

Licensee's final status survey results were below these DCGLs, and are thus acceptable. Based on its review, the staff has determined that the affected environment and any environmental impacts associated with the proposed action are bounded by the impacts evaluated by the "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities" (NUREG-1496) Volumes 1-3 (ML042310492, ML042320379, and ML042330385). Further, no incidents were recorded involving spills or releases of radioactive material at the Facility. Accordingly, there were no significant environmental impacts from the use of radioactive material at the Facility. The NRC staff reviewed the docket file records and the final status survey report to identify any non-radiological hazards that may have impacted the environment surrounding the Facility. No such hazards or impacts to the environment were identified. The NRC has found no other radiological or non-radiological activities in the area that could result in cumulative environmental impacts.

The NRC staff finds that the proposed release of the Facility described above for unrestricted use is in compliance with 10 CFR 20.1402. Based on its review, the staff considered the impact of the residual radioactivity in Room 105 and concluded that the proposed action will not have a significant effect on the quality of the human environment.

#### *Environmental Impacts of the Alternatives to the Proposed Action*

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would leave things as they are by simply denying the amendment request. This no-action alternative is not feasible because it conflicts with 10 CFR 40.42(d) and 70.38(d), requiring that decommissioning of source and special nuclear material facilities be completed and approved by the NRC after licensed activities cease. The NRC's analysis of the Licensee's final status survey data confirmed that Room 105 meets the requirements of 10 CFR 20.1402 for unrestricted release. Additionally, denying the amendment request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar, and the no-action

alternative is accordingly not further considered.

#### *Conclusion*

The NRC staff has concluded that the proposed action is consistent with the NRC's unrestricted release criteria specified in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

#### *Agencies and Persons Consulted*

NRC provided a draft of this Environmental Assessment to the State of West Virginia for review on May 17, 2006. On June 20, 2006, the State of West Virginia responded by electronic mail. The State agreed with the conclusions of the EA, and otherwise had no comments.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

#### **III. Finding of No Significant Impact**

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

#### **IV. 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 documents related to this action are listed below, along with their ADAMS accession numbers.

(1) Letter dated August 9, 2005, transmitting the "Final Status Survey for Decommissioning for West Virginia University Institute of Technology

Engineering Classroom Building Room 105" [ML052280399];

(2) Additional information in letters dated November 7, 2005 [ML053200348] and January 19, 2006 [ML060240555], and by facsimile February 10, 2006 [ML060470436];

(3) **Federal Register** Notice, Volume 65, No. 114, page 37186, dated Tuesday, June 13, 2000, "Use of Screening Values to Demonstrate Compliance With The Federal Rule on Radiological Criteria for License Termination";

(4) Title 10, Code of Federal Regulations, Part 20, Subpart E, "Radiological Criteria for License Termination";

(5) Title 10, Code of Federal Regulations, Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions";

(6) NUREG-1496, "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities."

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov). These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at King of Prussia, Pennsylvania, this 20th day of July 2006.

For the Nuclear Regulatory Commission.

**James P. Dwyer,**

*Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I.*

[FR Doc. E6-12514 Filed 8-2-06; 8:45 am]

BILLING CODE 7590-01-P

## **NUCLEAR REGULATORY COMMISSION**

[Docket No. 040-07455]

### **Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment to Source Materials License No. SMA 1018, Approving Revision 2 of the Erosion Sediment Pollution Control Plan for Excavation of Wetlands Areas at the Whittaker Corporation's Facility in Transfer, PA**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

**FOR FURTHER INFORMATION CONTACT:** Marjorie McLaughlin, Health Physicist,

Decommissioning Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406-1415; telephone (610) 337-5240; fax number (610) 337-5269; or by e-mail: [mmm3@nrc.gov](mailto:mmm3@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Source Materials License No. SMA-1018. This license is held by Whittaker Corporation (the Licensee), for its Whittaker facility (the Facility), located at 99 Crestview Drive in Transfer, Pennsylvania. Issuance of the amendment would approve a revision to the license tie-down document, "Erosion and Sediment Pollution Control Plan for Phase 1 and Phase 2 Activities at the Whittaker Remediation Site (ESPCP)." The Licensee requested this action in a letter dated May 24, 2006. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10, Code of Federal Regulations (CFR), Part 51 (10 CFR Part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued to the Licensee following the publication of this FONSI and EA in the **Federal Register**.

##### II. Environmental Assessment

###### *Identification of Proposed Action*

The proposed action would grant the Licensee's May 24, 2006, license amendment request, thereby approving Revision 2 of the ESPCP. Specifically, the ESPCP describes the Licensee's activities at the Facility that involve excavation and/or other forms of earth disturbance. The ESPCP also describes the engineering and programmatic controls the Licensee will implement during any such activities to minimize the potential for accelerated erosion and sedimentation. Accelerated erosion is the removal of surface soils by natural processes and human activity at a faster rate than would occur due to the natural processes alone. Sedimentation is the action of depositing sediment (e.g., soil) in a body of water. The proposed action would approve the Licensee's revision to the ESPCP to allow for excavation of material within Facility areas that are delineated as wetlands. The specific contents of the ESPCP are described in more detail in a later section of this report.

License No. SMA-1018 was issued on December 15, 1969, pursuant to 10 CFR part 40, and has been amended periodically since that time. The license authorized the possession and use of unsealed source material (natural thorium and natural uranium) contained in ores used for minerals processing and as a contaminant that was isolated by the processing of scrap metal. The Facility originally consisted of a plant and a slag waste storage area. In 1974, the Licensee ceased licensed operations at the Facility, and initiated decommissioning of plant equipment and buildings. Waste slag, raw materials, feed-metal scrap, and contaminated building materials that were generated from the decontamination activities were placed in the slag storage area. The portion of the property housing the plant was released for unrestricted use in 1975, following the performance of a confirmatory survey by the NRC. An additional plant building was decommissioned in 1983 and released for unrestricted use in 1985. The plant is an active facility under a new owner (Greenville Metals), who is not associated with the Licensee. Greenville Metals processes and refines scrap and other metals to produce metal alloys and conversion products. Greenville Metals does not utilize NRC-licensed radioactive material, and is separated from the Whittaker property by metal fencing.

The current Facility consists of the slag area, located on an irregularly-shaped, 5.9 acre strip of land, that is characterized by four sections according to topography and site use. Facility topography (prior to the initiation of decommissioning) had been built up through the repeated disposal of slag, scrap metal, debris, and foundry sand. The Facility is bordered by an access road to the north, Greenville Metals to the west and south, and the Shenango River to the east. The Facility is located within an industrial park. There are no buildings remaining (with the exception of temporary trailers supplied by the decommissioning contractor), and the surrounding area is primarily rural. In July 2004, the Licensee initiated decommissioning activities, involving excavation of the slag material and shipment to an authorized disposal facility.

The NRC has required the Licensee to monitor the current Facility for signs of erosion from the time when it was used only as a storage area for the radioactive slag material. The slag piles had reached elevations of 20 feet or more above the adjoining river flood plain. The proximity of the Facility to the river,

coupled with the steep slope of the slag piles were the initial motivation for implementing erosion controls to guard against offsite migration of contaminated material. When the Licensee commenced decommissioning activities, a more robust erosion control program was required. NRC approved the previous ESPCP revision with the most recent license renewal. The EA associated with that renewal was published in the **Federal Register** on September 16, 2005 (Volume 70, Number 179). The current and proposed ESPCPs describe the controls that are to be implemented during Phase 1 and Phase 2 of the Facility decommissioning operation. Phase 1 involved the removal of staged debris and slag from a concrete pad located on the Facility, and is complete. Phase 2 involves excavation and removal of slag material from other Facility areas, and is currently in progress.

The proposed ESPCP amendment involves excavation of material located within the site-delineated wetlands areas. As defined in the Clean Water Act (CWA), wetlands are, "those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas [Source: 40 CFR 230.3(t)]." Section 404 of the CWA establishes the program that regulates the discharge of material into U.S. waters, including wetlands. Activities within wetlands areas are evaluated and controlled through a permitting process, which grants approval of proposed actions. Significant activities are approved by individual permits. Activities that are determined to have minimal adverse effects may be granted a general permit. The program is developed and enforced by the U.S. Environmental Protection Agency (EPA) and is administered by the U.S. Army Corps of Engineers (ACE). State environmental agencies involvement may consist of assuming either the general permitting process or the entire permitting program. The Pennsylvania Department of Environmental Protection (PADEP) has assumed the authority for general permit reviews for proposed activities in wetlands within the Commonwealth.

The current ESPCP is a part of the Licensee's NRC license. Amendments to the ESPCP require an amendment to the license. The National Environmental Policy Act (NEPA) requires Federal agencies to consider the environmental impacts of actions under their

jurisdiction. Although the decommissioning activities described in the proposed ESPCP do not differ from those already approved by the NRC in the licensee's current operating procedures, their application to Facility wetlands areas requires NRC to perform this assessment of the environmental impacts of the proposed action.

#### *Need for the Proposed Action*

The Licensee is no longer using licensed materials at the Facility, and has initiated site decommissioning. The Licensee is preparing a formal Decommissioning Plan (DP) that will describe the methods and procedures to complete decommissioning activities, and will submit the DP as a separate amendment request. Until the NRC approves the Licensee's DP, decommissioning activities must be performed in accordance with NRC-approved procedures. This amendment request involves such a procedure and the action allows the licensee to continue site cleanup activities until the DP is approved. In accordance with 10 CFR 20.1402, a site may be considered for unrestricted release if the residual radioactivity results in a total effective dose equivalent (TEDE) that does not exceed 25 millirem per year (mrem/yr). To meet this dose criterion, the Licensee must remediate (decommission) the Facility by removing and appropriately disposing of radioactive materials that result in a TEDE that is greater than 25 mrem/yr. The Licensee identified that radioactive materials are present in the subsurface soils of Facility wetlands areas. Removal of these materials is necessary to effect Facility decommissioning. The Licensee will follow the proposed ESPCP to provide protection to the affected wetlands and waterway while removing this material.

#### *Environmental Impacts of the Proposed Action*

Both the previous and the proposed ESPCP revisions provide a brief description of the site, its history and current activities, and topography and soil makeup. There is also no change to the method for preventing sediments generated from storm water runoff from entering the wetlands areas and the Shenango River. Installed silt fencing at the base of the slag pile slopes remains the control method for this situation. The fencing in some locations is 30-inch filter fabric reinforced with staked straw bales and 33-inch filter fabric supported by chain link fence in other locations. In addition to the silt fencing, which will remain installed both during and in-between excavation activities, weekly site walkdowns are performed during

active excavation campaigns. The walkdowns include inspection and maintenance of the silt fencing and removal of any built up debris or sediment from the base of the fencing. Any necessary repairs to the fencing are reported to the appropriate Commonwealth agency. During periods of Facility inactivity (i.e., winter shut-down), the site walkdowns are performed monthly. The proposed action does not involve a change to the silt fencing use or design, or to the site walkdowns.

The current ESPCP describes the delineation of Facility wetlands and certifies that slag and material removal from these areas will be performed by hand (i.e., heavy equipment will not be used and excavations will not be involved). The current ESPCP does allow for material excavation using heavy equipment within the Facility floodway areas, and specifies that such activities will only remove material from the floodway, and will not add any. The current ESPCP was submitted to the PADEP as a section of the Facility Restoration Plan, which was provided to meet the Commonwealth's requirements for approving Facility activities. The Commonwealth approved the current ESPCP and determined that the proposed activities had no significant environmental impacts, and qualified for a waiver from the permit requirements in accordance with 25 PA Code 105.12. NRC approved the current ESPCP as part of the most recent license renewal, as described previously in this report.

The proposed activity amends the ESPCP to allow for excavation of material from within the Facility-delineated wetlands. The proposed ESPCP states that soil borings may be obtained from within this area using a boring machine, so that the soil may be analyzed for the presence of radioactive material. In addition, excavation of material within this area may be performed, and some trees removed so that radioactive slag within the root systems may be accessed and disposed. The ESPCP proposes to minimize the environmental impacts from these activities by: Extending the silt fencing to contain these areas; setting up the excavating equipment in non-wetlands areas and, to the extent possible, extending the reach of the arm so that only the bucket impacts the wetlands (i.e., rather than driving an excavator truck over the wetlands soil); and minimizing the amount of soil removed from the wetlands. The proposed ESPCP commits that the Licensee will restore the wetland, floodway, and riverbank upon completion of slag removal. The

specific restoration activities will require PADEP approval and will be provided in a later ESPCP revision.

The Licensee submitted the proposed ESPCP to PADEP as a revision to the Facility Restoration Plan. PADEP approved the revision on April 19, 2006, and again determined that the proposed activities qualify for a waiver from the permitting requirements.

The NRC staff has determined that the proposed activity will have a minimal effect on environmental resources. The activities described in the proposed ESPCP involve removal of material from within Facility wetlands areas, but the amount of material and the impact to these areas will be minimized to the extent possible. Additionally, the proposed activity provides for the use of engineering barriers (silt fencing) to prevent migration of sediment and contaminants into the river. The proposed activity involves only the removal of soil and slag material. The Licensee will not be adding material to the wetlands or waterway under this proposed action. Based on its review, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

#### *Environmental Impacts of the Alternatives to the Proposed Action*

The only alternative to the proposed action is the no-action alternative, under which the staff would deny the amendment request for the proposed ESPCP. This alternative would result in no environmental impacts, but would prohibit the removal of contaminated material from the Facility wetlands areas. This no-action alternative is not feasible because it conflicts with 10 CFR 20.1402, requiring licensees to verify that residual radioactivity meets the radiological unrestricted release criteria. The Licensee may not be able to meet the unrestricted release criteria if the material in these areas is not removed from the Facility and appropriately disposed. Additionally, denying the amendment request would prevent the Licensee from completing decommissioning in the timeframe required by 10 CFR 40.42(h). The environmental impacts of the proposed action are not significant, and the no-action alternative is accordingly not further considered.

#### *Conclusion*

The NRC staff has concluded that the proposed action is consistent NRC guidance and regulations. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes

that the proposed action is the preferred alternative.

#### *Agencies and Persons Consulted*

NRC provided a draft of this Environmental Assessment to PADEP for review on June 9, 2006. On June 14, 2006, PADEP responded by email that PADEP staff involved with both radiation protection and with watershed management reviewed the EA. PADEP agreed with the conclusions of the EA, and otherwise had no comments.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

#### **III. Finding of No Significant Impact**

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

#### **IV. 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 documents related to this action are listed below, along with their ADAMS accession numbers.

1. Amendment request with Erosion and Sediment Pollution Control Plan Revision 2, dated May 24, 2006 (ML061570151);

2. Title 25, Pennsylvania Code, Chapter 105, "Dam Safety and Waterway Management;"

3. Title 40, Code of Federal Regulations, Part 230, Section 404(b)(1), "Guidelines for Specification of Disposal Sites for Dredged or Fill Material;"

4. Title 10, Code of Federal Regulations, Part 20, Subpart E,

"Radiological Criteria for License Termination;"

5. Title 10, Code of Federal Regulations, Part 40, "Domestic Licensing of Source Material;"

6. Title 10, Code of Federal Regulations, Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions;"

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov). These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at King of Prussia, Pennsylvania, this 25th day of July.

For the Nuclear Regulatory Commission,  
**Marie Miller,**

*Chief, Decommissioning Branch, Division of Nuclear Materials Safety, Region I.*

[FR Doc. E6-12515 Filed 8-2-06; 8:45 am]

**BILLING CODE 7590-01-P**

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#### **POSTAL RATE COMMISSION**

[Docket No. MC2006-6; Order No. 1472]

#### **Extension of Negotiated Service Agreement**

**AGENCY:** Postal Rate Commission.

**ACTION:** Notice and order.

**SUMMARY:** This document informs the public that the Postal Service is seeking approval of a one-year extension of the negotiated service agreement with Capital One Services, Inc. The document describes the agreement, identifies certain preliminary decisions, and addresses procedural steps, including key deadlines.

**DATES:** 1. August 14, 2006: Deadline for intervention, statements identifying issues requiring a hearing, and objections to rule 197 treatment.

2. August 15, 2006: Prehearing conference.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, general counsel, at 202-789-6820.

#### **Procedural History**

Capital One Services, Inc. Negotiated Service Agreement, 67 FR 61355 (September 30, 2002).

On July 26, 2006, the United States Postal Service filed a request seeking a recommended decision from the Postal Rate Commission approving a one-year extension of the negotiated service agreement with Capital One Services, Inc.<sup>1</sup> The Capital One negotiated service agreement was first recommended by the Commission on May 15, 2003,<sup>2</sup> and ordered into effect for a period of three years ending September 1, 2006, by the United States Postal Service Board of Governors.<sup>3</sup> The Request, which includes seven attachments, was filed pursuant to chapter 36 of the Postal Reorganization Act, 39 U.S.C. 3601 *et seq.*<sup>4</sup> The Postal Service asks that this case proceed under the Commission's rules for requests to renew previously recommended negotiated service agreements with existing participants. Rule 197 [39 CFR 3001.197].

The Postal Service has identified Capital One Services, Inc. (Capital One), along with itself, as parties to the negotiated service agreement. This identification serves as notice of intervention by Capital One. It also indicates that Capital One shall be considered a co-proponent, procedurally and substantively, of the Postal Service's Request during the Commission's review of the negotiated service agreement. Rule 191(b) [39 CFR 3001.191(b)].

In support of the direct case, the Postal Service has filed Direct Testimony of Jessica Lowrance on

<sup>1</sup> Request of the United States Postal Service for a Recommended Decision to Extend the Duration of the Previously Recommended Negotiated Service Agreement with Capital One, July 26, 2006 (Request).

<sup>2</sup> PRC Op. MC2002-2, May 15, 2003.

<sup>3</sup> Decision of the Governors of the United States Postal Service on the Opinion and Recommended Decision of the Postal Rate Commission Recommending Experimental Rate and Service Changes to Implement Negotiated Service Agreement with Capital One, Docket No. MC2002-2, June 2, 2003.

<sup>4</sup> Attachment A to the Request contains proposed changes to the Domestic Mail Classification Schedule; Attachment B contains the current rate schedules, which have not been modified from Docket No. MC2002-2; Attachment C is a certification required by Commission rule 193(i) specifying that the cost statements and supporting data submitted by the Postal Service, which purport to reflect the books of the Postal Service, accurately set forth the results shown by such books; Attachment D is an index of testimony and exhibits; Attachment E is a compliance statement addressing satisfaction of various filing requirements; Attachment F is a copy of the amendment to the Negotiated Service Agreement and the Negotiated Service Agreement itself; and Attachment G contains the decision of the Governors for the original Negotiated Service Agreement.