

December 21, 2006

EA-06-252

Edward J. Sander, P.E.
Associate Vice President
Pennoni Associates, Inc.
2041 Avenue C, Suite 100
Bethlehem, PA 18017

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$3,250 (NRC Inspection Report No. 03017570/2006002)

Dear Mr. Sander:

This refers to the inspection conducted between August 21 and September 21, 2006, at your facility in Bethlehem, and temporary job sites in Rehrersburg and Chambersburg, Pennsylvania. During the inspection, the NRC reviewed the circumstances related to the loss on, August 19, 2006, of a portable nuclear density gauge containing licensed material that was inadvertently left uncontrolled in the public domain for approximately four days. You reported the loss of the device to the NRC by telephone on August 21, 2006, and followed up this verbal report with a letter dated September 21, 2006, wherein you described your corrective actions taken to prevent recurrence. The gauge was recovered on August 23, 2006, and properly secured in one of your storage facilities.

As described in the NRC inspection report sent to you on November 9, 2006, three apparent violations of NRC requirements were identified during the NRC inspection and were being considered for escalated enforcement in accordance with the NRC Enforcement Policy. The apparent violations included the failure to: (1) use a minimum of two independent physical controls to secure the aforementioned portable gauge while it was not under the control and surveillance of your staff; (2) control and maintain constant surveillance of the gauge while it was in an unrestricted area, and (3) report by telephone immediately after you determined that the gauge was lost. In the letter transmitting the inspection report, the NRC informed you that a Predecisional Enforcement Conference (PEC), open for public observation, was scheduled for November 28, 2006, to discuss the apparent violations, their causes and your corrective actions. At the PEC, you stated that Pennoni Associates takes the security of licensed material very seriously, and described your actions to recover the lost gauge and your corrective actions to preclude recurrence of this event. A summary of the PEC was sent to you on December 6, 2006.

Based on the information developed during the inspection, and the information provided by you during the PEC, the NRC has determined that three violations of NRC requirements occurred, as described herein. The violations are cited in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) and the circumstances surrounding them are described in detail in the subject inspection report. The violations occurred when the authorized gauge user loaned his vehicle containing the gauge to a relative who was not a licensee representative and,

therefore, was considered a member of the public. Subsequently, the box containing the gauge was forcibly removed from the vehicle and placed at a private residence in Bethlehem, Pennsylvania, where it was recovered four days later. During that time, Pennoni Associates did not have control of the gauge.

The first violation involved the failure of the authorized user to ensure that the gauge was secured with a minimum of two independent physical barriers to prevent unauthorized removal, as required by 10 CFR 30.34(i). Although the gauge was secured to the vehicle in a locked transport container in the rear seat (one barrier), the second barrier (locked door) was compromised when the authorized user gave the vehicle keys to an unauthorized individual who drove off with the vehicle. The second violation involved the failure to control and maintain constant surveillance of the licensed material within the gauge while the material was in the public domain, an unrestricted area, from August 19 to August 23, 2006, as required by 10 CFR 20.1802. The third violation involved the failure to immediately report the loss of licensed material to the NRC, as required by 10 CFR 20.2201(a).

At the November 28, 2006 PEC, you acknowledged that a violation occurred, but stated that the failure to use two independent physical controls to secure the portable gauge, and the failure to control and maintain constant surveillance of licensed material that was in an unrestricted area should be considered one violation. You also stated that the Radiation Safety Officer (RSO) notified the NRC of the missing gauge immediately after he determined that persons in unrestricted areas could be exposed to radiation, and therefore a violation of 10 CFR 20.2201(a) did not occur. With respect to the first two violations, the NRC concluded that they were separate and distinct because the first violation occurred when the authorized user lost control of the gauge on August 19, 2006, and the second violation occurred over the subsequent four days when the gauge was missing. With respect to the reporting violation, although the RSO notified the NRC of the loss on August 21, 2006, he did so approximately 18 hours after becoming aware that the gauge was in the public domain (unrestricted area) and that members of the public could be exposed to radiation. Therefore, the NRC has concluded that you failed to make an immediate notification. However, the NRC also concluded that it was appropriate to categorize the three violations as one problem as discussed below.

Although you determined, and the NRC agreed with your determination, that the sources remained in their shielded position during the time the gauge was in the public domain and, therefore, no member of the public received any measurable radiation exposure, these violations are of concern to the NRC because (1) the failure to control radioactive material resulted in the gauge being unattended and in the public domain for approximately four days; and (2) such sources can result in unintended radiation dose to an individual if the sources are removed from their shielded position. Therefore, the three violations are categorized collectively as a Severity Level III problem in accordance with the NRC Enforcement Policy.

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$3,250 is considered for a Severity Level III violation involving the loss of radioactive material with this level of radioactivity. Because your facility has not been the subject of escalated enforcement action within 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, which you described in your letter dated September 21, 2006, and during the PEC held on

November 28, 2006, included, but were not limited to: (1) retrieving the gauge and securing it in your company's locked storage area; (2) taking disciplinary action against the authorized gauge user who failed to maintain control of the nuclear gauge; (3) briefing your staff on this event; (4) increasing field audits of authorized gauge users to ensure proper control of licensed material; and, (5) replacing the Radiation Safety Officer. Since credit is warranted for corrective action, application of the civil penalty assessment process would not normally result in a civil penalty. However, Section VII.A.1(g) of the Enforcement Policy indicates that a case involving the loss, abandonment, or improper transfer or disposal of a sealed source or device should normally be assessed a civil penalty of at least the base amount, notwithstanding the outcome of the civil penalty assessment process set forth in Section VI.C.2.

Therefore, to emphasize the importance of maintaining security and control of radioactive material, and immediately reporting the loss of licensed material, I have been authorized, after consultation with the Director, Office of Enforcement, to exercise discretion in accordance with Section VII.A.1.(g) of the Enforcement Policy and issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the base amount of \$3,250 for this Severity Level III problem. In addition, this Notice constitutes escalated enforcement action that may subject you to increased inspection effort.

The NRC has concluded that the provisions of 10 CFR 2.201, i.e., the 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 on the docket in this letter, in your letter dated September 21, 2006, in the inspection report issued on November 9, 2006, and/or in the additional information you provided at the November 28, 2006, PEC, as documented in the summary report issued on December 6, 2006. Therefore, although you are required to provide a response to the enclosed Notice of Violation and Proposed Imposition of Civil Penalty, you are not required to address the provisions of 10 CFR 2.201 unless the description herein, as well as in the inspection report, does not accurately reflect your corrective actions or your position. In that case, you should follow the instructions specified in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty.

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

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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

Docket No. 030-17570

License No. 37-17637-02

Enclosures:

1. Notice of Violation and Proposed Imposition of Civil Penalty
2. NUREG/BR-0254 Payment Methods (Licensee only)

cc: Commonwealth of Pennsylvania

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B Jones, OGC (Bradley)

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B. Sosa, OEDO

Enforcement Coordinators

RII, RIII, RIV

L. Lopez, OE

O. Samuel, OE

M Elwood, OGC

S Gagner, OPA

H Bell, OIG

J. Schlueter, FSME

D. Rathbun, FSME

G Caputo, OI

L Tremper, OCFO

D Screnci, PAO-RI

N Sheehan, PAO-RI

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Region I OE Files (with concurrences)

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NAME	GMorell**	CCarpenter**/DSolorio for	SCollins		
DATE	12/18/06	12/18/06	12/20/06		

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*see previous concurrence page

**per e-mail from LSreenivas to JWray on 12/19/06

Enclosure

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Pennoni Associates, Inc.
Bethlehem, PA

Docket No. 03017570
License No. 37-17637-02
EA No. 06-252

During an NRC inspection conducted at the Pennoni Associates facility in Bethlehem, Pennsylvania, and temporary job sites in Rehrersburg and Chambersburg, Pennsylvania, between August 21 and September 21, 2006, three violations of NRC requirements were 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. In accordance with the NRC Enforcement Policy, the violations and associated civil penalty are listed below:

- A. 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 19, 2006, the licensee failed to use a minimum of two independent physical controls to secure a portable gauge from unauthorized removal when the gauge was not under the control and constant surveillance of the licensee. Specifically, an authorized user loaned a vehicle containing NRC licensed material, i.e. a portable gauge, to an unauthorized individual. Although the gauge was secured to the vehicle in its locked transport container in the rear seat of the vehicle (one barrier), the second barrier (locked door) was compromised when the authorized user gave the vehicle keys to the unauthorized individual who drove off with the vehicle. As a result, only one independent physical barrier to secure the portable gauge and prevent its unauthorized removal remained.

- B. 10 CFR 20.1802 requires, in part, that the licensee control and maintain constant surveillance of licensed material that is in an unrestricted area. As defined in 10 CFR 20.1003, an unrestricted area means an area, access to which is neither limited nor controlled by the licensee.

Contrary to the above, from August 19 to August 23, 2006, the licensee failed to control and maintain constant surveillance of licensed material that was in an unrestricted area. Specifically, the gauge containing licensed material was left unsupervised in the public domain (an unrestricted area) for approximately four days.

- C. 10 CFR 20.2201 requires, in part, that each licensee immediately report by telephone after its occurrence becomes known to the licensee, any lost, stolen, or missing licensed material in an aggregate quantity equal to or greater than 1,000 times the

quantity specified in Appendix C to 10 CFR 20 under such circumstances that it appears to the licensee that an exposure could result to persons in unrestricted areas.

Contrary to the above, on August 20, 2006, the licensee knew that a portable gauge containing greater than 1,000 times Appendix C quantities of NRC licensed material was missing, and did not notify the NRC until the morning of August 21, 2006, approximately 18 hours after the loss of the licensed material became known. The gauge was in the public domain and persons in unrestricted areas could have been exposed to radiation.

This is a Severity Level III problem (Supplement IV).
Civil Penalty - \$3,250

The NRC has concluded that information regarding the reasons for the violations, the corrective actions taken to correct the violations and prevent recurrence, and the date when full compliance was achieved is already adequately addressed on the docket in this letter; in your letter dated September 21, 2006; in Inspection Report No. 03017570/2006002 issued on November 9, 2006; and/or during the predecisional enforcement conference held in the NRC Region I office with representatives from your company on November 28, 2006, as documented in the summary report issued on December 6, 2006. Therefore, although you are required to provide a response to the Notice and Proposed Imposition of Civil Penalty, you are not required to respond to the provisions of 10 CFR 2.201 unless the description herein, as well as in the inspection report, 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-06-252," 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.

The licensee may pay the civil penalty proposed above in accordance with NUREG/BR-0254 (copy enclosed) and by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, a letter clearly marked "Statement as to Payment of Civil Penalty" indicating when and by what method payment was made.

The licensee 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 of Violation and Proposed Imposition of Civil Penalty, 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 Atomic Energy Act, 42 U.S.C. 2282c.

The responses noted above (Reply to a Notice of Violation; EA-06-252, Statement as to Payment of Civil Penalty, or Answer to a Notice of Violation) should be addressed to: Cynthia Carpenter, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy addressed to: Samuel Collins, Regional Administrator, U.S. Nuclear Regulatory Commission, Region I, 475 Allendale Road, King of Prussia, PA 19406-1415.

Your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. Therefore, to the extent possible, the response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction. In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days.

Dated this 21st day of December 2006.