

## NUCLEAR REGULATORY COMMISSION

[Docket No. 70–7004–ML; ASLBP No. 05–838–01–ML]

### Atomic Safety and Licensing Board; In the Matter of USEC, Inc. (American Centrifuge Plant); Notice (Notice of Hearing)

March 1, 2007.

Before Administrative Judges: Lawrence G. McDade, Chairman; Dr. Peter S. Lam; Dr. Richard E. Wardwel.

This Atomic Safety and Licensing Board hereby gives notice that it will convene an evidentiary session to receive testimony and exhibits in the “mandatory hearing” portion of this proceeding regarding the August 23, 2004 application of USEC, Inc. (USEC) for authorization to construct a facility and to possess and use source, byproduct, and special nuclear material in order to enrich natural uranium to a maximum of ten percent uranium-235 by the gas centrifuge process.<sup>1</sup> USEC proposes to do this at a facility—denominated the American Centrifuge Plant—to be constructed near Piketon, Ohio. This mandatory hearing will concern safety and environmental matters relating to the proposed issuance of the requested license, as more fully described below.

#### A. Matters To Be Considered

As set forth by the Commission in the October 2004 Notice of Hearing<sup>2</sup> the matters to be considered are (1) Whether the application and record of the proceeding contain sufficient information and whether the NRC Staff’s review of the application has been adequate to support findings to be made by the Director of the Office of Nuclear Materials Safety and Safeguards, with respect to the applicable standards contained in 10 CFR 30.33, 40.32, and 70.23, and (2) whether the review conducted by the NRC Staff pursuant to 10 CFR Part 51 has been adequate. Additionally, in accord with the Commission’s October 2004 notice, also at issue in this proceeding is: (3) Whether the requirements of Sections 102(2)(A), (C), and (E) of the National Environmental Policy Act of 1969 and 10 CFR Part 51, Subpart A, have been complied with in this proceeding; (4) whether the final balance among conflicting factors contained in the record of this proceeding indicate that granting the license is the appropriate action to be

taken; and (5) whether the license should be issued, denied, or appropriately conditioned to protect the environment.

#### B. Date, Time, and Location of Mandatory Hearing

The Board will conduct this mandatory hearing at the specified location and time:

1. *Date:* Tuesday, March 13, 2007.

*Time:* Beginning at 10 a.m. EST.

*Location:* ASLBP Hearing Room, Two White Flint North, Third Floor, 11545 Rockville Pike, Rockville, Maryland 20852–2738.

The hearing on these issues will then be continued until Monday, March 19, 2007, and thereafter day-to-day until concluded.

Any members of the public who plan to attend the mandatory hearing are advised that security measures will be employed at the entrance to the hearing facility, including searches of hand-carried items such as briefcases or backpacks. The public is further advised that, in accordance with 10 CFR 2.390, portions of the hearing sessions will be closed to the public because the matters at issue will involve the discussion of protected information.

#### C. Availability of Documentary Information Regarding the Proceeding

Documents relating to this proceeding 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 publicly available records component of NRC’s document system (ADAMS). ADAMS is accessible from the NRC Web site at [www.nrc.gov/reading-rm/adams.html](http://www.nrc.gov/reading-rm/adams.html) (the Public Electronic Reading Room). 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 (800) 397–4209 or (301) 415–4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

#### D. Scheduling Information Updates

Any updated/revised scheduling information regarding the evidentiary hearing can be found on the NRC Web site at [www.nrc.gov/public-involve/public-meetings/index.cfm](http://www.nrc.gov/public-involve/public-meetings/index.cfm) or by calling (800) 368–5642, extension 5036, or (301) 415–5036.

*It is so ordered.*

Dated in Rockville, Maryland, on March 1, 2007.

For the Atomic Safety And Licensing Board.<sup>3</sup>

**Lawrence G. McDade,**

*Chairman, Administrative Judge.*

[FR Doc. E7–4103 Filed 3–6–07; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

[Docket No. 030–17584]

### Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment to Byproduct Materials License No. 01–02861–05, for Termination of the License and Unrestricted Release of the Department of the Army’s Chemical School Facility in Fort McClellan, AL

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Issuance of environmental assessment and finding of no significant impact for license amendment.

#### FOR FURTHER INFORMATION CONTACT:

Orysia Masnyk Bailey, Health Physicist, Materials Security & Industrial Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19401; phone number (864) 427–1032; fax number (610) 680–3497; or by e-mail: [omm@nrc.gov](mailto:omm@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering terminating Byproduct Materials License No. 01–02861–05. This license is held by the Department of the Army (the Licensee), for remaining residual ground contamination at a 1950s era radioactive materials burial ground, located within the LaGarde Park (the Site) in Anniston, Alabama, adjacent to Fort McClellan. Termination of the license would authorize release of the site for unrestricted use.

The Army requested this action in a letter dated April 26, 2005. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10, Code of Federal Regulations (CFR), Part 51 (10 CFR part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The license will be terminated following the publication of this FONSI and EA in the **Federal Register**.

<sup>1</sup> See 69 FR 61411 (Oct. 18, 2004); see also 10 CFR Parts 30, 40, and 70.

<sup>2</sup> 69 FR at 61411–61412.

<sup>3</sup> Copies of this Notice were sent this date by Internet electronic mail transmission to counsel for (1) USEC; and (2) the NRC Staff.

## II. Environmental Assessment

### *Identification of Proposed Action*

The proposed action would approve the Licensee's April 26, 2005, request, resulting in release of the Site for unrestricted use and the termination of its NRC materials license. The U.S. Army Chemical School was located at Fort McClellan from 1951–1973 and 1979–1999. Several Byproduct Materials Licenses were issued and terminated over the years which authorized the use of byproduct material by the Army Chemical School at Fort McClellan. License No. 01–02861–05 was issued in 1979, pursuant to 10 CFR Part 30, and has been amended periodically since that time. This license initially was a license of broad scope, but now is limited to authorizing the possession of unsealed byproduct material in contaminated soil at the Site. Over the past 10 years, portions of the Army's Chemical School at Fort McClellan have been incrementally released for unrestricted use as remediation activities and radiological surveys have allowed in support of the Base Closure and Relocation (BRAC) process Fort McClellan is undergoing. As buildings and outdoor areas were released they were turned over to the State of Alabama. The Site now under consideration for release is on property that was deeded to the city of Anniston from the Army in 1974, and has been used as a recreational park.

A flyover survey of Fort McClellan was completed in October 2001 and the Site was found to contain a "hot spot". Cesium 137 contamination on the east side of the Site was identified and was determined to be from training activities at the former Army Chemical School. The contaminated area (adjacent to the Fort McClellan perimeter fence) was then fenced. This area is located in a wooded section of the park containing walking and biking trails. Because the property no longer belonged to the Army, the U.S. Army Corps of Engineers (USACE) assumed responsibility for site remediation under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA). Since the contamination found at the site was associated with the Army's use of the property during the 1950s, the property was found to be eligible for action under the Defense Environmental Restoration Program (DERP). This program authorizes the Secretary of Defense to undertake remediation action at formerly used defense sites (FUDS) related to contamination associated with past Department of Defense (DOD) use. USACE is DOD's delegated execution agent for DERP–FUDS response actions.

The permit waiver provision of CERCLA 121(e) thus applies to the Site, and USACE therefore was not required to submit a decommissioning plan to the NRC prior to initiating remediation activities in September 2003.

### *Need for the Proposed Action*

The Licensee has ceased conducting licensed activities at the site, and seeks the unrestricted use of the site and the termination of its NRC materials license.

### *Environmental Impacts of the Proposed Action*

The historical review of licensed activities conducted at the site shows that such activities involved use of the following radionuclides with half-lives greater than 120 days: cobalt-60 and cesium-137. Prior to performing the final status survey, USACE contracted to have 244 tons of contaminated materials and dirt removed from the site from September 2003 through March 2005.

USACE conducted a final status survey of the Site in August 2005 and submitted its draft data (later submitted unchanged in final form in June 2006) showing that the Site meets the criteria in Subpart E of 10 CFR Part 20 for unrestricted release and permits license termination. USACE demonstrated compliance with the radiological criteria for unrestricted release specified in 10 CFR 20.1402 by using the screening approach described in NUREG–1757, "Consolidated NMSS Decommissioning Guidance," Volume 2. USACE used the radionuclide-specific derived concentration guideline levels (DCGLs), developed there by the NRC. These DCGLs define the maximum amount of residual radioactivity on building surfaces, equipment, and materials, and in soils, that will satisfy the NRC requirements in Subpart E of 10 CFR Part 20 for unrestricted release. USACE's final status survey results were below these DCGLs and are in compliance with the As Low As Reasonably Achievable (ALARA) requirement of 10 CFR 20.1402. USACE also considered the dose contribution from previous site releases. The NRC concludes that USACE's final status survey results are acceptable. NRC staff conducted a confirmatory survey on September 27, 2005. Results were comparable to those observed by USACE and none of the confirmatory sample results exceeded the DCGLs.

Based on its review, the staff has determined that the affected environment and any environmental impacts associated with the proposed action are bounded by the impacts evaluated by the "Generic Environmental Impact Statement in

Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities" (NUREG–1496) Volumes 1–3 (ML042310492, ML042320379, and ML042330385). Accordingly, there were no significant environmental impacts from the use of radioactive material at the site. The NRC staff reviewed the docket file records and the final status survey report to identify any non-radiological hazards that may have impacted the environment surrounding the site. No such hazards or impacts to the environment were identified. The NRC has found no other radiological or non-radiological activities in the area that could result in cumulative environmental impacts.

The NRC staff finds that the proposed release of the site for unrestricted use and the termination of the NRC materials license is in compliance with 10 CFR 20.1402 including the impact of residual radioactivity at previously-released site locations of use. Based on its review, the staff considered the impact of the residual radioactivity at the Site and concluded that the proposed action will not have a significant effect on the quality of the human environment.

### *Environmental Impacts of the Alternatives to the Proposed Action*

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would leave things as they are by denying the termination request. This no-action alternative is not feasible because it conflicts with 10 CFR 30.36(d), requiring that decommissioning of byproduct material facilities be completed and approved by the NRC after licensed activities cease. The NRC's analysis of the USACE's final status survey data confirmed that the Site meets the requirements of 10 CFR 20.1402 for unrestricted release and for license termination. Additionally, this denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar, and the no-action alternative is accordingly not further considered.

### *Conclusion*

The NRC staff has concluded that the proposed action is consistent with the NRC's unrestricted release criteria specified in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the

human environment, the NRC staff concludes that the proposed action is the preferred alternative.

#### *Agencies and Persons Consulted*

NRC provided a draft of this Environmental Assessment to the State of Alabama, Department of Radiation Control for review on October 31, 2006. On November 11, 2006, the State of Alabama Department of Radiation Control responded by e-mail. The State agreed with the conclusions of the EA, and otherwise had no substantive comments.

The NRC staff has determined that the proposed action is of a procedural nature and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

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

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

#### **IV. Further Information**

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

1. NUREG-1757, "Consolidated NMSS Decommissioning Guidance";
2. Title 10, Code of Federal Regulations, Part 20, Subpart E, "Radiological Criteria for License Termination";
3. Title 10, Code of Federal Regulations, Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions";
4. NUREG-1496, "Generic Environmental Impact Statement in

Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities";

5. August 1, 2002 U.S. Army Corps of Engineers (USACE) to NRC memorandum (ML031490516);

6. October 2002 "Airborne Radiological Survey—Main Post and Pelham Range, Walkover Radiological Survey at Rideout Field and Anomaly Surveys on Main Post and Pelham Range, Groundwater Investigation—Burial Mound at Rideout Field" (Package ML030100136);

7. June 2003 "Final Completion Report, Site Investigation at LaGarde Park, Anniston, Alabama" (ML052710179);

8. August 25, 2003 NRC Inspection Report No. 01-02861-05/03-01 (ML032380139);

9. October 13, 2003, STEP, Inc. to USACE, "Removal Action at LaGrange Park, Phase II Memorandum" (ML052710136);

10. February 10, 2004, Shaw Group, Inc. response to NRC Inspection Report 01-02861-05/03-01 (ML042100101);

11. NRC letter dated June 24, 2004, acknowledging the receipt of the Army's Airborne Survey Report (ML041770403);

12. May 2004 "Final Report for Removal Action at LaGarde Park" (TBS);

13. April 2005 "Final Remedial Investigation Report, Expanded Site Investigation at LaGarde Park, Anniston, Alabama" (ML061940256);

14. April 26, 2005, Department of the Army request for termination of Materials License No. 01-02861-05 (ML051430344);

15. August 2005 "Draft Final Remedial Action Report, Final Interim Removal Action at LaGarde Park, Anniston, Alabama" (ML052840081);

16. November 4, 2005 "Final Remedial Action Report, Final Interim Removal Action at LaGarde Park, Anniston, Alabama" (ML061940267);

17. December 14, 2005 NRC Inspection Report 03017584/2005001 (ML053480096);

18. May 2006 "Proposed Plan for the LaGarde Park Site of the Former Fort McClellan, Anniston, Alabama" (ML061940273); and

19. June 2006 "Final Decision Document for the LaGarde Park Site of the former Fort McClellan, Anniston, Alabama" (ML061940269).

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov). These documents may also be viewed electronically on the public computers

located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at King of Prussia, Pennsylvania, this 27th day of February, 2007.

For the Nuclear Regulatory Commission.

**Marie Miller,**

*Chief, Materials Security & Industrial Branch, Division of Nuclear Materials Safety, Region I.*

[FR Doc. E7-4096 Filed 3-6-07; 8:45 am]

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#### **OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE**

#### **Determination Regarding Waiver of Discriminatory Purchasing Requirements With Respect to Goods and Services Covered by Chapter 9 of the Dominican Republic-Central America-United States Free Trade Agreement for the Dominican Republic**

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Determination Regarding Waiver of Discriminatory Purchasing Requirements under the Trade Agreements Act of 1979.

**DATES:** *Effective Date:* March 1, 2007.

**FOR FURTHER INFORMATION CONTACT:** Jean Heilman Grier, Senior Procurement Negotiator, Office of the United States Trade Representative, (202) 395-9476.

**SUPPLEMENTARY INFORMATION:** On August 5, 2004, the United States and the Dominican Republic entered into the Dominican Republic-Central America-United States Free Trade Agreement ("the CAFTA-DR"). Chapter 9 of the CAFTA-DR sets forth certain obligations with respect to government procurement of goods and services, as specified in Annex 9.1.2(b)(i) of the CAFTA-DR. On August 2, 2005, the President signed into law the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act ("the Act") (Pub. L. No. 109-53, 119 Stat. 462). In section 101(a) of the Act, the Congress approved the CAFTA-DR. The CAFTA-DR will enter into force on March 1, 2007, for the Dominican Republic.

Section 1-201 of Executive Order 12260 of December 31, 1980 delegated the functions of the President under Sections 301 and 302 of the Trade Agreements Act of 1979 ("the Trade Agreements Act") (19 U.S.C. 2511, 2512) to the United States Trade Representative.