UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
LICENSEES AUTHORIZED TO	)	EA 05-090
POSSESS RADIOACTIVE MATERIAL	)	
QUANTITIES OF CONCERN	)	

ORDER IMPOSING INCREASED CONTROLS (EFFECTIVE IMMEDIATELY)

I

The Licensees identified in Attachment A[1] to this Order hold licenses issued in accordance with the Atomic Energy Act of 1954 by the U.S. Nuclear Regulatory Commission (NRC or Commission) authorizing them to possess certain quantities of radioactive material of concern. Commission regulations at 10 CFR § 20.1801 require Licensees to secure, from unauthorized removal or access, licensed materials that are stored in controlled or unrestricted areas. Commission regulations at 10 CFR § 20.1802 require Licensees to control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage.

II

Prior to the terrorist attacks of September 11, 2001 (9/11), several national and international efforts were underway to address the potentially significant health and safety hazards posed by uncontrolled sources. These efforts recognized the need for increased control of high-risk radioactive materials to prevent inadvertent and intentional unauthorized access, primarily due to the potential health and safety hazards posed by the uncontrolled

[1] Attachment A contains sensitive information and will not be released to the public.

material. Following 9/11, it was recognized that these efforts should also include a heightened awareness and focus on the need to prevent intentional unauthorized access due to potential malicious acts. These efforts, such as the International Atomic Energy Agency (IAEA) Code of Conduct on the Safety and Security of Radioactive Sources (Code of Conduct) concerning Category 1 and 2 sources, seek to increase the control over sources to prevent unintended radiation exposure and to prevent malicious acts.

A licensee's loss of control of high-risk radioactive sources, whether it be inadvertent or through a deliberate act, has a potential to result in significant adverse health impacts and could reasonably constitute a threat to the public health and safety. In this regard, the Commission has determined that certain additional controls are required to be implemented by Licensees to supplement existing regulatory requirements in 10 CFR § 20.1801 and 10 CFR § 20.1802, in order to ensure adequate protection of, and minimize danger to, the public health and safety. Therefore, the Commission is imposing the requirements set forth in Attachment B on radioactive materials licensees who possess, or have near term plans to possess, radionuclides of concern at or above threshold limits, identified in Table 1. These requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety continues to be adequately protected. These requirements will remain in effect until the Commission modifies its regulations to reflect increased controls.

To effect nationwide implementation, these measures have been determined by the Commission to be an immediate mandatory Category "B" matter of compatibility for Agreement States. In parallel with the Commission's issuance of this Order, each Agreement State is required to issue legally binding requirements to put essentially identical measures in place for

licensees under their regulatory jurisdiction.

The Commission recognizes that Licensees may have already initiated many controls set forth in Attachment B to this Order in response to previously issued advisories or on their own. It is also recognized that some controls may not be possible or necessary at some sites, or may need to be tailored to accommodate the Licensees' specific circumstances to achieve the intended objectives and avoid any unforeseen adverse effect on the safe use and storage of the sealed sources.

Although the additional controls implemented by the Licensees in response to the Safeguards and Threat Advisories have been adequate to provide reasonable assurance of adequate protection of public health and safety, the Commission concludes that additional controls must be imposed by an Order, consistent with the established regulatory framework.

To provide assurance that the Licensees are implementing prudent measures to achieve a consistent level of control, all Licensees who hold licenses issued by the NRC authorizing possession of radioactive material quantities of concern and as listed in Table 1, "Radionuclides of Concern," (Attachment B, Table 1), shall implement the requirements identified in Attachment B to this Order. In addition, pursuant to 10 CFR § 2.202, because of the potentially significant adverse health impacts associated with failure to control high risk radioactive sources, I find that the public health, safety, and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 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, 10 CFR Part 30, and 10 CFR Part 33, IT IS HEREBY ORDERED, **EFFECTIVE IMMEDIATELY**, THAT ALL LICENSEES IDENTIFIED IN ATTACHMENT A TO THIS ORDER SHALL COMPLY WITH THE REQUIREMENTS OF THIS ORDER AS FOLLOWS:

A. The Licensee shall comply with the requirements described in Attachment B to this Order. The Licensee shall complete implementation by June 20, 2006, or the first day that radionuclides of concern at or above threshold limits, identified in Table 1, are possessed, whichever occurs later.

B. 1. The Licensee shall in writing, within **forty (40) 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 B, (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 the Licensee to be in violation of the provisions of any Commission regulation or its license. The notification shall provide the Licensee's justification for seeking relief from or variation of any specific requirement.

B. 2. If the Licensee considers that implementation of any of the requirements described in Attachment B to this Order would adversely impact safe operation of the facility, the Licensee must notify the Commission, in writing, within **forty (40) 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 B requirement in question, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is

appropriate, the Licensee must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

C. 1. The Licensee shall, within **forty (40) days** of the date of this Order, submit to the Commission a schedule for completion of each requirement described in Attachment B.

C. 2. The Licensee shall report to the Commission when they have achieved full compliance with the requirements described in Attachment B.

D. Notwithstanding any provisions of the Commission's regulations to the contrary, all measures implemented or actions taken in response to this Order shall be maintained until the Commission modifies its regulations to reflect increased controls.

Licensee responses to Conditions B.1, B.2, C.1, and C.2 above shall be submitted to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, Licensee's responses shall be marked as "Withhold From Public disclosure Under 10 CFR 2.390."

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

IV.

In accordance with 10 CFR § 2.202, the Licensee 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 **forty (40) 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 the Licensee 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, 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 the Licensee if the answer or hearing request is by a person other than the Licensee. Because of possible 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 either by means of facsimile transmission to 301-415-3725 or by e-mail to OGCMailCenter@nrc.gov If a person other than the Licensee 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 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 CFR § 2.202(c)(2)(i), the Licensee 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 **forty (40) 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.

Dated this 22nd day of December 2005

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Jack R. Strosnider, Director

Office of Nuclear Material Safety
and Safeguards

Attachments:
A. Increased Controls Licensee List
B. Increased Controls for Licensees
That Possess Sources Containing
Radioactive Material Quantities of Concern