



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

August 4, 2009

Doug Holmberg
Executive Vice President of Operations
DMS Health Technologies
2101 North University Drive
Fargo, North Dakota 58102

SUBJECT: NRC INSPECTION REPORT 030-36404/09-01 AND NOTICE OF VIOLATION

Dear Mr. Holmberg:

This refers to the inspection conducted on June 22 and 26, 2009, at the main office in Sioux Falls and the field office in Rapid City, South Dakota. This inspection was an examination of activities conducted under your NRC 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, observations of activities, and interviews with personnel. A final exit briefing was conducted with you and your staff on July 17, 2009.

Based on the results of the inspection, the NRC has determined that a Severity Level IV violation of NRC requirements occurred. This violation was evaluated in accordance with the NRC Enforcement Policy included on the NRC's Website at www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html. The violation is cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding it are described in detail. The violation involved a failure to follow procedures for opening radioactive packages. The violation is being cited in the Notice because it was 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, 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 NRC's 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 regarding this letter or the enclosed Notice, please contact Jason Razo at (817) 276-6589 or the undersigned at (817) 860-8252.

Sincerely,

/RA/

Anthony D. Gaines, Chief
Nuclear Materials Safety Branch A

Docket: 030-36404
License: 40-32477-01

Enclosures:

1. Notice of Violation
2. Information Notice 96-28

cc w/enclosure:

Robert J. Stahl, Administrator
Office of Health Care Facilities
Licensure & Certification
South Dakota Department of Health
615 E. 4th Street
Pierre, SD 57501-1434

cc w/enclosure:

- E. Collins, RA
- A. Howell, D:DNMS
- C. Cain, DD:DNMS
- A. Gaines, C:NMSB-A
- J. Whitten, C:NMSB-B
- J. Razo, NMSB-A
- L. Hanson, NMSB-A
- Fee Coordinator

Hard Copy:
RIV Materials Docket File (5th Floor)

S:\DNMS\!NMIB!\Razo\Inspections\south dakota\2009-06\final docs\DMS CL and SLIV NOV IR 09-01.doc

ADAMS		<input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> SUNSI Review Complete	Reviewer Initials: JMR
Category B.1		<input checked="" type="checkbox"/> Publicly Available		<input checked="" type="checkbox"/> Non-sensitive	
Category A		<input type="checkbox"/> Non-publicly Available		<input type="checkbox"/> Sensitive	
NMSB-A	C:NMSB-A				
JMRazo	ADGaines				
<i>/RA/</i>	<i>/RA/</i>				
7/27/09	8/4/09				

OFFICIAL RECORD COPY

T=Telephone

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NOTICE OF VIOLATION

DMS Health Technologies
Sioux Falls, South Dakota

Docket 030-36404
License 40-32477-01

During an NRC inspection conducted on June 22 and 26, 2009, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 20.1906(b) requires each licensee to monitor the external surfaces of packages labeled with a Radioactive White I, Yellow II, or Yellow III label for: (1) radioactive contamination, unless the package contains only radioactive material in the form of a gas or in special form as defined in 10 CFR 71.4; and (2) radiation levels, unless the package contains quantities of radioactive material that are less than or equal to the Type A quantity, as defined in 10 CFR 71.4 and Appendix A to Part 71.

10 CFR 20.1907(c) requires licensees to perform the monitoring required by paragraph (b) above, as soon as practicable, but not later than 3 hours after receipt of the package if it is received during the licensee's normal working hours, or not later than 3 hours from the beginning of the next working day if it is received after working hours.

Contrary to the above, on June 26, 2009, the licensee received a package labeled with a Radioactive Yellow II label during working hours, the package was not exempt from the monitoring requirement for radioactive contamination, and the licensee did not perform the required monitoring. Specifically, the package received by the licensee contained unit doses of technetium-99m containing approximately 10-20 mCi each in unsealed form.

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

Pursuant to the provisions of 10 CFR 2.201 DMS Health Technologies is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001, with a copy to the Regional Administrator, Region IV 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: (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 was, or 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, U.S. Nuclear Regulatory Commission Washington, DC 20555-0001.

ENCLOSURE 1

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 www.nrc.gov/reading-rm/pdr.html or 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 may be required to post this Notice within 2 working days.

Dated this 4th day of August 2009