

March 18, 2010

Erwin Citizens Awareness Network
P.O. Box 1151
Erwin, TN 37650p

Dear Citizens:

Thank you for the letters to Chairman Jaczko dated December 14, 2009 and February 8, 2010, expressing your concerns regarding Nuclear Fuel Services (NFS). We are also concerned about recent performance by NFS. Extensive U.S. Nuclear Regulatory Commission (NRC) actions are being taken to confirm that root causes discussed in the Augmented Inspection Team public meeting are adequately evaluated and actions listed in the January 7, 2010, Confirmatory Action Letter have been implemented.

In this letter, I am responding to six concerns and actions from your two letters. You pointed out a number of issues regarding NRC's licensing, enforcement, inspection, and oversight of NFS. The following are specific responses to your stated concerns and the actions you requested:

1. You requested an immediate and permanent shut down of the Commercial Development (CD) Line, including removal of all stored uranium hexafluoride (UF₆).

On November 14, 2009, NFS shut down the CD Line following a glovebox fire. The CD Line remains shut down pending completion of the licensee's corrective actions. The NRC is closely monitoring the licensee's investigation and will confirm that adequate corrective actions are implemented before the CD Line is restarted. With regard to UF₆ cylinders in storage, the licensee's investigation into the November 14, 2009 event concluded that several of these cylinders contain an overpressure of fluorine gas resulting from extended storage. The excess pressure will have to be released before the cylinders may be shipped or further processed. The NRC has confirmed that the cylinders currently in storage are stable and based on updated analysis, using specific information for each individual cylinder, there would be no off-site health consequences associated with a release due to failure of the affected cylinders. NFS is developing a plan to safely vent and treat any gas which has accumulated in the cylinders. The NRC continues our inspections to confirm that plant changes meet regulatory requirements and ensure adequate protection of public and worker safety and the environment.

2. You requested treatment of all future violations of NRC safety requirements as Level I violations and assessment of multi-million dollar fines against NFS.

NRC adheres to its regulations such as 10 CFR Part 2, as well as internal procedures such as the Enforcement Policy. As part of the NRC's enforcement process, past performance is considered in determining the appropriate enforcement sanction for violations of NRC requirements (e.g. a civil penalty or enforcement order). In general, poor previous performance would result in consideration of a higher civil penalty.

Notwithstanding the outcome of the NRC's normal enforcement process, the NRC's Enforcement Policy provides the NRC staff with the option of exercising discretion and escalating an enforcement sanction, depending on the specific circumstances of a violation. For example, although the NRC does not normally escalate the Severity Level of a violation based on poor performance, the NRC would consider using enforcement discretion to issue a larger civil penalty in situations where a licensee's previous enforcement history or performance has been particularly poor or in cases where a violation is repetitive. By statute, the NRC is authorized to issue civil penalties up to \$140,000 per violation. For continuing violations and in cases where a strong message is warranted, discretion could be exercised to assess a civil penalty of this amount on a per day basis. Existing policies enable the NRC staff to develop an appropriate enforcement sanction to deter noncompliance and encourage prompt identification and prompt, comprehensive correction of violations of NRC requirements. As such, the NRC does not consider it is necessary to automatically treat all future violations at NFS as Severity Level I violations. Where appropriate, the NRC will consider NFS's enforcement history in consideration of civil penalties for future violations of NRC requirements.

3. You requested that Alternative Dispute Resolution (ADR) should never again be used to negotiate away NFS accountability.

The ADR process is sometimes used in cases involving potential willful violations of NRC requirements and in cases of potential discrimination. Use of the ADR program for enforcement of NRC requirements is limited to these types of cases and is voluntary for both parties. There are circumstances where it may not be appropriate for the NRC to offer a licensee the option of engaging in ADR. For example, the NRC would likely not offer ADR if it had been used in the past and the licensee continued to remain in violation, or in cases involving particularly egregious violations. The outcome of the ADR process generally requires licensees to complete corrective actions agreed to during the ADR mediation session, and these corrective actions are normally issued to the licensee in a confirmatory order. The NRC has found that the ADR process routinely results in corrective actions for violations that are far more robust and comprehensive than would be required otherwise. For this reason, the NRC considers the ADR process an effective tool in its enforcement process and positively impacts nuclear safety and security. The NRC will continue to use this tool for cases involving wrongdoing or discrimination, where appropriate. In cases where the NRC finds that a licensee has abused the ADR program, or where ADR has been less effective than desired, the NRC will consider using the normal enforcement process and not offering ADR.

4. You requested publication of a viable plan for decontamination and decommissioning of the entire NFS site, together with documentation that ample funding exists to execute the plan.

In accordance with 10 CFR 70.25, NFS has established a decommissioning funding plan (DFP), which includes a detailed cost estimate and financial instruments. The DFP provides reasonable assurance that adequate funds will be available to complete decommissioning of the site. The DFP must be adjusted every 3 years to ensure it remains current. The cost estimate contains a contingency factor and includes the cost for a third party to perform the work. The financial instruments must be verified to ensure the funds are available. NFS is preparing an update to its funding plan and the NRC has requested a redacted version which can be released to the public. The result of the NRC review of this updated funding will be made public.

5. You pointed out the lack of response to December 14, 2009 letter requesting an Environmental Impact Statement (EIS) and what NRC means by "resetting the clock."

As we explained during a public meeting in Erwin on October 29, 2009, the NRC licensing of a new fuel facility requires an EIS. When the National Environmental Policy Act (NEPA) was promulgated in 1969, several fuel facilities already existed, including NFS. In many cases, the impacts of authorizing an existing facility to continue operation are not expected to result in significant environmental impacts due to the regulatory requirements which must be followed during operations. Therefore, an Environmental Assessment (EA) is performed when license renewal is requested at an existing facility like NFS, and if significant impacts are identified an EIS will be prepared.

As part of the NRC review of NFS's application for license renewal, you provided two binders of printed material at a public meeting on November 17, 2009, which are currently being considered in the NRC staff's environmental review. Should the NRC staff determine during the course of its review that the environmental impacts warrant preparation of an EIS, the staff will publish a Notice of Intent to prepare the EIS in the *Federal Register* and notify you of that action. If the staff concludes a finding of no significant environmental impact based on an EA that is currently being prepared, this draft conclusion will be published for public comment.

The NRC's Fuel Manufacturing Branch Chief did state during the October 29, 2009 public meeting that NRC is "resetting or restarting the clock" regarding NFS. This statement is related to the schedule of the staff's review of NFS's license renewal pursuant to 10 CFR 70.33. The staff's schedule for completing safety reviews starts following NRC's acceptance of the licensee's submittal. The NRC did not initially accept NFS's original submittal for license review, and the review schedule did not start until the submittal was revised to contain the information necessary to conduct the review. The NRC's review of a license renewal application re-evaluates the contents of the application pursuant to 10 CFR 70.22 and adheres to the requirements for approval (10 CFR 70.23). In broad terms, the NRC confirms personnel are qualified by reasons of training and experience, facility and equipment protects health and minimizes danger to life or property, and operations of the facility will not significantly affect the quality of the environment with considerations of alternatives in a cost-benefit analysis. The comment referred to "restarting" the staff's review schedule from the date the staff accepted the licensee's revised renewal application for review.

6. You stated that the NRC enabled NFS to recklessly endanger your health and safety by licensing the CD Line. Then, without ensuring that a robust safety culture existed throughout the new UF₆ operations, NRC declared the CD Line's operational readiness.

Your assertions have been referred to the NRC's Office of the Inspector General. In addition, it should be noted that the NRC has no specific regulations regarding safety culture. Although the February 21, 2007 Confirmatory Order directed NFS to assess its safety culture, and to identify and implement any needed enhancements, the NRC determined that NFS's performance was acceptable to permit operation of the facility until a Confirmatory Action Letter was issued on January 7, 2010. The Confirmatory Action Letter specifies actions the licensee has committed take to obtain NRC authorization to restart processes at NFS, including the CD line.

NRC staff performed a detailed review of the hazards associated with the CD line. The small scale equipment is assembled in an existing building, and is housed inside glove boxes. The hazard evaluations and consequence calculations associated with the processes were examined, including a variety of accident sequences, such as accumulating too much uranium in the enclosures, fires in the cylinder storage or main processing areas, venting of pressurized powders, and failures of process off-gas ventilation. The staff concluded with reasonable assurance that the assessment methodology used by NFS was consistent with approved techniques, that accidents which could exceed the performance requirements of 10 CFR 70.61 were analyzed and included in the amendment request, and that appropriate items relied on for safety were established to prevent or mitigate these accidents.

In accordance with 10 CFR 2.390 of the NRC's, "Rules of Practice," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from our Agencywide Document Access and Management System (ADAMS). ADAMS is accessible through the NRC public Web site at <http://www.nrc.gov/reading-rm/adams.html>.

If you have any questions or need additional information, please contact Kevin Ramsey of my staff at (301) 492-3123 or via e-mail to Kevin.Ramsey@nrc.gov.

Sincerely,

/RA/

Michael F. Weber, Director
Office of Nuclear Material Safety
and Safeguards

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

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If you have any questions or need additional information, please contact Kevin Ramsey of my staff at (301) 492-3123 or via e-mail to Kevin.Ramsey@nrc.gov.

Sincerely,

/RA/

Michael F. Weber, Director
Office of Nuclear Material Safety
and Safeguards

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

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