

April 17, 2006

EA 06-017

Mr. Carlos A. Mercado, President
GEO EXPLOR, Inc.
MSC 928
138 Avenida Winston Churchill
San Juan, Puerto Rico 00926-6023

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL
PENALTY - \$3,250 (NRC Inspection Report No. 030-35886/2005-001)

Dear Mr. Mercado:

This refers to the NRC inspection conducted on November 15, 2005, at your facility located in San Juan, Puerto Rico, to review the circumstances associated with the loss of one of your portable gauging devices. The portable gauge contained NRC licensed radioactive material. You reported this gauge missing to the NRC by telephone on August 16, 2005, and you followed up that verbal report with a letter dated August 17, 2005, wherein you described corrective actions taken to prevent recurrence. As described in the NRC inspection report sent to you on February 9, 2006, three 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 were discussed with you following the on-site inspection on November 15, in a subsequent telephone conversation on December 9, 2005, and in a telephone exit meeting on January 11, 2006.

In the February 9, 2006, letter transmitting the inspection report, we provided you the opportunity to address the apparent violations identified in the report before we made our final enforcement decision by either providing a written response or attending a predecisional enforcement conference. In that letter, we stated that a revision to the NRC Enforcement Policy became effective on February 16, 2001 (Section VII.A.1.g) which states that cases involving the loss, abandonment, or improper transfer or disposal of a sealed source or device should normally result in a civil penalty. In a letter dated March 6, 2006, you responded to the apparent violations and stated that you agreed with the information regarding the apparent violations. You also described the corrective actions you had taken to address the apparent violations.

Based on the information developed during the inspection, the NRC has determined that three violations of NRC requirements occurred. The violations are cited 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 violations occurred as a result of the authorized gauge user's failure to adequately lock the transport case onto the bed of his truck and failure to close the tailgate. After driving for less than a mile from the temporary job site, the authorized gauge user determined that the case containing the gauge had fallen off the

truck. When the gauge user retraced his route, he was unable to locate the gauge. You subsequently learned that the gauge had been found by a member of the public and taken to a commercial warehouse. You retrieved the gauge, which was intact and undamaged, on August 22, 2005.

The following three violations contributed to this event occurring: (1) the failure to control and maintain constant surveillance of the gauge, (2) the failure to use two independent physical controls to form a tangible barrier to secure the gauge against unauthorized removal, and (3) the failure to properly block and brace the gauge during transport.

Although the gauge was locked in the shielded condition and it was in a locked transport case at the time it was found by the member of the public, these violations are of concern to the NRC because (1) the gauge was in the public domain for approximately 6 days, and (2) such sources can result in unintended radiation exposure to an individual if the source is not in the shielded position. Therefore, these violations are categorized collectively 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. Because your facility has not been the subject of escalated enforcement actions within the last 2 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) immediately notifying all appropriate authorities, including the local police and media, of the missing gauge, (2) disciplining the gauge technician by suspending him for one week, and (3) promptly re-instructing all company portable gauge operators regarding the proper security and handling procedures for NRC licensed material. Since credit was given for corrective action, a civil penalty would not normally be issued in this case.

However, Section VII.A.1(g) of the Enforcement Policy specifies that a case involving the loss or improper disposal of a sealed source or device is normally assessed a civil penalty of at least the base amount, notwithstanding the outcome of the normal civil penalty assessment process. Therefore, to emphasize the importance of maintaining security and control of licensed 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 base amount of \$3,250 for this Severity Level III problem. In addition, 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 and on the docket in NRC Inspection Report No. 030-35886/2005001, dated January 25, 2006. 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.

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. 030-35886
License No. 52-25580-01

Enclosures:

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

cc w/encl:
Commonwealth of Puerto Rico

Distribution w/encls:

ADAMS (PARS)

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CA

OEMAIL

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LReyes, EDO

MVirgilio, DEDMRS

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JStrosnider, NMSS

CMiller, NMSS

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CMiller, OEDO

GMorell, NMSS

Enforcement Coordinators RII, RIII, RIV

SGagner, OPA

HBell, OIG

JSchlueter, STP

GCaputo, OI

LTremper, OC

DScrenci, NSheehan, RI

GPangburn, RI

FCostello, RI

SMinnick, RI SAO

State Agreement Officers RII, RIV

JKinneman, RI

KFarrar, RI

DHolody, RI

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RSummers, RI

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SVillar, RI

Region I OE Files (with concurrences)

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OFFICE	RI/ORA		RI/DNMS		RI/DNMS		RI/RC		RI/ORA	
NAME	JNicholson		JKinneman		GPangburn		KFarrar		DHolody	
DATE	03/16/2006		03/21/06		03/23/06		03/27/06		04/13/06	
OFFICE	OE		OGC (NLO)		NMSS		OE		RI/RA	
NAME	SMerchant *		BJones (GL for)*		CMiller (GM for)*		CNolan (LT for)*		SCollins	
	04/11/06		04/11/06		03/29/06		04/12/06		04/14/06	

OFFICIAL RECORD COPY

(* via e-mail on 4/12/06 from Leigh Trocine ** See previous concurrences)

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

GEO EXPLOR, Inc.
San Juan, Puerto Rico

Docket No. 030-35886
License No. 52-25580-01
EA 06-017

During an NRC inspection conducted on November 15, 2005, three violations of NRC requirements were identified. The violations were discussed with the licensee following the on-site inspection on November 15, in a subsequent telephone conversation on December 9, 2005, and in a telephone exit meeting on January 11, 2006. 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 20.1802 requires that the licensee shall control and maintain constant surveillance of licensed material 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, between August 16 and 22, 2005, the licensee failed to control and maintain constant surveillance of a CPN-International Model MC-1 portable gauge containing NRC licensed radioactive material. Specifically, during transport, the unsecured portable gauge fell off the transport vehicle, was lost on a public highway, then later kept at a commercial warehouse, and access to both of these areas was neither limited nor controlled by the licensee.

- B. 10 CFR 30.34(l) requires that the 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 16, 2005, at a temporary job site in Dorado, Puerto Rico, the licensee did not use two independent physical controls to secure a portable gauge. The gauge user did not secure the gauge case with any of the two available chains in the truck bed of his open pickup truck.

- C. 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 173.448(a) requires that each shipment of radioactive material must be secured to prevent movement and shifting during normal transportation conditions.

Enclosure

49 CFR 173.842(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 August 16, 2005, the licensee transported a portable gauge containing licensed material on a public highway from a temporary job site in Dorado, Puerto Rico, without securing or blocking and bracing the transport case to prevent it from shifting position. Specifically, the locked transport case was placed in the truckbed without securing it in any way, and the truck tailgate was not closed.

This is a Severity Level III problem (Supplements IV, V, and VI)
Civil Penalty - \$3,250

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, are already adequately addressed herein and on the docket in NRC Inspection Report No. 030-35886/2005001 dated January 25, 2006. Therefore, although you are required to provide a response to the 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 do not accurately reflect your corrective actions or your position. In that case, clearly mark your response as a "Reply to a Notice of Violation; EA-06-017," and send it to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, with a copy to the Regional Administrator, Region I, within 30 days of the date of the letter transmitting this Notice.

You 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 letter clearly marked "Statement as to Payment of Civil Penalty" indicating when and by what method payment was made.

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: M. Johnson, 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 2 working days.

Dated this 17th day of April 2006