



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

REGION III
2443 WARRENVILLE RD. SUITE 210
LISLE, IL 60532-4352

November 25, 2015

EA-15-228

Mr. Allen Holloway, Laboratory Manager
Construction Materials Testing Group, LLC
5318 Blue Banks Avenue
Kansas City, MO 64130

SUBJECT: NRC ROUTINE INSPECTION REPORT NO. 03031561/2015001(DNMS)
AND NOTICE OF VIOLATION – CONSTRUCTION MATERIALS TESTING
GROUP, LLC

Dear Mr. Holloway:

On September 15, 2015, inspectors from the U.S. Nuclear Regulatory Commission (NRC) conducted a routine inspection at your facility on Blue Banks Avenue in Kansas City, Missouri, with continued in-office review through October 26, 2015. The purpose of the inspection was to review activities performed under your NRC license to ensure that activities were being performed in accordance with NRC requirements. The purpose of the additional in-office review was to evaluate the significance of the inspection findings. Mr. Ryan Craffey of my staff conducted a final exit meeting by telephone with you on November 4, 2015, to discuss the inspection findings. The enclosed inspection report presents the results of the inspection.

During this inspection, the NRC staff examined activities conducted under your license related to public health and safety. Additionally, the staff examined your compliance with the Commission's rules and regulations as well as the conditions of your license. Within these areas, the inspection consisted of 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 website at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>. The violations concerned: (1) the failure to have the individual listed in Condition 11 on NRC License No. 24-26162-01 to perform the duties and functions of Radiation Safety Officer (RSO) for your licensed activities; (2) the failure to secure portable gauges with two independent physical controls that form tangible barriers against unauthorized removal, as required by Title 10 of the *Code of Federal Regulations* (CFR) Part 30.34(i); and (3) several examples of the failure to comply with the applicable requirements of the DOT regulations in 49 CFR Part 172 for shipping papers and emergency information, as required by 10 CFR 71.5(a).

The violations are cited in the enclosed Notice of Violation (Notice). The NRC is citing the violations in the enclosed Notice because the inspectors identified them. Please note that violations of 10 CFR 30.34(i) are normally characterized in the Enforcement Policy at Severity Level III and considered for escalated enforcement action. However, in accordance with Enforcement Guidance Memorandum 11-004, the NRC exercised discretion to characterize the violation of 10 CFR 30.34(i) identified during this inspection as a Severity Level IV because: (1) one physical control – the facility's perimeter fence – existed to prevent loss or theft of the portable gauge present at the time of the inspection; (2) you retained possession of the gauge; (3) the violation was isolated to the day of the inspection, as the interior fenced enclosure which had been left unlocked that morning normally constituted a second physical control; and (4) the violation did not appear to indicate any kind of programmatic weakness.

The inspectors determined that the root causes of the aforementioned violations were, respectively: (1) a lack of understanding of regulatory requirements regarding license conditions; (2) an oversight by the last individual to remove a gauge from storage; and (3) an oversight with regard to the accuracy of information contained in shipping papers.

As corrective actions to restore compliance, during the inspection on September 15, 2015, you locked the interior fenced enclosure to secure the remaining gauge with two independent physical controls; you committed to submit a request to amend your NRC Materials License, naming a new RSO; and you committed to revise the shipping papers for each portable gauge in your possession. On September 18, 2015, you submitted the amendment request to Region III's Materials Licensing Branch and provided copies of revised shipping papers to the inspector.

As corrective action to address the potential for recurrence, on September 16 and 17, 2015, you provided refresher training to your employees regarding the storage and transportation of gauges. In the documentation of this training which you provided to the inspector on September 18, 2015, you also described revised expectations for using a third independent physical control – a job box bolted to the floor, in which the gauges were normally stored – by removing the key from the lock and securing that key elsewhere.

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken and planned to correct the violations and prevent recurrence, and the date when full compliance will be achieved is already adequately addressed on the docket in this letter. 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 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 enclosure, and your response, if you choose to provide one, will be made available electronically for public inspection in the NRC's Public Document Room or from the NRC's Agencywide Documents Access and Management System (ADAMS), accessible from the NRC's 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 publicly available without redaction.

A. Holloway

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Please feel free to contact Mr. Ryan Craffey or Mr. Navid Tehrani of my staff if you have any questions regarding this inspection. Mr. Craffey can be reached at 630-829-9655, and Mr. Tehrani can be reached at 630-829-9809.

Sincerely,

/RA/

Aaron T. McCraw, Chief
Materials Inspection Branch
Division of Nuclear Materials Safety

Docket No. 030-31561
License No. 24-26162-01

Enclosure:
Notice of Violation

cc w/encl: State of Missouri

A. Holloway

-3-

Please feel free to contact Mr. Ryan Craffey or Mr. Navid Tehrani of my staff if you have any questions regarding this inspection. Mr. Craffey can be reached at 630-829-9655, and Mr. Tehrani can be reached at 630-829-9809.

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Enclosure:
Notice of Violation

cc w/encl: State of Missouri

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NOTICE OF VIOLATION

Construction Materials Testing Group, LLC
Kansas City, Missouri

License No. 24-26162-01
Docket No. 030-31561
EA-15-228

During a U.S. Nuclear Regulatory Commission (NRC) inspection conducted on September 15, 2015, with continued in-office review through October 26, 2015, three violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. Condition 11 of NRC License No. 24-26162-01, Amendment No. 10, authorizes a specifically named individual to fulfill the duties of the Radiation Safety Officer (RSO) for the license.

Contrary to the above, between July 4, 2015, and September 15, 2015, the named individual, specifically authorized by Condition 11 of the license to fulfill the duties and responsibilities as RSO, was no longer employed by the licensee and did not fulfill the duties and responsibilities of the RSO. Specifically, the RSO had left the employ of the licensee on or around July 4, 2015; since that time, the licensee had not notified the NRC nor submitted an amendment request to name the new individual who was performing the duties and responsibilities of the RSO, and who was determined by the NRC to be technically qualified, on the license.

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

- B. Title 10 of the *Code of Federal Regulations* (CFR) Part 30.34(i) requires that each licensee 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 September 15, 2015, Construction Materials Testing Group, LLC did not use a minimum of two independent physical controls to secure their gauges from unauthorized removal. Specifically, the licensee used only one independent physical control, a barbed-wire perimeter fence, to secure one portable gauge in storage at its facility on Blue Banks Avenue in Kansas City, Missouri, and did not maintain constant surveillance of the gauge.

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

- C. Title 10 CFR Part 71.5(a) requires in part that each licensee who transports licensed material outside the site of usage, as specified in the NRC license, or where transport is on public highways, shall comply with the applicable requirements of the Department of Transportation (DOT) regulations in 49 CFR Parts 107, 171 through 180, and 390 through 397, appropriate to the mode of transport.

1. Title 49 CFR Part 172.202(a) requires in part, with exceptions not applicable here, that the shipping description of a hazardous material on the shipping paper must include the identification number prescribed for the material as shown in Column (4) of the Section 172.101 table; and the proper shipping name prescribed for the

Enclosure

material in Column (2) of the Section 172.101 table. Pursuant to 49 CFR 172.101, radioactive material is classified as hazardous material.

Contrary to the above, on September 15, 2015, the licensee transported portable gauges nominally containing 8 millicuries (mCi) of cesium-137 (Cs-137) and 40 mCi of americium-241 (Am-241) outside the confines of its facility on Blue Banks Avenue in Kansas City, Missouri, and the shipping description on the shipping paper that accompanied the shipments did not include the correct identification numbers and proper shipping names. Specifically, the licensee used one shipping paper for all gauges, and that shipping paper identified the material contained therein as "UN 2974, Radioactive material, special form, n.o.s." instead of "UN 3332, Radioactive material, Type A package, special form, *non-fissile or fissile-excepted*," as indicated on the gauge transportation cases.

2. Title 49 CFR Part 172.203(d) requires, in part, that the description for a shipment of Class 7 (radioactive) material include the name of each radionuclide in the class 7 (radioactive) material that is listed in Section 173.435 of this subchapter; and the activity contained in each package of the shipment in terms of the appropriate SI units.

Contrary to the above, on September 15, 2015, the licensee transported portable gauges nominally containing 8 mCi of Cs-137 and 40 mCi of Am-241 outside the confines of its facility on Blue Banks Avenue in Kansas City, Missouri, and the description on the shipping paper that accompanied the shipments did not include the name and activity of the 40 mCi Am-241 source. Specifically, the licensee used one shipping paper for all its gauges, and that shipping paper only included the 8 mCi Cs-137 source.

3. Title 49 CFR Part 172.604 requires, in part, that a person who offers a hazardous material for transportation must provide an emergency response telephone number, including the area code, for use in an emergency involving the hazardous material. The telephone number must be monitored at all times the hazardous material is in transportation, including storage incidental to transportation; and the telephone number must be the telephone number of a person who is either knowledgeable of the hazardous material being shipped and has comprehensive emergency response and incident mitigation information for that material, or has immediate access to a person who possesses such knowledge and information.

Contrary to the above, on September 15, 2015, the licensee transported portable gauges nominally containing 8 mCi of Cs-137 and 40 mCi of Am-241 outside the confines of its facility on Blue Banks Avenue in Kansas City, Missouri, and the emergency response telephone number on the shipping paper that the licensee provided with the shipment was inadequate. Specifically, the telephone number, for an office phone at the licensee's aforementioned facility, was not monitored at all times.

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 was achieved, is already adequately addressed on the docket in the letter transmitting this Notice of Violation (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, NRC Inspection Report No. 03031561/2015001(DNMS)" 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 III, within 30 days of the date of the letter transmitting this 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 Agencywide Documents Access and Management System (ADAMS), accessible from the NRC's website at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, the response should not include any personal privacy, proprietary, or safeguards information so that it can be made publicly available without redaction.

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 two working days of receipt.

Dated this 25th day of November, 2015.