



6/6/2012

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Phillip C. McMullan
Thermo-Scan Energy Management Corporation
License No. 13-25387-01
P.O. Box 705 Carmel, Indiana 46082

U.S. Nuclear Regulatory Commission
Region III
ATTN: Charles Casto - Regional Administrator
2443 Warrenville Road, Suite 210
Lisle, Illinois 60532-4352

To whom it may concern,

Please find the attached Reply to a Notice of Violation IR 03034353/12-001(DNMS)

Sincerely,

A handwritten signature in black ink, appearing to read 'P. McMullan', is written over a horizontal line.

Phillip C. McMullan
President
Thermo-Scan Energy Management Corporation

Docket No. 030-34353
License No. 13-25387-01

Enclosures:
Reply to Notice of Violation IR 03034353/12-001(DNMS)
Notice of Violation
Letter from NRC Region III Dated May 10th

Cc w/encl: U.S. Regulatory Commission – Document control desk

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Reply To Notice of Violation; IR 03034353/12-001(DNMS)

6/6/2012

Thermo-scan Energy Management Corporation
Carmel, Indiana

Document No. 030-34353
License No. 12-25387-01

Violation:

- A. Title 10 (CFR) 30.34 C- Storing licensed materials at authorized locations
 - 1. We moved our physical office location(directly behind our previous location) and did not request an amendment to our license authorizing the new facility. Our mailing address has remained the same.
 - 2. An amendment request to add the current address as location of use was submitted on April 4, 2012
 - 3. We will place a copy of the amended license in our files when it is received.
 - 4. Full compliance has been achieved
- B. License condition 13.A. – Swipe test frequency
 - 1. Swipe test was not completed at the six month interval required due to lack of attention to date required.
 - 2. Leak tests were performed on April 6, 2012 and Leak test Certificates were received from the testing company on April 10th 2012
 - 3. Semiannual re-test dates have been entered into a company calendar that will alert(thru a built in reminder) the RSO, company safety officer, Director of operations and the lead field technician. This will eliminate the possibility of missing a re-test date thru duplication of notification.
 - 4. Full compliance has been achieved
- C. 10 CFR 71.5(a) and 49 CFR 172.704(c)(2) Hazmat training every three years.
 - 1. Hazmat training was not completed within the last three years
 - 2. Hazmat training has been scheduled for July 9th and 10th 2012
 - 3. Re-test dates have been entered into a company calendar that will alert(thru a built in reminder) the RSO, company safety officer, Director of operations and the lead field technician. This will eliminate the possibility of missing a re-test date thru duplication of notification.
 - 4. Training is scheduled and confirmed for all company employees involved in this program for July 9th and 10th . Documentation of completion will be sent to our regional inspector after completion of testing.

D. 10CFR 20.1101(c) Annual review of the radiation protection program.

1. Annual reviews have not taken place due to a lack of understanding of this requirement.
2. An annual review was conducted on May 31st 2012. Findings were similar to the items found in the routine inspection by the NRC on March 24th 2012
3. A copy of the review will be sent to our regional inspector. Items found are being addressed and corrected. Annual inspection dates have been entered into a company calendar that will alert(thru a built in reminder) the RSO, company safety officer, Director of operations and the lead field technician. This will eliminate the possibility of missing a re-test date thru duplication of notification.
4. Compliance has been achieved.

In addition to the above items, Thermo-scan Management discovered the need to replace the current RSO due to his lack of time to devote to the program. A new RSO will be trained on July 9th and 10th. Once the training is complete an amendment request will be made for the new RSO. We have populated our company calendar with the key dates for required inspections and testing. The calendar will send out reminders to multiple people in our company, such as our RSO, Safety manager, Director of operations and lead field tech. This will eliminate any missed dates. The RSO will report directly to the director of operations who will add an additional layer of oversight to the program.

Thermo-Scan Energy Management Corporation

NOTICE OF VIOLATION

Thermo-Scan Energy Management Corporation
Carmel, Indiana

Docket No. 030-34353
License No. 13-25387-01

During a U.S. Nuclear Regulatory Commission (NRC) inspection conducted on March 24, 2012, with continuing in-office review through April 19, 2012, violations of NRC requirements were identified. In accordance with the Enforcement Policy, the violations are listed below:

- A. Title 10 of the Code of Federal Regulations (CFR) 30.34(c) requires that each licensee confine his possession and use of byproduct materials to the locations and purposes authorized by the license.

Contrary to the above, from April 2007 until March 24, 2012, the licensee failed to confine its possession of byproduct material to the locations authorized by the license. Specifically, the licensee possessed two gauges containing licensed material at 4650 Killarney Drive in Carmel, Indiana, a location not authorized by the license.

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

- B. License Condition No. 13.A. to NRC License No. 13-25387-01 requires that sealed sources be tested for leakage and/or contamination at intervals not to exceed the intervals specified in the certificate of registration issued by NRC under 10 CFR 32.210 or by an Agreement State.

The certificate of registration for the portable gauges possessed by the licensee specifies that the leak test frequency is six months.

Contrary to the above, between 2010 and April 6, 2012, a period exceeding six months, the licensee failed to test two portable gauges for leakage and/or contamination.

This is a Severity Level IV Violation (Section 6.7).

- C. 10 CFR 71.5(a) requires that a licensee who transports licensed material outside of the site of usage, as specified in the NRC license, or where transport is on public highways, or who delivers licensed material to a carrier for transport, comply with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation (DOT) in 49 CFR Parts 107, 171-180, and 390-397.

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 171-177 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.

Enclosure

Notice of Violation

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49 CFR 172.704(c)(2) requires, in part, that a hazmat employee must receive the training required by Subpart H of 49 CFR Part 172 at least once every three years.

Contrary to the above, from prior to March 2009 through March 24, 2012, a period exceeding three years, the licensee failed to provide training for its hazmat employees at the frequency required by 49 CFR 172.704(c)(2), and the licensee otherwise meets the definition of hazmat employer in 49 CFR 171.8.

This is a Severity Level IV violation (Section 6.8).

- D. 10 CFR 20.1101(c) requires that the licensee periodically (at least annually) review the radiation protection program content and implementation.

Contrary to the above, as of March 24, 2012, the licensee failed to review the radiation protection program content and implementation.

This is a Severity Level IV Violation (Section 6.7).

Pursuant to the provisions of 10 CFR 2.201, Thermo-Scan Energy Management, Corporation, is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001, with a copy to the Regional Administrator, Region III, 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; IR 03034353/12-001(DNMS) and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation or severity level; (2) the corrective steps that have been taken and the results achieved; (3) the corrective steps that will be taken; 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, with the basis for your denial, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response, 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 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, then 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 material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your

Notice of Violation

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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). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21. If Classified Information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR Part 95.

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

Dated this 10th day of May 2012.



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

REGION III
2443 WARRENVILLE ROAD, SUITE 210
LISLE, ILLINOIS 60532-4352

May 10, 2012

Mr. Phillip McMullan, President
Thermo-Scan Energy Management Corporation
P.O. Box 705
Carmel, Indiana 46082

**SUBJECT: NRC ROUTINE INSPECTION REPORT 03034353/12-001 (DNMS) AND
NOTICE OF VIOLATION – THERMO-SCAN ENERGY MANAGEMENT
CORPORATION**

Dear Mr. McMullan:

On March 24, 2012, a U.S. Nuclear Regulatory Commission (NRC) inspector conducted a routine inspection at your facility in Carmel, Indiana, with continuing in-office review through April 19, 2012. The purpose of the inspection was to determine whether activities authorized by the license were conducted safely and in accordance with NRC requirements. The in-office review included review of leak test, training, and inventory records. The findings were discussed with Keith Fettig of your staff during a telephonic exit meeting on April 24, 2012.

During this inspection, the NRC staff examined activities conducted under your license related to public health and safety. Additionally, the staff examined your compliance with the Commission's rules and regulations as well as the conditions of your license. Within these areas, the inspection consisted of selected examination of procedures and representative records, observations of activities, and interviews with personnel.

Based on the results of this inspection, the NRC has determined that four Severity Level IV violations of NRC requirements occurred. The violations were evaluated in accordance with the NRC Enforcement Policy included on the NRC's Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>. The violations are cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding them are described in detail below; these violations are being cited because they were identified by the inspector.

The first violation concerned the failure to store licensed materials only at authorized locations, as required by Title 10 of the Code of Federal Regulations (CFR), Section 30.34(c). You moved your office, including gauge storage, to a new facility in April 2007 but did not request an amendment to your license authorizing the new facility prior to moving the gauges. As a result, your license does not authorize gauge storage at your new office. The root cause of the violation was your lack of understanding of the requirement to amend your license to authorize a new permanent storage location before storing licensed materials at that location. As corrective action, you submitted an amendment request to add the current address as a location of use on April 4, 2012.

The second violation concerned the failure to leak test your gauges at a six-month frequency as required by License Condition No. 13.A. of your license and the certificate of registration for the gauges. The two gauges had last been leak tested on July 17 and September 29, 2010. The root cause of the violation was a lack of attention to ensuring that the leak tests were performed timely. As corrective action, you leak tested the gauges on April 6, 2012, and your Radiation Safety Officer (RSO) stated that you will track the leak tests through a tickler system to ensure that the leak tests are performed timely in the future.

The third violation concerned the failure to perform hazmat training under Department of Transportation requirements at a three year frequency as required by 10 CFR 71.5(a) and 49 CFR 172.704(c)(2). The last documented hazmat training session was held in March 1997; all four of the current gauge users were trained at this time. While the RSO was not certain when the training was last provided, your safety manager determined that it had not been provided for at least three years. The root cause of this violation was the RSO's lack of knowledge that this requirement was required at this frequency. As corrective action, you have made plans to complete a hazmat training session before May 1, 2012, for all gauge operators and to track this training with the tickler system to ensure future training is performed timely.

The fourth violation concerned the failure to review the radiation protection program content and implementation at least annually as required by 10 CFR 20.1101(c). You have no records of any previous program reviews. The root cause of this violation was the RSO's lack of knowledge that such program reviews are required. Your safety manager stated that, as corrective action, an audit will be completed by June 1, 2012, and the audits will be tracked to ensure that future audits are performed timely.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. If you have additional information that you believe the NRC should consider, you may provide it in your response to the Notice. The NRC's review of your response to the Notice will determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

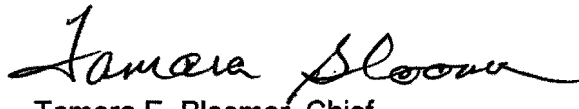
In addition, NRC management is concerned with the apparent lack of management oversight that appeared to be a contributing factor to the number and type of violations identified. While the day-to-day requirements of this program were being met, higher-level requirements were not being followed. Therefore, please describe what steps you will take in terms of management oversight of this program to reduce the likelihood of these or similar violations occurring in the future.

P. McMullan

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In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response 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 should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction.

Sincerely,

A handwritten signature in black ink, appearing to read "Tamara Bloomer". The signature is fluid and cursive, with the first name "Tamara" being more prominent than the last name "Bloomer".

Tamara E. Bloomer, Chief
Materials Inspection Branch
Division of Nuclear Materials Safety

Docket No. 030-34353
License No. 13-25387-01

Enclosure:
Notice of Violation

cc w/encl: William C. Achenbach, RSO
State of Indiana