



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

August 8, 2007

Docket No. 03019414
EA 07-070

License No. 37-20559-01

Lou Marsolino, Owner
Marsh Asphalt, Inc.
Belle Vernon Asphalt Plant
P.O. Box 1125
Uniontown, PA 15401

SUBJECT: INSPECTION 03019414/2006001, MARSH ASPHALT, INC., BELLE VERNON ASPHALT PLANT, UNIONTOWN, PENNSYLVANIA AND NOTICE OF VIOLATION

Dear Mr. Marsolino:

On November 30, 2006, December 4, 2006, and June 21, 2007, David Everhart, Ronald Rolph, and Michael Reichard, respectively, of this office, conducted a safety inspection at the Belle Vernon Asphalt Plant, SR 3001, Belle Vernon, Pennsylvania, of activities authorized by the above listed NRC license. The inspection was an examination of your licensed activities as they relate to radiation safety and to compliance with the Commission's regulations and the license conditions. The inspection consisted of observations by the inspectors, interviews with personnel, and a selected examination of representative records. Additional information that you provided during a telephone conversation of February 2, 2007, with Ronald Rolph of this office was also reviewed as part of the inspection. The findings of the inspection were discussed with you on June 21, 2007.

Based on the results of this inspection, the NRC has determined that two violations of the NRC requirements occurred. These violations are described in the enclosed Notice of Violation (Notice).

One of the violations involved the failure to provide two independent physical controls to secure a portable gauge from unauthorized removal, as required by 10 CFR 30.34(i). Such violations are normally categorized at Severity Level III, and considered for escalated enforcement action. However, because: (1) one physical control existed to prevent loss or theft of the portable gauge; (2) you retained possession of the gauge; (3) you took appropriate action to correct the violation and prevent recurrence of similar violations in the future; and (4) the violation was not willful, we are exercising enforcement discretion to categorize this violation at Severity Level IV in accordance with Enforcement Guidance Memorandum EGM 06-001. EGM 06-001 states, in part, that if a gauge is not lost or stolen, and the licensee did not provide adequate security, in that one or no independent physical control was present, the violation would normally be categorized at a Severity Level III, and the staff would follow the Civil Penalty Assessment process set forth in Section VI.C. of the Enforcement Policy to disposition the violation. The EGM also states that the NRC will exercise discretion to disposition the violation as Severity Level IV for first time non-willful violations of this requirement, when the gauge is not lost or stolen and one suitable independent control was present. Please be reminded that any future

violations of 10 CFR 30.34(i) will be categorized at Severity Level III and evaluated for a civil penalty in accordance with Section VI.C. of the Enforcement Policy.

The second violation occurred when you failed to notify the NRC in writing, within 60 days after no principal activities under the license had been conducted for a period of 24 months, as required by 10 CFR 30.36(d).

Your request dated June 8, 2007, for an amendment to your license to authorize storage only, and change of Radiation Safety Officer is under review, and you will be notified of the result of our review under separate cover. However, please note that 10 CFR 30.36(d) also requires you to initiate decommissioning activities (transfer of your gauge to another authorized recipient) as soon as practical. On August 7, 2007, you confirmed during a telephone conversation with Marie Miller of my staff that initial attempts to transfer your portable gauge have been unsuccessful, so you have changed your storage location to a more secure location.

You are required to respond to this letter, and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. After reviewing your response to this Notice, including your proposed corrective actions and the results of future inspections, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

Current NRC regulations are included on the NRC's website at www.nrc.gov ; select **Nuclear Materials; Medical, Academic, and Industrial Uses of Nuclear Material**; then **Regulations, Guidance, and Communications Page**. The current Enforcement Policy is included on the NRC's website at www.nrc.gov ; select **Site Map**, then **scroll down to Enforcement Policy**. You may also obtain these documents by contacting the Government Printing Office (GPO) toll-free at 1-866-512-1800. The GPO is open from 7:00 a.m. to 8:00 p.m. EST, Monday through Friday (except Federal holidays).

Please contact Michael Reichard at 610-337-6945 if you have any questions regarding this matter.

Sincerely,

/RA by Gary L. Shear Acting For/

Brian Holian, Director
Division of Nuclear Materials Safety

Enclosure:
Notice of Violation

cc:
Commonwealth of Pennsylvania

violations of 10 CFR 30.34(i) will be categorized at Severity Level III and evaluated for a civil penalty in accordance with Section VI.C. of the Enforcement Policy.

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Your request dated June 8, 2007, for an amendment to your license to authorize storage only, and change of Radiation Safety Officer is under review, and you will be notified of the result of our review under separate cover. However, please note that 10 CFR 30.36(d) also requires you to initiate decommissioning activities (transfer of your gauge to another authorized recipient) as soon as practical. You should make every attempt to dispose of your gauge properly as soon as possible because your storage location has been subjected to repeated vandalism.

You are required to respond to this letter, and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. After reviewing your response to this Notice, including your proposed corrective actions and the results of future inspections, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

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Sincerely,
/RA by Gary L. Shear Acting For/
Brian Holian, Director
Division of Nuclear Materials Safety

Enclosure: Notice of Violation

cc: Commonwealth of Pennsylvania

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OFFICE	DNMS/RI	N	DNMS/RI	N	ORA	N
NAME	MReichard mcr		MMiller mtm		Holody rjs for	
DATE	7/27/07		8/3/07		8/3/07	

OFFICE	RC	N	DNMS/RI	N				
NAME	Farrar KLF		Holian gls for					
DATE	8/6/07		8/8/07					

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NOTICE OF VIOLATION

Marsh Asphalt, Inc.
Uniontown, PA

Docket No. 03019414
License No. 37-20559-01
EA-07-070

During an NRC inspection conducted on November 30, 2006, December 4, 2006, and June 21, 2007, two violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. 10 CFR 30.34(i) requires that each portable gauge licensee 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, the licensee did not 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, on November 30, 2006 and June 21, 2007, only one lock was present on a steel container that contained the portable gauge. In addition, the door to the building, where the steel container was located, was not locked.

This is a Severity Level IV violation (Supplement VI).

- B. 10 CFR 30.36(d) requires, in part, that each licensee provide notification to the NRC in writing within 60 days after no principal activities under the license have been conducted for a period of 24 months.

Contrary to the above, the licensee did not provide notification to the NRC in writing within 60 days after no principal activities under the license had been conducted for a period of 24 months. Specifically, licensed activities ceased in July 2004 and the licensee did not notify the NRC in writing until June 8, 2007, a period greater than 24 months.

This is a Severity Level IV violation (Supplement VI).

Pursuant to the provisions of 10 CFR 2.201, Marsh Asphalt, Inc. is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555, with a copy to the Regional Administrator, Region I, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, 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, an order or a Demand for Information may be issued as to why the license should not be modified, suspended, or revoked, or why such other

action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

If you contest this enforcement action, you should also provide a copy of your response to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, any response which contests an enforcement action shall be submitted under oath or affirmation.

Your response will be placed in the NRC Public Document Room (PDR) and on the NRC Web site. To the extent possible, it should, therefore, not include any personal privacy, proprietary, or safeguards information so that it can be made publically available without redaction. However, if you find it necessary to include such information, you should clearly indicate the specific information that you desire not to be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public.

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

Dated This 8th day of August 2007.