



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION II
SAM NUNN ATLANTA FEDERAL CENTER
61 FORSYTH STREET SW SUITE 23T85
ATLANTA, GEORGIA 30303-8931

July 18, 2001

EA-01-179

Freedom Lincoln Mercury
ATTN: Brian Wynne
General Manager
1765 South Military Highway
Chesapeake, VA 23320

SUBJECT: NRC INSPECTION REPORT NO. 999-90012/01-01 AND NOTICE OF VIOLATION

Dear Mr. Wynne:

This refers to the special inspection conducted on June 18, 2001, at your facility located at 1765 South Military Highway, Chesapeake, Virginia. The purpose of the inspection was to review the circumstances surrounding a static eliminator that was found in a vacant lot in Virginia Beach, Virginia. At the conclusion of the inspection, the findings were discussed with you and members of your staff.

Based on the results of this inspection, the NRC has determined that two violations of NRC requirements occurred. The violations are cited in the enclosed Notice of Violation (Notice). The violations involve the: 1) unauthorized transfer of a static eliminator containing 10 millicuries of polonium-210 to a member of the public who was not authorized to receive and possess such licensed material (the device was subsequently found abandoned in a vacant lot in Virginia Beach, Virginia); and 2) failure to make a written report within 30 days after making the telephone report on April 30, 2001, regarding the unauthorized transfer and recovery of the static eliminator. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, the violation in Item A of the Notice could have been classified as a Severity Level III violation, which could have resulted in possible civil penalties. However, we have concluded that due to the low actual safety significance associated with the small amounts of radioactive materials and radiation levels from the device, the inherent design and difficulty in gaining access to the sealed source in the device, and your immediate actions in the recovery and transfer of the device to the manufacturer, the violation is being classified at Severity Level IV. Please, be advised that violations of this nature in the future, could result in significant enforcement action in accordance with the Enforcement Policy.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. For your consideration and convenience, NRC Information Notice 96-28, "SUGGESTED GUIDANCE RELATING TO DEVELOPMENT AND IMPLEMENTATION OF CORRECTIVE ACTION," is enclosed. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/NRC/ADAMS/index.html> (the Public Electronic Reading Room).

Sincerely,

/RA/

Thomas R. Decker, Chief
Materials Licensing/Inspection Branch 1
Division of Nuclear Materials Safety

Docket No. 999-90012
License No. General License (10CFR 31.5)

Enclosures: 1. Notice of Violation
2. NRC Information Notice 96-28

cc w/encls:
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DATE	7/18/2001	7/18/01	7/18/2001	7/18/2001	7/ /2001
E-MAIL COPY?	YES NO	YES NO	YES NO	YES NO	YES NO

NOTICE OF VIOLATION

Freedom Lincoln Mercury
Chesapeake, Virginia

Docket No. 999-90012
License No. General License
(10 CFR 31.5)

During an NRC inspection conducted on June 18, 2001, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions," NUREG-1600, the violations are listed below:

- A. 10 CFR 31.5(c)(8) requires, in part, that any person who acquires, receives, possesses, uses or transfers material in a device pursuant to a general license shall transfer or dispose of the device containing byproduct material only by transfer to a person holding a specific license pursuant to 10 CFR Parts 30 and 32 of this chapter or from an Agreement State to perform such activities.

10 CFR 31.5(c)(9) requires, in part, that the person shall transfer the device to another general licensee only: (i) where the device remains in use at a particular location; or (ii) where the device is held in storage in the original shipping container at its intended location of use prior to initial use by a general licensee.

Contrary to the above, on or about April 29, 2001, the licensee transferred a static eliminator containing 10 millicuries of polonium-210 to a member of the public who was not authorized to receive and possess such licensed material, and did not hold a specific license pursuant to 10 CFR Part 30 and 32 of this chapter or from an Agreement State, nor was the person another general licensee. The device was subsequently found abandoned in a vacant lot located in Chesapeake, Virginia.

This is a Severity Level IV violation (Supplement IV).

- B. 10 CFR 20.2201(b) requires that each licensee required to make a report under paragraph (a) of this section shall, within 30 days after making the telephone report, make a written report setting forth: (i) a description of the licensed material involved, including kind, quantity, and chemical and physical form; and (ii) a description of the circumstances under which the loss or theft occurred; (iii) a statement of disposition, or probable disposition, of the licensed material involved; and (iv) exposures of individuals to radiation, circumstances under which the exposures occurred, and the possible total effective dose equivalent to persons in unrestricted areas; and (v) actions that have been taken, or will be taken, to recover the material; and (vi) procedures or measures that have been or will be, adopted to ensure against a recurrence of the loss or theft of licensed material.

Contrary to the above, as of June 18, 2001, the licensee had not within 30 days after making a telephone report on April 30, 2001, regarding the unauthorized transfer and recovery of a static eliminator containing 10 millicuries of polonium-210, made a written report as required.

This is a Severity Level IV violation (Supplement VI).

Regarding the violations and pursuant to the provisions of 10 CFR 2.201, Freedom Lincoln Mercury, is hereby required to submit a written statement or explanation to the U. S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555, with a copy to the Regional Administrator, Region 2, 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 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 to avoid further violations, 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.

Because your response to the violation will be placed in the NRC Public Document Room (PDR), to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR 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 2.790(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 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.

Dated this 18th day of July 2001