



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

February 26, 2007

EA-07-022

C & W Enterprises, Inc.
Attn: Mr. Warren Barse
Radiation Safety Officer
P.O. Box 84826
Sioux Falls, South Dakota 57118

SUBJECT: NRC INSPECTION REPORT NO. 030-30526/2006-001 AND NOTICE OF VIOLATION

Dear Mr. Barse:

This refers to the routine, unannounced inspection conducted on November 27-28, 2006, at your facility in Sioux Falls, South Dakota, with additional in-office review through February 6, 2007. This inspection was an examination of activities conducted under your license as they relate to safety and compliance with the Commission's rules and regulations and with the conditions of your license. Within these areas, the inspection consisted of a selected examination of procedures and representative records, observations of activities, and interviews with personnel. The preliminary inspection findings were discussed with you at the conclusion of the onsite portion of the inspection. A telephonic exit interview was conducted with you on February 6, 2007.

Based on the results of this inspection, one apparent violation was identified and is being considered for escalated enforcement action in accordance with the NRC Enforcement Policy. The current Enforcement Policy is included on the NRC's Web site at www.nrc.gov; select **What We Do, Enforcement**, then **Enforcement Policy**." The apparent violation involves the failure to secure a portable gauge from unauthorized removal, with at least two independent physical controls, when the portable gauge was not under the control and constant surveillance of the licensee. At the time of the inspection, your staff promptly placed a padlock on the storage shed, providing one physical control to secure the gauge. Then, you completed additional actions to ensure a second independent physical barrier. The circumstances surrounding the apparent violation, the significance of the issue, and the need for lasting and effective corrective actions were discussed with you during the February 6 inspection exit briefing. As a result, it may not be necessary to conduct a predecisional enforcement conference in order to enable the NRC to make an enforcement decision.

In addition, since your facility has not been the subject of escalated enforcement actions within the past two years and based on our understanding of your corrective action, a civil penalty may not be warranted in accordance with Section VI.C.2 of the Enforcement Policy. The final decision will be based on your confirming on the license docket that the corrective actions previously described to the staff have been or are being taken.

Before the NRC makes its enforcement decision, we are providing you an opportunity to either: (1) respond to the apparent violation addressed in this inspection report within 30 days of the date of this letter or (2) request a predecisional enforcement conference. If a conference is held, it will be open for public observation, and will follow the agenda in Enclosure 3. The NRC will also issue a press release to announce the conference. Please contact Ms. Vivian Campbell at (817) 860-8287 within seven days of the date of this letter to notify the NRC of your intended response.

If you choose to provide a written response, it should be clearly marked as a "Response to An Apparent Violation in Inspection Report No. 030-30526/2006-001; EA-07-022" and should include: (1) the reason for the apparent violation, or, if contested, the basis for disputing the apparent violation; (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. In presenting your corrective actions, you should be aware that the promptness and comprehensiveness of your actions will be considered in assessing any civil penalty for the apparent violation. The guidance in the enclosed excerpt from NRC Information Notice 96-28, "Suggested Guidance Relating to Development and Implementation of Corrective Action," may be helpful (Enclosure 4). Your response may reference or include previously docketed correspondence, if the correspondence adequately addresses the required response. If an adequate response is not received within the time specified or an extension of time has not been granted by the NRC, the NRC will proceed with its enforcement decision or schedule a predecisional enforcement conference.

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. You will be advised by separate correspondence of the results of our deliberations on this matter.

In addition to the apparent violation discussed above, NRC determined that three additional violations of NRC requirements occurred. These violations were evaluated in accordance with the NRC's Enforcement Policy and have been categorized at Severity Level IV. They are cited in the enclosed Notice of Violation (Notice). These violations involve your failure to: (1) conduct annual reviews of the radiation protection program, which was a repeat violation; (2) conduct a public dose assessment after moving the storage location of the gauge; and (3) conduct physical inventories at six month intervals. These violations are cited in the enclosed Notice because they were identified by the NRC, rather than being identified by the licensee.

You are required to respond to the Notice and should follow the instructions specified in the enclosed Notice when preparing your response. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with the regulatory requirements.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure(s), and your response, if you choose to provide one, 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 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.

Should you have any questions concerning this inspection, the enclosed report or the enclosed Notice, please contact Ms. Vivian Campbell at (817) 860-8287.

Sincerely,

/RA/

Leonard D. Wert, Director
Division of Nuclear Material Safety

Docket No. 030-30526
License No. 40-26938-01

Enclosures:

1. Notice of Violation
2. NRC Inspection
Report 030-30526/2006-001
3. Agenda - Predecisional
Enforcement Conference
4. Excerpt from NRC IN 96-28

cc w/enclosures 1-3:
South Dakota Radiation Control Program Director

EA-07-022

bcc w/enclosures (via e-mail distrib):

- RIDSOEMAILCENTER
- RIDSOGCMailCENTER
- RIDSNMSSOD
- RIDSNMSSFSME
- R4ALLEGE
- BSMallett
- TPGwynn
- LWert
- CLCain
- VHCampbell
- JEWhitten
- GMVasquez
- KDFuller
- WAMaier
- VDricks
- LDonovan
- GKMorell, FSME
- MBurgess, FSME
- JRSchlueter, FSME
- SLMerchant, OE
- LSreenivas, OE
- RITS Coordinator
- NMIB
- RIV Materials Docket File (5th Floor)

SUNSI Review Completed: ADAMS: Yes Initials: LD
 Publicly Available Non Sensitive:

DOCUMENT NAME: draft: s:\dnms\!nmib\donovan\63052601.wpd final r:_dnms

RIV:DNMS:NMIB	C:NMIB:	C:NMLB
LDonovan*	VHCampbell*	JEWhitten*
/RA/	/RA/	/RA/
02/07/07	02/13/07	02/14/07

ACES	D:ACES/RC:	D:DNMS
GMVasquez*	KDFuller*	LDWert*
/RA/	/RA/	/RA/
02/20/07	02/23/07	02/26/07

OFFICIAL RECORD COPY

T=Telephone

E=E-mail

F=Fax

*Previous Concurrence

ENCLOSURE 1

NOTICE OF VIOLATION

C & W Enterprises, Inc.
Sioux Falls, South Dakota

Docket No. 030-30526
License No. 40-26938-01

During an NRC inspection conducted on November 27-28, 2006, three violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. 10 CFR 20.1101(c) requires that licensee shall periodically, at least annually, review the radiation protection program content and implementation.

Contrary to the above, the licensee failed to review the radiation protection program content and implementation at least annually. Specifically, annual reviews of the licensee's radiation protection program were not conducted from 2003 through 2005. This is a repeat violation.

This is Severity level IV violation (Supplement IV).

- B. 10 CFR 20.1301(a)(1) requires, in part, that the total effective dose equivalent to individual members of the public from the licensed operation does not exceed 0.1 rem (1mSv) in a year.

10 CFR 20.1302(a) requires, in part, that the licensee shall make or cause to be made surveys of radiation levels in unrestricted and controlled areas to demonstrate compliance with the dose limits for individual members of the public in 10 CFR 1301.

Contrary to the above, the licensee failed to conducted surveys or cause to be made surveys of radiation levels in unrestricted and controlled areas to demonstrate compliance with dose limits for individual members of the public. Specifically, the licensee failed to conduct surveys to demonstrate compliance with public dose limits when the storage location for the gauge was moved.

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

- C. Condition 16 of NRC License No. 40-26938-01, issued October 7, 2007, requires that the licensee shall conduct a physical inventory every six months, or at other intervals approved by the U.S. Nuclear Regulatory Commission, to account for all sources and/or devices received and possessed under the license.

Contrary to the above the licensee failed to conduct a physical inventory to account for the sources and/or devices received and possessed under NRC License 40-26938-01, every six months. Specifically, the licensee placed its portable gauge in storage in July 2005, and did not conduct an inventory from that time until the gauge was moved to its new storage location in August 2006, a period in excess of six months.

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

Pursuant to the provisions of 10 CFR 2.201, C & W Enterprises, Inc., is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001, with a copy to the Regional Administrator, Region IV, within 30 days of the date of the letter transmitting this Notice. This reply should be clearly marked as a "Reply to a Notice of Violation" EA-07-022 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 may 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). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

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

Dated this 26th day of February 2007.

ENCLOSURE 2

U. S. Nuclear Regulatory Commission
Region IV

Docket No.: 030-30526
License No.: 40-26938-01
Report No.: 030-30526/2006-001
EA No.: 07-022
Licensee: C & W Enterprises, Inc.
Facility: C & W Enterprises, Inc., office
Location: Sioux Falls, South Dakota
Date: November 27, 2006 to February 6, 2007
Inspector: Lawrence Donovan, Health Physicist
Nuclear Materials Inspection Branch
Approved by: Vivian H. Campbell, Chief
Nuclear Materials Inspection Branch
Attachment: Supplemental Inspection Information

EXECUTIVE SUMMARY

C & W Enterprises, Inc. (C & W)
NRC Inspection Report 030-30526/2006-001

This was a routine, unannounced inspection of licensed activities involving the use of byproduct material contained in a portable gauging device. The scope of the inspection was limited to interviews of C & W personnel and a review of licensee records and documentation.

Program Overview

C & W is a small construction company located in Sioux Falls, South Dakota. C & W is authorized to use byproduct material (cesium-137 and americium-241) contained in portable gauging devices for measuring physical properties of materials at the licensee's facility located in Sioux Falls, South Dakota, and at temporary job sites in areas of NRC jurisdiction (Section 1).

Inspection Findings Considered for Escalated Enforcement

- The licensee did not secure a portable gauge from unauthorized removal, with at least two independent physical controls, while in storage at his facility in Sioux Falls, South Dakota, and not under their control and constant surveillance. This was identified as an apparent violation of 10 CFR 30.34(i). (Section 2)

Inspection Findings Not Considered for Escalated Enforcement

- The licensee did not conduct annual radiation protection program reviews for calendar years 2003-2005. This was identified as a violation of 10 CFR 20.1101(c). (Section 3)
- The licensee did not conduct a public dose assessment to demonstrate that the total effective dose equivalent to individual members of the public would not exceed 100 mrem (1 mSv) in a calendar year from licensed operations. This was identified as a violation of 10 CFR 20.1302 (a). (Section 3)
- The licensee did not conduct physical inventories of its licensed material at six-month intervals as required by license condition. This was identified as a violation of Condition 16 of NRC License 40-26938-01, issued October 7, 2004. (Section 3)

Licensee Corrective Actions

During the inspection, the licensee immediately placed a lock on the storage shed, providing the first tangible barrier. After the inspection, the licensee initiated additional actions to provide the second tangible barrier. In addition, the licensee conducted a physical inventory at the time of the inspection. (Section 4)

During the telephone exit briefing, the licensee stated that he had conducted the 2006 annual review shortly after the inspection, and had performed a public dose assessment within 30 days of the inspection.

Report Details

1 Program Overview (87124)

1.1 Inspection Scope

The inspector reviewed the license application, supporting documents, and other records provided by the licensee. Collectively, these documents describe the licensee's radiation safety program. Additionally, licensee staff interviews were conducted by the inspector.

1.2 Observations and Findings

C & W is authorized under NRC License 40-26938-01 to use byproduct material (cesium-137 and americium-241) contained in portable gauging devices (portable gauges) for measuring physical properties of materials. Licensed material is authorized to be used at the licensee's facility in Sioux Falls, South Dakota, and at temporary job sites in areas of NRC jurisdiction. At the time of the inspection, the licensee's personnel consisted of the President/radiation safety officer (RSO) who is the only gauge user, the Office Manager and a secretary. The RSO was not onsite at the time of the inspection, but the inspection was conducted with the Office Manager. The RSO provided clarification on the information collected during the inspection by telephone. The licensee possessed only one Troxler 3400 series portable gauge. The portable gauge was used infrequently, with the last use in July 2005.

2 Inspection Findings Considered for Escalated Enforcement (87124)

2.1 Inspection Scope

The inspector examined the storage location used by the licensee and reviewed the licensee's security measures for storing the portable gauge. The inspector had detailed discussions with licensee personnel.

2.2 Observations and Findings

10 CFR 30.34(i) requires, in part, that each portable gauge licensee shall use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee.

During the onsite inspection on November 27, 2006, the inspector noted that the licensee was renting office space within a building that was shared with the building owner. The portable gauge was stored in a section of the warehouse which was shared common space with the landlord. The portable gauge in its transportation case was stored in a wooden shed that is approximately five feet by four feet by three feet. The inspector observed that the shed was not locked even though there was a hasp and latch on the shed to secure its lid. The licensee stated that the shed was usually locked.

However, the shed and portable gauge were moved to its location in the warehouse sometime in August 2006 and they had neglected to lock it at that time.

The inspector asked the licensee to describe the two independent physical controls that were normally used. The licensee stated that the first barrier was the lock on the storage shed and the second barrier was the door on the warehouse. The inspector explained to the licensee that because of the current storage configuration the first independent physical control was the lock on the shed. The inspector further explained that the warehouse door could not be considered the second independent control because the licensee did not have control over the shared space in the warehouse.

Prior to the end of the inspection, the licensee obtained a lock and secured the wooden shed containing the portable gauge which satisfied the first tangible barrier. The licensee later took additional actions to provide the second tangible barrier.

The licensee's failure to use a minimum of two independent physical controls that formed tangible barriers to secure the portable gauge from unauthorized removal, whenever the portable gauge was not under the control and constant surveillance of the licensee was identified as an apparent violation of 10 CFR 30.34(i).(030-30526/06-01)

2.3 Conclusions

This inspection identified an apparent violation of 10 CFR 30.34(i) involving the security of the gauge when not under the control and constant surveillance of the licensee.

3 Inspection Findings Not Considered for Escalated Enforcement (87124)

3.1 Inspection Scope

The inspector directly observed licensed activities, and reviewed the written procedures and records required to be maintained by the licensee. Detailed discussions regarding the radiation safety program were conducted with the Office Manager and RSO.

3.2 Observations and Findings.

- 10 CFR 20.1101(c) requires the licensee to periodically (at least annually) review the radiation protection program content and implementation.

Through interviews with the licensee personnel, the inspector determined that annual reviews of the radiation protection program had not been conducted from 2003 to 2005. Further, it was noted that the licensee was cited for this violation during the last inspection on September 10, 2003, because annual reviews were not conducted from 1998 to 2003. The licensee's failure, at least annually, to review the radiation protection program content and implementation was identified as an apparent violation of 10 CFR 20.1101(c).(030-30526/06-02) **(REPEAT VIOLATION)**

- NRC regulations require, in part, that licensees conduct operations to limit doses to members of the general public. Specifically, 10 CFR 20.1301(a)(1) requires, in part, that the total effective dose equivalent to individual members of the public from the licensed operation does not exceed 0.1 rem (1 mSv) in a year. 10 CFR 20.1302(a) requires, in part, that the licensee demonstrate compliance with the dose limits for individual members of the public in 10 CFR 20.1301.

The inspector asked the licensee to describe how compliance with this requirement was achieved. Based on discussions with the Office Manager and the RSO, the licensee had not demonstrated compliance with this requirement with neither measurement nor calculation when the gauge storage container was relocated. The licensee's failure to conduct surveys to demonstrate compliance with dose limits to individual members of the public was identified as a violation of 10 CFR 20.1302(a). (030-30526/06-03)

- NRC License 40-26938-01, issued October 7, 2004, authorizes the licensee to use and store portable gauges containing licensed material at their facility in Sioux Falls, South Dakota. License Condition 16 of the NRC license requires the licensee to conduct a physical inventory every six months, or at other intervals approved by NRC, to account for all sources and/or devices received and possessed under the license.

The licensee last used the portable gauge in July 2005. The gauge was placed in storage at that time and was not inventoried until the gauge was moved to its new location in August 2006, a period in excess of six months. The licensee's failure to conduct a physical inventory every six months to account for the portable gauge was identified as a violation of License Condition 16. (030-30526/06-04).

3.3 Conclusions

The inspection identified three Severity Level IV violations that are described in the attached Notice of Violation. These violations involved the: (1) failure to conduct a review of the radiation protection program, at least annually, (2) failure to demonstrate compliance with the dose limits for individual members of the public, and (3) failure to conduct an inventory of the portable gauge every six months.

4. **Licensee Corrective Actions**

Preliminary results of the inspection were discussed with licensee personnel after the on-site portion of the inspection. Prompt corrective action taken by licensee personnel included placing a padlock on the wooden shed before the inspector left the facility. A land/sea container was located in the outside area of the building at the address currently identified in the license. The shed was then moved and placed into the large land/sea container with another lock that formed the second tangible barrier. In addition, the licensee conducted a physical inventory at the time of the inspection.

During the telephone exit briefing, the licensee stated that he had conducted the 2006 annual review shortly after the inspection, and had performed a public dose assessment within 30 days of the inspection.

7. Exit Meeting Summary

On February 6, 2007, a final telephonic exit briefing was conducted with the President/RSO and Office Manager to review the inspection findings as presented in this report. Licensee management acknowledged the findings. No proprietary information was identified.

ATTACHMENT

PARTIAL LIST OF PERSONS CONTACTED

Licensee

*#Duane Devos, Office Manager
#Warren Barse, President/RSO

* indicates individuals present at the entrance meeting

indicates individuals present at exit meeting

INSPECTION PROCEDURES USED

87124 Fixed and Portable Gauge Programs

ITEMS OPENED, CLOSED, AND DISCUSSED

Opened

030-30526/06-01	APV	An apparent violation involving the licensee's failure to provide a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever the portable gauges are not under control and constant surveillance.
030-30526/06-02	VIO	A violation involving the licensee's failure to conduct annual reviews of the radiation protection program.
030-30526/06-03	VIO	A violation involving the licensee's failure to make or cause to be made surveys of radiation levels in unrestricted and controlled areas to demonstrate compliance with the dose limits for individual members of the public in §20.1301.
030-30526/06-04	VIO	A violation involving the licensee's failure to conduct physical inventories of its sources and/or devices at intervals not to exceed six months.

LIST OF ACRONYMS USED

APV	Apparent Violation
CFR	Code of Federal Regulations
NRC	Nuclear Regulatory Commission
RSO	Radiation Safety Officer
VIO	Violation

ENCLOSURE 3

PROPOSED PRE-DECISIONAL ENFORCEMENT CONFERENCE AGENDA

C & W ENTERPRISES, INC.
TBD

1. INTRODUCTION/OPENING REMARKS:
Leonard Wert, Director, Division of Nuclear Material Safety
2. ENFORCEMENT POLICY AND PROCESS:
Michael Vasquez, Senior Enforcement Specialist
3. APPARENT VIOLATIONS & REGULATORY CONCERNS:
Vivian Campbell, Chief, Nuclear Materials Inspection Branch
4. LICENSEE PRESENTATION
5. BREAK - 10 MINUTES
6. RESUMPTION OF CONFERENCE
7. CLOSING REMARKS - C & W ENTERPRISES, INC.
8. CLOSING REMARKS - LEONARD WERT, NRC