

April 17, 2012

EA-11-276

Marcia Prowell, P.E.
President
Advanced Material Services, LLC
2515 E. Glenn Avenue, Suite 107
Auburn, AL 36830

SUBJECT: ADVANCED MATERIAL SERVICES, LLC - NOTICE OF VIOLATION - NRC
Inspection Report No. 15000001/2011001

Dear Ms. Prowell:

This letter provides you the U.S. Nuclear Regulatory Commission (NRC) enforcement decision for the apparent violation identified during the NRC inspection conducted on November 10, 2011, at Advanced Materials Services' (AMS's) office in Auburn, Alabama, and subsequent in-office follow-up that concluded on February 1, 2012. The inspection consisted of an on-site examination and in-office review of your licensed activities within NRC jurisdiction as they relate to radiation safety and to compliance with NRC regulations. The NRC discussed its findings during a telephonic exit with Brian D. Prowell, Ph.D., of your organization on February 1, 2012. The findings were also described in the NRC inspection report (ML120400705¹) sent to you with a letter dated February 9, 2012 (ML120400704¹).

AMS is the holder of a license issued by the State of Alabama (an NRC Agreement State) that authorizes the possession and use (within that State) of byproduct radioactive material in a portable nuclear gauge to conduct material density testing. Such licenses do not authorize use of radioactive material in non-Agreement States or other areas of exclusive federal jurisdiction. Title 10 of the Code of Federal Regulations (CFR) Section 150.20 grants an NRC general license to Agreement State licensees allowing them to conduct the licensed activities authorized by the Agreement State license in non-Agreement States provided, in part, that the Agreement State licensee files for reciprocity. Such a filing includes submitting to the NRC a copy of NRC Form-241, "Report of Proposed Activities in Non-Agreement States," a copy of the Agreement State specific license, and the appropriate fee to the Regional Administrator of the appropriate NRC regional office, at least three days prior to engaging in such licensed activities.

¹ Designation in parentheses refers to an Agencywide Documents Access and Management System (ADAMS) accession number. Documents referenced in this letter are publicly-available using the accession number in ADAMS.

In the February 9, 2012, letter, the NRC indicated that one apparent violation was identified during the inspection. The apparent violation involved AMS's use of a portable nuclear gauge at a temporary jobsite within the State of Connecticut (a non-Agreement State) between May 12 and June 26, 2008, without having submitted the required documentation. AMS indicated to the NRC that it had not recognized there was a requirement to file for reciprocity.

In a telephone conversation on March 8, 2012, Mr. Randolph Ragland and Mr. Blake Welling of my staff informed Dr. Prowell that the NRC was considering escalated enforcement for the apparent violation, in accordance with the NRC Enforcement Policy, and that we had sufficient information regarding the apparent violation and your corrective actions to make an enforcement decision without the need for a pre-decisional enforcement conference (PEC) or a written response from you. Dr. Prowell indicated that a PEC would not be necessary and that AMS did not plan to submit a written response.

Therefore, 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. The violation involved the failure by AMS to file for reciprocity prior to working in a non-Agreement State.

The violation impacted the NRC's regulatory process because the NRC was not provided an opportunity to conduct inspections of licensed activities since the NRC was not informed that a portable nuclear gauge was being used in areas under NRC jurisdiction on these occasions. Therefore, the violation has been categorized at Severity Level (SL) III in accordance with the Enforcement Policy. In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$3,500 is considered for a SL III violation. Because AMS has not been the subject of escalated enforcement action within the last two years (note, this was the first NRC reciprocity inspection of your license), the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section 2.3.4 of the Enforcement Policy. The NRC has concluded that credit is warranted for AMS's corrective action taken to address the violation. Specifically, AMS instituted a new work planning policy requiring the AMS work planner to review the NRC website and determine whether the state in which work is being planned is a non-agreement state (or if the work will occur in an area that is otherwise under exclusive federal jurisdiction) and, if so, to ensure that AMS properly submits to the NRC the necessary reciprocity forms.

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 an escalated enforcement action that may subject you to increased inspection effort in the future should you decide to reapply for reciprocity or for a specific NRC license.

The NRC has concluded that information regarding: (1) the reason for the violation; (2) the actions planned or already taken to correct the violation and prevent recurrence; and, (3) the date when full compliance was achieved, is already adequately addressed on the docket in this letter and in NRC Inspection Report No. 15000001/2011001. Therefore, you are not required to

respond to this letter unless the descriptions in the aforementioned correspondence do not accurately reflect 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 and its enclosure as well as your response, if you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room and from the NRC's Agency-wide 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 <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>.

To the extent possible, your response, if you choose to provide one, 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 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).

Sincerely,

/RA/

William M. Dean
Regional Administrator

Docket No. 15000001
AL License No. 1479

Enclosure: Notice of Violation

cc: w/enclosure
Brian D. Prowell, Ph.D., Radiation Safety Officer
State of Connecticut
State of Alabama

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Sincerely,
/RA/
 William M. Dean
 Regional Administrator

Docket No. 15000001
 AL License No. 1479
 Enclosure: Notice of Violation
 cc: w/enclosure
 Brian D. Prowell, Ph.D., Radiation Safety Officer
 State of Connecticut
 State of Alabama

Distribution:

See next page

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 ADAMS ACCESSION NUMBER: [ML121100070](#)

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*HQ to perform a quick review. ** see previous concurrence page

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NOTICE OF VIOLATION

Advanced Materials Services, LLC
Auburn, Alabama

Docket No. 15000001
AL License No. 1479
EA-11-276

During an NRC inspection conducted between November 10, 2011 and February 1, 2012, for which an exit meeting was conducted on February 1, 2012, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 30.3 states, in part, that no person shall own, possess, or use byproduct material except as authorized in a specific or general license issued in accordance with the regulations in this chapter.

10 CFR 150.20(a) states, in part, that any person who holds a specific license from an Agreement State is granted an NRC general license to conduct the same activity in non-Agreement States, provided that the provisions of 10 CFR 150.20(b) have been met.

10 CFR 150.20(b)(1) requires, in part, that any person engaging in activities in a non-Agreement State, shall, at least three days before engaging in each such activity, file a submittal containing an NRC Form 241, "Report of Proposed Activities in Non-Agreement States," a copy of its Agreement State specific license, and the appropriate fee with the Regional Administrator of the appropriate NRC regional office.

Contrary to the above, between May 12 and June 26, 2008, Advanced Material Services, LLC (AMS), which only holds an Alabama (Agreement State) license, engaged in activities at a temporary jobsite in Connecticut (a non-Agreement State) involving the use and storage of a portable nuclear gauge containing a cesium-137 sealed source, without either obtaining a specific license issued by the NRC or, at least three days before engaging in such activity, filing a submittal containing an NRC Form 241, "Report of Proposed Activities in Non-Agreement States," a copy of its Agreement State specific license, and the appropriate fee with the Regional Administrator of the appropriate NRC regional office.

This is a Severity Level III violation (Section 6.9).

The NRC has concluded that information regarding: (1) the reason for the violation; (2) the actions planned or already taken to correct the violation and prevent recurrence; and, (3) the date when full compliance was achieved, is already adequately addressed on the docket in the letter transmitting the Notice of Violation (Notice) and in NRC Inspection Report No. 15000001/2011001. Therefore, you are not required to respond to this Notice. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the descriptions in the aforementioned correspondence do 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-11-276," and send it to the Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001, with a copy to the Regional Administrator, Region I, 475 Allendale Road, King of Prussia, PA 19406, 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 and from the NRC's Agency-wide Documents Access and Management System (ADAMS), accessible from the NRC Web site at <http://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 of receipt.

Dated this 17th day April, 2012