

December 5, 2007

EA 07-284

Mr. Mark Whalem, Plant Manager
Mittal Steel USA, Inc.
Indiana Harbor
3210 Watling Street
East Chicago, IN 46312

SUBJECT: EXERCISE OF ENFORCEMENT DISCRETION – MITTAL STEEL USA, INC.

Dear Mr. Whalem:

This refers to the inspection conducted on September 18, 2007, at your facility in East Chicago, Indiana. The inspection was documented in inspection report 030-04353/2007-001(DNMS). In the letter transmitting the inspection report, we noted that an apparent violation of NRC requirements had been identified for failure to implement the NRC's Order Imposing Increased Controls, EA-05-090, (Order) dated December 22, 2005.

In April 2007, after your consultant reviewed NRC guidance regarding the applicability of the Order to co-located fixed gauges, you determined that you were subject to the Order but had not complied with its requirements. That guidance, dated February 2007, was not available to you when the Order was first issued. You notified the NRC upon your discovery and installed additional physical barriers to ensure that the gauges at your facility could not be co-located.

The NRC has now completed its review of this matter and has determined that a violation of the Order occurred between June 20, 2006, and September 4, 2007, the time period during which you neither implemented the Order nor had additional physical barriers in place to avoid co-location of your fixed gauges. Failure to implement the Order is normally characterized as a Severity Level III violation.

Notwithstanding the above, I have been authorized, after consultation with the Director, Office of Enforcement, to exercise enforcement discretion in this case, in accordance with Section VII.B.6 of the Enforcement Policy (<http://www.nrc.gov/about-nrc/regulatory/enforcement/enforc-pol.pdf>) and not cite the violation based on your overall good performance, and on the initial lack of clarity regarding whether the Order applied to sources at large facilities such as the one at your East Chicago, Indiana, location. Other factors taken into account by the NRC included your self-identification of the violation and your conservative corrective actions, which included installation of additional physical barriers to prevent removal of the fixed gauges and implementation of a computerized inventory database and procedures to ensure that no single gauge or group of gauges contained radioactive material quantities of concern. As provided under NRC guidance, with the additional physical barriers in place, you are no longer required to implement the Order.

Because the NRC is exercising enforcement discretion, you are not required to respond to this letter unless the description in this letter does not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, you should clearly mark your response as a "Reply to an Exercise of Enforcement Discretion, EA-07-284" and send it to the Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001, with copies to (1) the Regional Administrator and the Enforcement Officer, Region III, 2443 Warrenville Road, Lisle IL, 60532 and (2) the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response, should you choose to respond, 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, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

We will gladly discuss any questions you have concerning the information contained in this letter.

Sincerely,

/RA/

James L. Caldwell
Regional Administrator

License No. 13-03086-03
Docket No.030-04353

cc: State of Indiana

M. Whalem

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/RA/

James L. Caldwell
Regional Administrator

License No. 13-03086-03
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cc: State of Indiana

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Letter to Mark Whalem from James L. Caldwell dated December 5, 2007

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