



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

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

August 8, 2016

EA-16-100

Mr. Mohammed Al-Shatel
City Engineer
City of Muskegon City Hall – Engineering Dept.
P.O. Box 536
Muskegon, MI 49443-0536

SUBJECT: NOTICE OF VIOLATION - CITY OF MUSKEGON CITY HALL – ENGINEERING DEPARTMENT; NRC SPECIAL INSPECTION REPORT NO. 03010761/2016001(DNMS)

Dear Mr. Al-Shatel:

This refers to a U.S. Nuclear Regulatory Commission (NRC) inspection conducted on April 4, 2016, at your facility in Muskegon, Michigan, with continued in-office review through April 27, 2016. 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 an exit meeting on April 27, 2016. Details regarding the apparent violation were provided in NRC Inspection Report No. 03010761/2016001(DNMS) dated May 17, 2016.

In the letter transmitting the report, we provided you with the opportunity to address the apparent violation identified in the report by: (1) responding in writing within 30 days of the date of the letter; or (2) requesting a Predecisional Enforcement Conference. You provided a written response in a letter dated May 24, 2016.

Based on the information developed during the inspection and the information you provided in your written response dated May 24, 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 our inspection report dated May 17, 2016. The root cause of the apparent violation was that licensee management was unaware of the requirement to amend their NRC license to reflect a change in the Radiation Safety Officer (RSO).

The violation involves failure for the individual specifically authorized by Condition 12 of your NRC Materials License to fulfill the duties and responsibilities as RSO. Specifically, the individual listed as RSO on the license left the employ of your organization on April 18, 2014, and therefore, was no longer available to fulfill the duties and responsibilities as RSO. The failure to have a qualified individual to fulfill the duties and responsibilities of the RSO is a significant regulatory concern because you could have performed services under your NRC license without having an RSO available to ensure that you were meeting the conditions of your license. The root cause of the apparent violation was that licensee management was unaware of the requirement to amend their NRC license to reflect a change in RSO. Therefore, the NRC has categorized the violation at Severity Level III.

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$7,000 is normally considered for a Severity Level III violation.

Because your facility has not been the subject of escalated enforcement action within the last two years or two inspections, the NRC considered whether credit was warranted for Corrective Action in accordance with the civil penalty assessment process described in Section 2.3.4 of the Enforcement Policy. The NRC determined that credit was warranted for your corrective actions. Your immediate corrective action was to send in a request for a license amendment to appoint a new RSO after he received the required training. Your long-term corrective action consisted of training another authorized gauge user on the duties and responsibilities of RSO to maintain the ability to appoint an alternate RSO, if necessary. In addition, all gauge operations would cease if the individual authorized on the license is no longer employed by your organization until such time that another RSO is appointed and the NRC license is amended. New procedures have been implemented to relay the requirements regardless of any changes in applicable personnel. While the NRC deemed the corrective actions sufficient to correct the violation, licensee management is ultimately responsible for ensuring that all regulatory requirements are met, independent of the RSO.

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, to not propose a civil penalty in this case. However, significant violations in the future could result in a civil penalty. In addition, issuance of this Notice constitutes escalated enforcement action that may subject you to increased inspection effort.

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation, and the date when full compliance was achieved, was adequately addressed on the docket in the NRC inspection Report 03010761/2016001(DNMS) dated May 17, 2016, and in your written response dated May 24, 2016. 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 accordance with Title 10 of the *Code of Federal Regulations* (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>. Therefore, 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, 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 information, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information

M. Al Shatel

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required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information). 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. 030-10761
License No. 21-16304-01

Enclosure:
Notice of Violation

cc: Mr. Edward Aho,
Radiation Safety Officer
State of Michigan

NOTICE OF VIOLATION

City of Muskegon City Hall – Engineering Dept.
Muskegon, Michigan

Docket No. 03010761
License No. 21-16304-01
EA-16-100

During a U.S. Nuclear Regulatory Commission (NRC) inspection conducted on April 4, 2016, at your Muskegon, Michigan facility, with continued in-office review through April 27, 2016, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

License Condition No. 12 of NRC License No. 21-16304-01 requires a specifically listed individual to perform the duties and responsibilities of Radiation Safety Officer (RSO).

Contrary to the above, from April 18, 2014, through April 19, 2016, the licensee failed to have the individual named on the license employed as RSO; therefore, the named individual could not perform the duties and functions of RSO. Specifically, the RSO left the company on April 18, 2014, and the licensee did not submit an amendment request to the NRC to appoint a new qualified RSO until March 22, 2016. The NRC approved the new license amendment on April 19, 2016.

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 Inspection Report No 03010761/2016001 dated May 17, 2016, and in your response dated May 24, 2016. 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-16-100)," 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 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.

Enclosure

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

Dated this 8th day of August 2016

M. Shatel

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required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information). 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. 030-10761
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Enclosure:
Notice of Violation

cc: Mr. Edward Aho,
Radiation Safety Officer
State of Michigan

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DATE	07/18/16	07/18/16	07/20/16	07/27/16	08/01/16	08/8/16

OFFICIAL RECORD COPY

¹ OE concurrence per email from Kerstun Norman dated July 27, 2016

Letter to Mohammed M. Al-Shatel from Cynthia D. Pederson dated August 8, 2016.

SUBJECT: NOTICE OF VIOLATION - CITY OF MUSKEGON CITY HALL – ENGINEERING
DEPARTMENT; NRC SPECIAL INSPECTION REPORT NO.
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