



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, DC 20555 - 0001**

December 9, 2003

EA 03-256

Dr. Elson S. Floyd, President
University of Missouri
321 University Hall
Columbia, MO 65211

**SUBJECT: COMMITMENTS TO BE CONFIRMED BY ORDER MODIFYING LICENSE
(EFFECTIVELY IMMEDIATELY)**

Dear Dr. Floyd:

A Confirmatory Order was discussed by the NRC and your staff during a meeting held at the University of Missouri (MU) on November 3, 2003, and during subsequent discussions by the NRC with your attorney, Thomas C. Poindexter. Based on our understanding of the commitments agreed to by MU, the NRC has drafted the enclosed Confirmatory Order.

Please inform us whether MU will consent to the enclosed draft Confirmatory Order by providing your written response to me at U.S. Nuclear Regulatory Commission, Washington, D.C., 20555, within five working days of the date of this letter. If you consent to the Order, we request that you sign the enclosed Consent and Hearing Waiver form and return it to me at the above address. By signing the enclosed form, MU agrees to have these commitments incorporated into a Confirmatory Order that will be immediately effective upon issuance and MU will waive any and all rights to a hearing concerning the Order. After receiving your written consent, the NRC will issue the aforementioned Order.

Questions concerning this letter should be addressed to Nick Hilton, Office of Enforcement, who can be reached at 301-415-3055.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," documents compiled for enforcement purposes are normally placed in the NRC Public Electronic Reading Room (PERR) link at www.nrc.gov/reading-rm/adams.htm. The NRC will delay placing a copy of this letter with its enclosures into the PERR until the Confirmatory Order is issued.

Sincerely,

/RA/

James G. Luehman, Deputy Director
Office of Enforcement

Docket No. 50-186
License No. R-103

Enclosures: 1. Consent and Hearing Waiver Form
2. Draft Confirmatory Order

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OFFICE	OE:ES	OE:DD	OGC	
NAME	D. Starkey*	J. Luehman	L. Clark*	
DATE	12/11/2003	12/11/2003	12/11/2003	

OFFICIAL RECORD COPY

CONSENT AND HEARING WAIVER FORM

The University of Missouri hereby agrees to comply with the commitments described in this letter and agrees to incorporation of these commitments into a Confirmatory Order that will be immediately effective upon issuance. I recognize that by signing below, the University of Missouri consents to the issuance of the Confirmatory Order, effective immediately, with the commitments described in the NRC's letter dated December 9, 2003, and draft Confirmatory Order attached, and, by doing so, pursuant to 10 CFR 2.202(a)(3) and (d), the University of Missouri waives the right to request a hearing on all or any part of the Order.

Name and Title

Date

ENCLOSURE 1

EA 03-256

Dr. Elson S. Floyd, President
University of Missouri
321 University Hall
Columbia, MO 65211

SUBJECT: CONFIRMATORY ORDER (EFFECTIVE IMMEDIATELY)

Dear Dr. Floyd:

The enclosed Confirmatory Order is being issued to the University of Missouri (MU), the licensee, to confirm certain commitments, as set forth in Section V of the Order, and to ensure that processes used at the University of Missouri Research Reactor (MURR) for addressing employee protection and safety concerns will be adequately enhanced. The Confirmatory Order was discussed by the NRC and your staff during discussions held at MU on November 3, 2003, and was agreed to by MU and NRC prior to a final NRC determination regarding whether a violation occurred at MURR based on findings of an NRC investigation conducted to determine whether a former research scientist at MURR was subject to employment discrimination for engaging in protected activities. In view of the Confirmatory Order, consent by the licensee thereto by letter dated December __, 2003, and subject to the satisfactory completion of the conditions of the Confirmatory Order by the licensee, the NRC will not pursue further enforcement action on the subject of this investigation. In consideration of the mutual understanding of future actions between MU and the NRC, MU has waived its right to request a hearing on all or any part of this Confirmatory Order.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to civil monetary penalties.

Questions concerning this Order should be addressed to Nick Hilton, Office of Enforcement, who can be reached at 301-415-3055.

A copy of this letter and its enclosure(s) will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent

Dr. E.S. Floyd

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possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction. The NRC also includes significant enforcement actions on its Web site at www.nrc.gov; select **What We Do, Enforcement**, then **Significant Enforcement Actions**.

Sincerely,

Frank J. Congel, Director
Office of Enforcement

Docket No. 50-186
License No. R-103

Enclosure: Confirmatory Order (Effective Immediately)

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
University of Missouri)
University of Missouri Research Reactor)

Docket No. 50-186
License No. R-103
EA-02-256

CONFIRMATORY ORDER MODIFYING LICENSE
(EFFECTIVE IMMEDIATELY)

I

The University of Missouri Research Reactor (MURR) is a research reactor regulated by the U.S. Nuclear Regulatory Commission (NRC). MURR is located on the campus of the University of Missouri (MU) in Columbia Missouri.

II

On December 18, 2001, the NRC initiated an investigation of the University of Missouri (the licensee) to determine if a former senior research scientist at the MURR facility was the subject of employment discrimination and continued retaliation by management for previous protected activities. The NRC Office of Investigations (OI) concluded in Office of Investigations Report No. 4-2001-054 that the former senior research scientist was the subject of employment discrimination and continued retaliation by management for previous protected activities.

By letter dated June 4, 2003, the NRC provided the licensee with its conclusions through issuance of an apparent violation of employee protection requirements and a synopsis of the referenced OI report. During subsequent discussions, NRC and MU agreed in principle regarding acceptable actions that, if performed, should better ensure that personnel involved with MURR will not be subject to employment discrimination or retaliation for engaging in protected activity, including raising safety concerns. The details of the agreement are set forth in Section V of this Order.

III

The licensee has agreed to take certain actions to modify its access authorization procedures to better ensure transparency and clarity, to assess the work environment at MURR, to perform periodic training, and to modify its organization to better ensure that university senior management is appropriately involved in ensuring a safety conscious work environment (SCWE). The agreed-upon actions noted in Section V of this order focus on (1) modifying the chain of command for MURR; (2) development of a long-term plan, which will better ensure a SCWE; and (3) ensuring timely review of access requests and providing for review of access authorization denials by an independent organization.

IV

Since the licensee has committed to take comprehensive actions to address NRC concerns, and since the licensee has committed to assess, train, and develop a long-term plan for ensuring a work environment conducive to employees raising safety concerns or engaging in any form of protected activity without fear of retaliation, the NRC has concluded that its concerns can be resolved through the NRC's confirmation of the licensee commitments as outlined in this Order.

I find that the licensee's commitments as set forth in Section V below are acceptable and necessary and conclude that with these commitments, the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that these commitments be confirmed by this Order. Based on the above and the licensee's consent, this Order is immediately effective upon issuance. The licensee for MURR is required to provide the NRC with a letter summarizing its actions when all of the Section V commitments have been completed.

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 C.F.R. §2.202 and 10 C.F.R. Part 50, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY THAT:

1. The licensee shall modify its chain-of-command for MURR to better ensure oversight of its activities by university senior management. It has been agreed that the modification of Figure 6.0 in the MURR Technical Specifications will reflect MURR reporting to the Office of the Provost, who in-turn, reports to the Office of the President, University of Missouri. The requisite technical specification change shall be submitted to the NRC within 30 days of this Order and upon being granted by the NRC, shall be effective no later than 30 days after the date of the NRC's issuance of the license amendment.
2. The licensee shall develop a long-term plan for ensuring a SCWE. This plan, which shall address a minimum of two years, shall include, at a minimum:
 - (a) Performance of an employee cultural survey developed by an independent consultant or entity. This survey shall be performed annually for not less than two years. During the two year period, the NRC shall be provided an annual report summarizing the findings of the culture assessment, including the questions used, the methodology applied, and any follow-up actions. The NRC would consider the use or partial use of MU's campus departments (e.g., psychology) to constitute an independent entity for purpose of this action, with the stipulation that a separate independent consultant or entity shall review the assessment, including the questions used and the methodology applied, prepared by the MU campus department.
 - (b) Annual training of MURR employees and other personnel who routinely use the MURR facility on how to better ensure a SCWE. The first two years of the annual training shall be conducted by an independent consultant or entity with expertise in

providing SCWE training. The licensee shall designate a specific manager to be responsible for ensuring annual SCWE training. SCWE training shall include, at a minimum:

1. Policies and programs designed to encourage employees to raise concerns, including a description of the multiple pathways for raising concerns.
2. Discussion of NRC regulations and any applicable federal and state laws pertaining to whistleblower protection, including a discussion of protected activities and adverse actions stated in 10 C.F.R. 50.7.
3. Expectations for management to promote a SCWE
4. Expectations for employees to report concerns, especially safety concerns.
5. Other applicable procedures and processes related to implementing and maintaining a SCWE.
6. Additional training for managers and supervisors describing their specific responsibilities and obligations.

The plan for ensuring a SCWE shall be forwarded to the NRC within sixty (60) days after the date of this order and implementation shall begin no later than ninety (90) days after the date of this Order.

3. Within forth-five (45) days after the date of this Order the licensee will modify MURR's access authorization procedures to better ensure transparency and clarity in its processes.

The licensee shall maintain a process for granting access to the facility with two key components. The first component shall focus on the need for access. The second component shall involve routine background checks consistent with industry practices and other requirements contained in NRC regulations. The procedure modifications will, at a minimum, provide for the following:

- (a) A requirement that personnel requesting sponsorship discuss the following issues, at a minimum:

- *Basis:* A detailed description of the basis for requesting access (escorted or unescorted) to the facility.
 - *Funding:* Source of funding for the subject project; whether funding has already been obtained or when it is anticipated.
 - *Resources:* Necessary project resources (e.g., personnel, equipment, reactor time).
 - *Benefits to MURR:* Is the subject project a collaborative project which will lead to credit for participation; does the subject project involve collaboration with MURR staff?
 - *Strategic:* Is the subject project consistent with MURR's published strategic plan and research priorities?
- (b) Any sponsor denying a written request for sponsorship by an applicant shall provide the Director of MURR in writing with the basis for such denial within fifteen (15) days of receipt of such a request.
- (c) Access requests shall be addressed by MURR within sixty (60) days and a decision by the Director of MURR provided to the requestor in writing within that time. Requestors being denied access shall be informed in writing of the appeal provisions of (e).
- (d) The Provost shall be informed of any denial of access by the Director of MURR.
- (e) The Ombudsman Panel shall review any decision by the Director of MURR under (c) upon an appeal request in writing by the applicant within fifteen (15) days of receipt of such a denial. The Ombudsman Panel shall provide a report of recommendations regarding the denial to the Office of the Provost for its reconsideration of the Director's decision within forty five (45) days of receipt of an appeal request.

4. The licensee shall post this Confirmatory Order at the MURR facility and inform MURR employees of its content.
5. The President of the University of Missouri shall within thirty (30) days of the date of this order issue a letter to all individuals with access to the MURR facility which affirms the licensee's commitment to a SCWE and which provides a summary of the licensee's policy to promote a SCWE.

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

VI

Any person adversely affected by this Confirmatory Order, other than the licensee, 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, D.C. 20555. Copies of the hearing request shall also be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington D.C. 20555, to the Assistant General Counsel for Materials Litigation and Enforcement, to the Director of the Division of Regulatory Improvement Programs at the same address, and to MU. 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 to the Office of the General Counsel by means of facsimile transmission to 301-415-3725 or e-mail to 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 C.F.R. § 2.714(d).

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.

FOR THE NUCLEAR REGULATORY COMMISSION

Frank Congel, Director
Office of Enforcement

Dated this XXth Day of December, 2003