



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

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

September 26, 2016

EA-16-135

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

SUBJECT: NOTICE OF VIOLATION – ONTONAGON COUNTY ROAD COMMISSION;
NRC ROUTINE INSPECTION REPORT NO. 03032894/2016001(DNMS)

Dear Mr. Maloney:

This letter refers to the U.S. Nuclear Regulatory Commission (NRC) inspection conducted on June 14, 2016, at your facility in Ontonagon, Michigan. The purpose of the inspection was to review activities performed under your NRC license to ensure that those 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 you on July 6, 2016. Details regarding the apparent violation were provided in NRC Inspection Report No. 03032894/2016001(DNMS) dated July 25, 2016. The inspection report can be found in the NRC's Agencywide Documents Access and Management System (ADAMS) at Accession Number ML16207A391. 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 providing a written response or requesting a predecisional enforcement conference. By letter dated September 1, 2016, you provided a written response. In your response, you acknowledged the apparent violation and provided your corrective actions.

Based on the information developed during the inspection, 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 the licensee's failure to use a minimum of two independent physical controls that form tangible barriers to secure a portable gauge from unauthorized removal, whenever the gauge was not under the control and constant surveillance of the licensee as required by Title 10 of the *Code of Federal Regulations* (CFR) 30.34(i). Specifically, between May 2010 and June 14, 2016, the licensee stored its portable gauge in a locked room, but did not consistently maintain a second independent physical control during business hours that formed a tangible barrier against its unauthorized removal when the gauge was not under the control and constant surveillance of the licensee.

The root cause of the violation was the lack of knowledge of NRC regulatory requirements. You believed that the lock on the gauge case constituted a second barrier, however, it did not prevent unauthorized removal of the case with the gauge inside. The failure to use two independent physical barriers to properly secure nuclear 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 \$7,000 is considered for a Severity Level III violation.

Because your facility has not been the subject of escalated enforcement actions within the last two years or the last 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 that credit was warranted for *Corrective Action*. Specifically, you immediately locked the exterior door, restoring the building itself as a second barrier. Your long-term corrective actions consisted of installing a second barrier, a lock and a chain affixed to the wall of the storage room to prevent unauthorized removal of the transport case containing the gauge.

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 subject inspection report and your letter dated September 1, 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.

M. Maloney

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

Sincerely,

/RA/

Cynthia D. Pederson
Regional Administrator

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

Enclosure:
Notice of Violation

cc: State of Michigan

NOTICE OF VIOLATION

Ontonagon County Road Commission
Ontonagon, Michigan

License No. 21-26441-01
Docket No. 030-32894
EA-16-135

During a U.S. Nuclear Regulatory Commission (NRC) inspection conducted on June 14, 2016, at your Ontonagon, Michigan facility, 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* (CFR) 30.34(i) requires, in part, that each portable gauge licensee shall 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, as of June 14, 2016, the licensee failed to use a minimum of two independent physical controls that form tangible barriers to secure a portable gauge from unauthorized removal, whenever the gauge was not under the control and constant surveillance of the licensee. Specifically, the licensee stored its portable gauge in a locked room, but did not consistently maintain a second independent physical control during business hours that formed a tangible barrier against its unauthorized removal when the gauge was 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 to correct the violation and to prevent recurrence, and the date when full compliance was achieved, is already adequately addressed on the docket in Inspection Report No. 03032894/2016001(DNMS) and in your letter dated September 1, 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-16-135" 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, Suite 210, 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

Enclosure

<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.

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

Dated this 26th day of September, 2016.

M. Maloney

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

Sincerely,

/RA/

Cynthia D. Pederson
Regional Administrator

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

Enclosure:
Notice of Violation

cc: State of Michigan

DISTRIBUTION:
See next page

ADAMS Accession No. ML16-271A347

OFFICE	RIII		RIII		RIII		D:OE	
NAME	M. Gryglak:jc		AMcCraw		JGiessner		PHolahan ¹	
DATE	09/12/16		09/13/16		09/13/16		09/23/16	
OFFICE	RIII		RIII				RIII	
NAME	RSkokowski		CPederson					
DATE	09/26/16		09/26/16					

OFFICIAL RECORD COPY

¹ OE concurrence provided via e-mail from Kerstun Norman on September 23, 2016

Letter to Mr. Michael Maloney from Ms. Cynthia D. Pederson dated September 26, 2016

SUBJECT: NOTICE OF VIOLATION – ONTONAGON COUNTY ROAD COMMISSION;
NRC ROUTINE INSPECTION REPORT NO. 03032894/2016001(DNMS)

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