



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

REGION III
2443 WARRENVILLE ROAD, SUITE 210
LISLE, ILLINOIS 60532-4352
May 5, 2011

EA-11-104

Mr. Gary M. Kurek
Chief Operating Officer
Abonmarche Consultants, Inc.
95 West Main Street
Benton Harbor, MI 49023

**SUBJECT: NRC ROUTINE INSPECTION REPORT NO. 030-33895/2011-001(DNMS) AND
NOTICE OF VIOLATION - EXERCISE OF ENFORCEMENT DISCRETION -
ABONMARCHE CONSULTANTS, INC.**

Dear Mr. Kurek:

On April 14 and 15, 2011, a U.S. Nuclear Regulatory Commission (NRC) inspector conducted an inspection at the Benton Harbor, Michigan facility. The NRC inspector conducted an exit meeting with you and your staff on April 15, 2011.

This inspection examined activities conducted under your license as they relate to safety and compliance with the Commission's rules and regulations and with the conditions in 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 inspector identified a violation of Title 10 of the Code of Federal Regulations (CFR) 30.34(i) during this inspection, and the violation is described in the enclosed Notice of Violation (Notice). The violation involved the failure 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. In accordance with the Enforcement Policy, although such violations are normally categorized at Severity Level III and considered for escalated enforcement action, because: (1) one physical control existed to prevent loss or theft of the portable gauge; (2) you retained possession of the gauge; (3) the violation was isolated; and (4) no indication of programmatic weakness was identified, NRC is exercising enforcement discretion to categorize this violation as Severity Level IV.

As corrective action for the violation, the Radiation Safety Officer committed to: (1) provide a second lock and chain on the gauge cases so that the gauges could be secured with two independent tangible barriers during transport and at temporary job sites; and (2) train all gauge users on the requirement to use the two locks to secure the gauges at temporary job sites in the field.

The violation is being cited in the Notice because the NRC identified the violation. The NRC inspector determined that the reason for the violation was that after making several trips to the vehicle to pick up equipment, the authorized user forgot to lock the vehicle; the date when full compliance would be achieved was immediate on April 15, 2011. Based upon an e-mail from the licensee's Radiation Safety Officer on April 19, 2011, the corrective actions required to prevent recurrence of the violation in the future was to secure the gauge with two locks and two

G. Kurek

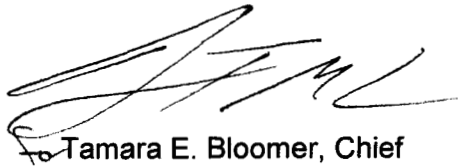
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chains. Therefore, you are not required to respond to this letter unless the description herein does not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, you should follow 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 enclosure, 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 Web site at <http://www.nrc.gov/reading-rm/adams.html>.

We will gladly discuss any questions you have concerning this inspection.

Sincerely,



Tamara E. Bloomer, Chief
Materials Inspection Branch
Division of Nuclear Materials Safety

Docket No. 030-33895
License No. 21-26663-01

Enclosure:
Notice of Violation

cc w/encl: K. McAndrew, RSO

G. Kurek

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In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, 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 Web site at <http://www.nrc.gov/reading-rm/adams.html>.

We will gladly discuss any questions you have concerning this inspection.

Sincerely,

/RA/ By Aaron T. McCraw
For/

Tamara E. Bloomer, Chief
Materials Inspection Branch
Division of Nuclear Materials Safety

Docket No. 030-33895
License No. 21-26663-01

Enclosure:
Notice of Violation

cc w/encl: K. McAndrew, RSO

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NOTICE OF VIOLATION

Abonmarche Inc.
Benton Harbor, Michigan

License No. 21-26663-01
Docket No. 030-33895

During a U.S. Nuclear Regulatory Commission inspection conducted on April 14 and 15, 2011, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

Title 10 of the Code of Federal Regulations (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 April 14, 2011, the licensee failed to use two independent physical controls that formed tangible barriers to secure a portable gauge from unauthorized removal, when the gauge was not under the control and constant surveillance of the licensee. Specifically, the inspector observed the licensee's Troxler portable gauge to be in an unlocked vehicle and secured by only a single lock and chain. The vehicle was located on a street above the construction site and the gauge was not under the control and constant surveillance of the licensee.

The NRC is exercising enforcement discretion to categorize this violation as Severity Level IV.

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 the letter transmitting this Notice of Violation (Notice). However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description in the letter forwarding this Notice 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," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Documentation Control Desk, Washington, DC 20555-0001 with a copy to the Regional Administrator, Region III, 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 or from NRC's Agencywide Documents Access and Management 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, 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.

Dated this 5th day of May 2011

Enclosure

INSPECTION RECORD

Region III Inspection Report No. 030-33895/2011-001

EA-11-104

License No. 21-26663-01

Docket No. 030-33895

Licensee:

Abonmarche Inc.

95 West Main Street

Benton Harbor, Michigan 49023

Location Being Inspected:

95 West Main Street, Benton Harbor and on Park Avenue in South Haven, Michigan

Licensee Contact: Kenton Mc Andrew, RSO

Telephone No.: 269-927-2295

Priority: 5 Program Code: 03121

Date of Last Inspection: February 24, 2006 (routine) and September 12, 2000 (Routine)

Date of This Inspection: April 14 - 15, 2011

Type of Inspection: () Initial () Announced (X) Unannounced
(X) Routine () Special

Next Inspection Date: April 2016 (X) Normal () Reduced

Justification for reducing the routine inspection interval:

Summary of Findings and Actions:

- () No violations cited, clear U.S. Nuclear Regulatory Commission (NRC) Form 591 or regional letter issued
- () Non-cited violations (NCVs)
- () Violation(s), Form 591 issued
- (X) Violation(s), regional letter issued
- () Follow up on previous violations

Inspector(s):

Ed Kulzer
Edward L. Kulzer, Health Physicist

Date:

5/5/11

Approved:

Tamara E. Bloomer
Tamara E. Bloomer, Chief,
Materials Inspection Branch

Date:

5/5/11

PART I - LICENSE, INSPECTION, INCIDENT/EVENT, AND ENFORCEMENT HISTORY

1. AMENDMENTS AND PROGRAM CHANGES:

No amendments were issued since last inspection.

2. INSPECTION AND ENFORCEMENT HISTORY:

No violations were identified during the last routine inspections conducted on February 24, 2006. One severity level IV violation of 10 CFR 1801, failure to secure gauges, was identified on the previous inspection conducted on September 12, 2000.

3. INCIDENT/EVENT HISTORY:

No events have occurred since the last inspection.

PART II - INSPECTION DOCUMENTATION

1. ORGANIZATION AND SCOPE OF PROGRAM:

Abonmarche Consultants, Inc. is authorized under NRC Materials License No. 21-26663-01 to use licensed material for measuring physical properties of materials with nuclear gauging devices. Licensed material is authorized to be used at temporary job sites anywhere in the United States in areas of NRC jurisdiction. The licensee used the gauges on a daily basis for construction engineering projects throughout the Michigan area. The licensee has three portable Troxler Model 3400 series portable gauges, containing cesium-137 and americium-241.

2. SCOPE OF INSPECTION:

Inspection Procedure(s) Used: 87124

Focus Areas Evaluated: 03.01 - 03.07

3. INDEPENDENT AND CONFIRMATORY MEASUREMENTS:

The inspector performed direct radiation measurements in and around the licensee's gauges which indicated similar results as noted in the licensee's survey records.

4. VIOLATIONS, NCVs, AND OTHER SAFETY ISSUES:

On April 14, 2011, during a routine license inspection, the inspector identified an apparent violation of 10 CFR 30.34(i) involving the failure to use a minimum of two independent physical controls that form tangible barriers to secure a portable gauge from unauthorized removal, when the portable gauge was not under the control and constant surveillance of the licensee.

The inspector observed that the licensee secured the Troxler gauge at a temporary job site on Park Avenue in South Haven, Michigan, in an unlocked vehicle parked on the street above the construction site with no one present. The inspector observed the authorized user at the construction site downhill from the vehicle. The inspector requested the authorized user to show him the gauge. Because the authorized user secured the gauge in the unlocked vehicle with only one lock and one chain, the licensee failed to meet the requirement for independent physical controls of 10 CFR 30.34(i) in which the licensee is required to use a minimum of two independent physical controls that form tangible barriers to secure portable gauges, when the gauge was not under the control and constant surveillance of the licensee to prevent removal of the gauge. The inspector identified himself to the authorized user who corrected the violation by locking the vehicle before the inspector left the job site. The cause of the violation was that the authorized user had forgotten to lock the vehicle and secured the gauge with only one lock and chain

While inspecting the licensee's office, the inspector identified that all gauges in storage were secured as required.

As corrective action for the violation, the RSO committed to: (1) providing a second lock and chain on the gauge case so that the gauge could be secured with two independent tangible barriers during transport and at temporary job sites; and (2) training all gauge users on the requirement to use the two locks to secure the gauges at temporary job sites in the field.

In accordance with the Enforcement Policy, although such violations are normally categorized at Severity Level III and considered for escalated enforcement action, because: (1) one physical control existed to prevent loss or theft of the portable gauge; (2) the licensee retained possession of the gauge; (3) the violation was isolated; and (4) no indication of programmatic weakness was identified, NRC exercised enforcement discretion to categorize this violation as Severity Level IV.

5. **PERSONNEL CONTACTED:**

*#Gary Kurek, Chief Operating Officer
*Kenton Mc Andrew, RSO

Use the following identification symbols:
Individual(s) present at entrance meeting
* Individual(s) present at exit meeting

-End-