



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

October 6, 2010

EA-10-174

Mark Lees, Project Engineer
McConnell Dowell (American Samoa), Ltd.
P.O. Box 4664
Pago Pago, American Samoa 96799

SUBJECT: NRC INSPECTION REPORT 030-38318/10-001 AND NOTICE OF VIOLATION

Dear Mr. Lees:

This letter refers to the in-office inspection conducted between May 17 and September 2, 2010, regarding McConnell Dowell (American Samoa), Ltd. (McConnell). The in-office inspection was a review of portable nuclear gauge activities conducted in NRC jurisdiction from 2008 to July 25, 2010, and compliance with the Commission's rules and regulations. The inspection consisted of telephonic and electronic communications with Messrs. Mark Lees, Project Engineer, and Keith Griffin, Project Manager, and reviews of electronic documents submitted to the NRC. On June 22, 2010, the NRC held a preliminary exit meeting telephonically with Mr. Griffin to discuss the preliminary inspection findings. Messrs. Jack Whitten and Roberto Torres conducted a final exit briefing telephonically with you on September 2, 2010. The enclosed report presents the results of this in-office inspection.

During the preliminary exit briefing, Mr. Whitten and Ms. Michelle Simmons informed Mr. Griffin that the NRC was considering escalated enforcement against McConnell for an apparent violation of NRC requirements. The apparent violation involved the failure to obtain an NRC license as required by 10 CFR Part 30 for the possession, storage and use of radioactive material in NRC jurisdiction. The circumstances surrounding the apparent violation, the significance of the issues, and the need for lasting and effective corrective actions were discussed with Mr. Griffin during the preliminary exit briefing.

Additionally, Mr. Griffin initiated immediate corrective actions to address the apparent violation by placing the two portable nuclear gauges in storage and agreed to stop using them until an NRC license was obtained. McConnell subsequently submitted an application for an NRC license. These corrective actions are documented in the subject inspection report and in McConnell's application for a license dated July 1, 2010, and letter dated July 14, 2010. Furthermore, during the September 2, 2010, conference call we provided you an opportunity (1) to respond to the apparent violation addressed in this inspection report within 30 days of the date of this letter or (2) to 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 needed and stated that you had no further information to convey through a written response.

Therefore, based on the information developed during the in-office inspection and the information you provided, 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 the violation are described in detail in the subject inspection report. As noted above, the violation involved the failure to obtain an NRC license as required by 10 CFR Part 30 for the possession, storage and use of radioactive material, prior to engaging in licensed activities within NRC jurisdiction. Specifically, McConnell did not obtain a license for the use of radioactive material contained in two portable nuclear gauges that were stored and used in American Samoa, an area of exclusive Federal jurisdiction, between 2008 and July 25, 2010. The apparent root cause of the violation was a misunderstanding of the regulations by the licensee. The licensee did not recognize the need for an NRC license for the possession, storage and use of radioactive material in American Samoa.

The NRC considers this violation significant because the failure to obtain an NRC license prior to conducting licensed activities in NRC jurisdiction impacts the NRC's ability to meet its regulatory responsibility to ensure that those activities are conducted in a safe and secure manner. 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 2 years, 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 immediate corrective actions included halting portable nuclear gauge activities upon notification that an NRC license was required and promptly submitting an application for an NRC license and paying the requisite license fees. Your long-term corrective actions include: (1) reviewing applicable NRC regulations; (2) following the guidance described in NUREG-1556, Volume 1, "Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Portable Gauge Licenses" Revision 1; (3) reviewing the conditions of the NRC radioactive materials license; and (4) monitoring the Federal and State Materials and Environmental Management Programs' Licensee's Quarterly Newsletter.

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 correct the violation and prevent recurrence, and the date when full compliance was achieved is already adequately addressed on the docket in Inspection Report 030-38318/10-001, the application for a license dated July 1, 2010, and the letter dated July 14, 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 Mr. Jack Whitten, Chief, Nuclear Materials Safety Branch B at (817) 860-8197.

Sincerely,

/RA/

Elmo E. Collins
Regional Administrator

Docket: 030-38318
License: 56-29396-01

Enclosures:

1. Notice of Violation
2. Inspection Report 030-38318/10-001

cc: w/Enclosures 1 and 2:
Pati Faiai, Chief of Staff
Office of the Governor
A.P. Lutali Executive Office Building
Pago Pago, American Samoa 96799
chiefofstaff@americansamoa.gov

McConnell Dowell (American Samoa) Ltd - 4 -
EA-10-174

Mr. Punafo Tilei, Director
Department of Public Works
American Samoa Government
Territory of American Samoa
Pago Pago, American Samoa 96799
publicworks@americansamoa.gov

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Art.Howell@nrc.gov;
Karla.Fuller@nrc.gov;
Bill.Maier@nrc.gov;
Victor.Dricks@nrc.gov;
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William.Jones@nrc.gov;
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Randy.Erickson@nrc.gov;
Rachel.Browder@nrc.gov;
Blair.Spitzberg@nrc.gov;
Marisa.Herrera@nrc.gov;
Pete.Hernandez@nrc.gov;
RobertoJ.Torres@nrc.gov;
Darlene.Eubanks-White@nrc.gov;

Nick.Hilton@nrc.gov;
Gregory.Bowman@nrc.gov;
Carolyn.Faria-Ocasio@nrc.gov;
Robert.Summers@nrc.gov;
Leelavathi.Sreenivas@nrc.gov;
Kerstun.Day@nrc.gov;
Michele.Burgess@nrc.gov;
Christian.Einberg@nrc.gov;
Glenda.Villamar@nrc.gov;
Duane.White@nrc.gov

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Category – KEYWORD:		EA-10-174 NOV McConnell Dowell		
RIV:DNMS:NMSBB	BC:NMSBB	ACES	RC	
RJTorres	JEWhitten	MCMaier	KSFuller	
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ATHowell	CACasto	EECollins		
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10/04/2010	10/06/2010	10/06/10		

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NOTICE OF VIOLATION

McConnell Dowell (American Samoa), Ltd.
Pago Pago, American Samoa

Docket 030-38318
License 56-29396-01
EA-10-174

During an NRC in-office inspection conducted between May 17 and September 2, 2010, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 30.3(a) requires that no person shall transfer, receive, acquire, own, possess, or use byproduct material except as authorized in a specific or general license issued in accordance with the regulations in Title 10, Part 30, Chapter I, of U.S. Nuclear Regulatory Commission regulations.

Contrary to the above, from 2008 to July 25, 2010, the licensee transferred, received, acquired, owned, possessed, or used byproduct material without a specific or general license issued in accordance with the regulations in Title 10, Part 30, Chapter I, of U.S. Nuclear Regulatory Commission regulations. Specifically, McConnell Dowell (American Samoa), Ltd., received, possessed and used two portable nuclear gauges containing americium-241, cesium-137, and radium-226 radioactive sealed sources in American Samoa, an area of exclusive Federal jurisdiction, without a specific license issued by the U.S. Nuclear Regulatory Commission.

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 Inspection Report 030-38318/10-001, the application for an NRC license dated July 1, 2010, and letter dated July 14, 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, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation; EA-10-174", 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, 612 East Lamar Blvd., Suite 400, Arlington, Texas 76011-4125, within 30 days of the date of the letter transmitting this Notice.

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

ENCLOSURE 1

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 2 working days.

Dated this 6th day of October, 2010.

U.S. NUCLEAR REGULATORY COMMISSION
REGION IV

Docket: 030-38318
Report: 030-38318/10-001
Licensee: McConnell Dowell (American Samoa), Ltd.
EA: EA-10-174
Location: Pago Pago, American Samoa
Dates: May 17 through September 2, 2010
Inspector: Roberto J. Torres, Senior Health Physicist
Nuclear Materials Safety Branch B
Approved By: Jack E. Whitten, Chief
Nuclear Materials Safety Branch B
Attachment: Supplemental Inspection Information

ENCLOSURE 2

EXECUTIVE SUMMARY

McConnell Dowell (American Samoa), Ltd.
NRC Inspection Report 030-38318/10-001

McConnell Dowell is an international company that provides engineering and construction services to four geographic areas: 1) Australia, 2) New Zealand and the Pacific, 3) South East Asia, and 4) the Middle East. McConnell Dowell (American Samoa), Ltd. operations fall under the purview of McConnell Dowell's New Zealand office.

From 2008 until July 25, 2010, McConnell Dowell (American Samoa), Ltd., a non-licensed entity at that time, stored and used two portable nuclear gauges in American Samoa, an area of exclusive Federal jurisdiction, without an NRC license as required by 10 CFR Part 30. The NRC contacted a McConnell Dowell (American Samoa), Ltd. management representative on June 22, 2010, and requested that the two portable nuclear gauges be placed in storage and not be used until the company could obtain an NRC license. The management representative, after becoming aware of the requirement to have an NRC license prior to operating in American Samoa, agreed to store the portable nuclear gauges and not use them. McConnell Dowell (American Samoa), Ltd. applied for an NRC license on July 1, 2010. The NRC reviewed the application and issued License No. 56-29396-01 to McConnell Dowell (American Samoa), Ltd. on July 26, 2010.

The NRC conducted an in-office inspection between May 17 and September 2, 2010. An apparent violation of 10 CFR 30.3(a) was identified. 10 CFR 30.3 (a) requires that no person shall transfer, receive, acquire, own, possess, or use byproduct material except as authorized in a specific or general license issued in accordance with the regulations in Title 10, Part 30, Chapter 1, of U.S. Nuclear Regulatory Commission regulations. A preliminary exit meeting was held with McConnell Dowell (American Samoa), Ltd. on June 22, 2010, to discuss the circumstances surrounding the violation, the significance of the issue, the need for lasting and effective corrective actions, and the extent of circumstances. A final exit meeting was held on September 2, 2010.

Report Details

McConnell Dowell is an international company that provides engineering and construction services to four geographic areas: 1) Australia, 2) New Zealand and the Pacific, 3) South East Asia, and 4) the Middle East. McConnell Dowell (American Samoa), Ltd. operations fall under the purview of McConnell Dowell's New Zealand office.

From 2008 until July 25, 2010, McConnell Dowell (American Samoa) Ltd., a non-licensed entity at that time, stored and used two portable nuclear gauges in American Samoa, an area of exclusive Federal jurisdiction, without obtaining an NRC license as required by 10 CFR Part 30. The NRC contacted a McConnell Dowell (American Samoa) Ltd. management representative on June 22, 2010, and requested that the two portable nuclear gauges be placed in storage and not be used until the company could obtain an NRC license. After becoming aware of the requirement to have an NRC license, the management representative agreed to immediately stop using and store the portable nuclear gauges until an NRC license could be obtained. McConnell Dowell (American Samoa) Ltd. applied for a license with the NRC on July 1, 2010. The NRC reviewed the application and issued License No. 56-29396-01 to McConnell Dowell (American Samoa), Ltd. on July 26, 2010.

1 Program Overview

1.1 Inspection Scope

The NRC evaluated McConnell Dowell (American Samoa), Ltd. activities conducted in NRC jurisdiction from 2008 to July 25, 2010, against the NRC's rules and regulations.

1.2 Observations and Findings

The NRC became aware on May 17, 2010, of the possibility that McConnell Dowell (American Samoa), Ltd. was storing and using portable nuclear gauges in American Samoa, an area of exclusive Federal jurisdiction, without having obtained the required NRC license. On June 22, 2010, the NRC contacted the Project Manager of McConnell Dowell (American Samoa), Ltd., and confirmed that two portable nuclear gauges were being used and stored by McConnell Dowell (American Samoa), Ltd. in American Samoa. During the June 22, 2010, telephone call, the NRC informed McConnell Dowell (American Samoa), Ltd. that they were in violation of NRC requirements and at that time they agreed to put the portable nuclear gauges in storage and not use them until they could obtain a radioactive materials license from the NRC. Through subsequent communications, the NRC was able to confirm that McConnell Dowell (American Samoa), Ltd. was in possession of two portable nuclear gauges, a Seaman gauge that can contain up to a maximum of 5.5 millicuries of radium-226 in sealed source form and a Humboldt gauge that can contain up to a maximum of 11 millicuries of cesium-137 and 44 millicuries of americium-241. Both portable nuclear gauges were brought from the company's office in New Zealand into American Samoa in 2002 and 2008, respectively. The NRC also informed McConnell Dowell (American Samoa), Ltd. that the NRC would consider enforcement action against the company for possessing licensed radioactive material without a valid NRC license.

The U.S. Nuclear Regulatory Commission has regulated the possession and use of cesium-137 and americium-241 since the creation of the Atomic Energy Act in 1954. The Energy Policy Act of 2005 gave the NRC regulatory authority over certain naturally occurring and accelerator-produced radioactive material (NARM), including radium-226 sealed sources. The NRC began regulating radium-226 in U.S. Territories on September 30, 2008.

From 2008 to July 25, 2010, McConnell Dowell (American Samoa), Ltd.'s portable nuclear gauges were used in infrastructure projects for the American Samoa Government. The Project Manager stated to the NRC that McConnell Dowell (American Samoa), Ltd. had never been made aware by the American Samoa Government of the need to acquire an NRC license. The Project Manager also stated that the American Samoa Government had not placed any stipulations through McConnell Dowell (American Samoa), Ltd.'s construction contracts specifying the requirement for an NRC license when using the portable nuclear gauges within their territory. McConnell Dowell (American Samoa), Ltd. assumed that there were no local regulatory requirements for using portable nuclear gauges in American Samoa. To ensure they had a radiation safety program in place for the devices being used in American Samoa, McConnell Dowell (American Samoa), Ltd. defaulted to complying with the New Zealand health and safety regulations for the use of portable nuclear gauges. The NRC corroborated that leak testing results for the sealed sources contained in the two portable nuclear gauges were negative for removable contamination.

1.3 **Conclusion**

The NRC conducted an in-office inspection between May 17, 2010, and September 2, 2010. The in-office inspection identified a violation of 10 CFR 30.3(a), for failing to obtain an NRC license for the use of radioactive material contained in two portable nuclear gauges that were stored and used in American Samoa, an area of exclusive Federal jurisdiction, between 2008 and July 25, 2010.

2 **Corrective Actions**

McConnell Dowell (American Samoa), Ltd.'s immediate corrective actions included halting portable nuclear gauge activities on June 22, 2010, upon notification that an NRC license was required and promptly submitting an application and paying the requisite fee for a radioactive material license with the NRC. McConnell Dowell (American Samoa), Ltd. applied for a license with the NRC on July 1, 2010. The NRC reviewed the application and issued License No. 56-29396-01 to McConnell Dowell (American Samoa), Ltd. on July 26, 2010.

McConnell Dowell (American Samoa), Ltd.'s long-term corrective actions include reviewing applicable NRC regulations; following the guidance described in NUREG 1556, Volume 1, revision 1, "Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Portable Gauge Licenses"; reviewing the conditions of the NRC radioactive materials license; and monitoring the Federal and State Materials and Environmental Management Programs' Licensee's Quarterly Newsletter.

3 Exit Meeting Summary

The NRC held a preliminary exit meeting telephonically with a McConnell Dowell (American Samoa), Ltd. representative on June 22, 2010. A final exit meeting was conducted telephonically with a McConnell Dowell (American Samoa), Ltd. representative on September 2, 2010. The overall scope and findings of the in-office inspection were discussed. The licensee representatives acknowledged the inspector's findings. No proprietary information was identified.

Supplemental Inspection Information

PARTIAL LIST OF PERSONS CONTACTED

Mark Lees, Project Engineer
Keith Griffin, Project Manager

ITEMS OPENED, CLOSED, OR DISCUSSED

Opened

03038318/10-001	VIO	A violation involving the transfer, receipt, acquisition, ownership, possession, or use of byproduct without authorization in a specific or general license issued in accordance with the regulations in Part 30 of Title 10 of the <i>Code of Federal Regulations</i> .
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Closed

None

Discussed

None

LIST OF ACRONYMS USED

APV	Apparent Violation
CFR	<i>Code of Federal Regulations</i>
NRC	Nuclear Regulatory Commission
VIO	Violation