[7590-01-P]

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

[NRC-2009-0342]

In the Matter of
Mr. Michael T. Hackett) IA-09-026

CONFIRMATORY ORDER
(EFFECTIVE IMMEDIATELY)

I

Mr. Michael Hackett is currently the Radiation Safety Officer (RSO) for the Department of Veterans Affairs (DVA) Medical Center, located in Lexington, Kentucky, and is named as such on Permit 16-08896-04, issued by the Department of Veterans Affairs (licensee) under the authority granted them by Master Materials License (MML) Number 03-23853-01VA.

This Confirmatory Order is the result of an agreement reached during an Alternative Dispute Resolution (ADR) mediation session conducted on June 26, 2009.

II

On September 17, 2007, the DVA National Health Physics Program (NHPP) inspectors performed an inspection at the DVA Medical Center located in Lexington, Kentucky. The Medical Center is a permitee under the DVA's MML. During the inspection, the NHPP inspectors determined that the RSO had not implemented portions of the radiation safety program including not holding periodic Radiation Safety Committee meetings; not performing annual program reviews; and not performing required hazardous material training. Furthermore, the NHPP determined that the RSO's actions were deliberate. A contributing cause was the permitee's assignment of a collateral duty to the RSO as the Controlled Substance Coordinator.

Based on the NHPP determination, the NRC began an investigation into the actions of the RSO. On December 18, 2008, the Office of Investigations issued an investigation report and on February 23, 2009, the NRC determined that violations of NRC requirements had occurred at the DVA Medical Center located in Lexington, Kentucky. The NRC also preliminarily determined that Mr. Michael Hackett's actions, as the RSO, caused the permittee to be in apparent violation of the above requirements.

The results of the investigation were sent to Mr. Michael Hackett in a letter dated April 16, 2009. This letter offered Mr. Michael Hackett the opportunity to either participate in Alternative Dispute Resolution (ADR) mediation or to attend a Predecisional Enforcement Conference. In response to the NRC's offer, Mr. Michael Hackett requested use of the NRC's ADR process to resolve the differences he had with the NRC. On May 18, 2009, the NRC and Mr. Michael Hackett agreed to mediate. On June 26, 2009, the NRC and Mr. Michael Hackett participated in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. As used by the NRC, ADR is a process in which a neutral mediator with no decision-making authority assists the parties in reaching an agreement on resolving any differences regarding the dispute. This Confirmatory Order is issued pursuant to the agreement reached during the ADR process.

III

During the June 26, 2009, ADR session, a preliminary settlement agreement was reached. The elements of the agreement consisted of the following:

1. Mr. Michael Hackett agrees to submit to the NRC and NHPP a plan on how he will accomplish all the tasks assigned to him as RSO in the permit, and what steps he will take to ensure that the infrastructure exists for those duties with a long periodicity

(i.e., once a year, or once every three years) and what steps he will take to ensure that the permittee, the NHPP, and the NRC are aware that he is accomplishing his assigned duties within 60 days of the issuance of the Confirmatory Order. In addition to the above, such plan shall contain the following:

a. Within 45 days following each periodic (quarterly) Radiation Safety Committee meeting, Mr. Michael Hackett will provide minutes of the meeting to the permitee, the NHPP, and the NRC. This will continue for a period of one year from the date of the issuance of the Confirmatory Order.

b. Within 45 days following completion of the next annual program review following issuance of the Confirmatory Order, Mr. Michael Hackett will provide the results of the review to the permitee, the NHPP, and the NRC.

c. Within 45 days following completion of the next periodic training, conducted following issuance of the Confirmatory Order, regarding transportation and receipt of radioactive material, Mr. Michael Hackett will provide a curriculum of subjects covered and a list of individuals who were required to attend and a list of attendees [with personal privacy information redacted] to the permitee, the NHPP, and the NRC.

d. Within 45 days, Mr. Michael Hackett agrees to inform the NRC if he has been assigned, and has accepted, the responsibility for any additional collateral duties that may impact his ability to successfully fulfill his responsibilities as the Radiation Safety Officer. This will include his evaluation of how he will monitor the collateral duties to ensure that they do not overwhelm his primary RSO responsibilities. This will continue for one year from the issuance of the Confirmatory Order.

2. If, at any time, Mr. Michael Hackett is unable to perform any of his Radiation Safety Officer responsibilities, he will notify the NHPP and the NRC within 30 days.

3. Within 90 days following the issuance of the Confirmatory Order, Mr. Michael Hackett agrees to prepare and submit to the NRC an article, for subsequent submittal and consideration for publication by the NHPP, to inform others of: (1) the importance of ensuring that a VA radiation safety program fulfills all NRC safety requirements; and (2) developing the necessary infrastructure and communication paths to identify and resolve competing priorities that may preclude successful implementation of a VA radiation safety program. Within 30 days following receipt of approval from the NRC, Mr. Michael Hackett will submit the article to the NHPP for publication.

4. Mr. Michael Hackett agrees that he will inform the NRC if he leaves his RSO position before the terms of this Order are completed. The terms of the Order will remain in abeyance and will be reinstated if he accepts a position as or resumes the duties of an RSO within two years of the date of the Order.

5. The NRC agrees not to pursue any further enforcement action in connection with the NRC's April 16, 2009, letter to Mr. Michael Hackett. This does not prohibit NRC from taking enforcement action in accordance with the NRC Enforcement Policy if Mr. Michael Hackett commits a similar violation in the future or violates this Order.

6. Within 45 days, Mr. Michael Hackett agrees to inform the NRC of any condition that may preclude him from complying with any of the conditions of this Order. In such event, Mr. Michael Hackett may request relief from the associated requirements of the Order.

7. Mr. Michael Hackett has made no admission that he violated any NRC requirements and this agreement is settlement of a disputed claim in order to avoid litigation and further action by the NRC.

On July 9, 2009, Mr. Michael Hackett consented to issuing this Order with the commitments, as described in Section V below. Mr. Michael Hackett further agreed that this Order is to be effective upon issuance and that he has waived his right to a hearing.

IV

Since Mr. Michael Hackett has agreed to take additional actions to address NRC concerns, as set forth in Item III above, the NRC has concluded that its concerns can be resolved through issuance of this Order.

I find that Mr. Michael Hackett's commitments as set forth in Section V are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that Mr. Michael Hackett's commitments be confirmed by this Order. Based on the above, and Mr. Michael Hackett's consent, this Order is immediately effective upon issuance.

V

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 and 10 CFR Part 30, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY:

1. Mr. Michael Hackett agrees to submit to the NRC and NHPP a plan on how he will accomplish all the tasks assigned to him as RSO in the permit, and what steps he will

take to ensure that the infrastructure exists for those duties with a long periodicity (i.e., once a year, or once every three years) and what steps he will take to ensure that the permittee, the NHPP, and the NRC are aware that he is accomplishing his assigned duties within 60 days of the issuance of the Confirmatory Order. In addition to the above, such plan shall contain the following:

a. Within 45 days following each periodic (quarterly) Radiation Safety Committee meeting, Mr. Michael Hackett will provide minutes of the meeting to the permitee, the NHPP, and the NRC. This will continue for a period of one year from the date of the issuance of the Confirmatory Order.

b. Within 45 days following completion of the next annual program review following issuance of the Confirmatory Order, Mr. Michael Hackett will provide the results of the review to the permitee, the NHPP, and the NRC.

c. Within 45 days following completion of the next periodic training, conducted following issuance of the Confirmatory Order, regarding transportation and receipt of radioactive material, Mr. Michael Hackett will provide a curriculum of subjects covered and a list of individuals who were required to attend and a list of attendees [with personal privacy information redacted] to the permitee, the NHPP, and the NRC.

d. Within 45 days, Mr. Michael Hackett agrees to inform the NRC if he has been assigned, and has accepted, the responsibility for any additional collateral duties that may impact his ability to successfully fulfill his responsibilities as the Radiation Safety Officer. This will include his evaluation of how he will monitor the collateral duties to ensure that they

do not overwhelm his primary RSO responsibilities. This will continue for one year from the issuance of the Confirmatory Order.

2. If, at any time, Mr. Michael Hackett is unable to perform any of his Radiation Safety Officer responsibilities, he will notify the NHPP and the NRC within 30 days.

3. Within 90 days following the issuance of the Confirmatory Order, Mr. Michael Hackett agrees to prepare and submit to the NRC an article, for subsequent submittal and consideration for publication by the NHPP, to inform others of: (1) the importance of ensuring that a VA radiation safety program fulfills all NRC safety requirements; and (2) developing the necessary infrastructure and communication paths to identify and resolve competing priorities that may preclude successful implementation of a VA radiation safety program. Within 30 days following receipt of approval from the NRC, Mr. Michael Hackett will submit the article to the NHPP for publication.

4. Mr. Michael Hackett agrees that he will inform the NRC if he leaves his RSO position before the terms of this Order are completed. The terms of the Order will remain in abeyance and will be reinstated if he accepts a position as or resumes the duties of an RSO within two years of the date of the Order.

5. Within 45 days, Mr. Michael Hackett agrees to inform the NRC of any condition that may preclude him from complying with any of the conditions of this Order. In such event, Mr. Michael Hackett may request relief from the associated requirements of the Order.

Notifications to the NRC, as outlined in the above items, should be made to the Regional Administrator, NRC Region III, 2443 Warrenville Road, Lisle, Illinois, 60532.

The Regional Administrator, NRC Region III, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Michael Hackett of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than Mr. Michael Hackett, may request a hearing within 20 days of the Order's publication in the Federal Register. 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 directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and include a statement of good cause for the extension.

A request for a hearing must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August, 2007, 72 Fed. Reg. 49,139 (Aug. 28, 2007). The E-Filing process requires participants to submit and serve documents over the internet or, in some cases, to mail copies on electronic optical 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 five 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 using the agency's adjudicatory e-filing system 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 Meta-System Help Desk, which is available

between 8:00 a.m. and 8:00 p.m., Eastern Time, Monday through Friday, excluding government holidays. The Meta-System Help Desk can be contacted by telephone at 1-866-672-7640 or by e-mail at MSHD.Resource@nrc.gov.

Participants who believe that they have good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR. 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, 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 person other than Mr. Michael Hackett 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 the hearing is requested by 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 Confirmatory Order should be sustained.

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 V above shall be final 20 days from the date this Order is published in the Federal Register without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires, if a hearing request has not been received. A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Mark A. Satorius, Regional Administrator, Region III

Dated this 28th day of July 2009