



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
REGION IV
1600 E LAMAR BLVD
ARLINGTON, TX 76011-4511

October 16, 2014

EA-14-089

Gary Cuddeford, Vice President
Idahoan Foods, LLC
P.O. Box 130
529 North 3500 East
Lewisville, Idaho 83431

SUBJECT: NOTICE OF VIOLATION; NRC SPECIAL INSPECTION REPORT
NO. 99900011/2014-001

Dear Mr. Cuddeford:

This letter refers to the inspection conducted on February 27, 2014, at your facilities located in Lewisville and Idaho Falls, Idaho, with continued in-office reviews through June 26, 2014. The purpose of the inspection was to review Idahoan Foods' control of generally licensed devices, which are regulated by the U.S. Nuclear Regulatory Commission (NRC). During the inspection, two violations of NRC requirements were identified. The significance of the issues and the need for lasting and effective corrective actions were discussed with you during the telephonic exit meeting on June 26, 2014. Details regarding the apparent violations were provided in NRC Special Inspection Report No. 99900011/2014-001 dated September 15, 2014.

In the letter transmitting the special inspection report, we provided you with the opportunity to address the apparent violations identified in the report by either: 1) attending a predecisional enforcement conference or, 2) by providing a written response, before we made our final enforcement decision. In a letter dated September 30, 2014, from your corporate environmental manager, you provided responses to the apparent violations.

Based on the information developed during the inspection and the information that you provided in your response, the NRC has determined that violations of NRC requirements occurred. The violations are cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding them are described in detail in the subject inspection report. The violations involved the inappropriate transfer for disposal of two devices containing byproduct material to an entity not authorized to receive the devices, and the failure to appoint an individual responsible for ensuring compliance with the appropriate regulations and requirements related to byproduct material.

The root cause of the violations was inadequate oversight of the generally licensed program by management. The failure to appoint an individual responsibility for the program and the authority to take any required action to ensure compliance with the regulations and requirements contributed to an unauthorized transfer and/or disposal of devices containing byproduct material. This is of concern to the NRC because it could have resulted in unauthorized usage or unintended exposure to members of the public. Therefore, the two apparent violations have been categorized in accordance with the NRC Enforcement Policy as one Severity Level III problem.

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$3500 is considered for a Severity Level III problem. Because your facility has not been the subject of an escalated enforcement action within the last two inspections, 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.

Credit was warranted for your corrective actions, which included, but were not limited to: (1) appointing a radiation safety officer to control the generally licensed devices in Idahoan Foods' facilities; (2) reinforcing NRC requirements to your management staff at the Lewisville facility and to the engineering director, by issuing a memorandum dated September 30, 2014, regarding the Ronan Engineering Model RLL1 radioactive devices; (3) conducting interviews and performing physical inventories to identify all generally licensed devices; and (4) developing plans to replace the remaining four generally licensed devices that are still in-service with non-radioactive devices by September 1, 2015. In addition, because the sources are not required to be registered in accordance with 10 CFR 31.5(c)(13)(i), the NRC's Lost Source Policy does not apply.

Therefore, in recognition of the absence of previous escalated enforcement action, and to encourage prompt and comprehensive correction of violations, 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 problem constitutes escalated enforcement action, which may subject you to increased inspection effort.

The NRC has concluded that your completed corrective actions to date were sufficient to address and prevent repetition of the root causes to the violations and that you are in full compliance with the regulatory requirements under your general license. The information regarding the reasons for the violations, the corrective actions taken to correct the violations and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed on the docket in NRC Special Inspection Report No. 99900011/2014-001, and your letter from your corporate environmental manager, dated September 30, 2014. 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.

G. Cuddeford

- 3 -

In accordance with 10 CFR 2.390 of the NRC's "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 and 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>.

Sincerely,

/RA/

Kriss M. Kennedy
Deputy Regional Administrator

Enclosure:
Notice of Violation

cc w/encl:
Curt Fransen, Director
Technical Services Division
Idaho Dept. of Environmental Quality
1410 North Hilton
Boise, ID 83706

G. Cuddeford

- 3 -

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Sincerely,

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Enclosure:
Notice of Violation

cc w/encl:
Curt Fransen, Director
Technical Services Division
Idaho Dept. of Environmental Quality
1410 North Hilton
Boise, ID 83706

DOCUMENT NAME: S:\RAS\ACES\ENFORCEMENT\EA CASES - OPEN\Idahoan Foods_EA-14-089_GL\Final Action\NOV_EA-14-089_Idahoan Foods Final Action.doc

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OFFICIAL RECORD COPY

Letter to Gary Cuddeford from Kriss M. Kennedy dated October 16, 2014

SUBJECT: NOTICE OF VIOLATION; NRC SPECIAL INSPECTION REPORT
NO. 99900011/201-001

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NOTICE OF VIOLATION

Idahoan Foods, LLC
Lewisville, Idaho

Docket No. 99900011
EA-14-089

During an NRC inspection conducted between February 27 and June 26, 2014, two violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

10 CFR 31.5(a) states, in part, that a general license is issued to industrial firms to acquire, receive, possess, use or transfer byproduct material contained in devices, in accordance with the provisions of 10 CFR 31.5(c).

- A. 10 CFR 31.5(c)(8) requires, in part, that any person who acquires, receives, possesses, uses or transfers byproduct material in a device pursuant to the general license shall transfer or dispose of the device containing byproduct material only by transfer to another general licensee as authorized in 10 CFR 31.5(c)(9) or to a person authorized to receive the device by a specific license.

Contrary to the above, as of June 26, 2014, Idahoan Foods, LLC, failed to transfer or dispose of two devices containing byproduct material only by transfer to another general licensee as authorized in 10 CFR 31.5(c)(9) or to a person authorized to receive the device by a specific license. Specifically, on January 24, 2014, the NRC was informed by the State of California, Department of Public Health, Radiologic Health Branch, that a generally licensed device containing cesium-137 was found in a load of scrap metal at a recycling facility in the State of California. It was determined that the device was a Ronan RLL-1 (serial number 206280A) originating from the general license holder, Idahoan Foods, LLC. On April 30, 2014, the device was transferred to the manufacturer, Ronan. A second device (serial number 207822A) remains unaccounted for and is believed to have been sold as scrap metal near the end of 2012.

- B. 10 CFR 31.5(c)(12) requires, in part, that any person who acquires, receives, possesses, uses or transfers byproduct material in a device pursuant to the general license shall appoint an individual responsible for having knowledge of the appropriate regulations and requirements and the authority for taking required actions to comply with appropriate regulations and requirements.

Contrary to the above, between March 16, 2005, and September 30, 2014, Idahoan Foods, LLC, failed to appoint an individual responsible for having knowledge of the appropriate regulations and requirements and the authority for taking required actions to comply with appropriate regulations and requirements. Specifically, in 2005 and 2006, nine Ronan Engineering Model RLL1 devices containing byproduct material were purchased by the licensee. At the time, the licensee did not appoint an individual with responsibility for complying with the applicable regulations and requirements related to the byproduct material. On September 30, 2014, the licensee appointed the Corporate Environmental Manager as the Radiation Safety Officer.

This is a Severity Level III problem (Section 6.7).

Enclosure

The NRC has concluded that information regarding the reason for each violation, the corrective actions taken and planned to be taken to correct the violations and prevent recurrence, and the date when full compliance will be achieved, is already adequately addressed on the docket in Special Inspection Report No. 99900011/2014-001, and your letter, from your Corporate Environmental Manager, dated September 30, 2014.

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 provide a response, then clearly mark your response as a "Reply to a Notice of Violation, EA-14-089" 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, 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.

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.

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

Dated this 16th day of October 2014