

May 7, 2008

EA-08-048

Mr. Jeff Gussert
Chief Operating Officer
Dickinson County Memorial Hospital
1721 South Stephenson
Iron Mountain, MI 49807

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$3250, NRC FOLLOW-UP INSPECTION 030-17318/2008-001(DNMS)
DICKINSON COUNTY MEMORIAL HOSPITAL

Dear Mr. Gussert:

This refers to the inspection conducted on January 25, 2008, at Dickinson County Memorial Hospital, Iron Mountain, Michigan. The purpose of the inspection was to evaluate your corrective actions taken in response to a Severity Level III violation of 10 CFR 20.1801 issued in a Notice of Violation dated October 4, 2007 (EA-07-211). During the follow-up inspection, a repeat apparent violation of 10 CFR 20.1801 was identified. Details regarding this new apparent violation were provided in Inspection Report 030-17318/2008-001 dated February 25, 2008.

In the letter transmitting the inspection report, we provided you the opportunity to address the apparent violation identified in the report by either attending a predecisional enforcement conference or by providing a written response before we made our final enforcement decision. On March 3, 2008, your Radiology Manager notified us that you would be providing a written response to the apparent violation and would not be requesting a predecisional enforcement conference. You subsequently provided a written response in a letter dated March 6, 2008.

Based on the information developed during the inspection and the information that you provided in your March 6, 2008 response to the inspection report, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding it are described in detail in the subject inspection report. On January 25, 2008, you failed to secure from unauthorized removal or limit access to licensed material stored in a controlled area. Specifically, the doors to a room which contained licensed material being packaged for shipment were left unsecured and unattended, resulting in licensed radioactive material being accessible to unauthorized individuals via an adjacent, unrestricted hallway. This is a violation of 10 CFR 20.1801.

The root cause of the apparent violation was a radiation therapist's failure to ensure the doors were secured from unauthorized access prior to leaving the room. A contributing cause to the violation was your failure to implement comprehensive corrective actions following a similar violation of 10 CFR 20.1801 in August 2007, on which the NRC took escalated enforcement action¹. Specifically, your corrective actions for the previous failure to secure licensed material did not address all areas of the facility where licensed material was stored. The failure to secure licensed radioactive material, of a quantity greater than 1000 times the quantity specified in Appendix C to 10 CFR Part 20, is a significant regulatory concern. Therefore, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level III.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$3250 is considered for a Severity Level III violation. Because your facility was subject to escalated enforcement actions within the last two years, 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. The NRC determined that credit was not warranted for Identification as the violation was identified by the NRC. However, the NRC determined that credit was warranted for Corrective Action based on the corrective actions implemented as a result of our January 25, 2008, inspection. These corrective actions addressed the underlying root cause and were prompt and comprehensive. The immediate corrective actions included: (1) installing a key lock on the room door that automatically locks the door when closed, (2) installing an automatic door closure system, (3) locking the licensed radioactive material in a cabinet within the room during storage, and (4) retraining all individuals, with access to the rooms containing radioactive material, on the requirements for control of radioactive material. Additionally, as long-term corrective actions, you: (1) added a sign to the door restricting access, (2) removed a storage rack and (3) assigned a periodic task to test cabinet locks and verify control of radioactive materials.

Therefore, to emphasize the importance of control of licensed material, to encourage prompt and comprehensive correction of violations, and recognizing that this is the second Severity Level III violation within the past two inspections, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty in the base amount of \$3250. In addition, issuance of this Notice constitutes escalated enforcement action that may subject you to increased inspection effort.

The NRC has concluded that information regarding the reason 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 on the docket in Inspection Report No. 030-17318/2008-001(DNMS) and a letter from you dated March 6, 2008. Therefore, you are not required to respond to this letter unless the description therein 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.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, Enclosure 1, and your response, if you choose to make one, 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 www.nrc.gov/reading-rm/

¹ A Severity Level III violation was issued for this issue on October 4, 2007 (EA-07-211). The violation also addressed a failure to control licensed material.

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 includes significant enforcement actions on its Web site at www.nrc.gov/about-nrc/regulatory/enforcement.html.

Please contact Robert Gattone, Acting Chief, Materials Inspection Branch, with any questions. Mr. Gattone can be reached at telephone number (630) 829-9823.

Sincerely,

/RA by Mark A. Satorius Acting for/

James L. Caldwell
Regional Administrator

Docket No. 030-17318
License No. 21-18889-01

Enclosures:

1. Notice of Violation and Proposed Imposition of Civil Penalty
2. NUREG/BR-0254 Payment Methods (Licensee only)

cc w/enclosure 1: State of Michigan

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¹⁻³ OE, OGC and FSME concurrence received via E-mail from L. Sreenivas on May 2, 2008.

Letter to J. Gussert from James Caldwell dated May 7, 2008

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$3250, NRC FOLLOW-UP INSPECTION 030-17318/2008-001(DNMS)
DICKINSON COUNTY MEMORIAL HOSPITAL

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NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Dickinson County Memorial Hospital
1721 South Stephenson
Iron Mountain, MI 49807

Docket No. 030-17318
License No. 21-18889-01
EA-08-048

During an NRC inspection conducted on January 25, 2008, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the NRC proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violation and associated civil penalty is set forth below:

10 CFR 20.1801 requires that the licensee secure from unauthorized removal or access licensed materials that are stored in controlled or unrestricted areas. 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 January 25, 2008, you failed to secure from unauthorized removal or limit access to licensed material in a quantity of material that exceeded 1000 times the amount specified in Appendix C to 10 CFR Part 20 for the radioisotope of concern. The material was stored in a controlled area.

This is a Severity Level III violation (Supplement IV).
Civil Penalty - \$3250 (EA-08-048)

The NRC has concluded that information regarding the reason 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 on the docket in Inspection Report No. 030-17318/2008-001(DNMS) and in a letter from the licensee dated March 6, 2008. Therefore, you are not required to respond to this letter unless the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, clearly mark your response as a "Reply to a Notice of Violation," and send it to the Director, Office of Enforcement, with a copy to the Regional Administrator, Region III.

The licensee may pay the civil penalty proposed above in accordance with NUREG/BR-0254 and by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, a statement indicating when and by what method payment was made, or may protest imposition of the civil penalty in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission. Should the licensee fail to answer within 30 days of the date of this Notice, the NRC will issue an order imposing the civil penalty. Should the licensee elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation" and may: (1) deny the violation listed in this Notice, in whole or in part; (2) demonstrate extenuating circumstances; (3) show error in this Notice; or (4) show other

Notice of Violation and
Proposed Imposition of Civil Penalty

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reasons why the penalty should not be imposed. In addition to protesting the civil penalty in whole or in part, such answer may request remission or mitigation of the penalty.

In requesting mitigation of the proposed penalty, the response should address the factors addressed in Section VI.C.2, "Civil Penalty Assessment," of the Enforcement Policy. Any written answer addressing these factors pursuant to 10 CFR 2.205, should be set forth separately from the statement or explanation provided pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the licensee is directed to the other provisions of 10 CFR 2.205, regarding the procedure for imposing a civil penalty.

Upon failure to pay any civil penalty which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205 to be due, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The responses noted above, i.e., Reply to Notice of Violation, Statement as to Payment Of Civil Penalty, and Answer to a Notice of Violation, should be addressed to: Cynthia A. Carpenter, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region III, 2443 Warrenville Road, Suite 210, Lisle, IL 60532.

If you choose to respond, your response 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, it should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction. 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 that such material is withheld from public disclosure, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim (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). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

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

Dated this 7th day of May 2008