

significant contamination event. Although the Licensee may have conducted some training, the Licensee: (1) did not assure adequate training of all individuals covered by Item 10.4.1(d) of the license application as referenced in License Condition 21; and (2) did not verify that those who were trained understood the training that had been provided. Therefore, the NRC maintains that the violation occurred as stated in the Notice.

Restatement of Violation A.6

Condition 21 of License No. 37-04594-11 requires that licensed material be possessed and used in accordance with the statements, representations, and procedures contained in the Licensee's application dated April 1, 1991.

Item 10.3.1(j) requires that the RSO conduct periodic reviews of the terms and conditions of the license to ensure compliance with requirements.

Contrary to the above, between January 1992 and July 1994, the RSO did not conduct periodic reviews of the terms and conditions of the license, as evidenced by the fact that the RSO was unaware of the requirements specified in the licensee's application dated April 1, 1991.

Summary of Licensee's Response to Violation A.6

The Licensee denies the violation and indicates that there were differences of interpretation between the RSO and NRC, and that those differences arose as a result of the process of the Licensee proposing procedures in amendment applications and the NRC formally incorporating those procedures into the license by amendment. The Licensee also states that the RSO and RSC have thoroughly reviewed the license, including the basic document and all letters of additional commitments. The Licensee indicates that, based upon its review and discussion with the NRC Regional Office, it is the Licensee's intent to apply for modifications to the license which will meet the Licensee's actual and limited need. The Licensee also states that upon satisfactory resolution of the current issues with the NRC, it expects to request modification to a more limited license and to delete some of the current commitments which are not reasonable for the circumstances of this Licensee's use of radioactive materials.

NRC Evaluation of Licensee's Response to Violation A.6

License Condition 21 requires that licensed material be possessed and used in accordance with the statements, representations, and procedures contained in certain specified applications and letters submitted by the Licensee. The requirement is clear and leaves no room for differences of interpretation. As required by License Condition 21, application dated April 1, 1991, Item 10.3.1(j), the RSO is required to conduct periodic reviews of the terms and conditions of the license to ensure compliance with requirements.

Although the Licensee describes certain actions taken by the RSO and RSC in reviewing the license, it appears that the Licensee is referring to actions taken subsequent to the inspection. As documented

in the inspection report, the RSO was not aware of the requirements for leak testing and physical inventory of sealed sources, and was unfamiliar with area survey requirements for authorized users, all of which are required by conditions of the license. Therefore, the NRC concludes that the violation occurred as stated in the Notice.

Restatement of Violation B

Condition 14 of the license requires that sealed sources and detector cells not in storage and containing greater than 100 microcuries of gamma emitting radioactive material be tested for leakage and/or contamination at intervals not to exceed 6 months or at such other intervals as are specified by the certificate of registration referred to in 10 CFR 32.210.

Contrary to the above, sealed sources and detector cells not in storage and containing greater than 100 microcuries of gamma emitting radioactive material were not tested for leakage and/or contamination at intervals not to exceed 6 months and no other intervals were specified by the certificate of registration referred to in 10 CFR 32.210. Specifically, a cesium-137 and cobalt-60 source with activities greater than 100 microcuries of gamma emitting radioactive material per source and in use by the licensee, were not tested for leakage and/or contamination during the period August 1991 to August 1994, an interval in excess of six months.

Summary of Licensee's Response to Violation B

The Licensee states that the only sealed source not in storage and requiring leak testing at the time of the NRC inspection was a 1.06 mCi cesium-137 source used once or twice a year in the Physics and Atmospheric Sciences Department. The Licensee also states that the cobalt-60 source, having decayed to 64 μ Ci, does not require leak testing and, for more than three years, has not required it. In addition, the Licensee notes that subsequent to the NRC inspection, the Cs-137 source was assayed on September 14, 1994, and again in October 1994 and leak tested with no evidence of any leakage found.

NRC Evaluation of Licensee's Response to Violation B

Since the Licensee acknowledges that leak-testing did not occur with respect to the cesium-137 source, the NRC concludes that this aspect of the violation occurred as stated in the Notice. Based on the additional information which has now been provided by the Licensee, but which was unavailable at the time of the inspection, the aspect of the violation regarding the cobalt-60 source is hereby withdrawn. The withdrawal of one example of a violation does not change the fact that the violation occurred, nor does it change the amount of the civil penalty assessed for the violations in this case.

Summary of Licensee's Response Regarding Severity Level

The Licensee states that it does not concur with the NRC classification of the violations collectively as a Severity Level III Problem, contending that in a number of instances, the NRC extrapolated a single, or even several

replications of the identical, adverse findings among many activities and personnel, to suggest widespread disregard for either its radiation safety program or its responsibility in its oversight and management. The Licensee contends that it takes the protection of public health and safety as a serious responsibility, and to suggest otherwise from the violations cited by the NRC is a significant inaccuracy.

The Licensee also states that it finds it disturbing that the October 17, 1994, letter transmitting the civil penalty suggests that the NRC had an expectation that the corrective actions were to be completed prior to the enforcement conference, and not having them completed was a factor in classifying the violations at Severity Level III.

The Licensee further states that since the 1991 inspection, those involved at the time in the Radiation Safety Program leadership and management are no longer with the Licensee and significant change has taken place. The Licensee also states that the Provost and Senior Vice President for Academic Affairs, Senior Vice President for Administration and Finance, Vice Provost for Research and Graduate Studies, Radiation Safety Officer, and the New Chief Executive Officer of the University are all very seriously committed to a Radiation Safety Program which is in complete accord with NRC requirements.

NRC Evaluation of the Licensee's Response Regarding Severity Level

The violations identified during the 1994 inspection indicated a lack of management attention to the radiation safety program, as described in the October 17, 1994 letter transmitting the Notice. This NRC determination of a lack of adequate management attention was based on the fact that ten violations of NRC requirements were identified and cited, and more importantly, five of those violations were repetitive. If appropriate management attention had been provided, appropriate corrective actions would have been taken after the previous NRC findings in 1991, and these violations would not have recurred, or would have been promptly identified and corrected by current management. That did not happen. Rather, the violations were identified by the NRC.

The NRC did not suggest, in its letter, that there was widespread disregard for the program. If that had been the case, the NRC would have proposed a more severe sanction. However, given the number of violations, the repetitive nature of some of them, and the fact that the violations would have been identified by the RSO or RSC if adequate management attention was provided to the program, the NRC concludes that the violations were appropriately categorized collectively at Severity Level III.

The Licensee has confused the failure to take lasting corrective action to prevent the recurrence of the violations identified during the 1991 inspection with the issue of corrective actions for the violations identified during the July 1994 inspection. The latter issue was not a basis for considering the 1994 violations collectively as a Severity Level III problem; however, it was considered in determining the amount of the civil penalty for this Severity level III problem.