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

September 10, 2008

EA-08-076

Mr. Trevor Sande, President
and Radiation Safety Officer
R&M Engineering-Ketchikan, Inc.
355 Carlanna Lake Road
Ketchikan, Alaska 99901

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY - $ 3,250 (NRC INSPECTION REPORT NO 030-37441/07-001 AND INVESTIGATION REPORT NO 4-2008-010)

Dear Mr. Sande:

This refers to the inspection and investigation of R&M Engineering-Ketchikan, Inc., (R&M-Ketchikan) located in Ketchikan, Alaska, which concluded on June 3, 2008. The inspection report and a factual summary of the OI report were transmitted to you by letter dated July 9, 2008.

In the July 9 letter transmitting the inspection report and factual summary, we provided you the opportunity to address the apparent violation identified in the report by either attending a predecisional enforcement conference, providing a written response, or requesting alternative dispute resolution (ADR) before we made our final enforcement decision. In lieu of these options, on July 22, 2008, you contacted Ms. Vivian Campbell and Mr. Lawrence Donovan of my staff to discuss this matter. You acknowledged the violation, declined ADR and indicated that you did not believe that a predecisional enforcement conference or written response was needed. However, you did commit to providing written confirmation of certain long-term corrective actions that previously had been discussed. That documentation was provided to the NRC by letter dated July 22, 2008.

Based on the information developed during the inspection and investigation, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice) and involves the failure to use two independent physical controls to secure portable gauges while in storage at your facility in Ketchikan, Alaska, as required by 10 CFR 30.34(i), "*Security requirements for portable gauges*". In reviewing the circumstances associated with the violation, the NRC has concluded that willfulness is associated with the violation. Specifically, R&M-Ketchikan's storage vault was constructed with an outer door and an inner door such that when both doors were locked, the inner door could provide the second independent physical control, and therefore, a tangible barrier for gauge security. This configuration for your gauge storage vault would have met the requirement of 10 CFR 30.34(i), if both doors had been locked. Yet, during the September 20, 2007, inspection, the inspector found the outer door of the vault locked, but the inner door unlocked and portable gauges being stored inside the vault. At that time, the RSO indicated that he understood that the second door required a lock and that he had purchased the lock, but just had not had the time to put it in use. His plan was to lock the hasp after the inner door was built, but did not do so. The failure of

R&M-Ketchikan's RSO to install the lock on the inner door of the gauge storage vault, with an understanding of the regulation is a deliberate violation of the "Security requirements for portable gauges" in 10 CFR 30.34(i).

Although there were no actual safety consequences to the violation, the NRC considered the security implications associated with the failure to secure the portable gauges. The violation increased the potential for the loss or theft of the gauges. The violation is also significant because willfulness was associated with it. Willful violations are of concern because the NRC must rely on licensees and their employees to comply with NRC requirements even when the NRC is not present. Therefore, this violation has been categorized in accordance with the NRC Enforcement Policy as a Severity Level III violation. The current NRC Enforcement Policy is included on the NRC's Web site at http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html.

In accordance with the Enforcement Policy, a base civil penalty in the amount of $3,250 is considered for a Severity Level III violation. Because willfulness is associated with the violation, 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. In this case, the NRC has determined that R&M-Ketchikan is not deserving of Identification credit because the inspector identified the violation. In evaluating your corrective actions, we noted that once the inspector informed you about your failure to comply with NRC requirements, R&M-Ketchikan initiated prompt and comprehensive corrective actions to correct the violation. Specifically, you immediately secured the portable gauges being stored at your facility, by implementing the use of two independent physical controls that form tangible barriers to secure the gauges, in compliance with 10 CFR 30.34(i). As discussed in your July 22, 2008, letter, your long term corrective actions included: a review of the NRC's gauge security regulations and instruction on new locking mechanisms for all gauge users, modifications to the R&M-Ketchikan safety manual and a briefing of all gauge users on the modifications, and instituting an annual gauge safety and procedures refresher meeting. As a result, the NRC has determined that credit for Corrective Action is warranted in this case.

Therefore, to emphasize the importance of prohibiting willful violations and of prompt identification and correction of violations, 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. 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 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, its enclosure(s), 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 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/.

Should you have any questions concerning this letter or the enclosed Notice, you may contact Mr. William Jones or Ms. Christi Maier of my staff. Mr. Jones may be reached at 817-860-8182 and Ms. Maier may be reached at 817-860-8217.

Sincerely,

/RA/

Elmo E. Collins
Regional Administrator

Docket No. 030-37441
License No. 50-29259-01

Enclosures:
1. Notice of Violation and Proposed Imposition of Civil Penalty
2. NUREG/BR-0254 Payment Methods (Licensee only)
3. NUREG/BR-0317 Post-Investigation ADR Program (Licensee only)

cc w/enclosure (1):
Alaska Radiation Control Program Director

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Ashley.Tull@nrc.gov
R4ALLEGATION.resource@nrc.gov
NMSB-A Inspector(s)
RIV Materials Docket File (5th Floor)

SUNSI Review Completed: ADAMS: _X_ Yes Initials: __MCM_.
___Non-Publicly Available _X_ Publicly Available __Sensitive _X_. Non-Sensitive

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MCMaier	WJones	VHCampbell	KSFuller	CLCain
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08/01/08	08/04/08	08/06/08	08/08/08	08/15/08

D:DNMS	DRA	FSME	OGC	OE	RA
ATHowell	CACasto	MBurgess	CMarco	NHilton	EECollins
/RA/ CLC for	**/RA/**	**/RA/ E**	**LClark for**	**/RA/ E**	**/RA/**
08/15/08	08/15/08	08/25/08	09/03/08	09/04/08	09/10/08

OFFICIAL RECORD COPY T=Telephone E=E-mail F=Fax

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

R&M Engineering – Ketchikan, Inc.
Ketchikan, Alaska

Docket No. 030-37441
License No. 50-29259-01
EA-08-076

During an NRC inspection and investigation, which concluded on June 3, 2008, 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 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, as of September 20, 2007, the licensee failed to use a minimum of two independent physical controls that formed tangible barriers to a secure portable gauge from unauthorized removal, when the portable gauge was not under the control and constant surveillance of the licensee. Specifically, the licensee stored four portable gauges in its warehouse located in Ketchikan, Alaska, using only one independent physical control that formed a tangible barrier and the gauges were not under the control and constant surveillance of the licensee.

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

Civil Penalty - $ 3,250 (EA-08-076)

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 the letter enclosing this Notice, in Inspection Report No. 030-37441/07-001, and in your letter dated July 22, 2008. However, if the description therein does not accurately reflect your position or your corrective actions, you are required to submit a written statement or explanation under 10 CFR 2.201. In that case, or if you choose to respond, clearly mark your response as a, “Reply to a Notice of Violation (EA-08-076),” 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 IV.

R&M Engineering-Ketchikan, Inc., 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 you fail to answer within 30 days of the date of this Notice, the NRC will issue an order imposing the civil

penalty. Should you 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 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. Your attention 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., 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.

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's Web site at www.nrc.gov/reading-rm/pdr.html or 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 10th day of September 2008