



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
2100 RENAISSANCE BOULEVARD, SUITE 100
KING OF PRUSSIA, PENNSYLVANIA 19406-2713

January 10, 2013

Docket No. 03037552

License No. 52-31279-01

Juan Raul Robles
General Manager and Radiation Safety Officer
R & F Asphalt Unlimited, Inc.
P. O. Box 801028
Coto Laurel, PR 00780-1028

SUBJECT: NRC INSPECTION REPORT NO. 03037552/2012001, R & F ASPHALT
UNLIMITED, INC., COTO LAUREL, PUERTO RICO SITE AND NOTICE OF
VIOLATION

Dear Mr. Robles:

On December 4, 2012, Randolph Ragland of this office conducted a safety inspection at your facilities located at Carretera PR 14, Km 9.6, Coto Laurel, Puerto Rico of activities authorized by the above listed NRC license. The inspection was continued in-office until January 9, 2013. The inspection was an examination of your licensed activities as they relate to radiation safety and to compliance with the Commission's regulations and the license conditions. The inspection consisted of observations by the inspector, interviews with personnel, and a selective examination of representative records. The findings of the inspection were discussed with you by telephone at the conclusion of the inspection on January 9, 2013.

Based on the results of this inspection and in accordance with the NRC Enforcement Policy, the NRC has determined that four Severity Level IV violations of NRC requirements occurred. The violations involved: 1) the failure to leak test sealed sources at the required frequencies; 2) the failure of one gauge user to use a required radiation dosimetry device; 3) the failure of a gauge user to maintain shipping paperwork within reach of the driver; and 4) the failure to perform annual reviews of the radiation protection program content and implementation.

The violations are cited in the enclosed Notice of Violation (Notice), because the violations were identified by the NRC.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure(s), and your response, if you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room or from the NRC document system (ADAMS), accessible from the NRC website 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.

Current NRC regulations and guidance are included on the NRC's website at www.nrc.gov; select **Nuclear Materials; Med, Ind, & Academic Uses**; then **Regulations, Guidance and**

Communications. The current Enforcement Policy is included on the NRC's website at www.nrc.gov; select **About NRC, Organizations & Functions; Office of Enforcement; Enforcement documents**; then **Enforcement Policy (Under 'Related Information')**. You may also obtain these documents by contacting the Government Printing Office (GPO) toll-free at 1-866-512-1800. The GPO is open from 8:00 a.m. to 5:30 p.m. EST, Monday through Friday (except Federal holidays).

The NRC's Safety Culture Policy Statement became effective in June 2011. While a policy statement and not a regulation, it sets forth the agency's *expectations* for individuals and organizations to establish and maintain a positive safety culture. You can access the policy statement and supporting material that may benefit your organization on NRC's safety culture Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/safety-culture.html>. We strongly encourage you to review this material and adapt it to your particular needs in order to develop and maintain a positive safety culture as you engage in NRC-regulated activities.

Please contact Randolph Ragland at 610-337-5083 if you have any questions regarding this matter.

Sincerely,

Original signed by Blake D. Welling

Blake Welling, Chief
Materials Security and Industrial Branch
Division of Nuclear Materials Safety

Enclosure:
Notice of Violation

cc:
Commonwealth of Puerto Rico

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Enclosure:
Notice of Violation

cc:
Commonwealth of Puerto Rico

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OFFICE	DNMS/RI	N	DNMS/RI	DNMS/RI		
NAME	RRagland/rr		BWelling/bw			
DATE	1/10/13		1/10/13			

NOTICE OF VIOLATION

R & F Asphalt Unlimited, Inc.
Coto Laurel, PR

Docket No. 03037552
License No. 52-31279-01

During an NRC inspection conducted on December 4, 2012, and continued in-office until January 9, 2013, four violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. NRC License No. 52-31279-01, Amendment No. 2, Condition 14A, states that “sealed sources shall be tested for leakage and/or contamination at intervals not to exceed six months or at the intervals specified in the certificate of registration issued by the U.S. Nuclear Regulatory Commission under 10 CFR 32.210, or under equivalent regulations of an Agreement State.

Contrary to the above, during the period between January 2011 and December 2012, R & J Asphalt Unlimited, Inc., did not leak test their portable gauges that were not in storage, at the frequencies required by the sealed source and device registry (SSDR). Specifically, SSDR No. NR-0587-D-104-S, for the Seaman C-200 series gauge, requires a leak test frequency of 6 months, and two gauges which were not in storage, were not leak tested during the period from January 2011 to December 2012.

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

- B. NRC License No. 52-31279-01, Amendment No. 2, Condition 19, requires R & J Asphalt Unlimited, Inc., to conduct its program in accordance with their NRC license application dated September 26, 2007 (ML072770288). Item 10 of the license application states that operating and emergency procedures will be developed implemented and maintained. R & F Asphalt Unlimited, Inc. operating procedures stated that gauge users will “always wear their assigned dosimeter, when using the gauge.”

Contrary to this requirement, on December 4, 2012, during use of a licensed gauge at a road construction project on PR No 2, a gauge user was not wearing his assigned dosimetry.

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

- C. 10 CFR 71.5 (a) requires, in part, that each licensee who transports licensed materials outside the site of usage or where transport is on public highways, shall comply with the applicable requirements of the U.S. Department of Transportation regulations in 49 CFR Parts 170 through 189. 49 CFR 177.817 states that radioactive material shipping papers shall be within reach of the driver while the driver is restrained in a lap belt, or readily visible to a person entering the driver’s compartment.

Contrary to the above, on December 4, 2012, while transporting a portable gauge on a public highway, an R & F Asphalt Unlimited, Inc. driver, did not maintain shipping papers

within reach of the driver. Specifically, shipping paperwork for a portable gauge was contained inside the gauge shipping container, which was located in the rear truck bed, rather than within reach of the driver.

This is a Severity Level IV violation (Section 6.8).

- D. 10 CFR 20.1101(c) requires licensees to periodically (at least annually) review the radiation protection program content and implementation.

Contrary to the above, R & F Asphalt Unlimited, Inc. did not review the radiation protection program content and implementation during the years of 2009, 2010, and 2011.

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

Pursuant to the provisions of 10 CFR 2.201, R & F Asphalt Unlimited, Inc. is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555, with a copy to the Regional Administrator, Region I, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as to why the license should not be modified, suspended, or revoked, or why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

If you contest this enforcement action, you should also provide a copy of your response to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, any response which contests an enforcement action shall be submitted under oath or affirmation.

Your response will be placed in the NRC Public Document Room (PDR) and on the NRC Web site. To the extent possible, it should, therefore, not include any personal privacy, proprietary, or safeguards information so that it can be made publically available without redaction. However, if you find it necessary to include such information, you should clearly indicate the specific information that you desire not to be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public.

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

Dated This 10th day of January 2013