



**UNITED STATES  
NUCLEAR REGULATORY COMMISSION**

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

September 5, 2018

EA-18-069

Mr. Eddie Welsh  
Chief Operating Officer  
Jefferson Asphalt Company  
P.O. Box 104868  
Jefferson City, MO 65110

SUBJECT: NOTICE OF VIOLATION; NRC ROUTINE INSPECTION REPORT  
NO. 03035988/2018001(DNMS) – JEFFERSON ASPHALT COMPANY

Dear Mr. Welsh:

This letter refers to the routine inspection conducted on April 17 and 18, 2018, at your Jefferson City and Columbia, Missouri locations, with continued in-office review through June 12, 2018. The purpose of the inspection was to review 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 circumstances surrounding the apparent violation, the significance of the issue, and the need for lasting and effective corrective actions were discussed with Mr. Joe Davis and Ms. Rachel Nesmeyer of your staff during the telephone exit meeting on June 12, 2018. Details regarding the apparent violation were provided in NRC Inspection Report No. 03035988/2018001(DNMS), dated July 9, 2018. The inspection report can be found in the NRC's Agencywide Documents Access and Management System (ADAMS) at Accession Number ML18190A428. ADAMS is accessible from the NRC website at <http://www.nrc.gov/reading-rm/adams.html>.

In the letter transmitting the inspection report, we 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 addition, our letter also transmitted a Notice of Violation (Notice) with five Severity Level IV violations from which we also asked you to provide a response. In a letter dated August 7, 2018, you provided a response to the apparent violation and the cited violations, which can be found in the NRC's ADAMS at Accession Number ML18221A139.

Regarding the apparent violation, based on the information developed during the inspection and the information that you provided in your response to the inspection report, dated August 7, 2018, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice and the circumstances surrounding it are described in detail in the subject inspection report. The violation involved the failure to control and maintain constant surveillance of licensed material that was in a controlled or unrestricted area and not in storage, and to use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal whenever portable gauges were not under the control and constant surveillance of the licensee, as required by Title 10 of the *Code of Federal*

*Regulations* (CFR) 20.1802 and 10 CFR 30.34(i). The root cause of the violation was an inadequate safety and security focus by the authorized user. When the authorized user identified that the portable gauge had equipment issues, the user's attention was diverted away from the safe and secure handling of the gauge to troubleshooting and resolving the equipment issues, resulting in the user leaving the gauge unattended and unsecured.

The failure to maintain constant surveillance of a portable gauge in a controlled or unrestricted area and not in storage, or to properly secure the gauge when unattended, is of significant concern to the NRC because of the potential for unauthorized individuals to gain control of the radioactive material and misuse it, which could result in an unintended exposure to a member of the public. Therefore, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level III. In accordance with the Enforcement Policy, a base civil penalty in the amount of \$7,250 is considered for a Severity Level III violation.

Because your facility has not been the subject of escalated enforcement actions within the last 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. Immediate corrective actions included securing the gauge with two barriers. Additional corrective actions to prevent recurrence included: (1) retraining all authorized users on the requirements for securing portable gauges; (2) implementing a quarterly internal audit program to further ensure compliance; and (3) implementing an annual radiation safety and gauge security training program to specifically address this incident and the correct protocols for gauge security and safety. Based on the corrective actions discussed above, credit for *Corrective Action* is warranted.

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

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 Inspection Report No. 03035988/2018001(DNMS) and your August 7, 2018, letter. 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.

Regarding the Severity Level IV violations documented in Inspection Report No. 03035988/2018001(DNMS) and the Notice, both dated July 9, 2018, the NRC has reviewed your corrective actions described in your August 7, 2018, letter, which appear to be adequate, and has no further questions at this time. These corrective actions will be reviewed during a future inspection.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response will be made available electronically for public inspection in the NRC Public Document Room and in the NRC's 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. 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).

Sincerely,

***/RA by Darrell J. Roberts acting for/***

K. Steven West  
Regional Administrator

Docket No. 030-35988  
License No. 24-32390-01

Enclosure:  
Notice of Violation

cc w/encls: Rachael Nesmeyer, RSO  
State of Missouri

Letter to Mr. Eddie Welsh from K. Steven West dated September 5, 2018, 2018

SUBJECT: NOTICE OF VIOLATION; NRC ROUTINE INSPECTION REPORT  
NO. 03035988/2018001(DNMS) – JEFFERSON ASPHALT COMPANY

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## NOTICE OF VIOLATION

Jefferson Asphalt Company  
Jefferson City, Missouri

Docket No. 030-35988  
License No. 24-32390-01  
EA-18-069

During a U.S. Nuclear Regulatory Commission (NRC) inspection conducted on April 17 and 18, 2018, with continued in-office review through June 12, 2018, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

Title 10 of the *Code of Federal Regulations* (CFR) 20.1802 requires that licensees control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage.

Title 10 CFR 30.34(i) requires that portable gauge licensees 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 April 17, 2018, the licensee failed to control and maintain constant surveillance of a licensed portable gauge in an unrestricted area, and failed to use a minimum of two independent physical controls to secure the gauge from unauthorized removal when the gauge was not under the control and constant surveillance of the licensee. Specifically, while the authorized user was troubleshooting the printer associated with an asphalt content gauge in a separate trailer from the one housing the gauge, the authorized user failed to secure the gauge with any physical controls and did not maintain control and constant surveillance of the gauge for a period of greater than five minutes.

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

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 is achieved, is already adequately addressed on the docket in Inspection Report No. 03035988/2018001(DNMS) and your August 7, 2018, letter. 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-18-069," 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, Suite 210, Lisle, IL 60532-4352 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 website at

Enclosure

<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 two working days of receipt.

Dated this 5th day of September 2018