UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
611 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-4005

July 13, 2007

EA-07-022

C & W Enterprises, Inc.
ATTN: Mr. Warren Barse, President and
Radiation Safety Officer
P.O. Box 84826
Sioux Falls, SD 57118

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY - $3,250 (NRC INSPECTION REPORT NO. 030-30526/2006-001)

Dear Mr. Barse:

This refers to the inspection conducted at your facility on November 27-28, 2006, and to our in-office reviews that were completed on February 6, 2007. The findings from this inspection were discussed with you during a telephonic exit briefing conducted on February 6, 2007, and described in detail in an inspection report dated February 26, 2007. The cover letter to the subject inspection report informed you that we were considering escalated enforcement for an apparent violation of 10 CFR 30.34(i), and that before we made our enforcement decision we were providing you with the opportunity to either respond in writing to the apparent violation or to request a predecisional enforcement conference.

You chose to respond to the apparent violation in writing by letter dated March 28, 2007. In that letter, you described the circumstances surrounding the violation observed during the November 2006 inspection. You stated that C & W Enterprises, Inc. (C & W) had owned the facility where the gauges were stored until August 2006, and that after that time, C & W became a renter in the same facility where, at the time of the inspection, the gauge had been stored in an unlocked metal shed. You indicated that you thought that locking the warehouse door would suffice as the second tangible barrier to secure the gauge, but that the inspector corrected your understanding. Subsequently, you moved the metal storage shed into a larger metal container and locked it to provide the necessary second independent physical barrier.

On April 24, 2007, the NRC conducted a followup inspection at your facility to review the storage of the portable gauge. During the inspection, NRC found that the large metal (outer) container was locked. When it was opened, we found the metal storage shed inside was unlocked, and a chain had been placed around the gauge. However, the chain was not bolted to the floor or to any other permanent fixture, and therefore could not be considered a physical control that formed a tangible barrier to secure the portable gauge from unauthorized removal, as required by 10 CFR 30.34(i). An individual gaining access into the large metal (outer) container could have picked up the gauge with the chain surrounding it and removed it. Once our inspector pointed out the flaw in your use of the chain, you locked the (inner) metal shed (with the gauge inside) which was inside the locked, larger (outer) metal container. This

configuration met the requirements of 10 CFR 30.34(i). You were informed of the results of our followup inspection during a telephonic exit briefing on May 17, 2007.

Based on the information developed during the inspection, the April 24, 2007, followup inspection, and the information that you provided in your letter dated March 28, 2007, 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 and in this letter. The violation involves the failure to secure a portable gauge containing licensed material from unauthorized removal with at least two independent physical controls when the portable gauge was not under the control and constant surveillance of the licensee, in accordance with 10 CFR 30.34(i).

The NRC considers the violation of 10 CFR 30.34(i) significant because an improperly secured gauge could allow for unauthorized removal or theft of the radioactive material. Therefore, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level III. The NRC Enforcement Policy can be found on the NRC's website at www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html.

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. In evaluating your corrective actions, we note that the gauge was not properly secured during our April 24, 2007, followup inspection. As such, your corrective actions were not adequate to restore compliance from our November 27-28, 2006, inspection, and you are not deserving of corrective action credit.

Therefore, to encourage prompt and comprehensive correction of violations, I have been authorized, after consultation with the Director, Office of Enforcement, to propose a civil penalty in the amount of $3,250 for this Severity Level III violation. In addition, issuance of this Severity Level III violation constitutes escalated enforcement action, that may subject you to increased inspection effort.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, your letter dated March 28, 2007, and your response to the enclosed Notice, 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 www.nrc.gov/reading-rm/adams.html. The NRC also includes significant enforcement actions on its Web site at www.nrc.gov/reading-rm/doc-collections/enforcement/actions/.

Sincerely,

/Thomas P. Gwynn for /RA/

Bruce S. Mallett
Regional Administrator

Docket No. 030-30526
License No. 40-26938-01

Enclosure:
1. Notice of Violation
2. NUREG/BR-0254

cc (w/Enclosure 1):
South Dakota Radiation Control Program Director

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

C & W Enterprises, Inc.
Sioux Falls, South Dakota

Docket No. 030-30526
License No. 40-26938-01
EA-07-022

During NRC inspections completed on February 6 and April 24, 2007, a violation of NRC requirements was 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. The particular violation and associated civil penalty are set forth below:

> 10 CFR 30.34(i) requires, in part, that each portable gauge licensee shall 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, from September 2006 until November 27, 2006, and again on April 24, 2007, the licensee did not use a minimum of two independent physical controls that formed tangible barriers to secure portable gauges from unauthorized removal when the portable gauge was not under the control and constant surveillance of the licensee. Specifically, no tangible barrier was used to secure a portable gauge that was stored in a warehouse in Sioux Falls, South Dakota, prior to November 27, 2006, and on April 24, 2007, only one physical control that formed a tangible barrier was used to secure the portable gauge from unauthorized removal.
>
> This is a Severity Level III violation (Supplement VI).
> Civil Penalty - $3,250 (EA-07-022)

Pursuant to the provisions of 10 CFR 2.201, C & W Enterprises, Inc., (Licensee) is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation; (EA-07-022)" and should include for each alleged violation: (1) admission or denial of the alleged violation; (2) the reasons for the violation if admitted, and if denied, the basis for denying the validity of the violation; (3) the corrective steps that have been taken and the results achieved; (4) the corrective steps that will be taken to avoid further violations; and (5) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, the NRC may issue an order or a Demand for Information requiring you to explain why your license should not be modified, suspended, or revoked or why the NRC should not take other action as may be proper. Consideration may be given to extending the response time for good cause shown.

ENCLOSURE 1

Within the same time provided for the response required under 10 CFR 2.201, the Licensee may pay the civil penalty proposed above or the cumulative amount of the civil penalties if more than one civil penalty is proposed, in accordance with NUREG/BR-0254 and by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, a statement indicating when and by what method payment was made, or 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, the NRC will issue an order imposing the civil penalty. 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 violation(s) 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(ies), the response should address the factors addressed in Section VI.C.2, “Civil Penalty Assessment,” of the Enforcement Policy. Any written answer addressing these factors pursuant to 10 CFR 2.205, should be set forth separately from the statement or explanation provided 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(ies).

Upon failure to pay any civil penalty which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205 to be due, 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 Act, 42 U.S.C. 2282c.

The responses noted above, i.e., Reply to Notice of Violation, Statement as to payment of civil penalty, and Answer to a Notice of Violation, should be addressed to: Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011.

Because your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC’s document system (ADAMS). ADAMS is accessible from the NRC Web site at www.nrc.gov/reading-rm/adams.html. If personal privacy or proprietary information is necessary to provide an acceptable response, then 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 that such material is withheld from public disclosure, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim (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).

In accordance with 10 CFR 19.11, you are required to post this Notice within two working days.

Dated this 13th day of July 2007

C&W Enterprises, Inc., EA-07-022

bcc:
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SUNSI Review Completed: gmv ADAMS: XX Yes ☐ No Initials: gmv
XX Publicly Available ☐ Non-Publicly Available ☐ Sensitive XX Non-Sensitive

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ACES	C:NMIB	D:DNMS	RC	OE
GMVasquez	VHCampbell	LDWert	KDFuller	DSolorio
/RA/	***/RA/***	***/RA/***	***/RA/***	***/RA/***
6/6/07	6/6/07	6/18/07	6/20/07	6/29/07

FSME	OGC	DRA	RA	
MLBurgess	BJones	TPGwynn	BSMallett	
/RA/	***/RA/***	***/RA/***	***/TPGwynn for /RA/***	
6/25/07	6/26/07	7/9/07	7/9/07	

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