



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION II
SAM NUNN ATLANTA FEDERAL CENTER
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ATLANTA, GEORGIA 30303-8931

January 7, 2009

EA-08-103

Mr. David L. Kudsin
President
Nuclear Fuel Services, Inc.
P.O. Box 337, MS 123
Erwin, TN 37650

SUBJECT: NUCLEAR REGULATORY COMMISSION OFFICE OF INVESTIGATIONS
REPORT NO. 2-2006-017 AND NFS INSPECTION REPORT 07000143/2008401

Dear Mr. Kudsin:

This refers to an investigation initiated on April 20, 2006, by the U.S. Nuclear Regulatory Commission's (NRC) Office of Investigations (OI) at NFS. The purpose of the investigation was to determine whether fitness for duty requirements were willfully violated in connection with a Fitness for Duty incident which occurred in March 2006. A Factual Summary, included as Enclosure 1 to this letter, provides details of the OI investigation.

Based on the OI investigation, seven apparent violations of NRC requirements were identified and are being considered for escalated enforcement action in accordance with the NRC Enforcement Policy. The current Enforcement Policy is located on the NRC's Web site at www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html.

The seven apparent violations are summarized as follows:

- On March 9, 2006, a senior executive of NFS consumed alcohol less than 5 hours before a scheduled working tour, in apparent violation of 10 CFR 26.20, "Written policy and procedures", subparagraph (a)(1);
- Despite detection of alcohol on the senior executive's breath and observance of behavior indicating questionable fitness, NFS failed to relieve the senior executive of his duties and failed to perform for-cause testing to determine his fitness for duty, in apparent violation of 10 CFR 26.24, "Chemical and alcohol testing", subparagraph (a)(3); 10 CFR 26.27, Management actions and sanctions to be imposed", subparagraph (b)(1); and NFS-HR-08-001-A, Fitness for Duty Program, Sections E.3.b. and E.3.d. There are four examples of this apparent violation, two of which were willful: (1) On March 7, 8 and 9, 2006, a security manager detected alcohol on the breath of the senior executive but with careless disregard of applicable requirements, did nothing to remove or initiate removal of the employee for cause testing; (2) On March 9, a senior security manager detected alcohol on the employee's breath and observed the senior executive engage in an inappropriate angry outburst directed at an NRC inspector. In deliberate violation of applicable requirements, the senior security manager took no action to remove or initiate removal of the senior executive for cause testing; (3) On March 9, the senior executive made inappropriate comments of a sexual nature to a female radiation technologist employee in the presence of another radiation technologist employee and their supervisor. Although one radiation technologist believed that the employee appeared

and acted impaired, and the other radiation technologist commented that the senior executive must have been drunk, neither the radiation technologists nor their supervisor took any action to remove or to initiate removal of the senior executive for cause testing; and (4) On March 9, 2006, an NFS security guard and his supervisor detected alcohol on the senior executive's breath, and the security guard believed that the senior executive appeared and acted impaired, but neither the guard nor the supervisor took any action to remove or initiate removal of the senior executive for cause testing.

- On April 5, 2006, NFS granted the senior executive Self-Referral Rehabilitation Status in the NFS Employee Assistance Program after he had been notified of an ongoing Fitness for Duty investigation, in apparent violation of 10 CFR 26.20, "Written Policy and procedures", subparagraph (a), and NFS-HR-08-001-A, Fitness for Duty Program, Section G, Employee Assistance Participation.
- Sometime after April 5 and before April 30, 2006, on behalf of NFS, an NFS executive provided the NRC with information which was materially inaccurate, in apparent violation of 10 CFR 70.9, "Completeness and accuracy of information". Specifically, correspondence addressed to NRC stated that the NFS senior executive had entered a substance abuse rehabilitation program when, in fact he had not done so. The executive provided the inaccurate information with careless disregard to its accuracy. The inaccurate statement was material because it was capable of influencing NRC decisions regarding the NFS response to the March 9, 2006, violation of 10 CFR 26.20(a)(1).
- On April 11, 2006, in apparent violation of 10 CFR 70.9, "Completeness and accuracy of information", a senior NFS manager placed a letter in the senior executive's personnel file, and on June 8, 2006, NFS provided this letter, which was not accurate in all material respects, to the NRC. Specifically, the letter stated that the senior executive had entered a substance abuse rehabilitation program when, in fact, the senior executive had not done so. The inaccurate statement was material because it was capable of influencing NRC decisions regarding the NFS response to the March 9, 2006, violation of 10 CFR 26.20(a)(1).
- In May 2006, in apparent violation of 10 CFR 26.27, "Management sanctions and actions to be imposed", subparagraph (b)(1), and the NFS Fitness for Duty Program, Procedure No. NFS-HR-08-001, Section L. 2. "Impaired Workers", NFS failed to determine the senior executive's fitness to safely and competently perform his duties and responsibilities before returning him to duty. The contract professional retained by NFS to perform a determination of the senior executive's fitness to return to duty could not make the required determination because pertinent information had not been supplied to and considered by the contractor, who subsequently advised NFS that the senior executive was fit to return to duty. As a result, NFS failed to make the determination required by 10 CFR 26.27(b)(1) and Procedure No. NFS-HR-08-001 that the senior executive was fit to safely and competently perform his responsibilities. The information not supplied or considered was that: the smell of alcohol was detected on the senior executive not only March 9, 2006, but also on March 7 and 8, 2006; the senior executive consumed alcohol on March 9, 2006 less than 5 hours before a scheduled working tour; the meeting in which the senior executive was "hot-headed" was an important meeting with regulators of NFS, NRC and the U. S. Department of Energy: the senior executive made inappropriate comments of a sexual nature to a female employee on March 9, 2006;

and the senior executive had been convicted in 1979 of driving under the influence of alcohol, for which his license was suspended and for which he was fined.

- NFS did not provide appropriate training to ensure that employees understood their roles and responsibilities in implementing its Fitness For Duty Program and that employees understood 10 CFR Part 26, "Fitness for Duty Programs", requirements associated with the consumption of alcohol within 5 hours of any scheduled working tour, in apparent violation of 10 CFR 26.21, "Policy communications and awareness training", subparagraphs (a)(1) and (5); 10 CFR 26.22, "Training of supervisors and escorts", subparagraphs (a)(1), (a)(2) and (a)(4); 10 CFR 26.24, "Chemical and alcohol testing", subparagraph (a)(3); 10 CFR 26.27, "Management actions and sanctions to be imposed", subparagraph (b)(1); and NFS-HR-008-001-A, Fitness for Duty Program, Section N.2. There are two examples to this violation: (1) NFS did not ensure that employees understood that fitness for duty of an employee may be questionable based solely on detection of the smell of alcohol on the employee, and did not ensure that employees understood that aberrant behavior which may require for cause testing means not only behavior out of the ordinary for a particular employee, but also behavior which is aberrant in general; and (2) NFS training sessions and materials failed to expressly and clearly indicate that no employee may consume alcohol within 5 hours of any scheduled working tour, but only indicated that consumption of alcohol within 5 hours of a scheduled working tour may be grounds for cause testing.

In addition, based on the OI investigation, multiple apparent violations by two NFS employees and two NFS contractors of 10 CFR 70.10, "Deliberate misconduct", were identified. Specifically, materially incomplete or inaccurate information was submitted to NFS and to contractors of NFS which, in turn, caused or contributed to failures in NFS implementation of 10 CFR Part 26 requirements and of NFS programs and procedures. The apparent violations of 10 CFR 70.10 are being addressed in separate correspondence to the individual employees and contractors.

Before the NRC makes its enforcement decision, we are providing you an opportunity to either: (1) respond to the apparent violations within 30 days of the date of this letter or (2) request a predecisional enforcement conference. If a conference is held, it will be closed to public observation in accordance with the NRC Enforcement Policy because the findings are based on an NRC Office of Investigations report that has not been publicly disclosed.

If you choose to provide a written response, it should be clearly marked as a "Response to Apparent Violation EA-08-103," and should include: (1) the reason for the apparent violation, or, if contested, the basis for disputing the apparent violation; (2) the corrective steps that have been taken and the results achieved; (3) the corrective steps that will be taken to avoid further violations; and (4) the date when full compliance will be achieved.

Your response may reference or include previously docketed correspondence, if the correspondence adequately addresses the required response. If an adequate response is not received within the time specified or an extension of time has not been granted by the NRC, the NRC will proceed with its enforcement decision.

In addition, please be advised that the number and characterization of the apparent violations described herein may change as a result of further NRC review. You will be advised by separate correspondence of the results of our deliberations on this matter.

If you choose to request a PEC, the conference will afford you the opportunity to provide your perspective on the apparent violations and any other information that you believe the NRC should take into consideration before making an enforcement decision. The topics discussed during the conference may include: information to determine whether a violation occurred, information to determine the significance of a violation, information related to the identification of a violation, and information related to any corrective actions taken or planned to be taken.

In lieu of a predecisional enforcement conference, you may also request Alternative Dispute Resolution (ADR) with the NRC in an attempt to resolve this issue. Alternative Dispute Resolution is a general term encompassing various techniques for resolving conflicts outside of court using a neutral third party. The technique that the NRC has decided to employ is mediation. Additional information concerning the NRC's ADR program is described in the enclosed brochure (NUREG/BR-0317) and can be obtained at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>. The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program as a neutral third party. Please contact ICR at 877-733-9415 within 10 days of the date of this letter if you are interested in pursuing resolution of this issue through ADR. Additionally, please contact Mr. Michael Ernestes, Chief, Plant Support Branch 2, Division of Reactor Safety, at (404) 562-4540, within 10 days of the date of this letter to notify the NRC of your intended response.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and Enclosure 2 will be made available electronically for public inspection in the NRC Public 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>. After completion of enforcement related activities in this matter and should the NRC conclude that escalated enforcement is warranted, Enclosure 1 will also be made available electronically for public inspection. To the extent possible, if you choose to respond, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

For administrative purposes this letter is issued as Inspection Report 07000143/2008401.

Should you have any questions concerning this letter, please contact me at (404) 562-4601 or Mr. Michael Ernestes at (404) 562-4540.

Sincerely,

/RA/

Kriss M. Kennedy, Director
Division of Reactor Safety

Docket No.: 70-143
License No.: SNM-124

Enclosures: 1. Factual Summary, NRC Office of Investigations Report No. 2-2006-017
2. NUREG/BR-0317

cc: See Page 5

cc w/Encl:

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