

June 2, 2010

EA-10-044

Mr. Mark Whalen
Vice President and General Manager
ArcelorMittal USA, Inc.
3210 Watling Street
East Chicago, IN 46312

SUBJECT: NOTICE OF VIOLATION – ARCELORMITTAL USA, INC.
NRC INSPECTION REPORT NO. 030-04353/2010-001(DNMS)

Dear Mr. Whalen:

This refers to a U.S. Nuclear Regulatory Commission (NRC) inspection conducted on February 17 and 18, 2010, at your Indiana Harbor Works, East Chicago, Indiana, facilities, with continued in-office review through March 2, 2010. The purpose of this inspection was to examine activities conducted under your license as they relate to safety and compliance with the Commission's rules and regulations and with the conditions in your license. An apparent violation of your license was identified during the inspection and considered for escalated enforcement. The apparent violation involved your staff's failure to ensure that three individuals who removed gauges from service containing NRC licensed material had completed the required training or were specifically authorized by the Commission or an Agreement State to perform such services. The inspection report discussing this apparent violation was transmitted to you in our letter dated March 29, 2010.

In the letter transmitting the inspection report, we provided you with 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 subsequently provided written responses in letters dated April 29, and May 5 and 6, 2010.

Based on the information developed during the inspection and information provided in your written responses, 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.

On April 15, and November 20, 2009, your staff removed gauges from service. Three of the individuals involved had not completed your "In House" or the gauge manufacturer's training program. Additionally, the individuals were not authorized by the Commission or an Agreement State to perform gauge removal from service. This was a violation of your NRC license.

The inspector determined that the cause of the violation was that you did not have a process to ensure that work on the gauges was performed by individuals who completed the required training or by individuals specifically authorized by the Commission or an Agreement State to perform such services. The conduct of licensed activities by technically unqualified individuals is a significant regulatory concern. There was an increased risk of performing unsafe work on the gauges, which could have resulted in unnecessary radiation exposure. Therefore, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level III.

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$3,500 is considered for a Severity Level III violation. 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. Credit was warranted for your corrective actions which included, but are not limited to: (1) inserting a requirement into the Radiation Safety Manual for verifying that individuals who will perform work on gauges have the required training; (2) instructing operating management on the training requirement; and (3) training departmental management on the training requirement by June 1, 2010. We also understand that as of April 28, 2010, the Radiation Safety Officer (RSO) made available to all departments a complete list of individuals who have completed the required training. The RSO, or authorized representative, will on a quarterly basis, review the maintenance records of each department having gauges to verify that only properly trained authorized individuals are performing work on the gauges. If it is found that an unauthorized individual was used, the RSO will notify the operating management responsible and request a corrective action plan. In addition, the General Manager and Safety Manager will be notified at the same time. Finally, the RSO will, on a quarterly basis, report to the General Manager the status of compliance activities and any potential compliance issues. The RSO has also been instructed to immediately report any license violations, or potential violations, to the Safety Manager and the General Manager.

Therefore, to encourage prompt and 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, which 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 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 Inspection Report No. 030-04353/2010-001(DNMS) and your letters dated April 29, and May 5 and 6, 2010. 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 Title 10 of the Code of Federal Regulations (10 CFR) 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response, if any, will be made available electronically for public inspection in the NRC Public Document Room or from the

M. Whalen

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NRC's Agencywide Documents Access and Management 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/reading-rm/doc-collections/enforcement/actions>).

Please contact Tamara Bloomer, Chief, Materials Inspection Branch, with any questions. Ms. Bloomer can be reached at telephone number (630) 829-9627.

Sincerely,

/RA/

Mark A. Satorius
Regional Administrator

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

Enclosure:
Notice of Violation

cc w/encl: Ryan Hill, RSO
State of Indiana

M. Whalen

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Mark A. Satorius
Regional Administrator

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

Enclosure:
Notice of Violation

cc w/encl: Ryan Hill, RSO
State of Indiana

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See next page

FILE NAME: G:\G:\EICS\ENFORCEMENT\Enforcement Cases 2010\EA-10-044 ArcelorMittal fixed gauges\EA-10-044 Arcelormittel final action.doc

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DATE	05/28/10		05/28/10		06/01/10		05/26/10		06/02/10		06/02/10

OFFICIAL RECORD COPY

¹ OE concurrence received via e-mail from K. Day on May 26, 2010.

Letter to Mark Whalen from Mark A. Satorius dated June 2, 2010

SUBJECT: NOTICE OF VIOLATION – ARCELORMITTAL USA, INC.
NRC INSPECTION REPORT NO. 030-04353/2010-001(DNMS)

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NOTICE OF VIOLATION

ArcelorMittal USA, Inc.
East Chicago, IN

Docket No. 030-04353
License No. 13-03086-03
EA-10-044

During a U.S. Nuclear Regulatory Commission (NRC) inspection conducted on February 17 and 18, 2010, with continued in-office review through March 2, 2010, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

Item 9 of NRC License No. 13-03086-03, Amendment No. 55, dated December 6, 2007, requires, in part, that installation, relocation, removal from service, maintenance, repair, and initial radiation survey of licensed gauges containing licensed material only be performed by persons who have completed the licensee's "In House" training program or the gauge manufacturer's training course specifically covering these service operations or by persons specifically authorized by the Commission or an Agreement State to perform such services.

Contrary to the above, on November 20, 2009, two individuals removed from service a Texas Nuclear Model 5010 fixed gauge containing approximately 1 curie of americium-241. Neither individual completed the licensee's "In House" training program nor the gauge manufacturer's training course specifically covering installation, relocation, removal from service, maintenance, repair, and initial radiation survey of gauges containing licensed material. In addition, on April 15, 2009, two other individuals removed from service a different Texas Nuclear Model 5010 fixed gauge containing approximately 1 curie of americium-241. One of those two individuals had not received the aforementioned training. None of the three individuals who had not received the training were authorized by the Commission or an Agreement State to perform gauge removal from service.

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 Inspection Report No. 030-04353/2010-001(DNMS) and your letters dated April 29, and May 5 and 6, 2010. However, you are required to submit a written statement or explanation pursuant to Title 10 of the Code of Federal Regulations (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-10-044," 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 and the Enforcement Officer, Region III, 2443 Warrenville Road, Suite 210, Lisle, IL 60532, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

Notice of Violation

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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, U.S. 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 Agencywide Documents Access and Management System (ADAMS), accessible from the NRC Web site at <http://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 of receipt.

Dated this 2nd day of June 2010