



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

April 22, 2004

Docket No. 99990001
EA No. 04-074

License No. General License

David Watson
Vice President, Corporate Engineering
Pepperidge Farm, Inc.
595 Westport Avenue
Norwalk, CT 06851-4482

**SUBJECT: INSPECTION 99990001/2004003, PEPPERIDGE FARM, INC.,
NORWALK, CONNECTICUT SITE**

Dear Mr. Watson:

On March 3, 2004, Ms. Donna Janda of this office conducted a special inspection at your Norwalk, Connecticut facility. The inspection included a review of the circumstances surrounding the loss of a Kay-Ray/Sensall Model 7107 moisture sensor device containing 36 millicuries of cesium-137 and control of other generally-licensed devices. The preliminary findings of the inspection were discussed with Mr. Thomas Rieth and Mr. Carlos Pena of your staff at the conclusion of the inspection. The enclosed report presents the results of this inspection.

Based on the results of this inspection, two apparent violations were identified and are being considered for escalated enforcement in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG 1600. One apparent violation involves the failure to properly dispose of a moisture sensor device containing byproduct material. The second apparent violation involves the failure 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 actions.

Two additional apparent violations of lesser significance were identified and are not being considered for escalated enforcement. This first apparent violation involves the failure to dispose of a device (the moisture sensor device) that had not been in use for longer than two years. The second apparent violation involves the loss of an x-ray fluorescence analyzer containing less than one millicurie of iron-55 (Fe-55).

The circumstances surrounding these apparent violations, the significance of the issues, and the need for lasting and effective corrective action were discussed with members of your staff at the inspection exit meeting on March 3, 2004. During a telephone conversation with you on April 22, 2004, Sattar Lodhi of this office also reviewed these apparent violations and your corrective actions. Therefore, it may not be necessary to conduct a predecisional enforcement conference in order to enable the NRC to make an enforcement decision.

The NRC received your letter dated February 9, 2004, and is aware of the prompt actions your company implemented in attempts to locate the device. In addition, the NRC is aware of the

corrective actions that your company has implemented in order to prevent the recurrence of such an incident and of your company's full cooperation in subsequent discussions and inspections related to this matter. However, Section VII.A.1.g. of the NRC Enforcement Policy states that the NRC should normally exercise discretion to propose imposition of a civil penalty of at least the base amount for violations involving the loss, abandonment, or improper transfer or disposal of a sealed source or device. Since one of the apparent violations involves the improper disposal of a sealed source containing 36 millicuries of cesium-137, the NRC is considering imposition of a base civil penalty which is based on approximately three times the expected average cost of the authorized disposal. The NRC may consider adjusting the civil penalty amount to a more appropriate base amount if you can demonstrate that three times the actual cost of disposal would be significantly less than \$7,500. However, the NRC will not normally decrease the civil penalty to an amount below the lowest base civil penalty for such cases, \$3,000.

Before the NRC makes its enforcement decision, we are providing you an opportunity to either (1) respond to the apparent violations addressed in the enclosed inspection report within 30 days of the date of this letter or (2) request a predecisional enforcement conference. Please contact Donna Janda at (610) 337-5371 within seven days of the date of this letter, to inform us as to which of the above two options you choose. Please note that predecisional enforcement conferences are typically open for public observation. The NRC announces predecisional enforcement conferences to the public by issuing a press release.

If you choose to provide a written response, it should be clearly marked as a "Response to Apparent Violations in Inspection Report No. 99990001/2004003" and should include for each apparent violation: (1) the reason for the apparent violation, or, if contested, the basis for disputing the apparent violation, (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. In presenting your corrective action, you should be aware that the promptness and comprehensiveness of your actions will be considered in assessing any civil penalty for the apparent violations. The guidance in the enclosed NRC Information Notice 96-28, "SUGGESTED GUIDANCE RELATING TO DEVELOPMENT AND IMPLEMENTATION OF CORRECTIVE ACTION," may be helpful. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate response is not received within the time specified or an extension of time has not been granted by the NRC, the NRC will proceed with its enforcement decision or schedule a predecisional enforcement conference.

In addition, please be advised that the number and characterization of apparent violations described in the enclosed inspection report may change as a result of further NRC review. You will be advised by separate correspondence of the results of our deliberations on this matter.

D. Watson
Pepperidge Farm, Inc.

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In accordance with 10 CFR 2.390, a copy of this letter, its enclosures, and your response (if you choose to provide one) will be placed in the NRC Public Document Room (PDR) and will be accessible from the NRC Web site at <http://www.nrc.gov/reading-rm.html>. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction.

If you have any questions regarding this inspection, please contact Donna Janda of my staff at the number provided above.

Sincerely,

Original signed by Francis M. Costello

George Pangburn, Director
Division of Nuclear Materials Safety

Enclosures:

1. Inspection Report No. 99990001/2004003
2. NUREG 1600 (Enforcement Policy)
3. NRC Information Notice 96-28

cc:

Thomas E. Rieth, Pepperidge Farm
State of Connecticut

D. Watson
Pepperidge Farm, Inc.

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U.S. NUCLEAR REGULATORY COMMISSION
REGION I

INSPECTION REPORT

Inspection No. 99990001/2004003
Docket No. 99990001
License No. General License, 10 CFR 31.5
Licensee: Pepperidge Farm, Inc.
Location: 595 Westport Avenue
Norwalk, CT 06851
Inspection Dates: March 3, 2004

Inspector: ***Original signed by
Sattar Lodhi, Ph.D.*** ***April 22, 2004***

Donna M. Janda
Health Physicist
date

Approved By: ***Original signed by
Sattar Lodhi, Ph.D.*** ***April 22, 2004***

John D. Kinneman, Chief
Nuclear Materials Safety Branch 2
Division of Nuclear Materials Safety
date

EXECUTIVE SUMMARY

Pepperidge Farm, Inc.
NRC Inspection Report No. 99990001/2004003

On January 21, 2004, the Connecticut Department of Environmental Protection (CT DEP) informed NRC that a generally-licensed Kay-Ray/Sensall Model No. 7107, Serial No. 7107-12, moisture sensor device used to measure bakery dough density was missing from the Pepperidge Farm, Inc. bakery facility in Norwalk, Connecticut and presumed sent to a scrap recycler in South Norwalk, Connecticut. The gauge contained 36 millicuries of cesium-137. Region I contacted a Pepperidge Farm representative on January 22, 2004 who confirmed that the gauge was missing and presumed scrapped. Pepperidge Farm and CT DEP representatives conducted inspections of the scrap recycling facility in unsuccessful attempts to locate the device.

On March 3, 2004, NRC Region I conducted an inspection at the Pepperidge Farm facility in Norwalk, Connecticut. Pepperidge Farm has determined that the most likely cause of loss of the device was that a subcontractor inadvertently disposed of the device as scrap metal after disassembly of equipment in the bakery facility in September 2003.

Three apparent violations were identified during the inspection:

1. Failure to properly dispose of a device containing byproduct material is an apparent violation of 10 CFR 31.5(c)(8)(i).
2. Failure 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 actions is an apparent violation of 10 CFR 31.5(c)(12).
3. Failure to dispose of a device that has not been in use for longer than two years is an apparent violation of 10 CFR 31.5(c)(15).

REPORT DETAILS

I. Background

On January 15, 2004, in response to a registration request from the Connecticut Department of Environmental Protection (CT DEP), Pepperidge Farm, Inc. informed the CT DEP that a Kay-Ray/Sensall (now ThermoMeasure Tech) Model No. 7107 moisture sensor device, Serial No. 7107-12, containing 36 millicuries of cesium-137 (Cs-137), was missing and presumed sent to a scrap recycling facility in South Norwalk, CT. According to a Pepperidge Farm representative, the unit containing the moisture sensor device was purchased in 1982 and contained 50 millicuries of Cs-137 at the time of purchase. The device had not been used since 1992. According to the manufacturer's records, the device was last leak tested in August 2002. The device was located in the Pepperidge Farm Norwalk Connecticut Bakery, which ceased production operations on July 31, 2003. All equipment that was not transferred to other operating plants, including the unit containing the moisture sensor device, was removed from the plant on September 24, 2003 and sent to LaJoie's Auto Salvage in Norwalk, CT. Searches of the salvage yard by Pepperidge Farm and CT DEP representatives failed to locate the device.

II. Licensee Preliminary Investigation of Loss of Moisture Sensor Device

a. Inspection Scope

The inspector reviewed the circumstances related to the improper disposal of a moisture sensor device containing Cs-137 at the Pepperidge Farm facility.

b. Observations and Findings

On March 3, 2004, NRC Region I conducted an inspection at the Pepperidge Farm facility in Norwalk, Connecticut. The inspector met with Pepperidge Farm representatives to discuss the loss of the device. According to Pepperidge Farm representatives, the device had been located in the Pepperidge Farm Norwalk Connecticut Bakery and had not been used since 1992. The Bakery had ceased production operations on July 31, 2003. Equipment from various production areas was transferred to other existing operating plants. Any equipment not being transferred or sold through an asset recovery broker, including the unit containing the moisture sensor device, was to be sent to a scrap recycling facility.

After receiving a registration request for the device from the CT DEP, Pepperidge Farm conducted a search of remaining equipment and other facilities for the unit containing the moisture sensor device. After review of daily time slips of the riggers removing the equipment, Pepperidge Farm representatives determined that the device was removed and scrapped to LaJoie's Auto Salvage in September 2003. Pepperidge Farm conducted searches for the device at the scrap recycling yard on January 14, 21, and 23, 2004. Pepperidge Farm was accompanied by CT DEP representatives on the January 21, 2004 visit to the recycling facility. The device was not found. Pepperidge Farm assumes the device was shredded, bailed and sent to a metal reprocessing company.

During the site visit, CT DEP informed Pepperidge Farm that they needed to notify the NRC of the missing byproduct material. Pepperidge Farm representatives were attempting to make the required notification when they received a call on January 22, 2004 from NRC

regarding the event. This call was based on a notification of the event by CT DEP to NRC on the evening of January 21, 2004.

c. Conclusions

The failure to properly dispose of a device containing byproduct material is an apparent violation of 10 CFR 31.5(c)(8)(i).

The failure to dispose of a device that has not been in use for longer than two years is an apparent violation of 10 CFR 31.5(c)(15).

III. Management Oversight of the Program

a. Inspection Scope

The inspector reviewed the management oversight of the generally-licensed device program.

b. Observations and Findings

From approximately June 2003 until January 2004, Pepperidge Farm did not have a person responsible for day-to-day compliance with appropriate regulations and requirements pertaining to generally-licensed devices. The project engineer who previously had this responsibility was transferred to another Pepperidge Farm facility in June 2003 and a replacement was not designated for some time, resulting in the loss of this job responsibility. Pepperidge Farm has now designated the Manager of Infrastructure & Environmental Engineering to be responsible for the generally-licensed device program at the facility.

c. Conclusions

The failure 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 actions is an apparent violation of 10 CFR 31.5(c)(12).

IV. Use, Transfer, and Control of Generally-Licensed Devices

a. Inspection Scope

The inspector reviewed the use, transfer and control of generally-licensed devices at the Pepperidge Farm facility with company representatives, and the regulations pertaining to them.

b. Observations and Findings

According to the NRC General License Tracking System (GLTS), Pepperidge Farm registered the moisture sensor device with the NRC in January 2002 (ADAMS Accession No. ML020160503.) According to GLTS records, Pepperidge Farm possessed two additional generally-licensed devices. One device was an Agilent Model No. 19233 gas chromatograph containing 15 millicuries of nickel-63. According to the manufacturer, this device was returned to Agilent in September 2000 for disposal. The second device was an Oxford Instruments Model LAB-X 1001 x-ray fluorescence analyzer containing 20 millicuries of iron-55 (Fe-55) when purchased in 1991. After conducting a thorough investigation into the location of this device, the licensee has determined that the device is lost. The current activity of the Fe-55 source is approximately 0.625 millicuries, which is below the amount (1 millicurie) that meets the reporting requirement in 10 CFR 20.2201.

c. Conclusions

The failure to properly dispose of the x-ray fluorescence analyzer containing byproduct material is another example of an apparent violation of 10 CFR 31.5(c)(8)(i).

V. Exit Meeting

The inspector met with Pepperidge Farm representatives on the afternoon of March 3, 2004. The inspector discussed the preliminary findings of the inspection with the meeting attendees. The apparent violations included the failure to properly dispose of byproduct material, the failure to appoint an individual responsible for the generally-licensed device program, and the failure to dispose of a device that has not been in use for longer than two years. The inspector provided a copy of the NRC Enforcement Policy and a general description of the enforcement process. The inspector discussed with the licensee that decisions regarding apparent violations are not made until all the information is reviewed.

The NRC inspector discussed with Pepperidge Farms representatives the regulations in 10 CFR 31.5 regarding the proper use, transfer and control of generally-licensed devices. The inspector provided copies of 10 CFR Parts 20 and 31.

PARTIAL LIST OF PERSONS CONTACTED

Licensee

*#Thomas Rieth, Manager - Infrastructure & Environmental Engineering
Carlos Pena, General Counsel

* present at entrance meeting
present at exit meeting