



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

July 7, 2011

EA-11-022

NMED Numbers: 100595 and 110078

Mr. Pat Downey
Director of Montana Operations
Luzenac America, Inc.
767 Old Yellowstone Trail
Three Forks, Montana 59752

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$ 8,500 (NRC INSPECTION REPORT 99990001/2010-005)

Dear Mr. Downey:

This letter refers to the reactive inspection conducted on December 3, 2010, at your facilities near Three Forks, Montana, with continued in-office review of additional information you provided electronically through February 7, 2011. The purpose of the inspection was to review the circumstances surrounding a fixed gauge containing NRC-regulated radioactive material that was discovered at a recycling center in Bozeman, Montana, and determined to be the property of Luzenac America, Inc. A final exit briefing was conducted telephonically with you and members of your staff on March 24, 2011. The subject inspection report was issued on April 27, 2011. Based on the results of this inspection, one apparent violation was identified that was being considered for escalated enforcement action in accordance with the NRC Enforcement Policy.

In the letter transmitting the inspection report, we provided 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. In a letter dated May 25, 2011, you provided a written response to the apparent violation.

Based on the information developed during the inspection and the information that you provided in your written response to the inspection report, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in Enclosure 1 and the circumstances surrounding it are described in detail in the subject inspection report. The violation involved the unintentional transfer of a generally licensed fixed gauge containing radioactive material to a recycling center unauthorized to receive it. Employees at the recycling center notified the NRC of the transfer when it was discovered in their scrap yard, and secured the device such that none of those employees (members of the public) received doses in excess of NRC limits.

Nevertheless, the NRC considers loss of control of licensed radioactive material a significant regulatory and security concern because of the potential for unauthorized possession or use of licensed radioactive material, or exposure of members of the public to unnecessary radiation. Therefore, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level III.

The NRC recognizes that you took prompt and comprehensive corrective actions to address the cause of this violation. These corrective actions, in part, included: 1) completing a root-cause analysis of the event; 2) removing the device from its unauthorized location and transferring the device to a licensee authorized to receive it for disposal; 3) conducting a site survey to locate any additional unneeded radioactive devices and equipment; 4) communicating the details of the violation to all company personnel; 5) purchasing hand held scanners and implementing a scrap metal sampling procedure for radioactive materials prior to recycling; 6) training employees on identification of nuclear devices; and, 7) implementing a Radiation Safety Plan to include the inventory tracking, use, storage and disposal of nuclear devices and other radiation sources.

In accordance with Section 2.3.4 of the Enforcement Policy, for violations where a licensee has lost control of its regulated radioactive material for any period of time, the NRC normally will issue at least a base civil penalty. The base civil penalty for a Severity Level III violation involving the loss of control of this type of radioactive material is \$8500. Therefore, to emphasize the importance of ensuring radioactive devices are properly controlled and disposed, I have been authorized after consultation with the Director, Office of Enforcement, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the base amount of \$8500 for this Severity Level III violation. In addition, issuance of this Notice 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 NRC Inspection Report 99990001/2010-005 and your letter dated May 25, 2011. Therefore, you are not required to respond to the violation discussed in Enclosure 1 unless the description therein does

Mr. Pat Downey

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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. Please note that you are required to respond to the civil penalty, as instructed in Enclosure 1.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response, if you choose to provide one in addition to the civil penalty, 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>. The NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>.

Should you have any questions regarding this letter or the enclosed report, please contact Mr. Michael Vasquez, Chief, Nuclear Materials Safety Branch A, at 817 860 8287.

Sincerely,

/RA/

Elmo Collins
Regional Administrator

Docket: 99990001

License: General Licensee

Enclosures:

1. Notice of Violation and Proposed Imposition of Civil Penalty
2. NUREG/BR-0254 Payment Methods (Licensee only)

Mr. Pat Downey

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cc w/Enclosure 1:

Rob VanAunsdol, Manager
Pacific Steel and Recycling
315 West Griffin Drive
Bozeman, Montana 59715

Roy Kemp, Deputy Administrator
Division of Quality Assurance
Department of Public Health and
Human Services
2401 Colonial Drive
P.O. Box 202953
Helena, MT 59620-2953

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Roy.Caniano@nrc.gov ;
Karla.Fuller@nrc.gov;
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Jack.Whitten@nrc.gov;
Sue.Trifiletti@nrc.gov;
Stephanie.Bush-Goddard@nrc.gov

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<input checked="" type="checkbox"/> Publicly Available		<input type="checkbox"/> Non-publicly Available		<input type="checkbox"/> Sensitive	<input checked="" type="checkbox"/> Non-sensitive
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OFFICIAL RECORD COPY

T=Telephone

E=E-mail

F=Fax

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Luzenac America, Inc.
Three Forks, Montana

Docket: 99990001
License: General License Pursuant
to 10 CFR 31.5(a)
EA-11-022

During an NRC inspection conducted on December 3, 2010, through March 24, 2011, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the NRC proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violation and associated civil penalty are set forth below:

10 CFR 31.5(c)(8)(i) states, in part, that any person who acquires, receives, possesses, uses or transfers byproduct material in a device pursuant to the general license in paragraph (a) of this section shall transfer or dispose of the device containing byproduct material only by export as provided by paragraph (c)(7) of this section, by transfer to another general licensee as authorized in paragraph (c)(9) of this section, or to a person authorized to receive the device by a specific license issued under parts 30 and 32 of this chapter, or part 30 of this chapter that authorizes waste collection, or equivalent regulations of an Agreement State, or as otherwise approved under paragraph (c)(8)(iii) of this section.

Contrary to the above, as of December 2, 2010, pursuant to the general license in paragraph (a) of this section, the general licensee failed to transfer or dispose of the device containing byproduct material only by export as provided by paragraph (c)(7) of this section, by transfer to another general licensee as authorized in paragraph (c)(9) of this section, or to a person authorized to receive the device by a specific license issued under parts 30 and 32 of this chapter, or part 30 of this chapter that authorizes waste collection, or equivalent regulations of an Agreement State, or as otherwise approved under paragraph (c)(8)(iii) of this section. Specifically, the general licensee transferred a cesium-137-sealed source in a fixed nuclear gauge to a recycling company that was not authorized to receive it.

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

Civil Penalty - \$ 8,500.

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 Inspection Report 99990001/2010-005 and your letter dated May 25, 2011.

However, if the description therein does not accurately reflect your position or your corrective actions, you are required to submit a written statement or explanation under 10 CFR 2.201. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation, and send it to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S., Nuclear Regulatory Commission, Region IV, 612 E. Lamar Blvd., Suite 400, Arlington, TX 76011.

The Licensee may pay the civil penalty proposed above, in accordance with NUREG/BR-0254 and by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, a statement indicating when and by what method payment was made, or may protest imposition of the civil penalty in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission.

Should the Licensee fail to answer within 30 days of the date of this Notice, the NRC will issue an order imposing the civil penalty. Should the Licensee elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation" and may: (1) deny the violation listed in this Notice, in whole or in part; (2) demonstrate extenuating circumstances; (3) show error in this Notice; or (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty in whole or in part, such answer may request remission or mitigation of the penalty.

In requesting mitigation of the proposed penalty, the response should address the factors addressed in Section 2.3.4 of the Enforcement Policy. Any written answer addressing these factors pursuant to 10 CFR 2.205, should be set forth separately from the statement or explanation provided pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the Licensee is directed to the other provisions of 10 CFR 2.205, regarding the procedure for imposing a civil penalty.

Upon failure to pay any civil penalty, which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205 to be due, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The responses noted above, i.e., Reply to Notice of Violation (if one is provided), and Statement as to payment of civil penalty, should be addressed to: Roy Zimmerman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV, 612 E. Lamar Blvd., Suite 400, Arlington, TX 76011.

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), to the extent possible, it should not include any personal privacy or propriety information so that it can be made available to the public without redaction. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

If personal privacy or proprietary information is necessary to provide an acceptable response, then 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 that such material is withheld from public disclosure, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim (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).

In accordance with 10 CFR 19.11, you may be required to post this Notice within 2 working days of receipt.

Dated this 7th day of July 2011