

October 10, 2008

EA-08-216

Mr. Gary G. Holcombe
Radiation Safety Officer
Elmer's Construction Engineering, LLC
3600 Rennie School Road
P.O. Box 6150
Traverse City, MI 49696-6150

SUBJECT: NOTICE OF VIOLATION, NRC ROUTINE INSPECTION REPORT
NO. 030-37138/2008-001(DNMS) - ELMER'S CONSTRUCTION
ENGINEERING, LLC

Dear Mr. Holcombe:

This refers to an NRC inspection conducted on July 22, 2008, at your Traverse City, Michigan, facility. The purpose of this inspection was to determine if licensed activities were conducted safely and in accordance with your NRC license. During the inspection, an apparent violation of NRC requirements was identified by the inspector. At the conclusion of the inspection, on July 22, 2008, the inspector discussed the circumstances of the apparent violation, the significance of the issue, and the need for lasting and effective corrective actions. Details regarding the apparent violation were provided in the NRC Inspection Report No. 030-37138/2008-001(DNMS), dated August 19, 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. In a letter dated September 10, 2008, 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 September 10, 2008, 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 violation involved your staff's failure to use a minimum of two independent physical controls that form tangible barriers to secure a portable gauge whenever the gauge was not under the control and constant surveillance as required in 10 CFR 30.34(i). Specifically, your staff used a single barrier, a lock and chain, to secure a gauge case in the back of an open-bed pickup truck and a single barrier, a lock, to secure the gauge case closed. The root cause of the apparent violation was your staff's lack of knowledge of the requirements in 10 CFR 30.34(i).

The violation is of concern to the NRC because a member of the public could have been exposed to radiation if the device was stolen and the sources were exposed. Therefore, this violation has been categorized, in accordance with the NRC Enforcement Policy, as a Severity Level III violation.

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$3250 is considered for a Severity Level III violation. Because your facility has not been the subject of escalated enforcement actions within the last two years or 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. Your immediate corrective actions included securing the gauge in the storage facility and providing a second chain and lock to the gauge user for future use. Your long term corrective actions included: (1) revising the procedures associated with the transportation of gauges to include increased guidance; (2) providing training to each licensee gauge user regarding the requirements of 10 CFR 30.34(i), the changes made to the transportation procedures, and the proper way to secure gauges in transport; and (3) sending out a memorandum to all gauge users emphasizing the proper method of transporting portable gauges.

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 that 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. 030-37138/2008-001(DNMS) and a letter from the licensee dated September 10, 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, if you choose to provide one, 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

G. Holcombe

-3-

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 www.nrc.gov/about-nrc/regulatory/enforcement.html.

Sincerely,

/RA by Mark A. Satorius Acting for/

James L. Caldwell
Regional Administrator

Docket No. 030-37138
License No. 21-26100-02

Enclosure:
Notice of Violation

cc w/encl: State of Michigan

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¹ OE concurrence received via e-mail from L. Sreenivas on October 2, 2008.

Letter to Gary G. Holcombe from James L. Caldwell dated October 10, 2008

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NO. 030-37138/2008-001(DNMS) - ELMER'S CONSTRUCTION
ENGINEERING, LLC

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NOTICE OF VIOLATION

Elmer's Construction Engineering, LLC
Traverse City, MI

Docket No. 030-37138
License No. 21-26100-02
EA-08-216

During an NRC inspection conducted on July 22, 2008, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

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 July 22, 2008, the licensee failed to use a minimum of two independent physical controls that form tangible barriers to secure a portable moisture/density gauge from unauthorized removal when the gauge was not under the control and constant surveillance of the licensee. Specifically, the licensee secured the gauge to the bed of an open-bed pick-up truck with a single physical control, using a single chain and lock to secure the case to the vehicle, and a single lock securing the case lid closed.

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

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to be taken 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. 030-37138/2008-001(DNMS) and a letter from the licensee dated September 10, 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-08-216", 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 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 10th of October 2008

ENCLOSURE