

established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.309(c)(1)(i) through (viii).

Requests for a hearing and petitions for leave to intervene should be served upon Mr. Jay M. Gutierrez at Morgan, Lewis & Bockius, LLP, 1111 Pennsylvania Avenue, Washington, DC 20004, telephone: 202-739-5466, fax: 202-739-3001, and e-mail [jgutierrez@morganlewis.com](mailto:jgutierrez@morganlewis.com); the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001 (e-mail address for filings regarding license transfer cases only: [OGCLT@NRC.gov](mailto:OGCLT@NRC.gov)); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.302 and 2.305.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated January 23, 2006, available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agency wide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in

ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, 301-415-4737 or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland this 13th day of February 2006.

For the Nuclear Regulatory Commission.

**Patrick D. Milano,**

*Senior Project Manager, Plant Licensing Branch I-1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

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## NUCLEAR REGULATORY COMMISSION

[IA 05-041]

### In the Matter of Theodore D. Simmons, II; Confirmatory Order (Effective Immediately)

#### I

Theodore D. Simmons, II (Mr. Simmons) is employed by a contractor hired to provide various health and safety services to NASA's Goddard Space Flight Center. Mr. Simmons serves as the Radiation Safety Officer (RSO) on the NRC license.

#### 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 did substantiate that Mr. Simmons 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 Mr. Simmons in a letter dated August 18, 2005.

#### III

Subsequent to the inspection in December 2002, and after becoming aware of the details of the apparent violation, Mr. Simmons undertook a number of corrective actions to assure that these events would not recur. These actions included changing the manner in which assessments were completed and source location was verified, and attendance at a 40-hour Radiation Safety Officer course in November 2005 which addressed the issue of communications and reportability to the NRC.

In response to the NRC's August 18, 2005, letter, Mr. Simmons requested the use of Alternative Dispute Resolution (ADR) to resolve these apparent

violations and pending enforcement action. ADR is a process in which a neutral mediator, with no decision-making authority, assists the NRC and the individual to resolve any disagreements on whether a violation occurred, the appropriate enforcement action, and the appropriate corrective actions. At Mr. Simmons' request: (1) A joint Alternative Dispute Resolution (ADR) mediation session was held at the NASA facility in Greenbelt, Maryland, on November 4, 2005, between Mr. Simmons, NASA, 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 Mr. Simmons and the NRC, at which NASA 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, Mr. Simmons 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, in those memoranda, as missing 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) Mr. Simmons 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 used by health physics technicians to account for sources indicating all sources were accounted for, when in fact, sources were not accounted for at the time.

2. Mr. Simmons agreed that he 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. Mr. Simmons also agreed that he provided inaccurate information during the December 18-19, 2002, inspection, as noted in Item 1.

3. The NRC maintained that Mr. Simmons' actions were willful, at a

minimum, in careless disregard of NRC requirements, because Mr. Simmons had reasonable information that material was not accounted for, yet failed to evaluate and take appropriate action, and he provided information to the inspector that was inaccurate. Mr. Simmons contended that his actions were not willful or in careless disregard, in part, because he had doubts about the accuracy of the information, and did not believe it warranted an immediate evaluation. The NRC and Mr. Simmons agreed to disagree on willfulness of his actions.

4. While Mr. Simmons and the NRC agreed to disagree on the willfulness of Mr. Simmons' actions, Mr. Simmons and the NRC agreed that Mr. Simmons' 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 a separate ADR agreement between NASA and the NRC.

5. Mr. Simmons, subsequent to the NRC's identification of these violations, took actions to assure that he learned from these violations and provided the NRC with assurance that it would not recur. These actions included attendance at a 40-hour Radiation Safety Officer course in November 2005 which addressed the issue of communications and reportability to the NRC.

6. During the ADR mediation session, Mr. Simmons recognized an opportunity for others in the industry to learn from his actions which contributed to the violations set forth in Item 1. Therefore, Mr. Simmons agreed to take the following future corrective actions, namely: (a) Providing a lessons learned presentation to all NASA Goddard users of material, as well as to other NASA Goddard employees willing to attend, addressing, at a minimum, reporting requirements, requirements for ensuring completeness and accuracy of information, and being forthright with the NRC in response to questions from inspectors; and (b) providing a similar session to employees from other NASA facilities at a future NASA Occupational Health Conference in 2006.

7. Mr. Simmons agreed to complete the additional actions in Item 6 by August 31, 2006, and send a letter to the NRC informing the NRC that these actions are complete. Mr. Simmons agreed to send this letter to the NRC within 30 days of completion of all actions.

8. In light of the actions Mr. Simmons took as described in Item 5, the actions Mr. Simmons has committed to take as described in Items 6 and 7, and the action that the NRC will take against NASA for the violations, the NRC agrees to neither issue a Notice of Violation to

Mr. Simmons, nor issue an Order banning him from NRC-licensed activities. Rather, the NRC will issue a letter and Confirmatory Order to Mr. Simmons confirming the commitments set forth herein. This letter and the confirmatory Order will be publically available in ADAMS, will appear on the NRC "Significant Enforcement Actions—Individuals" website for a period of 1 year, and will be discussed in a press release announcing the ADR agreement between NASA and the NRC.

9. Mr. Simmons agreed to issuance of the letter and Confirmatory Order confirming this agreement and also agrees to waive any request for a hearing regarding this Confirmatory Order.

#### IV

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

I find that Mr. Simmons' 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 Mr. Simmons' 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 Parts 20 and 30, it is hereby ordered, that:

1. Mr. Simmons will: (a) Provide a lessons learned presentation to all NASA Goddard users of material, as well as to other NASA Goddard employees willing to attend, addressing, at a minimum, reporting requirements, requirements for ensuring completeness and accuracy of information, and being forthright with the NRC in response to questions from inspectors; and (b) provide a similar session to employees from other NASA facilities at a future NASA Occupational Health Conference in 2006.

2. Mr. Simmons will complete these additional actions by August 31, 2006, and will send a letter to the NRC informing the NRC that these actions are complete. Mr. Simmons will send this letter to the NRC within 30 days of completion of all actions.

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

#### VI

Any person adversely affected by this Confirmatory Order, other than Mr. Simmons, 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, DC 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, DC 20555. Copies of the hearing request shall also be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement, and to the Director of the Division of Regulatory Improvement Programs at the same address. 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 2.309(d) and (f).

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.

Dated this 10th day of February 2006.

For the Nuclear Regulatory Commission.

**Michael Johnson,**

*Director, Office of Enforcement.*

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