

NUCLEAR REGULATORY COMMISSION

[Docket No.: 70-7015; EA-2009-291; NRC-2009-0187]

In the Matter of: AREVA Enrichment Services, LLC (Eagle Rock Enrichment Facility) and All Other Persons Who Seek or Obtain Access to Safeguards Information Described Herein; Order Imposing Requirements for a Reviewing Official for the Implementation of a Safeguards Information Program (Effective Immediately)

I

AREVA Enrichment Services, LLC (AES), has applied to the U.S. Nuclear Regulatory Commission (NRC) for a license to authorize it to construct and operate a uranium enrichment facility in Bonneville County, Idaho. AES submitted a license application to the NRC on December 30, 2008 and a revised license application on April 23, 2009; this revised license application is currently under review. On October 22, 2009, AES notified the NRC of its implementation of a Safeguards Information (SGI) program for the Eagle Rock Enrichment Facility in accordance with Title 10 of the *Code of Federal Regulations* (10 CFR) 73.22, "Protection of Safeguards Information: Specific Requirements."

On August 8, 2005, the Energy Policy Act of 2005 (EPAct) was enacted. Section 652 of the EPAct amended Section 149 of the Atomic Energy Act of 1954 (AEA), as amended, to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check of any person who is to be permitted to have access to SGI.¹ Initially, after enactment of the EPAct, the Commission issued orders to certain licensees imposing fingerprinting and criminal history checks for individuals seeking access to SGI.

Subsequently, the NRC amended the regulations at 10 CFR Part 73, "Physical Protection of Plants and Materials," to incorporate the fingerprinting and criminal history records check requirements for access to SGI, to conform with the EPAct, and to include the general requirements of the Commission's orders. The amendment to 10 CFR Part 73 addressed and expanded the protection of SGI, including access to SGI, the types of security information to be protected,

¹ SGI is a form of sensitive, unclassified, security-related information that the Commission has the authority to designate and protect under Section 147 of the AEA.

and handling and storage requirements. The requirements set forth in 10 CFR Part 73 reflect the minimum restrictions that the Commission found necessary to protect SGI against inadvertent release or unauthorized disclosure that might compromise public health and safety or the common defense and security.

Although the amendment to 10 CFR Part 73 generally incorporates the requirements of the orders, it did not codify the requirement for each licensee or applicant to nominate a reviewing official for NRC approval, including the notification to the NRC of any changes to the reviewing official. The orders required licensees to nominate an individual to review the results of an individual's criminal history records check report and other relevant trustworthiness and reliability information to determine whether that individual may be given access to SGI. In the October 22, 2009, notification of its implementation of an SGI program, AES nominated a reviewing official and submitted the individual's fingerprints to the NRC under separate cover. This order imposes the requirement for nominating an initial reviewing official and for notifying the NRC of any desired change to the reviewing official.

II

The Commission has broad statutory authority to protect and prohibit the unauthorized disclosure of SGI. Section 147 of the AEA grants the Commission explicit authority to issue such orders, as necessary, to prohibit the unauthorized disclosure of SGI. Furthermore, Section 652 of the EPAct amended Section 149 of the AEA to require fingerprinting and an FBI identification and criminal history records check of each individual who seeks access to SGI. In addition, the regulations at 10 CFR Part 73 state that no person may have access to SGI unless the person has an established need to know and satisfies the trustworthiness and reliability requirements of the regulations.

In order to provide assurance that AES is taking appropriate measures to comply with the fingerprinting and criminal history check requirements for access to SGI, AES shall implement the requirements of this order. In addition, pursuant to 10 CFR 2.202, "Orders," the NRC finds that in light of the common defense and security matters identified above, which warrant the issuance of this order, public health and safety and the public interest require that this order be **effective immediately**.

III

Accordingly, under Sections 53, 62, 63, 81, 147, 149, 161b, 161i, 161o, 182, and 186 of the AEA and under the Commission's regulations at 10 CFR 2.202; 10 CFR Part 30, "Rules of General Applicability to Domestic Licensing of Byproduct Material"; 10 CFR Part 40, "Domestic Licensing of Source Material"; 10 CFR Part 70, "Domestic Licensing of Special Nuclear Material"; and 10 CFR Part 73, it is hereby ordered, **effective immediately**, that AES and all other persons who seek or obtain access to SGI described herein shall comply with the requirements set forth in this order.

A. No person may have access to any SGI if the NRC has determined, based on fingerprinting and an FBI identification and criminal history records check, that the person may not have access to SGI.

B. No person may provide SGI to any other person except in accordance with applicable requirements and Condition III.A. above. Prior to providing SGI to any person, a copy of this Order shall be provided to that person.

C. AES shall comply with the following three requirements:

1. The NRC has determined that the individual whom AES nominated as its reviewing official meets the fingerprinting and FBI identification and criminal history records check requirements.² AES shall, in a written response to the Commission, inform the NRC whether this individual is approved as AES's reviewing official, based upon the required background check according to 10 CFR 73.22(b), for determining access to SGI by this individual. AES may, at the same time or later, submit the fingerprints of other individuals for whom it seeks to grant access to SGI. Fingerprints shall be submitted and reviewed in accordance with the procedures described in 10 CFR Part 73.

2. AES shall notify the NRC of any desired change to the reviewing official. The NRC will determine whether this individual (or any subsequent reviewing official) may have access to SGI and, therefore, will be permitted to serve as the AES reviewing official, subject to AES performing the required 10 CFR 73.22 background check. The NRC will base its determination on a previously obtained or new criminal history records check.

² The NRC's determination of this individual's access to SGI in accordance with the process described in Enclosure 3 to the transmittal letter of this order is an administrative determination that is outside the scope of this order.

3. AES shall, in writing, within **20 days** of the date of this order, notify the Commission (a) if it is unable to comply with any of the requirements described in the order or (b) if compliance with any of the requirements is unnecessary based on its specific circumstances. In the notification, AES shall provide justification for seeking relief from, or the variation of, any specific requirement.

Licensees shall submit their responses to B.1, B.2, and B.3 above to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, licensees shall mark their responses as "Security-Related Information—Withhold under 10 CFR 2.390."

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

IV

In accordance with 10 CFR 2.202, AES must, and any other person adversely affected by this order may, submit an answer to this order and may request a hearing on this order within 20 days of the date of this order. Where good cause is shown, the NRC will consider extending the time to request a hearing. A request for an extension of time in which to submit an answer or to request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and must include a statement of good cause for the extension. The answer may consent to this order. Unless the answer consents to this order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law by which AES or other entities adversely affected rely and the reasons as to why the NRC should not have issued the order. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies shall also be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; and to AES if an entity other than AES submits the answer or hearing request. Because of possible delays in the delivery of mail to U.S. Government offices, the NRC requests that answers and requests for

hearings be transmitted to the Secretary of the Commission either by facsimile transmission to 301-415-1101 or by e-mail to hearingdocket@nrc.gov and also to the Office of the General Counsel either by facsimile transmission to 301-415-3725 or by e-mail to OGCMailCenter@nrc.gov. If an entity other than AES requests a hearing, that entity shall set forth, with particularity, the manner in which its interest is adversely affected by this order and shall address the criteria set forth in 10 CFR 2.309, "Public Inspections, Exemptions, Requests for Withholding."

If AES or a person whose interest is adversely affected by this order requests a hearing, 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 this hearing shall be whether this order should be sustained.

Under 10 CFR 2.202(c)(2)(i), AES may, in addition to demanding a hearing, at the time the answer is filed, or soon thereafter, move that the presiding officer set aside the immediate effectiveness of the order on the grounds that the order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error. In the absence of any request for a hearing or written approval of an extension of time in which to request a hearing, the provisions, as specified above in Section III, shall be final 20 days from the date of this order without further issuance of an order or proceedings.

If an extension of time for requesting a hearing has been approved, the provisions, as specified above in Section III, shall be final when the extension expires if a hearing request has not been received. An answer or a request for a hearing shall not stay the immediate effectiveness of this order.

Dated this 26th day of February 2010.

For the Nuclear Regulatory Commission.

Michael F. Weber,

Director, Office of Nuclear Material Safety and Safeguards.

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NUCLEAR REGULATORY COMMISSION

[IA-09-068; NRC-2010-0085]

In the Matter of Mr. Lawrence E. Grimm; Order Prohibiting Involvement in NRC-Licensed Activities

I

Mr. Lawrence E. Grimm was employed as a radiation safety officer at the U.S. Department of Commerce's National Institute of Standards and Technology (NIST or Licensee), Boulder, Colorado facility. NIST holds License 05-3166-05, issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) 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 the conditions specified therein. Mr. Grimm was listed on the license as the radiation safety officer (January 18, 2007, Amendment 27, until the issuance of Amendment 33, on January 16, 2009).

II

On July 22, 2008, the United States Nuclear Regulatory Commission's Office of Investigations (OI) initiated an investigation to determine if Mr. Grimm willfully failed to provide complete and accurate information to the NRC in a license amendment application dated February 15, 2007, regarding written procedures for the safe use of radioactive sources and security of material. A predecisional enforcement conference was held on January 7, 2010, with Mr. Grimm to obtain Mr. Grimm's perspective on the apparent violation.

Based on a review of information from the investigation and information provided during the predecisional enforcement conference, a violation of the NRC's rule prohibiting deliberate misconduct, 10 CFR 30.10, was identified, with two examples, involving the dosimetry program and the security of materials, which caused the Licensee to be in violation of 10 CFR 30.9. Specifically, on February 15, 2007, Mr. Grimm submitted an amendment request to expand NIST-Boulder's licensed activities to acquire and use source and special nuclear material, including plutonium. The 2007 amendment request stated that the "Boulder facility maintains a radiation safety procedure manual entitled, 'Health Physics Instructions' (HPIs). Drawn from the Gaithersburg radiation safety procedures, these procedures cover all health physics aspects pertinent to Boulder's radiation safety