



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION III
2443 WARRENVILLE ROAD, SUITE 210
LISLE, ILLINOIS 60532-4352

January 18, 2024

EA-23-123
NMED No. 230141 (Closed)

Rami Anabtawi
Owner
Geotechnical and Materials Engineers, Inc.
3517 Focus Dr.
Fort Wayne, IN 46818

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY
\$9000; NRC NON-ROUTINE INSPECTION REPORT NO. 03035029/2023001
(DRSS) – GEOTECHNICAL AND MATERIALS ENGINEERS, INC.

Dear Rami Anabtawi:

This letter refers to the U.S. Nuclear Regulatory Commission (NRC) non-routine inspection conducted on August 24, 2023, at your Fort Wayne, Indiana facility with continued in-office review through October 19, 2023. The purpose of the inspection was to review the circumstances surrounding a portable gauge that was struck and damaged by a bulldozer at a temporary job site. An exit meeting was held on October 19, 2023, with you and your staff to discuss an apparent violation involving the failure to control and maintain constant surveillance of a portable moisture density gauge. Inspection Report No. 03035029/2023001 (DRSS) was issued on November 8, 2023, and can be found in the NRC's Agencywide Documents Access and Management System (ADAMS) at accession number ML23299A231. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

In our November 8, 2023, letter transmitting the inspection report, we informed you that the apparent violation was being considered for escalated enforcement action, including a civil penalty. In the letter, we provided you the opportunity to address the apparent violation identified in the report by either attending a predecisional enforcement conference, engaging the NRC in Alternative Dispute Resolution (ADR) mediation, or by providing a written response before we made our final enforcement decision. In a letter dated November 29, 2023, your radiation safety officer provided a response to the apparent violation.

Based on the information developed during the inspection and the information provided in your response to the inspection report dated November 29, 2023, the NRC has determined that a violation of NRC requirements occurred and is proceeding with enforcement action. The violation and circumstances surrounding it are described in detail in the subject inspection report. On March 22, 2023, your staff notified the NRC by telephone of an event involving a portable moisture density gauge that was struck and damaged by a bulldozer at a temporary job site earlier that day. The violation involved the failure to control and maintain constant surveillance of a portable gauge or use two barriers to secure the gauge as required by Title 10 of the *Code of Federal Regulations* (10 CFR) Part 20.1802 and 10 CFR 30.34(i). The apparent root cause of the event was that the technician walked away from the gauge, failing to maintain control and constant surveillance of the gauge.

The failure to control and maintain constant surveillance over a portable gauge is a significant safety and security concern that resulted in the gauge being damaged by a bulldozer and that could have resulted in the release of radioactive material into the environment and potential unintended exposure to a member of the public. However, in this case there was not a release of material and no exposure to a member of the public occurred. Therefore, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level (SL) III. The current Enforcement Policy is included on the NRC's Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>. In accordance with the Enforcement Policy, a base civil penalty in the amount of \$9000 is considered for a SL III violation.

Because your facility has been the subject of escalated enforcement actions within the last 2 years,¹ the NRC considered whether credit was warranted for Identification and Corrective Action in accordance with the civil penalty assessment process in Section 2.3.4 of the Enforcement Policy. Credit for identification is not warranted as the violation was identified through an event involving damage to the portable gauge. Credit for corrective actions is warranted and included: (1) suspending the individual from gauge use until they retake the portable gauge safety class; (2) retraining all staff on operating, transporting, emergency and security procedures for portable gauges; (3) increasing the refresher training frequency to twice a year; and (4) implementing an unannounced inspection program for gauge users.

Therefore, to emphasize the importance of maintaining control of licensed material, and of the need for prompt and comprehensive correction of violations, and in recognition of your previous escalated enforcement action, 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 \$9000 for the SL III violation. In addition, issuance of this Notice constitutes escalated enforcement action that may subject you to increased inspection effort. The NRC also includes significant enforcement actions on its Web site at http://www.nrc.gov/reading_rm/doc_collections/enforcement/actions/.

You may choose to pay the proposed civil penalty by submitting your payment, with the invoice enclosed to this letter, to the following address:

Office of the Chief Financial Officer
U.S. Nuclear Regulatory Commission
P.O. Box 979051
St. Louis, MO 63197

In addition, you may pay the proposed civil penalty in accordance with [NUREG/BR-0254](#). When using NUREG/BR-0254 to pay the civil penalty, the invoice number should be used as the "enforcement action identifier" when submitting your payment through one of the approved methods listed in the brochure. The NRC may consider a request for additional time to pay the proposed civil penalty, including the option to enter into an installment agreement, if payment of the civil penalty as a lump sum in the required timeframe would pose a financial hardship.

¹ A Severity Level III problem was issued on February 14, 2022, involving the failure to store licensed material at an authorized location and the failure to properly secure licensed material (EA-21-134).

To request additional time to pay, you must submit a written request, with appropriate justification explaining your financial hardship, to NRCCollections.Resource@nrc.gov. All requests should be submitted in sufficient time to allow the NRC the ability to review your request for additional time to pay before the 30-day payment period expires.

If you disagree with this enforcement sanction, you may deny the violation, as described in the Notice, or you may request ADR mediation 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) Rhex Edwards at 630-829-9722 or by email at rhex.edwards@nrc.gov within 10 days of the date of this letter. You may also contact both ICR and Mr. Edwards for additional information. Your submitted signed agreement to mediate using the NRC ADR program will 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 reason for the violation, or if contested, the basis for disputing the violation; (2) the corrective steps that have been taken and the results achieved; (3) the corrective steps that will be taken; and (4) the date when full compliance was achieved is already adequately addressed on the docket in Inspection Report No. 03035029/2023001 (DRSS) and your radiation safety officer's letter dated November 29, 2023. 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 “Agency Rules of Practice and Procedure,” a copy of this letter, its enclosure, and your response, if you choose to provide one, 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 Web site at <http://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.

If you have any questions concerning this matter, please contact Diana Betancourt-Roldan, Enforcement/Investigations Officer 630-810-4372 or by email at diana.betancourt-roldan@nrc.gov.

Sincerely,



Signed by Giessner, Jack
on 01/18/24

John B. Giessner
Regional Administrator

Docket No. 030-35029
License No. 13-32182-01

cc w/enclosure 1:
Sam Abbasi, VP Operations
Dina Sljivo, RSO
State of Indiana

Enclosure: (1) Notice of Violation and Proposed
Imposition of Civil Penalty
(2) Civil Penalty Invoice No. EA-23-123

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Geotechnical and Materials Engineers, Inc.
Fort Wayne, Indiana

Docket No. 030-35029
License No. 13-32182-01
EA-23-123

During a U.S. Nuclear Regulatory Commission (NRC) inspection conducted on August 24, 2023, with continued in-office review through October 19, 2023, 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, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The violation and associated civil penalty are set forth below:

Title 10 of the *Code of Federal Regulations* (10 CFR) 20.1802 requires, in part, 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.

Title 10 CFR 30.34(i) requires that each portable gauge licensee 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 March 22, 2023, the licensee failed to maintain control and constant surveillance of or use a minimum of two independent physical controls that form tangible barriers to secure from unauthorized removal, licensed material in a portable gauge that was not in storage. Specifically, the licensee did not control or maintain constant surveillance of a portable gauge containing approximately 38.5 millicuries (1424.5 megabecquerels) of americium-241: beryllium and 4.8 millicuries (177.6 megabecquerels) of cesium-137 at a temporary job site in Fort Wayne, Indiana.

This is a Severity Level III violation (Enforcement Policy Section 6.)
Civil Penalty - \$9000 (EA-23-123)

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. 03035029/2023001 (DRSS) and the licensee's letter dated November 29, 2023. 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, and send it to the 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 III, 2443 Warrenton Road, Suite 210, Lisle, IL 60532-4352, and the Document Control Desk, Washington, DC 20555-0001.

The Licensee may pay the civil penalty proposed above through one of the following two methods:

1. Submit the payment with the enclosed invoice for Civil Penalty, EA-23-123, issued to Geotechnical and Materials Engineers, Inc., to the following address:

Office of the Chief Financial Officer
U.S. Nuclear Regulatory Commission
P.O. Box 979051
St. Louis, MO 63197

OR

2. Submit the payment in accordance with [NUREG/BR-0254](#).

The Licensee may protest the 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. 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 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 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, Statement as to Payment of Civil Penalty, and Answer to a Notice of Violation, should be addressed to: 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 III, 2443 Warrenville Road, Suite 210, Lisle, IL 60532-4352 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 NRC's Agencywide Documents Access and Management System (ADAMS). To the extent possible, your response should not include any personal privacy, proprietary, classified 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, 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 may be required to post this Notice within two working days of receipt.

Dated this 18th day of January 2024.



Geotechnical and Materials Engineers, Inc.
3517 FOCUS DRIVE
FORT WAYNE, IN 46818



01/17/2024

Address/Customer Information

Geotechnical and Materials Engineers, Inc.
3517 FOCUS DRIVE
FORT WAYNE, IN 46818

Customer Codes

Account Code: L00002214/1

Bill Information

Bill Number: EA-23-123
Amount Due: \$9,000.00
Due Date: 02/16/2024

Contact Us

Phone Number: 301-415-7554
Fax Number: 301-415-4135
Email Address: Fees.Resource@nrc.gov

Remit to Address

Office of the Chief Financial Officer
U.S. Nuclear Regulatory Commission
P.O. Box 979051
St. Louis, MO 63197

Bill Summary

Initial Charges	\$9,000.00
Discount	0.00
Surcharge	0.00
Interest Charges	0.00
Penalty Charges	0.00
Admin Charges	0.00
Bill Amount	\$9,000.00
Collected	0.00
Applied Credit	0.00
Adjustments	0.00
Amount Due	\$9,000.00

Credit Summary

Applied Credit	\$0.00
Unapplied Credit	0.00
Credit Total	\$0.00

Comments:

For questions, contact (301) 415-7554 or by email at Fees.Resource@nrc.gov. For NRC debt collection procedures, including interest and penalty provisions, see 31 U.S.C. 3717, 4 CFR 101-105, AND 10 CFR 15. For questions, contact the NRC Financial Services and Operations Branch at (301) 415-7554 or by email at Fees.Resource@nrc.gov. For NRC debt collection procedures, including interest and penalty provisions, see 31 U.S.C. 3717, 4 CFR 101-105 and 10 CFR 15.

If this invoice is related to an Order Imposing a Civil Penalty, Geotechnical and Materials Engineers, Inc. is required to pay the Civil Penalty within 30 days of the Order date. If payment is in response to a Notice of Violation and Proposed Imposition of a Civil Penalty, please follow the instructions in the Notice. The NRC may consider a request for additional time to pay the Civil Penalty, including the option to enter into an installment agreement, if appropriate. All requests for additional time to pay an invoice must be submitted in writing, with appropriate justification, to NRCCollections.Resource@nrc.gov, and should be submitted sufficiently ahead of time to allow the NRC time to review the request for additional time to pay within the 30-day payment period. This Invoice is related to the Civil Penalty proposed or imposed under EA-23-123 issued to Geotechnical and Materials Engineers, Inc.. Please include this reference number on your payment method (see attached Payments Methods Brochure).

Customer Information

L00002214/1
Geotechnical and Materials Engineers, Inc.
3517 FOCUS DRIVE
FORT WAYNE, IN 46818

Change of Address:

Phone: _____

Remittance Information

Office of the Chief Financial Officer
U.S. Nuclear Regulatory Commission
P.O. Box 979051
St. Louis, MO 63197

This Payment References the following Bill:

EA-23-123

Outstanding Amount Due: \$9,000.00

Amount Enclosed: _____