

September 19, 1996

Mr. Valdas V. Adamkus
Regional Administrator
United States Environmental Protection Agency
Region V
77 West Jackson Boulevard
Chicago, IL 60604-3507

Dear Mr. Adamkus:

In accordance with the Energy Policy Act of 1992 (the Act), the Nuclear Regulatory Commission has issued its initial certification decision for the United States Enrichment Corporation (USEC) to operate the gaseous diffusion plant near Portsmouth, Ohio. NRC intends to assume regulatory jurisdiction over the plant from the Department of Energy on March 3, 1997.

The Act requires the NRC to report annually to Congress on the health, safety, and environmental conditions as well as consult with the EPA with regard to the certification of the plant. We appreciated the EPA comments provided by Mr. George Czerniak in his letter dated February 29, 1996, which we considered in the certificate review. We will contact EPA again in 1997 when we prepare the first annual report to Congress.

Enclosed is a copy of the Federal Register Notice announcing the certification decision.

If you would like additional information, please contact Ms. Merri Horn of my staff at (301) 415-8126.

Sincerely,

Original Signed By

John W. N. Hickey, Chief
Enrichment Branch
Division of Fuel Cycle Safety
and Safeguards

Enclosure: Federal Register Notice

cc: M. Barger-Garvey w/enclosure
M. MacMullen w/enclosure
G. Czerniak w/enclosure

Docket No. 70-7002

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[Docket Nos. 70-7001; 70-7002]

Notice of Certification Decision for U.S. Enrichment Corporation To Operate Gaseous Diffusion Plants and Finding of No Significant Impact

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Certification of gaseous diffusion plants.

SUMMARY: The U.S. Nuclear Regulatory Commission is issuing a certification decision for the U.S. Enrichment Corporation (USEC) to operate the two gaseous diffusion plants (GDPs) located at Paducah, Kentucky, and at Piketon, Ohio. NRC is also issuing a Finding of No Significant Impact (FONSI) concerning NRC's approval of the compliance plan prepared by the U.S. Department of Energy (DOE) and submitted by USEC.

FOR FURTHER INFORMATION CONTACT: Ms. M.L. Horn, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-8126; Mr. C. B. Sawyer, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-8174.

SUPPLEMENTARY INFORMATION:

Background

The President signed H.R. 776, the Energy Policy Act of 1992 (the Act), into law on October 24, 1992. The Act amended the Atomic Energy Act of 1954, to establish a new government corporation, the U.S. Enrichment Corporation (USEC), for the purpose of operating the uranium enrichment enterprise owned and previously operated by the DOE. The Act provided that within two years after enactment of the legislation, NRC would promulgate standards that apply to USEC's operation of its GDPs at Paducah, KY, and Piketon, OH, to protect public health and safety from radiological hazards, and to provide for the common defense and security. The Act directed the NRC to establish and implement an annual certification process under which the GDPs would be certified by the NRC for compliance with these standards. For areas where plant operations are not yet in compliance, the Act provided for a compliance plan prepared by the DOE. The Act also required NRC to report annually to the Congress on the status of the GDPs.

On February 11, 1994 (59 FR 6792), the Commission published for comment a proposed new Part 76 to Chapter I of Title 10 of the *Code of Federal*

Regulations (CFR), establishing requirements and procedures for the certification process. After NRC review and consideration of public comments, the final rule was published on September 23, 1994 (59 FR 48944). Part 76, "Certification of Gaseous Diffusion Plants," includes procedural requirements, generally applicable NRC health and safety standards, technical safety requirements, and safeguards and security requirements specific to the GDPs.

DOE currently continues nuclear safety, safeguards, and security oversight of the GDPs. DOE retains ownership of the facilities and will be responsible for eventual decommissioning of the sites.

USEC submitted its initial certification application on April 18, 1995. NRC's preliminary review of the initial application determined that it did not adequately address the standards NRC had established for the GDPs and did not contain enough information for NRC to determine compliance with 10 CFR Part 76. Therefore, by letter dated May 5, 1995, NRC formally rejected the initial application and notified USEC that it had to submit a revised application. NRC's decision to reject the application was not a determination that the operation of these plants was unsafe or in noncompliance.

USEC submitted a revised certification application on September 15, 1995, and a revised, DOE-prepared compliance plan on November 6, 1995. The application package includes: a safety analysis report; a quality assurance program; technical safety requirements; an emergency plan; an environmental compliance status report; a nuclear material control plan; a transportation protection plan; a physical protection plan; a security plan for protection of classified matter; a waste management program; a decommissioning funding program; environmental information; and a DOE-prepared compliance plan. The NRC staff requested additional information and revisions to the certification application and the compliance plan, and USEC responded during the period from October 1995 through August 1996.

The application and all related non-proprietary, unclassified supporting information and correspondence are available for public inspection and copying at the Commission Public Document Room (PDR), 2120 L Street, NW, Washington, DC 20555, and at the Local Public Document Rooms (LPDRs), under Docket No. 70-7001, at the Paducah Public Library, 555 Washington Street, Paducah, Kentucky,

42003; and under Docket No. 70-7002, at the Portsmouth Public Library, 1220 Gallia Street, Portsmouth, Ohio, 45662.

Notice of receipt of the application appeared in the *Federal Register* (60 FR 49026) on September 21, 1995, allowing for a 45-day public comment period on the application and noticing public meetings to solicit public input on the certification. A second notice appeared in the *Federal Register* (60 FR 57253) on November 14, 1995, providing for a 45-day public comment period on the compliance plan. Public meetings were held on November 28, 1995, at the Vern Riffe Joint Vocational School in Portsmouth, Ohio, and on December 5, 1995, at the Paducah Information Age Park Resource Center in Paducah, Kentucky. Eleven comment letters were received. Comments received during the comment period, together with transcripts of the public meetings, are available in the PDR and the LPDRs, and were reviewed and considered by the staff during the certification evaluation. The staff responses to the public comments are also available in the PDR and the LPDRs.

As required by the Energy Policy Act, NRC consulted with the U.S. Environmental Protection Agency (EPA) about certification. EPA did not identify any significant compliance issues.

The USEC Privatization Act, contained in Public Law 104-134, was signed into law on April 26, 1996. Among other provisions, it amended the Atomic Energy Act requirement for an annual application for certification to require instead a periodic application, as determined by the Commission, but not less than every five years. Also, as required by the USEC Privatization Act, NRC and the Occupational Safety and Health Administration developed a Memorandum of Understanding (MOU) describing coordination of their regulatory activities at the GDPs to ensure worker safety. This MOU was published in the *Federal Register* on August 1, 1996 (61 FR 40249).

Certification Decision of the Director, Office of Nuclear Material Safety and Safeguards

The NRC staff has reviewed the certification application and the DOE-prepared compliance plan submitted by USEC, and concluded that, in combination with certificate conditions, they provide reasonable assurance of adequate safety, safeguards, and security, and compliance with NRC requirements. Therefore, the Director, Office of Nuclear Material Safety and Safeguards (Director) is prepared to issue a Compliance Certificate and a compliance plan approval for each

plant. The staff has prepared a Compliance Evaluation Report, for each plant, which provides details of the staff's evaluations, bases for certificate approval, and responses to public comments. The proposed Compliance Certificates and Compliance Evaluation Reports are available in the PDR and the LPDRs.

The initial certificates will be issued for an effective period of approximately 2 years, with expiration dates of December 31, 1998. This is consistent with the new provision in Public Law 104-134, the USEC Privatization Act, which amended Section 1701(c)(2) of the Atomic Energy Act replacing the requirement for an annual application for a certificate of compliance with a requirement for an application to be filed "periodically, as determined by the Commission, but not less than every five years."

The staff believes that two years is a reasonable period for the first certificates of compliance; in two years significant progress will be made in implementing plant improvements specified in the compliance plan. Therefore, USEC will receive an exemption from the requirements in §§ 76.31 and 76.36 to submit an annual application for certificate renewal in 1997. USEC will be required to file an application for renewal of the certificates of compliance by April 15, 1998.

The requirements in §§ 76.31 and 76.36 for an annual application were based on the previous statutory requirement for an annual application, which has been superseded. Therefore the exemptions from these requirements are justified under § 76.23, which specifically allows the NRC to grant such exemptions from the requirements of Part 76 as it determines are authorized by law and will not endanger life, property, or the common defense, and are otherwise in the public interest. The exemptions meet these criteria.

Transition of Regulatory Authority

The certificates of compliance will become effective and the NRC will assume regulatory authority over the GDPs on March 3, 1997, following a transition period. This transition period will give USEC time to revise procedures and train employees on the approved application. DOE will continue regulatory oversight during the transition period until NRC assumes jurisdiction.

Opportunity To Petition for Review

USEC or any person whose interest may be affected, and who submitted written comments in response to the

Federal Register Notice on the application or compliance plan, under § 76.37, or provided oral comments at any meeting held on the application or compliance plan conducted under § 76.39, may file a petition, not exceeding 30 pages, requesting review of the Director's certification decision. The petition must be filed with the Commission not later than 15 days after publication of this **Federal Register Notice**. Any person described in this paragraph may file a response to any petition for review, not to exceed 30 pages, within 10 days after the filing of the petition. Unless the Commission grants the petition for review or otherwise acts within 60 days after the publication of this **Federal Register Notice**, the initial decision on the certificate application or compliance plan will become final. If no petition is received within the designated 15-day period, the Director will issue final Compliance Certificates.

Finding of No Significant Impact

As specified in 10 CFR § 51.22(c)(19), an environmental assessment is not required for the certificates of compliance, themselves. However, the associated compliance plan describes how and when the plants will be brought into compliance with NRC requirements in instances where compliance is lacking at the time of certification. The staff has prepared the following environmental assessment on the compliance plan:

Environmental Assessment

Identification of Proposed Action

The proposed action is the approval of the compliance plan associated with certification of the GDPs. Approving the compliance plan would authorize the GDPs to operate for a limited period before achieving full compliance with NRC's requirements.

The Need for Action

Section 1701(d) of the Atomic Energy Act of 1954, as amended by the Energy Policy Act of 1992, states that the GDPs may not be operated by the Corporation unless the NRC " * * * makes a determination of compliance * * * or approves a plan...for achieving compliance." Thus, NRC approval of the compliance plan is necessary to meet the requirement specified by the statute.

Environmental Impacts of the Action

The staff has evaluated all the compliance plan issues with regard to their environmental impacts. Individual issues or areas of noncompliance were evaluated to determine whether they could produce any changes to routine

air and water emissions, or any uncontrolled releases, or otherwise adversely affect the environment.

The majority of the issues or areas of noncompliance identified in the compliance plan involve activities by USEC to upgrade plant programs, procedures, and equipment to conform to applicable NRC requirements. Continued operation under existing plant programs and procedures, by itself, will not have a negative impact on the level of effluents from plant operations or otherwise adversely affect the environment.

The only issue identified with regard to plant programs and procedures that may relate to the quality of the environment is "Environmental Trending Procedures" for the Paducah plant. This compliance plan issue will ensure that all environmental data will be evaluated for trends to identify long-term changes in the environment that may result from plant operations. The staff has examined the current practices at the plant for reviewing environmental data for any unusual results that might indicate an increase in radiological releases from the Paducah Plant or in the dose to members of the public. The staff finds the current practices to be acceptable until new procedures are established, in accordance with the plant procedure upgrade program, to evaluate all environmental data for trends.

Plant equipment upgrades should better ensure confinement of UF₆ and other effluents during normal and accidental conditions, and, therefore, will maintain or reduce the levels of effluents from plant operations. The staff has examined the two specific items of noncompliance that relate to effluents: "HEPA Filter System Testing" for both the Portsmouth and Paducah plants, and "High-Volume Ambient Air Samplers" for the Paducah plant.

Not all High Efficiency Particulate Air (HEPA) filters have in-place efficiency performance testing in accordance with American National Standards Institute Standard N510. Although the failure of the HEPA filters to perform properly could affect airborne radionuclide emissions, no significant environmental releases to the ambient air have been detected, in over ten years, that were attributed to HEPA filter failure. As reported in the USEC Environmental Compliance Status Report, the maximum dose to a member of the public from radionuclide air emissions for the Portsmouth plant in 1994 was 0.006 mSv (0.06 mrem) and for the Paducah plant in 1994 was 0.0016 mSv (0.016 mrem), both well within the EPA 1 mSv (10 mrem) limit in 40 CFR Part

61. The staff concludes that the "HEPA Filter System Testing" noncompliance will not significantly affect the quality of the human environment.

Although the new high-volume air sampling system has been in operation at the Paducah plant since August 1995, sufficient data to establish the capabilities of the system and to establish baseline radionuclide concentrations at the station have not been completed. Data from the new high-volume air sampling system will help confirm the accuracy of data on annual radionuclide air emissions. However, since maximum doses from Paducah annual radionuclide air releases have been in the range of 0.0016 mSv (0.016 mrem), well within the EPA regulatory limit, the staff concludes that the unavailability of data from the new high-volume air sampling system will not significantly affect the quality of the human environment.

More detailed information on the staff's evaluation is contained in the Compliance Evaluation Reports, which have been placed in NRC's PDR and in the LPDRs located in Paducah, Kentucky, and Portsmouth, Ohio.

Alternatives to the Proposed Action

The proposed action to approve the compliance plan, along with the approval of the certification application, would authorize USEC to continue operations of the GDPs under NRC regulatory oversight.

The "No Action" alternative would be to withhold approval of the compliance plan. Under this alternative, the GDPs would be shut down, or would continue to operate under DOE regulatory oversight until compliance is achieved.

Agencies and Persons Consulted

In reviewing the certification application and compliance plan, and in accordance with the Energy Policy Act of 1992, the staff consulted with EPA. EPA did not identify any major concerns associated with the certification action or approval of the compliance plan.

Conclusion

Based on the foregoing assessment, the NRC staff concludes that the environmental effects of approving the compliance plan will be insignificant. The staff believes that the compliance plan is sufficient to ensure that, during the interim period of noncompliance, plant operation related to areas of noncompliance will not significantly affect the quality of the human environment.

Finding of no Significant Impact

On the basis of this assessment, the staff has concluded that environmental impacts that would be created by this action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The Environmental Assessment and the documents related to this proposed action are available for public inspection and copying at the Commission's PDR and LPDRs.

Dated at Rockville, Maryland, this 16th day of September, 1996.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 96-24019 Filed 9-18-96; 8:45 am]

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