

U.S. NUCLEAR REGULATORY COMMISSION
REGION I

INSPECTION REPORT

Inspection No. 15000029/2009001
Docket No. 15000029
License No. NJSL-10910/01/000
Licensee: Certified Testing & Inspection, Inc.
Location: 46 Fountain Boulevard
Burlington, New Jersey 08016
Inspection Dates: 9/2/2009 & 9/23/2009
Additional Information
Received: 9/1/2009 & 9/22/2009

Inspectors: _____/RA/_____
Randolph Ragland 9/25/2009
Senior Health Physicist date

_____/RA by Randolph C. Ragland For/_____
Scott Wilson 9/25/2009
Health Physicist date

Approved By: _____/RA/_____
Marie Miller, Chief 9/25/09
Materials Security and Industrial Branch date
Division of Nuclear Materials Safety

EXECUTIVE SUMMARY

Certified Testing & Inspection, Inc.
NRC Inspection Report No. 15000029/2009001

Certified Testing & Inspection Inc. is a small firm that is engaged in non-destructive examinations for construction activities. They were licensed by State of New Jersey, License No. NJSL-10910/01/000 to possess Ra-226 for use in Seaman Nuclear Series gauges for moisture and density testing of soil, roofing, concrete, and asphalt. They possess two Seaman Model C-200 Density Moisture Gauges and utilize the gauges several times a quarter. In the late spring of 2009, Certified Testing & Inspection lost their sub-lease for their business office and had to temporarily relocate the business office and gauges to the company president's private residence.

The Energy Policy Act of 2005 expanded the definition of byproduct material and gave the U.S. Nuclear Regulatory Commission (NRC) authority over certain naturally occurring (e.g., radium-226) and accelerator-produced radioactive material (NARM). As authorized by section 651(e) of the Energy Policy Act, the NRC issued a waiver on August 31, 2005, to allow the continued use and possession of NARM, with state oversight, while the NRC developed a regulatory framework for regulation of the new byproduct material. As of August 8, 2009, the final waiver was terminated and New Jersey's approximately 500 NARM licensees came under NRC jurisdiction and these licensees must comply with NRC regulations, including reporting and record keeping requirements.

During this inspection, two apparent violations were identified: 1) Failure to confine the possession and use of byproduct material to the locations and purposes authorized in the license as required by 10 CFR 30.34(c); and 2) 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 as required by 10 CFR 30.34(i).

NRC will not take enforcement action for these apparent violations because: 1) the time period in which the above mentioned apparent violations occurred included an approximately three-month period in which the State of New Jersey had jurisdiction for the licensing and inspection of Certified Testing & Inspection, Inc.'s licensed program; and 2) the State of New Jersey is expected to become an Agreement State on September 30, 2009. As agreed to between NJDEP and NRC Region I, these inspection findings will be provided to the State of New Jersey for consideration for enforcement action.

REPORT DETAILS

I. Background

NRC Regulatory Authority

The Energy Policy Act of 2005 expanded the definition of byproduct material and gave the U.S. Nuclear Regulatory Commission (NRC) authority over certain naturally occurring (e.g., radium-226) and accelerator-produced radioactive material (NARM). As authorized by section 651(e) of the Energy Policy Act, the NRC issued a waiver on August 31, 2005, to allow the continued use and possession of NARM, with state oversight, while the NRC developed a regulatory framework for regulation of the new byproduct material. On November 30, 2007, the NRC initiated termination of the waiver in phases. On August 7, 2009, the NRC terminated the final waiver which included NRC licensees with headquarters in Canada and the States of Alaska, Connecticut, Hawaii, Michigan, and New Jersey. Accordingly, as of August 8, 2009, New Jersey's approximately 500 NARM licensees came under NRC jurisdiction and these licensees must comply with NRC regulations, including reporting and record keeping requirements.

On September 30, 2009, the State of New Jersey is expected to become an NRC Agreement State. At that time, the State of New Jersey will re-assume responsibility for the licensing and inspection of NARM. During the seven week period between the waiver expiration date and the date on which New Jersey becomes an Agreement State, the NRC has jurisdiction over NARM but will work closely with the State of New Jersey, Department of Environmental Protection, and the Bureau of Environmental Radiation to ensure the safe use of NARM.

Reason for the Inspection

On September 1, 2009, representatives from the State of New Jersey Department of Environmental Protection, Bureau of Environmental Radiation, notified the NRC that Mr. Joseph Cuozzo, President and Radiation Safety Officer of Certified Testing & Inspection, Inc., (New Jersey State License No. NJSL-10910/01/000) was in the possession of several radioactive gauges and these gauges were located at his private residence and that this address was not listed as an authorized use location on Certified Testing & Inspection, Inc.'s New Jersey License No. NJSL-10910/01/000, which NRC currently has jurisdiction over. In response to that notification, on September 1, 2009, inspectors contacted Mr. Cuozzo by telephone and scheduled an inspection with him on September 2, 2009, at his private residence.

II. Organization and Scope of the Program

a. Inspection Scope

The Inspectors reviewed the organization and scope of licensed activities and the status of the gauges located at 46 Fountain Boulevard, Burlington, NJ. Information was gathered through interviews with the company president and an authorized gauge user, review of documents, and a direct inspection of the licensee's gauge storage area located at 46 Fountain Boulevard, Burlington, New Jersey.

b. Observations and Findings

Certified Testing & Inspection Inc. is a small firm that is engaged in non-destructive examinations for construction activities. It was licensed by the State of New Jersey, License No. NJSL-10910/01/000 to possess Ra-226 for use in Seaman Nuclear Series gauges for moisture and density testing of soil, roofing, concrete, and asphalt. The licensee typically uses the gauges several times per quarter. Mr. Joseph Cuzzo is the company President and Radiation Safety Officer (RSO).

On September 2, 2009, Mr. Randolph Ragland and Mr. Scott Wilson of the NRC Region I Office and Mr. Richard Peros and Ms. Adria Wentzel of the New Jersey Bureau of Environmental Radiation, met Mr. Joseph Cuzzo and Mr. Don Piselli, authorized gauge user, at Mr. Cuzzo's private residence located at 46 Fountain Boulevard, Burlington, NJ.

The inspectors toured the gauge storage location and examined the two radioactive gauges. The gauges were found to be two Seaman C-200 portable moisture density gauges (serial numbers A670 and A672). Each gauge was housed in a shipping container and each gauge contained 4.5 mCi of Ra-226. The inspectors conducted an independent radiation survey of the gauges using a calibrated Eberline RO-2 ion chamber, Serial No. 018523, and found that dose rates associated with the gauges were normal and within the dose rate limits published in the sealed source and device registry for the device. A review of New Jersey State License No. NJSL-10910/01/000, which NRC has currently has jurisdiction over, showed that Certified Testing and Inspection, Inc. is authorized to possess and use these gauges. However, 46 Fountain Boulevard, Burlington, New Jersey, is not listed on the license as an authorized storage location for the gauges.

Mr. Cuzzo explained that approximately four months earlier, Certified Testing and Inspection, Inc, lost their sublease for their authorized storage location at 2470 Lamberton Road, Trenton, NJ, and that he had temporarily moved the gauges to a storage area at his private residence. He stated that he was actively looking for another facility that was suitable for his business operations. He stated that he intended to submit a license amendment request to New Jersey/NRC to change his authorized use location but had not yet taken that action.

The inspectors notified Mr. Cuzzo that NRC licensees are required to confine the possession and use of byproduct material to the locations and purposes authorized in the license. The inspectors informed Mr. Cuzzo that the failure to confine the possession and use of byproduct material to the location authorized by New Jersey State License No. NJSL-10910/01/000, which NRC has jurisdiction over, is an apparent violation of 10 CFR 30.34(c).

By telephone on September 1, 2009, the inspectors instructed Mr. Cuzzo to submit a license amendment request to NRC to change his authorized storage location. On September 1, 2009, Mr. Cuzzo submitted a license amendment request to NRC to change the authorized gauge storage location from 2470 Lamberton Road, Trenton, NJ to 46 Fountain Boulevard, Burlington, NJ 08016. On September 22, 2009, Certified Testing & Inspection, Inc. also submitted sealed source leak test results which indicted

that these sealed sources have not leaked, in order to justify removing 2470 Lamberton Road, Trenton, NJ 08611 as an authorized storage location. In order to provide further clarification, the September 22, 2009, correspondence stated that the devices are to be used at temporary job sites throughout the State of New Jersey.

Apparent Violation of 10 CFR 30.34(c)

From August 8 to September 2, 2009, Certified Testing & Inspection, Inc. was required to comply with NRC regulations as summarized on page 1 of this report. Title 10 CFR 30.34(c) required each person licensed by the Commission...to confine his possession and use of byproduct material to the locations and purposes authorized by the license.

Contrary to this requirement, Certified Testing & Inspection, Inc. did not confine their possession and use of byproduct material to the location authorized by the license. Specifically, from August 8 to September 2, 2009, two licensed portable gauges were stored at a private residence located at 46 Fountain Boulevard, Burlington, New Jersey 08016, which is not an authorized storage location on New Jersey State License NJSL10910/01/000, which NRC currently has jurisdiction over.

c. Conclusions

Certified Testing and Inspection, Inc. is authorized by New Jersey State License No. NJSL-10910/01/000 to possess and use the radioactive gauges that were located at 46 Fountain Boulevard, Burlington, New Jersey.

The failure to confine the possession and use of byproduct material to the location authorized by New Jersey State License No. NJSL-10910/01/000, which NRC currently has jurisdiction over, is an apparent violation of 10 CFR 30.34(c).

I. Material Receipt, Use, Transfer, and Control

a. Inspection Scope

The inspectors reviewed material receipt, use, transfer, and control of licensed sources. Information was gathered through interviews with the company president and an authorized gauge user, review of documents, and a direct inspection of the licensee's gauge storage area located at 46 Fountain Boulevard, Burlington, New Jersey.

b. Observations and Findings

A selected review of records showed that Certified Testing & Inspection was performing sealed source leak tests of his gauges in accordance with New Jersey State License No. NJSL-10910/01/000, and maintained a personnel radiation monitoring program and reported results to employees.

The inspectors inquired if Certified Testing & Inspections, Inc. was performing annual reviews of the radiation protection program content and implementation as required by 10 CFR 20.1101(c). Mr. Cuozzo stated that he was not routinely performing annual

reviews of the radiation protection program content and implementation. The inspectors acknowledged that the requirement to perform reviews of the radiation protection program in accordance with 10 CFR 20.1101(c) was an annual requirement and Certified Testing & Inspection, Inc. had only been an NRC licensee for approximately three and one-half weeks. The inspectors informed Mr. Cuozzo that NRC NUREG-1556, Vol. 1, Rev. 1, Appendix F contained a portable gauge audit checklist that could be modified for use in performing annual program reviews.

The inspectors inquired about source security and the RSO stated that gauge security was maintained when in use by maintaining direct control and constant surveillance of the gauge by licensee staff, or when in storage, by locking the gauges inside a gauge storage area. The inspectors observed that the locked storage area door represented only one tangible barrier to secure the portable gauges from unauthorized removal. The inspectors pointed out that portable gauges require a minimum of two tangible barriers to prevent unauthorized removal whenever the gauges are not under the control and constant surveillance by the licensee. The RSO stated that he had assumed that the locked storage area door represented one tangible barrier and his physical presence inside the residence represented another tangible barrier to prevent unauthorized removal of the gauge. The inspectors explained that although his physical presence inside the residence decreased the likelihood of unauthorized removal of the gauges, his mere physical presence inside the residence, did not meet the requirement for a second tangible barrier or constant surveillance by the licensee. In response to this finding, on September 2, 2009, Mr. Cuozzo installed another tangible barrier to prevent unauthorized removal of the gauges and modified another door lock to the storage area to ensure that two tangible barriers are in place during periods of time when the gauge is stored in the storage area and not attended by licensee staff.

Apparent Violation of 10 CFR 30.34(i)

From August 8 to September 2, 2009, Certified Testing & Inspection, Inc. was required to comply with NRC security requirements for portable gauges as summarized on page 1 of this report. Title 10 CFR 30.34(i) requires each portable gauge licensee 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.

Contrary to this requirement, Certified Testing & Inspection, Inc. did not employ a minimum of two physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever, portable gauges were not under the control and constant surveillance by the licensee as required by 10 CFR 30.34(i). Specifically, from August 8 to September 2, 2009, two portable gauges were stored at 46 Fountain Boulevard, Burlington, New Jersey 08016, and secured from unauthorized removal with a single door lock, during periods of time when the licensee did not maintain direct control and constant surveillance of the gauges.

c. Conclusions

One apparent violation of 10 CFR 30.34(i) was identified for the failure to use a minimum of two independent physical controls that formed tangible barriers to secure portable

gauges from unauthorized removal, whenever portable gauges were not under the control and constant surveillance by the licensee.

II. Exit Meeting

a. Inspection Scope

On September 23, 2009, Mr. Randolph Ragland conducted an inspection exit meeting by telephone to discuss the inspection findings. In attendance were Mr. Joseph Cuozzo, President and RSO, Certified Testing & Inspection, Inc. and representatives from the State of New Jersey Department of Environmental Protection, Bureau of Environmental Radiation, including Bill Csaszar, Program Director, and Richard C. Peros, Radiation Physicist.

b. Observations and Findings

Mr. Ragland summarized the inspection findings and informed Mr. Cuozzo that NRC had identified two apparent violations of NRC requirements. Mr. Cuozzo acknowledged the inspection findings, but emphasized that he immediately corrected both violations when they were brought to his attention. He added that Certified Testing & Inspection, Inc. was committed to regulatory compliance and that he intended to utilize the guidance in NUREG-1556, Volume 1, Rev. 1 to improve his program.

c. Conclusions

Because the time period in which the above mentioned violations occurred included an approximately three-month period in which the State of New Jersey had jurisdiction for the licensing and inspection of Certified Testing and Inspection, Inc.'s licensed program, and the State of New Jersey is expected to become an Agreement State on September 30, 2009, NRC will not take enforcement action for these apparent violations and will provide these inspection findings to the State of New Jersey for consideration for enforcement action.

PARTIAL LIST OF PERSONS CONTACTED

Licensee

- *#Joseph Cuzzo, President and Radiation Safety Officer
- * Don Piselli, Authorized Gauge User

NRC Staff

- *#Randolph Ragland, Senior Health Physicist
- * Scott Wilson, Health Physicist

State of New Jersey

- #William Csaszar, Supervisor, Radioactive Materials Section
- *#Richard Peros, Radiation Physicist
- * Adria Wentzel, Radioactive Materials Section

- * Present at inspection entrance meeting on September 2, 2009
- # Present during telephone exit meeting on September 23, 2009