

## APPENDIX

### NOTICE OF VIOLATION

David S. Gooden, Ph.D.  
Tulsa, Oklahoma 74136

Docket: 030-05968  
License: 35-13797-01

During an NRC inspection conducted on August 22, 1994, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C, the violations are listed below:

- A. License Condition 11 of NRC Byproduct Materials License 35-13797-01 states that licensed material shall be used by, or under the supervision and in the physical presence of, David S. Gooden, Ph.D.

Contrary to the above, between August 2, 1989, and August 22, 1994, an individual other than David S. Gooden, Ph.D., used licensed material and David S. Gooden, Ph.D., was not physically present while the material was in use.

This is a Severity Level IV violation (Supplement VI).

- B. 10 CFR 71.5(a) requires that a licensee who transports licensed material outside of the confines of its plant or other place of use, 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 170 through 189.

1. 49 CFR 172.200-203 require, in part, with exceptions not applicable here, that each person who offers a hazardous material for transportation describe the hazardous material on the shipping paper in the manner required by Subpart C of 49 CFR Part 172. Pursuant to 49 CFR 172.101, radioactive material is classified as hazardous material.

Contrary to the above, between August 2, 1989, and August 22, 1994, the licensee transported cesium-137, a radioactive material, outside the confines of its plant without describing the material on a shipping paper in accordance with Subpart C of 49 CFR 172. Specifically, the licensee did not include: (1) the proper shipping name prescribed for the material in 172.101 or 172.102, the hazard class, the identification number, and the total quantity by weight or volume; (2) the letters "RQ" entered either before or after the basic description of the hazardous substance; and (3) the physical and chemical form of the material, the category of label applied to the package, and the transport index assigned to the package which was labeled with RADIOACTIVE YELLOW-II labels.

This is a Severity Level IV violation (Supplement V).

2. 49 CFR 173.415(a) requires that each shipper of a DOT Specification 7A Type A package must maintain on file for at least 1 year after the last shipment a complete documentation of tests and an engineering evaluation or comparative data showing that the construction methods, packaging design, and materials of construction comply with the specification as described in 49 CFR 178.350.

Contrary to the above, between August 2, 1989, and August 22, 1994, the licensee shipped cesium-137, a licensed material, in a package marked DOT Specification 7A Type A and as of August 22, 1994, the licensee had not maintained documentation of tests and an engineering evaluation or comparative data showing that the package complied with the applicable DOT specification.

This is a Severity Level V violation (Supplement V).

Pursuant to the provisions of 10 CFR 2.201, David S. Gooden, Ph.D., 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 IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, 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. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued to show cause 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.

Dated at Arlington, Texas  
this        day of                1994

David S. Gooden, Ph.D.

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bcc:  
DMB - Original (IE-07)  
LJCallan  
DWeiss, OC/LFDCB (T-9E10)  
WLFisher  
LLKasner  
FAWenslawski, WCFO  
\*GLGuerra  
\*NMIB  
\*MIS System  
\*RIV Nuclear Materials File - 5th Floor (2)  
  
\*W/IFS Form

RIV:NMIB	C:NMIB <i>JK</i>	DD:DRSS	D:DRSS <i>JK</i>	
*GLGuerra	LLKasner <i>JK</i>	RAScarano	SJCollins	
09/ /94	09/30/94	09/ /94	09/2/94	

\*Previously concurred