

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-08-321

CONFIRMATORY ORDER MODIFYING LICENSE
(EFFECTIVE IMMEDIATELY)

[NRC-2009-0528]

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.

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 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 23rd day of November 2009