



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
REGION I
2100 RENAISSANCE BLVD.
KING OF PRUSSIA, PA 19406-2713

August 9, 2019

John T. Jensen, Chief
Radiation Safety Division
Office of Homeland Security and Emergency Coordination
United States Department of Agriculture
5601 Sunnyside Avenue, MS 551 O
Beltsville, MD 20705

SUBJECT: U. S. DEPARTMENT OF AGRICULTURE: NRC INSPECTION REPORT
03004530/2019001 AND NOTICE OF VIOLATION

Dear Mr. Jensen:

This letter refers to the unannounced inspection conducted on April 2, 2019, at the Agricultural Research Service (ARS) facility located at 11861 Leetown Road in Kearneysville, WV, and to your review of activities at the ARS Reynolds Creek Experimental Watershed (RCEW) facility near Boise, ID on February 12-13, 2019. The inspection was an examination of activities conducted under your license as they relate to public health and safety, to confirm compliance with the U.S. Nuclear Regulatory Commission's (NRC) rules, regulations, and with the conditions of your license. Within these areas, the inspection consisted of a selected examination of procedures and representative records, observation of activities, and interviews with personnel. The preliminary inspection findings at Kearneysville were discussed with Mr. Greg Weber at the conclusion of the onsite portion of the inspection, and he subsequently provided additional information through follow-up email and phone calls. A final telephonic exit call with Mr. Weber was held on July 11, 2019. Inspection findings related to the Boise location were discussed with you during an exit telephone call conducted with you on July 8, 2019.

Based on the results of this inspection, no violations were identified at the ARS facility at 11861 Leetown Road in Kearneysville, WV. However, the NRC has determined that a Severity Level IV violation of NRC requirements occurred at the RCEW facility in Boise, ID. The violation was evaluated in accordance with the NRC Enforcement Policy. The current Enforcement Policy is included on the NRC's Web site at <https://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>. The violation is cited in the enclosed Notice of Violation (Notice) because the violation was identified by the NRC and involved the failure to assure personnel have received required training prior to using licensed moisture gauges.

The NRC has concluded that information regarding: (1) the reason for the violation; (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 and include: identification of the cause of the violation, immediate corrective action to cease use of the gauge and long term corrective action to terminate the USDA permit to use the gauge at the RCEW facility. Therefore, you are not required to respond to this letter unless the description herein 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 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 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 you have any questions regarding this matter, please contact Todd Jackson of my staff at (610) 337-5308 or via electronic mail at Todd.Jackson@nrc.gov.

Thank you for your cooperation.

Sincerely,

/RA/

Anne DeFrancisco, Acting Chief
Commercial, Industrial, R&D
and Academic Branch
Division of Nuclear Materials Safety
Region I

Docket No. 03004530
License No. 19-00915-03

Enclosure:
Notice of Violation

cc w/ encl: Gregory Weber, USDA
State of Idaho
State of West Virginia

U. S. DEPARTMENT OF AGRICULTURE: NRC INSPECTION REPORT 03004530/2019001
AND NOTICE OF VIOLATION DATED August 9, 2019

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NOTICE OF VIOLATION

US Department of Agriculture (USDA)
Beltsville, MD

Docket No. 03004530
License No. 19-00915-03

During an NRC inspection of activities at the Agricultural Research Service (ARS) Reynold's Creek Experimental Watershed (RCEW) near Boise, ID on February 12-13, 2019, and continuing in-office through July 8, 2019, one violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

Condition 27.A of License 19-00915-03 requires the licensee to conduct its program in accordance with the statements, representations, and procedures contained in the commitments made in the letter from USDA Radiation Safety Division (RSD) dated April 8, 2016 (ML16160A125). Section 8, "Training," on page 8 of the referenced letter, states, "RSD will ensure all users receive radiation safety training prior to initial use of radioactive materials and refresher radiation safety training every 3 years."

Contrary to the above, as of November 8, 2018, USDA failed to ensure that all users of licensed material had received radiation safety training prior to initial use of radioactive materials. Specifically, an employee of USDA/ARS who had not received the the specified training required by RSD used a licensed moisture gauge at the RCEW facility. Use of the gauge was suspended when supervisors at the Northwest Watershed Research Center/RCEW learned of the violation on November 8, 2018. The case was investigated and the use of licensed material at the location was permanently stopped in February 2019, after determination that the required training had not been administered. With RSD assistance, the gauges were removed from the facility by June 24, 2019, and the USDA permit to use licensed material at the facility has been terminated.

This is a Severity Level IV violation (Enforcement Policy Section 6.3).

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence and the date when full compliance will be achieved is already adequately addressed on the docket. 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," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555 with a copy to the Regional Administrator, Region I, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

If you contest this enforcement action, you should also provide a copy of your response to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, any response which contests an enforcement action shall be submitted under oath or affirmation.

Your response will be placed in the NRC Public Document Room (PDR) and on the NRC Web site. To the extent possible, it should, therefore, not include any personal privacy, proprietary, or safeguards information so that it can be made publically available without redaction. However, if you find it necessary to include such information, you should clearly indicate the

specific information that you desire not to be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public.

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days of receipt.

Dated This 9th day of August 2019