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By Telecopier
March 28, 1996

Honorable Shirley A. Jackson
Chair of the Commission
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Honorable Kenneth C. Rogers
Member of the Commission
U.S. Nuclear Regulatory Commission
Washington, DC 20555

RE: National Institutes of Health's Response
to NRC's Demand for Information (EA-95-240)
Docket No. 030-01786 License No. 19-00296-10

Dear Commissioners Jackson and Rogers:

I am counsel for Dr. Maryann Wenli Ma and Bill Wenling Zheng in the above-captioned matter. Their petition, Docket No. 030-01786, is pending before the Office of Nuclear Material Safety and Safeguards, and a public hearing concerning a number of the issues raised by their petition is scheduled for April 19, 1996.

Given the status of the petition, I was alarmed to read a press release issued by the House Subcommittee on Human Resources and Intergovernmental Relations which states that the Nuclear Regulatory Commission agrees with the following conclusions:

The conclusions of the study [of safety practices at the National Institutes of Health (NIH) as it relates to the handling of nuclear materials] were: (1) the NIH has a history of relatively minor safety violations but among organizations licensed by the NRC to handle radioactive materials, the NIH poses minimum risk to public health and safety; and (2) the NIH could not have prevented what federal investigators term a "not unintentional contamination" by "someone" of Dr.

Honorable Shirley A. Jackson
Honorable Kenneth C. Roger
March 28, 1996
Page 2

Ma and the incidental poisoning of 26 others by
radioactive material (P-32).

See Press Release (March 21, 1996), attached hereto (emphasis added).

I would appreciate immediate clarification as to whether the press release accurately describes the NRC's position with respect to these matters. Has the NRC in fact concluded that the NIH could not have prevented Dr. Ma's contamination and the incidental poisoning of 26 others by P-32?

If so, these conclusions appear to be contrary to those discussed during the Briefing on the Generic Implications of Recent Events Involving Ingestion of Radioactive Material at Research Facilities on December 19, 1995, during which Dr. John Glenn, Chief, Radiation Protection & Health Effects Branch, RES stated:

There were two conclusions by the team regarding security and control of byproduct material. The first linked security and control to the malicious acts or the misuse of material in that the team concluded that programs for control and security of byproduct material may not be effective to deter or to detect diversion or misuse of radioactive materials. We did not conclude that security and control can prevent such misuse in all cases, particularly when it is by a knowledgeable individual who is perhaps the person who has the key and the control of the material. However, the team did conclude that effective security and control could deter such misuse and if such misuse is going to be detected, that provides even greater deterrence.

See Transcript at 9.

Further, the Nuclear Regulatory Commission (Region I) Augmented Inspection Team has also concluded that:

Furthermore, special inspections of security conducted in October and November, 1995, identified weaknesses in the security of radioactive material. Weaknesses may have resulted in ease of access to radioactive material which could be a contributing factor [to the contamination of Dr. Ma and the 26 others].

Honorable Shirley A. Jackson
Honorable Kenneth C. Roger
March 28, 1996
Page 3

See Augmented Inspection Team Report, p. 21 (emphasis added)

The AIT Report also concluded that NIH's failure to investigate alternative sources of contamination and to conduct more comprehensive surveys, may have delayed the detection of the contaminated water cooler and resulted in the needless contamination of others.

Id., at 16.

If the conclusions attributed to the NRC in the press release are incorrect, we believe that it is crucial that you correct the record forthwith to restore petitioners' and the public's confidence that their petition is being fully and fairly adjudicated. If the statements attributed to the NRC are correctly attributed, this is of grave concern to petitioners Ma and Zheng because it suggests strongly that the NRC intends to do what it has in the past when it comes to violations by the NIH -- downgrade the severity of the violations and take no enforcement action. We are hopeful that this is not the case.

I await your response.

Sincerely,

Debra S. Katz

cc: Judy Wolfer, Esquire
Dr. Maryann Ma
Dr. Bill Zheng
/sp