



**UNITED STATES  
NUCLEAR REGULATORY COMMISSION**

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

October 23, 2015

EA-15-141

Ms. Kathy Banicki, President  
Testing Engineers & Consultants, Inc.  
1343 Rochester Road  
Troy, MI 48083

**SUBJECT: NOTICE OF VIOLATION – TESTING ENGINEERS & CONSULTANTS, INC.;**  
**NRC SPECIAL INSPECTION REPORT NO. 03014016/2015001(DNMS)**

Dear Ms. Banicki:

This letter refers to the U.S. Nuclear Regulatory Commission (NRC) inspection conducted on June 19, 2015, with continued in-office review through June 29, 2015, at your Troy, Michigan facility. The purpose of the inspection was a post-escalated enforcement action followup regarding corrective actions your staff implemented to prevent violations that were identified during the last inspection. The in-office review included receipt and review of information that was not available during the onsite inspection, including information about the annual audit of your radiation protection program. 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 your staff during a telephone exit meeting conducted on June 29, 2015. Details regarding the apparent violation were provided in NRC Inspection Report No. 03014016/2015001(DNMS), dated July 29, 2015. The inspection report can be found in the NRC's Agencywide Documents Access and Management System (ADAMS) at Accession Number ML15210A394. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

In the letter transmitting the inspection report, we provided you with the opportunity to address the apparent violation identified in the report by: (1) providing a written response; (2) requesting a predecisional enforcement conference; or (3) attending an alternative dispute resolution (ADR) session. In your letter dated August 7, 2015, you provided a written response to the apparent violation.

Based on the information developed during the inspection and the in-office review, as well as the information you provided in your response dated August 7, 2015, 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 your staff's failure to use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal when the gauges were not under the control and constant surveillance of the licensee, as required by Title 10 of the *Code of Federal Regulations* (10 CFR) 30.34(i). Specifically, during off-duty hours, non-licensee building tenants had access to the storage room locked door which constituted a single physical barrier to prevent unauthorized removal of the gauges while in storage at the licensee's Troy, Michigan facility.

The root cause of the violation was the licensee's lack of oversight and failure to recognize a weakness in its program pertaining to security of portable gauges. The failure to properly secure the gauges is of significance to the NRC because of the potential for unauthorized individuals to gain control of the radioactive material and misuse it. Therefore, this violation has been categorized, in accordance with the NRC Enforcement Policy, at Severity Level III.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$3,500 is considered for a Severity Level III violation.

On February 24, 2015, the NRC issued a Severity Level III violation for Testing Engineers & Consultants, Inc.'s failure to secure a portable gauge with a minimum of two independent barriers in accordance with 10 CFR 30.34(i) at a temporary job site. Because your facility has been the subject of escalated enforcement action within the last two years, the NRC considered whether, in this case, credit was warranted for *Identification* and *Corrective Action* and whether exercise of discretion is warranted in accordance with the civil penalty assessment process in Section 2.3.4 of the Enforcement Policy.

The NRC determined that credit was not warranted for *Identification* because the violation was identified by an NRC inspector. However, the NRC determined that credit was warranted for *Corrective Action*. Based on the information gathered during the inspection and your response dated August 7, 2015, your corrective actions included: (1) installation of a new door handle with an independent locking mechanism which constitutes the second barrier to the storage room; and (2) training staff regarding the requirements and use of the new double-locked door during storage of gauges.

In accordance with Section 3.5 of the Enforcement Policy, "Violations Involving Special Circumstances", the NRC is exercising discretion to not propose a civil penalty based on the specific facts of this case. Specifically, the inspection report that resulted in the February 2015 violation, included an inspection of your temporary job site and your storage facility, but only the violation at the temporary job site was identified at that time. If the violation at the storage facility had been identified at that time, it would have been considered a second example of the violation cited in the February 2015 Notice of Violation, and no civil penalty would have been proposed. Therefore, based on these circumstances, including the scope and timeframe of the previous inspection, and the prompt and comprehensive corrective actions taken by the licensee, the NRC is granting discretion not to propose a civil penalty. 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 that may subject you to increased inspection effort.

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 useful in preparing your response. You can find the Information Notice on the NRC's Web site 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.

K. Banicki

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In accordance with 10 CFR 2.390, "Public Inspections, Exemptions, Requests for Withholding," of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response, will be available electronically for public inspection in the NRC's Public Document Room and in 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 Darrell Roberts Acting for/***

Cynthia D. Pederson  
Regional Administrator

Docket No. 030-14016  
License No. 21-18668-01

Enclosure:  
Notice of Violation

cc w/encl: State of Michigan

## NOTICE OF VIOLATION

Testing Engineers & Consultants, Inc.  
Troy, Michigan

Docket No. 030-14016  
License No. 21-18668-01  
EA-15-141

During a U.S. Nuclear Regulatory Commission (NRC) inspection conducted on June 19, 2015, with continued in-office review through June 29, 2015, 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* (10 CFR) 30.34(i) requires, in part, 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.

Contrary to the above, from approximately 2011 until June 19, 2015, the licensee failed to use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal when the portable gauges were not under the control and constant surveillance of the licensee. Specifically, during off-duty hours, non-licensee building tenants had access to the storage room locked door which constituted a single physical barrier to prevent unauthorized removal of the gauges while in storage at the licensee's Troy, Michigan facility.

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

Pursuant to the provisions of 10 CFR 2.201, Testing Engineers & Consultants, 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 III, 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" and should specifically explain your long-term corrective actions to prevent recurrence in all areas of your program pertaining to use and storage of NRC-licensed material, and the date when full compliance was or will be achieved. Your response may reference or include previously 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.

Enclosure

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 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 publicly available 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).

In accordance with 10 CFR 19.11, you may be required to post this Notice within 2 working days of receipt.

Dated this 23rd day of October, 2015.

K. Banicki

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In accordance with 10 CFR 2.390, "Public Inspections, Exemptions, Requests for Withholding," of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response, will be available electronically for public inspection in the NRC's Public Document Room and in 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 Darrell Roberts Acting for/**

Cynthia D. Pederson  
Regional Administrator

Docket No. 030-14016  
License No. 21-18668-01

Enclosure:  
Notice of Violation

cc w/encl: State of Michigan

ADAMS Accession Number ML15299A280

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DATE	10/22/15	10/23/15	10/23/15	

**OFFICIAL RECORD COPY**

<sup>1</sup> OE and NMSS concurrence provided via e-mail from K. Norman on October 22, 2015

Letter to Ms. Kathy Banicki from Ms. Cynthia D. Pederson dated October 23, 2015

SUBJECT: NOTICE OF VIOLATION – TESTING ENGINEERS & CONSULTANTS, INC.;  
NRC SPECIAL INSPECTION REPORT NO. 03014016/2015001(DNMS)

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