February 11, 2011

EA-10-272

Juan Carro
President
Carro & Carro Enterprises, Inc.
P.O. Box 1475
Ciales, PR 00638

SUBJECT: NOTICE OF VIOLATION - NRC Inspection Report No. 99990001/2010003

Dear Mr. Carro:

This refers to the U.S. Nuclear Regulatory Commission (NRC) special inspection conducted on October 7, 2010, at the Carro & Carro Enterprises, Inc. (CCE) temporary office located in Guaynobo, Puerto Rico. The inspection involved a review of the circumstances regarding the temporary loss of a portable moisture density gauge that you reported to the NRC on June 14, 2010, and your possession of the gauge without the required NRC license. In addition to the on-site reviews, the inspection also involved NRC in-office review of your 30-day written report, dated July 9, 2010, concerning the lost gauge and additional information CCE provided the NRC during an October 28, 2010, telephone conversation between you and Scott Wilson of my staff. The inspection results were discussed with you by telephone during an exit meeting on January 6, 2011, and were transmitted to you in a letter dated January 28, 2011, which enclosed the subject inspection report.

The NRC's January 28, 2011, letter stated that, based on the results of the inspection, the NRC identified an apparent violation of NRC requirements. During the January 6, 2011, telephone conversation, Marie Miller of my staff informed you that the NRC was considering escalated enforcement for the apparent violation, and that we had sufficient information regarding the apparent violation and your corrective actions to make an enforcement decision without the need for a predecisional enforcement conference (PEC) or a written response from you. You indicated that a PEC would not be necessary, and that CCE did not plan to submit a written response. Therefore, 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 the violation are described in detail in the inspection report. The violation involved CCE's failure to obtain authorization in a specific NRC license to own and possess the portable moisture density gauge, which contained byproduct material, namely a radium-226 discrete source. CCE had previously been authorized by the Commonwealth of Puerto Rico to possess and use the gauge. However, in accordance with the Energy Policy Act of 2005, the NRC assumed the authority for licensing discrete sources of radium-226, and CCE was required to apply for an NRC License by November 30, 2008, which it did not do. CCE staff informed the NRC inspector that CCE thought it only needed to apply for an NRC license if it intended to use the gauge. The CCE staff also stated that CCE did not submit the application, because CCE had been evaluating whether or not to retain the gauge given the minimal demand for its use.

The CCE staff further stated that CCE had not used the gauge since August 2008, and had placed it in storage at that time.

CCE's failure to apply for and obtain an NRC license for its portable gauge was identified in June 2010, when the gauge was stolen from its storage location at the CCE temporary site in Guaynobo. CCE had been storing the gauge inside an office within a normally locked building at the temporary site. When CCE personnel were not inside the office, the interior office door was normally locked. However, on one occasion in May 2010, while maintenance activities were being conducted on a building stairway, the CCE staff left the office and did not lock the interior door or provide a second physical control. In early June 2010, CCE recognized that the gauge was missing and, after verifying that it was not in use by any CCE employees, concluded that it had been stolen. When CCE notified the Commonwealth of Puerto Rico of the missing gauge on June 10, 2010, the Commonwealth informed CCE that the NRC had authority for the material and directed CCE to notify the NRC. CCE contacted the NRC on June 14, 2010, and reported the missing gauge.

The NRC notes that CCE took appropriate corrective actions to recover the stolen gauge including: notifying local authorities, the United States Environmental Protection Agency, and the Puerto Rico Police, in addition to the NRC; interviewing all employees; and issuing a press release offering a monetary reward for information leading to the recovery of the gauge. CCE was in the process of scheduling an investigation to include the local authorities when, on June 28, 2010, the stolen gauge was anonymously returned, intact and with the source shield securely locked. Additionally, on June 29, 2010, CCE transferred possession of the gauge to an NRC-licensed entity, which maintained possession of the gauge until October 4, 2010, when CCE transferred ownership of the gauge to an authorized NRC licensee.

In accordance with NRC regulations, portable gauge users are required to obtain a license to possess and use such gauges, and as licensees are required 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. Additionally, the theft or loss of licensed material in an aggregate quantity equal to or greater than 1,000 times the quantity specified in Appendix C to Part 20 is required to be reported to the NRC by telephone immediately after its occurrence becomes known to the licensee when an exposure could result to persons in unrestricted areas. The NRC notes that CCE failed to maintain two independent physical controls to secure its gauge in May 2010, which resulted in the theft of the gauge. Additionally, although CCE was informed on June 10, 2010, of the need to notify the NRC Operations Center that the gauge had been stolen, CCE did not make the notification to the NRC Operations Center until June 14, 2010.

CCE, by not applying for and obtaining the NRC license, precluded the NRC from reviewing and inspecting CCE's gauge program and controls. This failure to apply for a license, as required by 10 CFR 30.3(a), also contributed to CCE's lack of knowledge about the NRC's requirements and its responsibilities as owner/possessor of the portable gauge. It further contributed to the lack of control and theft of the device, and the resulting potential safety and security risk to the public. Therefore, in accordance with the NRC Enforcement Policy, the NRC has categorized this violation at Severity Level (SL) III.

In light of the fact that CCE has decided to not obtain an NRC license, and that CCE took prompt and comprehensive action that resulted in the recovery and appropriate transfer of the gauge, the NRC has decided to not propose a civil penalty in this case. However, should CCE

obtain an NRC license in the future and significant violations occur, these violations could result in a civil penalty.

The NRC has also concluded that information regarding the reason for the violation, the corrective action taken to correct the violation and prevent recurrence, and the date when full compliance was achieved is already adequately addressed on the docket in this letter and its enclosure and in Inspection Report No. 99990001/2010003. 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, the enclosure, and your response, if you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room and from the NRC's document system (ADAMS), accessible from the NRC 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 personal privacy or proprietary information is necessary to provide an acceptable response, please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information.

If you request withholding of such information, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information). The NRC also includes significant enforcement actions on its Web site at (http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/).

Sincerely,

/RA/

William M. Dean
Regional Administrator

Docket No. 99990001
License No. Non-Licensee

Enclosure:
Notice of Violation

cc w/encl:
Dawin Lozada, Radiation Safety Officer
Commonwealth of Puerto Rico

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Sincerely,
/RA/
William M. Dean
Regional Administrator

Docket No. 99990001
License No. Non-Licensee

Enclosure:
Notice of Violation

cc w/encl:
Dawin Lozada, Radiation Safety Officer
Commonwealth of Puerto Rico

SUNSI Review Complete: MMM

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*HQ to perform a quick review. ** see previous concurrence page

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ENCLOSURE 1

NOTICE OF VIOLATION

Carro & Carro Enterprises, Inc.
Ciales, Puerto Rico

Docket No. 999-90001
License No. Non-Licensee
EA-10-272

Based on an NRC special inspection on October 7, 2010, as well as an in-office review of information provided by Carro & Carro Enterprises, Inc. (CCE) in correspondence dated July 9, 2010, and during an October 28, 2010 telephone call, for which a telephonic exit meeting was held on January 6, 2011, 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, in part, that no person shall own or possess byproduct material except as authorized in a specific or general license issued in accordance with NRC regulations.
>
> Contrary to the above, from November 30, 2008, through June 28, 2009, CCE owned and/or possessed byproduct material (a discrete radium-226 source contained in a portable moisture density gauge) without authorization in a specific or general license issued in accordance with NRC regulations.
>
> This is a Severity Level III violation (EGM-09-004).

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 the letter transmitting this Notice and in Inspection Report No. 99990001/2010003. Therefore, no response to this Notice is required. 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-10-272," 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 I, 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 and from the NRC's document system (ADAMS), accessible from the NRC Web site at http://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 of receipt.

Dated this 11th day of February 2011.