



**UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
REGION IV  
611 RYAN PLAZA DRIVE, SUITE 400  
ARLINGTON, TEXAS 76011-4005**

January 26, 2005

IA-04-030

James H. Moy, Ph.D.  
University of Hawaii at Manoa  
Food Technology Building  
1920 Edmondson Road  
Honolulu, Hawaii 96822

**SUBJECT: NRC INVESTIGATION REPORT NO. 4-2004-008**

Dear Dr. Moy:

This is in reference to an investigation conducted by the NRC's Office of Investigations (OI) involving the security of byproduct material used in a research food irradiator at the University of Hawaii at Manoa. The purpose of the investigation was to determine whether there was deliberate (willful) misconduct associated with an apparent violation of NRC requirements that was brought to the attention of the NRC during a March 15-18, 2004, inspection. The investigation found that in March 2003 you willfully failed to secure the irradiator facility when you disabled the combination lock on the door to the irradiator room and disengaged the alarm system on the irradiator door so that a university maintenance worker could enter and repair a non-working light in your absence. Enclosure 1 is a Factual Summary of Investigation Report 4-2004-008.

Based on our review of the investigation report, an apparent violation of the NRC's rule on deliberate misconduct, 10 CFR 30.10, has been identified. Enclosure 2 is a copy of 10 CFR 30.10, the NRC's Rule on Deliberate Misconduct. This rule prohibits an intentional act or omission that a person knows would cause a licensee to be in violation of any rule, regulation, or license condition.

On January 25, 2005, we informed you by telephone of the results of the investigation, told you the NRC was considering enforcement action against you, and informed you that before taking any action you had the option of providing us your position on this matter in a predecisional enforcement conference. You indicated that you would consider participating in a conference after you received this letter. If a conference is held, it will be conducted telephonically, will be closed to public observation, and will be transcribed. You also indicated that you may decide to provide us your position in writing. Please contact Mr. Sanborn at the telephone number referenced below to let the NRC know your intentions.

As discussed with you, if a conference is held, it is considered predecisional because the NRC has not made a final determination that violations of NRC requirements occurred or that enforcement action will be taken against you. The purpose of a conference is to discuss the apparent violation and the circumstances surrounding it, and to give you an opportunity to provide your perspective on the apparent violation and any other information that you believe is relevant to the NRC's enforcement determination. You are specifically invited to address the

factors that the NRC would consider in determining whether enforcement action should be taken against you. These factors are described in Section VIII, Enforcement Actions Involving Individuals, of the enclosed copy of the "General Statement of Policy and Procedures for NRC Enforcement Actions," NUREG-1600 (Enclosure 3).

In addition, as discussed with you, you may have an attorney or personal representative attend the conference, but it should be understood that the NRC will address its questions to you. Furthermore, you are not required to participate in a conference, but you should understand that if you do not, the NRC will make an enforcement decision on the basis of the information developed during the investigation.

If the NRC concludes that you deliberately caused or committed a violation of NRC requirements, the possible sanctions include a Notice of Violation, a civil penalty,<sup>1</sup> or an order. An order may prohibit involvement in NRC-licensed activities, require notice to the NRC before resuming involvement in NRC-licensed activities, or require other action. Accordingly, you should be prepared to address why NRC should not issue you an order removing you from licensed activities.

You will be advised by separate correspondence of the results of our deliberations on this matter. Should you have any questions about this letter or the conference, please contact Gary Sanborn, Director, Allegation Coordination & Enforcement Staff, at 817-860-8222.

The NRC will delay making available a copy of this letter and Enclosure 1 to the public until an enforcement decision has been made. At that time, in accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and Enclosure 1 may 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/NRC/ADAMS/index.html>.

Please note that on October 25, 2004, the NRC suspended public access to ADAMS, and initiated an additional security review of publicly available documents to ensure that potentially sensitive information is removed from the ADAMS database accessible through the NRC's web site. Interested members of the public may obtain copies of the referenced documents for review and/or copying by contacting the Public Document Room pending resumption of public access to ADAMS. The NRC Public Document Room is located at NRC Headquarters in Rockville, MD, and can be contacted at 800-397-4209 or 301-415-4737 or [pdr@nrc.gov](mailto:pdr@nrc.gov).

Sincerely,

*/RA/*

Charles L. Cain, Acting Director  
Division of Nuclear Materials Safety

Docket No.: 030-07113  
License No.: 53-00017-09

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<sup>1</sup> Civil penalties are not normally imposed on unlicensed individuals.

Enclosures:

1. Factual Summary, OI 4-2004-008
2. 10 CFR 30.10, Rule Prohibiting Deliberate Misconduct
3. NRC Enforcement Policy, NUREG-1600
4. Inspection Report 030-07113/04-001  
dated January 24, 2005

bcc w/Enclosure 1 (via ADAMS distrib):

FJCongel, OE  
 CLMiller, NMSS  
 GFSanborn  
 HAFreeman  
 KSFuller  
 CLCain  
 JCruz  
 JEWhitten  
 RRErickson  
 MLBurgess, NMSS  
 GKMorell, OE  
 NMIB File  
 OEMail  
 SLMerchant, OE  
 RIV File (5th Floor)

ADAMS:  Yes     No    Initials: \_\_re\_\_  
 Publicly Available    Non-Publicly Available    Sensitive     Non-Sensitive

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01/06/05	01/06/05	01/06/05
D:ACES	RC	AD:DNMS
GFSanborn	KSFuller	CLCain
<b>/RA/</b>		<b>/RA/</b>
01/06/05	01/—/05	01/26/05

\*Previously concurred OFFICIAL RECORD COPY T=Telephone E=E-mail F=Fax

## **ENCLOSURE 1**

### Factual Summary Office of Investigations Report 4-2004-008 University of Hawaii at Manoa

This investigation was initiated by the NRC's Office of Investigations (OI) in April 2004 and involved an apparent violation of NRC requirements regarding the security of NRC-licensed radioactive material. The purpose of the investigation was to determine whether the apparent violation, which involved a failure to secure access to the university's irradiator facility, was committed willfully. The irradiator was a small pool irradiator which contained approximately 1,100 curies of cobalt-60. The apparent violation, which occurred in March 2003, was brought to the NRC's attention during a March 2004 routine inspection at the university.

The investigation found that on March 17, 2003, a professor responsible for the irradiator facility placed a request to have two burned-out fluorescent lights replaced in the irradiator room. A maintenance employee came to replace the lights but left to obtain supplies. The professor had business elsewhere, so he left the door to the facility and door to the irradiator room unlocked to allow the maintenance employee to return to replace the lights.

Leaving the irradiator facility unlocked and unattended violated NRC requirements in 10 CFR 20.1801 and 20.1802 regarding the security and control of licensed radioactive material, and violated licensee procedures that required the irradiator room to be locked with a combination lock at all times when not in use, and required operators to secure and lock access to the room whenever they were not actually in the area. A review of the professor's educational credentials, training history, and work history indicated that he was very experienced in radiation safety matters. In fact, at the time of the apparent violation, he was the university's radiation safety officer for the irradiator facility. The investigation found that the professor willfully violated NRC requirements when he left the facility unlocked and unattended.

## ENCLOSURE 2

### 10 CFR 30.10 - Deliberate misconduct.

(a) Any licensee, certificate of registration holder, applicant for a license or certificate of registration, employee of a licensee, certificate of registration holder or applicant; or any contractor (including a supplier or consultant), subcontractor, employee of a contractor or subcontractor of any licensee or certificate of registration holder or applicant for a license or certificate of registration, who knowingly provides to any licensee, applicant, certificate holder, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's, certificate holder's or applicant's activities in this part, may not:

(1) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee, certificate of registration holder, or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Commission; or

(2) Deliberately submit to the NRC, a licensee, certificate of registration holder, an applicant, or a licensee's, certificate holder's or applicant's, contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

(b) A person who violates paragraph (a)(1) or (a)(2) of this section may be subject to enforcement action in accordance with the procedures in 10 CFR Part 2, Subpart B.

(c) For the purposes of paragraph (a)(1) of this section, deliberate misconduct by a person means an intentional act or omission that the person knows:

(1) Would cause a licensee, certificate of registration holder or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation, of any license issued by the Commission; or

(2) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, certificate of registration holder, applicant, contractor, or subcontractor.