



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION II
SAM NUNN ATLANTA FEDERAL CENTER
61 FORSYTH STREET SW SUITE 23T85
ATLANTA, GEORGIA 30303-8931

July 18, 2001

NMED No. 010149

EA-01-163

Martin Marietta Aggregates
ATTN: Adam Szczepanski
Corporate RSO
2710 Wycliff Road
Raleigh, NC 27607

SUBJECT: NRC INSPECTION REPORT NO. 999-90002/01-01

Dear Mr. Szczepanski:

This refers to the special inspections conducted on April 3 and April 30, 2001, at the Rockville, Virginia Rock Quarry. The purpose of the April 3, 2001, inspection was to determine whether Martin Marietta Aggregates transferred a fixed gauging device to a scrap metal recycling company which was not authorized to receive and possess such licensed material. The inspection was also conducted to determine if the gauge was locked and secured at the Rockville facility. On April 30, 2001, inspectors visited Martin Marietta Aggregates' Rockville and Carmel Church, Virginia facilities to determine if any additional generally licensed devices remained onsite. The inspectors were unable to identify any additional fixed gauging devices at the facilities. The results of the inspection were discussed on July 9, 2001, during a telephone conversation between Ms. Andrea Jones of my staff and you. The enclosed report presents the results of the inspection.

Based on the results of this inspection, 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, last revised December 18, 2000, Federal Register Notice 65 FR 79140. The Enforcement Policy (enclosed) is included on the NRC's website at www.nrc.gov/OE. The apparent violation involved the unauthorized transfer of a fixed gauging device containing 50 millicuries of cesium-137 to a metal recycling facility not authorized to receive and possess such licensed material.

The circumstances surrounding the apparent violation, the significance of the issues, and the need for lasting and effective corrective action have been discussed with you and other members of Martin Marietta Aggregates' staff during the onsite inspection and the July 9, 2001, telephone conversation. As a result, it may not be necessary to conduct a predecisional enforcement conference in order to enable the NRC to make an enforcement decision.

In addition, since your facility has not been the subject of escalated enforcement action within the last two years, and based on our understanding of the circumstances surrounding the apparent violation and your corrective actions, a civil penalty may not be warranted in accordance with Sections VI.C and VII of the Enforcement Policy. Our final decision will be based on your confirming on the license docket that the corrective actions previously described to the staff have been or are being taken.

Before the NRC makes its enforcement decision, we are providing you an opportunity to either (1) respond to the apparent violation addressed in this inspection report within 30 days of the date of this letter or (2) request a predecisional enforcement conference. If a conference is held, it will be open for public observation. The NRC will also issue a press release to announce the conference. Please contact Thomas R. Decker at 404-562-4721 within seven days of the date of this letter to notify the NRC of your intended response.

Your response should be clearly marked as a "Response to An Apparent Violation" in Inspection Report No. 999-90002/01-01 and should include: (1) the reason for the apparent violation, or, if contested, the basis for disputing the apparent 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. In presenting your corrective action, you should be aware that the promptness and comprehensiveness of your actions will be considered in assessing any civil penalty for the apparent violation. The guidance in the enclosed NRC Information Notice 96-28, "SUGGESTED GUIDANCE RELATING TO DEVELOPMENT AND IMPLEMENTATION OF CORRECTIVE ACTION," may be helpful. Your response should be submitted under oath or affirmation and may reference or include previously docketed correspondence, if the correspondence adequately addresses the required response. If an adequate response is not received within the time specified or an extension of time has not been granted by the NRC, the NRC will proceed with its enforcement decision.

In addition, please be advised that the characterization of the apparent violation described in the enclosed inspection report may change as a result of further NRC review. You will be advised by separate correspondence of the results of our deliberations on this matter.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, Enclosure 1, and your response, should you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/NRC/ADAMS/index.html> (the Public Electronic Reading Room). To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

Should you have any questions concerning this letter, please contact Mr. Thomas R. Decker at (404) 562-4721 or Ms. Andrea R. Jones at (404) 562-4724.

Sincerely,

/RA by J. Henson Acting for/

Douglas M. Collins, Director
Division of Nuclear Materials Safety

Docket No. General License (10 CFR 31.5)
License No. 999-90002

- Enclosures:
1. Inspection Report
 2. Information Notice 96-28
 3. Enforcement Policy

cc w/encl 1:
Commonwealth of Virginia

Distribution w/encl 1:

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PUBLIC DOCUMENT (circle one): YES NO

OFFICE	RII:DNMS	RII:DNMS	RII:DNMS	RII:ORA	RII:ORA
SIGNATURE	/RA/	/RA/		/RA/	/RA/
NAME	AJones	TDecker	DMCollins	ABoland	CEvans
DATE	7/12/01	7/13/01		7/16/01	7/16/01
E-MAIL COPY?	YES NO	YES NO	YES NO	YES NO	YES NO

U. S. NUCLEAR REGULATORY COMMISSION

REGION II

Docket No.: General License (10 CFR 31.5)

License No.: 999-90002

Report No.: 999-90002/01-01

Licensee: Martin Marietta Aggregates

Location: Rockville Rock Quarry
Rockville, Virginia

Dates: April 3 and April 30, 2001, and telephone conversations held on
July 2 and 9, 2001

Inspectors: Andrea R. Jones, Radiation Specialist
Richard Gibson, Jr., Radiation Specialist
Cynthia Taylor, Radiation Specialist

Approved by: Thomas R. Decker, Chief
Materials Licensing/Inspection Branch 1
Division of Nuclear Materials Safety

EXECUTIVE SUMMARY

Martin Marietta Aggregates
NRC Inspection Report No. 999-90002/01-01

This special, announced inspection was conducted to evaluate the circumstances associated with the unauthorized transfer of a Kay-Ray Model No. 7062 fixed gauging device that contained 50 millicuries of cesium-137, and determine the security and control of the licensed device.

Martin Marietta Aggregates purchased the Carmel Church facility and all of its assets in June 1994 from the Carolina Stone Company. From 1999 through February 2001, portions of the scrap metal were removed from the Rockville, Virginia Rock Quarry for recycling which resulted in the February 14, 2001, transfer of a fixed gauging device that contained 50 millicuries of cesium-137 to Cycle Systems, a metal recycling facility not authorized to receive and possess such licensed material. The licensee's failure to transfer the generally licensed device to an NRC or Agreement licensee authorized to receive and possess such licensed material was identified as an apparent violation of NRC regulatory requirements.

No events or incidents associated with the gauge were reported during the time that it was transferred and remained in the possession of Cycle Systems; however, the potential existed for the inappropriate use, handling or storage of the device in such a way where members of the public could have received radiation exposure that exceeded NRC regulatory requirements.

Attachment:

Persons Contacted

Inspection Procedure Used

REPORT DETAILS

1. **Program Scope and Licensee Organization**

The licensee is authorized to possess and use radioactive material under a General License for the purposes of measuring properties of material using a fixed gauging device. Martin Marietta Aggregates' (MMA) Rockville facility possessed one device that contained 50 millicuries of cesium-137.

2. **Circumstances Relative to the Transfer of the Licensee's Kay Ray Model No. 7062 Fixed Gauging Device.**

a. Scope

The inspectors reviewed licensee records, interviewed knowledgeable licensee representatives, and toured the licensee's Rockville and Carmel Church facilities, to evaluate the apparent unauthorized transfer of a Kay-Ray Model No. 7062 fixed gauging device on February 14, 2001.

b. Observations and Findings

On April 3, 2001, an NRC inspection was conducted to review the facts and circumstances surrounding MMA's unauthorized transfer of a Kay-Ray Model No. 7062 fixed gauging device to Cycle Systems, a scrap metal recycling facility located in Lynchburg, Virginia. A review of NRC's General Licensed device database revealed that a Kay-Ray Model No. 7062 gauge was sold to Carolina Stone Company located in Carmel Church, Virginia between April-June 1983. The database listed Mr. Vernon Harris, Carolina Stone's former Plant Manager, as the contact person for the device. In June 1994, MMA purchased the Carolina Stone Company facility. In November 1994, Mr. Harris left the Carmel Church facility, transferring to another MMA site. During a telephone conversation with the former Plant Manager on April 23, 2001, Mr. Harris informed the inspector that the fixed gauging device was obtained from a Rock Quarry from within the Carolina Stone Corporate structure. Additionally, Mr. Harris stated that the Kay-Ray device, which was used as a weigh scale, was never actually utilized by personnel after its installation. Mr. Harris stated during the April 23, 2001, conversation, that he had not informed MMA's management of the presence of the fixed gauging device prior to the 1994 purchase by MMA or when he left the Carmel Church facility.

In 1998, a tornado demolished the Carmel Church plant. Between 1999-2000, MMA initiated a clean up and salvaging project at the inactive Carmel Church site. As a result, equipment (i.e., conveyor belts) and metal was transported and installed at MMA's Rockville, Virginia rock quarry for use. Equipment and metal determined to be unusable was also transferred to the Rockville site but was placed in piles awaiting transfer to a metal recycling facility.

On February 14, 2001, Cycle Systems, a metal recycling facility, retrieved a pile of scrap metal from the MMA Rockville facility. The Kay-Ray Model No. 7062/SN 5867 fixed gauging device was among the scrap metal. Upon delivery to the recycling facility, a radiation detector alarmed when the shipment containing the gauge attempted to enter the Lynchburg facility. On February 15, 2001, Cycle Systems returned the device to MMA's Rockville facility. The device was transferred to an authorized recipient on April 25, 2001.

10 CFR 31.5(c)(8) requires, in part, that any person who (possesses) material in a device pursuant to a general license shall transfer or dispose of the device containing byproduct material only by transfer to a person holding a specific license pursuant to 10 CFR Part 30 and 32 of this chapter or from an Agreement State to perform such activities. The February 14, 2001, unauthorized transfer of the Kay-Ray Model 7062 fixed gauging device to Cycle Systems, an entity not specifically licensed by the NRC or an Agreement State to receive and possess such licensed material was identified as an apparent violation of 10 CFR 31.5(c)(8).

c. Conclusion

The inspector concluded that the licensee's apparent failure to transfer the generally licensed device to an entity specifically licensed by the NRC or an Agreement State to receive it was identified as an apparent violation of 10 CFR 31.5(c)(8).

EXIT MEETING SUMMARY

The results of the inspection were communicated during telephone conversations held on July 2, with Mr. Ben Brown, and on July 9, 2001, with Mr. Adam Szczepanski. The overall findings from the inspection were discussed, including the apparent violation of regulatory requirements. The licensee did not offer any dissenting comments.

ATTACHMENT

PERSONS CONTACTED

Martin Marietta Aggregates

*Adam Szczepanski, Corporate RSO

*Ben Brown, Rockville Rock Quarry, Plant Manager

Wayne Allen, Assistant Plant Manager, Rockville Rock Quarry

Durvin Corker, Former Plant Manager, Carmel Church

Other

Vernon Harris, Former Plant, Manager, Carolina Stone Company/Carmel Church Rock Quarry

*Exit Meeting Conducted via telephone

INSPECTION PROCEDURE USED

IP 87114 Fixed and Portable Gaug