



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

August 18, 2005

Docket Nos. 03004538
03006929
EA No. 05-125

License Nos. 19-05748-02
19-05748-03

Armando Lopez
Chief, Safety and Environmental Division/Code 250
National Aeronautics and Space Administration
Goddard Space Flight Center
Greenbelt, Maryland 20771-0001

SUBJECT: INSPECTION REPORT NOS. 03004538/2002002, 03006929/2002002, 03004538/2003001, AND 03006929/2003001, NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, GREENBELT, MARYLAND, AND OFFICE OF INVESTIGATIONS (OI) REPORT NO.1-2003-011

Dear Mr. Lopez:

On December 18 and 19, 2002, Kathy Modes of this office conducted an unannounced safety inspection at the Greenbelt, Maryland facility of activities authorized by the above listed NRC licenses. On May 27 and 28, 2003, Ms. Modes and Donna Janda of this office conducted an inspection to follow up on issues identified during the December 2002 inspection and to review your new self-shielded irradiator. Additional information provided by your Radiation Protection Officer, Mr. Theodore Simmons, was reviewed as part of the inspections. The inspections were examinations of your licensed activities as they relate to radiation safety and to compliance with the Commission's regulations and the license conditions. The inspections consisted of observations by the inspectors, interviews with personnel, and a selected examination of representative records. The findings of the inspections were discussed with your predecessor, Terry Spagnuolo, your Radiation Protection Program Manager, your Radiation Protection Officer, the Chairman of your Radiation Safety Committee, the Occu-Health Program Manager, and other members of your staff at the conclusion of the inspections. The enclosed report presents the results of the inspections.

In addition to the inspections, NRC's Office of Investigations (OI) completed an investigation on May 25, 2005. The purpose of the OI investigation was to determine whether NASA/Occu-Health employees used uncalibrated instruments to perform required surveys and whether the Radiation Protection Officer provided incomplete and/or inaccurate information to the NRC. OI did not substantiate that NASA/Occu-Health employees used uncalibrated Eberline survey instruments. However, OI did substantiate that the Radiation Protection Officer deliberately failed to report missing licensed material as required, and provided incomplete and inaccurate information verbally and in writing to the NRC in violation of 10 CFR 30.9(a). A Factual Summary of the OI report is enclosed.

Based on the results of the inspections and the OI investigation, it appears that your activities were not conducted in full compliance with NRC requirements. Of primary concern to NRC is the deliberate failure of your Radiation Protection Officer to report missing licensed material, as required by 10 CFR 20.2201(a)(ii), and his failure to provide complete and accurate information verbally and in writing to the NRC, as required by 10 CFR 30.9. Additional concerns include apparent violations related to Radiation Safety Committee oversight, physical inventories, record keeping, Ludlum instrument calibration, and training. The characterization of the apparent violations may change as a result of further NRC review. Accordingly, no Notice of Violation is presently being issued.

The violations involving the Radiation Protection Officer deliberately failing to report missing licensed material as required, and providing incomplete and inaccurate information verbally and in writing to the NRC are being considered for escalated enforcement in accordance with the NRC Enforcement Policy. The current Enforcement Policy is included on the NRC's Web site at www.nrc.gov; select **What we Do, Enforcement**, then **Enforcement Policy**. Before the NRC makes its enforcement decision, we are providing you an opportunity to either: (1) attend a Predecisional Enforcement Conference (PEC); or (2) request Alternative Dispute Resolution (ADR). If you choose to attend a PEC, you will have the opportunity to discuss the apparent violations before an enforcement decision is made by the NRC. This conference will be held at the Region I Office in King of Prussia, PA. The NRC will issue a press release to announce the conference. Since the PEC will be based, in part, on the findings of an OI Investigation, the PEC will be closed to the public and will be transcribed. The decision to hold a PEC does not mean that the NRC has determined that violations have occurred or that enforcement action will be taken. The conference will be held to achieve a common understanding of the facts in the case, obtain appropriate information so that we can determine whether violations occurred, to determine the significance of any violations which did occur, to understand how the violations were identified, and to understand any corrective actions taken or planned. The conference will provide an opportunity for you to provide your perspective on these matters, including any errors in the inspection reports, and any other information that you believe the NRC should take into consideration in making an enforcement decision. In presenting corrective actions, you should be aware that the promptness and comprehensiveness of your actions will be considered in assessing any civil penalty for the apparent violations. The guidance in the enclosed excerpt from NRC Information Notice 96-28, "SUGGESTED GUIDANCE RELATING TO DEVELOPMENT AND IMPLEMENTATION OF CORRECTIVE ACTION," may be helpful. Our final decision on enforcement action will not be available at the conclusion of the PEC. You will be advised by separate correspondence of the results of our deliberations on all the information pertaining to the violations including that received at the PEC.

Instead of attending a PEC, you may request Alternative Dispute Resolution (ADR) with the NRC in an attempt to resolve any disagreement on whether these violations occurred and the appropriate enforcement action. ADR is a general term encompassing various techniques for resolving conflict outside of court using a neutral third party. The technique that the NRC has decided to employ during a pilot program which is now in effect is mediation. Additional information concerning the NRC's pilot program is described in the enclosed brochure (NUREG/BR-0317) and can be obtained at <http://www.nrc.gov/what-we-do/regulatory/enforcement/adr.html>. The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program as a neutral party. You must contact ICR

A. Lopez 3
National Aeronautics and Space Administration

at (877) 733-9415 within 10 days of the date of this letter if you are interested in pursuing resolution of these issues through ADR.

No response regarding the apparent violations is required at this time. However, you must contact Mr. James Dwyer at (610) 337-5309 within 10 days of the date of this letter to notify the NRC of your decision to either participate in a PEC or pursue ADR. A PEC or an ADR session will generally be held within 30 days of the date of this letter. If you do not participate in either process, we will make an enforcement decision based on the available information.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, without Enclosure 1, will be made available electronically for public inspection in the NRC Public Document Room (PDR) or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. Enclosure 1 will not be made available electronically for public inspection in the PDR or from ADAMS because it contains specific information concerning the isotopes, activities and locations of radioactive material use and storage authorized by your license.

Thank you for your cooperation in this matter.

Sincerely,

/RA FCostello Acting for/

George Pangburn, Director
Division of Nuclear Materials Safety

Enclosures:

1. Inspection Report Nos. 03004538/2002002, 03006929/2002002, 03004538/2003001, and 03006929/2003001 [NON-PUBLICLY AVAILABLE IN ADAMS]
2. Factual Summary for OI Report 1-2003-011
3. Excerpt from NRC Information Notice 96-28
4. Brochure NUREG/BR-0317

cc w/encls. 1 and 2:

Theodore D. Simmons II, Radiation Protection Officer
Patrick Hancock, Radiation Protection Program Manager
State of Maryland

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