



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

June 6, 2024

EA-23-119
NMED No. 220442 (closed)

Thomas Newhof
President
Prein & Newhof
3355 Evergreen Drive NE
Grand Rapids, MI 49525

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$9000, NRC ROUTINE INSPECTION REPORT 03028571/2023001(DRSS) – PREIN
& NEWHOF

Dear Thomas Newhof:

This letter refers to the U.S. Nuclear Regulatory Commission (NRC) inspection conducted on April 13, 2023, and September 18 through 21, 2023, at your facilities in Kalamazoo, Cadillac, Muskegon and Grand Rapids, Michigan, as well as at temporary job sites in Kalamazoo and Muskegon with continued in-office review through February 21, 2024. The purpose of the inspection was to review activities performed under your NRC license to ensure that they were being performed in accordance with NRC requirements, and to review an incident involving damage to a device containing licensed material that you reported on October 11, 2022. During the inspection, two apparent violations of NRC requirements were identified. During a telephone exit meeting on February 21, 2024, the licensee's representative, Brent Van Dyke, Radiation Safety Officer, was informed of the apparent violations. The circumstances surrounding the apparent violations, the significance of the issue, and the need for lasting and effective corrective actions were also discussed at that exit meeting. Inspection Report No. 03028571/2023001 (DRSS) was issued on March 22, 2024, and can be found in the NRC's Agencywide Documents Access and Management System (ADAMS) at accession number ML24068A087. ADAMS is accessible from the NRC web site at <http://www.nrc.gov/reading-rm/adams.html>.

In our March 22, 2024, letter transmitting the inspection report, we informed Brent Van Dyke that the apparent violations were being considered for escalated enforcement action, including a civil penalty. In the letter, we provided Brent Van Dyke the opportunity to address the apparent violations identified in the report by attending a predecisional enforcement conference, engaging the NRC in Alternative Dispute Resolution (ADR) mediation, or by providing a written response before we made our final enforcement decision. In letters dated March 25, 2024 (ML24087A149), March 27, 2024 (ML24088A188), and April 5, 2024 (ML24101A239), you, Christopher Cruickshank and Brent Van Dyke provided responses to the apparent violations.

Based on the information developed during the inspection and information provided in written responses dated March 25, 2004, March 27, 2024, and April 5, 2024, the NRC has determined that two violations of NRC requirements occurred and is proceeding with enforcement action. These violations are cited in the enclosed Notice of Violation and Proposed Imposition of Civil

Penalty (Notice) and the circumstances surrounding them are described in detail in the subject inspection report. The first violation (Violation I.A) involved four examples of the failure to use a minimum of two independent physical controls that form tangible barriers to secure portable moisture density gauges from unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee, as required by Title 10 of the *Code of Federal Regulations* (10 CFR) Part 30.34(i). Specifically, on four separate occasions a gauge was only secured with one barrier. The root cause of the violation was determined to be a lack of adequate management oversight to ensure that personnel were knowledgeable about gauge security requirements and consistently implementing them.

The failure, on four occasions, to secure portable moisture density gauges with two barriers is a significant safety and security concern because improperly secured gauges could be more easily lost or stolen which could lead to improper handling or use of material and exposures to members of the public. Therefore, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level (SL) III. The current Enforcement Policy is included on the NRC's web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$9000 is considered for a SL III violation.

Because your facility has been the subject of escalated enforcement actions within the last two inspections,¹ the NRC considered whether credit was warranted for Identification and Corrective Action in accordance with the civil penalty assessment process in Section 2.3.4 of the Enforcement Policy. Credit for identification is not warranted as the four examples of improperly secured gauges were identified by the NRC during inspection activities. Credit for corrective actions is warranted based on the following: (1) taking immediate actions to properly secure each of the four gauges; (2) no longer relying on locked truck toppers to provide a second barrier; (3) providing adequate chains and locks to secure the gauge box to vehicles and office storage locations; (4) emailing authorized gauge users reminding them of proper security procedures including photographs of how gauges are to be secured in their vehicle; (5) discussing gauge security at length during the annual Radiation Safety and Gauge Review seminar required to be attended by all gauge users; and (6) conducting unannounced radiation safety officer visits to gauge users in the field and at offices.

In addition, your corporate management committed to the following: (1) participating in annual radiation training/refresher classes; (2) continuing review of radiation program audit results; (3) reaching out to gauge users to remind them of NRC regulations and expectations for compliance and consequences for noncompliance; (4) periodically including nuclear gauge safety in internal weekly newsletter; and (5) continuing to include the RSO in discussions involving the storage of gauges at current and proposed facilities.

Therefore, to emphasize the importance of properly securing portable moisture density gauges, and in recognition of your previous escalated enforcement actions, I have been authorized, after consultation with the Director, Office of Enforcement to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the base amount \$9000 for the SL III violation.

¹ A Severity Level III violation was issued on March 16, 2018, (EA-17-201) for the failure to secure portable moisture density gauges with two barriers.

In addition, issuance of this Notice 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/.

You may choose to pay the proposed civil penalty by submitting your payment, with the invoice enclosed to this letter, to the following address:

Office of the Chief Financial Officer
U.S. Nuclear Regulatory Commission
P.O. Box 979051
St. Louis, MO 63197

In addition, you may pay the proposed civil penalty in accordance with NUREG/BR-0254. NUREG/BR-0254 can be found on the NRC web site at <https://www.nrc.gov/reading-rm/doc-collections/nuregs/brochures/br0254/index.html>. When using NUREG/BR-0254 to pay the civil penalty, the invoice number should be used as the “enforcement action identifier” when submitting your payment through one of the approved methods listed in the brochure. The NRC may consider a request for additional time to pay the proposed civil penalty, including the option to enter into an installment agreement, if payment of the civil penalty as a lump sum in the required timeframe would pose a financial hardship. To request additional time to pay, you must submit a written request, with appropriate justification explaining your financial hardship, to NRCCollections.Resource@nrc.gov. All requests should be submitted in sufficient time to allow the NRC the ability to review your request for additional time to pay before the 30-day payment period expires.

The NRC has also determined that a non-escalated Severity Level IV violation of NRC requirements occurred (Violation II.B). This violation involved the failure to report a safety equipment failure within 24 hours of its discovery, as required by 10 CFR 30.50(b)(2). 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.

If you disagree with this enforcement sanction, you may deny the violation, as described in the Notice, or you may request alternative dispute resolution (ADR) with the NRC in an attempt to resolve this issue. ADR is a general term encompassing various techniques for resolving conflicts using a neutral third party. The technique that the NRC has decided to employ is mediation. Mediation is a voluntary, informal process in which a trained neutral (the “mediator”) works with parties to help them reach resolution. If the parties agree to use ADR, they select a mutually agreeable neutral mediator who has no stake in the outcome and no power to make decisions. Mediation gives parties an opportunity to discuss issues, clear up misunderstandings, be creative, find areas of agreement, and reach a final resolution of the issues. Additional information concerning the NRC's ADR program can be found at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>.

The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program as a neutral third party. **If you are interested in pursuing this issue through the ADR program, please contact: (1) the ICR at 877-733-9415; and (2) Diana Bentancourt-Roldan at 630-810-4373 within 10 days of the date of this letter.** You may also contact both ICR and Diana Betancourt-Roldan for additional information. Your submitted signed agreement to mediate using the NRC ADR program will stay the 30-day time period for payment of the civil

penalty and the required written response, if any, as identified in the enclosed Notice, until the ADR process is completed.

The NRC has concluded that information regarding: (1) the reason for the violations, or if contested, the basis for disputing the violations; (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 achieved is already adequately addressed on the docket in Inspection Report No. 03028571/2023001 (DRSS) and your letters dated March 25, 2004, March 27, 2024, and April 5, 2024. 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 in the enclosed Notice.

In accordance with 10 CFR 2.390 of the NRC's "Agency Rules of Practice and Procedure," a copy of this letter, its enclosures, and your response, if you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room and from 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 you have any questions concerning this matter, please contact Diana Betancourt-Roldan of my staff at (630) 810-4373.

Sincerely,



Signed by Giessner, Jack
on 06/06/24

John B. Giessner
Regional Administrator

Docket No. 030-28571
License No. 21-18663-02

Enclosures: Notice of Violation and Proposed
Imposition of Civil Penalty
Civil Penalty Invoice

cc w/enclosure: Brent Van Dyke,
Radiation Safety Officer
State of Michigan

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Prein & Newhof
Grand Rapids, Michigan

Docket No. 030-28571
License No. 21-18663-02
EA-23-119

During a U.S. Nuclear Regulatory Commission (NRC) inspection conducted on April 13, 2023, and September 18 through 21, 2023, two violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the NRC proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and Title 10 of the *Code of Federal Regulations* (10 CFR) 2.205. The particular violations and associated civil penalty are set forth below:

I. Violation Assessed a Civil Penalty

- A. Title 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 April 13, September 18, September 20, and September 21, 2023, the licensee failed to use a minimum of two independent physical controls that formed tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee. Specifically, at its facilities in Kalamazoo and Grand Rapids, Michigan, and during transport in Cadillac, Michigan, the licensee used only one tangible barrier to secure portable gauges containing cesium-137 and americium-241.

This is a Severity Level III violation (NRC Enforcement Policy Section 6.3.c.3).
Civil Penalty - \$9000 (EA-23-119)

II. Violation Not Assessed a Civil Penalty

- B. Title 10 CFR 30.50(b)(2) requires that each licensee notify the NRC within 24 hours after the discovery of an event in which equipment is disabled or fails to function as designed when: (i) the equipment is required by regulation or license condition to prevent releases exceeding regulatory limits, to prevent exposures to radiation and radioactive materials exceeding regulatory limits, or to mitigate the consequences of an accident; (ii) the equipment is required to be available and operable when it is disabled or fails to function; and (iii) no redundant equipment is available and operable to perform the required safety function.

Contrary to the above, on October 6, 2022, the licensee failed to notify the NRC within 24 hours after the discovery of an event in which equipment was disabled or failed to function as designed. Specifically, the source rod on one of the licensee's portable gauges was damaged at a temporary job site on October 5, 2022, and failed to function as designed to retract the Cs-137 source into a shielded position and the criteria in 10 CFR 30.50(b)(2)(i) through (iii) were met. However, the licensee did not notify the NRC until October 11, 2022, six days after the discovery of this failure.

Enclosure

This is a Severity Level IV violation (NRC Enforcement Policy Section 6.9.d.1).

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. 03028571/2023001 (DRSS), and licensee letters dated March 25, 2024, March 27, 2024, and April 5, 2024. However, if the description therein does not accurately reflect your position or your corrective actions, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 within 30 days of the date of the letter transmitting this Notice of Violation (Notice). In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation, EA-23-119," and send it to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region III, 2443 Warrenville Road, Suite 210, Lisle, IL 60532-4352 and the Document Control Desk, Washington, DC 20555-0001

The licensee may pay the civil penalty proposed above through one of the following two methods:

1. Submit the payment with the enclosed invoice for Civil Penalty EA-23-119 issued to Prein & Newhof to the following address:

Office of the Chief Financial Officer
U.S. Nuclear Regulatory Commission
P.O. Box 979051
St. Louis, MO 63197

OR

2. Submit the payment in accordance with NUREG/BR-0254.

The licensee may protest the imposition of the civil penalty in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice. Should the Licensee fail to answer within 30 days of the date of this Notice, the NRC will issue an order imposing the civil penalty. Should the licensee elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation" and may: (1) deny the violations listed in this Notice, in whole or in part; (2) demonstrate extenuating circumstances; (3) show error in this Notice; or (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty in whole or in part, such answer may request remission or mitigation of the penalty.

In requesting mitigation of the proposed penalty, the response should address the factors addressed in Section 2.3.4 of the Enforcement Policy. Any written answer addressing these factors pursuant to 10 CFR 2.205 should be set forth separately from the statement or explanation provided pursuant to 10 CFR 2.201 but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the licensee is directed to the other provisions of 10 CFR 2.205 regarding the procedure for imposing a civil penalty.

Upon failure to pay any civil penalty which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205 to be due, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The responses noted above, i.e., Reply to Notice of Violation, Statement as to payment of civil penalty, and Answer to a Notice of Violation, should be addressed to: Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region III, 2443 Warrenville Road, Suite 210, Lisle, IL 60532-4352 and the Document Control Center, 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 NRC's Agencywide Documents Access and Management System (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, then 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 that such material is withheld from public disclosure, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim (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).

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

Dated this 6th day of June 2024.



Prein & Newhof
3355 EVERGREEN DRIVE, N.E.
GRAND RAPIDS, MI 49525



06/06/2024

Address/Customer Information

Prein & Newhof
3355 EVERGREEN DRIVE, N.E.
GRAND RAPIDS, MI 49525

Customer Codes

Account Code: L00001338/1

Bill Information

Bill Number: EA-23-119
Amount Due: \$9,000.00
Due Date: 07/06/2024

Contact Us

Phone Number: 301-415-7554
Fax Number: 301-415-4135
Email Address: Fees.Resource@nrc.gov

Remit to Address

Office of the Chief Financial Officer
U.S. Nuclear Regulatory Commission
P.O. Box 979051
St. Louis, MO 63197

Bill Summary

Initial Charges	\$9,000.00
Discount	0.00
Surcharge	0.00
Interest Charges	0.00
Penalty Charges	0.00
Admin Charges	0.00
Bill Amount	\$9,000.00
Collected	0.00
Applied Credit	0.00
Adjustments	0.00
Amount Due	\$9,000.00

Credit Summary

Applied Credit	\$0.00
Unapplied Credit	0.00
Credit Total	\$0.00

Comments:

For questions, contact (301) 415-7554 or by email at Fees.Resource@nrc.gov. For NRC debt collection procedures, including interest and penalty provisions, see 31 U.S.C. 3717, 4 CFR 101-105, AND 10 CFR 15.

For questions, contact the NRC Financial Services and Operations Branch at (301) 415-7554 or by email at Fees.Resource@nrc.gov. For NRC debt collection procedures, including interest and penalty provisions, see 31 U.S.C. 3717, 4 CFR 101-105 and 10 CFR 15.

If this invoice is related to an Order Imposing a Civil Penalty, Prein & Newhof is required to pay the Civil Penalty within 30 days of the Order date. If payment is in response to a Notice of Violation and Proposed Imposition of a Civil Penalty, please follow the instructions in the Notice. The NRC may consider a request for additional time to pay the Civil Penalty, including the option to enter into an installment agreement, if appropriate. All requests for additional time to pay an invoice must be submitted in writing, with appropriate justification, to NRCCollections.Resource@nrc.gov, and should be submitted sufficiently ahead of time to allow the NRC time to review the request for additional time to pay within the 30-day payment period. This Invoice is related to the Civil Penalty proposed or imposed under EA-23-119 issued to Prein & Newhof. Please include this reference number on your payment method (see attached Payments Methods Brochure).

Please see the Payment Methods brochure for instructions on how to make payment. EFFECTIVE OCTOBER 1, 2024, THE NRC WILL ONLY ACCEPT ELECTRONIC PAYMENT METHODS. PAPER METHODS OF PAYMENT, INCLUDING CHECKS, WILL NO LONGER BE ACCEPTED. Please refer to the terms and conditions brochure for information on interest, penalties, and administrative fees associated with delinquent payments. Please reference the invoice number on the remittance.

Customer Information

L00001338/1
Prein & Newhof
3355 EVERGREEN DRIVE, N.E.
GRAND RAPIDS, MI 49525

Change of Address:

Phone: _____

Remittance Information

Office of the Chief Financial Officer
U.S. Nuclear Regulatory Commission
P.O. Box 979051
St. Louis, MO 63197

This Payment References the following Bill:

EA-23-119

Outstanding Amount Due: \$9,000.00

Amount Enclosed: _____