

NOTICE OF VIOLATION

Roberts Construction Company
Prichard, West Virginia

Docket No. 030-31981
License No. 16-24818-02
EA 96-480

During an NRC inspection conducted during the period November 5 through 14, 1996, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions," NUREG-1600, the violations are listed below:

- A. 10 CFR 20.1801 requires the licensee to secure from authorized removal or access licensed materials that are stored in a controlled or unrestricted areas.

Condition 18 of Materials License No. 16-24818-02 requires the licensee to conduct its program in accordance with the statements, representations, and procedures contained in the Application dated November 29, 1990.

Item 10.B.6 of the Application states "Maintain security of the instrument at all times. Do not at any time leave gauge unattended....When stored, the area should be locked." Item 10.C.3 of the Application states "Storage containers shall be physically secured to prevent tampering or removal by unauthorized personnel. All gauges while on temporary job sites will be secured in such a manner as to safeguard against unauthorized access."

Contrary to the above, on November 6 and 7, 1996, the licensee failed to secure from unauthorized removal or access a portable density gauge containing nominally 8 millicuries of Cesium-137 and 40 millicuries of Americium-241 located in a tool trailer at a temporary job site in War, West Virginia, which is an unrestricted area.

This is a Severity Level III violation (Supplement IV and VI).

- B. Condition 14.A (1) of Material License No. 16-24818-02 requires, in part, that each sealed source containing licensed material, other than Hydrogen-3, with a half-life greater than thirty days and in any form other than gas shall be tested for leakage and/or contamination at intervals not to exceed six months.

Contrary to the above, from January 1992 to May 26, 1994, and from December 1994 to November 25, 1996, the licensee failed to test its Cesium-137 and Americium-241 sealed sources contained in a portable density gauge for leakage and/or contamination at six month intervals. (02014)

This is a Severity Level IV violation (Supplement VI).

Enclosure 1

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Notice of Violation

- C. Condition 15 of Material License No. 16-24818-02 requires, in part, the licensee to conduct a physical inventory every six months to account for all sealed sources received and possessed under the license.

Contrary to the above, from January 1992 to May 26, 1994, and from December 1994 to November 7, 1996 (the end date of the inspection), the licensee failed to inventory Cesium-137 and Americium-241 sealed sources contained in a portable density gauge every six months. (03014)

This is a Severity Level IV violation (Supplement VI).

Pursuant to the provisions of 10 CFR 2.201, Roberts Construction Company is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555 with a copy to the Regional Administrator, Region II, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the 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 will be achieved. Your response may reference or include previously docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as to why the license should not be modified, suspended, or revoked, or why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Because your response will be placed in the NRC Public Document Room (PDR), to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction. However, if you find it necessary to include such information, you should clearly indicate the specific information that you desire not to be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public.

Dated at Atlanta, Georgia
this 17th day of January 1997

LIST OF PREDECISIONAL ENFORCEMENT CONFERENCE ATTENDEES
January 13, 1997

Roberts Construction Company

David Roberts, President and Radiation Safety Officer

Nuclear Regulatory Commission

Bruce Mallett, Director, Division of Nuclear Materials Safety (DNMS), Region II
Bruno Uryc, Director, Enforcement and Investigations Coordination Staff (EICS), RII
Carolyn Evans, Regional Counsel, RII
John Potter, Chief, Materials Licensing/Inspection Branch 2, DNMS, RII
Joseph DelMedico, Enforcement Coordinator, Office of Enforcement*
Diane Flack, Health Physicist, Industrial Medical, and Nuclear Materials Safety
Branch, Office of Nuclear Materials, Safety and Safeguards.*
Orysia Masnyk-Bailey, Materials Inspector, DNMS, RII
A. Boland, Enforcement Specialist, EICS, RII

* Participated by Telephone

Enclosure 2



3008 Cornwallis Rd. P.O. Box 12057 Research Triangle Park,
North Carolina 27709, U.S.A.

Device - Model # 3411, Serial # 6992
Source(s) - Serial # 404131, Radionuclide _____
Serial # 473228, Radionuclide _____
Date of Test: 5-27-94

Please print legibly and firmly. This is your return address label.

• ROBERTS CONSTRUCTION
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Your Name: DAVID ROBERTS
Telephone: (301) 648-7290

ORIGINAL COPY

LEAK TEST ANALYSIS

This certifies that the sample accompanying this form has been analyzed using an approved monitoring method that measures both beta/gamma & alpha contamination; and, the results of this analysis shows the removable activity to be less than 0.005 microcuries.

H. Williams

5-27-94

NRC PREDECISIONAL ENFORCEMENT CONFERENCE

INDIVIDUAL/ROBERTS CONSTRUCTION

JANUARY 13, 1997

- A. 10 CFR 20.1801 requires the licensee to secure from unauthorized removal or access licensed materials that are stored in controlled or unrestricted areas.

On November 6, 1996, the inspector observed that your foreman failed to secure the gauge. This was pointed out to him. On November 7, 1996, you failed to secure the gauge. In both cases, the gauge was in its storage box, which was unlocked, in an unlocked tool trailer.

- B. 10 CFR 30.36 (a) states in relevant part, that a license continues in effect beyond the expiration date, with respect to possession of byproduct material, but that actions relevant to licensed material be limited to decommissioning.

After your license expired on January 31, 1996, you did not limit your use of the gauge to decommissioning activities but used it at a jobsite in War, West Virginia.

- C. License Condition 14 A of License No. 16-24818-02 requires, in part, that licensed materials be tested for leakage and/or contamination at intervals not exceeding 6 months.

You failed to test your gauge from January 14, 1992 until November 14, 1996, a period of time exceeding 6 months.

- D. License Condition 15 of License No. 16-24818-02 requires the licensee to conduct a physical inventory every 6 months of all sealed sources.

From January 14, 1992 until November 14, 1996, you failed to perform this inventory.

NOTE: The apparent violations discussed in this predecisional enforcement conference are subject to further review and are subject to change prior to any resulting enforcement decision.

CLOSED PREDECISIONAL ENFORCEMENT CONFERENCE AGENDA

INDIVIDUAL/ROBERTS CONSTRUCTION
JANUARY 13, 1997
NRC REGION II OFFICE, ATLANTA, GEORGIA

(THIS PREDECISIONAL ENFORCEMENT
CONFERENCE WILL BE TRANSCRIBED)

- I. OPENING REMARKS AND INTRODUCTIONS
Bruce S. Mallett, Director
Division Nuclear Materials and Safety
- II. NRC ENFORCEMENT POLICY
Bruno Uryc, Director
Enforcement and Investigations Coordination Staff
- III. STATEMENT OF ISSUES AND CONCERNS
Bruce S. Mallett
- IV. INDIVIDUAL PRESENTATION
David H. Roberts
President and Radiation Safety Officer
Roberts Construction Company
- V. FOLLOWUP QUESTIONS
- VI. CLOSING REMARKS
Bruce S. Mallett