

Dated at Rockville, Maryland this 13th day of February 2006.

For the Nuclear Regulatory Commission.

**G. Edward Miller,**

*Project Manager, Plant Licensing Branch I-2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

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## NUCLEAR REGULATORY COMMISSION

### In the Matter of National Aeronautics and Space Administration; Confirmatory Order (Effective Immediately)

National Aeronautics and Space Administration (NASA or Licensee) is the holder of Byproduct Material Licenses 19-05748-02 and 19-05748-03 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 30. License No. 19-05748-02 was originally issued on June 28, 1960, and is due to expire on July 3, 2011. License No. 19-05748-03 was originally issued on October 1, 1963, and is due to expire on September 30, 2015.

On January 16, 2003, the NRC Office of Investigations (OI) initiated an investigation (OI Case No. 1-2003-011) at NASA. Based on the evidence developed during its investigations, OI substantiated that the contract RSO deliberately failed to report missing licensed material as required, and provided incomplete and inaccurate information, verbally and in writing, to the NRC in violation of 10 CFR 30.9(a). The results of the investigation completed on May 25, 2005, were sent to NASA in a letter dated August 18, 2005.

Subsequent to the NRC's identification of the apparent violations, NASA took several actions to assure that these events would not recur. These actions included: (a) Selecting a new contract RSO to provide radiation safety services; (b) changing the inventory database to improve tracking of sources; (c) implementing recommendations made by NASA Security Office following its evaluation of the materials storage area to improve security of the facility; (d) conducting a physical inventory of all items and determining that all but two sources, which were below reportable quantities, were accounted for; and (e) instructing the contract RSO that all notifications shall be made within required regulatory timeframes.

Also, in response to the NRC's August 18, 2005, letter, NASA requested the use

of Alternative Dispute Resolution (ADR) to resolve the apparent violations and pending enforcement action. ADR is a process in which a neutral mediator, with no decision-making authority, assists the NRC and NASA to resolve any disagreements on whether a violation occurred, the appropriate enforcement action, and the appropriate corrective actions. At NASA's request: (1) A joint Alternative Dispute Resolution (ADR) mediation session was held at the NASA facility in Greenbelt, Maryland, on November 4, 2005, between NASA, its contract Radiation Safety Officer (RSO), and the NRC; and (2) an individual ADR session was held in the Region I Office in King of Prussia, PA on December 19, 2005, between NASA and the NRC at which the contract RSO participated in portions of the mediation. These ADR sessions were mediated by a professional mediator, arranged through Cornell University's Institute of Conflict Management. Based on the discussions during the ADR sessions, a settlement agreement was reached regarding this matter. The elements of the settlement agreement are as follows:

1. The NRC determined that violations of NRC requirements occurred at NASA when: (a) Contrary to 10 CFR 20.1501, its contract Radiation Safety Officer (RSO) failed to perform a reasonable and necessary evaluation of information provided to him in memoranda from a health physics technician on September 10, 2002, and October 21, 2002, to determine whether the licensed material reported as missing in those memoranda, at the NASA Goddard Space Flight Center in Greenbelt, Maryland, reached the threshold for reportability under 10 CFR 20.2201; and (b) contrary to 10 CFR 30.9(a), the contract RSO provided inaccurate information to an NRC inspector during an NRC inspection on December 18-19, 2002, when he provided an inspector with an inventory form indicating all sources were accounted for when, in fact, sources were not accounted for at the time.

2. NASA agreed that the contract RSO caused NASA to violate NRC requirements when he failed to perform a reasonable and necessary evaluation, pursuant to 10 CFR 20.1501, of information provided to him by the health physics technician, to determine whether the licensed material reported as missing in the memoranda identified in Item 1 reached the threshold for reportability under 10 CFR 20.2201. NASA also agreed that the contract RSO provided inaccurate information during the December 18-19, 2002 inspection, as noted in Item 1. The NRC maintained

that the contract RSO's actions were willful, at a minimum, in careless disregard of NRC requirements, because the contract RSO had reasonable information that material was not accounted for, yet he failed to investigate and take appropriate action, and he provided information to the inspector that was inaccurate. NASA contended that the contract RSO's actions were not in careless disregard, in part, because he had doubts about the accuracy of the information. The NRC and NASA agreed to disagree on the willfulness of the actions by the contract RSO.

3. While NASA and the NRC agreed to disagree on the willfulness of the contract RSO's actions, NASA and the NRC agreed that the contract RSO's actions caused NASA to be in violation of NRC requirements, which resulted in an enforcement action that will be taken against NASA as part of this ADR agreement.

4. NASA also agreed to complete, in addition to the actions it has already taken, other actions to ensure that others at NASA Goddard, other NASA facilities, and other NRC licensees, learned from these violations. Those additional actions included: (a) Increasing the frequency of its internal audits of its radiation safety program from annually to quarterly, for, at a minimum, through the end of 2007; (b) retaining an organization independent of NASA Goddard to conduct an annual independent review of the radiation safety program, at a minimum, for 2006 and 2007; and (c) providing a presentation at the NASA Occupational Health Conference in 2006, and include, at a minimum, in that presentation, a description of the violations that are described in Item 1 of this agreement, as well as the circumstances that led to the violations, lessons learned, and the corrective actions taken and planned to prevent recurrence.

5. NASA agreed to complete all of the additional actions in Item 4 by December 31, 2007, and send a letter to the NRC informing the NRC that these actions are complete. NASA agreed to send this letter to the NRC within 30 days of completion of all actions.

6. In light of the corrective actions that NASA has taken or has committed to take as described above, NASA agreed to the NRC issuance of a Notice of Violation for the two violations described in Item 1, which the NRC will characterize as a Severity Level III problem, as well as for the other violations described in the NRC inspection report attached to the NRC August 18, 2005, letter which will be characterized at Severity Level IV. This

action will be publicly available in ADAMS and on the NRC "Significant Enforcement Actions" Web site, and the NRC will issue a press release announcing this action, as well as the actions NASA has taken and committed to take to address the violation. NASA disagreed that the two violations described in Item 1 warrant a Severity Level III characterization. The NRC and NASA agreed to disagree regarding the Severity Level III characterization.

7. NASA agreed to issuance of a Confirmatory Order confirming this agreement, and also agreed to waive any request for a hearing regarding this Confirmatory Order.

In light of the actions NASA has taken and agreed to take to correct the violation and prevent recurrence, as set forth in Section III above, the NRC has concluded that its concerns regarding the violation can be resolved through the NRC's confirmation of the commitments as outlined in this Confirmatory Order.

I find that NASA's commitments as set forth in Section III above are acceptable. However, in view of the foregoing, I have determined that these commitments shall be confirmed by this Confirmatory Order. Based on the above and NASA's consent, this Confirmatory Order is immediately effective upon issuance.

Accordingly, pursuant to Sections 103, 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 20 and 30, *it is hereby ordered*, that by December 31, 2007:

1. NASA will increase the frequency of its internal audits of its radiation safety program from annually to quarterly, for, at a minimum, through the end of 2007;

2. NASA will retain an organization independent of NASA Goddard to conduct an annual independent review of the radiation safety program, at a minimum, for 2006 and 2007;

3. NASA will provide a presentation at the NASA Occupational Health Conference in 2006, and include, at a minimum, in that presentation, a description of the violations that are described in Section 3 of this agreement, as well as the circumstances that led to the violations, lessons learned, and the corrective action taken and planned to prevent recurrence; and

4. Within 30 days of completion of all of these actions as set forth in Sections V.1-3, NASA will send a letter to the NRC informing the NRC that the actions are complete.

The Director, Office of Enforcement, may relax or rescind, in writing, any of

the above conditions upon a showing by NASA of good cause.

Any person adversely affected by this Confirmatory Order, other than NASA, 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 must 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: Chief, Rulemaking and Adjudications Staff, Washington, DC 20555. Copies of the hearing request shall also be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement, to the Director of the Division of Regulatory Improvement Programs at the same address, and to MSHMC. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov) and also to the Office of the General Counsel by means of facsimile transmission to 301-415-3725 or e-mail to [OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov). If such a person requests a hearing, that person shall set forth with particularity the manner in which his 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 shall be sustained. An answer or a request for a hearing shall not stay the effectiveness date of this order.

Dated this 10th day of February 2006.

For the Nuclear Regulatory Commission.

**Michael Johnson,**

*Director, Office of Enforcement.*

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## NUCLEAR REGULATORY COMMISSION

[Dockets No. 50-220 and 50-410]

### **Nine Mile Point Nuclear Station, LLC; Nine Mile Point Nuclear Station, Unit Nos. 1 and 2; Notice of Consideration of Approval of Application Regarding Proposed Merger and Opportunity for a Hearing**

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the indirect transfer of the Renewed Facility Operating Licenses, which are numbered DPR-63 and NPF-69, for the Nine Mile Point Nuclear Station, Unit Nos. 1 and 2 (NMP), currently held by Nine Mile Point Nuclear Station, LLC (NMP LLC), as owner and licensed operator. Long Island Power Authority holds a 18-percent ownership interest in NMP Unit No. 2, but is not involved in this proposed action.

According to an application for approval filed by Constellation Generation Group, LLC (CGG), on behalf of NMP LLC, in connection with the merger of CGG's parent company, Constellation Energy Group, Inc. (CEG, Inc.) and FPL Group, Inc. (FPL Group), FPL Group will become a wholly owned subsidiary of CEG, Inc. At the closing of the merger, the former shareholders of FPL Group will own approximately 60% of the outstanding stock of CEG, Inc., and the pre-merger shareholders of CEG, Inc., will own the remaining approximately 40%. In addition, the CEG, Inc., board of directors will be composed of fifteen members, nine of whom will be named by FPL Group, and six of whom will be named by the current CEG, Inc. NMP LLC will continue to own and operate the facility and hold the licenses to the same extent now held.

No physical changes to the facility or operational changes are being proposed in the application.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve the application for the indirect transfer of a license, if the Commission determines that the proposed merger will not affect the qualifications of the licensee to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.