

January 28, 2005

EA 05-004

Mr. W. R. Ashworth, Director
Office of Procurement and Property Management
Department of Administration
U. S. Department of Agriculture
5601 Sunnyside Avenue (Mailstop 5510)
Beltsville, MD 20705-1500

SUBJECT: NOTICE OF VIOLATION (NRC Inspection Report Nos. 030-04530/01-001 through 04-004 and 030-06923/02-002 through 04-004)

Dear Mr. Ashworth:

This letter refers to the routine unannounced NRC inspections completed on January 6, 2005, at a number of your facilities including those located in Pendleton, Oregon, Union City, Tennessee, and Fort Smith, Arkansas. The enclosed inspection report documents the findings of these inspections, which were discussed initially with Mr. James Stevens, Director, Safety and Health Management Division and other members of the Radiation Safety Committee in September 2004, and Mr. John Jensen, your Director of Radiation Safety during an exit meeting on January 6, 2005.

Based on the findings from these inspections, the NRC has determined that a violation of NRC requirements occurred. The violation, which is cited in the enclosed Notice of Violation (Notice) and inspection report, involves the failure, on three separate occasions, to secure, control or maintain constant surveillance of portable nuclear gauges containing NRC licensed material (americium-241 and cesium-137). Specifically, (1) on September 6, 2001, a portable nuclear gauge was left unattended in an unrestricted area in Pendleton, Oregon; (2) on December 21, 2001, three portable gauges were not secured and controlled from unauthorized removal when a storage room in Union City, Tennessee, was left unlocked and was not under the direct surveillance of an authorized user; and (3) on May 14, 2003, a portable gauge was not secured and controlled from unauthorized removal when a storage room in Fort Smith, Arkansas, was found by an NRC inspector unlocked and not under the direct surveillance of an authorized user.

On January 14, 2005, Mr. John Kinneman of my staff informed Mr. Jensen that this violation was being considered for escalated enforcement action, and the NRC did not need any additional information to make an enforcement decision. However, Mr. Kinneman provided Mr. Jensen an opportunity to attend a predecisional enforcement conference or to provide a written response, prior to the NRC determining appropriate enforcement action. During this conversation, Mr. Jensen declined the opportunity to attend a conference or to provide a written response.

Although it was unlikely that unauthorized persons came into direct contact with the material, this violation is of concern to the NRC because (1) the failure to control radioactive material could result in the loss or theft of the material; and (2) unintended radiation doses to members of the public could occur if the source was removed from its shielded position. Therefore, this violation is categorized at Severity Level III in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy), NUREG-1600.

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 your facility has not been the subject of escalated enforcement action within the last two years or two inspections (i.e. none since at least July 1999), the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy. Credit for corrective actions is warranted because your corrective actions were considered prompt and comprehensive. These corrective actions included, but were not limited to: (1) immediately securing the nuclear gauges at all three sites; (2) revising procedures, training designated workers and recertifying all gauge users; (3) notifying all of the agency's permit holders of their responsibility to secure licensed material; (4) revoking the user authorization for the individual involved in case 1; and (4) repairing the storage room locks at the locations in cases 2 and 3.

Therefore, to encourage prompt and comprehensive correction of violations, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice of Violation without a civil penalty for this Severity Level III violation. However, you should be aware that significant violations in the future could result in a civil penalty. In addition, issuance of this Notice constitutes escalated enforcement action that may subject you to increased inspection effort.

The NRC has concluded that information regarding the reasons for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence, and the date when full compliance was achieved is already adequately addressed on the docket in this letter and the enclosed inspection report. Therefore, you are not required to respond to this Notice of Violation 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 addition to the attached Notice, the NRC also identified a Severity Level IV violation of 10 CFR 30.36(d) for failure to notify the NRC when portable nuclear gauges were not used within a 24 month period. This violation is being treated as a Non-Cited Violation (NCV), consistent with Section VI.A of the Enforcement Policy. The NCV is described in the inspection report.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response (if you choose to provide one) 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). (Note:Public access to many documents in ADAMS has been temporarily suspended so that security reviews of publicly available documents may be performed and potentially sensitive information removed. Please check the NRC website for updates on the resumption of ADAMS access to all documents.) To the extent possible, your response should not include any personal privacy, proprietary or safeguards information so that it can be made available to the public without redaction. The NRC also includes significant enforcement actions on its web site at <http://www.nrc.gov>; select **What We Do, Enforcement**, then **Significant Enforcement Actions**.

Sincerely,

/RA/ JWiggins for

Samuel J. Collins
Regional Administrator

Docket Nos. 030-04530
030-06923
License Nos. 19-00915-03
19-00915-06

Enclosures:

1. Notice of Violation
2. NRC Region I Inspection Report Nos. 030-04530/01-001 through 04-004 and 030-06923/02-002 through 04-004

cc w/encls:

John Jensen, USDA, Director of Radiation Safety
State of Maryland
State of Oregon
State of Tennessee
State of Arkansas

Mr. W. R. Ashworth

DISTRIBUTION:

ADAMS (PARS)

SECY

CA

OEMAIL

OEWEB

LReyes, EDO

MVirgilio, DEDMRS

FCongel, OE

SFiguroa, OE

LChandler, OGC

JMoore, OGC

MElwood, OGC

KRemsberg, OGC

JStrosnider, NMSS

CMiller, NMSS

RPierson, NMSS

DGillen, NMSS

RTadesse, OEDO

CMiller, OEDO

LPsyk-Gersey, NMSS

Enforcement Coordinators RII, RIII, RIV

SGagner, OPA

HBell, OIG

PLohaus, STP

GCaputo, OI

LTremper, OC

DScrenci, RI

NSheehan, RI

GPangburn, RI

FCostello, RI

SMinnick, RI SAO

State Agreement Officers RII, RIV

JKinneman, RI

KFarrar, RI

DHolody, RI

JWray, RI

DCorlew, RI

Region I OE Files (with concurrences)

SISP Review Complete: JDK (Reviewer's Initials)

DOCUMENT NAME: E:\Filenet\ML050310381.wpd

After declaring this document "An Official Agency Record" it **will** be released to the Public.

To receive a copy of this document, indicate in the box: "C" = Copy without attachment/enclosure "E" = Copy with attachment/enclosure "N" = No copy

OFFICE	RI/ORA	RI/ORA	RI/DNMS	RI/ORA	RI/RA
NAME	JWray	DHolody	GPangburnRBellemy for	KFarrar	SCollins
DATE	01/19/05	01/27/05	01/26/05	01/28/05	01/27/05

OFFICIAL RECORD COPY

ENCLOSURE 1

NOTICE OF VIOLATION

U. S. Department of Agriculture
Beltsville, Maryland

Docket No. 030-04530
License No. 19-00915-03
EA 05-004

Based on an NRC inspection completed on January 6, 2005, a violation of NRC requirements was identified. The violation was discussed with the licensee during an exit meeting on January 6, 2005. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy), NUREG-1600, the violation is set forth below:

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, on three separate occasions, the licensee did not adequately secure from unauthorized removal or limit access to portable nuclear gauges in unrestricted areas, nor did the licensee control and maintain constant surveillance of this licensed material. Specifically,

1. on September 6, 2001, a portable gauge containing 50 millicuries of americium 241 was left unattended at a location in Pendleton, Oregon;
2. on December 21, 2001, three portable gauges containing 8 millicuries of Cs-137 and 40 millicuries of Am-241 each were left in an unlocked storage room in Union City, Tennessee; and
3. on May 14, 2003, a portable gauge containing 8.3 millicuries of Cs-137 and 40 millicuries of Am-241 was left in an unlocked storage room in Fort Smith, Arkansas.

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

The NRC has concluded that information regarding the reasons for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence, and the date when full compliance was achieved is already adequately addressed on the docket in the letter transmitting this Notice, and in NRC Inspection Report Nos. 030-04530/01-001 through 04-004 and 030-06923/02-002 through 04-004. 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, EA 04-219" 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 the violation, 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.

If you choose to respond, your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document 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.

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

Dated this 28th day of January 2005