



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
1600 EAST LAMAR BLVD
ARLINGTON, TEXAS 76011-4511

February 24, 2012

EA 11-263

Nelcon, Inc.
ATTN: Sam Weyers
Vice President / RSO
P.O. Box 5370
Kalispell, Montana 59903

SUBJECT: NRC INSPECTION REPORT 030-38422/2011-001 AND NOTICE OF VIOLATION
AND EXERCISE OF ENFORCEMENT DISCRETION

Dear Weyers:

This letter refers to the initial inspection conducted on August 29, 2011, and the follow-up inspection conducted on January 25, 2012, at your office in Kalispell, Montana. In addition, as part of the initial inspection, a review of your activities at a temporary jobsite in Missoula, Montana was performed.

The NRC staff examined activities conducted under your new license that was issued on April 18, 2011, as they relate to public health and safety, compliance with the Commission's rules and regulations, and with the conditions of your license. Within these areas, the inspections consisted of selected examination of procedures and representative records, observations of activities, and interviews with personnel. A preliminary exit telephone call was conducted with you on September 29, 2011, in which the results of the initial inspection and the violations identified were discussed with you. A final exit telephone call was conducted with you on February 17, 2012, in which the results of the follow-up inspection were discussed with you.

Based on the results of the inspection, the NRC has determined that three Severity Level IV violations of NRC requirements occurred. These violations were evaluated in accordance with the NRC Enforcement Policy. The current Enforcement Policy is included on the NRC's Web site at: <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>. These violations involved the failure to: (1) have shipping papers, (2) maintain two tangible barriers as required by 10 CFR 30.34(i) and (3) obtain training by the RSO prior to possessing radioactive material under the license. Normally, a violation of 10 CFR 30.34(i) is categorized at Severity Level III and considered for escalated enforcement action. However, because (1) one physical control existed to prevent loss or theft of the portable gauge; (2) you retained possession of the gauge; (3) the violation was isolated; and 4) no indication of programmatic weakness was identified, NRC is exercising enforcement discretion to categorize this violation at Severity Level IV (EA-11-263). These violations are cited in the enclosed Notice of Violation (Notice) because they were identified by the NRC during the August 29, 2011 inspection.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. For your consideration and convenience, an excerpt from NRC Information Notice 96-28, "Suggested Guidance Relating to Development and Implementation of Corrective Action," is enclosed. If you have additional information that you believe the NRC should consider, you may provide it in your response to the Notice. The NRC review of your response to the Notice will also determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

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 Public Document Room or from the NRC's Agencywide Documents Access Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy or proprietary information so that it can be made available to the Public without redaction.

Should you have any questions concerning this inspection, please contact Ms. Rachel Browder at 817-200-1116 or me at 817-200-1130.

Sincerely,

/RA/

G. Michael Vasquez, Chief
Nuclear Materials Safety Branch A

Docket: 030-38422
License: 25-29423-01

Enclosures:

1. Notice of Violation
2. NRC Information Notice 96-28

cc w/Enclosure 1:
Montana Radiation Control Program Director

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LMHanson	RSBrowder	ADGaines	MCMaier	GMVasquez	
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OFFICIAL RECORD COPY

NOTICE OF VIOLATION

Nelcon, Inc.
Kalispell, Montana

Docket: 030-38422
License: 25-29423-01
EA-11-263

During an initial NRC inspection conducted on August 29, 2011, three violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. 10 CFR 71.5(a) requires that each licensee who transports licensed material outside the site of usage, as specified in the NRC license, or where transport is on public highways, or who delivers licensed material to a carrier for transport, shall comply with the applicable requirements of the Department of Transportation (DOT) regulations in 49 CFR Parts 107, 171 through 180, and 390 through 397, as appropriate to the mode of transport.

49 CFR 171.8 defines *shipping paper*, in part, as a shipping order, bill of lading, manifest or other shipping document serving a similar purpose and prepared in accordance with Subpart C of 49 CFR Part 172.

49 CFR 172.202(a) requires, in part, that the shipping paper must include the proper shipping name and identification number prescribed for the material in Column (2) and Column (4), respectively of the § 172.101 Table;

49 CFR 172.604 requires, in part, that the shipping paper must contain an emergency response telephone number that must be monitored at all times; and

49 CFR 172.203(c)(2) requires, in part, that the letters "RQ" must be entered on the shipping paper either before or after the basic description required by § 172.202 for each hazardous substance.

Contrary to the above, on August 29, 2011, the licensee transported a hazardous material by highway and did not have the accompanying shipping papers prepared in accordance with Subpart C of 49 CFR Part 172. Specifically, the licensee transported a portable gauge containing hazardous material to a temporary jobsite in Missoula, Montana, and the shipping paper did not contain the proper shipping name, the correct identification number, the emergency response telephone number, and the letters "RQ" for hazardous substance.

This is a Severity Level IV violation (Section 6.8).

- B. 10 CFR 30.34(i) requires, that each portable gauge licensee shall use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal whenever portable gauges are not under the control and constant surveillance of the licensee.

Contrary to the above, on August 29, 2011, the licensee failed to use a minimum of two independent physical controls that form tangible barriers to secure the portable gauge from unauthorized removal when the gauge was not under the control and constant

surveillance of the licensee. Specifically, the licensee used only one independent physical control to secure a portable gauge inside the bed of the truck, which had an unlocked camper top, while at a temporary jobsite on Highway 93 in Missoula, Montana, and the gauge was not under the control and constant surveillance of the licensee.

This is a Severity Level IV violation (EGM 11-004).

- C. License condition 21 of NRC Materials License 25-29423-01, states, in part, that the licensee shall conduct its program in accordance with the statements, representations, and procedures contained in the documents, including any enclosures in the license application dated February 1, 2011.

Item 7, of the application dated February 1, 2011, states, in part, that before obtaining licensed materials, the proposed RSO will have successfully completed one of the training courses described in Section 8.7 or Appendix D of NUREG-1556, Volume 1, Revision 1 dated November 2001.

Contrary to the above, as of August 29, 2011, the licensee failed to ensure that the proposed RSO successfully completed one of the training courses described in Section 8.7 or Appendix D of NUREG-1556, Volume 1, Revision 1 dated November 2001, before obtaining licensed materials. Specifically, the licensee was in possession of a portable gauge that contained licensed material and the RSO had not successfully completed one of the gauge user training courses.

This is a Severity Level IV violation (Section 6.3).

Pursuant to the provisions of 10 CFR 2.201, Nelcon, Inc. 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 IV, 1600 E. Lamar Blvd., Arlington, Texas 76011-4511, 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 - EA-11-263" and should include for each violation:

- (1) the reason for the violation, or, if contested, the basis for disputing the violation or severity level,
- (2) the corrective steps that have been taken and the results achieved,
- (3) the corrective steps that will be taken, and
- (4) the date when full compliance will be achieved.

Your response may reference or include previous 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.

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

Your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at www.nrc.gov/reading-rm/adams.html. To the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be made publically available without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, then 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 material, you must specifically identify the 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.)

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

Dated this 24th day of February 2012