



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

REGION IV
1600 E. LAMAR BLVD.
ARLINGTON, TX 76011-4511

February 1, 2016

Mr. James Trudeau
Radiation Safety Officer
FMG, Inc.
3700 Sturgis Road
Rapid City, South Dakota 57702-0317

SUBJECT: NRC INSPECTION REPORT NO. 030-20350/2015-001 AND NOTICE OF VIOLATION

Dear Mr. Trudeau:

This letter refers to the routine, unannounced inspection conducted on November 30, 2015, at your office located in Rapid City, South Dakota. The inspection continued with in-office reviews through January 19, 2016. This inspection examined activities conducted under your license as they relate to safety and security, to compliance with the Nuclear Regulatory Commission's (NRC) rules and regulations, and with the conditions of your license. Within these areas, the inspection consisted of a selected examination of procedures and representative records, observations of activities, and interviews with personnel. The inspector discussed the preliminary inspection findings with you at the conclusion of the on-site portion of the inspection. A final exit briefing was conducted telephonically with you on January 20, 2016.

Based on the results of this inspection, the NRC has determined that two Severity Level IV violations of NRC requirements were identified. The violations were evaluated in accordance with the NRC Enforcement Policy which can be found at the NRC's Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>. The violations involved the failure to: (1) periodically (at least annually) review the radiation protection program; and (2) provide Department of Transportation training as required by 10 CFR 71.5. The violations are cited in the enclosed Notice of Violation (Notice) because they were identified by the NRC during the inspection.

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 will be achieved, is already adequately addressed on the docket in your email dated December 28, 2015 (available electronically for public inspection in the NRC's Agencywide Documents Access and Management System (ADAMS) at ML16027A037). 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.

In accordance with 10 CFR 2.390 of the NRC's "Agency Rules of Practice and Procedure," a copy of this letter, its enclosure, and your response, if any, will be made available electronically for public inspection in the NRC Public Document Room or in the NRC's 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 or proprietary information so that it can be made available to the public without redaction.

Should you have any questions concerning this letter or the enclosed Notice, please contact Mr. Don Stearns at (817) 200-1176 or the undersigned at (817) 200-1456.

Sincerely,

/RA/

Brooke G. Smith, Acting Chief
Nuclear Materials Safety Branch-A

Docket: 030-20350
License: 40-26818-01

Enclosure:
Notice of Violation (Notice)

cc: South Dakota Radiation Control Program Director

In accordance with 10 CFR 2.390 of the NRC's "Agency Rules of Practice and Procedure," a copy of this letter, its enclosure, and your response, if any, will be made available electronically for public inspection in the NRC Public Document Room or in the NRC's 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 or proprietary information so that it can be made available to the public without redaction.

Should you have any questions concerning this letter or the enclosed Notice, please contact Mr. Don Stearns at (817) 200-1176 or the undersigned at (817) 200-1456.

Sincerely,

/RA/

Brooke G. Smith, Acting Chief
Nuclear Materials Safety Branch-A

Docket: 030-20350
License: 40-26818-01

Enclosure:
Notice of Violation (Notice)

cc: South Dakota Radiation Control Program Director

DISTRIBUTION:

K. Kennedy, DRA	M. Shaffer, D:DNMS	L. Howell, DD:DNMS
B. Smith, AC:NMSB-A	J. Whitten, C:NMSB-B	ACES
R4NMSB-A		

ADAMS ACCESSION NUMBER: ML16028A491

<input checked="" type="checkbox"/> SUNSI Review		ADAMS	<input checked="" type="checkbox"/> Publicly Available	<input checked="" type="checkbox"/> Non-Sensitive	Keyword:
By: DLS		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Non-Publicly Available	<input type="checkbox"/> Sensitive	
OFFICE	NMSB-A	C:NMSB-A			
NAME	DLStearns	BGSmith			
SIGNATURE	/RA/	/RA/			
DATE	01/28/16	02/01/16			

OFFICIAL RECORD COPY

NOTICE OF VIOLATION

FMG, Inc.
Rapid City, South Dakota

Docket: 030-20350
License: 40-26818-01

During an NRC inspection conducted on November 30, 2015 two violations of NRC requirements were identified. In accordance with NRC Enforcement Policy, the violations are listed below:

1. 10 CFR 20.1101(c) states, that the licensee shall periodically (at least annually) review the radiation protection program content and implementation.

Contrary to the above, the licensee did not periodically (at least annually) review the radiation protection program content and implementation. Specifically, the licensee did not review the radiation protection program content and implementation for the years 2012, 2013, and 2014.

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

2. License Condition 19 of License No. 40-27465-01 requires, in part, that the licensee is authorized to transport licensed material only in accordance with the provisions of 10 CFR Part 71, "Packaging and Transportation of Radioactive Material."

10 CFR 71.5 states, in part, that each licensee who transports licensed material outside the site of usage, as specified in the NRC license, or where transport is on public highways, shall comply with the applicable requirements of the Department of Transportation (DOT) regulations in 49 CFR Parts 171 through 180, and 30 through 397, appropriate to the mode of transport.

49 CFR 172.702 requires that each hazmat employer shall ensure that each hazmat employee is trained and tested, and that no hazmat employee performs any function subject to the requirements of 49 CFR Parts 171 through 177 unless trained, in accordance with Subpart H of 49 CFR Part 172. The terms "hazmat employer" and "hazmat employee" are defined in 49 CFR 171.8. 49 CFR 172.704(c)(2) requires that a hazmat employee must receive the training required by this subpart at least once every 3 years.

Contrary to the above, between December 30, 2014 and the date of this inspection on November 30, 2015, the licensee did not provide training for one of the hazmat employees (authorized gauge users) as required by 10 CFR 71.5. The licensee meets the definition of hazmat employer as specified in 49 CFR 171.8. Specifically, the gauge user last received training on December 30, 2011, and transported licensed material after December 2014 to temporary job sites in South Dakota without the required recurrent training required by 10 CFR 71.5 and 49 CFR 172.704(c)(2).

This is a Severity Level IV violation.

The NRC has concluded that 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 will be achieved, is already adequately addressed on the docket in your email dated December 28, 2015 (available electronically for public inspection in the NRC's

Enclosure

Agencywide Documents Access and Management System (ADAMS) at ML16027A037). 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" 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 E. Lamar Blvd., Arlington, Texas, 76011, within 30 days of the date of the letter transmitting this Notice of Violation.

If you choose to respond, your response will be made available electronically for public inspection in the NRC Public Document Room or in 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>. Therefore, to the extent possible, the response should not include any personal privacy or proprietary 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 two working days of receipt.

Dated this 1st day of February, 2016