

May 30, 2006

EA-06-086; EA-06-087

E. Lynn McGuire, Director
National Health Physics Program (115HP/NLR)
Department of Veterans Affairs
Veterans Health Administration
2200 Fort Roots Drive
Little Rock, AR 72114

SUBJECT: EXERCISE OF ENFORCEMENT DISCRETION

Dear Mr. McGuire:

This letter refers to two instances involving the loss of NRC-licensed radioactive materials, that occurred between October 2004 and August 2005, at the Department of Veterans Affairs (DVA) Medical Center in New Orleans, LA.

On November 3, 2004, your staff conducted a special inspection at the New Orleans, LA. facility. The purpose of the inspection was to review the circumstances surrounding a loss of 10 millicuries of liquid iodine-125 that occurred on October 26 or October 27, 2004. The loss appeared to have occurred when a researcher placed an unmarked package containing the iodine-125 near a trash container and the package was inadvertently removed along with the regular trash.

The NRC Master Materials License (MML) issued to the DVA authorizes the DVA's National Radiation Safety Committee (NRSC) to take enforcement actions against its permittees. On November 3, 2004, the DVA NRSC issued a Notice of Violation (NOV) to the New Orleans facility, its permittee, in accordance with DVA Standard Operating Procedure (SOP-03), "NRSC Enforcement Procedures," for the loss of NRC-licensed materials that occurred during the time period October 26 to 27, 2004. In the NOV, the DVA cited the permittee with a Severity Level III violation of 10 CFR 20.2001 for an improper disposal of NRC-licensed material. Based upon a subsequent review of the DVA's special inspection report and the NOV information, the NRC determined that the primary cause for the loss of NRC-licensed material was the permittee's failure to maintain adequate security of NRC-licensed materials. Therefore, the loss of NRC-licensed materials should have been cited as a violation of 10 CFR 20.1801, "Security of Stored Material," and 10 CFR 20.1802, "Control of Material Not in Storage." Specifically, the New Orleans facility failed to secure the NRC-licensed material from unauthorized access or removal or maintain constant surveillance of the NRC-licensed material as demonstrated by its inadvertent removal and disposal.

Although the NRSC NOV did not cite the permittee's loss of the NRC-licensed materials as being a result of the permittee's failure to follow the requirements of 10 CFR 20.1801 and 10 CFR 20.1802, we determined that the violation was properly categorized at Severity Level III in accordance with the NRSC enforcement procedures. We also determined, based

upon a review of your November 23, 2004, letter describing the circumstances surrounding the loss of the material and the corrective actions taken, that the corrective actions appeared to address those issues associated with the permittee's failure to follow the requirements of 10 CFR 20.1801 and 10 CFR 20.1802.

In accordance with the NRC Enforcement Policy, a failure to properly secure NRC-licensed materials in storage, or to control NRC-licensed materials not in storage would be categorized at a Severity Level III. However, because the DVA: (1) identified the violation; (2) took appropriate corrective actions to address the violation and to prevent future recurrence, and; (3) processed the violation in accordance with the enforcement requirements and procedures included in your MML, the NRC has decided to exercise enforcement discretion, as provided for in Section VII.B.6 of the Enforcement Policy, and not cite this violation (EA-06-087). The current Enforcement Policy is included on the NRC's Web site at www.nrc.gov; select **What We Do, Enforcement**, then **Enforcement Policy**.

Although we are exercising enforcement discretion to not cite this issue, we request that you reissue the NOV to the permittee to include a revised citation against 10 CFR 20.1801 and 10 CFR 20.1802 and to require the permittee to document those new or already implemented corrective actions that address the reissued NOV. We will review the permittee's response to the revised NOV as a part of our next routine oversight inspection.

In addition to the above, on November 4, 2005, you notified the NRC that the New Orleans facility lost 200 microcuries of iodine-131 and 600 microcuries of iodine-125 on August 30, 2005. You indicated in your November 4, 2005, report and your December 1, 2005, letter that, as a result of Hurricane Katrina, a radioactive materials waste storage area in the facility was flooded causing the NRC-licensed materials to be lost. The loss of NRC-licensed materials would normally be cited as a violation of 10 CFR 20.1801 and 10 CFR 20.1802. However, in view of the unforeseeable flooding associated with the hurricane, the NRC has decided to exercise enforcement discretion, as provided for in Section VII.B.6 of the Enforcement Policy, and to not cite this violation (EA-06-086).

Therefore, to encourage prompt identification and comprehensive correction of violations, and in recognition of absence of previous escalated enforcement actions involving this facility, I have been authorized, after consultation with the Director, Office of Enforcement not to issue a Notice of Violation for these matters.

You are not required to respond to this letter. Should you choose to respond, please mark your response as a "Reply to an Exercise of Enforcement Discretion, EA-06-086; EA-06-087," 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, within 30 days of the date of this letter.

Please contact Patricia J. Pelke, Chief, Materials Licensing Branch, at (630) 829-9868 with questions.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and your response, should you choose to respond, 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 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 include significant enforcement actions on its Web site at www.nrc.gov; select **What We Do, Enforcement**, then **Significant Enforcement Actions**.

Sincerely,

/RA/

James L. Caldwell
Regional Administrator

Docket No. 030-34325
License No. 03-23853-01VA

***See Previous Concurrence**

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NAME	Weil		Morell		Johnson		Reynolds		O'Brien		Caldwell	
DATE	05/22/06		05/09/06		05/22/06		5/26/06		5/26/06		5/30/06	

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¹ NMSS concurrence received on 05/09/2006 by e-mail from Gregory Morell, NMSS.

² OE concurrence received on 05/22/2006 from Sally Merchant, OE.

Letter to E. McGuire from J. Caldwell dated May , 2006

SUBJECT: EXERCISE OF ENFORCEMENT DISCRETION

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