

June 6, 2008

EA-08-031

Michael Boehmer
Vice President
IBS of America Corporation
3732 Profit Way
Chesapeake, VA 23323

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$3,250, NRC INSPECTION REPORT NO. 03034734/2007001.

Dear Mr. Boehmer:

This refers to the inspection conducted on November 5, 2007 at the IBS of America Corporation (IBS) facility in Chesapeake, Virginia. 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 the license conditions. The findings of the inspection were discussed with you during an exit meeting on January 9, 2008. The inspection report, which presented the results of the inspection, was sent to you on April 1, 2008.

On April 17, 2008, a predecisional enforcement conference (PEC) was conducted in the Region I office, with Scott Oman, your Sales Coordinator/Radiation Safety Officer (RSO), to discuss the apparent violations, their significance, their root causes, and your corrective actions.

Based on the information developed during the inspection and the information that you provided during the conference, the NRC has determined that violations of NRC requirements occurred. These violations are cited in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice), and the circumstances surrounding them are described in detail in the subject inspection report. The most significant violation involves the failure to confine your possession and use of byproduct material to the location authorized by your license, as required by 10 CFR 30.34(c). During November 2006, IBS permanently ceased activities at the facility authorized by the NRC license, and began to store and use its portable gauges at a new facility location not authorized by its NRC license. At the PEC, Mr. Oman stated that a notification of the move was provided to the NRC Region II office, but was not acknowledged by the NRC. Mr. Oman also indicated that IBS did not realize that written NRC authorization was required.

In assessing the significance of this violation, the NRC considered that at the time that IBS moved to its new location, two of its gauges had not been recently leak tested, and IBS had not performed a final radiation survey of its prior location of use. This created a potential for the prior location of use to have been released for unrestricted use with residual contamination present. Therefore, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level III, and is documented in Section I of the enclosed Notice.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$3,250 is considered for a Severity Level (SL) III violation. Because your facility has been the subject of escalated enforcement actions within the last two inspections¹, the NRC considered whether credit was warranted for *Identification* and *Corrective Action* in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy. Credit for identification is not warranted, because the NRC identified the violation during the inspection. However, credit for corrective actions is warranted because IBS's corrective actions taken and/or planned, were considered to be prompt and comprehensive. These corrective actions include: (1) submitting an amendment request, in January 2008, to change the location for gauge use and storage; (2) leak testing, in January 2008, the two gauges for which the tests were missed in 2005 and 2007; (3) training the gauge users, known as applications engineers, on the results of the NRC inspection completed in February 2008; and, (4) committing to inform and train the applications engineers on the current enforcement issues by May 30, 2008.

Therefore, to emphasize the importance of prompt identification of violations, and in recognition of your previous escalated enforcement action, I have been authorized, after consultation with the Director, Office of Enforcement, to propose imposition of a civil penalty in the base amount of \$3,250 for this SL III violation. Also, issuance of this Notice constitutes escalated enforcement action that may subject you to increased inspection effort.

In addition, two SL IV violations were identified during the inspection that are not subject to a civil penalty. These are documented in Section II of the enclosed Notice.

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 this letter, as well as in Inspection Report No. 03034734/2007001. Therefore, you are not required to provide that information unless the descriptions in the aforementioned correspondence do not accurately reflect your position. However, pursuant to 10 CFR 2.201, you are required to provide a response to the enclosed Notice and Proposed Imposition of Civil Penalty identifying whether you admit or deny the violation, as well as to provide appropriate payment of the Civil Penalty. Please follow the instructions in the attached Notice when preparing your response.

¹ A SL III violation and \$7,500 civil penalty was issued by the NRC Region II office to IBS on September 15, 2003 (EA-03-079) for violations involving the failures to: (1) maintain control and surveillance of licensed material; and, (2) verify that the individual your facility was transferring licensed material to had been authorized to receive it.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and 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>. 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. 03034734
License No. 45-25435-01

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

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Commonwealth of Virginia

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T Bloomer, OEDO

Enforcement Coordinators

RII, RIII, RIV

L Lopez, OE

M Clark, OGC

C Marco, OGC

M Burgess, FSME

E Hayden, OPA

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G Caputo, OI

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Region I OE Files (with concurrences)

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Sincerely,

/RA/ Original Signed by Marc Dapas for

Samuel J. Collins,
Regional Administrator

Docket No. 03034734
License No. 45-25435-01

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

SUNSI Review Complete: MM (Reviewer's Initials)

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OFFICE	HQ/OE	HQ/FSME	HQ/OGC	RI/ORA	
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DATE	06/02/08	05/01/08	05/22/08	06/05/08	

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*see previous concurrence page

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

IBS of America Corporation
Chesapeake, Virginia

Docket No. 03034734
License No. 45-25435-01
EA-08-031

During an NRC inspection conducted on November 5, 2007, for which an exit meeting was conducted on January 9, 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. VIOLATION ASSESSED A CIVIL PENALTY

10 CFR 30.34(c) requires, in part, that each licensee confine its possession and use of byproduct material to the locations and purposes authorized by the license.

Contrary to the above, on November 5, 2007, and for an indeterminate period of time before that date, the licensee did not confine its possession of byproduct material to the location authorized by the license. Specifically, the licensee possessed byproduct material at 3732 Profit Way, Chesapeake, Virginia, a location not authorized by the license.

This is a Severity Level III violation (Supplement VI).
Civil Penalty - \$ 3,250. (EA-08-031)

II. VIOLATIONS NOT SUBJECT TO A CIVIL PENALTY

A. 10 CFR 30.36(d)(2) requires, in part, that licensees provide notification to the NRC in writing within 60 days when the licensee has decided to permanently cease principal activities at the entire site or in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with NRC requirements.

Contrary to the above, as of November 5, 2007, the licensee decided to permanently cease principal activities at 3742 Cook Boulevard, Chesapeake, Virginia conducted under Byproduct Material License No. 45-25435-01, and the licensee failed to notify the NRC in writing within 60 days of this occurrence. Specifically, the licensee did not notify the NRC of this occurrence until January 11, 2008, which was greater than sixty days following the decision to permanently cease activities at a site which was potentially contaminated.

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

- B. Condition 13 A. of the license requires, in part, that sealed sources be tested for leakage at the frequency specified in its certificate of registration.

Contrary to the above, in 2005 and 2007, the licensee did not test two of its sealed sources at the required six-month frequency specified in the devices' certificates of registration.

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

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 this letter transmitting this Notice, as well as in Inspection Report No. 03034734/2007001. Therefore, you are not required to provide that information unless the descriptions in the aforementioned correspondence do not accurately reflect your position. However, pursuant to 10 CFR 2.201, you are required to provide a response to the enclosed Notice and Proposed Imposition of Civil Penalty identifying whether you admit or deny the violation, as well as to provide appropriate payment of the Civil Penalty. Clearly mark your response as a "Reply to a Notice of Violation, EA-08-031" and sent 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.

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" 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 I.

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)], to the extent possible, it should not include any personal, privacy, or 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 6th day of June 2008