



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION III
2443 WARRENVILLE RD. SUITE 210
LISLE, IL 60532-4352

July 27, 2017

EA-17-063

Ms. Sherrilyn Johnson
Plant Manager
Hill's Pet Nutrition
2325 Union Pike
Richmond, IN 47374

SUBJECT: HILL'S PET NUTRITION - NOTICE OF VIOLATION; NRC REACTIVE
INSPECTION REPORT NO. 99990003/2017001(DNMS)

Dear Ms. Johnson:

This letter refers to the U.S. Nuclear Regulatory Commission (NRC) reactive inspection conducted on March 22, 2017, at your facility in Richmond, Indiana, with continued in-office review through April 18, 2017. The purpose of the inspection was to review an incident that was reported to the NRC on December 2, 2016, involving the removal of a generally licensed fixed gauge by unqualified personnel at your facility. During the inspection, an apparent violation of NRC requirements was identified. The significance of the issue and the need for lasting and effective corrective actions was discussed with you during the exit meeting held on April 19, 2017.

The apparent violation concerned the failure to remove a generally licensed fixed gauge in accordance with instructions provided by labels on the device or have an authorized person remove the gauge from installation, as required by Title 10 of the *Code of Federal Regulations* (CFR) Section 31.5(c)(3). Details regarding the apparent violation were provided in the subject inspection report, dated May 19, 2017. The inspection report is available electronically in the NRC's Agencywide Documents Access and Management System (ADAMS) at Accession Number ML17142A235.

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 June 15, 2017, your staff provided a response to the apparent violation. In the response, Hill's Pet Nutrition agrees that it maintained inadequate physical control of the generally licensed device resulting in removal of the device by unauthorized personnel. Specifically, there was nothing in place to restrict access to the device or prevent unauthorized work by contractors. The response also noted that Hill's Pet Nutrition has not had escalated enforcement within the last two years, and requested that the NRC reduce the severity level of the violation and waive any civil penalty if the severity level cannot be reduced.

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. The 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 root cause of the violation was the failure to implement adequate controls to prevent unauthorized access to the gauge while in service.

In your response, you requested the NRC consider reducing the severity level (SL) of the violation from SL III to SL IV. The NRC considers the failure to ensure that only qualified personnel remove a generally licensed fixed gauge in accordance with instructions provided by labels on the device and 10 CFR 31.5(c)(3) to be a significant safety violation. Although there were no actual safety consequences resulting from the failure to comply with the requirements in 10 CFR 31.5(c)(3), there was a potential for significant exposure if the device had not been placed such that the open shutter was shielded by the floor. 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 \$14,000 is considered for a Severity Level III violation.

Because your facility has not been the subject of escalated enforcement actions within the last 2 years 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 upon the commitments made at the exit meeting and the information provided in the letter dated June 15, 2017, the NRC has concluded that corrective action credit is warranted. As immediate corrective actions, you closed and locked the shutter, removed access to the device by locking it in an inaccessible location, and assessed potential exposures to involved individuals. Your long term corrective actions included partnering with an independent consultant to establish training and safety requirements, installing additional signage in the vicinity of the of device, and ensuring that the device cannot be moved or modified without a key.

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: (1) the reason for the violation; (2) the corrective actions that have been taken and the results achieved; and (3) the date when full compliance was achieved is already adequately addressed on the docket in Inspection Report No. 99990003/2017001 and your staff's letter, dated June 15, 2017. 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 and in ADAMS, accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. The NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions>.

Sincerely,

/RA Jim Trapp for/

Cynthia D. Pederson
Regional Administrator

Docket No. 999-90003
License No. 10 CFR 31.5

Enclosure:
Notice of Violation

cc: State of Indiana

Letter to S. Johnson from Cynthia D. Pederson dated July 27, 2017

SUBJECT: HILL'S PET NUTRITION - NOTICE OF VIOLATION; NRC REACTIVE
INSPECTION REPORT NO. 99990003/2017001(DNMS)

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NOTICE OF VIOLATION

Hill's Pet Nutrition
Richmond, IN

Docket No. 999-90003
License No. 10 CFR 31.5
EA-17-063

During a U.S. Nuclear Regulatory Commission (NRC) inspection conducted on March 22, 2017, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

Title 10 of the *Code of Federal Regulations* (CFR) Section 31.5(c)(3) requires, in part, that any person who acquires, receives, possesses, uses, or transfers byproduct material in a device pursuant to paragraph (a) of this section shall assure that removal from installation involving radioactive materials, its shielding or containment, are performed in accordance with the instructions provided by the labels or by a person holding a specific license pursuant to Parts 30 and 32 of this chapter or from an Agreement State to perform such activities.

Contrary to the above, on November 28, 2016, Hill's Pet Nutrition failed to assure that the removal of a generally licensed fixed gauge from its installation was performed in accordance with the instructions provided by the labels or by a person holding a specific license pursuant to Parts 30 and 32 of this chapter or from an Agreement State to perform such activities. Specifically, the gauge was removed by two contractor employees, who were not licensed to remove fixed gauges and the removal was not performed in accordance with the instructions provided by the label.

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 Inspection Report No.99990003/2017001 and letter from the licensee, dated June 15, 2017. 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-17-063" 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 III, 2443 Warrenville Road, Lisle, IL 60532 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 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, 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 two working days of receipt.

Dated this 27th day of July 2017

Enclosure