



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

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

March 27, 2015

EA-13-251
EN 49556
NMED No. 130560 (closed)

Mr. Randy Morton, Branch Manager
ATC Group Services, Inc.
7988 Centerpoint Drive, Suite 100
Indianapolis, IN 46256-3345

**SUBJECT: ORDER IMPOSING CIVIL MONETARY PENALTY - \$3,500
ATC GROUP SERVICES, INC.**

Dear Mr. Morton:

This letter refers to your letter dated December 14, 2014, in response to the Notice of Violation and Proposed Imposition of Civil Penalty (Notice) sent as an enclosure to our letter dated November 19, 2014. Our letter and Notice describe one violation identified during a U.S. Nuclear Regulatory Commission (NRC) inspection conducted December 4, 2013, and an Office of Investigations investigation completed August 12, 2014. The NRC inspection and investigation were prompted by your submittal of an event notification (EN) 49556 following identification of a theft of a nuclear gauge.

To emphasize the importance of maintaining security and control of sealed sources and devices and compliance with NRC requirements, a civil penalty of \$3,500 was proposed.

In your response, you did not deny the facts surrounding the violation. However, you disagreed with the NRC assessment of the safety significance of the violation. Specifically, you requested that the violation be deemed a Severity Level IV violation.

After consideration of your response, we have concluded that a violation occurred as stated in the Appendix attached to the enclosed Order Imposing Civil Monetary Penalty and that an adequate basis does not exist for either a reduction of the severity level or the mitigation of the civil penalty. Accordingly, we hereby serve the enclosed Order on ATC Group Services, Inc., imposing a civil monetary penalty in the amount of \$3,500. Within 30 days of the date of the enclosed Order you should either: (1) pay the civil penalty in accordance with Section IV of the Order, or (2) request a hearing in accordance with Section V of the Order.

We will review the effectiveness of your corrective actions during a subsequent inspection.

In accordance with Title 10 of the *Code of Federal Regulations* (CFR) 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response, if you choose to provide one, will be made available electronically for public inspection in the NRC Public Document

R. Morton

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Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <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. The NRC also includes significant enforcement actions on its Web site (<http://www.nrc.gov/about-nrc/regulatory/enforcement.html>).

Sincerely,

/RA/

Darrell J. Roberts
Acting Regional Administrator

Docket No. 030-13245
License No. 13-17732-01

Enclosures:

1. Order Imposing Civil Monetary Penalty
2. NUREG/BR-0254 Payment Methods
(licensee only)

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)

ATC Group Services, Inc.)
Indianapolis, IN)

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Docket No. 030-13245
License No. 13-17732-01
EA-13-251

ORDER IMPOSING CIVIL MONETARY PENALTY

I

ATC Group Services, Inc. (Licensee) is the holder of Materials License No. 13-17732-01, issued by the U.S. Nuclear Regulatory Commission (NRC) on December 30, 1977, and last amended January 29, 2014 (Amendment 31). The license authorizes the Licensee to use and store moisture/density gauges containing radioactive material in accordance with the conditions specified therein.

II

An inspection of the Licensee's activities was conducted on December 4, 2013, and an Office of Investigations investigation was completed August 12, 2014. The results of this inspection and investigation indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated November 19, 2014. The Notice states the nature of the violation, the provision of the NRC's requirements that the Licensee violated, and the amount of the civil penalty proposed for the violation.

The Licensee responded to the Notice in a letter dated December 14, 2014. In its response, the Licensee disagreed with the NRC assessment of the safety significance of the violation. Specifically, the Licensee requested that the violation be deemed a Severity Level IV violation.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined that, as set forth in the Appendix to this Order, the violation occurred as stated and that the penalty proposed for the violation designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, IT IS HEREBY ORDERED THAT:

The Licensee pay a civil penalty in the amount of \$3,500 within 30 days of the date of this Order, in accordance with NUREG/BR-0254. In addition, at the time payment is made, the licensee shall submit a statement indicating when and by what method payment was made, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738.

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order within 30 days of its issuance. In addition, the Licensee and any other person adversely affected by this Order may request a hearing on this Order within 30 days of its issuance. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007, as amended by 77 FR 46562, August 3, 2012), codified in pertinent part at 10 CFR Part 2, Subpart C. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at hearing.docket@nrc.gov, or by telephone at (301) 415-1677, to request: (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and

(2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, web-based submission form. In order to serve documents through Electronic Information Exchange (EIE), users will be required to install a web browser plug-in from the NRC web site. Further information on the web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene through the EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

[submittals.html](#). A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time (ET) on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail at MSHD.Resource@nrc.gov, or by a toll-free call at (866) 672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., ET, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville

Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket, which is available to the public at <http://ehd1.nrc.gov/ehd/>, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. In the absence of any request for a hearing, or written approval of an extension of

time in which to request a hearing, the provisions specified in Section IV above shall be final 30 days from the date this Order is issued without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. If payment has not been made by the time specified above, the matter may be referred to the Attorney General for collection.

FOR THE NUCLEAR REGULATORY
COMMISSION

/RA/

Darrell J. Roberts
Acting Regional Administrator
Region III

Dated this 27th day of March, 2015

APPENDIX

U.S. NUCLEAR REGULATORY COMMISSION EVALUATION AND CONCLUSION

On November 19, 2014, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for a violation identified during a U.S. Nuclear Regulatory Commission (NRC) inspection conducted December 4, 2013, and an Office of Investigations investigation completed August 12, 2014. ATC Group Services, Inc. (Licensee) responded to the Notice in a letter dated December 14, 2014. The Licensee disputed the NRC's assessment of the severity level of the violation. Specifically, the Licensee requested that the violation be deemed a Severity Level IV violation. The NRC's evaluation and conclusion regarding the Licensee's request are as follows:

Violation as cited in the Notice:

Title 10 of the *Code of Federal Regulations* (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.

Contrary to the above, on November 18, 2013, the licensee failed to control and maintain constant surveillance of licensed material, a portable gauge, that was in an unrestricted area and that was not in storage. Specifically, a company employee left the gauge locked in the back of an open-bed truck in a store parking lot in Indianapolis, Indiana, with the truck door unlocked and the keys in the ignition.

This is a Severity Level III violation (Section 6.7).
Civil Penalty - \$3,500.

Summary of Licensee's Reply to the Notice:

In its reply to the Notice, the Licensee described four factors listed in Section 2.2.1 of the NRC Enforcement Policy, "Factors Affecting Assessment of Violations," which are considered by NRC staff when assessing the safety significance of a violation. These factors include the actual security and safety consequences of the violation, the potential security and safety consequences of the violation, whether the violation involved willfulness, and the impact of the violation on the NRC's ability to perform its regulatory oversight functions. The Licensee implied that the NRC staff misapplied these factors when assessing the violation as cited in the Notice. Specifically, the Licensee argued that the violation did not result in any actual consequences as there was no release of radiation, nor any radiation or chemical hazard exposures. In addition, the Licensee stated that the violation had no potential safety or security consequences as the violation did not create a credible accident, security failure, or exposure scenario that could potentially have significant actual consequences. Further, the Licensee indicated that the violation did not impact the NRC's ability to monitor or carry out its statutory mission. Lastly, the Licensee acknowledged that the former employee did not deliberately lose control of the gauge.

The Licensee cited differences in safety significance between a Severity Level III and Severity Level IV violation as stated in Section 2.2.2 of the Enforcement Policy, "Traditional Enforcement." To illustrate its point, the Licensee provided an example of a failure to secure a portable gauge with at least two independent physical controls whenever the gauge is not under the control and constant surveillance of the licensee as required by 10 CFR 30.34(i) as a Severity Level III violation (Section 6.3.c.3 of the Enforcement Policy). The Licensee concluded

that the Licensee met the provisions of 10 CFR 30.34 (i) as two barriers were used to secure the gauge to the vehicle. Further, the Licensee explained that the circumstances associated with the violation (i.e., the former employee's oversight that led to the theft of the vehicle and the gauge) did not meet the safety significance of a Severity Level III violation, and therefore, the violation should be deemed a Severity Level IV violation.

NRC Evaluation of Licensee's Reply to the Notice:

The NRC staff reviewed the information provided by the Licensee in its Reply to the Notice that was issued on November 19, 2014. The NRC staff reviewed its application of the applicable regulations and the Enforcement Policy, which governs the NRC process during assessments of the safety significance of violations.

The NRC staff has reviewed its application of the four factors described in Section 2.2.1 of the NRC Enforcement Policy. The staff acknowledges that the company employee did not intentionally cause the Licensee to be in violation of NRC requirements. The staff agrees that the violation did not impact the NRC's ability to perform its regulatory oversight function as the Licensee promptly reported the event to the NRC. However, the staff disagrees with the Licensee's assessment of the actual and potential security and safety consequences. The NRC staff has determined that the violation resulted in actual security consequences in that the Licensee lost control of the gauge containing radioactive material and the gauge has not been recovered. Because the gauge has not been recovered, the violation has potential safety consequences in that the unauthorized possession and misuse of the radioactive material can lead to unnecessary exposures of members of the public.

Section 2.2.2 of the Enforcement Policy describes that under the NRC traditional enforcement process, the NRC assesses significance by assigning a severity level to all violations subject to NRC's enforcement authority. Further, the Policy provides the designations and the general definitions of Severity Level I, II, III, and IV violations. However, the Policy also states that these are general principles and the severity level designations reflect different degrees of significance (based on actual and potential consequences) and also depend on the activity area in which the severity level is designated. To illustrate this concept, the NRC staff recognizes that a Severity Level I violation at an operating nuclear plant does not compare to a Severity Level I violation at a gauge user's facility. Section 6 of the Enforcement Policy provides examples of violations for each severity level involving different activity areas.

In the Licensee's Reply to the Notice, the Licensee provided an example of a Severity Level III violation in Section 6.3 of the Enforcement Policy, "Materials Operations," for a failure to follow the provisions of 10 CFR 30.34(i). The staff determined that a violation of 10 CFR 20.1802, "Control of Material Not in Storage," occurred as the regulation encompasses all radioactive material that is in an unrestricted area and not in storage, and as the violation involved an actual failure to control and maintain surveillance of that material. This type of violation is addressed in Section 6.7 of the Enforcement Policy, "Health Physics." Specifically, Sections 6.7.c.10.a and 6.7.d.6 of the Enforcement Policy provide examples of a Severity Level III and a Severity Level IV violation for the failure to secure, or maintain surveillance over, licensed material. As the examples demonstrate, the actual and potential consequences associated with the violation are further quantified based on the activity and the type of radionuclides present. Section 6.7.c.10.a of the Enforcement Policy involves the failure to secure, or maintain surveillance over, licensed material in any aggregate quantity greater than 1,000 the quantity specified in Appendix C, "Quantities of licensed Material Requiring Labeling," to 10 CFR Part 20, "Standards for Protection against Radiation." The NRC staff determined that the appropriate severity level for

the violation is Severity Level III based on the actual activity of americium-241 and cesium-137 present at the time the gauge was stolen.

NRC Conclusion

Based on its evaluation, the NRC has concluded that a violation of 10 CFR 20.1802 occurred as stated and that an adequate basis does not exist for either a reduction of the severity level or the mitigation of the civil penalty. Consequently, the proposed civil penalty in the amount of \$3,500 should be imposed.

R. Morton

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Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <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. The NRC also includes significant enforcement actions on its Web site (<http://www.nrc.gov/about-nrc/regulatory/enforcement.html>).

Sincerely,

/RA/

Darrell J. Roberts
Acting Regional Administrator

Docket No. 030-13245
License No. 13-17732-01

Enclosures:

1. Order Imposing Civil Monetary Penalty
2. NUREG/BR-0254 Payment Methods
(licensee only)

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DATE	03/18/15	03/19/15	03/24/15	03/27/15	

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¹ NMSS concurrence provided via email from R. Sun on March 11, 2015.

² OGC concurrence and No Legal Objection provided via email from D. Cylkowski on March 18, 2015.

³ OE concurrence provided via email from K. Norman on March 19, 2015.

Letter to R. Morton from D. Roberts dated XXXX

SUBJECT: ORDER IMPOSING CIVIL MONETARY PENALTY - \$3,500
ATC GROUP SERVICES, INC.

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