

April 21, 2017

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U.S. Nuclear Regulatory Commission  
ATTN: Document Control Desk  
Washington, DC 20555 0001

**Subject: Response to an Apparent Violation  
NRC Inspection Report 030-38881/2015-001  
EA-16-258**

Dear Mr. Shaffer:

Please accept this written response to Apparent Violations identified in the referenced report addressing Hayre McElroy & Associates, LLC (HMA) nuclear densometer use and licensure in Hawaii. The following sections of this letter address each of the four (4) Apparent Violations with HMA's resolution and/or steps being taken to reach full compliance.

**Apparent Violation of 10 CFR 150.20(b)(2)**

*1. Reason for Violation*

As a licensee in an Agreement State, HMA staff errantly assumed submitting NRC Form 241, when operating on Federal military property, was sufficient to allow our firm to operate a nuclear densometer in Hawaii. All of HMA's projects for the first 2+ years while operating in Hawaii, and requiring use of a nuclear densometer, were military projects on Federal military bases. Access on base with a nuclear densometer required approval from base safety personnel and submission of an approved NRC 241. Because of the military requirement to provide NRC Form 241, HMA applied for this temporary change in work location. Department of Defense ongoing acceptance of HMA's NRC 241 further led the firm to believe we were operating in a proper manner.

While not an acceptable excuse, HMA personnel functioned for several years under the belief that because Hawaii did not have a department that oversaw and licensed the use of nuclear densometers, like Washington State, that licensure was not necessary and the NRC 241 was only needed when required by military bases. Our firm's only experience with licensure for nuclear densometers is with State of Washington, where the local state agency instructs firms on the requirements and make the process very simple and straightforward. It is not unusual for Hawaii

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to not operate in the way mainland states operate and, unfortunately, we assumed in error that this was a similar case of local, Hawaii government not managing processes such as licensure for nuclear densometer use.

Regardless of this misunderstanding, we accept the NRC's decision that HMA personnel carelessly disregarded the requirements. While this is stated as a willful violation, we hope the NRC understands that HMA personnel were not willfully trying to violate law, avoid being identified, or avoid paying fees. We have a strong business with 38 staff and our reputation is critical to our firm. The effort to become licensed and the cost associated are extremely minor when compared to the risk a firm would take on by trying to avoid proper licensure.

In summary, while we understand our errors are completely unacceptable, we simply did not realize our errors and, until the time that the firm hired Keith Blazer, we did not employ the proper personnel in Hawaii to identify the requirements, need for licensure, and proper direction to resolve our internal licensure issue.

### 2./3. Corrective Steps

As stated in the NRC's report, HMA staff took immediate action once alerted to our violation(s) on October 26, 2015. We immediately had all gauges returned to our lab for proper securing, and in less than 24 hours had completed all requirement of the application for NRC licensure. The NRC assisted greatly in expediting our application, and provided licensure to HMA on October 30, 2015 (license No. 46-35280-01). Since applying for licensure, HMA has maintained 100% compliance with all licensure and legal requirements.

### 4. Date of Full Compliance

HMA was in full compliance on October 30, 2015 when the NRC issued licensure.

## **Apparent Violation of 10 CFR 30.3(a)**

### 1. Reason for Violation

HMA staff believed use of NRC Form 241 provided 180 usage days of nuclear densometer usage, rather than the allowable 180 calendar days. All projects which HMA provides services require significantly less than 180 days of gauge usage, and in many cases less than 10 individual days of gauge usage, if at all. HMA continued to use temporary licensure via NRC Form 241 for durations greater than 180 calendar days under the belief that the licensure was valid until 180 usage days had been reached.

In the Summer of 2015, Keith Blazer, a new hire to HMA, brought his experience and knowledge of the NRC requirements to HMA and raised concern regarding use of NRC Form 241 as opposed to licensure directly for NRC for gauge use in Hawaii. HMA senior personnel did not understand that the firm's gauge usage in Hawaii was not per NRC requirements, and allowed Mr. Blazer to further investigate the issue. When presented with information from Mr. Blazer that HMA did in fact need to file for a separate license for Hawaii, the firm's senior staff listened and accepted Mr. Blazer's conclusions; however, the firm did not act in a timely manner due to several circumstances, most notably a simple lack of understanding of the significance of the situation by senior personnel.

At the time of the NRC's audit on October 25, 2015, HMA was in the process of preparing all documents and reconstructing our storage cabinet facilities in preparation of filing for NRC licensure in Hawaii. This preparation prior to NRC's arrival is the sole reason HMA was prepared to apply within 24 hours of the audit, and show the NRC's auditor complete compliance with all aspects of NRC requirements.

As a firm, we understand the errors we made in assuming we could continue to function in Hawaii the way the firm did with use of gauges. We made mistakes, we corrected our mistakes, and we are prepared to accept the NRC's judgement in how HMA is to be penalized for the mistakes made.

### 2./3. Corrective Steps

As stated in the NRC's report, HMA staff took immediate action once alerted to our violation(s) on October 26, 2015. We immediately had all gauges returned to our lab for proper securing, and in less than 24 hours had completed all requirement of the application for NRC licensure. The NRC assisted greatly in expediting our application, and provided licensure to HMA on October 30, 2015 (license No. 46-35280-01). Since applying for licensure, HMA has maintained 100% compliance with all licensure and legal requirements.

### 4. Date of Full Compliance

HMA was in full compliance on October 30, 2015 when the NRC issued licensure.

## **Apparent Violation of 10 CFR 150.20(b)**

### 1. Reason for Violation

Prior to hiring Keith Blazer, in April of 2015, HMA employed Aaron Sundberg as our Operations Manager of Hawaii. The primary reason for hiring Mr. Blazer was due to Mr. Sundberg's lack of focus and commitment to his management position. Lack of proper log management for use our nuclear gauges was one of many things that HMA's senior staff came to learn Mr. Sundberg was failing to maintain. While our gauges were properly returned to our office for storage each day they were removed for use, the proper sign-in/sign-out and transfer logs were not being maintained by Mr. Sundberg, who in addition to being the operations manager, was also our Hawaii RSO.

HMA's senior management fully realizes that these short comings should have been identified and remedied. Unfortunately, until hiring Mr. Blazer, these violations were not realized. Shortly following his start with HMA, Mr. Blazer put a strong focus on identifying areas of our nuclear safety program needing improvement or correction. Organizing proper transfer documents and use logs were underway within a couple months of Mr. Blazer's hire, and were in compliance when audited.

### 2./3. Corrective Steps

Within 1 to 2 months of Keith Blazer joining HMA, he began organizing all nuclear densometer transfer and use documents and enforcing use of these documents. We should note that all transfer documents have been maintained by HMA; however, Mr. Sundberg's files were very disorganized and lacked the necessary documents. HMA's corporate office maintains copies of these transfer documents of gauges shipped from Washington or purchased from manufacturers. At the time of the October 25 audit, all paperwork was organized and in order with the exception of transfer documents (copies retained by corporate office) and use logs prior to Mr. Blazer's hire.

### 4. Date of Full Compliance

HMA was in full compliance prior to October 26, 2015 for use on or after about May 1, 2015. We cannot legitimately update use logs prior to the date this became mandatory, but following about May 1, 2015 the logs have been used without exception and will continue to be used for the duration that HMA owns nuclear materials (gauges).

## **Apparent Violation of 10 CFR 150.20(b)(5)**

### **2. Reason for Violation**

A technician in HMA's Aiea, HI office was using a Ford Transit commercial vehicle for travel between the office and job sites. While the vehicle was equipped with a cable and lock to block and brace the nuclear densometer in the back of the vehicle, HMA's technician chose to not employ the blocking/bracing and created the violation.

We should note that at the time of the audit, HMA owned only one Ford Transit. At the time of the audit, and presently, all other fleet vehicles were trucks or hatch-back cars. All trucks use chains to block and brace gauge boxes and locks to secure the gauges. All hatch-back cars use the truck-area of the car as blocking and bracing, and further lock the gauge box to a hold-down installed in the interior of the vehicle.

It is our belief that the violation was an unusual occurrence. All other technicians were properly bracing, blocking, and securing gauges in their vehicles. The HMA technician using the Ford Transit was reprimanded, put through a retraining process, and monitored to verify all bracing, blocking, and securing was conducted in accordance with NRC requirements.

### **2./3. Corrective Steps**

Immediately upon the issue being identified by the NRC auditor, HMA management corrected the issue with our technician, and monitored adherence to requirements on a daily basis. HMA senior personnel was unable to identify block, bracing, or securing issues with any other staff and their equipment. Since the date of violation, HMA has remained in compliance and continues to educate staff on proper bracing and blocking during routine training and hiring of new personnel.

### **4. Date of Full Compliance**

HMA was in full compliance on October 26, 2015, immediately after the issue was identified by the NRC.

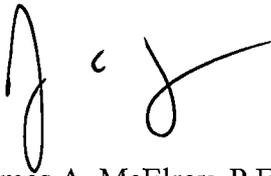
## **Closure**

Since our initial, unannounced audit in October 2015, HMA's Aiea office has since been audited. On June 20, 2016, NRC Inspector James Thompson audited our facility and records and found our firm to be 100% in compliance with NRC requirements.

We hope the NRC finds these written responses to be acceptable. HMA greatly values its credibility, quality, and professionalism. The issues we have had with NRC compliance have weighed heavily on HMA staff involved in these activities. We look forward to resolution and moving forward with a fully-compliant nuclear materials program. Please contact the undersigned should you have any questions or concerns.

Sincerely,

**HAYRE MCELROY & ASSOCIATES, LLC**

A handwritten signature in black ink, appearing to read 'J. McElroy', with a stylized flourish at the end.

James A. McElroy, P.E  
Principal

Copy:

Mr. Mark R. Shaffer, Director  
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