



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

July 9, 2007

Docket No. 03037435
EA Nos. 07-101
07-104

License No. 09-31230-01

Joseph DiStefano
Vice President
MC Squared, Inc.
5905-C Breckenridge Parkway
Tampa, FL 33610

**SUBJECT: NRC SPECIAL INSPECTION 03037435/2007001, MC SQUARED, INC.,
SEMINOLE TRIBE INDIAN RESERVATION, CLEWISTON, FLORIDA**

Dear Mr. DiStefano:

This refers to the inspection conducted on March 15, 2007, at your temporary job site located at the Seminole Tribe Indian Reservation, Clewiston, Florida. The purpose of the inspection was to follow-up on the event involving the theft of a portable nuclear gauge from the job site. You reported the theft to the NRC Operations Center (Event No. 43219) on March 7, 2007. The followup information received on March 13, 23, and 29, 2007 and May 18, 2007, was also reviewed as part of the inspection. The inspection findings were discussed with you via telephone on March 29, 2007, at the conclusion of the inspection and during a subsequent telephone conversation with you on April 10, 2007.

Based on the results of this inspection, three apparent violations were identified. Two of these apparent violations are being considered for escalated enforcement action in accordance with the NRC Enforcement Policy. The first apparent violation relates to NRC jurisdiction for regulating licensed material at Indian Reservations located in Agreement States and the requirement for an Agreement State licensee to file NRC Form 241 with the NRC in accordance with 10 CFR 150.20(b), prior to engaging in licensed activities at the Indian Reservations. From January 2006 until at least March 12, 2007, you stored and used a portable gauge containing licensed material at two Seminole Indian Tribe Reservations in Florida, and did not file the required NRC Form 241 with the NRC prior to engaging in these activities. The second apparent violation occurred when you did not use any physical controls that formed tangible barriers to secure a Troxler Model 3411 portable gauge from unauthorized removal, as required by 10 CFR 30.34(i). The regulation requires that a portable gauge licensee use 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 of the licensee. Failure to secure the gauge as required contributed to the theft of the gauge. The gauge remained in the public domain for more than two months before it was recovered on May 11, 2007. The third violation, which is not being considered for escalated enforcement, involved the failure to provide an authorized user with hazardous material refresher training at least once every three years, as required by 49 CFR 172.702(c)(2).

Regarding the first violation, a civil penalty may not be warranted for this violation, as provided in Section VI.C.2 of the Enforcement Policy, because (i) you have not been the subject of escalated enforcement actions within the last two years; (ii) you applied for and obtained an NRC license, and (iii) based on our understanding, you took prompt and comprehensive corrective actions to prevent reoccurrence.

Regarding the second violation, it is important to note that apparent violations that involve the loss or theft of a sealed source or device normally result in a civil penalty of at least the base amount, as described in Section VI.C.1 of the NRC Enforcement Policy.

The NRC has concluded that it has sufficient information to make an enforcement decision, because the information regarding the reason for the violations, the corrective actions taken to correct the violation and prevent recurrence, and the date when full compliance was achieved are already adequately addressed as described in the enclosed inspection report. However, before the NRC makes this final enforcement decision, we are providing you an opportunity to either: (1) respond to the apparent violations addressed in this inspection report within 30 days of the date of this letter; or (2) request a predecisional enforcement conference (PEC).

Please contact Ms. Marie Miller at (610) 337-5205 within ten days of the date of this letter, to inform us of your intended response. Please note that you are not required to provide a written response or attend a PEC, unless the description of the corrective actions, or the factual information in the enclosed inspection report, does not accurately reflect your corrective actions or your position on this matter. Also, be advised that a PEC is typically open for public observation and is announced to the public by issuing a press release.

If you decide to respond in writing, your response should be clearly marked as a "Response to Apparent Violations in Inspection Report No. 03037435/2007001", 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 was or will be achieved. 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 violation. The guidance in the enclosed NRC Information Notice 96-28, "SUGGESTED GUIDANCE RELATING TO DEVELOPMENT AND IMPLEMENTATION OF CORRECTIVE ACTION," may be helpful. Your response should be submitted under oath or affirmation and may reference or include previous 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. To the extent possible, your response should not include any personal privacy, proprietary, or security sensitive information, so that it can be made available to the public without redaction.

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

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

Regulations, Guidance, and Communications. The current NRC Enforcement Policy is included on the NRC's website at <http://www.nrc.gov>; select **Site Map**; then **Enforcement Policy**. You may also obtain these documents by contacting the Government Printing Office (GPO) toll-free at 1-866-512-1800. The GPO is open from 7:00 a.m. to 8:00 p.m. EST, Monday through Friday (except Federal holidays).

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 Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> (the Public Electronic Reading Room).

Sincerely,

Original signed by Brian Holian

Brian Holian, Director
Division of Nuclear Materials Safety

Enclosure:

1. Inspection Report No. 03037435/2007001
2. NRC Information Notice 96-28

cc:

Christopher DiViccaro, Radiation Safety Officer
State of Florida

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Sincerely,
Original signed by Brian Holian
 Brian Holian, Director
 Division of Nuclear Materials Safety

Enclosure:

1. Inspection Report No. 03037435/2007001
2. NRC Information Notice 96-28

cc:

Christopher DiViccario, Radiation Safety Officer
 State of Florida

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U.S. NUCLEAR REGULATORY COMMISSION
REGION I

INSPECTION REPORT

Inspection No. 03037435/2007001
Docket No. 03037435
License No. 09-31230-01
Licensee: MC Squared, Inc.
Address: 5905-C Breckenridge Parkway
Tampa, FL 33610
Locations Inspected: 35050 Halls Road, Clewiston, Florida
Inspection Dates: March 7 through April 10, 2007
Date Followup
Information Received: March 13, 23, and 29, 2007 and May 18, 2007

/RA/

7/3/07

Inspector:

Sattar Lodhi, Ph.D.
Senior Health Physicist

Date

/RA/

7/3/07

Approved By:

Marie Miller, Chief
Materials Security and Industrial Branch
Division of Nuclear Materials Safety

Date

EXECUTIVE SUMMARY

MC Squared, Inc.
NRC Inspection Report No. 03037435/2007001

MC Squared, Inc., (the licensee) is an engineering consulting company that holds a radioactive materials license (No. 3424-1) from the State of Florida. The State license authorizes the licensee to use Troxler Model 3400 series portable gauges anywhere within the State's jurisdiction. Further, it does not prohibit the use in other Agreement States and states under the jurisdiction of the U.S. Nuclear Regulatory Commission through reciprocity that has been approved by an Agreement State or the NRC.

On March 7, 2007, the State of Florida (State) notified NRC Operations Center (Event No. 43219) of theft of a portable gauge from a job site located at a Seminole Indian Reservation (Reservation) in Florida. The licensee also notified the Operations Center of the event on the same day. The notifications indicated that the gauge (a Troxler Model 3411B) was in storage at the job site on the Reservation and was last used on March 2, 2007, but the theft was not discovered until March 7, 2007. The gauge contained americium 241 (Am-241) and cesium 137 (Cs-137).

Federal Reservations located within an Agreement State are within NRC's jurisdiction. At the time of the event, the licensee had not filed the required NRC Form 241 with NRC prior to engaging in licensed activities at the Reservation. On March 7, 2007, Region I contacted the State and the licensee to obtain details of the event, and informed the licensee of the requirements in 10 CFR 150.20. The licensee stated that they assumed that their license authorized use of licensed material anywhere in the State of Florida, and that they no longer had the gauge at the site.

Region I also requested that the State send an inspector to the site to evaluate the circumstances. On March 12, 2007, the State Inspector visited the job site and reported that the licensee had brought a replacement gauge to the site and the gauge was stored in the licensee's trailer.

On March 13, 2007, NRC Region I called the licensee to remind them of the requirements in 10 CFR 150.20, and asked the licensee to remove the gauge immediately from the Reservation. The licensee removed the gauge and submitted NRC Form 241 on March 13, 2007. However, the licensee abandoned the request for reciprocity and filed an application for NRC license on March 29, 2007. The NRC issued the license (No. 09-31230-01) on April 5, 2007.

On March 15, 2007, an NRC Inspector visited the licensee's job site at the Reservation to review the circumstances surrounding the event. The inspector determined that the licensee had been using the gauge at two Reservations in Florida since January 1, 2006. The gauge that was stolen had been stored in a trailer at the job site. There were no tangible barriers that met the requirements in 10 CFR 30.34(i) at the time the gauge was stolen. The inspector also determined that the licensee had not provided an authorized user (AU) the recurrent hazardous material training as required in 40 CFR 172.704.

On May 17, 2007, the licensee notified the inspector that the missing gauge had been found. It had been in possession of a member of the public, who had found it abandoned on a public highway in Florida. The licensee retrieved the gauge on May 11, 2007. There was no apparent damage to the gauge or its container. On May 18, 2007, the licensee submitted a written report to NRC Region I.

Three apparent violations of NRC requirements were identified: (1) failure to file NRC Form 241 at least three days prior to engaging in licensed activities in NRC jurisdiction as required by 10 CFR 150.20(b); (2) failure to use a minimum of two independent physical controls that form tangible barriers to secure the portable gauge from unauthorized removal; and (3) failure to provide the recurrent hazmat training to an employee as required by 49 CFR 127.704(c)(2).

REPORT DETAILS

I. Organization and Scope of the Program

a. Inspection Scope

Inspection was limited to a review of the licensee's activities at locations within NRC's jurisdiction.

b. Observations and Findings

MC Squared Inc. (the licensee) is an engineering consulting company. Its main office is located in Marietta, GA, and has a branch office in Tampa, FL. The Tampa office holds a Radioactive Materials License No. 3424-01 from the State of Florida (the State). Until April 5, 2006, the licensee did not hold an NRC license. The State license authorizes the licensee to possess and use Troxler Electronic Laboratories Model 3400 series portable gauges throughout the State, and does not prohibit the use in other Agreement States and states under the jurisdiction of the U.S. Nuclear Regulatory Commission under reciprocity that has been approved by an Agreement State or the NRC.

Since January 1, 2006, until at least March 2, 2007, the licensee stored and used a Troxler Electronic Laboratories Model 3411 B portable gauge containing licensed material (40 mCi of Am-241 and 8 mCi of Cs-137) at the Seminole Indian Reservations located in Florida. During the year 2006, the licensee used and stored the gauge at Brighton Indian Reservation, and then from January 1, 2007, through at least March 2, 2007, stored and used the gauge at Big Cypress Seminole Indian Reservation.

Federal Reservations in an Agreement State are within the NRC jurisdiction. The general license in 10 CFR 150.20(a) grants any person who holds a specific license from an Agreement State to conduct the same licensed activity in areas of Exclusive Federal Jurisdiction within Agreement States. The general license requires, in part, that an Agreement State licensee, at least three days before engaging in each activity for the first time in a calendar year, file a submittal containing an NRC Form 241, "Report of Proposed Activities in Non-Agreement States" with the Regional Administrator of the U. S. Nuclear Regulatory Commission. The licensee did not file NRC Form 241 prior to engaging in licensed activities in NRC jurisdiction (the Indian Reservations).

Failure to file NRC Form 241, at least three days prior to engaging in licensed activities is an apparent violation of 10 CFR 150.20(b).

The licensee stated that they assumed that their license from the State authorized them to use licensed material anywhere in the State, and they were not aware that the Federal Reservations are within NRC jurisdiction.

c. Conclusions

The inspection identified a violation of 10 CFR 150.20(b). The licensee started using/storing licensed material in areas of NRC jurisdiction from January 1, 2006, and did not file NRC Form 241 with the NRC Regional Office prior to engaging in licensed activities in areas of NRC Jurisdiction.

II. Notification & Follow-up of the Event

a. Inspection Scope

The inspection consisted of a review of circumstances surrounding the event (No. 43219) that was reported to NRC Operations Center on March 7, 2007.

b. Observations and Findings

On March 7, 2007, the State notified the NRC Operations Center of the theft of a Troxler moisture/density gauge from a job site located at a Seminole Indian Reservation. The notification stated that the gauge was used at a job site at 35050 Halls Road, Clewiston, Florida on a Seminole Indian Reservation. After being used on the job site, the gauge was placed in a storage trailer. The gauge is a Model 3411B Troxler soil moisture density gauge, serial number 13563. The gauge contained an Am-241 source and a Cs-137 source.

The notification further stated that the device was used Friday, March 2, 2007, and placed in a storage trailer, and not notice missing until the trailer was opened in the morning of March 7, 2007. The trailer had not been broken into. The licensee also notified the NRC Operations Center of the event (No. 43219) on March 7, 2007.

On March 7, 2007, an NRC Region I inspector contacted the State and the licensee to obtain additional information about the event. The State agreed that the event occurred outside its jurisdiction, when the State licensee used the gauge at the Indian Reservation, which is within NRC jurisdiction. The inspector informed the licensee of the requirement to file Form 241. The licensee stated that they were not aware of the requirement and that licensed material was no longer stored at the job site.

The State agreed to send an inspector to the site to review the circumstances surrounding the event. The State inspector visited the job site on March 12, 2007, and reported that the licensee had another Troxler Model 3411 portable gauge stored in the trailer at the job site. The gauge was in its locked transport container that was not secured to the trailer.

Following the report from the State inspector, Region I called the licensee to remind them that they are required to file NRC Form 241 before they can store or use licensed material within NRC jurisdiction, and asked the licensee to remove the gauge until they have received an approved NRC Form 241 from the NRC. During the telephone conference with the inspector and RI DNMS Branch Chief, the licensee stated that the replacement gauge was brought to the job site on March 8, 2007, but the Radiation Safety Officer (RSO) agreed to immediately remove the gauge from the job site and committed to file NRC Form

241 before bringing the gauge to the job site. Region I received the completed NRC Form 241 from the licensee on March 13, 2007, without the applicable fee.

On March 15, 2007, the NRC inspector visited the job site at the Reservation, and discussed the event with the AU and the RSO.

From these discussions, the inspector determined that the licensee was a subcontractor of R2T Engineers and had used the gauge at the two Indian Reservations in Florida since January 1, 2006. The licensee was required by its contract to maintain a full time technician (AU) at the job site with a moisture/density available at the site. The licensee had a trailer at the job site part of which was used as the office, and part was used for storage of equipment. The trailer is described in the next section under Facilities & Equipment.

The AU stated that the gauge was not used every day, and was stored in the trailer when it was not in use. Although the gauge was stored in its locked transport container, the container itself was not secured to the trailer. The AU also stated that she did not lock the trailer during the day when she left the trailer to perform her other assignments at the job site leaving the gauge in the trailer unattended.

The inspector determined that the unlocked trailer was an unrestricted area when the AU was not present in the trailer, and the gauge had no physical control to form tangible barriers to secure the gauge from unauthorized removal.

10 CFR 30.34(i) requires that each portable gauge licensee 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. Failure of the licensee to use at least two physical controls that formed tangible barriers to secure the portable gauge from unauthorized removal is an apparent violation of 10 CFR 30.34(i).

The AU stated that she used the gauge at the job site during morning hours of March 2, 2007, and left the trailer at approximately 10:30 a.m., after returning the gauge to its storage location in the trailer. She returned to the trailer at approximately 7 a.m. on March 5, 2007, and worked in the office area in the trailer. She kept the door between the office space and storage area closed while she worked in the office area. She did not enter the storage area to verify if the gauge was still in the storage area.

The AU stated that she remembers locking the trailer when she left the trailer on March 2, 2007, and she did not notice any evidence that indicated that the trailer had been broken into when she returned to the trailer on March 5, 2007. Similarly, she worked in the trailer on March 6, 2007, without entering the storage area of the trailer.

She noticed that the gauge was missing from the storage area of the trailer on March 7, 2007, when she went to the storage area to retrieve the gauge for use at the job site. She notified the RSO of the missing gauge and filed a report with the local police. The licensee also posted notices of reward for the recovery of the gauge. As of April 10, 2007, the gauge had not been recovered.

The inspector informed the licensee that NRC had received the NRC Form 241 from the licensee, but the required fee was not included. The RSO stated that the licensee had decided to abandon its request for reciprocity (NRC Form 241) and apply for an NRC

license instead. The inspector guided the RSO in obtaining appropriate guidance document (NUREG 1556, Vol. 1, Rev. 1) from NRC's web site.

NRC Region I received the licensee's NRC Form 313, "Application for Materials License" dated March 21, 2007. However, the application was not complete, as it did not include the licensee's radiation safety procedures. Region I received a revised application on March 29, 2007, and a license (No. 09-31230-01) was issued on April 5, 2007.

On May 17, 2007, the RSO notified the inspector via telephone that the gauge had been recovered. The licensee informed the inspector that on May 11, 2007, they became aware that a member of the public had found a gauge and its container abandoned on a public highway near Clewiston, Florida. The member of the public had picked up the gauge and was storing the gauge at its facilities. The member of the public told an employee of KDL Construction of the gauge at his facility. KDL Construction is another subcontractor of R2T Engineers. The KDL employee informed R2T personnel of the gauge and R2T then notified the licensee. The gauge was brought to the job site by the KDL employee. The licensee identified the gauge as the one that was missing from its job site at the Indian Reservation. The licensee stated that the container was not locked and the gauge did not appear to be damaged.

On May 18, 2007, the licensee submitted a written report (ML071420397) of the event leading to the recovery of the gauge. The inspector requested that the licensee test the gauge for leakage of licensed material and the licensee agreed to perform the leak test. The results of the leak test will be reviewed during a subsequent inspection.

c. Conclusions

The inspection identified an apparent violation of 10 CFR 30.34(i), specifically, the licensee's failure to use a minimum of two physical controls that formed tangible barriers to secure a portable gauge from unauthorized removal when the gauge was not under control and constant surveillance of the licensee.

III. Facilities and Equipment

a. Inspection Scope

The inspection consisted of a review of the licensee's facilities at the temporary job site.

b. Observations and Findings

The licensee stated that they possessed three portable gauges under its Florida license. Two of these gauges were stored at the licensee's facilities in Tampa, Florida, and the third (then missing) was assigned to the AU for use at the Indian Reservations.

The licensee's facility at the job site on Big Cypress Seminole Indian Reservation consisted of a trailer that was parked near the job site in a fenced area. There were two other trailers parked in the fenced area. The fence had a gate but the gate was not kept locked. The fenced area was adjacent to a Recreational Vehicles (RV) camp site. On March 15, 2007, the inspector noted that there were several RVs parked at the camp site. The job site was a short driving distance away from the trailer and the trailer was not visible from the job site.

The licensee's trailer at the job site was divided into two compartments with an unlockable door separating the two compartments. One compartment was used as office space for the AU and the other was for storage of equipment. Each compartment had an entry door and each door had a dead bolt lock. The licensee had one Troxler Model 3411B (Serial No. 13563) that was assigned to the AU for use at the Reservation. The AU stored the gauge in the equipment storage portion of the trailer.

The AU stated that she stored the gauge in its locked transport container under the counter in the storage compartment, and the container was not secured to any structure of the trailer. The AU also stated that she would keep the door separating the compartments closed while she worked in the office area and would enter the storage area only when she needed to retrieve equipment from the area. The AU stated that during the working hours she did not lock the trailer when she left the trailer to perform her other assignments at the job site. Personnel from the other contractor had access to the trailer, and on March 15, 2007, the inspector noted a contractor's employee entering the trailer unchallenged. As a result of the theft the RSO stated that in addition to the dead bolt locks, they will install a locked bar in front of each of the two doors to the trailer for added security.

c. Conclusions

The inspection determined that until at least March 2, 2007, the licensee stored the gauge in the trailer and the storage area in the trailer was accessible to personnel from other contractors. The licensee had not implemented the required controls to secure the gauge from unauthorized removal, as described in the previous section of this report.

IV. Training of Workers

a. Inspection Scope

The inspection included a review of the AU's training.

b. Observations and Findings

The AU assigned to the job site has worked for the licensee for approximately two years. She had previously worked for other licensees and stated that she had extensive experience working with the portable gauges. She received radiation safety training for gauge operators on September 16, 2003, when she worked for another employer, but her current employer (the licensee) did not provide her with any training regarding its radiation safety procedures, and the regulatory requirements. She stated that she had been using portable gauges for the past several years and therefore she was familiar with the radiation safety procedures related to the gauges but she was not aware of the requirements in 10 CFR 30.34(i) for securing portable gauges from unauthorized removal, or the requirements in 10 CFR 150.20. The inspector discussed these requirements with the AU during the inspection, and the RSO stated that additional training would be provided to the AU.

The inspector noted that a period of more than three years had elapsed since the AU received hazmat training on September 16, 2003, and had not received the required refresher hazmat training since then. 49 CFR 172.702(c)(2) requires that a hazmat employee receive the training described in Subpart H of 49 CFR 172, at least once every three years.

Failure to provide the AU with hazmat refresher training at least once every three years is an apparent violation of 49 CFR 172.702(c)(2).

c. Conclusions

Discussions with the AU indicated that the licensee relied on her previous experience using gauges and her training provided by her previous employers and did not provide her with training in the licensee's own radiation safety procedures. The AU did not receive the recurrent training that is required for a hazmat employee. The inspection identified one apparent violation of 49 CFR 172.702(c)(2)

V. Exit

The inspector called the licensee on April 10, 2007, and summarized the inspection findings, including the three apparent violations. The licensee summarized corrective actions that included removing the licensed material from the Reservation, applying for NRC license, installing additional controls to secure the portable gauge from unauthorized removal, and providing training to the AU. All corrective actions were completed by March 29, 2007. The inspector informed the licensee that a written report of the inspection will be sent that will describe the inspection findings.

PARTIAL LIST OF PERSONS CONTACTED

Licensee

Pamela Horan, Authorized User
Christopher DiVaccaro, RSO
Joseph DiStefano, Vice President (Via telephone) *

*Denotes attended exit meeting on April 10, 2007.

