

VOID SHEET

TO: License Fee Management Branch

FROM: RIII - Kevin Nelli

SUBJECT: VOIDED APPLICATION

Control Number: 00208

Applicant: Hoechst Marion Roussel

License Number: 24-15595-01

Docket Number: 030-09415

Date Voided: 5/22/97

Reason for Void:

Financial Assurance review. Licensee's instrument accepted, amendment not required.

Kevin A. Nelli  
Signature

5/29/97  
Date

Attachment:  
Official Record Copy of  
Voided Action

FOR LFMB USE ONLY

- ☐ Refund Authorized and processed
- ☐ No Refund Due
- ☒ Fee Exempt or Fee Not Required

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Log completed ☒

Processed by: JAC

6/11/97  
APR 13 III  
5497

0/1  
ML  
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SD

180300

9706190025 970529  
PDR ADGCK 03009415  
B PDR



BETWEEN:

LICENSE FEE MANAGEMENT BRANCH, ARM  
AND  
REGIONAL LICENSING SECTIONS

(FOR LFMS USE)  
INFORMATION FROM 12

PROGRAM CODE: 03620  
STATUS CODE: 0  
FEE CATEGORY: 3M  
EXP. DATE: 19990331  
FEE COMMENTS:  
DECOM FIN ASSUR-RECDT-Y  
.....

LICENSE FEE TRANSMITTAL

A. REGION

1. APPLICATION ATTACHED  
APPLICANT/LICENSEE: MARION MERRELL DOW INC.  
RECEIVED DATE: 950301  
DOCKET NO: 3009415  
CONTROL NO.: 300208  
LICENSE NO.: 24-15595-01  
ACTION TYPE: AMENDMENT

2. FEE ATTACHED  
AMOUNT: 0  
CHECK NO.: 12

3. COMMENTS

SIGNED  
DATE

*D. Hersey*  
3-7-95

B. LICENSE FEE MANAGEMENT BRANCH (CHECK WHEN MILESTONE 03 IS ENTERED /\_/\_/)

1. FEE CATEGORY AND AMOUNT: \_\_\_\_\_

2. CORRECT FEE PAID. APPLICATION MAY BE PROCESSED FOR:  
AMENDMENT \_\_\_\_\_  
RENEWAL \_\_\_\_\_  
LICENSE \_\_\_\_\_

3. OTHER \_\_\_\_\_  
\_\_\_\_\_

SIGNED  
DATE

\_\_\_\_\_  
\_\_\_\_\_

MAY 22 1997

Pamela A. Barton  
Radiation Safety Officer  
Hoechst Marion Roussel  
P. O. Box 9627  
Kansas City, MO 64134-0627

Dear Ms. Barton:

We have completed our review of your decommissioning financial assurance documents dated March 1, 1995, and subsequent submittals dated November 16, 1995, received November 20, 1995, dated April 1, 1996, November 8, 1996 and April 28, 1997. Within the scope of our review, no further deficiencies were identified. If additional information is required, we will contact you.

In addition, you will note that we are returning a number of financial assurance documents you previously submitted. These documents were replaced by submittals listed in the preceding paragraph, and include the following: (1) Letter of Credit Number SB 13136, (2) Amendment to Letter of Credit Number SB 13136, and (3) Letter of Credit Number 005103.

If you have any questions, please do not hesitate to call Kevin Null of my staff at (630) 829-9854.

Sincerely,

Original Signed By  
Cassandra F. Frazier, Acting Chief  
Nuclear Materials Licensing Branch

License No. 24-15595-01  
Docket No. 030-09415

DOCUMENT NAME: M:\03009415.DE7

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OFFICE	DNMS/RIII	C		C					
NAME	KGNUL:jaw	CN	chaz						
DATE	05/21/97		5/21/97						

OFFICIAL RECORD COPY

## CONVEATION RECORD

TIME

(time)

DATE

5/6/97

☐ VISIT☒ CONFERENCE☐ TELEPHONE☐ INCOMING☐ OUTGOING

NAME OF PERSON(S) CONTACTED OR IN CONTACT

ORGANIZATION (OFFICE, DEPT. ETC.)

TELEPHONE NO.

Steve Lewis, OGC

## SUBJECT

Hoechst Marion Rousell's 4/28/97 response to our 3/24/97 def. letter

## SUMMARY

Steve reviewed item 3 of the licensee's response and stated he felt their response should be deemed adequate, and the matter resolved re: the acceptability of their financial assurance.

## ACTION REQUIRED

NAME OF PERSON DOCUMENTING CONVERSATION

Kevin G. Null

SIGNATURE

Kevin G. Null

DATE

5/7/97

## ACTION TAKEN

SIGNATURE

TITLE

DATE

**Hoechst Marion Roussel**

Hoechst Marion Roussel, Inc.

10236 Marion Park Drive  
Mail: P.O. Box 9627  
Kansas City, MO 64134-0627  
Telephone: (816) 966-5000

April 28, 1997

United States Nuclear Regulatory Commission  
Region III  
Attention: Kevin Null  
Lisle, Illinois 60532-4351

300208

Dear Mr. Null,

You will find enclosed documentation to address the requests made in correspondence dated March 24, 1997.

Items number 1 and 2 of this correspondence dealt with the Standby Trust Agreement. The Standby Trust Agreement was modified to incorporate the changes. Two original documents with original signatures are provided.

To address item number 3, a Certified Copy of Corporate Resolutions is enclosed.

If there are any questions, please feel free to call me at 816-966-5755.

Sincerely yours,

*Pamela Barton*

Pamela Barton  
Radiation Safety Officer

**RECEIVED**

Hoechst Marion Roussel  
A member of the Hoechst Group

**APR 29 1997**

**Hoechst REGION III**

PM: 4-28-97

**CERTIFIED COPY OF  
CORPORATE RESOLUTIONS**

I, Rebecca R. Tilden, Secretary of Hoechst Marion Roussel, Inc. (formerly Marion Merrell Dow Inc.), a Delaware corporation (the "Corporation"), do hereby certify that the following is a true and correct excerpt from the Restated Authorization Policy of the Corporation, that such Restated Authorization Policy has been duly authorized and approved by the Board of Directors of the Corporation, and that such excerpt is in full force and effect on the date hereof:

**6.03 Loans and Loan Guarantees: General Authority of the Board and Certain Officers.**

- (e) Authority of Certain Officers with Respect to Letters of Credit, Bonds and other similar instruments. Subject to the condition that the provisions of this subsection will not expand the authority delegated by the Board pursuant to any other section of this Policy or otherwise, the Chief Executive Officer, the Chief Financial Officer and the Treasurer may authorize and cause to be executed and delivered letters of credit, bonds, guarantees and other similar instruments that guarantee or secure payment or other performance in connection with any authorized transaction, including any transaction entered into as part of any normal business operations. Such instruments may contain such terms and conditions as any such officer may approve. The authority granted hereunder includes the authority to approve, execute and deliver any comfort letter, letter of awareness or similar instrument. Such comfort letters, letters of awareness, and other similar instruments may contain such terms and conditions as any such officer may approve.

I do further certify that there is no provision in the charter or bylaws of the Corporation limiting the power of the Board of Directors to adopt the foregoing Restated Authorization Policy, and I do certify and warrant that the same are in conformity with the provisions of said charter and the bylaws of the Corporation and within its corporate and lawful powers.

I do further certify that the below-named person has been duly elected or appointed, has duly qualified and is, on the date hereof, an officer of Hoechst Marion Roussel, Inc. holding the respective office set forth opposite his name, and the signature set forth below is his genuine signature:

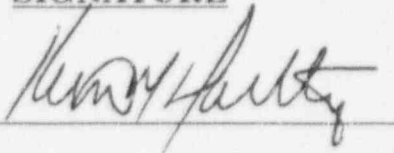
NAME

Kevin M. Hartley

OFFICE

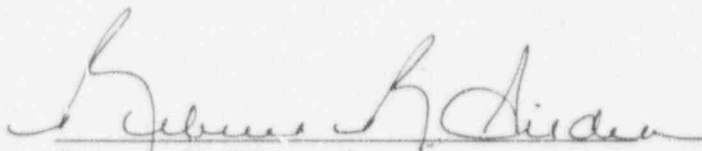
Vice President Finance  
and Treasurer

SIGNATURE



I do further certify that the person named above is authorized individually to sign the Standby Trust Agreement dated November 4, 1996.

Witness my hand and the seal of the Corporation on the 14th day of April, 1997.

  
Rebecca R. Tilden, Secretary

(SEAL)

**NON NEGOTIABLE**

Amendment to  
Standby Trust Agreement

This amendment to the Standby Trust Agreement dated as of May 29, 1991, by and between Hoechst Marion Roussel, Inc. (formerly Marion Merrell Dow Inc.), a Delaware Corporation, herein referred to as the "Grantor" and Commerce Bank of Kansas City, N.A., 922 Walnut, Kansas City, Missouri, 64106, the "Trustee" is dated as of November 1, 1995 and amends the Standby Trust Agreement.

WHEREAS, 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, stands as the potential beneficiary of the Standby Trust Agreement in accordance with regulations of Title 10, Chapter I of the Code of Federal Regulations, Part 30.

WHEREAS, the Standby Trust Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the NRC, or State Agency, or by the Trustee and the NRC or State Agency, if the Grantor ceases to exist; and

WHEREAS, the Grantor, the Trustee and the NRC desire to amend the Standby Trust Agreement.

NOW, THEREFORE, in consideration of the foregoing and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged the Grantor, the Trustee, and the NRC hereby agree as follows:

1. Amendment. The Standby Trust Agreement is hereby amended as follows:

(a)(1) License Number 24-15591-01 as found in "Section 2. Costs of Decommissioning" is hereby deleted in its entirety and replaced by the following:

"License Number 24-15595-01".

(a)(2) The language of "Section 5. Payments for Required Activities Specified in the Plan." is amended to incorporate the following:

"No withdrawal from the fund can exceed 10% (ten percent) of the outstanding balance of the Fund or \$75,000 (seventy-five thousand dollars), whichever is greater, unless NRC approval is attached."

(b) Except as expressly amended hereby, the Standby Trust Agreement shall remain in full force and effect.

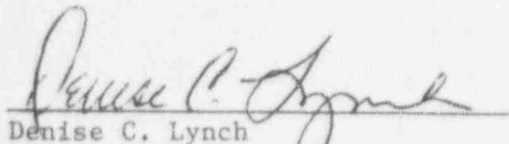
2. Effective Date of Amendment. The foregoing Amendment shall be effective April 1, 1997.

3. Governing Law. This Amendment shall be administered, construed and enforced according to the laws of the State of Missouri.

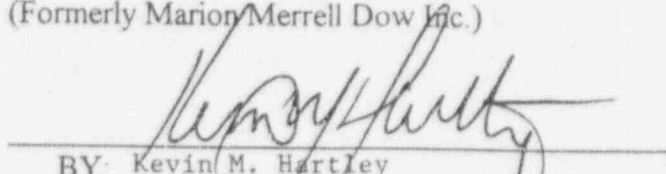
IN WITNESS WHEREOF the parties have caused this Amendment to be executed by the respective officers duly authorized and its corporate seal to be hereunto affixed and attested as of the effective date written above.

Attest:

Hoechst Marion Roussel, Inc.  
(Formerly Marion Merrell Dow Inc.)



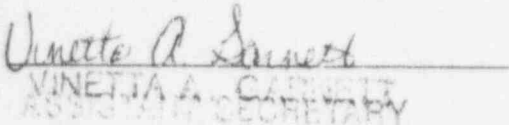
Denise C. Lynch  
Vice President, Bus. Anal. & Reptg.

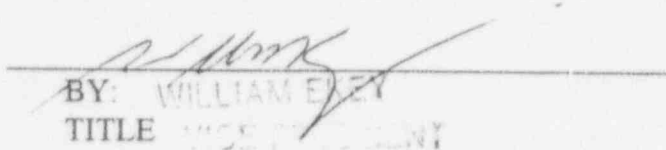


BY: Kevin M. Hartley  
TITLE: Vice President, Finance & Treasury

Attest:

✓ TRUSTEE: Commerce Bank of Kansas City, N.A.

  
VINETTA A. CANNELL  
ASSISTANT SECRETARY

  
BY: WILLIAM E. EZY  
TITLE: VICE PRESIDENT

Attest:

U.S. Nuclear Regulatory Commission

\_\_\_\_\_

BY:  
TITLE

**NON NEGOTIABLE**

MAR 24 1997

Pamela A. Barton  
Radiation Safety Officer  
Hoechst Marion Roussel  
P. O. Box 9627  
Kansas City, MO 64134-0627

Dear Ms. Barton:

We have completed our review of your financial assurance submission dated November 8, 1996, in response to our August 16, 1996 letter and find that we will need additional information as follows:

1. **Revise Section 2 of the Standby Trust Agreement to Correctly Reference the License Covered by the Agreement (*Regulatory Guide 3.66*, page 4-18)**

OK  
Section 2 of the submitted standby trust agreement states that "this Agreement pertains to the costs of decommissioning the materials and activities identified in License Number 24-15591-01 . . . as shown in Schedule A" (emphasis added). However, the correct license number is 24-15595-01 (according to the surety bond, Schedule A to the standby trust, and the cover letter to the submission). To ensure that the standby trust agreement effectively addresses the license covered by the agreement, please revise Section 2 of the standby trust agreement to correctly reference license number 24-15595-01, as called for by *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), page 4-18.

2. **Revise the Standby Trust Agreement to Include Language Omitted From Section 5 Limiting Withdrawals to No More Than 10 Percent of the Outstanding Balance Without Written NRC Approval**

OK  
The standby trust agreement submitted by the licensee does not include the following provision in Section 5: "No withdrawal from the fund can exceed \_\_\_\_ percent of the outstanding balance of the Fund or \_\_\_\_ dollars, whichever is greater, unless NRC approval is attached." NRC guidance specifies that the appropriate level to complete the blanks is 10 percent, meaning that no more than 10 percent of the outstanding balance of the trust may be withdrawn at a time without written approval from NRC. This provision provides NRC greater opportunity to monitor the licensee's decommissioning spending by requiring NRC approval for withdrawals larger than the specified amount. Please revise Section 5 to add this provision.

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

The submitted standby trust agreement is signed by the licensee's "V.P. Finance & Treasurer." However, the submission does not provide sufficient evidence indicating that this person is authorized to enter into a standby trust agreement for the licensee, as recommended in *Regulatory Guide 3.66*, page 3-14. The previous submission included an excerpt from the licensee's corporate by-laws that authorizes company vice presidents to represent the licensee "at the request of the President or in his absence or in the event of his inability or refusal to act." The previous submission also included documentation that the president was absent when the surety bond was executed. The current submission, however, does not indicate whether any of these conditions applied at the time the replacement standby trust was executed.

Evidence of authority to represent the licensee is necessary to ensure the validity and enforceability of the mechanism. Therefore, please submit a copy of the corporate by-laws or other evidence (e.g., a written request or authorization from the president) indicating that the person signing the standby trust agreement is authorized to do so.

Sincerely,

Original Signed By  
Kevin Null  
Nuclear Materials Licensing Branch

License No. 24-15595-01  
Docket No. 030-09415

DOCUMENT NAME: M:\03009415.DF7

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OFFICE	DNMS/RIII	N							
NAME	KNUL:jaw								
DATE	03/1/97								

OFFICIAL RECORD COPY



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

96-77

March 6, 1997

MEMORANDUM TO: Cassandra Frazier  
Materials Licensing Section  
Division of Radiation Safety  
and Safeguards, Region III

FROM: Louis M. Bykoski *Louis M. Bykoski*  
Facilities Decommissioning Section  
Low-Level Waste and Decommissioning  
Projects Branch  
Division of Waste Management, NMSS

SUBJECT: THE OFFICE OF THE GENERAL COUNSEL AND CONTRACTOR COMMENTS ON  
NON-STANDARD FINANCIAL ASSURANCE SUBMITTALS

Our contractor, ICF Incorporated, and the Office of the General Counsel (OGC) have reviewed and provided comments on the Battelle Memorial Institute, Allied Signal Aerospace, Frontier Technology, Notre Dame, and Hoechst Marion Roussel nonstandard financial assurance submittals sent to us for review.

The ICF comments are presented in two parts. The first part deals with specific recommendations to current deficiencies. The second part (Other Issues) provides a discussion of changes to the standard wording that are acceptable and are not considered to be deficiencies. The OGC comments may include additional deficiencies that need to be corrected by the licensee and comments for our internal use.

You should carefully review all the comments before preparing the deficiency letter. We have attached both the ICF and OGC comments to assist you in your review.

Attachments: As stated

CONTACT: Louis M. Bykoski, NMSS/DWM  
415-6754  
Stephen Lewis, OGC  
415-1684

LIST OF INSTRUCTIONS

HOECHST MARION ROUSSEL, 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 3 plus last paragraph.
2. All OGC comments.

All other comments and discussions are for reviewer information.

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

-HOECHST MARION ROUSSEL

We have no objection to the comments being transmitted to the Licensee in that they are all corrections or additions to the documents that ought to be made under our current guidance. With regard to ICF's recommendation (3), OGC believes that the NRC may reasonably rely on the representation in the Standby Trust that the officers of the Licensee and Trustee are "duly authorized." As to the Licensee, if this representation were inaccurate, the NRC would be able to take enforcement action under 10 CFR § 30.9(a). However, Regulatory Guide 3.66 calls for the submittal of evidence of the authorization of the signatory.

NMSS may wish to consider in the update of the Regulatory Guide that we understand is underway, simply stating that a licensee's representation as to the authorization of the officer signing a financial assurance instrument for it is sufficient.



CONSULTING GROUP

ICF Incorporated  
9300 Lee Highway  
Fairfax, VA 22031-1207  
703/934-3000 Fax 703/934-9740

January 16, 1997

To: Dr. Lou Bykoski, NMSS/NRC

From: Matt Borick and John Collier, ICF Incorporated

Subject: Review of Surety Bond Submitted by Hoechst Marion Roussel, Inc.

---

Hoechst Marion Roussel, Inc. in Kansas City, Missouri, submitted a certification of financial assurance and a new standby trust agreement to accompany a previously-submitted surety bond.<sup>1</sup> The submission addresses decommissioning costs in the amount of \$750,000 for license 24-15595-01 issued under 10 CFR Part 30.<sup>2</sup> According to the cover letter (dated November 8, 1996) to the submission, the new standby trust agreement is intended to replace an earlier standby trust agreement submitted by Marion Merrell Dow, Inc., which merged with Hoechst Roussel to form Hoechst Marion Roussel, Inc.

Upon review of the submission, ICF recommends that NRC require the licensee to modify the submission in the following ways:

- (1) Revise Section 2 of the standby trust agreement to correctly reference the license covered by the agreement (Regulatory Guide 3.66, page 4-18);
- (2) Revise the standby trust agreement to include language omitted from Section 5 limiting withdrawals to no more than 10 percent of the outstanding balance without written NRC approval; and
- (3) Submit evidence indicating that the person signing the standby trust agreement for the licensee is authorized to represent the company (Regulatory Guide 3.66, page 3-14).

These recommendations and other issues are discussed below.

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<sup>1</sup> ICF reviewed two previous submissions regarding this license, one from Marion Merrell Dow, Inc. and one from Hoechst Marion Roussel, Inc., and reported recommendations to NRC in memoranda dated June 28, 1995 and June 3, 1996.

<sup>2</sup> ICF assumes that NRC has verified that the certification amount is accurate under 10 CFR 30.35.

Attachment

- (1) **Revise Section 2 of the Standby Trust Agreement to Correctly Reference the License Covered by the Agreement (Regulatory Guide 3.66, page 4-18)**

Section 2 of the submitted standby trust agreement states that "this Agreement pertains to the costs of decommissioning the materials and activities identified in License Number 24-15591-01 . . . as shown in Schedule A" (emphasis added). However, the correct license number is 24-15595-01 (according to the surety bond, Schedule A to the standby trust, and the cover letter to the submission). To ensure that the standby trust agreement effectively addresses the license covered by the agreement, ICF recommends that NRC require the licensee to revise Section 2 of the standby trust agreement to correctly reference license number 24-15595-01, as called for by 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), page 4-18.

- (2) **Revise the Standby Trust Agreement to Include Language Omitted From Section 5 Limiting Withdrawals to No More Than 10 Percent of the Outstanding Balance Without Written NRC Approval**

The standby trust agreement submitted by the licensee does not include the following provision in Section 5: "No withdrawal from the fund can exceed \_\_\_ percent of the outstanding balance of the Fund or \_\_\_ dollars, whichever is greater, unless NRC approval is attached." NRC guidance specifies that the appropriate level to complete the blanks is 10 percent, meaning that no more than 10 percent of the outstanding balance of the trust may be withdrawn at a time without written approval from NRC. This provision provides NRC greater opportunity to monitor the licensee's decommissioning spending by requiring NRC approval for withdrawals larger than the specified amount. ICF recommends that Section 5 of the submitted standby trust agreement be revised to add this provision.

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

The submitted standby trust agreement is signed by the licensee's "V.P. Finance & Treasurer." However, the submission does not provide sufficient evidence indicating that this person is authorized to enter into a standby trust agreement for the licensee, as recommended in Regulatory Guide 3.66, page 3-14. The previous submission included an excerpt from the licensee's corporate by-laws that authorizes company vice presidents to represent the licensee "at the request of the President or in his absence or in the event of his inability or refusal to act." The previous submission also included documentation that the president was absent when the surety bond was executed. The current submission, however, does not indicate whether any of these conditions applied at the time the replacement standby trust was executed.

Evidence of authority to represent the licensee is necessary to ensure the validity and enforceability of the mechanism. Therefore, ICF recommends that NRC require the licensee to submit a copy of the corporate by-laws or

other evidence (e.g., a written request or authorization from the president) indicating that the person signing the standby trust agreement is authorized to do so.

#### Other Issues

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

- (a) The surety bond included in the current submission (which serves as Schedule B to the licensee's standby trust agreement) is identical in every respect to the bond previously reviewed by ICF (see ICF memorandum dated June 3, 1996), except that the signatures on the two bonds are not identical, and that the words "original document w/ original signatures + corporate seal" are handwritten on the newly submitted bond. (The signatures on the two bonds appear to have been penned by the same individuals.) These facts suggest that the bond included in the current submission may be a photocopy of the originally-signed duplicate held by the licensee. This should be acceptable to NRC, which should already have an originally-signed duplicate of the bond from the licensee's previous submission.
- (b) The surety bond states that the surety company is located in New York. The U.S. Department of Treasury's Circular 570, however, lists the surety company's address in California and states that the California surety company is licensed in all states. ICF believes that the New York address and California address pertain to the same surety company because the surety bond lists California as the surety company's state of incorporation (as does the accompanying power of attorney document).
- (c) The heading of the payment surety bond does not specify the surety company's type of organization. In addition, the signature block does not specify the address or state of incorporation of the surety company. Although this information may help NRC to identify the surety company, the surety company is identified as a "corporation" in the power of attorney document, and the full address and state of incorporation of the surety company are stated in the heading of the bond.
- (d) The surety bond does not indicate the amount(s) guaranteed for each covered facility, as recommended in *Regulatory Guide 3.66*, page 4-30. Identifying the amounts guaranteed for each facility helps ensure that funds will be available for all facilities as appropriate. However, the licensee is using a certification of financial assurance, which cannot be allocated among multiple facilities covered by a single license.
- (e) The heading of the surety bond contains a typographical error in that the zip code for the Marion Park facility is listed as "64137-0627" (emphasis added). According to the cover letter to the submission, which is printed on company letterhead, the correct zip code is "64134-0627." This error is not likely to reduce the effectiveness of the surety bond because the bond also lists the correct zip code in the

business address of the principal (which is also the address of the Marion Park facility).

- (f) The surety bond does not indicate a liability limit, as recommended on page 4-32 of *Regulatory Guide 3.66*. This omission does not detract from the protection provided by the mechanism, however. The penal sum, which is stated on the first page of the surety bond, is equal to the liability limit.
- (g) The surety bond does not indicate the bond premium, as recommended by *Regulatory Guide 3.66* on page 4-32. The bond premium represents an agreement between the licensee and the surety company and its exclusion from the surety bond does not affect the bond's remaining provisions.
- (h) As submitted, all signatures and titles are on a separate page from the rest of the payment surety bond. Common practice (as suggested by the recommended wording in *Regulatory Guide 3.66*, page 4-32) would have signatures on the same page as at least some portion (e.g., the final section) of the agreement. This practice helps ensure the validity of the agreement by providing added certainty that the signatures apply to the agreement. Although in this case the signatures fall on a separate page, ICF does not believe that revising the document (e.g., re-formatting the surety bond so that the last paragraph and the signatures are on the same page) would substantially alter the degree of assurance provided to NRC by the bond.
- (i) As noted in the introduction to this memorandum, the new standby trust agreement is intended to replace an earlier standby trust agreement submitted by Marion Merrell Dow, Inc. It is worth noting, however, that Section 16 of the earlier standby trust agreement allows the trust to be terminated only with the written consent of NRC. If the earlier trust has been terminated without NRC's knowledge and approval then the required procedures specified in the trust agreement have not been followed. NRC may wish to investigate this issue with the licensee and the trustee.
- (j) The standby trust agreement does not identify the full address of the trustee, as is recommended in *Regulatory Guide 3.66*, page 4-18. The trustee's full name and address is often important in (1) allowing NRC to determine whether the trustee is qualified to act as trustee, and (2) ensuring that NRC will be able to communicate readily with the trustee (e.g., to order payment for required decommissioning activities). However, because the full address of the trustee is stated elsewhere in the submission (i.e., in the specimen certificate of events) as "922 Walnut (sic), Kansas City, Missouri 64106," the standby trust agreement does not need to be revised to include the trustee's address in this case.
- (k) Section 7(b) of the submitted trust agreement contains an incorrect citation to the applicable sections of the Investment Company Act of 1940. The section cites the applicable sections as "15 U.S.C. 80a-a1 et seq." (emphasis added). According to *Regulatory Guide 3.66*, page 4-20,

the correct citation is "15 U.S.C. 80a-1 et seq." ICF does not believe that this error is likely to affect the interpretation of Section 7(b) or to reduce the effectiveness of the agreement. If NRC wishes to eliminate any possibility of the error affecting the agreement, NRC could require the licensee to correct the error.

- (l) The submitted standby trust agreement numbers the two sections immediately following Section 17 as Sections 19 and 20, respectively (i.e., there is no Section 18). In addition, the submitted Section 19 is titled "Choice of Law," whereas the corresponding section of the recommended wording in *Regulatory Guide 3.66*, page 4-23, does not have a title. These discrepancies should not diminish the financial assurance provided to NRC because Section 20 of the submitted agreement appropriately states that "The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement."
- (m) The trustee of the submitted standby trust is identified in the introduction to the agreement as "Commerce Bank of Kansas City, N.A." However, the phrase "of Kansas City" is struck out on the signature page. This should not affect the enforceability of the mechanism because the submitted acknowledgment states that the person signing on behalf of the trustee is "Vice President of Commerce Bank of Kansas City, N.A."
- (n) The standby trust agreement is not dated on the signature page. This does not affect the validity of the mechanism because the agreement specifies an effective date in the opening paragraph.
- (o) Schedule A of the standby trust agreement is missing the following line recommended in *Regulatory Guide 3.66*: "This Agreement demonstrates financial assurance for the following cost estimates for the following licensed activities:...." However, as the purpose of Schedule A is stated in Section 2 of the standby trust agreement, this omission should not lead to confusion for the trustee (i.e., assuming Recommendation 1 has been implemented).
- (p) Schedule A of the standby trust agreement is missing the following line recommended in *Regulatory Guide 3.66*: "The cost estimates listed here were last adjusted and approved by the NRC on \_\_\_\_." This statement is intended to assist the trustee in evaluating the information in Schedule A, but is not critical to the trust's effectiveness because NRC will both evaluate the cost estimate (or, in this case, the certification amount) and ensure that Schedule A is accurate.
- (q) The standby trust agreement does not reference or include a Schedule C stating the trustee's compensation for serving as trustee. The agreement states (in Section 12) that "The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing with the Grantor." Schedule C, called for by *Regulatory Guide 3.66*, would provide written evidence of the fee arrangement. Nevertheless, the statement included in the agreement, in combination with the signatures

of the licensee and trustee, and the annual valuation provision (see Section 10), provide adequate assurance that the compensation is reasonable and its effect on the trust is limited.

- (r) The standby trust agreement submitted by the licensee appropriately includes an acknowledgement substantiating the identity of the trustee. The agreement also includes an acknowledgement substantiating the identity of the licensee. Although this additional acknowledgement is not called for by *Regulatory Guide 3.66*, its inclusion should not affect the financial assurance provided by the mechanism.

Finally, NRC 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 submission, we cannot verify compliance with these requirements.

attachments

APPENDIX A  
CHECKLIST FOR DECOMMISSIONING FINANCIAL ASSURANCE

NAME OF LICENSEE OR APPLICANT

Hoechst Marion Roussel, Inc.

MAILING ADDRESS

P.O. Box 9627

Kansas City, MO 64134-0627

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. Received by ARB on 11/12/96 Date of Financial Assurance Submission Execution Date: 3/13/96  
2. ☐ Public Entity Surety Bond  
☒ Private Entity Effective Date: 3/13/96  
3. ☒ Certification of Financial Assurance \$750,000.00  
☐ Decommissioning Funding Plan certification statement included  
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 \$750,000.00  
    ☐ Letter of Credit  
    ☐ 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
  - ☐ Standby Trust Agreement
  - ☐ Acknowledgement
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.

EXHIBIT 3-6

CHECKLIST OF CRITERIA FOR REVIEW OF SURETY BONDS

Included in  
previous submission

• 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.

NRC to check  
(stamped non-negotiable)

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

✓ • Copy of Circular 570 of the U.S. Department of Treasury.

✓ • Copy of broker/agent's power of attorney authorizing the broker/agent to issue bonds.

✓ • Signed statement from applicant indicating that they will notify NRC if the surety company intends to cancel or go bankrupt.

✓ • Date of execution of bond and effective date.

✓ • Name and address of licensee (principal).

✓ • Type of business organization; State of incorporation, if appropriate.

Decommissioning  
costs not explicitly  
stated for each facility

• NRC license number, identification of licensed facility(ies), decommissioning costs.

✓ • Identification of corporate or individual surety(ies).

ICF verified

✓ 1. Name;

✓ 2. State of incorporation;

3. Qualification in jurisdiction where facility covered by the surety bond is located.

✓ • Designation of obligee (NRC or State regulatory agency).

Missing • Recitation of consideration (fee paid for surety bond).

✓ • Liability of surety.

✓ 1. Penal sum

✓ 2. Limitation of liability

✓ 3. Condition(s) of liability

✓ 4. Statement of joint and several liability

✓ • Statement of licensee's or applicant's regulatory obligations as reason for bond.

✓ • Scope and duration of bond.

✓ 1. Restricted to single obligation

✓ 2. Continuing

✓ 3. Provisions for renewal

✓ 4. Payable to a standby trust fund

EXHIBIT 3-6 (Continued)

- ✓ • Termination.
  - ✓ 1. By surety
  - ✓ 2. By principal
  - ✓ 3. Effective date of termination or revocation
- ✓ • Adjustment of penal sum.
- ✓ • Date.
- ✓ • Signatures.
- Missing • Premium.

EXHIBIT 3-5

CHECKLIST OF CRITERIA FOR REVIEW OF TRUST AGREEMENTS<sup>a</sup>

No ☒ • 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.

NRC to check • Evidence that the financial instrument is an originally signed duplicate (e.g., an executed copy of the instrument).  
(stamped "non-negotiable")

☒ • Evidence that the financial institution has authority to act as a trustee.

☒ • Purpose of trust ("whereas" clauses).

☒ 1. Description

☒ • Grantor or grantors (introductory paragraph).

☒ 1. Names

No 2. Addresses (not called for by Reg Guide 3.66)

☒ • Trustee or trustees.

No address 1. Names and addresses

☒ 2. Bank or corporate trustee (introductory paragraph)

☒ • Identification of facilities and cost estimates (Section 2).<sup>b</sup> (License number is incorrect)

☒ • Words of transfer, conveyance, and delivery in trust (Section 3).

☒ • Payments constituting the trust fund (Section 4).

☒ • Duration of trust.

☒ • Description of trust property.

☒ 1. Property described in attached schedule (Schedule B)

☒ 2. Cash

☒ 3. Stock and other securities

☒ • Additions to trust.

☒ • Distribution of trust principal (Section 5).

☒ 1. Disbursement to licensee upon proper certification

☒ 2. Payment for activities at NRC's direction in writing

<sup>a</sup> Adapted from 17A Am Jur Legal Forms 2d (Rev) §251.94.

<sup>b</sup> References are to recommended wording for trust agreements provided in Section 4.3 of this guide.

EXHIBIT 3-5 (continued)

- ✓ 3. Refund to grantor at HRC's specification in writing after completion of decommissioning activities
- Missing 4. Withdrawal provisions must not exceed 10 percent
- ✓ • Trust management (Sections 6-8).
  - ✓ 1. Discretionary powers
  - ✓ 2. Fiduciary duty
  - ✓ 3. Commingling and investment
  - ✓ 4. Sale or exchange of trust property
  - ✓ 5. Scope of investments
  - ✓ 6. Express powers of trustee
  - ✓ 7. Borrowing money and encumbering trust assets
- (Optional provisions)
- Optional 8. Insurance
- 9. Operation of business
- 10. Compromise of claims
- ✓ • Taxes and expenses (Section 9).
- ✓ • Annual valuation (Section 10).
- ✓ • Advice of counsel (Section 11).
- ✓ • Authority, compensation, and tenure of trustees (Sections 12-14).
  - ✓ 1. Trustee compensation (No schedule C)
  - ✓ 2. Successor trustee
  - ✓ 3. Instructions to trustee
- ✓ • Amendment of agreement (Section 15).
- ✓ • Irrevocability and termination (Section 16).
- ✓ • Immunity and indemnification (Section 17).
- ✓ • Law to govern construction and operation of trust (Section 18). (Section 19 in submission)
- ✓ • Interpretation and severability (Section 19). (Section 20 in submission)
- Missing • Date (signature block). (on first page)
- ✓ • Signatures (signature block).
- ✓ • Acknowledgements, seals or attestations, if necessary or desired (witness by notary public).
- ✓ • Acceptance of trust by trustee or trustees (acknowledgment).

DEC 11 1996

96-77

MEMORANDUM TO: Louis M. Bykoski  
Materials Decommissioning Section  
Low Level Waste and Decommissioning  
Projects Branch  
Division of Waste Management, NMSS

FROM: B. J. Holt, Chief  
Nuclear Materials Licensing Branch  
Division of Nuclear Materials Safety, RIII

SUBJECT: REQUEST FOR ASSISTANCE IN THE REVIEW OF HOECHST  
MARION ROUSSEL'S RESPONSE TO OUR AUGUST 16, 1996  
DEFICIENCY LETTER; LICENSE NO. 24-15595-01

On August 16, 1996, the Region mailed a deficiency letter (attached) addressing NRC contractor comments on Hoechst Marion Roussel's financial instrument. The content of the letter dealt primarily with deficiencies in the licensee's Standby Trust Agreement.

In response to the letter, the licensee submitted a new Standby Trust Agreement (reference letter dated November 8, 1996). We ask that you review the document for acceptability.

Attachments: As stated

CONTACT: Kevin G. Null  
(630) 829-9854

cc: C. D. Pederson

DOCUMENT NAME: M:\03009415.DE6

To receive a copy of this document, indicate in the box: "C" = Copy without enclosures "E" = Copy with enclosures "N" = No copy

OFFICE	DNMS/RIII	N							
NAME	KNUL:jaw	LN							
DATE	12/9/96								

OFFICIAL RECORD COPY

VIA Federal Express

Office of the General Counsel

Hoechst Celanese Corporation  
Route 202-206  
PO Box 2500  
Somerville, NJ 08876-1258  
908 231 2000  
Telex 833 449  
Fax 908 231 2209

November 8, 1996

TSM-245-96

Mr. Kevin G. Null  
United States Regulatory Commission  
Region III  
801 Warrenville Road  
Lisle, Illinois 60532-4351

RE: Hoechst Marion Roussel, Inc., Troost Drive and Marion  
Park Drive, Kansas City, Missouri  
NRC License Number: 24-15595-01  
Control Number: 030-09415

Dear Mr. Null:

I am responding to your letter dated August 16, 1996 addressed to Pamela A. Barton, whereby you notified Ms. Barton that additional information was necessary to complete the review of Hoechst Marion Roussel, Inc.'s NRC financial assurance submission.

Enclosed please find a new Standby Trust Agreement dated November 4, 1996 which will replace any prior Standby Trust Agreements. This new trust agreement incorporates all the changes noted in your letter, including a Letter of Acknowledgement, two Specimen Certificates and a Certification Statement.

This additional information completes our application. If you have any questions regarding our submission, please contact me at 908-231-4673.

Very truly yours,

*Tema S. Maccaro*

Tema S. Maccaro

:keb  
/enclosures

cc: Pam Barton (Kansas City)  
Mark Hanchar (Kansas City)  
Melinda R. Martinson (Bridgewater)

RECEIVED

NOV 12 1996

REGION III

NOV 12 1996

Hoechst 

## STANDBY TRUST AGREEMENT

TRUST AGREEMENT, the Agreement entered into as of November 4, 1996 by and between Hoechst Marion Roussel, Inc., a Delaware corporation, herein referred to as the "Grantor," and Commerce Bank of Kansas City, N.A., a national banking association, the "Trustee."

WHEREAS, 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, has promulgated regulations in Title 10, Chapter I of the Code of Federal Regulations, Part 30. These regulations, applicable to the Grantor, require that a holder of, or an applicant for, a Part 30, 40, 70 or 72 license provide assurance that funds will be available when needed for required decommissioning activities.

WHEREAS, the Grantor has elected to use a surety bond to provide all such financial assurance for the facilities identified herein; and

WHEREAS, when payment is made under a surety bond, this standby trust shall be used for the receipt of such payment; and

WHEREAS, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this Agreement, and the Trustee is willing to act as trustee,

NOW, THEREFORE, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

- (a) The term "Grantor" means the NRC licensee who enters into this Agreement and any successors or assigns of the Grantor.
- (b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Costs of Decommissioning. This Agreement pertains to the costs of decommissioning the materials and activities identified in License Number 24-15591-01 issued pursuant to 10 CFR Part 30 as shown in Schedule A.

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Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund (the Fund) for the benefit of the NRC. The Grantor and the Trustee intend that no third party have access to the Fund except as provided herein.

Section 4. Payments Constituting the Fund. Payments made to the Trustee for the Fund shall consist of cash, securities, or other liquid assets acceptable to the Trustee. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee are referred to as the "Fund," together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount of, or adequacy of the Fund, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the NRC.

Section 5. Payments for Required Activities Specified in the Plan. The Trustee shall make payments from the Fund to the Grantor upon presentation to the Trustee of the following:

- a. A certificate duly executed by the Secretary of the Depositor attesting to the occurrence of the events, and in the form set forth in the attached Specimen Certificate, and
- b. A certificate attesting to the following conditions:
  - (1) that decommissioning is proceeding pursuant to an NRC-approved plan.
  - (2) that the funds withdrawn will be expended for activities undertaken pursuant to that Plan, and
  - (3) that the NRC has been given 30 days' prior notice of Hoechst Marion Roussel, Inc.'s intent to withdraw funds from the escrow fund.

In the event of the Grantor's default or inability to direct decommissioning activities, the Trustee shall make payments from the Fund as the NRC shall direct, in writing, to provide for the payment of the costs of required activities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the NRC, or State agency, from the Fund for expenditures for required activities in such amounts as

NON NEGOTIABLE

the NRC, or State agency, shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the NRC specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 6. Trust Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the Fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

- (a) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, [15 U.S.C. 80a-2(a)], shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;
- (b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal Government, and in obligations of the Federal Government such as GNMA, FNMA, and FHLM bonds and certificates or State and Municipal bonds rated BBB or higher by Standard and Poors or Baa or higher by Moody's Investment Services ; and
- (c) For a reasonable time, not to exceed 60 days, the Trustee is authorized to hold uninvested cash, awaiting investment or distribution, without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

- (a) To transfer from time to time any or all of the assets of the fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

**NON NEGOTIABLE**

- (b) To purchase shares in any investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-a1 et seq.), including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

- (a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale, as necessary to allow duly authorized withdrawals at the joint request of the Grantor and the NRC or to reinvest in securities at the direction of the Grantor;
- (b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (c) To register any securities held in the Fund in its own name, or in the name of a nominee, and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, to reinvest interest payments and funds from matured and redeemed instruments, to file proper forms concerning securities held in the Fund in a timely fashion with appropriate government agencies, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee or such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the U. S. Government, or any agency or instrumentally thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;
- (d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal government; and
- (e) To compromise or otherwise adjust all claims in favor of or against the Fund.

**NON NEGOTIABLE**

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. After payment has been made into this standby trust fund, the Trustee shall annually, at least 30 days before the anniversary date of receipt of payment into the standby trust fund, furnish to the Grantor and to the NRC a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days before the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the NRC, or State agency, shall constitute a conclusively binding asset by the Grantor, barring the grantor from asserting any claim or liability against the Trustee with respect to the matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting on the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing with the Grantor.

Section 13. Successor Trustee. Upon 90 days notice to the Nuclear Regulatory Commission, the Trustee may resign; upon 90 days notice to the Nuclear Regulatory Commission and the Trustee, the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor Trustee and this successor accepts the appointment. The successor Trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor Trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor Trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee or for instructions. The successor Trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor, the NRC or State agency, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are signatories to this agreement or such other designees as the Grantor may designate in writing. The Trustee shall be fully protected in acting without inquiry in accordance with the grantor's orders, requests, and instructions. If the NRC or State agency issues orders, requests, or instructions to the Trustee these shall be in writing, signed by the NRC, or State agency, or their designees, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor, the NRC, or State agency, hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instruction from the Grantor and/or the NRC, or State agency, except as provided for herein.

Section 15. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee and the NRC, or State agency, or by the Trustee and the NRC or State Agency, if the Grantor ceases to exist.

Section 16. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 15, this trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the NRC or State agency, or by the Trustee and the NRC or State agency, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor or its successor.

Section 17. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this trust, or in carrying out any directions by the Grantor, the NRC, or State Agency, issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the trust fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

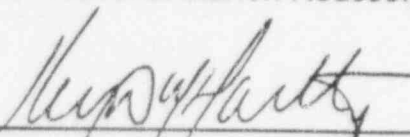
Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Delaware.

**NON NEGOTIABLE**

Section 20. Interpretation and Severability. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement. If any part of this agreement is invalid, it shall not affect the remaining provisions which will remain valid and enforceable.

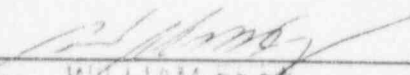
IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written.

Attest: Hoechst Marion Roussel, Inc.

  
\_\_\_\_\_  
Name: Kevin M. Hartley  
Title: V.P. Finance & Treasurer

[Seal]

Attest: Commerce Bank ~~of Kansas City~~, N.A.

✓   
\_\_\_\_\_  
Name: WILLIAM ENDERS  
Title: VICE PRESIDENT

[Seal]

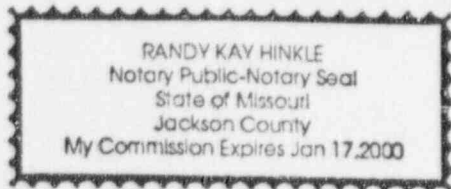
NON NEGOTIABLE

State of Missouri

County of Jackson

On this 14<sup>th</sup> day of November, 1996, before me personally came Chris M. Hartley, to me known, who, being by me duly sworn, did depose and say that he resides at Lee's Summit, Mo, that he is V.P. Finance (Treasurer) of Hoechst Marion Roussel, Inc., the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Randy Kay Hinkle  
[Signature of Notary Public]



**NON NEGOTIABLE**

State of Missouri

County of Jackson

On this 4th day of November, 1996, before me personally came William E. Key, to me known, who, being by me duly sworn, did depose and say that he resides at Independence, Mo., that he is Vice President of Commerce Bank of Kansas City, N.A., the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

C. Guerin  
[Signature of Notary Public]

C. GUEIN  
Notary Public, Notary Seal  
State of Missouri  
Jackson County  
My Commission Expires April 3, 1998

NON NEGOTIABLE

Schedule A

NRC License Number: 24-15595-01

Licensee: Hoechst Marion Roussel, Inc.  
6633 Troost Drive  
10236 Marion Park Drive  
Kansas City, Missouri

Mailing Address: Hoechst Marion Roussel, Inc.  
P.O. Box 9627  
Kansas City, MO 64134-0627

Decommissioning Cost Estimate: \$750,000

**NON NEGOTIABLE**

Schedule B

Surety Bond

original NO. 2478 OCT. 10 ment  
if original  
signatures  
+ corporate  
seal

## PAYMENT SURETY BOND

Date Bond Executed: March 13, 1996

Effective Date: March 13, 1996

Principal Hoechst Marion Roussel, Inc.  
10236 Marion Park Drive  
Kansas City, MO 64134

Type of Organization: Corporation

State of Incorporation: Delaware

Surety: Fireman's Fund Insurance Company  
One Liberty Plaza  
New York, NY 10006

State of Incorporation: California

NRC License #24-15595-01  
6633 Troost Drive, Kansas City, MO  
10236 Marion Park Drive, Kansas City, MO 64137-0627

Total Penal Sum of Bond: \$750,000.000

Surety's Bond Number: 11119349782

Know all persons by these presents, That we, the Principal and Surety(ies) hereto, are firmly bound to the U.S. Nuclear Regulatory Commission (hereinafter called NRC), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety bind itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety; but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS, the U.S. Nuclear Regulatory Commission, an agency of the U.S. Government, pursuant to the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, has promulgated regulations in Title 10, Chapter I of the Code of Federal Regulations, Part [30, 40, 70, or 72], applicable to the Principal, which require that a license holder or an applicant for a facility license provide financial assurance that funds will available when needed for facility decommissioning;

NON NEGOTIABLE

NOW, THEREFORE, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of decommissioning of each facility identified above, fund the standby trust fund in the amount(s) identified above for the facility;

Or, if the Principal shall fund the standby trust fund in such amount(s) after an order to begin facility decommissioning is issued by the "NRC" or a U.S. district court or other court of competent jurisdiction;

Or, if the Principal shall provide alternative financial assurance and obtain the written approval of the "NRC" of such assurance, within 30 days after the date a notice of cancellation from the Surety(ies) is received by both the Principal and to the "NRC" then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the "NRC" that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the "NRC" provide, however, that cancellation shall not occur during the 90 days beginning on the date of receipt of the notice of cancellation by both the Principal and the "NRC" as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the "NRC" and to Surety(ies) 90 days prior to the proposed date of termination, provide, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond from the "NRC".

The Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the "NRC".

If any part of this agreement is invalid, it shall not affect the remaining provisions which will remain valid and enforceable.

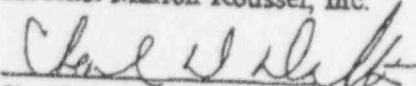
In Witness Whereof, the Principal and Surety(ies) have executed this financial guarantee bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies).

NON NEGOTIABLE

Principal  
Hoechst Marion Roussel, Inc.

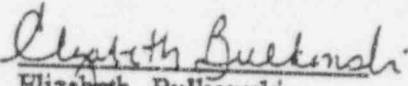
By:  
Name:  
Title:

  
Charles D. Dalton  
Vice President, Asst. Secretary

(Corporate Seal)

Surety  
Fireman's Fund Insurance Company

By:  
Name:  
Title:

  
Elizabeth Bulkowski  
Attorney-in-Fact

(Corporate Seal)

NOV 1 1996

On this 13th day of March, 1996, before me personally appeared  
Elizabeth Bulkowski, known to me to be the Attorney-in-fact of  
Fireman's Fund Insurance Company, the corporation that  
executed the within instrument, and acknowledged to me that such corporation executed the  
same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my  
office in the aforesaid county, the day and year in this certificate first above written.

CHRISTINE SADOFSKY  
Notary Public, State of New York  
No. 03-4858325  
Qualified in Bronx County  
Commission Expires May 5, 1996

Christine Sadofsky  
(Notary Public)

RECEIVED  
OCT 31 1996  
NOTARY PUBLIC  
STATE OF NEW YORK

FIREMAN'S FUND INSURANCE COMPANY

KNOW ALL MEN BY THESE PRESENTS: That FIREMAN'S FUND INSURANCE COMPANY, a Corporation duly organized and existing under the laws of the State of California, and having its principal office in the County of Marin, State of California, has made, constituted and appointed, and does by these presents make, constitute and appoint

ELIZABETH BULKOWSKI

NEW YORK NY

its true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, seal, acknowledge and deliver any and all bonds, undertakings, recognizances or other written obligations in the nature thereof

and to bind the Corporation thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the corporate seal of the Corporation and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney(s)-in-Fact may do in the premises.

This power of attorney is granted pursuant to Article VII, Sections 45 and 46 of By-laws of FIREMAN'S FUND INSURANCE COMPANY now in full force and effect.

"Article VII. Appointment and Authority of Resident Secretaries, Attorney-in-Fact and Agents to accept Legal Process and Make Appearances.

Section 45. Appointment. The Chairman of the Board of Directors, the President, any Vice-President or any other person authorized by the Board of Directors, the Chairman of the Board of Directors, the President or any Vice-President may, from time to time, appoint Resident Assistant Secretaries and Attorneys-in-Fact to represent and act for and on behalf of the Corporation and Agents to accept legal process and make appearances for and on behalf of the Corporation.

Section 46. Authority. The authority of such Resident Assistant Secretaries, Attorneys-in-Fact and Agents shall be as prescribed in the instrument evidencing their appointment. Any such appointment and all authority granted thereby may be revoked at any time by the Board of Directors or by any person empowered to make such appointment."

This power of attorney is signed and sealed under and by the authority of the following Resolution adopted by the Board of Directors of FIREMAN'S FUND INSURANCE COMPANY at a meeting duly called and held on the 7th day of August, 1984, and said Resolution has not been amended or repealed:

"RESOLVED, that the signature of any Vice-President, Assistant Secretary, and Resident Assistant Secretary of this Corporation, and the seal of this Corporation may be affixed or printed on any power of attorney, on any revocation of any power of attorney, or on any certificate relating thereto, by facsimile, and any power of attorney, any revocation of any power of attorney, or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Corporation."

IN WITNESS WHEREOF, FIREMAN'S FUND INSURANCE COMPANY has caused these presents to be signed by its Vice-President, and its corporate seal to be hereunto affixed this 30th day of June, 19 95.



FIREMAN'S FUND INSURANCE COMPANY

By

*[Signature]*  
Vice-President

STATE OF CALIFORNIA  
COUNTY OF MARIN

On this 30th day of June, 19 95, before me personally came M. A. Mallonee to me known, who, being by me duly sworn, did depose and say: that he is Vice-President of FIREMAN'S FUND INSURANCE COMPANY, the Corporation described in and which executed the above instrument; that he knows the seal of said Corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Corporation and that he signed his name thereto by like order.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year herein first above written.



CERTIFICATE

*[Signature]*  
Notary Public

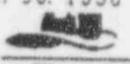
STATE OF CALIFORNIA  
COUNTY OF MARIN

I, the undersigned, Resident Assistant Secretary of FIREMAN'S FUND INSURANCE COMPANY, a CALIFORNIA Corporation, DO HEREBY CERTIFY that the foregoing and attached POWER OF ATTORNEY remains in full force and has not been revoked; and furthermore that Article VII, Sections 45 and 46 of the By-laws of the Corporation, and the Resolution of the Board of Directors; set forth in the Power of Attorney, are now in force.

Signed and sealed at the County of Marin. Dated the 13th day of March, 19 96



*[Signature]*  
Resident Assistant Secretary


**Fireman's Fund**
Fireman's Fund  
Insurance CompanyFIREMAN'S FUND INSURANCE COMPANY  
SUMMARY FINANCIAL STATEMENT - December 31, 1994

(As Filed with Insurance Department of the State of California)

ASSETS:

*Government Bonds	\$ 1,386,971,927
*State and Municipal Bonds	685,111,609
*Miscellaneous Bonds	2,284,301,265
+Stocks	1,192,790,615
Cash in Bank and Company's Office	11,646,941
Accrued Interest	78,045,987
Premiums in Course of Collection and Other Assets	1,249,790,018
<b>Total Assets</b>	<b>\$ 6,888,658,362</b>

LIABILITIES, SURPLUS AND OTHER FUNDS:

Loss and Loss Expense Reserve	\$ 3,556,082,787
Unearned Premium Reserve	672,037,665
All Other Claims, Demands and Reserves	651,834,215
<b>Total Liabilities</b>	<b>4,909,954,667</b>

Capital Paid-up	\$ 4,200,000
Net Surplus	1,974,503,695

Policyholder's Surplus

Total Capital, Surplus and Reserves

1,978,703,695
<b>\$ 6,888,658,362</b>

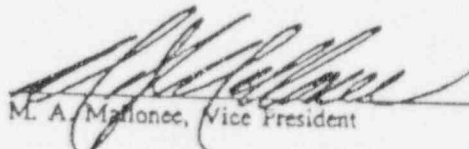
\*Bonds are stated at Amortized Values  
+Stocks are stated at Market Values

0

State of California )  
County of Marin ) ss

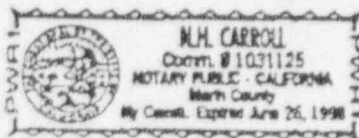
I, M. A. Mallonee, Vice President of Fireman's Fund Insurance Company, do hereby certify that the above is a true statement of the assets and liabilities of said Corporation as of December 31, 1994, taken from the books and records of said Corporation.

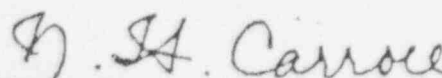


  
M. A. Mallonee, Vice President

State of California )  
County of Marin ) ss

Subscribed and sworn before me, a Notary Public of the State of California, in the County of Marin, this 17th day of February, 1995.



  
Notary Public of California

**NOT RECORDED**

777 San Marin Drive, Novato, CA 94988 415 899 2000

Specimen Certificate of Events

Commerce Bank of Kansas City, N.A.  
922 Walnut  
Kansas City, Missouri 64106

Attention: Trust Division

Gentlemen:

In accordance with the terms of the Agreement with you dated  
November \_\_\_\_\_, 1996, I, \_\_\_\_\_, Secretary of  
Hoechst Marion Roussel, Inc., hereby certify that the following events have occurred:

1. Hoechst Marion Roussel, Inc. is required to commence the decommissioning of its facility located at 6633 Troost and Marion Park Drive, Kansas City, Missouri (hereinafter called the decommissioning).
2. The plans and procedures for the commencement and conduct of the decommissioning have been approved by the United States Nuclear Regulatory Commission, or its successor, on \_\_\_\_\_ (copy of approval attached).
3. The Board of Directors of Hoechst Marion Roussel, Inc. has adopted the attached resolution authorizing the commencement of the decommissioning.

\_\_\_\_\_  
Secretary of Hoechst Marion Roussel, Inc.

\_\_\_\_\_  
Date

NOV 14 1996  
FBI - KANSAS CITY

Specimen Certificate of Resolution

I, \_\_\_\_\_, do hereby certify that I am Secretary of Hoechst Marion Roussel, Inc., a Delaware corporation, and that the resolution listed below was duly adopted at a meeting of this Corporation's Board of Directors on \_\_\_\_\_, 19\_\_\_\_.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the seal of this Corporation this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Secretary

RESOLVED, that this Board of Directors hereby authorizes the President, or such other employee of the Company as he may designate, to commence decommissioning activities at Hoechst Marion Roussel, Inc., 6633 Troost and Marion Park Drive, Kansas City, Missouri in accordance with the terms and conditions described to this Board of Directors at this meeting and with such other terms and conditions as the President shall approve with and upon the advice of Counsel.

**NON NEGOTIABLE**

Hoechst Marion Roussel, Inc.

10236 Marion Park Drive  
Mail: P.O. Box 9627  
Kansas City, MO 64134-0627  
Telephone (816) 966-5000

## CERTIFICATION OF FINANCIAL ASSURANCE

**Principal:** Hoechst Marion Roussel, Inc. P.O. Box 9627, Kansas City, Missouri 64134-0627 (formerly Marion Merrell Dow Inc.)

**NRC License Number 24-15595-01:** Hoechst Marion Roussel Inc., 6633 Troost and Marion Park Drive, Kansas City, Missouri

**Issued to:** U.S. Nuclear Regulatory Commission

This is to certify that Hoechst Marion Roussel, Inc. is licensed to possess Hydrogen-3 (1.0 curie), Carbon-14 (1.0 curie), Sulfur-35 (20 millicuries), Iodine-125 (70 millicuries), and Iodine -131 (30 millicuries) in the amounts indicated in parentheses and that financial assurance in the amount prescribed by 10 CFR Part 30 of \$750,000.00 has been obtained for the purpose of decommissioning.

Corporate Seal

November 4, 1996



Rebecca R. Tilden  
Vice President, Assistant General  
Counsel & Assistant Secretary

NON NEGOTIABLE

Hoechst Marion Roussel  
A member of the Hoechst Group

Hoechst 

AUG 16 1996

Pamela A. Barton  
Radiation Safety Officer  
Hoechst Marion Roussel  
P. O. Box 9627  
Kansas City, MO 64134-0627

Dear Ms. Barton:

We have reviewed your Surety Bond submitted as evidence of financial assurance and in replacement of your Irrevocable Standby Letter of Credit and find that we will need additional information as follows:

1. **Submit a Certification Statement (*Regulatory Guide 3.66*, page 1-5)**

The submission does not include a certification statement. The certification statement, in addition to providing information that would allow NRC to verify the certification amount (e.g., the names and locations of the facilities for which financial assurance is provided, and the amount and types of materials handled), officially certifies that the licensee is in compliance with the appropriate requirements. Please submit a certification statement certifying compliance with the decommissioning rules, as recommended in *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), page 1-5.

2. **Revise the Standby Trust Agreement to Reference the Current Name of the Licensee and the Licensee's Use of the Surety Bond**

As noted in your correspondence, the original holder of license 24-15595-01, Marion Merrell Dow, Inc., has merged with Hoechst Roussel to form Hoechst Marion Roussel, Inc. The previously-submitted standby trust agreement, however, references Marion Merrell Dow, Inc. as the grantor throughout the agreement (i.e., in paragraph 1, Schedule A, Schedule C, the specimen certificate of events, and the specimen certificate of resolution). To ensure that the standby trust agreement will be effective given the new corporate entity (Hoechst Marion Roussel, Inc.), please revise the agreement (including the attachments, as described above) to reference Hoechst Marion Roussel, Inc. instead of Marion Merrell Dow, Inc. Schedule A should also be revised to specify the licensee's new mailing address.

In addition, because you submitted a surety bond to replace the previously-submitted letter of credit, please revise paragraphs 3 and 4 of the standby trust agreement to specify that the licensee is currently using a surety bond, rather than

a letter of credit, as the primary financial assurance mechanism. Although this modification is unlikely to be critical to the effectiveness of the standby trust agreement, it would make the agreement more consistent with the primary mechanism.

3. **Revise the Standby Trust Agreement to Delete the Added Language in Section 3 (*Regulatory Guide 3.66*, page 4-18)**

The standard wording for Section 3 ("Establishment of Fund") of the standby trust agreement, as recommended in *Regulatory Guide 3.66*, page 4-18, reads as follows:

The Grantor and the Trustee hereby establish a standby trust fund (the Fund) for the benefit of the NRC. The Grantor and the Trustee intend that no third party have access to the Fund except as provided herein.

Section 3 of the submitted standby trust agreement includes this wording, but also adds the following wording:

This Standby Trust is to be funded when:

- (a) Grantor commences decommissioning at its NRC licensed facility: License Number 24-15595-01, and
- (b) Marion Merrell Dow Inc. will not carry out the required decommissioning activities.

The Grantor shall deposit sufficient funds into this Standby Trust so that NRC may direct decommissioning in accordance with the NRC approved decommissioning plan. The Standby Trust property is hereby referred to as the Standby Trust Fund (the Fund).

The added language could be problematic for at least two reasons, as discussed below:

- (1) The two specified conditions under which the standby trust is to be funded do not encompass all situations under which NRC requires the trust to be funded. For example, if the licensee goes bankrupt prior to the start of decommissioning (or refuses to begin decommissioning activities), NRC would wish to fund the trust even though the licensee had not commenced decommissioning and satisfied Condition (a). Similarly, if the licensee does not go bankrupt but is incapable of fully paying for decommissioning, NRC

would wish to fund the trust even though NRC might allow the licensee to conduct the necessary decommissioning activities using the funding in the trust. (This case would not satisfy Condition (b)).

- (2) The added language, by stating that the grantor shall deposit sufficient funds into this standby trust, seems to contradict the possibility that the trust may be funded using the licensee's surety bond.

To ensure that the standby trust will be funded as required, please revise the standby trust agreement to eliminate the added wording in Section 3.

4. **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. 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. Please submit a letter of acknowledgement with the standby trust agreement, as recommended in *Regulatory Guide 3.66, page 4-27*.

We will continue our review of your application upon receipt of this information. Please reply in duplicate, within 30 days, and refer to Control Number 00208.

If you have any questions or require clarification on any of the information stated above, you may contact us at (630) 829-9887.

Sincerely,

Original Signed By  
Kevin G. Null  
Nuclear Materials Licensing Branch

License No. 24-15595-01  
Docket No. 030-09415

DOCUMENT NAME: M:\03009415.DF6

To receive a copy of this document, indicate in the box: "C" = Copy without enclosures "E" = Copy with enclosures "N" = No copy

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DATE	08/5/96								

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UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

*Hoechst Marion  
Roussell*

*96-33*

July 31, 1996

MEMORANDUM TO: John R. Madera, Chief  
Materials Licensing Section  
Division of Radiation Safety  
and Safeguards, Region III

FROM: Louis M. Bykoski *Louis M. Bykoski*  
Materials Decommissioning Section  
Low-Level Waste and Decommissioning  
Projects Branch  
Division of Waste Management, NMSS

SUBJECT: THE OFFICE OF THE GENERAL COUNSEL AND CONTRACTOR COMMENTS ON  
NON-STANDARD FINANCIAL ASSURANCE SUBMITTALS

Our contractor, ICF Incorporated, and the Office of the General Counsel (OGC) have reviewed and provided comments on the Hoechst Marion Roussell and SteriGenics International nonstandard financial assurance submittals sent to us for review.

The ICF comments are presented in two parts. The first part deals with specific recommendations to current deficiencies. The second part (Other Issues) provides a discussion of changes to the standard wording that are acceptable and are not considered to be deficiencies. The OGC comments may include additional deficiencies that need to be corrected by the licensee and comments for our internal use.

You should carefully review all the comments before preparing the deficiency letter. We have enclosed both the ICF and OGC comments to assist you in your review.

Attachments: As stated

CONTACT: Louis M. Bykoski, NMSS/DWM  
415-6754  
Stephen Lewis, OGC  
415-1684

### LIST OF INSTRUCTIONS

Hoechst Marion Roussel

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.

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

HOECHST MARION ROUSSEL

Based upon our review, we have no comments.



CONSULTING GROUP

ICF Incorporated  
9300 Lee Highway  
Fairfax, VA 22031-1207  
703/934-3000 Fax 703-934-9740

June 3, 1996

To: Dr. Lou Bykoski, NMSS/NRC

From: Matt Borick and John Collier, ICF Incorporated

Subject: Review of Surety Bond Submitted by Hoechst Marion Roussel, Inc.

---

Hoechst Marion Roussel, Inc. in Kansas City, Missouri, submitted a certification of financial assurance using a surety bond in the amount of \$750,000.<sup>1</sup> The submission addresses decommissioning costs for license 24-15595-01 issued under 10 CFR Part 30. This license was previously held by Marion Merrell Dow, Inc., which has merged with Hoechst Roussel to form Hoechst Marion Roussel, Inc.<sup>2</sup> The newly-submitted surety bond is intended to replace a letter of credit previously submitted by Marion Merrell Dow, Inc.<sup>3</sup>

Upon review of the current submission and a previously-submitted standby trust agreement,<sup>4</sup> ICF recommends that NRC require the licensee to modify the materials in the following ways:

- (1) Submit a certification statement (Regulatory Guide 3.66, page 1-5);
- (2) Revise the standby trust agreement to reference the current name of the licensee and the licensee's use of the surety bond;

---

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

<sup>2</sup> Memorandum from John R. Madera, NRC Region III, to Louis M. Bykoski, NMSS, April 17, 1996.

<sup>3</sup> ICF reviewed a previous submission regarding this license, from Marion Merrell Dow, Inc., and reported recommendations to NRC in a memorandum dated June 28, 1995.

<sup>4</sup> The current submission does not include a standby trust agreement. However, the previous submission from Marion Merrell Dow, Inc. included a standby trust agreement dated May 29, 1991, which ICF reviewed in 1995 (see ICF memorandum dated June 28, 1995). ICF's current review restates the issues previously raised by ICF concerning the standby trust agreement as well as new standby trust issues raised by the current submission.

- (3) Revise the standby trust agreement to delete the added language in Section 3 (Regulatory Guide 3.66, page 4-18); and
- (4) Submit a letter of acknowledgement with the standby trust agreement (Regulatory Guide 3.66, page 4-27).

These recommendations and other issues are discussed below.

**(1) Submit a Certification Statement (Regulatory Guide 3.66, page 1-5)**

The submission does not include a certification statement. The certification statement, in addition to providing information that would allow NRC to verify the certification amount (e.g., the names and locations of the facilities for which financial assurance is provided, and the amount and types of materials handled), officially certifies that the licensee is in compliance with the appropriate requirements. ICF recommends that NRC require the licensee to submit a certification statement certifying compliance with the decommissioning rules, as recommended in 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), page 1-5.

**(2) Revise the Standby Trust Agreement to Reference the Current Name of the Licensee and the Licensee's Use of the Surety Bond**

As noted in the introduction to this memorandum, the original holder of license 24-15595-01, Marion Merrell Dow, Inc., has merged with Hoechst Roussel to form Hoechst Marion Roussel, Inc. The previously-submitted standby trust agreement, however, references Marion Merrell Dow, Inc. as the grantor throughout the agreement (i.e., in paragraph 1, Schedule A, Schedule C, the specimen certificate of events, and the specimen certificate of resolution). To ensure that the standby trust agreement will be effective given the new corporate entity (Hoechst Marion Roussel, Inc.), ICF recommends that NRC require the licensee to revise the agreement (including the attachments, as described above) to reference Hoechst Marion Roussel, Inc. instead of Marion Merrell Dow, Inc. Schedule A should also be revised to specify the licensee's new mailing address.

In addition, because the licensee submitted a surety bond to replace the previously-submitted letter of credit, NRC may wish to require the licensee to revise paragraphs 3 and 4 of the standby trust agreement to specify that the licensee is currently using a surety bond, rather than a letter of credit, as the primary financial assurance mechanism. Although this modification is unlikely to be critical to the effectiveness of the standby trust agreement, it would make the agreement more consistent with the primary mechanism.

- 3
- (3) Revise the Standby Trust Agreement to Delete the Added Language in Section 3 (*Regulatory Guide 3.66*, page 4-18)

The standard wording for Section 3 ("Establishment of Fund") of the standby trust agreement, as recommended in *Regulatory Guide 3.66*, page 4-18, reads as follows:

The Grantor and the Trustee hereby establish a standby trust fund (the fund) for the benefit of the NRC. The Grantor and the Trustee intend that no third party have access to the Fund except as provided herein.

Section 3 of the submitted standby trust agreement includes this wording, but also adds the following wording:

This Standby Trust is to be funded when:

- (a) Grantor commences decommissioning at its NRC licensed facility: License Number 24-15595-01, and
- (b) Marion Merrell Dow Inc. will not carry out the required decommissioning activities.

The Grantor shall deposit sufficient funds into this Standby Trust so that NRC may direct decommissioning in accordance with the NRC approved decommissioning plan. The Standby Trust property is hereby referred to as the Standby Trust Fund (the Fund).

The added language could be problematic for at least two reasons, as discussed below:

- (1) The two specified conditions under which the standby trust is to be funded do not encompass all situations under which NRC requires the trust to be funded. For example, if the licensee goes bankrupt prior to the start of decommissioning (or refuses to begin decommissioning activities), NRC would wish to fund the trust even though the licensee had not commenced decommissioning and satisfied Condition (a). Similarly, if the licensee does not go bankrupt but is incapable of fully paying for decommissioning, NRC would wish to fund the trust even though NRC might allow the licensee to conduct the necessary decommissioning activities using the funding in the trust. (This case would not satisfy Condition (b).)
- (2) The added language, by stating that the grantor shall deposit sufficient funds into this standby trust, seems to contradict the possibility that the trust may be funded using the licensee's surety bond.

To ensure that the standby trust will be funded as required, ICF recommends that NRC require the licensee to revise the standby trust agreement to eliminate the added wording in Section 3.

- (4) 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. 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, as recommended in Regulatory Guide 3.66, page 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:

- (a) The surety bond states that the surety company is located in New York. The U.S. Department of Treasury's Circular 570, however, lists the surety company's address in California and states that the California surety company is licensed in all states. ICF believes that the New York address and California address pertain to the same surety company because the surety bond lists California as the New York surety company's state of incorporation (as does the accompanying power of attorney document).
- (b) The heading of the payment surety bond does not specify the surety company's type of organization. In addition, the signature block does not specify the address or state of incorporation of the surety company. Although this information may help NRC to identify the surety company, the surety company is identified as a "corporation" in the power of attorney document, and the full address and state of incorporation of the surety company are stated in the heading of the bond.
- (c) The surety bond does not indicate the amount(s) guaranteed for each covered facility, as recommended in Regulatory Guide 3.66, page 4-30. Identifying the amounts guaranteed for each facility helps ensure that funds will be available for all facilities as appropriate. However, the licensee is using a certification of financial assurance, which cannot be allocated among multiple facilities covered by a single license.
- (d) The heading of the surety bond contains a typographical error in that the zip code for the Marion Park facility is listed as "64137-0627" (emphasis added). According to the cover letter to the submission, which is printed on company letterhead, the correct zip code is "64134-0627." This error is not likely to reduce the effectiveness of the surety bond because the bond also lists the correct zip code in the business address of the principal (which is also the address of the Marion Park facility).

- (e) The surety bond does not indicate a liability limit, as recommended on page 4-32 of Regulatory Guide 3.66. This omission does not detract from the protection provided by the mechanism, however. The penal sum, which is stated on the first page of the surety bond, is equal to the liability limit.
- (f) The surety bond does not indicate the bond premium, as recommended by Regulatory Guide 3.66 on page 4-32. The bond premium represents an agreement between the licensee and the surety company and its exclusion from the surety bond does not affect the bond's remaining provisions.
- (g) As submitted, all signatures and titles are on a separate page from the rest of the payment surety bond. Common practice (as suggested by the recommended wording in Regulatory Guide 3.66, page 4-32) would have signatures on the same page as at least some portion (e.g., the final section) of the agreement. This practice helps ensure the validity of the agreement by providing added certainty that the signatures apply to the agreement. Although in this case the signatures fall on a separate page, ICF does not believe that revising the document (e.g., re-formatting the surety bond so that the last paragraph and the signatures are on the same page) would substantially alter the degree of assurance provided to NRC by the bond.
- (h) The standby trust agreement is not dated on the signature page. This does not affect the validity of the mechanism because the agreement specifies an effective date in the opening paragraph.
- (i) The standard wording for specimen certificates of resolution, as recommended in Regulatory Guide 3.66, page 4-25, anticipates a corporate resolution reading as follows:

RESOLVED, that this Board of Directors hereby  
authorizes the President, or such other employee of  
the Company as he may designate, to commence  
decommissioning activities . . .

The submitted specimen certificate of resolution, however, does not identify any company officers:

RESOLVED, that this Board of Directors hereby  
authorizes the commencement of decommissioning  
activities . . .

This wording is acceptable because the Board of Directors is authorized to commence decommissioning activities, just as it is authorized to delegate the power to commence decommissioning activities.

Finally, NRC 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 submission, we cannot verify compliance with these requirements.

attachments

APPENDIX A  
CHECKLIST FOR DECOMMISSIONING FINANCIAL ASSURANCE

NAME OF LICENSEE OR APPLICANT

MAILING ADDRESS Hoechst Marion Roussel

Po Box 9627

Kansas City, MO 64134-9627

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. 4/3/96 Date of Financial Assurance Submission      Issue Date: 3/13/96  
Effective Date: 3/13/96
2. ☐ Public Entity  
☒ Private Entity
3. ☒ Certification of Financial Assurance      \$750,000 No Certification Statement  
☐ 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)      \$750,000
  - ☒ Surety bond
  - ☐ Letter of Credit
  - ☐ 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 *previous submission*
  - ☒ Acknowledgement
2. Letter of Credit
  - ☐ Letter of Credit
  - ☐ Standby Trust Agreement
  - ☐ Acknowledgement
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.

EXHIBIT 3-6

CHECKLIST OF CRITERIA FOR REVIEW OF SURETY BONDS

- ✓ • 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.
- C to check • Evidence that the financial instrument is an originally signed duplicate (e.g., an executed copy of the instrument).
- ✓ • Copy of Circular 570 of the U.S. Department of Treasury.
- ✓ • Copy of broker/agent's power of attorney authorizing the broker/agent to issue bonds.
- ✓ • Signed statement from applicant indicating that they will notify NRC if the surety company intends to cancel or go bankrupt.
- ✓ • Date of execution of bond and effective date.
- ✓ • Name and address of licensee (principal).
- ✓ • Type of business organization; State of incorporation, if appropriate.
- commissioning • NRC license number, identification of licensed facility(ies),  
sts not explicitly decommissioning costs.  
ated for each facility
- ✓ • Identification of corporate or individual surety(ies).
  - ✓ 1. Name;
  - ✓ 2. State of incorporation;
  - Missing 3. Qualification in jurisdiction where facility covered by the surety bond is located. (ILF verified)
- ✓ • Designation of obligee (NRC or State regulatory agency).
- Missing • Recitation of consideration (fee paid for surety bond).
- ✓ • Liability of surety.
  - ✓ 1. Penal sum
  - ✓ 2. Limitation of liability
  - ✓ 3. Condition(s) of liability
  - ✓ 4. Statement of joint and several liability
- ✓ • Statement of licensee's or applicant's regulatory obligations as reason for bond.
- ✓ • Scope and duration of bond.
  - ✓ 1. Restricted to single obligation
  - ✓ 2. Continuing
  - ✓ 3. Provisions for renewal
  - ✓ 4. Payable to a standby trust fund

EXHIBIT 3-6 (Continued)

- ✓ • Termination.
  - ✓ 1. By surety
  - ✓ 2. By principal
  - ✓ 3. Effective date of termination or revocation
- ✓ • Adjustment of penal sum.
- ✓ • Date.
- ✓ • Signatures.
- Missing • Premium.

CMD1 -----

LICENSE SCREEN \* - DECOMMISSIONING FINANCIAL ASSURANCE INFORMATION

DOCKET: ----- LIC: 24-15575-01 NAME: Howard Marion Russell

PARTY ISSUING MECHANISM:

NAME: Firgman's Fund Insurance Company  
ADDR1: One Liberty Plaza  
ADDR2: -----  
CITY: New York  
STATE: NY ZIP: 10006

ASSUR TYPE: CERT  
MECH TYPE: SB  
MECH AMOUNT: 0 \$750,000  
APPROVED? DATE: 0  
EXPIRES ? DATE: 0 until cancelled  
ACTION (A=ADD C=CHG D=DELETE)

PARTY ISSUING MECHANISM:

NAME: -----  
ADDR1: -----  
ADDR2: -----  
CITY: -----  
STATE: ----- ZIP: -----

ASSUR TYPE: ? CERT  
MECH TYPE: -----  
MECH AMOUNT: 0  
APPROVED? DATE: 0  
EXPIRES ? DATE: 0  
ACTION (A=ADD C=CHG D=DELETE)

\*\*\* 000 000 \*\*\*

B M3 LIU10

NUM

A.6

RS C4

OT for Attention. Home to Switch

Capture Off

1 Number 1

CMD1 -----

LTS - FINANCIAL ASSURANCE INFORMATION

VALID MECHANISM TYPE CODES AND THEIR MEANINGS:

MECH TYPE	DESCRIPTION
TR -----	TRUST FUND
ES -----	ESCROW ACCOUNT
CD -----	CERTIFICATE OF DEPOSIT
GF -----	GOVERNMENT FUND
GS -----	DEPOSIT OF GOVERNMENT SECURITIES
SB -----	SURETY BOND
LT -----	LETTER OF CREDIT
LN -----	LINE OF CREDIT
PG -----	PARENT COMPANY GUARANTEE
SI -----	STATEMENT OF INTENT

PRESS RETURN KEY FOR FINANCIAL ASSURANCE SCREEN:

B M3 LIU10

A.6

R1 C1

OT for Attention. Home to Switch

Capture Off

1 Number 1



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

*Hoechst Marion  
Roussell*

*96-33*

July 31, 1996

MEMORANDUM TO: John R. Madera, Chief  
Materials Licensing Section  
Division of Radiation Safety  
and Safeguards, Region III

FROM: Louis M. Bykoski *Louis M. Bykoski*  
Materials Decommissioning Section  
Low-Level Waste and Decommissioning  
Projects Branch  
Division of Waste Management, NMSS

SUBJECT: THE OFFICE OF THE GENERAL COUNSEL AND CONTRACTOR COMMENTS ON  
NON-STANDARD FINANCIAL ASSURANCE SUBMITTALS

Our contractor, ICF Incorporated, and the Office of the General Counsel (OGC) have reviewed and provided comments on the Hoechst Marion Roussell and SteriGenics International nonstandard financial assurance submittals sent to us for review.

The ICF comments are presented in two parts. The first part deals with specific recommendations to current deficiencies. The second part (Other Issues) provides a discussion of changes to the standard wording that are acceptable and are not considered to be deficiencies. The OGC comments may include additional deficiencies that need to be corrected by the licensee and comments for our internal use.

You should carefully review all the comments before preparing the deficiency letter. We have enclosed both the ICF and OGC comments to assist you in your review.

Attachments: As stated

CONTACT: Louis M. Bykoski, NMSS/DWM  
415-6754  
Stephen Lewis, OGC  
415-1684

### LIST OF INSTRUCTIONS

Hoechst Marion Roussel

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.

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

HOECHST MARION ROUSSEL

Based upon our review, we have no comments.



CONSULTING GROUP

ICF Incorporated  
9300 Lee Highway  
Fairfax, VA 22031-1207  
703/934-3000 Fax 703-934-9740

June 3, 1996

To: Dr. Lou Bykoski, NMSS/NRC

From: Matt Borick and John Collier, ICF Incorporated

Subject: Review of Surety Bond Submitted by Hoechst Marion Roussel, Inc.

---

Hoechst Marion Roussel, Inc. in Kansas City, Missouri, submitted a certification of financial assurance using a surety bond in the amount of \$750,000.<sup>1</sup> The submission addresses decommissioning costs for license 24-16595-01 issued under 10 CFR Part 30. This license was previously held by Marion Merrell Dow, Inc., which has merged with Hoechst Roussel to form Hoechst Marion Roussel, Inc.<sup>2</sup> The newly-submitted surety bond is intended to replace a letter of credit previously submitted by Marion Merrell Dow, Inc.<sup>3</sup>

Upon review of the current submission and a previously-submitted standby trust agreement,<sup>4</sup> ICF recommends that NRC require the licensee to modify the materials in the following ways:

- (1) Submit a certification statement (Regulatory Guide 3.66, page 1-5);
- (2) Revise the standby trust agreement to reference the current name of the licensee and the licensee's use of the surety bond;

---

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

<sup>2</sup> Memorandum from John R. Madera, NRC Region III, to Louis M. Bykoski, NMSS, April 17, 1996.

<sup>3</sup> ICF reviewed a previous submission regarding this license, from Marion Merrell Dow, Inc., and reported recommendations to NRC in a memorandum dated June 28, 1995.

<sup>4</sup> The current submission does not include a standby trust agreement. However, the previous submission from Marion Merrell Dow, Inc. included a standby trust agreement dated May 29, 1991, which ICF reviewed in 1995 (see ICF memorandum dated June 28, 1995). ICF's current review restates the issues previously raised by ICF concerning the standby trust agreement as well as new standby trust issues raised by the current submission.

- (3) Revise the standby trust agreement to delete the added language in Section 3 (Regulatory Guide 3.66, page 4-18); and
- (4) Submit a letter of acknowledgement with the standby trust agreement (Regulatory Guide 3.66, page 4-27).

These recommendations and other issues are discussed below.

**(1) Submit a Certification Statement (Regulatory Guide 3.66, page 1-5)**

The submission does not include a certification statement. The certification statement, in addition to providing information that would allow NRC to verify the certification amount (e.g., the names and locations of the facilities for which financial assurance is provided, and the amount and types of materials handled), officially certifies that the licensee is in compliance with the appropriate requirements. ICF recommends that NRC require the licensee to submit a certification statement certifying compliance with the decommissioning rules, as recommended in 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), page 1-5.

**(2) Revise the Standby Trust Agreement to Reference the Current Name of the Licensee and the Licensee's Use of the Surety Bond**

As noted in the introduction to this memorandum, the original holder of license 24-15595-01, Marion Merrell Dow, Inc., has merged with Hoechst Roussel to form Hoechst Marion Roussel, Inc. The previously-submitted standby trust agreement, however, references Marion Merrell Dow, Inc. as the grantor throughout the agreement (i.e., in paragraph 1, Schedule A, Schedule C, the specimen certificate of events, and the specimen certificate of resolution). To ensure that the standby trust agreement will be effective given the new corporate entity (Hoechst Marion Roussel, Inc.), ICF recommends that NRC require the licensee to revise the agreement (including the attachments, as described above) to reference Hoechst Marion Roussel, Inc. instead of Marion Merrell Dow, Inc. Schedule A should also be revised to specify the licensee's new mailing address.

In addition, because the licensee submitted a surety bond to replace the previously-submitted letter of credit, NRC may wish to require the licensee to revise paragraphs 3 and 4 of the standby trust agreement to specify that the licensee is currently using a surety bond, rather than a letter of credit, as the primary financial assurance mechanism. Although this modification is unlikely to be critical to the effectiveness of the standby trust agreement, it would make the agreement more consistent with the primary mechanism.

- (3) Revise the Standby Trust Agreement to Delete the Added Language in Section 3 (Regulatory Guide 3.66, page 4-18)

The standard wording for Section 3 ("Establishment of Fund") of the standby trust agreement, as recommended in Regulatory Guide 3.66, page 4-18, reads as follows:

The Grantor and the Trustee hereby establish a standby trust fund (the Fund) for the benefit of the NRC. The Grantor and the Trustee intend that no third party have access to the Fund except as provided herein.

Section 3 of the submitted standby trust agreement includes this wording, but also adds the following wording:

This Standby Trust is to be funded when:

- (a) Grantor commences decommissioning at its NRC licensed facility: License Number 24-15595-01, and
- (b) Marion Merrell Dow Inc. will not carry out the required decommissioning activities.

The Grantor shall deposit sufficient funds into this Standby Trust so that NRC may direct decommissioning in accordance with the NRC approved decommissioning plan. The Standby Trust property is hereby referred to as the Standby Trust Fund (the Fund).

The added language could be problematic for at least two reasons, as discussed below:

- (1) The two specified conditions under which the standby trust is to be funded do not encompass all situations under which NRC requires the trust to be funded. For example, if the licensee goes bankrupt prior to the start of decommissioning (or refuses to begin decommissioning activities), NRC would wish to fund the trust even though the licensee had not commenced decommissioning and satisfied Condition (a). Similarly, if the licensee does not go bankrupt but is incapable of fully paying for decommissioning, NRC would wish to fund the trust even though NRC might allow the licensee to conduct the necessary decommissioning activities using the funding in the trust. (This case would not satisfy Condition (b).)
- (2) The added language, by stating that the grantor shall deposit sufficient funds into this standby trust, seems to contradict the possibility that the trust may be funded using the licensee's surety bond.

To ensure that the standby trust will be funded as required, ICF recommends that NRC require the licensee to revise the standby trust agreement to eliminate the added wording in Section 3.

(4) **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. 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, as recommended in Regulatory Guide 3.66, page 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:

- (a) The surety bond states that the surety company is located in New York. The U.S. Department of Treasury's Circular 570, however, lists the surety company's address in California and states that the California surety company is licensed in all states. ICF believes that the New York address and California address pertain to the same surety company because the surety bond lists California as the New York surety company's state of incorporation (as does the accompanying power of attorney document).
- (b) The heading of the payment surety bond does not specify the surety company's type of organization. In addition, the signature block does not specify the address or state of incorporation of the surety company. Although this information may help NRC to identify the surety company, the surety company is identified as a "corporation" in the power of attorney document, and the full address and state of incorporation of the surety company are stated in the heading of the bond.
- (c) The surety bond does not indicate the amount(s) guaranteed for each covered facility, as recommended in Regulatory Guide 3.66, page 4-30. Identifying the amounts guaranteed for each facility helps ensure that funds will be available for all facilities as appropriate. However, the licensee is using a certification of financial assurance, which cannot be allocated among multiple facilities covered by a single license.
- (d) The heading of the surety bond contains a typographical error in that the zip code for the Marion Park facility is listed as "64137-0627" (emphasis added). According to the cover letter to the submission, which is printed on company letterhead, the correct zip code is "64134-0627." This error is not likely to reduce the effectiveness of the surety bond because the bond also lists the correct zip code in the business address of the principal (which is also the address of the Marion Park facility).

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- (f) The surety bond does not indicate the bond premium, as recommended by *Regulatory Guide 3.66* on page 4-32. The bond premium represents an agreement between the licensee and the surety company and its exclusion from the surety bond does not affect the bond's remaining provisions.
- (g) As submitted, all signatures and titles are on a separate page from the rest of the payment surety bond. Common practice (as suggested by the recommended wording in *Regulatory Guide 3.66*, page 4-32) would have signatures on the same page as at least some portion (e.g., the final section) of the agreement. This practice helps ensure the validity of the agreement by providing added certainty that the signatures apply to the agreement. Although in this case the signatures fall on a separate page, ICF does not believe that revising the document (e.g., re-formatting the surety bond so that the last paragraph and the signatures are on the same page) would substantially alter the degree of assurance provided to NRC by the bond.
- (h) The standby trust agreement is not dated on the signature page. This does not affect the validity of the mechanism because the agreement specifies an effective date in the opening paragraph.
- (i) The standard wording for specimen certificates of resolution, as recommended in *Regulatory Guide 3.66*, page 4-25, anticipates a corporate resolution reading as follows:

RESOLVED, that this Board of Directors hereby  
authorizes the President, or such other employee of  
the Company as he may designate, to commence  
decommissioning activities . . .

The submitted specimen certificate of resolution, however, does not identify any company officers:

RESOLVED, that this Board of Directors hereby  
authorizes the commencement of decommissioning  
activities . . .

This wording is acceptable because the Board of Directors is authorized to commence decommissioning activities, just as it is authorized to delegate the power to commence decommissioning activities.

Finally, NRC 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 submission, we cannot verify compliance with these requirements.

attachments

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NAME OF LICENSEE OR APPLICANT

MAILING ADDRESS Hoechst Marion Roussel

Po Box 9627

Kansas City, MO 64134-0627

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. 4/3/96 Date of Financial Assurance Submission      Issue Date: 3/13/96  
Effective Date: 3/13/96
2. ☐ Public Entity  
☒ Private Entity
3. ☒ Certification of Financial Assurance      \$750,000 No Certification Statement  
☐ 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)      \$750,000  
☒ Surety bond  
☐ Letter of Credit  
☐ 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  previous submission
  - ☒ Acknowledgement
2. Letter of Credit
  - ☐ Letter of Credit
  - ☐ Standby Trust Agreement
  - ☐ Acknowledgement
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.

EXHIBIT 3-6

CHECKLIST OF CRITERIA FOR REVIEW OF SURETY BONDS

- ✓ • 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.
- NRC to check • Evidence that the financial instrument is an originally signed duplicate (e.g., an executed copy of the instrument).
- ✓ • Copy of Circular 570 of the U.S. Department of Treasury.
- ✓ • Copy of broker/agent's power of attorney authorizing the broker/agent to issue bonds.
- ✓ • Signed statement from applicant indicating that they will notify NRC if the surety company intends to cancel or go bankrupt.
- ✓ • Date of execution of bond and effective date.
- ✓ • Name and address of licensee (principal).
- ✓ • Type of business organization; State of incorporation, if appropriate.
- Decommissioning costs not explicitly stated for each facility • NRC license number, identification of licensed facility(ies), decommissioning costs.
- ✓ • Identification of corporate or individual surety(ies).
  - ✓ 1. Name;
  - ✓ 2. State of incorporation;
  - Missing 3. Qualification in jurisdiction where facility covered by the surety bond is located. (ICF verified)
- ✓ • Designation of obligee (NRC or State regulatory agency).
- Missing • Recitation of consideration (fee paid for surety bond).
- ✓ • Liability of surety.
  - ✓ 1. Penal sum
  - ✓ 2. Limitation of liability
  - ✓ 3. Condition(s) of liability
  - ✓ 4. Statement of joint and several liability
- ✓ • Statement of licensee's or applicant's regulatory obligations as reason for bond.
- ✓ • Scope and duration of bond.
  - ✓ 1. Restricted to single obligation
  - ✓ 2. Continuing
  - ✓ 3. Provisions for renewal
  - ✓ 4. Payable to a standby trust fund

EXHIBIT 3-6 (Continued)

- ✓ • Termination.
  - ✓ 1. By surety
  - ✓ 2. By principal
  - ✓ 3. Effective date of termination or revocation

✓ • Adjustment of penal sum.

✓ • Date.

✓ • Signatures.

Missing • Premium.

CMD: -----

LICENSE SCREEN \* - DECOMMISSIONING FINANCIAL ASSURANCE INFORMATION

DOCKET: ----- LIC: 24-15595-01 NAME: Hoechst Marion Roussel

PARTY ISSUING MECHANISM:

NAME: Fidman's Fund Insurance Company  
ADDR1: One Liberty Plaza  
ADDR2: -----  
CITY: New York  
STATE: NY ZIP: 10006

ASSUR TYPE: CERT  
MECH TYPE: SB  
MECH AMOUNT: 0 \$750,000  
APPROVED? - DATE: 0  
EXPIRES ? - DATE: 0 until cancelled  
ACTION (A=ADD C=CHG D=DELETE)

PARTY ISSUING MECHANISM:

NAME: -----  
ADDR1: -----  
ADDR2: -----  
CITY: -----  
STATE: -- ZIP: -----

ASSUR TYPE: ? CERT  
MECH TYPE: --  
MECH AMOUNT: 0  
APPROVED? - DATE: 0  
EXPIRES ? - DATE: 0  
ACTION (A=ADD C=CHG D=DELETE)

\*\*\* 000 000 \*\*\*

B MJ L1U10

NUM

A. &

RS C9

AT for Attention. Home to Switch

Casture Off

Numerical

CMD: -----

LTS - FINANCIAL ASSURANCE INFORMATION

VALID MECHANISM TYPE CODES AND THEIR MEANINGS:

MECH TYPE	DESCRIPTION
TR	TRUST FUND
ES	ESCROW ACCOUNT
CD	CERTIFICATE OF DEPOSIT
GF	GOVERNMENT FUND
GS	DEPOSIT OF GOVERNMENT SECURITIES
SB	SURETY BOND
LT	LETTER OF CREDIT
LN	LINE OF CREDIT
PG	PARENT COMPANY GUARANTEE
SI	STATEMENT OF INTENT

PRESS RETURN KEY FOR FINANCIAL ASSURANCE SCREEN:

B MJ L1U10

A. &

RS C1

AT for Attention. Home to Switch

Casture Off

Numerical

96-33

APR 17 1996

MEMORANDUM TO: Louis M. Bykoski  
Materials Decommissioning Section  
Low Level Waste and Decommissioning  
Projects Branch  
Division of Waste Management, NMSS

FROM: John R. Madera, Chief  
Nuclear Materials Licensing Branch  
Division of Nuclear Materials Safety

SUBJECT: REQUEST FOR ASSISTANCE IN THE REVIEW OF FINANCIAL ASSURANCE  
IN THE FORM OF A PAYMENT SURETY BOND

Marion Merrell Dow, Inc., holder of NRC license Number 24-15595-01 recently merged with Hoechst Roussel to form Hoechst Marion Roussel. As part of the change in ownership, the license elected to replace their current financial assurance with a payment surety bond.

Attached for your review is a copy of the payment surety bond in the amount of \$750,000. We ask that you review the document for acceptability.

Attachments: As stated

CONTACT: Kevin G. Null  
(708) 829-9854

cc: Cindy Pederson

DOCUMENT NAME: P:\TAR:FIN

To receive a copy of this document, indicate in the box: "C" = Copy without attachment/enclosure "E" = Copy with attachment/enclosure "N" = No copy

OFFICE	DNMS/RIII	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NAME	KGNull:brt	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DATE	04/15/96	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

OFFICIAL RECORD COPY

300 208

R2

Hoechst Marion Roussel

Hoechst Marion Roussel, Inc.

10236 Marion Park Drive  
Mail: P.O. Box 9627  
Kansas City, MO 64134-0627  
Telephone (816) 966-5000

April 1, 1996

Mr. Kevin Null  
U.S. Nuclear Regulatory Commission  
Region III  
801 Warrenville Road  
Lisle, IL 60532-4351

SUBJECT: License No. 24-15595-01

Dear Mr. Null,

Please find enclosed an original Certified Copy of Hoechst Marion Roussel's Corporate Bylaws.

Also, you will find 2 original copies of a Payment Surety Bond. The Surety bond will replace the Letter of Credit.

These documents are being sent to address the NRC requirement for a Decommissioning Financial Assurance Instrument.

Should you have any questions, I can be reached at 816-966-5755.

Sincerely yours,

*Pamela Barton*

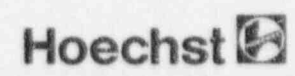
Pamela A. Barton  
Radiation Safety Officer

PB/vc

Enc.

RECEIVED  
APR 03 1996  
REGION III

Hoechst Marion Roussel  
A member of the Hoechst Group



**CERTIFIED COPY OF**  
**CORPORATE BYLAWS**

I, Tommy R. White, Vice President of Hoechst Marion Roussel, Inc., a Delaware Corporation (the "Corporation"), do hereby certify that the following is a true and correct excerpt from the By-Laws of the Corporation, that such By-Laws have been duly authorized and approved by the Board of Directors of the Corporation, and that such excerpt is in full force and effect on the date hereof:

**Section 6. President.** The President, shall, subject to the control of the Board of Directors and, if there be one, the Chairman of the Board of Directors, have general supervision of the business of the Corporation and shall see that all orders and resolutions of the Board of Directors are carried into effect. He shall execute all bonds, mortgages, contracts and other instruments of the Corporation requiring a seal, under the seal of the Corporation, except where required or permitted by law to be otherwise signed and executed and except that the other officers of the Corporation may sign and execute documents when so authorized by these By-Laws, the Board of Directors or the President. In the absence or disability of the Chairman of the Board of Directors, or if there be none, the President shall preside at all meetings of the stockholders and the Board of Directors. If there be no Chairman of the Board of Directors, the President shall be the Chief Executive Officer of the Corporation. The President shall also perform such other duties and may exercise such other powers as from time to time may be assigned to him by these By-Laws or by the Board of Directors.

**Section 7. Vice Presidents.** At the request of the President or in his absence or in the event of his inability or refusal to act (and if there be no Chairman of the Board of Directors), the Vice President or the Vice Presidents if there is more than one (in the order designated by the Board of Directors) shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. Each Vice President shall perform such other duties and have such other powers as the Board of Directors from time to time may prescribe. If there be no Chairman of the Board of Directors and no Vice President, the Board of Directors shall designate the officer of the Corporation who, in the absence of the President or in the event of the inability or refusal of the President to act, shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all restrictions upon the President.

I do further certify that on the date hereof the President was absent.

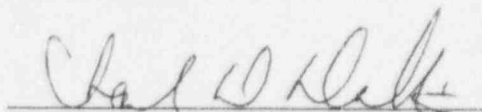
I do further certify that the same are within the corporate and lawful powers of the Corporation.

I do further certify that Charles D. Dalton has been duly appointed a Vice President of the Corporation and is serving as such on the date hereof, and that the signature set forth below opposite his name is his genuine signature:

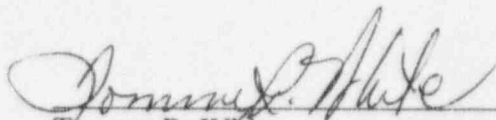
NAME

SIGNATURE

Charles D. Dalton



Witness my hand and the seal of the Corporation on March 19, 1996



Tommy R. White  
Vice President

(S E A L)

FIREMAN'S FUND INSURANCE COMPANY

KNOW ALL MEN BY THESE PRESENTS: That FIREMAN'S FUND INSURANCE COMPANY, a Corporation duly organized and existing under the laws of the State of California, and having its principal office in the County of Marin, State of California, has made, constituted and appointed, and does by these presents make, constitute and appoint

ELIZABETH BULKOWSKI

NEW YORK NY

its true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, seal, acknowledge and deliver any and all bonds, undertakings, recognizances or other written obligations in the nature thereof

and to bind the Corporation thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the corporate seal of the Corporation and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney(s)-in-Fact may do in the premises.

This power of attorney is granted pursuant to Article VII, Sections 45 and 46 of By-laws of FIREMAN'S FUND INSURANCE COMPANY now in full force and effect.

"Article VII. Appointment and Authority of Resident Secretaries, Attorney-in-Fact and Agents to accept Legal Process and Make Appearances.

Section 45. Appointment. The Chairman of the Board of Directors, the President, any Vice-President or any other person authorized by the Board of Directors, the Chairman of the Board of Directors, the President or any Vice-President may, from time to time, appoint Resident Assistant Secretaries and Attorneys-in-Fact to represent and act for and on behalf of the Corporation and Agents to accept legal process and make appearances for and on behalf of the Corporation.

Section 46. Authority. The authority of such Resident Assistant Secretaries, Attorneys-in-Fact and Agents shall be as prescribed in the instrument evidencing their appointment. Any such appointment and all authority granted thereby may be revoked at any time by the Board of Directors or by any person empowered to make such appointment."

This power of attorney is signed and sealed under and by the authority of the following Resolution adopted by the Board of Directors of FIREMAN'S FUND INSURANCE COMPANY at a meeting duly called and held on the 7th day of August, 1984, and said Resolution has not been amended or repealed:

"RESOLVED, that the signature of any Vice-President, Assistant Secretary, and Resident Assistant Secretary of this Corporation, and the seal of this Corporation may be affixed or printed on any power of attorney, on any revocation of any power of attorney, or on any certificate relating thereto, by facsimile, and any power of attorney, any revocation of any power of attorney, or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Corporation."

IN WITNESS WHEREOF, FIREMAN'S FUND INSURANCE COMPANY has caused these presents to be signed by its Vice-President, and its corporate

seal to be hereunto affixed this 30th day of June, 1995.



FIREMAN'S FUND INSURANCE COMPANY

By

Vice-President

STATE OF CALIFORNIA  
COUNTY OF MARIN

ss.

On this 30th day of June, 1995, before me personally came M. A. Mallonee to me known, who, being by me duly sworn, did depose and say: that he is Vice-President of FIREMAN'S FUND INSURANCE COMPANY, the Corporation described in and which executed the above instrument; that he knows the seal of said Corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Corporation and that he signed his name thereto by like order.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year herein first above written.



STATE OF CALIFORNIA  
COUNTY OF MARIN

ss.

I, the undersigned, Resident Assistant Secretary of FIREMAN'S FUND INSURANCE COMPANY, a CALIFORNIA Corporation, DO HEREBY CERTIFY that the foregoing and attached POWER OF ATTORNEY remains in full force and has not been revoked; and furthermore that Article VII, Sections 45 and 46 of the By-laws of the Corporation, and the Resolution of the Board of Directors; set forth in the Power of Attorney, are now in force.

Signed and sealed at the County of Marin. Dated the 13th day of March, 1996.



Resident Assistant Secretary

NON NEGOTIABLE



**Fireman's  
Fund**

Fireman's Fund  
Insurance Company

**FIREMAN'S FUND INSURANCE COMPANY**  
**SUMMARY FINANCIAL STATEMENT - December 31, 1994**

(As Filed with Insurance Department of the State of California)

**NON NEGOTIABLE**

ASSETS:

*Government Bonds	\$ 1,386,971,927
*State and Municipal Bonds	685,111,609
*Miscellaneous Bonds	2,284,301,265
+Stocks	1,192,790,615
Cash in Bank and Company's Office	11,646,941
Accrued Interest	78,045,987
Premiums in Course of Collection and Other Assets	1,249,790,018
<b>Total Assets</b>	<b>\$ 6,888,658,362</b>

LIABILITIES, SURPLUS AND OTHER FUNDS:

Loss and Loss Expense Reserve	\$ 3,556,082,787
Unearned Premium Reserve	672,037,665
All Other Claims, Demands and Reserves	681,834,215
<b>Total Liabilities</b>	<b>4,909,954,667</b>

Capital Paid-up	\$ 4,200,000
Net Surplus	1,974,503,695
<b>Policyholder's Surplus</b>	<b>1,978,703,695</b>
<b>Total Capital, Surplus and Reserves</b>	<b>\$ 6,888,658,362</b>

0

\*Bonds are stated at Amortized Values  
+Stocks are stated at Market Values

State of California )  
County of Marin ) ss

I, M. A. Mallonee, Vice President of Fireman's Fund Insurance Company, do hereby certify that the above is a true statement of the assets and liabilities of said Corporation as of December 31, 1994, taken from the books and records of said Corporation.



M. A. Mallonee, Vice President

State of California )  
County of Marin ) ss

Subscribed and sworn before me, a Notary Public of the State of California, in the County of Marin, this 17th day of February, 1995.



Notary Public of California

## CONVERSATION RECORD

TIME

DATE

(time)

2/6/96

☐ VISIT☐ CONFERENCE☒ TELEPHONE☐ INCOMING☒ OUTGOING

NAME OF PERSON(S) CONTACTED OR IN CONTACT

ORGANIZATION (OFFICE, DEPT. ETC.)

TELEPHONE NO.

Pamela Barton

SUBJECT

C/N 00208

## SUMMARY

Pleas submit the following additional information pertaining to financial assurance for Hoechst Marion Roussel:

1. A copy of letter dated 10/31/95 as referenced in your letter to us dated 11/16/95. This letter was in response to item 3 of our 9/20/95 deficiency letter.
2. A modified letter of credit to reflect the change in name of the licensee to Hoescht Marion Roussel.

In addition, Ms. Barton confirmed that item 1 of the license is to be changed to Hoescht Marion Roussel.

4/15/96 RE: Licensee's 4/1/96 letter, spoke with P. Barton. She confirmed that the financial assurance package is intended to completely replace all previous submissions for financial assurance. Send a TAR to HQ.

## ACTION REQUIRED

As above.

NAME OF PERSON DOCUMENTING CONVERSATION

Kevin Null

SIGNATURE

DATE

Kevin L. Null 2/6/96

## ACTION TAKEN

SIGNATURE

TITLE

DATE

Amendment to  
Standby Trust Agreement

This amendment to the Standby Trust Agreement dated as of May 29, 1991, by and between Hoechst Marion Roussel, Inc. (formerly Marion Merrell Dow Inc.), a Delaware Corporation, herein referred to as the "Grantor" and Commerce Bank of Kansas City, N.A., 922 Walnut, Kansas City, Missouri, 64106, the "Trustee" is dated as of November 1, 1995 and amends the Standby Trust Agreement.

WHEREAS, 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, stands as the potential beneficiary of the Standby Trust Agreement in accordance with regulations of Title 10, Chapter I of the Code of Federal Regulations, Part 30.

WHEREAS, the Standby Trust Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the NRC, or State Agency, or by the Trustee and the NRC or State Agency, if the Grantor ceases to exist; and

WHEREAS, the Grantor, the Trustee and the NRC desire to amend the Standby Trust Agreement.

NOW, THEREFORE, in consideration of the foregoing and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged the Grantor, the Trustee, and the NRC hereby agree as follows:

1. Amendment. The Standby Trust Agreement is hereby amended as follows:

(a) The language of "Section 3. Establishment of Fund." is hereby deleted in its entirety and replaced by the following:

"The Grantor and the Trustee hereby establish a standby trust for the benefit of the NRC. The Grantor and the Trustee intend that no third party have access to the Fund except as provided herein."

(b) Except as expressly amended hereby, the Standby Trust Agreement shall remain in full force and effect.

2. Effective Date of Amendment. The foregoing Amendment shall be effective November 1, 1995.

3. Governing Law. This Amendment shall be administered, construed and enforced according to the laws of the State of Missouri.

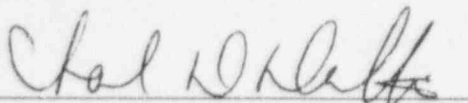
**NON NEGOTIABLE**

RECEIVED  
NOV 20 1995  
REGION III

IN WITNESS WHEREOF the parties have caused this Amendment to be executed by the respective officers duly authorized and its corporate seal to be hereunto affixed and attested as of the effective date written above.

Attest:

Hoechst Marion Roussel, Inc.  
(Formerly Marion Merrell Dow Inc.)



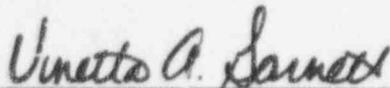
Charles D. Dalton  
Assistant Secretary



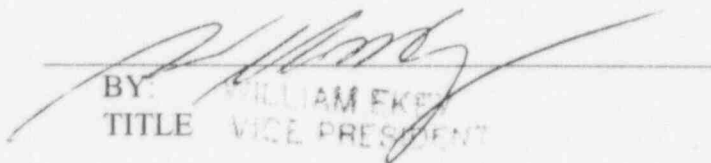
BY: Rebecca R. Tilden  
TITLE: Vice President

Attest:

 TRUSTEE: Commerce Bank of Kansas City, N.A.



VINETTA A. GARNETT  
ASSISTANT SECRETARY



BY: WILLIAM E. KEEN  
TITLE: VICE PRESIDENT

Attest:

U.S. Nuclear Regulatory Commission

\_\_\_\_\_  
BY:  
TITLE

NON NEGOTIABLE

## **CERTIFICATION OF FINANCIAL ASSURANCE**

**Principal:** Hoechst Marion Roussel, Inc., P.O. Box 9627, Kansas City, Missouri 64134-0627 (formerly Marion Merrell Dow Inc.)

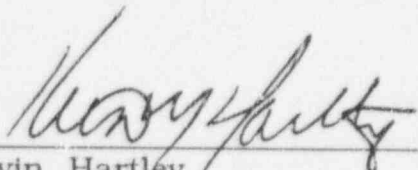
**NRC License Number 24-15595-01:** Hoechst Marion Roussel Inc., 6633 Troost and Marion Park Drive, Kansas City, Missouri

**Issued to:** U.S. Nuclear Regulatory Commission

This is to certify that Hoechst Marion Roussel, Inc. is licensed to possess Hydrogen-3 (1.0 curie), Carbon-14 (1.0 curie), Sulfur-35 (20 millicuries), Iodine-125 (70 millicuries), and Iodine-131 (30 millicuries) in the amounts indicated in parenthesis, and that financial assurance in the amount prescribed by 10 CFR Part 30 of \$750,000.00 has been obtained for the purpose of decommissioning.

Corporate Seal

November 16, 1995

  
\_\_\_\_\_  
Kevin Hartley

Vice President, Finance & Assistant Treasurer

**NON NEGOTIABLE**

# HOECHST MARION ROUSSEL, INC.

P. O. BOX 9627  
10236 MARION PARK DRIVE  
KANSAS CITY, MO 64137-1405

November 17, 1995

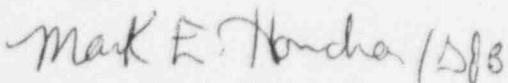
Ms. Cassandra F. Frazier  
Nuclear Material Licensing Section  
U.S. Nuclear Regulatory Commission  
Region III, 801 Warrenville Road  
Lisle, IL 60532-3451

RE: Acknowledgment

Dear Ms. Frazier:

Enclosed please find the acknowledgment that you requested.

Sincerely,

Handwritten signature of Mark E. Hanchar in cursive, followed by a vertical line and the initials 'DfB'.

Mark E. Hanchar, AU SCLA ALCM  
Risk Manager

RECEIVED  
NOV 20 1995  
REGION III

ACKNOWLEDGEMENT

STATE OF

Missouri

COUNTY OF

JACKSON

On this 15<sup>th</sup> day of November, 1985, before me a notary public in and for the County and State aforesaid, personally appeared William Ekey, and he did depose and say that he is the Vice President, of Commerce Bank, N.A., national banking association, Trustee, which executed the above instrument, that he knows the seal of said association; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the association; and that he signed his name thereto by like order.

C. Guin

C. GUEIN  
Notary Public, Notary Seal  
State of Missouri  
Jackson County

My Commission Expires: My Commission Expires April 8, 1996

NON NEGOTIABLE



MARION MERRELL DOW INC.

9300 Ward Parkway  
MAIL: P.O. Box 8480  
Kansas City, Missouri 64114-0480  
Telephone: 816/966-4000

FEDERAL EXPRESS

November 16, 1995

Ms. Cassandra F. Frazier  
Nuclear Material Licensing Section  
U.S. Nuclear Regulatory Commission  
Region III  
801 Warrenville Road  
Lisle, IL 60532-4351

RE: License No. 24-15595-01  
Docket No. 030-09415

Dear Ms. Frazier:

This is in response to your letter dated September 20, 1995, addressed to Ms. Pam Barton, our Radiation Safety Officer, requesting additional information. With regard to item 1 of your letter, enclosed is the certification statement specified by Regulatory Guide 3.66.

Under item 2 of your letter, please note that Rabobank, the institution which issued the letter of credit is a qualified institution. The bank's full name is Cooperatieve Centrale Raiffeissen Boerenleen Bank, B.A. and their ABA number is 021000018. The institution is regulated by the U.S. Comptroller of the Currency and Federal Reserve Bank.

With regard to item 3, please refer to the October 31, 1995, letter (copy enclosed) from Rabobank to the NRD, which amended our letter of credit as requested.

With regard to items 4 and 5, you should be receiving under separate cover the requested amendment to the standby trust agreement and letter of acknowledgment.

Very truly yours,

HOECHST MARION ROUSSEL, INC.  
(formerly Marion Merrell Dow Inc.)

Nathan J. Treinish  
Corporate Counsel-Regulatory

NJT/95083:pb

cc: Ms. Pam Barton

RECEIVED  
NOV 17 1995  
REGION III

my

# HOECHST MARION ROUSSEL, INC.

P. O. BOX 9627  
10236 MARION PARK DRIVE  
KANSAS CITY, MO 64137-1405

November 15, 1995

Mr. Matt McLaughlin  
Commerce Bank of Kansas City  
922 Walnut  
Kansas City, Missouri 64106

**RE:     Amendment of Standby Trust Agreement &  
         Certification of Financial Assurance  
         U.S. Nuclear Regulatory Commission  
         Letter to Ms. Cassandra F. Frazier  
         Instructions Therefore**

Dear Matt:

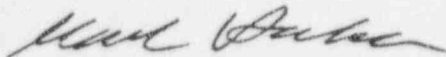
The attached **Amendment of Standby Trust Agreement** needs to be executed and sent along with the **Certification of Financial Assurance** document and sent to Cassandra Frazier Federal Express. The address is:

Ms. Cassandra F. Frazier  
Nuclear Material Licensing Section  
U.S. Nuclear Regulatory Commission  
Region III  
801 Warrenville Road  
Lisle, IL 60532-4351

^ Will be coming from  
Commerce Bank

Please send a copy of all to me. If I can provide anything further let me know.

Sincerely,



Mark E. Hanchar, AU SCLA ALCM  
Risk Manager

Attachments

copy

## CERTIFICATION OF FINANCIAL ASSURANCE

**Principal:** Hoechst Marion Roussel, Inc., P.O. Box 9627, Kansas City, Missouri 64134-0627 (formerly Marion Merrell Dow Inc.)

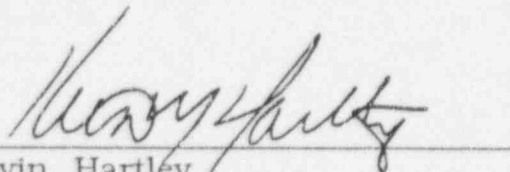
**NRC License Number 24-15595-01:** Hoechst Marion Roussel Inc., 6633 Troost and Marion Park Drive, Kansas City, Missouri

**Issued to:** U.S. Nuclear Regulatory Commission

This is to certify that Hoechst Marion Roussel, Inc. is licensed to possess Hydrogen-3 (1.0 curie), Carbon-14 (1.0 curie), Sulfur-35 (20 millicuries), Iodine-125 (70 millicuries), and Iodine-131 (30 millicuries) in the amounts indicated in parenthesis, and that financial assurance in the amount prescribed by 10 CFR Part 30 of \$750,000.00 has been obtained for the purpose of decommissioning.

Corporate Seal

November 16, 1995



Kevin Hartley

Vice President, Finance & Assistant Treasurer

SEP 20 1995

Hoechst Marion Roussel  
ATTN: Pamela A. Barton  
Radiation Safety Officer  
P.O. Box 9627  
Kansas City, MO 64134-0627

Dear Dr. Urbanski:

We have reviewed your decommissioning financial assurance instrument, Irrevocable Standby Letter of Credit dated March 1, 1995. In order to complete our review of your instrument, we will need you to address the following items:

1. **Submit a Certification Statement (*Regulatory Guide 3.66*, page 1-5)**

You did not submit a statement of certification of financial assurance, as recommended by *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), page 1-5 (enclosed). The statement of certification, in addition to providing information that would allow NRC to verify the certification amount (e.g., the names and locations of the facilities for which financial assurance is provided, and the amount and types of materials handled), officially certifies that the licensee is in compliance with the appropriate requirements. Please submit a statement of certification.

2. **Submit Evidence that the Financial Institution Issuing the Letter of Credit is Qualified (*Regulatory Guide 3.66*, pages 3-19 and 3-20)**

*Regulatory Guide 3.66*, pages 3-19 and 3-20, states that letters of credit should be accompanied by evidence that the issuing financial institution is regulated and examined by a Federal or State Agency. This requirement helps ensure that the issuer of the letter of credit will be able to provide decommissioning funds to NRC whenever necessary. The submission does not, however, include evidence that Rabobank Nederland New York Branch, the issuing financial institution, is regulated and examined. We telephoned both the Federal Deposit Insurance Corporation (FDIC) and the International Division of the New York Department of Banking, but was unable to confirm that the institution is regulated and examined. Please provide evidence that the financial institution is regulated and examined, as called for in *Regulatory Guide 3.66*. If the institution is not regulated and examined by a Federal or State Agency, you should obtain a letter of credit from a different institution that meets this standard.

SEP 20 1995

3. Revise the Automatic Renewal Provision in the Letter of Credit (10 CFR 30.35(f)(2)(i))

Under 10 CFR 30.35(f)(2)(i), if a letter of credit is written for a definite term, it "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." This provision is essential to ensure that the mechanism is not terminated without being replaced by another acceptable mechanism or being drawn upon by NRC. The language of the submitted letter of credit is different from the recommended wording in the *Regulatory Guide 3.66*. As submitted, the letter of credit reads:

"This Letter of Credit is effective as of March 1, 1995 and shall expire on March 1, 1996, but such expiration date shall be automatically extended without amendment for a period of one year on March 1, 1996 and on each successive expiration date, unless, at least 90 days prior to the current expiration date, Rabobank Nederland notifies U.S. Nuclear Regulatory Commission and Marion Merrell Dow Inc. in writing by certified mail or courier of non renewal." (emphasis added)

According to *Regulatory Guide 3.66*, the underlined wording above should read as follows:

"... unless, at least 90 days before the current expiration date, we notify both you and [licensee's name], by certified mail, as shown on the signed return receipts." (emphasis added)

This wording difference raises two significant issues for NRC. First, the submitted letter of credit excludes the phrase "as shown on the signed return receipts." This omission diminishes the protection provided to NRC because the letter of credit does not specify that the 90 day notification period begins only once NRC and the licensee have received the notification. Second, the use of a mail service other than certified mail (e.g., an unspecified courier service) may result in types of return receipts that are not acceptable to NRC to demonstrate receipt of this notification (e.g., if the receipt is signed by the courier rather than the addressee). Consequently, the submitted letter of credit provides reduced certainty that NRC will receive adequate notice of non-renewal. Please revise the letter of credit to require notification by certified mail at least 90 days before expiration, as shown on the signed return receipts.

4. Revise the Standby Trust Agreement to Delete the Added Language in Section 3 (*Regulatory Guide 3.66*, page 4-18)

SEP 20 1985

The standard wording for Section 3 ("Establishment of Fund") of the standby trust agreement, as recommended in *Regulatory Guide 3.66*, page 4-18, reads as follows:

"The Grantor and the Trustee hereby establish a standby trust fund (the Fund) for the benefit of the NRC. The Grantor and the Trustee intend that no third party have access to the Fund except as provided herein."

Section 3 of the submitted standby trust agreement includes this wording, but also adds the following wording:

"This Standby Trust is to be funded when:

- (a) Grantor commences decommissioning at its NRC licensed facility: License Number 24-15595-01, and
- (b) Marion Merrell Dow Inc. will not carry out the required decommissioning activities.

The Grantor shall deposit sufficient funds into this Standby Trust so that NRC may direct decommissioning in accordance with the NRC approved decommissioning plan. The Standby Trust property is hereby referred to as the Standby Trust Fund (the Fund)."

The added language could be problematic for at least two reasons, as discussed below:

- (1) The two specified conditions under which the standby trust is to be funded do not encompass all situations under which NRC would require the trust to be funded. For example, if the licensee goes bankrupt prior to the start of decommissioning (or refuses to begin decommissioning activities), NRC would wish to fund the trust even though the licensee had not commenced decommissioning and satisfied Condition (a). Similarly, if the licensee does not go bankrupt but is incapable of funding decommissioning, NRC would wish to fund the trust even though the licensee might still conduct the necessary decommissioning activities using the funding in the trust. (This case would not satisfy Condition (b).)
- (2) The added language seems to contradict the possibility that the trust may be funded using the licensee's letter of credit. It is inconsistent with the preamble to the standby trust agreement, which states that "when payment is made under a letter of credit, this standby trust shall be used for the receipt of such payment."

SEP 20 1995

To eliminate potential confusion and avoid precluding the funding of the standby trust if the stated conditions are not met, please revise the standby trust agreement to eliminate the added wording in Section 3.

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

OK 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. Please submit a letter of acknowledgement with the standby trust agreement.

Finally, all documents submitted to the NRC must be 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.

We will continue our review of your application upon receipt of this information. Please reply in duplicate, within 30 days, and refer to Control Number 00208.

If you have any questions or require clarification on any of the information stated above, you may contact us at (708) 829-9887.

Sincerely,

Original Signed By  
Cassandra F. Frazier  
Nuclear Material Licensing Section

License No. 24-15595-01  
Docket No. 030-09415

Enclosure: Regulatory Guide 3.66

DOCUMENT NAME: M:\03009415.DE5

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OFFICE	DRSS/RIII								
NAME	CFFRAZIER:jaw								
DATE	09/29/95								

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UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

95-15

July 28, 1995

MEMORANDUM TO: John R. Madera, Chief  
Materials Licensing Section  
Division of Radiation Safety  
and Safeguards, Region III

FROM: Louis M. Bykoski  
Materials Decommissioning Section  
Low-Level Waste and Decommissioning  
Projects Branch  
Division of Waste Management, NMSS

*Louis M. Bykoski*

SUBJECT: THE OFFICE OF GENERAL COUNSEL AND CONTRACTOR COMMENTS ON  
STANDARD FINANCIAL ASSURANCE SUBMITTALS

Our contractor, ICF Incorporated, and the Office of General Counsel (OGC) have reviewed and provided comments on two Region III nonstandard financial assurance submittals sent to us for review.

1. Marion Merrell, Dow ✓
2. Northern States Power Company

The ICF comments are presented in two parts. The first part deals with specific recommendations to current deficiencies. The second part (Other Issues) provides a discussion of changes to the standard wording that are acceptable and are not considered to be deficiencies. The OGC comments include additional deficiencies that need to be corrected by the licensee and comments for our internal use.

You should carefully review all the comments before preparing the deficiency letter. We have enclosed both the ICF and OGC comments to assist you in your review.

Should you have any further questions with regard to the comments, please call me on (301) 415-6754 or Bradley Jones of OGC on (301) 415-1628.

Attachments: As stated

CONTACT: Louis M. Bykoski, NMSS/DWM  
415-6754  
Bradley Jones, OGC  
415-1628

JUL 31 1995

### LIST OF INSTRUCTIONS

Marion Merrall Dow

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 5
2. All OGC comments, plus the last paragraph.

All other comments and discussions are for reviewer information.

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

Marion Merrell Dow, Inc.

We have reviewed the 5 recommendations related to the Marion Merrell Dow, Inc. submittal of a letter of credit for financial assurance purposes. We support those recommendations and have no legal objection to providing those recommendations to the licensee. We would particularly note the importance of recommendation number 2 in the ICF memorandum dated June 28, 1995. In view of the fact that ICF made an attempt, but was unable to verify, that the financial institution in question was "qualified", this issue may become a significant impediment to acceptance of the proposed letter of credit even if the other deficiencies are addressed.

CMD: .....

LICENSE SCREEN \* - DECOMMISSIONING FINANCIAL ASSURANCE INFORMATION

DOCKET: 030-04415 LIC: 24-15595-01 NAME: MARION MERKELL POW, INC.

PARTY ISSUING MECHANISM:

NAME: RABOBANK NEDERLAND, NEW YORK BRANCH

ADDR1: .....

ADDR2: 245 PARK AVENUE

CITY: New York

STATE: NY ZIP: 10167-0062

ASSUR TYPE: CERT

MECH TYPE: LT

MECH AMOUNT: 0 \$ 750,000

APPROVED? DATE: 0

EXPIRES ? DATE: 0 <sup>UNTIL</sup> CANCELLED

ACTION (A=ADD C=CHG D=DELETE)

PARTY ISSUING MECHANISM:

NAME: .....

ADDR1: .....

ADDR2: .....

CITY: .....

STATE: ZIP: .....

ASSUR TYPE: ? CENT

MECH TYPE: -

MECH AMOUNT: 0

APPROVED? DATE: 0

EXPIRES ? DATE: 0

ACTION (A=ADD C=CHG D=DELETE)

00 000 000 00

B MJ LIU10

NUM

A, 0

RS C9

T for Attention. Home to Switch

Capture Off

Number:

CMD: .....

LTS - FINANCIAL ASSURANCE INFORMATION

VALID MECHANISM TYPE CODES AND THEIR MEANINGS:

MECH TYPE	DESCRIPTION
TR	TRUST FUND
ES	ESCROW ACCOUNT
CD	CERTIFICATE OF DEPOSIT
GF	GOVERNMENT FUND
GS	DEPOSIT OF GOVERNMENT SECURITIES
SB	SURETY BOND
LT	LETTER OF CREDIT
LN	LINE OF CREDIT
PG	PARENT COMPANY GUARANTEE
SI	STATEMENT OF INTENT

PRESS RETURN KEY FOR FINANCIAL ASSURANCE SCREEN:

B MJ LIU10

A, 0

RS C1

T for Attention. Home to Switch

Capture Off

Number:



CONSULTING GROUP

ICF Incorporated  
9300 Lee Highway  
Fairfax, VA 22031-1207  
703/934-3000 Fax 703/934-9740

June 28, 1995

To: Dr. Lou Bykoski, NMSS/NRC

From: Bill Goldberg and John Collier, ICF Incorporated

Subject: Review of Letter of Credit Submitted by Marion Merrell Dow, Inc.

---

Marion Merrell Dow, Inc. in Kansas City, Missouri, submitted a certification of financial assurance, using a letter of credit, in the amount of \$750,000. The submission assures decommissioning costs for license 24-15595-01 issued under 10 CFR Part 30.<sup>1</sup> Upon review of the submission, ICF recommends that NRC require the licensee to modify the submission in the following ways:

- (1) Submit a certification statement (Regulatory Guide 3.66, page 1-5);
- (2) Submit evidence that the financial institution issuing the letter of credit is qualified (Regulatory Guide 3.66, pages 3-19 and 3-20);
- (3) Revise the automatic renewal provision in the letter of credit (10 CFR 30.35(f)(2)(i));
- (4) Revise the standby trust agreement to delete the added language in Section 3 (Regulatory Guide 3.66, page 4-18); and
- (5) Submit a letter of acknowledgement with the standby trust agreement (Regulatory Guide 3.66, page 4-27).

These recommendations and other issues are discussed below.

- (1) Submit a Certification Statement (Regulatory Guide 3.66, page 1-5)

The licensee did not submit a statement of certification of financial assurance, as recommended by 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), page 1-5. The statement of certification, in addition to providing information that would allow NRC to

---

<sup>1</sup> ICF assumes that NRC has verified that the certification amount is acceptable under 10 CFR 30.35.

verify the certification amount (e.g., the names and locations of the facilities for which financial assurance is provided, and the amount and types of materials handled), officially certifies that the licensee is in compliance with the appropriate requirements. ICF recommends that NRC require the licensee to submit a statement of certification.

- (2) Submit Evidence that the Financial Institution Issuing the Letter of Credit is Qualified (Regulatory Guide 3.66, pages 3-19 and 3-20)

Regulatory Guide 3.66, pages 3-19 and 3-20, states that letters of credit should be accompanied by evidence that the issuing financial institution is regulated and examined by a Federal or State Agency. This requirement helps ensure that the issuer of the letter of credit will be able to provide decommissioning funds to NRC whenever necessary. The submission does not, however, include evidence that Rabobank Nederland New York Branch, the issuing financial institution, is regulated and examined. ICF telephoned both the Federal Deposit Insurance Corporation (FDIC) and the International Division of the New York Department of Banking, but was unable to confirm that the institution is regulated and examined. ICF recommends that NRC require the licensee to provide evidence that the financial institution is regulated and examined, as called for in Regulatory Guide 3.66. If the institution is not regulated and examined by a Federal or State Agency, the licensee should obtain a letter of credit from a different institution that meets this standard.

- (3) Revise the Automatic Renewal Provision in the Letter of Credit (10 CFR 30.35(f)(2)(i))

Under 10 CFR 30.35(f)(2)(i), if a letter of credit is written for a definite term, it "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." This provision is essential to ensure that the mechanism is not terminated without being replaced by another acceptable mechanism or being drawn upon by NRC. The language of the submitted letter of credit is different from the recommended wording in the Regulatory Guide 3.66. As submitted, the letter of credit reads:

"This Letter of Credit is effective as of March 1, 1995 and shall expire on March 1, 1996, but such expiration date shall be automatically extended without amendment for a period of one year on March 1, 1996 and on each successive expiration date, unless, at least 90 days prior to the current expiration date, Rabobank Nederland notifies U.S. Nuclear Regulatory Commission and Marion Merrell Dow Inc. in writing by certified mail or courier of non renewal." (emphasis added)

According to Regulatory Guide 3.66, the underlined wording above should read as follows:

"... unless, at least 90 days before the current expiration date, we notify both you and [licensee's name], by certified mail, as shown on the signed return receipts." (emphasis added)

This wording difference raises two significant issues for NRC. First, the submitted letter of credit excludes the phrase "as shown on the signed return receipts." This omission diminishes the protection provided to NRC because the letter of credit does not specify that the 90 day notification period begins only once NRC and the licensee have received the notification. Second, the use of a mail service other than certified mail (e.g., an unspecified courier service) may result in types of return receipts that are not acceptable to NRC to demonstrate receipt of this notification (e.g., if the receipt is signed by the courier rather than the addressee). Consequently, the submitted letter of credit provides reduced certainty that NRC will receive adequate notice of non-renewal. ICF recommends that NRC require the licensee to revise the letter of credit to require notification by certified mail at least 90 days before expiration, as shown on the signed return receipts.

- (4) **Revise the Standby Trust Agreement to Delete the Added Language in Section 3 (Regulatory Guide 3.66, page 4-18)**

The standard wording for Section 3 ("Establishment of Fund") of the standby trust agreement, as recommended in Regulatory Guide 3.66, page 4-18, reads as follows:

"The Grantor and the Trustee hereby establish a standby trust fund (the Fund) for the benefit of the NRC. The Grantor and the Trustee intend that no third party have access to the Fund except as provided herein."

Section 3 of the submitted standby trust agreement includes this wording, but also adds the following wording:

"This Standby Trust is to be funded when:

- (a) Grantor commences decommissioning at its NRC licensed facility: License Number 24-15595-01, and
- (b) Marion Merrell Dow Inc. will not carry out the required decommissioning activities.

The Grantor shall deposit sufficient funds into this Standby Trust so that NRC may direct decommissioning in accordance with the NRC approved decommissioning plan. The Standby Trust property is hereby referred to as the Standby Trust Fund (the Fund)."

The added language could be problematic for at least two reasons, as discussed below:

- (1) The two specified conditions under which the standby trust is to be funded do not encompass all situations under which NRC would require the trust to be funded. For example, if the licensee goes bankrupt prior to the start of decommissioning (or refuses to

begin decommissioning activities), NRC would wish to fund the trust even though the licensee had not commenced decommissioning and satisfied Condition (a). Similarly, if the licensee does not go bankrupt but is incapable of funding decommissioning, NRC would wish to fund the trust even though the licensee might still conduct the necessary decommissioning activities using the funding in the trust. (This case would not satisfy Condition (b).)

- (2) The added language seems to contradict the possibility that the trust may be funded using the licensee's letter of credit. It is inconsistent with the preamble to the standby trust agreement, which states that "when payment is made under a letter of credit, this standby trust shall be used for the receipt of such payment."

To eliminate potential confusion and avoid precluding the funding of the standby trust if the stated conditions are not met, ICF recommends that NRC require the licensee to revise the standby trust agreement to eliminate the added wording in Section 3.

- (5) **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.

#### Other Issues

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

- (a) The letter of credit is not entitled "letter of credit." The first sentence of the letter, however, clearly identifies the letter as an "irrevocable letter of credit."
- (b) The top of the letter of credit does not state that "This Credit Expires [date]." The third paragraph, however, clearly identifies the expiration date.
- (c) The letter of credit is addressed to the NRC Regional Office in Lisle, Illinois. Regulatory Guide, page 4-33, recommends that the letter of credit be addressed to: U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. This difference does not affect the effectiveness or enforceability of the mechanism. It may, however, require the Region rather than Headquarters to draw on the mechanism, if needed.

- (d) In describing the documentation that NRC must present to the bank to draw on the letter of credit, the submitted letter of credit calls for presentation of the "Beneficiary's" sight draft and the "Beneficiary's" signed statement. The term "beneficiary" is not explicitly defined to mean NRC. Nevertheless, because the letter is addressed to NRC, it is clear that the bank is making the licensee's credit available to NRC.
- (e) In describing the documentation that NRC must present to the bank to draw on the letter of credit, the submitted letter of credit calls for presentation of not only a sight draft and a signed statement, as recommended in *Regulatory Guide 3.66*, but also the original letter of credit. This requirement should not diminish NRC's ability to draw funds using the letter of credit. It does, however, require NRC to present non-standard documentation (i.e., the letter of credit itself) to draw on the credit. NRC should ensure that it possesses and properly safeguards the original letter of credit so that it may comply with this requirement.
- (f) Paragraph 2 incorrectly refers to the "Atomic Energy Act of 1974" rather than the correct "Atomic Energy Act of 1954." Because it is clear that NRC derives its regulatory authority from the Atomic Energy Act, as amended, and no other law, this error is unlikely to pose any problem for NRC.
- (g) The submitted letter of credit is worded differently from the wording suggested in *Regulatory Guide 3.66*, page 4-33, with respect to drawing on the letter of credit when the issuer has failed to extend it. The *Regulatory Guide* states that "NRC may draw upon the full value of this letter of credit prior to cancellation," whereas the submission states that "NRC may draw upon the full amount currently outstanding prior to cancellation..." The difference in wording simply clarifies that the total amount of funding that NRC may withdraw is limited to the face value of the mechanism, even in the event of non-renewal of the mechanism.
- (h) The submitted letter of credit states that NRC, to draw upon the letter of credit in the event of notification of non-renewal, must present to the bank the following items: (1) the beneficiary's sight draft, (2) a signed statement from the beneficiary reading "I/We certify that we have received notice of non-renewal from Rabobank Nederland, and that alternative financial assurance has not been received," (3) a copy of the notification of non-renewal received from the bank, and (4) the original letter of credit. This requirement should not diminish NRC's ability to withdraw funds in the event of non-renewal. It does, however, require NRC to present non-standard documentation to draw on the credit.
- (i) The letter of credit includes non-standard versions of the last two paragraphs recommended in *Regulatory Guide 3.66*. The submitted versions contain the same information, however, and do not diminish the protections provided to NRC.

- (j) The standby trust agreement is not dated on the signature page. This does not affect the validity of the mechanism because the agreement specifies an effective date in the opening paragraph.
- (k) The standard wording for specimen certificates of resolution, as recommended in Regulatory Guide 3.66, page 4-25, anticipates a corporate resolution reading as follows:

"Resolved, that this Board of Directors hereby authorizes the President, or any such other employee of the company as he may designate to commence decommissioning activities...."

The submitted specimen certificate of resolution does not identify any company officers:

"Resolved, that this Board of Directors hereby authorizes the commencement of decommissioning activities...."

This wording is acceptable because the board of directors is authorized to commence decommissioning activities, just as it is authorized to delegate the power to commence decommissioning activities.

Finally, NRC 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

Marion Merrell Dow Inc.

MAILING ADDRESS

9300 Ward Parkway

Kansas City, MO 64114

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. 3/1/95 Date of Financial Assurance Submission
2. ☐ Public Entity  
☒ Private Entity
3. ☒ Certification of Financial Assurance  
☐ 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  
☐ Line of Credit  
☐ Parent Company Guarantee/Financial Test<sup>\*</sup>  
(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)

<sup>\*</sup>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
  - ☒ Standby Trust Agreement
  - ☐ Acknowledgement (missing)
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.

EXHIBIT 3-7

CHECKLIST OF CRITERIA FOR REVIEW OF LETTERS OF CREDIT

- MA • 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.
- Region will Verify • Evidence that the financial instrument is an originally signed duplicate (e.g., an executed copy of the instrument).
- No - calls to FDIC, NY • Evidence that the financial institution is regulated by Federal or State agency (e.g., member of FDIC, Federal Reserve System, etc.).  
could not confirm
- not done • The instrument must be entitled a letter of credit.
- ✓ • The letter should be limited in amount.
- ✓ • The letter of credit must contain a specified expiration date or be written for a definite term.
- ✓ • 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.
- ✓ • The licensee should have an unqualified obligation to reimburse the issuer for payments made under the letter of credit.

EXHIBIT 3-5

CHECKLIST OF CRITERIA FOR REVIEW OF TRUST AGREEMENTS<sup>a</sup>

- ✓
- Region Will Verify
- Standard work
- 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.
  - Evidence that the financial instrument is an originally signed duplicate (e.g., an executed copy of the instrument).
  - Evidence that the financial institution has authority to act as a trustee.
  - Purpose of trust ("whereas" clauses).
    - 1. Description
  - Grantor or grantors (introductory paragraph).
    - 1. Names
    - 2. Addresses
  - Trustee or trustees.
    - 1. Names and addresses
    - 2. Bank or corporate trustee (introductory paragraph)
  - Identification of facilities and cost estimates (Section 2).<sup>b</sup>
  - Words of transfer, conveyance, and delivery in trust (Section 3).
  - Payments constituting the trust fund (Section 4).
  - Duration of trust.
  - Description of trust property.
    - 1. Property described in attached schedule (Schedule B)
    - 2. Cash
    - 3. Stock and other securities
  - Additions to trust.
  - Distribution of trust principal (Section 5).
    - 1. Disbursement to licensee upon proper certification
    - 2. Payment for activities at NRC's direction in writing

<sup>a</sup>Adapted from 17A Am Jur Legal Forms 2d (Rev) §251.94.

<sup>b</sup>References are to recommended wording for trust agreements provided in Section 4.3 of this guide.

EXHIBIT 3-5 (continued)

3. Refund to grantor at NRC's specification in writing after completion of decommissioning activities
- Trust management (Sections 6-8).
    - 1. Discretionary powers
    - 2. Fiduciary duty
    - 3. Commingling and investment
    - 4. Sale or exchange of trust property
    - 5. Scope of investments
    - 6. Express powers of trustee
    - 7. Borrowing money and encumbering trust assets
  - (Optional provisions)
    - 8. Insurance
    - 9. Operation of business
    - 10. Compromise of claims
  - Taxes and expenses (Section 9).
  - Annual valuation (Section 10).
  - Advice of counsel (Section 11).
  - Authority, compensation, and tenure of trustees (Sections 12-14).
    - 1. Trustee compensation
    - 2. Successor trustee
    - 3. Instructions to trustee
  - Amendment of agreement (Section 15).
  - Irrevocability and termination (Section 16).
  - Immunity and indemnification (Section 17).
  - Law to govern construction and operation of trust (Section 18).
  - Interpretation and severability (Section 19).
  - Date (signature block).
  - Signatures (signature block).
  - Acknowledgements, seals or attestations, if necessary or desired (witness by notary public).
  - Acceptance of trust by trustee or trustees (acknowledgment).

April 11, 1995

9515

MEMORANDUM FOR: Dr. Louis Bykoski, Project Officer  
Low-Level Waste and Decommissioning Projects Branch  
Division of Waste Management, Office of Nuclear  
Material Safety and Safeguards

FROM: John R. Madera, Chief  
Materials Licensing Section, Nuclear Materials  
Safety Branch  
Division of Radiation Safety and Safeguards,  
Region III

SUBJECT: REQUEST FOR ASSISTANCE IN PROCESSING AND REVIEW OF  
NONSTANDARD FINANCIAL ASSURANCE SUBMITTALS RELATED TO THE  
DECOMMISSIONING RULE

Enclosed for your review is one financial assurance submittal from a Region III licensee. The licensee is Marion Merrell Dow, Inc. License Number 24-15595-01. They have submitted a new Irrevocable Standby Letter of Credit dated March 1, 1995 (enclosed) which requires contractor review.

We appreciate your efforts in resolving these issues. If you have any questions, please contact Cassandra Frazier of my staff at (708) 829-9830.

License No.: 24-15595-01  
Docket No.: 030-09415

Enclosure: Licensee ltr dtd 03/01/95

DOCUMENT NAME: M:\03009415.DE5

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OFFICE	DRSS/RIII								
NAME	CFRAZIER:jaw								
DATE	04/07/95								

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**Rabobank Nederland**  
**New York Branch**  
245 Park Avenue  
New York, NY 10167-0062 U.S.A.  
212-916-7800

March 1, 1995

U.S. Nuclear Regulatory Commission  
Region 3, 801 Warrenville Road  
Lisle, IL. 60532-4351

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. SB 13136 in your favor, at the request and for the account of Marion Merrell Dow, Inc., 9300 Ward Parkway (East 4), P.O. Box 8480 Kansas City, MO. 64114-0480 up to the aggregate amount of Seven Hundred Fifty Thousand and no/100 United States Dollars (USD 750,000.00) available upon presentation by the U.S. Nuclear Regulatory Commission of

- (1) Beneficiary's sight draft, drawn on Rabobank Nederland
- (2) Beneficiary's signed statement that "I/We certify that the amount of the draft is payable pursuant to regulations issued under authority of U.S. Nuclear Regulatory Commission."
- (3) Original Letter of Credit.

This Letter of Credit is issued in accordance with the 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 1974, as amended, and the Energy Reorganization Act of 1974. The (NRC) has promulgated regulations in Title 10, Chapter 1 of the Code of Federal Regulations, Part 30 which require that a holder of, or an applicant for, a license issued under 10 CFR Part 30, provide assurance that funds will be available when needed for decommissioning.

This Letter of Credit is effective as of March 1, 1995 and shall expire on March 1, 1996 but such expiration date shall be automatically extended without amendment for a period of one year on March 1, 1996 and on each successive expiration date, unless, at least 90 days prior to the current expiration date, Rabobank Nederland notifies U.S. Nuclear Regulatory Commission and Marion Merrell Dow Inc. in writing by certified mail or courier of non renewal.

In the event U.S. Nuclear Regulatory Commission and Marion Merrell Dow Inc. are notified of non-renewal and Marion Merrell Dow Inc. is unable to secure alternative financial assurance to replace this Letter of Credit within 30 days of notification of non-renewal then U.S. Nuclear Regulatory Commission may draw upon the full amount currently outstanding prior to cancellation by presentation of:

(Continued on Page Two)

**NON NEGOTIABLE**

Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A.

200208

**RECEIVED**  
MAR 1 - 1995  
**Rabobank**  
**REGION III**



**Rabobank Nederland**  
**New York Branch**  
245 Park Avenue  
New York, NY 10167-0062 U.S.A.  
212-916-7800

March 1, 1995  
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- 1) Beneficiary's sight draft drawn on Rabobank Nederland.
- 2) Beneficiary's signed statement that "I/We certify that we have received notice of non-renewal from Rabobank Nederland, and that alternative financial assurance has not been received."
- 3) Copy of non-renewal notice received from Rabobank Nederland.
- 4) Original Letter of Credit

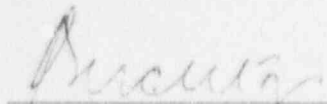
Rabobank Nederland will give immediate notice to Marion Merrell Dow Inc. and U.S. Nuclear Regulatory Commission of any notice received or action filed alleging: (1) the insolvency or bankruptcy of the financial institution or (2) any violation of regulatory requirements that could result in suspension or revocation of the Bank's charter or licence to do business. Rabobank Nederland also shall give immediate notice if the Bank, for any reason, becomes unable to fulfill its obligation under the Letter of Credit.


All drafts drawn under this Letter of Credit shall bear the claim "Drawn under Rabobank Nederland Letter of Credit" and indicate this Letter of Credit number and issue date.

We hereby engage with you that drafts drawn under and in compliance with the terms and conditions of this Letter of Credit will be duly honored within 30 days of presentation. Upon receipt of documents complying with the terms and conditions, Rabobank Nederland will deposit the draft amount directly into the Standby Trust Fund of Marion Merrell Dow Inc. in accordance with beneficiary's instructions.

This letter of credit is subject to the "Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chambers of Commerce, Publication No. 500.

Regards  
Rabobank Nederland  
New York Branch

  
Vice President

  
Vice President

**NON NEGOTIABLE**