

May 21, 2012

Mr. Paul Privacky  
County Road Highway Surveyor  
Muskegon County Road Commission  
7700 East Apple Avenue  
Muskegon, Michigan 49442-4999

SUBJECT: NRC ROUTINE INSPECTION REPORT NO. 03020574/12-001(DNMS) AND  
NOTICE OF VIOLATION – MUSKEGON COUNTY ROAD COMMISSION.

Dear Mr. Privacky:

On February 15-16, 2012, U.S. Nuclear Regulatory Commission (NRC) inspectors conducted a routine inspection at the Muskegon County Road Commission facility located in Muskegon, Michigan, with continued NRC in-office review through April 27, 2012. The NRC in-office review included additional documentation including inventory records, purchase orders, and incident reports. Mr. Herr and Mr. Kulzer of my staff conducted telephone exit meeting with you on April 27, 2012, to discuss the inspection findings.

During this inspection, the NRC staff examined activities conducted under your license related to public health and safety. Additionally, the staff examined your compliance with the Commission's rules and regulations as well as the conditions of your license. Within these areas, the inspection consisted of selected examination of procedures and representative records, observations of activities, and interviews with personnel.

Based on the results of this inspection, the NRC has determined that two Severity Level IV violations of NRC requirements occurred. The violations were evaluated in accordance with the NRC Enforcement Policy. The current Enforcement Policy is included on the NRC's Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>. The first violation was a failure to comply with License Condition 11.A. of your license that specifies a specifically named individual as the Radiation Safety Officer (RSO). The second violation was a failure to store portable gauges only at locations listed in your license as required by Title 10 of the Code of Federal Regulations 30.34(c).

These violations are cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding them are described in detail in the subject inspection report. The violations are being cited in the Notice because the NRC inspectors identified them.

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken and planned to be taken to correct the violation, and the date when full compliance will be achieved, is already adequately addressed on the docket in the enclosed inspection report. Therefore, you are not required to respond to this letter unless the description herein 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 Title 10 of the Code of Federal Regulations 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, 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 Agencywide Documents Access and Management 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.

We will gladly discuss any questions you have concerning this inspection, and you may contact me at 630-829-9627.

Sincerely,

*/RA/*

Tamara E. Bloomer, Chief  
Materials Inspection Branch  
Division of Nuclear Materials Safety

Docket No. 030-20574  
License No. 21-21369-01

Enclosures:

1. Notice of Violation
2. NRC Inspection Report  
No. 03020574/12-001(DNMS)

cc w/encls: State of Michigan

P. Privacky

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Docket No. 030-20574  
License No. 21-21369-01

Enclosures:

1. Notice of Violation
2. NRC Inspection Report  
No. 03020574/12-001(DNMS)

cc w/ encls: State of Michigan

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## NOTICE OF VIOLATION

Muskegon County Road Commission  
Muskegon, Michigan

Docket No. 030-20574  
License No. 21-21369-01

During a U.S. Nuclear Regulatory Commission (NRC) inspection conducted on February 15-16, 2012, with continued NRC in-office review through April 27, 2012, two violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. NRC License No. 21-21369-01, License Condition 11.A., named a specific individual as the Radiation Safety Officer (RSO) for this license.

Contrary to the above, as of February 15, 2012, the specifically named individual who was designated as the RSO was no longer employed at the facility. Specifically, the specific individual had not been employed at the Muskegon County Road Commission since June 2011, and the licensee had not amended its license to name an RSO to manage the radiation safety program.

This is example of a Severity Level IV violation (Section 6.3).

- B. Title 10 of the Code of Federal Regulations 30.34(c) requires that each license confine its possession and use of byproduct materials to the locations and purposes authorized by the license.

Contrary to the above, from July 5, 2011, through October 13, 2011, the licensee failed to confine its possession of byproduct material to the locations authorized by the license. Specifically, the licensee stored its Troxler portable moisture/density gauge containing sealed sources of cesium-137 and americium-241, at Westshore Consulting, another NRC licensee's facility, located at 2534 Black Creek Road, Muskegon, Michigan, a location not listed on their license and not a temporary job site.

This is a Severity Level IV Violation (Section 6.3.).

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken and planned to be taken to correct the violations, and the dates when full compliance will be achieved, is already adequately addressed on the docket in NRC Inspection Report No. 03020574/12-001(DNMS). However, you are required to submit a written statement or explanation pursuant to Title 10 of the Code of Federal Regulations (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," 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.

If you contest the 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.

If you have any questions concerning this matter, please contact Mr. Herr of my staff at 630-829-9752.

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days.

Dated this 21st day of May 2012.

U.S. NUCLEAR REGULATORY COMMISSION  
REGION III

Docket No.: 030-20574

License No.: 21-21369-01

Report No.: 03020574/12-001(DNMS)

Licensee: Muskegon County Road Commission

Facility: Muskegon County Road Commission facility  
Muskegon, Michigan 49442-4999

Dates: February 15-16, 2012  
with in-office review through  
April 27, 2012

Preliminary Exit Meeting: February 16, 2012

Final Exit Meeting: April 27, 2012

Inspectors: Edward L. Kulzer, Health Physicist  
Michael G. Herr, CHP, Health Physicist

Approved By: Tamara E. Bloomer, Chief  
Materials Inspection Branch  
Division of Nuclear Materials Safety

**EXECUTIVE SUMMARY**  
**Muskegon County Road Commission**  
**NRC Inspection Report 03020574/12-001(DNMS)**

During a routine inspection, the inspectors identified two violations involving the failure to:  
(1) have the person named on the license as the Radiation Safety Officer (RSO); and  
(2) confine the possession of byproduct materials to the locations and purposes authorized by the license.

The licensee's corrective actions to prevent similar violations include: submitting an amendment request to name a new RSO; submitting an amendment request for storage only of the gauges; and, training a sufficient number of personnel to eliminate the need to hire contractors to use their portable gauges.

## Report Details

### **1 Program Overview**

Muskegon County Road Commission is authorized under the U.S. Nuclear Regulatory Commission (NRC) Materials License No. 21-21369-01 to use licensed material for measuring physical properties of materials using Troxler Model 3430 and 3440 portable gauges, containing cesium-137 and americium-241. The License authorizes the use of material at 7700 E. Apple Ave, Muskegon, Michigan, and at temporary jobsites anywhere in the United States in areas of NRC jurisdiction. The licensee uses the gauges on a daily basis for construction engineering projects throughout the Muskegon County, Michigan area.

### **2 Radiation Safety Program**

#### **2.1 Inspection Scope**

Inspection procedure 87124 was used to inspect Muskegon County Road Commission on February 15-16, 2012. The inspectors reviewed the elements of the licensee's radiation safety program including records, some of which were not available during the initial inspection and were reviewed in-office.

#### **2.2 Observations and Findings**

The inspectors reviewed physical inventory records for all of the gauges and operational logs for the two gauges used during the construction season. The inspectors verified that the licensee had completed the required leak tests on the portable gauges annually. The inspectors reviewed dosimetry and did not identify any dose in excess of NRC regulations. The gauges were secured using two independent physical controls while in the licensed facility.

The inspectors identified that the licensee had not employed a Radiation Safety Officer (RSO) since June 2011; however, all records and actions were completed as appropriate with the exception of a three-month period in which the licensee contracted a qualified RSO to utilize the licensee's gauge at a temporary job-site. During this time the contractor, Westshore Consulting, did not return the gauge to the licensee when not at the job-site, but secured the gauge at its facility using two independent physical controls, similar to how it stored its own gauge.

NRC License No. 21-21369-01, License Condition 11.A., named a specific individual as the RSO for this license. The inspectors identified that the specific individual who was designated as the RSO on the license had not been employed at the facility since June 2011. As of February 16, 2012, the licensee had not identified a replacement RSO to manage the radiation safety program, nor had it amended its license to notify the NRC of the loss of the RSO, or to name a new RSO.



Title 10 CFR 30.34(c) requires that each license confine its possession and use of byproduct materials to the locations and purposes authorized by the license. The inspectors identified that the licensee's licensed material was stored at Westshore Consulting, another NRC licensee facility, located at 2534 Black Creek Road, Muskegon, Michigan, during the time period of July 5, 2011, through October 13, 2011. This is not an authorized storage location listed on the Muskegon County Road Commission's license, nor was it a temporary jobsite.

The root cause of the violations was lack of licensee management awareness of the requirements of their license. However, as identified above, the failure to replace the RSO had limited consequences on the licensees program.

To address these violations Muskegon County Road Commission proposed corrective actions including amending their license for storage of portable gauges until they could name a new RSO, amending their license to name a new RSO once the proposed RSO completes training, and training sufficient number of portable gauge users such that it is not necessary to hire contractors to use their portable gauges.

## 2.3 Conclusions

The inspectors identified two violations; failure to comply with NRC License No. 21-21369-01, Condition 11.A., that specifies a specifically named individual as the RSO, and failure to store portable gauges only at locations listed in the License as required by 10 CFR 30.34(c).

No other violations were identified.

## 3 **Security of Portable Gauges**

### 3.1 Inspection Scope

The inspectors observed the licensee's method of securing portable gauges in storage at the Muskegon County Road Commission's facility located 7700 East Apple Avenue, Muskegon, Michigan and during simulated transport.

### 3.2 Observations and Findings

On February 15-16, 2012, inspectors observed the licensee controls for gauge security. The minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal were observed when the gauges were in storage at the Muskegon County Road Commission's facility located at 7700 East Apple Avenue, Muskegon, Michigan.

The inspectors observed the security of the portable gauges via a cabinet that has a hasp type lock fixture locked with a keyed pad lock inside of the self-closing self-locking door to the equipment room.

The licensee demonstrated how the gauges were secured in a cabinet that was bolted to the bed of the only truck used to transport the portable gauges. The cabinet was secured using a hasp lock fixture using a keyed lock to secure it. The lift-gate of the truck then forms the second barrier when it is shut and locked preventing entry into the cabinet.

### 3.3 Conclusions

The portable gauges were observed on February 15, 2012, to be secured with two tangible barriers while stored at the licensee's facility and during simulated transport.

## 4 **Exit Meeting Summary**

The NRC inspectors presented preliminary inspection findings following the onsite inspection on February 16, 2016. The licensee did not identify any documents or processes reviewed by the inspectors as proprietary. The licensee acknowledged the findings presented. A final exit meeting was held via telephone on April 27, 2012.

### **PARTIAL LIST OF PERSONNEL CONTACTED**

\*Paul Privacky, County Highway Surveyor, Muskegon County Road Commission  
David Huber, Construction Inspectors, Muskegon County Road Commission  
Lynda Jackomino, Administrative Assistant, Muskegon County Road Commission  
Rich Vannett, Radiation Safety Officer, Westshore Consulting Inc.

\* Attended telephonic exit meeting on April 27, 2012

### **INSPECTION PROCEDURES USED**

IP 87124