



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
2100 RENAISSANCE BOULEVARD, SUITE 100
KING OF PRUSSIA, PA 19406-2713

April 27, 2020

EA-19-136

Chad M. Riley, CEO
Thrasher Engineering, Inc,
600 White Oaks Blvd.
Bridgeport, WV 26330

**SUBJECT: THRASHER ENGINEERING, INC - NOTICE OF VIOLATION AND PROPOSED
IMPOSITION OF CIVIL PENALTY - \$7,500**

Dear Mr. Riley:

This letter provides you the U.S. Nuclear Regulatory Commission's (NRC) enforcement decision for an apparent violation identified during an unannounced, limited scope inspection at Coalfield Expressway Construction Site, a temporary jobsite located in West Virginia (Inspection Report No. 03020231/2019002). The purpose of the inspection was to examine Thrasher Engineering, Inc.'s (Thrasher's) licensed activities as they relate to radiation safety and compliance with the Commission's regulations and the conditions of Thrasher's license. The NRC discussed the apparent violation with Mr. Wade Naylor and Mr. Robert Kelly of your organization during a telephonic exit meeting on January 10, 2020. The apparent violation was also described in the NRC inspection report sent to you with a letter dated January 23, 2020 (ML20023B558).¹

In the NRC letter transmitting the inspection report, we provided you an opportunity to address the apparent violation before we made our final enforcement decision by attending a pre-decisional enforcement conference (PEC), providing a written response, or requesting alternative dispute resolution (ADR). In a letter dated January 30, 2020, you provided a written response to the apparent violation. Specifically, you identified several long-term corrective actions implemented to prevent reoccurrence including revising a procedure to cover the proper way to transport and secure a gauge when not under control and constant surveillance by an authorized user.

Based on the information developed during the inspection and the information that you provided in your response, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice) and was described in detail in the subject inspection report. The violation was related to Thrasher's failure to secure a portable gauge with two independent physical controls while not under control and constant surveillance of the licensee. Specifically, a portable gauge containing licensed material in an amount exceeding the quantities in 10 CFR Part 20, Appendix C was stored in the bed of a company pickup truck with only one independent physical control (one lock versus the required two

¹ Designation in parentheses refers to an Agency-wide Documents Access and Management System (ADAMS) accession number. Unless otherwise noted, documents referenced in this letter are publicly-available using the accession number in ADAMS.

locks). The authorized user was located in the construction site trailer next to the truck and failed to maintain constant surveillance of the gauge. This was a repeat violation from a previous inspection conducted on March 19, 2019. Thrasher's repeat failure to properly secure the gauge is of significant concern to the NRC because the previous corrective actions to address this violation were ineffective to prevent reoccurrence. This violation has been categorized at Severity Level III (SL III) in accordance with the NRC Enforcement Policy because the potential existed for the portable gauge to be removed by an unauthorized individual and possibly cause an unintended radiation exposure to members of the public.

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$7,500 is considered for a SL III violation. Because your facility has been the subject of escalated enforcement actions within the 2 most recent inspections (a SL III violation was issued January 26, 2017, (EA-16-224) and a SL IV was issued on September 6, 2019, (EA-19-027) for similar portable gauge violations), the NRC considered whether credit was warranted for licensee identification and corrective action in accordance with the civil penalty assessment process in Section 2.3.4 of the Enforcement Policy. The NRC determined that identification credit was not warranted because the violation was identified by the NRC. However, the NRC concluded that credit was warranted for Thrasher's actions taken to address the violation. Specifically, when the authorized user was made aware of the violation, the authorized user immediately corrected the violation and properly secured the gauge. The NRC also considered that the corrective actions described in Thrasher's letter dated January 30, 2020, if properly implemented, were reasonable to prevent reoccurrence of this violation. The NRC will conduct a follow-up inspection to evaluate Thrasher's implementation of your corrective actions within the next twelve months, in accordance with NRC Inspection Manual Chapter 2800, "Materials Inspection Program."

To emphasize the importance of compliance with regulatory requirements and prompt identification of violations, 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 \$7,500. In addition, issuance of this Notice constitutes an escalated enforcement action that may subject Thrasher to increased inspection effort in the future. The NRC also includes significant enforcement actions on its Web site at (<http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>).

The NRC recognizes that many licensees have been impacted economically by the public health emergency caused by the Coronavirus Disease 2019 (COVID-19). Consequently, as described in the enclosed Notice, the NRC is extending by 30 days the period of time by which the civil penalty must be paid (i.e., extending the deadline from 30 days to 60 days from the date of this Notice), and the NRC would consider a request for additional time, if appropriate. Please refer to the enclosed Notice for further instructions.

If you disagree with this enforcement sanction, you may deny the violation, as described in the Notice, or you may request Alternative Dispute Resolution (ADR) with the NRC in an attempt to resolve this issue. ADR is a general term encompassing various techniques for resolving conflicts using a neutral third party. The technique that the NRC has decided to employ is mediation. Mediation is a voluntary, informal process in which a trained neutral (the "mediator") works with parties to help them reach resolution. If the parties agree to use ADR, they select a mutually agreeable neutral mediator who has no stake in the outcome and no power to make decisions. Mediation gives parties an opportunity to discuss issues, clear up misunderstandings, be creative, find areas of agreement, and reach a final resolution of the

issues. Additional information concerning the NRC's ADR program can be found at <http://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 third party. If you are interested in pursuing this issue through the ADR program, please contact: (1) the ICR at (877) 733-9415; and (2) Chris Cahill, Chief, Commercial, Industrial, R&D, and Academic Branch, Division of Nuclear Materials Safety, NRC Region I, at 610-337-5108 within 10 days of the date of this letter. You may also contact both ICR and Mr. Cahill for additional information. Your submitted signed agreement to mediate using the NRC ADR program would stay the 30-day time period for payment of the civil penalty as identified in the enclosed notice, until the ADR process is completed.

The NRC has concluded that information regarding: (1) the reasons for the violation; (2) the actions planned or already taken to correct the violation and prevent recurrence; and, (3) the date when full compliance was achieved, is already adequately addressed on the docket in Inspection Report No. 03020231/2019002. 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 and its enclosures will be made available electronically for public inspection in the NRC Public Document Room and from the NRC's Agencywide Documents Access and Management System (ADAMS), accessible from the NRC Website at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response, if you choose to provide one, 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).

Sincerely,

David C. Lew
Regional Administrator

Docket No. 03020231
License No. 47-23065-01

Enclosures:

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

cc w/enclosure: Wade Naylor,
Radiation Safety Officer
State of West Virginia

SUBJECT: THRASHER ENGINEERING, INC. - NOTICE OF VIOLATION - NRC
INSPECTION REPORT NO. 03006580/2018001 DATED: APRIL 27, 2020

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Region I OE Files (with concurrences)

ML20063L519

DOCUMENT NAME: S:\Enf-allg\Enforcement\Proposed-Actions\Region1\Thrasher NOV-III rep gauge EA-19-136_ML20063L519.docx

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OFFICE	RI/ORA	RI/DNMS	RI/ORA	RI/ORA	OE	NMSS
NAME	C Crisden/cjc*	C Cahill/CC*	B Klukan/BMK via email	R McKinley/RM*	L Sreenivas via email	M Burgess via email
DATE	3/4/20	3/5/20 (4/6/20)	3/6/20 (4/7/20)	3/6/20	3/12/20 (4/3/20)	3/12/20 (4/14/20)
OFFICE	OGC	RI/ DNMS				RA
NAME	L Baer via email	J Trapp				D Lew
DATE	3/10/20 (4/3/20)	3/18/20/ (4/3/20)				04/2/12020

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NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Thrasher Engineering, Inc.
Bridgeport, West Virginia

Docket No. 03020231
License No. 47-23065-01
EA-19-136

During an NRC inspection conducted on October 29, 2019, with continued in-office review through January 10, 2019, a violation of NRC requirements was 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, amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violation and associated civil penalty are set forth below:

10 CFR 30.34(i) requires, in part, that each 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 October 29, 2019, the portable gauge licensee failed to use a minimum of two independent physical controls that formed tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges were not under the control and constant surveillance of the licensee. Specifically, a portable gauge was secured, in the bed of the licensee's pickup truck, with only a single locked hasp on the case containing the portable gauge, which provided only one physical control that formed a tangible barrier to secure the portable gauge from unauthorized removal. The portable gauge user was inside the construction site trailer next to the truck and did not have control and constant surveillance of the portable gauge.

This is a Severity Level III violation. (Enforcement Policy Sections 6.3)
Civil Penalty - \$7,500 (EA-19-136)

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. (03020231/2019002), and your letter dated January 30, 2020. However, if the description therein does not accurately reflect your position or your corrective actions, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 within 30 days of the date of the letter transmitting this Notice of Violation. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation, (EA-19-136)" and send it to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S., Nuclear Regulatory Commission, Region 1, 2100 Renaissance Blvd, Suite 100, King of Prussia, PA, and the Document Control Desk, Washington, DC 20555-0001.

Thrasher 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. Within 30 days of the date of this Notice, Thrasher must either confirm to the NRC in writing that it will pay the civil penalty or provide its

written answer protesting the civil penalty. However, in the event Thrasher elects to pay the civil penalty, in recognition of the economic impact to licensees by the public health emergency caused by the Coronavirus Disease 2019 (COVID-19), the NRC is extending the period of time by which the civil penalty must be paid from 30 days to 60 days from the date of this Notice. Should Thrasher fail to pay the civil penalty within 60 days of the date of this Notice, the NRC will issue an order imposing the civil penalty. Should Thrasher 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 (EA-19-136)" and may: (1) deny the violation 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 civil penalty. Separately, Thrasher may request an additional extension of time to pay the civil penalty as a result of impacts to the licensee from COVID-19. Such an extension request must be in writing and should explain the basis for the request and should specify the amount of additional time being requested. This extension request must be submitted to the NRC no later than 50 days from the date of this Notice (i.e., at least 10 days before the initial 60-day deadline to pay the civil penalty).

In requesting mitigation of the proposed penalty, the response should address the factors addressed in Section 2.3.4 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, Extension of time to pay the civil penalty, Statement as to payment of civil penalty, and Answer to a Notice of Violation, should be addressed to: George Wilson, 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, 2100 Renaissance Blvd, Suite 100, King of Prussia, PA and the Document Control Center, 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 in 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 or proprietary 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, 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). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

In accordance with 10 CFR 19.11, you are required to post this Notice within two working days of receipt.

Dated this 27TH day of April, 2020.