



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION II
245 PEACHTREE CENTER AVENUE NE, SUITE 1200
ATLANTA, GEORGIA 30303-1257

September 2, 2010

EA-10-086
NMED No. 090788
NRC Event No. 45446

Mr. David B. Amerine
President
Nuclear Fuel Services, Inc.
P. O. Box 337, MS 123
Erwin, TN 37650

SUBJECT: NOTICE OF VIOLATION, EXERCISE OF ENFORCEMENT DISCRETION, AND PROPOSED IMPOSITION OF CIVIL PENALTY - \$140,000 (NRC INSPECTION REPORT NUMBER 70-143/2010-010)

Dear Mr. Amerine:

This letter refers to inspection activities completed prior to May 26, 2010, associated with activities at the Nuclear Fuel Services, Inc., (NFS) facility, located in Erwin, Tennessee. The purpose of the inspection activities was to review the circumstances surrounding the event in a bowl cleaning station of the uranium aluminum process in the Blended Low-Enriched Uranium Preparation Facility on October 13, 2009.

On October 12, 2009, NFS finalized procedure changes to allow chemical processing of high enriched uranium scrap material in the centrifuge bowl cleaning stations. On October 13, 2009, upon addition of nitric acid into the bowl cleaning station, the solution exhibited an unexpectedly high rate of reaction. The operator shut down the station recirculation pump and shut off the heaters. However, the reaction continued producing an excessive quantity of nitrogen compound gases (NO_x). These gases triggered NO_x detectors at the air gap of the nitric acid knockout column, which prompted an evacuation of the building. The heated gases deformed a section of the wet off-gas piping system for the bowl cleaning station and the nitric acid knockout column. In response, the NRC initiated a Special Inspection to review the facts and circumstances surrounding the event.

On October 19, 2009, NFS submitted an event notification to the NRC that stated laboratory testing of the scrap material indicated that the rate of NO_x generation was significantly higher than previously analyzed which could have potentially resulted in a "high occupational consequence." The system design for processing this type of material, referred to as "fines", included only one item relied on for safety. However, the potential for a high occupational consequence when processing this material required the presence of additional items relied on for safety. Based on the increased potential safety significance and preliminary insights from the Special Inspection Team, the inspection was upgraded to an Augmented Inspection on October 22, 2009.

The results of the Augmented Inspection, which included eight unresolved items, were documented in NRC Inspection Report No. 70-143/2009-011, dated March 19, 2010 (ML100780127). Following additional review of these unresolved items, the NRC identified five apparent violations, which were documented in NRC Inspection Report No. 70-143/2010-007, dated May 26, 2010 (ML101460178), and requested NFS' attendance at a predecisional enforcement conference to discuss the apparent violations.

On July 13, 2010, a predecisional enforcement conference was conducted at the NRC's Region II office with you and members of your staff to discuss the significance and root causes of the apparent violations and your corrective actions. At the conference, NFS acknowledged the violations, but stated that the significance of the violations did not warrant escalated enforcement action because there was no actual safety significance to plant workers, no actual or potential safety significance to the public or the environment, and because of the considerable resources that had been expended by NFS to improve plant safety following the October 13, 2009 event. Nuclear Fuel Services presented details of its corrective actions at the conference, as well as its perspectives as to why previous corrective actions from its Safety Culture Improvement Initiative did not effectively preclude these performance deficiencies. After the conference, NFS provided a more comprehensive characterization of their corrective actions in a letter dated July 19, 2010 (ML102150017).

Based on the information developed during the inspections and the information that you provided during and after the conference, the NRC has determined that five violations of NRC requirements occurred. Three violations are cited in Part I of the enclosed Notice of Violation (Notice) and the circumstances surrounding them are described in detail in NRC Inspection Report Nos. 70-143/2009-011 and 70-143/2010-007. In summary, the violations of Part I involve: (Part I.A) operation of the bowl cleaning station without sufficient engineered or administrative controls to comply with Title 10 of the *Code of Federal Regulations* (10 CFR) 70.61(b); (Part I.B) failure to comply with multiple procedures related to the development of Enterprise Change Requests 20092008 and 20091919, as required by NFS' materials license, SNM-124; and (Part I.C) failure to maintain records of written evaluations that provide the bases for the determination that a change to the facility did not require prior NRC approval, as required by 10 CFR 70.72.

The NRC concluded that the event of October 13, 2009, did not result in any actual consequences to workers or the environment because the NOx detector functioned as designed, triggering the alarm that prompted personnel to evacuate the area, and the facility scrubber and ventilation systems operated properly throughout the duration of the event preventing an excessive release of NOx gas outside the facility. The NRC also concluded that the potential safety significance to the workers was high due to the possibility of an acute chemical exposure to NOx gas released inside the facility.

As discussed in the NRC's Augmented Inspection report of March 19, 2010, and confirmed during subsequent NRC review, the event of October 13, 2009, occurred because multiple barriers at NFS failed. These failures were primarily attributable to a lack of management oversight of the change management process, a lack of a questioning attitude, perceived production pressure, and poor communication. As a result, NFS failed to properly utilize four portions of its existing decision-making processes to implement a significant change to the uranium aluminum process to allow chemical processing of small particles of high-enriched uranium scrap material (fines) in the centrifuge bowl cleaning stations. Consequently, the significance of the change went undetected by your staff and later resulted in a event that could

have resulted in a high consequence occupational exposure. Performance issues were also identified involving procedural compliance, technical reviews, safety reviews, and written evaluations that were required to support decisions made without prior NRC approval. These deficiencies, when viewed in their totality, resulted in an unanticipated reduction in the margin of safety at the facility. Under different circumstances, the failure of these barriers could have resulted in a more significant event. Based on the above, and because violations I.A, I.B, and I.C are interrelated, the significance of these violations has been characterized collectively as a Severity Level III Problem in accordance with the NRC Enforcement Policy.

Two remaining violations are cited in Part II of the enclosed Notice, involving: (Part II.A) a failure to maintain process safety information that would have provided reasonable assurance that a chemical addition item relied on for safety (BUA-43) could perform its intended design function described in the integrated safety analysis, as required by 10 CFR 70.62(b); and (Part II.B) failure to identify engineered or administrative controls as items relied on for safety for several accident scenarios involving excessive NO_x generation in the fuel manufacturing, uranium metal/oxide, uranium aluminum, and commercial development lines, as required by 10 CFR 70.61. The NRC has concluded that violations II.A and II.B should be characterized as separate Severity Level IV violations because additional safety controls were in place and NFS had adequate technical information to ensure the effectiveness of these safety controls.

In accordance with the NRC's Enforcement Policy, a base civil penalty in the amount of \$35,000 is considered for a Severity Level III problem. Since NFS has been the subject of escalated enforcement within the past two years¹, NRC considered whether credit was warranted for *Identification and Corrective Action* in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy. The NRC has concluded that credit is not warranted for the factor of *Identification* because the violations in Part I of the Notice were identified as the result of an event.

Corrective actions taken by NFS included, but were not limited to: (1) immediate action to safely shut down the bowl cleaning station, evacuate the area and account for all personnel; (2) revising the configuration management program to provide requirements for a technical basis with sufficient technical detail to facilitate the risk and hazard assessments of process changes; (3) the development of guidelines to ensure process changes made during off-shift hours have adequate technical review and oversight; (4) revising the definition of "urgent change;" (5) implementing a process to ensure formal communications occur between operations and laboratory personnel; (6) the conduct of training to appropriate staff and management on improvements to the change control process and other procedural revisions; (7) the addition of items relied on for safety to two areas in the Blended Low Enriched Uranium Preparation Facility to better support nitrogen compound gas calculation assumptions; (8) implementing a project management program for all new projects or major process changes to existing processes; (9) implementing a senior engineering watch which provides coverage on the process floor by NFS personnel with technical knowledge of the operations; (10) communicating to all levels of management a very clear set of behavior standards (for example, to not proceed in the face of uncertainty); and (11) developing a comprehensive conduct of operations document based on industry best practices which includes rules for proper communication of information with safety implications.

¹ A Severity Level III Problem was issued on April 30, 2009 (EA-08-346) for a security issue.

Normally, the NRC's decision to grant *Corrective Action* credit is based on the promptness and comprehensiveness of those actions that have been taken or planned, at the time of the pre-decisional enforcement conference, which occurred on July 13, 2010. However, in this case the NRC's Augmented Inspection identified concerns with decisions made by NFS management, in both October and November 2009, to restart the uranium aluminum process without fully understanding the causes of the event and correcting the underlying problems. Based on these concerns, NRC engaged NFS management on multiple occasions in December 2009, which resulted in NFS making numerous commitments to take corrective action as described in a letter dated December 30, 2009 (ML093641023). As a result, on January 7, 2010, the NRC issued a Confirmatory Action Letter (ML100070118) to confirm these commitments in order to ensure that the root and contributing causes of the event would be adequately evaluated and appropriate corrective actions implemented for all potentially affected processes before the resumption of operations. Without NRC intervention, NFS would not have fully understood the root and contributing causes and would not have identified and implemented comprehensive corrective actions. Based on the above, the NRC concluded that credit is not warranted for the factor of *Corrective Action*.

Because credit is not warranted for the factors of *Identification* and *Corrective Action*, the NRC would normally propose a civil penalty equal to two times the base civil penalty amount. However, notwithstanding the outcome of the normal civil penalty assessment process addressed in Section VI.C.2 of the Enforcement Policy, the NRC may exercise discretion by escalating the amount of the resulting civil penalty to ensure that the proposed civil penalty reflects the significance of the circumstances. As described in Section VII.A.1 of the Enforcement Policy, the NRC may consider the exercise of discretion for cases involving particularly poor licensee performance, and in situations where the licensee's previous enforcement history has been particularly poor. In this case, the violations stemming from the October 13, 2009, event clearly demonstrate continuing poor performance, most notably in the areas of management oversight, the change management process, and safety culture. Furthermore, NFS' previous enforcement history in these areas, and other escalated enforcement in the past several years is especially poor and well documented. To summarize, NRC's issuance of a Confirmatory Order on February 21, 2007, was the result of numerous operational, configuration management, security-related, and willful violations, and prompted NFS' Safety Culture Improvement Initiative. The NRC issued two separate Confirmatory Orders on November 23, 2009, (ML093270353 and ML093270326), which documented significant violations and safety culture weaknesses in NFS' implementation of its fitness-for-duty program. The NRC also issued a Severity Level III Problem on April 30, 2009, for a security issue. The circumstances that led to the October 13, 2009, event and the significant deficiencies in NFS' review of this matter prompted the NRC's issuance of the January 7, 2010, Confirmatory Action Letter and clearly demonstrate continuing poor licensee performance. Based on the above, the NRC considers the exercise of discretion to escalate the civil penalty to be warranted.

Therefore, to emphasize the importance of prompt identification and correction of violations and in recognition of particularly poor licensee performance and previous escalated enforcement history, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of \$140,000 for the Severity Level III problem. In addition, issuance of this Notice constitutes escalated enforcement action that may subject you to increased inspection effort.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. The NRC also includes significant enforcement actions on its Web site at (<http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>).

Should you have any questions concerning this letter, please contact Mr. Anthony Gody at (404) 997-4700.

Sincerely,

/RA/

Luis A. Reyes
Regional Administrator

Docket No. 70-143
License No. SNM-42

Enclosures:

1. Notice of Violation and Proposed Imposition of Civil Penalty
2. NUREG/BR-0254 Payment Methods (Licensee only)

cc w/encls:

Timothy Lindstrom
Vice President, Operations
Nuclear Fuel Services, Inc.
Electronic Mail Distribution

Mark Elliott
Director, Quality, Safety and Safeguards Department
Nuclear Fuel Services, Inc.
Electronic Mail Distribution

Debra Shults
Director, TN Dept. of Environment & Conservation
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Director, Quality, Safety and Safeguards Department
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Debra Shults
Director, TN Dept. of Environment & Conservation
Electronic Mail Distribution

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DATE	9/ /2010	9/ /2010	9/ /2010	9/ /2010		
E-MAIL COPY?	YES NO	YES NO	YES NO	YES NO	YES NO	YES NO
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SIGNATURE	J. Wray 8/30/10	CH 8/30/109	Email 8/29/10			
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NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Nuclear Fuel Services, Inc.
Erwin, TN

Docket No. 70-143
License No. SNM-42
EA-10-086

During an NRC inspection completed on May 26, 2010, violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the NRC proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violations and associated civil penalty are set forth below:

I. Violations Assessed a Civil Penalty

- A. 10 CFR 70.61(b) states, in part, that the risk of each credible high-consequence event must be limited. Engineered controls, administrative controls, or both, shall be applied to the extent needed to reduce the likelihood of occurrence of the event so that, upon implementation of such controls, the event is highly unlikely or its consequences are less severe than those in paragraphs (b)(1)-(4) of this section.

Contrary to the above, on October 13, 2009, the licensee failed to apply engineered controls, administrative controls, or both, to the extent needed to reduce the likelihood of occurrence of the event so that, upon implementation of such controls, the event is highly unlikely or its consequences are less severe. Specifically, the licensee failed to implement sufficient items relied on for safety to prevent or mitigate the production of nitrogen compound gas generation which could have led to a high consequence event.

- B. Nuclear Fuel Services' materials license, SNM-124, Part 1, Section 2.7, states in part that "safety function activities are conducted in accordance with written procedures" and that "compliance with these procedures is mandatory."

Procedure NFS-CM-004, "NFS Change Control Process," Revision 3, Section 2.0, states in part that "changes addressing failures which are adversely impacting personnel safety or significantly impacting operations may be assigned a priority of Urgent."

Procedure NFS-CM-005, "NFS Change Controls Board (CCB) Charter," Revision 2, requires the CCB to evaluate all enterprise change requests according to various criteria including the impact the change would have on the facility systems, processes, activities, and facility configuration information.

Procedure NFS-GH-901, "Configuration Management Program," Revision 12, Sections 5.3.1 and 5.3.2, require technical reviews of changes to verify that the design basis is preserved.

Contrary to the above,

- Prior to October 13, 2009, the licensee failed to follow Procedure NFS-CM-004, when assigning Enterprise Change Requests (ECRs) 20092008 and 20091919 as urgent. Specifically, these ECRs were assigned as urgent, but did not address failures which were adversely impacting personnel safety or significantly impacting operations. Instead, the ECRs involved the implementation of a method to process fines material.
 - Prior to October 13, 2009, the licensee failed to follow Procedure NFS-CM-005. Specifically, CCB's review of ECRs 20092008 and 20091919 authorized the processing of fines directly in the bowl cleaning station. CCB's review failed to identify, however, that the design requirements and design basis were affected by the direct addition of fines into the bowl cleaning station without first processing the material in the uranium-aluminum dissolvers.
 - Prior to October 13, 2009, the licensee failed to follow Procedure NFS-GH-901, involving the technical reviews as documented in ECRs 20092008 and 20091919. Specifically, the licensee failed to identify that processing uranium-aluminum fines directly in the bowl cleaning station, without processing the material through the caustic dissolution and centrifuge steps, was not analyzed in the integrated safety analysis as a part of the uranium-aluminum design basis.
- C. 10 CFR 70.72 requires licensees to maintain records of written evaluations that provide the bases for the determination that a change to its facility does not require prior NRC approval.

Contrary to the above, prior to October 13, 2009, the licensee failed to maintain records of written evaluations that provided the bases for the determination that a change to its facility did not require prior NRC approval. Specifically, the inspectors determined that an inadequate 10 CFR 70.72 review was conducted based on reviews of the Safety and Regulatory Review Routing Forms used for the change requests that led to the October 13, 2009 event.

This is a Severity Level III Problem (Supplement VI).
Civil Penalty - \$ 140,000

II. Violations Not Assessed a Civil Penalty

- A. 10 CFR 70.62(b) requires, in part, that licensees maintain process safety information pertaining to the performance and technology of the process to enable the performance and maintenance of the integrated safety analysis.

Contrary to the above, prior to December 11, 2009, NFS failed to maintain process safety information that would have provided reasonable assurance that a chemical addition item relied on for safety (BUA-43) could perform its intended design function as described in the integrated safety analysis.

This is a Severity Level IV violation (Supplement VI).

- B. 10 CFR 70.61(e) requires, in part, that the licensee designate engineered or administrative controls as items relied on for safety if they are required to meet the performance requirements of 10 CFR 70.61(b).

Contrary to the above, prior to December 11, 2009, NFS failed to identify engineered or administrative controls as items relied on for safety for several accident scenarios involving excessive nitrogen compound gas generation in the fuel manufacturing, uranium-metal/oxide, uranium-aluminum, and commercial development lines in order to meet the performance requirements of 10 CFR 70.61(b).

This is a Severity Level IV violation (Supplement VI).

Pursuant to the provisions of 10 CFR 2.201, Nuclear Fuel Services, Inc. (Licensee) is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation: (EA-10-086)" and should include for each alleged violation: (1) admission or denial of the alleged violation; (2) the reasons for the violation if admitted, and if denied, the basis for denying the validity of the violation; (3) the corrective steps that have been taken and the results achieved; (4) the corrective steps that will be taken; and (5) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, the NRC may issue an order or a Demand for Information requiring you to explain why your license should not be modified, suspended, or revoked or why the NRC should not take other action as may be proper. Consideration may be given to extending the response time for good cause shown. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Within the same time provided for the response required under 10 CFR 2.201, the Licensee may pay the civil penalty proposed above in accordance with NUREG/BR-0254 and by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, a statement indicating when and by what method payment was made, or may protest imposition of the civil penalty in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission. Should the Licensee fail to answer within 30 days of the date of this Notice, the NRC will issue an order imposing the civil penalty. Should the Licensee elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation" and may: (1) deny the violations listed in this Notice, in whole or in part; (2) demonstrate extenuating circumstances; (3) show error in this Notice; or (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty in whole or in part, such answer may request remission or mitigation of the penalty.

In requesting mitigation of the proposed penalty, the response should address the factors addressed in Section VI.C.2, "Civil Penalty Assessment," of the Enforcement Policy. Any written answer addressing these factors pursuant to 10 CFR 2.205, should be set forth separately from the statement or explanation provided pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the Licensee is directed to the other provisions of 10 CFR 2.205, regarding the procedure for imposing a civil penalty.

Upon failure to pay any civil penalty which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205 to be due, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The responses noted above, i.e., Reply to Notice of Violation, Statement as to payment of civil penalty, and Answer to a Notice of Violation, should be addressed to: Roy Zimmerman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region II, 245 Peachtree Center Avenue, Suite 1200, Atlanta, GA 30303-1257, and a copy to the NRC Resident Inspector at the facility that is the subject of this Notice.

Because your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), to the extent possible, it should not include any personal privacy, proprietary, or classified information so that it can be made available to the public without redaction. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request that such material is withheld from public disclosure, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information). If safeguards or classified information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days.

Dated this 2nd day of September 2010