



**UNITED STATES  
NUCLEAR REGULATORY COMMISSION**

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

November 17, 2022

EA-22-064

Mr. Mark Behrens  
President & Director of Geotechnical Engineering  
Terra Site Development, Inc.  
1307 W 161st St.  
Westfield, IN 46074

**SUBJECT: NOTICE OF VIOLATION - NRC ROUTINE INSPECTION REPORT  
NO. 03038010/2022001(DNMS); TERRA SITE DEVELOPMENT, INC.**

Dear Mr. Behrens:

This letter refers to the US Nuclear Regulatory Commission (NRC) inspection conducted on May 24, 2022, at your Westfield, Indiana facility. 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. A final exit briefing was conducted by telephone with you on July 20, 2022, and the inspection report was issued on August 3, 2022 (Agencywide Document Access and Management System (ADAMS) Accession No. ML22208A171).

In the letter transmitting the inspection report, we provided you with the opportunity to address the apparent violations 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 17, 2022 (ML22278A166), you provided a written response to the apparent violations.

Based on the information developed during the inspection and the information provided in your August 17, 2022, response, the NRC has determined that two violations of NRC requirements occurred. The violations are cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding them are described in detail in the subject inspection report. As described in the inspection report, the inspector arrived at your facility for an unannounced routine inspection and found one portable gauge left unattended in your garage (visible from the outside of your garage) with no physical controls to prevent unauthorized removal. Two other gauges were in an unlocked storage container with only one physical control to prevent unauthorized removal. Your August 17, 2022, response acknowledged that the gauges had been left unattended for at least 20 minutes.

Although leaving the gauges unattended and improperly secured did not result in actual consequences in terms of unauthorized removal, the violations could have resulted in exposures to members of the public had anyone entered the garage or if the gauges had been stolen. The inspector determined that the root cause of both violations was your failure to adequately instruct an individual in their duties to maintain constant surveillance of the gauges while not secured. Therefore, these violations are categorized collectively in accordance with the NRC Enforcement Policy as a Severity Level (SL) III problem. In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$8000 is considered for a SL III problem.

Because your facility has not been the subject of escalated enforcement actions within 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. According to your August 17, 2022, response, you took corrective action at the time of the inspection by locking the one unsecured gauge in its case, chaining it in the cabinet, and locking the cabinet. Once the cabinet was locked, the two gauges originally secured with only one barrier were then properly secured with two barriers. To prevent future recurrence, you limited access to the keys to the garage, cabinet, and gauge locks to authorized gauge users and provided retraining for all gauge users. Based on the corrective actions listed above, corrective action credit is warranted.

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 SL III problem 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 violations; (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. 03038010/2022001(DNMS), and your response dated August 17, 2022. 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 any) will be made available electronically for public inspection in the NRC Public Document Room and in the NRC's ADAMS, accessible from the NRC web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response (if any) 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

M. Behrens

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create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information).

If you have any questions concerning this matter, please contact Diana Betancourt-Roldan, Enforcement Officer of my staff, at 630-810-4373 or [diana.betancourt-roldan@nrc.gov](mailto:diana.betancourt-roldan@nrc.gov).

Sincerely,



Curtis, David signing on behalf  
of Giessner, Jack  
on 11/17/22

John B. Giessner  
Regional Administrator

Docket No. 030-38010  
License No. 13-32741-01

Enclosure:  
Notice of Violation

cc (w/encl): State of Indiana

## NOTICE OF VIOLATION

Terra Site Development, Inc.  
Westfield, Indiana

Docket No. 030-38010  
License No. 13-32741-01  
EA-22-064

During a US Nuclear Regulatory Commission (NRC) inspection conducted on May 24, 2022, 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* (10 CFR) 20.1802 requires, in part, that the licensee control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage.

10 CFR 30.34(i) requires that each portable gauge licensee 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, on May 24, 2022, the licensee did not maintain control and constant surveillance of or use a minimum of two independent physical controls that form tangible barriers to secure from unauthorized removal, licensed material in a portable gauge that was not in storage. Specifically, while not under constant surveillance, a Seaman Model C-300 gauge containing 5.5 millicuries of radium-226 was left unsecured and uncontrolled on the garage floor at the licensee's residence.

- B. 10 CFR 30.34(i) requires that each portable gauge licensee 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, on May 24, 2022, the licensee did not use a minimum of two independent physical controls that form tangible barriers to secure two portable gauges from unauthorized removal when the gauges were not under the control and constant surveillance of the licensee. Specifically, while not under constant surveillance, a Seaman Model C-300 gauge containing 5.5 millicuries of radium-226 and a Troxler Model 3400 gauge containing 9 millicuries of cesium-137 and 44 millicuries of americium-241 were secured with only one tangible barrier to prevent unauthorized removal.

This is a Severity III Level problem (Enforcement Policy Section 6.3.c.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 Inspection Report No. 03038010/2022001(DNMS) and your letter dated August 17, 2022. 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-22-064)," and send it to the US Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001 with a copy to the Regional

Enclosure

Administrator, Region III, 2443 Warrenville Road, Suite 210, Lisle, IL 60532-4352 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.

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

Dated this 17 day of November 2022

EA-22-064 - Terra Site DATE November 17, 2022

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**ADAMS Accession No.: ML22300A098**

**OE-001**

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NAME	KLambert <i>KL</i>	JPeralta <i>JP</i>	KWilliams <i>KW</i>	JGiessner DCurtis for <i>DC</i>
DATE	Oct 27, 2022	Nov 15, 2022	Nov 14, 2022	Nov 17, 2022

***OFFICIAL RECORD COPY***