

January 12, 2010

EA-09-276

Mr. Hakim Shakir, P.E.
Principal
Engineering Services, Inc.
32232 Schoolcraft Road
Livonia, MI 48150

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF
CIVIL PENALTY - \$3500; INSPECTION REPORT
NO. 030-34199/2009-002(DNMS) – ENGINEERING SERVICES, INC.

Dear Mr. Shakir:

This refers to the inspection conducted on October 29, 2009, at the Engineering Services Inc., facility in Livonia, Michigan. The purpose of the inspection was to review corrective actions taken as a result of previous escalated enforcement (EA-09-123) concerning storage of a portable gauge. During the inspection, an apparent violation of U.S. Nuclear Regulatory Commission (NRC) requirements was identified by the NRC inspector. Details regarding the apparent violation were provided in NRC Inspection Report No. 030-34199/2009-002(DNMS), dated November 25, 2009.

In the letter transmitting the inspection report, we provided you the opportunity to address the apparent violation identified in the report by either attending a Predecisional Enforcement Conference or by providing a written response before we made our final enforcement decision. In a letter dated December 14, 2009, you provided a response to the apparent violation.

Based on the information developed during the inspection and the information that you provided in your December 14, 2009, letter, 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.

The violation involved your staff's failure to use a minimum of two independent physical controls that form tangible barriers to secure a portable gauge whenever the gauge was not under your control and constant surveillance, as required in 10 Code of Federal Regulations (CFR) 30.34(i). Specifically, a bracket, to which the gauge was supposed to be secured by a chain, had fallen off the wall and had not been replaced, and neither the gauge nor the storage closet was under

constant surveillance by licensee personnel at all times. The NRC determined that the root cause of the violation was due to an incomplete understanding of the need to take timely corrective actions when the bracket came loose from the wall.

The violation is of concern to the NRC because the failure to provide two tangible barriers could potentially have resulted in the radioactive material being stolen and exposures to members of the public. Therefore, this violation has been categorized, in accordance with the NRC Enforcement Policy, as a Severity Level III violation.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$3500 is considered for a Severity Level 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 was not warranted for *Identification* because the inspector identified the repeat violation. Credit was warranted for Corrective Actions based on: (1) reattaching the bracket to the wall with longer fasteners and reattaching the gauge to the bracket via a chain; and (2) implementing a weekly check that the gauge remained secured to the wall.

Therefore, to emphasize the importance of control of licensed material, 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 \$3500. In addition, issuance of this Notice 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 to prevent recurrence, and the date when full compliance was achieved, was already adequately addressed on the docket in the inspection report dated November 25, 2009, and in your December 14, 2009, letter. 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, its enclosure, and your response, if you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's

¹ A Severity Level III violation was issued on July 21, 2009, for a failure to have two independent physical controls that formed tangible barriers (EA-09-123).

H. Shakir

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Agencywide Documents Access and Management 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 www.nrc.gov/about-nrc/regulatory/enforcement.html.

Sincerely,

/RA by Cynthia D. Pederson Acting for/

Mark A. Satorius
Regional Administrator

Docket No. 030-34199
License No. 21-26742-01

Enclosures:

1. Notice of Violation and Proposed Imposition of Civil Penalty
2. NUREG/BR-0254 Payment Methods (Licensee only)

cc w/enclosure 1: State of Michigan

Letter to Hakim Shakir from Mark A. Satorius dated January 12, 2010

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF
CIVIL PENALTY - \$3500; INSPECTION REPORT
NO. 030-34199/2009-002(DNMS) – ENGINEERING SERVICES, INC

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NOTICE OF VIOLATION

AND

PROPOSED IMPOSITION OF CIVIL PENALTY

Engineering Services, Inc.
Livonia, Michigan

Docket No. 030-34199
License No. 21-26742-01
EA-09-276

During a U.S. Nuclear Regulatory Commission (NRC) inspection conducted on October 29, 2009, 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 Code of Federal Regulations (CFR) 2.205. The particular violation and associated civil penalty are set forth below:

Title 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 October 29, 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 are not under the control and constant surveillance of the licensee. Specifically, licensee personnel secured the transport case containing a gauge in its storage area with only one independent lock. The gauge was not under the control and constant surveillance of licensee personnel.

This is a Severity Level III violation (Supplement VI)
Civil Penalty - \$ 3500

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and to prevent recurrence, and the date when full compliance was achieved is already adequately addressed on the docket in Inspection Report No. 030-34199/2009-002(DNMS), dated November 25, 2009, and in your letter, dated December 14, 2009. 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-09-276," and send it to the 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 III, 2443 Warrenville Road, Suite 210, Lisle, IL 60532, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

You 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 you fail to answer within 30 days of

ENCLOSURE 1

Notice of Violation and
Proposed Imposition of Civil Penalty

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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 violation 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., "Reply to Notice of Violation," "Statement as to Payment of Civil Penalties," and "Answer to a Notice of Violation," should be addressed to: Roy Zimmerman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to Mark Satorius, Regional Administrator, U.S. Nuclear Regulatory Commission, Region III, 2443 Warrenville Road, Suite 210, Lisle, IL 60532.

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 Agencywide Documents Access and Management 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).

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

Dated this 12th day of January 2010

ENCLOSURE 1

Agencywide Documents Access and Management 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 www.nrc.gov/about-nrc/regulatory/enforcement.html.

Sincerely,

/RA by Cynthia D. Pederson Acting for/

Mark A. Satorius
Regional Administrator

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DATE	01/08/10	01/08/10	01/06/10	01/06/10	01/05/10
OFFICE	RIII	RIII	RIII	RIII	
NAME	Reynolds	Heck	Orth	Pederson for Satorius	
DATE	01/11/10	01/11/10	01/11/10	01/11/10	

OFFICIAL RECORD COPY

1 OE concurrence received via E-mail from K. Day on January 6, 2010.
2 FSME concurrence received per D. White via E-mail from K. Day on January 6, 2010.
3 OGC No Legal Objection received per M. Clark via E-mail from K. Day on January 6, 2010.