



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

June 3, 2024

EA-24-021

Len Simkins
Radiation Safety Officer
Infrared Roofing Technologies, LLC
2149 Potter Road East
Traverse City, MI 49696

SUBJECT: INFRARED ROOFING TECHNOLOGIES, LLC - NOTICE OF VIOLATION;
NRC ROUTINE INSPECTION REPORT NO. 03039031/2023001 (DRSS)

Dear Len Simkins:

This letter refers to the inspection conducted on November 29, 2023, at your Traverse City, Michigan, facility with continued in-office review through March 15, 2024. The purpose of this inspection was to examine activities conducted under your license as they relate to public health and safety and to confirm compliance with U.S. Nuclear Regulatory Commission (NRC) rules and regulations and with the conditions of your license. During the inspection, three apparent violations of NRC requirements were identified. The circumstances surrounding the apparent violations, the significance of the issue, and the need for lasting and effective corrective actions were discussed with you during a telephone exit meeting on March 15, 2024. Inspection Report No. 03039031/2023001 (DRSS) was issued on April 4, 2024, and can be found in the NRC's Agencywide Documents Access and Management System (ADAMS) at accession number ML24086A382. ADAMS is accessible from the NRC web site at <https://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 dated April 15, 2024 (ML24122A739), you provided a response to the apparent violations.

Based on the information developed during the inspection and the information that you provided in your response to the inspection reported dated April 15, 2024, the NRC determined that three 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. The first violation (Violation A) involves the failure to use a minimum of two independent physical controls that formed tangible barriers to secure a portable gauge and was not under your control and constant surveillance as required by Title 10 of the *Code of Federal Regulations* (10 CFR) Part 30.34(i). The root cause of the violation appears to be the failure to realize that the plastic bin containing the portable gauge could be picked up and moved easily, leading to you believing that the bin was secure. Additionally, you did not identify that the bin would not be counted as a barrier for unauthorized removal.

The failure to properly secure the gauge from unauthorized removal when it was not under your control and constant surveillance is of significant concern to the NRC because of the potential for unauthorized individuals to gain control of the radioactive material and misuse it. Normally, the failure to secure a gauge, when only one level of physical control existed, there was no loss of material, and the failure was not repetitive, is categorized, in accordance with the NRC Enforcement Policy, at a Severity Level IV. However, this violation is considered repetitive in that we identified an example during this inspection and previously issued you a Severity Level IV violation of 10 CFR 34(i) in a letter dated January 19, 2018. 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 \$9000 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. Specifically, your immediate corrective actions included chaining the plastic bin to a permanent shelving post and locking the bin in place with a padlock inside of a building that is continuously locked. This corrective action has resulted in the portable gauge having a minimum of two independent physical controls that form tangible barriers that secure it from unauthorized removal when the portable gauge is not under control and constant surveillance of you, the Radiation Safety Officer (RSO). Based on the corrective action 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 Severity Level III violation constitutes escalated enforcement action that may subject you to increased inspection effort. The NRC 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 two Severity Level IV violations of NRC requirements occurred (Violations B and C). Violation B involved the failure to properly post the area in which radioactive material was stored with a conspicuous sign bearing the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIALS" as required by 10 CFR 20.1902(e). Violation C involved the failure to store shipping papers required for transporting hazardous material within the driver's immediate reach when the driver was at the vehicle's controls as required by 10 CFR 71.5(a) and 49 CFR 177.817(e). These violations were also evaluated in accordance with the NRC Enforcement Policy. The violations are cited in the enclosed Notice and the circumstances surrounding them are described in detail in the subject inspection report. The violations are cited in the Notice because they were 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 in Inspection Report No. 03039031/2023001 (DRSS) and your letter dated April 15, 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 specified 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 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 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 06/03/24

John B. Giessner
Regional Administrator

Docket No. 030-39031
License No. 21-32845-01

Enclosure: Notice of Violation

cc w/encl: State of Michigan

Letter to L. Simkins from J. Giessner dated June 3, 2024.

SUBJECT: INFRARED ROOFING TECHNOLOGIES, LLC - NOTICE OF VIOLATION;
NRC ROUTINE INSPECTION REPORT NO. 03039031/2023001 (DRSS)

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NOTICE OF VIOLATION

Infrared Roofing Technologies, LLC
Traverse City, Michigan

Docket No. 030-39031
License No. 21-32845-01
EA-24-021

During a U.S. Nuclear Regulatory Commission (NRC) inspection conducted on November 29, 2023, through March 15, 2024, 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) 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, from January 2021 through November 2023, the licensee failed to use a minimum of two independent physical controls that formed tangible barriers to secure a portable gauge from unauthorized removal, when the portable gauge was not under the control and constant surveillance of the licensee. Specifically, when the portable gauge was in storage and not being used, the licensee stored it in a plastic bin that did not have a second barrier to prevent the whole bin from being removed from its locked and alarmed storage location.

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

- B. Title 10 CFR 20.1902(e) requires, in part, that the licensee post each room in which there is used or stored licensed material exceeding 10 times the quantity of such material specified in appendix C to part 20 with a conspicuous sign bearing the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIALS."

Contrary to the above, from January 2021 through November 2023, the licensee failed to post the room where its portable gauge, containing licensed material exceeding 10 times the quantity of material specified in appendix C to part 20, was stored with a conspicuous sign bearing the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIALS."

This is a Severity Level IV violation (Enforcement Policy Section 6.3).

- C. Title 10 CFR 71.5(a) requires, in part, that each licensee who transports licensed material on public highways shall comply with the applicable requirements of the DOT regulations in 49 CFR part 171-180, appropriate to the mode of transport.

49 CFR 177.817(e) requires, in part, that a driver of a motor vehicle containing hazardous material shall ensure that the shipping paper required by 49 CFR 177.817(a) is readily available to, and recognizable by, authorities in the event of accident or inspection. Specifically, when the driver is at the vehicle's controls, the shipping paper shall be within the driver's immediate reach while the driver is restrained by the lap belt.

Contrary to the above, from January 2018 through November 29, 2023, on various occasions, the licensee transported licensed materials on public highways and failed to ensure that the shipping paper was readily available to, and recognizable by, authorities

Enclosure

in the event of accident or inspection. Specifically, the licensee failed to have the bill of lading and emergency response information within arm's reach of the driver when transporting the portable gauge.

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

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. 03039031/2023001 (DRSS) and the licensee's letter dated April 15, 2024. 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-24-021)," 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 60532-4352 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 3rd day of June 2024.