



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

July 13, 2011

Docket No. 03038446
EA-11-123

License No. 52-31439-01

Carlos Sierra, P.E.
President
Sierra Geotechnical, Inc.
P.O. Box 1570
Trujillo Alto, Puerto Rico 00977-1570

SUBJECT: EXERCISE OF ENFORCEMENT DISCRETION: SIERRA GEOTECHNICAL,
INC.

Dear Mr. Sierra:

We are sending you this letter to document our discussions regarding your possession of portable nuclear density gauges containing radium-226, and to provide our conclusions regarding Sierra Geotechnical, Inc.'s compliance with NRC regulations for these devices. No further action or response is necessary on your part.

During a telephone conversation on May 2, 2011, between you and Scott Wilson of my staff, we learned that Sierra Geotechnical, Inc. owns portable gauges containing radium-226 sealed sources. We informed you that this material is considered byproduct material, and requires an NRC license to possess. We discussed the change to NRC regulations that occurred with the enactment of the Energy Policy Act of 2005 (Act), and the NRC regulations resulting from the Act, which became effective on November 30, 2007. Specifically, we indicated that, effective November 30, 2007, you were required to have an NRC license for the gauges.

We also informed you that Sierra Geotechnical, Inc. needed to apply for an NRC license, transfer the gauges to an authorized NRC licensee, or legally dispose of the gauges. You stated that you were previously unaware of the new regulation and that Sierra Geotechnical, Inc. would: 1) immediately secure the gauges in compliance with 10 CFR 30.34(i); 2) maintain the gauges in storage until authorized by NRC license; 3) submit an NRC license application for the gauges within 60 days; and 4) ensure compliance with the public dose limits in 10 CFR 20.1301, "Dose limits for individual members of the public." We noted that you applied for a license on May 3, 2011, and that NRC License No. 52-31439-01 was issued on May 11, 2011.

Based on the above information, the NRC has determined that a violation of NRC requirements occurred. The violation involved the possession and use of byproduct material without a specific NRC license issued in accordance with the regulations in 10 CFR Part 30. Specifically, from November 30, 2007, to May 3, 2011, Sierra Geotechnical, Inc. possessed four Seaman Nuclear Corporation Model C-300 portable moisture density gauges containing byproduct material (radium-226 sealed sources; 4.5 millicuries each) without obtaining a specific NRC license.

In accordance with NRC Enforcement Guidance Memorandum 09-004, dated May 13, 2009, although such violations are normally categorized at Severity Level IV, because 1) this was the first occurrence Sierra Geotechnical Inc. was involved in after November 30, 2007, the effective date of the requirement; 2) the failure did not result in an actual safety, health, or security consequence; 3) the failure was not willful; 4) you were unaware of the requirement; and 5) you submitted an initial license application within 60 days, NRC is exercising enforcement discretion and not issuing a violation.

On June 30, 2011, Scott Wilson of my staff informed you of this conclusion.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, 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 document system (ADAMS), accessible from the NRC website 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.

Current NRC regulations and guidance are included on the NRC's website at www.nrc.gov; select **Nuclear Materials; Medical, Med, Ind, & Academic Users**; then **Regulations, Guidance and Communications**. The current Enforcement Policy is included on the NRC's website at www.nrc.gov; select **About NRC, Organizations & Functions; Office of Enforcement; Enforcement documents**; then **Enforcement Policy (Under 'Related Information')**. You may also obtain these documents by contacting the Government Printing Office (GPO) toll-free at 1-866-512-1800. The GPO is open from 7:00 a.m. to 6:30 p.m. EST, Monday through Friday (except Federal holidays).

Please contact Scott Wilson at 610-337-5136 if you have any questions regarding this matter.

Sincerely,

/RA/

Raymond K. Lorson, Director
Division of Nuclear Materials Safety

cc:
Commonwealth of Puerto Rico

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