



UNITED STATES  
NUCLEAR REGULATORY COMMISSION

REGION IV  
612 EAST LAMAR BLVD, SUITE 400  
ARLINGTON, TEXAS 76011-4125

December 8, 2009

EA-09-265

Mr. Mike Hudson  
Radiation Safety Officer  
American Technical Services, Inc.  
2301 East Rice Street  
Sioux Falls, South Dakota 57103

SUBJECT: NRC INSPECTION REPORT 030-33094/09-001 AND NOTICE OF VIOLATION

Dear Mr. Hudson:

This refers to the unannounced inspection conducted on September 17, 2009, at the American Technical Services, Inc., office in Sioux Falls, South Dakota. The inspection was an examination of activities conducted under your license as they relate to radiation safety and security, and to compliance with the Commission's rules and regulations, as well as the conditions in your license. Within these areas, the inspection consisted of a selected examination of procedures and representative records, observations of activities, and interviews with personnel. The inspectors discussed the preliminary inspection findings with you at the conclusion of the onsite portion of the inspection. The NRC conducted a final exit briefing telephonically with you on November 2, 2009. The enclosed report presents the results of this inspection.

In a telephone conversation November 2, 2009, Messrs. Anthony Gaines and Larry Donovan of my staff informed you that the NRC was considering escalated enforcement for an apparent violation of NRC requirements. The apparent violation involved the failure to use a minimum of two independent physical controls to secure portable gauges, whenever portable gauges are not under the control and constant surveillance, specifically while in storage at your Sioux Falls, South Dakota, office. The circumstances surrounding this apparent violation, the significance of the issue, and the need for lasting and effective corrective actions were discussed with you at the inspection exit briefing. You have initiated corrective actions to address the violation. These corrective actions are documented in this report. Further, we provided you an opportunity to (1) respond to the apparent violation addressed in this inspection report within 30 days of the date of this letter or (2) request a predecisional enforcement conference. Mr. Gaines informed you that the NRC had sufficient information regarding the apparent violation and your corrective actions to make an enforcement decision without the need for a predecisional enforcement conference or a written response from you. You agreed that a predecisional enforcement conference or written response was not needed.

Based on the information developed during the inspection, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding it are described in detail in the subject inspection report. As noted above, the violation involved a failure to use two independent physical controls to secure portable gauges while in storage. Specifically, two portable gauges were stored inside a vault in the garage bay area of the American Technical Services, Inc., Sioux Falls facility, a licensed storage location, with no physical controls present to prevent unauthorized removal of the gauges. The cases, in which the gauges were stored, were found in a storage area within an open garage bay. The cases were locked, as were the gauge plungers. A lock was on the doorway to the storage area; however, the keys to the lock were hanging on the wall a few inches away. The garage bay opened to an unrestricted area outside the facility and the bay area was not under the control or constant supervision of American Technical Services, Inc., employees.

The NRC considers this violation significant because this security requirement provides a reasonable assurance that licensed material stored in controlled or unrestricted areas will be secured from unauthorized removal or access. Therefore, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level III. The NRC Enforcement Policy may be found on the NRC's web site at [www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html](http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html).

In accordance with the NRC Enforcement Policy, a base civil penalty for \$3,500 is considered for a Severity Level III violation.

Because your facility has not been the subject of escalated enforcement actions within the last 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. Based on your prompt and comprehensive corrective actions, the NRC has determined that *Corrective Action* credit is warranted. Your corrective actions included immediately securing the portable gauges with two independent physical controls and placing the keys to the vault in a locked cabinet with controlled access by authorized users only. In addition, you promptly retrained authorized users regarding the security policies and procedures. Further, you intend to provide quarterly refresher training on security procedures to the authorized users.

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 Severity Level 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 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 Inspection Report 030-33094/2009-001. Therefore, you are not required to respond to this letter

unless the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to provide 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, enclosures, and your response, if you decide to submit one, 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's Web site at <http://www.nrc.gov/reading-rm/pdr.html> or <http://www.nrc.gov/reading-rm/adams.html>. 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 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 [www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html](http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html).

Should you have any questions regarding this letter, the enclosed report, or the enclosed Notice, please contact Mr. Anthony Gaines, Chief, Nuclear Materials Safety Branch A, at (817) 860-8252.

Sincerely,

/RA/

Elmo Collins  
Regional Administrator

Docket: 030-33094  
License: 40-27465-01

Enclosures:

1. Notice of Violation
2. NRC Inspection Report 030-33094/09-001
3. Excerpt from NRC Information Notice 96-28

cc w/enclosure 1:  
South Dakota Radiation Control Program Director

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| <a href="mailto:Victor.Dricks@nrc.gov">Victor.Dricks@nrc.gov</a> ;               | <a href="mailto:Linda.Mclean@nrc.gov">Linda.Mclean@nrc.gov</a> ;       | <a href="mailto:Glenda.Villamar@nrc.gov">Glenda.Villamar@nrc.gov</a> ;           |
| <a href="mailto:Marisa.Herrera@nrc.gov">Marisa.Herrera@nrc.gov</a> ;             | <a href="mailto:Duane.White@nrc.gov">Duane.White@nrc.gov</a> ;         | <a href="mailto:Gregory.Bowman@nrc.gov">Gregory.Bowman@nrc.gov</a> ;             |
| <a href="mailto:Ross.Moore@nrc.gov">Ross.Moore@nrc.gov</a> ;                     | <a href="mailto:Robert.Summers@nrc.gov">Robert.Summers@nrc.gov</a> ;   | <a href="mailto:Larry.Donovan@nrc.gov">Larry.Donovan@nrc.gov</a>                 |
| <a href="mailto:Sue.Trifiletti@nrc.gov">Sue.Trifiletti@nrc.gov</a>               | <a href="mailto:Denise.Freeman@nrc.gov">Denise.Freeman@nrc.gov</a>     | <a href="mailto:Rick.Deese@nrc.gov">Rick.Deese@nrc.gov</a>                       |
| <a href="mailto:Darlene.Eubanks-White@nrc.gov">Darlene.Eubanks-White@nrc.gov</a> |  |  |

Hard copy:  
RIV Materials Docket File (5th Floor)

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| ADAMS  | <input type="checkbox"/> No                     | <input checked="" type="checkbox"/> Yes | <input checked="" type="checkbox"/> SUNSI Review Complete |   | Reviewer Initials: LD |
| <input checked="" type="checkbox"/> Publicly Available | <input type="checkbox"/> Non-publicly Available |   | <input type="checkbox"/> Sensitive                        | <input checked="" type="checkbox"/> Non-sensitive |                       |
| Category – <b>KEYWORD:</b>                             |   |   | EA-09-265 NOV American Technical Services                 |   |                       |
| RIV:DNMS:NMSB-A  | C:NMSB-A  | C:NMSB-B                                | ACES  | RC  |                       |
| LDonovan   | ADGaines  | JEWhitten                               | MCMaier   | KFuller   |                       |
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## NOTICE OF VIOLATION

American Technical Services, Inc.  
Sioux Falls, South Dakota

Docket: 030-33094  
License: 40-27465-01  
EA-09-265

During an NRC inspection conducted on September 17, 2009, one violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 30.34(i) requires that each portable gauge licensee 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 September 17, 2009, the licensee failed to use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges were not under the control and constant surveillance of the licensee. Specifically, American Technical Services, Inc., used no independent physical controls to secure portable gauges, not under its control and constant surveillance, while stored within a garage bay at its facility in Sioux Falls, South Dakota.

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

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 dates when full compliance was achieved, is already adequately addressed on the docket in Inspection Report 030-33094/2009-001. 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-09-265," 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 IV, within 30 days of the date of the letter transmitting this 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's Web site at [www.nrc.gov/reading-rm/pdr.html](http://www.nrc.gov/reading-rm/pdr.html) or [www.nrc.gov/reading-rm/adams.html](http://www.nrc.gov/reading-rm/adams.html). Therefore, to the extent possible, it should not include any personal privacy, proprietary or safeguards information so that it can be made available to the public without redaction.

Dated this 8<sup>th</sup> day of December 2009

ENCLOSURE 1

U.S. NUCLEAR REGULATORY COMMISSION  
REGION IV

Docket: 030-33094  
License: 40-27465-01  
Report: 030-33094/2009-001  
EA: EA-09-265  
Licensee: American Technical Services, Inc.  
Location: 2301 East Rice Street, Sioux Falls, South Dakota  
Dates: September 17 through November 2, 2009  
Inspector: Lawrence Donovan, Health Physicist  
Nuclear Materials Safety Branch A  
Approved by: Anthony D. Gaines, Chief  
Nuclear Materials Safety Branch A  
Attachment: Supplement Inspection Information

ENCLOSURE 2

## **EXECUTIVE SUMMARY**

American Technical Services (ATS), Inc.  
NRC Inspection Report 030-33094/09-001

This inspection report is based on the findings of the NRC's routine inspection of NRC license 40-27465-01. The inspection began on September 17, 2009, with continued in-office review through November 2, 2009. The inspection included a review of the licensed activities involving the use and storage of byproduct material in portable gauges at the licensee's facility located in Sioux Falls, South Dakota. This report describes the findings of the inspection.

### **Program Overview**

American Technical Services, Inc., is authorized to possess and use byproduct material (cesium-137 and americium-241/beryllium) in the operation of portable moisture density gauging devices in areas of NRC jurisdiction, including temporary jobsites. Use of portable moisture density gauges is seasonal from April to mid-October due to the weather conditions. The licensee uses gauges for soil testing through out the State of South Dakota. (Section 1)

### **Inspection Findings**

The licensee did not secure portable gauges using two independent physical controls to prevent unauthorized removal while in storage at the licensee's permanent storage facility. Specifically, the garage door of the building was open with no one providing direct constant surveillance and the door to the room where the gauges were stored was locked, but the keys to the lock were hanging on the wall in close proximity to the lock. The failure to use two independent physical controls to prevent unauthorized removal of a portable gauge when it was not under the control and constant surveillance of the licensee was identified as a violation of 10 CFR 30.34(i). (Section 2)

### **Licensee Corrective Actions**

At the time of the inspection, the licensee removed the keys that were hanging on the wall and placed them in a locked file cabinet in a separate room in the main office adjacent to the receptionist's desk. Further, the keys were placed inside a cabinet in a secured box with a combination lock. The combination to the lock was made known to authorized gauge users only. Additionally, the RSO affixed a second hasp and lock to the door of the gauge storage room. Both sets of keys will be stored in the main office, as discussed above. Additionally, all authorized users were promptly retrained regarding the security policies and procedures and quarterly refresher training on security procedures will be provided to the authorized users. (Section 3)

## Report Details

### **1 Program Overview (87124)**

#### **1.1 Inspection Scope**

This was a routine, unannounced inspection of this licensee. The inspector reviewed American Technical Services, Inc.'s, (ATS) NRC license, and associated supporting tie down documents. Collectively, these documents describe the licensee's radiation safety program. The licensee has a second field office in Black Hawk, South Dakota that was added to the license in October 2008. No inspection activities were performed at the Black Hawk field office.

#### **1.2 Observations and Findings**

American Technical Services, Inc., is authorized to use and possess byproduct material in portable moisture density gauges, and conducts gauging activities on a seasonal basis due to weather conditions in the Sioux Falls, South Dakota, area. Licensed gauge activities are typically conducted from April to mid October, typically 3-4 times a week and once a month in the winter months. At the time of the inspection, the licensee had four Troxler Model 3400 Series portable moisture density gauges and employed three authorized users. The gauges were used on road, sewer, dam, and water projects. All work was dispatched from the Sioux Falls or Black Hawk, South Dakota, offices for work conducted throughout the State of South Dakota.

### **2 Material Security and Control (87124)**

#### **2.1 Inspection Scope**

The inspector conducted interviews with licensee's staff and observed licensed activities at the corporate office in Sioux Falls, South Dakota. Licensed activities were examined as they relate to the safety and security of the portable gauges and the licensee's efforts to protect members of the public.

#### **2.2 Observation and Findings**

10 CFR 30.34(i) requires portable gauge licensees to use a minimum of two independent physical controls that form tangible barriers, to secure gauges from unauthorized removal whenever portable gauges are not under the control and constant surveillance of the licensee.

On September 17, 2009, during a routine unannounced inspection, NRC inspectors were directed by a licensee staff member to the rear of the licensee's facility where the gauges are stored. When the inspectors entered the large bay area in the rear of the facility, they found that the outside entrance to the garage bay of ATS' building was open. The licensee, when questioned about the security of the portable gauges, stated that there is usually someone in the garage bay area of the building. It was later



determined that an individual who was usually in the area, was away temporarily at the time of the inspectors' arrival. Nonetheless, for that period, the gauges were not under direct surveillance. The inspectors were then directed to a vault/room, adjacent to the garage entrance door, where the portable gauges were stored. The storage room had a hasp and lock, which was secured. However, the keys to that lock were located on the adjacent wall approximately 6 inches away from the lock, rendering the storage room unsecured. The storage vault contained two portable gauges that were secured at the plunger with a lock and stored in their locked transportation cases. Since the garage door was open with no individual around to provide constant surveillance of the portable gauge storage location and the keys to the locked storage room were hanging near the lock, the licensee failed to have any physical controls to prevent unauthorized removal of the portable gauges. The licensee's failure to use two independent physical controls that formed tangible barriers to secure the portable gauge from unauthorized removal while not under the control and constant surveillance of the licensee was identified as a violation of 10 CFR 30.34(i).

### 2.3 Conclusions

One violation of NRC requirements was identified, involving the licensee's failure to implement the increased security requirements for portable gauges identified in 10 CFR 30.34(i).

### **3 Licensee Corrective Actions**

On September 17, 2009, during the inspection, the licensee immediately secured the keys to the lock in the main office area in a cabinet near the receptionist's desk. The keys were placed in a second locked container with access to the combination known only by authorized users. The RSO affixed a second hasp and lock on the door and placed both sets of keys in the cabinet near the receptionist's desk in the main office as discussed above. Consequently, the licensee secured the stored gauge with two independent physical controls forming tangible barriers to prevent unauthorized access to the stored gauge. Additionally, all authorized users were retrained regarding the licensee's security policies and procedures and the licensee stated that they will provide quarterly refresher training on security procedures to the authorized users.

### **4 Exit Meeting Summary**

A final telephonic exit briefing was conducted with the radiation safety officer on November 2, 2009, to review the inspection findings as presented in this report. He acknowledged the inspector's findings. No proprietary information was identified.

**ATTACHMENT**

**PARTIAL LIST OF PERSONS CONTACTED**

Licensee

Mike Hudson, RSO  
Carl Liester, Engineer

**INSPECTION PROCEDURES USED**

87124 Fixed and Portable Gauge Programs

**ITEMS OPENED, CLOSED, AND DISCUSSED**

Opened

|                  |     |   |
|------------------|-----|---|
| 03033094/0901-01 | VIO | Failure to use two independent physical controls to secure a portable gauge from unauthorized removal while not under the control and constant surveillance of the licensee<br>[10 CFR 30.34(i) (EA-09-0265)] |
|------------------|-----|---|

**LIST OF ACRONYMS USED**

|     |                               |
|-----|-------------------------------|
| APV | Apparent Violation            |
| CFR | Code of Federal Regulations   |
| NOV | Notice of Violation           |
| NRC | Nuclear Regulatory Commission |
| RSO | Radiation Safety Officer      |
| VIO | Violation                     |