



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION IV
1600 EAST LAMAR BOULEVARD
ARLINGTON, TEXAS 76011-4511

March 9, 2020

EA-19-128

Dr. James D. Polk
Chief Health and Medical Officer
National Aeronautics and Space Administration
NASA Headquarters
300 E. Street SW
Washington, DC 20546

SUBJECT: NOTICE OF VIOLATION AND EXERCISE OF ENFORCEMENT DISCRETION,
NRC INSPECTION REPORT 999-90004/2019-001

Dear Dr. Polk:

This letter refers to the announced special inspection conducted on September 23, 2019, at your facility in New Orleans, Louisiana. The purpose of the inspection was to assess the facts, circumstances, and timeline related to the facility's: (1) failure to apply for a U.S. Nuclear Regulatory Commission (NRC) specific license; (2) loss of a generally licensed device by transfer to a third-party recycling company; (3) failure to provide a timely report following identification of the loss of the generally licensed device; and (4) use and storage of the remainder of radioactive material located at your facility. A final exit briefing was conducted telephonically with Mr. Roy Malone, Director, Office of Center Operations, Marshall Space Flight Center, and other staff members on December 10, 2019, and the details regarding the apparent violations were provided in NRC Inspection Report 999-90004/2019-001, dated December 16, 2019, (NRC's Agencywide Documents Access and Management System (ADAMS) Accession ML19351D412).

In the letter transmitting our inspection report, we provided you with the opportunity to address the apparent violations by either attending a predecisional enforcement conference, requesting alternative dispute resolution, or providing a written response before we made our final enforcement decision. In a letter dated January 22, 2020 (ADAMS Accession ML20024D139) you provided a written response to the apparent violations.

Based on the information developed during the inspection and the information that you provided in your response to the inspection report dated December 16, 2019, the NRC has determined that three violations of NRC requirements occurred. These violations are cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding them are described in detail in the subject inspection report. The violations involved: (A) the failure to possess an NRC specific materials license authorizing possession of certain byproduct materials; (B) the loss-of-control of a generally licensed source; and (C) the failure to provide a timely notification following identification of the missing radioactive source. Each of these violations are normally categorized in accordance with the NRC Enforcement Policy at Severity Level III. The

Enforcement Policy can be found on the NRC's website at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>.

However, after considering the facts and circumstances of the current enforcement action, and in consultation with the Director of the NRC's Office of Enforcement, I have been authorized to exercise enforcement discretion in accordance with Section 3.0 of the Enforcement Policy, "Use of Enforcement Discretion," and assess the violations at Severity Level IV. The NRC is exercising discretion for Violation A since the significance was mitigated because the nuclear material was never used and because oversight was provided by the State of Louisiana. The NRC is exercising discretion for Violations B and C since the significance was mitigated because of the quantity and type of the source, and because the source was transferred to a recycling facility with established training and procedures to identify and handle hazardous materials, resulting in an extremely low risk to public health and safety. Please note that another similar violation of any of the requirements cited in the enclosed Notice may be subject to escalated enforcement action and possibly a civil penalty.

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 will be achieved is already adequately addressed on the docket in your letter dated January 22, 2020, and NRC Inspection Report 999-90004/2019-001. 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 "Agency Rules of Practice and Procedure," 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 or in the NRC's ADAMS, accessible from the website at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy or proprietary information so that it can be made available to the public without redaction.

If you have any questions concerning this matter, please contact Mr. Jeremy Groom, Team Leader, Allegation Coordination and Enforcement Staff, at 817-200-1182.

Sincerely,

/RA/

Linda L. Howell, Deputy Division Director
Division of Nuclear Materials Safety

Docket No. 999-90004
License No. General License
under 10 CFR 31.5

Enclosure:
Notice of Violation

cc w/Enclosure:

Jeff J. Dauzat, Administrator
Emergency and Radiological Services Division
Louisiana Department of Environmental Quality

Cynthia Becker, Chief
Bureau of Radiation Control
Florida Department of Health

NOTICE OF VIOLATION, EXERCISE OF ENFORCEMENT DISCRETION, NRC INSPECTION REPORT 999-90004/2019-001- DATED MARCH 9, 2020

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Cvr Ltr & All Encl: ADAMS ACCESSION NUMBER: **ML20069E378**

SUNSI Review: JGK ADAMS: Non-Publicly Available Non-Sensitive Keyword: By:
 Yes No Publicly Available Sensitive

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NOTICE OF VIOLATION

National Aeronautics and Space Administration
Michoud Assembly Facility
New Orleans, Louisiana

Docket No. 999-90004
License No. General License
under 10 CFR 31.5
EA-19-128

During an NRC inspection conducted on September 23, 2019, three violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. 10 CFR 30.3(a) requires, in part, that no person shall receive, acquire, own, possess, or use byproduct material except as authorized in a specific license issued in accordance with the regulations in 10 CFR Chapter I.

Contrary to the above, from October 2010 to July 30, 2019, National Aeronautics and Space Administration (NASA) Michoud Assembly Facility (MAF) received, acquired, owned, and possessed byproduct material without authorization under a specific license issued in accordance with the regulations in 10 CFR Chapter I. Specifically, NASA MAF possessed a cesium-137 calibration source, a device requiring an NRC specific license to acquire, own, or possess, until the source was transferred to an authorized third-party on July 30, 2019.

This is a Severity Level IV violation (NRC Enforcement Policy Section 3.0).

- B. 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 the general license in 10 CFR 31.5(a) shall transfer or dispose of the device containing byproduct material only by export as provided in 10 CFR 31.5(c)(7), by transfer to another general licensee as authorized in 10 CFR 31.5(c)(9), to a person authorized to receive the device by a specific license issued under 10 CFR Part 30 and 10 CFR Part 32, or 10 CFR Part 30 that authorizes waste collection, or equivalent regulations of an Agreement State, or as otherwise approved under 10 CFR 31.5(c)(8)(iii).

Contrary to the above, on September 9, 2013, NASA MAF failed to transfer or dispose of a device containing byproduct material only by export as provided in 10 CFR 31.5(c)(7), by transfer to another general licensee as authorized in 10 CFR 31.5(c)(9), to a person authorized to receive the device by a specific license issued under 10 CFR Part 30 and 10 CFR Part 32, or 10 CFR Part 30 that authorizes waste collection, or equivalent regulations of an Agreement State, or as otherwise approved under 10 CFR 31.5(c)(8)(iii). Specifically, NASA MAF possessed a device which contained 35 microcuries of americium-241 and inadvertently transferred the device in a shipment to a recycling company for disposal.

This is a Severity Level IV violation (NRC Enforcement Policy Section 3.0).

- C. 10 CFR 31.5(c)(10) requires, in part, that any person who acquires, receives, possesses, uses, or transfers byproduct material in a device pursuant to the general license in 10 CFR 31.5(a) shall comply with the provisions of 10 CFR 20.2201 for the loss of licensed material.

Enclosure

10 CFR 20.2201(a)(i) requires, in part, that each licensee shall report by telephone immediately after its occurrence becomes known to the licensee, any lost, stolen, or missing licensed material in an aggregate quantity equal to or greater than 1,000 times the quantity specified in 10 CFR Part 20, Appendix C, under such circumstances that it appears to the licensee that an exposure could result to persons in unrestricted areas.

10 CFR Part 20, Appendix C, specifies a quantity of 0.001 microcuries for americium-241.

Contrary to the above, on August 15, 2018, NASA MAF failed to report by telephone immediately after its occurrence becomes known to the licensee, any lost, stolen, or missing licensed material in an aggregate quantity greater than 1,000 times the quantity specified in 10 CFR Part 20, Appendix C, under such circumstances that it appears to the licensee that an exposure could result to persons in unrestricted areas. Specifically, NASA MAF identified the loss of a 35 microcurie americium-241 source (a quantity greater than 1,000 times the quantity specified in 10 CFR Part 20, Appendix C) on August 15, 2018, and did not inform any regulatory agency until May 9, 2019, when the State of Louisiana was contacted. The radioactive source had been inadvertently transferred to recycling company for disposal.

This is a Severity Level IV violation (NRC Enforcement Policy Section 3.0).

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 will be achieved is already adequately addressed on the docket in your letter dated January 22, 2020, and NRC Inspection Report 999-90004/2019-001.

However, if the description therein does not accurately reflect your position or your corrective actions, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 within 30 days of the date of the letter transmitting this Notice of Violation (Notice). In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation; EA-19-128," and send it to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001 with a copy to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001, and the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV, 1600 East Lamar Blvd., Arlington, Texas 76011-4511.

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 ADAMS, accessible from the website at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy or proprietary 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 9th day of March 2020