



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

December 15, 2016

EA-16-138

Ms. Ranya Seoud, CEO  
EMSI Engineering, Inc.  
9720 Capital Ct, Suite 202  
Manassas, Virginia 20110

**SUBJECT: EMSI ENGINEERING, INC., NOTICE OF VIOLATION AND PROPOSED  
IMPOSITION OF A CIVIL PENALTY - \$14,000 - NRC OFFICE OF  
INVESTIGATION REPORT 1-2015-022**

Dear Ms. Seoud:

This letter provides you the U.S. Nuclear Regulatory Commission's (NRC's) enforcement decision for the apparent violation identified during an NRC investigation of activities conducted by EMSI Engineering, Inc. (EMSI) at temporary jobsites in areas under NRC jurisdiction. The investigation evaluated, in part, whether any EMSI employees willfully caused EMSI (a licensee of the Commonwealth of Virginia) to violate NRC requirements pertaining to filing for reciprocity prior to conducting work in areas under NRC jurisdiction.

Based on the evidence gathered during the NRC investigation, the NRC has concluded that on numerous occasions between April 9, 2009, and November 18, 2015, EMSI used byproduct material in areas under NRC jurisdiction without filing for reciprocity with the NRC, contrary to the requirements in Title 10 of the Code of Federal Regulations (CFR), Section 150.20. The NRC also concluded that a previous EMSI employee, the former Radiation Safety Officer (RSO) and Operations Manager, contributed to the violation when he acted in careless disregard of NRC requirements.

The apparent violation was discussed in the NRC letter sent to you on October 3, 2016, (ML16277A533).<sup>1</sup> In the NRC letter, we provided you the opportunity to address the apparent violation by attending a predecisional enforcement conference, providing a written response, or requesting Alternative Dispute Resolution before we made our final enforcement decision. In a letter dated on October 11, 2016, (ML16300A225), you described the actions taken by EMSI to address the apparent violation. Specifically, you stated that EMSI refrained from conducting work in Washington, DC that required the utilization of a nuclear gauge; that EMSI will apply for a federal license; and that EMSI will continue to not conduct work in areas under NRC jurisdiction until a license is issued.

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<sup>1</sup> 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 investigation and provided in your October 11, 2016, letter, the NRC 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 investigation report. The violation involves the failure to file for reciprocity prior to using licensed materials in areas under NRC jurisdiction, as required by 10 CFR 150.20. The failure to file for reciprocity prior to using licensed materials in areas under NRC jurisdiction interfered with the NRC's ability to inspect EMSI's activities while in those areas to ensure the adequate protection of public health and the safe use of radioactive materials.

The violation has been categorized at Severity Level (SL) III in accordance with the NRC's Enforcement Policy because the NRC was not informed of the activities occurring in Washington, DC and in an area of exclusive Federal jurisdiction within an Agreement State. In addition, the evidence gathered during the OI investigation concluded that a former EMSI Radiation Safety Officer and Operations Manager contributed to the violation when he acted willfully, in careless disregard of NRC requirements, by failing to ascertain whether EMSI was licensed to perform work in areas under NRC jurisdiction prior to EMSI engaging in work in Washington, DC and an area of exclusive Federal jurisdiction within the Commonwealth of Virginia.

In accordance with the NRC Enforcement Policy, a civil penalty in the amount of twice the base civil penalty of \$7,000 is considered for willful violations where identification and corrective action credit is not warranted. Because the NRC has determined that your actions were willful and that the violation was not self-identified, the NRC considered whether credit was warranted for corrective actions in accordance with the civil penalty assessment process in Section 2.3.4 of the Enforcement Policy. The NRC determined that identification credit was not warranted because the violation was identified by an inspector from the Commonwealth of Virginia. The NRC also concluded that credit was not warranted for EMSI's corrective actions taken to address the violation. Specifically, your letter lacked information on how EMSI would determine the jurisdictional status of your work locations in order to refrain from working in NRC jurisdiction; how EMSI would avoid future internal disconnects to prevent a reoccurrence of the violation; and a timeframe for when EMSI would apply for a license from the NRC. Further, your statement that you will apply for a Federal license and file for reciprocity prior to conducting any work in areas under NRC jurisdiction suggests that EMSI does not fully understand reciprocity requirements, as a Federal license would not be required if EMSI properly files for reciprocity. Finally, your corrective actions do not demonstrate that you have controls in place to ensure that you have awareness of what is NRC jurisdiction, including areas of exclusive Federal jurisdiction within the Commonwealth of Virginia.

With credit not granted for identification and not granted for corrective action, the civil penalty assessment process would normally result in a proposed penalty of \$14,000, two times the base civil penalty. Therefore, to emphasize the importance of compliance with regulatory requirements and prompt identification and comprehensive correction of violations, 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 amount of \$14,000. In addition, issuance of this Notice constitutes an 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 employs 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) Blake Welling, Chief, Commercial, Industrial, R&D, and Academic Branch at 610-337-5205 within 10 days of the date of this letter. You may also contact both ICR and Mr. Welling for additional information. Your submitted signed agreement to mediate using the NRC ADR program would stay the 30-day time period for payment of the civil penalties and the written response, as identified in the enclosed notice, until the ADR process is completed.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. If you have additional information that you believe the NRC should consider, you may provide it in your response to the Notice. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

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 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/>).

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel H. Dorman", with a stylized flourish at the end.

Daniel H. Dorman  
Regional Administrator

Docket No.: 03031412 (Retired)

License No.: 45-25079-01 (Retired); VA License No. 683-315-1

Enclosures:

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

cc w/enclosures:

Commonwealth of Virginia

ENCLOSURE 1

NOTICE OF VIOLATION  
AND  
PROPOSED IMPOSITION OF CIVIL PENALTY

EMSI Engineering, Inc.  
Manassas, Virginia

Docket No. 03031412 (Retired)  
License No. 45-25079-01 (Retired)  
VA License No. 683-315-1  
EA-16-138

During an NRC investigation completed on June 22, 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 is set forth below:

10 CFR 30.3(a) states, in part, that except for persons exempt as provided in this part and Part 150 of this chapter, no person shall own, possess, or use byproduct material except as authorized in a specific or general license issued pursuant to the regulations in 10 CFR Part 30.

10 CFR 150.20(a)(1) states, in part, that any person who holds a specific license from an Agreement State is granted an NRC general license to conduct the same activity in Non-Agreement States and areas of exclusive Federal jurisdiction within Agreement States, subject to the provisions of 10 CFR 150.20(b).

10 CFR 150.20(b) requires, in part, that any person engaging in activities in Non-Agreement States or in an area of exclusive Federal jurisdiction within an Agreement State shall, at least 3 days before engaging in each such activity for the first time in a calendar year, file a submittal containing an NRC Form 241, "Report of Proposed Activities in Non-Agreement States," a copy of its Agreement State specific license, and the appropriate fee, with the Regional Administrator of the appropriate NRC regional office.

Contrary to the above, between April 9, 2009, and November 18, 2015, EMSI Engineering, Inc., a licensee of the Commonwealth of Virginia, used byproduct material in areas under NRC jurisdiction on numerous occasions without filing NRC Form 241, "Report of Proposed Activities in Non-Agreement States," a copy of its Agreement State specific license, and the appropriate fee for calendar years 2009, 2010, 2011, 2012, and 2015, with the Regional Administrator of the appropriate NRC regional office.

This is a Severity Level III violation. (Enforcement Policy Section 6.9)  
Civil Penalty - \$14,000 (EA-16-138)

Pursuant to the provisions of 10 CFR 2.201 EMSI Engineering, Inc. (Licensee) is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, with a copy to the Document Control Desk, Washington, DC 20555-0001, within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation; (EA-16-138)" and should include the following information: (1) how you would determine jurisdictional status of your work locations to refrain from working in NRC jurisdiction;

(2) how you would avoid future internal disconnects to prevent reoccurrence; (3) and if EMSI chooses to apply for an NRC license, provide the timeframe for when EMSI plans to submit the license application.

Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, the NRC may issue an order or a Demand for Information requiring you to explain why the NRC should not take other action as may be proper. Consideration may be given to extending the response time for good cause shown.

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, 19406, 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 are required to post this Notice within two working days of receipt.

Dated this 15<sup>th</sup> day of December, 2016