



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

May 16, 2012

Docket No. 03038439

License No. 47-31438-01

Thomas C. Apperson
Vice President
Triton Construction, Inc.
P.O. Box 908
Nitro, WV 25143

SUBJECT: NRC INSPECTION REPORT NO. 03038439/2012001, TRITON
CONSTRUCTION, INC., NITRO, WEST VIRGINIA SITE AND NOTICE OF
VIOLATION

Dear Mr. Apperson:

On April 25, 2012, Randolph Ragland of this office conducted a safety inspection at the above address of activities authorized by the above listed NRC license. The inspection was an examination of your licensed activities as they relate to radiation safety and to compliance with the Commission's regulations and the license conditions. The inspection continued in-office until May 4, 2012. The inspection consisted of observations by the inspector, interviews with personnel, and a selective examination of representative records. The findings of the inspection were discussed with you and William Gessel, Radiation Safety Officer, of your organization, by telephone at the conclusion of the inspection.

Based on the results of this inspection and in accordance with the NRC Enforcement Policy, the NRC has determined that two Severity Level IV violations of NRC requirements occurred. The violations involved: 1) a failure to maintain operating and emergency procedures as required by NRC license condition; and 2) a failure to describe hazardous materials on radioactive material shipping papers and a failure to include nuclear gauge transportation emergency response information with the shipping papers.

The violations are cited in the enclosed Notice of Violation (Notice), because the violation was identified by the NRC.

During our inspection exit meeting on May 4, 2012, you indicated that you have taken corrective and preventative actions to address each violation and that Triton Construction, Inc. is committed to radiation safety and to compliance with NRC regulations and licensed conditions. Specifically, you stated that you have:

- 1) Placed copies of operating and emergency procedures inside: a) the cab of his transport truck; b) inside the gauge container; and c) inside the Radiation Safety Officer's office; and
- 2) Placed copies of a radioactive shipment bill of lading and nuclear gauge transportation emergency response information inside: a) the cab of the nuclear gauge transport truck; b) inside the gauge container; and c) inside the Radiation Safety Officer's office.

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken and planned to correct the violation and prevent recurrence is already adequately addressed in our records. Therefore, you are not required to respond to this letter unless the description of your corrective actions in this letter does not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice.

After careful consideration of the factors involved in this specific instance and in accordance with the current NRC Enforcement Policy, the violations have been classified at the Severity Level IV level. Specifically, these violations posed a minimal health and safety problem and represent an isolated rather than a programmatic weakness in your radiation safety program. Similar violations of this type in the future may result in additional enforcement action.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, 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; Med, Ind, & Academic Uses**; 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 8:00 a.m. to 5:30 p.m. EST, Monday through Friday (except Federal holidays).

Please contact Randolph Ragland at 610-337-5083 if you have any questions regarding this matter.

T. Apperson

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Please note that the Region I Division of Nuclear Materials Safety will be moving effective May 9, 2012. Our new address will be:

USNRC – Region I
2100 Renaissance Blvd, Suite 100
King of Prussia, PA 19406-2713

Sincerely,

Original signed by Blake D. Welling

Blake Welling, Chief
Materials Security and Industrial Branch
Division of Nuclear Materials Safety

Enclosure:
Notice of Violation

cc:
William M. Gessel, Radiation Safety Officer
State of West Virginia

T. Apperson

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DATE	5/16/2012		5/16/2012				

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NOTICE OF VIOLATION

Triton Construction, Inc.
Nitro, WV

Docket No. 03038439
License No. 47-31438-01

During an NRC inspection conducted on April 25, 2012, and continued in-office until May 4, 2012, two violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. NRC License No. 47-31438-01, Condition 19, states that the licensee shall conduct its program in accordance with the application dated April 5, 2011.

Triton Construction, Inc. NRC license application dated April 5, 2011, states that the licensee will implement and maintain the operating and emergency procedures in Appendix H of NUREG 1556, Vol. 1, Rev. 1, dated November 2001, and provide copies to all gauge users and at each job site.

Contrary to this requirement, between the period of approximately March 26, 2012, - April 25, 2012, Triton Construction, Inc. did not maintain a copy of operating and emergency procedures. Specifically, on or about March 26, 2012, Operating and Emergency Procedures for the portable gauge were lost at a temporary job site and had not been replaced as of April 25, 2012.

This is a Severity Level IV violation (Section 6.7)

- B. 10 CFR 71.5 (a) requires, in part, that each licensee who transports licensed materials outside the site of usage or where transport is on public highways, shall comply with the applicable requirements of the U.S. Department of Transportation regulations in 49 CFR Parts 170 through 189.

49 CFR 172.200 (a) requires each person who offers a hazardous material for transportation to describe the hazardous material on shipping papers.

49 CFR 172.602(b) requires, in part, that emergency response information required by 49 CFR 172.602(a) must be available on shipping papers, or in a document, other than shipping papers, and maintained in the same manner as prescribed for shipping papers.

Contrary to the above, between the period of approximately March 26, 2012, - April 25, 2012, Triton Construction, Inc. transported a portable nuclear density gauge containing cesium-137 and americium-241 sealed sources to various temporary job sites and did not include with the shipments shipping papers describing the material as required by 49 CFR 172.200(a), and did not maintain nuclear gauge transportation emergency response information with the shipping papers as required by 49 CFR 172.602(a).

This is a Severity Level IV violation (Section 6.8)

Notice of Violation
Triton Construction, Inc.

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The NRC has concluded that information regarding the reason for the violations, the corrective actions taken and planned to correct the violations and prevent recurrence and the date when full compliance will be achieved is already adequately addressed on the docket. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555 with a copy to the Regional Administrator, Region I, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

If you contest this enforcement action, you should also provide a copy of your response to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, any response which contests an enforcement action shall be submitted under oath or affirmation.

Your response will be placed in the NRC Public Document Room (PDR) and on the NRC Web site. To the extent possible, it should, therefore, not include any personal privacy, proprietary, or safeguards information so that it can be made publically available without redaction. However, if you find it necessary to include such information, you should clearly indicate the specific information that you desire not to be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public.

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days of receipt.

Dated This 16th day of May 2012