



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

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

November 21, 2017

EA-17-118

Ms. Julie Tappendorf
Radiation Safety Officer
Midwest Engineering and Testing, Inc.
501 Mercury Drive
Champaign, IL 61822

SUBJECT: NOTICE OF VIOLATION; NRC RECIPROCITY INSPECTION REPORT
(15000012/2017002(DNMS)) - MIDWEST ENGINEERING AND TESTING, INC.

Dear Ms. Tappendorf:

This letter refers to the U.S. Nuclear Regulatory Commission (NRC) reciprocity inspection conducted on June 22, 2017, at your job site in Unionville, Michigan. The purpose of the inspection was to determine whether licensed activities were being performed in accordance with NRC requirements. During this 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 the exit meeting on August 3, 2017. Details regarding the apparent violation were provided in NRC Inspection Report No. 15000012/2017002(DNMS), dated August 16, 2017. A copy of the inspection report can be found 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> under accession number ML17228A731.

In the letter transmitting the inspection report, we provided you with the opportunity to address the apparent violation identified in the report by either attending a predecisional enforcement conference or by providing a written response before we made our final enforcement decision. In a letter dated August 23, 2017, you provided a response to the apparent violation. (ML17244A881).

Based on the information developed during the inspection and the information that you provided in your response to the inspection report dated August 23, 2017, 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 failure to use a minimum of two independent physical controls to secure a Troxler portable moisture density gauge from unauthorized removal whenever the gauge was not under the control and constant surveillance of your staff as required by Title 10 of the *Code of Federal Regulations* (CFR) 20.1801 and 30.34(i). Specifically, on June 22, 2017, one of your technicians placed the gauge in your job site construction trailer and left the site, but forgot to secure either locking mechanism on either of the trailer's two doors, resulting in zero barriers to secure the gauge from unauthorized removal.

The root cause of the violation appears to be an oversight by your authorized user in implementing the security measure of locking your trailer doors before leaving the site. The failure to use two independent physical controls to properly secure the gauge when stored is of safety significance to the NRC because of the potential for unauthorized individuals to gain

control of the radioactive material, which could result in an unintended exposure to a member of the public. 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, 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 *Corrective Action* credit was warranted due to the following corrective actions: (1) Your authorized gauge user promptly returned to the job site, and reinstated the two barriers by securing both locking mechanisms on each door of your job site trailer where the gauge was stored; (2) you have implemented two additional barriers inside the trailer in the form of two chains and two locks securing the gauge case to two legs of a concrete crushing press machine (weighing nearly 1000 pounds) in the trailer; (3) you have added an additional lock (shielded against tampering) to the trailer doors, and (4) you confirmed implementation of the security measures in the field, and reinforced properly locking the gauge and following procedures with your authorized gauge user.

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

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 Inspection Report No. 15000012/2017002(DNMS) and your letter dated August 23, 2107. 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 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 respond, will be made available electronically for public inspection in the NRC Public Document Room and in ADAMS. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public 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 of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the

J. Tappendorf

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information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information).

Sincerely,

/RA/

Cynthia D. Pederson
Regional Administrator

Docket No. 150-00012
License No. IL-01673-01

Enclosure:
Notice of Violation

cc w/encl: State of Illinois
State of Michigan

Letter to J. Tappendorf from Cynthia D. Pederson dated November 21, 2017

SUBJECT: NOTICE OF VIOLATION; NRC RECIPROCITY INSPECTION REPORT
(15000012/2017002(DNMS)) - MIDWEST ENGINEERING AND TESTING, INC.

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DATE	11/07/17	11/07/17	11/08/17	11/21/17	11/21/17

NOTICE OF VIOLATION

Midwest Engineering and Testing, Inc.
Champaign, Illinois

Docket No. 150-00012
License No. IL-01673-01
EA-17-118

During a U.S. Nuclear Regulatory Commission (NRC) reciprocity inspection conducted on June 22, 2017, 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* (10 CFR) 20.1801 requires that the licensee secure from unauthorized removal or access licensed materials that are stored in controlled or unrestricted areas.

Title 10 CFR 30.34(i) requires that each portable gauge licensee 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.

Contrary to the above, on June 22, 2017, Midwest Engineering & Testing failed to secure from unauthorized removal or access licensed materials that were stored in controlled or unrestricted areas, and failed to use a minimum of two independent physical controls that form tangible barriers to secure a portable gauge from unauthorized removal when the gauge was not under the control and constant surveillance of the licensee. Specifically, the licensee's technician placed the gauge in a construction trailer and left the site, but forgot to secure either locking mechanism on either of the trailer's two doors, resulting in zero tangible barriers to secure the gauge from unauthorized removal.

This is a Severity Level III violation (Sections 6.3. and 6.7)

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 in NRC Inspection Report No. 15000012/2017002(DNMS) and the licensee's letter, dated August 23, 2107. 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-17-118)," 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 <http://www.nrc.gov/reading-rm/adams.html>. Therefore, to the extent possible, the response

Enclosure

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 two working days of receipt.

Dated this 21st day of November 2017