

SEP 27 1993

License No. 20-01537-02
Docket No. 030-00763
Control No. 113083

Massachusetts Institute of Technology
ATTN: Frank Masse
Radiation Safety Officer
77 Massachusetts Avenue
Cambridge, Massachusetts 02139

Dear Mr. Masse:

SUBJECT: FINANCIAL ASSURANCE FOR DECOMMISSIONING

This is in reference to your various submittals to provide financial assurance for License No. 20-01537-02. We have reviewed your submittal and request that you modify the appropriate documents to address the specific issues listed below.

1. Submit a Certification Statement.

Under 10 CFR 30.35 and 10 CFR 70.25, you are required to 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 amounts specified in the Escrow Agreement (\$750,000.00 for License No. 20-01537-02 and \$750,000.00 for License No. SNM-986), it appears that a certification statement should have been included. The statement of certification, in addition to providing information that would allow NRC to verify the certification amount (e.g., the names and locations of types of materials handled), officially certifies that the licensee is in compliance with the appropriate requirements. Please submit a statement certifying compliance with the decommissioning rules, as recommended in 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, (copy enclosed).

2. Revise the Escrow Agreement so that Paragraphs 3 and 4 do not allow distribution of assets to the licensee without NRC approval.

Paragraphs 3 and 4 of the Escrow Agreement allow the escrow agent to distribute funds to the licensee if the escrow agent receives from its counsel "a written acknowledgment that such an escrow is no longer required by law." This provision is

9404050176 940310
PDR ADOCK 03000763
C PDR

inconsistent with the wording recommended in Regulatory Guide 3.66, pages 4-2 through 4-7, and allows the escrow account to be dissolved or decreased in amount without NRC approval if the escrow agent's counsel believes the financial assurance is no longer required. In the event that NRC were to disagree with the counsel's recommendations, the escrow might not provide adequate financial assurance. Revise Paragraphs 3 and 4 of the Agreement to remove this provision.

3. **Modify the Escrow Agreement to limit withdrawals to no more than 10 percent of the outstanding balance.**

The Escrow Agreement closely follows the language recommended in Regulatory Guide 3.66, but omits the second paragraph in Paragraph 4. Without the missing paragraph, the Escrow Agreement does not limit the size of withdrawals from the Fund. NRC recommends that withdrawals of more than 10 percent of the outstanding balance of the fund require written NRC approval. Please modify the Agreement to incorporate the recommended paragraph and the withdrawal limit. This change will provide NRC greater opportunity to monitor your decommissioning activities.

4. **Revise Paragraph 4 of the Escrow Agreement to substitute "and" for the second occurrence of the word "or".**

The recommended wording in Regulatory Guide 3.66, page 4-3, permits the escrow agent to make payments from the escrow account upon presentation of both a fully executed certificate of events and a certificate attesting to three conditions listed in Paragraph 4. The wording of the Escrow Agreement you submitted requires presentation of either of these certificates as a condition of payment. To help ensure that all payments from the fund are appropriate, the word "and" should be substituted for the second occurrence of the word "or" in Paragraph 4 of the Escrow Agreement, thereby requiring both certificates to be presented before the escrow agent makes payments from the account.

5. **Revise Paragraph 6 of the Escrow Agreement to state that the escrow agent will act in NRC's interest.**

Paragraph 6 of the Escrow Agreement, regarding powers of the escrow agent and escrow account management, does not state that the escrow agent will discharge its duties "solely in the interest of the NRC," as recommended in Regulatory Guide 3.66, page 4-4. This omission diminishes the protection to NRC because it allows the escrow agent to invest funds without specifically considering the NRC's interests (such as preservation of principal). Amend the Agreement to include the missing phrase in Paragraph 6.

6. **Revise Paragraphs 6 and 8 of the Escrow Agreement to require valuation whenever investment income is to be transferred to the licensee, and to prohibit payment of investment income to the licensee if it would deplete the funds in the account to less than the required amount.**

Paragraph 6 of the Escrow Agreement provides that "interest earnings shall be paid immediately upon receipt to [the licensee]." In contrast, the recommended Escrow Agreement in Regulatory Guide 3.66 states that the escrow agent shall invest and reinvest the income of the escrow account and keep the account invested as a single fund without distinguishing between principal and interest. Income from the investment of the property held in a mechanism may be transferred to the licensee, as long as the required financial assurance amount is maintained for decommissioning purposes.

To ensure that the required amount of coverage is maintained, modify Paragraph 6 and Paragraph 8 (annual valuation) of the Escrow Agreement to require a valuation of the property held in the escrow account whenever interest is transferred to the licensee. Although Paragraph 8 of the submitted Escrow Agreement and the corresponding paragraph (Paragraph 7) of the recommended Escrow Agreement in Regulatory Guide 3.66 require only annual valuation of the escrow account, more frequent valuation is appropriate when the Agreement allows transfer of investment income to the licensee. In addition, Paragraph 6 of the Escrow Agreement should be modified to preclude the transfer of interest if the transfer would deplete the escrow account balance to less than the amount of the decommissioning cost estimates that still must be paid from the escrow.

7. **Revise Paragraph 8 of the Escrow Agreement to limit the time in which the licensee may object to the annual valuation of the account**

Paragraph 8 of the submitted escrow does not include the wording recommended in Regulatory Guide 3.66, Paragraph 7, stating that:

"The failure of the licensee to object in writing to the escrow agent within 90 days after the statement has been furnished to the licensee shall constitute a conclusively binding assent by the licensee, barring the licensee from asserting any claim or liability against the escrow agent with respect to the matters disclosed in the statement."

This omission could allow the grantor longer than the 90 days recommended by NRC to object to matters disclosed in the valuation statement, and, in turn, could delay funding for financial assurance purposes while the dispute is settled. Modify the annual valuation provision by inserting the missing text.

8. **Revise Paragraph 14 of the Escrow Agreement regarding interpretation of the agreement.**

The Escrow Agreement modifies the language in Paragraph 14 (Paragraph 13 in Regulatory Guide 3.66) governing the interpretation of the Escrow Agreement. The submission omits the sentence underlined below:

"This agreement constitutes the entire agreement between [the licensee] and the Escrow Agent. The Escrow Agent shall not be bound by any other agreement or contract entered into by [the licensee] and the only document that may be referenced in case of ambiguity in this Escrow Agreement is the licensing agreement between [the licensee] and NRC, or its successor."

Without the missing sentence, other agreements or contracts may affect the validity of the Escrow Agreement. Revise the Escrow Agreement to include this wording.

9. **Submit a Specimen Certificate of Resolution to commence decommissioning**

The submission lacks a Specimen Certificate of Resolution, which should contain blank spaces for dates and signatures until decommissioning activities are commenced. Although you submitted a specimen certificate of events, which references the certificate of resolution to commence decommissioning, the submission does not include the specimen certificate of resolution. Without the specimen certificate of resolution, NRC cannot be sure that the escrow agent will release decommissioning funds only upon receiving appropriate instructions. In addition, the agent may not be able to determine the validity of future resolutions authorizing commencement of decommissioning activities and payments from the escrow. This could delay implementation of decommissioning activities for funding reasons, despite the financial assurance. Provide a certificate of resolution to commence decommissioning, worded similarly to the specimen resolution on page 4-9 of Regulatory Guide 3.66.

10. **Submit evidence that the party signing the Escrow Agreement for the licensee is authorized to represent the licensee.**

The submission does not include evidence that the party signing the Escrow Agreement for the licensee is authorized to represent the licensee in signing the Escrow Agreement. Regulatory Guide 3.66, page 3-5, requires evidence that the signatory is empowered to enter into the agreement. Unless authorized, the Agreement may not be enforceable. Provide evidence, such as a copy of the corporate by-laws if the licensee is incorporated, to verify that the signatory is authorized to represent the licensee in the Escrow Agreement.

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

Please reply in duplicate to my attention at the Region I office and be sure to submit originally signed documents with all appropriate seals. You may refer to Mail Control No. 113083. 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