



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

April 12, 2013

Docket No. 99990001
EA-13-051

Non-Licensee

Paul A. Giardina
Chief of Radiation and Indoor
Air Branch
United States Environmental
Protection Agency
Region II
290 Broadway
New York, NY 10007-1866

**SUBJECT: EXERCISE OF ENFORCEMENT DISCRETION: UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY, REGION II**

Dear Mr. Giardina:

We are sending you this letter to document our discussions regarding your possession of byproduct material (radium-226), and to provide our conclusions regarding the United States Environmental Protection Agency (USEPA), RII compliance with NRC regulations for possession of this source.

During a telephone conversation on February 27, 2013, between Jeanette Eng of your staff and Thomas Thompson of my staff, we learned that USEPA, RII owned a sealed source containing radium-226 which was stored in USEPA RII's facility in Edison, New Jersey. We also learned that you transferred the sealed source to an NRC licensee authorized to possess radium-226 under License No. 27-05861-02 on or about January 29, 2013.

Information regarding the transfer of the sealed source was provided by Jeanette Eng of your staff on February 27, 2013.

As was discussed during the above telephone discussion, the regulation of radium-226 was transferred to the NRC in 2007. 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 November 30, 2007. Your staff indicated that USEPA, RII was unaware that the NRC had jurisdiction for the specific sealed source that you possessed until attending a symposium in Philadelphia on November 9, 2012. Your staff explained that you attempted to determine how the radium-226 sealed source was purchased to see if it qualified as generally licensed but were unable to make that determination. You concluded possession of the radium-226 sealed source would require a NRC license authorizing it and, therefore, you proceeded to transfer the source to another EPA facility that possesses an NRC license authorizing the sealed source.

Based on the above information, the NRC has determined that a violation occurred of NRC requirements. The violation involved the possession and use of byproduct material without a specific NRC license issued in accordance with the regulations in 10 CFR Part 30. Specifically, from November 30, 2007, to on or about January 29, 2013, USEPA, RII possessed one 2.7 microcurie radium-226 sealed source at your facility located in Edison, New Jersey without obtaining a specific NRC license.

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 USEPA, RII was involved in after November 30, 2007, 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) USEPA, RII was unaware of the requirement; and 5) USEPA, RII subsequently transferred the byproduct material to an authorized licensee.

On March 20, 2013, Thomas Thompson of my staff informed Jeanette Eng of this conclusion by telephone. No further action or response is necessary on your part. In the future, should USEPA want authorization to possess byproduct material that is not authorized by the general license provisions in 10 CFR Part 30, USEPA must submit a license application to the NRC and receive authorization prior to acquiring the licensed 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 and 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 include any personal privacy, proprietary, or safeguards information so that it can 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 on 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).

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.

Please contact Thomas Thompson at 610-337-5303 if you have any questions regarding this matter.

P. Giardina

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Thank you for your cooperation.

Sincerely,

/RA/

Raymond K. Lorson, Director
Division of Nuclear Materials Safety

cc:
Eric Mosher, Chief Response and Prevention Branch
State of New Jersey

Thank you for your cooperation.

Sincerely,

/RA/

Raymond K. Lorson, Director
Division of Nuclear Materials Safety

cc:
Eric Mosher, Chief Response and Prevention Branch
State of New Jersey

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