



**UNITED STATES  
NUCLEAR REGULATORY COMMISSION**

REGION III  
2443 WARRENVILLE RD. SUITE 210  
LISLE, IL 60532-4352

December 29, 2014

EA-14-233  
EN 50659  
NMED No. 140794 (closed)

Mr. Robert J. Tozzie, Radiation Safety Officer  
DTE Energy  
EF2 110 AIB  
6400 North Dixie Highway  
Newport, MI 48166

SUBJECT: NRC SPECIAL INSPECTION REPORT NO. 99990003/2014009(DNMS) AND  
NOTICE OF VIOLATION – DTE ENERGY

Dear Mr. Tozzie,

On December 9, 2014, an inspector from the U.S. Nuclear Regulatory Commission (NRC) conducted an in-office review of the circumstances surrounding the loss of a Niton x-ray fluorescence analyzer (XRF); model number XLP-303A, serial number 8622. The NRC initiated this review after DTE Energy contacted the NRC Operations Center on December 8, 2014, to report the loss or theft of this generally licensed device containing a nominal 40-millicurie cadmium-109 (Cd-109) source. By the time of loss, the source had decayed to less than one millicurie (0.26 millicuries) and did not present a risk to public health and safety. Mr. Zahid Sulaiman of my staff presented the findings of this review to you via telephone on December 9, 2014.

During this in-office review, the NRC staff examined activities conducted under your general license related to public health and safety. Additionally, the staff examined your compliance with the Commission's rules and regulations. The in-office review consisted of interviews with personnel and examination of information provided by you to the NRC.

Based on the results of this in-office review and the information you provided, the NRC has determined that a Severity Level IV violation of NRC requirements occurred. The violation was evaluated in accordance with the NRC Enforcement Policy. The current Enforcement Policy is included on the NRC's website at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>. The violation concerned the licensee's failure to properly dispose or transfer the device as required by Title 10 of the *Code of Federal Regulations (CFR)* 31.5(c)(8)(i). The violation is cited in the enclosed Notice of Violation (Notice). The NRC is citing the violation in the Notice because the inspector identified the violation. The NRC is citing the violation at Severity Level IV (very low safety significance), because the source had decayed to less than 1,000 times, but greater than 10 times, the quantity specified in Appendix C to 10 CFR Part 20 and that its loss did not present a hazard to public health and safety.

The inspector determined that the root cause of the violation was a lack of full understanding of NRC's requirements for generally licensed devices. This is of concern to the NRC because it increases the chance for the devices to be lost, stolen, or improperly handled which could result in adverse impacts to the health and safety of the general public. As corrective actions to address recurrence of the event and to prevent a similar violation in the future, per your email dated December 12, 2014, the licensee committed to implementing a requirement that any purchase or disposal of generally licensed devices must be approved by the Radiation Safety Officer, and to communicate clear expectations across the company delineating the regulatory requirements associated with obtaining or owning generally licensed devices containing byproduct material.

The NRC has concluded that information regarding the root cause of the violation, the corrective actions planned to correct the violation and address its recurrence, and the date when full compliance was achieved is already adequately addressed on the docket in this letter. 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 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's Public Document Room or from the NRC's Agencywide Documents Access and Management System (ADAMS), accessible from the NRC's website 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 publicly available without redaction.

Please feel free to contact Mr. Zahid Sulaiman of my staff if you have any questions regarding this inspection. Mr. Sulaiman can be reached at 630-829-9752.

Sincerely,

*/RA/*

Aaron T. McCraw, Chief  
Materials Inspection Branch  
Division of Nuclear Materials Safety

Docket No.: 999-90003  
License No.: General License

Enclosure:  
Notice of Violation

cc (w/encl): State of Michigan

R. Tozzie

- 2 -

compliance was achieved is already adequately addressed on the docket in this letter. 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* (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's Public Document Room or from the NRC's Agencywide Documents Access and Management System (ADAMS), accessible from the NRC's website 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 publicly available without redaction.

Please feel free to contact Mr. Zahid Sulaiman of my staff if you have any questions regarding this inspection. Mr. Sulaiman can be reached at 630-829-9752.

Sincerely,

*/RA/*

Aaron T. McCraw, Chief  
Materials Inspection Branch  
Division of Nuclear Materials Safety

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cc (w/encl): State of Michigan

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DATE	12/29/14		12/29/14				

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## NOTICE OF VIOLATION

DTE Energy  
Newport, Michigan  
EA-14-233

License No. General License  
Docket No. 999-90003

During a U.S. Nuclear Regulatory Commission (NRC) in-office review conducted on December 9, 2014, 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* (CFR) CFR 31.5(c)(8)(i) requires, in part, that any person who acquires, receives, possesses, uses or transfers byproduct material in a device pursuant to a general license shall transfer or dispose of the device containing byproduct material only by export as provided by paragraph (c)(7) of this section, by transfer to another general licensee as authorized in paragraph (c)(9) of this section, or to a person authorized to receive the device by a specific license.

Contrary to the above, between late May and early June 2014, DTE Energy failed to transfer or dispose of byproduct material in a generally licensed device by export, by transfer to another general licensee, or by transfer to a person authorized by a specific license. Specifically, on December 8, 2014, the licensee reported that one Niton XRF analyzer, model number XLP-303A, serial number 8622, containing 0.26 millicuries cadmium (Cd-109), was lost or stolen from its facility in Newport, Michigan, between late May and early June 2014.

This is a Severity Level IV violation (Section 6.7).

The NRC has concluded that information regarding the reason for the violation, the corrective actions planned to correct the violation and prevent recurrence, and the date when full compliance was or will be achieved is already adequately addressed on the docket in this letter. 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. 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, IR 99990003/2014009(DNMS)" 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 choose to respond, your response will be made available electronically for public inspection in the NRC's Public Document Room or from the NRC's Agencywide Documents Access and Management System (ADAMS), accessible from the NRC's website 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 publicly available without redaction.

Enclosure

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.

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

Dated this 29th day of December 2014.