

November 7, 2008

EA-08-215  
EA-08-267

Mr. Joshua A. Gottschall  
Radiation Safety Officer  
Wilcox Associates, Inc.  
One Madison Avenue  
Cadillac, MI 49601

SUBJECT: NOTICE OF VIOLATION – WILCOX ASSOCIATES, INC.; NRC INSPECTION  
REPORT NOS. 030-20901/2008-001(DNMS) AND 030-20901/2008-002(DNMS)

Dear Mr. Gottschall:

This refers to the inspections conducted on July 21, 2008, at your Caledonia, Michigan facility and on August 21, 2008, at your Saginaw, Michigan facility. The purpose of the inspections was to examine activities conducted under your license as they related to safety and compliance with the Commission's rules and regulations and with the conditions in your license. During each inspection, an example of an apparent violation of NRC requirements was identified. Details regarding the apparent violation examples were provided in NRC Inspection Report Nos. 030-20901/2008-001(DNMS), dated August 20, 2008, and 030-20901/2008-002(DNMS), dated September 19, 2008.

In the letter transmitting the first inspection report, we provided you with the opportunity to address the apparent violation by either attending a predecisional enforcement conference or by providing a written response before we made our final enforcement decision. You provided a response to both examples of the apparent violation, in a letter dated September 16, 2008, based on the information included in Inspection Report No. 030-20901/2008-001 and your understanding of the likely content of Inspection Report No. 030-20901/2008-002.

Based on the information developed during the inspections and the information that you provided in your response of September 16, 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 reports. On July 21, 2008, at your Caledonia facility, the NRC inspectors observed that only one physical barrier was used to secure a portable gauge case while it was located in the back of a closed-bed pickup truck and was not under the immediate control of a licensee employee. On August 21, 2008, at your Saginaw facility, the NRC inspectors observed that only one physical barrier was being used to secure portable gauges while in storage. 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 constitute two examples of a violation of 10 CFR 30.34(i).

The violation is of concern to the NRC because it could have permitted unauthorized access to and unnecessary radiation exposures from a radioactive materials gauge. Furthermore, the fact that the gauges were stored properly at the Caledonia facility when the NRC inspected in July

but not at the Saginaw facility during the NRC's inspection in August indicated to the NRC that you did not have a complete understanding of the requirements of 10 CFR 30.34(i) even after the NRC's July inspection. Therefore, these examples have 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 two of your facilities experienced examples of the violation within approximately one month, the NRC considered whether the *Identification and Corrective Action* factors should be applied in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy. The *Identification* factor is normally applied if a facility has been the subject of escalated enforcement action within the last two inspections or two years. However, in your case, the NRC determined that the *Identification* factor should not be applied because, at the time of the second violation, you had not been informed of an enforcement decision with regard to the first violation.

The second factor considered was *Corrective Action*. The NRC considered whether you should be given credit for the promptness and comprehensiveness of your corrective actions, due to the second violation being discovered a month after the first one. After a review of the circumstances surrounding the two examples, and a review of your corrective actions as detailed in your response, dated September 16, 2008, the NRC determined that you should be given credit for your corrective actions. The NRC noted your immediate corrective actions for the first example of the violation included locking the pickup bed topper and sending an e-mail to all other associate radiation safety officers at your other facilities informing them of the transportation requirements and requesting a response indicating their understanding of the transportation requirements. The NRC deemed these actions to be comprehensive at the time they were taken because they focused on the aspect of the regulation which was found to be deficient. In regard to the second example of the violation, the NRC noted your immediate corrective action was to install a lock and chain within the storage room to anchor the gauges to an immovable barrier. You also ensured that each gauge case was locked and the gauges were stored within a locked cage. This ensured that two physical barriers existed to prevent theft of either the gauge by itself or the gauge in its case. You then sent further e-mails to your remaining offices reminding them of both aspects of the regulation and the necessary actions to ensure compliance with 10 CFR 30.34(i) both during transportation and storage.

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, to not 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.

The NRC has concluded that information regarding the reason for the violation, the corrective actions 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 Nos. 030-20901/2008-001(DNMS), dated August 20, 2008, and 030-20901/2008-002(DNMS), dated September 19, 2008, and in your response, dated September 16, 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 any, 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 [www.nrc.gov/reading-rm/adams.html](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>.

Sincerely,

**/RA by Mark A. Satorius Acting for/**

James L. Caldwell  
Regional Administrator

Docket No. 030-20901  
License No. 21-23314-01

Enclosure:  
Notice of Violation

cc w/encl: State of Michigan

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 any, 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 [www.nrc.gov/reading-rm/adams.html](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>.

Sincerely,

**/RA by Mark A. Satorius Acting for/**

James L. Caldwell  
Regional Administrator

Docket No. 030-20901  
License No. 21-23314-01

Enclosure:  
Notice of Violation

cc w/encl: State of Michigan

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<sup>1</sup> OE concurrence received via E-mail from N. Coleman on October 30, 2008.

Letter to J. Gottschall from James L. Caldwell dated November 7, 2008

SUBJECT: NOTICE OF VIOLATION – WILCOX ASSOCIATES, INC.; NRC INSPECTION  
REPORT NOS. 030-20901/2008-001(DNMS) AND 030-20901/2008-002(DNMS)

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## NOTICE OF VIOLATION

Wilcox Associates, Inc.  
Cadillac, MI 49601

Docket No. 030-20901  
License No. 21-23314-01  
EA-08-215 and EA-08-267

During NRC inspections conducted on July 21 and August 21, 2008, two examples of a violation of NRC requirements were 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, the licensee failed to use a minimum of two independent physical controls that form tangible barriers to secure portable moisture/density gauges from unauthorized removal when the gauges were not under the control and constant surveillance of the licensee. Specifically,

1. On July 21, 2008, the licensee secured a portable gauge, in its transport case, in the back of a closed-bed pickup truck. While the case was locked to the bed of the pickup truck, a single barrier, the lock on the pickup bed capper was not locked and the truck was not under the control and constant surveillance of the licensee.
2. On August 21, 2008, the licensee stored portable gauges in a locked cage, a single barrier, and the gauges were not under the control and constant surveillance of the licensee.

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 Nos. 030-20901/2008-001(DNMS) and 030-20901/2008-002(DNMS) and in a letter from the licensee dated September 16, 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-08-215 and EA-08-267," 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, 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 7<sup>th</sup> day of November 2008