



California  
Department of  
Health Services

SANDRA SHEWRY  
Director

State of California—Health and Human Services Agency  
Department of Health Services



ARNOLD SCHWARZENEGGER  
Governor

April 24, 2005

Mr. Paul H. Lohaus, Director  
Office of State and Tribal Programs  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

**SUBJECT: MARCH 16, 2005 LETTER FROM MR. PAUL H. LOHAUS  
ABC MANAGEMENT COMPANY AND LICENSE TERMINATION RULE**

Dear Mr. Lohaus:

On February 4, 2005, prior to Senator Talent's letter to you forwarding concerns from ABC Laboratories, Inc., members of the California Department of Health Services (DHS), Radiologic Health Branch (RHB) staff met with representatives of ABC Laboratories, Inc. regarding their request to decommission their facility and terminate their license. On February 24, 2005, RHB staff visited the site and performed some confirmatory sampling at the site. RHB staff remains in communication with representatives of ABC Laboratories, Inc., and will continue to work with company representatives to facilitate the decommissioning and license termination.

We appreciate your offer of assistance with respect to the evaluations of decommissionings of agricultural research laboratories, such as ABC Laboratories, Inc., where residual carbon-14 in soil is the primary contaminant of concern. As noted in our comments to Mr. Terry Brock, of your staff, in an email dated March 12, 2005, there are a number of unique concerns with respect to assessing residual carbon-14 contamination in soil, and assessing the future potential dose from that contamination. We look forward to input from the Nuclear Regulatory Commission's staff on these issues.

You also requested information as to 1) how RHB is currently addressing license termination issues "similar to the site addressed in the Senator's letter," 2) whether RHB intends to adopt the License Termination Rule, and 3) the expected schedule for promulgating such a rule. These issues are addressed below:

#### License Terminations for Sites Similar to ABC Laboratories

RHB currently has at least six pending requests from four licensees for the termination or the release of specific areas, where soil has been impacted by carbon-14, similar to the ABC Laboratories facility. In general, these pending actions create concerns similar to those presented in our March 12, 2005, email to Mr. Terry Brock. In addition, because RHB is prohibited from prospectively approving any numerical license termination criteria (including any approval of derived concentration guideline limits pursuant to MARSSIM), the process of license termination and release for unrestricted use is somewhat protracted.

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*RIDS: SP08*

*SISP Review Complete*

The only regulatory criteria for decommissioning in California is that a "reasonable effort has been made to eliminate residual radioactive contamination, if present" (Cal. Code of Regs., tit. 17, section 30256(k)(2)). Effectively, although many licensees are required to submit a decommissioning plan in advance of their decommissioning efforts, the evaluation of the adequacy of that plan is approved (or denied) retrospectively – i.e., after the actions are completed, because, as noted above, we cannot prospectively approve a dose or residual concentration goal.

#### **Adoption of License Termination Rule and Schedule**

RHB's adoption of the License Termination Rule (LTR) or an equivalent rule has not yet been completed. As you know, in 2001, DHS promulgated regulations, which among other things incorporated the LTR by reference. DHS' adoption of this rule was challenged in court, and DHS was ordered to rescind the rule. The court further ordered DHS not to adopt any new numerical decommissioning standard until it first completed a full Environmental Impact Report (EIR), as part of fulfilling requirements under the California Environmental Quality Act (CEQA). In Fiscal Year 2003 – 2004 (FY 03-04), DHS entered into a limited contract with the California Department of General Services for the preparation of an EIR, and other actions required by CEQA. Limited work was begun under this contract; however, the contract was not renewed in FY 04-05 due to a lack of funds in the RHB budget. RHB is working to develop ways to establish appropriate release criteria. We will continue to keep you informed of our progress.

Please contact me at (916) 440-7899, if you have further questions in regard to this allegation or my response to it.

Sincerely,



Edgar D. Bailey, C.H.P., Chief  
Radiologic Health Branch  
California Department of Health Services