



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

February 25, 2013

Schmucker, Paul, Nohr & Associates, Inc.
dba Helms & Associates
ATTN: Jay C Koch, P.E., RSO
P.O. Box 111
Aberdeen, South Dakota 57402

SUBJECT: NRC INSPECTION REPORT NO. 030-34421/2012-001 AND NOTICE OF VIOLATION

Dear Mr. Koch:

This letter refers to the routine, unannounced inspection conducted on November 13-15, 2012, at your main office, 221 Brown County Highway 19, Aberdeen, South Dakota and your field office, 2100 North Sanborn Boulevard, Mitchell, South Dakota. The inspection continued with in-office reviews until February 15, 2013. The inspection was an examination of activities conducted under your license as they relate to safety and compliance with the Commission's rules and regulations and with the conditions of the license. Within these areas, the inspection consisted of selected examination of procedures and representative records and interviews with personnel. Preliminary inspection findings were discussed with you and Mr. Harlan J. Quenzer, P.E, Principal, at the conclusion of the on-site inspections. A final telephonic exit briefing was conducted with you and Mr. Harlan J. Quenzer on February 15, 2013.

This inspection examined activities conducted under your license as they relate to safety and 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.

Based on the results of this inspection, the NRC has determined that three Severity Level IV violations of NRC requirements occurred. The violations were evaluated 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 violations are cited in the enclosed Notice of Violation (Notice) because they were identified by the NRC during the inspection. The violations involved failures to: (1) provide required nuclear gauge training, (2) conduct the required leak tests, and (3) conduct the required physical inventory.

Under other circumstances, the first violation could have been more significant. As documented in your letter dated November 19, 2012 [ML13030A487], an individual used a radium gauge after receiving basic in-house training; but the training did not conform to license requirements. In determining the significance of this issue, we also considered your statements that the individual was, at times, audited in his use of the gauge by a qualified gauge user and no deficiencies were noted. Notwithstanding this, the training did not meet license requirements.

Schmucker, Paul, Nohr, & Associates, Inc.
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You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. For your consideration and convenience, NRC Information Notice 96-28, "Suggested Guidance Relating to Development and Implementation of Corrective Action," is enclosed. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, Enclosure 1 and your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the 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 personal privacy or proprietary information is necessary to provide an acceptable response, please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such information, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g. explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information).

Should you have any questions regarding this letter or the enclosed Notice, please contact Ms. Latischa Hanson at 817-200-1286 or the undersigned at 817-200-1130.

Sincerely,

/RA/

G. Michael Vasquez, Chief
Nuclear Materials Safety Branch A

Docket: 030-34421
License: 40-27560-01

Enclosures:

1. Notice of Violation
2. Information Notice 96-28

cc w/Enclosure 1:
State of South Dakota Radiation Control Program Director

Schmucker, Paul, Nohr, & Associates, Inc.
dba Helms & Associates

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Internal distribution w/Enclosure 1:

E. Collins, RA
S. Reynolds, DRA
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	<input type="checkbox"/> Non-publicly Available	<input type="checkbox"/> Sensitive	
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LMHanson	GMVasquez		
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NOTICE OF VIOLATION

Schmucker, Paul, Nohr & Associates, Inc.
dba Helms & Associates
Aberdeen, South Dakota

Docket: 030-34421
License: 40-27560-01

During an NRC inspection conducted from November 13, 2012, through February 15, 2013, three violations of NRC requirements were identified. In accordance with NRC Enforcement Policy, the violations are listed below:

1. License Condition 11 of byproduct materials license 40-27560-01, requires that licensed materials shall only be used by, or under the supervision and in the physical presence of, individuals who have received the training described in the application dated February 26, 2007.

License Condition 21 of byproduct materials license 40-27560-01, requires, in part, that the licensee shall conduct its program in accordance with the statements, representations, and procedures contained in license application dated February 26, 2007. Item 8 of the license application, titled "Training for Individuals Working in or Frequenting Restricted Areas," stated that, "Each individual that will operate a nuclear gauge will complete the Troxler Nuclear Gauge Training course taught by Troxler instructors; will read and understand our radiation safety procedures; and will be approved by our Radiation Safety Officer. Copies of each individuals training certificates will be maintained on file."

Contrary to the above, at various times in July and August 2012, an individual operated a nuclear gauge without completing the required nuclear gauge training and the individual had not been approved by the radiation safety officer before being allowed to use a nuclear gauge. Although the individual received in-house training, the training was not as described in Item 8 of License Condition 21. And, when the untrained individual used the gauge, he was not always under the supervision and in the physical presence of individuals who had received the training described in the application dated February 26, 2007.

This is a Severity Level IV violation (Section 6.3)

2. License Condition 13. of byproduct materials license 40-27560-01, requires, in part, that sealed sources shall be tested for leakage and/or contamination at intervals not exceed the intervals specified in the certificate of registration issued by the U.S. Nuclear Regulatory Commission under 10 CFR 32.210 or by an agreement state. The certificate of registration for the Seaman Nuclear Corporation radium gauge specifies leak testing at six-month intervals.

Contrary to the above, from 2009 through 2012, the licensee conducted leak tests on an annual basis, which exceeded the six-month required interval.

This is a Severity Level IV violation (Section 6.3)

Enclosure 1

3. License Condition 15 of byproduct materials license 40-27560-01, requires that the licensee shall conduct a physical inventory every 6 months, or at other intervals approved by the U. S. Nuclear Regulatory Commission, to account for all sources, and/or devices received and possessed under the license.

Contrary to the above, from 2009 through 2012, the licensee failed to conduct the physical inventories at least every six months. Specifically, at the Mitchell, South Dakota field office, the physical inventories were performed at one-year intervals instead of at six-month intervals, as required by License Condition 15 of byproduct materials license 40-27560-01.

This is a Severity Level IV violation (Section 6.3)

Pursuant to the provisions of 10 CFR 2.201, Schmucker, Paul, Nohr & Associates, Inc. dba Helms & Associates, is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001, with a copy to the Regional Administrator, Region IV, 1600 E. Lamar Blvd., Arlington, Texas, 76011, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for the violation: (1) the reason for the violation or, if contested, the basis for disputing the violation or severity level; (2) the corrective steps that have been taken and the results achieved; (3) the corrective steps that will be taken; and (4) the date when full compliance was, or will be, achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as to why the license should not be modified, suspended, or revoked, or why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

In accordance with 10 CFR 19.11, you may be required to post this Notice within 2 working days. However, you are reminded to review your NRC security orders for superseding requirements that limit the release of information to certain individuals.

Dated this 25th day of February 2013