



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

September 4, 2009

EA-09-138

Knife River
ATTN: Jack A. Brown
Radiation Safety Officer
4800 Wilkie Road
Missoula, MT 59808

SUBJECT: NEW LICENSE

Please find enclosed License No. 25-29352-01. An environmental assessment for this action is not required, since this action is categorically excluded under 10 CFR 51.22(c)(14)(viii). You should review this license carefully and be sure that you understand all conditions. If you have any questions, you may contact me at 817-276-6552.

The NRC needs your Taxpayer Identification Number in order to make payments (refunds). Please complete and return NRC Form 531, "Request for Taxpayer Identification Number," to the highlighted address in Item 5 on Form 531, in the enclosed envelope for your convenience.

On August 8, 2005, the President signed the Energy Policy Act of 2005 (EPAAct) into law. Section 651(e) of the EPAAct expanded the definition of byproduct material to include naturally occurring and accelerator-produced radioactive materials (NARM) which were not previously regulated by the NRC. Although the legislation made NRC's authority over these new materials effective immediately, the NRC did not have regulations in place that would specifically apply to this newly covered byproduct material. Therefore, the NRC issued a time-limited waiver on August 31, 2005 (70 FR 51581), for continued use and possession of NARM, allowing time for the NRC to develop regulations to implement the new requirements.

The NRC published notification of its plan for the transition of regulatory authority resulting from the expanded definition of byproduct material in the Federal Register on October 1, 2007 (72 FR 55864). This followed publication of a final rule covering the new byproduct materials on October 1, 2007 (72 FR 55863). The regulations set forth in the rule became effective on November 30, 2007, for some licensees and later for others. Accordingly, the transition plan set forth the applicable dates for waiver terminations. In accordance with the transition plan, the waiver was terminated for the State of Montana on November 30, 2007.

The NRC issued three Regulatory Information Summaries (RIS) informing licensees, manufacturer and distributors, and Agreement States of the recent issuance of regulations concerning the new byproduct materials. This information is available on the NARM Toolbox located on the NRC website at: <http://nrc-stp.ornl.gov/narmtoolbox.html>. The RIS notified recipients that the Commission would be terminating waivers in phases, beginning November 30, 2007, and ending August 7, 2009. The RIS explained that upon waiver termination, all persons in possession of material newly defined as byproduct material associated with the respective termination phase would be expected to be in compliance with

NRC regulations. In addition, the RIS identified that such persons would be required to (1) submit license amendment requests for NARM within 6 months from the date the waiver is terminated if they hold an NRC specific byproduct materials license, or (2) submit a license application for NARM within 12 months from the date the waiver is terminated.

Notwithstanding the issuance of the Federal Register notice and the RIS, it is recognized that some entities may not have been aware of the new regulatory requirements. The NRC has reviewed Knife River's license application. After considering the information developed during the review of the license application, and the information provided during the onsite visit by Mr. Anthony Gaines with this office, the NRC has determined to use enforcement discretion to not issue a violation for failure to submit a license application to include NARM activities by the date required.

The NRC has concluded that information provided to support this decision is already adequately addressed on the docket in the application and the information provided by Mr. Anthony Gaines, in which he described that Knife River only became aware of the regulatory requirement when he informed Knife River on May 5, 2009, during a visit to the office in Belgrade, Montana. Therefore, you are not required to respond to this letter unless the description does not accurately reflect the circumstances causing the delay in submitting your license application for the NARM activities. In that case, or if you choose to provide additional information, please clearly mark your response as a "Reply to Enforcement Discretion under EGM 09-004," and include the EA number referenced in this letter. Please send your response 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.

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.

NRC expects licensees to conduct their programs with meticulous attention to detail and a high standard of compliance. Because of the serious consequences to employees and the public that can result from failure to comply with NRC requirements, you must conduct your radiation safety program according to the conditions of your NRC license, representations made in your license application, and NRC regulations. In particular, note that you must:

1. Operate by NRC regulations 10 CFR Part 19, "Notices, Instructions and Reports to Workers: Inspection and Investigations," 10 CFR Part 20, "Standards for Protection Against Radiation," and other applicable regulations.
2. Notify NRC in writing of any change in mailing address.

3. By 10 CFR 30.36(d) and/or license condition, notify NRC, promptly, in writing, and request termination of the license:
 - a. When you decide to terminate all activities involving materials authorized under the license whether at the entire site or any separate building or outdoor area;
 - b. If you decide not to acquire or possess and use authorized material; or
 - c. When no principal activities under the license have been conducted for a period of 24 months.
4. Request and obtain a license amendment before you:
 - a. Change Radiation Safety Officers;
 - b. Order byproduct material in excess of the amount, radionuclide or form authorized on the license;
 - c. Add or change the areas or address(es) of use identified in the license application or on the license; or
 - d. Change the name or ownership of your organization.
5. Submit a complete renewal application or termination request at least 30 days before the expiration date on your license. You will receive a reminder notice approximately 90 days before the expiration date. Possession of radioactive material after your license expires is a violation of NRC regulations.

In addition, please note that NRC Form 313 requires the applicant, by signature, to verify that the applicant understands that all statements contained in the application are true and correct to the best of the applicant's knowledge. The signatory for the application should be the licensee or certifying official rather than a consultant. Since the NRC also accepts a letter requesting amendment of an NRC license, the signatory for such a request should also be the licensee or certifying official rather than a consultant.

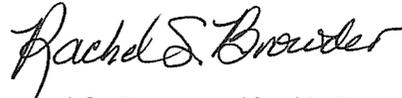
NRC will periodically inspect your radiation safety program. Failure to conduct your program according to NRC regulations, license conditions, and representations made in your license application and supplemental correspondence with NRC may result in enforcement action against you. This could include issuance of a notice of violation; imposition of a civil penalty; or an order suspending, modifying, or revoking your license as specified in the NRC Enforcement Policy. The NRC Enforcement Policy is available on the following internet address:
<http://www.nrc.gov/reading-rm/doc-collections/enforcement/>.

NRC no longer publishes the NRC Rules and Regulations loose leaf supplements. However, an electronic version of the NRC's regulations is available on the NRC Web site at www.nrc.gov. Additional information regarding use of radioactive materials may be obtained on the NRC Web site at <http://www.nrc.gov/materials/miau/mat-toolkits.html>. This site also provides the link to the toolbox for updated information on the revised regulations for naturally-occurring and accelerator-produced radioactive materials (NARM).

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and NRC license will be available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

Thank you for your cooperation.

Sincerely,



Rachel S. Browder, Health Physicist
Nuclear Materials Safety Branch B

Docket: 030-38054
License: 25-29352-01
Control: 472279

Enclosures:

1. NRC License 25-29352-01
2. Excerpt from NRC Information Notice 96-28

cc:

C. Maier, ACES
M. Haire, ACES

U.S. NUCLEAR REGULATORY COMMISSION

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 1. Knife River 2. 4800 Wilkie Road Missoula, Montana 59808	3. License number 25-29352-01 4. Expiration date September 30, 2019 5. Docket No. 030-38054 Reference No.
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6. Byproduct, source, and/or special nuclear material A. Radium-226 B. Radium-226	7. Chemical and/or physical form A. Sealed sources (Gammatron Model AN-HPG or GT-GHP) B. Sealed sources (AEA Technology/QSA, Inc. Model RAN-G1; Gammatron Model GT-GHP; Radium Chemical Company Drawing 21.94)	8. Maximum amount that licensee may possess at any one time under this license A. 55.5 millicuries total. No single source to exceed the maximum activity specified in the certificate of registration issued by NRC or an Agreement State. B. 55.5 millicuries total. No single source to exceed the maximum activity specified in the certificate of registration issued by NRC or an Agreement State.
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9. Authorized use: A. B.	In Seaman Nuclear Corporation Model C-200 Series portable gauging devices for measuring physical properties of materials. In Seaman Nuclear Corporation Model C-300 Series portable gauging devices for measuring physical properties of materials.
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CONDITIONS

10. Licensed material may be used or stored at the licensee's facilities located at:
- A. 2800 40th Avenue, Missoula, Montana
 - B. 21730 Frontage Road, Belgrade, Montana

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C. Temporary job sites anywhere in the United States where the U.S. Nuclear Regulatory Commission maintains jurisdiction for regulating licensed material, including areas of exclusive Federal jurisdiction within Agreement States.

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.

11. Licensed materials may be used by, or under the supervision and in the physical presence of, individuals who have received the training described in application dated June 3, 2009.
12. The Radiation Safety Officer (RSO) for this license is Jack A. Brown.
13.
 - 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 U.S. Nuclear Regulatory Commission under 10 CFR 32.240 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 U.S. Nuclear Regulatory Commission under 10 CFR 32.240 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 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 microcuries (185 becquerels) of radioactive material on the test sample. If the test reveals the presence of 0.005 microcuries (185 becquerels) 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, 612 East Lamar Blvd., Suite 400, Arlington, Texas 76011-4125, 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 the analysis; analysis of leak test samples must be performed by persons specifically licensed by the Commission or an Agreement State to perform such services.
 - F. Records of leak tests results shall be kept in units of microcuries and shall be maintained for 3 years.

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14. 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.
15. The licensee shall conduct a physical inventory every 6 months, or at other intervals approved by the U.S. Nuclear Regulatory Commission, to account for all sources and/or devices received and possessed under the license.
16. Except for maintaining labeling as required by 10 CFR Part 20 or 71, the licensee shall obtain authorization from 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 Certificates of Registration issued either by the Commission pursuant to 10 CFR 32.210 or by an Agreement State.
17. Each portable nuclear 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.
18. 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.
19. 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.
20. 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."

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21. 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 June 3, 2009



FOR THE U.S. NUCLEAR REGULATORY COMMISSION

Date September 4, 2009

By *Rachel S. Browder*
Rachel S. Browder, Health Physicist
Nuclear Materials Safety Branch B
Region IV
Arlington, Texas 76011-4125