



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION IV
612 EAST LAMAR BLVD, SUITE 400
ARLINGTON, TEXAS 76011-4125

September 17, 2008

EA-08-139
EA-08-140

Alaska Rim Engineering, Inc.
ATTN: Mr. Charles A. Leet, Principal Engineer
P.O. Box 2749
Palmer, AK 99645

SUBJECT: NRC INSPECTION REPORT NO. 030-37429/2007-001; NOTICE OF VIOLATION;
EXERCISE OF ENFORCEMENT DISCRETION; AND INVESTIGATION REPORT
NO 4-2008-012

Dear Mr. Leet:

This letter refers to the initial inspection of NRC License No. 50-29256-01 authorizing possession and use of byproduct material in portable gauging devices. The inspection began on September 18, 2007, at the Alaska Rim Engineering, Inc., (Alaska Rim) facility located in Palmer, Alaska. Based on concerns identified during the inspection, the NRC's Office of Investigations (OI) conducted an investigation to review Alaska Rim's possession and use of a portable gauge. After our reviews of the information obtained by OI, we conducted a preliminary exit briefing with you by telephone on June 20, 2008, and a final exit briefing on August 27, 2008. The enclosed inspection report presents the results of the inspection and investigation.

During the June 20 exit briefing, my staff informed you that the NRC was considering escalated enforcement for two violations both of which appeared to involve willfulness and that before making a final enforcement decision we wanted to discuss these violations with Alaska Rim during a predecisional enforcement conference. My staff also explained that you had an option for requesting Alternative Dispute Resolution. You informed my staff that you planned to transfer the portable nuclear density gauge to an authorized recipient and that you planned to request termination of your license. You also did not believe further discussions in a predecisional enforcement conference or Alternative Dispute Resolution were necessary.

By letter dated July 21, 2008, Alaska Rim informed the NRC that it had transferred its gauge to an authorized recipient and submitted a request to terminate its license. My staff confirmed that you had transferred your gauge to an authorized entity. Based on this information and a review of your historical file, the staff concluded that all licensable radioactive material has been removed from your facility. Your facility located at 9131 East Frontage Road, Palmer, Alaska, is suitable for unrestricted use in accordance with 10 CFR 20.1402, "Radiological Criteria for Unrestricted Use." No further remediation or actions with respect to NRC regulated material is required. Therefore, NRC License No. 50-29256-01 is hereby terminated as stated in the enclosed Amendment No. 01 to the license.

Based on the information developed during the inspection and investigation, the NRC has determined that two violations of NRC requirements occurred. The violations are cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding them are described in detail in the subject inspection report. The violations involved: (1) Alaska Rim's possession and use of a portable gauge containing radioactive material from May 2003 until March 2007, without an NRC license, in violation of 10 CFR 30.3; and (2) Alaska Rim's failure to provide complete and accurate information in its license application dated March 6, 2007, in violation of 10 CFR 30.9. In addition, the NRC has determined that willfulness in the form of deliberate misconduct was associated with both of these violations. The first violation occurred after Alaska Rim personnel received training on use of the gauge in May 2003. After that training, which included a discussion of NRC licensing requirements, Alaska Rim took possession of a gauge without first obtaining an NRC license, used the gauge during the summer of 2003, and then placed the gauge in storage. In March 2007, your staff transferred the gauge to an authorized recipient in order to service the gauge, and Alaska Rim submitted a license application to the NRC. In your application for an NRC license dated March 6, 2007, you, as the certifying official for Alaska Rim, stated that Alaska Rim was "planning to purchase, and would be licensing, one Troxler 3409B portable moisture density gauge." This was inaccurate because you had already purchased, possessed, and used the gauge, and had been storing the gauge since May 2003.

The NRC considers the violation of 10 CFR 30.3 significant because it impeded our ability to review your radiation safety program to ensure licensed material was being used safely and was secured appropriately. The significance of the violation involving your failure to provide complete and accurate information also impeded our ability to understand the circumstances surrounding your purchase, use, and storage of the gauge. The significance of these violations was mitigated by the fact there were no actual safety consequences associated with your possession and use of the gauge. Nevertheless, willful violations are significant because the NRC's regulatory framework depends on individuals acting with integrity and communicating with candor. Therefore, these violations are categorized collectively in accordance with the NRC Enforcement Policy as a Severity Level III problem. The NRC Enforcement Policy may be found on the NRC's Web site at www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html.

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$3250 was considered for this Severity Level III problem. However, based on the fact you have transferred all your material to an authorized recipient and are terminating your license, the NRC is exercising enforcement discretion under VII.B.6, "Special Circumstances" of the NRC Enforcement Policy to refrain from issuing a civil penalty in this case. The enclosed Notice of Violation serves to document the violation that existed.

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken and planned to correct the violations and prevent recurrence and the date when full compliance was achieved is already adequately addressed on the docket in the enclosed Inspection Report and in your letter dated July 21, 2008. Therefore, you are not required to respond to this letter unless the description therein does not accurately reflect your corrective

Alaska Rim Engineering, Inc.
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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.

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

Should you have any questions regarding this letter, please contact Mr. Michael Vasquez, Acting Chief, Nuclear Materials Safety Branch A at 817-860-8130.

Sincerely,

/RA CACasto for/

Elmo Collins
Regional Administrator

Docket No. 030-37429
License No. 50-29256-01

Enclosures:

1. Notice of Violation
2. NRC Inspection Report 030-37429/2007-001
(with Attachment)
3. Terminated License

cc w/enclosures 1-3:
Alaska Radiation Control Program Director

Alaska Rim Engineering, Inc.
 EA-08-139
 EA-08-140

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SUNSI Review Completed: ADAMS: Yes Initials: LD
 Publicly available Non-sensitive

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NMSB-A	C:NMSB-A	C:NMSB-B	ACES	D:DNMS
LDonovan	VHCampbell	JEWhitten	WBJones	ATHowell
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NOTICE OF VIOLATION

Alaska Rim Engineering, Inc
Palmer, Alaska

Docket No. 030-37429
License No. 50-29256-01
EA-08-139; EA-08-140

During an NRC inspection and investigation conducted on September 18, 2007 through August 27, 2008, two violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. 10 CFR 30.3(a) requires that no person shall manufacture, produce, transfer, receive, acquire, own, possess, or use byproduct material except as authorized in a specific or general license issued in accordance with the regulations.

Contrary to the above, from May 17, 2003, until March 6, 2007, Alaska Rim Engineering, Inc., possessed and used a portable gauging device containing cesium-137 and americium-241 in the state of Alaska, a non-Agreement State, without an NRC license.

- B. 10 CFR 30.9(a) requires, in part, that information provided to the Commission by a licensee be complete and accurate in all material respects.

Contrary to the above, on March 6, 2007, Alaska Rim Engineering, Inc., submitted an application for an NRC license stating that it was planning to purchase and will be licensing one Troxler 3409B portable gauge moisture density gauge. This is inaccurate because it had purchased and used the gauge in May 2003, without an NRC license. Alaska Rim Engineering, Inc., also possessed the gauge since May 2003, without an NRC license. This information is material because it concealed the fact that Alaska Rim Engineering, Inc., had been in violation of 10 CFR 30.3(a) for a four year period prior to the application, and this information could have impacted the NRC's decision to issue a license to Alaska Rim Engineering, Inc.

This is a Severity Level III problem (Supplement VI).

The NRC has concluded that 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, is already adequately addressed on the docket in Inspection Report No. 030-37429/2007001 and in your letter dated July 21, 2008. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein 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-08-139; EA-08-140, and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001 with a copy to the Regional Administrator, Region IV, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

ENCLOSURE 1

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 from the NRC Web site at www.nrc.gov/reading-rm/pdr.html or 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.

Dated this 17th day of September 2008

U.S. Nuclear Regulatory Commission
Region IV

Docket No.: 030-37429
License No.: 50-29256-01
Report No.: 030-37429/2007-001
EA Nos.: EA-08-139; EA-08-140
Licensee: Alaska Rim Engineering, Inc.
Facility: Palmer, Alaska
Location: Palmer, Alaska
Dates: September 18, 2007 through August 27, 2008
Inspector: Lawrence Donovan, Health Physicist,
Nuclear Materials Safety Branch, A
Approved By: Vivian H. Campbell, Chief,
Nuclear Materials Safety Branch, A
Attachment: Supplemental Inspection Information

ENCLOSURE 2

EXECUTIVE SUMMARY

Alaska Rim Engineering, Inc.
NRC Report (030-37429/2007-001)

This was an initial safety inspection of licensed activities involving the use of byproduct materials conducted under NRC License No. 50-29256-01 held by Alaska Rim Engineering, Inc., (Alaska Rim). In addition, an investigation by the NRC's Office of Investigation (OI) was conducted to review Alaska Rim's possession and use of a device containing licensable quantities of radioactive material without an NRC license. The inspection began on September 18, 2007, with continued in-office review of the information obtained by OI through August 27, 2008. The inspection included a review of licensed activities involving the use and storage of byproduct material in a portable density gauge at the licensee's facility located in Palmer, Alaska. This report describes the findings of the inspection and the OI investigation.

Program Overview

Alaska Rim was a portable gauge licensee located in Palmer, Alaska. Use of portable density gauges was authorized by an NRC license issued on May 3, 2007. Alaska Rim was authorized use of gauges at the Alaska Rim facility and at temporary job sites within NRC jurisdiction. The licensee had mainly used its gauge seasonally around the Palmer and Anchorage area. (Section 1)

Details of Inspection

Based upon the inspection and investigation, the NRC determined that on May 17, 2003, Alaska Rim purchased a portable gauge containing byproduct material from Hevly Technical Services (Hevly). Hevly provided Alaska Rim staff training on the use of the portable density gauge on that date, including a discussion of NRC licensing requirements. Alaska Rim staff used the gauge during the summer of calendar year (CY) 2003, and subsequently retained possession of the gauge for approximately 4 years without having an NRC license. This was determined to be a violation of 10 CFR 30.3(a). (Section 2)

In Alaska Rim's application for an NRC license dated March 6, 2007, the certifying official for Alaska Rim stated that Alaska Rim was "planning to purchase, and would be licensing, one Troxler 3409B portable moisture density gauge." The NRC later found that Alaska Rim had already purchased the gauge on or about May 17, 2003. In fact, Alaska Rim had possessed the gauge since purchase. The inaccurate information contained in the license application dated March 6, 2007, was determined to be a violation of 10 CFR 30.9(a). (Section 2)

Licensee Corrective Actions

Alaska Rim requested termination of its NRC license on July 21, 2008, after transferring the gauge to an authorized recipient on July 18, 2008. (Section 3)

REPORT DETAILS

1 Program Overview

1.1 Scope

Alaska Rim was granted NRC Materials License No. 50-29256-01 on May 3, 2007, to use byproduct material in portable gauges at the Alaska Rim facility and at temporary job sites in areas of NRC jurisdiction. The licensee's work is seasonal.

2 Details of Inspection and Investigation

2.1 Inspection and Investigation Scope

The initial inspection of Alaska Rim's activities was conducted on September 18, 2007. During the inspection, the inspector found that Alaska Rim had purchased a portable gauge from Hevly Technical Services (Hevly) in May 2003. As a condition of the sale, Hevly provided training to Alaska Rim personnel on the use of the portable density gauge, including how to obtain an NRC license for possession and use of licensed material. Following Hevly's training, Alaska Rim elected to use the gauge on various occasions during the summer of 2003. Alaska Rim had started drafting an application for an NRC license in May 2003, but did not apply for an NRC license for several years. Alaska Rim maintained possession of the portable density gauge and stored it for approximately 4 years without an NRC license. In March 2007, Alaska Rim returned the portable density gauge to Hevly and submitted an application to the NRC for a license on March 6, 2007. The NRC issued a license to Alaska Rim on May 3, 2007.

2.2 Observation and Findings

10 CFR 30.3(a) requires, in part, that except for persons exempted, no person shall possess or use byproduct material except as authorized by a specific or general license issued pursuant to Title 10, Chapter 1, Code of Federal Regulations.

During the on-site inspection of Alaska Rim on September 18, 2007, the inspector discovered that Alaska Rim had purchased a portable moisture density gauge containing byproduct material from Hevly on May 17, 2003. As part of the conditions of sale, Hevly provided training on the use of the portable density gauge. This training also addressed the mechanics of how to prepare an application to obtain an NRC license. Upon completion of the training, Hevly left the portable density gauge containing licensed material with Alaska Rim, an unlicensed entity. In May 2003, Alaska Rim began drafting an application for an NRC license, but did not complete it, and did not notify the NRC that it had possession of the gauge.

Alaska Rim used the portable density gauge containing byproduct material, without an NRC license, in Alaska, on several occasions during the summer of 2003 and then placed the gauge in storage until January 2007. During this 4-year period, Hevly contacted Alaska Rim to question the status of the NRC license application. In January 2007, a new engineer was hired at Alaska Rim and the individual discovered the portable density gauge in storage. This new engineer discussed this with Alaska

Rim's principal engineer, who directed the new engineer to resume the application process. Because the portable density gauge was out of calibration, the new engineer returned the gauge to Hevly for service in March 2007. Upon receipt, Hevly elected to retain the gauge until Alaska Rim received an NRC license. Alaska Rim received its NRC license on May 3, 2007, after which, Hevly returned the gauge. The possession of a portable gauge containing byproduct material without an NRC license was identified as a violation of 10 CFR 30.3(a). (030-37429/007-01)

10 CFR 30.9(a) requires, in part, that information provided to the Commission by an applicant for a license be complete and accurate in all material respects. In item 5 of NRC Form 313, "Application for Materials License" dated March 6, 2007, Alaska Rim stated, "Our company is planning to purchase and will be licensing one (1) Troxler 3409B portable moisture/density gauge." During the application process, NRC was unaware that Alaska Rim had already purchased the gauge back in 2003, and had possessed the gauge for 4 years without having the requisite NRC license. The certifying official for Alaska Rim knew it had already purchased the gauge and had possessed it for an extended period of time. As a result, the statement in the license application that Alaska Rim was planning to purchase a gauge was incomplete and inaccurate. This information was material to the NRC because it related to compliance with 10 CFR 30.3(a). This was identified as a violation of 10 CFR 30.9(a). (030-37429/007-02)

2.3 Conclusions

Two violations were identified. The possession of a portable gauge containing byproduct material without a NRC license was identified as a violation of 10 CFR 30.3(a) (030-37429/007-01). Further, Alaska Rim failed to provide complete and accurate information in its license application, which was identified as a violation of 10 CFR 30.9(a) (030-37429/007-02).

3. **Corrective Actions**

Alaska Rim applied for an NRC license on March 6, 2007, and received its NRC license on May 3, 2007. On July 18, 2008, Alaska Rim permanently transferred the gauge to an NRC licensee. Alaska Rim subsequently submitted a request to terminate their license on July 21, 2008.

4. **Exit Meeting Summary**

On June 20, 2008, a preliminary telephonic exit briefing was conducted with the Principal Engineer/RSO of Alaska Rim to review the findings as presented in this report. A final exit briefing was conducted on August 27, 2008. The licensee representative acknowledged the findings. No proprietary information was identified.

PARTIAL LIST OF PERSONS CONTACTED

Licensee

Charles A. Leet, Principal Engineer and RSO of Alaska Rim Engineering, Inc.

INSPECTION PROCEDURES USED

87124 Fixed and Portable Gauge programs
83822 Radiation Protection

ITEMS OPENED, CLOSED, AND DISCUSSED

Opened

030-37429/007-01	VIO	Possession of byproduct material without a license
030-37429/007-02	VIO	Providing incomplete and inaccurate information in support of a license application to use byproduct material

Closed

None

Discussed

None

LIST OF ACRONYMS USED

Alaska Rim	Alaska Rim Engineering, Inc
CFR	Code of Federal Regulations
Hevly	Hevly Technical Services, Inc
NRC	Nuclear Regulatory Commission
OI	Office of Investigations
RSO	Radiation Safety Officer
VIO	Violation