



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION II
SAM NUNN ATLANTA FEDERAL CENTER
61 FORSYTH STREET, SW, SUITE 23T85
ATLANTA, GEORGIA 30303-8931

November 23, 2009

EA-08-321

Mr. David L. Kudsin
President
Nuclear Fuel Services, Inc.
P.O. Box 337, MS 123
Erwin, TN 37650

SUBJECT: CONFIRMATORY ORDER (EFFECTIVE IMMEDIATELY)
[NRC OFFICE OF INVESTIGATIONS REPORT NO. 2-2008-032]

Dear Mr. Kudsin:

The enclosed Confirmatory Order is being issued to Nuclear Fuel Services, Inc., (NFS) as a result of a successful Alternative Dispute Resolution (ADR) session. The enclosed commitments were made by NFS as part of a settlement agreement to resolve an enforcement matter involving an incident at NFS in October 2007, when the hearing test portion of a medical examination was not administered to two security officers.

In a letter dated February 26, 2009, the Nuclear Regulatory Commission (NRC) provided NFS with the results of an investigation completed by the NRC's Office of Investigations (OI). The NRC's letter documented two apparent violations involving the actions of a primary physician for licensed activities for NFS, who on October 19, 2007, certified on two security medical examination forms that the named security officers were medically qualified per medical standards when in fact their medical evaluation had not been completed. Specifically, the two security officers had not been administered the hearing test portion of the medical examination. As a result, NFS maintained incomplete and inaccurate information, in violation of 10 CFR 70.9(a). Additionally, the security officers were assigned to perform security duties without proper suitability certification between October 23, 2007, and February 9, 2008, in violation of 10 CFR 73.46(b)(4).

In addition, our letter of February 26, 2009 offered NFS the opportunity to either: (1) attend a Predecisional Enforcement Conference; (2) provide a written response; or (3) request ADR with the NRC in an attempt to resolve any disagreement regarding whether violations occurred, the appropriate enforcement action, and the appropriate corrective actions. In response, NFS requested ADR in an attempt to resolve the issue. An ADR mediation session was held on September 16, 2009 and a preliminary settlement was reached. The elements of the preliminary agreement were formulated and agreed upon at the mediation session and are documented in the enclosed Confirmatory Order.

As discussed in the enclosed Confirmatory Order, NFS has completed and is implementing a number of corrective actions and enhancements to preclude the incident from recurring. The actions included, but were not limited to: the prompt performance of hearing examinations for the two security officers in question; a review to confirm that physical examination paperwork contained no additional discrepancies; a meeting with the primary physician to reinforce the importance of physical exam requirements regarding the Site Training and Qualification Plan; additional administrative checks were instituted to ensure that all required information is annotated on the incoming physical exam forms; and, a procedure was created to educate the security work force on basic physical qualification requirements. NFS also agreed to: conduct a review of corrective action program (CAP) thresholds and other CAP evaluation activities; take action to ensure full understanding of the extent of the condition; periodic interface meetings between the primary physician responsible for licensed activities at NFS and a physician engaged in NRC-regulated activities; and the establishment of appropriate standards and oversight for the primary physician for licensed activities and other contract medical specialists, based on industry best practices and enhancements.

In consideration of the commitments discussed in the Confirmatory Order, the NRC agrees to refrain from proposing a civil penalty or issuing a Notice of Violation or Order for the matters discussed in the NRC's letter to NFS of February 26, 2009 (EA-08-321). We will evaluate the implementation of your commitments during future inspections.

We have enclosed a 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 October 29, 2009, you agreed to issuance of this letter and 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 Order shall be subject to criminal prosecution as set forth in that section. Violation of this 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 NRC Region II, ATTN: Regional Administrator, 61 Forsyth Street, SW Suite 23T85, Atlanta, Georgia 30303-8931.

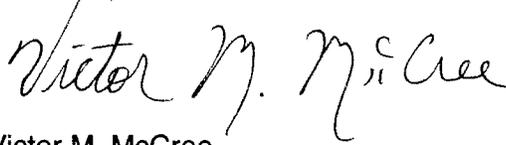
A copy of this letter and its enclosures will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. The NRC will also include this letter, and the attached Confirmatory Order, on its website at www.nrc.gov; select Public Meetings and Involvement, then Enforcement. 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).

NFS

3

If you have any questions or comments concerning this letter, please contact Mr. Kriss Kennedy, Director, Division of Reactor Safety, at 404-562-4601.

Sincerely,

A handwritten signature in black ink that reads "Victor M. McCree". The signature is written in a cursive style with a large, stylized initial "V".

Victor M. McCree
Deputy Regional Administrator
for Operations

Docket No.: 70-143
License No.: SNM-124

Enclosures:

1. Confirmatory Order
2. Consent and Hearing Waiver Form

cc/encls: (see page 4)

cc/encls:

B. Marie Moore,
Director
Safety and Regulatory Management
Nuclear Fuel Services, Inc.
P. O. Box 337, MS 123
Erwin, TN 37650

Timothy Lindstrom,
Vice President, Operations
Nuclear Fuel Services, Inc.
P.O. Box 337, MS 123
Erwin, TN 37650

L. Edward Nanney, Director
Division of Radiological Health
Tennessee Dept. of Environment & Conservation
L&C Annex, Third Floor
401 Church Street
Nashville, TN 37243-1532

William D. Lewis, Mayor
Town of Erwin
211 N. Main Avenue
P.O. Box 59
Erwin, TN 37650

Gregg Lynch, Mayor
Unicoi County
P. O. Box 169
Erwin, TN 37650

Johnny Lynch, Mayor
Town of Unicoi
Unicoi, TN 37692

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

NUCLEAR FUEL SERVICES, INC.
Erwin, Tennessee

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Docket No. 70-143
License No. SNM-124

EA-08-321

CONFIRMATORY ORDER MODIFYING LICENSE
(EFFECTIVE IMMEDIATELY)

I

Nuclear Fuel Services, Inc. (NFS or Licensee) is the holder of Special Nuclear Materials License No. SNM-124 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 70 on July 2, 1999. The license authorizes the operation of the NFS facility in accordance with the conditions specified therein. The facility is located on the Licensee's site in Erwin, Tennessee.

This Confirmatory Order is the result of an agreement reached during an Alternative Dispute Resolution (ADR) session conducted on September 16, 2009.

II

On October 21, 2008, the NRC's Office of Investigations (OI) initiated a review of an October 2007 incident that occurred at the Licensee's facility in which the hearing test portion of a medical examination was not administered to two security officers. The NRC's letter of February 26, 2009, documented two apparent violations of NRC requirements. The apparent violations involved the actions of a primary physician for licensed activities for Nuclear Fuel Services, Inc., who on October 19, 2007, certified on two security medical examination forms that the named security officers were medically qualified per medical standards when in fact

their medical evaluation had not been completed. Specifically, the two security officers had not been administered the hearing test portion of the medical examination. As a result, Nuclear Fuel Services, Inc., maintained incomplete and inaccurate information, in violation of 10 CFR 70.9(a). Additionally, the security officers were assigned to perform security duties without proper suitability certification between October 23, 2007 and February 9, 2008, in violation of 10 CFR 73.46(b)(4).

III

On September 16, 2009, the NRC and NFS 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) NFS agrees that the two issues discussed in the NRC's letter of February 26, 2009, represent violations of regulatory requirements.
- (2) To preclude recurrence of the violations and to address NRC concerns, NFS completed the following corrective actions and enhancements:
 - a. On February 5, 2008, both security officers were removed from security duties and scheduled for hearing tests. The security officers passed the test.

- b. On February 5, 2008, a Security Training Specialist performed a query on physical examinations completed during the same time frame (October 15-26, 2007) and reviewed physical exam paperwork for additional discrepancies. No additional discrepancies were identified.
- c. On February 6, 2008, the Security Training Manager met with the Contract Security Scheduler and the Security Training Specialists to reinforce the importance of physical exam requirements and provided instructions on performing a proper review of physical exams and immediate actions to take for identified discrepancies.
- d. On February 6, 2008, the Security Training Manager met with the primary physician for licensed activities and reinforced the importance of physical exam requirements regarding the Site Training and Qualification Plan.
- e. On February 6, 2008, NFS received physical exam paperwork documenting the successful completion of hearing tests for the two security officers and allowed officers to resume security duties.
- f. NFS created procedure NFS-SEC-008 in March 2009 to educate the security work force on basic physical qualification requirements.
- g. NFS has instituted an administrative check process to ensure that all required information is annotated on the incoming physical exam forms.

(3) In addition to the actions completed by NFS as discussed above, NFS agreed to additional corrective actions and enhancements, as fully delineated below in Section V

of the Confirmatory Order.

- (4) The NRC and NFS agree that the elements discussed in Sections III and V will be incorporated into a Confirmatory Order. The resulting Confirmatory Order will be considered by the NRC for any future assessment of NFS, as appropriate.
- (5) NFS agrees to complete the items listed in Section V within 12 months of issuance of the Confirmatory Order.
- (6) Within three months of completion of the terms of the Confirmatory Order, NFS will provide the NRC with a letter discussing its basis for concluding that the Confirmatory Order has been satisfied.
- (7) In consideration of the commitments delineated in Section III and V, the NRC agrees to refrain from proposing a civil penalty or issuing a Notice of Violation for all matters discussed in the NRC's letter to NFS of February 26, 2009 (EA-08-321).
- (8) This agreement is binding upon successors and assigns of NFS.

IV

Since NFS has completed the actions as delineated in Section III.2, 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 NFS's commitments as set forth in Section V are acceptable and necessary and conclude that with these commitments the public health and safety and common defense and

security are reasonably assured. In view of the foregoing, I have determined that public health and safety require that NFS's commitments be confirmed by this Order. Based on the above and NFS's consent, this Order is immediately effective upon issuance.

V

Accordingly, pursuant to Sections 51, 53, 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 70, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT LICENSE NO. SNM-124 IS MODIFIED AS FOLLOWS:

- (1) NRC acknowledged NFS' ongoing efforts in implementation of the Safety Culture Improvement Plan (SCIP) as prescribed in the NRC's Confirmatory Order of February 21, 2007, and its benchmarking efforts and Corrective Action Program (CAP) improvements. However, NFS also agrees to assess why the incident referenced in Section II was not entered into its CAP and why a formal root cause evaluation was not completed. Based on this review, NFS will implement corrective actions to ensure that the CAP thresholds for conducting root cause evaluations are appropriate. As part of the above assessment, NFS agrees to additional benchmarking efforts, as warranted, to identify and implement best practices, including the area of root cause analysis, thresholds, and processes.

- (2) NFS agrees to initiate and complete actions to ensure an understanding of the extent of condition (including vulnerability of other physician certified processes such as respirator qualification).

- (3) NFS agrees to benchmark other licensees in their oversight of services provided by any primary physician for licensed activities, to identify and implement best practices and enhancements to ensure the quality and accuracy of licensed physician services.
- (4) For a period of one year after issuance of the Confirmatory Order, NFS will ensure that the primary physician responsible for licensed activities meets at least quarterly with a physician engaged in NRC-regulated activities, to review unique or noteworthy issues relevant to compliance with NRC regulations. At the conclusion of the one year period, NFS will determine the appropriate frequency for continuing such interactions.
- (5) NFS will ensure that the primary physician for licensed activities initiates a one time, mutual review of processes and procedures with an industry counterpart involved with applicable NRC-regulated activities. The results of this review will be documented and made available for NRC review. NFS will consider corrective actions and enhancements based on the review.
- (6) NFS will establish appropriate standards for the primary physician for licensed activities and other contract medical specialists. These standards will include applicable regulatory requirements, continuing education requirements (such as industry peer group membership and certification), and an NFS specific lesson plan.
- (7) NFS will formalize its administrative check used to ensure all required information is annotated on the incoming physical exam forms by revising procedure NFS-SEC-008.
- (8) NFS agrees to complete the items listed in Section V within 12 months of issuance of the Confirmatory Order.

(9) Within three months of completion of the terms of the Confirmatory Order, NFS 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 NFS of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than NFS, 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 NFS 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 *Federal Register* 49,139) 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 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's 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 help desk number is (866) 672-7640.

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.

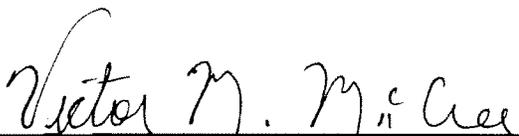
Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket, which is available to the public at http://ehd.nrc.gov/EHD_Proceeding/home.asp, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants 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

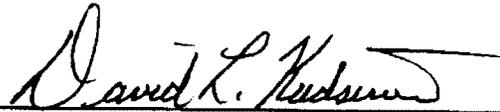


Victor M. McCree
Deputy Regional Administrator for Operations

Dated this 23rd day of November 2009

CONSENT AND HEARING WAIVER FORM

Nuclear Fuel Services, Inc., hereby agrees to comply with the commitments described in this letter and agrees to incorporation of these commitments into a Confirmatory Order that will be immediately effective upon issuance. I recognize that by signing below, I, David L. Kudsin, President, Nuclear Fuel Services, Inc., consent to the issuance of the Confirmatory Order, effective immediately, with the commitments described in the NRC=s draft Confirmatory Order attached and, by doing so, waive, pursuant to 10 CFR 2.202(a)(3) and (d), the right to request a hearing on all or any part of the Order.



10/29/09

David L. Kudsin
President
Nuclear Fuel Services, Inc.

Date

Distribution w/encls:

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NAME	MERNSTES	KKENNEDY	CEVANS			
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