

NUCLEAR REGULATORY COMMISSION

Docket No. 72-1004 and 72-1027

EA-05-045

**In the Matter of TRANSNUCLEAR, INC., AND ALL OTHER PERSONS WHO OBTAIN
SAFEGUARDS INFORMATION DESCRIBED HEREIN**

AGENCY: Nuclear Regulatory Commission

ACTION: Issuance of Order Imposing Requirements for the Protection of Certain Safeguards Information.

FOR FURTHER INFORMATION CONTACT: Cynthia Barr, Project Manager, Licensing and Inspection Directorate, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Rockville, MD 20852. Telephone: (301) 415-4015; fax number: (301) 415-8555; e-mail CSB2@nrc.gov.

SUPPLEMENTARY INFORMATION:

I.

In accordance with the Atomic Energy Act of 1954 and 10 CFR Part 72, Transnuclear, Inc., (Transnuclear) holds Certificate of Compliance No. 1004 for the Model No. NUHOMS®-32PT storage cask and Certificate of Compliance No. 1027 for the Model No. TN-68 storage cask. In a phone call on January 27, 2005, Transnuclear agreed to meet with the U.S. Nuclear Regulatory Commission (NRC) staff with Safeguards Information security measures in place. The purpose of the meeting(s) is to discuss the NRC's engineering evaluations performed to evaluate the safety and security of an array of NUHOMS®-32PT and an array of TN-68 storage casks. The meeting(s) will be closed to the public.

Following the September 11, 2001, simultaneous terrorist events at the World Trade Center (WTC) in New York City and at the Pentagon in Virginia, the U.S. Government issued a nationwide alert for the potential of additional terrorist acts within the United States. The NRC initiated a comprehensive review of all NRC-licensed activities to evaluate those activities against threats. As part of that review, U.S. Nuclear Regulatory Commission initiated an engineering study to assess the consequences of a terrorist event, similar in magnitude to the WTC and Pentagon, on spent nuclear fuel transportation packages and storage casks. The NRC staff intends to discuss specific information on the engineering evaluations performed for the NUHOMS®-32PT and the TN-68 storage casks with Transnuclear. However, the Commission has determined that the material to be discussed at the meeting(s) is Safeguards Information, will not be released to the public, and must be protected from unauthorized disclosure. Therefore, the Commission is imposing the requirements, as set forth in 10 CFR 73.21, so that Transnuclear can receive this information for review and comment at the closed meeting. This Order also imposes requirements for the protection of Safeguards Information in the hands of any person¹, whether or not a Licensee of the Commission, who produces, receives, or acquires Safeguards Information.

II.

The Commission has broad statutory authority to protect and prohibit the unauthorized

¹Person means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the Department, except that the Department shall be considered a person with respect to those facilities of the Department specified in section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244), any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

disclosure of Safeguards Information. Section 147 of the Atomic Energy Act of 1954, as amended, grants the Commission explicit authority to “issue such orders, as necessary to prohibit the unauthorized disclosure of safeguards information . . .”. This authority extends to information concerning special nuclear material, source material, and byproduct material, as well as production and utilization facilities. Licensees and all persons who produce, receive, or acquire Safeguards Information must ensure proper handling and protection of Safeguards Information to avoid unauthorized disclosure in accordance with the specific requirements for the protection of Safeguards Information as contained in 10 CFR 73.21. The Commission hereby provides notice that it intends to treat all violations of the requirements contained in 10 CFR 73.21, applicable to the handling and unauthorized disclosure of Safeguards Information, as serious breaches of adequate protection of the public health and safety and the common defense and security of the United States. Access to Safeguards Information is limited to those persons who have established the need-to-know the information, and are considered to be trustworthy and reliable. A need-to-know means a determination by a person having responsibility for protecting Safeguards Information that a proposed recipient's access to Safeguards Information is necessary in the performance of official, contractual, or duties of employment. Licensees and all other persons who obtain Safeguards Information must ensure that they develop, maintain and implement strict policies and procedures for the proper handling of Safeguards Information to prevent unauthorized disclosure, in accordance with the requirements in 10 CFR 73.21. Transnuclear must ensure that all contractors whose employees may have access to Safeguards Information either adhere to the licensee’s policies and procedures on Safeguards Information or develop, maintain and implement their own acceptable policies and procedures. Transnuclear remains responsible for the conduct of their contractors. The policies and procedures necessary to ensure compliance with applicable requirements contained in 10 CFR 73.21 must address, at a minimum, the following: the

general performance requirement that each person who produces, receives, or acquires Safeguards Information shall ensure that Safeguards Information is protected against unauthorized disclosure; protection of Safeguards Information at fixed sites, in use and in storage, and while in transit; correspondence containing Safeguards Information; access to Safeguards Information; preparation, marking, reproduction and destruction of documents; external transmission of documents; use of automatic data processing systems; and removal of the Safeguards Information category.

In order to provide assurance that Transnuclear is implementing prudent measures to achieve a consistent level of protection, to prohibit the unauthorized disclosure of Safeguards Information, Transnuclear shall implement the requirements identified in 10 CFR 73.21. The Commission recognizes that Transnuclear may have already initiated many of the measures set forth in 10 CFR 73.21 to this Order for handling of Safeguards Information in conjunction with a previous NRC Order. In addition, pursuant to 10 CFR 2.202, I find that in light of the common defense and security matters identified above, which warrant the issuance of this Order, the public health, safety and interest require that this Order be effective immediately.

III.

Accordingly, pursuant to Sections 53, 57, 62, 63, 81, 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 Part 72, IT IS HEREBY ORDERED, **EFFECTIVE IMMEDIATELY**, THAT TRANSNUCLEAR, INC., AND ALL OTHER PERSONS WHO PRODUCE, RECEIVE, OR ACQUIRE THE SAFEGUARDS INFORMATION DESCRIBED ABOVE, AND ANY RELATED SAFEGUARDS INFORMATION, SHALL COMPLY WITH THE REQUIREMENTS OF 10 CFR 73.21.

The Director, Office of Nuclear Materials Safety and Safeguards, may in writing, relax or rescind any of the above conditions upon demonstration by the licensee.

IV.

In accordance with 10 CFR 2.202, Transnuclear 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 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. Any request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, 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, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to Transnuclear if the hearing request is by a person other than Transnuclear. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that 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 either by means of facsimile transmission to 301-415-3725 or by e-mail to OGCMailCenter@nrc.gov. If a person other than Transnuclear 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 2.714(d).

If a hearing is requested by Transnuclear 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 CFR 2.202(c)(2)(i), Transnuclear 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. A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

Margaret V. Federline, Deputy Director
Office of Nuclear Material Safety
and Safeguards

Dated this day of March 2005.

Pursuant to 10 CFR 2.202(c)(2)(i), Transnuclear 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. A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Margaret V. Federline, Deputy Director
Office of Nuclear Material Safety
and Safeguards

Dated this 3rd day of March 2005.

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*see previous concurrence

OFC:	SFPO	E	SFPO	E	SFPO	E	OE		OGC			
NAME:	BWhite*		CBarr*		RLewis*		FCongel*		JGoldberg*			
DATE:	3/1/05		3/1/05		3/1/05		3 / 3 /05		3/1/05			
OFC:	NSIR		NSIR		SFPO		SFPO		D:SFPO		DD:NMSS	
NAME:	ALSilvious*		GMTracy*		BThomas*		MWHodges*		EWBrach*		MVFederline*	
DATE:	3/1 /05		3/2/05		3 / 3 /05		3 / 3 /05		3 / 3 /05		3 / 3 /05	