

July 24, 2007

MEMORANDUM TO: Frederick Burrows, Sr. Electrical Engineer (Retired)

Melanie Galloway, Branch Chief
Division of Fuel Cycle Safety
and Safeguards
Office of Nuclear Material Safety
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Christopher Tripp, Sr. Nuclear Process Engineer (Criticality)
Division of Fuel Cycle Safety
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FROM: Michael F. Weber, Director */RA/*
Office of Nuclear Material Safety
and Safeguards

SUBJECT: FINAL DECISION: DIFFERING PROFESSIONAL OPINION ON
MANAGEMENT POLICY ON LICENSING NEW FUEL CYCLE
FACILITIES (DPO-2006-005)

I am responding to your Differing Professional Opinion (DPO) about the acceptability of the staff's approach to licensing new fuel cycle facilities, which you submitted on November 15, 2006. Specifically, you expressed the opinion that the licensing approach described in an August 4, 2006, memorandum from Mr. Robert Pierson, Director, Division of Fuel Cycle Safety and Safeguards entitled "United States Enrichment Corporation License Detail Regarding the Level of Information Needed for 10 CFR Part 70 Licensing" is inconsistent with the requirements of the licensing process in Part 70 and the staff review guidance in the "Standard Review Plan for the Review of a License Application for a Fuel Cycle Facility," NUREG-1520.

By memorandum dated December 22, 2006, which was reissued on January 17, 2007, my predecessor established a DPO Ad Hoc Review Panel (the Panel). The Panel conducted its review of your opinion in accordance with Management Directive (MD) 10.159, "The NRC Differing Professional Opinions Program. The Panel met with you on January 18 and February 8, 2007, to obtain a mutual understanding of your opinion. I understand that you accepted the Panel's characterization of the opinion in an email dated February 20, 2007. The Panel reviewed your DPO submittal and other relevant documents as described in the Panel's report dated March 30, 2007, as well as interviewed you and other pertinent staff members.

I have reviewed the DPO, the Panel's report, and your comments on the Panel's report. I also met with you on June 11, 2007, and considered your comments, including your observation that you do not question the safety basis for the American Centrifuge Facility or the Louisiana Energy Services facility. In addition, I met with the Panel Chairman on June 6, 2007. The Panel's conclusions and recommendations are set forth in the enclosed copy and need not be

repeated here. Based on my review, I concur with the Panel that a programmatic review, as described in Mr. Pierson's August 4, 2006 memorandum is consistent with the requirements of Part 70. In addition, I concur that the SRP can be interpreted to allow a programmatic review when considered along with the rule itself and the statement of considerations for the rule.

Nevertheless, your DPO highlighted a need for improved clarity in some areas of our licensing and oversight programs for fuel cycle facilities to ensure that NRC reviewers will be able to apply the regulations and associated regulatory guidance to future licensing reviews without difficulties. This could include improvements related to reviewing the hazards identified for each process and a general description of the types of accident sequences (10 CFR 70.65(b)(3)) and reviewing each Item Relied on for Safety in sufficient detail to understand their functions in relation to the performance requirements (10 CFR 70.65(b)(6)). Your dedication and thoroughness with which you have pursued these issues are laudable and I expect that you will continue to provide your suggestions and recommendations on how we can continue to improve our guidance on implementing 10 CFR Part 70.

I agree with the Panel's recommendations that the SRP may need to be modified to clarify that a programmatic level of detail is sufficient for licensing reviews in accordance with Part 70, for both new and existing facilities licensed under Subpart H of the rule, and to ensure that the acceptance criteria in the SRP are consistent with this approach. I also concur with the Panel's second recommendation that the NRC oversight program for fuel cycle facilities needs to be reviewed to ensure that the confirmatory inspections and reviews of the Items Relied On For Safety (IROFS) Boundary Packages are clearly defined and inspector qualifications clearly established. Indeed, these elements are essential to ensuring the effectiveness of our regulatory oversight program.

Therefore, I am assigning the following tasks to the Director, FCSS, in consultation and coordination with appropriate staff and management in FCSS, NRC Region II, Office of Enforcement, and Office of the General Counsel:

1. Review and revise, as necessary and appropriate, NRC's licensing guidance (e.g., NUREG-1520) to incorporate the guidance on the information needed for licensing fuel facilities in accordance with 10 CFR Part 70 based on the August 4, 2006, memorandum. This guidance should address, among other aspects, what constitutes the licensing basis for fuel cycle facilities in accordance with Subpart H of Part 70 and related aspects. In any revisions to the licensing guidance, consideration should be given to any additional clarifications resulting from: (1) lessons learned in applying the guidance in recent licensing reviews, and (2) ongoing interactions with stakeholders on related licensing matters, such as applying the change controls consistent with the criteria in 10 CFR 70.72 and reporting consistent with the criteria in Appendix A of Part 70. Estimated Completion Date: 12/2009 [Estimate 6 months for working group to conduct review and recommend any changes; balance of time to proposed and complete development of any SRP revisions, allowing for incorporation of additional revisions related to other ongoing initiatives]
2. Review and update, as necessary and appropriate, inspection guidance for conducting the operational readiness review required in 10 CFR 70.32(k) that confirms, with reasonable assurance, that uranium enrichment facilities have been constructed in accordance with the requirements of the license. The inspection guidance should ensure that necessary design information about

Items Relied on For Safety (IROFS) that is not contained within the applicant's ISA Summary will be available to inspectors to fulfill their confirmatory functions (IROFS Boundary Packages). The guidance should also confirm that inspection staff are suitably qualified to perform their confirmatory reviews, including change reviews conducted by the licensee under 10 CFR 70.72. As part of this review, consider the merits of identifying key features that require confirmation by the NRC, similar to the inspections, tests, analyses, and acceptance criteria (ITAAC) established for new reactors under 10 CFR Part 52. Estimated Completion Date: July 2008

3. Develop and execute a communication plan for FCSS and Regional staff, licensees, and other stakeholders on any clarification and revisions to the licensing guidance and oversight program, including the scope of the changes, the basis for the revisions, and plan for implementation, including training of license reviewers and inspectors. Estimated Completion Date: December 2008

Thank you for raising your DPO and for your active participation in the DPO process. An open and thorough exploration of how we carry out our regulatory programs is essential to keeping these programs effective. Your willingness to raise your concerns with your colleagues and managers and ensure that your concerns are heard and understood are essential pillars of our regulatory decision-making process.

Enclosure: DPO Panel Report Dated March 30, 2007

cc: R. Pierson, FCSS
D. Collins, Region II
R. Pedersen, OE

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cc: R. Pierson, FCSS
D. Collins, Region II
R. Pedersen, OE

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