



UNITED STATES  
NUCLEAR REGULATORY COMMISSION

REGION IV

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

January 19, 1996

EA 95-287

Odell Geer Construction Company, Inc.  
ATTN: Mr. Odell Geer, President  
PO Drawer 1089  
Belton, TX 76513

SUBJECT: NRC INSPECTION REPORT 999-90004/95-07

This refers to the special, announced inspection conducted by Messrs. Richard A. Leonardi, Jr., and Jeffrey Cruz of this office on December 13-14, 1995, and to our subsequent review of information provided by your staff during the inspection. The inspection included a review of activities conducted by Odell Geer Construction Company, Inc., (Odell) in areas of exclusive Federal jurisdiction within the state of Texas. At the conclusion of the inspection, the findings were discussed with members of your staff. The inspection findings were also discussed during a telephonic exit briefing conducted on January 10, 1996, between yourself and Mr. Tony Minica of your staff, and Messrs. Leonardi and Cruz and Ms. Linda Howell.

The inspection was an examination of activities conducted as they relate to radiation safety and to compliance with the Commission's rules and regulations. The inspection consisted of selective examinations of representative records and interviews with Odell personnel. The purpose of the inspection was to review Odell's use of nuclear gauges containing byproduct material in areas of exclusive Federal jurisdiction at Fort Hood, Texas.

Based on the results of this inspection, certain of your activities appeared to be in violation of NRC requirements. The violation involved a failure to obtain an NRC specific license as required by 10 CFR 30.3 prior to using portable nuclear gauges on numerous occasions between April 1976 and November 1995 at Fort Hood, Texas, an area of exclusive Federal jurisdiction. Although Odell held a valid radioactive materials license issued by the state of Texas, Odell was not authorized to possess or use byproduct material under either a specific or general NRC license during the above noted period.

Although the requirements of 10 CFR 30.3 apply to work performed in areas of exclusive Federal jurisdiction in Agreement States, we also note that as an alternative to obtaining an NRC license, Odell could have filed an NRC Form-241 with the NRC, paid the associated fees, and conducted these activities as described in 10 CFR 150.20. At the present time, 10 CFR 150.20 of the NRC's regulations discusses only activities conducted in non-Agreement States and offshore waters; however, as a matter of practice the NRC has allowed Agreement State licensees to conduct licensed activities in areas of exclusive Federal jurisdiction within Agreement States, provided licensees file a Form-241, "Report of Proposed Activities in Non-Agreement States," prior to conducting such activities. The NRC is currently developing

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recommendations for rulemaking in order to clarify requirements for licensees working in areas of exclusive Federal jurisdiction within Agreement States.

The inspection established that Odell representatives did not appear to be aware of the need to either have a specific license under 10 CFR 30.3 or, in lieu thereof, to file a Form-241 with the NRC. The inspectors also determined that you relied on U.S. Army Corps of Engineers personnel to inform you of the applicable regulatory requirements regarding licensed activities performed by you at Fort Hood. As a result, you believed that the work could be performed under authorization provided through your Texas Radioactive Materials License.

Normally, the failure to obtain an NRC license or failure to file an NRC Form-241 to notify the NRC of activities conducted within its jurisdiction would be considered for escalated enforcement action which could include the issuance of a civil penalty in accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions (Enforcement Policy)," NUREG-1600. However, after consultation with the Director, Office of Enforcement, and the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support, the NRC is exercising enforcement discretion and is not taking any enforcement action, in accordance with Section VII.B(6) of the Enforcement Policy. The NRC is exercising enforcement discretion based on the circumstances described above, including our conclusions from the information provided during the inspection that you did not intentionally fail to obtain the proper license and that Odell did not understand the regulatory requirements pertaining to use of licensed materials in areas of exclusive Federal jurisdiction. In reaching this decision, the NRC also considered the fact that Odell promptly discontinued using regulated material at Fort Hood after it was advised that an NRC license was required, and that Odell applied for and was granted an NRC license in December 1995. In addition, based on discussions with members of your staff during the inspection, it appears that appropriate personnel are now aware of regulatory requirements which must be observed when working in areas under NRC jurisdiction.

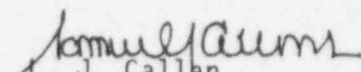
In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter will be placed in the NRC Public Document Room.

Odell Geer Construction Company,  
Inc.

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Should you have any questions concerning this letter, please contact  
Jeffrey Cruz at (817) 860-8164 or Linda L. Howell at (817) 860-8213.

Sincerely,

  
L. J. Callan  
See Regional Administrator

Docket: 030-34023 (999-90004)  
License: 42-27536-01 (TX L01804)

cc:  
Texas Radiation Control Program Director

Odell Geer Construction Company,  
Inc.

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bcc:

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Inc.

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