



UNITED STATES
NUCLEAR REGULATORY COMMISSION

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

September 29, 2009

Kim Leavitt, President
Harper Leavitt Engineering, Inc.
985 North Capital Avenue
Idaho Falls, Idaho 83405

SUBJECT: NRC INSPECTION REPORT 030-32220/09-01 AND NOTICE OF VIOLATION

Dear Mr. Leavitt:

This refers to the inspection conducted from August 27 through September 2, 2009, at your facilities in Idaho Falls, Blackfoot, and Twin Falls, Idaho. This 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 your license. Within these areas, the inspection consisted of selected examination of procedures and representative records, observations of activities, and interviews with personnel. A preliminary exit briefing was conducted with Jared Bragg on September 15, 2009, and a final exit briefing was conducted with you on September 16, 2009. The enclosed report presents the results of this inspection.

Based on the results of this inspection, the NRC has determined that four 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 surrounding them are described in detail in the subject inspection report. The violations are being cited in the Notice because they were identified by the NRC during the inspection. These violations involved a failure to amend your license when the Twin Falls address changed, a failure to perform annual audits of the radiation safety program, a failure to lock the gauge or case while in storage, and a failure to have legible package labels.

We are concerned with the number and type of violations, since they appear to indicate a lack of management oversight of your radiation safety program, and a lack of understanding of regulatory requirements by your Radiation Safety Officer. Two of the violations were repeats from the previous inspection in 2004, and increased attention to the details of the radiation safety program may be necessary to prevent similar violations in the future.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. 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, its enclosures, and your response, will be made available electronically for public inspection in the

Harper Leavitt Engineering, Inc.

- 2 -

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.

Should you have any questions regarding this letter or the enclosed Notice, please contact Jason Razo at (817) 276-6589 or the undersigned at (817) 860-8252.

Sincerely,

/RA/

Anthony D. Gaines, Chief
Nuclear Material Safety Branch A

Docket 030-32220
License 11-27395-01

Enclosures:

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

cc w/enclosure:

Mark Dietrich
Technical Services Administrator
Idaho Dept. of Environmental Quality
1410 North Hilton
Boise, Idaho 83706

- 2 -

cc w/enclosure:

- E. Collins, RA
- A. Howell, D:DNMS
- C. Cain, DD:DNMS
- A. Gaines, C:NMSB-A
- J. Whitten, C:NMSB-B
- J. Razo, NMSB-A
- M. Poston-Brown, NMSB-A
- Fee Coordinator

Hard Copy:

RIV Materials Docket File (5th Floor)

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Final R:_dnms\2009

ADAMS	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> SUNSI Review Complete	Reviewer Initials: JMR
Category B.1	<input checked="" type="checkbox"/> Publicly Available		<input checked="" type="checkbox"/> Non-sensitive	
Category A	<input type="checkbox"/> Non-publicly Available		<input type="checkbox"/> Sensitive	
KEYWORD: A.X		Sensitive - XXX		
NMSB-A	C:NMSB-A			
JMRazo	ADGaines			
/RA/	/RA/			
09/28/2009	09/28/2009			

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NOTICE OF VIOLATION

Harper Leavitt Engineering, Inc.
Idaho Falls, ID

Docket: 030-32220
License: 11-27395-01

During an NRC inspection conducted from August 27, through September 2, 2009, four violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. License condition 16 of NRC Materials License 11-27395-01, Amendment 4, requires, in part, that 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.

Contrary to the above, on August 27, 2009, the licensee failed to have a lock or outer locked container designed to prevent unauthorized or accidental removal of the sealed source from its shielded position while in storage. Specifically, Troxler portable nuclear gauge, serial number 31706, was in a storage closet at the Idaho Falls office. The gauge was charging inside the closet, it was not in a locked container, and the gauge was not locked.

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

- B. 10 CFR 30.34(c) requires, in part, that each licensee confine its possession and use of byproduct materials to the locations and purposes authorized by the license. Condition 10 of License No. 11-27395-01, Amendment 4, requires that licensed material be stored and used only at 985 North Capital Avenue, Idaho Falls, Idaho, 800 West Judicial Street, Blackfoot, Idaho, and 451 Eastland Drive, Suite 4, Twin Falls, Idaho.

Contrary to the above, from October 2007, through September 2, 2009, the licensee possessed and stored 8 mCi of cesium-137 and 40 mCi of americium-241 in the form of sealed sources within a Troxler portable gauge at 1334 Falls Avenue E, Twin Falls, Idaho, a location not authorized by the license.

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

- C. 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, since the last inspection in 2004 through September 2009, the licensee failed to periodically (at least annually) review the radiation protection program content and implementation.

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

- D. 10 CFR 71.5(a) requires that a licensee who transports licensed material outside of the site of usage, as specified in the NRC license, or where transport is on public highways, or who delivers licensed material to a carrier for transport, comply with the applicable

ENCLOSURE 1

requirements of the regulations appropriate to the mode of transport of the Department of Transportation (DOT) in 49 CFR Parts 107, 171-180, and 390-397.

49 CFR 172.403 requires, in part, that each package of radioactive material be labeled, as appropriate, with two RADIOACTIVE WHITE-I, RADIOACTIVE YELLOW-II, or RADIOACTIVE YELLOW-III labels on opposite sides of the package. The contents, activity, and transport index must be entered in the blank spaces on the label using a legible and durable, weather resistant means. The contents entered on the label must include the name or abbreviation (e.g., Cs-137) of the radionuclides as taken from the listing in 49 CFR 173.435, with consideration of space available on the label. The activity must be expressed in terms of the appropriate SI units (e.g., Becquerel, Terabecquerel etc...), or in terms of appropriate SI units followed by customary units (e.g., curies, millicuries, or microcuries).

Contrary to the above, on multiple occasions in 2008, the licensee transported licensed material, and the RADIOACTIVE label affixed to the package did not identify the contents, activity, or transport index.

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

Pursuant to the provisions of 10 CFR 2.201, Harper-Leavitt Engineering, Inc., is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001, with a copy to the Regional Administrator, Region IV within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

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 was, or 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). 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 may be required to post this Notice within two working days.

Dated this 29th day of September 2009