



UNITED STATES
NUCLEAR REGULATORY COMMISSION

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

July 12, 2016

EA-16-075
NMED No. 160117 (Closed)

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 SPECIAL
INSPECTION REPORT NO. 03037878/2016001(DNMS)

Dear Mr. Sherer:

This letter refers to the inspection conducted on March 24, 2016, at your Indianapolis, Indiana facility with continued in-office review until April 18, 2016. The purpose of the inspection was to review the circumstances surrounding the report of a damaged portable moisture/density gauge at a temporary job site in Indianapolis, Indiana, that occurred on March 8, 2016. The in-office review included a review of your written report describing the event. The significance of the issue and the need for lasting and effective corrective actions were discussed with Mr. Bryan King of your staff during the exit meeting on April 18, 2016. Details regarding the apparent violation were provided in NRC Inspection Report No. 03037878/2016001(DNMS) dated May 10, 2016. The inspection report can be found in the NRC's Agencywide Documents Access and Management System (ADAMS) at Accession Number ML16132A329. 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 the opportunity to address the apparent violation identified in the report by either attending a predecisional enforcement conference or by providing a written response before we made our final enforcement decision. In a letter dated June 7, 2016, you provided a response to the apparent violation.

Based on the information developed during the inspection and the information that you provided in your response, dated June 7, 2016, 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. The apparent violation concerned the failure to secure or maintain constant surveillance of a portable moisture/density gauge, as required by Title 10 of the *Code of Federal Regulations* (CFR) 20.1802 and 10 CFR 30.34(i). Specifically, on March 8, 2016, a member of your staff failed to secure or maintain constant surveillance of a portable gauge resulting in the gauge being run over by a vehicle and damaged. The root cause of the violation was individual error by the technician, who was distracted by his cell phone. 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 (SL) III.

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

Because your facility has been the subject of escalated enforcement actions within the last two inspections,¹ the NRC considered whether credit was warranted for *Identification* and *Corrective Action* in accordance with the civil penalty assessment process in Section 2.3.4 of the Enforcement Policy. The NRC determined that credit was not warranted for *Identification* because: (1) the issue was identified through an event; (2) the identification did not occur as a result of any self-monitoring efforts; and (3) the issue did not require extensive effort to identify.

The NRC determined that credit for *Corrective Action* was warranted based on your corrective actions that included: (1) retraining authorized gauge users at all branch offices regarding the importance of security and handling of gauges; (2) the field supervisor paying greater attention to the proper use, transportation and security of gauges on a daily basis; (3) making periodic site safety inspections during use at temporary job sites; and (4) retraining the authorized gauge user involved in the incident.

Therefore, to emphasize the importance of controlling licensed material, and in recognition of your previous escalated enforcement action, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the base amount of \$3,500 for the SL III violation. In addition, issuance of this Notice constitutes escalated enforcement action that may subject you 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. Richard Skokowski, Enforcement Officer at 630-810-4373 within 10 days of the date of this letter. You may also contact both ICR and Mr. Skokowski for additional information. Your submitted signed

¹ A Severity Level III violation and a \$3,500 civil penalty was issued on February 4, 2015, for a violation of portable gauge security requirements (EA-14-162).

agreement to mediate using the NRC ADR program will stay the 30-day time period for payment of the civil penalty, 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, or if contested, the basis for disputing the violation; (2) the corrective steps that have been taken and the results achieved; and (3) the corrective steps that will be taken; and (4) the date when full compliance was achieved is already adequately addressed on the docket in your letter, dated June 7, 2016. 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 and from 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>. 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 at http://www.nrc.gov/reading_rm/doc_collections/enforcement/actions/.

If you have any questions concerning this matter, please contact Mr. Skokowski of my staff at 630-801-4373.

Sincerely,

/RA by Darrell J. Roberts Acting for/

Cynthia D. Pederson
Regional Administrator

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

Enclosure:

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

cc w/o Enclosure 2: State of Indiana

The NRC has concluded that information regarding: (1) the reason for the violation, or if contested, the basis for disputing the violation; (2) the corrective steps that have been taken and the results achieved; and (3) the corrective steps that will be taken; and (4) the date when full compliance was achieved is already adequately addressed on the docket in your letter, dated June 7, 2016. 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.

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If you have any questions concerning this matter, please contact Mr. Skokowski of my staff at 630-801-4373.

Sincerely,
/RA by Darrell J. Roberts Acting for/
 Cynthia D. Pederson
 Regional Administrator

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

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2 OE concurrence provided by e-mail from Kerstun Norman dated 7/5/16
 3 OGC concurrence provided by e-mail from David Cylkowski dated 7/5/16

Letter to Mr. James Sherer from Ms. Cynthia D. Pederson dated July 12, 2016

SUBJECT: NOTICE OF VIOLATION – 7NT ENTERPRISES, LLC;
NRC ROUTINE INSPECTION REPORT NO. 03038799/2016001(DNMS)_

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NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Patriot Engineering and Environmental, Inc.
Indianapolis, Indiana

Docket No. 030-37878
License No. 13-32725-01
EA-16-075

During a U.S. Nuclear Regulatory Commission (NRC) inspection conducted on March 24, 2016, with continued in-office review until April 18, 2016, 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 are set forth below:

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.

Title 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 March 8, 2016, 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 and damaged at a temporary jobsite in Indianapolis, Indiana.

This is a Severity Level III violation (Section 6.3).
Civil Penalty - \$3,500

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 on the docket in the letter from the licensee, dated June 7, 2016. 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. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation; EA-16-075," and send it to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission with a copy to the Regional Administrator, U.S., Nuclear Regulatory Commission, Region III and the Document Control Desk, Washington, DC 20555-0001.

Enclosure 1

The Licensee may pay the civil penalty proposed above in accordance with NUREG/BR-0254 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 with a copy to the Regional Administrator, Region III, 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; EA-16-075" 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 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 Notice of Violation, Statement as to payment of civil penalty, and Answer to a Notice of Violation, should be addressed to: Patricia Holahan, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to Cynthia Pederson, Regional Administrator, U.S. Nuclear Regulatory Commission, Region III, 2443 Warrenville Road, Suite 210, Lisle, IL 60532-4352, and the Document Control Desk, 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 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>. 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).

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

Dated this 12th day of July 2016