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

January 13, 2011

EA-10-243

Mr. Roy Holm, CEO
Holm, Blough and Company
1402 Stampede Avenue
Cody, Wyoming 82414

SUBJECT: NRC INSPECTION REPORT 030-38135/10-01

Dear Mr. Holm:

This refers to the announced, initial inspection conducted at your facility located in Cody, Wyoming on September 22, 2010, with continued in-office review through December 16, 2010. The purpose of the inspection was to assess the licensee's performance in a short-term context and to provide conclusions about the effectiveness of the radiation protection program. The inspector discussed the preliminary inspection findings with Mr. Travis Hill of your staff at the conclusion of the on-site portion of the inspection. A final exit briefing was conducted telephonically with you on December 16, 2010.

This inspection examined activities conducted under your license as they relate to safety and security, to compliance with the Commission's rules and regulations, and with 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 enclosed report presents the results of this inspection.

Based on the results of this inspection, two apparent violations were identified, one of which is being considered for escalated enforcement in accordance with the NRC Enforcement Policy. The current Enforcement Policy is included on the NRC's Web site at http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html. The apparent violation being considered for escalated enforcement involves the failure to use a minimum of two independent physical controls to secure portable gauges, whenever portable gauges were not under the control and constant surveillance of the licensee. The second apparent violation involves the possession of radioactive material (radium-226 contained in the gauges) not authorized on the license. The circumstances surrounding these apparent violations, the significance of the issues, and the need for lasting and effective corrective actions were discussed with your staff at the inspection exit briefing on December 16, 2010. As a result, it may not be necessary to conduct a predecisional enforcement conference in order to enable the NRC to make an enforcement decision.

Before the NRC makes its enforcement decision, we are providing you an opportunity to (1) respond to the apparent violations addressed in this inspection report within 30 days of the date of this letter, or (2) request a Pre-decisional Enforcement Conference (PEC). If a PEC is

held, it will be open for public observation, and the NRC will issue a press release to announce the time and date of the conference. If you decide to participate in a PEC, please contact Ms. Vivian Campbell at 817-860-8287 or Mr. Larry Donovan at 817-860-8140 within 10 days of the date of this letter. A PEC should be held within 30 days of the date of this letter.

If you choose to provide a written response, it should be clearly marked as a "Response to Apparent Violations in NRC Inspection Report 030-38135/10-01; EA-10-243" and should include for each apparent violation: (1) the reason for the apparent violation, or, if contested, the basis for disputing the apparent 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 previously docketed correspondence, if the correspondence adequately addresses the required response. If an adequate response is not received within the time specified or an extension of time has not been granted by the NRC, the NRC will proceed with its enforcement decision or schedule a PEC.

If you choose to request a PEC, the conference will afford you the opportunity to provide your perspective on the apparent violation and any other information that you believe the NRC should take into consideration before making an enforcement decision. The topics discussed during the conference may include the following: information to determine whether a violation occurred, information to determine the significance of a violation, information related to the identification of a violation, and information related to any corrective actions taken or planned to be taken. In presenting your corrective actions, you should be aware that the promptness and comprehensiveness of your actions will be considered in assessing any civil penalty for the apparent violations.

In addition, please be advised that the number and characterization of apparent violations described in the enclosed inspection report may change as a result of further NRC review. You will be advised by separate correspondence of the results of our deliberations on this matter.

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 Agencywide Documents Access and Management 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 you have any questions concerning this matter, please contact Ms. Vivian Campbell, Chief, Nuclear Materials Safety Branch A, at 817-860-8287.

Sincerely,

/RA/

Roy J. Caniano, Director
Division of Nuclear Materials Safety

Docket: 030-38135
License: 49-29361-01

Enclosures:
NRC Inspection Report 030-38135/2010-001

cc w/Enclosure
Scott Ramsay
Wyoming Radiation Control Program Director
Radiological Services Supervisor
Wyoming Office of Homeland Security
2421 E. 7th Street
Cheyenne, Wyoming 82001

DISTRIBUTION:

OEMail. Resource@nrc.gov
Elmo.Collins@nrc.gov;
Roy.Caniano@nrc.gov ;
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Victor.Dricks@nrc.gov;
Lara.Uselding@nrc.gov;
Chuck.Cain@nrc.gov;
Vivian.Campbell@nrc.gov;
Jack.Whitten@nrc.gov;
Denise.Freeman@nrc.gov;
Sue.Trifiletti@nrc.gov;

OEWEB. Resource@nrc.gov
Art.Howell@nrc.gov;
Ray.Kellar@nrc.gov;
Christi.Maier@nrc.gov;
Randy.Erickson@nrc.gov;
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Blair.Spitzberg@nrc.gov;
Marisa.Herrera@nrc.gov;
Michele.Burgess@nrc.gov;
Larry.Donovan@nrc.gov;

Nick.Hilton@nrc.gov;
John.Wray@nrc.gov;
S.Woods@nrc.gov;
Nicole.Coleman@nrc.gov;
Leelavathi.Sreenivas@nrc.gov;
Kerstun.Day@nrc.gov;
Robert.Summers@nrc.gov;
Christian.Einberg@nrc.gov;
Glenda.Villamar@nrc.gov;
Duane.White@nrc.gov;
Carolyn.Faria-Ocasio@nrc.gov;

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ADAMS	☐ No	☒ Yes	X SUNSI Review Complete	Reviewer Initials:
☒ Publicly Available	☐ Nonpublicly Available		☐ Sensitive	☒ Nonsensitive
EA-10-243 Choice Letter				

RIV:DNMS/NMSB-A	C:NMSB-A	ACES	D:DNMS
LDonovan;dlf	VHCampbell	MCMaier	RJCaniano
/RA/	***/RA/***	***/RA/***	***/RA/***
1/3/11	1/10/11	1/12/11	1/13/11

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U.S. NUCLEAR REGULATORY COMMISSION
REGION IV

Docket:	030-38135
License:	49-29361-01
Report:	030-38135/10-01
EA:	EA-10-243
Licensee:	Holm, Blough and Company
Location:	1402 Stampede Avenue, Cody, Wyoming 82414
Dates:	September 22 through December 16, 2010
Inspectors:	Lawrence Donovan, Health Physicist Nuclear Materials Safety Branch A Marti Poston, Health Physicist Nuclear Materials Safety Branch A
Approved By:	Vivian Campbell, Chief Nuclear Materials Safety Branch A
Attachment:	Supplemental Inspection Information

EXECUTIVE SUMMARY

Holm, Blough and Company
NRC Inspection Report 030-38135/10-001

This was a routine, announced, initial inspection of licensed activities involving the use and storage of byproduct material in portable gauges at the licensee's facility located in Cody, Wyoming. The inspection began on September 22, 2010, with continued in-office review through December 16, 2010. This report describes the findings of the inspection.

Program Overview

Holm, Blough and Company is authorized to possess and use byproduct material (cesium-137 and americium-241) in the operation of portable moisture density gauges within areas of NRC jurisdiction, including temporary jobsites. The licensee use gauges for soil testing throughout northern Wyoming, but use is seasonal due to weather conditions. (Section 1)

Inspection Findings

The licensee failed 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. This was identified as an apparent violation of 10 CFR 30.34(i). (Section 2)

The licensee failed to limit its possession of licensed material to that authorized on its NRC license. This was identified as an apparent violation of 10 CFR 30.3. (Section 2)

Licensee Corrective Actions

The licensee immediately placed both gauges back within their transportation cases, securing the cases, and then securing both cases using a heavy wire and padlocking to the bench and wall in the garage. (Section 3)

On September 24, 2010, the licensee submitted an application requesting that the unauthorized material be added to its NRC License. Amendment 01 to NRC License 49-29361-01 issued December 8, 2010, included the authorization for radium-226 and the associated gauges. (Section 3)

Report Details

1 Program Overview (87124)

1.1 Inspection Scope

The inspectors reviewed the license and supporting documentation, interviewed licensee personnel, and examined the storage location at the licensee's facility. Collectively, the documents described the licensee's implementation of its radiation safety program. The license was issued on February 4, 2010, and this was the initial inspection.

1.2 Observations and Findings

Holm, Blough and Company is authorized to use and possess byproduct material in portable moisture density gauges and conducts licensed activities in Cody, Wyoming, and the surrounding area. At the time of the inspection, the licensee had one authorized portable moisture density gauge containing cesium-137 and americium-241, which was secured properly in the permanent storage area in a small laboratory in the garage. The licensee employed three authorized users, including the Radiation Safety Officer. The gauge was dispatched from the Cody, Wyoming, office for work conducted throughout northern Wyoming, but gauge work was conducted on a seasonal basis.

2 Apparent Violations - Material Security and Control (87124)

2.1 Inspection Scope

The inspectors conducted interviews with licensee staff and observed licensed activities at the corporate office in Cody, 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 September 22, 2010, during an announced, initial inspection, NRC inspectors observed that two portable gauges, containing radium-226, were stored in an open bay area, outside of their transport cases, along the garage wall adjacent to the licensee's permanent gauge storage area. The garage door was locked, but neither gauge was secured with a second tangible physical barrier. The failure of the licensee to use a minimum of two independent physical controls that form tangible barriers to secure the two radium-226 portable gauges from unauthorized removal, when not under the control and constant surveillance of the licensee was identified as an apparent violation of 10 CFR 30.34(i). (030-36841/10001-01)

10 CFR 30.3 states, in part, that except for persons exempt as provided in this part, no person shall possess byproduct material except as authorized in a specific or general license issued pursuant to the regulation in this chapter.

The licensee submitted an application dated August 27, 2009, requesting authorization to use cesium-137 and americium-241 in Troxler Model 3400 and 2400 series gauges. NRC License 49-29361-01 was issued on July 16, 2010, authorizing the requested material and activity. Portable gauges, containing radium-226, were not authorized on the NRC license. The licensee stated that he misunderstood the requirements and thought that the radium gauges were exempt from licensing; therefore, he did not include the radium gauges in the license application.

According to the President of Holm, Blough and Company, the radium-226 gauges were purchased in 1977, and were rarely used after the late 1990s because of accuracy issues and dated technology. After purchasing the new Troxler gauge, the licensee contacted Troxler on August 3, 2010, regarding the possible sale or disposal of the radium-226 gauges. Troxler personnel informed the licensee that disposal would be expensive and that the gauges needed to be authorized on the NRC license. The Radiation Safety Officer indicated that he was waiting on information from Troxler on the disposal of the gauges and had not had an opportunity to request an amendment to the license to authorize possession of the radium-226 gauges. The possession of radioactive material for which a specific license is required was identified as an apparent violation of 10 CFR 30.3. (030-36841/10001-02)

2.3 Conclusions

The inspection identified two apparent violations. The licensee failed to secure two portable gauges with a minimum of two independent physical controls, while in storage at their facility in Cody, Wyoming. This was identified as an apparent violation of 10 CFR 30.34(i). The licensee possessed radioactive material (two radium-226 portable gauges) that was not authorized on their NRC license. This was identified as an apparent violation of 10 CFR 30.3

3 Licensee Corrective Actions

Corrective Actions for Apparent Violations

The licensee immediately placed the two radium gauges back into their transportation cases and then secured both gauges using a heavy wire and padlock in the licensee's permanent storage facility in the laboratory. In a letter dated September 24, 2010, the licensee requested authorization to move the permanent storage facility to another location. The licensee was authorized to store the gauges in a padlocked steel locker that was bolted to the floor of a padlocked storage shed. Therefore, all gauges will be secured inside the metal steel locker and the shed will be locked providing the second tangible barrier in accordance with 10 CFR 30.34(i) (ML103010101).

On October 4, 2010, the licensee submitted an application to request authorization to possess the radium-226 gauges to the license until they could be properly disposed (ML103010101). The licensee has since made arrangements with a licensed service provider to dispose of the gauges.

4 Exit Meeting Summary

A preliminary exit briefing was conducted with Mr. Travis Hill of your staff at the conclusion of the on-site portion of the inspection. A final telephonic exit briefing was conducted with the licensee on December 16, 2010, to review the inspection findings as presented in this report. The licensee acknowledged the inspector's findings. No proprietary information was identified.

PARTIAL LIST OF PERSONS CONTACTED

Licensee

#Travis Hill, Authorized user
*Brian Edwards, Radiation Safety Officer and user

#present at entrance meeting
*present at exit meeting

INSPECTION PROCEDURES USED

87124 Portable and Fixed Gauges

ITEMS OPENED, CLOSED, AND DISCUSSED

Opened

030-36841/10-001	APV	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
030-36841/10-002	APV	Failure to limit possession of licensed material to that authorized on the NRC license.

LIST OF ACRONYMS USED

APV apparent violation
CFR *Code of Federal Regulations*
NRC Nuclear Regulatory Commission