



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

September 9, 2013

Docket No. 03037814

License No. 52-31329-01

Hector Rodriguez-Valle
President
HR Asphalt, Inc.
P. O. Box 1239
Hormigueros, PR 00660

**SUBJECT: NRC INSPECTION REPORT NO. 03037814/2013001, HR ASPHALT, INC.,
HORMIGUEROS, PUERTO RICO, AND NOTICE OF VIOLATION**

Dear Mr. Rodriguez-Valle:

On August 21, 2013, Sattar Lodhi of this office conducted a safety inspection at the HR Asphalt Plant, Carr. 309, Bo. San. Romualdo, Hormigueros, Puerto Rico of activities authorized by the above listed NRC license. 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. Additional information provided in your e-mail dated August 29, 2013 was also examined as part of the inspection. The findings of the inspection were discussed with Ms. Litza Ferrer, Eng. Anibal Diaz, and other members of your staff at the conclusion of the inspection.

Based on the results of this inspection and in accordance with the NRC Enforcement Policy, the NRC has determined that 6 Severity Level IV violations of NRC requirements occurred. The violations involved: 1) the failure to review radiation safety program at least annually; 2) the failure to include emergency telephone number on shipping papers; 3) the failure to ensure that shipping papers are readily available during transport; 4) the failure to conduct a physical inventory of devices every six months; 5) the failure to develop operating and emergency procedures and provide a copy of these procedures to users at temporary job sites; and 6) the failure to provide appropriate training to the Radiation Safety Office/Authorized user in the applicable regulatory requirements.

The violations are cited in the enclosed Notice of Violation (Notice), because the violations were identified by the NRC. Also, Item A, as listed in the Notice, is a repeat violation that was identified during the previous inspection of your licensed program. This was documented in the NRC Form 591 Part 1 dated June 6, 2012. Although you had stated that the violation will be corrected within 30 days, the same violation was again identified during this inspection. This is of concern to us because your preventative actions were not effective in preventing recurrence and indicate a lack of attention to detail. Additionally, inadequate training of your Radiation Safety Officer is also of concern to the NRC. Use of licensed material by inadequately trained personnel can result in serious consequences to personnel and members of the public.

The NRC expects licensees to conduct their programs with meticulous attention to detail and high standards of safety and compliance. Because of the potential for radiation exposure to employees and the public which could result from failure to comply with NRC requirements, you must conduct your program according to NRC regulations, the conditions of your NRC license, and the representations made in your application.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. If you have additional information that you believe the NRC should consider, you may provide it in your response to the Notice. The NRC review of your response to the Notice will also determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

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 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.

H. Rodriguez Valle

3

Please contact Sattar Lodhi at (610) 337-5364 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:
Felix J. Soto, Radiation Safety Officer
Commonwealth of Puerto Rico

H. Rodriguez-Valle

3

Please contact Sattar Lodhi at (610) 337-5364 if you have any questions regarding this matter.

Sincerely,

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Enclosure:
Notice of Violation

cc:
Felix J. Soto, Radiation Safety Officer
Commonwealth of Puerto Rico

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NAME	SLodhi/sl		BWelling/bw				
DATE	9/9/2013		9/9/2013				

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NOTICE OF VIOLATION

HR Asphalt, Inc.
Hormigueros, PR

Docket No. 03037814
License No. 52-31329-01

During an NRC inspection conducted on August 21, 2013, six violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. 10 CFR 20.1101(c) requires that the licensee periodically (at least annually) review the radiation program content and implementation, and 10 CFR 20.2102 (a)(2) requires that each licensee maintain records of audits and other reviews of program content and implementation.

Contrary to the above, the licensee did not review the radiation program content and implementation and did not maintain any record of the required audits. Specifically, the licensee had not conducted an audit of its radiation safety program and had no records that indicated that the licensee audited its program since acquiring the license on October 2, 2008.

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

- B. 10 CFR 71.5 requires, in part, that each licensee who transports licensed material outside of the site of usage comply with the applicable requirements of the DOT regulations 49 CFR Parts 171 through 180.

- (1) 49 CFR 172.202(d) requires, in part, that a shipping paper contain an emergency response telephone number.

Contrary to the above, on at least two separate occasions, the licensee transported licensed material to its temporary job sites located outside of its facilities and the shipping paper accompanying the material did not include emergency response telephone number. Specifically, on July 25, 2013, and August 15, 2013, the licensee transported a Seaman Model C-200 portable gauge containing a 4.5 millicuries of Ra-226, to job sites and the shipping paper accompanying the gauge did not include an emergency response telephone number.

This is a Severity IV violation (Section 6.8).

- (2) 49 CFR 177.817(e)(2)(i) requires, in part, that a driver of a motor vehicle containing hazardous material ensure that the shipping paper required by 49 CFR 177.817(a) is readily available and when the driver is at the vehicle's controls, the shipping paper be within his immediate reach while he is restrained by the lap belt.

Contrary to the above, on at least two separate occasions the licensee did not ensure that the shipping paper required by 49 CFR 177.817(a) was readily available while transporting hazardous material to a job site. Specifically on July 25, 2013 and August 15, 2013, an authorized user transported a Seaman Model C-200 portable gauge containing 4.5 mCi of Ra-226 to job sites and he kept the shipping paper in the transport container of the gauge that was stored at the rear of his vehicle and was not within his immediate reach while he was at the controls of the vehicle.

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

- C. Condition No. 15 of NRC License No. 52-31329-01 requires, in part, that the licensee conduct a physical inventory every six months to account for all sources and/or devices received or possessed under the license, and the records of inventories are maintained for 5 years from the date of each inventory.

Contrary to the above, the licensee did not conduct physical inventory of its devices every six months to account for all devices received or possessed under the license. Specifically, the licensee had no record that indicated that it conducted the required inventory of its devices in 2012 and 2013.

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

- D. Condition 19 of the license requires, in part, that the licensee conduct its program in accordance with the statements contained in its application dated August 1, 2008.

- (1) Item 10 (titled Radiation Safety Program – Operating and Emergency Procedures) of the application requires that the licensee develop, implement and maintain the operating and emergency procedures, and provide copies of these procedures to all gauge users and at each job site.

Contrary to the above, the licensee did not develop, implement and maintain the operating and emergency procedures. Specifically, the RSO was not aware that these procedures were developed and did not have copies of such procedures available to him at job sites.

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

- (2) Item 10 (titled Radiation Safety Program – Training of Radiation Safety Officer) of the application requires that the RSO be provided training in the regulatory requirements, inventory, and operating and emergency procedures.

Contrary to the above, the licensee did not provide the RSO the training in the regulatory requirements and operating and emergency procedures. Specifically, as of August 21, 2013, the RSO was not aware of the regulatory requirements of the DOT and of the Conditions of the license.

This is a Severity Level IV violation (Section 6.3)

Pursuant to the provisions of 10 CFR 2.201, HR Asphalt, 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 9 day of September 2013