



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE RD, SUITE 102
KING OF PRUSSIA, PA 19406-1415

August 27, 2024

EA-24-035

Jean Antoine Nehme Ph.D., P.E.
Director, Office of Infrastructure R&D
Department of Transportation
Federal Highway Administration
Office of Infrastructure R&D (HRI-1)
6300 Georgetown Pike
McLean, VA 22101

SUBJECT: NOTICE OF VIOLATION - DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION; NRC INSPECTION REPORT
030-28770/2024-001

Dear Jean Antoine Nehme:

This letter refers to the reactive inspection conducted on February 27, 2024, at your McLean, Virginia facility, with continued in-office review through May 7, 2024, of activities performed under the U.S. Nuclear Regulatory Commission (NRC) license issued to the Department of Transportation's (DOT's) Federal Highway Administration (FHWA). The inspection was in response to your communications on December 14, 2023, and January 24, 2024, identifying a different Radiation Safety Officer (RSO) than the individual who had been approved and identified on your license. The inspection consisted of an examination of activities performed within the jurisdiction of the NRC, as they related to NRC-licensed byproduct material.

Based on the results of the inspection, the NRC staff identified four apparent violations (AVs) of NRC requirements. The most significant AV involved the failure to maintain a qualified and NRC-approved RSO on your NRC license. Additional AVs involved: (1) a failure to periodically (at least annually) review the radiation protection program content and implementation, as required by Title 10 of the *Code of Federal Regulations* (10 CFR) 20.1101(c); (2) a failure to conduct a physical inventory every six months, or at intervals approved by the NRC, to account for all sources and/or devices received and possessed under the license, as required by Condition 15 of FHWA's NRC license; and, (3) a failure to ensure that instruments and equipment used for quantitative radiation measurements were calibrated periodically, as required by 10 CFR 20.1501(c). NRC staff discussed the AVs with you, Jack Youtcheff Ph.D., and Jose F. Munoz Campos Ph.D. during a telephonic exit meeting on May 7, 2024, and described the AVs in NRC Inspection Report No. 030-28770/2024-001 sent to you with a letter dated June 4, 2024 (ML24151A639)¹.

In the letter transmitting the inspection report, we informed you that the AVs were being considered for escalated enforcement action and provided you with the opportunity to address the AVs by either attending a pre-decisional enforcement conference or by providing a written

¹ Designation in parentheses refers to an Agency-wide Documents Access and Management System (ADAMS) accession number. Documents referenced in this letter are publicly-available using the accession number in ADAMS.

response before we made our final enforcement decision. In a letter dated July 1, 2024 (ML24240A062), you provided a written response that described the actions taken and planned by the FHWA to address the AVs, as further described below.

Based on the information identified during the inspection and the information that you provided in your July 1, 2024, letter, 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. As described above, the first violation involved the failure to maintain a qualified RSO on your NRC license. Specifically, the previous RSO left employment on September 24, 2022, but FHWA failed to submit an amendment request to add a new RSO to the license. Since June 5, 2023, two individuals were identified by FHWA to act as the RSO, but FHWA again did not amend the license to add these individuals, and these individuals were subsequently determined not qualified to serve as RSOs. Compliance was restored on March 11, 2024, when the NRC approved FHWA's February 2, 2024, amendment request to name a qualified RSO on the license. The NRC considered the violation to be significant because the RSO is responsible to oversee and ensure the safe use of radioactive materials in your possession. Therefore, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level III (SL III).

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$9,000 is considered for a SL III violation. Because your facility has not been the subject of escalated enforcement actions within the last 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 staff determined that credit for corrective action is warranted. Namely, in addition to naming a qualified RSO on the NRC license, FHWA established a Safety Committee that will meet on a quarterly basis to discuss the radiation safety program, including staffing. Furthermore, FHWA is developing a standard operating procedure (SOP) for the orderly transition of radiation safety program duties; the SOP will establish timeframes for providing training and submitting documentation to the NRC when the licensee designates a new RSO.

Therefore, to encourage 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 SL III violation constitutes escalated enforcement action that may subject you to increased inspection effort.

As described above, three additional violations were identified that are being assessed at SL IV. Those violations involved failure to perform annual reviews of the radiation protection program, failure to perform physical inventories of licensed sources and devices, and failure to calibrate radiation measurement equipment. The violations are cited in the enclosed Notice because they were identified by the NRC.

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 NRC Inspection Report No. 030-28770/2024-001 and in your letter dated July 1, 2024. 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, should 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 NRC Web site 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. If personal privacy or proprietary information is necessary to provide an acceptable response, 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 withholding of such information, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (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). The NRC also includes significant enforcement actions on its Web site at (<http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>).

If you have any questions concerning this matter, please contact Monica Ford of my staff at 610-337-5214 or Monica.Ford@nrc.gov.

Sincerely,

Raymond K. Lorson
Regional Administrator

Docket No. 03028770
License No. 45-23090-01

Enclosure: Notice of Violation

**SUBJECT: NOTICE OF VIOLATION - DEPARTMENT OF TRANSPORTATION
 FEDERAL HIGHWAY ADMINISTRATION - NRC INSPECTION REPORT
 030-28770/2024-001 DATED AUGUST 27, 2024**

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X SUNSI Review/ CJC		X Non-Sensitive □ Sensitive			X Publicly Available □ Non-Publicly Available	
OFFICE	RI/ORA	RI/DRSS	RI/ORA	RI/ORA	OE	
	M McLaughlin	M Ford	B Klukan	J Nick	L Sreenivas	
DATE	8/14/2024	8/15/2024	8/15/2024	8/19/2024	8/20/2024	
OFFICE					RI/DRSS	DRA
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DATE					8/21/2024	8/27/2024

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NOTICE OF VIOLATION

Department of Transportation Federal Highway Administration
McLean, Virginia

Docket No.: 03028770
License No.: 45-23090-01
EA-24-035

During an NRC reactive inspection conducted on February 27, 2024, with continued in-office review through May 7, 2024, violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

A. ESCALATED VIOLATION

NRC License Condition No. 12 of NRC License No. 45-23090-01, Amendment 12, dated April 27, 2021, authorizes a specific individual to fulfill the duties and responsibilities of the Radiation Safety Officer (RSO).

Contrary to the above, from September 24, 2022, to February 2, 2024, the individual specifically authorized as the RSO in Condition 12 of NRC License 45-23090-01, dated April 27, 2021, did not fulfill the duties and responsibilities of the RSO. Specifically, the licensee did not identify a qualified RSO after the previous RSO left the employment of the licensee on September 24, 2022. Furthermore, since June 5, 2023, two unqualified individuals not named on the license were identified by the licensee to act as the RSO. The licensee submitted an amendment request on February 2, 2024, to the NRC when a qualified RSO was identified.

This is a Severity Level III violation (Enforcement Policy 6.3.c.11(d))

B. NON-ESCALATED VIOLATIONS

1. 10 CFR 20.1101(c) requires that the licensee shall periodically (at least annually) review the radiation protection program content and implementation.

Contrary to the above, from May 20, 2022, until February 2, 2024, the licensee failed to complete periodic (at least annual) reviews of its radiation protection program content and implementation. Specifically, the licensee's records indicated that the last annual review was performed on May 20, 2022, and as of the inspection conducted on February 27, 2024, only one annual audit had been performed. The last annual audit was performed on February 2, 2024.

This is a Severity Level IV violation (NRC Enforcement Policy Example 6.3.d.3)

2. NRC License Condition No. 15 of NRC License No. 45-23090-01, dated April 27, 2021, requires that the licensee conduct a physical inventory every six months, or at other intervals approved by the U.S. Nuclear Regulatory Commission, to account for all sources and/or devices received and possessed under the license.

Contrary to the above, from August 2, 2021, through January 31, 2024, the licensee did not conduct a physical inventory every six months, or at other intervals approved by the U.S. Nuclear Regulatory Commission, to account for all sources and/or

devices received and possessed under the license. Specifically, the licensee did not maintain records of physical inventories to account for all sources and/or devices received and possessed under the license and was not able to demonstrate that physical inventories were being conducted at a frequency of six months.

This is a Severity Level IV violation (NRC Enforcement Policy Example 6.3.d.3)

3. 10 CFR 20.1501(c) requires that the licensee shall ensure that instruments and equipment used for quantitative radiation measurements (e.g., dose rate and effluent monitoring) are calibrated periodically for the radiation measured.

Contrary to the above, from September 2021 until February 27, 2024, (a period exceeding one year) the licensee failed to ensure that instruments and equipment used for quantitative radiation measurements were calibrated periodically for the radiation measured. Specifically, the records indicated that the last calibration occurred in September 2021 with a calibration due date of September 2022, and no other calibration was completed until the time of the inspection on February 27, 2024.

This is a Severity Level IV violation (NRC Enforcement Policy Example 6.7.d.4)

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken and planned to correct the violations and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed on the docket in NRC Inspection Report No. 030-28770/2024-001 and in your letter dated July 1, 2024. Therefore, you are not required to respond to this Notice of Violation (Notice). 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-24-035)," 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 I, 475 Allendale Rd., Suite 102, King of Prussia, PA 19406 within 30 days of the date of the letter transmitting this 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, the 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 27th day of August, 2024