



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

March 28, 2002

EA-02-017

Department of the Army
ATTN: Brigadier General Patricia L. Nilo
Commandant
U.S. Army Chemical School
Fort Leonard Wood, Missouri 65473-8926

SUBJECT: NOTICE OF VIOLATION (INSPECTION REPORT NO. 01-02861-05/01-03)

Dear General Nilo:

This refers to the inspection completed on January 14, 2002, at the Pelham Range burial area at Fort McClellan, Alabama. The purpose of the inspection was to determine whether decommissioning activities authorized by the license were conducted safely and in accordance with Nuclear Regulatory Commission (NRC) requirements. The results of the inspection, including three apparent violations involving the discovery of approximately 34 millicuries of Cobalt 60 at the Pelham Range at Fort McClellan, Alabama, were discussed with you and transmitted on February 12, 2002. The letter transmitting the inspection findings also provided you the opportunity to either respond to the apparent violations in writing or request a predecisional enforcement conference. The NRC confirmed your desire not to attend a predecisional enforcement conference, and by letter dated March 14, 2002, you provided the Department of the Army's response to the apparent violations and addressed the causes and corrective actions to prevent recurrence. We have reviewed your response and conclude that sufficient information is available to determine the appropriate enforcement action in this matter.

Based on the information developed during the inspection and the information you provided in your response to the inspection report, the NRC has determined that three violations of NRC requirements occurred. These violations are cited in the enclosed Notice of Violation (Notice), and the circumstances surrounding them are described in detail in the subject inspection report. Violation A is cited in the Notice and involves the failure to secure from unauthorized removal or limit access to licensed material and the failure to control and maintain constant surveillance of licensed material as required by 10 CFR 20.1801 and 20.1802. In August 2001, the decommissioning contractor for the Department of the Army discovered approximately 34 millicuries of Cobalt 60 at the Pelham Range at Fort McClellan, Alabama, during decommissioning activities. The contractor subsequently buried the Cobalt 60 material at the job site under a mound of dirt approximately four feet in diameter and four feet high, roped the area with a yellow and magenta rope, and posted the area. These activities, however, did not satisfy the regulatory requirements of 10 CFR 20.1801 and 20.1802. Prior to the NRC inspection in December 2001, the Radiation Safety Officer for the Department of the Army was unaware that the Cobalt 60 sources had been found at the site because of a lack of communication with the contractor, and because no onsite inspections had been conducted by the Army due to an increased workload after September 11, 2001. The Army became aware of the sources on December 14, 2001, as a result of the NRC inspection, and promptly secured and shipped the material offsite for proper disposal.

In reviewing this issue, the NRC recognizes that no actual consequences resulted from the failure to adequately secure the radioactive material. In addition, the actions taken by the contractor for the Department of the Army from August to December 14, 2001, provided some level of security and control of the material. However, due to the ability of members of the public and other untrained individuals to access the area, prevention of unauthorized access was not assured. Based on the amount of material involved, i.e., significantly greater than 10 CFR Part 20, Appendix C quantities, the potential for unauthorized access to the material is of concern to the NRC because significant exposures could result if the material was improperly handled by unauthorized and/or untrained individuals. Therefore, in accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions - May 1, 2000" (Enforcement Policy), NUREG-1600, this violation is characterized as a Severity Level III violation.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$3,000 is considered for a Severity Level III violation. Because the Department of the Army has not been the subject of 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 described in Section VI.C.2 of the Enforcement Policy. Your corrective action for Violation A included the initiation of prompt actions to properly secure the material, proper off-site disposal of the material, the submittal of a license amendment to request an increase in the possession limit for Cobalt 60, and a commitment to increase oversight of contractor activities at the site e.g., by contacting the decommissioning contractor weekly and visiting the decommissioning site at least monthly. Based on the above, the NRC concluded that your actions were prompt and comprehensive, and credit was warranted for the factor of Corrective Action.

Therefore, to encourage prompt and comprehensive correction of violations and in recognition of the absence of previous escalated enforcement action, I have been authorized to propose that no civil penalty be assessed in this case. However, similar violations in the future could result in further escalated enforcement action. Issuance of this Notice constitutes escalated enforcement action, that may subject you to increased inspection effort.

In addition, two additional violations (Violations B and C) were identified and are cited in the enclosed Notice. Violation B involved the Department of the Army's exceeding its license possession limit of 8 millicuries for Cobalt 60. Violation C involved the Army's failure to comply with 10 CFR 20.2203 (a)(3)(ii), which requires the submittal of a written report within 30 days after learning that any applicable limit in its license is exceeded. In this case, the Army submitted a report within 30 days of being advised by the NRC inspectors of the potential violation, but not within 30 days of the discovery of the event.

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 adequately addressed on the docket in your March 14, 2002, response, in our February 12, 2002, inspection report, and this letter. Therefore, you are not required to respond to this letter unless the description herein 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, its enclosure, and 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/reading-rm/ADAMS.html> (the Public Electronic Reading Room).

If you have any questions regarding this matter, please contact Douglas M. Collins, Director, Division of Nuclear Materials Safety, at 404-562-4700.

Sincerely,

/RA/ BSM for

Luis A. Reyes
Regional Administrator

Docket No. 030-17584
License No. 01-02861-05

Enclosure: Notice of Violation

cc w/encl:
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Environmental Protection Agency
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Atlanta, GA 30365

James T. Williams
Division of Radiation Control
State of Alabama
Department of Public Health
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NOTICE OF VIOLATION

Department of the Army
Fort McClellan, Alabama

Docket No. 030-17584
License No. 01-02861-05
EA-02-017

During an NRC inspection completed on January 14, 2002, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions - May 1, 2000," NUREG-1600, the violations are listed below:

- A. 10 CFR 20.1801 requires that the licensee secure from unauthorized removal or access licensed materials that are stored in controlled or unrestricted areas. 10 CFR 20.1802 requires that the licensee control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage. As defined in 10 CFR 20.1003, controlled area means an area, outside of a restricted area but inside the site boundary, access to which can be limited by the licensee for any reason; and unrestricted area means an area, access to which is neither limited nor controlled by the licensee.

Contrary to the above, the Department of the Army discovered approximately 34 millicuries of Cobalt 60 at the Pelham Range at Fort McClellan, Alabama, during decommissioning activities and failed to properly secure the material from the end of August 2001 until December 14, 2001, in that the material was stored in a dirt pile that could be accessed by unauthorized individuals.

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

- B. NRC Materials License No. 01-02861-05, Revision 16, dated March 2, 2001, limits the licensee's possession of Cobalt 60 to eight millicuries.

Contrary to the above, the Department of the Army discovered approximately 34 millicuries of Cobalt 60, at the Pelham Range at Fort McClellan, Alabama, during decommissioning activities at the end of August 2001.

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

- C. 10 CFR 20.2203 (a)(2)(v) requires the licensee to submit a written report within 30 days after learning that any applicable limit in its license is exceeded.

Contrary to the above, the Department of the Army discovered approximately 34 millicuries of Cobalt 60 at the Pelham Range at Fort McClellan, Alabama, during decommissioning activities at the end of August 2001 and failed to provide a written report until January 14, 2001.

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

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 letter transmitting this Notice of Violation (Notice), in the Department of the Army's letter dated March 14, 2002, and our February 12, 2002, inspection report. 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, 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 II within 30 days of the date of the letter transmitting this 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.

Because any 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), to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/ADAMS.html> (the Public Electronic Reading Room). 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.

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

Dated this 28th day of March 2002