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June 11, 2021

(via email only to christopher.cahill@nrc.gov)

Christopher Cahill, Chief
Commercial, Industrial, R&D, and Academic Branch
NRC Region 1

Re: Steel of West Virginia NRC Inspection Report No. 03028692/2020002

Dear Mr. Cahill,

Thank you for providing the investigative report and the choice letter dated May 13, 2021, and for our discussions concerning the investigation and preliminary results. As indicated via correspondence of May 21, 2021, Steel of West Virginia ("SWVA") has chosen to provide documentation of its corrective actions in response to the choice letter. It is our hope that, with our extensive prior and ongoing corrective actions, and our assistance throughout the investigation, NRC will consider reducing the possible violation, currently indicated as a Level III violation, to a Level IV violation, or no violation given our immediate addressing of the issue and our efforts which have prevented and will prevent any further issue like this occurring again.

I. Removal of the Devices and Termination of NRC License

To eliminate the possibility of any violation occurring in the future, SWVA has purchased an alternative, non-radioactive measuring device to replace the NRC-licensed, Ronan measuring devices. These devices are a Thermal Mold Level System (TMLS) from Italy, manufactured by SMS.

The process of installing, commission and adjusting these devices has been significantly slowed due to the travel restrictions for the last year. As part of the purchase, and the vendor's requirements, SMS provides commissioning agents to test and commission the devices. Those individuals are located in Italy and it was impossible for most of last year to have them come to the US. After the travel restrictions decreased in 2021, the agents were able to visit the plant to check the installation and begin commissioning. Commissioning was completed in April, 2021. Because the new devices have to be calibrated to each of the mold types, SWVA has begun an incremental calibration process as molds are changed out on the production lines. SWVA has taken the following steps with regard to final removal and replacement of the Ronan devices:

- A. Specifications and design for new TMLS to replace and discontinue Ronan devices were determined and reviewed in 2019-2020
- B. Placement of order for TMLS in August 2020
- C. Receipt of TMLS in November 2020
- D. Installation of TMLS on lines late 2020 into 2021
- E. Commissioning of the TMLS on the lines in April 2021, the delay in commissioning to April was due to COVID related difficulties with international travel, *see Exhibit A*
- F. Verification of molds to new devices
 - a. This process takes significant time and some line shut downs to achieve.
Presently, SWVA has calibrated 2 of 18 mold sizes with the TMLS
- G. Anticipated final calibrations of TMLS October-November, 2021
- H. Removal and decommissioning of Ronan devices targeted for November, 2021
- I. Termination of NRC license – approximately December, 2021

By end of December 2021, SWVA anticipates it will have removed the Ronan devices from the lines and will be requesting a termination of its license with NRC for the Ronan devices. Thus, no NRC violations could occur after that point in time.

II. Immediate Corrective Actions Taken in March, 2020

The investigative report and the choice letter document the immediate corrective actions taken at the time of, and immediately after the facility inspection during on March 11 and 12, 2020. Those actions included:

- A. Shutter on Ronan device discovered to be wired open on March 11, 2020
- B. Immediate briefing on March 11, 2020 with all staff of the license violation by wiring the shutters
- C. Removal of all wiring alterations from devices on March 12, 2020
- D. Creation of Policy Statement Concerning Nuclear Regulatory Commission Licensed Device in April 2020

In addition to those immediate actions, and as documented through our various document productions, conversations and interviews during the investigation, SWVA has implemented the following additional corrective actions, policy changes and procedures to be certain the Ronan devices are not altered, modified or otherwise tampered with in violation of the license:

- A. Creation of Policy Statement Concerning Nuclear Regulatory Commission Licensed Device in April 2020, which was distributed to all SWVA caster employees
- B. From April 2020 to the present, SWVA's Radiation Safety Officer conducted Awareness Training Classes with all current caster employees
- C. Creation of policy that all Caster employees moving forward will receive the Awareness Training Class prior to their assignment to work at the Caster

- D. On April 15th and 16th, 2020, the following SWVA employees received Radiation Safety Officer & Radiation Safety and Nuclear Gauge User Training: Tyler M. Perry, Guy Marcum, Charles Lucas, Jacob Brinkerhoff, Roger Stumbo, Scott Stephens and Brad Jones
- E. On June 23, 2020, the Plant Radiation Safety Officer delegation of duties and authority was transferred from Mike Howard to Brad Jones

III. Ongoing Corrective Actions and Mitigation

As part of the above, SWVA has conducted additional periodic trainings concerning the devices with all employees, staff, and others who have any contact, proximity to, or control over the devices and control over those who use the devices. Additionally, all new caster employees and other new employees who may be in proximity or contact with the devices, have been trained on the radiation policies and license requirements.

SWVA has also posted signage throughout the facility to warn those present of the radioactive nature of the devices and to indicate source material in the storage area. We have attached hereto as collective **Exhibit B** photographs of the signs that have been placed as part of SWVA's ongoing corrective actions.

IV. Statement of Ongoing and Future Compliance

SWVA states unequivocally that the devices have not been wired open since the wires were removed in March 2020, and that SWVA, nor any of its agents will violate the NRC license until the devices are removed from the production lines.

V. Request and Bases for Reduction of Indicated Level III Violation

Given the foregoing corrective actions and SWVA's immediate correction of the violation, SWVA requests that NRC reduce the current indicated Level III to a Level IV, or no, violation. We believe this request to be appropriate considering the following:

- A. No exposure to employees as documented in the inspection report
- B. Monitoring of the devices during the inspection produced no indication of harm to health and safety of employees
- C. Corrective actions taken immediately and ongoing to prevent any such violations from occurring again
- D. Forthcoming removal of the Ronan devices, and current installation and commissioning of non-radioactive device to eliminate radioactive source use at the facility.

As noted in the Inspection Report, the NRC is processing this apparent violation as an escalated enforcement action in accordance with the NRC Enforcement Policy, as a Notice of Violation has not yet been issued. Based on the circumstances of the violation and the corrective actions taken, SWVA requests that the violation cited in the Inspection Report be reduced to a Level IV

or, no violation. Pursuant to the NRC Enforcement Policy, a Level III violation is one “that resulted in or could have resulted in moderate safety or security consequences (e.g., violations that created a potential for moderate safety or security consequences or violations that involved systems not being capable, for a relatively short period, of preventing or mitigating a serious safety or security event.” *Enforcement Policy*, § 2.2.2(c). SWVA believes that the mitigation efforts set forth above demonstrate that the violation can be prevented and SWVA is committed to rectifying the violation. Further, the Level IV violation examples set forth in the Enforcement Policy include “[a] failure to comply with a technical specification action requirement demonstrate[ing] misapplication of the conventions in technical specifications.” *Enforcement Policy*, §6.1(d)(1). SWVA’s violation involves such noncompliance with technical specifications and, as such, should be reduced to a Level IV violation, especially given the mitigation and prevention efforts taken.

Further, there are several instances where the NRC issued Security Level III notices, where the actions were far more egregious than SWVA’s violation. Specifically, in the below examples, the licensee often failed to completely respond or provided deliberately false information to the NRC inspector. *See Notice of Violation and Proposed Civil Penalty*, S&M Testing Laboratory, Action No. EA-08-332, (imposing a civil penalty and noting failure of licensee to respond); *Notice of Violation and Proposed Imposition of Civil Penalty*, S&R Engineering S.E., Action no. EA-11-098 (imposing civil penalty and assessing the violation as an SL III because of failure to respond completely); *Notice of Violation and Proposed Imposition of Civil Penalty*, S.C. Johnson & Son, Inc., Action No. EA-97-338 (imposing a SL III due to false statements made to inspector and deliberate improper disposal of radioactive material); and *Notice of Violation and Proposed Imposition of Civil Penalty*, Schultz Surveying & Engineering, Inc., Action No. EA-14-238 (failure to confine possession and use of byproduct materials to the locations and purposes authorized by the license). Here, SWVA has timely and comprehensively responded to the violation and has already begun its long-term plans to fully remediate and remove the licensed devices.

Additionally, the NRC should take into account both the short term and long term remedial, corrective actions and credit SWVA for these efforts. The NRC has offered such credit for even less actions, including instances where a violation was kept at a Security Level III because only immediate corrective actions were taken. *See, Notice of Violation*, SCI Engineering, Inc., Action No. EA-01-237 (civil penalty would have been fully mitigated due to efforts taken by the licensee, however a base civil penalty was issued for failure to secure from unauthorized removal or limit access to byproduct material); and *Notice of Violation*, K & S Engineers, Inc., Action No. EA-17-157 (violation issued for a SL III for failure to properly lock a gauge case and failure for any surveillance, however in the violation notice, the NRC notes that the immediate corrective actions warranted credit). Here, SWVA is going beyond just immediate corrective actions and is removing the device ultimately in its entirety. Based on the foregoing, SWVA requests the NRC reduce the violation to a Security Level III violation, or issue no violation due to the expansive efforts taken by SWVA.

Christopher Cahill, Chief

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Please contact me should you wish to discuss further, or if you need any further information regarding SWVA's corrective actions or plan to eliminate the Ronan devices.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'EPK', is positioned above the typed name.

Ericson P. Kimbel

On behalf of and as counsel for Steel of West Virginia

EPK:MSH

cc: Steve Shaffer (via email to steve.shaffer@nrc.gov)
Steel of West Virginia

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