

May 5, 2004

EA-04-035
NMED No. 040024

Dean Seng
Plant Manager
Saint-Gobain Performance Plastics Corporation
150 Dey Road
Wayne, NJ 07470

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$7,500
(NRC Inspection Report No. 99990001/2004001)

Dear Mr. Seng:

This refers to the NRC inspection conducted on January 14, 2004, at your facility located in Wayne, New Jersey, to review the circumstances associated with the loss of a thickness gauge containing 150 millicuries of americium-241. The inspection was initiated after a representative from the Onyx Greentree Landfill, located in Kersey, Pennsylvania, informed the NRC that a radioactive source was identified in a shipment of municipal waste to their landfill from Totowa, New Jersey. The source was traced to a gauge that your company had obtained in the past. Subsequently, you sent a letter, dated February 5, 2004, wherein you described the events that led to the loss of the gauge and corrective actions you have taken to prevent recurrence. As described in the NRC inspection report sent to you on March 9, 2004, four apparent violations of NRC requirements were identified during the NRC inspection. In the letter accompanying the report, you were notified that one of the violations was being considered for escalated enforcement action.

In our March 9, 2004 letter forwarding the inspection report, you were also provided the opportunity to request a predecisional enforcement conference or to respond to the apparent violations in written correspondence to the NRC. On March 16, 2004, you communicated via telephone with Ms. Donna Janda, of the NRC Region I staff, indicating that you declined the opportunity to attend a predecisional enforcement conference, but would respond in writing regarding the apparent violations. In your response dated April 5, 2004, you provided additional corrective actions that have been implemented to prevent recurrence of the violations. You also provided an estimated cost of disposal for the gauge (\$3000).

Based on the information developed during the inspection, and the information provided in your response, the NRC has determined that four violations of NRC requirements occurred. The violations are cited in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) and the circumstances surrounding them are described in detail in the subject inspection report. The most significant violation involved the failure to maintain control of the gauge containing the americium-241 radioactive source, which resulted in the loss of the

gauge. This violation occurred when the gauge was discarded in the normal trash after disassembly of equipment at the facility. Prior to being discarded, the gauge had been removed from the production line and used in the research and development area of the facility.

Although the gauge's source was in the shielded condition at the time it was discovered at the landfill, this violation is of concern to the NRC because (1) the failure to control the gauge resulted in the loss of radioactive material in the public domain; and (2) such sources can result in substantial unintended radiation dose to an individual if the source is removed from the shielded position. Therefore, this violation is categorized at Severity Level III in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$7,500 is considered for a Severity Level III violation involving the loss of control of radioactive material with this level of radioactivity. Because your facility has not been the subject of an 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 in Section VI.C.2 of the Enforcement Policy. Credit for corrective action is warranted because your corrective actions were considered prompt and comprehensive. These corrective actions included, but were not limited to: (1) recovery of the source from the landfill; (2) shipping the source back to the manufacturer for proper disposal; (3) identifying a responsible individual within your organization to oversee the radiation safety program; (4) conducting an inventory of all radioactive sources located at your site; (5) conducting initial training for all employees involved with work in the areas of the radioactive devices; and (6) making all management staff aware of the event and the corrective actions taken to prevent a recurrence of the event.

Application of the normal civil penalty assessment process would not result in a civil penalty in this case. However, the revised Enforcement Policy published December 18, 2000 (effective February 16, 2001), provides that, notwithstanding the normal civil penalty assessment process, a civil penalty of at least the base amount should normally be proposed in this type of case to reflect the significance of the violation and to emphasize the importance of maintaining control of licensed material (see section VII.A.1(g) of the Enforcement Policy). Therefore, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the base amount of \$7,500 for this Severity Level III violation. In addition, issuance of this Notice constitutes escalated enforcement action, that may subject you to increased inspection effort.

Based on the results of this inspection, the NRC has also determined that three additional Severity Level IV violations of NRC requirements occurred. These violations involved (1) the failure to maintain labels affixed to the device after receipt, bearing a statement that the removal of the label is prohibited, and that the employee is to comply with all instructions and precautions provided by such labels; (2) the failure to appoint an individual responsible for having knowledge of the appropriate regulations and actions; and (3) the failure to report to the NRC within 30 days the transfer of an exit sign containing tritium from your facility to another general licensee. These violations are fully described in the subject inspection report and are also cited in the attached Notice.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you may reference any

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previous correspondence that is applicable to this case to avoid repetitive submissions. The NRC will use your response, in part, to 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 enclosures, 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/reading-rm/adams.html> (the Public Electronic Reading Room).

Sincerely,

/RA James T. Wiggins ACTING FOR/

Hubert J. Miller
Regional Administrator

Docket No. 99990001
General License

Enclosures:

1. Notice of Violation and Proposed Imposition of Civil Penalty
2. NUREG/BR-0254 Payment Methods (Licensee only)

cc w/encl:
State of New Jersey
Commonwealth of Pennsylvania

DISTRIBUTION:

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 J. Goldberg, OGC
 L. Chandler, OGC
 Enforcement Coordinators
 RII, RIII, RIV
 S. Gagner, OPA
 H. Bell, OIG
 P. Lohaus, OSTP
 G. Caputo, OI
 L. Tremper, OC
 S. Rosenberg, OEDO
 E. Wilson, OI-RI
 G. Pangburn, RI
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NAME	JNick JN		DHolody DH		KFarrar KF		GPangburn GP		HMiller JTW for	
DATE	4/19/04		4/20/04		4/20/04		4/20/04		4/20/04	
OFFICE	HQ/OE	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
NAME	FCongel *									
	4/29/04									

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*OE concurrence provided per telecon with S. Merchant on 4/29/04 **JN**

ENCLOSURE

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Saint-Gobain Performance Plastics Corporation
Wayne, New Jersey
EA-04-035

Docket No. 99990001
General License
NMED No. 040024

During an NRC inspection conducted on January 14, 2004, four violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy), NUREG-1600, the NRC proposes a civil penalty for one of the violations pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282 and 10 CFR 2.205. The violations and associated civil penalty are set forth below:

I. VIOLATION ASSESSED A CIVIL PENALTY

10 CFR 20.1801 requires that the licensee secure from unauthorized removal or access licensed materials that are stored in controlled or unrestricted areas. 10 CFR 20.1802 requires that the licensee control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage. As defined in 10 CFR 20.1003, *controlled area* means an area, outside of a restricted area but inside the site boundary, access to which can be limited by the licensee for any reason; and *unrestricted area* means an area, access to which is neither limited nor controlled by the licensee.

Contrary to the above, on an indeterminate date in December 2003, the licensee failed to secure from unauthorized removal and failed to control and maintain constant surveillance of an NDC Systems Model No. 103 backscatter thickness gauge (Serial No. 867), a generally-licensed device containing 150 millicuries of americium-241. Specifically, the licensee put the gauge, which had been stored in a controlled area of its facility in Wayne, New Jersey, in the normal trash. As a result of the licensee's failure to secure the gauge, the gauge was subsequently sent to the municipal trash, which is an unrestricted area that the licensee did not maintain control or surveillance of the gauge.

This is a Severity Level III violation (Supplement VI).
Civil Penalty - \$7,500

II. VIOLATIONS NOT ASSESSED A CIVIL PENALTY

A. 10 CFR 31.5(c)(1) requires that the general licensee (1) assure that all labels affixed to the device at the time of receipt and bearing a statement that removal of the label is prohibited, are maintained thereon, and (2) comply with all instructions and precautions provided by such labels.

Contrary to the above, after receipt of a device in 1995, the general licensee did not maintain all labels bearing a statement that removal of the label is prohibited and affixed to the device. Specifically, the general licensee placed a backscatter thickness gauge (Serial No. 867), a generally-licensed device containing 150 millicuries of americium-241, in an aluminum container without any markings or labels on the outside container to identify the radioactive material.

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

- B. 10 CFR 31.5(c)(12) requires that persons possessing byproduct material under a general license shall appoint an individual responsible for having knowledge of the appropriate regulations and requirements and with the authority for taking required actions to comply with appropriate regulations and requirements.

Contrary to the above, from approximately June 2001 until January 13, 2004, the general licensee did not have an individual responsible for having knowledge of the appropriate regulations and requirements and with the authority for taking required actions to comply with appropriate regulations and requirements pertaining to generally-licensed devices. Specifically, the engineer responsible for the generally-licensed devices was laid off in approximately June 2001 and a replacement was not designated until after a device previously possessed by the general licensee was found in the waste shipment at a landfill on January 13, 2004.

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

- C. 10 CFR 31.5(c)(9)(i) requires that the general licensee furnish a report to the Director of Nuclear Material Safety and Safeguards within 30 days after the transfer of a device to another general licensee.

Contrary to the above, the general licensee did not furnish a report to the NRC within 30 days after it transferred a device to another general licensee. Specifically, the general licensee transferred an exit sign containing tritium to another general licensee in 1989, but did not furnish a report to the NRC.

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

Pursuant to the provisions of 10 CFR 2.201, Saint-Gobain Performance Plastics Corporation (the Licensee) is required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation, EA-04-035" and should include for each alleged violation: (1) admission or denial of the alleged violation, (2) the reasons for the violation if admitted, and if denied, the reasons why, (3) the corrective steps that have been taken and the results achieved, (4) the corrective steps that will be taken to avoid further violations, and (5) 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 why the license should not be modified, suspended,

or revoked or why such other action as may be proper should not be taken. Consideration may be given to extending the response time for good cause shown.

Within the same time as provided for the response required above under 10 CFR 2.201, the Licensee may pay the civil penalty proposed above, or the cumulative amount of the civil penalties if more than one civil penalty is proposed, in accordance with NUREG/BR-0254 and by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, a statement indicating when and by what method payment was made, or may protest imposition of the civil penalty in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission. Should the Licensee fail to answer within 30 days of the date of this Notice, an order imposing the civil penalty will be issued. Should the Licensee elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation, EA-04-035" and may: (1) deny the violations listed in this Notice, in whole or in part, (2) demonstrate extenuating circumstances, (3) show error in this Notice, or (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty in whole or in part, such answer may request remission or mitigation of the penalty.

In requesting mitigation of the proposed penalty, the factors addressed in Section VI.C.2 of the Enforcement Policy should be addressed. Any written answer in accordance with 10 CFR 2.205 should be set forth separately from the statement or explanation in reply pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the Licensee is directed to the other provisions of 10 CFR 2.205, regarding the procedure for imposing a civil penalty.

Upon failure to pay any civil penalty due which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The response noted above (Reply to Notice of Violation, statement as to payment of civil penalty, and Answer to a Notice of Violation) should be addressed to: F. Congel, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region I.

Because 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), to the extent possible, it should not include any personal privacy or proprietary 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/reading-rm/adams.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

Saint-Gobain Performance Plastics Corp. 4

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.

Dated this 5th day of May 2004.