

November 22, 2005

IA-05-030

Ralph Black  
HOME ADDRESS DELETED  
UNDER 10 CFR 2.390

SUBJECT: NOTICE OF VIOLATION (NRC OFFICE OF INVESTIGATIONS REPORT NO. 2-2005-003; NRC INSPECTION REPORT NO. 03034284/2004001)

Dear Mr. Black:

This letter is in reference to an NRC inspection conducted on November 18, 2004 and a related investigation completed on May 19, 2005, by the NRC's Office of Investigations (OI) at the facilities of Foundation Engineering Sciences, Inc. (FES) located in Newport News, Virginia. The OI investigation was initiated to determine if you, as an authorized gauge user, deliberately failed to maintain control of a licensed portable gauging device that was subsequently stolen and deliberately failed to report the theft of the material to your management.

In a letter we sent you on August 26, 2005, which contained a factual summary of the OI investigation, we informed you that based on the inspection and OI investigation, the NRC concluded that you were in apparent deliberate violation of 10 CFR 30.10, "Deliberate Misconduct", in that you deliberately caused FES to violate NRC requirements. Specifically, you deliberately failed to control a licensed portable gauging device that was subsequently stolen, and you deliberately failed to report the theft of licensed material to your management, which resulted in FES failing to file a required immediate report with the NRC. Our letter also informed you that the NRC was considering escalated enforcement action for the apparent violation of 10 CFR 30.10 in accordance with its enforcement policy, and you were provided an opportunity to either respond in writing to this apparent violation, attend a predecisional enforcement conference, or request Alternate Dispute Resolution (ADR) with the NRC in an attempt to resolve this issue.

In a telephone conversation on September 19, 2005, you informed Mr. James Schmidt of my staff that you did not believe that a predecisional enforcement conference or ADR was required, but that you would provide a written response. In your response, dated September 22, 2005, you acknowledged that the nuclear gauge was not locked to the bed of your truck and was stolen from your vehicle. You also stated that you immediately notified the FES Project Manager that your gauge had been stolen and called the police to file a report. In addition, you asserted that the gauge was not locked because FES had not provided padlocks. Your assertions that (1) you promptly notified the Project Manager of the theft, and (2) the violations were a result of not being provided locks by FES, were not substantiated during the inspection or the OI investigation.

**Certified Mail**  
**Return Receipt Requested**

Based on the information that we obtained during the inspection and the investigation, and our consideration of the information that you provided in your written response dated September 22, 2005, the NRC has concluded that you violated 10 CFR 30.10 in that you (1) deliberately failed to maintain control of a licensed portable gauging device, contrary to 10 CFR 20.1801, and (2) deliberately failed to report the theft of the material, contrary to 10 CFR 20.2201. Your deliberate actions placed FES in violation of NRC requirements, and, as such, you are in violation of 10 CFR 30.10, "Deliberate Misconduct." This violation is cited in the enclosed Notice of Violation (Notice).

Deliberate violations are a very serious concern to the NRC because the NRC regulatory program relies, in part, on the honesty and integrity of NRC licensees and their employees. In addition, these violations are of concern to the NRC because (1) the failure to control radioactive material resulted in the gauge being uncontrolled in the public domain for approximately eleven days; and (2) such sources can result in substantial unintended radiation exposure to an individual if the source is not in the shielded position. After considering the significance of the violation, and in particular, the deliberate nature of your actions, this violation has been categorized at Severity Level III in accordance with the NRC Enforcement Policy.

In determining the appropriate sanction to be issued to you in this case, the NRC considered all available enforcement options, including issuing an Order prohibiting your involvement in NRC-licensed activities. However, after consultation with the Director, Office of Enforcement, and after considering the circumstances of this case, I have decided that issuance of an Order is not warranted given that (1) the safety consequence of this case was low in that it is unlikely that any member of the public received measurable radiation exposure, (2) you were not functioning as a supervisor at the time of your actions, and (3) disciplinary action was taken against you by FES. However, your actions were egregious since your failure to control the nuclear gauge resulted in the theft of the gauge and the loss of radioactive material into the public domain for eleven days. Therefore, the NRC has determined that a Notice of Violation is warranted in this case. A Notice of Violation was also issued to FES on this date, based, in part, on your actions. Enclosure 2 is a copy of the enforcement action taken against FES.

You should also be aware that any similar actions in the future involving NRC licensed activities at a licensed facility, whether identified by your employer, or by the NRC during an inspection or investigation, could result in the NRC taking significant enforcement action against you and potential criminal prosecution.

The NRC has concluded that based on the information you provided in your September 22, 2005, letter, you are not required to respond to this violation. If you choose to provide additional information, you should follow the instructions specified in the enclosed 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 conflict outside of court using a neutral third party. The technique that the NRC has decided to employ during a pilot program which is now in effect is mediation. Additional information concerning the NRC's pilot program is described in the enclosed brochure (NUREG/BR-0317) and 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

Mr. Ralph Black

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neutral. Please contact ICR at (877) 733-9415 within 10 days of the date of this letter if you are interested in pursuing resolution of this issue through ADR. If you have any questions regarding this letter, please contact Mr. John Kinneman of my staff at (610) 337-5252.

This letter will be maintained by the Office of Enforcement (OE) in an NRC Privacy Act system of records, NRC-3, "Enforcement Actions Against Individuals." The NRC-3 system notice, which provides detailed information about this system of records, can be accessed from our Web site at <http://www.nrc.gov/reading-rm/foia/privacy-systems.html>.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, any response to this letter, and our August 26, 2005, letter as well as your September 22, 2005 response to that letter, 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). 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. The NRC also includes significant enforcement actions on its web site at <http://www.nrc.gov>; select **What We Do, Enforcement**, then **Significant Enforcement Actions**.

Sincerely,

*/RA/ Original Signed by Marc Dapas for*

Samuel J. Collins  
Regional Administrator

Enclosures:

1. Notice of Violation
2. Letter to FES with Notice of Violation

cc w/encls:  
State of Virginia

Mr. Ralph Black

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Enforcement Coordinators RII, RIII, RIV

DScrenci, PAO-RI

NSheehan, PAO-RI

JKinneman, DNMS

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RI OE Files (w/concurrences)

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

DOCUMENT NAME: E:\Filenet\ML053220011.wpd

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|--------|----------|----------|-----------------------|------------------------|------------------|
| OFFICE | RI/ORA   | RI/ORA   | RI/DNMS               | RI/DNMS                | RI/OI            |
| NAME   | JWray    | DHolody  | JKinneman             | GPangburn              | EWilson          |
| DATE   | 10/14/05 | 10/28/05 | 10/20/05              | 10/24/05               | 10/25/05         |
| OFFICE | RI/ORA   | HQ/NMSS  | HQ/OGC                | HQ/OE                  | RI/RA            |
| NAME   | KFarrar  | GMorell  | S. Hamrick for BJones | C. Nolan for M Johnson | SCollins/MLD for |
| DATE   | 10/25/05 | 11/07/05 | 11/09/05              | 10/15/05               | 11/17/05         |

OFFICIAL RECORD COPY

## ENCLOSURE 1

### NOTICE OF VIOLATION

Mr. Ralph Black

IA-05-030

During the NRC inspection conducted on November 18, 2004 and a subsequent investigation by the NRC Office of Investigations completed on May 19, 2005, at the facilities of Foundation Engineering Sciences, Inc. (FES) located in Newport News, Virginia, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 30.10(a) requires, in part, that any employee of a licensee may not engage in deliberate misconduct that causes a licensee to be in violation of any regulation of the Commission. Pursuant to 10 CFR 30.10(c), deliberate misconduct means an intentional act or omission that the person knows would cause a licensee to be in violation of any regulation of the Commission.

10 CFR 20.1801 requires that the licensee secure from unauthorized removal or access licensed materials that are stored in controlled or unrestricted areas. 10 CFR 20.1802 requires 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. As defined in 10 CFR 20.1003, controlled area means an area, outside of a restricted area but inside the site boundary, access to which can be limited by the licensee for any reason; and unrestricted area means an area, access to which is neither limited nor controlled by the licensee. Additionally, Condition 16 of License Number 45-25374-01 requires that a nuclear gauge or gauge container be locked when in transport, storage or when not under the direct surveillance of an authorized user, to prevent unauthorized or accidental removal of the source from its shielded position.

10 CFR 20.2201(a)(1)(I) requires that each licensee make immediate phone notification to the NRC following identification of the loss or theft of licensed material in excess of 1000 times the quantity listed in Appendix C to Part 20.

Contrary to the above, in October 2004, you, as an authorized nuclear gauge user employed by FES, willfully engaged in deliberate misconduct that caused FES, an NRC licensee, to be in violation of Commission regulations. Specifically, on October 18, 2004, (1) you knowingly left a nuclear gauge unsecured in the back of your vehicle while parked in a public parking lot, an unrestricted area, which resulted in the theft of the gauge containing quantities of licensed material in excess of 1000 times the quantity listed in Appendix C to Part 20, and (2) you willfully failed to immediately notify your employer of the theft, and did not do so until October 25, 2004. These actions caused the licensee to be in violation of 10 CFR 20.1801, 10 CFR 20.1802, and 10 CFR 20.2201(a)(1).

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

The NRC has concluded that the information you provided in your letter, dated September 22, 2005, adequately addresses this issue. Therefore, you are not required to respond to this violation. However, if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation, IA 05-030" and send it 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.

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, D.C. 20555-0001.

Any 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). Therefore, to the extent possible, it should not include any personal privacy 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 Electronic Reading Room). If personal privacy 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).

Dated this 22nd day of November 2005