



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

September 12, 2007

Docket No. 03019483
EA 07-192

License No. 37-19894-01

Christopher Kinsley
Vice President Operations
Kinsley Construction, Inc.
P.O. Box 2886
York, PA 17405

SUBJECT: INSPECTION 03019483/2007001, KINSLEY CONSTRUCTION, INC., YORK, PENNSYLVANIA SITE AND THE SPRING GROVE, PENNSYLVANIA SITES, EXERCISE OF ENFORCEMENT DISCRETION AND NOTICE OF VIOLATION

Dear Mr. Kinsley:

On May 23, 2007, David Collins of this office conducted a safety inspection at the above address and construction paving sites at Routes 116 and 616, Spring Grove, Pennsylvania 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 Richard Wildin of your organization by telephone on June 28, 2007, during which time additional information was provided by Mr. Wildin that was also examined as part of the inspection. The enclosed report presents the results of this inspection.

Based on the results of this inspection, a violation of 10 CFR 30.34(i) was identified, because only one of the two required physical controls to prevent unauthorized removal was in place, to protect against the loss or theft of two portable nuclear gauges, as described in the attached Notice of Violation. Although such violations are normally categorized at Severity Level III and considered for escalated enforcement action, we are exercising enforcement discretion to categorize this violation at Severity Level (SL) IV because: (1) one physical control existed to prevent loss or theft of the portable gauge; (2) you retained possession of the gauges; (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. However, any future violations of 10 CFR 30.34(i) could be categorized at SL III and evaluated for a civil penalty in accordance with Section VI. C of the Enforcement Policy.

During the inspection the inspector verified the immediate actions you took to correct the violation which included providing an additional barrier to secure portable gauges from unauthorized removal. Therefore, you are not required to respond to this letter unless the description herein 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.

C. Kinsley

2

Current NRC regulations are included on the NRC's website at www.nrc.gov; select **Nuclear Materials; Medical, Industrial, and Academic Uses of Nuclear Material**; then **Regulations, Guidance, and Communications**. The current Enforcement Policy is included at www.nrc.gov; select **Site Map**, then scroll down to **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).

If you have any questions concerning this matter, please contact Marie Miller of my staff at 610-337-5205.

Sincerely,

Original signed by Brian Holian

Brian E. Holian, Director
Division of Nuclear Materials Safety

Enclosure:
NRC Inspection Report No. 03019483/2007001
Notice of Violation

cc:
Richard Wildin, Radiation Safety Officer
Commonwealth of Pennsylvania

C. Kinsley

2

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Brian E. Holian, Director
Division of Nuclear Materials Safety

Enclosure:
NRC Inspection Report No. 03019483/2007001
Notice of Violation

cc:
Richard Wildin, Radiation Safety Officer
Commonwealth of Pennsylvania

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NOTICE OF VIOLATION

Kinsley Construction, Inc.
York, PA

Docket No. 03019483
License No. 37-19894-01
EA-07-192

During an NRC inspection conducted on May 23, 2007, for which an exit meeting was held on June 28, 2007, one violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 30.34(i) requires each portable gauge licensee to 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.

Contrary to the above, on May 23, 2007 at two field locations in Spring Grove, Pennsylvania, the licensee had used a single lock on a transport box bolted to an open-bed pick-up truck, forming only one tangible barrier to secure portable gauges from unauthorized removal when the two portable gauges were not under the control and constant surveillance of the licensee.

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

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken and planned to be taken to correct the violations and prevent recurrence, and the date when full compliance was achieved are already adequately addressed on the docket in the letter transmitting this Notice of Violation (Notice). However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description herein 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, EA-07-192," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001 with a copy to the Regional Administration, Region I, within 30 days of the date of the letter transmitting this Notice.

If you choose to respond, 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 at <http://www.nrc.gov/reading-rm/adams.html>. Therefore, to the extent possible, the response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

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.

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

Dated This 12th day of September 2007

U.S. NUCLEAR REGULATORY COMMISSION
REGION I

INSPECTION REPORT

Inspection No. 030-19483/2007001
Docket No. 030-19483
License No. 37-19894-01
Licensee: Kinsley Construction, Inc.
Address: 1110 East Princess Street
York, Pennsylvania 17405
Other Locations Inspected: Two field locations
Inspection Dates: May 23, 2007

Inspector: Original signed by MMiller for: 9/7/07
David J. Collins
Health Physicist date

Approved By: Original signed by MMiller 9/7/07
Marie Miller, Chief
Materials Security and Industrial Branch
Division of Nuclear Materials Safety date

EXECUTIVE SUMMARY

Kinsley Construction, Inc.
NRC Inspection Report No. 03019483/2007001

The inspector performed a routine safety inspection of a Materials Licensee, Kinsley Construction Inc., at two of the licensee's paving field sites, and the main office and storage location at 1110 Princess Street, York, Pennsylvania.

The inspector and the Radiation Safety Officer (RSO) went to two paving field sites located in Spring Grove, Pennsylvania, on May 23, 2007. At each site, they found that the portable gauge transportation box in the tailgate-less semi-covered pickup truck was secured by only one built-in keylock, bolted down to the truck bed. The portable gauge, while not in the box at the time of inspection, had no means within the box of a second independent physical control. The RSO and the gauge technician stated that a second physical control was not used.

One violation of NRC requirements was identified for the failure to use two independent physical controls to form tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee, as required by 10 CFR 30.34(j). Specifically, on May 23, 2007, inspections at two paving field sites were conducted, and the inspector identified that the portable gauge transportation box that was bolted down in the tailgate-less semi-covered pickup truck was secured by only one built-in keylock. The portable gauge, while not in the box at the time of inspection, had no means within the box of a second independent physical control. The Radiation Safety Officer and the gauge technician stated that two independent physical security controls had not been used and that they did not maintain control and constant surveillance of the gauge, when it was stored in this configuration.

REPORT DETAILS

I. Organization and Scope of the Program

a. Inspection Scope

On May 23, 2007, the inspector conducted a routine safety inspection of the possession, storage and use of the licensee's three Troxler Models 3400 and 4640 portable gauges. The inspection consisted of a review of the licensee's radiation protection program as it related to the possession and use of portable gauges, including use at, and transportation to and from, temporary job sites.

b. Observations and Findings

The inspector reviewed the licensee's administrative documents, including annual radiation protection audit; radiation dosimetry; training of individuals both initial and refresher; storage at the main facility;

c. Conclusions

No violations of NRC requirements were identified.

II. Management Oversight of the Program

a. Inspection Scope

The inspector reviewed management actions in response to a Notice of Violation issued March 19, 2002.

The Notice of Violation contained three violations:

- (1) The Radiation Safety Officer shall be the named individual. The named individual had left the company and the license had not been amended to reflect the current holder of the position.
- (2) The licensee did not review at least annually the radiation protection program.
- (3) Individuals were not trained in Hazardous Materials procedures every three years as required and materials were transported outside the site of usage, or delivered to a carrier for transport.

The licensee responded in a letter dated April 2, 2002.

b. Observations and Findings

The inspector verified that the licensee's corrective actions to these violations were completed. The named RSO was listed on the license. The inspector verified that the licensee's program to review the radiation protection program at least annually had been implemented. The RSO stated that future reviews will include written acknowledgment by upper management. The licensee provided records, and interviews with the staff verified, that Hazardous Materials training had been provided and was being renewed every three years. No carrier shipments by air are made by the licensee.

c. Conclusions

The licensee had implemented effective corrective actions. These violations are closed.

III. Transportation and Security

a. Inspection Scope

The inspector reviewed the licensee's program for transportation and security for two Troxler Model 4640 and one Troxler Model 3400 portable gauges.

b. Observations and Findings

Radiation areas around two gauges in the field were typical of those indicated in the vendor's technical manual. Radiation areas around the vehicles with gauges in stored position were less than 0.1 milliroentgen/hour (mR/hr). Radiation areas around the storage cabinet were all less than 0.1 mR/hr. NRC survey meter Xetex 305B (NRC SN 025713, calibration due 9/14/21007) was used.

The inspector determined by observation and interview with technicians at two field sites on PA Route 116, and PA Route 616 that the licensee transported gauges inside steel boxes that are bolted to the pickup truck bed and secured with a built-in button lock. The licensee staff stated that the gauges were transported inside the box without benefit of a second independent physical restraint, and during temporary storage of the portable gauges in this configuration, the licensee did not maintain constant surveillance of the portable gauges. The cap on the vehicle was open at the back with the cap gate having been removed to facilitate handling of both the gauge in its storage box and the operation of the core drill. The licensee staff had the proper documentation in their possession, and the documentation was available to an emergency responder within reach of the driver's position. The RSO stated that the gauges would remain under the direct surveillance of the technicians until an additional means of physical restraint was provided the same evening. The inspector verified by telephone on June 5, 2007 that the restraints had been installed.

c. Conclusions

The failure to 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 is a violation of 10 CFR 30.34(i).

IV. Exit Meeting

An exit meeting was held telephonically with Mr. Richard Wildin, Safety Director on June 28, 2007. The licensee was advised of the inspection findings and informed that an apparent violation of 10 CFR 30.34(i) was identified. The inspector noted that the licensee implemented prompt corrective actions in response to the finding. The licensee acknowledged the inspector findings.

PARTIAL LIST OF PERSONS CONTACTED

Licensee

Richard Wildin, Safety Director and Radiation Safety Officer