



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

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

March 11, 2020

EA-19-108

Mr. Stanley Schultz
[HOME ADDRESS DELETED
UNDER 10 CFR 2.390(A)]

SUBJECT: SCHULTZ SURVEYING & ENGINEERING, INC. - NOTICE OF VIOLATION AND EXERCISE OF DISCRETION; NRC SPECIAL INSPECTION REPORT NO. 03034973/2019001(DNMS) AND INVESTIGATION REPORT NO 3-2018-009

Dear Mr. Schultz:

This letter refers to the U.S. Nuclear Regulatory Commission (NRC) inspection conducted on September 14, 2017, with continued in-office review through December 19, 2019, at your Branson, Missouri facility. The details of the inspection were documented in NRC Inspection Report No. 03034973/2019001(DNMS)(ML20029E989) issued on January 29, 2020, available on NRC's Agencywide Documents Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. On September 5, 2018, the NRC Office of Investigations (OI), Region III Field Office, initiated an investigation to determine whether: (1) the owner of Schultz Surveying & Engineering deliberately failed to comply with an NRC Order; and (2) the licensee owner deliberately transferred a Troxler Model 3440 portable moisture density gauge that required an NRC license to a company not licensed to possess the device. The OI completed its investigation on September 4, 2019. Based on the inspection and investigation, the NRC identified five apparent violations of NRC requirements. The circumstances surrounding the apparent violations, the significance of the issues, and the need for lasting and effective corrective actions were discussed with you during the telephonic exit meeting on December 30, 2019.

In the letter transmitting the inspection report, we provided you with the opportunity to address the apparent violations identified in the report by: (1) attending a predecisional enforcement conference; (2) providing a written response; (3) attending an alternate dispute resolution session; or (4) terminating your NRC license before we made our final enforcement decision. In a letter dated February 4, 2020 (ML20041E816), you provided a response to the apparent violations that included a request to terminate your license.

Based on the information developed during the inspection and investigation, and the information that you provided in your response to the inspection report dated, February 4, 2020, the NRC has determined that five 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: (1) the deliberate transfer of a portable moisture density gauge containing licensed materials to a person not authorized to possess the material; (2) the failure to have the specific individual named on the license as the Radiation Safety Officer (RSO) serve as the RSO; (3) the failure to respond to an order revoking Schultz Surveying & Engineering, Inc's. (SSE) license for non-payment of annual fees; (4) the failure to test sealed sources for leakage at the required leak test interval prior to transferring to another person; and 5) the failure to conduct a physical inventory every 6 months. The root cause of these violations appears to be the lack of adequate licensee management oversight of the radiation safety program.

The deliberate violation involving the transfer of licensed material to a person not authorized to possess the material and the failure to respond to an NRC Order are of significant regulatory concern as the NRC relies on its licensees to follow our regulations and requirements to ensure the safe use of radioactive materials. The failure to have an individual serve as an RSO is also a significant safety concern as the RSO ensures that licensed material is used safely, in accordance with NRC requirements, and the conditions of your license. Therefore, these three violations are categorized collectively in accordance with the NRC Enforcement Policy as a Severity Level III Problem. In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$7500 is considered for a Severity Level III Problem. The NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>.

Because one of the violations in the SL III Problem was deliberate, the NRC considered whether credit was warranted for *Identification* and *Corrective Action* in accordance with the civil penalty assessment process in Section 2.3.4 of the Enforcement Policy. Credit for *Identification* is not warranted as the violations were identified by the NRC. Credit for *Corrective Action* is warranted since all portable moisture density gauges have been transferred to an authorized recipient and the licensee has submitted a request to terminate its license. The NRC reviewed your request and determined that the requirements in 10 CFR 30.36 were met and terminated your license on February 20, 2020 (ML20054C145).

After consultation with the Director of the Office of Enforcement, the NRC is exercising discretion to not propose a civil penalty in accordance with Section 3.6 of the Enforcement Policy, "Use of Discretion in Determining the Amount of a Civil Penalty," because your license was revoked for non-payment of required annual licensing fees due to bankruptcy, you transferred all licensed material possessed to an authorized recipient, and your license has since been terminated. Should you decide to resume operations in the future, you will be required to pay all debts to the NRC and apply for, and be issued, a new license, which also requires payment of an application fee. In addition, if applicable, you may be required to address what actions you would take to ensure that you will follow NRC requirements in the future.

Furthermore, the NRC has determined that two Severity Level IV violations of NRC requirements occurred. These violations were evaluated in accordance with the NRC Enforcement Policy. The 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 are being cited in the Notice because the violations were identified by the NRC.

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. 03034973/2019001(DNMS), and your letter dated February 4, 2020. 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 will be made available electronically for public inspection in the NRC Public Document Room and in the NRC's Agencywide Documents Access and

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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.

Sincerely,

/RA by John B. Giessner acting for/

Darrell J. Roberts
Regional Administrator

Docket No. 030-34973
License No. 24-32159-01

Enclosure:
Notice of Violation

cc w/encl: State of Missouri
State of Kansas

Letter to Stanley Schultz from Darrell J. Roberts dated March 11, 2020

SUBJECT: SCHULTZ SURVEYING & ENGINEERING, INC. - NOTICE OF VIOLATION AND EXERCISE OF DISCRETION; NRC SPECIAL INSPECTION REPORT NO. 03034973/2019001(DNMS) AND INVESTIGATION REPORT NO 3-2018-009

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DATE	3/10/2020	03/09/2020	3/11/2020	3/11/2020

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NOTICE OF VIOLATION

Schultz Surveying & Engineering, Inc.
Branson, Missouri

Docket No. 030-34973
License No. 24-32159-01
EA-19-108

During a U.S. Nuclear Regulatory Commission (NRC) inspection conducted on September 14, 2017, with continued in-office review through December 19, 2019, and an investigation completed on September 4, 2019, by the NRC Office of Investigations, violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. License Condition No. 11 of Amendment No. 9 of NRC License No. 24-32159-01 names a specific individual as Radiation Safety Officer (RSO).

Contrary to the above, as of December 2016 the licensee failed to have the named individual serve as the Radiation Safety Officer. Specifically, since December 2016 the individual named as the RSO left the employment of the licensee.

- B. Title 10 of the *Code of Federal Regulations* (CFR) 30.41(a) requires that no licensee shall transfer byproduct material except as authorized pursuant to this section.

Title 10 CFR 30.41(b)(5) requires, in part, that except as otherwise provided in his license and subject to the provisions of paragraphs (c) and (d) of this section, any licensee may transfer byproduct material to any person authorized to receive such byproduct material under terms of a specific license or a general license or their equivalents issued by the Atomic Energy Commission, the Commission, or an Agreement State.

Contrary to the above, on January 31, 2017, the licensee transferred byproduct material to a person not authorized to receive such byproduct material under terms of a specific license or a general license or their equivalents issued by the Atomic Energy Commission, the Commission, or an Agreement State.

- C. Title 10 CFR 2.202(a) requires, in part, that the Commission may institute a proceeding to modify, suspend, or revoke a license or to take such other actions as may be proper by serving on the licensee an order that requires the licensee to file a written answer to the order under oath or affirmation within twenty (20) days of the order's date or such other time as may be specified in the order.

Contrary to the above, as of May 30, 2018, the licensee failed to provide a written answer under oath or affirmation within the required time period after being served with an order. Specifically, on April 30, 2018, an "Order Revoking License Within 20 Days Based on Non-payment of License Fees" was served on the licensee and the licensee failed to provide a written answer to the order within the twenty (20) day period specified in the order.

This is a Severity Level III Problem (Section 6.3 of the NRC Enforcement Policy).

- D. License Condition 13 of NRC License No. 24-32159-01, Amendment 9, requires, in part, that when sealed sources are transferred to another person, and have not been tested within the required leak test interval, they shall be tested before transfer.

Contrary to the above, on November 24, 2017, the licensee transferred four sealed sources, containing a nominal 8 millicuries of cesium-137 and 40 millicuries of americium-241/beryllium, and failed to leak test the sources within the required leak test interval and before transfer.

This is a Severity Level IV violation (Section 6.3 of the NRC Enforcement Policy)

- E. License Condition 16 of NRC License No. 24-32159-01, Amendment 9, requires, in part that the licensee conduct a physical inventory every 6 months to account for all sealed sources and/or devices received and possessed under the license.

Contrary to the above, between November 16, 2016 and September 14, 2017, the licensee failed to conduct a physical inventory every 6 months to account for all sealed sources and/or devices received and possessed under the license.

This is a Severity Level IV violation (Section 6.3 of the NRC Enforcement Policy)

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. 03034973/2019001(DNMS) and your letter dated February 4, 2020. 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-19-108)" 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, proprietary, or safeguards 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 11th day of March 2020.