

MAYER, BROWN, ROWE & MAW

190 SOUTH LA SALLE STREET

CHICAGO, ILLINOIS 60603-3441

PERCY L. ANGELO
DIRECT DIAL (312) 701-7330
DIRECT FAX (312) 706-9106
pangelo@mayerbrown.com

MAIN TELEPHONE
(312) 782-0600
MAIN FAX
(312) 701-7711

September 20, 2002

VIA U.S. MAIL & UPS NEXT DAY AIR

Philip Ting, Chief
Fuel Cycle Licensing Branch, FCSS
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

40-3392

Re: Honeywell International, Metropolis Illinois (License SUB-526)
Supplement to March 2, 2001 Letter re: Illinois Department of
Nuclear Safety Letter of February 16, 2001

Dear Mr. Ting:

We wrote you previously on March 2, 2001 in connection with the efforts of the Illinois Department of Nuclear Safety ("IDNS") to reclassify certain materials at Honeywell International's uranium hexafluoride conversion facility at Metropolis, Illinois (License SUB-526). This letter supplements and updates our previous correspondence, and asks that you take into account a recent NRC decision as you consider the status of these materials. We are attorneys representing Honeywell with respect to that IDNS effort (see February 16, 2001 letter to you from IDNS Director, Thomas Ortziger).

Specifically, in its February 16, 2001 letter, IDNS contended that crushed drums containing residues from yellowcake shipped to Metropolis and chipped pallets contaminated with yellowcake shipped to Metropolis are subject to IDNS jurisdiction and may not be considered Section 11e.(2) byproduct material. In our previous correspondence we asked you to reject the IDNS position and to clarify NRC's jurisdiction over these materials and to confirm NRC's prior direction that they constitute 11e.(2) byproduct materials.^{1/}

^{1/} In support of this request we pointed out the letter from R. Dale Smith, NRC, to Quivira Mining Company, Amendment No. 2, dated May 6, 1987, and the letter from Daniel M. Gillen, NRC, to Quivira Mining Company, Amendment No. 34, dated December 7, 1995, allowing disposal of crushed yellowcake drums from the Metropolis facility and the Sequoyah Fuels Facility. Honeywell also notes the letter from John J. Surmeier, NRC, to William Paul Goranson, Quivira Mining Company (Nov. 10, 1999), confirming that certain uranium recovery wastes (i.e. chipped wooden pallets contaminated by licensed source material concentrates –

Brussels Charlotte Chicago Cologne Frankfurt Houston London Los Angeles Manchester New York Palo Alto Paris Washington, D C
Independent Mexico City Correspondent Jauregui, Navarrete, Nader y Rojas, S C

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Recently the Nuclear Regulatory Commission has determined that certain wastes from the front-end of the process at the Sequoyah Fuels Corporation uranium conversion facility may be treated as 11e.(2) byproduct materials under the Atomic Energy Act ("AEA"). SECY-02-0095. Several of these wastes are entirely similar to the crushed drums and chipped pallets previously addressed in our March 2, 2001 letter.^{2/} We are writing to ask you to review the *Sequoyah Fuels* precedent in connection with our response to the IDNS letter.

We are aware that the NRC's *Sequoyah Fuels* decision makes reference to the circumstances of Honeywell's Metropolis plant and the scope of the effect of that decision on that plant. *Sequoyah Fuels* at 9. Honeywell believes that while its overall process differs in some respect from that operated at Sequoyah Fuels, the front end of the Honeywell process produces wastes which, in fact, qualify as 11e.(2) byproduct material. Honeywell is reviewing the *Sequoyah Fuels* decision and its applicability to Honeywell and at a later date intends to ask for NRC review of these issues as well. At this point, however, Honeywell asks only that you consider the significance of the *Sequoyah Fuels* decision for the crushed drums and chipped pallets addressed in our March 2, 2001 letter.

As previously described, the drums in question are those in which Metropolis receives yellowcake directly from the mine/mill. There is no question that those drums and their residues would be 11e.(2) byproduct material at the mill site itself. Based on the recent *Sequoyah Fuels* decision they will be treated as 11e.(2) material at Sequoyah Fuels. They should be 11e.(2) material at Metropolis as well, and indeed the December 7, 1995 NRC letter to Quivira reached exactly that conclusion.

Similarly, the chipped pallets at Metropolis were originally used to store yellowcake drums received from the mines/mills before Metropolis processing and became contaminated with yellowcake residues. These contaminated pallets would be 11e.(2) byproduct material at the mills, they have now been held to be 11e.(2) material at Sequoyah Fuels and the November 10, 1999 letter has already reached the conclusion that those pallets are 11e.(2) material at Metropolis. Honeywell asks that the NRC reject the attempt by IDNS to assert jurisdiction over and reclassify those materials.

"yellow-cake" – at Honeywell's facility) are 11e.(2) byproduct material. See Exhibits A, B & C to our March 2, 2001 letter.

^{2/} At Sequoyah Fuels these front end wastes also included wastes from processing steps prior to conversion, including contaminated soils from spills and sludges from raffinate processing.

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The materials in question are from the front end of the Honeywell process, indeed they are produced before processing of any kind begins. They are comparable to the yellowcake loading, management and storage activities at the mill, and “can reasonably be viewed as a continuation of the milling process that was started at a licensed uranium mill.” *Sequoyah Fuels* at 3. The *Sequoyah Fuels* decision makes clear that activities related to milling may take place at locations other than the mill itself and may include steps at least through the “extraction or concentration terms in the definition of 11e.(2) byproduct material.” *Id.*

Section 11e.(2) byproduct material is defined by the AEA as:

The tailings or wastes produced by the extraction or *concentration* of uranium or thorium from *any ore* processed primarily for its source material content.

42 U.S.C. § 2014e.(2) (emphasis added).

Under this definition, the tailings or wastes must be produced by the extraction or concentration of uranium or thorium; the uranium or thorium must be extracted or concentrated from any ore; and the ore must be processed primarily for its source material content. There is no question that the Metropolis crushed drums and chipped pallets with their yellowcake residues are a result of the milling process; they have just come to be located at Metropolis rather than at the mill.

Treatment of drums and pallets as 11e.(2) requires no change in policy or reinterpretation on the part of the NRC and is entirely consistent with its interpretations even prior to *Sequoyah Fuels*.^{3f}

Rejection of the IDNS position in this matter will have no adverse consequences. The wastes themselves have been sent out of state for disposal at properly licensed facilities. As described in our March 2, 2001 letter, jurisdiction over this issue at the Metropolis uranium conversion facility, an important national asset and the only remaining uranium conversion facility in the U.S., is and should remain with the NRC. IDNS’ interpretation of the scope of 11e.(2) is entirely contrary to that of the NRC and it appears that its interest in the Metropolis materials is almost wholly monetary: the State seeks to collect fees from Metropolis for those materials under its low-level radioactive waste rules, even though Illinois’ compact has no

^{3f} While *Sequoyah Fuels* comments in dicta that Honeywell does not currently have mill processing, we ask that the NRC leave that issue open at this time as some of the pre-conversion ore preparation processing activities performed at Metropolis may correspond to the milling type activities producing 11e.(2) wastes in *Sequoyah Fuels*.

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LLRW disposal facility and no current plans to construct such a facility and even though the Metropolis materials are sent out of state for disposal. In Honeywell's case such fees are substantial and can impact its profitability, especially given current market conditions and the necessary focus on security concerns.

The decision in Kerr-McGee Chemical Corp. v. U.S. Nuclear Regulatory Commission, 903 F.2d 1 (1990), represents a strong direction that the AEA definition of 11e.(2) byproduct material is not to be interpreted narrowly. The *Sequoyah Fuels* decision makes clear generally that front end preparation activities at a conversion facility may result in 11e.(2) byproduct materials and that this interpretation clearly applies to crushed drums and chipped pallets bearing residues from licensed source materials (yellowcake). Honeywell asks that you consider the effect of the *Sequoyah Fuels* decision, along with the presentation in my letter of March 2, 2001, and reject the IDNS request, confirming NRC authority at Metropolis and NRC's own prior conclusion that the waste in question is 11e.(2) byproduct material.

Sincerely,


Percy L. Angelo

cc: Russell Eggert, Esq., Mayer, Brown, Rowe & Maw
Gordon Quin, Esq., Honeywell International
Hugh C. Roberts, Honeywell International
Marshall Shepherd, Honeywell International
Michael Weber, Director, Division of Fuel Cycle Safety & Safeguards, NRC
Thomas Essig, Chief, Uranium Recovery & Low-Level Waste, NRC
Jame Dyer, Regional Administrator, NRC, Region III
Cynthia Pederson, Director, Division of Nuclear Materials Safety, NRC, Region III
James Lynch, State Agreements Program Officer, NRC, Region III
Stephen J. England, Esq., Illinois Department of Nuclear Safety