



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV

611 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-8064

November 8, 1996

EA 96-382

Mr. Robert E. Grandin
Grandin Testing Lab, Inc.
11 Roberts Circle
Los Lunas, New Mexico 87103

SUBJECT: NRC INSPECTION REPORT 999-90004/96-11 AND INVESTIGATION
REPORT 4-96-009

Dear Mr. Grandin:

This refers to the investigation conducted from February 21 to September 13, 1996, at Grandin Testing Lab, Inc.'s (Grandin), facility in Los Lunas, New Mexico. The purpose of the investigation was to determine whether activities conducted by Grandin at Kirtland Air Force Base (AFB) were conducted safely and in accordance with NRC requirements. The findings of the investigation were discussed with you during a telephonic exit briefing on October 30, 1996.

The investigation focused on activities relating to the use of portable nuclear gauges containing byproduct material at Kirtland AFB, an area where the NRC maintains jurisdiction for regulating the use of byproduct material. The investigation included interviews of you and members of your staff, review of pertinent documents maintained by Grandin, and interviews of Kirtland AFB personnel.

Based on the investigation findings, one apparent violation was identified and is being considered for escalated enforcement action in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600. Accordingly, no Notice of Violation is presently being issued for this investigation finding. In addition, please be advised that the number and characterization of apparent violations may change as a result of further NRC review.

The apparent violation involved Grandin's failure to comply with 10 CFR 30.3 which requires, in part, that except for persons exempt as provided in 10 CFR Parts 30 and 150, no person shall possess or use byproduct material except as authorized in a specific or general license issued pursuant to Title 10, Chapter 1, of the Code of Federal Regulations. The investigation determined that Grandin, a New Mexico licensee, performed measurements using portable nuclear gauges at Kirtland AFB during calendar years 1994, 1995, and 1996 without authorization under either a general or specific NRC license. Further, based on information developed through the investigation, the NRC has concluded that Grandin may have deliberately failed to obtain the required authorization.

The investigation findings are based, in part, on the fact that you, as the president and radiation safety officer, submitted a facsimile transmittal of an NRC Form 241 dated July 18, 1994, to the Region IV office reporting proposed activities at Kirtland AFB for the

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period July 1994 to July 1995. Region IV staff responded to your transmittal, by letter dated August 23, 1994, notifying you that the Form 241 was being returned because you failed to: (1) submit four copies of Grandin's Agreement State license as instructed on the form, (2) include sufficient information concerning the sources to be used, and (3) submit the required fee. We note that during the period in question, an NRC license was required to conduct activities using byproduct material in areas of exclusive federal jurisdiction in Agreement States. However, as a matter of practice, the NRC has accepted a Form 241, and the associated fee, in lieu of an application for an NRC specific license from Agreement State licensees seeking authorization to conduct activities in areas of exclusive federal jurisdiction within an Agreement State. Your submittal of the Form 241 appears to indicate that you were aware that authorization from the NRC was required to perform licensable activities at Kirtland AFB.

The investigation determined that after you were informed by Kirtland AFB personnel that a Form 241 must be filed in order to obtain authorization from base personnel to perform work at Kirtland AFB, you provided a copy of the incomplete Form 241 previously submitted to the NRC Region IV office to the base radiation protection officer (RPO). Likewise, when you were notified in December 1995 and February 1996 that a permit issued by Kirtland AFB to Grandin was about to or had expired, you presented a Form 241 dated January 8, 1996, to the base RPO to obtain authorization from Kirtland AFB staff to continue operations at the base. In the first instance, the Form 241 submitted by Grandin in 1994 was not accepted by the NRC and in the second instance, Grandin failed to submit the Form 241 to the NRC prior to performing work at Kirtland AFB in 1996. We also note that Grandin failed to provide any notification to the NRC of work performed at Kirtland AFB during calendar year 1995.

The NRC considers this apparent violation to be of significant regulatory concern because it appears that Grandin was aware that authorization from the NRC was required to perform work at Kirtland AFB in 1994 but failed to respond to the NRC's notification that the Form 241 submitted by Grandin was incomplete, and because Grandin failed to seek authorization from the NRC prior to performing licensable activities at Kirtland AFB during calendar years 1995 and 1996.

A transcribed predecisional enforcement conference to discuss the apparent violation noted above has been scheduled for 1:00 p.m (CST) on November 25, 1996. The decision to hold a predecisional enforcement conference does not mean that the NRC has determined that a violation has occurred or that enforcement action will be taken. This conference is being held to obtain information to enable the NRC to make an enforcement decision, such as a common understanding of the facts, root causes, missed opportunities to identify the apparent violation sooner, corrective actions, significance of the issues and the need for lasting and effective corrective action. In particular, we expect you to address why Grandin failed to take the necessary actions to obtain authorization from the NRC following receipt of the NRC's August 23, 1994, letter and to discuss your role in submitting unauthorized NRC Form 241s to Kirtland AFB staff.

The conference also presents an opportunity for you to point out any errors in our basic understanding of the issues as discussed above, and for you to provide any information concerning your perspectives on (1) the severity of the violation, (2) the application of the

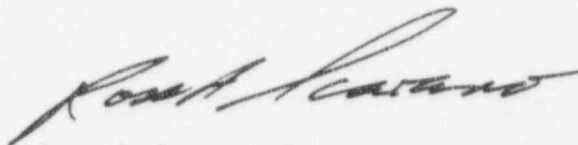
factors that the NRC considers when it determines the amount of a civil penalty that may be assessed in accordance with Section VI.B.2 of the Enforcement Policy, and (3) any other application of the Enforcement Policy to this case, including the exercise of discretion in accordance with Section VII.

To assist you in preparing for the conference, a copy of the NRC's Enforcement Policy and applicable portions of the regulations noted above have been included for your reference. You will be advised by separate correspondence of the results of our deliberations on this matter. No response regarding the apparent violation is required at this time.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be placed in the NRC Public Document Room.

Should you have any questions concerning this letter or its enclosures, please contact Mr. Jeffrey Cruz at (817) 860-8164 or Ms. Linda Howell at (817) 860-8213.

Sincerely,



Ross A. Scarano, Director
Division of Nuclear Materials Safety

Docket No. 999-90004
License: New Mexico DM257-03

Enclosures:

1. Conference Agenda
2. NRC Enforcement Policy, NUREG-1600
3. 10 CFR Parts 30 and 150

cc w/Enclosure 1:
New Mexico Radiation Control Program Director

Grandin Testing Lab, Inc.

-4-

bcc to DMB (IE-07)

bcc dist. by RIV:

LJCallan

SJCollins

JLieberman, OE (OWFN-7H5)

DACool, NMSS (TWFN- 8F5)

GFSanborn

GMVasquez

RWise

WLBrown

RAScarano

DBSpitzberg

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LJCallan

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JLieberman, OE (OWFN-7H5)

DACool, NMSS (TWFN- 8F5

GFSanborn

GMVasquez

RWise

WLBrown

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LLHowell	CLCain	RAScarano				
11/6/96	11/6/96	11/6/96				

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PREDECISIONAL ENFORCEMENT CONFERENCE AGENDA

CONFERENCE WITH GRANDIN TESTING LAB, INC.

1. INTRODUCTION/OPENING REMARKS - NRC
2. ENFORCEMENT PROCESS - EO
3. APPARENT VIOLATIONS & REGULATORY CONCERNS - NRC
4. LICENSEE PRESENTATION - GRANDIN TESTING LAB, INC.
5. BREAK (10 MINUTE NRC CAUCUS IF NECESSARY)
6. RESUMPTION OF CONFERENCE
7. CLOSING REMARKS - GRANDIN TESTING LAB, INC.
8. CLOSING REMARKS - NRC