

January 7, 2008

EA-07-276
NMED No. 070584

Mr. Oge Udegbumam, Ph.D., P.E.
President, Principal Engineer
Tyme Engineering, Inc.
21415 Civic Center Drive, Suite 213
Southfield, MI 48076

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF
CIVIL PENALTY - \$3,250 [NRC SPECIAL INSPECTION REPORT
NO. 030-36599/2007-001(DNMS)] - TYME ENGINEERING, INC.

Dear Mr. Udegbumam:

This letter refers to an inspection conducted on October 11, 2007, by the U.S. Nuclear Regulatory Commission (NRC) at your Southfield, Michigan facility. The purpose of the inspection was to follow up on the theft of your portable moisture-density gauge that occurred sometime between September 15 and 18, 2007. An apparent violation of 10 CFR 30.34(i) was identified involving a failure to use a minimum of two independent physical controls that form tangible barriers to secure a gauge. Details regarding the apparent violation were provided in NRC Reactive Inspection Report No. 030-36599/2007-001(DNMS) dated November 9, 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 we made our final enforcement decision. You declined the opportunity to discuss this matter at a PEC, and provided a written response dated December 3, 2007, to the apparent violation.

Based on the information developed during the inspection and the information provided in your written response to the inspection report, 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 November 9, 2007. On September 18, 2007, you reported to the NRC that one of your gauges had been stolen. The gauge was last used on Saturday, September 15, 2007, and was transported by the gauge user back to your office on the back of an open bed pickup truck. The source was locked in the shielded position and the gauge was secured within the transport case with one lock on the case lid. The gauge was secured in the truck bed with one chain looped through one handle on the transportation case. Upon arrival at your office, the gauge user was distracted by a personal commitment and failed to place the

gauge, as required by your internal policies and procedures, within the authorized storage room. Because the gauge remained on the truck bed with only one chain securing the transportation case and one lock securing the case lid, the gauge user failed to secure the gauge with a minimum of two independent physical controls that form tangible barriers to secure the gauge from unauthorized removal, when the gauge was not under the control and constant surveillance of the licensee, as required by 10 CFR 30.34(i). When the gauge user returned to work on Tuesday, September 18, 2007, he identified that the gauge had been stolen from the truck bed.

The root cause for the event was inattentiveness of the gauge user when he failed to follow your internal policies and procedures. A second root cause was your failure to provide the gauge user instruction on portable gauge security requirements regarding the use of two independent physical controls that form tangible barriers to secure the portable gauge whenever the portable gauge is not under the control and constant surveillance of the gauge user.

The NRC considers the loss of licensed material significant. The loss of the gauge could result in unintended radiation doses to members of the public if the sealed sources are moved from the locked and shielded position. Therefore, this violation is categorized in accordance with the NRC Enforcement Policy at Severity Level III.

In accordance with Section VII.A.1.g. of the Enforcement Policy, the NRC is exercising discretion to propose imposition of a civil penalty of at least the base amount for the violation involving the theft of a sealed source or device. The base civil penalty amount for the violation discussed above and included in the enclosed Notice is \$3,250.

Therefore, to emphasize the importance of maintaining security and control of portable gauges, 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 in the amount of \$3,250 for this Severity Level III violation. In addition, issuance of this Notice constitutes escalated enforcement action that may subject you to increased inspection effort.

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 Reactive Inspection Report No. 030-36599/2007-001(DNMS) and in your letter dated December 3, 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.

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

O. Udegbunam

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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>.

Sincerely,

/RA by Mark A. Satorius/

James L. Caldwell
Regional Administrator

Docket No. 030-36599
License No. 21-32523-01

Enclosures:

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

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>.

Sincerely,

/RA by Mark A. Satorius Acting for/

James L. Caldwell
Regional Administrator

Docket No. 030-36599
License No. 21-32523-01

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

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DATE	1/03/08	1/05/08	1/02/08	1/04/08	1/04/08

OFFICIAL RECORD COPY

1 HQ concurrence received on January 2, 2008, from N. Hilton, OE.

Letter from J. Caldwell to O. Udegbumam dated January 7, 2008

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$3,250 [NRC SPECIAL INSPECTION REPORT NO. 030-36599/2007-001(DNMS)]
- TYME ENGINEERING, INC.

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NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Tyme Engineering, Inc.
Southfield, Michigan

Docket No. 030-36599
License No. 21-32523-01
EA-07-276

During an NRC inspection conducted on October 11, 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 from unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee.

Contrary to the above, during a period when a portable gauge was not under the control and constant surveillance of the licensee, a single tangible barrier was provided to secure the portable gauge from unauthorized removal. Specifically, when a portable gauge was stolen from the open bed of an unattended licensee pickup truck parked at the licensee's business parking lot between September 15 and 18, 2007, the licensee had only a single tangible barrier in place to prevent the theft.

This is a Severity Level III Violation (Supplement IV).
Civil Penalty - \$3,250 (EA-07-276)

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 Reactive Inspection Report No. 030-36599/2007-001(DNMS) and a letter from the licensee dated December 3, 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-07-276," 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

Notice of Violation and Proposed
Imposition of Civil Penalty

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whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation, EA-07-276" 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 7th day of January 2008