



UNITED STATES
NUCLEAR REGULATORY COMMISSION

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

August 3, 2010

EA-10-115

Tim Gentleman, Vice President
Simon Contractors
4819 South Industrial Service Road
Cheyenne, Wyoming 82007

SUBJECT: NRC INSPECTION REPORT 030-32872/10-001 AND NOTICE OF VIOLATION

Dear Mr. Gentleman:

This refers to the unannounced inspection conducted on April 19, 2010, at the Simon Contractors facility in Cheyenne, Wyoming. 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 Ms. Valerie Kormick, Site Radiation Safety Officer, at the conclusion of the on-site portion of the inspection. Ms. Latischa Hanson and Mr. Anthony Gaines conducted a final exit briefing telephonically with you and Ms. Kormick on July 2, 2010. The enclosed report presents the results of this inspection.

During the telephonic exit briefing, Ms. Hanson and Mr. Gaines of my staff informed you that the NRC was considering escalated enforcement for an apparent violation of NRC requirements. The apparent violation involved a failure 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. The circumstances surrounding this apparent violation, the significance of the issue, and the need for lasting and effective corrective actions were discussed with you at the inspection exit briefing.

Additionally, you have initiated corrective actions, documented in your electronic mail (e-mail) correspondence dated April 22 and May 13, 2010, to address the violation. The corrective actions are also 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. We also 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 was not necessary and stated that you had no further information to convey through a written response.

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 a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal. The portable gauge was located in a storage room at your Cheyenne, Wyoming, facility and had only a single barrier to prevent unauthorized removal of the portable gauge while not under the control and constant surveillance of the authorized user. The apparent root cause of the violation was a misunderstanding of the regulation by the licensee. The licensee believed that the locked portable gauge transportation case represented one of the two required independent physical controls.

The NRC considers this violation significant because this security requirement provides a reasonable assurance that portable gauges will be secured from unauthorized access or theft. 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 in the amount of \$3,500 is considered for a 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, as documented in your April 22 and May 13, 2010, e-mail messages included immediately installing a hasp with a key lock on the exterior door of the gauge storage room to provide another independent physical control; securing the portable gauge within the storage room by using a padlock and a chain bolted to the inside wall of the storage room; changing the lock on the storage room door; and locking the two outside doors of your facility. Additional corrective actions included retraining authorized users in portable gauge security policies and procedures and committing to training all gauge users annually in these policies and procedures.

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.

Simon Contractors
EA-10-115

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The NRC has concluded that information regarding the reason for the violations, the corrective actions taken and planned to be taken to correct the violations and prevent recurrence, and the dates when full compliance was achieved, is already adequately addressed on the docket in the e-mail correspondence dated April 22 and May 13, 2010. Therefore, you are not required to respond to this letter unless the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose 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 choose to provide 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>.

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: 030-32872
License: 49-27443-01

Enclosures:

1. Notice of Violation
2. NRC Inspection Report 030-32872/10-001

cc w/Enclosures 1 and 2:
Mr. Scott W. Ramsay
Radiological Services Supervisor
State of Wyoming Office of
Homeland Security
2421 E. 7th Street
Cheyenne, WY 82001

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Hard copy:

RIV Materials Docket File (5th Floor)
DNMS Secretarial File

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ADAMS	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> SUNSI Review Complete		Reviewer Initials: LMH
<input checked="" type="checkbox"/> Publicly Available	<input type="checkbox"/> Non-publicly Available		<input type="checkbox"/> Sensitive	<input checked="" type="checkbox"/> Non-sensitive	
Category –		KEYWORD: EA-10-115 NOV Simon Contractors			
RIV:DNMS:NMSB-A	C:NMSB-A	C:NMSB-B	ACES		
LMHanson	VHCampbell	JEWhitten	MCMaier		
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07/14/2010	07/14/2010	07/14/2010	07/26/2010		
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07/29/2010	07/14/2010	07/30/2010	08/3/2010		

OFFICIAL RECORD COPY

T=Telephone

E=E-mail

F=Fax

NOTICE OF VIOLATION

Simon Contractors
Cheyenne, Wyoming

Docket: 030-32872
License: 49-27443-01
EA-10-115

During an NRC inspection conducted on April 19, 2010, 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 April 19, 2010, the licensee failed to use a minimum of two independent physical controls that form tangible barriers to secure a portable gauge from unauthorized removal, when the portable gauge was not under the control and constant surveillance of the licensee. Specifically, the licensee stored a portable gauge in a storage room in Cheyenne, Wyoming, with only one lock on the storage room door to provide a tangible barrier to secure the portable gauge. .

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 electronic mail correspondence dated April 22 and May 13, 2010. 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-10-115, 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.

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

Dated this 3rd day of August 2010

U.S. Nuclear Regulatory Commission
Region IV

Docket: 030-32872
License: 49-27443-01
Report: 030-32872/10-001
EA: EA-10-115
Licensee: Simon Contractors
Facilities: Main Office
Location: Cheyenne, Wyoming
Date: April 19, 2010
Inspectors: Latischa Hanson, Health Physicist
Nuclear Materials Safety Branch A
Vivian Campbell, Chief
Nuclear Materials Safety Branch A
Approved By: Vivian Campbell, Chief
Nuclear Materials Safety Branch A
Attachment: Supplemental Inspection Information

EXECUTIVE SUMMARY

Simon Contractors
NRC Inspection Report 030-32872/10-001

This was an unannounced inspection of licensed activities involving the use and storage of byproduct material at the Simon Contractors facility located in Cheyenne, Wyoming. The inspection consisted of selected examination of procedures and representative records, observations of activities, and interviews with personnel. This report describes the findings of the inspection.

Program Overview

Simon Contractors is authorized to use and store byproduct material (cesium-137 and americium-241) in the operation of a portable moisture density-gauging device at its facility located in Cheyenne, Wyoming, and at temporary job sites in areas of NRC jurisdiction. The licensee possesses one Troxler moisture density gauge for environmental testing. (Section 1)

Inspection Findings Considered for Escalated Enforcement

The licensee failed to secure a portable gauge properly while in storage. The licensee used only one barrier when a minimum of two are required. This was identified as a violation of 10 CFR 30.34(i). (Section 2.2)

Corrective Actions

Immediate:

On April 19, 2010, the licensee installed a hasp with a key lock on the exterior door of the gauge storage room to provide a second independent physical control, in addition to installing a chain and padlock which is bolted to the inside wall of the storage room to also secure the gauge while in the storage room. This is documented in the licensee's correspondence to the NRC dated April 22, 2010.

The licensee's April 22, 2010, correspondence to the NRC states that all gauge users were re-trained in gauge security procedures, inclusive of the use of two independent physical controls while in storage. (Section 3)

Long-term:

On May 13, 2010, the site radiation safety officer (Site RSO) provided correspondence to the NRC, stating that all authorized users (AUs) will be re-trained annually on the updated portable gauge security procedures, and your commitment to train any new gauge users on the updated security procedures prior to their independent use. Additionally, the Site RSO confirmed that the keys to the locks on the storage room door are maintained under the control of the Site RSO at all times. (Section 3)

Inspection Findings Not Considered for Escalated Enforcement

None

Report Details

1 Program Overview (87124 and 86740)

1.1 Inspection Scope

The inspectors reviewed the license and supporting documentation, interviewed licensee staff, and examined the storage location at the Simon Contractors facility at Cheyenne, Wyoming, on April 19, 2010. Collectively, the documents reviewed described the licensee's implementation of its NRC license requirements and its radiation safety and security program.

1.2 Observations and Findings

Simon Contractors operates a concrete and paving business from its main office in Cheyenne, Wyoming. Simon Contractors possesses an NRC specific materials license to use portable nuclear density gauges in NRC jurisdiction and has four authorized users at the Cheyenne, Wyoming office. The licensee was last inspected in November 2004 and no violations were identified at that time.

2 Inspection Findings (87124 and 86740)

2.1 Inspection Scope

Interviews with licensee staff, review of procedures, and observations of storage locations constituted the bulk of the inspection. Licensed activities were examined as they relate to the safety and security of the radioactive material and the licensee's policies and procedures for handling licensed materials. The inspectors evaluated training, shipping/transporting, posting, labeling, and storage of licensed material.

2.2 Observations and Findings Considered for Escalated Enforcement

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.

On April 19, 2010, the inspectors arrived at the Simon Contractors office in Cheyenne, Wyoming to conduct an unannounced inspection. The Site RSO/AU was observed returning to the facility with the gauge. The inspectors followed the Site RSO/AU as she returned the gauge to the storage room, in accordance with the licensee's procedures. The Site RSO/AU entered an unlocked, unsecured rear-building door and within a few steps, arrived at the storage room, where the inspection staff observed one doorknob with a key lock as the sole physical security barrier. The Site RSO/AU maintained the key to the doorknob key lock. Since there was only one lock, there was only one physical control present to prevent unauthorized removal of the gauge.

Based on the April 19, 2010, inspection findings, the inspectors determined that the licensee failed to maintain adequate control of their portable gauge. The licensee's

failure to use a minimum of two independent physical controls that form tangible barriers to secure the portable gauge from unauthorized removal, whenever the portable gauge was not under the control and constant surveillance of the licensee was identified as a violation of 10 CFR 30.34(i). (030-32872/10-001)

The root cause of this violation was a misunderstanding of the regulation. The Site RSO and authorized users were familiar with the requirement for two independent physical controls. However, they believed that the lock on the portable gauge transportation case counted as one of the two required locks.

2.3 Conclusions

The inspection identified a failure to secure a portable gauge with a minimum of two independent physical controls while in storage at the Simon Contractors' facility in Cheyenne, Wyoming. This was identified as a violation of 10 CFR 30.34(i).

2.4 Observations and Findings Not Considered for Escalated Enforcement

None.

3 **Corrective Actions (87124 and 86740)**

On the day of the inspection, the licensee installed a hasp with a key lock on the exterior door of the gauge storage room to provide a second independent physical control. The hasp and key lock provided a second independent physical control to secure the gauge in accordance with 10 CFR 30.34(i). Additionally, the licensee installed a chain and padlock, bolted to the inside wall of the storage room to secure the gauge while in storage.

The licensee stated in correspondence to the NRC dated April 22, 2010, that authorized users were re-trained by the RSO on security regulations relating to portable gauges on April 20, 2010. This training included acceptable methods for complying with NRC requirements at the licensee's location in Cheyenne, Wyoming, and at temporary job sites.

The licensee committed to annual refresher training of all AUs on updated portable gauge security procedures, and training any new gauge users on all gauge security procedures prior to their independent use, as stated in the licensee's May 13, 2010, correspondence to the NRC.

4 **Exit Meeting Summary**

A preliminary exit briefing was conducted at the conclusion of the on site inspection with the radiation safety officer. A final telephonic exit briefing was conducted with Tim Gentleman, Vice President, and Valerie Kormick, Site Radiation Safety Officer, on July 2, 2010, to review the inspection findings as presented in this report. They acknowledged the inspectors' findings. No proprietary information was identified.

PARTIAL LIST OF PERSONS CONTACTED

Licensee

Valerie Kormick, Site Radiation Safety Officer/Authorized User
Tim Gentleman, Vice President

INSPECTION PROCEDURES USED

87124 Fixed and Portable Nuclear Gauges
86740 Inspection of Transportation Activities

ITEMS OPENED, CLOSED, AND DISCUSSED

Opened

030-32872/10-001 VIO A violation involving a failure 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.

Closed

None

Discussed

None

LIST OF ACRONYMS USED

AU	Authorized User
CFR	Code of Federal Regulations
EA	Enforcement Action
NRC	Nuclear Regulatory Commission
RSO	Radiation Safety Officer
Site RSO	Site Radiation Safety Officer
VIO	Violation