

## Reply to a Notice of Violation

December 22, 2006

US Nuclear Regulatory Commission  
ATTN: Document Control Desk  
Washington, DC 20555

Dear Madam/Sir:

This letter is submitted in response to James P. Dwyer's December 5, 2006 *Notice of Violation* (Docket No. 03011313, License No. 45-09475-30) sent to me as the designated official at Virginia Polytechnic Institute and State University responsible for institutional compliance in our NRC license. We appreciate the opportunity to provide our response and to indicate the corrective actions we have taken, and our plan to prevent recurrence of the deficiencies.

**Cited Violation** – "...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...."

### Responses to the Violation:

- 1. The Reason for the Violation** – Our Radiation Safety Officer, and our Radiation Safety Committee, were acting in the belief that **49 CFR § 171.1** (Applicability of Hazardous Materials Regulations (HMR) to Persons and Functions), which stated that the regulations applied "...to persons who transport hazardous materials in *commerce*", did not apply to our institution since the transport of the material was exempt from the regulations since it did not involve commerce. It was pointed out to us, by the NRC inspector, on September 27, 2006, that **10 CFR § 71.5** (Transportation of Licensed Material) subsection (b) clearly states, "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." We now understand that our institution was in violation of the requirements of **10 CFR § 71.5 (b)** as those requirements supercede DOT regulations.

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2. **Corrective Steps Taken, and Results Achieved** – The Radiation Safety Officer established SOPs for the transport of this material, and provided training for all staff who perform transport activities. All radioactive waste containers are labeled as Low Specific Activity, shipments are appropriately manifested and accompanied by shipping papers, and containers are transported in placarded vehicles, in compliance with **49 CFR § 171** and **10 CFR § 71.5**. The results achieved are full compliance with the applicable regulations.
3. **Corrective Steps Taken to Avoid Further Violations** – We will continue to label waste, placard vehicles and prepare shipping papers for all waste moved internally. The Radiation Safety Officer will conduct periodic random audits to ensure that waste containers are appropriately labeled, that manifests and shipping documents are complete and accurate, and that vehicles display the appropriate placard. The Radiation Safety Officer and the Radiation Safety Committee will discuss at the first quarter RSC meeting in 2007 whether to submit a request for exemption from the requirements of **10 CFR § 71.5 (b)**, to be filed with, or made to, the Director, Office of Nuclear Material Safety and Safeguards, NRC.
4. **Date When Full Compliance Was Achieved** – Full compliance with the requirements of **10 CFR § 71.5 (b)** was achieved on September 28, 2006, one day after the NRC inspection.

Let me again express our appreciation for the opportunity to respond to and address the violations identified by the NRC inspector. We recognize our responsibility and obligation to maintain compliance with all applicable regulations in order to maintain our institutional NRC license.

Sincerely,



David M. Moore, MS, DVM, DAACLAM  
Assistant Vice President for Research Compliance

cc: Regional Administrator, Region I, USNRC  
Virginia Tech Radiation Safety Officer  
Virginia Tech Radiation Safety Committee