

June 20, 2011

MEMORANDUM TO: Paul Michalak, Chief
Materials Decommissioning Branch
Decommissioning and Uranium Recovery
Licensing Directorate
Division of Waste Management
and Environmental Protection
Office of Federal and State Materials
and Environmental Management Programs

FROM: Dominick Orlando, Project Manager */RA/*
Special Projects Branch
Decommissioning and Uranium Recovery
Licensing Directorate
Division of Waste Management
and Environmental Protection
Office of Federal and State Materials
and Environmental Management Programs

SUBJECT: PRE-DECISIONAL ENFORCEMENT CONFERENCE MEETING
SUMMARY

On May 10, 2011, a Pre-decisional Enforcement Conference (PEC) was held with the U.S. Army at the U.S. Nuclear Regulatory Commission's (NRC's) offices in Arlington, Texas, to discuss the Army's apparent violation of NRC regulations at 10 CFR Part 40. The Meeting Summary for the PEC is enclosed.

Docket No.: 040-09083

Enclosure: Meeting Summary

CONTACT: Dominick Orlando, FSME/DWMEP
(301) 415-6749

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Distribution:
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| NAME | DOrlando | SAchten | PMichalak | KMcConnell | DOrlando |
| DATE | 6 /6 /11 | 6/16 /11 | 6/17/11 | 6/20/11 | 6/20/11 |

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PREDECISIONAL ENFORCEMENT CONFERENCE SUMMARY

Licensee: US Army Installation Management Command
Facility: Schofield Barracks, Pohakuloa Training Area, HI and various IMCOM ranges in the United States
License No.: NA
Docket No.: 040-09083
EA-10-129

On May 10, 2011, representatives of the United States Army Installation Management Command (IMCOM) met with U.S. Nuclear Regulatory Commission (NRC) personnel in the Region IV office located in Arlington Texas, to discuss the apparent violation identified in a letter to the U.S. Army dated April 5, 2011 (ML110660245). The identified apparent violation was that IMCOM possessed depleted uranium, a licensable source material, at various installations, without a license and performed decommissioning at its Schofield Barracks installation in Hawaii without authorization from the NRC. The conference was held at the request of the NRC Office of Federal and State Materials and Environmental Management Programs.

IMCOM staff presented a summary of the causes of the apparent violation and their corrective actions (written submittal attached). IMCOM staff stated that they believed that, while they possessed DU without a license since 1978, extenuating circumstances, namely that the Army was told in 1961 that they did not need a license and that the NRC was aware (or should have been aware) of the possession of DU for many years after 1978 but did not inform the Army of the need for a license until recently, warranted no enforcement action by NRC.

IMCOM staff stated that when they became aware of the DU, restrictions were put in place to ensure the protection of the health of the public and Army personnel. However, IMCOM staff stated that while many of the restrictions were communicated in a formal manner, some of the restrictions were communicated to Army personnel in an informal manner, through various meetings and communications with Army staff.

IMCOM staff stated that while some removal of DU was performed at the Hawaiian installations, decommissioning (i.e., the removal of radioactive material and the subsequent release of the site or portion of the site for unrestricted use) was not performed and that the DU contaminated areas were, and remain, restricted areas. It was not clear if the removal was performed by contractor personnel under the contractor's license.

Members of the public were given the opportunity to ask questions and make statements at the conclusion of the business portion of the meeting. The questions and statements that were within the scope of the meeting pertained to requests to clean up the ranges, ensuring that adequate environmental monitoring was in place at the sites, ensuring that all DU was identified/accounted for, and expressing concern about exposures to the public and workers at the two Hawaiian installations, Schofield Barracks and the Pohakuloa Training Area.

Enclosure

The meeting attendee list, the NRC's presentation, and the IMCOM's presentation and supporting materials are attached to this summary.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this summary and its enclosures will be made available to the Public.

Attachments

1. Attendee list
2. NRC Presentation
3. IMCOM Presentation and background materials

Attendee List
Predecisional Enforcement Conference
May 11, 2011
US ARMY IMCOM

USNRC

Keith McConnell, Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate (DURLD), Division of Waste Management and Environmental Protection (DWMEP), Office of Federal and State Materials and Environmental Management Programs (FSME)
Paul Michalak, Chief, Materials Decommissioning Branch, DURLD/DWMEP/ FSME
Michelle Burgess, Licensing Branch, Division of Materials Safety and State Agreement, FSME
Dominick Orlando, Special Projects Branch, DURLD/DWMEP/FSME
Catherine Scott, Office of the General Counsel (OGC)
Brett Klukan, OGC
Kimberly Sexton, OGC
Robert Summers, Office of Enforcement (OE)
Carolyn Faria, OE
David McIntyre, Office of Public Affairs
Roy Caniano, Director, Division of Nuclear Materials Safety (DNMS), Region IV (RIV)
D.Blair Spitzberg, DNMS, RIV
Robert Evans, DNMS, RIV
Gerald Schlapper, DNMS, RIV
Mike Vasquez, OE, RIV
Ray Kellar, OE, RIV

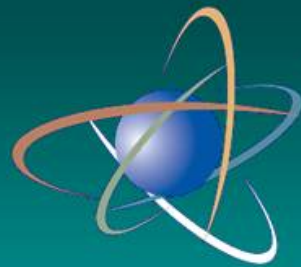
US ARMY IMCOM

Major General Al Aycock, US Army Installation Management Command (IMCOM) Deputy Commanding General
Colonel Greg Baldwin, IMCOM Staff Judge Advocate
Major Dray Noble, US Army Legal Services Agency
Dr. Bob Cherry, IMCOM Radiation Safety Staff Officer
Mr. Greg Komp, Army Radiation Safety Officer
Mr. Ed Valdez, US Army Corps of Engineers St. Louis District
Mr. Hans Honerlah, US Army Corps of Engineers Baltimore District
Mr. Matt Hite, HQ IMCOM
Mr. Dan Smith, HQ IMCOM
Mr. Greg Miller, Cabrera Services
Mr. Hank Siegrist, Cabrera Services
Tony Mason, Cabrera Services
Don Paglioni IMCOM Pacific
Rick Hearn US Army Garrison (USAG) Ft. Riley
Dick Shield USAG Ft. Riley
Mr. Scott Spears USAG Ft. Hood
Mr. Roy Coker IMCOM Southeast
Lt Col Paul Argo US Army Public Health Command
Mr. Stephen Fant HQ IMCOM
Mr. Ernesto Valadez HQ IMCOM

Mrs. Karen McGuire, Tank-automotive Armament Command (TACOM) Life Cycle Management
Command (LCMC) Warren
Mr. Thomas Gizicki, TACOM LCMC Rock Island
Mr. Clint German USAG Hawaii
Mr. Pete Strom, Joint Base Lewis-McChord
Mr. Steve Harris USAG Ft. Bragg
Mr. Dave Williams USAG Ft. Bragg
Mr. Bill Edwards USAG Ft. Bragg
Mr. Guadalupe Gomez, IMCOM West Region

MEMBERS OF THE PUBLIC

Isaac Harp
James Albertini
Cory Hardin
Elaine Hawkins
Harry Newman
Everett Ohta
Mike Reamer
Pono Keloha
David Cullen
Leimaile Quitevis



U.S.NRC

UNITED STATES NUCLEAR REGULATORY COMMISSION

Protecting People and the Environment

Predecisional Enforcement Conference

**Department of the Army, Installation Management
Command**

May 10, 2011

| | |
|-----------------------------|---------------------|
| AUDIO CALL IN NUMBER | 888-455-9746 |
| PASS CODE | 51823 |
| MEETING CONTACT | 301-512-8025 |



Agenda

- **Introduction/Opening Remarks**
- **Overview of NRC's Enforcement Process**
- **Discussion of Apparent Violations**
- **Army IMCOM Presentation**
- **Questions and Answer Session**
- **Closing Remarks**



NRC Enforcement Process

- **Inspection and/or Investigation**
- **NRC Review of Issues**
- **Exit Meeting with licensee**
- **Letter to Licensee with w/apparent violations**
- **Predecisional Enforcement Conference (PEC)**
- **NRC Review of ALL Information**
- **Final Agency Decision, and communication of final decision to licensee**



Today's Conference

- **PEC is an opportunity to provide your perspective**
 - **Whether violations occurred**
 - **Identification and corrective actions (immediate and long-term actions)**
 - **Whether you agree with our characterization of the violations in the PEC letter to you.**
 - **Any other information you want us to consider**
- **NRC's PEC letter to you provides NRC understanding and perspectives**



Post-PEC: NRC Decisions to be Made

- **Whether violations occurred**
- **Significance of the violations**
- **Enforcement action, if any**



Possible Outcomes

- **No Enforcement Action**
- **Notice of Violation (NOV)**
- **NOV with Civil Penalty**
- **Order**



Determine Significance = Severity Level

SEVERITY LEVEL – I
(most significant regulatory concern)

SEVERITY LEVEL – II
(very significant regulatory concern)

SEVERITY LEVEL – III
(significant regulatory concern)



(Non-Escalated Enforcement)

SEVERITY LEVEL – IV
(less significant concern, but more than minor)

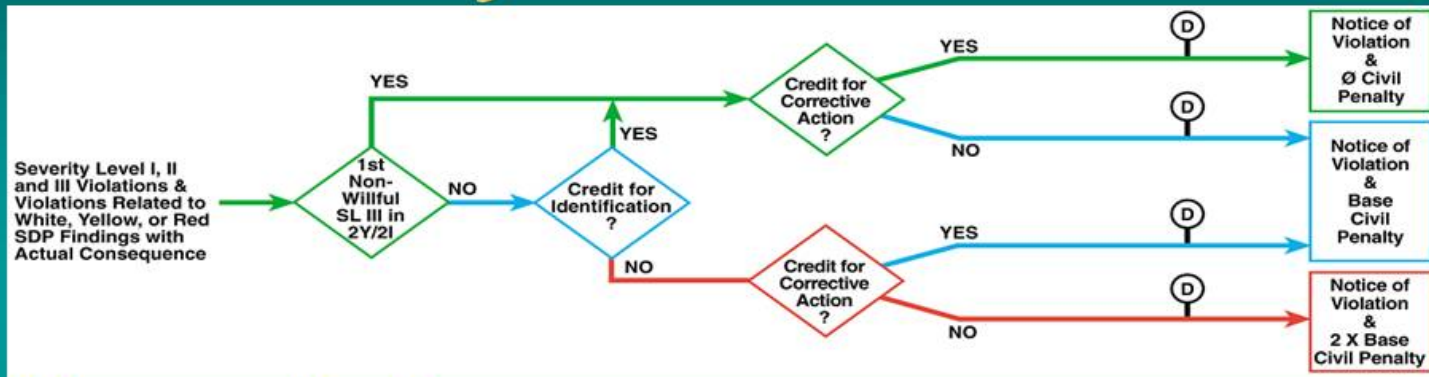


Four factors in assigning Severity Level

- **Actual Safety Consequences**
- **Potential Safety Consequences**
- **Impact on Regulatory Process - Whether the NRC was prevented from carrying out its regulatory responsibilities**
- **Associated willfulness**



Civil Penalty



Primary considerations:

1. How the violation was identified
2. The promptness and completeness of any corrective actions taken

If a licensee has not had escalated enforcement in the past 2 years or 2 inspections, the only factor in determining if a civil penalty is assessed is the licensee's corrective actions



Civil Penalties

- **Civil Penalties are dependent on the type of license and the severity of the violation**
 - **For example the base CP for a SL III violation for a radiography licensee is \$7,000; while the base CP for a SL III violation for a contractor or waste disposal licensee is \$14,000**



Discretion

- **Regardless of the outcome, the NRC can exercise discretion if the circumstances warrant it, and may either escalate or decrease the civil penalty**
- **Examples where the NRC might exercise discretion include - - willfulness, overexposures to members of the public, etc**



Public Information

- If NRC takes enforcement action, it will be publicly available on NRC's web site
- In the event that a civil penalty or an order is issued, normally, a press release will be issued as well



Appeal Rights

- **Any NRC action may be challenged**
- **Instructions for challenging an enforcement action will be described in the action or the accompanying letter**



NRC Enforcement Process Next Steps

- **NRC Review of ALL Information to determine:**
 - **Whether violations occurred**
 - **Significance of the violations**
 - **Enforcement action, if any**
- **Final Agency Decision, and communication of final decision to licensee**



Apparent Violation

- **10 CFR § 40.3, “License Requirements,” states, in part, that persons may not receive title to, own, receive, possess, use, transfer, or dispose source material unless authorized in a specific or general license issued by the NRC.**
- **Based upon the above, it appears that the Army is in possession of DU, a source material, in quantities in excess of the exempt and general use limits, without authorization in a specific or general license issued by the NRC**
- **It also appears that the Army may have performed certain decommissioning activities at the Schofield Barracks installation without necessary authorization from NRC**



Closing

- **NRC will consider the information obtained today in making an enforcement decision and will notify the Army by telephone and in writing when we are ready to announce our decision.**
- **Apparent violations discussed at this conference are subject to further review and may be revised prior to any resulting enforcement action, and that the statements or expressions of opinion made by NRC employees at this conference, or the lack thereof, are not intended to represent final agency positions or determinations**

Attachment 3
Background Materials