



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

February 8, 2012

EA-11-238

Mr. Phillip Caines, President
McGarvin-Moberly
Construction Company
1001 Highway 20 North
P.O. Box 1166
Worland, Wyoming 82401

SUBJECT: NOTICE OF VIOLATION, EXERCISE OF ENFORCEMENT DISCRETION
(NRC INSPECTION REPORT 030-32107/2011-002)

Dear Mr. Caines:

This letter refers to the unannounced inspection conducted on August 30, 2011, at McGarvin-Moberly Construction Company's (MMCC) corporate office in Worland, Wyoming, and at a temporary job site on Highway 26, 4 miles east of Riverton, Wyoming. The purpose of the inspection was to review your corrective actions implemented after the issuance of an escalated enforcement action to MMCC on April 14, 2011 (ML11105A125). The previous enforcement action involved a failure to meet 10 CFR 30.34(i).

This current inspection identified an apparent repetitive violation of 10 CFR 30.34(i), and indicated your corrective actions for the previous violation were not effective. Preliminary inspection findings were discussed with you at the conclusion of the onsite portion of this inspection, and a final exit briefing was conducted telephonically with you and members of your staff on October 31, 2011. The inspection results were documented in NRC Inspection Report 030-32107/2011-002 dated November 30, 2011 (ML11334A155).

In the letter transmitting the inspection report, we provided you with the opportunity to meet with us in a predecisional enforcement conference to discuss the apparent repeat violation of 10 CFR 30.34(i), "Security requirements for portable gauges." Subsequently, MMCC transferred its portable nuclear density gauge (portable gauge or gauge) to another company authorized to possess the portable gauge and MMCC's NRC materials license was terminated on December 30, 2011. During a telephone call on January 12, 2012, with Mr. Michael Vasquez, Chief, Nuclear Materials Safety Branch A, you informed us that you did not contest the violation and you saw no need for a predecisional enforcement conference.

Based on the information developed during the inspection, 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 a failure to use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal. Specifically, at the corporate office, the licensee had a portable gauge stored in a locked plywood box with only one physical control present to prevent unauthorized removal of the gauge. During the day, when MMCC's building was unlocked, licensee personnel did not always control and maintain constant surveillance of the gauge.

The NRC considers this violation significant because this security requirement provides a reasonable assurance that portable gauges will be secured from unauthorized access or theft and because MMCC was previously cited for a violation of 10 CFR 30.34(i). Therefore, this violation has been categorized in accordance with the NRC's Enforcement Policy at Severity Level III. The NRC's Enforcement Policy may be found on the NRC's website at www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html.

In accordance with the NRC's Enforcement Policy, a base civil penalty of \$3500 is normally considered for a Severity Level III violation. However, in recognition of the immediate corrective actions you took to restore compliance and the fact that you terminated your license, the NRC has decided to exercise enforcement discretion to refrain from proposing a civil penalty in this case. However, should you apply for an NRC materials license in the future, we may ask you how you plan to comply with the Commission's rules and regulations and with the conditions of the license to prevent recurrence and avoid further violations.

The NRC has concluded that 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 was achieved is already adequately addressed on the docket in NRC Inspection Report 030-32107/2011-002; NRC Form 314, "Certificate of Disposition of Materials," dated December 2, 2011 (ML11362A344); and NRC letter dated December 30, 2011, authorizing termination of NRC Materials License 49-27065-01 (ML12003A271). 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 "Rules of Practice," a copy of this letter, its enclosure, and your response, should you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's Agencywide Documents Access Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, any response should not include any personal privacy, proprietary, or safeguards 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

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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).

If you have any questions concerning this matter, please contact Mr. Michael Vasquez, Chief, Nuclear Materials Safety Branch A, at 817-200-1130.

Sincerely,

/RA/

Elmo E. Collins
Regional Administrator

Docket: 030-32107
License: 49-27065-01

Enclosure: Notice of Violation

Cc w/enclosure:
Scott W. Ramsay, RSO.
Wyoming Office of Homeland Security
2421 E. 7th Street
Cheyenne, WY 82001

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☒ Publicly Available ☐ Non-Publicly Available ☐ Sensitive ☒ Non-Sensitive

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NOTICE OF VIOLATION

McGarvin-Moberly Construction Company
Worland, Wyoming

Docket: 030-32107
License: 49-27065-01
EA-11-238

During an NRC inspection conducted on August 30, 2011, at the licensee's corporate office in Worland, Wyoming, a violation of an NRC requirement was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 30.34(i) requires 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 the portable gauges are not under the control and constant surveillance of the licensee.

Contrary to the above, on August 30, 2011, the licensee failed to use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever the portable gauges are not under the control and constant surveillance of the licensee. Specifically, at the licensee's corporate office, the portable gauge was stored in an immovable plywood box and secured with a single hasp and padlock which afforded only one tangible barrier for the gauge. This is a repeat violation.

This is a Severity Level III violation (Section 6.3).

The NRC has concluded that 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 was achieved is already adequately addressed on the docket in NRC Inspection Report 030-32107/2011-002 (ML11334A155); NRC Form 314, "Certificate of Disposition of Materials," dated December 2, 2011 (ML11362A344); and NRC letter dated December 30, 2011, authorizing termination of NRC Materials License 49-27065-01 (ML12003A271). However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as "Reply to a Notice of Violation, EA-11-238," and send it 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 East Lamar Blvd., Arlington, Texas 76011-4511, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

If you choose to respond, your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's Agencywide Documents Access 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, proprietary, or safeguards information so that it can be made available to the Public without redaction.

Dated this 8th day of February 2012