

May 11, 2011

EA-11-009

Carmello Calderon, P.E.
Vice President
Del Valle Group
P.O. Box 2319
Toa Baja, PR 00951-2319

SUBJECT: NOTICE OF VIOLATION - NRC Inspection Report No. 03038392/2011001, DEL VALLE GROUP

Dear Mr. Calderon:

This refers to the U.S. Nuclear Regulatory Commission (NRC) special inspection conducted on October 5, 2010, at the Del Valle Group (DVG) office located in Toa Baja, Puerto Rico. The inspection involved a review of the circumstances regarding the temporary loss of a portable moisture density gauge containing byproduct material that you reported to the NRC on September 30, 2010, and your possession of three such gauges without the required NRC license. In addition to the on-site reviews, the inspection also involved NRC in-office review of your 30-day written report, dated October 27, 2010, concerning the lost gauge and additional information that you provided during a March 14, 2011, telephone conversation with Craig Gordon of my staff. The inspection results were discussed with you by telephone during an exit meeting on March 23, 2011, and were transmitted to you in a letter dated April 21, 2011, which enclosed the subject inspection report.

The NRC's April 21, 2011, letter stated that, based on the results of the inspection, the NRC identified an apparent violation of NRC requirements. During an April 13, 2011, telephone conversation, Blake Welling of my staff informed you that the NRC was considering escalated enforcement for the apparent violation, and that we had sufficient information regarding the 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. You indicated that a PEC would not be necessary, and that DVG did not plan to submit a written response. Therefore, based on the information developed during the inspection, 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 the violation are described in detail in the inspection report. The violation involved DVG's failure to obtain authorization in a specific NRC license to own and possess three portable moisture density gauges, which contain byproduct material, namely radium-226 discrete sources. The possession and use of radium gauges would previously have been authorized by the Commonwealth of Puerto Rico (PR). However, in accordance with the Energy Policy Act of 2005 (EPAAct), the NRC assumed the authority for licensing discrete

sources of radium-226, and DVG was required to apply for an NRC License by November 30, 2008, which it did not do. Your staff informed the NRC inspector that DVG was not notified of the previous requirement to register the gauges with PR by the distributor from which it had purchased the gauges in the mid-1990s. Additionally, your staff stated that DVG was not aware of the subsequent requirement to obtain an NRC license for the material as a result of the EPAct.

DVG's failure to apply for and obtain an NRC license for its portable gauges was identified on September 29, 2010, when one of the gauges was temporarily lost. A DVG employee (who was also an authorized user of the gauge) had been transporting the gauge from his residence in San Lorenzo, PR, when it apparently fell off of the back of his truck. The gauge had not been secured as an NRC license would have required. When the DVG employee recognized that the gauge was missing, he searched his travel route but did not locate the gauge. Your staff notified the PR State Police and the DVG radiation safety consultant, who provided the company with guidance that included an instruction to notify the NRC, which DVG did the following day, September 30, 2010.

The NRC notes that, in addition to notifying the NRC, DVG took appropriate corrective actions to recover the gauge. Specifically, on September 30, 2010, DVG provided information regarding the hazards and precautions associated with handling the gauge during an on-air interview with a local radio station and in an advertisement in a local newspaper. DVG also obtained the assistance of a local resident from the area in which the gauge had been lost, who aided the company by personally contacting area residents. As a result of these personal communications, the local resident identified that another member of the public who lived in that area had found and taken possession of the gauge a day earlier. The local resident retrieved the gauge from the member of the public who had found it and transported the gauge back to DVG's office on September 30, 2010, approximately 24 hours after the gauge had initially been lost. The NRC verified that the gauge was inspected and leak tested by DVG's consultant and that the gauge was undamaged and was not leaking.

In accordance with NRC regulations, as specified in 10 CFR 30.3(a), no person may own, possess, or use byproduct material without an NRC license. By not applying for and obtaining an NRC license, DVG precluded the NRC from reviewing and inspecting DVG's gauge program and controls. Additionally, DVG's failure to obtain a license contributed to DVG's lack of knowledge about the NRC's requirements and its responsibilities as owner/possessor of the portable gauges, including the requirement to secure any radioactive material (including gauges) to prevent shifting during normal transportation conditions. Consequently, DVG did not adequately secure the gauge to prevent shifting during transport on September 29, 2010, resulting in the temporary loss of the gauge, and the resulting 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 Section 2.3.4 of the NRC Enforcement Policy, for violations involving the loss, abandonment, or improper transfer or disposal of regulated material, the NRC considers the imposition of a civil penalty of at least the base amount. However, the NRC may mitigate or escalate the civil penalty amount based on the merits of the specific case. The NRC considered that: 1) at the time DVG lost its gauge, DVG was not an NRC licensee and was not aware of the NRC's requirements; 2) in spite of being unaware of the NRC's requirements, on its own initiative, DVG took effective prompt and comprehensive action that resulted in the recovery of

the gauge only one day after it had been lost; and, 3) as a corrective action in response to this event, DVG has applied for and obtained an NRC license, thereby coming into compliance with the NRC requirements for possession of the gauges. Accordingly, the NRC has decided to not propose a civil penalty in this case. However, significant violations in the future could result in a civil penalty.

The NRC has also concluded that information regarding the reason for the violation, the corrective action taken to correct the violation and prevent recurrence, and the date when full compliance was achieved is already adequately addressed on the docket in this letter and its enclosure and in Inspection Report No. 03038392/2011001. 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 (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 [\(http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/\)](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. 03038392
License No. 52-31423-01

Enclosure:
Notice of Violation

cc w/encl:
Commonwealth of Puerto Rico

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SUNSI Review Complete: MMM

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DATE	4/26/11	4/26/11	4/27/11	4/28/11	4/28/11
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NAME	N Coleman via email	G Villamar via email	WDean/DCL for		
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ENCLOSURE 1

NOTICE OF VIOLATION

Del Valle Group
Tao Baja, Puerto Rico

Docket No. 03038392
License No. 52-31423-01
EA-11-009

Based on an NRC special inspection on October 5, 2010, as well as an in-office review of information provided by Del Valle Group (DVG) in correspondence dated October 27, 2010, and during a March 14, 2011, telephone conversation, for which a telephonic exit meeting was held on March 23, 2011, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 30.3(a) requires, in part, that no person shall own or possess byproduct material except as authorized in a specific or general license issued in accordance with NRC regulations.

Contrary to the above, from November 30, 2008, through October 28, 2010, DVG owned and/or possessed byproduct material (discrete radium-226 sources contained in three portable moisture density gauges) without authorization in a specific or general license issued in accordance with NRC regulations.

This is a Severity Level III violation (EGM-09-004).

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 transmitting this Notice and in Inspection Report No. 03038392/2011001. 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-11-009," 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 11th day of May, 2011.