



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION II
SAM NUNN ATLANTA FEDERAL CENTER
61 FORSYTH STREET, SW, SUITE 23T85
ATLANTA, GEORGIA 30303-8931

September 25, 2008

Mr. David Stinson
President and Chief Operating Officer
Shaw AREVA MOX Services
Savannah River Site
P.O. Box 7097
Aiken, SC 29804-7097

SUBJECT: RESPONSE TO MIXED OXIDE (MOX) FUEL FABRICATION FACILITY- NRC
INSPECTION REPORT 70-3098/2008-002 AND NOTICE OF VIOLATION

Dear Mr. Stinson:

Thank you for your response dated August 28, 2008, to the Notice of Violation (NOV) issued on July 29, 2008. The Notice of Violation was in regards to the inspections conducted April 1 through June 30, 2008, at your Mixed Oxide Fuel Fabrication Facility (MFFF). We acknowledge receipt of your reply to NRC Inspection Report No. 70-3098/2008-002.

In your letter and in Attachment 1 to your letter, Application of the NRC Enforcement Policy, you state that MOX Services believes that the issuance of the NOV was a misapplication of the NRC Enforcement Policy, that the Severity Level IV (SLIV) violation represented a departure from the NRC Enforcement Policy, and that the issues identified in the NOV should have been more appropriately classified as non cited violations or minor violations. Accordingly, I would like to clarify the NRC's positions on these topics.

MOX Services is authorized to construct a plutonium processing and fuel fabrication plant under 10 CFR Part 70. NRC Inspection Manual Chapter (IMC) 2630, "Mixed Oxide Fuel Fabrication Facility (MFFF) Construction Inspection Program," defines the processes and procedures that the NRC follows while implementing the construction inspection program for the MFFF. When an NRC construction inspector observes a condition at a construction site, places that observation in context, and evaluates the significance of that observation, the observation may be described as a finding. Placing an observation in context involves a review of the applicable industry standards or regulatory requirements and determining if the observed activity, non-conformance, etc., failed to meet those standards or requirements. Evaluating the significance includes a process by which the NRC determines if the observation is minor or not. Several tools are available to the NRC staff in making this determination. For example, NRC IMC 2630 specifies that all inspection findings will be documented in accordance with NRC IMC 0610, "Nuclear Material Safety and Safeguards Inspection Reports." NRC IMC 0610, Section 06.10, "Thresholds of Significance," provides guidance to NRC staff on how to determine when an observation is minor and refers the NRC staff to NRC IMC 0612, "Power Reactor Inspection Reports," for additional guidance.

If the finding is determined to be more than minor and a violation of NRC requirements, the NRC staff process those findings in accordance with the NRC Enforcement Policy. As stated in Section IV.B. of the Policy, “[l]icensed activities will be placed in the activity area most suitable in light of the particular violation involved, including activities not directly covered by one of the listed areas...” The supplements provide examples and serve as guidance, however, the examples are neither exhaustive nor controlling. Supplement II, “Part 50 Facility Construction,” provides the NRC guidance on construction-related violations and is used to ascertain the Severity Level (SL) of the apparent violation for all construction findings.

The logical application of Supplement II of the NRC Enforcement Policy for fuel facility construction violations is based on two main factors: (1) Supplement II of the Enforcement Policy is where the NRC defines Severity Level thresholds for violations involving facility construction, and (2) you committed to 10 CFR Part 50, Appendix B, “Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants,” in your Construction Authorization and MOX Project Quality Assurance Plan. As such, NRC determined that Supplement II was the most appropriate supplement to determine the severity level of the NRC-identified, quality assurance violation cited in NRC Inspection Report 70-3098/2008-002.

Since the subject violations were determined to meet the SL IV criteria, the NRC staff assessed whether the violation met the non-cited violation criteria contained in the NRC Enforcement Policy. Since the MFFF is not a power reactor with a well-established corrective Action Program, NRC Enforcement Policy, Section VI. A.8, “Dispositions of Violations,” specifies that any NRC identified SL IV violation be considered for a Notice of Violation. The NRC Enforcement Policy also provides information on when a formal written response is required for a cited violation.

We have evaluated your response to the violation that was identified during the inspections and found that your response meets the requirements of 10 CFR 2.201. Your proposed corrective action appears to be adequate with one exception with regard to your response to Notice of Violation (example 3). We do not agree that surveillance reports were not active or in use records. The violation will remain open until we have further evaluated the extent of the condition and have verified implementation of your corrective actions.

In accordance with 10 CFR 2.390 of the NRC’s “Rules of Practice,” a copy of this letter will be made available electronically for public inspection in the NRC Public Document Room or from the NRC’s document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/readingrm/adams.html>.

Should you have any questions concerning this letter, please contact us.

Sincerely,

/RA/

Deborah A. Seymour, Chief
Construction Projects Branch 1
Division of Construction Projects

Docket No. 70-3098
Construction Authorization No. CAMOX-001

cc: (See page 3)

D. Stinson

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cc:

Mr. Garrett Smith, NNSA/HQ
NA-261/Forrestal
1000 Independence Ave., SW
Washington, DC 20585

Louis A. Zeller
Blue Ridge Environmental Defense League
P.O. Box 88
Glendale Springs, NC 28629

A.J. Eggenberger, Chairman
Defense Nuclear Facilities Safety Board
625 Indian Ave., NW
Suite 700
Washington, DC 20004

Mr. Joseph Olencz, NNSA/HQ
1000 Independence Ave., SW
Washington, DC 20585

Mr. Henry Porter, Assistance Director
Division of Radioactive Waster
Management
Bureau of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

D. Silverman
Morgan, Lewis and Bockius
1111 Penn. Ave., NW
Washington, DC 20004

Diane Curran
Harmon, Curran, Spielberg
& Eisenberg LLC
1726 M. St., NW
Suite 600
Washington, DC 20036

Glenn Carroll
Coordinator
Nuclear Watch South
P.O. Box 8574
Atlanta, GA 31106

D. Stinson

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P.O. Box 8574
Atlanta, GA 31106

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ADAMS: Yes ACCESSION NUMBER: ML082701017 SUNSI REVIEW COMPLETE

OFFICE	RII:DCI						
SIGNATURE	MSL						
NAME	MLesser						
DATE	9/25/2008						
E-MAIL COPY?	YES NO						

Letter to D. Stinson from Deborah A. Seymour dated, September 25, 2008

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INSPECTION REPORT 70-3098/2008-002 AND NOTICE OF VIOLATION

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