UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
612 EAST LAMAR BLVD, SUITE 400
ARLINGTON, TEXAS 76011-4005

August 26, 2008

Mr. Robert F. Wilkinson
President & CEO
Maui Paving, LLC
P.O. Box 78
Honolulu, Hawaii 96810

SUBJECT: RESPONSE TO NRC INSPECTION REPORT 030-33548/08-001 AND NOTICE OF VIOLATION

Dear Mr. Wilkinson:

Thank you for your letter dated August 1, 2008, in response to the violations identified in our letter and Notice of Violation (Notice) dated July 7, 2008. We have reviewed your letter and find it responsive to the concerns raised in our Notice. We will review the implementation of your corrective actions during a future inspection to determine that full compliance has been achieved and will be maintained.

With regards to Violation B, for not leak testing a portable gauge, we thank you for submitting additional information showing that the portable gauge in question had in fact been leak tested by another company prior to its transfer to Maui Paving. However, License Condition 13(B) of your License states, in part, that in the absence of a certificate from the transferor indicating that a leak test had been performed at the appropriate intervals, a sealed source received from another person shall not be put into use until tested. Maui Paving employees neither obtained a certificate from the transferor indicating that the sealed sources in the portable gauge had been leak tested, nor performed a leak test themselves, prior to putting the portable gauge into use. At the time of the inspection on March 6, 2008, a leak test certificate for the Troxler Model 3440, Serial Number 17573, had not been obtained from the transferor, and the gauge was actively being used on a construction project in Kehei, Hawaii. The most recent leak test certificate available was from August 9, 2006. Therefore, the Troxler gauge should have been leak tested by Maui Paving prior to use, which is why Violation B is a valid violation.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and 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 from the NRC Web site at http://www.nrc.gov/reading-rm/adams.html.

Sincerely,

/RA/ for

Vivian H. Campbell, Chief
Nuclear Materials Safety Branch A

Docket No.: 030-33548
License No: 53-29069-01

cc w/copy of licensee's letter dated August 1, 2008:
Hawaii Radiation Control Program Director

RF

GracePacific
Grace Pacific Corporation • GP Maintenance Solutions • GP Roadway Solutions • GPRM Prestress • Niu Construction

memo

RECEIVED
AUG 07 2008
DNMS

Date: August 1, 2008

To: James Thompson, NRC Representative

From: Rusty Niau, Director of HR/Safety
Felicia Souza, RSO

RE: Maui Paving – Notice of Violations

This memo is in response to the NRC Inspection Report 030-33548/08-001 and Notice of Violation:

1. The licensee failed to conduct a physical inventory every six months to account for all sources and devices received and possessed under the license. Specifically, physical inventories were not performed during the Calendar Year 2007.

Attached is the Maui Paving, LLC Inventory Form for Nuclear Gauges, labeled as ***attachment A****. The RSO, Clayton Castillo will be held responsible to conduct a physical inventory every 6 months to account for all sources and devices received and possessed under the license.*

2. Sealed sources were not tested for leakage and/or contamination at intervals specified in the certificate of registration issued by U.S. Nuclear Regulatory Commission under 10 CFR 32.210 or by an Agreement State. Specifically, the licensee failed to perform leak tests on sealed sources housed in a Troxler Model 3440, Serial Number 17573, from August 9, 2006, until the date of inspection on March 6, 2008, and the leak test interval for this gauge is every 12 months. This gauge was routinely being used on a highway construction project in Kihei, Hawaii during this time interval.

ADAMS # ML082200682
Template
Date 8/7/08 QC'd by

Specifically, the Troxler Gauge Model # 3440, Serial Number 17573 is owned by Construction Engineering Labs Inc and was leak tested on February 29, 2008; however at the time of the inspection results were not available.
(See Attachment B-1)

Attached is a "Certificate of Leak Test" from CPN for the MC-3 Gauge, Serial # M390605145. In addition, a form notating a Log for Nuclear Gauge Leak Test is attached. Both of these items are labeled as ***attachment B-2 and B-3).***

As reflected on the Inventory of Nuclear Gauges for Maui Paving LLC, both Troxler gauges, 3242 and 3440 were stored, not in use and the appropriate procedures for leak testing of these gauges were not processed at the time of the transfer from Rim Rock to Maui Paving LLC.

Moving forward the licensee will conduct leak testing as a Condition of 13(A) of License No. 53-29069-01 which requires that sealed sources shall be tested for leakage and/or contamination at intervals not to exceed the intervals specified in the certificate of registration issued by the U.S. Nuclear Regulatory Commission under 10 CFR 32.210 or by an Agreement State.

3. The Licensee failed to limit possession of byproduct material to the types and quantities listed on the License. Specifically, the License authorizes the possession of only cesium-137 and americium-241. However, the licensee is currently in possession of a sealed source of californium-252 (serial number 74-364).

The licensee failed to register byproduct material of the Troxler Model 3242 gauge, serial number 283 and source serial number74-364. An amendment to the license is in progress to add the byproduct of californium-252 for the Troxler Model 3242. This gauge was part of a joint venture business arrangement between Rim Rock and Grace Pacific and currently now in the possession of Maui Paving, LLC.

4. The licensee transferred byproduct material to a specific licensee without verifying that the transferee's license authorizes the receipt of the type, form, and quantity of byproduct material to be transferred. Specifically, on March 24, 2008, the licensee transferred a Campbell Pacific Nuclear portable nuclear gauge (Serial Number M390605145) containing sealed sources of cesium-137 and americium-241 (Model CPN -131), and these models are not authorized under the transferee's license.

The transferee in this case is identified as Construction Engineering Labs and to rectify this situation, Construction Labs has requested an Amendment to their current license to add the use of the CPN Model MC-3 nuclear moisture/density gauge containing the sealed sources of cesium-137 and americium-241, see ***attachment D.***

5. The licensee failed to periodically review its radiation protection program content, and implementation at least annually. Specifically, annual reviews of the licensee's radiation protection program were not conducted in Calendar Years 2006 and 2007.

The licensee has attached a form, Annual Review of Radiation Safety Program ***labeled attachment E,*** *for review. The licensee has been negligent in the calendar years 2006 and 2007; however is committed to correct this violation and ensure the proper documentary procedures are taken in the future.*

INVENTORY OF NUCLEAR GAUGES FOR MAUI PAVING LLC

MANUFACTOR	MODEL NUMBER	SERIAL NUMBER	SOURCE TYPE	SOURCE SERIAL NO	STATUS
C.P.N.	MC - 3	M390605145	Cs - 137 / Am - 241:Be	CS36C/AM93D	IN USE
TROXLER	3242	283	Cf- 252	74-364	IN STORAGE
TROXLER	3440	23444	Cs-137 / Am-241:Be	75-5486 / 47-19327	IN STORAGE

10-Apr-08
Date

Clayton Castillo
Radiation Safety Officer

(B)7

InstroTek, Inc.
5908 Triangle Drive
Raleigh, NC 27617
(919)875-8371 Fax (919)875-8328

3/10/2008
Test Number: 1

RON PICKERING
CONSTRUCTION ENGINEERING LABS INC
96-1173 WAIHONA STREET UNIT B
PEARL CITY, HI 96782

Phone: (808)455-1522
Fax: (808)455-1384

LEAK TEST CERTIFICATE

NC Materials License #092-1073-1

This certifies that leak test analysis was conducted on the sample with the following information. The results shown below accurately represent the level of removable contamination.

Gauge Model: 3440 Gauge S/N: 17573 Test Date: 2/29/2008

Source (Model/Serial#)	Reading in microCuries
47-13002	0.00000
50-7011	0.00026

Note: 0.005 microCuries (185 Bq) or greater is considered a leaking source.° The source(s) tested above may remain in use.

Reviewed by: _____ Date: 03/10/08

RSO Signature: _____ Date: _____

°CPN gauges are 50 mCi Am241:Be and 10 mCi Cs-137. Humboldt gauges are 40 mCi Am241:Be and 10 mCi Cs-137. InstroTek Gauge is 40 mCi Am241:Be and 10 mCi Cs-137. Troxler gauges all, except 4640, are 40 mCi Am241:Be and 8 mCi Cs-137. Troxler 4640 is 8 mCi Cs-137.

(B) 12

CPN

Advanced Instrumentation for Density
& Moisture Testing of Soils & Pavements

CPN International, Inc.
4057 Port Chicago Highway, Suite 100
Concord, CA 94520 USA
Phone: (925) 363-9770
Fax: (925) 363-9385
e-mail: cpn@cpn-intl.com

CERTIFICATE OF LEAK TEST

GRACE PACIFIC LTD/HAWIIAN BIT.
ATTN: FALICIA M. SOUZA
P.O. BOX 78
HONOLULU HI 96810

Customer No: 7370600
Date Sample Collected: 4/2/2008
Test Number: 51209

This is to certify that the leak test on the indicated source (s) was counted on 4/30/2008 and the results shown accurately represent the level of removable contamination.

Model: MC-3 Source(s)/Gauge Serial Number: M390605145

Source	Activity	* Removable Contamination (in microCuries)
AmBe 241	50 mCi	.0000016
Cs 137	10 mCi	.0000129

* 0.005 microcuries (185 Bq) or greater constitutes a leaking source.

This Source : May Remain in use.

Reviewed by: Leak Testing Quality Control
CA License No. 1100-07

6)-3

NUCLEAR GAUGE LEAK TEST LOG FOR Maui Paving LLC

MANUFACTOR	MODEL NUMBER	SERIAL NUMBER	SOURCE SERIAL NO	TEST DATE	NEXT TEST DUE	PERFORMED BY
C.P.N.	MC - 3	M390605145	CS36C/AM93D	Apr-08	Oct-08	F. SOUZA
TROXLER	3440	75-5486	47-19327	IN STORAGE		
TROXLER	3242	283	74-364	IN STORAGE		

(D)

Construction Engineering Labs

96-1173 Waihona St., Unit B-7, Pearl City, Hawaii 96782
Fax: 808-455-1384 • Email: cel-admin@hawaii.rr.com

July 16, 2008

U.S. NRC Region IV
Texas Health Resources Tower
611 Ryan Plaza Dr., Suite 400
Arlington, TX 76011-8064

Subject: License Number 53-23293-01 Amendment Request

Dear Sir or Madam,

I would like to request an amendment to Radioactive Material License No. 53-23293-01 to authorize Construction Engineering Labs to use the CPN International, Inc. Model MC3 nuclear moisture/density gauge for measurement of soils and construction materials. The Model MC3 contains the following sealed sources:

1. Cs-137 (AEA Technology QSA Model Number X.8)
   Maximum activity: 10 mCi

2. Am-241:Be (AEA Technology QSA, Inc. Model Number X.2084)
   Maximum activity: 50 mCi

Please contact me if you need more information.

Respectfully,
CONSTRUCTION ENGINEERING LABS, INC.

By: Ronald A. Pickering II
Its: Vice President Operations

Official Use Only - Security-Related Information

NRC FORM 374 U.S. NUCLEAR REGULATORY COMMISSION PAGE 1 OF 5 PAGES

Amendment No. 07

MATERIALS LICENSE

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974 (Public Law 93-438), and Title 10, Code of Federal Regulations, Chapter I, Parts 30, 31, 32, 33, 34, 35, 36, 39, 40, and 70, and in reliance on statements and representations heretofore made by the licensee, a license is hereby issued authorizing the licensee to receive, acquire, possess, and transfer byproduct, source, and special nuclear material designated below; to use such material for the purpose(s) and at the place(s) designated below; to deliver or transfer such material to persons authorized to receive it in accordance with the regulations of the applicable Part(s). This license shall be deemed to contain the conditions specified in Section 183 of the Atomic Energy Act of 1954, as amended, and is subject to all applicable rules, regulations, and orders of the Nuclear Regulatory Commission now or hereafter in effect and to any conditions specified below.

Licensee	in accordance with letter dated
	February 5, 2007
1. Construction Engineering Labs, Inc.	3. License number 53-23293-01 is amended in its entirety to read as follows:
2. 96-1173 Waihona Street, Unit B7 Pearl City, Hawaii 96782	4. Expiration date November 30, 2014
	5. Docket No. 030-31156 Reference No.

6. Byproduct, source, and/or special nuclear material	7. Chemical and/or physical form	8. Maximum amount that licensee may possess at any one time under this license
A. Cesium-137	A. Sealed sources (AEA Technology/QSA, Inc. Model CDCW556; Isotope Product Laboratories Model HEG-137 or HEG-137-8M; or Troxler Model A-102112)	A. 1,000 millicuries total. No single source to exceed the maximum activity specified in the certificate of registration issued by the U.S. Nuclear Regulatory Commission or an Agreement State
B. Americium-241	B. Sealed neutron sources (AEA Technology/QSA, Inc. Models AMN.V997, 3021, or 3027; Isotope Products Laboratories Model Am1.NO2; or Troxler Model A-102451 or A-102113)	B 1,000 millicuries total. No single source to exceed the maximum activity specified in the certificate of registration issued by the U.S. Nuclear Regulatory Commission or an Agreement State
C. Cesium-137	C. Sealed sources (AEA Technology/QSA, Inc. Model CDC.805 or Isotope Products Laboratories Model HEG-137)	C. 1,000 millicuries total. No single source to exceed the maximum activity specified in the c ertificate of registration issued by the U.S. Nuclear Regulatory Commission or an Agreement State

Official Use Only - Security-Related Information

NRC FORM 374A U.S. NUCLEAR REGULATORY COMMISSION PAGE 2 of 5 PAGES

MATERIALS LICENSE
SUPPLEMENTARY SHEET

License Number
53-23293-01

Docket or Reference Number
030-31156

Amendment No. 07

6. Byproduct, source, and/or special nuclear material	7. Chemical and/or physical form	8. Maximum amount that licensee may possess at any one time under this license
D. Americium-241	D. Sealed neutron sources (AEA Technology/QSA, Inc. Model AMN.V977 or Isotope Products Laboratories Model Am1.NO2)	D. 1,000 millicuries total. No single source to exceed the maximum activity specified in the certificate of registration issued by the U.S. Nuclear Regulatory Commission or an Agreement State

9. Authorized use

A. and B. In Troxler Electronic Laboratories, Inc. Model No. 3400 series and Model No. 4640 portable gauging devices for measuring physical properties of materials.

C. and D. In InstroTek, Inc. Model No. 3500 Xplorer portable gauging devices for measuring phycial properties of materials.

CONDITIONS

10. Licensed material may be used or stored at the licensee's facilities located at:

A. 96-1173 Waihona Street, Suite B7, Pearl City, Hawaii;

B. West Hawaii Kona Quarry, Kailua-Kona, Hawaii;

C. Central Maui Baseyard, 218 Kaupoku Loop, Puunene, Maui, Hawaii;

D. Temporary job sites of the licensee anywhere in the United States where the U.S. Nuclear Regulatory Commission maintains jurisdiction for regulating the use of licensed material.

If the jurisdiction status of a Federal facility within an Agreement State is unknown, the licensee should contact the Federal agency controlling the job site in question to determine whether the proposed job site is an area of exclusive Federal jurisdiction. Authorization for use of radioactive materials at job sites in Agreement States not under exclusive Federal jurisdiction shall be obtained from the appropriate state regulatory agency.

MATERIALS LICENSE
SUPPLEMENTARY SHEET

License Number
53-23293-01

Docket or Reference Number
030-31156

Amendment No. 07

11. Licensed material shall only be used by, or under the supervision and in the physical presence of individuals who have received the training described in letter received October 7, 1996, and application for renewal dated April 13, 2004.

12. The Radiation Safety Officer (RSO) for this license is Ronald A. Pickering II.

13. In addition to the possession limits in Item 8, the licensee shall further restrict the possession of licensed material to quantities below the minimum limit specified in 10 CFR 30.35(d), 40.36(b), and 70.25(d) for establishing financial assurance for decommissioning.

14. A. Sealed sources shall be tested for leakage and/or contamination at intervals not to exceed the intervals specified in the certificate of registration issued by the U.S. Nuclear Regulatory Commission under 10 CFR 32.210 or by an Agreement State.

    B. In the absence of a certificate from a transferor indicating that a leak test has been made within the intervals specified in the certificate of registration issued by the U.S. Nuclear Regulatory Commission under 10 CFR 32.210 or by an Agreement State prior to the transfer, a sealed source or detector cell received from another person shall not be put into use until tested.

    C. Sealed sources need not be leak tested if they are in storage and are not being used. However, when they are removed from storage for use or transferred to another person, and have not been tested within the required leak test interval, they shall be tested before use or transfer. No sealed source shall be stored for a period of more than 10 years without being tested for leakage and/or contamination.

    D. The leak test shall be capable of detecting the presence of 0.005 microcurie (185 becquerel) of radioactive material on the test sample. If the test reveals the presence of 0.005 microcurie (185 becquerel) or more of removable contamination, a report shall be filed with the U.S. Nuclear Regulatory Commission in accordance with 10 CFR 30.50(c)(2), and the source shall be removed immediately from service and decontaminated, repaired, or disposed of in accordance with Commission regulations. The report shall be filed within 5 days of the date the leak test result is known with the U.S. Nuclear Regulatory Commission, Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, ATTN: Director, Division of Nuclear Materials Safety. The report shall specify the source involved, the test results, and corrective action taken.

    E. Tests for leakage and/or contamination shall be performed by persons specifically licensed by the U.S. Nuclear Regulatory Commission or an Agreement State to perform such services. In addition, the licensee is authorized to collect leak test samples but not perform analysis; analysis of leak test samples must br performed by persons specifically licensed by the Commission or an Agreement State to perform such services.

    F. Records of leak test results shall be kept in units of microcuries and shall be maintained for 3 years.

NRC FORM 374A	U.S. NUCLEAR REGULATORY COMMISSION	PAGE 4 of 5 PAGES
MATERIALS LICENSE **SUPPLEMENTARY SHEET**		License Number 53-23293-01
		Docket or Reference Number 030-31156
		Amendment No. 07

15. Sealed sources or source rods containing licensed material shall not be opened or sources removed or detached from source rods or gauges by the licensee, except as specifically authorized.

16. The licensee shall conduct a physical inventory every six months, or at other interval approved by the U.S. Nuclear Regulatory Commission, to account for all sealed sources and/or devices received and possessed under the license.

17. Except for maintaining labeling as required by 10 CFR Part 20 or 71, the licensee shall obtain authorization from the U.S. Nuclear Regulatory Commission before making any changes in the sealed source, device, or source-device combination that would alter the description or specifications as indicated in the respective Registration Certificates issued either by the Commission pursuant to 10 CFR 32.210 or by an Agreement State.

18. Each portable gauge shall have a lock or outer locked container designed to prevent unauthorized or accidental removal of the sealed source from its shielded position. The gauge or its container must be locked when in transport, storage, or when not under the direct surveillance of an authorized user.

19. Any cleaning, maintenance, or repair of the gauges that requires detaching the source or source rod from the gauge shall be performed only by the manufacturer or other persons specifically licensed by the U.S. Nuclear Regulatory Commission or an Agreement State to perform such services.

20. A. If the licensee uses unshielded sealed sources extended more than 3 feet below the surface, the licensee shall use surface casing that extends from the lowest depth to 12 inches above the surface and other appropriate procedures to reduce the probability of the source or probe becoming lodged below the surface. If it is not feasible to extend the casing 12 inches above the surface, the licensee shall implement procedures to ensure that the cased hole is free of obstruction before making measurements.

    B. If a sealed source or a probe containing sealed sources becomes lodged below the surface and it becomes apparent that efforts to recover the sealed source or probe may not be successful, the licensee shall notify the U.S. Nuclear Regulatory Commission and submit the report required by 10 CFR 30.50(b)(2) and (c). The licensee shall not abandon the sealed source or probe without obtaining the Commission's prior written consent.

21. The licensee is authorized to transport licensed material only in accordance with the provisions of 10 CFR Part 71, "Packaging and Transportation of Radioactive Material.

NRC FORM 374A U.S. NUCLEAR REGULATORY COMMISSION PAGE 5 of 5 PAGES

MATERIALS LICENSE
SUPPLEMENTARY SHEET

License Number
53-23293-01

Docket or Reference Number
030-31156

Amendment No. 07

22. Except as specifically provided otherwise in this license, the licensee shall conduct its program in accordance with the statements, representations, and procedures contained in the documents, including any enclosures, listed below. The U.S. Nuclear Regulatory Commission's regulations shall govern unless the statements, representations, and procedures in the licensee's application and correspondence are more restrictive than the regulations.

A. Application dated April 7, 1994
B. Letter received October 7, 1996
C. Facsimile dated October 30, 1996
D. Letter dated August 9, 2001
E. Letter dated October 18, 2001
F. Application dated April 13, 2004
G. Facsimile dated May 12, 2004
H. Facsimiles dated October 7 and 8, 2004
I. Letter dated February 5, 2007

FOR THE U.S. NUCLEAR REGULATORY COMMISSION

Date May 4, 2007

By

Jacqueline D. Cook, Senior Health Physicist
Nuclear Materials Licensing Branch
Region IV, Arlington, Texas 76011

(E)

NOTE: All areas indicated in audit notes may not be applicable to every license and may not need to be addressed during each audit

LICENSEE'S NAME: Maui Paving LLC. License No. 53-29069-01
AUDITOR: Norman Shinno Date of Audit: 4/11/08 Telephone No. (808) 870-2064

(Signature)

1. AUDIT HISTORY
   a. Last audit of this location conducted on (date) N/A
   b. Were previous audits conducted yearly? [***10 CFR 20.1101***] NO
   c. Were records of previous audits maintained? [***10 CFR 20.2102***] NO
   d. Were any deficiencies identified during last two audits or two users, whichever is longer? YES
   e. Were corrective actions taken? (Look for repeated deficiencies). YES

2. ORGANIZATION AND SCOPE OF PROGRAM
   a. If the mailing address or places of use changed, was the license amended? YES
   b. If ownership changed or bankruptcy filed, was ***NRC*** prior consent obtained or was ***NRC*** notified? YES
   c. If the ***RSO*** was changed, was license amended? Does new ***RSO*** meet NRC training requirements? YES
   d. If the designated contact person for ***NRC*** changed, was ***NRC*** notified? YES
   e. Does the license authorize all of the ***NRC***-regulated radionuclides contained in in gauges possessed? NO
   f. Are the gauges as described in the Sealed Source and Device (SSD) Registration Certificate or Sheet? YES
      Have copies of (or access to) SSD Certificated? Have manufacturers' manuals for operation and maintenance? [***10 CFR 32.210***] YES
   g. Are the actual uses of gauges consistent with the authorized uses listed on the license? YES
   h. Is ***RSO*** fulfilling his/her duties? YES

3. TRAINING AND INSTRUCTIONS TO WORKERS
   a. Were all workers who are likely to exceed 100 mrem/yr instructed per [***10 CFR 19.12***]? Refresher training provided, as needed [***10 CFR 19.12***]? YES
   b. Did each gauge operator attend an approved course prior to using gauges? YES
   c. Are training records maintained for each gauge operator? YES
   d. Did interviews with operators reveal that they know the emergency procedures? YES
   e. Did this audit include observations of operators using the gauge in a field situation? NO
   f. Operating gauge? Performing routine cleaning and lubrication? Transporting gauge? Storing gauge? YES
   g. Did the operator demonstrate safe handling and security during transportation, use and storage? YES
   h. HAZMAT training provided as required? [***49 CFR 172.700, 49 CFR 172.701, CFR 172.702, 49 CFR 172.703, 49 CFR 172.704***] YES

4. RADIATION SURVEY INSTRUMENTS
   a. If the licensee possesses its own survey meter, does it meet the ***NRC's*** criteria? N/A
   b. If the licensee does not possess a survey meter, are specific plans made to have one available? YES
   c. Is the survey meter needed for non-routine maintenance calibrated as required [***10 CFR 20.1501***]? N/A
   d. Are calibration records maintained [***10 CFR 20.2103(a)***]? N/A

5. GAUGE INVENTORY
   a. Is a record kept showing the receipt of each gauge? **[10 CFR 30.51(a)(1)]** YES
   b. Are all gauges received physically inventoried every six months? YES
   c. Are records of inventory results with appropriate information maintained? NO

6. PERSONNEL RADIATION PROTECTION
   a. Are ***ALARA*** considerations incorporated into the radiation protection program? [***10 CFR 20.1101(b)***] YES
   b. Is documentation kept showing that unmonitored users receive <10% of limit? YES
   c. Did unmonitored users' activities change during the year which could put them over 10% of limit? NO
   d. If yes to c. above, was a new evaluation performed? N/A
   e. Is external dosimetry required (user receiving >10% of limit)? And is dosimetry provided to users? YES
      1) Is the dosimetry supplier ***NVLAP*** approved? [***10 CFR 20.1501(c)***] YES
      2) Are the dosimeters exchanged monthly for film badges and at industry recommended frequency for ***TLDs***? QUARTERLY
      3) Are dosimetry reports reviewed by the ***RSO*** when they are received? YES
      4) Are the records ***NRC*** Forms or equivalent? [***10CFR 20.2104(d), 10 CFR 20.2106 (c)***] YES

         * ***NRC-4*** "Cumulative Occupational Exposure History" completed? YES
         * ***NRC-5*** "Occupational Exposure Record for a Monitoring Period" completed? YES

5) If a worker declared her pregnancy, did licensee comply with ***10 CFR 20.1208***? N/A

* Were records kept of embryo/fetus dose per ***10 CFR 20.2106(e)***? N/A

f. Are records of exposures, surveys, monitoring, and evaluations maintained [***10CFR 20.2102, 10 CFR 20.2103, 10 CFR 20.2106***] YES

7. PUBLIC DOSE
   a. Are gauges stored in a manner to keep doses below 100 mrem in a year? [***10 CFR 20.1301(a)(1)***] YES
   b. Has a survey or evaluation been performed per ***10 CFR 20.1501(a)***? Have there been any additions or changes to the storage, security, or use of surrounding areas that would necessitate a new survey or evaluation? A new survey will be conducted when new storage area is completed
   c. Do unrestricted area radiation levels exceed 2 mrem in any one hour? ***10 CFR 20.1801(a)(2)*** NO
   d. Are gauges being stored in a manner that would prevent unauthorized use or removal? [***10 CFR 20.1801***] NO
   e. Records maintained? [***10 CFR 20.2103, 10 CFR 20.2107***] YES

8. OPERATING AND EMERGENCY PROCEDURES
   a. Have operating and emergency procedures been developed? YES
   b. Do they contain the required elements? YES
   c. Does each operator have a current copy (telephone numbers) of the operating and emergency procedures? YES
   d. Did any emergencies occur? If so, and were they handled properly by operator? Were appropriate corrective actions taken? N/A

9. LEAK TEST
   a. Was each sealed source leak tested every 6 months or at other prescribed intervals?
      No, but has been leak tested on 4/2/08
   b. Was the leak test performed as described in correspondence with ***NRC*** and according to the license? NO
   c. Are records of results retained with the appropriate information included? YES
   d. Were any sources found leaking and if yes, was ***NRC*** notified? NO

10. MAINTENANCE OF GAUGES
   a. Are manufacturer's procedures followed for routing cleaning and lubrication of gauge? YES
   b. Does the source or source rod remain attached to the gauge during cleaning? YES
   c. Is non-routine maintenance performed where the source or source rod is detached from the gauge? NO
      If yes, was it performed according to license requirements (e.g., extent of work, individuals performing the work, procedures, dosimetry, survey instrument, compliance with ***10 CFR 20.1301*** limits)? N/A

11. TRANSPORTATION
   a. DOT-7A or other authorized packages used? [***49 CFR 173.415, 49 CFR 173.416(b)***] YES
   b. Package performance test records on file? YES
   c. Special from sources documentation? [***49 CFR 173.476(a)***] YES
   d. Package has 2 labels (ex. Yellow-II) with TI, Nuclide, Activity, and Hazard Class? [***49 CFR 172.403, 49 CFR 173.441***] YES
   e. Package properly marked? [***49 CFR 172.301, 49 CFR 172.304, 49 CFR 172.310, 49 CFR 172.324***] YES
   f. Package closed and sealed during transport? [***49 CFR 173.475(f)***] YES
   g. Shipping papers prepared and used? [***49 CFR 172.200(a)***] YES
   h. Shipping papers contain proper entries? {Shipping name, Hazard Class, Identification Number (UN Number), Total Quantity, Package Type, Nuclide, RQ, Radioactive Material, Physical and Chemical Form, Activity, category of label, TI, Shipper's Name, Certification and Signature, Emergency Response Phone Number, Cargo Aircraft Only (If applicable)} [***49 CFR 172.200, 49 CFR 172.201, 49 CFR 172.202, 49 CFR 172.203, 49 CFR 172.204, 449 CFR 172.604***] YES
   i. Shipping papers within drivers reach and readily accessible during transport? [***49 CFR 177.817(e)***] YES
   j. Secured against movement? [***49 CFR 177.834***] YES
   k. Placarded on vehicle, if needed? [***49 CFR 172.504***] N/A
   l. Proper overpacks, if used? [***49 CFR 173.25***] YES
   m. Any incidents reported to ***DOT***? [***49 CFR 171.15,16***] NO

12. AUDITOR'S INDEPENDENT SURVEY MEASUREMENTS (IF MADE)
   a. Describe the type, location, and results of measurements. Do any radiation level exceed regulatory limits? NO

13. NOTIFICATION AND REPORTS
   a. Was any radioactive material lost or stolen? Were reports made? [***10 CFR 20.2201, 10 CFR 30.50***] NO
   b. Did any reportable incidents occur? Were reports made? [***10 CFR 20.2202,*** 10 CFR 30.50] NO
   c. Did any overexposures and high radiation levels occur? Reported? [***10 CFR 20.220,*** 10 CFR 30.50] NO
   d. If any events (as described in items a through c above) did occur, what was root cause? N/A
      Were corrective actions appropriate? N/A
   e. Is the licensee aware of telephone number for ***NRC*** Emergency Operations Center? YES
      [(301) 816-5100]

14. POSTING AND LABELING
   a. ***NRC-3*** "Notice to Workers" posted? [***10 CFR 19.11***] YES
   b. ***NRC*** regs., license documents posted or a notice posted? [***10 CFR 19.11, 10 CFR 21.6***] YES
   c. Other posting and labeling? [***10 CFR 20.1902, 10 CFR 20.1904***] YES

15. RECORD KEEPING FOR DECOMMISSIONING
   a. Records kept of information important to decommissioning? [***10 CFR 30.35(g)***] YES

b. Records include all information outlined in [*10 CFR 30.35(g)*] YES

16. BULLETINS AND INFORMATION NOTICES
    a. *NRC* Bulletins, *NRC* Information Notices, *NMSS* Newsletters, received? YES
    b. Appropriate training and action taken in response? YES

17. SPECIAL LICENSE CONDITIONS OR ISSUES
    a. Did auditor review special license conditions or other issues (e.g., non-routine maintenance)? YES

18. DEFICIENCIES IDENTIFIED IN AUDIT; CORRECTIVE ACTIONS
    a. Summarize problems/deficiencies identified during audit. YES
    b. If problems/deficiencies identified in this audit, describe corrective actions planned or taken. Are corrective actions planned or taken at ALL licensed locations (not just location audited)? YES
    c. Provide any other recommendations for improvement. Program awarness

19. EVALUATION OF OTHER FACTORS
    a. Senior licensee management is appropriately involved with the radiation protection program and/or Radiation Safety Officer (*RSO*) oversight? YES
    b. *RSO* has sufficient time to perform his/her radiation safety duties? YES
    c. Licensee has sufficient staff to support the radiation protection program? YES

Annual Review of Radiation Safety Program

10 CFR 20 Sub-part B - Radiation protection Programs 20.1101 (c). The licensee shall periodically (at least annually) review the radiation protection program content and implementation.

1. Is a physical inventory performed every six (6) months and a record maintained for inspection? (If multiple gauges are possessed.)

   ☐ Yes ☒ No, If No, corrective action taken: This is the 1st review since program was transferred to Maui Paving.

2. Are leak-tests performed on all gauges, including rental gauges, at intervals not to exceed one year and certificates retained for Inspection for a period of three (3) years or until Inspected, whichever is longer? Is a current leak test certificate in every gauge shipping container?

   ☐ Yes ☒ No, If No, corrective action taken: Gauge was leak tested on 4/2/08, last record indicates last leak test was performed 11/06

3. Are entries made in the check-out/check -in log prior to /following transport and use at temporary temporary job sites?

   ☒ Yes ☐ No, If No, corrective action taken: _____

4. Are recipients licenses obtained to certify that possession is authorized, before transfer of gauges? Has a letter of receipt been obtained upon transfer of possession?

   ☐ Yes ☒ No, If No, corrective action taken: recipient was under the assumption that they we authorized to accept/possess certain source type. A request to ammend their license is in the process.

5. If a survey meter is specified as a license condition, is it calibrated annually and are calibration records retained for inspection?

   ☒ Yes ☐ No, If No, corrective action taken: _____

6. Are gauges transported in compliance with 49 CFR (Title 49, Code of Federal Regulations), Transportation? This includes gauges tied down and locked, carrying a shipping paper, and Special Form and Type A Package Authorizations on file.

   ☒ Yes ☐ No, If No, corrective action taken: _____

7. Are personal dosimetry devices used in compliance with the conditions of the License? Are dosimetry records preserved indefinitely?

☒ Yes ☐ No, If No, corrective action taken: _____

8. Have all employees received certification training and annual refresher training on the safe and legal use of radioactive materials? Are records on file for Inspection?

☒ Yes ☐ No, If No, corrective action taken: _____

9. Are all procedures for the use, storage and possession of radioactive material in compliance with the conditions of the Radiation Safety Plan?

☒ Yes ☐ No, If No, corrective action taken: _____

10. Are all gauges used, serviced, stored, and transported in compliance with the conditions of the Radioactive Materials License?

☒ Yes ☐ No, If No, corrective action taken: _____

11. Is all information on the radioactive material license current?

☒ Yes ☐ No, If No, corrective action taken: _____

Company Official

April 11, 2008
Date

License No. 53-29069-01

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
612 EAST LAMAR BLVD, SUITE 400
ARLINGTON, TEXAS 76011-4005

July 7, 2008

Mr. Robert F. Wilkinson
President & CEO
Maui Paving, LLC
P.O. Box 78
Honolulu, Hawaii 96810

SUBJECT: NRC INSPECTION REPORT 030-33548/08-001 AND NOTICE OF VIOLATION

Dear Mr. Wilkinson:

This refers to the inspection conducted on March 6, 2008, at Maui Paving's facility at Ameron Quarry, Camp 10, in Puunene, Hawaii, with continued in-house review through June 3, 2008. The 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 the license. Within these areas, the inspection consisted of selected examination of procedures and representative records and interviews with personnel. Preliminary inspection findings were discussed with Mr. Clayton Castillo, Radiation Safety Officer, at the conclusion of the onsite portion of the inspection. A final exit briefing was conducted with members of your staff telephonically on June 13, 2008.

Based on the results of this inspection, the NRC has determined that five Severity Level IV violations of NRC requirements occurred. These violations were evaluated in accordance with the NRC Enforcement Policy included on the NRC's Web site at www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html. The violations are cited in the enclosed Notice of Violation (Notice) and the circumstances that surround them are described in detail. The violations involved: 1) the failure to perform physical inventories of licensed material at the required intervals; and, 2) the failure to perform leak tests on radioactive sources at the required intervals; and, 3) the transfer of a portable nuclear gauge to a licensee not authorized to possess the gauge; and, 4) the possession of a radioactive isotope not listed on your license; and, 5) the failure to perform audits of the radiation protection program annually. The violations are being cited in the Notice because they were identified by the NRC during the inspection.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In addition, you should describe the steps you have taken, or will take to address our concerns about your management's attention to your radiation safety program and your Radiation Safety Officers's apparent lack of understanding of NRC requirements. For your consideration and convenience, an excerpt from NRC Information Notice 96-28, "SUGGESTED GUIDANCE RELATING TO DEVELOPMENT AND IMPLEMENTATION OF CORRECTIVE ACTION," is enclosed. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, Enclosure 1, and 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 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, please contact Mr. James L. Thompson at (817) 276-6538 or the undersigned at (817) 860-8287.

Sincerely,

Anthony D. Gaines for

Vivian H. Campbell, Chief
Nuclear Materials Safety Branch A

Docket No.: 030-33548
License No.: 53-29069-01

Enclosures:
1. Notice of Violation
2. Information Notice 96-28

cc w/Enclosure 1:
Hawaii Radiation Control Program Director

NOTICE OF VIOLATION

Maui Paving, LLC
Puunene, Hawaii

Docket No. 030-33548
License No. 53-29069-01

During a NRC inspection conducted on March 6, 2008, five violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

A. Condition 15 of License No. 53-29069-01 requires, in part, that the licensee shall conduct a physical inventory every six months to account for all sources and devices received and possessed under the license.

Contrary to the above, the licensee failed to conduct a physical inventory every six months to account for all sources and devices received and possessed under the license. Specifically, physical inventories were not performed during Calendar Year 2007.

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

B. Condition 13(A) of License No. 53-29069-01 requires, in part, that sealed sources shall be tested for leakage and/or contamination at intervals not to exceed the intervals specified in the certificate of registration issued by U.S. Nuclear Regulatory Commission under 10 CFR 32.210 or by an Agreement State.

Contrary to the above, sealed sources were not tested for leakage and/or contamination at intervals specified in the certificate of registration issued by U.S. Nuclear Regulatory Commission under 10 CFR 32.210 or by an Agreement State. Specifically, the licensee failed to perform leak tests on sealed sources housed in a Troxler Model 3440, Serial Number 17573, from August 9, 2006, until the date of inspection on March 6, 2008, and the leak test interval for this gauge is every 12 months. This gauge was routinely being used on a highway construction project in Kehei, Hawaii during this time interval.

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

C. Condition 6 of License No. 53-29069-01 requires, in part, that the licensee limit possession of byproduct material to the types and quantities listed on the License.

Contrary to the above, the licensee failed to limit possession of byproduct material to the types and quantities listed on the License. Specifically, the License authorizes the possession of only cesium-137 and americium-241. However, the licensee is currently in possession of a sealed source of californium-252 (serial number 74-364).

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

D. 10 CFR 30.41(c) requires, in part, that before transferring byproduct material to a specific licensee of the Commission, the licensee transferring the material shall verify that the transferee's license authorizes the receipt of the type, form, and quantity of byproduct material to be transferred.

Contrary to the above, before transferring byproduct material to a specific licensee of the Commission, the licensee transferring the material failed to verify that the transferee's license authorizes the receipt of the type, form, and quantity of byproduct material to be transferred. Specifically, on March 24, 2008, the licensee transferred a Campbell Pacific Nuclear portable nuclear gauge (Serial Number M390605145) containing sealed sources of cesium-137 and americium-241(Model CPN-131), and these models are not authorized under the transferee's license.

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

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

Contrary to the above, the licensee failed to periodically review its radiation protection program content, and implementation at least annually. Specifically, annual reviews of the licensee's radiation protection program were not conducted in Calendar Years 2006 and 2007.

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

Pursuant to the provisions of 10 CFR 2.201, Maui Paving, LLC is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator, Region IV, 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 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.

Because 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 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 7th day of July 2008

bcc w/Enclosure 1 (via ADAMS distrib):
ECollins
AHowell
CLCain
VHCampbell
JEWhitten
JLThompson
RITS Coordinator
NMSB-A
RIV Materials Docket File (5th Floor)

SUNSI review completed: JLT

ADAMS: X Yes Initials: JLT

X Publicly Available X Non Sensitive

s:\dnms\nmib\REPORTS IN CONCURRENCE\Maui Paving NOV 08-01.doc Final: r:_dnms\

RIV:DNMS:NMSB-A	C:NMSB-A
JLThompson	VHCampbell
	APG for
6/13/08	7/7/08

OFFICIAL RECORD COPY T=Telephone E=E-mail F=Fax

ADAMS # ML081890581
Template
Date 7/7/08 QC'd by JT