

May 28, 2008

EA-08-004
EA-08-086

John Pritchard
President
McCallum Testing Laboratories, Inc.
1808 Hayward Ave.
Chesapeake, VA 23320

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$3250, NRC INSPECTION REPORT NO. 03008916/2007001 AND OFFICE OF
INVESTIGATIONS REPORT NO. 1-2007-043

Dear Mr. Pritchard:

This refers to the inspection conducted on June 19, 2007 at your Chesapeake, Virginia facility and at the Chesapeake Fire Department. The purpose of the inspection was to examine your licensed activities as they relate to radiation safety and to compliance with the Commission's regulations and license conditions. The inspection also included a review of an event which occurred on February 15, 2007, wherein a portable gauge was temporarily lost and subsequently damaged when it fell off of a vehicle while in transport. This event was reported to the NRC by your Radiation Safety Officer (RSO), and the gauge was recovered by Chesapeake city employees. The inspector discussed the apparent violations identified during the inspection with you during a preliminary exit conducted on June 19, 2007. Additional information was reviewed in the NRC office and discussed with you on December 18, 2007. The final exit meeting was held on March 10, 2008, and the inspection report was issued on March 25, 2008. This matter was also investigated by the NRC Office of Investigations (OI), and a report was issued by OI on November 29, 2007. Based on that investigation, the NRC staff did not identify any wrongdoing.

In the letter transmitting the inspection report, we provided you the opportunity to address the apparent violations identified in the report by either attending a predecisional enforcement conference or by providing a written response before we made our final enforcement decision. On April 3, 2008, Ms. Marie Miller of my staff spoke with you and Philip Berman, RSO, and indicated that we had sufficient information regarding the apparent violations and your corrective actions to make an enforcement decision without the need for a predecisional enforcement conference or a written response from you. You informed Ms. Miller of your decision to decline to attend a predecisional enforcement conference or submit a written response.

Based on the information developed during the inspection, the NRC has determined that five violations of NRC requirements occurred. The violations are cited in Sections I and II of the enclosed Notice of Violation and Proposed Imposition of Civil Penalty, and the circumstances surrounding them are described in detail in the subject inspection report. The two most significant violations involved the failure to: (1) control and maintain constant surveillance of a portable gauge during transport; and, (2) block and brace a portable gauge during transport.

These two violations contributed to the February 15, 2007 event, during which an authorized user (AU) failed to realize that the portable gauge he was transporting had fallen off of his truck and was subsequently damaged by oncoming traffic.

After the damaged gauge was found on a highway by Chesapeake city employees, it was taken to the Chesapeake fire house. Your RSO reported to the fire house and assessed the damage to the gauge. He also had leak test results submitted to the gauge manufacturer for analysis and prepared a dose assessment of the event, dated June 22, 2007, which was submitted to the NRC (ADAMS accession number ML080850454). The report stated that the city employees involved in the gauge event had not had contact with the gauge's source rod. In addition, your investigation into the event confirmed that all of the licensed material was accounted for, the source rod of the gauge had not been compromised, and that no contamination had occurred.

Nonetheless, during the time that the damaged gauge was lost, a potential existed for significant radiation exposures to members of the public, if the source rod had been compromised or contamination occurred. Therefore, these two violations are categorized collectively in accordance with the NRC Enforcement Policy as a Severity Level (SL) III problem.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$3,250 is considered for a SL III violation or problem. For escalated violations or problems involving the loss of a sealed source or device, the NRC exercises discretion to propose imposition of a civil penalty of at least the base amount, in accordance with Section VII.A.1.g. of the Enforcement Policy. Therefore, to emphasize the importance of maintaining security and control of sealed sources and devices, 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 the SLIII problem. In addition, issuance of this Notice constitutes escalated enforcement action that may subject you to increased inspection effort.

Three violations not subject to escalated enforcement action were also identified during the inspection. These violations are documented in Section II of the enclosed Notice.

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 Inspection Report No. 03008916/2007001 and in your letters dated February 28 and June 22, 2007 (ADAMS accession numbers ML070730618, ML080850454). 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, or if you choose to respond with additional information, you should follow the instructions specified in the enclosed Notice.

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 <http://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/ Original Signed by Marc L. Dapas for

Samuel J. Collins,
Regional Administrator

Docket No. 03008916
License No. 45-15325-01

Enclosures: 1. Notice of Violation and Proposed Imposition of Civil Penalty
2. NUREG/BR-0254 Payment Methods

cc:
Philip S. Berman, RSO
Commonwealth of Virginia
City of Chesapeake Fire Department
City of Chesapeake Building and Highway Department

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cc:
Philip S. Berman, RSO
Commonwealth of Virginia
City of Chesapeake Fire Department
City of Chesapeake Building and Highway Department

SUNSI Review Complete: MM (Reviewer's Initials)

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NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

McCallum Testing Laboratories, Inc.
Chesapeake, Virginia

Docket No. 03008916
License No. 45-15325-01
EA-08-004 and EA-08-086

During an NRC inspection conducted on June 19, 2007, for which a final exit was held on March 10, 2008, 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 particular violations and associated civil penalty are set forth below:

I. VIOLATIONS ASSESSED A CIVIL PENALTY

- A. 10 CFR 20.1802 requires that the licensee control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage.

Contrary to the above, on February 15, 2007, the licensee did not control and maintain constant surveillance of a portable gauge in an unrestricted area in Chesapeake, Virginia. Specifically, while the licensee was transporting the gauge on a truck between a temporary job site and the licensee's office facility, the gauge fell off the truck and was subsequently lost for approximately an hour.

- B. 10 CFR 71.5(a) requires that a licensee who transports licensed material outside of the site of usage, as specified in the NRC license, or where transport is on public highways, or who delivers licensed material to a carrier for transport, comply with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation (DOT) in 49 CFR Parts 107, 171-180, and 390-397.

49 CFR 177.842 requires, in part, that packages of radioactive materials be so blocked and braced that they cannot change position during conditions normally incident to transportation.

Contrary to the above, on February 15, 2007, the licensee transported a package containing licensed material outside the site of usage, as specified on the NRC license, on a public highway, and the package was not blocked and braced such that it could not change position during conditions normally incident to transportation. Specifically, the authorized user transporting the gauge placed it

into the open bed of a pickup truck without using a transport case or attaching the gauge in any way to the truck. During subsequent transport, the gauge fell off the truck, was damaged, and was lost for approximately an hour.

This is a Severity Level III problem (Supplement IV).
Civil Penalty - \$ 3,250. (EA-08-004, -086)

II. VIOLATIONS NOT ASSESSED A CIVIL PENALTY

- A. 10 CFR 71.5(a) requires that a licensee who transports licensed material outside of the site of usage, as specified in the NRC license, or where transport is on public highways, or who delivers licensed material to a carrier for transport, comply with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation (DOT) in 49 CFR Parts 107, 171-180, and 390-397.

49 CFR 172.702 requires that each hazmat employer shall ensure that each hazmat employee is trained and tested, and that no hazmat employee performs any function subject to the requirements of 49 CFR Parts 171 - 177 unless trained, in accordance with Subpart H of 49 CFR Part 172. The terms hazmat employer and hazmat employee are defined in 49 CFR 171.8.

49 CFR 172.704(c)(2) requires that a hazmat employee shall receive the training required by this subpart at least once every three years.

Contrary to the above, between June 19, 2004 and June 19, 2007, four hazmat employees who performed functions subject to the requirements of 49 CFR Parts 171 - 177 did not receive the required hazmat training.

This is a Severity Level IV violation (Supplement V).

- B. Condition 16 of License No 45-15325-01 requires that each portable gauge shall have a lock or outer locked container to prevent unauthorized or accidental removal of the sealed source from its shielded position. The gauge or its container must be locked when in transport or storage, or when not under the direct surveillance of an authorized user.

Contrary to the above, on two occasions the licensee failed to have a lock or outer locked container to prevent unauthorized or accidental removal of the sealed source from its shielded position, when in transport or while in storage. Specifically, on February 15, 2007, the licensee transported a portable gauge without having locked its source rod into position or having other required locks on the gauge. Additionally, on June 19, 2007, the licensee stored a portable gauge in its storage area in an unlocked transportation container, and the gauge itself was not locked to prevent accidental removal of the source from its shielded position.

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

- C. 10 CFR 20.1101(c) requires, that the licensee perform periodically (at least annually) reviews of the licensee's radiation safety program content and implementation.

Contrary to the above, as of June 19, 2007, the licensee failed to perform periodic reviews of its radiation safety program content and implementation. Specifically, the last such review was performed on January 23, 2003.

This is a Severity Level IV violation (Supplement IV).

The NRC has concluded that information regarding the reason 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 Inspection Report No. 03008916/2007001 and in your letters dated February 28 and June 22, 2007 (ADAMS accession numbers ML070730618, ML080850454). 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-08-004, -086" and send it to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S., Nuclear Regulatory Commission, Region I, within thirty 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 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, EA-08-004, -086" 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 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 I.

Your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS). Therefore, to the extent possible, it should not include any personal privacy and proprietary information, so that it can be made available to the public without redaction. ADAMS is accessible from the NRC Web site at <http://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). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

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

Dated this 28th day of May 2008