70-7001
70-7002

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

March 23, 1998

United States Enrichment Corporation
ATTN: George P. Rifakes
Executive Vice President, Operations
2 Democracy Center
6903 Rockledge Drive
Bethesda, MD 20817

Dear Mr. Rifakes:

I am responding to your October 21, 1997, request for an exemption from the FY 1997 annual fees for the Paducah and Portsmouth Gaseous Diffusion Plants (GDPs) (Docket Nos. 070-07001 and 070-07002, respectively). Specifically you requested that the fee be reduced to $1,276,000 commensurate with the fee for Low Enriched Uranium (LEU) fuel facilities and that a single fee be assessed covering both GDPs. As described below your request for an exemption is denied.

The bases for your request and our response to each issue that you raised are as follows:

A. The annual fee will result in a disproportionate allocation of costs to USEC.

Issue 1:

The two GDPs are the operational equivalent of a single plant, similar to the Combustion Engineering (CE) plants. Separate certificates are permissible and may have been more practical, but were not required by statute. The two GDPs are, like the CE plants, component parts of a single process -- to produce enriched uranium product suitable for fabrication of light water reactor fuel. The Paducah, Kentucky, plant (Paducah) produces feed material for subsequent processing at the Portsmouth, Ohio, plant (Portsmouth). At Portsmouth the feed is further enriched, then the tails are sent to Paducah for further stripping. The two GDPs use the same technology and have the same design.

Response:

These plants are, in fact, capable of operating independently, and do in some respects operate independently. Portsmouth is authorized to receive and process down blended Russian High Enriched Uranium (HEU), separately and independently from Paducah. Similarly, Portsmouth also feeds natural uranium to the process in addition to enriched uranium from Paducah. The two GDPs are generally capable of independent production and, in fact, preliminary analyses have been performed to support completely independent production at both facilities (see Department of Energy Paducah Gaseous Diffusion Plant Safety Analysis Report [KY/EM-174], Volume 1, section E.1, Site Background and Mission.) In addition, USEC has chosen to operate the two GDPs with significant differences in major policies and programs such as Material Control and Accounting, Fire Safety, and Radiation Protection.

Issue 2:

The GDP hazards are comparable to LEU fuel facilities but the fees far exceed those imposed on such facilities.

Response:

The predominant hazard at the GDPs, as well as other LEU fuel fabrication facilities, is the presence of UF_6. However, the risk of accidental release of UF_6 or an inadvertent nuclear criticality, is higher at the GDPs than at other LEU fuel facilities, because of the complexity and scope of operations, the significantly larger volume of liquid phase UF_6 that is handled, and the very large total inventory of UF_6. This higher risk is evidenced by the relatively large number of analyzed accident scenarios, many with multiple initiating events, and the large number of process controls encompassed in the technical safety requirements. Furthermore, as stated in the NRC response to USEC's comments on the proposed FY 1997 fee rule (62 FR 29197), license fee categories are not assigned solely on the basis of the enrichment of the authorized nuclear material. The most significant factor considered is the level of programmatic effort required to assure public health and safety. While the GDPs are certified for processing LEU, NRC disagrees with USEC's assertion that the hazards of operating the GDPs are equivalent to those associated with other LEU fuel facilities. The greater risk associated with the operation of the GDPs is such that a higher level of programmatic effort is required. [see Paducah and Portsmouth Safety Analysis Reports, revisions 21 and 17, respectively, chapter 4, Accident Analysis]

B. Budgeted generic costs attributable to USEC are neither directly nor indirectly related to the specific class of licensee nor explicitly allocated to USEC by Commission policy discussion.

Issue 1:

USEC is aware of no Commission policy decision that explicitly allocates any budgeted generic costs to USEC. NRC's budgeted generic cost of regulating the two GDPs does not correspond to the actual generic cost associated with regulating the GDPs. Such generic costs are not markedly higher because there are two GDPs as opposed to one.

Response:

NRC does not calculate annual fees by determining the cost of generic programmatic requirements for each individual plant or licensee. The Conference Report accompanying Public Law 101-508 states that the conferees contemplated that the NRC will continue to allocate generic costs that are attributable to a given class of licensees to that class. Therefore, NRC allocated budgeted costs for the fuel facility class of licensees to that class.

The assignment of annual fees to each licensee in the fuel facility class is not calculated by an equal division of those generic costs among all licensees in that class. The methodology used to determine the annual fees for the fuel facility class of licensees was established in the FY 1995 final fee rule which was published in the Federal Register June 20, 1995, after notice and comment. The objective of the current methodology is to reflect more precisely agency generic costs attributable to the fuel facility licenses. Five fuel facility fee categories were established: High Enriched Fuel (HEU), Low Enriched Fuel (LEU), Limited Operations Facility, UF_6 Conversion, and Other Fuel Facilities. As explained in the FY 1995 final fee rule (60 FR 32234), licenses are grouped into the five fuel facility fee categories according to their license (nuclear material type, enrichment, form, quantity, and use/associated activity), and according to the scope, depth of coverage and rigor of generic regulatory programmatic effort applicable to each category. The programmatic effort reflects the safety or safeguards significance associated with the authorized nuclear material and use/activity, and the commensurate generic regulatory program (i.e., scope, depth and rigor). The safety and safeguards weighted factors are applied to the annual fee base for the fuel facility class. The total annual fee is determined by adding the LLW and other surcharges to this base fee.

The NRC applied this methodology to the USEC facilities and concluded that the relative weighted safety and safeguards factors for these facilities is similar to an HEU facility (62 FR 29205).

C. Other factors which show that the annual fee is not based on a fair and equitable allocation of NRC costs.

Issue 1:

Both the GDPs and the LEU fuel facilities are safeguards category III facilities and require considerably less stringent safeguards than their HEU counterparts.

Response:

Although this statement is true, the less stringent safeguards requirement is offset by the increased regulatory effort in other areas necessitated by the higher public health and safety risk (see Paducah and Portsmouth Safety Analysis Reports, revisions 21 and 17, respectively, chapter 4, Accident Analysis.)

Issue 2:

USEC is aware of no analysis which shows that the number of potential accidents at the GDPs exceeds that of an LEU fuel facility, or is comparable to that of an HEU facility.

Response:

The safety analysis reports USEC submitted for the GDPs detail the analysis of a significantly larger number of accident scenarios than is typically done for other LEU fuel facilities. While the potential consequences of accidents at the GDPs may be comparable to those of other LEU fuel facilities, the total risk posed by those accidents is higher at the GDPs. This is a result of the large total inventory of UF_6, the large volume of liquid UF_6 handled, and the complexity of operations at the GDPs. There is significantly higher risk to onsite workers posed by the large inventories and larger onsite population. (see Paducah and Portsmouth Safety Analysis Reports, revisions 21 and 17, respectively, chapter 4, Accident Analysis)

Issue 3:

Almost all of the inspection procedures applicable to the GDPs are existing procedures used for the inspection of fuel fabrication facilities.

Response:

Special subject inspection procedures, such as chemical safety and criticality safety, were pre-existing. However, the core inspection procedures used by the resident inspectors were created specifically for use at the GDPs (see NRC Inspection Procedures 88100, 88102, 88103, 88015).

In addition to the specific responses above to issues raised, the following generic programmatic effort is expended for GDPs but not for other fuel cycle licensees: NRC prepares an annual report to Congress on the GDPS; backfit rules apply only to GDPS, GDPs are governed by separate legislation that applies only to them; and GDPs require the development of separate standard review plans.

Based on the foregoing, I find no basis to grant a partial exemption from the annual fee for the two GDPs.

Sincerely,

Original signed by Jesse Funches

Jesse L. Funches
Chief Financial Officer

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October 21, 1997

U.S. Nuclear Regulatory Commission
Attention: Document Control Desk
Washington, D.C. 20555-0001

SERIAL: GDP 97-0183

Paducah Gaseous Diffusion Plant (PGDP)
Portsmouth Gaseous Diffusion Plant (PORTS)
Docket Nos. 70-7001 and 70-7002
Request for Exemption from Annual Fee Regulations Pursuant to 10 CFR 171.11(d)

Dear Sir:

In accordance with 10 CFR 171.11(d), the United States Enrichment Corporation (USEC) hereby submits the enclosed request for exemption from the annual fee regulations for the Paducah and Portsmouth Gaseous Diffusion Plants.

For the reasons discussed within, USEC respectfully requests that the NRC grant exemptions from its fiscal year 1997 annual fee rule as follows:

(1) the annual fee of $2,606,000 for the GDPs should be reduced to $1,276,000 commensurate with the fee for LEU fuel facilities,

(2) a single fee should be assessed covering both of the GDPs operated by USEC, rather than a separate fee for each facility.

There are no new commitments made in this letter. Any questions related to this subject should be directed to Ms. Lisa Jarriel at (301) 564-3247.

Sincerely,

George P. Rifakes
Executive Vice President, Operations

Enclosure: As stated

cc (w/o enclosures):
NRC Region III Office
NRC Resident Inspector - PGDP
NRC Resident Inspector - PORTS

UNITED STATES ENRICHMENT CORPORATION
REQUEST FOR EXEMPTION FROM
NRC ANNUAL FEE REGULATIONS
PURSUANT TO 10 CFR § 171.11(d)

I. Introduction

On February 27, 1997, the Nuclear Regulatory Commission (NRC) published a proposed rule establishing annual fees for fiscal year 1997 (62 Fed. Reg. 8885). The rule proposed annual fees for each of the gaseous diffusion uranium enrichment plants (GDPs) operated by the United States Enrichment Corporation (USEC) at $2,606,000 per GDP. USEC commented on the proposed rule in a letter dated March 31, 1997 and recommended, among other things, that:

(1) the proposed annual fees of $2,606,000 for the GDPs be reduced to $1,276,000, commensurate with the proposed fee for low-enriched uranium (LEU) fuel fabrication facilities; and

(2) a single fee be assessed covering both of the GDPs operated by USEC, rather than duplicate fees for each GDP facility.

In its final fee rule published on May 29, 1997 (62 Fed. Reg. 29194), the NRC rejected USEC's comments and maintained the 1997 annual fees at $2,606,000 per GDP facility. As a result, USEC will be required to pay total annual fees for fiscal year 1997 of $5,212,000. The NRC also stated that USEC could submit a request for exemption from the annual fee rule if it desired.

Therefore, in accordance with 10 CFR § 171.11(d), USEC hereby requests an exemption from the provisions of the annual fee rule setting fees for the GDPs at $2,606,000 per facility. If granted in its entirety, the effect of the exemption would be an assessment of a single annual fee of $1,276,000, covering both GDPs.

II. Basis for the Exemption

10 CFR § 171.11(d) states that the NRC may grant an exemption from the annual fee if it determines that the fee is not based on "a fair and equitable allocation of the NRC costs..." In addition, the Omnibus Budget Reconciliation Act (OBRA) of 1990 mandates that the NRC assess only those fees which have a reasonable relationship to the cost of providing regulatory services. The relevant section of the statute states:

> To the maximum extent practicable, the charges shall have a reasonable relationship to the cost of providing regulatory services and may be based on the Commission's allocation of the resources among licensees or classes of licensees. (Section 6101(c)(3), Omnibus Budget Reconciliation Act (OBRA) of 1990, Pub. L. No. 101-508.)

In determining whether to grant an exemption under section 171.11(d), the NRC considers three factors [1]

(A) whether there are data specifically indicating that the annual fee will result in a significantly disproportionate allocation of costs to the licensee,

(B) whether there is clear and convincing evidence that the budgeted generic costs attributable to the class of licensees are neither directly or indirectly related to the licensee nor explicitly allocated to the licensee by Commission policy decisions, or

(C) any other relevant matter that the licensee believes shows that the annual fee was not based on a fair and equitable allocation of NRC costs.

As discussed below, the criteria for the issuance of an exemption from the annual fee rule have been met.

A. The Annual Fee Will Result in a Significantly Disproportionate Allocation of Costs to USEC

There are two bases for concluding that the annual fees to be assessed against USEC will result in a "significantly disproportionate allocation of costs" to USEC. First, assessing two separate fees does not recognize that the two GDPs are, in fact, the operational equivalent of a single plant. Second, the hazards associated with operating the GDPs are comparable to those at LEU fuel facilities, yet USEC's fees far exceed those set for such facilities. Each of these bases is discussed below.

1. The GDPs Are the Operational Equivalent of a Single Plant

In Allied-Signal v. NRC, 988 F.2d 146 (D.C. Cir. 1992), the United States Court of Appeals for the District of Columbia Circuit directed the NRC to grant an exemption under Section 171.11. In that case, the NRC had assessed fees for two LEU fuel fabrication facilities owned by Combustion Engineering, based on the fact that each plant had its own, separate NRC license. The court recognized that both plants were, in the aggregate, part of one process and therefore the operational equivalent of a single plant. Furthermore it concluded that the NRC was not able to point to any greater regulatory costs associated with regulating a second plant. The court held that the NRC had levied a double assessment against the licensee and directed the NRC to grant an exemption from the additional fees related to the second plant.

In particular, the court stated:

> The Commission's own criteria call for an exemption if the licensee can show that "the assessment of the annual fee w[ould] result in a significantly disproportionate allocation of costs to the licensee....Against this [double assessment

[1] These three factors are "independent considerations" any of which may support the granting of an exemption. Allied-Signal Inc. v. NRC, 988 F.2d 146, 154 at n.5 (D.C. Cir. 1992).

> levied against Combustion Engineering] the Commission is able to point to almost nothing by way of greater costs. The double burden for Combustion measured against de minimis additional burdens for the Commission, amply overcomes the hurdle established by 10 CFR § 171.11(d). Allied-Signal, 988 F.2d at 154.

The two GDPs are, like the Combustion Engineering plants, component parts of a single process -- in this case a process to produce enriched uranium product suitable for fabrication of light water reactor fuel. The GDP located at Paducah, Kentucky, produces feed material for subsequent processing at the Portsmouth, Ohio GDP. (Paducah SAR at 3.1.3). This feed material enters the cascade feed of the Portsmouth plant as enriched stream assay. (Portsmouth SAR at 3.1.1.1.3). At the Portsmouth GDP, this feed is further enriched and then the tails are sent to Paducah for further stripping. As discussed more fully below, the two GDPs use the same technology and have the same design. Thus, the two plants are operationally the equivalent of one plant and one process.

In Allied Signal, the court noted that the two Combustion Engineering plants had separate licenses rather than a single license due to "historical chance."[2] Allied Signal, 989 F. 2d at 153. Similarly, it was not necessary to have two certificates of compliance for the GDPs. Indeed, the Atomic Energy Act, speaks in the singular, to "a certification process" and an "Annual Application for Certificate of Compliance", and requires USEC to apply "for a certificate of compliance...." 42 U.S.C. § 2297F(c)(1997). While separate certificates are permissible and may have been more practical under the circumstances, separate certificates were not required as a matter of statute. Thus, because the GDPs are operationally equivalent to a single plant, the NRC's assessment of separate fees for both sites imposes a significantly disproportionate allocation of costs upon USEC.

2. The GDP Hazards are Comparable to LEU Fuel Facilities But the Fees Far Exceed Those Imposed on Such Facilities.

The GDPs contain hazards very comparable to those found at LEU fuel fabrication facilities. At an LEU fuel facility, the predominant chemical hazard is uranium hexafluoride (UF_6). (NUREG-1140 at 2.1.2). Similarly, at the GDPs, UF_6 is the predominant hazard. See, Portsmouth SAR at 5.6.13.2 (noting that "[u]ranium hexafluoride (UF_6) is the most abundant hazardous material on site), see also Paducah SAR at 5.6.13.2 (same). In NUREG-1140, the NRC concedes that the types of potential accidents at enrichment plants "are similar to those at conversion plants and fuel fabrication plants." For purposes of setting the annual fees, the GDPs should be treated similarly to these comparable facilities.

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[2] Combustion explained that it had two licenses because it had purchased a company with a separate license almost 20 years before the litigation. Allied Signal, 988 F. 2d at 153.

> However, under the annual fee rule, USEC must pay over four times what an LEU fuel licensee pays, and about eight times what a uranium conversion facility pays [3] Indeed, even as compared to high enriched uranium (HEU) fuel facilities, USEC will pay twice what those licensees pay The very substantial differential between the fees assessed against USEC and those assessed against similar NRC licensees is not warranted by any comparable difference in generic, programmatic regulatory costs attributable to NRC regulation of the GDPs Thus, contrary to OBRA and as discussed in section C, the NRC fees do not bear a "reasonable relationship to the cost of providing regulatory services " This, coupled with the disproportionate allocation of costs to USEC, warrants granting the requested exemption

B Budgeted Generic Costs Attributable to USEC are Neither Directly or Indirectly Related to the Specific Class of Licensee Nor Explicitly Allocated to USEC by Commission Policy Decisions

Under section 171 11(d), an alternative and independently sufficient criterion for granting an exemption is whether there is clear and convincing evidence that

> the budgeted generic costs attributable to the class of licensees are neither directly or indirectly related to the specific class of licensee nor explicitly allocated to the licensee by Commission policy decisions... 10 CFR § 171 11(d)(2)

USEC is aware of no Commission policy decision that explicitly allocates any budgeted generic costs to USEC As for the relationship between the NRC's budgeted generic costs and USEC's activities, the budgeted generic cost of regulating the two GDPs does not correspond to the actual generic costs associated with regulating the GDPs In particular, such generic costs are not markedly higher because there are two GDPs, as opposed to one

The NRC has not provided any basis for concluding that the generic costs of regulating two GDPs are higher than for one plant Furthermore, the GDPs have a highly uniform design Both the Paducah and Portsmouth plants employ the same gaseous diffusion technology (Portsmouth SAR at 3.1) The UF_6 molecules are separated according to their isotopic forms by diffusing them through a repetitive series of porous barriers Id As the overall design is effectively the same from plant to plant, the existence of a second plant and a second certificate does not significantly increase the NRC's generic regulatory burden In effect, the generic, programmatic costs of regulating two plants should be about the same as the costs of regulating one Notably, the annual fee rule does not explain which generic costs are significantly higher because USEC operates two facilities, and possesses two certificates

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[3] Although uranium conversion facilities do not use enriched uranium, they do possess substantial quantities of UF_6

Even if there are certain increased costs, there is no basis for concluding that they warrant the dramatic differences in fees between USEC and comparable licensees which have been established by the NRC. For this reason as well, the requested exemption should be granted.

C. There Are Other Factors Which Show that the Annual Fee is not Based on a Fair and Equitable Allocation of NRC Costs

The third alternative and independently sufficient basis for granting an exemption is the existence of any other factor that demonstrates that the annual fee is not based on a fair and equitable allocation of NRC costs. 10 CFR § 171.11(d)(3). A number of such factors exist in this case.

1. Weighted Safeguards and Security Factors

First, the GDPs employ safety and safeguards measures which are directly comparable to LEU fuel facilities, and, because of the absence of strategic special nuclear material, are much less stringent than those required at HEU fuel facilities. The NRC considers the relative weighted safety and safeguard factors at a facility when it places a facility in a particular fee category. The methodology used by the NRC was described in its Fiscal 1995 final fee rule and involves: (1) a categorization of facilities into a fee category based upon nuclear material type, enrichment, form, quantity and use/associated activity, and (2) a determination of the "relative programmatic effort" associated with the fee category. This determination of relative programmatic effort is intended to reflect the "safety and safeguards significance" of the licensee's authorized activities...." 60 Fed. Reg. 32235.

Both the GDPs and the LEU fuel facilities are safeguards category III facilities and require considerably less stringent safeguards than their HEU counterparts. The NRC "does not dispute that the GDPs have been certified as low enriched uranium facilities with corresponding safeguards measures for category III facilities." 62 Fed. Reg. 29197. Despite this recognition, however, the NRC states that this information is not "the determining factor" in setting fees. The fact that the GDPs are certified as, and possess only, category III special nuclear material should be a very significant factor in setting the appropriate fees.[4] From the NRC's final rulemaking notice, it appears that little or no weight was given to this factor in setting the fees.

2. Generic Regulatory Programmatic Effect

The NRC goes on to state that despite the less stringent requirements of USEC's certificates, other factors warrant placing the GDPs in a higher fee category than an LEU fuel facility. In particular, the NRC states that the "scope, depth of coverage, and rigor of generic regulatory programmatic effort applicable to the GDPs... is approximately equivalent to that of a high enriched fuel fabrication." It also states that "[t]his level of

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[4] Although the Portsmouth facility has some HEU on site, the NRC has recognized that the Department of Energy is solely responsible for regulating the HEU that exists at the Portsmouth plant. 62 Fed. Reg. 29197.

generic effort is the basis for assigning the two GDPs to the high enriched fuel facility category..." Id (Emphasis added)

The NRC first states that this increased programmatic effort is necessitated by the fact that the GDPs are "subject to a relatively large number of credible accidents, most of which have multiple initiating events." Id USEC is aware of no analysis which shows that the number of potential accidents at the GDPs exceeds that of an LEU fuel facility, or is comparable to that of an HEU facility. On the contrary, it appears that the number of accidents described in the application or license of other LEU fuel facilities does compare with the GDPs, with most ranging between 5 to 10 analyzed accident scenarios. The multiple initiating events for the 7 accidents described in the GDP SARs only reflect the comprehensive hazard assessment performed for the GDPs. Other LEU licensees' accident analyses do not address such depth and are therefore, not analogous. Indeed, the NRC recognizes that the risks associated with other LEU fuel facilities are not well defined and has initiated rulemaking to require performance of an integrated safety analysis (ISA) to address this concern. The GDPs have already performed this in-depth analysis.

Secondly, the NRC claims that the "potential onsite and offsite consequences" of these accidents are "significantly greater" than for an LEU fuel facility. As described in the GDP SARs, there are few if any credible accidents that could produce any serious offsite consequences at the GDPs. (Paducah SAR at 4.9; Portsmouth SAR at 4.7) Furthermore, the potential accident scenarios at the GDPs are largely a function of the type of material and enrichment levels at the plants. LEU, in the form of UF_6, is the same predominant hazard present at both the GDPs and the LEU fuel facilities. HEU facilities, of course, possess more highly enriched materials that pose greater hazards. The NRC has provided no basis for concluding that the potential consequences of accidents at the GDPs are comparable to HEU facilities.

The NRC next states that "the large size and scope of the GDP operations require substantially more effort for the development of inspection procedures, guidance, and schedules...." In this regard, it should be noted that in initially rejecting Combustion Engineering's exemption request, the NRC stated that "the NRC does not agree...that annual fees should be based on a licensee's size [or] production capacity...." and that the "amount of [the NRC's] generic regulatory" costs is not materially affected by a facility's LEU fuel fabrication capacity...."[5] If the relatively small size and capacity of the Combustion Engineering plants did not warrant a reduction in its fees, it is not clear why the relatively large size of the GDPs, in and of itself, warrants a fee increase over and above the fees for LEU fuel fabricators.

A review of NRC inspection procedures applicable to the GDPs reveals that almost all the procedures are existing procedures used for the inspection of fuel fabrication facilities.[6]

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5 Letter, James M. Taylor to Richard S. Studek, December 17, 1991.

6 The remaining seven inspection procedures are related to the existence of the NRC Resident Inspector and derive from existing reactor inspection procedures.

According to the NRC, the "large size and scope [of the GDPs] is also expected to result in a higher number of reportable events that the NRC Staff must review." Such an NRC position serves to discourage a conservative approach to reporting events. The NRC assumed regulatory oversight of the GDPs only six months ago, and it is too early to determine whether or not the GDPs will produce a substantially larger number of reportable events than other comparable facilities. Indeed, as USEC continues to gain experience in operating under NRC regulation, it is possible that the number of reportable events will decrease and will remain comparable to that of the LEU fuel facilities. In any event, the NRC's rulemaking notice does not explain the cost or scope of effort required of the NRC Staff to review reportable events, and it does not appear that the potential burden involved justifies an effective doubling of fees over and above those assessed against LEU fuel facilities.

3. Other Factors

The NRC's rulemaking notice states that the "factors for placing a licensee into a fee category include "nuclear material type, enrichment, form, quantity, and use/associated activity..." 62 Fed. Reg. 29197. In reciting these factors, the NRC states that "[t]he nuclear material and activity at the GDPs, authorized by the certificates, does not automatically place the facilities into the high enriched fuel category." 62 Fed. Reg. 29197. There is, however, no further discussion of these factors as a basis for establishing the fees applicable to the GDPs.

USEC's review of these factors suggests that they provide no basis for treating the GDPs like HEU fuel facilities, rather than like LEU facilities in assessing annual fees. The GDPs, as well as LEU fuel and HEU fuel facilities, possess and utilize special nuclear material in the form of UF_6. This similarity among all three types of facilities provides no basis for distinguishing among any of them in assessing fees. Furthermore, while the principal "use/activity" at the GDPs is, of course, uranium enrichment rather than fuel fabrication, this factor provides no basis for treating the GDPs like HEU, as opposed to, LEU fuel facilities. The principal determinant in assessing fees should be the presence of, and need for NRC regulation of HEU.[7] In this regard, of course, the GDPs are much more akin to LEU fuel facilities.

III. Conclusion

The GDPs should not be assessed separate annual fees, but should instead be assessed a single fee, commensurate with the reasoning in Allied Signal as well as the requirements of the OBRA and 10 CFR § 171.11(d). In addition, under the OBRA and section 171.11(d), the annual fee assessed should be comparable to that imposed upon LEU fuel facilities rather than on HEU fuel facilities. Accordingly, for the reasons discussed above, namely

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[7] USEC presumes that this is the principal factor used by the NRC in deciding to assess fees against HEU fuel fabricators that are more than double those applied to LEU fuel facilities.

- the two GDPs are the operational equivalent of a single plant,
- USEC is appropriately licensed as an LEU facility commensurate with the hazards associated with LEU fuel facilities, namely predominantly UF_6,
- the GDPs and the LEU fuel facilities are safeguards category III facilities and require considerably less stringent safeguards than their HEU counterparts, and
- the NRC's programmatic effort is not increased in that the number of analyzed accident scenarios for the GDPs is within the range of other LEU fuel facilities and the inspection procedures were pre-existing,

USEC respectfully requests that the NRC grant exemptions from its fiscal year 1997 annual fee rule as follows:

(1) the annual fee of $2,606,000 for the GDPs should be reduced to $1,276,000 commensurate with the fee for LEU fuel facilities;

(2) a single fee should be assessed covering both of the GDPs operated by USEC, rather than a separate fee for each facility.