

SAFETY EVALUATION REPORT
PROPOSED CHANGE OF CONTROL FOR BYPRODUCT MATERIALS LICENSE

Date: 4-June-2020
Docket Nos.: 030-32714
License Nos.: 13-26398-01
Licensee: Dow AgroSciences
Addresses: 9330 Zionsville Rd., Indianapolis, IN 46268
Technical Reviewer: Sara A. Forster, M.S., Materials Licensing Branch, Division of Nuclear Materials Safety

SUMMARY AND CONCLUSIONS:

Dow AgroSciences ("the licensee") holds a byproduct materials license issued by the U.S. Nuclear Regulatory Commission (NRC). Under NRC License No. 13-26398-01, the licensee is authorized to possess byproduct material at its facilities located at 9330 Zionsville Rd., Indianapolis, Indiana; and at one building at Haskell Laboratories, Stine Research Center, 1090 Elkton Rd., Newark, Delaware. The license authorizes possession and use of byproduct material for purposes of performing research and development under a Type A license of broad scope. Prior to the Change of Control, the licensee had been a wholly-owned subsidiary of DowDuPont, Inc.

In 2017, The Dow Chemical Company (Dow) and its subsidiaries and E.I. du Pont and its consolidated subsidiaries merged and created DowDupont, Inc. ("the transferor"). The merger resulted in the Dow and the licensee becoming subsidiaries of the created transferor.

The U.S. Nuclear Regulatory Commission (NRC) staff reviewed a December 9, 2019 request for consent to a direct license transfer from the transferor that will result from a transfer first to Dow AgroSciences, LLC, and then to Corteva Agriscience. The letter may be found at the NRC's Agency Documents Access and Management System (ADAMS), accession number ML19343A576.

The request for consent for a direct change in control of a Title 10 *Code of Federal Regulations* (CFR) Part 30 license was reviewed by NRC staff in accordance with NUREG 1556, Volume 15, "Consolidated Guidance About Materials Licenses - Guidance About Changes of Control and About Bankruptcy Involving Byproduct, Source, or Special Nuclear Materials Licenses," revision 1, dated June 2016. The NRC staff finds that the information submitted by the licensee sufficiently describes and documents the transaction and commitments made by the licensee, the transferor, and the transferee, and financial assurance for decommissioning made by Dow AgroSciences, as required by 10 CFR 30.34(b)(2).

As required by 10 CFR 30.34 and Section 184 of the Atomic Energy Act of 1954, as amended (the Act), NRC staff has reviewed the application and finds that the proposed change in control is in accordance with the Act. The staff finds that, after the change of control, the licensee will remain qualified to use byproduct material for the purpose requested, and will continue to have the equipment, facilities, and procedures needed to protect public health and safety, and to promote the common defence and security of licensed material.

SAFETY AND SECURITY REVIEW

The transfer of control of Dow AgroSciences (“the licensee”) from Dow DuPont, Inc. (“the transferor”), to Dow AgroSciences, LLC, and then to Corteva Agriscience, together with any associated amendments, such as a name change, is essentially administrative in nature. Under 63 *FR* 66721, pp. 66727-28, such an administrative amendment, following the review and approval of the transfer itself, “presents no safety questions and clearly involves no significant hazards considerations.” Further the Commission has noted that, “Safety Evaluation Reports (SERs) prepared in connection with previous license transfers confirm that such transfers do not, as a general matter, have significant impacts on the public health and safety.” Accordingly, the transferee’s acquisition of the licensee via redesign of organization presents no safety questions and involves no significant hazards evaluations.

According to data obtained from the NRC’s Web Based Licensing (WBL) System, the licensee has held an NRC license since September 21, 1992. The NRC identified no violations at the licensee’s initial inspection, which was conducted on November 18, 1992. [ADAMS Accession No. ML20128M000]. However, the NRC identified a Severity Level IV violation of 10 CFR 20.1906 requirements for calibration of survey meters at the licensee’s May 17, 1995 inspection, for which the licensee provided adequate corrective action and was subsequently closed. [ADAMS Accession No. ML052640449] Since that second inspection, the NRC has identified no violations at the licensee’s subsequent inspections, which were conducted on September 10, 1997, November 1, 2000, August 5, 2003, October 3, 2006, May 11, 2010, February 27, 2013, May 12, 2016, and March 22, 2019. [ADAMS Accession Nos. ML052640450, ML052640453, ML052640457, ML062900547, ML101410591, ML13080A231, ML16147A569, and ML19092A223, respectively] Regarding the current transferor and transferee – via the initial December 9, 2019 letter and an additional information letter dated January 16, 2020 – have provided statements confirming that the licensee:

- A. will not change the Radiation Safety Officer (RSO) listed on the NRC license;
- B. will not change the personnel involved in licensed activities;
- C. will not change the locations, facilities, and equipment authorized on the NRC license;
- D. will not change the radiation safety program authorized in the NRC license;
- E. will keep regulatory required surveillance records and decommissioning records;
- F. will submit updated decommissioning financial assurance instruments, in accordance with 10 CFR 30.35(f), within 30 days of the transaction; and
- G. will abide by all existing constraints, conditions, requirements, representations, and commitments, including those identified in the December 9, 2019 letter.

As the result of this transaction, Corteva Agriscience will own and operate facilities at the listed locations of use. Corteva Agriscience is a reorganization of the former subsidiary of Dow DuPont, which owned several NRC radioactive materials licenses including the Licensee’s Materials License No.13-26398-01 - for the use of byproduct material. Therefore, for security purposes, Corteva Agriscience is considered a known entity, following the guidance provided by the NRC’s Office of Nuclear Material Safety and Safeguards (NMSS) “Checklist to Provide a Basis for Confidence that Radioactive Materials will be Used as Specified on the Application,” January 29, 2019 revision (basis-for-confidence checklist). The purpose of the basis-for-confidence checklist is for the NRC to obtain reasonable assurance from new license applicants or NRC licensees transferring control of licensed activities that the licensed material will be used for its intended purpose and not for malevolent use.

The licensee continues to be required to have decommissioning financial assurance based on the types and amount of material authorized by License No. 13-26398-01.

REGULATORY FRAMEWORK

Section 184 of the Act prohibits the transfer of control of any license unless the Commission finds that the transfer is in accordance with the Act and consents to the transfer writing.

Dow AgroScience's NRC Materials License No. 13-26398-01 was issued under 10 CFR Part 30, "Rules of General Applicability to Domestic Licensing of Byproduct Material." The NRC is required by 10 CFR 30.34 to determine if the change of control is in accordance with the provisions of the Act and give its consent in writing.

Under 10 CFR 30.34(b), for licenses "issued or granted pursuant to the regulations in [Parts 30] through 36," the Commission is required to determine if the change of control is in accordance with the provisions of the Act, and give its consent in writing. Specifically, no 10 CFR Part 30 licenses, "nor any right under a license shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of the Act and shall give its consent in writing."

Under 10 CFR 30.34(c), NRC licenses issued pursuant to 10 CFR Parts 30 through 36 may not be "transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, through transfer of control of any license to any person, unless" the NRC has found that the transfer is in accordance with the Act and has given its consent in writing.

Under 10 CFR 30.38, NRC licensees must file amendment applications "in accordance with [10 CFR] 30.32 and must specify the respects in which the licensee desires its license to be amended and the grounds for the amendment."

As previously stated, the staff evaluation associated with the transfer of control was completed in accordance with NUREG 1556, Volume 15, rev. 1, and informed by 63 *Federal Register* 66721, "10 CFR Parts 2 and 51, RIN 3150-AG09, Streamlined Hearing Process for NRC Approval of License Transfers, Nuclear Regulatory Commission, Final Rule," dated Dec. 3, 1998. The central issue when determining whether a license is directly transferred is whether the authority over the license has changed. The Dow and Dow Agrosciences request for consent describes a direct transfer of control of the NRC license held by Dow Agrosciences, resulting from corporate reorganization that results in the restructuring of Dow Agrosciences under a new company name, Corteva Agriscience. Following the corporate realignment, the activities authorized by License No. 07-13341-02 will continue under Dow AgroSciences d/b/a Corteva Agriscience, and, as such, the transfer requires the NRC's consent.

DESCRIPTION OF TRANSACTION

As described by Dow AgroSciences in letters dated December 9, 2019 and January 16, 2020 (ADAMS accession numbers ML19343A576 and ML2021A071), DowDuPont reorganized its subsidiaries to create three new, independent companies. After completion of the 2-phased corporate realignment, the remaining activities of Dow AgroSciences, LLC, a wholly owned subsidiary of DowDuPont, became the company Corteva Agriscience.

Under Corteva Agriscience, the licensee will remain in control of all licensed activities under License No. 13-26398-01, with no significant changes to key responsible personnel, licensed facilities, or equipment. The NRC staff finds that the request for consent adequately provides a complete and clear description of the transaction, and is consistent with the guidance provided in NUREG-1556, Volume 15, rev. 1, Appendix E. Further, the NRC staff finds that the Transaction, with respect to licensed operations, is limited to a transfer of control that is essentially administrative in nature.

THE TRANSFEREE'S COMMITMENT TO ABIDE BY THE TRANSFEROR'S COMMITMENTS

The NRC staff finds that the commitments and information submitted by Dow AgroSciences ("the licensee") and Corteva Agriscience ("the transferee"), under letters dated December 9, 2019 (ML19343A576) and January 16, 2020 (ML20021A071), are consistent with the guidance outlined in NUREG-1556, Volume 15, revision 1.

ENVIRONMENTAL REVIEW

An environmental assessment for this action is not required since approvals of direct and indirect transfers of control are categorically excluded under 10 CFR 51.22(c)(21).

CONCLUSION

The NRC staff has reviewed the request for consent submitted by Dow AgroSciences ("the licensee") and Corteva Agriscience ("the transferee"), with regard to a direct transfer of control of byproduct materials license No. 13-26398-01 pursuant to 10 CFR 30.34(b). The staff has found that the transfer of control, including any associated amendments, is essentially administrative in nature, and has no significant impact on public health and safety. Accordingly, the staff approves the request for consent to a transfer of control pursuant to 10 CFR 30.34(b).

Consistent with the guidance in NUREG-1556, Volume 15, revision 1, the submitted information sufficiently describes the transaction, documents both the licensee and the transferee understanding of the license conditions and commitments, and demonstrates that personnel have the experience and training to properly implement and maintain the license and that they will maintain the existing records. The staff further finds that the licensee and the transferee have committed to maintain existing records, and abide by all existing commitments to the license.

Therefore, the staff concludes that the proposed change in control would not alter previous findings, made under 10 CFR Part 30, that licensed operations will not be inimical to the common defense and security, or to the health and safety of the public.