



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

May 25, 2021

EA-21-016

Mr. Cevero Caramillo
Radiation Safety Officer
Jicarilla Apache Nation Contract Roads
P.O. Box 709
Dulce, NM 87528

SUBJECT: JICARILLA APACHE NATION CONTRACT ROADS – NRC INSPECTION
REPORT 030-38273/2020-001

Dear Mr. Caramillo:

This letter refers to the U.S. Nuclear Regulatory Commission (NRC) in-office license document review beginning on May 31, 2020, for Jicarilla Apache Nation Contract Roads. The purpose of the in-office review was to confirm that you would either: (a) apply for renewal of NRC License No. 30-29388-01, prior to its expiration; (b) terminate the license; or (c) apply for a possession-only license. The license reviewer discussed the findings with you on May 19, 2021.

Based on the results of this review, an apparent violation was identified and is being considered for escalated enforcement action in accordance with the NRC Enforcement Policy. The current Enforcement Policy is included on the NRC's website at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>. An apparent violation was identified related to Jicarilla Apache Nation Contract Roads' failure to dispose of or transfer the nuclear density gauges possessed under its NRC license and complete decommissioning prior to its license expiration. Specifically, the NRC made multiple unsuccessful attempts to communicate with you prior to and following the license expiration on May 31, 2020, but you did not inform the NRC of the intent to terminate the license until after it had expired. To date, the Jicarilla Apache Nation Contract Roads is still in possession of licensed materials.

Because Jicarilla Apache Nation Contract Roads has not taken corrective action for the violation, the enforcement action could include a proposed civil penalty of approximately \$7,500. As noted in Section 2.3.4 of the Enforcement Policy, the NRC may exercise discretion and assess a separate violation and attendant civil penalty up to the statutory limit for each day the violation continues. The NRC may exercise this discretion when a licensee was aware of a violation of at least moderate significance and had a clear opportunity to prevent, identify, and correct the violation but failed to do so. Since the NRC has not made a final determination, a Notice of Violation is not being issued at this time.

Before the NRC makes its enforcement decision, we are providing you an opportunity to offer your perspective on this matter and provide any information you believe the NRC should take into consideration. You may either: (1) respond in writing to the apparent violation addressed in this inspection report within 30 days of the date of this letter; (2) request a Predecisional Enforcement Conference (PEC) to meet with the NRC and provide your views in person; or

(3) request Alternative Dispute Resolution (ADR). If a PEC is held, it will be open for public observation and the NRC may issue a press release to announce the time and date of the conference. If you decide to participate in a PEC or pursue ADR, please contact Mr. Vince Gaddy at 817-200-1243 within 10 days of the date of this letter. A PEC should be held within 30 days or an ADR session within 45 days of the date of this letter.

If you choose to provide a written response, it should be clearly marked as a "Response to An Apparent Violation in NRC Inspection Report 030-38273/2020-001; EA-21-016" and should include for the apparent violation: (1) the reason for the apparent violation or, if contested, the basis for disputing the apparent violation; (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 previously docketed correspondence if the correspondence adequately addresses the required response. Additionally, your response should be sent to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001, with a copy mailed to the Director, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission Region IV, 1600 East Lamar Boulevard, Arlington, Texas 76011, and emailed to R4Enforcement@nrc.gov within 30 days of the date of this letter. If an adequate response is not received within the time specified or an extension of time has not been granted by the NRC, the NRC will proceed with its enforcement decision or schedule a PEC.

If you choose to request a PEC, the conference will afford you the opportunity to provide your perspective on these matters and any other information that you believe the NRC should take into consideration before making an enforcement decision. The decision to hold a PEC does not mean that the NRC has determined that a violation has occurred or that enforcement action will be taken. This conference would be conducted to obtain information to assist the NRC in making an enforcement decision. The topics discussed during the conference may include information to determine whether a violation occurred, information to determine the significance of a violation, information related to the identification of a violation, and information related to any corrective actions taken or planned.

In presenting your corrective actions, you should be aware that the promptness and comprehensiveness of your actions will be considered in assessing any civil penalty for the apparent violation. 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>.

In lieu of a PEC, you may request ADR with the NRC in an attempt to resolve this issue. Alternative dispute resolution is a general term encompassing various techniques for resolving conflicts using a neutral third-party mediator. The technique that the NRC has decided to employ is mediation. Mediation is a voluntary, informal process in which a trained neutral mediator works with parties to help them reach resolution. If the parties agree to use ADR, they select a mutually agreeable neutral mediator who has no stake in the outcome and no power to make decisions. Mediation gives parties an opportunity to discuss issues, clear up misunderstandings, be creative, find areas of agreement, and reach a final resolution of the issues. Additional information concerning the NRC's ADR program can be obtained at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>. The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program as a neutral third party. Please contact ICR at 877-733-9415 within 10 days of the date of this letter if you are interested in pursuing resolution of this issue through ADR.

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. You will be advised by separate correspondence of the results of our deliberations on this matter.

The NRC's primary interest in this matter is to ensure that Jicarilla Apache Nation Contract Roads meets its obligation to ensure the proper transfer or disposal of the licensed material. Accordingly, in addition to the process described above, the NRC will not propose a civil penalty if, within 30 days of the date of this letter, Jicarilla Apache Nation Contract Roads arranges for or otherwise effects the proper transfer or disposal of its gauges. After completing this action, Jicarilla Apache Nation Contract Roads must send a copy of the certification from the authorized recipient that the material has been received to the Director, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission Region IV, 1600 East Lamar Boulevard, Arlington, Texas 76011 and emailed to R4Enforcement@nrc.gov.

The NRC recognizes that many licensees have been impacted by the public health emergency caused by the Coronavirus Disease 2019 (COVID-19). Consequently, the NRC would consider a request for additional time from 30 days to 60 days from the date of this letter to complete proper transfer or disposal of the licensed material, based on COVID-19 or other good cause, if appropriate. Such an extension request must be in writing, should explain the basis for the request, and be submitted to the NRC before the initial 30-day deadline.

In accordance with 10 CFR 2.390 of the NRC's "Agency Rules of Practice and Procedure," a copy of this letter, its enclosure, and your response, if you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's Agencywide Documents Access and Management System (ADAMS), accessible from the NRC website 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 you have any questions concerning this matter, please contact Mr. Vincent Gaddy of my staff at (817) 200-1243 or Vincent.Gaddy@nrc.gov.

Sincerely,

Mary C.
Muessle

Digitally signed by
Mary C. Muessle
Date: 2021.05.25
08:57:06 -05'00'

Mary C. Muessle, Director
Division of Nuclear Materials Safety

Docket No. 030-38273
License No. 30-29388-01

Enclosure:
NRC Inspection Report 030-38273/2021-001

SUBJECT: JICARILLA APACHE NATION CONTRACT ROADS - NRC INSPECTION REPORT
030-30278/2020-001 - DATED MAY 25, 2021

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RidsOcoMailCenter
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R4DNMS_MLDB

cc: caramillocevero@yahoo.com

ADAMS ACCESSION NUMBER: **ML21144A053**

<input checked="" type="checkbox"/> SUNSI Review By: ACR		ADAMS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Sensitive <input checked="" type="checkbox"/> Non-Sensitive	<input type="checkbox"/> Non-Publicly Available <input checked="" type="checkbox"/> Publicly Available	Keyword NRC-002
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**U.S. NUCLEAR REGULATORY COMMISSION
Region IV**

Docket No.: 030-38273

License No.: 30-29388-01

Report No.: 030-38273/2020-01

EA No.: EA-21-016

Licensee: Jicarilla Apache Nation
Contract Roads
Dulce, New Mexico

Location Inspected: In-office review

Inspection Dates: In-office review May 31, 2020, through April 22, 2021

Exit Meeting Date: May 19, 2021

Inspector: Casey C. Alldredge, Health Physicist
Materials Licensing and Decommissioning Branch
Division of Nuclear Materials Safety

Approved by: Vince G. Gaddy, Chief
Materials Licensing and Decommissioning Branch
Division of Nuclear Materials Safety

Attachment: Supplemental Inspection Information

Enclosure

EXECUTIVE SUMMARY

Jicarilla Apache Nation Contract Roads NRC Inspection Report 030-38273/2021-001

Program Overview

Jicarilla Apache Nation Contract Roads (licensee) was authorized under U.S. NRC Materials License 30-29388-01 to possess and use byproduct material, specifically radium-226, to be used in portable gauging devices to measure physical properties of materials. The license expiration date was May 31, 2020. (Section 1)

NRC In-Office Review Summary

One apparent violation was identified involving the licensee's failure to dispose of its byproduct material prior to the license's expiration. This apparent violation was identified during an in-office license review. (Section 2)

Corrective Actions

The licensee's immediate corrective action was to submit an NRC Form 314 "Certificate of Disposition of Materials," dated November 10, 2020, indicating its desire to terminate its license. The licensee also submitted the most recent leak tests for the gauges. However, as of the date of the submitted form, the licensee still possessed the byproduct material and had not yet disposed of it. The licensee indicated that it was working with the manufacturer to dispose of the material. (Section 3)

REPORT DETAILS

1 Program Overview

1.1. Program Scope

Jicarilla Apache Nation Contract Roads (licensee) is authorized by NRC Materials License 30-29388-01 to possess and use byproduct material, specifically radium-226, to be used in portable gauging devices to measure physical properties of materials. The license expiration date was May 31, 2020.

1.2. Observations and Findings

The licensee possesses three portable gauging devices. The gauges have not been used since approximately 2018 and have been in storage. The most recent inspection of the licensee was conducted in 2018 and did not identify any violations.

2 Findings

2.1 In-Office Review Scope

Prior to the license expiration, Region IV, Materials Licensing and Decommissioning Branch (MLDB) attempted to inform the licensee that its license was going to expire on May 31, 2020. These communication attempts were not successful.

On July 14, 2020, the NRC Region IV, MLDB mailed the licensee a letter informing it that its license had expired and that the licensee was currently in possession of radioactive materials without a license, contrary to Title 10 of the *Code of Federal Regulations* (10 CFR), Section 30.3(a). In addition, on July 15, 2020, MLDB faxed a copy of this letter to the licensee. The July 14, 2020, letter was ultimately returned to sender as undelivered.

On August 28, 2020, MLDB mailed another letter informing the licensee of the same information in the July 14, 2020, letter. On September 10, 2020, the licensee informed MLDB that it intended to terminate its license. On November 10, 2020, MLDB received an NRC Form 314 Certificate of Disposition of Materials. It included leak test results for the gauges and stated that the gauges had not yet been dispositioned because the licensee was waiting on a disposal quote. As of the date of this report, the licensee has still not dispositioned the gauges.

2.2 Observation and Findings

Title 10 CFR 30.3(a) states, in part, that no person shall possess byproduct material except as authorized in a specific or general license issued in accordance with the regulations in Chapter I.

Contrary to the above, since May 31, 2020, Jicarilla Apache Nation Contract Roads possessed byproduct material without being authorized in a specific or general license issued in accordance with the regulations in Chapter I. Specifically, on May 31, 2020, Jicarilla Apache Nation Contract Roads' specific NRC license (No. 30-29388-01) expired. The licensee did not renew or terminate the license yet maintained possession

of three Seaman Nuclear Corporation Model C-200 portable gauges, which contained radium-226. Possession of these gauges requires a specific license.

2.3 Conclusions

The NRC identified an apparent violation (AV) involving the licensee's failure to either renew its license, apply for a possession-only license, or dispose of its byproduct material before the license's expiration date of May 31, 2020, as required by 10 CFR 30.3(a). (AV 030-38273/2020-001-01)

3 **Corrective Actions**

The radiation safety officer for the licensee stated that the licensee intends to terminate the license. The licensee's immediate corrective action was to submit an NRC Form 314 "Certificate of Disposition of Materials," dated November 10, 2020, which included leak tests for the gauges in the licensee's possession.

However, the licensee's long-term corrective actions of disposing of the gauges and terminating the license have not been completed.

4 **Exit Meeting Summary**

On May 19, 2021, a telephonic exit meeting was conducted with Mr. Cevero Caramillo, Radiation Safety Officer. The licensee acknowledged the findings and did not dispute any of the details presented during the exit call.

SUPPLEMENTAL INSPECTION INFORMATION

Partial List of Persons Contacted

Licensee

Cevero Caramillo, Radiation Safety Officer

Inspection Procedure Used

87121 Industrial Radiography Programs

Items Opened, Closed, and Discussed

Opened

030-3278/2020-001-01	AV	Failure to dispose of byproduct material prior to NRC license expiration
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Closed

None

Discussed

None