



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
REGION II
SAM NUNN ATLANTA FEDERAL CENTER
61 FORSYTH STREET, SW, SUITE 23T85
ATLANTA, GEORGIA 30303-8931

September 2, 2009

EA-09-074

Mr. Mitch Tillman
Plant Manager
Honeywell Specialty Chemicals
P.O. Box 430
Metropolis, IL 62960

**SUBJECT: NOTICE OF VIOLATION (NRC INSPECTION REPORT NO. 40-3392/2009-003
AND OFFICE OF INVESTIGATIONS REPORT NO. 2-2008-056)**

Dear Mr. Tillman:

This refers to an investigation completed by the U.S. Nuclear Regulatory Commission's (NRC) Office of Investigations (OI) on March 13, 2009, at Honeywell Specialty Chemicals Metropolis Works facility in Metropolis, IL. The purpose of the investigation was to determine whether a health physics technician deliberately failed to perform required measurements (radiological surveys) of fume hood flow rates and falsified NRC required records to conceal this failure.

The results of our review, including the identification of an apparent violation involving the failure to perform required measurements of laboratory fume hood flow rates and subsequent falsification of survey records, were documented in NRC Inspection Report No. 40-3392/2009-003, and forwarded to you in our letter dated June 10, 2009. In our letter, you were informed that the NRC was considering escalated enforcement action for the apparent violation, and that a pre-decisional enforcement conference would be held to discuss the details of the incident.

On August 18, 2009, a pre-decisional enforcement conference was held in the NRC's Region II office with you and members of your staff. At the conference, you acknowledged that a violation occurred involving the deliberate failure to perform required surveys and subsequent falsification of records, and presented information regarding the root and contributing causes and corrective actions to preclude recurrence.

Based on the information developed during the investigation and the information provided at the conference, the NRC has determined that two violations of NRC requirements occurred. The violations are cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding them are described in detail in the subject inspection report.

The first violation involved a health physics technician who, on August 27, 2008, deliberately failed to perform monthly airflow measurements of 20 chemical fume hoods located throughout the licensee's facility. These measurements were required to be performed periodically to ensure that flow rates through the hoods are sufficient to prevent the spread of radioactive contamination out of the hoods and into various laboratory work areas. The technician deliberately chose not to perform the measurement in violation of 10 CFR 20.1501(a), Honeywell's NRC License No. SUB-526 and license application, and site procedure

MTW-SAF-IH-001, "Ventilation Systems for Employee Exposure Control", which together require monthly measurements of air flow rates through the laboratory fume hoods.

The second violation involved the requirements of 10 CFR 40.9(a), which state that information provided to the Commission by a licensee or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the licensee shall be complete and accurate in all material respects. After the health physics technician deliberately failed to conduct the required surveys, he deliberately falsified radiological survey records for 20 laboratory fume hoods to indicate that air flow velocity measurements had been conducted when, in fact, the measurements had not been conducted. The surveys are required to be conducted by 10 CFR 20.1501, and the associated records are required to be maintained by 10 CFR 20.2103(a). The performance of these fume hood air flow surveys and the records of these surveys are material to the NRC because they are reviewed by the NRC staff to assess the radiological conditions at the facility and confirm regulatory compliance.

In this case, the violations discussed above did not result in any actual consequences because there was no event or condition at Honeywell during that time involving the spread of radioactive contamination. However, radiological surveys of laboratory fume hoods are conducted to ensure air flow rates through the hoods are sufficient to prevent the spread of radioactive contamination out of the hoods and into various laboratory work areas. Under different circumstances, the failure to conduct the radiological surveys could have resulted in the failure to identify a degraded barrier to preclude or minimize the spread of radioactive contamination.

As was advised in our letter of June 10, 2009, the number and characterization of the apparent violation described therein was subject to change as a result of further NRC review. After additional deliberations subsequent to the enforcement conference, the NRC concluded that the incident is more appropriately characterized as two separate violations, because the incident involves two separate acts on the part of the health physics technician. In light of the potential significance and interrelationship of the two violations, the NRC has concluded that the violations are appropriately characterized as a Severity Level III Problem, in accordance with the NRC Enforcement Policy.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$16,250 is considered for each Severity Level III violation or problem. Because of the willful aspects, 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. Because the circumstances of the incident were identified by Honeywell, credit is warranted for the factor of *Identification*. As Honeywell presented at the conference, corrective actions included, in part: (1) a prompt investigation into the circumstances of the incident; (2) an extent of condition review to confirm that the incident was limited to the actions of the health physics technician in question; (3) a review of other health physics departmental records for anomalies; (4) the conduct of meetings between health physics department management and department personnel to reiterate site expectations, accuracy of records, and to underscore the safety significance of various health physics tasks; (5) additional training to all site personnel on the details and significance of the incident, and roles and responsibilities of Honeywell employees; (6) disciplinary action against the individual. Based on the above, credit is warranted for the factor of *Corrective Action*.

Therefore, to encourage prompt identification of violations, and prompt and comprehensive correction of violations, I have been authorized, after consultation with the Director, Office of

Enforcement, not to propose a civil penalty in this case. However, significant violations in the future could result in a civil penalty.

In addition, issuance of this Severity Level III Problem constitutes escalated enforcement action that may subject you to increased inspection effort.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

In accordance with 10 CFR 2.390 of 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 Agency-Wide Document Access and Management System (ADAMS) on the Internet at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, if you choose to respond, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

Sincerely,

/RA/

Luis A. Reyes
Regional Administrator

Docket No. 40-3392
License No. SUB-526

Enclosure: Notice of Violation

cc w/encl:
Gary Wright
Emergency Management Agency
Division of Nuclear Safety
Electronic Mail Distribution

Distribution w/encl:

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NAME	JHENSON	JSHEA	CEVANS	MCCREE	JWRAY	JHILTZ	
DATE	8/31/09	8/31/09	8/31/09	9/3/09	9/1/09	9/1/09	
E-MAIL COPY?	YES	YES	YES	YES	YES NO	YES NO	YES NO

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NOTICE OF VIOLATION

Honeywell Specialty Chemicals
Metropolis, IL

Docket No. 40-3392
License No. SUB-526
EA-09-074

During an NRC investigation completed on March 13, 2009, violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. 10 CFR 20.1501(a) requires that each licensee make or cause to be made, surveys that may be necessary for the licensee to comply with the regulations in this part; and that are reasonable under the circumstances to evaluate (i) the magnitude and extent of radiation levels; and (ii) concentrations or quantities of radioactive material; and (iii) the potential radiological hazards.

License Condition 18 of NRC License No. SUB-526, Amendment No. 0, states that the licensee shall conduct authorized activities at the Honeywell Metropolis Works Facility in accordance with the statements, representations and conditions (or as revised by change and/or configuration management processes as described therein) in Chapters 1 through 7 of the license application dated May 12, 2006, as supplemented by a letter dated March 20, 2007.

License application Section 3.2.2 states that laboratory fume hoods that are routinely used to handle radioactive materials shall be checked periodically to measure face velocity. If the average face velocity does not exceed 100 linear feet per minute, the hood shall not be used for radioactive materials until proper operation has been restored.

Honeywell procedure MTW-SAF-IH-001, "Ventilation Systems for Employee Exposure Control", requires that the air flow measurement survey be performed monthly.

Contrary to the above, on August 27, 2008, a health physics technician failed to conduct monthly airflow measurements of 20 chemical fume hoods located throughout the licensee's facility.

- B. 10 CFR 40.9(a) requires that information provided to the Commission by an applicant for a license or by a licensee or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.

10 CFR 20.2103(a) requires, in part, that each licensee maintain records showing the results of surveys required by 10 CFR 20.1501 for a period of 3 years after the record is made.

Contrary to the above, on or about August 27, 2008, the licensee failed to maintain information that was complete and accurate in all material respects. Specifically, a health physics technician deliberately falsified radiological survey records for 20 laboratory fume hoods to indicate that air flow velocity measurements had been conducted, when in fact the measurements had not been conducted. The surveys are required to be conducted by

10 CFR 20.1501, the license and license application, and Honeywell procedure MTW-SAF-IH-001, and the associated records are required to be maintained by 10 CFR 20.2103(a). The performance of these fume hood air flow surveys and the records of these surveys are material to the NRC because the records provide evidence that is reviewed during NRC inspections to assess the radiological conditions at the facility and confirm regulatory compliance.

This is a Severity Level III problem (Supplement VI).

Pursuant to the provisions of 10 CFR 2.201, Honeywell Specialty Chemicals is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001, with a copy to the Regional Administrator, Region II, 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; EA-09-074" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation or severity level, (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, with the basis for your denial, to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

Because 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 deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (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 2nd day of September 2009

Enclosure