



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

November 6, 2001

EA-01-266

Burlington Performance Wear
ATTN: Don Beusse
Director-Health and Safety
3330 West Friendly Avenue
Greensboro, North Carolina 27410

**SUBJECT: NRC INSPECTION REPORT NO. 999-90002/01-03 AND EXERCISE OF
ENFORCEMENT DISCRETION**

Dear Mr. Beusse:

This letter refers to our final review of the apparent violation identified in NRC Inspection Report No. 999-90002/01-03. The report was issued on October 25, 2001, and documented our inspection at your Hurt, Virginia facility and the circumstances surrounding the loss of a generally licensed Panalyzer Model 4000 Spectrochemical analyzer, containing 10 millicuries of Americium-241. Based on our further review, 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 an 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, any 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).

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

Sincerely,

Bruce S. Mallett
Acting Regional Administrator

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