

SAFETY EVALUATION REPORT PROPOSED CHANGE OF CONTROL FOR BYPRODUCT MATERIALS LICENSE

Date: December 8, 2017
Docket Nos.: 030-04783, 030-10509, and 030-04858
License Nos.: 21-00265-06, 21-08362-12, and 21-08362-08
Licensee: The Dow Chemical Company including its subsidiary Dow Corning Corporation
Addresses: 1803 Building, Midland, MI 48674
3901 S Saginaw Rd., Mail No. 002, Midland, MI 48688; and
2200 W Salzburg Rd., Auburn, MI 48611
Technical Reviewer: Sara A. Forster, M.S., Materials Licensing Branch, Division of Nuclear Materials Safety

SUMMARY AND CONCLUSIONS:

The Dow Chemical Company ("the licensee") including Dow Corning Corporation ("the licensee's subsidiary") is authorized by NRC License Nos. 21-00265-06, 21-08362-12, and 21-08362-08 for the possession and use of byproduct material in broad scope research and development, fixed gauge measuring systems, and limited scope research and development. On September 1, 2017, the licensee notified the NRC of its plans for a merger between the licensee and E.I. DuPont de Nemours and Company ("DuPont"), to form DowDuPont ("the transferee"). The U.S. Nuclear Regulatory Commission (NRC) staff reviewed a request for consent to an indirect license transfer submitted by the licensee that would result from the merger of the licensee and DuPont to form the transferee. As a result of the acquisition, the licensee would remain as its own legal entity, with full control over the referenced licensed activities. The indirect transfer of control is described in Agency Documents Access and Management System (ADAMS) accession number ML17257A076.

The request for consent was reviewed by NRC staff for a direct change in control of a Title 10 *Code of Federal Regulations* (CFR) Part 30 license using the guidance in NUREG 1556, Volume 15, "Consolidated Guidance About Materials Licenses - Guidance About Changes of Control and About Bankruptcy Involving Byproduct, Source, or Special Nuclear Materials Licenses," dated November 2000. The NRC staff finds that the information submitted by the licensee sufficiently describes and documents the transaction and commitments made by the licensee and the transferee.

As required by 10 CFR 30.34 and Section 184 of the Atomic Energy Act of 1954, as amended (the Act), NRC staff has reviewed the application and finds that the proposed change in control is in accordance with the Act. The staff finds that, after the change of control, the licensee will remain qualified to use byproduct material for the purpose requested, and will continue to have the equipment, facilities, and procedures needed to protect public health and safety, and to promote the security of licensed material.

SAFETY AND SECURITY REVIEW

According to data obtained from the NRC's Web Based Licensing (WBL) System, the licensee has held an NRC license since August 14, 1964. The licensee's subsidiary (NRC Lic. Nos. 21-08362-12 and 21-08362-08) has held NRC licenses since July 16, 1974 and January 9, 1969, for each respective license. The NRC most recently conducted inspections of

the licensee on May 23, 2013, and July 13-14, 2016, and identified no violations during those inspections. The NRC also most recently conducted inspections - and identified no violations during those inspections - of the licensee's subsidiary (NRC License Nos. 21-08362-12 and 21-08362-08) on May 1, 2013 and May 22, 2013, for each respective license. In the licensee's request for NRC consent to the indirect transfer of control, statements made by the licensee confirm that the licensee:

- A. Will not change the Radiation Safety Officers (RSO) listed on the NRC licenses, at this time;
- B. will not change the personnel involved in licensed activities;
- C. will not change the locations, facilities, and equipment authorized in the NRC license;
- D. will not change the radiation safety program authorized in the NRC license; and
- E. will keep regulatory required surveillance records and decommissioning records.

Until license termination on December 16, 2015, E.I. DuPont DeNemours & Co. ("DuPont"), Inc. held a radioactive materials license, NRC Lic. No. 07-00455-29. Accordingly, the transferee (merged entity comprised of the licensee and DuPont) is considered a known entity following the guidance provided by the NRC's Office of Federal and State Materials and Environmental Management Programs (FSME) "Checklist to provide a basis for confidence that radioactive materials will be used as specified on the license," September 3, 2008 revision, as no other aspects of the company have changed. The purpose of this checklist is for the NRC to obtain reasonable assurance from new license applicants or NRC licensees transferring control of licensed activities that the licensed material will be used for its intended purpose and not for malevolent use.

The licensee is required to hold decommissioning financial assurance based on the types and amounts of material authorized under NRC Lic. No. 21-00265-06. Because the licensee remains as an independent legal entity with no name changes as a result of the merger, the financial assurance need not be amended as a result of the transaction. Its subsidiary is not currently required to have decommissioning financial assurance based on the types and amount of material authorized by License Nos. 21-08362-12 and 21-08362-08.

REGULATORY FRAMEWORK

License Nos. 21-00265-06, 21-08362-12, and 21-08362-08 were issued under 10 CFR Part 30, Rules of General Applicability to Domestic Licensing of Byproduct Material. Under 10 CFR 30.34(b), for licenses "issued or granted pursuant to the regulations in [Parts 30] through 36," the Commission is required to determine if the change of control is in accordance with the provisions of the Act, and give its consent in writing. Specifically, no 10 CFR Part 30 licenses, "nor any right under a license shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of the Act and shall give its consent in writing." The review was completed in accordance with NUREG 1556, Volume 15, and informed by 63 *Federal Register* 66721, "10 CFR Parts 2 and 51, RIN 3150-AG09, Streamlined Hearing Process for

NRC Approval of License Transfers, Nuclear Regulatory Commission, Final Rule," dated Dec. 3, 1998.

DESCRIPTION OF TRANSACTION

In letter dated September 1, 2017, The Dow Chemical Company ("the licensee") and its subsidiary Dow Corning Corporation notified the U.S. Nuclear Regulatory Commission that the transferee, via an indirect transfer, planned merge with the DuPont, to form the transferee DowDuPont. The transaction is described in ADAMS accession number ML17257A076. After completion of the acquisition, the licensee would continue as the owner of all licensed activities authorized under NRC Materials License Nos. 21-00265-06, 21-08362-12, and 21-08362-08, with no significant changes to the RSOs, other key responsible personnel, licensed facilities, or equipment.

The NRC staff finds that the request for consent adequately provides a complete and clear description of the transaction, and is consistent with the applicable guidance provided in NUREG-1556, Volume 15, rev. 1, Appendix E.

THE TRANSFEREE'S COMMITMENT TO ABIDE BY THE TRANSFEROR'S COMMITMENTS

The NRC staff finds that the commitments and information submitted by The Dow Chemical Company and its subsidiary Dow Corning Corporation, under letter dated September 1, 2017, are consistent with the guidance outlined in NUREG-1556, Volume 15, rev. 1. Commitments from the transferee are not necessary as The Dow Chemical Company including its subsidiaries will remain an independent legal entity, in the wake of the transaction.

ENVIRONMENTAL REVIEW

An environmental assessment for this action is not required since this action is categorically excluded under 10 CFR 51.22(c)(21).

CONCLUSION

The staff has reviewed the request for consent submitted by the licensee – with regard to an indirect change of control of byproduct materials license Nos. 21-00265-06, 21-08362-12, and 21-08362-08 and approves the application pursuant to 10 CFR 30.34(b).

Submitted information sufficiently describes the transaction; documents the understanding of the license and commitments; demonstrates that personnel have the experience and training to properly implement and maintain the license and that they will maintain the existing records; and, in the future, will abide by all existing commitments to the license, consistent with the guidance in NUREG-1556, Volume 15, rev. 1.

In accordance with the above analysis, the staff concludes that the proposed change in control would not alter previous findings, that licensed operations will not be inimical to the common defense and security, or to the health and safety of the public.