



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

November 30, 2011

EA-11-238

Mr. Phillip Caines, President
McGarvin-Moberly
Construction Company
1001 Highway 20 North
P.O. Box 1166
Worland, Wyoming 82401

SUBJECT: NRC INSPECTION REPORT 030-32107/2011-002

Dear Mr. Caines:

This letter refers to the unannounced inspection conducted on August 30, 2011, at the corporate office in Worland, Wyoming, and at a temporary job site along Highway 26, 4 miles east of Riverton, Wyoming. The purpose of the inspection was to review your implementation of the corrective actions following the issuance of an escalated enforcement action on April 14, 2011 (ML11105A125), involving a violation of 10 CFR 30.34 (i). This inspection examined activities conducted under your license as they relate to radiation safety and security and to 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. Preliminary inspection findings were discussed with you at the conclusion of the onsite portion of this inspection. A final exit briefing was then conducted telephonically with you and members of your staff on October 31, 2011. The enclosed report presents the results of this inspection.

Based on the results of this inspection, one apparent violation was identified and is being considered for escalated enforcement action in accordance with the NRC Enforcement Policy. The current Enforcement Policy is included on the NRC's Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>. The apparent violation involved the failure to use a minimum of two independent physical controls that form tangible barriers to secure portable gauges, whenever portable gauges are not under the control and constant surveillance of the licensee, as required by 10 CFR 30.34(i). Specifically, at the corporate office, a portable gauge was being stored with only one physical control present to prevent unauthorized removal of the gauge. The circumstances surrounding this apparent violation, the significance of the issue and the need for lasting and effective corrective actions were discussed with you during the exit briefing. Since the NRC has not made a final determination in this matter, a Notice of Violation is not being issued for the inspection findings at this time. In addition, please be advised that the number and characterization of violations described in the enclosed inspection report may change as a result of further NRC review.

The NRC is concerned about this apparent violation because we identified a previous violation of 10 CFR 30.34(i) and issued an enforcement action on April 14, 2011 [ML11105A125]. As such, your corrective actions to the prior violation do not appear to have been effective.

Before the NRC makes its enforcement decision, we are providing you an opportunity to meet with us in a predecisional enforcement conference (PEC) to discuss this apparent violation. The PEC will be open for public observation and the NRC will issue a press release to announce the time and date of the conference. Please contact Mr. Michael Vasquez at 817-860-8130 within 10 days of the date of this letter to schedule the conference. A PEC should be held within 30 days of the date of this letter.

The decision to hold a PEC does not mean that the NRC has determined a violation has occurred or that enforcement action will be taken. This conference is being held to obtain information to assist the NRC in making an enforcement decision. This may include information to determine whether a violation occurred, information to determine the significance of the violation, information related to the identification of a violation and information related to any corrective actions taken or planned to be taken. The conference will provide an opportunity for you to provide your perspective on these matters and any other information that you believe the NRC should take into consideration in making an enforcement decision. In presenting your corrective actions, you should be aware that the promptness and comprehensiveness of your actions will be considered in assessing any civil penalty for the apparent violation. The guidance in the enclosed NRC Information Notice 96-28, "Suggested Guidance Relating to Development and Implementation of Corrective Action," may be helpful.

You will be advised by separate correspondence of the results of our deliberations on this matter. No response regarding the apparent violation is required at this time.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, and its enclosure, 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>. 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.

If you have any questions concerning this matter, please contact Mr. Vasquez (817) 860-8130.

Sincerely,

/RA/

Roy J. Caniano, Director
Division of Nuclear Materials Safety

Docket: 030-32107
License: 49-27065-01

Enclosures:

1. Inspection Report 030-32107/2011-002
2. NRC Information Notice 96-28

cc:
Wyoming Radiation Control Program Director

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US NUCLEAR REGULATORY COMMISSION
REGION IV

Docket: 030-32107

License: 49-27065-01

Inspection Report: 030-32107/2011-002

EA: 11-238

Licensee: McGarvin-Moberly Construction Company
1001 Highway 20 North
P.O. Box 1166
Worland, Wyoming

Locations inspected: Corporate office – Worland, Wyoming
Temporary Jobsite – 4 miles east of Riverton, WY

Inspection Date: August 30, 2011

Inspectors: Martha Poston-Brown, Health Physicist
Nuclear Materials Safety Branch A
Division of Nuclear Materials Safety

Donald Stearns, Health Physicist
Nuclear Materials Safety Branch A
Division of Nuclear Materials Safety

Approved by: G. Michael Vasquez, Chief
Nuclear Materials Safety Branch A
Division of Nuclear Materials Safety

Enclosure

EXECUTIVE SUMMARY

McGarvin-Moberly Construction Company
NRC Inspection Report 030-32107/2011-002

This was an unannounced inspection of licensed materials involving the use and storage of byproduct material at a temporary jobsite operated by McGarvin-Moberly Construction Company along Highway 26, 4 miles east of Riverton, Wyoming, as well as a review of the use and storage of material at the corporate office in Worland, Wyoming. The inspection was an examination of activities conducted under NRC Materials License 49-27065-01, as they related to radiation safety and security and to compliance with the Commission's rules and regulations, as well as to the conditions of the license. This inspection was conducted to review the licensee's corrective actions following the issuance of an escalated enforcement action on April 14, 2011 [ML11105A125]. Within these areas, the inspection consisted of observations of activities and interviews with personnel. This report describes the findings of the inspection.

Program Overview

McGarvin-Moberly Construction Company is authorized to use and store byproduct material (cesium-137 and americium-241) in the operation of portable moisture density gauging devices at its facility in Worland, Wyoming, and at temporary jobsites in areas of NRC jurisdiction.

Inspection Findings Considered for Escalated Enforcement

The licensee failed to use a minimum of two independent physical controls that form a tangible barrier to secure portable gauges from unauthorized removal, whenever the gauges were not under the control and constant surveillance of the licensee. Specifically, the licensee had a portable gauge stored at the corporate office in a locked plywood box with only one lock securing the gauge inside the box (only one barrier). During the day, when the licensee's building was unlocked, licensee personnel did not control and maintain constant surveillance over the portable gauge, and no other physical controls were in place to secure the gauge from unauthorized removal or theft. This was identified as an apparent violation of 10 CFR 30.34(i). At night, the licensee locked the building, which provided the second barrier.

Corrective Actions

The licensee immediately restored compliance by adding a second lock and hasp to the plywood box used to store the gauges at the corporate office.

REPORT DETAILS

1 Program Overview (87124)

1.1 Inspection Scope

NRC Materials License 49-27065-01 authorizes the licensee to possess and use byproduct material for possession, use, and storage in portable gauges. The licensee performs work at temporary jobsites in NRC jurisdiction.

On April 14, 2011, the NRC issued a Severity III violation to McGarvin-Moberly Construction Company for a violation of 10 CFR 30.34(i) [ML11105A125]. This (current) unannounced inspection of the corporate office and the temporary jobsite was conducted to ensure the corrective actions for that violation were effective. The inspectors reviewed conditions found at both locations, conducted interviews with licensee personnel and subcontractor staff, and examined the storage of the gauges at both locations.

1.2 Observations and Findings

McGarvin-Moberly Construction Company (MMCC) performs work primarily in the state of Wyoming. MMCC possesses an NRC specific materials license to use portable density gauges containing cesium-137 and americium-241 in NRC jurisdiction.

1.3 Findings

Licensee activities were limited to the observations authorized by NRC Materials License 49-27065-01 at the temporary jobsite and the corporate office.

2 Inspection Findings (87124)

2.1 Inspection Scope

Licensed activities were examined as they relate to the safety and security of radioactive materials and the licensee's policies and procedures for handling radioactive materials at both locations. The inspectors reviewed leak tests records, shipping paperwork, and training records at the corporate office.

2.2 Observations and Findings Considered for Escalated Enforcement

10 CFR 30.34(i) requires that each portable gauge licensee shall use a minimum of two independent physical controls that form a tangible barrier to secure portable gauges from unauthorized removal, whenever the portable gauges are not under the control and constant surveillance of the licensee.

On August 30, 2011, the inspectors performed an inspection at the MMCC corporate office to evaluate the effectiveness of the corrective actions taken as a result of the NRC's enforcement action issued on April 14, 2011 [ML11105A125]. The Radiation Safety Officer (RSO) was not available, so the review of the program at the corporate office was conducted with the assistance of the company president. One of the licensee's two gauges was located at the corporate office; the other gauge had been

inspected in the field earlier in the day. The gauge at the corporate office was stored in a plywood box, which was locked with a single hasp and padlock. This plywood box was located at the rear of the building on the second floor of a shop area, and the box could not be moved by a person. The first floor of the shop area consists of three bays, each with two garage doors and an access door for personnel. Each bay had at least one of the two garage doors open and the access door propped open to allow free access and egress from the shop areas into the parking lot. Of the three bays only the one furthest away from the gauge was occupied. A person could enter through one of the garage doors undetected and could have had access to the plywood box where the gauge was stored. The inspectors concluded that the licensee was not maintaining control and constant surveillance over the portable gauge. As such, the licensee was required to provide two physical controls to prevent the gauge from unauthorized access or removal during times when the licensee had the building unlocked. At night, the licensee locked the building, which provided the second barrier. The failure to use a minimum of two independent physical controls that form a tangible barrier to secure its portable gauge from unauthorized removal, whenever the portable gauges are not under the control and constant surveillance of the licensee, was identified as an apparent violation of 10 CFR 30.34(i) (030-32107/2011-002/001).

During the predecisional enforcement conference (PEC), conducted on March 21, 2011, the licensee committed to corrective actions which included removing the gauges from service until modification of the storage boxes could be completed, providing training to gauge users on the security requirements, and having the RSO perform field operations audits to ensure safety and security requirements are being followed.

The RSO at the time of the PEC left the organization in June 2011. The new RSO stated he was not familiar with all the previous commitments and corrective actions that the licensee had made. The new RSO focused on modification of the storage boxes for the trucks, which was completed, but did not ensure that the storage box at the corporate office was in compliance. The new RSO also stated that the training he conducted was more general in regard to gauge security and that he was unaware of the commitment to conduct field audits. This indicated a lack of oversight by senior managers to ensure that all commitments made to the NRC for the previous significant violation were effectively implemented.

2.3 Conclusion

One apparent violation was identified for the failure to use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever the portable gauge is not under the control and constant surveillance of the licensee.

3 **Corrective Actions**

During the inspection on August 30, 2011, the licensee added a second hasp and padlock to the plywood box located in the shop.

4 Exit Meeting Summary

A preliminary exit briefing was conducted at the conclusion of the onsite inspection with Mr. Phillip Caines. A final exit briefing was conducted via telephone with Messrs. Phillip Caines, Payton Zierlof, and Ernest Sketteberg on October 31, 2011. No proprietary information was identified at this time.

SUPPLEMENTAL INSPECTION INFORMATION

PARTIAL LIST OF PERSONS CONTACTED

Licensee

Matt Larson, Project Manager, McGarvin-Moberly Construction Company

*Phillip Caines, President, McGarvin-Moberly Construction Company

*Ernest Sketteberg, Vice President and current RSO

*Payton Zierlof, proposed RSO and gauge user

*Present during the exit briefing

INSPECTION PROCEDURES USED

87124 Fixed and Portable Gauge Programs

ITEMS OPENED, CLOSED AND DISCUSSED

Opened

030-32107/11-001	APV	An apparent violation involving the failure to have a minimum of two independent physical controls that form a tangible barrier to secure portable gauges from unauthorized removal whenever the portable gauge is not under the control and constant surveillance of the licensee.
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Closed

None