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SERIAL: GDP 96-0186

Mr. John C. Hoyle
Secretary
United States Nuclear Regulatory Commission
Attention: Docketing and Service Branch
Washington, D.C. 20555-0001

Paducah Gaseous Diffusion Plant (PGDP)
Portsmouth Gaseous Diffusion Plant (PORTS)
Docket Nos. 70-7001 & 70-7002
USEC Response to "Kwanitewk" Petition for Commission Review of Director's Decision

Dear Mr. Hoyle:

The Nuclear Regulatory Commission (NRC) has received a letter dated September 28, 1996 signed by "Neilly Buckalew" on letterhead of "Kwanitewk NATIVE Resource/Network, Meriden NH" petitioning, among other things, for Commission review of the Director's Decision on the certificates of compliance for the Portsmouth, Ohio and Paducah, Kentucky gaseous diffusion plants. The United States Enrichment Corporation (USEC) has reviewed that document and has concluded that it is virtually identical to the petition for Commission review previously submitted by "Portsmouth-Piketon Residents for Environmental Safety and Security" or "PRESS." Indeed the "Kwanitewk" petition appears to be a copy of the PRESS petition reproduced on "Kwanitewk" letterhead and with only a few minor alterations to the text.

USEC's response to the "Kwanitewk" petition pursuant to 10 CFR § 76.62(c) is provided in this letter and in USEC's October 15, 1996 "Response to 'PRESS' Petition for Commission Review of Director's Decision" which we are hereby incorporating by reference. A copy of our response to PRESS' petition is enclosed for your convenience. For the reasons set forth in our response to the PRESS petition, "Kwanitewk's" petition should also be denied.

In addition, we wish to call to the NRC's attention two particular aspects of the Kwanitewk petition which make it even less worthy of merit than the PRESS petition. First, the "Kwanitewk" petition is expressly submitted on behalf of "the people we are working with of whom we will allow to remain anonymous." "Kwanitewk" Petition at p.1. It should be abundantly clear that a petition submitted on behalf of anonymous parties cannot possibly establish a sufficient basis for legal standing under either NRC requirements or applicable judicial concepts of standing. See attached USEC Response to PRESS Petition at pp. 2-3. Second, even if the NRC construes the petition to have been filed on behalf of "Kwanitewk," the listed address for that organization is Meriden, New Hampshire. New Hampshire is clearly outside the area that could even be remotely affected by the gaseous

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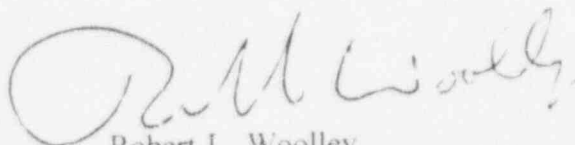
Mr. John C. Hoyle
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diffusion plants. Therefore, residence in New Hampshire is not sufficient to confer standing under 10 CFR § 76.62(c) to petition for Commission review of the Director's Decision on the certification of the Portsmouth and Paducah plants. See enclosed USEC Response to PRESS Petition at p.3. "Kwanitewk" has made no effort to demonstrate its standing in this matter and its petition falls far below NRC standards in that regard.

Therefore, for the reasons set forth in this letter and in the enclosed response to the PRESS petition, the "Kwanitewk" petition should be denied, and the Director's Decision on USEC's certificate of compliance applications should be permitted to become final and effective on November 18, 1996.

If you have any questions, please call me at (301) 564-3413.

Sincerely,



Robert L. Woolley
Nuclear Regulatory Assurance and Policy Manager

Enclosure: United States Enrichment Corporation Response to "PRESS" Petition for
Commission Review of Director's Decision

cc: Dr. Carl J. Paperiello, NRC
NRC Region III Office
NRC Resident Inspector - PGDP
NRC Resident Inspector - PORTS
Mr. J. Dale Jackson (DOE)

October 15, 1996

**UNITED STATES ENRICHMENT CORPORATION
RESPONSE TO "PRESS" PETITION FOR
COMMISSION REVIEW OF DIRECTOR'S DECISION**

I. INTRODUCTION

On September 13, 1996, the Director of Nuclear Material Safety and Safeguards of the Nuclear Regulatory Commission (NRC) issued an initial certification decision (Director's Decision) and proposed certificates of compliance for the United States Enrichment Corporation (USEC) authorizing continued operation of the Portsmouth, Ohio and Paducah, Kentucky gaseous diffusion plants (GDPs) under 10 C.F.R. Part 76 (1996). The Director's Decision concluded that USEC's certification applications, the Department of Energy's (DOE) Compliance Plans, and the certificate conditions imposed by the NRC provide "reasonable assurance of adequate safety, safeguards, and security, and compliance with NRC requirements." 61 Fed. Reg. 49,360, 49,361 (Sept. 19, 1996).

By letter dated September 30, 1996, "Portsmouth-Piketon Residents for Environmental Safety and Security" (PRESS) submitted a petition to the Director requesting, among other things, full Commission review of the Director's Decision under 10 C.F.R. § 76.62(c). Section 76.62(c) authorizes "any person whose interest may be affected and who submitted written comments in response to the [certificate of compliance] application[s] or compliance plan[s] . . . or provided oral comments at any meeting held on the application[s] or compliance plan[s] . . ." to file such a petition requesting Commission review.

The Director's Decision is the product of a thorough and detailed NRC Staff review that has spanned 16 months. The Portsmouth and Paducah applications each contain over 2,000 pages and discuss in detail how USEC satisfies, or intends to come into full compliance with,

applicable NRC regulations. Those applications are likely the most detailed applications ever submitted to the NRC for a fuel cycle or materials applicant. The Staff review involved over 50 public meetings between USEC, the Staff, and the DOE, and over 2,000 detailed written Staff questions. This comprehensive and thorough process produced two Staff Compliance Evaluation Reports (CERs) which describe in detail the bases for the Director's Decision.

For the reasons set forth below, PRESS lacks legal standing to petition the Commission for review and has provided no substantive information that should cause the Commission to review the results of the Staff's thorough assessment process. Therefore, we respectfully request that the PRESS petition be denied, and that the Director's Decision be permitted to become effective and final without modification.

II. PRESS LACKS LEGAL STANDING TO PETITION FOR COMMISSION REVIEW

Section 76 62(c) permits only certain persons "whose interest may be affected" by the Director's Decision to submit a petition for Commission review. This language is identical to that used in Section 189a of the Atomic Energy Act of 1954, as amended (AEA) and in various NRC regulations. It is intended to require a demonstration of "legal standing" as the basis for participation in certain NRC proceedings. *See, e.g.* 42 U.S.C. § 2239a (1994); 10 C.F.R. §§ 2.714(a)(1), 2.1205(a); Babcock and Wilcox (Apollo, Pennsylvania Fuel Fabrication Facility), LBP-93-4, 37 N.R.C. 72, 80 (1993). To demonstrate such standing, a person or organization must show: (1) that it could suffer an actual "injury in fact" as a result of the action to be taken by the NRC; and (2) that its interests are within the "zone of interests" protected by

the relevant statutes¹ PRESS has made no effort to demonstrate its standing in this matter. Its petition does not appear to even recognize the need to show that such standing exists. It contains no discussion of the nature of its organization, the interests or geographic location of its members, the specific or "particularized" injury it or its members may suffer if the Director's Decision becomes effective, or the extent to which those interests are within the "zone of interests" protected by the relevant statutes. Instead, the petition contains only generalized claims about the impacts of the continued operation of the GDPs on the environment and falls far below the standard set in a long line of NRC cases.²

The petition is particularly deficient as it applies to the Paducah plant, because of the distance between that facility and PRESS' apparent address in McDermott, Ohio over 300 miles from Paducah. Even in commercial nuclear power reactor licensing cases (where the potential area offsite that could be affected by an accidental release of radioactive material is much larger than for the GDPs), persons living beyond 50 miles from a facility are generally not afforded standing.³

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- 1/ Director, OWCP v. Newport News Shipbuilding, 115 S.Ct. 1278, 1283 (1995); Kelley v. Selin, 42 F.3d 1501, 1508 (6th Cir.), cert. denied, 115 S.Ct. 2611 (1995); Georgia Power Co. (Vogtle Electric Generating Plant, Units 1 and 2), CLI-93-16, 38 NRC 25 (1993).
 - 2/ E.g. Georgia Power, 38 N.R.C. at 32; Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 N.R.C. 327, 332-33 (1983); Northern States Power (Pathfinder Atomic Plant), LBP-89-30, 30 N.R.C. 311 (1989); Apollo, 37 N.R.C. 72.
 - 3/ Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 N.R.C. 1423, 1447 (1982), (residence 120 miles from the site not sufficient interest for standing) citing, Dairyland Power Cooperative (LaCrosse Boiling Water Reactor), ALAB-497, 8 N.R.C. 312, 313 (1978) (residence 75 miles from site not sufficient interest for standing); Public Service Co. of Oklahoma (Black Fox Units 1 and 2), ALAB-397, 5 N.R.C. 1143, 1150 (1977) (residence 125 miles from site or occasional trips to within
(continued...))

III. RESPONSE TO PRESS OBJECTIONS

The PRESS petition contains six separate issues or "objections" and a general request for additional information from the NRC. USEC's response to each of those objections and requests is presented below.

1. **Petition for Extending the Comment Period Regarding Certification**

PRESS first argues that the 15-day time period for filing a petition for review is inadequate and should be extended. Petition at p 2. PRESS' argument directly challenges 10 C.F.R. Part 76, since the time frame established for filing petitions for review was set by the Commission by rule in Section 76.62(c). Such challenges have been consistently prohibited by the NRC in individual proceedings absent a showing of "special circumstances." Section 2.758 states that NRC regulations are not "subject to attack . . . in any adjudicatory proceeding" absent a showing that "special circumstances with respect to the subject matter of the particular proceeding are such that the application of the . . . regulation . . . would not serve the purposes for which the . . . regulation was adopted." 10 C.F.R. §§ 2.758 (a) and (b). While there is no adjudicatory proceeding in this case, the principle that challenges to NRC regulations should be made through rulemaking proceedings -- and not in individual case-specific regulatory actions⁴ -

³/ (. . . continued)

25 miles from site not sufficient interest for standing).

⁴/ Citizens for Safe Power v. NRC, 524 F.2d 1291, 1300 (D. C. Cir. 1975) (failure of party to utilize rulemaking or amendment procedures to challenge radiological standards incorporated into the Commission's regulations foreclosed them from challenging them during licensing proceeding); Pacific Gas & Electric Co. v. Fed. Power Com'n, 506 F.2d 33, 38 (D.C. Cir. 1974). UCS v. AEC, 499 F.2d 1069, 1090 (D. C. Cir. 1974) (rulemaking procedure, not licensing hearing, proper forum for challenging Commission "interim acceptance criteria" that had been adopted via rulemaking proceeding). See also Public (continued...)

- applies equally here. Therefore, if PRESS desired to challenge the regulations themselves, it should have participated in the rulemaking proceeding and sought judicial review of Part 76 if it was dissatisfied with the result.

Furthermore, during the Part 76 rulemaking proceeding, the NRC specifically considered whether the 15-day period should be extended -- in response to public comments recommending such an extension. The NRC chose not to alter the time period for filing petitions, and instead added Section 76.74(b) to the regulations to "confirm" its ability to extend time periods in an individual case "for good cause." Statements of Consideration on Final Rule "Certification of Gaseous Diffusion Plants" 59 Fed. Reg. 48,944, 48,951-52 (Sept. 23, 1994). If PRESS required more time to prepare its petition, it could have requested an extension under Section 76.74(b) and demonstrated "good cause." Here, all PRESS has done is state that more time is needed to allow "full participation" by "all taxpaying citizens" and that having materials available only at the NRC and at the two plants does not allow for such full participation. Petition at p. 2. PRESS has failed to demonstrate good cause for an extension, therefore this aspect of its petition should be denied.

2. Objection to Limiting Persons Who May Comment⁵

PRESS' second "objection" is that "any" citizen or interested person "has the right to petition for the issuance, amendment, or repeal of a rule" under Section 553(e) of the

^{4/} (...continued)

Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-89-8, 29 N.R.C. 399, 416-417 (1989); American Nuclear Corp. (Revision of Orders to Modify Source Material Licenses) CLI-86-23, 24 N.R.C. 704, 707 (1986).

^{5/} This is identified as Objection 3 in the PRESS petition.

Administrative Procedure Act (APA) and that any "taxpayer" has the right to comment. Petition at p 2. Again, PRESS has not challenged any aspect of the Director's Decision and therefore its argument provides no basis for Commission review.

In addition, USEC agrees that Section 553(e) of the APA permits any person to petition for changes to NRC rules and that any taxpayer has the right to "comment" on actions taken by the agency. The NRC has established procedures for the filing of such rulemaking petitions in 10 C.F.R. § 2.802, and letters of comment may be submitted at any time. Part 76 does not limit those rights in any way, but instead, properly limits petitions for Commission review of Director's Decisions to certain persons "whose interest may be affected" -- that is persons with "standing" to challenge the Director's Decision. As discussed in Section 1 above, that limitation is well-founded in NRC precedent and is well within the Agency's discretion.

3. **Petition to Open Up Commenting to "Any Interested" Person of the U.S. With No Limitations⁶**

PRESS does not provide any further discussion of this portion of its petition. Petition at p 2. However, it appears to repeat the objections discussed above. As with those objections, PRESS has not challenged the Director's Decision and has provided no basis for Commission review.

⁶/ This is identified as Objection 4 in the PRESS petition.

4. **Administrative Petition for Action to Hold Public Hearings
Nationally Regarding Continued Operation of the Gaseous
Diffusion Plants in Ohio and Kentucky⁷**

PRESS next argues that the NRC has "gone beyond its statutory scope" by "limiting" who can comment on the continued operation of the GDPs, and requests "national hearings" on the subject. In particular, PRESS states that neither the Energy Policy Act of 1992, subsequent legislation, nor the APA "create limitations" on who may comment, and that for various reasons, all U.S. taxpayers should have the right to comment. Petition at p.2. Once again, PRESS has not taken issue with any aspect of the Director's Decision and has provided no reason for the Commission to review that decision.

Furthermore, the NRC has acted well within its statutory authority. The Energy Policy Act broadly directed the NRC to issue "such standards as are necessary" to govern the GDPs and to "establish a certification process" to ensure that USEC complies with those standards. 42 U.S.C. § 2297f. The Energy Policy Act did not direct the NRC to craft those standards and processes in any particular way, consistent with the discretion typically provided by Congress to administrative agencies.⁸ The subsequent USEC Privatization Act⁹ also contained no such direction. The NRC has very broad discretion under the Atomic Energy Act and the APA to establish reasonable procedural requirements. In Kelley v. Selin, 42 F.3d 1511, the court stated:

In order to prevail on a claim that the NRC is bound
to conduct its proceedings in a particular manner, a

7/ This is identified as Objection 2 in the PRESS petition.

8/ Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 544 (1978) (a "very basic tenet of administrative law [is] that agencies should be free to fashion their own rules of procedure."); Siegel v. AEC, 400 F.2d 778, 786 (D.C. Cir. 1968).

9/ Uranium Privatization Act, Pub. L. 104-134, Title III, Subchapter A (1996).

petitioner "must point to a statute specifically mandating that procedure, for 'absent constitutional constraints or extremely compelling circumstances' courts are never free to impose on the NRC (or any other agency) a procedural requirement not provided for by Congress." [Citations omitted] "In fact, . . . the Atomic Energy Act of 1954 creates 'a regulatory scheme which is virtually unique in the degree to which broad responsibility is reposed in the administrative agency . . .'" [particularly with respect to the formulation of] its own rules of procedure and methods of inquiry. [Citations omitted]

Furthermore, while a "taxpayer" (or any other individual) may comment at any time on any aspect of NRC regulation, an individual's status as a taxpayer is not sufficient to establish the requisite "standing" that would permit a petition for Commission review under Section 76 62(c).¹⁰

10/ *E.g., Public Service Co. of New Hampshire* (Seabrook Station, Unit 2), CLI-84-6, 19 N.R.C. 975, 978 (1984); *Pathfinder*, 30 N.R.C. at 315; *Tennessee Valley Authority* (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 N.R.C. 1418, 1421 (1977). PRESS also raises a number of concerns about the use of "taxpayer dollars" for various purposes related to GDP operations, decommissioning and purchase of weapons-related uranium from the former Soviet Union. These economic concerns constitute a "generalized grievance," are outside the scope of NRC jurisdiction and should not be considered as part of the certification process. *Drake v. Detroit Edison Co.*, 453 F. Supp. 1123, 1130 and fn. 3 (D.C. W.D. Mich. 1978) (generalized economic concerns common to all members of the public do not satisfy requirements for standing), *citing U.S. v. Richardson*, 418 U.S. 166, 176-177 (1974); *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 N.R.C. 327, 332 (1983).

5. **Objection to the Finding of No Significant [Impact] Regarding USEC's Compliance Plan and that No Adverse Effects on the Environment Will Occur from the Continued Operation of the Gaseous Diffusion Plants in Reaching Compliance**

PRESS raises nine separate issues in this portion of its petition. Each of these is addressed below

a. Impacts of Privatization

PRESS states that USEC privatization will affect safety and the environment and will "severely inhibit" governmental oversight. Petition at p 3. Privatization will have no such effects. NRC regulations governing USEC's operation of the GDPs apply fully to USEC, regardless of whether it is a government-owned corporation or a privately-operated company. 10 C.F.R. §§ 76.1, 76.2 and 76.4 (the definition of the "Corporation" includes USEC and any other person authorized to operate the GDPs "pursuant to a plan for . . . privatization . . . approved by the President . . .").

Furthermore, privatization will not "severely inhibit" governmental oversight. On the contrary, NRC regulation of the GDPs under Part 76 represents the first time in the over 40-year history of these plants that they will be subject to independent nuclear safety and security regulation. USEC has not yet privatized and therefore the initial certification is the wrong forum for the NRC to consider the impacts of such privatization. Under 10 C.F.R. § 76.65, the NRC will be required to review and consent to USEC's transfer of control of the certificates of compliance before USEC's privatization and may, at that time, address any safety or environmental concerns that relate to the planned privatization.¹¹

^{11/} Also, contrary to PRESS' statements, DOE will in fact retain ownership of the GDPs,
(continued...)

b. "Fugitive Uranium Deposits"

PRESS next raises a general concern regarding "uranium deposits and the potential [for criticality]" Petition at p 4. The operation of the GDPs has been very successful with respect to nuclear criticality safety. In fact, there has never been a nuclear criticality accident in the over 100 years of their operation. The nuclear criticality safety (NCS) program, as described in the certification applications (Safety Analysis Report (SAR) Sections 5.2.2 and 5.2.3), explains the programmatic NCS controls for uranium deposits. In addition, Chapter 3 of the Portsmouth SAR (specifically Sections 3.1.1.13, 3.1.2.4, 3.1.2.6, 3.1.4.7, 3.3.1.3.1, and 3.3.1.3.2) describes the potential for deposit formation during operations and the operational controls that are in place to control deposits and potential deposit moderation.

Residual highly-enriched uranium (HEU) deposits in the Portsmouth enrichment cascade and supporting equipment are addressed in Section 3.7 of the Portsmouth SAR. The accident analysis sections of the SAR describe the substantial margin of safety that is provided by the enrichment and support systems when deposits are present.¹² These sections show that any remaining deposits from DOE operations will not compromise nuclear criticality safety.

^{11/} (...continued)

even after privatization. 42 U.S.C. § 2297c-2. PRESS also states that "limits on public oversight . . . ha[ve] already occurred" and that USEC "refused to publish waste stream outputs stating that this is a 'corporate secret.'" Petition at p.4. USEC assumes that this comment refers to certain information on the volume of waste and depleted uranium it generates -- which USEC originally sought to exempt from public disclosure under the Freedom of Information Act. That information has now been fully disclosed in both applications, in the Depleted Uranium Management Plans and the Decommissioning Funding Program Descriptions.

^{12/} Portsmouth SAR Sections 4.1, 4.3, Chapter 4 Appendix C; Paducah SAR Sections 4.4.1, 4.4.3, Chapter 4 Appendix A.

Furthermore, due to the nature of diffusion cascade operational requirements, there is no potential for any significant increase in "fugitive deposits" due to the age of the plant. The gaseous diffusion process does not function adequately in the presence of large deposits. Finally, as described in the SAR, deposit moderation (which is necessary for criticality) is prevented by the UF_6 gas environment. The Director reviewed these aspects of USEC's applications and found them sufficient in Section 5.2.2 and Chapter 6 of the CERs.

c. "Synergistic" Impacts

PRESS next states that the NRC has not reviewed the "synergistic" impacts of asbestos, lead, heavy metals, and uranium contamination. Petition at p. 4. While toxicological synergistic effects have been demonstrated for some combinations of complex chemicals (such as the organic compounds in pesticides and herbicides)¹³, synergistic effects between the less complex inorganic compounds and chemicals used at the GDPs have not been identified in standard toxicology texts, such as Cassarett and Doull's Toxicology, The Basic Science of Poisons, or The Handbook of Experimental Pharmacology, XXXVI¹⁴.

As discussed in the response to PRESS' Objection 5 f, there is no evidence to suggest that the past 40 years of plant operation have resulted in any adverse health impacts in the areas surrounding the plants. Any real and significant synergistic effects from exposures to chemicals from the plants or from any other source in the area, such as other industries, should already have manifested themselves as observable health impacts. Since no such impacts have been

^{13/} Doull, J., Klassen, K.D., and Amdur, M.O., Cassarett and Doull's Toxicology, The Basic Science of Poisons, Second Edition.

^{14/} Hodge, H.C., Stannard, J.N., Hursh, Handbook of Experimental Pharmacology, Uranium, Plutonium, Transplutonic Elements, Springer-Verlag, New York, 1973, pp. 12-56.

observed, and since documented synergistic effects for exposures to chemicals used at the GDPs have not been found, further study to evaluate such synergistic effects is unwarranted.

PRESS specifically mentions asbestos, lead, and heavy metals. While USEC has programs to ensure compliance with applicable Occupational Safety and Health Administration (OSHA) and Environmental Protection Agency (EPA) requirements relating to such materials, the NRC does not have jurisdiction over these non-radiological materials. NRC/OSHA "Memorandum of Understanding With Respect to the Gaseous Diffusion Plants," 61 Fed. Reg. 40,249 (Aug. 2, 1996). Thus, PRESS' argument is beyond the scope of the NRC's jurisdiction.

The toxicology of the chemicals used at the GDPs is well-known, well-documented, and as required by OSHA's Hazards Communication Standard (29 C.F.R. § 29.1910.1200), well-communicated to employees. Material Safety Data Sheets (MSDS) are readily available for employee use, employees are trained in their use, and employees are routinely monitored for exposure to hazardous chemicals. Respiratory protection for chemical and radiological exposures is provided in accordance with the respiratory protection program. Section 3.23 of the Technical Safety Requirements specifies measures for worker protection from UF₆ process hazards. Radiation Protection and Chemical Safety Programs are presented in Sections 5.3 and 5.6 of the SARs. The Director reviewed these aspects of the applications and found them acceptable in Sections 7 and 10 of the CERs.

d. Aging and Impacts on "Major Bodies of Water"

PRESS next states that the GDPs should immediately begin decommissioning or, at a minimum, that USEC should be required to immediately provide an "agenda on full decommissioning" (presumably a full decommissioning plan). Petition at p. 5. With one very

limited exception, DOE, not USEC, has the responsibility for decommissioning the GDPs once their operations are terminated.¹⁵ Furthermore, shutdown and decommissioning of the GDPs would be directly contrary to the underlying purposes for which Congress established USEC, including among other things, the maintenance of a reliable and economical domestic source of uranium enrichment services. 42 U.S.C. § 2297a(8)

PRESS also raises unsupported claims regarding the impact of the Portsmouth plant on aquifers and other bodies of water. *Id.* The subsurface hydrology of the Portsmouth plant is thoroughly described in Section 2.5 of the Portsmouth SAR and was reviewed by the Director in Section 2.4 of the Portsmouth CER. The facilities operated by USEC at Portsmouth are located on an old river valley that was filled in by low-permeability glacial deposits. Contrary to PRESS' statements, these deposits beneath the site do not make up the major regional aquifer. As described in Section 2.5.1.1 of the Portsmouth SAR, the major regional aquifer is the sand and gravel glacial deposits of the Scioto River, located west of the Portsmouth site. The subsurface hydrology of the site has been extensively studied and characterized by DOE in the remedial studies. In addition, DOE continues to implement an extensive groundwater monitoring program for the site, which includes sampling of off-site residential wells. As stated in Portsmouth SAR Section 2.5.2.3, monitoring of springs and private wells near the Portsmouth site has not detected levels of uranium, technetium, total alpha, or total beta above background to date. Therefore, the potential for groundwater contamination has been adequately investigated.

^{15/} Lease Agreement between the United States Department of Energy and the United States Enrichment Corporation, Section 4.6; Portsmouth and Paducah CERs, Chapter 14.

In light of this information, PRESS' speculation that significant groundwater contamination is "highly possible" (Petition at p. 5) provides no basis for Commission review.

e. Financial Resources for Decommissioning

PRESS states that the GDPs should not be permitted to continue operations "without secure financial resources for clean-up." Petition at p. 5. The requisite financial assurance for decommissioning exists. The U.S. government (through DOE) has the bulk of the financial responsibility for decommissioning (42 U.S.C. § 2297c-2(d)), and Congress has established specific provisions to assure that adequate funds will be available for that purpose (42 U.S.C. § 2297g). With respect to those limited aspects of decommissioning that are USEC's financial responsibility, USEC has provided the requisite financial assurance in accordance with 10 C.F.R. § 76.35(n) and will be required to provide further, specific financial assurance guarantees prior to privatization. USEC's financial assurance arrangements were described in its applications, are in full compliance with NRC regulations, and were reviewed and approved by the Director in Chapter 14 of the CERs.

f. Adverse Health Effects

PRESS alleges that serious adverse health effects have occurred from offsite historical and current releases from the Portsmouth plant and that NRC, DOE and USEC have not adequately addressed those effects. Petition at p. 5. PRESS first references a recent report issued by ten Ohio "health planning agencies" and states that the report found "significant elevated cancer rates" in nine contiguous counties in southwestern Ohio and that "six of these counties lie along the Ohio River." Petition at p. 5.

The study mentioned by PRESS is apparently the Ohio Mortality Mapping Study completed in May 1996¹⁶. USEC has reviewed the Mapping Study and disagrees with PRESS' conclusions and implications. The Mapping Study gives a cancer death rate of 151 to 165 per 100,000 persons for 16 of Ohio's 88 counties, as compared to a State-wide average of 144 per 100,000. While these findings indicate higher relative cancer rates in these portions of the State, nothing in PRESS' petition or in the Mapping Study indicates any connection between those rates and the Portsmouth plant. The Mapping Study presented no conclusions as to the significance of the findings. Though PRESS states that six of these counties with "elevated" cancer rates lie along the Ohio River (listing the four counties down river from the plant's watershed area), it fails to mention that Pike County, where the Portsmouth plant is located, is not one of the nine counties with the higher rates. Pike County cancer mortality rates (137 to 151 per 100,000) are consistent with the State average. PRESS also fails to note that higher mortality rates can be found in counties along the Ohio River that are well upstream of the plant's watershed.

USEC has consulted with the professional staff of the American Cancer Society regarding estimated cancer death rates for 1996¹⁷. According to the American Cancer Society, the estimated mortality rate for cancer in Ohio is 180 per 100,000. By comparison, the cancer mortality rate for Kentucky is 192 per 100,000 and 126 per 100,000 for Utah. Considering the

^{16/} "Ohio Mortality Mapping Study," Prepared by Ohio's Health Service Agencies (HSAs) through The Ohio Association for Areawide Health Planning, Inc. (OAHPI), May 10, 1996.

^{17/} "Cancer Facts & Figures - 1996," American Cancer Society, 1996.

wide range in mortality rates nationwide, the county-to-county differences within Ohio are not significant

In fact, a July 1990 study by the National Cancer Institute¹⁸ failed to show a statistically significant impact from Portsmouth plant operations. The overall conclusion to be drawn from the epidemiology associated with the Portsmouth plant, is that plant operations have not adversely impacted the health of the surrounding communities

PRESS rejects, without basis, the study conducted by the Agency for Toxic Substances and Disease Registry (ATSDR)¹⁹, an agency of the U.S. Department of Health and Human Services, as too "narrow." Petition at p.5. The ATSDR study examined cancer mortality in Pike, Scioto, Adams, Highland, Ross, Finton, and Jackson counties. The Portsmouth plant is located entirely within Pike County, and Scioto County lies between the plant and the Ohio River. The ATSDR study reviewed data compiled by the Centers for Disease Control and Prevention, and the National Center for Health Statistics, Office of Analysis and Epidemiology.

ATSDR's report notes, among other things, that Scioto County, but not Pike County, appears to have slightly higher mortality rates for cancer, but that when the data is age-adjusted for the population, the cancer rate falls in line with the rest of the state. ATSDR Study at p. 36. The ATSDR report concludes that "the Portsmouth Gaseous Diffusion Plant and its operations

18/ Jablon, S., Hrubec, Z., Boice, J. D., Stomr. B. J., Cancer in Populations Living Near Nuclear Facilities, Volume 3, Individual Facilities : Cancer by 5-Year Time Intervals, National Cancer Institute, July, 1990, Table 2-A 8.

19/ "Public Health Assessment for US DOE Portsmouth Gaseous Diffusion Plant, Piketon, Pike County, Ohio, Cerclis No. OH7890008983," U.S. Department of Health and Human Services, Public Health Service, Agency for Toxic Substances and Disease Registry, December 19, 1995.

represent no apparent hazard to human health." ASTDR Study at p. 39. This report was provided to the EPA and was issued for public comment. The comment period expired in February 1996, and the report may be modified in some fashion as a result of public comments. However, clearly the report did not find any basis for concluding that Portsmouth plant operations are the cause of higher cancer rates in some of the surrounding counties.

g. Offsite Releases and Impacts

PRESS states that an AFL-CIO study reported that "12 deaths from cancer of workers at the Portsmouth GDP were affirmed to be linked to occupational exposures at the plant". Petition at p. 5. USEC has not been able to find a copy of that report to evaluate the basis for this conclusion. If validated by appropriate peer review, such a conclusion would have received substantial attention in the scientific community. A search of references to BEIR IV²⁰, which conducted an extensive review of the epidemiological literature, failed to reveal a citation to the referenced study. A valid study that presented such strong evidence should clearly have been included in one of the more authoritative publications by a nationally recognized body. In any event, PRESS' mere reference to this study is not a sufficient basis for the Commission to review the Director's Decision.

It is possible that by 1961, 12 workers at the Portsmouth Plant may have died from cancer and that some of these workers were exposed to radioactive materials and low levels of radiation. However, this is merely an association. USEC objects strongly to the contention that the relationship is causal and suggests, based on a number of studies of the Portsmouth plant and

^{20/} National Research Council, Health Risks of Radon and Other Internally Deposited Alpha Emitters, BEIR IV. National Academy Press, Washington, D.C., 1980. pp. 290-302.

other facilities, that it is not. Our experience suggests that once the study is corrected for the numerous confounding factors such as diet, smoking, life style, and age, the effect will vanish.

PRESS also alleges that DOE failed to report a significant offsite UF_6 release that occurred in the mid 1970s. Section 4.2 of the Portsmouth SAR (specifically Table 4.2-1) does, in fact, discuss the event in question, in which a 14-ton liquid UF_6 cylinder was dropped from a straddle carrier and ruptured, releasing a large portion of the cylinder's contents. No health effects to members of the offsite public were reported or observed, there were no irreversible health effects observed in on-site workers exposed to the release, and there was minimal impact to the environment. As a consequence of the accident, maintenance practices for the straddle carriers were improved, administrative controls to enhance safety were implemented, and subsequently, procedures were revised to prohibit the movement of liquid UF_6 cylinders using straddle carriers.²¹

UF_6 releases that have occurred at the GDPs have been previously identified and evaluated as described in Section 4.2 of the Portsmouth SAR and Section 4.1 of the Paducah SAR. In rendering his decision, the Director considered the history of operation of the GDPs, including the UF_6 releases that have occurred. CERs Section 1.5. Consequently, past releases of UF_6 at the GDPs have already been fully identified and evaluated as a basis of the Director's Decision and there is no basis for the Commission to review that decision.

h. Bedrock Fractures and Groundwater Contamination

PRESS next states that an April 1990 EPA report indicates that there are groundwater migration pathways different than those covered by the existing monitoring well network.

^{21/} Portsmouth SAR Sections 3.2.7 and 4.2.3.1, Portsmouth CER Sections 4 and 5.2.1.

Petition at p 6. USEC understands that contamination migration issues due to horizontal and vertical bedrock fractures were discussed in an April 1990 DOE report²², and that since that time, DOE has installed numerous piezometers and monitoring wells in the bedrock in order to determine groundwater flow patterns and to look for contamination. As reflected in USEC's applications and the Staff's CERs, however, groundwater monitoring at the GDPs is DOE's responsibility, not USEC's, and is therefore outside the scope of the certification process. SAR Section 2.2.3, CER Section 2.2

i. Connection to High-Level Waste Policy

PRESS next states that continued operation of the GDPs will create additional high-level waste as a result of the operation of commercial nuclear power plants fueled by enriched uranium from the GDPs. Petition at p 6. This argument again does not challenge any particular aspect of the Director's Decision. Furthermore, the NRC has evaluated this issue in its generic Waste Confidence Proceeding and has concluded, among other things, that there is reasonable assurance that:

"safe disposal of high-level radioactive waste and spent fuel . . . is technically feasible; . . . high-level radioactive waste and spent fuel will be managed in a safe manner until sufficient repository capacity is available . . . ; [and] if necessary, spent fuel . . . can be stored safely and without significant environmental impacts for at least 30 years beyond [the licensed life for reactor operation]"

Rulemaking on the Storage and Disposal of Nuclear Waste, (Waste Confidence Rulemaking),

CLI-84-15, 20 N.R.C. 288, 293 (1984); 55 Fed. Reg. 38,474 (Sept. 18, 1990) (emphasis added)

Based upon the results of the Waste Confidence Proceeding, the NRC has rejected contentions

²²/ "Environment, Safety, and Health Compliance Assessment of the Portsmouth Gaseous Diffusion Plant," U.S. Department of Energy, April 1990.

addressing the long-term management of spent fuel in individual licensing proceedings, and should do so here. *E.g.* Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-86-21, 23 N.R.C. 849, 871 (1986). Furthermore, the federal courts have interpreted the AEA such that the NRC need not withhold licensing actions pending final determinations on the permanent storage of high-level radioactive waste. NRDC v. NRC, 582 F.2d 166, 175 (2d. Cir. 1978).

PRESS also comments on the purchase of HEU from the former Soviet Union and on USEC's sales in the international market. Petition at p. 6. PRESS recognizes that these issues are "more political in nature than regulatory . . ." *Id.* Regardless of how they are characterized, they are not related to the Director's Decision on the safety, safeguards and regulatory compliance of the GDPs, and provide no basis for Commission review.

6 **Objection to Tacit and Unreviewed Acceptance of DOE
Overseeing Nuclear Safety Currently and During the
Transition Period to Slated Full Privatization of the USEC**

PRESS argues that the NRC should, as part of the certification process, evaluate DOE oversight of the GDPs due to perceived DOE management and oversight "failures" across the DOE complex. Petition at pp. 6-7. Congress required USEC to lease the GDPs for a period of six years beginning on July 1, 1993, but gave the NRC two years to establish standards for the certification of the plants and additional time to complete the certification process and assume regulatory oversight. Statements of Consideration, 59 Fed. Reg. at 48,948. As the NRC has recognized, under the Energy Policy Act, "[d]uring the interim period, DOE has oversight responsibility for the GDPs . . ." *Id.* Thus, Congress has determined that DOE will oversee nuclear safety and safeguards during this interim period and the NRC has no authority to review

or modify that decision. Furthermore, PRESS' argument misperceives the purpose of the certification process, which is to "ensure that the Corporation complies with [the] standards established" by the NRC to protect public health and safety and provide for the common defense and security, and not to assess the effectiveness of prior DOE oversight activities²³ 42 U.S.C. § 2297f(c). Therefore, PRESS has provided no basis for Commission review.

7. **PRESS Final Comments and Request for Information**

Finally, PRESS requests that the NRC explain and clarify various aspects of the regulatory program governing operation of the GDPs, including the respective roles and responsibilities of the NRC and DOE, and responsibility for releases, clean-up, waste disposal and enforcement of environmental monitoring and compliance. Petition at p. 7. PRESS' requests for information do not challenge the Director's Decision and do not provide any basis for the Commission to review that decision.

IV. **CONCLUSION**

The Director has issued a well-supported and documented decision based upon a thorough evaluation of USEC's applications, its responses to Staff questions, public comments and other information in the record. PRESS lacks standing to challenge that decision and its petition provides no basis for the Commission to question the Director's determination. For the reasons stated above, USEC respectfully requests that the PRESS petition for Commission review be denied.

^{23/} In fact, Congress has specifically stated that the NRC "shall limit its finding . . . to a determination of whether the facilities are in compliance with the standards established . . ." by the NRC. 42 U.S.C. § 2297f(c)(4)(C).

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

U. S. ENRICHMENT CORPORATION

(Paducah, Kentucky and Piketon, Ohio)

Docket No.(s) 70-7001/7002

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing RESPONSES (5) TO PETITIONS... 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 Sec. 2.712.

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Docket No.(s)70-7001/7002
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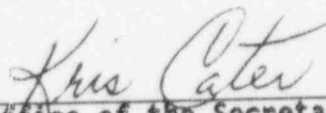
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