



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
REGION IV  
612 EAST LAMAR BLVD, SUITE 400  
ARLINGTON, TEXAS 76011-4125

March 1, 2010

EA-09-142  
NMED 080326

U.S. Department of Commerce  
National Institute of Standards and Technology  
ATTN: Richard F. Kayser, PhD  
Special Assistant for Environment, Safety, and Health  
Building 301, Room B111  
Gaithersburg, MD 20899-1730

SUBJECT: CONFIRMATORY ORDER (EFFECTIVE IMMEDIATELY) (NRC INSPECTION  
REPORT 030-03732/2008-001, NRC INVESTIGATION REPORT 4-2008-062)

Dear Dr. Kayser:

The enclosed Confirmatory Order is being issued to the U.S. Department of Commerce's National Institute of Standards and Technology (NIST) as a result of a successful alternative dispute resolution (ADR) mediation session. The enclosed commitments were made by NIST as part of a settlement agreement between NIST and the NRC concerning ten apparent violations identified in the subject inspection report dated November 2, 2009.

In the November 2, 2009, inspection report, the NRC provided you with the results of an NRC special inspection and an investigation completed by the NRC's Office of Investigations. The report identified ten apparent violations associated with the plutonium contamination event that occurred on June 9, 2008, at the NIST facility in Boulder, Colorado. In addition, the NRC indicated that willfulness may have been involved in one of the ten apparent violations, in that it appeared that a former representative at the NIST-Boulder facility willfully failed to provide complete and accurate information to the NRC in a license amendment application dated February 15, 2007, regarding the security of special nuclear material, written procedures for the safe use of special nuclear material, and the monitoring of personnel. A factual summary of the Office of Investigations' investigation was enclosed with our November 2, 2009, letter.

In addition, our November 2, 2009, letter offered you a choice to either attend a Predecisional Enforcement Conference or request ADR with the NRC in an attempt to resolve any disagreement on whether a violation occurred, the appropriate enforcement action, and the appropriate corrective actions.

In response, NIST requested ADR to resolve the issues concerning the apparent violations. An ADR mediation session was held on January 5, 2010, during which a preliminary settlement agreement was reached. The elements of the preliminary agreement were formulated and agreed to at the mediation session and are contained within the enclosed Confirmatory Order.

In response to the June 9, 2008, event, NIST implemented extensive corrective actions including: (1) decontaminating the NIST-Boulder facility, (2) designating new and additional managers with responsibility for oversight of the radiation and overall safety programs, (3) implementing a hazards analysis and control policy, and (4) undertaking efforts to evaluate and improve the safety culture at NIST. In addition, as part of the settlement agreement, NIST agreed to take a number of other actions including: (1) hiring an independent consultant to evaluate the effectiveness of its radiation safety program, (2) submitting its annual audits to the NRC, (3) improving its new employee indoctrination program regarding radiation safety, (4) making specific improvements to its radiation safety training program, (5) submitting a license amendment to reduce the number of authorized radionuclides at the NIST-Boulder facility, (6) implementing a radiation hazards analysis process, (7) revising the Ionizing Radiation Safety Committee's charter to include additional oversight of communications with the NRC, and (8) paying a civil penalty in the amount of 10,000 dollars. In recognition of these actions, the NRC agreed to refrain from pursuing further enforcement action in connection with the November 2, 2009, letter to NIST. We will evaluate the implementation of your commitments in future inspections.

We have enclosed a Confirmatory Order (effective immediately) to confirm the commitments made as part of the settlement agreement. As evidenced by your signed "Consent and Hearing Waiver Form," (copy enclosed) dated February 04, 2010, you agreed to issuance of this letter and Confirmatory Order.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Confirmatory Order shall be subject to criminal prosecution as set forth in that section. Violation of this Confirmatory Order may also subject the person to civil monetary penalties.

You are not required to respond to this letter. However, if you choose to provide a response, please provide it within 30 days to the U.S. Nuclear Regulatory Commission, Regional Administrator, Region IV, 612 East Lamar Blvd., Suite 400, Arlington, Texas 76011-4125. If you have any questions or comments concerning this letter, please contact Mr. Mark Haire of my staff at 817-860-8121.

U.S. Department of Commerce  
EA-09-142  
NMED 080326

- 3 -

A copy of this letter and its enclosures will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS). ADAMS is accessible from the NRC web site at <http://www.nrc.gov/reading-rm/adams.html>. The NRC will also include this letter, and its attached Confirmatory Order, on its web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement.html>; select Significant Enforcement Actions. Your response, if you choose to provide one, will also be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS).

Sincerely,



Elmo E. Collins  
Regional Administrator

Docket: 030-03732  
License: 05-03166-05 & SNM-362

Enclosures:

1. Confirmatory Order
2. Consent and Hearing Waiver Form

cc:

John K. Guenther, Deputy Chief  
U.S. Department of Commerce  
Employment & Labor Law Division  
1401 Constitution Ave. NW  
Room 5717  
Washington, DC 20230

Steve Tarlton, Manager  
Radiation Program  
Colorado Department of Public Health  
and Environment  
HMWMD-B2  
4300 Cherry Creek Drive South  
Denver, CO 80246-1530

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	Docket No. 030-03732
U.S. Department of Commerce	)	License No. 05-03166-05
National Institute of Standards and Technology	)	EA-09-142

CONFIRMATORY ORDER MODIFYING LICENSE  
(EFFECTIVE IMMEDIATELY)

I

The U.S. Department of Commerce's National Institute of Standards and Technology (NIST or Licensee) is the holder of Nuclear Regulatory Commission (NRC or Commission) Materials License 05-03166-05 issued pursuant to 10 CFR Part 30 on December 19, 1966, and amended to include 10 CFR Parts 40 and 70 on April 19, 2007. The license authorizes the operation of the NIST-Boulder facility in accordance with conditions specified therein. The facility is located on the Licensee's site in Boulder, Colorado.

This Confirmatory Order is the result of an agreement reached during an alternative dispute resolution (ADR) mediation session conducted on January 5, 2010.

II

On July 22, 2008, the NRC's Office of Investigations began an investigation (Office of Investigations' Case No. 4-2008-062) into the circumstances surrounding the June 9, 2008, plutonium contamination event at NIST-Boulder. A special inspection of the contamination

Enclosure 1

event was initiated on June 11, 2008. Based on the evidence developed during its investigation and associated inspection, 10 apparent violations were identified (summarized in Section III below). In addition, the NRC was concerned that willfulness may have been associated with one of those apparent violations. The results of the investigation and inspection were sent to NIST in a letter dated November 2, 2009. In response to NRC's November 2, 2009, letter, NIST requested ADR to resolve these issues.

On January 5, 2010, the NRC and NIST met in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. Alternative dispute resolution is a process in which a neutral mediator with no decision-making authority assists the parties in reaching an agreement on resolving any differences regarding the dispute. This Confirmatory Order is issued pursuant to the agreement reached during the ADR process.

### III

In response to the NRC's offer, NIST requested use of the NRC ADR process to resolve issues associated with the 10 apparent violations identified by the NRC. During that ADR session, a preliminary settlement agreement was reached. The elements of the agreement consisted of the following:

Pursuant to the NRC Office of Enforcement's ADR program, the following are the terms and conditions agreed upon in principle by the U.S. Department of Commerce, NIST,

and the NRC relating to NRC Inspection Report 030-03732/2008-001 issued by the NRC to NIST on November 2, 2009.

Whereas, the NRC's inspection and investigation conducted between June 11, 2008, and November 2, 2009, identified ten apparent violations of NRC requirements;

Whereas, the ten apparent violations involved were:

- 1) The failure to provide complete and accurate information to the Commission;
- 2) The failure to control and maintain constant surveillance of licensed material in a controlled area and not in storage;
- 3) The failure to secure from unauthorized removal or limit access to licensed materials stored in a controlled area;
- 4) The failure to provide radiation safety training for all applicable individuals;
- 5) The failure to have a radiation safety program sufficient to ensure that occupational doses and doses to members of the public were as low as reasonably achievable;
- 6) The failure to periodically audit the radiation safety program content and implementation;
- 7) The failure to demonstrate that the total effective dose equivalent to individuals would not exceed the annual dose limit for members of the public;

- 8) The failure to monitor the occupational intake of plutonium by radiation workers;
- 9) The failure to limit receipt, possession, and use of radioactive material authorized on the NRC license; and
- 10) The failure to assure that servicing involving radioactive material of a device was performed by a person authorized to perform this activity.

Whereas, the NRC is concerned that willfulness may be associated with one apparent violation above;

Whereas, NRC acknowledges the extensive corrective actions NIST has already implemented associated with the apparent violations, which include:

- 1) Completing extensive, successful decontamination of the NIST-Boulder facility;
- 2) Designating a new radiation safety officer at NIST-Boulder;
- 3) Designating a new radiation safety officer at NIST-Gaithersburg;
- 4) Establishing and filling a senior-level safety-executive position to oversee the NIST central safety organization;
- 5) Reorganizing the central safety organization so that both NIST-Boulder and NIST-Gaithersburg report to the safety executive;
- 6) Providing additional resources to the NIST central safety organization, including resources for additional staff and equipment for health physics;

- 7) Establishing and filling a senior safety-management position to oversee the safety organization at NIST-Boulder;
- 8) Establishing and filling a senior-level research-director position at NIST-Boulder with local line-management responsibility for the safety of all laboratory activities at NIST-Boulder;
- 9) Establishing and filling a new executive-level site-manager position at NIST-Boulder to coordinate safety, emergency preparedness, and security for the entire Department of Commerce's Boulder site and to help ensure that the safety functions needed by NIST-Boulder are provided effectively and efficiently by the safety office in Boulder;
- 10) Improving the safety culture of NIST by communicating individual and management responsibility for safety, providing staff with the tools needed to understand how to protect themselves and those around them, and creating safer workplaces;
- 11) Establishing and implementing a new NIST-wide policy on hazard analysis and control, including requirements related to emergency planning; and
- 12) Undertaking additional efforts to further evaluate and improve the safety culture at NIST.

Whereas, the NRC acknowledges NIST took the following additional actions to address issues identified by the city of Boulder, Colorado:

- 1) Updating the inventory of and properly disposing of unused chemicals;

Enclosure 1

- 2) Developing an emergency notification checklist and communication plan;
- 3) Developing a standard operating procedure for reporting hazardous material releases; and
- 4) Developing and implementing a worksite training program for preventing and reporting releases, which included training approximately 500 people.

Whereas, during subsequent inspections after June 2008, the NRC found no safety-significant violations;

Whereas, these terms and conditions shall not be binding on either party until memorialized in a Confirmatory Order issued by the NRC to NIST relating to this matter;

Therefore, the parties agree to the following terms and conditions:

- 1) NIST shall contract with an independent consultant to evaluate the effectiveness of its radiation safety programs for licenses SNM-362 and 05-03166-05.
  - a) Within 90 days of the date of this Confirmatory Order, NIST shall submit to the Director, Division of Nuclear Materials Safety, U.S. NRC, Region IV, for approval, a proposed statement of work and the selection criteria, including the qualifications, for an independent consultant(s) to review and evaluate NIST's radiation safety programs.

- b) Within 120 days of NRC's approval of the statement of work and the selection criteria, the consultant's assessment plan shall be submitted to the Director, Division of Nuclear Materials Safety, U.S. NRC, Region IV, for review and approval. In the event that NIST requires an extension of time to submit the assessment plan to NRC, a request for extension shall be submitted to the U.S. NRC Region IV Regional Administrator.
- c) Within 30 days of the NRC's approval of the consultant's assessment plan, the consultant shall commence an assessment of NIST's radiation safety programs.
- d) Within 120 days following the approval of the consultant's assessment plan, the consultant shall provide NIST a final report discussing its findings and recommendations for program improvements. At the same time the consultant provides its final report to NIST, the consultant shall send a copy to the Director, Division of Nuclear Materials Safety, U.S. NRC, Region IV.
- e) Within 90 days of receiving the consultant's final report, NIST shall provide the Director, Division of Nuclear Materials Safety, U.S. NRC, Region IV, in writing, its determination of how it will address the consultant's findings and recommendations. In its correspondence to the NRC, NIST shall identify which of the consultant's findings and recommendations it will implement and the time frame in which it will implement the findings and recommendations. For those findings and recommendations NIST does not accept, NIST shall provide the NRC with its justification.

- 2) For the years 2010 – 2014, NIST shall send a copy of its required annual audit results to the Director, Division of Nuclear Materials Safety, U.S. NRC, Region IV, for licenses SNM-362 and 05-03166-05, within 30 days of receiving the final audit report.
  
- 3) Within 120 days from the date of this Confirmatory Order, NIST shall develop and implement a procedure for the indoctrination of new employees and associates with regard to general radiation safety policy and procedures.
  
- 4) NIST shall incorporate the ten elements below into its initial training and refresher training provided to NIST employees and associates who are assigned duties involving work with licensed material; initially, all such individuals shall receive training by December 31, 2010, irrespective of NIST's internal training schedule:
  - a) A review of the June 9, 2008, plutonium spill event;
  - b) A review of the consequences of and the potential actions that NRC may take against an individual for willful violations of NRC requirements;
  - c) Lessons learned from the circumstances surrounding each of the apparent violations identified by the NRC in its November 2, 2009, letter;
  - d) A review of NRC requirements and NIST's license conditions (as applicable);

- e) A review of NIST's operating and emergency procedures;
- f) Security and access controls for radioactive materials;
- g) Instructions to workers in accordance with 10 CFR 19.12 (as applicable);
- h) As low as reasonably achievable controls, procedures, and practices;
- i) Requirements for acquiring radioactive materials; and
- j) The NIST radiation safety program policy.

Training shall include a method to measure the mastery of training objectives.

Records of training for all individuals shall be maintained for 5 years.

- 5) Within 120 days of the date of this order, NIST shall submit a license amendment request incorporating the following:

The deletion of all specifically licensed radionuclides currently listed on the NIST-Boulder NRC license that NIST no longer plans to possess or use.

- 6) Within 120 days from the date of this order, NIST shall develop and implement a formal radiation hazard analysis process that requires confirmation that the requirements of the hazard analysis have been addressed prior to the commencement of work. The process shall also ensure that guidance, if any, provided by the manufacturer/distributor of radioactive material is appropriately reflected in operating and emergency procedures.

- 7) Licenses 05-03166-05 and SNM-362 are modified in accordance with the requirements of the order. As such, in the event of the transfer of either NRC license by NIST, the requirements of this Confirmatory Order shall survive any such transfer and shall be binding on the new license holder.
  
- 8) NIST shall revise the NIST Ionizing Radiation Safety Committee charter to require the committee to review, for completeness and accuracy, all of the following for licenses 05-03166-05 and SNM-362: applications for license amendments, responses to requests for additional information, licensee event reports, and responses to notices of violation. This revision shall be completed no later than 30 days following the date of this Confirmatory Order.
  
- 9) NIST shall revise the NIST radiation safety program policy to indicate that all individuals interacting with the NRC shall provide information that is complete and accurate in all material respects. The revision shall be completed no later than June 30, 2010.
  
- 10) NIST shall clearly and unambiguously define the process for acquiring radioactive materials. This process shall be implemented within 90 days of the date of this Confirmatory Order.
  
- 11) In consideration of the above actions on the part of NIST, NRC agrees to limit the civil penalty amount in this enforcement action to \$10,000. Accordingly,

within 60 days of the date of this Confirmatory Order, NIST shall pay the civil penalty of \$10,000 in accordance with NUREG/BR-0254 and submit to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, a statement indicating when and by what method payment was made.

- 12) The NRC agrees not to pursue any further enforcement action against license 05-03166-05 in connection with the NRC's November 2, 2009, letter to NIST and will not count this matter as previous enforcement for the purposes of assessing potential future enforcement action in accordance with Section VI.C of the Enforcement Policy.
  
- 13) The NRC agrees not to assign severity levels to any apparent violations in the November 2, 2009, inspection report. Also, the NRC agrees not to further characterize the apparent violations as violations.

On February 4, 2010, NIST consented to issuing this Confirmatory Order with the commitments as described in Section V below. The Licensee further agreed that this Confirmatory Order is to be effective upon issuance and that it has waived its right to a hearing.

IV

Since the licensee has agreed to take additional actions to address NRC concerns, as set forth in Item III above, the NRC has concluded that its concerns can be resolved through issuance of this Confirmatory Order.

I find that the Licensee's commitments as set forth in Section V are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that the Licensee's commitments be confirmed by this Confirmatory Order. Based on the above and the Licensee's consent, this Confirmatory Order is immediately effective upon issuance.

V

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Parts 30, 31, 32, 33, 34, 35, 36, 39, 40, and 70, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT LICENSES 05-03166-05 AND SNM-362 ARE MODIFIED AS FOLLOWS:

- 1) NIST shall contract with an independent consultant to evaluate the effectiveness of its radiation safety programs for licenses SNM-362 and 05-03166-05.

- a) Within 90 days of the date of this Confirmatory Order, NIST shall submit to the Director, Division of Nuclear Materials Safety, U.S. NRC, Region IV, for approval, a proposed statement of work and the selection criteria, including the qualifications, for an independent consultant(s) to review and evaluate NIST's radiation safety programs.
- b) Within 120 days of NRC's approval of the statement of work and the selection criteria, the consultant's assessment plan shall be submitted to the Director, Division of Nuclear Materials Safety, U.S. NRC, Region IV, for review and approval. In the event that NIST requires an extension of time to submit the assessment plan to NRC, a request for extension shall be submitted to the Regional Administrator, NRC Region IV.
- c) Within 30 days of the NRC's approval of the consultant's assessment plan, the consultant shall commence an assessment of NIST's radiation safety programs.
- d) Within 120 days following the approval of the consultant's assessment plan, the consultant shall provide NIST a final report discussing its findings and recommendations for program improvements. At the same time the consultant provides its final report to NIST, the consultant shall send a copy to the Director, Division of Nuclear Materials Safety, U.S. NRC, Region IV.
- e) Within 90 days of receiving the consultant's final report, NIST shall provide the Director, Division of Nuclear Materials Safety, U.S. NRC, Region IV, in writing, its determination of how it will address the consultant's findings and recommendations. In its correspondence to the NRC, NIST shall identify which of the consultant's findings and recommendations it will implement and the time frame in which it will implement the

findings and recommendations. For those findings and recommendations NIST does not accept, NIST shall provide the NRC with its justification.

- 2) For the years 2010 – 2014, NIST shall send a copy of its required annual audit results to the Director, Division of Nuclear Materials Safety, U.S. NRC, Region IV, for licenses SNM-362 and 05-03166-05, within 30 days of receiving the final audit report.
- 3) Within 120 days from the date of this Confirmatory Order, NIST shall develop and implement a procedure for the indoctrination of new employees and associates with regard to general radiation safety policy and procedures.
- 4) NIST shall incorporate the ten elements below into its initial training and refresher training provided to NIST employees and associates who are assigned duties involving work with licensed material; initially, all such individuals shall receive training by December 31, 2010, irrespective of NIST's internal training schedule:
  - a) A review of the June 9, 2008, plutonium spill event;
  - b) A review of the consequences of and the potential actions that NRC may take against an individual for willful violations of NRC requirements;
  - c) Lessons learned from the circumstances surrounding each of the apparent violations identified by the NRC in its November 2, 2009, letter;
  - d) A review of NRC requirements and NIST's license conditions (as applicable);
  - e) A review of NIST's operating and emergency procedures;

- f) Security and access controls for radioactive materials;
- g) Instructions to workers in accordance with 10 CFR 19.12 (as applicable);
- h) As low as reasonably achievable controls, procedures, and practices;
- i) Requirements for acquiring radioactive materials; and
- j) The NIST radiation safety program policy.

Training shall include a method to measure the mastery of training objectives. Records of training for all individuals shall be maintained for 5 years.

- 5) Within 120 days of the date of this order, NIST shall submit a license amendment request incorporating the following:

The deletion of all specifically licensed radionuclides currently listed on the NIST-Boulder NRC license that NIST no longer plans to possess or use.

- 6) Within 120 days from the date of this order, NIST shall develop and implement a formal radiation hazard analysis process that requires confirmation that the requirements of the hazard analysis have been addressed prior to the commencement of work. The process shall also ensure that guidance, if any, provided by the manufacturer/distributor of radioactive material is appropriately reflected in operating and emergency procedures.
- 7) Licenses 05-03166-05 and SNM-362 are modified in accordance with the requirements of the order. As such, in the event of the transfer of either NRC license by NIST, the

requirements of this Confirmatory Order shall survive any such transfer and shall be binding on the new license holder.

- 8) NIST shall revise the NIST Ionizing Radiation Safety Committee charter to require the committee to review, for completeness and accuracy, all of the following for licenses 05-03166-05 and SNM-362: applications for license amendments, responses to requests for additional information, licensee event reports, and responses to notices of violation. This revision shall be completed no later than 30 days following the date of this Confirmatory Order.
- 9) NIST shall revise the NIST radiation safety program policy to indicate that all individuals interacting with the NRC shall provide information that is complete and accurate in all material respects. The revision shall be completed no later than June 30, 2010.
- 10) NIST shall clearly and unambiguously define the process for acquiring radioactive materials. This process shall be implemented within 90 days of the date of this Confirmatory Order.
- 11) Within 60 days of the date of this Confirmatory Order, NIST shall pay a civil penalty of \$10,000 in accordance with NUREG/BR-0254 and submit to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, a statement indicating when and by what method payment was made.

The Regional Administrator, NRC Region IV, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its publication in the Federal Register. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to 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 (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. 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 ten (10) days prior to 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 request (1) a digital 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 in instances in which 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 NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at <http://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 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 a hearing request/petition to intervene is 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 Meta System Help Desk through the "Contact Us" link located on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail at [MSHD.Resource@nrc.gov](mailto:MSHD.Resource@nrc.gov), or by a toll-free call at (866) 672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding 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, 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 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 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 [http://ehd.nrc.gov/EHD\\_Proceeding/home.asp](http://ehd.nrc.gov/EHD_Proceeding/home.asp), unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 C.F.R. 2.309(d) and (f).

If the hearing is requested by a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date this Confirmatory Order was published in the Federal Register, without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received. A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION



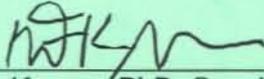
Elmo E. Collins, Regional Administrator

Dated this 1 day of March 2010

Enclosure 1

## CONSENT AND HEARING WAIVER FORM

The U.S. Department of Commerce's National Institute of Standards and Technology (NIST) hereby agrees to comply with the terms and conditions of the Confirmatory Order to be issued relating to enforcement action No. EA-09-142, which will be immediately effective upon its issuance. By signing below, NIST consents to the issuance of the referenced Confirmatory Order, effective immediately upon its issuance and, by doing so, agrees to waive the right to request a hearing on all or any part of the Confirmatory Order pursuant to 10 CFR 2.202(a)(3) and (d).



Richard F. Kayser, PhD, Special Assistant for  
Environment, Safety, and Health, NIST

02/04/10

Date