



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
1600 EAST LAMAR BOULEVARD
ARLINGTON, TEXAS 76011-4511

July 22, 2021

EA-20-134

Mr. Kevin Satterlee, President
Idaho State University
921 S. 8th Ave., Stop 8130
Pocatello, Idaho 83209-8130

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF \$45,000 IN CIVIL PENALTIES, NRC INSPECTION REPORT 030-32322/2020-001; 030-38726/2020-001; 070-01374/2020-001

Dear Mr. Satterlee:

This letter refers to the announced team inspection conducted March 9-13, 2020, at your facilities in Pocatello and Idaho Falls, Idaho, with in-office review through March 29, 2021. The purpose of the inspection was to: (1) examine activities conducted under your licenses as they relate to safety and compliance with the U.S. Nuclear Regulatory Commission's (NRC's) rules and regulations and with the conditions of your licenses; (2) review your corrective actions related to violations previously cited by the NRC; and (3) assess your completed actions related to the May 2, 2019, Confirmatory Order (Agencywide Documents Access and Management System (ADAMS) Accession No. [ML19122A123](#)). A final exit briefing was conducted telephonically with members of your staff on March 29, 2021. Details of the inspection and five associated apparent violations identified during the inspection were provided to you in the subject inspection report, dated April 2, 2021, ADAMS Accession No. [ML21092A132](#).

On May 10, 2021, a predecisional enforcement conference was conducted with you and members of your staff to discuss the five apparent violations, their significance, their root causes, and your corrective actions. A portion of the conference was closed to public observation because we discussed Security-Related Information.

Based on the information developed during the inspection and the information you provided during the conference, the NRC has determined that five violations of NRC requirements occurred. These violations are cited in the enclosed Notice of Violation and Proposed Imposition of Civil Penalties (Notice), and the circumstances surrounding them are described in detail in the subject inspection report. The violations involved the failure to: (A) complete a 100 percent source inventory as required by Section V, Condition A of the May 2, 2019, Confirmatory Order; (B) have the reactor safety committee review and approve written procedures for the use of the licensed materials in the subcritical assembly; (C) perform a physical inventory that consisted of a determination on a measured basis of the quantity of uranium-235 on hand at a given time; (D) provide complete and accurate information to the NRC in all material respects regarding the difference in the quantity of special nuclear material (SNM) in your records versus the quantity of SNM reported to the NRC in Material Balance Reports; and (E) establish written operating and emergency procedures for the use of a category 2 americium-241/beryllium source.

The NRC considers the violations described above to be significant. The failures to properly inventory, account for, and make accurate required reports for licensed material are significant because of the potential for the loss of licensed material. Failures of your radiation safety committee and reactor safety committee to provide effective oversight of NRC-licensed activities, such as the use of the subcritical assembly, put the health and safety of your workers and the public at greater risk. The failure to establish and maintain adequate written operating and emergency procedures for the use of a category 2 americium-241/beryllium source, a risk significant activity, represents a failure of your radiation safety program and contributed to the occurrence of an incident described in the April 2, 2021, NRC inspection report. Therefore, each of these violations have been categorized in accordance with the NRC Enforcement Policy as Severity Level III violations. The NRC Enforcement Policy can be found on the NRC's website at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>.

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$7,500 is considered for each Severity Level III violation.

Because your facility has been the subject of escalated enforcement action (i.e., the Confirmatory Order dated May 2, 2019) within the last two inspections, the NRC considered whether credit was warranted for *Identification* and *Corrective Action* in accordance with the civil penalty assessment process in Section 2.3.4 of the NRC Enforcement Policy.

The NRC has determined that *Identification* credit is not warranted for any of the violations because the violations were identified by the NRC during inspection of your facilities.

The NRC determined that *Corrective Action* credit is warranted for Violations A, C, D, and E based on the corrective actions documented in your predecisional enforcement conference presentation (ADAMS Accession No. [ML21125A333](#)) and in our April 2, 2021, inspection report. Therefore, to emphasize the importance of the control and oversight of the licensed activities at Idaho State University (ISU) and the identification of violations, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalties in the base amount of \$7,500 for each Severity Level III Violation A, C, D, and E. The issuance of this Notice constitutes escalated enforcement action that may subject you to increased inspection effort.

The NRC also determined that *Corrective Action* credit is not warranted for Violation B based on the information developed during the inspection in March 2020 and the information you provided during the predecisional enforcement conference in May 2021. When assessing *Corrective Action* credit, the NRC evaluates both the promptness and the comprehensiveness of a licensee's corrective actions. In the case of Violation B, following the March 2020 inspection, you promptly suspended use of the subcritical assembly until a procedure could be developed, reviewed, and approved by the reactor safety committee. In September 2020, your radiation safety committee approved the use of additional byproduct material sources in the subcritical assembly but failed to assess whether the procedure being developed would address the use of these additional source quantities and radionuclides. The procedure that your reactor safety committee approved in October 2020 only specified the use of a californium-252 source in the subcritical assembly. At the predecisional enforcement conference, you informed the NRC that an americium-241/beryllium source was used in the subcritical assembly even though the procedure had not been revised, reviewed, or approved for its use by the reactor safety committee. Your corrective actions were neither comprehensive nor effective at preventing the continuation of Violation B.

Therefore, to emphasize the importance of the control and oversight of the licensed activities at ISU and the identification and comprehensive correction of violations, I have also been authorized to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalties for twice the base amount (i.e. \$15,000) for Severity Level III Violation B. The issuance of this Notice constitutes escalated enforcement action that may subject you to increased inspection effort.

The NRC recognizes that many of its licensees have been adversely impacted financially by the public health emergency caused by the Coronavirus Disease 2019 (COVID-19). Consequently, as described in the enclosed Notice, the NRC is extending by 30 days the period of time by which the civil penalties must be paid (i.e., extending the deadline from 30 days to 60 days from the date of this Notice), and the NRC would consider a request for additional time, if appropriate. Please refer to the enclosed Notice for further instructions.

If you disagree with this enforcement sanction, you may deny the violation(s), as described in the Notice, or you may request alternative dispute resolution (ADR) with the NRC to resolve this issue. Alternative dispute resolution is a general term encompassing various techniques for resolving conflicts using a neutral third party. The technique that the NRC has decided to employ is mediation. Mediation is a voluntary, informal process in which a neutral mediator works with parties to help them reach resolution. If the parties agree to use ADR, they select a mutually agreeable neutral mediator who has no stake in the outcome and no power to make decisions. Mediation gives parties an opportunity to discuss issues, clear up misunderstandings, be creative, find areas of agreement, and reach a final resolution of the issues. Additional information concerning the NRC's ADR program can be found at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>.

The Institute on Conflict Resolution at Cornell University has agreed to facilitate the NRC ADR program as a neutral third party. If you are interested in pursuing this issue through the ADR program, please contact: (1) the Institute on Conflict Resolution at 877-733-9415; and (2) Dr. Lizette Roldán-Otero at 817-200-1455 within 10 days of the date of this letter. Your submitted signed agreement to mediate using the NRC ADR program will stay the 60-day time period for payment of the civil penalties, as identified in the enclosed Notice, until the ADR process is completed.

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 should provide it in your response to the Notice. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

The type of NRC licenses held by ISU grant significant decision-making and oversight authority to the license holder. Given the scope and risk-significance of the licensed activities, ISU's oversight function is critically important. Although reasonable assurance of adequate protection of public health and safety has been maintained, your recent and prior enforcement history with the NRC is indicative of the need to implement appropriate corrective actions to improve the comprehensive oversight of your licensed activities. The NRC has observed that the separation of accountability and responsibility between the oversight functions of the radiation safety committee and the reactor safety committee has, at times, resulted in failures to implement effective radiation safety programs and to identify non-compliances with regulatory requirements such as special nuclear material inventory, accounting and reporting, and procedural development and approval. It is essential that you develop and implement sound and

comprehensive approaches to integrating effective radiation safety and oversight measures across your various and often overlapping NRC-licensed activities, consistent with NRC requirements.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice and Procedure," a copy of this letter, the enclosure, and 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 NRC 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. The NRC also includes significant enforcement actions on its website at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions>.

If you have any questions concerning this matter, please contact Dr. Lizette Roldán-Otero of my staff, at 817-200-1455.

Sincerely,

Scott A. Morris
Regional Administrator

Docket Nos.: 030-32322,
030-38726, 070-01374
License Nos.: 11-27380-01,
11-27380-04, SNM-1373

Enclosure: Notice of Violation and Proposed
Imposition of Civil Penalties

cc w/Enclosure:
Mark Dietrich
Radiation Control Program Director
Idaho Department of Environmental Quality
1410 North Hilton Drive
Boise, ID 83706

NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF \$45,000 IN CIVIL PENALTIES,
 NRC INSPECTION REPORT 030-32322/2020-001; 030-38726/2020-001; 070-01374/2020-001
 DATED – JULY 22, 2021

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[https://usnrc.sharepoint.com/teams/Region-IV-ACES/ACES S Drive/ENFORCEMENT/_EA CASES - OPEN/Idaho State EA-20-134/Final Action/NOVCP_EA-20-134_ISU Radiation Safety Programs.docx](https://usnrc.sharepoint.com/teams/Region-IV-ACES/ACES%20S%20Drive/ENFORCEMENT/_EA%20CASES%20-%20OPEN/Idaho%20State%20EA-20-134/Final%20Action/NOVCP_EA-20-134_ISU%20Radiation%20Safety%20Programs.docx)

ADAMS ACCESSION NUMBER: ML

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

OFFICE	SES:ACES	TL:ACES	RIV:MIB	C:MIB	RC	DD:DNMS
NAME	JKramer	DDodson	JKatanic	LRoldanOtero	DCylkowski	LHowell
SIGNATURE	/RA/ E	/RA/ E	/RA/E	/RA/ E	/RA/ E	/RA/E
DATE	06/28/21	06/29/21	06/30/21	06/29/21	07/2/2021	06/29/21
OFFICE	NMSS	OE	OGC	D:DNMS	RA	
NAME	RSun	RFretz	TSteinfeldt	MMuessle	SMorris	
SIGNATURE	/RA/ E	/RA/ E	/NLO/ E	/RA/ LH for	/RA/ E	
DATE	07/15/21	07/15/21	07/15/21	07/16/21	07/22/21	

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NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTIES

Idaho State University
Pocatello, Idaho

As specified below:

Docket Nos.: 030-32322,
030-38726,
070-01374

License Nos.: 11-27380-01,
11-27380-04,
SNM-1373

EA-20-134

During an NRC inspection conducted March 9-13, 2020, at the licensee's facilities in Pocatello and Idaho Falls, Idaho, with continued in-office review through March 29, 2021, five violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the NRC proposes to impose civil penalties pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The violations and associated civil penalties are applied to the specific licenses and docket, as set forth below:

Violation A is cited for the following: License No. 11-27380-01 for Docket No. 030-32322, License No. 11-27380-04 for Docket No. 030-38726, and License No. SNM-1373 for Docket No. 070-01374.

- A. Confirmatory Order EA-18-153, dated May 2, 2019, Section V, Condition A requires, in part, that within 90 days of the issuance date of the Confirmatory Order, one or more third-party person(s) selected by Idaho State University will complete a 100 percent source inventory and submit the results in writing to the NRC.

Contrary to the above, from July 31, 2019, to March 9, 2020, the third-party person selected by Idaho State University failed to complete a 100 percent source inventory. Specifically, the inventory performed by the third-party person and submitted to the NRC on July 25, 2019, failed to account for licensed material in the licensee's possession under NRC licenses SNM-1373 and R-110.

This is a Severity Level III violation (NRC Enforcement Policy Section 6.9.c).
Civil Penalty - \$7,500 (EA-20-134)

Violation B is cited for License No. SNM-1373 for Docket No. 070-01374.

- B. License Condition 9 of License SNM-1373, Amendment Nos. 1-6, state, in part, that licensed special nuclear material (SNM) is authorized for use in accordance with the statements, representations, and conditions specified in the licensee's application supplement dated February 14, 2011.

License application supplement dated February 14, 2011, Section 9, "Material Control and Accountability," Subsection (b), "Administrative controls," states, in part, that the reactor safety committee shall review and approve all plans and procedures for the use of the licensed materials in the subcritical assembly.

Enclosure

Contrary to the above, from May 19, 2015, to January 6, 2021, the reactor safety committee failed to review and approve plans and procedures for the usage of the licensed materials in the subcritical assembly. Specifically, the licensee failed to have its reactor safety committee review and approve written procedures for the usage of the licensed materials in the subcritical assembly that included written procedures for: loading the neutron source into the subcritical assembly; handling the subcritical assembly fuel plates; use of radiation measuring and monitoring instruments; and restrictions and prohibitions regarding superior moderator or reflector materials to prevent inadvertent criticality.

This is a Severity Level III violation (NRC Enforcement Policy Section 6.3.c).
Civil Penalty - \$15,000 (EA-20-134)

Violations C and D are cited for License No. 11-27380-01 for Docket No. 030-32322 and License No. SNM-1373 for Docket No. 070-01374.

- C. 10 CFR 74.19(c) requires, in part, that each licensee who is authorized to possess SNM, at any one time and site location, in a quantity greater than 350 grams of contained uranium-235, uranium-233, or plutonium, or any combination thereof, shall conduct a physical inventory of all SNM in its possession under license at intervals not to exceed 12 months.

10 CFR 74.4 defines *physical inventory*, in part, as the determination on a measured basis of the quantity of SNM on hand at a given time.

Contrary to the above, on March 9, 2020, the licensee failed to conduct a physical inventory of all SNM in its possession, where the licensee was authorized to possess SNM in a quantity greater than 350 grams of contained uranium-235, uranium-233, or plutonium. Specifically, the licensee failed to perform a physical inventory that consisted of a determination on a measured basis for the quantity of uranium-235 on hand at a given time within the 12 months preceding March 9, 2020.

This is a Severity Level III violation (NRC Enforcement Policy Section 6.9.c).
Civil Penalty - \$7,500 (EA-20-134)

- D. 10 CFR 70.9 requires, in part, that information provided to the Commission by a licensee shall be complete and accurate in all material respects.

10 CFR 74.13(a) requires, in part, that each licensee possessing or who had possessed in the previous reporting period, at any one time and location, SNM in a quantity totaling one gram or more of contained uranium-235, uranium-233, or plutonium shall complete and submit Material Balance Reports concerning SNM that the licensee has received, produced, possessed, transferred, consumed, disposed, or lost. Each licensee shall prepare and submit the Material Balance Report as specified in the instructions in NUREG/BR-0007, "Instructions for the Preparation and Distribution of Material Status Reports."

10 CFR 74.15(a) requires, in part, that each licensee who adjusts the inventory in any manner, other than for transfers and receipts, shall submit a Nuclear Material Transaction Report to coincide with the submission of the Material Balance Report. This

shall be done as specified in the instructions in NUREG/BR-0006, "Instructions for Completing Nuclear Material Transaction Reports."

Contrary to the above, on March 9, 2020, the licensee failed to provide information to the Commission that was complete and accurate in all material respects. Specifically, information provided to the Commission in Material Balance Reports submitted by the licensee to the NRC were not complete and accurate in all material respects, in that there was a difference between the quantity of SNM in site-maintained records and the quantity of SNM reported by the licensee in the Material Balance Reports. The licensee failed to either: (1) submit a Form 740M "Concise Note" explaining the difference, as specified in the instructions in NUREG/BR-0007, or (2) submit a Form 741 "Nuclear Material Transaction Report," as specified in the instructions in NUREG/BR-0006, to coincide with the submission of its Material Balance Reports to adjust for the difference in the quantity of SNM.

This is a Severity Level III violation (NRC Enforcement Policy Section 6.9.c).
Civil Penalty - \$7,500 (EA-20-134)

Violation E is cited for License No. 11-27380-01 for Docket No. 030-32322.

- E. 10 CFR 33.13(c)(3)(ii) requires, in part, that the licensee establish administrative controls and provisions relating to procedures and management review that are necessary to assure safe operations, including the establishment of administrative procedures to assure the completion of safety evaluations of proposed uses of byproduct material which take into consideration such matters as the adequacy of equipment, training and experience of the user, and the operating or handling procedures.

Contrary to the above, from September 25, 2018, to March 9, 2020, the licensee failed to establish appropriate administrative procedures to assure completion of safety evaluations of proposed uses of byproduct material which took into consideration such matters as the adequacy of equipment, training and experience of the users, and the operating or handling procedures. Specifically, for the use of a category 2 americium-241/beryllium source, the licensee failed to establish written operating and emergency procedures that took into consideration the necessary: training and experience of the users; equipment and training for removing and returning the source storage container from the storage shaft; radiation monitoring and detection equipment for radiation surveys and personnel monitoring; handling procedures for removing the americium-241/beryllium source from the storage container; procedures for the establishment and control of high radiation areas; and emergency procedures.

This is a Severity Level III violation (NRC Enforcement Policy Section 6.3.c).
Civil Penalty - \$7,500 (EA-20-134)

Pursuant to 10 CFR 2.201, Idaho State University (licensee) is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV, 1600 East Lamar Blvd., Arlington, Texas 76011-4511, and emailed to R4Enforcement@nrc.gov within 30 days of the date of the letter transmitting this Notice of Violation and Proposed Imposition of Civil Penalties (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation; EA-20-134" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing

the violation or severity level; (2) the corrective steps that have been taken and the results achieved; (3) the corrective steps that will be taken; 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, the NRC may issue an order or a demand for information requiring you to explain why your 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, with the basis for your denial, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

You may pay the civil penalties proposed above in accordance with NUREG/BR-0254, "Payment Methods," (NRC's Agencywide Documents Access and Management System (ADAMS) Accession [ML19163A244](#)), and by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, a statement indicating when and by what method payment was made, or you may protest the imposition of the civil penalties in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice. However, in recognition of the financial impact to licensees by the public health emergency caused by the Coronavirus Disease 2019 (COVID-19), the NRC is extending the period of time by which the civil penalties must be paid from 30 days to 60 days from the date of this Notice. Should you fail to pay the civil penalties within 60 days of the date of this Notice, the NRC may issue an order imposing the civil penalties.

Should you elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalties in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation; EA-20-134" and may: (1) deny the violation listed in this Notice, in whole or in part; (2) demonstrate extenuating circumstances; (3) show error in this Notice; or (4) show other reasons why the penalties should not be imposed. In addition to protesting the civil penalties in whole or in part, such answer may request remission or mitigation of the penalties. Separately, you may request an additional extension of time to pay the civil penalties as a result of impacts from COVID-19. Such an extension request must be in writing, should explain the basis for the request, and should specify the amount of additional time being requested. This extension request must be submitted to the NRC no later than 50 days from the date of this Notice (i.e., at least 10 days before the initial 60-day deadline to pay the civil penalties).

In requesting mitigation of the proposed penalties, the response should address the factors addressed in Section 2.3.4 of the Enforcement Policy. Any written answer addressing these factors pursuant to 10 CFR 2.205 should be set forth separately from the statement or explanation provided pursuant to 10 CFR 2.201 but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the licensee is directed to the other provisions of 10 CFR 2.205 regarding the procedure for imposing civil penalties.

Upon failure to pay any civil penalties, which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205 to be due, this matter may be referred to the

Attorney General, and the penalties, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The responses noted above (i.e., Reply to Notice of Violation, Statement as to payment of civil penalties, and Answer to a Notice of Violation), should be addressed to: 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, and emailed to R4Enforcement@nrc.gov.

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 NRC website at <http://www.nrc.gov/reading-rm/adams.html>. Therefore, 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 personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request that such material is withheld from public disclosure, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information).

In accordance with 10 CFR 19.11, you are required to post this Notice within 2 working days of receipt.

Dated this 22nd day of July 2021