



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
REGION II
SAM NUNN ATLANTA FEDERAL CENTER
61 FORSYTH STREET, SW, SUITE 23T85
ATLANTA, GEORGIA 30303-8931

January 12, 2009

EA-08-342

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

**SUBJECT: IDENTIFICATION OF APPARENT VIOLATIONS FROM NRC INSPECTION
REPORT NO. 70-143/2008-003**

Dear Mr. Kudsin:

This letter refers to unresolved item (URI) 2008-003-03 associated with the item relied on for safety (IROFS) identified for the 310 Warehouse. Based on further review of this item, two apparent violations (AV) were identified and are being considered for escalated enforcement action in accordance with the NRC Enforcement Policy. The current Policy is included on the NRC's Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>.

The first AV involves the apparent failure to meet 10 CFR 70.61(e). This regulation requires, in part, that each engineered or administrative control system necessary to comply with the performance requirements be designated as IROFS. The NRC determined that, prior to August 29, 2008, the fire accident scenarios indicated in the 310 Warehouse Integrated Safety Analysis (ISA) summary had insufficient engineered or administrative controls designated to demonstrate compliance with the performance requirements. NRC derived this conclusion from the fact that only one administrative item relied on for safety (IROFS FIRE-2) had been designated to prevent or mitigate a high consequence event.

The second AV involves the failure to implement 10 CFR 70.62 which requires, in part, that each licensee establish a safety program that demonstrates compliance with the performance requirements. One of the elements of the safety program is management measures which ensure that administrative IROFS will be available and reliable to perform its intended function when needed to comply with the performance requirements. The NRC determined that, prior to August 29, 2008, Nuclear Fuel Service, Inc. (NFS) had not implemented a safety program that would ensure IROFS FIRE-2 would perform its intended function when needed to comply with the performance requirements. NRC derived this conclusion from the fact that non-compliances with the combustible loading program in the 310 Warehouse (the critical component of FIRE-2) were identified, but corrective actions were ineffective. Specifically, unacceptable amounts of combustible material were found in the warehouse repeatedly for several months.

An open pre-decisional enforcement conference to discuss these apparent violations will be scheduled at a future date. The NRC will contact your staff to coordinate arrangements for the meeting. This conference will be open to public observation in accordance with Section V of the NRC Enforcement Policy.

The decision to hold a pre-decisional enforcement conference does not mean the NRC has determined that a violation occurred or that enforcement action will be taken. This conference is being held to obtain information to assist the NRC in making an enforcement decision. This may include information to determine whether violations occurred, information to determine the significance of the violations, information related to the identification of the violations, and information related to any corrective actions that were taken or planned. The conference also will provide you an opportunity to provide your perspectives on these matters and any other information you believe the NRC should take into consideration in making an enforcement decision. In particular, the NRC staff is interested in your assessment of the safety significance of the issues and the potential for a high consequence event. In presenting your corrective actions, you should be aware that the promptness and comprehensiveness of your actions will be considered in assessing any civil penalty for the apparent violation. The guidance contained in NRC Information Notice 96-28, "SUGGESTED GUIDANCE RELATING TO DEVELOPMENT AND IMPLEMENTATION OF CORRECTIVE ACTION," may be helpful and is available on the NRC's Web site.

Because the NRC has not made a final determination in this matter, no Notice of Violation is being issued for the inspection issues at this time. In addition, please be advised that the number and characterization of the apparent violations described above may change as a result of further NRC review. You will be advised by separate correspondence of the results of our deliberations in this matter. No response regarding the apparent violations is required at this time. However, if important information regarding the apparent violations is identified that is not captured in the 310 Warehouse Integrated Safety Analysis Summary or 310 Warehouse Fire Hazard Analysis, please submit this information at your earliest convenience so that we are afforded the opportunity to review the information prior to the pre-decisional enforcement conference.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be available electronically for public inspection in the NRC Public Document Room or from the NRC document system (ADAMS). ADAMS is accessible from the NRC website at <http://www.nrc.gov/reading-rm/adams.html>.

Should you have any questions concerning the meeting, please contact me at (404) 562-4700.

Sincerely,

/RA/

Joseph W. Shea, Director
Division of Fuel Facility Inspection

Docket No. 70-143
License No. SNM-42

cc: (See page 3)

D. Kudsin

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ADAMS: Yes ACCESSION NUMBER: _____

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