



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

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

February 2, 2016

EA-15-190

Mr. Carl Muench
Radiation Safety Officer
Whitworth-Muench, Inc.
2110 Sherwood Drive
Cape Girardeau, MO 63701

SUBJECT: NOTICE OF VIOLATION – WHITWORTH-MUENCH, INC.;
NRC ROUTINE INSPECTION REPORT NO. 03018085/2015001(DNMS)

Dear Mr. Muench:

This letter refers to the U.S. Nuclear Regulatory Commission (NRC) inspection conducted at your facility in Sikeston, Missouri, on August 18, 2015, with continued in-office review through October 6, 2015. The purpose of the inspection was to review activities performed under your NRC license to ensure that activities were being performed 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 during a final exit meeting by telephone on October 6, 2015. Details regarding the apparent violation were provided in NRC Inspection Report No. 03018085/2015001(DNMS) dated October 20, 2015. The inspection report can be found in the NRC's Agencywide Documents Access and Management System (ADAMS) at Accession Number ML15294A459, which 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 pre-decisional enforcement conference; (3) requesting Alternate Dispute Resolution (ADR); or (4) requesting to terminate your NRC license. On December 10, 2015, you informed us of your intention to respond to the apparent violation in writing; however, we have not received a written response from you. In a telephone conversation on January 8, 2016, Aaron McCraw and Ryan Craffey of my staff informed you that the NRC was considering escalated enforcement for the apparent violation and that we were proceeding with our final determination regarding the significance of the apparent violation and the adequacy of your corrective actions without a written response.

Based on the information developed during the inspection and the in-office review, 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 licensee'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, over a period of approximately a month, the licensee stored three nuclear gauges in locked transportation cases in a pantry behind a locked door. The locked pantry door constituted a single physical barrier to prevent unauthorized removal of the transportation cases with gauges inside while in storage.

The root cause of the violation was the licensee's lack of understanding of NRC's security requirements for portable gauges when not in the licensee's direct control or under constant surveillance. 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, which could result in adverse impacts to the health and safety of the general public. Therefore, this violation has been categorized, in accordance with the NRC Enforcement Policy, at Severity Level III.

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

Because your facility has not been the subject of escalated enforcement actions within the last two years or 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. Based on the information obtained during the inspection and the in-office review, your immediate corrective actions to restore compliance included installation of a second hasp and a lock on the pantry door, which constituted the second barrier to prevent unauthorized removal of the gauges while in storage. On the basis of this corrective action, the NRC determined that *Corrective Action* credit was warranted.

Therefore, to encourage prompt and comprehensive correction of violations, and in recognition of the absence of previous escalated enforcement action, 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 that may subject you to increased inspection effort.

The NRC has concluded that information regarding: (1) the reason for the violation; (2) the corrective action that has been taken and the results achieved; and (3) the date when full compliance was achieved is already adequately addressed on the docket in the subject NRC inspection report. 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 addition to the apparent violation documented in the subject NRC inspection report, the NRC issued a Severity Level IV violation for the licensee's failure to notify the NRC in writing, within 60 days of occurrence, that no principal activities under the license had been conducted for a period of 24 months, as required by 10 CFR 30.36(d). Please remember that 10 CFR 30.36(h) requires you to complete decommissioning as soon as practicable, but no later than 24 months following the initiation of decommissioning. In accordance with 10 CFR 30.36(d), the NRC considers your period of decommissioning to have been initiated in September 2014, after no principal activities under your license were conducted for a period of 24 months. Therefore, you are required to complete decommissioning, including transferring or disposing of your gauges and terminating your NRC license by September 2016. Failure to complete decommissioning in a timely manner could result in further enforcement action. If you require additional time to complete decommissioning, you must submit a request to the NRC for an alternative schedule in accordance with 10 CFR 30.36(i). The NRC will then determine whether the alternative schedule is warranted by considering the factors listed in 30.36(i)(1) through (5).

Our letter dated October 20, 2015, which transmitted an apparent violation and a Notice of Violation, required you to respond to the three Severity Level IV violations in the Notice of Violation. The three violations were: (1) the failure to periodically (at least annually) review the radiation protection program content and implementation, as required by 10 CFR 20.1101(c); (2) the failure to conduct a physical inventory every six months to account for all sources and/or devices received and possessed under the license, as required by Condition 15 of your NRC License NO. 24-20197-01; and (3) the failure to notify the NRC in writing, within 60 days of the occurrence, that no principal activities under the license had been conducted for a period of 24 months, as required by 10 CFR 30.36(d)(3). As of January 28, 2016, we had not received your written response outlining your corrective actions for these three violations. Based on a telephone conversation between you and Aaron McCraw of my staff on January 29, 2016, our understanding of your corrective actions are as follows: (1) you intend to dispose of your three portable moisture/density gauges and terminate your NRC license; (2) you have begun decommissioning by contacting vendors and other organizations to get quotes or guidance on the disposal of your gauges; (3) you are aware that you must complete decommissioning and terminate your license by September 24, 2016, or request an extension; (4) you have inventoried and verified that all radioactive materials possessed under your license are accounted for; (5) you will document your inventories; (6) you will continue semi-annual inventories until all radioactive materials possessed under your license are disposed of and your license is terminated; and (7) within the next two weeks, you will review the content and implementation of your radiation protection program and will document your findings. This letter serves as the docketed response to the three Severity Level IV violations; therefore, no further response is required 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 Notice of Violation.

C. Muench

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In accordance with 10 CFR 2.390, of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and any response, if you choose to provide one, will be made available electronically for public inspection in the NRC's Public Document Room or in ADAMS, which is 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. 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
Regional Administrator

Docket No. 030-18085
License No. 24-20197-01

Enclosure:
Notice of Violation

cc: State of Missouri

NOTICE OF VIOLATION

Whitworth-Muench, Inc.
Cape Girardeau, MO

Docket No. 030-18085
License No. 24-20197-01
EA-15-190

During a U.S. Nuclear Regulatory Commission (NRC) inspection conducted on August 18, 2015, with continued in-office review through October 6, 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, between approximately July 18 and August 18, 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, the licensee stored three nuclear gauges in locked transportation cases in a pantry behind a locked door. The locked pantry door constituted a single physical barrier to prevent unauthorized removal of the transportation cases with gauges inside while in storage.

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

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed on the docket in Inspection Report No. 03018085/2015001(DNMS) dated October 20, 2015. 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-15-190," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001, with a copy to Cynthia D. Pederson, Regional Administrator, Region III, 2443 Warrenville Rd, Lisle, IL 60532-4352, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

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

If you choose to respond, your response will be made available electronically for public inspection in the NRC Public Document Room or in 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, your 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 2nd day of February, 2016.

Letter to Mr. Carl Muench from Ms. Cynthia D. Pederson dated February 2, 2016

SUBJECT: NOTICE OF VIOLATION – WHITWORTH-MUENCH, INC.;
NRC ROUTINE INSPECTION REPORT NO. 03018085/2015001(DNMS)

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OFFICE	RIII	RIII	RIII	D:OE	RIII	RIII
NAME	Gryglak	McCraw GW for	Giessner CAL for	Holahan ¹	Skokowski	Pederson
DATE	01/22/16	01/25/16	01/26/16	01/27/16	02/02/16	02/02/16

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¹OE and NMSS concurrence provided by e-mail from K. Norman on January 27, 2016.