



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

April 25, 2012

General Licensee
EA-12-003

Docket No. 99990001

Todd Hobson
President
Clay Point Associates, Inc.
25 Bishop Avenue
Williston, VT 05495-7870

SUBJECT: EXERCISE OF ENFORCEMENT DISCRETION, CLAY POINT ASSOCIATES, INC.

Dear Mr. Hobson:

We are sending you this letter to document our discussions regarding your possession of an X-Ray Fluorescence (XRF) device containing byproduct material in the form of Cobalt-57 (Co-57) and to provide our conclusions regarding your compliance with NRC regulations for the device.

During a telephone conversation on August 12, 2011, between you and Laurie Kauffman of this office, we learned that Clay Point Associates, Inc. (the licensee) possessed one XRF device containing 12 millicuries of Co-57 and that the licensee had registered the device with the State of Vermont. During a telephone conversation between yourself and Steven Courtemanche of this office on January 5, 2012, you were informed that the regulation of Co-57 was transferred to the NRC from the State of Vermont. This change occurred with the enactment of the Energy Policy Act of 2005 (Act), and the NRC regulations resulting from the Act, which became effective on August 7, 2009. You indicated that Clay Point Associates was unaware that the NRC had jurisdiction and that an NRC license was required for the device. You stated that the device would be placed in storage and not used until corrective actions had been completed.

Also, during the telephone conversation of January 5, 2012, between Mr. Courtemanche and yourself, the NRC identified that the XRF device possessed by Clay Point Associates could be configured (with the appropriate labeling and documentation) as a generally-licensed (GL) device. A GL device usually consists of radioactive material contained in a sealed source within a shielded device that is designed with inherent radiation safety features so that it can be used by persons with no radiation safety experience. Consequently, a specific license under which the NRC must evaluate the adequacy of the radiation training or experience of each user is not necessary. The NRC evaluates the adequacy of GL products, ensuring that distributors meet the specific requirements in 10 CFR Part 31. Mr. Courtemanche spoke with a representative of the device manufacturer, Radiation Monitoring Devices (RMD), and verified that RMD could prepare the appropriate documentation and provide you with the proper labels for the device to be configured to meet the NRC GL requirements. During a conversation between yourself and Mr. Courtemanche on January 13, 2012, you confirmed that RMD and Clay Point Associates had completed these actions.

Based on the above information, the NRC has determined that a violation of NRC requirements occurred. The violation involved the possession of byproduct material without a specific NRC license issued in accordance with the regulations in 10 CFR Part 30. Specifically, from August 7, 2009, to January 6, 2012, Clay Point Associates, Inc. possessed an XRF device containing byproduct material (a sealed source containing 12 millicuries of Co-57). Although the device can be configured to meet NRC GL requirements, for the period of the violation it was not, and a specific NRC license was required.

This violation would normally be categorized at Severity Level IV; however, in accordance with NRC Enforcement Guidance Memorandum (EGM) 09-004, dated May 13, 2009, the NRC will exercise discretion and not issue a violation. The NRC's decision is based on the criteria listed in EGM 09-004. Specifically, 1) this was the first occurrence the licensee was involved in after August 7, 2009, 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) the licensee, once aware of the requirements, took appropriate action; and 5) the licensee kept the device in secure storage from October 2011 until procedures were completed to reconfigure it as a generally-licensed device.

On January 5, 2012, Mr. Courtemanche informed you of this conclusion by telephone and that a letter documenting the conclusion would be issued once the XRF device was reconfigured following the procedures of the manufacturer. No further action or response is necessary on your part. In the future, should Clay Point Associates, Inc. want authorization to possess byproduct material that is not authorized by the general license provisions in 10 CFR Part 30, Clay Point Associates, Inc. must submit a license application to the NRC, and receive authorization prior to receiving byproduct material.

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 through 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 could 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; Med, Ind. & Academic Users**; then **Regulations, Guidance and Communications**. The current enforcement policy is included in 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 8:00 a.m. to 5:30 p.m. EST, Monday through Friday (except Federal holidays).

Please contact Steven Courtemanche at 610-337-5075, if you have any questions regarding this matter.

T. Hobson

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Thank you for your cooperation.

Sincerely,

/RA/

Raymond K. Lorson, Director
Division of Nuclear Materials Safety

T. Hobson

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Thank you for your cooperation.

Sincerely,

/RA/

Raymond K. Lorson, Director
Division of Nuclear Materials Safety

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