

April 30, 2007

EA-06-286

Mr. George R. Koch
Vice President
TRC Engineers, Inc. (Formerly SITE-Blauvelt Engineering, Inc.)
16000 Commerce Parkway, Suite B
Mount Laurel, NJ 08054

SUBJECT: ORDER IMPOSING CIVIL MONETARY PENALTY - \$ 3,250

Dear Mr. Koch:

This refers to your letter, dated February 28, 2007, in response to the Notice of Violation and Proposed Imposition of Civil Penalty (Notice) sent to you by our letter, dated January 30, 2007. Our letter and Notice described a violation identified during a Nuclear Regulatory Commission (NRC) inspection conducted to review the circumstances associated with the theft of a portable nuclear density gauge containing licensed material from a temporary job site in Monroe, Pennsylvania. The theft occurred on either the evening of August 29, 2006, or the early morning of August 30, 2006. The NRC was informed by Mario Marra, the Radiation Safety Officer (RSO) for TRC Engineers, Inc., on April 2, 2007, that the gauges were found in a safe condition in Cortland County, NY on April 2, 2007.

The violation involved the failure to adequately secure the gauge in accordance with the requirement that each portable gauge licensee use a minimum of two independent physical controls that form tangible barriers whenever the gauges are not under the control and constant surveillance of the licensee. The violation was classified at Severity Level III. A civil penalty in the amount of \$3,250 was proposed for the violation to emphasize the importance of maintaining security and control of radioactive material.

In your response, you disputed the violation and requested remission or mitigation of the associated civil penalty. After consideration of your response, we have concluded that you did not provide an adequate basis for the NRC to withdraw the violation or to rescind or mitigate the civil penalty. Therefore, the NRC concludes that a civil penalty should be imposed. The reasons for your request, as well as the NRC basis for the denial of your request, are described in the Appendix attached to the enclosed Order Imposing Civil Monetary Penalty.

Accordingly, we hereby serve the enclosed Order on TRC Engineers, Inc. imposing a civil monetary penalty in the amount of \$3,250. As stated in the enclosed Order, the penalty must be paid within 30 days of the date of this Order, in accordance with NUREG/BR-0254. In addition, at the time payment is made, the licensee shall submit a statement indicating when and by what method payment was made, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738.

G. R. Koch

2

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and the enclosures 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 website at <http://www.nrc.gov/NRC/ADAMS/index.html> (the Public Electronic Reading Room).

Sincerely,

/RA/

Cynthia A. Carpenter, Director
Office of Enforcement

Docket No. 030-29302
License No. 29-27857-01

Enclosures:

- 1) Order Imposing Civil Monetary Penalty, with attached Appendix
- 2) NUREG/BR-0254 Payment Methods (Licensee only)

cc (w/enclosure 1 only):
State of New Jersey
Commonwealth of Pennsylvania
State of New York

G. R. Koch

2

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and the enclosures 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 website at <http://www.nrc.gov/NRC/ADAMS/index.html> (the Public Electronic Reading Room).

Sincerely,

/RA/
Cynthia A. Carpenter, Director
Office of Enforcement

Docket No. 030-29302
License No. 29-27857-01

Enclosure:

- 1) Order Imposing Civil Monetary Penalty, with attached Appendix
- 2) NUREG/BR-0254 Payment Methods (Licensee only)

cc (w/enclosure 1 only):
State of New Jersey
Commonwealth of Pennsylvania

DISTRIBUTION w/encl:

ADAMS (PARS)
SECY
CA
OEMAIL
OEWEB
L Reyes, EDO
MVirgilio, DEDMRT
CCarpenter, OE
CMontgomery, OE
SMerchant, OE
LSreenivas, OE
LLopez, OE
OSamuel, OE
RTaylor, OE
BJones, OGC
LChandler, OGC
GVeneziano, OGC
JSchlueter, FSME
DRathbun, FSME
EA-06-286 File

GPangburn, FSME
CMiller, FSME
BSosa, OEDO
Enforcement Coordinators
RII, RIII, RIV
EHayden, OPA
HBell, OIG
GCaputo, OI
LTremper, OCFO
DScrenci, PAO-RI
NSheehan, PAO-RI
MMiller, RI
BHolian, RI
KFarrar, RI
DHolody, RI
ADeFrancisco, RI
CO'Daniell, RI
SVillar, RI
Region I OE Files (with concurrences)

SUNSI Review Complete: AED (Reviewer's Initials)

PUBLIC X NON-SENSITIVE X

ADAMS ML071200245

OFFICE	RI/ORA		RI/DNMS		RI/DNMS		RI/ORA		RI/ORA	
NAME	ADeFrancisco		MMiller		BHolian (JDK for)		KFarrar		DHolody	
DATE	03/29/07		03/29/07		03/29/07		04/02/07		04/03/07	
OFFICE	RI/DRA		NMSS		OGC		OE			
NAME	MDapas		GMorell for C. Miller		M.Clark for B. Jones		CCarpenter			
DATE	04/04/07		04/10/07		04/18/07		04/30/07			

OFFICIAL RECORD COPY

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
TRC ENGINEERS, INC.)	Docket No. 030-29302
Mount Laurel, NJ)	License No. 29-27857-01
)	EA-06-286

ORDER IMPOSING CIVIL MONETARY PENALTY

I

TRC Engineers, Inc., formerly SITE-Blauvelt Engineering, Inc., formerly Site Engineers, Inc., is the holder of a byproduct materials License No. 29-27857-01 issued by the Nuclear Regulatory Commission (NRC or Commission) on July 11, 1986. The license was renewed on December 26, 2001 (Amendment 7) and expires on December 31, 2011. The license authorizes the Licensee to possess and use certain byproduct materials in accordance with the conditions specified therein.

II

An inspection of the Licensee's activities was completed on December 5, 2006 at the licensee's facility, as well as at a temporary job site in Monroe, Pennsylvania. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated January 30, 2007. The Notice states the nature of the violation, the provision of the NRC's requirements that the Licensee violated, and the amount of the civil penalty proposed for the violation. The Licensee responded to the Notice in a letter dated February 28, 2007. In its response, the Licensee disputed the violation and requested rescission of the civil penalty.

2

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, the violation occurred as stated in the Notice and that the penalty proposed for the violation designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, IT IS HEREBY ORDERED THAT:

The Licensee pay a civil penalty in the amount of \$ 3,250 within 30 days of the date of this Order, in accordance with NUREG/BR-0254. In addition, at the time payment is made, the licensee shall submit a statement indicating when and by what method payment was made, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738.

V

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a

"Request for an Enforcement Hearing" and shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555-0001. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to the Regional Administrator, NRC Region I, 475 Allendale Rd., King of Prussia, PA 19406. If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, or if written approval of an extension of time in which to request a hearing has not been granted, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General, for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) whether the Licensee was in violation of the Commission's requirements as set forth in the Notice referenced in Section II above, and

(b) whether, on the basis of such violation, this Order should be sustained.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Cynthia A. Carpenter, Director
Office of Enforcement

Dated this 30th day of April 2007

APPENDIX

EVALUATIONS AND CONCLUSION

On January 30, 2007, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued to TRC Engineers, Inc. (Licensee) for a violation identified during NRC review of the circumstances associated with the theft of a portable nuclear density gauge containing licensed material which occurred on either the evening of August 29, 2006, or the early morning of August 30, 2006. The licensee responded to the Notice in a letter dated February 28, 2007 (ML070610169). The licensee disputed the violation and requested that the NRC rescind or mitigate the proposed civil penalty. The NRC's evaluation and conclusion regarding the licensee's requests are as follows:

RESTATEMENT OF THE VIOLATION

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 a portable gauge from unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee.

Contrary to the above, on August 29, 2006, at the temporary job site in Monroe County, Pennsylvania, the licensee did not use a minimum of two independent physical controls that form tangible barriers to secure a portable gauge from unauthorized removal when the portable gauge was not under the control and constant surveillance of the licensee. Specifically, the licensee locked the gauge in its transportation container and stored it overnight in a locked shed at the temporary job site (one barrier). The gauge was not secured to the shed and, therefore, a second independent barrier to prevent unauthorized removal was not provided. The licensee notified the NRC on August 30, 2006, that the portable gauge had been stolen.

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

SUMMARY OF THE LICENCEE'S RESPONSE DISPUTING THE VIOLATION

In its response, the licensee contends that at the time the gauge was stolen, the licensee had used two tangible barriers to secure the gauge, namely, the locked shed and the locked storage container. Although the storage container was not secured to the shed, the licensee stated its belief that a chain connecting the container to the floor of the shed would not have prevented the theft. The licensee also indicated that the NRC's interpretation of what constitutes two tangible barriers was arbitrary.

NRC'S EVALUATION OF THE LICENSEE'S RESPONSE DISPUTING THE VIOLATION

The NRC has evaluated the licensee's contention disputing the violation and determined that the licensee did not provide a sufficient basis for the NRC to withdraw the violation. The NRC recognizes that the shed was locked, which provided one barrier to the theft of the gauge. However, locking of the storage container containing the portable gauge did not provide a second barrier, because the storage container was not secured to the shed or any other

appropriate structure, and, therefore, could be removed from the shed without having to compromise a second barrier.

In addition, while the licensee contended at a Predecisional Enforcement Conference (PEC) on December 20, 2006, that the added weight of the storage container allowed it to be considered a second barrier, the licensee did not provide any information at the PEC, nor in its February 28, 2007 response, to support that position. Therefore, an adequate basis was not provided to withdraw the violation.

SUMMARY OF LICENSEE'S REQUEST FOR REMISSION OR MITIGATION OF THE CIVIL PENALTY

In its response, the licensee also requests remission or mitigation of the civil penalty, contending that a civil penalty is punitive. The licensee noted that the loss of the gauge was a capital and revenue loss for which they suffered a financial hardship, and issuance of a fine is punitive and not corrective. The licensee also noted that it took prompt corrective actions for the violation.

NRC EVALUATION OF LICENSEE'S REQUEST FOR REMISSION OR MITIGATION OF THE CIVIL PENALTY

In accordance with Section VI.C.2 of the Enforcement Policy, the base civil penalty amount for a Severity Level III violation involving the loss of this type of radioactive material is \$3,250. The licensee, while contending that a financial loss occurred, did not provide any indication that payment of the civil penalty would create a financial hardship. Also, while the NRC acknowledges that the licensee took prompt and comprehensive corrective actions, a civil penalty was nonetheless warranted, consistent with the NRC Enforcement Policy, because the violation contributed to the theft of a gauge containing radioactive material. Issuance of this civil penalty was consistent with one of the purposes of the Enforcement Policy which is to deter noncompliance, including for lost sources, by emphasizing to the licensee and other licensees the importance of compliance with NRC safety and security requirements.

NRC CONCLUSION

The NRC has concluded that this violation occurred as stated in the Notice and that an adequate basis was not provided by the licensee for withdrawal of the violation or remission or mitigation of the civil penalty. Consequently, the proposed civil penalty in the amount of \$ 3,250 should be imposed.