



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

June 25, 2013

EA-13-057

Robert E. Leigh, P.E.
Vice President
Mountaineer Contractors, Inc.
P.O. Box 606
Kingwood, WV 26537

**SUBJECT: MOUNTAINEER CONTRACTORS, INC., NOTICE OF VIOLATION - NRC
INSPECTION REPORT NO. 03015246/2013001**

Dear Mr. Leigh:

This letter provides you the U.S. Nuclear Regulatory Commission's (NRC's) enforcement decision for the apparent violations identified during the NRC inspection conducted on March 12 and 13, 2013, at the Mountaineer Contractors, Inc. (MCI) sites in Kingwood and Wheeling, West Virginia, with subsequent in-office follow-up that was completed on April 24, 2013. Both the onsite inspection and the in-office review evaluated MCI's licensed activities within NRC jurisdiction as they relate to radiation safety and to compliance with NRC regulations. Blake Welling, Chief, NRC Region I Nuclear Materials Security and Industrial Branch, discussed the apparent violations during a telephonic exit with you on April 24, 2013. The apparent violations were also described in the NRC inspection report sent to you with a letter dated May 10, 2013 (ML13133A223¹).

In the May 10, 2013, letter transmitting the inspection report, we provided you an opportunity to address the apparent violations identified in the report by either attending a pre-decisional enforcement conference or by providing a written response before we made our final enforcement decision. In a letter (ML13163A307) dated May 22, 2013, you provided a response to the apparent violations in which you outlined the reasons each apparent violation occurred, the corrective steps taken and planned to prevent recurrence, and the date on which full compliance was achieved.

Based on the information developed during the inspection and the information that you provided in your response, the NRC has determined that seven violations of NRC requirements occurred. The violations are cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding them are described in detail in Inspection Report No. 03015246/2013001, issued on May 10, 2013.

¹ Designation in parentheses refers to an Agency-wide Documents Access and Management System (ADAMS) accession number. Documents referenced in this letter are publicly-available using the accession number in ADAMS.

The most significant violation involved multiple instances between February 8, 2008, and March 11, 2013, where MCI did not maintain two independent controls to form a tangible barrier to secure its portable nuclear gauges from unauthorized removal whenever the gauges were not under MCI's control and constant surveillance, as required by 10 CFR 30.34(i). Specifically, during the inspection of MCI's Kingwood facility on March 12, 2013, the inspector identified that MCI stored its gauges inside a cabinet in a room within the maintenance building. Although the cabinet door was locked (providing one security control), the door to the room was unlocked during working hours, and authorized individuals were not always present to prevent unauthorized individuals from accessing the room. Although the portable gauges were not removed or stolen, there was a potential that unauthorized individuals could have removed them from the building by defeating only one security control.

The other six violations involved MCI's failures to: (1) conduct annual radiation protection program reviews; (2) provide hazardous materials (HAZMAT) training to each employee that transported the portable nuclear gauges; (3) seek NRC approval prior to acquiring and possessing licensed materials (sealed sources contained in three portable nuclear gauges) exceeding the maximum amount authorized by MCI's NRC license (sealed sources contained in two portable nuclear gauges); (4) leak test the sealed radioactive sources within the portable nuclear gauges within the required 12-month interval; (5) maintain a log book that included the dates of use for the portable nuclear gauges, names of the authorized users responsible for the gauges, and the temporary job sites where the gauges would be used; and (6) conduct physical inventories every six months to account for all radioactive sources and/or devices possessed under MCI's license.

The NRC has concluded that the root cause of all seven violations was MCI's failure to provide adequate oversight of the radiation protection program, which had previously been the responsibility of a part-time radiation safety officer (RSO). Given the significance of the first violation, as well as the common root cause failure of all the violations, these violations have been categorized collectively as a SL III problem to emphasize the importance of providing suitable resources and focus on radiation safety and program implementation.

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$3,500 is considered for a SL III problem. Because your facility has not been the subject of escalated enforcement action within the last two years or two inspections, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section 2.3.4 of the Enforcement Policy. The NRC has concluded that credit is warranted for MCI's corrective actions taken to address the violations. Specifically, MCI: (1) placed a second, independent and more robust lock on the storage cabinet to provide a second physical control to secure the portable gauges; (2) provided the HAZMAT training to applicable employees; (3) submitted a request, on March 14, 2013, to amend its NRC license to increase the possession limit to an amount sufficient to possess and use four portable nuclear gauges; (4) assigned a full-time office employee to serve as the RSO; (5) implemented a log book to document the dates of use for the portable nuclear gauges, names of the authorized users responsible for the gauges, and the temporary job sites where the gauges would be used; and, (6) developed automatic schedule reminders for performing program reviews, leak tests, inventories, and log book verifications.

Therefore, in recognition of the absence of previous escalated enforcement action, and to encourage prompt and comprehensive correction of violations, I have been authorized, after consultation with the Director, Office of Enforcement, not to propose a civil penalty in this case. However, significant violations in the future could result in a civil penalty. In addition, issuance

of this Severity Level III problem constitutes an escalated enforcement action that may subject you to increased inspection effort.

The NRC has concluded that information regarding: (1) the reason(s) for the violations; (2) the actions planned or already taken to correct the violations and prevent recurrence; and, (3) the date when full compliance was achieved, is already adequately addressed on the docket in Inspection Report No. 03015246/2013001, in your May 22, 2013, letter, and in this letter. 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 and its enclosure 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 NRC Website at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response, if you choose to provide one, 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). The NRC also includes significant enforcement actions on its Web site at (<http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>).

Sincerely,

/RA/

William M. Dean
Regional Administrator

Docket No. 03015246
License No. 47-17517-02

Enclosure: Notice of Violation

cc w/enclosure:
Mike Neely, Radiation Safety Officer
State of West Virginia

of this Severity Level III problem constitutes an escalated enforcement action that may subject you to increased inspection effort.

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Sincerely,

/RA/

William M. Dean
Regional Administrator

Docket No. 03015246
License No. 47-17517-02
Enclosure: Notice of Violation
cc w/enclosure:
Mike Neely, Radiation Safety Officer
State of West Virginia

Distribution: see next page

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* See previous concurrence page ** HQ to perform a quick review

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NOTICE OF VIOLATION

Mountaineer Contractors, Inc.
Kingwood, West Virginia

Docket No. 03015246
License No. 47-17517-02
EA-13-057

During an NRC inspection conducted between March 12 and April 24, 2013, (which included an on-site inspection as well as an in-office review of information provided by Mountaineer Contractors, Inc. (MCI)), for which an exit meeting was conducted on April 24, 2012, violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. 10 CFR 30.34(i) requires that each portable gauge licensee shall use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee.

Contrary to the above, on multiple occasions between February 8, 2008, and March 11, 2013, MCI did not use two independent physical controls that form tangible barriers to secure its portable gauges from unauthorized removal, whenever the portable gauges were not under MCI's control and constant surveillance. Specifically, MCI stored its portable gauges in a locked storage cabinet located in a room within the maintenance building at its Kingwood, West Virginia location. However, the door to the room was unlocked during working hours and authorized individuals were not always present to prevent unauthorized individuals from accessing the storage room

- B. 10 CFR 20.1101(c) requires that licensees periodically (at least annually) review the radiation protection program content and implementation.

Contrary to the above, for the calendar years 2009 - 2011, MCI did not perform a review of its radiation protection program content and implementation.

- C. 10 CFR 71.5(a) requires, in part, that each licensee who transports licensed material outside the site of usage, as specified in the NRC license, shall comply with the applicable requirements of the Department of Transportation (DOT) regulations in 49 CFR parts 171 through 180, appropriate to the mode of transport.

49 CFR 172.702(a) requires that a hazardous materials (hazmat) employer shall ensure that each of its hazmat employees is trained in accordance with the requirements in this subpart.

49 CFR 172.704 requires, in part, that a hazmat employee shall receive recurrent training required by the subpart, at least once every three years.

Contrary to the above, from August 19, 2007, to March 11, 2013, an MCI hazmat employee, transported portable gauges containing licensed material outside the site of usage, but had not received the training required by 49 CFR 172.704 since August 19, 2004, a period greater than three years.

- D. NRC License No. 47-17517-02, Amendment No. 07, Item 8, specifies that the maximum sealed source activity MCI is authorized to possess at any one time is 88 millicuries of americium-241 (Am-241) and 18 millicuries of cesium-137 (Cs-137).

Contrary to the above, from November 5, 2012, to March 21, 2013, MCI possessed licensed materials in amounts that exceeded the limits specified in its NRC license. Specifically, on November 5, 2012, MCI received a Troxler Electronic Laboratories portable moisture/density gauge containing sealed Am-241 and Cs-137 sources, which increased the licensee's possession of Am-241 to approximately 136 millicuries, and Cs-137 to approximately 26 millicuries.

- E. NRC License No. 47-17517-02, Amendment 07, Condition 14.A requires, in part, that sealed sources shall be tested for leakage and/or contamination at intervals specified in the certificate of registration.

The certificate of registration (NC-0646-D-130-S) for the sealed sources possessed by MCI requires leak testing at least every 12 months.

Contrary to the above, on multiple occasions between February 20, 2008, and May 5, 2011, MCI did not leak test its sealed sources at the required intervals. Specifically, MCI leak tested its sealed sources on February 20, 2008, October 16, 2009, and May 5, 2011, resulting in an interval between tests that exceeded 12 months.

- F. NRC License No. 47-17517-02, Amendment No. 07, Condition 19.A requires that MCI conduct its program in accordance with the statements, representations, and procedures contained in its license application dated August 12, 2004.

Item #10 of the application dated August 12, 2004, "Radiation Safety Program, Operating and Emergency Procedures," specifies that licensee personnel will implement and maintain the Operating and Emergency Procedures in Appendix H of NUREG-1556, Volume 1, Rev. 1.

The Operating and Emergency Procedures in Appendix H of NUREG-1556, Volume 1, Rev. 1 require, in part, that licensees sign out portable gauges in a log book including the date of use, name of the authorized user, and the temporary job site where the portable gauges will be used.

Contrary to the above, between February 8, 2008, and March 12, 2013, MCI used its portable gauges at temporary jobsites without signing out the gauges in a log book that included the dates of use, names of the authorized users responsible for the gauge, and the temporary job site where the portable gauge will be used.

- G. NRC License No. 47-17517-02, Amendment No. 07, Condition 15, requires, in part, that MCI conduct a physical inventory every six months, or at intervals approved by the NRC, to account for all sources and/or devices received and possessed under the license.

Contrary to the above, between 2008 and March 12, 2013, a period greater than six months, MCI did not conduct physical inventories to account for all sources and or devices possessed under the license.

This is a Severity level III problem (Section 6.3).

The NRC has concluded that information regarding: 1) the reason for the violations; 2) the actions planned or already taken to correct the violations and prevent recurrence; and, 3) the date when full compliance was achieved, is already adequately addressed on the docket in Inspection Report No. 03015246/2013001, in MCI's May 22, 2013, letter, and in this letter. Therefore, you are not required to respond to this Notice. 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 EA-13-057," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001 with a copy to the Regional Administrator, Region I, 2100 Renaissance Boulevard, Suite 100, King of Prussia, PA 19406, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

If you choose to respond, 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 NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. Therefore, to the extent possible, the response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

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

Dated this 25th day of June, 2013