

January 24, 2006

EA-05-226

Timothy Hammill, Managing Director
Dickinson County Road Commission
1107 South Milwaukee Avenue
Iron Mountain, MI 49801-0519

SUBJECT: NOTICE OF VIOLATION (NRC INSPECTION REPORT NO. 030-18644/05-001(DNMS) - DICKINSON COUNTY ROAD COMMISSION

Dear Mr. Hammill:

This refers to a routine safety inspection conducted by the U.S. Nuclear Regulatory Commission (NRC) on November 17, 2005, at the Dickinson County Road Commission, Iron Mountain, Michigan, with continuing NRC in-office review through November 22, 2005. One apparent violation, concerning the security and control of NRC-licensed material, was identified during the inspection.

In the letter transmitting the inspection report, dated December 16, 2005, we provided you the opportunity to address the apparent violation identified in the inspection report by either attending a predecisional enforcement conference or by providing a written response before we made our final enforcement decision. You declined the opportunity to attend a predecisional enforcement conference and in a letter dated December 29, 2005, you provided a written response to the apparent violation.

Based on the information developed during the inspection, the information that your staff provided in your December 29, 2005, written response to the inspection report, and the information discussed during the January 23, 2006, telephone conversation, 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. In summary, on November 17, 2005, an NRC inspector entered your offices in an unlocked public building and found an unsecured Troxler Model 3411-B portable moisture/density gauge (Serial No. 12059) containing NRC-licensed materials (cesium-137 and americium-241). At the time of the inspection, your staff was not present to maintain constant surveillance of the unsecured Troxler gauge containing NRC-licensed material. The failure to secure or maintain constant surveillance of the NRC-licensed material contained in the Troxler portable moisture/density gauge is a significant regulatory concern and the violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level III.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$3,250 is considered for a Severity Level III violation. Because your facility has not been the subject of escalated enforcement action within the last two years or two inspections, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty

assessment process in Section VI.C.2 of the Enforcement Policy. Credit was warranted for your corrective actions that included: (1) immediately securing the gauge to an immobile object; (2) relocating the gauge to a locked room; (3) limiting access to the gauge storage room to three individuals; (4) developing a sign in/out sheet; (5) installing warning signs on the storage room door; and (6) re-training your staff on NRC requirements concerning the security of NRC-licensed material.

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 in this case. However, significant violations in the future could result in a civil penalty. In addition, issuance of this Severity Level III violation constitutes escalated enforcement action and may subject you to increased inspection effort.

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. 030-18644/05-001(DNMS) and your December 29, 2005 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, should you choose to respond, 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, if you choose to respond, 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 www.nrc.gov; select **What We Do, Enforcement**, then **Significant Enforcement Actions**.

Sincerely,

/RA by Geoffrey E. Grant Acting for/

James L. Caldwell
Regional Administrator

Docket No. 030-18644
License No. 21-24463-01

Enclosure: Notice of Violation

*See previous concurrence

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DATE	01/10/2006		01/11/2006		01/23/2006		01/24/2006		01/24/2006	

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(DNMS) - DICKINSON COUNTY ROAD COMMISSION

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NOTICE OF VIOLATION

Dickinson County Road Commission
Iron Mountain, Michigan

Docket No. 030-18644
License No. 21-24463-01
EA-05-226

During an NRC inspection conducted from November 17 to November 22, 2005, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 20.1801 requires that the licensee secure from unauthorized removal or access licensed materials that are stored in controlled or unrestricted areas. 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. As defined in 10 CFR 20.1003, *controlled area* means an area, outside of a restricted area but inside the site boundary, access to which can be limited by the licensee for any reason; and *unrestricted area* means an area, access to which is neither limited nor controlled by the licensee.

Contrary to the above, on November 17, 2005, the licensee did not secure from unauthorized removal or limit access to cesium-137 and americium-241 contained within a Troxler portable moisture density gauge (Serial No. 12059) located in an unlocked storage room within the licensee's facility, which is an unrestricted area, nor did the licensee control and maintain constant surveillance of this licensed material.

This is a Severity Level III violation (Supplement IV).

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. 030-18644/05-001(DNMS) and your December 29, 2005 letter. 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-05-226" and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555 with a copy to the Regional Administrator and the Enforcement Officer, Region III, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, 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, the response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days.

Dated this 24th day of January 2006