

August 6, 2009

Mr. Allen McNeely, Director
Division of Occupational Safety
and Health
North Carolina Department of Labor
1101 Mail Service Center
Raleigh, NC 27699-1101

SUBJECT: PROTECTION OF CLASSIFIED INFORMATION FOR THE GENERAL ELECTRIC-
HITACHI URANIUM ENRICHMENT FACILITY

Dear Mr. McNeely:

I am proposing for your consideration draft guidance for the protection of classified information that the North Carolina Department of Labor may need access to. Your responsibilities for regulating laser safety under the Occupational Safety and Health Act may require access to classified information related to the General Electric-Hitachi Global Laser Enrichment test loop and the commercial uranium enrichment facility that have been proposed to be located in Wilmington, North Carolina. Because of the unique sensitivity of the proposed facility, it is especially important to protect the classified technology. The enclosed guidance document incorporates comments from your staff and includes important provisions regarding access to, and management of, classified information. This guidance discusses both of our agencies' roles and responsibilities and provides a process for obtaining security clearances and, if needed, a facility clearance permit for storing, handling, and processing classified information at your office. We very much appreciate your assistance in developing and coordinating the enclosed guidance document. If you agree with the guidance in this document, please acknowledge this in a response to this letter.

If you have any questions regarding the guidance or its implementation of the enclosed guidance, please contact Mr. Brian Smith, at 301-492-3137, or via e-mail, at Brian.Smith@nrc.gov.

Sincerely,

/RA/

Michael F. Weber, Director
Office of Nuclear Material Safety
and Safeguards

Enclosure: As stated

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**GUIDANCE FOR REGULATING LASER SYSTEMS RELATING TO
URANIUM ENRICHMENT ACTIVITIES
AT THE GENERAL ELECTRIC – HITACHI GLOBAL LASER ENRICHMENT FACILITIES IN
WILMINGTON, NORTH CAROLINA**

I. BACKGROUND

The U.S. Nuclear Regulatory Commission (NRC) has the responsibility for regulating and licensing commercial uses of source, byproduct, and special nuclear material (SNM) in the United States. General Electric-Hitachi Global Laser Enrichment, Inc. (GEH) is proposing to construct and operate a laser-based uranium enrichment test loop and a commercial-scale laser-based uranium enrichment facility in Wilmington, North Carolina.

In December 1988, NRC and the Federal Occupational Safety and Health Administration (OSHA) issued a Memorandum of Understanding (MOU) addressing a coordinated interagency effort related to non-radiological industrial safety at NRC licensed facilities. Under the MOU, OSHA is responsible for administering the requirements under the Occupational Safety and Health Act (OSH Act) and for dispositioning any non-radiological industrial safety issues identified by NRC staff.

Under its responsibilities under the OSH Act, the North Carolina Department of Labor's (NCDOL's) Division of Occupational Safety and Health (OSHNC) has been delegated by OSHA to regulate the safety of laser systems in North Carolina. Consistent with the MOU between NRC and OSHA, OSHNC, therefore, will be responsible for regulating laser safety at the GEH facilities.

Because the GEH facilities will use laser systems and uranium enrichment equipment classified up to the Secret-Restricted Data (S-RD) level and category, OSHNC will need to have appropriately cleared staff and a facility clearance for possession and storage of classified information to perform its inspection and regulatory functions. NRC has responsibility for review and approval of the necessary personnel and facility clearances that OSHNC will require to perform their responsibilities at the GEH facilities.

The purpose of this guidance is to define the OSHNC and NRC responsibilities and functions in regulating lasers at the GEH facilities in Wilmington, North Carolina.

II. AUTHORITY

NRC is responsible for licensing and regulating nuclear facilities and material and for conducting research in support of the licensing and regulatory process, as mandated by the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; in accordance with the National Environmental Policy Act of 1969, as amended; and other applicable statutes. NRC responsibilities include protecting public health and safety, protecting the environment, and safeguarding nuclear facilities and materials in the interest of national security. Pursuant to the Atomic Energy Act of 1954, as amended by the Energy Reorganization Act of 1974, applicable Executive Orders (including Executive Orders 12968 and 12958), and other authorities, NRC has responsibility for granting clearances to access classified information, and for granting

clearances for facilities and containers used to handle, transmit, or store such information.

OSHA is responsible for administering the requirements established under the OSH Act (29 U.S.C. 651, et seq.), which was enacted in 1970. OSHA's authority to engage in the activities described below does not apply to those workplace safety and health conditions for which other Federal agencies exercise statutory authority to prescribe and enforce standards, rules, or regulations. OSHA may delegate its responsibilities under the OSH Act to States that have an approved plan pursuant to 29 U.S.C. 667. North Carolina has such an approved plan.

Under Section 274 of the Atomic Energy Act, the State of North Carolina entered into an agreement with the NRC to regulate certain uses of source, byproduct, and special nuclear material. Under Section 193 of the Atomic Energy Act, NRC is responsible for regulating uranium enrichment facilities.

OSHA and NRC entered into an MOU, dated October 21, 1988, which delineated their respective general areas of responsibilities at facilities licensed by NRC. That MOU recognizes the authority of States with approved plans under 29 U.S.C. 667 to assume the same general responsibilities as Federal OSHA in accordance with the approved plan. North Carolina's plan received final approval from OSHA on December 18, 1996 (61 FR 66593).

For appropriate staff of the OSHNC, NRC will determine their eligibility for access to classified information by meeting the required personnel security procedures and by adhering to Executive Order 12968 (March 1997); the Adjudicative Guidelines for "Determining Eligibility for Access to Classified Information" (revised December 2005); NRC Management Directive 12.3, "Personnel Security Program"; Sections 145 and 161 (I) of the Atomic Energy Act of 1954, as amended [42 U.S.C. 2165 and 2201 (I)]; and Title 10 of the *Code of Federal Regulations* (10 CFR) Part 10 regulations. The investigation required for access to S-RD is a Single-Scope Background Investigation. Requirements for protection of classified information are provided in 10 CFR Parts 25 and 95. The security clearance requirements and investigation will comply with any and all changes required by applicable authority, Executive Order, law, or regulation.

III. PURPOSE AND SCOPE

This guidance defines and sets forth the mutual understanding of the regulatory roles and responsibilities of NRC and OSHNC for the regulation of lasers and protecting classified information associated with the GEH facilities in Wilmington, North Carolina.

OSHA has delegated to OSHNC the responsibility to regulate laser safety within the State of North Carolina. This delegation is recognized by the MOU between OSHA and NRC, entered on October 21, 1988, which delineated the respective general areas of responsibilities between OSHA and NRC at facilities licensed by NRC.

OSHNC requires access to classified information/equipment in conducting regulatory activities under its laser safety regulatory responsibilities and will ensure that access to classified information/equipment is provided only to those individuals with proper security

clearances and a need-to-know basis, as decided by NRC. OSHNC will also obtain a facility clearance under the requirements of 10 CFR Part 95 for possession and storage of classified information. OSHNC will only be provided access to classified information related to laser safety.

NRC will administratively process and review OSHNC personnel security clearance requests. NRC will review OSHNC facility clearance application requests.

NRC will provide information security training to OSHNC personnel, including topics related to lasers that may include classified information.

OSHNC understands that they will not have derivative classification authority and will not be provided classification guidance. Prior to being removed off-site, all notes will be reviewed by an NRC or GEH-authorized derivative classifier, and will be appropriately marked. OSHNC is responsible for completing an NRC Form 790 whenever a classified document is created, as required by 10 CFR 95.57(c). OSHNC will detail how classified material will be transmitted from the licensee facility to the approved OSHNC facility in its Standard Practice Procedure Plan (SPPP). Documents prepared from classified notes at the OSHNC site will be handled as classified until reviewed for release by an authorized derivative classifier. NRC will review documents prepared by OSHNC personnel and provide derivative classification services for OSHNC- prepared documents. NRC understands that OSHNC only has six months following the occurrence of any violation to issue a citation under N.C. Gen Stat. § 95-137(b)(3), and, therefore, NRC will use its best efforts to expedite its review of these documents to accommodate this limitation period.

Federal law, regulations, and orders shall govern the access to and handling and dissemination of all information, processes, equipment, and facilities that have been designated as classified or Safeguards Information. As designated under Section 147 of the Atomic Energy Act, Safeguards Information is information not otherwise classified as National Security Information or Restricted Data which specifically identifies a licensee's or applicant's detailed security measures for the physical protection of SNM or certain equipment vital to the safety of production or utilization facilities.

OSHNC will pay the costs of obtaining any personnel security clearances and facility clearances it requires.

NRC and OSHNC will share applicable inspection reports and findings applicable to laser safety.

Nothing in this guidance will limit the rights or ability of either agency (NRC or OSHNC) to exercise its authority independently with regard to matters that are the subject of this guidance.

This guidance applies solely to the activities described in this agreement related to the regulation of lasers pertaining to GEH laser-based uranium enrichment activities. Nothing in this guidance applies to or establishes a precedent for any other matter or agreement, including any other existing or future agreement between NRC and OSHNC.

All agreements herein are subject to, and will be carried out in compliance with, all applicable laws, regulations, and other legal requirements.

IV. ROLES AND RESPONSIBILITIES

A. U.S. Nuclear Regulatory Commission

NRC will initiate a review of the completed security package(s), submit the necessary forms to initiate the background investigation to the Office of Personnel Management, and will adjudicate the completed investigation before making an eligibility determination for access. No clearance nor access may be granted until completion of the investigation and a favorable adjudication decision is rendered.

NRC will retain sole discretion over the determination of who has a need-to-know with respect to any sensitive/classified information or equipment.

After the determination is rendered, the individual must first attend an NRC-provided Security Briefing and sign the Classified Non-Disclosure Agreement (SF-312). The original SF-312 will be sent to NRC for signature and acceptance.

NRC will provide OSHNC guidance documents describing the handling, storage, dissemination, and access to sensitive/classified information, equipment, and facilities necessary to prepare its SPPP for protection of classified information. NRC will also provide OSHNC staff information security training briefings.

NRC can deny, suspend, or revoke a personnel security clearance or facility clearance at any time based upon unfavorable information or for any other reason. If NRC's evaluation/adjudication of the information developed on an individual is unfavorable, NRC will inform the requester of its determination in the matter.

The Commission's regulations allow NRC, or authorize NRC, to conduct a personnel security interview when information contained in the report(s) of investigation of an individual or additional information added to the file creates a question of the individual's initial or continuing eligibility for a SNM access authorization, or for a security clearance, or for access to Restricted Data or National Security Information. [See 10 CFR 10.10 (c), 10.12, or 10 CFR 11.21(c)]. Such interviews are conducted for the purpose of assisting the NRC in resolving the access eligibility question and are intended to afford the individual an opportunity to furnish additional information or an explanation regarding the information in question.

NRC will review facility clearance applications submitted by OSHNC for possession, handling, and storage of classified information.

NRC will coordinate with OSHNC and inform OSHNC's designated Bureau Chief of any allegations or reportable events under OSHNC's jurisdiction.

B. OTHERS

A licensee, certificate holder, or other person who has a need to use, process, store, reproduce, transmit, transport, or handle sensitive or classified information at any location in connection with GEH-related activities shall promptly request the necessary NRC clearances or facility clearances. This specifically includes situations where a licensee, certificate holder, or other person needs a contractor or consultant to have access to classified information. Also included are others who require access to classified information in connection with NRC regulated activities but do not require use, storage, or possession of classified information outside of NRC facilities.

The request must include the name of the facility, the location of the facility, and an identification of any facility clearance issued by another government agency. If there is no existing facility clearance, the request must include a security SPPP that outlines the facility's proposed security procedures and controls for the protection of classified information.

C. Occupational Safety and Health Administration

Requests for access to classified information for the OSHNC personnel are to be submitted with the following required forms through the specific NRC sponsor and are to be forwarded to NRC's Personnel Security Branch:

- NRC Form 237, Request for Access Authorization with Justification (signed by NRC sponsor)
 - Complete Standard Form (SF) 86, in e-QIP
 - Signature Pages of SF-86:
 - Certification That All Answers Are True
 - Authorization for Release of Information
 - Authorization for Release of Medical Information (*if applicable*)
 - NRC Form 176, Security Acknowledgment Signed
 - Fair Credit Reporting Act of 1970 - Release
 - Fingerprint Cards FD-258
 - Payment (Check) for each applicant.
 - Q clearance –
 - Standard processing fee is \$5120.00
 - Expedited processing fee \$5625.00
- (See Section III of this guidance for responsibility of OSHNC to reimburse NRC for clearance investigations. The above rates are current as of the date of this letter, but are subject to change in the future.) Make check payable to: U.S. Nuclear Regulatory Commission

The security clearance requirements and investigation will comply with any and all changes required by applicable authority, Executive Order, law, or regulation. OSHNC will pay the current applicable rate for all required investigations should any increase in rates occur during the term of this agreement.

OSHNC will ensure that all its employees/representatives who are granted access to sensitive/classified information, equipment, and facilities will comply fully with all applicable rules and policies regarding the handling, storage, dissemination, and access to sensitive/classified information, equipment, and facilities.

OSHNC will possess, handle, and store classified information in accordance with its facility clearance, its SPPP, and 10 CFR Parts 25 and 95.

OSHNC will submit properly completed NRC Form 277, "Request for Visit or Access Approval," to GEH prior to site visits.

- D. For NRC to make a Facility Security Clearance determination, OSHNC will be required to develop an SPPP for access only to classified information. An overview of these requirements can be found in 10 CFR 95.17.
- E. OSHNC will coordinate with NRC and inform NRC's Regional Branch Chief and NRC's GEH Project Manager of any allegations or reportable events under OSHNC's jurisdiction.
- F. OSHNC and NRC will consult with each other before disclosing information related to this MOU to preclude dissemination of information that may be exempt from disclosure under the Freedom of Information Act (FOIA), as amended, the N.C. Public Records Act, or other applicable law. FOIA requests, N.C. Public Records Act requests, Congressional requests, or other requests for documents will be referred to the agency that authored the document for resolution. Although it is NRC's practice to make available to the public non-sensitive docket-related OSHNC correspondence that is not classified, restricted, privileged, or proprietary by placing these documents in NRC's Agency-Wide Documents and Management System, OSHNC may specifically request that information be withheld. In addition, any documentation that is classified, safeguards, restricted, privileged, or proprietary must be clearly marked as such.

V. RESOLUTION OF DISPUTES

- A. If disagreements or conflicts about matters within the scope of this guidance arise, OSHNC and NRC will work together to resolve these differences.
- B. Resolution of differences between OSHNC and NRC staff will be the initial responsibility of the Bureau Chief of Education, Training, and Technical Assistance Bureau; OSHNC; and the Branch Chief; Uranium Enrichment Branch; NRC.
- C. If the issue cannot be resolved at the Bureau and Branch Chief levels, OSHNC and NRC will refer the matter within thirty (30) days to the Director; Occupational Safety and Health Division; OSHNC; and the Director; Division of Fuel Cycle Safety and Safeguards; Office of Nuclear Material Safety and Safeguards; NRC.
- D. Resolution of policy issues concerning agency jurisdiction, operational relations, and inspection and enforcement will be coordinated by the Chief; Uranium

Enrichment Branch; NRC; and by the Bureau Chief; Education, Training, and Technical Assistance Bureau; OSHNC.

VI. OTHER LAWS AND MATTERS

This guidance shall not be used to obligate or commit funds or as the basis for the transfer of funds.

This guidance is strictly for internal management purposes of each of the parties. It is not a legally enforceable document and shall not be construed to create any legal obligation on the part of either party or to provide a right or cause of action (legal or equitable) for or by any person(s) or entity.

This guidance in no way restricts either of the parties from participating in any activity with other public or private agencies, organizations, or individuals.

This guidance may be further implemented by supplementary agreements in which authorized representatives of OSHNC and NRC may amplify or modify the policy or provisions in this guidance or any of its supplements, provided that any material modifications of the provisions or any of its supplements shall be subject to the approval of the Chief; Uranium Enrichment Branch; NRC; and by the Bureau Chief; Education, Training, and Technical Assistance Bureau; OSHNC.

If any provision(s) of this guidance, or the application of any provision(s) to any person or circumstances, is held invalid, the remainder of the guidance and the application of such provision to other persons or circumstances shall not be affected.

VII. POINTS OF CONTACT

A. U.S. Nuclear Regulatory Commission

Refer to the e-QIP form for information regarding requesting an NRC clearance and the e-QIP Brochure for the specific instructions on accessing and completing the e-QIP forms. OSHNC personnel must sign and return the original hard copy of the signature pages to the following address:

U. S. Nuclear Regulatory Commission
ATTN: Personnel Security Branch
Division of Facilities and Security
11555 Rockville Pike
Mailstop: TWB-5-B32M
Rockville, MD 20852

NRC Agency Sponsor, Timothy Johnson, Senior Project Manager, (301) 492-3121 or by e-mail Timothy.Johnson@NRC.GOV

Information Security, J. Keith Everly Jr., Senior Security Specialist (301) 415-7048 or by e-mail JKeith.Everly@NRC.GOV

Personnel Security Processing, Valerie Kerben, Senior Personnel Security Specialist, (301) 492-3527, or by e-mail Valerie.Kerben@NRC.GOV

B. Occupational Safety and Health Administration

N.C. Department of Labor
Occupational Safety and Health Division
1101 Mail Service Center
Raleigh, NC 27699-1101

Allen McNeely, OSHNC, Director, (919) 807-2861 or by e-mail
Allen.McNeely@labor.nc.gov

Wanda Lagoe, OSHNC, Bureau Chief, (919) 807-2890 or by e-mail
Wanda.Lagoe@labor.nc.gov

C. UPDATES

NRC and OSHNC will provide updates of the above designated contacts for implementation of this memorandum as necessary. Updated lists of OSHNC contacts will be provided to the Chief; Uranium Enrichment Branch; NRC. Updated lists of NRC contacts will be provided to the Bureau Chief; Education, Training, and Technical Assistance Bureau; OSHNC.

Attachment(s):

1. e-QIP form for requesting NRC clearance
2. e-QIP Brochure