PRECISION CUSTOM COMPONENTS LLC
BOX 15101 - YORK, PENNSYLVANIA 17405-7101
PHONE: (717) 848-1126 FAX: (717) 848-4543

November 27, 2019

Ms. Katie Strangis
Senior Policy Advisor
Office of Nonproliferation and Arms Control
National Security Administration
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

Subject: Comments on Assistance to Foreign Atomic Energy Activities Notice of Proposed Rulemaking on Civil Penalties (RIN 1994-AA05)

Dear Ms. Strangis:

Precision Custom Components, LLC (PCC) is providing this letter in response to the U.S. Department of Energy's request for comment on Assistance to Foreign Atomic Energy Activities Notice of Proposed Rulemaking on Civil Penalties. PCC has been an active participant in industry discussions and development of comments and hereby endorses the comments provided by the Nuclear Energy Institute (NEI).

PCC has been a manufacturer of nuclear reactor equipment from Shippingport I through to AP1000 hardware and now SMR and Advanced Reactor prototypes, test equipment, and design input. We support a variety of customers who themselves or their customers require workable regulations affecting use and exchange of technology with international partners or customers. Therefore, PCC emphasizes the following key points that are consistent with the NEI comments.

- The final rule should include clear procedures for voluntary self-disclosure beyond what is outlined in DOE's FAQs. DOE should look at its sister export control agencies all of whom have extensive self-disclosure procedures.

- Provide for alternative dispute resolution (ADR) and pre-decisional enforcement conference (PEC) options. In particular, DOE should use the Administrative Dispute Resolution Act of 1996 (ADRA) to develop a process for voluntary self-disclosure.

- Explicitly provide for "no action" and warning letters as possible outcomes of enforcement actions or investigations. This will incentivize the industry to work with DOE to self-report and promptly remedy violations.

- DOE should adopt the maximum statutory penalty closer to the base penalty of $100,000, which reflects Congressional intent. It makes little sense to adjust the base penalty for inflation by applying annual catch-up adjustments back to 2015.

- Narrow the excessive scope of a "continuing" violation as it will be difficult to determine when such transfers start or stop.

- Refrain from applying penalties retroactively. The Supreme Court in *Bowen v. Georgetown University Hospital* held "[R]etroactivity is not favored in the law"[1] and Congress did not indicate a desire to retroactively apply civil penalties when it amended Section 234(a) of the AEA.

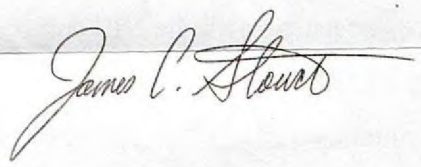
- In compliance with the Administrative Procedure Act and court decisions, the final rule should place the burden of proof at the administrative hearing level on DOE.

- Limit the Under Secretaries role to only set aside the penalty if it is excessive or arbitrary, and clarify that the Under Secretary, may not impose a harsher punishment. Otherwise, if the Under Secretary is allowed to impose harsher punishments it would render the protections provided by the ALJ hearing process meaningless.

PCC also requests the final rule become effective no earlier than six months after publication to allow time for companies to adjust and understand rule.

If you have any questions or require additional information, please contact me at your convenience.

Sincerely,



James C. Stouch, P.E.
Vice President, Business Development
T - 717-434-1902
C - 614-562-3614

1 488 U.S. 204, 208 (1988).