

November 26, 2003

EA 03-196

Mr. Steven Sturm
Director of Measurement Technology
ABB Inc.
650 Ackerman Road
Columbus, OH 43202-1577

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$3,000
(NRC Inspection Report No. 999-90002/2003-004)

Dear Mr. Sturm:

This refers to the NRC inspection conducted on September 16, 2003, at a temporary job site located at Lees Carpets in Glasgow, Virginia, to review the circumstances associated with your loss of a sealed source capsule containing 78 millicuries of strontium-90. You reported this loss to the NRC via telephone on September 11, 2003, after you had discovered the source was missing. You provided additional information to the NRC regarding this event by telephone on September 17 and 25, 2003, as well as in a written report dated October 7, 2003.

At the time the source was lost, your employees were working in the Commonwealth of Virginia (an NRC Non-Agreement State) under a general license per 10 CFR Part 31.6, and therefore, were working under NRC jurisdiction. As described in the NRC inspection report sent to you on October 15, 2003, one apparent violation of NRC requirements was identified during the inspection involving your failure to control radioactive material that resulted in the loss of the source. In a written report sent to the NRC on October 7, 2003, you stated that the ABB staff believes that the lost source was inadvertently placed in a dumpster and sent to a sanitary landfill. You also stated that you have implemented corrective actions to prevent recurrence.

In a telephone conversation on October 29, 2003, Mr. Wade Loo, of my staff, provided Dr. Jonathan Fortkamp, of your staff, the opportunity to address the apparent violation identified in the NRC inspection report by either attending a predecisional enforcement conference or by providing a written response before the NRC made a final enforcement decision. During that conversation, Dr. Fortkamp informed Mr. Loo that you declined to have a conference but that you elected to provide a written response to the NRC. You provided the written response to the NRC on October 29, 2003.

Based on the information developed during the inspection, and the additional information provided in your letter dated October 29, 2003, the NRC has determined that one violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) and the circumstances surrounding it are described in detail in the subject inspection report. The violation involved the failure to control radioactive material that resulted in the loss of the source. The violation occurred in August

2003, during dismantlement of three gauges and packaging of three sources for shipment to your facility in Columbus, Ohio. Although you were unable to specifically determine exactly how the one source was lost, you have concluded based on an investigation conducted by your staff, that the source inadvertently fell out of its holder during the preparation for shipment and was later swept up with other debris. You also concluded that the source was placed in a dumpster and sent to the sanitary landfill in Rockbridge County, Virginia, since a physical search and radiation surveys conducted at the temporary job site did not identify any radioactive material.

The safety consequence of this violation was minimized by the fact that the source, if sent to the sanitary landfill, is unlikely to come in close contact with any individual. Nonetheless, this violation is of concern to the NRC because: (1) the failure to control radioactive material resulted in the subsequent loss of the source; and (2) such sources can result in substantial unintended radiation dose to an individual if placed in close contact with the individual's skin. Therefore, this violation is categorized at a Severity Level III in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600.

In accordance with the current version of the Enforcement Policy, a base civil penalty is considered for a Severity Level III violation or problem involving the loss or improper disposal of this type of radioactive material. Since your facility has not been the subject of an escalated enforcement action within the last two years or 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. Credit for corrective actions is warranted because your corrective actions were considered prompt and comprehensive. These corrective actions included, but were not limited to: (1) obtaining detailed source drawings from the manufacturers; (2) revising instructions and procedures for future service involving this type of device to include specific information obtained from the manufacturer; and (3) reviewing all policies and procedures to assure timely identification of discrepancies or problems with source receipt.

Application of the civil penalty assessment process would not normally result in a civil penalty when there are no escalated enforcement actions issued to the facility within the past two years or two inspections, and appropriate corrective actions were taken to prevent the violation from recurring. However, the revised Enforcement Policy published December 18, 2000 (effective February 16, 2001), provides that, notwithstanding the normal civil penalty assessment process, a civil penalty of at least the base amount should normally be proposed for cases involving lost material to reflect the significance of the violation and to emphasize the importance of maintaining control of licensed material (see section VII.A.1.(g) of the Enforcement Policy). In this case, the base civil penalty amounts in the application of the civil penalty assessment process, as reflected in Tables 1A.f2 and 1B of the Enforcement Policy, would result in a civil penalty of \$7500, which has been determined to be approximately three times the average cost for authorized disposal. The revised Enforcement Policy also provides that civil penalties may be adjusted to better correspond to three times the actual cost for authorized disposal. You stated in your October 29 letter that your vendor's estimated cost of disposal for the device was approximately \$260. However, the Enforcement Policy also states that a civil penalty amount less than lowest civil penalty listed in the Enforcement Policy Tables 1A.f3 and 1B (\$3000) would not be sufficient to adequately emphasize the importance of maintaining control of

radioactive material. Therefore, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the base amount of \$3,000 for this Severity Level III violation. In addition, issuance of this Notice constitutes escalated enforcement action that may subject you to increased inspection effort.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you may reference any previous correspondence that is applicable to this case to avoid repetitive submissions. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response will be made available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/NRC/ADAMS/index.html> (the Public Electronic Reading Room).

Sincerely,

/RA/ original signed by J.T. Wiggins for

Hubert J. Miller
Regional Administrator

Docket No. 999-90002
General License (10 CFR 31.6)

Enclosures:

1. Notice of Violation and Proposed Imposition of Civil Penalty
2. NUREG/BR-0254 Payment Methods (Licensee only)

cc w/encl:
Jonathan Fortkamp, Ph. D.
State of Ohio
Commonwealth of Virginia

ABB Inc.

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L. Chandler, OGC

Enforcement Coordinators

RII, RIII, RIV

S. Gagner, OPA

H. Bell, OIG

P. Lohaus, OSTP

G. Caputo, OI

L. Tremper, OC

M. Dapas, RIII

E. Wilson, OI-RI

G. Pangburn, RI

F. Costello, RI

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NAME	JNick		DHolody		KFarrar		GPangburn		HMiller	
DATE	11/10/03		11/14/03		11/12/03		11/17/03		11/17/03	
OFFICE	OE									
NAME	Fcongell									
DATE	11/26/03**									

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** Concurrence provided via telecon w/J. Nick & N. Bhalla 11/26/03

ENCLOSURE

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

ABB, Inc.
Columbus, OH

General License (10 CFR 31.6)
Docket No. 999-90002
EA 03-196

During an NRC inspection conducted at a temporary jobsite at Lees Carpets in Glasgow, Virginia on September 16, 2003, one violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy), NUREG-1600, the NRC proposes a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282 and 10 CFR 2.205. The violation and associated civil penalty are set forth below:

10 CFR 20.1801 requires that the licensee secure from unauthorized removal or access licensed materials that are stored in controlled or unrestricted areas. 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. 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; and *unrestricted area* means an area, access to which is neither limited nor controlled by the licensee.

Contrary to the above, on July 30, 2003, the licensee failed to secure from unauthorized removal a sealed source capsule containing approximately 78 millicuries of strontium-90 located at a temporary job site at the Lees Carpet facility in Glasgow, Virginia, which is an unrestricted area, nor did the licensee limit access and maintain constant surveillance of this licensed material. Specifically, the licensee failed to secure the source while conducting maintenance on the fixed gauging device, resulting in the loss of the source into the public domain (likely sent to the Rockbridge County landfill).

This is a Severity Level III problem (Supplement IV).
Civil Penalty - \$3,000.

Pursuant to the provisions of 10 CFR 2.201, ABB Inc. is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation, EA 03-196" and should include for each alleged violation: (1) admission or denial of the alleged violation, (2) the reasons for the violation if admitted, and if denied, the reasons why, (3) the corrective steps that have been taken and the results achieved, (4) the corrective steps that will be taken to avoid further violations, and (5) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an Order or a Demand for Information may be issued as why the license should not be modified, suspended, or revoked or why such other

action as may be proper should not be taken. Consideration may be given to extending the response time for good cause shown.

Within the same time as provided for the response required above under 10 CFR 2.201, the Licensee may pay the civil penalty proposed above, or the cumulative amount of the civil penalties if more than one civil penalty is proposed, in accordance with NUREG/BR-0254 and by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, a statement indicating when and by what method payment was made, or may protest imposition of the civil penalty in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission. Should the Licensee fail to answer within 30 days of the date of this Notice, an order imposing the civil penalty will be issued. Should the Licensee elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation" and may: (1) deny the violations listed in this Notice, in whole or in part, (2) demonstrate extenuating circumstances, (3) show error in this Notice, or (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty in whole or in part, such answer may request remission or mitigation of the penalty.

In requesting mitigation of the proposed penalty, the factors addressed in Section VI.C.2 of the Enforcement Policy should be addressed. Any written answer in accordance with 10 CFR 2.205 should be set forth separately from the statement or explanation in reply pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the Licensee is directed to the other provisions of 10 CFR 2.205, regarding the procedure for imposing a civil penalty.

Upon failure to pay any civil penalty due which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The response noted above (Reply to Notice of Violation, statement as to payment of civil penalty, and Answer to a Notice of Violation) should be addressed to: F. Congel, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region I.

Because your response will be made available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS), to the extent possible, it should not include any personal privacy or proprietary information so that it can be made available to the public without redaction. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> (the Public Reading Room). If personal privacy or proprietary information is necessary to provide an acceptable response, then 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 material, 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 2.790(b) to support a request for withholding confidential commercial or financial information).

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

Dated this 26th day of November 2003