

August 16, 2007

EA-07-156

Mr. John Englerth
Health and Safety Coordinator
Valley Quarries, Inc.
297 Quarry Road
P. O. Box J
Chambersburg, PA 17201-0809

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$3,250 (NRC INSPECTION REPORT NO. 03022161/2007001)

Dear Mr. Englerth:

This refers to an NRC inspection conducted on May 10, 2007, at your Chambersburg office and at a field location near Gettysburg, Pennsylvania, of activities authorized by your NRC license. The purpose of this inspection was to follow-up on an event involving the theft of a licensed portable gauge from a company vehicle. You reported this theft to the NRC Operations Center (Event No. 43349) on May 7, 2007. During the inspection, an apparent violation was identified involving the failure to meet the requirements established by 10 CFR 30.34(i), in that only one of the two required independent physical controls were in place at the time of the theft. The findings of the inspection were discussed with you at the conclusion of the inspection, and during a subsequent telephone discussion between you and Marie Miller of my staff on June 27, 2007. The apparent violation of NRC requirements was documented in an inspection report forwarded to you in a letter dated June 29, 2007. Prior to the NRC issuance of the inspection report, you provided us with a letter, dated June 20, 2007, describing the corrective actions you have taken to ensure proper gauge security.

In a letter dated June 29, 2007, the NRC informed you that it was considering the apparent violation for escalated enforcement action, and the NRC provided you an opportunity to attend a predecisional enforcement conference (PEC) or submit a written response. During a telephone conversation on July 20, 2007, you informed Marie Miller that you did not wish to submit a response or participate in a PEC. Therefore, based on the results of the NRC inspection, as well as information provided in your June 20, 2007 letter, the NRC has determined that a violation of NRC requirements occurred. The violation is described in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty. The violation involved the failure to use two independent physical controls that form tangible barriers to secure portable nuclear gauges from unauthorized removal during periods when portable gauges were not under direct control and constant surveillance. Specifically, when a Troxler portable nuclear gauge was stolen from an unattended licensee vehicle parked at an employee residence on May 6, 2007, there was only one single tangible barrier in place to prevent the theft.

Although there were no health and safety consequences to the public, the NRC considered that the gauge was in an unrestricted area for a period of sixteen days, and that there was a potential for radiation exposure to members of the public if the source had been removed from its shielded position. There was also the potential for contamination if someone had tried to tamper with the sealed source. Therefore, in accordance with Supplement VI of the Enforcement Policy, the NRC has classified this violation at Severity Level III.

In accordance with Section VI.C.2 of the Enforcement Policy, the base civil penalty amount for a Severity Level III violation involving the loss of this type of radioactive material is \$3,250. For violations involving the loss, abandonment, or improper transfer or disposal of a sealed source or device, a civil penalty of at least the base amount is normally issued. Therefore, to emphasize the importance of maintaining security and control of radioactive material, 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 \$3,250 for this Severity Level III violation. In addition, this Notice constitutes escalated enforcement action that may subject you to increased inspection effort.

The NRC has evaluated your corrective actions for this violation, and considers them to be prompt and comprehensive. These corrective actions included: (1) training staff on offsite implementation of security requirements; (2) purchasing chains and locks to meet the requirements of transporting and securing the portable nuclear gauge to the vehicle while being transported or when not in use on the job; and, (3) performing a visual inspection on June 6, 2007, to ensure the subject gauge was being secured properly.

The NRC has concluded that information regarding the reasons for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed in the letter transmitting this Notice, in your June 20, 2007 letter, and in our June 29, 2007 letter forwarding the inspection report. Therefore, although you are required to provide a response to the Notice of Violation and Proposed Imposition of Civil Penalty, you are not required to respond to the provisions of 10 CFR 2.201 (which would require you to describe your corrective actions), unless the description herein 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. 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.

Mr. John Englerth

3

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and its enclosures will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document 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 <http://www.nrc.gov>.

Sincerely,

/RA/ Original Signed By Marc L. Dapas for

Samuel J. Collins
Regional Administrator

Docket No. 03022161
License No. 37-20965-01

Enclosures: 1. Notice of Violation and Proposed Imposition of Civil Penalty
2. NUREG/BR-0254 Payment Methods

cc:
Commonwealth of Pennsylvania

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and its enclosures will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document 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 <http://www.nrc.gov>.

Sincerely,

/RA/ Original Signed By Marc L. Dapas for

Samuel J. Collins
Regional Administrator

Docket No. 03022161
License No. 37-20965-01

Enclosures: 1. Notice of Violation and Proposed Imposition of Civil Penalty
2. NUREG/BR-0254 Payment Methods

cc:
Commonwealth of Pennsylvania

Distribution:

ADAMS (PARS)
SECY
CA
OEMAIL
OEWEB
LReyes, EDO
MVirgilio, DEDMRT
CCarpenter, OE
SMaGruder, OE
SMerchant, OE
LSreenivas, OE
BJones, OGC
LChandler, OGC
CMiller, FSME
GPangburn, FSME
JSchlueter, FSME
DRathbun, FSME
MCox, EDO
Enforcement Coordinators
RII, RIII, RIV

LLopez, OE
RTaylor, OE
GVeneziano, OGC
EHayden, OPA
HBell, OIG
GCaputo, OI
TGrancorvitz, OCFO
DScrenci, PAO-RI
NSheehan, PAO-RI
BHolian, RI
MMiller, RI
KFarrar, RI
DHolody, RI
ADeFrancisco, RI
RSummers, RI
CO'Daniell, RI
SVillar, RI
Region I OE Files (with concurrences)
R1DNMSMail

SUNSI Review Complete: aep (Reviewer's Initials)

DOCUMENT NAME: C:\FileNet\ML072290016.wpd ADAMS Accession No.: ML072290016

After declaring this document "An Official Agency Record" it will be released to the Public.

To receive a copy of this document, indicate in the box: "C" = Copy without attachment/enclosure "E" = Copy with attachment/enclosure "N" = No copy

OFFICE	RI/ORA	RI/DNMS	RI/DNMS	RI/RC	RI/ORA
NAME	*ADeFrancisco	*MMiller	*BHolian	*KFarrar	*DHolody
DATE	07/24/07	07/25/07	07/26/07	07/27/07	07/27/07
OFFICE	HQ/FSME	HQ/OGC	HQ/OE	RI/RA	
NAME	via SMerchant email	via SMerchant email	via SMerchant email	SCollins/MLD for	
DATE	7/31/2007	8/10/07	8/14/07	08/16 /07	

OFFICIAL RECORD COPY

*see previous concurrence page for original signatures

NOTICE OF VIOLATION

Valley Quarries, Incorporated
Chambersburg, PA

Docket No. 03022161
License No. 37-20965-01
EA-07-156

During an NRC inspection conducted on May 10, 2007, one violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

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, during a period when a portable gauge was not under the control and constant surveillance of the Licensee, only a single tangible barrier was provided to secure the nuclear gauge from unauthorized removal. Specifically, when Troxler portable nuclear gauge (serial number 32506) was stolen from an unattended Licensee vehicle parked at an employee residence on May 6, 2007, the Licensee had only a single tangible barrier in place to prevent the theft.

This is a Severity Level III violation (Supplement VI).
Civil Penalty - \$3,250

The NRC has concluded that information regarding the reasons for the violations, the corrective actions taken and planned to correct the violations and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed in the letter transmitting this Notice, your June 20, 2007 letter, and the NRC inspection report transmitted on June 29, 2007. Therefore, although you are required to provide a response to this Notice of Violation and Proposed Imposition of Civil Penalty, you are not required to respond to the provisions of 10 CFR 2.201 (which would require you to describe your corrective actions), 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, clearly mark your response as a "Reply to a Notice of Violation" and send it 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.

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. Should the Licensee fail to answer within 30 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" and may: (1) deny the violation(s) 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.

In requesting mitigation of the proposed penalty, the response should address the factors addressed in Section VI.C.2, "Civil Penalty Assessment," 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, Statement as to Payment of Civil Penalty, and Answer to a Notice of Violation, should be addressed to: Cynthia Carpenter, 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.

If you choose to respond, your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS). To the extent possible, your response should not include any personal privacy, proprietary, classified or safeguards information so that it can be made available to the public without redaction. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. 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.

Dated this 16th day of August 2007.