



February 24, 2016

Mr. Ken Kalman  
Project Manager  
U.S. Nuclear Regulatory Commission  
11555 Rockville Pike  
Rockville, MD 20852-2738

Re: Docket No. 70-925; License No. SNM-928  
Control of Access in Accordance with License Condition 27(d)

Dear Mr. Kalman:

The purpose of this letter is to request NRC to provide written concurrence that the "personnel" referred to in License Condition 27(d) are individuals who are retained by the licensee, and who are authorized by the licensee to access the site based on training, qualification, and experience, commensurate with the work being performed. The wording of License Condition 27(d) does not explicitly require that "personnel" be employees of the licensee. The basis for this request is provided herein.

The Reason Clarification is Needed

In December 2015, during NRC review of a right-of-way grant, NRC legal counsel advised Environmental Properties Management (EPM) that License Condition 27(d) required that the gates be locked unless an employee of the licensee is onsite. In an e-mail dated December 3, 2015, NRC's legal representative stated,

*"...the licensed portions of the site must be locked and secured when Cimarron personnel are not present."*

NRC explained that the term "Cimarron personnel" means "personnel employed by the licensee" (Cimarron Corporation was the licensee when the license condition was added to the license). This interpretation has not been the licensee's understanding since License Condition 27(d) was issued in 1999.

The Reason License Condition 27(d) was Added to the License

In 1998, the management of Cimarron Corporation (Cimarron) concluded that there was no longer a need for security guards at the site. Security guards were contract personnel, not employees of the licensee. Cimarron notified NRC of its plan to discontinue the use of security guards in two 1998 submittals. In the August 8, 1999 Safety Evaluation Report for License Amendment 15, NRC noted,

*"Based on its review of Cimarron's proposals, NRC staff will incorporate the following conditions into a revised license: ..."*

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6. *By letters of October 26, 1998 and December 11, 1998, Cimarron noted its plans to discontinue the use of security guards at the Cimarron site. NRC staff reviewed this submittal and found the elimination of security guards at the site is acceptable provided that access gates to the facility are locked and secured when no personnel are onsite and fences and locks will be maintained. NRC staff will therefore add the following license condition:*

*Access gates the [sic] Cimarron facility shall be locked and secured when no personnel are onsite and fences and locks will be maintained."*

Prior to the termination of security, gates to the facility were not locked after working hours. The intention of the license condition was to ensure that the gates would be locked except when people were working at the site, since security guards would no longer be present after hours.

#### NRC Provided for Personnel Retained by the Licensee to Occupy Key Positions

In 2007, Ms. Karen Morgan, the Radiation Safety Officer for Cimarron, retired from the company. Ms. Morgan was the last employee of Cimarron Corporation. From 1999 through 2007, there were frequent times when the only personnel on site were contractors retained by the licensee, rather than employees of the licensee.

From 2001 through 2007, the ALARA Committee was composed of two employees of Cimarron's parent company, and one Cimarron employee. After Ms. Morgan's retirement, the ALARA Committee was staffed by two employees of Cimarron's parent company, and one contractor retained by Cimarron.

During a 2008 NRC inspection, the NRC inspector noted that License Condition 27(e) stated,

*"The ALARA Committee shall consist of a minimum of three individuals employed by the licensee, and one of these shall be designated as the ALARA Committee chairman."*

The inspector noted that none of the ALARA Committee members were employed by the licensee (although two of the three were employed by Cimarron's parent company). In a letter to NRC dated August 6, 2008, the licensee addressed this, stating,

*"The inspector noted that the licensee, "Cimarron Corporation", has no employees. ... Because the license condition states that the ALARA Committee shall consist of a*

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*minimum of three individuals "employed by the licensee", Cimarron does not and is not able to comply with this condition. ... The manager responsible for decommissioning and the site Radiation Safety Officer should be selected on the basis of their expertise and responsibility rather than their status as employees of the licensee." [emphasis mine]*

On January 12, 2009, Tronox, Inc., parent company of Cimarron (the licensee), notified NRC that Tronox and certain of its subsidiaries (including Cimarron) filed for relief under Chapter 11 of the U.S. Bankruptcy Code.

On February 11, 2009, in response to the bankruptcy filing, NRC informed Tronox that,

*"...the bankruptcy filing does not relieve Cimarron Corporation, a subsidiary of Tronox Worldwide LLC, of its obligations to comply with NRC requirements, including those relating to security and control of licensed material; decontamination and decommissioning of contaminated facilities; and the retention of personnel required by NRC requirements (e.g., the radiation safety officer (RSO), authorized users, etc.)."*

License Amendment 20 was issued June 12, 2009. The Safety Evaluation Report (SER) prepared for License Amendment 20 specifically addressed the requirement that ALARA Committee members be employed by the licensee, stating,

*"By letter dated August 6, 2008, you submitted a request for the U.S. Nuclear Regulatory Commission (NRC) to amend License Condition 27(e)(3) of License SNM-928 for the Cimarron site in Crescent, Oklahoma. The current license condition requires an ALARA Committee consisting of at least three individuals employed by the licensee. However, as stated in your request, the proposed changes are necessary because, due to organizational changes, the licensee, "Cimarron Corporation," has no employees.*

*The NRC staff has completed its review of your request to amend your license and identified no major deficiencies. However, to ensure that the licensee or the licensee's parent company retains responsibility for the ALARA Committee, the NRC staff has revised the proposed license condition by inserting the fourth sentence in the paragraph "The designees for decommissioning of the site and the Radiation Safety Officer or equivalent, shall be retained by the licensee or the licensee's parent company."*

The SER established that personnel who are as critical to license compliance as the Radiation Safety Officer and the manager of decommissioning activities need not be employed by the licensee. Rather, to maintain licensee responsibility, these individuals need to be **retained** by the

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licensee. The licensee is responsible to ensure that individuals retained to work on the site have the training, qualifications, and experience needed to perform their work in accordance with regulatory and license requirements as well as accepted industry practice.

Although the NRC inspector clearly recognized that the licensee had no employees, there was no discussion of License Condition 27(d). It was understood by NRC staff that “Cimarron personnel” were contractors who were *retained by* Cimarron. The licensee had no employees from 2007 through 2011, when License SNM-928 was transferred to the Cimarron Environmental Response Trust (the Trust). All personnel who worked at the Cimarron were contractors retained by the licensee.

#### Site Security After Transfer of the License to the Trust

After the license was transferred to the Trust, EPM continued the practice of authorizing contract personnel who satisfactorily completed Site Orientation to perform work at the site. EPM also requires Radiation Worker training for those who would work with radioactive material or in restricted areas. There had been no requirement that an employee of the licensee be present at the site, and EPM maintained this policy. Contractors were required to lock the office building whenever it was not occupied, and to lock the gates at the end of each work-day before they left the site. Thus, gates were locked when no “personnel” were on site. This was how License Condition 27(d) had been implemented since it was issued.

Fourteen NRC inspections were conducted since License Condition 27(d) was added to the license; six were conducted since the licensee notified NRC that it had no employees. The requirement that ALARA Committee members be employees of the licensee was addressed during these inspections. However, the idea that the personnel referred to in License Condition 27(d) needed to be employees of the licensee was never considered.

#### Defining Appropriate Control of Access

As Cimarron asserted in its August 1998 submittal, personnel responsible for decommissioning and radiation protection should be selected on the basis of their expertise and responsibility rather than their status as employees of the licensee. If this is the case, certainly access to the site should be a function of the training, qualifications, and experience of the individual, not the employment status of the person on site.

Contractors and subcontractors need to be able to access the site to perform decommissioning or license compliance work if they are authorized to do so based on qualification and experience.



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EPM, as licensee, has only one employee. Requiring that employee to be on site to unlock gates would restrict the licensee's ability to schedule needed functions. The ability to perform needed work would be dependent upon the availability of the single employee of the licensee. EPM maintains that the wording of License Condition 27(d) does *not* require that "personnel" be employees of the licensee.

To avoid confusion and inconsistent interpretation of this license condition, EPM requests that NRC provide written concurrence that the "personnel" referred to in License Condition 27(d) are individuals who are retained by the licensee, and authorized by the licensee to access the site based on training, qualification, and experience, commensurate with the work being performed.

If you have any questions or comments regarding this request, please contact me at 405-642-5152.

Sincerely,

A handwritten signature in black ink that reads "Jeff Lux". The signature is written in a cursive, slightly slanted style.

Jeff Lux, PE  
Project Manager

cc: NRC Document Control Desk  
Esther Houseman, NRC Office of General Counsel (electronic copy)  
Dr. Gerald Schlapper, NRC Region IV  
Paul Davis, Oklahoma Department of Environmental Quality  
Mike Broderick, Oklahoma Department of Environmental Quality (electronic copy)  
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