

January 10, 2012
EN-12-003

OFFICE OF ENFORCEMENT
NOTIFICATION OF SIGNIFICANT ENFORCEMENT ACTION

Licensee: S&R Engineering S.E. (EA -11-098)
San Juan, PR

Subject: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$14,000

This is to inform the Commission that a Notice of Violation and Proposed Imposition of a Civil Penalty in the amount of \$14,000 will be issued on or about January 13, 2012, to S&R Engineering S.E. (S&R), for violations identified during inspections and investigations. The staff identified one Severity Level (SL) III problem and two SL III violations. The SL III problem involved both the licensee's failure to comply with the October 29, 2009, NRC Order requiring proper transfer of its licensed nuclear material (a portable moisture density gauge) by January 29, 2010, after S&R failed to pay the NRC licensing fee, and its deliberate failure to provide complete and accurate information to the NRC regarding its continued possession of the gauge. An additional SL III violation involved S&R's failure, since August 3, 2010, to respond to NRC communications, thereby preventing the NRC from fully inspecting S&R's activities and the status of the gauge. The other SL III violation involved S&R's failure to close and lock the shutter mechanism of its nuclear gauge, since October 10, 2010, as required by S&R's License Condition.

In accordance with the Enforcement Policy, base civil penalties (CPs) in the amount of \$3,500 were considered for each SL III problem/violation. Because one of the violations in the SL III problem was deliberate, the staff considered whether credit was warranted for both *Identification* and *Corrective Action* in accordance with the CP assessment process in Section 2.3.4 of the Enforcement Policy. The staff determined that credit for *Identification* was not warranted because the violations were identified by the NRC, and that credit for *Corrective Action* was not warranted, because S&R has still failed to properly transfer its gauge. Therefore, to emphasize the importance of compliance with NRC requirements and to provide complete and accurate information to the NRC, a CP in the amount of \$7,000 (twice the amount of the base CP) was assessed for the SL III problem. The other two SL III violations were assigned base CPs of \$3,500 each because the staff determined that credit for *Corrective Action* was not warranted for either violation. Therefore, a total civil penalty in the amount of \$14,000 is being proposed.

The NRC's primary interest in this matter is to ensure that the gauge is immediately and appropriately transferred to an authorized recipient since S&R is no longer authorized to possess this licensed material. Accordingly, the NRC will provide S&R a grace period of 30 days from the date of this letter to transfer its gauge to an authorized recipient and comply with all other NRC requirements for decommissioning. If S&R completes these actions, the NRC will forgo imposition of the \$14,000 civil penalty, and S&R's license will be terminated by written notice in accordance with 10 CFR 30.36(k) when the NRC determines that the licensed material has been transferred.

It should be noted that the licensee has not been specifically informed of the enforcement action. The schedule of issuance and notification is:

Mailing of Notice	January 13, 2012
Telephone Notification of Licensee	January 13, 2012

The Commonwealth of Puerto Rico will be notified.

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