

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
LICENSEES AUTHORIZED TO POSSESS)
RADIOACTIVE MATERIAL)
QUANTITIES OF CONCERN)

EA-09-204

**ORDER IMPOSING INCREASED CONTROLS
(EFFECTIVE IMMEDIATELY)**

I

The Licensees identified in Attachment A to this Order hold licenses issued in accordance with the Atomic Energy Act of 1954 by the U.S. Nuclear Regulatory Commission (NRC or Commission) authorizing them to possess certain quantities of radioactive material of concern. Under NRC regulations, Licensees must take measures to ensure the security and control of such material. Among these regulations, 10 CFR § 20.1801 requires Licensees to secure from unauthorized removal or access licensed materials that are stored in controlled or unrestricted areas, while 10 CFR § 20.1802 requires Licensees to control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage.

II

Prior to the terrorist attacks of September 11, 2001 (9/11), several national and international efforts were underway to address the potentially significant health and safety hazards posed by uncontrolled sources. These efforts recognized the need for increased

Enclosure 1

control of high-risk radioactive materials to prevent both inadvertent and intentional unauthorized access, primarily due to the potential health and safety hazards posed by the uncontrolled material. Following 9/11, it was recognized that these efforts should also include a heightened awareness and focus on the need to prevent intentional unauthorized access due to potential malicious acts. These efforts, such as the International Atomic Energy Agency Code of Conduct on the Safety and Security of Radioactive Sources concerning Category 1 and 2 sources, sought to increase the control over sources in order to prevent both unintended radiation exposure and malicious acts.

A licensee's loss of control of high-risk radioactive sources, whether it be inadvertent or through a deliberate act, has the potential to result in significant adverse health impacts and could reasonably constitute a threat to the public health and safety. For this reason, the Commission has determined that Licensees must implement certain additional controls in order to ensure adequate protection of, and minimize danger to, public health and safety. These additional controls supplement existing requirements in the NRC's regulations, including the requirements in 10 CFR § 20.1801 and 10 CFR § 20.1802. The Commission is imposing the requirements set forth in Attachment C on decommissioning reactor licensees who possess, or who plan to acquire in the near future, radionuclides of concern at or above threshold limits identified in Table 1. These requirements will remain in effect until the Commission modifies its regulations to reflect increased controls.

The Commission recognizes that Licensees may have already initiated many controls set forth in Attachment C to this Order in response to previously issued advisories or on their own initiative. The Commission also recognizes that some controls may not be possible or necessary at some sites, and that certain controls may need to be tailored to accommodate the

Licensees' specific circumstances, achieve the intended objectives, and avoid any unforeseen adverse effect on the safe use and storage of licensed material.

To provide assurance that the Licensees are implementing prudent measures to achieve a consistent level of control, all Licensees who hold licenses issued by the NRC authorizing possession of radioactive material quantities of concern, as listed in Table 1, "Radionuclides of Concern," (Attachment B, Table 1), shall implement the requirements identified in Attachment C to this Order. In addition, pursuant to 10 CFR § 2.202, because of the potentially significant adverse health impacts associated with failure to control high risk radioactive sources, the NRC finds that the public health, safety, and interest require that this Order be effective immediately.

III

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, including regulations in 10 CFR Parts 2, 20, 30, 33, 40 and 50, IT IS HEREBY ORDERED, **EFFECTIVE IMMEDIATELY**, THAT ALL LICENSEES IDENTIFIED IN ATTACHMENT A TO THIS ORDER SHALL COMPLY WITH THE REQUIREMENTS OF THIS ORDER AS FOLLOWS:

A. The Licensee shall comply with the requirements described in Attachment C to this Order. The Licensee shall complete implementation within ninety (90) days of the date of this Order, or the first day that radionuclides of concern at or above threshold limits, identified in Table 1, are possessed, whichever occurs later.

B. 1. The Licensee shall in writing, within **twenty five (25) days** of the date of this Order, notify the Commission, (1) if it is unable to comply with any of the requirements

described in Attachment C, (2) if compliance with any of the requirements is unnecessary in its specific circumstances, or (3) if implementation of any of the requirements would cause the Licensee to be in violation of the provisions of any Commission regulation or its license. The notification shall provide the Licensee's justification for seeking relief from or variation of any specific requirement.

B. 2. If the Licensee considers that implementation of any of the requirements described in Attachment C to this Order would adversely impact safe operation of the facility, the Licensee must notify the Commission, in writing, within **twenty five (25) days** of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment C requirement in question, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, the Licensee must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

C. 1. The Licensee shall, **within twenty five (25) days** of the date of this Order, submit to the Commission a schedule for completion of each requirement described in Attachment C.

C. 2. The Licensee shall report to the Commission when they have achieved full compliance with the requirements described in Attachment C.

- D. Notwithstanding any provisions of the Commission's regulations to the contrary, all measures implemented or actions taken in response to this Order shall be maintained until the Commission modifies its regulations to reflect increased controls.

- E. These requirements do not apply to radioactive material contained in spent nuclear fuel.

Licensee responses to Conditions B.1, B.2, C.1, and C.2 above shall be submitted to the Director, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, Licensee's responses shall be marked as "Withhold From Public Disclosure Under 10 CFR 2.390."

The Director, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Programs, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

IV.

In accordance with 10 CFR § 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within **twenty five (25) days** of the date of this Order. If a person other than the 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 CFR § 2.309(d). Where good cause is shown, consideration will be given to extending the time to

request a hearing. A request for extension of time in which to submit an answer must be made in writing to the Director, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to the Licensee if the answer is by a person other than the Licensee. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that answers be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 and also to the Office of the General Counsel either by means of facsimile transmission to 301-415-3725 or by e-mail to OGCMailCenter@nrc.gov.

A request for a hearing must be filed in accordance with the NRC E-Filing rule, which became effective on October 15, 2007. The E-Filing Final Rule was issued on August 28, 2007, (72 Fed. Reg. 49,139). 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 of the Commission 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 of the Commission 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 of the Commission, 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.

If a hearing is requested by the Licensee or 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 Order should be sustained.

Pursuant to 10 CFR § 2.202(c)(2)(i), the Licensee may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the

immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

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 III above shall be final **twenty five (25) days** from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

Dated this 23rd day of November 2009

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Larry W. Camper, Director
Division of Waste Management
and Environmental Protection
Office of Federal and State Materials
and Environmental Management Programs

Attachments:

- A. Increased Controls Licensee List
- B. Table 1 "Radionuclides of Concern"
- C. Increased Controls for Licensees That Possess Sources Containing Radioactive Material Quantities of Concern