



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

March 6, 2013

EA-12-269

Mr. Joseph G. Henry
President
Nuclear Fuel Services, Inc.
P. O. Box 337, MS 123
Erwin, TN 37650

SUBJECT: WITHDRAWAL OF NOTICE OF VIOLATION 70-143/2012-004-02

Dear Mr. Henry:

Thank you for your response dated November 29, 2012, to the Notice of Violation (NOV) issued on October 30, 2012, in Nuclear Regulatory Commission (NRC) Inspection Report Number (No.) 70-143/2012-004. The NOV was in regards to inspections conducted July 1 through September 30, 2012, at Nuclear Fuel Services (NFS) and was characterized by the NRC as a Severity Level IV violation. We acknowledged receipt of your reply to NRC Inspection Report No. 70-143/2012-004 in our letter dated December 19, 2012.

In your letter you disputed that Violation 70-143/2012-004-02 (failure to implement requirements of the emergency plan) occurred as documented based on the following key points: (1) the violation focused on individual procedures that NFS intended to create after accident conditions were known and (2) because the NFS Emergency Plan was not recognized by the NRC as an implementing procedure for some activities.

We have evaluated your response to the disputed violation and conclude that the violation did not occur as stated. Accordingly, this violation is hereby withdrawn.

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

J. Henry

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Should you have any questions regarding this letter, please contact Mr. Alan Blamey of my staff at (404) 997-4415.

Sincerely,

/RA/

Anthony T. Gody, Director
Division of Fuel Facility Inspection

Docket No. 70-143
License No. SNM-124

Enclosure:
NRC Evaluation and Conclusion for
Violation 70-143/2012-004-02

cc w/encl: (see page 3)

J. Henry

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Docket No. 70-143
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NRC Evaluation and Conclusion for
Violation 70-143/2012-004-02

cc w/encl: (see page 3)

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ADAMS: X Yes

ACCESSION NUMBER: ML13065A007

X SUNSI REVIEW COMPLETE X FORM 665 ATTACHED

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| OFFICE | RII:DFFI | RII:DFFI | RII:DFI | RII:EICS | HQ:OE | | |
| SIGNATURE | PG | MC | AB | CE | email | | |
| NAME | PGlenn | MCrespo | ABlamey | CEvans | TMarenchin | | |
| DATE | 3/1/2013 | 3/1/2013 | 3/1/2013 | 3/4/2013 | 3/5/2013 | | 3/ /2013 |
| E-MAIL COPY? | YES NO | YES NO | YES NO | YES NO | YES NO | YES NO | YES NO |

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Response Final Rev1.docx

DOCUMENT NAME G:\DFFI\ENFORCE escalated\NFS\2012\NFS EP Denial\Revised Denial

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NRC EVALUATIONS AND CONCLUSIONS

Introduction

NRC Inspection Report 70-143/2012-004, dated October 30, 2012, documented a Notice of Violation (NOV) with one violation regarding activities at the Nuclear Fuel Services (NFS) facility in Erwin, TN, between July 1 through September 30, 2012. The violation involved a failure to implement requirements of the emergency plan through approved written procedures related to Chapter 9 of the NFS Emergency Plan "Recovery and Restoration," as required by Section 8.2, Implementing Procedures, of the NFS license application. The NRC characterized the violation as Severity Level IV Violation and is tracking it via Violation (VIO) 70-143/2012-004-02.

NFS provided its written response to the violation in its letter dated November 29, 2012. In summary, the licensee denied the violation on the basis of two key points: (1) the NRC's application of the second through fifth sentences in the second paragraph of Section 9.2 of the NFS Emergency Plan and (2) due to the NFS Emergency Plan not being recognized by the NRC as an implementing procedure for some activities. However, the licensee did state in their response that "if it is the NRC's intent that a general restoration procedure be in place in advance of an actual emergency, NFS will commence development of this procedure."

The cited NOV as documented in Inspection Report 70-143/2012-004 is provided below:

Section 8.2 of the License Application states that the requirements of the Emergency Plan are implemented through approved written procedures.

Section 9.2 of the Emergency Plan specifies that: 1) a procedure for decontamination and repair of affected plant areas is prepared; 2) a procedure for corrective actions for on-site contamination outside the work areas is also developed; 3) these procedures include provisions for checking and restoring to normal operation all criticality alarms, effluent and area monitors, and emergency supplies used during the emergency; and 4) the intent is for recovery operations to return the plant to a state of emergency preparedness before normal operations commence.

Contrary to the above, as of August 24, 2012, the inspectors identified that the licensee failed to create and implement procedures to address post accident recovery and restoration of the plant before normal operations commence.

This is a Severity Level IV violation (Section 6.2.d.7).

Specific Basis for Disputing VIO 70-143/2012-004-02

In the reply provided by NFS to the cited NOV, the licensee questioned the cited violation due to (1) the NRC's application of the second through fifth sentences in the second paragraph of Section 9.2 of the NFS Emergency Plan and also (2) due to the Emergency Plan not being recognized by the NRC as an implementing procedure for some activities. More specifically:

- (1) NFS indicated that, "in the event of an actual emergency, recovery and restoration procedures would be required in order to comply with Section 8.2 of their license; however, per Section 9.2 of the Emergency Plan, such procedures are not required to be

Enclosure

developed and approved until actual accident/post-accident conditions and data from re-entry teams are known". Furthermore, the licensee stated that, "it is not possible to detail specific recovery and restoration procedures for every type of incident in advance because such procedures would differ depending on the type and extent of the emergency." The licensee's position is that, "the intent of Section 9.2 of the Emergency Plan is to specify what procedures will be prepared once the Emergency Control Director has determined that the emergency has ended, recovery has started, and actual accident conditions and corresponding data from re-entry teams are known."

- (2) NFS indicated that, "portions of the Emergency Plan implement certain emergency response activities instead of utilizing a separate Emergency Procedure." Furthermore NFS believes that, "Section 9.0 of the NFS Emergency Plan adequately outlines the major activities required to initiate reentry, restoration, and resumption of operations at the plant following an accident and that a separate Emergency Procedure would not contain instructions beyond those already stated in the Plan and would be of little benefit to the Emergency Response Organization (ERO). Additionally, the licensee stated that, "ERO members are required to document their reading of the approved Emergency Plan, as well as be trained to and practice the requirements of the Plan in drills and graded exercises."

NRC Evaluation of Licensee's Response

The NRC staff reviewed NFS' response and concluded that a violation did not occur as described in the cited NOV for VIO 70-143/2012-004-02. The NRC agrees that there is no expectation for the licensee to have detailed pre-written procedures that would address actual accident conditions as that information is dynamic in that it evolves during an emergency and specifics regarding the accident and emergency conditions are unknown until an actual emergency is present (e.g. plant contamination, radiation levels, status of equipment, etc).

The NRC disagrees with the assertion that the NFS Emergency Plan is an implementing procedure. In Section 11.4, "Procedure Development and Implementation," of the NFS License Application, NFS discusses procedure development and implementation for the facility. Included in that section are the various types of procedures that NFS utilizes (e.g. operating, general safety, support group, maintenance, etc.). In Section 11.4.2, "General Safety Procedures", it states, in part, that "general safety procedures outline health and safety practices that help maintain occupational radiation exposures at levels as low as reasonably achievable (ALARA). These procedures are generally applicable on a plant-wide basis such as those governing the collection of bioassay samples, contamination control, emergency evacuation, and other similar matters. Included in this category are the Emergency Plan implementing procedures." Furthermore, while reviewing the range of procedures that NFS utilizes to govern various activities and practices, etc. at the site, it was determined that the NFS Emergency Plan was not referenced as a procedure nor included in any underlying procedure category contained in Section 11.4 of the License Application. Thus, the NRC concluded that the NFS Emergency Plan is not considered an implementing procedure.

The NRC noted that the NFS Emergency Management Program could be enhanced by having an overarching emergency preparedness implementing procedure (EPIP) to implement the framework established by NFS to address the means of restoring the plant to a safe condition. Title 10 of the Code of Federal Regulations (CFR) 70.22(i)(3) establishes key aspects of an emergency plan for fuel cycle facilities such as NFS. Those aspects include safe shutdown, which NFS addresses in Chapter 9, Recovery and Plant Restoration, of the Emergency Plan.

The process of recovery and restoration of the facility following an accident is not merely administrative in nature. Therefore, although a procedure is not required by regulation, a formal implementing procedure to implement the NFS recovery and plant restoration framework should be considered.

NRC Conclusion

Based on the preceding evaluation, the NRC concluded that the violation did not occur as written in the Notice of Violation. Therefore VIO 70-143/2012-004-02 is officially withdrawn. In addition, the NRC concluded that the NFS Emergency Plan is not considered an implementing procedure.