

National Aeronautics and  
Space Administration  
**Goddard Space Flight Center**  
Greenbelt, MD 20771



February 6, 2006

Reply to Attn of: 250

**BY CERTIFIED MAIL**

Mr. Michael R. Johnson  
U.S. Nuclear Regulatory Commission  
Mail Stop O14E1  
11555 Rockville Pike  
Rockville, MD 20852

Ref: EA-05-125

Dear Mr. Johnson:

This responds to your letter dated January 12, 2006, allowing NASA to comment on the enclosed draft Notice of Violation and draft Confirmatory Order for the subject enforcement action. As a result of our subsequent telephone discussions, NRC provided revised language for both documents on January 27, and January 30, 2006. NASA agrees with that draft language enclosed with this letter. Based on the agreement, I have signed the enclosed Consent and Hearing Waiver form on behalf of NASA's Goddard Space Flight Center. We appreciate the opportunity to comment on earlier drafts.

NASA does plan to send a response to the Notice. We would appreciate your sending, by facsimile to (301) 286-1745, a copy of the final letter as soon as it is signed with advance notice of when the NRC plans to issue a press release.

Sincerely,

A handwritten signature in cursive script, appearing to read "Diane E. Williams".

Diane E. Williams  
Director of Management Operations

Enclosures

Enclosure 1

**Consent and Hearing Waiver Form**

NASA hereby agrees with the attached draft Notice of Violation (NOV) and Confirmatory Order that will be immediately effective upon issuance. I recognize that by signing below, NASA consents to the issuance of the NOV and Confirmatory Order, effective immediately, containing commitments agreed to as incorporated into the draft Confirmatory Order. The agreement was reached following: (1) the joint Alternate Dispute Resolution (ADR) mediation session held at the NASA facility in Greenbelt, Maryland, on November 4, 2005, between NASA, its contract Radiation Protection Officer (RPO), and the NRC; and (2) the individual ADR mediation session, at which the contract RPO participated in portions of the session, held in the NRC Region I Office in King of Prussia, PA, on December 19, 2005. By agreeing to the attached NOV and Confirmatory Order, pursuant to 10 CFR 2.202(a)(3) and (d), NASA waives the right to request a hearing on all or any part of the Confirmatory Order.



Diane E. Williams  
Director, Management Operations Directorate  
National Aeronautics and Space Administration  
Goddard Space Flight Center

1/19/06  
Date

Enclosure

## US NUCLEAR REGULATORY COMMISSION

Number of Pages: 1 + cover

TO: David Shuman

FROM: Sally L. Merchant  
(301) 415- 2747

DATE: January 30, 2006

### MESSAGE:

Attached is the revised Section II from the Order to NASA. A similar change was made to the Order for Mr. Simmons.

NASA needs only to sign and return the Consent and Hearing Waiver Form

Enclosure

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of  
National Aeronautics and Space Administration

EA-05-125

CONFIRMATORY ORDER  
(EFFECTIVE IMMEDIATELY)

I

National Aeronautics and Space Administration (NASA or Licensee) is the holder of Byproduct Material Licenses 19-05748-02 and 19-05748-03 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. License No. 19-05748-02 was originally issued on June 28, 1960, and is due to expire on July 3, 2011. License No. 19-05748-03 was originally issued on October 1, 1963, and is due to expire on September 30, 2015.

II

On January 16, 2003, the NRC Office of Investigations (OI) initiated an investigation (OI Case No. 1-2003-011) at NASA. Based on the evidence developed during its investigations, OI substantiated that the contract RSO deliberately failed to report missing licensed material as required, and provided incomplete and inaccurate information, verbally and in writing, to the NRC in violation of 10 CFR 30.9(a). The results of the investigation completed on May 25, 2005, were sent to NASA in a letter dated August 18, 2005.

III



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, DC 20555 - 0001

EA-05-125

Diane E. Williams, Director, Management Operations Directorate  
National Aeronautics and Space Administration  
Goddard Space Flight Center  
Greenbelt, Maryland 20771-0001

SUBJECT: NOTICE OF VIOLATION AND CONFIRMATORY ORDER (EFFECTIVE  
IMMEDIATELY) (NRC Office of Investigations Report No. 1-2003-011)

Dear Ms. Williams:

In a letter dated August 18, 2005, the NRC provided you with the results of an investigation (OI Report No. 1-2003-011) completed by the NRC Office of Investigations (OI), Region I Field Office, on May 25, 2005. Based on the evidence developed during the investigation, OI substantiated that the NASA contract Radiation Safety Officer (RSO) deliberately failed to report missing licensed material as required, and provided incomplete and inaccurate information, orally and in writing, to the NRC in violation of 10 CFR 30.9(a). A Factual Summary of the OI investigation and the inspection report was enclosed with our August 18, 2005, letter.

Our August 18, 2005, letter and attached factual summary of the OI report, also informed you that, as a result of this OI investigation, and since licensees are responsible for the acts and omissions of its staff (including its contract RSO), an apparent deliberate violation was identified and was being considered for escalated enforcement action in accordance with the NRC Enforcement Policy. This apparent deliberate violation involved the submission of inaccurate information to the NRC regarding missing licensed material and the failure to report missing licensed material as required by 10 CFR 20.2201. Specifically, during an inspection in December 2002, the contract RSO provided an NRC inspector a printout of NASA's source inventory which indicated that no sources were missing and, during the same inspection, told the NRC inspector that no radioactive sources were missing. During the December 2002 inspection, the inspector identified that not all sources were accounted for at the time. Also, the contract RSO failed to report missing licensed material, as required.

Please note that two of the apparent violations described in the inspection report involving not maintaining records of disposal, and not calibrating survey instruments, enclosed with our letter dated August 18, 2005, were not cited in the Notice of Violation because you provided new information after issuance of the report that support your statements that the violations did not occur.

Our August 18, 2005, letter offered you a choice to (1) attend a Predecisional Enforcement Conference, or (2) request Alternative Dispute Resolution (ADR) with the NRC in an attempt to

Enclosure

resolve any disagreement on whether a violation occurred, the appropriate enforcement action, and the appropriate corrective actions. ADR is a general term encompassing various techniques for resolving conflict outside of court using a neutral third party, and the NRC currently has a pilot program for using ADR. The technique that the NRC decided to employ during the pilot program, which is now in effect, is mediation.

At your request, (1) a joint Alternative Dispute Resolution (ADR) mediation session was held at the NASA facility in Greenbelt, Maryland, on November 4, 2005, between NASA, its contract Radiation Safety Officer (RSO), and the NRC; and (2) an individual ADR session was held in the Region I Office in King of Prussia, PA, between NASA and the NRC on December 19, 2005, at which the contract RSO participated in portions of the mediation. Based on the discussions during the ADR sessions, a settlement agreement was reached regarding this matter. The elements of the settlement agreement are as follows:

1. The NRC has determined that violations of NRC requirements occurred at NASA when:  
(a) contrary to 10 CFR 20.1501, its contract Radiation Safety Officer (RSO) failed to perform a reasonable and necessary evaluation of information provided to him in memoranda from a health physics technician on September 10, 2002, and October 21, 2002, to determine whether the licensed material reported as missing in those memoranda, at the NASA Goddard Space Flight Center in Greenbelt, Maryland, reached the threshold for reportability under 10 CFR 20.2201; and (b) contrary to 10 CFR 30.9(a), the contract RSO provided inaccurate information to an NRC inspector during an NRC inspection on December 18-19, 2002, when he provided an inspector with an inventory form indicating all sources were accounted for when, in fact, sources were not accounted for at the time.
2. NASA agreed that the contract RSO caused NASA to violate NRC requirements when he failed to perform a reasonable and necessary evaluation, pursuant to 10 CFR 20.1501, of information provided to him by the health physics technician, to determine whether the licensed material reported as missing in the memoranda identified in Item 1 reached the threshold for reportability under 10 CFR 20.2201. NASA also agreed that the contract RSO provided inaccurate information during the December 18-19, 2002 inspection, as noted in Item 1. The NRC maintained that the contract RSO's actions were willful, at a minimum, in careless disregard of NRC requirements, because the contract RSO had reasonable information that material was not accounted for, yet he failed to investigate and take appropriate action, and he provided information to the inspector that was inaccurate. NASA contended that the contract RSO's actions were not in careless disregard, in part, because he had doubts about the accuracy of the information. The NRC and NASA agreed to disagree on the willfulness of the actions by the contract RSO.
3. While NASA and the NRC agreed to disagree on the willfulness of the contract RSO's actions, NASA and the NRC agreed that the contract RSO's actions caused NASA to be in violation of NRC requirements, which resulted in an enforcement action that will be taken against NASA as part of this ADR agreement.
4. NASA, subsequent to the NRC's December 2002 inspection, took actions to assure that the violations would not recur. Those actions were described in a document provided by

NASA at the December 19, 2005, ADR session, and included: (1) selecting a new contractor to provide radiation safety services; (2) changing the inventory database to improve tracking of sources; (3) implementing recommendations made by NASA Security Office following its evaluation of the materials storage area to improve security of the facility; (4) conducting a physical inventory of all items and determining that all but two sources, which were below reportable quantities, were accounted for; and (5) instructing the contract RSO that all notifications shall be made within required regulatory timeframes.

5. NASA also agreed to complete other actions to ensure that others at NASA Goddard, other NASA facilities, and other NRC licensees, learned from these violations. Those additional actions included: (a) increase the frequency of its internal audits of its radiation safety program from annually to quarterly, for, at a minimum, through the end of 2007; (b) retain an organization independent of NASA Goddard to conduct an annual independent review of the radiation safety program, at a minimum, for 2006 and 2007; and (c) provide a presentation at the NASA Occupational Health Conference in 2006, and include, at a minimum, in that presentation, a description of the violations that are described in Item 1 of the agreement, as well as the circumstances that led to the violations, lessons learned, and the corrective taken and planned to prevent recurrence.
6. NASA agreed to complete all of the additional actions in Item 5 by December 31, 2007, and send a letter to the NRC informing the NRC that these actions are complete. NASA agreed to send this letter to the NRC within 30 days of completion of all actions.
7. In light of the corrective actions that NASA has taken or has committed to take as described in Items 4, 5, and 6, NASA agreed to the NRC issuance of a Notice of Violation for the two violations described in Item 1, which the NRC will characterize as a Severity Level III problem, as well as for the other violations described in the NRC inspection report attached to the NRC August 18, 2005, letter which will be characterized at Severity Level IV. This action will be publically available in ADAMS and on the NRC "Significant Enforcement Actions" website, and the NRC will issue a press release announcing this action, as well as the actions NASA has taken and committed to take to address the violation. NASA disagreed that the two violations described in Item 1 warrant a Severity Level III characterization. The NRC and NASA agreed to disagree regarding the Severity Level III characterization.
8. NASA agreed to issuance of a Confirmatory Order confirming this agreement, and also agreed to waive any request for a hearing regarding this Confirmatory Order.

Enclosed with this letter is the Notice of Violation (Notice) and the Confirmatory Order (Order). You are not required to respond to this letter or Notice. However, in accordance with the settlement agreement, you are required to respond to the Order. Your written response to the Order, and your response to the Notice, if you choose to provide one, should be sent to the U.S. Nuclear Regulatory Commission, ATTN: Regional Administrator, Region I, 475 Allendale Road, King of Prussia, PA 19406, and marked "Open by Addressee Only," within 30 days of the date of this letter.

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). ADAMS is

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accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. The NRC will also include this letter, and its attached Notice of Violation and Confirmatory Order, on its website for a period of one year at [www.nrc.gov](http://www.nrc.gov); select **What We Do, Enforcement, Significant Enforcement Actions**. Your response, if you choose to provide one, will also be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS).

If you have any questions or comments concerning this letter, please contact Ms. Sally Merchant of my staff at 301-415-2747.

Sincerely,

Michael Johnson, Director  
Office of Enforcement

Enclosures: As Stated



## NOTICE OF VIOLATION

National Aeronautics and Space Administration  
Goddard Space Flight Center  
Greenbelt, Maryland

Docket Nos. 03004538; 03006929  
License Nos. 19-05748-02; 19-05748-03  
EA-05-125

During an NRC inspection conducted on December 18 and 19, 2002, and May 27 and 28, 2003, and during an investigation completed by the NRC Office of Investigations on May 25, 2005, violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. 1. 10 CFR 30.9(a) requires, in part, that information provided to the Commission by a licensee, or information required by the Commission's regulations to be maintained by the licensee, shall be complete and accurate in all material respects.

Contrary to the above, on December 18, 2002, information provided by the licensee's contract Radiation Safety Officer (RSO) to an NRC inspector was inaccurate, in that the contract RSO, in response to the inspector's questions regarding accountability of all licensed material, stated that all material was accounted for, and provided a written inventory record which also indicated that licensed material was accounted for. This statement and the record were not accurate in that sealed sources containing licensed material could not be accounted for at the time. This information was material because the control of licensed material is important to maintaining worker safety and safety for members of the public.

2. 10 CFR 20.1501 requires that each licensee make or cause to be made surveys that may be necessary for the licensee to comply with the regulations in Part 20 and that are reasonable under the circumstances to evaluate the extent of radiation levels, concentrations or quantities of radioactive materials, and the potential radiological hazards that could be present.

Pursuant to 10 CFR 20.1003, *survey* means an evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, or presence of radioactive material or other sources of radiation.

Contrary to the above, as of December 20, 2002, the licensee failed to perform a reasonable and necessary evaluation of information provided to assure compliance with 10 CFR 20.2201, which describes the reporting requirements for lost, stolen, or missing licensed material. Specifically, the licensee's contract Radiation Safety Officer received memoranda dated September 10, 2002, and October 21, 2002, from the health physics technician indicating that licensed material in the form of several radioactive sealed sources was missing from the NASA Goddard Space Flight Center, yet a reasonable and necessary evaluation of the information was not performed to determine reportability of the missing material.

## Notice of Violation

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These violations constitute a Severity Level III problem.

- B. Condition 21 of License No. 19-05748-02 requires, in part, that the licensee shall conduct its program in accordance with statements, representations, and procedures contained in the letter dated March 30, 2001.

1. Section 10.3 of the letter dated March 20, 2001, states, that instruments will be calibrated in accordance with NUREG-1556, Volume 11, Appendix O, which requires a check on each scale.

Contrary to the above, on January 8, 2002, a Ludlum Model 19 microR survey instrument was only calibrated on two of the three scales.

2. Item 8.2 of the letter dated March 30, 2001, requires all radioactive material workers to attend a refresher training course (every two years) and apply for renewal of their approval to use radioactive materials.

Contrary to the above, as of May 28, 2003, one custodian who did not attend training, had a permit renewed by the Radiation Safety Committee (RSC) during a meeting conducted on March 26, 2003. In addition, as of May 28, 2003, 3 out of the 16 custodians (Authorized Users) did not attend a refresher course since 2000, and they still possessed licensed material at the time of the May 2003 inspection.

These are Severity Level IV violations (Supplement VI).

- C. Condition 18 of License No. 19-05748-03 requires, in part, that the licensee shall conduct its program in accordance with statements, representations, and procedures contained in the application dated March 28, 1995.

Item 10.1.1 of the application dated March 28, 1995 states that emergency console personnel provide 24 hour monitoring of emergency alarms from the facility and are prepared to respond to these alarms.

Contrary to the above, on December 19, 2002, emergency console personnel, who provide 24 hour monitoring of emergency alarms, did not respond to these alarms.

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

- D. 10 CFR 71.5(a) requires that a licensee who transports licensed material outside of the site of usage, as specified in the NRC license, or where transport is on public highways, 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.

49 CFR 172.702 requires that each hazmat employer shall ensure that each hazmat employee is trained and tested, and that no hazmat employee performs any function subject to the requirements of 49 CFR Parts 171-177 unless trained, in accordance with

## Notice of Violation

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Subpart H of 49 CFR Part 172. The terms Hazmat Employer and Hazmat Employee are defined in 49 CFR 171.8.

49 CFR 172.704(c)(2) states that a Hazmat employee shall receive training required by this subpart at least once every three years.

Contrary to the above, as of December 18, 2002, the licensee, a Hazmat employer, did not ensure that all of its Hazmat employees, who performed functions subject to the requirements of 49 CFR Parts 171-177 during 2002, were trained and tested as required by 49 CFR 172.202. Specifically, the licensee's Radiation Safety Officer shipped licensed material on July 25, 2002 without having a valid hazmat certification.

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

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken and planned to correct the violations and prevent recurrence, and the date when full compliance will be achieved has already been adequately addressed in the letter forwarding this Notice, and at the ADR mediation sessions held on November 4, 2005, and December 19, 2005. Therefore, you are not required to respond to this Notice. However, if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation, EA-05-125" and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555 with a copy to the Regional Administrator, Region I within 30 days of the date of the letter transmitting this Notice

Because your response 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, it should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days.

Dated this            day of January 2006.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of  
National Aeronautics and Space Administration

EA-05-125

CONFIRMATORY ORDER  
(EFFECTIVE IMMEDIATELY)

I

National Aeronautics and Space Administration (NASA or Licensee) is the holder of Byproduct Material Licenses 19-05748-02 and 19-05748-03 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. License No. 19-05748-02 was originally issued on June 28, 1960, and is due to expire on July 3, 2011. License No. 19-05748-03 was originally issued on October 1, 1963, and is due to expire on September 30, 2015.

II

On January 16, 2003, the NRC Office of Investigations (OI) initiated an investigation (OI Case No. 1-2003-011) to determine whether the contract Radiation Safety Officer (RSO) deliberately provided incomplete and/or inaccurate information regarding missing licensed material to the NRC during an inspection in December 2002. Based on the evidence developed during its investigations, OI substantiated that the contract RSO deliberately failed to report missing licensed material as required, and provided incomplete and inaccurate information, verbally and in writing, to the NRC in violation of 10 CFR 30.9(a). The results of the investigation completed on May 25, 2005, were sent to NASA in a letter dated August 18, 2005.

## III

Subsequent to the NRC's identification of the apparent violations, NASA took several actions to assure that these events would not recur. These actions included: (a) selecting a new contract RSO to provide radiation safety services; (b) changing the inventory database to improve tracking of sources; (c) implementing recommendations made by NASA Security Office following its evaluation of the materials storage area to improve security of the facility; (d) conducting a physical inventory of all items and determining that all but two sources, which were below reportable quantities, were accounted for; and (e) instructing the contract RSO that all notifications shall be made within required regulatory timeframes.

Also, in response to the NRC's August 18, 2005, letter, NASA requested the use of Alternative Dispute Resolution (ADR) to resolve the apparent violations and pending enforcement action. ADR is a process in which a neutral mediator, with no decision-making authority, assists the NRC and NASA to resolve any disagreements on whether a violation occurred, the appropriate enforcement action, and the appropriate corrective actions. At NASA's request: (1) a joint Alternative Dispute Resolution (ADR) mediation session was held at the NASA facility in Greenbelt, Maryland, on November 4, 2005, between NASA, its contract Radiation Safety Officer (RSO), and the NRC; and (2) an individual ADR session was held in the Region I Office in King of Prussia, PA on December 19, 2005, between NASA and the NRC at which the contract RSO participated in portions of the mediation. These ADR sessions were mediated by a professional mediator, arranged through Cornell University's Institute of Conflict Management. Based on the discussions during the ADR sessions, a settlement agreement was reached regarding this matter. The elements of the settlement agreement are as follows:

1. The NRC determined that violations of NRC requirements occurred at NASA when: (a) contrary to 10 CFR 20.1501, its contract Radiation Safety Officer (RSO) failed to perform a reasonable and necessary evaluation of information provided to him in memoranda from a health physics technician on September 10, 2002, and October 21, 2002, to determine whether the licensed material reported as missing in those memoranda, at the NASA Goddard Space Flight Center in Greenbelt, Maryland, reached the threshold for reportability under 10 CFR 20.2201; and (b) contrary to 10 CFR 30.9(a), the contract RSO provided inaccurate information to an NRC inspector during an NRC inspection on December 18-19, 2002, when he provided an inspector with an inventory form indicating all sources were accounted for when, in fact, sources were not accounted for at the time.
2. NASA agreed that the contract RSO caused NASA to violate NRC requirements when he failed to perform a reasonable and necessary evaluation, pursuant to 10 CFR 20.1501, of information provided to him by the health physics technician, to determine whether the licensed material reported as missing in the memoranda identified in Item 1 reached the threshold for reportability under 10 CFR 20.2201. NASA also agreed that the contract RSO provided inaccurate information during the December 18-19, 2002 inspection, as noted in Item 1. The NRC maintained that the contract RSO's actions were willful, at a minimum, in careless disregard of NRC requirements, because the contract RSO had reasonable information that material was not accounted for, yet he failed to investigate and take appropriate action, and he provided information to the inspector that was inaccurate. NASA contended that the contract RSO's actions were not in careless disregard, in part, because he had doubts about the accuracy of the information. The NRC and NASA agreed to disagree on the willfulness of the actions by the contract RSO.

3. While NASA and the NRC agreed to disagree on the willfulness of the contract RSO's actions, NASA and the NRC agreed that the contract RSO's actions caused NASA to be in violation of NRC requirements, which resulted in an enforcement action that will be taken against NASA as part of this ADR agreement.
4. NASA also agreed to complete, in addition to the actions it has already taken, other actions to ensure that others at NASA Goddard, other NASA facilities, and other NRC licensees, learned from these violations. Those additional actions included: (a) increase the frequency of its internal audits of its radiation safety program from annually to quarterly, for, at a minimum, through the end of 2007; (b) retain an organization independent of NASA Goddard to conduct an annual independent review of the radiation safety program, at a minimum, for 2006 and 2007; and (c) provide a presentation at the NASA Occupational Health Conference in 2006, and include, at a minimum, in that presentation, a description of the violations that are described in Item 1 of this agreement, as well as the circumstances that led to the violations, lessons learned, and the corrective taken and planned to prevent recurrence.
5. NASA agreed to complete all of the additional actions in Item 4 by December 31, 2007, and send a letter to the NRC informing the NRC that these actions are complete. NASA agreed to send this letter to the NRC within 30 days of completion of all actions.
6. In light of the corrective actions that NASA has taken or has committed to take as described above, NASA agreed to the NRC issuance of a Notice of Violation for the two violations described in Item 1, which the NRC will characterize as a Severity Level III problem, as well as for the other violations described in the NRC inspection report attached to the NRC

August 18, 2005, letter which will be characterized at Severity Level IV. This action will be publically available in ADAMS and on the NRC "Significant Enforcement Actions" website, and the NRC will issue a press release announcing this action, as well as the actions NASA has taken and committed to take to address the violation. NASA disagreed that the two violations described in Item 1 warrant a Severity Level III characterization. The NRC and NASA agreed to disagree regarding the Severity Level III characterization.

7. NASA agreed to issuance of a Confirmatory Order confirming this agreement, and also agreed to waive any request for a hearing regarding this Confirmatory Order.

#### IV

In light of the actions NASA has taken and agreed to take to correct the violation and prevent recurrence, as set forth in Section III above, the NRC has concluded that its concerns regarding the violation can be resolved through the NRC's confirmation of the commitments as outlined in this Confirmatory Order.

I find that NASA's commitments as set forth in Section III above are acceptable. However, in view of the foregoing, I have determined that these commitments shall be confirmed by this Confirmatory Order. Based on the above and NASA's consent, this Confirmatory Order is immediately effective upon issuance.



## V

Accordingly, pursuant to Sections 103, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR § 2.202 and 10 CFR Part 30 and 35, IT IS HEREBY ORDERED, THAT BY DECEMBER 31, 2007:

1. NASA will increase the frequency of its internal audits of its radiation safety program from annually to quarterly, for, at a minimum, through the end of 2007;
2. NASA will retain an organization independent of NASA Goddard to conduct an annual independent review of the radiation safety program, at a minimum, for 2006 and 2007;
3. NASA will provide a presentation at the NASA Occupational Health Conference in 2006, and include, at a minimum, in that presentation, a description of the violations that are described in Section 3 of this agreement, as well as the circumstances that led to the violations, lessons learned, and the corrective taken and planned to prevent recurrence; and
4. Within 30 days of completion of all of these actions as set forth in Sections V.1-3, NASA will send a letter to the NRC informing the NRC that the actions are complete.

The Director, Office of Enforcement, may relax or rescind, in writing, any of the above conditions upon a showing by NASA of good cause.

## VI

Any person adversely affected by this Confirmatory Order, other than NASA, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and must include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemaking and Adjudications Staff, Washington, D.C. 20555. Copies of the hearing request shall also be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Assistant General Counsel for Materials Litigation and Enforcement, to the Director of the Division of Regulatory Improvement Programs at the same address, and to MSHMC. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov) and also to the Office of the General Counsel by means of facsimile transmission to 301-415-3725 or e-mail to [OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov). If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR § 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order shall be sustained. AN ANSWER OR A REQUEST FOR A HEARING SHALL NOT STAY THE EFFECTIVENESS DATE OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

Michael Johnson, Director  
Office of Enforcement

Dated this      day of      2006

## Enclosure 1

**Consent and Hearing Waiver Form**

NASA hereby agrees with the attached draft Notice of Violation (NOV) and Confirmatory Order that will be immediately effective upon issuance. I recognize that by signing below, NASA consents to the issuance of the NOV and Confirmatory Order, effective immediately, containing commitments agreed to as incorporated into the draft Confirmatory Order. The agreement was reached following: (1) the joint Alternate Dispute Resolution (ADR) mediation session held at the NASA facility in Greenbelt, Maryland, on November 4, 2005, between NASA, its contract Radiation Protection Officer (RPO), and the NRC; and (2) the individual ADR mediation session, at which the contract RPO participated in portions of the session, held in the NRC Region I Office in King of Prussia, PA, on December 19, 2005. By agreeing to the attached NOV and Confirmatory Order, pursuant to 10 CFR 2.202(a)(3) and (d), NASA waives the right to request a hearing on all or any part of the Confirmatory Order.

Diane E. Williams  
Director, Management Operations Directorate  
National Aeronautics and Space Administration  
Goddard Space Flight Center

\_\_\_\_\_  
Date

LAW OFFICE

**CLIFFORD & GARDE**

JOHN M. CLIFFORD\*  
BILLIE PIRNER GARDE\*\*  
AOIFE O'NEILL†

\* ALSO ADMITTED IN MD  
\*\* ALSO ADMITTED IN TX, WI

† ONLY ADMITTED IN CA  
(NOT ADMITTED IN D.C.)

1707 L STREET, N.W.  
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February 7, 2006

**Via Facsimile: (301) 415-3431  
and U.S. Mail**

Ms. Sally Merchant  
Office Enforcement  
Nuclear Regulatory Commission  
Washington, D.C. 20555

Re: Consent and Waiver Form re: Confirmatory Order  
(NRC Office of Investigations Report No. 1-2003-011)

Dear Ms. Merchant:

Please accept the attached Consent and Waiver form from Mr. Theodore Simmons in connection with the above-stated matter.

Sincerely,

*Billie P. Garde*  
Billie Pirner Garde  
Counsel for Theodore Simmons

Attachment

## Enclosure 1

**Consent and Hearing Waiver Form**

I, Theodore D. Simmons, II, hereby agree with the attached draft Confirmatory Order that will be immediately effective upon issuance. I recognize that, by signing below, I consent to the issuance of the Confirmatory Order, effective immediately, containing commitments which were agreed to following: (1) a joint Alternative Dispute Resolution (ADR) mediation session held at the NASA facility in Greenbelt, Maryland, on November 4, 2005, between me, NASA, and the NRC; and (2) an individual ADR session held in the Region I Office in King of Prussia, PA, on December 19, 2005, between me and the NRC, at which NASA participated in portions of the mediation. The commitments are incorporated into the draft Confirmatory Order. By agreeing to the Confirmatory Order, I waive the right to request a hearing, pursuant to 10 CFR 2.202(a)(3) and (d), on all or any part of the Confirmatory Order.

  
Theodore D. Simmons, II

2/1/2006  
Date