



Department of Energy

Washington, DC 20585

March 15, 2011

Mr. Woodrow B. "Jamie" Jameson
Program Director
Fluor B&W Portsmouth, LLC
1862 Shyville Road, Suite 216
Piketon, Ohio 45661

Dear Mr. Jameson:

This is in response to your December 17, 2010, request for exemption from title 10, Code of Federal Regulations, part 835, *Occupational Radiation Protection*.

On September 13, 2010, the Department of Energy (DOE) issued the United States Enrichment Corporation (USEC) an Exemption Decision, which allowed USEC to perform work at the Portsmouth Gaseous Diffusion Plant (PORTS GDP) after the termination of the certification of the plant by the Nuclear Regulatory Commission. Under the Exemption Decision, specified areas were regulated by DOE under a Regulatory Oversight Agreement. As part of the process of transitioning the PORTS GDP primary uranium enrichment processing facilities from the current shutdown condition to Decontamination and Decommissioning (D&D), DOE Portsmouth/Paducah Project Office (DOE PPPO) requested that USEC complete specified tasks. These tasks included performing transition, surveillance and maintenance, and hazard reduction activities.

USEC is to perform transition, surveillance and maintenance, and hazard reduction activities in these areas until the D&D contractor takes over operation of these facilities. It is estimated that effective March 28, 2011, your company, Fluor-B&W Portsmouth, LLC (FBP), will take over operation of these facilities as the D&D contractor.

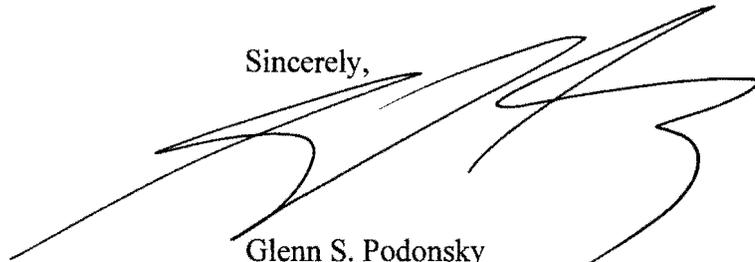
FBP is requesting an Exemption Decision for PORTS GDP activities, which will remain in effect from conclusion of the transition period for contract DE-AC30-10CC40017 until FBP implements a DOE-approved radiation protection program for PORTS GDP activities. DOE PPPO and the DOE Office of Environmental Management concur with the exemption request.



On November 30, 2010, DOE conducted an assessment to evaluate the adequacy of regulatory controls for all declassified GDP facilities, areas, and associated radiation protection activities. The assessment concluded that the regulatory controls for the PORTS GDP radiation protection activities are adequate as indicated in the Technical Review (enclosure 1). Based on this information, we are issuing FBP a temporary Exemption Decision (enclosure 2).

Please contact Dr. Patricia R. Worthington, Director, Office of Health and Safety, at (301) 903-5926 with any questions related to our Technical Review or Exemption Decision.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. Podonsky', written over a large, stylized, scribbled-out area.

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

Enclosures

cc w/enclosures:

Randall M. Devault, DOE/OR
Paula S. Rhea, DOE/PPPO
Anthony L. Takacs, DOE/PPPO
M. Judson Lilly, DOE/PPPO
William E. Murphie, DOE/PPPO
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Claude E. Magnuson, DOE/EM-51
Peter B. Lyons, DOE/NE-1
Docketing Clerk, DOE/HS-40
Price Anderson Amendments Act Coordinator
Radiological Control Coordinating Committee

Technical Review

**Fluor-B&W Portsmouth, LLC
Title 10, Code of Federal Regulations, Part 835
Exemption Request**

On September 13, 2010, the Department of Energy (DOE) responded to a request for a temporary exemption from the provisions contained in title 10, Code of Federal Regulations, part 835 (10 C.F.R. 835), *Occupational Radiation Protection*. The response provided for a temporary Exemption Decision for the United States Enrichment Corporation (USEC) workers to perform radiological activities associated with the Portsmouth Gaseous Diffusion Plant (PORTS GDP) site following termination of its Nuclear Regulatory Commission (NRC) Certificate. The temporary Exemption Decision will be valid until the decontamination and decommissioning (D&D) contractor takes over operation of radiological activities at PORTS GDP. The assurance of radiological protection during conduct of nuclear activities under DOE regulation in these areas continues to be provided by USEC compliance with, and DOE enforcement of, the DOE-approved USEC radiation protection program.

It is estimated that effective March 28, 2011, Fluor-B&W Portsmouth, LLC (FBP), will assume the role of D&D contractor at PORTS GDP. On December 17, 2010, FBP submitted an exemption request asking to continue implementing the USEC NRC-based radiation protection program until they develop and implement a DOE compliant program. Until FBP implements a DOE-approved FBP radiation protection program, the assurance of radiological protection during conduct of nuclear activities under DOE regulation will continue to be provided by FBP after contract transition through compliance with, and DOE enforcement of, the DOE-approved USEC radiation protection program. As such, Price Anderson Amendments Act indemnification will apply.

As discussed below, temporary relief from the provisions of 10 C.F.R. 835 is justified. The DOE Office of Worker Safety and Health Policy recommends providing temporary exemption to 10 C.F.R. 835, with conditions, as specifically discussed in this technical review.

Discussion of Exemption Request

General

In particular, FBP requested a temporary exemption from requirements contained in 10 C.F.R. 835 on the condition that FBP continues to follow USEC plans, programs, and procedures currently implemented at PORTS GDP in compliance with NRC requirements in 10 C.F.R. 20, *Standards for Protection Against Radiation*. FBP will develop a transition plan for converting the 10 C.F.R. 20 based program over to a 10 C.F.R. 835 compliant program.

Requirements from which Exemption is Sought

FBP requests temporary exemption from all parts of 10 C.F.R. 835.

Results of Analysis

Discussion

On September 13, 2010, DOE issued USEC an Exemption Decision, which allowed USEC to continue performing work at GDP after expiration of the NRC certification of the plant; i.e., after September 30, 2010.

After September 30, 2010, USEC performed activities in USEC-leased spaces that no longer were covered by an NRC Certificate of Compliance. USEC requested and was granted an Exemption Decision for GDP activities, which remain in effect until the D&D contractor is hired.

It is estimated that effective March 28, 2011, FBP will assume the role of D&D contractor at PORTS GDP. On December 17, 2010, FBP submitted an exemption request asking to continue implementing the USEC NRC-based radiation protection program until it develops and implements a DOE compliant program.

FBP's exemption request was very similar to USEC's and identified the same areas where it would be overly burdensome to transition from following NRC (10 C.F.R. 20, et al.) to DOE requirements (10 C.F.R. 835). Accordingly, the technical review for this exemption request is very similar to the USEC request. The technical review for the USEC request may be found at: <http://www.hss.doe.gov/HealthSafety/WSHP/radiation/exempt/2010usec.pdf>.

The exemption request discusses the burden that would result in needing to rewrite the radiation protection procedures and programs to meet 10 C.F.R. 835 requirements immediately after they begin work as the D&D contractor. The request states that the burden would not be justified and the situation justifies temporary relief from application of the requirements while FBP is taking good faith action to achieve compliance.

The Office of Worker Safety and Health Policy agrees with this position.

Concurrence

Temporary relief from the requirements in 10 C.F.R. 835, with conditions, should be provided. This is in recognition of the fact that FBP will continue to adhere to a comparable set of regulations from NRC and the State of Ohio for occupational radiation protection while making good faith efforts.

Conclusion

The above exemption meets the criteria for granting a temporary exemption under 10 C.F.R. 820.62:

1. Granting this exemption would be authorized by law.
2. This exemption would not present an undue risk to public health and safety, the environment, or facility workers.
3. The exemption would be consistent with the safe operation of a DOE nuclear facility.
4. In granting this exemption pursuant to §820.62(d)(2), DOE recognizes that special circumstances exist that justify temporary exemption because application of the requirements in the particular circumstances would not serve, or is not necessary, to achieve its underlying purpose or would result in resource impacts that are not justified by the safety improvements.

Based on the above, the Office of Worker Safety and Health Policy concurs with the request for temporary exemption, with conditions.

1. FBP should operate PORTS GDP in accordance with the radiation protection requirements in:
 - 10 C.F.R. 19, *Notices, Instructions and Report to Workers: Inspection and Investigations*;
 - 10 C.F.R. 20, *Standards for Protection against Radiation*;
 - 10 C.F.R. 34, *Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations*;
 - 10 C.F.R. 76, *Certification of Gaseous Diffusion Plants – Subpart D–Safety*;
 - 10 C.F.R. 30, 32, 36, 39, and 40 for the control, inventory, and leak testing of sealed radioactive sources used at GDP; and
 - State of Ohio, Department of Health, licensing requirements for radiation-producing devices.
2. FBP should substitute DOE for NRC when NRC regulations require notification, approvals, submission of information and documents, and reporting to NRC.
3. FBP should develop a transition plan, approved by DOE, listing dates when specified radiation protection program transitions are to occur. If FBP has not fully transitioned to a DOE-approved radiation protection program when additional facilities are to be transitioned from USEC to FBP authority, the transition plan should be updated, with DOE approval, to expand to these other areas.

4. Recognizing that scheduling Department of Energy Laboratory Accreditation (DOELAP) (both external dosimetry and radiobioassay) site visits and performance testing are outside the control of FBP, the transition plan need only address the schedule for submittal of the DOELAP applications.
5. During the transition period FBP should be allowed to use radiological postings compliant with either 10 C.F.R. 20, subpart J, or 10 C.F.R. 835, subpart G.

This temporary exemption should become effective when FBP initiates its contracted D&D activities and shall remain in effect until completion of the transition plan discussed above.

The Office of Worker Safety and Health Policy also recommends that the Exemption Decision state that, based on this and subsequent evaluation, DOE reserves the right to modify the conditions of this Exemption Decision.

EXEMPTION DECISION

Pursuant to title 10, Code of Federal Regulations, part 820.61 (10 C.F.R. 820.61), the Chief Health, Safety and Security Officer is authorized to exercise authority on behalf of the U.S. Department of Energy (DOE) with respect to requests for exemptions from nuclear safety rules relating to radiological protection of workers, the public, and the environment.

Under the terms set forth in 10 C.F.R. 820.61, on September 13, 2010, DOE responded to a request for a temporary exemption from the provisions contained in 10 C.F.R. 835. The response provided for a temporary Exemption Decision for the United States Enrichment Corporation (USEC) workers to perform radiological activities associated with the Portsmouth Gaseous Diffusion Plant (PORTS GDP) site following termination of its Nuclear Regulatory Commission (NRC) Certificate. The temporary Exemption Decision will be valid until the decontamination and decommissioning (D&D) contractor takes over operation of radiological activities at PORTS GDP. The assurance of radiological protection during conduct of nuclear activities under DOE regulation in these areas continues to be provided by USEC compliance with, and DOE enforcement of, the DOE-approved USEC radiation protection program.

It is estimated that effective March 28, 2011, Fluor-B&W Portsmouth, LLC (FBP), will assume the role of D&D contractor at PORTS GDP. On December 17, 2010, FBP submitted an exemption request asking to continue implementing the USEC NRC-based radiation protection program until they develop and implement a DOE compliant program. Until FBP implements a DOE-approved FBP radiation protection program, the assurance of radiological protection during conduct of nuclear activities under DOE regulation will continue to be provided by FBP after contract transition through compliance with, and DOE enforcement of, the DOE-approved USEC radiation protection program. As such, Price Anderson Amendments Act indemnification will apply.

I find that the exemption criteria of 10 C.F.R. 820.62 have been met. Also, the requested exemption is not prohibited by law; will not present an undue risk to the public health and safety, the environment, or facility workers; and is consistent with the safe operation of a DOE nuclear facility. I have determined that granting a temporary exemption meets the special circumstances that constitute a sufficient basis upon which to grant this Exemption Decision with conditions. Specifically, the situation justifies temporary relief from application of the requirements while the contractor is taking good faith action to achieve compliance.

On the basis of the foregoing, I hereby am issuing the Exemption Decision for FBP temporary exemption from 10 C.F.R. 835. The Exemption Decision applies to radiological activities at PORTS GDP. The following conditions apply:

Conditions:

1. FBP shall operate PORTS GDP in accordance with the radiation protection requirements in:
 - 10 C.F.R. 19, *Notices, Instructions and Report to Workers: Inspection and Investigations*;
 - 10 C.F.R. 20, *Standards for Protection Against Radiation*;
 - 10 C.F.R. 34, *Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations*;
 - 10 C.F.R. 76, *Certification of Gaseous Diffusion Plants – Subpart D – Safety*;
 - 10 C.F.R. 30, 32, 36, 39, and 40 for the control, inventory, and leak testing of sealed radioactive sources used at GDP; and
 - State of Ohio, Department of Health, licensing requirements for radiation-producing devices.
2. FBP shall substitute DOE for NRC when NRC regulations require notification, approvals, submission of information and documents, and reporting to NRC.
3. FBP shall develop a transition plan, approved by the DOE Portsmouth/Paducah Project Office (DOE PPPO), listing dates when specified radiation protection program transitions are to occur. If FBP has not fully transitioned to a DOE-approved radiation protection program when additional facilities are to be transitioned from USEC to FBP authority, the transition plan shall be updated, with DOE PPPO approval, to expand to these other areas.
4. Recognizing that scheduling Department of Energy Laboratory Accreditation (DOELAP) (both external dosimetry and radiobioassay) site visits and performance testing are outside the control of FBP, the transition plan need only address the schedule for submittal of the DOELAP applications.
5. During the transition period, FBP may use radiological postings compliant with either 10 C.F.R. 20, subpart J, or 10 C.F.R. 835, subpart G.

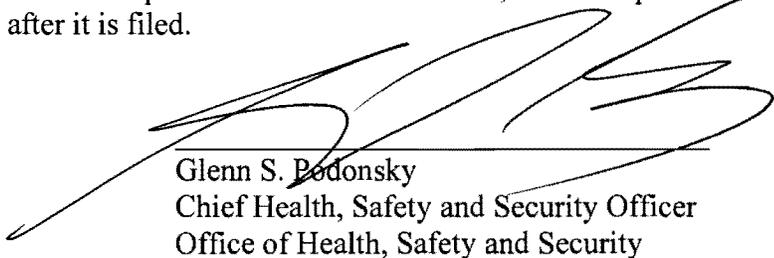
This temporary exemption shall become effective when FBP initiates its contracted D&D activities and shall remain in effect until completion of the transition plan discussed above.

As always, based on this and subsequent evaluations, DOE reserves the right to modify the conditions of this Exemption Decision upon notice to FBP. As such, DOE reserves the right to perform periodic inspections of activities covered by the scope of this Exemption Decision.

Pursuant to 10 C.F.R. 20.66, FBP has 15 days from the date of the filing of this Decision to file a Request to Review with the Secretary of Energy. The Request to Review shall state specifically the respects in which the exemption determination is claimed to be erroneous, the grounds of the request, and the relief requested. If no Request to Review is submitted, the Exemption Decision becomes a Final Order 15 days after it is filed.

03/15/2011

Date



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