



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
611 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-4005**

March 10, 2003

EA-03-006

Mr. Paul DesFosses, Project Manager
Structural Testing & Inspection
53 North Arthur, No. 7
Pocatello, Idaho 83204

**SUBJECT: NRC INSPECTION REPORT 999-90004/02-04 AND INVESTIGATION REPORT
NO. 4-2002-045**

Dear Mr. DesFosses:

This refers to the inspection conducted on September 23-26, 2002, at multiple locations in Idaho regarding Structural Testing & Inspection's (STI) possession and use of byproduct material contained in portable nuclear gauging devices. The inspection was conducted to determine if byproduct material was possessed and used without authorization by either a specific or general license issued by NRC or an Agreement State. The enclosed report presents the results of this inspection. Additionally, an investigation by the NRC's Office of Investigations (OI) was initiated on October 16, 2002, to determine if NRC requirements were violated willfully. An exit meeting was conducted telephonically with Mr. Lowell Trujillo on February 3, 2003. A final exit meeting was conducted telephonically with you on March 7, 2003.

Based on the results of this inspection and investigation, one apparent violation was identified and is being considered for escalated enforcement action in accordance with the "General State of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600 (enclosed). The apparent violation involved the failure to obtain a specific license from the NRC or an Agreement State prior to acquiring and using byproduct material during the period from August 9 to September 26, 2002. The investigation conducted by OI determined that the violation was committed willfully by STI employees. Enclosure 2 is a factual summary of the investigation report. Since the NRC has not made a final determination in this matter, no Notice of Violation is being issued for these inspection findings at this time. In addition, please be advised that the number and characterization of apparent violations described in the enclosed inspection report may change as a result of further NRC review.

A closed predecisional enforcement conference to discuss this apparent violation has been scheduled for March 26, 2003, 10:00 a.m., in Idaho Falls, Idaho. The decision to hold a predecisional enforcement conference does not mean that the NRC has determined that a violation has occurred or that enforcement action will be taken. This conference is being held to obtain information to assist the NRC in making an enforcement decision. This may include 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. The conference will provide an opportunity for you to provide your perspective on these matters and any other information that you believe the NRC should take into consideration in making an enforcement decision. In presenting your corrective action, you should be aware that the promptness and comprehensiveness of your actions will be considered in assessing any civil penalty for the apparent violations. The guidance in the enclosed excerpt from NRC Information Notice 96-28, "SUGGESTED GUIDANCE RELATING TO DEVELOPMENT AND IMPLEMENTATION OF CORRECTIVE ACTIONS," may be helpful.

You will be advised by separate correspondence of the results of our deliberations on this matter. No response regarding the apparent violation is required at this time.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and Enclosures 1-3 will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

Should you have any questions concerning this inspection or the enclosed report, please contact Mr. Michael L. Fuller at (817) 860-8164 or Mr. James Thompson at (817) 276-6538.

Sincerely,

/RA/

Elmo E. Collins, Director
Division of Nuclear Materials Safety

Docket No.: 999-90004

Enclosures:

1. NRC Inspection Report 999-90004/02-04
2. Factual Summary of Office of Investigations Report 4-2002-045
3. Predecisional Enforcement Conference Agenda
4. NRC Information Notice 96-28
5. NRC Enforcement Policy, NUREG-1600

cc w/Enclosures 1-3:
Idaho Radiation Control Program Director

bcc w/Enclosures 1-3 (via ADAMS distrib):

EW Merschhoff

FJ Congel, OE

DCool

FBrown

GFSanborn

RWise

HA Freeman

KD Smith

EE Collins

CL Cain

MR Shaffer

ML Fuller

JE Whitten

JL Thompson

NMIB File

RIV File (5th Floor)

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N Bhalla, OE

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JLThompson*	MLFuller*	GMVasquez*	EECollins
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02/11/03	02/19/03	02/21/03	03/10/03

*Previously concurred OFFICIAL RECORD COPY T=Telephone E=E-mail F=Fax

ENCLOSURE 1

Docket No.:	999-90004
License No.:	Non-Licensee
Report No.:	999-90004/02-02
EA.:	03-006
Non-Licensee:	Structural Testing & Inspection
Facility:	Temporary Jobsite
Location:	Stanley, Idaho
Dates:	September 23-26, 2002
Inspector:	James L. Thompson, Health Physicist Nuclear Materials Inspection Branch
Approved by:	Michael L. Fuller, Acting Chief Nuclear Materials Inspection Branch
Attachment:	Supplemental Inspection Information

EXECUTIVE SUMMARY

Structural Testing & Inspection (STI) NRC Inspection Report 999-90004/02-04

This was an unannounced reactive inspection involving the use of byproduct material contained in a portable nuclear gauging device. The scope of the inspection included interviews with representative from four companies involved in the purchase and use of these portable gauging devices, interviews with the Custer County, Idaho Deputy Sheriff, a review of records maintained at a temporary jobsite in Stanley, Idaho, discussions with the Idaho Department of Transportation personnel present at the temporary jobsite, and a discussion with the Structural Testing and Inspection (STI) representative present at the temporary jobsite.

Program Overview

On September 12, 2002, the Deputy Sheriff of Custer County, Idaho, contacted the NRC Operations Officer. The deputy sheriff inquired as to whether STI was authorized to possess radioactive material, since he had observed STI employees using a portable nuclear gauge in Stanley, Idaho, but was unable to confirm that the gauges actually belonged to STI. An NRC inspection was dispatched and subsequently interviewed three NRC licensee representatives involved in STI's purchase and possession of two portable nuclear gauging devices. On September 26, 2002, the NRC inspector interviewed the STI representative present at a temporary jobsite in Stanley, Idaho, in possession of one of these gauging devices (Section 1).

Inspection Findings

Between August and September 2002, STI apparently acquired, possessed, and used byproduct material contained in two portable nuclear gauging devices without authorization to do so in a specific license issued by the NRC or an Agreement State. This was identified as an apparent violation of 10 CFR 30.3 (Section 1).

Corrective Actions

On September 26, 2002, STI submitted an application for a specific license with the NRC for the possession and use of byproduct material contained in portable nuclear gauging devices (Section 2).

Report Details

1 Possession and Use of Licensed Material (87114)

1.1 Inspection Scope

The scope of the inspection included reviews of pertinent records and interviews of representatives from four companies involved in the purchase, possession and use of two portable nuclear gauging devices, discussion with the Custer County, Idaho Deputy Sheriff, interviews of the Idaho Department of Transportation personnel present at the temporary jobsite, and an interview of the STI representative present at the temporary jobsite.

1.2 Observations and Findings

On September 12, 2002, the Deputy Sheriff of Custer County, Idaho, reported to NRC Region IV that he had confiscated and impounded a portable nuclear gauging device (Troxler Model 3411, Serial Number 12805) during a search for stolen construction equipment in Stanley, Idaho. The person in possession of this gauge was the senior projects manager of STI. This employee, however, was unable to provide any proof of ownership. Shortly thereafter, the owner of STI forwarded to the sheriff's office a copy of a bill of sale for this gauge, along with a copy of a NRC license issued to Reliance Testing & Inspection. This license listed the owner of STI as the radiation safety office (RSO) for Reliance Testing & Inspection. Upon presentation of these documents, the gauge was released to two employees of STI.

On September 23, 2002, the NRC dispatched an inspector to begin a reactive inspection.

On September 24, 2002, the inspector interviewed a sales and marketing specialist of Qal-Tek Associates, NRC License Number 11-27610-01. The specialist provided two bills of sale and gauge sales invoices for two portable nuclear gauging devices (both Troxler Model 3411, Serial Numbers 12805 and 4639) sold to STI. Portable gauge Serial Number 12805 was signed for and picked up by the owner of STI on August 9, 2002, and the other portable gauge, Serial Number 4639 was signed for and picked up by the senior projects manager for STI on September 5, 2002. Also included on the bill of sale for both portable gauges was NRC License Number 11-27657-01, a license number issued to All Tech Corporation. The sales specialist explained that the employees of STI purchased the portable gauges described above under the All Tech Corporation license because the two employees of STI were also employees of All Tech Corporation, and had purchased portable gauges for All Tech Corporation in the past. However, the company name listed above the license number on each bill of sale was that of STI.

Later on the day of September 24, 2002, the NRC inspector interviewed the RSO of All Tech Corporation, NRC License Number 11-27657-01. He explained to the inspector that he had no knowledge of the purchase of these portable nuclear gauging devices,

and that All Tech Corporation had not authorized the use of their license by the employees of STI. He further explained that the owner of STI was a previous employee of All Tech Corporation.

On September 25, 2002, the NRC inspector interviewed the RSO of Reliance Testing & Inspection, NRC License Number 11-27658-01. He explained to the inspector that the owner of STI had worked for Reliance Testing & Inspection in the past, which time he was listed on their as the RSO. He further explained that the owner of STI's employment with Reliance Testing & Inspection was terminated approximately 2 years ago, and his name was subsequently removed from the license. The RSO stated that Reliance Testing & Inspection had never authorized STI to possess portable nuclear gauging devices under their NRC license, nor did they authorize the use of these portable gauges under their license in the Stanley, Idaho, area.

During a discussion with the Deputy Sheriff of Custer County, Idaho, later that day, the NRC inspector questioned if he knew where these portable nuclear gauging devices were being stored. The deputy sheriff stated that he did not know anything about the second portable gauge, but the one that he had previously impounded (Serial Number 12805) was presently being used at a temporary jobsite in Stanley, Idaho, by STI employees. Upon hearing this information, NRC Region IV management directed the inspector to proceed to Stanley, Idaho, to determine if byproduct material contained in portable nuclear gauging devices was possessed and being used by persons without a specific license.

On the morning of September 26, 2002, the NRC inspector with the deputy sheriff to discuss the findings to date. Since employees of STI had used the NRC license issued to Reliance Testing & Inspection to release the Troxler Model 3411 (Serial Number 12805) portable gauge from impoundment, the inspector called the RSO of Reliance Testing & Inspection and asked him to explain to the deputy sheriff their relationship with STI. When the deputy sheriff heard the RSO of Reliance Testing & Inspection state that they had not authorized STI to use their license to release the portable gauges from impoundment, he and the inspector proceeded to the temporary jobsite where he had last observed employees of STI using the portable gauge. When an STI employee arrived at the temporary jobsite with the portable gauge, he was approached by the deputy sheriff and the NRC inspector (this portable gauge contained 10 millicuries of cesium-137 and 50 millicuries of americium-241). The inspector asked the STI employee to show the license under which he was authorized to possess and use the portable nuclear gauging device. The STI employee showed the inspector a NRC license issued to Reliance Testing & Inspection. Upon seeing this, the deputy sheriff confiscated the portable gauge and asked where the other portable gauge that had been purchased by STI was located. The STI employee stated that it was with the owner of STI in Idaho Falls, Idaho, and gave the deputy sheriff the owner's cell phone number. Upon contact of the owner by the deputy sheriff, the owner voluntarily delivered the Troxler Model 3411, Serial Number 4639 portable gauge to the Idaho Falls Sheriff's Department, who in turn impounded the portable gauge at the Idaho Department of Transportation's field office in Idaho Falls, Idaho.

1.3 Conclusions

The inspection identified one apparent violation of NRC requirements which involved the acquisition, possession and use of byproduct material contained in portable nuclear gauging devices without authorization in either a specific license or general license issued by NRC or an Agreement State. This was identified as an apparent violation of 10 CFR 30.3 which requires, in part, that except for persons exempted, no person shall possess or use byproduct material except as authorized by a specific or general license issued pursuant to Title 10, Code of Federal Regulations (999-90004/02-04).

2 Corrective Actions (87114)

On September 26, 2002, Structural Testing & Inspection submitted an application for a specific license with the NRC for the possession and use of byproduct material contained in portable nuclear gauging devices.

3 Exit Meeting Summary (87114)

A final telephonic exit meeting was conducted with the project manager of STI on March 7, 2003. No proprietary information was identified.

ATTACHMENT

PARTIAL LIST OF PERSONS CONTACTED

Licensees

Clayton Maher, Portable Gauge User, STI
Paul Desfosses, Portable Gauge User, STI
Lowell Trujillo, Owner of STI
Spencer Uhl, Deputy Sheriff, Custer County
Bill Berry, RSO, All Tech Corporation
Jon Kishyama, RSO, Reliance Testing & Inspection
Travis Snowden, Sales and Marketing Specialist, Qal-Tek Associates

INSPECTION PROCEDURES USED

87114	Fixed and Portable Gauge Programs
86740	Transportation

ITEMS OPENED, CLOSED, AND DISCUSSED

999-90004/02-04	APV	An apparent violation of 10 CFR 30.3 involving the acquisition, possession, and use of byproduct material without authorization in a specific license.
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Closed

None

LIST OF ACRONYMS USED

APV	Apparent Violation
CFR	Code of Federal Regulations
NRC	Nuclear Regulatory Commission
OI	Office of Investigations
RSO	Radiation Safety Officer
STI	Structural Testing & Inspection

ENCLOSURE 2

FACTUAL SUMMARY OFFICE OF INVESTIGATIONS REPORT 4-2002-045

Investigation 4-2002-045 was initiated by the NRC's Office of Investigations on October 1, 2002, to determine if Structural Testing & Inspection (STI), an NRC license applicant, deliberately violated NRC requirements regarding the acquisition, possession, and use of byproduct material.

The investigation was completed in December 2002, and found that STI's designated radiation safety officer (RSO) deliberately violated NRC requirements regarding the purchase, possession, and use of radioactive byproduct material contained in two Troxler moisture density gauges. Specifically, the RSO and two other individuals proposed to form a company, STI, in late August 2002. At the time, the RSO was employed by All Tech Corporation (ATC) and, without ATC's knowledge or permission, purchased two Troxler moisture density gauges for STI using the NRC license belonging to a second company, Reliance Testing and Inspection (RTI), where he also had previously been employed. NRC regulations do not permit the use of NRC licenses issued to specific entities to be used in this manner.

The RSO's stated position, which the NRC did not find credible, was that because he was listed as RTI's RSO, he could possess and use the STI gauges, even though he no longer worked for RTI. In fact, after a Troxler moisture density gauge had been confiscated from STI by the Custer County Sheriff's Office on September 12, 2002, the RSO faxed the outdated copy of RTI's NRC license to the sheriff's office showing that they (STI) were authorized by the NRC to possess and use the gauge.

The investigation also found that the other two owners of STI willfully violated NRC requirements. Specifically, the other two owners of STI were aware that STI was operating without its own NRC license, and stated that they were not familiar with the NRC licensing process and relied on the information provided by the RSO (that STI could use RTI's license). However, they were aware an NRC license was needed to possess and use a gauge and were aware that the RSO no longer worked for RTI. Their actions appear to have demonstrated a reckless disregard towards NRC requirements.

ENCLOSURE 3

PREDECISIONAL ENFORCEMENT CONFERENCE AGENDA

CONFERENCE WITH STRUCTURAL TESTING & INSPECTION

MARCH 26, 2003, 10:00 a.m.

IDAHO FALLS, IDAHO

1. INTRODUCTION/OPENING REMARKS - Elmo E. Collins, Director, DNMS, NRC
2. ENFORCEMENT PROCESS - Michael Vasquez, Enforcement Specialist, Allegation Coordination & Enforcement Staff
3. APPARENT VIOLATIONS & REGULATORY CONCERNS- Michael Fuller, Acting Chief, NMIB
4. STRUCTURAL TESTING & INSPECTION PRESENTATIONS
5. BREAK - 10 Minutes
6. RESUMPTION OF CONFERENCE
7. CLOSING REMARKS - Structural Testing & Inspection
8. CLOSING REMARKS - Elmo E. Collins, Directors, DNMS