



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION IV
1600 E. LAMAR BLVD
ARLINGTON, TX 76011-4511

March 22, 2017

EA-16-258

Mr. James A. McElroy
Principal
Hayre McElroy & Associates, LLC
2757 152nd Avenue NE
Redmond, WA 98052

SUBJECT: NRC INSPECTION REPORT 030-38881/2015-001 AND INVESTIGATION
REPORT 4-2016-006

Dear Mr. McElroy:

This letter refers to an unannounced inspection conducted at your facility in Aiea, Hawaii from October 26 to 30, 2015. The purpose of the inspection was to examine activities performed under a U.S. Nuclear Regulatory Commission (NRC) general license, which was granted under Title 10 of the *Code of Federal Regulations* (CFR) Section 150.20, "Recognition of Agreement State licenses," to ensure that activities were performed in accordance with NRC requirements. Hayre McElroy & Associates, LLC, (HMA) was granted a general license to conduct the same activities authorized under its State of Washington license, in areas of exclusive Federal jurisdiction during calendar years (CYs) 2010-2015, for a period not to exceed 180 days in each CY.

The inspection consisted of examinations of selected procedures and representative records, observations of facilities and licensed activities, independent radiation measurements, and interviews with personnel. The NRC Office of Investigations (OI) initiated an investigation on November 20, 2015. The investigation was performed to determine whether HMA willfully failed to follow NRC requirements related to the possession and use of portable gauges in an area of NRC jurisdiction without an NRC specific license. A final exit briefing was conducted telephonically with Mr. G. Hayre, Principal on March 15, 2017. The enclosed report presents the results of this inspection (Enclosure 1). The results of the investigation are discussed in the Factual Summary of the NRC Investigation (Enclosure 2).

Based on the results of the inspection and investigation, four apparent violations were identified and are being considered for escalated enforcement action in accordance with the NRC Enforcement Policy. The current Enforcement Policy is included on the NRC Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>. The apparent violations being considered for escalated enforcement action involve failures to: (1) request approval from the NRC for changes in work locations or activities different from the information contained in initial NRC Form 241s (Report of Proposed Activities in Non-Agreement States) during multiple CYs; (2) apply for an NRC specific license prior to exceeding 180 days of possession and use of portable gauges in NRC jurisdiction; (3) block and brace Class 7 (radioactive) material during transport; and (4) maintain use/transfer logs for each gauge possessed in NRC jurisdiction.

Before the NRC makes its enforcement decision, we are providing you an opportunity to: (1) respond, in writing, to the apparent violations addressed in this inspection report within 30 days of the date of this letter; (2) request a predecisional enforcement conference (PEC); or (3) request Alternative Dispute Resolution (ADR). If a PEC is held, the NRC will issue a meeting notice to announce the time and date of the conference; however, the PEC will be closed to public observation since information related to an OI report will be discussed and the report has not been made public. If you decide to participate in a PEC or pursue ADR, please contact Mr. Ray L. Kellar, P.E., Chief, Nuclear Materials Safety Branch A, at 817-200-1191, within 10 days of the date of this letter to notify the NRC of your intended response. A PEC should be held within 30 days and an ADR session within 45 days of the date of this letter.

If you choose to provide a written response, it should be clearly marked as a "Response to an Apparent Violation, NRC inspection Report 030-38881/2015-001; EA-16-258" and should include for each of the apparent violations: (1) the reason for the apparent violation or, if contested, the basis for disputing the apparent violation; (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 will be achieved. Your response may reference or include previously docketed correspondence, if the correspondence adequately addresses the required response. Your response should be sent to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555 0001, with a copy to Mr. Mark R. Shaffer, Director, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region IV, 1600 E. Lamar Blvd., Arlington, TX 76011-4511. If an adequate response is not received within the time specified or an extension of time has not been granted by the NRC, the NRC will proceed with its enforcement decision or schedule a PEC.

If you choose to request a PEC, the conference will afford you the opportunity to provide your perspective on these matters and any other information that you believe the NRC should take into consideration before making an enforcement decision. The decision to hold a PEC does not mean that the NRC has determined that a violation has occurred or that enforcement action will be taken. This conference would be conducted to obtain information to assist the NRC in making an enforcement decision. The topics discussed during the conference may include information to determine whether a violation occurred, information to determine the significance of a violation, information related to the identification of a violation, and information related to any corrective actions taken or planned. In presenting your corrective actions, you should be aware that the promptness and comprehensiveness of your actions will be considered in assessing any civil penalty for the apparent violations. The guidance in NRC Information Notice 96-28, "Suggested Guidance Relating to Development and Implementation of Corrective Action," may be helpful. You can find the Information Notice on the NRC Web site at <http://pbadupws.nrc.gov/docs/ML0612/ML061240509.pdf>.

In lieu of a PEC, you may request ADR with the NRC in an attempt to resolve this issue. ADR is a general term encompassing various techniques for resolving conflicts using a neutral third party. The technique that the NRC has decided to employ is mediation. Mediation is a voluntary, informal process in which a trained neutral mediator works with parties to help them reach resolution. If the parties agree to use ADR, they select a mutually agreeable neutral mediator who has no stake in the outcome and no power to make decisions. Mediation gives parties an opportunity to discuss issues, clear up misunderstandings, be creative, find areas of agreement, and reach a final resolution of the issues. Additional information concerning the NRC's program can be obtained at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>. The Cornell University Scheinman Institute on Conflict Resolution (ICR) has agreed to facilitate the NRC's program as a neutral third party.

Please contact ICR at 877-733-9415 within 10 days of the date of this letter if you are interested in pursuing resolution of this issue through ADR.

Please be advised that the number and characterization of apparent violations described in the enclosed report may change as a result of further NRC review. You will be advised by separate correspondence of the results of our deliberations on this matter.

Based on the results of this inspection, the NRC has also determined that an additional Severity Level IV violation of NRC requirements occurred. Because the violation was identified by HMA personnel, was corrected within a reasonable time after identification, was not a repetitive issue or the result of inadequate corrective action, and was not willful, this violation is being treated as a non-cited violation (NCV) consistent with Section 2.3.2 of the Enforcement Policy. This violation is described in the subject inspection report. If you contest the violation or the significance of the NCV, you should provide a response within 30 days of the date of this inspection report, with the basis for your denial, to the Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001, with copies to: (1) the Regional Administrator, Region IV; (2) the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

In accordance with 10 CFR 2.390, of the NRC's "Agency Rules of Practice and Procedure," a copy of this letter and its enclosures will be made available electronically for public inspection in the NRC Public Document Room or in the NRC's Agencywide Documents Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy, proprietary, security-related, or safeguards information so that it can be made available to the Public without redaction.

If you have any questions concerning this matter, please contact Mr. Ray L. Kellar, P.E., of my staff at 817-200-1191.

Sincerely,

/RA/

Mark R. Shaffer, Director
Division of Nuclear Materials Safety

Docket Nos. 030-38881, 150-00046

License No. 46-35280-01

Enclosures:

1. NRC Inspection Report 030-38881/2015-001
2. Factual Summary of OI Investigation Report 4-2016-006

cc w/Enclosures:

Hawaii Radiation Control Program Director

Washington Radiation Control Program Director

NRC INSPECTION REPORT 030-38881/2015-001 AND INVESTIGATION REPORT
4-2016-006 DATED MARCH 22, 2017

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ADAMS ACCESSION NUMBER – ML17066A193

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**U.S. NUCLEAR REGULATORY COMMISSION
REGION IV**

Docket Nos.: 030-38881
150-00046

License No.: 46-35280-01

Report Nos.: 030-38881/2015-001

EA No.: EA-16-258

Licensee: Hayre McElroy & Associates, LLC

Facility: Aiea, Hawaii

Inspection Dates: October 26-30, 2015

Exit Meeting Date: March 15, 2017

Inspector: Janine F. Katanic, PhD, CHP
Senior Health Physicist
Nuclear Materials Safety Branch A

Approved by: Ray L. Kellar, P.E., Chief
Nuclear Materials Safety Branch A
Division of Nuclear Materials Safety

EXECUTIVE SUMMARY

Hayre McElroy & Associates, LLC NRC Inspection Report 030-38881/2015-001

Program Overview

Hayre McElroy & Associates, LLC, (HMA) is a firm that provides inspection and testing, construction management, and engineering services. It possesses a State of Washington radioactive materials license WN-I0556 for portable gauge use. Under the general license granted in Title 10 of the *Code of Federal Regulations* (CFR) 150.20, "Recognition of Agreement State licenses," in calendar years (CY) 2010 to 2015, HMA applied for and received approval from the U.S. Nuclear Regulatory Commission (NRC) to conduct portable gauge activities in non-Agreement States and areas of exclusive Federal Jurisdiction within Agreement States.

Inspection Findings

On October 26, 2015, the NRC began an unannounced inspection of HMA's portable gauge activities in Hawaii, a non-Agreement State. Based on the information gathered during the inspection, four apparent violations of NRC requirements were identified. Additionally, one non-cited violation was discussed, which involved HMA's failure to use a minimum of two independent physical controls to secure portable gauges from unauthorized removal, whenever portable gauges are not under control and constant surveillance. The four apparent violations relate to HMA's failure to: (1) request approval from the NRC for changes in work locations or activities different from the information contained in initial NRC Form 241s during CYs 2011 to 2015; (2) apply for an NRC specific license prior to exceeding 180 days of possession and use of portable gauges in an area of NRC jurisdiction; (3) block and brace Class 7 (radioactive) material during transportation; and (4) maintain use/transfer logs for each gauge possessed in NRC jurisdiction.

Corrective Actions

At the conclusion of the October 26, 2015, inspection, when informed of the apparent violations, HMA implemented a stop work order for its portable gauge activities in Hawaii. Immediately following the onsite NRC inspection, HMA submitted an application to the NRC for a specific license for portable gauge use in locations where the NRC maintains jurisdiction for regulating the use of licensed material, including areas of exclusive Federal jurisdiction within Agreement States. The license application also included, as locations of storage of portable gauges, HMA in Aiea, Hawaii (Oahu), and Kahului, Hawaii (Maui). Following an expedited license application review process, NRC specific byproduct materials license No. 46-35280-01 was issued to HMA on October 30, 2015. Additionally, at the conclusion of the onsite inspection, an HMA Manager committed to: (1) provide appropriate means for its gauge users to properly block and brace gauges while in transport for each of its vehicles; and (2) develop and maintain use logs for each portable gauge possessed by the licensee in Hawaii.

REPORT DETAILS

1 Program Overview (Inspection Procedure 87124)

1.1 Program Scope

Hayre McElroy & Associates, LLC, (HMA) is a firm based out of Redmond, Washington, that provides inspection and testing, construction management, and engineering services. It possesses State of Washington radioactive materials license WN-I0556 for portable gauge use. Under the general license granted in 10 CFR 150.20, "Recognition of Agreement State licenses," any person who holds a specific license from an Agreement State is granted a general license to conduct the same activity authorized in the Agreement State license in non-Agreement States, areas of exclusive Federal jurisdiction within Agreement States, and offshore waters. In CY 2010 to 2015, HMA applied for and received approval from the NRC to conduct the same activities authorized in the Agreement State license in non-Agreement States and areas of exclusive Federal Jurisdiction within Agreement States.

1.2 Observations and Findings

The inspector reviewed HMA's Agreement State license and the NRC Form 241s, "Report of Proposed Activities in Non-Agreement States," that were submitted by HMA to NRC during CYs 2010-2015. The inspector reviewed HMA's written procedures and interviewed HMA employees regarding the performance of portable gauge activities during CYs 2010-2015 in non-Agreement States and areas of exclusive Federal jurisdiction within Agreement States.

The inspector determined that HMA first applied to the NRC for reciprocal recognition ("reciprocity") of its State of Washington Agreement State license to use portable gauges at a military facility in Washington in CY 2010. In CYs 2011 to 2015, HMA filed for reciprocity with NRC for work various locations in non-Agreement States and areas of exclusive Federal jurisdiction within Agreement States.

2 Inspection Findings (Inspection Procedure 87124)

2.1 Inspection Scope

An unannounced inspection was conducted on October 26, 2015, at HMA's Aiea, Hawaii, facility and continued through October 30, 2015. The inspector reviewed the HMA facility, performed independent radiation measurements, and reviewed records and procedures related to radiation safety and HMA's activities in Hawaii involving portable gauges. Following the on-site inspection, the inspector performed additional review of reciprocity records submitted by HMA in CYs 2010 through 2015.

2.2 Observation and Findings

Prior to the October 26, 2015, unannounced inspection, the inspector reviewed HMA's CY 2015 reciprocity filing. The initial NRC Form 241 submitted by HMA, dated February 12, 2015, was for a work location at Naval Base Kitsap, Bremerton, Washington, for use from February 16, 2015, to June 16, 2015. No further updates to

work locations or work dates had been provided to the NRC by HMA. As a result, in CY 2015, the NRC was unaware of any HMA portable gauge activities in Hawaii, a non-Agreement State. The NRC became aware of the storage of portable gauges by HMA in Hawaii when an HMA employee made an inquiry to the NRC regarding regulations related to the use of portable gauges in the Marshall Islands. The HMA employee explained that the portable gauges were already located at the HMA facility in Hawaii. The physical address of HMA facility in Hawaii was determined by the inspector based on an internet search.

The morning of October 26, 2016, the inspector arrived at the HMA facility in Aiea, Hawaii, and observed several portable gauges in storage. The inspector met with the HMA Hawaii Division Manager (Manager) to discuss the portable gauge activities in Hawaii. During the inspection, it was revealed that the Manager assumed those duties around April 2015, and began to review HMA Hawaii operations, including its portable gauge operations. By early July 2015, the Manager had determined that the HMA portable gauge operations in Hawaii were not in compliance with NRC regulatory requirements, in particular the requirement to possess an NRC specific license. The Manager had communicated this information to the HMA Principals in Washington. On July 24, 2015, the Manager contacted the NRC and inquired as to what would be necessary to obtain an NRC specific license, but did not relate that HMA already possessed portable gauges in Hawaii. The NRC provided an email to the Manager with information on how to apply for an NRC specific license for portable gauges. The Manager forwarded the email from the NRC to the two HMA principals in Washington. However, no action was taken by HMA to apply for an NRC specific license. It was further revealed that in addition to the portable gauge activities on the island of Oahu, HMA was using portable gauges on the islands of Kauai and Maui, and had established an office with a gauge storage location on Maui. Based on interviews with HMA employees, and a review of documents maintained by HMA, it was determined that HMA first started using portable gauges in Hawaii in CY 2011 and continued through the date of the inspection in CY 2015.

During the inspection, the inspector informed the Manager that the HMA reciprocity filing for CY 2015 did not include any work locations in Hawaii. The inspector also explained that since portable gauges were stored in Hawaii since January 1, 2015, HMA had exceeded 180 days of use in areas of NRC jurisdiction. The inspector explained that HMA appeared to be in violation of NRC requirements under the general license pursuant to 10 CFR 150.20, and that the continued use of portable gauges in NRC jurisdiction would require an NRC specific license. The inspector also noted that HMA's portable gauge use in Hawaii had been ongoing continuously since CY 2011. It appeared that in each CY after 2011, HMA exceeded 180 days of possession or use in Hawaii, a non-Agreement State, and had not ceased activities involving portable gauges or applied for and obtained an NRC specific license. During the inspection, the inspector had a telephonic conversation with one of the HMA principals in Washington State and repeated these observations.

During the telephonic conversation with the inspector, the HMA principal told the Manager to lock up the portable gauges at the end of the work day and not allow the use of portable gauges until the matter with the NRC was resolved. Rather than waiting for the end of the work day, the Manager issued an immediate stop work order for portable gauge use, including notifying the gauge user on Maui to lock up and not use the portable gauge until further notice. On Oahu, all of the portable gauges were gathered

and placed into the gauge storage cabinet in the Aiea facility, which was secured with a lock, and the key was left in the Manager's possession. The inspector explained that under the general license in a non-Agreement State, such as Hawaii, reciprocity activities are limited to a total of 180 days in a CY. The 180 day period includes days of use of the portable gauges as well as days of storage or possession of the portable gauges. Immediately following the onsite inspection, HMA submitted an application to NRC for a specific license for portable gauges.

Based on interviews with HMA employees and a review of documents maintained by HMA and by the NRC, the inspector was able to establish a history of HMA's possession and use of portable gauges in areas of NRC jurisdiction. Records reviewed included a handful of portable gauge use logs for some of the gauges possessed by HMA in Hawaii, records of "permits" and authorizations granted by U.S. military facilities for the use of portable gauges at military facilities in Hawaii, and records of NRC Form 241s that were filed with NRC during CYs 2010-2015.

For CY 2010, HMA filed its initial NRC Form 241 dated November 25, 2009, for portable gauge activities at a work location in Fort Lewis, Washington, for work dates beginning on January 4, 2010. No additional information was identified to establish the actual dates for the work performed at Fort Lewis, or any additional work locations in NRC jurisdiction in CY 2010. There is no indication that HMA established portable gauge operations in Hawaii in CY 2010.

During CY 2011, it appears that HMA first shipped portable gauges from its Washington facility to Aiea, Hawaii, in January 2011. HMA filed its initial NRC Form 241 dated January 21, 2011, for activities at a two work locations: the NOAA facility at Pearl Harbor, from February 15 to December 31, 2011; and Helemano Military Reservation, from March 1, 2011, to September 30, 2011. HMA submitted two additional NRC Form 241s for: Hickam Air Force Base, from November 1 to December 31, 2011; and Hickam Air Force Base, for a different client and work location, from October 27 to December 31, 2011. Documents reviewed by the inspector indicated that there were many additional work dates and additional work locations in Hawaii, including Schofield Barracks and the NOAA facility on Ford Island. Records indicated that at least four portable gauges were in Hawaii starting in January 2011. The possession and use of portable gauges in Hawaii continued throughout the entire CY 2011.

For CY 2012, HMA filed its initial NRC Form 241 dated December 16, 2011, for activities at two work locations: Hickam Air Force Base, Hawaii, from January 1 to March 30, 2012, and (Naval Base) Kitsap, Bangor, Washington, from January 1 to June 15, 2012. Documents reviewed by the inspector indicated that there were many additional work dates and work locations in Hawaii, including Schofield Barracks and a location referred to as "C2F" which may refer to Fort Shafter. Records indicated that five portable gauges were possessed in Hawaii by HMA. The possession and use of portable gauges in Hawaii began on January 1, 2012, and continued throughout the entire CY 2012.

For CY 2013, HMA filed its initial NRC Form 241 dated March 29, 2013, for activities at Fort Shafter, Hawaii, from April 1-December 31, 2013. Documents reviewed by the inspector indicated that there were many additional work dates and work locations in Hawaii including: Schofield Barracks; "WIT"; "BEQ"; "C2F"; Leeward Community College; Ford Island; Helemano; "Building 434"; "kiddie pool"; "VEPH"; "airport"; and

“bridge.” The possession and use of portable gauges in Hawaii began on January 1, 2013, and continued throughout the entire CY 2013.

For CY 2014, HMA filed its initial NRC Form 241 dated October 9, 2014, for activities at Naval Base Kitsap, Washington, from October 20-December 12, 2014. Documents reviewed by the inspector indicated that there were many additional work dates and work locations including: Schofield Barracks; Wahiawa General Hospital; Honolulu International Airport; “NAM FM”; “WIT”; Pier 1; Ala Moana; “BEQ”; Fort Shafter; “DCK airport”; Helemano; NOAA; Leeward Community College; Building 434; “C2F”; MCBH kiddie pool; “VEPH”; “demo”; and “hangar”. The possession and use of portable gauges in Hawaii began on January 1, 2014, and continued throughout the entire CY 2014.

For CY 2015, HMA filed its initial NRC Form 241 dated February 12, 2015, for activities at Naval Base Kitsap, Washington, from February 16 to June 16, 2015. A change request was submitted to NRC dated June 16, 2015, for revised work dates for the same work location. Documents reviewed by the inspector indicated that there were many additional work dates and work locations including: Schofield Barracks; Straub Corporation; airport hangar; Middle Street; Fort Shafter; Farrington; “P320 PH”; and Makakilo. On the date of the inspection, of the eight gauges possessed by HMA in Hawaii, four were on Oahu at another licensee facility for calibration, one was being used at the International Marketplace on Oahu, one was at the HMA facility in Kahului, Maui, and two were in the Aiea, Hawaii, storage cabinet, including one that had been returned to Oahu on October 22, 2015, from HMA portable gauge activities on Kauai. Based on discussions with the Manager, the portable gauge that was returned to Oahu from Kauai had been on Kauai starting in April or July 2015. The possession and use of portable gauges in Hawaii began on January 1, 2015, and continued through the date of the inspection on October 26, 2015.

Four apparent violations of NRC requirements were identified. Additionally, one non-cited violation was discussed. The apparent violations and non-cited violation are described below.

Apparent violation of 10 CFR 150.20(b)(2)

10 CFR 150.20(a)(1) requires, in part, that any person who holds a specific license from an Agreement State, where the licensee maintains an office for directing the licensed activity and retaining radiation safety records, is granted a general license to conduct the same activity in (i) Non-Agreement States [and] (ii) Areas of Exclusive Federal jurisdiction within Agreement States.

10 CFR 150.20(b)(2) requires, in part, that the general licensee shall file an amended NRC Form 241 or letter with the Regional Administrator to request approval for changes in work locations, radioactive material, or work activities different from the information contained on the initial NRC Form 241.

Contrary to the above, in CYs 2011 to 2015, HMA filed an initial NRC Form 241 with the NRC. However, in CYs 2011 to 2015, there were many additional work locations and dates that were not provided to NRC either via an amended NRC Form 241 or letter to the Regional Administrator to request approval for these changes. Additionally, for CY 2014 and CY 2015, HMA did not inform the NRC of any work location in Hawaii, although gauges were stored and used in Hawaii in CY 2014 and CY 2015. The use of

portable gauges in Hawaii during CYs 2011 to 2015 included locations on military facilities as well as numerous non-military locations, including locations on Oahu, Maui, and Kauai.

Apparent violation of 10 CFR 30.3(a)

10 CFR 30.3(a) requires, in part, that no person shall receive, acquire, own, possess, or use byproduct material except as authorized in a specific or general license issued in accordance with the regulations in 10 CFR Part 30.

10 CFR 150.20(b)(4) requires, in part, that the general licensee shall not, under the general license concerning activities in non-Agreement States or in areas of exclusive Federal jurisdiction within Agreement States, possess or use radioactive materials, or engage in the activities authorized by 10 CFR 150.20(a) for more than 180 days in any calendar year.

Contrary to the above, under the general license granted in 10 CFR 150.20, "Recognition of Agreement State licenses," in CYs 2010 to 2015, HMA applied for, and received approval from NRC to conduct portable gauge activities in non-Agreement States and areas of exclusive Federal Jurisdiction within Agreement States and during each CY from 2011 to 2015, HMA engaged in portable gauge activities in Hawaii for more than 180 days. Portable gauges were used and possessed (stored) in Hawaii continuously from approximately January 21, 2011, through the date of the inspection on October 26, 2015. In each CY from 2011 to 2015, when 180 days of use and possession had been exceeded, HMA did not cease its portable gauge activities and remove the portable gauges from NRC jurisdiction. Because the portable gauge activities continued beyond 180 days, an NRC specific license was required. However, HMA failed to apply for a specific NRC license in accordance with the regulations in 10 CFR Part 30.

Apparent violation of 10 CFR 150.20(b)

10 CFR 150.20(b) requires, in part, that general licenses provided in 10 CFR 150.20 are subject to the provisions of 10 CFR Part 71.

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, or where transport is on public highways, or who delivers licensed material to a carrier for transport, shall comply with the applicable requirements of the U.S. Department of Transportation (DOT) regulations in 49 CFR Parts 107, 171 through 180, and 390 through 397, appropriate to the mode of transport.

49 CFR 177.842(d) requires that packages containing Class 7 (radioactive) materials must be so blocked and braced that they cannot change position during conditions normally incident to transportation.

Contrary to the above, although most of the vehicles used by HMA in Hawaii to transport portable gauges to job sites were outfitted with the means to block and brace a portable gauge transportation container, the "Transit" vehicle used by HMA was not, and this vehicle was used to transport portable gauges. The inspector observed that the back of the "Transit" vehicle had a cable that was intended to be used to block and brace the

gauge in the back of the vehicle, but the cable was still unopened in its original plastic packaging. Based on a review of records maintained by HMA, it was identified that this vehicle was used to transport a portable gauge containing Class 7 (radioactive) material on public highways from October 22 to 26, 2015.

Apparent violation of 10 CFR 150.20(b)(5)

10 CFR 150.20(b)(5) requires, in part, that any person engaging in activities in non-Agreement States, or in areas of exclusive Federal jurisdiction within Agreement States, under the general licenses provided in 10 CFR 150.20 shall comply with all terms and conditions of the specific license issued by an Agreement State except such terms or conditions as are contrary to the requirements of 10 CFR 150.20.

State of Washington Radioactive Materials License WN-I0566, Amendment No. 4, dated May 11, 2011, License Condition 14, requires, in part, that the licensee maintain a use/transfer log for each gauge. The use/transfer log shall include, but not be limited to, dates of use, location of use, and name of authorized individual checking out the gauge.

Contrary to the above, on October 26, 2015, the inspector observed that four of the eight gauges possessed by the licensee in Hawaii, a non-Agreement State, had use/transfer logs that did not include all dates of use, locations of use, or name of authorized individual checking out the gauge. There were no logs maintained for the other four gauges possessed by the licensee in Hawaii.

Non-cited violation (NCV) of 10 CFR 150.20(b)

10 CFR 150.20(b) requires, in part, that general licenses provided in 10 CFR 150.20 are subject to all applicable rules, regulations, and orders of the NRC including the provisions of 10 CFR 30.34.

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.

During the October 26, 2015, inspection, the Manager informed the inspector that from January 2011 to approximately May 2015, at its Aiea, Hawaii, facility, six of eight gauges were stored under a workbench that had locking cabinet doors; however, the top of the workbench was not attached, so the lock on the cabinet doors served no meaningful purpose to secure portable gauges from unauthorized removal. The inspector was shown the workbench, the cabinet underneath, and that the top of the workbench was not attached to the workbench itself. The Manager further stated that two additional gauges did not fit in the area under the workbench and were routinely stored on the floor in front of the workbench. In this configuration, when the portable gauges were not under HMA's control and constant surveillance, the doors to the facility provided a single tangible barrier to secure the portable gauges from unauthorized removal. The Manager made these observations when he began his employment with HMA in April 2015, and stated that he immediately began the design and construction of a gauge storage cabinet that would provide 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.

The Manager stated that the new portable gauge storage cabinet was completed in May 2015. The portable gauge storage cabinet was observed by the inspector on October 26, 2015. The cabinet had a locking hasp, and when not under control and surveillance by HMA employees, was within a locked facility.

This violation would normally be characterized as a Severity Level IV violation in accordance with Section 6.3.d. of the NRC Enforcement Policy. However, the violation was identified by HMA personnel, was corrected within a reasonable time after identification, was not a repetitive issue or the result of inadequate corrective action, and it was not willful. Therefore, the NRC is treating this violation as an NCV consistent with Section 2.3.2.b. of the NRC Enforcement Policy.

2.3 Conclusions

In January 2011, HMA commenced using portable gauges in Hawaii, a non-Agreement State. The HMA portable nuclear gauge operations continued uninterrupted in Hawaii until the NRC inspection on October 26, 2015. During its years in Hawaii, HMA expanded its portable gauge operations from its facility on Oahu to include work activities on Maui and Kauai. It also added gauges to its inventory over the years, and continued to use portable gauges in areas of NRC jurisdiction in Washington. In each CY from 2011 to 2015, HMA filed for reciprocity but did not inform NRC of all of its work locations, as required. In each CY from 2011 to 2015, HMA exceeded 180 days of use in NRC jurisdiction, did not cease its portable gauge operations, and failed to apply for an NRC specific license.

Four apparent violations of NRC requirements were identified involving the licensee's failures to: (1) request approval from NRC for changes in work locations or activities different from the information contained in initial NRC Form 241s during multiple CYs; (2) apply for an NRC specific license after exceeding 180 days of possession and use of portable gauges in NRC jurisdiction in a CY; (3) block and brace Class 7 (radioactive) material during transport; and (4) maintain use/transfer logs for each gauge possessed in NRC jurisdiction.

The causal factors for the apparent violations included HMA's: (1) division of work responsibilities for activities in Hawaii; (2) failure to understand the meaning and applicability of the requirements and the limitations for general licensees granted under 10 CFR 150.20; and (3) reliance on U.S. military approvals for portable gauge use at military facilities as an indication or endorsement of NRC regulatory compliance.

There was a division of responsibility for the HMA's activities in Hawaii which, at times, allowed regulatory compliance to go unheeded. In particular, one of the HMA principals was the lead for HMA operations in Hawaii, including those involving portable gauges, but he was not involved in the licensing or reciprocity process. The other HMA principal was the Radiation Safety Officer listed on the State of Washington license and was the individual responsible for making sure that the NRC Form 241s were completed and provided to the NRC. However, this individual was not directly involved with HMA Hawaii operations and did not have complete awareness of the work activities in Hawaii where portable gauges were used.

The HMA principals failed to understand the meaning and applicability of the requirements and the limitations for general licensees granted under 10 CFR 150.20.

This failure was compounded by the failure on the part of the HMA principals to read the instructions for completing the NRC Form 241 and to read and understand the letters from NRC acknowledging initial receipt of NRC Form 241 in each CY. The instructions for completing the NRC Form 241 explain how to use the form and summarize the requirements, and state that activities, including storage, are limited to a total of 180 days in a CY. Additionally, the letter from NRC transmitted to HMA acknowledging receipt of an NRC Form 241 in each CY included statements that informed HMA that under the general license, reciprocity activities including storage are limited to a total of 180 days in a CY. Based on information gathered during the investigation, each principal indicated that he did not understand that 180 days of “use” included the actual days using the portable gauges on projects as well as days storing the gauges in NRC jurisdiction.

Hawaii is a non-Agreement State, and therefore use of portable gauges in Hawaii is under NRC jurisdiction. A number of the projects in Hawaii that HMA used portable gauges on were located on U.S. military facilities. As part of its contractual processes, these military facilities often required HMA to request permission to use portable gauges on its facilities. For example, for several projects on Department of the Army facilities, HMA applied for a “permit” with the Department of the Army to use radioactive materials on those facilities. These permits were granted by the Department of the Army to HMA in multiple CYs. A similar process was followed for U.S. Navy facilities and joint military base facilities. There was a misunderstanding on the part of HMA that these “permits” and military contractual approvals indicated that HMA was in compliance with the NRC regulatory requirements. There was a perception by HMA that these permits and approvals would not have been granted if HMA wasn’t in good standing with the NRC. The inspector’s review concluded that the military permits and approvals were issued to fulfil contractual obligations, such as verifying that HMA had operating and emergency procedures for portable gauges, and that leak tests for sealed sources in portable gauges were current. Because the U.S. military facilities are not the regulatory body for portable gauge use, the military facilities did not question or verify whether HMA had filed for reciprocity with the NRC in the subject CY, if HMA had exceeded 180 days in NRC jurisdiction in the subject CY, or if HMA had an NRC specific license, nor would they be expected to make such requests. However, HMA appears to have relied on these military approvals to use portable gauges at military facilities in Hawaii as an endorsement of NRC regulatory compliance.

The apparent violations represent a significant impact on NRC’s regulatory process. Had HMA been updating the NRC with the changes in work locations and dates of actual gauge use and storage, the NRC would have had the opportunity to identify that 180 days had been or was going to be exceeded. The NRC could have explained the options to HMA for either ceasing portable gauge activities (including use and storage) in NRC jurisdiction or applying for an NRC specific license. Because HMA’s portable gauge activities in Hawaii exceeded 180 days, and HMA failed to apply for an NRC specific license, the NRC could not use appropriate regulatory tools to address the noncompliance because the NRC was unaware that the noncompliance existed. Additionally, for CY 2014 and CY 2015, the licensee did not inform the NRC of any work location in Hawaii although gauges were stored and used in Hawaii in both CYs for more than 180 days.

Additionally, one NCV was noted related to the security requirements for portable gauges. The violation was identified by HMA personnel, was corrected within a reasonable time after identification, was not repetitive or the result of inadequate corrective action, and it was not willful. Therefore, the violation is being treated as an NCV consistent with Section 2.3.2.b. of the NRC Enforcement Policy.

3 Corrective Actions

On October 26, 2015, during the inspection, the NRC inspector had a telephone conversation with one of the HMA principals in Redmond, Washington, and explained that HMA had exceeded 180 days of use in NRC jurisdiction in CY 2015, and in multiple previous years starting in CY 2011, and appeared to be in violation of NRC regulatory requirements. In response, the HMA principal issued a stop work order for the portable gauges to be placed into storage at the end of the business day. The Manager issued an immediate stop work order and collected the portable gauges from the work locations on Oahu and placed them into storage. The Manager also called the HMA gauge user on Maui and informed the gauge user to place the gauge on Maui into storage until further notice. Once all of the portable gauges on Oahu were collected and placed into the locked storage cabinet, the Manager confirmed this with the inspector and placed a lock that only he had the keys to on the cabinet.

On October 26, 2015, following the onsite NRC inspection, HMA submitted an application for a specific license for portable gauge use in locations where the NRC maintains jurisdiction for regulating the use of licensed material, including areas of exclusive Federal jurisdiction within Agreement States. The application identified HMA facilities in Aiea, Hawaii (Oahu), and Kahului, Hawaii (Maui) as storage locations. Following an expedited license application review process, NRC specific byproduct materials license No. 46-35280-01 was issued to HMA on October 30, 2015.

Additionally, at the conclusion of the onsite inspection, the Manager committed to: (1) provide appropriate means for its gauge users to properly block and brace gauges while in transport in each HMA vehicle; and (2) develop and maintain use logs for each portable gauge possessed by the licensee in Hawaii.

The inspector returned to the facility on October 30, 2015, and verified that following the October 26, 2015, inspection the gauges on Oahu and Maui were placed into storage. The inspector reviewed the terms and conditions of the new NRC license with the Manager.

On June 20, 2016, the initial inspection of the NRC specific license was performed and documented in NRC Inspection report 030-38881/2016-001. No violations were identified.

4 Exit Meeting Summary

On March 15, 2017, a final telephonic exit meeting was conducted with the licensee to discuss the apparent violations. The NRC representatives also described the enforcement process and the options for the licensee to provide a written response, request to attend a predecisional enforcement conference with NRC, or request ADR with NRC.

Supplemental Inspection Information

PARTIAL LIST OF PERSONS CONTACTED

James A. McElroy, Principal
Gurdip "Gee" Hayre, Principal
Keith Blazer, Manager, Hawaii Division

INSPECTION PROCEDURES USED

87124 Fixed and Portable Gauge Programs

ITEMS OPENED, CLOSED, AND DISCUSSED

Opened

030-38881/2015-001-01	APV	Failure to file an amended NRC Form 241 to request approval for changes in work locations, radioactive material, or work activities different from the information contained on the initial NRC Form 241. (10 CFR 150.20(b)(2))
030-38881/2015-001-02	APV	Failure to possess and use byproduct material except as authorized in a specific or general license issued in accordance with the regulations in 10 CFR Part 30. (10 CFR 30.3(a))
030-38881/2015-001-03	APV	Failure to comply with 10 CFR Part 71 to block and brace Class 7 (radioactive) materials during transportation. (10 CFR 150.20(b))
030-38881/2015-001-04	APV	Failure to comply with all terms and conditions of the specific license issued by an Agreement State regarding the maintenance of use/transfer logs for each gauge. (10 CFR 150.20(b)(5))

Closed

None

Opened and Closed

030-38881/2015-001-05	NCV	Failure to comply with 10 CFR 30.34(i) to use a minimum of two independent physical controls to secure portable gauges from unauthorized removal, whenever portable gauges are not under control and constant surveillance. (10 CFR 150.20(b))
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LIST OF ACRONYMS USED

ADAMS	Agencywide Documents Access and Management System
APV	Apparent Violation
CFR	<i>Code of Federal Regulations</i>
CY	calendar year
HMA	Hayre McElroy & Associates, LLC
NCV	Non-Cited Violation
NRC	Nuclear Regulatory Commission
PEC	Predecisional Enforcement Conference
RSO	Radiation Safety Officer

FACTUAL SUMMARY OF OI INVESTIGATION
REPORT 4-2016-006

On November 20, 2015, the U.S. Nuclear Regulatory Commission (NRC) Office of Investigations (OI) Region IV Field Office initiated an investigation to determine whether three individuals (Individuals 1, 2, and 3) at Hayre McElroy & Associates, LLC, (HMA) willfully caused HMA to fail to obtain an NRC license prior to using nuclear gauges in Hawaii, an area of exclusive Federal jurisdiction. The investigation was completed on November 18, 2016, and documented in OI Report 04-2016-006.

On October 26, 2015, at the licensee's facility in Aiea, Hawaii, inspectors determined that from calendar year 2011 to 2015 HMA failed to request approval from the NRC for changes in work locations or activities different from the information contained in initial NRC Form 241s and failed to apply for an NRC specific license after exceeding 180 days of possession and use of portable gauges in an area of NRC jurisdiction.

During the investigation, Individual 1 acknowledged that shortly after being hired, the individual determined that HMA was not in compliance federal regulations. Individual 1 shared this information with Individuals 2 and 3. Individual 1 testified that Individuals 2 and 3 were convinced that HMA was in compliance with their state of Washington license and an NRC Form 241, but did not oppose Individual 1's search for information on whether HMA was in compliance. In July 2015, Individual 1, who believed that HMA was not in compliance with NRC regulations, corresponded with the NRC, Region IV office about the steps for acquiring an NRC License. HMA eventually applied for an NRC license after the October 26, 2015, onsite inspection.

Individuals 2 and 3 testified that they did not fully understand the federal nuclear licensing requirements. Specifically, they did not understand that the 180 day limit applied to possession of nuclear gauges as well as use. Based on testimony and evidence developed during the investigation, the NRC determined that Individuals 2 and 3 willfully (careless disregard) violated NRC requirements resulting in HMA possessing nuclear gauges containing byproduct material in Hawaii without a license.