



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

June 9, 2008

Docket No. 03032573
EA-08-150

License No. 47-25178-01

Eugene Thompson
Vice President
Ahern & Associates, Inc.
P.O. Box 9367
South Charleston, WV 25309

**SUBJECT: INSPECTION 03032573/2008001, AHERN & ASSOCIATES, INC.,
SOUTH CHARLESTON AND PARKERSBURG, WEST VIRGINIA SITES**

Dear Mr. Thompson:

On April 17 through 21, 2008, and April 29, 2008, Samuel J. Mulay of this office conducted a safety inspection at 5725 Kanawha Turnpike, SW, South Charleston, West Virginia, and Route 50 East, Bridge Project, Parkersburg, West Virginia 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 selective examination of representative records. The findings of the inspection were discussed with you during a telephone conversation on April 29, 2008, at the conclusion of the inspection. The enclosed report presents the results of this inspection.

Based on the results of this inspection, one apparent violation was identified and is being considered for escalated enforcement in accordance with the NRC Enforcement Policy. The current Enforcement Policy is available at <http://www.nrc.gov/about-nrc/regulation/enforcement/enforce-pol.html>. The apparent violation involves the failure to use a minimum of two independent physical controls that form tangible barriers to secure a portable gauge whenever the portable gauge is not under the control and constant surveillance of the licensee. Specifically, on April 17, 2008, only one physical control was used to secure a portable gauge, containing a nominal activity of cesium-137 and americium-241 in the form of sealed sources, from unauthorized removal.

The circumstances surrounding this apparent violation, the significance of the issue, and the need for lasting and effective corrective action were discussed with you and your Radiation Safety Officer at the inspection exit meeting on April 29, 2008. The corrective actions are adequately described on the docket in the enclosed inspection report, and the NRC has concluded that it has sufficient information to make an enforcement decision. 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 last two years, and based on our understanding of your corrective actions, a civil penalty may not be warranted in accordance with Section VI.C.2 of the NRC Enforcement Policy.

Before the NRC makes its enforcement decision, we are providing you an opportunity to provide any additional information you believe the NRC should consider when making this decision by either: (1) responding to the apparent violations addressed in this inspection report within 30 days of the date of this letter; or (2) requesting a predecisional enforcement conference. If a conference is held, it will be open for public observation and the NRC will issue a press release to announce the conference. Please contact Marie Miller of my staff at (610) 337-5205 within 10 days of the date of this letter to notify the NRC of your intention.

If you choose to provide a written response, it should be clearly marked as a "Response to An Apparent Violation in Inspection Report No. 03032573/2008001; EA-08-150" 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 taken to avoid further violations, and (4) the date of full compliance. In presenting your corrective actions, you should be aware that the promptness and comprehensiveness of corrective actions are considered in assessing any civil penalty for an 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. 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 thirty days or an extension of time has not been granted by the NRC, the NRC will proceed with its enforcement decision.

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.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and its enclosures, 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 document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personnel privacy, proprietary, or Safeguards Information so that it can be made available to the Public without redaction.

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

E. Thompson

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For any questions concerning this matter, please contact Ms. Miller at 610-337-5205.

Sincerely,

/RA/

Brian Holian, Director
Division of Nuclear Materials Safety

Enclosure:

1. Inspection Report No. 03032573/2008001
2. Excerpt from NRC Information Notice 96-28

cc:

William Gessel, Radiation Safety Officer
State of West Virginia

E. Thompson

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Sincerely,

/RA/

Brian Holian, Director
Division of Nuclear Materials Safety

Enclosure:

1. Inspection Report No. 03032573/2008001
2. Excerpt from NRC Information Notice 96-28

cc:

William Gessel, Radiation Safety Officer
State of West Virginia

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EXECUTIVE SUMMARY

Ahern & Associates, Inc.
NRC Inspection Report No. 03032573/2008001

This was a routine safety inspection conducted on April 17, 2008, with continuing in office review through April 29, 2008, to evaluate activities conducted under the license as they relate to safety and compliance with the Commission's rules and regulations and with conditions of the license.

The inspector identified an apparent violation of Title 10 Code of Federal Regulations (CFR) 30.34(i) associated with the licensee's failure to use a minimum of two independent physical controls that form tangible barriers to secure the portable gauge whenever the portable gauge is not under the control and constant surveillance of the licensee while in storage at the licensee's main office location.

The root cause of the apparent violation was the licensee's failure to lock the door to the storage area housing a locked storage cabinet containing the portable gauge. The door was unlocked to facilitate electrical maintenance activities by workers in and around the storage area, thereby not providing two independent physical controls when licensed material was not under constant surveillance by the licensee in accordance with 30.34(i).

The licensee's proposed corrective actions for the apparent violation include: (1) discussion of the incident with appropriate licensee personnel reinforcing the policy to maintain the door to the storage area locked when the area is not under direct surveillance by the licensee; and (2) the licensee committed to the installation of an additional chain and lock to be attached around the storage cabinet containing the portable gauge and secured to an eyebolt attached to the frame of the storage area by April 29, 2008, to maintain and further enhance the two barrier requirement when licensed material is not under constant surveillance by the licensee. During a telephone exit meeting held on April 29, 2008, the licensee stated that the above proposed actions had been completed.

REPORT DETAILS

I. Organization and Scope of the Program

a. Inspection Scope

The inspection included a review of the licensee's activities, and organizational structure.

b. Observations and Findings

Ahern & Associates, Inc. (licensee) possesses three Model 3400 Series Troxler portable moisture density gauges, each containing nominally 8 millicuries of cesium-137 (Cs-137) and 40 millicuries of americium-241 (Am-241):beryllium in sealed source form. The devices are used to measure physical properties of materials at various road projects and construction sites within the State of West Virginia. The licensee's NRC License No. 47-25178-01, authorizes possession and use of portable gauges at temporary job sites anywhere in the United States where the NRC maintains regulatory jurisdiction. At the time of this inspection, the licensee maintained one portable gauge in storage at the licensee's main office, and the two remaining gauges were in the possession of two authorized users for use at temporary job sites as needed.

c. Conclusions

The inspection did not identify any violations or safety concerns regarding organization and scope of the program.

II. Material Receipt, Use, Transfer, and Control

a. Inspection Scope

The inspector toured the licensee's main office facility, and reviewed the licensee's program for complying with 10 CFR 30.34(i) by interviewing the authorized user/Radiation Safety Officer (RSO), and by observing selected licensed activities at a temporary job site. The inspector also performed a performance based review of licensed activities at a temporary job site location at the Route 50 West, Bridge Project, Parkersburg, West Virginia.

b. Observations and Findings

During the inspection on April 17, 2008, the inspector observed that a Troxler Model No. 3411 moisture density gauge containing a nominal activity of Cs-137 and Am-241 as sealed sources, was stored in a padlocked metal cabinet inside a fenced storage area in a loft at the licensee's South Charleston, West Virginia facility. The inspector observed that the padlock used to secure the storage area housing the locked storage cabinet was unlocked, and the door left open to facilitate workers performing electrical maintenance through and adjacent to the unlocked storage area, and the area was not under constant

surveillance by the licensee.

The licensee's 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 an apparent violation of 10 CFR 30.34(i). The licensee's proposed corrective actions for the apparent violation included: (1) discussion of the incident with appropriate licensee personnel reinforcing the policy to maintain the door to the storage area locked when the area is not under direct surveillance of the licensee; and (2) the RSO committed to installing an additional chain and lock to be attached around the storage cabinet and secured to an eyebolt attached to the frame of the storage area to further enhance security and compliance with 30.34(i).

The review of the licensee's job site located in Parkersburg, West Virginia included observations of security of licensed material for compliance with 10 CFR 30.34(i) as well as a review of emergency procedures, shipping papers and blocking and bracing techniques. The inspector noted that the gauge was properly secured in the licensee's vehicle equipped with a locked "topper" as well as additional locks and chains which adequately demonstrated compliance with 10 CFR 30.34(i).

c. Conclusions

The inspector identified an apparent violation of 10 CFR 30.34(i) involving the licensee's failure to use a minimum of two independent physical controls that form tangible barriers to secure portable gauges whenever the portable gauges are not under the control and constant surveillance of the licensee. The licensee implemented appropriate corrective actions to address the apparent violation.

III. Exit Meeting

The inspector discussed the preliminary conclusions, as described in this report, with the RSO at the conclusion of the on-site inspection on April 17, 2008, and with licensee management and the RSO during a final exit meeting during a telephone conversation on April 29, 2008. The inspector discussed the activities reviewed, the inspection findings, and the apparent violation. The licensee stated that the proposed corrective actions were completed.

PARTIAL LIST OF PERSONS CONTACTED

Licensee

Eugene Thompson, Vice President

William "Mark" Gessel, Radiation Safety Officer