

December 27, 2006

EA-06-299
NMED No. 060666

Andrew Rath sack, President
Andrews Environmental Engineering, Inc.
3300 Ginger Creek Drive
Springfield, Illinois 62711

SUBJECT: NOTICE OF VIOLATION [NRC SPECIAL INSPECTION REPORT
NO. 030-34711/06-01(DNMS)] ANDREWS ENVIRONMENTAL
ENGINEERING, INC.

Dear Mr. Andrews:

This refers to information your Radiation Safety Officer (RSO) provided to the U.S. Nuclear Regulatory Commission (NRC) on November 2, 2006, that a portable gauge containing NRC-licensed materials was damaged at a field location in Brock, Indiana, earlier that day. The NRC conducted a special inspection from November 8 to 13, 2006, at your facility in Naperville, Illinois, to review the circumstances surrounding the event on November 2, 2006. One apparent violation of NRC requirements was identified during the inspection. The apparent violation concerned the failure of your gauge technician to control access to or maintain constant surveillance of NRC-licensed materials in an unrestricted area on November 2, 2006, in violation of 10 CFR 20.1802. The inspection report was provided to you on December 13, 2006.

In the letter transmitting the inspection report, we provided you with the opportunity to address the apparent violation identified in the report by either attending a predecisional enforcement conference (PEC) or by providing a written response before we made our final enforcement decision. On December 19, 2006, your RSO indicated that a PEC would not be requested and a letter dated November 29, 2006, would serve as your response to the apparent violations.

Based on the information developed during the inspection and the information contained in the November 29, 2006, letter from the licensee, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding it are described in detail in the subject inspection report. In summary, an engineering technician was performing soil density measurements at a temporary job site in Brock, Indiana, on November 2, 2006, using a Troxler Model 3400 Series portable gauge. At the time of the event, the gauge contained NRC-licensed materials (nominally 8 millicuries (mCi) of cesium-137 and 40 mCi of americium-241:beryllium) in sealed sources. While at the field site, the technician was distracted by a telephone call and walked approximately 50 feet away from the portable gauge, with his back to the gauge, to answer the call. The gauge was struck by an earth compactor while the technician was away from the gauge and answering the telephone. While the plastic shell of the gauge case was damaged by contact with the earth compactor, the sealed source remained undamaged. The failure to

control access to or maintain surveillance of the quantity of NRC-licensed material that was contained in the Troxler gauge on November 2, 2006, while in an unrestricted area, such as the job site in Brock, Indiana, is a serious violation of NRC requirements for the control of radioactive materials. Therefore, the violation is categorized in accordance with the NRC Enforcement Policy at Severity Level III.

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. Because your facility has not been the subject of escalated enforcement actions within the last 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 was given for the *Corrective Action* factor for corrective actions consisting of: (1) suspending the technician from using portable gauges containing NRC-licensed materials until the technician was retrained; (2) emphasizing to all employees the importance of constant control and surveillance of NRC-licensed materials; and (3) including the topic of constant surveillance and control of NRC-licensed materials during the next and in future annual refresher training sessions for portable gauge users.

Therefore, to encourage prompt comprehensive correction of violations, and in recognition of the absence of previous escalated enforcement action, I have been authorized, after consultation with the Director, Office of Enforcement, not to propose a civil penalty in this case. However, significant violations in the future could result in a civil penalty. In addition, issuance of this Severity Level III violation constitutes escalated enforcement action, that may subject you to increased inspection effort.

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence and the date when full compliance was achieved is already adequately addressed on the docket in Inspection Report No. 030-34711/06-01(DNMS) and a letter from the licensee dated November 29, 2006. Therefore, you are not required to respond to this letter 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, should you choose to respond, 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>. 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. If personal privacy or proprietary information is necessary to provide an acceptable response, 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 information, 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) The NRC also includes significant enforcement actions on its Web site at www.nrc.gov; select **What We Do, Enforcement**, then **Significant Enforcement Actions**.

Sincerely,

/RA/

James L. Caldwell
 Regional Administrator

Docket No. 030-34711
 License No. 13-32079-01

Enclosure: Notice of Violation

FILE NAME: G:\EICS\06-299 SLIII No CP - Andrews Engineering - Unsecured Gauge.wpd

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DATE	12/21/06		12/26/06		12/26/06		12/26/06		12/27/06	

OFFICIAL RECORD COPY

Letter from J. Caldwell to A. Rathack dated December 27, 2006

SUBJECT: NOTICE OF VIOLATION [NRC SPECIAL INSPECTION REPORT
NO. 030-34711/06-01(DNMS)] ANDREWS ENVIRONMENTAL
ENGINEERING, INC.

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State of Indiana

NOTICE OF VIOLATION

Andrews Environmental Engineering, Inc.
Indianapolis, Indiana

Docket No. 030-34711
License No. 13-32079-01
EA-06-299

During an NRC inspection conducted from November 8 to 13, 2006, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

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.

Contrary to the above, on November 2, 2006, the licensee did not control or maintain constant surveillance of a soil moisture/density gauge containing nominally 8 millicuries of cesium-137 and 40 millicuries of americium-241:beryllium, NRC-licensed materials, located at a temporary job site in Brook, Indiana, which is an unrestricted area.

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

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to be taken to correct the violation and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed on the docket in Inspection Report No. 030-34711/06-01(DNMS) and a letter from the licensee dated November 29, 2006. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation, EA-06-299," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001 with a copy to the Regional Administrator and the Enforcement Officer, Region III, within 30 days of the date of the letter transmitting this Notice of Violation (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, DC 20555-0001.

If you choose to respond, 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 27th day of December 2006