



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, DC 20555 - 0001**

January 4, 2002

EA-99-290

Mr. James W. Henderson
Division Manager
Earthline Technologies
(Previously RMI Environmental Services)
P.O. Box 579
Ashtabula, OH 44005-0579

SUBJECT: ORDER IMPOSING CIVIL MONETARY PENALTY - \$17,600

Dear Mr. Henderson:

This refers to your letter, dated October 17, 2001, in response to the Notice of Violation and Proposed Imposition of Civil Penalty (Notice) sent to you by our letter dated September 24, 2001. Our letter and Notice described two violations of NRC requirements identified during two investigations conducted by the U.S. Nuclear Regulatory Commission (NRC), Office of Investigations (OI). To emphasize the need to promptly identify and correct violations and the necessity for a safety conscious work environment that is free of any chilling effect so that employees can bring forward nuclear and radiological safety concerns without fear of an adverse employment action, a civil penalty of \$17,600 was proposed for the first violation.¹

In the response, you denied the facts in the Notice and protested the civil penalty associated with the violation of 10 CFR 40.7, "Employee Protection." In support of that position, you stated the employment action was taken for legitimate business reasons, you were unaware that the complainant had contacted the NRC, and the complainant did not experience a material loss of benefits because he was placed on paid medical leave.

The October 17, 2001, response listed examples of performance deficiencies, described as legitimate business reasons, as grounds for placing the complainant on paid medical leave. Several of the examples cited in the letter were also protected activities where the complainant discussed his radiation protection concerns with management. Further, you stated that you were unaware the complainant had contacted the NRC. However, the complainant wrote to you on February 6, 1999, and stated that he "decided to exercise [his] rights under NRC Form 3" to

¹ The second violation pertained to the failure to secure NRC-licensed material, uranium, on July 31, 1998, from unauthorized removal from your facility. While this second violation was categorized at Severity Level III, a civil penalty was not assessed because RMI/Earthline identified the violation, notified the NRC, and took corrective action (EA-01-037). The licensee did not challenge this violation.

contact the NRC.² On February 8, 1999, in a return letter, you acknowledged receipt of the complainant's letter of February 6, 1999. Finally, the October 17, 2001, response indicated that the complainant did not experience a decrease in wages or an adverse change in material benefits because he was placed on paid medical leave. The purpose of the employee protection regulations is to assure that a safety conscious work environment (SCWE) exists in which employees at NRC-regulated facilities are free to bring forward concerns regarding activities covered by NRC regulations. Placing an employee on paid leave after the employee raised safety concerns (whether that leave is termed medical, administrative, investigative, etc.) is viewed by the NRC as a change in the terms, conditions, or privileges of employment. Furthermore, the February 12, 1999, letter from RMI/Earthline to the complainant that informed him he was being placed on medical leave also told him that a portion of that leave would be unpaid.

After considering the information you provided in your October 17, 2001, response, we have concluded that the violation occurred as stated in the September 24, 2001, letter and Notice, and that your response did not provide an adequate basis for withdrawing the violation, reducing the severity level, or mitigating or rescinding the civil penalty. Accordingly, we hereby serve the enclosed Order on RMI/Earthline Technologies imposing a civil monetary penalty in the amount of \$17,600. As provided in Section IV of the enclosed Order, payment should be made within 30 days in accordance with NUREG/BR-0254. In addition, at the time payment is made, a statement indicating when and by what method payment was made, is to be mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice", a copy of this letter and the enclosures 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/reading-rm/adams.html> (the Public Electronic Reading Room).

Sincerely,
/RA/

Carl J. Paperiello
Deputy Executive Director
for Materials, Research and
State Programs

Docket No. 040-02384
License No. SMB-00602

² The title of NRC Form 3 is, "Notice to Employees, Standards for Protection Against Radiation (Part 20); Notices, Instructions and Reports to Workers; Inspections (Part 19); Employee Protection." NRC Form 3 provides instructions on subjects such as, "May I Talk to an NRC Inspector," "How Do I Contact the NRC," and "Can I Be Fired for Raising a Safety Concern."

Mr. J. Henderson

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Enclosures: 1. Order Imposing Civil Monetary Penalty
2. NUREG/BR-0254 Payment Methods

cc w/encl 1 only: Timothy G. Rupert, President & CEO, RTI International Metals, Inc.
Anthony J. Diverne, Esq. McDonald, Hopkins, Burke & Haber
Roger Suppes, State of Ohio, Bureau of Radiation Protection
Ruth Vandegrift, State of Ohio, Bureau of Radiation Protection

Mr. J. Henderson

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UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
Earthline Technologies)	Docket No. 040-02384
(Previously RMI Environmental Services))	License No. SMB-00602
Ashtabula, OH)	EA-99-290

ORDER IMPOSING CIVIL MONETARY PENALTY

I

Earthline Technologies (previously RMI Environmental Services) was the holder of Materials License No. SMB-00602, issued by the Nuclear Regulatory Commission (NRC or Commission) on June 8, 1962. The license authorized the Licensee, in part, to conduct decontamination and decommissioning activities in accordance with the conditions specified therein.

II

An investigation of the Licensee's activities was completed on September 29, 1999. The results of this investigation indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated September 24, 2001. The Notice states the nature of the violation, the provision of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violation.

The Licensee responded to the Notice in a letter dated October 17, 2001. In its response, the Licensee denied the violation and protested the civil penalty. The Licensee claimed the employment action was taken for legitimate business reasons, the manager was unaware that

the complainant had contacted the NRC, and the complainant did not have a material loss of benefits because he was placed on paid medical leave.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, that the violation occurred as stated and that the penalty proposed for the violation designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, IT IS HEREBY ORDERED THAT:

The Licensee pay a civil penalty in the amount of \$17,600 within 30 days of the date of this Order, in accordance with NUREG/BR-0254. In addition, at the time of making the payment, the Licensee shall submit a statement indicating when and by what method payment was made, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738.

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532-4351.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order (or if written approval of an extension of time in which to request a hearing has not been granted), the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

- (a) whether the Licensee was in violation of the Commission's requirements as set forth in the Notice referenced in Section II above, and

- (b) whether, on the basis of such violation, this Order should be sustained.

FOR THE NUCLEAR REGULATORY COMMISSION

SIGNED BY PAUL H. LOHAUS for:

Carl J. Paperiello
Deputy Executive Director
for Materials, Research and
State Programs

Dated this 3rd day of January 2002