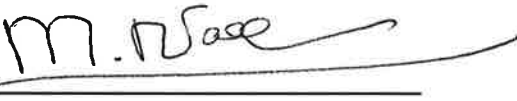
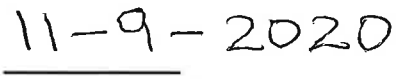


CONSENT AND HEARING WAIVER FORM

Armed Forces Radiobiology Research Institute hereby agrees to comply with the terms and conditions of this Confirmatory Order arising out of an alternative dispute resolution mediation session held on September 18, 2020, to be issued relating to Enforcement Action EA-20-056. This Confirmatory Order will be effective upon its issuance. By signing below, Armed Forces Radiobiology Research Institute consents to the issuance of the referenced Confirmatory Order, and, by doing so, agrees to waive the right to request a hearing on all or any part of this Confirmatory Order.



Colonel Mohammad Naeem
Director
Armed Forces Radiobiology Research Institute



Date



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

November XX, 2020

EA-2020-056

Colonel Mohammad Naeem, Director
Armed Forces Radiobiology Research Institute
4301 Jones Bridge Road
Bethesda, MD 20814-4799

**SUBJECT: CONFIRMATORY ORDER AND NRC INVESTIGATION REPORT 1-2019-003 -
ARMED FORCES RADIOBIOLOGY RESEARCH INSTITUTE**

Dear Colonel Naeem:

The enclosed Confirmatory Order is being issued to you as a result of a successful alternative dispute resolution (ADR) mediation session. The enclosed commitments were made as a part of a settlement agreement between Armed Forces Radiobiology Research Institute (AFRRI) and the U.S. Nuclear Regulatory Commission (NRC). The settlement agreement concerns an apparent violation of an NRC requirement, as discussed in our letter dated June 8, 2020.

Our June 8, 2020, letter provided you with the result of an investigation (1-2019-003) conducted by the NRC's Office of Investigations to determine whether a violation of NRC requirements occurred at AFRRI. Based on the results of this investigation, the NRC determined that AFRRI discriminated against a senior reactor operator, subjecting him to a 2-day suspension without pay, at least in part, for engaging in protected activities. Based on the evidence developed during its investigation, the NRC identified an apparent violation of Title 10 of the Code of Federal Regulations (10 CFR) Part 50.7, "Employee Protection."

In the letter, the NRC also offered AFRRI the opportunity to: (1) attend a predecisional enforcement conference or (2) participate in an ADR mediation session in an effort to resolve these concerns. In response to the NRC's offer, AFRRI requested the use of the NRC's ADR process to resolve this matter.

On September 18, 2020, an ADR mediation session was held and a preliminary settlement agreement reached. The elements of that agreement, formulated and agreed to at the mediation session, are incorporated in the enclosed Confirmatory Order (Enclosure 1). The Confirmatory Order confirms the commitments made as part of the preliminary settlement agreement.

At the mediation session, you agreed that a Confirmatory Order would be issued in settlement of the apparent violation. In light of the corrective actions you have taken and subject to the satisfactory completion of the additional actions you committed to take, as described in the

M. Naeem

- 3 -

**SUBJECT: CONFIRMATORY ORDER AND NRC INVESTIGATION REPORT 1-2019-003 -
ARMED FORCES RADIOBIOLOGY RESEARCH INSTITUTE
DATED: November XX, 2020**

DISTRIBUTION:

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Confirmatory Order: MLXXXXXXXX
FRN: MLXXXXXXXX
Waiver Form: MLXXXXXXXX

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of) Docket No.: 05000170
) License No.: R-84
Armed Forces Radiobiology Research Institute)
Bethesda, Maryland) EA-20-056

CONFIRMATORY ORDER MODIFYING LICENSE
EFFECTIVE UPON ISSUANCE

I

Armed Forces Radiobiology Research Institute (AFRRI or Licensee) is the holder of License No. R-84, issued by the U. S. Nuclear Regulatory Commission (NRC or Commission) pursuant to Part 50 of *Title 10 of the Code of Federal Regulations* (10 CFR). The license authorizes the operation of AFRRI Research Reactor (facility) in accordance with conditions specified therein. The facility is located on the Licensee's site in Bethesda, Maryland.

This Confirmatory Order (CO) is the result of an agreement reached during an Alternative Dispute Resolution (ADR) mediation session conducted on September 18, 2020, to address an apparent violation.

II

On February 27, 2020, the NRC's Office of Investigations (OI), issued a report (1-2019-003) related to AFRRI. Based on the evidence developed during its investigation, the NRC identified an apparent violation of 10 CFR § 50.7, "Employee protection." The NRC determined that AFRRI placed an AFRRI employee on a 2-day suspension without pay on May 14, 2018, in part, for engaging in protected activity. By letter dated June 8, 2020, the NRC notified AFRRI of the results of the investigation with an opportunity to: (1) attend a pre-decisional enforcement conference or (2) to participate in an ADR mediation session in an effort to resolve this concern.

6. Issued a message from the newly appointed Safety Culture Program Officer to all AFRRRI staff emphasizing leadership's focus on safety and mechanisms for reporting concerns.
7. Participated in monthly National Organization of Test, Research, and Training Reactors (TRTR) calls, and registered several AFRRRI staff for the upcoming annual conference.
8. Solicited feedback from AFRRRI staff regarding the ongoing command climate survey to serve as a baseline for future safety improvement metrics.

Agreed Upon Future Actions:

A. Communication

1. Within 60 calendar days of issuance of the CO, the Uniformed Services University (USU) President shall issue a written statement, communicating the specific strategy to improve AFRRRI's nuclear safety culture.
 - a. The communication is to include (1) a brief summary regarding the employee protection regulations, (2) the NRC's concerns expressed in its March 2020 chilling effect letter, (3) specific lessons learned from previously applied corrective actions, and (4) corrective actions both taken and planned.
 - b. USU shall provide a copy of this communication to the NRC for prior review.
 - c. NRC shall provide comments within 1 week of receipt of the draft communication.
2. Within 90 calendar days of the USU President's statement, AFRRRI shall hold an all-hands meeting for management to discuss the importance of the above communication with AFRRRI employees.
 - a. AFRRRI shall conduct the all-hands meeting on multiple levels of management (i.e., Director level, Department head) with current employees. AFRRRI employees must attend at least one of the all-hands meetings.

materials shall be maintained and provided to all new employees during initial orientation.

- h. AFRRRI shall require employees to confirm their receipt of the materials by completing a "Read and Sign".

2. Within 180 calendar days of issuance of the CO, AFRRRI shall establish a nuclear SCWE program.

- a. AFRRRI shall ensure that the SCWE program is consistent with the NRC Safety Conscious Work Environment Policy Statements and associated guidance (i.e., the NRC's May 1996 Safety Conscious Work Environment Policy Statement, and the NRC's Regulatory Issue Summary 2005-18, "Guidance for Establishing and Maintaining a Safety Conscious Work Environment").
- b. Initial SCWE Program documents (guidance and related materials) shall be provided to the NRC review at least 60 calendar days prior to issuance.
- c. Within 2 weeks of receiving the documents, NRC will provide comments to AFRRRI.
- d. Within 45 days of receiving communication that the NRC review is complete, AFRRRI will either incorporate NRC comments or provide acknowledgement of NRC comments and why comments were not incorporated.
- e. AFRRRI shall make NRC aware of any revisions to SCWE program documents and make the revisions available for NRC review, upon request. This requirement is limited to the initial 2 years of program establishment.
- f. AFRRRI will distribute copies of these documents and materials to employees and inform employees where all related materials can be located. These

- i. Case studies of discriminatory practices;
- ii. Definitions of key industry terms/common language;
- iii. Behavioral expectations with regards to each nuclear safety culture traits;
- iv. Expectations for demonstrating support for raising nuclear safety concerns, and all available avenues without fear of retaliation; and
- v. A statement that all employees have the right to raise nuclear safety concerns to USU/AFRRI, the NRC and Congress, or engage in any other type of protected activity without fear of being subject to disciplinary action or retaliation, as well as, provide a list of available reporting avenues.

2. Supervisory Training: In addition to the content areas described within paragraph C.1 above, supervisory training shall also include expectations specific to the role of management and include specific discussion on how to (1) effectively manage safety concerns and (2) ensure employees feel comfortable raising concerns.

- a. If AFRRI conducts the initial training, the training will be performed by AFRRI employees trained by the team who developed the training at AFRRI or the organization who developed the program.
- b. The supervisory training shall be completed within 180 calendar days after the issuance of the CO.
- c. Refresher training:
 - i. Shall be primarily instructor led and be provided at least every two years for a period of four (4) years. This training may be provided by AFRRI staff.

- a. NRC will provide comments to AFRRRI within 2 weeks of receipt.
- b. Within 45 days of receiving communication that the NRC review is complete, AFRRRI will either incorporate NRC comments or provide acknowledgement of NRC comments and why comments were not incorporated.

D. Assess and Monitor Nuclear Safety Culture and Safety Conscious Work Environment

1. By no later than 18 months after the issuance of the CO, AFRRRI shall hire a third-party independent organization and complete a tailored comprehensive nuclear safety culture assessment, to ensure the effectiveness of the nuclear safety culture and SCWE programs.
 - a. The assessment will evaluate all program components, including insights from employee surveys, anonymous reports, interviews and the conduct of focus groups to assess effectiveness of the programs.
 - b. AFRRRI shall conduct the initial assessment within one (1) year of the establishment of the SCWE program.
 - c. AFRRRI must address and implement corrective actions as a result of the assessment report.
2. A follow-up assessment shall be conducted within 2 years after the initial assessment. The follow-up assessment shall be comparable to the initial assessment to allow for effective evaluation of trends. This assessment does not require the use of a third-party organization.
3. AFRRRI shall make available to the NRC, upon request, the results of the assessments, surveys, AFRRRI's analysis of the trends, results and proposed corrective actions (if any) AFRRRI will take to address the results in order to verify that a healthy nuclear safety culture and SCWE exists at AFRRRI.

- i. An electronic, telephonic or physical, reporting mechanism for AFRRRI employees to submit safety concerns. This mechanism shall allow for both standard and anonymous submission capability.
- ii. A means to evaluate information collected through the reporting mechanisms available, in order to analyze the data over time, related to AFRRRI's nuclear safety culture.
- iii. A means to ensure AFRRRI's nuclear safety culture and SCWE policies, and associated guidance/materials, are readily accessible for employee viewing.
- iv. The opportunity for departing AFRRRI employees to participate in an exit interview/survey to facilitate identification of nuclear safety issues, resulting trends and conclusions.

General Provisions

1. As part of its deliberations and consistent with the philosophy of the Enforcement Policy, Section 3.3, "Violations Identified Because of Previous Enforcement Action," the NRC will consider enforcement discretion for violations of the NRC Employee Protection Rules that occurred prior to or during implementation of the corrective actions aimed at correcting that specific condition as specified in the CO.
2. The NRC will not cite a violation or issue a civil penalty in connection with the NRC's June 8, 2020, letter to AFRRRI.
3. This CO will not count as escalated enforcement in the civil penalty assessment process for future cases, as long as the future action is not related to the NRC Employee Protection Rule.
4. The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by AFRRRI of good cause.

V

Accordingly, pursuant to Sections 104c, 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 50, IT IS HEREBY ORDERED, EFFECTIVE UPON ISSUANCE, THAT License No. R-84 IS MODIFIED AS FOLLOWS:

A. Communication

1. Within sixty (60) calendar days of issuance of the Confirmatory Order (CO), the Uniformed Services University (USU) President shall issue a written statement communicating the specific strategy to improve AFRRRI's nuclear safety culture.
 - a. The communication is to include (1) a brief summary regarding the employee protection regulations, (2) the NRC's concerns expressed in its March 18, 2020, chilling effect letter, (3) specific lessons learned from previously applied corrective actions, and (4) corrective actions both taken and planned.
 - b. USU shall provide a copy of this communication to the NRC for prior review.
 - c. NRC shall provide comments within one (1) week of receipt of the draft communication.
2. Within ninety (90) calendar days of the USU President's statement, AFRRRI shall hold all-hands meetings for management to discuss the importance of the communication, described within Section A.1 above, with AFRRRI employees.
 - a. AFRRRI shall conduct the all-hands meetings on multiple levels of management (i.e. AFRRRI Director, Department Heads), with current

- f. Within forty-five (45) days of receiving communication that NRC's review is complete, AFRRRI will either incorporate NRC's comments or provide acknowledgement of NRC's comments and state why NRC's comments were not incorporated.
 - g. AFRRRI will distribute copies of the NSC Policy, guidance and related materials to AFRRRI employees, and inform AFRRRI employees how to access the documents and materials. These materials shall be maintained and provided to all new AFRRRI employees during initial employee orientation.
 - h. AFRRRI shall require both current and new AFRRRI employees to confirm their receipt of the NSC Policy, guidance and related materials, by completing a "Read and Sign."
2. Within one hundred eighty (180) calendar days of issuance of the CO, AFRRRI shall establish a nuclear safety conscious work environment (SCWE) program.
- a. AFRRRI shall ensure that the SCWE program is consistent with the NRC Safety Conscious Work Environment Policy Statement and associated guidance (i.e., NRC's May 14, 1996, policy statement "Freedom of Employees in the Nuclear Industry to Raise Safety Concerns Without Fear of Retaliation," and the NRC's Regulatory Issue Summary 2005-18, "Guidance for Establishing and Maintaining a Safety Conscious Work Environment").
 - b. Initial SCWE program documents (guidance and related materials) shall be provided to the NRC review at least sixty (60) calendar days prior to issuance.
 - c. NRC will provide comments to AFRRRI, within two (2) weeks of receipt of the documents.

training). This training shall be completed within one hundred eighty (180) days of designation as the Program Officer.

- iii. The Program Officer shall assist the AFRRRI Director in management and execution of the SCWE program, to include the intake and processing of reported safety concerns.
- iv. The Program Officer shall review AFRRRI communications related to safety culture messaging and provide feedback.
- v. The Program Officer shall encourage better communication between nuclear materials safety and security committees associated with AFRRRI.

C. Training

- 1. Within two hundred ten (210) calendar days of issuance of the CO, AFRRRI shall develop and/or revise its employee protection, nuclear safety culture and safety conscious work environment training for all AFRRRI employees and supervisors.
 - a. Training shall include the following:
 - i. Case studies of discriminatory practices;
 - ii. Definitions of key industry terms/common language;
 - iii. Behavioral expectations with regards to each nuclear safety culture trait as defined in NRC's June 14, 2011, Safety Culture Policy Statement;
 - iv. Expectations for demonstrating support for raising nuclear safety concerns without fear of retaliation; and
 - v. A statement that all employees have the right to raise nuclear safety concerns to USU/AFRRRI, the NRC and Congress, or engage in any other type of protected activity without being subject to disciplinary action or retaliation, as well as, providing a list of available reporting avenues.

- a. The initial AFRRRI employee training shall be primarily instructor-led and all AFRRRI employee training shall commence within one hundred eighty (180) calendar days after the issuance of the CO.
 - b. All initial AFRRRI employee training must be completed within three hundred thirty (330) calendar days of the issuance of the CO.
 - c. Refresher employee training may be computer-based and shall be provided to all AFRRRI employees annually.
 - d. AFRRRI shall conduct instructor-led training for any new AFRRRI employee hired after the initial training, described in paragraphs C.1 and C.3.a, as part of the employee's orientation program/process.
 - e. Training records shall be retained for four (4) years after the completion of applicable training and made available to the NRC upon request.
 - f. All training material shall be made available to the NRC upon request.
4. The training described in paragraphs C.1, C.2 and C.3 is applicable to all AFRRRI employees and management who are engaged in work associated with NRC-regulated activities.
 5. AFRRRI shall provide all initial training materials to the NRC for review at least sixty (60) calendar days prior to conducting training.
 6. NRC will provide comments to AFRRRI within two (2) weeks of receipt of the documents.
 7. Within forty-five (45) days of receiving communication that NRC's review is complete, AFRRRI will either incorporate NRC's comments or provide acknowledgement of NRC's comments and state why NRC's comments were not incorporated.

D. Assess and Monitor Nuclear Safety Culture and Safety Conscious Work Environment

described within the CO. AFRRRI may utilize the same organization as described in paragraph D above.

- a. The independent third-party organization shall be unrelated to the proceedings at issue and experienced within NRC employee protection regulations, Section 211 of the Energy Reorganization Act, as amended, and nuclear safety culture and SCWE policies/programs.
- b. AFRRRI shall receive assistance from the independent third-party organization for the following tasks:
 - i. Initial revisions/updates to AFRRRI's NSC Policy, as AFRRRI ensures consistency with NRC and industry guidance, as described in paragraph B.1;
 - ii. Establishment of AFRRRI's SCWE program, as described in paragraph B.2; and
 - iii. Development and implementation of AFRRRI's initial Nuclear Safety Culture and SCWE program assessment, as described in paragraph D.1.
- c. AFRRRI will ensure that the independent third-party organization is provided all materials to comprehensively assist AFRRRI, including NRC inspection reports associated with AFRRRI's SCWE and the March 18, 2020, Chilling Effect Letter.

F. Work Process

1. Within two hundred seventy (270) calendar days of the issuance of the CO, AFRRRI will develop a program for AFRRRI employees to raise nuclear safety and security concerns.
 - a. The program shall include the following:

3. This CO will not count as escalated enforcement in the civil penalty assessment process for future cases, as long as the future action is not related to the NRC Employee Protection Rules.
4. The NRC agrees not to pursue any further enforcement action in connection with the NRC's June 8, 2020, letter to AFRRRI.

In the event of the transfer of the operating license of AFRRRI to another entity, the terms and conditions set forth hereunder shall continue to apply to AFRRRI and accordingly survive any transfer of ownership or license.

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

VI

In accordance with 10 CFR 2.202 and 10 CFR 2.309, any person adversely affected by this Confirmatory Order, other than AFRRRI, may request a hearing within thirty (30) calendar days of the date of issuance of this Confirmatory Order. 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 and petition for leave to intervene (petition), 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

<https://www.nrc.gov/site-help/electronic-sub-ref-mat.html>. A filing is considered complete at the time the document is 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's 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 document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the "Contact Us" link located on the NRC's public Web site at <https://www.nrc.gov/site-help/e-submittals.html>, by e-mail to MSHD.Resource@nrc.gov, or by a toll-free call at 1-866-672-7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 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 stating why there is good cause for not filing electronically and 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

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the *Federal Register* and served on the parties to the hearing.

If a person (other than AFRR) 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 CFR 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 hearings. 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 30 days from the date of this Confirmatory Order 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.

For the Nuclear Regulatory Commission

George A. Wilson, Director
Office of Enforcement

Dated this XX day of November 2020