



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

January 15, 2015

Docket No. 03033138
EA-14-189

License No. 06-30033-01

Lawrence F. Johnsen, P.E.
Owner
Heller and Johnsen
Foot of Broad Street
Stratford, CT 06615

**SUBJECT: NRC INSPECTION REPORT NO. 03033138/2014001, HELLER AND
JOHNSEN, STRATFORD, CONNECTICUT SITE, NOTICE OF VIOLATION,
AND EXERCISE OF ENFORCEMENT DISCRETION**

Dear Mr. Johnsen:

On October 29, 2014, Scott Wilson of this office conducted a safety inspection at the above address. The inspection examined 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. Additional information provided by you to Scott Wilson via telephone on December 3, 2014, was also reviewed as part of the inspection. The findings of the inspection were discussed with you via telephone at the conclusion of the inspection on January 12, 2015.

Based on the results of this inspection and in accordance with the NRC Enforcement Policy, the NRC has determined that a Severity Level IV violation of NRC requirements occurred. The violation involved the failure to use two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever the portable gauges were not under your control and constant surveillance as required by 10 CFR 30.34(i).

The above stated violation of 10 CFR 30.34(i) was identified by the inspector and is described in the enclosed Notice of Violation. In accordance with the NRC's Enforcement Policy, although such violations are normally categorized at Severity Level III and considered for escalated enforcement action, because: 1) one physical control existed to prevent loss or theft of the portable gauge; 2) you retained possession of the gauge; 3) the violation was isolated in nature; and 4) no indication of programmatic weakness was identified, the NRC is exercising enforcement discretion to categorize this violation as Severity Level IV.

In response to this finding, you indicated that you did not fully understand the requirement until it was explained to you by the inspector. You also stated during a December 3, 2014, telephone conversation with Scott Wilson of this office that you have taken corrective and preventative actions to address the violation and that Heller and Johnsen is committed to radiation safety and to compliance with NRC regulations. Further, you stated that Heller and Johnsen had acquired additional padlocks and cables for use in securing the gauges, and that you have informed all authorized users on the proper protocol for securing gauges when not under their direct control.

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 is already adequately addressed in this letter and our records. Therefore, you are not required to respond to this letter unless the description of your corrective actions in this letter 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).

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/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.

L. Johnsen

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Please contact Scott Wilson at (610) 337-5136 if you have any questions regarding this matter.

Sincerely,

/RA/

Daniel S. Collins, Director
Division of Nuclear Materials Safety

Enclosures:

1. Notice of Violation
2. Inspection Report

cc w/Enclosures:
State of Connecticut

L. Johnsen

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Please contact Scott Wilson at (610) 337-5136 if you have any questions regarding this matter.

Sincerely,

/RA/

Daniel S. Collins, Director
Division of Nuclear Materials Safety

Enclosures:

- 1. Notice of Violation
- 2. Inspection Report

cc w/Enclosures:
State of Connecticut

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NOTICE OF VIOLATION

Heller and Johnsen
Stratford, CT

Docket No. 03033138
License No. 06-30033-01

During an NRC inspection conducted on October 29, 2014, and continuing in-office through January 12, 2015, one violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 30.34(i) requires, in part, 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 the dates November 30, 2009, and October 29, 2014, Heller and Johnsen had secured portable gauges within vehicles at temporary jobsites and the portable gauges were secured from unauthorized removal with only one independent physical control (vehicle door or trunk locks) that formed a tangible barrier to secure the portable gauges from unauthorized removal, and the portable gauges were not under the control and constant surveillance of the licensee.

This is a Severity Level IV violation (EGM-11-004).

The NRC has concluded that information regarding the reason for the violations, 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 15th day of January 2015

Enclosure 1

EXECUTIVE SUMMARY

Heller and Johnsen
NRC Inspection Report No. 03033138/2014001

Heller and Johnsen is an engineering company that operates in the State of Connecticut. This was a routine, unannounced inspection of licensed activities involving the use of sealed sources of byproduct material (cesium-137 and americium-241) in portable moisture-density gauges for the purpose of measuring the physical properties of materials.

Based on the results of the inspection, one Severity Level IV violation of NRC requirements was identified regarding the licensee's failure to use two independent physical controls that form tangible barriers to secure two portable gauges from unauthorized removal whenever the portable gauges were not under the control and constant surveillance of the licensee, as required by 10 CFR 30.34(i).

On multiple occasions between the dates November 30, 2009, and October 29, 2014, Heller and Johnsen had secured portable gauges within vehicles at temporary jobsites and the portable gauges were secured from unauthorized removal with only one independent physical control (vehicle door or trunk locks) that formed a tangible barrier to secure the portable gauges from unauthorized removal, and the portable gauges were not under the control and constant surveillance of the licensee.

The radiation safety officer stated that he did not fully understand the requirement until it was explained to him by the inspector. As immediate and preventative corrective actions the licensee implemented an additional physical barrier (cable and lock) to prevent unauthorized access to the gauges while in storage and not under the control and constant surveillance of the licensee and informed all authorized users of the process change.

REPORT DETAILS

I. Organization and Scope of the Program

a. Inspection Scope

The inspector reviewed the license application, supporting documents, and other pertinent licensee records. Collectively, these documents describe the licensee's radiation safety program. The inspection was conducted using NRC Inspection Procedure 87124, Focus Elements 1 – 7.

b. Observations and Findings

Heller and Johnsen (licensee) was authorized under NRC License No. 06-30033-01 to possess and use byproduct material for the purpose of measuring the physical properties of materials with portable moisture-density gauges (gauges). The licensee possessed three Troxler Electronic Laboratories Model 3400 Series gauges containing sealed sources of cesium-137 and americium-241. Gauges were authorized to be used at the licensee's facility located in Stratford, Connecticut and at temporary job sites in areas under NRC jurisdiction. Heller and Johnsen used the gauges weekly for moisture-density testing at projects in Connecticut. The licensee employed nine individuals involved in gauging operations. Authorized gauge users (AU's) reported directly to the company owner and radiation safety officer (RSO), Lawrence (Larry) Johnsen, P.E.

c. Conclusion

No violations were identified.

II. Material Receipt, Use, and Control

a. Inspection Scope

The inspector interviewed the owner and AU's regarding gauge use, transportation, storage, security and AU training. The inspector reviewed licensee records including: sealed source leak tests, dosimetry reports, shipping papers, operating and emergency procedures and annual program reviews and observed a demonstration of gauge transport and use. The inspection was conducted using NRC Inspection Procedure 87124, Focus Elements 1 – 7.

b. Observations and Findings

This was a routine, unannounced inspection of the licensee's activities and was conducted at the licensee's office located in Stratford, CT on October 29, 2014. No licensed activities using gauges were being performed at the time of this inspection;

therefore no temporary jobsites were inspected. However, the inspector observed an authorized user demonstration of portable gauge use, transport and storage.

The inspector determined, based on the licensee's demonstration and discussions with the authorized user, that the licensee's practice when using a portable gauge at a temporary jobsite was to secure the gauge within a locked personal vehicle whenever the gauge was not under the control and constant surveillance of the licensee; however, in those instances, the licensee employed only one physical barrier (vehicle door or trunk locks) to secure the portable gauge from unauthorized removal. This had occurred on multiple occasions between November 30, 2009, and October 29, 2014, the date of this inspection.

In accordance with the NRC's Enforcement Policy, although such violations are normally categorized at Severity Level III and considered for escalated enforcement action, because: 1) one physical control existed to prevent loss or theft of the portable gauge; 2) you retained possession of the gauge; 3) the violation was isolated in nature; and 4) no indication of programmatic weakness was identified, the NRC is exercising enforcement discretion to categorize this violation as Severity Level IV.

c. Conclusion

One Severity Level IV violation of NRC requirements was identified during the inspection:

10 CFR 30.34(i) requires, in part, 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 the dates November 30, 2009 and October 29, 2014, the licensee secured portable gauges within vehicles at temporary jobsites and the portable gauges were secured from unauthorized removal with only one independent physical control (vehicle door or trunk locks) that formed a tangible barrier to secure the portable gauge from unauthorized removal, and the portable gauges were not under the control and constant surveillance of the licensee. This is a violation of 10 CFR 30.34(i).

The radiation safety officer stated that he did not fully understand the requirement until it was explained to him by the inspector.

As immediate and preventative corrective actions the licensee implemented an additional physical barrier (cable and lock) to prevent unauthorized access to the gauges while in storage and not under the control and constant surveillance of the licensee and informed all AU's of the process change.

No other items of non-compliance were observed.

III. Exit Meeting

A preliminary site exit briefing was conducted on October 29, 2014. On January 12, 2015, a final telephonic exit meeting was conducted with the company owner and RSO. Licensee representatives acknowledged the inspector's findings. No proprietary information was identified.

PARTIAL LIST OF PERSONS CONTACTED

LICENSEE

#*Lawrence (Larry) Johnsen, Owner/RSO

#*Juan Beboya, Engineer/Technician

- present at entrance meeting

* - present at exit meeting

INSPECTION PROCEDURES USED

NRC Inspection Procedure 87124, "Fixed and Portable Gauge Programs"

ITEMS OPEN, CLOSED, AND DISCUSSED

One Severity Level IV violation of 10 CFR 30.34(i) was identified regarding the licensee's failure to use a minimum of two independent physical controls to secure portable gauges from unauthorized removal. (Section II)