

December 11, 2008

EA-08-266

Mr. Roger Sparks  
City Engineer  
City of St. Joseph  
Department of Public Works &  
Transportation/Engineering Division  
1100 Frederick Avenue  
St. Joseph, MO 64501

SUBJECT: NOTICE OF VIOLATION — CITY OF ST. JOSEPH  
NRC INSPECTION REPORT NO. 030-17372/2008-001(DNMS)

Dear Mr. Sparks:

This refers to an NRC inspection conducted on August 26, 2008, at your St. Joseph, Missouri facility. The purpose of the inspection was to determine if licensed activities were conducted safely and in accordance with your license. During the inspection, an apparent violation of NRC requirements was identified by the inspector. At the conclusion of the on-site inspection, on August 26, 2008, and during a final telephone exit meeting with Mr. John Lawrence, the Radiation Safety Officer (RSO), on September 5, 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 NRC Inspection Report No. 030-17372/2008-001(DNMS), dated October 3, 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 (PEC) or by providing a written response before we made our final enforcement decision. In an October 17, 2008, telephone conversation between Mr. Lawrence and Mr. Sam Mulay, of the U.S. Nuclear Regulatory Commission (NRC), Mr. Lawrence declined the opportunity to attend a PEC or to provide a written response. Mr. Lawrence also indicated that you agreed with the apparent violation, the root cause, and the characterization of the corrective actions, as described in the subject inspection report.

Based on the information developed during the inspection, the NRC 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 your control and constant surveillance, as required by 10 CFR 30.34(i).

Specifically, your staff stored a moisture/density gauge in a storage room with the key in the door lock rendering the first physical barrier ineffective. In addition, your staff did not provide a second independent physical barrier. The root cause of the violation was your staff's failure to

recognize that the storage room door was rendered unsecured by leaving the key in door handle and 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 corrective actions included the: (1) immediate removal of the key from the storage room door lock; (2) maintenance and accountability of the storage room key by the RSO; (3) accompaniment of individuals requiring access to the storage room; and (4) addition of a second chain and a padlock system around a concrete support column within the storage room to secure the gauge case and establish the second required physical barrier.

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. 030-17372/2008-001(DNMS). 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 of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request

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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](http://www.nrc.gov/about-nrc/regulatory/enforcement.html).

Sincerely,

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

James L. Caldwell  
Regional Administrator

Docket No. 030-17372  
License No. 24-18931-01

Enclosure:  
Notice of Violation

cc w/encl: State of Missouri

R. Sparks

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James L. Caldwell  
Regional Administrator

Docket No. 030-17372  
License No. 24-18931-01

Enclosure:  
Notice of Violation

cc w/encl: State of Missouri

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1 OE concurrence received via e-mail from N. Coleman on December 9, 2008

Letter to Roger Sparks from James L. Caldwell dated December 11, 2008

SUBJECT: NOTICE OF VIOLATION — CITY OF ST. JOSEPH  
NRC INSPECTION REPORT NO. 030-17372/2008-001(DNMS)

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## NOTICE OF VIOLATION

City of St. Joseph  
St. Joseph, MO

Docket No. 030-17372  
License No. 24-18931-01  
EA-08-266

During an NRC inspection conducted on August 26, 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 August 26, 2008, the licensee failed to use a minimum of two independent physical controls that form tangible barriers to secure a portable moisture/density gauge containing licensed material from unauthorized removal when the gauge was not under the control and constant surveillance of the licensee. Specifically, the licensee stored the moisture/density gauge in a storage room with the key in the door lock rendering the physical barrier ineffective. Additionally, a second independent physical barrier was not provided.

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. 030-17372/2008-001(DNMS). 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-08-266", 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 11<sup>th</sup> day of December 2008

ENCLOSURE