

Discussion of Science Opportunities  
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Discussions

May 28, 1997

AM

Summaries of Advisory Committee  
Working Group Discussions  
Advisory Committee Recommendations  
Meeting Wrap-up/Future Business  
Dated: May 5, 1997.

**M. Rebecca Winkler,**

*Committee Management Officer.*

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## NUCLEAR REGULATORY COMMISSION

[Docket No. 030-31085; License No. 31-  
28369-01 EA 97-019]

### **Roy Sadovsky, D.V.M. Floral Park, New York; Notice of Denial of License Renewal and Order Terminating License**

#### **I**

Roy Sadovsky, D.V.M., (Licensee or Dr. Sadovsky) is the holder of Byproduct Nuclear Material License No. 31-28369-01 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The License authorizes possession and use of licensed material (i.e., gold-198 seeds) for implantation in horses for the treatment of leg injuries and diseases in accordance with the conditions specified therein. Condition 10 of the License requires that licensed material be used only at the Meadowlands Race Track in East Rutherford, New Jersey, or Showplace Farm and Gaitway Farm in Millstone Township, New Jersey. The License, originally issued on December 22, 1989, was amended on January 10, 1992, and was due to expire on January 31, 1995. The license has remained in effect, however, pursuant to 10 CFR 30.36(a), based on a request made by the Licensee in an application for renewal filed on January 24, 1995.

#### **II**

On August 26, and September 5, 1996, the NRC conducted an inspection at the Licensee's office in Elmont, New York, and at the Gaitway Farm in Millstone Township, New Jersey. During the inspection, it was determined that the Licensee had continued to use licensed radioactive material consisting of gold-198 seeds at White Birch Farm, in Allentown, New Jersey, a location not authorized by the license, despite being

cited for that violation in an NRC Notice of Violation (NOV) issued in January 1992, and despite informing the NRC in February 1992 that he would no longer use the material at the unauthorized location.

During the inspection, the NRC inspector determined, through review of records and interview of the Licensee, that Dr. Sadovsky continued to use gold-198 seeds at the White Birch Farm location on 15 occasions between 1992 and 1996. In addition to this finding of a deliberate violation of an NRC requirement, the August-September 1996 inspection also identified other violations of NRC requirements, each of which are documented in a related Notice of Violation and Proposed Imposition of Civil Penalty issued on this date. These violations include: (1) Failing to secure from unauthorized removal or access, licensed materials (approximately 120 millicuries of gold-198) that were stored in the Licensee's unlocked, open vehicle on September 5, 1996, as required by 10 CFR 20.1801 and 20.1802; (2) transporting licensed material in violation of 10 CFR 71.5 and the applicable requirements of the U.S. Department of Transportation regulations, including failure to use a Type A package as required by 49 CFR 173.415, failure to apply the radioactive material Yellow-II label as required by 49 CFR 172.403, and failure to describe the material on the shipping paper as required by 49 CFR 172.200; (3) failing to provide individual monitoring devices to personnel who assisted in the Licensee's use of licensed material, and to ensure the use of those devices by such personnel, when provided as required by Condition 15 of the License; and (4) conducting operations with licensed material (gold-198) in a manner that caused dose rates in an unrestricted area to exceed 2 millirem in any one hour, as prohibited by 10 CFR 20.1301(a)(2).

On September 13, 1996, the NRC issued an Order Suspending the License (Effective Immediately) and Demand for Information (DFI) to the Licensee, based on the findings of the inspection. As noted in the Order, the violations involving use of licensed material at White Birch Farm were apparently willful, in that the Licensee had been put on notice in 1992 that the license limited use of licensed material to only the locations authorized on the license, and was aware that this material was being used at Allentown, New Jersey, a location not authorized on the NRC license.

Subsequently, the NRC Office of Investigations conducted an investigation of this matter. The investigation determined that the

Licensee's use of gold-198 at an unauthorized location during the period from February 22, 1992, to October 19, 1994, was deliberate, and that the use of this licensed material at this location subsequent to January 1995 was willful.

By letter dated October 15, 1996, the Licensee responded to the Order and Demand for Information. In his response, the Licensee stated, among other things, that he did not willfully use licensed material at a location not authorized by his license and that he believed that his license had been amended to include use of licensed material at White Birch Farm. The Licensee repeated his position in a letter dated January 7, 1997.

On February 26, 1997, an enforcement conference was held with the Licensee. At the enforcement conference, the Licensee again denied that he had committed a willful violation of NRC requirements, and again maintained his belief that his license had been amended to authorize work at White Birch Farm.

Notwithstanding the Licensee's assertion, the NRC has concluded that the Licensee's action of performing licensed activity at White Birch Farm, an unauthorized location, was deliberate. This conclusion is supported by the fact that the Licensee used licensed material at White Birch Farm in February and March 1992, only a short time after he was put on notice by the Notice of Violation issued in January 1992 that such use was not authorized by his License. In addition, notwithstanding the Licensee's assertion that he believed that he had then submitted a license amendment to allow use of licensed material at White Birch Farm, this request was not submitted until January 1995.

#### **III**

Based on the above, the NRC has concluded that the Licensee deliberately violated NRC requirements. Furthermore, the additional violations, which were identified during the 1996 inspection, are of significant concern in that they have the potential to impact public health and safety. In particular, the radiation level from the quantity of gold-198 that the Licensee typically used is approximately 2.5 rem per hour at 10 centimeters and, when implanted in horses, the legs of the treated horses produce radiation levels of more than 200 millirem per hour at a distance of 30 centimeters. Given these radiation levels, the failure to provide and to ensure the use of individual monitoring by a worker raises a question as to

whether workers were exposed to radiation in excess of NRC requirements. The Licensee's failure to use personnel monitoring devices also raises the question of whether the Licensee was exposed to radiation in excess of NRC requirements. Furthermore, the Licensee's failure to secure licensed material, as well as the transport of this material without proper packaging, without affixing proper labels, and without including accurate shipping papers, are of serious concern to the NRC.

The NRC must be able to rely on its Licensees to comply with NRC requirements. It is important that licensed material be used in accordance with the applicable requirements. The Licensee's deliberate, continued use of licensed material at an unauthorized location, the Licensee's failure to provide individual monitoring devices to personnel who assisted in the Licensee's use of licensed material, and the Licensee's failure to take the necessary action to correct the violation of NRC requirements previously cited in January 1992, demonstrate that the Licensee is either unwilling or unable to comply with NRC requirements. Given the safety significance of the identified violations and the deliberate nature of one of the violations, the NRC no longer has reasonable assurance that public health and safety will be protected.

Consequently, I lack the requisite reasonable assurance that the Licensee is willing and able to conduct operations under License No. 31-28369-01 in compliance with the Commission's requirements, and that the health and safety of the public will be protected. Therefore, the public health, safety and interest require that, pursuant to 10 CFR 2.103, the application for renewal of the License be denied and that the License be terminated.

#### IV

Accordingly, pursuant to sections 81, 161b, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.103, it is hereby ordered that the Application for renewal of License No. 31-28369-01 is denied and License No. 31-28369-01 is terminated.

#### V

In accordance with 10 CFR 2.103, the Licensee may request a hearing on this denial of license renewal within 20 days of the date of this denial. 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,

Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and include a statement of good cause for the extension. Any request for hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406-1415.

If a hearing is requested by the Licensee, the Commission will issue an Order designating the time and place of the hearing. If a hearing is held, the issue to be considered at such hearing shall be whether, on the basis of NRC findings and violations described in Sections II and III of this Notice, denial of the application for renewal of the License should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV of this Order shall be final when the extension expires if a hearing request has not been received.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 1st day of May 1997.

**Edward L. Jordan,**

*Deputy Executive Director for Regulatory Effectiveness, Program Oversight, Investigations and Enforcement.*

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## NUCLEAR REGULATORY COMMISSION

[IA-97-024]

### Roy Sadovsky, D.V.M. Floral Park, New York; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

#### I

Roy Sadovsky, D.V.M., (Licensee or Dr. Sadovsky) is the holder of Byproduct Nuclear Material License No. 31-28369-01 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The License authorizes possession and use of licensed material (i.e., gold-198 seeds) for implantation in horses for the treatment of leg injuries and diseases in accordance with the conditions specified therein. Condition 10 of the License requires that licensed material be used only at the Meadowlands Race Track in East Rutherford, New Jersey, or Showplace Farm and Gaitway Farm in Millstone Township, New Jersey. The License, originally issued on December 22, 1989, was amended on January 10, 1992, and was due to expire on January 31, 1995. The license has remained in effect, however, pursuant to 10 CFR 30.36(a), based on a request made by the Licensee in an application for renewal filed on January 24, 1995.

#### II

As noted in a Notice of Denial of License Renewal and Order Terminating License issued to Dr. Sadovsky concurrently on this date, the NRC has found, based on an inspection and investigation, that Dr. Sadovsky has deliberately engaged in violations of NRC requirements, as detailed in the Notice of Denial of License Renewal And Order Terminating License. Notwithstanding the denial of Dr. Sadovsky's license renewal, given Dr. Sadovsky's deliberate failure to adhere to regulatory requirements, as well as the significance of additional violations of other requirements as set forth in the Notice of Denial of License Renewal and Order Terminating License, the NRC no longer has the necessary assurance that Dr. Sadovsky's activities, if performed under any other NRC license, would be performed safely and in accordance with requirements.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Dr. Sadovsky were permitted at this