

May 4, 2006

Docket No. 030-01325  
EA No. 06-029

License No. 08-03604-03

Mr. Jeffrey A. Matton  
Vice President of Professional Services  
Washington Hospital Center  
110 Irving Street, NW  
Washington, D.C.

SUBJECT: NOTICE OF VIOLATION (OFFICE OF INVESTIGATIONS REPORT  
NO. 1-2005-012)

Dear Mr. Matton:

This letter refers to an NRC investigation, conducted by the NRC's Office of Investigations (OI), Region I field office, at your facility in Washington, D.C., completed on January 17, 2006. The purpose of the investigation was to determine if on July 14, 2003, the lock on the hot lab door at the Washington Hospital Center (WHC) was deliberately taped open, thereby leaving the hot lab unsecured, contrary to the requirements of 10 CFR 20.1801 and 20.1802. The OI investigation was initiated on April 7, 2005, after the NRC became aware that the hot lab door lock may have been taped open. During this investigation, OI determined that, during a routine daily walk through of the facility on July 14, 2003, your Radiation Safety Assistant discovered the door lock to the hot lab had been taped to prevent it from locking and the hot lab was found unattended.

Based on the OI investigation, the NRC concluded that a deliberate violation occurred and that you identified the violation on July 14, 2003, as a result of conducting a routine surveillance. On February 27, 2006, we sent you a letter which contained a factual summary of the OI investigation and informed you that the NRC had identified an apparent deliberate violation involving the failure to secure from unauthorized removal or access, and the failure to provide constant surveillance of, licensed materials that are stored in a controlled or unrestricted area. Our letter also informed you that this apparent deliberate violation was being considered for escalated enforcement action in accordance with the NRC enforcement policy and that the NRC did not need any additional information to make an enforcement decision. Nonetheless, you were provided an opportunity to either respond in writing to this apparent violation, attend a predecisional enforcement conference (PEC), or request Alternate Dispute Resolution (ADR) with the NRC in an attempt to resolve this issue.

In a telephone conversation on March 3, 2006, Mr. Alex Eremia, your legal counsel, informed Ms. Penny Lanzisera of my staff that you did not desire to have a PEC or pursue ADR, but that you would provide a written response. In your response, dated March 28, 2006, you acknowledged that this incident occurred as stated in our February 27, 2006 letter, but you stated that your organization believed that the circumstances surrounding the violation met the criteria for a non-cited violation (NCV) and should be disposed as such. However, you also stated that should the NRC assess the significance of the violation at Severity Level III and issue a Notice of Violation, you believed that because of your prompt identification of the violation and comprehensive corrective actions, no civil penalty is warranted.

Based on our review of the circumstances associated with the apparent violation, including the information we obtained during the investigation and the information you provided in your written response dated March 28, 2006, the NRC has determined that a deliberate violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice). The deliberate violation involved the failure to secure from unauthorized removal, and maintain constant surveillance of, licensed material that was stored in the hot lab at WHC, a controlled area containing licensed materials. Specifically, for a portion of the day on July 14, 2003, licensed radioactive material was left unsecured and unattended in the hot lab at your facility when the lock to the hot lab door was taped over, contrary to the requirements of 10 CFR 20.1801 and 10 CFR 20.1802. Although OI did not determine who actually taped the door open, the NRC concluded that the action was a deliberate act by an WHC employee, in part, because (1) the area where the hot lab is located is not generally accessed by the public; (2) anyone in the area, other than WHC staff, must be escorted; and (3) unescorted individuals are readily identified by WHC staff. In your March 28, 2006 response, you also stated that you believe a nuclear medicine technologist placed the tape on the door lock because the technologists frequently access the hot lab and they were most inconvenienced by the faulty lock.

In this case, the failure of your staff to maintain constant surveillance and control of the licensed material in the hot lab did not result in loss or theft of any licensed material. Furthermore, there is no evidence that unauthorized persons came into direct contact with the material during the time that it was unsecured and unattended. Nonetheless, this deliberate 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 unintended radiation doses to members of the public could occur if this material were removed. Deliberate violations are a very serious concern to the NRC because the NRC regulatory program relies, in part, on the honesty and integrity of NRC licensees and their employees. As such, deliberate violations cannot be tolerated. Given the deliberateness of this action, this violation has been 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 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. Since your facility has been the subject of escalated enforcement action within the last two years or two inspections, the NRC considered whether credit was warranted for *Identification and Corrective Action* in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy. Credit for identification is warranted because a member of your staff discovered the taped open door during a routine daily surveillance of your facility. Credit for corrective actions is also warranted because your corrective actions were considered prompt and comprehensive. These corrective actions included: (1) immediately removing the tape from the door latch; (2) replacing the door lock; (3) instructing all night shift technicians to increase vigilance over the hot lab door security; (4) increasing management inspections of the hot lab; (5) reinforcing the requirement to secure the hot lab door with all department employees at weekly staff meetings; (6) reviewing the violation with Nuclear Medicine Department management; and (7) emphasizing the applicable regulatory and procedural requirements during nuclear technologists' annual training. In addition, you stated that your organization would install a video camera system to monitor the area surrounding the hot lab which will ensure that all licensed material is under constant surveillance.

Therefore, to encourage prompt identification 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 Severity Level III violation constitutes escalated enforcement action that may subject you to increased inspection effort.

The NRC has concluded that because 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 in this letter, and in your letter dated March 28, 2006, you are not required to respond to this 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.

If you disagree with the enforcement sanction, you may request ADR with the NRC in an attempt to resolve any disagreement on whether a violation occurred and the appropriate enforcement action. ADR is a general term encompassing various techniques for resolving conflict outside of court using a neutral third party. The technique that the NRC has decided to employ during a pilot program which is now in effect is mediation. Additional information concerning the NRC's pilot program is described in the enclosed brochure (NUREG/BR-0317) and can be obtained at <http://www.nrc.gov/what-we-do/regulatory/enforcement/adr.html>. The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's ADR program as a neutral party. You must contact ICR at (877) 733-9415 within 10 days of the date of this letter if you are interested in pursuing resolution of these issues through ADR.

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/**

Samuel J. Collins  
Regional Administrator

Enclosure: Notice of Violation

cc: District of Columbia  
State of Maryland

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NAME	KFarrar		G. Morell for C. Miller		E. Bowden Berry for B. Jones		C. Nolan for M. Johnson		SCollins/MLD for	
DATE	04/07/06		04/14/06		05/1/06		05/2/06		05/4/06	

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ENCLOSURE

NOTICE OF VIOLATION

Washington Hospital Center  
Washington, D.C.

Docket No. 030-01325  
License No. 08-03604-03  
EA-06-029

Based on an NRC investigation at the Washington Hospital Center in Washington, D.C., conducted between April 7, 2005 and January 17, 2006, as well as reviews in the Region I office of the information you provided to the NRC in a letter dated March 28, 2006, one violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 30.10(a) requires, in part, that any licensee may not engage in deliberate misconduct that causes the licensee to be in violation of any regulation of the Commission. Pursuant to 10 CFR 30.10(c), deliberate misconduct means an intentional act or omission that the person knows would cause a licensee to be in violation of any regulation of the Commission.

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 July 14, 2003, the licensee engaged in deliberate misconduct that caused the licensee to be in violation of 10 CFR 20.1801 and 10 CFR 20.1802, in that the licensee deliberately caused the failure to secure from unauthorized removal and failure to maintain constant surveillance over licensed material. Specifically, the lock on the door to the hot lab, a controlled area which contained licensed material, had been deliberately disabled with tape to allow ease of access and the hot lab was left unattended with the door lock disabled.

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

The NRC has concluded that information regarding the reasons for the violation, the corrective actions taken to correct the violation and prevent recurrence, and the date when full compliance was achieved is already adequately addressed in this letter and in your letter dated March 28, 2006. 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-06-029" and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 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, D.C. 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 day 4th of May 2006