



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, DC 20555 - 0001**

December 22, 2004

EA-03-126

Mr. Michael Barton, Commissioner
State of Alaska Department of
Transportation & Public Facilities
3132 Channel Drive
Juneau, Alaska 99801

SUBJECT: RESPONSE TO "REPLY TO NOTICE OF VIOLATION, EA-03-126"

Dear Mr. Barton:

This letter is in response to your letter dated November 9, 2004, in which you provided the State of Alaska Department of Transportation and Public Facilities' (ADOT&PF) response to the Notice of Violation (NOV), EA-03-126, issued to ADOT&PF on March 15, 2004. The NOV documented NRC's conclusion that, between 1999 and 2002, ADOT&PF discriminated against its Statewide Radiation Safety Officer (SRSO) for raising safety and compliance concerns.

Your November 9, 2004, letter reiterated ADOT&PF's position stated at the November 19, 2003, predecisional enforcement conference (PEC) that ADOT&PF does not believe that it discriminated against the SRSO. Your letter also reiterated ADOT&PF's position that personnel actions taken against the SRSO were unrelated to protected activities, and were necessitated by unsatisfactory performance of the SRSO's separate and unrelated contract management and material certification review duties. Your November 9th letter addressed the NOV by providing essentially the same information presented at the PEC. We have evaluated your response and, based on the evidence, have determined that the adverse actions taken against the SRSO were taken, at least in part, for discriminatory reasons. Therefore, we have concluded that the violation occurred as stated in the NOV. In addition, we remind you that the March 15, 2004, Confirmatory Order, involving your plans for assuring a safety conscious work environment, continues in effect. ADOT&PF must maintain continuing compliance with the commitments that were documented in that Order.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and its enclosures 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>.

Sincerely,

/RA/ J. Luehman for

Frank Congel, Director
Office of Enforcement

Docket No.: 030-07710
License No.: 50-14102-01

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