



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

EA 09-176

January 25, 2010

Jim Gilman Excavating, Inc.  
ATTN: Paul Thompson  
Radiation Safety Officer  
3099 Grand Avenue  
Butte, Montana 59701

**SUBJECT: NOTICE OF VIOLATION**

On August 8, 2005, the President of the United States signed the Energy Policy Act of 2005 (EPAct) into law. Section 651(e) of the EPAct expanded the definition of byproduct material to include naturally occurring and accelerator-produced radioactive materials (NARM), such as Radium-226 contained in sealed sources, which were not previously regulated by the U.S. Nuclear Regulatory Commission (NRC). Although the legislation made NRC's authority over these new materials effective immediately, the NRC did not have regulations in place that would specifically apply to this newly covered byproduct material. Therefore, the NRC issued a time-limited waiver on August 31, 2005 (70 FR 51581), for continued use and possession of NARM, allowing time for the NRC to develop regulations to implement the new requirements.

The NRC issued three Regulatory Information Summaries (RIS) informing licensees, manufacturer and distributors, and Agreement States of the recent issuance of regulations concerning the new byproduct materials. The RIS notified recipients that the NRC would be terminating waivers in phases, beginning November 30, 2007 for the State of Montana. The RIS explained that upon waiver termination, all persons in possession of material newly defined as byproduct material associated with the respective termination phase would be expected to be in compliance with NRC regulations. In addition, the RIS identified that such persons would be required to (1) submit license amendment requests for NARM within 6 months from the date the waiver is terminated if they hold an NRC specific byproduct materials license, or (2) submit a license application for NARM within 12 months from the date the waiver is terminated.

In accordance with the transition plan, the due date for submitting a license application for NARM for users located in the State of Montana was December 1, 2008. Your company submitted a license application for NARM on March 23, 2009. Therefore, the NRC has determined to issue a Severity Level IV violation for failure to submit a license application to include NARM activities on or before December 1, 2008, in accordance with Enforcement Guidance Memorandum EGM-09-004.

The NRC has concluded that the information provided to support this decision is already adequately addressed in the license application and information obtained during the pre-licensing visit. Therefore, you are not required to respond to this letter.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

Thank you for your cooperation.

Sincerely,

**/RA/**

Roberto J. Torres, Acting Chief  
Nuclear Materials Safety Branch B

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