



UNITED STATES
NUCLEAR REGULATORY COMMISSION

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

May 13, 2020

EA-20-014

Mr. William Witzig
Radiation Safety Officer/Owner
Alt and Witzig Engineering, Inc.
4105 West 99th Street
Carmel, IN 46032

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$8,500, NRC SPECIAL INSPECTION REPORT 03035111/2020001 (DNMS)

Dear Mr. Witzig:

This letter refers to the U.S. Nuclear Regulatory Commission (NRC) special inspection conducted October 23, 2019, at your Carmel, Indiana, location with continued in-office review through March 2, 2020. The purpose of the inspection was to review the circumstances surrounding a reportable event in which a portable moisture/density gauge was stolen at the residence of a gauge user in Indianapolis, Indiana, on October 3, 2019. A final telephone exit meeting to discuss the inspection findings was conducted with Mr. Mark Herber, Senior Project Engineer, on March 2, 2020. The inspection report can be found in NRC's Agencywide Documents Access and Management System (ADAMS) at accession No. ML20073K861. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

In the letter transmitting the inspection report, dated March 16, 2020, we provided you the opportunity to address the apparent violations identified in the report by attending a pre-decisional enforcement conference, by providing a written response, or by requesting Alternative Dispute Resolution (ADR) mediation before we made our final enforcement decision. In a letter dated April 6, 2020, you provided a written response to the apparent violations.

Based on the information developed during the inspection and the information that you provided in your response dated April 6, 2020, the NRC has determined that two violations of NRC requirements occurred, and the violations are cited in the enclosed Notice of Violation (Notice). The first violation involved the failure to secure from unauthorized removal or access licensed material that was stored or to use a minimum of two independent physical controls that form tangible barriers 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) 20.1801 and 10 CFR 30.34(i). Specifically, on October 3, 2019, a licensed portable gauge user stored the portable gauge in an over-pack container on his work truck and forgot to lock it when he left the job site. The gauge user drove home, and the truck was left outside his residence with the over-pack unlocked until he returned to it the next morning. He subsequently noticed the over-pack lid was open and the portable gauge had been stolen. The gauge user's failure to control and secure the portable gauge with two independent physical controls is of concern to the NRC because it led to the theft of licensed material. The licensed material could have been tampered with and led to potential exposures to members of the public. Therefore, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level (SL) III. In this case no tampering occurred and there were no overexposures.

Corrective actions to prevent recurrence of a similar event included restricting the gauge user involved in the event from access to and use of the licensee's portable moisture/density gauges for at least 60 days and requiring the individual to undergo additional training and testing prior to operating a gauge. You also held immediate training for all the current gauge users focusing on physical controls to lock the gauge during transportation and responsibilities associated with storing and operating nuclear density gauges, as well as refresher emails and annual refresher training on the subject.

In accordance with Section 2.3.4 of the Enforcement Policy, the NRC is exercising discretion to propose imposition of a civil penalty of at least the base amount for the violation involving the loss of a sealed source or device. Therefore, to emphasize the importance of maintaining security and control of sealed sources and devices, 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 \$8,500 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 recognizes that many licensees have been impacted economically by the public health emergency caused by the Coronavirus Disease 2019 (COVID-19). Consequently, as described in the enclosed Notice, the NRC is extending by 30 days the period of time by which the civil penalty must be paid (i.e., extending the deadline from 30 days to 60 days from the date of this Notice) and the NRC would consider a request for additional time if appropriate. Please refer to the enclosed Notice for further instructions.

If you disagree with this enforcement sanction, you may deny the violation, as described in the Notice, or you may request ADR mediation 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. Jamnes Cameron at (630) 810-4373 or Jamnes.Cameron@NRC.gov within 10 days of the date of this letter. You may also contact both ICR and Mr. Cameron for additional information. Your submitted signed agreement to mediate using the NRC ADR program will stay the time period for payment of the civil penalty and the required written response, as identified in the enclosed Notice, until the ADR process is completed.

The second violation pertained to failing to notify the NRC immediately after the occurrence became known to the licensee of a stolen quantity of licensed material above 1,000 times the quantity listed in Appendix C of 10 CFR Part 20. Specifically, on October 4, 2019, at 8:00 a.m., the gauge user's supervisor was notified by the gauge user that one of their portable gauges was missing and presumed stolen. However, the licensee did not report this to the NRC Headquarters Operations Center until 4:00 p.m. on that same day. Failure to notify the NRC immediately after theft of licensed material is of concern because if the NRC is not aware of stolen licensed material, we cannot assist local authorities with its retrieval, if contacted.

Therefore, this violation is categorized in accordance with the NRC Enforcement Policy at SL III. In accordance with the Enforcement Policy, a base civil penalty in the amount of \$7,500 is considered for a SL III violation. However, for this SL III violation, because your facility has not been the subject of escalated enforcement actions within the last two inspections, the NRC considered whether credit was warranted for Corrective Action in accordance with the civil penalty assessment process in Section 2.3.4 of the Enforcement Policy. The NRC considered the information you provided to the NRC inspectors and in your response dated April 6, 2020. In your written response, you stated that you have reviewed and understand 10 CFR 20.2201, and recognize that immediate notification needs to be made to the NRC operations center in the event of future incidents. Hence, credit for Corrective Action is warranted.

Therefore, to encourage prompt and comprehensive correction of violations, and in recognition of the absence of previous escalated enforcement action, I have been authorized, after consultation with the Director, Office of Enforcement, not to propose a civil penalty for the failure to notify the NRC of the lost source. However, significant violations in the future could result in a civil penalty. In addition, issuance of this SL III violation constitutes escalated enforcement action that may subject you to increased inspection effort. The NRC also includes significant enforcement actions on its website at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions>.

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 date when full compliance was achieved is already adequately addressed on the docket in Inspection Report No. 03035111/2020001 (DNMS), in your response dated April 6, 2020, 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 or are required to provide one, will be made available electronically for public inspection in the NRC Public Document Room and from the NRC's 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.

W. Witzig

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If you have any questions concerning this matter, please contact Jamnes Cameron, of my staff, at (630) 810-4373.

Sincerely,

John B. Giessner
Regional Administrator

Docket No. 03035111
License No. 13-18685-02

Enclosure:

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

cc: State of Indiana

Letter to W. Witzig from John B. Giessner dated 13 May, 2020

SUBJECT: Alt & Witzig. - NOTICE OF VIOLATION; NRC SPECIAL INSPECTION REPORT
NO. 03035111/2020001 (DNMS)

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OFFICE	RIII	RIII	RIII	NMSS
NAME	S. Bakhsh	R. Ruiz	DPelton	RSun
DATE	4/21/2020	4/23/2020	4/23/2020	4/30/2020
OFFICE	OGC	OE	RIII	RIII
NAME	LBaer (NLO)	JPeralta	JCameron	JGeissner
DATE	5/04/2020	5/06 /2020	5/7/2020	5/13/2020

OFFICIAL RECORD COPY

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Alt & Witzig Engineering, Inc.
Carmel, Indiana

Docket No. 030-35111
License No. 13-18685-02
EA-20-014

During a U.S. Nuclear Regulatory Commission (NRC) inspection conducted October 23, 2019, at your Carmel, Indiana, location, with continued in-office review through March 2, 2020, violations of NRC requirements were 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), Section 2.205. The particular violations and associated civil penalty are set forth below:

I. Violations Assessed a Civil Penalty

- A. Title 10 CFR, Section 20.1801 requires that the licensee secure from unauthorized removal or access licensed materials that are stored in controlled or unrestricted areas.

Title 10 CFR, Section 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 October 3, 2019, the licensee failed to secure from unauthorized removal or access and failed to use a minimum of two independent physical controls that formed tangible barriers to secure a portable moisture density gauge when it was stored in an unrestricted area and not under the control and constant surveillance of the licensee. Specifically, the licensee stored a CPN Model MC-1DR-P portable gauge, containing a nominal 10 millicurie cesium-137 sealed source and a nominal 50 millicurie americium-241/beryllium sealed source in the back of a vehicle with no tangible barriers and without maintaining control and constant surveillance of the portable gauge.

This is a Severity Level III violation (6.3)
Civil Penalty - \$8,500 (EA-20-014)

II. Violations Not Assessed a Civil Penalty

- A. Title 10 CFR, Section 20.2201(a)(1)(i) requires that each licensee report by telephone, immediately after its occurrence becomes known to the licensee, any lost, stolen, or missing licensed material in an aggregate quantity equal to or greater than 1,000 times the quantity specified in Appendix C to Part 20 under such circumstances that it appears to the licensee that an exposure could result to a person in unrestricted areas.

Contrary to the above, on October 4, 2019, the licensee failed to immediately notify the NRC of a stolen gauge that contained 10 millicuries of Cs-137 and 50 millicuries of

Am-241/Be in an aggregate quantity equal to or greater than 1,000 times the quantity specified in Appendix C to Part 20 under such circumstances that it appears to the licensee that an exposure could result to persons in unrestricted areas. Specifically, the licensee was notified of the stolen gauge at 8:00am and did not notify the NRC until 4:00pm.

This is a Severity Level III violation (Section 6.9)

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken and planned to correct the violations and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed on the docket in Inspection Report No. 03035111/2020001(DNMS) dated March 16, 2020, in your response dated April 6, 2020, and the letter transmitting this Notice of Violation (Notice). However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation, EA-20-014" 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 III, Suite 210, 2443 Warrenville Rd, Lisle, IL 60532, 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 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, the licensee must either confirm to the NRC in writing that it will pay the civil penalty or provide its written answer protesting the civil penalty. However, in recognition of the economic impact to licensees by the public health emergency caused by the Coronavirus Disease 2019 (COVID-19), the NRC is extending the period of time by which the civil penalty must be paid from 30 days to 60 days from the date of this Notice. Should the licensee fail to pay the civil penalty within 60 days of the date of this Notice, the NRC will issue an order imposing the civil penalty. Separately, the licensee may request an additional extension of time to pay the civil penalty as a result of impacts to the licensee from COVID-19. Such an extension request must be in writing and should explain the basis for the request and should specify the amount of additional time being requested. This extension request must be submitted to the NRC no later than 50 days from the date of this Notice (i.e., at least 10 days before the initial 60-day deadline to pay 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-20-014)" and may: (1) deny the violations 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 civil 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, Extension of time to pay the civil penalty, Statement as to payment of civil penalty, and Answer to a Notice of Violation, should be addressed to: George Wilson, 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, Suite 210, 2443 Warrenville Rd, Lisle, IL 60532, and a copy to 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 ADAMS, accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. Therefore, to the extent possible, the response should not include any personal privacy, proprietary, or safeguards 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 2020.

QUESTIONS?

If you have questions, please visit <https://www.nrc.gov> and search for "License Fees."

Questions may also be directed to the NRC Accounts Receivable Help Desk by e-mail at nrc@fiscal.treasury.gov, by phone at (301) 415-7554, or by writing to the address below:

U.S. NUCLEAR REGULATORY COMMISSION
OCFO/DOC/ARB
Mail Stop T9-E10
Washington, DC 20555-0001



Payment Methods

U.S. NUCLEAR REGULATORY COMMISSION
OCFO/DOC/ARB
Mail Stop T-9-E10
Washington, DC 20555-0001
PH (301) 415-7554



NUREG/BR-0254, Rev. 9
June 2019



Enclosure 2

Estimated burden per response to comply with this voluntary collection request: 10 minutes. This brochure provides information about available payment methods. Forward comments about to burden estimate to the Records Management Branch (T6-F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the Paperwork Reduction Project (3150-0190), Office of Management and Budget, Washington, DC 20503. If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

NRC accepts the methods described below.

PAYMENT BY AUTOMATED CLEARINGHOUSE

To pay by Automated Clearinghouse/Electronic Data Interchange (ACH/EDI), provide a copy of NRC Form 628 to your financial institution. You may obtain a copy of NRC Form 628 from the NRC Web site at <http://www.nrc.gov> by searching for "NRC Form 628." You can also obtain a form by calling the NRC Accounts Receivable Help Desk at (301) 415-7554.

PAYMENT BY CREDIT CARD

The NRC is currently accepts credit card payments of up to \$24,999.99. For payment by credit card, go to Pay.gov, search for "U.S. Nuclear Regulatory Commission Fees" and enter the required information.

You may also mail or fax NRC Form 629 following the directions on the form. To obtain a copy of NRC Form 629 go to <http://www.nrc.gov> and search for "NRC Form 629" or call the NRC Accounts Receivable Help Desk at (301) 415-7554.



PAYMENT BY FEDWIRE DEPOSIT SYSTEM

The NRC can receive funds through the U.S. Department of the Treasury (Treasury) Fedwire Deposit System. The basic wire message format below complies with the Federal Reserve Board's standard structured third-party format for all electronic funds transfer (EFT) messages.

See the sample EFT message to Treasury below. Each numbered field is described below.

1 RECEIVER-DFI# – Treasury's ABA number for deposit messages is 021030004.

2 TYPE-SUBTYPE-CD – The sending bank will provide the type and subtype code.

3 SENDER-DFI# – The sending bank will provide this number.

4 SENDER-REF# – The sending bank will insert this 16-character reference number at its discretion.

5 AMOUNT – The transfer amount must be punctuated with commas and decimal point; use of the "\$" is optional. The depositor will provide this item.

6 SENDER-DFI-NAME – The Federal Reserve Bank will automatically insert this information.

7 RECEIVER-DFI-NAME – Treasury's name for deposit messages is "TREAS NYC". The sending bank will enter this name.

8 PRODUCT CODE – A product code of "CTR" for customer transfer should be the first item in the receiver text field. Other values may be entered, if appropriate, using the ABA's options. A slash must be entered after the product code.

9 AGENCY LOCATION CODE (ALC) – THIS ITEM IS OF CRITICAL IMPORTANCE. IT MUST APPEAR ON THE FUNDS TRANSFER DEPOSIT MESSAGE IN THE PRECISE MANNER AS STATED TO ALLOW FOR THE AUTOMATED PROCESSING AND CLASSIFICATION OF THE FUNDS TRANSFER MESSAGE TO THE AGENCY LOCATION CODE OF THE APPROPRIATE AGENCY. The ALC identification sequence can, if necessary, begin on one line and end on the next line; however, the field tag "BNF=" must be on one line and cannot contain any spaces. The NRC's 8-digit ALC is: BNF=/AC-31000001

10 THIRD-PARTY INFORMATION – The Originator to Beneficiary Information (OBI) field tag "OBI=" signifies the beginning of the free-form third-party text. All other identifying information intended to enable the NRC to identify the deposit—for example, NRC annual fee invoice number, description of fee, 10 CFR 171 annual fee, and licensee name—should be placed in this field.

The optimum format for fields 7, 8, 9, and 10 using an 8-digit ALC is as follows:

TREAS NYC/CTR/BNF=/AC-31000001 OBI=

The optimum format, shown above, will allow 219 character positions of information following the "OBI=" indicator.

If the licensee's bank is not a member of the Federal Reserve System, the nonmember bank must transfer the necessary information and funds to a member bank, which then must transfer the information and funds to the local Federal Reserve Bank.

For a transfer of funds from local Federal Reserve Banks to be recorded on the same day, the transfer must be received at the New York Federal Reserve Bank by 4 p.m., EST. Otherwise, the deposit will be recorded on the next workday.

PAYMENT BY CHECK

Checks should be made payable to the U.S. Nuclear Regulatory Commission with the invoice number, Enforcement Action number, or other information that identifies the payment, written on the check. Mail the check to the following address:

U.S. Nuclear Regulatory Commission
U.S. Bank
P.O. Box 979051
St. Louis, MO 63197-9000

FedEx or overnight mailings must be delivered to the following address:

U.S. Nuclear Regulatory Commission
U.S. Bank Government Lockbox
SL-MO-C2GL
1005 Convention Plaza
St. Louis, MO 63101

TAXPAYER IDENTIFICATION NUMBER

You must file your Taxpayer Identification Number (TIN) with the NRC. Use NRC Form 531 to provide your TIN. You may obtain NRC Form 531 from the NRC Web site at <http://www.nrc.gov> by searching for "NRC Form 531" or by calling the NRC Accounts Receivable Help Desk at (301) 415-7554.