



UNITED STATES  
NUCLEAR REGULATORY COMMISSION

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

August 11, 2017

EA-17-100

Mr. Dibakar Sundi, P.E.  
President, Radiation Safety Officer  
K&S Engineers, Inc.  
9715 Kennedy Avenue  
Highland, IN 46322

SUBJECT: NRC ROUTINE INSPECTION REPORT NO. 03028612/2017001(DNMS) AND  
NOTICE OF VIOLATION – K&S ENGINEERS, INC.

Dear Mr. Sundi:

On May 16, 2017, an inspector from the U.S. Nuclear Regulatory Commission (NRC) conducted a routine inspection at your facility in Highland, Indiana, with continued in-office review through July 5, 2017. 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. The in-office review included an evaluation of information not available at the time of the inspection. Mr. Ryan Craffey of my staff conducted a final exit meeting by telephone with you on July 19, 2017 to discuss the inspection findings. This letter 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, the NRC has determined that three 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 unauthorized possession of a portable gauge containing radium-226 (Ra-226), contrary to Title 10 of the *Code of Federal Regulations* (10 CFR), Part 30.3(a), the failure to utilize two barriers to secure that portable gauge, as required by 10 CFR 30.34(i), and the repeat failure to ensure that hazmat employees who transported gauges were trained in accordance with 49 CFR 172.702(c), as required by 10 CFR 71.5(a).

The NRC normally considers violations involving unauthorized possession of radioactive material and violations involving inadequate security of portable gauges for escalated enforcement action. However, the agency recognizes that you were unaware of the revisions to the definition of byproduct material made in the Energy Policy Act of 2005 which subjected discrete sources of Ra-226 (such as the one you currently possess) to NRC requirements. Therefore, in accordance with EGM-09-004, "Interim Guidance for Dispositioning Violations of Naturally Occurring and Accelerator-Produced Radioactive Materials (NARM) Requirements,"

the NRC has decided to exercise discretion and not cite the violations of 10 CFR 30.3(a) and 10 CFR 30.34(i) in this instance because (1) these violations did not result in actual safety, health or security consequences; (2) the violations were not willful; (3) you were unaware that the definition of byproduct material was revised to include discrete sources of Ra-226; and (4) you took timely and effective corrective action to secure the gauge in accordance with NRC requirements and to request that the gauge be authorized on your existing NRC license.

Please note that, as discussed at the final exit meeting, the NRC will not consider discretion for any future violations involving NARM. This letter serves as your final reminder that the portable gauge in your possession containing Ra-226 is also subject to the Commission's rules and regulations and the conditions of your license.

The violation of 49 CFR 172.702(c), which was not related to the possession of Ra-226, is cited in the enclosed Notice of Violation (Notice). The NRC is citing the violation in the enclosed Notice because the inspector identified it.

You are required to respond to this letter 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's 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 addition, the NRC is concerned about the adequacy of your oversight of your radiation safety program, based on observations and findings during inspections of your Highland, Indiana facility, as described in this letter, and of your Beech Grove, Indiana facility, as will be addressed in an upcoming NRC inspection report (No. 03028612/2017002(DNMS)). K & S Engineers, Inc.'s performance during past and recent NRC inspections suggests a continued lack of attention to detail towards applicable regulatory requirements. Although the issues identified have not yet resulted in actual health or safety consequences, the agency is concerned that continued failure to comply with various requirements could make such consequences more likely and more severe. In our correspondence transmitting the results of the most recent inspection at your Beech Grove, Indiana facility in NRC Inspection Report No. 03028612/2017002(DNMS), we will ask that you address these concerns in detail specifically describing the actions that you will take to strengthen the overall oversight of your radiation safety program at both facilities to help ensure future compliance with all applicable 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.

D. Sundi

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

Sincerely,

*/RA/*

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

Docket No. 030-28612  
License No. 13-24480-01

Enclosure:  
Notice of Violation

cc w/encl: State of Indiana

Letter to Dibaker Sundi from Aaron McCraw dated August 11, 2017.

SUBJECT: NRC ROUTINE INSPECTION REPORT NO. 03028612/2017001(DNMS) AND  
NOTICE OF VIOLATION – K&S ENGINEERS, INC.

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**ADAMS Accession Number: ML17226A244**

OFFICE	RIII-DNMS		RIII-EICS		RIII-DNMS		RIII	
NAME	RCraffey:ps via email		RSkokowski		AMcCraw			
DATE	7/31/2017		8/7/2017		8/11/2017			

**OFFICIAL RECORD COPY**

## NOTICE OF VIOLATION

K&S Engineers, Inc.  
Highland, Indiana

License No. 13-24480-01  
Docket No. 030-28612  
EA-17-100

During a U.S. Nuclear Regulatory Commission (NRC) inspection conducted on May 16, 2017, with continued in-office review through July 5, 2017, 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 71.5(a) requires that each licensee who transports licensed material outside the site of usage, as specified in the NRC license, or where transport is on public highways, or who delivers licensed material to a carrier for transport, shall comply with the applicable requirements of the DOT regulations in 49 CFR parts 107, 171 through 180, and 390 through 397, appropriate to the mode of transport.

Title 49 CFR 172.702 requires that each hazmat employer shall ensure that each hazmat employee is trained and tested, and that no hazmat employee performs any function subject to the requirements of 49 CFR Parts 171-177 unless trained, in accordance with Subpart H of 49 CFR Part 172. The terms Hazmat Employer and Hazmat Employee are defined in 49 CFR 171.8.

Title 49 CFR 172.704(c)(2) requires, in part, that a hazmat employee receive the training required by this subpart at least once every three years.

Contrary to the above, as of May 16, 2017, K&S Engineers, Inc., a licensee who transports licensed material outside the site of usage and otherwise meets the definition of a hazmat employer provided in 49 CFR 171.8, did not ensure that each hazmat employee who performs functions subject to the requirements of 49 CFR Parts 171-177 meet the requirements in Subpart H to 49 CFR Part 172, requiring training at least once every three years. Specifically, one of the licensee's employees had not received hazmat training since July 2012, and another since May 2004, intervals which both exceed three years.

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

Pursuant to the provisions of 10 CFR 2.201, K&S Engineers, Inc. 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 was on 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.

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.

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 publically available without redaction.

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

Dated this 11<sup>th</sup> day of August, 2017.