U.S. NUCLEAR REGULATORY COMMISSION

RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) REQUEST

NRC FOIA REQUEST NUMBER(S): FOIA — 92-67

RESPONSE TYPE: [ ] FINAL [X] PARTIAL

DATE: MAY 29 1992

DOCKET NUMBER(S) *(If applicable)*:

REQUESTER: Mr. F. L. Malphurs

PART I.—AGENCY RECORDS RELEASED OR NOT LOCATED *(See checked boxes)*

	No agency records subject to the request have been located.
	No additional agency records subject to the request have been located.
	Requested records are available through another public distribution program. See Comments section.
X	Agency records subject to the request that are identified in Appendix(es) C are already available for public inspection and copying at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC.
	Agency records subject to the request that are identified in Appendix(es) _____ are being made available for public inspection and copying at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC, in a folder under this FOIA number.
	The nonproprietary version of the proposal(s) that you agreed to accept in a telephone conversation with a member of my staff is now being made available for public inspection and copying at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC, in a folder under this FOIA number.
	Agency records subject to the request that are identified in Appendix(es) _____ may be inspected and copied at the NRC Local Public Document Room identified in the Comments section.
X	Enclosed is information on how you may obtain access to and the charges for copying records located at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC.
X	Agency records subject to the request are enclosed. *
	Records subject to the request have been referred to another Federal agency(ies) for review and direct response to you.
	Fees
	You will be billed by the NRC for fees totaling $ _____
	You will receive a refund from the NRC in the amount of $ _____
	In view of NRC's response to this request, no further action is being taken on appeal letter dated _____, No. _____

PART II. A—INFORMATION WITHHELD FROM PUBLIC DISCLOSURE

X	Certain information in the requested records is being withheld from public disclosure pursuant to the exemptions described in and for the reasons stated in Part II, B, C, and D. Any released portions of the documents for which only part of the record is being withheld are being made available for public inspection and copying in the NRC Public Document Room, 2120 L Street, N.W., Washington, DC in a folder under this FOIA number.

COMMENTS

*A copy of the relevant portions of the record identified on enclosed Appendix D is enclosed. The records identified on enclosed Appendix E are being denied in their entirety.

9212100145 920529
PDR FOIA
MALPHURS92-67 PDR

SIGNATURE, DIRECTOR, DIVISION OF FREEDOM OF INFORMATION AND PUBLICATIONS SERVICES

Donna H. Chenoly

RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) REQUEST (CONTINUATION)	FOIA NUMBER(S) FOIA – 92-67	DATE MAY 29 1992

PART II.B – APPLICABLE EXEMPTIONS

Records subject to the request that are described in the enclosed Appendix(es) E are being withheld in their entirety or in part under the Exemption No.(s) and for the reason(s) given below pursuant to 5 U.S.C. 552(b) and 10 CFR 9.17(a) of NRC regulations.

	1. The withheld information is properly classified pursuant to Executive Order. (Exemption 1)
	2. The withheld information relates solely to the internal personnel rules and procedures of NRC. (Exemption 2)
	3. The withheld information is specifically exempted from public disclosure by statute indicated. (Exemption 3)
	Sections 141-145 of the Atomic Energy Act, which prohibits the disclosure of Restricted Data or Formerly Restricted Data (42 U.S.C. 2161-2165).
	Section 147 of the Atomic Energy Act, which prohibits the disclosure of Unclassified Safeguards Information (42 U.S.C. 2167).
	4. The withheld information is a trade secret or commercial or financial information that is being withheld for the reason(s) indicated. (Exemption 4)
	The information is considered to be confidential business (proprietary) information.
	The information is considered to be proprietary information pursuant to 10 CFR 2.790(d)(1).
	The information was submitted and received in confidence pursuant to 10 CFR 2.790(d)(2).
X	5. The withheld information consists of interagency or intraagency records that are not available through discovery during litigation. (Exemption 5). Applicable Privilege:
X	Deliberative Process. Disclosure of predecisional information would tend to inhibit the open and frank exchange of ideas essential to the deliberative process. Where records are withheld in their entirety, the facts are inextricably intertwined with the predecisional information. There also are no reasonably segregable factual portions because the release of the facts would permit an indirect inquiry into the predecisional process of the agency.
	Attorney work-product privilege. (Documents prepared by an attorney in contemplation of litigation.)
X	Attorney-client privilege. (Confidential communications between an attorney and his/her client.)
	6. The withheld information is exempted from public disclosure because its disclosure would result in a clearly unwarranted invasion of personal privacy. (Exemption 6)
	7. The withheld information consists of records compiled for law enforcement purposes and is being withheld for the reason(s) indicated. (Exemption 7)
	Disclosure could reasonably be expected to interfere with an enforcement proceeding because it could reveal the scope, direction, and focus of enforcement efforts, and thus could possibly allow recipients to take action to shield potential wrongdoing or a violation of NRC requirements from investigators. (Exemption 7 (A))
	Disclosure would constitute an unwarranted invasion of personal privacy. (Exemption 7(C))
	The information consists of names of individuals and other information the disclosure of which could reasonably be expected to reveal identities of confidential sources. (Exemption 7 (D))
	OTHER:

PART II. C – DENYING OFFICIALS

Pursuant to 10 CFR 9.25(b) and/or 9.25(c) of the U.S. Nuclear Regulatory Commission regulations, it has been determined that the information withheld is exempt from production or disclosure, and that its production or disclosure is contrary to the public interest. The persons responsible for the denial are those officials identified below as denying officials and the Director, Division of Freedom of Information and Publications Services, Office of Administration, for any denials that may be appealed to the Executive Director for Operations (EDO).

DENYING OFFICIAL	TITLE/OFFICE	RECORDS DENIED	APPELLATE OFFICIAL		
			EDO	SECRETARY	IG
Ben B. Hayes	Director, Office of Investigations	App. E/1	X		
James A. Fitzgerald	Assistant General Counsel for Adjudications and Opinions	App. E/2, 3, and 4		X	

PART II. D – APPEAL RIGHTS

The denial by each denying official identified in Part II.C may be appealed to the Appellate Official identified there. Any such appeal must be made in writing within 30 days of receipt of this response. Appeals must be addressed, as appropriate, to the Executive Director for Operations, to the Secretary of the Commission, or to the Inspector General, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should clearly state on the envelope and in the letter that it is an "Appeal from an Initial FOIA Decision."

Re: FOIA-92-67

APPENDIX C

DOCUMENTS MAINTAINED AT THE PDR

NUMBER	DATE	DESCRIPTION
1.	12/7/90	Ltr from M. Knapp w/Inspection Report 30-10026/90-01, Acc. No. 9012170135.
2.	12/20/90	Ltr from M. Knapp w/Enforcement Conference Report 30-10026/90-02, Acc. No. 9101100128.
3.	6/26/91	Ltr from M. Knapp w/Synopsis of OI Report 1-90-018, Acc. No. 9107030045.
4.	7/18/91	Ltr from R. Bellamy w/Enforcement Conference Report 30-10026/91-02, Acc. No. 9107030045.
5.	11/4/91	Ltr from T. Martin w/attached Notice of Violation, Acc. No. 9111110299.
6.	11/5/91	Ltr from F. Malphurs, Acc. No. 9111120413.
7.	1/24/92	Ltr from J. Lieberman, Acc. No. 9201280124.

Re: FOIA-92-67

APPENDIX D

DOCUMENTS BEING RELEASED IN PART

NUMBER	DATE	DESCRIPTION
1.	12/31/90	Memo for File from E. A. Fitzgerald, subject: "Review of Radiation Safety Committee Meeting Minutes November 1989; January 1990; June 1990; September 1990; and November 1990; Veterans Administration Medical Center (Case No. 1-90-018), (16 pgs.) - CERTAIN PORTIONS OF THIS RECORD ARE "OUTSIDE THE SCOPE OF THIS REQUEST."

APPENDIX E

DOCUMENTS BEING WITHHELD IN THEIR ENTIRETY

NUMBER	DATE	DESCRIPTION
1.	Undated	Draft Ltr to U. S. Department of Justice from Ben B. Hayes, w/o enclosure, (2 pgs.) - EXEMPTION 5.
2.	4/8/91	Memo for Ben B. Hayes from James A. Fitzgerald, subject: "Draft Referral Letter to Department of Justice - In the Matter of the Albany Veterans Administration Medical Center," (1 pg.) - EXEMPTION 5.
3.	8/14/91	Note to Steve Lewis from Jenny Longo, subject: "VA Albany, Notice of Violation and Proposed Imposition of Civil Penalty," (5 pgs.) - EXEMPTION 5.
4.	8/14/91	Note to James Lieberman from Stephen H. Lewis, subject: "VA Albany, Notice of Violation and Proposed Imposition of Civil Penalty," (2 pgs.) - EXEMPTION 5.

DEPARTMENT OF VETERANS AFFAIRS
Samuel S. Stratton
Medical Center
113 Holland Avenue
Albany NY 12208

February 6, 1992

In Reply Refer To: 500/00

Freedom of Information Act Officer
US Nuclear Regulatory Commission
Mail Stop, P-378
Washington, D.C. 20555

FREEDOM OF INFORMATION
ACT REQUEST
FOIA-92-67
Rec'd 2-11-92

SUBJ: FOIA Request

RE: Docket No. 030-10026
License No. 3102755-05
EA 91-050

1. The purpose of this letter is to request copies of all records relating to the above NRC case. This applies to the NRC investigation, inspection, hearings and any related communications or proceedings. Specifically, I am requesting any and all documentation relating to this matter that constitutes the official record of this case.

2. We are requesting this information under the Freedom of Information Act. I specifically request that this include the transcript of the Enforcement Conference conducted in King of Prussia on December 13, 1990 and the Enforcement Conference on July 8, 1991 also conducted in King of Prussia.

3. I would be pleased to accept these copies in whatever format that they are available and to compensate your office for whatever costs or charges that may be appropriate.

4. Your assistance in this matter is appreciated.

F.L. MALPHURS
Director

9211170101

Information in this record was deleted
in accordance with the Freedom of Information
Act, exemptions "outside scope"
FOIA- 92-67

December 31, 1990

MEMORANDUM FOR: File

FROM: Edward A. Fitzgerald, Investigator
Office of Investigations Field Office, Region I

SUBJECT: REVIEW OF RADIATION SAFETY COMMITTEE MEETING MINUTES NOVEMBER 1989; JANUARY 1990; JUNE 1990; SEPTEMBER 1990; AND NOVEMBER 1990, VETERANS ADMINISTRATION MEDICAL CENTER (VAMC) (CASE NO. 1-90-018)

On December 12, 1990, Dr. Lawrence Flesh, Chief of Staff, VAMC, was requested by OI Investigator Edward A. Fitzgerald to furnish copies of minutes of Radiation Safety Committee meetings for 1989 and 1990.

The following 1989/1990 meeting minutes were reviewed for indications of sealed sources inventory problems discussed by the Safety Committee.

1. November 30, 1989 - Dr. Andrew Kang, temporary Radiation Safety Officer (RSO) reports to the Committee that VAMC performed only one sealed source inventory in a six month period of 1989 and was cited by a NRC inspection in October 1989. Kang said that a quarterly inventory is a requirement.

2. January 25, 1990 - No problems relating to sealed sources inventories discussed.

3. June 14, 1990 - No problems relating to sealed source inventory discussed.

4. September 27, 1990 - One radiation safety incident, loss of radioactive material (package of 1 mCi of tritium). A report filed with NRC. No other problems reported relating to sealed sources.

   NOTE: At this meeting Dr. James ZHANG was introduced as the new Radiation Safety Officer.

5. November 29, 1990 - It was noted that certified health physicist was hired as a consultant in radiation safety. A lengthy discussion concerning the NRC inspection of November 20 and 21 was held. A new inventory was ordered by NRC to be submitted by December 7, 1990. The VAMC was also directed to appear in the NRC Region I offices to provide a plan to recover from an estimate of twenty violations.

The review of the meeting minutes indicates that the RSO did not present to the Safety Committee any problems with accountability of sealed sources for the first three quarters of 1990 until after the NRC inspection of November 1990. It is noted that at the November 30, 1989, meeting Kang reported that the NRC cited the VAMC for performing only one sealed source inventory during a six month period when a quarterly inventory is the requirement.

RADIATION SAFETY/RADIOISOTOPE COMMITTEE MEETING

November 30, 1989

MEMBERS PRESENT:

Lawrence H. Flesh, M.D.	Chief of Staff
Pocheng Cheng, Ph.D.	Radiation Therapy Service
Charles A. Hall, M.D.	Medical Service
Paula Hemmings, R.N.	Nursing Service
S. A. Kang, M.D.	Acting Radiation Safety Officer/Chairman
Peter Maloy, M.D.	Surgical Service
Min-Fu Tsan, M.D. Ph.D.	ACOS, Research Service
An-Ya Wu, M.D.	Laboratory Service

MEMBERS ABSENT:

Gail Capel, M.D.	Acting Chief, Radiology Service

OLD BUSINESS:

Acceptance of Minutes

The minutes from the September 28, 1989, meeting were accepted unanimously.

o/s

NRC Inspection

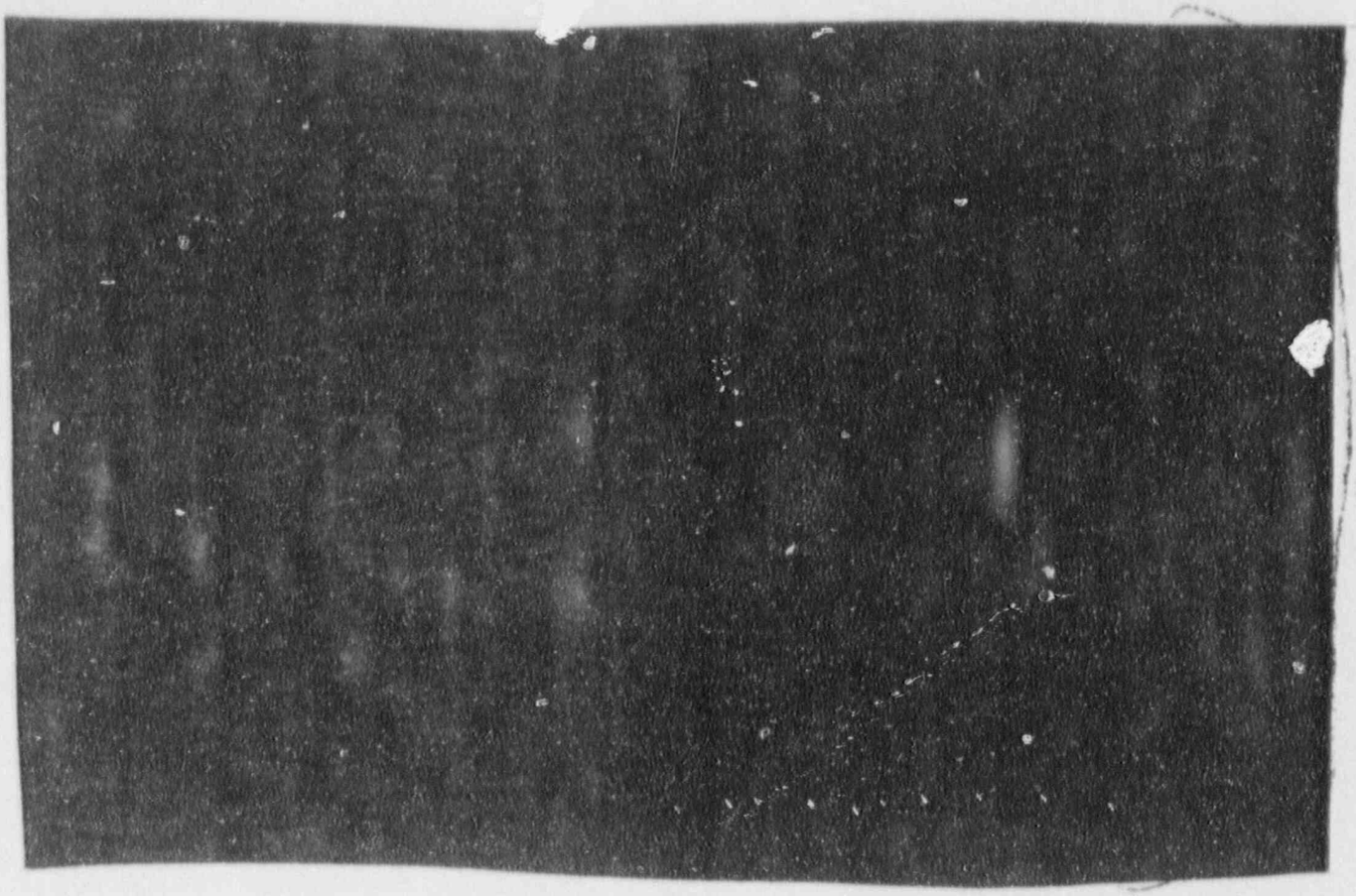
Dr. Kang notified the committee that there was an unexpected NRC inspection in October immediately after the previous Radiation Safety Officer resigned. The following were the only suggestions made by the inspector because of recent changes in regulations:

1. Quality Control Reporting - Tc-99m Generator - Date and Time should be recorded when Molly Assay is performed.

2. Sealed Source Inventory - Required to be performed quarterly, however, it was noted that during one six month period, it was performed only once.

EXHIBIT 16

o/s p. 1



S. A. KANG, M.D.
Chairman, Radiation Safety/Radioisotope Committee
Acting Radiation Safety Officer

MINUTES

RADIATION SAFETY/RADIOISOTOPE COMMITTEE

January 25, 1990

MEMBERS PRESENT:

Lawrence H. Flesh, M.D.	Chief of Staff
Charles A. Hall, M.D.	Medical Service
S.A. Kang, M.D.	Acting Radiation Safety Officer/Chairman
Angel Fermin, M.D.	Radiology Service

MEMBERS ABSENT:

Pocheng Cheng, Ph.D.	Radiation Therapy Service
Paula Hemmings, R.N.	Nursing Service
Peter Maloy, M.D.	Surgical Service
Min-Fu Tsan, M.D., Ph.D.	ACOS, Research Service
An-Ya Wu, M.D.	Laboratory Service

OLD BUSINESS:

Acceptance of Minutes:

Minutes from the November 30, 1989, meeting were accepted.

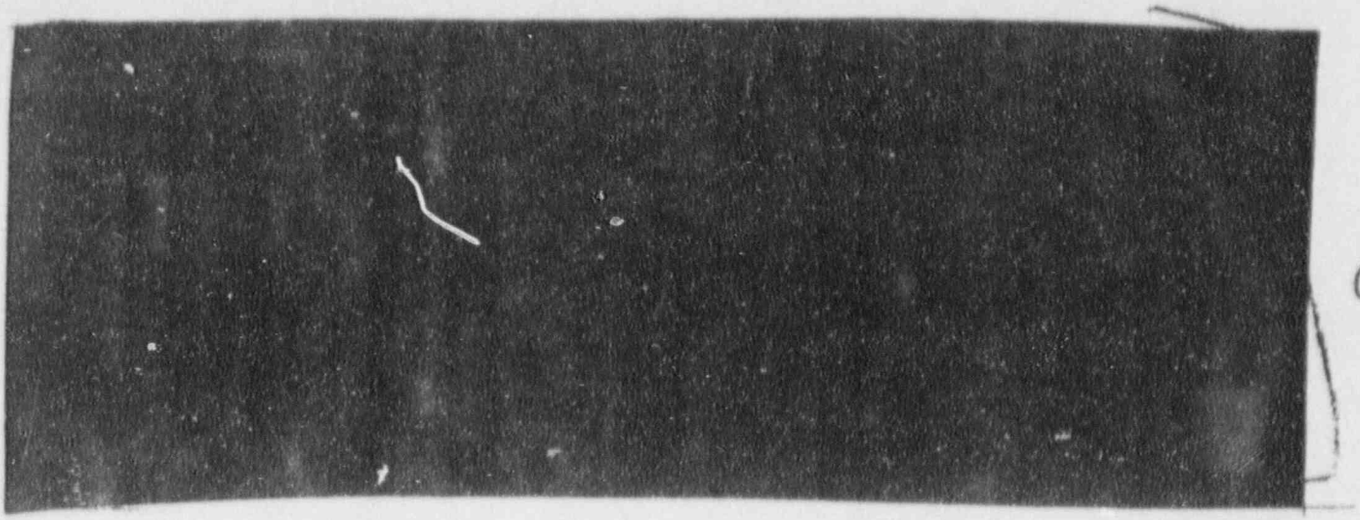
[redacted]

Current Status of Recruitment for RSO

Dr. Kang announced that Dr. Terry Teslow is scheduled to be interviewed on 1/26/90 for the RSO position. His credentials were reviewed with the committee and Dr. Kang offered to introduce Dr. Teslow to members who are interested in meeting him during his visit.

EXHIBIT 16

PAGE 4 OF 13 PAGE(S)



0/5

S. A. KANG, M.D.
Chairman, Radiation Safety/Radioisotope Committee
Acting Radiation Safety Officer

EXHIBIT 16
PAGE 5 OF 13 PAGE(S)

MINUTES

RADIATION SAFETY/RADIOISOTOPE COMMITTEE

Thursday, June 14, 1990

MEMBERS PRESENT:

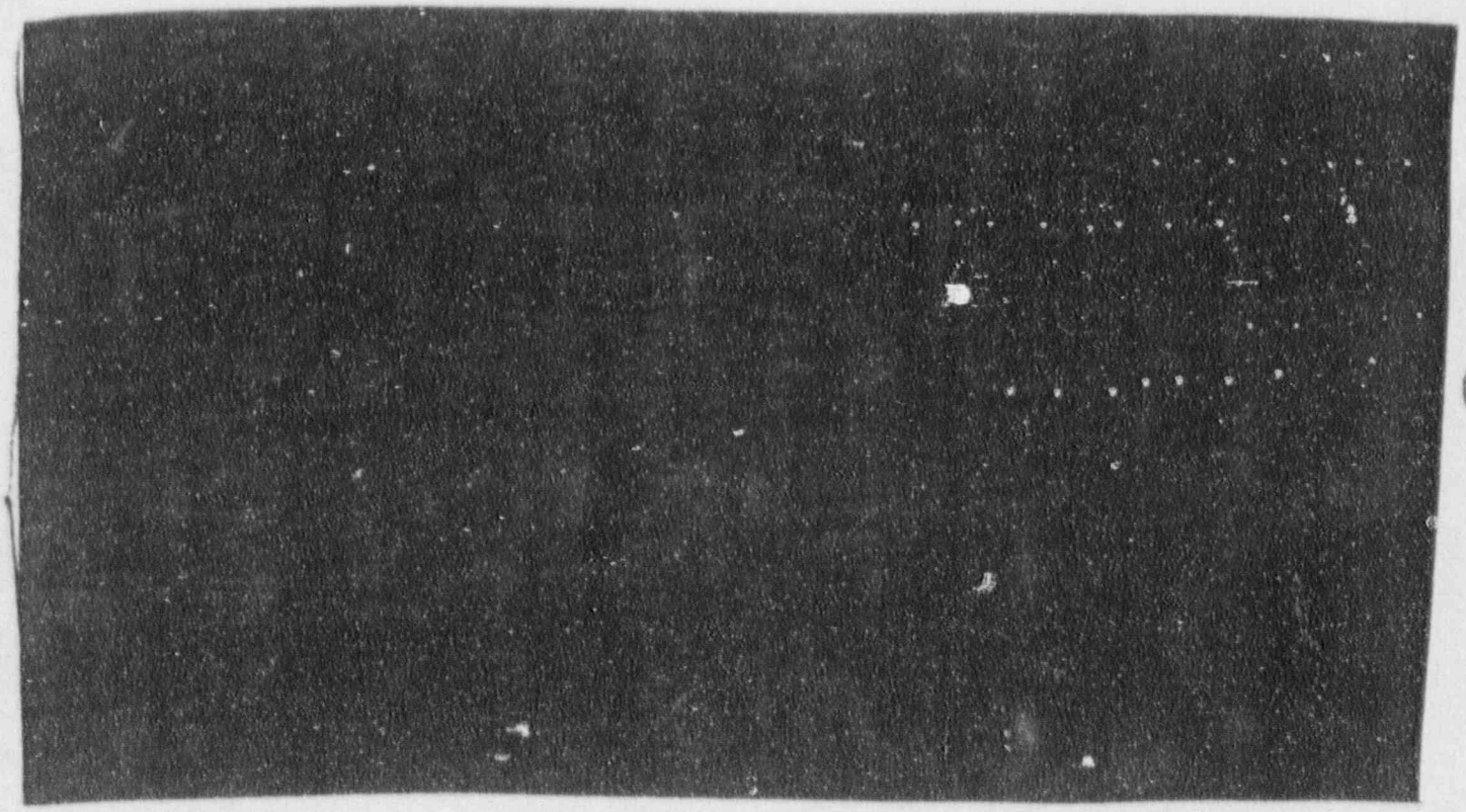
Lawrence H. Flesh, M.D.	Chief of Staff
S.A. Kang, M.D.	Acting Radiation Safety Officer/Chairman
Pocheng Cheng, Ph.D.	Radiation Therapy Service
Paula Hemmings, R.N.	Nursing Service
Min-Fu Tsan, M.D., Ph.D.	ACOS, Research and Development
An-Ya Wu, M.D.	Laboratory Service

MEMBERS ABSENT:

Charles A. Hall, M.D.	Medical Servite
Angel Fermin, M.D.	Chief, Radiology Service

OLD BUSINESS:

Acceptance of Minutes: Minutes: The minutes from the January 25, 1990, meeting were accepted.



0/5

c/s pulm.

EXHIBIT 16

PAGE 6 OF 13 PAGE(S)

Status of Recuritment for RSO Vacancy

Dr. Kang announced that Dr. Terrance Teslow, who had been offered the RSO position has declined and accepted another position because the salary was unacceptable to him. Among the other applicants, there is a qualified candidate, who has been offered the position, pending CO approval.

S. A. KANG, M.D.
Chairman/Acting Radiation Safety Officer

MINUTES

RADIATION SAFETY/RADIOISOTOPE COMMITTEE

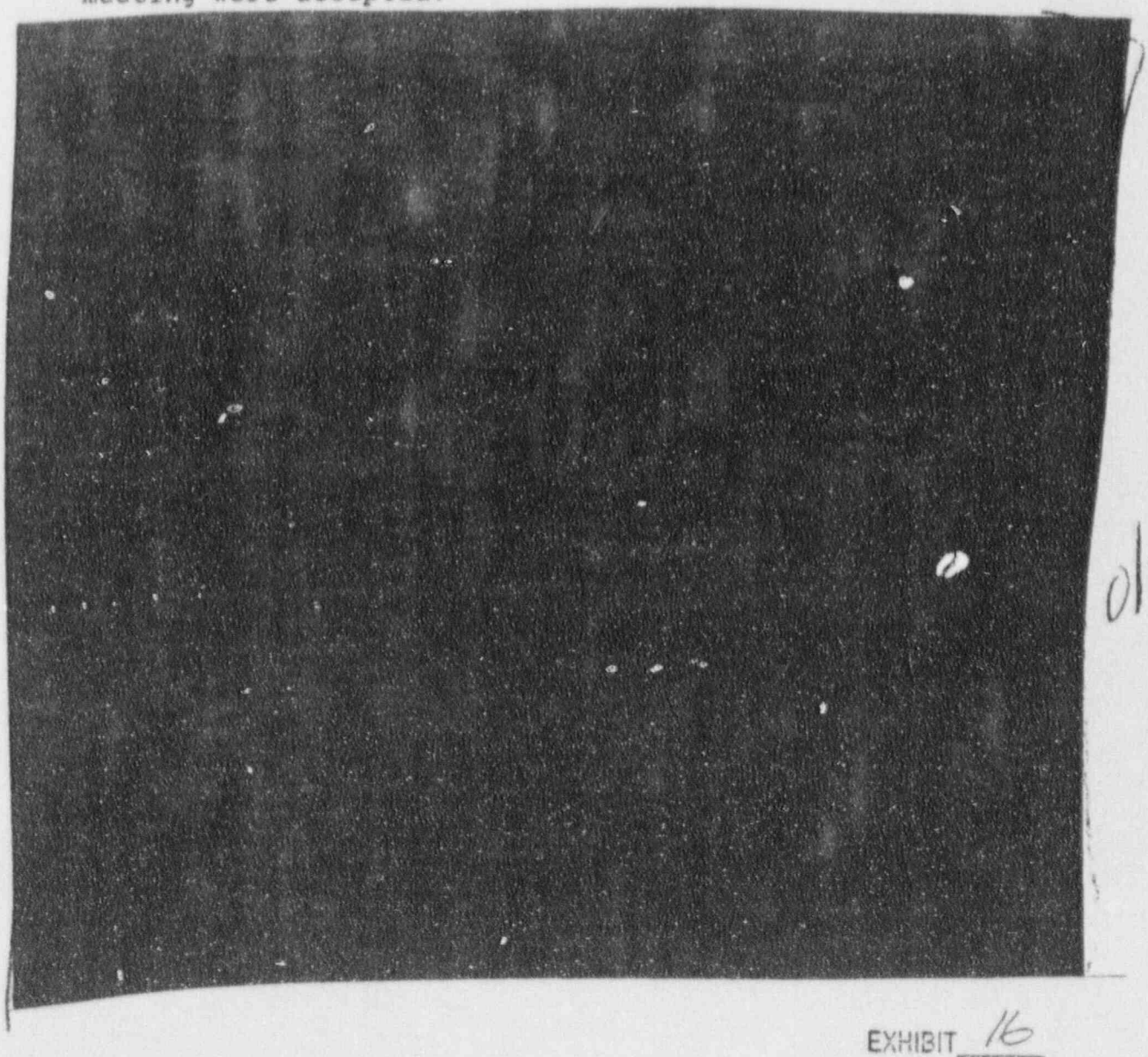
September 27, 1990

MEMBERS PRESENT: Dr. Flesh, Dr. Tsan, Dr. Hall, Dr. Kang, Dr. Wu, Dr. Zhang, Dr. Cheng

MEMBERS ABSENT: Dr. Fermin, Ms. Hemmings

OLD BUSINESS:

Acceptance of Minutes: The minutes from the June 14, 1990, meeting were accepted.



0/s

Introduction of New Radiation Safety Officer

Dr. Kang introduced James Zhang, the new Radiation Safety Officer.

[redacted] o/s

Radiation Safety Incident - Lost of Radioactive material

Dr. Kang notified the committee of an incident occurring on August 3, 1990, in which a package containing 1 mCi of tritium (Adenosine) was lost. A report describing the details of this incident was filed with the NRC.

[redacted] o/s

Enforcement of Radioactive Material Receiving Procedures

The Radiation Safety Officer noted that the procedures for signing- off for package receipt when personnel pick up their RAM orders will be strictly enforced in the future. He noted that there have been a few incidents when this was not done.

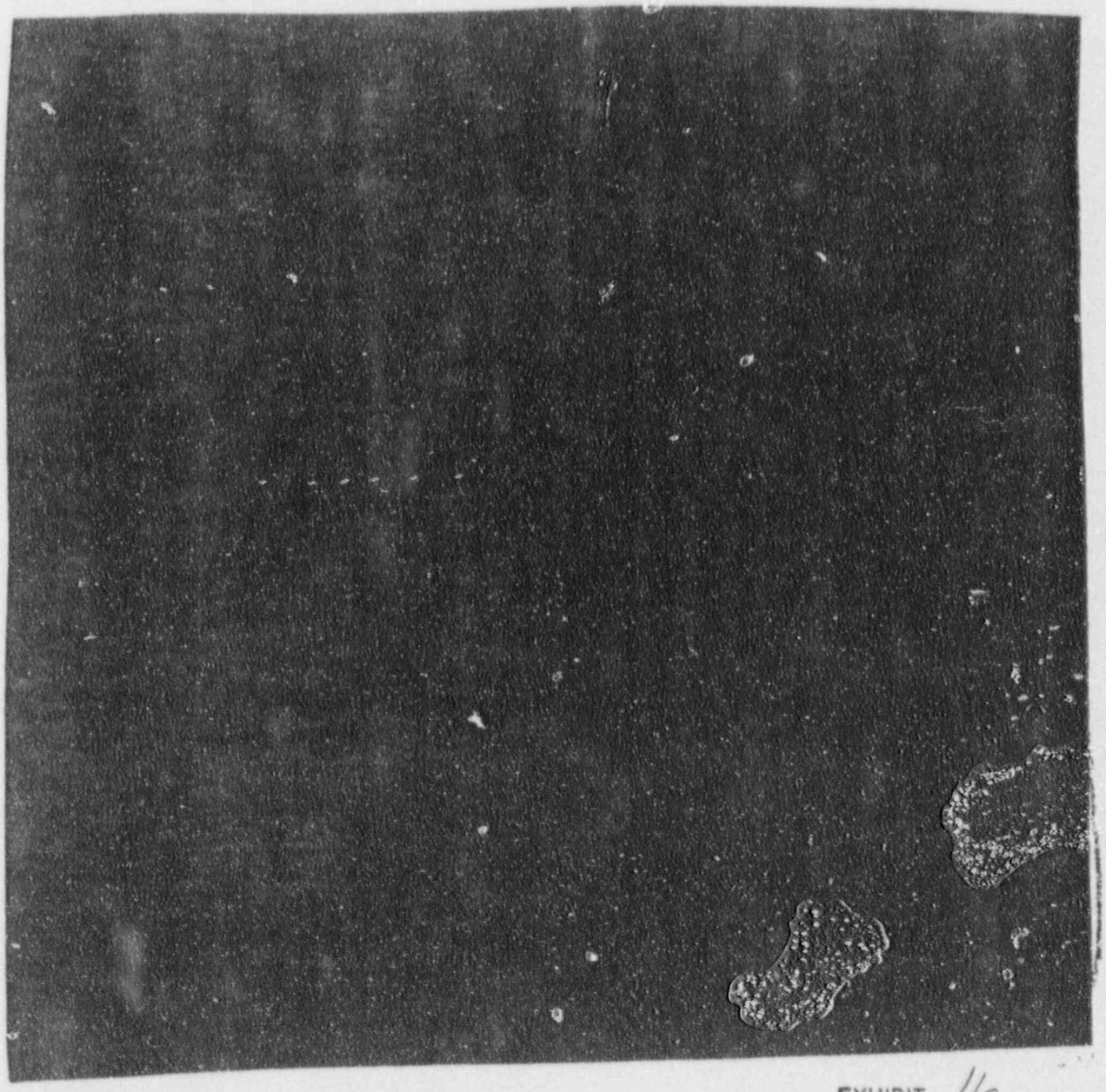
S.A. Kang, M.D.
Chairman, Radiation Safety/Radioisotope Committee

MINUTES

Radiation Safety/Radioisotope Committee Meeting
November 29, 1990

Consultant in Attendance: Mr. John Dapolito

Members Present: Dr. Flesh, Dr. Tsan, Dr. Kang, Dr. Wu, Dr. Silver, Ms Hemmings, Dr. Cheng, Dr. Fereshetian

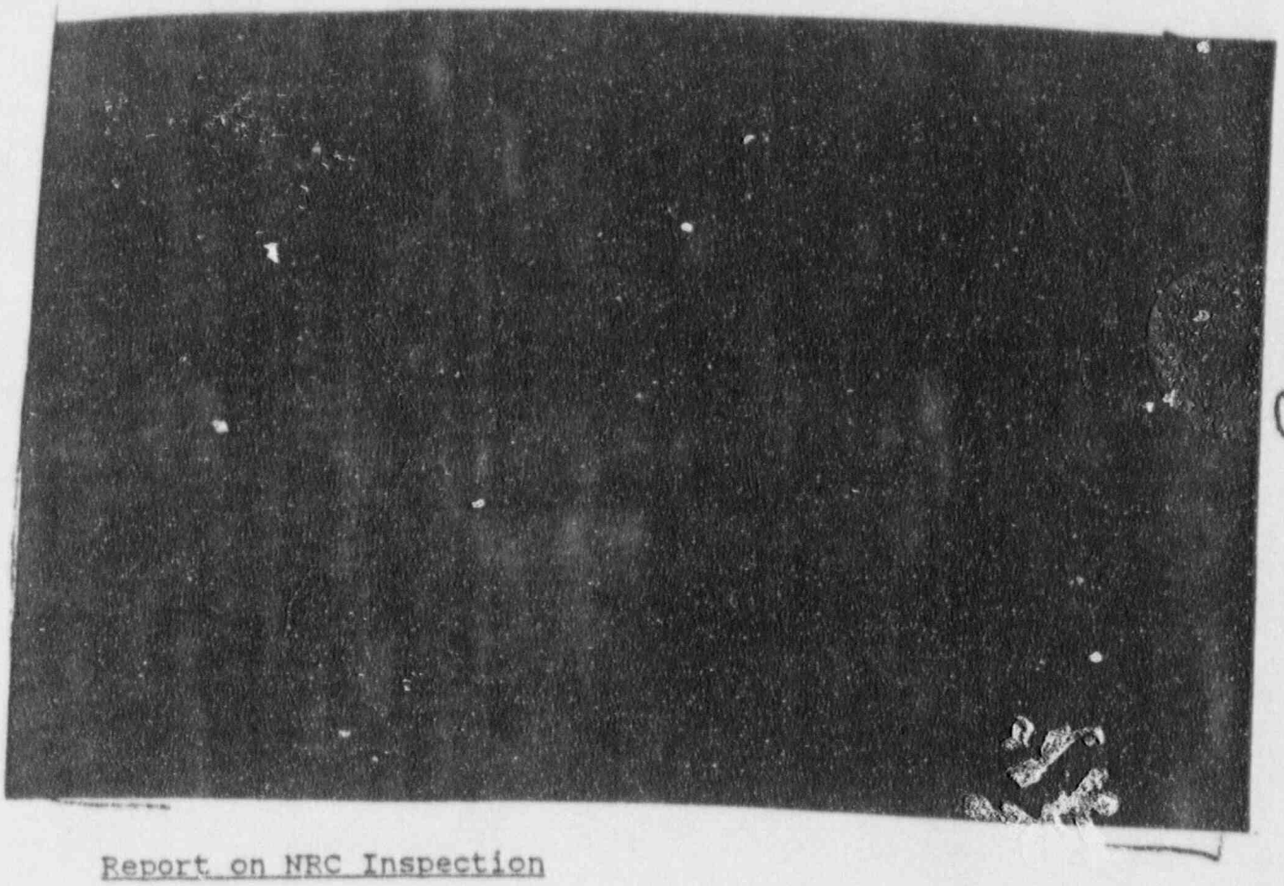


ok

EXHIBIT 16

PAGE 10 OF 13 PAGE(S)

(Ke rectum



ds

Report on NRC Inspection

Dr. Kang reported to the committee on the recent unscheduled NRC inspection on November 21 and 22, 1990. He noted that there were some violations found and reviewed these in detail.

Dr. Tsan noted that there were no deficiencies found in his research lab. He also commented that the lack of a qualified Radiation Safety Officer for the past year to enforce the regulations is the major contributing factor to the problems found in the other research labs.

Dr. Flesh agreed that the James Zhang did not fulfill the responsibilities of the radiation safety office while he held that position and that the program has not been maintained properly since the Dr. Hill-Zobel resigned in October, 1989. He reported, however, that the NRC lays the blame for that failure on this committee and conveyed the seriousness of this situation which may threaten the hospital's broad license. The Director of the NRC Region I Office has ordered a board of responsible officials to appear at their office in Pennsylvania to provide a plan to recover from what they estimate is in the order of twenty violations. They have ordered that at that time a complete evaluation of the Radiation Safety Program be provided and

evidence that a Radiation Safety Specialist has been hired. In addition, they ordered that a complete inventory of sealed sources be provided to their office by December 7. In the event that a source is not found, a report on the investigation of that loss and corrective actions taken are to be provided. By January 30, 1991, they have ordered that a complete audit of the Radiation Safety Program, in writing, be provided. This must include a written plan, eliciting all improvements and violations, staffing of radiation safety functions, procedures for sealed source inventory control, procedures for Iodine Therapy, procedures for receipt and logging of packages, plans for continued inventory procedures, a plan for training activities and the comprehensive training in radiation safety for all users. They also require that day-to-day oversight of the program be maintained.

Dr. Kang distributed copies of a recent NRC publication which described the responsibilities of the RS/R Committee and recent punitive actions taken for violations in other medical centers. He also distributed Center Memorandum No. 00-2 Radiation Safety/Radioisotope Committee.

Dr. Tsan noted that other committees who have oversight responsibilities, are required to perform an annual inspection and felt that the responsibilities of this committee should not be limited to policy making, but should include monitoring and enforcement as well. Dr. Tsan also felt that it is a conflict of interest to have the Radiation Safety Office under the Chief of Nuclear Medicine. The committee agreed to discuss this topic at a future meeting.

In closing, the committee members reaffirmed their responsibility to the Radiation Safety Program and will continue an active search for a qualified candidate for the

position of Radiation Safety Officer. [redacted] 0/S

S. A. KANG, M.D.
Chairman, Radiation Safety/Radioisotope Committee
Acting Radiation Safety Officer

APPROVED/~~DISAPPROVED~~:

F.L. MALPHURS
Director

NOV. 29 1990

Docket No. 030-10026
CAL No. 1-90-019

License No. 31-02755-05

VA Medical Center
ATTN: Fred Malphurs, Director
113 Holland Avenue
Albany, New York 12208

Gentlemen:

Subject: Confirmatory Action Letter No. 1-90-019

On November 20-21, 1990, Mr. Christopher J. Eckert of this office conducted an inspection of NRC licensed activities at the above addressed facility. Several radiological safety weaknesses and apparent violations of NRC requirements were identified. The identified problems indicate an apparent lack of radiological safety program oversight at your facility.

Pursuant to a telephone conversation between you, Dr. Ronald Bellamy and Dr. Mohamed Shanbaky of this office on November 28, 1990, it is our understanding that you have taken or will take the following actions, which will be completed by the dates specified:

1. Perform a complete inventory of all your radioactive sealed sources. Provide the inventory results to this office by December 7, 1990. The results should indicate the serial number, activity and location of each source. Lost sources will be immediately reported to this office in accordance with 10 CFR 20.402 requirements.

2. Provide by January 31, 1991, training to your staff commensurate with their program functions and responsibilities. The training should include: (a) applicable NRC requirements; (b) your procedural requirements and (c) appropriate radiological safety precautions.

3. Obtain the services of an independent consultant to perform a comprehensive evaluation (audit) of your radiation safety program, to be completed by December 31, 1990.

4. Review the results of this audit, and provide, to this office, by January 31, 1991:

   (a) a written response detailing your planned action for each audit finding

9012140028 901129
PDR ADOCK 03010026
31-02755-05 PDR

bcc:
Region I Docket Room (w/concurrences)
J. Lieberman, OE
J. Goldberg, OGC
R. Cunningham, NMSS
J. Glenn, NMSS
D. Holody, RI
M. Knapp, RI
R. Cooper, RI
R. Bellamy, RI
M. Shanbaky, RI
C. Eckert, RI

RI:DRSS	RI:DRSS	RI:DRSS	RI:EC	RI:DRA	RI:DRA
Shanbaky	Bellamy	Konklin	Holody	Kane	Martin
11/29/90	11/29/90	11/29/90	11/29/90	11/29/90	11/29/90

EXHIBIT 17