

September 8, 2005

Docket Nos. 03033097
03030462
EA No. 05-078
05-079

License Nos. 45-25239-01
45-24974-01

Mr. James R. Carpenter, P.E.
Chief Engineer and Vice President
ECS Mid-Atlantic, LLC
14026 Thunderbolt Place, Suite 300
Chantilly, VA 20151

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$3,250 (NRC Inspection Report Nos. 03033097/2004001 and
03030462/2004002; and Investigation Report No. 1-2004-019)

Dear Mr. Carpenter:

This refers to two separate inspections conducted on May 5 and 6, 2004, at your Richmond, Virginia, and Chantilly, Virginia facilities, and a subsequent related investigation completed by our Office of Investigations (OI), on March 14, 2005. During the inspections, it was determined that licensed material contained in portable gauging devices was transferred from each facility to an individual not authorized to receive or possess byproduct material. The purpose of the OI investigation was to determine if these transfers occurred with the knowledge that they were in violation of NRC requirements.

As described in our letter sent to you on June 30, 2005, two apparent violations of NRC requirements were identified, both of which involved the improper transfers. Our letter also noted that the violations were being considered for escalated enforcement in accordance with the NRC Enforcement Policy. As noted in the Factual Summary of the OI Investigation Report attached to the letter, the violation that occurred at your Chantilly facility was determined to be willful. The June 30, 2005 letter also provided you the opportunity to discuss the NRC findings at a Predecisional Enforcement Conference (PEC).

On July 28, 2005, a PEC was conducted in the Region I office with you and members of your staff to discuss the apparent violations, their significance, their root causes, and your corrective actions. At the conference, you (1) acknowledged the facts surrounding the transfers of licensed material to an individual not authorized to receive or possess the material, (2) discussed your immediate and long term corrective actions to ensure that the violations will not recur, and (3) took exception to the NRC conclusion that the transfers from your Chantilly facility were willful. At the conference, we also confirmed that the name on your license has been changed from Engineering Consulting Services, Inc. to ECS Mid-Atlantic, LLC. A copy of the Enforcement Conference Report was sent to you on August 15, 2005.

Based on the information developed during the inspections and the OI investigation, and the information provided by you during the enforcement conference, the NRC has determined that two violations of NRC requirements occurred. The first violation relates to the sale and transfer of a portable gauging device containing licensed material from your Richmond facility (License No. 45-25239-01) on September 15, 2003, to an individual not authorized by the NRC or an Agreement State to receive or possess licensed material. Although the individual was certified to service gauges at your facility, he was not authorized to possess the devices.

The second violation relates to the willful transfer of several portable gauges (containing licensed material) from your Chantilly facility (License No. 45-24974-01) to the same individual on April 29, 2004, and other undetermined dates. In contesting the willful characterization of this violation, you stated that before the illegal transfer occurred, staff at your Chantilly location had received documents verifying that the individual was certified by the device manufacturer to repair, calibrate, and train personnel on the use of the devices. This manufacturer certification is not a license authorizing possession of licensed material. Notwithstanding your contention, the NRC maintains the violation was willful because the Chantilly facility received several messages from the ECS Construction Services Manager questioning whether the individual was licensed to receive/possess and/or transfer portable gauges. Based on all the available information, the NRC has concluded that personnel employed at your Chantilly facility exercised careless disregard by transferring several portable gauges, on several separate occasions, to an individual that was not authorized to receive and/or possess licensed material.

Although the individual who received the gauges from your Richmond and Chantilly facilities was knowledgeable in the proper procedures for handling radioactive material, your staff's actions are of concern to the NRC because the transfer of licensed material to an individual not authorized to receive or possess the material is a violation of NRC requirements and circumvents the NRC licensing process. The transfer of licensed material to an unauthorized individual could have exposed members of the public to unnecessary risks. Therefore, these violations are categorized at Severity Level III 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 violation. Because your Richmond facility has not been the subject of escalated enforcement actions in the last two 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 removing the unauthorized individual from your company's vendor list; (2) providing specific instructions to all company Radiation Safety Officers regarding the proper procedures for transferring NRC licensed material; and (3) increasing required audits at your sites to ensure compliance with regulatory requirements.

With respect to the Richmond facility, because the violation was not willful and to encourage prompt and comprehensive correction of the violation, I have been authorized not to propose a civil penalty for this violation. However, significant violations in the future could result in a civil penalty. In addition, issuance of this Notice of Violation constitutes escalated enforcement action that may subject your Richmond facility to increased inspection effort.

With respect to the Chantilly facility, because the NRC determined that the violation was willful, the NRC considered whether credit was warranted for *Identification and Corrective Action* in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy. Credit for identification is not warranted because the violation was identified by the NRC during the inspection, and not because of any special self-monitoring effort by your management or staff. Credit for corrective actions is warranted because your corrective actions were considered prompt and comprehensive. These corrective actions were the same as those taken for the Richmond facility.

Therefore, to emphasize the significance of willful noncompliance with NRC requirements, as well as prompt identification when a noncompliance occurs, 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 in the base amount of \$3,250 for the violation that occurred at your Chantilly facility. In addition, issuance of this Notice constitutes escalated enforcement action that may subject your Chantilly facility to increased inspection effort.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notices when preparing your response. In your response, you may reference any previous correspondence that is applicable to this case to avoid repetitive submissions. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

If you disagree with the enforcement sanction taken with respect to the willful violation at your Chantilly facility, you may request alternative dispute resolution (ADR) with the NRC concerning that violation. ADR is a general term encompassing various techniques for resolving conflict outside of court using a neutral third party. The NRC is currently utilizing ADR during a pilot program for issues involving willful or deliberate violations. The technique that the NRC has decided to employ during the pilot program is mediation. In mediation, a neutral mediator with no decision-making authority helps parties clarify issues, explore settlement options, and evaluate how best to advance their respective interests. The mediator's responsibility is to assist the parties in reaching an agreement; however, the mediator has no authority to impose a resolution upon the parties. Mediation is a confidential and voluntary process. If the parties to the ADR process (the NRC and the licensee) agree to use ADR, they select a mutually agreeable neutral mediator and share equally the cost of the mediator's services. Generally, the NRC is willing to discuss the resolution of three potential issues regarding any willful or deliberate violation: (1) whether a violation occurred; (2) the appropriate enforcement action; and (3) the appropriate corrective actions for the violation. Additional information concerning the NRC's pilot program can be obtained at <http://www.nrc.gov/what-we-do/regulatory/enforcement/adr.html>. The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program as an intake neutral. Intake neutrals perform several functions, including: assisting parties in determining the ADR potential for their case, advising parties regarding the ADR process, aiding the parties in selecting an appropriate mediator, explaining the extent of confidentiality, and providing other logistical assistance as necessary. Please contact ICR at (607) 255-1124 within 10 days of the date of this letter if you are interested in pursuing resolution of this issue through ADR. You may also contact Nick Hilton, Office of Enforcement, at (301) 415-3055 for additional information.

Mr. James R. Carpenter

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Questions concerning this letter and the enclosed Notices may be addressed to John D. Kinneman, Chief, Security and Industrial Nuclear Safety Branch, Division of Nuclear Materials Safety. Mr. Kinneman can be reached at telephone number (610)-337-5252.

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/ Marc Dapas Acting For
Samuel J. Collins
Regional Administrator

Docket Nos. 03033097
03030462
License Nos. 45-25239-01
45-24974-01

Enclosures:

1. Notice of Violation to the Richmond, Virginia, Facility
2. Notice of Violation and Proposed Imposition of Civil Penalty to the Chantilly, Virginia, Facility
3. NUREG/BR-0254 Payment Methods (Licensee only)

cc w/encl:

Lincoln K Swineford, Radiation Safety Officer, Richmond, VA
Omer M. Duzyol, Radiation Safety Officer, Chantilly, VA
Commonwealth of Virginia
State of Maine

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SISP Review Complete: _____ **JDK** _____ **(Reviewer's Initials)**

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|--------|----------|--------------------|--------------------|------------|--------------|
| OFFICE | ORA/RI | DNMS/RI | DNMS/RI | ORA/RI | ORA/RI |
| NAME | JWray | JKinneman | GPangburn | DHolody | KFarrar |
| DATE | 08/11/05 | 08/11/05 | 08/12/05 | 08/16/05 | 08/12/05 |
| OFFICE | OI/RI | ORA/RI | OGC | NMSS | OE |
| NAME | EWilson | SCollins (MLD for) | BJones * (GML for) | GMorell ** | MJohnson *** |
| DATE | 08/12/05 | 08/18/05 | 08/30/05 | 08/30/05 | 09/02/05 |

OFFICIAL RECORD COPY

- * Based on e-mail A. Hayes to J. Wray on 8/30/05.
- ** G. Morell per e-mail A. Hayes to J. Wray on 8/30/05.
- *** M. Johnson per telecon A. Hayes to J. Wray on 9/2/05.

ENCLOSURE

NOTICE OF VIOLATION

ECS Mid-Atlantic, LLC
Richmond, VA

Docket No. 03033097
License No. 45-25239-01
EA 05-078

During an NRC inspection conducted on May 5, 2004, as well as a subsequent investigation completed by the NRC Office of Investigations on March 16, 2005, one violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," the violation is listed below:

10 CFR 30.41 requires, in part, that before transferring byproduct material to another party, the licensee transferring the material must verify that the other party possesses a specific or general license from the NRC or an Agreement State to receive the material, and the other party's license authorizes the receipt of the type, form, and quantity of byproduct material to be transferred. 10 CFR 30.41(d) specifies acceptable methods for this verification.

Contrary to the above, on September 15, 2003, the licensee transferred, by sale, a CPN nuclear gauge (containing byproduct material) from its facility in Richmond, Virginia, to Universal Calibrations (UC) of Westbrook, Maine, and UC was not authorized by an NRC or an Agreement State license to receive the material, and the licensee did not verify by an acceptable method whether UC was authorized to receive the material.

This is a Severity Level III violation (Supplement VI).

Pursuant to the provisions of 10 CFR 2.201, ECS Mid-Atlantic, LLC, is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555, with a copy to the Regional Administrator, Region I, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each violation: (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 to avoid further violations, and (4) 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, an order or a Demand for Information may be issued as to why the license should not be modified, suspended, or revoked, or why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

If you contest this enforcement action, you should also provide a copy of your response to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, any response which contests an enforcement action shall be submitted under oath or affirmation.

Notice of Violation
ECS Mid-Atlantic, LLC

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Your response will be placed in the NRC Public Document Room (PDR) and on the NRC Web site at <http://www.nrc.gov/reading-rm.html>. To the extent possible, it should, therefore, not include any personal privacy, proprietary, or safeguards information so that it can be made publically available without redaction. However, if you find it necessary to include such information, you should clearly indicate the specific information that you desire not to be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public.

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days.

Dated this 8th day of September 2005

ENCLOSURE

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

ECS Mid-Atlantic, LLC
Chantilly, VA

Docket No. 03030462
License No. 45-24974-01
EA 05-079

During an NRC inspection conducted on May 5 and 6, 2004, as well as a subsequent investigation completed by the NRC Office of Investigations on March 16, 2005, one violation of NRC requirements was identified. 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 violation and associated civil penalty are set forth below:

10 CFR 30.41 requires, in part, that before transferring byproduct material to another party, the licensee transferring the material must verify that the other party possesses a specific or general license from the NRC or an Agreement State to receive the material, and the other party's license authorizes the receipt of the type, form, and quantity of byproduct material to be transferred. 10 CFR 30.41(d) specifies acceptable methods for this verification.

Contrary to the above, on April 29, 2004, and other undetermined dates prior to this date, the licensee willfully transferred nuclear gauges (containing byproduct material) from its facility in Chantilly, Virginia, to Universal Calibrations (UC) of Westbrook, Maine, and UC was not authorized by an NRC or an Agreement State license to receive the material, and the licensee did not verify by an acceptable method whether UC was authorized to receive the material.

This is a Severity Level III violation (Supplement VI)

Civil Penalty \$3,250.

Pursuant to the provisions of 10 CFR 2.201, ECS Mid-Atlantic, LLC is 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" and should include for each violation: (1) admission or denial of the violation, (2) the reasons for the violation if admitted, and if denied, the reasons why, (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, an Order or a Demand for Information may be issued as to why the license should not be modified, suspended, or revoked or why such other action as may be proper should not be taken. Consideration may be given to extending the response time for good cause shown.

Within the same time as provided for the response required above 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, an order imposing the civil penalty will be issued. 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 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 two working days.

Dated this 8th day of September 2005