



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

REGION IV
1600 E. LAMAR BLVD.
ARLINGTON, TX 76011-4511

March 10, 2016

EA-15-188

Ms. Maria Elizabeth V. Cristi, P.E.
Radiation Safety Officer
Pacific Soils Engineering & Testing
P. O. Box 20670 Guam Main Facility
Barrigada, Guam 96921

**SUBJECT: NOTICE OF VIOLATION - PACIFIC SOILS ENGINEERING & TESTING
NRC INSPECTION REPORT 030-17199/2015-001**

Dear Ms. Cristi:

This refers to the inspection conducted on June 24-25, 2015, at your Upper Tumon, Guam, facility, with continued in-office review through November 30, 2015. The inspection was an examination of activities conducted under your byproduct material license as it relates to safety and security, and compliance with the Nuclear Regulatory Commission's (NRC's) rules and regulations and with the conditions of the license. Preliminary inspection findings were discussed with you at the conclusion of the onsite portion of the inspection. A final exit briefing was conducted telephonically with you on December 3, 2015. The results of this inspection were documented in NRC Inspection Report 030-17199/2015-001 dated December 31, 2015 (Agencywide Documents Access and Management System (ADAMS) ML15350A431).

In the letter transmitting the inspection report, we informed you of two apparent violations, one of which was being considered for escalated enforcement. We also provided you with 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 January 27, 2016 (ADAMS ML16040A257), you provided a response to the apparent violations.

Based on the information developed during the inspection, the NRC has determined that two violations of NRC requirements occurred. These violations are cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding them are described in detail in the subject inspection report. The violations involved the failure to: (1) use two independent physical controls to secure a portable gauge from unauthorized removal while in storage; and (2) provide hazmat training to your portable gauge users once every 3 years.

Specifically, the licensee staff stored the portable gauge on a truck at your facility with no physical controls in place to prevent its theft or unauthorized removal, and did not maintain control and constant surveillance of the gauges as required by Title 10 *Code of Federal Regulations* (10 CFR) 30.34(i). In addition, you allowed authorized users to transport portable gauges without providing them hazmat training every 3 years, as required by the U.S. Department of Transportation and 10 CFR 71.5.

The NRC considers failure to use two independent physical controls to secure a portable gauge to be significant because this security requirement provides reasonable assurance that licensed

material will be secured from unauthorized removal or access. Therefore, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level III. The current Enforcement Policy is included on the NRC's Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>.

In accordance with the NRC Enforcement Policy, a base civil penalty 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, 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. Based on your prompt and comprehensive corrective actions, the NRC has determined that Corrective Action credit is warranted. Specifically, your corrective actions included immediately securing the portable gauge in a locked configuration using two independent physical controls on the day of the inspection. In addition, you revised the company's procedures to incorporate gauge security following NRC guidance, and trained all of your gauge authorized users on the implementation of the revised procedures.

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 violations; (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 your letter dated January 27, 2016. 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 "Agency Rules of Practice and Procedure," 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 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>. 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/>.

M. Cristi

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If you have any questions concerning this matter, please contact Ray Kellar, Chief, Nuclear Materials Safety Branch A, at 817-200-1191.

Sincerely,

/RA/ KMK for

Marc L. Dapas
Regional Administrator

Docket: 030-17199
License: 56-19242-01

Enclosure: Notice of Violation

cc:
M. Thomas Nadeau, Administrator
Division of Environmental Health
123 Chalan Kareta
Mangilao, GU 96913-6304

Rosanna Y. Rabago
Environmental Public Health Officer Administrator
Bureau of Compliance and Investigation
123 Chalan Kareta
Mangilao, GU 96913-6304

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ADAMS ACCESSION NUMBER:

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|---|-----------|--|---|--------------------|---|-----------------|
| <input checked="" type="checkbox"/> SUNSI Review By: MRS5 | | ADAMS <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | <input checked="" type="checkbox"/> Publicly Available <input type="checkbox"/> Non-Publicly Available | | <input checked="" type="checkbox"/> Non-Sensitive <input type="checkbox"/> Sensitive | Keyword: |
| OFFICE | RIV/DNMS | C:NMSB-A | C:ACES | RC | D:DNMS | RA |
| NAME | MRSimmons | BGSmith | JMRollins | MXWright | MRShafter | MLDapas |
| SIGNATURE | /RA/ | /RA/ | /RA/ | /RA/ w/comments | /RA/ | /RA/ KMK for |
| DATE | 2/24/2016 | 03/01/2016 | 03/07/16 | 03/08/16 | 03/02/2016 | 3/10/16 |

OFFICIAL RECORD COPY

NOTICE OF VIOLATION

Pacific Soils Engineering & Testing
Barrigada, Guam

Docket: 030-17199
License: 56-19242-01
EA-15-188

During an NRC inspection conducted on June 24-25, 2015, violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. Title 10 of CFR 30.34(i) requires that each portable gauge licensee shall 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 June 24, 2015, the licensee failed to 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. Specifically, the licensee stored a portable gauge inside a metallic box located in a truck, parked at the licensee's facility, without two independent physical controls present to prevent unauthorized removal of the gauge. The gauge was not under the direct control and constant surveillance of the licensee.

This is a Severity Level III violation. (Section 6.3.c.)

- B. Title 10 of CFR 71.5(a) requires, in part, that each licensee who transports licensed material outside the site of usage, as specified in the NRC license, or where transport is on public highways, or who delivers licensed material to a carrier for transport, shall comply with the applicable requirements of the U.S. Department of Transportation regulations in 49 CFR Parts 107, 171 through 180, and 390 through 397, appropriate to the mode of transport.

Title 49 of CFR 172.704(c)(2) requires, in part, that a hazmat employee must receive the training required by 49 CFR 172, Subpart H, at least once every 3 years.

License Condition 19 of NRC License 56-19242-01, states that the licensee is authorized to transport licensed material only in accordance with the provisions of 10 CFR Part 71, "Packaging and Transportation of Radioactive Material."

Contrary to the above, as of August 15, 2015, the licensee failed to provide hazmat employees with the training required by 49 CFR 172, Subpart H, at least once every 3 years. Specifically, on at least two occasions between June 24 and June 25, 2015, licensee hazmat employees transported a portable gauge containing Class 7 radioactive material on Guam's public highways, and they had not received hazmat training since 2009, a period greater than 3 years.

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

Enclosure

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken to correct the violations and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed on the docket in the letter from Pacific Soils Testing and Engineering dated January 27, 2016 (ADAMS Accession No. ML16040A257), and in NRC Inspection Report 030-17199/2015-001. 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-2015-188" 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 IV, 1600 East Lamar Blvd., Arlington, Texas 76011-4511, 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.

Dated this 10th day of March 2016