

September 12, 2006

EA 06-150

Mr. Dennis C. Chambers, P.E.  
Vice President  
Triad Engineering, Inc.  
P. O. Box 889  
Morgantown, WV 26505

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF  
CIVIL PENALTY - \$3,250 (NRC Inspection Report No. 030-13255/2006-001)

Dear Mr. Chambers:

This refers to the special inspection conducted by this office on May 8, and June 14, 2006, at your facilities in Winchester and Purcellville, Virginia. The purpose of the inspection was to review the circumstances surrounding an event which occurred on March 14, 2006, when one of your portable nuclear density gauges containing NRC licensed material fell off a pick-up truck being driven by a Triad employee and landed on a public road. You reported this event to the NRC by telephone on March 14, 2006, and you followed up that verbal report with a letter dated April 10, 2006, wherein you described corrective actions taken to prevent recurrence.

The NRC inspection report sent to you on July 14, 2006, indicated that two apparent violations of NRC requirements were identified during the NRC inspection and were being considered for escalated enforcement in accordance with the NRC Enforcement Policy. The apparent violations discussed in our July 14, 2006, letter and inspection report included (1) failure to adequately secure the transport container to prevent shifting during normal transport conditions, contrary to 49 CFR 177.842(d), and (2) failure to secure the portable gauge using a minimum of two independent physical controls when the gauge was not under constant surveillance or control, contrary to 10 CFR 30.34(i).

In the letter transmitting the inspection report, the NRC informed you that a predecisional enforcement conference, open for public observation, was scheduled for August 9, 2006. The conference was held on that date to discuss the apparent violations, their causes and significance, and your corrective actions. At the conference, you (1) acknowledged the facts surrounding the event as presented in the inspection report, (2) stated that Triad Engineering takes the security of licensed material very seriously, and (3) further described your immediate and long term corrective actions to preclude recurrence of this event. A summary of the conference was sent to you on August 21, 2006.

Based on the information developed during the inspection, and the information provided by you during the conference, the NRC has decided to cite two violations of NRC requirements. The violations are described in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) and the circumstances surrounding them are described in detail in the subject inspection report. The first violation involved the failure of the authorized gauge user to properly block and brace the gauge in the open bed of his pick-up truck, to secure the gauge with two independent physical controls, and to close the tailgate prior to leaving the field office parking lot. The case containing the gauge fell off the truck onto a public street resulting in the second violation which involved the failure to control and maintain constant surveillance of licensed material in an unrestricted area. After bystanders notified him that his gauge had fallen off his truck, the driver retraced his route and retrieved the gauge. The container and the gauge were not damaged and there was no radiation dose to members of the public as a result of this event.

Since the failure to properly prepare the gauge for transport in accordance with the requirements of 10 CFR 71.5(a) and 49 CFR 177.842(d), commonly referred to as blocking and bracing, is the root cause for this event, the NRC has decided not to cite 10 CFR 30.34(i) in the enclosed Notice. However, because the licensed material was unsecured in a public area, even for a short period of time, a citation for violation of 10CFR20.1802 is included in the Notice.

Although the source in this case remained in the shielded position at all times, these violations could have caused unnecessary radiation exposure to members of the public. Therefore, these violations are categorized as a Severity Level III problem in accordance with the Enforcement Policy.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$3,250 is considered for a Severity Level III problem involving the loss of radioactive material with an activity level similar to the activity level of the sources contained in this portable gauging device. Triad Engineering, Inc. has been the subject of an escalated enforcement action within the last two inspections. Specifically, a Notice of Violation was issued to Triad Engineering, Inc. on February 24, 2005, for a Severity Level III violation involving the transfer of a portable gauge containing licensed material to a person not authorized to receive such material (Reference: EA 04-235). Therefore, NRC considered whether credit was warranted for *Identification and Corrective Action* in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy. Credit for identification is not warranted because the violation was identified as a result of an event, and not because of any special self-monitoring effort by your management or staff. 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) immediately notifying all appropriate authorities of the missing gauge; (2) retrieving the gauge and properly securing it to the bed of the pick-up truck; (3) re-instructing company nuclear gauge operators regarding the proper security and handling procedures for NRC licensed material; and (4) increasing required management checks of company vehicles to ensure compliance with regulatory security requirements.

Notwithstanding your corrective actions, given the referenced prior escalated enforcement action to Triad Engineering, Inc., as well as the fact that these violations were identified as a result of an event, 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 in the base amount of \$3,250 for the violation set forth in the Notice. This action is being issued to emphasize the significance of adequately maintaining control of licensed material. Issuance of this Notice constitutes escalated enforcement action, that may subject you to increased inspection effort.

The NRC has concluded that the provisions of 10 CFR 2.201, i.e., the information regarding the reasons for the violations, the corrective actions taken and planned to correct the violations and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed herein; in the inspection report issued on July 14, 2006; and during the August 9, 2006, predecisional enforcement conference. Therefore, although you are required to provide a response to the enclosed Notice of Violation and Proposed Imposition of Civil Penalty, you are not required to address the provisions of 10 CFR 2.201 unless the descriptions therein do 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 of Violation and Proposed Imposition of Civil Penalty.

In accordance with 10 CFR 2.390 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/reading-rm/adams.html> (the Public Electronic Reading Room).

Sincerely,

**/RA/**

Samuel J. Collins  
Regional Administrator

Docket No. 03013255  
License No. 47-17742-01

Enclosures:

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

cc w/encl:  
State of West Virginia  
Commonwealth of Virginia

Distribution w/encls:

ADAMS (PARS)

SECY

CA

OEMAIL

OEWEB

L. Reyes, EDO

M. Virgilio, DEDMRS

C. Carpenter, OE

L. Lopez, OE

L. Chandler, OGC

B. Jones, OGC

M. Elwood, OGC

J. Strosnider, NMSS

C. Miller, NMSS

W. Outlaw, OCM

A. Kock, OEDO

G. Morell, NMSS

Enforcement Coordinators RII, RIII, RIV

S. Gagner, OPA

H. Bell, OIG

J. Schlueter, STP

G. Caputo, OI

L. Tremper, OC

D. Screnci, RI

N. Sheehan, RI

G. Pangburn, RI

M. Layton, RI

D. White, RI SAO

State Agreement Officers RIII, RIV

J. Kinneman, RI

K. Farrar, RI

D. Holody, RI

J. Wray, RI

E. Wilson, OI

C. O'Daniell, RI

S. Villar, RI

Region I OE Files (with concurrences)

**SUNSI Review Complete:** jdk (Reviewer's Initials)

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NAME	JWray		JKinneman		GPangburn		KFarrar		DHolody	
DATE	8/14/06		08/16/06		08/18/06		08/21/06		08/21/06	

  

OFFICE	OGC		NMSS		OE		RI/RA			
NAME	B.Jones/slm*		CMiller/MLB for		JLuehman		SCollins/MLD			
	8/31/06		8/31/06		8/31/06		09/08/06			

OFFICIAL RECORD COPY

ENCLOSURE

NOTICE OF VIOLATION  
AND  
PROPOSED IMPOSITION OF CIVIL PENALTY

Triad Engineering, Inc.  
Morgantown, West Virginia

Docket No. 03013255  
License No. 47-17742-01  
EA 06-150

During an NRC inspection conducted on May 8, and June 14, 2006, two violations of NRC requirements were identified. In accordance with the Enforcement Policy, 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 violations and associated civil penalty are set forth below:

- A. 10 CFR 71.5(a) requires that a licensee who transports licensed material outside of the site of usage, as specified in the NRC license, or where transport is on public highways, or who delivers licensed material to a carrier for transport, comply with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation (DOT) in 49 CFR Parts 170 through 189.

49 CFR 177.842(d) requires that packages must be so blocked and braced that they cannot change position during conditions normally incident to transportation.

Contrary to the above, on March 14, 2006, in Purcellville, Virginia, the licensee transported a portable nuclear gauge containing NRC licensed radioactive material on a public highway, and at the time, the transport case was not properly blocked and braced such that it could not change position during conditions normally incident to transportation. Specifically, the authorized user failed to secure the transport case containing the portable gauge to the bed of his pick-up truck and to close the tailgate. As a result, while the vehicle was in transit, the transport case fell off the vehicle onto a public street.

- B. 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, an unrestricted area means an area, access to which is neither limited nor controlled by the licensee.

Contrary to the above, on March 14, 2006, in Purcellville, Virginia, the licensee failed to control and maintain constant surveillance of a portable nuclear gauge containing NRC licensed radioactive material that was in an unrestricted area and was not in storage. Specifically, while the licensee was transporting a portable nuclear gauge on a public street, the unsecured gauge fell off the licensee's truck and was, for a short period of time, unattended on the public street.

These violations represent a Severity Level III problem (Supplements IV and V)

Civil Penalty - \$3,250

The NRC has concluded that information regarding the reasons for the violations, the corrective actions taken to correct the violations and prevent recurrence, and the date when full compliance was achieved is already adequately addressed in this letter; in the inspection report issued on July 14, 2006; and during a predecisional enforcement conference in the NRC Region I office with representatives from your company on August 9, 2006. Therefore, although you are required to provide a response to the Notice and Proposed Imposition of Civil Penalty, you are not required to address the provisions of 10 CFR 2.201 unless the descriptions do 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-06-150" and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555 with a copy to the Regional Administrator, Region I, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

The licensee may pay the civil penalty proposed above 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: C. Carpenter, 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 2.390(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 12th day of September 2006