



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

November 1, 2007

Docket No. 03022207

License No. 29-23456-01

Roberto J. Garcia
Radiation Safety Officer
George Harms Construction Company, Inc.
P.O. Box 817
Farmingdale, NJ 07727

SUBJECT: INSPECTION 03022207/2007001, GEORGE HARMS CONSTRUCTION COMPANY, INC., AND NOTICE OF VIOLATION

Dear Mr. Garcia:

On August 13, 2007, Orysia Masnyk Bailey of this office conducted a safety inspection at your Howell, New Jersey office, and on September 27, 2007, Judith Joustra of this office conducted a field inspection at your temporary job site in Summer's Point, New Jersey, of activities authorized by the above listed NRC license. The inspection findings were discussed during a phone call between you and Orysia Masnyk Bailey on October 10, 2007. 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.

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. You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. After reviewing your response to this Notice, including your proposed corrective actions and the results of future inspections, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

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 **Regulations, Guidance, and Communications Page**. The current Enforcement Policy is included on the NRC's website 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).

R. Garcia
George Harms Construction Company, Inc.

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Please contact Orysia Masnyk Bailey at (864) 427-1032 if you have any questions regarding this matter.

Sincerely,

Original signed by Marie Miller

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

Enclosure:
Notice of Violation

cc:
State of New Jersey

R. Garcia
George Harms Construction Company, Inc.

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Please contact Orysia Masnyk Bailey at (864) 427-1032 if you have any questions regarding this matter.

Sincerely,

Original signed by Marie Miller

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

Enclosure:
Notice of Violation

cc:
State of New Jersey

Distribution:
D. J. Holody, RI

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SUNSI Review Complete: JJoustra

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DATE	11/1/07		11/1/07		11/1/07			

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NOTICE OF VIOLATION

George Harms Construction Company, Inc.
Farmingdale, NJ

Docket No. 030-22207
License No. 29-23456-01

During an NRC inspection conducted on August 13, September 27, and October 10, 2007, two violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. 10 CFR 30.34(c) requires, in part, that each licensee confine his possession and use of byproduct materials to the location and purposes authorized by the license.

License Condition No. 9, of NRC Material License No. 29-23456-01, limits the authorized use of the licensee's byproduct material within Troxler Electronic Laboratories, Inc. Model No. 3400 Series portable gauging devices.

Contrary to the above, at the time of the inspection on August 13, and September 27, 2007, the licensee possessed a Troxler Electronic Laboratories, Inc. Model No. 4640B portable gauge; a use not authorized by the material license.

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 transportation 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 172.202(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 May 27, 2007, the licensee transported licensed material outside the site of usage as specified in their NRC license, and the shipping description on the shipping paper that accompanied the shipment listed UN # 2974 rather than UN # 3332, the correct identification number. Specifically, the licensee transported a portable gauge containing cesium-137 and americium-241 in the form of sealed sources.

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

Pursuant to the provisions of 10 CFR 2.201, George Harms Construction Company, Inc. Is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555, with a copy to the

George Harms Construction Company, Inc.

Regional Administrator, Region I, 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, (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 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 1 day of November 2007