inspection conducted on September 15, 2009, at your facility located in Niles, Michigan. The purpose of the inspection was to examine activities conducted under your license as they relate to safety and compliance with the Commission's rules and regulations and with the conditions of your license. During the inspection, an apparent violation of U.S. Nuclear Regulatory Commission (NRC) requirements was identified by the NRC inspector. Details regarding the apparent violation were provided to you in NRC Inspection Report No. 030-04829/2009001(DNMS), dated October 16, 2009.

In the letter transmitting the inspection report, we offered you the opportunity to address the apparent violation identified in the report by either attending a Predecisional Enforcement Conference or by providing a written response before we made our final enforcement decision. In a letter dated November 20, 2009, you provided a response to the apparent violation.

Based on the information developed during the inspection and the information that you provided in your November 20, 2009, response to the inspection report, 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. The violation involved your staff's failure to secure from unauthorized removal or access licensed material that was stored in a controlled area, as required by Title 10 of the Code of Federal Regulations (10 CFR) Section 20.1801. Specifically, your staff failed to secure an iridium-192 sealed source from unauthorized removal or access while the radiography source was stored within your permanent radiographic installation. A former member of your staff had the keys and was capable of accessing the installation and, ultimately, the source. The NRC determined that the root cause of the violation was your staff's lack of knowledge of NRC requirements.

The violation is of concern to the NRC because the failure to secure from unauthorized removal or access could potentially have resulted in the loss or theft of the source and exposures to members of the public. Therefore, this violation has been categorized, in accordance with the NRC Enforcement Policy, as a Severity Level III violation.

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$7000 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 inspections, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process described in Section VI.C.2 of the Enforcement Policy. Your immediate corrective actions included changing the locks to the facility and the room where the radiography camera was stored. Subsequently, you transferred the radiography source and the camera to another NRC licensee for disposal and submitted a request to terminate your NRC license, which was granted on October 7, 2009.

Therefore, to encourage prompt and comprehensive correction of violations, in recognition of the absence of previous escalated enforcement action and in recognition that you have chosen to terminate your license, I have been authorized, after consultation with the Director, Office of Enforcement, not to propose a civil penalty in this case.

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken to correct the violation and to prevent recurrence, and the date when full compliance was achieved, was already adequately addressed on the docket in the inspection report dated October 16, 2009, and in your reply dated November 20, 2009. 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 Agencywide Documents Access and Management 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)

J. Waller

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to support a request for withholding confidential commercial or financial information). The NRC also includes significant enforcement actions on its Web site at www.nrc.gov/about-nrc/regulatory/enforcement.html.

Sincerely,

/RA by Cynthia D. Pederson Acting for/

Mark A. Satorius
Regional Administrator

Docket No. 030-04829
License No. 21-04741-01

Enclosure:
Notice of Violation

cc w/encl: State of Michigan

Letter to Jeremy Waller from Mark A. Satorius dated December 9, 2009

SUBJECT: NOTICE OF VIOLATION – NILES STEEL TANK COMPANY
NRC INSPECTION REPORT NO. 030-04829/2009001(DNMS)

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NOTICE OF VIOLATION

Niles Steel Tank Company
Niles, Michigan

Docket No. 030-04829
License No. 21-04741-01
EA-09-260

During a U.S. Nuclear Regulatory Commission (NRC) inspection conducted on September 15, 2009, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

Title 10 Code of Federal Regulations (CFR) Section 20.1801 requires that the licensee secure from unauthorized removal or access licensed materials that are stored in controlled or unrestricted areas. As defined in 10 CFR 20.1003, *controlled area* means an area, outside of a restricted area but inside the site boundary, access to which can be limited by the licensee for any reason.

Contrary to the above, between August 24, and September 9, 2009, the licensee failed to secure from unauthorized removal or access licensed material that was stored within a controlled area. Specifically, the licensee stored a radiography camera containing an iridium-192 source in the licensee's permanent radiographic installation (PRI) and a member of the public had the keys to the PRI and the radiography device.

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

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken to correct the violation and to prevent recurrence, and the date when full compliance was achieved, is already adequately addressed on the docket in Inspection Report 030-04829/2009001(DNMS), dated October 16, 2009, and in a letter from the licensee dated November 20, 2009. 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-09-260," 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 III, 2443 Warrenville Road, Suite 210, Lisle IL 60532, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

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, U.S. Nuclear Regulatory Commission, Washington DC 20555-0001.

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 Agencywide Documents Access and Management System (ADAMS), accessible from the NRC Web site at

ENCLOSURE

<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.

Dated this 9th day of December 2009

ENCLOSURE

J. Waller

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to support a request for withholding confidential commercial or financial information). The NRC also includes significant enforcement actions on its Web site at www.nrc.gov/about-nrc/regulatory/enforcement.html.

Sincerely,

/RA by Cynthia D. Pederson Acting for/

Mark A. Satorius
Regional Administrator

Docket No. 030-04829
License No. 21-04741-01

Enclosure:
Notice of Violation

cc w/encl: State of Michigan

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See next page

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OFFICE	RIII	RIII	RIII	D:OE	RIII	RIII
NAME	Gryglak	Bloomer	Louden for Reynolds	Day for Zimmerman ¹	Orth	Pederson for Satorius
DATE	12/03/09	12/04/09	12/04/09	12/01/09	12/08/09	12/09/09

OFFICIAL RECORD COPY

¹ OE concurrence received via e-mail from K. Day on December 1, 2009.