

August 21, 2002

MEMORANDUM TO: Michael T. Lesar, Chief
Rules and Directives Branch
Division of Administrative Services
Office of Administration

FROM: Martin J. Virgilio, Director **/RA/**
Office of Nuclear Material Safety
and Safeguards

SUBJECT: BWX TECHNOLOGIES, INC., AND NUCLEAR FUEL SERVICES, INC.,
ORDERS

Please find attached one signed original of the subject Federal Register notice (FRN) for your transmittal to the Office of the Federal Register for publication. In addition, five copies of the notice and a disk containing this file are attached.

Attachments:

1. Original FRN
2. Copies of FRN (5)
3. Disk

Docket No:	70-27	70-143
License No.:	SNM-42	SNM-124

CONTACT: Mary Adams, (301) 415-7249
Edwin Flack, (301) 415-8115

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of:

BWX TECHNOLOGIES, INC.
LYNCHBURG, VA

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Docket No. 70-27
License No. SNM-42

**ORDER MODIFYING LICENSE
(EFFECTIVE IMMEDIATELY)**

I

BWX Technologies, Inc. (BWXT) is the holder of Special Nuclear Material License SNM -42 issued by the U.S. Nuclear Regulatory (NRC or Commission) pursuant to 10 CFR Part 70. BWXT is authorized by their license to receive, possess, and transfer byproduct, source material, and special nuclear material in accordance with the Atomic Energy Act of 1954, as amended, and 10 C.F.R. Part 70. The BWXT license, originally issued on August 22, 1956, was renewed on October 1, 1995, and is due to expire on September 30, 2005.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, N.Y., and Washington, D.C., utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness

to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security plan requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain compensatory measures are required to be implemented by BWXT as prudent, interim measures to address the current threat environment. Therefore, the Commission is imposing interim requirements, set forth in Attachment 1¹ of this Order, which supplement existing regulatory requirements, to provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect pending notification from the Commission that a significant change in the threat environment occurs, or if the Commission determines that other changes are needed.

The Commission recognizes that some of the requirements set forth in Attachment 1² to this Order may already have been initiated by BWXT in response to previously issued advisories, or on its own. It is also recognized that some measures may need to be tailored to specifically

¹ Attachment 1 contains classified information and will not be released to the public.

² To the extent that specific measures identified in Attachment 1 to this Order require actions pertaining to BWXT's possession and use of chemicals, such actions are being directed on the basis of the potential impact of such chemicals on radioactive materials and activities subject to NRC regulation.

accommodate the specific circumstances and characteristics existing at BWXT's facility to achieve the intended objectives and avoid any unforeseen effect on safe operation.

Although BWXT's response to the Safeguards and Threat Advisories has been adequate to provide reasonable assurance of adequate protection of public health and safety, the Commission believes that the response must be supplemented because of the current threat environment. As a result, it is appropriate to require certain security measures so that they are maintained within the established regulatory framework. In order to provide assurance that BWXT is implementing prudent measures to achieve an adequate level of protection to address the current threat environment, Special Nuclear Materials License SNM-42 shall be modified to include the requirements identified in Attachment 1 to this Order. In addition, pursuant to 10 C.F.R. §§ 2.202 and 70.81, I find that, in the circumstances described above, the public health, safety and interest and the common defense and security require that this Order be immediately effective.

III

Accordingly, pursuant to Sections 63, 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 C.F.R. § 2.202 and 10 C.F.R. Part 70, IT IS HEREBY ORDERED, **EFFECTIVE IMMEDIATELY**, THAT SPECIAL NUCLEAR MATERIALS LICENSE SNM-42 IS MODIFIED AS FOLLOWS:

- A. BWXT shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 1 to this Order. BWXT shall immediately start implementation of the requirements in Attachment 1 to the Order

and shall complete implementation, unless otherwise specified in Attachment 1 to this order, **no later than February 28, 2003.**

- B.
 - 1. BWXT shall, within **twenty (20) days** of the date of this Order, notify the Commission, (1) if it is unable to comply with any of the requirements described in Attachment 1, (2) if compliance with any of the requirements is unnecessary in its specific circumstances, or (3) if implementation of any of the requirements would cause BWXT to be in violation of the provisions of any Commission regulation or its license. The notification shall provide BWXT's justification for seeking relief from or variation of any specific requirement.
 - 2. If BWXT considers that implementation of any of the requirements described in Attachment 1 to this Order would adversely impact safe operation of its facility, BWXT must notify the Commission, within **twenty (20) days** of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 1 requirement in question, or a schedule for modifying the facilities to address the adverse safety condition. If neither approach is appropriate, BWXT must supplement its response to Condition B1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B1.
- C.
 - 1. BWXT shall, within **twenty (20) days** of the date of this Order, submit to the Commission, a schedule for achieving compliance with each requirement described in Attachment 1.
 - 2. BWXT shall report to the Commission when it has achieved full compliance with the requirements described in Attachment 1.

- D. Notwithstanding any provision of the Commission's regulations to the contrary, all measures implemented or actions taken in response to this Order shall be maintained pending notification from the Commission that a significant change in the threat environment occurs, or if the Commission determines that other changes are needed.

BWXT's responses to Conditions B.1, B.2, C.1, and C.2, above shall be submitted in accordance with 10 C.F.R. §70.5. In addition, BWXT's submittals that contain classified information shall be properly marked and handled in accordance with 10 C.F.R. § 95.39.

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, modify, relax or rescind any of the above conditions upon demonstration by BWXT of good cause.

IV

In accordance with 10 C.F.R. §§ 2.202 and 70.81, BWXT must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which BWXT or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear

Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, and the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement, at the same address, to the Regional Administrator, NRC Region II, Sam Nunn Atlanta Federal Center, Suite 23 T85, 61 Forsyth Street, S.W. Atlanta, GA 30303-3415, and to BWXT if the answer or hearing request is by a person other than BWXT. 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 and also by e-mail to OGCMailCenter@nrc.gov. If a person other than BWXT 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 C.F.R. § 2.714(d)³.

If a hearing is requested by BWXT or 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 Order should be sustained.

³ The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 C.F.R. 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. Those provisions are extant and still applicable to petitions to intervene. Those provisions are as follows: "In all other circumstances, such ruling body or officer shall, in ruling on—(1) A petition for leave to intervene or a request for hearing, consider the following factors, among other things: (i) The nature of the petitioner's right under the Act to be made a party to the proceeding. (ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding. (iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest. (2) The admissibility of a contention, refuse to admit a contention if: (i) The contention and supporting material fail to satisfy the requirements of paragraph (b)(2) of the section; or (ii) The contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief.

Pursuant to 10 C.F.R. §§ 2.202(c)(2)(i), BWXT may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

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 III above shall be final twenty (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 III shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Martin J. Virgilio, Director
Office of Nuclear Material Safety
and Safeguards

Dated this 21 day of August 2002

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

NUCLEAR FUEL SERVICES, INC.
ERWIN, TN

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Docket No. 70-143
License No. SNM-124

**ORDER MODIFYING LICENSE
(EFFECTIVE IMMEDIATELY)**

I

Nuclear Fuel Services, Inc., (NFS) is the holder of Special Nuclear Material License SNM-124 issued by the U.S. Nuclear Regulatory (NRC or Commission) pursuant to 10 C.F.R. Part 70. NFS is authorized by their license to receive, possess, and transfer byproduct, source, and special nuclear material in accordance with the Atomic Energy Act of 1954, as amended, and 10 C.F.R. Part 70. The NFS license, originally issued on September 18, 1957, was renewed on July 2, 1999, and is due to expire on July 31, 2009.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, N.Y., and Washington, D.C., utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State and local government agencies

and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has commenced a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security plan requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain compensatory measures are required to be implemented by NFS as prudent, interim measures to address the current threat environment. Therefore, the Commission is imposing interim requirements, set forth in Attachment 1⁴ of this Order, which supplement existing regulatory requirements, to provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect pending notification from the Commission that a significant change in the threat environment occurs, or if the Commission determines that other changes are needed.

The Commission recognizes that some of the requirements set forth in Attachment 1⁵ to this Order may already have been initiated by NFS in response to previously issued advisories, or on its own. It is also recognized that some measures may need to be tailored to specifically accommodate the specific circumstances and characteristics existing at NFS's facility to achieve the intended objectives and avoid any unforeseen effect on safe operation.

⁴ Attachment 1 contains classified information and will not be released to the public.

⁵ To the extent that specific measures identified in Attachment 1 to this Order require actions pertaining to NFS's possession and use of chemicals, such actions are being directed on the basis of the potential impact of such chemicals on radioactive materials and activities subject to NRC regulation.

Although NFS's response to the Safeguards and Threat Advisories has been adequate to provide reasonable assurance of adequate protection of public health and safety, the Commission believes that the response must be supplemented because of the current threat environment. As a result, it is appropriate to require certain security measures so that they are maintained within the established regulatory framework. In order to provide assurance that NFS is implementing prudent measures to achieve an adequate level of protection to address the current threat environment, Special Nuclear Materials License SNM-124 shall be modified to include the requirements identified in Attachment 1 to this Order. In addition, pursuant to 10 C.F.R. §§ 2.202 and 70.81, I find that, in the circumstances described above, the public health, safety and interest and the common defense and security require that this Order be immediately effective.

III

Accordingly, pursuant to Sections 63, 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 C.F.R. § 2.202 and 10 C.F.R. PART 70, IT IS HEREBY ORDERED, **EFFECTIVE IMMEDIATELY**, THAT SPECIAL NUCLEAR MATERIALS LICENSE SNM-124 is MODIFIED AS FOLLOWS:

- B. NFS shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 1 to this Order. NFS shall immediately start implementation of the requirements in Attachment 1 to the Order and shall complete implementation, unless otherwise specified in Attachment 1 to this order, **no later than February 28, 2003**.

- B. 1. NFS shall, **within twenty (20) days** of the date of this Order, notify the Commission, (1) if it is unable to comply with any of the requirements described in Attachment 1, (2) if compliance with any of the requirements is unnecessary in its specific circumstances, or (3) if implementation of any of the requirements would cause NFS to be in violation of the provisions of any Commission regulation or its license. The notification shall provide NFS's justification for seeking relief from or variation of any specific requirement.
2. If NFS considers that implementation of any of the requirements described in Attachment 1 to this Order would adversely impact safe operation of its facility, NFS must notify the Commission, **within twenty (20) days** of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 1 requirement in question, or a schedule for modifying the facilities to address the adverse safety condition. If neither approach is appropriate, NFS must supplement its response to Condition B1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B1.
- C. 1. NFS shall, **within twenty (20) days** of the date of this Order, submit to the Commission a schedule for achieving compliance with each requirement described in Attachment 1.
2. NFS shall report to the Commission when it has achieved full compliance with the requirements described in Attachment 1.
- D. Notwithstanding any provision of the Commission's regulations to the contrary, all measures implemented or actions taken in response to this Order shall be maintained pending notification from the Commission that a significant change in the threat

environment occurs, or until the Commission determines that other changes are needed.

NFS's responses to Conditions B.1, B.2, C.1, and C.2, above shall be submitted in accordance with 10 C.F.R. §70.5.SNM-124 In addition, NFS's submittals that contain classified information shall be properly marked and handled in accordance with 10 C.F.R. § 95.39

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, modify, relax or rescind any of the above conditions upon demonstration by NFS of good cause.

IV

In accordance with 10 C.F.R. §§ 2.202 and 70.81, NFS must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which NFS or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material

Safety and Safeguards, and the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement, at the same address, to the Regional Administrator, NRC Region II, Sam Nunn Atlanta Federal Center, Suite 23 T85, 61 Forsyth Street, S.W. Atlanta, GA 30303-3415, and to NFS if the answer or hearing request is by a person other than NFS. 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 and also by e-mail to OGCMailCenter@nrc.gov. If a person other than NFS 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 C.F.R. § 2.714(d)⁶.

If a hearing is requested by the licensee or 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 Order should be sustained.

Pursuant to 10 C.F.R. § 2.202(c)(2)(i), NFS may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate

⁶ The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 C.F.R. 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. Those provisions are extant and still applicable to petitions to intervene. Those provisions are as follows: "In all other circumstances, such ruling body or officer shall, in ruling on—(1) A petition for leave to intervene or a request for hearing, consider the following factors, among other things: (i) The nature of the petitioner's right under the Act to be made a party to the proceeding. (ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding. (iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest. (2) The admissibility of a contention, refuse to admit a contention if: (i) The contention and supporting material fail to satisfy the requirements of paragraph (b)(2) of the section; or (ii) The contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief.

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FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Martin J. Virgilio, Director
Office of Nuclear Material Safety
and Safeguards

Dated this 21 day of August 2002