



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

April 15, 2020

EA-20-055

Mr. Bill Muiter, Site Manager
Daher-TLI
7017 Paducah Road
Kevil, Kentucky 42053

SUBJECT: REQUEST FOR EXTENSION OF TIME TO SUBMIT REPORTS REQUIRED BY
10 CFR 150.17(a) AND EXERCISE OF ENFORCEMENT DISCRETION

Dear Mr. Muiter:

This letter provides the Nuclear Regulatory Commission (NRC) response to your request for relief from requirements in 10 CFR Part 150, for the filing of certain reports to the NRC.

Title 10 of the *Code of Federal Regulations* (10 CFR) Section 150.17, "Submission to Commission of nuclear material status reports," requires, in part, that persons possessing, or who had possessed in the previous reporting period, quantities of certain special nuclear material totaling 1 gram or more, submit a Physical Inventory Listing Report and Material Balance Report to the Nuclear Materials Management and Safeguards System (NMMSS) by March 31 of each year. Section 150.17(a) also states that "[t]he Commission may, when good cause is shown, permit a licensee to submit Material Balance Reports and Physical Inventory Listing Reports at other times." By letter dated April 3, 2020 (Agencywide Documents Access and Management Systems (ADAMS) Accession Number ML20094H616), Daher-TLI (licensee) requested an extension for the filing of the Physical Inventory Listing Report and Material Balance Report for the facility, RIS codes ZYI and YYI, until April 17, 2020. The letter cites state-ordered restrictions due to the COVID-19 virus as limiting facility schedules, staffing, and access, which affected the ability to file the reports by the prescribed date. The April 3, 2020, letter also stated that the system for receiving the reports, the Nuclear Materials Management and Safeguards System (NMMSS), has been affected by the COVID-19 virus with reduced staffing, causing slower than normal response times for interactions with NMMSS staff.

Accordingly, the facility did not file the Physical Inventory Listing Report and Material Balance Report by the required date of March 31, 2020.

DISCUSSION

The NRC staff reviewed your request and acknowledges that the Kentucky Governor's declaration of a State of Emergency on March 6, 2020, and subsequent restrictions on business activities in the state as a result of the COVID-19 public health emergency (PHE) have impacted work schedules and staffing levels at your facility, including access to the information necessary to prepare the reports required by 10 CFR 150.17(a). The NRC finds that the restrictions on the facility and its staff due to COVID-19-PHE provide good cause for allowing an extension of the filing deadline.

By failing to file the Physical Inventory Listing Report and Material Balance Report for the facility by March 31, 2020, and by not receiving prior approval for an extension from that requirement prior to the due date, Daher -TLI is in apparent violation of 10 CFR 150.17(a). Section 3.5 of the NRC's Enforcement Policy (ADAMS Accession No. ML19352E921), states, in part, that the NRC may refrain from issuing a Notice of Violation based on the merits of the case after considering the guidance in the Policy and such factors as the age of the violation, the significance of the violation, and other relevant circumstances. In addition, the NRC may "refrain from issuing enforcement action for violations resulting from matters not within a licensee's control." The NRC staff acknowledges that Daher-TLI has experienced reduced staffing and facility access, limiting the ability to retrieve the data needed to complete the Physical Inventory Listing Report and Material Balance Report. These reductions are the result of state-issued restrictions on work schedules and staffing, and thus are not within the licensee's control. Therefore, I have been authorized, after consulting with the Director, Office of Enforcement, to exercise enforcement discretion and not issue a violation in accordance with Section 3.5 of the Policy for violations involving special circumstances. Specifically, the NRC is exercising its discretion to forgo taking enforcement action against Daher-TLI for its violation of 10 CFR 150.17(a), provided that the reporting is completed no later than the revised due date of April 17, 2020. The NRC notes that the COVID-19-PHE has not impacted the ability of the NMMSS system to receive reports. Therefore, the NRC decision to grant an extension of time to file the required annual reports does not rely on the licensee's claim that the slower response times by NMMSS staff contributed to Daher-TLI's inability to meet the reporting deadline.

CONCLUSION

The NRC staff has reviewed the request and finds that the restrictions on the facility and its staff due to COVID-19 provide good cause for allowing an extension of the filing deadline. The NRC therefore grants Daher-TLI an extension from the required filing date of March 31, 2020, to April 17, 2020, as requested.

Please be advised that the requirement for reporting annual inventory in accordance with 10 CFR 150.17(a) is the responsibility of the licensee, and that requests to extend the due date should be submitted with sufficient time to allow the NRC to review these requests prior to the required due date of March 31. In the future, NRC may choose not to exercise enforcement discretion for issues not identified in a timely manner.

Sincerely,

Andrea
L. Kock

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by Andrea L. Kock
Date: 2020.04.15
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Andrea L. Kock, Director
Division of Fuel Management
Office of Nuclear Material Safety and
Safeguards

SUBJECT: Request for relief/extension for 10 CFR 150.17(a)

DATED: April 15, 2020

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***via email**

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