UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

[NRC-2014-0115]

In the Matter of	)	
	)	**IA-13-059**
Richard Brian Smith	)	
	)	

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES

I.

Richard Brian Smith was formerly employed as a senior reactor operator (SRO) at Entergy Operations, Inc., Grand Gulf Nuclear Station (Grand Gulf or licensee). Mr. Smith was the holder of SRO license No. SOP-44682, which was issued by the U.S. Nuclear Regulatory Commission (NRC) on May 29, 2013. The license authorized Mr. Smith to manipulate, and supervise the manipulation of, the controls of Grand Gulf, Facility License No. NPF-29, located in Port Gibson, Mississippi.

II.

On May 16, 2013, Mr. Smith self-reported an arrest for driving under the influence of alcohol, in accordance with Title 10 of the *Code of Federal Regulations* (10 CFR) 73.56, "Personnel access authorization requirements for nuclear power plants." As a result of this arrest, Mr. Smith was subjected to an increased fitness-for-duty (FFD) testing frequency in accordance with Grand Gulf procedures. On July 18, 2013, Mr. Smith participated in the FFD testing process, which resulted in a negative indication for alcohol. However, on July 22, 2013,

the Grand Gulf Medical Review Officer received Mr. Smith's FFD test sample results, which confirmed a positive test result for a cocaine metabolite. The licensee immediately relieved Mr. Smith of his watchstanding duties and revoked his unescorted site access, in accordance with 10 CFR 26.75, "Sanctions."

On September 9, 2013, the NRC received follow-up information regarding Mr. Smith's July 18, 2013, positive test result from Grand Gulf. Included in this letter was the licensee's plan to reinstate Mr. Smith to licensed duties, pending the successful completion of both a substance abuse treatment program and a subsequent medical evaluation by the facility's Medical Review Officer. By email dated November 18, 2013, and subsequent phone call on November 20, 2013, Grand Gulf notified the NRC that Mr. Smith had satisfactorily completed medical examinations, a substance abuse evaluation, and a clinical evaluation with a psychologist, as well as security and FFD processing. Based on the satisfactory completion of these evaluations, Grand Gulf granted Mr. Smith unescorted access to the protected area, but did not allow him to perform licensed duties.

On December 4, 2013, the NRC's Office of Investigations (OI), Region IV Field Office, initiated an investigation based on Mr. Smith's positive FFD test results. The investigation was completed on January 22, 2014, and the results were documented in the NRC's OI Report No. 4-2014-012. Based on the evidence developed during the investigation, it was determined that Mr. Smith deliberately used cocaine while an employee of Grand Gulf.

On December 11, 2013, Grand Gulf received the results from an FFD test sample submitted by Mr. Smith on December 5, 2013. Mr. Smith's December sample also resulted in a positive test result for a cocaine metabolite. Grand Gulf immediately reported the positive test result for an illegal drug to the NRC. On January 6, 2014, Grand Gulf requested the termination of Mr. Smith's license, retroactive to December 11, 2013. On January 6, 2014, the NRC retroactively terminated Mr. Smith's license, effective on December 11, 2013.

III.

The NRC holds licensed operators to high performance standards and entrusts them with assuring the public health and safety in the operation of a nuclear power plant. Incorporated into this trust is the expectation that licensed operators will follow all NRC requirements. A licensed operator testing positive for an illegal substance is a violation of 10 CFR 55.53(d), which requires the licensee to observe all applicable rules, regulations, and orders of the Commission, and 10 CFR 55.53(j), which states, in part, "The licensee shall not use, possess, or sell any illegal drugs." Mr. Smith also violated 10 CFR 50.5, the NRC's deliberate misconduct rule, when he deliberately participated in drug use activities.

Consequently, due to Mr. Smith's positive FFD test results on two separate occasions, and his deliberate actions related to drug use activities, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Smith were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety, and interest require that Mr. Smith be prohibited from any involvement in NRC-licensed activities for a period of five years, effective 30 days from the date of issuance of this Order. During this five year prohibition period, Mr. Smith cannot engage in activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20. Additionally, Mr. Smith is required to notify the NRC of his first employment in NRC-licensed activities for a period of one year following the prohibition period.

IV.

Accordingly, pursuant to sections 81, 161b, 161i, 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 30.10, IT IS HEREBY ORDERED THAT:

1. Richard Brian Smith is prohibited for five years from engaging in any NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Richard Brian Smith is involved with another licensee in NRC-licensed activities, then he must cease those activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer.

3. For a period of one year after the five year period of prohibition has expired, Richard Brian Smith shall, within 30 days of acceptance of his first employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555-0001, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. This notification should be clearly marked as a "Reply to an Order; IA-13-059." In the notification, Richard Brian Smith shall include a statement of his commitment to compliance with regulatory requirements and the basis why the

Commission should have confidence that he will now comply with applicable NRC requirements. He shall also include: (1) the reason for the violation, or, if contested, the basis for disputing the violation, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance was achieved.

The above provisions are effective 30 days from the date of issuance of this Order.

The Director, Office of Enforcement, or designee, may, in writing, relax or rescind any of the above conditions upon demonstration by Richard Brian Smith of good cause.

V.

At this time Mr. Smith is not required to respond to this Order; however, if he chooses to respond, he must submit a written answer to this Order under oath or affirmation within 30 days of its issuance. Any person adversely affected by this Order may submit a written answer to this Order within 30 days of its issuance. In addition, Mr. Smith may demand, and any other person adversely affected by this Order may request, a hearing on this Order within 30 days of its issuance. Where good cause is shown, consideration will be given to extending the time to answer and demand or 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, 20555-001 and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a demand or request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a demand or 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, as amended by 77 FR 46562, August 3, 2012), codified in pertinent part at 10 CFR 2.302. 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 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 demand or request 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.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 obtained 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*.

After the Office of the Secretary has created a docket and a participant has obtained a digital ID certificate, the participant may submit a demand for hearing or request for hearing and 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 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 other persons who have advised the Office of the Secretary that they wish to participate in the proceeding. The filer need not serve the documents on participants separately. Therefore, others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing demand or 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 NRC'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's public 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 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 paper format 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 the reason for the exemption no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC electronic hearing docket, which is available to the public at *http://ehd1.nrc.gov/ehd/*, 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, participants are requested not to include copyrighted materials in their submission, except for limited excerpts that serve the purpose of the adjudicatory filings and constitute a Fair Use application.

If a person other than Mr. Smith requests a hearing, that person shall set forth with particularity the manner in which his or her 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 demanded by Mr. Smith or requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. In the absence of any demand or request for hearing, or written approval of an extension of time in which to demand or request a hearing, the provisions specified in Section IV above shall be effective and final 30 days of its issuance without further order or proceedings. If an extension of time for demanding or requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing demand or request has not been received.

Dated at Rockville, Maryland, this 14th day of May 2014.

For the Nuclear Regulatory Commission.

/RA/

Roy P. Zimmerman, Director
Office of Enforcement