

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
) Docket Nos. 030-38874 and 030-38780
Plus, LLC) License Nos. 06-35274-01E, 06-35183-01
Stamford, CT) EA-13-190

ORDER IMPOSING CIVIL MONETARY PENALTY

I

Plus, LLC (Plus or the Licensee), is the holder of Materials License No.06-35183-01 issued by the U.S. Nuclear Regulatory Commission (NRC) on April 23, 2015, pursuant to Part 30 of Title 10 of the *Code of Federal Regulations* (10 CFR). The license authorizes the licensee to possess material at its facility located in Stamford, Connecticut, in accordance with the conditions specified therein. Under 10 CFR 110.27, the Licensee is granted a general license to import in accordance with the conditions specified in the regulations. The Licensee is also the holder of Materials License No. 06-35274-01E issued by the NRC on December 2, 2015. The license authorizes the Licensee to distribute material in accordance with the conditions specified therein. At the time of the initiation of the violations, Plus, LLC, did not have any specific licenses issued by the NRC or an Agreement State for activities involving the import, possession, or distribution of byproduct material.

II

Two investigations were initiated by the NRC Office of Investigations (OI), on October 18, 2013, and April 8, 2015. The results of these investigations indicated that Plus was

conducting activities that were not in compliance with the NRC's requirements, specifically, without the required licensing for such activities. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon Plus by letter dated May 3, 2016 (ADAMS Accession No. ML16071A111). The Notice states the nature of the violations, the provisions of the NRC's requirements that Plus violated, and the amount of the civil penalty proposed for the violations.

Plus responded to the Notice in a letter dated May 10, 2016 (ADAMS Accession No. ML16215A481). In its response, the Licensee did not deny the facts involving the violations, but did request mitigation of the severity level of the violations and the proposed civil penalty amount.

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, as set forth in the Appendix to this Order that these violations occurred, as stated, and that adequate basis does not exist for mitigation of the severity level. The NRC also determined that an adequate basis was provided by the Licensee for mitigation of the proposed civil penalty amount. Consequently, based on the small entity status of the Licensee, a reduced civil penalty in the amount of \$21,000 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 shall pay a civil penalty in the amount of \$21,000 within 30 days of the issuance date of this Order, in accordance with NUREG/BR-0254, "Payment Methods" (see <http://www.nrc.gov/reading-rm/doc-collections/nuregs/brochures/br0254/>). 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.

V

In accordance with 10 CFR 2.205(d), the Licensee and any other person adversely affected by this Order may request a hearing on this Order within 30 days of the issuance date of this Order. 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 at 77 FR 46562, August 3, 2012). 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 ten (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 (1) request a digital identification (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/getting-started.html>. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission to the NRC," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/electronic-sub-ref-mat.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 Electronic Filing 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.

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. 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/electronic-sub-ref-mat.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 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's 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, applicants and other participants (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 Electronic Filing Help Desk through the "Contact Us" link located on the NRC's 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 to (866) 672-7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 7 p.m., Eastern Time, 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 stating why there is good cause for not filing electronically and 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 Plus, LLC, 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 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 alternative dispute resolution (ADR), or written approval of an extension of time in which to request a hearing or ADR, the provisions specified in Section IV above shall be final 30 days from the issuance date of this Order without further order or proceedings. If an extension of time for requesting a hearing or ADR has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing or ADR request has not been received. If ADR is requested, the provisions specified in Section IV shall be final upon termination of an ADR process that did not result in issuance of an order.

Dated at Rockville, Maryland, this 8th day of August, 2016.

For the Nuclear Regulatory Commission.

/RA/

Patricia K. Holahan, Director,
Office of Enforcement.

APPENDIX TO IMPOSITION ORDER

EVALUATIONS AND CONCLUSION OF LICENSEE REQUEST FOR MITIGATION

On May 3, 2016, the U.S. Nuclear Regulatory Commission (NRC) issued a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) for violations identified during the NRC investigations and records review. Plus, LLC (Licensee), responded to the Notice on May 10, 2016.

The Licensee did not deny the facts involving the violations, however, the Licensee did request mitigation of the severity level of the violations and the proposed civil penalty amount. The NRC's evaluation and conclusion regarding the Licensee's requests are as follows:

1. Summary of Licensee's Request to Mitigate Severity Level:

The Licensee stated that there was no actual "moderate safety or security consequences" because there was no contamination found at the Licensee facility in an inspection conducted by the NRC on February 10, 2016, and that the products were the same as those that the NRC subsequently licensed for distribution by the Licensee.

NRC Evaluation of Licensee's Response to Violations

The NRC considers these violations significant because the requirements in § 30.3(a) of Title 10 of the *Code of Federal Regulations* (CFR) 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. The fact that there was no actual contamination found, and that the NRC

was subsequently able to approve the Licensee's application for possession and distribution licenses, is fortuitous, but does not decrease the importance of the regulatory requirement and NRC oversight. Also, the NRC considers the Licensee's actions regarding all three of the violations to be willful and because the NRC's regulatory programs rely upon the integrity of entities, applicants, and licensees to comply with NRC requirements, the willful violations are of significant concern to the NRC. Therefore, in accordance with the Enforcement Policy (ADAMS Accession No. ML16197A561), these violations are appropriately characterized as Severity Level III violations. Accordingly, the significance of these violations have been determined to remain valid as stated in the Notice.

2. Summary of Licensee's Request for Mitigation of Civil Penalty Amount

The Licensee stated that Plus, LLC, should be considered a small entity and that if considered a small entity then the amount of annual license fees that Plus, LLC, avoided over the duration of the violations is less than the \$70,000 estimated by the NRC. The Licensee requested that the NRC reconsider the civil penalty amount proposed.

NRC Evaluation of Licensee's Request for Mitigation of Civil Penalty Amount

The NRC confirmed that, on or about March 22, 2016, Plus, LLC, requested small entity classification by submitting an NRC Form 526 - Certification of Small Entity Status for the Purposes of Annual Fees Imposed under 10 CFR Part 171, along with the Licensee's first annual fee invoice. The request was accepted by the NRC and therefore, Plus, LLC, is considered to be a small entity entitled to reduced fees under 10 CFR 171.16. Accordingly, the NRC recalculated the annual fees avoided assuming small entity status and determined that the amount of annual license fees that Plus, LLC, avoided was approximately \$11,200. Therefore, the NRC has concluded that it will not escalate the base civil penalty, and will

reduce the proposed civil penalty to \$21,000 as determined by application of the NRC Enforcement policy.

Conclusion:

Based on its evaluation, the NRC has concluded that these violations occurred as stated, and that adequate basis does not exist for mitigation of the severity level of these violations. The NRC also concluded that the Licensee provided an adequate basis for mitigation of the proposed civil penalty amount. Consequently, a reduced civil penalty in the amount of \$21,000 will be imposed.