



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
2100 RENAISSANCE BOULEVARD, SUITE 100
KING OF PRUSSIA, PENNSYLVANIA 19406-2713

January 15, 2013

General Licensee
EA-12-270

Docket No. 99990001

Jeffrey J. Starkey
Commissioner
Department of Licenses and Inspections
City of Wilmington
800 N. French St., 3rd Floor
Wilmington, DE 19801

SUBJECT: EXERCISE OF ENFORCEMENT DISCRETION: CITY OF WILMINGTON,
DEPARTMENT OF LICENSES AND INSPECTIONS

Dear Mr. Starkey:

We are sending you this letter to document our discussions regarding your possession of an X-Ray Fluorescence (XRF) device containing byproduct material in the form of Cobalt-57 (Co-57) and to provide our conclusions regarding your compliance with NRC regulations for the device.

During a telephone conversation on July 26, 2011, between Kevin Wilson, Housing Code Enforcement Supervisor, and Robin Elliott of this office, we learned that the City of Wilmington Department of Licenses and Inspections possessed one XRF device containing 12 millicuries of Co-57 and that the licensee had registered the device with the State of Delaware. During a subsequent telephone conversation between Kevin Wilson and Robin Elliott on April 13, 2012, Mr. Wilson was informed that the regulation of Co-57 was transferred to the NRC from the State of Delaware. This change occurred with the enactment of the Energy Policy Act of 2005 (Act), and the NRC regulations resulting from the Act, which became effective on August 7, 2009. Mr. Wilson indicated that the City of Wilmington Department of Licenses and Inspections was unaware that NRC had jurisdiction and that an NRC license was required for the device. Mr. Wilson stated that the device would be stored and not used pending completion of corrective actions.

Also, during the telephone conversation of April 13, 2012, between Mr. Wilson and Ms. Elliott, the NRC identified that the unlicensed XRF device possessed by the City of Wilmington Department of Licenses and Inspections could be configured (with the appropriate labeling and documentation) as a generally-licensed (GL) device. A GL device usually consists of radioactive material contained in a sealed source within a shielded device that is designed with inherent radiation safety features so that it can be used by persons with no radiation safety experience. Consequently, a specific license under which the NRC must evaluate the adequacy of the radiation training or experience of each user is not necessary. The NRC evaluates the adequacy of GL products, ensuring that distributors meet the specific requirements in 10 CFR Part 31. Mr. Steven Courtemanche, of our staff, spoke with a representative of the device manufacturer, Radiation Monitoring Devices (RMD), and verified that RMD could prepare the appropriate documentation and provide your staff with the proper labels for the device to be configured to meet the NRC GL requirements. Through communication between Mr. Wilson

and Ms. Elliott on December 27, 2012, Mr. Wilson confirmed that RMD and the City of Wilmington Department of Licenses and Inspections had completed these actions.

Based on the above information, the NRC has determined that a violation of NRC requirements occurred. The violation involved the possession of byproduct material without a specific NRC license issued in accordance with the regulations in 10 CFR Part 30. Specifically, from August 7, 2009, to December 27, 2012, the City of Wilmington Department of Licenses and Inspections possessed an XRF device containing byproduct material (a sealed source containing 12 millicuries of Co-57). Although the device can be configured to meet NRC GL requirements, for the period of the violation it was not, and a specific NRC license was required.

This violation would normally be categorized at Severity Level IV; however, in accordance with NRC Enforcement Guidance Memorandum (EGM) 09-004, dated May 13, 2009, the NRC will exercise discretion and not issue a violation. The NRC's decision is based on the criteria listed in EGM 09-004. Specifically, 1) this was the first occurrence the licensee was involved in after August 7, 2009, the effective date of the requirement; 2) the failure did not result in an actual safety, health or security consequence; 3) the failure was not willful; 4) the licensee, once aware of the requirements, took appropriate action; and 5) the licensee kept the device in secure storage from April 2012 until procedures were completed to reconfigure it as a generally-licensed device.

On January 2, 2013, Ms. Elliott informed Mr. Wilson of this conclusion and that a letter documenting the conclusion would be issued. No further action or response is necessary on your part. In the future, should the City of Wilmington Department of Licenses and Inspections want authorization to possess byproduct material that is not authorized by the general license provisions in 10 CFR Part 30, the City of Wilmington Department of Licenses and Inspections must submit a license application to the NRC, and receive authorization prior to receiving byproduct material.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, 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 through 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 could be made available to the Public without redaction.

Current NRC regulations and guidance are included on the NRC's website at www.nrc.gov; select **Nuclear Materials; Med, Ind. & Academic Users**; then **Regulations, Guidance and Communications**. The current enforcement policy is included in the NRC's website at www.nrc.gov; select **About NRC, Organizations & Functions; Office of Enforcement; Enforcement Documents**; then **Enforcement Policy (Under "Related Information")**. 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 8:00 a.m. to 5:30 p.m. EST, Monday through Friday (except Federal holidays).

Please contact Robin Elliott at 610-337-5076, if you have any questions regarding this matter.

J. Starkey

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The NRC's Safety Culture Policy Statement became effective in June 2011. While a policy statement and not a regulation, it sets forth the agency's *expectations* for individuals and organizations to establish and maintain a positive safety culture. You can access the policy statement and supporting material that may benefit your organization on NRC's safety culture Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/safety-culture.html>. We strongly encourage you to review this material and adapt it to your particular needs in order to develop and maintain a positive safety culture as you engage in NRC-regulated activities.

Thank you for your cooperation.

Sincerely,

/RA/

Raymond K. Lorson, Director
Division of Nuclear Materials Safety

cc:
State of Delaware
Kevin Wilson, Housing Code Enforcement Supervisor

J. Starkey

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Raymond K. Lorson, Director
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cc:
State of Delaware
Kevin Wilson, Housing Code Enforcement Supervisor

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