



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

August 21, 2001

EA-01-163

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

SUBJECT: NOTICE OF VIOLATION (INSPECTION REPORT NO. 999-90002/01-01)

Dear Mr. Szczepanski:

This refers to the special inspections conducted on April 3 and 30, 2001, at the Rockville, Virginia Rock Quarry. The purpose of the inspections was to determine whether Martin Marietta Aggregates (MMA) transferred a fixed gauging device to a scrap metal recycling company that was not authorized to receive and possess such licensed material and to determine if the gauge was locked and secured at the Rockville facility. The results of the inspection, including one apparent violation, were discussed with you on July 9, 2001, and formally transmitted to you by letter dated July 18, 2001. This letter also provided you the opportunity to either respond to the apparent violation in writing or request a predecisional enforcement conference. In your letter of August 7, 2001, you confirmed that you did not wish to attend a predecisional enforcement conference. You also provided Martin Marietta Aggregates' response to the apparent violation and addressed the causes and corrective actions to prevent recurrence. We have reviewed your response and conclude that sufficient information is available to determine the appropriate enforcement action in this matter.

Based on the information developed during the inspection and the information you provided in your response to the inspection report, the NRC has determined that a violation of NRC requirements occurred. This violation is cited in the enclosed Notice of Violation (Notice), and the circumstances surrounding it are described in detail in the subject inspection report. The violation involved the unauthorized transfer of a fixed gauging device containing 50 millicuries of Cesium-137 to a metal recycling facility that was not authorized to receive and possess such licensed material. Your 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 a violation of 10 CFR 31.5(c)(8).

In this case, the failure to properly transfer the gauge did not result in any actual radiation exposure to members of the public, as the gauge was found at a scrap metal recycling company with its shutter locked and closed. However, your company was unaware that the gauge had been transferred to a metal recycling facility, and the potential existed for members of the public to have access to the gauge or receive unnecessary radiation exposure. The device's sealed source could have been damaged prior to and/or during transit, or it could have been improperly handled by unauthorized and/or untrained individuals. The NRC holds

licensees responsible for ensuring that generally licensed devices are not abandoned when business operations cease or are transferred to other business entities to preclude unnecessary radiation exposure. Therefore, in accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions - May 1, 2000" (Enforcement Policy), NUREG-1600, as amended on December 18, 2000, the failure to properly transfer the gauge is categorized as a Severity Level III violation.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$3,000 is considered for a Severity Level III violation. Because your company 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.C.2 of the Enforcement Policy. Your corrective action for the Violation included, in part, (1) conducting an inspection of the remaining materials from the Carmel Church facility to determine if there were any other units, and none were found, (2) changing your acquisition checklist to include a question regarding the presence of nuclear measuring devices, (3) submitting a list to management requesting the seller to disclose information on nuclear measuring devices, and (4) sending a questionnaire to each newly purchased plant to double check for the presence of any nuclear devices post acquisition. Based on the above, the NRC concluded that your actions were prompt and comprehensive, and credit was warranted for the factor of Corrective Action.

Therefore, to encourage prompt and comprehensive correction of violations and in recognition of the absence of previous escalated enforcement action, I have been authorized to propose that no civil penalty be assessed in this case. However, similar violations in the future could result in further escalated enforcement action. Issuance of this Notice constitutes escalated enforcement action.

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence, and the date when full compliance was achieved is adequately addressed on the docket in your August 7, 2001, letter, our July 18, 2001, inspection report and this letter. Therefore, you are not required to respond to this letter unless the description herein 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 2.790 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 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).

MMA

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If you have any questions regarding this matter, please contact Douglas M. Collins, Director, Division of Nuclear Materials Safety at 404-562-4700.

Sincerely,

/RA/

Bruce S. Mallett
Acting Regional Administrator

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

Enclosure: Notice of Violation

cc w/encl:
Commonwealth of Virginia

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NOTICE OF VIOLATION

Martin Marietta Aggregates
Raleigh, NC 27607

Docket No. General License (10 CFR 31.5)
License No. 999-90002
EA-01-163

During an NRC inspection conducted on April 3 and 30, 2001, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions - May 1, 2000," NUREG-1600, as amended on December 18, 2000, the violation is listed below:

10 CFR 31.5(c)(8) requires, in part, that any person who acquires, receives, possesses, uses or transfers byproduct material in a device pursuant to a general license shall, except as provided in 10 CFR 31.5(c)(9), transfer or dispose of the device containing byproduct material only by transfer to persons holding a specific license pursuant to 10 CFR Parts 30 and 32 or from an Agreement State to receive the device.

Contrary to the above, on February 13, 2001, Martin Marietta Aggregates transferred a Kay-Ray model 7062/SN 7897 fixed gauging device containing 50 millicuries of Cesium-137, and this transfer was not made to a person holding a specific license pursuant to 10 CFR Parts 30 and 32 or from an Agreement State to receive the device, and the exceptions in 10 CFR 31.5(c)(9) did not apply. Specifically, the device was transferred to an unlicensed scrap metal company.

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

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence, and the date when full compliance was achieved is already adequately addressed on the docket in the letter transmitting this Notice of Violation (Notice), in Martin Marietta Aggregates' letter of August 7, 2001, and our July 18, 2001 inspection report. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555 with a copy to the Regional Administrator, Region II within 30 days of the date of the letter transmitting this Notice.

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.

Because any response 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), to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/NRC/ADAMS/index.html> (the Public Electronic Reading Room). 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 2.790(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

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

Dated this 21st day of August 2001