



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
611 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-4005

October 23, 2007

EA Nos.: 07-180; 07-181; 07-182
NMED 060635

Mr. J. Mark Pusich, P.E.
Radiation Safety Officer
R&M Engineering, Inc.
6205 Glacier Highway
Juneau, AK 99801-7906

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY-
\$3250 (NRC INSPECTION REPORT NO. 030-22284/07-001 AND
OI 4-2007-012)

Dear Mr. Pusich:

This letter is in reference to the predecisional enforcement conference that was conducted by telephone with you and other owners of the company on October 4, 2007. The purpose of the conference was to discuss apparent violations of NRC requirements that were related to three incidents: (1) failure to secure a portable gauge when it was not under the control and constant surveillance of the licensee; (2) losing a portable gauge during transport when it fell out of the back of a company vehicle (it was recovered by a member of the public and returned to the licensee shortly thereafter); and (3) a willful failure to follow applicable requirements when transporting a portable gauge. These apparent violations were identified at the conclusion of our inspection and investigation. Our findings were discussed with you and Mr. Mark Johnson on August 29, 2007, and were documented in the subject inspection report issued on September 17, 2007.

A summary of the slides and other written information from the conference is enclosed with this letter. During the conference, you did not dispute any of the characterizations contained in our inspection report and agreed that the violations occurred. You emailed us a brief description of your corrective actions on October 4, 2007. The conference focused on a discussion of your corrective actions. These included an engineered tie-down system in the bed of vehicles that would ensure compliance with NRC security requirements and with transportation requirements; training all gauge users, including R&M's seasonal employees, on NRC's security requirements for portable gauges and R&M's operating and emergency procedures; and unannounced audits conducted by R&M managers of gauge users in the field to ensure compliance with NRC and company requirements. Additional corrective actions are described in the enclosed documents.

Based on the information developed during the inspection and the investigation, and the information that you provided during the conference, the NRC has determined that two violations of NRC requirements occurred. The violations are cited in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty. The first violation is the most significant and

involves two instances of a failure to use two independent physical controls to secure a portable gauge while the gauge was not under direct control and constant surveillance of the licensee as required by 10 CFR 30.34(i), "Security requirements for Portable Gauges." In the first instance, a gauge was left unattended in the bed of a company truck in the parking lot at your offices, while the driver was inside. The second instance occurred after a gauge fell out of a company vehicle on a public highway and was retrieved by a member of the public. Although the gauge was promptly returned to you, it was not under your employee's direct control and constant surveillance for a short period of time.

The NRC considers the loss of licensed materials significant, even for short periods of time. In assessing the significance of this violation, the NRC considered that the gauge was out of R&M's control for only a few minutes, the gauge was not damaged, and the source remained in the locked and shielded position thereby preventing exposures to the member of the public. Although there were no actual safety consequences resulting from this violation, the failure to maintain adequate security of portable gauges and the loss of the gauge could have resulted in unintended radiation doses to members of the public if the sealed sources were moved from the locked and shielded position. Therefore, this violation is categorized, in accordance with the NRC's Enforcement Policy, at Severity Level III. The Enforcement Policy can be found on the NRC's website at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>.

In accordance with Section VI.C.2. of the Enforcement Policy, a civil penalty is considered for a Severity Level III violation. Based on your corrective actions, the NRC is granting Corrective Action credit for the violation. However, in accordance with Section VII.A.1.g of the Enforcement Policy and Section 8.1.1 of the NRC Enforcement Manual, the NRC normally proposes imposition of a civil penalty for the loss of a sealed source. The base civil penalties for the loss of a source are described in Table 1A and 1B in Section VI.C.1 of the Enforcement Policy, and are estimated to be three times the average cost of disposing of the material. Although you provided information that three times the actual cost of authorized disposal would be less than the lowest base civil penalty (for the loss of a source), the NRC will only mitigate the civil penalty down to the lowest base civil penalty amount for the loss of a source, which is \$3,250 for a Severity Level III violation.

Therefore, to emphasize the importance of maintaining security and control of radioactive material, 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 amount of \$3,250 for this Severity Level III violation. In addition, issuance of this Notice constitutes escalated enforcement action that may subject you to increased inspection effort.

The second violation involved two examples of a failure to block and brace a portable gauge so that it could not change position during conditions normally incident to transportation as required by 10 CFR 71.5(a) and 49 CFR 177.842. This violation is of concern because willfulness, in the form of careless disregard, was associated with the failure to block and brace a portable gauge as it was transported in the cab of a company truck to and from a temporary job site. However, this violation involved the acts of a low-level seasonal employee, the gauge was transported inside the cab versus an open truck bed, and it was considered to be an isolated action of that employee. Consequently, given the unique circumstances in this case, this violation is being categorized at

Severity Level IV. This violation is being cited in the enclosed Notice, in part, because it was identified by the NRC during the investigation.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

Instead of responding to the Notice, you may request alternative dispute resolution (ADR) with the NRC in an attempt to resolve these issues. ADR is a general term encompassing various techniques for resolving conflict outside of court using a neutral third party. The technique that NRC has decided to employ is mediation. Additional information concerning the NRC's program is described in the enclosed brochure (NUREG/BR-0317) and can also be obtained at www.nrc.gov/about-nrc/regulatory/enforcement/adr.html. The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program as a neutral party. Please contact ICR at 877-733-9415 within 10 days of the date of this letter if you are interested in pursuing resolution of these issues through ADR.

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 NRC's document system (ADAMS), accessible from the NRC Web site at 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. The NRC also includes significant enforcement actions on its Web site at www.nrc.gov; select **About NRC, How we Regulate** (Regulation), **Enforcement**, then **Significant Enforcement Actions**.

Sincerely,

/RA/

Elmo E. Collins
Regional Administrator

Docket No.: 030-22284
License No.: 50-23509-01

Enclosure:

- (1) Notice of Violation and Proposed Imposition of Civil Penalty
- (2) Handouts from the October 4, 2007, Predecisional Enforcement Conference
- (3) NUREG/BR-0254
- (4) NUREG/BR-0317

cc w/Enclosures 1-2:
Alaska Radiation Control Program Director

R&M Engineering, Inc., EA-07-180; 07-181; 07-182

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N Hilton, OE
 D. White, OI
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SUNSI Review Completed: MCM1 ADAMS: Yes ☐ No Initials: MCM1Publicly Available ☐ Non-Publicly Available ☐ Sensitive ☐ Non-Sensitive

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10/10/07	10/05/07	10/10/07	10/10/07	10/10/07
FSME	OE	DRA	RA	OGC
MBurgess	D Starkey for N Hilton	TPGwynn	EECollins	JMartin
/RA via E/	/RA via E/	/RA/	/RA TPG for/	/RA via E/
10/17/07	10/18/07	10/11/07	10/22/07	10/12/07

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E=E-mail

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NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

R&M Engineering, Inc.
Juneau, Alaska

Docket No.: 030-22284
License No.: 50-23509-01
EA-07-180; EA-07-181; EA-07-182

During an NRC inspection and investigation conducted from September 28, 2006, through August 29, 2007, two violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the NRC proposes to impose 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 particular violations and associated civil penalty are set forth below:

I. Violation Assessed a Civil Penalty

10 CFR 30.34(i) states, in part, that a portable gauge licensee shall use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee.

Contrary to the above, on August 19, 2006, the licensee failed to use a minimum of two independent physical controls that form tangible barriers to secure a portable gauge from unauthorized removal, whenever the gauge was not under the control and constant surveillance of the licensee. Specifically, in the first instance, an authorized portable gauge user left the portable gauge unattended and unsecured in the bed of a company truck in R&M Engineering's parking lot, as he returned to the office to retrieve paperwork. In the second instance, after a portable gauge fell out of a company truck and was on a public road, the licensee did not have two independent physical controls that formed tangible barriers until after it was returned to the company by a member of the public.

This is a Severity Level III violation (Supplement VI).
Civil Penalty - \$3,250 EA-07-180; EA-07-181

II. Violation Not Assessed a Civil Penalty

10 CFR 71.5(a) requires, in part, that a licensee who transports licensed material on public highways comply with the applicable requirements of the DOT regulations in 49 CFR Parts 107, 171 through 180, and 390 through 397.

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

Contrary to the above, the licensee transported a package of radioactive materials on a public highway and the package was not blocked and braced such that it could not change position during conditions normally incident to transportation. Specifically, on the morning of August 19, 2006, an authorized portable gauge user left the R&M engineering parking lot without adequately securing the portable gauge in the bed of the

Enclosure 1

company truck; the gauge subsequently fell out of the truck. Additionally, in late August 2006, an authorized gauge user transported a portable gauge inside the cab of the truck from a temporary job site to a restaurant and then back to the job site, without properly blocking and bracing the gauge.

This is a Severity Level IV violation (Supplement V)

Pursuant to the provisions of 10 CFR 2.201 R&M Engineering, 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-07-180, EA-07-181, and EA-07-182" 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 basis for denying the validity of the violation; (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, the NRC may issue an order or a Demand for Information requiring you to explain why your license should not be modified, suspended, or revoked or why the NRC should not take other action as may be proper. Consideration may be given to extending the response time for good cause shown. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Within the same time provided for the response required 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, the NRC will issue an order imposing the civil penalty. 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 response should address the factors addressed in Section VI.C.2, "Civil Penalty Assessment," of the Enforcement Policy. Any written answer addressing these factors pursuant to 10 CFR 2.205, should be set forth separately from the statement or explanation provided 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 which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205 to be due, 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 responses noted above, i.e., Reply to Notice of Violation, Statement as to payment of civil penalty, and Answer to a Notice of Violation, should be addressed to: Cynthia 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 IV, 611 Ryan Plaza Drive, Suite 400, Arlington, TX 76011-4005.

Because your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS) to the extent possible, it should not include any personal privacy, proprietary information so that it can be made available to the public without redaction. ADAMS is accessible from the NRC Web site at www.nrc.gov/reading-rm/pdr.html www.nrc.gov/reading-rm/adams.html. 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 that such material is withheld from public disclosure, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim (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 are required to post this Notice within two working days.

Dated this 23rd day of October 2007