

SAFETY EVALUATION REPORT
INDIRECT TRANSFER OF CONTROL FOR BYPRODUCT MATERIALS LICENSE
NUMBER 07-20696-01, BASF COLORS AND EFFECTS USA, LLC

DATE: December 9, 2021

DOCKET NO.: 030-20734

LICENSE NO.: 07-20696-01

LICENSEE: BASF Colors and Effects USA, LLC
205 South James Street
Newport, DE 19804

TECHNICAL REVIEWER: Steven Courtemanche

SUMMARY AND CONCLUSIONS

BASF Colors and Effects USA, LLC (BASF) is authorized by NRC Materials License No. 07-20696-01, for the possession and use of byproduct material in the performance of level and density measurements with fixed gauges at its facilities located at 205 South James Street, Newport, DE under Title 10 Code of Federal Regulations (10 CFR) Part 30. The U.S. Nuclear Regulatory Commission (NRC) staff reviewed a December 8, 2020 request for an indirect transfer of control submitted by BASF supplemented by correspondence dated March 26, 2021; March 30, 2021; and June 9, 2021. The correspondence requesting consent for the indirect transfer of control is available in NRC's Agencywide Documents Access and Management System (ADAMS) at the following accession numbers: Letter dated December 8, 2020 (ML21004A139), Letter dated March 26, 2021 (ML21096A099), Letter dated March 30, 2021 (ML21096A111), and E-Mail dated June 9, 2021 (ML21160A220).

This request was for post-hoc approval of an indirect license transfer that occurred in July 2021 without prior written consent of the Commission. The NRC conducted an on-site pre-licensing visit of the facilities at 295 South James Street, Newport, DE on August 2, 2021, no issues regarding radiation safety or regulatory requirements were identified.

Because the license was issued under 10 CFR Part 30, "Rules of General Applicability to Domestic Licensing of Byproduct Material," the NRC must find that the transfer is in accordance with the provisions of the Atomic Energy Act of 1954, as amended (the Act), and, if so, must give its consent in writing prior to the transfer, in accordance with Section 184 of the Act and 10 CFR 30.34(b). The NRC staff finds that the information submitted by BASF sufficiently describes and documents the transaction and commitments of BASF Corporation, the current parent company, and DIC Corporation.

As required by 10 CFR 30.34(b) and the Act, NRC staff has reviewed the application and finds that indirect transfer of control is in accordance with Act. The staff finds that, after the indirect

transfer of control, BASF will be qualified to use byproduct material for the purpose requested, and will continue to have the equipment, facilities, and procedures needed to protect public health and safety, and to promote the common defense and security.

REGULATORY FRAMEWORK

Section 184 of the Atomic Energy Act of 1954, as amended (the Act), prohibits the transfer of control of any license unless the Commission finds that transfer is in accordance with the Act and consents to the transfer in writing.

BASF holds NRC Materials License No. 07-20696-01, which was issued under 10 CFR Part 30. The NRC must find that the indirect transfer is in accordance with the provisions of the Act and, if so, give its consent in writing prior to the transfer, in accordance with Section 184 of the Act and 10 CFR 30.34(b). Additionally, the NRC staff reviewed the indirect transfer of control request using the guidance in NUREG-1556, Volume 15, Revision 1, "Consolidated Guidance About Materials Licenses – Guidance About Changes of Control and About Bankruptcy Involving Byproduct, Source, or Special Nuclear Material Licenses," dated June 2016.

10 CFR 30.34(b) states:

- 1) No license issued or granted pursuant to the regulations in this part and parts 31 through 36 and 39 nor any right under a license shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the Act and shall give its consent in writing.
- 2) An application for transfer of the license must include:
 - i) The identity, technical, and financial qualifications of the proposed transferee; and
 - ii) Financial assurance for decommissioning information required by 10 CFR 30.35.

DESCRIPTION OF TRANSACTION

The indirect transfer of control is described in ADAMS at Accession Numbers ML21004A139, ML21096A099, and ML21096A111. On July 1, 2021, BASF Corporation sold 100 percent of its interest in BASF Colors and Effects USA, LLC, which includes NRC License No. 07-20696-01 for the Newport, DE facility, to Sun Chemical Corporation, a subsidiary of DIC Corporation. After the sale, the BASF Colors and Effects USA, LLC legal entity will remain under the control of Sun Chemical Corporation and the Newport facility's parent company will be DIC Corporation. The NRC staff finds that the request for consent adequately provides a complete and clear description of the transaction and is consistent with the guidance provided in Appendix E of NUREG-1556, Volume 15, Revision 1. The sufficiency of the description is described below.

SAFETY AND SECURITY REVIEW

According to data obtained from the NRC's Web-Based Licensing System (WBL), NRC License No. 07-20696-01 was first issued on May 9, 1984. The issuance of the license was, in part, the result of the acquisition on April 12, 1984, of the facility by Ciba-Geigy Corporation from E. I. duPont de Nemours & Company, Inc. (Dupont) where the facility was part of Dupont's NRC license which covered more than one facility. On December 31, 1996, Ciba-Geigy Corporation transferred the operation of the facility to Ciba Specialty Chemicals Corporation. At the time of the transfer, Ciba Specialty Chemicals Corporation was an affiliate of Ciba-Geigy Corporation. Ciba Specialty Chemicals Corporation became an independent company in March of 1997. There were no changes in the facility or personnel. The NRC approved the indirect transfer of control on December 30, 1996, from Ciba-Geigy Corporation to Ciba Specialty Chemicals Corporation. On April 1, 2010, BASF Corporation, the parent company of Ciba Specialty Chemicals Corporation, took over all the assets and liabilities of the licensee. The NRC approved the indirect transfer of control on March 30, 2010, from Ciba Specialty Chemicals Corporation to BASF Corporation. On July 1, 2016, BASF Colors and Effects USA, LLC, the licensee, underwent a reorganization and a name change while keeping BASF Corporation as the parent company. The NRC approved the reorganization on July 25, 2016.

Since the issuance of the license on May 9, 1984, one violation of NRC requirements was issued: April 26, 2007, NRC Inspection No. 03020734/2007-001 – Failure to periodically (at least annually) review the radiation protection program content and implementation. The NRC inspection on January 18, 2012, examined the licensee's corrective and preventive actions, determined that they were adequate, and closed the finding.

Additionally, as described in the initial request, DIC Corporation commits that it:

- A. will not change the radiation safety officer listed on the NRC license;
- B. will not change the personnel involved in licensed activities;
- C. will not change the location, facilities, and equipment authorized in the NRC license;
- D. will not change the radiation safety program authorized in the NRC license; and
- E. will keep regulatory required surveillance records and decommissioning records, if applicable.

Based on these commitments, the NRC finds that the licensee's request adequately documents the constraints, license conditions, requirements, representations, and commitments made by BASF Corporation, Sun Chemical Corporation, and BASF Colors and Effects USA, LLC and is consistent with 10 CFR 30.34(b) and Chapter 5 and Appendix E of NUREG-1556, Volume 15, Revision 1.

Pursuant to the asset sale agreement described in NRC ADAMS Accession Numbers ML21004A139, ML21096A099, and ML21096A111, BASF Corporation sold 100 percent of its

interest in BASF Colors and Effects USA, LLC to Sun Chemical Corporation, a subsidiary of DIC Corporation, which includes NRC License No. 07-20696-01 on July 1, 2021. The NRC staff performed a pre-licensing visit on August 2, 2021. Because neither Sun Chemical, DIC, nor another subsidiary of DIC possesses an active NRC or Agreement State license, the pre-licensing visit was used to obtain reasonable assurance that the licensed material will be used for its intended purpose and not for malevolent use. The pre-licensing visit determined that BASF Colors and Effects USA, LLC continues to have an active and effective radiation safety program under Sun Chemical, personnel responsible for the use of the licensed material were properly trained and knowledgeable about the licensee's Operating and Emergency Procedures, and the licensed material was being used for the purpose for which it was intended.

In the request for an indirect transfer of ownership, BASF Colors and Effects USA, LLC provided information regarding its current decommissioning funding plans. Based on the information provided, BASF Colors and Effects USA, LLC, is not required to have financial assurance for decommissioning because of the types and amount of material authorized in License No. 07-20696-01. The NRC staff finds that the licensee's request adequately provided information for financial assurance for decommissioning, consistent with 10 CFR 30.34(b) and Chapter 5 and Appendix E of NUREG-1556, Vol. 15, Rev. 1.

ENVIRONMENTAL REVIEW

An environmental assessment for this action is not required because the approval of the described indirect transfer of control is categorically excluded under 10 CFR 51.22(c)(21).

PUBLIC COMMENT PERIOD

The request for an indirect transfer of control was posted for public comment on the NRC website for 30 days in accordance with 10 CFR Part 2, Subpart M as described in NRC's Regulatory Issue Summary 2014-08, Revision 1. No comments were received from members of the public.

CONCLUSION

The staff has reviewed the request for an indirect transfer of control of NRC Materials License No. 07-20696-01 and finds that the indirect transfer of control is in accordance with Section 184 of the Act and 10 CFR 30.34(b) and consents to the indirect transfer. Consistent with the guidance in NUREG-1556, Vol. 15, Revision 1, the submitted information sufficiently describes the transaction; documents the understanding of the license and commitments of the transferee; demonstrates that personnel have the experience and training to properly implement and maintain the license and that the licensee will maintain the existing records. The submitted information also demonstrates that the transferee will abide by all existing commitments to the license.

Therefore, the NRC staff concludes that the proposed indirect transfer of control would not alter the previous findings, made under 10 CFR Part 30, that licensed operations will not be inimical to the common defense and security, or to the health and safety of the public.