



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

September 13, 2024

EA-24-058

Danny De Lara, Operations Manager
Paramount Builders, Inc.
P.O. Box 2070
Pago Pago, AS 96799

SUBJECT: PARAMOUNT BUILDERS INC. - NRC INSPECTION
REPORT 030-39276/2024-001

Dear Danny De Lara:

This letter refers to the unannounced routine inspection that was conducted on February 16 and 19, 2024, at your facility in Pago Pago, American Samoa, with continued in-office review through August 29, 2024. The purpose of the inspection was to examine activities conducted under your license as they relate to public health and safety, and to confirm compliance with the U.S. Nuclear Regulatory Commission (NRC) rules and regulations and the conditions of your license. Within these areas, the inspection consisted of an examination of selected procedures and representative records, observation of licensed activities, independent radiation measurements, and interviews with personnel. The enclosed inspection report presents the results of this inspection. The inspectors discussed the preliminary inspection findings with Elisaia Folau, Jr., Radiation Safety Officer, at the conclusion of the onsite portion of the inspection. A final telephonic exit briefing was conducted with you on August 29, 2024.

Based on the results of the inspection, 11 apparent violations were identified and are 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>. The apparent violations involve the failure to: (1) confine the possession and use of byproduct material to the purposes authorized in the license; (2) conduct a physical inventory every 6 months to account for all sealed sources and/or devices received and possessed under the license; (3) use a minimum of two independent physical controls that formed tangible barriers to secure portable gauges from unauthorized removal; (4) have a lock or outer locked container designed to prevent unauthorized or accidental removal of the sealed source from its shielded position; (5) instruct individuals (hazmat employees) in the requirements related to the transport of Class 7 (radioactive) materials; (6) have shipping papers that described the transport of Class 7 (radioactive) materials; (7) maintain a log book that remained at the storage location; (8) test sealed sources for leakage and contamination at intervals not to exceed the intervals specified in the certificate of registration; (9) either possess and use, or have access to and use, a radiation survey meter; (10) maintain documentation demonstrating that unmonitored individuals are not likely to receive a radiation dose in excess of the NRC regulatory limits; and (11) periodically (at least annually) review the radiation protection program content and implementation.

The circumstances surrounding these apparent violations, the significance of the issues, and the need for lasting and effective corrective action were discussed with you during the telephonic exit meeting on August 29, 2024.

Before the NRC makes its enforcement decision, we are providing you an opportunity to: (1) respond in writing to the apparent violations addressed in the inspection report within 30 days of the date of this letter; (2) request a predecisional enforcement conference (PEC); 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. Please contact Dr. Lizette Roldán-Otero, Chief, Materials Inspection Branch, at 817-200-1455 or Lizette.Roldan-Otero@nrc.gov within 10 days of the date of this letter to notify the NRC of your intended response to either provide a written response, participate in a PEC, or pursue ADR. A PEC should be held within 30 days and 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 Apparent Violations in NRC Inspection Report 030-39276/2024-001; EA-24-058" and should include for each 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 (or has been) achieved. Your response may reference or include previously docketed correspondence if the correspondence adequately addresses the required response. 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.

Your written response, should you choose to provide one, should be sent to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001, with identical copies mailed to the Director, Division of Radiological Safety & Security, Region IV, 1600 East Lamar Boulevard, Arlington, TX 76011-4511, 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 violations. 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 (Agencywide Documents Access and Management System (ADAMS) Accession No. [ML061240509](#)).

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. The technique that the NRC employs 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 at Cornell University has agreed to facilitate the NRC's program as a neutral third party. Please contact the Institute on Conflict Resolution 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.

Since the NRC has not made a final determination in this matter, a Notice of Violation is not being issued for the apparent violations at this time. 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 on our deliberations in this matter.

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's website at <http://www.nrc.gov/reading-rm/adams.html>.

If you have any questions concerning this matter, please contact Dr. Lizette Roldán-Otero of my staff at 817-200-1455.

Sincerely,



Groom, Jeremy signing on behalf
of Bloomer, Tamara
on 09/13/24

Tamara Bloomer, Director
Division of Radiological Safety & Security

License No. 57-35643-01
Docket No. 030-39276

Enclosure:
NRC Inspection Report 030-39276/2024-001

cc w/Enclosure:
Fa'amao Asalele
American Samoa Environmental Protection Agency
ASEPA Building - Utulei
Pago Pago, AS 96799

Motusa Tuileama Nua
American Samoa Department of Public Health
LBJ Hospital - Fagaalu
Pago Pago, AS 96799

PARAMOUNT BUILDERS INC. - NRC INSPECTION REPORT 030-39276/2024-001 - DATED SEPTEMBER 13, 2024

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DOCUMENT NAME: PARAMOUNT BUILDERS INC. - NRC INSPECTION REPORT 030-39276/2024-001

ADAMS ACCESSION NUMBER: **ML24242A325**

SUNSI Review: ADAMS: Non-Publicly Available Non-Sensitive Keyword:
 By: JFK Yes No Publicly Available Sensitive NRC-002

OFFICE	SHP:DRSS:MIB	BC:DRSS:MIB	TL:ACES	RC
NAME	JKatanic	LRoldanOtero	BAIferink	DCylkowski
SIGNATURE	<i>/RA/ E</i>	<i>/RA JFK for/</i>	<i>/RA/ E</i>	<i>/RA/ E</i>
DATE	09/03/24	09/04/24	09/03/24	09/04/24
OFFICE	OE	OGC	D:DRSS	
NAME	LSreenivas	RAugustus	TBloomer	
SIGNATURE	<i>/RA/ E</i>	<i>/NLO/ E</i>	<i>/RA JRG for/</i>	
DATE	09/11/24	09/12/24	09/13/24	

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**U.S. NUCLEAR REGULATORY COMMISSION
REGION IV**

Docket No. 030-39276

License No. 57-35643-01

Inspection Report No. 030-39276/2024-001

EA No. EA-24-058

Licensee: Paramount Builders, Inc.

Location Inspected: Baby George Building
Fagaima Road
Pago Pago, American Samoa 96799

Inspection Date: February 16 and 19, 2024, with in-office review through
August 29, 2024

Exit Meeting Date: August 29, 2024

Inspector: Janine F. Katanic, PhD, CHP
Senior Health Physicist
Materials Inspection Branch
Division of Radiological Safety & Security, Region IV

Approved by: Lizette Roldán-Otero, PhD
Chief, Materials Inspection Branch
Division of Radiological Safety & Security, Region IV

Attachment: Supplemental Inspection Information

Enclosure

EXECUTIVE SUMMARY

Paramount Builders, Inc. (PBI or licensee) NRC Inspection Report 030-39276/2024-001

On February 16 and 19, 2024, the NRC performed an unannounced routine inspection of PBI. The purpose of the inspection was to examine activities conducted under the PBI license as they relate to public health and safety, and to confirm compliance with NRC rules and regulations and with the conditions of the PBI license. Within these areas, the inspection consisted of a selected examination of procedures and representative records, observations of licensed activities, independent radiation measurements, and interviews with personnel. Paramount Builders, Inc., is authorized under NRC Materials License No. 57-35643-01 to possess and use byproduct material in portable nuclear gauging devices for measuring the physical properties of materials.

One previous violation was reviewed regarding the licensee's failure to have the named individual as the RSO for the license. Based on the inspection, there is sufficient information to consider this violation closed.

Based on the current inspection, 11 apparent violations were identified regarding the licensee's failure to: (1) confine the possession and use of byproduct material to the purposes authorized in the license; (2) conduct a physical inventory every 6 months to account for all sealed sources and/or devices received and possessed under the license; (3) use a minimum of two independent physical controls that formed tangible barriers to secure portable gauges from unauthorized removal; (4) have a lock or outer locked container designed to prevent unauthorized or accidental removal of the sealed source from its shielded position; (5) instruct individuals (hazmat employees) in the requirements related to the transport of Class 7 (radioactive) materials; (6) have shipping papers that described the transport of Class 7 (radioactive) materials; (7) maintain a log book that remained at the storage location, indicating for each portable gauge possessed by the licensee: the date(s) of use, name(s) of the authorized users who will be responsible for the gauge, and the temporary job site(s) where the gauge will be used; (8) test sealed sources for leakage and contamination at intervals not to exceed the intervals specified in the certificate of registration; (9) either possess and use, or have access to and use, a radiation survey meter; (10) maintain, for inspection by the NRC, documentation demonstrating that unmonitored individuals are not likely to receive a radiation dose in excess of the NRC regulatory limits; and (11) periodically (at least annually) review the radiation protection program content and implementation.

As corrective actions, on February 23, 2024, the licensee submitted an amendment request to NRC to increase their possession limits to add an additional portable nuclear gauge. On April 11, 2024, the PBI NRC license was amended to increase the possession limits. The licensee has not provided information regarding what actions the licensee has taken or plans to take to prevent recurrence of obtaining materials that are not authorized by the NRC license. The licensee has not provided corrective actions that it has taken or plans to take to correct the other identified deficiencies.

REPORT DETAILS

1 Program Overview (Inspection Procedure (IP) 87139)

Paramount Builders, Inc. (PBI or licensee) is authorized under NRC Materials License No. 57-35643-01 to possess and use byproduct material in portable nuclear gauging devices for measuring the physical properties of materials. The licensee is based in Pago Pago, American Samoa. The licensee is a general contractor construction company that specializes in large construction projects throughout American Samoa. The licensee's work activities include construction of the American Samoa Fono Building (Territorial Legislature Building) and the concrete runway reconstruction project at Ofu Airport in the Manu'a island group, which is part of the U.S. Territory of American Samoa.

2 Portable Nuclear Gauge Activities (IP 87139)

2.1 Inspection Scope

On February 16 and 19, 2024, the NRC performed an unannounced routine inspection of PBI. The purpose of the inspection was to examine activities conducted under the PBI license as they relate to public health and safety, to confirm compliance with NRC rules, and regulations and the conditions the PBI license. Within these areas, the inspection consisted of a selected examination of procedures and representative records, observations of licensed activities, independent radiation measurements, and interviews with personnel.

The inspection also reviewed the licensee's corrective actions to address a Severity Level IV violation (VIO) that was identified in NRC Inspection Report 030-39276/2022-001 and Notice of Violation (NOV) dated October 16, 2023 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML23278A261).

2.2 Observations and Findings

2.2.1 Review of Previous Inspection Findings

The PBI license was issued by the NRC on August 10, 2021. At that time, due to the Covid-19 Public Health Emergency, commercial flights to American Samoa were suspended and the border remained closed. As a result, the NRC's initial inspection of PBI was conducted remotely, from April 4, 2022, through January 16, 2023. The NRC inspectors determined that the Radiation Safety Officer (RSO) listed on the new license was no longer employed by PBI. The NRC issued Inspection Report 030-39276/2022-001 on July 3, 2023 (ML23172A170). The Inspection Report identified one apparent violation related to licensee's failure to assign an individual to perform the duties and fulfill the responsibilities of the RSO.

The licensee responded in writing with letters dated August 2 and August 23, 2023 (ML23251A101 and ML23285A225, respectively). The licensee provided the training and qualifications of the new RSO demonstrating that the individual met the qualifications to be named as the RSO on the NRC license. On October 16, 2023, the licensee was issued a VIO for failing to request an amendment to the NRC license to name a new RSO after the previous RSO was no longer employed by PBI (ML23278A261).

During the current inspection, the licensee's corrective actions for the VIO were reviewed. There had not been any change of RSO since the NRC's remote initial inspection. Accordingly, the inspector determined that the licensee's corrective actions were sufficient to consider VIO 030-39276/2022-001-01 closed.

2.2.2 Current Inspection Findings

On February 16, 2024, the inspector arrived at the PBI facility unannounced, and waited outside the gauge storage facility for the RSO to arrive. The inspector observed that the licensee possessed two Humboldt Scientific Model 5001 portable nuclear gauges, although the PBI NRC license only authorized the licensee to possess one. Based on the information available to the inspector, it appeared that the second gauge was shipped by the manufacturer Humboldt Scientific on May 12, 2022, and was received by the licensee after shipping time to American Samoa, customs clearance, etc. on or about July 13, 2022. The RSO stated that they were unaware that a second portable nuclear gauge had been acquired by the licensee. Since the issuance of the license, the licensee had not conducted a physical inventory every 6 months to account for all sealed sources and/or devices received and possessed under the license.

The inspector observed that both portable nuclear gauges were secured with only one independent tangible barrier, which was the locked door to the PBI building. One portable nuclear gauge, which was the first one acquired by PBI, had a lock on the gauge handle designed to prevent unauthorized or accidental removal of the sealed source from its shielded position. The other portable nuclear gauge, which was the second one acquired, had a lock on the handle, but the key was in the lock. Neither portable nuclear gauge transportation case was locked.

The RSO explained that the NRC license and the portable nuclear gauge had been obtained for one particular project, the concrete runway reconstruction project at Ofu Airport in the Manu'a island group, which is part of the U.S. Territory of American Samoa. During the project, the gauge would be removed from the PBI storage facility and transported to the dock where the PBI vessel, the *Kite Runner*, would transport it to Ofu Island with the gauge user, who was usually the RSO. At the end of the day, the gauge would be transported back to the PBI storage facility. The project went on for several months. When that project ceased, the portable nuclear gauge ceased being used by the licensee. Accordingly, the RSO had not been to the gauge storage location in some time. Many records associated with licensed activities could not be located. The inspector and RSO made arrangements to meet on February 19, 2024, to allow the RSO time to attempt to locate relevant records.

On February 19, 2024, the inspector met with the RSO and another licensee employee, who was not a trained gauge user and did not have U.S. Department of Transportation (DOT) Hazmat training. This other licensee employee stated that PBI acquired the second portable nuclear gauge because the original gauge was not working properly. The employee stated that the second gauge was also not working properly and had never been used for any projects. The PBI employee stated that when the gauge was received, the employee transported it to another NRC portable nuclear gauge licensee's facility in American Samoa. They stated that the other licensee did comparison tests of the PBI gauge to one of its portable nuclear gauges, and that the readings did not

match, leading the PBI employee to conclude that the new PBI portable nuclear gauge did not work properly.

This PBI employee transported the portable nuclear gauge to and from another NRC licensee's facility in American Samoa without the required DOT Hazmat training. The employee stated that they never "operated" the gauge but instead the other NRC licensee's portable gauge user operated the gauge. Although the licensee had a blank Bill of Lading/ Shipping Papers form, it does not appear that any were used for transportation activities associated with the Ofu Island project and were not used for when the gauge was transported to and from the PBI storage facility to the other NRC licensee facility for comparison testing.

The inspector asked to review the records related to the use of the portable nuclear gauge for the Ofu Island project. The licensee did not have a log book to document usage or removal of the original gauge from storage nor for removal of the new gauge from storage. The RSO stated that there had been a log for the original gauge and showed the inspector a blank "Daily Utilization Log" form but there were no completed entries. An available "log" that was used for the original gauge on the Ofu Island project was for recording of the daily testing results and did not contain the information required to be in a log book for each portable gauge possessed by the licensee: the date(s) of use, name(s) of the authorized users who will be responsible for the gauge, and the temporary job site(s) where the gauge will be used.

The licensee had the original leak test results from when the gauges were manufactured and purchased by PBI but had not performed any leak tests since the time each of the portable nuclear gauges were received. The original gauge was last tested for leakage or contamination in August 2021, and the new gauge was last tested in May 2022. The leak test frequency specified in the certificate of registration for the manufacturer and model of portable nuclear gauge is 1 year. The licensee had leak test kits from the manufacturer but had never used them.

The licensee did not implement several other NRC license commitments. The licensee committed to either possess and use, or have access to and use, a radiation survey meter. However, they did not possess a survey meter, nor had they ascertained whether any other NRC licensee or other entity on American Samoa would allow them access to a survey meter. The licensee committed to maintain, for inspection by the NRC, documentation demonstrating that unmonitored individuals are not likely to receive a radiation dose in excess of the limits in 10 CFR 20.1502(a). However, the licensee did not supply personnel monitoring devices (dosimeters) or have information to support that dosimeters were not required for unmonitored individuals.

The licensee did not have a program for self-assessment and since the issuance of the license, had not reviewed its radiation safety program annually as required.

Based on the inspector's review of licensed activities, 11 apparent violations were identified regarding the licensee's failure to: (1) confine the possession and use of byproduct material to the purposes authorized in the license; (2) conduct a physical inventory every 6 months to account for all sealed sources and/or devices received and possessed under the license; (3) use a minimum of two independent physical controls that formed tangible barriers to secure portable gauges from unauthorized removal; (4) have a lock or outer locked container designed to prevent unauthorized or accidental

removal of the sealed source from its shielded position; (5) instruct individuals (hazmat employees) in the DOT requirements related to the transport of Class 7 (radioactive) materials; (6) have shipping papers that described the transport of Class 7 (radioactive) materials; (7) maintain a log book that remained at the storage location, indicating for each portable gauge possessed by the licensee: the date(s) of use, name(s) of the authorized users who will be responsible for the gauge, and the temporary job site(s) where the gauge will be used; (8) test sealed sources for leakage and contamination at intervals not to exceed the intervals specified in the certificate of registration; (9) either possess and use, or have access to and use, a radiation survey meter; (10) maintain, for inspection by the NRC, documentation demonstrating that unmonitored individuals are not likely to receive a radiation dose in excess of the NRC regulatory limits; and (11) periodically (at least annually) review the radiation protection program content and implementation.

Apparent violation of 10 CFR 30.34(c)

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

Items 6.A through 6.B. of NRC License No. 57-35643-01, Amendment Nos. 0 and 1, dated August 10, 2021, and September 11, 2023, respectively, authorized the possession and use of americium-241/beryllium and cesium-137 sealed sources, in a specified portable nuclear gauging device (Humboldt Scientific, Inc., Model 5001) for measuring physical properties of materials. The quantity of material authorized equated to the possession of one Humboldt Scientific, Inc., Model 5001 portable nuclear gauging device.

Contrary to the above, from approximately July 13, 2022, to April 11, 2024, the licensee failed to confine its possession and use of byproduct material to the purposes authorized in the license. Specifically, the licensee possessed americium-241/beryllium and cesium-137 sealed sources in two Humboldt Scientific, Inc., Model 5001 portable nuclear gauging devices, although only one such portable nuclear gauging device was authorized to be possessed in the NRC license.

The licensee's failure to confine its possession and use of byproduct material to the purposes authorized in the license was identified as an apparent violation of 10 CFR 30.34(c). (030-39276/2024-001-01)

Apparent violation of License Condition 15

License Condition 15 of NRC License No. 57-35643-01, Amendment Nos. 0 and 1, dated August 10, 2021, and September 11, 2023, respectively, requires, in part, that each licensee shall conduct a physical inventory every 6 months to account for all sealed sources and/or devices received and possessed under the license. Records of inventories shall be maintained for 3 years from the date of each inventory, and shall include the radionuclides, quantities, manufacturer's name and model numbers, and the date of the inventory.

Contrary to the above, from February 10, 2022, to February 16, 2024, the licensee failed to conduct a physical inventory every 6 months to account for all sealed sources and/or

devices received and possessed under the license. Specifically, the licensee did not perform any physical inventory of materials possessed under the license, which consisted of two Humboldt Scientific, Inc., Model 5001 portable nuclear gauges.

The licensee's failure to conduct a physical inventory every 6 months to account for all sealed sources and/or devices received and possessed under the license was identified as an apparent violation of License Condition 15. (030-39276/2024-001-02)

Apparent violation of 10 CFR 30.34(i)

Title 10 CFR 30.34(i) requires that each portable gauge licensee shall use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee.

Contrary to the above, on February 16, 2024, the portable gauge licensee failed to use a minimum of two independent physical controls that formed tangible barriers to secure portable gauges from unauthorized removal, whenever the portable gauge was not under the control and constant surveillance of the licensee. Specifically, two Humboldt Scientific, Inc., Model 5001 portable nuclear gauges were secured with only one physical barrier, a locked door to the storage building. The portable nuclear gauges were not under the constant control and surveillance of the licensee.

The licensee's failure to use a minimum of two independent physical controls that formed tangible barriers to secure portable gauges from unauthorized removal was identified as an apparent violation of 10 CFR 30.34(i). (030-39276/2024-001-03)

Apparent violation of License Condition 17

License Condition 17 of NRC License No. 57-35643-01, Amendment No. 1, dated September 11, 2023, requires that each portable nuclear gauge shall have a lock or outer locked container designed to prevent unauthorized or accidental removal of the sealed source from its shielded position. The gauge or its container must be locked when in transport, storage, or when not under the direct surveillance of an authorized user.

Contrary to the above, on February 16, 2024, for a portable nuclear gauge in storage and not under the direct surveillance of an authorized user, the licensee failed to have a lock or outer locked container designed to prevent unauthorized or accidental removal of the sealed source from its shielded position. Specifically, one Humboldt Scientific, Inc., Model 5001 portable nuclear gauge was in storage and not under the direct surveillance of an authorized user. The portable nuclear gauge did not have an outer locked container, and the lock on the portable nuclear gauge handle had the key in the lock.

The licensee's failure to have a lock or outer locked container designed to prevent unauthorized or accidental removal of the sealed source from its shielded position was identified as an apparent violation of License Condition 15. (030-39276/2024-001-04)

Apparent violation of 10 CFR 71.5(a)

Title 10 CFR 71.5(a) requires, in part, that each licensee who transports licensed material on public highways shall comply with the applicable requirements of the U.S. Department of Transportation (DOT) regulations in 49 CFR Parts 171 through 180 appropriate to the mode of transport.

Title 49 CFR 172.702(b) requires, in part, except as provided in 10 CFR 172.704(c)(1), that a hazmat employee who performs any function subject to the requirements of 49 CFR Chapter I, Subchapter C, may not perform that function unless instructed in the requirements of 49 CFR Chapter I, Subchapter C, that apply to that function. It is the duty of each hazmat employer to comply with the applicable requirements of 49 CFR Chapter I, Subchapter C, and to thoroughly instruct each hazmat employee in relation thereto.

Title 49 CFR 172.704(c)(1) requires, in part, that a new hazmat employee may perform those functions prior to the completion of the training provided that the employee performs those functions under the direct supervision of a properly trained and knowledgeable hazmat employee and the training is completed within 90 days after employment.

Contrary to the above, between approximately July 13, 2022, to February 16, 2024, a licensee hazmat employee performed functions subject to the requirements of 49 CFR Chapter I, Subchapter C, but the licensee failed to instruct the individual in the requirements of 49 CFR Chapter I, Subchapter C, that applied to that function. Specifically, on at least two occasions, a licensee hazmat employee transported a portable nuclear gauge containing licensed Class 7 (radioactive) materials on public highways in NRC jurisdiction, and the individual had not been instructed in the requirements of 49 CFR Chapter I, Subchapter C, that apply to that function. The individual did not perform the functions under the direct supervision of a properly trained and knowledgeable hazmat employee and the training was not completed within 90 days after performing those functions.

The licensee's failure to instruct individuals (hazmat employees) in the requirements of 49 CFR Chapter I, Subchapter C, related to the transport of Class 7 (radioactive) materials was identified as an apparent violation of 10 CFR 71.5(a). (030-39276/2024-001-05)

Apparent violation of 10 CFR 71.5(a)

Title 10 CFR 71.5(a) requires, in part, that each licensee who transports licensed material on public highways shall comply with the applicable requirements of the DOT regulations in 49 CFR Parts 171 through 180 appropriate to the mode of transport.

Title 49 CFR 172.200(a) requires, in part, that each person who offers a hazardous material for transportation shall describe the hazardous material on the shipping paper in the manner required by 49 CFR 172 Subpart C – Shipping Papers.

Contrary to the above from approximately July 13, 2022, to February 16, 2024, the licensee offered hazardous material for transportation and failed to describe the hazardous material on the shipping paper in the manner required by 49 CFR 172

Subpart C – Shipping Papers. Specifically, on numerous occasions, the licensee transported portable nuclear gauges containing licensed Class 7 (radioactive) materials on public highways in NRC jurisdiction and failed to have shipping papers that described the hazardous materials.

The licensee's failure to have shipping papers that described the transport of Class 7 (radioactive) materials was identified as an apparent violation of 10 CFR 71.5(a). (030-39276/2024-001-06)

Apparent violation of License Condition 19

License Condition 19 of NRC License No. 57-35643-01, Amendment Nos. 0 and 1, dated August 10, 2021, and September 11, 2023, respectively, 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.

Emails with attachments dated June 15, 2021, and June 18, 2021, item 10.6 states, in part, that the licensee will implement and maintain the operating, emergency, and security procedures in Appendix G to NUREG-1556, Volume 1, Revision 2.

Appendix G to NUREG-1556, Volume 1, Revision 2, states, in part, under "Operating Procedures," to sign out the gauge in a log book (that remains at the storage location), including the date(s) of use, name(s) of the authorized users who will be responsible for the gauge, and the temporary jobsite(s) where the gauge will be used.

Contrary to the above, from August 10, 2021, to February 16, 2024, 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, for its portable gauge storage location in American Samoa, the licensee failed to maintain a log book that remained at the storage location, indicating for each portable gauge possessed by the licensee: the date(s) of use, name(s) of the authorized users who will be responsible for the gauge, and the temporary job site(s) where the gauge will be used.

The licensee's failure to maintain a log book that remained at the storage location, indicating for each portable gauge possessed by the licensee: the date(s) of use, name(s) of the authorized users who will be responsible for the gauge, and the temporary job site(s) where the gauge will be used, was identified as an apparent violation of License Condition 19. (030-39276/2024-001-07)

Apparent violation of License Condition 13

License Condition 13 of NRC License No. 57-35643-01, Amendment Nos. 0 and 1, dated August 10, 2021, and September 11, 2023, respectively, requires, in part, that sealed sources shall be tested for leakage and contamination at intervals not to exceed the intervals specified in the certificate of registration issued by the NRC under 10 CFR 32.210 or by an Agreement State.

The certificate of registration for the Humboldt Scientific, Inc., portable moisture and density gauge, NC-356-D-101-S, specifies that the leak test frequency is 12 months.

Contrary to the above, from August 2022 to February 16, 2024, the licensee failed to test sealed sources for leakage and contamination at intervals not to exceed the intervals specified in the certificate of registration issued by the NRC under 10 CFR 32.210 or by an Agreement State as evidenced by the following two examples:

1. The licensee's Humboldt Scientific, Inc., Model 5001 portable moisture and density gauge, serial number 10078, was last tested for leakage and contamination in August 2021, and as of February 16, 2024, had not been tested for leakage and contamination, a period in excess of 12 months.
2. The licensee's Humboldt Scientific, Inc., Model 5001 portable moisture and density gauge, serial number 10151, was last tested for leakage and contamination on May 9, 2022, and as of February 16, 2024, had not been tested for leakage and contamination, a period in excess of 12 months.

The licensee's failure to test sealed sources for leakage and contamination at intervals not to exceed the intervals specified in the certificate of registration was identified as an apparent violation of License Condition 13. (030-39276/2024-001-08)

Apparent violation of License Condition 19

License Condition 19 of NRC License No. 57-35643-01, Amendment Nos. 0 and 1, dated August 10, 2021, and September 11, 2023, respectively, 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.

Emails with attachments dated June 15, 2021, and June 18, 2021, item 10.2, states, in part, that the licensee will either possess and use, or have access to and use, a radiation survey meter that meets the criteria in the section titled, "Radiation Safety Program – Radiation Monitoring Instruments," in NUREG-1556, Volume 1, Revision 2.

Contrary to the above, from August 10, 2021, to February 16, 2024, 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 either possess and use, or have access to and use, a radiation survey meter that meets the criteria in the section titled, "Radiation Safety Program – Radiation Monitoring Instruments," in NUREG-1556, Volume 1, Revision 2.

The licensee's failure to either possess and use, or have access to and use, a radiation survey meter that meets the criteria in NUREG-1556, Volume 1, Revision 2, was identified as an apparent violation of License Condition 19. (030-39276/2024-001-09)

Apparent violation of License Condition 19

License Condition 19 of NRC License No. 57-35643-01, Amendment Nos. 0 and 1, dated August 10, 2021, and September 11, 2023, respectively, 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.

Emails with attachments dated June 15, 2021, and June 16, 2021, item 10.4, states, in part, that the licensee will maintain, for inspection by the NRC, documentation demonstrating that unmonitored individuals are not likely to receive a radiation dose in excess of the limits in 10 CFR 20.1502(a).

Contrary to the above, from August 10, 2021, to February 16, 2024, 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 maintain, for inspection by the NRC, documentation demonstrating that portable nuclear gauge users, who are unmonitored, are not likely to receive a radiation dose in excess of the limits in 10 CFR 20.1502(a).

The licensee's failure to maintain, for inspection by the NRC, documentation demonstrating that unmonitored individuals are not likely to receive a radiation dose in excess of the NRC regulatory limits was identified as an apparent violation of License Condition 19. (030-39276/2024-001-10)

Apparent violation of 10 CFR 20.1101(c)

Title 10 CFR 20.1101(c) requires that the licensee shall periodically (at least annually) review the radiation protection program content and implementation.

Contrary to the above, from August 10, 2021, to February 16, 2024, the licensee failed to periodically (at least annually) review the radiation protection program content and implementation. Specifically, from the date of issuance of the license on August 10, 2021, no review of the licensee's radiation protection program had been conducted by the licensee.

The licensee's failure to periodically (at least annually) review the radiation protection program content and implementation was identified as an apparent violation of 10 CFR 20.1101(c). (030-39276/2024-001-11)

2.3 Causal Evaluation

A formal root cause analysis was not performed by the inspector as it was beyond the scope of the inspection. The inspector's general observations were that the deficiencies could largely be attributed to poor turnover from the previous RSO to the current RSO, and poor licensee internal communications regarding the portable nuclear gauge program.

It appeared to the inspector that the initial RSO on the original PBI NRC license attempted to establish a radiation safety program by developing forms for various tasks, such as performing physical inventories or performing leak tests. When the initial RSO left PBI's employment there was inadequate turnover with the new (current) RSO, and the radiation safety program was not implemented. The current RSO stated that they had not seen a copy of the PBI NRC license until the inspector provided it for review during the inspection. The current RSO was therefore not aware of the terms and conditions of the NRC license and NRC regulatory requirements and therefore did not perform the activities required to comply with those conditions and requirements.

At the time of the inspection the current RSO appeared to be the only qualified portable nuclear gauge user at PBI. Based on discussions with licensee personnel, the NRC license was obtained for one particular project, the concrete runway reconstruction project at Ofu Airport in the Manu'a island group, which is part of the U.S. Territory of American Samoa. When that project ceased, the portable nuclear gauge ceased being used by the licensee.

When licensee management considered using the gauge for a new project, the current RSO was not informed. A PBI employee, who was not a qualified portable nuclear gauge user, accessed the gauge without the RSO's knowledge and determined that the gauge was not operational. Unbeknownst to the current RSO, the licensee ordered and acquired a second portable nuclear gauge to replace the "inoperable" gauge. It did not appear that individuals involved with procuring the second portable nuclear gauge had familiarity with the terms and conditions of the PBI NRC license and did not appear to have awareness that the PBI NRC license was limited to the possession of a single portable nuclear gauge.

Since the current RSO was unaware of any ongoing projects requiring the use of a gauge, the current RSO had not been to the gauge storage location in some time. The current RSO only became aware of the second portable nuclear gauge when the individual went to the storage location to meet the NRC inspector for the inspection. The current RSO was therefore unaware that the gauges were not properly secured or stored, and that either of the gauges had been transported outside of the storage location without the RSO's knowledge.

2.4 Corrective Actions

On February 23, 2024, the licensee submitted an amendment request to increase the possession limits to add the additional portable nuclear gauge (ML24066A186). The PBI NRC license was amended to increase the possession limits with Amendment No. 2 issued on April 11, 2024 (ML24102A274). Although the licensee amended the license to correct the deficiency, the licensee has not provided information regarding what actions the licensee has taken or plans to take to prevent recurrence.

The licensee has not provided the inspector with any specific corrective actions that it has taken or plans to take to correct the other identified deficiencies.

2.5 Conclusions

One previous violation was reviewed regarding the licensee's failure to have the named individual as the RSO for the license. Based on the inspection, there is sufficient information to consider this violation closed.

Based on the current inspection, 11 apparent violations were identified regarding the licensee's failure to: (1) confine the possession and use of byproduct material to the purposes authorized in the license; (2) conduct a physical inventory every 6 months to account for all sealed sources and/or devices received and possessed under the license; (3) use a minimum of two independent physical controls that formed tangible barriers to secure portable gauges from unauthorized removal; (4) have a lock or outer locked container designed to prevent unauthorized or accidental removal of the sealed source from its shielded position; (5) instruct individuals (hazmat employees) in the DOT

requirements related to the transport of Class 7 (radioactive) materials; (6) have shipping papers that described the transport of Class 7 (radioactive) materials; (7) maintain a log book that remained at the storage location, indicating for each portable gauge possessed by the licensee: the date(s) of use, name(s) of the authorized users who will be responsible for the gauge, and the temporary job site(s) where the gauge will be used; (8) test sealed sources for leakage and contamination at intervals not to exceed the intervals specified in the certificate of registration; (9) either possess and use, or have access to and use, a radiation survey meter; (10) maintain, for inspection by the NRC, documentation demonstrating that unmonitored individuals are not likely to receive a radiation dose in excess of the NRC regulatory limits; and (11) periodically (at least annually) review the radiation protection program content and implementation.

3 Exit Meeting Summary

On August 29, 2024, a final teleconference exit meeting was conducted with Danny De Lara, Operations Manager, to discuss the inspection findings. The NRC representative discussed the content of the inspection report, described the NRC's enforcement process, and described the options for the licensee to: (1) respond in writing to the apparent violations described in the inspection report; (2) request a predecisional enforcement conference; or (3) request alternative dispute resolution. The licensee did not identify any proprietary information.

Supplemental Inspection Information

PARTIAL LIST OF PERSONS CONTACTED

Danny De Lara, Operations Manager
Elisaia (Eli) Folau, Jr., Radiation Safety Officer
George Panagasagan, Project Engineer

INSPECTION PROCEDURES USED

IP 87139 Portable Nuclear Gauge Programs

ITEMS OPENED, CLOSED, AND DISCUSSED

Opened

030-39276/2024-001-01	AV	Failure to confine the possession and use of byproduct material to the purposes authorized in the license. (10 CFR 30.34(c))
030-39276/2024-001-02	AV	Failure to conduct a physical inventory every 6 months to account for all sealed sources and/or devices received and possessed under the license. (License Condition 15)
030-39276/2024-001-03	AV	Failure to use a minimum of two independent physical controls that formed tangible barriers to secure portable gauges from unauthorized removal. (10 CFR 30.34(i))
030-39276/2024-001-04	AV	Failure to have a lock or outer locked container designed to prevent unauthorized or accidental removal of the sealed source from its shielded position. (License Condition 15)
030-39276/2024-001-05	AV	Failure to instruct individuals (hazmat employees) in the requirements of 49 CFR Chapter I, Subchapter C, related to the transport of Class 7 (radioactive) materials. (10 CFR 71.5(a))
030-39276/2024-001-06	AV	Failure to have shipping papers that described the transport of Class 7 (radioactive) materials. (10 CFR 71.5(a))
030-39276/2024-001-07	AV	Failure to maintain a log book that remained at the storage location, indicating for each portable gauge possessed by the licensee: the date(s) of use, name(s) of the authorized users who will be responsible for the gauge, and the temporary job site(s) where the gauge will be used. (License Condition 19)

030-39276/2024-001-08	AV	Failure to test sealed sources for leakage and contamination at intervals not to exceed the intervals specified in the certificate of registration. (License Condition 13)
030-39276/2024-001-09	AV	Failure to either possess and use, or have access to and use, a radiation survey meter that meets the criteria in NUREG-1556, Vol. 1, Rev. 2. (License Condition 19)
030-39276/2024-001-10	AV	Failure to maintain, for inspection by the NRC, documentation demonstrating that unmonitored individuals are not likely to receive a radiation dose in excess of the NRC regulatory limits. (License Condition 19)
030-39276/2024-001-11	AV	Failure to periodically (at least annually) review the radiation protection program content and implementation. (10 CFR 20.1101(c))

Discussed

None

Closed

030-39276/2022-001-01	VIO	Failure to have the named individual as the RSO for the license. (License Condition 12)
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LIST OF ACRONYMS AND ABBREVIATIONS USED

10 CFR	Title 10 of the <i>Code of Federal Regulations</i>
ADAMS	Agencywide Documents Access and Management System
ADR	Alternative Dispute Resolution
AV	Apparent Violation
DOT	U.S. Department of Transportation
IP	Inspection Procedure
NOV	Notice of Violation
NRC	U.S. Nuclear Regulatory Commission
PBI	Paramount Builders, Inc.
PEC	Predecisional Enforcement Conference
RSO	Radiation Safety Officer
VIO	Violation