



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION IV
1600 EAST LAMAR BOULEVARD
ARLINGTON, TEXAS 76011-4511

May 26, 2022

EA-22-043

Mr. Gurdip Hayre, Principal
Hayre McElroy & Associates, LLC
9644 153rd Avenue NE, Suite B8
Redmond, WA 98052

SUBJECT: NRC INSPECTION REPORT 030-38881/2022-001; EXERCISE OF
ENFORCEMENT DISCRETION; AND NOTICE OF VIOLATION

Dear Mr. Hayre:

This letter refers to the unannounced routine inspection that was conducted on April 11, 2022, at your facility in Kapolei, Hawaii. The inspection was an examination of activities conducted under your license as they relate to public health and safety, and security of licensed materials, to confirm compliance with the U.S. Nuclear Regulatory Commission's (NRC) rules, regulations, and with the conditions of your license. Within these areas, the inspection consisted of a selected examination of procedures and representative records, observation of licensed activities, independent radiation measurements, and interviews with personnel. At the conclusion of the onsite inspection, the inspector discussed the preliminary inspection findings with Mr. Martin Lagazo, your site Radiation Safety Officer. A final exit briefing was conducted telephonically with Mr. Lagazo on May 24, 2022.

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 of a portable nuclear gauge that was 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 Web site at <https://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>. However, in accordance with NRC Enforcement Guidance Memorandum (EGM) 20-003, issued July 15, 2020, the NRC is exercising enforcement discretion to categorize this violation as a Severity Level IV violation. The violation is cited in the enclosed Notice because it was identified by the NRC during the inspection.

During the inspection, the NRC also reviewed the corrective actions taken to address two violations identified during the NRC inspection conducted at your facility in Kapolei, Hawaii, in February 2018. The violations involved the failure to: (1) maintain use/transfer logs for each portable nuclear gauge possessed in NRC jurisdiction; and (2) limit the use or storage of portable nuclear gauges to the locations listed in the license. With respect to these violations, the current inspection determined that compliance was restored and has been maintained. The violations are considered closed. You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. 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>. If you have additional information that you believe the NRC should consider, you may provide it in your response to the Notice. Information regarding the reason for the violation, the corrective actions taken and planned to correct the violation 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.

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 the NRC's Agencywide Documents Access and Management System (ADAMS), accessible from the NRC Web site 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.

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 05/26/22

Lizette Roldán-Otero, PhD, Chief
Materials Inspection Branch
Division of Radiological Safety and Security

Docket No. 030-38881
License No. 46-35280-01

Enclosure:
Notice of Violation

cc w/Enclosure:
Thomas Lileikis, Chief
Hawaii State Department of Health
Indoor and Radiological Health Branch
99-945 Halawa Valley Street
Aiea, HI 96701

Jill Wood, Director
Office of Radiation Protection
Washington State Department of Health
P.O. Box 47827
Olympia, WA 98504-7827

SUBJECT: NRC INSPECTION 030-38881/2022-001; EXERCISE OF ENFORCEMENT DISCRETION; AND NOTICE OF VIOLATION - DATED MAY 26, 2022

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NOTICE OF VIOLATION

Hayre McElroy & Associates, LLC
Redmond, WA

Docket No. 030-38881
License No. 46-35280-01
EA-22-043

During an NRC inspection conducted on April 11, 2022, at the licensee's facility located in Kapolei, Hawaii, one violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 30.34(c) requires, in part, that each person licensed by the Commission pursuant to the regulations in 10 CFR Part 30 and parts 31 through 36 and 39 shall confine his possession and use of the byproduct material to the locations and purposes authorized in the license.

License Conditions 6.A. through F. - 9.A. through F., NRC license 46-35280-01, Amendment No. 3, dated May 16, 2018, and License Conditions 6.A. through F. - 9.A. through F., NRC license 46-35280-01, Amendment No. 4, dated August 13, 2020, authorize the possession and use of Troxler Electronic Laboratories Model 3400 Series; Troxler Electronic Laboratories Model 3411; and CPN International, inc., Model MC Series PORTAPROBE portable nuclear gauging devices.

Contrary to the above, from August 28, 2018, to April 11, 2022, 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 F. - 9.A. through F., NRC license 46-35280-01, Amendment No. 3, dated May 16, 2018, and License Conditions 6.A. through F. - 9.A. through F., NRC license 46-35280-01, Amendment No. 4, dated August 13, 2020. The licensee possessed an InstroTek, Inc. Model 3500 Xplorer, which was not authorized in NRC license 46-35280-01, Amendment No. 3, dated May 16, 2018, or Amendment No. 4, dated August 13, 2020.

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

Pursuant to the provisions of 10 CFR 2.201, Hayre McElroy & Associates, LLC, 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 Regional Administrator, 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-22-043" and should include: (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, an order or a Demand for Information may be issued requiring information as to why the license should not be modified, suspended, or revoked, or why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

Enclosure

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 Web site 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 26th day of May 2022