



ICF INCORPORATED

June 12, 1992

To: Dr. Lou Bykoski, NMSS/NRC

From: John Collier, Craig Dean and Paul Bailey, ICF Incorporated

Subject: Review of Letter of Credit Submitted by Radiation Sterilizers, Inc.

Radiation Sterilizers, Inc. in Fremont, California, resubmitted a certification of financial assurance, using an amended letter of credit, in the amount of \$75,000.¹ The submission assures decommissioning costs for license 04-19644-01 issued under 10 CFR Part 30.² Upon review of the submission, ICF recommends that NRC Region III require the licensee to modify the submission in the following ways:

- (1) Replace the submitted letter of credit with one that meets NRC requirements (*Regulatory Guide 3.66*, pages 4-33 through 4-34);
- (2) Submit evidence indicating that the party signing the standby trust agreement for the licensee is authorized to represent the company (*Regulatory Guide 3.66*, page 3-14);
- (3) Submit a letter of acknowledgement with the standby trust agreement (*Regulatory Guide 3.66*, page 4-27); and
- (4) Submit a specimen certificate of events and specimen certificate of resolution with the standby trust agreement (*Regulatory Guide 3.66*, pages 4-24 and 4-25).

These recommendations and other issues are discussed below.

¹ ICF assumes that NRC has verified that the certification amount is accurate under 10 CFR 30.35.

² ICF reviewed the original submission and reported several recommendations to NRC in a memorandum dated May 31, 1991.

- (1) Replace the Submitted Letter of Credit With One That Meets NRC Requirements (*Regulatory Guide 3.66, Pages 4-33 through 4-34*)

The wording of the letter of credit submitted by the licensee differs substantially from that recommended in *Regulatory Guide 3.66, pages 4-33 through 4-34*. The modifications necessary to make the submitted letter of credit suitable for use under the decommissioning financial assurance requirements of 10 CFR 30.35 would entail almost a complete redrafting of the letter. Therefore, to ensure the effectiveness of the financial assurance, ICF recommends that NRC require the licensee to replace the submitted letter of credit with one that more closely matches the recommended wording of *Regulatory Guide 3.66*.

The submitted letter of credit contains the following fundamental flaws that make it inappropriate for use as a financial assurance mechanism for NRC:

- The letter of credit contains some, but not all, of the wording recommended in *Regulatory Guide 3.66*, and also adds provisions that are not recommended. For example, most of the recommended opening paragraph is missing. As a result, the beginning of the letter of credit is unclear. In addition, nonstandard language labeled "Instructions" has been added near the end; this makes the letter unclear as to whether earlier instructions, which were included from the recommended wording, apply.
- The letter of credit fails to state NRC's regulatory authority for requiring financial assurance. Such a statement helps ensure that the mechanism was executed to assure only decommissioning costs, and that NRC regulations may be considered applicable to interpreting any ambiguities in the terms of the mechanism.
- The letter of credit relaxes the issuer's notification responsibilities in the event the bank chooses not to renew the credit. Specifically, the bank is required to notify only NRC, and not the licensee, of the bank's intent not to renew. In addition, notification may be made by "courier mail, registered mail or certified mail at our discretion." Allowing notification by courier mail does not meet the certified or registered mail standard that NRC relies on to provide signed return receipts through the U.S. Postal Service. As a result, NRC and the licensee may not have adequate time or warning to address the situation prior to cancellation of the letter of credit.
- The letter of credit does not contain language requiring the issuer to give immediate notice if the bank, for any reason, becomes unable to fulfill its obligation under the letter of credit. Such language would help ensure that both NRC and the licensee are given adequate warning of events that may jeopardize the financial assurance.

- The letter of credit does not require drafts to be honored within 30 days, nor does it require that the bank deposit the amount of the draft in the standby trust fund. The 30-day requirement ensures timely receipt of funds necessary to pay for decommissioning costs. Payment to a standby trust fund is necessary because if the funds are paid directly to NRC, NRC would be required to deposit the funds in the U.S. Treasury as general revenues. Consequently, the funds would not be immediately available to pay for decommissioning costs.

Due to the many differences in protection provided by the submission relative to the recommended letter of credit wording in *Regulatory Guide 3.66*, ICF recommends that NRC require the licensee to submit a new letter of credit that more closely follows the terms and conditions recommended in *Regulatory Guide 3.66*.

- (2) **Submit Evidence Indicating that the Party Signing the Standby Trust Agreement for the Licensee is Authorized to Represent the Company**
(*Regulatory Guide 3.66*, Page 3-14)

The submission does not provide evidence indicating that the party signing the mechanism is authorized to enter into a standby trust agreement for the licensee, as recommended in *Regulatory Guide 3.66*, page 3-14. Evidence of authority to represent the licensee helps ensure the validity and enforceability of the mechanism. To ensure that the licensee complies with all provisions recommended in *Regulatory Guide 3.66*, ICF recommends that NRC require the licensee to submit a copy of the corporate by-laws or other evidence indicating that the party signing the standby trust agreement is authorized to do so.

- (3) **Submit a Letter of Acknowledgement with the Standby Trust Agreement**
(*Regulatory Guide 3.66*, Page 4-27)

The submission does not include a letter of acknowledgement with the standby trust agreement, as recommended by *Regulatory Guide 3.66*, page 4-27. The acknowledgement is needed to verify the execution of the standby trust agreement and to certify the trustee's signature and authority to enter into the agreement. ICF recommends that NRC require the licensee to submit a letter of acknowledgement with the standby trust agreement.

- (4) **Revise Schedules Accompanying the Standby Trust Agreement** (*Regulatory Guide 3.66*, Pages 4-24 through 4-26)

The submission includes four schedules (Schedule A, B, C, and D) recommended by *Regulatory Guide 3.66*, but it presents those schedules in different forms:

- Schedule A: The licensee used a copy of its NRC materials license as Schedule A of the standby trust fund. The license contains some of the information that should be included in Schedule A, but does not state the amount assured by the standby trust fund (i.e.,

\$75,000). Specification of the required amount of financial assurance is important to inform the trustee of the amount that the trustee may spend on decommissioning the licensed facilities.

- Schedule B: The licensee used the original or a copy of its letter of credit as Schedule B. Use of the original letter of credit would not be acceptable in this case because the terms of the licensee's letter of credit specifies that the original letter of credit must be presented to the bank in order to withdraw funds. Consequently, the original letter of credit must reside with NRC, and not with the trustee.
- Schedule C: The licensee has included an incomplete Schedule C, which should specify the compensation of the trustee, as recommended in *Regulatory Guide 3.66*.
- Schedule D: The licensee has included a "certificate of secretary" and a "certificate of conditions" that appear to serve the purpose of the "specimen certificate of events" recommended in *Regulatory Guide 3.66*, page 4-24, but which use slightly less specific language. The submission does not include any schedule or item corresponding to the recommended "certificate of resolution" as shown on page 4-25 of *Regulatory Guide 3.66*. Without the recommended specimen certificates, NRC cannot be sure that the trustee will release decommissioning funds only upon receiving appropriate instructions. In addition, the trustee may not be able to determine the validity of future resolutions authorizing commencement of decommissioning activities and payments from the trust.

ICF recommends that NRC require the licensee to revise its schedule attachments as necessary to more closely meet the terms specified in *Regulatory Guide 3.66*, pages 4-24 through 4-26.

Other Issues

Apart from editorial and non-substantive changes to the standard wording provided in *Regulatory Guide 3.66*, the following modifications are noteworthy:

- The standby trust agreement allows withdrawal from the trust fund up to "0% percent of the outstanding balance of the Fund or 0 dollars," whichever is greater, without NRC approval. This withdrawal limit is acceptable because it is less than the 10 percent level specified in NRC guidance.³

³ "Response to Questions Related to the Trust Fund Mechanism," from Timothy Johnson, NMSS/NRC to Karen Davis, St. Louis University, August 7, 1990. Although this guidance applies to a stand-alone trust fund, we assume NRC would give the same response to the same question regarding a standby trust fund.

It will, however, require NRC to approve all withdrawals from the trust.

Finally, the Region should ensure that documents submitted by the licensee are originally signed duplicates, as recommended in *Regulatory Guide* 3.66. Unless the documents have been properly signed, NRC cannot be certain that the financial assurance mechanism is enforceable. Because ICF does not possess the original submissions, we cannot verify compliance with these requirements.

attachments

MEMO TO: Louis M. Bykoski, NMSS
FROM: OGC
RE: REVIEW OF NONSTANDARD SUBMITTALS

JUN 29 1992

Radiation Sterilizers, Inc.: No legal objection to ICF Recommendations (1)-(4). Under the heading "Other Issues," Region III might wish to suggest that the licensee change the percentage amount in the withdrawal provision to a value greater than the current 0%, to a percentage less than the recommended 10%, unless the Region cares to be contacted for approval of every minor withdrawal.

LIST OF INSTRUCTIONS

JUN 29 1982

Radiation Sterilizers, Inc.

In reviewing the comments the reviewer will note that there will be some overlap between ICF and OGC comments. The following comments should be included in the basis for the deficiency letter:

1. ICF comments 1 through 4 plus last paragraph.
2. All OGC comments.

All other comments and discussions are for reviewer information.