



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

February 1, 2016

Docket No. 03004530
EA-15-273

License No. 19-00915-03

John T. Jensen
Chief, Radiation Safety Division
Office of Homeland Security
and Emergency Coordination
US Department of Agriculture
5601 Sunnyside Avenue, MS 5510
Beltsville, MD 20705

SUBJECT: NRC INSPECTION REPORT NO. 03004530/2015004, US DEPARTMENT OF AGRICULTURE (USDA), AGRICULTURAL RESEARCH SERVICE, SIDNEY, MONTANA, NOTICE OF VIOLATION AND EXERCISE OF ENFORCEMENT DISCRETION

Dear Mr. Jensen:

On September 16, 2015, and continuing in-office through January 21, 2016, Jason Dykert of the NRC Region IV office conducted a safety inspection at the Agricultural Research Service, Northern Plains Soil & Water Research Center, 1500 N. Central Avenue, Sidney, Montana of activities authorized by your NRC license. The inspection was an examination of your licensed activities as they relate to radiation safety and to compliance with the Commission's regulations and the license conditions. The inspection consisted of observations by the inspector, interviews with personnel, and a selective examination of representative records. The results of this inspection were discussed with you by telephone at the conclusion of the inspection on January 21, 2016.

Based on the results of this inspection and in accordance with the NRC Enforcement Policy, the NRC has determined that one Severity Level IV violation of NRC requirements occurred. The violation which is described below, is cited in the enclosed Notice of Violation (Notice) because the violation was identified by the NRC. You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. If you have additional information that you believe the NRC should consider, you may provide it in your response to the Notice. The NRC's review of your response to the Notice will also determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

The violation that was identified during this inspection involved the failure to use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal whenever portable gauges are not under the control and constant surveillance of the licensee as required by 10 CFR 30.34(i). In accordance with the Enforcement Policy, such violations are normally categorized at Severity Level III and are

considered for escalated enforcement action. However, the NRC is exercising enforcement discretion to categorize this violation as Severity Level IV because: 1) one physical control existed to prevent loss or theft of the portable gauge; 2) you retained possession of the gauge; 3) the violation was isolated; and 4) no indication of programmatic weakness was identified.

The inspector determined the violation of 10 CFR 30.34(i) discussed above was the result of an isolated misunderstanding of the specific requirements by the staff at this location of use and is not representative of practices at other licensee locations. Other USDA locations using portable gauges have recently been inspected and were found to be securing gauges in accordance with the requirements.

During the site inspection, the associate user immediately locked the cabinet containing the gauges with a cable and padlock to correct the violation, and the gauge storage met the security requirements prior to the inspector leaving the site. In addition, the lab supervisor ensured that the other staff who use licensed devices were re-trained to properly secure the gauges while in storage.

During our inspection exit meeting on January 21, 2016, you indicated that you have taken corrective and preventative actions to address the violation and that USDA is committed to radiation safety and to compliance with NRC regulations and licensed conditions.

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 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 Uses**; 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).

J. Jensen

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Please contact Todd Jackson at 610-337-5308 if you have any questions regarding this matter.

Sincerely,

/RA/

James M. Trapp, Director
Division of Nuclear Materials Safety

Enclosure:
Notice of Violation

cc: State of Montana

J. Jensen

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Please contact Todd Jackson at 610-337-5308 if you have any questions regarding this matter.

Sincerely,

/RA/

James M. Trapp, Director
Division of Nuclear Materials Safety

Enclosure:
Notice of Violation

cc: State of Montana

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NOTICE OF VIOLATION

US Department of Agriculture
Beltsville, MD

Docket No. 03004530
License No. 19-00915-03
EA-15-273

During an NRC inspection conducted on September 16, 2015, and continuing in-office through January 21, 2016, one violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 30.34(i) requires each portable gauge licensee to use a minimum of two independent physical controls that form tangible barriers to prevent unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee.

Contrary to the above, from July 11, 2005 to September 16, 2015, the licensee failed to use two independent physical controls that formed tangible barriers to secure portable gauges from unauthorized removal when the portable gauges were not under its control and constant surveillance. Specifically, a property fence was improperly relied upon as a second physical control although it did not form a second tangible barrier when the gate was not locked during normal working hours. While the gauge storage building was locked, the lockable cabinet inside which the gauges were stored was not locked at the time of the inspection.

This is a Severity Level IV violation (EGM 11-004).

Pursuant to the provisions of 10 CFR 2.201, the US Department of Agriculture is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555, with a copy to the Regional Administrator, Region I, 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, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. Your response may reference or include previous 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 to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, any response which contests an enforcement action shall be submitted under oath or affirmation.

Your response will be placed in the NRC Public Document Room (PDR) and on the NRC Web site. To the extent possible, it should, therefore, not include any personal privacy, proprietary, or safeguards information so that it can be made publically available without redaction.

However, if you find it necessary to include such information, you should clearly indicate the specific information that you desire not to be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public.

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 February 2016