

January 3, 2003

The Honorable Paul Sarbanes
United States Senate
Washington, DC 20510

Dear Senator Sarbanes:

In a letter dated March 24, 1998, to Mr. Dennis Rathbun, you referred concerns about the regulation of the Neutron Products, Inc., (NPI) facility in Dickerson, Maryland, to the Nuclear Regulatory Commission (NRC). In letters dated April 28, 1998, and January 19, 1999, we provided written responses and committed to provide you with further information on this matter following resolution of a court case involving NPI. The purpose of this correspondence is to fulfill that commitment.

The NRC has closely followed the regulation of the NPI facility by the State of Maryland as a part of our oversight responsibilities under Section 274b of the Atomic Energy Act. On June 15, 2000, NRC staff met with Ann Marie DeBiase, Director, Air and Radiation Management Administration, Maryland Department of Environment (MDE), who is the Governor's designee for all NRC matters affecting the State. Other attendees at the meeting included Roland Fletcher, Program Manager, Maryland Radiological Health Program, members of his staff, and representatives of the Maryland Attorney General's Office. In addition, while at the MDE office, NRC staff conducted a review of pertinent documents relating to the State's regulation of NPI.

NRC staff has continued to stay abreast of the many legal actions taken to bring NPI into compliance with Maryland's regulations. Maryland 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. At that time, Maryland was addressing compliance with the license and supporting Maryland regulations through an active inspection program and escalated enforcement actions.

Maryland issued an Order for NPI to cease and desist conducting any activities under its source production license on November 3, 2000. This Order was later modified on December 21, 2000, to allow the licensee to conduct some activities under its license; however, the Order prohibited source melting and the receipt of material. The December 2000 Order was challenged by NPI. Subsequently, a court ruling of December 6, 2001, upheld the Order. Maryland issued another Order on February 21, 2002, which allowed NPI to ship eight new teletherapy sources, with the stipulation that NPI arrange for a guaranteed recipient for the depleted sources resulting from the eight source exchanges. The February 2002 Order also requires NPI to deposit in a decommissioning fund fifty cents for each curie (quantity of radioactive material) sold.

On August 13, 2002, the Director of the Radiological Health Program, MDE, informed the NRC of a permanent injunction against NPI, which was issued on June 17, 2002, by a Montgomery County Maryland Circuit Court Judge. The injunction prohibits activities under one of the two NPI licenses, including receipt of material and manufacture and distribution of teletherapy

sources. The injunction also requires NPI to decommission their source manufacturing and waste storage facility.

In addition, on August 14-15, 2002, the Environmental Protection Agency (EPA), Region III, conducted a scoping survey and risk assessment of the NPI facility. EPA plans to use this survey and assessment as a basis to determine whether the facility will be listed on the National Priority List as a Superfund site or whether an emergency removal of material is necessary. At present, EPA has not completed its assessment of the NPI site. EPA, in conjunction with the State of Maryland, is continuing to evaluate the site and is considering additional assessment activities before a final decision on the site is reached.

We will continue to follow Maryland's activities in addressing NPI through our Agreement State oversight process. If you have any additional questions or concerns, please do not hesitate to contact us.

Sincerely,

/RA/

William D. Travers
Executive Director
for Operations

cc: R. Fletcher, Program Manager
Maryland Radiological Health Program

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cc: R. Fletcher, Program Manager
Maryland Radiological Health Program

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