



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION III
2443 WARRENVILLE ROAD, SUITE 210
LISLE, ILLINOIS 60532-4352

August 6, 2018

EA-18-099

Mr. Sergio Meilman, P.E., Ph.D.
Director of Operations and Radiation
Safety Officer
Environmental Protection Industries, Inc.
16650 S. Canal Street
South Holland, IL 60473

SUBJECT: NRC SPECIAL INSPECTION REPORT NO. 15000012/2018002(DNMS)
ENVIRONMENTAL PROTECTION INDUSTRIES, INC.

Dear Dr. Meilman:

On July 5, 2018, an inspector from the U.S. Nuclear Regulatory Commission (NRC) contacted you concerning activities involving your possession and use of a portable nuclear gauge in the State of Indiana. The NRC performed in-office review of information you provided, through July 27, 2018, including documentation of the dates worked, your stated corrective actions, and your application for future reciprocity during Calendar Year 2018. Mr. Dennis O'Dowd of my staff conducted a final exit meeting by telephone with you on July 27, 2018, to discuss our findings. The enclosed report presents the results of this review.

Based on the results of this review, an apparent violation was identified and is 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 violation involved the licensee's apparent failure to file NRC Form 241 prior to possessing and performing activities using a portable nuclear gauge containing licensed materials in the State of Indiana, a non-Agreement State, in 2018, as required by Title 10 of the *Code of Federal Regulations* (CFR) 150.20(b)(1).

Because the NRC has not made a final determination on this matter, the NRC is not issuing a Notice of Violation for this finding at this time. The circumstances surrounding this apparent violation, the significance of the issues, and the need for lasting and effective corrective action were discussed with you during the telephonic exit meeting on July 27, 2018.

Before the NRC makes its enforcement decision, we are providing you an opportunity to either: (1) respond in writing to the apparent violation addressed in the enclosed report within 30 days of the date of this letter; or (2) request a Predecisional Enforcement Conference (PEC). If a PEC is held, it will be open for public observation and the NRC will issue a press release to announce the time and date of the conference. **Please contact Aaron T. McCraw at 630-829-9650 within ten days of the date of this letter to notify the NRC of your intended response.**

If you choose to provide a written response, it should be clearly marked as "Response to the Apparent Violation in Report No. 15000012/2018002(DNMS); EA-18-099," and should include, for the 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 to avoid further violations; and (4) the date when full compliance was or will be achieved. 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 violation. The guidance in NRC Information Notice 96-28, "Suggested Guidance Relating to Development and Implementation of Corrective Action," may be helpful. You can find the information notice on the NRC website at: <http://www.nrc.gov/reading-rm/doc-collections/gen-comm/info-notices/1996/in96028.html>. Your response may reference or include previously docketed correspondence, if the correspondence adequately addresses the required response. 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 the apparent violation and any other information that you believe the NRC should take into consideration before making an enforcement decision. The topics discussed during the conference may include the following: 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 to be taken.

Because your facility has not been the subject of escalated enforcement actions within the last two years or two inspections, a civil penalty may not be warranted in accordance with Section 2.3.4 of the Enforcement Policy. In addition, based upon NRC's understanding of the facts and your corrective actions, it may not be necessary to conduct a PEC in order to enable the NRC to make a final enforcement decision. Our final decision will be based on your confirming on the license docket that the corrective actions previously described to the staff have been or are being taken.

In addition, please be advised that the number and characterization of the 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 of our deliberations on this matter.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response will be made available electronically for public inspection in the NRC's Public Document Room or from the NRC's Agencywide Documents Access and Management System (ADAMS), accessible from the NRC's 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 publicly available without redaction.

Please feel free to contact Dennis O'Dowd of my staff if you have any questions regarding this review. Mr. O'Dowd can be reached at 630-829-9573.

Sincerely,

/RA/

Christine A. Lipa, Acting Director
Division of Nuclear Materials Safety

Docket No. 150-00012
General License under 10 CFR 150.20
State of Illinois License No. IL-02294-01

Enclosure:
IR 15000012/2018002(DNMS)

cc w/encl: State of Illinois
State of Indiana

Letter to Sergio Meilman from Christine Lipa, dated August 6, 2018

SUBJECT: NRC SPECIAL INSPECTION REPORT NO. 15000012/2018002(DNMS)
ENVIRONMENTAL PROTECTION INDUSTRIES, INC.

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**U.S. Nuclear Regulatory Commission
Region III**

Docket No.	150-00012
General License Under	10 CFR 150.20
State of Illinois License No.	IL-02294-01
Report No.	15000012/2018002(DNMS)
EA No.	EA-18-099
Licensee:	Environmental Protection Industries, Inc.
Facility:	16650 S. Canal Street South Holland, IL 60473
Review Period:	July 5 – 27, 2018
Exit Meeting Date:	July 27, 2018
Inspector:	Dennis O'Dowd, Health Physicist
Approved By:	Geoffrey Warren, Acting Chief Materials Inspection Branch Division of Nuclear Materials Safety

Enclosure

EXECUTIVE SUMMARY

Environmental Protection Industries, Inc. NRC Inspection Report 15000012/2018002(DNMS)

Environmental Protection Industries, Inc. ("company") is an environmental consulting, remediation, and engineering company located in South Holland, Illinois. State of Illinois License No. IL-02294-01 authorizes the company to possess and use portable nuclear gauges containing millicurie quantities of cesium-137 (Cs-137) and americium-241/beryllium (Am-241:Be) sealed sources for measuring the moisture/density of various materials, at temporary job sites in the State of Illinois, except in areas of exclusive Federal jurisdiction.

On July 5, 2018, a representative of the State of Illinois Emergency Management Agency (IEMA) radiation control program notified the NRC that he had become aware that day that the company, an Illinois radioactive materials licensee, was working in Indiana, and confirmed with the NRC Region III office that the company had not filed for reciprocity. Subsequently, on July 5, 2018, in follow-up to this information, in a telephone conversation between an NRC materials inspector and the company's Radiation Safety Officer (RSO), (who also is the company's Director of Operations), the NRC was informed by the RSO that on July 5, 2018, and on several days prior, the company possessed and used a portable nuclear gauge in Indiana, specifically at several locations in East Chicago, Indiana, for a recently contracted work project. During the conversation, the RSO stated that he would call to immediately direct his field technician to cease activities at the Indiana work site and return the gauge back to the office. During that call, the RSO committed that they would not resume activities at the site until approved for reciprocity by the NRC. The RSO stated during this telephonic conversation, and several subsequent conversations, that portable gauges were not used in Indiana, nor in any other area subject to NRC jurisdiction, prior to this particular project, and all such use occurred in Calendar Year 2018 only. A review of agency records confirmed that the company had not filed NRC Form 241, "Report of Proposed Activities in Non-Agreement States," requesting reciprocity for the current year, nor did the company have an NRC specific license authorizing use in NRC jurisdiction.

The inspector identified that this use of the portable gauge is an apparent violation of Title 10 of the *Code of Federal Regulations* (CFR) 150.20(b)(1), which requires Agreement State licensees to file an NRC Form 241 for reciprocity at least three days before working in a non-Agreement State, area of exclusive federal jurisdiction, or offshore waters, every calendar year.

As a result of the telephone conference on July 5, 2018, the company's RSO subsequently provided a list of dates that the company possessed and used a portable nuclear gauge in the State of Indiana. The Region III materials inspector determined that Environmental Protection Industries, Inc. had possessed and used a portable nuclear gauge a total of 17 days, between the period beginning on June 11, 2018, and ending on July 5, 2018 and had not filed NRC Form 241 prior to the first use of such materials in 2018. The root cause of the apparent violation was the company's lack of awareness that the use of licensed materials in the State of Indiana required authorization from the NRC.

As corrective action, the company's Director of Operations/RSO: (1) on July 5, 2018, immediately after the telephonic discussion with the NRC materials inspection, contacted his field technician via telephone and directed the technician to immediately cease use of the portable nuclear gauge and return the gauge to its authorized storage location in the state of Illinois; (2) filed a completed NRC Form 241 for Calendar Year 2018, including payment of \$1,800, on July 9, 2018; (3) provided locations and dates of unauthorized portable nuclear gauge use in Indiana in 2018; (4) stated in the telephone conference on July 5, 2018, and

re-stated during an in-person meeting on July 9, 2018, in several subsequent telephonic conversations, and during the telephonic exit meeting on July 27, 2018, that he now understands the rules and regulations of reciprocity with the NRC and would follow them now and in the future.

REPORT DETAILS

1 Program Overview

Environmental Protection Industries, Inc., ("the company") of South Holland, Illinois, possessed a State of Illinois license authorizing company personnel to possess and use portable nuclear gauges containing millicurie quantities of cesium-137 (Cs-137) and americium-241:beryllium (Am-241:Be) sealed sources, at temporary job sites in the State of Illinois except in areas of exclusive Federal jurisdiction.

2 Use of Licensed Material in Indiana

2.1 Scope of Review

During the review period, the inspector interviewed the company's Radiation Safety Officer (RSO), who is also the company's Director of Operations, by telephone, as well as in-person, and reviewed documents provided by the company concerning work performed by company personnel in Indiana in 2018.

2.2 Observations and Findings

On July 5, 2018, an inspector with the State of Illinois Emergency Management Agency (IEMA) radiation control program notified the NRC via telephone that earlier that morning, while driving to the company's job site as part of a routine inspection, the inspector realized that the licensee's work site was not within the Illinois state boundary, and was, in fact, in the State of Indiana, specifically East Chicago, Indiana. Upon realizing this, the inspector contacted the company's Radiation Safety Officer (RSO) (who is also the company's Director of Operations), who when asked by the IEMA inspector whether the company had filed for reciprocity with the NRC prior to working in the State of Indiana, appeared to be unaware of this requirement. The IEMA inspector contacted NRC Region III and confirmed that the company had not filed for reciprocity. During that telephone conversation, the IEMA inspector provided the company's contact information.

The NRC subsequently followed up by contacting the company's RSO. In a telephone conversation on July 5, 2018, between an NRC inspector and the company's RSO, the NRC inspector was informed by the RSO that on July 5, 2018, and on several days prior, the company possessed and used a portable nuclear gauge (specifically, a Humboldt Model H5001EZ, Serial No. 2502) in Indiana, specifically, at several locations in East Chicago, Indiana, for a recently contracted work project. During this telephonic conversation, the RSO stated that he would call to immediately direct his field technician using the gauge to immediately cease activities at the Indiana work site and return the gauge back to the office. In addition, during the telephonic conversation, the RSO also committed that the company would not resume activities at the site until approved to work in Indiana under reciprocity by the NRC. The RSO stated during this telephonic conversation, and in subsequent conversations, that portable nuclear gauges were not used in Indiana, nor in any other area subject to NRC jurisdiction, prior to this particular project. A review of agency records confirmed that the company had not filed NRC Form 241, "Report of Proposed Activities in Non-Agreement States," requesting reciprocity for the current year, nor did the company have an NRC specific license authorizing use in NRC jurisdiction.

As a result of the telephone conference on July 5, 2018, and the in-person discussion between the NRC materials inspector and the RSO on July 9, 2018, the company provided a list of dates and locations worked in Indiana during 2018. It was determined that the company possessed and used a portable nuclear gauge a total of 17 days during the period beginning on June 11, 2018, and ending on July 5, 2018.

Title 10 of the *Code of Federal Regulations* (CFR), Section 150.20(b)(1) requires Agreement State licensees to file an NRC Form 241 for reciprocity at least three days before working in a non-Agreement State, in an area of exclusive federal jurisdiction, or in offshore waters, every calendar year. The company's apparent failure to file NRC Form 241 prior to performing work requiring a license in Indiana, a non-Agreement State, in 2018, during the aforementioned period, is an apparent violation of 10 CFR Section 150.20(b)(1).

The root cause of the apparent violation was the company's lack of awareness that the use of licensed materials in the State of Indiana required authorization from the NRC. During the telephone interview on July 5, 2018, the company's RSO stated that he had not been aware of the requirement to either file NRC Form 241, "Report of Proposed Activities in Non-Agreement States," requesting reciprocity for the current year to authorize such use under a general license, or to have an NRC specific license authorizing use in NRC jurisdiction.

As corrective action, the company's Director of Operations/RSO: (1) on July 5, 2018, immediately after the telephonic discussion with the NRC materials inspection, contacted his field technician via telephone and directed the technician to immediately cease use of the portable nuclear gauge and return the gauge to its authorized storage location in the state of Illinois; (2) provided to the agency via hand-delivery on July 9, 2018, a completed NRC Form 241 request for reciprocity for Calendar Year 2018, a copy of the company's Illinois radioactive materials license, and payment of \$1,800 for the required reciprocity fee; (3) provided locations and dates of unauthorized portable nuclear gauge use in Indiana in 2018; (4) stated in the telephone conference on July 5, 2018, and re-stated during an in-person meeting on July 9, 2018, in subsequent telephonic conversations, and during the telephonic exit meeting on July 27, 2018, that he now understands the rules and regulations of reciprocity with the NRC and would follow them now and in the future. In addition, it was confirmed during a telephonic conversation with the RSO on July 11, 2018, that the RSO's supervisor, the President/CEO of the company, was made aware of the issue and the reciprocity requirement by the RSO on July 5, 2018.

2.3 Conclusions

The inspector identified an apparent violation of 10 CFR 150.20(b)(1) concerning the licensee's failure to file for reciprocity during calendar year 2018 prior to performing licensed activities in the State of Indiana. The company has taken corrective action to address the apparent violation as described above.

3 Exit Meeting Summary

The NRC inspector presented final review findings to Mr. Meilman by telephone on July 27, 2018. The licensee did not identify any documents or processes reviewed by the inspector as proprietary. The licensee acknowledged the findings presented.

LIST OF PERSONNEL CONTACTED

Sergio Meilman, P.E., Ph.D.,
Director of Operations and Radiation Safety Officer

Attended telephonic exit meeting on July 27, 2018.