

NUCLEAR REGULATORY COMMISSION

Docket No. 70-36

**Notice Extending the Deadline for Requesting a Hearing and Correcting
Information Regarding the Procedure for Requesting a Hearing on a License Amendment
Application Filed by Westinghouse Electric Company LLC for the Hematite
Decommissioning Project, Festus, Missouri**

[NRC-2009-0278]

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice extending the deadline for requesting a hearing and correcting information regarding the procedure for requesting a hearing.

DATES: Any request for a hearing must be filed by October 5, 2009.

FOR FURTHER INFORMATION CONTACT: John J. Hayes, Project Manager, Materials Decommissioning Branch, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Two White Flint North, Mail Stop T8F5, 11545 Rockville Pike, Rockville, Maryland 20852-2738 Telephone: (301) 415-5928; fax number: (301) 415-5928; e-mail: john.hayes@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

On July 6, 2009, the U.S. Nuclear Regulatory Commission (NRC or Commission) provided notice in the Federal Register of the opportunity to request a hearing on Westinghouse Electric Company LLC's application for a license amendment that would allow it

to dispose of NRC-licensed material at a U.S. Ecology facility near Grand View, Idaho. The deadline for requesting a hearing stated in the Federal Register notice was September 4, 2009.

The NRC is extending the deadline for requesting a hearing on Westinghouse's application until October 5, 2009. The NRC is also providing corrected information regarding the procedure for requesting a hearing. As explained below, any hearing request must be served in accordance with the NRC's E-Filing rules in Subpart C of 10 CFR Part 2. Finally, the NRC is providing a corrected reference number for one document listed in the July 6, 2009 Federal Notice.

II. Background

By letter dated May 21, 2009, the NRC received a license amendment application from Westinghouse Electric Company LLC (WEC or the licensee), pertaining to its planned disposal of NRC-licensed source, byproduct and special nuclear material. Regarding this material, WEC seeks approval, pursuant to 10 CFR 20.2002, of proposed disposal procedures which are not otherwise authorized by NRC regulations. WEC holds NRC License No. SNM-00033, which authorizes the licensee to conduct decommissioning activities at its former fuel cycle facility located in Festus, Missouri. The amendment request seeks authorization allowing WEC to transfer decommissioning waste to U.S. Ecology Idaho, Inc., a Resource Conservation and Recovery Act (RCRA) Subtitle C disposal facility located near Grand View, Idaho. This facility is regulated by the Idaho Department of Environmental Quality, and is not an NRC-licensed facility. Pursuant to 10 CFR 30.11 and 70.17, WEC's application also requested exemptions from the licensing requirements of 10 CFR 30.3 and 70.3 for the byproduct and special nuclear material it seeks to transfer. These exemptions are necessary because the disposal of byproduct and special nuclear material must occur at a facility licensed to possess such material, and the U.S. Ecology Idaho facility has no NRC license.

An NRC administrative review, documented in a letter to Westinghouse dated June 19, 2009, found the alternate disposal application acceptable to begin a technical review. If the NRC approves the Westinghouse request, the approval will be documented in an amendment to NRC License No. SNM-00033. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and the National Environmental Policy Act. These findings will be documented, respectively, in a Safety Evaluation Report (SER), and in a separate environmental assessment performed by the NRC.

III. Opportunity to Request a Hearing

On July 6, 2009, the NRC provided notice of Westinghouse's application for the license amendment described above. In accordance with the general requirements in Subpart C of 10 CFR Part 2, any person whose interest may be affected by this proceeding and who desires to participate as a party must file a written request for a hearing and a specification of the contentions which the person seeks to have litigated in the hearing. Any person filing a hearing request must do so by October 5, 2009.

As required by 10 CFR 2.309, a hearing request or petition for leave to intervene shall set forth with particularity the interest of the requestor/petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The request should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: 1) the name, address and telephone number of the requestor or petitioner; 2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; 3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and 4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also

identify the specific contentions that the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the person submitting the hearing request or petition to intervene must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion that support the contention and on which the requester intends to rely in proving the contention at the hearing. The requester must also provide references to those specific sources and documents of which the requester is aware and on which the requester intends to rely to establish those facts or expert opinion. The hearing request must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated on August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve all adjudicatory documents over the

internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the requestor/petitioner should contact the Office of the Secretary by e-mail at HEARING.DOCKET@NRC.GOV , or by calling (301) 415-1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor/petitioner will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at <http://www.nrc.gov/site-help/e-submittals/install-viewer.html> . Information about applying for a digital ID certificate is available on NRC's public website at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html> .

Once a requestor/petitioner has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, he or she can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public website at <http://www.nrc.gov/site-help/e-submittals.html> . A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the

document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory e-filing system may seek assistance through the "Contact Us" link located on the NRC website at <http://www.nrc.gov/site-help/e-submittals.html> or by calling the NRC Meta-System Help Desk, which is available between 8:00 a.m. and 8:00 p.m., Eastern Time, Monday through Friday, excluding government holidays. The Meta-System Help Desk can be contacted by telephone at 1-866-672-7640 or by e-mail at MSHD.Resource@nrc.gov.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville, Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)-(viii).

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at http://ehd.nrc.gov/EHD_Proceeding/home.asp unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, Participants are requested not to include copyrighted materials in their submissions.

IV. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, you can access the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are: Request for Alternate Disposal Approval and Exemption for Specific Hematite Project Waste (ML091480071) (this number corrects the reference provided in the July 6, 2009 Federal Register Notice); and Review Acceptance Letter to Westinghouse on 10 CFR 20.2002 Alternate Disposal Request for Hematite (ML091690253). If you do not have access to

ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415- 4737 or by email to pdr.resource@nrc.gov.

These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR) at 11555 Rockville Pike, Rockville, Maryland 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 4th day of September 2009.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Keith McConnell, Deputy Director
Decommissioning and Uranium Recovery
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and Environmental Protection
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