

August 15, 2005

EA-05-121

Gene Iannazzo
President
Harsco Corporation
Heckett MultiServ Division
P.O. Box 1071
Butler, PA 16003

SUBJECT: NOTICE OF VIOLATION [NRC INSPECTION REPORT NO. 03035120/2005-001(DNMS)] HARSCO/HECKETT MULTISERV DIVISION

Dear Mr. Iannazzo:

This refers to a routine inspection conducted on May 25, 2005, at the Harsco/Heckett MultiServ Division facility in East Chicago, Indiana. Several apparent violations of U.S. Nuclear Regulatory Commission (NRC) regulations were identified during the inspection, including your failure to replace the individual named on the NRC licensee as the Radiation Safety Officer (RSO) following the individual's departure from the company in May 2003.

In a letter dated June 24, 2005, transmitting the inspection report, we provided you the opportunity to address the apparent violations identified in the report by either attending a predecisional enforcement conference or providing a written response before we made our final enforcement decision. You subsequently declined the opportunity to address the apparent violations by attending a predecisional enforcement conference, and in letters dated June 29 and July 8, 2005, you provided written responses to the apparent violations.

Based on the information developed during the inspection and the information that you provided in your June 29 and July 8, 2005, letters, the NRC has determined that violations of NRC requirements occurred. The violations are cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding them are described in detail in the inspection report. Violation A of the enclosed Notice pertains to the RSO position at the East Chicago, Indiana, facility. Condition 21 of your NRC license specifically identified a named individual to fulfill the RSO responsibilities at the East Chicago, Indiana facility. In May 2003, this named individual left the employ of your company and a replacement RSO was designated after the NRC identified the violation during our May 2005 inspection. The failure to immediately appoint a replacement RSO is a significant regulatory concern since an RSO is responsible for the overall implementation of the licensee's radiation safety program. Therefore, Violation A is categorized in accordance with the NRC Enforcement Policy at Severity Level III. The current Enforcement Policy is included on the NRC's Web site at www.nrc.gov; select **What We Do, Enforcement**, then **Enforcement Policy**.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$3,250 is considered for a Severity Level III violation. Because the licensee has not been the subject of

escalated enforcement actions within the past two inspections, 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. The NRC determined that credit was warranted for your corrective actions which included: (1) amending your NRC license to designate a new RSO; (2) establishing a tracking system to notify management when key individuals, including the RSO, change positions; and, (3) retaining the services of an outside consultant to provide regulatory training to the new RSO, authorized users, and managers.

Therefore, to encourage comprehensive correction of violations, and in recognition of the absence of previous escalated enforcement action, I have been authorized, after consultation with the Director, Office of Enforcement, not to propose a civil penalty in this case. However, significant violations in the future could result in a civil penalty. In addition, issuance of this Severity Level III violation constitutes escalated enforcement action, that may subject you to increased inspection effort.

Three violations of NRC requirements, which were not considered for escalated enforcement, were also identified during the inspection and are included in the Notice. Violation B was associated with a failure to conduct a physical inventory every six months, to account for all sources and devices received and possessed under the license, as specified in Condition 15 of your NRC license. During the inspection you completed a physical inventory which determined that all NRC-licensed material was properly identified and controlled; however, the last previous inventory was completed on December 3, 2002, a period in excess of six months. In accordance with the Enforcement Policy, Violation B was categorized at Severity Level IV. Corrective actions for Violation B included developing an inventory spreadsheet to document performance of the inventories and utilizing a computer program to display reminders to perform regulatory requirements at specified intervals.

Violation C.1 involved a failure to instruct individuals to close the device shutter when the conveyor belt was stopped and Violation C.2 involved a failure to post adequate signs in the vicinity of the devices reminding individuals to close the device shutter, as required by Condition 21 of the NRC license. In accordance with the Enforcement Policy, Violations C.1 and C.2 were categorized at Severity Level IV. Corrective actions for Violations C.1 and C.2 included: (1) providing the appropriate training to licensee employees; (2) committing to periodic retraining of licensee employees; and (3) posting and ensuring the legibility of the required signs in the immediate vicinity of the devices.

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 Inspection Report No. 03035120/2005-001(DNMS) and your June 29 and July 8, 2005, letters. Therefore, you are not required to respond to this letter unless the description in your response 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 2.390 of the NRC's "Rules of Practice," a copy of this letter and its enclosure, 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>. To the extent possible, your response, if you choose to respond, 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 www.nrc.gov; select **What We Do, Enforcement**, then **Significant Enforcement Actions**.

Please contact John Madera, Chief, Materials Inspection Branch, at telephone number (630) 829-9834 if you have any questions.

Sincerely,

/RA/

James L. Caldwell
Regional Administrator

Docket No. 030-35120
License No. 37-26522-02

Enclosure: Notice of Violation

*See previous concurrence

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NOTICE OF VIOLATION

Harsco Corporation
Heckett MultiServ Division
East Chicago, Indiana

Docket No. 030-35120
License No. 37-26522-02
EA-05-121

During an NRC inspection conducted on May 25, 2005, violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. Condition 11 of License No. 37-26522-02, dated August 31, 1999, authorized a specifically named individual to fulfill the responsibilities of the Radiation Safety Officer (RSO).

Contrary to the above, as of May 2003, an individual, specifically authorized by Condition 11 of the license to fulfill the RSO's responsibilities, was no longer employed by the licensee and did not fulfill the RSO's responsibilities. Specifically, the licensee failed to appoint a new RSO following the previous RSO leaving the company.

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

- B. License Condition 15 of License No. 37-26522-02 provides, in part, that the licensee conduct a physical inventory every six months to account for all sources and devices received and possessed under the license.

Contrary to the above, from December 4, 2002, to May 25, 2005, the licensee failed to conduct a physical inventory every six months to account for all sources and/or devices received and possessed under the license, a period in excess of six months.

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

- C. Condition 21.A of License No. 37-26522-02 requires the licensee conduct its program in accordance with the statements, representations, and procedures, including any enclosures, contained in an application dated July 28, 1993.

1. Item 10.a.ii of the application, dated July 28, 1993, provides, in part, that personnel be instructed to close the shutter when the slag conveyor belt is stopped and/or work must be done in the near proximity of the devices.

Contrary to the above, on May 25, 2005, the slag conveyor belt was stopped with the shutter of the device open and an employee working in proximity to the device had not been instructed to close the shutter when the belt was stopped.

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

2. Item 10.a.iv of the application, dated July 28, 1993, provides, in part, signs, displaying "Caution Radiation" and the standard symbol stating that the shutter must be closed and the radiation safety officer notified prior to entering the area when working near the gauge, will be posted at installation.

Contrary to the above, on May 25, 2005, a sign displaying the following: "Caution Radiation," with the standard symbol, and a sign stating that, "the shutter must be closed, and the RSO notified prior to entering the area", was not posted near the location of one device and signs near the second device were illegible.

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

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 Inspection Report No. 03035120/2005-001(DNMS) and your June 29 and July 8, 2005, letters. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description in your response 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-05-121," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555 with a copy to the Regional Administrator and Enforcement Officer, Region III, 2443 Warrenville Road, Suite 210, Lisle, IL 60532-4352, within 30 days of the date of the letter transmitting this Notice of Violation.

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 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 15th day of August 2005.