



# MARYLAND DEPARTMENT OF THE ENVIRONMENT

1800 Washington Boulevard • Baltimore MD 21230

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Martin O' Malley  
Governor

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Acting Secretary

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**License No: NR-45-25477-01 - Reciprocity**  
**Case No: RHP 06-10**

Todd Kupfer, Radiation Safety Officer  
Applied Technical Services, Inc.  
10487 Lakeridge Parkway, Suite 200  
Ashland, Virginia 23005

Dear Mr. Kupfer:

Enclosed you will find a Complaint and Notice of Administrative Penalty issued on behalf of the Maryland Department of the Environment (MDE) against **APPLIED TECHNICAL SERVICES, INC.**, located at 10487 Lakeridge Parkway, Suite 200, Ashland, Virginia 23005. This action results from violations of Maryland's Radiation law and regulations governing the possession and use of radioactive materials, while working in the State of Maryland under reciprocity status. The MDE Air and Radiation Management Administration is assessing a penalty of \$9,250.00 in this case.

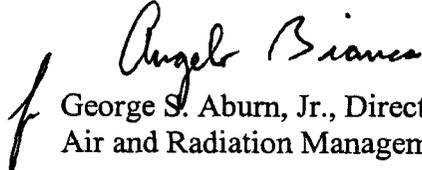
Please read the attached Complaint and Notice of Administrative Penalty carefully, paying close attention to the time period for appeal. Additional information on requesting a hearing on the Complaint and Notice of Administrative Penalty is enclosed. If you elect to request a hearing, you must request such a hearing in writing within **thirty (30)** calendar days following receipt of this document. The assessment and amount of the penalty may increase or decrease as a result of the hearing. If payment of the penalty is elected, you should contact Ms. Debra Kemp at (410) 537-4117 to arrange for an invoice to be sent to you for the amount stipulated in the penalty portion of the attached document.



Mr. Kupfer  
Page Two

If you have any questions concerning this matter, please contact Mr. Ray Manley, Radioactive Materials Licensing and Compliance Division, Air and Radiation Management Administration, at (410) 537-3300. However, if you have an attorney, please have your attorney contact the Assistant Attorney General whose signature appears on the enclosed document at (410) 537-3053.

Sincerely,

  
George S. Aburn, Jr., Director  
Air and Radiation Management Administration

GSA/mdk

Enclosure

cc: Susan Martielli  
Ray Manley ✓  
Michael Kurman  
License File  
Debra Kemp (w/o encl)



## APPLICABLE LAW

(4) COMAR 26.12.01.01C.90(a) titled, "Reciprocal Recognition of Licenses- Licenses of Byproduct, Source, and Special Nuclear Material in Quantities Not Sufficient to Form a Critical Mass," allows the Department to grant reciprocal recognition and authority for out-of-state specific radiation licenses to conduct activities in Maryland authorized by such licenses.

(5) COMAR 26.12.01.01C.90(a)(1)(iv) titled, "Reciprocal Recognition of Licenses" and Administration letter to the licensee dated April 22, 2004 require the licensee to report to the Administration in advance of the job details on the exposure device, source and camera information, transporting vehicle information, and copy of the radioactive material license.

(6) COMAR 26.12.01.01E.49(a) titled, "Radiation Surveys" requires that a licensee not conduct a radiographic operation unless at least one calibrated and operable radiation survey instrument, as described in COMAR 26.12.01.01E.25, is available and used by each radiographic person at the site of each exposure.

(7) COMAR 26.12.01.01E.49(b) titled, "Radiation Surveys" requires the licensee to conduct a radiation survey around the entire circumference of the radiographic exposure device with a radiation survey instrument after each radiographic exposure to determine that the sealed source has been returned to its shielded position.

(8) COMAR 26.12.01.01E.53 titled, "Posting" and COMAR 26.12.01.01D.902(b) titled "Posting Requirements" require the licensee to post each high radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, HIGH RADIATION AREA" or "DANGER, HIGH RADIATION AREA."

(9) COMAR 26.12.01.01E.53 titled, "Posting" and COMAR 26.12.01.01D.902(a) titled "Posting Requirements" require the licensee to post each radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIATION AREA."

(10) COMAR 26.12.01.01E.35(d) titled, "Labeling, Storage, and Transportation" requires the licensee to lock and physically secure the transport package containing licensed radioactive material in the transporting vehicle to prevent accidental loss, tampering, or unauthorized removal of the licensed material from the vehicle.

(11) COMAR 26.12.01.01T.5(a)(1) titled "Transportation of Licensed Material" requires a licensee who transports licensed material outside the site of usage or on public highways or who delivers licensed material to a carrier for transport shall comply with the applicable requirements of the U.S. Department of Transportation regulations in 49 CFR Parts 170 through 189.

(12) Section C.90(a)(1)(iv) titled, "Reciprocal Recognition of Licenses" and Agency letter to the licensee dated April 22, 2004 require the licensee have in its possession a current copy of the Code of Maryland Regulations (COMAR) 26.12.01.01 "Regulations for the Control of Ionizing Regulations" with all effective supplements while working in Maryland.

(13) Under § 8-502(a) of the Environment Article, the Department is authorized to issue an Administrative Complaint when the person to whom the complaint is directed has violated Title 8 of the Environment Article, or any implementing regulation, or any order or provision of any license issued pursuant to Title 8.

(14) Under § 8-510(a) of the Environment Article, the Department is authorized to impose an administrative penalty for any violation of Title 8 or any rule, order, plan for compliance, registration, certificate or license issued pursuant to Title 8.

(15) Violations are subject to the imposition of administrative penalties by the Department of up to \$1,000 for each violation, as provided in §8-510(b)(1)(i) of the Environment Article. Section 8-510(b)(2) provides that each day a violation occurs is a separate violation.

#### **FACTS**

(16) On April 13, 2006, a health physicist with the Administration conducted an inspection of APL's operations related to radiation control. The inspection noted a number of regulatory and reciprocal license requirement violations. The violations included: APL's failure to have an operable radiation survey instrument at its worksite; APL's failure to conduct radiation surveys; APL's failure to post radiation and high radiation caution signs; APL's failure to lock a transport container in which a radiography camera was stored; APL's failure to properly secure a radiography camera during transport; APL's failure to supply accurate information to the Administration regarding radiographic camera and transport vehicle; and APL's failure to have at the jobsite a current copy of the Maryland Radiation Regulations.

(17) On July 20, 2006, the Department issued a Notice of Violation (NOV) to APL, which described the violations cited during the April 13, 2006 inspection. The NOV required APL to take immediate action to correct the violations and submit a written statement to the Department describing the actions taken or to be taken to correct the violations, the actions initiated to avoid further violations, and the date when full compliance will be achieved.

(18) On August 10, 2006, the Department received a written response from APL describing the actions APL had taken or initiated to correct the violations referenced in the July 20, 2006 NOV, and the date by which full compliance will be achieved.

(19) On August 31, 2006, a Licensee Management Conference was held with representatives of both the Department and APL. At this conference, the violations, compliance actions, and remaining regulatory concerns were discussed.

### **VIOLATIONS**

(20) APL violated COMAR 26.12.01.01E.49(a), by failing to have a calibrated and operable radiation survey instrument available for each radiographic person at the site.

(21) APL violated COMAR 26.12.01.01E.49(b), by failing to conduct required radiation surveys.

(22) APL violated COMAR 26.12.01.01E.53 and COMAR 26.12.01.01D.902(b) by failing to conspicuously post a sufficient number of high radiation caution or danger signs in a high radiation area having multiple entrances.

(23) APL violated COMAR 26.12.01.01E.53 and COMAR 26.12.01.01D.902(a) by failing to conspicuously post a sufficient number of radiation area caution signs around the areas in which industrial radiography was being performed.

(24) APL violated by failing to lock the transport container in which APL's radiography camera was stored during transport.

(25) APL violated COMAR 26.12.01.01T.5(a)(1) and 26.12.01.01E.35(d) by failing to properly secure APL's radiography camera during transport.

(26) APL violated COMAR 26.12.01.01C.90(a)(1)(iv) and the Administration's letter to the licensee dated April 22, 2004 by failing to provide accurate information to the Administration regarding APL's radiographic camera and the device transport vehicle.

(27) APL violated COMAR 26.12.01.01C.90(a)(1)(iv) and Agency letter to the licensee dated April 22, 2004 by failing to have at the jobsite a copy of the current Maryland Radiation Regulations.

## ADMINISTRATIVE PENALTY

The Air and Radiation Management Administration hereby assesses an administrative penalty of \$9,250.00. This penalty is assessed after consideration of the eight factors set forth in § 8-510(b) of the Environment Article of the Annotated Code of Maryland. These factors include:

- (1) The willfulness of the violation, to the extent to which the existence of the violation was known to the violator but uncorrected by the violator, and the extent to which the violator exercised reasonable care;
- (2) Any actual harm to human health or to the environment;
- (3) The nature and degree of injury to or interference with general welfare, health, and property;
- (4) The cost of control of the source of radiation or any emission of radiation;
- (5) The extent to which the location of the violation, including location near areas of human population, creates the potential for harm to the environment or to human health or safety;
- (6) The available technology and economic reasonableness of correcting, controlling, reducing, or eliminating the situation or condition that caused the violation;
- (7) The degree of hazard posed by the source of radiation or the emission of radiation; and
- (8) The extent to which the current violation is part of a recurrent pattern of the same or similar type of violation committed by the violator.

12 March 2007  
Date

George S. Aburn, Jr.  
George S. Aburn, Jr., Director  
Air and Radiation Management Administration

Approved as to form and legal sufficiency this

12<sup>th</sup> Day of March, 2007.

Susan J. Martin  
Assistant Attorney General

## NOTICE OF HEARING RIGHTS

Each defendant has a right to a hearing to contest the Complaint and Administrative Penalty, pursuant to Environment Article § 8-506 and State Government Article §10-201 et seq., Md. Code Ann. Each defendant must separately request the hearing. If you fail to timely request a hearing on the administrative penalty, or fail to participate in a pre-hearing conference, the hearing, or any other stage of the adjudicative proceeding, a default order may be entered against you for the amount of the administrative penalty. If you fail to pay an administrative penalty that has become final, a lien may be placed against your property for the amount of the penalty, plus costs and interest. In addition, your account may be transferred to the State's Central Collections Unit for enforced collection action.

You may obtain a hearing to contest the Complaint and Administrative Penalty by filing your request within **thirty (30)** days of your receipt of this document. Payment of the penalty would constitute a waiver of your right to request a hearing on the Complaint and Administrative Penalty. The Department is authorized by law to assess a penalty of up to \$1,000.00 for each day each violation existed, up to a maximum total penalty assessed for a single administrative hearing of \$50,000.00. If you proceed to a hearing, the final penalty imposed by the Administrative Law Judge may be higher or lower than the amount now sought, up to the limits prescribed in § 8-510(b)(1)(i) of the Environment Article, Annotated Code of Maryland.

Your request(s) must include a copy of this document and a brief statement of the factual and legal basis for the request, and should be sent to Mr. Roland G. Fletcher, Program Manager, Radiological Health Program, 1800 Washington Boulevard, Baltimore, Maryland, 21230, with a copy to the attorney who signed this document, addressed to the Office of the Attorney General, Department of the Environment, 1800 Washington Boulevard, Baltimore, Maryland 21230.

An appearance before the Administrative Law Judge constitutes a contested administrative hearing and you have the rights of any party in a contested case provided by the Maryland Administrative Procedure Act, State Government Article, §10-201, et seq., Md. Code Ann. and COMAR 26.01.02.

Any party charged in the Complaint appearing before the Administrative Law Judge may be represented by an attorney, but if a party named in the Complaint and Order is a corporation, the corporation must be represented by an attorney in an administrative hearing. Any attorney representing you, whether or not you are a corporation, must be admitted to the Bar of the State of Maryland or must be specially admitted to the Maryland Bar pursuant to Maryland Rule 14 of the Maryland Rules, which governs special admission of out-of-state attorneys.