



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

March 4, 2024

EA-23-113

Aldru Todd Aaron, General Counsel
Empire Wireline, LLC
P.O. Box 967
Manvel, TX 77578

**SUBJECT: EMPIRE WIRELINE, LLC - NOTICE OF VIOLATION, NRC INSPECTION
REPORT 150-00042/2023-006**

Dear Aldru Todd Aaron:

This letter refers to the U.S. Nuclear Regulatory Commission (NRC) August 15, 2023, limited scope inspection conducted remotely with in office review through November 7, 2023, of licensed activities performed at the U.S. Department of Energy Strategic Petroleum Reserve located in Bryan Mound and Big Hill, Texas, and West Hackberry, Louisiana. The purpose of the inspection was to examine activities conducted by Empire Wireline, LLC in areas of exclusive Federal jurisdiction as they relate to compliance with the NRC rules and regulations. A final exit briefing was conducted with Matthew Chitwood, Radiation Safety Officer, on November 7, 2023. Details of the inspection and one apparent violation were provided to you in the subject inspection report, dated December 1, 2023, Agencywide Documents Access and Management System (ADAMS) Accession No. ML23305A199.

On February 20, 2024, a predecisional enforcement conference was conducted at the NRC Region IV office with you to discuss the apparent violation, its significance, the causes, and the corrective actions.

Based on the information developed during the inspection and the information provided during the conference, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in Enclosure 1, Notice of Violation (Notice), and the circumstances surrounding the violations are described in detail in the subject inspection report. The violation involved the failure to file an NRC Form 241, "Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters," and receive approval for reciprocity prior to working in exclusive Federal jurisdiction in calendar years 2019 and 2020. Enclosure 2 contains the details of the NRC's evaluation of your predecisional enforcement conference presentation.

The NRC considers the violation to be a significant violation because the failure to file a submittal containing an NRC Form 241 and conduct of licensed activities in exclusive Federal jurisdiction prevented the NRC from inspecting these areas to ensure that licensed material is being used safely and in accordance with NRC requirements. Therefore, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level III.

The current Enforcement Policy can be found on the NRC's website at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>.

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$9,000 is considered for Severity Level III violation.

Because your facility has not been the subject of an escalated enforcement action within the last two routine inspections, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section 2.3.4 of the NRC Enforcement Policy. The NRC has determined that *Corrective Action* credit is warranted based on the prompt and comprehensive corrective actions you implemented. Your corrective actions to address the violation are documented in NRC Inspection Report 150-00042/2023-006 and in your predecisional enforcement conference slides, ML24053A124.

Therefore, in recognition of the absence of previous escalated enforcement action, and your prompt and comprehensive corrective actions, I have been authorized, after consultation with the Director, Office of Enforcement, not to propose a civil penalty in this case. However, significant violations in the future could result in a civil penalty. In addition, issuance of this Severity Level III violation constitutes escalated enforcement action that may subject you to increased inspection effort.

The NRC has concluded that information regarding: (1) the reason for the violations; (2) the corrective actions that have been taken and the results achieved; and (3) the date when full compliance was achieved is already adequately addressed on the docket in NRC Inspection Report 150-00042/2023-006 and in your predecisional enforcement conference slides. Therefore, you are not required to respond to this letter unless the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice.

In accordance with 10 CFR 2.390 of the NRC's "Agency Rules of Practice and Procedure," a copy of this letter, the enclosure, and your response, if you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room or in the NRC's ADAMS, accessible from the NRC website 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. The NRC also includes significant enforcement actions on its website at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions>.

A. Aaron

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If you have any questions concerning this matter, please contact Dr. Lizette Roldán-Otero of my staff at 817-200-1455.

Sincerely,



Signed by Monninger, John
on 03/04/24

John D. Monninger
Regional Administrator

Docket No. 150-00042
License No. General license pursuant
to 10 CFR 150.20

Enclosures:

1. Notice of Violation
2. Predecisional Enforcement Conference
Evaluation

cc w/Enclosures:

Jerry Lang, Administrator
Emergency & Radiological Services Division
Louisiana Dept. of Environmental Quality

Lisa Bruedigan, Director
Radiation Control Program,
Consumer Protection Division
Texas Department of State Health Services

EMPIRE WIRELINE, LLC - NOTICE OF VIOLATION, NRC INSPECTION
 REPORT 150-00042/2023-006 - DATED MARCH 4, 2024

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OFFICIAL RECORD COPY

NOTICE OF VIOLATION

Empire Wireline, LLC
Manvel, Texas

Docket No. 150-00042
License No. General License
EA-23-113

During an NRC inspection and in-office review conducted from August 15 to November 7, 2023, one violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 150.20(a)(1) requires, in part, that any person who holds a specific license from an Agreement State is granted a general NRC license to conduct the same activity in areas of exclusive Federal jurisdiction within Agreement States, subject to the provisions of 10 CFR 150.20(b).

10 CFR 150.20(b)(1) requires, in part, that any person engaging in activities in areas of exclusive Federal jurisdiction within Agreement States shall, at least 3 days before engaging in each activity for the first time in a calendar year, file a submittal containing an NRC Form 241, "Report of Proposed Activities in Non-Agreement States," a copy of its Agreement State specific license, and the appropriate fee with the Regional Administrator of the appropriate NRC regional office.

Contrary to the above, on June 4, July 16, August 29, and December 3, 2019, and on February 26, 2020, Empire Wireline, LLC, a licensee of the State of Texas and the State of Louisiana, engaged in activities in areas of exclusive Federal jurisdiction within Agreement States and failed to file a submittal containing an NRC Form 241, a copy of its Agreement State specific license, and the appropriate fee with the Regional Administrator of the NRC Regional Office at least 3 days before engaging in each activity for the first time in a calendar year. Specifically, for calendar years 2019 and 2020, the licensee performed activities at the U.S. Department of Energy, Strategic Petroleum Reserve facilities located in Bryan Mound and Big Hill, Texas, and West Hackberry, Louisiana and failed to submit the required information by June 1, 2019, for calendar year 2019 and by February 23, 2020, for calendar year 2020.

This is a Severity Level III Violation (Enforcement Policy Section 6.9.c.2.c).

The NRC has concluded that information regarding: (1) the reason for the violation; (2) the corrective actions that have been taken and the results achieved; and (3) the date when full compliance was achieved is already adequately addressed on the docket in NRC Inspection Report 150-00042/2023-006 and the predecisional enforcement conference slides.

However, if the description therein does not accurately reflect your position or your corrective actions, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 within 30 days of the date of the letter transmitting this Notice of Violation. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation; EA-23-113," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001 with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV, 1600 East Lamar Blvd., Arlington, Texas 76011-4511, and email it to R4Enforcement@nrc.gov.

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, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

If you choose to respond, your response will be made available electronically for public inspection in the NRC Public Document Room or in the NRC's Agencywide Documents Access and Management System (ADAMS), accessible from the NRC website at <http://www.nrc.gov/reading-rm/adams.html>. Therefore, to the extent possible, the response should not include any personal privacy or proprietary information so that it can be made available to the public 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 that such material is withheld from public disclosure, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim (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).

Dated this 4th day of March 2024

PREDECISIONAL ENFORCEMENT CONFERENCE EVALUATION

The NRC staff evaluated several aspects of the predecisional enforcement conference (PEC) slides and the presentation provided by Empire Wireline, LLC (Empire).

10 CFR 40.11 Exemption

Empire's Position

At the PEC, Empire stated that it is exempt from the requirements of 10 CFR 40.11, "Persons using source material under certain Department of Energy and Nuclear Regulatory Commission contracts," because it is a subcontractor to the Department of Energy prime contractor conducting work at a government owned and controlled site.

NRC Evaluation

The requirements of 10 CFR 40.11 are not applicable for this case. The material in question was not source material and therefore the requirements or exemptions in 10 CFR Part 40 are not applicable. The NRC evaluated the requirements in 10 CFR 30.12, "Persons using byproduct material under certain Department of Energy and Nuclear Regulatory Commission contracts." The NRC determined that the "automatic" exemption in 10 CFR 30.12 for Department of Energy prime contractors conducting work at a government owned and controlled site does not apply to Empire, because Empire was not a Department of Energy prime contractor. Under 10 CFR 30.12, a subcontractor is not exempted from NRC licensing requirements unless the NRC determines that the exemption is authorized by law and that there is adequate assurance that the work can be accomplished without undue risk to the public health and safety. Empire did not submit a request to the NRC for such an exemption prior to conducting work at the Strategic Petroleum Reserve sites.

List of Exclusive Federal Jurisdiction Sites/Nulla Poena Sine Lege

Empire's Position

Nulla Poena Sine Lege translates to "no punishment without law." Empire stated that the U.S. Department of Energy, Strategic Petroleum Reserve facilities were not listed or known by the NRC to be exclusive Federal jurisdiction at the time the services were rendered. Therefore, no federal law could have been violated.

NRC Evaluation

The requirement in 10 CFR 150.20(b)(1) to file for reciprocity prior engaging in activities in areas of exclusive Federal jurisdiction within Agreement States was already a well-established requirement when Empire performed worked at the Strategic Petroleum Reserve facilities. Furthermore, published NRC guidance emphasizes that it is the responsibility of Agreement State licensees to determine the jurisdictional status of a location prior to conducting licensed activities at that location.

The NRC does not maintain or publish a definitive list of locations subject to exclusive Federal jurisdiction. NUREG-1556, Volume 19, Revision 1, "Guidance for Agreement State Licensees About NRC Form 241 "Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters" and Guidance for NRC Licensees Proposing

to Work in Agreement State Jurisdiction (Reciprocity)” published June 2016, Section 2.6 states, in part, that:

NRC cannot effectively maintain accurate information about the jurisdictional status of Federal lands or facilities throughout the country, because of the large number of sites and the fact that their status is constantly changing.

If you intend to conduct licensed activities at a federally controlled site (e.g., a federally controlled site in an Agreement State), you should determine the jurisdictional status of the site prior to conducting such activities.

In addition, NUREG-1556, Volume 19, Appendix B, “RECOMMENDED PROCEDURE TO OBTAIN JURISDICTION DETERMINATIONS FOR FEDERAL SITES,” provides the recommended steps to follow to obtain the jurisdictional status of the proposed jobsite.

All of the above regulatory requirements and NRC guidance were published and in effect prior to Empire conducting work at the Strategic Petroleum Reserve sites.