

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
NUCLEAR FUEL SERVICES, INC.)	Docket No. 70-143
Erwin, Tennessee)	License No. SNM-124
)	
)	EA-08-103

CONFIRMATORY ORDER MODIFYING LICENSE
(EFFECTIVE IMMEDIATELY)

[NRC-2009-0529]

I

Nuclear Fuel Services, Incorporated (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 15, 2009.

II

On April 20, 2006, an investigation was initiated by the NRC's Office of Investigations (OI) to review a March 2006 incident involving a senior executive at NFS who consumed alcohol less than five hours before a scheduled working tour. Based on the OI investigation and subsequent NRC staff review, the NRC advised NFS by letter dated January 7, 2009, of the identification of seven apparent violations:

- (1) On March 9, 2006, a senior executive of NFS consumed alcohol less than five hours before a scheduled working tour, in apparent violation of 10 CFR 26.20.
- (2) In March 2006, NFS failed to relieve the senior executive of his duties, failed to perform for-cause testing to determine his fitness for duty, and failed to implement management actions in apparent violation of 10 CFR 26.24, 10 CFR 26.27, and an NFS procedure.
- (3) On April 5, 2006, NFS granted the senior executive Self-Referral Rehabilitation Status in the NFS Employee Assistance Program after he had been notified of an ongoing Fitness for Duty (FFD) investigation, in apparent violation of 10 CFR 26.20 and an NFS procedure.
- (4) Between April 5 and 30, 2006, an NFS senior executive, in correspondence addressed to NRC, stated that the NFS senior executive had entered a substance abuse rehabilitation program when, in fact, he had not done so, in apparent violation of 10 CFR 70.9.
- (5) On April 11, 2006, in apparent violation of 10 CFR 70.9, Completeness and accuracy of information, a senior NFS manager placed a letter in the senior executive's personnel file, and on June 8, 2006, NFS provided this letter, which was not accurate in all material respects, to the NRC. Specifically, the letter stated that the senior executive had entered a substance abuse rehabilitation program when, in fact, the senior executive had not done so.
- (6) In May 2006, in apparent violation of 10 CFR 26.27 and the NFS FFD Program, NFS

failed to determine the senior executive's fitness to safely and competently perform his duties and responsibilities before returning him to duty.

- (7) NFS did not provide appropriate training to ensure that employees understood their roles and responsibilities in implementing its FFD Program and understood 10 CFR Part 26 requirements.

III

On September 15, 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) NRC Inspection Report 070143/2006-008, dated July 14, 2006, documented a violation regarding an inadequate FFD procedure. By letter dated August 11, 2006, NFS responded to the violation and documented corrective actions. The referenced corrective actions clarified the procedural requirement associated with the consumption of alcohol within 5 hours of a scheduled working tour. Since the implementation of the FFD program in 1993, NFS' training program included the 5 hour abstinence period. NFS stated at the ADR meeting that these corrective actions are relevant to apparent violations (II.1) and (II.7) above.
- (2) NFS agrees with the underlying circumstances which gave rise to the apparent

violations discussed in the NRC's letter of January 7, 2009. However, NFS disagrees with apparent violations (II.3) and (II.6), and questions the appropriateness of apparent violation (II.5) because it involves a personnel document wholly internal to NFS and not intended for transmittal to the NRC.

- (3) The NRC recognizes the ongoing efforts of NFS in implementation of the Safety Culture Improvement Plan as prescribed in the NRC's Confirmatory Order of February 21, 2007, and acknowledges the applicability of corrective actions and enhancements to preclude recurrence of the aforementioned apparent violations and to address the safety culture contributors to the apparent violations.
- (4) Although the NRC continues to believe that violations occurred as stated in its letter of January 7, 2009, the NRC and NFS agree that the underlying issues will be adequately addressed by the corrective actions and enhancements documented in this Confirmatory Order.
- (5) To preclude recurrence of the violations and to address NRC concerns, NFS completed the following corrective actions and enhancements:
 - a. NFS conducted a prompt investigation and subsequent review of the March 2006 FFD issue and identified factors that contributed to the FFD program failures.
 - b. Based on review of the above and in furtherance of other organizational improvements, NFS implemented and completed the following:
 - i. Disciplinary action and organizational change with respect to the senior

executive;

- ii. Modification of the FFD procedure and training for all existing and new employees to address the 5 hour abstinence period; and the NFS requirement to test if alcohol consumption or the smell of alcohol is suspected. NFS continues to advise its employees of actions to be taken when a supervisor is suspected of an FFD violation.
- iii. Establishment of alternative avenues for reporting FFD related concerns and lowering the threshold for reporting. These include the creation of the position of Chief Nuclear Safety Officer, the implementation of an Employee Concerns Program (ECP), notification to employees of a corporate ethics hotline for reporting concerns, and introduction of an anonymous reporting feature as a part of the Corrective Action Program (CAP). The Chief Nuclear Safety Officer has a reporting chain which is independent of facility operations.
- iv. The Medical Review Officer (MRO) attended comprehensive MRO training, and successfully completed a re-certification examination.
- v. Implemented measures to assure continued Safety Conscious Work Environment (SCWE), to prevent, detect, and mitigate perceptions of harassment and intimidation, including an enhanced SCWE policy, a new organizational change process (which considers a potential chilling effect associated with organizational changes), new employee orientation and continuing communication with respect to the importance of a SCWE.

- vi. Launched the ECP on April 6, 2009, with widespread advertisement of the program, including informational postings, newsletters, periodic emails from the Vice President of Operations, and distribution of informational brochures.

- (6) 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.

- (7) 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.

- (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.

- (10) 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 January 7, 2009 (EA-08-103).

- (11) This agreement is binding upon successors and assigns of NFS.

IV

Since NFS has completed the actions as delineated in Section III.5, 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' 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' commitments be confirmed by this Order. Based on the above and NFS' 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) NFS agrees to develop an Executive Review Board (ERB) oversight process to review and consider Behavioral Observation Program (BOP)/FFD issues, allegations, positive FFD tests, disciplinary actions, ECP concerns, and if appropriate direct further action, such as root cause and common cause reviews. The ERB will convene on an as needed basis, but not less than quarterly for a period of one year after issuance of the Confirmatory Order. Thereafter, the ERB will convene at a frequency of no less than once per year. The ERB will also review relevant examples of ECP successes and

direct communications to NFS staff, as appropriate.

- (2) NFS agrees to implement additional ECP enhancements through review of its ECP brochure and other communications for clarity regarding the ability of staff to bring concerns to the ECP on a 24 hour/7 day basis. In addition, NFS will perform a one-time third party evaluation of its ECP.
- (3) NFS will develop BOP/FFD case studies for the purpose of communicating program changes, reporting thresholds for FFD issues, avenues for reporting, and other FFD issues. One such case study will be developed from the circumstances arising from the FFD incident of March 2006 described in the NRC's letter of January 7, 2009. These case studies will be used in FFD training and the presentation will include participation by NFS management at the Level III management level and above.
- (4) NFS will revise FFD procedures as necessary to clearly define when self-referred status is no longer available and communicate these revisions to NFS employees.
- (5) NFS will revise its process for handling NRC Requests For Information related to allegations to assure the completeness and accuracy of information.
- (6) NFS will modify FFD and BOP procedures for referral of issues to the MRO to provide a vehicle for transmitting event information. The modification will also include a provision for employee consent to disclose pertinent personal privacy information.
- (7) NFS will establish appropriate written standards for the MRO and other medical specialists, that ensure effective implementation of 10 CFR Part 26 requirements.

These standards will reflect the requirements of 10 CFR Part 26 as well as the development of commercial, licensing, and regulatory requirements and expectations, continuing education requirements (such as industry peer group membership and certification), and an NFS-specific lesson plan. The MRO's performance to these standards will be assessed by an independent party within one year after issuance of this Confirmatory Order, and every other year thereafter. This assessment will include FFD and BOP referrals, and a review of annual NFS performance audits.

- (8) NFS agrees to complete the items listed in Section V above 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 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.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule, (72 FR 49139, Aug. 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at hearing.docket@nrc.gov, or by telephone at (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 proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an

electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public website at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public website at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the website, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's on-line, web-based submission form. In order to serve documents through EIE, users will be required to install a web browser plug-in from the NRC website. Further information on the web-based submission form, including the installation of the web browser plug-in, is available on the NRC's public website at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. 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 documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing 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 E-Filing 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 documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can 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 by contacting the NRC Meta-System Help Desk through the "Contact Us" link located on the NRC website at <http://www.nrc.gov/site-help/e-submittals.html>, by email at MSHD.Resource@nrc.gov, or by a toll-free call at (866) 672-7640. The NRC Meta-System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, 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. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

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, or the 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, unless an NRC regulation or other law requires submission of such information. 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 submission.

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 provision 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 23rd day of November 2009