

May 8, 2009

Mr. Albert E. Kennedy, Licensing Manager
GE-Hitachi Global Laser Enrichment
P.O. Box 780
3901 Castle Hayne Road
Wilmington, NC 28402

SUBJECT: APPROVAL OF GE-HITACHI EXEMPTION REQUEST RELATED TO
COMMENCEMENT OF CONSTRUCTION

Dear Mr. Kennedy:

On December 8, 2008, GE-Hitachi Global Laser Enrichment (GEH) transmitted a "Request for Exemption from 10 CFR §§ 70.4 and 70.23(a)(7) Requirements Governing Commencement of Construction," to the U.S. Nuclear Regulatory Commission (NRC) for review and approval. On April 7, 2009, NRC staff transmitted a request for additional information (RAI). In response to the RAI, on May 1, 2009, GEH provided additional information indicating that it would eliminate several pre-construction activities related to facilities, structures, and equipment where NRC approvals under the Physical Security Plan or the Standard Practice Procedures Plan for the Protection of Classified Matter would be needed.

GEH has requested an exemption from the requirements in Title 10 of the *Code of Federal Regulations* (10 CFR), Sections 70.4 and 70.23(a)(7) to allow specific construction activities associated with GEH's proposed uranium enrichment facility in Wilmington, North Carolina, before completion of the NRC's environmental review under 10 CFR Part 51. GEH also requested an exemption from the applicable provisions of 10 CFR 30.4, 30.33(a)(5), 40.4, and 40.32(e) as those provisions apply to the licensing of GEH's facility. As amended by the May 1, 2009, submittal, the exemption covers the following activities and facilities:

- Clearing of 100 acres
- Site grading and erosion control
- Storm water retention ponds
- Main access roadways and guardhouses
- Utilities
- Parking lots
- Administrative buildings not used to process, handle or store classified information

A Safety Evaluation Report of the staff's review of the exemption request is attached in the enclosure. Based on its review, the staff finds that the request to perform certain construction activities is authorized by law, will not endanger life or property or common defense and security, and is in the public interest. Therefore, GEH is granted an exemption to 10 CFR 30.4, 30.33(a)(5), 40.4, 40.32(e), 70.4, and 70.23(a)(7) to authorize the specified construction activities provided that none of the facilities or activities subject to the exemption will be, at a later date, a component of GEH's Physical Security Plan or its Standard Practice Procedures Plan for the Protection of Classified Matter or otherwise subject to NRC review or approval.

A. Kennedy

- 2 -

As described in our April 7, 2009, letter transmitting our RAI, NRC staff requests that GEH prepare a supplement to its environmental report to distinguish between the environmental impacts of the construction activities covered by this exemption and construction activities which will not be undertaken until after issuance of a license by the NRC. This supplement will facilitate NRC staff's separation of the environmental impacts of construction activities performed before completion of the NRC's environmental review and construction activities undertaken after an NRC license is issued. This separation is consistent with NRC's interim staff guidance regarding limited work authorizations (COL/ESP-ISG-004).

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records component of NRC's Agencywide Document Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> (the Public Electronic Reading Room).

If you have any questions, please contact Mr. Timothy C. Johnson at (301) 492-3121.

Sincerely,

/RA/

Daniel H. Dorman, Director
Division of Fuel Cycle Safety
and Safeguards
Office of Nuclear Material Safety
and Safeguards

Enclosure: Safety Evaluation Report

Docket No.: 70-7016

| | | |
|-----|----------------------------------------|---------------------------------|
| cc: | William Szymanski/DOE | Bruce Shell/New Hanover County |
| | Patricia Campbell/GEH | Marty Lawing/Brunswick County |
| | Robert Brown/GEH | George Brown/Pender County |
| | Tammy Orr/GEH | Bill Saffo/Wilmington |
| | Mike Giles/CFC | Malissa Talbert/Wilmington |
| | Tom Clements/FOTE | Wanda Lagoe/NCOSH |
| | Doug Springer/CFRW | Cameron Weaver/NCDENR |
| | Stephen Rynas/NCDENR | Jennifer Frye/USACE |
| | Jennifer Braswell/New Hanover County | Kimberly Garvey/USACE |
| | Christopher O'Keefe/New Hanover County | David Weaver/New Hanover County |
| | Lafayette Atkinson/NCOSH | |

As described in our April 7, 2009, letter transmitting our RAI, NRC staff requests that GEH prepare a supplement to its environmental report to distinguish between the environmental impacts of the construction activities covered by this exemption and construction activities which will not be undertaken until after issuance of a license by the NRC. This supplement will facilitate NRC staff's separation of the environmental impacts of construction activities performed before completion of the NRC's environmental review and construction activities undertaken after an NRC license is issued. This separation is consistent with NRC's interim staff guidance regarding limited work authorizations (COL/ESP-ISG-004).

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| DATE | 05/05/09 | 05/06/09 | 05/ 07 /09 | 05/ 08/09 | 05/08 /09 | 05/ 08 /09 | 05/08 /09 |

OFFICIAL RECORD COPY

DOCKET: 070-7016

LICENSEE: GE-Hitachi Global Laser Enrichment, LLC
Wilmington, North Carolina

SUBJECT: SAFETY EVALUATION REPORT: EXEMPTION REQUEST FOR EARLY
CONSTRUCTION ACTIVITIES, DATED DECEMBER 8, 2008

BACKGROUND

On December 8, 2008, GE-Hitachi Global Laser Enrichment (GEH) requested an exemption from the requirements in Title 10 of the *Code of Federal Regulations* (10 CFR), Sections 70.4 and 70.23(a)(7) for early construction of certain site facilities without prior U.S. Nuclear Regulatory Commission (NRC) approval for GEH's proposed uranium enrichment facility to be constructed in Wilmington, North Carolina. GEH also requested an exemption from the applicable provisions of 10 CFR 30.4, 30.33(a)(5), 40.4, and 40.32(e) as those provisions apply to the licensing of GEH's facility. Under the existing regulations, the commencement of construction cannot begin until the completion of the NRC's environmental review under 10 CFR Part 51. Construction is defined to include any clearing of land, excavation, or other substantial action that would adversely affect the environment of a site.

On April 7, 2009, NRC staff transmitted to GEH a request for additional information (RAI). In the RAI, NRC staff requested additional information to clarify the scope of proposed pre-construction activities that related to possible NRC approvals related to security matters that would be ultimately addressed in the GEH's Physical Security Plan and its Standard Practice Procedures Plan for the Protection of Classified Matter. On May 1, 2009, GEH responded to the RAI by amending its exemption request to exclude activities involving: 1) the fabrication facility and warehouse; 2) security lighting, cameras, and motion detectors; 3) security systems; and 4) vehicle barriers and stops. By excluding these activities, GEH is eliminating activities that pertain to security-related matters that fall under NRC regulatory jurisdiction. As amended by the May 1, 2009, submittal, the exemption covers the following activities and facilities:

- Clearing of 100 acres
- Site grading and erosion control
- Storm water retention ponds
- Main access roadways and guardhouses
- Utilities
- Parking lots
- Administrative buildings not used to process, handle or store classified information

DISCUSSION

GEH intends to submit a license application under 10 CFR Parts 30, 40, and 70 to the NRC to construct and operate a uranium enrichment facility in Wilmington, North Carolina. Under 10 CFR 70.23(a)(7), before commencement of construction, NRC must evaluate information filed in accordance with 10 CFR Part 51.

Enclosure

Under 10 CFR 30.11, 40.14, 51.6, and 70.17, NRC may grant an exemption to the regulations if the exemption is authorized by law, will not endanger life or property or the common defense and security, and is in the public interest.

In GEH's exemption request, GEH stated that, under the existing regulations, it is prohibited from any clearing of land, excavation, or other substantial action that would adversely affect the natural environment of a site. Because of this, GEH requests that it be allowed to undertake construction activities specified in the May 2, 2009, supplement, on the grounds that they would not be considered construction activities under the definition of construction currently in 10 CFR Part 50.2. Like Part 50 licensees, the applicant is asking to be permitted to undertake construction of facilities and construction activities that are not subject to NRC regulation or are safety-related.

In the exemption request, GEH stated that the Atomic Energy Act of 1954, as amended, contains no provisions excluding the early construction of activities that are outside the nexus of NRC regulatory authority. In addition, that authority cannot be construed to expand the Commission's authority under the National Environmental Policy Act. In NRC's rulemaking amending the definition of construction in 10 CFR Part 50, the Commission stated that it does not believe that the redefinition constitutes an unlawful segmentation of environmental impacts, because the single Federal action would not include private actions for which NRC has no regulatory authority.

NRC's rulemaking amending the definition of construction in 10 CFR Part 50 made conforming changes to the definition of construction in 10 CFR Part 51, which governs NRC's implementation of the National Environmental Policy Act of 1969, as amended. Because granting the exemption is consistent with the definition of construction in 10 CFR Part 51, NRC staff finds that no environmental review of the exemption request is required.

GEH also stated that granting an exemption will not endanger life or property or common defense and security, because the requested exemption would limit early construction to those facilities or activities that are not regulated by NRC, or that do not have a public health and safety or common defense and security basis.

GEH also stated that the exemption is in the public interest because there is a need for advanced uranium enrichment capacity to support national energy objectives.

NRC staff reviewed GEH's request and supporting rationale for the exemption. NRC staff agrees that the proposed exemption is authorized by law because the Atomic Energy Act of 1954, as amended, contains no provisions excluding the early construction of activities that are outside the nexus of NRC regulatory authority. In addition, the Commission's authority under the National Environmental Policy Act does not include activities that are outside of its jurisdiction. NRC also agrees that the definition of construction in 10 CFR Part 50 does not constitute an unlawful segmentation of environmental impacts, because the single Federal action would not include private actions for which NRC has no regulatory authority.

NRC staff also agrees that applying the same definition of construction authorized for nuclear power plants, under 10 CFR Part 50, will not endanger life or property or common defense and security. Under this definition, the only construction permitted to take place are those facilities and activities that fall outside NRC's jurisdiction and are not security- or safety-related. NRC staff also agrees that the proposed exemption is in the public interest. Therefore, NRC staff recommends that the exemption request be approved.

CONCLUSION

Based on the above considerations, the staff finds that the proposed exemption request is authorized by law, will not endanger life or property or common defense and security, and is otherwise in the public interest. Therefore, the staff finds the request acceptable and recommends approval of the exemption.

PRINCIPAL CONTRIBUTORS

Timothy C. Johnson