

November 9, 2005

Mr. Robert E. Owen, Chief
Bureau of Radiation Protection
Ohio Department of Health
P. O. Box 118
Columbus, OH 43216-0118

Dear Mr. Owen:

As we discussed during yesterday's telephone call, the U.S. Nuclear Regulatory Commission (NRC) recently received a copy of your October 14, 2005 letter to Dr. Julian Earls of the National Aeronautics and Space Administration (NASA). In this letter, you stated that the State of Ohio through the Ohio Department of Health/Bureau of Radiation Protection is the regulatory entity with jurisdiction as to the characterization of the contaminated area (the off-site radiological contamination from the Plum Brook reactor). Your letter, in part, was based on earlier conversations with NRC staff who may not have been fully aware of the potential jurisdictional issues involved. We apologize for any misunderstanding that might have occurred. The recent delay in resolving the jurisdictional issues was to ensure that an Agency-wide position was shared with the State of Ohio, and this letter serves that purpose.

The NRC staff review of the jurisdiction issues for the Plum Brook site and associated off-site contaminated areas has concluded the following.

The Plum Brook site is a 10 CFR Part 50 licensee. Therefore, NRC has regulatory responsibility over the reactor site and any radiologically impacted areas under 10 CFR Part 50 until these areas can be released for unrestricted use.

In addition, NASA as the owner and operator of the Plum Brook facility is a Federal entity. Under the Constitution a Federal entity, such as NASA, is not subject to State regulation unless Congress directs otherwise.

Therefore, the off-site contamination from the Plum Brook site is a NASA responsibility and subject to the same Federal regulatory controls as the facility itself.

The NRC, as the Federal regulator, intends to continue to work closely with and keep the State of Ohio informed of activities related to the off-site contamination to help ensure that Ohio's concerns are fully considered.

The NRC Office of Nuclear Reactor Regulation (NRR) has the lead responsibility for the oversight of both the Plum Brook on- and off-site activities. In order to ensure continued Federal-State communications on this important matter, the NRC Region III State Liaison staff

will continue to maintain communications with Ohio staff. If you have any questions on this letter, please contact me at 301-415-3340 or Dennis Sollenberger of my staff at 301-415-2819. We appreciate your continued interest in these matters and look forward to working with you.

Sincerely,

/RA/

Janet R. Schlueter, Director
Office of State and Tribal Programs

cc: C. A. O'Claire, State Liaison Officer
Dr. J. Earls, NASA
K. Peecook, NASA

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***See previous concurrence.**

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