

FACSIMILE REQUEST

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MESSAGE TO:

Earl G. Wright

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INCLUDING THIS REQUEST FORM

MESSAGE FROM:

John Kinneman

U.S.N.R.C. REGION I KING OF PRUSSIA, PENNA.

TRANSMITTED BY:

DATE & TIME:

conf # (404) 331-5510

VERIFIED BY:

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A-103

MS 20
L3
37-19533-01

LIST OF INSTRUCTIONS

Union Carbide Chemicals and Plastics Company

In reviewing the comments the reviewer will note that there will be some overlap between ICF and OGC comments. The following comments should be included in the basis for the deficiency letter:

1. ICF comments 1 through 7 plus last paragraph.
2. All OGC comments.

All other comments and discussions are for reviewer information.

OFFICIAL RECORD COPY ML 10

113570
08-08-91

July 30, 1991

Memo to: Louis Bykoski, NMSS

From: Michael Finkelstein, OGC

Re: Review of Package #8 (ICF Reviews dated May 31, 1991)

Union Carbide Corporation-Parent Company Guarantee

All ICF recommendations should be implemented. The phrase "and found acceptable to the NRC, obligee," in the first paragraph of the Parent Company Guarantee should be deleted.



ICF INCORPORATED

May 31, 1991

To: Dr. Lou Bykoski, NMSS/NRC

From: Bryan Kelleher and John Collier, ICF Incorporated

Subject: Review of Parent Company Guarantee/Financial Test Submitted by Union Carbide Chemicals and Plastics Company

Union Carbide Chemicals and Plastics Company (UCC&P) in Danbury, Connecticut submitted a certification of financial assurance, using a parent company guarantee and financial test demonstration from the Union Carbide Corporation, in the amount of \$300,000. The submission assures decommissioning costs for licenses 37-19533-01 and 47-00260-02 issued under 10 CFR Part 30.¹ Upon review of the submission, ICF recommends that NRC require the licensee to modify the submission in the following ways:

- (1) Submit either a statement of certification or a decommissioning cost estimate; and
- (2) Submit an alternate form of financial assurance.

If the licensee had been able to use the guarantee/financial test mechanism, then it would also have had to modify its submission in the following ways:

- (3) Submit a new letter from the licensee's chief executive officer;
- (4) Submit guarantor's annual financial statements and auditor's opinion;
- (5) Revise the parent guarantee and demonstrate that it has been approved by the guarantor's board of directors;
- (6) Submit evidence that the person signing the guarantee is authorized to represent the company; and
- (7) Submit a standby trust fund.

These recommendations and other issues are discussed below.

¹ ICF assumes that NRC has verified that the certification amount of \$150,000 is acceptable for each license under 10 CFR 30.35.

(1) Submit Either a Statement of Certification or a Decommissioning Cost Estimate

Under 10 CFR 30.35, a licensee is required to submit either a decommissioning cost estimate or a certification statement as a demonstration that adequate funds will be available for decommissioning. The licensee's submission does not include either a decommissioning cost estimate or a certification statement. [Based upon the amounts of assurance specified in the chief financial officer's letter (i.e., \$150,000 and \$150,000) it appears that a certification statement should have been included.] ICF recommends that NRC require the licensee to submit a certification statement certifying compliance with the decommissioning rules, as recommended in NRC's *Regulatory Guide 3.66 "Standard Format and Content of Financial Assurance Mechanisms Required for Decommissioning Under 10 CFR Parts 30, 40, 70, and 72"* (June 1990), page 1-5.

~~example~~

(2) Submit an Alternate Form of Financial Assurance

As stated in 10 CFR 30.35(f)(2), a parent company guarantee, like the surety and insurance methods of financial assurance, must "guarantee that decommissioning costs will be paid should the licensee default." The preamble to the decommissioning rule explains that the parent guarantee mechanism is allowed only when the parent company provides "an independent commitment beyond that of the licensee to expend funds" (53 Federal Register 24036, June 27, 1988).

According to the 1989 Form 10K filed by Union Carbide Chemicals and Plastics Company Inc. (which was not included in the submission), "All of Union Carbide (Corporation's) businesses are conducted by UCC&P and there are no material differences between the consolidated operations of UCC&P and those of Union Carbide." Therefore, although a parent-subsidiary relationship is present between the guarantor and the licensee, it appears that the guarantor is unable to provide an independent financial commitment beyond that of the licensee.

Because the guarantor cannot provide the independent commitment required by NRC, ICF recommends that NRC require the licensee to submit an alternate form of financial assurance. If, however, the licensee had been able to use the parent company guarantee, then ICF would also recommend that NRC require the licensee to modify its submission as described below.

(3) Submit a New Letter from the Licensee's Chief Executive Officer

Section 4.7.1 of NRC's *Regulatory Guide 3.66* requires the licensee to submit a letter from its chief executive officer (CEO). In this letter, the licensee must certify that it is a going concern, identify the amount of its tangible net worth, specify whether the firm is required to file a Form 10K with the U.S. Securities and Exchange Commission, and list the date on which the firm's fiscal year ends.

The submission includes such a letter from the chief financial officer (CFO) of the guarantor, providing information about the guarantor. This

letter should come from the licensee's CEO, and should provide the information for the licensee firm.

(4) Submit Guarantor's Annual Financial Statements and Auditor's Opinion

Although the submission includes a special report from the independent auditor confirming that the financial data in the letter from the chief financial officer (CFO) agrees with the amounts in the audited financial statements, it does not include the audited financial statements or an auditor's opinion of the financial statements. *Regulatory Guide 3.66*, on page 3-21, requires the guarantor to submit its financial statements, audited by an independent certified accountant, to substantiate its financial position.

If the annual financial statements have not received a "clean" opinion from the independent auditor, then the data derived from those statements in the CFO's letter may not fairly represent the financial condition of the guarantor. In order to determine whether the data used in the financial test fairly present the guarantor's financial condition, licensees using the parent company guarantee should submit the guarantor's annual financial statements, along with the auditor's opinion on those statements.

(5) Revise the Parent Guarantee and Demonstrate that It has been Approved by the Guarantor's Board of Directors

The licensee submitted a guarantee issued by the parent company that generally followed the wording recommended by *Regulatory Guide 3.66*, pages 4-41 to 4-45. The guarantee agreement varies from the required wording, however, in several areas.

- Recital 1 does not include the following phrase that is required if the guarantor has a board of directors:
"Guarantor has approval from its board of directors to enter into this guarantee."
- *Regulatory Guide 3.66*, page 4-42, suggests that Recital 7 state the basis of the guarantor's authority for issuing the guarantee as:

"... pursuant to the authority conferred upon the guarantor by ("the unanimous resolution of its directors" or "the majority vote of its shareholders"), a certified copy of which is attached..."

The submitted guarantee agreement does not include this phrase.

- Recital 8 of the guarantee does not indicate that the licensee must annually provide "revised" financial statements, and a reconciling schedule along with the auditor's special report.

- Recital 11 of the parent guarantee agreement has been modified to state that the guarantor will establish an alternative financial assurance mechanism ". . . within 30 days after it is disallowed from continuing as a guarantor [emphasis added] . . ." In contrast, the recommended wording on page 4-43 of *Regulatory Guide 3.66* states that the guarantor will establish alternative financial assurance ". . . within 30 days after it [the guarantor] determines that it no longer meets the financial test criteria or it is disallowed from continuing as a guarantor [emphasis added]."
- Page 4 of the submitted guarantee does not include a signature of a witness or notary, as is recommended by *Regulatory Guide 3.66* on page 4-44.

Because of the uncertain potential effects of these variations, the licensee should submit a revised guarantee and evidence that the guarantee has been approved by the guarantor's Board of Directors (i.e., a certified copy of the Board's resolution, as required by Recital 7) in order to avoid any implication that the guarantee is not official.

- (6) Submit Evidence that the Person Signing the Guarantee is Authorized to Represent the Company

The licensee did not submit any evidence to demonstrate the authority of the chief financial officer to represent the guarantor in the parent company guarantee. Evidence of authority to represent the guarantor is necessary, as recommended by *Regulatory Guide 3.66*, to ensure the validity and enforceability of the mechanism.

- (7) Submit a Standby Trust Fund

If the licensee defaults on its decommissioning obligations, the guarantor, under Recital 7, must either (1) carry out required decommissioning activities or (2) make funds available in a trust fund to allow NRC to pay for these activities. If the guarantor chooses the second option, it must establish a trust fund because funds paid directly to NRC must be deposited in the U.S. Treasury and are not available for decommissioning costs. To avoid the possibility that a trust fund will not be readily available if and when needed, *Regulatory Guide 3.66* states that a standby trust fund should be used with a parent company guarantee. If the licensee continues to use the parent company guarantee, it should submit a standby trust fund, acknowledgement, and other related documents as recommended in *Regulatory Guide 3.66* on pages 4-18 through 4-27.

Other Issues

Apart from editorial and non-substantive changes to the standard wording provided in *Regulatory Guide 3.66*, the following modifications are noteworthy:

- (2) Paragraph 2 of the CFO's letter does not include the license numbers of the two facilities for which the

guarantor is providing financial assurance. They are included in the next page of the letter, however.

- (3) The first paragraph of the parent company guarantee includes the following underlined phrase: "Guarantee made . . . to the (NRC) and found acceptable to the NRC, obligee . . ." As discussed in Recommendations 5 and 6, however, the guarantee agreement may not be acceptable to NRC. NRC may wish to require that the licensee delete this phrase from the guarantee agreement.
- (4) Recital 13 does not explicitly identify NRC as the beneficiary. However, NRC is directly named as the "obligee" in the opening paragraph, and is referenced as the beneficiary in Recital 7.

Finally, the Region should ensure that documents submitted by the licensee are originally signed duplicates, as recommended in *Regulatory Guide* 3.66. Unless the documents have been properly signed, NRC cannot be certain that the financial assurance mechanism is enforceable. Because ICF does not possess the original submissions, we cannot verify compliance with these requirements.

attachments

APPENDIX A
CHECKLIST FOR DECOMMISSIONING FINANCIAL ASSURANCE

NAME OF LICENSEE OR APPLICANT Wain CARBIDE Chemicals and Plastics Company, Inc (LICE & P)
MAILING ADDRESS 39 Old Ridgebury Road
Danbury CT 06817-0001

A. Licensee Part (check one of the following):

- Part 30 Licensee or Applicant
- Part 70 Licensee or Applicant
- Part 40 Licensee or Applicant
- Part 72 Licensee or Applicant

B. Check appropriate item in each category (if applicable)

1. 11/19/90 Date of Financial Assurance Submission
2. Public Entity
- Private Entity
3. Certification of Financial Assurance \$150,000 and \$50,000
No Certification Statement
 Decommissioning Funding Plan
4. (a) Prepayment Option (See Appendix B)
 - Trust Fund
 - Escrow Account
 - Certificate of Deposit
 - Government Fund
 - Deposit of Government Securities
- (b) Surety/Insurance/Other Guarantee (See Appendix C)
 - Surety bond
 - Letter of Credit
 - Line of Credit
 - Parent Company Guarantee/Financial Test*
- (c) External Sinking Fund, Sinking Account and Surety/Insurance (See Appendix D)
 - Trust Fund
 - Escrow Account
 - Certificate of Deposit
 - Government Fund
 - Deposit of Government Securities
 - Surety Bond
 - Letter of Credit
 - Line of Credit
- (d) Statement of Intent (public entities only)

*May not be used in combination with any other instrument.

APPENDIX C

CHECKLIST FOR SUBMISSION OF SURETY/INSURANCE/PARENT COMPANY GUARANTEE

A. Check Appropriate Form of Surety/Insurance/Guarantee

- Surety Bond
- Letter of Credit
- Line of Credit
- Parent Company Guarantee/Financial Test*
- Insurance

B. Check Documents Submitted for Surety/Insurance/Guarantee

CEO letter
- signed by CFO of parent and references the parent

CFO's letter
- no license #15 in par. 2
- no address in par 1

Fin test
- meets two of three ratios

Auditor's report
- not the recommended wording
- no attached schedule

- 1. Surety Bond -P/6
 - Surety Bond
 - Standby Trust Agreement
 - Acknowledgement
- 2. Letter of Credit
 - Letter of Credit
 - Standby Trust Agreement
 - Acknowledgement
- 3. Line of Credit
 - Verification
 - Standby Trust Agreement
 - Acknowledgement
- 4. Parent Company Guarantee
 - Letter from Chief Executive Officer of Applicant or Licensee
 - Letter from Chief Financial Officer of Parent Company
 - Financial Test: Alternative [I] or [II]
 - Auditor's Special Report and Attached Schedule
 - Corporate Guarantee
 - Standby Trust Agreement
 - Acknowledgement
- 5. Insurance
 - Certificate of Insurance
 - Standby Trust Agreement
 - Acknowledgement

- first paragraph
- recital 1 missing Board approval
- rec. 3 - name of facility (OK)
- Rec. 5 - address of licensee
- rec. 7 - missing approval
- rec. 8 - missing wording
- rec. 11 - missing wording
- rec 13 - beneficiary?
- authorized signature? witness or notary?

May not be used in combination with any other instrument.

EXHIBIT 3-B

CHECKLIST OF CRITERIA FOR REVIEW OF PARENT COMPANY GUARANTEES

No
letter from
parent

- Copy of letter from the chief executive officer of the licensee, verifying that it is a going concern* with positive tangible net worth (submitted annually at same time as parent company financial test in Sections 4.7.3 and 4.7.4 of this guide).

No

- Copy of corporate by-laws or other evidence indicating that parties signing the financial instrument (for the applicant) are authorized to represent the organization in the transaction.

No

- Evidence that the financial instrument is an originally signed duplicate (e.g., an executed copy of the instrument).

No

- Evidence that the corporate parent has majority control of the applicant's voting stock.

yes

- Name and address of guarantor.

SAME ADDRESS

yes

- Name and address of the licensee.

yes

- Name and address of the regulatory agency.

NCC

yes

- Recitation of the guarantor's authority to provide the guarantee, such as ownership of the licensee.

facilities owned
by the licensee
addresses are
yes

- Identification of the facilities for which the guarantee provides financial assurance and amounts guaranteed for decommissioning activities.

*A "going concern" is a firm that is expected to continue operating at least long enough for current expectations and plans to be carried out and for the reasonably foreseeable future period after that.

EXHIBIT 3-8 (Continued)

license # 37-19533-01
47-00260-01
Company

yes ✓

Description of the primary obligation (decommissioning requirements).

yes ✓

Unequivocal statement of guarantee.

a. Recitation of the consideration for the guarantee.

b. Liability of the guarantor. - not approved by Board or shareholders.

a. Limitation of liability

b. Condition(s) of liability

c. Effect on liability of a change in the status of the licensee

yes ✓

Statement that guarantor remains bound despite amendment or modification of license or decommissioning funding plan, reduction or extension of time of performance of required activities, or any other modification or alteration of an obligation of licensee.

yes ✓

Notice requirements.

yes ✓

Discharge of the guarantor.

yes ✓

Termination and revocation.

1. Termination on occurrence of contingency

2. Voluntary revocation by guarantor

3. Effective date of termination or revocation

accepted "it no longer meets the financial test criteria"

yes ✓

Date.

yes ✓

Signatures.

not authorized
no signature of witness or notary