

handling, storage, and use of MOX fuel lead assemblies does not create the possibility of a new or different kind of accident.

### III. Margin of Safety Evaluation

The proposed license amendment to allow the use of MOX fuel lead assemblies will not involve a significant reduction in a margin of safety.

There are provisions in the \* \* \* Catawba Technical Specifications that allow a "limited number of lead test assemblies" to be placed in "nonlimiting core regions." These provisions will not change and will apply to the planned use of MOX fuel lead assemblies. The effect of these provisions is to place restrictions on the allowable power distribution limits for a MOX fuel lead assembly.

The core design process assures that the limiting fuel rod in the core, whether LEU or MOX, has adequate nuclear power design limits under normal, transient, and accident conditions. If the core design process reveals unacceptable margin, adjustments are made to restore the needed margin. The operating limits are established in Core Operating Limits Report to assure the design limits are not exceeded, thus assuring that adequate design margins for the fuel are maintained. This iterative design process is used to analyze the core containing MOX fuel lead assemblies to assure that there is no significant reduction in a margin of safety.

Because these lead assemblies will be located in nonlimiting locations *i.e.*, will have margin above that of the limiting assemblies, the results of safety analyses will likewise assure that appropriate margins to safety are maintained during transients and accidents.

On the basis of the information provided by the licensee and developed by the NRC staff, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should

the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Comments on this Notice may also be delivered to the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. A copy of any Comments should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and it is also requested that copies be transmitted either by means of facsimile transmission to 301-415-3725 or by e-mail to [OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov). A copy of any Comments should also be sent to Ms. Lisa F. Vaughn, Legal Department (ECIIX), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201-1006, attorney for the licensee. Documents may be examined, and/or copied for a fee, at the NRC's PDR.

A Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing was published in the **Federal Register** on July 25, 2003 (68 FR 44107). On August 21 and August 25, 2003, respectively, the Nuclear Information and Resource Service and the Blue Ridge Environmental Defense League filed a petition requesting a hearing and seeking to intervene in the license amendment proceeding. Pursuant to a notice issued on September 17, 2003, the Commission established an Atomic Safety and Licensing Board to preside over this matter.

Since a hearing has been requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding

the request for a hearing. The completion of any ongoing hearing may take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

For further details with respect to this action, see the application for amendment dated February 27, 2003, as supplemented by letters dated September 15, September 23, October 1 (two letters), October 3 (two letters), November 3 and 4, December 10, 2003, February 2, 2004, (two letters), March 1, 2004, (two letters), March 9, 2004, (two letters), March 16, 2004 (two letters), March 26, March 31, April 13, April 16, May 13 and June 17, 2004 which are available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, 301-415-4737, or by e-mail to [pdrc@nrc.gov](mailto:pdrc@nrc.gov).

Dated at Rockville, Maryland, this 1st day of July 2004.

For the Nuclear Regulatory Commission.

**Robert E. Martin, Sr.,**

*Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 04-15696 Filed 7-9-04; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

[Docket No. 040-09015]

### Notice of Consideration of Amendment Request to Decommission The Michigan Department of Natural Resources' Tobico Marsh State Game Area Site, Bay County, MI, and Opportunity To Request a Hearing

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of a license amendment request and opportunity to request a hearing; notice of Public Meeting.

**DATES:** Comment must be sent by August 11, 2004. A request for a hearing must be filed by September 10, 2004. Public meeting will be held on July 21, 2004.

**FOR FURTHER INFORMATION CONTACT:** David Nelson, Project Manager, Decommissioning Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone (301) 415-6626; fax (301) 415-5398; or e-mail at [dwn@nrc.gov](mailto:dwn@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment to Source Material License No. SUC-1581, issued to the Michigan Department of Natural Resources (the licensee), to authorize decommissioning of its Tobico Marsh State Game Area Site in Bay County, Michigan, and to allow termination of this license.

On January 30, 2004, the Michigan Department of Natural Resources submitted Revision 1 of the Decommissioning Plan (DP) for the Michigan Department of Natural Resources' Tobico Marsh State Game Area Site, for NRC review, approval, and incorporation, by amendment to license, SUC-1581. An NRC administrative review, documented in a letter to the Michigan Department of Natural Resources, dated April 22, 2004, found the DP acceptable to begin a technical review.

If the NRC approves the DP, the approval will be documented in an amendment to NRC License No. SUC-1581. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment. The license will be terminated if this amendment is approved following completion of decommissioning activities and verification by the NRC in accordance with the license termination rule (Subpart E of 10 CFR Part 20) and the Commission's regulations.

**II. Opportunity To Provide Comments**

In accordance with 10 CFR 20.1405, the NRC is providing notice to individuals in the vicinity of the site that the NRC is in receipt of a DP, and will accept comments concerning this decommissioning proposal and its

associated environmental impacts. Comments with respect to this amendment should be provided in writing within 30 days of this notice and addressed to David Nelson, Project Manager, Mail Stop: T-7F27, Decommissioning Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6626, fax number (301) 415-5398 or e-mail [dwn@nrc.gov](mailto:dwn@nrc.gov).

Because of possible disruptions in the delivery of mail to United States Government offices, it is requested that comments mailed also be transmitted to the Project Manager by means of facsimile transmission or by e-mail. Comments received after 30 days will be considered if practicable to do so, but only those comments received on or before the due date can be assured consideration.

**III. Public Meeting**

A public meeting will be held in Bay County, Michigan, to solicit comments from individuals in the vicinity of the site and answer any questions about NRC's review of the DP for the Michigan Department of Natural Resources' Tobico Marsh State Game Area Site. The public meeting will be held on July 21, 2004, from 7 p.m. to 9:30 p.m. at the Bay County Community Center, 800 John F. Kennedy Drive, Bay City, Michigan, 48708.

**IV. Opportunity To Request a Hearing**

The NRC hereby provides notice that this is a proceeding on an application for a license amendment. In accordance with the general requirements in Subpart C of 10 CFR Part 2, as amended on January 14, 2004 (69 FR 2182), any person whose interest may be affected by this proceeding and who desires to participate as a party must file a written request for a hearing and a specification of the contentions which the person seeks to have litigated in the hearing.

In accordance with 10 CFR 2.302 (a), a request for a hearing must be filed with the Commission either by:

1. First class mail addressed to: Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, Attention: Rulemakings and Adjudications;
2. Courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Attention: Rulemakings and Adjudications Staff between, 7:45 a.m. and 4:15 p.m., Federal workdays;

3. E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, [HEARINGDOCKET@NRC.GOV](mailto:HEARINGDOCKET@NRC.GOV); or

4. By facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C., Attention: Rulemakings and Adjudications Staff, at (301) 415-1101; verification number is (301) 415-1966.

In accordance with 10 CFR 2.302 (b), all documents offered for filing must be accompanied by proof of service on all parties to the proceeding or their attorneys of record as required by law or by rule or order of the Commission, including:

1. The applicant, by delivery to the Michigan Department of Natural Resources, Office of Legal Services, PO Box 30028, Lansing, MI 48909, Attention: Kelli Sobel, and,
2. The NRC staff, by delivery to the Office of the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Hearing requests should also be transmitted to the Office of the General Counsel, either by means of facsimile transmission to (301) 415-3725, or by e-mail to [ogcmailcenter@nrc.gov](mailto:ogcmailcenter@nrc.gov).

The formal requirements for documents are contained in 10 CFR 2.304 (b), (c), (d), and (e), and must be met. However, in accordance with 10 CFR 2.304 (f), a document filed by electronic mail or facsimile transmission need not comply with the formal requirements of 10 CFR 2.304 (b), (c), and (d), if an original and two (2) copies otherwise complying with all of the requirements of 10 CFR 2.304 (b), (c), and (d) are mailed within two (2) days thereafter to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff.

In accordance with 10 CFR 2.309 (b), a request for a hearing must be filed by September 10, 2004.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, the general requirements involving a request for a hearing filed by a person other than an applicant must state:

1. The name, address and telephone number of the requester;
2. The nature of the requester's right under the Act to be made a party to the proceeding;
3. The nature and extent of the requester's property, financial or other interest in the proceeding;

4. The possible effect of any decision or order that may be issued in the proceeding on the requester's interest; and

5. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.309 (b).

In accordance with 10 CFR 2.309 (f)(1), a request for hearing or petitions for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

1. Provide a specific statement of the issue of law or fact to be raised or controverted;

2. Provide a brief explanation of the basis for the contention;

3. Demonstrate that the issue raised in the contention is within the scope of the proceeding;

4. Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceeding;

5. Provide a concise statement of the alleged facts or expert opinions which support the requester's/petitioner's position on the issue and on which the requester/petitioner intends to rely to support its position on the issue; and

6. Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This information must include references to specific portions of the application that the requester/petitioner disputes and the supporting reasons for each dispute, or, if the requester/petitioner believes the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requester's/petitioner's belief.

In addition, in accordance with 10 CFR 2.309(f)(2), contentions must be based on documents or other information available at the time the petition is to be filed, such as the application or other supporting documents filed by the applicant, or otherwise available to the petitioner. Contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer.

Requesters/petitioners should, when possible, consult with each other in preparing contentions and combine similar subject matter concerns into a joint contention, for which one of the co-sponsoring requesters/petitioners is designated the lead representative. Further, in accordance with 10 CFR 2.309(f)(3), any requester/petitioner that wishes to adopt a contention proposed by another requester/petitioner must do so in writing within ten days of the date

the contention is filed, and designate a representative who shall have the authority to act for the requester/petitioner.

In accordance with 10 CFR 2.309(g), a request for hearing and/or petition for leave to intervene may also address the selection of the hearing procedures, taking into account the provisions of 10 CFR 2.310.

#### V. Further Information

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this Notice are: ML040790356 which contains the January 30, 2004 application for license amendment and the DP for the Michigan Department of Natural Resources' Tobico Marsh State Game Area Site; ML041110650 which contains the April 22, 2004 NRC acceptance review letter. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at (800) 397-4209 or (301) 415-4737, or by email to [pdr@nrc.gov](mailto:pdr@nrc.gov). These documents may also be examined, and/or copied for a fee, at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (First Floor), Rockville, MD 20852. The PDR is open from 7:45 a.m. to 4:15 p.m., Monday through Friday, except on Federal holidays.

Dated at Rockville, Maryland, this 2nd day of July 2004.

For the Nuclear Regulatory Commission.

**Claudia M. Craig,**

*Acting Deputy Director, Decommissioning Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards.*

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## NUCLEAR REGULATORY COMMISSION

[Docket No. 040-09022]

### Notice of Consideration of Amendment Request To Decommission the S. C. Holdings (SCA Hartley & Hartley Landfill) Site, Kawkawlin Township, MI and Opportunity To Request a Hearing

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of a license amendment request and opportunity to request a hearing; notice of public meeting.

**DATES:** Comment must be sent by August 11, 2004. A request for a hearing must be filed by September 10, 2004. Public meeting will be held on July 21, 2004.

#### FOR FURTHER INFORMATION CONTACT:

David Nelson, Project Manager, Decommissioning Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone (301) 415-6626; fax (301) 415-5398; or e-mail at [dwn@nrc.gov](mailto:dwn@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment to Source Material License No. SUC-1565, issued to S. C. Holdings (the licensee), to authorize decommissioning of its Hartley & Hartley Landfill Site in Bay County, Michigan, and to allow termination of this license.

On November 26, 2003, S. C. Holdings submitted the Decommissioning Plan (DP) for the Hartley & Hartley Landfill Site for NRC review, approval, and incorporation, by amendment to license, SUC-1565. An NRC administrative review, documented in a letter dated March 1, 2004, found the DP acceptable to begin a technical review.

If the NRC approves the DP, the approval will be documented in an amendment to NRC License No. SUC-1565. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment. The license will be terminated if this amendment is approved following completion of decommissioning activities and verification by the NRC in accordance with the license termination rule