

February 06, 2003

SAFEGUARDS INFORMATION

Mr. Scott Wilkerson, Plant Manager
Framatome Advanced Nuclear Power, Inc. Lynchburg
Lynchburg Manufacturing Facility
P.O. Box 11646
Lynchburg, VA 24506-1646

SUBJECT: ISSUANCE OF ORDER FOR INTERIM COMPENSATORY MEASURES

Dear Mr. Wilkerson:

The U.S. Nuclear Regulatory Commission has issued the enclosed Order that modifies Framatome Advanced Nuclear Power, Inc. (Framatome ANP Lynchburg) SNM-1168 Materials License for your facility to require compliance with the specified interim safeguards measures. These interim compensatory measures (ICM) are listed in Attachment 1 of the enclosed Order. The Commission recognizes that you have voluntarily and responsibly implemented additional security measures following events of September 11, 2001, but in light of the current threat environment, the Commission concludes that the security measures should be embodied in an Order, consistent with the established regulatory framework. This Order does not obviate the need for your facility to implement the protective measures specified under Threat Condition Yellow in the U.S. Nuclear Regulatory Commission's (September 3, 2002) Regulatory Issue Summary for Category III fuel cycle facilities on the NRC's Threat Advisory and Protective Measures System (Enclosure 2) and to maintain the effectiveness of existing security measures taken in response to the events of September 11, 2001.

The Commission has determined that the current threat environment requires that the enclosed Order be effective immediately. The requirements will remain in effect pending notification from the Commission that a significant change in the threat environment has occurred, or the Commission determines that other changes are needed.

The enclosed Order calls for response within specified time frames. With respect to the notices and submissions required by Sections IIIB and IIIC of the Order, for any requirement of Attachment 1 that requires an analysis or is contingent on completion of another requirement of Attachment 1, it will be a sufficient response if you state in your twenty-day submission that completion of the requirement is dependent on completion of an analysis or other requirement and the expected date of completion of the analysis or other requirement. Upon completion of

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such analysis or other requirement, you should promptly submit the results and the actions thereafter proposed with respect to the requirement at issue, as well as the projected date of completion. No extension of time from the twenty-day requirement is necessary for such responses submitted within twenty days.

As a separate matter, if you wish to preserve your right to request a hearing on any requirement contingent upon completion of an analysis or other requirement, a request for an extension of time to request a hearing must be filed within twenty days of the date of this order in accordance with Section IV of the order. Such a request may seek a reasonable period of time to request a hearing beyond the date that the staff informs you whether the actions proposed and completion date for the requirement(s) contingent upon an analysis or other requirement are satisfactory.

Please contact Robert Pierson at (301) 415-7213 to facilitate resolution of any issues related to compliance with the requirements in the enclosed Order, or if you have any other questions.

The enclosed Order has been forwarded to the Office of the Federal Register for publication.

Sincerely,

/RA/

Martin J. Virgilio, Director
Office of Nuclear Material Safety
and Safeguards

Enclosure: (1) Order Modifying License and Attachment (ICM)
(2) Regulatory Issue Summary (RIS) - Category III Fuel Cycle Facilities

Docket No.: 70-1201

February 06, 2003

such analysis or other requirement, you should promptly submit the results and the actions thereafter proposed with respect to the requirement at issue, as well as the projected date of completion. No extension of time from the twenty-day requirement is necessary for such responses submitted within twenty days.

As a separate matter, if you wish to preserve your right to request a hearing on any requirement contingent upon completion of an analysis or other requirement, a request for an extension of time to request a hearing must be filed within twenty days of the date of this order in accordance with Section IV of the order. Such a request may seek a reasonable period of time to request a hearing beyond the date that the staff informs you whether the actions proposed and completion date for the requirement(s) contingent upon an analysis or other requirement are satisfactory.

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Sincerely,
/RA/

Martin J. Virgilio, Director
Office of Nuclear Material Safety
and Safeguards

Enclosures: (1) Order Modifying License and Attachment (ICM)
(2) Regulatory Issue Summary (RIS) -Category III Fuel Cycle Facilities

Docket No.: 70-1201

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

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)
FRAMATOME ADVANCED NUCLEAR POWER, INC.
LYNCHBURG, VA

)
)
Docket No. 70-1201
License No. SNM-1168

**ORDER MODIFYING LICENSE
(EFFECTIVE IMMEDIATELY)**

I

Framatome Advanced Nuclear Power, Inc. Lynchburg (Framatome ANP Lynchburg) is the holder of Special Nuclear Material License No. SNM 1168 issued by the U.S. Nuclear Regulatory (NRC or Commission) pursuant to 10 C.F.R. Part 70. Framatome ANP Lynchburg is authorized by their license to receive, possess, and transfer byproduct, source material, and special nuclear material in accordance with the Atomic Energy Act of 1954, as amended, and 10 C.F.R. Part 70. The Framatome ANP Lynchburg license, originally issued in December 1969, was renewed in September 1990. The license is currently being reviewed for renewal until 2012.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, N.Y., and Washington, D.C., utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with

Enclosure 1

other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security plan requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain compensatory measures are required to be implemented by Framatome ANP Lynchburg as prudent, interim measures to address the current threat environment. Therefore, the Commission is imposing interim requirements, set forth in Attachment 1¹ of this Order, which supplement existing regulatory requirements, to provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that some of the requirements set forth in Attachment 1² to this Order may already have been initiated by Framatome ANP Lynchburg in response to previously- issued advisories, or on its own. It is also recognized that some measures may need to be tailored to specifically accommodate the specific circumstances and characteristics existing at Framatome ANP Lynchburg's facility to achieve the intended objectives and avoid any unforeseen effect on safe operation.

¹ Attachment 1 contains safeguards information and will not be released to the public.

² To the extent that specific measures identified in Attachment 1 to this Order require actions pertaining to Framatome ANP Lynchburg's possession and use of chemicals, such actions are being directed on the basis of the potential impact of such chemicals on radioactive materials and activities subject to NRC regulation.

Although Framatome ANP Lynchburg's response to the Safeguards and Threat Advisories has been adequate to provide reasonable assurance of adequate protection of public health and safety, in light of the current threat environment, the Commission concludes that the security measures must be embodied in an Order, consistent with the established regulatory framework. In order to provide assurance that Framatome ANP Lynchburg is implementing prudent measures to achieve an adequate level of protection to address the current threat environment, Materials License SNM-1168 shall be modified to include the requirements identified in Attachment 1 to this Order. In addition, pursuant to 10 C.F.R. §§ 2.202 and 70.81, I find that, in the circumstances described above, the public health, safety and interest and the common defense and security require that this Order be immediately effective.

III

Accordingly, pursuant to Sections 53, 63, 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 C.F.R. § 2.202 and 10 C.F.R. Part 70, IT IS HEREBY ORDERED, **EFFECTIVE IMMEDIATELY**, THAT MATERIAL LICENSE SNM-1168 IS MODIFIED AS FOLLOWS:

- A. Framatome ANP Lynchburg shall, notwithstanding the provisions of any Commission regulation to the contrary, comply with the requirements described in Attachment 1 to this Order. Framatome ANP Lynchburg shall immediately start implementation of the requirements in Attachment 1 to the Order and shall complete implementation, unless otherwise specified in Attachment 1 to this order, **no later than August 15, 2003**.

- B.
1. Framatome ANP Lynchburg shall, within **twenty (20) days** of the date of this Order, notify the Commission, (1) if it is unable to comply with any of the requirements described in Attachment 1, (2) if compliance with any of the requirements is unnecessary in its specific circumstances, or (3) if implementation of any of the requirements would cause Framatome ANP Lynchburg to be in violation of the provisions of any Commission regulation or its license. The notification shall provide Framatome ANP Lynchburg's justification for seeking relief from or variation of any specific requirement.
 2. If Framatome ANP Lynchburg considers that implementation of any of the requirements described in Attachment 1 to this Order would adversely impact safe operation of its facility, Framatome ANP Lynchburg must notify the Commission, within **twenty (20) days** of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 1 requirement in question, or a schedule for modifying the facilities to address the adverse safety condition. If neither approach is appropriate, Framatome ANP Lynchburg must supplement its response to Condition B1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B1.
- C.
1. Framatome ANP Lynchburg shall, within **twenty (20) days** of the date of this Order, submit to the Commission, a schedule for achieving compliance with each requirement described in Attachment 1.
 2. Framatome ANP Lynchburg shall report to the Commission when it has achieved full compliance with the requirements described in Attachment 1.

- D. Notwithstanding any provision of the Commission's regulations to the contrary, all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

Framatome ANP Lynchburg's responses to Conditions B.1, B.2, C.1, and C.2, above shall be submitted in accordance with 10 C.F.R. §70.5. In addition, Framatome ANP Lynchburg's submittals that contain safeguards information shall be properly marked and handled in accordance with 10 C.F.R. § 73.21.

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions upon demonstration by Framatome ANP Lynchburg of good cause.

IV

In accordance with 10 C.F.R. § 2.202, the licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the licensee or other person adversely affected relies and the reasons as to why the Order should not

have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, D.C. 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region II, Sam Nunn Atlanta Federal Center, Suite 23 T85, 61 Forsyth Street, S.W. Atlanta, GA 30303-3415, and to Framatome ANP Lynchburg if the answer or hearing request is by a person other than the licensee. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to hearingdocket@nrc.gov and also to the Office of the General Counsel either by means of facsimile transmission to 301-415-3725 or by e-mail to OGCMailCenter@nrc.gov. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 C.F.R. § 2.714(d).³

If a hearing is requested by the licensee or 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 Order should be sustained.

Pursuant to 10 C.F.R. § 2.202(c)(2)(i), the licensee may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for

³The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714(d), please see 67 FR 20884, April 29, 2002.

immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

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 III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

Dated this 6th day of February 2003

/RA/

Martin J. Virgilio, Director
Office of Nuclear Material Safety
and Safeguards