



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

June 22, 2011

EA-10-053

CQC Testing and Engineering, LLC
ATTN: Jaime Rojas, P.E.
Manager
6802 Commerce Avenue, Unit A
El Paso, TX 79915

SUBJECT: NRC INSPECTION REPORT 150-00042/2011-001 AND NOTICE OF VIOLATION

Dear Mr. Rojas:

This letter refers to the in-office inspection conducted between December 16, 2009, and June 14, 2011. The in-office inspection was an examination of activities conducted under the general license of 10 CFR 150.20 as it relates to safety and security, and compliance with the Commission's rules and regulations and with the conditions of the license. Within these areas, the inspection consisted of selected examination of procedures, representative records, telephonic and electronic communications. Preliminary inspection findings were discussed with you on May 05, 2011. A final exit briefing was conducted with you and Jose L. Mavarro of your staff on June 14, 2011.

Based on the results of this inspection, the NRC has determined that a violation of NRC requirements occurred. This violation involved the failure to file a submittal containing an NRC Form 241, a copy of the Agreement State specific license, and the appropriate fee with the Regional Administrator of the appropriate regional office, three days before engaging in license activities in areas of exclusive Federal jurisdiction within an Agreement State. This violation was evaluated in accordance with the NRC Enforcement Policy included on the NRC's website at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>. The violation is cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding it are described in the subject Notice.

Although such violations are normally categorized at Severity Level III and considered for escalated enforcement action, we are exercising enforcement discretion to categorize this violation at Severity Level IV. This action was taken because (1) you contacted the NRC in December 2009 and agreed to stop work within areas of exclusive Federal jurisdiction until a NRC general license was obtained, and you subsequently filed a request with us for use of the general license; (2) although you failed to file a request again in January 2010 before work began for that calendar year, the NRC determined that you believed the general license authorized in December 2009 was valid for a year; (3) you took appropriate action to correct the violation that occurred in January of 2010 by immediately stopping work and filing a request for use of the general license when prompted to do so by NRC staff; 4) to prevent recurrence of similar violations, you applied for and received a specific byproduct material license from the NRC on November of 2010, and (5) the NRC found that the failure to file for use of the general license in calendar years 2009 and 2010 was not willful.

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken to correct the violation and prevent recurrence, and the date when full compliance was achieved is already adequately addressed in the application for a general license dated December 10, 2009, January 7, 2010, and the application for a specific license dated September 13, 2010. 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, Enclosure 1, 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 Web site at 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 concerning this inspection, please contact Michelle Simmons at 817-276-6590, or the undersigned at 817-860-8197.

Sincerely,

/RA/

Jack Whitten, Chief
Nuclear Materials Safety Branch B

Docket: 150-00042
License: L05802 (Texas)

Enclosures:

1. Notice of Violation
2. Excerpt from NRC Information Notice 96-28

cc w/enclosure:
Texas Radiation Control Program Director

bcc w/Enclosure 1 via e-mail:

E. Collins, RA
A. Howell, DRA
R. Caniano, D:DNMS
V. Campbell, DD:DNMS
J. Whitten, C:NMSB-B
M. Simmons, NMSB-B
M. Herrera, Fee Coordinator
R4DNMS_MS-A

Hard Copy
RIV Materials Docket File

SUNSI review completed: ADAMS: X Yes Initials: MRS
X Publicly Available X Non-Sensitive

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RIV:DNMS:NMSB-B	C:NMSB-B	
MRSimmons	JEWhitten	
/RA/	/RA/	
6/22/11	6/22/11	

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T=Telephone E=E-mail F=Fax

NOTICE OF VIOLATION

CQC Testing and Engineering, LLC
El Paso, Texas

Docket: 150-00042
License: L05802 (Texas)
EA-10-053

During a NRC in-office inspection conducted between December 16, 2009, and June 14, 2011, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 150.20(a) provides, in part, that any person who holds a specific license from an Agreement State is granted an NRC general license to conduct the same activity in areas of exclusive Federal jurisdiction within Agreement States, provided that the provisions of 10 CFR 150.20(b) have been met.

10 CFR 150.20(b)(1) requires, in part, that any person engaging in activities in areas of exclusive Federal jurisdiction within Agreement States, shall, at least 3 days before engaging in each activity for the first time in a calendar year, file a submittal containing an NRC Form 241, "Report of Proposed Activities in Non- Agreement States," a copy of its Agreement State specific license, and the appropriate fee as prescribed in 10 CFR 170.31, with the Regional Administrator of the appropriate NRC regional office.

Contrary to the above, from April 23, 2009 through December 16, 2009, and from January 4, 2010, through January 7, 2010, CQC Testing and Engineering, Limited Liability Company, engaged in activities in areas of exclusive Federal jurisdiction within an Agreement State and failed to file submittals containing an NRC Form 241, a copy of its Agreement State specific license, and the appropriate fee with the Regional Administrator of the appropriate regional office. Specifically, CQC Testing and Engineering, Limited Liability Company, who holds a specific license from the State of Texas, used a portable density gauge with 9 millicuries of cesium-137 and 44 millicuries of americium-241 under its specific license in an area of exclusive Federal jurisdiction on the Fort Bliss Army Base, Fort Bliss, Texas, without filing an initial NRC Form 241 reciprocity request, a copy of the Texas specific byproduct material license, and the appropriate fee with the NRC Region IV, Regional Administrator. These filings were not made before work began in both 2009 and 2010.

This is a Severity Level IV violation (Section 6.9).

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken to correct the violation and prevent recurrence, and the date when full compliance was achieved is already adequately addressed in the application for a general license dated December 10, 2009, January 7, 2010, and the application for a specific license dated September 13, 2010. 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-10-053", 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 IV, 612 East Lamar Blvd., Suite 400, Arlington, Texas 76011-4125, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

Enclosure

If you choose to respond, 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/pdr.html or 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 2 working days.

Dated this 22 of June 2011