



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION IV

611 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-8064

FEB 18 1994

Docket: 030-31312
License: 35-27002-01

Empire Construction & Materials, Inc.
ATTN: Gene B. Harris, President
P.O. Box 440
Jenks, Oklahoma 74037

SUBJECT: NRC INSPECTION REPORT 030-31312/94-01 (NOTICE OF VIOLATION)

This refers to the routine, unannounced inspection conducted by Mr. Mark R. Shaffer and Ms. Christi Hernandez of this office on February 1, 1994. The inspection included a review of activities authorized by Byproduct Materials License 35-27002-01. At the conclusion of the inspection, the findings were discussed with members of your staff.

The inspection was an examination of activities conducted under the license as they relate to radiation safety and to compliance with the Commission's rules and regulations and the conditions of the license. The inspection consisted of selective examinations of procedures and representative records, interviews of personnel, independent measurements, and observation of activities in progress.

Based on the results of this inspection, certain of your activities appeared to be in violation of NRC requirements, as specified in the enclosed Notice of Violation (Notice).

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence. After reviewing your response to this Notice, including your proposed corrective actions and the results of future inspections, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

The inspectors observed that the licensee possessed two gauging devices containing sealed sources of americium-241 and cesium-137. One of the instruments was used for measuring asphalt content at the licensee's facility in Tulsa, Oklahoma, while the other device was a portable moisture/density gauge used for the measurement of properties of materials at temporary jobsites.

The inspection disclosed that the licensee's designated Radiation Safety Officer (RSO) was no longer involved in the supervision of licensed activities. Specifically, although this individual was still employed by the licensee, he had been transferred to a different facility approximately 2 years ago and was no longer responsible for licensed activities. Interviews

9402240065 940218
PDR ADOCK 03031312
C PDR

JEON 11

Empire Construction &
Materials, Inc.

-2-

with licensee personnel revealed that the licensee had failed to designate a replacement RSO to oversee licensed activities. The licensee maintained records indicating that individuals operating the gauging devices had been trained to use the instruments as specified in the license application dated September 8, 1989. As evidenced by the number and duration of violations identified during the inspection, the licensee had not maintained adequate oversight of licensed activities.

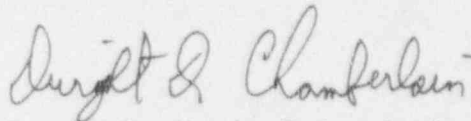
We are concerned about the implementation of your program in the area of management control that permitted these violations to occur. Therefore, in your reply to this letter, you should also specifically describe those actions planned or taken to improve the effectiveness of the management control of your licensed operations, with particular emphasis on measures currently being taken to prevent further violations.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosures will be placed in the NRC Public Document Room.

The responses directed by this letter and the enclosed Notice are not subject to the clearance procedures of the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, Pub. L. No. 96.51.

Should you have any questions concerning this letter, please contact the inspector identified above at (817) 860-8100.

Sincerely,



Dwight D. Chamberlain, Acting Director
Division of Radiation Safety
and Safeguards

Enclosure:
Appendix - Notice of Violation

cc:
Oklahoma Radiation Control Program Director

Empire Construction &
Materials, Inc.

-3-

bcc:
DMB - Original (IE-07)
LJCallan
DDChamberlain
LWCamper
MMessier, OC/LFDCB (4503)
*WLFisher
*CLCain
*MRShaffer
*MCHernandez
*NMIB
*MIS System
*RIV Files (2)

*W/IFS Form

RIV:NMIB <i>ms</i>	NMIB <i>MCH</i>	C:NMIB <i>me</i>	ADD:DRSS <i>DC</i>	AD:DRSS <i>DC</i>
MRShaffer:nh	MCHernandez	CLCain	LWCamper <i>fn</i>	DDChamberlain
2/16/94	2/16/94	2/18/94	2/18/94	2/18/94

Empire Construction &
Materials, Inc.

-3-

bcc:

DMB - Original (IE-07)

LJCallan

DDChamberlain

LWCamper

MMessier, OC/LFDCB (4503)

*WLFisher

*CLCain

*MRShaffer

*MCHernandez

*NMIB

*MIS System

*RIV Files (2)

*W/IFS Form

RIV:NMIB <i>nh</i>	NMIB <i>MCH</i>	C:NMIB <i>nh</i>	ADD:DRSS <i>DR</i>	AD:DRSS <i>DR</i>
MRShaffer:nh	MCHernandez	CLCain	LWCamper <i>fa</i>	DDChamberlain
2/16/94	2/16/94	2/18/94	2/18/94	2/18/94

APPENDIX

NOTICE OF VIOLATION

Empire Construction & Materials, Inc.
Jenks, Oklahoma 74037

Docket: 030-31312
License: 35-27002-01

During an NRC inspection conducted on February 1, 1994, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C, the violations are listed below:

- A. License Condition 11 specifies that the Radiation Safety Officer for this licensee is Ronald D. Brown.

Contrary to the above, at the time of the inspection, this individual had discontinued his responsibilities for the supervision of licensed activities and was not the licensee's Radiation Safety Officer.

This is a Severity Level IV violation. (Supplement VI)

- B. License Condition 13.A.(1) requires, in part, that the licensee test its sealed sources for leakage and/or contamination at intervals not to exceed 6 months.

Contrary to the above, the licensee had not tested any of its sealed sources (one 100-millicurie americium-241 source, one 40-millicurie americium-241 source, and one 8-millicurie cesium-137 source) for leakage between April 4, 1990 and February 1, 1994, an interval in excess of 6 months.

This is a Severity Level IV violation. (Supplement VI)

- C. License Condition 16 requires that the licensee conduct a physical inventory every 6 months to account for all sources and/or devices received and possessed under the license. Records of inventories shall be maintained for 2 years from the date of each inventory.

Contrary to the above, as of February 1, 1994, the licensee had not retained any records of physical inventories of its sealed sources and/or devices.

This is a Severity Level V violation. (Supplement VI)

- D. License Condition 20 requires, in part, that the licensee conduct its program in accordance with the statements, representations, and procedures contained in the licensee's application dated September 8, 1989.

Item 10, Section 1.A.4., of the application specifies, in part, that the Radiation Safety Officer shall maintain records of personnel exposures.

Contrary to the above, the licensee had not retained personnel exposure records for individuals monitored between March 1990 and June 1993.

This is a Severity Level V violation. (Supplement IV)

- E. CFR 19.11(a) and (b) require, in part, that the licensee post current copies of Part 19, Part 20, the license, license conditions, documents incorporated into the license, license amendments and operating procedures or that the licensee post a notice describing these documents and where they may be examined.

Contrary to the above, on February 1, 1994, the licensee did not post any of the required documents or notices.

This is a Severity Level V violation. (Supplement VI)

Pursuant to the provisions of 10 CFR 2.201, Empire Construction & Materials, Inc., is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555, with a copy to the Regional Administrator, Region IV, 611 Ryan Plaza Drive, Suite 400, 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 for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued to show cause 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.

Dated at Arlington, Texas
this 18th day of February 1994