

June 17, 2008

EA-08-147

Mr. Duane F. Ellis, P.E., Director  
Division of Public Works  
City of Mt. Pleasant  
1303 North Franklin Street  
Mt. Pleasant, MI 48858

SUBJECT: NOTICE OF VIOLATION [NRC INSPECTION REPORT  
NO. 030-28673/2008-001(DNMS)] - CITY OF MT. PLEASANT

Dear Mr. Ellis:

This refers to the inspection conducted on April 10, 2008, at your Mt. Pleasant, Michigan facility. The purpose of this inspection was to examine activities conducted under your license as they relate to safety and compliance with the Commission's rules and regulations and with the conditions in your license. An apparent violation of 10 CFR 30.34(i), with two examples, was identified during the inspection and considered for escalated enforcement. The apparent violation involved the failure 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 your constant control and surveillance. The inspection report discussing this apparent violation was transmitted to you in our letter dated May 8, 2008.

In the letter transmitting the inspection report, we provided you with 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. You subsequently provided a written response in a letter dated May 21, 2008.

Based on the information developed during the inspection and information provided in your written response, 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. On April 10, 2008, the inspectors observed that a portable gauge was stored in a locked storage room in a metal cabinet that was not locked. The inspectors also identified that you used only one physical barrier to secure the gauge case in the back of an open bed pick-up truck while the gauge was being stored at temporary job sites. Your failure 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 your control and constant surveillance is a violation of 10 CFR 30.34(i).

The root cause of the violation was your staff's failure to recognize that the methods used to secure the gauge were not in compliance with 10 CFR 30.34(i). The failure to properly secure the gauge was a significant regulatory concern because it could have permitted unauthorized access to and unnecessary radiation exposures from radioactive materials. Therefore, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level III.

In accordance with the NRC 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 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 VI.C.2 of the Enforcement Policy. Credit was warranted for your corrective actions which are described in detail in your letter dated May 21, 2008.

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, which may subject you to increased inspection effort.

Based on the inspection results, the NRC also determined that a Severity Level IV violation of NRC requirements occurred which is cited in the enclosed Notice. The violation was not considered for escalated enforcement but is being cited because it was identified by the inspectors. The violation occurred when you exceeded the 6-month interval for conducting a physical inventory to account for all sources and/or devices received and possessed under your license.

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken and planned to be taken 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. 030-28673/2008-001(DNMS) and your letter dated May 21, 2008. 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 enclosure, and 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>. 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 personal privacy or proprietary information is necessary to provide an acceptable response, 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 withholding of such information, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (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). The NRC also includes significant enforcement actions on its Web site at (<http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions>).

D. Ellis

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Please contact Patrick Loudon, Chief, Materials Inspection Branch, with any questions. Mr. Loudon can be reached at telephone number (630) 829-9627.

Sincerely,

*/RA/*

James L. Caldwell  
Regional Administrator

Docket No. 030-28673  
License No. 21-24504-01

Enclosure:  
Notice of Violation

cc: State of Michigan

D. Ellis

-3-

Please contact Patrick Loudon, Chief, Materials Inspection Branch, with any questions. Mr. Loudon can be reached at telephone number (630) 829-9627.

Sincerely,

**/RA/**

James L. Caldwell  
Regional Administrator

Docket No. 030-28673  
License No. 21-24504-01

Enclosure:  
Notice of Violation

cc: State of Michigan

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See next page

FILE NAME: G:\G:\EICS\ENFORCEMENT\Enforcement Cases 2008\EA-08-147 City of Mount Pleasant - Portable Gauge - Enf. Panel\EA-08-147 Final Mt. Pleasant Notice of Violation.doc

\*See previous concurrence

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DATE	06/09/08	06/09/08	06/09/08	06/12/08	06/13/08	06/17/08

**OFFICIAL RECORD COPY**

<sup>1</sup> OE concurrence received via E-Mail from S. Woods on June 12, 2008.

Letter to Duane F. Ellis from James L. Caldwell dated June 17, 2008

SUBJECT: NOTICE OF VIOLATION [NRC INSPECTION REPORT  
NO. 030-28673/2008-001(DNMS)] - CITY OF MT. PLEASANT

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## NOTICE OF VIOLATION

City of Mt. Pleasant  
Mt. Pleasant, MI

Docket No. 030-28673  
License No. 21-24504-01  
EA-08-147

During an NRC inspection conducted on April 10, 2008, violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

1. 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, as of April 10, 2008, the licensee failed 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 control and constant surveillance of the licensee as demonstrated by the following examples:

- a. The licensee secured a transport case, containing a gauge, in a storage room using only a single lock;
- b. The licensee secured a transport case, containing a gauge, while in temporary storage in an open-bed pickup truck using only one lock and chain.

This is a Severity Level III violation (Supplement VI). (EA-08-147)

2. License Condition No. 16 of NRC License No. 21-24504-01 requires the licensee to conduct a physical inventory every six months to account for all sources and/or devices received and possessed under the license.

Contrary to the above, the licensee did not conduct a physical inventory of all sources and/or devices received and possessed under the license between April 2007 and February 2008, a period of greater than six months.

This is a Severity level IV violation (Supplement VI).

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken and planned to be taken 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. 030-28673/2008-001(DNMS) and your letter dated May 21, 2008. 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-08-147," 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 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 17<sup>th</sup> day of June 2008