

July 22, 2005

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

August 1, 2005 (11:10am)

In the Matter of )

LOUISIANA ENERGY SERVICES, L.P. )

(National Enrichment Facility) )

Docket No. 70-3103

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

NMAG'S AND NMED'S STATUS REPORT  
ON SETTLEMENT AGREEMENT

The New Mexico Attorney General ("NMAG") and the New Mexico Environment Department ("NMED") hereby file their status report on the settlement agreement between the NMAG, NMED and Louisiana Energy Services, L.P. ("LES") in accordance with the Atomic Safety and Licensing Board's ("Board") Order dated July 11, 2005.

Background

On June 23, 2005, NMAG, NMED and LES filed a Joint Motion for Approval of Settlement Agreement ("Joint Motion") with the Board, seeking approval of a settlement agreement that had been executed by the Attorney General of the State of New Mexico, the Secretary of the New Mexico Environment Department, and the President and Chief Executive Officer of LES. The settlement agreement resolves all admitted contentions of NMAG and NMED, and provides for withdrawal of the State of New Mexico from this proceeding upon approval of the agreement by the Board.

The settlement agreement also resolves issues that are of critical importance to the State, its citizens, and its environment. The settlement agreement limits the number of cylinders of

LES's waste material, depleted uranium hexafluoride ("DUF6") that can be stored onsite at LES, and limits the length of time any one cylinder may be stored onsite. Furthermore, the settlement agreement ensures that there will be no long-term storage or disposal of DUF6 in New Mexico, that LES will not construct or operate a deconversion facility in the State, and that the United States Department of Energy ("DOE") will not take possession of and store DUF6 at the LES facility indefinitely. Finally, the settlement agreement provides robust financial assurances regarding the NEF. Each of these concerns of the State is directed to protecting the health and safety of its citizens and the integrity of its environment.

On July 5, 2005, Nuclear Regulatory Commission Staff ("Staff") filed objections to the proposed Settlement Agreement. Staff noted that it was not a party to the negotiations to the settlement, and argued that certain provisions of the agreement may not be enforceable by the Commission. Nuclear Information and Resource Service/Public Citizen ("NIRS/PC") also filed a response to the proposed Settlement Agreement. NIRS/PC did not object to the terms of the Settlement Agreement, but simply wanted affirmed that the Settlement Agreement would not affect their litigation rights, and requested resolution of Staff's objections.<sup>1</sup>

On July 7, 2005, LES requested that the Board defer ruling on the Joint Motion so that Staff's comments could be evaluated and to ascertain whether there was an opportunity to reach resolution. NMAG and NMED concurred in the motion to allow additional time for further review and an opportunity to confer with principals.

On July 11, 2005, the Board issued an Order deferring ruling on the Joint Motion, and requested that the parties file a status report regarding the Settlement Agreement by July 22, 2005.

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<sup>1</sup> NIRS/PC is correct that approval of the settlement agreement would have no effect on their litigation rights.

## Status Report

NMAG, NMED and LES have been in discussions between themselves and with the NRC Staff and have reached resolution with Staff on their objections. NMAG and NMED hereby request the Board to expeditiously approve the revised settlement agreement that is presented as Exhibit A to this Status Report, which will substitute for the settlement agreement that was attached to the Joint Motion as Exhibit 1. An original fully executed Exhibit A will be forwarded to the Board next week.

The Commission has a long-standing policy of encouraging settlements. The Commission's rules provide: "The fair and reasonable settlement and resolution of issues proposed for litigation in proceedings . . . is encouraged. Parties are encouraged to employ various methods of alternate dispute resolution to address the issues without the need for litigation . . . ." 10 C.F.R. § 2.338. Indeed, encouraging settlement

not only can lead to reducing the costs and burdens of litigation, but can also bring more satisfying outcomes than those produced by litigation, allowing both sides to a controversy to reconcile their philosophical differences by reaching mutually agreeable practical resolutions. Unlike litigation, which can leave underlying disputes among the parties festering even after a decision producing "winners" and "losers" is rendered by an adjudicator, settlement produces a result shaped by, and acceptable to, the parties themselves . . . [, and is more likely to yield a] harmonious future [for] all involved.

*In the Matter of CFC Logistics, Inc.*, 61 NRC 45, 50 (2005) (parentheticals and footnotes omitted; brackets in original).

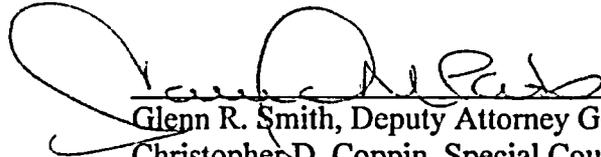
The revised settlement agreement now before the Board attached as Exhibit A hereto is the result of productive negotiations between Staff, LES, and the State of New Mexico that have taken place since July 7, 2005, and represents the complete resolution of all of NRC Staff's

objections reflected in its filing of July 5, 2005. The revised settlement agreement is fully in the public interest and wholly supported by Staff.

Accordingly, for all the reasons stated in the Joint Motion, and in this Status Report, NMAG and NMED would respectfully request that the Board grant the June 23, 2005 Joint Motion for Approval with the revised settlement agreement attached hereto as Exhibit A substituted for Exhibit 1 of the Joint Motion.

Respectfully submitted,

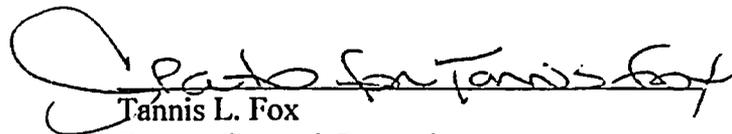
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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
  
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

G. Paul Bollwerk, III, Chairman  
Dr. Paul B. Abramson  
Dr. Charles N. Kelber

In the Matter of	)	
	)	
LOUISIANA ENERGY SERVICES, L.P.	)	Docket No. 70-3103-ML
	)	
(National Enrichment Facility)	)	ASLBP No. 04-826-01-ML
	)	

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the New Mexico Attorney General's and New Mexico Environment Department's Status Report on Settlement Agreement have been served upon the following persons by electronic mail, facsimile, and/or first class U.S. mail this 22<sup>nd</sup> day of July, 2005:

Office of Commission Appellate  
Adjudication  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

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Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
E-mail: [pba@nrc.gov](mailto:pba@nrc.gov)

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Tannis Fox, Esq.  
Clay Clarke, Esq.  
Assistant General Counsel  
State of New Mexico Environment Dep't



**EXHIBIT A**

## SETTLEMENT AGREEMENT

WHEREAS, the New Mexico Environment Department (“NMED”) and the Attorney General of New Mexico (“NMAG”) have requested and been granted a hearing before the Atomic Safety and Licensing Board (“Board”) relating to certain matters concerning the application filed by Louisiana Energy Services, L.P. (“LES” or “licensee”) for a license from the United States Nuclear Regulatory Commission (“NRC”) to construct and operate the National Enrichment Facility (“NEF”), Docket No. 70-3103 (“NRC Proceeding”);

WHEREAS, NMED, NMAG and LES have determined that it is in the public interest for LES to be bound by enforceable conditions limiting the storage and disposal of depleted uranium hexafluoride (“DUF<sub>6</sub>”) generated at the NEF;

WHEREAS, NMED, NMAG and LES have determined that it is in the public interest to insure that LES reduces the amount of DUF<sub>6</sub> stored onsite by 289 million pounds from the amount originally requested in LES’ license application and to limit the length of time that DUF<sub>6</sub> is stored onsite at the NEF;

WHEREAS, NMED, NMAG and LES have determined that it is in the public interest to prohibit the disposal of DUF<sub>6</sub> in the State of New Mexico;

WHEREAS, NMED, NMAG and LES have determined that it is in the public interest to require LES to establish adequate financial assurances for the storage and offsite disposal of DUF<sub>6</sub>;

WHEREAS, NMED, NMAG and LES have determined that an appropriate contingency factor should be applied to the financial assurances to be established by LES; and

WHEREAS, NMED, NMAG and LES have reached agreement regarding the issues raised by NMED and NMAG in the NRC Proceeding;

THEREFORE, IT IS HEREBY STIPULATED AND AGREED by NMED,

NMAG and LES that:

1. NMED, NMAG and LES admit that the NRC has jurisdiction over the parties and the subject matter of this Settlement Agreement.

2. NMED, NMAG and LES agree to the following condition:

Onsite storage of DUF<sub>6</sub> generated at the NEF shall be limited to a maximum of 5,016 48Y cylinders (or the equivalent amount of uranium stored in other NRC accepted and Department of Transportation ("DOT") certified cylinder types) of DUF<sub>6</sub>. The generation of any additional DUF<sub>6</sub> to be stored onsite by LES beyond this limit shall constitute noncompliance with this Settlement Agreement and the license. LES shall suspend production of any additional DUF<sub>6</sub> for onsite storage until this noncompliance is remedied. In no event shall LES store DUF<sub>6</sub> generated at the NEF in New Mexico other than at the NEF.

NMED, NMAG and LES agree that this condition shall be included in the NEF license when issued by the NRC.

3. NMED, NMAG and LES agree to the following condition:

Onsite storage of any one cylinder of DUF<sub>6</sub> generated at the NEF shall be limited to a maximum of 15 years, beginning from the date that each cylinder is filled in accordance with LES' standard procedures. The storage of any one DUF<sub>6</sub> cylinder beyond this limit by LES shall constitute noncompliance with this Settlement Agreement and with the license. LES shall suspend production of any additional DUF<sub>6</sub> for onsite storage until this noncompliance is remedied. In no event shall LES store DUF<sub>6</sub> generated at the NEF in New Mexico other than at the NEF.

NMED, NMAG and LES agree that this condition shall be included in the NEF license when issued by the NRC.

4. NMED, NMAG and LES agree to the following condition:

LES shall provide financial assurance for the offsite disposal of DUF<sub>6</sub> from the NEF using a minimum contingency factor of twenty-five percent (25%).

Upon reaching 4,000 cylinders of DUF<sub>6</sub> in 48Y cylinders (or the equivalent amount of uranium stored in other NRC accepted and DOT certified cylinder types) in onsite storage, LES shall immediately increase the financial assurance to provide a fifty percent (50%) contingency factor for disposition of DUF<sub>6</sub> stored at the NEF unless: (a) an application to construct and operate a deconversion facility outside of New Mexico that is specifically designated to deconvert the DUF<sub>6</sub> stored onsite at the NEF has been docketed by the agency responsible for reviewing the application; (b) an application for such a facility has been approved by the agency responsible for reviewing the application; or (c) LES is using another alternate method for removing the DUF<sub>6</sub> stored onsite.

In addition, upon reaching the limit of 5,016 cylinders of DUF<sub>6</sub> in 48Y cylinders (or the equivalent amount of uranium stored in other NRC accepted and DOT certified cylinder types) in onsite storage, LES shall immediately increase the financial assurance to provide a fifty percent (50%) contingency factor for disposition of DUF<sub>6</sub> stored at the NEF if the contingency factor has not already been increased to fifty percent (50%). The contingency factor shall remain at fifty percent (50%) until the number of cylinders stored onsite is reduced to ninety-eight percent (98%) of the 5,016 limit and either: (a) an application to construct and operate a deconversion facility outside of New Mexico that is specifically designated to deconvert the DUF<sub>6</sub> stored onsite at the NEF has been docketed by the agency responsible for reviewing the application; (b) an application for such a facility has been approved by the agency responsible for reviewing the application; or (c) LES is using another alternate method for removing the DUF<sub>6</sub> from New Mexico.

Nothing herein shall release LES from other financial assurance obligations set forth in applicable laws and regulations.

NMED, NMAG and LES agree that this condition shall be included in the NEF license when issued by the NRC.

5. NMED, NMAG and LES agree that

In no event shall DUF<sub>6</sub> from the NEF be disposed of in the State of New Mexico and in no event shall LES construct or operate a deconversion facility in the State of New Mexico.

LES agrees that if it decides to submit a request to the Secretary of the United States Department of Energy ("DOE") pursuant to Section 3113 of Public Law 104-134 (42 U.S.C. § 2297h-11), such a request will be made only if both LES and DOE determine that the NEF is not and will not be considered an "existing DUF<sub>6</sub> storage facility" within the meaning of Section 311 of Public Law 108-447.

6. NMED, NMAG and LES agree that LES shall provide a draft copy of the periodic adjustment of the decommissioning cost estimate required by 10 C.F.R. § 70.25(e) (hereinafter referred to as the "Triennial Report") to the Attorney General of the State of New Mexico and to the Secretary of the New Mexico Environment Department at least 60 days prior to the submission of Triennial Report in final form to the NRC. NMED, NMAG and LES further agree that they will work together in good faith to resolve any comments regarding the Triennial Report. Notwithstanding any efforts by LES to resolve any comments regarding the Triennial Report, NMED or NMAG may submit their comments directly to the NRC. Lastly, LES agrees to reimburse NMED and NMAG (or to pay directly as requested by NMED and NMAG) to hire expert(s) and/or outside counsel to evaluate, review, and provide comments to the draft Triennial Report subject to a maximum of no greater than \$20,000 per Triennial Report.

7.A. NMED, NMAG and LES agree that LES will provide financial assurance in the minimum initial amount of \$7.15/kgU for the disposition of DUF<sub>6</sub> situated at the NEF from the date when financial assurance is required by the NRC until LES notifies the NRC of any revision pursuant to applicable NRC regulatory requirements and guidance, but no revision shall be submitted for review sooner than the first Triennial Report.

7.B. In addition to the DUF<sub>6</sub> disposition cost estimate and contingency factor submitted by LES in Section 10.3 of its Fourth Revision to the Safety Analysis Report in its License Application (April 2005), NMED, NMAG and LES agree that to address and resolve NMAG's financial assurance concerns, an additional \$1.30/kgU will be included in the initial amount of financial assurance for the disposition of DUF<sub>6</sub> situated at the NEF, bringing the minimum initial amount to a total of \$7.15/kgU as provided in Paragraph 7.A of this Settlement Agreement. NMED, NMAG and LES further acknowledge that LES maintains that the additional \$1.30/kgU to address NMAG's financial assurance concerns is over and above the amount that LES maintains is required by applicable NRC regulatory requirements and guidance.

7.C. NMED, NMAG and LES further agree that in the first, or subsequent, Triennial Report(s), LES may not submit for NRC review the elimination of the \$1.30/kgU amount provided for in Paragraph 7.B of this Settlement Agreement unless LES has in place a contractual arrangement for the out-of-state processing and/or removal of DUF<sub>6</sub> situated onsite at the NEF. Nothing herein shall preclude NMED or NMAG, in accordance with the provisions in Paragraph 6 of this Settlement Agreement, from advocating at the first, or subsequent, Triennial Report(s), any issues with respect to financial assurance, including, but not limited to, the \$1.30/kgU provided for in Paragraph 7.B of this Settlement Agreement.

8. NMED, NMAG and LES agree that LES shall provide a yearly report to the Attorney General of the State of New Mexico and to the Secretary of the New Mexico Environment Department, on or before January 15<sup>th</sup> of each year that the NEF is producing DUF<sub>6</sub>, that identifies the number of DUF<sub>6</sub> cylinders stored on the storage pad at the NEF as of the end of the preceding year, the number of DUF<sub>6</sub> cylinders anticipated to be filled during the next year, and the lengths of time all the DUF<sub>6</sub> cylinders have been stored onsite. In addition, NMED, NMAG and LES agree that in each such yearly report LES shall include any findings resulting from the cylinder management program (as required in LES' Environmental Report at Section 4.13.3.1.1) for the preceding year.

9. NMED, NMAG and LES agree that LES shall provide NMED and the NMAG the same access to documents and materials relating to LES' radiation protection program that is required to be provided to the NRC.

10. NMED, NMAG and LES agree that LES shall support and shall not object to NMED accompanying NRC staff on any of its inspections of the NEF radiation program and conducting inspections as permitted by any agreements between NMED and NRC that are executed in accordance with applicable NRC policy and guidance. In this regard, LES shall allow NMED staff the same access to its facilities, documents, materials and personnel to which NRC is entitled. NMED shall execute any confidentiality agreement necessary to participate in such inspections and shall comply with all appropriate NEF rules (e.g., safety, security) and any applicable NRC requirements when participating in such inspections.

11. NMED, NMAG and LES agree that the NEF shall comply with all safeguards requirements of the International Atomic Energy Agency ("IAEA") as imposed by the NRC to ensure proliferation protection.

12. NMED, NMAG and LES agree that LES shall provide to the New Mexico Department of Public Safety the Physical Security Plan for the NEF subject to the execution by the appropriate officials, employees or representatives of the New Mexico Department of Public Safety of all required non-disclosure agreements.

13. NMED, NMAG and LES agree that all NMED and NMAG matters presently pending in the NRC Proceeding shall be deemed to be withdrawn upon the Board's or NRC's approval of this Settlement Agreement in its entirety. NMED and NMAG reserve the right to reappear before the Board or NRC during the pendency of the NRC Proceeding upon the discovery of significant information that was not known by NMED or NMAG at the time they executed this Settlement Agreement and, in the event the NMED or NMAG make such an appearance, they shall comply with any applicable NRC rules regarding late-filed contentions. Prior to reappearing before the Board or NRC, NMED and NMAG shall make good faith efforts to resolve the issues or claims with LES. Nothing herein shall be construed to prohibit NMED or NMAG from filing a request that the NRC initiate a proceeding to enforce the conditions of the license issued as a result of this Settlement Agreement. Finally, NMED and NMAG agree that neither NMED nor NMAG will judicially challenge or seek to join a judicial challenge of a decision by the Board or NRC in this NRC Proceeding unless such challenge is based solely on a matter which was the subject of a reappearance by NMED and/or NMAG as provided for herein.

14. This Settlement Agreement does not resolve matters not raised by NMED or NMAG in the NRC Proceeding or matters outside the NRC Proceeding. NMED and NMAG reserve the right to enforce and seek relief under any other applicable laws and regulations. Moreover, nothing in this Settlement Agreement waives or releases LES from its obligation to comply with all applicable laws and regulations.

15. All parties hereto agree to exercise due diligence in the performance of their various responsibilities under this Settlement Agreement and to cooperate with each other in carrying out its intent.

16. This Settlement Agreement supersedes all prior representations, negotiations, and understandings of the parties hereto, whether oral or written, and constitutes the entire agreement between the parties with respect to the matter hereof. It is expressly understood, however, that nothing in this Settlement Agreement shall prevent or excuse LES from fulfilling any legal or statutory requirement of the NRC, or its successors, whether contained in the license for the NEF when issued or other requirement or regulation of the NRC, its successors, or representatives, whether oral or in writing.

17. This Settlement Agreement shall not be effective, final and binding on the parties hereto unless this Settlement Agreement is approved in its entirety by the Board or the NRC. If the Board or the NRC does not approve this Settlement Agreement in its entirety, then this Settlement Agreement shall not take effect and shall be deemed null and void. The parties agree that if the Board or the NRC does not approve this Settlement Agreement, they will negotiate in good faith to resolve any outstanding issues necessary to obtain its approval by the Board or the NRC.

18. In the event this Settlement Agreement becomes effective in accordance with the provisions herein, LES, NMED and NMAG agree that the license conditions in this Settlement Agreement are fully enforceable by the NRC. All parties agree not to contest the NRC's jurisdiction to approve and enforce the license conditions in this Settlement Agreement. If any provision of this Settlement Agreement is found by the NRC or any court of competent jurisdiction to be outside the NRC's jurisdiction, and thus unenforceable by the NRC, or should

the NRC refuse or otherwise decline to enforce any provision of this Settlement Agreement, the parties agree that an action to enforce such provision may be filed in the United States District Court for the District of New Mexico (if subject matter jurisdiction exists) or the First Judicial District Court, Santa Fe County, of New Mexico and agree not to object to the jurisdiction of those courts to hear and determine such action. The parties further agree to waive any objection to the standing of any party to this Settlement Agreement to bring an action to enforce the license conditions in this Settlement Agreement before the NRC or, if outside the NRC's jurisdiction, the United States District Court or the First Judicial District Court. Finally, the parties agree to proceed before the NRC prior to bringing an action in court, and further to proceed in United States District Court (if subject matter jurisdiction exists) before proceeding in the First Judicial District Court.

19. In the event of a breach of any provision of Paragraphs 2, 3, 4, 5 or 7 herein, NMED and NMAG shall be entitled to liquidated damages from LES in the amount of \$5,000 per day per breach. This amount is not a penalty but is a reasonable estimate of the damages that would result from any breach. Notwithstanding the foregoing, NMED, NMAG and LES agree that LES shall be entitled to attempt to cure the breach of any provision of Paragraphs 2, 3, 4, 5 or 7 herein within 60 days of receiving written notice from NMED or NMAG of such breach.

20. In the event this Settlement Agreement becomes effective in accordance with the terms herein, the parties agree if any term, section, provision or portion of this Settlement Agreement is subsequently held invalid or unconstitutional by any court of competent jurisdiction, the remaining terms, sections, provisions and portions of this Settlement Agreement shall remain in full force and effect.

21. In the event this Settlement Agreement becomes binding upon the parties in accordance with the terms herein, the Settlement Agreement shall be binding upon the parties' successors, assigns, representatives, employees, agents, partners, subsidiaries, and affiliates.

22. NMED, NMAG and LES expressly waive the right to challenge, contest the validity of, or seek judicial review of any order entered as a result of this Settlement Agreement so long as such order is fully consistent with each provision of this Settlement Agreement.

23. When approved by the Board, the order entered as a result of this Settlement Agreement has the same force and effect as an order made after full hearing.

IN WITNESS WHEREOF LES, NMED and NMAG have caused this Settlement Agreement to be executed by their duly authorized representatives on this \_\_\_ day of June 2005.

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Patricia A. Madrid  
Attorney General of New Mexico

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Ron Curry  
Secretary, New Mexico Environment Department

---

E. James Ferland  
President and Chief Executive Officer  
Louisiana Energy Services, L.P.

DC:424436.1



# Attorney General of New Mexico

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July 22, 2005

Secretary of the Commission  
United States Nuclear Regulatory Commission  
Attn: Rulemaking and Adjudications Staff  
Washington, D.C. 20555-0001  
Facsimile: (301) 415-1101

Re: **In the Matter of Louisiana Energy Services, L.P. (National  
Enrichment Facility)**  
Docket No. 70-3103

Dear Rulemaking and Adjudications Staff:

Enclosed is the original and three copies of the NEW MEXICO ATTORNEY GENERAL'S AND THE NEW MEXICO ENVIRONMENT DEPARTMENT'S STATUS REPORT ON SETTLEMENT AGREEMENT. The New Mexico Attorney General would appreciate it if you would kindly file, endorse and return a copy of each in the enclosed self-addressed, stamped envelope provided herewith.

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "David M. Pato".

David M. Pato  
Assistant Attorney General  
New Mexico Attorney General's Office

Enclosures