



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
REGION I
2100 RENAISSANCE BOULEVARD, SUITE 100
KING OF PRUSSIA, PA 19406-2713

April 16, 2014

Docket No. 99990001
EA-14-043

Paul Kowalski
Environmental Health Program Director
New Haven Health Department
54 Meadow St.
New Haven, CT 06519

SUBJECT: NRC INSPECTION REPORT NO. 99990001/2014001, NEW HAVEN HEALTH DEPARTMENT, NEW HAVEN, CONNECTICUT SITE AND EXERCISE OF ENFORCEMENT DISCRETION

Dear Mr. Kowalski:

On February 25, 2014, Scott Wilson of this office conducted a reactive safety inspection to review the circumstances related to the theft and subsequent recovery of a portable x-ray fluorescence lead paint analyzer (analyzer) on December 16, 2013. The inspection continued in-office until April 8, 2014. Also, the inspection was an examination of your licensed activities as they relate to radiation safety and to compliance with the Commission's regulations and the general license requirements in 10 CFR 31.5, "Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere." The inspection consisted of observations by the inspector, interviews with personnel, and a selective examination of representative records. The findings of the inspection were discussed with you and Ms. Glenda Wolfe of your organization via telephone on April 8, 2014.

Based on the above information, the NRC has determined that a violation of NRC requirements occurred. The violation involved the possession and use of byproduct material without a valid specific or general NRC license issued in accordance with NRC regulations. Specifically, between August 7, 2009, and January 16, 2014, the City of New Haven Health Department's Bureau of Environmental Health (Bureau) used and/or possessed up to four RMD Model LPA-1 lead paint analyzers containing byproduct material (cobalt-57 sealed source; 15 millicuries each) in NRC jurisdiction, without obtaining a specific or general NRC license as required by 10 CFR 30.3. The violation was unrelated to the event involving the theft of one of these analyzers on December 16, 2013.

This violation would normally be categorized at Severity Level III; however, in accordance with NRC Enforcement Guidance Memorandum (EGM) 09-004, "Interim Guidance for Dispositioning Violations of Naturally Occurring and Accelerator-Produced Radioactive Materials (NARM) Requirements," dated May 13, 2009, the NRC will exercise discretion and not issue a violation. Specifically, the NRC considered that the Bureau is authorized to use and possess byproduct material contained in the analyzers through a registration issued by the State of Connecticut. Prior to issuance of the Act, many states (including Connecticut) regulated NARM under their own radiation programs. Upon issuance of the Act, the NRC issued a waiver permitting states to continue to regulate NARM until NRC regulations were codified. States were also provided the opportunity to enter into agreements with the NRC to regulate byproduct material

themselves. While some non-Agreement States did elect to enter into agreements with the NRC, others (including Connecticut) did not, and the NRC assumed regulatory authority for NARM in those states upon expiration of the waiver. The transition of regulatory authority in Connecticut from the State to the NRC would not likely have been known by the Bureau. The NRC found that, on the occasions on which the Bureau used and/or possessed the analyzers in Connecticut both before and after the enactment of the Act, it appropriately registered with the state for authorization to do this work, which was required and would have been all that was required prior to the NRC assuming regulatory authority for NARM in that state.

Consequently, I have been authorized, after consultation with the Director, Office of Enforcement, and the Regional Administrator, to use discretion to not issue a violation in accordance with EGM 09-004 because this inspection was the first interaction between you and the NRC, and because the failure met the following criteria: 1) the failure did not result in an actual safety, health, or security consequence; 2) the failure was not willful; 3) the Bureau was unaware of the change in requirements; and 4) the Bureau obtained NRC licensing for the analyzers through the redistribution of them under the NRC general license provisions in 10 CFR 31.5.

On April 8, 2014, Scott Wilson of my staff informed you of this conclusion by telephone. No further action or response is necessary on your part.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure(s), and your response, if you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room or from the NRC document system (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, proprietary, or safeguards information so that it can be made available to the Public without redaction.

Current NRC regulations and guidance are included on the NRC's website at www.nrc.gov; select **Nuclear Materials; Med, Ind, & Academic Uses**; then **Regulations, Guidance and Communications**. The current Enforcement Policy is included on the NRC's website at www.nrc.gov; select **About NRC, Organizations & Functions; Office of Enforcement; Enforcement documents**; then **Enforcement Policy (Under 'Related Information')**. You may also obtain these documents by contacting the Government Printing Office (GPO) toll-free at 1-866-512-1800. The GPO is open from 8:00 a.m. to 5:30 p.m. EST, Monday through Friday (except Federal holidays).

P. Kowalski

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Please contact Scott Wilson at 610-337-5136 if you have any questions regarding this matter.

Sincerely,

Original signed by James Clifford

James W. Clifford, Director
Division of Nuclear Materials Safety

Enclosure: Inspection Report 99990001/2014001

cc: Glenda Wolfe, Lead Poisoning Inspector
State of Connecticut

P. Kowalski

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Original signed by James Clifford

James W. Clifford, Director
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cc: Glenda Wolfe, Lead Poisoning Inspector
State of Connecticut

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