

U.S. NUCLEAR REGULATORY COMMISSION
REGION I

INSPECTION REPORT

Inspection No. 03036857/2009001
Docket No. 03036857
License No. 29-31009-01
EA No. EA-10-068
Licensee: Anthony and Edward Consultants
Address: 5 Cross Avenue
Matawan, New Jersey
Other Locations Inspected: 5 Pence Road, Manalapan NJ; 22 Walter Drive, Woodbridge, NJ,
Inspection Dates: February 18, 2009 through April 26, 2010

Inspector: /RA/ _____ 5/25/10 _____
Sattar Lodhi, Ph.D. Date
Senior Health Physicist
Materials Security and Industrial Branch
Division of Nuclear Materials Safety

Approved By: /RA/ _____ 5/25/10 _____
Marie Miller, Chief Date
Materials Security and Industrial Branch
Division of Nuclear Materials Safety

EXECUTIVE SUMMARY

Anthony and Edward Consultants
NRC Inspection Report No. 03036857/2009001

Anthony and Edward Consultants (the licensee) was a small engineering company that operated in New Jersey and had maintained an NRC license since 2005. The license authorized the use of four portable moisture/density gauges. On February 18, 2009, a representative of the State of New Jersey notified Region I that Anthony and Edward Consultants had not paid the NJ annual registration fee to possess or store radioactive material in the State, and its mail to the address on the NRC license was returned as undeliverable. Since this notification, the Region I inspector attempted to contact the licensee several times via telephone, e-mails and written notes left at three addresses associated with the license, the licensee's owner, and a former storage location. As documented in our letter dated May 6, 2009, (ML091280209) the licensee did not respond to any of these requests to contact the inspector.

As a result of the licensee's failure to pay its NRC annual fees, the NRC issued an "Order Revoking License" (Order) on July 28, 2009. However, the Order could not be delivered to the licensee, and therefore, it did not become effective. On September 17, 2009, at 5 Pence Road, Manalapan, NJ (the address on the license), the inspector in presence of a special agent from the NRC Office of Investigations (OI) hand delivered the Order and a copy of the May 6, 2009 letter that had been mailed to this address earlier. The individuals receiving the documents were related to the President of the licensee, and stated that the documents would be delivered to the President. There was no response from the licensee. Therefore, on October 17, 2009, the Order became effective and the license was revoked. The Order required, in part, that the licensee arrange for disposal or transfer to an authorized recipient of any licensed material acquired or possessed under the authority of License No. 29-31009-01, and the disposal was required to take place within 60 days from the date of the Order.

Based on information from the OI, contact with the President of Anthony and Edward Consultants was established and an inspection was conducted on February 4, 2010, by an NRC inspector, who was accompanied by a representative of State of New Jersey. The inspector determined that the licensee had stored the gauges at a location that was not authorized on the license. However, the gauges were stored at a secured location under the control of the licensee, and all business operations related to use of the portable gauges had ceased. The President stated that he did not receive any of the messages or letters from the NRC.

The inspector identified three apparent violations: (1) failure to confine storage of licensed material to locations authorized on the license; (2) failure to provide the Commission with opportunity to inspect licensed activities, and (3) failure to pay debts to the NRC within 30 days, or dispose of or transfer the licensed material within 60 days from the date of the NRC Order Revoking License.

On September 30, 2009, the State of New Jersey became an Agreement State and the NRC ceased to have regulatory jurisdiction for radioactive material licenses in the State. On April 19, 2010, the NJDEP representative informed the inspector that on April 14, 2010, the gauges were transfer to Troxler Electronics Laboratories by Anthony and Edward Consultants.

REPORT DETAILS

I. Scope and Management of the Licensed Program

a. Inspection Scope

The inspector reviewed the licensee's management structure and scope of activities and changes since the initial inspection conducted in 2006.

b. Observations and Findings

The licensee was a small engineering consulting company. When it acquired its NRC license on March 14, 2005, its President was also the Radiation Safety Officer (RSO). The license authorized the use of moisture/density portable gauges at the licensee's temporary job sites. NRC conducted the initial inspection of the licensee's authorized activities on February 15, 2006. During the inspection, the inspector determined that the licensee possessed three Troxler Model 4640 portable gauges each containing an 8 millicurie-sealed source of cesium 137. The licensee had two full time authorized users, including the RSO, and two additional part time authorized users. During the February 15, 2006 inspection, the gauges were stored at one of the two authorized storage locations.

In a letter dated February 10, 2007, the licensee requested a change in the name of the licensed entity and to remove one of the authorized storage locations from the license. The licensee also wanted to increase the possession limit of licensed material so that they could acquire two additional portable gauges. On March 19, 2007, the license was amended to incorporate the requested changes, and authorize storage of licensed material only at 60 Route 9 South, Marlboro, New Jersey.

The licensee was required to pay annual fees for maintaining the NRC license. The NRC Office of Chief Financial Officer did not receive the required annual fee from the licensee. Region I inspector called the licensee on July 29, 2008, to remind the licensee of the payment of fees. The licensee's representative stated that the President had passed away in April 2008, and that his brother had taken over the company, as its new President. In a letter dated July 31, 2008, the new President requested an amendment to its license to add two new storage locations and a new RSO. The letter included the number of gauges that the licensee possessed. The President also confirmed in the letter that the licensee will continue to abide by all conditions and constraints of the license issued to Anthony and Edward Consultants. The licensee paid the NRC annual fee and its amendment request was approved on August 14, 2008, authorizing possession four Troxler Model 4640 portable gauges, and approving an individual as the RSO. The licensee had made significant changes (transfer of control) in its management therefore; in accordance with NRC policy, the next inspection was rescheduled at an earlier date (in May 2009). As described in the Section III of this report, the licensee last conducted licensed activities on September 5, 2008, and the material had been in storage since that date.

c. Conclusions

The inspection found that Anthony and Edward Consultants (A&E) had changed its management in mid-2008, and by September 2008, had ceased all business operations related to use of portable radioactive gauges.

II. Facilities, Equipment and Licensed Activities

a. Inspection Scope

The inspector reviewed the licensee's conduct of licensed activities.

b. Observations and Findings

The State of New Jersey requires that an entity that stores in the State any radioactive material acquired under an NRC license must register with the State and pay an annual registration fee. On February 18, 2009, a representative of State of New Jersey (NJDEP) contacted the inspector regarding the whereabouts of the licensee. The State had sent the annual fee invoice to the licensee at the address specified on the NRC license, but the invoice could not be delivered. The State was unable to contact the licensee by phone either. The Region I inspector attempted several times to contact the licensee via telephone, but the licensee did not return any of his calls.

On March 4, 2009, the inspector visited the licensee's facility at 5 Pence Road, Manalapan, New Jersey, which was also the residence of the President. However, the inspector could not find anyone at the facility, and left a written note along with his business card requesting the licensee to contact the inspector. On March 6, 2009, the inspector sent an e-mail message to the licensee requesting the licensee to contact him (ML092610306). The licensee responded to this request via e-mail and the response simply stated: "I am writing back to you as per your request." There was no name or any identifying information regarding the responder. The inspector sent another e-mail to the licensee requesting information about its licensed activities and the licensed material. The licensee did not respond to the inspector's request. On April 28, 2009, the inspector visited the second storage location in Woodbridge, New Jersey that was listed on the license and determined that that the licensee did not reside or store its gauges at that location. The inspector also visited the storage facilities listed on the prior amendments to the license, but no additional information could be obtained from those facilities.

The inspector later received information that the gauges may be stored at 5 Cross Anenue, Matawan, New Jersey. On May 4, 2009, the inspector again went to the Manalapan facility and then to the Matawan facility, but did not find anyone at these facilities and left a written note and his business card at each of these locations, requesting the licensee to contact the inspector. The licensee did not respond to any of these requests. On May 6, 2009, the inspector sent a letter (ML091280209) to the licensee at the two addresses, requesting the licensee to contact the inspector and reminding the licensee of the requirement in 10 CFR 19.14 for providing opportunity to the Commission to inspect licensed activities. However, the licensee did not respond to

the letter.

Pursuant to 10 CFR 171.16, the licensee was required to pay an annual fee for maintaining its NRC license. In accordance with 10 CFR Part 150, the NRC sent an invoice dated March 2, 2009, to the licensee and a second notice dated April 2, 2009, requesting the licensee to pay the annual fee. Having received no response from the licensee, on July 28, 2009, the NRC issued an "Order Revoking License" (Order) (ML092090560). This Order revokes the license unless the licensee pays the required fees within 30 days of the date of the Order. However, this Order was returned as undeliverable at the address and therefore, it did not become effective at this time.

On September 17, 2009, the inspector accompanied by a special agent from the NRC Office of Investigations (OI) visited the Manalapan facility, and talked to three relatives of the President. They told the inspector that they were the residents of the house and there were no gauges stored in the house. They declined to reveal the whereabouts of the President. The inspector handed the NRC Order dated July 28, 2009, and the NRC letter dated May 6, 2009, to the relatives who assured the inspector that they would provide these documents to the President. However, Region I did not receive any response from the licensee.

On October 17, 2009, the Order became effective. The licensee did not respond to the Order, which required that within 30 days of the Order the licensee pay the debts to the NRC or within 60 days of the Order, arrange to have the licensed material disposed of by transfer to an authorized recipient.

Failure to pay the debt to the NRC and dispose of the licensed material by transfer to an authorized recipient within the prescribed times is an apparent violation of Sections III.A. and III.C of the Order.

10 CFR 19.14 requires, in part, that a licensee afford to the Commission at all reasonable times opportunity to inspect materials, activities, facilities and records.

Failure of the licensee to afford to the Commission at all reasonable times opportunity to inspect materials, activities, facilities and records is an apparent violation of 10 CFR 19.14. Specifically, the licensee did not respond to several NRC attempts to inspect its facility to verify the safety and security of four licensed portable gauges from February 18, 2009 until February 1, 2010.

c. Conclusions

The inspector identified two apparent violations: (1) failure to pay the debts to the NRC and arrange for disposal or transfer to an authorized recipient all licensed material within the prescribed times as required by Sections III.A., and III.C. of the Order; and (2) failure to afford the Commission at all reasonable times opportunity to inspect materials, activities, facilities and records, as required by 10 CFR 19.14.

III. Material Receipt, Use, Transfer, and Control

a. Inspection Scope

The inspector reviewed the licensee's acquisition, and storage of licensed material.

b. Observations and Findings

The license authorized the licensee to possess and use Troxler Model 4640 portable gauges. Condition 10 of the license specified the locations where the licensee was authorized to store licensed material. In a letter dated July 31, 2008, the licensee stated that it possessed four Troxler Model 4640B portable gauges, and the material will be stored at 5 Pence Road, Manalapan, New Jersey and 22 Walter Drive, Woodbridge, New Jersey. NRC approved the licensee's request and on August 14, 2008, issued the amended license incorporating the licensee's request.

On February 18, 2009, Region I became aware that the licensee had moved to a new location. The licensee did not notify NRC of its move. On September 16, 2009, OI opened an investigation to locate the licensee and determine if there had been any wrongdoing. On February 1, 2010, the licensee responded to OI's inquiries and agreed to meet with the inspector on February 4, 2010, at 5 Cross Avenue, Matawan, New Jersey. The inspector verified that the licensee possessed four Troxler Model 4640B portable gauges. The gauges were stored in a storage shed at the Cross Avenue address. The inspector noted that this storage location was not authorized on the license as one of the storage locations. The licensee acknowledged that the NRC was not informed of the change in storage location. The licensee stated that the gauges were brought to this address on September 5, 2008, and had been in storage since that date.

10 CFR 30.34(c) requires, in part, that a licensee confine possession and use of licensed material to the locations authorized in the license.

Failure to confine possession of licensed material to the locations authorized in the license is an apparent violation of 10 CFR30.34(c).

On September 30, 2009, the State of New Jersey became an Agreement State and the NRC ceased to have regulatory jurisdiction for radioactive material licenses in the State. The representative of NJDEP accompanying the inspector on February 4, 2010, stated that the State will issue a storage-only license to the licensee and on March 25, 2010, issued the license that authorized storage of licensed material. On April 19, 2010, the NJDEP representative informed the inspector that on April 14, 2010, the gauges were transfer to Troxler Electronics Laboratories by Anthony and Edward Consultants.

c. Conclusions

The inspector identified one apparent violation of 10 CFR 30.34(c). Specifically, from September 5, 2008 through September 30, 2009, the licensee did not confine possession of licensed material to locations authorized on the license, as required by

10 CFR 30.34(c).

IV. Exit Meeting

On February 4, 2010, the inspector discussed the preliminary inspection findings with the President of the licensee. The President stated that he was willing to transfer the gauges to any authorized individual but was unable to location any authorized recipient. The President stated that the licensee's business had failed and because of family issues, he had to vacate the location at 5 Pence Road. He brought the gauges to his residence to ensure that licensed material remained secured from unauthorized removal. He also stated that he did not get any correspondence that was sent to 5 Pence Road address. Following confirmation from the State of New Jersey that the licensee had transferred its gauges to the vendor, a final exit meeting was held with the licensee on April 26, 2010.

PARTIAL LIST OF PERSONS CONTACTED

Licensee

Zdenko Kolanovic, President

State of New Jersey

Catherine Biel, NJDEP representative