

October 11, 2007

EA-07-174

David Houser  
President  
Blakemore Construction Corporation  
Rockville Stone Quarry (Luck Stone Quarry)  
Rockville, VA 23261

SUBJECT: NOTICE OF VIOLATION (NRC Inspection Report No. 03030019/2007001)

Dear Mr. Houser:

This refers to an NRC inspection conducted at the Luck Stone Quarry site in Rockville, VA on June 6-7, 2007, of activities authorized by NRC License No. 45-24919-01. During the inspection, three apparent violations were identified. The most significant apparent violation involved a failure to use a minimum of two independent physical controls that form tangible barriers to secure a portable gauge from unauthorized removal when the portable gauge was not under control and constant surveillance. The findings of the inspection were discussed with you during an exit meeting at the conclusion of the inspection on June 7, 2007. On June 10, 2007, Ms. Joustra of my staff informed you that one of the apparent violations was being considered for escalated enforcement action, and that you may attend a predecisional enforcement conference or submit a written response prior to the NRC determining appropriate enforcement action. The NRC subsequently sent you a letter, dated August 31, 2007, which included an inspection report that documented the apparent violations. The August 31, 2007 letter also documented your decision to submit a written response. The NRC received your letter, "Response to Apparent Violations in Inspection Report No. 03030019/2007001; EA-07-174" on September 28, 2007.

Based on the NRC inspection, as well as information submitted in your September 28, 2007 letter, the NRC has determined that three violations of NRC requirements occurred. The most significant violation involved the failure to use two tangible barriers to secure nuclear gauges from unauthorized removal during periods when portable gauges were not under control and constant surveillance, in accordance with 10 CFR 30.34(i). Specifically, on June 6, 2007, an authorized user removed a portable gauge from the storage area and failed to subsequently lock the area, leaving portable gauges in storage in an unlocked room located in an unlocked building, without providing constant surveillance and control. This violation is of concern to the NRC because during the time that the gauges were not under control and constant surveillance, the potential existed for an unauthorized individual to take possession of the gauges, which contained licensed material. This could have resulted in a member of the public being exposed to radiation if the gauges were not handled correctly. Therefore, in accordance with the Enforcement Policy, the NRC has classified this violation at Severity Level (SL) III.

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$3,250 is considered for a SL III violation. Since your facility has not been the subject of escalated enforcement action within the last two years or 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 actions is warranted because your corrective actions were considered prompt and comprehensive. These corrective actions included: (1) locking transportation boxes containing locked gauges with a common chain secured to an immovable concrete block with two locks keyed differently behind a locked storage room door; (2) being able to maintain a direct line of surveillance of the storage room while the storage room door is open by opening the door to a room location adjacent to the storage room; and, (3) properly disposing the model 3241 C asphalt content gauge by returning the gauge to Troxler Laboratories on July 26, 2007.

Therefore, to encourage prompt and comprehensive correction of violations, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice of Violation without a civil penalty for the SL III violation. However, you should be aware that significant violations in the future could result in a civil penalty. In addition, issuance of this SL III violation constitutes escalated enforcement action that may subject you to increased inspection effort.

The other two violations cited in the enclosed Notice involved the failures to: (1) periodically (at least annually) review the radiation protection program content and implementation; and, (2) have the required shipping paper when transporting quantities of Am -241 and Cs -137 in the form of sealed sources in a Troxler portable gauge. In accordance with the NRC Enforcement Policy, these violations have been categorized at SL IV.

The NRC has concluded that information regarding the reasons for the violations, the corrective actions taken and planned to correct the violations and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed in this letter, our August 31, 2007 letter forwarding the inspection report, and/or in your September 28, 2007 letter. 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, please follow the directions in the enclosed Notice.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and its enclosures 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>. The NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov>.

Sincerely,

**/RA/ Original Signed by Marc L. Dapas for**

Samuel J. Collins  
Regional Administrator

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Sincerely,

**/RA/ Original Signed by Marc L. Dapas for**  
Samuel J. Collins  
Regional Administrator

Docket No. 03030019  
License No. 45-24919-01

**SUNSI Review Complete:** MTM (Reviewer's Initials)

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## NOTICE OF VIOLATION

Blakemore Construction Corporation  
Rockville, VA

Docket No. 03030019  
License No. 45-24919-01  
EA-07-174

During an NRC inspection conducted on June 6 and 7, 2007, for which an exit meeting was held on June 7, 2007, three violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. 10 CFR 30.34(i) requires that each portable gauge licensee use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee.

Contrary to the above, on June 6, 2007, the licensee did not use a minimum of two independent physical controls that form tangible barriers to secure a portable gauge from unauthorized removal when the portable gauge was not under the control and constant surveillance of the licensee. Specifically, two Troxler portable gauges were stored in an unlocked storage room located in an unlocked building at the Luck Stone Quarry facility.

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

- B. 10 CFR 20.1101(c) requires that a licensee shall periodically (at least annually) review the radiation protection program content and implementation.

Contrary to the above, as of June 6, 2007, the licensee had not periodically (at least annually) reviewed the radiation protection program content and implementation. The licensee had not performed a review of the radiation protection program from October 23, 2002 through June 7, 2007.

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

- C. 10 CFR 71.5(a) requires that a licensee who transports licensed material outside of the site of usage, as specified in the NRC license, or where transport is on public highways, or who delivers licensed material to a carrier for transport, comply with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation (DOT) in 49 CFR Parts 170 through 189.

49 CFR 177.817(a) requires that a carrier not transport a hazardous material unless it is accompanied by a shipping paper prepared in accordance with 49 CFR 172.200 - 203. Pursuant to 49 CFR 172.101, radioactive material is classified as hazardous material.

Contrary to the above, on September 21, 2006, the licensee transported quantities of Am -241 and Cs -137 in the form of sealed sources in a Troxler portable gauge without the required shipping paper.

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

The NRC has concluded that information regarding the reasons for the violations, the corrective actions taken to correct the violations and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed in the letter transmitting this Notice, in our August 31, 2007 letter forwarding the inspection report, and/or in your September 28, 2007 letter. 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, EA-07-174," 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, Region I, 475 Allendale Rd., King of Prussia, PA 19406, within 30 days of the date of this letter.

If you contest this enforcement action, you should also provide a copy of your response to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, any response which contests an enforcement action shall be submitted under oath or affirmation.

Your response will be placed in the NRC Public Document Room (PDR) and on the NRC Web site. To the extent possible, it should, therefore, not include any personal privacy, proprietary, or safeguards information so that it can be made publically available without redaction. However, if you find it necessary to include such information, you should clearly indicate the specific information that you desire not to be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public.

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

Dated this 11<sup>th</sup> day of October 2007