

April 8, 2014

IA-13-038

Joseph Shepherd

[NOTE: HOME ADDRESS DELETED
UNDER 10 CFR 2.390]

SUBJECT: RESPONSE AND ISSUANCE OF ERRATUM TO ORDER CONDITIONING
INVOLVEMENT IN NRC-LICENSED ACTIVITIES (IA-13-038) AND NOTICE OF
VIOLATION (NRC Office of Investigations Report No. 1-2012-040)

Dear Mr. Shepherd:

The purpose of this letter is to provide a revision to Order IA-13-038 to address your comments in your letter dated January 3, 2014 (ML14028A134). In your letter, you responded to the U.S. Nuclear Regulatory Commission's (NRC) letter dated December 20, 2013, transmitting a Notice of Violation and Order IA-13-038. The violation involved your failure to adhere to the conditions of Order IA-08-014 when you performed work at the Uniformed Services University of the Health Sciences (USU) in Bethesda, Maryland without notifying USU of the Order issued to you and without making the Order available to USU. As discussed in our letter dated December 20, 2013, and as specified in Order IA-13-038, you are required to notify the NRC no less than 5 business days prior to engaging in licensed activities in NRC jurisdiction, to notify customers of both the December 20, 2013, Order (IA-13-038) and the September 8, 2008, Order (IA-08-014), and to make both Orders available for the customers to review. In addition, for upcoming proposed work, you must determine whether your customer is under NRC jurisdiction, document the jurisdictional determination, and state the basis for your determination.

In your response to the NRC's Notice of Violation and Order (IA-13-038), you acknowledged a violation of Order IA-08-014. You explained that during removal of the irradiator from the transport package by others and prior to transferring the irradiator into USU's facility, you engaged in a conversation with an NRC inspector. You stated that during the conversation, you realized that you had not made the required notification to USU. Once you realized this, you immediately notified USU's Assistant Radiation Safety Officer (ARSO) of the Order and offered the Order for review. In your January 3, 2014, response, you also stated that the notification took place prior to the irradiator being transferred into the facility. You further indicated that no source transfer was performed for the irradiator and that the irradiator was removed from the transport package with the source installed.

The NRC conducted a detailed review of your response and the corrective actions that you have taken or plan to take to address the violation. Your corrective actions appear adequate and we have no further questions with respect to the corrective actions at this time. The actions that you have taken and plan to take to address the violation may be examined during a future inspection.

Regarding your statement that there was no source transfer into the irradiator and that the irradiator was removed from the transport package with the source installed, the NRC agrees

with your response and has issued an erratum to Order IA-13-038 issued on December 20, 2013. The enclosed erratum corrects the information regarding the source transfer by deleting the following sentence from page 3 of the Order: "After observing the activities of the day and watching FTS finish loading radioactive sources into USU's irradiator, an NRC inspector interviewed Mr. Shepherd regarding the notification provisions of the 2008 Order issued to him." Additionally, the deleted sentence has been replaced by the following two sentences: "An NRC inspector observed Mr. Shepherd coordinating the delivery and set-up of the self-shielded irradiator in the USU facility. The NRC inspector later held a conversation with Mr. Shepherd regarding the notification provisions of the 2008 Order issued to him." (Enclosure 1) Please substitute the enclosed page into all copies of Order IA-13-038. You are not required to respond to the erratum. However, if you choose to respond, any further correspondence **must** be under oath of affirmation.

Regarding your statement that your conversation with the inspector occurred during the removal of the irradiator from the transport package and prior to transferring the irradiator into the facility, the NRC acknowledges your perspective on the events of the day, but does not agree with your statement. The NRC has determined that the conversation between you and the inspector occurred near the end of the day after most activities had been completed. Specifically, the conversation occurred after you coordinated the delivery and set-up of the self-shielded irradiator at the USU facility. During the same conversation, the inspector discussed the preliminary results of the inspection and reviewed the requirements of the Order with you. Therefore, the NRC has concluded that the information in the Order regarding the timing of the conversation between you and the inspector occurred as stated in Order IA-13-038.

Regarding your statement that you immediately notified USU of the Order and offered the Order for its review, the NRC acknowledges that you, in fact, made the notification to the USU ARSO after the conversation with the inspector. However, this notification did not meet the requirements of the Order (IA-08-014) because it was made after your involvement in licensed activities was initiated. Therefore, the NRC has concluded that your notification of the USU RSO occurred as stated in both the Notice of Violation and Order IA-13-038 dated December 20, 2013.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of the NRC's document system (ADAMS). ADAMS is accessible for the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> (the Public Electronic Reading Room).

Sincerely,

/RA/

Roy P. Zimmerman, Director
Office of Enforcement

cc w/ enclosures: State of California

Enclosures:

1. Erratum to Order IA-13-038
2. Corrected page to Order IA-13-038
3. Joseph Shepherd Reply to Notice of Violation and Order IA-13-038, dated January 3, 2014

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Regarding your statement that your conversation with the inspector occurred during the removal of the irradiator from the transport package and prior to transferring the irradiator into the facility, the NRC acknowledges your perspective on the events of the day, but does not agree with your statement. The NRC has determined that the conversation between you and the inspector occurred near the end of the day after most activities had been completed. Specifically, the conversation occurred after you coordinated the delivery and set-up of the self-shielded irradiator at the USU facility. During the same conversation, the inspector discussed the preliminary results of the inspection and reviewed the requirements of the Order with you. Therefore, the NRC has concluded that the information in the Order regarding the timing of the conversation between you and the inspector occurred as stated in Order IA-13-038.

Regarding your statement that you immediately notified USU of the Order and offered the Order for its review, the NRC acknowledges that you, in fact, made the notification to the USU ARSO after the conversation with the inspector. However, this notification did not meet the requirements of the Order (IA-08-014) because it was made after your involvement in licensed activities was initiated. Therefore, the NRC has concluded that your notification of the USU RSO occurred as stated in Order IA-13-038.

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Sincerely,

/RA/
Roy P. Zimmerman, Director
Office of Enforcement

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DISTRIBUTION: See next page

ADAMS Accession No.: **ML14055A232**

* Concurrence by email

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DATE	02/04/14	02/05/14	02/05/14	02/11/14	02/12/14	02/12/14
OFFICE	OE	FSME	OGC			
NAME	R Zimmerman	M Burgess	M Clark			
DATE	4/08/2014	2/20/2014	2/24/2014			

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ENCLOSURE 1: See next page

**ERRATUM SHEET FOR
ORDER CONDITIONING INVOLVEMENT IN NRC-LICENSED
ACTIVITIES (IA-13-038)**

Page	Location	Change
3	Second paragraph, line 2	<p>“After observing the activities of the day and watching FTS finish loading radioactive sources into USU’s irradiator, an NRC inspector interviewed Mr. Shepherd regarding the notification provisions of the 2008 Order issued to him”</p> <p style="text-align: center;">should read</p> <p>“An NRC inspector observed Mr. Shepherd coordinating the delivery and set-up of the self-shielded irradiator in the USU facility. The NRC inspector later held a conversation with Mr. Shepherd regarding the notification provisions of the 2008 Order issued to him.”</p>

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Roy P. Zimmerman
Director, Office of Enforcement

Dated this 8th day of April, 2014

ENCLOSURE 2: See next page

Bethesda, Maryland hired FTS to remove a Mark I Model 68A irradiator from a facility in North Carolina and install the irradiator at USU. Although USU is affiliated with the United States military services, it is under NRC jurisdiction. FTS's contract with USU originally involved a joint venture with another company, but FTS became the sole contractor after the other company was unable to fulfill the contract. On April 4, 2012, FTS submitted to the NRC's Region IV an NRC Form 241, "Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters." With this form, FTS provided notification of their intent to conduct work at USU under reciprocity; that is, under FTS's California license.

On April 13, 2012, the NRC inspected FTS's work on the self-shielded irradiator at USU. An NRC inspector observed Mr. Shepherd coordinating the delivery and set-up of the self-shielded irradiator in the USU facility. The NRC inspector later held a conversation with Mr. Shepherd regarding the notification provisions of the 2008 Order issued to him. Mr. Shepherd acknowledged that he had not notified USU of the Order and that he had not made the Order available to USU.

On April 25, 2012, the NRC Office of Investigations (OI) initiated an investigation to determine if Mr. Shepherd willfully failed to adhere to the conditions of his Order when he worked at USU without notifying the USU of the Order issued to him and without making the Order available to USU. Based on OI's investigation, the NRC finds that Mr. Shepherd willfully violated the Order, in careless disregard of its requirements. Specifically, the NRC finds that Mr. Shepherd willfully failed to notify USU of the Order issued to him and willfully failed to make the Order available to USU prior to performing work at the facility. Although Mr. Shepherd has stated that he believed the Order's notification requirements did not apply to his work at USU

ENCLOSURE 3: ML14028A134