



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
2100 RENAISSANCE BOULEVARD, SUITE 100
KING OF PRUSSIA, PENNSYLVANIA 19406-2713

January 7, 2013

Docket No. 03038581
EA-12-236

License No. 52-24971-02

Ignacio Lopez Beguiristain
Vice President
Constructora Santiago II Corp
P.O. Box 364925
San Juan, PR 00936-4925

SUBJECT: NRC INSPECTION REPORT NO. 03038581/2012001, CONSTRUCTORA SANTIAGO II CORP, TRUJILLO ALTO, PUERTO RICO SITE AND NOTICE OF VIOLATION

Dear Mr. Lopez Beguiristain:

On July 18, 2012, with continued in-office review through December 11, 2012, Craig Gordon of this office conducted a safety inspection at Constructora Santiago II Corporation's (CSI) Trujillo Alto, Puerto Rico site 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 consisted of observations by the inspector, interviews with personnel, and a selective examination of representative records. The findings of the inspection were discussed with Mr. Javier Santiago of your organization at the conclusion of the inspection. The enclosed report presents the results of this inspection.

Based on the results of this inspection, the NRC has determined that one violation of NRC requirements occurred. The violation involved the failure to obtain authorization in a specific NRC license to own and possess one CPN MC-3 portable gauge containing cesium-137 (Cs-137) and americium-241 (Am-241), in accordance with 10 CFR 30.3. The violation is cited in the enclosed Notice of Violation (Notice) because the violation was identified by the NRC.

CSI was previously authorized under NRC License No. 52-24971-01 (issued on November 24, 1999), to use and store portable gauging devices for measuring physical properties of materials, and did, in fact, own one such device at the time. On April 29, 2003, CSI submitted to the NRC an application for renewal of its license. Prior to the renewed license being issued, CSI submitted NRC Form 314, "Certificate of Disposition of Materials," indicating the gauge had been transferred on July 7, 2003, to another NRC licensee, and requesting that the NRC terminate the license. On October 2, 2003, the NRC completed processing of the license renewal request as Amendment No. 3 to the license, followed by completion of the termination request as Amendment No. 4.

On October 6, 2003, NRC issued a letter to CSI in response to the license termination request, but which apparently mistakenly contained the renewed license (Amendment No.3), with an October 31, 2013, expiration date as the enclosure. Interviews conducted during the inspection indicated that the terminated license (Amendment No.4) was never received by CSI. You stated that you believed the license remained in effect until its October 31, 2013, expiration and used it to

order another gauge in 2005, and that CSI has possessed, and occasionally used the gauge since that time.

While the inclusion of the renewed license with the October 6, 2003, NRC letter likely contributed to CSI's belief that it continued to possess a valid NRC license, the NRC noted that the license transmittal letter specified that CSI's license had been terminated (as requested by CSI itself). Additionally, the possession of licensed material without an NRC license precluded the NRC from reviewing and inspecting CSI's gauge program and controls to ensure all other regulatory requirements were met.

Upon identification by NRC, we noted that you took prompt corrective actions including retaining an NRC licensed consultant who maintained the gauge in secure storage and performed required leak tests, advised you on the implementation of a licensed program, and assisted you with applying for and obtaining an NRC license for the gauge. During our inspection, we verified that your consultant placed the gauge in secure storage, leak tested the sealed source, and that the result of the leak test was negative for contamination.

Based on the circumstances in which CSI improperly received a renewed license with a license termination letter as discussed above, and considering that CSI took prompt and effective corrective actions, the NRC has assessed the violation as Severity Level IV. The NRC has also concluded that information regarding the reason for the violation, the corrective action taken to correct the violation and prevent recurrence, and the date when full compliance was achieved is already adequately addressed on the docket in this letter and its enclosures. Therefore, you are not required to respond to this letter unless the description therein 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.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, 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 Craig Gordon at 610-337-5216 if you have any questions regarding this matter.

The NRC's Safety Culture Policy Statement became effective in June 2011. While a policy statement and not a regulation, it sets forth the agency's *expectations* for individuals and organizations to establish and maintain a positive safety culture. You can access the policy statement and supporting material that may benefit your organization on NRC's safety culture Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/safety-culture.html>. We

strongly encourage you to review this material and adapt it to your particular needs in order to develop and maintain a positive safety culture as you engage in NRC-regulated activities.

Sincerely,

/RA/

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

Enclosures:

1. Notice of Violation
2. Inspection Report No. 03038581/2012001

cc w/enclosures:

Javier Santiago, Radiation Safety Officer
Commonwealth of Puerto Rico

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cc w/enclosures:

Javier Santiago, Radiation Safety Officer
Commonwealth of Puerto Rico

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NOTICE OF VIOLATION

Constructora Santiago II Corporation
San Juan, PR

Docket No. 03038581
License No. 52-24971-02
EA-12-236

During an NRC inspection conducted on July 18 through December 11, 2012, one violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 30.3 requires, in part, that no person shall possess or use byproduct material except as authorized by a specific or general license issued in accordance with the regulations in 10 CFR Part 30.

Contrary to the above, from 2005 through October 15, 2012, Constructora Santiago II Corporation (CSI) possessed and used byproduct material (one CPN Model MC-3 portable gauge containing cesium-137 and americium-241 sealed radiological sources) that was not authorized by a specific or general license issued in accordance with the regulations in 10 CFR Part 30.

This is a Severity Level IV violation (Section 6.3).

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation 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 7th day of January 2013.

U.S. NUCLEAR REGULATORY COMMISSION
REGION I

INSPECTION REPORT

Inspection No. 03038581/2012001
Docket No. 03038581
License No. 52-24971-02
EA No. EA-12-236
Licensee: Constructora Santiago II, Inc.
Location: P. O. Box 364925
San Juan, Puerto Rico 00936-4925
Inspection Dates: July 18, 2012 - December 11, 2012

Inspector: */B. D. Welling for/* 01/07/13
Craig Z. Gordon date
Senior Health Physicist
Materials Security and Industrial Branch
Division of Nuclear Materials Safety

Approved By: */RA/* 01/07/13
Blake D. Welling, Chief date
Materials Security and Industrial Branch
Division of Nuclear Materials Safety

EXECUTIVE SUMMARY

Constructora Santiago II, Inc.
NRC Inspection Report No. 03038581/2012001

Constructora Santiago II, Inc. (CSI) operates a highway construction company in Trujillo Alto, Puerto Rico, and formerly possessed licensed radioactive material under NRC License No. 52-24791-01. In 2003, CSI transferred their licensed material to an authorized recipient and requested termination of their NRC license. By letter dated October 6, 2003, NRC notified CSI that their license had been terminated, but, due to an administrative error, NRC inadvertently enclosed a copy of their recently renewed license with an expiration date of October 31, 2013, rather than a copy of their terminated license.

During this reactive inspection, NRC determined that although CSI apparently believed they still possessed an NRC license, they were actually in the possession of a CPN Model MC-3 portable gauge containing cesium-137 and americium-241 sealed sources without a valid NRC license. Accordingly, one Severity Level IV violation was identified for the possession of byproduct material without a valid NRC license as required by 10 CFR 30.3.

In response to the finding, CSI took prompt corrective actions including retaining an NRC licensed consultant who maintained the gauge in secure storage and performed a required leak tests, and CSI applied for and received an NRC license (52-24971-02) for the possession and use of portable gauging devices.

REPORT DETAILS

I. Organization and Scope of the Program

a. Inspection Scope

The inspector reviewed the company's organization, scope of the radiation safety program, and previous licensing activities.

b. Observations and Findings

Constructora Santiago, Inc. (CSI) was previously authorized under License No. 52-24971-01 to use and store portable gauging devices for measuring physical properties of materials.

By letter dated April 29, 2003, CSI submitted a license renewal request for their license, which was due to expire April 30, 2003. By letter dated May 1, 2003, NRC informed CSI that the renewal application was deemed timely filed and that the license would not expire until final action was taken. Amendment No. 3 to NRC License No. 52-24971-01 was issued October 3, 2003, (expiration date October 31, 2013) which renewed the license in its entirety.

The last inspection performed at the CSI Trujillo Alto, PR facility on October 2, 2002, noted that the licensee was in possession of one CPN Model MC-1 portable moisture density gauge, SN M17087833, but had not used the gauge since 1997. A Notice of Violation was issued for failure to notify the NRC that principal activities were not conducted for a period of 24 months, as required by 10 CFR 30.36.

CSI continued to maintain the gauge in storage while making inquiries to transfer it. A July 3, 2003 leak test performed on the gauge by the licensee's consultant (an NRC-licensed service company) was negative for contamination. On September 30, 2003, with the consultant's assistance, the licensee submitted NRC Form 314, "Certificate of Disposition of Materials," indicating the gauge had been transferred on July 7, 2003, to Betterroads Asphalt Corporation (NRC License No. 52-19845-01), and requested termination of the license.

By letter dated October 6, 2003, the NRC issued Amendment No. 4, to terminate License No. 52-24971-01. Although the letter addressed license termination, a search of NRC ADAMS found that the letter was matched with License Amendment No. 3 (renewal) as the only documents in the file, while Amendment No. 4 (termination) was found in ADAMS as a standalone document, without a cover letter or other correspondence. A review of the license file did not identify an NRC renewal letter to transmit Amendment No. 3 to CSI. It appeared the licensee received the cover letter for Amendment No. 4, with the renewal Amendment No. 3 attached, rather than termination amendment.

c. Conclusions

No violations were identified.

II. Material Receipt, Use, Transfer, and Control

a. Inspection Scope

The inspector reviewed the activities related to Constructora Santiago II, Inc.'s receipt, use, and control of portable gauging devices.

b. Observations and Findings

On June 1, 2012, NRC received a telephone call from the licensee's consultant stating that he had received a gauge from CSI for servicing and wanted to confirm that CSI possessed a valid NRC license before returning the gauge to CSI. The consultant indicated that he was authorized to possess the type of gauge and quantity of material on his NRC license, and would maintain the gauge in a safe and secure condition until the matter could be resolved. A follow-up review by NRC Region I staff determined that the licensee did not possess an active NRC license for the gauge.

In response to this preliminary finding, NRC Region I staff conducted a reactive inspection at the company's facility in Trujillo Alto, Puerto Rico. On July 18, 2012, the inspector visited the CSI site to conduct interviews related to gauge operations with Mr Ignacio Lopez Beguiristain, Vice President and Mr. Javier Santiago, the Radiation Safety Officer (RSO) named on LN 52-24971-01. The RSO stated the original gauge was transferred in 2003 as documented in the Form 314 termination request to the NRC. He explained that another gauge was obtained in 2005 from the same manufacturer (CPN) using Amendment No.3, which at the time appeared to be a valid license after being renewed in 2003.

The second gauge was used on a construction site in Ponce, PR for about two years. When the project was completed, the gauge was returned and stored at CSI's main office in a designated secure location within the building. According to the RSO, there was no further usage of the gauge before it was transferred to the consultant in late May 2012.

In response to the preliminary NRC finding, the Vice President and RSO committed to allow the gauge to remain in the safe and secure possession of their NRC licensed consultant, have the gauge leak tested by the consultant, and with the consultant's assistance, apply for and receive a NRC license for the possession and use of portable gauging devices. With regard to required documentation, the Vice President indicated that in recent years older files were not maintained due to office space limitations. The RSO was unable to provide copies of any correspondence between CSI and NRC, and did not maintain records related to licensing, fee payments, shipment, use, and transfer of either gauge.

When the inspector presented copies of Amendment No. 4 and the October 6, 2003, termination letter to the Vice President and RSO, they stated that they could not remember seeing or receiving the documents. CSI staff stated that because they never received a terminated license, they believed the license remained in effect (until its October 31, 2013 expiration date). Therefore, they believed they were authorized to purchase the second gauge in 2005.

The inspector conducted additional discussions with CSI personnel and the consultant regarding future activities involving the new gauge, the NRC's regulatory process to ensure CSI obtains a license to maintain compliance, and fee billing. The Vice President committed to work with the consultant to file an application for a new license, and the consultant agreed to maintain the gauge in his possession until a license was issued.

On September 17, 2012, with assistance from the consultant, Constructora Santiago II Corporation (new company name) submitted a new license application and fee for possession and use of the CPN gauge being held by the consultant. By letter dated October 15, 2012, the NRC issued License No. 52-24791-02 to Constructora Santiago II Corporation for possession and use of CPN portable gauging devices.

Information provided by NRC's Office of Chief Financial Officer indicated that the company was not assessed fees since 2005, because CSI did not have a valid NRC license authorizing specific use of material, and that unpaid fees would not be recovered.

Although the NRC issued Amendment No. 4 to terminate the license, it cannot be determined whether it was officially transmitted to or received by CSI. Based on interviews, it appeared that CSI staff obtained the second gauge because they did not recognize that License Number 52-24971-01 had been terminated. However, because CSI was in possession and used the gauge without a valid license since 2005, a violation of 10 CFR 30.3 was identified.

c. Conclusion

One Severity IV violation was identified.

10 CFR 30.3 requires, in part, that no person shall possess or use byproduct material except as authorized by a specific or general license issued in accordance with the regulations in 10 CFR Part 30.

Contrary to the above, from 2005 through October 15, 2012, Constructora Santiago II Corporation (CSI) possessed and used byproduct material (one CPN Model MC-3 portable gauge containing cesium-137 and americium-241 sealed radiological sources) that was not authorized by a specific or general license issued in accordance with the regulations in 10 CFR Part 30.

III. Exit Meeting

On December 11, 2012, the inspector conducted a telephonic exit meeting and informed CSI that a Severity Level IV violation of 10 CFR 30.3 was identified. The inspector stated that CSI took appropriate corrective actions by applying for and receiving an NRC license to possess and use the gauge. The licensee acknowledged the violation.

SUPPLEMENTARY INFORMATION

PARTIAL LIST OF PERSONS CONTACTED

Ignacio Lopez Beguiristain, Vice President, CSI
Javier Santiago, Radiation Safety Officer

INSPECTION PROCEDURES USED

Inspection Procedure 87124, "Fixed and Portable Gauge Programs"