

NUCLEAR REGULATORY COMMISSION

NRC-2009-0376

In the Matter of)	
)	
United States Enrichment Corporation)	Docket No.: 07007001
Paducah Gaseous Enrichment Plant)	Certificate No. GDP-1
)	
)	EA-08-280

CONFIRMATORY ORDER
(EFFECTIVE IMMEDIATELY)

I

The United States Enrichment Corporation (USEC), a subsidiary of USEC Inc., is the holder of NRC Certificates of Compliance (COC) No. GDP-1 issued by the NRC pursuant to 10 CFR Part 76 on November 26, 1996, and renewed on December 22, 2008. The COC is set to expire on December 31, 2013. The certificate authorizes USEC to operate the Paducah Gaseous Diffusion Plant (Paducah), located near Paducah, Kentucky. The certificate also authorizes 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 an alternative dispute resolution (ADR) mediation session conducted on July 1, 2009.

II

On September 30, 2008, the NRC's Office of Investigations (OI) completed an investigation (OI Case No. 2-2008-009) regarding activities at the Paducah Gaseous Diffusion Plant facility located in Paducah, Kentucky. Based on the evidence developed during the investigation, the NRC staff concluded that on August 10, 2007, a Training Records Clerk and a Security Analyst willfully shipped a package containing classified information to an address that was not an approved classified mailing address (CMA). These actions were contrary to 10 CFR

95.39(b)(3) and Paducah Security Procedure CP2-SS-SE1036, Classified Matter Protection and Control, which require the external transmission of classified mail be made to a uniquely designated CMA for the receipt of classified information.

III

On July 1, 2009, the NRC and USEC met in an ADR session mediated by a professional mediator, which was arranged 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 or resolving any differences regarding their dispute. This confirmatory order is issued pursuant to the agreement reached during the ADR process. The elements of the agreement consist of the following:

1. The NRC and USEC agreed that a violation occurred on August 10, 2007, when a Training Records Clerk and a Security Analyst shipped a package containing classified information to an address that was not an approved CMA. These actions were contrary to 10 CFR 95.39(b)(3) and Paducah Security Procedure CP2-SS-SE1036, Classified Matter Protection and Control, which require the external transmission of classified mail be made to a uniquely designated CMA for the receipt of classified information.
2. Based on its review and investigation, USEC-Paducah concluded that the cause of the violation was not due to willfulness on the part of the Training Records Clerk or the Security Analyst.
3. Based on USEC's review of the incident and NRC concerns associated with precluding recurrence of the violation, USEC-Paducah completed the following corrective actions and enhancements:

- a. Processed procedural enhancements to procedure CP2-SS-SE1036 to provide instructions for verifying proper use of classified mailing addresses and shipping addresses, clarify entity with authority to package and process classified shipments and mailings, provide specific instructions for use of commercial carriers, and provide actions to take for off-normal requests.
- b. Security Management briefed and discussed the event and error with the Security staff personnel. The briefing and discussions included the apparent violation of the procedure and reiterated management expectations with respect to procedure adherence.
- c. The Records Management Document Control (RMDC) Manager briefed and discussed the event and procedural error with RMDC personnel. Expectations discussed included that classified materials may be mailed and not shipped to USEC headquarters, and that RMDC has primary responsibility for mailing classified information, while Shipping and Receiving has primary responsibility for shipping classified information.
- d. Security and RMDC staff were retrained on requirements for off-site shipping/mailing. The training highlighted shipment of classified documents versus the mailing of classified documents.
- e. Lessons learned were documented and issued to all site personnel. The lessons included: the importance of procedural adherence, even when under time constraints; the need to re-implement procedure steps when the environment changes; the requirement that all forms be completed; and the use of error prevention tools.

4. In addition to the actions completed by USEC as discussed above, USEC agreed to additional corrective actions and enhancements, as fully delineated below in Section V of the Confirmatory Order.
5. At the ADR session, the NRC and USEC agreed that (1) the actions referenced in Section III.3 and Section V, would be incorporated into a Confirmatory Order, and (2) the resulting Confirmatory Order would be considered by the NRC for any assessment of USEC, as appropriate.
6. In consideration of the completed corrective actions delineated in Section III.3 and the commitments delineated in Section V of this Confirmatory Order, the NRC agreed to refrain from proposing a civil penalty or issuing a Notice of Violation for all matters discussed in the NRC's letter to USEC of February 6, 2009 (EA-08-280).
7. This agreement is binding upon successors and assigns of USEC.

On August 12, 2009, USEC consented to issuance of this Order with the commitments, as described in Section V below. USEC further agreed that this Order is to be effective upon issuance and that it has waived its right to a hearing.

IV

Since USEC has completed the actions as delineated in Section III.3, and agreed to take the actions as set forth in Section V, the NRC has concluded that its concerns can be resolved through issuance of this Order.

I find that USEC'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 USEC's commitments be confirmed by this Order. Based on the above and USEC's consent, this Order is immediately effective upon issuance.

V

Accordingly, pursuant to Sections 104b, 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 76, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT CERTIFICATE NO. GDP-1 BE MODIFIED AS FOLLOWS:

- a. In October 2008, USEC-Paducah developed recurring training for Operations and Maintenance supervisors to reinforce "conduct of" principles and procedure compliance. Training will continue on a quarterly basis for a period of at least twelve (12) months after issuance of the Confirmatory Order.
- b. In July 2008, a group of Paducah plant employees attended an INPO course on Human Performance. This group formed the Human Performance Steering team which was established to assist the plant in efforts to prevent among other things, noncompliance with regulatory requirements and other adverse events.
 - i. Brainstorming sessions were held with workers to identify practical solutions to preventing adverse events.

- ii. Multiple interactive informational training sessions were held with small groups of employees focusing on identifying critical job tasks and the tools to prevent and protect against causing adverse events when performing critical tasks. Sessions in Maintenance and Operations have been completed. This approach will continue for the remainder of the Paducah employees for a period of at least twelve (12) months after issuance of the Confirmatory Order.

- c. By no later than sixty (60) calendar days after the issuance of the Confirmatory Order, USEC agrees to develop a “lessons learned” document addressing the lessons learned from the event which gave rise to this mediation, and share those lessons learned with USEC’s Paducah Gaseous Diffusion Plant, Portsmouth Gaseous Diffusion Plant, Headquarters, the American Centrifuge Plant (ACP), and ACP vendors who handle classified information. After issuance of the lessons learned, USEC will require a response within ninety (90) days which identifies any actions taken by the vendors to address the lessons learned. USEC will track internal actions via the use of its Business Prioritization System.

- d. By no later than one-hundred twenty (120) calendar days after the issuance of the Confirmatory Order, USEC agrees to revise the relevant classified material mailing and shipping procedures applicable to USEC’s Paducah Gaseous Diffusion Plant, Portsmouth Gaseous Diffusion Plant, USEC Headquarters, and the ACP to clarify the definition of the term “cleared commercial carrier” as that term applies to the mailing or shipping of classified information, and provide associated training.

- e. USEC-Paducah agrees to complete the items listed in Section V above within twelve (12) months of issuance of the Confirmatory Order.
- f. Within three (3) months of completion of the terms of the Confirmatory Order, USEC-Paducah will provide the NRC with a letter discussing its basis for concluding that the Confirmatory Order has been satisfied.

The Regional Administrator, NRC Region II, may relax or rescind, in writing, any of the above conditions upon a showing by USEC of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than USEC, 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 20555-0001, and include a statement of good cause for the extension.

If a person other than USEC 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 a 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.

A request for a hearing must be filed in accordance with the NRC E-Filing rule, which became effective on October 15, 2007. The NRC E-filing Final Rule was issued on August 28, 2007 (72 FR 49139), and was codified in pertinent part at 10 CFR Part 2, Subpart B. 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, 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, he/she 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.

VII

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/

Victor M. McCree
Deputy Regional Administrator for Operations

Dated this 18th day of August 2009