

February 17, 2010

EA -10-014

Mr. Carl P. Littrell, P.E.
City Engineer
City of South Bend,
Department of Public Works
Division of Engineering
1316 County-City Building
South Bend, Indiana 46601

SUBJECT: NRC ROUTINE INSPECTION REPORT NO. 03018412/2010-001(DNMS) –
CITY OF SOUTH BEND, DEPARTMENT OF PUBLIC WORKS

Dear Mr. Littrell:

On January 19, 2010, the U.S. Nuclear Regulatory Commission (NRC) conducted an inspection at the City of South Bend, Department of Public Works in South Bend, Indiana. 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.

Based on the results of this inspection, one apparent violation was identified and is 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 <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.htm>. The apparent violation involved the failure to amend your NRC license to name a new individual as the Radiation Protection Officer (RPO) after the previous RPO left the company. The circumstances surrounding the apparent violation, the significance of the issues, and the need for lasting and effective corrective action were discussed with you at the inspection exit meeting on January 19, 2010. Specifically, as a short-term corrective action you immediately designated an authorized user as the RPO. As a long-term corrective action, you submitted a license amendment request to name a new individual as the RPO on the license. Additionally, you indicated that you would pursue disposal of the gauges and a license termination. Based on the receipt of your amendment for a new RPO, the NRC has determined that it has sufficient information to reach a final enforcement decision. As a result, it may not be necessary for you to respond or to conduct a pre-decisional enforcement conference.

In addition, since your facility has not been the subject of escalated enforcement action within the last two years, and based on our understanding of your corrective action, a civil penalty may not be warranted in accordance with Section VI.C.2 of the Enforcement Policy.

Therefore, you are not required to respond to this letter before the NRC makes its enforcement decision, unless your understanding differs from what is documented in this letter and the inspection report. Furthermore, if your understanding differs you will be provided the opportunity to either: (1) respond to the apparent violation addressed in this inspection report within 30 days of the date of this letter; or (2) request a Pre-decisional Enforcement Conference (PEC). If a PEC is held, it will be open for public observation. The NRC will also issue a press release to announce the time and date of the conference. Please contact Tamara Bloomer at (630) 829-9627 within seven days of the date of this letter to notify the NRC if you intend to respond. If you choose to provide a written response, it should be clearly marked as a "Response to An Apparent Violation in Inspection Report No. 3018412/2010-001(DNMS); EA-10-014" and should include for the 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 violation. The guidance in NRC Information Notice 96-28, "Suggested Guidance Relating to Development and Implementation of Corrective Action," may be helpful. You can find the information notice on the NRC website at: <http://www.nrc.gov/reading-rm/doc-collections/gen-comm/info-notices/1996/in96028.html>. Your response may reference or include previously docketed correspondence, if the correspondence adequately addresses the required response. If you choose not to respond, the NRC will proceed with its final enforcement decision.

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 accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure(s), and your response, if you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's Agencywide Documents Access and Management System (ADAMS), accessible from the NRC 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.

C. Littrell

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If you have any questions concerning this matter, please contact Tamara Bloomer of my staff at (630) 829-9627.

Sincerely,

/RA/Patrick L. Loudon Acting For/

Steven A. Reynolds, Director
Division of Nuclear Materials Safety

Docket No. 030-18412
License No. 13-15243-03

Enclosure:
Inspection Report 03018412/2010-001(DNMS)

cc (w/encl): Larry Camparone, Acting RPO
State of Indiana

C. Littrell

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If you have any questions concerning this matter, please contact Tamara Bloomer of my staff at (630) 829-9627.

Sincerely,

/RA/Patrick L. Louden Acting For/

Steven A. Reynolds, Director
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Enclosure:
Inspection Report 03018412/2010-001(DNMS)

cc (w/encl): Larry Camparone, Acting RPO
State of Indiana

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NUCLEAR REGULATORY COMMISSION

REGION III

Docket No. 030-18412

License No. 13-15243-03

Report No: 03018412/2010-001(DNMS)

Licensee: City of South Bend,
Department of Public Works

Location Inspected: 1316 County-City Building
South Bend, Indiana

Inspection Date: January 19, 2010

Inspector: Edward L. Kulzer, Health Physicist

Approved by: Tamara E. Bloomer, Chief
Materials Inspection Branch

EXECUTIVE SUMMARY

City Of South Bend, Department of Public Works NRC Inspection Report No. 03018412/2010-001(DNMS)

On January 19, 2010, a Nuclear Regulatory Commission inspector performed a routine safety inspection at the City of South Bend, Department of Public Works located in South Bend, Indiana, to evaluate the licensee's performance and compliance with NRC regulations and license conditions.

The inspector identified an apparent violation that reflects a lack of management oversight of NRC requirements and license conditions. The apparent violation of License Condition 11B involves the licensee's failure to replace the Radiation Protection Officer (RPO), Mr. Darrell L. Baker, when he left the company in 2009. Specifically, Mr. Baker left the licensee's employment in 2009 and the licensee failed to designate another individual as RPO.

The root cause of this violation was the failure to recognize that the license needed to be amended to include a technically qualified individual who could oversee the Radiation Safety Program.

The immediate corrective action was your designation of a new RPO. The long-term corrective action included submission of a license amendment to add the new RPO. Additionally, you identified that you intend to sell or dispose of the gauges to a facility authorized to accept them and subsequently terminate the license.

Report Details

1 Program Scope and Inspection History

The City of South Bend, Department of Public Works is authorized by the Nuclear Regulatory Commission (NRC) License No. 13-15243-03 to possess and use portable moisture/density gauges at temporary job sites anywhere in the United States where the NRC maintains regulatory jurisdiction. At the time of this inspection, the licensee possessed two Troxler moisture/density gauges, containing authorized quantities of licensed material. The licensee used the gauges throughout Indiana during the construction season.

The licensee was previously inspected on June 3, 2005, when a violation of License Condition 12 A, failure to conduct required leak testing of the sealed sources, was identified.

2 Management Program Oversight

Radiation Safety Officer

2.1 Inspection Scope

The inspector reviewed management oversight of the program by interviewing licensee staff, which included the City Engineer and the authorized user.

2.2 Observations and Findings

The inspector was informed that Mr. Baker, the Radiation Protection Officer (RPO), had left the company in January 2009 and had not been replaced. The City Engineer stated that since the RPO had left the company, the gauges were placed in storage, and the licensee planned on terminating its license by selling or disposing of the gauges. Therefore, there was no individual at the facility to ensure that licensed material was stored in accordance with the NRC regulatory requirements.

Condition 11B of NRC License No. 13-15243-03 authorized Mr. Baker as the RPO. The licensee's failure to request a license amendment to authorize another individual as the designated RPO is an apparent violation of Condition 11B of NRC License 13-15243-03. The root cause of this violation was the failure to recognize that the license needed to be amended to include a technically qualified individual who could oversee the Radiation Safety Program.

As a short-term corrective action, the licensee designated a new RPO. As a long-term corrective action, the licensee sent in a request for a license amendment to the NRC Region III office to add the new RPO. Additionally, the licensee is planning to terminate its NRC license and sell or properly dispose of the gauges.

2.3 Conclusion:

The inspector identified an apparent violation of License Condition 11B, which dealt with the licensee's failure to replace the RPO at the facility in 2009. The licensee faxed the NRC Region III office a request for a license amendment to appoint the authorized user as an interim RPO until a permanent RPO is acquired.

3 Security of Portable Gauges

3.1 Inspection Scope

The inspector reviewed the licensee's method of securing portable gauges by interviewing authorized users and the City Engineer. The inspector also toured the licensee's facility.

3.2 Observations and Findings

The inspector observed that the gauges were locked in a closet within in a locked building. The inspector observed that the licensee had met the requirements of 30.34(i).

3.3 Conclusions

No violations of NRC regulatory requirements were identified.

4 Other Areas Inspected

4.1 Inspection Scope

The inspector reviewed other areas of the licensee's radiation safety program by reviewing selected licensee records, including dosimetry, training, leak testing, and physical inventories.

4.2 Observations and Findings

The licensee had no leak test or dosimetry records. The last leak tests and dosimetry records the licensee completed were done prior to the RPO's departure in 2009. The inspector reviewed the required six month inventory checks as well as the training for the authorized user. The licensee stated that the gauges were placed in storage and were in the process of being sold or disposed of by the City of South Bend. The licensee had not used the gauges since the RPO had left the company. Since the licensee had not used the gauges and had placed them in storage for sale and/or disposal, it was not required to leak test sources or use dosimetry badges.

4.3 Conclusions

The licensee successfully implemented other areas of its radiation safety program.

5 **Exit Meeting**

At the conclusion of the onsite inspection on January 19, 2010, the inspector conducted an exit meeting with the individuals listed below to discuss the inspection activities and the preliminary inspection findings. The licensee did not identify any information reviewed during the inspection as proprietary in nature.

ATTACHMENT: SUPPLEMENTAL INFORMATION

SUPPLEMENTAL INFORMATION

PARTIAL LIST OF PERSONS CONTACTED

*Carl Littrell, City Engineer, Department of Department of Public Works, Division of Engineering

*Larry Camparone, Authorized user, Project Inspector

*Denotes individuals attending the preliminary exit meeting on January 19, 2010.