June 4, 2003

EA-02-256

Dr. Elson S. Floyd, President
University of Missouri System
321 University Hall
Columbia, MO 65211

SUBJECT: MISSOURI UNIVERSITY RESEARCH REACTOR — APPARENT VIOLATION OF EMPLOYEE PROTECTION REQUIREMENTS (OFFICE OF INVESTIGATIONS REPORT NO. 4-2001-054)

Dear Dr. Floyd:

This letter refers to the investigation conducted at the Missouri University Research Reactor (MURR). The investigation was initiated to determine if a former senior research scientist was the subject of employment discrimination. The enclosed Report of Investigation (ROI) No. 4-2001-054 provides an overview of the evidence gathered during this investigation. The ROI provides the Office of Investigations' (OI) conclusion regarding the investigation, not necessarily the staff's final conclusion.

Based on the results of this investigation, an apparent violation was identified and is being considered for escalated enforcement action in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600. The current Enforcement Policy is included on the NRC's Web site at www.nrc.gov; select *What We Do*, *Enforcement*, then *Enforcement Policy*.

The research scientist engaged in protected activity as established in ROI Nos. 4-2000-030 and 4-2000-030S. On several occasions, the research scientist requested access to MURR and access was not approved by the facility director. Despite at least two requests from the research scientist to the MURR Director for justification of the access denial, no such justification was provided to the research scientist until January 10, 2002. By an internal letter dated January 14, 2002, senior University of Missouri - Columbia (UMC) management stated that access to MURR could " . . . lead to more [research scientist] complaints to the NRC about practices at MURR."

The apparent violation includes, but is not limited to, retaliation against the research scientist by not allowing him access to MURR in apparent violation of 10 CFR 50.7. Before the NRC makes its enforcement decision, we are providing you an opportunity to either: (1) provide a written response to the apparent violation within 30 days of the date of this letter or (2) request a predecisional enforcement conference (PEC). If a PEC is held, it will not be open for public observation. Please contact Mr. Alexander Adams at 301-415-1127 within 7 days of the date of this letter to notify the NRC of your intended response.

If you choose to provide a written response, it should be clearly marked as a "Response to Apparent Violation in ROI No. 4-2001-054; EA-02-256" and should include: (1) the reason for the apparent violation or, if contested, the basis for disputing the apparent 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. Your response may reference or include previous docketed correspondence, if the

correspondence adequately addresses the required response. If an adequate response is not received within the time specified or an extension of time has not been granted by the NRC, the NRC will proceed with its enforcement decision. You should also be aware that any written response may be provided to the research scientist for his comment, as would be afforded him in a PEC.

If you choose to request a PEC, the decision to hold a PEC does not mean that the NRC has made a final determination regarding whether a violation occurred or whether an enforcement action will be taken. PECs are held to obtain information to enable the NRC staff to make an enforcement decision, such as to obtain a common understanding of the facts, root cause, significance of the issue, and the need for lasting and effective corrective action. In addition, this is an opportunity for you to point out any errors and for you to provide any information concerning your perspectives on: (1) the severity of the violation; (2) the application of the factors that the NRC considers when assessing a violation (see the NRC Enforcement Policy); and (3) any other application of the Enforcement Policy to this case. A conference is also an opportunity for you to explain why the NRC should be confident that in the future, while engaged in licensed nuclear activities, MURR will abide by the NRC's regulations. In accordance with our policy, the research scientist will be invited to attend the PEC and present his perspective on this matter.

In addition, please be advised that the number and characterization of apparent violations may change as a result of further NRC review. You will be advised by separate correspondence of the results of our deliberations on this matter.

The enclosed copy of the ROI is only being provided to PEC participants at this time. After a full review of the circumstances, the NRC may conclude that no enforcement action is warranted, therefore, we request that you control this ROI and not release it to any members of the public to help protect the identity of those identified in the ROI. Should you request a PEC, the former research scientist will be provided a copy prior to the PEC. In addition, assisting in an OI investigation in any manner is protected activity. Any adverse action taken against individuals in retaliation for assisting OI will be considered a violation of the NRC's employee protection regulation.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, without the enclosure, and your response (if you choose to provide one) will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at http://www.nrc.gov/reading-rm/adams.html. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

Sincerely,

/RA/

David B. Matthews, Director
Division of Regulatory Improvement Programs
Office of Nuclear Reactor Regulation

Docket No. 50-186
License No. R-103

Enclosure: Redacted Copy of the Office of Investigations Report of Investigation No. 4-2001-054

cc w/o enclosure:
Please see next page

cc:

Dr. Richard L. Wallace, Chancellor
University of Missouri-Columbia
105 Jesse Hall
Columbia, Missouri 65211

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Director
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Columbia, MO 65201

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cc w/o enclosure: Please see next page

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*Please see previous concurrence

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Enclosure

Redacted Copy of the Office of Investigations Report No. 4-2001-054