Maryland Department of the Environment Attorney General's Office

Fax

To: Mr. O'Brien

Fax: 301-415-3502 **Total Number of** 9

Phone: **Date:** 12/29/2000 11:20 AM

Re: Neutron Products, Inc. License **CC:**

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From the desk of

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IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

DEPARTMENT OF THE ENVIRONMENT	:	
Plaintiff / Counter-Defendant	:	**Civil No. 199036**
v.	:	
NEUTRON PRODUCTS, INC.	:	
Defendant / Counter-Plaintiff	:	

ORDER MODIFYING PERMANENT INJUNCTION PENDING APPEAL

Pursuant to Maryland Rule 2-632 the permanent injunction entered on November 3, 2000 herein is modified during the pendency of defendant's appeal of that injunction as follows:

1. Neutron may transfer sources within the facilities operated under its 01 License and between the 01 facilities and the irradiators operated under the 04 and 05 Licenses. In continuing the operation of its existing irradiators, Neutron shall not exceed therein the existing limits of 2 million curies authorized by the 04 License for Dickerson II, and 750,000 curies authorized by the 05 License for Dickerson I. Neutron may also operate as its 01 License allows except that it may not: a) melt cobalt-60; and b) receive additional radioactive material or refabricate such material except as allowed herein.

2. Neutron must place into an escrow account at least 10% of revenues generated by source sales and removals. Payment into the fund shall be within sixty (60) days after shipment or removal of the relevant source. To the extent that these payments are less than 10% of the revenues generated by source sales, and removals on a quarterly basis as established from the books and records of Neutron, additional payments shall be due by the end of the same quarter in which the initial payment was made. The State of Maryland, Department of the Environment [hereinafter "Department"], shall receive a copy of the monthly statements directly from said bank and the agreement establishing the escrow account shall be subject to the approval of the

Department. "Revenues generated by source sales and removal" are defined as any revenue generated by any radioactive material subject to the 01 License sold or delivered after November 3, 2000 and shall be measured by the invoiced price to customers for all services relating to the exchange or delivery of a source less installation, transportation costs and sales agent commissions if any, paid to third parties.

3. The funds deposited into, earned by and distributed from said escrow account will be used exclusively for the shipment of radioactive waste. The waste shipped using these funds shall be in addition to the waste that Neutron is otherwise obligated to ship under its 01 License during 2001 and 2002. If this case is not disposed of by March 31, 2002 a plan for utilizing the funds deposited into the escrow account shall be negotiated between the parties. The release of funds from said account requires the approval of the Department. Once placed in the account, the funds must be used solely for financing waste shipments or other decommissioning activities unless Neutron is successful on appeal and obtains a final decision that it is not required to provide financial assurance for its 01 License or that Neutron has provided adequate financial assurance for the 01 License to meet its obligations under the applicable law without consideration of the funds being held in escrow. If the Permanent Injunction of November 3, 2000 is upheld, the funds held in escrow shall be used to finance a decommissioning plan agreed to by the parties or ordered by the Court in the continuing litigation in Montgomery County. In the event of abandonment, bankruptcy, or failure of Neutron to abide by the terms of any final decommissioning plan, sole control of the remaining escrow funds shall pass to the Department.

4. Between the date of this order and June 30, 2001 the escrowed funds shall be used to ship 600 cubic feet of low activity radioactive waste for disposal. By December 31, 2001, Neutron shall ship an additional 600 cubic feet of low activity radioactive waste. (All volumes to be measured before compaction.) Between December 31, 2001 and June 30, 2002, Neutron shall ship at least 80% of the remaining low activity radioactive waste stored at the Dickerson facility.

If during any of these six-month periods Neutron exceeds its shipping requirement for that period, then the excess shall be credited against subsequent shipping requirements under this order. Failure to meet any shipping deadline shall result in an additional 10% of the revenues generated by source sales and removal being paid into the escrow account until the shipment requirement is met. For every deadline missed, an additional 10% shall be added to the escrow account until the required shipment is completed.

5. In order to assure the Department that continued operations will not add to the eventual decommissioning cost of the facilities operated under the 01 License as a result of the acceptance of irradiated targets, trade-in sources, or sources removed from the facilities of other licensees, Neutron shall, prior to the acceptance of any cobalt-60 material, provide assurance from a guarantor or guarantors (other than Neutron) that the guarantor(s) can and will accept the delivery of double encapsulated sources containing the cobalt-60 hereafter brought to Dickerson by Neutron. There must be a guarantee covering each of the sources or targets brought into Dickerson after November 3, 2000. Guarantors must have adequate facilities and licenses from the United States Nuclear Regulatory Commission or a State authorized by the NRC to issue such licenses to receive such material. Each guarantor shall guarantee acceptance of such sources within 180-days of the entry of an order by the Court of Special Appeals upholding the order entered by the Circuit Court on November 3, 2000. The guarantee may be premised upon the fabrication of the sources at Neutron into new or recycled sources. The Department will support a request by Neutron to the Court to continue operation for a period not to exceed 180 days after the entry of the mandate of the Court of Special Appeals for the sole purpose of such fabrication. The execution of the necessary guarantees must precede the acceptance of any sources or targets by Neutron. The guarantees must name the State of Maryland as an intended third-party beneficiary of the agreement and the guarantee must not be premised on any conditions except those detailed herein.

6. If Neutron uses in its 04 and 05 irradiators cobalt-60 that it receives pursuant to a guarantee, it may remove that cobalt-60 from coverage by the guarantee and accept additional curries under that guarantee. Provided, however, that the cobalt-60 removed from the irradiators when the new sources are installed shall be covered by a guarantee. If material covered by a guarantee is sold and removed from Neutron's Dickerson plant, Neutron may accept additional material pursuant to that or other guarantees.

7. The executed guarantee, in the form attached hereto as Exhibit 1, shall be submitted to and approved by the Department prior to the acceptance of any additional cobalt-60 by Neutron. The Department will promptly review each guarantee and will not unreasonably withhold approval. This provision is not to be construed to permit the acceptance by Neutron of additional radioactive waste, whether or not associated with usable cobalt-60. Neutron is allowed, however, when accepting cobalt-60 pursuant to this order, to accept the cladding and shipping containers that may accompany such cobalt-60.

8. Should Neutron lose its appeal in the Court of Special Appeals, nothing herein shall prevent it from seeking an extension of this order or the entry of a different order from the Court of Special Appeals or from the Court of Appeals, should Neutron seek further appeals. If Neutron's initial appeal is heard by the Court of Appeals, the 180-day time limit specified in paragraph 5 herein shall run from the date of the Court of Appeal's decision.

9. This Court will retain jurisdiction over this order to adjudicate disputes and interpret the terms thereof.

10. Neutron shall provide a report by the fifteenth of each month disclosing all sales revenue and expenses for the previous month broken down by license which will itemize the revenue generated by source sale and removal activities associated with or ancillary to the 01 License, as well as the amount added to the escrow account. The derivation of the "revenue generated by source sales and removals" shall be in sufficient detail to identify gross sales revenue for the

services performed, the invoiced price, and the type and applicability of expense deductions from such gross sales revenue. In addition, Neutron shall, upon request, provide access to an independent auditor selected by the Department who will execute the existing confidentiality agreement to audit the relevant books and records of Neutron. Should the audit show that the payment due based upon 10% of Neutron's "revenue generated by source sales and removals" is greater than the amount paid by Neutron, Neutron will pay the deficiency established by the audit. Neutron shall promptly produce copies of any financial records requested by the State or its auditor and shall produce computer report(s) and compilations of any financial records maintained in its company computers to the extent such reports or compilations are supported by its existing software. For each sale generating revenue after November 3, 2000, a copy of the relevant contract must be submitted along with a copy of the invoice(s) sent to the customer.

11. In no event during the pendency of this order may Neutron exceed the 1.88 million curies as a running 12 month average radioactivity limitation as set forth in Judge McGuckian's order of July 1, 1999, or exceed the 01 License limitations on radioactive material at the 01 facility.

12. If Neutron fails to satisfy the shipping requirement(s) of this order or its 01 License, no additional cobalt-60 may be brought onto the site under the 01 License until Neutron comes into compliance.

December 21, 2000

Date

Judge Nelson W. Rupp, Jr.

GUARANTEE

1. _____ (Guarantor) hereby agrees and guarantees that pursuant to the following conditions it will, upon request and with no less than sixty days prior written notice and at a price to be negotiated between Guarantor and Neutron Products, Inc. ("Neutron"), and any successor in interest or assign of either party, accept from Neutron delivery of doubly encapsulated cobalt-60 sources containing up to _____ curies of cobalt-60 for use in Guarantor's existing plant or licensed replacement thereof. This guarantee is good for a period of three years from this date, and will be extended from year to year thereafter unless terminated by twelve months prior written notice.

2. Unless otherwise agreed by Neutron and Guarantor, these sources must be from 3/8" to 9/16" in diameter with activity ranging from 50-1,200 curies per foot or from 1" to 1.5" in diameter with activities of from 100-1,800 curies per foot. Unless otherwise agreed by Neutron and Guarantor the sources must be capable of organization into three-foot lengths by a combination of 18" length sources or 1 and 2 foot sources.

3. The parties hereto hereby acknowledge that the State of Maryland, Department of the Environment ("Department") is an intended third party beneficiary of this Guarantee, with full rights to enforce the Guarantee conveyed hereby.

4. Guarantor understands that, in reliance upon this Guarantee, the Department has agreed to alter its prior position and authorize Neutron to take possession of, own and refabricate into useful sources, cobalt-60 that it would not

otherwise authorize Neutron to receive, own, possess and process because of its concern that the State may ultimately be responsible for the safe storage and disposal thereof. Therefore, the Department may be subject to significant potential costs should Guarantor not fulfill the terms of this Guarantee.

5. Although Neutron and Guarantor have separately agreed to negotiate a fair and equitable price to be paid to Neutron for the sources so purchased and accepted by Guarantor, failure of the parties to this Guarantee to timely agree upon such a price shall not relieve Guarantor of its obligation to the Department to timely receive any such sources which satisfy its specifications. Nor will such failure relieve Neutron of its obligation to timely fabricate such sources to said specifications, or to other specifications that are mutually agreeable between Neutron and Guarantor.

6. Guarantor warrants that it is fully licensed to accept the delivery of such sources and stands ready, willing, and able to accept such delivery under the terms of its agreement with Neutron and this Guarantee. Guarantor will undertake all reasonable efforts to maintain this ability and will notify the Department of any impairment or potential impairments of its ability to fulfill its obligations hereunder within 30 days of learning of such impairment or potential impairments.

7. Guarantor agrees to promptly furnish such reasonable financial and licensing information as may be requested by the Department. The Department will maintain all material marked as confidential in a manner consistent with the requirements of the Maryland Public Information Act.

8. Neutron hereby certifies that all of the cobalt-60 covered by this guarantee and accepted under the 01 License at the Dickerson facility after November 3, 2000 will

be capable of fabrication (or refabrication) into doubly encapsulated sources that satisfy the specifications set forth in its agreement with Guarantor, or will be capable of being modified, without melting, at the Dickerson facility under the terms of the 01 License to meet said specifications within 180-days after the issuance of a mandate by the Court of Special Appeals or of the Court of Appeals if the Court of Appeals hears the original appeal with regard to Neutron's appeal of the Permanent Injunction granted on November 3, 2000. Neutron also certifies that the balance of all Cobalt-60 received after November 3, 2000, will be capable of fabrication without melting for sale to other authorized recipients who provide guarantees acceptable to the Department in advance of receipt of the cobalt-60 at Dickerson.

The parties hereby accept and acknowledge the conditions of this Guarantee.

Guarantor	Neutron Products Inc.