

September 13, 2007

EA 07-101
EA 07-104

Joseph DiStefano
Vice President
MC Squared, Inc.
5905-C Breckenridge Parkway
Tampa, FL 33610

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$3,250 (NRC Inspection Report No. 03037435/2007001)

Dear Mr. DiStefano:

This refers to the NRC inspection conducted on March 15, 2007, at your temporary job site located at the Seminole Tribe Indian Reservation, Clewiston, Florida. Although you are a licensee of the State of Florida, an Agreement State, you are subject to NRC regulations when conducting work on an Indian Reservation. The purpose of the NRC inspection was to follow-up on an event involving the theft of a portable nuclear gauge from that job site. You reported the theft to the NRC Operations Center (Event No. 43219) on March 7, 2007. As part of the inspection, the NRC also reviewed additional information received from you between March 13 and March 29, 2007, including an application for reciprocity and the license application. The findings of that inspection were discussed with you via telephone on March 29, 2007, at the conclusion of the inspection, and during a subsequent exit meeting by telephone on April 10, 2007. On May 17, 2007, you informed my staff, via telephone, that the stolen gauge was recovered on May 11, 2007. The NRC received the written report of the recovered stolen gauge on May 18, 2007.

As described in the letter and NRC inspection report sent to you on July 9, 2007, three apparent violations were identified during the inspection, two of which were being considered for escalated enforcement action in accordance with the NRC Enforcement Policy. The first apparent violation involves your failure to file a Form 241 with the NRC in accordance with 10 CFR 150.20(b), prior to engaging in licensed activities at two Indian Reservations in Florida from January 2006 until at least March 12, 2007. Those licensed activities involved the storage and use of a portable gauge containing licensed material at those reservations. The second apparent violation involved the failure to use any independent physical controls that formed tangible barriers to secure a Troxler portable gauge from unauthorized removal during periods when the portable gauge was not under direct control and constant surveillance, as required by 10 CFR 30.34(i). Failure to secure the gauge as required contributed to the theft of the gauge. The third apparent violation, which was not considered for escalated enforcement, involved the failure to provide an authorized user with hazardous material refresher training at least once every three years, as required by 49 CFR 172.702(c)(2).

In the letter transmitting the inspection report, the NRC also informed you that it had sufficient information to make an enforcement decision. The letter further stated that before the NRC made its final enforcement decision, we were providing you an opportunity to either: (1) respond to the apparent violations addressed in this inspection report within 30 days of the date of the letter; or (2) request a predecisional enforcement conference (PEC). You responded to the NRC in a letter dated August 14, 2007, and you (1) indicated that you understood the seriousness of the apparent violations, and have taken immediate corrective actions to remedy the situation and prevent future violations; (2) requested that the NRC consider waiving any associated civil penalty for the violations; and (3) provided a description of the corrective actions taken in response to the first two apparent violations.

Based on the information developed during the inspection and the information that you provided in your August 14th response, the NRC has determined that two violations of NRC requirements occurred. These violations are cited in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty. The two violations are of concern to the NRC because: (1) the quantity of radioactive material stolen in this case is greater than 1000 times the quantity specified in Appendix C of 10 CFR 20; (2) unintended radiation doses to members of the public could occur if sources in the gauge are removed from their shielded position; (3) the failure to adhere to the requirements of 10 CFR 30.34(i) contributed to the theft of the gauge; and, (4) the NRC had no knowledge that radioactive material that required an NRC license or approval under reciprocity was being used at the two Indian Reservations, which are under NRC's jurisdiction. Therefore, the two violations are categorized as a Severity Level III problem in accordance with the Enforcement Policy.

In accordance with Section VI.C.2 of the Enforcement Policy, the base civil penalty amount for a Severity Level III violation or problem involving the loss of this type of radioactive material is \$3,250. For violations involving the loss, abandonment, or improper transfer or disposal of a sealed source or device, a civil penalty of at least the base amount is normally issued. Therefore, to emphasize the importance of maintaining security and control of radioactive material, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the base amount of \$3,250 for this Severity Level III problem. In addition, this Notice constitutes escalated enforcement action that may subject you to increased inspection effort.

The NRC has evaluated your corrective actions for these violations, and considers them to be prompt and comprehensive. These corrective actions included: (1) immediately filing an NRC Form 241 for reciprocity and then obtaining an NRC license, which was issued on April 6, 2007; (2) adding barriers to secure the portable gauge by putting bar locks on the entrance doors to the trailer where the gauge was stored, chaining the portable gauge to a concrete compressive strength testing machine, and dead-bolting and bar-locking both entrance doors to the trailer when an authorized user is not in the trailer; (3) having the radiation safety officer (RSO) or another management member conduct random checks of the protective barriers; and, (4) providing the authorized user additional training on the storage and handling requirements for radioactive material, as well as the required hazardous materials refresher training. You also indicated that these corrective actions were completed by March 29, 2007.

In your August 14, 2007 letter, you also disputed the third apparent violation described in the NRC July 9, 2007 letter and associated inspection report, involving the failure to provide

hazardous materials training to an Authorized User (AU) in accordance with 49CFR172.702(c)(2). You provided new information to the NRC that had not been provided to the NRC staff during the inspection. That information consisted of a May 16, 2006 record, indicating that the AU had received hazardous materials training. Therefore, based on this additional information, the NRC has concluded that a violation did not occur.

The NRC has concluded that the provisions of 10 CFR 2.201, i.e., the 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 the inspection report issued on July 9, 2007, and/or in your August 14, 2007 letter. Therefore, although you are required to provide a response to the enclosed Notice of Violation and Proposed Imposition of Civil Penalty, you are not required to address the provisions of 10 CFR 2.201 unless the description herein, as well as in the inspection report, does not accurately reflect your corrective actions or your position. In that case, you should follow the instructions specified in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response, if you 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 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/reading-rm/doc-collections/enforcement/actions>.

Sincerely,

/RA/ Original Signed by Marc L. Dapas for

Samuel J. Collins
Regional Administrator

Docket No. 030-37435
License No. 09-31230-01

Enclosures:

1. Notice of Violation and Proposed Imposition of Civil Penalty
2. NUREG/BR-0254 Payment Methods (Licensee only)

cc w/encl (1) only:
State of Florida

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SUNSI Review Complete: MTM (Reviewer's Initials)

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Region I OE Files (with concurrences)

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

MC Squared, Inc.
Tampa, Florida

Docket No. 030-37435
License No. 09-31230-01
EA 07-101; EA 07-104

During an NRC inspection conducted on March 15, 2007, at the temporary job site located at the Seminole Tribe Indian Reservation, Clewiston, Florida, violations of NRC requirements were 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 violations and associated civil penalty are listed below:

- A. 10 CFR 150.20(b) requires, in part, that an Agreement State licensee file NRC Form 241 at least three days prior to engaging in licensed activities within NRC jurisdiction.

Contrary to the above, the licensee failed to file NRC Form 241 at least three days prior to engaging in licensed activities within NRC jurisdiction. Specifically, from January 1, 2006 through at least March 12, 2007, the licensee stored or used a Troxler Model 3411-B portable gauge containing byproduct material (americium-241 and cesium-137) at two Indian Reservations located in the State of Florida, sites that are within NRC jurisdiction, and did not file NRC Form 241 prior to using the material at these sites.

- B. 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, between March 2, 2007 and March 7, 2007, at a job site on a Seminole Indian Reservation, in Clewiston, Florida, the licensee did not use a minimum of two independent physical controls that form tangible barriers to secure a Troxler moisture/density gauge from unauthorized removal when the portable gauge was not under the control and constant surveillance of the licensee. Specifically, the licensee stored the gauge in a trailer that was unlocked, and in an unrestricted area when an authorized user was not present. Although the gauge was in a locked container, the gauge had no physical control to form tangible barriers to secure the gauge from unauthorized removal, because the gauge container was not secured to the trailer, nor was access to the trailer controlled. The licensee notified the NRC on March 7, 2007, that the portable gauge had been stolen.

These two violations represent a Severity Level III problem (Supplement VI).
Civil Penalty - \$3,250

The NRC has concluded that information regarding the reasons for the violations, the corrective actions taken 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 Inspection Report No. 03037435/2007001 issued on July 9, 2007, and/or in the additional information you provided in your letter dated August 14, 2007.

Therefore, although you are required to provide a response to the Notice and Proposed Imposition of Civil Penalty, you are not required to respond to the provisions of 10 CFR 2.201 unless the description herein, as well as in the inspection report, does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond with additional information, clearly mark your response as a "Reply to a Notice of Violation; EA 07-101, EA 07-104," and send it to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, with a copy to the Regional Administrator, Region I, within 30 days of the date of the letter transmitting this Notice.

The licensee may pay the civil penalty proposed above in accordance with NUREG/BR-0254 (copy enclosed) and by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, a letter clearly marked "Statement as to Payment of Civil Penalty" indicating when and by what method payment was made.

The licensee 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 of Violation and Proposed Imposition of Civil Penalty, an order imposing the civil penalty will be issued. 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 violations 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, the factors addressed in Section VI.C.2 of the Enforcement Policy should be addressed. Any written answer in accordance with 10 CFR 2.205 should be set forth separately from the statement or explanation in reply 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.

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

The responses noted above (Reply to a Notice of Violation; EA 07-101, EA 07-104, Statement as to Payment of Civil Penalty, or Answer to a Notice of Violation) should be addressed to: Cynthia Carpenter, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy addressed to: Samuel Collins, Regional Administrator, U.S. Nuclear Regulatory Commission, Region I, 475 Allendale Road, King of Prussia, PA 19406-1415.

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 13th day of September 2007.