



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

January 23, 2013

Docket No. 03038487  
EA-13-008

License No. 52-31452-01

Jose L. Torres Negron  
President  
Hot Asphalt Paving, Inc.  
609 Tito Castro Avenue,  
Suite 102, PMB 384  
Ponce, PR 00716-2232

SUBJECT: NRC INSPECTION REPORT NO. 03038487/2012001, HOT ASPHALT PAVING, INC., CANO VERDE SECTOR, SALINAS, PUERTO RICO, EXERCISE OF ENFORCEMENT DISCRETION AND NOTICE OF VIOLATION

Dear Mr. Torres Negron:

On December 5, 2012, Randolph Ragland of this office conducted a safety inspection at your facility located at Cano Verde Sector, Road #1, Km 90.9, Salinas, Puerto Rico of activities authorized by the above listed NRC license. The inspection continued in-office until January 3, 2013. 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 inspector, interviews with personnel, and a selective examination of representative records. Additional information provided in a telephone conversation on January 3, 2013, between Ivan R. Ortiz of your organization and this office was also examined as part of the inspection. The findings of the inspection were discussed with Ivan R. Ortiz of your organization at the conclusion of the inspection on January 3, 2013.

Based on the results of this inspection and in accordance with the NRC Enforcement Policy, the NRC has determined that three Severity Level IV violations of NRC requirements occurred. The violations involved: 1) the failure to use a minimum of two independent physical controls that form tangible barriers to prevent unauthorized removal, whenever portable gauges were not under the control and constant surveillance of the licensee, as required by 10 CFR 30.34(i); 2) the failure to maintain a record of a gauge inventory as required by NRC License No. 52-31452-01, Condition No. 15; and 3) the failure to maintain, for inspection by NRC, documentation demonstrating that unmonitored individuals are not likely to receive a radiation dose in excess of 10 percent of the allowable limits in 10 CFR 20.

The violations are cited in the enclosed Notice of Violation (Notice), because the violations were identified by the NRC.

During our inspection exit meeting on January 3, 2013, Mr. Ortiz stated that he had taken the following corrective actions:

- 1) installed an additional lock on the gauge storage area door; and
- 2) developed a form for conducting gauge inventories and documented a gauge inventory.

He stated that he was currently developing documentation demonstrating that unmonitored individuals are not likely to receive a radiation dose in excess of 10 percent of the allowable limits in 10 CFR 20.

As noted above, a violation of 10 CFR 30.34(i) was identified during this inspection and is described in the enclosed Notice of Violation. In accordance with the Enforcement Policy, although such violations are normally categorized at Severity Level III and considered for escalated enforcement action, because (1) one physical control existed to prevent loss or theft of the portable gauges; (2) you retained possession of the gauges; (3) the violation was isolated; and (4) no indication of programmatic weakness was identified, NRC is exercising enforcement discretion to categorize this violation as Severity Level IV.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response 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. 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). The NRC also includes significant enforcement actions on its website at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions>.

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, Organizations & 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).

The NRC's Safety Culture Policy Statement became effective in June 2011. While a policy statement and not a regulation, it sets forth the agency's *expectations* for individuals and organizations to establish and maintain a positive safety culture. You can access the policy statement and supporting material that may benefit your organization on NRC's safety culture Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/safety-culture.html>. We strongly encourage you to review this material and adapt it to your particular needs in order to develop and maintain a positive safety culture as you engage in NRC-regulated activities.

J. Torres Negrón

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Please contact Randolph Ragland at 610-337-5083 if you have any questions regarding this matter.

Sincerely,

***/RA/***

Raymond K. Lorson, Director  
Division of Nuclear Materials Safety

Enclosure:  
Notice of Violation

cc:  
Rafael D. Velazquez Diaz, Radiation Safety Officer  
Commonwealth of Puerto Rico

J. Torres Negron

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Please contact Randolph Ragland at 610-337-5083 if you have any questions regarding this matter.

Sincerely,

**/RA/**

Raymond K. Lorson, Director  
Division of Nuclear Materials Safety

Enclosure:  
Notice of Violation

cc:  
Rafael D. Velazquez Diaz, Radiation Safety Officer  
Commonwealth of Puerto Rico

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DATE	01/23/13							

\*see previous concurrence

OFFICIAL RECORD COPY

## **NOTICE OF VIOLATION**

Hot Asphalt Paving, Inc.  
Ponce, PR

Docket No. 03038487  
License No. 52-31452-01  
EA-13-008

During an NRC inspection conducted on December 5, 2012 - January 3, 2013, three 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 each portable gauge licensee to use a minimum of two independent physical controls that form tangible barriers to prevent unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee.

Contrary to the above, on December 5, 2012, Hot Asphalt Paving did not use a minimum of two independent physical controls that form tangible barriers to prevent unauthorized removal, whenever portable gauges were not under the control and constant surveillance of the licensee. Specifically, two Seaman Nuclear Corporation Model C-200 portable gauges, each containing approximately 4.5 mCi radium-226, were secured inside a storage building with only one door lock to prevent unauthorized removal of the gauge.

In accordance with the Enforcement Policy, although such violations are normally categorized at Severity Level III and considered for escalated enforcement action, because (1) one physical control existed to prevent loss or theft of the portable gauges; (2) Hot Asphalt Paving retained possession of the gauges; (3) the violation was isolated; and (4) no indication of programmatic weakness was identified, NRC is exercising enforcement discretion to categorize this violation as Severity Level IV.

This is a Severity Level IV Violation (EGM-11-004).

- B. NRC License No. 52-31452-01, Condition 15, requires Hot Asphalt Paving to conduct a physical inventory every six months, and to maintain a record of the inventory for 5 years from the date of the inventory that includes the radionuclides, quantities, manufacturer's name and model numbers, and the date of the inventory.

Contrary to the above, from January 23, 2012, to December 5, 2012, Hot Asphalt Paving did not maintain a record of a gauge inventory.

This is a Severity Level IV Violation (Section 6.7).

- C. NRC License No. 52-31452-01, Condition 19, states that the licensee shall conduct its program in accordance with the statements made in their license application dated November 17, 2011. The license application stated that they will either maintain, for inspection by NRC, documentation demonstrating that unmonitored individuals are not likely to receive a radiation dose in excess of 10 percent of the allowable limits in 10 CFR 20, or will provide [applicable staff] dosimetry.

Contrary to this requirement, from January 23, 2012, to December 5, 2012, Hot Asphalt Paving did not maintain, for inspection by NRC, documentation demonstrating that unmonitored individuals are not likely to receive a radiation dose in excess of 10 percent of the allowable limits in 10 CFR 20, or provide [applicable staff] dosimetry.

This is a Severity Level IV Violation (Section 6.7).

Pursuant to the provisions of 10 CFR 2.201, Hot Asphalt Paving, 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 of receipt.

Dated This 23 day of January 2013