



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

REGION I
2100 RENAISSANCE BLVD., SUITE 100
KING OF PRUSSIA, PA 19406-2713

November 4, 2015

Docket No. 03029462
EA-15-142

License No. 45-23645-01NA

Douglas Morton, RDML
Director, Energy and Environment
Readiness Division (N45)
Office of Chief of Naval Operations
Department of the Navy
ATTN: N45, Rm 2D258
2000 Navy Pentagon
Washington, DC 20350-02000

**SUBJECT: EXERCISE OF ENFORCEMENT DISCRETION - NRC INVESTIGATION
REPORT NO. 1-2014-026 – DEPARTMENT OF NAVY**

Dear Admiral Morton:

This letter refers to an investigation conducted by the U.S. Nuclear Regulatory Commission (NRC) Office of Investigations (OI) conducted at the Navy Medical Center, San Diego, California (NMCS D), a permittee on the Department of the Navy (Navy) master materials license (MML). The investigation, which was completed on June 11, 2015, was initiated to determine whether a former NMCS D Radiation Safety Officer (RSO) willfully forged the signature of the NMCS D commanding officer (CO) on documents related to requests to amend or renew NMCS D's permit. The investigation was initiated after the Navy informed the NRC of the results of its investigation into the matter and its conclusion that the RSO had willfully forged the CO's signature on several such documents, including an application to amend the NMCS D's Naval Radioactive Material Permit (NRMP) to add Radium-223 (Ra-223), and an application to renew the NMCS D's NRMP.

Based on the evidence gathered during the NRC OI investigation, the NRC similarly concluded the RSO willfully forged the CO's signature on the above mentioned documents. As a result, the NRC determined that the RSO's actions caused two violations of NRC requirements. The first violation involved the failure to maintain permit records that are complete and accurate in all material respects as required by Title 10 of the Code of Federal Regulations (CFR) 30.9. The second violation involved the failure to have permittee management approve in writing the request for a permit application renewal and the permit amendment prior to submitting the documents to the Navy as required by 10 CFR 35.24.

Willful violations of NRC requirements are of significant regulatory concern because the NRC's regulatory program is based on licensees and the employees of licensees acting with integrity and communicating with candor. Therefore, it is essential that the NRC have confidence in those individuals working with licensed materials and that licensees closely monitor their

program to ensure that individuals entrusted to use licensed materials adhere to regulatory and license requirement.

The NRC evaluated the results of the NRC OI investigation and the actions taken by the Navy in accordance with the NRC Enforcement Policy (the current Enforcement Policy is included on the NRC's Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>). The NRC reviewed the facts and circumstances of this case and determined that the Navy appropriately identified and issued a Severity Level (SL) IV violation to NMCSO for this issue. In addition to issuing the SL IV violation, the Navy issued an order to all Navy permittees permanently forbidding the former RSO from working with permitted radioactive materials and ensured that NMCSO took the appropriate corrective actions to address the violation.

The NRC concluded that although the Navy appropriately characterized the violation as a SL IV, the method used to reach that conclusion was inconsistent with the approach described in the NRC Enforcement Policy¹. Specifically, in evaluating the issue, the Navy determined that the significance of the violation was a SL III, but mitigated the significance to a SL IV because: (1) the violation was self-identified; (2) the permittee notified the NRSC of the forgeries and permittee actions in a timely manner; (3) the permittee initiated an investigation when the falsified records were discovered; (4) the permittee terminated the RSO, and (5) the falsified documents were non-technical and did not affect the health and safety of the patients and staff. With the exception of determining that the falsified documents were non-technical in nature, identification of the violation and corrective actions taken are not considered when determining the significance of the violation. Rather, identification and corrective action credit are assessed during the NRC civil penalty assessment process.

The significance of violations is based on the examples provided in the NRC Enforcement Policy and on the circumstances of the case. In assessing the significance of this violation, the NRC considered that the NRMP renewal and the Ra-223 amendment request had been properly reviewed and approved by the NMCSO Radiation Safety Committee prior to the RSO forging the CO's signature. Absent the review and approval of the NMCSO Radiation Safety Committee, the violation would have likely been more significant.

After consultation with the Director, Office of Enforcement and in recognition of the enforcement action taken under the Navy's MML, the NRC is exercising enforcement discretion in accordance with Section 3.5 of the NRC Enforcement Policy and is not issuing a Notice of Violation or proposing a civil penalty for this case.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and your response, if you choose to provide one, will be available electronically for public inspection in the NRC Public Document Room and from the NRC's Agency-wide Documents Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. Current NRC regulations and guidance are included on the NRC's website at www.nrc.gov; select **Nuclear Materials; Med, Ind, & Academic Uses**; then **Regulations, Guidance and Communications**. The current Enforcement Policy is included on the NRC's website at www.nrc.gov; select **About NRC, Organizations & Functions; Office of Enforcement; Enforcement documents**; then

¹ The NRC Enforcement Manual Part II, Section 3.4.0, states that MMLs must have an enforcement program that commits to following the NRC's Enforcement Policy to ensure that enforcement actions are consistent with the Policy and are uniformly applied between the MML and its permittees.

Enforcement Policy (Under 'Related Information'). You may also obtain these documents by contacting the Government Printing Office (GPO) toll-free at 1-866-512-1800. The GPO is open from 8:00 a.m. to 5:30 p.m. EST, Monday through Friday (except Federal holidays).

No further action or response is required on your part unless the description in this letter does not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, you should clearly mark your response as a "Reply to an Exercise of Enforcement Discretion, EA-15-142" and send it to the Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001, with a copy to the Regional Administrator, Region I, 2100 Renaissance Boulevard, Suite 100, King of Prussia, PA 19406 and a copy to the Enforcement Officer, Region I, within 30 days of the date of this letter.

Please note that final NRC investigation documents, such as the OI report described in this letter, may be made available to the public under the Freedom of Information Act (FOIA) subject to redaction of information appropriate under the FOIA. Requests under the FOIA should be made in accordance with 10 CFR 9.23, "Requests for Records," a copy of which is enclosed for your information.

Should you have any questions regarding this letter, please contact Mr. Shawn Seeley at (610) 337-5102.

Sincerely,

/RA/

Daniel S. Collins, Director
Division of Nuclear Materials Safety

Docket No.: 03029462
License No.: 45-23645-01NA
NMCS D Permit No.: 04-00259-11NP

Enclosure: as stated

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* See previous concurrence page

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Letter to Douglas Morton, RDML from Daniel Collins dated November 4, 2015

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