

SAFEGUARDS INFORMATION

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
WOLF CREEK NUCLEAR OPERATING CORPORATION)	DOCKET NO. 72-79
WOLF CREEK GENERATING STATION)	EA-20-091
INDEPENDENT SPENT FUEL STORAGE INSTALLATION)	
1550 OXEN LANE)	
BURLINGTON, KS 66839)	

ORDER FOR IMPLEMENTATION OF ADDITIONAL SECURITY MEASURES AND FINGERPRINTING FOR UNESCORTED ACCESS TO WOLF CREEK GENERATING STATION INDEPENDENT SPENT FUEL STORAGE INSTALLATION (EFFECTIVE IMMEDIATELY)

I

The U.S. Nuclear Regulatory Commission (NRC or the Commission), has issued a general license to Wolf Creek Nuclear Operating Corporation (Wolf Creek) authorizing the operation of an independent spent fuel storage installation (ISFSI), in accordance with the Atomic Energy Act of 1954, as amended, and title 10 of the *Code of Federal Regulations* (10 CFR) part 72, "Licensing requirements for the independent storage of spent nuclear fuel, high-level radioactive waste, and reactor-related greater than Class C waste." The NRC is issuing this Order to Wolf Creek because Wolf Creek has identified near-term plans to store spent fuel in an ISFSI under the general license provisions of 10 CFR part 72.

WARNING: Violation of Section 147 of the Atomic Energy Act, "Safeguards Information," is subject to Civil and Criminal Penalties.

Document transmitted herewith contains sensitive unclassified information. When separated from Attachment 1, this document is DECONTROLLED.

Enclosure 1

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The Commission's regulations at 10 CFR 72.212(b)(5), 10 CFR 50.54(p)(1), and 10 CFR 73.55(c)(5) require licensees to maintain safeguards contingency plan procedures to respond to threats of radiological sabotage and to protect the spent fuel against the threat of radiological sabotage, in accordance with 10 CFR Part 73, "Physical protection of plants and materials," Appendix C, "Licensee Safeguards Contingency Plans." Specific physical security requirements are contained in 10 CFR 73.51, "Requirements for the physical protection of stored spent nuclear fuel and high-level radioactive waste," or 10 CFR 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," as applicable.

Inasmuch as an insider has an opportunity equal to, or greater than, any other person, to commit radiological sabotage, the Commission has determined these measures to be prudent. The NRC has issued comparable Orders to all licensees that currently store spent fuel or have identified near-term plans to store spent fuel in an ISFSI.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and near Washington, DC, using 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 to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. On October 16, 2002, the Commission issued Orders to the licensees of operating ISFSIs, to place the actions taken in response to the Advisories into the established regulatory framework and to implement additional security enhancements that emerged from the NRC's ongoing comprehensive review. 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

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Order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has conducted a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain additional security measures (ASMs) are required to address the current threat environment in a consistent manner throughout the nuclear ISFSI community. Therefore, the Commission is imposing requirements, as set forth in Attachments 1 and 2 to this Order, on all licensees of these facilities. These requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that public health and safety, and the environment, continue to be adequately protected, and that the common defense and security continue to be promoted 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 of the measures set forth in Attachments 1 and 2 to this Order, in response to previously issued advisories, or on their own. It also recognizes that some measures may not be possible or necessary at some sites, or may need to be tailored to accommodate the specific circumstances existing at Wolf Creek's facility, to achieve the intended objectives and avoid any unforeseen effect on the safe storage of spent fuel.

Although the ASMs implemented by licensees in response to the safeguards and threat advisories have been sufficient to promote the common defense and security and to provide reasonable assurance of adequate protection of public health and safety, in light of the continuing threat environment, the Commission concludes that these actions should be embodied in an Order, consistent with the established regulatory framework.

To provide assurance that Wolf Creek is implementing prudent measures to achieve a

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consistent level of protection to address the current threat environment, Wolf Creek's general license issued pursuant to 10 CFR 72.210, General license issued," shall be modified to include the requirements identified in Attachments 1 and 2 to this Order. In addition, pursuant to 10 CFR 2.202, "Orders," I find that, in light of the common defense and security circumstances described above, the public health, safety, and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 53, 103, 104, 147, 149, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the NRC's regulations in 10 CFR 2.202 and 10 CFR parts 50, 72, and 73, IT IS HEREBY ORDERED, **EFFECTIVE IMMEDIATELY**, THAT YOUR GENERAL LICENSE IS MODIFIED AS FOLLOWS:

- A. Wolf Creek shall comply with the requirements described in Attachments 1 and 2 to this Order, except to the extent that a more stringent requirement is set forth in the Wolf Creek Generating Station physical security plan. Wolf Creek shall demonstrate its ability to comply with the requirements in Attachments 1 and 2 to the Order **no later than 365 days from the date of this Order or 90 days before the first day that spent fuel is initially placed in the ISFSI**, whichever is earlier. Wolf Creek must implement these requirements before initially placing spent fuel in the ISFSI. Additionally, Wolf Creek must receive written verification from the NRC (Office of Nuclear Material Safety and Safeguards) that it has adequately demonstrated compliance with these requirements before initially placing spent fuel in the ISFSI.
- B. 1. Wolf Creek shall, within **20 days** of the date of this Order, notify the Commission:
 - (1) if it is unable to comply with any of the requirements described in Attachments 1 and 2, (2) if compliance with any of the requirements is unnecessary, in its specific circumstances, or (3) if implementation of any of the requirements would

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cause Wolf Creek to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide Wolf Creek's justification for seeking relief from, or variation of, any specific requirement.

2. If Wolf Creek considers that implementation of any of the requirements described in Attachments 1 and 2 to this Order would adversely impact the safe storage of spent fuel, Wolf Creek must notify the Commission, within **20 days** of the date 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 1 and 2 requirements in question, or a schedule for modifying the facility, to address the adverse safety condition. If neither approach is appropriate, Wolf Creek 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 mandated under Condition B.1.
- C.
1. Wolf Creek shall, within **20 days** of the date of this Order, submit to the Commission a schedule for achieving compliance with each requirement described in Attachments 1 and 2.
 2. Wolf Creek shall report to the Commission when it has achieved full compliance with the requirements described in Attachments 1 and 2.
- D. All measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

Wolf Creek shall submit its response to Conditions B.1, B.2, C.1, and C.2, above, in accordance with 10 CFR 72.4, "Communications." In addition, submittals and documents produced by Wolf Creek as a result of this Order that contain safeguards information as defined by 10 CFR 73.22, "Protection of Safeguards Information: Specific Requirements," shall be

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properly marked and handled, in accordance with 10 CFR 73.21, "Protection of Safeguards Information: Performance Requirements," and 10 CFR 73.22.

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

IV

In accordance with 10 CFR 2.202, Wolf Creek must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of its publication in the *Federal Register*. In addition, Wolf Creek and any other person adversely affected by this Order may request a hearing on this Order within 20 days of its publication in the *Federal Register*. Where good cause is shown, the NRC will consider extending the time to answer or request a hearing. A request for extension of time must be made, in writing, to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and include a statement of good cause for the extension.

The answer may consent to this Order. If the answer includes a request for a hearing, it shall, under oath or affirmation, specifically set forth the matters of fact and law on which Wolf Creek relies and the reasons as to why the NRC should not have issued the Order. If a person other than Wolf Creek requests a hearing, that person shall set forth with particularity the manner in which his/her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

All documents filed in NRC adjudicatory proceedings, including a request for hearing, and petition for leave to intervene (petition), any motion or other document filed in the proceeding before the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (Volume 72 of the Federal Register (FR), page 49139 72 FR 49139), August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-

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Filing process requires participants to submit and serve all adjudicatory documents electronically, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC Web site at <https://www.nrc.gov/site-help/e-submittals.html>.

Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days before the filing deadline, the participant should contact the Office of the Secretary by e-mail at hearing.docket@nrc.gov, or by telephone at (301) 415-1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even if the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at <https://www.nrc.gov/site-help/e-submittals/getting-started.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submission is available on the NRC's public Web site at <https://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. eastern time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps

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the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Electronic Filing Help Desk through the "Contact Us" link located on the NRC Web site at <https://www.nrc.gov/site-help/e-submittals.html>, by e-mail at MSHD.Resource@nrc.gov, or by a toll-free call at 1-866-672-7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., eastern time, Monday through Friday, excluding Federal Government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by (1) first-class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary of the Commission, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff.

Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing

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the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from the use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at <https://adams.nrc.gov/ehd>, unless excluded pursuant to an Order of the Commission, or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click "cancel" when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants should not include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in Order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, the NRC requests that participants not include copyrighted materials in their submissions.

If a hearing is requested by Wolf Creek 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 takes place, 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), Wolf Creek may, in addition to requesting 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 grounds that the Order, including the need for immediate

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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 as specified in Section III, shall be final 20 days from the date this Order is published in the *Federal Register*, without further Order or proceedings. If the NRC has approved an extension of time for requesting a hearing, the provisions of this Order as specified in Section III, shall be final when the extension expires, if the NRC has not received a hearing request. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

Dated: July 22, 2020.

For the Nuclear Regulatory Commission.

John W. Lubinski, Director
Office of Nuclear Material Safety
and Safeguards

Attachments:

1. "Additional Security Measures for Physical Protection of Dry Independent Spent Fuel Storage Installations (ISFSIs)"
(**This attachment contains Safeguards Information.**)
2. "Additional Security Measures for Access Authorization and Fingerprinting at Independent Spent Fuel Storage Installations"