



UNITED STATES  
**NUCLEAR REGULATORY COMMISSION**  
REGION I  
475 ALLENDALE ROAD  
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

March 16, 2010

Docket No. 03030523  
EA-10-038

License No. 52-24983-01

Jose A. Alvarez-Bruno  
Asphalt Section Supervisor/RSO  
Puerto Rico Highway and Transportation Authority  
Materials and Testing Laboratory  
P. O. Box 42007  
San Juan, PR 00940-2007

**SUBJECT: NRC INSPECTION REPORT NO. 03030523/2009001, PUERTO RICO  
HIGHWAY AND TRANSPORTATION AUTHORITY, MATERIALS AND TESTING  
LABORATORY, SAN JUAN, PUERTO RICO AND NOTICE OF VIOLATION**

Dear Mr. Alvarez-Bruno:

On December 15 and 16, 2009, Craig Gordon of this office conducted a safety inspection at the above address of activities authorized by the above listed NRC license. The inspection was an examination of your licensed activities as they relate to radiation safety and to compliance with the Commission's regulations and the license conditions. The inspection consisted of observations by the inspector, interviews with personnel, and a selective examination of representative records. Further telephonic and written communications with this office, after the onsite inspection, provided additional information regarding the storage of unlicensed radioactive material at your facility. The preliminary findings of the inspection were discussed with you at the conclusion of the inspection on December 16, 2009. The final inspection results were discussed by telephone between Ms. Lisa Rivera of your office and Mr. Gordon on March 10, 2010.

Based on the results of this inspection and in accordance with the NRC Enforcement Policy, the NRC has determined that two Severity Level IV violations of NRC requirements occurred. The violations are cited in the enclosed Notice of Violation (Notice), because the violations were identified by the NRC. The first violation involved the failure to test sealed sources being stored for a period of more than 10 years for leakage and/or contamination. The second violation involved four examples of possession of byproduct material that was not authorized by a specific license issued in accordance with 10 CFR Part 30. The first example, which is cited in the enclosed Notice, involved a portable gauge containing cesium-137, which has been in your possession (in storage) since the 1970s. The three additional examples involved portable gauges containing radium-226, which have also been in your possession and in storage since the 1970s. Discrete radium sources came under NRC jurisdiction for licensees in Puerto Rico as of November 30, 2007, in accordance with the Energy Policy Act of 2005. In accordance with NRC Enforcement Guidance Memorandum, EGM-09-004, "Interim Guidance for Dispositioning Violations of Naturally Occurring and Accelerator-Produced Radioactive Materials (NARM) Requirements," these three examples are not being cited because: 1) the gauges were being appropriately maintained and secured, so there was no actual safety, health or security consequence; 2) your actions were not willful; 3) you stated that you were unaware that

the NRC had assumed authority for discrete radium sources that were not in use; and, 4) you took prompt

corrective action by requesting an amendment of your NRC license to include the three radium gauges. In addition, also in accordance with the EGM, we are not issuing a violation for failure to submit a license amendment request to include NARM activities.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. After reviewing your response to this Notice, including your proposed corrective actions and the results of future inspections, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

In your letters dated December 15, 2009, and January 26, 2010, (ML093520043 and ML100270272 respectively) you requested an amendment to your license to add the portable gauges containing byproduct material, which were being maintained in storage, but had not been used since the 1970s. In our letter dated February 5, 2010, we amended your license to authorize storage only of the unused gauges and changed the expiration date to reflect the NRC policy regarding long-term storage of radioactive material.

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 choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room or from the document system (ADAMS), available at the NRC website 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.

Current NRC regulations are included on the NRC's website at [www.nrc.gov](http://www.nrc.gov); select **Nuclear Materials; Medical, Academic, and Industrial Uses of Nuclear Material**; then **Regulations, Guidance, and Communications Page**. The current Enforcement Policy is included on the NRC's website at [www.nrc.gov](http://www.nrc.gov); select **About NRC; How We Regulate; Enforcement**; then **Enforcement Policy**. You may also obtain these documents by contacting the Government Printing Office (GPO) toll-free at 1-866-512-1800. The GPO is open from 7:00 a.m. to 6:30 p.m. EST, Monday through Friday (except Federal holidays).

Please contact Mr. Gordon at 610-337-5216, if you have any questions regarding this matter.

Sincerely,

***Original signed by John D. Kinneman***

John D. Kinneman, Director  
Division of Nuclear Materials Safety

Enclosure:  
Notice of Violation

cc:  
Commonwealth of Puerto Rico

corrective action by requesting an amendment of your NRC license to include the three radium gauges. In addition, also in accordance with the EGM, we are not issuing a violation for failure to submit a license amendment request to include NARM activities.

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Sincerely,

**Original Signed by:**  
John D. Kinneman, Director  
Division of Nuclear Materials Safety

Enclosure:  
Notice of Violation

cc:  
Commonwealth of Puerto Rico

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ML100770158

**SUNSI Review Complete:** CGordon

After declaring this document "An Official Agency Record" it **will** be released to the Public.

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OFFICE	DNMS/RI	N	DNMS/RI	ORA/OE	DNMS/RI
NAME	CGordon/czg		MMiller/mtm	DHolody/mmm f/	JKinneman/jdk
DATE	3/15/10		3/15/10	3/15/10	3/16/2010





## **NOTICE OF VIOLATION**

Puerto Rico Highway and Transportation Authority  
San Juan, PR

Docket No. 03030523  
License No. 52-24983-01

During an NRC inspection conducted on December 15 and 16, 2009, two violations of NRC requirements were identified, as described during the exit interview on March 10, 2010. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. License Condition 13.C. states, in part, that no sealed source shall be stored for a period of more than 10 years without being tested for leakage and/or contamination.

Contrary to this requirement, as of December 15, 2009, Puerto Rico Highway and Transportation Authority stored a portable gauge containing sealed sources for a period of more than 10 years without the gauge being tested for leakage and/or contamination. Specifically, Puerto Rico Highway and Transportation Authority stored one Nuclear Chicago Corporation (Texas Nuclear) portable gauge (Model P-22) more than 10 years and the gauge was not tested during that period for leakage and contamination.

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

- B. 10 CFR 30.3(a) states, in part, that no person shall receive, acquire, own, possess or use byproduct material except as authorized in a specific or general license issued in accordance with the regulations in 10 CFR Part 30.

Contrary to this requirement, on December 15, 2009, Puerto Rico Highway and Transportation Authority was in the possession of byproduct material that was not authorized by a specific license issued in accordance with 10 CFR Part 30. Specifically, Puerto Rico Highway and Transportation Authority possessed one Nuclear Chicago Corporation (Texas Nuclear) portable gauge (Model P-22) containing byproduct material that was not authorized by NRC License No. 52-24983-01 or by a general license.

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

Pursuant to the provisions of 10 CFR 2.201, Puerto Rico Highway and Transportation Authority is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555, with a copy to the Regional Administrator, Region I, within 30 days of the date of the letter transmitting this Notice of Violation (Notice), EA-10-038. 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, (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. 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.

Notice of Violation 2  
Puerto Rico Highway and Transportation Authority

If you contest this enforcement action, you should also provide a copy of your response to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, any response which contests an enforcement action shall be submitted under oath or affirmation.

Your response will be placed in the NRC Public Document Room (PDR) and on the NRC Web site. To the extent possible, it should, therefore, not include any personal privacy, proprietary, or safeguards information so that it can be made publically available without redaction. However, if you find it necessary to include such information, you should clearly indicate the specific information that you desire not to be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public.

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

Dated this 16<sup>th</sup> day of March 2010