



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
2100 RENAISSANCE BLVD.
KING OF PRUSSIA, PA 19406-2713**

December 18, 2019

EA-19-096

Mr. José L. Torres-Negrón, President
Hot Asphalt Paving, Inc.
609 Tito Castro Avenue
Suite 102, PMB 384
Ponce, PR 00716-2232

**SUBJECT: HOT ASPHALT PAVING, INC. - NRC INSPECTION REPORT NO.
03038487/2018001**

Dear Mr. Torres-Negrón:

During the period between June 4, 2018, to November 19, 2019, NRC staff including Randolph Ragland, Shawn Seeley, and Jonathan Pflugsten of this office conducted an inspection of Hot Asphalt Paving, Inc. (HAPI). This inspection included eight site visit inspections of the HAPI facility in Ponce, Puerto Rico. The inspection also included continued in-office review by Mr. Ragland and Mr. Juan Ayala (also of this office) through November 19, 2019. The enclosed report (Enclosure 1) presents the results of this inspection. Mr. Ayala discussed the preliminary inspection findings with you by telephone at the conclusion of the inspection on November 19, 2019.

The inspection was conducted to evaluate your compliance with the NRC Order issued July 24, 2014, revoking HAPI's NRC license for non-payment of fees and with the NRC's decommissioning requirements. Because you did not pay the owed fees within 20 days of the date of issuance of the Order, HAPI's NRC license was revoked effective August 13, 2014. As such, HAPI was required to decommission its site. In a letter received by the NRC on September 3, 2014, you responded to the Order by acknowledging that HAPI no longer intended to use its NRC-licensed material (nuclear density gauges). You requested additional time to sell and/or assign the gauges possessed by HAPI. In a letter dated November 24, 2014, the NRC accepted your September 3, 2014 letter as notification of cessation of activities but did not grant HAPI additional time. In accordance with Title 10 of the *Code of Federal Regulations* (10 CFR), Section 30.36(d), upon providing notification of cessation of activities, a licensee must begin decommissioning its site. Further, as required by 10 CFR 30.36(h), a licensee is required to complete decommissioning no later than 24 months following initiation of decommissioning. As further stated in 10 CFR 30.36(j), as the final step in decommissioning, the licensee must certify the disposition of all licensed material.

Based on the results of the inspection, an apparent violation was identified related to HAPI's failure to dispose of or transfer the nuclear density gauges possessed under its NRC license and complete decommissioning. This apparent violation is being considered for escalated enforcement action in accordance with the NRC Enforcement Policy. The current Enforcement Policy is available on the NRC's Web site at <http://www.nrc.gov/about->

[nrc/regulatory/enforcement/enforce-pol.html](http://www.nrc.gov/regulatory/enforcement/enforce-pol.html). Because HAPI has not taken corrective action for the violation, the enforcement action would include a proposed civil penalty of approximately \$7250. As noted in Section 2.3.4 of the Policy, the NRC may exercise discretion and assess a separate violation and attendant civil penalty up to the statutory limit for each day the violation continues. The NRC may exercise this discretion when a licensee was aware of a violation of at least moderate significance and had a clear opportunity to prevent, identify and correct the violation but failed to do so. Since the NRC has not made a final determination, a Notice of Violation is not being issued at this time. Please be advised that the number and characterization of the apparent violation described herein may change as a result of further NRC review.

The NRC's primary interest in this matter is to ensure that HAPI meets its obligation to ensure the proper transfer or disposal of the licensed material. Accordingly, the NRC will not propose a civil penalty if, within **30** days of the date of this letter, HAPI arranges for or otherwise effects the proper transfer or disposal of its gauges. After completing this action, HAPI must send a copy of the certification from the authorized recipient that the material has been received to the Regional Administrator, NRC Region I, 2100 Renaissance Blvd, Suite 100, King of Prussia, PA 19406.

Additionally, before the NRC makes its enforcement decision, we are providing you an opportunity to offer your perspective on this matter and provide any information you believe the NRC should take into consideration. You can elect to provide such information by either: (1) requesting a pre-decisional enforcement conference (PEC) to meet with the NRC and provide your views in person; (2) requesting Alternative Dispute Resolution (ADR); or (3) responding to the apparent violation in writing. You may also choose to accept the apparent violation as characterized in this letter and its enclosure, in which case, the NRC will proceed with its enforcement action and propose the appropriate civil penalty if HAPI does not dispose of the licensed material as described above.

If you choose to request a PEC, the meeting should be held in our office in King of Prussia, PA, within **30** days of the date of this letter. The conference will provide an opportunity for HAPI to provide its perspective on these matters and any other information that HAPI believes the NRC should take into consideration in making an enforcement decision. The topics discussed during the PEC may include information to determine whether a violation occurred, information to determine the significance of a violation, information related to the identification of a violation, and information related to any corrective actions taken or planned. In presenting its corrective actions, HAPI should be aware that the promptness and comprehensiveness of its actions will be considered in assessing any civil penalty for the apparent violation. The guidance in the enclosed excerpt from NRC Information Notice 96-28, "Suggested Guidance Relating to Development and Implementation of Corrective Action," (Enclosure 2) may be helpful. The PEC would be open for public observation, and the NRC would issue a press release to announce the conference time and date.

In lieu of a PEC, HAPI may request ADR with the NRC. ADR is a general term encompassing various techniques for resolving conflict outside of court using a neutral third party. The technique that the NRC has decided to employ is mediation. Mediation is a voluntary, informal process in which a trained neutral (the "mediator") works with parties to help them reach resolution. If the parties agree to use ADR, they select a mutually agreeable neutral mediator who has no stake in the outcome and no power to make decisions. Mediation gives parties an opportunity to discuss issues, clear up misunderstandings, be creative, find areas of agreement, and reach a final resolution of the issues. Additional information concerning the NRC's program can be obtained at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>. The Institute

on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program as a neutral third party. Please contact ICR at 877-733-9415 within **10** days of the date of this letter if you are interested in pursuing resolution of this issue through ADR.

If you choose to provide a written response, it should be sent to the NRC within **30** days of the date of this letter. It should be clearly marked as a "Response to Apparent Violation in NRC inspection Report No. 03038487/2018001: EA-19-096," and sent to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001 with a copy to the Regional Administrator, Region I, 2100 Renaissance Boulevard, King of Prussia, PA 19406.

Please contact Chris Cahill, Chief, Commercial, Industrial, R&D, and Academic Branch, NRC Region I, at 610-337-5108 within **10** days of the date of this letter to notify the NRC of whether HAPI will disposition the gauges or to notify the NRC whether you are interested in attending a PEC or ADR or providing a written response. If you do not contact the NRC within the time specified, and an extension of time has not been granted by the NRC, the NRC will proceed with its enforcement decision.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response if you choose to provide one will be made available electronically for public inspection in the NRC Public Document Room and from the NRC Agency-wide Documents Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-material-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.

Sincerely,

/RA JNick for/

James M. Trapp, Director
Division of Nuclear Materials Safety

Enclosures:

1. NRC Inspection Report No. 03038487/2018001
2. NRC Information Notice 96-28, "Suggested Guidance Relating to Development and Implementation of Corrective Action"

Docket No. 03038487
License No. 52-31452-01

cc w/Enclosures:

Roy Greaves, Director, Environment, Health, and Safety
Commonwealth of Puerto Rico

HOT ASPHALT PAVING, INC. – NRC INSPECTION REPORT NO. 03038487/2019001 DATED

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| OFFICE | RI: DNMS | RI:OE | RI: DNMS | RI: DNMS | |
| NAME | RRagland | McLaughlin | CCahill | JTrapp/JNick for | |
| DATE | 12/3/2019 | 12/3/2019 | 12/13/2019 | 12/18/19 | |
| OFFICE | OGC | OE | | | |
| NAME | Lorraine Baer, NLO | Juan Peralta | | | |
| DATE | 12/3/2019 | 12/4/2019 | | | |

*Concurrence on previous page

OFFICIAL RECORD COPY

EXECUTIVE SUMMARY

Hot Asphalt Paving, Inc.
NRC Inspection Report No. 03038487/2018001

On July 24, 2014, NRC issued an Order to Hot Asphalt Paving, Inc. (HAPI) "Order Revoking License Within 20 days Based On Nonpayment of License Fees." HAPI failed to pay applicable fees; therefore, HAPI's license revocation became effective on August 13, 2014. By letter dated September 3, 2014, HAPI requested additional time to sell or assign the gauges to a properly NRC licensed entity. By letter dated November 24, 2014, NRC accepted the September 3, 2014 letter as notification of cessation of activities but did not grant HAPI additional time. The NRC also informed HAPI that continued possession of licensed material could result in escalated enforcement action resulting in press releases and civil monetary penalties. NRC's November 24, 2014, letter also documented that in a November 5, 2014, telephone call, the president of HAPI was informed that multiple options were available to HAPI to transfer or dispose of the gauges including contacting a physicist who could advise HAPI and perform removable contamination surveys prior to gauge transport, contacting the Health Physics Society at www.hps.org, contacting the National Nuclear Security Administration's Off-Site Source Recovery Project at <http://osrp.lanl.gov>, or contacting the Orphan Source Project at www.crcpd.org.

In accordance with Title 10 of the *Code of Federal Regulations* (10 CFR), Section 30.36(d), upon providing notification of cessation of activities, a licensee must begin decommissioning its site. Further, as required by 10 CFR 30.36(h), a licensee is required to complete decommissioning no later than 24 months following initiation of decommissioning. As further stated in 10 CFR 30.36(j), as the final step in decommissioning, the licensee must certify the disposition of all licensed material. Since sending the November 24, 2014 letter, NRC has contacted HAPI numerous times by telephone and conducted numerous site visits in an attempt to encourage HAPI to take action to transfer their gauges to a properly licensed entity and to verify the safety and security of portable gauges. To date, HAPI has not properly disposed of or transferred its gauges to a licensed entity. This failure represents an apparent violation of NRC requirements and is being considered for escalated enforcement action.

Apparent Violation

10 CFR 30.36(h) requires that that unless the Commission approves an alternate schedule for decommissioning of the site, the licensee must complete decommissioning of the site, or separate building, or outdoor area as soon as practicable but no later than 24 months following the initiation of decommissioning. 10 CFR 30.36(d) requires that within 60 days of deciding to permanently cease principal activities, the licensee shall provide notification to the NRC in writing of such occurrence, and begin decommissioning its site. 10 CFR 30.36(j) states, in part, that as the final step in decommissioning, the licensee shall certify the disposition of all licensed material, including accumulated wastes, by submitting a completed NRC Form 314 or equivalent information.

Contrary to the above, since September 3, 2016, Hot Asphalt Paving, Inc. has not completed decommissioning of the site within 24 months and has not received approval by NRC for an alternate schedule for decommissioning. Specifically, by letter received by NRC on September 3, 2014, Hot Asphalt Paving, Inc. (HAPI) notified the NRC that the company was no longer conducting licensed activities and requested additional time to sell or assign its nuclear

gauges to a licensed entity. In a letter dated November 24, 2014, the NRC accepted the September 3, 2014 letter as notification of cessation of activities but did not grant HAPI additional time to decommission the gauges. As of November 19, 2019, HAPI has not transferred its nuclear gauges in order to certify the disposition of its licensed material and complete decommissioning within 24 months following initiation of decommissioning.

REPORT DETAILS

1. Organization and Scope of the Program

1.1 Inspection Scope

The inspector reviewed the organization and scope of activities performed under License No. 52-31452-01. Information was gathered through telephone interviews with the President of HAPI, through direct site inspections, and reviews of records.

1.2 Observations and Findings

Hot Asphalt Paving, Incorporated (HAPI) is a portable gauge licensee located at an asphalt production plant in Ponce Puerto Rico. They currently possess two Seaman Nuclear Corporation C-200 Radium Gauges both containing approximately 9 mCi of Ra-226. On July 24, 2014, NRC issued an Order to HAPI indicating that if delinquent fees were not paid in 20 days, their NRC license would be revoked. Those fees were not paid and HAPI's NRC license revocation became effective on August 13, 2014. In accordance with the NRC Order, HAPI's activities are restricted to decommissioning and the safe and secure storage of the gauges until the gauges can be properly transferred to a licensed entity. On September 3, 2014, Hot Asphalt Paving, Inc. notified the NRC that the company was no longer conducting licensed activities and requested additional time to sell or assign its nuclear gauges to a licensed entity. The NRC did not grant HAPI additional time to transfer their gauges.

NRC has conducted multiple visits to HAPI's asphalt production site to verify that the gauges are still present and are being stored in a safe and secure manner. HAPI reportedly leased the asphalt production site to another company but still maintained a gauge storage area at the leased site.

During this inspection period, NRC conducted site visits on June 4, 2018, October 24, 2018, November 6 & 7, 2018, December 12 & 13, 2018, and February 19 and 20, 2019. The inspector also submitted several emails to the president of HAPI informing him of the opportunity to register his sources (<http://osrp.lanl.gov/crcpdscater.shtml>) in order to participate in the Department of Energy's radioactive source roundup that occurred in Puerto Rico in April 2019. Those emails went unanswered.

During an August 14, 2019, telephone call, NRC informed the president of HAPI that the continued possession of the two NRC licensed gauges was a violation of NRC decommissioning timeliness requirements. HAPI's president explained that he could not currently afford to ship the gauges for disposal. The inspectors acknowledged his position and informed him that other options such as transferring the gauges to another licensed entity was also acceptable to NRC. Mr. Torres-Negrón stated that he would explore the possibility of transferring the gauges to another licensed entity.

1.3 Conclusions

HAPI's continued possession of two Seaman Nuclear Corporation C-200 Radium Gauges both containing approximately 9 mCi of Ra-226, represents a violation of NRC decommissioning requirements in 10 CFR 30.36(h).

2. Safety and Security of Licensed Gauges

2.1 Inspection Scope

The inspectors performed a review of the status of Hot Asphalt Paving Incorporated (HAPI) licensed activities with the primary focus on verifying the safe and secure storage of HAPI's licensed gauges. Information was gathered through direct inspections and through telephone calls with HAPI's president.

2.2 Observations and Findings

The inspectors observed that the two Seaman Nuclear Corporation C-200 Radium Gauges have been and are stored in a locked storage area at HAPI's facility located in Ponce, Puerto Rico. The gauges are secured with two tangible barriers in compliance with 10 CFR 30.34(i) requirements. The gauges have remained in the same storage location and have not been used. These gauges will require leak testing prior to being transferred to another licensed entity.

2.3 Conclusions

HAPI is storing two Seaman Nuclear Corporation C-200 gauges at their asphalt facility in Ponce, Puerto Rico. The gauges are properly secured in accordance with the security requirements of 10 CFR 30.34(i). These gauges will require leak testing prior to transfer to a licensed entity.

3.0 Exit Meeting

Juan Ayala, of this office, conducted a telephonic exit meeting with Mr. José L. Torres-Negrón, President of HAPI on November 19, 2019. Torres-Negrón acknowledged the inspector's findings. No proprietary information was identified.

PARTIAL LIST OF PERSONS CONTACTED

Hot Asphalt Paving, Inc. Staff

Jose Torres-Negrón, HAPI President

NRC Staff

*Randolph C. Ragland, Jr., Senior Health Physicist
Shawn Seeley, Health Physicist
Jonathan Pfingsten, Health Physicist
#Juan Ayala, Health Physicist

* Present at Entrance Meeting on June 4, 2018

Present at Exit Meeting November 19, 2019

INSPECTION PROCEDURES USED

IP 87124 Fixed and Portable Gauge Programs

LIST OF ACRONYMS AND ABBREVIATIONS USED

CFR Code of Federal Regulations
FBI Federal Bureau of Investigations
HAPI Hot Asphalt Paving, Inc.