

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE SECRETARY

April 4, 2005 (8:30am)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of

Docket No. 70-7004

USEC Inc.
American Centrifuge Plant (ACP)

Reply to "NRC STAFF'S RESPONSE TO PETITIONS TO INTERVENE
FILED BY PORTSMOUTH/PIKETON RESIDENTS FOR
ENVIRONMENTAL SAFETY AND SECURITY (PRESS) AND GEOFFREY
SEA"

Introduction

Herein, we reply to the NRC Staff ("Staff") answer to our petition to intervene, which we refer to simply as (the) "Answer."

In our reply to USEC's Answer, we pointed out that we are not lawyers, that we are inexperienced in the formalities of this proceeding, and that we are only able to prepare our presentations in our spare time. Moreover, we indicated that we ran short of time, and that we were several drafts from a properly composed product at the deadline time for submission. Further, we noted that 60 days is the shortest time allowed in 10 CFR 2.309 (b)(3)(i) for preparation of a petition to intervene. Accordingly, we asked the Commission for some measure of latitude on account of these considerations.

That said, we believe we made a more robust presentation than either USEC or the Staff appear to have understood. Our intention is to protect our members from adverse effects to them, should the ACP go ahead, by petitioning the Commission to deny USEC a license to

build and operate the ACP. The main elements of our petition are the violations history of USEC and consistent reference to 10 CFR 70.22 (“Contents of Applications”) and 10 CFR 70.23 (“Requirements for Approval of Applications”).

USEC’s violations history is undoubtedly far more broad than the restricted analysis we made in Appendix B of our petition, which only uses NRC enforcement action notices. However, these are quite remarkable in themselves, especially in comparison to all of the other NRC licensees, as represented in the stunning diagram on page 58 of our petition, reproduced here for convenience.

We note that in USEC’s Answer, the footnotes refer to documents as old as 1923. Certainly, we’d expect them to scrutinize any prospective employee whose record was as seriously darkened by a record of violations as USEC’s record is, even if the violations were a few years old.

More importantly, perhaps, it seems that both USEC and the Staff failed to understand the full significance of our references to 10 CFR 70.22, and 10 CFR 70.23. These appeared as the final basis of almost all of our contentions, and consist of pointers to appendices D and E. Internally, we identified these sections of the Code using short descriptive names, as shown in the table below.

Accordingly, the general thrust of our petition is that USEC’s Application fails to adequately provide for the protection of ACP workers (a strong concern of PRESS, since some of our members have worked at the GDP), that the Application provides inadequate assurance that maximum radiation doses will not be exceeded, that the Application makes inadequate provision for emergencies, and that the proprietary and classified redactions in the public version of the Application documents unnecessarily obstruct the Community’s Right to Know. Moreover, we are pointing out that the Application fails the criteria that make it acceptable for the Commission to approve the Application, because USEC, as NRC’s

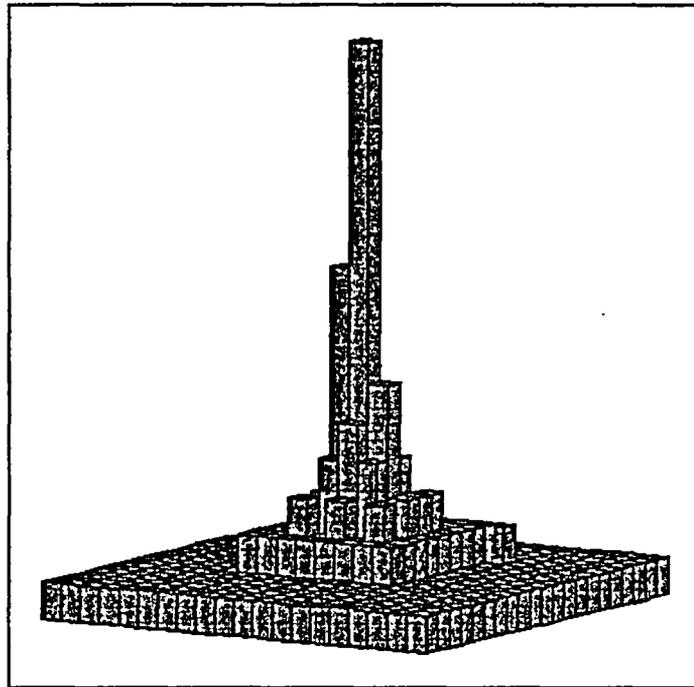


Figure 1: USEC Inc. leads NRC materials licensees in number of violations notices. Each block represents one violator, its height represents the number of violations issued. Violators at the edge have one violation. All 416 violators are represented. Materials licensees with no violations are omitted. The tall one in the middle is USEC Inc. with 15 violations notices, and civil penalties totalling \$378,000. Note: This is based on data from Oct, 2004. Since then, USEC Inc. has added an extra violation, bringing its tally to 16.

leading violator, is disqualified by reason of training and experience, that USEC will not be able to pay for the full plan, and that USEC's proposed emergency plans are inadequate. Additionally, we believe that USEC may have already made significant alterations to the site in preparation for the ACP, which is grounds for denial of a license according to 10 CFR 70.23.

Section	PRESS internal name
D.1.1	Workers
D.1.2	Max Dose
D.1.3	Emergency
D.2	Community Right to Know
E.1.1	Experience
E.1.2	Money
E.1.3	Emergency Plan

We acknowledge that we relied too much on implied connections, and that we should have “connected the dots” more than we did. In part, that was because we employed our “everyday” mode of communication in our petition, and because we assumed that our readers would be well educated, and quite capable of discerning our intentions. We erred in assuming that what was obvious to us would be unambiguously obvious to our readers. We will be happy to restate our intentions explicitly, with the aid of an attorney, should we be so ordered by the Commission.

Contentions

On reviewing our contentions in the light of the Staff’s Answer, being mindful of their underappreciation of the significance of our references to Appendices D and E, and with the understanding that we didn’t properly “connect the dots,” we believe that almost all of them have significant merit and that they raise issues that are entirely germane to the case. We believe that the Commission should allow us to argue these points by admitting us to the proceedings.

There is only one contention that we would like to withdraw, and that is Contention 22: Gender Discrimination.

We found it difficult to read the Staff’s reply because it was presented as a Word Perfect document. There are certainly small blocks of writing that we were unable to view. However, we were able to read most of it.

Contention 1: Criticality Monitoring Exemption

It is very unfortunate that the error in this contention (the bases are indeed supporting a challenge to criticality monitoring requirements) appears in the first contention. It undermines our credibility that such an error is the first detail that the reader encounters.

Staff at Answer page 35 quotes LA that the frequency for criticality accidents in the cylinder yards is between 5×10^{-6} per year and 1×10^{-6} per year. If this is true, then the likelihood for a criticality accident over the 30 years of the proposed license is between 0.00015 and 0.00003. This seems significant enough to deny the exemption.

Our final Basis refers to D.1.3 (Emergency) and E.1.3 (Emergency Plans). We think the violations support the intended contention quite naturally.

Contention 2: Radiation Work Permits

Our final basis refers to D.1.1 (Workers).

The security violations do indeed support the contention. We do identify a failure of the Application. The contention should be admitted.

Contention 3: Cylinder Labeling

Our final basis refers to D.1.1 (Workers).

The safety violation does support the contention. We do establish a dispute. The contention should be admitted

Contention 4: 10% Assay

Our final basis refers to D.2 (Right to Know) and D.1.2 (Max Dose).

The contention is not outside the scope of the proceeding inasmuch as it identifies a deficiency in the Application's attention to safety regarding the potential for radioactivity in the environment.

We believe that the cited violation, on close reading, records an instance when USEC did indeed exceed their assay limit.

Contention 5: Domino Effect

Our final basis refers to D.1.3 (Emergency) and E.1.3 (Emergency plans).

The contention is supported by fact. We explain the phenomenon, show instances in which USEC behaved unreliably, and present the 20 centrifuge per day analysis.

Contention 6: Health Risks

Our final basis refers to D.1.1 (Workers), D.1.2 (Max Dose), and D.2 (Right to Know).

The past events provide a precedent that is related to the culture in which the ACP is operated. This contention relates to the dispute with USEC that PRESS is most keen to present to the Commission.

Contention 7: 3.9% Feedstock

Final Basis refers to D.1.2 (Max Dose). The missing reference (“??” in our original text) is to D.2 (Right to Know).

We think it is sufficiently obvious that the effect of 17 shipments per day should be explored.

Contention 8: Scioto Survey

Refers to D.1.2 (Max Dose).

There is a genuine dispute here. USEC is relying on an average, but the distribution of pollutants is likely to follow a pattern that is more alarming.

Contention 9: LLMW Exemption

Refers to D.1.2 (Max Dose) and D.1.1 (Workers).

This is not beyond scope inasmuch as it expresses a concern that will affect the environment and the workers.

Contention 10: Independent Environmental Reporting

Refers to D.1.2 (Max Dose) and D.1.1 (Workers).

USEC's record on self-assessment is so poor as to shed doubt on the entire ER.

We believe that there are indeed incidents in the EA notices involving provision of false and inaccurate information.

Contention 11: Ground and Surface Water

Refers to D.1.2 (Max Dose).

Staff err in citing details from Basis 10.2 instead of the corresponding basis in contention 11.

This contention is not about RCRA. The point is about deficiencies in the Application. There is no scope problem.

Contentions 12 - 21

These should stand. We've run out of time to explain why.

Contention 22: Gender Discrimination

Withdrawn.

Respectfully submitted,

Vina K Colley

Date: April 1st, 2005

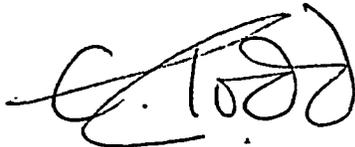
Vina K. Colley, President PRESS

3706 McDermott Pond Creek

McDermott, Ohio 45652

Phone: 740-259-4688

Email: vcolley@earthlink.net

A handwritten signature in black ink, appearing to read 'E. Todd', with a stylized flourish at the end.

Ewan A. S. Todd, Technical Co-ordinator PRESS

403 E. Oakland Ave.

Columbus OH 43202

Phone: 614-267-1076

Email: ewan@mathcode.net