



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
612 EAST LAMAR BLVD, SUITE 400
ARLINGTON, TEXAS 76011-4125

May 11, 2009

EA-09-070

David Schaff, Vice President
Panhandle Geotechnical
and Environmental, Inc.
818 South Beltline Highway East
Scottsbluff, Nebraska 69361

SUBJECT: NRC INSPECTION REPORT 030-37783/09-001 AND NOTICE OF VIOLATION

Dear, Mr. Schaff:

This refers to the initial inspection conducted from February 9, 2009, through April 16, 2009, at a Panhandle Geotechnical and Environmental, Inc. (Panhandle), field office located in Douglas, Wyoming. The inspection was an examination of activities conducted under your license as they relate to radiation safety and security, and to compliance with the Commission's rules and regulations, as well as the conditions in your license. Within these areas, the inspection consisted of a selected examination of procedures and representative records, observations of activities, and interviews with personnel. The inspector discussed the preliminary inspection findings with your staff at the conclusion of the onsite portion of the inspection. The inspector conducted a final exit briefing telephonically with you on April 16, 2009. The enclosed report presents the results of this inspection.

Based on the results of this inspection two apparent violations were identified and are being considered for escalated enforcement action in accordance with the NRC Enforcement Policy. The current Enforcement Policy is included on the NRC's Web site at www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html. The apparent violations involved the failure to use two independent physical controls to secure a portable gauge while in storage at your Douglas, Wyoming, field office and the failure to file a submittal prior to engaging in licensed activities in NRC jurisdiction as required by 10 CFR 150.20, "Recognition of Agreement State Licenses." The circumstances surrounding these apparent violations, the significance of the issues, and the need for lasting and effective corrective action were discussed with members of your staff at the inspection exit meeting on April 16, 2009. 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, 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 Enforcement Policy.

Before the NRC makes its enforcement decision, we are providing you an opportunity to either: (1) respond in writing to the apparent violations addressed in this inspection report within 30 days of the date of this letter or (2) request a predecisional enforcement conference. If a conference is held, it will be open for public observation. The NRC will also issue a press

release to announce the conference. Please contact Vivian Campbell, Chief, Nuclear Materials Safety Branch A at 817-860-8287 within 7 days of the date of this letter to notify the NRC of your intended response.

If you choose to provide a written response, it should be clearly marked as a "Response to Apparent Violations in Inspection Report No. 030-37783/09-001; EA-09-070" and should include for each apparent violation: (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 that will be taken to avoid further violations; and (4) the date when full compliance will be achieved. In presenting your corrective actions, you should be aware that the promptness and comprehensiveness of your actions will be considered in assessing any civil penalty for the apparent violations. 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 the time specified or an extension of time has not been granted by the NRC, the NRC will proceed with its enforcement decision or schedule a predecisional enforcement conference.

Since the NRC has not made a final determination in this matter, no Notice of Violation is being issued for these inspection findings at this time. 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 addition, based on the information developed during the inspection, the NRC has determined that an additional two violations of NRC requirements occurred, but they are not subject to escalated enforcement. 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) failure to have or have access to a survey meter; and (2) failure to follow operating procedures for signing out the gauge on days of use. The circumstances surrounding the violations, the significance of the issues, and the need for lasting and effective corrective action were discussed with members of your staff at the inspection exit meeting.

You are required to respond to the Notice and should follow the instructions specified in the enclosed Notice when preparing your response. The information provided in the excerpt from NRC Information Notice 96-28 may be helpful when preparing your response. 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, its enclosures, and your responses to both the apparent violations and the Notice, 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's 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. If personal privacy or proprietary information is necessary to provide an acceptable response, 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 information, 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). The NRC also includes announcements of significant enforcement actions on its Web site at www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html.

Should you have any questions concerning this inspection or the enclosed Notice of Violation, please contact Ms. Vivian Campbell at (817) 860-8287.

Sincerely,

/RA Charles L. Cain for/

Arthur T. Howell III, Director
Division Nuclear Materials Safety

Docket No. 030-37783
License No. 26-29304-01

Enclosures:

1. Notice of Violation
2. NRC Inspection Report 030-37783/09-001
(w/Attachment)
3. Excerpt from NRC Information Notice 96-28

cc w/Enclosures 1 and 2:
Scott W. Ramsay
Radiation Safety Officer
Wyoming Office of Homeland Security
2421 E. 7th Street
Cheyenne, WY 82001

Julia A. Schmitt, Program Manager
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Division of Public Health
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Hard copy:

RIV Materials Docket File (5th Floor)

SUNSI Review Completed: 3/20/09. ADAMS: Yes No Initials: JMR.
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JMRazo	VHCampbell	JEWhitten	CMMaier
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NOTICE OF VIOLATION

Panhandle Geotechnical and Environmental, Inc.
Scottsbluff, Nebraska

Docket No. 030-37783
License No. 26-29304-01
EA 09-070

During an NRC inspection conducted February 9, 2009, through April 16, 2009, two violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. License Condition 22 of NRC Materials License 26-29304-01 states, in part, that the licensee shall conduct its program in accordance with the statements, representations, and procedures contained in the documents, including any enclosures in the license application dated June 16, 2008.

Item 10, RADIATION SAFETY PROGRAM—SURVEY INSTRUMENTS, of the application states, in part, that the licensee will either possess and use, or have access to and use, a radiation survey meter that meets the Criteria in the section entitled "Radiation Safety Program—Instruments" in NUREG-1556, Vol. 1, Rev. 1, dated November 2001.

Contrary to the above, from October 2, 2008, through February 9, 2009, the licensee failed to either possess and use, or have access to and use, a radiation survey meter that meets the Criteria in the section entitled "Radiation Safety Program—Instruments" in NUREG-1556, Vol. 1, Rev. 1, dated November 2001. Specifically, the licensee failed to have or have access to a survey meter for licensed activities conducted at or dispatched from its Douglas, Wyoming, field office.

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

- B. License Condition 22 of NRC Materials License 26-29304-01 states, in part, that the licensee shall conduct its program in accordance with the statements, representations, and procedures contained in the documents, including any enclosures in the electronic mail dated August 4, 2008.

The August 4, 2008, electronic mail states, in part, that the licensee will follow the revised Appendix H, "Operating, Emergency, and Security Procedures" of NUREG-1556, Volume 1, revision 1.

The revised Appendix H, "Operating, Emergency, and Security Procedures" of NUREG-1556, Volume 1, revision 1, states, in part, that the licensee will sign out the portable gauge in a log book (that remains at the storage location) including the date(s) of use, name(s) of the authorized users who will be responsible for the portable gauge, and the temporary job site(s) where the portable gauge will be used.

Contrary to the above, on October 21, 2008, and November 4, 2008, the licensee failed to sign out the portable gauge in a log book (that remains at the storage location) including the date(s) of use, name(s) of the authorized users who were to be responsible for the portable gauge, and the temporary job site(s) where the portable gauge was to be

used. Specifically, the licensee used a portable gauge at a temporary job site without using a log book to sign out the gauge.

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

Pursuant to the provisions of 10 CFR 2.201, Panhandle Geotechnical and Environmental Inc., is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-001 with a copy to the Regional Administrator, Region IV, 612 East Lamar Blvd. Suite 400, Arlington, Texas 76011-4125 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; EA-09-070" 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.

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

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's Web site at www.nrc.gov/reading-rm/pdr.html or 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).

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

Dated this 11th day of May 2009.

U.S. Nuclear Regulatory Commission
Region IV

Docket No.: 030-37783
License No.: 26-29304-01
Report No.: 030-37783/09-001
EA No.: 09-070
Licensee: Panhandle Geotechnical and Environmental, Inc.
Facilities: Field Office
Location: Douglas, Wyoming
Date: February 9, 2009 through April 16, 2009
Inspector: Jason Razo, Health Physicist
Nuclear Materials Safety Branch A
Approved By: Vivian Campbell, Chief
Nuclear Materials Safety Branch A
Attachment: Supplemental Inspection Information

Enclosure 2

EXECUTIVE SUMMARY

Panhandle Geotechnical and Environmental, Inc.
NRC Inspection Report 030-37783/09-001

This was an initial, announced inspection of licensed activities involving the use and storage of byproduct material at the Panhandle Geotechnical and Environmental, Inc., field office located in Douglas, Wyoming. The inspection was an examination of activities conducted under NRC Materials License 26-29304-01, as they relate to radiation safety and security and to compliance with the Commission's rules and regulations, as well as the conditions of the license. Within these areas, the inspection consisted of selected examination of procedures and representative records, observations of activities, and interviews with personnel. This report describes the findings of the inspection.

Program Overview

Panhandle Geotechnical and Environmental, Inc., is authorized to use and store byproduct material (cesium-137 and americium-241) in the operation of portable moisture density gauging devices at its facilities located in Douglas, Wyoming, and at temporary job sites in areas of NRC jurisdiction. Prior to NRC license issuance on August 15, 2008, the licensee operated in Wyoming under reciprocal recognition of a Nebraska license. (Section 1)

Inspection Findings Considered for Escalated Enforcement

- The licensee failed to use a minimum of two independent physical controls that form tangible barriers to secure the portable gauge from unauthorized removal, whenever the portable gauge was not under the control and constant surveillance of the licensee. Specifically, they failed to maintain control over all keys to their storage shed. This was identified as an apparent violation of 10 CFR 20.1801. (Section 2.2)
- The licensee failed to file a submittal containing an NRC Form 241, "Report of Proposed Activities in Non-Agreement States," a copy of its Agreement State specific license, and the appropriate fee as prescribed in 10 CFR 170.31, prior to engaging in licensed activities within NRC jurisdiction in calendar year 2008. The licensee's failure to file this submittal resulted in the failure to establish the general license required of an Agreement State specific licensee to conduct activities in NRC jurisdiction. This was identified as an apparent violation of 10 CFR 150.20(a) and (b). (Section 2.2)

Corrective Actions

- On February 9, 2009, the licensee obtained all keys to their storage shed behind their offices. The licensee's possession of all keys ensured that two independent physical controls were in place to secure the portable gauge from unauthorized removal. (Section 3)
- On August 15, 2008, the licensee obtained an NRC license to use portable gauges in NRC jurisdiction, including Wyoming. (Section 3)

Inspection Findings Not Considered for Escalated Enforcement

- The licensee failed to have available for use, or access to, a survey meter. (Section 2.4)
- The licensee failed to follow operating procedures for signing out the portable gauge. (Section 2.4)

Report Details

1 Program Overview (87124)

1.1 Inspection Scope

The inspector reviewed the license and supporting documentation, interviewed licensee staff, and examined storage locations at Panhandle Geotechnical and Environmental Inc.'s (Panhandle) field office in Douglas, Wyoming on February 9, 2009. Collectively, the documents reviewed described the licensee's implementation of its NRC license requirements and its radiation safety and security program.

1.2 Observations and Findings

Panhandle operates a geotechnical and environmental consulting business from its office in Douglas, Wyoming. Since August 2008, Panhandle has possessed an NRC specific materials license to use portable nuclear density gauges in NRC jurisdiction. Panhandle has two trained authorized users stationed in Douglas, Wyoming, and its radiation safety officer is available from its office in Scottsbluff, Nebraska.

2 Inspection Findings (87124)

2.1 Inspection Scope

Interviews with licensee staff, review of procedures, and observations of storage locations constituted the bulk of the inspection. Licensed activities were examined as they relate to the safety and security of the radioactive material and the licensee's policies and procedures for handling licensed materials. The inspector evaluated training, shipping/receiving, posting, labeling, and storage of licensed material.

2.2 Observations and Findings Considered for Escalated Enforcement

2.2.1 Material Security and Control

10 CFR 30.34(i) requires, in part, that each portable gauge licensee shall 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.

On February 9, 2009, the inspector arrived at Panhandle's office in Douglas, Wyoming, to conduct an initial, announced field office inspection. During the inspection, the inspector inquired about the storage location of the portable nuclear gauge. The radiation safety officer, in response to the inspector's question, showed the inspector a stand-alone shed behind the main offices at that location. The inspector requested the licensee to open the stand-alone shed so that he could see how the portable gauge was being stored. Inside the shed, the inspector observed a single portable nuclear gauge chained to an eyelet within the shed. The lock on the chain securing the portable gauge represented the first tangible barrier since the portable gauge or case could not be removed or opened with the chain secured. The keyed padlock on the exterior of the shed could have served as the second tangible barrier. To determine the validity of the second tangible barrier, the keyed padlock, the inspector asked whether anyone besides

the licensee retained keys to the storage shed. The licensee indicated that the owner of the shed, who is not an employee or official of Panhandle Geotechnical and Environmental, Inc., retained a key. During the inspection, the licensee contacted the shed owner and obtained the only uncontrolled key to the shed. Possession of all keys ensured that Panhandle was maintaining two independent physical controls to form tangible barriers to prevent unauthorized access to the portable gauge.

Based on February 9, 2009, inspection findings, the inspector determined that the licensee failed to maintain control over the keys used to gain access to its gauge storage area. This was a failure to use a minimum of two independent physical controls that form tangible barriers to secure the portable gauge from unauthorized removal, whenever the portable gauge was not under the control and constant surveillance of the licensee. This was identified as an apparent violation of 10 CFR 30.34(i). (030-37783/09-001)

2.2.2 Reciprocity

10 CFR 150.20(a) states, in part, that any person who holds a specific license from an Agreement State is granted a general license to conduct the same activity in non-Agreement States, in areas of exclusive Federal jurisdiction within Agreement States, and in offshore Federal waters, provided that the provisions of 10 CFR 150.20(b) have been met.

During the inspection, the inspector asked the licensee if any portable gauge activities had been conducted in NRC jurisdiction before the NRC issued Panhandle's specific license. The licensee, when questioned by the inspector, stated that the portable gauges had been dispatched from the Scottsbluff, Nebraska office into NRC jurisdiction in Douglas and Torrington, Wyoming, before the NRC license had been issued. The licensee's staff confirmed that they had dispatched the portable the gauge into NRC jurisdiction on multiple days between March 14, 2008, and July 17, 2008. The inspector noted that the NRC had issued the license on August 15, 2008.

The licensee failed to file a submittal containing an NRC Form 241, "Report of Proposed Activities in Non-Agreement States," a copy of its Agreement State specific license, and the appropriate fee as prescribed in 10 CFR 170.31, prior to engaging in licensed activities within NRC jurisdiction in calendar year 2008. The licensee's failure to file this submittal resulted in the subsequent failure to obtain the general license required of an Agreement State specific licensee to conduct activities in NRC jurisdiction. This was identified as an apparent violation of 10 CFR 150.20(a) and (b) (030-37783/09-002)

2.3 Conclusions

The inspection identified two apparent violations. The first apparent violation involved the licensee's failure to secure licensed materials with two independent physical controls. The second apparent violation involved the licensee's failure to file a submittal containing an NRC Form 241, a copy of its Agreement State specific license, and the appropriate reciprocity fee, prior to engaging in licensed activities in Douglas and Torrington, Wyoming, areas in NRC jurisdiction.

2.4 Observations and Findings Not Considered for Escalated Enforcement

2.4.1 Survey Instruments

Panhandle's NRC application states, in part, that they will either possess and use, or have access to and use, a radiation survey meter that meets the criteria in the section entitled "Radiation Safety Program—Instruments" in NUREG-1556, Vol. 1, Rev. 1, dated November 2001.

The licensee did not possess and use or have access to and use, a survey meter since obtaining a portable gauge in October 2008 through February 9, 2009. The portable gauge was used twice between October 2008 and February 2009, and on both occasions, a survey meter was not available. When not in use, the portable gauge was stored at the licensee's storage shed. The licensee's failure to possess and use, or to have access to and use, a radiation survey meter when using the portable gauge was identified as an example of a violation of License Condition 22. (030-37783/09-003)

2.4.2 Operating Procedures

Panhandle's NRC application states, in part, that they will sign out the portable gauge in a log book (that remains at the storage location) including the date(s) of use, name(s) of the authorized users who will be responsible for the portable gauge, and the temporary job site(s) locations where the portable gauge will be used.

On days of use in October and November 2008, Panhandle used the portable gauge without recording its use in a log book with all of the required information. This was identified as a violation of License Condition 22. (030-37783/09-004)

2.5 Conclusions

The inspection identified two severity level IV violations during the inspection. These two violations were not considered for escalated enforcement. The licensee is required to provide a written response to the violations in the enclosed Notice of Violation.

3 Corrective Actions (87124)

During the inspection, Panhandle retrieved all keys from the owner of the storage shed where the each portable gauge was stored. Obtaining ownership of all keys confirmed that the licensee could maintain two independent physical controls over the licensed portable gauge.

On August 15, 2009, Panhandle obtained a specific license to use and possess portable nuclear gauges in NRC jurisdiction, which includes Wyoming.

Since the onsite inspection, the licensee has implemented the following actions:

- The licensee has reached an agreement with the Douglas, Wyoming, Fire Department to have access to their radiation survey meters, if one should ever be needed.

- The licensee has developed a log book to track the use and location of the portable gauge and instructed authorized users in its proper use.

4 Exit Meeting Summary

A preliminary exit briefing was conducted at the conclusion of the on site inspection with Sydney Johnson, Radiation Safety Officer and Frank Strong IV, Field Office Manager. A final telephonic exit briefing was conducted with representatives of Panhandle on April 16, 2009, to review the inspection findings as presented in this report. Licensee representatives acknowledged the inspector's findings. No proprietary information was identified.

PARTIAL LIST OF PERSONS CONTACTED

Licensee

David Schaff, Vice President
Frank Strong IV, P.E., Field Office Manager
Sydney Johnson, Radiation Safety Officer

INSPECTION PROCEDURES USED

87124 Fixed and Portable Nuclear Gauges

ITEMS OPENED, CLOSED, AND DISCUSSED

Opened

030-37783/09-001	APV	A violation involving a 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.
030-37783/09-002	APV	A violation involving a failure to file a submittal containing an NRC Form 241, "Report of Proposed Activities in Non-Agreement States," a copy of its Agreement State specific license, and the appropriate fee as prescribed in 10 CFR 170.31,
030-37783/09-003	VIO	A violation involving the failure to have access to a survey meter.
030-37783/09-004	VIO	A violation involving the failure to follow operating procedures for signing out the portable nuclear gauge on days of use.

Closed

None

Discussed

Public dose assessment of portable gauge storage location in Douglas, Wyoming.

Occupational dosimetry worn by authorized users during licensed operations.

LIST OF ACRONYMS USED

APV	Apparent Violation
CFR	Code of Federal Regulations
EA	Enforcement Action
NRC	Nuclear Regulatory Commission
VIO	Violation