



**UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
REGION IV  
611 RYAN PLAZA DRIVE, SUITE 400  
ARLINGTON, TEXAS 76011-4005**

December 8, 2004

Mr. Bob Bartosh  
Chief Operating Officer  
Dakota Coal Company  
P.O. Box 5540  
Bismarck, North Dakota 58506-5540

**SUBJECT: NRC INSPECTION REPORT 030-32878/04-001 AND NOTICE OF VIOLATION**

Dear Mr. Bartosh:

This refers to the inspection conducted on November 16, 2004, at your facility in Frannie, Wyoming. This inspection was an examination of activities conducted under your license as they relate to safety and compliance with the Commission's rules and regulations and with the conditions of your license. Within these areas, the inspection consisted of selected examination of procedures and representative records, performance of licensed activities, and interviews with personnel. The inspection findings were discussed with your radiation safety officer at the conclusion of the onsite portion of the inspection on November 16, 2004, and with you during a final telephonic exit briefing on November 23, 2004.

Based on the results of this inspection, the NRC has determined that two Severity Level IV violations of NRC requirements occurred. These violations were evaluated in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600 (enclosed). The violations are cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding them are described in detail. These violations are being cited in the Notice because they were identified by the NRC during the inspection.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. For your consideration and convenience, an excerpt from NRC Information Notice 96-28, "SUGGESTED GUIDANCE RELATING TO DEVELOPMENT AND IMPLEMENTATION OF CORRECTIVE ACTION," is enclosed. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response 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>. 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.

Please note that on October 25, 2004, the NRC suspended public access to ADAMS, and initiated an additional security review of publicly available documents to ensure that potentially sensitive information is removed from the ADAMS database accessible through the NRC's web

site. Interested members of the public may obtain copies of the referenced documents for review and/or copying by contacting the Public Document Room pending resumption of public access to ADAMS. The NRC Public Document Room is located at NRC Headquarters in Rockville, MD, and can be contacted at (800) 397-4209 or (301) 415-4737 or [pdr@nrc.gov](mailto:pdr@nrc.gov).

Should you have any questions concerning this inspection, please contact James Thompson at (817) 276-6538 or the undersigned at (817) 860-8287.

Sincerely,

***/RA CLCain for/***

Mark R. Shaffer, Chief  
Nuclear Materials Inspection Branch

Docket No.: 030-32878  
License No.: 33-27444-01

Enclosures:

1. Notice of Violation
2. NRC Information Notice 96-28
3. NRC Enforcement Policy, NUREG-1600

cc w/Enclosure 1:  
Wyoming Radiation Control Program Director  
North Dakota Radiation Control Program Director

bcc w/Enclosure 1 (via ADAMS distrib):  
MASatorius  
MRShaffer  
CLCain  
JEWhitten  
JLThompson  
KEGardin  
NMIB  
RIV Materials Docket File (5<sup>th</sup> floor)

ADAMS: X Yes     No    Initials: JLT  
X Publicly Available     Non-Publicly Available     Sensitive    X Non-Sensitive

DOCUMENT NAME: s:\dnms\nmib\!thompson\43287801.wpd

RIV:DNMS:NMIB	C:NMIB
JLThompson	MRShaffer
<i>/RA/</i>	<i>/RA CLCain for/</i>
11/30/04	12/08/04

OFFICIAL RECORD COPY

T=Telephone

E=E-mail

F=Fax

## ENCLOSURE 1

### NOTICE OF VIOLATION

Dakota Coal Company  
Bismarck, North Dakota

Docket No. 030-32878  
License No.33-27444-01

During an NRC inspection conducted at the field office in Frannie, Wyoming, on November 18, 2004, two violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the violations are listed below:

- A. 10 CFR 20.1101(a) requires, in part, that the licensee shall develop, document, and implement a radiation protection program sufficiently to ensure compliance with the provisions of this part. 10 CFR 20.1101(c) requires that the licensee shall periodically (at least annually) review the radiation protection program content and implementation.

Contrary to the above, the licensee had not reviewed the radiation protection program content and implementation at least annually. Specifically, the radiation protection program content and implementation has not been reviewed since the previous inspection on July 14, 1998.

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

- B. License Condition 12.B. to NRC License 33-27444-01 states that, in part, before assuming the duties and responsibilities as radiation safety officer (RSO) for this license, the individual [named as RSO in License Condition 12.A.] shall have successfully completed one of the training courses described in Section 8.7.1 of NUREG-1556, Volume 4, dated October 1998.

Contrary to the above, the individual named as RSO in License Condition 12.A. had not completed the training required by License Condition 12.B. prior to assuming the duties and responsibilities as RSO for this license. Specifically, this individual has not been trained in accordance with NUREG 1556, Volume 4, Section 8.7.1, since the renewal of this license on March 5, 2003, at which time this individual assumed responsibility as RSO for this license.

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

Pursuant to the provisions of 10 CFR 2.201, Dakota Coal Company is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator, Region IV, at 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, 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 or severity level, (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, with the basis for your denial, to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

Because your response 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>, to the extent possible, it 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, 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 withholding of such material, 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).

Please note that on October 25, 2004, the NRC suspended public access to ADAMS, and initiated an additional security review of publicly available documents to ensure that potentially sensitive information is removed from the ADAMS database accessible through the NRC's web site. Interested members of the public may obtain copies of the referenced documents for review and/or copying by contacting the Public Document Room pending resumption of public access to ADAMS. The NRC Public Document Room is located at NRC Headquarters in Rockville, MD, and can be contacted at (800) 397-4209 or (301) 415-4737 or [pdr@nrc.gov](mailto:pdr@nrc.gov).

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

Dated this 8<sup>th</sup> day of December 2004