



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

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

February 19, 2016

EA-15-221

Mr. Steven M. Elliott, President
Materials Testing Consultants, Inc.
693 Plymouth Avenue, NE
Grand Rapids, MI 49505

SUBJECT: NOTICE OF VIOLATION – MATERIALS TESTING CONSULTANTS, INC.;
NRC ROUTINE INSPECTION REPORT NO. 03013918/2015001(DNMS)

Dear Mr. Elliott:

This letter refers to the U.S. Nuclear Regulatory Commission (NRC) inspection conducted on August 5, 2015, with continued in-office review through October 28, 2015, at your Grand Rapids, Michigan facility. 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 circumstances surrounding this apparent violation, the significance of the issue, and the need for lasting and effective corrective action were discussed with Mr. Lautenbach of your staff at the inspection exit meeting on November 12, 2015. Details regarding the apparent violation were provided in NRC Inspection Report No. 03013918/2015001(DNMS), dated December 11, 2015. The inspection report can be found in the NRC's Agencywide Documents Access and Management System (ADAMS) at Accession Number ML15345A213. 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; or (2) requesting a predecisional enforcement conference. You provided a written response to the apparent violation in a letter dated January 28, 2016.

Based on the information developed during the inspection and the in-office review, as well as the information you provided in your response dated January 28, 2016, 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 your portable gauges from unauthorized removal, whenever the portable gauges were not under the control and constant surveillance of the licensee, as required by Title 10 of the *Code of Federal Regulations* (CFR) Section 30.34(i). Specifically, on August 5, 2015, the inspector observed that during business hours, you used only a single barrier to secure the portable gauges in the storage room at your Grand Rapids, Michigan facility.

The root cause of the violation was your staff's misunderstanding of NRC regulatory requirements. 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.

Because your facility has not been the subject of escalated enforcement actions within the last 2 years, or 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. The NRC determined credit was warranted for *Corrective Action* based on your corrective actions which included: installing a second lock on the storage room door, posting a memorandum for all gauge users alerting them to the new lock and reminding them of the NRC regulatory requirements for securing portable gauges, and reviewing the issue with management personnel so as to prevent a violation of this nature from occurring in the future.

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 actions that have been taken and the results achieved; and (3) the date when full compliance was achieved is already adequately addressed on the docket in the inspection report and your written response dated January 28, 2016. Therefore, you are not required to respond to the Notice enclosed with 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 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 Public Document Room and in ADAMS.

S. Elliott

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The NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>.

Sincerely,

/RA by Darrell J. Roberts Acting for/

Cynthia D. Pederson
Regional Administrator

Docket No: 030-13918
License No: 21-15281-01

Enclosure:
Notice of Violation

cc: State of Michigan

NOTICE OF VIOLATION

Materials Testing Consultants, Inc.
Grand Rapids, Michigan

License No. 21-15281-01
Docket No. 030-13918
EA-15-221

During a U.S. Nuclear Regulatory Commission (NRC) inspection conducted on August 5, 2015, with continued in-office review through October 28, 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, on August 5, 2015, Materials Testing Consultants, Inc. did not use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges were not under the control and constant surveillance of the licensee. Specifically, the licensee stored portable gauges at its Grand Rapids, Michigan office within a locked storage room, but did not provide, during business hours, a second independent physical control that formed a tangible barrier against their unauthorized removal when the portable gauges were not under the control and constant surveillance of the licensee.

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 to prevent recurrence, and the date when full compliance will be achieved, is already adequately addressed on the docket in Inspection Report No. 03013918/2015001 and your written response dated January 28, 2016. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201, if the description herein 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-15-221" 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, 2443 Warrenville Road, Lisle, IL 60532, 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.

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, the response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

Notice of Violation

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

Dated this 19th day of February, 2016.

S. Elliott

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The NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>.

Sincerely,

/RA by Darrell J. Roberts acting for/

Cynthia D. Pederson
Regional Administrator

Docket No: 030-13918
License No: 21-15281-01

Enclosure:
Notice of Violation

cc: State of Michigan

DISTRIBUTION:
See next page

ADAMS Accession No. ML16050A386

OFFICE	RIII		RIII		RIII		D:OE	
NAME	PRPelke		McCraw		Giessner		Holahan ¹	
DATE	02/05/16		02/03/16		02/05/16		02/16/16	
OFFICE	RIII		RIII				RIII	
NAME	Skokowski		Pederson DJR for					
DATE	02/17/16		02/19/16					

OFFICIAL RECORD COPY

¹ OE concurrence provided via e-mail from Kerstun Norman on February 16, 2016

Letter to Mr. Steven Elliott from Ms. Cynthia D. Pederson dated February 16, 2016

SUBJECT: NOTICE OF VIOLATION – MATERIALS TESTING CONSULTANTS, INC.;
NRC ROUTINE INSPECTION REPORT NO. 03013918/2015001(DNMS)

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