



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

September 27, 2019

EA-19-085

Mr. Jerek Depuydt
Radiation Safety Officer
Stillwater Mining Company
2562 Nye Road
Nye, MT 59061

SUBJECT: NRC ROUTINE INSPECTION REPORT 030-29751/2019-001 AND NOTICE OF VIOLATION

Dear Mr. Depuydt:

This letter refers to the inspection conducted on June 11, 2019, at your facility in Nye, Montana, with an in-office review until August 8, 2019. This inspection examined activities conducted under your license as they relate to public health and safety and compliance with the U.S. Nuclear Regulatory Commission's (NRC's) rules, 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 licensed activities, and interviews with personnel. The enclosed report presents the results of this inspection. The inspector discussed the preliminary inspection findings with you at the conclusion of the onsite portion of the inspection. A final exit briefing was conducted (telephonically) with you on September 24, 2019.

Based on the results of this inspection, one apparent violation was identified and is being considered for escalated enforcement action in accordance with the NRC Enforcement Policy. The current enforcement policy is included on the NRC's Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>. The apparent violation involves the failure to have the individual named on the license performing the duties and responsibilities of the radiation safety officer. The circumstances surrounding the apparent violation, the significance of the issue, and the need for lasting and effective corrective actions were discussed with you during the inspection exit meeting on September 24, 2019.

Before the NRC makes its enforcement decision, we are providing you an opportunity to (1) respond to the apparent violation addressed in this inspection report within 30 days of the date of this letter; (2) request a pre-decisional enforcement conference (PEC); or (3) request alternative dispute resolution (ADR). If a PEC is held, it will be open for public observation and the NRC will issue a press release to announce the time and date of the conference. If you decide to participate in a PEC or pursue ADR, please contact Ms. Patricia Silva at (817) 200-1455 within 10 days of the date of this letter. A PEC should be held within 30 days and an ADR session within 45 days of the date of this letter.

If you choose to provide a written response, it should be clearly marked as a "Response to An Apparent Violation in NRC Inspection Report 030-29751/2019-001; EA-19-085" and should include for each apparent violation: (1) the reason for the apparent violation or, if contested, the

basis for disputing the apparent violation; (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 previously docketed correspondence, if the correspondence adequately addresses the required response.

Additionally, your response should be sent to the NRC's Document Control Center, with a copy mailed to Mr. Michael Hay, U.S. NRC Region IV, 1600 E. Lamar Blvd., Arlington, Texas within 30 days of the date of this letter. If an adequate response is not received within the time specified or an extension of time has not been granted by the NRC, the NRC will proceed with its enforcement decision or schedule a PEC.

If you choose to request a PEC, the conference will afford you the opportunity to provide your perspective on these matters and any other information that you believe the NRC should take into consideration before making an enforcement decision. The decision to hold a PEC does not mean that the NRC has determined that a violation has occurred or that enforcement action will be taken. This conference would be conducted to obtain information to assist the NRC in making an enforcement decision. The topics discussed during the conference may include information to determine whether a violation occurred, information to determine the significance of a violation, information related to the identification of a violation, and information related to any corrective actions taken or planned. In presenting your corrective action, you should be aware that the promptness and comprehensiveness of your actions will be considered in assessing any civil penalty for the apparent violations. The guidance in the enclosed excerpt from NRC Information Notice 96-28, "Suggested Guidance Relating to Development and Implementation of Corrective Action," may be helpful.

In lieu of a written response or PEC, you may also request ADR with the NRC in an attempt to resolve this issue. ADR is a general term encompassing various techniques for resolving conflicts using a neutral third party. The technique that the NRC has decided to employ is mediation. Mediation is a voluntary, informal process in which a trained neutral party (the "mediator") works with parties to help them reach resolution. If the parties agree to use ADR, they select a mutually agreeable neutral mediator who has no stake in the outcome and no power to make decisions.

Mediation gives parties an opportunity to discuss issues, clear up misunderstandings, be creative, find areas of agreement, and reach a final resolution of the issues. Additional information concerning the NRC's program can be obtained at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>. The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program as a neutral third party. Please contact ICR at 877-733-9415 within 10 days of the date of this letter if you are interested in pursuing resolution of this issue through ADR.

Additionally, the NRC determined that two Severity Level IV violations of NRC requirements occurred. These violations were evaluated in accordance with the NRC Enforcement Policy. The first Severity Level IV violation, involving failure to receive the Commission's written consent prior to a transfer of control, is cited in the enclosed Notice of Violation (Notice). This violation is being cited in the Notice because the NRC identified the violation during our inspection. You are required to reply to the enclosed Notice and should follow the instructions provided in the Notice. If you have additional information that you believe the NRC should consider, you may provide it in your reply to the Notice. The NRC's review of your reply to the Notice will also determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

The second Severity Level IV violation, involving failure to perform a review of the radiation protection program at least annually, is being treated as a non-cited violation (NCV), because it was self-identified, corrected, and not repetitive, consistent with Section 2.3.2(b) of the Enforcement Policy. If you contest the violation or significance of this NCV, you should provide a response within 30 days of the date of this inspection report, with the basis for your denial, to the Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington DC 20555-0001, with copies to: (1) the Regional Administrator, Region IV, 1600 E. Lamar Blvd., Arlington, Texas 76011; and (2) the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

In accordance with Title 10 of the *Code of Federal Regulations* (CFR) 2.390 of the NRC's "Agency Rules of Practice and Procedure," 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 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 you have any questions concerning this matter, please contact Ms. Patricia Silva of my staff, at 817-200-1455.

Sincerely,

/RA/

Michael C. Hay, Acting Director
Division of Nuclear Materials Safety

Docket No.: 030-29751
License No.: 25-26871-01

Enclosures:

1. Notice of Violation (Notice)
2. Inspection Report 030-32322/2018-001
3. Excerpt from NRC Information Notice 96-28

cc w/ enclosures:

Carter S. Anderson, Administrator
Montana Department of Public Health &
Human Services

NRC ROUTINE INSPECTION REPORT 030-29751/2019-001 AND NOTICE OF VIOLATION -
DATED SEPTEMBER 27, 2019

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By: ABB		<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Non-Sensitive	<input checked="" type="checkbox"/> Publicly Available	NRC-002
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NOTICE OF VIOLATION

Stillwater Mining Company
Nye, Montana

Docket No.: 030-29751
License No.: 25-26871-01
EA-19-085

During an NRC inspection conducted June 11, 2019, one violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 30.34(b) requires, in part, that no license issued or granted pursuant to the regulations in this Part shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of the Act and shall give its consent in writing.

Contrary to the above, on May 4, 2017, the licensee failed to receive the Commission's consent in writing prior to completing a transfer of control of NRC License 25-26871-01. Specifically, on May 4, 2017, Stillwater Mining Company completed a merger with Sibanye Gold Limited, which constituted a change of control under 10 CFR 30.34(b), without receiving prior NRC approval and consent in writing.

This is a Severity Level IV violation (Section 6.3.d.7)

Pursuant to the provisions of 10 CFR 2.201, Stillwater Mining Company 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 IV, 1600 E. Lamar Blvd., Arlington, Texas 76011, 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 EA-19-085" and should include for the 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 requiring information 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, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

Your response will be made available electronically for public inspection in the NRC Public Document Room and 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 or proprietary 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 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).

In accordance with 10 CFR 19.11, you may be required to post this Notice within 2 working days of receipt.

Dated this September 27, 2019

U.S. NUCLEAR REGULATORY COMMISSION
REGION IV

Docket:	030-29751
License:	25-26871-01
Report:	030-29751/2019-001
EA No.:	EA-19-085
Licensee:	Stillwater Mining Company
Location Inspected:	Stillwater Mine Site 2562 Nye Road Nye, Montana
Inspection Date:	June 11, 2019
Exit Meeting Date:	September 24, 2019
Inspector:	Allyce Bolger, Health Physicist Materials Inspection Branch
Approved By:	Patricia A Silva, Chief Materials Inspection Branch
Attachment:	Supplemental Inspection Information

EXECUTIVE SUMMARY

Stillwater Mining Company NRC Inspection Report 030-29751/2018-001

Program Overview

On June 11, 2019, the U.S. Nuclear Regulatory Commission (NRC) performed an unannounced, routine inspection of a platinum and palladium mine in Nye, Montana. Stillwater Mining Company is authorized by NRC Materials License Number 25-26871-01 to use fixed gauges containing cesium-137 byproduct material for the measurement of process control variables at the licensee's facilities in Nye, Columbus, and McLeod, Montana. (Section 1)

Inspection Findings

The inspection identified one apparent violation of NRC requirements involving the licensee's failure to have the individual authorized on NRC Materials License Number 25-26871-01 fulfilling the duties and responsibilities of the radiation safety officer (RSO). The inspection additionally identified two Severity IV level violations involving failures to (1) receive the Commission's consent prior to completing a transfer of control and (2) periodically (at least annually) review the radiation protection programs content and implementation. (Section 2)

Corrective Actions

To correct the violation, the licensee submitted a license amendment request to change the name of the individual authorized to be the RSO and to inform the NRC of the change of control. The licensee had identified and corrected the failure to review the radiation protection program at least annually prior to the inspection and consistent with Section 2.3.2(b) of the Enforcement Policy this violation is being treated as a Non-Cited Violation (NCV). (Section 3)

Report Details

1 Program Overview

Stillwater Mining Company is authorized by NRC Materials License No. 25-26871-01 to possess and use fixed gauging devices containing cesium-137 byproduct material for the measurement of process control variables. Licensed activities are authorized to be performed at the licensee's facilities in Nye, Columbus, and McLeod, Montana. At the time of the inspection, the licensee possessed twenty-nine gauging devices and had five employees authorized to use the devices.

2 Inspection Observations and Findings (Inspection Procedure 87124)

2.1 Inspection Scope

The purpose of the inspection was to perform a review of the licensee's radiation protection program, as it relates to public health and safety, and examine activities conducted under the license to confirm compliance with NRC regulations and the conditions of the license. Inspection activities consisted of an examination of procedures and representative records, observations of licensed activities, and interviews with licensee personnel.

2.2 Observations and Findings

On June 11, 2019, the inspector conducted an unannounced, routine inspection of the licensee's activities at their main mining facility in Nye, Montana. The inspector was informed, at arrival, that the individual named on the license as RSO was no longer an employee of the licensee. A review of email correspondence determined that the RSO, who was also the electrical supervisor, had resigned on September 9, 2015. Since that date, the two electricians who were authorized users for the fixed gauges continued to perform routine tasks when work orders were generated by the licensee's maintenance scheduling system. The work order system ensured that the licensee was compliant regarding the performance of shutter checks, inventory, and leak testing requirements.

In April 2017 the licensee appointed a new electrical supervisor. The electrical supervisor did not initially have the technical qualifications to perform the duties of RSO for the license. As the electrical supervisor became familiar with his various responsibilities, including oversight of the individuals authorized to use the fixed gauges and the applicable regulatory requirements for those gauges, the electrical supervisor became aware of the requirement to have an RSO. On November 30, 2018, the electrical supervisor completed the required RSO training. However, at the time of this inspection, the licensee had not submitted the required information to revise their NRC license to name the new RSO. Additionally, in February 2019, a third-party assessment of the licensee's radiation safety program identified the non-compliance regarding the discrepancy between the individual named as RSO on the license and the individual performing the role of RSO. The results of this third-party assessment informed the licensee that they were not in compliance with their license. However, the licensee did not take comprehensive corrective actions to amend their license before the NRC inspection performed on June 11, 2019.

Apparent Violation of NRC Materials License 25-26871-01

License Condition 12.A of NRC Materials License 25-26871-01, Amendment 14, dated February 4, 2015, authorized a named individual to fulfill the duties and responsibilities of the RSO for the license.

Contrary to the above, from September 9, 2015 until June 13, 2019, the licensee failed to have the individual authorized on the license performing the duties and responsibilities of the RSO. Specifically, the RSO listed on the license resigned on September 9, 2015 and the license was not amended to name a new RSO until June 13, 2019. (030-29751/2019-001-01)

During the inspection, the inspector observed that the insignia for the licensee displayed Sibanye Gold Limited (Sibanye) and not Stillwater Mining Company. Through interviews with licensee staff and a review of press releases, the inspector confirmed that Sibanye had acquired Stillwater Mining Company through a company merger that was completed on May 4, 2017. Sibanye's acquisition of Stillwater Mining Company constituted a transfer of control that required the Commission's written consent prior to completion, however the NRC was not informed of the transfer.

Violation of 10 CFR 30.34(b)

10 CFR 30.34(b) requires, in part, that no license issued or granted pursuant to the regulations in this Part shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of the Act and shall give its consent in writing.

Contrary to the above, on May 4, 2017, the licensee failed to receive the Commission's consent in writing prior to completing a transfer of control of NRC License 25-26871-01. Specifically, on May 4, 2017, Stillwater Mining Company completed a merger with Sibanye Gold Limited, which constituted a change of control under 10 CFR 30.34(b), without receiving prior NRC approval and consent in writing. (030-29751/2019-001-02)

The inspector's review of licensee records included the licensee's annual assessment of their radiation protection program. A thorough assessment of the licensee's program was performed by a third-party in February 2019. The third-party's assessment identified that a review of the radiation protection program had not occurred since the resignation of the RSO. Interviews with the electrical supervisor confirmed that an annual review of the radiation protection program had not been performed in previous years. Since, the third-party assessment of the licensee's radiation protection program identified and corrected this violation the NRC is treating it as a non-cited violation.

Non-Cited Violation of 10 CFR 20.1101(c)

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

Contrary to the above, from 2015 through 2018, the licensee failed to annually review the radiation protection program content and implementation. (030-29751/2019-001-03)

2.3 Conclusions

One apparent violation was identified by the NRC and is being considered for escalated enforcement action in accordance with the NRC Enforcement Policy. The apparent violation involved the licensee's failure to have the individual authorized on the license performing the duties and responsibilities of the RSO. Additionally, two severity level IV violations of NRC requirements were identified. The first violation involved the licensee's failure to receive the Commission's written consent prior the completion of a transfer of control and is issued in the enclosed Notice of Violation (Enclosure 1). The second violation involved the licensee's failure to annually review the radiation protection program and is being treated as a non-cited violation in accordance with Section 2.3.2(b) of the NRC Enforcement Policy.

3 Corrective Actions

On June 18, 2019, Stillwater Mining Company submitted a license amendment request to change the individual named as RSO on NRC Materials License No. 25-26871-01. NRC Materials License No. 25-26871-01, Amendment 15, was issued on August 30, 2019, naming a new RSO. Any additional corrective actions will be addressed by the licensee in future correspondence.

4 Exit Meeting Summary

On September 24, 2019, a final telephonic exit meeting was conducted with Jerek Depuydt, RSO, discussing significance of these issues. The licensee stated they understood the options provided in the cover letter to this report.

SUPPLEMENTAL INSPECTION INFORMATION

LIST OF PERSONS CONTACTED

Jerek Depuydt, Electrical Supervisor and Radiation Safety Officer
Brandon McGillvray, Concentrator Superintendent

INSPECTION PROCEDURES

Inspection Procedure 87124: Fixed and Portable Gauge Programs

ITEMS OPENED, CLOSED, AND DISCUSSED

Opened

030-29751/2019-001-01	APV	The failure to have the individual authorized on the license fulfilling the duties and responsibilities of the RSO.
030-29751/2019-001-02	VIO	The failure to obtain the Commission's written consent prior to a transfer of control.

Closed

030-29751/2019-001-03	NCV	The failure perform an annual review of the radiation protection program.
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Discussed

None

LIST OF ACRONYMS AND ABBREVIATIONS USED

ADAMS	Agencywide Documents Access and Management System
ADR	Alternative Dispute Resolution
APV	Apparent Violation
CFR	<i>Code of Federal Regulations</i>
NCV	Non-cited Violation
NRC	Nuclear Regulatory Commission
PEC	Pre-decisional Enforcement Conference
RSO	Radiation Safety Officer
VIO	Violation