

December 12, 2007

EA-07-253  
NMED No. 070567

Ms. Brandye Hendrickson  
Deputy Commissioner  
Indiana Department of Transportation  
Greenfield District  
32 South Broadway Street  
Greenfield, IN 46140

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -  
\$3,250 [NRC SPECIAL INSPECTION REPORT NO. 030-32463/  
2007-001(DNMS)] INDIANA DEPARTMENT OF TRANSPORTATION

Dear Ms. Hendrickson:

This letter refers to an inspection conducted on September 18, 2007, by the U.S. Nuclear Regulatory Commission (NRC) at the Indiana Department of Transportation (INDOT) Greenfield, Indiana, facility. The purpose of the inspection was to follow up on the theft of an INDOT portable gauge containing licensed material. An apparent violation of 10 CFR 30.34(i), with two examples, was identified involving two failures to use a minimum of two independent controls that form tangible barriers to secure portable gauges. Details regarding the apparent violation were provided in NRC Special Inspection Report No. 030-32463/2007-001(DNMS) dated October 16, 2007.

In the letter transmitting the inspection report, we provided you the opportunity to address the apparent violation identified in the report by either attending a predecisional enforcement conference (PEC) or by providing a written response before the NRC made its final enforcement decision. You declined the opportunity to discuss this matter at a PEC, and provided a written response to the apparent violation dated November 1, 2007.

Based on the information developed during the inspection and the information provided in your written response, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) and the circumstances surrounding it are described in detail in the inspection report dated October 16, 2007. On September 10, 2007, an INDOT portable gauge containing licensed material was stolen from a temporary job site in Indianapolis, Indiana. The theft occurred when the gauge operator walked away from the gauge while the gauge was on the ground, behind the back of a pick-up truck. The gauge operator subsequently located the gauge in a vacant lot approximately two hours later. In addition, during the inspection, the inspectors observed a portable gauge secured (by the same operator) in the back of an open bed pick-up truck with only one physical barrier securing the gauge container lid while the gauge was being stored and was not under constant surveillance. You determined that the violation occurred primarily due to the negligence of a single operator.

The NRC considers the loss of licensed material significant, even for a short period of time. In assessing the significance of this violation, the NRC considered that for the first example, the gauge was out of INDOT's control for approximately two hours and the gauge was not damaged; and for both examples, the sources remained in the locked and shielded position; thereby, preventing exposures to members of the public. Although there were no actual safety consequences resulting from this violation, the failure to maintain adequate security of portable gauges and the loss of the gauge could have resulted in unintended radiation doses to members of the public if the sealed sources were moved from the locked and shielded position. Therefore, this violation, with two examples, is categorized collectively, in accordance with the NRC Enforcement Policy as a Severity Level III problem.

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. 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 violation. In addition, this Notice constitutes escalated enforcement action that may subject you to increased inspection effort.

The NRC has evaluated your corrective actions for this violation, and found them to be prompt and comprehensive. These corrective actions included, but are not limited to: (1) each operator within the Greenfield District has completed a refresher course on the proper methods for handling and transporting a gauge; (2) the operator responsible for the violation was reprimanded; (3) each operator will continue to attend biennial refresher training; (4) the Radiation Safety Officer will continue to make random checks at field locations to verify compliance; and (5) nuclear gauge safety and security will be addressed on a state-wide level in early 2008 at the Annual INDOT Construction Conference. Based on your prompt and comprehensive corrective actions, the NRC has determined that escalation of the base civil penalty of \$3,250 is not warranted.

The NRC has concluded that information regarding the reasons for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence, and the date when full compliance was achieved is already adequately addressed on the docket in NRC Special Inspection Report No. 030-32463/2007-001(DNMS) and in your letter dated November 1, 2007. Therefore, you are not required to respond to this letter unless the description therein does not accurately reflect your corrective actions or position. In that case, or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice. However, you are required to either pay the proposed civil penalty or respond in accordance with the instructions in the enclosed Notice.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, Enclosure 1 and your response, if you choose to respond, 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>.

Please contact John Madera, Chief, Materials Inspection Branch, with questions. Mr. Madera can be reached at (630) 829-9834.

Sincerely,

*/RA/*

James L. Caldwell  
Regional Administrator

Docket No. 030-32463  
License No. 13-26341-01

Enclosures:

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

B. Hendrickson

-3-

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James L. Caldwell  
Regional Administrator

Docket No. 030-32463  
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See next page

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1 HQ concurrences received on December 7, 2007, from Leelavathi Sreenivas, OE.

Letter from J. Caldwell to B. Hendrickson dated December 12, 2007

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL  
PENALTY - \$3,250 (NRC SPECIAL INSPECTION REPORT NO. 030-32463/  
2007- 001(DNMS))

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NOTICE OF VIOLATION  
AND  
PROPOSED IMPOSITION OF CIVIL PENALTY

Indiana Department of Transportation  
Greenfield District  
Greenfield, Indiana

Docket No. 030-32463  
License No. 13-26341-01  
EA-07-253

During an NRC inspection conducted on September 18, 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 that each portable gauge licensee use a minimum of two independent physical controls that form tangible barriers to secure portable gauges containing licensed material from unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee.

Contrary to the above, the licensee failed to use a minimum of two independent physical controls that form tangible barriers to secure portable gauges containing licensed material from unauthorized removal when the gauges were not under the control and constant surveillance of the licensee. Specifically,

- A. On September 10, 2007, while at a temporary job site, the licensee failed to use a minimum of two independent physical controls that form tangible barriers to secure a portable gauge containing licensed material and the gauge was not under the control and constant surveillance of the licensee. The portable gauge was subsequently stolen.
- B. On September 18, 2007, the licensee failed to use a minimum of two independent physical controls that form tangible barriers for a portable gauge containing licensed material stored in a case in an open bed pick-up truck and the gauge was not under the control and constant surveillance of the licensee. The gauge was secured to the truck bed with only one physical control.

This is a Severity Level III problem (Supplement IV).  
Civil Penalty - \$3,250 (EA-07-253)

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence and the date when full compliance was achieved is already adequately addressed on the docket in NRC Special Inspection Report No. 030-32463/2007-001(DNMS) and a letter from the licensee dated November 1, 2007. 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-07-253," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555 with a copy to the Regional Administrator and Enforcement Officer, Region III, within 30 days of the date of the letter transmitting this Notice of Violation and Proposed Imposition of Civil Penalty (Notice).

The licensee may pay the civil penalty proposed above 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, 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, EA-07-253" and may: (1) deny the violation 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, if provided, 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 Act, 42 U.S.C. 2282c.

The response noted above (statement as to payment of civil penalty and Answer to a Notice of Violation) should be addressed to: Cynthia A. Carpenter, 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 and Enforcement Officer, U.S. Nuclear Regulatory Commission, Region III.

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 12<sup>th</sup> day of December 2007