



**UNITED STATES
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February 23, 2016

Docket No. 03029462

License No. 45-23645-01NA

RDML D. Morton
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: NRC OPINION REGARDING THE NAVY'S PERMITTING OF DEFENSE
HEALTH AGENCY FACILITIES UNDER THE NAVY'S MASTER MATERIALS
LICENSE, LICENSE NO. 45-23645-01NA**

Dear Admiral Morton:

Congressional mandates for cost reductions from 2009 – 2012, were implemented by the Department of Defense (DOD) to provide an integrated delivery system for medical care for the DOD. This was determined to be an urgent need, and as such, was fast-tracked for implementation through the Base Realignment and Closure (BRAC) Commission and a Joint Task Force (JTF) created by the Defense Health Board. In doing so, several medical facilities that were permitted under the Navy Master Materials License (MML) became co-located with non-Navy licensed activities.

The Navy made inquiries, in 2000 (ML003690615) and 2010 (ML100601230 and ML100900276), about the use of permitted materials by "non-Navy" personnel. In May 2006, License Condition 10 was revised to read as follows:

Licensed material may be used at Department of the Navy facilities by:
(1) Department of the Navy personnel as authorized by permits issued by the Naval Radiation Safety Committee; and (2) users who are not Department of the Navy personnel when such use is authorized by the Naval Radiation Safety Committee and is conducted in work spaces under the control of the Department of the Navy or Department of Defense (ML061230590).

The condition was written broadly to allow mission critical work and care to be conducted under the Navy MML. It was NRC's understanding that the overall structure and control of activities at these facilities remained with the Navy. In other words, it was NRC's understanding that these were Navy facilities. It is now NRC's understanding that these facilities are under the control of the Defense Health Agency (DHA). In other words, these facilities are DHA facilities.

With this understanding, NRC concluded that the Navy is not authorized to permit and should not have permitted DHA facilities. License Condition 10 authorizes use of licensed material at Department of Navy facilities. While License Condition 10 provides for non-Navy personnel to use materials under Navy permits, the Navy is not authorized to permit use of licensed materials in non-Navy facilities. The NRC understands that the language of License Condition 10 has caused confusion concerning the Navy's MML permitting authority and is open to amending the license to clarify this language to avoid any potential for confusion in the future.

Because the Navy's MML does not authorize the Navy to issue permits to non-Navy facilities, and the Navy has issued permits to DHA facilities, these DHA facilities must obtain NRC licenses and the Navy must rescind these permits. DHA has two options for licensing: apply for licenses for each of its facilities, or apply for a master materials license and then issue permits to each of its facilities.

As these facilities already hold Navy MML permits and presumably already have demonstrated that they meet NRC requirements, licensing of these facilities could be completed in a timely manner. MML application review would require more time but may be a long term resolution. In any event, patient care will not be interrupted or discontinued during this licensing period.

The NRC looks forward to working cooperatively with the Navy and DHA to remedy this situation and ensure that DHA facilities are properly licensed and continue to provide important patient care. If you have any concerns or require additional clarification with the details of this letter, please do not hesitate to contact Shawn Seeley of my staff at (610) 337-5102 or shawn.seeley@nrc.gov.

Sincerely,

/RA/

James P. Dwyer, Chief
Medical Branch
Division of Nuclear Materials Safety

cc: D. Fletcher, NRSC Executive
Secretary, Department of the Navy

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James P. Dwyer, Chief
Medical Branch
Division of Nuclear Materials Safety

cc: D. Fletcher, NRSC Executive
Secretary, Department of the Navy

SUNSI Review Complete: SSeeley

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