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

May 8, 2006

EA 06-091

Docket No. 03036971 License No. 09-23920-01E

Jeffrey Hess
President
Hess Fine Arts, Inc.
1131 4th Street North
St. Petersburg, FL 33701

SUBJECT: INSPECTION 03036971/2005001, HESS FINE ARTS, INC., ST. PETERSBURG, FLORIDA, NRC OFFICE OF INVESTIGATIONS REPORT NO. 1-2006-002, AND NOTICE OF VIOLATION

Dear Mr. Hess:

On October 13, 2005, Mr. John Nicholson of this office conducted a safety inspection at the above address of activities authorized by your NRC license. The inspection was an examination of your licensed activities as they relate to radiation safety and to compliance with the Commission's regulations and the license conditions. The inspection consisted of observations by the inspector, interviews with personnel, and a selected examination of representative records. The preliminary findings of the inspection were discussed with you on October 13, 2005, at the conclusion of the onsite inspection. The findings included two apparent violations: (1) the distribution of timepieces containing tritium, a licensed radioactive material, to persons exempt from licensing prior to receipt of a NRC distribution license, as required by 10 CFR 30.3; and (2) the distribution of timepieces to persons exempt from licensing that contained more than the 25 milliCuries of tritium permitted by 10 CFR 30.15(a)(1)(I). The enclosed report describes the results of this inspection.

On October 27, 2005, the NRC 's Office of Investigations (OI) initiated an investigation to determine if Hess Fine Arts deliberately distributed timepieces containing byproduct material before receipt of the required NRC license and deliberately distributed timepieces containing greater than the 25 milliCuries per timepiece permitted for exempt distribution. In the report issued March 24, 2006, OI concluded that the violations did occur; however, OI did not substantiate that Hess Fine Arts acted deliberately in violation of NRC requirements.

Based on the results of the October 13, 2005, inspection, and the OI investigation, it appears that your activities were not conducted in full compliance with NRC requirements. A Notice of Violation is enclosed. The Notice describes one Severity Level IV violation for your distribution of timepieces containing tritium to persons exempt from licensing prior to your receipt of a NRC distribution license, as required by 10 CFR 30.3. Your distribution of timepieces containing more than the 25 milliCuries of tritium per timepiece permitted by 10 CFR 30.15(a)(1)(I) occurred prior to your receipt of a NRC license; therefore, we are considering your distribution of these timepieces to be part of the 10 CFR 30.3 violation and not a violation of 10 CFR 30.15(a)(1)(I).

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. After reviewing your response to this Notice, including your proposed corrective actions and the results of future inspections, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

Current NRC regulations are included on the NRC's website at www.nrc.gov; select **Nuclear Materials; Medical, Industrial, and Academic Uses of Nuclear Material;** then **Toolkit Index Page.** The current Enforcement Policy is included on the NRC's website at www.nrc.gov; select **What We Do, Enforcement,** then **Enforcement Policy.** Or you may obtain these documents by contacting the Government Printing Office (GPO) toll-free at 1-888-293-6498. The GPO is open from 7:00 a.m. to 9:00 p.m. EST, Monday through Friday (except Federal holidays).

Your cooperation with us is appreciated.

Sincerely,

/RA/

George Pangburn, Director
Division of Nuclear Materials Safety

Enclosures:
1. Notice of Violation
2. Inspection Report No. 03036971/2005001

cc:
Katrina Hess, Radiation Safety Officer
State of Florida

Distribution:
D. J. Holody, RI
S. Merchant, OE

DOCUMENT NAME: E:\Filenet\ML061280412.wpd

SISP Review Complete: JJN
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 w/o attach/encl "**E**" = Copy w/ attach/encl "**N**" = No copy

OFFICE	DNMS/RI	N	DNMS/RI		ORA/RI		DNMS/RI	
NAME	Jnicholson/JPD f/		Jdwyer/JPD		DHolody/DJH		GPangburn/GCP	
DATE	04/28/2006		04/28/2006		05/04/2006		5/08/2006	

OFFICIAL RECORD COPY

NOTICE OF VIOLATION

Hess Fine Arts, Inc.
St. Petersburg, FL

Docket No. 03036971
License No. 09-23920-01E
EA 06-091

Based on an NRC inspection conducted on October 13, 2005, as well as a subsequent investigation by the NRC Office of Investigations, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

> 10 CFR 30.3 requires, in part, that except for persons exempt as provided in parts 30 and 150 of this chapter, no person shall transfer, receive, acquire, own, possess, or use byproduct material except as authorized in a specific or general license issued pursuant to the regulations in this chapter.
>
> Contrary to the above, between November 2004 and September 27, 2005, Hess Fine Arts, Inc. transferred tritium, a byproduct material contained in timepieces, without a valid NRC distribution license, (a license was not obtained until September 27, 2005), and Hess Fine Arts, Inc. was not exempt from the requirements for a license.
>
> This is a Severity Level IV violation (Supplement VI).

Pursuant to the provisions of 10 CFR 2.201, Hess Fine Arts, Inc. is hereby required to submit a written statement or explanation 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). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the 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. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as to why the license should not be modified, suspended, or revoked, or why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

If you contest this enforcement action, you should also provide a copy of your response to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, any response which contests an enforcement action shall be submitted under oath or affirmation.

Your response will be placed in the NRC Public Document Room (PDR) and on the NRC Web site. To the extent possible, it should, therefore, not include any personal privacy, proprietary, or safeguards information so that it can be made publically available without redaction. However, if you find it necessary to include such information, you should clearly indicate the specific information that you desire not to be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public.

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

Dated this 8th day of May 2006

U.S. NUCLEAR REGULATORY COMMISSION
REGION I

INSPECTION REPORT

EA No.	06-091
Inspection No.	03036971/2005001
Docket No.	03036971
License No.	09-23920-01E
Licensee:	Hess Fine Arts, Inc.
Location:	1131 4th Street North St. Petersburg, FL 33701
Inspection Date:	October 13, 2005

Inspector:	***/RA J. P. Dwyer for/*** John Nicholson Health Physicist	***04/28/06*** date
Approved By:	***/RA/*** James P. Dwyer, Chief Commercial and R&D Branch Division of Nuclear Materials Safety	***04/28/06*** date

Document Name: E:\Filenet\ML061280412.wpd

EXECUTIVE SUMMARY

Hess Fine Arts, Inc.
NRC Inspection Report No. 03036971/2005001

NRC determined that Hess Fine Arts, Inc. (HFA): (1) distributed timepieces containing tritium, a licensed radioactive material, to persons exempt from licensing prior to receipt of a NRC distribution license, as required by 10 CFR 30.3.; and (2) distributed timepieces to persons exempt from licensing that contained more than the 25 milliCuries of tritium permitted by 10 CFR 30.15(a)(1)(I).

Distribution of the watches containing greater than 25 milliCuries of tritium per timepiece occurred prior to issuance of the HFA distribution license; therefore, it is appropriate to include distribution of watches containing more than 25 milliCuries of tritium per timepiece under the apparent violation for distribution without a license.

REPORT DETAILS

I. Organization and Scope of the Program

a. Inspection Scope

The inspector reviewed the organization and scope of the radiation safety program by interviewing staff and reviewing records.

b. Observations and Findings

In 2004, Hess Fine Arts, Inc. (HFA) and Ball Watch, a firm based in Switzerland, signed an agreement allowing HFA to be the sole distributor of Ball Watch timepieces in the United States. Soon after signing this agreement, HFA submitted an application to NRC, dated September 29, 2004, requesting a license to distribute timepieces containing tritium to persons exempt from licensing. The application was received by NRC on December 7, 2004. Because HFA did not yet have a license from the State of Florida to possess the tritium contained in the timepieces, NRC voided the application on March 1, 2005. HFA indicated the State of Florida would not grant them a possession license until the Radiation Safety Officer completed required training. HFA resubmitted their request for an exempt distribution license to the NRC on June 21, 2005. HFA received a license from the State of Florida to possess the tritium contained in the timepieces on September 23, 2005. NRC issued the exempt distribution license on September 27, 2005.

c. Conclusions

No violations or safety concerns were identified.

II. Management Oversight of the Program

a. Inspection Scope

The inspector reviewed management oversight of the radiation safety program by interviewing staff and reviewing records.

b. Observations and Findings

Management delegated the task of completing the application for the exempt distribution license to a former employee. The former employee drafted the application that was dated September 29, 2004, and was received by NRC on December 7, 2004. A consultant was hired to draft and submit the application dated June 21, 2005. During the inspection, HFA management did not appear to be familiar with the applicable regulations in the Code of Federal Regulations or the guidance for exempt distribution licensing in NUREG-1556, Volume 8; however, the inspector noted that the licensee's consultant was knowledgeable and prepared to assist the licensee with any regulatory issues that arose during their operations.

c. Conclusions

No violations or safety concerns were identified.

III. Material Receipt, Use, Transfer, and Control

a. Inspection Scope

The inspector reviewed the receipt, transfer and control of licensed material by questioning staff and reviewing records.

b. Observations and Findings

The inspector determined that HFA received their initial shipment of timepieces containing tritium on November 26, 2004. At that time, HFA did not have a possession license from the State of Florida or a distribution license from the NRC. Beginning in December 2004, timepieces were distributed by HFA to several retail stores. Distribution continued through October 12, 2005. Approximately 800 timepieces were distributed during this time. The initial application for a distribution license was not received by the NRC until December 7, 2004, and the license was not issued until September 27, 2005.

10 CFR 30.3 requires, in part, that except for persons exempt as provided in this part and part 150 of this chapter, no person shall transfer, receive, acquire or own byproduct material except as authorized in a specific or general license issued pursuant to the regulations in this chapter. Contrary to this requirement, between December 2004 and September 27, 2005, HFA transferred, received, acquired and owned tritium, a byproduct material contained in timepieces, without a valid NRC license, and HFA was not exempt from the requirements for a license. This is an apparent violation of 10 CFR 30.3. HFA was asked why they distributed watches to persons exempt from licensing without a license. HFA replied that they were told by Ball Watch that they could distribute the timepieces as long a they had an application pending with NRC.

10 CFR 30.15(a)(1)(I) requires, in part, that timepieces distributed to persons exempt from licensing contain no more than 25 milliCuries of tritium per timepiece. The inspector determined that HFA ordered and received 37 watches containing more than 25 milliCuries per timepiece and distributed 13 of these watches between April and August 2005. The remaining 24 watches were returned to the manufacturer in October 2005. Distribution of watches containing more than 25 milliCuries of tritium per timepiece to persons exempt from licensing is an apparent violation of 10 CFR 30.15(a)(1)(I). HFA was asked why they distributed watches containing greater than 25 milliCuries of tritium to persons exempt from licensing. HFA replied that they were not aware the timepieces contained more than the 25 milliCuries of tritium permitted by the regulation.

c. Conclusions

Distribution of watches containing tritium without a license to persons exempt from licensing is an apparent violation of 10 CFR 30.3. Distribution of the watches containing greater than 25 milliCuries of tritium per timepiece occurred prior to issuance of the HFA distribution license; therefore, it is appropriate to include distribution of watches containing more than 25 milliCuries of tritium per timepiece under the apparent violation for distribution without a license.

IV. Exit Meeting

Following the onsite inspection on October 13, 2005, the initial findings of the inspection and the apparent violations were discussed with HFA management.

PARTIAL LIST OF PERSONS CONTACTED

Jeffrey Hess, President Hess Fine Arts
Katrina Hess, Radiation Safety Officer
Ray Dielman, Florida Department of Health, Bureau of Radiation Control, Environmental Manager

present at exit meeting