



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION III

2443 WARRENVILLE ROAD, SUITE 210
LISLE, ILLINOIS 60532-4352

December 15, 2022

EA-22-110

Mr. Dewayne Rogers, Manager
Clare County Road Commission
3900 E. Mannsiding Road
Harrison, MI 48625

SUBJECT: NRC ROUTINE INSPECTION REPORT NO. 03036906/2022001(DRSS) – CLARE COUNTY ROAD COMMISSION

Dear Mr. Rogers:

On October 21 and 27, 2022, an inspector from the U.S. Nuclear Regulatory Commission (NRC) conducted a routine inspection at your office in Harrison, Michigan, with continued in-office review through November 9, 2022. 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 assessment of inspection findings and corrective actions. The enclosed inspection report 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, two apparent violations of NRC requirements were identified and are being considered for escalated enforcement action in accordance with the NRC Enforcement Policy, which is available on the NRC's website at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>. The apparent violations concerned (1) the failure to adequately secure a portable moisture density gauge containing licensed material, as required by Title 10 of the *Code of Federal Regulations* (10 CFR) Part 20.1801 and 10 CFR 30.34(i); and (2) the repeat failure to comply with U.S. Department of Transportation requirements in 49 CFR 172.704(c)(2) for hazmat refresher training, as required by 10 CFR 71.5(a).

Because the NRC has not made a final determination in this matter, the NRC is not issuing a Notice of Violation for these inspection findings at this time. Mr. Ryan Craffey of my staff discussed the circumstances surrounding these apparent violations, the significance of the issues, and the need for lasting and effective corrective action with your Radiation Safety Officer (RSO), Mr. Al Leonard, at the inspection exit meeting on November 28, 2022.

Before the NRC makes its enforcement decision, we request that you provide additional information regarding your corrective and preventative actions for the violations. You should be aware that the promptness and comprehensiveness of your actions will be considered in assessing any civil penalty for the apparent violations. 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 website at: <http://www.nrc.gov/reading-rm/doc-collections/gen-comm/info-notices/1996/in96028.html>.

The written response should be sent within 30 days of the date of this letter. It should be clearly marked as "Response to the Apparent Violations in Inspection Report No. 03036906/2022001(DRSS); EA-22-110," and should include, for each 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. 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 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. Your response should be sent to the NRC's Document Control Desk, Washington, DC 20555-0001, with a copy mailed to the NRC Region III Office, 2443 Warrenville Road, Suite 210, Lisle, Illinois 60532, within 30 days of the date of this letter. 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 pre-decisional enforcement conference (PEC).

In lieu of providing this written response, you may choose to provide your perspective on this matter including the significance, cause, and corrective actions, as well as any other information that you believe the NRC should take into consideration by requesting a PEC to meet with the NRC and present your views in person. 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. **Please contact Rhex Edwards, Chief of the Materials Inspection Branch, at 630-829-9722 or rhex.edwards@nrc.gov within ten days of the date of this letter to notify the NRC of your intended response.**

If you choose to request a PEC, it will afford you the opportunity to provide your perspective on the apparent violations and any other information that you believe the NRC should take into consideration before making an enforcement decision. The topics discussed during the PEC 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.

As your facility has not been the subject of escalated enforcement action within the last two years or 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 effective corrective actions to address the potential for recurrence of similar violations have been or are being taken.

In addition, 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.

In accordance with the NRC's "Rules of Practice" in 10 CFR 2.390, a copy of this letter, its enclosure, and any response you provide 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, any 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 Mr. Craffey of my staff if you have any questions regarding this inspection. Mr. Craffey can be reached at ryan.craffey@nrc.gov or 630-829-9655.

Sincerely,



Signed by Heck, Jared
on 12/15/22

Jared Heck, Acting Director
Division of Radiological Safety and Security

Docket No. 030-36906
License No. 21-32565-01

Enclosure:
Inspection Report No. 03036906/2022001(DRSS)

cc w/encl: Al Leonard, RSO
State of Michigan

Letter to D. Rogers from J. Heck, dated December 15, 2022.

SUBJECT: NRC INSPECTION REPORT NO. 03036906/2022001(DRSS) – CLARE COUNTY ROAD COMMISSION

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

Docket No. 030-36906

License No. 21-32565-01

Report No. 03036906/2022001(DRSS)

EA No. EA-22-110

Licensee: Clare County Road Commission

Facility: 3900 East Mannsiding Road
Harrison, MI

Inspection Dates: October 21 and 27, 2022

Exit Meeting Date: November 28, 2022

Inspector: Ryan Craffey, Senior Health Physicist

Approved By: Rhex Edwards, Chief
Materials Inspection Branch
Division of Radiological Safety and Security

Enclosure

EXECUTIVE SUMMARY

Clare County Road Commission NRC Inspection Report 03036906/2022001(DRSS)

This was an unannounced routine inspection of licensed activities involving the use of byproduct material to measure the physical properties of materials. The Clare County Road Commission (the licensee) was authorized by U.S. Nuclear Regulatory Commission (NRC) License No. 21-32565-01 to store portable moisture density gauges containing byproduct material at its office in Harrison, Michigan, and to use them at temporary job sites in NRC jurisdiction.

As a result of this inspection, the NRC identified two apparent violations of regulatory requirements: (1) the failure to adequately secure a portable moisture density gauge, as required by Title 10 of the *Code of Federal Regulations* (10 CFR) Part 20.1801 and 10 CFR 30.34(i); and (2) the repeat failure to comply with U.S. Department of Transportation requirements in 49 CFR 172.704(c)(2) for hazmat refresher training, as required by 10 CFR 71.5(a).

The circumstances of these violations, as well as the corrective actions the licensee has since taken to restore compliance and address the potential for recurrence, are discussed in more detail in the following report.

REPORT DETAILS

1 Program Overview and Inspection History

The Clare County Road Commission was authorized to store portable moisture density gauges containing byproduct material at its office in Harrison, Michigan, and to use them for measuring the physical properties of construction materials at temporary job sites in NRC jurisdiction. At the time of the inspection, the licensee had one gauge and two individuals authorized to use it.

The NRC last performed a routine inspection of the licensee on July 11, 2017. One Severity Level IV violation of 10 CFR 71.5(a) was cited for failure to provide hazmat training to the sole hazmat employee per 49 CFR 172.704(c)(2).

Prior to that, the NRC performed a special inspection on December 1, 2014, in response to learning that the licensee no longer employed the approved RSO. One Severity Level IV violation of Condition 12 of NRC License No. 21-32565-01 was identified as a result, since the approved individual had been gone and unable to fulfill the duties of RSO for more than fourth months by the time the licensee notified the NRC.

2 Security of Portable Gauges

2.1 Inspection Scope

On October 21, 2022, the inspector toured the licensee's facility in Harrison and interviewed office staff to discuss the secure storage of licensed material.

2.2 Observations and Findings

The inspector visited the facility in Harrison to attempt an unannounced routine inspection. However, the RSO was out of the office on a road project at the time, as was the other authorized gauge user. The inspector contacted the RSO to discuss opportunities for completing the inspection. The RSO stated that he would be out until late that day and asked to reschedule the inspection. The inspector agreed but before leaving, asked to confirm that the gauge, a Troxler 3430 (s/n 36347) was adequately secured. The RSO indicated that the gauge was in the covered bed of a truck parked in the visitor lot. The inspector and the licensee's office staff went to the truck and found that although the gauge was concealed in the bed and the lid to its case was secured with two locks, the tailgate was not locked, nor was the case secured to anything in the bed. The inspector noted a chain with locks hanging on a mounting point next to the case. However, the chain was not in use and the locks were later determined to be inoperable from heavy corrosion.

Title 10 CFR 20.1801 requires that licensees 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 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.

The failure to secure the gauge from unauthorized removal or access using a minimum of two independent physical controls is an apparent violation of 10 CFR 20.1801 and 30.34(i).

The RSO acknowledged that he had kept the gauge in this vehicle since signing it out of storage on August 31, 2022, but that the truck was his normal work vehicle and he drove it home and locked it on evenings and weekends. However, even granted this, the gauge would still have only been secured by one barrier – the covered bed in conjunction with the locking tailgate – when the vehicle was not under his control or surveillance.

As corrective action to date, the office staff (at the direction of the RSO) immediately returned the gauge to the designated storage inside the office. The inspector discussed relevant requirements and the importance of gauge security with the RSO and his supervisor. The licensee is currently developing corrective actions to address the potential for recurrence.

2.3 Conclusions

The inspector identified an apparent violation of 10 CFR 20.1801 and 30.34(i).

3 Radiation Safety Program

3.1 Inspection Scope

On October 27, 2022, the inspector returned to the licensee's facility in Harrison, interviewed the RSO and his manager to discuss the implementation of the radiation safety program, and reviewed a selection of records.

3.2 Observations and Findings

The inspector toured the facility in Harrison. All areas were adequately posted, and all licensed material was adequately secured behind at least two barriers when in the designated storage area. The inspector performed independent and confirmatory surveys of the facility (the licensee had its own survey meter); radiation levels were well below regulatory limits to members of the public in unrestricted areas. The licensee's gauge and its case were in good condition and adequately labeled. The inspector interviewed the RSO to discuss measures for gauge use, transport, maintenance, and program oversight.

The inspector reviewed sealed source leak test results, training certificates for a new gauge user, utilization logs and shipping papers.

During a review of training certificates, the inspector found that the RSO, a hazmat employee, had not taken hazmat training since last doing so on July 15, 2017, as corrective action for a Severity Level IV violation of 10 CFR 71.5(a) cited in IR 030-36906/2017001(DNMS) for failure to comply with U.S. Department of Transportation requirements in 49 CFR 172.704(c)(2), which require hazmat training be provided at least once every three years.

Title 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, 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 172.704 requires that each hazmat employer 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.

The failure to provide timely hazmat refresher training for the RSO and thus the failure to comply with 49 CFR 172.704(c)(2) is a repeat apparent violation of 10 CFR 71.5(a).

As corrective action to date, the RSO committed to re-take hazmat refresher training before transporting a gauge again. The licensee is currently developing corrective actions to address the potential for recurrence.

3.3 Conclusions

The inspector identified an apparent violation of 10 CFR 71.5(a) and 49 CFR 172.704(c)(2).

4 **Exit Meeting Summary**

The NRC inspector presented preliminary inspection findings following the onsite inspection and held a final exit meeting with the licensee on November 28, 2022. The licensee acknowledged the findings presented.

LIST OF PERSONNEL CONTACTED

Al Leonard – Engineering Technician, RSO
Dewayne Rogers – Manager

Attended exit meeting on November 28, 2022

INSPECTION PROCEDURES USED

IP 87139 – Portable Nuclear Gauge Programs