

August 13, 2009

EA-06-140

Mr. Robert Van Namen  
Senior Vice President, Uranium Enrichment  
USEC Inc.  
Two Democracy Center  
6903 Rockledge Drive  
Bethesda, MD 20817

SUBJECT: CONFIRMATORY ORDER (EFFECTIVE IMMEDIATELY)  
(ALJ Case No. 2004-ERA-0001)

Dear Mr. Van Namen:

The enclosed Confirmatory Order is being issued to USEC Inc. and its subsidiary, the United States Enrichment Corporation (USEC), a Certificate holder, as part of a settlement agreement between USEC, Inc. and the U.S. Nuclear Regulatory Commission (NRC) regarding an apparent violation of 10 CFR 76.7, "Employee protection," issued by the NRC to USEC, on January 9, 2009.

In the letter of January 9, 2009, the NRC identified an apparent violation of 10 CFR 76.7 based on a United States Department of Labor (DOL) Administrative Review Board's (ARB) August 29, 2008, Final Decision and Order (ARB Case Nos. 06-055, 06-058, and 06-119) affirming a DOL Administrative Law Judge's (ALJ) findings of fact and conclusions. On January 27, 2006, the ALJ issued a Proposed Decision and Order (ALJ Case No. 2004-ERA-001), concluding that USEC retaliated against a former quality control manager at the Paducah Gaseous Diffusion Plant (Paducah) in violation of Section 211 of the Energy Reorganization Act of 1974, as amended (the ERA). USEC disagreed with the ALJ decision and appealed to the ARB for review.

In response to the ALJ decision, the NRC sent USEC a letter on April 6, 2006, expressing concerns regarding the potential existence of a chilling effect on the safety-conscious work environment (SCWE) at Paducah as a result of the ALJ finding of discrimination. The NRC sought information from USEC regarding the actions it had taken or planned to take to prevent the finding from having a negative effect on the willingness of Paducah employees to raise safety concerns. The NRC also informed USEC that, in accordance with its normal practice, it

would monitor the ARB proceedings to determine if revisiting the matter would be warranted when the ARB issued its decision. On May 8, 2006, USEC responded to the NRC letter. As mentioned above, the ARB issued its decision on August 29, 2008, affirming the findings and conclusions of the DOL ALJ.

In the January 9, 2009 letter, the NRC offered USEC the option of either: (1) providing a written response to the apparent violation, or (2) requesting alternative dispute resolution (ADR) with the NRC. In response, USEC requested ADR to resolve the apparent violation of 10 CFR 76.7. The ADR mediation session was held on May 29, 2009, in Washington, D.C at which time the parties entered into a settlement agreement. The terms and conditions of that settlement agreement are set forth in Section V of the enclosed Confirmatory Order.

As part of the settlement agreement, USEC Inc. agreed to complete a number of actions, including: having a third party conduct an independent assessment of the SCWE at the Paducah site; and providing SCWE training (that includes case studies) to Paducah, Portsmouth Gaseous Diffusion Plant, American Centrifuge Plant, American Centrifuge Lead Cascade Facility, and designated USEC headquarters managers and employees. In exchange for these actions, the NRC agreed to exercise enforcement discretion and refrain from pursuing further enforcement action relating to the January 9, 2009, letter. We will, however, evaluate the implementation of the Confirmatory Order during future inspections.

We have enclosed the Confirmatory Order (Effective Immediately) to confirm the commitments made as part of the settlement agreement. As evidenced by your signed "Consent and Hearing Waiver" Form (copy enclosed) dated July 30, 2009, you agreed to issuance of the enclosed Confirmatory Order.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Confirmatory Order shall be subject to criminal prosecution as set forth in that section. Violation of this Confirmatory Order may also subject the person to civil monetary penalties.

You are not required to respond to this letter. However, if you choose to provide a response, please provide it to me within 30 days at U.S. Nuclear Regulatory Commission, Mail Stop O14E1, 11555 Rockville Pike, Rockville, MD 20852. Questions concerning this Confirmatory Order should be addressed to Russell J. Arrighi, NRC Office of Enforcement, who can be reached at 301-415-0205 or via e-mail at [Russell.Arrighi@nrc.gov](mailto:Russell.Arrighi@nrc.gov).

A copy of this letter and its enclosures will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. The NRC will

also include this letter, and its enclosed Confirmatory Order, on its website at [www.nrc.gov](http://www.nrc.gov). Your response, if you choose to provide one, will also be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS).

Sincerely,

/RA/

Cynthia A. Carpenter, Director  
Office of Enforcement

Docket Nos. 070-07001, 070-07002, 070-07003, 070-07004  
Certificate Nos. GDP-1, GDP-2  
License Nos. SNM-7003, SNM-2011

Enclosures:

1. Confirmatory Order
2. Copy of Consent and Hearing Waiver Form dated July 30, 2009

cc: w/enclosures:

S. A. Toelle, Director, Nuclear Regulatory Affairs, USEC  
P. J. Miner, Director Regulatory Affairs, USEC Inc.  
R. B. Starkey, Paducah Gaseous Diffusion Plant General Manager,  
V. Shankes, Paducah Regulatory Affairs Manager  
S. R. Penrod, Portsmouth Gaseous Diffusion Plant General Manager  
T. Sensue, American Centrifuge Plant Regulatory Manager  
D. E. Mays, American Centrifuge Lead Cascade Regulatory Manager  
R. M. DeVault, Regulatory Oversight Manager, DOE  
G. A. Bazzell, Paducah Facility Representative, DOE  
C. A. O'Claire, State Liaison Officer (Ohio)  
D. Crawford, State Liaison Officer (Kentucky)

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G. A. Bazzell, Paducah Facility Representative, DOE  
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ADAMS Package No.: ML092220191, Order: ML092220214, Waver: ML092220191

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DATE	07/08/2009	07/20/2009	07/23/2009	07/21/2009	08/13/2009

**OFFICIAL RECORD COPY**

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of		
United States Enrichment Corporation	)	Docket No. 070-07001
Paducah Gaseous Diffusion Plant	)	Certificate No. GDP-1
Paducah Kentucky	)	
United States Enrichment Corporation	)	Docket No. 070-07002
Portsmouth Gaseous Diffusion Plant	)	Certificate No. GDP-2
Piketon, Ohio	)	
United States Enrichment Corporation, Inc.	)	Docket No. 070-07003
American Centrifuge Lead Cascade Facility	)	License No. SNM-7003
Piketon, Ohio	)	
United States Enrichment Corporation, Inc.	)	Docket No. 070-07004
American Centrifuge Plant	)	License No. SNM-2011
Piketon, Ohio	)	

EA-06-140

CONFIRMATORY ORDER MODIFYING LICENSE  
(EFFECTIVE IMMEDIATELY)

I

USEC Inc. is the holder of Facility Operating License Nos. SNM-7003 and SNM-2011 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 70.

License SNM-7003 was issued on February 24, 2004, and amended on October 30, 2008.

License No SNM-2011 was issued on April 13, 2007, and amended on July 14, 2009. The licenses authorize the operation of the American Centrifuge Plant and the American Centrifuge Lead Cascade Facility in accordance with the provisions therein. These facilities are located in Piketon, OH.

The United States Enrichment Corporation (USEC), a subsidiary of USEC Inc., is the holder of NRC Certificates of Compliance (COC) No. GDP-1 and GDP-2 issued by the NRC pursuant to

10 CFR Part 76 on November 26, 1996, and renewed on December 22, 2008. The COC are set to expire on December 31, 2013. The certificates authorize USEC to operate the Paducah Gaseous Diffusion Plant (Paducah), located near Paducah, Kentucky, and the Portsmouth Gaseous Diffusion Plant (Portsmouth), located in Piketon, Ohio. The certificates also authorize USEC to receive, and other NRC licensees to transfer to USEC, byproduct material, source material, or special nuclear material to the extent permitted under the COC.

This Confirmatory Order is the result of an agreement reached during the alternative dispute resolution (ADR) mediation session conducted on May 29, 2009.

## II

By letter dated January 9, 2009, the NRC informed USEC of the identification of an apparent violation of 10 CFR 76.7, "Employee protection." The apparent violation was based on the United States Department of Labor (DOL) Administrative Review Board's (ARB's) August 19, 2008, Final Decision and Order (ARB Case Nos. 06-055, 06-058, and 06-119) affirming a DOL Administrative Law Judge's (ALJ) findings of fact and conclusions. Previously, on January 27, 2006, the DOL ALJ issued a Proposed Decision and Order (ALJ Case No. 2004-ERA-001), concluding that USEC retaliated against a former quality control manager at Paducah in violation of Section 211 of the Energy Reorganization Act of 1974, as amended (the ERA). USEC denied that it violated the ERA and appealed the ARB decision to the United States Court of Appeals for the Sixth Circuit. Although, at this time, there is no indication that the impact of the apparent violation is not isolated, the NRC is concerned that, in the absence of appropriate management actions, the ARB decision may ultimately have a broader impact on Paducah's safety-conscious work environment (SCWE).

In its January 9, 2009, letter to USEC, the NRC offered USEC the option of either providing a written response to the apparent violation, or requesting ADR through Cornell University's Institute on Conflict Resolution. ADR is a process in which a neutral mediator with no decision-making authority assists the parties in reaching an agreement and resolving any differences regarding a dispute. This Confirmatory Order is issued pursuant to the agreement reached during the ADR process.

### III

In response to the NRC's letter of January 9, 2009, USEC chose to participate in ADR with the NRC. During the ADR session a preliminary settlement agreement was reached. The elements of the agreement consisted of the following:

- I. By no later than 180 calendar days after the issuance of the Confirmatory Order, USEC agrees to engage a third party to conduct an independent assessment of the SCWE at USEC's Paducah site. Through this assessment, the Certificatee will benchmark the effectiveness of the key elements of its SCWE initiatives; look at industry best practices; modify or further develop the SCWE program; and develop an assessment tool to periodically evaluate the effectiveness of USEC's Paducah SCWE program.
- II. Within 90 calendar days after completion of the assessment as referenced in paragraph I above, USEC shall make available to the NRC onsite:
  - (a) A description of the tools/methods used to conduct the assessment including any survey questions;

- (b) The results of the assessment and USEC's analysis of the results; and,
  - (c) The proposed actions, if any, USEC will take to address the results of the assessment in order to ensure that a healthy SCWE exists at USEC's Paducah site.
  
- III. No later than three years after the independent assessment performed in paragraph I above, USEC shall perform a second independent assessment of the SCWE at USEC's Paducah site to determine the effectiveness of the SCWE program
  
- IV. By no later than 180 calendar days after the issuance of the Confirmatory Order, USEC agrees to develop, review and/or revise as appropriate, annual SCWE training (that includes case studies). USEC agrees to train the following management staff on SCWE principles within 15 months of the date of the Confirmatory Order and provide refresher training annually thereafter:
  - (a) USEC Headquarters personnel, to include employees designated in the Safety Analysis Report (SAR) as having safety responsibilities for the gaseous diffusion plants, and USEC Headquarters Operations personnel;
  - (b) American Centrifuge Plant (ACP) management;
  - (c) American Centrifuge Lead Cascade Facility (ACLCF) management;
  - (d) Paducah Gaseous Diffusion Plant (Paducah) management;
  - (e) Portsmouth Gaseous Diffusion Plant (Portsmouth) management; and
  - (f) USEC's long-term contractor management who work at the ACP, ACLCF, Paducah, and Portsmouth facilities.

In addition, within three months of hire or promotion, new USEC managers at the entities identified in (a) through (e) above will receive initial SCWE training.



- V. By no later than 180 calendar days after the issuance of the Confirmatory Order, USEC agrees to develop, review, and/or revise as appropriate, refresher SCWE training (that includes case studies) for non-management personnel. USEC agrees to train ACP, ACLCF, Paducah and Portsmouth plants' non-management employees, and USEC long-term contractors who work within the ACP, ACLCF, Paducah, and Portsmouth facilities on the topic of SCWE within 15 months of the date of the Confirmatory Order and provide refresher training every two years thereafter.
- VI. The terms of the Confirmatory Order apply to the successors and assigns of the Certificatee and Licensees.

On July 30, 2009, USEC Inc. consented to issuance of this Confirmatory Order with the commitments, as described in Section V below. USEC Inc. further agreed that this Confirmatory Order is to be effective upon issuance and it has waived its right to a hearing.

#### IV

Since USEC Inc. 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 Confirmatory Order and thereby has agreed to exercise enforcement discretion and not pursue any further enforcement action for this issue in accordance with Section VII of the Enforcement Policy.

I find that USEC Inc'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 the public health and safety require that the Licensee's and Certificate holder's commitments be confirmed by this Confirmatory Order. Based on the above and the Licensee's and Certificate holder's consent, this Confirmatory Order is immediately effective upon issuance.

## V.

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182, 186 and 1710 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Part 70, and 10 CFR Part 76, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT CERTIFICATES OF COMPLIANCE NO. GDP-1, GDP-2, AND LICENSE NOS. SNM-2011 AND SNM-7003 ARE MODIFIED AS FOLLOWS:

- I. By no later than 180 calendar days after the issuance of the Confirmatory Order, USEC agrees to engage a third party to conduct an independent assessment of the SCWE at USEC's Paducah site. Through this assessment, the Certificatee will benchmark the effectiveness of the key elements of its SCWE initiatives; look at industry best practices; modify or further develop the SCWE program; and develop an assessment tool to periodically evaluate the effectiveness of USEC's Paducah SCWE program.
- II. Within 90 calendar days after completion of the assessment as referenced in paragraph I above, USEC shall make available to the NRC onsite:
  - (a) A description of the tools/methods used to conduct the assessment including any survey questions;

- (b) The results of the assessment and USEC's analysis of the results; and,
  - (c) The proposed actions, if any, USEC will take to address the results of the assessment in order to ensure that a healthy SCWE exists at USEC's Paducah site.
  
- III. No later than three years after the independent assessment performed in paragraph I above, USEC shall perform a second independent assessment of the SCWE at USEC's Paducah site to determine the effectiveness of the SCWE program.
  
- IV. By no later than 180 calendar days after the issuance of the Confirmatory Order, USEC agrees to develop, review and/or revise as appropriate, annual SCWE training (that includes case studies). USEC agrees to train the following management staff on SCWE principles within 15 months of the date of the Confirmatory Order and provide refresher training annually thereafter:
  - (a) USEC Headquarters personnel, to include employees designated in the Safety Analysis Report (SAR) as having safety responsibilities for the gaseous diffusion plants, and USEC Headquarters Operations personnel;
  - (b) American Centrifuge Plant (ACP) management;
  - (c) American Centrifuge Lead Cascade Facility (ACLCF) management;
  - (d) Paducah Gaseous Diffusion Plant (Paducah) management;
  - (e) Portsmouth Gaseous Diffusion Plant (Portsmouth) management; and
  - (f) USEC's long-term contractor management who work at the ACP, ACLCF, Paducah, and Portsmouth facilities.

In addition, within three months of hire or promotion, new USEC managers at the entities identified in (a) through (e) above will receive initial SCWE training.

V. By no later than 180 calendar days after the issuance of the Confirmatory Order, USEC agrees to develop, review, and/or revise as appropriate, refresher SCWE training (that includes case studies) for non-management personnel. USEC agrees to train ACP, ACLCF, Paducah and Portsmouth plants' non-management employees, and USEC long-term contractors who work within the ACP, ACLCF, Paducah, and Portsmouth facilities on the topic of SCWE within 15 months of the date of the Confirmatory Order and provide refresher training every two years thereafter.

VI. The terms of the Confirmatory Order apply to the successors and assigns of the Certificatee and Licensees.

The Director, Office of Enforcement, may relax or rescind, in writing, any of the above conditions upon a showing by the Licensee or Certificate holder of good cause.

## VI

In accordance with 10 C.F.R 2.202, any person adversely affected by this Confirmatory Order, other than USEC, Inc. which holds licenses SNM-7003 and SNM-2011 and its subsidiary, USEC, which holds certificates GDP-1 and GDP -2, may request a hearing within 20 days of its 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, 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. 8, 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 (5) days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at [HEARINGDOCKET@NRC.GOV](mailto: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 person (other than the Certificate holder or 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 C.F.R. 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/*

Cynthia A. Carpenter, Director  
Office of Enforcement

Dated this 13 day of August, 2009