



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

February 18, 2011

EA-10-245

Mr. Phil Caines, President  
McGarvin-Moberly  
Construction Company  
P.O. Box 1166  
1001 Highway 20 North  
Worland, Wyoming 82401

SUBJECT: NRC INSPECTION REPORT NO. 030-32107/2010-001 AND NOTICE OF VIOLATION

Dear Mr. Caines:

This refers to the unannounced inspection conducted on September 22, 2010, at a McGarvin-Moberly Construction Company temporary jobsite along Highway 14 East near Greybull, Wyoming. The purpose of the inspection was to assess the licensee's performance in the use of radioactive material at a temporary job site, and to provide conclusions about the effectiveness of the licensee's radiation protection program. Preliminary inspection findings were discussed with Mr. Gary Robertson, Radiation Safety Officer, and other members of your staff at the conclusion of the onsite portion of the inspection. A final exit briefing was then conducted telephonically with you and Mr. Robertson on December 16, 2010. The enclosed report presents the results of this inspection.

This inspection examined activities conducted under your license as they relate to radiation safety and security, and to compliance with the Commission's rules and regulations, and with the conditions in your license. Within these areas, the inspection consisted of selected examination of representative records and interviews with personnel.

Based on the results of this inspection, one apparent violation was identified and 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 [www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html](http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html). The apparent violation involved the failure to use a minimum of two independent physical controls to secure portable gauges at a temporary job site 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 members of your staff at the preliminary inspection exit briefing on September 22, 2010. As a result, it may not be necessary to conduct a pre-decisional enforcement conference (PEC) in order to enable the NRC to make an enforcement decision.

If you choose to provide a written response, it should be clearly marked as a "Response to An Apparent Violation in NRC Inspection Report 030-32107/2010-001; EA-10-245" 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 predecisional enforcement conference.

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 violation.

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.

Additionally, three Severity Level IV violations were identified for failures to: (1) prepare shipping papers when transporting radioactive material on public roadways; (2) provide hazardous materials refresher training to authorized gauge users; and (3) provide copies of operating and emergency procedures to each authorized gauge user for use at temporary job sites. These violations are not being considered for escalated enforcement and, as such, are cited in the enclosed Notice of Violation (Notice). The violations are being cited in the Notice because they were identified by the NRC during the inspection. You are required to respond to these violations and should follow the instructions in the Notice. You have initiated corrective actions to address the violations. These corrective actions are documented in this report.

In accordance with 10 CFR 2.390 of the NRC's Rules of Practice, a copy of this letter, its enclosures, and 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 <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.

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.

McGarvin-Moberly  
Construction Company  
EA-10-245

- 3 -

Sincerely,

*/RA/*

Roy J. Caniano, Director  
Division of Nuclear Materials Safety

Docket: 030-32107  
License: 49-27065-01

Enclosures:

1. Notice of Violation
2. Inspection Report 030-32107/2010-001

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

McGarvin-Moberly  
 Construction Company  
 EA-10-245

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[Vivian.Campbell@nrc.gov](mailto:Vivian.Campbell@nrc.gov); [Marisa.Herrera@nrc.gov](mailto:Marisa.Herrera@nrc.gov); [Christian.Einberg@nrc.gov](mailto:Christian.Einberg@nrc.gov);  
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## NOTICE OF VIOLATION

McGarvin-Moberly Construction Company  
Worland, Wyoming

Docket: 030-32107  
License: 49-27065-01  
EA-10-245

During an NRC inspection conducted on September 22, 2010, with in-office review through December 16, 2010, three violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

A. 10 CFR 71.5(a) requires that each licensee who transports licensed material outside the site of usage, as specified in the NRC license, or where transport is on public highways, or who delivers licensed material to a carrier for transport, shall comply with the applicable requirements of the Department of Transportation (DOT) regulations in 49 CFR Parts 107, 171 through 180, and 390 through 397, appropriate to the mode of transport.

1. 49 CFR 177.817(a) requires, in part, that a person may not transport a hazardous material by highway unless that person has received a shipping paper prepared in accordance with 49 CFR 172 of this subchapter. 49 CFR 172.101 lists radioactive material as a hazardous material.

Contrary to the above, on September 22, 2010, the licensee transported hazardous material by highway without receiving a shipping paper prepared in accordance with 49 CFR 172. Specifically, the licensee transported a portable gauge (containing a hazardous radioactive material) without a shipping paper from the licensee's corporate office in Worland, Wyoming, to a temporary jobsite on Highway 14 East near Greybull, Wyoming.

This is a Severity Level IV violation. (Violation Example 6.8)

2. 49 CFR 172.702 requires, in part, that a hazmat employer shall ensure that each hazmat employee is trained and, with exceptions not applicable here, no hazmat employee who performs any function subject to the requirements of this subpart shall perform that function unless instructed in the requirements of this subchapter that apply to that function. The terms hazmat employer and hazmat employee are defined in 49 CFR 171.8.

49 CFR 172.704(c)(2) requires, in part, that a hazmat employee must receive the training required by this subpart at least once every three years.

Contrary to the above, on September 22, 2010, the licensee failed to provide hazmat refresher training for one of its hazmat employees. Specifically, an authorized user at the temporary jobsite on Highway 14 East near Greybull, Wyoming, had not received hazmat training from April 2007 to the date of inspection on September 22, 2010, a period in excess of 3 years.

This is a Severity Level IV violation. (Violation Example 6.3)

- B. License Condition 21A of Amendment 3 to NRC Materials License 49-27065-01, Corrected Copy, requires that the licensee conduct its program in accordance with the statements, representation and procedures contained in the documents in the application dated February 1, 2001 (ML011290236).

Item 10.G of the application dated February 1, 2001, states that the licensee will develop implement, maintain and meet the criteria in the section entitled "Radiation Safety Program-Operating and Emergency Procedures" in NUREG-1556 Volume 1, "Consolidated Guidance about Materials Licenses: Program Specific Guidance about Portable Gauge Licenses", dated May 1997. Item 10 of Appendix M to the referenced NUREG, "Radiation Safety Program –Operating and Emergency Procedures", states that the licensee will provide copies of operating and emergency procedures to all gauge users and at each jobsite.

Contrary to the above, on September 22, 2010, the licensee failed to provide copies of the licensee's operating and emergency procedures to all gauge users and at each jobsite. Specifically, an authorized user did not possess a copy of the licensee's operating and emergency procedures when conducting licensed activities at a temporary jobsite on Highway 14 East near Greybull, Wyoming.

This is a Severity Level IV violation. (Violation Example 6.3)

Pursuant to the provisions of 10 CFR 2.201, McGarvin-Moberly Construction Company is hereby required to submit a written statement or explanation 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 of Violation (Notice). This reply should be clearly marked as "Reply to Notice of Violation; EA-10-245 and should include for each violation: (1) the reason for the violation or, if contested, the basis for disputing the violation or severity level, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken, and (4) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an order or Demand for Information may be issued as to why the license should not be modified, suspended, or revoked, or why such other action as may be proper should not be taken. When good cause is shown, consideration will be given to extending the response time.

If you contest this enforcement action, you should 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.

Because 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/adams.html](http://www.nrc.gov/reading-rm/adams.html), to the extent possible, it 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, then 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 material, 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). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

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

Dated this 18<sup>th</sup> day of February 2011

U.S. NUCLEAR REGULATORY COMMISSION  
REGION IV

Docket: 030-32107

License: 49-27065-01

Report: 030-32107/2010-001

Licensee: McGarvin-Moberly Construction Company  
P.O. Box 1166  
Worland, Wyoming

Location Inspected: Highway 14E near Greybull, Wyoming (temporary job site)

Inspection Date: 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

## EXECUTIVE SUMMARY

McGarvin-Moberly Construction Company  
NRC Inspection Report 030-32107/2010-001

This was an unannounced inspection of licensed activities involving the use and storage of byproduct material at a temporary jobsite operated by McGarvin-Moberly Construction Company (McGarvin-Moberly) along Highway 14 East, near Greybull, Wyoming. The inspection was an examination of activities conducted under NRC License 49-27065-01, as they related to radiation safety and security and to compliance with the Commission's rules and regulations, as well as the conditions of the license. Within these areas, the inspection consisted of observations of activities and interviews with personnel. This report describes the findings of the inspection.

### Program Overview

McGarvin-Moberly is authorized to use and store byproduct material (cesium-137 and americium-241) in the operation of portable moisture density gauging devices at its facility in Worland, Wyoming, and at temporary jobsites in areas of NRC jurisdiction. (Section 1)

### Inspection Findings Considered for Escalated Enforcement

The licensee failed to use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever the gauges were not under the control and constant surveillance of the licensee. This was identified as an apparent violation of 10 CFR 30.34(i). (Section 2.2)

### Inspection Findings not Considered for Escalated Enforcement

The licensee failed to prepare shipping papers for radioactive material prior to transportation. This was identified as a violation of 49 CFR 177.817(a). (Section 2.3)

The licensee failed to provide hazardous materials refresher training. This was identified as a violation of 49 CFR 172.704(c)(2). (Section 2.3)

The licensee failed to possess operating and emergency procedures at the temporary jobsite near Greybull, Wyoming. This was identified as a violation of License Condition 21A of Amendment 03 to NRC Materials License 49-27065-01, Corrected Copy. (Section 2.3)

### Corrective Actions

Licensee personnel locked the case containing the gauge, and the metal container, containing the case; then, returned the truck and portable gauge unit to the main office. (Section 3)

Licensee personnel who had not completed recurrent hazardous materials (hazmat) training were restricted from transporting gauges until training was completed. This training was completed on October 1, 2010. (Section 3)

The licensee placed operating and emergency procedures manuals in all vehicles transporting portable gauges. (Section 3)

## REPORT DETAILS

### **1 Program Overview (87124)**

#### 1.1 Inspection Scope

The inspectors reviewed the NRC license and correspondence, statements, representations and procedures provided by the licensee in support of their application for the license. The inspectors reviewed the conditions found at the temporary jobsite, interviewed licensee staff, and examined the storage of the gauge at the temporary jobsite along Highway 14 East near Greybull, Wyoming, on September 22, 2010.

#### 1.2 Observations and Findings

McGarvin-Moberly Construction Company (McGarvin-Moberly ) is authorized by NRC Materials License 49-27065-01 to possess and use cesium-137 and americium-241 in portable density gauges. The licensee performs work at temporary jobsites in NRC jurisdiction, primarily in the state of Wyoming.

### **2 Inspection Findings (87124)**

#### 2.1 Inspection Scope

Licensed activities were examined as they relate to the safety and security of the radioactive materials and the licensee's policies and procedures for handling radioactive materials at the temporary job site only. The inspectors reviewed leak tests, labeling, shipping paperwork, and training records, which were faxed to NRC on September 28, 2010 (ML103140708).

#### 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 September 22, 2010, the inspectors identified a temporary jobsite on Highway 14 East near Greybull, Wyoming, where licensee personnel had transported a portable gauge for use at the site. When the inspectors arrived at the jobsite, they found the licensee's transportation vehicle, which was equipped with a metal container bolted to the truck bed. The lid to the metal container was secured by one lock. The inspectors conducted radiation surveys of the licensee's transportation vehicle, which indicated the presence of radioactive material. During this period, no one approached the inspectors. Licensee personnel were not in the immediate vicinity to provide surveillance or control of the gauge.

The inspectors located licensee personnel with other workers of the construction detail a short distance from where the licensee's vehicle was parked. The inspector asked the driver/authorized user to unlock the metal container where the gauge was stored. The inspector found that there were no additional independent physical controls in place to prevent loss or theft of the gauge or gauge case. Therefore, only one independent physical control (the locked metal container) was in place to prevent unauthorized removal of the gauge. The failure to use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever the portable gauges are not under the control and constant surveillance of the licensee was identified as an apparent violation of 10 CFR 30.34(i). (030-32107/10001-01)

### 2.3 Observations and Findings not Considered for Escalated Enforcement

10 CFR 71.5(a) requires that a licensee who transports licensed material outside of the site of usage, as specified in the NRC license, or where transport is on public highways, or who delivers licensed material to a carrier for transport, comply with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation (DOT) in 49 CFR Parts 107, 171-180, and 390-397.

49 CFR 177.817(a) requires, in part, that a person may not transport hazardous material (hazmat) by highway unless the shipment is accompanied by a shipping paper prepared in accordance with 49 CFR Part 172.

The inspector asked the user to see the licensee's shipping papers. The user told the inspector that he did not have shipping papers with him. He stated to the inspector that he had requested the shipping papers from his Radiation Safety Officer (RSO), but the RSO had not provided the user the shipping papers prior to his departure from the office. The licensee had transported radioactive material on public highways to the temporary jobsite without shipping papers. The failure to use shipping papers during the transportation of the gauge on public highways was identified as a violation of 49 CFR 177.817(a). (030-32107/10001-02)

49 CFR 172.702(a) requires that each hazmat employer shall ensure that each hazmat employee is trained and tested, and that no hazmat employee performs any function subject to the requirements of 49 CFR Parts 171-177 unless trained in accordance with Subpart H of 49 CFR Part 172. The terms Hazmat Employer and Hazmat Employee are defined in 49 CFR 171.8. 49 CFR 172.704(c)(2) requires, in part, that a hazmat employee receive recurrent training at least once every three years.

The inspector asked the authorized user the date of his last hazmat refresher training. The user stated that his last refresher training was "awhile ago." The RSO provided records in a facsimile dated September 28, 2010 (ML103140708), which showed that the authorized user completed hazmat training in April 2007, which had subsequently expired in April 2010. Since April 2010 until the date of the inspection on September 22, 2010, the user had transported radioactive material in portable gauges without having completed hazmat refresher training. The failure to provide recurrent hazmat training for one of their hazmat employees was identified as a violation of 49 CFR 172.704(c)(2). (030-32107/10001-03)

License Condition 21 of NRC License 49-27065-01, Amendment 03 dated July 16, 2010, Corrected Copy, requires that the licensee conduct its program in accordance with the statements, representations and procedures contained in the documents including any enclosures in the license application dated February 1, 2001 (ML011290236). Item 10 G of the application dated February 1, 2001, states that the licensee will develop, implement, maintain and meet the criteria in the section entitled 'Radiation Safety Program -Operating and Emergency Procedures' in NUREG-1556, Vol. 1, 'Consolidated Guidance about Materials Licenses: Program-Specific Guidance about Portable Gauge Licenses,' dated May 1997. Item 10, of Appendix M to the referenced NUREG, "Radiation Safety Program-Operating and Emergency Procedures", states that the licensee will provide copies of operating and emergency procedures to all gauge users and at each jobsite.

At the temporary job site, the NRC inspector requested to see the licensee's Operations and Emergency (O&E) procedures manual. The user stated that he forgot to take the O&E manual with him to the temporary job site near Greybull, Wyoming. The failure to have the licensee's O&E manual at the temporary job site was identified as a violation of the commitments made in application dated February 1, 2001, referenced in License Condition 21 of Amendment No. 3, Corrected Copy, to NRC Materials License 49-27065-01. (030-32107/10001-04)

## 2.4 Conclusions

One apparent violation was identified for the failure to use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever the portable gauges are not under the control and constant surveillance of the licensee. Additionally, three violations were identified for failures to: (1) possess shipping papers while transporting gauges on public highways, (2) provide recurrent hazardous materials training, and (3) possess standard O&E procedures at the temporary jobsite.

## 3 **Corrective Actions**

During the inspection on September 22, 2010, the licensee secured the gauge in the case, locked the gauge case and the metal container containing the gauge case. Since there was no additional equipment at the temporary jobsite with which to secure the metal container and establish a second tangible barrier, the authorized user returned with the gauge to the main office in Worland, Wyoming. Licensee personnel who had not completed recurrent hazmat training were restricted from transporting gauges until training was completed. This training was completed on October 1, 2010. The licensee placed operating and emergency procedure manuals in all vehicles transporting portable gauges.

## 4 **Exit Meeting Summary**

A preliminary exit briefing was conducted at the conclusion of the onsite inspection with the authorized user. A preliminary telephonic exit briefing was conducted with the RSO on

September 28, 2010, to review the inspection findings as presented in this report. A final exit briefing was conducted with Mr. Phil Caines, President and Mr. Gary Robertson, RSO on December 16, 2010.

## PARTIAL LIST OF PERSONS CONTACTED

\*Matt Larson, Authorized Gauge User  
#Gary Robertson, RSO  
#Phil Caines, President

\*Individuals present during the on-site entrance on September 22, 2010  
#Individual contacted for exit meetings by telephone on September 28, 2010 and December 16, 2010

## INSPECTION PROCEDURES USED

87124                      Portable and Fixed Gauges

## ITEMS OPENED, CLOSED, AND DISCUSSED

Opened

030-32107/10001-01	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.
030-32107/10001-02	VIO	Failure to generate shipping papers for radioactive material prior to transportation.
030-32107/10001-03	VIO	Failure to provide hazardous materials refresher training.
030-32107/10001-04	VIO	Failure to possess operating and emergency procedures at the temporary jobsite.

## LIST OF ACRONYMS USED

APV	Apparent Violation
CFR	Code of Federal Regulations
NRC	Nuclear Regulatory Commission
VIO	Violation