

January 17, 2006

Docket No. 03002578
EA No. 05-214

License No. 29-13911-01

Mr. Wayne Schiffner
Chief Operating Officer
South Jersey Healthcare
1505 W. Sherman Avenue
Vineland, NJ 08360

SUBJECT: NOTICE OF VIOLATION

Dear Mr. Schiffner:

This letter refers to the NRC inspection conducted at your facilities in Vineland and Elmer, New Jersey, on September 26-28, 2005, as well as reviews of additional information you provided to the NRC through October 7, 2005. During the inspection, the NRC reviewed the circumstances associated with an apparent violation of NRC requirements, that occurred in February 2005, involving the failure to maintain constant surveillance of a package containing licensed material in the form of two brachytherapy sources. The apparent violation was initially identified by your consultant physicist. The results of the inspection, including this apparent violation, as well as another apparent violation involving the failure to train the clerk receiving the material, were discussed with Beth Semler, Radiation Safety Officer, and Mario Sergi, Jr., Director, Radiation Therapy/Radiology of your staff during an exit meeting at the conclusion of the inspection on October 28, 2005. The apparent violations were also described in a letter and inspection report sent to you on November 30, 2005.

On November 16, 2005, Mr. Randy Ragland of my staff informed you that the apparent violation involving the failure to maintain constant surveillance of licensed material was being considered for escalated enforcement action, and the NRC did not need any additional information to make an enforcement decision. Nonetheless, Mr. Ragland provided you an opportunity to attend a predecisional enforcement conference or to provide a written response, prior to the NRC determining appropriate enforcement action. During that conversation, you declined the opportunity to attend a conference or to provide a written response.

Based on the information developed during the inspection, 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 subject inspection report. The most significant violation involved the failure to secure from unauthorized removal and maintain constant surveillance of licensed material that was stored in a controlled area. Specifically, for portions of approximately 17 hours on February 9-10, 2005, two brachytherapy sources containing cesium-137, were left unsecured and unattended in a

mail room after being received from a supplier of the material. This condition was contrary to the requirements of 10 CFR 20.1801 and 10 CFR 20.1802. The other violation involved the failure to provide a receiving clerk, who received the licensed material, adequate function specific hazardous material training regarding responsibilities for receipt and shipment of radioactive materials.

In this case, the failure of your staff to maintain constant surveillance and control of the sources did not result in removal of the sources from their shielded container, nor did it result in any leakage from the sources. Furthermore, there is no evidence that unauthorized persons came into direct contact with the sources during the time that they were unsecured and unattended. Nonetheless, this violation is of concern to the NRC because the failure to control radioactive material could result in the loss or theft of the material, and significant unintended radiation doses to members of the public could occur if these sources were removed from their shielded position. Therefore, this violation is categorized at Severity Level III in accordance with the NRC Enforcement Policy.

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$3,250 is considered for a Severity Level III violation involving the loss of control of radioactive material with this level of radioactivity. Because your facility has not been the subject of escalated enforcement action within the last two years or 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. Credit for corrective actions is warranted because your corrective actions were considered prompt and comprehensive. These corrective actions included: (1) training of pertinent staff regarding receipt and shipment of licensed materials; (2) posting of appropriate receipt and shipping procedures at the main desk; and (3) discussions with suppliers of radioactive materials regarding making notification to the facility of any pending delivery of material.

Therefore, to encourage prompt and comprehensive correction of violations, and in recognition of the absence of previous escalated enforcement action at your facilities, 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 Severity Level III violation constitutes escalated enforcement action that may subject you to increased inspection effort.

The second violation of NRC requirements is described in the attached Notice and is classified as Severity Level IV.

The NRC has concluded that information regarding the reasons for the violations, the corrective actions taken to correct the violations and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed in this letter, and in our inspection report issued on November 30, 2005. Therefore, you are not required to respond to these violations 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.

Mr. W. Schiffner

3

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, 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). 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/ Original Signed by Marc L. Dapas for

Samuel J. Collins
Regional Administrator

Enclosure: Notice of Violation

cc:
B. Semler, Radiation Safety Officer
State of New Jersey

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, 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). 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/ Original Signed by Marc L. Dapas for

Samuel J. Collins
Regional Administrator

Enclosure: Notice of Violation
cc:
B. Semler, Radiation Safety Officer
State of New Jersey

DISTRIBUTION w/encl:
ADAMS (PARS)
SECY
CA
OEMAIL
OEWEB
L Reyes, EDO
M Virgilio, DEDMRS
M Johnson, OE
B Jones, OGC
L Chandler, OGC
J Strosnider, NMSS
C Miller, NMSS
R Zimmerman, NSIR
G Tracy, NSIR
J Peralta, NSIR
C Miller, OEDO
G Morell, NMSS
Enforcement Coordinators
RII, RIII, RIV

S Figueroa, OE
M Elwood, OGC
K Remsberg, OGC
S Gagner, OPA
H Bell, OIG
J Schlueter, STP
G Caputo, OI
L Tremper, OCFO
D Screnci, PAO-RI
N Sheehan, PAO-RI
G Pangburn, RI
F Costello, RI
P Henderson, RI
K Farrar, RI
D Holody, RI
J Wray, RI
C O'Daniell, RI
S Villar, RI
Region I OE Files (with concurrences)

DOCUMENT NAME: E:\Filenet\ML060170469.wpd

SISP Review Complete: fmc _____ (Reviewer's Initials)

After declaring this document "An Official Agency Record" it **will/will not** 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 | ORA/RI | DNMS/RI | DNMS/RI | RC/RI | RA |
| NAME | DHolody | PHenderson | GPangburn | KFarrar | SCollins/MLD for |
| DATE | 12/29/05 | 12/29/05 | 12/29/05 | 01/13/06 | 01/13/06 |

| | | | | | |
|--------|-----------|------------|---------|---------|---------|
| OFFICE | NMSS | OE | | | |
| NAME | GMorell** | MJohnson** | | | |
| DATE | 01/11/06 | 01/13/06 | 01/ /06 | 01/ /06 | 01/ /06 |

OFFICIAL RECORD COPY

**concurrence via e-mail from SMerchant

Mr. W. Schiffner

ENCLOSURE

NOTICE OF VIOLATION

South Jersey Healthcare
Vineland, NJ

Docket No. 030-02578
License No. 29-13911-01
EA-05-214

Based on an NRC inspection conducted at South Jersey Healthcare facilities in Vineland and Elmer, New Jersey on September 26-28, 2005, as well as reviews in the Region I office of additional information provided to the NRC until October 7, 2005, two violations of NRC requirements were identified. The violations were discussed during an exit meeting following the inspection on October 28, 2005. In accordance with the NRC Enforcement Policy, 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 states that the licensee shall 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, for portions of approximately 17 hours on February 9-10, 2005, the licensee did not secure from unauthorized removal or limit access to a package containing two cesium-137 brachytherapy sources located in a mail room (awaiting inter-office transfer), which is an unrestricted area, nor did the licensee control and maintain constant surveillance of this licensed material.

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

- B. 10 CFR 71.5 requires that a licensee who transports licensed material outside the site of usage, as specified in the NRC license, or where transport is on public highways, or who delivers licensed material to a carrier for transport, comply with the applicable requirements of the Department of Transportation regulations in 49 CFR parts 170 through 189 appropriate to the mode of transport.

49 CFR 172.704 (a) (2) requires that Hazmat employee training include, in part, function-specific training, which is specifically applicable to the functions the employee performs.

Contrary to the above, the licensee did not provide function specific training to a receiving clerk with regard to responsibilities for receipt and shipment of radioactive materials.

This is a Severity Level IV Violation (Supplement V).

The NRC has concluded that information regarding the reasons for the violations, the corrective actions taken to correct the violations and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed in this letter, and in the inspection report issued on November 30, 2005. Therefore, no response to this Notice is required. 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-05-201" 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 violations, 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.

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 2.390(b) to support a request for withholding confidential commercial or financial information).

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

Dated this 17th day of January 2006