



UNITED STATES  
**NUCLEAR REGULATORY COMMISSION**  
REGION I  
475 ALLENDALE ROAD  
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

August 9, 2011

Docket No. 03038454  
EA-11-122

License No. 52-31443-01

Enrique Hartmann  
Managing Partner  
Constructora Hartmann, S.E.  
PMB 319, Avenue Winston Churchill 138  
San Juan, PR 00926-6013

SUBJECT: EXERCISE OF ENFORCEMENT DISCRETION: CONSTRUCTORA  
HARTMANN, S.E.

Dear Mr. Hartmann:

We are sending you this letter to document our discussions regarding your possession of a portable nuclear density gauge containing radium-226, and to provide our conclusions regarding Constructora Hartmann, S.E.'s compliance with NRC regulations for these devices. No further action or response is necessary on your part.

During a telephone conversation on May 12, 2011, between you and Scott Wilson of my staff, we learned that Constructora Hartmann, S.E. owned a portable gauge containing a radium-226 sealed source. We informed you that this material is considered byproduct material, and requires an NRC license to possess. We discussed the change to NRC regulations that occurred with the enactment of the Energy Policy Act of 2005 (Act), and the NRC regulations resulting from the Act, which became effective on November 30, 2007. Specifically, we indicated that, effective November 30, 2007, you are required to have an NRC license for the gauge.

We informed you that Constructora Hartmann, S.E. needed to apply for an NRC license, transfer the gauge to an authorized NRC licensee, or legally dispose of the gauge. You stated that you were previously unaware of the new regulation and that Constructora Hartmann, S.E. would: 1) immediately secure the gauge in compliance with 10 CFR 30.34(i); 2) maintain the gauge in storage until authorized by NRC license; 3) submit an NRC license application for the gauge within 60 days; and 4) ensure compliance with the public dose limits in 10 CFR 20.1301, "Dose limits for individual members of the public." We noted that you applied for a license on May 23, 2011, and that NRC License No. 52-31443-01 was issued on June 2, 2011.

Based on the above information, the NRC has determined that a violation of NRC requirements occurred. The violation involved the possession and use of byproduct material without a specific NRC license issued in accordance with the regulations in 10 CFR Part 30. Specifically, from November 30, 2007, to May 23, 2011, Constructora Hartmann, S.E. possessed one Seaman Nuclear Corporation Model C-300 portable moisture density gauge containing byproduct material (radium-226 sealed source; 4.5 millicuries) without obtaining a specific NRC license.

In accordance with NRC Enforcement Guidance Memorandum 09-004, dated May 13, 2009, although such violations are normally categorized at Severity Level IV, because 1) this was the first occurrence Constructora Hartmann, S.E. was involved in after November 30, 2007, the effective date of the requirement; 2) the failure did not result in an actual safety, health, or security consequence; 3) the failure was not willful; 4) you were unaware of the requirement; and 5) you submitted an initial license application within 60 days, NRC is exercising enforcement discretion and not issuing a violation.

On July 26, 2011, Scott Wilson of my staff informed you of this conclusion by telephone.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, and your response, if you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room or from the NRC document system (ADAMS), accessible from the NRC website at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

Current NRC regulations and guidance are included on the NRC's website at [www.nrc.gov](http://www.nrc.gov); select **Nuclear Materials; Medical, Med, Ind, & Academic Users**; then **Regulations, Guidance and Communications**. The current Enforcement Policy is included on the NRC's website at [www.nrc.gov](http://www.nrc.gov); select **About NRC, Organizations & Functions; Office of Enforcement; Enforcement documents**; then **Enforcement Policy (Under 'Related Information')**. You may also obtain these documents by contacting the Government Printing Office (GPO) toll-free at 1-866-512-1800. The GPO is open from 7:00 a.m. to 6:30 p.m. EST, Monday through Friday (except Federal holidays).

Please contact Scott Wilson at 610-337-5136 if you have any questions regarding this matter.

Thank you for your cooperation.

Sincerely,

/RA/

Raymond K. Lorson, Director  
Division of Nuclear Materials Safety

cc:  
Miguel Montes, Radiation Safety Officer  
Commonwealth of Puerto Rico

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cc:

Miguel Montes, Radiation Safety Officer  
Commonwealth of Puerto Rico

SUNSI Review Complete: SWilson (Reviewer's Initials)

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