



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
REGION IV
1600 E. LAMAR BLVD.
ARLINGTON, TX 76011-4511

May 2, 2014

EA-14-069

PMPC
ATTN: Dan Ferrin
Radiation Safety Officer
P.O. Box 370
Saratoga, Wyoming 82331

SUBJECT: NEW LICENSE and ENFORCEMENT DISCRETION

Please find enclosed License No. 49-35126-01. An environmental assessment for this action is not required since this action is categorically excluded under 10 CFR 51.22(c)(14)(viii). You should review this letter regarding enforcement discretion and license carefully and be sure that you understand all conditions. You can contact Michelle Hammond at 817-200-1127 if you have any questions about this license or enforcement discretion detailed below.

The NRC needs your Taxpayer Identification Number in order to make payments (refunds). Please complete and return NRC Form 531, "Request for Taxpayer Identification Number," to the highlighted address in Item 5 on Form 531. NRC Form 531 can be found at: <http://www.nrc.gov/reading-rm/doc-collections/forms/nrc531.pdf>.

NRC's Regulatory Issue Summary (RIS) 2005 31 provides criteria to identify security-related sensitive information and guidance for handling and marking of such documents. This ensures that potentially sensitive information is not made publicly available through ADAMS. The RIS may be located on the NRC Web site at: <http://www.nrc.gov/reading-rm/doc-collections/gen-comm/reg-issues/2005/>. Pursuant to NRC's RIS 2005 31, the enclosed materials license will not be made publicly available.

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.

Please note that 10 CFR 30.34, Terms and conditions of licenses, was revised to enhance the security requirements for portable gauges containing byproduct material. This revision became effective July 11, 2005. Revised 10 CFR 30.34 now 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

(i.e., when not in use). Guidance on these security procedures is provided in the errata sheet for Appendix H of NUREG-1556, Volume 1, Revision 1 which may be located at: <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1556/v1/r1/>.

NRC expects licensees to conduct their programs with meticulous attention to detail and a high standard of compliance. Because of the serious consequences to employees and the public that can result from failure to comply with NRC requirements, you must conduct your radiation safety program according to the conditions of your NRC license, representations made in your license application, and NRC regulations. In particular, note that you must:

1. Operate by NRC regulations 10 CFR Part 19, "Notices, Instructions and Reports to Workers: Inspection and Investigations," 10 CFR Part 20, "Standards for Protection Against Radiation," and other applicable regulations.
2. Notify NRC in writing of any change in mailing address.
3. In accordance with 10 CFR 30.36(d), notify NRC, promptly, in writing within 60 days, and request termination of the license:
 - a. When you decide to terminate all activities involving materials authorized under the license whether at the entire site or any separate building or outdoor area;
 - b. If you decide not to acquire or possess and use authorized material; or
 - c. When no principal activities under the license have been conducted for a period of 24 months.
4. Request and obtain a license amendment before you:
 - a. Change Radiation Safety Officers;
 - b. Order byproduct material in excess of the amount, radionuclide or form authorized on the license;
 - c. Add or change the areas or address(es) of use identified in the license application or on the license; or
 - d. Change the name or ownership of your organization.
6. Submit a complete renewal application or termination request at least 30 days before the expiration date on your license. You will receive a reminder notice approximately 90 days before the expiration date. Possession of radioactive material after your license expires is a violation of NRC regulations.

In addition, please note that NRC Form 313 requires the applicant, by signature, to verify that

the applicant understands that all statements contained in the application are true and correct to the best of the applicant's knowledge. The signatory for the application should be the licensee or certifying official rather than a consultant. Since the NRC also accepts a letter requesting amendment or renewal of an NRC license, the signatory for such a request should also be the licensee or certifying official rather than a consultant.

NRC will periodically inspect your radiation safety program. Failure to conduct your program according to NRC regulations, license conditions, and representations made in your license application and supplemental correspondence with NRC may result in enforcement action against you. This could include issuance of a notice of violation; imposition of a civil penalty; or an order suspending, modifying, or revoking your license as specified in the NRC Enforcement Policy. The NRC Enforcement Policy is available on the following internet address: <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>.

An electronic version of the NRC's regulations is available on the NRC Web site at www.nrc.gov. Additional information regarding use of radioactive materials may be obtained on the NRC Web site at <http://www.nrc.gov/materials/miau/mat-toolkits.html>. This site also provides the link to the toolbox for updated information on the revised regulations for naturally-occurring and accelerator-produced radioactive materials (NARM).

On August 8, 2005, the President signed the Energy Policy Act of 2005 (EPAAct) into law. Section 651(e) of the EPAAct expanded the definition of byproduct material to include naturally occurring and accelerator-produced radioactive materials (NARM), which were not previously regulated by the NRC. Discrete sources of radium-226, similar to the one in the portable gauges possessed and used by PMPC, meet this definition. Although the legislation made NRC's authority over the new materials effective immediately, the NRC did not have regulations in place that would specifically apply to this newly covered byproduct material. Therefore, the NRC issued a time-limited waiver on August 31, 2005 (70 FR 51581), for continued use and possession of NARM, allowing time for the NRC to develop regulations to implement the new requirements.

The NRC published notification of its plan for the transition of regulatory authority resulting from the expanded definition of byproduct material in the Federal Register on October 1, 2007 (72 FR 55864). This followed publication of a final rule covering the new byproduct materials on October 1, 2007 (72 FR 55863). The regulations set forth in the rule became effective on November 30, 2007, for some users and later for others. Accordingly, the transition plan set forth the applicable dates for waiver terminations. In accordance with the transition plan, the waiver was terminated for the State of Wyoming on December 1, 2008.

Based on the guidance in Enforcement Guidance Memorandum 09-004, and after considering the information developed during the licensing technical review, the NRC has decided to use enforcement discretion not to issue a violation for possession of NARM without a license beyond the waiver termination period. PMPC was eligible for the use of enforcement discretion because the licensing review was the first interaction between it and the NRC and because the failure to obtain a license met the following criteria:

1. The failure did not result in an actual safety, health, or security consequence;

2. The failure was not willful;
3. PMPC provided a reasonable argument that it was unaware of the new requirement; and,
4. PMPC submitted an initial license application within 60 days of the date when PMPC attempted to send the gauges to the manufacturer for service.

The NRC has concluded that information regarding the reason for these issues, the corrective actions taken and the date when full compliance was achieved is already adequately addressed on the docket in your application dated January 29, 2014. Therefore, 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 will be available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

Thank you for your cooperation.

Sincerely,

/RA/

Jack E. Whitten, Branch Chief
Nuclear Materials Safety Branch B

Docket: 030-38709
License: 49-35126-01
Control: 582972

Enclosure: As stated