



**UNITED STATES  
NUCLEAR REGULATORY COMMISSION**

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

March 17, 2014

EA-14-001

Mr. Alan Griffiths  
Public Works Director  
City of Kirksville  
2001 N. Osteopathy  
Kirksville, MO 63501

SUBJECT: NOTICE OF VIOLATION – CITY OF KIRKSVILLE; NRC SPECIAL INSPECTION  
REPORT NO. 03017623/2013002(DNMS)

Dear Mr. Griffiths:

This refers to the in-office review conducted by the NRC from December 17, 2013, through January 10, 2014, regarding the City of Kirksville's transfer of a moisture density gauge to a non-NRC licensee. During the inspection, an apparent violation of NRC requirements was identified. The significance of the issue and the need for lasting and effective corrective actions were discussed with Mr. Craig Dawson of your staff during a final telephonic exit meeting that was held on January 21, 2014. Details regarding the apparent violation were provided in NRC Inspection Report No. 03017623/2013002(DNMS) dated February 7, 2014.

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 February 21, 2014, 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 report dated February 7, 2014, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding it are described in detail in the subject inspection report. Specifically, the NRC identified a violation involving your transfer of your moisture density gauge to a company who did not possess a license to have byproduct material, contrary to the requirements in Title 10 of the Code of Federal Regulations (10 CFR) 30.41(a) and (b)(5). The root cause of the violation was a misunderstanding on your part that it was acceptable for the new owner to pursue obtaining a license after purchasing the gauge rather than prior to obtaining the gauge. This is of significant concern to the NRC because of the chance for the gauge to be lost, stolen, or improperly handled and controlled which could result in adverse impacts to the health and safety of the general 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 \$3,500 is considered for a Severity Level III violation.

Because your facility has not been the subject of escalated enforcement actions within the last two years or 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. In this case, the new owner promptly called the NRC, and the gauge was returned to your possession until a sale to a properly licensed company could be transacted. You sent the NRC a letter providing notification of the sale, and also kept the NRC informed of the ultimate transfer of the gauge. Additionally, you submitted paperwork to terminate your NRC license. In addition, you committed to keeping the paperwork on this issue for seven years, so that in the event that you obtain another gauge, although that is not currently planned, you will have records on how to deal with the ultimate disposal. On the basis of your corrective actions, the NRC determined that *Corrective Action* credit was 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, should you obtain an NRC license in the future, significant violations 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, if you again become an NRC licensee.

The NRC has concluded that information regarding: (1) the reason for the violation; (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 the inspection report and in your letter dated February 21, 2014. 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 you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room and in the NRC's Agencywide Documents Access and Management System (ADAMS), accessible from the

A. Griffiths

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NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. The NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>.

Sincerely,

**/RA/**

Cynthia D. Pederson  
Regional Administrator

Docket No. 030-17623  
License No. 24-18995-01

Enclosure:  
Notice of Violation

cc w/encl: State of Missouri  
Todd Barnes, RSO

## NOTICE OF VIOLATION

City of Kirksville  
Kirksville, Missouri

Docket No. 030-17623  
License No. 24-18995-01  
EA-14-001

During an NRC in-office review conducted from December 17, 2013 through January 10, 2014, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 30.41(a) and (b)(5) require, in part, that no licensee transfer byproduct material except to a person authorized to receive such byproduct material under the terms of a specific or general license issued by the Commission or an Agreement State.

Contrary to the above, on or about December 2, 2013, the City of Kirksville, Missouri, transferred byproduct material to a person not authorized to receive such byproduct material under the terms of a specific or general license issued by the Commission or an Agreement State. Specifically, the licensee transferred a specifically-licensed portable moisture/density gauge containing Cesium-137 and Americium-241 to BRS Construction, a company who was not authorized to receive such byproduct material under the terms of a specific or general license issued by the Commission or an Agreement State.

This is a Severity Level III violation (Section 6.3).

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed on the docket in Inspection Report No. No. 03017623/2013002(DNMS) dated February 7, 2014, and your letter dated February 21, 2014. 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-14-001," 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 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, your 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 17<sup>th</sup> day of March, 2014

NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. The NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>.

Sincerely,

/RA/

Cynthia D. Pederson  
Regional Administrator

Docket No. 030-17623  
License No. 24-18995-01

Enclosure:  
Notice of Violation

cc w/encl: State of Missouri  
Todd Barnes, RSO

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**SEE PREVIOUS CONCURRENCE**

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OFFICE	RIII	RIII	RIII	D:OE	RIII	RIII
NAME	Loughheed	McCraw	Louden	Zimmerman <sup>1</sup> Norman	Orth	Pederson
DATE	03/07/14	03/07/14	03/07/14	03/13/14	03/17/14	03/17/14

**OFFICIAL RECORD COPY**

<sup>1</sup> OE concurrence provided via email from K. Norman on March 13, 2014