



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
1600 EAST LAMAR BLVD
ARLINGTON, TEXAS 76011-4511

August 21, 2012

EA-12-101

Apache Deepwater, LLC
ATTN: Steve Daigle
2000 West Sam Houston Parkway, Suite 2000
Houston, Texas 77042

SUBJECT: EXERCISE OF ENFORCEMENT DISCRETION

Dear Mr. Daigle:

This letter refers to your letter dated August 9, 2012 (ML12233A624), which you sent in response to our correspondence dated June 28, 2012, which the NRC sent regarding the circumstances surrounding the transfer of a fixed gauging device from Roxar, Inc. to Apache Deepwater, LLC. (Apache), in 2007. At the time of the transfer, an NRC license was required for possession and use of the device. However, at present, the fixed gauging device possessed by Apache can be possessed, with the appropriate labeling and documentation, as a generally licensed device. It is our understanding that Roxar, Inc., has provided you with instructions for meeting the NRC general license requirements, you have completed or committed to complete the actions required to comply with the NRC general license requirements, and you have committed to installing the required labels the first time the device is returned to the surface. Labels are not required if the device is being decommissioned when returned to the surface.

Based on the above information, the NRC has determined that a violation of NRC requirements occurred. The violation involved possession and use of byproduct material without a specific NRC license in accordance with 10 CFR 30.3, Activities requiring license. Specifically, from 2007 to January 12, 2012, Apache possessed a fixed gauging device containing byproduct material (a sealed source containing 30 millicuries of cesium-137) and did not hold a specific NRC license for the device. Although the device now meets NRC general license requirements, for the period of the violation it was not considered a generally licensed device, and a specific NRC license was required.

The violation was evaluated in accordance with the NRC Enforcement Policy. The current Enforcement Policy is on the NRC's Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>. A violation of 10 CFR 30.3 is normally categorized at Severity Level IV. However: (1) the failure to obtain an NRC license did not result in an actual safety, health, or security consequence, (2) the failure was not willful, (3) at the time of installation, Roxar, Inc., presented the position that it would handle all regulatory requirements associated with possession and use of the gauge even though this was counter to the NRC regulations, (4) the device will be registered in the NRC's General Licensee Tracking System, (5) you have committed to adhere to all requirements of your general license, and (6) you have committed to install the appropriate general license label on the device the first time that the device is

Apache Deepwater, LLC
EA-12-101

- 2 -

returned to the surface. Therefore, in accordance with the NRC Enforcement Policy, the NRC is exercising enforcement discretion to not issue a violation.

No further action or response is necessary on your part. You are not required to respond to this letter unless the description herein does not accurately reflect your corrective actions or your position.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and your response, should you choose to provide one, will be 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>.

Should you have any questions concerning this letter, please contact Mr. Jason Razo at 817-200-1589 or Mr. Michael Vasquez at 817-200-1130.

Sincerely,

/RA/

Anton Vegel, Director
Division of Nuclear Materials Safety

Docket: 9999-0004
General Licensee

cc:
Richard A. Ratliff, P.E., L.M.P., Chief
Radiation Safety Licensing Branch Manager
Division for Regulatory Services
TX Dept. of State Health Services
P.O. Box 149347 Mail Code 2835
Austin, TX 78714-9347

Roxar Flow Measurement, Inc.
ATTN: Ms. Marie Benson
6005 Rogerdale Road
Mail Stop: SC200.2
Houston, Texas 77072

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ADAMS		<input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> SUNSI Review Complete		Reviewer Initials: JMR	
<input checked="" type="checkbox"/> Publicly Available		<input type="checkbox"/> Non-publicly Available		<input type="checkbox"/> Sensitive		<input checked="" type="checkbox"/> Non-sensitive	
RIV:DNMS/NMSB-A	C:NMSB-A	C:ACES	D:DNMS				
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