

**NUCLEAR REGULATORY COMMISSION**

[Docket No. 50-184]

**National Institute of Standards and Technology (NIST); Notice of Receipt and Availability of Application for Renewal of the National Institute of Standards and Technology Reactor (the NBSR) Facility Operating License No. TR-5 for an Additional 20-Year Period**

The U.S. Nuclear Regulatory Commission (NRC or Commission) has received an application, dated April 9, 2004, from the National Institute of Standards and Technology (NIST), filed pursuant to Sections 104c of the Atomic Energy Act of 1954, as amended, and 10 CFR Part 50.51(a), to renew Operating License No. TR-5 for the National Institute of Standards and Technology Reactor (the NBSR). NIST requested renewal of the license to authorize operation of the facility for an additional 20-year period beyond the period specified in the current operating license. The current operating license for the NBSR (TR-5) expires on May 16, 2004. In accordance with 10 CFR 2.109(a), NIST's application for renewal was at least 30 days prior to the expiration of an existing license, and therefore the existing license will not be deemed to have expired until the application has been finally determined. The reactor is located on the NIST campus in Gaithersburg, Maryland. The acceptability of the tendered application for docketing, and other matters including an opportunity to request for a hearing, will be the subject of subsequent **Federal Register** notices.

Copies of the application are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically from the NRC's Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room under accession number ML041120161. The ADAMS Public Electronic Reading Room is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. In addition, the application is available on the NRC Web page at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html>, while the application is under review. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR Reference staff by telephone at 1-800-

397-4209, extension 301-415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland, this 29th day of April 2004.

For the Nuclear Regulatory Commission.

**Patrick M. Madden,**

*Section Chief, Research and Test Reactors Section, New, Research and Test Reactors Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.*

[FR Doc. 04-10732 Filed 5-11-04; 8:45 am]

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**NUCLEAR REGULATORY COMMISSION**

[Docket No. 50-499]

**STP Nuclear Operating Company; Notice of Withdrawal of Application for Amendment to Facility Operating License**

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of STP Nuclear Operating Company acting on behalf of itself and for Texas Genco, LP, the City Public Service Board of San Antonio (CPS), AEP Texas Central Company, and the City of Austin, Texas, (the licensee) to withdraw its March 4, 2004, application for proposed amendment to Facility Operating License No. NPF-80 for the South Texas Project (STP), Unit 2, located in Matagorda County, Texas.

The proposed amendment would have revised the Technical Specifications to allow STP, Unit 2 to change modes with standby diesel generator 22 inoperable.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on March 23, 2004 (69 FR 13596). However, by letter dated April 29, 2004, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated March 4, 2004, and the licensee's letter dated April 29, 2004, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams/html>. Persons who do not have access to ADAMS or who encounter problems in

accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209 or 301-415-4737 or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland, this 5th day of May 2004.

For the Nuclear Regulatory Commission.

**Michael Webb,**

*Senior Project Manager, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 04-10735 Filed 5-11-04; 8:45 am]

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**NUCLEAR REGULATORY COMMISSION**

[Docket No. 72-52; EA 04-080]

**In the Matter of Tennessee Valley Authority; Browns Ferry Nuclear Plant, 6A Lookout Place, 1101 Market Street, Chattanooga, Tennessee 37402-2801; Order Modifying License (Effective Immediately)**

I

Tennessee Valley Authority (TVA) has been issued a general license by the U.S. Nuclear Regulatory Commission (NRC or the Commission) authorizing storage of spent fuel in an independent spent fuel storage installation (ISFSI) in accordance with the Atomic Energy Act of 1954, 10 CFR part 50, and 10 CFR part 72. This Order is being issued to TVA who has identified near term plans to store spent fuel in an ISFSI under the general license provisions of 10 CFR part 72. The Commission regulations at 10 CFR 72.212(b)(5) and 10 CFR 73.55(h)(1) require TVA to maintain safeguards contingency plan procedures in accordance with 10 CFR part 73, appendix C. Specific safeguards requirements are contained in 10 CFR 73.55.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State, and local government agencies and industry representatives to discuss and evaluate the current threat environment in order

to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security plan requirements, as well as a review of information provided by the intelligence community and other governmental agencies, the Commission has determined that certain compensatory measures are required to be implemented by licensees as prudent, interim measures, to address the current threat environment in a consistent manner throughout the nuclear ISFSI community. Therefore, the Commission is imposing requirements, as set forth in Attachment 1<sup>1</sup> of this Order, on TVA who has indicated near term plans to store spent fuel in an ISFSI under the general license provisions of 10 CFR part 72. These interim requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that some measures may not be possible or necessary, or may need to be tailored to accommodate the specific circumstances existing at TVA's facility to achieve the intended objectives and avoid any unforeseen effect on the safe storage of spent fuel.

In order to provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, the Commission concludes that security measures must be embodied in an Order consistent with the established regulatory framework. TVA's general license issued pursuant to 10 CFR 72.210 shall be modified to include the requirements identified in Attachment 1 to this Order. In addition, pursuant to 10 CFR 2.202, the Commission finds that in the circumstances described above, the public health, safety and interest require that this Order be effective immediately.

### III

Accordingly, pursuant to sections 103, 104, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR § 2.202 and 10

CFR parts 50, 72 and 73, *It is hereby ordered, effective immediately, that your general license is modified as follows:*

A. TVA shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 1 to this Order except to the extent that a more stringent requirement is set forth in their security plan. TVA shall immediately start implementation of the requirements in Attachment 1 to the Order and shall complete implementation before spent fuel is initially placed in the ISFSI.

B. 1. TVA shall, within twenty (20) days of the date of this Order, notify the Commission: (1) If they are unable to comply with any of the requirements described in Attachment 1, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the requirements would cause the licensee to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide the licensee's justification for seeking relief from or variation of any specific requirement.

2. If TVA considers that implementation of any of the requirements described in Attachment 1 to this Order would adversely impact the safe storage of spent fuel, TVA must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 1 requirement in question, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, TVA must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

C. 1. TVA shall, within twenty (20) days of the date of this Order, submit to the Commission, a schedule for achieving compliance with each requirement described in Attachment 1.

2. TVA shall report to the Commission when they have achieved full compliance with the requirements described in Attachment 1.

D. Notwithstanding the provisions of 10 CFR 72.212(b)(5), all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

TVA's responses to Conditions B.1, B.2, C.1, and C.2, shall be submitted in accordance with 10 CFR 72.4. In addition, submittals that contain Safeguards Information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, Office of Nuclear Material Safety and Safeguards may, in writing, relax or rescind any of the above conditions upon demonstration by TVA of good cause.

### IV

In accordance with 10 CFR 2.202, TVA must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; to the Regional Administrator for NRC Region II; and to the licensee if the answer or hearing request is by a person other than the licensee. Because of potential disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission, either by means of facsimile transmission to 301-415-1101, or by e-mail to [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov) and also to the Office of the General Counsel, either by means of facsimile transmission to 301-415-3725, or by e-mail to [OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov). If a person other than TVA requests a hearing, that

<sup>1</sup> Attachment 1 contains SAFEGUARDS information and will not be released to the public.

person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by TVA or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such a hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), TVA may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland, this 7 day of May, 2004.

For the Nuclear Regulatory Commission.

**Jack Strosnider,**

*Director, Office of Nuclear Material Safety and Safeguards.*

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## NUCLEAR REGULATORY COMMISSION

[Docket No. 40-8084]

### **Finding of No Significant Impact and Notice of Availability of the Environmental Assessment Addressing a License Amendment Request To Approve Rio Algom Mining LLC's Erosion Protection Design at Its Lisbon Uranium Mill Tailings Impoundment Located in San Juan County, UT**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of Availability of an Environmental Assessment and Finding of No Significant Impact.

**FOR FURTHER INFORMATION CONTACT:** Jill Caverly, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T8-A33, Washington DC 20555-0001, telephone (301) 415-6699 and e-mail [jsc1@nrc.gov](mailto:jsc1@nrc.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Introduction**

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of an amendment to Rio Algom Mining LLC's (Rio Algom) Source Materials License SUA-1119.

The proposed action updates the erosion control design for reclamation of uranium mill tailings at Rio Algom's Lisbon uranium mill facility near La Sal, Utah. Appendix A, Title 10, U.S. Code of Federal Regulations (10 CFR), Part 40, requires that former uranium mill sites provide protection for 1000 years against forces that will cause erosion or at a minimum of 200 years.

Additionally, regulations require that the design should not require active maintenance. The proposed action is in accordance with the licensee's submittal dated September 3, 2002. License Condition 52 of Source Materials License, SUA-1119, requires Rio Algom to provide plans addressing the overall site stability. This submittal is a response to that requirement.

Pursuant to the requirements of 10 CFR Part 51, Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions, the NRC has prepared an environmental assessment (EA) to evaluate the environmental impacts associated with this request. Based on this evaluation, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate for the proposed licensing action.

##### **II. EA Summary**

The EA was prepared to evaluate the environmental impacts associated with Rio Algom's Erosion Control Facility Design for surface erosion at its Lisbon uranium mill facility. This action will result in an amendment to its Source Materials License, SUA-1119, License Condition 52.

The proposed amendment to Source Materials License, SUA-1119, will amend License Condition 52F and verify that Rio Algom's design meets the requirements of 10 CFR Part 40, Appendix A. Criterion 6 of 10 CFR Part 40, Appendix A, requires that uranium mill tailings be disposed of in an area that provides reasonable assurance of

control of radiological hazards and be effective for 1000 years to the extent reasonably achievable and, in any case, for at least 200 years. In order to meet this requirement, Rio Algom's design must meet the requirements of its license condition. This includes: (1) Addressing potential for erosive velocities in the soil portion of the spillway channel and rock erosion control design of the swale; (2) revising the erosion protection at the toe of the upper tailings dam; (3) considering scour; (4) reviewing rock apron design; (5) address sedimentation; (6) analyzing natural tributary inflows to the diversion channel; (7) reviewing riprap thickness; (8) analyzing strear stress effects; (9) analyzing rock durability and tests bedrock competency; and (10) devising an inspection for the filter and riprap placement.

The EA evaluated the potential impacts of construction and placement of runoff control features including placement of rock riprap. In addition, the EA addressed environmental impacts for rock placement on the top and side slopes of the tailings impoundment, diversion channels, and transition aprons. Construction impacts due to placement and transport of the rock were also considered.

The proposed action is necessary because the regulations and Rio Algom's license require that an engineered barrier be placed over tailings and byproduct material and that the design meets the requirements of 10 CFR Part 40, Appendix A.

##### **III. Finding of No Significant Impact**

Pursuant to 10 CFR Part 51, the NRC has prepared the EA, summarized above. The staff has determined that no significant environmental impacts are expected when the erosion cover is constructed. There will be no significant or additional impacts to the surface features because the erosions protection will be placed on areas where tailings have been covered with an engineered soil barrier and will therefore have no significant effect to wildlife. In addition, the licensee will stabilize areas adjacent to the tailings impoundment where runoff from higher drainage areas enters onto the impoundment but no significant environmental impacts will result from this action.

The proposed NRC approval of the action when combined with known effects on resource areas at the site, including further site remediation, is not anticipated to result in any cumulative impacts at the sites. Therefore, the NRC staff has concluded that there will be no significant environmental impacts on the quality of