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

December 5, 2006

Docket No. 03011313 License No. 45-09475-30

David M. Moore
Assistant Vice President for Research Compliance
Virginia Polytechnic Institute & State University
1880 Pratt Drive
Suite 2006, MC 0497
CRC Building XV
Blacksburg, VA 24061

SUBJECT: INSPECTION 03011313/2006003, VIRGINIA POLYTECHNIC INSTITUTE & STATE UNIVERSITY, BLACKSBURG, VIRGINIA SITE AND NOTICE OF VIOLATION

Dear Dr. Moore:

On September 26 and 27, 2006, Todd Jackson of this office conducted a safety inspection at the above address of activities authorized by the above listed NRC license. The inspection was an examination of your licensed activities as they relate to radiation safety and to compliance with the Commission's regulations and the license conditions. The inspection consisted of observations by the inspector, interviews with personnel, and a selected examination of representative records. Additional information provided in email correspondence dated October 12, 2006 and the telephone conversation on November 8, 2006 between Doug Smiley of your organization and this office were also examined as part of the inspection. The findings of the inspection were discussed with you and members of your organization at the conclusion of the inspection.

Based on the results of this inspection, it appears that your activities were not conducted in full compliance with NRC requirements. A Notice of Violation is enclosed that categorizes the violation by severity level. You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. After reviewing your response to this Notice, including your proposed corrective actions and the results of future inspections, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements. Based on your commitment stated at the exit meeting on September 27, 2006, it is our understanding that you took immediate corrective action to assure that all transfers of licensed materials were made in compliance with your NRC license and appropriate DOT regulations.

Current NRC regulations are included on the NRC's website at www.nrc.gov; select **Nuclear Materials; Medical, Academic, and Industrial Uses of Nuclear Material;** then **Toolkit Index Page.** The current Enforcement Policy is included on the NRC's website at www.nrc.gov; select **What We Do, Enforcement,** then **Enforcement Policy.** Or you may obtain these documents

by contacting the Government Printing Office (GPO) toll-free at 1-888-293-6498. The GPO is open from 7:00 a.m. to 8:00 p.m. EST, Monday through Friday (except Federal holidays).

Your cooperation with us is appreciated.

Sincerely,

Original signed by James P. Dwyer

James P. Dwyer, Chief
Commercial and R&D Branch
Division of Nuclear Materials Safety

Enclosure:
Notice of Violation

cc:
Doug Smiley, Radiation Safety Officer
Commonwealth of Virginia

Distribution:
D. J. Holody, RI

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SUNSI Review Complete: TJackson
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OFFICE	DNMS/RI	N	DNMS/RI					
NAME	Tjackson/jpd f/		Jdwyer/jpd					
DATE	11/30/2006		12/5/2006					

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NOTICE OF VIOLATION

Virginia Polytechnic Institute & State University
Blacksburg, VA

Docket No. 03011313
License No. 45-09475-30

During an NRC inspection conducted on September 26 and 27, 2006, one violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

> 10 CFR 71.5(a) requires that a licensee who transports licensed material outside of the site of usage, as specified in the NRC license, or where transport is on public highways, or who delivers licensed material to a carrier for transport, comply with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation (DOT) in 49 CFR Parts 107, 171-180, and 390-397.
>
> 10 CFR 71.5(b) requires that if DOT regulations are not applicable to a shipment of licensed material, the licensee shall conform to the standards and requirements of the DOT specified in paragraph (a) of this section to the same extent as if the shipment or transportation were subject to DOT regulations.
>
> Contrary to the above, as of September 26, 2006, the licensee transported licensed material outside of the site of usage, as specified in the NRC license, and on public highways, but did not comply with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation (DOT) in 49 CFR Parts 107, 171-180, and 390-397. Specifically, the licensee did not assure that packages of licensed material were appropriately labeled or accompanied by shipping papers when required. The licensee stated that some packages, in particular packages containing phosphorus-32, did not fully comply with DOT regulations.
>
> This is a Severity Level IV violation (Supplement V).

Pursuant to the provisions of 10 CFR 2.201, Virginia Polytechnic Institute & State University is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555, with a copy to the Regional Administrator, Region I, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a “Reply to a Notice of Violation” and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the 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. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as to why the license should not be modified, suspended, or revoked, or why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

If you contest this enforcement action, you should also provide a copy of your response to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington,

DC 20555-0001. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, any response which contests an enforcement action shall be submitted under oath or affirmation.

Your response will be placed in the NRC Public Document Room (PDR) and on the NRC Web site. To the extent possible, it should, therefore, not include any personal privacy, proprietary, or safeguards information so that it can be made publically available without redaction. However, if you find it necessary to include such information, you should clearly indicate the specific information that you desire not to be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public.

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days.

Dated This 5th day of December 2006