



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

February 23, 2010

EA-10-001

John Kane, PE, President
Intermountain Construction
and Materials, Inc.
209 N. Limestone Avenue
Gillette, WY 82717-2469

SUBJECT: NRC INSPECTION REPORT 030-33060/09-001 AND NOTICE OF VIOLATION

Dear Mr. Kane:

This refers to the routine unannounced inspection conducted at Intermountain Construction and Materials, Inc., in Gillette, Wyoming, on December 2, 2009, with continued review through February 3, 2010. The inspection was an examination of activities conducted under your license as they relate to radiation safety and security and to compliance with the Commission's rules and regulations, as well as the conditions of your license. Within these areas, the inspection consisted of a selected examination of procedures and representative records, observations of activities, and interviews with personnel. The inspectors discussed the preliminary inspection findings with Messrs. Anthony Clobes and Tom Evans at the conclusion of the onsite portion of the inspection. A final exit briefing was conducted telephonically with Messrs. Jeff Dahlen, General Manager, and Anthony Clobes, Radiation Safety Officer, of your staff on February 3, 2010. The enclosed report presents the results of this inspection.

In the telephone conversation on February 3, 2010, Messrs. Anthony Gaines and Larry Donovan of my staff informed you that the NRC was considering escalated enforcement for an apparent violation of NRC requirements. The apparent violation involved the failure to use a minimum of two independent physical controls to secure portable gauges, whenever portable gauges are not under control and constant surveillance of the licensee. Specifically, at your facility, portable gauges were stored with only one physical control present to prevent unauthorized removal of the case or the gauge.

The circumstances surrounding this apparent violation, the significance of the issue, and the need for lasting and effective corrective actions were discussed with your staff at the inspection exit briefing. You have initiated corrective actions to address the violation. These corrective actions are documented in this report. Further, we provided you an opportunity to: (1) respond to the apparent violation addressed in this inspection report within 30 days of the date of this letter or (2) request a predecisional enforcement conference. Mr. Gaines informed you that the NRC had sufficient information regarding the apparent violation and your corrective actions to make an enforcement decision without the need for a predecisional enforcement conference or a written response from you. You agreed that a predecisional enforcement conference or written response was not needed.

Based on the information developed during the inspection, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding it are described in detail in the subject inspection report. As noted above, the violation involved a failure to use two independent physical controls to secure portable gauges while in storage and not under control and constant surveillance at your facility. Specifically, only one physical control, a padlock, was in place and locked. However, the keys to the padlock were stored in an unlocked drawer in a desk in the adjacent room. Further, the building that housed the storage vault was unlocked.

The NRC considers this violation significant because these security requirements provide a reasonable assurance that licensed material stored in controlled or unrestricted areas will be secured from unauthorized use, removal, or access. Therefore, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level III. The NRC Enforcement Policy may be found on the NRC's Web site at www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html.

In accordance with the NRC Enforcement Policy, a base civil penalty for \$3500 is considered for each Severity Level III violation.

Because your facility has not been the subject of escalated enforcement actions within the last two inspections, the NRC considered whether credit was warranted for corrective action in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy. Based on your prompt and comprehensive corrective actions, the NRC has determined that Corrective Action credit is warranted. Your corrective actions included immediately securing a portable gauge storage vault with a second keyed lock, installing a combination storage safe for the keys, and limiting access to the storage safe to authorized gauge user personnel. In addition, you committed to performing biannual safety meetings to review NRC policies and regulations.

Therefore, to encourage prompt and comprehensive correction of violations, and in recognition of the absence of previous escalated enforcement action, I have been authorized, after consultation with the Director, Office of Enforcement, not to propose a civil penalty in this case. However, significant violations in the future could result in a civil penalty. In addition, issuance of this Severity Level III violation constitutes escalated enforcement action that may subject you to increased inspection effort

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to be taken to correct the violation and prevent recurrence, and the date when full compliance was achieved is already adequately addressed on the docket in the letter dated December 7, 2009, and NRC Inspection Report 030-33060/2009-001. Therefore, you are not required to respond to this letter unless the descriptions therein do not accurately reflect your corrective actions or your position. In that case, or if you chose to provide additional information, you should follow the instructions specified in the enclosed Notice.

In accordance with 10 CFR 2.390 of the NRC's Rules of Practice, a copy of this letter, its enclosures, and your response, if you decide to submit one, 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. If

personal privacy or proprietary information is necessary to provide an acceptable response, 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 information, 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). The NRC also includes significant enforcement actions on its Web site at www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html.

Should you have any questions regarding this letter, the enclosed report, or the enclosed Notice, please contact Ms. Vivian Campbell, Chief, Nuclear Materials Safety Branch A, at 817-860-8287.

Sincerely,

/RA/

Elmo E. Collins
Regional Administrator

Docket: 030-33060
License: 49-27460-01

Enclosures:

1. Notice of Violation
2. NRC Inspection Report 030-33060/09-001

cc w/enclosures:
Scott W. Ramsey
Radiological Services Supervisor
Wyoming Office of Homeland Security
2421 E. 7th Street
Cheyenne, WY 82001

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<input checked="" type="checkbox"/> Publicly Available		<input type="checkbox"/> Nonpublicly Available		<input type="checkbox"/> Sensitive		<input checked="" type="checkbox"/> Nonsensitive	
RIV:DNMS/NMSB-A	C:NMSB-A	ACES	RC				
LDonovan; dlf	VHCampbell	MCMaier	KDFuller				
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NOTICE OF VIOLATION

Intermountain Construction
and Materials, Inc
Gillette, Wyoming

Docket: 030-33060
License: 49-27460-01
EA-10-001

During an NRC inspection conducted on December 2, 2009, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 30.34(i) requires that each portable gauge licensee shall 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 the above, on December 2, 2009, the licensee failed to use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges were not under the control and constant surveillance of the licensee. Specifically, Intermountain Construction and Materials, Inc., stored portable gauges in a vault, secured with only one padlock, inside its unlocked facility, which was not under its control and constant surveillance.

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

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to be taken to correct the violation and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed on the docket in the letter dated December 7, 2009, and NRC Inspection Report 030-33060/2009-001. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, clearly mark your response as a "Reply to a Notice of Violation, EA-10-001, and send it 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.

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's 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.

Dated this 23rd day of February 2010

U.S. NUCLEAR REGULATORY COMMISSION
REGION IV

Docket: 030-33060
License: 49-27460-01
Report: 030-33060/09-001
EA: EA-10-001
Licensee: Intermountain Construction and Materials, Inc.
Location: 209 N Limestone Ave, Gillette, Wyoming
Date: December 2, 2009, through February 3, 2010
Inspectors: Lawrence Donovan, Health Physicist
Nuclear Materials Safety Branch A
Martha Poston Brown, Health Physicist
Nuclear Materials Safety Branch A
Approved By: Vivian Campbell, Chief
Nuclear Materials Safety Branch A
Attachment: Supplemental Inspection Information

EXECUTIVE SUMMARY

Intermountain Construction and Materials, Inc.
NRC Inspection Report 030-33060/09-001

This inspection report is based on the findings of the NRC's routine inspection of NRC License 49-27460-01. The inspection began on December 2, 2009, with continued in-office review through February 3, 2010. The inspection included a review of licensed activities involving the use and storage of byproduct material in portable gauges at the licensee's facility located in Gillette, Wyoming. This report describes the findings of the inspection.

Program Overview

Intermountain Construction and Materials, Inc. is authorized to possess and use byproduct material (cesium-137 and americium-241) in the operation of a portable moisture density gauging device in areas of NRC jurisdiction, including temporary jobsites. Use of portable moisture density gauges is seasonal due to weather conditions. The licensee uses gauges for soil testing throughout the state of Wyoming. (Section 1)

Inspection Findings

The licensee did not secure portable gauges using two independent physical controls to prevent unauthorized removal, while in storage at the licensee's permanent storage facility. Specifically, the door of the building was unlocked with no one providing direct constant surveillance and the vault where the gauges were stored was secured with only one lock. The keys to the lock were stored in an unlocked desk drawer in a room adjacent to the vault at their location in Gillette, Wyoming. The failure to use a minimum of two independent physical controls to prevent unauthorized removal of portable gauges when not under the control and constant surveillance of the licensee was identified as a violation of 10 CFR 30.34(i). (Section 2)

Licensee Corrective Actions

The licensee took immediate corrective action and, in the presence of NRC inspectors, placed a second keyed padlock on the vault using a pre-existing hasp. The keys to the padlock were removed from the desk drawer and relocated to the RSO's office in the main building. Following the inspection, on December 3, 2009, the licensee installed a combination storage safe/lock box for the storage vault keys in the building adjacent to the storage vault. Access to the combination storage safe/lock box is limited to authorized gauge user personnel. In addition, the licensee committed to conducting safety meetings at 6-month intervals to review NRC requirements and policies.

Report Details

1 Program Overview (87124)

1.1 Inspection Scope

This was a routine unannounced inspection of this licensee. The inspector reviewed Intermountain Construction and Materials, Inc.'s NRC license and associated supporting tie-down documents. Collectively, these documents describe the licensee's radiation safety program.

1.2 Observations and Findings

Intermountain Construction and Materials, Inc. is authorized to use and possess byproduct material in portable moisture density gauges and conducts gauging activities on a seasonal basis due to weather conditions in the Gillette, Wyoming, area. Licensed gauge activities are typically conducted from April to mid-October, typically three to four times a week and once a month during the winter. At the time of the inspection, the licensee had two Troxler Model 3400 Series portable moisture density gauges and employed eight authorized users. All work is dispatched from the Gillette, Wyoming, office for work conducted throughout the state of Wyoming.

2 Material Security and Control (87124)

2.1 Inspection Scope

The inspector conducted interviews with licensee's staff and observed licensed activities at the corporate office in Gillette, Wyoming. Licensed activities were examined as they relate to the safety and security of the portable gauges and the licensee's efforts to protect members of the public.

2.2 Observations and Findings

10 CFR 30.34(i) requires portable gauge licensees 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.

On December 2, 2009, during a routine unannounced inspection, NRC inspectors were directed by licensee staff to the area where the gauges are stored. When the inspectors entered the building where the gauges were stored, they found that the entrance door to the building was closed but unlocked. The licensee, when questioned about the security of the portable gauges, stated that there is usually someone in this building as it is the laboratory where samples are prepared; however, given the decrease in workload, the laboratory isn't used as much. Nonetheless, at the time the inspectors entered the laboratory building, there was no one in the building. The inspectors were then directed to the vault storage area, which was in the far corner of the building. The storage location was a small vault with two separate hasps on the vault door but only a single lock secured on one hasp. The second hasp did not have a lock affixed. Keys to the lock on the vault were stored in an unlocked desk drawer in a room adjacent to the vault.

The storage vault contained two Troxler 3400 series gauges whose transport cases were locked and the gauge plungers locked on each gauge. Since the building entrance door was unlocked, with no individual around to provide constant surveillance of the portable gauge storage location, and the vault was locked with one lock, the licensee failed to have two physical controls to prevent unauthorized removal of the portable gauges. The licensee's failure to use two independent physical controls that formed tangible barriers to secure the portable gauge from unauthorized removal while not under the control and constant surveillance of the licensee was identified as a violation of 10 CFR 30.34(i). (030-33060/09-001)

2.3 Conclusions

One violation of NRC requirements was identified, involving the licensee's failure to implement the security requirements for portable gauges identified in 10 CFR 30.34(i).

3. **Licensee Corrective Actions**

On December 2, 2009, during the inspection, the licensee immediately secured a second keyed padlock on the vault using a pre-existing hasp. Initially the keys to the padlock were removed from the desk drawer and relocated to the Radiation Safety Officer's office in the main building. Following the inspection, on December 3, 2009, the licensee installed a wall-mounted combination storage safe/lock box on the wall above and adjacent to the storage vault. Access to the combination storage safe/lock box is limited to authorized gauge users only. In addition, the licensee committed to conducting safety meetings at 6-month intervals to review NRC requirements and policies.

4 **Exit Meeting Summary**

A final telephonic exit briefing was conducted with the licensee's general manager and Radiation Safety Officer on February 3, 2010, to review the inspection findings as presented in this report. They acknowledged the inspectors findings. No proprietary information was identified.

ATTACHMENT

PARTIAL LIST OF PERSONS CONTACTED

Licensee

Anthony Clobes, Radiation Safety Officer*
Tom Murphy, Vice President*
Jeff Dahlen, General Manager

*present at entrance meeting and exit meeting

INSPECTION PROCEDURES USED

87124 Portable and Fixed Gauges

ITEMS OPENED, CLOSED, AND DISCUSSED

Opened

030-33060/09-001 VIO Failure to use two independent physical controls to secure a portable gauge from unauthorized removal while not under the control and constant surveillance of the licensee.

LIST OF ACRONYMS USED

CFR Code of Federal Regulations
NRC Nuclear Regulatory Commission
VIO Violation