



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
612 EAST LAMAR BLVD, SUITE 400
ARLINGTON, TEXAS 76011-4125

July 9, 2008

EA-08-041

Mr. John R. Schunke
Vice President
Morrison-Maierle, Inc.
P.O. Box 1113
Bozeman, Montana 59771-1113

SUBJECT: NOTICE OF VIOLATION, NRC INSPECTION REPORT 030-12975/2007-001
AND INVESTIGATION REPORT 4-2007-046

Dear Mr. Schunke:

This refers to the inspection and investigation conducted from August 6, 2007, through April 14, 2008, of Morrison-Maierle, Inc.'s, licensed activities at a temporary jobsite located at Gallatin Field in Bozeman, Montana. The findings from the inspection and the investigation were discussed with you and Mr. Steve Malmberg during an exit briefing conducted telephonically on April 14, 2008, and described in detail in an inspection report dated April 24, 2008. The cover letter to the subject inspection report informed you that we were considering escalated enforcement for an apparent violation of 10 CFR 30.34(i), NRC's security requirements for portable gauges, and that before we made our enforcement decision we were providing you the opportunity to address the apparent violation identified in the report by either attending a predecisional enforcement conference or by providing a written response before we made our final enforcement decision.

You chose to respond to the apparent violation in writing by letter dated May 19, 2008. In that letter, you described the circumstances surrounding the violation observed during the inspection of your temporary job site at Gallatin Field. You stated that the building where the portable gauge was stored is located within the security fence at Gallatin Field and is unavailable to the general public. In addition, you stated that individuals with access to the area within the security fence had been fingerprinted and had undergone a background check by TSA. Further you stated that Gallatin Field security was incorrectly considered, by your employees, to be a suitable barrier for portable gauge security. Subsequently, your storage of a portable gauge within the building located inside of the security fence at Gallatin Field did not meet the requirements of 10 CFR 30.34(i).

Based on the information developed during the inspection and the investigation and the information that you provided in your response to the inspection report dated April 24, 2008, the NRC has determined that a violation of NRC requirements occurred. The 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 NRC considers the violation of 10 CFR 30.34(i) significant because an improperly secured gauge could allow for unauthorized removal or theft of the radioactive material. Therefore, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level III." The NRC Enforcement Policy may be found on the NRC's website at www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html.

Because your facility has not been the subject of escalated enforcement actions 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. Based on your corrective actions, the NRC has determined that Morrison-Maierle, Inc., is deserving of *Corrective Action* credit. Specifically, you immediately secured the portable gauge being stored at Gallatin Field, using a chain and lock on hand, to a fixed, immobile generator, pending acquisition of additional locks; and within 24 hours you secured the gauge from unauthorized removal with two independent physical controls that form tangible barriers, in compliance with 10 CFR 30.34(i). Your long term corrective actions include informing gauge users of the violation of NRC requirements at Gallatin Field and the review of operating procedures with all gauge users with an emphasis on proper storage and transportation of portable gauges.

Therefore, to encourage prompt comprehensive correction of violations and in recognition of the absence of previous escalated enforcement action, I have been authorized, after consultation with the Director, Office of Enforcement, not to propose a civil penalty in this case. However, significant violations in the future could result in a civil penalty. In addition, issuance of this Severity Level III violation constitutes escalated enforcement action that may subject you to increased inspection effort.

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 from Morrison-Maierle, Inc., dated May 19, 2008. Therefore, you are not required to respond to this letter unless the description therein 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 2.390 of the NRC's "Rules of Practice," a copy of this letter, and its enclosure 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 website at <http://www.nrc.gov/reading-rm/pdr.html> or 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. If personal privacy or proprietary information is necessary to provide an acceptable response, 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 information, 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) The NRC also includes significant enforcement actions on its website at www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html.

Morrison-Maierle, Inc.
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Should you have any questions concerning this letter or its enclosure, please contact Mr. Michael Vasquez, Senior Enforcement Specialist, at (817) 860-8121 or Ms. Christi Maier, Enforcement Specialist, at (817) 860-8217.

Sincerely,

/RA CACasto for/

Elmo E. Collins
Regional Administrator

Docket No. 030-12975
License No. 25-17563-01

Enclosure: Notice of Violation

cc w/enclosure:
Montana Radiation Control Program

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Ashley.Tull@nrc.gov

NMSB-A Inspector(s)

RIV OI FOD (for OI cases)
RIV Materials Docket File (5th Floor)

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

RIV:ACES:ES	C:NMSB-A	D:DNMS	RC	OE
MCMaier	VHCampbell	ATHowell	KDFuller	NHilton L. Sreenevas for
/RA/	/RA/ ADG for	/RA/	/RA/ E	/RA/ E
06/13/08	07/08/08	07/09/08	06/13/08	06/26/08
FSME	DRA	RA		
MBurgess	CACasto	EECollins		
/RA/ E	/RA/	/RA CACasto/		
06/26/08	07/09/08	07/09/08		

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T=Telephone

E=E-mail

F=Fax

NOTICE OF VIOLATION

Morrison-Maierle, Inc.
Bozeman, Montana

Docket No. 030-12975
License No. 25-17563-01
EA-08-041

During an NRC inspection conducted from August 6, 2007, through April 14, 2008, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

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, from June 18, 2007, through August 6, 2007, the licensee failed to use a minimum of two independent physical controls that formed tangible barriers to a secure portable gauge from unauthorized removal, when the portable gauge was not under the control and constant surveillance of the licensee. Specifically, the licensee did not have tangible barriers to secure a portable gauge from unauthorized removal while stored in a building located within the secured area of Gallatin Field, Bozeman, Montana.

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

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to be taken to correct the violation and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed on the docket in letter from Licensee dated May 19, 2008. 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-08-041" 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 IV, within 30 days of the date of the letter transmitting this Notice of Violation (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.

If you choose to respond, 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 website at www.nrc.gov/reading-rm/pdr.html or www.nrc.gov/reading-rm/adams.html. Therefore, to the extent possible, the response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction."

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

Dated this 9th day of July 2008