



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

February 27, 2006

Docket No. 030-01325
EA-06-029

License No. 08-03604-03

Kevin J. Harlen
Vice President of Professional Services
Washington Hospital Center
110 Irving Street, NW
Washington, DC 20010-2975

SUBJECT: OFFICE OF INVESTIGATIONS REPORT NO. 1-2005-012

Dear Mr. Harlen:

On March 25, 2005, your staff reported to the NRC that an internal investigation concluded that, during the week of July 14, 2003, the door lock to the Washington Hospital Center hot lab had been taped to prevent it from locking and the hot lab was found unattended. 10 CFR 20.1801 "Security of Stored Material" states that the licensee shall secure from unauthorized removal or access, licensed materials that are stored in controlled or unrestricted areas. 10 CFR 20.1802 "Control of Material Not in Storage" states that the licensee shall control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage. The failure to prevent the hot lab door from locking and the failure to maintain constant surveillance over licensed material that is in a controlled area is an apparent violation of 10 CFR 20.1801/20.1802.

The NRC Office of Investigations (OI) conducted an investigation to determine if this violation occurred and if the violation was deliberate. Based on the investigation, OI concluded that the violation occurred and that the violation was deliberate (see enclosed Factual Summary of the OI Investigation Report). 10 CFR 30.10(a) requires, in part, that any employee of a licensee may not engage in deliberate misconduct that causes a licensee to be in violation of any regulation of the Commission.

Based on the results of this investigation, the NRC has identified an apparent violation involving a deliberate act to prevent the hot lab door from locking and the resultant failure to maintain constant surveillance over licensed material in a controlled area is an apparent violation of 10 CFR 30.10(a) and 10 CFR 20.1801/20.1802. This apparent violation is being considered for escalated enforcement in accordance with the enclosed "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG 1600. Before the NRC makes its enforcement decision, we are providing you an opportunity to either (1) respond to the apparent violation addressed in this letter within 30 days of the date of this letter or (2) request a predecisional enforcement conference. Please contact Penny Lanzisera at (610) 337-5169, within seven days of the date of this letter, to inform us as to which of the above two options you choose.

If you choose to respond in writing rather than attend a conference, your response should be clearly marked as a "Response to Apparent Violation Described in Enforcement Action #06-029" and should include: (1) the reason for the apparent violation, or if contested, the basis for disputing the apparent violation, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. In presenting your corrective actions, you should be aware that promptness and comprehensiveness of your actions will be considered in assessing any civil penalty for the apparent violation. The guidance in the enclosed NRC Information Notice 96-28, "SUGGESTED GUIDANCE RELATING TO DEVELOPMENT AND IMPLEMENTATION OF CORRECTIVE ACTION," may be helpful. Your response should be submitted under oath or affirmation and may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate response is not received within the time specified or an extension of time has not been granted by the NRC, the NRC will proceed with its enforcement decision or schedule a predecisional enforcement conference.

If you disagree with this apparent violation, you may request Alternative Dispute Resolution (ADR) with the NRC. ADR is a general term encompassing various techniques for resolving conflicts outside of court using a neutral third party. The NRC is currently utilizing ADR during a pilot program for any issues involving willful or deliberate violations. The technique that the NRC has decided to employ during a pilot program which is now in effect is mediation. In mediation, a neutral mediator with no decision-making authority helps parties clarify issues, explore settlement options, and evaluate how best to advance their respective interests. The mediator's responsibility is to assist the parties in reaching an agreement. However, the mediator has no authority to impose a resolution upon the parties. Mediation is a confidential and voluntary process. If the parties to the ADR process (the NRC and the licensee) agree to use ADR, they select a mutually agreeable neutral mediator and share equally the cost of the mediator's services. Generally, the NRC is willing to discuss the resolution of three potential issues regarding any willful or deliberate violation: 1) whether a violation occurred; 2) the appropriate enforcement action; and 3) the appropriate corrective actions for the violation(s). Additional information concerning the NRC's pilot program 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 an intake neutral. Intake neutrals perform several functions, including: assisting parties in determining ADR potential for their case, advising parties regarding the ADR process, aiding the parties in selecting an appropriate mediator, explaining the extent of confidentiality, and providing other logistic assistance as necessary. Please contact ICR at (607) 255-1124 within 10 days of the date of this letter if you are interested in pursuing resolution of this issue through ADR. You may also contact Nick Hilton, Office of Enforcement, at (301) 415-3055 for additional information.

In addition, please be advised that the number and characterization of apparent violations may change as a result of further NRC review. You will be advised by separate correspondence of the results of our deliberations on this matter.

In accordance with 10 CFR 2.390, a copy of this letter, Enclosure (1), and your response, (if you choose to provide one) will be placed in the NRC Public Document Room (PDR) and will be accessible from the NRC Web site at <http://www.nrc.gov/readign-rm.html>. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction.

Sincerely,

Original signed by Pamela Henderson

George Pangburn, Director
Division of Nuclear Materials Safety

Enclosures:

1. Factual Summary of OI Investigation
Case No. 1-2005-012
2. NUREG 1600 (Enforcement Policy)
3. NRC Information Notice 96-28

cc:

Shashadhar Mohapatra, Ph.D., Radiation Safety Officer
District of Columbia

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FACTUAL SUMMARY OF OI INVESTIGATION REPORT NO. 1-2005-012

On April 7, 2005, the U. S. Nuclear Regulatory Commission's (NRC) Office of Investigations (OI), Region I (RI) Field Office, initiated an investigation to determine if the lock on the hot lab door at the Washington Hospital Center (WHC) was taped open allowing unauthorized access to radioactive material for several months in 2003, contrary to the NRC requirement that the licensee shall secure from unauthorized removal or access licensed materials that are stored in controlled areas. Based on the evidence developed during this investigation, OI concluded that the WHC hot lab door was deliberately left unsecured on July 14, 2003, in violation of NRC requirements.

The evidence supporting the conclusion included the admission to OI from the radiation safety assistant, who routinely inspects the WHC hot lab, that on July 14, 2003 he found tape on the latch of the hot lab door. This was the only time the radiation safety assistant found tape on the door. The assistant removed the tape immediately and the hot lab was secured. The Director of Nuclear Medicine stated the lock on the hot lab door was replaced on July 17, 2003. Neither OI nor the licensee were able to determine who had taped the hot lab door.