

March 21, 2013

Mr. Dealis W. Gwyn, Licensing Manager
Shaw AREVA MOX Services
P.O. Box 7097
Aiken, SC 29804-7097

SUBJECT: REQUEST FOR TIME EXTENSION FOR AN UPDATED LICENSE
APPLICATION, INTEGRATED SAFETY ANALYSIS SUMMARY AND
EXERCISE OF ENFORCEMENT DISCRETION

Dear Mr. Gwyn:

We have received and reviewed your request for an extension of time to submit an updated License Application (LA) and Integrated Safety Analysis Summary (ISA) for the Mixed Oxide Fuel Fabrication Facility which is under construction in Aiken, SC, in a letter from Mr. Kelly Trice dated December 19, 2012. The requested extension date is May 31, 2013.

The regulation 10 CFR Part 70.72(d)(2) requires submittal of annual updates by licensees of the ISA, by January 30 of each year, to include revised pages indicating any changes that were made to the ISA and a brief summary of changes made. However, there has been some misunderstanding regarding the applicability of 10 CFR 70.72 for a facility that has a Construction Authorization. The U. S. Office of Nuclear Regulatory Commission (NRC), Office of General Council (OGC) has recently determined (November 2012) that MOX Services is subject to the annual reporting requirements of 10 CFR Part 70.72(d)(2) to submit an update of the ISA.

Chapter 16 of the March 2012 LA states "For changes that do not require NRC pre-approval of the LA, MOX Services submits to the NRC annually, within 30 days after the end of the calendar year during which the changes occurred, a brief summary of the changes." There are no specific regulatory requirements in 10 CFR Part 70 which require annual updates to the LA.

The staff completed its review of LA and ISA and documented the review in a Safety Evaluation Report in December 2010. MOX Services is in the process of preparing a revised LA and ISA , which will document changes that were made to each of these documents that did not require prior NRC approval. MOX Services has not identified any changes to the LA or ISA that would have required an amendment to either document.

The NRC staff has been working with you to assure that changes that have occurred to the LA and ISA will be adequately described in the next revision. You have informed us that MOX Services is revising and clarifying the discussion in LA Chapter 16 to clearly show how changes will be documented while the facility is still under construction and after a license is issued. Additionally you have told us that an ISA update, which includes change pages and a brief summary of the changes that were made since the last update that was submitted in March 2010, is currently in preparation.

Based on the recent OGC determination, MOX Services is required by regulation (10 CFR Part 70.72(d)(2)) to submit the required annual updates by January 30 of each year. Although the failure to submit the required annual updates constitutes a violation of NRC requirements, we have concluded that the violation resulted from matters not reasonably within MOX Services' control due to clarity of the requirement and associated guidance. Using the NRC's Enforcement Policy, the violation met the criteria for enforcement discretion. As such, I have been authorized, after consultation with the Director, NRC Office of Enforcement, to exercise enforcement discretion in accordance with Section 3.5 of the Enforcement Policy and refrain from issuing enforcement action for the violation. The NRC will not take any enforcement action related to this issue for previous years. However, for future years starting in 2014, MOX Services shall submit the documentation required by 10 CFR Part 70.72(d)(2) within the timeframes laid out in the regulation.

Based on the additional NRC direction regarding the applicability of 10 CFR Part 70.72(d)(2) and our discussions regarding applicable change processes, your request for an extension for the 2013 update of the ISA and LA update until May 31, 2013, is approved.

If you have any questions, please contact Mr. David Tiktinsky of my staff at (301) 492-3229.

Sincerely,

/RA/

Marissa Bailey, Deputy Director
Division of Fuel Cycle Safety
and Safeguards
Office of Nuclear Material Safety
and Safeguards

Docket No. 70-3098

cc: See next page

Based on the recent OGC determination, MOX Services is required by regulation (10 CFR Part 70.72(d)(2)) to submit the required annual updates by January 30 of each year. Although the failure to submit the required annual updates constitutes a violation of NRC requirements, we have concluded that the violation resulted from matters not reasonably within MOX Services' control due to clarity of the requirement and associated guidance. Using the NRC's Enforcement Policy, the violation met the criteria for enforcement discretion. As such, I have been authorized, after consultation with the Director, NRC Office of Enforcement, to exercise enforcement discretion in accordance with Section 3.5 of the Enforcement Policy and refrain from issuing enforcement action for the violation. The NRC will not take any enforcement action related to this issue for previous years. However, for future years starting in 2014, MOX Services shall submit the documentation required by 10 CFR Part 70.72(d)(2) within the timeframes laid out in the regulation.

Based on the additional NRC direction regarding the applicability of 10 CFR Part 70.72 and our discussions regarding applicable change processes, your request for an extension for the 2013 update of the ISA and LA update until May 31, 2013, is approved.

If you have any questions, please contact Mr. David Tiktinsky of my staff at (301) 492-3229.

Sincerely,

/RA/

Marissa Bailey, Deputy Director
Division of Fuel Cycle Safety
and Safeguards
Office of Nuclear Material Safety
and Safeguards

Docket No. 70-3098

cc: See next page

DISTRIBUTION:

FCSS, r/f MOX, r/f DMcIntyre, OPA MBailey, FCSS
MShannon, RII KMorrissey, FCSS WGloersen, RII

ML13036A308

OFFICE	NMSS/FCSS/CDMB	NMSS/FCSS	NMSS/FCSS/CDMB	OE
NAME	DTiktinsky	TRichmond	PSilva	TMarenchin
DATE	2/7 /13	2/6 /13	3 /18 /13	3/11 /13

OFFICIAL RECORD COPY

OFFICE	FCSS			
NAME	MBailey			
DATE	3 /21 /13			

cc:

Mr. Kevin Hall, Acting Federal Project Director
NA-262.1
P.O. Box A
Aiken, SC 29802

Mr. Sam Glenn, Deputy
Federal Project Director
NA-262.1
P.O. Box A
Aiken, SC 29802

Dr. Peter Winokur, Chairman
Defense Nuclear Facilities Safety Board
625 Indiana Ave., NW, Suite 700
Washington, DC 20004

Mr. Kelley Cummins, NNSA/HQ
1000 Independence Ave., SW
Washington, DC 20585

Ms. Susan Jenkins
Division of Radioactive Waste Management
Bureau of Health and Environmental Control
2600 Bull St.
Columbia, SC 29201

D. Silverman
Morgan, Lewis, & Bockius
1111 Penn. Ave., NW
Washington, DC 20004

G. Carroll
Nuclear Watch South
P.O. Box 8574
Atlanta, GA 30306

Mr. Dealis Gwyn, Licensing Manager
Shaw AREVA MOX Services
Savannah River Site
P.O. Box 7097
Aiken, SC 29804-7097

L. Zeller
Blue Ridge Environmental Defense League
P.O. Box 88
Glendale Springs, NC 28629

Diane Curran
Harmon, Curran, Spielberg
& Eisenberg, LLP
1726 M St., NW, Suite 600
Washington, DC 20036