



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
REGION III
2443 WARRENVILLE ROAD, SUITE 210
LISLE, IL 60532-4352

December 21, 2011

EA-11-237

Mr. David P. Wilcox
Senior Associate
Hubbell, Roth & Clark, Inc.
2285 Franklin Road, Suite 140
PO Box 824
Bloomfield Hills, Michigan 48303-0824

SUBJECT: NOTICE OF VIOLATION – HUBBELL, ROTH AND CLARK, INC.;
NRC INSPECTION REPORT NO. 03033835/2011001 (DNMS)

Dear Mr. Wilcox:

This refers to a U.S. Nuclear Regulatory Commission (NRC) routine inspection conducted on October 6, 2011, at your facility located in Bloomfield Hills, Michigan, with continued in-office review through October 21, 2011. The purpose of the inspection was to determine whether activities authorized under your license were conducted safely and in accordance with NRC requirements. During the inspection, an apparent violation of NRC requirements was identified. The significance of the issue, and the need for lasting and effective corrective actions were discussed with you at the final inspection exit meeting on October 21, 2011. Details regarding the apparent violations were provided in NRC Inspection Report No. 03033835/2011001(DNMS) dated November 1, 2011.

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 an enforcement decision. In a letter dated November 10, 2011, your staff provided a response to the apparent violation. Your staff also provided a supplemental response, via electronic mail message on November 30, 2011.

Based on the information developed during the inspection, and the information provided in your November 11 and 30, 2011, responses, 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 the failure to secure a portable gauge with a minimum of two physical controls that formed tangible barriers to prevent unauthorized removal of the gauge. Specifically, on October 6, 2011, the NRC identified that a portable gauge was stored in an open lockbox inside an unlocked garage and that the gauge was not under the control and constant surveillance of a Hubbell, Roth and Clark, Inc., employee. Furthermore, the NRC learned that the gauge was routinely stored at the temporary jobsite without physical barriers because: (1) the lockbox itself was moveable; (2) the garage was normally unlocked during work hours; and (3) during non-work hours, personnel not in the employment of Hubbell, Roth and Clark, Inc., had a key to the building. This was a violation of Title 10 of the Code of Federal Regulations (10 CFR) 30.34(i) and of Hubbell, Roth, and Clark, Inc.'s NRC License No. 21-26646-01.

The root cause of the violation was a misunderstanding by your staff of the requirement to have two physical controls that formed tangible barriers. Your staff believed that the garage formed a tangible barrier, although the garage was normally unlocked during the day and an individual not in Hubbell, Roth, and Clark, Inc.'s employment controlled a key that granted access to the garage during non-work hours. Furthermore, your staff believed the lockbox formed a barrier although the box itself was moveable. The violation is of concern to the NRC because it could have resulted in the gauge being stolen, possibly resulting in members of the public being exposed to the nuclear material. Therefore, the 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 \$3500 is considered for a Severity Level III violation. Because your facility has not been the subject of an escalated enforcement action 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 2.3.4 of the Enforcement Policy. Credit was warranted for your corrective actions which included immediately returning the gauge to your permanent storage location. Your staff also committed to implement longer term corrective actions prior to storing the gauge at the temporary jobsite in the future. These longer term corrective actions included ensuring that the lockbox was secured to the building by at least two physical barriers and that access to the gauge inside the lockbox was also prevented by at least two physical barriers (such as securing the gauge inside the lockbox via a chain and lock as well as locking the lockbox itself). Additionally, you committed to revising your Operating Procedures to more clearly delineate the requirements for storage of portable gauges at temporary jobsites and to seek a license amendment to update your Operating Procedures.

Therefore, in recognition of the absence of previous escalated enforcement action, and to encourage prompt and comprehensive correction of violations, 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.

The NRC has concluded that information regarding the reasons 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 NRC Inspection Report No. 03033835/2011001(DNMS) and in your responses dated November 11 and 30, 2011. 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 Agencywide Documents

D. Wilcox

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Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. The NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions>.

Sincerely,

/RA/

Cynthia D. Pederson
Acting Regional Administrator

Docket No. 030-33835
License No. 21-26646-01

Enclosure:
Notice of Violation

cc w/encl: State of Michigan

NOTICE OF VIOLATION

Hubble, Roth, and Clark, Inc.
Bloomfield Hills, Michigan

Docket No. 030-33835
License No. 21-26646-01
EA-11-237

During a U.S. Nuclear Regulatory Commission (NRC) inspection conducted on October 6, 2011, with continued in-office review through October 21, 2011, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

Title 10 of the Code of Federal Regulations, Section 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.

Condition 18 of NRC License No. 21-26646-01 states, in part, that a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal whenever the portable gauge is not under the control and constant surveillance of the licensee are required.

Contrary to the above, on multiple occasions between March 2, 2010, and October 6, 2011, the licensee failed to use a minimum of two independent physical controls that formed tangible barriers to secure a portable gauge from unauthorized removal whenever the portable gauge was not under the control and constant surveillance of the licensee. Specifically, on October 6, 2011, the licensee stored a portable gauge inside an unlocked lockbox inside an unlocked garage and the gauge was not otherwise secured and was not under the control and constant surveillance of the licensee. Additionally, on multiple occasions between March 2, 2010, and October 6, 2011, the licensee stored the portable gauge in a shared garage inside a lockbox, and the gauge was not secured by a minimum of two independent physical controls that formed tangible barriers or under the control and constant surveillance of the licensee.

This is a Severity Level III violation (Section 6.3).

The NRC has concluded that information regarding the reasons 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 NRC Inspection Report No. 03033835/2011001(DNMS) and in your responses dated November 11 and 30, 2011.

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-11-237," 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, 2443 Warrenville Road, Suite 210, Lisle, IL 60532, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

ENCLOSURE

Notice of Violation

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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, U.S. 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 Agencywide Documents Access and Management 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 of receipt.

Dated this 21st of December 2011

ENCLOSURE

D. Wilcox

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Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. The NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions>.

Sincerely,

/RA/

Cynthia D. Pederson
Acting Regional Administrator

Docket No. 030-33835
License No. 21-26646-01

Enclosure:
Notice of Violation

cc w/encl: State of Michigan

DISTRIBUTION:
See next page

FILE NAME: G:\ORAI\IEICS\ENFORCEMENT\Enforcement Cases 2011\EA-11-237 Hubbell Roth Clark gauge\EA-11-237 HRC final action.docx

Publicly Available, non-sensitive

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DATE	12/02/11	12/06/11	12/08/11	12/16/11	12/19/11	12/21/11

OFFICIAL RECORD COPY

¹ OE concurrence received via e-mail from K. Day on December 16, 2011.

Letter to David P. Wilcox from Cynthia D. Pederson dated December 21, 2011

SUBJECT: NOTICE OF VIOLATION – HUBBELL, ROTH AND CLARK, INC.;
NRC INSPECTION REPORT NO. 03033835/2011001 (DNMS)

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