



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
1600 E. LAMAR BLVD.
ARLINGTON, TX 76011-4511

June 24, 2016

IA-16-018

Mr. Curtis Hofer
[NOTE: HOME ADDRESS DELETED
UNDER 10 CFR 2.390]

SUBJECT: NOTICE OF VIOLATION AND INVESTIGATION REPORT 4-2014-042

Dear Mr. Hofer:

This letter refers to the investigation completed on August 12, 2015, by the U.S. Nuclear Regulatory Commission's (NRC) Office of Investigations, Region IV, at Montana State University (MSU). The investigation was conducted to determine whether you, as the radiation safety officer at MSU, willfully failed to perform a physical inventory of the sealed sources authorized under the MSU license, and if you provided inaccurate information regarding leak tests that were not performed. A factual summary of the investigation, as it pertains to your actions, was issued as an enclosure to our letter to you dated March 15, 2016 (available in NRC's Agencywide Documents Access and Management System (ADAMS) Accession ML16076A449 and is accessible from NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>).

In the letter transmitting the factual summary of the Office of Investigations report and the results of the investigation, we provided you the opportunity to address the apparent violation identified in the report by either attending a predecisional enforcement conference, requesting alternative dispute resolution, or providing a written response before we made our final enforcement decision. In your e-mail dated May 1, 2016, you provided a response to the apparent violation.

Based on the information developed during the investigation, including your testimony that you knew that MSU was not in possession of two gas chromatographs containing nickel-63 sealed sources (sources) when you documented that you had conducted leak tests on them, and the information provided in your May 1, 2016, written response, the NRC has determined that a deliberate violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice) (Enclosure1). The violation was determined to be the result of your actions as an employee at MSU.

On several occasions between 2008 and 2014, you deliberately provided MSU with documentation indicating that leak tests were completed on two sources that were not actually leak tested. Your deliberate actions placed you in violation of Title 10 of the *Code of Federal Regulations* (10 CFR) 30.10, "Deliberate misconduct." Given the significance of the underlying issue and the deliberate nature of your actions, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level III. The current Enforcement Policy is included on the NRC's Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>. You should be aware that if you are involved in NRC-licensed activities in the future, additional deliberate violations could result in more significant enforcement action or criminal action.

Your deliberate actions also caused MSU to be in violation of 10 CFR 30.9, "Completeness and accuracy of information," and License Condition 14.F of NRC License No. 25-00326-06, Amendment No. 61. This license condition states, in part, that records of leak test results shall be kept in units of microcuries and shall be maintained for 3 years. In addition, since the violation involved willfulness, the NRC considers the violation more significant. Therefore, a violation issued to MSU has been categorized in accordance with the NRC Enforcement Policy at Severity Level III. Enclosure 2 includes a copy of the letter and Notice issued to MSU.

The NRC has concluded that since (1) you are no longer employed by MSU; (2) you admitted that you documented leak test results for two sources that were not leak tested; and (3) you presented your understanding of the issue in your written response dated May 1, 2016, you are not required to respond to this letter. Should you choose to respond, follow the instructions specified in the enclosed Notice.

If you disagree with this enforcement action, you may either follow the instructions in the attached Notice or request alternative dispute resolution (Enclosure 3) with the NRC in an attempt to resolve this issue. Alternative dispute resolution is a general term encompassing various techniques for resolving conflicts using a neutral third party. The technique that the NRC has decided to employ is mediation. Mediation is a voluntary, informal process in which a trained neutral mediator works with parties to help them reach resolution. If the parties agree to use alternative dispute resolution, they select a mutually agreeable neutral mediator who has no stake in the outcome and no power to make decisions.

Mediation gives parties an opportunity to discuss issues, clear up misunderstandings, be creative, find areas of agreement, and reach a final resolution of the issues. Additional information concerning the NRC's alternative dispute resolution program can be obtained at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr/post-investigation.html>. The Institute on Conflict Resolution at Cornell University has agreed to facilitate the NRC's program as a neutral third party. Please contact Cornell at 877-733-9145 within 10 days of the date of this letter if you are interested in pursuing resolution of this issue through alternative dispute resolution.

In accordance with 10 CFR 2.390 of the NRC's "Agency Rules of Practice and Procedure," a copy of this letter, its enclosures, and your response, if you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room and from the NRC's 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. The NRC also includes significant enforcement actions on its Web site at <http://www.internal.nrc.gov/OE/eas.html>.

In addition, this letter will be maintained by the Office of Enforcement in an NRC Privacy Act system of records, NRC-3, Enforcement Actions Against Individuals. This system, which is not publicly-accessible, includes all records pertaining to individuals who are being or have been considered for enforcement action, whether such action was taken or not. The NRC-3 system notice, which provides detailed information about this system of records, can be accessed from the NRC Web site at <http://www.nrc.gov/reading-rm/foia/privacy-systems.html>.

C. Hofer

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If you have any questions, please contact John Kramer, Senior Enforcement Specialist, at 817-200-1121.

Sincerely,

A handwritten signature in black ink, reading "Kriss M. Kennedy". The signature is fluid and cursive, with the first name "Kriss" and last name "Kennedy" clearly legible.

Kriss M. Kennedy
Deputy Regional Administrator

Enclosures:

1. Notice of Violation
2. Notice of Violation issued to
Montana State University
3. NUREG/BR-0317, Revision 1

NOTICE OF VIOLATION

Curtis Hoffer
[HOME ADDRESS DELETED]
UNDER 10 CFR 2.390(a)]

IA-16-018

During an NRC investigation conducted August 21, 2014, through August 12, 2015, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 30.10(a) states, in part, that any employee of a licensee may not (1) engage in deliberate misconduct that causes a licensee to be in violation of any rule, regulation, or any condition of any license issued by the Commission; or (2) deliberately submit to the NRC or a licensee, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

License Condition 14.F of NRC License No. 25-00326-06, Amendment No. 61, states, in part, that records of leak test results shall be kept in units of microcuries and shall be maintained for 3 years.

Contrary to the above, on several occasions between 2008 and 2014, while employed as a Radiation Safety Officer for Montana State University (licensee), you engaged in deliberate misconduct that caused the licensee to be in violation of a rule or regulation, and deliberately submitted to the licensee information that you knew to be incomplete or inaccurate in some respect material to the NRC. Specifically, you caused the licensee to be in violation of 10 CFR 30.9 and Licensed Condition 14.F by documenting leak test results for two nickel-63 sealed sources that were not leak tested. This information was material to the NRC because maintaining accurate records associated with the performance of leak tests establishes the licensee's control of licensed material and validates that none of the sources were leaking.

This is a Severity Level III violation (Section 6.9).

The NRC has concluded that since (1) you are no longer employed by Montana State University; (2) you admitted that you documented leak test results for two nickel-63 sealed sources that were not leak tested; and (3) you presented your understanding of the issue in your written response dated May 1, 2016, you are not required to respond to this letter.

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 position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation, IA-16-018," and send it to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001, with a copy to the U.S. Nuclear Regulatory Commission, ATTN: Regional Administrator, Region IV, 1600 East Lamar Blvd., Arlington, Texas 76011-4511, and marked "Open by Addressee Only," within 30 days of the date of the letter transmitting this Notice of Violation.

Enclosure 1

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

Your response, if you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room and in the NRC's Agencywide Document Access and Management System, 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 personal privacy or proprietary information is necessary to provide an acceptable response, please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information).

This letter will be maintained by the Office of Enforcement in an NRC Privacy Act system of records, NRC-3, Enforcement Actions Against Individuals. This system, which is not publicly-accessible, includes all records pertaining to individuals who are being or have been considered for enforcement action, whether such action was taken or not. The NRC-3 system notice, which provides detailed information about this system of records, can be accessed from the NRC Web site at <http://www.nrc.gov/reading-rm/foia/privacy-systems.html>.

Dated this 24th day of June 2016

MONTANA STATE UNIVERSITY

NOTICE OF VIOLATION

**NRC INSPECTION REPORT 03000871/2014-001
AND NRC INVESTIGATION REPORT 4-2014-042**



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

REGION IV
1600 E. LAMAR BLVD.
ARLINGTON, TX 76011-4511

June 24, 2016

EA-15-165

Dr. Renee A. Reijo Pera, PhD
Vice-President for Research
Montana State University
1160 Research Drive
Bozeman, MT 59718-6856

**SUBJECT: NOTICE OF VIOLATION - NRC INSPECTION REPORT 030-00871/2014-001
AND INVESTIGATION REPORT 4-2014-042**

Dear Dr. Pera:

This letter refers to the special inspection and investigation conducted at your facility in Bozeman, Montana. The purpose of the inspection was to review the circumstances related to Montana State University's report of a lost, specifically licensed, gas chromatograph containing a nickel-63 sealed source. Montana State University notified the U.S. Nuclear Regulatory Commission (NRC) Headquarters Operations Center of this issue on August 2, 2014, and submitted a written report to the NRC on September 16, 2014. The NRC inspection report was issued on February 22, 2016 (Agencywide Documents Access and Management System (ADAMS) ML16006A571) and the NRC's Office of Investigations report was issued on August 12, 2015. The preliminary inspection findings were discussed with Mr. Justin Cook of your staff at the conclusion of the onsite portion of the inspection. A final exit briefing was conducted telephonically with you and members of your staff on January 7, 2016.

In the NRC letter dated February 22, 2016, we provided you with the opportunity to address the violations identified in the report by either attending a predecisional enforcement conference, requesting alternative dispute resolution (ADR), or by providing a written response before we made our final enforcement decision. We received your letter dated February 25, 2016 (ML16083A414) in which you provided a written response containing your corrective actions to the violations.

Based on the information developed during the inspection and the information that you provided in your response to the inspection report, the NRC has determined that five violations of NRC requirements occurred. These violations are cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding them are described in detail in the subject inspection report. The violations involve the failure to: (1) maintain control over licensed material as required by Title 10 of the *Code of Federal Regulations* (10 CFR) 20.1802; (2) conduct leak tests of sealed sources; (3) conduct a complete physical inventory; (4) provide complete and accurate information as required by 10 CFR 30.9(a); and (5) provide required Department of Transportation training to individuals who transported licensed material outside the site of usage.

The failure to conduct a complete inventory of sealed sources, to conduct leak tests, and to provide complete and accurate information could prevent timely identification of a loss of licensed material. Because of the significance of these violations, four are categorized collectively, in accordance with the NRC Enforcement Policy, as a Severity Level III problem and the fifth as a Severity Level IV violation. The current Enforcement Policy is included on the NRC's Web site at: <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>.

In accordance with the NRC Enforcement Policy, a base civil penalty of \$3,500 is considered for a Severity Level III violation. Because your facility has not been the subject of escalated enforcement actions within the last 2 years, 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. Based on your prompt and comprehensive corrective actions, the NRC has determined that *Corrective Action* credit is warranted. Specifically, your corrective actions include: (1) restructuring the management organization to increase oversight; (2) immediately re-training principal investigators and authorized users; (3) immediately conducting a complete inventory and leak tests; (4) disposing of unwanted and unused sealed sources; (5) training workers who transport radioactive waste on public highways; and (6) increasing security measures to maintain control of licensed material.

Therefore, to encourage prompt and comprehensive correction of violations, 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. However, significant violations in the future could result in a civil penalty. In addition, issuance of this Severity Level III problem constitutes 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 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 in Montana State University correspondence dated January 15, 2015 (ML15015A687), February 25, 2016 (ML16083A414), and in NRC Inspection Report 030-00871/2014-001. 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.

If you disagree with this enforcement action, you may either follow the instructions in the attached Notice or request ADR with the NRC in an attempt to resolve this issue. Alternative dispute resolution is a general term encompassing various techniques for resolving conflicts using a neutral third party. The technique that the NRC has decided to employ is mediation. Mediation is a voluntary, informal process in which a trained neutral mediator works with parties to help them reach resolution. If the parties agree to use ADR, they select a mutually agreeable neutral mediator who has no stake in the outcome and no power to make decisions.

Mediation gives parties an opportunity to discuss issues, clear up misunderstandings, be creative, find areas of agreement, and reach a final resolution of the issues. Additional information concerning the NRC's ADR program can be obtained at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr/post-investigation.html>. The Institute on Conflict Resolution at

R. Pera

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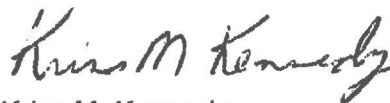
Cornell University has agreed to facilitate the NRC's program as a neutral third party. Please contact Cornell at 877-733-9145 within 10 days of the date of this letter if you are interested in pursuing resolution of this issue through ADR.

In accordance with 10 CFR 2.390 of the NRC's "Agency Rules of Practice and Procedure," a copy of this letter, its enclosure, 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's 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 personal privacy or proprietary information is necessary to provide an acceptable response, please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such information, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information). The NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>.

If you have any questions concerning this matter, please contact Ray Kellar at (817) 200-1191.

Sincerely,



Kriss M. Kennedy
Deputy Regional Administrator

Docket No. 030-00871
License No. 25-00326-06

Enclosure: Notice of Violation

cc:
Roy Kemp, Interim Administrator
Quality Assurance Division - DPHHS
2401 Colonial Drive
P. O. Box 202953
Helena, MT 59620-2953

NOTICE OF VIOLATION

Montana State University
Bozeman, Montana

Docket No. 030-00871
License No. 25-00326-06
EA-15-165

During a U.S. Nuclear Regulatory Commission (NRC) inspection and investigation conducted from October 7, 2014, through January 7, 2016, violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. 10 CFR 20.1802 states, in part, that the licensee shall 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, as of July 3, 2014, the licensee failed to control and maintain constant surveillance of licensed material that was in a controlled or unrestricted area and that was not in storage. Specifically, the licensee lost a Varian/Agilent Gas Chromatograph containing approximately 13.73 millicuries of nickel-63.

- B. License Condition 14.A of NRC License No. 25-00326-06, Amendment No. 61, states, in part, that sealed sources shall be tested for leakage and/or contamination at intervals not to exceed 6 months or at such other intervals as specified by the certificate of registration referred to in 10 CFR 32.210.

Contrary to the above, between 2008 and 2014, the licensee failed to test sealed sources for leakage and/or contamination at intervals not to exceed 6 months or at such other intervals as specified by the certificate of registration referred to in 10 CFR 32.210. Specifically, the licensee failed to leak test nickel-63 sealed sources, maintained under its license, at intervals not to exceed 36 months as specified by their certificates of registration.

- C. License Condition 25 of NRC license No. 25-00326-06, Amendment No. 61, states, in part, that the licensee shall conduct a physical inventory every 6 months, or at other intervals approved by the NRC, to account for all sources and/or devices received and possessed under the license.

Contrary to the above, between 2008 and 2014, the licensee failed to conduct a physical inventory every 6 months or at other intervals approved by the NRC to account for all sources and/or devices received and possessed under the license. Specifically, the licensee failed to account for two of its nickel-63 sealed sources enclosed in gas chromatographs every 6 months or at other intervals approved by the NRC.

- D. 10 CFR 30.9(a) states, in part, that information provided to the Commission by a licensee or information required by license conditions to be maintained by the licensee shall be complete and accurate in all material respects.

License Condition 14.F of NRC License No. 25-00326-06, Amendment No. 61, states, in part, that records of leak test results shall be kept in units of microcuries and shall be maintained for 3 years.

Enclosure

License Condition 25 of NRC License No. 25-00326-06, Amendment No. 61, states, in part, that records of inventories shall be maintained for 5 years from the date of each inventory, and shall include the radionuclides, quantities, manufacturer's name and model numbers, and the date of the inventory.

Contrary to the above, as of July 3, 2014, the licensee failed to maintain complete and accurate information with regard to leak test and inventory documentation as required by 10 CFR 30.9(a) and as required by License Conditions 14.F and 25 of NRC License No. 25-00326-06, Amendment No. 61. Specifically, licensee records indicated that two nickel-63 sources had been leak tested and physically accounted for, when in fact, the sources were not in the licensee's possession at the time the leak tests and inventories were documented as having been performed. This information is material because leak test and inventory records establish the licensee's control of licensed material.

This is a Severity Level III problem (Section 6.7).

- E. 10 CFR 71.5(a), states, in part, that each licensee who transports licensed material outside of the site of usage, as specified in the NRC license, or where transport is on public highways, shall comply with the applicable requirements of the Department of Transportation regulations in 49 CFR Parts 107, 171 through 180, and 390 through 397.

49 CFR 172.702 states, in part, that a hazmat employer shall ensure that each of its hazmat employees is trained in accordance with the requirements in 49 CFR 172, Subpart H, "Training."

49 CFR 172.704(a) states, in part, that the elements of hazmat employee training as: (1) general awareness/familiarization training, (2) function-specific training, (3) safety training, (4) security awareness training and (5) in-depth security training.

49 CFR 172.704(c)(1) states, in part, that a new hazmat employee or hazmat employee who changes job functions may perform those functions prior to the completion of training provided: (i) the employee performs those functions under the direct supervision of a properly trained and knowledgeable hazmat employee; and (ii) the training is completed within 90 days after employment or change in job function.

Contrary to the above, between August and September 2014, the licensee failed to ensure that each of its hazmat employees was trained in accordance with the requirements in 49 CFR 172, Subpart H, "Training." Specifically, the licensee allowed a hazmat employee to transport radioactive waste outside of its licensed site of usage, without having received initial hazmat training and not under the direct supervision of a properly trained and knowledgeable hazmat employee.

This is a Severity Level IV violation (Section 6.8)

The NRC has concluded that information regarding the reason for the violations, 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 on the docket in NRC Inspection Report 030-00871/2014-001 and letter from Montana State University dated February 25, 2016. 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-15-165," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001 with a copy to the Regional Administrator, Region IV, 1600 East Lamar Blvd., Arlington, Texas 76011-4511 within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

If you choose to respond, your response will be made available electronically for public inspection in the NRC Public Document Room or in the NRC's Agencywide Documents Access and Management System, accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. Therefore, to the extent possible, the response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

In accordance with 10 CFR 19.11, you may be required to post this Notice within 2 working days of receipt.

Dated this 24th day of June 2016

NUREG/BR-0317
POST-INVESTIGATION ALTERNATIVE
DISPUTE RESOLUTION PROGRAM
Revision 1

Mediation Location and Duration

The parties usually hold the mediation at, or in the vicinity of, one of the NRC's offices. However, the parties may mutually agree upon any alternate location. Mediation sessions are usually no longer than 1 day. In some cases, the mediation may take longer than 1 day with the mutual consent of the parties.

The NRC Mediation Team

The responsible Regional Administrator or his or her designee will serve as the principal negotiator for the NRC in cases that involve wrongdoing and related technical issues, if any. When a case involves discrimination, the Director of the Office of Enforcement will normally serve as the principal negotiator. The other members of the NRC mediation team typically include an enforcement specialist, an attorney, and a staff representative who is familiar with the technical issues under discussion.

The Confirmatory Order

A CO is a legally binding document that includes the terms of the AIP. For a licensee, a CO serves as an amendment to its NRC license. Regardless of the type of entity, a CO has the same legal force against any party to which it is issued.

The NRC will only issue a CO with the prior written consent of the other party, and with a waiver of the right to a hearing. After the entity or the individual, as applicable, has completed the terms of the CO, the NRC will conduct verification activities to ensure that the terms of the CO have been satisfied in a timely manner. Because the CO is legally binding, failing to comply with its terms exposes the entity or individual to additional enforcement action.

Although the substance of the mediation session remains confidential, the details of the settlement will normally be made public via a press release and the publication of the CO in the *Federal Register*.

Timeliness Goals

The timely resolution of issues is one of the goals of the post-investigation ADR program. Accordingly, the NRC expects a timely progression of a case at each stage of the mediation process. In cases where the parties achieve settlement, the NRC expects to issue a CO within 90 calendar days of the date of the agency's letter offering the ADR option to an entity the other party.

Additional Sources of Information

Further information about the NRC's ADR program is available from the following:

- Cornell toll free at (877) 733-9145
- NRC ADR Program Manager in the Office of Enforcement toll free at (800) 368-5642 or (301) 415-2741
- NRC enforcement ADR program on the agency's Web site at www.nrc.gov/about-nrc/regulatory/enforcement/adr.html



NUREG/BR-0317 Rev. 1
July 2011

 **U.S. NRC**
United States Nuclear Regulatory Commission
Protecting People and the Environment

Post-Investigation Alternative Dispute Resolution Program

The Program

The U.S. Nuclear Regulatory Commission's (NRC's) post-investigation alternative dispute resolution (ADR) program provides an amicable process to resolve enforcement matters. It may produce more timely and effective outcomes for the NRC and an entity (e.g., an NRC licensee, certificate holder, or contractor of an NRC licensee or certificate holder) or an individual who is subject to an enforcement action. Following the congressional endorsement of the use of ADR by Federal agencies, the NRC established the post-investigation ADR program in 2004. Post-investigation ADR offers the opportunity to resolve discrimination cases or other wrongdoing and related matters through mediation rather than through the NRC's traditional enforcement process.

Post-investigation ADR refers to the use of mediation *after* the completion of an investigation by the NRC Office of Investigations and the staff's conclusion that pursuit of an enforcement action appears warranted. As long as the enforcement matter is within the scope of the program, the NRC normally offers post-investigation ADR at each of the following stages of the enforcement process: (1) before an initial enforcement action, (2) after the initial enforcement action is taken, typically upon issuance of a notice of violation, and (3) when a civil penalty is imposed but before a hearing request.

Mediation is an informal process in which a trained and experienced mediator works with the parties to help them reach a resolution. The parties are the NRC and the entity or an individual, as applicable, in the mediation. The mediator focuses the attention of the parties on their needs and interests rather than on their stated positions. Mediation gives the parties an opportunity to discuss issues, clear up misunderstandings, identify creative ways to address issues, find areas of agreement, and resolve their dispute.

Participation in the program is entirely voluntary. The NRC and the entity or the individual, as applicable, may withdraw from the mediation process at any time.

The Program Administrator

The NRC has a contract with the Cornell University Scheinman Institute on Conflict Resolution (Cornell) to serve as the program administrator for the post-investigation ADR program. Cornell administers the program's day-to-day operations, including handling the logistical matters and working with the parties to select a mediator from Cornell's roster of mediators. Cornell uses a network of independent and experienced mediators who help the parties find areas of agreement and help them settle their dispute.

The Mediator

The mediator is an experienced neutral individual who is mutually selected by the parties. He or she has no stake in the outcome of the mediation or any power to make decisions that may bind either party. The role of the mediator is to facilitate communication between the parties and to provide an environment where the parties have an opportunity to address their differences. The mediator uses consensus building skills and knowledge of negotiation to help the parties find ways to overcome any misunderstandings and attempt to find areas of agreement. The mediator does not act as legal counsel or provide legal advice to any party. Each party should consult an attorney for legal advice as such party deems appropriate.

The Mediation Process

Historically, most post-investigation ADR mediations have occurred at the first stage of the enforcement process (i.e., before an initial enforcement action). In those cases, the NRC presents the entity or an individual, as applicable, with the opportunity to engage in mediation with the agency before it makes an enforcement decision. If the entity or the individual elects ADR, Cornell will help the NRC and the entity or the individual, as applicable, to jointly select a mediator. After the parties select a mediator, the parties, in coordination with the mediator, set a date and place for the mediation. Typically, the mediator holds a pre-mediation teleconference with the parties to discuss logistical matters or any special needs of either party.

During the mediation, the mediator will give the parties an opportunity to discuss their views on the issue. Often, the mediator will meet privately with each party to develop a clear understanding of the party's perspective and explore and assess options. Although the mediator does not have any power to make decisions that may bind either party, he or she may ask questions intended to help the parties assess the merits of their positions, help them converse in a respectful atmosphere, and identify potential settlement options.

If the parties reach a settlement agreement during the mediation session, they will typically document the terms of their agreement in writing by developing an agreement in principle (AIP) document. The AIP is not enforceable by either party against the other, but it is the basis on which the NRC drafts a confirmatory order (CO), which is a legally binding document used to confirm the commitments made in the AIP.

However, if the parties do not reach a settlement agreement, the traditional enforcement process resumes—that is, the enforcement process continues as it would have, had the parties not engaged in ADR.

Confidentiality

Although the terms of an ADR settlement become publicly available through the issuance of the CO, with certain exceptions, the substance of the discussions during the mediation session is confidential regardless of the mediation outcome. The mediator is prohibited from discussing the mediation proceedings, testifying on anyone's behalf concerning the mediation, or submitting a report on the substance of the discussions.

Cost

The NRC and the entity or individual, as applicable, equally share the fees and travel expenses of the mediator and any meeting room fees. However, each party is responsible for its own expenses, such as travel, lodging, and legal representation.