

December 28, 2012

EA-12-259
EN 48523
NMED 120693 (Open)

Mr. Patrick J. Kelley
TACOM LCMC Safety Director
Department of the Army
6501 East 11 Mile Road
Warren, MI 48397-5000

SUBJECT: RESPONSE TO 30-DAY REPORT DATED NOVEMBER 28, 2012, AND
NOTICE OF VIOLATION – DEPARTMENT OF THE ARMY

Dear Mr. Kelley:

On December 6, 2012, the U.S. Nuclear Regulatory Commission (NRC) completed an in-office review of your November 20, 2012, initial notification to the NRC and your November 28, 2012, 30-day written report regarding a missing improved chemical agent monitor, containing a 10 millicurie nickel-63 source, at Fort Riley in Kansas. In your letter, you described the circumstances regarding the missing monitor and the Department of the Army's proposed corrective actions to prevent recurrence. Telephone meetings between Mr. Thomas G. Gizicki, Department of the Army Radiation Safety Officer (RSO), and Mr. Aaron McCraw of my staff were conducted on December 4, 2012, and December 13, 2012, to discuss the event and the NRC's findings.

Based on the review of your notification and report, the NRC has determined that two Severity Level IV violations of NRC requirements occurred. The violations were evaluated in accordance with the NRC Enforcement Policy. The current Enforcement Policy is included on the NRC's website at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>. The first violation involved the licensee's failure to maintain control and constant surveillance of a chemical agent monitor, containing a 10 millicurie nickel-63 source. The second violation involved the licensee's failure to notify the NRC, in accordance with Title 10 of the Code of Federal Regulations (CFR) 20.2201(a)(ii), within 30 days after the occurrence of any lost, stolen, or missing licensed material in a quantity greater than 10 times the quantity specified in Appendix C to 10 CFR Part 20 becomes known to the licensee and the material is still missing at that time. Specifically, the licensee became aware that the monitor was missing as early as March 2012, when the licensee initiated an investigation into the monitor's loss. The event was reported to the NRC on November 20, 2012, a period greater than 30 days after the monitor's disappearance first became known to the licensee.

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

P. Kelley

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Because the second violation was self-identified, non-willful, non-repetitive, and the licensee took corrective action, it is being treated as a Non-Cited Violation, consistent with Section 2.3.2 of the Enforcement Policy. If you contest the violation or significance of the NCV, you should provide a response within 30 days of the date of this letter, with the basis for your denial, to the Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington DC 20555-0001, with copies to: (1) the Regional Administrator, Region III; and (2) the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

At this time, we have no further questions regarding the loss of the chemical agent monitor. This event, as well as your corrective actions in response to the event and violations, will be reviewed during a future inspection.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response, will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's Agencywide Documents Access and Management System (ADAMS), accessible from the NRC website at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made publicly available without redaction.

We will gladly discuss any questions you have concerning this correspondence.

Sincerely,

/RA by Jared K. Heck acting for/

Tamara E. Bloomer, Chief
Materials Inspection Branch
Division of Nuclear Materials and Safety

Docket No. 030-38500
License No. 21-32838-01

cc w/encl: Thomas G. Gizicki, RSO
State of Michigan

P. Kelley

-2-

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Docket No. 030-38500
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cc w/encl: Thomas G. Gizicki, RSO
State of Michigan

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NOTICE OF VIOLATION

Department of the Army
Warren, Michigan

Docket No. 030-38500
License No. 21-32838-01

During a U.S. Nuclear Regulatory Commission (NRC) review of an event reported to the NRC on November 20, 2012, one violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

Title 10 of the Code of Federal Regulations (CFR) 20.1802 states that the licensee shall control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area that is not in storage.

Contrary to the above, since March 2012, the licensee failed to maintain control and constant surveillance of licensed material that is not in storage. Specifically, the licensee failed to maintain control and constant surveillance of an improved chemical agent monitor that contains a nickel-63 radioactive material source with a nominal 10 millicuries, a quantity 10 times greater than the quantity specified in Appendix C to 10 CFR Part 20.

This is a Severity Level IV violation (Section 6.7).

Pursuant to the provisions of 10 CFR 2.201, the Department of the Army 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 III, 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 or severity level, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken, and (4) the date when full compliance was or will be achieved. Your response may reference or include previously 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, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days of receipt.

Dated this 28th day of December 2012.

Enclosure