



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

August 16, 2011

Docket No. 03037552  
EA-11-121

License No. 52-31279-01

Raul Robles  
C.E.O., R.S.O.,  
R&F Asphalt Unlimited, Inc.  
P.O. Box 80128  
Coto Laurel, PR 00780-1028

SUBJECT: EXERCISE OF ENFORCEMENT DISCRETION: R&F ASPHALT UNLIMITED, INC.

Dear Mr. Robles:

We are sending you this letter to document our discussions regarding your possession of portable nuclear density gauges containing radium-226, and to provide our conclusions regarding R&F Asphalt Unlimited, Inc.'s compliance with NRC regulations for these devices. No further action or response is necessary on your part.

During a telephone conversation on May 12, 2011, between you and Scott Wilson of my staff, we learned that R&F Asphalt Unlimited, Inc. owned portable gauges containing radium-226 sealed sources. We informed you that this material is considered byproduct material, and requires an NRC license to possess. We discussed the change to NRC regulations that occurred with the enactment of the Energy Policy Act of 2005 (Act), and the NRC regulations resulting from the Act, which became effective on November 30, 2007. Specifically, we indicated that, effective November 30, 2007, you were required to file an application for amendment of your NRC license to include the gauges.

We also informed you that R&F Asphalt Unlimited, Inc., as an alternative to filing an application for an amendment to their NRC license, may transfer the gauges to an authorized NRC licensee or legally dispose of the gauges. You stated that you were previously unaware of the new regulation and that R&F Asphalt Unlimited, Inc. would: 1) immediately secure the gauges containing radium-226 in compliance with 10 CFR 30.34(i); 2) maintain the gauges in storage until authorized by NRC license; 3) submit an NRC license amendment application for the gauges within 30 days; and 4) ensure compliance with the public dose limits in 10 CFR 20.1301, "Dose limits for individual members of the public." We noted that you applied for a license amendment on May 12, 2011, and that NRC License No. 52-31279-01, Amendment 01, was issued on May 18, 2011.

Based on the above information, the NRC has determined that a violation of NRC requirements occurred. The violation involved the possession and use of byproduct material without a specific NRC license issued in accordance with the regulations in 10 CFR Part 30. Specifically, from November 30, 2007, to May 12, 2011, R&F Asphalt Unlimited, Inc. possessed three Seaman Nuclear Corporation Model C-200 portable moisture density gauges containing byproduct material (radium-226 sealed sources; 4.5 millicuries each) without obtaining an amendment to their NRC license authorizing the possession of the gauges.

This violation would normally be categorized at Severity Level IV; however, in accordance with NRC Enforcement Guidance Memorandum (EGM) 09-004, dated May 13, 2009, the NRC will exercise discretion and not issue a violation. The NRC's decision is based on the criteria listed in EGM 09-004, which includes 1) this was the first occurrence that R&F Asphalt Unlimited, Inc. was involved in after November 30, 2007, the effective date of the requirement; 2) the failure did not result in an actual safety, health, or security consequence; 3) the failure was not willful; 4) R&F Asphalt Unlimited, Inc. was unaware of the requirement; and 5) R&F Asphalt Unlimited, Inc. submitted a license amendment application within 30 days.

On July 29, 2011, Scott Wilson of my staff informed you of this conclusion by telephone.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, and your response, if you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room or from the NRC document system (ADAMS), accessible from the NRC website 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.

Current NRC regulations and guidance are included on the NRC's website at [www.nrc.gov](http://www.nrc.gov); select **Nuclear Materials; Med, Ind, & Academic Uses**; then **Regulations, Guidance and Communications**. The current Enforcement Policy is included on the NRC's website at [www.nrc.gov](http://www.nrc.gov); select **About NRC, Organization & Functions; Office of Enforcement; Enforcement documents**; then **Enforcement Policy (Under 'Related Information')**. 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 8:00 a.m. to 5:30 p.m. EST, Monday through Friday (except Federal holidays).

Please contact Scott Wilson at 610-337-5136 if you have any questions regarding this matter.

Thank you for your cooperation.

Sincerely,

/RA/

Raymond K. Lorson, Director  
Division of Nuclear Materials Safety

cc:  
Moises Estrada, QC Manager  
Commonwealth of Puerto Rico

This violation would normally be categorized at Severity Level IV; however, in accordance with NRC Enforcement Guidance Memorandum (EGM) 09-004, dated May 13, 2009, the NRC will exercise discretion and not issue a violation. The NRC's decision is based on the criteria listed in EGM 09-004, which includes 1) this was the first occurrence that R&F Asphalt Unlimited, Inc. was involved in after November 30, 2007, the effective date of the requirement; 2) the failure did not result in an actual safety, health, or security consequence; 3) the failure was not willful; 4) R&F Asphalt Unlimited, Inc. was unaware of the requirement; and 5) R&F Asphalt Unlimited, Inc. submitted a license amendment application within 30 days.

On July 29, 2011, Scott Wilson of my staff informed you of this conclusion by telephone.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, and your response, if you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room or from the NRC document system (ADAMS), accessible from the NRC website 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.

Current NRC regulations and guidance are included on the NRC's website at [www.nrc.gov](http://www.nrc.gov); select **Nuclear Materials; Med, Ind, & Academic Uses**; then **Regulations, Guidance and Communications**. The current Enforcement Policy is included on the NRC's website at [www.nrc.gov](http://www.nrc.gov); select **About NRC, Organization & Functions; Office of Enforcement; Enforcement documents**; then **Enforcement Policy (Under 'Related Information')**. 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 8:00 a.m. to 5:30 p.m. EST, Monday through Friday (except Federal holidays).

Please contact Scott Wilson at 610-337-5136 if you have any questions regarding this matter.

Thank you for your cooperation.

Sincerely,

/RA/

Raymond K. Lorson, Director  
Division of Nuclear Materials Safety

CC:

Moises Estrada, QC Manager  
Commonwealth of Puerto Rico

Distribution:

ADAMS (PARS)

SECY

CA

OEMAIL

R1ENFORCEMENT

B. Welling, DNMS, RI

Region I OE Files (with concurrences)

L. Sreenivas, OE

K. Farrar, RI

D. Holody, RI

A. DeFrancisco, RI

M. McLaughlin, RI

C. O'Daniell, RI

S. Villar, RI

**SUNSI Review Complete: SWilson (Reviewer's Initials)**

DOCUMENT NAME: G:\WordDocs\Current\Misc Letter\LR&F Asphalt Unlimit.doc

**ML112341226**

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:DNMS	N	RI:DNMS	N	RI:DNMS	N	RI:ORA		RI:DNMS	N
NAME	SWilson/sw		BWelling/BDW		RLorson		MMcLaughlin/mmm		RLorson/rkl	
DATE	08/03/11		08/08/11		08/08/11		08/15/11		08/16/11	

OFFICIAL RECORD COPY