



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

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

February 23, 2016

EA-16-044

Mr. Kevin Day
Radiation Safety Officer
Indiana Department of Transportation
Vincennes District
3650 South U.S. Highway 41
Vincennes, IN 47591

**SUBJECT: NRC SPECIAL INSPECTION REPORT NO. 03032465/2016001(DNMS) –
INDIANA DEPARTMENT OF TRANSPORTATION, VINCENNES DISTRICT**

Dear Mr. Day:

From January 29, 2016, through February 4, 2016, an inspector from the U.S. Nuclear Regulatory Commission (NRC) conducted an in-office review of the circumstances surrounding the discovery of one Seamans portable moisture/density gauge containing radium-226 (Ra-226) at your facility. The NRC initiated this review after you contacted Mr. Ed Kulzer of my staff to self-report a potential violation. Mr. Kulzer presented the findings of this review to you staff via telephone on February 4, 2016.

During this in-office review, the NRC staff examined activities conducted under your 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 the in-office review and the information you provided, the NRC has determined that one 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 involved the failure to request an amendment to continue to possess and use Ra-226 after the NRC assumed authority to regulate such devices, as required by Title 10 of the *Code of Federal Regulations* (CFR) 30.3.(c)(2).

The Energy Policy Act of 2005 (EPAAct) expanded the definition of byproduct material to include naturally occurring and accelerator produced radioactive materials (NARM) and placed the material under NRC's jurisdiction. In accordance with the EPAAct, the NRC issued a waiver on August 31, 2005, allowing the continued use and possession of NARM while the NRC developed a regulatory framework for the regulation of the new byproduct material. On October 1, 2007, the NRC published a Federal Register Notice informing licensees of amendments to NRC's regulation regarding the possession and use of NARM. On November 30, 2007, the NRC published a Notice of Waiver Termination for licensees in the State of Indiana which stated, in part, that the NRC was terminating the waiver for persons

possessing accelerator-produced radioactive material or discrete sources of radium-226. The Notice further stated that the final rule allowed an additional 6-month period from the effective date of the final rule to apply for a license amendment (i.e., May 30, 2008).

The possession of this type and quantity of radioactive material not authorized on an NRC license is normally characterized as a Severity Level IV violation in accordance with the NRC Enforcement Policy. Because (1) this was the first occurrence of a violation of this requirement at your facility after the termination date of the waiver, (2) the failure to add this material to your license did not result in any safety or health consequence, (3) the failure was not willful, (4) your explanation that you were not aware that you possessed such device at the time of the waiver termination, and (5) you planned to dispose of the device as soon as possible, which you are doing in lieu of amending your license. The NRC is using discretion to disposition this violation as a non-cited violation (NCV), in accordance with Enforcement Guidance Memorandum 09-004, "Interim Guidance for Dispositioning of Naturally Occurring and Accelerator Produced Radioactive Materials (NARM) Requirements." However, any future violations of 10 CFR 30.3(c)(2) will be categorized as cited violations and evaluated as such.

The inspector determined that the root cause of the violation was that you had not realized that the device was still in your possession. The licensee had possessed this device since 1986, before NRC had authority to regulate such devices, but the device had not been used in some time. As corrective action to restore compliance and to prevent recurrence, you planned to dispose of the device as soon as possible.

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to be taken to correct the violation and prevent 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.

K. Day

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Please feel free to contact Mr. Kulzer of my staff if you have any questions regarding this correspondence. Mr. Kulzer can be reached at 630-829-9875.

Sincerely,

/RA/

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

Docket No. 030-32465
License No. 13-26343-01

cc: State of Indiana

K. Day

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