

AUG 30 1993

License No. 06-27843-02  
Docket No. 030-29266  
Control No. 114227

Bristol-Myers Squibb Company  
ATTN: George S. Nagle, Director  
Environmental Health & Safety  
Pharm. Research & Development Division  
P. O. Box 5100  
5 Research Parkway  
Wallingford, Connecticut 06492

Dear Mr. Nagle:

Subject: Financial Assurance for Decommissioning

This is in reference to your submittal dated February 18, 1991 to provide financial assurance for License No. 06-27843-02. We have reviewed your submittal. Please modify your submission to address the specific issues listed below:

1. **Submit either a Statement of Certification or a Decommissioning Cost Estimate.**

10 CFR 30.35 requires that a licensee submit either a certification statement or a decommissioning cost estimate. Your submission does not include either a cost estimate or a certification statement. Based upon the \$750,000 specified in the parent company guarantee agreement, it appears that a certification statement should have been included. Please submit either a certification statement or a decommissioning cost estimate in accordance with 10 CFR 30.35(c)(1). You may use the recommended wording contained in Regulatory Guide 3.66 "Standard Format and Content of Financial Assurance Mechanisms Required for Decommissioning Under 10 CFR 30, 40, 70 and 72" (June 1990), pages 1-5 (copy enclosed).

2. **Submit a different method of financial assurance or demonstrate that a Parent-Subsidiary relationship exists between the guarantor and the licensee.**

A parent-subsidiary relationship must exist between the guarantor and the licensee in order for the parent guarantee to be a valid method of financial assurance under NRC regulations. 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 only allowed when the parent company provides "an independent commitment beyond that of the licensee to expend funds" (52 Federal Register 24036, June 27, 1988).

There is no evidence in your submission documenting the existence of a parent-subsidary relationship between the guarantor and the licensee, or even that they are separate legal and financial entities. Although the submission includes the guarantor's 1989 SEC Form 10-K and its 1989 annual report, these documents do not indicate that the licensee is a subsidiary of the guarantor.

Several aspects of your submission suggest that the licensee is a division of the guarantor rather than a subsidiary:

- a. The guarantor (Bristol-Myers Squibb Company) submitted the parent company guarantee agreement on the letterhead of the licensee (Bristol-Myers Squibb Pharmaceutical Research Institute);
- b. The guarantee omits recitals 5 and 7 from the wording recommended in Regulatory Guide 3.66. The omitted recitals specifically address the parent-subsidary relationship; and
- c. The representative signing the parent guarantee for the guarantor (Bristol-Myers Squibb Company) works for the licensee (Bristol-Myers Squibb Pharmaceutical Research Institute). In fact, the submission contains evidence that the three individuals authorized to represent the guarantor in signing the guarantee all work for the licensee.

Please submit evidence that the licensee is a subsidiary of the guarantor. This evidence could include incorporation agreements (i.e., copies of submissions to the appropriate State Corporation Commission) or a corporate resolution certifying that the licensee and its parent guarantor are separate and distinct corporate entities and that the parent controls a majority of the voting stock of the subsidiary.

If a parent-subsidary relationship cannot be demonstrated, then the parent guarantee cannot be used and an alternate mechanism must be submitted. If, however, you are able to demonstrate a parent-subsidary relationship as discussed above, then modify your submission as described below.

3. Use the recommended wording in Regulatory Guide 3.66 for the parent company guarantee agreement.

Your submission varies greatly from the recommended wording in Regulatory Guide 3.66, pages 4-41 through 4-44. Many of the differences significantly reduce the assurance provided by the guarantee. For example, the guarantee omits recommended recitals 5, 6, 7, 11, 13, 15, and 16 entirely, and substantially modifies several other recitals. These provisions are essential to ensuring the validity and adequacy of the financial assurance for decommissioning.

The submitted guarantee also substantially modifies virtually all other recitals. For example, the guarantee refers to the guarantor's "net worth" and "credit rating", thereby making it unclear whether the guarantor passes NRC's more stringent financial test requirements regarding tangible net worth and bond ratings. Please submit a parent company guarantee agreement using the recommended wording specified in Regulatory Guide 3.66, pages 4-41 through 4-44.

4. Your submission does not adequately demonstrate that the guarantor is able to pass the financial test and does not include all of the supporting documents specified in Regulatory Guide 3.66. Submit the following documents substantiating a valid parent guarantee and financial test:
  - a. Letter from the Chief Executive Officer of the licensee;
  - b. Letter from the guarantor's Chief Financial Officer, including demonstration of ability to pass the financial test (either Alternative I or II);
  - c. Auditor's special report and schedule attachment to the special report; and
  - d. Standby Trust Agreement and related documents.

Please use the recommended wording in Regulatory Guide 3.66 in Sections 4.7 and 4.3 and submit originally signed duplicates.

5. Submit a Request for an Exemption.

If you are unable to demonstrate a parent-subsidiary relationship and decide to resubmit documents in support of a self-guarantee you need to include a request for a scheduler exemption from the regulations that specify acceptable financial assurance

mechanisms, until completion of the self-assurance mechanism rule-making which, while underway, is not expected to be complete for some time. To qualify for this option, you must submit:

- a. A specific request to use a self-guarantee and to be exempted from the requirements of 10 CFR 30.35(f).
- b. Documentation that the licensee passes the financial test which includes:
  - (1) Tangible net worth of at least 1 billion dollars;
  - (2) Tangible net worth at least 10 times the total decommissioning cost estimate for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor, or 10 times the current amount specified in NRC Regulations if certification is used;
  - (3) Assets located in the United States amounting to at least 90 percent of total assets or at least 10 times the total current decommissioning cost estimate for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor, or 10 times the current amount specified in NRC Regulations if certification is used;
  - (4) A current rating for its most recently issued bonds of AAA, AA, or A as issued by Standard and Poor's (S&P) or Aaa, Aa, or A as issued by Moody's; and
  - (5) At least one class of equity securities registered under the Securities Exchange Act of 1934.
- c. Copies of all reports filed with the Securities and Exchange Commission under Section 13 of the Securities Exchange Act of 1934.
- d. Documentation that the licensee's auditor has compared the data used by the licensee in the financial test with the corporation's independently audited year end financial statements.
- e. A commitment that the licensee will repeat and successfully pass the financial test within 90 days after the close of each succeeding fiscal year, and

- f. Commitment to notify the NRC within 90 days of any matters coming to the attention of the auditor that cause the auditor to believe that the data specified in the financial test should be adjusted and that the corporation no longer passes the test.

There is no guarantee that an exemption will be granted.

Satisfactory financial assurance is required for your license. Therefore, we request that you respond within 30 calendar days from the date of this letter.

Please reply in duplicate to my attention at the Region I office and submit originally signed documents. You may refer to Mail Control No. 114227. If you have any questions regarding this letter, please contact Anthony Dimitriadis of my staff at (215) 337-6953.

Sincerely,

Original Signed By:  
John D. Kinneman

John D. Kinneman, Chief  
Research, Development and  
Decommissioning Section  
Division of Radiation Safety  
and Safeguards

Enclosure:  
Regulatory Guide 3.66