

May 22, 2006

Docket No. 03030462  
EA 05-177

License No. 45-24974-01

Mr. Leo J. Titus, Jr.  
Vice President  
ECS Mid-Atlantic, LLC  
14026 Thunderbolt Place, Suite 100  
Chantilly, VA 20151

SUBJECT: NOTICE OF VIOLATION (NRC Inspection Report No. 030-30462/2005-002; and  
NRC Office of Investigations Report No. 1-2006-010)

Dear Mr. Titus:

This letter refers to the special NRC inspection conducted on August 9, 2005, at your facilities in Chantilly and Ashburn, Virginia. During the inspection, the NRC reviewed the circumstances associated with two instances involving damage to two portable nuclear gauges, one on June 24, 2005, and one on July 13, 2005. The results of the inspection were discussed with Mr. Stanley Murphy, your Radiation Safety Officer (RSO), at the conclusion of the inspection on August 9, 2005.

On October 11, 2005, we sent you a letter which included the inspection report, and informed you that the NRC was considering escalated enforcement action for the incident that occurred on June 24, 2005, in Fairfax, Virginia. Our letter also informed you that, based on the results of the inspection, no violations were identified associated with the event that occurred on July 13, 2005, in Gainesville, Virginia, and that two additional apparent violations of NRC requirements were identified that were not subject to escalated enforcement.

Prior to our October 11 letter, Mr. John Kinneman of my staff informed Mr. Murphy, during a telephone discussion on September 12, 2005, that the NRC did not need additional information to make an enforcement decision. However, Mr. Kinneman provided Mr. Murphy an opportunity to attend a predecisional enforcement conference (PEC) or to provide a written response, prior to the NRC determining appropriate enforcement action. During this conversation, Mr. Murphy informed the NRC that you did not believe that a PEC was needed, but that you would provide a written response.

Regarding the June 24, 2005, event, an employee did not control and maintain constant surveillance of a nuclear gauge when she left it unattended in a field and returned to her car approximately forty yards away. While the employee was in her car, the gauge was run over

and destroyed by a front end loader. Your RSO concluded that the source remained in its shielded position and no unintended radiation exposure to members of the public occurred. The gauge and source were subsequently removed from the site and transferred to a licensed facility for proper recycling.

In your response, dated October 24, 2005, to the NRC October 11, 2005 letter, you stated that (1) you do not dispute the facts as presented in the inspection report, and (2) the violation on June 24, 2005, resulted from an employee's decision to disregard clearly-stated safety policies. In your response, you also stated that in light of the individual's decision to disregard your policy, you do not believe your organization is culpable for the actions of the employee.

A subsequent investigation by the NRC Office of Investigations (OI) completed on March 23, 2006, confirmed that the individual deliberately violated the requirements. Further, the individual had been involved in a prior occurrence on November 1, 2004, and was counseled regarding the proper procedures for maintaining constant control of a gauge and the consequences for an employee who failed to comply with them. During the OI investigation, the individual admitted that she made a conscious decision to leave the gauge unattended, and that she had received training that specifically explained the requirements that prohibited leaving the gauge unattended. Nonetheless, the NRC holds licensees responsible for the actions of its employees. Therefore, the NRC has concluded that ECS Mid-Atlantic failed to comply with NRC requirements on June 24, 2005.

Although there is no evidence that unauthorized persons came into direct contact with the gauge when it was left unattended, this violation is of concern to the NRC because (1) the failure to control the gauge containing the radioactive material could have resulted in the loss or theft of the material, or, as occurred in this case, damage to the gauge, and (2) members of the public could have been exposed to radiation if the damage to the gauge had resulted in the sources being in the unshielded position. Therefore, this violation is classified at Severity Level III in accordance with the NRC Enforcement Policy. In addition, given that the violation was deliberate, the NRC considered escalating the severity level. However, the NRC has decided not to escalate the severity level after considering that (1) the individual was not a licensee official nor acting in a supervisory capacity at the time of the incident, (2) the event did not result in any worker or member of the public receiving measurable radiation doses from the damaged gauge, and (3) there was no economic nor financial gain for the licensee or individual as a result of the violation.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$3,250 is considered for a Severity Level III violation. Your facility has been the subject of escalated enforcement action within the last two years. For example, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,250 (Reference EA-05-079), was issued on September 8, 2005, for transferring multiple portable density gauges containing NRC licensed material to an individual not authorized to receive such byproduct material. In addition, on February 1, 2005, your facility was issued a Severity Level III violation for failure to control or maintain constant surveillance of portable nuclear gauges on three separate occasions in 1999 (Reference EA-05-005). Therefore, the NRC considered whether credit was warranted in the subject case for *Identification* and *Corrective Action* in accordance with the civil penalty assessment process set forth in Section VI.C.2 of the Enforcement Policy. Although the

violation was self-identified as a result of an event, credit for *Identification* is warranted because you immediately reported the violation to the NRC and took noteworthy actions to determine the root cause. Credit for *Corrective Actions* is also warranted because your corrective actions were considered prompt and comprehensive. These corrective actions included, but were not limited to: (1) immediately taking disciplinary action against the responsible gauge user; (2) discussing this event with other gauge users at monthly safety meetings; (3) notifying other company offices of this event and emphasizing the importance of compliance with security requirements; and (4) assigning team leaders to frequently observe gauge operators in the field.

Therefore, since credit is warranted for both identification and corrective action, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice of Violation without a civil penalty for this Severity Level III violation so as to encourage prompt identification and comprehensive correction of violations. However, you should be aware that significant violations in the future could result in a civil penalty. In addition, issuance of this Notice constitutes escalated enforcement action that may subject you to increased inspection effort.

If you disagree with this enforcement sanction, you may request Alternative Dispute Resolution (ADR) with the NRC in an attempt to resolve any disagreement on whether a violation occurred and the appropriate enforcement action. 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 ADR program as a neutral party. You must contact ICR at (877) 733-9415 within 10 days of the date of this letter if you are interested in pursuing resolution of these issues through ADR.

Two additional violations are also being cited as a result of the inspection. These violations are described in the enclosed Notice and they have been classified at Severity Level IV. One of the violations involved the failure to use a minimum of two independent physical barriers to secure a portable gauge from unauthorized removal, contrary to the requirements of 10 CFR 30.34 (i). Specifically, on August 9, 2005, an NRC inspector observed that a portable gauge, not in use and unattended, was being stored in an authorized user's vehicle without a chain locking the gauge to the wall or floor of the vehicle. The vehicle, at a construction site in Ashburn, Virginia, and the transport case containing the gauge, were both locked. However, there was no second independent physical control that formed a tangible barrier securing the gauge inside the vehicle, contrary to the requirements of 10 CFR 30.34(i). Although a violation of 10 CFR 30.34(i) was identified, we are exercising enforcement discretion to disposition this violation at Severity Level IV since your actions were not willful, you retained possession of the portable gauge, and you took appropriate corrective action to address the violation to prevent recurrence. However, any future violations of 10 CFR 30.34(i) will be considered for escalated enforcement action.

The NRC has concluded that 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 in this letter, and in Inspection Report No. 03030462/2005002, dated October 11, 2005. Therefore, you are not required to respond to this violation 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 "Rules of Practice," 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 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/ Marc L. Dapas Acting For*

Samuel J. Collins  
Regional Administrator

Enclosures:

1. Notice of Violation
2. Post-Investigation ADR Program Brochure NUREG/BR-0317

cc w/encl:  
Stanley J. Murphy, Corporate Radiation Safety Officer  
Commonwealth of Virginia

Mr. L. J. Titus, Jr.

DISTRIBUTION:

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CMiller, NMSS

GMorell, NMSS

LCamper, NMSS

CMiller, OEDO

BSosa, OEDO

Enforcement Coordinators E-mail directly to individual coordinators

RII, RIII, RIV (C. Evans, RII --- K. O'Brian, RIII --- G. Sanborn, RIV)

SGagner, OPA

HBell, OIG

JSchlueter, OSTP

GCaputo, OI

LTremper, OC

DScrenci, RI

NSheehan, RI

GPangburn, RI

FCostello, RI

JKinneman, RI

KFarrar, RI

DHolody, RI

JWray, RI

CO'Daniell, RI

SVillar, DNMS

R1DNMS\_Mail

Region I OE Files (with concurrences)

**SISP Review Complete:** \_\_\_\_\_ **GCP** \_\_\_\_\_ **(Reviewer's Initials)**

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NAME	JWray	JKinneman/GCP for	GPangburn	EWilson/MAM for	KFarrar
DATE	05/09/06	05/09/06	05/09/06	05/10/06	05/10/06
OFFICE	RI/ORA	HQ/NMSS	HQ/OGC	HQ/OE	RI/ORA
NAME	DHolody	GMorell for C. Miller	BJones	MJohnson/Leuhman for	SCollins/MLD for
DATE	05/10/06	5/11/06	5/12/06	05/15/06	05/20/06

Mr. L. J. Titus, Jr.

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## ENCLOSURE

### NOTICE OF VIOLATION

ECS Mid-Atlantic, LLC  
Chantilly, VA

Docket No. 030-30462  
License No. 45-24974-01  
EA 05-177

During an NRC inspection conducted on August 9, 2005, as well as a subsequent investigation by the NRC Office of Investigations completed on March 23, 2006, three violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. 10 CR 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.

Contrary to the above, on June 24, 2005, the licensee did not secure from unauthorized removal or limit access to a CPN Model MCIDRP portable gauge containing licensed material, located at a temporary job site in Fairfax City, Virginia, which was in an unrestricted area and not in storage, nor did the licensee control and maintain constant surveillance of this licensed material. While the gauge was unattended, the gauge was run over by a front end loader and destroyed.

This is a Severity Level III Violation (Supplement IV).

- B. 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 August 9, 2005, the licensee failed to use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, when a portable gauge was not under the control and constant surveillance of the licensee. Specifically, at a temporary job site in Ashburn, Virginia, a second independent physical control was not present in the SUV containing a CPN Model MC1DRP portable gauge, and the gauge was not under the control and constant surveillance of the licensee.

This is a Severity Level IV Violation (Supplement VI).



- 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 U.S. Department of Transportation (DOT) in 49 CFR Parts 107, 171 through 180, and 390 through 397 appropriate to the mode of transport.

49 CFR 172.403 requires, in part, with exceptions not applicable here, that each package of radioactive material be labeled, as appropriate with two RADIOACTIVE WHITE-I, RADIOACTIVE YELLOW-II, or RADIOACTIVE YELLOW-III labels on opposite sides of the package. The contents, activity, and transportation index must be entered in the blank spaces on the label using a legible and durable, weather resistant means. The contents entered on the label must include the name or abbreviation (e.g., <sup>99</sup>Mo) of the radionuclides as taken from the listing in 49 CFR 173.435, or for mixtures of radionuclides, those nuclides determined in accordance with provisions of 49 CFR 173.433(f), with consideration of space available on the label. The activity must be expressed in terms of the appropriate SI units (e.g., Becquerel, Terabecquerel etc.), or in terms of appropriate SI units followed by customary units (e.g., curies, millicuries, or microcuries)

Contrary to the above, on August 9, 2005, the licensee failed to ensure that the required information on the package containing radioactive material was legible. Specifically, at a temporary job site in Ashburn, Virginia, the RADIOACTIVE YELLOW - II labels affixed to the carrying case used to transport a CPN Model MC1DRP portable gauge containing licensed material, were torn and the contents and activity of the package printed on the labels were illegible.

This is a Severity Level IV Violation (Supplement V).

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken and planned to correct the violations and prevent recurrence, and the date when full compliance was achieved, has been adequately addressed in this letter, and in Inspection Report No. 03030462/2005002 dated October 11, 2005. Therefore, you are not required to respond in accordance with the provisions of 10 CFR 2.201 unless the descriptions do not accurately reflect your corrective actions or your position. In that case, or if you choose to respond with additional information, clearly mark your response as a "Reply to a Notice of Violation; EA-05-177," 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.

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, D.C. 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.

Your response will be placed in the NRC Public Document Room (PDR) and on the NRC Web site. 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 22nd day of May 2006