

*Facility Operating License No. DPR-75*: The amendment revised the TSs and the License.

*Date of initial notice in Federal Register*: June 1, 2010 (75 FR 30446).

The letters dated June 25, and August 18, 2010, provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the application beyond the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 1, 2010.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 10th day of September 2010.

For the Nuclear Regulatory Commission.

**Joseph G. Giitter,**

*Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

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## **NUCLEAR REGULATORY COMMISSION**

**[NRC-2010-0301; EA-10-054]**

### **In the Matter of: Stone & Webster Construction, Inc.; Confirmatory Order (Effective Immediately)**

#### **I**

Stone & Webster Construction, Inc. (SWCI), a Shaw Group company (referred to as Shaw), provides integrated services to various industries including the nuclear power industry. Shaw provides services to over thirty (30) operating nuclear plants and other facilities regulated by the U.S. Nuclear Regulatory Commission (NRC or Commission).

This Confirmatory Order is the result of an agreement reached during an alternative dispute resolution (ADR) mediation session conducted on August 24, 2010 in Washington, DC.

#### **II**

By letter dated June 2, 2010, the NRC identified to Shaw an apparent violation of 10 CFR. 50.7, "Employee Protection," relating to the termination of a former painter foreman in May 2004 at the Browns Ferry Nuclear Power Plant. The apparent violation was issued based on the U.S. Department Labor (DOL) Administrative Review Board's (ARB) September 24, 2009 decision (ARB Case No. 06-041). The ARB reversed a January 9, 2006, DOL Administrative Law Judge's (ALJ) recommended

decision (2005-ERA-6) where, following an evidentiary hearing, the ALJ had concluded that Shaw had not violated section 211 of the Energy Reorganization Act, as amended, by terminating the former painter foreman. Shaw denies that it has retaliated against the former painter foreman for engaging in a protected activity and is pursuing its legal challenge to the ARB decision.

In its June 2, 2009 letter, the NRC offered Shaw the opportunity to provide a written response, attend a pre-decisional enforcement conference, or request ADR in which a neutral mediator with no decision-making authority would facilitate discussions between the NRC and Shaw and, if possible, assist the NRC and Shaw in reaching an agreement. Shaw requested to use ADR to resolve differences it had with the NRC.

On August 24, 2010, the NRC and Shaw met in an ADR mediation session arranged through the Cornell University Institute on Conflict Resolution. This Confirmatory Order is issued pursuant to the agreement reached during the ADR process.

#### **III**

A. The NRC acknowledged that Shaw, for its own business reasons, had already put in place during the past several years the following policies, practices and programs that support Safety Conscious Work Environment (SCWE) and Safety Culture:

At the parent company, The Shaw Group Inc., level:

- The SpeakUp Program is a toll-free hotline and Web site in which workers can report issues to the Company. Reports can be made anonymously;
- The Stop Work Policy gives employees authority to immediately stop any work activity that presents a danger to him/her, co-workers, clients, partners or the public without fear of reprimand or retaliation;
- The Targeting Zero Program focuses on achieving zero environmental, health and safety incidents; it minimizes health and safety risks to employees, clients, the public and the environment;
- The Employment Discipline Policy prohibits retaliation for exercising the right to raise safety concerns;
- Mandatory Code of Corporate Conduct training for all employees with computer access;
- Consideration of integrity and compliance as performance factors in annual employee performance evaluations;
- Periodic independent culture surveys.

For nuclear maintenance sites:

- A SCWE Procedure outlines the Company's expectations, and each individual's responsibilities for establishing and maintaining a SCWE;
  - The New to Nuclear Workforce Orientation Program provides training and resources specific to working in the nuclear industry for workers coming in without nuclear experience;
  - New Hire Orientation informs new hires about Shaw's Safety Culture and SCWE expectations, and informs them of their responsibilities and programs available to them, including SpeakUp and Stop Work and Shaw's non-discrimination and harassment policies;
  - Supervisor Challenge (Oral Boards) evaluates supervisors' skills in the key focus areas including leadership, human performance, work performance, and reinforcing expectations.
- For new nuclear construction sites:
- An on-site Employee Concerns Program, modeled on resources in NEI 97-05 is available to all site workers;
  - Procedure *Maintaining a Strong Nuclear Safety Culture & Safety Conscious Work Environment*, modeled on NEI 09-12 and RIS 2005-018, describes Shaw's expectations for a SCWE and the methods by which it will establish and maintain it;
  - Shaw provides SCWE training comprised of four modules: In-processing for all personnel; 90-day enhanced training with case studies for new craft personnel; nuclear professional for office workers; and training for supervisors and above;
  - Shaw conducts periodic SCWE surveys based on NEI 09-12 survey tool.
- B. During the ADR mediation session, an agreement in principle was reached where Shaw agreed to take the following additional actions:

1. Within 2 months of issuance of this Confirmatory Order, Shaw will issue a written communication from a Shaw Power Group senior executive to Shaw employees in its Nuclear Services (i.e., construction) and Nuclear Maintenance Divisions working at nuclear facilities addressing: (a) A recent DOL ARB decision that concluded that retaliation occurred at a SWCI facility in 2004; b) that Shaw strives to maintain a SCWE; and (c) that nuclear workers have multiple avenues in which to raise concerns and identifying these avenues.

2. Where not already required by the applicable nuclear facility licensee, Shaw will establish an Executive Review Board (ERB) that will include management personnel at or above the level of the site project manager, including legal and/or human resources participation, to review all proposed significant adverse actions (defined as three or more days off without pay up to and including termination for cause, but excludes reductions-in-force and other ordinary layoffs) at any NRC-regulated maintenance site to ensure these actions

comport with applicable employee-protection requirements and to assess and mitigate the potential for any chilling effect. Within 3 months of issuance of this Confirmatory Order, Shaw will establish requirements for the ERB in a new or existing Nuclear Maintenance Procedure to become effective during this three-month period.

3. Within 3 months of issuance of this Confirmatory Order, Shaw will revise the SpeakUp program brochure issued at its nuclear facilities to include use of the program to raise safety concerns.

4. Consistent with the requirements of the nuclear facility licensees, Shaw will perform SCWE surveys including craft workers, at its Nuclear Maintenance sites and review the survey results for actions as appropriate. Within 24 months of issuance of this Confirmatory Order, Shaw will complete a substantial number of these surveys and will have scheduled surveys for the remaining sites, if any, to be completed within the following 12 months. Shaw will provide semi-annual status reports to the NRC Office of Enforcement regarding status toward completion of this action.

5. At Nuclear Maintenance sites, where not already provided by the nuclear facility licensees, Shaw will provide SCWE training to all Shaw Nuclear Maintenance supervisors and above to include an overview of regulatory requirements and case studies. Shaw will complete this action within 24 months of issuance of this Confirmatory Order.

6. For 24 months following issuance of this Confirmatory Order, Shaw will collect, review and assess for each of its Nuclear Maintenance sites, data regarding labor grievances, significant human resources actions, and ECP and SpeakUp concerns. Shaw's Compliance Council, chaired by the Chief Compliance Officer, will review this compilation of data quarterly for SCWE trends and recommend actions to line management as appropriate.

On September 9, 2010, Shaw consented to the issuance of this Confirmatory Order with the commitments, as described in Section V below. Shaw further agreed that this Confirmatory Order is to be effective upon issuance and that it has waived its right to a hearing.

#### IV

Since Shaw has agreed to take additional actions, as set forth in Item III.B above, the NRC has concluded that its concerns can be resolved through issuance of this Confirmatory Order and thereby has agreed not to pursue further action in connection with the NRC's June 2, 2010 letter to Shaw arising out of the ARB's September 29, 2009 decision (ARB Case No. 06-041).

I find that Shaw's commitments as set forth in Section V 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

public health and safety require that Shaw's commitments be confirmed by this Confirmatory Order. Based on the above and Shaw's consent, this Confirmatory Order is immediately effective upon issuance. By no later than thirty (30) calendar days after the completion of the requirements in Section V, Shaw is required to notify the NRC in writing and summarizing its actions.

#### V

Accordingly, pursuant to Sections 104b, 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 Part 50, It is hereby ordered, effective immediately, that:

1. Within 2 months of issuance of this Confirmatory Order, Shaw will issue a written communication from a Shaw Power Group senior executive to Shaw employees in its Nuclear Services (i.e., construction) and Nuclear Maintenance Divisions working at nuclear facilities addressing: (a) A recent DOL ARB decision that concluded that retaliation occurred at a SWCI facility in 2004; b) that Shaw strives to maintain a SCWE; and (c) that nuclear workers have multiple avenues in which to raise concerns and identifying these avenues.

2. Where not already required by the applicable nuclear facility licensee, Shaw will establish an Executive Review Board (ERB) that will include management personnel at or above the level of the site project manager, including legal and/or human resources participation, to review all proposed significant adverse actions (defined as three or more days off without pay up to and including termination for cause, but excludes reductions-in-force and other ordinary layoffs) at any NRC-regulated maintenance site to ensure these actions comport with applicable employee-protection requirements and to assess and mitigate the potential for any chilling effect. Within 3 months of issuance of this Confirmatory Order, Shaw will establish requirements for the ERB in a new or existing Nuclear Maintenance Procedure to become effective during this three-month period.

3. Within 3 months of issuance of this Confirmatory Order, Shaw will revise the SpeakUp program brochure issued at its nuclear facilities to include use of the program to raise safety concerns.

4. Consistent with the requirements of the nuclear facility licensees, Shaw will perform SCWE surveys including craft workers, at its Nuclear Maintenance sites and review the survey results for actions as appropriate. Within 24 months of issuance of this Confirmatory Order, Shaw will complete a substantial number of these surveys and will have scheduled surveys for the remaining sites, if any, to be completed within the following 12 months. Shaw will provide semi-annual status reports to the NRC Office of Enforcement regarding status toward completion of this action.

5. At Nuclear Maintenance sites, where not already provided by the nuclear facility licensees, Shaw will provide SCWE training to all Shaw Nuclear Maintenance supervisors and above to include an overview of regulatory requirements and case studies. Shaw will complete this action within 24 months of issuance of this Confirmatory Order.

6. For 24 months following issuance of this Confirmatory Order, Shaw will collect, review and assess for each of its Nuclear Maintenance sites, data regarding labor grievances, significant human resources actions, and ECP and SpeakUp concerns. Shaw's Compliance Council, chaired by the Chief Compliance Officer, will review this compilation of data quarterly for SCWE trends and recommend actions to line management as appropriate.

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

#### VI

Any person adversely affected by this Confirmatory Order, other than Shaw, may request a hearing within 20 days of its publication in the **Federal Register**. 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.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at [hearing.docket@nrc.gov](mailto:hearing.docket@nrc.gov), or by telephone at (301) 415-1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign

documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange (EIE), users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-

mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail at [MSHD.Resource@nrc.gov](mailto:MSHD.Resource@nrc.gov), or by a toll-free call at (866) 672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at [http://ehd.nrc.gov/EHD\\_Proceeding/home.asp](http://ehd.nrc.gov/EHD_Proceeding/home.asp),

unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a person (other than Shaw) requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

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

A request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland, this 10th day of September 2010.

For the Nuclear Regulatory Commission.

**Roy Zimmerman,**

*Director, Office of Enforcement.*

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**BILLING CODE 7590-01-P**