

October 4, 2006

Mr. Steven A. Toelle, Director
Regulatory Affairs
USEC Inc.
6903 Rockledge Dr.
Bethesda, MD 20817-1818

SUBJECT: ISSUANCE OF ORDER TO USEC, INC. (LEAD CASCADE FACILITY)
IMPOSING REQUIREMENTS FOR PROTECTING CERTAIN SAFEGUARDS INFORMATION

Dear Mr. Toelle:

The U.S. Nuclear Regulatory Commission (NRC or Commission) has issued the enclosed Order (Enclosure 1) requiring you to implement specific requirements to ensure proper handling and protection of Safeguards Information (SGI) to avoid unauthorized disclosure. NRC has taken this action because, on July 15, 2003, it provided you with draft guidance for physical protection programs that included SGI. In the future, NRC may also issue additional Orders containing SGI related to your security programs.

On August 8, 2005, the President signed into law the Energy Policy Act of 2005 (EPAct). The EPAct amended the Atomic Energy Act (AEA) of 1954 to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check of any person permitted access to SGI. Specifically, the EPAct amended Section 149 of the AEA to require fingerprinting before anyone is given access, by anyone, to SGI. Section 149, as amended, also requires a Federal Bureau of Investigation (FBI) identification and criminal records history check based on the fingerprints. The NRC's implementation of this requirement cannot await the completion of the SGI rulemaking, which is underway, because the EPAct fingerprinting and criminal history check requirements for access to SGI were immediately effective upon enactment of the EPAct. The EPAct permits the Commission by rule to except certain categories of individuals from the fingerprinting requirement, which the Commission has done (see 10 CFR § 73.59, 71 Fed. Reg. 33,989 (June 13, 2006)). Individuals relieved from fingerprinting and criminal history checks under the relief rule include Federal, State, and local officials and law enforcement personnel; Agreement State inspectors who conduct security inspections on behalf of NRC; members of Congress and certain employees of members of Congress or Congressional Committees, and representatives of the International Atomic Energy Agency (IAEA) or certain foreign government organizations. In addition, the NRC has determined that individuals who have active Federal security clearances or who have a favorably-decided U.S. Government criminal history check within the last five (5) years have already been subjected to fingerprinting and criminal history checks and thus have satisfied the EPAct fingerprinting requirement.

Under Section 147 of the Atomic Energy Act of 1954, as amended, the Commission has authority to "... issue such orders, as necessary, to prohibit the unauthorized disclosure of safeguards information...." The Order you are receiving directs you to protect this information from unauthorized disclosure, in accordance with "Modified Handling Requirements for Protection of Certain Safeguards Information (SGI-M)" (Attachment A to Enclosure 1);

“Trustworthiness and Reliability Requirements for Individuals Handling Safeguards Information” (Attachment B to Enclosure 1) and “Requirements for Fingerprinting and Criminal History Checks of Individuals When Licensee’s Reviewing Official is Determining Access to Safeguards Information (Attachment C to Enclosure 1). We are also providing as guidance, “Designation Guide for Safeguards Information” (Enclosure 2) to assist you in making determinations about what information needs to be protected as SGI; “Guidance for Licensee’s Evaluation of Access to Safeguards Information With the Inclusion of Criminal History (Fingerprint) Checks” (Enclosure 3); and “Process to Challenge NRC Denials or Revocations of Access to Safeguards Information” (Enclosure 4).

The enclosed Order also directs you not to share SGI with any recipient unless that person has a need to know the SGI, has been fingerprinted and undergone an FBI identification and criminal history records check, the fingerprint check has been favorably decided, and satisfies all other applicable requirements for access to SGI. These requirements also apply to any individual who has not been previously granted access to SGI, regardless of when the SGI was generated. Fingerprinting and the FBI identification and criminal history records check are not required, however, for any person who is relieved from that requirement by 10 CFR 73.59, has a Federally-decided U.S. government criminal history check within the last five (5) years, or has an active Federal security clearance.

It is the staff’s understanding that to ensure adequate protection of your facility and associated special nuclear material, you may need to share SGI with individuals that meet the above criteria. The Order also directs you to provide a copy of this Order to such individuals. By doing so, you are informing these individuals that this Order also applies to them. Unauthorized disclosure of SGI may result in civil or criminal penalties.

With respect to fingerprinting and criminal history checks for individuals who seek access to SGI, before a Licensee grants an individual access to SGI (including SGI designated as SGI-M for handling) in the Licensee’s possession, the Licensee must submit the fingerprints of those individuals to the NRC for an FBI criminal history check. The results of the FBI criminal history check will be provided to the Licensee and that information must be considered in conjunction with the information obtained in response to the trustworthiness and reliability determination requirements (Attachment B to the Order) in making a determination of whether each individual who has a need-to-know SGI may be given access to SGI (see Enclosure 3 to this letter for guidance on making SGI access determinations).

In order to implement the enclosed fingerprinting requirements, Licensees must nominate an individual who will review the results of the FBI criminal history check, in conjunction with the other relevant trustworthy and reliability information from Attachment B to the Order, to make SGI access determinations. This individual, referred to as the “reviewing official,” must be someone who needs continued access to SGI. Based on the results of the FBI criminal history check, the NRC staff will determine whether this individual may have access to SGI. If the NRC determines that the individual may not be granted access to SGI, the enclosed Order prohibits that individual from obtaining access to any SGI. The NRC process that will govern this determination, and the rights of the individual nominated to be the “reviewing official,” are described in Enclosure 4 to this letter. Once a reviewing official is approved by the NRC, the reviewing official and only the reviewing official can make SGI access determinations for other Licensee employees who have been fingerprinted and criminal history checked. The reviewing

official can only make SGI access determinations for other individuals but cannot approve other individuals to act as reviewing officials. Only the NRC can approve a reviewing official; therefore, if a Licensee wishes to have a new or additional reviewing official, the NRC must approve that individual before he/she can act as a reviewing official.

In the event that the individual nominated as the Licensee's initial reviewing official is not approved by the NRC to have access to SGI, then the individual may appeal this decision by following the procedures in Enclosure 4, and the Licensee may nominate a different individual to be the reviewing official. If the Licensee decides to withdraw the nomination of a reviewing official after submitting fingerprints to the FBI through the NRC, the NRC will nonetheless complete the review process to determine access to SGI. If this individual is denied access to SGI by the NRC, he/she may appeal the NRC's decision by following the procedures in Enclosure 4 to this letter.

Licensees are required to submit fingerprints in accordance with the Order. The current processing fee is \$27.00 per submission and payment must accompany the request. Details regarding fingerprint submittals and payment of fees are found in Attachment C to the Order.

The Commission has concluded that the requirements to protect SGI and the additional fingerprinting and FBI criminal history check requirements for access to SGI should be embodied in an Order, consistent with the established regulatory framework. The enclosed Order is effective immediately. These requirements will remain in effect until the Commission determines otherwise.

Orders contain requirements that licensees or certificate holders must implement. You must respond to this Order by filing a written answer, under oath or affirmation, consenting to the Order, or providing the reasons why you believe the Order should not have been issued. The enclosed Order requires that you respond to the Order within twenty (20) days of receipt.

A copy of the enclosed Order has also been forwarded to the Office of the Federal Register for publication.

S.A. Toelle

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Please contact Stan Echols at 301-415-6981 to facilitate resolution of any issues or questions related to compliance with the requirements in the enclosed Order.

Sincerely,

/RA/

Jack R. Strosnider, Director
Office of Nuclear Material Safety
and Safeguards

Docket No.: 70-7003

Enclosures:

1. Order
2. SGI Designation Guidance
3. Guidance for Evaluation of Access
4. Process to Challenge Denials

cc: (w/o enclosure)

William Szymanski/DOE

Carol O'Claire/Ohio EMA

Lindsay Lovejoy/NIRS

Rocky Brown/Mayor of Beaver

David Bowe/SPFPA/USEC

Billy Spencer/Mayor of Piketon

Harry Rioer/Pike Co. Comm

Robert Huff/Portsmouth CoC

Kara Willis/Gov. Taft's Reg. 7

Joyce Weeth/Pike Co. Rec

Michael Marriotte/NIRS

James Curtiss/W&S

Karl Gross/LES

Jim Brushart/Pike Co. Comm.

Teddy West/Scioto Twp. Trust.

Vina Colley/PRESS

Larry Scaggs/Seal Twp. Trust.

Ted Wheeler/Pike County Aud.

Ewan Todd/PRESS

Blaine Beekman/Pike CoC

Dan Minter/SODI

Randall DeVault/DOE

Peter Miner/USEC Inc.

Geoffrey Sea

Robert Owen/Ohio DoH

Donald Silverman/Morgan Lewis

Carrie Mytinger/Cong. Ney

Marvin Jones/Chillicothe CoC

Dwight Massie/Pike CoC

MarJean Kennedy/Gov. Taft

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Carrie Mytinger/Cong. Ney
 Marvin
 Jones/Chillicothe
 CoC
 Dwight
 Massie/Pike
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 MarJean
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 File Center
 USEC Website: no

ADAMS Accession Number: **Letter: ML062410053**

Package ML062410270

OFFICE	GCFLS	GCFLS	TSS	IMNS	NSIR	OGC (NLO)
NAME	JDowns	SEchols	RWray	CMiller	DDorman	JGoldberg
DATE	8/ 29 /06	8/ 29 /06	8/ 29 /06	9/ 19 /06	9/ 20 /06	9/ 21 /06

OFFICE	GCFLS	SPB	FCSS	OE	NMSS/OD	
NAME	BSmith	JGitter	RPierson	CCarpenter	JStrosnider	
DATE	9/ 21 /06	9/ 22/06	9/ 25/06	9/ 27/06	10/4/06	

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