



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

August 17, 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 - NOTICE OF VIOLATION,
NRC INSPECTION REPORT 030-38273/2020-001

Dear Mr. Caramillo:

This letter refers to the U.S. Nuclear Regulatory Commission (NRC) in-office document review of your Jicarilla Apache Nation Contract Roads license conducted May 31, 2020, through April 22, 2021. The purpose of the review was to evaluate your actions following expiration of NRC License No. 30-29388-01. A final exit call was conducted with you on May 19, 2021, and the details regarding an apparent violation identified during our review were provided in the NRC Inspection Report 030-38273/2020-001, dated May 25, 2021 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML21144A053).

In the letter transmitting the inspection report, we provided you with the opportunity to address the apparent violation by either attending a predecisional enforcement conference, requesting alternative dispute resolution, or providing a written response before we made our final enforcement decision. In correspondence dated July 20, 2021 (ADAMS Accession No. ML21225A033), you provided a response to the apparent violation.

Based on the information developed during the inspection and the information that you provided in your response to the inspection report dated May 25, 2021, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding it are described in detail in the subject inspection report. The violation involved the possession of byproduct material (portable gauges) without a license contrary to Title 10 of the *Code of Federal Regulations* (10 CFR) 30.3(a).

Although no actual safety or security consequences were identified, the NRC considers this violation to be significant because of the potential for impacting the NRC's ability to perform its regulatory function. Therefore, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level III. The Enforcement Policy can be found on the NRC's website at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>.

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$7,500 is considered for a Severity Level III violation.

Because your facility has not been the subject of escalated enforcement actions within the last two inspections, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section 2.3.4 of the NRC Enforcement Policy. When assessing *Corrective Action* credit, the NRC evaluates both the promptness and the comprehensiveness of a licensee's corrective actions. The NRC has determined that *Corrective Action* credit is not warranted. Notwithstanding eventual effective comprehensive corrective actions that included transferring the portable gauges to another licensee on June 11, 2021, and the termination of your license on July 26, 2021 (ADAMS Accession Nos. ML21215A566 and ML21215A570), we determined that prompt corrective actions were not taken to restore compliance once the violation was identified.

As documented in our letter dated May 25, 2021, the NRC indicated that it would not propose a civil penalty if, within 30 days of that letter, you properly transferred or disposed of the gauges. Subsequently, we learned that you properly transferred the gauges to another licensee on June 11, 2021, within the 30 days. Therefore, in recognition of your actions to transfer the gauges and the termination of your license, I have been authorized, after consultation with the Director, Office of Enforcement, not to propose a civil penalty in this case.

The NRC has concluded that information regarding: (1) the reason for the violation; (2) the corrective actions that have been taken and the results achieved; and (3) the date when full compliance was achieved is already adequately addressed on the docket in your correspondence dated on July 20, 2021, NRC Inspection Report 030-38273/2020-001, dated May 25, 2021, and your license termination dated July 26, 2021. Therefore, you are not required to respond to this letter unless the description therein does not accurately reflect your corrective actions or your position. In that case or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice.

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 in the NRC's ADAMS, accessible from the NRC website at <http://www.nrc.gov/reading-rm/adams.html>. The NRC also includes significant enforcement actions on its website at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions>.

If you have any questions concerning this matter, please contact Ms. Heather Gepford of my staff at 817-200-1156.

Sincerely,

Scott A. Morris
Regional Administrator

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

Enclosure: Notice of Violation

JICARILLA APACHE NATION CONTRACT ROADS - NOTICE OF VIOLATION,
 NRC INSPECTION REPORT 030-38273/2020-001 - DATED AUGUST 17, 2021

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 Cvr Ltr & Encl: ADAMS ACCESSION NUMBER:

SUNSI Review: JGK ADAMS: Non-Publicly Available Non-Sensitive Keyword: By:
 Yes No Publicly Available Sensitive

OFFICE	SES:ACES	TL:ACES	C:MLDB	RC	NMSS	OE	D:DNMS	RA
NAME	JKramer	DDodson	HGepford	DCylkowski	RSun	JPeralta	MMuessle	SMorris
SIGNATURE	/RA/ E	/RA/ JMR for	/RA/ E	/RA/ E	/RA/ E	/RA/ E	/RA/ LH for	/RA/ E
DATE	07/29/21	08/04/21	08/04/21	08/09/21	08/11/21	08/12/21	08/12/21	08/17/21

OFFICIAL RECORD COPY

NOTICE OF VIOLATION

Jicarilla Apache Nation Contract Roads
Dulce, New Mexico

Docket No. 030-38273
License No. 30-29388-01
EA-21-016

During an NRC in-office document review conducted from May 31, 2020, to April 22, 2021, one violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 30.3(a) requires, 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, from May 31, 2020, to June 11, 2021, 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. Jicarilla Apache Nation Contract Roads did not renew or terminate the license yet maintained possession of three Seaman Nuclear Corporation Model C-200 portable gauges, which contained radium-226, a byproduct material. Possession of these gauges requires a specific license. On June 11, 2021, Jicarilla Apache Nation Contract Roads transferred the portable gauges to another licensee.

This is a Severity Level III violation (NRC Enforcement Policy Section 6.3.c.11).

The NRC has concluded that information regarding: (1) the reason for the violation; (2) the corrective actions that have been taken and the results achieved; and (3) the date when full compliance was achieved is already adequately addressed on the docket in your correspondence dated on July 20, 2021, NRC Inspection Report 030-38273/2020-001, dated May 25, 2021, and your license termination dated July 26, 2021. However, if the description therein does not accurately reflect your position or your corrective actions, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 within 30 days of the date of the letter transmitting this Notice of Violation. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation; EA-21-016," and send it to U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV, 1600 East Lamar Blvd., Arlington, Texas 76011-4511, and email it to R4Enforcement@nrc.gov.

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, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

If you choose to respond, your response will be made available electronically for public inspection in the NRC Public Document Room or in the NRC's 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 personal privacy or proprietary information is necessary to provide an acceptable response, please provide a bracketed copy of your response that identifies the information that should be

Enclosure

protected and a redacted copy of your response that deletes such information. If you request withholding of such information, 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).

Dated this 17th day of August 2021