



UNITED STATES  
**NUCLEAR REGULATORY COMMISSION**  
REGION IV  
611 RYAN PLAZA DRIVE, SUITE 400  
ARLINGTON, TEXAS 76011-4005

August 17, 2007

EA-07-080

Lt. Col. Mark Wrobel  
Department of the Air Force  
USAF Radioisotope Committee  
HQ AFMOA/SG3PR  
110 Luke Ave., Suite 405  
Bolling AFB, DC 20032-7050

**SUBJECT: NRC INSPECTION REPORT 030-28641/2007001 AND EXERCISE OF ENFORCEMENT DISCRETION**

Dear Lt. Col. Wrobel:

This refers to our in-office inspection conducted to review the information you provided regarding a violation of 10 CFR 30.34(i). On September 8, 2006, the United States Air Force (USAF) Radioisotope Committee (RIC) issued a Notice of Violation to the 201<sup>st</sup> Red Horse Squadron (RHS), Pennsylvania (PA) Air National Guard, located in Annville, PA. In accordance with its NRC Master Materials License, the USAF RIC is authorized to issue permits to multiple user sites (permittees) for the possession and use of licensed material. Further, the RIC conducts inspections and enforcement of its permittees, and the USAF must have an enforcement program that commits to following the NRC's Enforcement Policy. In accordance with a Letter of Understanding between the NRC and the USAF, you informed the NRC Region IV Project Manager of the results of your inspections at the 201<sup>st</sup> RHS, PA Air National Guard. This documents the results of our in-office inspection of your activities, which were discussed with you and members of your staff during an exit briefing on July 20, 2007.

Based on the information you provided, the NRC has concluded that a violation of NRC requirements occurred. The violation involves the failure of the 201<sup>st</sup> Red Horse Squadron on two separate occasions to maintain two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal whenever not under direct control or surveillance, as required by 10 CFR 30.34(i). Specifically, on September 15, 2005, during a routine inspection performed by the USAF at the 201<sup>st</sup> RHS, PA Air National Guard, a violation of 10 CFR 30.34(i) was identified. The USAF inspector found three portable gauges stored unsecured in a room. The USAF inspector also noted that the building was an "Open Access Facility" into which any member of the public may enter, and the door into the building was unsecured. On December 8, 2005, the 201<sup>st</sup> RHS responded with its corrective actions for the violation. On May 25, 2006, the USAF conducted a follow-up inspection at the 201<sup>st</sup> RHS and found a second instance in which the gauges were not secured in accordance with 10 CFR 30.34(i). The USAF inspector found that access to the building was secured; however, the portable gauges were still stored in the room without a second tangible barrier.

The permittee provided a secondary barrier prior to the inspector leaving the facility during the May 25, 2006 inspection. The repeat violation was the result of a misunderstanding by the 201<sup>st</sup> RHS of what was specifically required to meet the regulatory requirement. Contributing to the violations was the use of traditional guardsmen as Permit Radiation Safety Officers, which are at the facility only two days per month, resulting in a lack of oversight. The USAF RIC has placed the 201<sup>st</sup> RHS Permit on an increased inspection frequency and conducted a Site Assistance Visit on November 13-15, 2006.

The corrective actions taken by the 201<sup>st</sup> RHS included: (1) assigning a full time technician as the primary Permit Radiation Safety Officer and providing 40 hours of additional training; (2) assigning a new storage area for the gauges which meets the requirements of 10 CFR 30.34(i); (3) drafting a consolidated Radiation Safety Program Manual for the use of squadron personnel; and (4) training all authorized portable gauge users on the correct procedures and in the upcoming Radiation Safety Program Manual.

Although no actual safety consequences resulted from the violations, the failure to maintain adequate security of portable gauges increases the likelihood that these gauges could become lost or stolen and represents an unacceptable risk to public health and safety. Normally, this violation would be categorized at Severity Level III and considered for a civil penalty in accordance with the NRC Enforcement Policy. The current Enforcement Policy can be found on the NRC's website at [www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html](http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html). However, I have decided, after consultation with the Director, Office of Enforcement, to exercise enforcement discretion under Section VII.B.6 of the Enforcement Policy and Section 8.12.1 of the Enforcement Manual to refrain from issuing a Notice of Violation in this case. The NRC's Enforcement Manual can be found on the NRC's website at [www.nrc.gov/about-nrc/regulatory/enforcement/guidance.html#manual](http://www.nrc.gov/about-nrc/regulatory/enforcement/guidance.html#manual). This use of enforcement discretion is based on: (1) the USAF conducted a thorough inspection into the issues; (2) the USAF's inspection identified the violation and reported its findings to the NRC; (3) the USAF took an enforcement action comparable to the NRC's Enforcement Policy; (4) the corrective actions taken for the May 25, 2006, violation were prompt and comprehensive; and (5) no willfulness was involved with the violation. However, significant violations in the future could result in a civil penalty.

You are not required to respond to this letter unless the description above does not accurately reflect your corrective actions or your position. However, should you choose to respond, your response should be sent to the U.S. Nuclear Regulatory Commission, ATTN: Regional Administrator, Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, TX, 76011, within 30 days of the date of this letter.

If you have any questions, you may contact Mr. Michael Vasquez, Senior Enforcement Specialist, of my staff. Mr. Vasquez can be reached at (817) 860-8121.

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>. The NRC also includes significant enforcement actions on its Web site at [www.nrc.gov/reading-rm/doc-collections/enforcement/actions](http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions).

Sincerely,

*/RA/*

Bruce S. Mallett  
Regional Administrator

Docket No. 030-28641  
License No. 42-23539-01AF

cc:  
Pennsylvania Radiation Control Program Director

bcc:

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SUNSI Review Completed: MCM ADAMS: X Yes  No Initials: MCM  
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ACES	NMLB	C:NMLB	D:DNMS	ACES
MVasquez	RBrowder	JWhitten	LWert	KFuller
/RA/	/RA/ by email	/RA RTorres for/	/RA/	/RA/
08/09/07	07/26/07	08/10/07	08/06/07	08/14/07
FSME	OE	DRA	RA	
MBurgess	NHilton	PGwynn	BMallett	
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