

December 24, 2003

J. Nick Baird, M.D.
Director of Health
Ohio Department of Health
246 North High Street
Columbus, OH 43216-0118

Dear Dr. Baird:

This letter is to inform you of the commitments and understandings reached during a December 4, 2003 telephone conversation between the U.S. Nuclear Regulatory Commission (NRC) and the Ohio Department of Health (ODH), Bureau of Radiation Protection staff. We discussed the cooperation and coordination of both our agencies in regulating the activities of a decommissioning contractor who may perform work at the Battelle West Jefferson decommissioning site. The following statements of cooperation describe the agreements reached.

The State of Ohio has entered into an Agreement with the NRC as provided for in Section 274 of the Atomic Energy Act of 1954, as amended, in which NRC has relinquished certain of its regulatory responsibilities to the State of Ohio. The State through the ODH and as set out in Chapter 3748 of the Ohio Revised Code has the responsibility to regulate the activities that the NRC has relinquished. ODH, in carrying out its Revised Code 3748.05 responsibilities has promulgated Ohio Administrative Code 3701:1-38-02(C) that provides for issuing licenses to persons doing business within the State of Ohio who provide decontamination/decommissioning services.

The NRC, in accordance with its regulations in 10 CFR 150.10 and the Agreement with the State of Ohio, remains responsible for the regulation of persons who are licensed to possess special nuclear material in quantities sufficient to form a critical mass. As provided in 10 CFR 150.11, the determinant of whether a person is exempt from NRC regulation for the possession or use of special nuclear material, is the authorization limit and not the amount of actual possession. NRC's jurisdiction for persons who possess special nuclear material in quantities sufficient to form a critical mass includes the regulation of decommissioning of the licensed operations and the ultimate termination of the license. In the case of Battelle Memorial Institute (Battelle), NRC license SNM-7 authorizes Battelle to possess special nuclear material at its West Jefferson North site in quantities that exceed critical mass. Accordingly, the regulation of Battelle's special nuclear material is a matter within the jurisdiction of the NRC. This includes the decommissioning of the licensed operation and the termination of the license.

Both NRC in its regulation at 10 CFR 70.4 and the State of Ohio in its regulation at 3701: 1-38-01(A)(38) define decommissioning in essentially the same terms as safely removing any licensed operation from service and reducing residual radioactivity to a level that permits release of the licensee's property and termination of the license. NRC recognizes that the

project closure contractor is not a direct contractor of Battelle; NRC nevertheless will hold Battelle responsible for the contractor's action while on site at the West Jefferson North site. This is because the persons conducting the decommissioning activities on behalf of Battelle remain subject to NRC jurisdiction for work done at the West Jefferson North site.

As a result, while Ohio licenses decommissioning service contractors doing business within Ohio, such persons when performing work at a site within NRC jurisdiction are subject to NRC regulation and must comply with the requirements NRC imposes on the site licensee under the NRC license. The December 1, 2001 ODH Policy and Guidance Directive provides in section 4.3 that there should be an agreement between the decontamination services licensee, in this case ECC & E2 Closure Services, LLC (Closure Services), and the licensee that owns the material, in this case Battelle, as to which license will govern the decontamination activities. Accordingly, to address the regulatory needs of both ODH and NRC on the Battelle West Jefferson North site and to avoid the potential for dual regulation, it is our understanding that the following actions will be taken:

1. Closure Services, the decommissioning service contractor who will do work at the Battelle West Jefferson North site, will obtain a decontamination services license from ODH to permit it to do business within the State of Ohio.
2. ODH will ensure through the agreement between Battelle and Closure Services referenced in section 4.3 of the ODH guidance, that when Closure Services is conducting activities at the West Jefferson North site to achieve decommissioning of the NRC license SNM-7 held by Battelle, activities will be subject to NRC requirements imposed by NRC regulations and the provisions of the SNM-7 license, including the approved decommissioning plan. NRC has determined that Closure Services is subject to the oversight and control of Battelle while performing decommissioning activities at the West Jefferson North site; accordingly, separate ODH license oversight will not be imposed. The regulation of Closure Services at other sites was not addressed by our discussions.
3. NRC will be responsible for inspection and enforcement activities associated with license SNM-7 including but not limited to activities of Closure Services while at the Battelle West Jefferson North site. However, if ODH becomes aware of any potential noncompliance or safety issues associated with the on-site activities of Closure Services, it will notify NRC so that NRC can determine what actions, if any, need to be taken. NRC will copy ODH on any actions it takes against Battelle as a result of Closure Services' activities.
4. NRC will notify and provide ODH an opportunity to accompany NRC on inspections of the West Jefferson North site. In addition, NRC will seek the views of ODH regarding significant actions resulting from these inspections, and before issuing any licensing actions associated with the Battelle West Jefferson North site.

If the above understandings are not correct, I would appreciate your notifying me immediately.

We look forward to continuing to cooperate and work with you and your staff. The lead NRC contact for the West Jefferson site is Christopher Miller, Chief of the Decommissioning Branch in our Region III Office, located in Lisle, Illinois. He can be reached by telephone at (630) 829-9633 or e-mail at CGM@nrc.gov

Sincerely,

/RA/

Paul H. Lohaus, Director
Office of State and Tribal Programs

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Paul H. Lohaus, Director
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