

UNITED STATES  
NUCLEAR REGULATORY COMMISSION

In the Matter of

LICENSEE IDENTIFIED IN ) EA-08-161  
ATTACHMENT 1 AND ALL OTHER PERSONS )  
WHO OBTAIN SAFEGUARDS )  
INFORMATION DESCRIBED HEREIN )

**ORDER IMPOSING REQUIREMENTS FOR THE  
PROTECTION OF CERTAIN SAFEGUARDS INFORMATION  
(EFFECTIVE IMMEDIATELY)**

I

The Licensee, identified in Attachment 1<sup>1</sup> to this Order, holds a license issued in accordance with the Atomic Energy Act of 1954, as amended, (AEA) by the U.S. Nuclear Regulatory Commission (NRC or Commission), authorizing it to possess, use, and transfer items containing radioactive material quantities of concern. The NRC intends to issue security Orders to this licensee in the near future. The Order will require compliance with specific Additional Security Measures to enhance the security for certain radioactive material quantities of concern. The Commission has determined that these documents will contain 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 Attachments 2 and 3 to this Order and in Order EA-08-162, so that the Licensee can receive these documents. This Order also imposes requirements for the protection of Safeguards

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<sup>1</sup> Attachment 1 contains sensitive information and will not be released to the public.

Information in the hands of any person,<sup>2</sup> 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 disclosure of Safeguards Information. Section 147 of the AEA 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 the security measures for the physical protection of special nuclear material, source material, and byproduct material. 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 contained in Attachments 2 and 3 to this Order. The Commission hereby provides notice that it intends to treat violations of the requirements contained in Attachments 2 and 3 to this Order 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, are considered to be trustworthy and reliable, and meet the requirements of Order EA-08-162. A need-to-know means a determination by a person having responsibility for protecting Safeguards Information that a proposed recipient's access to

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<sup>2</sup> Person means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the Department of Energy, except that the Department of Energy shall be considered a person with respect to those facilities of the Department of Energy 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.

Safeguards Information is necessary in the performance of official, contractual, or licensee duties of employment.

The Licensee 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 Attachments 2 and 3 to this Order. The Licensee 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, or maintain and implement their own acceptable policies and procedures. The Licensee remains responsible for the conduct of their contractors. The policies and procedures necessary to ensure compliance with applicable requirements contained in Attachments 2 and 3 to this Order 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; removal of the Safeguards Information category; the need-to-know the information; and background checks to determine access to the information.

In order to provide assurance that the Licensee is implementing prudent measures to achieve a consistent level of protection to prohibit the unauthorized disclosure of Safeguards Information, the Licensee shall implement the requirements identified in Attachments 2 and 3 to this Order. In addition, pursuant to 10 CFR Part 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 81, 147, 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, 10 CFR Part 32, 10 CFR Part 35, 10 CFR Part 70, and 10 CFR Part 73, IT IS HEREBY ORDERED, **EFFECTIVE IMMEDIATELY**, THAT ALL LICENSEES IDENTIFIED IN ATTACHMENT 1 TO THIS ORDER AND ALL OTHER PERSONS WHO PRODUCE, RECEIVE, OR ACQUIRE THE ADDITIONAL SECURITY MEASURES IDENTIFIED ABOVE (WHETHER DRAFT OR FINAL) OR ANY RELATED SAFEGUARDS INFORMATION SHALL COMPLY WITH THE REQUIREMENTS OF ATTACHMENTS 2 AND 3 TO THIS ORDER.

The Director, Office of Federal and State Materials and Environmental Management Programs, may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by the licensee.

## 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 within twenty (20) days of the date of this Order. In addition, the Licensee and any other person adversely affected by this Order may request a hearing of this Order within twenty (20) days of the date of the Order. 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 Federal and State Materials and Environmental Management Programs, 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. If the answer includes a request for a hearing, it shall, under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee relies and the reasons as to why the Order should not have been issued. 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).

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 2007, 72 Fed. Reg. 49139 (Aug. 28, 2007) and codified in pertinent part at 10 CFR Part 2, Subpart B. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E-Filing, at least ten (10) days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at HEARINGDOCKET@NRC.GOV, or by calling (301) 415-1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at <http://www.nrc.gov/site-help/e-submittals/install-viewer.html>. Information about applying for a digital ID certificate also is available on NRC's public website at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>.

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE.

Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public website at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the "Contact Us" link located on the NRC website at <http://www.nrc.gov/site-help/e-submittals.html> or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397-4209 or locally, (301) 415-4737.

Participants who believe that they have good cause for not submitting documents electronically must file a motion, in accordance with 10 C.F.R. 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville, Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by

courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at [http://ehd.nrc.gov/EHD\\_Proceeding/home.asp](http://ehd.nrc.gov/EHD_Proceeding/home.asp), unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, Participants are requested not to include copyrighted materials in their works.

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 requesting 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.

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

Dated this 18<sup>th</sup> day of June 2008

FOR THE NUCLEAR REGULATORY COMMISSION

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George Pangburn, Acting Director  
Office of Federal and State Materials  
and Environmental Management Programs

Attachments:

1. List of Applicable  
Materials Licensees
2. Modified Handling Requirements  
for the Protection of Certain  
Safeguards Information  
(SGI-M)
3. Trustworthiness and Reliability  
Requirements for Individuals  
Handling Safeguards  
Information