



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
REGION IV
1600 E. LAMAR BLVD
ARLINGTON, TX 76011-4511

November 19, 2015

EA-15-153

Mr. Paul Michlig
Radiation Safety Officer
American Engineering Testing, Inc.
550 Cleveland Avenue North
St. Paul, MN 55114

SUBJECT: NRC INSPECTION REPORT 030-18180/2015-001; NOTICE OF VIOLATION; AND EXERCISE OF ENFORCEMENT DISCRETION

Dear Mr. Michlig:

This letter refers to the routine unannounced inspection conducted on June 18, 2015, at your facility located in Sioux Falls, South Dakota, with continued in office review through October 26, 2015. This inspection examined activities conducted under your license as they relate to public health and safety, and to confirm compliance with the U.S. Nuclear Regulatory Commission's (NRC) rules and regulations, and with the conditions of your license. Within these areas, the inspection consisted of a selected examination of procedures and representative records, observations of activities, independent radiation measurements, and interviews with personnel. On June 18, 2015, at the conclusion of the onsite portion of the inspection, the inspectors telephonically discussed the preliminary inspection findings with you. A final exit briefing was conducted telephonically with you on October 26, 2015.

Based on the results of this inspection, the NRC has determined that one Severity Level IV violation of NRC requirements was identified. The violation was evaluated in accordance with the NRC Enforcement Policy, which is found at the NRC's Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>. The violation concerned the failure to use two independent physical controls that formed tangible barriers to secure a portable gauge from unauthorized removal while not under control and constant surveillance as required by Title 10 of the *Code of Federal Regulations* (CFR) section 30.34(i). Specifically, the inspectors observed a portable gauge in a locked shipping container secured to the bed of a licensee pickup truck with one chain and one ratcheting strap. The gauge user had recently returned from a job and was not in attendance to the vehicle. The chain was secured to the bed of the truck and formed a tangible barrier. The ratcheting strap was attached to the bed of the truck with an "S" hook and was not considered a tangible barrier because it was easily removed. This violation is being cited in the enclosed Notice of Violation (Notice) because it was identified by the NRC during the inspection.

In accordance with the Enforcement Policy, such violations are normally categorized at Severity Level III and considered for escalated enforcement action. However, the NRC is exercising enforcement discretion to categorize the violation at Severity Level IV based on the following: (1) one physical control existed to prevent loss or theft of the portable gauge; (2) no actual loss of the licensed material; (3) the violation was isolated; and (4) there was no indication of programmatic weakness was identified.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. The guidance in NRC Information Notice 96- 28, "Suggested Guidance Relating to Development and Implementation of Corrective Action," may be helpful. You can find the Information Notice on the NRC website at: <http://www.nrc.gov/reading-rm/doc-collections/gen-comm/info-notices/1996/in96028.html>. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

In accordance with 10 CFR 2.390 of the NRC's "Agency Rules of Practice and Procedure," a copy of this letter, its enclosure, and your response, will be made available electronically for public inspection in the NRC Public Document Room or in the NRC's Agencywide Document 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 or proprietary information so that it can be made available to the public without redaction.

If you have any questions concerning this matter, please contact Jason vonEhr of my staff at 817-200-1186.

Sincerely,

/RA/

Brooke G. Smith, Acting Chief
Nuclear Materials Safety Branch A

Docket No: 030-18180
License No: 22-20271-01

Enclosure:
Notice of Violation

cc: Todd McCaskell, Supervisor
State of South Dakota

Mary Navara, Manager
Indoor Environments and Radiation Section
State of Minnesota

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Brooke G. Smith, Acting Chief
Nuclear Materials Safety Branch A

Docket No: 030-18180
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Enclosure: Notice of Violation

cc: See next page

Distribution: See next page

ADAMS ACCESSION NUMBER: ML15293A532

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OFFICE	RIV:NMSB-A	RIV:NMSB-A	RIV:ACES	RIV:C:NMSB-A				
NAME	JEvonEhr	JFKatanic	MCHay	BGSmith				
SIGNATURE	/RA/	/RA/	/RA by MCMaier Acting For/	/RA/				
DATE	08/07/15	08/27/15	11/19/15	11/19/15				

OFFICIAL RECORD COPY

Letter to Paul Michilg from Brooke G. Smith dated 19 November 2015

SUBJECT: NRC INSPECTION REPORT 030-18180/2015-001; NOTICE OF VIOLATION; AND
EXERCISE OF ENFORCEMENT DISCRETION

cc: Todd McCaskell, Supervisor
State of South Dakota

Mary Navara, Manager
Indoor Environments and Radiation Section
State of Minnesota

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NOTICE OF VIOLATION

American Engineering Testing, Inc.
St. Paul, Minnesota

Docket No: 030-18180
License No: 22-20271-01
EA-15-153

During a Nuclear Regulatory Commission (NRC) inspection conducted on June 18, 2015, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

Title 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 a portable gauge is not under the control and constant surveillance of the licensee.

Contrary to the above, on June 18, 2015, the licensee failed to use a minimum of two independent physical controls that form tangible barriers to secure a portable gauge from unauthorized removal whenever the portable gauge is not under the control and constant surveillance of the licensee. Specifically, the licensee used only one independent physical control to secure a portable gauge in a licensee vehicle parked behind the Sioux Falls facility and the gauge was not under the direct control and constant surveillance of the licensee.

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

Pursuant to the provisions of 10 CFR 2.201, American Testing Engineering Inc., is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001, with a copy to the Regional Administrator, Region IV within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation; EA-15-153" and should include: (1) the reason for the violation, or, if contested, the basis for disputing the violation or severity level, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken; and (4) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as to why the license should not be modified, suspended, or revoked, or why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

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.

Your response will be made available electronically for public inspection in the NRC Public Document Room or in the NRC's Agency Document Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

Enclosure

To the extent possible, your response should not include any personal privacy or proprietary 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, then 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 material, 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 for withholding confidential commercial or financial information).

Dated this 19 day of November 2015