

March 17, 2011

EA-10-269

Thomas P. Balskus, P.E.  
Manager, Construction Services  
Milone & MacBroom, Inc.  
99 Realty Drive  
Cheshire, CT 06410

SUBJECT: NOTICE OF VIOLATION - NRC Inspection Report No. 03038287/2010001

Dear Mr. Balskus:

This refers to the U.S. Nuclear Regulatory Commission (NRC) inspection conducted on November 19, 2010, at the Milone & MacBroom, Inc. (MMI) office located in Cheshire, Connecticut (CT), and at a temporary job site in East Hartford, CT. The inspection consisted of an examination of your licensed activities as they relate to radiation safety and to compliance with the NRC's requirements and the conditions of your NRC license. In addition to the on-site reviews, the inspection also involved an in-office review of additional information that MMI provided to the NRC in correspondence dated January 18, 2011, and during a telephone conversation on January 20, 2011. This information described the corrective actions that were implemented in response to the apparent violations that were identified during the inspection. The inspection results were discussed with you by telephone during an exit meeting on January 20, 2011, and were transmitted to you in a letter dated February 08, 2011.

The NRC's February 08, 2011, letter stated that, based on the results of the inspection, the NRC identified five apparent violations. In this letter, we informed you that the NRC was considering escalated enforcement for one of the apparent violations, and that we had sufficient information regarding that apparent violation and your corrective actions to make an enforcement decision without the need for a predecisional enforcement conference (PEC) or a written response from you. However, we provided you with the opportunity to address the apparent violations identified in the report by either attending a predecisional enforcement conference or by providing a written response before we made our final enforcement decision. In an electronic mail message dated February 16, 2011, and a follow-up letter dated February 23, 2011, you indicated that a PEC would not be necessary, and that MMI did not plan to submit a written response. Therefore, based on the information developed during the inspection and the information that MMI provided in the communications noted above, the NRC has determined that violations of NRC requirements occurred.

The violations are cited in the enclosed Notice of Violation (Notice), and the circumstances surrounding the violation are described in detail in NRC Inspection Report No. 03038287/2010001. The most significant violation involved multiple examples between May 4, 2010, and November 19, 2010, where MMI did not use a minimum of two independent physical controls that form tangible barriers to secure the portable gauge from unauthorized removal whenever the gauge was not under MMI's control and constant surveillance. During

the inspection, the NRC inspector identified that MMI stored its portable gauge inside of a box within a room at the Cheshire, CT office. However, while the building entrance was controlled at all times (providing one barrier), neither the storage box nor the entry door to the storage room were outfitted with locks to provide a second barrier. In addition, MMI personnel acknowledged to the inspector that during transport to and from temporary job sites, they would, at times, leave the gauge unattended on the backseat of locked vehicles without an additional security barrier. Therefore, at those times, the gauge was not secured with two independent physical controls, as required by 10 CFR 30.34(i).

Although the gauge was not lost or stolen, not securing the gauge with two independent physical controls could make it easier for the gauge to be accessed and removed by unauthorized individuals, resulting in a potential safety and security risk to the public. Therefore, in accordance with the NRC Enforcement Policy, the NRC has categorized this violation at Severity Level (SL) III.

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$3,500 is considered for a SL III violation. Because your facility has not been the subject of escalated enforcement action within the last two years or the last two inspections, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section 2.3.4 of the Enforcement Policy. The NRC has concluded that credit is warranted for your corrective actions, which involved installing a lock on the storage box and locking the door to the storage room, as well as controlling issuance of the keys to those locks. MMI also committed to not use the gauge until it had developed corrective actions for maintaining two physical controls while transporting the gauge. 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 SL III violation constitutes escalated enforcement action that may subject you to increased inspection effort in the future.

Four additional violations, also documented in the Notice, have been categorized in accordance with the NRC Enforcement Policy at SL IV. These violations are being cited because they were identified by the NRC. The circumstances surrounding these violations are documented in detail in the above-referenced inspection report.

The NRC has concluded that information regarding the reason 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 on the docket in this letter and its enclosure, in the communication provided to the NRC in correspondence dated January 18, 2011, and in NRC Inspection Report No. 03038287/2010001. 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, the enclosure, and your response, if you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room and from the NRC's document system, the Agency-wide Documents Access and Management 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. 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 Web site at (<http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>).

Sincerely,

*/RA/ Original Signed by David C. Lew for*

William M. Dean  
Regional Administrator

Docket No. 03038287  
License No. 06-31408-01

Enclosure:  
Notice of Violation

cc w/encl:  
State of Connecticut

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, the enclosure, and your response, if you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room and from the NRC's document system, the Agency-wide Documents Access and Management 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. 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.

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Sincerely,  
*/RA/ Original Signed by David C. Lew for*  
 William M. Dean  
 Regional Administrator

Docket No. 03038287  
 License No. 06-31408-01

Enclosure:  
 Notice of Violation

cc w/encl:  
 State of Connecticut

SUNSI Review Complete: MMM

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\*HQ to perform a quick review. \*\* see previous concurrence page

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## ENCLOSURE 1

### NOTICE OF VIOLATION

Milone & MacBroom, Inc.  
Cheshire, Connecticut

Docket No. 030-38287  
License No. 06-31408-01  
EA-10-269

Based on an NRC inspection on November 19, 2010, as well as an in-office review of information provided by Milone & MacBroom, Inc. (MMI, the licensee) in correspondence dated January 18, 2011, and during a telephone conversation on January 20, 2011, for which a telephonic exit meeting was held on January 20, 2011, 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 shall 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 multiple occasions between May 4, 2010, and November 19, 2010, at times when the portable gauge was in storage, and at times while the gauge was in transport, MMI utilized only one independent physical control that formed a tangible barrier to secure its portable gauge from unauthorized removal when the gauge was not under its control and constant surveillance. Specifically, MMI stored its gauge in an unlocked box inside of an unlocked room within a locked building, and at times when the gauge was in transport by MMI staff, it was left unattended in a locked vehicle. In both situations, the gauge was secured with only one physical barrier.

This is a Severity Level III violation (Section 6.3).

- B. Condition 18 of NRC License No. 06-31408-01 requires that MMI conduct licensed activities in accordance with 10 CFR 71.5 regarding transportation of licensed materials.

10 CFR 71.5(a) requires, in part, that each licensee who transports licensed material outside 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, shall comply with the applicable requirements of the Department of Transportation (DOT) regulations in 49 CFR parts 107, 171 through 180, and 390 through 397.

49 CFR 171.8 defines a hazardous materials (hazmat) employee, in part, as a person who is employed by a hazmat employer and who in the course of such employment directly affects hazardous materials transportation safety, including individuals who load, unload, or handle hazardous materials; prepare hazardous materials for transportation; are responsible for safety of transporting hazardous materials; and operate a vehicle used to transport hazardous materials. This regulation defines a hazmat employer, in part, as a person who employs or uses at least one hazmat employee on a full-time, part time, or temporary basis; and who transports hazardous materials in commerce.

49 CFR 172.702 requires, in part, that each hazmat employer shall ensure that each of its hazmat employees is trained and tested by appropriate means on the training subjects covered in 49 CFR 172.704, and that no hazmat employee may perform any function

subject to the requirements of 49 CFR Parts 171-180 unless instructed in the applicable requirements.

49 CFR 172.704(c) requires, in part, that a hazmat employee receive initial training within 90 days after employment or a change in job function, and recurrent training at least once every three years.

Contrary to the above, on multiple occasions in 2010, MMI employees transported licensed material from the storage location in Cheshire, Connecticut, over public roads to and from temporary jobsites, without having completed the necessary training required by 49 CFR 172.704(c). Specifically, licensee records indicate that, of the employees that had transported gauges during the time period specified above, none of the employees had received recurrent training since 2006, a period of more than three years.

This is a Severity Level IV Violation (Section 6.3)

- C. 10 CFR 19.11 requires, in part, that each licensee shall prominently post NRC Form 3, "Notice to Employees" in a sufficient number of places to permit individuals engaged in NRC-licensed or regulated activities to observe them on the way to or from any particular licensed or regulated activity location to which the document applies.

Contrary to the above, as of November 19, 2010, MMI had not posted NRC Form 3, "Notice to Employees" at its facility.

This is a Severity Level IV violation (Section 6.7).

- D. 10 CFR 20.1904(a), in part, requires licensees to ensure that each container of licensed material bears a durable, clearly visible label that provides sufficient information (such as the radionuclide(s) present, an estimate of the quantity of radioactivity, the date for which the activity is estimated, radiation levels, kinds of materials, and mass enrichment) to permit individuals handling or using the containers, or working in the vicinity of the containers, to take precautions to avoid or minimize exposures.

Contrary to the above, on November 19, 2010, MMI possessed a container of licensed material (the gauge containing a radium-226 source) that did not bear a durable, clearly visible label that provided sufficient information to permit individuals handling or using the container, or working in the vicinity of the container, to take precautions to avoid or minimize exposures.

This is a Severity Level IV violation (Section 6.7)

- E. Condition 19 of NRC License No. 06-31408-01, requires, in part, that MMI conduct its program in accordance with statements, representation, and procedures contained in the application dated April 22, 2010.

Item 10.3 of the license application dated April 22, 2010, required that MMI will either possess and use, or have access to and use, a radiation survey meter that meets the

Criteria in the section entitled "Radiation Safety Program – Instrument," in NUREG-1556, Vol. 1, Rev. 1, dated November 2001.

Contrary to the above, as of November 19, 2010, MMI had not possessed or had access to use a radiation survey meter.

This is a Severity Level IV violation (Section 6.3).

The NRC has concluded that information regarding the reason 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 on the docket in this letter and its enclosure, in the communication provided to the NRC in correspondence dated January 18, 2011, and in Inspection Report No. 03038287/2010001. Therefore, no response to this Notice is required. 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-10-269," 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, within 30 days of the date of the letter transmitting this Notice.

If you choose to respond, your response will be made available electronically for public inspection in the NRC Public Document Room and from the NRC's document 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 17th day of Month 2011.