

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of:	)	Docket Nos.	50-603
All Chemical Isotope Enrichment, Inc.	)		50-604
Pine Ridge Office Park, Suite 202-B	)		
702 Illinois Avenue	)	License Nos.	CPEP-1
Oak Ridge, TN 37380	)		CPEP-2

ORDER MODIFYING LICENSES  
AND  
ORDER TO SHOW CAUSE WHY LICENSES SHOULD NOT BE REVOKED

I

All Chemical Isotope Enrichment, Inc. (AlChemIE or licensee) is the holder of Construction Permits (licenses) numbered CPEP-1 and CPEP-2, issued by the Nuclear Regulatory Commission (NRC) pursuant to 10 CFR Part 50. Construction Permit No. CPEP-1 was issued on February 10, 1989, and was amended on June 20, 1989, to extend its latest date for completion to November 3, 1989. Construction Permit No. CPEP-2 was issued on February 10, 1989, and has a latest date for completion of March 31, 1992.

Construction Permit No. CPEP-1 authorizes the modification of the existing Centrifuge Plant Demonstration Facility (CPDF) at the U.S. Department of Energy's (DOE) Oak Ridge Gaseous Diffusion Plant. Specifically, CPEP-1 also authorizes the licensee to acquire ownership of and take possession of security-classified gas centrifuge machines and associated classified equipment capable of enriching uranium, to transport the equipment as necessary, and to conduct, in the CPDF, tests using up to two gas centrifuge machines. CPEP-1 also provides for the implementation of security and safeguards measures at CPDF and modification of that facility to enrich stable isotopes. Construction Permit No. CPEP-1 also authorizes the licensee to possess uranium as calibration sources and as contamination on the machines.

Construction Permit No. CPEP-2 authorizes the licensee to construct in Oliver Springs, Tennessee, a new facility for the enrichment of stable isotopes, and to possess uranium as calibration sources and as contamination on gas centrifuge machines and associated equipment brought from the Department of

Energy's Gas Centrifuge Enrichment Plant (GCEP). To date no construction activities have been undertaken pursuant to Construction Permit No. CPEP-2.

## II

The licensee's proposed enrichment of stable isotopes would utilize classified gas centrifuge equipment. Specifically, this gas centrifuge equipment has been tested by the DOE and has been shown to be capable of producing special nuclear material in the form of enriched uranium in such quantity as to be of significance to the common defense and security. Consequently, this equipment is a production facility which must be licensed in accordance with the Atomic Energy Act of 1954, as amended (Act) (see Sections 11v, 101 and 103).

Section 103 production facilities are licensed pursuant to 10 CFR Part 50. Under 10 CFR Part 50, the applicant for a license is required to submit information showing that it is financially qualified to carry out, in accordance with the Commission's regulations, the activities for which the license is sought. In judging the adequacy of an application, the Commission must find, inter alia, what the applicant is financially qualified, and that the issuance of a license will not be inimical to the common defense and security. As described in the Federal Register Notice of the construction permit proceeding on this licensing action for CPEP-1 and CPEP-2 (52 FR 15315, April 28, 1988), one of the issues in this construction permit licensing proceeding was whether the applicant (now licensee) is technically and financially qualified to modify and construct the proposed facilities in such a way as to assure adequate protection of the common defense and security.

In that proceeding, the licensee provided written evidence and testimony in hearings of the Atomic Safety and Licensing Board. Based upon that information, the staff found that the licensee was technically and financially qualified to modify the existing CPDF facility in such a way as to assure adequate protection of the common defense and security; this finding appears in Construction Permit CPEP-1. A similar process led to a similar finding regarding construction of the proposed facility in Construction Permit CPEP-2.

Since issuance of the construction permits, certain events and information materially affect the findings and conclusions required for issuance of the construction permits. A letter of June 14, 1989, from Elbert M. Cooper, Jr., attorney for the Anderson County Bank, (Bank), to AlChemIE, asserts that AlChemIE has certain loans with the Anderson County Bank, which loans were due and payable in full on November 4, 1988. Further, it is asserted in the letter that the notes were seven months delinquent on June 4, 1989. Contrary to these assertions, the licensee's submittals to the NRC staff and the Licensing Board of November 11, 1988, December 19, 1988, and January 4, 9, and 17, 1989, consistently presented an optimistic picture of, inter alia, its ability to obtain bank loans. Specifically, AlChemIE failed to notify the staff or the Licensing Board that its loans with the Bank were delinquent during the period of the licensing review.

By letter dated June 26, 1989, AlChemIE notified the Commission that, for protection from creditors, AlChemIE had filed for reorganization in the United States Bankruptcy Court for the Eastern District of Tennessee (Case #89-01095RS-11A). Pursuant to 10 CFR § 50.54(f), in a letter dated July 17, 1989, the Director, Office of Nuclear Material Safety and Safeguards, required AlChemIE to provide in writing, by August 15, 1989, under oath or affirmation, answers to the request for information which was attached to the letter as Enclosure 1. The information was required for purposes of determining whether or not AlChemIE is currently in compliance with the licensing basis for Construction Permits Nos. CPEP-1 and CPEP-2. On August 15, 1989, documents were received from AlChemIE in response to that request for information. Based upon our review of these documents, AlChemIE has not demonstrated that it is financially qualified to conduct the activities under its license.

By letter of August 11, 1989, DOE advised AlChemIE that the Sales Agreement, (Contract No. DE-R005-880R21776 titled "Centrifuge Equipment Agreement and Bill of Sale," dated November 20, 1987), between DOE and AlChemIE for, inter alia, transfer to AlChemIE of gas centrifuge machines at DOE's Gas Centrifuge Enrichment Plant, was to expire on August 15, 1989, and would not be extended by DOE. DOE indicated that its decision not to extend the Sales Agreement was "based substantially on the continuing failure of AlChemIE to meet contractual commitments to the DOE, and the clear indication that AlChemIE is in

no position now or in the foreseeable future to meet those commitments." Finally, DOE stated, "[i]n addition to not extending the Sales Agreement with AlChemIE, the DOE will discontinue discussions with AlChemIE on the sale of centrifuge equipment contained in and the lease of the Centrifuge Plant Demonstration Facility located at the Oak Ridge Gaseous Diffusion Plant."

### III

Based on the above, it appears that the licensee failed to fully and accurately disclose to the staff or the Licensing Board its true financial condition during the licensing review period when it was presenting documents and testimony before the Board. The apparently incomplete and inaccurate information which the licensee did provide led the Staff to find that the licensee was financially qualified to modify and construct the facilities in such a way as to assure adequate protection of the common defense and security, and to issue Construction Permits Nos. CPEP-1 and CPEP-2. Had the staff known the licensee's true financial condition, the staff would not have issued construction permits to AlChemIE.

The NRC must be able to rely on its licensees to provide complete and accurate information. Section 50.9(a) of 10 CFR Part 50 specifies that information provided to the Commission shall be complete and accurate in all material respects. Section 186 of the Act provides for revocation of any license for any material false statement in the application or upon obtaining other information which would warrant the Commission to refuse to grant a license on an original application. The licensee's disregard of the Commission's need for complete and accurate information in this instance cannot and will not be tolerated.

Furthermore, the issuance of the construction permits to AlChemIE was based upon the licensee taking possession of the classified gas centrifuge equipment under the terms of the Sales Agreement. AlChemIE has failed to take possession of the equipment and, based upon DOE's decision not to extend the said Sales Agreement, has no further opportunity to take possession. Without possession of the gas centrifuge machines, the projected activities for which AlChemIE sought licenses cannot occur. Thus, there is no longer any purpose for Construction Permits CPEP-1 and CPEP-2.

For all the above reasons and because I find that I lack the requisite reasonable assurance that the licensee can proceed with operations under Construction Permits Nos. CPEP-1 and CPEP-2 in compliance with the Commission's regulations and in such a way that there will be adequate protection of the common defense and security, I have determined that Construction Permits Nos. CPEP-1 and CPEP-2 should be modified to require notice to the Commission prior to licensee's taking possession of classified equipment. Furthermore, pursuant to 10 CFR §2.201(c) and 2.204, I find that the public interest requires that this Order Modifying Licenses be immediately effective and that no prior notice is required.

## IV

Accordingly, pursuant to sections 103, 161b, 161c, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR §2.204 and 10 CFR Part 50, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT CONSTRUCTION PERMITS NOS. CPEP-1 AND CPEP-2 ARE MODIFIED AS FOLLOWS:

As Condition III.12 in CPEP-1 and as Condition III.11 in CPEP-2 is added the following:

Licensee shall notify in writing the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 and the Regional Administrator, NRC Region II, 101 Marietta Street, NW, Suite 2900, Atlanta, GA 30323, at least 30 days before taking possession of any classified equipment.

## V

IT IS FURTHER ORDERED THAT LICENSEE SHOW CAUSE WHY CONSTRUCTION PERMITS NOS. CPEP-1 AND CPEP-2 SHOULD NOT BE REVOKED. Pursuant to 10 CFR 2.202(b), the licensee may show cause why its licenses should not have been modified and why its licenses should not be revoked, by filing a written answer under oath or affirmation within 20 days after the date of issuance of this Order, setting forth the matters of fact and law on which the licensee relies. The licensee may answer this Order, as provided in 10 CFR 2.202(d), by consenting to the provisions specified in Section IV above.

Pursuant to 10 CFR 2.202(b), the licensee may, in its answer filed under Section V, request a hearing. The licensee or any other person adversely affected by this Order may request a hearing within 20 days of its issuance. Any answer to this Order or any request for hearing shall be submitted to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region II, 101 Marietta Street, NW, Suite 2900, Atlanta, GA 30323. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d). Upon the licensee's consent to the provisions set forth in Section IV of this Order, or upon failure of the licensee to file and answer within the specified time, and in the absence of any other request for a hearing, the provisions specified in Section IV above shall be final without further Order or proceedings. AN ANSWER UNDER SECTION V OR A REQUEST FOR HEARING UNDER SECTION VI OF THIS ORDER SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER. Upon the failure of the licensee to file an answer within the specified time, and in the absence of any other request for a hearing, Construction Permits CPEP-1 and CPEP-2 are revoked and this action shall be final without further Order or proceeding.

If a hearing is requested by the licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

FOR THE NUCLEAR REGULATORY COMMISSION

(Signed) Hugh L. Thompson, Jr.

Hugh L. Thompson, Jr.  
Deputy Executive Director for  
Nuclear Materials Safety, Safeguards,  
and Operations Support

Dated at Rockville, Maryland  
this 12th day of August, 1989