



ICF INCORPORATED

May 31, 1991

To: Dr. Lou Bykoski, NMSS/NRC

From: David Mitamura and John Collier, ICF Incorporated

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

Radiation Sterilizers, Inc. in Fremont, California submitted a certification of financial assurance in the amount of \$75,000.¹ The submission includes a letter of credit that deviates substantially from the wording recommend in NRC's *Regulatory Guide 3.66*, "Standard Format and Content of Financial Assurance Mechanisms Required for Decommissioning Under 10 CFR Parts 30, 40, 70, and 72" (June 1990). The submission assures decommissioning costs for license 04-19644-01 issued under 10 CFR Part 30. Upon review of the submission, ICF recommends that NRC Region III require the licensee to modify the submission in the following ways:

- (1) Revise the letter of credit to identify applicable NRC regulations;
- (2) Amend the letter of credit to include automatic renewal and cancellation notification provisions;
- (3) Amend the letter of credit to include automatic payment provisions;
- (4) Amend the letter of credit to include notification requirements;
- (5) Amend the letter of credit to require the issuer to deposit the funds from the letter of credit into the standby trust fund within 30 days of presentation of a draft to the bank; and
- (6) Submit a standby trust agreement.

These recommendations and other issues are discussed below.

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

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(1) Revise the Letter of Credit to Identify Applicable NRC Regulations

The submitted letter of credit does not include paragraph 2 of the wording recommended by NRC's *Regulatory Guide 3.66*, on page 4-33, which states that:

"This letter of credit is issued in accordance with regulations issued under the authority of the U.S. Nuclear Regulatory Commission (NRC), an agency of the U.S. Government, pursuant to the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974. The NRC has promulgated regulations in Title 10, Chapter I of the Code of Federal Regulations, Part [30, 40, 70, or 72], which require that a holder of, or an applicant for, a license issued under 10 CFR Parts [30, 40, 70, or 72] provide assurance that funds will be available when needed for decommissioning."

This paragraph helps to ensure that the purpose of the letter of credit is clear and unambiguous. ICF recommends that NRC require the licensee to modify the letter of credit to include the recommended language.

(2) Amend the Letter of Credit to Include Automatic Renewal and Cancellation Notification Provisions

Under 10 CFR 30.35(f)(2)(i), a surety method of assurance, if written for a specified term, "must be renewed automatically unless 90 days or more prior to the renewal date, the issuer notifies the Commission, the beneficiary, and the licensee of its intention not to renew." The submitted letter of credit is written for a definite term of one year, but it does not include the automatic renewal or the cancellation notification provisions. The automatic renewal provision is important to ensure continuous financial assurance, while the cancellation notification provision ensures that the mechanism is not canceled without being drawn upon by NRC or replaced by another mechanism. ICF recommends that NRC require the licensee to amend the letter of credit to include automatic renewal and cancellation notification provisions worded similarly to those in the letter of credit recommended in *Regulatory Guide 3.66*, page 4-33.

(3) Amend the Letter of Credit to Include Automatic Payment Provisions

Under 10 CFR 30.35(f)(2)(i), a letter of credit used as a surety method of assurance must also "provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the Commission within 30 days after receipt of notification of cancellation." This requirement helps ensure that in the event the issuer intends to cancel the letter of credit and the licensee fails to obtain alternate assurance, the letter of credit will be drawn upon before it expires.

The letter of credit submitted by the licensee has no automatic payment provision. ICF recommends that NRC require the licensee to amend the letter

of credit to include automatic payment provisions worded similarly to those in the letter of credit recommended in *Regulatory Guide 3.66*, page 4-33 and 4-34.

(4) Amend the Letter of Credit to Include Notification Requirements

The submitted letter of credit does not contain the following notification requirements recommended by *Regulatory Guide 3.66* at the end of Paragraph 3 in the sample letter of credit, which address the issuing financial institution's insolvency:

"The bank shall give immediate notice to the applicant and the [insert "NRC" or name of State agency] of any notice received or action filed alleging (1) the insolvency or bankruptcy of the financial institution or (2) any violations of regulatory requirements that could result in suspension or revocation of the bank's charter or license to do business. The financial institution also shall give immediate notice if the bank, for any reason, becomes unable to fulfill its obligation under the letter of credit."

This language ensures that both NRC and the licensee are given adequate warning of events that may jeopardize the financial assurance. ICF recommends that NRC require the licensee to amend the letter of credit to include notification requirements.

(5) Amend the Letter of Credit to Require the Issuer to Deposit the Funds from the Letter of Credit into the Standby Trust Fund within 30 Days of Presentation of a Draft to the Bank

The recommended wording of the letter of credit in *Regulatory Guide 3.66*, on page 4-34, includes the following statement: "Whenever this letter of credit is drawn on under and in compliance with the terms of this letter of credit, we shall duly honor such draft upon its presentation to us within 30 days, and we shall deposit the amount of the draft directly into the standby trust fund of [licensee's name] in accordance with your instructions." The letter of credit submitted by the licensee 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 as required by 10 CFR 30.35(f)(2)(ii).

The 30-day requirement ensures timely receipt of funds necessary to pay for decommissioning costs. The purpose of the standby trust fund is discussed in Recommendation 6 below. ICF recommends that NRC require the letter of credit to be revised to require the bank to deposit the funds into a standby trust fund within 30 days after the presentation of the draft for withdrawal.

(6) Submit a Standby Trust Agreement

Under 10 CFR 30.35(f)(2)(ii), a surety method of assurance, such as a letter of credit, "must be payable to a trust established for decommissioning costs." The licensee's submission does not include a standby trust agreement for such purposes. If the funds were paid directly to NRC, rather than to a standby trust fund, NRC would be required to deposit the funds with the U.S.

Treasury as general revenue. Consequently, the funds would be unavailable to pay for decommissioning costs. ICF recommends that NRC require the licensee to submit a standby trust agreement and related documents, as recommended in *Regulatory Guide 3.66*, pages 4-18 through 4-27.

Other Issues

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

- (1) The bank added the following requirements to the letter of credit:

"Each draft presented hereunder must be accompanied by this original credit for our endorsement thereon of the amount of such draft.

Documents must be forwarded to us in one parcel and may be mailed to Wells Fargo Bank, N.A., Trade Services Division, Northern California, 525 Market Street, 25th Floor, San Francisco, CA 94105-2733."

These sentences require that NRC present the letter of credit with any request for payment under the mechanism, and specify additional instructions for drawing on the letter of credit.

- (2) The letter of credit does not identify the title of the officer who signed the letter of credit for the issuer. Although the title may help identify the party who signed the mechanism, its omission does not affect the enforceability of the letter of credit.

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

APPENDIX A
CHECKLIST FOR DECOMMISSIONING FINANCIAL ASSURANCE

NAME OF LICENSEE OR APPLICANT

MAILING ADDRESS

RADIATION STERILIZERS, INC.

4020 CLIPPER COURT

FREMONT, CA 94538

A. Licensee Part (check one of the following):

- ☒ Part 30 Licensee or Applicant ☐ Part 70 Licensee or Applicant
☐ Part 40 Licensee or Applicant ☐ Part 72 Licensee or Applicant

B. Check appropriate item in each category (if applicable)

1. 11/13/90 Date of Financial Assurance Submission eff. 11/18/90
exp. 11/18/91
2. ☐ Public Entity
☒ Private Entity
3. ☒ Certification of Financial Assurance \$75,000
Identical wording
☐ Decommissioning Funding Plan
4. (a) ☐ Prepayment Option (See Appendix B)
 - ☐ Trust Fund
 - ☐ Escrow Account
 - ☐ Certificate of Deposit
 - ☐ Government Fund
 - ☐ Deposit of Government Securities

(b) ☒ Surety/Insurance/Other Guarantee (See Appendix C)
 - ☐ Surety bond
 - ☒ Letter of Credit Working entirely different \$75,000
 - ☐ Line of Credit
 - ☐ Parent Company Guarantee/Financial Test*

(c) ☐ External Sinking Fund, Sinking Account and Surety/Insurance (See Appendix D)
 - ☐ Trust Fund
 - ☐ Escrow Account
 - ☐ Certificate of Deposit
 - ☐ Government Fund
 - ☐ Deposit of Government Securities
 - ☐ Surety Bond
 - ☐ Letter of Credit
 - ☐ Line of Credit

(d) ☐ Statement of Intent (public entities only)

*May not be used in combination with any other instrument.

APPENDIX C

CHECKLIST FOR SUBMISSION OF SURETY/INSURANCE/PARENT COMPANY GUARANTEE

A. Check Appropriate Form of Surety/Insurance/Guarantee

- ☐ Surety Bond
- ☒ Letter of Credit
- ☐ Line of Credit
- ☐ Parent Company Guarantee/Financial Test*
- ☐ Insurance

B. Check Documents Submitted for Surety/Insurance/Guarantee

1. Surety Bond
 - ☐ Surety Bond
 - ☐ Standby Trust Agreement
 - ☐ Acknowledgement
2. Letter of Credit
 - ☒ Letter of Credit *Wording completely different*
 - ☐ Standby Trust Agreement *none submitted*
 - ☐ Acknowledgement *none submitted*
3. Line of Credit
 - ☐ Verification
 - ☐ Standby Trust Agreement
 - ☐ Acknowledgement
4. Parent Company Guarantee
 - ☐ Letter from Chief Executive Officer of Applicant or Licensee
 - ☐ Letter from Chief Financial Officer of Parent Company
 - ☐ Financial Test: Alternative [I or II]
 - ☐ Auditor's Special Report and Attached Schedule
 - ☐ Corporate Guarantee
 - ☐ Standby Trust Agreement
 - ☐ Acknowledgement
5. Insurance
 - ☐ Certificate of Insurance
 - ☐ Standby Trust Agreement
 - ☐ Acknowledgement

May not be used in combination with any other instrument.

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EXHIBIT 3-7

CHECKLIST OF CRITERIA FOR REVIEW OF LETTERS OF CREDIT

NA • Copy of corporate by-laws or other evidence indicating that parties signing the financial instrument (for the applicant) are authorized to represent the organization in the transaction.

To be
Ver. Fred.
by Region

• Evidence that the financial instrument is an originally signed duplicate (e.g., an executed copy of the instrument).

✓

• Evidence that the financial institution is regulated by Federal or State agency (e.g., member of FDIC, Federal Reserve System, etc.).

See FPC
Fin Inst List

NA • The instrument must be entitled a letter of credit. *irrevocable standing credit*

✓

• The letter should be limited in amount. *75,000*

✓

• The letter of credit must contain a specified expiration date or be written for a definite term. *10/19/91 no automatic renewal*

✓

• The issuer's obligation to pay the beneficiary should arise only upon presentation of a draft or other documents specified in the letter of credit.

✓

• The bank must not be called upon to determine a question of fact or law at issue between the licensee and the Commission or State regulatory agency.

implied

• The licensee should have an unqualified obligation to reimburse the issuer for payments made under the letter of credit.

CONVERSATION RECORD

TIME : DATE
10:30 A.M. 5/22/91☐ VISIT☐ CONFERENCE☒ TELEPHONE☐ INCOMING☒ OUTGOING

NAME OF PERSON(S) CONTACTED OR IN CONTACT

Lisa Foster

ORGANIZATION (OFFICE, DEPT. ETC.)

RSI

TELEPHONE NO.

SUBJECT

Status of their standby trust agreement to be submitted per our previous tele. conv.

SUMMARY

Lisa stated that she thought that their standby trust agreement had been completed by their corporate office and already submitted to the NRC. I told her that we have not received it. She will contact her corporate office and get back to me.

ACTION REQUIRED

Wait for return phone call from Ms. Foster.

NAME OF PERSON DOCUMENTING CONVERSATION

Kevin G. Null

SIGNATURE

Kevin G. Null

DATE

5/22/91