



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
1600 EAST LAMAR BLVD
ARLINGTON, TEXAS 76011-4511

February 7, 2012

EA-11-233

Wayne Bunge
Plant Manager
Dakota Panel
1651 Culvert Street
Rapid City, South Dakota 57701

SUBJECT: NOTICE OF VIOLATION - NRC INSPECTION REPORT 030-20262/11-001

Dear Mr. Bunge:

This refers to the inspection conducted on August 29, 2011, at your facility in Rapid City, South Dakota, with continued in-office review through October 13, 2011. This inspection examined activities conducted under your license as they related to radiation safety, to compliance with the Commission's rules and regulations, and to the conditions of your license.

The NRC inspector found that you have not had a qualified radiation safety officer since January 2010, when your former radiation safety officer retired. A preliminary exit briefing was conducted with Mr. Eric Baker of your staff at the conclusion of the onsite portion of the inspection on August 29, 2011. Additional telephone conversations occurred between Mr. Michael Vasquez, Chief, Nuclear Materials Safety Branch A, and you to discuss the inspection findings. A final telephonic exit briefing was conducted with you on November 7, 2011. An inspection report identifying an apparent violation was issued on November 14, 2011 (ML11318A186).

In the letter transmitting the inspection report, we provided you with the opportunity to address the apparent violation 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 December 12, 2011 (ML12004A144), 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 inspection report, the NRC has determined that a violation of NRC requirements occurred. This violation is cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding it are described in detail in the subject inspection report. The violation involved the failure to have a qualified radiation safety officer.

The NRC considers this violation significant because a trained radiation safety officer provides the NRC with reasonable assurance that someone in your organization is familiar with NRC regulations, can serve as the point of contact for radiation safety activities, and can respond to emergency activities. Therefore, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level III.

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$ 3,500 is considered for a Severity Level III violation. Because your facility has not been the subject of escalated enforcement actions 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 prompt and comprehensive corrective actions, the NRC determined that credit was warranted for *Corrective Action*. Corrective actions included, but were not limited to: (1) immediately selecting a new radiation safety officer, (2) sending the new radiation safety officer to required training, and (3) developing a policy and procedure to ensure that the radiation safety officer position remains filled by a qualified individual.

Therefore, to encourage prompt and comprehensive correction of violations, and in recognition of the absence of previous escalated enforcement action, 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 NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence, and the date when full compliance was achieved is already adequately addressed on the docket in your letter dated December 12, 2011, and our November 14, 2011, inspection report. Therefore, you are not required to respond to this letter unless the description therein 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.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response, if you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's Agencywide Documents Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response, if you choose to provide one, 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

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EA-11-233

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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 concerning this inspection, please contact Mr. Michael Vasquez at (817) 200-1130.

Sincerely,

/RA/

Elmo E. Collins,
Regional Administrator

Docket: 030-20262
License: 40-23107-01

Enclosure: Notice of Violation

cc (w/Enclosure):
South Dakota Radiation Control Program Director

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Marisa.Herrera@nrc.gov	Jason.Razo@nrc.gov ;	Duane.White@nrc.gov ;
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ADAMS	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> SUNSI Review Complete	Reviewer Initials: JMR5
<input checked="" type="checkbox"/> Publicly Available	<input type="checkbox"/> Non-publicly Available	<input type="checkbox"/> Sensitive	<input checked="" type="checkbox"/> Non-sensitive	
Category – KEYWORD:				
DNMS:NMSBA	DNMS:NMSBA:BC	ACES	ACES	
JMRazo	GMVasquez	MCMaier	HGepford	
/RA/	/RA/	/RA/	/RA/	
1 / 18 /2012	1 / 24 /2012	01/25/2012	01/25/2012	
RC	D:DNMS	DRA	RA	
KSFuller	RJCaniano	ATHowell	EECollins	
/RA/	/RA/	/RA/	/RA/	
01/26/2012	01/29/2012	02/02/2012	2/7/2012	

NOTICE OF VIOLATION

Dakota Panel
Rapid City, South Dakota

Docket: 030-20262
License: 40-23107-01
EA-11-233

During an NRC inspection conducted from August 29 through October 13, 2011, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

License Condition 12 of Amendment 06 to NRC Materials License 40-23107-01 identified a named individual as the Radiation Safety Officer (RSO) for this license; and the condition stated, in part, that before assuming the duties and responsibilities as RSO for this license, an individual shall have successfully completed one of the training courses described in NUREG-1556, Volume 4.

Contrary to the above, from January 2010 through September 23, 2011, the licensee failed to have the individual named in the license as RSO and the licensee did not have an individual identified as RSO who had successfully completed one of the training courses described in NUREG-1556, Volume 4.

This is a Severity Level III violation (Section 6.3).

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed on the docket in your letter dated December 12, 2011 (ML12004A144), and in Inspection Report 030-20262/11-001 (ML11318A186). 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-11-233," 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, 1600 East Lamar Blvd., Arlington, Texas 76011-4511, 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 Agencywide Documents Access Management 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 may be required to post this Notice within 2 working days of receipt.

Dated this 7th day of February 2012

Enclosure