

August 8, 2000

The Honorable Constance A. Morella
United States House of Representatives
81 Monroe Street, Suite 507
Rockville, MD 20850

Dear Congresswoman Morella:

On May 10, 2000, we provided an interim response to your letter dated March 24, 2000 concerning Neutron Products, Inc. (NPI) of Dickerson, Maryland. We indicated we had discussed and requested information from Maryland Department of the Environment (MDE) staff on NPI. We also indicated that we had planned to meet with MDE staff to discuss their oversight at NPI and any future actions that are planned or may be needed to satisfactorily resolve the matter.

On June 15, 2000, NRC staff met with Ann Marie DeBiase, Director, Air and Radiation Management Administration in MDE, Radiological Health Program staff in her Administration, and staff in the Maryland Attorney General's Office. Ms. DeBiase is also the Governor's designee for all NRC matters affecting Maryland.

Based on the meeting, and review of pertinent portions of Maryland State files regarding NPI (see enclosure), we conclude that Maryland is providing adequate oversight over NPI, consistent with its responsibility to protect public health and safety under its Agreement with NRC. In particular, Maryland is ensuring that public health and safety is protected through its licensing and inspection program, through requirements obligating NPI to conduct a radiation monitoring program at the site and through Maryland's own independent site monitoring program. Potential exposures off-site are below those monitored in previous years and are below the unrestricted public dose limits in Maryland's regulations. NPI is precluded from conducting "source melting" operations which was the principal source of off-site contamination and has taken actions to reduce radiation levels from stored waste.

Maryland has completed a lengthy process of placing NPI's major source manufacturing operation under a new updated license. The new license went into effect August 24, 1999 following an administrative ruling by the Secretary, MDE, upholding a court ruling against NPI on the terms and conditions of the license. NPI has challenged the Secretary's ruling and the case will be heard later this year by the Circuit Court. Under the Secretary's ruling, the license is in effect and is being enforced by Maryland staff, pending the higher court appeal. Maryland is addressing compliance with the license and supporting Maryland regulations through an active inspection program and escalated enforcement actions.

Maryland is also pursuing a significant issue relating to NPI compliance with the State's requirements to establish an adequate financial assurance to cover the estimated costs for closure and decommissioning of NPI manufacturing operations. Maryland staff informed us that NPI is the only Maryland facility which has not fully complied with their decommissioning financial assurance regulations which are compatible with NRC's regulations in this area. In

light of the above, Maryland requested injunctive relief in the Montgomery County Circuit Court to shut the facility down. The judge ruled in favor of NPI citing lack of radiation safety significant issues. However, on the issue of establishing an adequate financial assurance, the court ruled in favor of the State and Maryland and NPI are currently in discovery for a subsequent court hearing on this matter. Maryland staff also stated that they believe they have established and continue to maintain communication with local community leaders.

Under NRC's oversight authority under Section 274 j of the Atomic Energy Act of 1954, as amended, (Act), NRC has ability either at the request of the Governor, or upon its own initiative, to reassert authority over all materials covered by an Agreement, or a subcategory of materials or specific class of licensees, such as the class of licensees that would include NPI. Such reassertion of authority would take place upon a formal Commission finding that the Agreement State program was not adequately protecting public health and safety or otherwise not in compliance with the requirements of Section 274 of the Act. Public notice is required and, in the case of independent action by NRC, the Governor would have opportunity to request a hearing. The Act also provides authority for an emergency suspension of all or part of a State's Agreement in cases where they allow a situation to exist which requires immediate action to protect the health and safety of persons either within, or outside, the State. Neither of these conditions exists regarding Maryland's oversight of NPI and, therefore, NRC has no reason to consider reassertion of authority over all or a part of the Maryland Agreement State program at this time.

We recognize the challenge faced by the Maryland Agreement State program concerning its oversight over NPI. NRC has faced similar regulatory issues and has found that they can be time consuming, resource intensive and, in many cases, must involve lengthy litigation to bring all issues to closure. NRC staff believes that Maryland is pursuing NPI compliance with Maryland regulations, following Maryland laws and regulations, and in accordance with established Maryland administrative procedures. As a part of our meeting with Maryland staff, NRC staff agreed to provide technical assistance, if requested by Maryland staff, to address issues relating to NPI's compliance with Maryland's decommissioning and financial assurance regulations.

We will continue to follow Maryland's activities in addressing NPI through our Agreement State oversight process.

If you have additional questions or concerns, please do not hesitate to contact us.

Sincerely,

/RA/

William D. Travers
Executive Director
for Operations

Enclosure:
As stated

SUMMARY OF INFORMATION CONCERNING NEUTRON PRODUCTS INC.
REVIEWED BY NRC STAFF

NRC staff reviewed the following key items of information in State files as part of its review of Maryland's oversight of NPI.

1. Inspection Report for 1993 Inspection of NPI by NRC and Maryland
2. NPI's radioactive material license (MD-31-025-01) effective August 1999
3. Results of boundary and off-site monitoring of NPI by Maryland
4. NPI's 1999 annual review of their radiation protection program concerning exposure to members of the public
5. Inspection reports for various recent Maryland inspections of NPI (these reports included results of effluents releases and on-site and off-site radiation and contamination levels)
6. Notices of Violation issued by Maryland and responses from NPI for these inspections

ENCLOSURE