



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION IV
612 EAST LAMAR BLVD, SUITE 400
ARLINGTON, TEXAS 76011-4125

April 15, 2011

EA-10-243

Mr. Roy Holm, P.E., P.L.S.
President and Senior Engineer
Holm, Blough and Company
1402 Stampede Ave.
Cody, Wyoming 82414

SUBJECT: NOTICE OF VIOLATION (NRC INSPECTION REPORT 030-38135/2010-001)

Dear Mr. Holm,

This refers to the initial, announced inspection conducted on September 22, 2010, at your office in Cody, Wyoming. The inspection was an examination of activities conducted under NRC Material License 49-29361-01 as it relates to radiation safety and security, and compliance with the Commission's rules and regulations and with the conditions of the license. Within these areas, the inspection consisted of a selected examination of procedures and representative records and interviews with personnel.

In our January 13, 2011, letter transmitting the inspection report, we provided you with the opportunity to address the apparent violations identified in the report by either attending a predecisional enforcement conference or by providing a written response before we made our final enforcement decision. In a letter dated February 9, 2011, you provided a response to the apparent violations.

Based on the information developed during the inspection and the information that you provided in your response to the January 13 inspection report, the NRC has determined that two violations of NRC requirements occurred. These violations are cited in the enclosed Notice of Violation and the circumstances surrounding each are described in detail in the subject inspection report. The first violation involved the failure to use two independent physical controls to secure two portable gauges while in storage at your Cody, Wyoming, office as required by 10 CFR 30.34(i).

The second violation involved the failure to limit possession of licensed material to that authorized on your NRC license, as required by 10 CFR 30.3(a). Specifically, you possessed two portable gauges containing a radium-226 sealed source and NRC Materials License 49-29361-01 did not authorize radium-226.

The NRC considers the violation of 10 CFR 30.34(i) significant because this security requirement provides a reasonable assurance that portable gauges will be secured from unauthorized access or theft. Therefore, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level III. The NRC Enforcement Policy may be found on the NRC's Web site at www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html.

In accordance with the NRC Enforcement Policy, a base civil penalty for \$3,500 is considered for a Severity Level III violation.

Because your facility has not been the subject of escalated enforcement within the last two inspections, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section 2.3.4 of the *Enforcement Policy*. Based on your prompt and comprehensive corrective actions, the NRC has determined that Corrective Action credit is warranted. Your corrective actions included immediately securing the portable gauges with two independent physical controls, promptly submitting a request to add the radium gauges to your radioactive material license for storage, designating a separate storage location with additional controls, purchasing steel lockable storage containers, and adding provisions to your annual safety training program for gauge users which further emphasizes the importance of gauge security.

Therefore, to encourage prompt and comprehensive correction of violations, I have been authorized, after consultation with the Director, Office of Enforcement, not to propose a civil penalty in this case. However, significant violations in the future could result in a civil penalty. In addition, issuance of this Severity Level III violation constitutes escalated enforcement action that may subject you to increased inspection effort.

The violation of 10 CFR 30.3(a) was also evaluated in accordance with the NRC Enforcement Policy and has been categorized at Severity Level IV. As such, this violation is not subject to escalated enforcement. The violation is cited in the enclosed Notice of Violation and the circumstances surrounding it are described in detail in the subject inspection report.

The NRC has concluded that the information regarding the reason for the violations, the corrective actions taken and planned to correct the violations and prevent recurrence, and the date when full compliance was achieved is already addressed on the docket as described in NRC Inspection Report 030-38135/2010-001 and your letter dated February 9, 2011. Therefore, you are not required to respond to this letter unless the description herein does not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice of Violation.

In accordance with 10 CFR 2.390 of the NRC's Rules of Practice, a copy of this letter and its enclosure 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.

If personal privacy or proprietary information is necessary to provide an acceptable response, 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 information, 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). The NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>).

Should you have any questions regarding this letter or the enclosed Notice, please contact Ms. Vivian Campbell, Chief, Nuclear Materials Safety Branch A, at 817-860-8287.

Sincerely,

/RA/ ATH for

Elmo E. Collins
Regional Administrator

Docket No.: 030-38135
License No.: 49-29361-01

Enclosure:
Notice of Violation

cc w/enclosure:
Scott W. Ramsay
Radiological Services Supervisor
Wyoming Office of Homeland Security
2421 E. 7th Street
Cheyenne, WY 82001

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<input checked="" type="checkbox"/> Publicly Available		<input type="checkbox"/> Non-publicly Available		<input type="checkbox"/> Sensitive	<input checked="" type="checkbox"/> Non-sensitive
Category –		KEYWORD: EA-XX-YYY NOV for HB and C			
RIV:DNMS:NMSB-A	NMSB-A	C:NMSB-A	ACES	RC	
MRPoston-Brown	GMVasquez	VHCampbell	MCMaier	KSFuller	
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3/17/2011	3/22/2011	3/23/2011	3/24/2011	4/14/2011	
D:DNMS	DRA	OE	RA		
RJCaniano	ATHowell	LSreenivas	EECollins		
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3/31/2011	4/05/2011	4/15/2011	4/15/2011		

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NOTICE OF VIOLATION

Holm, Blough and Company
Cody, Wyoming

Docket No: 030-38135
License No: 49-29361-01
EA-10-243

During an NRC inspection conducted on September 22, 2010, at the licensee's facility in Cody, Wyoming, the following violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. 10 CFR 30.34(i) requires that each portable gauge licensee shall use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal whenever portable gauges are not under the control and constant surveillance of the licensee.

Contrary to the above, on September 22, 2010, the licensee failed to have the required two physical controls in place to prevent the unauthorized removal of two portable gauges when the gauges are not under the control and constant surveillance of the licensee. Specifically, two portable gauges, containing radium-226, were stored in a locked garage providing only one physical control to prevent theft or unauthorized removal.

This is a Severity Level III violation (Section 6.3)

- B. 10 CFR 30.3(a) requires, in part, that no person shall manufacture, produce, transfer, receive, acquire, own, possess or use byproduct material except as authorized in a specific or general license issued in accordance with the regulations.

Contrary to the above, on September 22, 2010, the licensee was in possession of two radium portable gauges, each containing approximately 2 mCi of material, that were not authorized under a radioactive materials license.

This is a Severity Level IV violation (Section 6.3)

The NRC has concluded that the information regarding the reason for the violations, the corrective actions taken and planned to correct the violations and prevent recurrence, and the date when full compliance was achieved is already addressed on the docket as described in NRC Inspection Report 030-38135/2010-001 and your letter dated February 9, 2011. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation, EA-10-243", and send it 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).

If you choose to respond, 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>. Therefore, to the extent possible, the response should not include any personal privacy, proprietary or safeguards information so that it can be made available to the public without redaction.

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

Dated this 15th day of April 2011