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**Homeland
Security**

June 2, 2005

John D. Kinnerman, Chief
Security and Industrial Branch
Division of Nuclear Materials Safety
NUCLEAR REGULATORY COMMISSION
Region 1
475 Allendale Road
King of Prussia, PA 19406-1415

Dear Mr. Kinnerman:

I have received your letter "Possession of Licensed Radioactive Material" dated May 25, 2005. I have forwarded a copy to DHS headquarters and will coordinate with them to develop a response.

Sincerely,

A handwritten signature in black ink that reads "Mitchell D. Erickson".

Mitchell D. Erickson, Director
Environmental Measurements Laboratory

Enclosures

cc: John Clarke, Chief, Office of National Laboratories
James E. Helt, Program Manager, Office of National Laboratories
Gerald Parker, Director, Office of Science-Based Threat Analysis and Countermeasures
Catherine S. Klusek, Deputy Laboratory Director, Environmental Measurements Laboratory
Fabien Raccach, Radiation Control Manager, Environmental Measurements Laboratory

M. Erickson
U.S. Department of Homeland Security

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Please reply to my attention at the Region I Office. If you have any technical questions regarding this letter or the process for applying for a license, please call Judy Joustra at (610) 337-5355. If you wish to discuss legal issues, you may call our Regional Attorney at (610) 337-5301.

We request that you respond in writing within 30 calendar days from the date of this letter.

Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "John D. Kinneman". The signature is written in a cursive style with a large initial "J" and "K".

John D. Kinneman, Chief
Security and Industrial Branch
Division of Nuclear Materials Safety



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

May 25, 2005

Mitchell D. Erickson
Director
U.S. Department of Homeland Security
Environmental Measurements Laboratory
201 Varick Street, 5th Floor
New York, NY 10014-7447

SUBJECT: POSSESSION OF LICENSED RADIOACTIVE MATERIAL

Dear Dr. Erickson:

On February 4, 2005, Judy Joustra, of my staff, contacted Mr. Fabien Raccah, of your office, to obtain information regarding the possession and use of radioactive material by the Environmental Measurements Laboratory. Mr. Raccah requested in an email dated February 9, 2005, to Ms. Joustra that her questions be submitted in writing to your attention.

We understand that Environmental Measurements Laboratory (EMS) is no longer a part of the Department of Energy (DOE), and is now a part of the Department of Homeland Security. While EMS was part of DOE the possession and use of radioactive material fell under the regulatory authority of DOE and was not subject to NRC regulation and the requirement for a license in 10 CFR 30.3, 40.3 and 70.3 pursuant to the definition of a "person" contained in 10 CFR 30.4, 40.4, and 70.4. Now that EMS is no longer part of DOE, the possession and the use of byproduct, source and special nuclear material by EMS falls under the regulatory authority of the Nuclear Regulatory Commission.

If you agree that EMS requires an NRC license, we would appreciate a schedule for preparing and submitting a license application in accordance with the guidance at <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1556/>.

If you believe that EML does not require an NRC license, please provide the basis for your conclusion including the following information:

- 1 The date when EMS legally separated from DOE. Describe the position of EMS in the Department of Homeland Security organization.
- 2) Summarize the radioactive material in EMS's possession by radioisotope, activity, and chemical/physical form. Describe the uses for the radioactive material. Provide the locations (addresses) where radioactive material is stored or used.