



UNITED STATES
NUCLEAR REGULATORY COMMISSION

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

December 21, 2009

EA 09-305

David W. Dobbs, P.E.
City Engineer
City of Great Falls
Public Works Department
P.O. Box 5021
Great Falls, Montana 59403

SUBJECT: NRC INSPECTION REPORT 030-08794/09-01 AND NOTICE OF VIOLATION

Dear Mr. Dobbs:

This refers to the inspection conducted on October 27, 2009, at your office in Great Falls, Montana, with continued in-office review through December 10, 2009. 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 you on October 27, 2009. A final exit briefing was conducted telephonically with you on December 15, 2009.

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. Discrete sources of radium-226, similar to the one in the portable gauge possessed by the City of Great Falls Public Works Department, meet this definition. Although the legislation made NRC's authority over the 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 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 comply with NRC regulations. In addition, the RIS identified that such persons would be required to submit license amendment requests for NARM within 6 months from the date the waiver was terminated if they hold an NRC specific byproduct materials license, which is the case for the City of Great Falls Public Works Department.

After considering the information developed during the inspection, the NRC has decided to issue a violation for failure to submit a license amendment to include NARM activities within 6 months from the date the waiver was terminated for the State of Montana. The details of this violation can be found in item A. of the enclosed Notice of Violation (Notice).

In addition, based on the results of this inspection, the NRC has determined that five other Severity Level IV violations of NRC requirements occurred. The 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 and the circumstances surrounding them are described in detail in the Notice. The violations are being cited in the Notice because they were identified by the NRC during the inspection. The five other violations involved: 1) a failure to conduct radiation program audits annually, 2) a failure to follow licensee procedures for signing in and signing out the portable gauges, 3) a failure to have the appropriate UN number on the Department of Transportation shipping papers, 4) a failure to have the appropriate Transportation Index on the Department of Transportation shipping papers, and 5) a failure to have the appropriate labels on a package used to transport radioactive material.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response to the six violations. 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 enclosure, and 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 <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.

City of Great Falls
Public Works Department
EA-09-305

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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: 030-08794
License: 25-15247-01

Enclosures:

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

cc w/Enclosure 1:

Roy Kemp
Licensing Bureau Chief
Division of Quality Assurance
Department of Public Health and
Human Services
2401 Colonial Drive
P.O. Box 202953
Helena, MT 59620-2953

City of Great Falls
 Public Works Department
 EA-09-305

bcc w/Enclosure 1:
 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. Herrera, Fee Coordinator
 Hard Copy:
 RIV Materials Docket File (5th Floor)

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ADAMS: <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> SUNSI Review Complete	Reviewer Initials: JMR	
	<input checked="" type="checkbox"/> Publicly Available	<input checked="" type="checkbox"/> Non-Sensitive	
Category .	<input type="checkbox"/> Non-publicly Available	<input type="checkbox"/> Sensitive	
KEYWORD:			
NSMB-A	C:NMSB-A		
JMRazo	ADGaines		
/RA/	/RA/		
12/15/2009	12/18/2009		

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NOTICE OF VIOLATION

City of Great Falls
Public Works Department
Great Falls, Montana

Docket: 030-08794
License: 25-15247-01
EA-09-305

During an NRC inspection conducted on October 27, 2009, six 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, in part, that no person shall possess byproduct material except as authorized in a specific license.

Byproduct material is defined, in part, in 10 CFR 30.4 as any discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity.

Contrary to the above, from May 30, 2008, through October 27, 2009, the licensee possessed byproduct material not authorized in their specific NRC Materials License. Specifically, the licensee possessed 4.5 millicuries of radium-226 in the form of a discrete source in a Seaman Nuclear portable gauge after the waiver period for license amendment submittal had expired for the State of Montana.

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

- B. 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 on November 3, 2004, through October 27, 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).

- C. License condition 22 of NRC Materials License 25-27594-01, Amendment 14, 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 facsimile dated September 21, 2004.

The September 21, 2004, facsimile 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 27, 2009, the licensee failed to sign out the portable

ENCLOSURE 1

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 Troxler portable gauges containing 8 mCi of cesium-137 and 40 mCi of americium-241, at temporary job sites without using a log book to sign out the gauge for that day of use.

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

- D. 10 CFR 71.5(a) requires, in part, that each licensee who transports licensed material outside of the site of usage, as specified in the NRC license, or where transport is on public highways, shall comply with the applicable requirements of the Department of Transportation (DOT) regulations in 49 CFR Parts 107, 171-180, and 390-397.
1. 49 CFR 172.200(a) requires, in part, that each person who offers a hazardous material for transportation shall describe the hazardous material on the shipping paper in the manner required by this subpart. Pursuant to 49 CFR 172.101, radioactive material is classified as hazardous material.
- a.) 49 CFR 172.202(a)(1) requires, in part, that the shipping description of a hazardous material on the shipping paper must include the identification number prescribed for the material as shown in Column (4) of the 49 CFR 172.101 table.
- Column (4) of the 49 CFR 172.101 table states, in part, that hazardous material described as radioactive material, Type A package, special form non fissile or fissile-excepted include the identification number UN3332.
- Contrary to the above, on October 27, 2009, the licensee offered a hazardous material for transportation and failed to describe the hazardous material on the shipping paper in the manner required by this subpart. Specifically, the shipping paper that accompanied the shipment did not include the correct identification number, UN3332.
- This is a Severity Level IV violation (Supplement V)
- b.) 49 CFR 172.202(d)(5) requires, in part, that the shipping description of a hazardous material on the shipping paper must include the transport index assigned to each package in the shipment bearing RADIOACTIVE YELLOW-II or RADIOACTIVE YELLOW-III labels.
- Contrary to the above, on October 27, 2009, the licensee offered a hazardous material for transportation and failed to describe the hazardous material on the shipping paper in the manner required by this subpart. Specifically, the shipping paper that accompanied the shipment did not include the correct transportation index. The shipping paper used a transportation index of 0.1 instead of 0.6.

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

2. 49 CFR 172.310 requires, in part, that each package containing Class 7 (radioactive) materials must be marked as follows: Each industrial, Type A, package must be legibly and durably marked on the outside of the packaging, in letters at least 13 mm (0.5 in) high, with the words "TYPE A."

Contrary to the above, on October 27, 2009, the licensee transported outside the confines of its facilities licensed material in a Type A package which was not marked "Type A." Specifically, the licensee transported a Troxler moisture density gauge containing 8 mCi of cesium-137 and 40 mCi of americium-241 in a package that did not have the required marking.

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

Pursuant to the provisions of 10 CFR 2.201, City of Great Falls Public Works Department, 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: (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).

In accordance with 10 CFR 19.11, you may be required to post this Notice within 2 working days.

Dated this 21st day of December 2009