



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

REGION I
2100 RENAISSANCE BLVD., SUITE 100
KING OF PRUSSIA, PA 19406-2713

December 14, 2015

EA-15-148

Joseph Meiburger
Branch Manager
ECS Mid-Atlantic, LLC
1340 Charwood Road, Suite A
Hanover, MD 21076

SUBJECT: ECS MID-ATLANTIC, LLC NOTICE OF VIOLATION - NRC INSPECTION
REPORT NO. 03037505/2015001

Dear Mr. Meiburger:

This letter provides you the U.S. Nuclear Regulatory Commission's (NRC's) enforcement decision for the apparent violation (AV) identified during an onsite NRC safety inspection conducted on June 11, 2015, at the ECS, Mid-Atlantic, LLC (ECS) Hanover, Maryland office and a temporary jobsite at the U.S. Naval Academy grounds in Annapolis, Maryland with continued in-office review through September 16, 2015. The inspection was conducted in response to a June 8, 2015, event (Event No. 51139) in which a portable moisture/density nuclear gauge was damaged by a compactor roller at an ECS temporary jobsite at the U.S. Naval Academy. The inspection consisted of interviews with ECS personnel and the examination of selective records to evaluate ECS's licensed activities as they relate to radiation safety and compliance with NRC regulations. Dr. Sattar Lodhi of this office discussed the AV with Mr. Michael Dean of your staff during a telephonic exit meeting on September 16, 2015. The AV was also described in the NRC inspection report sent to you with a letter dated October 14, 2015 (ML15287A298¹).

In the October 14, 2015, letter transmitting the inspection report, we informed you that we had sufficient information regarding the AV and the corrective actions taken by ECS to make an enforcement decision without the need for additional information from you. However, we provided you the opportunity to address the AV by either attending a pre-decisional enforcement conference (PEC) or providing a written response. We also informed you that you could accept the violations as characterized in the reports. In a phone call with Mr. Blake Welling of this office, on October 21, 2015, you indicated that ECS did not require a PEC and did not intend to send a written response.

¹ Designation in parentheses refers to an Agency-wide Documents Access and Management System (ADAMS) accession number. Unless otherwise noted, documents referenced in this letter are publicly-available using the accession number in ADAMS.

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 were described in detail in the subject inspection report. The violation involved the failure to properly control and secure a portable moisture/density nuclear gauge containing an 8 millicurie (mCi) cesium-137 sealed source and a 40 mCi americium-241 sealed source. Specifically, on June 8, 2015, an ECS authorized user (AU) was working with the gauge at the U.S. Naval Academy. The AU walked away from the gauge to provide soil compaction results to the work foreman. Subsequently, a compactor roller backed over the gauge, damaging the outer casing. The NRC determined that, during the time the gauge containing the radioactive sources was left unattended, ECS did not: (1) control and maintain constant surveillance of the gauge; or (2) use two independent physical controls that form tangible barriers to secure the gauge from unauthorized removal.

Upon identifying the damaged gauge, the AU immediately alerted nearby workers and secured the area and then called the ECS Radiation Safety Officer (RSO). The ECS RSO examined the gauge and conducted a radiological survey of the area. The RSO determined that the damage to the gauge was limited to the outer gauge housing, the sources remained intact and in shielded positions within the gauge, and no radiological contamination was spread to the environment. However, the potential existed for radiation exposure and the spread of contamination to occur if the sources had been damaged. Therefore, the violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level (SL) III.

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 ECS has not been the subject of escalated enforcement action within the last two years or two inspections, 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 NRC Enforcement Policy. The NRC has concluded that credit is warranted for ECS's corrective actions taken to address the violation. Specifically, ECS initiated prompt and comprehensive corrective and preventive actions including: (1) the AU immediately alerted personnel and secured the area; (2) the RSO quickly conducted radiological surveys and secured the gauge; and (3) ECS conducted timely training with all gauge users to discuss the root causes of the event and to emphasize procedural and regulatory requirements to maintain constant control and surveillance of portable gauges. Therefore, to encourage prompt and comprehensive correction of violations, and in recognition of the absence of previous escalated enforcement action, after consultation with the Director, Office of Enforcement, I have been authorized 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 escalated enforcement action that may subject you to increased inspection effort.

The NRC has concluded that information regarding: (1) the reasons 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 Inspection Report No. 03037505/2015001, and in this letter. Therefore, you are not required to respond to this letter unless the description 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 and its enclosure will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Website at <http://www.nrc.gov/reading-rm/adams.html>. 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 the 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).

The NRC also includes significant enforcement actions on its Web site at (<http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>).

Sincerely,

/RA/

Daniel H. Dorman
Regional Administrator

Docket No. 03037505

Enclosure: Notice of Violation

cc w/enclosure:
State of Maryland

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Website at <http://www.nrc.gov/reading-rm/adams.html>. 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 the 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).

The NRC also includes significant enforcement actions on its Web site at (<http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>).

Sincerely,

/RA/

Daniel H. Dorman
Regional Administrator

Docket No. 03037505

Enclosure: Notice of Violation

cc w/enclosure:
State of Maryland

ML15348A176

Distribution: see next page

DOCUMENT NAME: S:\Enf-all\Enforcement\Proposed-Actions\Region1\ECS Mid-Atl Dmgd gauge NOV-III EA-15-148.docx

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DATE	10/28/15	10/29/15	11/4/15	11/5/15	11/6/15
OFFICE	OE**email	RI/DNMS			RA
NAME	LSreenivas	D Collins/			D Dorman/
DATE	11/25/15	12/2/15			12/11/15

* See previous concurrence page ** OE to perform a quick review

OFFICIAL RECORD COPY

Letter to Joseph Meiburger from Daniel Dorman dated December 14, 2015

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Region I OE Files (with concurrences)

NOTICE OF VIOLATION

ECS Mid-Atlantic, LLC
Hanover, Maryland

Docket No. 03037505
License No. 19-31261-01
EA-15-148

During a U.S. Nuclear Regulatory Commission (NRC) inspection conducted on June 11, 2015, with continued in-office review through September 16, 2015, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 20.1802 states that the licensee shall 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 shall 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 June 8, 2015, ECS Mid-Atlantic, LLC, did not control and maintain constant surveillance of licensed material that was in a controlled or unrestricted area. Further, ECS did not use two independent physical controls that form tangible barriers to secure a portable gauge from unauthorized removal when gauges were not under control and constant surveillance. Specifically, a portable Troxler 3440 gauge, which contained sealed sources of approximately 8 millicuries of cesium-137 and 40 millicuries of americium-241, was left unattended and uncontrolled at a jobsite at the U.S. Naval Academy. Additionally, while the gauge was unattended, it was not secured with any physical controls that form tangible barriers to secure it from unauthorized removal. The unattended gauge was damaged when machinery (a compactor roller) operating at the site ran over the gauge.

This is a Severity Level III violation (Enforcement Policy Example Sections 6.3 and 6.7).

The NRC has concluded that information regarding: (1) the reasons 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 Inspection Report No. 03037505/2015001, and in the letter transmitting this Notice of Violation (Notice). 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 description 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-15-148," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001 with a copy to the Regional Administrator, Region I, 2100 Renaissance Boulevard, Suite 100, 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 or from the NRC's document system 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 14th day of December, 2015