



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

June 24, 2020

Docket No.: 03038487

License No.: 52-31452-01

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: NOTICE OF VIOLATION AND PROPOSED CIVIL PENALTY \$7,500 – HOT ASPHALT PAVING, INC., NRC INSPECTION REPORT NO. 03038487/2018001

Dear Mr. Torres-Negrón:

This letter refers to the inspections conducted June 4, 2018, through November 19, 2019, at the Hot Asphalt Paving, Inc. (HAPI) facility in Ponce, Puerto Rico. The inspections were conducted to evaluate your compliance with the Order issued by the U.S. Nuclear Regulatory Commission (NRC) on July 24, 2014 (ML14205A659)¹, revoking HAPI's NRC license, effective August 13, 2014, for non-payment of fees. As such, HAPI was required to begin decommissioning its site within 60 days of the date of revocation. In a letter received by the NRC on September 3, 2014 (ML14268A471), you responded to the Order by acknowledging that HAPI no longer intended to use its NRC-licensed material (nuclear density gauges) and requested additional time to sell or assign the gauges to a licensed entity. In a letter dated November 24, 2014 (ML14344A569), the NRC accepted your September 3, 2014, letter as notification of cessation of activities but did not grant HAPI additional time.

As required by Title 10 of the *Code of Federal Regulations* (10 CFR), Section 30.36(d), 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. Additionally, as required by 10 CFR 30.36(h), unless the Commission approves an alternate schedule for decommissioning of the site, 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, a licensee must certify the disposition of all licensed material. However, based on the results of the inspections, the NRC identified that HAPI did not dispose of or transfer its NRC-licensed material and complete decommissioning, in apparent violation of the above requirements. The NRC discussed the apparent violation (AV) with you during a telephonic exit meeting on November 19, 2019. The AV was also described in the NRC inspection report sent to you with a letter dated December 18, 2019 (ML19352E196).

¹ Designation in parentheses refers to an Agency-wide Documents Access and Management System (ADAMS) accession number. Documents referenced in this letter are publicly available using the accession number in ADAMS.

In the December 18, 2019, letter transmitting the inspection report, we informed you that the AV was being considered for escalated enforcement action, including a civil penalty. In the letter, we provided you the opportunity to address the apparent violations identified in the report by either attending a pre-decisional enforcement conference (PEC), engaging with the NRC in Alternative Dispute Resolution (ADR) mediation, or providing a written response before we made our final enforcement decision. We also informed you that the NRC would not propose a civil penalty if, within 30 days of the date of the letter, HAPI arranged for or otherwise effected the proper transfer or disposal of its gauges.

In a March 13, 2020, email, you requested additional time to identify licensee(s) to whom you could transfer the gauges. In a letter dated April 23, 2020 (ML20114E128), the NRC granted you an additional 60 days. As such, all decommissioning activities were required to be completed by June 22, 2020. However, as of the date of this letter, you have not disposed of or transferred the gauges. Therefore, the NRC has determined that the violation of NRC requirements occurred and is proceeding with enforcement action. The violation is cited in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice).

In assessing the significance of this violation, the NRC considered that the decommissioning timeliness requirements are intended to reduce potential risk to the public and environment that may result from delayed decommissioning of inactive facilities and sites. HAPI has not completed decommissioning despite having its NRC license revoked almost six years ago. Based on these considerations, the NRC has assessed this violation at Severity Level (SL) III, in accordance with the NRC Enforcement Policy.

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$7,500 is considered for a SL III violation. Because your facility has not been the subject of any 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. The NRC staff determined that credit for corrective action is not warranted because HAPI has failed to take any action to address the violation. Therefore, to emphasize the importance of compliance with NRC requirements and of prompt and comprehensive correction of violations, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the base amount of \$7,500. In addition, issuance of this Notice constitutes an escalated enforcement action that may subject you to increased inspection effort.

The NRC recognizes that many licensees have been impacted financially by the public health emergency caused by the Coronavirus Disease 2019 (COVID-19). Consequently, as described in the enclosed Notice, the NRC is extending by 30 days the period of time by which the civil penalty must be paid (i.e., extending the deadline from 30 days to 60 days from the date of this Notice), and the NRC would consider a request for additional time, if appropriate. Please refer to the enclosed Notice for further instructions.

The NRC's primary interest in this matter remains ensuring that HAPI meets its obligation to decommission its facility and effect the proper transfer or disposal of licensed material in its possession. Accordingly, the NRC will not impose the \$7,500 civil penalty if, within 60 days of the date of this letter, HAPI properly disposes of or transfers all sealed radioactive sources possessed under the NRC license and sends the following information documenting that the material has been transferred or disposed of to the Regional Administrator, NRC Region I, 2100 Renaissance Blvd, King of Prussia, PA 19406: (i) a completed NRC Form 314 (enclosed); (ii) a copy of the certification from the authorized recipient that the material has been received; and (iii) a copy of the radiation survey performed in accordance with 10 CFR 30.36(j)(2).

If HAPI completes the actions described above, the NRC will forgo imposition of any civil penalty and will terminate the NRC license. However, if HAPI does not complete the above actions, the NRC will impose the \$7,500 civil penalty and will consider the imposition of additional daily civil penalties that would continue to be assessed until HAPI addresses the violation by decommissioning its site.

If you disagree with this enforcement sanction, you may deny the violation, as described in the Notice, or you may request alternative dispute resolution (ADR) mediation with the NRC in an attempt to resolve this issue. ADR is a general term encompassing various techniques for resolving conflicts 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 ADR program can be found 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. If you are interested in pursuing this issue through the ADR program, please contact: (1) the ICR at (877) 733-9415; and (2) Christopher Cahill, Chief, Commercial, Industrial, R&D, and Academic Branch at 610-337-5108 **within 10 days** of the date of this letter. You may also contact both ICR and Mr. Cahill for additional information. Your submitted signed agreement to mediate using the NRC ADR program will stay the time period for payment of the civil penalties and the required written response, as identified in the enclosed notice, until the ADR process is completed.

You are required to respond to this letter and to 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 will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements. 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.

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

The NRC also includes significant enforcement actions on its Web site at <https://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>. If you have any questions concerning this matter, please contact Christopher Cahill of my staff at 610-337-5108.

Sincerely,

David C. Lew
Regional Administrator

Enclosures:

1. Notice of Violation and Proposed Imposition of Civil Penalty
2. NUREG/BR-0254, "Payment Methods"
3. NRC Form 314, "Certificate of Disposition of Materials"

cc w/Enclosures:

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

SUBJECT: HOT ASPHALT PAVING, INC. - NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF A CIVIL PENALTY DATED: June 24, 2020

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| Enforcement Coordinators | |
| RII, RIII, RIV (M Kowal; J Cameron; J Groom) | |
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| Region I OE Files (with concurrences) | |

ML20147A466

DOCUMENT NAME: S:\Enf-allg\Enforcement\Proposed-Actions\Region1\HAPI Decom NOV-III-CP EA-19-096 ML20147A466.docx

| X SUNSI Review/ MMM | | X Non-Sensitive □ Sensitive | | | X Publicly Available □ Non-Publicly Available | |
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| OFFICE | RI/ORA | RI/DNMS | RI/ORA | RI/ORA | OE | NMSS |
| | M McLaughlin via email | C Cahill via email | B Klukan via email | R McKinley via email | J Peralta via email | R Sun via email |
| DATE | 5/26/20 | 5/28/20 | 5/29/20 | 6/01/20 | 6/11/20 | 6/11/20 |
| OFFICE | OGC | | | | RI/DNMS | RA |
| NAME | L Baer NLO via email | | | | J Trapp via email | D Lew via email |
| DATE | 6/10/20 | | | | 6/12/20 | 6/18/20 |

ENCLOSURE 1

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Hot Asphalt Paving, Inc.
Ponce, Puerto Rico

Docket No.: 03038487
License No.: 52-31452-01
EA-19-096

During an NRC inspection conducted between June 4, 2018, and November 19, 2019, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the NRC proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violation and associated civil penalty are set forth below:

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(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, Hot Asphalt Paving, Inc. has not completed decommissioning of the site within 24 months of initiation of decommissioning (September 3, 2016), 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. 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 additional time and, as of June 24, 2020, Hot Asphalt Paving, Inc. has not transferred its nuclear gauges in order to certify the disposition of its licensed material and complete decommissioning.

This is a Severity Level III violation (Enforcement Policy Section 6.3)
Civil Penalty - \$7,500 (EA-19-096)

Pursuant to the provisions of 10 CFR 2.201, Hot Asphalt Paving, Inc. (Licensee) is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region I, 2100 Renaissance Blvd. King of Prussia, PA 19406, and a copy to the Document Control Desk, Washington, DC 20555-0001, within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation; (EA-19-096)" and should include for each alleged violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation or severity level; (2) the corrective steps that have been taken and the results achieved; (3) the corrective steps that will be taken; 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, the NRC may issue an order or a Demand for Information requiring you to explain why the NRC should not take other action as may be proper. Consideration may be given to extending the response time for good cause shown.

The NRC's primary interest in this matter remains ensuring that HAPI meets its obligation to decommission its facility and ensure the proper transfer or disposal of licensed material in its possession. Accordingly, the NRC will not impose the \$7,500 civil penalty if, within 60 days of the date of this letter, HAPI properly disposes of or transfers all sealed radioactive sources possessed under the NRC license and, as with the response to the Notice of Violation, sends the following information documenting that the material has been transferred or disposed of to the NRC as described below: (i) a completed NRC Form 314; (ii) a copy of the certification from the authorized recipient that the material has been received; and (iii) a copy of the radiation survey performed in accordance with 10 CFR 30.36(j)(2).

If HAPI completes the actions described above, the NRC will forgo imposition of any civil penalty and will terminate the NRC license. However, if HAPI does not complete the above actions, the NRC will impose the \$7,500 civil penalty and will consider the imposition of additional daily civil penalties that would continue to be assessed until HAPI addresses the violation by decommissioning its site.

The Licensee may pay the civil penalty proposed above in accordance with NUREG/BR-0254 and by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, a statement indicating when and by what method payment was made, or may protest imposition of the civil penalty in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission. Within 30 days of the date of this Notice, the Licensee must either confirm to the NRC in writing that it will pay the civil penalty or provide its written answer protesting the civil penalty. However, in the event the Licensee elects to pay the civil penalty, in recognition of the economic impact to licensees by the public health emergency caused by the Coronavirus Disease 2019 (COVID-19), the NRC is extending the period of time by which the civil penalty must be paid from 30 days to 60 days from the date of this Notice. Should the Licensee fail to pay the civil penalty within 60 days of the date of this Notice, the NRC will issue an order imposing the civil penalty.

Should the Licensee elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation (EA-19-068)" and may: (1) deny the violation listed in this Notice, in whole or in part; (2) demonstrate extenuating circumstances; (3) show error in this Notice; or (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty in whole or in part, such answer may request remission or mitigation of the penalty. Separately, the Licensee may request an additional extension of time to pay the civil penalty as a result of impacts to the licensee from COVID-19. Such an extension request must be in writing and should explain the basis for the request and should specify the amount of additional time being requested. This extension request must be submitted to the NRC no later than 50 days from the date of this Notice (i.e., at least 10 days before the initial 60-day deadline to pay the civil penalty).

In requesting mitigation of the proposed penalty, the response should address the factors addressed in Section 2.3.4 of the Enforcement Policy. Any written answer addressing these factors pursuant to 10 CFR 2.205, should be set forth separately from the statement or

explanation provided pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the Licensee is directed to the other provisions of 10 CFR 2.205, regarding the procedure for imposing a civil penalty.

Upon failure to pay any civil penalty which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205 to be due, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The responses noted above, i.e., Reply to Notice of Violation, Extension of time to pay the civil penalty request, Statement as to payment of civil penalty, and Answer to a Notice of Violation, should be addressed to: George Wilson, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region I, 2100 Renaissance Blvd. Suite 100, King of Prussia, PA 19406, and the Document Control Center, Washington, DC 20555-0001.

Your response will be made available electronically for public inspection in the NRC Public Document Room or in the NRC's Agency-wide 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, then 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 that such material is withheld from public disclosure, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim (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). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days of receipt.

Dated this 24th day of June, 2020.