



**UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
REGION II  
SAM NUNN ATLANTA FEDERAL CENTER  
61 FORSYTH STREET SW SUITE 23T85  
ATLANTA, GEORGIA 30303-8931**

December 10, 2001

EA-01-306

Dominion Generation  
ATTN: Martin L. Bowling  
Vice President Operations - Regulated  
5000 Dominion Boulevard  
Glen Allen, VA 23060

**SUBJECT: NRC INSPECTION REPORT NO. 999-90002/01-04 AND EXERCISE OF  
ENFORCEMENT DISCRETION**

Dear Mr. Bowling:

This letter refers to our review of Dominion Generation's loss of a generally licensed fixed level gauge. You reported the loss to the NRC Operations Center on August 30, 2001. The lost device was a Texas Nuclear Model No. 5197 (Serial No. B847) containing 100 millicuries of cesium-137, and was used at the Mt. Storm, West Virginia, facility. The results of our inspection are described in the enclosed NRC inspection report, and the findings were discussed with Mr. Bill Wilkinson, Senior Environmental Compliance Coordinator, on November 26, 2001. Based on our review of this issue, we have determined that a violation of 10 CFR 31.5(c)(8) occurred when you failed to transfer the generally licensed device to an NRC or Agreement State licensee authorized to receive and possess such licensed material.

Although a violation of 10 CFR 31.5 was identified, the NRC has concluded that the exercise of enforcement discretion is appropriate in this case, in accordance with the NRC Interim Enforcement Policy for Generally Licensed Devices Containing Byproduct Material, as discussed in the "General Statement of Policy and Procedures for NRC Enforcement Actions - May 1, 2000" (Enforcement Policy), NUREG-1600, as amended on December 18, 2000. Discretion is warranted because your actions were not willful, you identified and reported the lost device to the NRC, and took appropriate corrective action to address the violation and prevent recurrence of similar problems. Therefore, we are not issuing any enforcement action for this violation. However, future violations of 10 CFR 31.5 may be considered for enforcement action.

No response to this letter is required. In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter will be made available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/NRC/ADAMS/index.html> (the Public Electronic Reading Room).

Should you have any questions concerning this letter, please contact Douglas Collins, Director, Division of Nuclear Materials Safety, at (404) 562-4700.

Sincerely,  
/RA/

Bruce S. Mallett  
Acting Regional Administrator

General License (10 CFR 31.5)

Enclosure: NRC Inspection Report

cc w/encl: Commonwealth of Virginia

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U. S. NUCLEAR REGULATORY COMMISSION  
REGION II

Docket No.: Not Applicable

License No.: General License (10 CFR 31.5)

Report No.: 999-90002/01-04

Licensee: Dominion Generation

Location: Mt. Storm, West Virginia

Dates: Telephone interviews held on August 30, October 17, and November 26, 2001

Inspector: Wade T. Loo, Senior Health Physicist

Approved by: Thomas R. Decker, Chief  
Materials Licensing/Inspection Branch 1  
Division of Nuclear Materials Safety

Enclosure

Dominion Generation  
Mt. Storm Coal Generating Plant  
Mt. Storm, West Virginia

NRC Inspection Report No. 999-90002/01-04

On August 30, 2001, the licensee reported to the NRC Operations Center that they had been unable to determine the whereabouts of a Texas Nuclear (TN) fixed level gauge (Model No. 5197, Serial No. B847) that contained ~100 millicuries (mCi) of cesium-137 (Cs-137). Following that telephone notification to the NRC Operations Center, the licensee notified the NRC Region II (RII) office of the incident.

On October 3, 2001, the NRC RII office received a written report dated September 27, 2001, regarding the apparent loss of the fixed level gauge. From a review of that report and discussions with cognizant licensee representatives, the inspector determined that on July 17, 1980, the licensee received a TN fixed level gauge from the manufacturer at its Mt. Storm, West Virginia facility. The manufacturer sent the gauge to the licensee's facility for demonstration purposes so that the licensee could determine if such devices could be used at their facility to measure coal flyash levels in station hoppers. On August 2-3, 2001, a manufacturer's representative was onsite to conduct routine maintenance of the licensee's fixed level gauges. During that routine maintenance check, the manufacturer's representative informed the licensee that he could only locate 88 of the 89 gauges maintained on his inventory for that facility. During previous routine maintenance activities, the manufacturer had never notified the licensee of the unaccounted for gauge. An investigation to locate the missing gauge was then initiated by the licensee. After interviewing employees involved with the initial installation of the gauges, an extensive physical search of the facility, and a review of pertinent records associated with the purchase of those gauges, the licensee was unable to locate the missing gauge. Based on this incident, the licensee enhanced its nuclear detection program by clearly defining station roles and responsibilities, trained employees involved with the radiation safety program, and performed a self assessment of all Dominion Fossil & Hydro generating facilities with licensed material onsite for their respective nuclear detection programs. After reviewing the report, on October 17, 2001, the NRC requested records related to the licensee's receipt of the fixed level gauge from the manufacturer. On that same day, the licensee faxed a copy of the receipt records to the NRC RII office.

10 CFR 31.5(c)(8) requires, in part, that any person who acquires, receives, possesses, uses, or transfers byproduct material in a device pursuant to a general license shall, except as provided in 10 CFR 31.5(c)(9), transfer or dispose of the device containing byproduct material only by transfer to persons holding a specific license pursuant to 10 CFR Parts 30 and 32 or from an Agreement State to receive the device. Through discussions with cognizant licensee representatives and reviews of records, the inspector determined that the licensee failed to transfer or dispose of the fixed level gauge to the manufacturer. Specifically, the licensee has been unable to determine the whereabouts of the fixed level gauge since its receipt at the licensee's facility on July 18, 1980. Neither the licensee nor the manufacturer can provide documents demonstrating that the fixed level gauge was returned to the manufacturer on

July 19, 1980. Furthermore, the licensee conducted a search of the Mt. Storm, West Virginia facility and was not able to locate the fixed level gauge. Based on these discussions and reviews, the inspector identified a violation of 10 CFR 31.5(c)(8).

After a review of the licensee's report and receipt records, the inspector conducted a telephone exit interview on November 26, 2001, with Mr. Bill Wilkinson, Senior Environmental Compliance Coordinator, Mt. Storm Coal Generating Plant, to discuss the findings from the NRC's review of the circumstances surrounding the apparent loss of the fixed level gauge. No dissenting comments were received and no proprietary information was identified.