UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
1600 EAST LAMAR BOULEVARD
ARLINGTON, TEXAS 76011-4511

November 15, 2019

EA-19-049

Mr. Justin P. Bastian, Principal
Xcell Engineering, LLC
260 Laurel Lane
Chubbuck, Idaho 83202

SUBJECT: NRC INSPECTION 030-38919/2019-001, NOTICE OF VIOLATION AND EXERCISE OF ENFORCEMENT DISCRETION

Dear Mr. Bastian:

This letter refers to the unannounced inspection conducted on February 12, 2019, at your facility in Chubbuck, Idaho, with in office review through September 30, 2019. The inspection was an examination of activities conducted under your license as they relate to public health and safety, to confirm compliance with the U.S. Nuclear Regulatory Commission's (NRC's) rules, regulations, and with the conditions of your license. Within these areas, the inspection consisted of observations of activities, independent radiation surveys, and interviews with personnel. The preliminary inspection findings were discussed with you at the conclusion of the onsite portion of the inspection on February 12, 2019. A final telephonic exit briefing was conducted with you on September 30, 2019.

Based on the results of this inspection, the NRC has determined four Severity Level IV violations of NRC requirements occurred. These violations are cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding them are described in detail in the subject inspection report. Additionally, these violations were evaluated in accordance with the NRC Enforcement Policy, which can be found at the NRC's Web site at http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html.

The violations involved the failures to: (1) use two independent physical controls that form tangible barriers to secure a portable nuclear gauge from unauthorized removal when the nuclear gauge was not under the control and constant surveillance of the licensee; (2) provide U.S. Department of Transportation hazmat training to applicable personnel at least every 3 years; (3) provide a correct United Nations Identification Number on the U.S. Department of Transportation Bill of Lading; and (4) conduct annual reviews of the radiation protection program.

With respect to the violation associated with the two independent physical controls required by Title 10 of the *Code of Federal Regulations* (10 CFR) 30.34(i), the NRC Enforcement Policy provides a Severity Level III violation for repetitive violations of this requirement. The NRC issued Xcell Engineering, LLC a Severity Level IV violation in NRC Inspection Report 030-38919/2016-001 (NRC's Agencywide Documents Access and Management System (ADAMS) Accession No. ML16337A096), dated December 5, 2016, for the same requirement.

However, after considering the facts and circumstances of the current enforcement action, and in consultation with the Director of the NRC's Office of Enforcement, I have been authorized to exercise enforcement discretion in accordance with Section 3.0 of the Enforcement Policy, "Use of Enforcement Discretion," and assess the violation at Severity Level IV. Please note that another similar violation of this requirement will be subject to escalated enforcement action and a civil penalty.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. The guidance in NRC Information Notice 96-28, "Suggested Guidance Relating to Development and Implementation of Corrective Action," may be helpful in preparing your response. You can find the Information Notice on the NRC website at: http://www.nrc.gov/docs/ML0612/ML061240509.pdf. 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 (was) achieved should be addressed. The NRC review of your response to the Notice will also determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

In accordance with 10 CFR 2.390 of the NRC's "Agency Rules of Practice and Procedure," a copy of this letter, its enclosures, and your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's ADAMS, accessible from the NRC Web site at http://www.nrc.gov/reading-rm/adams.html.

Should you have any questions regarding this letter or the enclosures, please contact Jason vonEhr at 817-200-1186, or the undersigned at 817-200-1287.

Sincerely,

/RA/

Linda L. Howell, Deputy Director
Division of Nuclear Materials Safety

Docket: 030-38919
License: 11-29226-02

Enclosures:
1. Notice of Violation
2. NRC Inspection Report 030-38919/2019-001

cc w/ enclosures:
Kerry L. Martin, Manager
Idaho Dept. of Environmental Quality

NRC INSPECTION 030-38919/2019-001, NOTICE OF VIOLATION AND EXERCISE OF ENFORCEMENT DISCRETION - DATED November 15, 2019

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NOTICE OF VIOLATION

Xcell Engineering, LLC
Chubbuck, ID

Docket No. 030-38919
License No. 11-29226-02
EA-19-049

During an NRC inspection conducted on February 12, 2019, with in-office review through September 30, 2019, four violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

A) 10 CFR 30.34(i) 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 control and constant surveillance of the licensee.

Contrary to the above, on February 12, 2019, the licensee failed to 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 control and constant surveillance of the licensee. Specifically, the licensee had a portable gauge secured in a wooden cabinet that formed only one tangible barrier, while the gauge was not under control and constant surveillance of the only individual in the licensee's facility.

This is a Severity Level IV violation (NRC Enforcement Policy Section 6.3.d)

B) 10 CFR 71.5(a), requires, in part, that each licensee who transports licensed material outside of 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 U.S. Department of Transportation regulations in 49 CFR Parts 107, 171 through 180, and 390 through 397, appropriate to the mode of transport.

49 CFR 172.704(c)(2) requires, in part, that a hazmat employee must receive the training required by 49 CFR Part 172, Subpart H, at least once every 3 years.

Contrary to the above, from March 6, 2018, through February 12, 2019, the licensee failed to provide a hazmat employee the training required by 49 CFR Part 172, Subpart H, at least once every 3 years. Specifically, a licensee employee transported Class 7 (radioactive) material on multiple occasions outside the site of usage, as specified in the NRC license, and the employee last received the required training on March 5, 2015, a period in excess of 3 years.

This is a Severity Level IV violation (NRC Enforcement Policy Section 6.8.d)

C) 10 CFR 71.5(a), requires, in part, that each licensee who transports licensed material outside of 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 U.S. Department of Transportation regulations in 49 CFR Parts 107, 171 through 180, and 390 through 397, appropriate to the mode of transport.

49 CFR 177.817(a) requires, in part, that a person may not accept a hazardous material for transportation or transport a hazardous material by highway unless that person has received a shipping paper prepared in accordance with 49 CFR Part 172.

49 CFR 172.202(a) requires, in part, that the licensee's shipping paper must include a shipping description of the hazardous material, including the identification number prescribed for the material as shown in Column (4) of the 49 CFR 172.101 table.

Contrary to the above, on numerous occasions from November 16, 2016, through February 12, 2019, the licensee failed to prepare shipping papers in accordance with 49 CFR Part 172 prior to transporting hazardous materials by public highway. Specifically, the licensee's shipping papers included an identification number (UN2974) that was incorrect; the Type-A package, special form, non-fissile or fissile-excepted radioactive material transported by the licensee was UN3332.

This is a Severity Level IV violation (NRC Enforcement Policy Section 6.8.d)

D) 10 CFR 20.1101(c) requires that the licensee periodically (at least annually) review the radiation protection program content and implementation.

Contrary to the above, from January 1, 2017, through February 12, 2019, the licensee failed to periodically (at least annually) review the radiation protection program content and implementation.

This is a Severity Level IV violation (NRC Enforcement Policy Section 6.3.d)

Pursuant to the provisions of 10 CFR 2.201, Xcell Engineering, LLC, is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001, with a copy to the Regional Administrator, Region IV, 1600 E. Lamar Blvd., Arlington, Texas 76011, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include: (1) the reason for the violations, or, if contested, the basis for disputing the violation or severity level; (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 previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued requiring information as to why the license should not be modified, suspended, or revoked, or why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

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, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

Your response 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 or proprietary information so that it can be made available to the public without redaction.

If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that

should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information).

In accordance with 10 CFR 19.11, you may be required to post this Notice within 2 working days of receipt.

Dated this 14th day of November 2019

U.S. NUCLEAR REGULATORY COMMISSION
REGION IV

Docket:	030-38919
License:	11-29226-02
Report:	2019-001
EA No.:	19-049
Licensee:	Xcell Engineering, LLC
Locations Inspected:	260 Laurel Lane, Chubbuck, Idaho
Inspection Date:	February 12, 2019, with in-office review through September 30, 2019
Exit Meeting:	September 30, 2019
Inspector:	Jason vonEhr, Health Physicist Materials Inspection Branch Division of Nuclear Materials Safety
Approved By:	Patricia A. Silva, Chief Materials Inspection Branch Division of Nuclear Materials Safety
Attachment:	Supplemental Inspection Information

EXECUTIVE SUMMARY

Xcell Engineering, LLC
NRC Inspection Report 030-38919/2019-001

This was an unannounced routine inspection of Xcell Engineering, LLC. The inspection was conducted at a shortened inspection interval as a result of the issues identified during the previous routine inspection on November 15-16, 2016.

Program Overview

Xcell Engineering, LLC. is authorized under U.S. Nuclear Regulatory Commission Materials License Number 11-29226-02 to possess and use byproduct materials, including cesium-137 and americium-241, for use in portable nuclear gauges to measure physical properties of materials. Licensed activities are authorized to be performed at the licensee's Chubbuck, Idaho, facility, as well as at temporary job sites in areas of NRC jurisdiction. (Section 1)

Inspection Findings

Four Severity Level IV violations of NRC requirements were identified, which included failures to: (1) use two independent physical controls that form tangible barriers to secure a portable nuclear gauge from unauthorized removal when the nuclear gauge was not under the control and constant surveillance of the licensee; (2) provide U.S. Department of Transportation hazmat training to applicable personnel at least every 3 years; (3) provide a correct United Nations Identification Number on the U.S. Department of Transportation Bill of Lading; and (4) conduct annual reviews of the radiation protection program. (Section 2)

Corrective Actions

During the inspection, the licensee immediately provided a second independent physical control for a portable nuclear gauge that was identified to be in non-compliance. The licensee immediately provided U.S. Department of Transportation hazmat training to applicable personnel and committed to correcting the template Bill of Lading used for U.S. Department of Transportation transport in a timely manner. In addition, the licensee submitted a series of emails providing formal documentation of the hazmat training, the additional physical control on the nuclear gauge storage cabinet, and the corrected template Bill of Lading used in transportation of the nuclear gauges. (Section 4)

REPORT DETAILS

1. Program Overview (Inspection Procedure 87124)

1.1. Program Scope

Xcell Engineering, LLC. is authorized under U.S. Nuclear Regulatory Commission (NRC) Materials License Number 11-29226-02 to possess and use byproduct materials, including cesium-137 and americium-241, for use in portable nuclear gauges to measure physical properties of materials. Licensed activities are authorized to be performed at the licensee's Chubbuck, Idaho, facility, as well as at temporary job sites in areas of NRC jurisdiction.

Although Xcell Engineering, LLC. was still authorized at the time of the inspection for a second address in Rexburg, Idaho, the licensee's business relationship with that facility and its principal had ended since the 2016 NRC inspection. This was corrected by the licensee submitting a license amendment request to NRC Region IV to remove this location from the license via email on March 13, 2019. The licensee's amendment request was finalized and issued by the NRC on June 4, 2019.

1.2. Inspection Scope

On February 12, 2019, the NRC performed a routine, unannounced inspection of Xcell Engineering, LLC, at its facility in Chubbuck, Idaho, with in-office reviews through September 30, 2019. The inspection was conducted at a shortened inspection interval as a result of the issues identified during the previous routine inspection on November 15-16, 2016 (see NRC Inspection Report 030-38919/2016-001, at the NRC's Agencywide Documents Access and Management System (ADAMS) Accession ML16337A096).

The scope of the inspection was to perform a review of the licensee's radiation safety program. Within this area, the inspection included an examination of activities conducted under the Xcell Engineering, LLC. license as they relate to public health and safety, and to confirm compliance with the NRC's rules, regulations, and with the conditions of the NRC license. The inspection consisted of a selected examination of procedures and representative records, observations of activities at the facility, independent radiation measurements, and interviews with licensee personnel.

2. Observations and Findings

2.1. Main-Office Review

Licensed activities in Chubbuck, Idaho facility included the possession and storage of licensed radioactive materials in the form of portable gauges.

The licensee's facility was a small warehouse, with the East portion converted into two floors of office space; the second floor was partially open to the warehouse. The West portion was a large open space for a materials laboratory and portable gauge storage.

The facility, as was the case during the November 15-16, 2016, NRC inspection, was unlocked upon arrival of the inspector, and as in 2016, the NRC inspector found the owner and radiation safety officer (RSO) in a closed office on the second floor. Since the individual was the only person in the building, and he was in a closed office away from the gauge storage area, he was not providing control and constant surveillance of the portable gauges.

The owner escorted the inspector to the wooden cabinet where the portable gauges were stored and opened the first padlock securing the cabinet doors shut. Inside the cabinet were three portable gauge transport cases, one of which was empty. The two other transport cases contained an Instrotek Model 3500 and a Troxler Model 3440 portable gauge. Inside the cabinet was also a metal cable fixed to the cabinet wall which was to secure the portable gauges to the cabinet by way of the padlock against the transport cases' hasp, thus providing two independent physical controls that form tangible barriers in accordance with Title 10 of the *Code of Federal Regulations* (10 CFR) 30.34(i). One of the two portable gauges was secured this way.

The second transport case containing the Troxler Model 3440 portable gauge had the metal cable and padlock in place, but the padlock was in an open and, thus, unsecured state. For this portable gauge, the single physical control to prevent the removal was the padlock on the wooden cabinet. The RSO attempted with difficulty to secure the padlock, as the locking mechanism was 'sticky' and challenging to close. The RSO presumed he had closed the padlock when he was last in the cabinet and stated that he assumed that he had pushed the padlock to shut but had not engaged the lock fully.

2.2. Violations Identified in 2019

Four Severity Level IV violations of NRC requirements were identified during the 2019 inspection, which included failures to: (1) use two independent physical controls that form tangible barriers to secure a portable nuclear gauge from unauthorized removal when the nuclear gauge was not under the control and constant surveillance of the licensee; (2) conduct annual reviews of the radiation protection program; (3) provide U.S. Department of Transportation hazmat training to applicable personnel at least every 3 years; and (4) provide a correct United Nations Identification Number on the U.S. Department of Transportation Bill of Lading.

2.2.1. Violation of 10 CFR 30.34(i)

The inspector determined during the beginning of the inspection that the owner being in a second-floor closed office could not have provided control and constant surveillance to the portable gauge storage closet. Because of the lack of control and constant surveillance, the inspector determined that the two independent physical controls that form tangible barriers under 10 CFR were required to be in-place. While the previous inspection in 2016 also identified a violation of 10 CFR 30.34(i), the root causes of the two noncompliances were different, as discussed below in Section 2.3.1. The 2019 violation is described below.

> 10 CFR 30.34(i) 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 control and constant surveillance of the licensee.

> Contrary to the above, on February 12, 2019, the licensee failed to 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 control and constant surveillance of the licensee. Specifically, the licensee had a portable gauge secured in a wooden cabinet that formed only one tangible barrier, while the gauges were not under control and constant surveillance of the only individual in the licensee's facility.

The licensee's failure to secure a portable gauge with a minimum of two independent physical controls while not under control and constant surveillance was identified as a Severity Level IV violation of 10 CFR 30.34(i). (030-38919/2019-001-01)

The NRC Enforcement Policy provides a Severity Level III violation for repetitive violations of this requirement. The NRC issued Xcell Engineering, LLC a Severity Level IV violation in NRC Inspection Report 030-38919/2016-001 (NRC's Agencywide Documents Access and Management System (ADAMS) Accession No. ML16337A096), dated December 5, 2016, for the same requirement.

However, after considering the facts and circumstances of the current enforcement action, and in consultation with the Director of the NRC's Office of Enforcement, the NRC is choosing to exercise enforcement discretion in accordance with Section 3.0 of the Enforcement Policy, "Use of Enforcement Discretion," and assess the violation at Severity Level IV.

2.2.2. Violation of 10 CFR 20.1101(c)

Although the inspector requested copies of the licensee's audit or self-review of its radiation protection program on several occasions between the date of the inspection and April 24, 2019, no record was produced by the licensee to address this requirement. As a result, the violation below was identified:

> 10 CFR 20.1101(c) requires that the licensee periodically (at least annually) review the radiation protection program content and implementation.
>
> Contrary to the above, from January 1, 2017, through February 12, 2019, the licensee failed to periodically (at least annually) review the radiation protection program content and implementation. (030-38919/2019-001-02)

2.2.3. Violation of 49 CFR 172.704(c)(2)

The inspector reviewed the list of current and former gauge users who were active in using the gauges since the last inspection, and reviewed the training provided to each. The inspector determined that the RSO, who was in non-compliance with his U.S. DOT hazmat refresher training during the 2016 inspection, was still current and active with this training as a result of the corrective actions taken following the 2016 inspection.

However, a second gauge user did not have current U.S. DOT hazmat refresher training. The second gauge user's compliant U.S. DOT hazmat training had expired prior to the inspection. The gauge user had completed a separate course for annual safety refresher via an online course through a third party in 2016 and 2017. The RSO and

gauge user mistakenly believed this online course satisfied the U.S. DOT training requirements. However, this course did not cover aspects of transportation, and therefore, did not satisfy the U.S. DOT training requirements. While the previous inspection in 2016 also identified a violation of 49 CFR 172.704(c)(2), the root causes of the two noncompliances were different, as discussed below in Section 2.3.3. As a result of all the above, the NRC identified a Severity Level IV violation, which is described below.

> 10 CFR 71.5(a), requires, in part, that each licensee who transports licensed material outside of 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 U.S. Department of Transportation regulations in 49 CFR Parts 107, 171 through 180, and 390 through 397, appropriate to the mode of transport.
>
> 49 CFR 172.704(c)(2) requires, in part, that a hazmat employee must receive the training required by 49 CFR Part 172, Subpart H, at least once every 3 years.
>
> Contrary to the above, from March 6, 2018, through February 12, 2019, the licensee failed to provide a hazmat employee the training required by 49 CFR Part 172, Subpart H, at least once every 3 years. Specifically, a licensee employee transported Class 7 (radioactive) material on multiple occasions outside the site of usage, as specified in the NRC license, and the employee last received the required training on March 5, 2015, a period in excess of 3 years. (030-38919/2019-001-03)

2.2.4. Violation of 49 CFR 172.202(a)

During the inspector's review of the licensee's transportation practices as they related to the transport of Class 7 (radioactive) materials, the inspector identified an issue related to the content in the licensee's shipping papers. The shipping papers in use and on-site used an old, out-of-date UN identification number: UN2974.

It was unclear to the inspector how long the incorrect UN identification number was in use. The correct UN identification number for the licensee's shipments, which would be classified as Type-A packages, special form, non-fissile or fissile-excepted radioactive materials, is UN3332, as described in the U.S. DOT regulations in the table of hazardous materials under 49 CFR 172.101. The licensee's use of the incorrect UN identification number in its description provided in the shipping papers for the transport of Class 7 (radioactive) materials was identified as a violation the U.S. DOT requirements and is described below:

> 10 CFR 71.5(a), requires, in part, that each licensee who transports licensed material outside of 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 U.S. Department of Transportation regulations in 49 CFR Parts 107, 171 through 180, and 390 through 397, appropriate to the mode of transport.
>
> 49 CFR 177.817(a) requires, in part, that a person may not accept a hazardous material for transportation or transport a hazardous material by highway unless that person has received a shipping paper prepared in accordance with 49 CFR Part 172.

49 CFR 172.202(a) requires, in part, that the licensee's shipping paper must include a shipping description of the hazardous material, including the identification number prescribed for the material as shown in Column (4) of the 49 CFR 172.101 table.

Contrary to the above, on numerous occasions from November 16, 2016, through February 12, 2019, the licensee failed to prepare shipping papers in accordance with 49 CFR Part 172 prior to transporting hazardous materials by public highway. Specifically, the licensee's shipping papers included an identification number (UN2974) that was incorrect; the Type-A package, special form, non-fissile or fissile-excepted radioactive material transported by the licensee was UN3332 (030-38919/2019-001-04)

2.3. Review of Violations from Inspection Report 030-38919/2016-001

The inspector reviewed the previous inspection findings from NRC Inspection Report 030-38919/2016-001, which documented the licensee's failures to: (1) secure a portable gauge with two tangible barriers when not under direct control and surveillance; (2) maintain utilization logs in accordance with license commitments; (3) provide U.S. Department of Transportation (DOT) hazmat refresher training every 3 years; (4) prepare shipping papers prior to transporting Class 7 (radioactive) materials on public roads and highways; and (5) limit possession of byproduct material to the locations listed on the license.

2.3.1. Review of 10 CFR 30.34(i) – 030-38919/2016-001-01

With respect to the failure to secure portable gauges in accordance with 10 CFR 30.34(i), the description provided above in Section 2.1 and the Severity Level IV violation described in Section 2.2.1 was the result of the review of this 2016 finding. In 2016, the licensee failed to provide two physical controls as a result of inadequate design, namely the use of only the wooden cabinet as a physical control. In 2019, the design inadequacy had been corrected by the installation of a second physical control within the cabinet space, namely a metal cable in combination with a padlock. However, the licensee failed to engage this second physical control on one of the two portable gauges present. As a result, a Severity Level IV violation was identified of the same regulatory requirement, and the 2016 violation remains open.

2.3.2. Review of Utilization logs - 030-38919/2016-001-02

The licensee was cited in 2016 for a failure to maintain utilization logs in accordance with its commitments in the NRC license application. The logs in some instances had inaccurate dates, inaccurate locations, or the gauge users failed to sign gauges back in upon the gauge's return to storage.

The inspector reviewed the licensee's written logs and interviewed the gauge users regarding recent use of the gauges. These reviews did not identify any discrepancies or recurrences of the violation, and the licensee appeared to have corrected the inaccuracies and inconsistencies identified during the previous inspection. Therefore, the violation is closed.

2.3.3. Review of U.S. DOT Hazmat Training - 030-38919/2016-001-03

The inspector reviewed the licensee's training as it applied to transportation of Class 7 (radioactive) materials. The inspector found that while the RSO's training was still compliant as a result of the corrective actions taken in 2016, a second gauge user was out of compliance. The cause of the 2016 violation was inadequate oversight of the gauge user's recurrent needs for U.S. DOT hazmat training, which was in contrast to the 2019 violation, which was caused by a misunderstanding of whether a third-party training course adequately covered the requirements for U.S. DOT hazmat training. Therefore, the inspector judged that the two violations, though of the same regulatory requirement, had different root causes. Nonetheless, as a result of the identification of another violation, the 2016 violation remains open. The review of the 2016 violation resulted in the identification of a Severity Level IV violation, which was described above in Section 2.2.3.

2.3.4. Review of Shipping Papers - 030-38919/2016-001-04

The licensee was cited in 2016 for the failure to prepare and use shipping papers in accordance with U.S. DOT regulations related to the transport of Class 7 (radioactive) materials. In 2019, the inspector reviewed the records used by the licensee in transport and interviewed the gauge users. While there were shipping papers in use, the licensee had failed to describe the Class 7 (radioactive) materials, in accordance with U.S. DOT requirements.

The licensee had committed to using shipping papers following the 2016 NRC inspection and had provided a sample copy in its responses to the NRC Notice of Violation through January 26, 2017 (ML17030A270). This sample copy utilized the correct UN identification number for the material: UN3332. However, the shipping papers in use and on-site used an older, out-of-date UN identification number: UN2974. Since the licensee had corrected the 2016 violation regarding the use of shipping papers, the 2016 violation is closed. As described above in Section 2.2.4, the use of an old UN identification number was identified as a new Severity Level IV violation.

2.3.5. Review of Authorized Locations of Use - 030-38919/2016-001-05

With respect to the failure to limit possession of byproduct material to the locations listed on the license, the inspector reviewed the current licensed locations and the operations as described by the RSO and the second gauge user. Based on the inspector's review, the licensee was limiting its use of byproduct materials to the locations authorized on the NRC license, and therefore the 2016 violation is closed.

The licensee had since severed ties with a former gauge user who operated out of the previously-unauthorized Rexburg, Idaho, address. However, the licensee had not updated the license to reflect the removal of this location as a location of use. The inspector discussed this with the RSO, who then submitted a license amendment to remove this location from the Xcell Engineering, Inc., NRC license. The license amendment request submitted on March 13, 2019, was finalized and issued with Amendment No. 2 of the license on June 4, 2019.

3. Conclusions

The inspector reviewed the licensee's radiation safety program and identified four Severity Level IV violations concerning NRC health, safety, and security requirements. Three of the four Severity Level IV violations are related to the violations identified during the NRC's 2016 inspection of Xcell Engineering, LLC.

Of the five Severity Level IV violations that were identified in the NRC's 2016 inspection: Violations 030-38919/2016-001-02 and -05 were determined to be fully corrected and were closed out, Violation 030-38919/2016-001-04 was corrected and therefore closed, however the licensee's implementation of its corrective actions led to a related violation, and Violations 030-38919/2016-001-01 and -03 were not closed as a result of closely related circumstances leading to violations of the same regulatory requirement.

4. Corrective Actions

During the inspection, the licensee immediately provided a second independent physical control to the portable gauge that was not adequately secured by closing the unengaged padlock. In addition, the licensee provided a third independent physical control to the wooden cabinet by means of a second padlock on the door of the cabinet and provided photographic evidence of this change via email to the inspector on February 27, 2019. The licensee immediately provided U.S. DOT hazmat training to the applicable employee and committed to correcting the template Bill of Lading used for the transport of Class 7 (radioactive) materials in a timely manner.

5. Exit Meeting Summary

The inspector presented the preliminary inspection findings at the end of the on-site inspection on February 12, 2019, with the RSO and owner, Mr. Justin P. Bastian. On September 30, 2019, a final telephonic exit meeting was conducted with Mr. Bastian. The licensee acknowledged the findings and did not dispute any of the details presented during the exit call.

SUPPLEMENTAL INSPECTION INFORMATION

LIST OF PERSONS CONTACTED

Justin Paul Bastian, Owner and Radiation Safety Officer

INSPECTION PROCEDURES USED

87124 Fixed and Portable Gauge Programs

ITEMS OPENED, CLOSED, AND DISCUSSED

Opened

030-38919/2019-001-01	VIO	Failure to 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 control and constant surveillance of the licensee. (10 CFR 30.34(i))
030-38919/2019-001-02	VIO	Failure to periodically (at least annually) review the radiation protection program content and implementation. (10 CFR 20.1101(c))
030-38919/2019-001-03	VIO	Failure to provide U.S. DOT Hazmat Refresher Training. (10 CFR 71.5(a) / 49 CFR 172.704(c)(2))
030-38919/2019-001-04	VIO	Failure to adequately describe hazardous material on U.S. DOT Shipping Papers. (10 CFR 71.5(a) / 49 CFR 177.817(a) / 49 CFR 172.202(a))

Closed

030-38919/2016-001-02	VIO	Failure to maintain utilization logs. (License Condition 21)
030-38919/2016-001-04	VIO	Failure to prepare shipping papers for transport of U.S. DOT hazardous materials. (10 CFR 71.5(a) / 177.817(a))
030-38919/2016-001-05	VIO	Failure to limit the use of byproduct material to locations authorized on the NRC license. (10 CFR 30.34(c))

Discussed

None

LIST OF ACRONYMS AND ABBREVIATIONS USED

ADAMS	Agencywide Documents Access and Management System
CFR	*Code of Federal Regulations*
DOT	United States Department of Transportation
NRC	Nuclear Regulatory Commission
RSO	Radiation Safety Officer
VIO	Violation