



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION III
2443 WARRENVILLE ROAD, SUITE 210
LISLE, ILLINOIS 60532-4352

EA-22-110

March 14, 2023

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

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

Dear Dewayne Rogers:

This letter refers to the US Nuclear Regulatory Commission (NRC) inspection conducted on October 21 and 27, 2022, at your Harrison, Michigan facility with continued in-office inspection 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. An exit meeting was held on November 28, 2022, with Allan Leonard, Radiation Safety Officer, to discuss apparent violations involving the failure to secure a portable moisture density gauge and to provide required US Department of Transportation hazmat refresher training to moisture density gauge operators. Inspection Report No. 03036906/2022001(DRSS) was issued on December 15, 2022, and can be found in the NRC's Agencywide Documents Access and Management System (ADAMS) at accession number ML22336A229. 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 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 received on January 11, 2023, and an email dated February 1, 2023, Allan Leonard of your staff provided responses to the apparent violations.

Based on the information developed during the inspection and the information provided in the response to the inspection report received on January 11, 2023, the NRC has determined that violations of NRC requirements occurred. These violations are cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding them are described in detail in the subject inspection report.

Violation A involved the failure to secure a portable moisture density gauge from unauthorized removal with a minimum of two independent physical controls that form tangible barriers when the portable gauge is not under the control and constant surveillance of the licensee. Specifically, between August 31 and October 21, 2022, your staff routinely used only one physical barrier to secure the gauge on evenings and weekends, and on October 21 no barriers were used when the vehicle was left unlocked and unattended at your Harrison, Michigan facility.

The failure to secure a portable moisture density gauge is a significant safety and security concern because an unsecured gauge could be stolen and lead to the potential exposures to members of the public. Therefore, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level III. In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$8750 is considered for a Severity Level III violation.

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. Corrective actions included the following: (1) obtained new locks to secure the gauge to the truck bed; (2) committed to keeping the tailgate locked when the gauges are with the user or ensuring the gauge is locked in its storage location in the office; (3) discussed the violations with managers and coworkers so other knowledgeable coworkers can check to ensure the proper security measures are in place; and (4) developed a check list to be used annually that includes security and safety checks of gauges to include inspecting locks, instructing gauge users to monitor and control gauges at job sites, and verifying permanent storage area is secured with two independent controls.

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 also determined that a Severity Level IV violation of NRC and Department of Transportation requirements occurred (Violation B). This violation involved the failure to provide hazmat refresher training for authorized gauge users. This violation was also evaluated in accordance with the NRC Enforcement Policy. The violation is cited in the enclosed Notice and the circumstances surrounding it are described in detail in the subject inspection report. The violation is being cited in the Notice because it was identified by the inspector.

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 Inspection Report No. 03036906/2022001(DRSS), the letter received on January 11, 2023, and the email dated February 1, 2023. 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 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 should not include any personal privacy, or proprietary 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

D. Rogers

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

Sincerely,



Signed by Giessner, Jack
on 03/14/23

John B. Giessner
Regional Administrator

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

Enclosure: Notice of Violation

cc w/encl: State of Michigan

Letter to D. Rogers from J. Giessner dated March 14, 2023.

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

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NOTICE OF VIOLATION

Clare County Road Commission
Harrison, Michigan

Docket No. 030-36906
License No. 21-32565-01
EA-22-110

During a US Nuclear Regulatory Commission (NRC) inspection conducted on October 21 and 27, 2022, with continued in-office review through November 9, 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) 20.1801 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.

Contrary to the above, between August 31 and October 21, 2022, the Clare County Road Commission did not use a minimum of two independent physical controls that form tangible barriers to secure from unauthorized removal or limit access to a Troxler 3430 portable moisture density gauge nominally containing 9 millicuries of cesium-137 and 44 millicuries of americium-241 that was stored in an unrestricted area and not under the control and constant surveillance of the licensee. Specifically, between August 31 and October 21 the licensee routinely used only one physical barrier – the locked and covered bed of a pickup truck – to secure the gauge on evenings and weekends, and on October 21 used no barriers at all when it left the vehicle unlocked and unattended on the premises of its facility in Harrison, Michigan.

This is a Severity Level III violation (Enforcement Policy Section 6.3.c.3).

- B. 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 Department of Transportation (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.

Contrary to the above, between July 15, 2020, and November 22, 2022, the licensee failed to ensure that a hazmat employee received the training required by Title 49 CFR 172.704 at least once every three years. Specifically, the hazmat employee received training on July 15, 2017, and not again until November 2022, a period exceeding three years.

This is a Severity Level IV violation (Enforcement Policy Section 6.8.d).

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 will be achieved, is already adequately addressed on the docket in Inspection Report No. 03036906/2022001(DRSS), the licensee's letter received on January 11, 2023, and the licensee's email dated February 21, 2023. 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-22-110," and send it to the US 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 60532-4352 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 or proprietary 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 14 day of March 2023.