



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

February 15, 2018

EA-17-146

Sherry J. Davis, Director, ESOH Office
Department of Defense
Defense Threat Reduction Agency (DTRA)
8725 John J. Kingman Road
Fort Belvoir, Virginia 22060-6201

SUBJECT: DEPARTMENT OF DEFENSE, DEFENSE THREAT REDUCTION AGENCY
NOTICE OF VIOLATION - NRC INSPECTION REPORT NO. 03035668/2017002

Dear Ms. Davis:

This letter provides you the U.S. Nuclear Regulatory Commission's (NRC's) enforcement decision for apparent violations identified during an inspection of licensed activities conducted at the Department of Defense, Defense Threat Reduction Agency (DTRA) facility in Fort Belvoir, Virginia. The inspection examined activities conducted under your license as they relate to public health and safety, and to confirm compliance with the Commission's rules and regulations, and with the conditions of your license. The NRC discussed the apparent violations during a telephonic exit meeting with members of your staff on November 8, 2017. The apparent violations were also described in the NRC inspection report sent to you with a letter dated December 6, 2017 (ML17341A069)¹. The inspection report, and the apparent violations described therein, concern Security-Related Information in accordance with 10 CFR 2.390(d)(1), and disclosure to unauthorized individuals could present a security vulnerability. Consequently, the inspection report enclosed with the December 6 letter was not publicly available and details regarding violations were not provided in that letter but, rather, were in a non-public enclosure.

In the December 6th letter, we informed you that the NRC was considering escalated enforcement for the apparent violations and offered you an opportunity to address the apparent violations by either attending a pre-decisional enforcement conference (PEC) or by providing a written response before we made our final enforcement decision. We also informed you that we had sufficient information regarding the apparent violations and DTRA's corrective actions to make an enforcement decision without the need for a PEC. In a telephone call on January 3, 2018, with Mr. Michael Reichard, NRC Region I Health Physicist, Commercial, Industrial, R&D, and Academic Branch, you indicated that DTRA did not intend to request a PEC or provide a written response.

Enclosure 2 contains Sensitive Unclassified Non-Safeguards Information. When separated from the Enclosure 2, this transmittal letter and Enclosure 1 are decontrolled.

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

S. Davis

2

Based on the information developed during the inspection, the NRC has determined that violations of NRC requirements occurred. These violations are cited in the Notice of Violation (Notice), provided as Enclosure 1 to this letter, and the circumstances surrounding them were previously described in detail in Inspection Report No. 03035668/2017002. The violations involved DTRA's failure to: 1) control and maintain constant surveillance of licensed material that was in an unrestricted area and not in storage; (2) properly secure a package against shifting, including motion between packages, within the vehicle on which it is being transported; and (3) use the required shipping paper and to use a properly marked shipping container. Specifically, on August 2, 2017, a DTRA employee used licensed material for DTRA training at an offsite location. While packing the vehicle at the conclusion of training, the material, which was stored in an unmarked case, was inadvertently left on the roof of the vehicle. Upon arrival at the home office to return the source to its storage location, DTRA staff discovered the source was missing. After a prompt and extensive search by DTRA, the source was recovered on August 3, 2017. While there were no actual radiological consequences, this event could have resulted in the improper use or transfer of licensed material.

Therefore, because the violations are all directly related to the same event and the loss of licensed material, these violations have been categorized collectively in accordance with the NRC Enforcement Policy as a single Severity Level III (SL III) problem. This severity level corresponds to violations that resulted in, or could have resulted in, moderate safety or security consequences.

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$7,250 is considered for any SL III problem or violation. Because your facility has not been the subject of escalated enforcement action within either the last two years or the two most recent 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 has concluded that credit is warranted for DTRA's corrective actions. Enclosure 2 (non-public) provides a determination of severity level and a description of the corrective actions taken by DTRA to address the violations. Therefore, to encourage prompt and comprehensive correction of violations of NRC requirements, 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. Issuance of this SL III problem constitutes an escalated enforcement action that may subject you to increased inspection effort.

The NRC has concluded that information regarding: (1) the reason for the violations; (2) the actions planned or already taken to correct the violations and prevent recurrence; and, (3) the date when full compliance was achieved, is already adequately addressed on the docket in Inspection Report No. 03035668/2017002 and in the enclosures to this letter. 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.

S. Davis

3

In accordance with 10 CFR 2.390 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 located at NRC Headquarters in Rockville, MD, and from the NRC's document system, the Agencywide Documents Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. However, the material enclosed herewith contains Security-Related Information as described above. Therefore, the material in the enclosures will not be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS).

The NRC also includes significant enforcement actions on its Web site at (<http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>).

Sincerely,

/RA Daniel Collins for:/

David C. Lew
Acting Regional Administrator

Docket No. 03035668
License No. 45-25551-01

Enclosures:

1. Notice of Violation
2. Determination of Severity Level and Description of Corrective Actions

cc w/enclosures: Brian J. Stroh, Radiation Safety Officer
State of Virginia

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S. Davis

4

SUBJECT: DEPARTMENT OF DEFENSE, DEFENSE THREAT REDUCTION AGENCY
(DTRA) NOTICE OF VIOLATION - NRC INSPECTION REPORT NO.
03035668/2017002 DATED FEBRUARY 14, 2018

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Non-Public Designation Category: MD 3.4 Non-Public A.3

DOCUMENT NAME: S:\Enf-allg\Enforcement\Proposed-Actions\Region1\DTRA_EA-17-146_PUBLIC_FINAL.docx

ADAMS ACCESSION NUMBER (Cover letter w/enclosure 1) **ML18045A046**

ADAMS ACCESSION NUMBER: (Cover letter w/enclosure 1 and (non-public) enclosure 2) **ML18045A050**

Cover Letter: <input checked="" type="checkbox"/> SUNSI Review		<input checked="" type="checkbox"/> Non-Sensitive <input type="checkbox"/> Sensitive		<input checked="" type="checkbox"/> Publicly Available <input type="checkbox"/> Non-Publicly Available	
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NAME	C Crisden/CJC*	A Burritt/ALB*	B Klukan/BMK*	B Bickett/BAB*	L Sreenivas
	1/18/2018	1/23/18	1/24/2018	1/24/18	2/1/18 via email
OFFICE	RI/DNMS	RI/ORA			
NAME	J Trapp/JMT*	D Lew/DCollins for			
	2/5/18	2/13/18			

***See previous concurrence OFFICIAL RECORD COPY**

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5

SUBJECT: DEPARTMENT OF DEFENSE, DEFENSE THREAT REDUCTION AGENCY
(DTRA) NOTICE OF VIOLATION - NRC INSPECTION REPORT NO.
03035668/2017002 DATED FEBRUARY 14, 2018

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MBurgess, NMSS

RSun, NMSS

SHoliday, NMSS

Enforcement Coordinators

RII, RIII, RIV (MKowal; RSkokowski; MVasquez)

MLemoncelli

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HHarrington, OPA

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HBell, OIG

RIDSOIGMailCenter

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JTrapp, DNMS, RI

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JNick, DNMS, RI

ABurritt, DNMS, RI

MReichard, DNMS, RI

DScrenci, PAO-RI / NSheehan, PAO-RI

MFord, SAO-RI / JMiller, SAO-RI

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Region I OE Files (with concurrences)

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ENCLOSURE 1

NOTICE OF VIOLATION

Department of Defense
Defense Threat Reduction Agency
Fort Belvoir, VA

Docket No. 03035668
License No. 45-25551-01
EA-17-146

During an NRC inspection conducted on August 10, 2017, with continued in-office review through November 8, 2017, violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. 10 CFR 20.1802 requires that the licensee control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage.

Contrary to the above, from August 2, 2017, through August 3, 2017, Department of Defense, Defense Threat Reduction Agency (DTRA) did not control and maintain constant surveillance of licensed material that was in a controlled or unrestricted area and that was not in storage. Specifically, after completing a training class, a licensee employee placed a licensed source on the roof of a car and inadvertently drove away without retrieving the source, which fell from the roof and was lost. The source was recovered on August 3, 2017.

- B. 10 CFR 71.5(a) requires that each licensee who transports licensed material outside the site of usage, as specified in the NRC license, or where transport is on public highways, or who delivers licensed material to a carrier for transport, shall comply with the applicable requirements of the DOT regulations in 49 CFR parts 107, 171 through 180, and 390 through 397, appropriate to the mode of transport.

49 CFR 177.834(a) requires, in part, that any package containing any hazardous material, not permanently attached to a motor vehicle, must be secured against shifting, including relative motion between packages, within the vehicle on which it is being transported, under conditions normally incident to transportation.

Contrary to the above, on August 2, 2017, DTRA, transported a package containing hazardous licensed material that was neither permanently attached to a motor vehicle nor secured against shifting, including relative motion between packages, within the vehicle on which it was being transported, under conditions incident to transportation. Specifically, a licensee employee transported a licensed source on the roof of a car and inadvertently drove away without retrieving the source, which fell from the roof and was lost. The source was neither attached to the car nor secured within the car. The source was recovered on August 3, 2017.

- C. 10 CFR 71.5(a) requires that each licensee who transports licensed material outside the site of usage, as specified in the NRC license, or where transport is on public highways, or who delivers licensed material to a carrier for transport, shall comply with the applicable requirements of the DOT regulations in 49 CFR parts 107, 171 through 180, and 390 through 397, appropriate to the mode of transport.

Contrary to the above, on August 2, 2017, DTRA, transported licensed material outside the site of usage, as specified in the NRC license, and transported on public highways, and did not comply with the applicable requirements of the DOT regulations in 49 CFR parts 107, 171 through 180, and 390 through 397, appropriate to the mode of transport. Two examples were identified:

- 1) 49 CFR 172.200(a) requires, in part, that except as otherwise provided in this subpart, each person who offers a hazardous material for transportation shall describe the hazardous material on the shipping paper in the manner required by this subpart.

Contrary to the above, on August 2, 2017, DTRA offered a hazardous material for transport and did not describe the hazardous material on a shipping paper in the manner required by this subpart. Specifically, DTRA did not use a shipping paper which included the required information during transport of licensed material on August 2, 2017.

- 2) 49 CFR 172.300(a) requires, in part, that each person who offers a hazardous material for transportation shall mark each package, freight container, and transport vehicle containing the hazardous material in the manner required by this subpart.

Contrary to the above, on August 2, 2017, DTRA offered a hazardous material for transport and did not mark the package containing the hazardous material in the manner required by this subpart. Specifically, DTRA did not use a shipping container which included the required markings during transport of licensed material on August 2, 2017.

This is a Severity Level III problem (Enforcement Policy Sections 6.7 and 6.8)

The NRC has concluded that information regarding the reason for the violations, and 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 in Inspection Report 03035668/2017002 dated December 6, 2017. 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-17-146)," and follow the handling requirements above for security-related information. Send your response to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001 with a copy to the Chief, Materials Commercial, Industrial, Research & Development, and Academic Branch, U.S., Nuclear Regulatory Commission, Region I, 2100 Renaissance Boulevard, King of Prussia, PA 19406, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). In accordance with 10 CFR 2.390(b)(1)(ii), the NRC is waiving the affidavit requirements of your response.

Notice of Violation

3

Because this issue involves Security-Related Information, your response, if you choose to provide one, will not be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. If Security Related Information is necessary to provide an acceptable response, please follow the instructions for withholding in 10 CFR 2.390(b)(1).

Dated this 15th day of February 2018