



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
612 EAST LAMAR BLVD, SUITE 400
ARLINGTON, TEXAS 76011-4125

May 16, 2008

EA-08-129
EA-08-130

Mr. Duane Hevly, President
Hevly Technical Services, Inc.
1507 N. Miller Street
Wenatchee, WA 98801

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$3000 (NRC INSPECTION REPORT NO. 150-00046/07-001 AND
INVESTIGATION REPORT NO. 4-2008-011)

Dear Mr. Hevly:

This refers to the investigation conducted by the NRC's Office of Investigations (OI) into activities that Hevly Technical Services (HTS), an Agreement State licensee, conducted in NRC's jurisdiction. Specifically, in May 2003, HTS transferred a portable moisture density gauge containing radioactive material to a company in the state of Alaska that was not authorized to possess or use the gauge. In addition, HTS used the gauge at the Alaska company's facilities when HTS conducted training on the operation of the gauge. The investigation also considered whether deliberate misconduct was associated with these circumstances. The findings from the inspection, the OI investigation and our in-office review of the investigative findings were reviewed with you during an exit briefing conducted on May 1, 2008.

Based on the information developed during the inspection and the OI investigation, the NRC has determined that two violations of NRC requirements occurred. These violations are cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding them are described in detail in the subject inspection and investigation report. The violations involve: (a) transferring a portable moisture density gauge containing radioactive material to a company in the state of Alaska that was not licensed to possess or use the gauge, in violation of 10 CFR 150.20(b)(3); and (b) failing to notify the NRC by filing an NRC Form-241 at least 3 days prior to using the gauge in the state of Alaska, in violation of 10 CFR 150.20(b)(1). In addition, the NRC has determined that deliberate misconduct was associated with Violation A because you were aware that the Alaska company needed an NRC license to possess and use the gauge and yet you transferred the gauge to the Alaska company knowing it did not have an NRC license.

In assessing the significance of Violation A, the NRC notes that, absent deliberate misconduct, your transfer of radioactive material to a company (in Alaska) that was not licensed to possess and use the material was significant, because it denied the NRC the opportunity to review and inspect the Alaska company to ensure radioactive material would be used safely and as intended. In this case, the NRC was unaware that the Alaska company possessed the gauge for about 4 years. In addition, the violation is significant because of the deliberate misconduct associated with the violation. Therefore, the NRC has categorized Violation A in accordance

with the NRC Enforcement Policy at Severity Level III. The NRC Enforcement Policy may be found on the NRC's website at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>.

In accordance with the Enforcement Policy in effect in 2003, a civil penalty with a base value of \$3,000 is considered for a Severity Level III violation. Because deliberate misconduct is associated with Violation A, the NRC considered whether credit was warranted for both *Identification* and *Corrective Action* in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy. In this case, HTS is not deserving of identification credit given that it did not identify the violation. However, the NRC did conclude that HTS is deserving of Corrective Action credit because HTS is no longer providing retail/maintenance services, and no longer selling portable gauges. In summary, the NRC has determined that a civil penalty in the amount of \$3,000 is warranted for this deliberate violation.

In assessing the significance of Violation B, the NRC noted that HTS' failure to inform the NRC of its use of the gauge during training on May 17, 2003, in a non-Agreement state (Alaska) did not involve willfulness. However, the violation is significant because without the notification, the NRC was not made aware of licensed activities in its jurisdiction and did not have the opportunity to conduct an inspection. Therefore, the NRC has categorized Violation B in accordance with the NRC Enforcement Policy at Severity Level III.

In accordance with the Enforcement Policy in effect in 2003, a civil penalty with a base value of \$3,000 was also considered for Violation B. However, because willfulness was not associated with this violation and because HTS has not been the subject of NRC escalated enforcement within the last 2 years or two inspections, the NRC only 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. The NRC has concluded that HTS is deserving of Corrective Action credit because HTS is now aware of the requirement to notify the NRC prior to possessing or using licensed material in NRC jurisdiction, is using only simulated sources during the conduct of its training, and has modified its business to no longer provide retail/maintenance services for portable gauges. Based on this, the NRC has concluded that no civil penalty is warranted for this violation.

Therefore, to emphasize the importance of not engaging in deliberate misconduct, 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 (Notices) in the total amount of \$3,000. In addition, issuance of this Notice 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 has determined that a predecisional enforcement conference was not needed prior to issuance of this Notice because you provided your position to the NRC in your sworn statement to OI. However, if you have additional information that you believe the NRC should consider, you may provide it in your response to the Notice. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

Instead of providing a response to the Notice and Proposed Imposition of Civil Penalty, you may request alternative dispute resolution (ADR) with the NRC in an attempt to resolve this issue. ADR is a general term encompassing various techniques for resolving conflict outside of court using a neutral third party. The technique that the NRC has decided to employ is mediation. Additional information concerning the NRC's program is described in the enclosed brochure (NUREG/BR-0317) and can be obtained at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>. The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program as an intake neutral. Please contact ICR at (877) 733-9415 within 10 days of the date of this letter if you are interested in pursuing resolution of this issue through ADR.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and its enclosures 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/pdr.html or www.nrc.gov/reading-rm/adams.html. The NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>.

Sincerely,

/RA/ Dwight D. Chamberlain for

Elmo E. Collins
Regional Administrator

Docket No.: 150-00046
License No.: General License Pursuant to
10 CFR 150.20

Enclosures:

1. Notice of Violation and Proposed Imposition of Civil Penalty
2. Inspection Report 150-00046/07-001
3. NUREG/BR-0254 Payment Methods (Licensee only)
4. ADR Brochure - NUREG/BR-0317 (Licensee only)

cc (w/Enclosures 1 and 2):
State of Washington Radiation Control Program Director
State of Alaska Radiation Control Program Director

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V Campbell - VHC
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Maier - WAM
Wert - LXW1
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Morell - GKM
A Tull, FSME
N Hilton, OE
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R4ALLEGATION

C Maier
Collins - EEC
Dricks - VLD
Cain - CLC
R Erickson - RRE
L Sreenivas- OE
M Burgess - MLB5

Vasquez - GMV
Howell - ATH
M Herrera
Whitten - JEW1
L McLean - MLM1
Suzanne Woods, OE
S Merchant - OE

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SUNSI Review Completed: ADAMS: Yes Initials: LD
 Publicly Available Non-Sensitive

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RC	DRA	FSME	OGC	OE	RA
K Fuller	A Howell	M Burgess	C Marco	N Hilton	EECollins
/RA/	NA	E-MVasquez	L Clark for	E-MVasquez	DDChamberlain for
5/1/08		05/06/08	05 /12/08	05/13/08	05/15/08

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NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Hevly Technical Services, Inc.
E. Wenatchee, Washington

Docket No. 150-00046
General License Pursuant to 10 CFR 150.20
EA- 08-129; EA-08-130

During an NRC investigation and inspection which were concluded on May 1, 2008, two violations of NRC requirements were identified. In accordance with the 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 violations and associated civil penalty are set forth below:

A. Violation Assessed a Civil Penalty

10 CFR 150.20(a) states, in part, that any person who holds a specific license from an Agreement State is granted an NRC general license to conduct the same activity in non-Agreement States, provided that the provisions of 10 CFR 150.20(b) have been met.

10 CFR 150.20(b)(3) requires, in part, that any person engaging in activities in non-Agreement States under the general licenses provided shall not, in any non-Agreement State, transfer radioactive material possessed or used under the general licenses provided in this section, except by transfer to a person who is specifically licensed by the Commission to receive this material.

Contrary to the above, on May 17, 2003, Hevly Technical Services, Inc., a General Licensee under 10 CFR 150.20, transferred a portable gauging device containing cesium-137 and americium-241 to Alaska Rim Engineering, a company that was not specifically licensed by the Commission to receive the material. (EA-08-130)

This is a Severity Level III violation (Supplement VI).
Civil Penalty - \$3,000

B. Violation Not Assessed a Civil Penalty

10 CFR 150.20(a) provides, in part, that any person who holds a specific license from an Agreement State is granted an NRC general license to conduct the same activity in non-Agreement States, provided that the provisions of 10 CFR 150.20(b) have been met.

10 CFR 150.20(b)(1) requires, in part, that any person engaging in activities in non-Agreement States shall, at least 3 days before engaging in each such activity, file four copies of NRC Form-241, "Report of Proposed Activities in non-Agreement States," with the Regional Administrator of the appropriate NRC regional office.

Contrary to the above, on May 17, 2003, Hevly Technical Services, Inc., who held specific licenses from the Agreement States of Washington and Oregon, conducted licensed

ENCLOSURE 1

activities in Alaska, a non-Agreement state, without filing Form-241 with the NRC. Specifically, Hevly Technical Services, Inc., used a portable gauge device containing cesium-137 and americium-241 in Palmer, Alaska, during training. (EA-08-129)

This is a Severity Level III violation (Supplement VI).

Pursuant to the provisions of 10 CFR 2.201, Hevly Technical Services, Inc 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-08-129; EA-08-130)" 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. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

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, 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.

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: 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 to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV.

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 to the extent possible, it should not include any personal privacy, proprietary information. ADAMS is accessible from the NRC Web site at www.nrc.gov/reading-rm/pdr.html 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 16th day of May 2008

ENCLOSURE 1

U.S. Nuclear Regulatory Commission
Region IV

Docket No.: 150-00046

License No.: General License Pursuant to 10 CFR 150.20

Report No.: 150-00046/2007-001

EA No.: EA-08-129; EA-08-130

Licensee: Hevly Technical Services. Inc

Location: Wenatchee, Washington

Dates: September 18, 2007, through May 1, 2008

Inspector: Lawrence Donovan, Health Physicist
Nuclear Materials Safety Branch A

Approved By: Vivian H. Campbell, Chief
Nuclear Materials Safety Branch A

Attachment: Supplemental Inspection Information

ENCLOSURE 2

EXECUTIVE SUMMARY

Hevly Technical Services, Inc.
NRC Inspection Report No. 150-00046/07-001

This report is based on an inspection of HTS, an investigation conducted by the NRC's Office of Investigations (OI) and the subsequent in-office review of the information. The investigation was conducted to review the circumstances whereby in 2003, Hevly Technical Services, Inc. (HTS), an Agreement State licensee, transferred a portable moisture density gauge containing byproduct material to a Alaska RIM Engineering, Inc. (ARE), a company in Alaska that was not authorized to possess or use the byproduct material. In addition, HTS conducted training using the portable gauge at ARE's facility in Alaska, an area within NRC jurisdiction, without filing NRC Form 241, "Report of Proposed Activities in non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters" (NRC Form 241).

Program Overview

HTS was a one-man, technical services company authorized under a General License pursuant to 10 CFR 150.20 to possess and use byproduct material contained in portable moisture density gauges at temporary jobsites in areas of NRC jurisdiction provided that the requirements of 10 CFR 150.20 were met. In 2003, HTS possessed a state of Washington license and a State of Oregon license. (Section 1)

Details of Inspection

Based on interviews and the review of documentary evidence, on May 17, 2003, HTS transferred a portable gauge containing byproduct material to ARE in Palmer, Alaska, a company not authorized to possess or use the gauge. This was determined to be a violation of 10 CFR 150.20(b)(3). (Section 2).

On May 17, 2003, HTS used the portable gauge containing byproduct material to conduct training in Palmer, Alaska, an area in NRC jurisdiction without having filed an NRC Form 241, "Report of Proposed Activities in non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters." This was determined to be a violation of 10 CFR 150.20(b). (Section 2).

Corrective Actions

The licensee no longer sells, repairs, or provides maintenances for portable gauges. Therefore, the licensee does not anticipate selling or transferring portable gauges in the future. However, should the need arise, the licensee committed to complying with NRC requirements prior to transferring the gauge. In addition, the licensee does not conduct training using portable gauges with byproduct material; it conducts training with gauges that have simulated sources. Therefore, the licensee does not anticipate the need for filing an NRC Form-241. However, if in the future, it possesses, uses, or stores byproduct material in NRC's jurisdiction, the licensee indicated he was now aware of the requirements for filing an NRC Form-241, and committed to comply with the requirements. (Section 3)

Report Details

1 Program Overview

1.1 Scope

Hevly Technical Services Inc (HTS) is authorized under a General License pursuant to 10 CFR 150.20 to use byproduct material in portable gauges at temporary jobsites where the NRC maintains jurisdiction, provided that the requirements of 10 CFR 150.20 are met.

2 Details of Inspection and Investigation

2.1 Inspection and Investigation Scope

After an inspection of Alaska Rim Engineering, Inc. (ARE) in September 2007 revealed possible violations by HTS, NRC conducted an inspection of HTS, and NRC's Office of Investigations (OI) initiated an investigation in November 2007 to review HTS activities in NRC's jurisdiction. Specifically, in May 2003, HTS transferred a portable moisture density gauge containing radioactive material to Alaska Rim Engineering, Inc. (ARE), a company in the state of Alaska that was not authorized to possess or use the gauge. In addition, HTS used the gauge at the company's facilities in Alaska during the conduct of the training.

2.2 Observation and Findings

10 CFR 150.20(a) provides, in part, that any person who holds a specific license from an Agreement State is granted an NRC general license to conduct the same activity in non-Agreement States, provided that the provisions of 10 CFR 150.20(b) have been met.

10 CFR 150.20(b)(3) requires, in part, that any person engaging in activities in non-Agreement States under the general licenses provided shall not, in any non-Agreement State, transfer radioactive material possessed or used under the general licenses provided in this section, except by transfer to a person who is specifically licensed by the Commission to receive this material or exempt from the requirements for a license for such material under Section 30.14 of this chapter.

10 CFR 150.20(b)(1) requires, in part, that any person engaging in activities in non-Agreement States shall, at least 3 days before engaging in each such activity, file four copies of NRC Form-241, "Report of Proposed Activities in Non-Agreement States," with the Regional Administrator of the appropriate NRC regional office.

During the initial inspection of ARE on September 18, 2007, the inspector discovered that ARE had purchased, possessed, stored and used its portable moisture density gauge containing byproduct material since May 17, 2003. ARE had purchased the gauge from HTS after HTS provided training on the gauge on May 17, 2003. HTS left the gauge with ARE even though HTS knew that ARE needed an NRC license to possess and use the gauge, and knew that ARE did not possess an NRC license.

At the time of the inspection and investigation, HTS was a one-man, technical services company. However, in 2003, HTS had a service and repair operation, and it had a State of Washington license and a State of Oregon license. In 2003, HTS was authorized under a General License pursuant to 10 CFR 150.20 to possess and use byproduct material contained in portable moisture density gauges at temporary jobsites in areas of NRC jurisdiction provided that the requirements of 10 CFR 150.20 were met.

ARE contacted HTS in the spring of 2003 for the purpose of having HTS provide training in use of the gauge, to help ARE obtain an NRC license, and also to purchase a gauge from HTS. Initially, it was agreed to provide the training during the weekend of May 10-11, 2003, but the training was subsequently rescheduled for May 17, 2003. HTS shipped the gauge to ARE's facility in Palmer, Alaska, a couple days in advance of the president of HTS's arrival on site. The president of HTS provided a one day training class to ARE staff on May 17, 2003. Records indicated that ARE actually paid HTS for the gauge shortly after the May 17, 2003, training.

The president of HTS stated that he had discussed the information needed for an NRC license with ARE personnel when he was conducting the training on May 17, 2003. He stated that he was aware that ARE needed an NRC license and that ARE did not have an NRC license. He stated that he left the gauge with ARE with the understanding that ARE would obtain an NRC license. The president of HTS stated he asked ARE personnel to return the gauge if ARE did not obtain an NRC license. He further stated he contacted ARE various times between May 2003 and March 2007 to ask ARE to return the gauge since ARE had not obtained an NRC license.

In March 2007, ARE returned the gauge to HTS for calibration and maintenance. On March 6, 2007, ARE submitted a license application to the NRC. The president of HTS stated he did not return the portable gauge until ARE had obtained an NRC license. The NRC granted a license to ARE on May 3, 2007, unaware that ARE had actually been in possession of the gauge prior to issuance of the license. HTS subsequently returned the gauge to ARE after ARE received its NRC license.

HTS transferred the gauge when it shipped the gauge to ARE in May 2003 in advance of the training. HTS took possession of and used the gauge during the training. HTS again transferred the gauge to ARE after the training when it left the gauge in ARE's possession. This was identified as a violation of 10 CFR 150.20(b)(3). (150-00046/007-01)

In addition, the president of HTS stated he was unaware of the requirement to file an NRC Form-241, "Report of Proposed Activities in Non-Agreement States," with the NRC at least three days prior to conducting licensed activities in Alaska, as required by 10 CFR 150.20(b)(1). He stated that he normally does not conduct licensed activities during training because he normally conducts training with a simulated source inside a portable gauge. However, in this case he used the gauge (with a radioactive source) that ARE was purchasing from him. Nonetheless, the failure to file NRC Form 241, "Report of Proposed Activities in non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters" at least three days prior to conducting licensed activities (using the radioactive material during training) on May 17, 2003, in Alaska was identified as a violation of 10 CFR 150.20(b)(1). (150-00046/007-02).

3 Corrective Actions

HTS has since sold the service and repair portion of the HTS operation and its Washington State license was amended for possession and training purposes only. HTS terminated its Oregon State license. Therefore, the licensee does not anticipate selling or transferring portable gauges in the future. However, should the need arise, the licensee committed to complying with NRC requirements prior to transferring gauges. In addition, the licensee does not conduct training using portable gauges with byproduct material; it conducts training with gauges that have a simulated source. Therefore, the licensee does not anticipate the need for filing an NRC Form-241. However, if in the future, HTS desires to conduct licensed activities in NRC's jurisdiction, the licensee indicated it was now aware of the requirements for filing an NRC Form-241, and committed to comply with the requirements.

4 Exit Meeting Summary

On May 1, 2008, a final telephonic exit briefing was conducted with the President of HTS review the findings as presented in this report. Licensee representatives acknowledged the findings. No proprietary information was identified.

ATTACHMENT

PARTIAL LIST OF PERSONS CONTACTED

Licensee

Duane Hevly, President of Hevly Technical Services, Inc
Charles Leet, Principal Engineer, Alaska RIM Engineering Inc

ITEMS OPENED, CLOSED, AND DISCUSSED

Opened

150-00046/0007-01	VIO	Deliberately transferring a portable gauge to a company not authorized to possess or use the byproduct material.
150-00046/0007-02	VIO	Failure to file for reciprocity.

Closed

None

Discussed

None

LIST OF ACRONYMS USED

ARE	Alasaka RIM Engineering, Inc
VIO	Violation
CFR	Code of Federal Regulations
NRC	Nuclear Regulatory Commission
HTS	Hevly Technical Services