



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
REGION IV  
611 RYAN PLAZA DRIVE, SUITE 400  
ARLINGTON, TEXAS 76011-4005

October 19, 2006

Roger Bourne, RSO  
Merillat Industries, Inc.  
P.O. Box 4040  
Rapid City, South Dakota 57709

SUBJECT: NRC INSPECTION REPORT 030-20262/06-001 AND NOTICE OF VIOLATION

Dear Mr. Bourne:

This refers to the inspection conducted September 11, 2006, through October 16, 2006, of your facility in Rapid City, South Dakota. This inspection was an examination of activities conducted under your license as they relate to safety and compliance with the Commission's rules and regulations and with the conditions of the license. Within these areas, the inspection consisted of selected examination of procedures and representative records and interviews with personnel. Preliminary inspection findings were discussed with you and Mr. Scott LeZotte at the conclusion of the onsite portion of the inspection. The licensee required additional time to review company records to determine whether required tests were conducted. Therefore, a final exit briefing was conducted telephonically with Mr. LeZotte on October 16, 2006.

Based on the results of this inspection, the NRC has determined that a Severity Level IV violation of NRC requirements occurred. The violation was evaluated in accordance with the NRC Enforcement Policy. The current Enforcement Policy is included on the NRC's Web site at [www.nrc.gov](http://www.nrc.gov); select **What We Do, Enforcement**, then **Enforcement Policy**. The violation identified during the inspection is cited in the enclosed Notice of Violation (Notice) and involved the failure to test each gauge for the proper operation of the on-off mechanism (shutter) and indicator, if any, as required by your license. This violation is being cited in the Notice because it was identified by the NRC, rather than being self-identified by the licensee.

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. 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 enclosure(s), and 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

Merillat Industries, Inc.

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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, proprietary, or safeguards information so that it can be made available to the Public without redaction.

Should you have any questions concerning this inspection or the enclosed Notice, please contact Christi Maier at (817) 860-8217 or Vivian H. Campbell at (817) 860-8287.

Sincerely,

*/RA/*

Vivian H. Campbell, Chief  
Nuclear Materials Inspection Branch

Docket No.: 030-20262  
License No.: 40-23107-01

Enclosures:

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

cc w/Enclosure 1:  
South Dakota Radiation Control Program Director

bcc w/enclosure (via ADAMS e-mail distribution):

LDWert

CLCain

VHCampbell

JEWhitten

MCMaier

RITS Coordinator

NMIB

RIV Materials Docket File - 5<sup>th</sup> floor

SUNSI Review Completed: MCM1 ADAMS:  Yes  No Initials: MCM1  
 Publicly Available  Non-Publicly Available  Sensitive  Non-Sensitive

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E=E-mail

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## NOTICE OF VIOLATION

Merillat Industries, Inc.  
Rapid City, South Dakota

Docket No. 030-20262  
License No. 40-23107-01

During an NRC inspection conducted September 11, 2006, through October 16, 2006, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy the violation is listed below:

License Condition 16 of Materials License 40-23107-01 issued to Merillat Industries, Inc., states, in part, that each gauge shall be tested for the proper operation of the on-off mechanism (shutter) and indicator, if any, at intervals not to exceed six months or at such longer intervals as specified in the certificate of registration issued by the U.S. NRC pursuant to 10 CFR 32.210 or the equivalent regulations of an Agreement State.

Sealed Source and Device Registry No. OH-522-D-118-B for Ohmart/VEGA Corporation Gamma Gauge Source Housing Models SHRM-B and SHRM-BW for housing used in the Ohmart/VEGA Model BW gauge series states, in part, that shutter tests must be performed at intervals not to exceed six months.

Contrary to the above, the licensee failed to test each gauge for the proper operation of the on-off mechanism (shutter) and indicator, if any, at intervals not to exceed six months. Specifically, the licensee did not test two Ohmart/VEGA Model BW-30 fixed gauging devices for the proper operation of the on-off mechanism between July 2001 and September 2006, an interval greater than six months.

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

Pursuant to the provisions of 10 CFR 2.201, Merillat Industries, Inc., is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator, Region IV, 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" 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 to avoid further violations, 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.

Because 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 <http://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

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 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). 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 19<sup>th</sup> day of October 2006.