



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION III
2443 WARRENVILLE RD. SUITE 210
LISLE, ILLINOIS 60532-4352

February 4, 2015

EA-14-162

Mr. James T. Sherer, President
Patriot Engineering and Environmental, Inc.
6330 E. 75th Street, Suite 216
Indianapolis, IN 46250

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY –
\$3,500; PATRIOT ENGINEERING AND ENVIRONMENTAL, INC.;
NRC REACTIVE INSPECTION REPORT NO. 03037878/2014004(DNMS)

Dear Mr. Sherer:

This letter refers to the inspection conducted on September 4, 2014, at your facility in Indianapolis, Indiana, with continued in-office review through November 3, 2014. The purpose of the inspection was to follow up on an event, which happened at a temporary job site on August 15, 2014, and to review activities performed under your NRC license to ensure that activities are being performed in accordance with NRC requirements. The purpose of the in-office review was to conduct interviews and evaluate information not available during the onsite inspection. During the inspection, an apparent violation of NRC requirements was identified. The significance of the issue and the need for lasting and effective corrective actions were discussed with you during telephonic exit meetings that were held on October 17 and November 3, 2014. Details regarding the apparent violation were provided in NRC Inspection Report No. 03037878/2014004(DNMS) dated November 4, 2014. The inspection report can also be found in the NRC's Agencywide Documents Access and Management System (ADAMS) at Accession Number ML14308A498. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

In the letter transmitting the inspection report, we provided you with the opportunity to address the apparent violation identified in the report in one of three ways: (1) by providing a written response; (2) by requesting a predecisional enforcement conference; or (3) by attending an alternative dispute resolution (ADR) session. In an undated letter received by the NRC on December 12, 2014, you provided a written response to the apparent violation.

Based on the information developed during the inspection and the information that you provided in your response, 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. Specifically, the NRC identified that a portable gauge was left unattended and unsecured at a temporary jobsite when the technician using the gauge walked away to record data, contrary to the requirements of Title 10 of the *Code of Federal Regulations* (10 CFR) 20.1802 and 30.34(i). During the short interval while the technician's attention was diverted, a piece of heavy machinery drove over the gauge. The root cause of the violation was individual error by the technician, who was distracted while recording data. This is of significant concern to the NRC, because of the possibility that the source within the damaged gauge could have also been damaged, which could have resulted in adverse

impacts to the health and safety of the construction work force at the temporary jobsite. Therefore, this violation has been categorized, in accordance with the NRC Enforcement Policy, at Severity Level III.

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

Because your facility has been the subject of escalated enforcement action within the last two years¹, the NRC considered whether credit was warranted, in this case, for both *Identification* and *Corrective Action* in accordance with the civil penalty assessment process in Section 2.3.4 of the Enforcement Policy. These factors can either mitigate the civil penalty to zero, or increase the civil penalty up to double the base amount.

The NRC determined that credit was not warranted for *Identification* because: (1) the issue was identified through an event; (2) the event did not occur as a result of any self-monitoring efforts; (3) the issue did not require extensive effort to identify; and (4) there was an opportunity to prevent the event (i.e., the technician could have brought the gauge to the truck once the readings were finished or the technician could have brought the data-recording device with him prior to taking readings and remained with the gauge.)

The NRC determined that credit was warranted for *Corrective Action* based on your corrective actions which included: (1) holding a meeting about the importance of the security, handling, and training for the gauges at each facility location with the employees that handle the nuclear gauges; (2) providing each facility a specific training manual from the corporate office regarding gauge security; and (3) updating the corporate radiation safety program with a more stringent policy and responsibilities regarding the nuclear gauges. As longer-term actions, you plan to continue unannounced field inspections and safety meetings regarding the importance of training and security for the nuclear gauges.

Therefore, to emphasize the importance of prompt identification and comprehensive correction of violations and compliance with NRC requirements, after consultation with the Director, Office of Enforcement, I have been authorized to issue a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the base amount of \$3,500 (Enclosure 1). In addition, issuance of this Notice constitutes escalated enforcement action that will subject you to increased inspection effort.

The NRC has concluded that information regarding: (1) the reason for the violation; (2) the corrective actions that have been taken and the results achieved; and (3) the date when full compliance was achieved is already adequately addressed on the docket in the inspection report and in your written response. Therefore, you are not required to respond to the violations enclosed with 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. However, you are either required to provide a statement indicating when and by what method the civil penalty payment was made

¹ On July 18, 2014, the NRC issued a Severity Level III violation for a gauge control issue identified during a March 2014 inspection at your Fort Wayne and Indianapolis, Indiana facilities (EA-14-060). This violation may be found in ADAMS at Accession Number ML14203A102.

J. Sherer

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or to provide the NRC information protesting imposition of the civil penalty in whole or in part. Further information is provided 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 and in 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/>.

Sincerely,

/RA/

Cynthia D. Pederson
Regional Administrator

Docket No. 030-37878
License No. 13-32725-01

Enclosures:

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

cc w/ Enclosure 1:
State of Indiana
John R. Phillips, Corporate Radiation
Safety Officer

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Patriot Engineering and Environmental, Inc.
Indianapolis, Indiana

Docket No. 03037878
License No.13-32725-01
EA-14-162

During an NRC inspection conducted on September 4, 2014, with continued review through November 3, 2014, 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 Title 10 of the *Code of Federal Regulations* (10 CFR) Section 2.205. The particular violation and associated civil penalty are set forth below:

10 CFR 20.1802 requires that the licensee control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage.

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 4, 2014, the licensee failed to control and maintain constant surveillance over licensed material that was not in storage and failed to use a minimum of two independent physical controls that formed tangible barriers to secure a portable gauge while it was not under control and constant surveillance. Specifically, an authorized user failed to maintain control and constant surveillance over a gauge containing licensed material and that gauge was driven over by construction equipment.

This is a Severity Level III violation (Sections 6.3 and 6.7).
Civil Penalty – \$3,500

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 the date when full compliance was achieved, is already adequately addressed on the docket in NRC Inspection Report No. No. 03037878/2014004(DNMS) dated November 3, 2014, and in your written response. 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-14-162," and send it to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville, MD 20852-2738, with copies to the Regional Administrator, Region III, 2443 Warrenville Road, Suite 210, Lisle, IL 60532, and to the Document Control Desk, Washington, DC 20555-0001 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, a statement ("Statement as to Payment of Civil Penalty") 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 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, your response should address the factors addressed in Section 2.3.4 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 a Notice of Violation," "Statement as to Payment of Civil Penalty," and "Answer to a Notice of Violation," should be addressed to: Patricia K. Holahan, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with copies to Cynthia D. Pederson, Regional Administrator, U.S. Nuclear Regulatory Commission, Region III, 2443 Warrenville Road, Suite 210, Lisle, IL 60532-4352, and U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001 .

The responses noted above will be made available electronically for public inspection in the NRC Public Document Room or in the NRC's Agencywide 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 responses should not include any personal privacy, proprietary, or safeguards information, so that they can be made available to the public without redaction. 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 of receipt.

Dated this 4th day of February, 2015.

or to provide the NRC information protesting imposition of the civil penalty in whole or in part. Further information is provided 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 and in 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/>.

Sincerely,

/RA/

Cynthia D. Pederson
Regional Administrator

Docket No. 030-37878
License No. 13-32725-01

Enclosures:

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

cc/ Encl 1:

State of Indiana
John R. Phillips, Radiation Safety Officer

DISTRIBUTION (w/ Enclosure 1 only)

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*See previous concurrences

ADAMS Accession Number ML15037A457

OFFICE	RIII	RIII	RIII	RIII	D:NMSS	D:OGC	D:OE	RIII	RIII
NAME	Lougheed*	McCraw*	Louden*	Rubic	Henderson ² Sun	Scott ³ Simon	Holahan ⁴ Norman	Duncan	Pederson
DATE	12/16/14	12/17/14	12/18/14	1/15/15	1/22/15	1/30/15	1/30/15	2/03/15	2/04/15

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² NMSS concurrence provided via e-mail from R. Sun on January 22, 2015

³ OGC "No Legal Objection" and concurrence provided via e-mail from M. Simon on January 30, 2015

⁴ OE concurrence provided via e-mail from K. Norman on January 30, 2015