

EXECUTIVE SUMMARY

Foundation Engineering Co., Inc.
NRC Inspection Report No. 03035641/2011001

Foundation Engineering Company, Inc. (FECO) is authorized under License No. 52-23072-02 for use and storage of portable gauging devices. The licensee was in possession of one CPN Model MC-1 portable moisture density gauge, stored at 714 Hoare Street, San Juan, Puerto Rico. Due to a reduction in business activities after 2007, FECO restricted its work at the property and had limited communications with the business community. Beginning in October 2010, NRC inspection activities were delayed because of the inability to locate or communicate with FECO staff. Unsuccessful attempts to contact FECO raised a concern that FECO deliberately avoided NRC to allow an inspection of the property. With the assistance from the NRC Office of Investigations (OI), it was determined that FECO did not deliberately fail to provide the NRC a reasonable opportunity for inspection.

On September 3, 2010, the NRC issued Foundation Engineering Company, Inc. an Order Revoking License based on nonpayment of fees. The Order, sent to the licensee via certified mail, was not signed for or acknowledged by FECO and then returned to the NRC as undelivered. On October 18, 2010, the NRC Office of the Chief Financial Officer (OCFO) issued a Final Action regarding FECO's license by referral of FECO's nonpayment of fees to the US Department of the Treasury for collection. Inspection of the FECO facility on February 28, 2011-March 1, 2011 found the gauge stored and secured properly to meet NRC requirements. The licensee had no further use for the gauge and returned it to the manufacturer on May 9, 2011.

One violation was identified related to FECO's failure to pay the required fees for 2010. 10 CFR 171.16(a) states, in part, that each person authorized to conduct activities under 10 CFR Part 30 shall pay the applicable annual fee for each license the person holds during the fiscal year.

REPORT DETAILS

I. Organization and Scope of the Program

a. Inspection Scope (Order Revoking License)

The organization and scope of the program related to the Order Revoking License were reviewed.

b. Observations and Findings

License No. 52-23072-02 was issued to Foundation Engineering Company, Inc. (FECO) authorizing use and storage of portable gauging devices. The license expired April 30, 2011 and has not been renewed. Mr. E. Olivieri, president and RSO, was the primary individual involved in implementation of the radiation safety program. The last inspection performed in November 2006 found the licensee in possession of one CPN Model MC-1 portable moisture density gauge. Results of that inspection indicated the gauge was properly stored and secured, and had been used on a limited basis after the license was issued in 2001 (last used in 2005). Because Mr. Olivieri stated he did not plan to conduct gauge activities in the future and would not renew the license, the FECO license will be retired.

On September 3, 2010, the NRC issued FECO an Order Revoking License based on nonpayment of fees, effective 30 days after being issued. FECO was required by the Order to restrict activity of their gauge, secure it in safe storage until disposal or transfer, and transfer the gauge to an authorized recipient within 60 days from the date of the Order. Although the Order was sent to the licensee via certified mail, it was never signed for by FECO, then returned to the NRC as undelivered. On October 18, 2010, the NRC Office of the Chief Financial Officer (OCFO) issued a Final Action regarding FECO's license indicating that the Order Revoking License was not effective because FECO never formally acknowledged its receipt. The OCFO completed fee recovery activities by referral to the US Department of the Treasury for collection. FECO's failure to pay the required fees for fiscal year 2010 is identified as a violation of 10 CFR 171.16(a).

c. Conclusions

One violation was identified:

10 CFR 171.16(a) states, in part, that each person authorized to conduct activities under 10 CFR part 30 shall pay the applicable annual fee for each license the person holds during the fiscal year.

Contrary to the above, as of September 2, 2011, Foundation Engineering Co., Inc. did not pay the applicable annual fee for fiscal year 2010.

II. Material Use, Transfer, and Control

a. Inspection Scope (Inspection Procedure 87124, Focus Element FE-1)

The material use, transfer, and control related to the radiation safety program were reviewed.

b. Observations and Findings

On October 7, 2010, NRC Region I conducted a reactive inspection at FECO's San Juan, Puerto Rico (PR) location to determine the status of the licensee's program as it related to material use, transfer, and control. From outside observation of the property located at 714 Hoare St., San Juan, PR, the building appeared to be vacant. The building was locked and secured but not accessible. Mail was observed in the entrance vestibule. Attempts to locate FECO by telephone calls to the licensee's listed phone number, and interviews with nearby residents to obtain information about building occupancy or the licensee's status were unsuccessful. Interviews were held with local U.S. Post Office officials who indicated that mail was delivered to the building on a regular basis. Postal delivery personnel stated that delivered mail was picked up every few weeks, but they had not seen a building occupant since 2009.

After the October 2010 site visit, NRC continued attempts to communicate with FECO by telephone, but calls could not be completed. The telephone number to the main office was disconnected and no forwarding number provided. Internet searches for company information showed it to be solvent but not operational since 2008. NRC contacted other licensed gauge companies in the area and made another site visit to the San Juan location on February 28, 2011, but no additional information related to the company or status of the gauge could be determined.

A Region I Allegation Review Board requested that the NRC Office of Investigations (OI) attempt to locate FECO and ascertain if its president was deliberately avoiding NRC communications and preventing the NRC the opportunity to inspect its licensed activities. Since the NRC inspections could not identify information about whether FECO possessed and used their portable gauge, the OI opened an investigation to determine whether FECO was deliberately evading communication with the NRC, and to provide OI assistance in locating FECO and the gauge.

On March 1, 2011, OI and RI staff again attempted to locate the FECO president in San Juan, PR. With assistance from the San Juan Police Department, the president was located at his mother's residence. After OI presented a copy of the Order and the inspector explained the staff's concern was the status and security of the gauge, the president agreed to cooperate with NRC. He denied that he ever prevented the NRC from conducting an inspection of the property and the gauge. Mr Olivieri, FECO president, provided access to the building and was interviewed by OI. The gauge was found stored and secured properly to meet NRC requirements.

During the interview, Mr. Olivieri stated that FECO still existed as an engineering service company but had little business, and that he was the only remaining FECO employee. He stated that the gauge had not been used after 2005 and remained in the same storage location since that time. Mr. Olivieri indicated that he visited the building approximately once per week to check general security (including gauge security), perform occasional laboratory sampling, and pick up delivered mail. The Order, sent by the NRC via certified mail, was never received by FECO because Mr. Olivieri was not present in the building when the Order was delivered. He denied attempting to prevent the NRC from inspecting the gauge, and also stated that he never received the NRC Order. The concern whether FECO deliberately failed to provide the NRC a reasonable opportunity to inspect the facility was not substantiated.

Due to the current lack of use for the gauge, Mr. Olivieri committed to make inquiries about transferring it and terminating the NRC license. NRC worked with FECO to identify authorized recipients that could accept the gauge. On May 14, 2011, Mr. Olivieri notified the NRC that the gauge was returned to the manufacturer, QSA Global, Inc., Baton Rouge, LA, and provided shipping and receipt records to document the transfer.

c. Conclusions

No violations were identified.

III. Exit Meeting

On May 14, 2011, Mr. Olivieri notified the NRC that the gauge was returned to the manufacturer and provided shipping records documenting the transfer. NRC staff acknowledged the transfer and indicated that a violation of NRC requirements would be identified. On September 7, 2011, B. Welling and C. Gordon, NRC contacted Mr. Olivieri by telephone for the final exit meeting. He was informed about the violation and to contact the U.S. Treasury to resolve payment of outstanding fees.