



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I**
2100 RENAISSANCE BOULEVARD, SUITE 100
KING OF PRUSSIA, PENNSYLVANIA 19406-2713

July 27, 2012

EA-12-108

Jason Ainslie, P.E.
President
L.E. Gregg Associates
440 East High Street, Suite 140
Lexington, KY 40507

SUBJECT: L.E. GREGG ASSOCIATES - NOTICE OF VIOLATION - NRC Inspection Report
No. 15000016/2012001

Dear Mr. Ainslie:

This letter provides you the U.S. Nuclear Regulatory Commission (NRC) enforcement decision for the apparent violation identified during the NRC inspection that concluded on June 8, 2012. The inspection included an on-site inspection on April 26, 2012, at L.E. Gregg Associates' (L.E. Gregg's) office in Lexington, Kentucky, and subsequent in-office follow-up of information provided by L.E. Gregg in correspondence dated May 22, 2012, and June 7, 2012. The inspection consisted of an on-site examination and in-office review of your licensed activities within NRC jurisdiction as they relate to radiation safety and to compliance with NRC regulations. The NRC discussed its findings during a telephonic exit with you on June 8, 2012. The findings were also described in the NRC inspection report (ML12187A115)¹ sent to you with a letter dated July 2, 2012 (ML12187A113).

L.E. Gregg is the holder of a license issued by the Commonwealth of Kentucky (an NRC Agreement State) that authorizes the possession and use (within that State) of byproduct radioactive material in a portable nuclear gauge to conduct material density testing. Such licenses do not authorize use of radioactive material in non-Agreement States or other areas of exclusive federal jurisdiction. Title 10 of the Code of Federal Regulations (CFR) Section 150.20 grants an NRC general license to Agreement State licensees allowing them to conduct the licensed activities authorized by the Agreement State license in non-Agreement States provided, in part, that the Agreement State licensee files for reciprocity. Such a filing includes submitting to the NRC a copy of NRC Form 241, "Report of Proposed Activities in Non-Agreement States," a copy of the Agreement State specific license, and the appropriate fee to the Regional Administrator of the appropriate NRC regional office, at least three days prior to engaging in such licensed activities.

¹ Designation in parentheses refers to an Agency-wide Documents Access and Management System (ADAMS) accession number. Documents referenced in this letter are publicly-available using the accession number in ADAMS.

In the July 2, 2012, letter, the NRC indicated that one apparent violation was identified during the inspection, and was being considered for escalated enforcement. In the letter, we also provided L.E. Gregg with the opportunity to address the apparent violation identified in the report by either attending a pre-decisional enforcement conference (PEC) or by providing a written response before we made our final enforcement decision. In a telephone conversation on July 16, 2012, you informed Blake Welling of the NRC Region I office that a PEC would not be necessary and that L.E. Gregg did not plan to submit a written response. Therefore, based on the information developed during the inspection, the NRC has determined that the 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 L.E. Gregg's use of a portable nuclear gauge at temporary jobsites within the State of West Virginia (a non-Agreement State) on December 12-16, 2011, January 5-7, 2012, and February 21-24, 2012, without having submitted the required documentation. L.E. Gregg indicated to the NRC that it had experienced significant turnover in the Radiation Safety Officer position during the timeframe in which the violations occurred, resulting in a knowledge gap in that position. Consequently, L.E. Gregg staff had not recognized there was a requirement to file for reciprocity.

The violation impacted the NRC's regulatory process because the NRC was not provided an opportunity to conduct inspections of licensed activities since the NRC was not informed that a portable nuclear gauge was being used in areas under NRC jurisdiction on these occasions. Therefore, the violation has been categorized at Severity Level (SL) III in accordance with the Enforcement Policy. In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$3,500 is considered for a SL III violation. Because L.E. Gregg has not been the subject of escalated enforcement action within the last two years (note, this was the first NRC reciprocity inspection of your license), the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section 2.3.4 of the Enforcement Policy. The NRC has concluded that credit is warranted for L.E. Gregg's corrective action taken to address the violation. Specifically, L.E. Gregg submitted the appropriate reciprocity paperwork and fees for Calendar Year 2012, and developed and instituted a procedure and checklist that requires its project managers to ensure that reciprocity agreements are in place prior to performing work within NRC jurisdiction.

Therefore, to encourage prompt and comprehensive correction of violations, and in recognition of the absence of previous escalated enforcement action, I have been authorized, after consultation with the Director, Office of Enforcement, not to propose a civil penalty in this case. However, significant violations in the future could result in a civil penalty. In addition, issuance of this SL III violation constitutes an escalated enforcement action that may subject you to increased inspection effort in the future should you decide to reapply for reciprocity or for a specific NRC license.

The NRC has concluded that information regarding: (1) the reason for the violation; (2) the actions planned or already taken to correct the violation and prevent recurrence; and, (3) the date when full compliance was achieved, is already adequately addressed on the docket in this letter and in NRC Inspection Report No. 15000016/2012001. Therefore, you are not required to

respond to this letter unless the descriptions in the aforementioned correspondence do not accurately reflect 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 and its enclosure as well as your response, if you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room and from the NRC's Agency-wide Documents Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. The NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>.

To the extent possible, your response, if you choose to provide one, 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 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).

Sincerely,

/RA Original Signed by David C. Lew for/

William M. Dean
Regional Administrator

Docket No. 15000016
KY License No. KY-201-098-52

Enclosure: Notice of Violation

cc: w/enclosure
Tony Goodrich, Radiation Safety Officer
Commonwealth of Kentucky
State of West Virginia

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Sincerely,
/RA Original Signed by David C. Lew for/
 William M. Dean
 Regional Administrator

Docket No. 15000016
 KY License No. KY-201-098-52
 Enclosure: Notice of Violation
 cc: w/enclosure
 Tony Goodrich, Radiation Safety Officer
 Commonwealth of Kentucky
 State of West Virginia

Distribution:

See next page

DOCUMENT NAME: S:\Enf-all\Enforcement\Proposed-Actions\Region1\LE Gregg Reciprocity NOV-III EA-12-108.docx

ADAMS ACCESSION NUMBER: ML12212A344

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*HQ to perform a quick review. ** see previous concurrence page

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NOTICE OF VIOLATION

L.E. Gregg Associates
Lexington, Kentucky

Docket No. 15000016
KY License No. KY-201-098-52
EA-12-108

During an NRC inspection conducted between April 26, 2012 and June 8, 2012, for which an exit meeting was conducted on June 8, 2012, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 30.3 states, in part, that no person shall own, possess, or use byproduct material except as authorized in a specific or general license issued in accordance with the regulations in this chapter.

10 CFR 150.20(a) states, in part, that any person who holds a specific license from an Agreement State is granted an NRC general license to conduct the same activity in non-Agreement States, provided that the provisions of 10 CFR 150.20(b) have been met.

10 CFR 150.20(b)(1) requires, in part, that any person engaging in activities in a non-Agreement State, shall, at least three days before engaging in each such activity, file a submittal containing an NRC Form 241, "Report of Proposed Activities in Non-Agreement States," a copy of its Agreement State specific license, and the appropriate fee with the Regional Administrator of the appropriate NRC regional office.

Contrary to the above, on December 12-16, 2011, January 5-7, 2012, and February 21-24, 2012, L.E. Gregg Associates, which only holds a Kentucky (Agreement State) license, engaged in activities at temporary jobsites in West Virginia (a non-Agreement State) involving the use and storage of a portable nuclear gauge containing cesium-137 and americium-241 sealed sources, without either obtaining a specific license issued by the NRC or, at least three days before engaging in such activity, filing a submittal containing an NRC Form 241, "Report of Proposed Activities in Non-Agreement States," a copy of its Agreement State specific license, and the appropriate fee with the Regional Administrator of the appropriate NRC regional office.

This is a Severity Level III violation (Section 6.9).

The NRC has concluded that information regarding: (1) the reason for the violation; (2) the actions planned or already taken to correct the violation and prevent recurrence; and, (3) the date when full compliance was achieved, is already adequately addressed on the docket in the letter transmitting the Notice of Violation (Notice) and in NRC Inspection Report No. 15000016/2012001. Therefore, you are not required to respond to this Notice. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the descriptions in the aforementioned correspondence do not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation – EA-12-108," and send it to the Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001, with a copy to the Regional Administrator, Region I, 2100 Renaissance Boulevard, Suite 100, King of Prussia, PA 19406, within 30 days of the date of the letter transmitting this Notice.

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

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days of receipt.

Dated this 27th day July, 2012