



**UNITED STATES  
NUCLEAR REGULATORY COMMISSION**  
REGION III  
2443 WARRENVILLE RD. SUITE 210  
LISLE, IL 60532-4352

May 17, 2016

EA-16-100

Mr. Mohammed Al-Shatel  
City Engineer  
City of Muskegon City Hall – Engineering Dept.  
P.O. Box 536  
Muskegon, MI 49443-0536

**SUBJECT: NRC ROUTINE INSPECTION REPORT NO. 03010761/2016001(DNMS) – CITY  
OF MUSKEGON CITY HALL – ENGINEERING DEPARTMENT**

Dear Mr. Al-Shatel:

On April 4, 2016, an inspector from the U.S. Nuclear Regulatory Commission (NRC) conducted a routine inspection at your facility in Muskegon, Michigan, with continued in-office review through April 27, 2016. 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 a review of the circumstances of the findings observed during the on-site inspection. Mr. Edward Harvey of my staff conducted a final exit meeting by telephone with Mr. Edward Aho of your staff on April 27, 2016 to discuss the inspection findings. 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, one apparent violation of NRC requirements was identified and is being considered for escalated enforcement action in accordance with the NRC Enforcement Policy. The current Enforcement Policy is included on the NRC's website at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>. The apparent violation concerned the licensee's apparent failure for the individual specifically authorized by Condition 12 of your NRC Materials License to fulfill the duties and responsibilities as Radiation Safety Officer (RSO). Specifically, the individual listed as RSO on the license left the employ of your organization on April 18, 2014, and therefore, was no longer available to fulfill the duties and responsibilities as RSO.

Because the NRC has not made a final determination in this matter, the NRC is not issuing a Notice of Violation for this inspection finding at this time. The circumstances surrounding this

apparent violation, the significance of the issue, and the need for lasting and effective corrective action were discussed with Mr. Aho at the inspection exit meeting on April 27, 2016.

Before the NRC makes its enforcement decision, we are providing you an opportunity to either: (1) respond in writing to the apparent violation addressed in this inspection report within 30 days of the date of this letter; or (2) request a Predecisional Enforcement Conference (PEC).

**Please contact Aaron T. McCraw at 630-829-9650 within ten days of the date of this letter to notify the NRC of your intended response.**

If you choose to provide a written response, it should be clearly marked as "Response to the Apparent Violation in Inspection Report No. 03010761/2016001(DNMS); EA-16-100," and should include, for the 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. In presenting your corrective actions, you should be aware that the promptness and comprehensiveness of your actions will be considered in assessing any civil penalty for the apparent violation. 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's 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. 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 PEC.

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

Because 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 the corrective actions previously described to the staff have been or are being taken.

Please be advised that the number and characterization of the apparent violation 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.

Additionally, the NRC determined that a Severity Level (SL) IV violation of Title 10 of the *Code of Federal Regulations* (CFR) Section 71.5(a) occurred, concerning the licensee's failure

to complete HAZMAT refresher training at a period not to exceed three years. Because the violation was (1) self-identified by the licensee; (2) adequately corrected; (3) not repetitive as a result of inadequate corrective action; and (4) not willful, the NRC is dispositioning this violation as a Non-Cited Violation (NCV) in accordance with Section 2.3.2 of the NRC Enforcement Policy.

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'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, your 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. Harvey of my staff if you have any questions regarding this inspection. Mr. Harvey can be reached at 630-829-9819.

Sincerely,

*/RA/*

John B. Giessner, Director  
Division of Nuclear Materials Safety

Docket No. 030-10761  
License No. 21-16304-01

Enclosure:  
IR No. 03010761/2016001(DNMS)

cc w/encl: Mr. Edward Aho,  
Radiation Safety Officer  
State of Michigan

to complete HAZMAT refresher training at a period not to exceed three years. Because the violation was (1) self-identified by the licensee; (2) adequately corrected; (3) not repetitive as a result of inadequate corrective action; and (4) not willful, the NRC is dispositioning this violation as a Non-Cited Violation (NCV) in accordance with Section 2.3.2 of the NRC Enforcement Policy.

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/RA/

John B. Giessner, Director  
Division of Nuclear Materials Safety

Docket No. 030-10761  
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Enclosure:  
IR No. 03010761/2016001(DNMS)

cc w/encl: Mr. Edward Aho,  
Radiation Safety Officer  
State of Michigan

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See next page

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**OFFICIAL RECORD COPY**

Letter to Mohammed Al-Shatel from John Giessner dated May 17, 2016.

SUBJECT: NRC ROUTINE INSPECTION REPORT NO. 03010761/2016001(DNMS) – CITY  
OF MUSKEGON CITY HALL – ENGINEERING DEPARTMENT

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**U.S. Nuclear Regulatory Commission**

**Region III**

Docket No.	030-10761
License No.	21-16304-01
Report No.	03010761/2016001(DNMS)
EA No.	EA-16-100
Licensee:	City of Muskegon City Hall – Engineering Department
Facility:	933 Terrace Street Muskegon, Michigan
Inspection Date:	April 4, 2016, with continued in-office review through April 27, 2016
Exit Meeting Date:	April 27, 2016
Inspector:	Edward Harvey, Health Physicist
Approved By:	Aaron T. McCraw, Chief Materials Inspection Branch Division of Nuclear Materials Safety

Enclosure

## **EXECUTIVE SUMMARY**

### **City of Muskegon City Hall – Engineering Department NRC Inspection Report No. 03010761/2016001(DNMS)**

This was a routine, announced inspection of a municipal engineering department authorized under NRC Materials License No. 21-16304-01 to use licensed material for measuring physical properties of materials with nuclear gauging devices. The City of Muskegon City Hall - Engineering Department uses one gauge, as needed, for construction engineering projects throughout the city. The inspector announced this inspection to ensure the appropriate licensee personnel were available to discuss the facts and circumstances surrounding a license amendment request that was received by the NRC on March 22, 2016, requesting a change in Radiation Safety Officer (RSO).

Based on the results of the inspection, the inspector determined that from April 18, 2014, through April 19, 2016, the licensee failed to have the individual named on the license employed as RSO. The inspector identified this finding as an apparent violation of License Condition No. 12 of NRC License No. 21-16304-01. The root cause of the apparent violation was that licensee management was unaware of the requirement to amend their NRC license to reflect a change in RSO.

As short-term corrective actions, the licensee appointed a qualified person as RSO and submitted a corresponding license amendment request on March 22, 2016. For longer term corrective actions to prevent recurrence of a similar violation, the licensee committed to train another authorized gauge user on the duties and responsibilities of RSO to maintain the ability to more easily appoint a new RSO quickly, if needed. In addition, the licensee committed to cease all gauge operations in the event that the current RSO is no longer employed by the licensee, until a new RSO is appointed, the NRC is notified, and the license is amended.

In addition, the inspector determined a Severity Level (SL) IV violation of Title 10 of the *Code of Federal Regulations* (CFR) Section 71.5(a) occurred for failure to complete HAZMAT refresher training at a period not to exceed three years. Because the violation was (1) self-identified by the licensee; (2) adequately corrected; (3) not repetitive as a result of inadequate corrective action; and (4) not willful, the NRC is dispositioning this violation as a Non-Cited Violation (NCV) in accordance with Section 2.3.2 of the NRC Enforcement Policy.

## **REPORT DETAILS**

### **1 Program Overview and Inspection History**

City of Muskegon City Hall – Engineering Department is a municipal engineering department authorized under NRC Materials License No. 21-16304-01 to use licensed material for measuring physical properties of materials with nuclear gauging devices. The licensee uses one gauge, as needed, for construction engineering projects throughout the City of Muskegon. The licensee uses a Troxler Model Series 3400 portable gauge, containing cesium-137 and americium-241.

The NRC last inspected the licensee on February 1, 2012. The NRC did not identify any violations as a result of the inspection. The previous inspection was conducted on March 27, 2007, with no violations identified.

### **2 Radiation Safety Program**

#### **2.1 Inspection Scope**

During this inspection, the inspector reviewed the elements of the licensee's radiation safety program including the following: oversight, security, physical inventories, leak tests, dosimetry records, training records, and shipping papers.

#### **2.2 Observations and Findings**

On April 4, 2016, the inspector conducted an announced, onsite inspection to review the facts and circumstances surrounding a license amendment request that was received by the NRC on March 22, 2016, requesting a change in Radiation Safety Officer (RSO). The inspector conducted a routine inspection of the licensee's radioactive materials program in conjunction with the review of the facts and circumstances surrounding the departure of the previous RSO.

Based on information gathered during the inspection, the inspector determined that from April 18, 2014, through April 19, 2016, the licensee apparently failed to have the individual named on the license employed as RSO; therefore, the named individual could not perform the duties and functions of RSO. This is an apparent violation of License Condition No. 12 of NRC License No. 21-16304-01, which requires a specifically listed individual to perform the duties and responsibilities of RSO. The root cause of the apparent violation was that licensee management was unaware of the requirement to amend their NRC license to reflect a change in RSO.

As short-term corrective actions, the licensee appointed a qualified person as RSO and submitted a corresponding license amendment request on March 22, 2016. For longer-term corrective actions to prevent recurrence of a similar violation, the licensee has committed to train another authorized gauge user on the duties and responsibilities of RSO to maintain the ability to more easily appoint a new RSO quickly, if needed. In addition, the licensee also committed to cease all gauge operations in the event that the current RSO is no longer employed by the licensee, until a new RSO is appointed, the NRC is notified, and the license is amended.



At the time of the inspection, the gauge was off-site for annual calibration and leak testing. The inspector determined that, in absence of a qualified RSO, the licensee had performed proper maintenance, leak testing, and inventory of the gauge through the review of applicable records. The licensee also maintained the appropriate shipping papers for the authorized gauge users during transport of the gauge. In addition, the inspector reviewed the licensee's dosimetry reports and found that doses to the authorized gauge users were well within the occupational limits.

The inspector discussed with licensee personnel the licensee's security measures for their portable gauge both in storage and in transit. The inspector determined that the licensee appropriately used two independent physical controls to form tangible barriers to prevent unauthorized removal of the gauges while not under control or surveillance of the licensee.

When asked for training documentation, the new RSO provided the records for the initial manufacturer training for all of the gauge users. He self-reported to the inspector that he had identified that HAZMAT refresher training was not completed at the required 3-year interval. Once he became aware of this, the RSO provided refresher training to all of the operators, which was completed by March 22, 2016. The inspector determined that the most recent HAZMAT training completed by a gauge operator, prior to the refresher on March 22, was completed during an initial manufacturer training in 2011. As a corrective action, the RSO put a reminder in the RSO's Outlook calendar to ensure timely completion of future HAZMAT refresher training. Failure to complete HAZMAT refresher training at a period not to exceed three years is a Severity Level IV violation of 10 CFR 71.5(a) per the NRC Enforcement Policy. However, because the violation was (1) self-identified by the licensee; (2) adequately corrected; (3) not repetitive as a result of inadequate corrective action; and (4) not willful, the NRC is dispositioning this violation as a Non-Cited Violation (NCV) in accordance with Section 2.3.2 of the Enforcement Policy.

### **2.3 Conclusions**

The inspector identified one apparent violation of License Condition No. 12 of NRC License No. 21-16304-01 for the licensee's apparent failure to have the individual named on the license perform the duties and responsibilities of RSO for the period of April 18, 2014, to April 19, 2016. The inspector determined that one NCV of 10 CFR 71.5(a) occurred for failure to perform recurrent HAZMAT training at a period not to exceed three years.

## **3 Exit Meeting Summary**

The NRC inspector presented preliminary inspection findings following the onsite inspection on April 4, 2016. The licensee did not identify any documents or processes reviewed by the inspectors as proprietary. The licensee acknowledged the findings presented. A final telephonic exit meeting between the NRC and the RSO was conducted on April 27, 2016.

### **LIST OF PERSONNEL CONTACTED**

- #\* Edward Aho, RSO
- # Mohammed Al-Shatel, City Engineer  
Steve Fisher, City Inspector
- # Attended exit meeting on April 4, 2016
- \* Attended telephonic exit meeting on April 27, 2016

### **INSPECTION PROCEDURES USED**

87124: Fixed and Portable Gauge Programs