



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

May 3, 2016

EA-13-190

Mr. Jay Gupta
Plus, LLC
1455 Washington Blvd
Stamford, CT 06902

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$42,000 (NRC INVESTIGATION REPORT NOS. 1-2014-001 AND 1-2015-017,
PLUS, LLC.)

Dear Mr. Gupta:

This letter refers to two investigations initiated by the U.S. Nuclear Regulatory Commission (NRC) Office of Investigations (OI), on October 18, 2013 and April 8, 2015, related to the import, possession, and distribution of licensed materials by Plus, LLC in areas of NRC jurisdiction without having an NRC license.

On January 5, 2016, Mr. Hipólito González and staff, of the Division of Materials Safety, State, Tribal, and Rulemaking Programs (MSTR), Office of Nuclear Material Safety and Safeguard (NMSS), NRC, conducted a meeting by telephone with you in which the basis for three apparent violations of NRC's regulations were discussed. The three apparent violations were also described in detail in the letter the NRC issued to you on January 5, 2016 (Agencywide Document Access and Management System (ADAMS) Accession Number ML14343A906).

During the January 5, 2016, meeting and in the January 5, 2016, letter, the NRC informed you that the NRC was considering escalated enforcement for the three apparent violations, and offered you three choices: (1) to respond in writing, (2) to request Alternative Dispute Resolution (ADR), or (3) to request a predecisional enforcement conference (PEC) with the NRC. You requested a PEC.

On February 22, 2016, a PEC was conducted in the NRC's Headquarters office with you and your attorney. The purpose of the conference was to discuss the apparent violations, their significance, their root causes, the potential willfulness of the violations, and your corrective actions. The purpose of the PEC was also to allow NRC to obtain information to assist the NRC in making an informed enforcement decision, and to provide you with an opportunity to present your perspective on the apparent violations and any other information that Plus, LLC believed the NRC should take into consideration.

Based on the evidence developed during the investigations, including the information that you provided during the PEC, the NRC has determined that three violations of NRC requirements have occurred. The violations are cited in the enclosed Notice of Violation (Notice) and the

circumstances surrounding them are described in Enclosures 1 and 2 of NRC's January 5, 2016 letter to you.

The NRC considers your actions regarding all three of the violations to be willful. With respect to your activities between February 2013 and October 2014, you were aware of the regulatory requirements but made a deliberate decision to not comply given the cost associated with that compliance. Your activities between October 2014 and February 2015 showed careless disregard for regulatory requirements in that you acted based on your interpretation of the requirements without confirming with the NRC staff that your actions were compliant.

The NRC considers these violations significant because the requirements in title 10 of the *Code of Federal Regulations* (CFR) 30.3(a) provide reasonable assurance that transfers and the products intended for use by unlicensed persons meet the applicable requirements. The failure to obtain appropriate license authorization to distribute these products is significant because it resulted in the NRC not being able to conduct its regulatory responsibilities to ensure that the products were safe for distribution to members of the general public. Additionally, willful violations are of significant concern to the NRC because the NRC's regulatory programs rely upon the integrity of entities, applicants, and licensees to comply with NRC requirements. Therefore, the three violations have each been categorized in accordance with the NRC Enforcement Policy as a Severity Level III violation. The NRC Enforcement Policy may be found on the NRC website at www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html.

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$7,000 is considered for each Severity Level III violation. Plus, LLC has not previously been the subject of escalated enforcement action; however, because the violations were willful, the NRC considered whether credit was warranted for *Identification* in accordance with the civil penalty assessment process in Section 2.3.4 of the Enforcement Policy. Based on the fact that the violations were not identified by Plus, LLC, the NRC has determined that *Identification* credit is not warranted.

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. Based on its assessment of Plus, LLC's corrective actions, the NRC has determined that *Corrective Action* credit is warranted. Plus, LLC's corrective actions included ceasing distribution of watches stored at Amazon warehouses, obtaining a possession license from the NRC, and obtaining an NRC exempt-distribution license.

In accordance with the Enforcement Policy, a combined base Civil Penalty in the amount of \$21,000 was considered for the three violations. The NRC also determined that these willful violations resulted in Plus, LLC avoiding an estimated \$70,000 in annual license fees over the duration of the violations. In accordance with the Enforcement Policy, the NRC determined that the use of enforcement discretion was appropriate to consider a combined total Civil Penalty that doubles the combined base Civil Penalty.

Therefore, the NRC is issuing the enclosed Notice and Proposed Imposition of Civil Penalty in the amount of \$42,000 to emphasize the importance of compliance with the regulations, and prompt and comprehensive correction of violations that could adversely affect public health and safety, as well as life and property. In addition, issuance of these Severity Level III violations constitute escalated enforcement action that may subject Plus, LLC to increased inspection effort.

If you disagree with this enforcement sanction, you may deny the violation, as described in the Notice, or you may request alternative dispute resolution (ADR) with the NRC in an attempt to resolve this issue. ADR is a general term encompassing various techniques for resolving conflicts using a neutral third party. The technique that the NRC has decided to employ is mediation. Mediation is a voluntary, informal process in which a trained neutral (the "mediator") works with parties to help them reach resolution. If the parties agree to use ADR, they select a mutually agreeable neutral mediator who has no stake in the outcome and no power to make decisions. Mediation gives parties an opportunity to discuss issues, clear up misunderstandings, be creative, find areas of agreement, and reach a final resolution of the issues. Additional information concerning the NRC's ADR program can be found at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>.

The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program as a neutral third party. If you are interested in pursuing this issue through the ADR program, please contact: (1) the ICR at (877) 733-9415; and (2) Mr. Hipólito González, at 301-415-5637 within 10 days of the date of this letter. You may also contact both ICR and Mr. González for additional information. Your submitted signed agreement to mediate using the NRC ADR program will stay the 30-day time period for payment of the civil penalties and the required written response, as identified in the enclosed notice, until the ADR process is completed.

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken and planned to be taken to correct the violations and to prevent recurrence, and the date when full compliance will be achieved, are adequately addressed on the docket in documents submitted by Plus, LLC as a result of the predecisional enforcement conference. Plus, LLC is not required to respond to this letter unless the description herein does not accurately reflect Plus, LLC's corrective actions or its position. In that case, or if Plus, LLC chooses to provide additional information, it 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, its enclosures, and your response, if you provide one, 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's 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. 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, it 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/>.

Should you have any questions regarding this letter or the enclosed Notice or report, please contact Mr. Hipólito González, Branch Chief, MSTR/NMSS/NRC, at 301-415-5637.

Sincerely,

/RA/

Patricia K. Holahan, Director
Office of Enforcement

Docket: 030-38874

Enclosures:

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

cc: NRC Region I

Should you have any questions regarding this letter or the enclosed Notice or report, please contact Mr. Hipolito Gonzalez, Branch Chief, MSTR/NMSS/NRC, at 301-415-5637.

Sincerely,

/RA/

Patricia K. Holahan, Director
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NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Plus, LLC
Stamford, CT 06902

Docket Nos. 030-38874, 030-38780
License Nos. 06-35274-01E, 06-35183-01
EA-13-190

Based on the 2013 and 2015 Nuclear Regulatory Commission (NRC) investigations of the Plus, LLC, distribution of watches containing byproduct material (hydrogen-3), three violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the NRC proposes to impose a total civil penalty of \$42,000 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* (CFR) 2.205. The particular violations and associated civil penalties are set forth below:

- A. 10 CFR 30.3(a), "Activities requiring license" provides, in part, that "no person shall manufacture, produce, transfer, receive, acquire, 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 30.15(a)(1), provides an exemption to the requirement for a license in 10 CFR 30.3(a) for persons who receive, possess, use, transfer, own or acquire timepieces or hands or dials containing not more than specified quantities of byproduct material and not exceeding specified levels of radiation. However, the exemption in 10 CFR 30.15(a)(1) excludes "persons who initially transfer for sale or distribution" such timepieces or hands or dials.

10 CFR 30.15(b) provides, in part, that any person who desires to initially transfer for sale or distribution the products exempted in 10 CFR 30.15(a) should apply for a specific license pursuant to 10 CFR 32.14, which license states that the product may be distributed by the licensee to persons exempt from the regulations pursuant to 10 CFR 30.15(a).

Contrary to the above, Plus, LLC distributed material to unlicensed persons without an NRC license to distribute. Specifically, beginning on or around February 23, 2013, Plus, LLC initially imported for sale or distribution, approximately 1717 tritium watches containing byproduct material to unlicensed persons without obtaining a specific license pursuant to 10 CFR 32.14 authorizing such transfers. Additionally, between October 2014 and February 2015, Plus, LLC caused the initial transfer of approximately 110 watches containing tritium by conducting sales through its Amazon seller's account. Plus, LLC did not obtain a specific license pursuant to 10 CFR 32.14 prior to these initial transfers.

This is a Severity Level III violation (Section 6.3)
Civil Penalty - \$14,000 (EA-13-190)

- B. 10 CFR 30.3(a), "Activities requiring license" provides, in part, that "no person shall manufacture, produce, transfer, receive, acquire, own, possess, or use byproduct material except as authorized in a specific or general license issued in accordance with the regulations in this chapter."

Contrary to the above, Plus, LLC received and possessed radioactive material (watches containing tritium) without having the required license for possession of the material (a possession license issued by the NRC), and without having obtained the watches from an entity licensed to distribute those watches as an exempt use product. Specifically, between approximately February 23, 2013 and September 7, 2014, Plus, LLC, received 1717 watches, manufactured in Switzerland, containing tritium, without having a possession license issued by the NRC, and without having obtained the watches from an entity licensed to distribute those watches as an exempt use product. In addition, from January 26, 2015 to April 23, 2015, Plus, LLC continued to possess watches containing tritium, without having the required NRC license, and without having obtained the watches from an entity licensed to distribute those watches as an exempt use product.

This is a Severity Level III violation (Enforcement Policy Section 6.3)
Civil Penalty - \$14,000 (EA-13-190)

- C. 10 CFR 110.5 states, in part, "no person may export any nuclear equipment or material listed in § 110.8 and § 110.9, or import any nuclear equipment or material listed in § 110.9a, unless authorized by a general or specific license issued under this part."

10 CFR 110.9a, List of nuclear equipment and material under NRC import licensing authority, includes byproduct material (i.e. H-3).

10 CFR 110.20(a) states "A person may use an NRC general license as authority to export or import nuclear equipment or material, if the nuclear equipment or material to be exported or imported is covered by the NRC general licenses described in §§ 110.21 through 110.27. If an export or import is not covered by the NRC general licenses described in §§ 110.21 through 110.27, a person must file an application with the Commission for a specific license in accordance with §§ 110.31 through 110.32."

10 CFR 110.27(a) states "Except as provided in paragraphs (b) and (c) of this section, a general license is issued to any person to import byproduct, source, or special nuclear material if the U.S. consignee is authorized to receive and possess the material under the relevant NRC or Agreement State regulations."

Contrary to the above, Plus, LLC, imported byproduct material listed in §110.9a that was not authorized by a general or specific license issued under the regulations in 10 CFR Part 110. Specifically, between approximately February 23, 2013 and September 7, 2014, Plus, LLC imported approximately 1832 watches into the United States manufactured in Switzerland, and containing tritium, without the U.S. consignee having a possession license and without Plus, LLC having a specific import license from the NRC. Additionally, between October 2014 and February 2015, Plus, LLC caused the import of approximately 110 watches containing tritium by conducting sales on its Amazon seller's account in which watches were transferred to U.S. customers directly from outside the U.S. None of the U.S. consignees (Amazon customers) had NRC or Agreement State possession licenses, and Plus, LLC did not have a specific import license.

This is a Severity Level III violation (Enforcement Policy Section 6.15)
Civil Penalty - \$14,000 (EA-13-190)

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed in the Plus, LLC docket files (dockets 030-38780 and 030-38874 available in the NRC Agencywide Documents Access and Management System (ADAMS) at <http://www.nrc.gov/reading-rm/adams.html>). However, if the description therein does not accurately reflect your position or your corrective actions, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 within 30 days of the date of the letter transmitting this Notice of Violation and Proposed Imposition of Civil Penalties (Notice). Your response should be clearly marked "Reply to a Notice of Violation (EA-13-190)", and sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville, MD 20852-2738, with copies to the Director, Office of Nuclear Material Safety and Safeguards, U.S., Nuclear Regulatory Commission, Two White Flint North, 11545 Rockville, MD 20852-2738, and the Document Control Desk, Washington, DC 20555-0001.

Plus, LLC may pay the civil penalties proposed above or the cumulative amount of the civil penalties if more than one civil penalty is proposed, in accordance with NUREG/BR-0254 by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, a statement indicating when and by what method payment was made, or may protest imposition of the civil penalties in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice. Should you fail to answer within 30 days of the date of this Notice, the NRC will issue an order imposing the civil penalties. Should you elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalties, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation (EA-13-190)" and may: (1) deny the violation(s) 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 penalties should not be imposed. In addition to protesting the civil penalties in whole or in part, such answer may request remission or mitigation of the penalties.

In requesting mitigation of the proposed penalties, the 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 civil penalties.

Upon failure to pay any civil penalties which subsequently have 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 penalties, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234(c) of the Act, 42 U.S.C. 2282(c).

The responses noted above, i.e., Reply to Notice of Violation, Statement as to payment of civil penalties, and Answer to a Notice of Violation, should be labeled with the case number EA-13-190 and addressed to: Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with copies to the Director, Office of Nuclear Material Safety and Safeguards, U.S., Nuclear

Regulatory Commission, Two White Flint North, 11545 Rockville, MD 20852-2738, and the Document Control Desk, Washington, DC 20555-0001.

Your response will be made available electronically for public inspection in the NRC Public Document Room or in ADAMS at <http://www.nrc.gov/reading-rm/adams.html> . To the extent possible, your response should not include any personal privacy or proprietary information. 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 3rd day of May, 2016