

December 3, 1996

EA 96-480

Roberts Construction Company  
ATTN: Mr. David H. Roberts  
Radiation Safety Officer  
P. O. Box 610  
Louisa, KY 41230

SUBJECT: NRC INSPECTION REPORT NO. 16-24818-02/96-01

Dear Mr. Roberts:

This refers to the inspection conducted on November 5-7, and 14, 1996, at your Prichard, West Virginia facility and your telephone conversation with Mr. John Potter on November 25, 1996. The purpose of the inspection was to follow up on your use of byproduct material. The enclosed report presents the results of this inspection. The findings were discussed with you by telephone on November 14, 1996.

Based on the results of this inspection, four apparent violations were identified and are being considered for escalated enforcement action in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600. These apparent violations relate to your failure to perform a leak test or inventory of licensed material for four years, your continued use of the material for ten months after your license had expired, and your failure to secure the material on at least two occasions. The apparent violations are also a concern because of the potential carelessness and/or disregard for regulatory requirements that may have been involved. Accordingly, no Notice of Violation is presently being issued for these inspection findings. In addition, please be advised that the number and characterization of apparent violations described in the enclosed inspection report may change as a result of further NRC review.

Based upon the conversation on November 25, 1996, it is our understanding that you will complete the following:

1. Immediately retrieve the gauge from your work site outside of War, West Virginia, secure it from unauthorized removal, maintain it under lock and key at your facility, in Prichard, West Virginia, and have the gauge leak tested within the next month from the date of this letter.
2. Maintain the gauge in secure storage as in Item 1 and do not use the gauge until the NRC has resolved the issues involved with your license application.

A closed predecisional enforcement conference to discuss these apparent violations has been proposed for December 19, 1996, at 2:00 p.m. in the Region II office. Please advise me within seven days if you will attend the conference on this date. If not, please provide an alternate date on which you may attend. The decision to hold a predecisional enforcement conference does not mean that the

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NRC has determined that a violation has occurred or that enforcement action will be taken. This conference is being held to obtain information to enable the NRC to make an enforcement decision, such as a common understanding of the facts, root causes, missed opportunities to identify the apparent violation sooner, corrective actions, significance of the issues and the need for lasting and effective corrective action. In particular, we expect you to address why you continued to use the Troxler moisture density gauge after your license had expired, and why you failed to comply with the requirements of your license.

In addition, this is an opportunity for you to point out any errors in our inspection report and for you to provide any information concerning your perspectives on 1) the severity of the violation(s), 2) the application of the factors that the NRC considers when it determines the amount of a civil penalty that may be assessed in accordance with Section VI.B.2 of the Enforcement Policy, and 3) any other application of the Enforcement Policy to this case, including the exercise of discretion in accordance with Section VII. In presenting your corrective action, 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 the enclosed excerpt from NRC Information Notice 96-28, "SUGGESTED GUIDANCE RELATING TO DEVELOPMENT AND IMPLEMENTATION OF CORRECTIVE ACTION," may be helpful.

The predecisional enforcement conference will be transcribed. We have also enclosed a copy of NUREG-1600 for your information. Section V addresses predecisional enforcement conferences.

You will be advised by separate correspondence of the results of our deliberations on this matter. No response regarding these apparent violations is required at this time.

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

Should you have any questions concerning this letter, please contact us.

Sincerely,



Bruce S. Mallett, Director  
Division of Nuclear Materials Safety

Docket No. 030-31981  
License No. 16-24818-02

Enclosures: 1. Inspection Report No. 16-24818-02  
2. Excerpt from NRC Information Notice 96-28  
3. NUREG-1600, Enforcement Policy

cc w/encls:  
State of West Virginia

Distribution w/encls: (See Page 3)

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 RII Docket File  
 OE:EA File (BSummers) (2)  
 J. Lieberman, OE  
 J. DelMedico, OE  
 B. Uryc, EICS

(\* ) See next page for previous concurrences

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NAME	OMasnyk Bailey	OPotter	BUryc	CEvans		
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2. Excerpt from NRC Information Notice 96-28

cc w/encls:  
State of West Virginia

Distribution w/encls:

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RII Docket File

OE:EA File (B. Summers) (2)

OFFICE	RII:DNMS	RII:DNMS	RII:DNMS	RII:DNMS		
SIGNATURE	<i>DNMS</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>		
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*J Lieberman, OE*  
*J DelMedico, OE*  
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