

January 10, 2007

EA 06-288

Paul Echaniz, P.E.  
President/RSO  
EGS Associates, Inc.  
124 N. Mississippi Avenue  
Atlantic City, NJ 08401

SUBJECT: NOTICE OF VIOLATION (NRC Inspection Report No. 03032419/2006001)

Dear Mr. Echaniz:

This letter refers to the routine unannounced NRC inspection conducted on September 21, 2006, at your Atlantic City, New Jersey facility, as well as a review of additional information that you subsequently submitted to the Region I office. The results of the inspection were discussed with you during an exit meeting on November 13, 2006, and were described in the subject inspection report that was sent to you with our letter dated December 19, 2006.

Our December 19, 2006 letter noted that nine apparent violations were identified during the inspection, and that one of the apparent violations was being considered for escalated enforcement action. That apparent violation involved the failure, on two separate occasions, to provide a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal when not under the control and constant surveillance of the licensee, contrary to 10 CFR 30.34(i). Specifically, on September 21, 2006, (1) a portable nuclear gauge was not secured within an unlocked company vehicle; and, (2) a second gauge was not secured within a locked storage shed.

Before issuing the inspection report, Ms. Judy Joustra of my staff, during a telephone conversation on November 13, 2006, provided you an opportunity to either attend a predecisional enforcement conference or provide a written response, prior to the NRC determining appropriate enforcement action concerning the violation of 10 CFR 30.34(i). During that conversation, you declined the opportunity to attend a conference, but stated that you would provide a written response. Your written response, provided in a letter dated November 17, 2006, and in an e-mail dated November 22, 2006, was considered in determining the appropriate enforcement action.

Although it was unlikely that unauthorized persons came into direct contact with the radioactive sources during the times that the gauges were not secured, the subject violation is of concern to the NRC because (1) the failure to control the portable gauges could result in the loss or theft

of the gauges; and (2) unintended radiation doses to members of the public could occur if the radioactive sources were removed from their shielded position. Therefore, this violation is categorized at Severity Level III in accordance with the NRC Enforcement Policy. 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 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 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 included, but were not limited to: (1) immediately removing the nuclear gauge from the unsecured company vehicle and securing it in a locked storage shed; (2) installing a second lock on the storage shed; (3) obtaining required cables with padlocks to secure the cases to vehicles during transport; (4) reinforcing company policy to all authorized gauge users that gauges must be returned to the main office for storage at the end of each day; and (5) conducting training with the authorized users responsible for the two separate events to re-emphasize the requirements for proper gauge security.

Therefore, to encourage prompt and comprehensive correction of violations, 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. 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.

The eight additional violations identified as a result of the inspection are also described in the enclosed Notice and are categorized at Severity Level IV in accordance with Supplements IV, V, and VI, respectively, of the Enforcement Policy. Although none of these violations warrant escalated enforcement action, the number of violations, as well as the fact that Violations B, C, and G.3 were repetitive, demonstrates the need for increased management attention to your radiation safety program.

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 on the docket in this letter, in your letter dated November 17, 2006, in your e-mail dated November 22, 2006, and/or in the inspection report sent to you on December 19, 2006. Therefore, you are not required to respond to this Notice of Violation unless the description herein 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 enclosures, 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

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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 M Dapas for

Samuel J. Collins  
Regional Administrator

Docket No. 030-32419  
License No. 29-28670-01

Enclosure: Notice of Violation

cc w/encls: State of New Jersey

Paul Echaniz

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\*\*neither NMSS or OE needs to review/concurrence on this package per e-mail SMerchant to JWray dated 1/4/07

ENCLOSURE

NOTICE OF VIOLATION

EGS Associates, Inc.  
Atlantic City, New Jersey

Docket No. 030-32419  
License No. 29-28670-01  
EA 06-288

Based on an NRC inspection conducted on September 21, 2006, at your Atlantic City, New Jersey facility, and additional information you provided through November 22, 2006, nine violations of NRC requirements were identified. The violations were discussed with the licensee during an exit meeting on November 13, 2006. In accordance with the Enforcement Policy, the violations are set forth 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 September 21, 2006, the licensee, in two separate instances, did not use a minimum of two independent physical controls that form tangible barriers to secure a portable gauge from unauthorized removal when the gauge was not under the control and constant surveillance of the licensee. Specifically,

1. no physical barriers were used to prevent the unauthorized removal of licensed material contained in a portable nuclear gauge, when the gauge, in its locked transport case, was not secured for approximately 20 minutes inside of an unlocked company vehicle outside the licensee's facility in Atlantic City, New Jersey; and
2. although a second gauge was stored within a locked storage shed (one barrier) at the licensee's facility in Atlantic City, New Jersey, it was not secured to a structural component in the shed (second barrier). As a result, only one independent physical barrier was in place to prevent unauthorized removal.

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

- B. License Condition No. 17 of License No. 29-28670-01 requires that each portable nuclear gauge shall have a lock or outer locked container designed to prevent unauthorized or accidental removal of the sealed source from its shielded position. The gauge or its container must be locked when in transport, storage or when not in the direct surveillance of an authorized user.

Contrary to the above, as of September 21, 2006, a portable nuclear gauge in storage was not locked (nor was its container) to prevent unauthorized or accidental removal of the sealed source from its shielded position.

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

- C. 10 CFR 20.1101(c) requires that a licensee shall periodically (at least annually) review the radiation protection program content and implementation.

Contrary to the above, as of September 21, 2006, the licensee had not periodically (at least annually) reviewed the radiation protection program content and implementation since March 7, 2002.

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

- D. Condition 10 of License No. 29-28670-01 requires, in part, that licensed material may be used or stored at the specified licensee's facilities located in, Atlantic City, New Jersey, and may be used at temporary job sites of the licensee anywhere in the United States where the U.S. Nuclear Regulatory Commission maintains jurisdiction for regulating the use of the licensed material, including areas of exclusive Federal jurisdiction within an Agreement State.

Contrary to the above, as of September 21, 2006, the licensee stored licensed material at a location other than the licensee's specified facility located in, Atlantic City, New Jersey. Specifically, the licensee routinely stored a Troxler portable gauge, in a shed located at an authorized user's home which is not the location specified on the license.

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

- E. Condition 14 of License No. 29-28670-01 requires, in part, that sealed sources be tested for leakage and/or contamination at intervals not to exceed the intervals specified in the certificate of registration issued by the U.S. Nuclear Regulatory Commission under 10 CFR 32.210 or under equivalent regulations of an Agreement State.

Contrary to the above, as of September 21, 2006, sealed sources were not tested for leakage and/or contamination at intervals not to exceed the intervals specified in the certificate of registration issued by the U.S. Nuclear Regulatory Commission under 10 CFR 32.210 or under equivalent regulations of an Agreement State. Specifically, a portable gauge containing licensed material in the form of sealed sources had not been leak tested since April 2005, an interval exceeding the interval specified in the certificate of registration.

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

- F. Condition 16 of License No. 29-28670-01 requires that the licensee conduct a physical inventory every six months, or at other intervals approved by the U.S. Nuclear Regulatory Commission, to account for all sealed sources and/or devices received and possessed under the license.

Contrary to the above, as of September 21, 2006, the licensee had not conducted a physical inventory every six months. Specifically, the last inventory was conducted during January/February 2002, an interval exceeding six months.

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

G. 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 regulations appropriate to the mode of transport of the Department of Transportation (DOT) in 49 CFR Parts 170 through 189.

1. 49 CFR 177.817(a) requires that a carrier not transport a hazardous material unless it is accompanied by a shipping paper prepared in accordance with 49 CFR 172.200 - 172.203. Pursuant to 49 CFR 172.101, radioactive material is classified as hazardous material.

Contrary to the above, on September 21, 2006, the licensee transported a Troxler portable gauge which contained licensed material in the form of sealed sources without the required shipping papers.

2. 49 CFR 172.301 requires, in part, that each person who offers a hazardous material for transportation in a non-bulk packaging must mark the package with the proper shipping name and identification number (preceded by "UN").

49 CFR 172.324(b) requires the letters "RQ" shall be marked on the package in association with the proper shipping name.

49 CFR 178.350 requires that each Specification 7A packaging must be marked on the outside "USA DOT 7A Type A".

Contrary to the above, on September 21, 2006, the licensee offered hazardous material for transportation in a non-bulk package (i.e. a Troxler portable gauge which contained licensed material in the form of sealed sources) which was not marked with the proper shipping name, and identification number. In addition, the letters "RQ", were not marked on the package nor was "USA DOT 7A Type A".

3. 49 CFR 172.702 requires that each HAZMAT employer shall ensure that each HAZMAT employee is trained and tested, and that no HAZMAT employee performs any function subject to the requirements of 49 CFR Parts 171 - 177 unless trained, in accordance with Subpart H of 49 CFR Part 172. The terms HAZMAT employer and HAZMAT employee are defined in 49 CFR 171.8.

49 CFR 172.704(c)(2) states that a HAZMAT employee shall receive training required by this subpart at least once every three years.

Contrary to the above, as of September 21, 2006, the licensee, a HAZMAT employer, did not ensure that two employees, who performed functions subject to the requirements of 49 CFR Parts 171 - 177 from March 7, 2005 to September 21, 2006, were trained as required. Specifically training had not been given since March 2002.

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

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 on the docket in the letter transmitting this Notice; in your letter dated November 17, 2006; in your e-mail dated November 22, 2006; and/or in NRC Inspection Report No. 03032419/2006-001 issued on December 19, 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 06-288" and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 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).

If you contest any of the violations, 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.

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 10<sup>th</sup> day of January 2007