

**III**

In a telephone call on December 7, 1998, MMI agreed to issuance of a Confirmatory Order prohibiting MMI from engaging in NRC-licensed activities for a period of five years from the date that the Order is issued. The staff believes that such a prohibition will adequately protect the public health and safety and, therefore, finds this acceptable. MMI requested that if the Order is issued, it be allowed to complete work on one small existing contract to supply 10 plug assemblies for a NUHOMS cask. This provision is acceptable, as the assemblies have a limited safety function that can be verified by measurement at the time of use. On January 6, 1999, the staff forwarded to MMI a copy of the factual basis of the proposed order and the implementation paragraph. On January 10, 1999, MMI consented to the issuance of the order with those provisions and waived its rights to a hearing on this action.

I find that MMI's commitments as set forth in Section IV 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 the public health and safety require that MMI's commitments be confirmed by this Order. Based on the above and MMI's consent to this action, this Order is immediately effective upon issuance.

**IV**

Accordingly, pursuant to sections 53, 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, 10 CFR part 72, and 10 CFR 72.12, *it is hereby ordered, effective immediately*, as follows:

A. Except as noted in paragraph B, MMI is prohibited for five years from the date of this Order from any involvement in NRC-licensed activities. For purposes of this Order, licensed activities include providing or supplying, whether directly to NRC licensees or Certificate of Compliance holders, or as a contractor or subcontractor to a licensee or Certificate of Compliance holder, structures, systems, or components, subject to a procurement contract specifying compliance with 10 CFR Ch. I.

B. Provided that MMI notifies Transnuclear West, the Certificate of Compliance holder for the NUHOMS cask, of the existence of this Order, MMI may complete work on the contract that was entered into prior to the date of this order to fabricate a total of 10 plug assemblies for a NUHOMS cask.

The Director, Office of Enforcement, may relax or rescind, in writing, any of the above conditions upon a showing by the Licensee of good cause.

**V**

Any person adversely affected by this Confirmatory Order, other than MMI, may request a hearing within 20 days of its issuance. 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 made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Deputy Assistant General Counsel for Enforcement, and to the Director, Office of Nuclear Materials Safety and Safeguards, at the same address, and to Sierra Nuclear Corporation. If such a person requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a 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 IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

Dated this 27th day of January 1999.

For the Nuclear Regulatory Commission.

**James Lieberman,**

*Director, Office of Enforcement.*

[FR Doc. 99-3096 Filed 2-8-99; 8:45 am]

BILLING CODE 7590-01-P

**NUCLEAR REGULATORY COMMISSION**

[IA 98-062]

**Brian K. Rogers; Confirmatory Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)****I**

Brian K. Rogers is employed by March Metalfab, Inc. (MMI) as a Quality Assurance (QA) Manager. MMI is a subcontractor of Sierra Nuclear Corporation (SNC), which holds NRC Certificate of Compliance 72-1007 for the VSC-24 cask, used by general licensees, Palisades Nuclear Plant (PNP) and Arkansas Nuclear One (ANO). The general license (10 CFR 72.210) relied on by PNP and ANO is for the storage of spent nuclear fuel under 10 CFR part 72.

**II**

In March 1995, PNP loaded spent fuel into a multi-assembly sealed basket (MSB) spent fuel cask that had been supplied by SNC and fabricated by MMI. When the cask was pressurized with helium, two leaks were identified in the wall of the MSB adjacent to the closure weld. Subsequent analysis by PNP metallurgical personnel determined that the defects were caused by underbead or hydrogen cracking, resulting from a base metal weld repair to the MSB shell inner wall that was performed during MSB manufacturing. The NRC staff learned of the problem experienced by PNP as a result of inspection activities following a similar closure weld failure at ANO. The staff became concerned that undetected cracks in other MSBs, produced by SNC that were already loaded with spent fuel, could propagate while the casks were in storage, affecting the integrity of the cask confinement boundary. As a result, during the week of March 17-21, 1997, a special inspection was conducted at SNC and MMI.

During the special inspection, five MMI employees who were considered most likely to have been aware of the fabrication activities during the manufacture of the MSBs that failed were interviewed. In his interview at this time, Mr. Rogers stated that he never saw any temporary attachments being installed or removed from the MSBs and had no knowledge of any unauthorized welding being conducted on the MSBs. He stated that there was no reason to conduct welding on the inside top area of the MSBs above the structural support ring area.

In July 1997, the NRC conducted a further inspection of MMI and SNC. During that inspection, employees of both companies acknowledged that undocumented welds had been made on casks sold to ANO and PNP. In the course of this inspection, both Mr. Rogers, the Quality Assurance Manager and the Project Manager for MMI admitted that they were aware that repair welding had been performed on the inside of the MSBs during fabrication and that they had not informed the NRC inspectors of those welds during the March 1997 inspection interviews. The NRC continued to investigate the matter and the Office of Investigations issued its report on October 16, 1998.

The NRC has concluded that because Mr. Rogers was knowledgeable about the fabrication process and was aware that welding had been done on the insides of the MSBs, he deliberately made statements in March 1997 to SNC and to the NRC that were inaccurate concerning the internal welding. The information involved was material to the NRC's understanding as to the quality of the MSBs and delayed the NRC's action to ensure integrity of MSBs. As a result, the NRC has further concluded that in providing the information, Mr. Rogers violated 10 CFR 72.11, "Completeness and Accuracy of Information" and 10 CFR 72.12, "Deliberate Misconduct." The NRC believes that the circumstances of this matter raise questions as to Mr. Rogers willingness to comply with Commission requirements. Mr. Rogers has not admitted that a violation occurred.

### III

In a telephone call on December 7, 1998, Mr. Rogers agreed to issuance of a Confirmatory Order prohibiting him from engaging in NRC-licensed activities for a period of five years from the date that the Order is issued. The staff believes that this will adequately protect the public health and safety and, therefore, finds this acceptable. MMI and Mr. Rogers requested that if the Order is issued, they be allowed to complete work on one small existing contract to supply 10 plug assemblies for a NUHOMS cask. This provision is acceptable, as the assemblies have a limited safety function that can be verified by measurement at the time of use. On January 6, 1999, the staff forwarded to Mr. Rogers a copy of the factual basis of the proposed order and the implementation paragraph. On January 11, 1999, Mr. Rogers consented to the issuance of the order with those provisions and waived his rights to a hearing on this action.

I find that Mr. Rogers' commitments as set forth in Section IV 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 the public health and safety require that Mr. Rogers' commitments be confirmed by this Order. Based on the above and Mr. Rogers' consent to this action, this Order is immediately effective upon issuance.

### IV

Accordingly, pursuant to sections 53, 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, 10 CFR part 72 and 10 CFR 72.12, it is hereby ordered, effective immediately, as follows:

A. Except as noted in paragraph B, Mr. Rogers is prohibited for five years from the date of this Order from any involvement in NRC-licensed activities. For purposes of this Order, licensed activities include providing or supplying, whether directly to NRC licensees or Certificate of Compliance holders, or as a contractor or subcontractor to a licensee or Certificate of Compliance holder, structures, systems, or components, subject to a procurement contract specifying compliance with 10 CFR Ch. I.

B. Mr. Rogers may complete work on the contract that MMI entered into prior to the date of this order to fabricate a total of 10 plug assemblies for a NUHOMS cask.

The Director, Office of Enforcement, may relax or rescind, in writing, any of the above conditions upon a showing by Mr. Rogers of good cause.

### V

Any person adversely affected by this Confirmatory Order, other than Mr. Rogers, may request a hearing within 20 days of its issuance. 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 made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Deputy Assistant General Counsel for Enforcement, and to the Director, Office of Nuclear Materials Safety and

Safeguards, at the same address, and to Sierra Nuclear Corporation. If such a person requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a 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 IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

Dated this 27th day of January, 1999.

For the Nuclear Regulatory Commission.

**James Lieberman,**

*Director, Office of Enforcement.*

[FR Doc. 99-3097 Filed 1-8-99; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

[NUREG—1600, Rev.1]

### Policy and Procedure for NRC Enforcement Actions; Revised Treatment of Severity Level IV Violations at Power Reactors

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Policy Statement: Amendment.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, Rev.1, by adding Appendix C to the policy. This amendment revises the treatment of Severity Level IV violations at power reactors by: (1) Expanding the use of Non-Cited Violations (NCVs) to include Severity Level IV violations identified by the NRC; (2) providing that except under limited, defined circumstances, individual Severity Level IV violations normally will result in NCVs and not in Notices of Violation (NOVs); and (3) permitting NRC closure of most Severity Level IV violations based on their