



UNITED STATES  
NUCLEAR REGULATORY COMMISSION

REGION III  
2443 WARRENVILLE RD. STE 210  
LISLE, IL 60532-4352

May 29, 2023

**MAY 29 2023**

Mitch D. Forst  
Radiation Safety Officer  
Construction Consulting & Testing  
430 Bishop Rd  
Bowling Green, OH 43402

Dear Mitch D. Forst:

Enclosed is Amendment No. 2 renewing your NRC Material License No. 34-26746-03 in accordance with your request. Your license has been renewed for a 15-year term and will not expire until May 31, 2038.

Please review the enclosed document carefully and be sure that you understand all conditions. If there are any errors or questions, please notify the U.S. Nuclear Regulatory Commission, Region III office at (630) 829-9887 so that we can provide appropriate corrections and answers.

If you have any questions concerning these changes or this amendment you may contact me directly at (630) 829-9841. My fax number is (630) 515-1078.

This also refers to the processing of your renewal request application, an NRC Form 313 dated November 30, 2022, which included an acceptance review. We found that the application was lacking significant amounts of required information, as described below.

In addition, your responses dated November 30, 2022, consisting of the resubmittal of a previously submitted application with outdated, incomplete and extraneous information (ML23054A208); February 23, 2023, consisting of only a currently dated and signed 313 Form and transmittal email (ML23054A195); and an NRC Form 313 dated November 30, 2022, consisting of only that form and no supporting information whatsoever (ML22334A145), have been added to Condition No. 19 and the application dated October 15, 2012, consisting of information based upon outdated guidance (ML12289A369) to support a very minimally adequate application for license renewal.

This also refers to the telephone call between you and me on May 25, 2023, in which we discussed issuing the renewed license now contingent upon your completion and submission of a current, complete renewal application, using current guidance and bearing a current date and appropriate signature.

There appears to be some misunderstanding about how NRC licenses are administered. To help clarify this please note the following.

1. 10 CFR 30.36(a) states1.: “Each specific license expires at the end of the day on the expiration date stated in the license, unless the licensee has filed an application for renewal under § 30.37 not less than 30 days before the expiration date stated in the existing license. If an application for renewal has been filed at least 30 days before the expiration date stated in the existing license, the existing license expires at the end of the day on which the Commission makes a final determination to deny the renewal application or, if the determination states an expiration date, the expiration date stated in the determination.

We received your request to renew this license on November 30, 2022, a date less than 30 days before the expiration date stated in the license, which was November 30, 2022.

2. A Notice of License Expiration was sent to you on September 1, 2022, to the attention of Mr. Todd Baugher at 700 S. River Road, Waterville, Ohio, 43566.

This letter stated, in part, “Your U.S. Nuclear Regulatory Commission (NRC) license will expire within the next 2 months. If you wish to continue your licensed program, you should prepare and submit a renewal application on NRC Form 313, “Application for Materials License” (enclosed), following regulations *in Title 10 of the Code of Federal Regulations* (10 CFR) and licensing guidance NUREG 1556, “Consolidated Guidance About Materials Licenses.”

You must submit an application for the renewal of your license at least 30 days before the expiration date on the license.”

As we have only learned in the course of this renewal process, you changed your mailing address in 2021 but failed to request an amendment to your license. However, we did not receive the Notice of License Expiration letter back in returned mail so we assume that you did receive it.

3. I sent a request for additional information (RFAI) letter to you dated December 20, 2022, with instructions on how to prepare an application for the renewal of your license correctly, identifying the guidance you would need and including excerpts from that guidance. I requested your written response within 45 days, instead of our usual 30 days, due to the holidays. Your response was due on or before February 5, 2023. This letter is repeated as follows:

“This refers to the processing of your renewal request application, an NRC Form 313 dated November 30, 2022, which included an acceptance review. We found that the application was lacking significant amounts of required information, as described below.

The NRC staff has reviewed your application and concluded that it did not provide technical information in sufficient detail to enable the staff to complete its detailed review and make an independent assessment regarding the acceptability of your pending license renewal, in terms of regulatory requirements and the protection of public health, safety, and the environment.

With an incomplete document and the unavailability of adequate information to support your renewal request, we are unable to begin our detailed safety evaluation of the renewal in its entirety.

Please ensure that you include the entire application with the missing information needed to allow us to evaluate your renewal. Please provide only one complete, written response that is currently dated and signed by a senior management/certifying official for this license. Please include the title of the certifying officer who signs your response.

Please do not submit more than one response copy or respond by multiple means of transmission. For example, please do not fax and/or mail and/or email us a response. Your response must include either a new NRC Form 313 or a business-style transmittal letter that identifies this license by its name, license number, and control number, 633677.

You may respond by faxing your letter to (630) 515-1078 or you may scan your response and attach it to an email addressed to [DRSSMail.Resource@nrc.gov](mailto:DRSSMail.Resource@nrc.gov). You may "cc" me on this email. This will help ensure that your response is processed correctly in our offices.

Your written response should be addressed to my attention at the above address within 45 days of the date of this letter (by February 6, 2023), as "additional information to control number 633677."

If an alternative timeframe to respond is needed, please contact me at (630) 829-9841 or [colleen.casey@nrc.gov](mailto:colleen.casey@nrc.gov) to make other arrangements. We will then continue our review.

For assistance preparing your revised renewal application, please refer to our gauge toolkit page at: <https://www.nrc.gov/materials/miau/industrial-uses/gauge-toolkit.html> and our "Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Portable Gauge Licenses, Final Report (NUREG-1556, Volume 1, Revision 2) June 2016" at <https://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1556/v1/index.html>.

We noted that the mailing address on the NRC Form 313 dated November 30, 2022, is different from the mailing address we have on file for your license. It appears that you changed your mailing address without notifying us.

Please clarify in your response whether the Waterville, Ohio address or the Bowling Green, Ohio address should be your current mailing address.

Please note the attached excerpt from the Guidance document above, in section 8.2 Item 2 as it pertains to your mailing address:

**"8.2 Item 2: Name and Mailing Address of Applicant**

List the legal name of the applicant's corporation or other legal entity with direct control over use of the radioactive material. A division or department within a legal entity may not be a licensee. An individual may be designated as the applicant only if the individual is acting in a private capacity and the use of the radioactive material is not connected with employment in a corporation or other legal entity. Provide the mailing address where correspondence should be sent. A post office box number is an acceptable mailing address.

Notify the NRC of changes in the mailing address. These changes do not require a fee".

Please also note the attached excerpt from the Guidance document above, in section 9:

“9 LICENSE AMENDMENTS AND RENEWALS

**It is the licensee’s obligation to keep the license current.** If any of the information provided in the original application is to be modified or changed, the licensee must submit an application for a license amendment before the change takes place. The change is not in effect until the amendment has been issued. Also, to continue the license after its expiration date, the licensee must submit an application for a license renewal at least 30 days before the expiration date

Title 10 of the *Code of Federal Regulations* (10 CFR) [10 CFR 2.109(a), 10 CFR 30.36(a)].

Applicants for license amendment or renewal should do the following:

- **Use the most recent guidance in preparing an amendment or renewal request.**
- **Submit either a U.S. Nuclear Regulatory Commission (NRC) Form 313 or a letter requesting amendment or renewal.**
- **Provide the license number and docket number.**
- ***For renewals, provide a complete and up-to-date application, including all required program elements outlined in Appendix B of this NUREG. Training documentation for personnel currently listed on the license does not need to be submitted as part of the renewal application.” (emphasis added)***

If you have any questions or if you would like to schedule a telephone call with me to discuss these issues, please email me at [colleen.casey@nrc.gov](mailto:colleen.casey@nrc.gov) (preferable) to set up a mutually convenient date and time. My office phone number is 630-829-9841 but I telework about half of the time so reaching me by email is more reliable. Please also note that I am located in the central time zone and it appears that you are located in the eastern time zone, for such purposes.”

On February 7, 2023, I sent you an email asking about the status of the RFAI and I “cc’d” my supervisor on my email.

You responded that you had overlooked it and you asked for additional time to complete the response. We agreed on an additional 17 calendar days for a due date of February 24, 2023.

The response you transmitted to us on February 23, 2023, did not contain an explanation about the change in mailing address that I had requested in my RFAI letter. It also did not contain a currently dated and signed transmittal document.

I emailed you about these issues and you then sent an NRC Form 313 with a current date and signature (that was supposed to have been attached to the actual response) and in your email you explained the change in mailing address that took place in 2021.

When I continued my in-depth review of your renewal documents I became aware of the incompleteness, extraneous and outdated information submitted. You had also not specified the number of each model gauging device; the number of each sealed source, by radionuclide; and model number that you were requesting authorization for.

In our telephone call on May 25, 2023, you stated that you had resubmitted an old license application instead of following the instructions provided in my RFAI. This misunderstanding factored into the issues above.

What you need to do now is follow the instructions provided in my RFAI. Use the current guidance in NUREG 1556 Vol. 1, Rev. 2.

Please do not send us a copy of your license; copies of Sealed Source and Device certificates; previously submitted documents based on outdated guidance; extraneous information, especially when our guidance explicitly states certain information need not be submitted; or use a format that differs from Appendix B in the NUREG.

Failure to use the Appendix B format appears to be the cause of many of the problems with this license. The front of the NUREG takes you through the entire application process step-by-step so completion of the Appendix B document and necessary attachments are more streamlined and complete.

Since you are the incumbent Radiation Safety Officer, and the President of this company, it is not necessary for you to provide your qualifications to us yet again. Nor do we need a Delegation of Authority, in Appendix D, on the last page.

You do not need to submit actual procedures if you check the boxes on the Appendix B form and use the standard responses preprinted on it.

You do not need to submit an Occupational Dose assessment, as you submitted to us previously.

I also attached a "pen and ink" marked up copy of the documents you've submitted for this renewal so far to highlight some key areas of unnecessary or incomplete information.

Please submit your written response within 35 days of the date of this letter, by July 5, 2023.

Before submitting anything questionable, please contact me to schedule a phone call to discuss your question first.

In addition, please note that we will not accept any draft documents for preliminary review.

NUREG 1556 Vol. 1, Rev. 2 can be found at <https://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1556/v1/index.html>.

Your response should include appropriate responses to the information in the guidance document and may be provided on a copy of Appendix B, as we discussed.

There is no need to retype this Appendix. It can be printed or copied and filled in if the suggested responses accurately represent your commitments.

There is no need to retype this Appendix. It can be printed or copied and filled in if the suggested responses accurately represent your commitments.

Please be sure to include, *but do not be limited by*, the following details from this guidance document: I'm sorry if this is redundant but it is important.

1. Please specify how many sealed sources of each manufacturer and model number/devices of each manufacturer and model number you want to have listed on your license at this time.

Stating a single possession limit for each radionuclide is no longer acceptable.

You must now separate your requested sealed sources and devices by vendor and include the specific source model numbers.

Please see NUREG 1556, Vol. 1, Rev. 2, section 8.5.1. This document can be found at:

<https://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1556/v1/>

2. Please provide facilities diagrams and describe or illustrate the functional identity of the spaces above, below and surrounding the room where the portable gauges will be kept. Section 8.9 Item 9 in the guidance should be useful in this regard.

Please be reminded, that 10 CFR 30.9(a) "Completeness and accuracy of information" requires that: "(a) Information provided to the Commission by an applicant for a license or by a licensee or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects."

You will be periodically inspected by NRC. Failure to conduct your program in accordance with NRC regulations, license conditions, and representations made in your license application and supplemental correspondence with NRC will result in enforcement action against you.

This could include issuance of a notice of violation, or imposition of a civil penalty, or an order suspending, modifying or revoking your license as specified in the General Statement of Policy and Procedure for NRC Enforcement Actions.

Since serious consequences to employees and the public can result from failure to comply with NRC requirements, prompt and vigorous enforcement action will be taken when dealing with licensees who do not achieve the necessary meticulous attention to detail and the high standard of compliance which NRC expects of its licensees.

The NRC's Safety Culture Policy Statement became effective in June 2011. While a policy statement and not a regulation, it sets forth the agency's *expectations* for individuals and organizations to establish and maintain a positive safety culture. You can access the policy statement and supporting material that may benefit your organization on NRC's safety culture Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/safety-culture.html>.

M. Forst

- 7 -

We strongly encourage you to review this material and adapt it to your particular needs in order to develop and maintain a positive safety culture as you engage in NRC-regulated activities.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be 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>.

Sincerely,

A handwritten signature in cursive script that reads "Colleen Carol Casey".

Colleen Carol Casey  
Health Physicist  
Materials Licensing Branch

License No. 34-26746-03  
Docket No. 030-35974  
Control No. 633677

Enclosure:

Amendment No. 2