



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

April 12, 2001

Docket No. 99990001
EA No. 99-171

License No. General Licensee

Raymond C. Grimaldi
Chief Executive Officer
Arthur Brisbane Child Treatment Center
State of New Jersey
Department of Human Services
Div. Of Mental Health Services
P.O. Box 625
Farmingdale, NJ 07727

SUBJECT: INSPECTION 99990001/1997023, and NRC OFFICE OF INVESTIGATIONS
REPORT NO. 1-97-050, ARTHUR BRISBANE CHILD TREATMENT CENTER,
STATE OF NEW JERSEY, FARMINGDALE, NEW JERSEY

Dear Mr. Grimaldi:

On October 30, 1997, and November 20, 1997, Judith A. Joustra and Sheri Minnick of this office conducted a safety inspection at the above address of activities authorized by the general license contained in 10 CFR 31.5, which authorizes the possession and use of exit signs containing radioactive material. The inspection was limited to a review of the event which occurred at your facility on October 29, 1997, where an exit sign was broken and a portion of the facility was contaminated with radioactive material. On December 29, 1997, the NRC Office of Investigations (OI), Region I, initiated an investigation to determine if the Arthur Brisbane Child Treatment Center (Brisbane), a facility operated by the State of New Jersey Department of Human Services, willfully disposed of radioactive material consisting of the broken generally licensed exit sign containing approximately 12 curies of tritium, contaminated asbestos floor tiles, and other contaminated objects by transfer to SMI, East Coast Medical Waste, Inc. (SMI) on December 4, 1997.

Information in (1) an undated report on the Decontamination Operations and Final Radiological Status Survey submitted by Cophysics Corporation, and (2) a telephone conversation on December 4, 1997, between Robert Bellan of the Bureau of Environmental/Safety Compliance, State of New Jersey Department of Human Services, and Sheri Minnick of this office was also examined as part of the inspection. In a letter to you from this office dated December 24, 1997, we indicated that the NRC may have further questions or concerns related to this event and, therefore, considered Inspection No. 99990001/97-023 open. We have since concluded, via the OI investigation, our review of this event and your subsequent actions. Our findings are described in the summary of the OI investigation which is enclosed with this letter.

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Based on the results of this inspection and the OI investigation, one apparent violation has been identified and is being considered for escalated enforcement in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG 1600 (enclosed). 10 CFR 31.5(c)(8) requires in part that the licensee dispose of generally licensed devices only by transfer to persons holding a specific license issued pursuant to 10 CFR Parts 30 and 32 or from an Agreement State. On December 4, 1997, Brisbane disposed of a broken generally licensed device and other objects contaminated with radioactive material by transfer to SMI, a company which did not hold a specific license issued pursuant to 10 CFR Parts 30 and 32 or a license from an Agreement State. SMI subsequently transferred the objects mentioned above to Safety Disposal Systems, Inc. (formerly known as Chambers Medical Technologies of South Carolina) which also did not hold a specific license pursuant to 10 CFR Parts 30 and 32 or a license from an Agreement State. The broken generally licensed device was eventually disposed of properly by SMI. This apparent violation occurred as a result of the deliberate actions of the Chief, Bureau of Environmental/Safety Compliance, Department of Human Services.

In accordance with the NRC's Enforcement Policy, such a violation may be categorized at Severity Level III and may result in the proposal of one or more of the following sanctions: a Notice of Violation, a Civil Penalty, or an Order. An Order may prohibit Brisbane from involvement in NRC-licensed activities for a defined period of time or require other action.

Before the NRC makes its enforcement decision, we are providing you an opportunity to either (1) respond to the apparent violation addressed in this letter within 30 days of the date of this letter or (2) request a predecisional enforcement conference. Please contact Judith Joustra at (610) 337-5355 within 7 days of the date of this letter to notify the NRC of your intended response.

If you decide you want a conference, it would be predecisional because the NRC has not made a final determination that enforcement action will be taken against Brisbane. The purpose of the conference, which would be transcribed and closed to the public, is to give you an opportunity to provide your perspective on this issue and any other information that you believe is relevant to the NRC's enforcement determination, including the appropriate enforcement action.

If you choose to respond in writing, your response should be sent to my attention and be clearly marked as a "Response to An Apparent Violation" and should include for the apparent violation: (1) the reason for the apparent violation, or, if contested, the basis for disputing the apparent 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. In presenting your corrective action, you should be aware that the promptness and comprehensiveness of your actions will be considered in assessing any civil penalty for the apparent violation. The guidance in the enclosed NRC Information Notice 96-28, "SUGGESTED GUIDANCE RELATING TO DEVELOPMENT AND IMPLEMENTATION OF CORRECTIVE ACTION," may be helpful. Your response should be submitted under oath or affirmation and may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate response is not received within the time specified or an extension of time has not been granted by the NRC, the

R. Grimaldi
Arthur Brisbane Child Treatment Center

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NRC will proceed with its enforcement decision or schedule a predecisional enforcement conference.

Please be advised that the number and characterization of apparent violations described in this letter and the enclosed summary may change as a result of further NRC review. You will be advised by separate correspondence of the results of our deliberations on this matter.

In accordance with 10 CFR 2.790, a copy of this letter, Enclosure 1, and your response (if you choose to provide one) will be placed into the NRC Public Document Room (PDR) and will be accessible from the NRC Web site at <http://www.nrc.gov/NRC/ADAMS/index.html>. To the extent possible, your response should not include any personal privacy, or proprietary information so that it can be placed in the PDR without redaction.

Sincerely,

Original signed by Francis M. Costello

George Pangburn, Director
Division of Nuclear Materials Safety

Enclosures:

1. Summary of OI Investigation
2. NUREG 1600 (Enforcement Policy)
3. NRC Information Notice 96-28
4. 10 CFR Part 31

Distribution: w/enclosure 1

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DATE	3/28/01		4/3/01		4/2/01		4/12/01	
OFFICE	RC/RI		OI/RI					
NAME	Jfewell JBF		Bletts MAA					
DATE	4/4/01		3/29/01					

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SUMMARY OF FINDINGS OF OI REPORT 1-1997-050

The U. S. Nuclear Regulatory Commission (NRC), Office of Investigations (OI), Region I, initiated an investigation on December 29, 1997, to look into the circumstances surrounding transfer of generally licensed material by a state agency, the New Jersey Department of Human Services (DHS). In December 1997, a DHS facility, the Arthur Brisbane Child Treatment Center (Brisbane), disposed of generally licensed radioactive material, i.e., a broken exit sign containing approximately 12 curies of hydrogen-3 (tritium) and other materials that were contaminated from the broken sign or used to cleanup the contamination. The materials included contaminated asbestos floor tiles, furniture, clothes, bedding, a television, and other debris, which resulted from an incident at Brisbane on October 29, 1997.

The evidence, as developed by OI, indicates that the licensee, as a result of the deliberate actions of a DHS official, improperly disposed of the radioactive material generated from the Brisbane cleanup. The radioactive material was transferred to SMI East Coast Medical Waste, Inc. (SMI), a medical waste hauler, located in Morrisville, PA, who in turn transferred the waste to Safety Disposal Systems, Inc. (formerly known as Chambers Medical Technologies of South Carolina) a medical waste incinerator facility in South Carolina. Neither SMI nor Safety Disposal Systems, Inc. has a specific license for the radioactive material as required by 10 CFR Parts 30 or 32 or from an Agreement State.

The DHS official deliberately classified the radioactive waste as medical waste and caused it to be sent for incineration despite warnings from several knowledgeable people that classifying the radioactive material as medical waste was not appropriate. After receiving bids submitted to him for proper disposal, the DHS official told others that he was over budget from the contamination clean-up and could not afford the high cost of proper waste disposal. The DHS official also informed an NRC inspector on December 4, 1997, that the drums containing the broken exit sign and other contaminated objects had been disposed of properly, when in fact they had not been disposed of in accordance with 10 CFR 31.5(c)(8).

Further, the evidence indicates that the President of SMI, acting in concert with the DHS official, improperly transferred/disposed of the radioactive material. Based on conversations with others, the president of SMI knew of the requirement to dispose of the radioactive material as radioactive waste, but agreed, along with the DHS official, to dispose of the waste as medical waste at a lower cost. On December 4, 1997, SMI removed one barrel of radioactive material from Brisbane which contained approximately 12 curies of tritium from a broken generally licensed exit sign and stored that barrel and its contents at its Morrisville, PA facility to await disposal. This facility was not licensed to receive or store radioactive material. SMI also removed several other barrels from Brisbane that contained tritium contaminated objects that were shipped to Safety Disposal Systems, Inc., which is not appropriately licensed to receive the material.

The president of SMI also made false statements to the NRC during the investigation regarding invoices and consultation with an expert in the area of radioactive waste. Specifically, the president of SMI advised OI that he had provided copies of all information in his files, including invoices, as a result of an NRC subpoena. The president also advised the State of New Jersey Department of Environmental Protection (NJDEP) that he had provided copies of all documents to them, including invoices. Despite his claim of compliance with both investigative entities, the invoices provided to OI and NJDEP were different. In particular, an invoice dated December 4,

1997, that identified the broken exit sign was sent to NJDEP, but not provided to OI. When questioned by OI regarding the missing invoice, the president stated that it was not an official document and it did not really exist.

In addition, the president stated that he made the decision to dispose of the radioactive material as medical waste only after he had consulted with "his expert" in the field. However, that individual denies providing advice to the president that the waste could be disposed of as medical waste. Moreover, the individual states that he was not contacted by the president until after the shipment had arrived at its intended disposal destination in South Carolina.