

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
National Health Physics Program)	Docket No. 030-34325
Department of Veterans Affairs)	License No. 03-23853-01VA
Veterans Health Administration)	EA-08-353
North Little Rock, Arizona)	

ORDER IMPOSING CIVIL MONETARY PENALTY

I

The Department of Veterans Affairs (DVA: Licensee) is the holder of Master Materials License No. 03-23853-01VA issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30 on March 17, 2003. The license authorizes the DVA to issue permits to individual DVA medical centers for the possession and use of licensed material, and ties the Licensee to a framework of oversight consistent with NRC regulations, inspection, enforcement policies, procedures, and guidance.

II

An inspection of the Licensee's activities was conducted on November 18, 2008, with continued NRC in-office review through December 16, 2008, at the DVA Medical Center, Iowa City, Iowa (permittee). The results of this inspection indicated that the permittee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated April 10, 2009. The Notice states the nature of the violation, the provision of the NRC's requirements that the Licensee violated, and the amount of the civil penalty proposed for the violation.

Enclosure 1

The Licensee responded to the Notice in a letter dated May 4, 2009. In its response, the Licensee denied the violation and requested that the NRC withdraw the escalated enforcement citation, and remove the civil penalty. The Licensee provided a supplemental response on June 4, 2009, to clarify information provided in the May 4, 2009, response. In the supplemental letter, the Licensee disputed the Severity Level of the violation, based upon the new information provided.

III

After consideration of the Licensee's responses and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff determined, as set forth in the non-publicly available security related Appendix to this Order, that the violation occurred, as modified in the Appendix, and that the penalty proposed for the violation designated in the Notice should be imposed. The results of the NRC review of the information contained in the Licensee's letter and the basis for the NRC taking the actions described in this Order are set forth in the Appendix to this Order.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, IT IS HEREBY ORDERED THAT:

The Licensee shall pay, within 20 days of the date of this Order, a civil penalty in the amount of \$6,500, in accordance with NUREG/BR-0254. In addition, at the time payment is made, the Licensee shall submit a statement indicating when and by what method payment was made to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738.

V

In accordance with 10 CFR 2.202, the Licensee must submit an answer to this Order within 20 days of its publication in the Federal Register. The answer should be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission.

In accordance with 10 CFR 2.205, the Licensee and any other person adversely affected by this Order may request a hearing on this Order within 20 days of its publication in the Federal Register. Where good cause is shown, consideration will be given to extending the time to answer this Order and/or request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, and include a statement of good cause for the extension.

If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

If a hearing is requested by the Licensee, the Commission will issue an Order designating the time and place of hearing. If a hearing is held, an Order will be issued after the hearing by the Commission dismissing the proceeding or imposing, mitigating, or remitting the civil penalty. If the Licensee fails to request a hearing within 20 days of the date of this Order, or if written approval of an extension of time in which to request a hearing has not been granted, the

provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

- (a) whether the Licensee was in violation of the Commission's requirements as set forth in the Notice referenced in Section II above, and
- (b) whether, on the basis of such violation, this Order should be sustained.

A request for a hearing must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August, 2007, 72 Federal Register 49,139 (August 28, 2007). The E-Filing process requires participants to submit and serve documents over the internet or, in some cases, to mail copies on electronic optical storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E-Filing, at least ten (10) days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at HEARINGDOCKET@NRC.GOV, or by calling (301) 415-1677, to request: (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances

when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at <http://www.nrc.gov/site-help/e-submittals/install-viewer.html>. Information about applying for a digital ID certificate also is available on NRC's public website at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>.

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public website at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, if the Licensee chooses to request a hearing, the Licensee (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the "Contact Us" link located on the NRC website at <http://www.nrc.gov/site-help/e-submittals.html> or by calling the NRC technical

help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397-4209 or, locally, (301) 415-4737.

Participants who believe that they have good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville, Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at http://ehd.nrc.gov/EHD_Proceeding/home.asp, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With

respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their works.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Cynthia A. Carpenter, Director
Office of Enforcement

Dated this 14th day of August 2009