CENTRAL MIDWEST INTERSTATE
LOW-LEVEL RADIOACTIVE WASTE COMMISSION
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Clark W. Bullard, Chairman
Thomas W. Ortciger, Secretary-Treasurer
Donald R. Hughes, Sr., Commissioner

April 12, 1994

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Sir:

RE: Proposed Rule, "Certification of Gaseous Diffusion Plants," 59 *Federal Register* 6792 - 6823 (February 11, 1994)

This is in response to the Nuclear Regulatory Commission's request for comments on the above-referenced proposed rule. The Central Midwest Interstate Low-Level Radioactive Waste Commission has not met since the Notice was published in the *Federal Register*, but after consultation with the Commissioners, I am pleased to offer the following comments:

Waste Management

The Central Midwest Interstate Low-Level Radioactive Waste Commission is the administrative body of the Central Midwest Interstate Low-Level Radioactive Waste Compact, a bi-state agreement between Illinois and Kentucky relating to the management of low-level radioactive waste. The Commission is responsible for formulating policies for the management of low-level radioactive waste generated in the Central Midwest Region.

These comments are focused primarily on Section 76.35 of the proposed rule. That section specifies the information that must be included in an application for a certificate of compliance. Subsection (k) of that section would require the applicant to describe its program "for processing, management, and disposal of mixed and radioactive waste generated by operations and depleted uranium," including a description of the waste streams generated by enrichment operations, annual volumes of waste expected, identification of radioisotopes contained in the waste, physical and chemical forms, and plans for managing the waste. Subsection (l) would require the applicant to provide a description of the funding program to be established to ensure that funds will be set aside and available for the ultimate processing and disposition of depleted uranium and any waste generated, including financial surety arrangements ensure that sufficient funds will be available to cover the cost of conversion of depleted UF_6 to a stable form as well as ultimate disposition.

The Central Midwest Commission believes that any application for issuance or renewal of a certificate of compliance must contain the information and surety requirements described in subsections 76.35 (k) and (l). The Commission has been advised by the U. S. Enrichment Corporation that the Corporation views disposal of waste generated at the Paducah and Portsmouth facilities to be a state responsibility under the Low-Level Radioactive Waste Policy Amendments Act of 1985. (A copy of a November 15, 1993, letter from William H. Timbers, Transition Manager, U.S. Enrichment Corporation to Clark W. Bullard, Chairman, Central Midwest Commission, is enclosed.) The United States Enrichment Corporation does not view disposal of waste and disposition of depleted uranium generated at the sites to be a responsibility of the Department of Energy. The Central Midwest Commission does not necessarily concur in the position of the U.S. Enrichment Corporation. However, in the absence of a clear and binding commitment from the Department of Energy that it is assuming responsibility for disposal of all wastes and disposition of any depleted uranium at the sites, the Central Midwest Commission must insist that the NRC adopt the information and surety requirements proposed in subsections (k) and (l).

In establishing compliance with the financial assurance provisions of subsection (l), the Central Midwest Commission has no objection to allowing the Corporation to take into account money in the "Uranium Enrichment Decontamination and Decommissioning Fund" that has been earmarked for disposal of wastes at the particular facility that is the subject of the application. However, money that is not specifically dedicated and available for this purpose should not be considered as satisfying the financial assurance requirements.

The Commission also believes that Section 76.60 should be modified to require, as a condition for obtaining and retaining a certificate of compliance, that the Corporation demonstrate compliance with the applicable provisions of 10 CFR 61. Specifically, the Corporation should be required to comply with the waste classification provisions contained in that rule. Additionally, if the Corporation proposes to dispose of waste from one of its facilities at the other facility, it should be required to satisfy the licensure requirements of 10 CFR 61. Similarly, if the Corporation proposes to treat at one of its gaseous diffusion plants radioactive wastes received from its other plant or from a facility operated by someone else, NRC should require the Corporation to obtain a specific license from the NRC or an agreement state, as appropriate, to engage in that activity, and the Corporation should be required to obtain any requisite approvals from the compact commission for the jurisdiction in which the treatment activity will occur.

Backfitting

Commissioner Rogers has requested comments on the appropriateness of delaying the effectiveness of Section 76.76, concerning backfitting. As proposed, the rule would require backfitting whenever the NRC or its staff has found, based on documented evaluation, that any of the conditions identified in Section 76.76(a)(4) are present. In such circumstances, postponing the effectiveness of the backfitting requirement does not appear to be justified. That the NRC and the operators of the gaseous diffusion plants "have no prior corporate experience" operating the plants hardly seems to be an appropriate reason for the NRC to postpone requiring modifications that it determines to be necessary (1) to bring the plant into compliance with the plant's certificate and NRC's rules; (2) to adequately protect the health and safety of the public; or (3) to define the level of protection to public health. We note that when the NRC adopted its "New Part 20," backfitting was required as of the effective date of that rule, even though none of NRC's licensees had "prior corporate experience" operating a facility in conformance with that new scheme. We further note that these gaseous diffusion plants have been in operation for four decades and there is a wealth of experience regarding their operation. Although prior to July 1, 1993, the gaseous diffusion plants had been operated by DOE and its predecessors, in actuality much of the operation of the facilities has been conducted by contractors. We understand that the Corporation has entered into its own contractual arrangements with these same contractors. Accordingly, the shift from federal agency to corporate operation should have had little impact on the actual operations of the facilities.

Notice

In order to promote a meaningful opportunity for review of the application for initial issuance or renewal of a certificate of compliance, Section 76.37 should specify that the public comment period shall end no less than 60 days from the publication of the *Federal Register* notice. In addition, the Section 76.37 should be amended to specify that the NRC will send directly to the Governor's designee for receipt of NRC notifications, for the state in which the plant at issue is located, a copy of all *Federal Register* notices published pursuant to Section 76.37(a).

Cost Recovery

Finally, the Central Midwest Commission notes that the NRC has been directed by Congress to recover as much of its costs as feasible from its regulated community. To achieve this end, NRC has over the past several years substantially increased the license and

inspection fees applicable to its licensees. We note, however, that this rulemaking does not contain any provision for NRC to recover the costs it incurs in conjunction with certifying and inspecting the gaseous diffusion plants operated by the United States Enrichment Corporation. NRC's licensees should not be required to subsidize the Corporation by bearing these costs. The NRC should amend 10 CFR 170 and 171, as necessary, to require the Corporation to pay inspection fees and application fees, similar to license fees, to cover the costs incurred by NRC in conjunction with certifying the gaseous diffusion plants. If necessary, NRC should seek statutory authorization to impose such fees.

As requested in the *Federal Register* notice, we are providing a copy of our comments in electronic format. We thank you for the opportunity to provide these comments. Of course, our primary concern with respect to the proposed rule relates to the low-level radioactive waste management provisions. With the exception of the comments that the Commission specifically solicited regarding the proposed backfitting requirement, we have not attempted to address the health and safety issues that this rule presents. Comments on such issues are more appropriately submitted by the state and federal agencies responsible for implementing radiation control programs. We have shared with you our observations concerning other provisions of the rule in the hopes that you will provide them helpful. We would be happy to answer any questions you have regarding these comments.

Sincerely,

for Dr. Clark W. Bullard
Chairman

Enclosures