

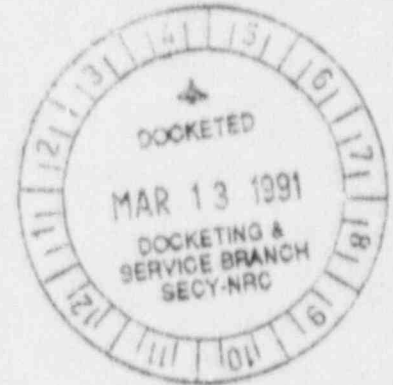
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New York State Department of Environmental Conservation
50 Wolf Road, Albany, New York 12233



Thomas C. Jorling
Commissioner

March 13, 1991

John H. Frye, III
Chairman
Atomic Safety and Licensing Board
No. 91-637-08-OLA
c/o Secretary, U.S. Nuclear Regulatory Commission
Washington, D.C. 20555



ATTENTION CHIEF, DOCKETING AND SERVICE SECTION

Re: In the Matter of Cintichem Incorporated
Docket No. 50-54-OLA

Dear Judge Frye:

The New York State Department of Environmental Conservation ("NYSDEC") has entered into the enclosed agreement with Cintichem, Inc. and Staff of the Nuclear Regulatory Commission ("NRC"), covering NYSDEC's involvement in respect to the Decommissioning Activities. In consideration of this agreement, NYSDEC hereby withdraws its February 14, 1991, request for a hearing and petition to intervene in the proceeding concerning the proposed issuance of NRC orders authorizing Cintichem Inc. to dismantle the reactor facility and dispose of the component parts and termination of the Facility License No. R-81 which was filed in response to the notice published in the Federal Register at 56 Fed. Reg. 1422 (January 14, 1991).

Sincerely,

Susan C. Quine

Susan C. Quine
Senior Attorney

Enclosure

SCQ:kl
cc: Enclosed Service List



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

CINTICHEM INCORPORATED

(Facility License No. R-81)

Docket No. (s) 50-54-OLA

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR §2.701:

Samuel J. Chilk, Secretary
US Nuclear Regulatory Commission
Washington, D.C. 20555
Attention Chief, Docketing and
Service Section

Administrative Law Judge
John H. Frye, III, Chairman
Atomic Safety and Licensing
Board
US Nuclear Regulatory Comm.
Washington, D.C. 20555
(by U.S. Mail and Facsimile
Transmission)

Atomic Safety and Licensing
Appeal Board
US Nuclear Regulatory Commission
Washington, D.C. 20555

Administrative Judge
David R. Schink
Department of Oceanography
Texas A&M University
College Station, TX 77843

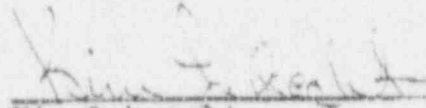
Administrative Judge
Charles N. Kelber
Atomic Safety and Licensing Bd.
US Nuclear Regulatory Commission
Washington, D.C. 20555

Office of General Counsel
US Nuclear Regulatory Comm.
Washington, D.C. 20555

Elaine Chan
Office of General Counsel
US Nuclear Regulatory Commission
Washington, D.C. 20555
(by U.S. Mail First Class and
Facsimile Transmission)

Philip Yachmetz
Attorney for Cintichem
Hoffman-LaRoche/Sr. Counsel
340 Kingsland Ave. Bldg 85
Nutley, NJ 07110
(by U.S. Mail First Class
and Facsimile Transmission)

Dated Albany, New York
this 13 day of March, 1991


Kim Lebrecht
New York State Department of
Environmental Conservation

COOPERATION AGREEMENT

This Agreement made as of this 12th day of March, 1991, by and between the Staff of the United States Nuclear Regulatory Commission, an agency of the federal government of the United States of America, having an office at One White Flint North, 11155 Rockville Pike, Rockville, Maryland 20852 ("NRC"); the New York Department of Environmental Conservation, an agency of the State of New York, having an office at 50 Wolf Road, Albany, New York 12233 ("NYSDEC"); and Cintichem, Inc., a Delaware corporation, having an office at Long Meadow Road, Tuxedo, New York 10987 ("Licensee").

WITNESSETH

WHEREAS, on October 19, 1990, Licensee filed an application with the NRC requesting the NRC's approval of a detailed plan for the decontamination and decommissioning of its five (5) Megawatt nuclear research reactor and radiochemical processing laboratory (hereinafter the "Reactor Facility") located at its plant site in Tuxedo, New York (hereinafter the "Decommissioning Plan"), which has heretofore been operated pursuant to NRC Reactor License No. R-81, NRC Special Nuclear Materials License No. SNM-639 and, in part, New York State Department of Labor ("NYDOL") Radioactive By-Product Materials License No. 729-0322 (hereinafter the "Licensee's Application"); and

. 2 .

WHEREAS, in response to a Notice of Opportunity for Hearing, published on January 14, 1991 (56 Fed. Reg. 1422), NYSDEC filed a timely Request for Hearing and Petition to Intervene on February 15, 1991 (hereinafter the "Petition") with respect to Licensee's Application, the Decommissioning Plan and the Decommissioning Process (each as herein defined and hereinafter collectively referred to as "Decommissioning Activities"); and

WHEREAS, NRC, NYSDEC and Licensee have conferred and concluded that the Petition was a formal means of registering NYSDEC's responsibilities and concerns and formally exercising any rights of NYSDEC in respect to the Decommissioning Activities, and without NRC and Licensee conceding the sufficiency of such Petition, would like to ensure that NYSDEC will enjoy a full, complete and open exchange of information and the opportunity to express its views with respect to the Decommissioning Activities; and

WHEREAS, NRC, NYSDEC and Licensee have further conferred and reached agreement concerning certain procedures and course of conduct and dealings to be followed during the Decommissioning Activities all as more specifically set forth herein; and

WHEREAS, based upon and subject to the provisions of this Agreement, NYSDEC now wishes to withdraw its Petition;

NOW THEREFORE, in consideration of the premises and mutual covenants set forth herein, and intending to be legally bound, NRC, NYSDEC and Licensee all agree as follows:

1. During May, 1989 the NRC and NYSDEC entered into a Letter of Agreement formalizing the understanding of the NRC, NYSDEC and NYDOL (hereinafter the "Agencies") regarding the specific areas of exclusive jurisdiction of each of the Agencies at the Licensee's plant site located in Tuxedo, New York (hereinafter the "Letter Agreement", a copy of which is attached hereto as Exhibit A and incorporated herein by this reference). The NRC, NYSDEC and Licensee agree that the Letter Agreement is and will continue in full force and effect in accordance with its terms and conditions. The NRC, NYSDEC and Licensee also agree that the Letter Agreement will govern matters of jurisdiction at the Licensee's plant site located in Tuxedo, New York during the Decommissioning Activities, until the Termination Order(s) and Notice (as hereinafter defined) are issued.

2. On June 6, 1990, NYSDEC and Licensee entered into an Order on Consent. The NRC, NYSDEC and Licensee agree that the Consent Order is and will continue in full force and effect in accordance with its terms and conditions during the Decommissioning Activities.

3. During the Decommissioning Activities, it is the express intent of NRC, NYSDEC and Licensee to have a full, complete and open exchange of information concerning the Decommissioning Activities, subject to such conditions as may be

necessary and appropriate for the protection of classified, proprietary and/or security or safeguards information (including, when appropriate, the exemption from disclosure to or by NYSDEC pursuant to 6 NYCRR § 616.7 or any other appropriate provisions of federal or state law) and to afford NYSDEC the opportunity to present in accordance with paragraph 7, its views, concerns and information with respect to the Decommissioning Activities to the NRC and Licensee and to have NRC and Licensee consider NYSDEC's views, concerns and information on a timely basis during the pendency of the Decommissioning Activities. To this end, NRC, NYSDEC and Licensee agree that these intentions will govern each of their actions during the Decommissioning Activities and the interpretation of the terms and conditions set forth in this Agreement.

4. (a) NRC and Licensee agree to furnish NYSDEC with copies of all correspondence, reports, documents, or other written information of any kind in any form whatsoever which either furnishes to the other during the Decommissioning Activities, which pertain to the review, progress, evaluation or status thereof. NRC and Licensee may request prior to the submission of such information that NYSDEC agree to the protection of classified, proprietary, and/or security or safeguards information.

(b) NRC, NYSDEC and Licensee agree that each will furnish to the others copies of any correspondence or other written information of any kind in any form whatsoever which any of them send to or receive from any federal, state, local, or private agency or entity not a party to this Agreement which pertains to the review, progress, evaluation or status of the Decommissioning Activities.

(c) NRC, NYSDEC and Licensee agree to furnish each other with copies of all correspondence, reports, documents, or documented oral or written information of any kind in any form whatsoever which is exchanged between any of the parties with respect to the Decommissioning Activities, as limited by paragraph d, recognizing that NYSDEC is subject to New York State Public Officers Law, § 87, incorporated herein by reference.

(d) The obligations of NRC, NYSDEC and Licensee as set forth in sections (a), (b) and (c) of this Paragraph 4 shall not extend to or include draft, pre-decisional or other documents including those protected by the New York State Public Officers Law § 87 prepared or received by the parties hereto and/or their consultants and agents, or documents which are or would otherwise be protected from disclosure under the Freedom of Information Act. (5 U.S.C. § 552).

5. NRC agrees to provide NYSDEC with timely notification, on a best efforts basis, of upcoming meetings and inspections between NRC and Licensee relevant to the review, progress, evaluation or status of the Decommissioning Activities and that NYSDEC may attend and participate in such meetings as appropriate, and accompany the NRC on such inspections. Should NYSDEC elect to attend such meetings and accompany NRC on such inspections, NYSDEC agrees that such attendance is for the purpose of achieving and maintaining a full, complete and open exchange of information, views and concerns relative to the Decommissioning Activities and that NYSDEC shall not unreasonably extend or change the scope or objective of such meetings, inspections or Decommissioning Activities.

6. The parties hereto agree to make timely response, on a best efforts basis, to any other Party's reasonable request for additional information relevant to the review, progress, evaluation or status of the Decommissioning Activities, provided that NRC, Licensee and/or their consultants, shall not be required to perform additional testing, calculations or other evaluations or analyses except as the NRC deems, in its sole discretion, to be appropriate or required in order to satisfy the requirements of the Atomic Energy Act of 1954, as amended, and the rules and regulations promulgated thereunder.

7. (a) NRC agrees to afford NYSDEC a reasonable opportunity to present its views in a timely manner to the NRC concerning the Decommissioning Activities before the NRC makes a final recommendation or determination on any approval of, or conditions for, the Decommissioning Activities. NYSDEC agrees to submit its views concerning an issue or aspect of the Decommissioning Activities in writing to both the NRC and Licensee within five (5) business days of the receipt of any correspondence, report, document or other written information from either NRC or Licensee, or an oral request for its views made by the NRC, except that an extension of time may be provided pursuant to paragraph 7(c).

(b) NRC also agrees to afford Licensee a reasonable opportunity to present its position on NYSDEC's views concerning the Decommissioning Activities in a timely manner to the NRC before the NRC acts on such views expressed by NYSDEC. Licensee agrees to submit its position with respect to NYSDEC's views within five (5) business days of its receipt of such views in writing from NYSDEC, except that an extension of time may be provided pursuant to paragraph 7(c).

(c) As timely implementation of Decommissioning Activities is agreed to be in the interest of all parties, NYSDEC and Licensee agree and acknowledge that the granting of any extensions of time within which to respond and present their views or positions will be within the sole discretion of the NRC.

(d) Further, in view of the provisions of the Letter Agreement and Consent Order, should the NRC and NYSDEC be unable to resolve conflicting viewpoints concerning an issue or aspect of the review, progress, evaluation, status, conditions or approval of the Decommissioning Activities, the position and opinion of the NRC shall prevail. However, upon the written request of NYSDEC, the NRC will promptly provide NYSDEC with a written justification or explanation of its position or opinion. The provision of such written justification or explanation will not delay the implementation or rendering of NRC's viewpoint, approval or decision on an issue or aspect of the Decommissioning Activities, unless and until the NRC so orders or directs.

(e) The parties agree that they shall retain all legal rights under the Commission's regulations and the Atomic Energy Act including late intervention and late-filed contentions. This agreement is not meant to abridge the rights of the parties in forums other than that of the NRC.

8. Subject to paragraph 7(e) hereof, NYSDEC, NRC and Licensee acknowledge that upon the issuance of an Order(s) and/or license amendment, by the NRC granting approval of the Decommissioning Plan and any supplements thereto, Licensee will implement, with all due dispatch and care, the approved Decommissioning Plan, thereby decontaminating and dismantling the Reactor Facility and disposing of or otherwise handling the radioactive and non-radioactive components, rubble and waste generated

by such activities in accordance with the methods and specifications set forth in the Decommissioning Plan or as otherwise ordered or directed by NRC (herein the "Decommissioning Process").

9. Subject to paragraph 7(e) hereof, NRC, NYSDEC and Licensee further acknowledge that upon completion of the activities authorized by the NRC's Order(s) and/or license amendment approving the Decommissioning Plan and any supplements thereto and verification by the NRC that in its sole and exclusive opinion acceptable levels of radioactive contamination have been achieved by the performance of the activities detailed in the Decommissioning Plan and any supplements and amendments thereto, such that a condition suitable for unrestricted use has been attained, the NRC will issue an Order terminating NRC Reactor License No. R-81 and a written notice terminating NRC Special Nuclear Materials License No. SNM-639 (hereinafter the "Termination Order and Notice"). In making such determinations that acceptable levels of radioactive contamination have been achieved at the Licensee's facility located in Tuxedo, New York the NRC shall be guided by its guidance, past practice, professional judgment and other criteria, and prior to the issuance of the Termination Order(s) and Notice the NRC will make any findings required by the Atomic Energy Act of 1954, as amended.

10. NRC, NYSDEC and Licensee agree that this Agreement confers no regulatory control, jurisdiction or authority upon NYSDEC over or with respect to the Decommissioning Activities; however, this Agreement will not prevent the NRC from designating in writing a particular aspect or function to be carried out by NYSDEC or

behalf of NRC, provided that the NRC makes such a designation pursuant to its sole and exclusive authority, after allowing the Licensee the opportunity to express its views and opinion, that such designation is appropriate and allowed under the applicable laws, rules and regulations.

11. Immediately upon the execution of this Agreement, (a) NYSDEC shall execute and file with the NRC a Notice of Withdrawal of its Petition, and (b) Licensee shall execute and transmit to the Secretary of the NRC a letter, requesting confirmation that no hearing has been or will be convened pursuant to the Petition filed by NYSDEC in the matter of Licensee's Application.

12. All communications and copies of correspondence, reports, documents or written information of any kind in any form whatsoever which shall be exchanged between the parties hereto pursuant to the terms of this Agreement shall be sent to all parties in identical fashion and, if requested, by rapid means (i.e.: by facsimile or overnight courier service; material so sent shall be deemed as received by the Addressee on the same day, or the next succeeding business day following dispatch, respectively). During the Decommissioning Activities, rapid means will be used between the parties hereto for urgent communications or the exchange of information for which comments are known to be required.

13. This Agreement shall take effect immediately upon the execution by all parties hereto.

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

Susan C. Quine

By: Susan C. Quine
Title: Senior Attorney

U.S. NUCLEAR REGULATORY
COMMISSION STAFF

Elaine I. Chan

By: Elaine I. Chan, Attorney
Office of the General Counsel

CINTICHEM, INC.

Philip R. Yachmetz, Esq.
By: Philip R. Yachmetz, Esq.
Counsel for Cintichem, Inc.

FROM NIMO XCHG MESSAGE 16-01-90