



January 6, 2010

Docket No. 03004530

License No. 19-00915-03

John T. Jensen
Director, Radiation Safety Staff/Radiation Safety Officer
United States Department of Agriculture
Office of Procurement & Property Management
Radiation Safety Staff
5601 Sunnyside Avenue, Mailstop 5510
Beltsville, MD 20705

SUBJECT: NRC INSPECTION REPORT NO. 03004530/2009006, UNITED STATES
DEPARTMENT OF AGRICULTURE-FOREST SERVICES, PARSONS, WEST
VIRGINIA AND NOTICE OF VIOLATION

Dear Mr. Jensen:

On October 7-8, 2009, Laurie Kauffman of this office conducted a safety inspection at the United States Department of Agriculture-Forest Services (USDA-FS), Northeastern Forest Experiment Station, Parsons, West Virginia 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 inspector, interviews with personnel, and a selective examination of representative records. Additional information provided in the telephone conversations on October 11, 2009, November 15 and 20, 2009, and December 15, 2009 between you and this office was also examined as part of the inspection. The findings of the inspection were discussed with you via telephone conversations at the conclusion of the inspection on December 16, 2009.

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 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.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response, if you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room or from the NRC document system (ADAMS), accessible from the NRC website at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not

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include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

Current NRC regulations are included on the NRC's website at 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; 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 Laurie Kauffman at 610-337-5323 if you have any questions regarding this matter.

Sincerely,

Original signed by Judith A. Joustra

Judith A. Joustra, Chief
Decommissioning Branch
Division of Nuclear Materials Safety

Enclosure:
Notice of Violation

cc:
State of Maryland

J. Jensen

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OFFICE	DNMS/RI	N	DNMS/RI	DNMS/RI		
NAME	LKauffman/LKauffman		MRoberts/JAJ For	JJoustra/JAJ		
DATE	01/6/2010		01/06/2010	01//06/2010		

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NOTICE OF VIOLATION

United States Department of Agriculture
Beltsville, MD

Docket No. 03004530
License No. 19-00915-03

During an NRC inspection conducted on October 7, 8, and 11 2009; November 15 and 20, 2009; and December 16, 2009, two violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. Condition 35 of License No. 19-00915-03 requires that the licensee conduct its program in accordance with statements, representations and procedures contained in an application dated August 23, 2005.

Item 10.3.2 of this application requires, in part, that the transfer, exchange, or other disposition of sealed sources to other locations or individuals requires the prior approval of the Radiation Safety Staff (RSS).

Contrary to the above, on June 10 – August 12, 2002, July 18, 2008, and May 22 – June 30, 2009, sealed sources were transferred to another location without the prior approval of the RSS. Specifically, the licensee transferred a portable moisture density gauge, Troxler Model 3440, containing millicurie quantities of cesium-137 and americium-241 in the form of sealed sources to a qualified individual employed by an NRC licensee located in West Virginia without prior approval of the RSS.

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

- B. 10 CFR 30.41(c) requires, in part, that before transferring byproduct material to a specific licensee of the Commission, the licensee transferring the material shall verify that the transferee's license authorizes the receipt of the type, form, and quantity of byproduct material to be transferred.

Contrary to the above, on June 10 – August 12, 2002, July 18, 2008, and May 22 – June 30, 2009, the licensee failed to verify that the transferee's license authorized the receipt of the type, form, and quantity of byproduct material to be transferred before transferring byproduct material to a specific licensee. Specifically, the licensee transferred a portable moisture density gauge, Troxler Model 3440, containing millicurie quantities of cesium-137 and americium-241 in the form of sealed sources to an individual employed by an NRC licensee located in West Virginia without first verifying that the transferee's license authorized the receipt of the type, form, and quantity of byproduct material to be transferred.

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

Pursuant to the provisions of 10 CFR 2.201, United States Department of Agriculture 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, D.C. 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 6 day of January 2010