



UNITED STATES  
NUCLEAR REGULATORY COMMISSION

REGION IV  
1600 EAST LAMAR BOULEVARD  
ARLINGTON, TEXAS 76011-4511

September 22, 2022

EA-22-007

Colonel Sanjay A. Gogate  
The Department of the Air Force  
Air Force Medical Readiness Agency  
7700 Arlington Blvd, Suite 5151  
Falls Church, VA 22042-5151

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF \$96,000 IN  
CIVIL PENALTIES, NRC INSPECTION REPORT 030-28641/2021-004;  
030-28641/2021-005; AND 030-28641/2021-006

Dear Colonel Gogate:

This letter refers to the U.S. Nuclear Regulatory Commission (NRC) inspection conducted on October 26–28, 2021, at the Air Force Medical Readiness Agency's (AFMRA's) facility in Falls Church, Virginia and the inspections conducted on September 27–30 and October 22, 2021, at Kirtland Air Force Base (KAFB) in Albuquerque, New Mexico. The purpose of these inspections was to review the activities authorized under the Department of the Air Force's Master Materials License (MML) 42-23539-01AF. A final exit briefing was conducted by videoconference with you and representatives of the Radioisotope Committee, the Department of the Air Force Inspection Agency, and the KAFB permittees on May 5, 2022. Details of the inspections and 14 associated apparent violations identified during the inspections were provided to you in the subject inspection report, dated May 11, 2022 (nonpublicly available Agencywide Documents Access and Management System (ADAMS) Accession No. ML22125A099 and publicly available ML22132A148).

On June 30, 2022, a predecisional enforcement conference was conducted at the Region IV office with you and members of your staff to discuss the 14 apparent violations, their significance, their root causes, and your corrective actions. A portion of the conference was closed to public observation because we discussed Security-Related Information. In a letter dated July 14, 2022 (ML22199A027, not publicly available), you provided a supplemental written response to the information provided at the conference. On July 15, 2022, the NRC issued a conference summary (ML22193A289).

Based on the information developed during the inspection, the information provided during the conference, and information provided in your supplemental response, the NRC has determined that 14 violations of NRC requirements occurred. Eleven violations are cited in publicly available Enclosure 1, "Notice of Violation and Proposed Imposition of Civil Penalties," and three Security-Related violations are cited in nonpublicly available Enclosure 2, "Notice of Violation."

**Enclosure 2 contains Sensitive Unclassified Non-Safeguards Information. When separated from Enclosure 2, this cover letter and Enclosures 1, 3, 4, and 5 are decontrolled.**

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The circumstances surrounding the violations are described in detail in the subject inspection report.

The NRC considers Violations A, B, and C to be significant violations because they involve the failure to maintain and implement the MML program consistent with the associated NRC inspection and enforcement programs. Therefore, these three violations have been categorized collectively in accordance with the NRC Enforcement Policy as a Severity Level III problem. The Enforcement Policy can be found on the NRC's website at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>.

The NRC considers Violations D, E, F, G, and H to be significant violations because they involve the failure to provide adequate oversight of the Operations/Training-10 Radiation Training Sites at KAFB and ensure that activities conducted under the permit were authorized under the MML, were consistent with NRC regulations, and established a radiation protection program that was protective of personnel, the public, and the environment. Therefore, these five violations have been categorized collectively in accordance with the NRC Enforcement Policy as a Severity Level III problem.

The NRC considers Violations I and J to be significant violations because they involve the failure to provide oversight and control of Building 28005 at KAFB. Building 28005 was released for unrestricted use although it remained contaminated above the NRC's radiological release criteria. Further, associated required records regarding the building were not maintained. Therefore, these two violations have been categorized collectively in accordance with the NRC Enforcement Policy as a Severity Level III problem.

The NRC considers Violation K to be a significant violation because it involved the failure to secure or maintain surveillance of licensed material. Therefore, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level III.

The NRC considers the violations described in nonpublic Enclosure 2 (Violations L, M, and N) to be of low security significance. Therefore, these violations have been categorized in accordance with the NRC Enforcement Policy at Severity Level IV.

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$16,000 is considered for each of the three Severity Level III problems. Separately, a base civil penalty in the amount of \$16,000 is considered for the Severity Level III Violation K.

Because your facility has been the subject of escalated enforcement action within the last two inspections (refer to letter dated October 25, 2018, ML18298A356), the NRC considered whether credit was warranted for *Identification* and *Corrective Action* in accordance with the civil penalty assessment process in Section 2.3.4 of the NRC Enforcement Policy.

The NRC determined that for all three Severity Level III problems, *Identification* credit is not warranted because they were identified by the NRC. Further, the NRC determined that for all three Severity Level III problems, *Corrective Action* credit is not warranted. The *Corrective Action* credit evaluation for the Severity Level III problems is documented in Enclosure 3.

Therefore, to emphasize the importance of the need to provide adequate oversight of your licensed programs and to promptly identify and correct violations, and in recognition of your previous escalated enforcement action, I have also been authorized, after consultation with the

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Director, Office of Enforcement, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalties for twice the base amount (i.e., \$32,000) for each of the three Severity Level III problems for a total of \$96,000 in civil penalties.

In addition, issuance of this Notice of Violation and Proposed Imposition of Civil Penalties constitutes escalated enforcement action that may subject you to increased inspection effort. While the NRC determined that your corrective actions were inadequate, particularly in addressing long-term causal factors, the NRC independently reviewed and concluded that your current oversight of the MML provides reasonable assurance that there is adequate protection of public health and safety and security.

With respect to Violation K, the NRC determined that *Identification* credit is warranted because it was identified by an Air Force MML inspector. Further, the NRC determined that *Corrective Action* credit is warranted for prompt and comprehensive corrective actions documented in the NRC Inspection Report dated May 11, 2022, your predecisional enforcement conference slides, and your supplemental letter dated July 14, 2022. Therefore, to encourage identification and prompt and comprehensive correction of violations, I have been authorized, after consultation with the Director, Office of Enforcement, not to propose a civil penalty for Violation K.

You may choose to pay the proposed civil penalties by submitting your payment with the invoice enclosed to this letter (Enclosure 4), to the following address:

Office of the Chief Financial Officer  
U.S. Nuclear Regulatory Commission  
P.O. Box 979051  
St. Louis, MO 63197

In addition, you may pay the proposed civil penalties in accordance with NUREG/BR-0254 "Payment Methods," Enclosure 5 or ADAMS Accession No. ML19163A244. When using NUREG/BR-0254 to pay the civil penalties, the bill number, EA-22-007, should be used as the "enforcement action identifier" when submitting your payment through one of the approved methods listed in the brochure. The NRC may consider a request for additional time to pay the proposed civil penalties, including the option to enter into an installment agreement, if payment of the civil penalties as a lump sum in the required timeframe would pose a financial hardship. To request additional time to pay, you must submit a written request, with appropriate justification explaining your financial hardship, to [NRCCollections.Resource@nrc.gov](mailto:NRCCollections.Resource@nrc.gov). All requests should be submitted in sufficient time to allow the NRC the ability to review your request for additional time to pay before the 30-day payment period expires.

If you disagree with this enforcement sanction, you may deny one or more of the violations, as described in Enclosure 1, or you may request alternative dispute resolution (ADR) mediation with the NRC to resolve this issue. Alternative dispute resolution is a general term encompassing various techniques for resolving conflicts using a neutral third party. The technique that the NRC has decided to employ is mediation. Mediation is a voluntary, informal process in which a neutral mediator works with parties to help them reach resolution. If the parties agree to use ADR, they select a mutually agreeable neutral mediator who has no stake in the outcome and no power to make decisions. Mediation gives parties an opportunity to discuss issues, clear up misunderstandings, be creative, find areas of agreement, and reach a final resolution of the issues. Additional information concerning the NRC's ADR program can be found at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>.

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The Institute on Conflict Resolution at Cornell University has agreed to facilitate the NRC's ADR program as a neutral third party. If you are interested in pursuing this issue through the ADR program, please contact: (1) the Institute on Conflict Resolution at 877-733-9415; and (2) Neil O'Keefe at 817-200-1156 within 10 days of the date of this letter. Your submitted signed agreement to mediate using the NRC ADR program will stay the 30-day period for payment of the civil penalties, as identified in Enclosure 1, until the ADR process is completed.

You are required to respond to this letter and should follow the instructions specified in the Enclosure 1 when preparing your response to Violations A through K. If you have additional information that you believe the NRC should consider, you should provide it in your response to the Enclosure 1 violations. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

For the Enclosure 2 violations, the NRC has concluded that information regarding: (1) the reason for the violations; (2) the corrective actions taken and planned to correct the violations and prevent recurrence; and (3) the date when full compliance was achieved is already adequately addressed on the docket in the inspection report dated May 11, 2022, your predecisional enforcement conference slides, and your supplemental letter dated July 14, 2022. Therefore, you are not required to respond to the Enclosure 2 violations unless the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, you should follow the instructions specified in Enclosure 2.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice and Procedure," a copy of this letter, Enclosures 1, 3, 4, and 5, and your response to the Enclosure 1 violations will be made available electronically for public inspection in the NRC Public Document Room and from the NRC's ADAMS, accessible from the NRC website at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy or proprietary information so that it can be made available to the public without redaction. The NRC also includes significant enforcement actions on its website at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions>.

However, Enclosure 2 contains Security-Related Information in accordance with 10 CFR 2.390(d)(1) and its disclosure to unauthorized individuals could present a security vulnerability. Therefore, Enclosure 2 will not be made available electronically for public inspection in the NRC Public Document Room or from the NRC's ADAMS.

Should you have any questions concerning this matter, please contact Neil O'Keefe of my staff at 817-200-1156.

Sincerely,



Signed by Morris, Scott  
on 09/22/22

Scott A. Morris  
Regional Administrator

Docket No. 030-28641  
License No. 42-23539-01AF

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Enclosures:

1. Notice of Violation and Proposed Imposition of Civil Penalties (public)
2. Notice of Violation (non-public)
3. Corrective Action Credit Evaluation (public)
4. Civil Penalty Invoice (public)
5. NUREG/BR-0254 "Payment Methods" (public)

cc w/Enclosures:

Lt. Col. Peace, Radioisotope Committee Secretariat

Santiago Rodriguez, Chief  
New Mexico Environment Department  
Radiation Control Bureau  
P.O. Box 5469  
Santa Fe, NM 87502-5469

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NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF \$96,000 IN CIVIL PENALTIES, NRC INSPECTION REPORT 030-28641/2021-004; 030-28641/2021-005; AND 030-28641/2021-006 - DATED SEPTEMBER 22, 2022

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Document: [https://usnrc.sharepoint.com/teams/Region-IV-ACES/ACES S Drive/ENFORCEMENT/\\_EA CASES - OPEN/AF MML EA-22-007/Final Action/NOVCP\\_EA-22-007\\_AF-MML.docx](https://usnrc.sharepoint.com/teams/Region-IV-ACES/ACES%20S%20Drive/ENFORCEMENT/_EA%20CASES%20-OPEN/AF%20MML%20EA-22-007/Final%20Action/NOVCP_EA-22-007_AF-MML.docx)

ADAMS ACCESSION NUMBER – PUBLIC: LETTER AND ENCLOSURES 1, 3, 4, and 5: <b>ML22265A247</b>						
<b>Public: Cover Letter (w/o Enclosure 2)</b> SUNSI Review by: JGK	ADAMS <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Publicly Available <input type="checkbox"/> Non-Publicly Available	<input checked="" type="checkbox"/> Non-Sensitive <input type="checkbox"/> Sensitive	Keyword: NRC-002		
ADAMS ACCESSION NUMBER – NON-PUBLIC: LETTER AND ALL ENCLOSURES: <b>ML22262A320</b>						
<b>Non-Public: Cover Letter &amp; Enclosures</b> SUNSI Review by: JGK	ADAMS <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Publicly Available <input checked="" type="checkbox"/> Non-Publicly Available	<input type="checkbox"/> Non-Sensitive <input checked="" type="checkbox"/> Sensitive	Keyword: MD 3.4, A.3		
<b>OFFICE</b>	SES:ACES	C:MLB	TL:ACES	RC	NMSS	OE
<b>NAME</b>	JKramer	NOKeefe	JGroom	DCylkowski	KWilliams	JPeralta
<b>SIGNATURE</b>	/RA/ E	/RA/ E	/RA/ E	/RA/ E	/RA/ E	/RA/ E
<b>DATE</b>	08/24/22	08/29/22	08/24/22	08/30/22	09/19/22	09/19/22
<b>OFFICE</b>	OGC	D:DNMS	RA			
<b>NAME</b>	RAugustus	MMuessle	SMorris			
<b>SIGNATURE</b>	/NLO/ E	/RA/ E	/RA/ E			
<b>DATE</b>	09/19/22	09/22/22	09/22/22			

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NOTICE OF VIOLATION  
AND  
PROPOSED IMPOSITION OF CIVIL PENALTIES

The Department of the Air Force  
Falls Church, Virginia

Docket No. 030-28641  
License No. 42-23539-01AF  
EA-22-007

During NRC inspections conducted from September 27 to October 28, 2021, 11 violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the NRC proposes to impose civil penalties pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The violations and associated civil penalties are set forth below:

I. Violations Assessed a Civil Penalty

- A. 10 CFR 20.1101(c) requires the licensee to periodically (at least annually) review the radiation protection program content and implementation.

Contrary to the above, from October 1, 2019, to October 28, 2021, the licensee failed to periodically (at least annually) review the radiation protection program content and implementation. Specifically, the licensee's last annual audit review was conducted on September 30, 2019, exceeding the annual requirement.

- B. Materials License No. 42-23539-01AF, License Condition 20.S of Amendment 29 and License Condition 22.S of Amendment 30, require, in part, that the licensee shall adhere to the statements and representations contained in the Understandings between the United States Air Force (USAF) and the NRC (ML14262A340).

Understandings between the USAF and the NRC, Item 17 requires, in part, that the USAF Radioisotope Committee (RIC) shall incorporate the current NRC Inspection Manual Chapter (IMC) 2800, "Materials Inspection Program," and applicable NRC inspection procedures in its (permittee) inspection program to ensure compatibility with NRC's inspection program.

IMC 2800, Section 05.01, "General Inspection Process," Step b.2 requires, in part, that every inspection determine whether the licensee took appropriate action in response to cited violations identified during the previous inspection.

IMC 2800, Section 09.01, "Required Information to Document Inspections," requires, in part, that all documented inspection results must contain: a description of the scope of the licensee's program, a description of the scope of the inspection, and sufficient information to support any cited violations or non-cited violations.

Contrary to the above, from March 2, 2020, to October 28, 2021, the licensee failed to incorporate the current NRC IMC 2800 in its permittee inspection program to ensure compatibility with NRC's inspection program, as evidenced by the following two examples:

- The licensee failed to incorporate the requirements of Section 05.01, Step b.2 and ensure that every inspection determined whether the licensee took appropriate

action in response to cited violations identified during the previous inspection. Specifically, during at least two inspections performed between March 2, 2020 and October 28, 2021, a licensee inspector did not determine whether the permittee took appropriate action in response to cited violations identified during the previous inspection.

- The licensee failed to incorporate the requirements of Section 09.01 and ensure that that all documented inspection results contained: a description of the scope of the licensee's (permittee's) program, a description of the scope of the inspection, and sufficient information to support any cited violations or non-cited violations. Specifically, between March 2, 2020 and October 28, 2021, 14 inspection reports were issued and did not contain a description of the scope of the permittee's program, the scope of the inspection, or sufficient information to support any cited violations or non-cited violations.

- C. Materials License No. 42-23539-01AF, License Condition 20.S of Amendment 29 and License Condition 22.S of Amendment 30, require, in part, that the licensee shall adhere to the statements and representations contained in the Understandings between the USAF and the NRC.

Understandings between the USAF and the NRC dated September 19, 2014, "Enforcement" requires, in part, the USAF RIC shall implement an enforcement program based on the current NRC Enforcement Policy (Policy) to ensure RIC enforcement actions are consistent with the Policy and immediately notify the NRC Region IV project manager when the RIC identifies [permittee] violations of NRC regulations that could result in escalated enforcement.

NRC Enforcement Policy dated January 15, 2020, Section 6.7.c.10 states, in part, that the failure to secure, or maintain surveillance over, licensed material in a quantity greater than 1,000 times the quantity specified in Appendix C, "Quantities of Licensed Material Requiring Labeling," to 10 CFR Part 20, "Standards for Protection against Radiation," is an example of a Severity Level III violation (escalated enforcement).

Contrary to the above, on February 20, 2020, the licensee failed to ensure enforcement actions are consistent with the NRC Enforcement Policy and to notify the NRC when violations of NRC regulations, that could result in escalated enforcement, are identified. Specifically, during an inspection of USAF permit number NM-30470-04/03AFP, the licensee did not disposition a violation regarding the permittees failure to secure a quantity of cesium-137 greater than 1,000 times the quantity specified in Appendix C to 10 CFR Part 20, in accordance with the NRC Enforcement Policy. The licensee's failure to ensure enforcement actions are consistent with the NRC Enforcement Policy, led to the additional failure to notify the NRC of the identification of a violation that could result in escalated enforcement.

This is a Severity Level III problem (Violations A-C) (Enforcement Policy Sections 6.3.c and 6.9.c).

Civil Penalty - \$32,000. EA-22-007



- D. 10 CFR 40.3 requires, in part, that a person subject to 10 CFR Part 40 may not possess, use, provide for long-term care, or dispose of radioactive material as defined in 10 CFR Part 40, or any source material after removal from its place of deposit in nature, unless authorized in a specific or general license issued by the Commission under the regulations in 10 CFR Part 40.

Materials License No. 42-23539-01AF, Conditions 6.B, 7.B, 8.B, and 9.B. of Amendment Nos. 29 and 30 state, in part, that the licensee can use any source material, in any chemical and physical form, in any amount as needed, for uses authorized by the USAF RIC.

Contrary to the above, in June 2020, the licensee failed to confine its use of source material to the purposes authorized in a specific license. Specifically, unsealed source material was used in a manner that was not authorized by the USAF RIC. Soils contaminated with thorium-232 oxide, source material under USAF permit NM-00602-01, were removed from outside of the western perimeter boundary of training site (TS) 2 at Kirtland Air Force Base (KAFB), and were relocated to within the TS2 perimeter boundary, an activity and use not authorized by the USAF RIC.

- E. 10 CFR 20.1101(b) requires that the licensee shall use, to the extent practical, procedures and engineering controls based on sound radiation protection principles to achieve occupational doses and doses to members of the public that are as low as is reasonably achievable (ALARA).

Contrary to the above, from June 2020 to October 22, 2021, the licensee failed to use, to the extent practical, procedures and engineering controls based on sound radiation protection principles to achieve occupational doses and doses to members of the public that are ALARA as evidenced by the following three examples:

- In June 2020, the licensee removed and relocated approximately 120 tons of soils contaminated with thorium-232 oxide and failed to use, to the extent practical, procedures and engineering controls to restrict occupational doses and doses to members of the public: (1) licensee personnel wore and utilized personal hydration packs for drinking water while working in radiologically posted areas where thorium-232 contaminated soils were being handled, increasing the likelihood of ingesting radioactive materials; (2) excavated thorium-232 contaminated soils from outside the fenced perimeter boundary of TS2 were relocated within the fenced perimeter boundary of TS2 in surface piles without proper engineering controls to mitigate or prevent the materials from being windswept beyond the fenced perimeter boundary of TS2, or to mitigate or prevent the continued offsite migration of the materials through precipitation events; and (3) motorized vehicles consisting of a skid steer and a tractor were used within the thorium-223 contaminated area without the establishment of proper engineering controls and measures such as dust controls to minimize inhalation of contaminated dust.
- On August 23, 2021, the licensee established criteria that radiation migration out of the controlled areas of the Operations/Training-10 (OT-10) Radiation Training Sites be surveyed to confirm the migration is “unsubstantial.” The use of the subjective word “unsubstantial” to establish radiation migration criteria was not based on sound radiation protection principles. The word “unsubstantial” was not defined by the

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licensee and did not establish action thresholds to achieve occupational doses and doses to members of the public that are ALARA.

- On October 22, 2021, the licensee failed to use proper engineering controls to control access to the area where elevated radiation levels and thorium-232 contaminated soils had been detected outside of the northwestern fenced perimeter of TS4. Specifically, several T-poles and barbed wire sections were knocked down, and other barbed wire sections were in disrepair.
- F. 10 CFR 20.2103(a) requires, in part, that each licensee shall maintain records showing the results of surveys required by 10 CFR 20.1501. The licensee shall retain these records for 3 years after the record is made.

Contrary to the above, from June 2020 to October 22, 2021, the licensee failed to maintain records showing the results of surveys required by 10 CFR 20.1501. Specifically, the licensee failed to maintain records associated with activities performed in June 2020 to relocate approximately 120 tons of soils contaminated with thorium-232, including: (1) personnel contamination surveys of individuals that performed activities within the contaminated site, and (2) release surveys of equipment that was used within the contaminated site and then released for unrestricted use, including shovels, wheeled carts, buckets, wheelbarrows, tarps, personal protective equipment, a skid steer, and a tractor.

- G. 10 CFR 20.1501(a) requires, in part, that each licensee shall make or cause to be made surveys of areas, including the subsurface that: (1) may be necessary for the licensee to comply with the regulations in 10 CFR Part 20, and (2) are reasonable under the circumstances to evaluate: the magnitude and extent of radiation levels, the concentrations or quantities of residual radioactivity, and the potential radiological hazards of the radiation levels and residual radioactivity detected.

10 CFR 20.1003 defines *residual radioactivity* as radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee's control. This includes radioactivity from all licensed and unlicensed sources used by the licensee but excludes background radiation. It also includes radioactive materials remaining at the site because of routine or accidental releases of radioactive material at the site and previous burials at the site, even if those burials were made in accordance with the provisions of 10 CFR Part 20.

Contrary to the above, from March 2011, to October 22, 2021, the licensee failed to make or cause to be made surveys of areas, including the subsurface that: (1) may be necessary for the licensee to comply with the regulations in this part, and (2) are reasonable under the circumstances to evaluate the magnitude and extent of radiation levels, concentrations or quantities of residual radioactivity, and the potential radiological hazards of the radiation levels and residual radioactivity detected. Specifically, ambient radiation measurements performed by the licensee in March 2011 indicated that licensed radioactive material had migrated beyond the perimeter at the western boundary of TS2 and at the northwestern boundary of TS4. The licensee failed to make or cause to be made surveys of areas, including the subsurface outside of the fenced perimeter boundaries of the active OT-10 Radiation Training Sites at KAFB, that were necessary for the licensee to comply with the regulations in 10 CFR Part 20 and were reasonable under the observed circumstances to evaluate the magnitude and extent of

radiation levels, the concentrations or quantities of residual radioactivity, and the potential radiological hazards of the radiation levels and residual radioactivity detected.

- H. 10 CFR 20.1101(a) requires, in part, that each licensee shall develop, document, and implement a radiation protection program commensurate with the scope and extent of licensed activities and sufficient to ensure compliance with the provisions of 10 CFR Part 20.

Contrary to the above, from December 13, 2005, to October 22, 2021, the licensee failed to develop, document, and implement a radiation protection program commensurate with the scope and extent of licensed activities and sufficient to ensure compliance with the provisions of 10 CFR Part 20. Specifically, the licensee failed to develop, document, and implement a radiation protection program that was commensurate with the scope and extent of environmental use of thorium-232 oxide in soil, and for the control of radiologically contaminated Building 28005 at KAFB.

This is a Severity Level III problem (Violations D-H) (Enforcement Policy Sections 6.3.c and 6.9.c).

Civil Penalty - \$32,000. EA-22-007

- I. 10 CFR 20.1402 requires, in part, that a site will be considered acceptable for unrestricted use if the residual radioactivity that is distinguishable from background radiation results in a total effective dose equivalent (TEDE) to an average member of the critical group that does not exceed 25 millirem per year, including that from groundwater sources of drinking water, and that the residual radioactivity has been reduced to levels that are ALARA.

Materials License No. 42-23539-01AF, Condition 19.Q of Amendment Nos. 19–24, Condition 20.Q of Amendment Nos. 25–29, and Condition 22.Q of Amendment No. 30 requires, in part, that the licensee shall adhere to the statements and representations contained in Final Status Survey Report (FSSR) for Environmental Restoration Program Site OT-10 Radiation Training Sites, dated January 2005, and received May 2005. The four OT-10 Radiation Training Sites, TS5, TS6, TS7, and TS8, including Building 28010 are approved for unrestricted use in accordance with 10 CFR 20.1402. Building 28005, located on TS8, will not be released for unrestricted use.

The FSSR for Environmental Restoration Program Site OT-10 Radiation Training Sites, dated January 2005, and received May 2005, states, in part, that Building 28005 at TS8 remains contaminated above the radiological release criteria.

Contrary to the above, between December 13, 2005, to October 22, 2021, the licensee released Building 28005 at TS8 for unrestricted use although the site failed to meet the NRC criteria to be acceptable for release for unrestricted use. Specifically, the licensee failed to place controls over Building 28005 at TS8 at KAFB and failed to list the site on the respective Master Materials License permit, which resulted in Building 28005 being released by the licensee for unrestricted use. When released for unrestricted use by the licensee, Building 28005 had radiation levels that were distinguishable from background radiation that could have resulted in a TEDE to an average member of the critical group exceeding 25 millirem per year, and the residual radioactivity in Building 28005 had not been reduced to levels that were ALARA.

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- J. 10 CFR 40.36(f) requires, in part, that each person licensed under 10 CFR Part 40 shall keep records of information important to the decommissioning of a facility in an identified location until the site is released for unrestricted use.

Materials License No. 42-23539-01AF, Condition 19.Q of Amendment Nos. 19–24, Condition 20.Q of Amendment Nos. 25–29, and Condition 22.Q of Amendment No. 30 require, in part, that the licensee shall adhere to the statements and representations contained in FSSR for Environmental Restoration Program Site OT-10 Radiation Training Sites, dated January 2005, and received May 2005. The four OT-10 Radiation Training Sites, TS5, TS6, TS7, and TS8, including Building 28010 are approved for unrestricted use in accordance with 10 CFR 20.1402. Building 28005, located on TS8, will not be released for unrestricted use.

The FSSR for Environmental Restoration Program Site OT-10 Radiation Training Sites, dated January 2005, and received May 2005, states, in part, that when referencing Building 28005, the licensee will establish a baseline radiological characterization of the inside floors, walls, and ceilings.

Contrary to the above, from December 13, 2005, to October 22, 2021, the licensee failed to keep records of information important to the decommissioning of a facility in an identified location until the site is released for unrestricted use. Specifically, the licensee was unable to locate the baseline radiological characterization of the inside floors, walls, and ceiling of Building 28005, an area where thorium-232 oxide source material was used and stored and did not keep this and other records important to decommissioning in an identified location.

This is a Severity Level III problem (Violations I-J) (Enforcement Policy Section 6.7.c).  
Civil Penalty - \$32,000. EA-22-007

II. Violation Not Assessed a Civil Penalty

- K. 10 CFR 20.1801 requires that the licensee shall secure from unauthorized removal or access licensed materials that are stored in controlled or unrestricted areas.

10 CFR 20.1802 requires that the licensee shall control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage.

Contrary to the above, on February 20, 2020, the licensee failed to secure from unauthorized removal or access or maintain constant surveillance of licensed material. Specifically, USAF permit number NM-30470-04/03AFP failed to secure a self-shielded irradiator, containing a category 3 quantity of cesium-137, from unauthorized removal or access while the irradiator was not under the constant surveillance by the permittee.

This is a Severity Level III violation (Enforcement Policy Section 6.7.c.10(a)).

Pursuant to 10 CFR 2.201, The Department of the Air Force is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV, 1600 East Lamar Blvd., Arlington, Texas 76011-4511, and email it to [R4Enforcement@nrc.gov](mailto:R4Enforcement@nrc.gov) within 30 days of the date of the letter

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transmitting this Notice of Violation and Proposed Imposition of Civil Penalties (Notice). This reply should be clearly marked as a “Reply to a Notice of Violation and Proposed Imposition of Civil Penalties, EA-22-007” and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation or severity level; (2) the corrective steps that have been taken and the results achieved; (3) the corrective steps that will be taken; 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 reply is not received within the time specified in this Notice, the NRC may issue an order or a demand for information requiring you to explain why your license should not be modified, suspended, or revoked, or why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

You may pay the civil penalties proposed above through one of the following two methods:

1. Submit the payment with the enclosed invoice for Civil Penalties EA-22-007, issued to The Department of the Air Force, to the following address:

Office of the Chief Financial Officer  
U.S. Nuclear Regulatory Commission  
P.O. Box 979051  
St. Louis, MO 63197

OR

2. Submit the payment in accordance with NUREG/BR-0254.

You may protest the imposition of the civil penalties in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice. Should you elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalties, in whole or in part, such answer should be clearly marked as an “Answer to a Notice of Violation, EA-22-007,” and may: (1) deny the violation(s) listed in this Notice, in whole or in part; (2) demonstrate extenuating circumstances; (3) show error in this Notice; or (4) show other reasons why the penalties should not be imposed. In addition to protesting the civil penalties in whole or in part, such answer may request remission or mitigation of the penalties. Should you fail to answer or pay the civil penalties within 30 days of the date of this Notice, the NRC may issue an order imposing the civil penalties.

In requesting mitigation of the proposed penalties, the response should address the factors addressed in Section 2.3.4 of the Enforcement Policy. Any written answer addressing these factors pursuant to 10 CFR 2.205 should be set forth separately from the statement or explanation provided pursuant to 10 CFR 2.201 but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the licensee is directed to the other provisions of 10 CFR 2.205 regarding the procedure for imposing the civil penalties.

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Upon failure to pay any civil penalties which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205 to be due, this matter may be referred to the Attorney General, and the penalties, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The responses noted above, i.e., “Reply to a Notice of Violation and Proposed Imposition of Civil Penalties, EA-22-007” and “Answer to a Notice of Violation, EA-22-007,” should be addressed to: Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001, and a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV, 1600 East Lamar Blvd., Arlington, Texas 76011-4511, and email it to [R4Enforcement@nrc.gov](mailto:R4Enforcement@nrc.gov).

Your response will be made available electronically for public inspection in the NRC Public Document Room and from the NRC’s ADAMS, accessible from the NRC website at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy or proprietary 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 that such material is withheld from public disclosure, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim (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).

In accordance with 10 CFR 19.11, you are required to post this Notice within 2 working days of receipt.

Dated this 22nd day of September 2022

## CORRECTIVE ACTION CREDIT EVALUATION

The NRC performed a *Corrective Action* credit evaluation of the Severity Level III problems identified in the cover letter and Enclosure 1 as part of the civil penalty assessment process in Section 2.3.4 of the NRC Enforcement Policy.

The purpose of the *Corrective Action* factor is to encourage licensees to: (1) take the immediate actions necessary upon discovery of a violation that will restore safety, security, and compliance with the license, regulation(s), or other requirement(s) and (2) develop and implement (in a timely manner) the lasting actions that will not only prevent recurrence of the violation at issue, but will be appropriately comprehensive, given the significance and complexity of the violation, to prevent occurrence of violations with similar root causes.

Regardless of other circumstances (e.g., past enforcement history, identification), the NRC evaluates the licensee's corrective actions as part of the civil penalty assessment process. As a reflection of the importance given to this factor, an NRC judgment that the licensee's corrective action has not been prompt and comprehensive will result in the issuance of civil penalty.

In assessing the *Corrective Action* factor, the NRC considers the timeliness of the corrective action (including the promptness in developing the schedule for long-term corrective action), the adequacy of the licensee's root cause analysis for the violation, and, given the significance and complexity of the issue, the comprehensiveness of the corrective action (i.e., whether the action is focused narrowly on the specific violation or broadly on the general area of concern).

### Violations A, B, and C problem evaluation

Although the prompt corrective actions were adequate to address the violations, the total set of corrective actions are not comprehensive and do not provide confidence that they will preclude repetition. Specifically, the planned corrective actions did not address the lack of knowledge/proficiency with the NRC Enforcement Policy which are required for long term sustainability of the Air Force Master Materials License (MML) oversight programs.

The Understandings between the United States Air Force and the NRC (Agencywide Documents Access and Management System (ADAMS) Accession No. ML14262A340) require the MML to implement an enforcement program based on the current NRC Enforcement Policy to ensure that the licensee will implement enforcement actions consistent with the Enforcement Policy and immediately notify the NRC when it identifies violations that could result in escalated enforcement. While the licensee's proposed corrective actions rely on inspectors from the Department of the Air Force Inspection Agency (DAFIA) to set the Severity Level of violations identified during their inspections, the licensee's corrective actions do not address programmatic changes, such as training for DAFIA inspectors, to ensure that future MML-issued enforcement actions are consistent with the Enforcement Policy. Further, the licensee's corrective action to have the Radioisotope Committee (RIC) conduct peer reviews of DAFIA inspection reports could delay notification to the NRC of potentially escalated enforcement because the licensee did not establish any protocols for notifying the RIC and in turn the NRC, once a potentially escalated issue is identified.

The licensee's prompt actions to update inspection checklists and improve inspection report content address the specific immediate issues with the licensee's implementation of NRC Inspection Manual Chapter (IMC) 2800, "Materials Inspection Program." However, the

licensee's comprehensive corrective actions focused on updating its letter of understanding with the NRC rather than ensuring its inspection program continues to meet IMC 2800.

Violations D, E, F, G, and H problem evaluation

The licensee's proposed development of an Environmental Care Plan and implementation of a comprehensive radiological survey are important long term corrective actions. However, in the interim, the licensee has not taken appropriate prompt corrective actions to address or mitigate the continued movement of thorium-232 in the environment, such as the implementation of erosion controls, or to expand barriers where appropriate to limit access to affected areas outside the licensed boundaries. Additionally, the scope and extent of the thorium-232 migration from the active Operations/Training-10 (OT-10) Radiation Training Sites and its radiological hazard remains unknown and will remain unknown until the licensee implements an appropriate Environmental Care Plan and performs a comprehensive radiological survey in the future.

As an interim corrective action, the licensee proposed to continue to take fence line ambient radiation measurements at the active OT-10 Radiation Training Sites. The licensee proposed to use a soil concentration action level for thorium-232 of 5.7 picocurie per gram (pCi/g). However, 5.7 pCi/g of thorium-232 in soil was originally derived for the former, now decommissioned, OT-10 Radiation Training Sites, based on radiation and soil concentration data specifically obtained from the former sites. Although the action level was placed on the respective KAFB permit as a corrective action to address the active OT-10 Radiation Training Sites, the licensee did not establish whether the assumptions used in deriving 5.7 pCi/g are valid and an appropriate action level for the active OT-10 Radiation Training Sites.

Additionally, the licensee placed the action level on the respective KAFB permit without providing the permittee guidance regarding how it is expected to demonstrate compliance with this action level. Furthermore, fence line ambient radiation surveys are not sufficient to demonstrate the scope and extent of any thorium-232 migration beyond the fenced perimeters of the active OT-10 Radiation Training Sites. As a result, these corrective actions are not effective because they will not establish the magnitude and extent of radiation levels, the concentrations or quantities of residual radioactivity, and the potential radiological hazards of the radiation levels and residual radioactivity resulting from the migration of thorium-232 from the active OT-10 Radiation Training Sites.

While the completed and proposed corrective actions are not adequate, the continuation of authorized permit activities for the OT-10 Radiation Training Sites, used to train personnel in the detection of dispersed radiological contamination from nuclear weapons accidents or incidents, is not impacted. The use of the OT-10 Radiation Training Sites for its permitted training activities does not pose a radiological safety concern.

Violations I and J problem evaluation

In developing its corrective actions to address the issue and to prevent recurrence, the licensee failed to address the root cause(s) that: (1) led to Building 28005 not being identified on the respective MML OT-10 Radiation Training Sites permit and (2) resulted in the release of Building 28005 for unrestricted use even though it was radiologically contaminated. The licensee's corrective actions also did not address searching for existing decommissioning records relevant to the OT-10 Radiation Training Sites and Building 28005, establishing an adequate system of records, and failed to identify the extent of condition across other MML permits regarding maintaining records important to decommissioning.



NRC *Corrective Action* Credit Conclusion

The NRC concluded that for all three Severity Level III problems described above, *Corrective Action* credit is not warranted. While the NRC determined that the licensee's long-term corrective actions were inadequate, particularly in addressing causal factors, the NRC independently reviewed and concluded that the current oversight of the MML provides reasonable assurance that there is adequate protection of public health and safety and security. The NRC's inspection results indicate that declining performance is caused by weakened RIC oversight of permittees compounded by a loss of corporate knowledge due to frequent position turnover. While the licensee's oversight is currently sufficient to ensure public health and safety, the NRC staff determined that more robust corrective actions are needed to fully reverse the observed declining performance.

## Civil Penalty Invoice



09/22/2022

**Address/Customer Information**

The Department of the Air Force  
Air Force Medical Readiness Agency  
7700 Arlington Blvd, Suite 5151  
Falls Church, VA 22042-5151

**Customer Codes**

Account Code: L00001343/1  
Agency Location Code: 00003801

**Bill Information**

Bill Number: EA-22-007  
Amount Due: \$96,000.00  
Due Date: 10/22/2022

**Contact Us**

Phone Number: 301-415-7554  
Fax Number: 301-415-4135  
Email Address: Fees.Resource@nrc.gov

**Remit to Address**

Office of the Chief Financial Officer  
U.S. Nuclear Regulatory Commission  
P.O. Box 979051  
St. Louis, MO 63197

**Bill Summary**

Initial Charges	\$96,000.00
Discount	0.00
Surcharge	0.00
Interest Charges	0.00
Penalty Charges	0.00
Admin Charges	0.00
Bill Amount	\$96,000.00
Collected	0.00
Applied Credit	0.00
Adjustments	0.00
Amount Due	\$96,000.00

**Credit Summary**

Applied Credit	\$0.00
Unapplied Credit	0.00
Credit Total	\$0.00

**Comments:**

For questions, contact (301) 415-7554 or by email at Fees.Resource@nrc.gov. For NRC debt collection procedures, including interest and penalty provisions, see 31 U.S.C. 3717, 4 CFR 101-105, AND 10 CFR 15.

If this invoice is related to an Order Imposing a Civil Penalty, Air Force Medical Readiness Agency is required to pay the Civil Penalty within 30 days of the Order date. If payment is in response to a Notice of Violation and Proposed Imposition of a Civil Penalty, please follow the instructions in the Notice. The NRC may consider a request for additional time to pay the Civil Penalty, including the option to enter into an installment agreement, if appropriate. All requests for additional time to pay an invoice must be submitted in writing, with appropriate justification, to NRCCollections.Resource@nrc.gov, and should be submitted sufficiently ahead of time to allow the NRC time to review the request for additional time to pay within the 30-day payment period. This Invoice is related to the Civil Penalty proposed or imposed under EA-22-007 issued to Air Force Medical Readiness Agency. Please include this reference number on your payment method (see attached Payments Methods Brochure).

**Customer Information**

L00001343/1  
The Department of the Air Force  
Air Force Medical Readiness Agency  
7700 Arlington Blvd, Suite 5151  
Falls Church, VA 22042-5151

**Change of Address:**

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**Phone:**

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**Remittance Information**

Office of the Chief Financial Officer  
U.S. Nuclear Regulatory Commission  
P.O. Box 979051  
St. Louis, MO 63197

**This Payment References the following Bill:**

EA-22-007

**Outstanding Amount Due:** \$96,000.00

**Amount Enclosed:** \_\_\_\_\_

NUREG/BR-0254  
Payment Methods

## QUESTIONS?

If you have questions, please visit <https://www.nrc.gov> and search for "License Fees."

Questions may also be directed to the NRC Accounts Receivable Help Desk by e-mail at [nrc@fiscal.treasury.gov](mailto:nrc@fiscal.treasury.gov), by phone at (301) 415-7554, or by writing to the address below:

U.S. NUCLEAR REGULATORY COMMISSION  
OCFO/DOC/ARB  
Mail Stop T9-E10  
Washington, DC 20555-0001



# Payment Methods

U.S. NUCLEAR REGULATORY COMMISSION  
OCFO/DOC/ARB  
Mail Stop T-9-E10  
Washington, DC 20555-0001  
PH (301) 415-7554



NUREG/BR-0254, Rev. 9  
June 2019



Estimated burden per response to comply with this voluntary collection request: 10 minutes. This brochure provides information about available payment methods. Forward comments about to burden estimate to the Records Management Branch (T6-F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the Paperwork Reduction Project (3150-0190), Office of Management and Budget, Washington, DC 20503. If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

NRC accepts the methods described below.

## PAYMENT BY AUTOMATED CLEARINGHOUSE

To pay by Automated Clearinghouse/Electronic Data Interchange (ACH/EDI), provide a copy of NRC Form 628 to your financial institution. You may obtain a copy of NRC Form 628 from the NRC Web site at <http://www.nrc.gov> by searching for "NRC Form 628." You can also obtain a form by calling the NRC Accounts Receivable Help Desk at (301) 415-7554.

## PAYMENT BY CREDIT CARD

The NRC is currently accepts credit card payments of up to \$24,999.99. For payment by credit card, go to Pay.gov, search for "U.S. Nuclear Regulatory Commission Fees" and enter the required information.

You may also mail or fax NRC Form 629 following the directions on the form. To obtain a copy of NRC Form 629 go to <http://www.nrc.gov> and search for "NRC Form 629" or call the NRC Accounts Receivable Help Desk at (301) 415-7554.



## PAYMENT BY FEDWIRE DEPOSIT SYSTEM

The NRC can receive funds through the U.S. Department of the Treasury (Treasury) Fedwire Deposit System. The basic wire message format below complies with the Federal Reserve Board's standard structured third-party format for all electronic funds transfer (EFT) messages.

See the sample EFT message to Treasury below. Each numbered field is described below.

**1 RECEIVER-DFI#** – Treasury's ABA number for deposit messages is 021030004.

**2 TYPE-SUBTYPE-CD** – The sending bank will provide the type and subtype code.

**3 SENDER-DFI#** – The sending bank will provide this number.

**4 SENDER-REF#** – The sending bank will insert this 16-character reference number at its discretion.

**5 AMOUNT** – The transfer amount must be punctuated with commas and decimal point; use of the "\$" is optional. The depositor will provide this item.

**6 SENDER-DFI-NAME** – The Federal Reserve Bank will automatically insert this information.

**7 RECEIVER-DFI-NAME** – Treasury's name for deposit messages is "TREAS NYC". The sending bank will enter this name.

**8 PRODUCT CODE** – A product code of "CTR" for customer transfer should be the first item in the receiver text field. Other values may be entered, if appropriate, using the ABA's options. A slash must be entered after the product code.

**9 AGENCY LOCATION CODE (ALC)** – THIS ITEM IS OF CRITICAL IMPORTANCE. IT MUST APPEAR ON THE FUNDS TRANSFER DEPOSIT MESSAGE IN THE PRECISE MANNER AS STATED TO ALLOW FOR THE AUTOMATED PROCESSING AND CLASSIFICATION OF THE FUNDS TRANSFER MESSAGE TO THE AGENCY LOCATION CODE OF THE APPROPRIATE AGENCY. The ALC identification sequence can, if necessary, begin on one line and end on the next line; however, the field tag "BNF=" must be on one line and cannot contain any spaces. The NRC's 8-digit ALC is: BNF=/AC-31000001

**10 THIRD-PARTY INFORMATION** – The Originator to Beneficiary Information (OBI) field tag "OBI=" signifies the beginning of the free-form third-party text. All other identifying information intended to enable the NRC to identify the deposit—for example, NRC annual fee invoice number, description of fee, 10 CFR 171 annual fee, and licensee name—should be placed in this field.

The optimum format for fields 7, 8, 9, and 10 using an 8-digit ALC is as follows:

TREAS NYC/CTR/BNF=/AC-31000001 OBI=

The optimum format, shown above, will allow 219 character positions of information following the "OBI=" indicator.

If the licensee's bank is not a member of the Federal Reserve System, the nonmember bank must transfer the necessary information and funds to a member bank, which then must transfer the information and funds to the local Federal Reserve Bank.

For a transfer of funds from local Federal Reserve Banks to be recorded on the same day, the transfer must be received at the New York Federal Reserve Bank by 4 p.m., EST. Otherwise, the deposit will be recorded on the next workday.

## PAYMENT BY CHECK

Checks should be made payable to the U.S. Nuclear Regulatory Commission with the invoice number, Enforcement Action number, or other information that identifies the payment, written on the check. Mail the check to the following address:

U.S. Nuclear Regulatory Commission  
U.S. Bank  
P.O. Box 979051  
St. Louis, MO 63197-9000

FedEx or overnight mailings must be delivered to the following address:

U.S. Nuclear Regulatory Commission  
U.S. Bank Government Lockbox  
SL-MO-C2GL  
1005 Convention Plaza  
St. Louis, MO 63101

## TAXPAYER IDENTIFICATION NUMBER

You must file your Taxpayer Identification Number (TIN) with the NRC. Use NRC Form 531 to provide your TIN. You may obtain NRC Form 531 from the NRC Web site at <http://www.nrc.gov> by searching for "NRC Form 531" or by calling the NRC Accounts Receivable Help Desk at (301) 415-7554.