



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

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

September 22, 2016

EA-16-153

Mr. Quentin McGahey, Plant Manager
Lehigh Cement Company, LLC
180 N. Meridian Road
Mitchell, IN 47446

SUBJECT: NRC SPECIAL INSPECTION REPORT NO. 03034344/2016001(DNMS)
LEHIGH CEMENT COMPANY LLC

Dear Mr. McGahey:

On July 13, 2016, an inspector from the U.S. Nuclear Regulatory Commission (NRC) conducted a special inspection at your Mitchell, Indiana location, with continued in-office review through August 23, 2016. The in-office review included information that was unavailable during the onsite inspection, including annual radiation protection program audit records. The purpose of the inspection was to follow up on the absence of your previous radiation safety officer (RSO) and review activities performed under your NRC license to ensure that activities were being performed in accordance with NRC requirements. Mr. Robert Gattone of my staff conducted a final exit meeting by telephone with Mr. Clayton Vandersall of your staff on August 23, 2016, to discuss the inspection findings.

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 licensee's failure to ensure that the individual who is named as the licensee's RSO in Condition 11 of Amendment No. 05 of NRC License 13-26779-01, performed the duties and functions of RSO. Specifically, the individual listed on the license left the licensee's employ on November 13, 2014, and the licensee had not appointed a new, qualified individual to perform the duties and functions of RSO until January 2016.

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 Mr. Vandersall during the inspection exit meeting on August 23, 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). **Please contact Aaron T. McCraw at 630-829-9650 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 NRC Inspection Report No. 03034344/2016001(DNMS); EA-16-153," 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's 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, it 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. 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.

Because your facility has not been the subject of escalated enforcement action within the last 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.

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.

Based on the results of this inspection, the NRC has also determined that three Severity Level IV violations of NRC requirements occurred. The violations were 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 violations concerned the failure to: (1) periodically (at least annually) review the radiation protection

program content and implementation as required by Title 10 of the *Code of Federal Regulations* (CFR) Section 20.1101(c); (2) conduct physical inventories of fixed gauges every 6 months, as required by Condition 15 of the license; and (3) conduct shutter tests on fixed gauges every 6 months, as required by Condition 16.A. of the license. The violations are cited in the enclosed Notice of Violation (Notice). The NRC is citing the violations in the enclosed Notice because the inspector identified them.

The NRC has concluded that information regarding the reason for the Severity Level IV violations, the corrective actions taken and planned to correct the violations and prevent recurrence, and the date when full compliance will be achieved is already adequately addressed on the docket in the enclosed inspection report. Therefore, you are not required to respond to these violations unless the description in the enclosed Inspection Report 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.

Please feel free to contact Robert Gattone of my staff if you have any questions regarding this inspection. Mr. Gattone can be reached at 630-829-9823.

Sincerely,

/RA Christine Lipa Acting for/

John B. Giessner, Director
Division of Nuclear Materials Safety

Docket No. 030-34344
License No. 13-26779-01

Enclosures:

1. Notice of Violation
2. IR 03034344/2016001(DNMS)

cc w/encls: Clayton Vandersall, Radiation
Safety Officer
State of Indiana

program content and implementation as required by Title 10 of the *Code of Federal Regulations* (CFR) Section 20.1101(c); (2) conduct physical inventories of fixed gauges every 6 months, as required by Condition 15 of the license; and (3) conduct shutter tests on fixed gauges every 6 months, as required by Condition 16.A. of the license. The violations are cited in the enclosed Notice of Violation (Notice). The NRC is citing the violations in the enclosed Notice because the inspector identified them.

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Please feel free to contact Robert Gattone of my staff if you have any questions regarding this inspection. Mr. Gattone can be reached at 630-829-9823.

Sincerely,

/RA Christine Lipa Acting for/

John B. Giessner, Director
Division of Nuclear Materials Safety

Docket No. 030-34344
License No. 13-26779-01

- Enclosures:
1. Notice of Violation
2. IR 03034344/2016001(DNMS)

cc w/encls: Clayton Vandersall, Radiation
Safety Officer
State of Indiana

Distribution w/encls:
See next page

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OFFICIAL RECORD COPY

Letter to Quentin McGahey from John Giessner dated September 22, 2016.

SUBJECT: NRC SPECIAL INSPECTION REPORT NO. 03034344/2016001(DNMS)
LEHIGH CEMENT COMPANY LLC

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NOTICE OF VIOLATION

Lehigh Cement Company, LLC
Mitchell, Indiana

License No. 13-26779-01
Docket No. 030-34344

During a U.S. Nuclear Regulatory Commission (NRC) inspection conducted on July 13, 2016, with continued in-office review through August 23, 2016, three violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. Title 10 of the *Code of Federal Regulations* (CFR) Section 20.1101(c) states that the licensee shall periodically (at least annually) review the radiation protection program content and implementation.

Contrary to the above, from November 2014 through June 2016, the licensee failed to periodically (at least annually) review its radiation protection program content and implementation.

This is a Severity Level IV violation (Section 6.7).

- B. Condition 15 of Amendment No. 06 of NRC License No. 13-26779-01 requires, in part, that the licensee conduct a physical inventory every 6 months to account for all sealed sources and/or devices received and possessed under the license.

Contrary to the above, on August 18, 2014, the licensee conducted a physical inventory to account for all sealed sources and/or devices received and possessed under the license, and the licensee failed to conduct the next physical inventory until October 7, 2015, a period of more than 6 months between physical inventories.

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

- C. Condition 16.A. of Amendment No. 06 of NRC License No. 13-26779-01 requires, in part, that the licensee test each gauge for the proper operation of the on-off mechanism (shutter) and indicator, if any, at intervals not to exceed 6 months.

Contrary to the above, on August 18, 2014, the licensee conducted shutter tests on its gauges, and the licensee failed to conduct the next shutter tests until August 21, 2015, a period of more than 6 months between shutter tests. In addition, on August 21, 2015, the licensee conducted shutter tests on its gauges, and the licensee failed to conduct the next shutter tests until June 21, 2016, a period of more than 6 months between shutter tests.

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

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken and planned to correct the violations and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed on the docket in the subject inspection report. 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, Inspection Report No. 03034344/2016001 (DNMS)" 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.

If you choose to respond, 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 publicly available without redaction.

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 22nd day of September 2016.

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

Docket No. 030-34344

License No. 13-26779-01

Report No. 03034344/2016001(DNMS)

EA No. EA-16-153

Licensee: Lehigh Cement Company, LLC

Facility: 180 N. Meridian Rd., Mitchell, Indiana

Inspection Date: July 13, 2016, with continuing in-office review through August 23, 2016

Exit Meeting Date: August 23, 2016

Inspector: Robert G. Gattone, Jr.
Senior Health Physicist

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

EXECUTIVE SUMMARY

Lehigh Cement Company, LLC NRC Inspection Report No. 03034344/2016001(DNMS)

Lehigh Cement Company, LLC (licensee) is authorized under U.S. Nuclear Regulatory Commission (NRC) Materials License No. 13-26779-01 (license) to use licensed material for level/density measurements with fixed nuclear gauging devices (gauges). Licensed material is authorized to be used at the licensee's facility in Mitchell, Indiana. The licensee possessed and used 15 gauges as authorized.

During this inspection, the inspector identified an apparent violation of Condition 11 of the license, which states the name of the individual who is the licensee's Radiation Safety Officer (RSO). From November 13, 2014, until June 3, 2016, the individual named as the licensee's RSO in Condition 11 of the license was not the RSO. The inspector determined that the cause of the violation was that nobody was assigned to replace the RSO and nobody conducted the duties of the RSO from November 13, 2014, until January 2016. A contributing factor was that there were several licensee management changes during that time. As corrective actions, in January 2016, the licensee had a qualified individual begin performing the duties of the RSO. On March 7, 2016, the licensee sent a letter to the NRC requesting that the license be amended to name the individual as the new RSO. In response, the NRC amended the license on June 3, 2016, naming the new RSO. In addition, the licensee committed to submit a license amendment request to add an alternate RSO as backup for the RSO. The licensee also committed to develop a document that states the regulatory duties relative to employment positions showing the due dates for actions to comply with NRC regulatory requirements (e.g., License Condition 11, shutter checks every 6 months, etc.).

The inspector also identified three violations involving licensee failure to: (1) periodically (at least annually) review the radiation protection program content and implementation as required by Title 10 of the *Code of Federal Regulations* (CFR) Section 20.1101(c); (2) conduct a physical inventory every 6 months to account for all sealed sources and/or devices received and possessed as required by Condition 15 of the license; and (3) test each gauge for the proper operation of the shutter and indicator, if any, at intervals not to exceed 6 months as required by Condition 16.A. of the license. The licensee implemented and planned corrective actions to prevent similar violations.

REPORT DETAILS

1 Program Overview and Inspection History

The licensee is authorized under its NRC license to use licensed material for level/density measurements with gauges. Licensed material is authorized to be used at the licensee's facility in Mitchell, Indiana. The licensee possessed and used 15 gauges as authorized. The gauges contained cesium-137 sealed sources.

The licensee was last inspected by the NRC on July 30, 2013. As a result of that inspection, a violation was cited for failure to conduct gauge shutter checks every 6 months as required by Condition 16.A. of the license. The licensee was previously inspected by the NRC on November 4, 2008, and no violations of NRC regulatory requirements were identified.

2 Absence of a Radiation Safety Officer

2.1 Inspection Scope

The inspector assessed the licensee's absence of an individual serving as its RSO by interviewing selected licensee personnel and reviewing selected records.

2.2 Observations and Findings

On or about October 31, 2014, the licensee's previous RSO gave the licensee his two weeks' resignation notice. On November 13, 2014, the previous RSO left the licensee's employ. Nobody conducted the duties of the RSO from November 13, 2014, until January 2016. During that time, nobody was assigned to replace the RSO. In January 2016, an Acting Plant Manager initiated action to replace the RSO by requesting a Project Manager (PM) who was qualified to begin performing the duties of the RSO including, in part, reviewing the licensee's radiation safety program and radiation safety requirements.

Condition 11 of Amendment No. 05 of the license states the name of the individual who is the licensee's RSO. From November 13, 2014, until June 3, 2016, the individual named as the licensee's RSO in Condition 11 of Amendment No. 05 of the license was not the RSO. The licensee's apparent failure to ensure that its RSO is the individual who is named as the licensee's RSO in Condition 11 of the license after the previous RSO left the licensee's employ is an apparent violation.

The inspector determined that the cause of the violation was that nobody was assigned to replace the RSO and nobody conducted the duties of the RSO from November 13, 2014, until January 2016. A contributing factor was that there were several licensee management changes during that time. As corrective actions, in approximately January 2016, the licensee had a qualified PM begin performing the duties of the RSO. On March 7, 2016, the licensee sent a letter to the NRC requesting that the license be amended to add the new RSO. In response, the NRC amended the license on June 3, 2016, naming the PM as the RSO. In addition, the licensee committed to submit a license amendment request to add an alternate RSO as backup for the RSO. The licensee also committed to develop a document that states the

regulatory duties relative to employment positions showing the due dates for actions to comply with NRC regulatory requirements (e.g., License Condition 11, shutter checks every 6 months, etc.).

2.3 Conclusions

The inspector identified an apparent violation of License Condition 11 of Amendment No. 05 of the license involving licensee failure to ensure that its RSO is the individual who is named as the licensee's RSO in License Condition 11. The licensee implemented corrective actions to prevent a similar violation.

3 **Other Areas Inspected**

3.1 Inspection Scope

The inspector reviewed other areas of the licensee's radiation protection program by reviewing selected records and interviewing selected licensee employees.

3.2 Observations and Findings

a. Radiation Protection Program

1. Program Review

From November 2014 through June 2016, the licensee did not periodically (at least annually) review its radiation protection program content and implementation. Title 10 CFR 20.1101(c) states that the licensee shall periodically (at least annually) review the radiation protection program content and implementation. The licensee's failure to periodically (at least annually) review the radiation protection program content and implementation is a violation of 10 CFR 20.1101(c).

The inspector determined that the cause of the violation was that nobody conducted the duties of the RSO from November 13, 2014, until January 2016. As corrective actions, in January 2016, the licensee had a qualified PM begin doing the duties of the RSO. On March 7, 2016, the licensee sent a letter to the NRC requesting that the license be amended to add the new RSO. In response, the NRC amended the license on June 3, 2016, naming the PM as the RSO. In addition, the licensee committed to submit a license amendment request to add an alternate RSO as backup for the RSO. The licensee also committed to develop a document that states the regulatory duties relative to employment positions showing the due dates for actions to comply with NRC regulatory requirements, including the reviews of its radiation protection program content and implementation.

2. Physical Inventories

On August 18, 2014, the licensee conducted a physical inventory to account for all sealed sources and/or devices received and possessed under the license, and the licensee did not conduct the next physical inventory until October 7, 2015, a

period of more than 6 months between physical inventories. Condition 15 of Amendment No. 06 of the license requires, in part, that the licensee conduct a physical inventory every 6 months to account for all sealed sources and/or devices received and possessed under the license. The licensee's failure to conduct a physical inventory every 6 months to account for all sealed sources and/or devices received and possessed under the license is a violation of Condition 15 of the license.

The inspector determined that the cause of the violation was that the licensee's general practice was to conduct physical inventories of its sealed sources and/or devices each year without realizing that the license required that those actions be done every 6 months. As corrective action to prevent a similar violation, the licensee committed to develop a document that states the regulatory duties relative to employment positions showing the due dates for actions to comply with NRC regulatory requirements, including conducting timely physical inventories of its sealed sources and/or devices. In addition, the licensee changed its scheduler to ensure that physical inventories to account for all sealed sources and/or devices are done every 6 months.

3. Shutter Checks

On August 18, 2014, the licensee conducted shutter tests on its gauges, and the licensee did not conduct the next shutter tests until August 21, 2015, a period of more than 6 months between shutter tests. In addition, on August 21, 2015, the licensee conducted shutter tests on its gauges, and the licensee did not conduct the next shutter tests until June 21, 2016, a period of more than 6 months between shutter tests. Condition 16.A. of Amendment No. 06 of the license requires, in part, that the licensee test each gauge for the proper operation of the on-off mechanism (shutter) and indicator, if any, at intervals not to exceed 6 months. The licensee's failure to test each gauge for the proper operation of the shutter and indicator, if any, at intervals not to exceed 6 months is a violation of Condition 16.A. of the license.

The inspector determined that the cause of the violation was that the licensee's general practice was to conduct shutter tests each year without realizing that the license required that those actions be done every 6 months. As corrective action to prevent a similar violation, the licensee committed to develop a document that states the regulatory duties relative to employment positions showing the due dates for actions to comply with NRC regulatory requirements, including conducting timely shutter tests. In addition, the licensee changed its scheduler to ensure that shutter tests are done every 6 months.

4. Gauge Service and Gauge Lock-Out

The inspector interviewed applicable staff members to determine how gauge service was conducted, how the licensee implemented lock-out procedures as a means of preventing individuals from receiving radiation doses while working near a gauge, and if the licensee implemented its lock-out procedure since November 13, 2014. The licensee did not open or remove sources from any gauges. Opening or removing sources from any gauges would be done by the

gauges' vendor. The licensee had not conducted any activities that required implementation of its lock-out procedures since November 13, 2014. The licensee applicable staff members were knowledgeable regarding the licensee's lock-out procedures.

5. Events

The inspector interviewed applicable staff members to determine if any events occurred involving licensed material. The licensee had no events involving licensed material related to fires, floods, high winds, leaking sources, loss, or theft.

3.3 Conclusions

The inspector identified three violations involving licensee failure to: (1) periodically (at least annually) review the radiation protection program content and implementation as required by 10 CFR 20.1101(c); (2) conduct a physical inventory every 6 months to account for all sealed sources and/or devices received and possessed as required by Condition 15 of the license; and (3) test each gauge for the proper operation of the shutter and indicator, if any, at intervals not to exceed 6 months as required by Condition 16.A. of the license. The licensee implemented and planned corrective actions to prevent similar violations.

4 **Exit Meeting Summary**

The NRC inspector presented preliminary inspection findings following the onsite inspection on July 13, 2016. The licensee did not identify any documents or processes reviewed by the inspector as proprietary. On August 23, 2016, the inspector conducted a final exit meeting by telephone. The licensee acknowledged the findings presented.

LIST OF PERSONNEL CONTACTED

- # Cody Hall, Safety Manager
- # Quentin McGahey, Plant Manager
Brock Robbins, Electrician
Kenny Simmons, Electrician
- ^# Clayton Vandersall, RSO

- # Attended preliminary exit meeting on July 13, 2016
- ^ Participated in final telephonic exit meeting on August 23, 2016

INSPECTION PROCEDURES USED

87124: Fixed and Portable Gauge Programs