DCD

December 20, 1996

David Bezzelli, Vice President
Health and Environmental Safety
Dow Chemical Company
H & ES, Industrial Hygiene Laboratory
1803 Building
Midland, MI 48674

SUBJECT: REVIEW OF TWO CONTESTED VIOLATIONS FROM NOVEMBER 7, 1996 NOTICE OF VIOLATION

Dear Mr. Bezzelli:

This will acknowledge receipt of your letter dated December 2, 1996, signed by Paul A. Wright, Senior Attorney, Legal Department. Your letter was in response to our letter dated November 7, 1996, transmitting a Notice of Violation (Notice). Based on your letter we understand that you dispute the two apparent violations contained in the Notice. The information you provided was independently reviewed by a member of my staff. Based on that review, we concluded that the first violation remains valid and the second apparent violation will be withdrawn.

Regarding the first violation in dispute, you indicated that prior to the date of the transfer of the sources, Dow Chemical Company (Dow) requested and received written "certification" from the transferee (the Radiation Safety Officer (RSO) of the Mid-Michigan Regional Medical Center), that he was authorized to receive the material to be transferred.

To ensure that we had a clear understanding of the facts and your concerns regarding the apparent violation, on December 17, 1996, we contacted the RSO at Mid-Michigan Regional Medical Center. It is our understanding that the "certification" that you referred to was actually a copy of their license and a xeroxed copy of an excerpt from 10 CFR 35.57. Our review of this same license (21-01549-02) indicates that it does not authorize possession of 7.5 millicuries of strontium-90 and/or 15 millicuries of hydrogen-3 (tritium) as sealed sources. Further, 10 CFR 35.57(a) requires that sealed sources used for calibration purposes under 10 CFR 35 must be manufactured and distributed by a person holding a license pursuant to 10 CFR 32.74. Dow Chemical does not possess a license issued pursuant to 10 CFR 32.74. Consequently, the violation stands as stated.

Regarding the second violation in dispute, you indicated that Item III(A)(8)(g) of your license application states that the RSO's quarterly review of radiation survey results will be a review of survey summary reports and not individual radiation survey results. We concur with your conclusion. Consequently, we concluded that a violation of License Condition No. 26 did not occur and we will modify our records accordingly to reflect this conclusion.

1/1

IE07

Your letter dated December 2, 1996, did not provide a description of the corrective actions you have taken or will take to address Violation No. 1. In response to this letter, please provide your proposed corrective actions to prevent similar violations from occurring.

We appreciate your comments and will gladly discuss any questions you may have.

Sincerely,

Original Signed by Roy J. Caniano

Cynthia D. Pederson, Director
Division of Nuclear Materials Safety

Docket No. 030-04783
License No. 21-00265-06

Enclosure: Letter dtd. 12/2/96

cc w/o encl: Paul A. Wright, Esq.

bcc w/encl: A. Kock, RIII
J. Cameron, RIII
PUBLIC IE07

DOCUMENT NAME: R:\LTRS2LIC\MTLS\030\96304783.L01

*** See Previous Concurrence**

To receive a copy of this document, indicate in the box: "C" = Copy without enclosure "E" = Copy with enclosure "N" = No copy

OFFICE	*RIII	E	RIII	E	RIII	E	RIII	
NAME	WIEDEMAN:dp		PHILLIPS		BURGESS		PEDERSON	
DATE	12/18/96		12/20/96		12/18/96		12/20/96	

OFFICIAL RECORD COPY

Your letter dated December 2, 1996, did not provide a description of the corrective actions you have taken or will take to address Violation No. 1. In response to this violation, please describe why your proposed corrective action is expected to be more successful in preventing future or similar violations.

We appreciate your comments and will gladly discuss any questions you may have.

Sincerely,

Cynthia D. Pederson, Director
Division of Nuclear Materials Safety

Docket No. 030-04783
License No. 21-00265-06

Enclosure: Letter dtd. 12/2/96

cc w/o encl: Paul A. Wright, Esq.

bcc w/encl: A. Kock, RIII
J. Cameron, RIII
PUBLIC IE07

DOCUMENT NAME: R:\LTRS2LIC\MTLS\030\96304783.L01

To receive a copy of this document, indicate in the box: "C" = Copy without enclosure "E" = Copy with enclosure "N" = No copy

OFFICE	RIII	RIII	RIII	RIII
NAME	WIEDEMAN:dp	PHILLIPS	BURGESS	PEDERSON
DATE	12/18/96	12/ /96	12/18/96	12/ /96

OFFICIAL RECORD COPY

The Dow Chemical Company
Midland, Michigan 48674

2030 Dow Center
December 2, 1996

CERTIFIED MAIL--RETURN RECEIPT
REQUESTED

U.S. Nuclear Regulatory Commission
Attn: Document Control Desk
Washington, DC 20555

REPLY TO A NOTICE OF VIOLATION

Pursuant to 10 CFR 2.201, The Dow Chemical Company hereby responds to a:
Notice of Violation dated November 7,1996
Docket No. 030-04783.

Response to Alleged Violation #1:

The alleged violation was described as follows:

> Contrary to 10 CFR 30.41(a) and (b)(5), on or about May 6, 1996, the licensee transferred a nominal 10 millicurie [activity date December, 1984] strontium-90 source and a nominal 20 millicurie [activity date November, 1991] hydrogen-3 source to MidMichigan Regional Medical Center, a person who was not authorized to receive such byproduct material under the terms of a specific or general license issued by the Commission or Agreement State.
>
> This is a repeat item.
>
> This is a Severity Level IV violation (Supplement VI).

While The Dow Chemical Company did transfer two sources to MidMichigan Regional Medical Center on or about said date, the transfer was not contrary to 10 CFR 30.41(a) or (b)(5) for the following reasons:

1. The activities of the sources described were not in fact 10 millicurie and 20 millicurie. Rather, when the activity is corrected for decay, the activities of these sources on the date of transfer (May 6, 1996) were actually only 7.5 mCi and 15 mCi, respectively.

2. Dow followed the requirements of 10 CFR 30.41 in that Dow verified that the transferee was qualified to receive the sources prior to the transfer. Specifically, 10 CFR 30.41(d)(2)

> The transferor may have in his possession a written certification by the transferee that he is authorized by license or registration certificate to receive the type, and quantity of byproduct material to be transferred, specifying the license or registration certificate number, issuing agency and expiration date.

Prior to the date of the transfer of these sources, Dow requested and received written certification from the transferee, Larry Langrill, Radiation Safety Officer of the MidMichigan Regional Medical Center, that he was authorized to receive the material to be transferred. The certification indicated that under the conditions of License 21-01549-02, with an expiration date of September 30, 1999, the transferee was authorized to receive hydrogen-3 and strontium-90 sources for use as check sources with activity up to 15-millicuries. The transferred sources had been used by Dow as check sources and were to be used by the transferee as check sources. Neither source exceeded 15-millicuries at the time of the transfer. The certification was received by Dow on or about September 18, 1995 and was available to the Commission inspector during the inspection of the Dow facility on October 16-17, 1996.

Thus, no violation of the requirements 10 CFR 30.41 occurred and this alleged violation is not a repeat item.

Response to Alleged Violation #2:

The alleged violation was described as follows:

> Condition 26 of License No. 21-00265-06 requires that licensed material be possessed and used in accordance with statements, representations and procedures contained in an application dated September 11, 1984 and other referenced documents.
>
> Item II(A)(2) of the referenced application, titled "Radiation Protection Program," requires that laboratory radiation survey results be reviewed quarterly by the Radiation Safety Officer.
>
> Contrary to the above, as of October 17, 1996, radiation survey results had not been reviewed by the Radiation Safety Officer. Specifically, summaries of survey results submitted by Isotope Owners were reviewed by the Radiation Safety Officer.
>
> This is a Severity Level IV violation (Supplement VI).

While Item II(A)(2) of the referenced application provides for quarterly review of laboratory radiation survey results by the Radiation Safety Officer, one must read further in the application for additional explanation of this review. Specifically, Item III (A)(8)(g) of the

referenced application requires that the Isotope Owner [laboratory] furnish to the RSO the following reports:

1. Inventory report of radioisotopes;
2. Survey summary report of all wipe testing and/or radiation surveys completed;
3. Summary report of all radioisotopes.

Survey summary reports of radiation surveys from the laboratories were provided quarterly to the RSO and were in fact reviewed by the RSO. Clearly, Item III(A)(8)(g) explains that the quarterly review to be conducted by the RSO is to be a review of the survey summary reports, not individual radiation survey results. One should note that the Commission inspector did not detect any exceedance in any radiation survey. This is due to the fact that the radiation safety program provides adequate checks to assure that any results in excess of appropriate levels are brought to the attention of the RSO, separate from the survey reports.

Thus, no violation of the license requirements has occurred.

The foregoing is a full and complete response to the Notice of Violation. If you have any questions concerning the foregoing, please contact the undersigned.

Sincerely,

Paul A. Wright

Paul A. Wright
Senior Attorney
Legal Department
517/636-1853

cc: Regional Administrator
United States Nuclear Regulatory Commission
Region III
801 Warrenville Road
Lisle, Illinois 60532-4351