



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

REGION III
2443 WARRENVILLE RD. SUITE 210
LISLE, ILLINOIS 60532-4352

August 1, 2014

EA-14-075
EN 49668
NMED No. 140008 (Closed)

Thomas J. Culross
Vice President, Environment Health and Safety
ConAgra Foods
Eleven ConAgra Drive, 11-165
Omaha, NE 68102

**SUBJECT: NOTICE OF VIOLATION – CONAGRA FOODS; NRC REACTIVE INSPECTION
REPORT NO. 99990003/2014001(DNMS)**

Dear Mr. Culross:

This letter refers to the reactive inspection conducted at your facility located in Trenton, Missouri, on April 21, 2014, with continued in-office review through May 15, 2014. The purpose of the inspection was to look further into your January 9 and March 14, 2014, reports about the loss of generally licensed devices. During the inspection, apparent violations of U. S. Nuclear Regulatory Commission (NRC) requirements were identified. The significance of the issues and the need for lasting and effective corrective actions were discussed with your staff during the telephonic exit meeting that was held on May 15, 2014. Details regarding the apparent violations were provided in NRC Inspection Report No. 99990003/2014001(DNMS) dated June 12, 2014.

In the letter transmitting the inspection report, we provided you with the opportunity to address the apparent violations identified in the report by either attending a predecisional enforcement conference or by providing a written response before we made our final enforcement decision. In a letter dated July 10, 2014, you provided a response to the apparent violations.

Based on the information developed during the inspection and the information that you provided in your correspondence dated January 9, March 14, and July 10, 2014, the NRC has determined that violations of NRC requirements occurred. The violations are cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding them are described in detail in the subject inspection report. Specifically, the NRC determined that: (1) you transferred or disposed of generally licensed devices to an organization not authorized to receive them; (2) you failed to notify the NRC of a separate transfer or disposal; and (3) you did not dispose of other generally licensed devices within two years of removing them from service. The root cause of the violations was a lack of full understanding of NRC's requirements for generally licensed devices. This is of significant concern to the NRC because it increases the chance for the devices to be lost, stolen, or improperly handled which could result in adverse impacts to the health and safety of the general public. Therefore, the violations have been collectively categorized, in accordance with the NRC Enforcement Policy, as a Severity Level III problem.

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$3,500 is considered for a Severity Level III problem.

Because your facility has not been the subject of escalated enforcement actions within the last two years or two inspections, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section 2.3.4 of the Enforcement Policy.

The NRC considered the *Corrective Action* information you provided in your March 14 and July 10, 2014, letters. Your staff's immediate corrective actions were to perform a thorough search of your facilities to attempt to locate the devices that were missing. You were able to determine that one device had been returned to the manufacturer, but were not able to locate two devices or four exit signs. You also gathered all remaining generally licensed devices into one location. As a long-term corrective action, you contacted an authorized waste disposal company and properly disposed of your remaining generally licensed devices. On the basis of these corrective actions, the NRC determined that *Corrective Action* credit was warranted. Despite credit being warranted for *Corrective Action*, the NRC considered whether it should impose a civil penalty of at least the base amount because the violation involved the apparent improper transfer or disposal of a sealed source or device. The NRC determined that because you (1) have a history of properly returning other devices to the manufacturer and (2) properly transferred the remaining devices in your possession, no civil penalty was warranted.

Therefore, to encourage proper control of licensed material, prompt and comprehensive correction of violations, and in recognition of the absence of previous escalated enforcement action, I have been authorized, after consultation with the Director, Office of Enforcement, not to propose a civil penalty in this case. However, significant violations in the future could result in a civil penalty. In addition, issuance of this Severity Level III problem constitutes escalated enforcement action that may subject you to increased inspection effort.

The NRC has concluded that information regarding: (1) the reason for the violations; (2) the corrective actions that have been taken and the results achieved; and (3) the date when full compliance was achieved is already adequately addressed on the docket in the inspection report and in your letter dated July 10, 2014. Therefore, you are not required to respond to this letter unless the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response, if you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room and in the NRC's Agencywide Documents Access and Management System (ADAMS), accessible from the

T. Culross

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NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. The NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>.

Sincerely,

/RA by Darrell J. Roberts acting for/

Cynthia D. Pederson
Regional Administrator

Docket No. 99990003
License No. General Licensee

Enclosure:
Notice of Violation

cc: State of Missouri
K. Hague, Plant Manager

NOTICE OF VIOLATION

ConAgra Foods
Trenton, Missouri

Docket No. 99990003
License No. General Licensee
EA-14-075

During a U. S. Nuclear Regulatory Commission (NRC) inspection conducted on April 21, 2014, with continued review through May 15, 2014, violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. 10 CFR 31.5(c)(8)(i) requires, in part, that any person who acquires, receives, possesses, uses or transfers byproduct material in a device pursuant to a general license shall transfer or dispose of the device containing byproduct material only by export as provided by paragraph (c)(7) of this section, by transfer to another general licensee as authorized in paragraph (c)(9) of this section, or to a person authorized to receive the device by a specific license.

Contrary to the above, between approximately December 28, 2009, and December 18, 2013, the licensee who possessed byproduct material failed to transfer or dispose of the device by export, by transfer to another general licensee, or by transfer to a person authorized by a specific license. Specifically, on December 18, 2013, the licensee reported that the two PECO gauges each containing 100 millicuries (mCi) Am-241, and four Brandhurst exit signs, each containing nominally 11 curies of Tritium, were lost or missing from their facility.

- B. 10 CFR 31.5(c)(8)(ii) requires, in part, general licensees, within 30 days after the transfer of a device to a specific licensee or export, furnish a report to the Director, Office of Federal and State Materials and Environmental Management Programs (FSME).

Contrary to the above, between November 8, 2004, and December 8, 2004, the licensee failed to furnish a report to FSME within 30 days of transferring a device. Specifically, the licensee transferred a generally licensed device to a specific licensee, the manufacturer, Industrial Dynamics, Inc., on November 8, 2004, and did not furnish a report to FSME until December 18, 2013, a period greater than 30 days.

- C. 10 CFR 31.5(c)(15) requires, in part, that a licensee may not hold devices that are not in use for longer than 2 years. 10 CFR 31.5(c)(15) provides an exception to the two-year limit, if the general licensee performs quarterly physical inventories of these devices while they are in standby.

Contrary to the above, as of April 21, 2014, the licensee held in its possession four generally licensed devices each containing 100mCi of Am-241 for greater than two years that were not in use and without conducting quarterly inventories.

This is a Severity Level III problem (Sections 6.3, 6.7, and 6.9).

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed on the docket in Inspection Report No. 99990003/2014001(DNMS) dated June 12, 2014, and your correspondence dated

Enclosure

January 9, March 14, and July 10, 2014. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation, EA-14-075," and send it 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).

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, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

If you choose to respond, your response will be made available electronically for public inspection in the NRC Public Document Room or in the NRC's Agencywide Documents Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. Therefore, 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.

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

Dated this 1st day of August, 2014

NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. The NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>.

Sincerely,

/RA by Darrell J. Roberts acting for/

Cynthia D. Pederson
Regional Administrator

Docket No. 99990003
License No. General Licensee

Enclosure:
Notice of Violation

cc: State of Missouri
K. Hague, Plant Manager

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OFFICE	RIII	RIII	RIII	D:OE	RIII	RIII
NAME	Loughed	McCraw	Louden JGiessner for	Holahan ¹ K Norman	Orth	Pederson: DJR for
DATE	07/24/14	07/24/14	07/24/14	07/30/14	07/31/14	08/01/14

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¹ OE concurrence provided via email from K. Norman on July 30, 2014