



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION III
2443 WARRENVILLE ROAD, SUITE 210
LISLE, ILLINOIS 60532-4352

November 28, 2023

EA-23-112

Chris Welch
Radiation Safety Officer
Air Products and Controls, Inc.
d/b/a Apollo America
25 Corporate Drive
Auburn Hills, Michigan 48326

SUBJECT: NRC NON-ROUTINE INSPECTION REPORT NO. 03032705/2023002 (DRSS)
AND NOTICE OF VIOLATION – AIR PRODUCTS AND CONTROLS, INC. D/B/A
APOLLO AMERICA

Dear Chris Welch:

This letter refers to the in-office review conducted from February 2, 2023, through September 21, 2023. The purpose of the review was to evaluate the disposal of smoke detectors that had not yet been distributed under your exempt distribution license that was identified during review of the termination request for your license. This letter presents the results of the inspection. Geoffrey Warren, of my staff, conducted a final exit meeting with you by telephone on October 17, 2023, to discuss the inspection findings.

In the exit meeting on October 17, 2023, Mr. Warren informed you that the U.S. Nuclear Regulatory Commission (NRC) was considering escalated enforcement for an apparent violation involving the failure to transfer smoke detectors containing licensed material to an authorized recipient for disposal. Mr. Warren also informed you that we had sufficient information regarding the apparent violation and your corrective actions to make an enforcement decision without the need for a predecisional enforcement conference or a written response from you. You indicated that a predecisional enforcement conference or written response was not needed.

Based on the information developed during our review and the information that you provided during the exit meeting, the NRC has determined that a Severity Level III violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice). The violation involved the failure to dispose of approximately 12,000 smoke detectors, each containing 0.9 microcuries of americium-241, through authorized means, as required by Title 10 of the *Code of Federal Regulations* (CFR) 20.2001(a)(1). Instead, the smoke detectors were transferred to a hazardous materials disposal company that was not specifically licensed to receive the detectors that had not been distributed. While each device was packaged and labeled for exempt distribution, the transfer of such materials as waste does not constitute distribution.

The improper transfer and disposal of NRC-regulated material is a significant regulatory and security concern because of the potential for unauthorized possession or use of the material and because of the potential for uncontrolled exposure to radiation by members of the public.

Therefore, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level III. In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$8750 is considered for a Severity Level III violation involving your type of license and regulated material. The NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>.

Notwithstanding the normal civil penalty assessment process, in cases where a licensee has failed to control or has improperly transferred and disposed of radioactive material, the NRC normally considers imposing a civil penalty. However, the NRC may mitigate or escalate this civil penalty amount based on the merits of a specific case.

The NRC concluded that the violation described in this letter merited mitigating the civil penalty because: (1) the location of the material is known and controlled, where it presents negligible risk to members of the public; (2) each individual device was in a form that could have been exempt if you had distributed the devices rather than disposing of them; and (3) you did not avoid disposal costs. Therefore, no civil penalty will be imposed.

The root cause of the violation appears to be your staff's misunderstanding of licensing requirements. Your staff believed that because the smoke detectors were labelled as an exempt product, they could be disposed at a hazardous waste landfill that was not licensed by the NRC or an Agreement State to receive licensed radioactive material. Because Air Products and Controls has ceased licensed activities and is in the process of terminating its licenses, no further corrective action is required.

The NRC has concluded that information regarding: (1) the reason for the violation; (2) the corrective actions taken and the results achieved; and (3) the date when full compliance will be achieved is adequately addressed on the docket in this 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.

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 any, will be made available electronically for public inspection in the NRC Public Document Room and 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>. 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,



Signed by Giessner, Jack
on 11/28/23

John B. Giessner
Regional Administrator

Docket No. 030-32705
License No. 21-23805-01

Enclosure: Notice of Violation

cc w/enclosure: State of Michigan

Letter to C. Welch from J. Giessner dated November 28, 2023.

SUBJECT: NRC NON-ROUTINE INSPECTION REPORT NO. 03032705/2023002 (DRSS)
AND NOTICE OF VIOLATION – AIR PRODUCTS AND CONTROLS, INC. D/B/A
APOLLO AMERICA

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OFFICIAL RECORD COPY

NOTICE OF VIOLATION

Air Products and Controls, Inc. d/b/a Apollo America
Auburn Hills, Michigan

Docket No. 030-32705
License No. 21-23805-01
EA-23-112

During a U.S. Nuclear Regulatory Commission (NRC) in-office review conducted from February 2, 2023, through September 21, 2023, 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) 20.2001(a)(1) requires a licensee to dispose of licensed material only by transfer to an authorized recipient as provided in § 20.2006 or in the regulations in parts 30, 40, 60, 61, 63, 70, and 72.

Contrary to the above, on March 31, 2023, the licensee disposed of approximately 12,000 smoke detectors, each containing 0.9 microcuries of americium-241, by releasing the materials to a hazardous waste company that was not an authorized recipient as provided in § 20.2006 or in the regulations in parts 30, 40, 60, 61, 63, 70, and 72.

This is a Severity Level III violation (Enforcement Policy Section 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 prevent recurrence, and the date when full compliance will be achieved, is already adequately addressed on the docket in this 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-23-112)," 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 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 two working days of receipt.

Dated this 28th day of November 2023

Enclosure