

July 9, 2008

EA-08-150

Eugene Thompson
Vice President
Ahern & Associates, Inc.
P.O. Box 9367
South Charleston, WV 25309

SUBJECT: NOTICE OF VIOLATION
(NRC Inspection Report No. 03032573/2008001)

Dear Mr. Thompson:

This refers to the inspection conducted from April 17 through April 29, 2008, at your South Charleston, West Virginia facility, as well as a temporary job site also in West Virginia. The inspection was an examination of your licensed activities as they relate to radiation safety and to compliance with the Commission's regulations and your license conditions. The findings of the inspection were discussed with your staff at the completion of the on-site inspection on April 17, 2008, and during a telephone exit meeting on April 29, 2008. Subsequently, on June 9, 2008, the subject inspection report was issued to you describing the apparent violation which was being considered for escalated enforcement.

In the letter transmitting the inspection report, we also 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 contacted Ms. Marie Miller of this office on June 24, 2008, and declined the opportunity to either attend a PEC or to provide additional written information regarding the apparent violation since NRC was aware of your corrective actions.

Based on the information developed during the inspection, the NRC has determined that a violation of NRC requirements set forth in 10 CFR 30.34(i) occurred. This violation is cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding it are described in detail in the subject inspection report. The violation involved the failure to use two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal at your facility during periods when the gauges were not under control and constant surveillance. Specifically, on April 17, 2008, a portable gauge was stored in a locked cabinet within your storage area; however, a second independent physical control to secure the portable gauge was not present at the time, nor were licensee personnel present in the area to provide control and constant surveillance of the gauge. Although the NRC determined that the storage area normally would be locked, the area was not locked at the time of the inspection to facilitate electrical maintenance activities by workers in and around the storage area. This violation is of concern to the NRC because the potential existed for an unauthorized individual to take possession of the gauge which could have resulted in a member of the public being exposed to

radiation if the gauge, containing licensed material, was not handled properly. Therefore, in accordance with the Enforcement Policy, the NRC has classified this violation at Severity Level (SL) III.

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$3,250 is considered for a SL III violation. Because your facility has not been the subject of escalated enforcement action within the last two years or two inspections, the NRC 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. Credit for corrective actions is warranted because your corrective actions were considered prompt and comprehensive. These corrective actions included: (1) immediately locking the storage area door in the facility to provide a second independent physical control; (2) discussing the incident with appropriate licensee personnel to reinforce the policy to maintain the storage area door locked when the area is not under the direct surveillance of authorized staff; and, (3) promptly upgrading the storage cabinet security to also include a chain lock and eyebolt securing the cabinet to the structure.

Therefore, to encourage prompt and comprehensive correction of violations, and in recognition of the absence of previous escalated enforcement action, I have been authorized, after consultation with the Director, Office of Enforcement, not to propose a civil penalty in this case. However, significant violations in the future could result in a civil penalty. In addition, issuance of this SL III violation constitutes escalated enforcement action that may subject you to increased inspection effort.

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 this letter, and in NRC Inspection Report No. 03032573/2008001. Therefore, you are not required to respond to this letter. 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, please follow 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 and its enclosure 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>. If you choose to respond, to the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, 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 withholding of such information, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the

E. Thompson

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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). The NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov>.

Sincerely,

/RA/

Samuel J. Collins
Regional Administrator

Docket No. 03032573
License No. 47-25178-01

Enclosure: Notice of Violation

cc: State of West Virginia

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). The NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov>.

Sincerely,

/RA/

Samuel J. Collins
Regional Administrator

Docket No. 03032573
License No. 47-25178-01

Enclosure: Notice of Violation

cc: Commonwealth of Virginia

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NOTICE OF VIOLATION

Ahern & Associates, Inc.
South Charleston, West Virginia

Docket No. 03032573
License No. 47-25178-01
EA-08-150

During an NRC inspection conducted on April 17, 2008, a violation of NRC requirements was identified and was discussed during an exit meeting on April 29, 2008. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 30.34(i) requires that each portable gauge licensee shall 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, on April 17, 2008, the licensee failed to use a minimum of two independent physical controls that form tangible barriers to secure a portable gauge from unauthorized removal, when the portable gauge was not under the control and constant surveillance of the licensee. Specifically, a portable gauge was unattended inside an unlocked storage area with only one physical control (a locked cabinet container) that formed a tangible barrier to secure the portable gauge.

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

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to be taken to correct the violation and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed on the docket in the letter transmitting this Notice and in NRC Inspection Report No. 03032573/2008001. Therefore, a response to this Notice is not required. 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-08-150," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001 with a copy to the Regional Administrator, Region I, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

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 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 9th day of July 2008