

GUIDANCE FOR REGULATING BOILER AND PRESSURE VESSEL SYSTEMS RELATING TO URANIUM ENRICHMENT ACTIVITIES AT THE GENERAL ELECTRIC–HITACHI GLOBAL LASER ENRICHMENT FACILITIES IN WILMINGTON, NORTH CAROLINA

I. PURPOSE

This guidance defines and sets forth the mutual understanding of the regulatory roles and responsibilities of the U.S. Nuclear Regulatory Commission (NRC) and the North Carolina Department of Labor's Boiler Safety Bureau (NCDOL/BSB) for the regulation of boiler and pressure vessels and the protection of classified information associated with the General Electric-Hitachi Global Laser Enrichment, Inc. (GEH) facility in Wilmington, North Carolina.

This guidance applies solely to the activities related to the regulation of boiler and pressure vessels associated with GEH's laser-based uranium enrichment activities. Nothing in this guidance applies to or establishes a precedent for any other matter or agreement, including any other existing or future agreement between NRC and NCDOL/BSB.

All provisions and commitments set forth in this guidance are subject to, and will be carried out in compliance with, all applicable laws, regulations, and other legal requirements.

II. BACKGROUND

The NRC is responsible for regulating and licensing commercial uses of source, byproduct, and special nuclear material (SNM) in the United States. GEH operates a laser-based uranium enrichment test loop and is licensed for a commercial-scale laser-based uranium enrichment facility in Wilmington, North Carolina. The GEH facilities will use laser systems and uranium enrichment equipment classified up to the Secret-Restricted Data (S-RD) level. NRC regulations require that licensees protect classified information in accordance with all applicable laws, regulations, and Executive Orders. The NRC has responsibility for granting personnel security clearances to access classified information and for granting clearances for facilities and containers used to handle, transmit, or store such information at the GEH facilities.

NCDOL/BSB is responsible for regulating boiler and pressure vessel safety in the State of North Carolina under NCDOL/BSB and is, therefore, responsible for regulating boiler and pressure vessel safety at the GEH facilities.

NCDOL/BSB requires access to classified information/equipment in conducting regulatory activities under its boiler and pressure vessel safety regulatory responsibilities. Accordingly, NCDOL/BSB will need to have appropriately cleared personnel and may need a facility clearance for possession and storage of classified information to perform its inspection and regulatory functions.

Enclosure

The NRC has responsibility for review and approval of the necessary personnel and facility clearances that NCDOL/BSB will require to perform their responsibilities at the GEH facilities.

III. AUTHORITY

The NRC is responsible for licensing and regulating nuclear facilities and material and for conducting research in support of the licensing and regulatory process, as mandated by the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; in accordance with the National Environmental Policy Act of 1969, as amended; and other applicable statutes. NRC responsibilities include protecting public health and safety, protecting the environment, and safeguarding nuclear facilities and materials in the interest of national security. Pursuant to the Atomic Energy Act of 1954, as amended by the Energy Reorganization Act of 1974, applicable Executive Orders (including Executive Orders 12968 and 12958), and other authorities, the NRC has responsibility for granting clearances to access classified information, and for granting clearances for facilities and containers used to handle, transmit, or store such information. Under Section 193 of the Atomic Energy Act, the NRC is responsible for regulating uranium enrichment facilities.

NCDOL/BSB is responsible for regulating boiler and pressure vessel safety under the Uniform Boiler and Pressure Vessel Act of North Carolina, General Statutes Chapter 95, Articles 7A and 7B, and the Administrative Rules North Carolina Administrative Code Title 13, Chapter 13.

Nothing in this guidance will limit the rights or ability of either agency (NRC or NCDOL/BSB) to exercise its authority independently with regard to matters that are the subject of this guidance.

IV. ROLES AND RESPONSIBILITIES

A. NRC

The NRC will administratively process and review NCDOL/BSB personnel clearance requests. The NRC will determine NCDOL/BSB eligibility for access to classified information in accordance with applicable laws, regulations, Executive Orders, and other applicable authorities, including Executive Order 12968 (March 1997) and the Adjudicative Guidelines for "Determining Eligibility for Access to Classified Information" (revised December 2005).

The NRC will initiate a review of the completed NCDOL/BSB security package(s) and submit the necessary forms to initiate the background investigation of NCDOL/BSB personnel to the Office of Personnel Management.

The NRC will adjudicate the completed investigation before making an eligibility determination for NCDOL/BSB personnel seeking access to classified information. No clearance or access may be granted until completion of the investigation and a favorable adjudication decision is rendered by the NRC.

The NRC retains sole discretion over the determination of who has a need-to-know with respect to any sensitive/classified information or equipment at the GEH facilities. The NRC reserves the right to conduct a personnel security interview when it receives information on an individual seeking access to classified information that, at the sole discretion of the NRC, calls into question that individual's initial or continuing eligibility for an SNM access authorization, or for a security clearance, or for access to Restricted Data or National Security Information. Such interviews are conducted for the purpose of assisting the NRC in resolving the access eligibility question and are intended to afford the individual an opportunity to furnish additional information or an explanation regarding the information in question.

The NRC will provide information security training to NCDOL/BSB personnel, including topics related to boilers that may include classified information.

The NRC will provide NCDOL/BSB with guidance documents describing the handling, storage, dissemination, and access to sensitive/classified information, equipment, and facilities necessary to prepare a Standard Practice Procedure Plan (SPPP) for the protection of classified information in its possession.

The NRC will review documents prepared by NCDOL/BSB personnel during the course of their inspection activities at GEH and provide derivative classification services for NCDOL/BSB-prepared documents. The NRC understands that NCDOL/BSB only has 6 months following the occurrence of any violation to issue a citation under N.C. General Statute § 95-137(b)(3), and therefore, the NRC will use its best efforts to expedite its review of these documents to accommodate this limitation period.

The NRC will review facility clearance applications submitted by NCDOL/BSB for possession, handling, and storage of classified information.

The NRC can deny, suspend, or revoke a personnel security clearance or facility clearance at any time based upon unfavorable information or for any other reason. If NRC's evaluation/adjudication of the information developed on an individual is unfavorable, the NRC will inform the requester of its determination in the matter.

The NRC will coordinate with NCDOL/BSB and inform NCDOL/BSB's designated Bureau Chief of any allegations or reportable events under NCDOL/BSB's jurisdiction.

B. NCDOL

NCDOL/BSB will ensure that access to classified information/equipment is provided only to those of its employees with a proper NRC-approved security clearance and an established need-to-know, as decided by the NRC. NCDOL/BSB agrees that NCDOL/BSB will only be provided access to classified information/equipment related to boiler and pressure vessel safety.

NCDOL/BSB agrees to submit requests for access to classified information/equipment to the NRC's Personnel Security Branch using the following required forms:

- eQIP Form for Requesting an NRC Clearance
- NRC Form 237, Request for Access Authorization with Justification (signed by NRC sponsor).
- Complete Standard Form (SF) 86 in e-QIP:
 - Signature Pages of SF-86
 - Certification That All Answers Are True
 - Authorization for Release of Information
 - Authorization for Release of Medical Information (*if applicable*)
- NRC Form 176, Security Acknowledgment Signed.
- Fair Credit Reporting Act of 1970 – Release.
- Fingerprint Cards FD-258.
- Payment (Check) for each applicant:
 - Q clearance:
 - Standard processing fee is \$6168.00
 - Expedited processing fee \$6774.00

(See Section III of this guidance for responsibility of NCDOL/BSB to reimburse the NRC for clearance investigations. The above rates are current as of the date of this letter, but are subject to change in the future). Make check payable to: U.S. Nuclear Regulatory Commission.

NCDOL/BSB agrees that personnel determined eligible for a security clearance shall attend an NRC-provided Security Briefing and sign a Classified Non-Disclosure Agreement (SF-312) before being given access to any classified information/equipment.

NCDOL/BSB will ensure that all its employees/representatives who are granted access to classified information, equipment, and facilities will comply fully with all applicable rules and policies regarding the handling, storage, dissemination, and access to sensitive/classified information, equipment, and facilities.

If needed NCDOL/BSB agrees to apply for a facility clearance for possession and storage of classified information in accordance with the requirements set forth in Title 10 of *the Code of Federal Regulations* (10 CFR) Part 95.

If pursuing a possessing facility clearance, NCDOL/BSB agrees to develop an SPPP that will detail how classified material will be transmitted from the GEH facility to the approved NCDOL/BSB cleared facility. NCDOL/BSB further agrees

that it will possess, handle, and store classified information in accordance with its facility clearance, its SPPP, and 10 CFR Parts 25 and 95.

NCDOL/BSB agrees to submit a properly completed NRC Form 277, "Request for Visit or Access Approval," to GEH prior to site visits.

NCDOL/BSB agrees that it will not have derivative classification authority and will not be provided classification guidance. NCDOL/BSB further agrees that all notes or other documentary material prepared by NCDOL/BSB personnel at the GEH site shall first be reviewed by an NRC- or GEH-authorized derivative classifier and appropriately marked before being taken offsite. NCDOL/BSB is responsible for completing an NRC Form 790 whenever a classified document is created, as required by 10 CFR 95.57(c).

C. Information Sharing

NCDOL/BSB and the NRC agree that any documentation that is classified, safeguards, restricted, privileged, or proprietary must be clearly marked as such.

NCDOL/BSB and the NRC agree to consult with each other before disclosing information related to this guidance to preclude dissemination of information that may be exempt from disclosure under the Freedom of Information Act (FOIA), as amended, the North Carolina Public Records Act, or other applicable law. FOIA requests, North Carolina Public Records Act requests, Congressional requests, or other requests for documents will be referred to the agency that authored the document for resolution. Although it is the NRC's practice to make available to the public non-sensitive docket-related NCDOL/BSB correspondence that is not classified, restricted, privileged, or proprietary by placing these documents in NRC's Agencywide Documents Access and Management System, NCDOL/BSB may specifically request that information be withheld.

NCDOL/BSB will coordinate with the NRC and inform the NRC's Regional Branch Chief and the NRC's GEH Project Manager of any allegations or reportable events under NCDOL/BSB's jurisdiction.

V. RESOLUTION OF DISPUTES

- A. If disagreements or conflicts about matters within the scope of this guidance arise, NCDOL/BSB and the NRC will work together to resolve these differences.
- B. Resolution of differences between NCDOL/BSB and the NRC staff will be the initial responsibility of the Bureau Chief of Education, Training, and Technical Assistance Bureau, NCDOL/BSB; and the Branch Chief; Enrichment and Conversion Branch, Office of Nuclear Material Safety and Safeguards, NRC.
- C. If the issue cannot be resolved at the Bureau and Branch Chief levels, NCDOL/BSB and the NRC will refer the matter within thirty (30) days to the Director, Standards and Inspection Division, NCDOL/BSB; and the Director, Division of Fuel Cycle Safety, Safeguards, and Environmental Review, Office of Nuclear Material Safety and Safeguards, NRC.

- D. Resolution of policy issues concerning agency jurisdiction, operational relations, and inspection and enforcement will be coordinated by the Chief, Enrichment and Conversion Branch, Office of Nuclear Material Safety and Safeguards, NRC; and by the Bureau Chief, Education, Training, and Technical Assistance Bureau, NCDOL/BSB.

VI. OTHER MATTERS

This guidance is neither a fiscal nor a funds obligation document. This guidance shall not be used to obligate or commit funds or as the basis for the transfer of funds.

This guidance is strictly for internal management purposes of each of the parties. It is not a legally enforceable document and shall not be construed to create any legal obligation on the part of either party or to provide a right or cause of action (legal or equitable) for or by any person(s) or entity.

This guidance in no way restricts either of the parties from participating in any activity with other public or private agencies, organizations, or individuals.

This guidance may be further implemented by supplementary guidance or agreements in which authorized representatives of NCDOL/BSB and the NRC may amplify or modify the policy or provisions in this guidance or any of its supplements, provided that any material modifications of the provisions or any of its supplements shall be subject to the approval of the Chief, Enrichment and Conversion Branch, Office of Nuclear Material Safety and Safeguards, NRC; and by the Bureau Chief, Education, Training, and Technical Assistance Bureau, NCDOL/BSB.

If any provision(s) of this guidance, or the application of any provision(s) to any person or circumstances is held invalid, the remainder of the guidance and the application of such provision to other persons or circumstances shall not be affected.

This guidance may be amended by mutual written agreement between the NRC and NCDOL/BSB. This guidance may be terminated by mutual agreement of the NRC and NCDOL/BSB or by either party upon 60 days written notice to the other party.

VII. POINTS OF CONTACT

A. NRC

Refer to the e-QIP form for information regarding requesting an NRC clearance and the e-QIP Brochure for the specific instructions on accessing and completing the e-QIP forms. NCDOL/BSB personnel must sign and return the original hard copy of the signature pages to the following address:

U. S. Nuclear Regulatory Commission
ATTN: Personnel Security Branch
Mail Stop: TWFN-03-B46M
Division of Facilities and Security
Office of Administration
Washington, DC 20555

NRC Agency Sponsor: James Smith, Health Physicist
Phone: (301) 287-9138
E-mail: James.Smith@nrc.gov

Information Security: J. Keith Everly Jr., Senior Security Specialist
Phone: (301) 415-7048
E-mail: JKeith.Everly@nrc.gov

Personnel Security Processing: Valerie Kerben, Branch Chief
Personnel Security Branch
Phone: (301) 415-7552
E-mail: Valerie.Kerben@nrc.gov

B. Occupational Safety and Health Administration

N.C. Department of Labor
Standards and Inspections Division
1101 Mail Service Center
Raleigh, NC 27699-1101

N.C. Department of Labor
Dr. Andy Frazier, Deputy Commissioner
Standards and Inspections Division
Phone: (919) 810-2794
E-mail: andy.frazier@labor.nc.gov

N.C. Department of Labor
Cliff Dautrich, Chief
Boiler Safety Bureau
Standards and Inspections Division
Phone: (919) 810-2765
E-mail: cliff.dautrich@labor.nc.gov

C. UPDATES

The NRC and NCDOL/BSB will provide updates of the above designated contacts for implementation of this memorandum as necessary. Updated lists of NCDOL/BSB contacts will be provided to the Chief, Enrichment and Conversion Branch, Office of Nuclear Material Safety and Safeguards, NRC. Updated lists of NRC contacts will be provided to the Bureau Chief, Education, Training, and Technical Assistance Bureau; NCDOL/BSB.

Attachments:

1. e-QIP form for requesting NRC clearance
2. e-QIP Brochure