



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

September 25, 2006

Docket No. 03034012
EA No. 06-201

License No. 08-30263-01

Roy A. Burke
Corporate Compliance Officer
Fort Myer Construction Corporation
2237 33rd Street, N.E.
Washington, DC 20018

SUBJECT: INSPECTION 03034012/2006001, FORT MYER CONSTRUCTION CORPORATION, WASHINGTON, D.C. SITE, NOTICE OF VIOLATION AND EXERCISE OF DISCRETION

Dear Mr. Burke:

On August 14, 2006, Jim Schmidt of this office conducted a safety inspection at 2001 5th Street, N.E., Washington, D.C. of activities authorized by the above listed NRC license. The inspection was an examination of your licensed activities as they relate to radiation safety and to compliance with the Commission's regulations and the license conditions. The inspection consisted of observations by the inspector, interviews with personnel, and a selected examination of representative records. The findings of the inspection were discussed with you during the telephone exit on September 21, 2006.

Based on the results of this inspection, it appears that your activities were not conducted in full compliance with NRC requirements. A Notice of Violation is enclosed that categorizes each violation by severity level. 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 was adequately addressed during the inspection exit on September 21, 2006, and is documented in Inspection Record 2006-001. 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.

A violation of 10 CFR 30.34(i) was identified during this inspection and is described in the attached Notice of Violation. Although such violations are normally categorized at Severity Level III and considered for escalated enforcement action, because (1) one physical control existed to prevent loss or theft of the portable gauge, (2) you retained possession of the gauge, (3) you took appropriate action to correct the violation and prevent recurrence of similar violations in the future, and (4) the violation was not willful, we are exercising enforcement discretion to categorize this violation at Severity Level IV. However, any future violations of 10 CFR 30.34(i) will be categorized at Severity Level III and evaluated for a civil penalty in accordance with Section VI.C. of the Enforcement Policy.

Current NRC regulations are included on the NRC's website at www.nrc.gov; select **Nuclear Materials; Medical, Academic, and Industrial Uses of Nuclear Material**; then **Toolkit Index**

R. Burke
Fort Myer Construction Corporation

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Page. The current Enforcement Policy is included on the NRC's website at www.nrc.gov; select **What We Do, Enforcement**, then **Enforcement Policy**. Or you may obtain these documents by contacting the Government Printing Office (GPO) toll-free at 1-888-293-6498. The GPO is open from 7:00 a.m. to 8:00 p.m. EST, Monday through Friday (except Federal holidays).

Your cooperation with us is appreciated.

Sincerely,

Original signed by John D. Kinneman

John D. Kinneman, Chief
Security and Industrial Branch
Division of Nuclear Materials Safety

Enclosure:
Notice of Violation

cc:
District of Columbia

R. Burke
Fort Myer Construction Corporation

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NOTICE OF VIOLATION

Fort Myer Construction Corporation
Washington, DC

Docket No. 03034012
License No. 08-30263-01

During an NRC inspection conducted on August 14, 2006, two violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. 49 CFR 172.202(a) and (b) require in part, with exceptions not applicable here, that the shipping description of a hazardous material on the shipping paper include, in the following sequence: (1) the proper shipping name prescribed for the material in 172.101 (2) the hazard class prescribed for the material as shown in Column 3 of the 172.101 Table, and (3) the identification number prescribed for the material as shown in Column 4 of the 172.101 Table. Pursuant to 49 CFR 172.101, radioactive material is classified as hazardous material.

Contrary to the above, on August 14, 2006, the licensee transported a Troxler nuclear gauge on public highways and the shipping description on the shipping paper that accompanied the shipment did not include the proper shipping name and identification number.

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

- B. 10 CFR 30.34(i) requires that each portable gauge not under the control and constant surveillance of the licensee, have a minimum of two independent physical controls that form tangible barriers to secure the gauge from unauthorized removal.

Contrary to the above, on August 14, 2006, the licensee allowed a Troxler nuclear gauge not under control and constant surveillance, to be secured by a single tangible barrier to prevent unauthorized removal.

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

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken and planned to correct the violation and prevent recurrence and the date when full compliance will be achieved is already adequately addressed on the docket. 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," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555 with a copy to the Regional Administrator, Region I, 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 to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, any response which contests an enforcement action shall be submitted under oath or affirmation.

Your response will be placed in the NRC Public Document Room (PDR) and on the NRC Web site. To the extent possible, it should, therefore, not include any personal privacy, proprietary, or safeguards information so that it can be made publically available without redaction. However, if you find it necessary to include such information, you should clearly indicate the specific information that you desire not to be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public.

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

Dated This 25th day of September 2006