



UNITED STATES  
NUCLEAR REGULATORY COMMISSION

REGION III  
2443 WARRENVILLE RD. SUITE 210  
LISLE, IL 60532-4352

May 29, 2015

EA-15-073  
EN 50322  
NMED No. 140409 (Closed)

Mr. Derek Stokes, President  
Blevins Asphalt Construction Co., Inc.  
P.O. Box 230  
Mt. Vernon, MO 65712

SUBJECT: NOTICE OF VIOLATION – BLEVINS ASPHALT CONSTRUCTION CO., INC.;  
NRC SPECIAL INSPECTION REPORT NO. 03037419/2015001(DNMS)

Dear Mr. Stokes:

This letter refers to the special inspection conducted at your facility in Mt. Vernon, Missouri, on March 30, 2015. The purpose of the inspection was to review the facts and circumstances associated with an event involving damage to a portable gauge that occurred on July 30, 2014, as well as selected activities performed under your U.S. Nuclear Regulatory Commission (NRC) license to ensure that activities were being performed in accordance with NRC requirements. During the inspection, an apparent violation of NRC requirements was identified. The significance of the issue and the need for lasting and effective corrective actions were discussed with you at the exit meeting held on March 30, 2015, between the NRC inspector and members of your staff. Details regarding the apparent violation were provided in NRC Inspection Report No. 03037419/2015001(DNMS) dated April 24, 2015. A copy of the inspection report can be found in the NRC's Public Document Room or from the NRC's Agencywide Documents Access and Management System (ADAMS), accessible from the NRC's website at <http://www.nrc.gov/reading-rm/adams.html> under accession number [ML15114A290](#).

In the letter transmitting the inspection report, we provided you with the opportunity to address the apparent violation identified in the report in one of three ways: (1) by responding in writing within 30 days of the date of the letter; (2) by requesting a Predecisional Enforcement Conference (PEC), or (3) by providing no further response. On May 11, 2015, you verbally responded that you would not provide any further response.

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 it are described in detail in the subject inspection report. Specifically, an authorized user left a portable gauge unattended and unsecured, contrary to the requirements of Title 10 of the *Code of Federal Regulations* (10 CFR) 20.1802 and 30.34(i). The authorized user's vehicle then backed over the portable gauge, damaging the gauge. The cause of this event was user distraction, specifically the user was attempting to locate the gauge's operating manual and forgot that the gauge was still behind the vehicle and unattended.

The failure to maintain control and constant surveillance over the gauge is of significant concern to the NRC, because of the possibility that the source within the damaged gauge could have also been damaged, which could have resulted in an adverse impact to the health and safety of the authorized user or others in the vicinity. Therefore, this violation has been categorized, in accordance with the NRC Enforcement Policy, as Severity Level III violation.

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$3,500 is considered for a Severity Level III violation.

Because your facility has not been the subject of escalated enforcement actions within the last 2 years, or 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 determined credit was warranted for *Corrective Action* based on your corrective actions which included: properly recovering the gauge, determining that the source was not damaged, and securing the gauge appropriately. As long-term actions, you trained your authorized users on the requirements of 10 CFR 20.1802 and 10 CFR 30.34(i), and plan to train additional authorized users at the beginning of the 2015 construction season on the need to maintain constant surveillance of the gauge. You also initiated actions to resolve the source of the distraction (searching for a manual).

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 Severity Level III violation constitutes escalated enforcement action that may subject you to increased inspection effort.

The NRC has concluded that information regarding: (1) the reason for the violation; (2) the corrective actions that have been taken and the results achieved; and (3) the date when full compliance was achieved is already adequately addressed on the docket in the inspection report. Therefore, you are not required to respond to the Notice enclosed with 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, its 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 in ADAMS. The

D. Stokes

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NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>.

Sincerely,

*/RA/*

Cynthia D. Pederson  
Regional Administrator

Docket No. 03037419  
License No. 24-32645-01

Enclosure:  
Notice of Violation

cc: State of Missouri  
David Snyder, Radiation  
Safety Officer

## NOTICE OF VIOLATION

Blevins Asphalt Construction Co., Inc.  
Mount Vernon, Missouri

Docket No. 03037419  
License No. 24-32645-01  
EA-15-073

During a U. S. Nuclear Regulatory Commission (NRC) inspection conducted on March 30, 2015, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 20.1802 requires that the licensee control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage.

10 CFR 30.34(i) requires that each portable gauge licensee 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 July 30, 2014, the licensee failed to control and maintain constant surveillance over licensed material that was not in storage and failed to use a minimum of two independent physical controls that formed tangible barriers to secure the gauge while it was not under control and constant surveillance. Specifically, an authorized gauge user failed to maintain control and constant surveillance over a gauge containing licensed material and that gauge was driven over by the individual's vehicle.

This is a Severity Level III violation (Sections 6.3 and 6.7).

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and to prevent recurrence, and the date when full compliance will be achieved, is already adequately addressed on the docket in Inspection Report No. 03037419/2015001. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201, if the description herein 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-15-073" 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 III, 2443 Warrenville Road, Lisle, IL 60532, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

If you choose to respond, your response will be made available electronically for public inspection in the NRC Public Document Room or in 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>. 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 2 working days of receipt.

Dated this 29<sup>th</sup> day of May, 2015

Enclosure

D. Stokes

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NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>.

Sincerely,

*/RA/*

Cynthia D. Pederson  
Regional Administrator

Docket No. 03037419  
License No. 24-32645-01

Enclosure:  
Notice of Violation

cc: State of Missouri  
David Snyder, Radiation  
Safety Officer

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ADAMS ACCESSION NUMBER: ML15153A116

| OFFICE | RIII     | RIII     | RIII     | D:OE                | RIII      | RIII     |
|--------|----------|----------|----------|---------------------|-----------|----------|
| NAME   | Lougheed | McCraw   | Louden   | Hilton <sup>1</sup> | Skokowski | Pederson |
| DATE   | 05/20/15 | 05/21/15 | 05/21/15 | 05/26/15            | 05/27/15  | 05/29/15 |

**OFFICIAL RECORD COPY**

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<sup>1</sup> OE concurrence provided via email from K. Norman on May 26, 2015