



Department of Energy

Washington, DC 20585

November 28, 2012

Mr. Peter J. Miner
Director
Regulatory and Quality Assurance
American Centrifuge Operating, LLC
6903 Rockledge Drive
Bethesda, Maryland 20817-1818

Dear Mr. Miner:

In a January 5, 2012, letter, American Centrifuge Operating, LLC (ACO) requested an exemption from the requirements contained in 10 C.F.R. 835, *Occupational Radiation Protection* (Part 835), in connection with ACO's proposed activities at the American Centrifuge Plant (ACP) on the Department of Energy's (DOE) site in Portsmouth, Ohio. In that letter, ACO states that it will become the sublease holder and Nuclear Regulatory Commission (NRC) licensee for facilities which are currently leased from DOE by the United States Enrichment Corporation under the December 7, 2006, Gas Centrifuge Enrichment Plant (GCEP) Lease Agreement (Lease). USEC Inc. is the current sublessee under the Lease and the NRC licensee under 10 C.F.R. 70, *Domestic Licensing of Special Nuclear Material* (Part 70), for the ACP.¹ ACO states that it expects to continue the occupational radiation protection practices, policies, and programs that USEC Inc. currently implements pursuant to its NRC license. Based on ACO's letter and consultation with the DOE Office of the General Counsel, we do not find a basis for granting ACO an exemption from Part 835 for its activities at ACP at this time.

In its letter, ACO requests an exemption from those same requirements contained in Part 835 as has been granted previously to USEC Inc. While DOE has granted such exemptions to USEC Inc. in the past, the most recent exemption issued on June 15, 2009, was based on the understanding that USEC Inc. would perform radiological activities for DOE in connection with the removal of equipment and material from the GCEP lease facilities. These activities involved the removal of equipment that had been contaminated with low levels of radioactive materials (legacy contamination) prior to execution of the Lease Agreement; the legacy contamination was not regulated by NRC. USEC Inc. needed to either comply with applicable Part 835 requirements or receive an exemption from Part 835 in order to conduct such work for DOE. DOE granted the exemption,

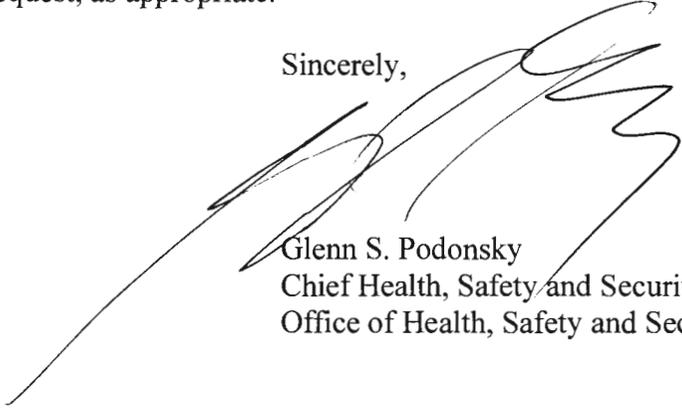
¹ There are two NRC licenses for the ACP, one for development of the lead cascade and one for commercial activities. ACO will assume USEC Inc.'s sublessee role only as to the commercial activities.



permitting USEC Inc. to comply with the NRC requirements in lieu of compliance with the DOE requirements. It is our understanding, however, that removal of the equipment and material from the GCEP lease property was completed and no additional equipment and material outside of NRC's jurisdiction have been identified for removal. Further, we are not aware of any activities that fall outside of the scope of the NRC commercial license that ACO will perform at the site. Thus, the basis for the previous Part 835 exemption for USEC Inc. is no longer applicable.

As ACO has not identified in its letter any particular ACO activity at ACP that would fall outside of regulation under its Part 70 License and which would be subject to DOE's Part 835 regulatory authority, there is no need or basis for an exemption to Part 835 requirements at this time. If ACO believes that circumstances exist justifying or necessitating an exemption at this time, it can provide DOE with additional information setting forth with specificity why this determination is erroneous. Further, if the circumstances noted above that have resulted in this denial of the request for an exemption change, ACO is welcome to submit a new request, as appropriate.

Sincerely,



Glenn S. Podonsky
Chief Health, Safety and Security Officer
Office of Health, Safety and Security

January 5, 2012
AET 12-0003

Mr. J. T. Howell
Deputy Assistant Manager for Nuclear Fuel Supply
U.S. Department of Energy
200 Administration Road
P.O. Box 2001
Oak Ridge, TN 37831

10 Code of Federal Regulations Parts 830 and 835 Exemption Request for American Centrifuge Operating, LLC

Dear Mr. Howell:

Purpose

This letter request exemption from the requirements in 10 *Code of Federal Regulations* (CFR) Parts 830 and 835 for American Centrifuge Operating, LLC (ACO).

Background

The U.S. Department of Energy (DOE) issued an extension of the Exemption Decision for 10 CFR Part 830 on June 30, 2009 (Reference 1), and 10 CFR Part 835 on June 15, 2009 (Reference 2), to USEC Inc. (USEC) for requirements contained in 10 CFR Part 830, Subpart A and 10 CFR Part 835, respectively. The Exemption Decisions will be in effect until June 30, 2014. Section 6.3 of Appendix 1 to the Lease Agreement between the DOE and the United States Enrichment Corporation for the Gas Centrifuge Enrichment Plant (GCEP lease) dated December 7, 2006 specifies that DOE will continue to exercise regulatory oversight for activities in the Gas Centrifuge Enrichment Plant (GCEP) leased premises that are not regulated by the U.S. Nuclear Regulatory Commission (NRC). The five year GCEP lease renewal is approved through June 30, 2014, (Reference 3).

As we have discussed with your staff on several occasions, USEC plans a project reorganization, where a new subsidiary of USEC, ACO, will become the sub-lease holder and NRC license holder for the GCEP facilities following completion of the project reorganization. In a letter dated January 31, 2011 (Reference 4), USEC requested that DOE expand the 10 CFR Parts 830 and 835 Exemption Decisions' applicability, referenced in the GCEP Regulatory Oversight Agreement (ROA) Exhibit M to the GCEP Lease, to ACO. Subsequently, following extensive review, the DOE determined (Reference 5) that the proper approach would be for ACO, as a newly-formed subsidiary company, to submit a request for exemption to 10 CFR Parts 830 and 835 in accordance with 10 CFR Part 820 Subpart E, *Exemption Relief* for DOE's review. Accordingly, ACO seeks exemption from those same requirements contained in 10 CFR 830 Subpart A and 835 as has been granted previously to USEC.

American Centrifuge Operating, LLC
6903 Rockledge Drive, Bethesda, MD 20817-1818
Telephone 301-564-3200 Fax 301-564-3201

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Discussion

The plans, programs, and procedures that will be used by ACO in performing its activities follow the guidance contained within American Society of Mechanical Engineers NQA-1-1994, Quality Assurance Requirements for Nuclear Facility Applications, and 10 CFR 70.64(a)(1) for quality assurance and comply with 10 CFR Part 20 for radiation protection. These functional areas are described in the License Application and supporting documents for the Lead Cascade Facility. They have been reviewed and approved by the NRC under 10 CFR Part 70 and the DOE under the ROA as protective of public health and safety, the environment, and workers. The functional areas of the American Centrifuge Plant utilize the same programs and procedures as the Lead Cascade. In addition, the conditions for the 10 CFR Parts 830 and 835 Exemption Decisions', as they relate to activities covered by the GCEP ROA, have been incorporated into USEC plans, programs, and procedures, which will be utilized by ACO.

We believe that the requested exemption is permitted and appropriate under the criteria of 10 CFR Part 820, Subpart E; namely, it (a) Would be authorized by law; (b) Would not present an undue risk to public health and safety, the environment, or facility workers; (c) Would be consistent with the safe operation of a DOE nuclear facility; and (d) Involves special circumstances. In particular, the activities that would be performed under DOE regulatory oversight will be conducted in accordance with the requirements of the ROA for the GCEP leased premises. Moreover, the implementation of quality and radiation safety programs meeting the NRC's requirements pursuant to 10 CFR Parts 20 and 70 provide adequate protection to the public, the environment, and facility workers. No measurable safety improvements would be gained by expending resources to demonstrate full compliance with the specific provisions of the comparable requirements in 10 CFR 830 and 835.

Action

We request that the DOE review and approve our exemption request at the Department's earliest convenience to support implementation of ACO by February 9, 2012 and that the exemptions be effective through the end of the current lease renewal.

Contact

If you have any questions, please contact me at (301) 564-3470 or Dennis J. Scott at (301) 564-3352.

Sincerely,



Peter J. Miner
Director, Regulatory and Quality Assurance

Mr. J. T. Howell
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cc: R. DeVault, DOE-ORO

References:

1. Letter from R. Shane Johnson (DOE) to Russ Starkey (USEC) regarding Extension of 10 CFR 830 Exemption, dated June 30, 2009
2. Letter from Glenn S. Podonsky, (DOE) to Russ Starkey (USEC) regarding Extension of 10 CFR 835 Exemption, dated June 15, 2009
3. Letter from Larry W. Clark (DOE), to Russ Starkey, Jr (USEC) regarding Renewal of Appendix 1 Lease Agreement between the U.S. Department of Energy (DOE) and the United States Enrichment Corporation (USEC) for the Gas Centrifuge Enrichment Plant ("GCEP Lease"), dated, February 25, 2009
4. USEC letter AET 11-0011 from Peter J. Miner (USEC) to Susan M. Cange (DOE) regarding Expansion of 10 CFR Parts 830 and 835 Exemptions to Include American Centrifuge Operating, LLC, dated January 31, 2011
5. Letter from J. T. Howell (DOE) to Peter J. Miner (USEC) regarding Expansion of 10 CFR Parts 830 and 835 Exemptions to Include American Centrifuge Operating, LLC, dated June 27, 2011