



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

Mar 4 11, 1994

MEMORANDUM FOR: Robert Pierson, Chief
 Licensing Branch
 Division of Fuel Cycle Safety and Safeguards
 Office of Nuclear Material Safety
 and Safeguards

FROM: Stuart A. Treby
 Assistant General Counsel for Rulemaking
 and Fuel Cycle
 Office of the General Counsel

SUBJECT: Battelle Decommissioning Funding Plan Submittal

We have reviewed the licensee's decommissioning funding plan submittal and request for exemption dated December 23, 1993 and are providing the following comments.

1. The sufficiency of the decommissioning cost estimates provided by Battelle cannot be verified by OGC. Your staff will have to insure that the cost estimates are satisfactory for the activities listed. We have based our legal analysis of the financial assurance instruments on the assumption that the cost estimates are correct. Note that any cost estimate will need to be periodically updated by Battelle as called for in § 70.25(e).
2. The statement of intent by the Department of Energy (DOE) is acceptable. However, as we have indicated in prior memoranda to staff regarding Battelle and other licensees, the statement of intent does not shift the ultimate responsibility for compliance with NRC decommissioning requirements. Thus, the licensee, Battelle, bears the ultimate responsibility for satisfying NRC regulations prior to termination of their license.
3. The irrevocable standby letter of credit number S93/92096 issued by Society National Bank in Cleveland, Ohio is in accordance with NRC regulations (10 CFR Part 70) and associated guidance in Regulatory Guide 3.66 (RG 3.66). The letter of credit differs from the sample in RG 3.66 by the addition of a paragraph. This paragraph allows the bank to cancel the letter of credit if the NRC were to approve an alternate form of financial assurance for the licensee. This additional language is legally unobjectionable.
4. The Industrial Trust created in 1980 and referred to by Battelle differs in many important respects from trusts presently authorized under 10 CFR Part 70. Since Battelle indicated that they would be "happy" to execute a new trust agreement, OGC

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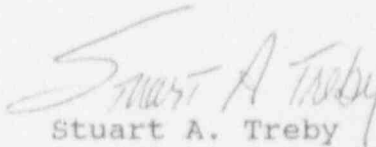
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recommends that the licensee do so. The licensee can refer to RG 3.66 for an example of an acceptable trust agreement.

5. In our memorandum to John Hickey dated August 18, 1992, addressing the earlier Battelle submittal, we noted that the licensee had failed to submit a: 1) specimen certificate of events; 2) certificate of resolution; and 3) Trust Agreement schedules A, B, and C as recommended by RG 3.66. These documents, or similar documents, serve to implement the trust agreement, if the NRC is required to draw upon the letter of credit. Battelle has yet to respond fully to this request, by omitting the first two items mentioned above, or provide a justification for their failure to provide the documents. Schedule C submitted by Battelle is acceptable, but Schedules A and B do not provide the necessary information as described in RG 3.66.

6. The Standby Trust Agreement submitted in conjunction with the irrevocable standby letter of credit is legally acceptable.

Battelle needs to address the concerns listed above to satisfy the requirements of 10 CFR Part 70. The most important concern which we cannot address is the sufficiency of the dollar amount in the decommissioning cost estimate. We would expect to see your outgoing letter to Battelle detailing to the licensee our concerns and others which your staff might raise. If you have any further questions, contact David J. Futoma of my staff at 504-1621.



Stuart A. Treby
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