



AUG 14 2009

NEF-09-00150-NRC

Attn: Document Control Desk
Director
Office of Nuclear Material Safety and Safeguards
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555-0001

Louisiana Energy Services, LLC
National Enrichment Facility
NRC Docket No. 70-3103

Subject: Revised Settlement Agreement

- References:
1. Letter from B. Smith (NRC) to G. Smith (LES), Tails Cylinder Limits, March 26, 2009
 2. Revised Settlement Agreement, June 16, 2009
 3. NEF-09-00103-NRC, Request for Amendment to Materials License SNM-2010 to Change License Conditions 21, 22 and 23 (LAR-09-21), July 10, 2009
 4. Email from J. Rollins (LES) to T. Naquin (NRC), Settlement Agreement, July 17, 2009

Pursuant to the NRC's request in Reference 1, Louisiana Energy Services, LLC (LES) herewith submits the Reference 2 agreement (Enclosure) which was referenced in the Reference 3 License Amendment Request (LAR-09-021). This agreement was transmitted to the NRC earlier via email (Reference 4).

Should you have any questions concerning this submittal, please contact Stephen Cowne, LES Director of Quality and Regulatory Affairs, at 575.394.5253.

Sincerely,

Gregory OD Smith
Chief Nuclear and Chief Operating Officer

Enclosure: Revised Settlement Agreement

LM5501

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REVISED SETTLEMENT AGREEMENT

WHEREAS, the New Mexico Environment Department (“NMED”) and the Attorney General of New Mexico (“NMAG”) have requested and been granted a hearing before the Atomic Safety and Licensing Board (“Board”) relating to certain matters concerning the application filed by Louisiana Energy Services, LLC (“LES” or “licensee”) for a license from the United States Nuclear Regulatory Commission (“NRC”) to construct and operate the National Enrichment Facility (“NEF”), Docket No. 70-3103 (“NRC Proceeding”);

WHEREAS, NMED, NMAG and LES have determined that it is in the public interest for LES to be bound by enforceable conditions limiting the storage and disposal of depleted uranium hexafluoride (“DUF₆”) generated at the NEF;

WHEREAS, NMED, NMAG and LES have determined that it is in the public interest to insure that LES limit the amount of DUF₆ stored onsite and to limit the length of time that DUF₆ is stored onsite at the NEF;

WHEREAS, NMED, NMAG and LES have determined that it is in the public interest to prohibit the disposal of DUF₆ in the State of New Mexico;

WHEREAS, NMED, NMAG and LES have determined that it is in the public interest to require LES to establish adequate financial assurances for the storage and offsite disposal of DUF₆;

WHEREAS, NMED, NMAG and LES have determined that an appropriate contingency factor should be applied to the financial assurances to be established by LES;

WHEREAS, NMED, NMAG and LES have reached agreement regarding the issues raised by NMED and NMAG in the NRC Proceeding;

WHEREAS, NMED, NMAG and LES agree to modify the July 27, 2005 Settlement Agreement ("Settlement Agreement") and substitute it with this Revised Settlement Agreement; and

WHEREAS, LES agrees, as soon as practicable after this Revised Settlement Agreement is executed by all parties, to apply to the NRC to modify its existing NEF license consistent with the conditions herein, as modified from the original Settlement Agreement.

THEREFORE, IT IS HEREBY STIPULATED AND AGREED by NMED, NMAG and LES that:

1. NMED, NMAG and LES admit that the NRC has jurisdiction over the parties and the subject matter of this Revised Settlement Agreement.

2. NMED, NMAG and LES agree to the following condition:

Onsite storage of DUF₆ generated at the NEF shall be limited to a maximum of 25,000 48Y cylinders (or the equivalent amount of uranium stored in other NRC accepted and Department of Transportation ("DOT") certified cylinder types) of DUF₆. The generation of any additional DUF₆ to be stored onsite by LES beyond this limit shall constitute noncompliance with this Revised Settlement Agreement and the license. LES shall suspend production of any additional DUF₆ for onsite storage until this noncompliance is remedied. In no event shall LES store DUF₆ generated at the NEF in New Mexico other than at the NEF.

NMED, NMAG and LES agree that this condition shall be included in the NEF license when amended by the NRC.

3. NMED, NMAG and LES agree to the following condition:

Onsite storage of any one cylinder of DUF₆ generated at the NEF shall be limited to a maximum of 25 years, beginning from the date that each cylinder is filled in accordance with LES' standard procedures. The storage of any one DUF₆ cylinder beyond this limit by LES shall constitute

noncompliance with this Revised Settlement Agreement and with the license. LES shall suspend production of any additional DUF₆ for onsite storage until this noncompliance is remedied. In no event shall LES store DUF₆ generated at the NEF in New Mexico other than at the NEF.

NMED, NMAG and LES agree that this condition shall be included in the NEF license when amended by the NRC.

4. NMED, NMAG and LES agree to the following condition:

LES shall provide financial assurance for the offsite disposal of DUF₆ from the NEF using a minimum contingency factor of twenty-five percent (25%).

Upon reaching 23,000 cylinders of DUF₆ in 48Y cylinders (or the equivalent amount of uranium stored in other NRC accepted and DOT certified cylinder types) in onsite storage, LES shall immediately increase the financial assurance to provide a fifty percent (50%) contingency factor for disposition of DUF₆ stored at the NEF unless: (a) an application to construct and operate a deconversion facility outside of New Mexico that is specifically designated to deconvert the DUF₆ stored onsite at the NEF has been docketed by the agency responsible for reviewing the application; (b) an application for such a facility has been approved by the agency responsible for reviewing the application; or (c) LES is using another alternate method for removing the DUF₆ stored onsite.

In addition, upon reaching the limit of 25,000 cylinders of DUF₆ in 48Y cylinders (or the equivalent amount of uranium stored in other NRC accepted and DOT certified cylinder types) in onsite storage, LES shall immediately increase the financial assurance to provide a fifty percent (50%) contingency factor for disposition of DUF₆ stored at the NEF if the contingency factor has not already been increased to fifty percent (50%). The contingency factor shall remain at fifty percent (50%) until the number of cylinders stored onsite is reduced to ninety-eight percent (98%) of the 25,000 limit and either: (a) an application to construct and operate a deconversion facility outside of New Mexico that is specifically designated to deconvert the DUF₆ stored onsite at the NEF has been docketed by the agency responsible for reviewing the application; (b) an

application for such a facility has been approved by the agency responsible for reviewing the application; or (c) LES is using another alternate method for removing the DUF₆ from New Mexico.

Nothing herein shall release LES from other financial assurance obligations set forth in applicable laws and regulations.

NMED, NMAG and LES agree that this condition shall be included in the NEF license when amended by the NRC.

5. NMED, NMAG and LES agree that

In no event shall DUF₆ from the NEF be disposed of in the State of New Mexico and in no event shall LES construct or operate a deconversion facility in the State of New Mexico.

LES agrees that if it decides to submit a request to the Secretary of the United States Department of Energy ("DOE") pursuant to Section 3113 of Public Law 104-134 (42 U.S.C. § 229h-1 1), such a request will be made only if both LES and DOE determine that the NEF is not and will not be considered an "existing DUF₆ storage facility" within the meaning of Section 311 of Public Law 108-447.

6. NMED, NMAG and LES agree that LES shall provide a draft copy of the periodic adjustment of the decommissioning cost estimate required by 10 C.F.R. § 70.25(e) (hereinafter referred to as the "Triennial Report") to the Attorney General of the State of New Mexico and to the Secretary of the New Mexico Environment Department at least 60 days prior to the submission of Triennial Report in final form to the NRC. NMED, NMAG and LES further agree that they will work together in good faith to resolve any comments regarding the Triennial Report. Notwithstanding any efforts by LES to resolve any comments regarding the Triennial Report, NMED or NMAG may submit their comments directly to the NRC. Lastly, LES agrees to reimburse NMED and NMAG (or to pay directly as requested by NMED and NMAG) to hire

expert(s) and/or outside counsel to evaluate, review, and provide comments to the draft Triennial Report subject to a maximum of no greater than \$20,000 per Triennial Report.

7.A. NMED, NMAG and LES agree that LES will provide financial assurance in the minimum initial amount of \$7.15/kgU for the disposition of DUF₆ situated at the NEF from the date when financial assurance is required by the NRC until LES notifies the NRC of any revision pursuant to applicable NRC regulatory requirements and guidance, but no revision shall be submitted for review sooner than the first Triennial Report.

7.B. In addition to the DUF₆ disposition cost estimate and contingency factor submitted by LES in Section 10.3 of its Fourth Revision to the Safety Analysis Report in its License Application (April 2005), NMED, NMAG and LES agree that to address and resolve NMAG's financial assurance concerns, an additional \$1.30/kgU will be included in the initial amount of financial assurance for the disposition of DUF₆ situated at the NEF, bringing the minimum initial amount to a total of \$7.15/kgU as provided in Paragraph 7.A of this Revised Settlement Agreement. NMED, NMAG and LES further acknowledge that LES maintains that the additional \$1.30/kgU to address NMAG's financial assurance concerns is over and above the amount that LES maintains is required by applicable NRC regulatory requirements and guidance.

7.C. NMED, NMAG and LES further agree that in the first, or subsequent, Triennial Report(s), LES may not submit for NRC review the elimination of the \$1.30/kgU amount provided for in Paragraph 7.B of this Revised Settlement Agreement unless LES has in place a contractual arrangement for the out-of-state processing and/or removal of DUF₆ situated onsite at the NEF. Nothing herein shall preclude NMED or NMAG, in accordance with the provisions in Paragraph 6 of this Revised Settlement Agreement, from advocating at the first, or subsequent, Triennial Report(s), any issues with respect to financial assurance, including, but not limited to, the \$1.30/kgU provided for in Paragraph 7.B of this Revised Settlement Agreement.

8. NMED, NMAG and LES agree that LES shall provide a yearly report to the Attorney General of the State of New Mexico and to the Secretary of the New Mexico Environment Department, on or before January 15th of each year that the NEF is producing DUF₆, that identifies the number of DUF₆ cylinders stored on the storage pad at the NEF as of the end of the preceding year, the number of DUF₆ cylinders anticipated to be filled during the next year, and the lengths of time all the DUF₆ cylinders have been stored onsite. In addition, NMED, NMAG and LES agree that in each such yearly report LES shall include any findings resulting from the cylinder management program (as required in LES' Environmental Report at Section 4.13.3.1.1) for the preceding year.

9. NMED, NMAG and LES agree that LES shall provide NMED and the NMAG the same access to documents and materials relating to LES' radiation protection program that is required to be provided to the NRC.

10. NMED, NMAG and LES agree that LES shall support and shall not object to NMED accompanying NRC staff on any of its inspections of the NEF radiation program and conducting inspections as permitted by any agreements between NMED and NRC that are executed in accordance with applicable NRC policy and guidance. In this regard, LES shall allow NMED staff the same access to its facilities, documents, materials and personnel to which NRC is entitled. NMED shall execute any confidentiality agreement necessary to participate in such inspections and shall comply with all appropriate NEF rules (e.g., safety, security) and any applicable NRC requirements when participating in such inspections.

11. NMED, NMAG and LES agree that the NEF shall comply with all safeguards requirements of the International Atomic Energy Agency ("IAEA") as imposed by the NRC to ensure proliferation protection.

12. NMED, NMAG and LES agree that LES shall provide to the New Mexico Department of Public Safety the Physical Security Plan for the NEF subject to the execution by the appropriate officials, employees or representatives of the New Mexico Department of Public Safety of all required non-disclosure agreements.

13. NMED and NMAG reserve the right to reappear before the Board or NRC upon the discovery of significant information that was not known by NMED or NMAG at the time they executed this Revised Settlement Agreement and, in the event the NMED or NMAG make such an appearance, they shall comply with any applicable NRC rules regarding late-filed contentions. Prior to reappearing before the Board or NRC, NMED and NMAG shall make good faith efforts to resolve the issues or claims with LES. Nothing herein shall be construed to prohibit NMED or NMAG from filing a request that the NRC initiate a proceeding to enforce the conditions of the license issued as a result of this Revised Settlement Agreement. Finally, NMED and NMAG agree that neither NMED nor NMAG will judicially challenge or seek to join a judicial challenge of a decision by the Board or NRC in this NRC Proceeding unless such challenge is based solely on a matter which was the subject of a reappearance by NMED and/or NMAG as provided for herein.

14. This Revised Settlement Agreement does not resolve matters not raised by NMED or NMAG in the NRC Proceeding or matters outside the NRC Proceeding. NMED and NMAG reserve the right to enforce and seek relief under any other applicable laws and regulations. Moreover, nothing in this Revised Settlement Agreement waives or releases LES from its obligation to comply with all applicable laws and regulations.

15. All parties hereto agree to exercise due diligence in the performance of their various responsibilities under this Revised Settlement Agreement and to cooperate with each other in carrying out its intent.

16. This Revised Settlement Agreement supersedes all prior representations, negotiations, and understandings of the parties hereto, whether oral or written, and constitutes the entire agreement between the parties with respect to the matter hereof. It is expressly understood, however, that nothing in this Revised Settlement Agreement shall prevent or excuse LES from fulfilling any legal or statutory requirement of the NRC, or its successors, whether contained in the license for the NEF when issued or other requirement or regulation of the NRC, its successors, or representatives, whether oral or in writing.

17. This Revised Settlement Agreement shall not be effective, final and binding on the parties hereto until the NRC modifies the existing NEF license consistent with this Revised Settlement Agreement (“License Modification”). If the NRC does not approve the License Modification in its entirety, then this Revised Settlement Agreement shall not take effect and shall be deemed null and void. The parties agree that if the NRC does not approve the License Modification, they will negotiate in good faith to resolve any outstanding issues necessary to obtain its approval by the Board or the NRC.

18. In the event this Revised Settlement Agreement becomes effective in accordance with the provisions herein, LES, NMED and NMAG agree that the license conditions in this Revised Settlement Agreement are fully enforceable by the NRC. All parties agree not to contest the NRC’s jurisdiction to approve and enforce NRC license conditions modified as a result of this Revised Settlement Agreement. If any provision of this Revised Settlement Agreement is found by the NRC or any court of competent jurisdiction to be outside the NRC’s jurisdiction, and thus unenforceable by the NRC, or should the NRC refuse or otherwise decline to enforce any provision of this Revised Settlement Agreement, the parties agree that an action to enforce such provision may be filed in the United States District Court for the District of New Mexico (if subject matter jurisdiction exists) or the First Judicial District Court, Santa Fe County, of New

Mexico and agree not to object to the jurisdiction of those courts to hear and determine such action. The parties further agree to waive any objection to the standing of any party to this Revised Settlement Agreement to bring an action to enforce the license conditions in this Revised Settlement Agreement before the NRC or, if outside the NRC's jurisdiction, the United States District Court or the First Judicial District Court. Finally, the parties agree to proceed before the NRC prior to bringing an action in court, and further to proceed in United States District Court (if subject matter jurisdiction exists) before proceeding in the First Judicial District Court.

19. In the event of a breach of any provision of Paragraphs 2, 3, 4, 5 or 7 herein, NMED and NMAG shall be entitled to liquidated damages from LES in the amount of \$5,000 per day per breach. This amount is not a penalty but is a reasonable estimate of the damages that would result from any breach. Notwithstanding the foregoing, NMED, NMAG and LES agree that LES shall be entitled to attempt to cure the breach of any provision of Paragraphs 2, 3, 4, 5 or 7 herein within 60 days of receiving written notice from NMED or NMAG of such breach.

20. In the event this Revised Settlement Agreement becomes effective in accordance with the terms herein, the parties agree if any term, section, provision or portion of this Revised Settlement Agreement is subsequently held invalid or unconstitutional by any court of competent jurisdiction, the remaining terms, sections, provisions and portions of this Revised Settlement Agreement shall remain in full force and effect.

21. In the event this Revised Settlement Agreement becomes binding upon the parties in accordance with the terms herein, the Revised Settlement Agreement shall be binding upon the parties' successors, assigns, representatives, employees, agents, partners, subsidiaries, and affiliates.

22. NMED, NMAG and LES expressly waive the right to challenge, contest the validity of, or seek judicial review of any order entered as a result of this Revised Settlement Agreement so long as such order is fully consistent with each provision of this Revised Settlement Agreement.

23. When approved by the Board, the order entered as a result of this Revised Settlement Agreement has the same force and effect as an order made after full hearing.

IN WITNESS WHEREOF LES, NMED and NMAG have caused this Revised Settlement Agreement to be executed by their duly authorized representatives on this 16th day of June 2009.



Gary King
Attorney General of New Mexico



Ron Curry
Secretary, New Mexico Environment Department



Reinhard Hinterreither
President and Chief Executive Officer
Louisiana Energy Services, LLC