

May 8, 1997

Mr. Harold R. Roberts, President  
Energy Fuels Nuclear, Inc.  
Three Park Central, Suite 900  
1515 Arapahoe Street  
Denver, CO 80202

SUBJECT: COMPLETION OF REVIEW OF REQUESTED AMENDMENT TO SOURCE MATERIAL  
LICENSE SUA-1558, RENO CREEK PROJECT, WYOMING, DENIAL OF AMENDMENT  
REQUEST AND DENIAL OF ANNUAL SURETY UPDATE

Dear Mr. Roberts:

The U.S. Nuclear Regulatory Commission staff has completed its review of Energy Fuels Nuclear, Inc.'s (EFN's) requested amendment to Source Material License SUA-1558, submitted by letter dated January 8, 1997. Appended to EFN's letter were documents supporting the 1997 annual update to the surety amount as required under License Condition 12 (LC 12). The amendment request proposes revision of LC 12 in order to synchronize the timing of NRC's annual surety update with that of the State of Wyoming's Department of Environmental Quality (State). This letter and its enclosure (Technical Evaluation Report) document the results of the NRC staff's review of the amendment request and the 1997 annual surety update.

Based on its review, the staff concludes that the licensee's request to amend LC 12 is denied. Furthermore, as a result of its annual surety update review, the staff requests additional information to support EFN's estimate of costs associated with the transport and disposal of the organic resin stored at the Reno Creek, Wyoming facility. The staff requests that this surety-related information be provided within thirty (30) days from the date of this letter to determine if the licensee is in compliance with NRC's regulations.

An applicant for a license amendment who is issued a notice of denial has a right, under 10 CFR 2.103(b)(2), to demand a hearing to dispute the notice of denial. You have twenty (20) days from the date of this letter to dispute the findings of these denials.

If you have any questions concerning this subject, please contact the NRC Project Manager, Mr. Harold E. Lefevre, at (301) 415-6678.

Sincerely,

(Original signed by)  
Joseph J. Holonich, Chief  
Uranium Recovery Branch  
Division of Waste Management  
Office of Nuclear Material Safety  
and Safeguards

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PDR ADOCK 04009024  
C PDR

Docket No. 40-9024  
License No. SUA-1558  
Case Closed L51496  
Enclosure: As stated  
cc: G. Cash, WY DEQ  
R. Chancellor, WY DEQ  
G. Mooney, WY DEQ  
M. Rehmann, EFN

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## TECHNICAL EVALUATION REPORT

DATE: May 5, 1997

DOCKET NO.: 40-9024

LICENSE NO. SUA-1558

LICENSEE: Energy Fuels Nuclear, Inc.

FACILITY: Reno Creek, Wyoming

PROJECT MANAGER: Harold E. Lefevre

TECHNICAL REVIEWER: Harold E. Lefevre

## SUMMARY AND CONCLUSIONS:

In a letter of January 8, 1997, Energy Fuels Nuclear, Inc. (EFN) requested changes to License Condition 12 in order to synchronize the timing of NRC's annual surety update of August 16 with that of the State of Wyoming's (State) annual surety update which is undertaken two months later (October 16). In addition, because the NRC/State-approved reclamation bond had been reduced in December 1996 without NRC approval, the staff initiated its annual surety update review based upon documents accompanying EFN's letter.

Based upon information provided by the licensee, the U.S. Nuclear Regulatory Commission staff denies the license amendment request. The staff's decision is based upon the requirements of 10 CFR Part 40, Appendix A, Criterion 9, mandating that the NRC-approved surety arrangement, adequate to cover the estimated costs for disposal of the resin, shall not lapse for any time period prior to license termination.

As a result of its review of annual surety update documents provided by the licensee, the staff requests additional information to support EFN's estimate of costs associated with the transport and disposal of the organic resin stored at its Reno Creek, Wyoming facility. The staff's bases for requesting such information is described in detail in the *Annual Update of Surety Arrangement* section of this Technical Evaluation Report.

## DESCRIPTION OF LICENSEE'S AMENDMENT REQUEST:

The Licensee proposed changes to a portion of LC 12, as follows:

1. Revision of existing LC 12: "... until a replacement is authorized by both the State and the NRC."
2. Additional language to immediately follow the above existing language:  
"The portion of any such replacement reclamation performance bond designated for transport and disposal of the resin shall be approved by

*NRC by August 16 of each year, so that any required adjustments can be incorporated into the subsequent replacement bond authorized by the State."*

#### TECHNICAL EVALUATION:

Revision of existing LC 12: "... until a replacement is authorized by ~~both the State and the NRC.~~"

Other portions of License Condition 12 that are directly relevant to this amendment request require: (1) "The licensee shall maintain an NRC-approved surety arrangement, consistent with 10 CFR Part 40, Appendix A, Criterion 9, adequate to cover the estimated costs, if accomplished by a third party, for disposal of the resin", (2) "Financial surety coverage for the full amount of the NRC-approved decommissioning cost estimate shall not lapse for any time period prior to license termination", and (3) "The Energy Fuels Nuclear, Inc. currently-approved surety . . . shall be continuously maintained in an amount no less than \$142,890.00 for the purpose of complying with 10 CFR Part 40, Appendix A, Criterion 9 . . ."

In light of the above license requirements, all of which are based upon 10 CFR Part 40, Appendix A, Criterion 9, this portion of the LC 12 amendment request is denied.

Additional language to immediately follow the above existing language: *"The portion of any such replacement reclamation performance bond designated for transport and disposal of the resin shall be approved by NRC by August 16 of each year, so that any required adjustments can be incorporated into the subsequent replacement bond authorized by the State."*

As in the case of the preceding technical evaluation other portions of License Condition 12 that are directly relevant to this amendment request require: (1) "The licensee shall maintain an NRC-approved surety arrangement, consistent with 10 CFR Part 40, Appendix A, Criterion 9, adequate to cover the estimated costs, if accomplished by a third party, for disposal of the resin", and (2) "Financial surety coverage for the full amount of the NRC-approved decommissioning cost estimate shall not lapse for any time period prior to license termination".

In light of the above license requirements, both of which are based upon 10 CFR Part 40, Appendix A, Criterion 9, this portion of the LC 12 amendment request is denied.

The staff is cognizant of the financial and administrative burdens placed upon the licensee because of the non-synchronous State/NRC reclamation performance bond anniversary dates (hereafter surety dates) and has, as requested by the licensee, considered the timing of the surety dates in this evaluation. Because of the ten month time lapse separating the State/NRC surety dates coupled with the fact that the dates of the State's surety approval during the past several years (December 30, 1996; December 12, 1995; and August 28, 1995, for the 1994 reclamation bond) have been inconsistent with its October 16 surety anniversary date the staff is unable to approve the licensee's



amendment request of January 8, 1997. The foremost reason for denial of the request is that the amendment proposes that NRC (if it determines that an increase in the surety amount covering the resin transportation and disposal is required) defer requiring a subsequent replacement bond until the State, in conjunction with the review of the reclamation portion of the surety bond, incorporates the increased resin disposal costs within the performance bond and approves the overall revised bond. Based on previous experience over the past three years State approval of the revised performance bond has not occurred earlier than two months following the State's surety date of October 16. In the event that NRC's annual surety review indicated that an increase in the bond amount is required, deferral of increase of the reclamation bond would not be acceptable since NRC's regulations require that the surety bond be continuously maintained in an amount adequate to cover the estimated costs for disposal of the resin. Since the surety date for SUA-1558 is August 16 and the earliest date of State surety bond approval over the past three years was December 12, 1995, the surety bond, at best, would not be continuously maintained for a period of approximately four months. In the case of the State's reclamation bond annual update of 1994, the surety bond for SUA-1558, would not have been continuously maintained for over one year.

#### Annual Update of Surety Arrangement

The State's reclamation bond estimate of November 5, 1996, included a review of the NRC-related portion of the surety covering the cost of resin disposal. This cost includes: (1) transportation (truck mile cost at \$1.75) and (2) a disposal fee of \$15.00 per cubic foot. The NRC staff, in conducting its annual surety review is, following conversation with Mr. Glenn Mooney of the State of Wyoming (State), Department of Environmental Quality, requesting additional information of EFN relative to establishing both the transportation costs as well as the disposal fee costs.

The NRC's review of the annual surety update was undertaken earlier than in past years in order to assure protection of its surety interests since EFN had elected to decrease its surety bond (contrary to License Condition 12) without having notified the NRC and without having received NRC approval prior to reduction of the bond. Although the staff had determined that the portion of the surety bond covering the removal and transport of organic resin has not been reduced, the staff requires additional information from EFN supporting the cited costs (transportation and disposal fees) associated with the removal, transport and disposal of the organic resin. With respect to the truck mile cost there has been no adjustment in this cost (\$1.75/mile) with respect to inflation or other considerations since the estimate was provided by EFN's Mr. Terry Wetz in his letter of October 14, 1994, to the State. The staff requests that the licensee provide an updated cost estimate for transport of the resin to the site designated for disposal of the resin based upon a written statement obtained from an independent (non-EFN) source.

The staff also requests additional information relative to the cited \$15.00 per cubic foot disposal fee for the organic resin. This cost is based upon an August 23, 1993, agreement with Umetco, then the operator of the White Mesa Mill, at the time of issuance of the August 19, 1993 Possession-Only License SMA-1558. EFN has since acquired 100 percent interest in the White Mesa Mill, and Umetco is no longer the operator. Both the NRC and State accepted this 1993 estimate since EFN's agreement was made with the operator of a licensed

disposal site not controlled by EFN. Based on the staff's independent estimates, resin disposal costs at a facility other than White Mesa Mill range from \$19.00 to as much as \$80.00 per cubic foot. Therefore, the NRC staff questions EFN's \$15.00 per cubic foot disposal fee cost estimate since EFN now owns the White Mesa Mill and, as required by 10 CFR Part 40, Appendix A, Criterion 9, EFN "must take into account total costs that would be incurred if an independent contractor were hired to perform decontamination and decommissioning work." The intended provision of the financial assurance rule is to guarantee that sufficient funds will be available should independent parties be required to perform decontamination and decommissioning at the site in the event of bond default and dissolution of Energy Fuels. Consistent with the position taken by NRC in 1995 in conjunction with denial (based on 10 CFR Part 40, Appendix A, Criterion 9) of EFN's request for a resin disposal-related bond reduction, the staff requests that EFN enter into an agreement (as it had previously with Umetco) with the operator of a site licensed to accept the organic resin for disposal and provide the NRC with a copy of this agreement. The agreement is to cite both the volume of organic resin to be disposed of as well as the disposal cost per cubic foot. In addition, as indicated in the July 16, 1995, letter of Mr. Richard W. Chancellor, Administrator of the State Land Quality Division, to EFN's Ms. Michelle R. Rehmann in explaining the State's basis for its denial of EFN's request for a resin disposal-related bond reduction: " . . . There remains no guarantee that such an arrangement [disposal of the organic resin at White Mesa Mill] would be available to the State in the case of bond default and dissolution of Energy Fuels."

#### Summary

The staff denies EFN's request that License Condition 12 of Possession-Only License SUA-1558 be amended as discussed above. In addition, the staff requests, as a result of its annual surety update review, that EFN provide information supporting costs associated with the removal, transport and disposal of organic resin stored at its Reno Creek, Wyoming facility.

#### Environmental Impact Evaluation

An environmental review was not performed since this action is categorically excluded under 10 CFR 51.22(c)(10).