



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

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

December 7, 2016

EA-16-153

Mr. Quentin McGahey, Plant Manager
Lehigh Cement Company, LLC
180 N. Meridian Road
Mitchell, IN 47446

SUBJECT: NOTICE OF VIOLATION – LEHIGH CEMENT COMPANY, LLC;
NRC SPECIAL INSPECTION REPORT NO. 03034344/2016001(DNMS)

Dear Mr. McGahey:

This letter refers to the U.S. Nuclear Regulatory Commission (NRC) inspection conducted July 13, 2016, at your facility in Mitchell, Indiana, with continued in-office review through August 23, 2016. The purpose of the inspection was to follow up on the absence of your radiation safety officer (RSO) and to review activities performed under your NRC license to ensure that those 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, significance of the issue, and the need for lasting and effective corrective actions were discussed with members of your staff during the telephonic exit meeting that was held on August 23, 2016. Details regarding the apparent violation were provided in NRC Inspection Report No. 03034344/2016001(DNMS) dated September 22, 2016. The inspection report is available electronically in the NRC's Agencywide Documents Access and Management System (ADAMS) at Accession Number ML16266A239. 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 providing a written response or requesting a predecisional enforcement conference. In a letter dated October 20, 2016, you provided a written response to the apparent violation. In your response, you acknowledged the apparent violation, described the circumstances leading to the apparent violation, identified the root cause to the apparent violation, and discussed your corrective actions taken and planned to address the apparent violation and prevent future occurrence. You also respectfully requested that the NRC classify the apparent violation at Severity Level IV with no civil penalty assessed.

Based on the information developed during the inspection, and the information you provided in your response dated October 20, 2016, 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 your failure to ensure that the individual who was named as RSO in Condition 11 of NRC License No. 13-26779-01, Amendment No. 5, performed the duties and functions of an RSO. Specifically, the RSO listed on the NRC license left your employment on November 13, 2014, and the license was not amended to name a new individual to serve as the RSO until June 3, 2016.

The root cause of the violation was a lack of oversight, which lead to the failure to recognize the need to appoint a qualified individual to assume the responsibilities of the RSO when the RSO left your employment. Contributing factors included several licensee management changes during that time and the lack of procedural guidance in addressing the loss of an RSO.

We assessed the safety significance of the violation in accordance with the Enforcement Policy, Section 6.3, "Materials Operations." We determined that the Severity Level IV example mentioned in your October 20, 2016, response and described in Section 6.3.d.8 of the Enforcement Policy is not applicable to the circumstances. This example demonstrates a scenario in which a licensee replaces an RSO prior to seeking required NRC approval. However, the qualified individual performing the duties and functions of RSO was evaluated and determined by the NRC to be qualified to perform the functions of an RSO.

In contrast, the Severity Level III example in Section 6.3.c.11(d) of the Enforcement Policy describes a scenario in which a licensee fails to seek required NRC approval before implementation of a significant change in licensed activities that has radiological or programmatic significance, such as when a licensee fails to have an RSO. The lack of an RSO for an extended period of time was a significant change in licensed activities that had programmatic significance. As documented in the subject inspection report, the lack of an RSO resulted in the failure to perform a number of activities required by NRC regulations and your Radiation Safety Program, such as conducting annual reviews of the program, conducting physical inventories of sealed sources and/or devices, and conducting gauge shutter tests within specified frequencies. 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 \$7,000 is considered for a Severity Level III violation. Because your facility has not been the subject of an 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 process in Section 2.3.4 of the Enforcement Policy. The NRC considered the information that you provided to the inspector at the time of the inspection, and your response dated October 20, 2016. As corrective actions, you appointed a qualified individual to perform the duties of an RSO in January 2016. On March 7, 2016, you requested that your NRC license be amended to add the new RSO. Your NRC license was amended on June 3, 2016, naming the qualified individual as the facility's RSO. You also initiated conducting monthly Radiation Safety Program meetings to review the status of the program and developed computer generated actions to ensure the NRC regulatory requirements are met. As your long term corrective actions, you committed to submitting a license amendment request to add an alternate RSO. In addition, you will revise plant procedures classifying the Radiation Safety Program as a critical function within the plant. You will establish and document key plant positions that would be responsible for overseeing the program and implementing the NRC regulatory requirements. On the basis of these corrective actions, the NRC determined that *Corrective Action credit* 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 has concluded that information regarding: (1) the reason for the violation; (2) taken and planned corrective actions and the results achieved; and (3) the date when full compliance was achieved is already adequately addressed on the docket in the inspection report, in your response dated October 20, 2016, and this letter. 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 Title 10 of the *Code of Federal Regulations* (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 ADAMS. 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. 030-34344
License No. 13-26779-01

Enclosure:
Notice of Violation

cc: State of Indiana

Letter to Q. McGahey from Cynthia D. Pederson dated December 7, 2016

SUBJECT: NOTICE OF VIOLATION – LEHIGH CEMENT COMPANY, LLC;
NRC SPECIAL INSPECTION REPORT NO. 03034344/2016001(DNMS)

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1 OE concurrence provided via e-mail from Kerstun Norman on November 29, 2016.

NOTICE OF VIOLATION

Lehigh Cement Company, LLC
Mitchell, IN

Docket No. 030-34344
License No. 13-26779-01
EA-16-153

During a U.S. Nuclear Regulatory Commission (NRC) inspection conducted July 13, 2016, at your facility in Mitchell, Indiana, with continued in-office review through August 23, 2016, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

Condition 11 of NRC License No. 13-26779-01, Amendment No. 5, named an individual as the Radiation Safety Officer (RSO).

Contrary to the above, from November 13, 2014 through June 2, 2016, the license failed to have the individual named in Condition 11 of NRC License No. 13-26779-01, Amendment No. 5, serve as the licensee's RSO. Specifically, the RSO listed on the NRC license left the licensee's employment on November 13, 2014, and the license was not amended to name a new individual to serve as the RSO until June 3, 2016, nor was there anyone performing the duties of the RSO during this time.

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. 03034344/2016001(DNMS) dated September 22, 2016, in your response dated October 20, 2016, and in the letter transmitting this Notice of Violation (Notice). However, you are required to submit a written statement or explanation pursuant to Title 10 of the *Code of Federal Regulations* (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-16-153" 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, Suite 210, 2443 Warrenville Rd, Lisle IL, within 30 days of the date of the letter transmitting this 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

Enclosure

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 7th day of December, 2016.