UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
2100 RENAISSANCE BLVD.
KING OF PRUSSIA, PA 19406-2713

May 13, 2016

EA-15-213

Mr. Anthony Ellis
Environmental Health and Safety Leader
Novelis Corporation
P.O. Box 912
800 Speedway Ave.
Fairmont, WV 26555

SUBJECT: NOVELIS CORPORATION, NOTICE OF VIOLATION, EXERCISE OF ENFORCEMENT DISCRETION, AND PROPOSED IMPOSITION OF CIVIL PENALTY - $7,000 - NRC INSPECTION REPORT NO. 03008804/2014001 AND INVESTIGATION REPORT 1-2015-004

Dear Mr. Ellis:

This letter provides you the U.S. Nuclear Regulatory Commission's (NRC's) enforcement decision for the apparent violation (AV) identified during an NRC inspection and investigation of activities performed by Novelis Corporation (Novelis) staff that were not authorized by your NRC license. The inspection and investigation were conducted, in part, to evaluate whether Novelis employees deliberately performed maintenance activities that were not permitted under the terms of Novelis's NRC license and whether Novelis management deliberately directed or allowed these activities to occur.

Based on the evidence gathered during the NRC inspection and investigation, the NRC has concluded that on September 12 and 13, 2014, Novelis employees deliberately directed and conducted repairs of a nuclear gauge that were not permitted under the terms of Novelis's NRC license. This constituted an AV of Condition 19.B of Novelis's NRC License No. 47-13348-02, which prohibited Novelis from performing these repairs.

The AV was described in the NRC inspection report sent to you with a letter dated January 27, 2016 (ML16027A219).[1] In the letter, we provided Novelis the opportunity to accept the AV, address the AV by attending a pre-decisional enforcement conference (PEC), provide a written response to the AV, or request Alternative Dispute Resolution before we made our final enforcement decision. In a letter dated March 8, 2016 (ML16074A181), you provided a written response in which you acknowledged the AV but disagreed with the NRC's preliminary determination that Novelis employees acted deliberately. Specifically, you stated that the first repair was independently initiated by an electrical technician who had previously received the

[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.

training required to be a Radiation Safety Officer (RSO). You stated that the technician apparently believed that the repair work was authorized by Novelis's license because the gauge shutter failed in the closed position (i.e., there was no radiological risk). You stated that the assigned RSO stopped the work and informed the Engineering Reliability and Automation Manager (ERAM) that such a repair was prohibited by the NRC license. You stated that the ERAM decided to allow the work to finish and that this decision, while erroneous, was made in good faith, in consideration of the status of the work and differing opinions of two respected workers who had both received radiation safety training. The second failure occurred shortly after the initial repair was completed. You stated that this was considered by those involved to be a continuation of the initial work and, as such, was not questioned by the Novelis staff. You stated that Novelis reported the incidents to the NRC, cooperated with the NRC investigation, and, on its own, transferred its licensed material to an authorized waste contractor and requested termination of the NRC license.

The NRC considered the information provided by Novelis, and concluded that it did not change the NRC's determination that the violation occurred due to deliberate actions by the technician and the ERAM. In particular, during the NRC inspection that was conducted in response to Novelis notifying the NRC of the gauge failures, the technician informed the inspectors that he knew Novelis's NRC license did not authorize replacement or repair of the shutter operating mechanism, but that he took it upon himself to repair the gauge, in spite of this knowledge and in spite of the RSO's counsel, because he did not want to stop production (to bring in authorized repairmen). Additionally, the NRC considered the ERAM's testimony to Office of Investigation (OI) in which he indicated that he knew Novelis had an NRC license and that he knew who was identified as the RSO on that license. The NRC noted that, in spite of receiving advice from the RSO that the repairs were not authorized by Novelis's NRC license, the ERAM directed their performance anyway.

Therefore, based on the information developed during the inspection, the investigation, and the information that you provided in your March 8, 2016, written response to the AV, 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 failure to restrict activities to those authorized by the NRC license is of significance to the NRC because of the potential for unintended radiation exposure when unauthorized individuals conduct work on components intended to shield a radioactive source. In addition, and as discussed above, the NRC concluded that the violation was willful (i.e., deliberate). Therefore, this violation has been categorized, in accordance with the NRC Enforcement Policy, at Severity Level III.

In accordance with Section 8 of the Enforcement Policy, a base civil penalty in the amount of $3,500 is considered for Severity Level III violations by small material users. Because the NRC determined that the violation was willful, the NRC considered whether credit was warranted for both *Identification* and *Corrective Action* in accordance with the civil penalty assessment process in Section 2.3.4 of the NRC Enforcement Policy. The NRC determined that identification credit was not warranted. Specifically, the NRC considered that, although Novelis staff appropriately reported to the NRC, in accordance with 10 CFR 30.50(b)(2)(i), both instances in which the shutter failed, the Novelis staff did not specify in either the initial notifications (EN 50453) or in the follow-up Licensee Event Report that the related repairs were not authorized by the license. The NRC concluded that credit was warranted for Novelis's corrective actions taken to address the violation. Specifically, Novelis hired an authorized contractor to inspect and service the gauge, after which Novelis transferred its licensed material (including the material in the gauge) to an authorized contractor for disposal and requested

termination of its NRC license. Therefore, a civil penalty of $3,500 would be assessed under the normal civil penalty assessment process.

However, the NRC also considered that the primary motive behind the violation was an interest in keeping the plant operating, as attested to by multiple individuals interviewed by OI. In particular, several Novelis employees informed the NRC (either in testimony to OI or in discussions with the NRC inspectors) that Novelis had experienced decreased production in September 2014 due to unrelated problems with one of the milling machines. The technician who performed the repairs told the NRC inspectors that he took it upon himself to fix the gauge so it would not be necessary to shut down the machine. He testified to OI that down time would have cost money.

In accordance with Section 3.6 of the NRC Enforcement Policy, notwithstanding the outcome of the normal civil penalty assessment process, the NRC may exercise discretion and escalate the amount of the resulting civil penalty for situations involving willfulness, particularly instances where the licensee made a conscious decision to be in noncompliance with NRC requirements in order to obtain an economic benefit. Therefore, after consultation with the Director, Office of Enforcement, I have been authorized to issue the Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of $7,000 (twice the base civil penalty). Instructions for responding to the proposed civil penalty are provided in the Notice and in NUREG/BR-0254, “Payment Methods,” a copy of which is enclosed with this letter.

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) Monica Ford, Acting Chief, Commercial, Industrial, R&D, and Academic Branch at 610-337-5214 within 10 days of the date of this letter. You may also contact both ICR and Ms. Ford 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: (1) the reason for the violation; (2) the actions 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. 03008804/2014001, in your letter dated March 8, 2016, and in this letter. Therefore, you are not required to respond to 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.

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 choose to 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 Website 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.

Please note that final NRC investigation documents, such as the OI report described above, may be made available to the public under the Freedom of Information Act (FOIA) subject to redaction of information appropriate under the FOIA. Requests under the FOIA should be made in accordance with 10 CFR 9.23, Requests for Records. Additional information is available on the NRC website at http://www.nrc.gov/reading-rm/foia/foia-privacy.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/

David C. Lew
Acting Regional Administrator

Docket No. 03008804

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

cc w/enclosures:
Mark A. Carvillano, Environmental Health and Safety Leader
State of West Virginia

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/RA/

David C. Lew
Acting Regional Administrator

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cc w/enclosures:
Mark A. Carvillano, Environmental Health and Safety Leader
State of West Virginia

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* See previous concurrence page OFFICIAL RECORD COPY

Letter to Anthony Ellis from David C. Lew dated May 13, 2016

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ENCLOSURE 1
NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Novelis Corporation
Fairmont, West Virginia

Docket No. 03008804
License No. 47-13348-02
EA-15-213

During an NRC inspection conducted on October 15, 2014, with continued in-office review through January 21, 2016, for which a telephonic exit meeting was conducted on January 22, 2016, and during an NRC investigation conducted between November 13, 2014, and October 1, 2015, 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 10 CFR 2.205. The particular violation and associated civil penalty is set forth below:

Condition 19 of NRC License No. 47-13348-02 states that:

a. The licensee may maintain, repair, or replace device components that are not related to the radiological safety of the device and that do not result in the potential for any portion of the body to come into contact with the primary beam or in increased radiation levels in accessible areas.

b. The licensee may not maintain, repair, or replace any of the following device components: the sealed sources, the source holder, source drive mechanism, on-off mechanism (shutter), shutter control, or shielding, or any other component related to the radiological safety of the device, except as provided otherwise by specific conditions of this license.

Contrary to the above, on two occasions, the licensee repaired device components that were related to the radiological safety of the device, including the on-off mechanism (shutter) and the shutter control. Specifically, on September 12, 2014, the licensee replaced a pneumatic cylinder that controls the position of the shutter, and on September 13, 2014, the licensee adjusted the shutter control mechanism. These repairs were not otherwise authorized by any specific conditions of the license and were, therefore, prohibited.

This is a Severity Level III violation. (Enforcement Policy Section 6.3)
Civil Penalty - $7,000 (EA-15-213)

The NRC has concluded that information regarding: (1) the reason for the violation; (2) the actions 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. 03008804/2014001, in a letter from Novelis Corporation dated March 8, 2016, and in the letter transmitting this Notice. Therefore, you are not required to respond to the violation unless the description therein does not accurately reflect your corrective actions or your position. If the docketed information does not accurately reflect your corrective actions or your position, you are

required to submit a written statement or explanation pursuant to 10 CFR 2.201. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation EA-15-213," 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 of Violation (Notice).

The Licensee may pay the civil penalty proposed above in accordance with NUREG/BR-0254, "Payment Methods," and 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 penalty 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 the Licensee fail to answer within 30 days of the date of this Notice, the NRC will issue an order imposing the civil penalty. Should the Licensee 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, 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. The attention of the Licensee is directed to the other provisions of 10 CFR 2.205 regarding the procedure for imposing 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 Notice of Violation, Statement as to Payment of Civil Penalty, and Answer to a Notice of Violation, should be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region I, 2100 Renaissance Boulevard, King of Prussia, PA, 19106, and the Document Control Center, Washington, DC 20555-0001.

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 (ADAMS), accessible from the NRC Web site at http://www.nrc.gov/reading-rm/adams.html. Therefore, to the extent possible, your response should not include any personal privacy or proprietary 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, 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). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days of receipt.

Dated this 13th day of May, 2016.