



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
REGION IV
1600 E. LAMAR BLVD.
ARLINGTON, TX 76011-4511

January 25, 2017

EA-16-232

Mr. Cole Morehead
Owner/Radiation Safety Officer
XCEL NDT, LLC
P.O. Box 146
Clifton, KS 66937

SUBJECT: NOTICE OF VIOLATION AND NRC INSPECTION REPORT 150-00026/2016-001

Dear Mr. Morehead:

This letter refers to the unannounced inspection conducted on September 22, 2016, at a temporary job site in Cheyenne, Wyoming. The purpose of the inspection was to examine activities conducted under your U.S. Nuclear Regulatory Commission (NRC) general license, which was granted under Title 10 of the *Code of Federal Regulations* (10 CFR) 150.20, "Recognition of Agreement State licenses," to ensure that activities were being performed in accordance with NRC rules and requirements and in a manner that ensured protection of public health and safety.

Within these areas, the inspection consisted of an examination of selected procedures and representative records, observations of activities, and interviews with personnel. XCEL NDT, LLC, was granted a general license, as noted above, to conduct the same activities authorized under its State of Nebraska license in areas of exclusive Federal jurisdiction during Calendar Year 2016 for a period not to exceed 180 days.

In the NRC letter dated November 16, 2016, (Agencywide Documents Access and Management System (ADAMS) ML16299A226) 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, attending alternative dispute resolution, or by providing a written response before we made our final enforcement decision. In letters dated December 15, 2016, (ML17011A104) and December 22, 2016, (ML17006A016) you provided your response to the apparent violations.

Based on the information developed during the inspection and the information that you provided in response to the inspection report, the NRC has determined that two 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 violations involved the failures to: (1) train a radiographer's assistant in accordance with 10 CFR 34.43 requirements, and (2) have two qualified individuals present during industrial radiographic operations in accordance with 10 CFR 34.41 requirements.

The NRC considers the failure to train radiographer assistants and the failure to have two qualified individuals present during industrial radiographic operations to be significant safety violations. The NRC requires all personnel who use licensed radioactive material to be trained and competent commensurate with their duties, and because of the radiation hazards associated with industrial radiography, the NRC requires a second qualified individual to accompany a radiographer whenever radiography is performed at a location other than a permanent radiographic installation. The NRC considers failures to comply with these requirements to merit consideration for escalated enforcement action.

Although there were no actual consequences resulting from the failure to comply with the requirements in 10 CFR 34.41 and 10 CFR 34.43, there was a potential for significant radiation exposures. The NRC recognizes that the failure to train the radiographer's assistant directly caused the licensee to be in violation of the requirement to have two qualified individuals present during radiographic operations, and thus, the two violations have been categorized as a single Severity Level III problem. In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$14,000 is considered for a Severity Level III problem.

Because XCEL NDT, LLC, has not been the subject of escalated enforcement actions within the last 2 years, 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. Based on the commitments documented in the letter dated December 22, 2016, the NRC has concluded that *Corrective Action* credit is warranted. These commitments included training and testing requirements that would be implemented for employees who conduct radiography and the implementation of a tracking system for managers throughout the company to easily assess whether an individual is qualified for radiography.

Therefore, to encourage prompt identification 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 problem constitutes escalated enforcement action that may subject you to increased inspection effort.

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 the letter from you dated December 22, 2016. 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, should you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room and in 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). The NRC also includes significant enforcement actions on its Web site at (<http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>).

If you have any questions concerning this matter, please contact Mr. Ray Kellar of my staff at 817-200-1191.

Sincerely,

/RA/

Kriss M. Kennedy
Regional Administrator

Docket No. 150-00026
License No. 10 CFR 150.20

Enclosure: Notice of Violation

cc:
Scott Ramsay
Wyoming Homeland Security
Radiological Services Manager
5500 Bishop Blvd.
Cheyenne, WY 82009

Julia A. Schmitt, Manager
Office of Radiological Health
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Lincoln, NE 68509-5026

Kimberly S. Steves, Radiation Section Chief
Radiation Control Program
Kansas Dept. of Health and Environment
Bureau of Environmental Health
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NOTICE OF VIOLATION AND NRC INSPECTION REPORT 150-00026/2016-001 DATED
JANUARY 25, 2017

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DATE	01/05/17	01/05/17	01/06/17	01/11/17	01/13/17	01/06/17	1/25/17	

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NOTICE OF VIOLATION

XCEL NDT, LLC
Cheyenne, Wyoming

Docket No. 150-00026
License No. 10 CFR 150.20
EA-16-232

During an NRC inspection conducted on September 22, 2016, at a temporary jobsite in Cheyenne, Wyoming, two violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. 10 CFR 34.43(c) requires, in part, that a licensee may not permit any individual to act as a radiographer's assistant until the individual has developed competence to use, under the personal supervision of the radiographer, the radiographic exposure devices, sealed sources, associated equipment, and radiation survey instruments that the assistant will use; and has demonstrated understanding of the instructions provided under (c)(1) of this section by successfully completing a written test on the subjects covered and has demonstrated competence in the use of hardware described in (c)(2) of this section by successful completion of a practical examination on the use of such hardware.

Contrary to the above, on September 22, 2016, the licensee permitted an individual to act as a radiographer's assistant when this individual had not developed competence to use, under personal supervision of the radiographer, the radiographic exposure devices, sealed sources, associated equipment, and radiation survey instruments that the assistant will use; and had not demonstrated understanding of the instructions provided under (c)(1) of this section by successfully completing a written test on the subjects covered, and had not demonstrated competence in the use of hardware described in (c)(2) of this section by successful completion of a practical examination on the use of such hardware. Specifically, an individual was acting as a radiographer's assistant without having demonstrated competence to use radiography equipment, nor completed any written test or practical examination demonstrating their competence in the subjects listed above.

- B. 10 CFR 34.41(a) requires, in part, that whenever radiography is performed at a location other than a permanent radiographic installation, the radiographer must be accompanied by at least one other qualified individual who has at a minimum met the requirements of 10 CFR 34.43(c). Radiography may not be performed if only one qualified individual is present.

Contrary to the above, on September 22, 2016, the licensee performed radiography at a location other than a permanent radiographic installation with a radiographer that was not accompanied by at least one other qualified individual who has at a minimum met the requirements of 10 CFR 34.43(c). Specifically, the licensee permitted a radiographer to be accompanied by a single individual who did not meet the minimum requirements described in 10 CFR 34.43(c)(2) or (c)(3).

This is a Severity Level III problem (NRC Enforcement Policy Section 6.3.c.4 and 6.3.c.5).

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 letters dated

Enclosure

December 15, 2016, (ML17011A104) and December 22, 2016, (ML17006A016) from the licensee.

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-16-232," 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 IV, 1600 East Lamar Blvd., Arlington, Texas 76011-4511 within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

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 2 working days of receipt.

Dated this 25th day of January 2017