



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION II
101 MARIETTA STREET, N.W., SUITE 2900
ATLANTA, GEORGIA 30323-0199

January 17, 1997

EA 96-480

Roberts Construction Company
ATTN: Mr. David H. Roberts
Radiation Safety Officer
P. O. Box 610
Louisa, KY 41230

SUBJECT: NOTICE OF VIOLATION
(NRC INSPECTION REPORT NO. 16-24818-02/96-01)

Dear Mr. Roberts:

This refers to the inspection conducted during the period November 5 through 7, 1996, at your Prichard, West Virginia facility. The inspection was conducted to determine whether you utilized licensed material (a portable nuclear gauge) after the expiration of your Nuclear Regulatory Commission (NRC) Materials License No. 16-24818-02 on January 31, 1996; and to determine why you were unresponsive to the NRC concerning the status of your licensed material. The results of this inspection were also discussed with you on November 14, 1996, and were formally transmitted to you by letter dated December 3, 1996. A closed, transcribed predecisional enforcement conference was conducted in the Region II office on January 13, 1997, with you to discuss the apparent violations, the root causes, and corrective actions to preclude recurrence. A list of conference attendees, a copy of the documentation you presented at the conference, and NRC conference materials provided to you are enclosed.

Based on the information developed during the inspection and the information that you provided during the conference, the NRC has determined that violations of NRC requirements occurred. The violations are cited in the enclosed Notice of Violation (Notice), and the circumstances surrounding them are described in detail in the subject inspection report. Violation A involved your failure to properly secure your licensed material against unauthorized removal or access while it was located at a temporary job site. Specifically, on November 6, 1996, the gauge was observed by an NRC inspector to be unsecured in an unlocked tool trailer located at a temporary job site in War, West Virginia. This fact was brought to the attention of your site foreman; however, upon the inspector's return to the War job site on November 7, 1996, the gauge was again observed to be unsecured in a manner similar to that observed on November 6, 1996.

At the conference, you stated that at the time, you believed the gauge was properly safeguarded from unauthorized access in that (1) at the conclusion of work each day, the tool trailer was locked and the access further secured by placement of heavy equipment in front of the access doors and (2) during the work day, individuals in your employ were present at the job site and would observe any unauthorized individuals in the tool trailer and would protect the gauge from theft.

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NRC determined that the gauge was secured against unauthorized removal or access at night; however, the circumstances observed by the NRC and that you described at the conference did not meet the NRC's requirements for security of the gauge during the day. Although workers were present at the job location, these individuals had not been specifically instructed in the need for constant surveillance of the gauge or the requirements for its security and control. The workers also were not physically positioned (e.g., workers in excavation pit and the crane operator across the street) to surveil for or prevent unauthorized individuals from accessing the gauge. This failure to control access or lack of security was made more significant by the fact that the tool trailer containing the gauge was located along a state road travelled by members of the public.

Based on these circumstances, the NRC concluded that on November 6 and 7, 1996, you failed to follow NRC requirements for controlling access to the gauge by unauthorized personnel. This failure is significant due to the potential for access by the public and potential for radiation exposure or loss of radioactive material. Therefore, this violation is classified in accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, as a Severity Level III violation.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$2,500 is considered for a Severity Level III violation occurring prior to November 12, 1996. Because your facility has not been the subject of escalated enforcement action within the last two inspections the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process described in Section VI.B.2 of the Enforcement Policy. On November 7, 1996, upon being personally informed of the inadequately secured gauge, you promptly took control of the gauge. At the conference, you stated that this storage of the gauge was unusual and an isolated case in that normally the gauge is under surveillance or locked at your base facility or your vehicle. You also indicated that you now understand the requirements for securing the gauge and will implement them properly in the future. Based on the above, the NRC concluded that your corrective actions were prompt and appropriate and credit was warranted for the factor of *Corrective Action*.

Although the failure to control and properly secure licensed material is of significant regulatory concern, to emphasize the importance of prompt corrective action for violations, I have been authorized, after consultation with the Office of Enforcement, not to propose a civil penalty in this case. **However, significant violations in the future could result in a civil penalty.**

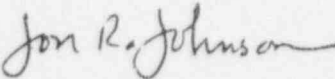
Violations B and C in the enclosed Notice have been categorized as Severity Level IV violations and involved your failure to leak test and inventory your sealed sources at the required six-month frequency. Specifically, since the last inspection in January 1992, your gauge was only leak tested once when it was sent to the manufacturer for calibration in May of 1994. At the conference, you stated that your corrective actions for these violations included: (1) purchase of a kit from the manufacturer to accomplish four leak tests in a two-year period; (2) establishment of separate files and/or logs for leak tests, inventories, and the annual program audit; and (3) establishment of a system to track when requirements are completed.

In addition, Inspection Report No. 16-24818-02/96-01 also identified an apparent violation regarding your apparent use of your portable gauge after your NRC material license expired on January 31, 1996. After considering your statements denying its use as well as subsequent discussions with the West Virginia Highway Department on January 14, 1997, we have concluded that you did not use you licensed material in violation of 10 CFR 30.36(a), and the apparent violation is therefore withdrawn.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. The NRC will consider your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

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

Sincerely,


for Luis A. Reyes
Regional Administrator

Docket No. 030-31981
License No. 16-24818-02

Enclosures: 1. Notice of Violation
2. Conference Attendees (Not to be Published in NUREG-0940)
3. Licensee Documentation (Not to be Published in NUREG-0940)
4. NRC Presentation Materials (Not to be Published in NUREG-0940)

cc w/encls:
State of West Virginia