



UNITED STATES
NUCLEAR REGULATORY COMMISSION

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

December 28, 2017

EA-17-147

Ms. Elizabeth A. Taylor
Radiation Safety Officer
CTI and Associates, Inc.
28001 Cabot Drive, Suite 250
Novi, Michigan 48377

SUBJECT: CTI AND ASSOCIATES, INC. - NOTICE OF VIOLATION AND PROPOSED
IMPOSITION OF CIVIL PENALTY - \$7,000, NRC ROUTINE INSPECTION
REPORT NO. 03012040/2017003(DNMS)

Dear Ms. Taylor:

This letter refers to the U.S. Nuclear Regulatory Commission (NRC) inspection conducted on August 9, 2017, at a temporary job site in Ann Arbor, Michigan, with continued in-office review through September 5, 2017. The purpose of the inspection was to review activities performed under your NRC license to ensure that activities were being performed in accordance with NRC requirements. During the inspection, an apparent violation of NRC requirements was identified. The significance of the circumstances surrounding the apparent violation and the need for lasting and effective corrective actions were discussed with you during the exit meeting on September 5, 2017. Details regarding the apparent violation were provided in NRC Inspection Report No. 03012040/2017003(DNMS) dated September 25, 2017. The inspection report can be found in the NRC's Agencywide Documents Access and Management System (ADAMS) at Accession Number ML17269A184. 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 November 10, 2017 (ML17331A482), 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 to the inspection report dated November 10, 2017, 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 involved the failure to control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage or to use a minimum of two independent physical controls to form a tangible barrier to secure a portable gauge from unauthorized removal whenever the gauge was not under the licensee's control and constant surveillance, as required by Title 10 of the *Code of Federal Regulations* (CFR) 20.1802 and 10 CFR 30.34(i). The root cause of the violation was the authorized user's misunderstanding of the requirement. The individual believed that having the gauge close by where he could glance at it or the vehicle it was in was acceptable surveillance.

The failure to maintain constant surveillance of a portable moisture/density gauge not in storage or to properly secure the gauge when unattended is of significant concern to the NRC because of the potential for unauthorized individuals to gain control of the radioactive material and misuse it, which could result in an unintended exposure to a member of the public. 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 \$7,000 is considered for a SL III violation.

Because your facility has been the subject of escalated enforcement actions within the last two years¹, 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. While the NRC acknowledges that the previous escalated enforcement action violation occurred just over two years ago, the Enforcement Policy allows considering a slightly longer period based on the circumstances of a particular case. Because this enforcement action and the previous enforcement action both involved the failure to secure portable gauges in accordance with 10 CFR 30.34(i), the NRC is considering *Identification* as part of the civil penalty assessment process in this case. The NRC determined that credit was not warranted for *Identification* because the issue was identified by the NRC and 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) suspending the gauge user from use of a nuclear density gauge until he completes a third-party training course on gauge security and transportation; (2) the radiation safety officer (RSO) conducting audits of all active gauge users; (3) the RSO providing a handout with photographs of a properly secured gauge; (4) subjecting gauge users to unannounced annual field audits; and (5) providing annual refresher training to be held at the start of the construction season.

Therefore, to emphasize the importance of prompt identification and comprehensive correction of violations, 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 \$7,000 for the SL III violation. In addition, issuance of this Notice constitutes escalated enforcement action that may subject you to increased inspection effort. The NRC also includes significant enforcement actions on its Web site at http://www.nrc.gov/reading_rm/doc/collections/enforcement/actions/.

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

¹ A Severity Level III violation was issued on November 23, 2015, for a failure on July 23, 2015, to maintain constant surveillance of a portable gauge or properly secure the gauge from unauthorized access (EA-15-157).

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) Richard Skokowski 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 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; (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 Inspection Report No. 03012040/2017003(DNMS) and your letter dated November 10, 2017. 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.

If you have any questions concerning this matter, please contact Mr. Skokowski of my staff at 630-810-4373.

Sincerely,

/RA/

Cynthia D. Pederson
Regional Administrator

Docket No. 030-12040
License No. 21-17007-01

Enclosures:

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

cc w/enclosure: State of Michigan

Letter to Elisabeth A. Taylor from Cynthia D. Pederson; dated December 28, 2017

SUBJECT: CTI AND ASSOCIATES, INC. - NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY - \$7,000, NRC ROUTINE INSPECTION REPORT NO. 03012040/2017003(DNMS)

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DATE	12/18/17	12/19/17	12/20/17	12/21/17	12/21/17	12/26/17	12/26/17

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² OGC Concurrence received by email from Eric Ruesch on December 21, 2017

³ OE Concurrence received by email from Eric Ruesch on December 21, 2017

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

CTI and Associates, Inc.
Novi, Michigan

Docket No. 030-12040
License No. 21-17007-01
EA-17-147

During a U.S. Nuclear Regulatory Commission (NRC) inspection conducted on August 9, 2017, 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 Title 10 of the *Code of Federal Regulations* (CFR) 2.205. The particular violation and associated civil penalty are set forth below:

Title 10 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 August 9, 2017, the licensee failed to control and maintain constant surveillance of licensed material that was not in storage and failed to use a minimum of two independent physical controls that formed tangible barriers to secure the gauge while it was not under control and constant surveillance. Specifically, a portable gauge was located in the back of a pickup truck with no barriers and without maintaining constant surveillance of the device.

This is a Severity Level III violation (Section 6.3 and 6.7).
Civil Penalty - \$7,000

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 Inspection Report No. 03012040/2017003(DNMS) and the letter from the licensee dated November 10, 2017. 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-17-147."

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, 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

Enclosure

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-17-147" 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: Anne Boland, 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 III, 2443 Warrenville Road, Suite 210, Lisle, IL 60532, 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 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 28th day of December 2017.