



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

January 16, 2009

Docket No. 03012771

License No. 08-17447-01

Gary McMahan  
Director, Occupational Safety & Health  
Department of Homeland Security  
U.S. Customs & Border Protection Bureau  
Attn: Occupational Safety & Health Division - IND  
1300 Pennsylvania Avenue, N.W.  
C/O 1400 L Street, N.W., 9th Floor  
Washington, DC 20229

**SUBJECT: NRC INSPECTION REPORT NO. 03012771/2007001, DEPARTMENT OF HOMELAND SECURITY, U.S. CUSTOMS & BORDER PROTECTION BUREAU, WASHINGTON, D.C., AND NOTICE OF VIOLATION**

Dear Mr. McMahan:

From March 14, 2007, through December 4, 2008, Judith Joustra, Orysia Masnyk Bailey, George Parker, Bryan Parker, Robert Gattone, and Rick Munzos of the NRC conducted safety inspections at numerous locations throughout the United States including Indianapolis, Indiana, of activities authorized by the above listed 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 inspectors, interviews with personnel, and a selective examination of representative records. Additional information provided in your correspondence dated September 15, 2008, was also examined as part of the inspection. The findings of the inspection were discussed with you, Carl Overstreet, and members of your organization with Judith Joustra and me by telephone on December 4, 2008. The enclosed report presents the results of this inspection.

Based on the results of this inspection, it appears that your activities were not conducted in full compliance with NRC requirements. A Notice of Violation is also enclosed that categorizes each violation by severity level. 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. Also note that a violation of 10 CFR 31.5 was identified regarding two lost or missing Generally Licensed devices. Although a violation of 10 CFR 31.5 was identified, the safety significance of the loss of these two devices is low, and because you identified and reported the violation to the NRC, and took appropriate corrective actions to address the violation and prevent recurrence of similar problems, the NRC is not taking enforcement action in this matter in accordance with the NRC Enforcement Policy. However,

any future violations of 10 CFR 31.5 may be considered for enforcement action.

Current NRC regulations are included on the NRC's website at [www.nrc.gov](http://www.nrc.gov); select **Nuclear Materials; Medical, Academic, and Industrial Uses of Nuclear Material**; then **Regulations, Guidance, and Communications Page**. The current Enforcement Policy is included on the NRC's website at [www.nrc.gov](http://www.nrc.gov); select **About NRC; How We Regulate; Enforcement**; then **Enforcement Policy**. You may also obtain these documents by contacting the Government Printing Office (GPO) toll-free at 1-866-512-1800. The GPO is open from 7:00 a.m. to 6:30 p.m. EST, Monday through Friday (except Federal holidays).

Please contact Judith Joustra at 610-337-5355 if you have any questions regarding this matter.

Sincerely,

***Original signed by Randolph Ragland for***

Marie Miller, Chief  
Security and Industrial Branch  
Division of Nuclear Materials Safety

Enclosures:

1. Inspection Report No. 03012771/2007001
2. Notice of Violation

cc: w/encls:

Luke McCormick, Radiation Safety Officer  
Carl Overstreet, RSO, Department of Homeland Security  
District of Columbia



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District of Columbia

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OFFICE	DNMS/RI	N	DNMS/RI	RO/ORA		
NAME	JJoustra/JAJ		MMiller/MTM	DHolody/aed f/		
DATE	01/12/09		01/13/09	01/16/09		

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## NOTICE OF VIOLATION

Department of Homeland Security  
U.S. Customs & Border Protection Bureau  
Washington, DC

Docket No. 03012771  
License No. 08-17447-01

During an NRC inspection conducted on from March 14, 2007, through December 4, 2008, nine violations of NRC requirements were identified, as discussed during an exit meeting on December 2, 2008. In accordance with the NRC Enforcement Policy, the violations are listed below:

A. Condition 16 of Amendment No. 34 to License No. 08-17447-01 requires that the licensee shall conduct a physical inventory every six months, or at other intervals approved by the U.S. Nuclear Regulatory Commission, to account for all sources and/or devices received and possessed under the license. Records of inventories shall be maintained for 5 years from the date of each inventory and shall include the radionuclide, quantities, manufacturer's name and model number, and date of the inventory.

1. Contrary to the above, as of March 14, 2007, the licensee did not perform a physical inventory every six months to account for all sources and/or devices received and possessed under the license. Specifically, the licensee did not perform a physical inventory of all sealed sources, used for training, located at the Miami Seaport in Miami, Florida.

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

2. Contrary to the above, as of March 14, 2007, inventory records maintained by the licensee did not include the radionuclide, quantities, manufacturer's name and model number. Specifically, the record maintained by the licensee that served as a physical inventory record for all VACIS units did not contain all the required information.

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

B. Condition 28 of Amendment No. 34 to License No. 08-17447-01 requires, in part, that licensed material be possessed and used in accordance with statements, representations and procedures contained in application dated July 7, 2003, and letter dated August 18, 2003.

1. Item 8 of application dated July 7, 2003, requires, in part, that annual refresher training be provided to VACIS employees.

Contrary to the above, as of March 14, 2007, annual refresher training was not provided as required. Specifically, several VACIS employees at the ports inspected during this inspection did not receive the required annual training.

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

2. Item 8 of application dated July 7, 2003, requires, in part, that a strict sign in and

sign out procedure for sources used to simulate hidden radiation items or weapons of mass destruction devices be provided to the Customs and Border Protection Radiation Safety Committee to ensure compliance on use, inventory and storage.

Contrary to the above as of March 14, 2007, the licensee did not implement a strict sign-in and sign-out procedure as required. Specifically, the licensee did not implement a sign-in and sign-out procedure at the Miami Seaport, for sealed sources used for training purposes.

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

- C. 10 CFR 71.5(a) requires that each licensee who transports licensed material outside the site of usage, as specified in the NRC license, or where transport is on public highways, or who delivers licensed material to a carrier for transport, shall comply with the applicable requirements of the DOT regulations in 49 CFR parts 170 through 189 appropriate to the mode of transport.

1. 49 CFR 172 requires, in part, that each hazmat employer shall ensure that each hazmat employee is trained and tested, and that no hazmat employee performs any function subject to the requirements of 49 CFR Parts 171-177 unless trained in accordance with Subpart H of 49 CFR Part 172. 49 CFR 172.704(c) requires, in part, that a hazmat employee receive initial training, and recurrent training at least once every three years.

Contrary to the above, as of March 14, 2007, not all of the licensee's hazmat employees received the required recurrent training. Specifically, the licensee could not confirm or demonstrate that several hazmat employees located at the licensee facilities in Miami, Florida, as well as locations in Texas, New Mexico, and California had received the required recurrent hazmat training.

This is a Severity Level IV violation (Supplement V).

2. 49 CFR 172.201(d) requires that a shipping paper contain an emergency response telephone number, as prescribed in subpart G of 49 CFR Part 172.

Contrary to the above on September 18, 2007, and on several other occasions during 2007 the licensee transported a Mobile VACIS unit containing approximately 0.75 curies of cobalt-60 outside of the licensee's facilities at the Port of San Diego, and Otay Mesa, California, and the shipping paper did not contain the required emergency telephone number.

This is a Severity Level IV violation (Supplement V).

- D. 10 CFR 20.1904(a) requires the licensee to ensure that each container of licensed material bears a durable, clearly visible label bearing the words "Caution Radioactive Material," or "Danger, Radioactive Material." The label must also provide sufficient information (such as the radionuclide(s) present, an estimate of the quantity of

radioactivity, the date for which the activity is estimated, etc.) to permit individuals handling or using the containers, or working in the vicinity of the containers, to take precautions to avoid or minimize exposures.

Contrary to the above, as of September 18, 2007, the licensee did not ensure that each container bears the required label. Specifically, in Laredo and Hidalgo, Texas, VACIS Unit #VR00011, VACIS Unit #VR00001, and VACIS II #V200011 did not bear the required label.

This is a Severity Level IV violation (Supplement IV).

- E. 10 CFR 20.1501 requires that each licensee make or cause to be made surveys that may be necessary for the licensee to comply with the regulations in 10 CFR Part 20 and that are reasonable under the circumstances to evaluate the extent of radiation level, concentrations or quantities of radioactive materials, and the potential radiological hazards that could be present. Survey means an evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, or presence of radioactive material or other sources of radiation.

Contrary to the above, as of May 13, 2008, the licensee had not made surveys that may be necessary for the licensee to comply with the regulations in 10 CFR Part 20. The licensee did not make surveys to assure compliance with 10 CFR 20.1201, which limits occupational dose to individual adults. Specifically, during June 2007 a VACIS operator walked in the open beam of a Railroad VACIS unit located in Calexico, California. The licensee became aware of the event during the NRC inspection conducted in November 2007, and had not performed the required evaluation until May 14, 2008.

This is a Severity Level IV violation (Supplement IV).

- F. 10 CFR 20.1902(e) requires that the licensee post each area or room in which certain amounts of licensed material, specified in Appendix C to Part 20, are used or stored, with a conspicuous sign or signs bearing the radiation symbol and the words "Caution, Radioactive Material(s)" or "Danger, Radioactive Materials(s)."

Contrary to the above, on September 12, 2007, and November 15, 2007 the licensee did not post each area that contained licensed material specified in Appendix C to Part 20 with a conspicuous sign or signs bearing the radiation symbol and the words "Caution Radioactive Material " or "Danger, Radioactive Material." Specifically, on September 12, 2007, at the location of a Railroad VACIS unit in International Falls, Minnesota, and on November 15, 2007, at the location of another VACIS unit located inside a building in Detroit, Michigan the required conspicuous caution signs were not posted.

This is a Severity Level IV violation (Supplement IV).

Pursuant to the provisions of 10 CFR 2.201, Department of Homeland Security 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 16th day of January 2009