



**UNITED STATES  
NUCLEAR REGULATORY COMMISSION**

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

July 25, 2016

EA-16-135

Mr. Michael Maloney  
Radiation Safety Officer  
Ontonagon County Road Commission  
415 Spar Street  
Ontonagon, MI 49953

SUBJECT: NRC ROUTINE INSPECTION REPORT NO. 03032894/2016001(DNMS)  
ONTONAGON COUNTY ROAD COMMISSION

Dear Mr. Maloney:

On June 14, 2016, an inspector from the U.S. Nuclear Regulatory Commission (NRC) conducted a routine inspection at your facility in Ontonagon, Michigan. 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. On July 6, 2016, Mr. Ryan Craffey of my staff conducted a final exit meeting by telephone you to discuss the inspection findings. The enclosed inspection report presents the results of the inspection.

During this inspection, 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 as well as the conditions of your license. Within these areas, the inspection consisted of selected examination of procedures and representative records, observations of activities, and interviews with personnel.

Based on the results of this inspection, one apparent violation of NRC requirements was identified and is being considered for escalated enforcement action 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 apparent violation concerned the failure to use a minimum of two independent physical controls that form tangible barriers against unauthorized removal, whenever portable gauges are not under the control and constant surveillance, as required by Title 10 of the *Code of Federal Regulations* (CFR) Part 30.34(i).

Because the NRC has not made a final determination in this matter, the NRC is not issuing a Notice of Violation for this inspection finding at this time. The circumstances surrounding this apparent violation, the significance of the issue, and the need for lasting and effective corrective action were discussed with you at the final exit meeting on July 6, 2016.

Before the NRC makes its enforcement decision, we are providing you an opportunity to either:  
(1) respond in writing to the apparent violation addressed in this inspection report within 30 days

of the date of this letter; or (2) request a Predecisional Enforcement Conference (PEC). If a PEC is held, it will be open for public observation and the NRC will issue a press release to announce the time and date of the conference. **If you decide to participate in a PEC, please contact Geoff Warren at 630-829-9742 within ten days of the date of this letter to notify the NRC of your intended response.**

If you choose to provide a written response, it should be clearly marked as "Response to the Apparent Violation in Inspection Report No. 03032894/2016001(DNMS); EA-16-135," and should include, for the apparent violation: (1) the reason for the apparent violation, or, if contested, the basis for disputing the apparent violation; (2) the corrective steps that have been taken and the results achieved; (3) the corrective steps that will be taken to avoid further violations; and (4) the date when full compliance was or will be achieved. In presenting your corrective actions, you should be aware that the promptness and comprehensiveness of your actions will be considered in assessing any civil penalty for the apparent violation. 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 website at: <http://www.nrc.gov/reading-rm/doc-collections/gen-comm/info-notices/1996/in96028.html>. Your response may reference or include previously docketed correspondence, if the correspondence adequately addresses the required response. If an adequate response is not received within the time specified or an extension of time has not been granted by the NRC, the NRC will proceed with its enforcement decision or schedule a PEC.

If you choose to request a PEC, the conference will afford you the opportunity to provide your perspective on the apparent violation and any other information that you believe the NRC should take into consideration before making an enforcement decision. The topics discussed during the conference may include the following: information to determine whether a violation occurred, information to determine the significance of a violation, information related to the identification of a violation, and information related to any corrective actions taken or planned to be taken.

As your facility has not been the subject of escalated enforcement action within the last two years or two inspections, a civil penalty may not be warranted in accordance with Section 2.3.4 of the Enforcement Policy. In addition, based upon NRC's understanding of the facts and your corrective actions, it may not be necessary to conduct a PEC in order to enable the NRC to make a final enforcement decision. Our final decision will be based on your confirming on the license docket that the corrective actions previously described to the staff have been or are being taken.

In addition, please be advised that the number and characterization of the apparent violations described in the enclosed inspection report may change as a result of further NRC review. You will be advised by separate correspondence of the results of our deliberations on this matter.

The NRC has also determined that one Severity Level (SL) IV violation of NRC requirements occurred. This violation concerned the failure to provide notification to the NRC in a timely manner that no principal activities under your license have been conducted for a period of 24 months, as required by 10 CFR Part 30.36(d)(3). The violation was also evaluated in accordance with the NRC Enforcement Policy, and is cited in the enclosed Notice of Violation

(Notice)(Enclosure 1). The NRC is citing the violation in the Notice because the inspector identified the violation.

You are required to respond to this letter regarding the SL IV violation 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 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 "Rules of Practice," a copy of this letter, its enclosure, and 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 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.

Please feel free to contact Mr. Craffey of my staff if you have any questions regarding this inspection. Mr. Craffey can be reached at 630-829-9655.

Sincerely,

***/RA by Christine Lipa Acting for/***

John B. Giessner, Director  
Division of Nuclear Materials Safety

Docket No. 030-32894  
License No. 21-26441-01

Enclosures:

1. Notice of Violation
2. IR 03032894/2016001(DNMS)

cc w/encl: State of Michigan

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Letter to Michael Maloney from John Giessner dated July 25, 2016.

SUBJECT: NRC ROUTINE INSPECTION REPORT NO. 03032894/2016001(DNMS)  
ONTONAGON COUNTY ROAD COMMISSION

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## NOTICE OF VIOLATION

Ontonagon County Road Commission  
Ontonagon, Michigan

License No. 21-26441-01  
Docket No. 030-32894

During a U.S. Nuclear Regulatory Commission (NRC) inspection conducted on June 14, 2016, one 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) Part 30.36(d)(3) requires, in part, that within 60 days of occurrence, each licensee shall provide notification to the NRC in writing if no principle activities under the license have been conducted for a period of 24 months.

Title 10 CFR Part 30.4 defines *principal activities* as activities authorized by the license which are essential to achieving the purpose(s) for which the license was issued or amended.

Contrary to the above, on July 30, 2012, Ontonagon County Road Commission failed 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. Specifically the licensee had not used any sealed sources of radioactive material since May 31, 2010 to measure the physical properties of materials, the principal activities authorized by the license, and did not notify the NRC within 60 days of May 31, 2012.

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

Pursuant to the provisions of CFR 2.201, Ontonagon County Road Commission 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 include: (1) the reason for the violation, or, if contested, the basis for disputing the violation or its 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 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.

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 website 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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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, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

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

Dated this 25<sup>th</sup> day of July 2016.

**U.S. Nuclear Regulatory Commission  
Region III**

Docket No. 030-32894

License No. 21-26441-01

Report No. 03032894/2016001(DNMS)

EA No. EA-16-135

Licensee: Ontonagon County Road Commission

Facility: 415 Spar Street  
Ontonagon, MI 49953

Inspection Dates: June 14, 2016

Exit Meeting Date: July 6, 2016

Inspector: Ryan Craffey, Health Physicist

Approved By: Aaron McCraw, Chief  
Materials Inspection Branch  
Division of Nuclear Materials Safety



## **EXECUTIVE SUMMARY**

### **Ontonagon County Road Commission NRC Inspection Report 03032894/2016001(DNMS)**

This was an unannounced routine inspection of Ontonagon County Road Commission (OCRC), authorized by U.S. Nuclear Regulatory Commission (NRC) Materials License No. 21-26441-01 to possess and use moisture density gauges containing byproduct material. At the time of the inspection, the licensee had one gauge, located at its facility in Ontonagon, Michigan.

As a result of this inspection, the NRC identified an apparent violation of Title 10 of the *Code of Federal Regulations* (10 CFR) 30.34(i) for the failure to use a minimum of two independent physical controls that form tangible barriers against unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee. The inspector found that the licensee stored its gauge at the Ontonagon facility in a locked transport case inside a locked storage room in the basement of the facility. However, the case, containing the gauge, was not secured by any means within the storage room. Furthermore, one of the exterior doors in the basement was unlocked at the time of the inspection, and licensee personnel did not provide control or surveillance of the gauge at all times.

The inspector determined that the root cause of the apparent violation was a misunderstanding of regulatory requirements. As corrective action to restore compliance, the licensee immediately locked the exterior door, restoring the building itself as a second tangible barrier. As additional corrective action, the licensee committed to discuss with its staff the need to ensure the door is locked when not under surveillance. The licensee also committed to install a second barrier within the storage room to ensure that the gauge is stored behind two barriers.

The NRC also identified a Severity Level IV violation of 10 CFR 30.36(d)(3) for the failure to notify the NRC in writing, within 60 days of occurrence, that no principle activities under the license had been conducted for a period of 24 months.

The inspector determined that the root cause of the violation was a lack of understanding of NRC requirements. As corrective action, the RSO committed to submit the required notification to the NRC.

## REPORT DETAILS

### **1 Program Overview and Inspection History**

Ontonagon County Road Commission (OCRC) was authorized by U.S. Nuclear Regulatory Commission (NRC) Materials License No. 21-26441-01 to use or store sealed sourced of byproduct material in portable gauging devices at its facility in Ontonagon, Michigan, and to use these devices for measuring physical properties of materials at temporary job sites in NRC jurisdiction. At the time of the inspection, the licensee possessed one Troxler gauge, maintained by one inactive authorized user who served as the Radiation Safety Officer (RSO). The licensee also maintained access to a survey meter from a nearby hospital.

The NRC conducted routine inspections of OCRC on June 21, 2005, and September 15, 2010. The 2005 inspection identified a violation of License Condition 14 regarding the failure to conduct sealed source leak tests at the required intervals. The licensee's corrective actions for the violation of License Condition 14 were reviewed during the 2010 inspection, and no additional violations were identified during this inspection.

### **2 Security of Portable Gauges**

#### **2.1 Inspection Scope**

On June 14, 2016, the inspector toured the licensee's facility in Ontonagon to evaluate the licensee's measures for materials security. The inspector also interviewed the licensee's RSO to discuss the implementation of these measures.

#### **2.2 Observations and Findings**

The inspector identified an apparent violation of 10 CFR 30.34(i) for the failure to 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 a licensee.

During the facility tour, the inspector found that the licensee stored its Troxler portable gauge using only one independent physical control to secure the gauge against unauthorized removal. The gauge was stored in a locked transport case inside a locked storage room in the basement of the licensee's office. However, the case itself was not secured by any means within the storage room, and one exterior door in the basement was unlocked at the time of the inspection. Although the door was intermittently monitored by the RSO, by viewing through his office window, the RSO acknowledged that he could be out of his office for up to three hours during a workday, unable to provide constant visual surveillance of the unlocked door. The inspector determined that the two other points of access to the gauge storage room in the basement, the stairs from the first floor offices and the licensee's store room, were monitored and secured by licensee staff during business hours.

The RSO stated that the licensee stored the gauge within its shipping case, in the basement storage room with only one barrier, since May 2010.

The inspector determined that the root cause of the apparent violation was a misunderstanding of regulatory requirements. The licensee believed that the lock on the gauge case constituted a second barrier.

As corrective action, the licensee immediately locked the basement door, restoring the building itself as a second tangible barrier. The licensee committed to discuss with its sign crew, who frequently entered the building via the basement door, the need to ensure the door is locked when not under surveillance, and committed to install a second barrier within the storage room to ensure that the gauge is stored behind two barriers, regardless of whether or not the building's doors were monitored or secured.

### 2.3 Conclusions

The inspector identified an apparent violation of 10 CFR 30.34(i) for a failure to use two independent physical controls that formed tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges are not under the control and constant surveillance of a licensee.

## **3 Conduct of Principal Activities**

### 3.1 Inspection Scope

On June 14, 2016, the inspector interviewed the licensee's RSO and reviewed a selection of records related to the use of licensed material.

### 3.2 Observations and Findings

The licensee informed the inspector that it had not used its portable gauge since May 31 2010, and did not notify the NRC within 60 days of May 31, 2012 (24 months after the last use of its gauge).

The inspector identified a violation of 10 CFR 30.36(d)(3) 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.

The inspector determined that the root cause of the violation was a lack of understanding of NRC requirements. As corrective action, the RSO committed to submit the required notification to the NRC. The RSO also stated that he intended to transfer the gauge to an authorized recipient and file a termination amendment request to the license.

### 3.3 Conclusions

The inspector identified a violation of 10 CFR 30.36(d)(3) 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. The licensee's corrective actions for this violation included a commitment to submit the required notification to the NRC.

## **4 Other Areas Inspected**

### **4.1 Inspection Scope**

The inspector toured the licensee's facility, interviewed the licensee's RSO, and reviewed a selection of records.

### **4.2 Observations and Findings**

The inspector conducted independent surveys using a Thermo Fischer Scientific RadEye G Gamma Survey Meter, last calibrated on April 22, 2016. Readings at the surface of the gauge were consistent with those indicated in the device's Safety Evaluation in the Sealed Source and Device Registry. Readings in unrestricted areas in the vicinity of the gauge storage room were indistinguishable from background.

The inspector reviewed a copy of the licensee's operating and emergency procedures, as well as shipping papers and the most recent leak test results for the gauge in storage. The inspector also discussed the conduct of physical inventories and reviewed the regulatory requirements for transfers of licensed material with the RSO.

### **4.3 Conclusions**

The inspector had no findings of significance in these areas.

## **5 Exit Meeting Summary**

The NRC inspector presented preliminary inspection findings during an exit meeting with the licensee's RSO by telephone on July 6, 2016. The licensee did not identify any documents or processes reviewed by the inspectors as proprietary. The licensee acknowledged the findings presented.

## **LIST OF PERSONNEL CONTACTED**

# Michael Maloney - RSO

# Attended exit meeting by telephone on July 6, 2016

## **INSPECTION PROCEDURES USED**

87124: Fixed and Portable Gauge Programs