

August 16, 2001

EA No. 99-171

Raymond C. Grimaldi
Chief Executive Officer
Arthur Brisbane Child Treatment Center
State of New Jersey
Department of Human Services
Div. Of Mental Health Services
P.O. Box 625
Farmingdale, NJ 07727

SUBJECT: NOTICE OF VIOLATION
(NRC Inspection 99990001/1997023, and NRC Office of Investigations Report
No. 1-97-050)

Dear Mr. Grimaldi:

This refers to the inspection conducted on October 30, 1997, and November 20, 1997, at the Arthur Brisbane Child Treatment Center (Brisbane) in Farmingdale, New Jersey, to review the circumstances associated with an event which occurred at your facility on October 29, 1997, wherein an exit sign, containing 12 curies of tritium, was broken and resulted in radioactive contamination of a portion of the facility. You were authorized to possess and use such exit signs pursuant to a general license contained in 10 CFR 31.5. Subsequent to the inspection, the NRC Office of Investigations (OI), Region I, initiated an investigation to determine if Brisbane, which is operated by the State of New Jersey Department of Human Services (DHS), willfully and improperly disposed of the broken generally licensed exit sign (along with contaminated asbestos floor tiles and other contaminated objects) by improperly transferring the material to SMI, East Coast Medical Waste, Inc. (SMI), a medical waste broker who was not authorized to receive radioactive waste.

Based on the OI investigation, the NRC found that, as a result of the deliberate actions of the DHS Chief of the Bureau of Environmental Compliance (DHS official), Brisbane improperly disposed of the radioactive material generated from the cleanup of the broken exit sign. The radioactive material was transferred to SMI, located in Morrisville, PA, who in turn transferred it to Safety Disposal Systems, Inc. (formerly known as Chambers Medical Technologies of South Carolina), a medical waste incinerator facility in South Carolina. Neither SMI nor Safety Disposal Systems, Inc. has a specific license for the radioactive material as required by 10 CFR Parts 30 or 32 or from an Agreement State. The basis for this finding was described in the factual summary of the OI investigation which was sent to you on April 12, 2001. The April 12, 2001 letter also stated that we were providing you the opportunity to address the apparent violations by either attending a predecisional enforcement conference or by providing a written response before we made our final enforcement decision. In a letter dated May 17, 2001, you provided a response to the apparent violations.

As noted in that factual summary, the NRC concluded that the DHS official deliberately classified the radioactive waste as medical waste and caused it to be sent for incineration despite warnings from several knowledgeable people that classifying the radioactive material as medical waste was not appropriate. After receiving bids submitted to him for proper disposal, the DHS official told others that he was over budget from the contamination clean-up and could not afford the high cost of proper waste disposal. The DHS official also informed an NRC inspector on December 4, 1997, that the drums containing the broken exit sign and other contaminated objects had been disposed of properly, when, in fact, they had not been disposed of in accordance with 10 CFR 31.5(c)(8).

As a result of these actions, two violations of NRC requirements occurred, both of which are described in the enclosed Notice of Violation. The violations involved (1) the deliberate improper disposal of the radioactive material; and (2) the deliberate submittal of the inaccurate information to the NRC. The safety significance of the violations was low in this case because there were no doses to individuals or potential doses to individuals that would create a serious health risk, and the broken exit sign was eventually disposed of properly by SMI. Nonetheless, these violations occurred as a result of the deliberate actions of the DHS official. Therefore, in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (NUREG-1600), the violations are classified as a Severity Level III problem.

In accordance with the Enforcement Policy in effect at the time of the violation, a base civil penalty in the amount of \$2,750 is considered for a Severity Level III problem. Because this was a willful violation, the NRC considered whether credit was warranted for *Identification* and *Corrective Action* in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy. Credit was not given for *Identification* since the violation was identified by the State of South Carolina. Credit was given for *Corrective Action* since appropriate corrective actions were taken including the proper disposal of the radioactive material after it was identified by the State of South Carolina.

While the NRC recognizes that application of the normal civil penalty assessment process would result in a base civil penalty for the Severity Level III problem, I have been authorized, after consultation with the Director, Office of Enforcement, to exercise discretion in accordance with Section VII.B.6 of the Enforcement Policy and not issue a penalty. Specifically, you were issued a \$15,000 civil penalty by the State of South Carolina on January 12, 1998, for violations of State requirements related to this event. Also, you have since removed all exit signs containing radioactive material at your facility, as noted in your May 17, 2001 letter to the NRC, and therefore, your agency is no longer a general licensee. In light of the above, the NRC has decided not to issue a civil penalty in this case.

The NRC has concluded that information regarding the reason for the violation, and the corrective actions taken to correct the violation and prevent recurrence, were already described adequately in your May 17, 2001 letter. 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.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosures, and your response will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of the

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NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/NRC/ADAMS/index.html> (the Public Reading Room).

Sincerely,

/RA/ James T. Wiggins Acting for

Hubert J. Miller
Regional Administrator

Docket No. 030-03111
License No. 37-09016-01

Enclosure: Notice of Violation

cc w/encl: State of New Jersey
State of South Carolina

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* Concurrence by J. Luehman for F. Congel per telecon with J. Lubinski

ENCLOSURE

NOTICE OF VIOLATION

Arthur Brisbane Child Treatment Center
Farmingdale, New Jersey

Docket No. 030-03111
License No. 37-09016-01
EA 99-171

During an NRC inspection conducted on October 30, 1997, and November 20, 1997, as well as a subsequent investigation conducted by the NRC Office of Investigation, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the violations are listed below:

- A. 10 CFR 31.5(c)(8) requires, in part, that the licensee dispose of generally licensed devices only by transfer to persons holding a specific license issued pursuant to 10 CFR Parts 30 and 32 or from an Agreement State.

Contrary to the above, on December 4, 1997, Arthur Brisbane Child Treatment Center (a general licensee possessing tritium in EXIT signs) disposed of a broken generally licensed device (containing 12 curies of tritium) and other objects contaminated with radioactive material, by transferring the material to SMI, East Coast Medical Waste, Inc. (SMI), a company which did not hold a specific license issued pursuant to 10 CFR Parts 30 and 32 or a license from an Agreement State. In addition, SMI subsequently transferred this material to Safety Disposal Systems, Inc. (formerly known as Chambers Medical Technologies of South Carolina), which also did not hold a specific license pursuant to 10 CFR Parts 30 and 32 or a license from an Agreement State.

- B. 10 CFR 30.9(a) requires, in part, that information provided to the Commission by a licensee be complete and accurate in all material respects.

Contrary to the above, on December 4, 1997, the licensee provided the Commission information that was not complete and accurate in all material respects. Specifically, a licensee official, namely, the Chief of the Bureau of Environmental Compliance, informed an NRC inspector on December 4, 1997, that drums containing a broken exit sign and other objects contaminated with tritium, had been disposed of properly, when in fact, the material had not been disposed of in accordance with 10 CFR 31.5(c)(8). The material was not disposed of in accordance with 10 CFR 31.5(c)(8), in that it was transferred to SMI, a company which did not hold a specific license issued pursuant to 10 CFR Parts 30 and 32 or a license from an Agreement State. This information was material because it had the capability to influence the NRC follow-up review of the disposal.

This is a Severity Level III problem (Supplement VII).

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken and planned to correct the violations and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed on the docket in the referenced inspection report and in your reply to the NRC dated May 17, 2001. 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 respond, you should clearly mark your response as a "Reply to a Notice of Violation," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555 with a copy to the Regional Administrator, Region I, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

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.

If you choose to respond, your response will be made 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). 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.

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

Dated this 16th day of August 2001