

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-10-076

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 October 4, 2010.

II

On October 7, 2009, the NRC Office of Investigations (OI) began an investigation (OI Case No. 2-2010-001) at NFS. Based on the evidence developed during its investigation, OI substantiated that a former Industrial Safety Specialist at NFS willfully provided the NRC incomplete and inaccurate information concerning fire damper inspections at NFS on two separate occasions. The results of the investigation, completed on February 26, 2010, were sent to NFS in a letter dated July 20, 2010. The NRC's July 20, 2010 letter offered NFS the opportunity to resolve the enforcement aspects of this matter through the NRC's normal enforcement process, or through ADR. In response to the NRC's offer, NFS requested use of the NRC ADR process to resolve the matter.

On October 4, 2010, the NRC and NFS met in an ADR session mediated by a professional mediator, 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 on resolving any differences regarding the dispute. This confirmatory order is issued pursuant to the agreement reached during the ADR process.

III

During the ADR session, a preliminary settlement agreement was reached. The elements of the agreement consisted of the following:

1. NFS agreed that two examples of a violation of Title 10 of the *Code of Federal Regulations* (10 CFR) 70.9(a), occurred, which requires that information provided to the NRC be complete and accurate in all material respects. The violation involved the following:
 - a. On November 25, 2008, NFS submitted to the NRC a Reply to Notice of Violation that was not complete and accurate in all material respects. NFS's letter documented that all fire dampers in procedure NFS-GH-22 were inspected in September of 2008, and passed the inspection, when in fact, 12 of the fire dampers had not been inspected (three of which were designated as items relied on for safety). The NRC preliminarily concluded that the submittal of inaccurate information was due, in part, to the willful actions of a former Industrial Safety Specialist at NFS who was tasked with drafting the written reply to the Notice of Violation. The inaccurate information was material to the NRC because it was used by the NRC to confirm that the required fire damper inspections had been completed.

- b. During the NRC's August 2009 inspection, the NRC attempted to verify the corrective actions as documented in the November 25, 2008 Reply to Notice of Violation. In support of the inspection, the aforementioned former Industrial Safety Specialist at NFS created and provided a document to the NRC inspector, which indicated that all but one of the fire dampers had been fully inspected during 2008, when in fact, more than one of the dampers had not been fully inspected. The NRC preliminarily concluded that this inaccurate information was willfully provided to the NRC. This information was material to the NRC because it was used during the inspection to confirm that the required fire damper inspections had been completed.
2. The NRC concluded that the actions of the former NFS Industrial Safety Specialist were willful. In its investigation, NFS did not reach any conclusions regarding willfulness.
3. In response to the violation described above, NFS implemented numerous corrective actions and enhancements, including but not limited to a prompt investigation into the incident, a root cause and corrective action review, an extent of condition and extent of cause review, a Safety Culture Implications Review, organizational and process changes in response to the 10 CFR 70.9 violation, training and communication initiatives, initiatives to improve employee awareness of the incident and lessons learned, and initiatives to gauge employee awareness of NFS's corrective actions, enhancements, and lessons learned.
4. In response to the issues as described in Section III.1 (a) and (b) above, NFS agreed to the following actions:
 - a. Within 30 days of issuance of this Confirmatory Order, NFS will submit a Reply to a Notice of Violation, which documents its corrective actions and

enhancements as discussed in Section III.3 above. NFS's Reply to a Notice of Violation will be consistent with the requirements of 10 CFR 2.201.

- b. Within one year of issuance of this Confirmatory Order, NFS will conduct an effectiveness review of each completed corrective action identified in its written Reply to a Notice of Violation. In response to its effectiveness review, NFS will implement additional corrective actions to address any deficiencies or weaknesses, and will continue to do so until such deficiencies and weaknesses are resolved.
- c. Within six months of issuance of this Confirmatory Order, NFS will conduct an assessment of the effectiveness of its actions to assure the adequacy and accuracy of information submitted to the NRC, including continuous improvements to its processes and changes to its organizational structure. The assessment will be conducted by an independent group (i.e., from outside the safety organization). NFS will address, through enhancements and corrective actions, the issues identified as a result of the assessment.
- d. NFS agrees to develop and implement an appropriate safety culture improvement plan to address the findings identified in the second Safety Culture Assessment report that was provided to the NRC on June 29, 2010. NFS also agrees to assess the effectiveness of its plan and implement additional corrective actions for any weaknesses or deficiencies identified, by June 2012. Corrective actions will continue to be implemented until such time that NFS demonstrates to NRC that the actions were fully effective.
- e. NFS will conduct integrated independent safety culture assessments using a variety of appropriate assessment tools (which may include, but are not limited to, an independent third party review, employee surveys, Nuclear Safety Review Board inputs, self-assessments), no later than June 2013, and at least

every 24 months thereafter, to an accepted nuclear industry standard. The safety culture assessments will include the following provisions and attributes:

- i. The integrated assessment results will be shared with NFS staff within 30 days of completion of results.
 - ii. The integrated assessment results will be provided to the NRC within 30 days of completion of results.
 - iii. The corrective action plans to address the issues identified in these integrated assessments will be provided to the NRC within 60 days of completion of results.
 - iv. Appropriate and timely corrective actions will be implemented to address the issues identified in these assessments.
 - v. Effectiveness reviews of corrective actions will be implemented within one year of completion of the corrective action. Additional corrective action will be taken to address those actions which were not fully effective.
 - vi. NFS will inform the NRC when it has determined that improvements in safety culture are sufficient and sustainable.
 - vii. The above actions involving independent safety culture assessments will continue until NRC has concluded that the actions were fully effective.
- f. NFS will complete an assessment of its current corrective action program against the requirements of NQA-1-2008, Part III, Subpart 3.1, "Non-Mandatory Appendix 16A-1." Based on this assessment, NFS will submit a license amendment request within nine months of the date of issuance of this Confirmatory Order incorporating into the license its current corrective action program including the additional enhancements made to the program as a result of the assessment.
- g. NFS shall implement metrics to measure overall safety performance at the facility.

5. The NRC and NFS agree that the above elements will be incorporated into a Confirmatory Order, and that the two examples of a violation of 10 CFR 70.9 will be cited as a Notice of Violation, and included as an attachment to the final Confirmatory Order. In addition, NFS agrees to waive its hearing rights for the issues documented in the Confirmatory Order.
6. In consideration of the commitments delineated in Section III.4 above and in Section V, the NRC agrees to refrain from proposing a civil penalty for all matters discussed in the NRC's letter to NFS of July 20, 2010 (EA-10-076).
7. Issuance of this Confirmatory Order for the above actions supersedes the NRC's Confirmatory Order to NFS, dated February 21, 2007, which is now closed.
8. This agreement is binding upon successors and assigns of NFS.

IV

Since the licensee has agreed to take additional actions to address NRC concerns, as set forth in Section V, the NRC has concluded that its concerns can be resolved through issuance of this Confirmatory 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 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 Confirmatory Order is immediately effective upon issuance.

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. Within 30 days of issuance of this Confirmatory Order, NFS will submit a Reply to a Notice of Violation, which documents its corrective actions and enhancements as discussed in Section III.3 above. NFS's Reply to the Notice of Violation will be consistent with the requirements of 10 CFR 2.201.
2. Within one year of issuance of this Confirmatory Order, NFS will conduct an effectiveness review of each completed corrective action identified in its written Reply to a Notice of Violation. In response to its effectiveness review, NFS will implement additional corrective actions to address any deficiencies or weaknesses, and will continue to do so until such deficiencies and weaknesses are resolved.
3. Within six months of issuance of this Confirmatory Order, NFS will conduct an assessment of the effectiveness of its actions to assure the adequacy and accuracy of information submitted to the NRC, including continuous improvements to its processes and changes to its organizational structure. The assessment should be conducted by an independent group (i.e., from outside the safety organization). NFS will then address the issues identified as a result of the assessment.
4. NFS agrees to develop and implement an appropriate safety culture improvement plan to address the findings identified in the second Safety Culture Assessment report that

was provided to the NRC on June 29, 2010. NFS also agrees to assess the effectiveness of its plan, and implement additional corrective actions for any weaknesses or deficiencies identified, by June 2012. Corrective actions will continue to be implemented until such time that NFS has demonstrated that the actions were fully effective.

5. NFS will conduct integrated independent safety culture assessments using a variety of appropriate assessment tools (which may include, but are not limited to, an independent third party review, employee surveys, Nuclear Safety Review Board inputs, self-assessments), no later than June 2013, and at least every 24 months thereafter, to an accepted nuclear industry standard. The safety culture assessments will include the following provisions and attributes:
 - a. The integrated assessment results will be shared with NFS staff within 30 days of completion of results.
 - b. The integrated assessment results will be provided to the NRC within 30 days of completion of results.
 - c. The corrective action plans to address the issues identified in these integrated assessments will be provided to the NRC within 60 days of completion of results.
 - d. Appropriate and timely corrective actions will be implemented to address the issues identified in these assessments.
 - e. Effectiveness reviews of corrective actions will be implemented within one year of completion of the corrective action. Additional corrective action is taken to address those actions which were not fully effective.
 - f. NFS will inform the NRC when it has determined that improvements in safety culture are sufficient and sustainable.
 - g. The above actions involving independent safety culture assessments will continue until NRC has concluded that the actions were fully effective.

6. NFS will complete an assessment of its current corrective action program against the requirements of NQA-1-2008, Part III, Subpart 3.1, "Non-Mandatory Appendix 16A-1." Based on this assessment, NFS will submit a license amendment request within nine months of the date of issuance of this Confirmatory Order, incorporating into the license its current corrective action program including the additional enhancements made to the program as a result of the assessment.

7. NFS shall implement metrics to measure overall safety performance at the facility.

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 made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension.

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, August 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 Web site 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 Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System 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 online, Web-based submission form. In order to serve documents through the Electronic Information Exchange (EIE), users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser

plug-in, is available on the NRC's public Web site 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 Web site 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 Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail 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.

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 Confirmatory Order and shall address the criteria set forth in 10 C.F.R. 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.

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 Confirmatory 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 16th day of November 2010