UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
612 EAST LAMAR BLVD, SUITE 400
ARLINGTON, TEXAS 76011-4125

November 17, 2008

EA-08-299

NJS Engineering
ATTN: Neil J. Stodolski, President
123 E. Jackson Boulevard, Suite 1
P.O. Box 226
Spearfish, South Dakota 57783

SUBJECT: NRC INSPECTION REPORT 030-30133/2008-001 AND NOTICE OF VIOLATION

Dear Mr. Stodolski:

This refers to the inspection conducted on August 26, 2008, at NJS Engineering. The inspection was an examination of activities conducted under byproduct material license 40-26894-01 as it relates to safety and compliance with the Commission's rules and regulations, and with the conditions of the license. Within these areas, the inspection consisted of selected examination of procedures and representative records and interviews with personnel. Preliminary inspection findings were discussed with your staff at the conclusion of the inspection. A final exit briefing was conducted with Mr. James Parker, radiation safety officer, on November 17, 2008.

Based on the results of this inspection, the NRC has determined that four violations of NRC requirements occurred. These violations involved the failure to: 1) perform leak testing; 2) provide hazardous material transportation refresher training; 3) provide formal portable gauge user training; and 4) perform annual radiation protection program audits. These violations were evaluated in accordance with the NRC Enforcement Policy included on the NRC's website at www.nrc.gov/about-nrc/regulatory/enforcement.html. The violations are cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding them are described in the subject Notice. The violations are being cited in the Notice because they were identified by the NRC, rather than being self-identified by the licensee.

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, Enclosure 1, 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 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.

Should you have any questions concerning this inspection, please contact Roberto J. Torres at (817) 860-8189 or the undersigned at (817) 860-8130.

Sincerely,

/RA/ Jackie Cook for JEW

Jack E. Whitten, Chief
Nuclear Materials Safety Branch-B

Docket No.: 030-30133
License No.: 40-26894-01

Enclosures:
1. Notice of Violation
2. Excerpt from NRC Information Notice 96-28

cc w/enclosure:
South Dakota Radiation Control Program Director

cc w/Enclosure 1:
ECollins
CACasto
ATHowell
CLCain
VHCampbell
GMVasquez
JEWhitten
ADGaines
RJTorres
FEE
NMSB-A
NMSB-B
RIV Materials Docket File (5th Floor)

SUNSI review completed: ADAMS: X Yes Initials: RJT
__X___ Publicly Available _X_ Non Sensitive

S:\DNMS\!NMIB\Reports in concurrence\NJS ENGINEERING NOV 08-01.doc Final: r:_dnms\

RIV:DNMS:NMSB-B	RIV:DNMS:NMSB-A	C:NMSB-A	
RJTorres	ADGaines	JEWhitten	
/RA/	***/RA/***	***/RA/ JCook for JEW***	
09/12/08	09/26/08	11/17/08	

OFFICIAL RECORD COPY T=Telephone E=E-mail F=Fax

NOTICE OF VIOLATION

EA-08-299

NJS Engineering
Spearfish, South Dakota

Docket No. 030-30133
License No. 40-26894-01

During a NRC inspection conducted on August 26, 2008, four violations of NRC requirements were identified. In accordance with the Enforcement Policy, the violations are listed below:

1. License Condition 14.A of NRC License No. 40-26894-01 requires that sealed sources be tested for leakage and/or contamination at intervals not to exceed the intervals specified in the certificate of registration issued by the U.S. Nuclear Regulatory Commission under 10 CFR 32.210 or by an Agreement State.

   Contrary to the above, the licensee failed to test sealed sources for leakage and/or contamination at intervals not to exceed the intervals specified in the certificate of registration issued by the U.S. Nuclear Regulatory Commission under 10 CFR 32.210 or by an Agreement State. Specifically, a portable gauge Troxler Model 3411B, Serial Number 7932, was leak tested on November 7, 2006. The leak test interval for this portable gauge is 12 months, according to the certificate of registration issued by an Agreement State. The licensee used this portable gauge 19 times (between April 15, 2008 and August 25, 2008) in NRC jurisdiction, without being tested for leakage and/or contamination.

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

2. License Condition 21 of NRC License No. 40-26894-01 states, that the licensee is authorized to transport licensed material only in accordance with the provisions of 10 CFR Part 71, "Packaging and Transportation of Radioactive Material." Specifically, 10 CFR 71.5(a) requires that a licensee who transports licensed material outside of the site of usage, as specified in the NRC license, or where transport is on public highways, or who delivers licensed material to a carrier for transport, shall comply with the applicable requirements of the Department of Transportation (DOT) regulations in 49 CFR Parts 107, 171 through 180, and 390 through 397, appropriate to the mode of transport.

   49 CFR 172.702 requires that each hazmat employer shall ensure that each hazmat employee is trained and tested, and that no hazmat employee performs any function subject to the requirements of 49 CFR Parts 171-177 unless trained, in accordance with Subpart H of 49 CFR Part 172. The terms Hazmat Employer and Hazmat Employee are defined in 49 CFR 171.8.

   49 CFR 172.704(a) specifies the elements of hazmat employee training as (1) general awareness/familiarization training, (2) function-specific training, (3) safety training, and (4) security awareness training. 49 CFR 172.704(c) requires, in part, that a hazmat employee receive initial training and recurrent training at least once every three years.

Contrary to the above, the licensee, meeting the definition of hazmat employer as defined in 49 CFR 171.8, failed to provide training for its hazmat employees which satisfied the requirements in Subpart H to 49 CFR Part 172. Specifically, two authorized portable nuclear gauge users at the time of this inspection had not received hazmat recurrent training since May 13, 2003, and April 26, 2005, a period greater than three years, and the individuals had transported portable gauges in this time period.

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

3. License Condition 11 of NRC License 40-26894-01 states that licensed material shall only be used by, or under the supervision and in the physical presence of, individuals who have received the training described in the application dated January 22, 2003.

   Item 8 of the application dated January 22, 2003, specified that before using licensed materials, authorized users will have to successfully complete one of the training courses described in Criteria in the section entitled “Training for Individuals Working In or Frequenting Restricted Areas” in NUREG-1556, Volume 1, Rev. 1, dated November 2001. This section states that NRC considers an individual adequately trained if the individual successfully completes a portable gauge manufacturer’s course for users or equivalent course that meets Appendix D criteria of NUREG-1556, Volume 1, Rev. 1.

   Contrary to the above, between July 5, 2005 and August 26, 2008, the licensee allowed an individual to use licensed material without receiving the training described in the application dated January 22, 2003. Specifically, the licensee allowed one individual to use licensed material more than 20 times without the supervision of an authorized user and without having completed a portable gauge manufacturer’s course for users or equivalent course that meets Appendix D criteria of NUREG-1556, Volume 1, Rev. 1.

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

4. 10 CFR 20.1101(c) requires, in part, that the licensee shall periodically (at least annually) review the radiation protection program content and implementation.

   Contrary to the above, between January 1, 2007, and December 31, 2007, the licensee failed to periodically (at least annually) review the radiation protection program content and implementation.

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

Pursuant to the provisions of 10 CFR 2.201, NJS Engineering, 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, U.S. Nuclear Regulatory Commission, 612 East Lamar Blvd., Suite 400, Arlington, Texas 76011-4125, 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 the 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.

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).

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

Dated this _17th day of November 2008.