

U.S. NUCLEAR REGULATORY COMMISSION
REGION I

INSPECTION REPORT

Inspection No. 15000020/2011001
Docket No. 15000020
MA License No. 48-0380
Licensee: Warner Brothers, LLC
Location: 901 River Road, East Deerfield, Massachusetts 01342
Inspection Dates: July 21, 2011 through September 29, 2011

Inspectors:	/RA/	10/12/11
	_____ Craig Z. Gordon Senior Health Physicist Materials Security and Industrial Branch Division of Nuclear Materials Safety	_____ date
	/RA/	10/12/11
	_____ Scott Wilson Health Physicist Materials Security and Industrial Branch Division of Nuclear Materials Safety	_____ date
Approved By:	/RA/	10/12/11
	_____ Blake Welling, Chief Materials Security and Industrial Branch Division of Nuclear Materials Safety	_____ date

EXECUTIVE SUMMARY

Warner Brothers, LLC
NRC Inspection Report No. 15000020/2011001

Warner Brothers, LLC (Warner Brothers), is an asphalt and aggregate supply company that also provides road construction and repair services. The company maintains a radioactive materials license issued by the Commonwealth of Massachusetts, which authorizes the possession and use of byproduct material in a portable density gauge at the company's East Deerfield, Massachusetts facility and at temporary job sites within the Commonwealth. The license does not authorize use of the gauge in non-Agreement States or in areas of exclusive Federal jurisdiction.

The NRC identified that Warner Brothers used their gauge in the State of Connecticut, a non-Agreement State, in 2006 and 2008, but did not file for reciprocity as required by 10 CFR 150.20(b)(1). Accordingly, one apparent violation of 10 CFR 150.20(b)(1) was identified and is being considered for escalated enforcement.

The purpose of this inspection was to determine the cause of the apparent violation, to obtain Warner Brothers' understanding of NRC regulations for licensed activities in Connecticut, to review additional documentation and information, and to assess Warner Brothers' compliance with NRC regulations.

During the inspection, the licensee committed to prompt and effective corrective actions. In follow-up discussions, the Warner Brothers Radiation Safety Officer provided a summary of corrective actions taken and planned to address the apparent violation and prevent recurrence.

REPORT DETAILS

I. Organization and Scope of the Program

a. Inspection Scope

The inspectors reviewed licensed activities within NRC jurisdiction through interviews with licensee personnel and reviews of licensee records. This inspection was initiated as a result of an NRC-initiated telephone inquiry.

b. Observations and Findings

Warner Brothers is an asphalt and aggregate supply company that also provides road construction and repair services. Warner Brothers maintains a Massachusetts (Agreement State) Materials License (No. 48-0380), which authorizes the possession and use of one Troxler Electronics Model 4640B density gauge (gauge) containing a single byproduct material sealed source (eight millicuries of Cesium-137). Warner Brothers' Agreement State license authorizes storage and use of the gauge at the licensee's East Deerfield, Massachusetts facility, and at temporary jobsites within Massachusetts. At the time of this inspection, the gauge was found stored at the Massachusetts facility and not used within NRC jurisdiction.

On July 21, 2011, during an NRC-initiated telephone inquiry, the inspector identified that Warner Brothers had used their gauge in the State of Connecticut, a non-Agreement State, in 2006 and 2008. The inspector determined that Warner Brothers had conducted licensed activities with their gauge at temporary job sites within NRC jurisdiction at Route 171 in Union, CT, on December 6, 2006, and at Rt. 190 in Stafford, CT, on July 7, 2008, without a specific license issued by the NRC and without filing NRC Form 241 with the NRC.

These activities were conducted contrary to NRC regulations governing reciprocity. Specifically, 10 CFR 150.20(a) authorizes an Agreement State licensee a general license to use byproduct material in NRC jurisdiction, and 10 CFR 150.20(b) requires, in part, that the Agreement State licensee file NRC Form 241 at least three days prior to engaging in licensed activities within NRC jurisdiction.

During interviews, the Warner Brothers Radiation Safety Officer (RSO) stated that he was not aware of the NRC reciprocity requirements for working within the State of Connecticut, and that the State was NRC jurisdiction. The RSO also stated that he had contacted the Connecticut Department of Environmental Protection (CTDEP), not the NRC, to inquire about the regulations and requirements for working within the State. For work activities performed in 2006 and 2008, it appeared that Warner Brothers relied on the guidance provided by the CTDEP rather than adhering to the conditions of their Massachusetts license, which required filing for reciprocity with the NRC.

As corrective actions for the apparent violation of 10 CFR 150.20, Warner Brothers revised their operating procedures for portable nuclear gauge use to include a provision that portable gauge use is prohibited for locations outside Massachusetts and in NRC jurisdiction. Also, the licensee took the preventative actions of (1) informing authorized gauge users of the apparent violation and its procedure changes, (2) training authorized gauge users on reciprocity requirements, and (3) marking both the gauge transport container and the utilization records with bold print stating that the gauge was not to be taken out of Massachusetts. During a telephone conversation between the RSO and NRC staff on August 16, 2011, the RSO informed the NRC that the corrective and preventative actions had been completed.

c. Conclusions

An apparent violation of 10 CFR 150.20(b)(1) was identified due to Warner Brothers' failure to file NRC Form 241 prior to engaging in licensed activities within NRC jurisdiction. Specifically, on December 6, 2006, and July 7, 2008, Warner Brothers engaged in licensed activities with a portable nuclear density gauge containing byproduct material (eight millicuries of Cs-137), in NRC jurisdiction, without filing NRC Form 241.

II. Exit Meeting

On September 29, 2011, an exit meeting was held by telephone. During the exit meeting, the inspection findings and apparent violation were discussed with Warner Brothers Quality Control Manager, Mark Gabriel, and the RSO, Wilfred Clough. The licensee was provided an opportunity to (1) attend a Predecisional Enforcement Conference (PEC), (2) provide any additional information relevant to the violation, or (3) to not provide additional information or attend a PEC. The licensee elected not to provide additional information or attend a PEC.

PARTIAL LIST OF PERSONS CONTACTED

Licensee

Wilfred Clough, RSO
Mark Gabriel, QC Manager

Commonwealth of Massachusetts

Michael Whalen, Jr., Radiation Control Officer

State of Connecticut DEP

Andrew Zwick, Environmental Analyst, Division of Radiation

SUPPLEMENTAL INFORMATION

Telephone records dated July 21, 22, 25, & August 16, 2011.

INSPECTION PROCEDURES USED

Manual Chapter 1220, Inspection Procedure 87124

LIST OF DOCUMENTS REVIEWED

Warner Brothers, LLC. Agreement State Radioactive Materials License
Warner Brothers Portable Nuclear Gauge Utilization Records