

UNITED STATES  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
 )  
LICENSEES AUTHORIZED TO )  
POSSESS RADIOACTIVE MATERIAL )  
QUANTITIES OF CONCERN )

EA 05-090

**ORDER IMPOSING PROTECTIVE MEASURES  
(EFFECTIVE IMMEDIATELY)**

I

The Licensees identified in Attachment A<sup>1</sup> to this Order hold licenses issued in accordance with the Atomic Energy Act of 1954 by the U.S. Nuclear Regulatory Commission (NRC or Commission) or an Agreement State authorizing them to possess certain quantities of radioactive material of concern. Commission regulations at 10 CFR § 20.1801 or equivalent Agreement State regulations require Licensees to secure, from unauthorized removal or access, licensed materials that are stored in controlled or unrestricted areas. Commission regulations at

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<sup>1</sup> Attachment A contains sensitive information and will not be released to the public.

10 CFR § 20.1802 or equivalent Agreement States regulations require Licensees to control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage.

## 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 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 review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and license requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain protective measures are required to be implemented by Licensees as prudent measures to address the current threat environment. Therefore, the Commission is imposing the requirements set forth in Attachment B on radioactive materials licensees who possess, or have near term plans to possess, radioactive material quantities of concern. These requirements, which supplement existing regulatory requirements, will 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 Licensees may have already initiated many measures set forth in Attachment B to this Order in response to previously issued advisories or on their own. It is also recognized that some measures may not be possible or necessary at some sites, or may need to be tailored to accommodate the Licensees' specific circumstances to achieve the intended objectives and avoid any unforeseen effect on the safe use and storage of the sealed sources.

Although the additional security measures implemented by the Licensees in response to the Safeguards and Threat Advisories have been adequate to provide reasonable assurance of adequate protection of public health and safety, the Commission concludes that the security measures must be embodied in an Order consistent with the established regulatory framework.

This Order requires both Nuclear Regulatory Commission (NRC) and Agreement State licensees to control information that, if released, could reasonably be expected to be useful to potential adversaries in planning an attack and adversely impact the common defense and security of the United States. Licensees must ensure proper handling and protection of their physical protection information related to the security of radioactive materials associated with this Order to avoid unauthorized disclosure in accordance with requirements set forth in Attachment C to this Order. The Commission hereby provides notice that it intends to treat

unauthorized disclosure of the licensee's physical protection information as a breach of adequate protection of the public health and safety and the common defense and security of the United States. Whoever willfully violates, attempts to violate, or conspires to violate any provision of an Order issued under Section 161b is subject to punishment including a fine or imprisonment.

To provide assurance that the Licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, and consistent with the International Atomic Energy Agency (IAEA) Code of Conduct on the Safety and Security of Radioactive Sources (Code of Conduct) concerning Category 1 and 2 sources, all Licensees who hold licenses issued by the U.S. Nuclear Regulatory Commission or an Agreement State authorizing possession of radioactive material quantities of concern, listed for IAEA Category 2 and as listed in Table 1, "Radionuclides of Concern," (Attachment B, Table 1), shall implement the requirements identified in Attachment B to this Order. In addition, pursuant to 10 CFR § 2.202, I find that in light of the common defense and security matters identified above, which warrant the issuance of this Order, the public health, safety and interest require that this Order be effective immediately.

### III

Accordingly, pursuant to Sections 81, 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, 10 CFR Part 30, and 10 CFR Part 32, IT IS HEREBY ORDERED, **EFFECTIVE IMMEDIATELY**, THAT ALL

LICENSEES IDENTIFIED IN ATTACHMENT A TO THIS ORDER SHALL COMPLY WITH THE REQUIREMENTS OF THIS ORDER AS FOLLOWS:

- A. 1. The Licensee shall, notwithstanding the provisions of any Commission or Agreement State regulation or license to the contrary, comply with the requirements described in Attachment B to this Order. The Licensee shall immediately start implementation of the requirements in Attachment B to the Order and shall complete implementation by December xx, 2005, or the first day that radionuclides of concern at or above threshold limits, identified in Table 1, are possessed, which ever is later.
2. The Licensee shall, notwithstanding the provisions of any Commission or Agreement State regulation or license to the contrary, comply with the information protection requirements described in Attachment C to this Order.
- B. 1. The Licensee shall, within **twenty five (25) 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 B, (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 the Licensee to be in violation of the provisions of any Commission or Agreement State regulation or its license. The notification shall provide the Licensee's justification for seeking relief from or variation of any specific requirement.
2. If the Licensee considers that implementation of any of the requirements described in

Attachment B to this Order would adversely impact safe operation of the facility, the Licensee must notify the Commission, in writing, within **twenty five (25) 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 B requirement in question, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, the Licensee must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

- C. 1. The Licensee shall, **within twenty five (25) days** of the date of this Order, submit to the Commission a schedule for completion of each requirement described in Attachment B.
- 2. The Licensee shall report to the Commission when they have achieved full compliance with the requirements described in Attachment B.
- D. Notwithstanding any provisions of the Commission's or an Agreement State's regulations to the contrary, all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

Licensee responses to Conditions B.1, B.2, C.1, and C.2 above shall be submitted to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, Licensee's responses shall be marked as

"Withhold From Public disclosure Under 10 CFR 2.390."

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

#### IV.

In accordance with 10 CFR § 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 five (25) 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, DC 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, and to the Licensee 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](mailto: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](mailto: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 CFR § 2.714(d).

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 CFR § 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 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 **twenty five (25) 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.

Dated this     day of June 2005

FOR THE NUCLEAR REGULATORY COMMISSION

Jack R. Strosnider, Jr., Director  
Office of Nuclear Material Safety  
and Safeguards

Attachments:

- A. Service List of Licensees (Not for Public Disclosure)
- B. Protective Measures for Licensees That Possess Sources Containing Radioactive Material Quantities of Concern, including Table 1: Radionuclides of Concern
- C. Handling and Protection of Physical Protection Information Related to the Security of Radioactive Material Quantities of Concern