



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

July 15, 2005

EA-04-225

AVI Food Systems, Inc.
Ms. Sandy Gray, Director of Human Resources
2590 Elme Road, N.E.
Warren, Ohio 44483

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

Dear Ms. Gray:

The enclosed Confirmatory Order is being issued to AVI Food Systems, Inc. (AVI) in order to confirm certain commitments, as set forth in Section V of the Order, and to ensure that AVI's process for addressing employee protection and safety conscious work environment will be enhanced. In view of the Confirmatory Order, and your consent to these commitments described in Mr. Hutton's letter dated June 9, 2005, the U.S. Nuclear Regulatory Commission (NRC) staff is exercising its enforcement discretion and will not issue a Notice of Violation or a civil penalty in this case. In addition, by correspondence dated July 6, 2005, AVI has consented to the issuance of the Confirmatory Order and waived their right to request a hearing on all or any part of the Confirmatory Order.

As part of the settlement agreement, AVI agreed to include in its policy/programs, information necessary to ensure that its future activities with NRC licensees will incorporate training for its employees involved with the NRC licensees regarding employee protection, safety conscious work environment, and safety culture. Section IV of the Order requires that AVI provide the NRC with a letter summarizing its actions when all of the requirements have been completed. The NRC staff requests that AVI include a copy of the changes to its policy/program as part of the letter. Be advised that the NRC staff will review the policy/program changes and may conduct future inspections to evaluate the implementation of your commitments.

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 Confirmatory Order should be addressed to Russell Arrighi, NRC Office of Enforcement, who can be reached at 301-415-3936 or via e-mail at rja1@nrc.gov

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and its enclosures will be made available electronically for public inspection in the NRC Public

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

Sincerely,

/RA/

Michael R. Johnson, Director
Office of Enforcement

Enclosures:

1. Confirmatory Order
2. Copy of Consent and Hearing Waiver Form dated July 6, 2005

cc w/out encl: Lee Hutton, Counsel for AVI Food Systems Inc.
Mr. Mark B. Bezilla, Vice President-Nuclear, Davis-Besse

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Sincerely,

/RA/

Michael R. Johnson, Director
Office of Enforcement

Enclosures:

1. Confirmatory Order
2. Copy of Consent and Hearing Waiver Form dated July 6, 2005

cc w/out encl: Lee Hutton, Counsel for AVI Food Systems Inc.
Mr. Mark B. Bezilla, Vice President-Nuclear, Davis-Besse

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*See previous concurrence

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OFFICE	OE:ES*		OGC*		OE:DD		OE:D	
NAME	RArrighi		SBrock		JLuehman		MJohnson	
DATE	7/07/05		7/08/05		7/2/05		7/14/05	

C = COVER

E = COVER & ENCLOSURE

N = NO COPY

Enclosure 1

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
AVI Food Systems, Inc.) EA-04-225

CONFIRMATORY ORDER
(EFFECTIVE IMMEDIATELY)

I

AVI Food Systems, Inc. (AVI) is an independently owned and operated food service company serving various industries in the Midwest and Eastern United States including the Davis-Besse plant which is regulated by the U.S. Nuclear Regulatory Commission (NRC or Commission). AVI headquarters is located in Warren, OH.

II

On February 9, 2004, and July 8, 2004, the NRC's Office of Investigations (OI) began investigations to determine if former AVI employees at the Davis-Besse facility were the subject of employment discrimination in violation of 10 CFR 50.7. In OI Report Nos. 3-2004-006 and 3-2004-018, OI concluded that AVI employees were the subject of discrimination. By letter dated February 25, 2005, the NRC identified to FirstEnergy Nuclear Operating Company (FENOC) the NRC's concern and offered FENOC and AVI the opportunity to attend a predecisional enforcement conference or to request alternative dispute resolution (ADR) in which a neutral mediator with no decision-making authority would facilitate discussions between the NRC, FENOC and AVI, and if possible, assist the NRC and the parties in reaching an agreement on resolving the concerns. FENOC and AVI chose to participate in ADR. On

May 11, 2005, the NRC and AVI met at the Davis-Besse facility in Oak Harbor, Ohio in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. As part of the ADR session, based upon the facts discussed during the mediation session and the commitments noted in Section IV below, the NRC will not issue a Notice of Violation to AVI for this issue.

III

By letter dated June 9, 2005, AVI committed to include in its policy/programs, information necessary to ensure that its future activities with NRC licensees will incorporate training for its employees involved with the NRC licensees regarding safety conscious work environment (SCWE) and safety culture. The training program will have the objective of reinforcing the importance of maintaining a SCWE and of assisting managers and supervisors in responding to employees who raise safety concerns in the workplace. AVI also agreed to include in such training the requirements of 10 CFR 50.7, "Employee protection."

On July 6, 2005, AVI consented to the NRC issuing this Confirmatory Order with the commitments, as described in Section IV below. AVI further agreed in its July 6, 2005, letter that this Order is to be effective upon issuance and that it has waived its right to a hearing.

The NRC has concluded that its concerns can be resolved through effective implementation of AVI's commitments. I find that AVI's commitments as set forth in Section IV 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 the public health and safety require that AVI's commitments be confirmed by this Order. Accordingly, the staff is exercising its enforcement discretion and will not issue a Notice of Violation in this case. Based

on the above and AVI's consent, this Order is immediately effective upon issuance. AVI is required to provide the NRC with a letter summarizing its actions when all of the Section IV requirements have been completed.

IV

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 Part 30, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

By no later than six months from the issuance of this Order, AVI will include in its policy/programs, information necessary to ensure that its future activities with NRC licensees will incorporate training, initial and recurring, for its employees involved with the NRC licensees regarding SCWE and safety culture. AVI also agreed to include in such training the requirements of 10 CFR 50.7, "Employee protection."

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

V

Any person adversely affected by this Confirmatory Order, other than AVI, 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 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: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall 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 at the same address, to the Regional Administrator, NRC Region III, 2443 Warrenville Road, Suite 210, Lisle, IL 60532-4352, and to the Licensee. Because of continuing 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 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 should be sustained.

A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Michael R. Johnson, Director
Office of Enforcement

Dated this 15th day of July 2005

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