



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

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

December 18, 2017

EA-17-148

Mr. Mitch D. Forst
Radiation Safety Officer and President
Construction Consulting & Testing
700 S. River Road
Waterville, OH 43566

SUBJECT: NOTICE OF VIOLATION – CONSTRUCTION CONSULTING & TESTING;
NRC ROUTINE INSPECTION REPORT NO. 03035974/2017001(DNMS)

Dear Mr. Forst:

This letter refers to the U.S. Nuclear Regulatory Commission (NRC) inspection conducted on August 10, 2017, through August 11, 2017, at your facility in Sterling Heights, Michigan, with continued in-office review through September 7, 2017. 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. During the inspection, an apparent violation of NRC requirements was identified. The circumstances surrounding this apparent violation, the significance of the issue, and the need for lasting and effective corrective actions were discussed with you during a telephone exit meeting on September 7, 2017. Details regarding the apparent violation were provided in NRC Inspection Report No. 03035974/2017001(DNMS), dated October 4, 2017. The inspection report can be found in the NRC's Agencywide Documents Access and Management System (ADAMS) at Accession Number ML17277B051. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

In the letter transmitting the inspection report, we provided you with the opportunity to address the apparent violation identified in the report by: (1) providing a written response, or (2) requesting a pre-decisional enforcement conference. You provided a written response to the apparent violation in a letter dated November 9, 2017, which can be found in the NRC's ADAMS at Accession Number ML17321B074.

Based on the information developed during the inspection, as well as information you provided in your response dated November 9, 2017, 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. The violation involved the failure to secure from unauthorized removal or access licensed materials that are stored in controlled or unrestricted areas and to 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, as required by Title 10 of the *Code of Federal Regulations* (CFR) Section 20.1801 and 10 CFR 30.34(i). Specifically, from July 29, 2017, through August 10, 2017, the gauge was stored in an unlocked cage with no barriers at your facility and it was not under the control and constant surveillance of personnel several instances each day.

The root cause of the violation was lack of communication between the radiation safety officer and one of the Ohio office gauge users. Specifically, the gauge user was not familiar with the storage system in the Michigan office, and after transporting the gauge from Ohio to the Michigan office on July 29, 2017, placed the gauge (in its case) in the upper cage with the other transportation cases to be serviced. As there were gauge cases in the upper cage at all times, the staff did not notice that there was a gauge inside a case in the upper cage.

The failure to properly secure from unauthorized removal or access a portable moisture density gauge that was stored in controlled or unrestricted areas is of significant concern to the NRC because of the potential for unauthorized individuals to gain control of the radioactive material and misuse it. Therefore, this violation has been categorized, in accordance with the NRC Enforcement Policy, at Severity Level III. In accordance with the Enforcement Policy, a base civil penalty in the amount of \$7,000 is considered for a Severity Level III violation.

Because your facility has not been the subject of escalated enforcement action within the last two inspections, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment in Section 2.3.4 of the Enforcement Policy. Specifically, the immediate corrective actions included securing the gauge with two barriers. Additional corrective actions included: (1) emphasizing the requirements of the two-barrier system with all the employees; (2) adding two independent locking barriers to the upper cage at the Michigan facility (same as lower cage); (3) posting additional placards at gauge storage areas that address the minimum of two barriers for storage; and (4) ensuring gauge safety is a main topic of discussion at annual safety meetings. Based on the corrective actions discussed above, credit for *Corrective Action* 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 also includes significant enforcement actions on its Web site at (<http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>).

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 your written response dated November 9, 2017. Therefore, you are not required to respond to the Notice enclosed with 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 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 NRC Web site 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 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

M. Forst

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required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information).

Sincerely,

/RA/

Cynthia D. Pederson
Regional Administrator

Docket No. 030-35974
License No. 34-26746-03

Enclosure:
Notice of Violation

cc w/encl: State of Ohio
State of Michigan

SUBJECT: NOTICE OF VIOLATION – CONSTRUCTION CONSULTING & TESTING;
NRC ROUTINE INSPECTION REPORT NO. 03035974/2017001(DNMS)

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ADAMS Accession No.: ML17354A794

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DATE	12/6/17		12/8/17		12/11/17		12/18/17		12/18/17

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NOTICE OF VIOLATION

Construction Consulting & Testing
Sterling Heights, Michigan

Docket No. 030-35974
License No. 34-26746-03
EA-17-148

During a U.S. Nuclear Regulatory Commission (NRC) inspection conducted on August 10-11, 2017, with continued in-office review through September 7, 2017, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

Title 10 of the *Code of Federal Regulations* (CFR) 20.1801 requires, in part, that the licensee shall secure from unauthorized removal or access licensed materials that are stored in controlled or unrestricted areas.

Title 10 CFR 30.34(i) requires, in part, 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 July 29, 2017, through August 10, 2017, the licensee failed to secure from unauthorized removal or access licensed material that was stored in controlled or unrestricted areas, and failed to use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal when the portable gauge was not under the control and constant surveillance of the licensee. Specifically, the licensee stored the gauge in an unlocked cage with no barriers at its facility, and the gauge was not under the licensee's control and constant surveillance on several instances each day.

This is a Severity Level III violation (Sections 6.3 and 6.7).

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and to prevent recurrence, and the date when full compliance was achieved, is already adequately addressed on the docket in Inspection Report No. 03035974/2017001(DNMS), and your response dated November 9, 2017. 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-17-148" 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, the response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

Enclosure

In accordance with 10 CFR 19.11, you may be required to post this Notice within 2 working days of receipt.

Dated this 18th day of December, 2017.