



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

September 3, 2021

EA-21-123

Mr. Ben Vance, PE
Radiation Safety Officer
Liberty Geotechnical Engineering, Inc.
dba Liberty Geotech
3012 North Sullivan Road, Suite D
Spokane Valley, WA 99216

SUBJECT: NRC INSPECTION REPORT 030-39230/2021-001; EXERCISE OF
ENFORCEMENT DISCRETION; AND NOTICE OF VIOLATION

Dear Mr. Vance:

This letter refers to the announced initial inspection conducted on July 15, 2021, at your facility in Spokane Valley, Washington, with continued in-office review through August 25, 2021. The inspection was an examination of activities conducted under your license as they relate to public health and safety and to confirm compliance with the U.S. Nuclear Regulatory Commission's (NRC's) rules, regulations, and with the conditions of your license. Within these areas, the inspection consisted of a selected examination of procedures and representative records, and interviews with personnel. A final exit briefing was conducted via videoconference with you on September 1, 2021.

A violation of Title 10 of the *Code of Federal Regulations* (10 CFR) 30.34(c) was identified during this inspection and is described in the enclosed Notice of Violation (Notice). The violation was related to the possession and use of models of portable nuclear gauges that were not authorized on the NRC license. In accordance with the NRC Enforcement Policy, this violation would normally be categorized at Severity Level III and considered for escalated enforcement action. The NRC Enforcement Policy can be found at the NRC's website at <https://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>. However, in accordance with NRC Enforcement Guidance Memorandum (EGM) 20-003, "Interim Guidance for Dispositioning Violations of Licensed Material Possession and Use Limits," (Agencywide Documents Access and Management System (ADAMS) Accession No. [ML20156A340](#)) issued July 15, 2020, the NRC is exercising enforcement discretion to categorize this violation as a Severity Level IV violation.

In addition to the violation described above, one Severity Level IV violation was identified related to the failure to implement and maintain operating, emergency, and security procedures for the use of portable nuclear gauges. This violation was evaluated in accordance with the NRC Enforcement Policy and categorized as a Severity Level IV violation.

The two Severity Level IV violations are cited in the enclosed Notice because they were identified by the NRC during the inspection. You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response.

If you have additional information that you believe the NRC should consider, you may provide it in your response to the Notice. 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: <https://www.nrc.gov/reading-rm/doc-collections/gen-comm/info-notices/1996/in96028.html>. Information regarding the reason for the violations, the corrective actions taken and planned to correct the violations and prevent recurrence, and the date when full compliance will be (was) achieved should be addressed. The NRC review of your response to the Notice will also determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

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 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).

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, will be made available electronically for public inspection in the NRC Public Document Room or from ADAMS, accessible from the NRC website at <http://www.nrc.gov/reading-rm/adams.html>.

Should you have any questions regarding this letter or the enclosed Notice, please contact Dr. Janine F. Katanic, CHP, at (817) 200-1151, or the undersigned at (817) 200-1455.

Sincerely,



Signed by Roldan-Otero, Lizette
on 09/03/21

Lizette Roldán-Otero, PhD, Chief
Materials Inspection Branch
Division of Nuclear Materials Safety

License No. 46-35594-01
Docket No. 030-39230

Enclosure:
Notice of Violation (Notice)

cc w/Enclosure:
Jill Wood, Director
Office of Radiation Protection
Washington State Department of Health
P.O. Box 47827
Olympia, WA 98430

NRC INSPECTION 030-39230/2021-001; EXERCISE OF ENFORCEMENT DISCRETION; AND NOTICE OF VIOLATION – DATED SEPTEMBER 3, 2021

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NOTICE OF VIOLATION

Liberty Geotechnical Engineering, Inc.
dba Liberty Geotech
Spokane Valley, WA

Docket No. 030-39230
License No. 46-35594-01
EA-21-123

During an NRC inspection conducted on July 15, 2021, two violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. 10 CFR 30.34(c) requires, in part, that each person licensed by the NRC shall confine his possession and use of the byproduct material to the locations and purposes authorized in the license.

License Conditions 6.A. through D. to 9.A. through D., NRC license 46-35594-01, issue date September 14, 2020, authorized the possession and use of Troxler Electronic Laboratories Model 3400 Series and CPN International, Inc., Model MC Series Portaprobe portable nuclear gauging devices.

Contrary to the above, from October 2020, to July 15, 2021, the licensee failed to confine its possession and use of byproduct material to the purposes authorized in the license. Specifically, the licensee failed to comply with the limits specified in License Conditions 6.A. through D. to 9.A. through D., NRC license 46-35594-01, issue date September 14, 2020. The licensee possessed and used three Instrotek Model 3500 Explorer portable nuclear gauges, which were not authorized in NRC license 46-35594-01, issue date September 14, 2020, and which were possessed and used in areas of NRC jurisdiction from October 2020, to July 15, 2021.

This is a Severity Level IV violation (NRC Enforcement Guidance Memorandum 20-003).

- B. License Condition 19 of NRC license 46-35594-01, issue date September 14, 2020, requires, in part, that the licensee shall conduct its program in accordance with the statements, representations, and procedures contained in the documents, including any enclosures, listed in the license.

Letter with attachments, dated September 2, 2020, specifies that the licensee will implement and maintain the operating, emergency, and security procedures in Appendix G to NUREG-1556, Volume 1, Revision 2, "Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Portable Gauge Licensees," and that copies of these procedures will be provided to all gauge users and will be available at each jobsite.

Contrary to the above, from September 2, 2020, to July 15, 2021, the licensee failed to conduct its program in accordance with the statements, representations, and procedures contained in the documents, including any enclosures, listed in the license. Specifically, the licensee failed to: (1) implement and maintain the operating, emergency, and security procedures in Appendix G to NUREG-1556, Volume 1, Revision 2, "Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Portable Gauge Licensees," (2) provide copies of these

Enclosure

procedures to all gauge users that performed licensed activities in NRC jurisdiction, and (3) make the procedures available at each jobsite in NRC jurisdiction.

This is a Severity Level IV violation (NRC Enforcement Policy, Section 6.3.d.3).

Pursuant to 10 CFR 2.201, Liberty Geotechnical Engineering, Inc., is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001, with a copy to the Director, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission Region IV, 1600 E. Lamar Blvd., Arlington, Texas 76011, and emailed to R4Enforcement@nrc.gov 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; EA-21-123" and should include, for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation or severity level; (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 previous docketed correspondence if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, the NRC may issue an order or a demand for information requiring you to explain why your license should not be modified, suspended, or revoked, or why the NRC should not take other action as may be proper. Consideration may be given to extending the response time for good cause shown.

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, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

Your response will be made available electronically for public inspection in the NRC Public Document Room or in the NRC's Agencywide Documents Access and Management System (ADAMS), accessible from the NRC website at <http://www.nrc.gov/reading-rm/adams.html>. Therefore, to the extent possible, the 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, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, 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).

In accordance with 10 CFR 19.11, you may be required to post this Notice within 2 working days of receipt.

Dated this 3rd day of September 2021