



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
2100 RENAISSANCE BOULEVARD, SUITE 100
KING OF PRUSSIA, PENNSYLVANIA 19406-2713

August 23, 2013

Docket Nos. 03036678
03036679

License Nos. 07-30963-01
07-30963-02G

Peter Schmitt
President
Montesino Technologies, Inc.
1719 Delaware Avenue, Suite 300
Wilmington, DE 19806-2362

SUBJECT: NRC INSPECTION REPORT NOS. 03036678/2013-001 AND
03036679/2013-001, MONTESINO TECHNOLOGIES, INC., WILMINGTON,
DELAWARE SITE AND NOTICE OF VIOLATION

Dear Mr. Schmitt:

On February 11, 2013, Steven Courtemanche of this office conducted a telephone discussion with Adam Smith of your staff of activities authorized by the above listed NRC licenses. The discussion was limited to a review of the status of your licensed program pertaining specifically to the following uses of radioactive materials: description of the location of use, the possession of licensed material at your listed location of use and present location of business, the distribution of devices containing radioactive material under the authorization of your general distribution license, and the non-payment of fees as described in Annual Fees Notices LFB 13-0138 and LFB 13-0139 by the licensee. On June 27, 2013, and August 15, 2013, Mr. Courtemanche conducted an inspection of activities authorized by the above listed NRC licenses. The inspection consisted of interviews with personnel and the review of records. The findings of the inspection were discussed with you at the conclusion of the inspection on August 15, 2013.

Based on the results of this inspection and in accordance with the NRC Enforcement Policy, the NRC has determined that two Severity Level IV violations of NRC requirements occurred. The violations involved: 1) the failure to amend Item 2 of your licenses when you changed your mailing address from "1900 Superfine Lane, Suite 7, Wilmington, Delaware 19802" to "1719 Delaware Avenue, Wilmington, Delaware 19806-2362"; and 2) the failure to submit quarterly distribution reports of devices containing radioactive material as authorized by License No. 07-30963-02G.

The violations are cited in the enclosed Notice of Violation (Notice), because the violations were identified by the NRC.

During the telephone discussion of inspection of February 11, 2013, you indicated that radioactive material was never possessed under NRC License No. 07-30963-01. You stated that gauges containing radioactive materials were delivered directly to the customer from the manufacturer; that you would request an amendment to each of your licenses updating the mailing address and current location of use; and that you will submit the quarterly distribution reports of devices containing radioactive material authorized under your general distribution

license for Calendar Year 2012, in accordance with 10 CFR 32.52 for each subsequent calendar quarter. Please provide a copy of a bill of lading showing that devices are shipped directly from the manufacturer to the client with your response to the enclosed Notice of Violation. During the exit meeting of August 15, 2013, Mr. Courtemanche noted that the Annual Fees, that were owed, had been paid and that your license had been amended for your new business location. It is our understanding that payment for future Annual Fees Notices will be submitted promptly.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure(s), 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 document system (ADAMS), accessible from the NRC website 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.

Current NRC regulations and guidance are included on the NRC's website at www.nrc.gov; select **Nuclear Materials; Med, Ind, & Academic Uses**; then **Regulations, Guidance and Communications**. The current Enforcement Policy is included on the NRC's website at www.nrc.gov; select **About NRC, Organizations & Functions; Office of Enforcement; Enforcement Documents**; then **Enforcement Policy (Under 'Related Information')**. You may also obtain these documents by contacting the Government Printing Office (GPO) toll-free at 1-866-512-1800. The GPO is open from 8:00 a.m. to 5:30 p.m. EST, Monday through Friday (except Federal holidays).

The NRC's Safety Culture Policy Statement became effective in June 2011. While a policy statement and not a regulation, it sets forth the agency's *expectations* for individuals and organizations to establish and maintain a positive safety culture. You can access the policy statement and supporting material that may benefit your organization on NRC's safety culture Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/safety-culture.html>. We strongly encourage you to review this material and adapt it to your particular needs in order to develop and maintain a positive safety culture as you engage in NRC-regulated activities.

Please contact Steven R. Courtemanche at 610-337-5075 if you have any questions regarding this matter.

P. Schmitt

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Your cooperation with us is appreciated.

Sincerely,

Original signed by Judith A. Joustra

Judith A. Joustra, Chief
Commercial and R&D Branch
Division of Nuclear Materials Safety

Enclosure:
Notice of Violation

cc:
Adam Smith, Radiation Safety Officer
State of Delaware

P. Schmitt

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Your cooperation with us is appreciated.

Sincerely,

Original signed by Judith A. Joustra

Judith A. Joustra, Chief
Commercial and R&D Branch
Division of Nuclear Materials Safety

Enclosure:
Notice of Violation

cc:
Adam Smith, Radiation Safety Officer
State of Delaware

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OFFICE	DNMS/RI	N	DNMS/RI		DNMS/RI		
NAME	SCourtemanche/src		JJoustra/jaj				
DATE	08/23/2013		08/23/2013				

OFFICIAL RECORD COPY

NOTICE OF VIOLATION

Montesino Technologies, Inc.
Wilmington, DE

Docket Nos. 03036678
03036679
License Nos. 07-30963-01
07-30963-02G

During an NRC inspection conducted on February 11, 2013, June 27, 2013, and August 15, 2013, two violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. 10 CFR 32.52 requires, in part, that each person licensed under 10 CFR 32.51 to initially transfer devices to generally-licensed persons shall report to the Director, Office of Federal and State Materials and Environmental Monitoring Programs (FSME), ATTN: GLTS, by an appropriate method listed in 10 CFR 30.6(a) all transfers of such devices to persons for use under the general license in 10 CFR 31.5. The report must be filed on a quarterly basis in a clear and legible report containing all of the data required by the form. 10 CFR 32.52(a)(7) requires that if no transfers have been made to or from persons generally licensed under 10 CFR 31.5 during the reporting period, the report must so indicate.

Contrary to the above, as of August 15, 2013, each person licensed under 10 CFR 32.51 to initially transfer devices to generally-licensed persons did not report to the Director, FSME, ATTN: GLTS, by an appropriate method listed in 10 CFR 30.6(a) all transfers of such devices to persons for use under the general license in 10 CFR 31.5. Specifically, the last report was submitted by the licensee in January 2012, and the licensee did not submit a report for subsequent calendar quarters when there were no transfers of devices under the general license in 10 CFR 31.5 until February 11, 2013, when notified of the need to file by the inspector. Also, as of August 15, 2013, a report had not been filed by the licensee for the second calendar quarter of 2013 when one gauge was distributed.

This is a Severity Level IV violation (Section 6.9).

- B. Item 2 of NRC License Nos. 07-30963-01 and 07-30963-02G and License Condition 10 of NRC License No. 07-30963-01 specify that the licensee's mailing address and authorized location of use, respectively, as 1900 Superfine Lane, Wilmington, DE 19802.

Contrary to the above, on September 1, 2012, the licensee's mailing address and location of use were no longer 1900 Superfine Lane, Wilmington, DE 19802. Specifically, the licensee moved to a new location, 1719 Delaware Avenue, Suite 300, Wilmington, DE 19806-2632, a location not stated on the license and did not request an amendment to its license until February 11, 2013.

This is a Severity Level IV violation (Section 6.3)

Notice of Violation
Montesino Technologies, Inc.

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Pursuant to the provisions of 10 CFR 2.201, Montesino Technologies, Inc. is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555, with a copy to the Regional Administrator, Region I, 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 each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation, (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.

If you contest this enforcement action, you should also provide a copy of your response to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, any response which contests an enforcement action shall be submitted under oath or affirmation.

Your response will be placed in the NRC Public Document Room (PDR) and on the NRC Web site. To the extent possible, it should, therefore, not include any personal privacy, proprietary, or safeguards information so that it can be made publically available without redaction. However, if you find it necessary to include such information, you should clearly indicate the specific information that you desire not to be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public.

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

Dated This 23 day of August 2013