



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

December 13, 2004

Mr. Kim H. Leavitt
President
Harper-Leavitt Engineering, Inc.
P.O. Box 50691
Idaho Falls, Idaho 83405

SUBJECT: NRC INSPECTION REPORT 030-32220/04-003 AND NOTICE OF VIOLATION

Dear Mr. Leavitt:

This letter and the enclosed Notice of Violation (Notice) refers to the inspection conducted on September 29, 2004, at your facilities located at 985 North Capital Avenue, Idaho Falls, Idaho, and 800 West Judicial Street, Blackfoot, Idaho. Preliminary inspection findings were discussed with you and Mr. Jared Bragg at the conclusion of the onsite inspection. The inspection results were also discussed with you during a final telephonic exit briefing conducted on November 22, 2004.

The inspection was an examination of activities conducted under your license as they relate to radiation safety and to compliance with the Commission's rules and regulations and with the conditions of your license. Within these areas, the inspection consisted of selective examinations of procedures and representative records, independent measurements, and interviews with personnel.

Based on the results of this inspection, the NRC has determined that two Severity Level IV violations of NRC requirements occurred. These violations were evaluated in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600 (enclosed). The violations are cited in the enclosed Notice and the circumstances surrounding them are described in detail. These violations are being cited in the Notice because they were identified by the NRC during the inspection. Also note that a previous Severity Level IV violation issued for activities at your Blackfoot, Idaho facility (NRC Inspection Report 030-32220/2004-001) was found to be corrected and is considered closed.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. For your consideration and convenience, an excerpt from NRC Information Notice 96-28, "SUGGESTED GUIDANCE RELATING TO DEVELOPMENT AND IMPLEMENTATION OF CORRECTIVE ACTION," is enclosed. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, Enclosure 1, and your response 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>. 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.

Please note that on October 25, 2004, the NRC suspended public access to ADAMS, and initiated an additional security review of publicly available documents to ensure that potentially sensitive information is removed from the ADAMS database accessible through the NRC's web site. Interested members of the public may obtain copies of the referenced documents for review and/or copying by contacting the Public Document Room pending resumption of public access to ADAMS. The NRC Public Document Room is located at NRC Headquarters in Rockville, MD, and can be contacted at 800-397-4209 or 301-415-4737 or pdr@nrc.gov.

Should you have any questions concerning this inspection or the enclosed report, please contact Dr. Janine F. Katanic at (817) 860-8151 or the undersigned at (817) 860-8287.

Sincerely,

/RA/

Mark R. Shaffer, Chief
Nuclear Materials Inspection Branch

Docket No.: 030-32220
License No.: 11-27395-01

Enclosures:

1. Notice of Violation
2. NRC Information Notice 96-28
3. NRC Enforcement Policy, NUREG-1600

cc w/Enclosure 1:
Idaho Radiation Control Program Director

bcc w/enclosure 1 (via ADAMS distrib):
 MASatorius
 CLCain
 MRShaffer
 JEWhitten
 JFKatanic
 KEGardin
 NMIB
 RIV Materials Docket File (5th floor)

ADAMS: Yes No Initials: JFK
 Publicly Available Non-Publicly Available Sensitive Non-Sensitive

DOCUMENT NAME: s:\dnms!\nmib\katanic\43222003.wpd final r:_dnms

RIV:DNMS:NMIB	C:NMIB
JFKatanic	MRShaffer
/RA/	/RA/
12/02/04	12/13/04

OFFICIAL RECORD COPY

T=Telephone

E=E-mail

F=Fax

ENCLOSURE 1

NOTICE OF VIOLATION

Harper-Leavitt Engineering, Inc.
Idaho Falls, Idaho

Docket No. 030-32220
License No. 11-27395-01

During an NRC inspection conducted on September 29, 2004, two violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the violations are listed below:

- A. Condition 15 of License 11-27395-01 requires, in part, that each portable nuclear gauge shall have a lock or outer locked container designed to prevent unauthorized or accidental removal of the sealed source from its shielded position and that the gauge or its container must be locked when in transport, storage, or when not under the direct surveillance of the authorized user.

Contrary to the above, the outer containers of three of the licensee's portable nuclear gauges were found to be unlocked and the portable nuclear gauges were not locked to prevent unauthorized or accidental removal of the sealed source from its shielded position. Specifically, on September 29, 2004, the licensee's Troxler Model 3430 portable nuclear moisture/density gauge (serial number 29870), Troxler Model 3411-B portable nuclear moisture/density gauge (Serial Number 19094), and Troxler Model 3241-C portable asphalt content gauge (Serial Number 1343) were in the licensee's storage area and were not under the direct surveillance of an authorized user. The outer containers of the three portable nuclear gauges were not locked and the gauges themselves were not locked to prevent unauthorized or accidental removal of the sealed source from its shielded position.

This is a Severity Level IV violation (Supplement VI).

- B. 10 CFR 71.5(a) requires that a licensee who transports licensed material outside of the site of usage, as specified in the NRC license, or where transport is on public highways, or who delivers licensed material to a carrier for transport, comply with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation (DOT) in 49 CFR Parts 170 through 189.

49 CFR 172.300 requires, in part, that each person who offers a hazardous material for transportation shall mark each package containing the hazardous material in the manner required.

49 CFR 172.301(a)(1) requires, in part, that each person who offers a hazardous material for transportation in a non-bulk packaging must mark the package with the proper shipping name and identification number preceded by "UN."

49 CFR 172.324(b) requires, in part, that for each non-bulk package that contains a hazardous substance the letters "RQ" shall be marked on the package in association with the proper shipping name.

49 CFR 178.350(b) requires, in part, that each Specification 7A packaging must be marked on the outside "USA DOT 7A Type A" and "Radioactive Material."

Contrary to the above, the licensee had transported a hazardous material in NRC jurisdiction and the packages containing the hazardous material were not marked as required. Specifically, the licensee stated that two of its Troxler Model 3430 portable nuclear moisture/density gauges, Serial Numbers 29870 and 31706, had been transported in NRC jurisdiction on numerous occasions during the time period from April-September 2004. Both packages were not marked with the proper shipping name, identification number preceded by "UN," the letters "RQ," or "USA DOT 7A Type A" and "Radioactive Material" as required.

This is a Severity Level IV violation (Supplement V).

Pursuant to the provisions of 10 CFR 2.201, Harper-Leavitt Engineering, Inc., is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator, Region IV, at 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation or severity level, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as to why the license should not be modified, suspended, or revoked, or why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

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.

Because your response 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>, to the extent possible, it 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, then 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 material, 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). Please note that on October 25, 2004, the NRC suspended public access to ADAMS, and initiated an additional security review of publicly available documents to ensure that potentially sensitive information is removed from the ADAMS database accessible through

the NRC's web site. Interested members of the public may obtain copies of the referenced documents for review and/or copying by contacting the Public Document Room pending resumption of public access to ADAMS. The NRC Public Document Room is located at NRC Headquarters in Rockville, MD, and can be contacted at 800-397-4209 or 301-415-4737 or pdr@nrc.gov.

In accordance with 10 CFR 19.11, you are required to post this Notice within two working days.

Dated this 13th day of December 2004