



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

April 14, 2011

EA-10-245

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

SUBJECT: NOTICE OF VIOLATION AND NRC INSPECTION REPORT 030-32107/2010-001

Dear Mr. Caines:

This refers to the routine, unannounced inspection conducted on September 22, 2010, at McGarvin-Moberly Construction Company's temporary jobsite near Greybull, Wyoming, with continued in-office review through December 16, 2010. 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, as well as to 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. A final exit briefing was conducted by telephone with Mr. Gary Robertson of your staff on December 16, 2010. An inspection report identifying the apparent violations was issued on February 18, 2011 (ML110530190).

On March 21, 2011, a Predecisional Enforcement Conference was conducted by telephone to discuss the apparent violations, their significance, their root causes, and your corrective actions.

During the Predecisional Enforcement Conference, we established a common understanding of the inspector's observations. As a result, you acknowledged that the violation occurred and committed to taking appropriate corrective action (as discussed below). A copy of the handouts provided by the NRC staff for the Predecisional Enforcement Conference is enclosed.

Based on the information developed during the inspection, and the information you presented during the conference, 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. The violation involved a failure to use two independent physical controls to secure a portable gauge while in storage. Specifically, the portable gauge was stored in a locked, metal box secured to the truck bed, and no other tangible barrier was present to secure the gauge.

The NRC considers this violation significant because this security requirement provides a reasonable assurance that licensed material stored in controlled or unrestricted areas 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 2.3.4 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 removing both gauges from field services and securing them in your corporate office, and promptly retraining authorized users regarding the security policies and procedures. Your long-term corrective actions included modifying the metal storage boxes to establish an additional barrier to prevent unauthorized access to the material, providing your gauge users with training emphasizing the importance of security requirements prior to using the gauges, and having the radiation safety officer perform audits of field operations to ensure safety and security requirements are being followed.

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.

You are required to respond to the Notice and should follow the instructions specified in the enclosed Notice when preparing your response. The information provided in NRC Information Notice 96-28 (enclosed) may be helpful when preparing your response. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with the regulatory requirements.

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. 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.

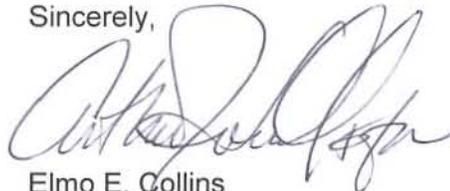
McGarvin-Moberly Construction
Company

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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 includes significant enforcement actions on its Web site at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions>).

Should you have any questions regarding this letter or the enclosed report, please contact Ms. Vivian Campbell, Chief, Nuclear Materials Safety Branch A, at 817-860-8287.

Sincerely,



Elmo E. Collins
Regional Administrator

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

Enclosures:

1. Notice of Violation
2. NRC Information Notice 96-28
3. Predecisional Enforcement Conference Handouts

cc w/Enclosures:

Scott W. Ramsey
Radiological Services Supervisor
Wyoming Office of Homeland Security
2421 E 7th Street
Cheyenne, Wyoming 82001

NOTICE OF VIOLATION

McGarvin-Moberly Construction Co.
Worland, Wyoming

Docket No: 030-32107
License No: 49-27065-01
EA-10-245

During an NRC inspection conducted on September 22, 2010, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

- A. 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 September 22, 2010, the licensee failed to use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal whenever portable gauges were not under the control and constant surveillance of the licensee. Specifically, the portable gauge was stored in a locked, metal box bolted to an open truck bed with only one lock present, no other tangible barriers were in use, and the gauge was not under the control and constant surveillance of the licensee.

This is a Severity Level III violation (Section 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 a "Reply to a Notice of Violation; EA-10-245" and should include: (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 a 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. Where good cause is shown, consideration will be given to extending the response time.

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.

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 Web site at 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).

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

Dated this 14th day of April 2011.

NRC INFORMATION NOTICE 96-28

UNITED STATES
NUCLEAR REGULATORY COMMISSION
OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS
WASHINGTON, D.C. 20555

May 1, 1996

NRC INFORMATION NOTICE 96-28:

SUGGESTED GUIDANCE RELATING TO DEVELOPMENT
AND IMPLEMENTATION OF CORRECTIVE ACTION

Addressees

All material and fuel cycle licensees.

Purpose

The U.S. Nuclear Regulatory Commission (NRC) is issuing this information notice to provide addressees with guidance relating to development and implementation of corrective actions that should be considered after identification of violation(s) of NRC requirements. It is expected that recipients will review this information for applicability to their facilities and consider actions, as appropriate, to avoid similar problems. However, suggestions contained in this information notice are not new NRC requirements; therefore, no specific action nor written response is required.

Background

On June 30, 1995, NRC revised its Enforcement Policy (NUREG-1600)¹ 60 FR 34381, to clarify the enforcement program's focus by, in part, emphasizing the importance of identifying problems before events occur, and of taking prompt, comprehensive corrective action when problems are identified. Consistent with the revised Enforcement Policy, NRC encourages and expects identification and prompt, comprehensive correction of violations.

In many cases, licensees who identify and promptly correct non-recurring Severity Level IV violations, without NRC involvement, will not be subject to formal enforcement action. Such violations will be characterized as "non-cited" violations as provided in Section VII.B.1 of the Enforcement Policy. Minor violations are not subject to formal enforcement action. Nevertheless, the root cause(s) of minor violations must be identified and appropriate corrective action must be taken to prevent recurrence.

If violations of more than a minor concern are identified by the NRC during an inspection, licensees will be subject to a Notice of Violation and may need to provide a written response, as required by 10 CFR 2.201, addressing the causes of the violations and corrective actions taken to prevent recurrence. In some cases, such violations are documented on Form 591 (for materials licensees)

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¹Copies of NUREG-1600 can be obtained by calling the contacts listed at the end of the Information Notice.

which constitutes a notice of violation that requires corrective action but does not require a written response. If a significant violation is involved, a predecisional enforcement conference may be held to discuss those actions. The quality of a licensee's root cause analysis and plans for corrective actions may affect the NRC's decision regarding both the need to hold a predecisional enforcement conference with the licensee and the level of sanction proposed or imposed.

Discussion

Comprehensive corrective action is required for all violations. In most cases, NRC does not propose imposition of a civil penalty where the licensee promptly identifies and comprehensively corrects violations. However, a Severity Level III violation will almost always result in a civil penalty if a licensee does not take prompt and comprehensive corrective actions to address the violation.

It is important for licensees, upon identification of a violation, to take the necessary corrective action to address the noncompliant condition and to prevent recurrence of the violation and the occurrence of similar violations. Prompt comprehensive action to improve safety is not only in the public interest, but is also in the interest of licensees and their employees. In addition, it will lessen the likelihood of receiving a civil penalty. Comprehensive corrective action cannot be developed without a full understanding of the root causes of the violation.

Therefore, to assist licensees, the NRC staff has prepared the following guidance, that may be used for developing and implementing corrective action. Corrective action should be appropriately comprehensive to not only prevent recurrence of the violation at issue, but also to prevent occurrence of similar violations. The guidance should help in focusing corrective actions broadly to the general area of concern rather than narrowly to the specific violations. The actions that need to be taken are dependent on the facts and circumstances of the particular case.

The corrective action process should involve the following three steps:

1. Conduct a complete and thorough review of the circumstances that led to the violation. Typically, such reviews include:
 - Interviews with individuals who are either directly or indirectly involved in the violation, including management personnel and those responsible for training or procedure development/guidance. Particular attention should be paid to lines of communication between supervisors and workers.

- Tours and observations of the area where the violation occurred, particularly when those reviewing the incident do not have day-to-day contact with the operation under review. During the tour, individuals should look for items that may have contributed to the violation as well as those items that may result in future violations. Reenactments (without use of radiation sources, if they were involved in the original incident) may be warranted to better understand what actually occurred.
- Review of programs, procedures, audits, and records that relate directly or indirectly to the violation. The program should be reviewed to ensure that its overall objectives and requirements are clearly stated and implemented. Procedures should be reviewed to determine whether they are complete, logical, understandable, and meet their objectives (i.e., they should ensure compliance with the current requirements). Records should be reviewed to determine whether there is sufficient documentation of necessary tasks to provide an auditable record and to determine whether similar violations have occurred previously. Particular attention should be paid to training and qualification records of individuals involved with the violation.

2. Identify the root cause of the violation.

Corrective action is not comprehensive unless it addresses the root cause(s) of the violation. It is essential, therefore, that the root cause(s) of a violation be identified so that appropriate action can be taken to prevent further noncompliance in this area, as well as other potentially affected areas. Violations typically have direct and indirect cause(s). As each cause is identified, ask what other factors could have contributed to the cause. When it is no longer possible to identify other contributing factors, the root causes probably have been identified. For example, the direct cause of a violation may be a failure to follow procedures; the indirect causes may be inadequate training, lack of attention to detail, and inadequate time to carry out an activity. These factors may have been caused by a lack of staff resources that, in turn, are indicative of lack of management support. Each of these factors must be addressed before corrective action is considered to be comprehensive.

3. Take prompt and comprehensive corrective action that will address the immediate concerns and prevent recurrence of the violation.

It is important to take immediate corrective action to address the specific findings of the violation. For example, if the violation was issued because radioactive material was found in an unrestricted area, immediate corrective action must be taken to place the material under licensee control in authorized locations. After the immediate safety concerns have been addressed, timely action must be taken to prevent future recurrence of the violation. Corrective action is sufficiently comprehensive when corrective action is broad enough to reasonably prevent recurrence of the specific violation as well as prevent similar violations.

In evaluating the root causes of a violation and developing effective corrective action, consider the following:

1. Has management been informed of the violation(s)?
2. Have the programmatic implications of the cited violation(s) and the potential presence of similar weaknesses in other program areas been considered in formulating corrective actions so that both areas are adequately addressed?
3. Have precursor events been considered and factored into the corrective actions?
4. In the event of loss of radioactive material, should security of radioactive material be enhanced?
5. Has your staff been adequately trained on the applicable requirements?
6. Should personnel be re-tested to determine whether re-training should be emphasized for a given area? Is testing adequate to ensure understanding of requirements and procedures?
7. Has your staff been notified of the violation and of the applicable corrective action?
8. Are audits sufficiently detailed and frequently performed? Should the frequency of periodic audits be increased?

9. Is there a need for retaining an independent technical consultant to audit the area of concern or revise your procedures?
10. Are the procedures consistent with current NRC requirements, should they be clarified, or should new procedures be developed?
11. Is a system in place for keeping abreast of new or modified NRC requirements?
12. Does your staff appreciate the need to consider safety in approaching daily assignments?
13. Are resources adequate to perform, and maintain control over, the licensed activities? Has the radiation safety officer been provided sufficient time and resources to perform his or her oversight duties?
14. Have work hours affected the employees' ability to safely perform the job?
15. Should organizational changes be made (e.g., changing the reporting relationship of the radiation safety officer to provide increased independence)?
16. Are management and the radiation safety officer adequately involved in oversight and implementation of the licensed activities? Do supervisors adequately observe new employees and difficult, unique, or new operations?
17. Has management established a work environment that encourages employees to raise safety and compliance concerns?
18. Has management placed a premium on production over compliance and safety? Does management demonstrate a commitment to compliance and safety?
19. Has management communicated its expectations for safety and compliance?
20. Is there a published discipline policy for safety violations, and are employees aware of it? Is it being followed?

This information notice requires no specific action nor written response. If you have any questions about the information in this notice, please contact one of the technical contacts listed below.

Elizabeth Q. Ten Eyck, Director
Division of Fuel Cycle Safety
and Safeguards
Office of Nuclear Material Safety
and Safeguards

Donald A. Cool, Director
Division of Industrial
and Medical Safety
Office of Nuclear Material Safety
and Safeguards

Technical contacts: Nader L. Mamish, OE
(301) 415-2740
Internet:nlm@nrc.gov

Daniel J. Holody, RI
(610) 337-5312
Internet:djh@nrc.gov

Bruno Uryc, Jr., RII
(404) 331-5505
Internet:bxu@nrc.gov

Bruce L. Burgess, RIII
(708) 829-9666
Internet:blb@nrc.gov

Gary F. Sanborn, RIV
(817) 860-8222
Internet:gfs@nrc.gov

PREDECISIONAL ENFORCEMENT
CONFERENCE HANDOUTS

TELEPHONIC PREDECISIONAL ENFORCEMENT CONFERENCE AGENDA

McGarvin Moberly Construction Company
March 21, 2011

10:00 A.M.

Arlington, Texas

1. INTRODUCTIONS/OPENING REMARKS – ROY CANIANO, NRC
2. ENFORCEMENT PROCESS – MICHAEL VASQUEZ, NRC
3. APPARENT VIOLATIONS & REGULATORY CONCERNS – VIVIAN CAMPBELL, NRC
4. INDIVIDUAL PRESENTATION- MCGARVIN MOBERLY CONSTRUCTION COMPANY
5. BREAK - 10 MINUTES
6. RESUMPTION OF CONFERENCE
7. CLOSING REMARKS – MCGARVIN MOBERLY CONSTRUCTION COMPANY
8. CLOSING REMARKS – ROY CANIANO, NRC



Summary of NRC's Enforcement Program
Predecisional Enforcement Conference
McGarvin-Moberly Construction
Company

March 21, 2011
Arlington, Texas



Enforcement Process

- Inspection and/or Investigation
- NRC Review of Issues
- EXIT MEETING with licensee
- Inspection Report w/apparent violations
- **PREDECISIONAL ENFORCEMENT CONFERENCE (PEC)**
- NRC Review of ALL Information
- **FINAL AGENCY DECISION** on whether Enforcement Action is warranted

You are here

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Today's Conference

- **No final decision has been made.**
- The Inspection Report provided the NRC's perspective.
- Today, is an opportunity to provide your perspective on:
 - Whether any violations occurred;
 - Identification and corrective actions; and
 - Our characterization of the apparent violation in the inspection report.
- Today is also an opportunity to provide any other information you want us to consider.

3



Decisions to be made

- Whether violations occurred.
- Significance of the violations.
- What, if any, enforcement action should be taken.

4



POSSIBLE OUTCOMES

1. No Enforcement Action
2. Notice of Violation (NOV)
3. NOV with Civil Penalty
4. Order

5



SIGNIFICANCE OF VIOLATIONS



6



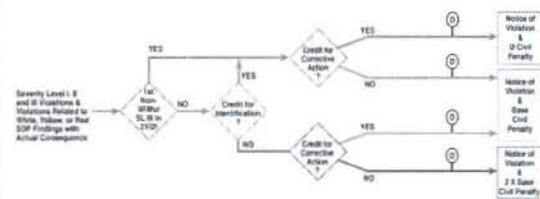
FOUR FACTORS IN DETERMINING SIGNIFICANCE

1. Actual Safety Consequences
2. Potential Safety Consequences
3. Impact on Regulatory Process
4. Associated willfulness

7



Civil Penalty Assessment



Primary considerations:

1. How the violation was identified
2. The promptness and completeness of any corrective actions taken

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Civil Penalties

- Civil Penalties are dependent on the type of licensee and the severity of the violation.
- For example, the CP for a SL III violation for a portable gauge is \$3,500

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DISCRETION

- NRC may escalate or mitigate a civil penalty based on the circumstances of a case (more information is in the Enforcement Policy).
- Examples where the NRC might exercise discretion include - - willfulness, overexposures, etc.

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Public Information

- If NRC takes enforcement action, it is normally made publicly available on NRC's web site.
- In the event that a civil penalty or an order is issued, normally, a press release is issued.

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Appeal Rights

- Any NRC action may be challenged.
- Instructions for challenging an NRC action will be described in the action or the accompanying letter.

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Any questions?

APPARENT VIOLATION A

Title 10 Code of Federal Regulations Part 30.34(i) requires each portable gauge licensee 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.

Contrary to the above, on September 22, 2010, the licensee failed to have two independent physical controls that formed tangible barriers to secure a portable gauge when the gauge was not under the control and constant surveillance of the licensee. Specifically, the licensee used only one tangible barrier to secure a portable gauge being stored at a temporary jobsite located on Highway 14 East, near Greybull, Wyoming, when it was not under constant surveillance. The single tangible barrier used to secure the portable gauge was a metal box locked with a single padlock and hasp. The metal box was secured to the truck bed.

**THIS APPARENT VIOLATION IS SUBJECT TO FURTHER REVIEW
AND MAY BE REVISED**