

May 3, 2010

EA-09-276

Mr. Hakim Shakir, P.E.
Principal
Engineering Services, Inc.
32232 Schoolcraft Road
Livonia, MI 48150

SUBJECT: WITHDRAWAL OF NOTICE OF VIOLATION AND PROPOSED
IMPOSITION OF CIVIL PENALTY - \$3500; INSPECTION REPORT
NO. 030-34199/2009-002(DNMS) – ENGINEERING SERVICES, INC.

Dear Mr. Shakir:

On February 2, 2010, you responded to the U.S. Nuclear Regulatory Commission's (NRC's) letter to Engineering Services, Inc., dated January 12, 2010, which issued a Notice of Violation and Proposed Imposition of Civil Penalty - \$3500. The Notice of Violation cited your failure, on October 29, 2009, to use a minimum of two independent physical controls that form tangible barriers to secure a portable gauge while it was not under your control and constant surveillance. In your response, you disputed the Notice of Violation and Proposed Imposition of Civil Penalty and provided additional information.

Your February 2, 2010, response to the Notice of Violation indicates that following our May 2009 inspection, you implemented a program to ensure that one or more of your staff maintained constant surveillance of the locked closet in which the gauge was stored during business hours. This information was not previously provided to the NRC, neither during the onsite inspection on October 29, 2009, nor in your December 29, 2009, letter that responded to that inspection. Your February 2, 2010, response also noted that at the time of the inspection, the storage closet was locked and under your constant surveillance.

We have evaluated the new information you provided. Although the gauge was not secured by two independent physical controls at the time of the inspection—the bracket securing the gauge to the wall inside of the locked storage closet had failed—the closet was under your constant surveillance. The exact time that the bracket became detached is unclear, and an independent review of the initial inspection could not establish a period of time that constant surveillance was not maintained by either yourself or others in your company when your company was open for business. Therefore, upon further consideration, we have determined that there was no violation of this NRC requirement.

H. Shakir

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Consequently, the Notice of Violation and Proposed Imposition of Civil Penalty is hereby withdrawn, and we will modify our records accordingly. You are not required to respond to this letter. A summary of our evaluation of your response is enclosed.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the NRC's Agency wide Documents Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> (the Public Electronic Reading Room).

If you have any questions regarding this matter, please contact Ms. Tamara Bloomer at (630) 829-9627.

Sincerely,

/RA/

Roy P. Zimmerman, Director
Office of Enforcement

Docket No. 030-34199
License No. 21-26742-01

Enclosure:
Evaluation of Licensee Response

Evaluation of Licensee Response

In a letter dated February 2, 2010, Engineering Services (the licensee) appealed the Notice of Violation and Proposed Imposition of Civil Penalty - \$3500 dated January 12, 2010 (EA-09-276). The NRC cited a violation of Title 10 of the Code of Federal Regulations (10 CFR) 30.34(i). The violation was cited in the Notice of Violation as occurring on October 29, 2009, the date of the inspection. The U.S. Nuclear Regulatory Commission (NRC) performed an independent review of the licensee's contentions. As part of the evaluation, the independent reviewer interviewed the two NRC inspectors and the Principal (licensee) to determine what pertinent information was discussed during the inspection. The independent reviewer also examined documentation pertaining to the May 2009 inspection. The independent reviewer's evaluation and conclusions are as follows:

Contention 1: Compliance Achieved During Onsite Inspection

The licensee's letter stated that, during the onsite inspection, the storage closet containing the gauge was locked and under constant surveillance by the licensee's Principal who was in a nearby office. The licensee indicated that, although there was only one physical barrier to secure the gauge during the onsite inspection (the locked storage closet), the licensee complied with 10 CFR 30.34(i) because the Principal maintained constant surveillance.

NRC Evaluation

The issued violation was based on the NRC's understanding of the responses the Principal provided during the inspection. Specifically, the inspector asked the Principal how constant surveillance was maintained if no one else was around and the Principal went to the restroom. The NRC agrees that at the time of the onsite inspection, the Principal was maintaining control and constant surveillance of the gauge.

Contention 2: Constant Surveillance Mechanism

The licensee's letter stated that, in addition to physical controls, the licensee instituted a "constant surveillance mechanism" as a result of an NRC inspection conducted in May 2009. The "constant surveillance mechanism" was a verbal instruction provided by the Principal to company employees. Under the program the Principal had primary responsibility for maintaining constant surveillance of the gauge while it was in storage. The licensee also stated that, during the Principal's short absences or during client meetings, gauge surveillance was handled by other staff members whose offices were in locations that permitted observation of the storage closet. The licensee also stated that the constant surveillance mechanism was discussed during the October 2009 inspection.

NRC Evaluation

The issued violation was based on the failure to have the second independent physical barrier to prevent unauthorized access (i.e., from when the bracket fell off the wall sometime between October 19 and October 26 until it was re-attached to the wall on October 29, 2009) and failure to control and maintain constant surveillance of the gauge.

When interviewed, the inspector stated that when he asked the Principal to explain how constant surveillance of the locked storage room was maintained when nobody else was around and the Principal went to the restroom, the Principal responded by stating that the periods of

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time when he would be in the restroom would be very short and were not enough time for an unauthorized person to take the gauge. The inspector also stated that he did not recall any discussion with the Principal during the inspection regarding a constant surveillance mechanism. The accompanying inspector stated that the inspector asked the Principal if there were times when the gauge was not under surveillance, and the Principal's response was there were short periods of time when the gauge was not under surveillance when the gauge was in the storage room.

When interviewed, the Principal stated that the inspector asked him about surveillance of the gauge in the locked closet while he was in the restroom and his answer to the inspector's question was that there was always someone available to observe the locked closet door. In addition, the Principal acknowledged that the inspector asked him about surveillance of the gauge in the locked closet while he was in the restroom, but did not recall the inspector asking how constant surveillance was maintained when no one other than the Principal was around.

The independent reviewer examined the documented corrective actions that the licensee established as a result of the violation identified during the May 2009 inspection. No mention of a "constant surveillance mechanism" was included in that documentation nor was there mention of a pre-existing "constant surveillance mechanism" in the December 14, 2009, letter from the licensee.

Contention 3: Post-Inspection Call to Principal from Inspector

The licensee's letter stated that the inspector called the Principal on January 26, 2010, and the Principal reasserted that, at the time of the inspection, the gauge was locked in the storage closet and was under constant surveillance by the Principal.

NRC Evaluation

As stated above, the issued violation was based on the NRC's understanding of the responses the Principal provided during the inspection regarding a scenario posed to the Principal as to how monitoring was maintained if no one else was around and the Principal went to the restroom. The NRC agrees that at the time of the onsite inspection, the Principal was maintaining control and constant surveillance of the gauge.

Contention 4: Independent Physical Barriers to Secure Gauge

The licensee's letter stated that, as a result of a previous NRC inspection in May 2009, the licensee implemented action to secure the gauge to the wall with a locked chain to a bracket affixed to a storage closet wall. This action was in addition to locking the gauge storage closet door and was considered not required as long as constant surveillance of the gauge was maintained.

NRC Evaluation

The use of two independent physical barriers to secure the gauge is not required when it is under control and constant surveillance. However, the issued violation was based on NRC's understanding of the responses the Principal provided during the inspection regarding a scenario posed to the Principal as to how monitoring was maintained if no one else was around and the Principal went to the restroom.

Review of documentation associated with the May 2009 inspection identified that the licensee had taken steps to ensure compliance with 10 CFR 30.34(i) by providing for a second lock and chain to secure the gauge.

Contention 5: Existing Physical Controls

The licensee's letter stated that the bracket came loose from the wall on October 26, 2009, and it was reaffixed to the wall on October 29, 2009. Therefore, the licensee had three controls to secure the gauge that included: (1) the chain locking the gauge to the bracket affixed to the storage closet wall; (2) locking the storage closet door; and (3) maintaining constant surveillance.

NRC Evaluation

When interviewed, the inspector stated that the licensee's Radiation Safety Officer (RSO) told the inspector that the bracket fell off the wall in the early part of the week prior to the inspection conducted on October 29, 2009.

When interviewed, the Principal stated that the RSO told the Principal that the bracket fell off the wall about two days before the inspection.

It is unclear when the bracket fell off the wall; however, it is clear that the bracket was not affixed to the wall for at least two days prior to the inspection.

Licensee's Performance History

The licensee's letter stated that Engineering Services had maintained a gauge since 1996, and the record showed that it neither compromised the gauge's security nor had a violation.

NRC Evaluation

A review of the licensee's enforcement history revealed that the licensee had compromised the gauge's security, which resulted in a cited violation. As stated in Item 1 of NRC Inspection Report No. 030-34199/2009-002(DNMS) dated November 25, 2009, the NRC took escalated enforcement action against the licensee as a result of the previous inspection conducted on April 21, and May 6, 2009. Specifically, on July 21, 2009, the NRC cited a Severity Level III violation of 10 CFR 30.34(i) (EA-09-123). The documented licensee long-term corrective action to prevent a similar violation was use of a chain and lock inside the storage area to secure the gauge while it was in storage with no mention of the constant surveillance mechanism.

Other Information Considered

The licensee's February 2, 2010, response to the Notice of Violation indicated that following the NRC's May 2009 inspection, the licensee implemented a program to ensure that one or more of the staff maintained constant surveillance of the locked closet in which the gauge was stored during business hours.

In the licensee's December 14, 2009, response to the NRC's choice letter, the licensee stated that "We have also made provisions for surveillance by additional staff members in my short absence as and when the need arises." The NRC considered the statement to describe a newly implemented corrective action to the apparent violation. The licensee's February 2, 2010, letter stated that a constant surveillance mechanism had been in place since May 2009. Further, the

Principal stated during an interview that the gauge had been under the constant surveillance mechanism during the time of the October 2009 inspection.

The reviewer determined that the question posed to the Principal by the inspector about gauge surveillance was asked in a general manner rather than specific to a time frame (i.e., from the early part of the week prior to the inspection to the inspection date).

The Principal stated that he was unsure if his answer to the inspector's question about who maintains surveillance of the locked storage room containing the gauge when he went to the restroom was general or specific to a time frame (i.e., from the early part of the week prior to the inspection to the inspection date).

NRC Conclusion

The NRC's review of this matter has identified instances where a common understanding of the licensee's actions was not achieved. The licensee has stated that some uncertainty existed on his part in fully understanding the questions posed to him by the inspector. The NRC's review identified that the questions presented by the inspector did not contain specific times and dates and were general in nature. In addition, the NRC's review identified that there was conflicting information about what was said during the inspection.

The licensee also provided clarifying information that the licensed gauge was under a constant surveillance mechanism since the inspection conducted in May 2009.

For the above mentioned reasons, it is unclear whether the licensee failed to maintain control and constant surveillance of the gauge during the time that the bracket was unattached to the wall (between the timeframe of October 19 to October 29, 2009). Additionally, the violation was cited in the Notice of Violation as occurring on October 29, 2009, which was the date of the inspection. The NRC agrees that at the time of the onsite inspection, the gauge was under the control and constant surveillance of the licensee.

Based on all of the facts reviewed, the NRC is withdrawing the Notice of Violation and Proposed Imposition of Civil Penalty - \$3500, dated January 12, 2010.

Letter to Hakim Shakir from Roy P. Zimmerman dated May 3, 2010

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H. Shakir

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Accordingly, the Notice of Violation and Proposed Imposition of Civil Penalty is hereby withdrawn and we will modify our records accordingly. You are not required to respond to this letter. A summary of our evaluation of your response is enclosed.

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Enclosure:
Evaluation of Licensee Response

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*OGC's No Legal Objection received via e-mail from M. Clark on April 14, 2010.