

Telephone (757) 864-3230; Fax (757) 864-9190.

Dated: December 29, 2003.

**Robert M. Stephens,**

*Deputy General Counsel.*

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## NUCLEAR REGULATORY COMMISSION

[Docket No. 70-7001, 70-7002]

### Notice of Renewal of Certificates of Compliance, GDP-1 and GDP-2 for the U.S. Enrichment Corporation, Paducah and Portsmouth Gaseous Diffusion Plants, Paducah, KY, and Portsmouth, OH

**AGENCY:** Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of a Director's Decision renewing the Certificates of Compliance for the United States Enrichment Corporation (USEC) which allows continued operation of the two Gaseous Diffusion Plants (GDPs), at Paducah, Kentucky, and Portsmouth, Ohio.

#### FOR FURTHER INFORMATION CONTACT:

Michael Raddatz, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Telephone: (301) 415-6334; Fax: (301) 415-5955; and/or by e-mail: [mgr@nrc.gov](mailto:mgr@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing a Director's Decision (Decision) renewing the Certificates of Compliance for the two GDPs located near Paducah, Kentucky, and Portsmouth, Ohio, for the USEC, which allows continued operation of these plants. The renewal of these certificates for the GDPs covers a five-year period. Pursuant to 10 CFR 76.31, USEC submitted its renewal request on April 11, 2003.

Pursuant to 10 CFR 76.53, the NRC consulted with and requested written comments on the renewal application from the U.S. Environmental Protection Agency (EPA). EPA responded on June 27, 2003, indicating that they did not have comments. The NRC staff has reviewed the certificate renewal applications for the GDPs located near Paducah, Kentucky, and Portsmouth, Ohio. USEC's applications for certificate renewal did not propose any changes to

the current safety basis or requirements. However, updates to USEC's Depleted Uranium Management Plan and Decommissioning Funding Plan were provided, to reflect a revised 5-year projection of accumulated depleted uranium and new cost estimates for disposition of depleted uranium and radioactive waste. Previous applications, statements, and reports are incorporated by reference into the renewal application as provided for in 10 CFR 76.36. These include the Technical Safety Requirements, Safety Analysis Report, Compliance Plan, Quality Assurance Program, Emergency Plan, Security and Safeguards Plans, Waste Management Program, and Decommissioning Funding Program, changes made pursuant to 10 CFR 76.68.

Based on its review of the certificate renewal applications, the staff has concluded that in combination with existing certificate conditions, they provide reasonable assurance of adequate safety, safeguards, and security, and compliance with NRC requirements. The NRC staff has prepared Compliance Evaluation Reports which provide details of the staff's evaluations. The NRC staff has determined that the renewals satisfy the criteria for a categorical exclusion in accordance with 10 CFR 51.22 (c) (19). Therefore, pursuant to 10 CFR 51.22 (b), no environmental impact statement or environmental assessment needs to be prepared for this action.

As a result of the staff reviews, the Director, Office of Nuclear Material Safety and Safeguards (NMSS), has found that the requirements in 10 CFR 76.60 for certification for operation of the GDPs have continued to be met. Accordingly, the Director has renewed Certificates of Compliance GDP-1 and GDP-2. The renewal of Certificates of Compliance GDP-1 and GDP-2 becomes effective immediately after being signed by the Director, NMSS.

##### II. Opportunity to File a Petition

Pursuant to 10 CFR 76.62(c), USEC, or any person whose interest may be affected may file a petition requesting the Commission's review of this renewal decision. A petition requesting the Commission's review may not exceed 30 pages and must be filed within 30 days after the publication of this notice in the **Federal Register**. Within 15 days of filing a petition requesting the Commission's review, pursuant to 10 CFR 76.62(c), any other person whose interest may be affected may file a response, not to exceed 30 pages, to the petition for review. Petitions requesting the Commission's review or responses thereto are to be served by either:

(1) Delivery to the Rulemaking and Adjudications Staff of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, between 7:45 a.m. and 4:15 p.m., Federal workdays; or

(2) Mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications Staff. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing also be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101, or by e-mail to [hearingsdocket@nrc.gov](mailto:hearingsdocket@nrc.gov).

A petition for review of the Decision and responses thereto shall set forth with particularity the interest of the person and how that interest may be affected by the results of the decision. The petition or responses thereto shall specifically explain the reasons why review of the Decision should or should not be permitted with particular reference to the following factors:

- (1) The interest of the petitioner;
- (2) How that interest may be affected by the Decision, including the reasons why the petitioner should be permitted a review of the Decision; and
- (3) The petitioner's areas of concern about the activity that is the subject matter of the Decision.

The filing of any petition for review or any responses thereto are governed by the procedural requirements set forth in 10 CFR 76.72.

##### III. Further Information

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," details with respect to this action, including the application for renewal (Portsmouth-ML031050318, Paducah-ML031050324) and the Commission's Compliance Evaluation Reports (Portsmouth-ML033440617, Paducah-ML033440612), are available electronically for public inspection and copying 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>. These documents (except for classified and proprietary portions which are withheld in accordance with 10 CFR 2.790, "Availability of Public Records") are also available for public inspection at the Commission's Public Document Room, at One White Flint North, 11555 Rockville Pike Rockville, MD 20852.

Dated at Rockville, Maryland, this 29th day of December, 2003.

For the Nuclear Regulatory Commission.

**Martin J. Virgilio,**

Director, Office of Nuclear Material Safety and Safeguards.

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## NUCLEAR REGULATORY COMMISSION

[NUREG-1600]

### Revision of NRC Enforcement Policy; Packaging and Transportation of Radioactive Material

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Policy statement; revision.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is publishing a revision to its Enforcement Policy (NUREG-1600, "General Statement of Policy and Procedure for NRC Enforcement Actions") to clarify that enforcement action may be taken against non-licensees for violations of the Commission's regulations governing the packaging and transportation of radioactive material.

**EFFECTIVE DATE:** October 1, 2004.

**ADDRESSES:** You may submit comments by any of the following methods. Comments submitted in writing or in electronic format will be made available to the public in their entirety on the NRC rulemaking web site. Personal information will not be removed from your comments. Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemaking and Adjudications Staff.

E-mail comments to: [SECY@nrc.gov](mailto:SECY@nrc.gov). If you do not receive a reply e-mail confirming that we have received your comments, contact us directly (301) 415-1966. You may also submit comments via the NRC's interactive rulemaking Web site at <http://ruleforum.llnl.gov>. Address questions about our rulemaking Web site to Carol Gallagher at (301) 415-5905 (e-mail: [CAG@nrc.gov](mailto:CAG@nrc.gov)).

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays. (Telephone (301) 415-1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415-1101.

Publicly available documents related to this action may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1F21, One White Flint

North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC's interactive rulemaking Web site at <http://ruleforum.llnl.gov>.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the document located in ADAMS, contact the NRC PDR Reference staff at 1-800-397-4209, 301-415-4737, or e-mail to [pdrc@nrc.gov](mailto:pdrc@nrc.gov).

The NRC maintains the current Enforcement Policy on its Web site at <http://www.nrc.gov>, select What We Do, Enforcement, then Enforcement Policy.

**FOR FURTHER INFORMATION CONTACT:** Frank J. Congel, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, (301) 415-2741, e-mail [fjc@nrc.gov](mailto:fjc@nrc.gov).

**SUPPLEMENTARY INFORMATION:** The Commission's Enforcement Policy primarily addresses violations by licensees and certain non-licensed persons, including certificate holders, as discussed further in footnote 3 to Section I, Introduction and Purpose, and in Section X, Enforcement Action Against Non-licensees. In 10 CFR Part 71, the NRC's regulations address licensing requirements for packaging and transport of radioactive material. For several years, the Commission has observed problems with the performance of some certificate holders and their contractors and subcontractors in the packaging and transport of radioactive material. The Commission has concluded that additional enforcement sanctions (e.g., issuance of Notices of Violations (NOVs) and Orders), are required to address the performance problems which have occurred in the packaging and transportation of radioactive material. Therefore, concurrent with publication of this change to the Enforcement Policy, the Commission is amending 10 CFR Part 71 to expand its applicability to holders of, and applicants for, Certificates of Compliance (CoCs). While CoCs are legally binding documents, certificate holders or

applicants for a CoC had not clearly been brought within the scope of certain Part 71 requirements, and the NRC has not had a clear basis to cite these persons for violations of Part 71 requirements in the same way it treats licensees. When the NRC has identified a failure to comply with Part 71 requirements by these persons, it has taken administrative action by issuing a Notice of Nonconformance (NON) or a Demand for Information rather than an NOV. With these changes to Part 71, the Commission will be in a position to issue NOVs and Orders to certificate holders and applicants.

An NOV is a written notice that sets forth one or more violations of a legally binding requirement. The NOV effectively conveys to both the person violating the requirement and the public that a violation of a legally binding requirement has occurred and permits use of graduated severity levels to convey more clearly the safety significance of the violation. Therefore, in addition to the changes to 10 CFR Part 71, the Commission is amending Part X of the Enforcement Policy, Enforcement Action Against Non-Licensees, to make clear that non-licensees who are subject to specific regulatory requirements (e.g., Part 71), will be subject to enforcement action, including NOVs and Orders. The final Part 71 rule does not provide authority for issuing civil penalties to non-licensees other than that already provided under the Deliberate Misconduct Rule (January 13, 1998; 63 FR 1890) in § 71.8.

### Paperwork Reduction Act

This policy statement does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget (OMB), approval number 3150-0136. The approved information collection requirements contained in this policy statement appear in Section VII.C.

### Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

### Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this