

Dated: August 7, 2009.

**Lisa J. Lierheimer,**

Senior Permit Biologist, Branch of Permits,  
Division of Management Authority.

[FR Doc. E9-19579 Filed 8-14-09; 8:45 am]

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## DEPARTMENT OF JUSTICE

### Notice of Lodging of Modified Consent Decree Pursuant to the Clean Air Act

Notice is hereby given that on August 11, 2009, a proposed modified Consent Decree in *United States et al. v. Ohio Edison Co., et al.*, (S.D. Ohio), No. C2-99-1181, was lodged with the United States District Court for the Southern District of Ohio. The proposed modified Decree is incorporated within a Joint Motion to Modify Consent Decree with Order Modifying Consent Decree, filed the same day in the same court.

Under the proposed modified Consent Decree, Ohio Edison agrees to repower one of its coal-fired power plants—the R.E. Burger Generating Station Units 4 and 5 (“Burger”) near Shadyside, Ohio—using primarily renewable biomass fuel. The agreement, joined by the States of New York, Connecticut and New Jersey, modifies a 2005 consent decree requiring reductions in Ohio Edison’s emissions of sulfur dioxide (“SO<sub>2</sub>”) and nitrogen oxide (“NO<sub>x</sub>”). The modified decree will substantially reduce emissions of SO<sub>2</sub> and NO<sub>x</sub> from Burger’s current levels and significantly reduce net carbon dioxide emissions from current levels.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the modified Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to [pubcomment-ees.enrd@usdoj.gov](mailto:pubcomment-ees.enrd@usdoj.gov) or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States et al. v. Ohio Edison, et al.*, (S.D. Ohio), No. C2-99-1181, D.J. Ref. 90-5-2-1-06894. The modified Consent Decree may be examined at the Office of the United States Attorney, Southern District of Ohio, 280 North High Street, Fourth Floor, Columbus, Ohio 43215. During the public comment period, the modified Consent Decree may also be examined on the following Department of Justice Web site, <http://www.usdoj.gov/enrd/>

*Consent Decrees.html*. A copy of the modified Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S.

Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood ([tonia.fleetwood@usdoj.gov](mailto:tonia.fleetwood@usdoj.gov)), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$2.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

**Maureen Katz,**

Deputy Chief, Environmental Enforcement Section.

[FR Doc. E9-19564 Filed 8-14-09; 8:45 am]

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (09-072)]

### Notice of Intent To Grant Partially Exclusive License

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of intent to grant partially exclusive license.

**SUMMARY:** This notice is issued in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive license worldwide to practice the invention described and claimed in U.S. Patent No. 7,094,045, entitled “Microencapsulation System and Method”, U.S. Patent No. 7,295,309, entitled “Microparticle Analysis System and Method” to NuVue Therapeutics, Inc. (formerly known as Critical Care Innovations, Inc.), having its principal place of business in Fairfax, Virginia. The fields of use are for both clinical and veterinary applications in the production and applications of microcapsules and microencapsulation of all cyto-toxic anti-cancer drugs. Also included are externally-triggered microcapsules including the use of ultrasound and magnetic flux triggering technologies, in situ activation inside microcapsules, cell encapsulation, and urokinase and DNA measurement of metastasis for diagnostic testing. The patent rights in these inventions have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective partially exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

**DATES:** The prospective partially exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives

written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

**ADDRESSES:** Objections relating to the prospective license may be submitted to Patent Counsel, Office of Chief Counsel, Mail Code AL, 2101 NASA Parkway, Houston, TX 77058, (281) 483-4871; (281) 483-6936 [Facsimile].

**FOR FURTHER INFORMATION CONTACT:** Theodore U. Ro, Patent Attorney, Office of Chief Counsel, Johnson Space Center, Mail Code AL, 2101 NASA Parkway, Houston, TX 77058, (281)244-7148; (281)483-6936 [Facsimile]. Information about other NASA inventions available for licensing can be found online at <http://technology.nasa.gov/>.

Dated: August 7, 2009.

**Richard W. Sherman,**

Deputy General Counsel.

[FR Doc. E9-19487 Filed 8-14-09; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

[Docket No.: 70-1151; NRC-2009-0355; EA-08-244; License No.: SNM-1107]

### In the Matter of Westinghouse Electric Company LLC; Confirmatory Order (Effective Immediately)

I

Westinghouse Electric Company LLC (WEC or Licensee) is the holder of Operating License No. SNM-1107 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 70. The license in effect at the time of the matters described below was most recently amended via Amendment 5, issued on April 10, 2009. The license authorizes the operation of WEC in accordance with the conditions specified therein. The facility is located on the Licensee’s site in Columbia, South Carolina.

This Confirmatory Order is the result of an agreement reached during an Alternative Dispute Resolution (ADR)

mediation session conducted on July 27, 2009.

## II

On August 11, 2008, the NRC's Office of Investigations (OI) completed an investigation (OI Case No. 2-2008-002) regarding activities at the WEC facility located in Columbia, South Carolina. Based on the evidence developed during the investigation, the NRC staff identified three apparent violations.

The first apparent violation involved the failure to establish adequate management measures, as required by 10 CFR 70.62(d), to ensure that Items Relied On For Safety (IROFS) are available and reliable to perform their function when needed, in that the periodicity of required ventilation system filter differential pressure readings, which the Integrated Safety Analysis specified as IROFS Vent 902, was not specified in implementing procedures.

The second apparent violation involved two examples in which information provided to the NRC or required to be maintained by the licensee was not complete and accurate as required by 10 CFR 70.9. In the first example, information documented in the corrective action program and provided to the NRC on September 11, 2007 regarding the circumstances surrounding falsified ventilation system data was inaccurate and incomplete as to the identification and employment status of the individual responsible for the falsification. In the second example, training records documenting employee completion of required training were incomplete and inaccurate in that the Electronic Training and Procedures System (ETAPS) indicated training was completed when, in fact, it was not.

The third apparent violation involved training records that were falsified by a contractor foreman, who accessed individual electronic training records of various employees and acknowledged completion of certain training requirements, when those training requirements were not accomplished. This action was an apparent willful violation of Columbia Plant Administrative Procedure CA-002, Columbia Plant Procedure System, which states that ETAPS End Users must read and then acknowledge procedures governing their job responsibilities in ETAPS before performing work assignments or manufacturing processes.

The results of the investigation were sent to the Licensee in a letter dated May 6, 2009. This letter also offered the Licensee the opportunity either to: provide a written response, attend a

Predecisional Enforcement Conference, or participate in ADR mediation. In response to the NRC's offer, the Licensee requested use of the NRC's ADR process to resolve the apparent violations.

## III

On July 27, 2009, representatives of the NRC and WEC met in an ADR session mediated by a professional mediator, which was arranged through Cornell University's Institute on Conflict Resolution. ADR is a process in which a neutral mediator with no decision-making authority assists the parties in reaching an agreement or resolving any differences regarding their dispute. This confirmatory order is issued pursuant to the agreement reached during the ADR process. The elements of the agreement consist of the following:

1. WEC acknowledged that corrective actions and enhancements were warranted to preclude recurrence of the matters discussed in the NRC's letter of May 6, 2009.

2. With respect to the matters described in section II above and NRC concerns with respect to precluding recurrence, WEC completed the following corrective actions and enhancements:

- a. As part of the Nuclear Criticality Safety Improvement Project, WEC has updated procedures and provided enhanced markings to delineate steps that are critical to the availability and reliability of IROFS. This program was completed June 30, 2009.

- b. WEC revised management oversight for maintenance and contractor activities by establishing: (1) A Maintenance Operations Manager position responsible for day-to-day Westinghouse maintenance activities and (2) a Site Maintenance Manager, reporting to the Plant Manager, responsible for providing direct oversight of contractor operations, including contractor corrective action program issues and contractor training.

- c. Required primary service providers (*i.e.*, Greggs Construction, Prime State Insulation (PSI)) to have a safety/compliance officer to monitor compliance with procedures and ensure safe operation of contractor activities.

- d. Reset ETAPS passwords for all PSI employees.

- e. Provided instruction to all WEC and contractors employees via the annual required refresher training to not share ETAPS passwords, and trained supervisors on methods to verify employee training completion.

- f. Developed process and procedures by which WEC will audit completion of required training on a sitewide basis.

- g. Required a Performance Improvement Program for PSI which includes expectations related to safety, reporting of issues, procedural compliance, training and fitness-for-duty.

- h. Provided independent training for human resources, security and two Environmental Health and Safety (EH&S) managers regarding enhanced investigative training and documentation techniques for issues which have the potential to include employee wrongdoing.

3. In addition to the actions completed by WEC as discussed above, WEC agreed to additional corrective actions and enhancements for the Columbia Fuel Fabrication Facility, as fully delineated below in Section V of the Confirmatory Order.

4. At the ADR session, the NRC and WEC agreed that (1) The actions referenced in section III.2 and section V would be incorporated into a Confirmatory Order, and (2) the resulting Confirmatory Order would be considered by the NRC for any assessment of WEC, as appropriate.

5. In consideration of the completed corrective actions delineated in section III.2 and the actions to be taken delineated in section V of this Confirmatory Order, the NRC agreed to refrain from proposing a civil penalty or issuing a Notice of Violation for all matters discussed in the NRC's letter to WEC of May 6, 2009 (EA-08-244).

6. This agreement is binding upon successors and assigns of WEC.

On July 31, 2009, the Licensee consented to issuance of this Order with the commitments described in section III.2 and section V. The Licensee further agreed that this Order is to be effective upon issuance and that it has waived its right to a hearing.

## IV

Since the licensee has completed the actions as delineated in section III.2 and agreed to take the actions as set forth in section V, the NRC has concluded that its concerns can be resolved through issuance of this Order.

I find that the Licensee's commitments as set forth in section III.2 and section V are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that the Licensee's commitments be confirmed by this Order. Based on the above and

the Licensee's consent, this Order is immediately effective upon issuance.

## V

Accordingly, pursuant to sections 104b, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 70, It Is Hereby Ordered, Effective Immediately, that License No. SNM-1107 Be Modified as Follows:

a. WEC will conduct a quarterly management audit, on a sampling basis, of Apparent Cause Analyses in the WEC Corrective Action Program.

b. WEC will conduct an analysis of the causes of the falsification issues identified in section II above, and develop additional corrective actions and enhancements in response to the analysis.

c. WEC will incorporate lessons learned from this incident into new employee training and annual refresher training to all WEC and contractor employees. Aspects to be communicated will include, but are not limited to, the falsification of the multiple records and/or data, and consequences of such actions.

d. WEC will conduct an independent assessment of the effectiveness of the employee concerns processes to satisfactorily resolve WEC and contractor employee concerns.

e. WEC will conduct an independent assessment of the effectiveness of the enhanced investigative and documentation techniques in section III.2.h within six months of issuance of the Confirmatory Order. The independent assessment will be conducted by a party other than the developer of the program.

f. WEC agrees to complete the items listed in section V within twelve (12) months of issuance of the Confirmatory Order, unless otherwise stated.

g. Within three (3) months of completion of the terms of the Confirmatory Order, WEC will provide the NRC with a letter discussing its basis for concluding that the Confirmatory Order has been satisfied.

Notification to the NRC, as outlined above, should be made to the Regional Administrator, NRC Region II, 61 Forsyth Street, SW., Suite 23T85, Atlanta, Georgia 30303-8931.

The Regional Administrator, NRC Region II, may relax or rescind, in writing, any of the above conditions upon demonstration by WEC of good cause.

## VI

Any person adversely affected by this Confirmatory Order, other than the

Licensee, may request a hearing within 20 days of the Order's publication in the **Federal Register**. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and include a statement of good cause for the extension.

If a person other than WEC requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309 (d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

A request for a hearing must be filed in accordance with the NRC E-Filing rule, which became effective on October 15, 2007. The NRC E-filing Final Rule was issued on August 28, 2007 (72 **Federal Register** 49,139) and was codified in pertinent part at 10 CFR part 2, subpart B. The E-Filing process requires participants to submit and serve documents over the Internet or, in some cases, to mail copies on electronic optical storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E-Filing, at least five (5) days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at [HEARINGDOCKET@NRC.GOV](mailto:HEARINGDOCKET@NRC.GOV), or by calling (301) 415-1677, to request (1) A digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at <http://www.nrc.gov/site-help/e-submittals/install-viewer.html>. Information about applying for a digital ID certificate also is available on NRC's public Web site at <http://www.nrc.gov/>

[site-help/e-submittals/apply-certificates.html](http://www.nrc.gov/site-help/e-submittals/apply-certificates.html).

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, he/she can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the "Contact Us" link located on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html> or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397-4209 or locally, (301) 415-4737.

Participants who believe that they have good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the

document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket, which is available to the public at [http://ehd.nrc.gov/EHD\\_Proceeding/home.asp](http://ehd.nrc.gov/EHD_Proceeding/home.asp), unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their works.

## VII

A Request for Hearing Shall Not Stay the Immediate Effectiveness of this Order.

Dated this 6th day of August 2009.

For the Nuclear Regulatory Commission.

**Victor M. McCree,**

*Deputy Regional Administrator.*

[FR Doc. E9-19642 Filed 8-14-09; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

[NRC-2009-0357; Docket No. 03037121]

### Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment to Byproduct Materials License No. 47-19315-02, for Termination of the License and Unrestricted Release of the West Virginia School of Osteopathic Medicine's Facility in Lewisburg, WV

**AGENCY:** Nuclear Regulatory Commission.

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

#### FOR FURTHER INFORMATION CONTACT:

Steve Hammann, Health Physicist, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, PA 19406; telephone (610)-337-5399; fax number (610)-337-5269; or by e-mail: [stephen.hammann@nrc.gov](mailto:stephen.hammann@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Byproduct Materials License No. 47-19315-02. This license is held by West Virginia School of Osteopathic Medicine (the Licensee), for its Smith Science Building (the Facility), located at 400 North Lee Street in Lewisburg, West Virginia. Issuance of the amendment would authorize release of the Facility for unrestricted use and termination of the NRC license. The Licensee requested this action in a letter dated May 1, 2009. 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 approve the Licensee's May 1, 2009, license amendment request, resulting in release of the Facility for unrestricted use and the termination of its NRC materials license. License No. 47-19315-02 was issued on February 24, 2006, pursuant to 10 CFR part 30, and has been amended once since that time. This license authorized the Licensee to use unsealed byproduct material for the purpose of conducting research and development activities on laboratory bench tops and in hoods.

The Facility is located on the campus of the West Virginia School of Osteopathic Medicine and consists of classrooms, office space, and laboratories. The Facility is located in a mixed residential/commercial area. Within the Facility, use of licensed materials was confined to rooms 242 and 243 which have a combined area of 100 square meters.

On July 10, 2007, the Licensee ceased licensed activities and initiated a survey and decontamination of the Facility. Based on the Licensee's historical knowledge of the site and the conditions of the Facility the Licensee determined that only routine decontamination activities, in accordance with their NRC-approved operating radiation safety procedures, were required. The Licensee was not required to submit a

decommissioning plan to the NRC because worker cleanup activities and procedures are consistent with those approved for routine operations. The Licensee conducted surveys of the Facility and provided information to the NRC to demonstrate that it meets the criteria in subpart E of 10 CFR part 20 for unrestricted release and for license termination.

###### Need for the Proposed Action

The Licensee has ceased conducting licensed activities at the Facility, and seeks the unrestricted use of its Facility and the termination of its NRC materials license.

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

The historical review of licensed activities conducted at the Facility shows that such activities involved one radionuclide, hydrogen-3, with half-life greater than 120 days. Prior to performing the final status survey, the Licensee conducted decontamination activities, as necessary, in the areas of the Facility affected by the radionuclide.

The Licensee conducted a final status survey on April 28, 2009. This survey covered the two rooms in which licensed materials were used. The final status survey report was attached to the Licensee's amendment request dated May 1, 2009. The Licensee elected to demonstrate compliance with the radiological criteria for unrestricted release as specified in 10 CFR 20.1402 by using the screening approach described in NUREG-1757, "Consolidated NMSS Decommissioning Guidance," Volume 2. The Licensee used the radionuclide-specific derived concentration guideline levels (DCGLs), developed there by the NRC, which comply with the dose criterion in 10 CFR 20.1402. These DCGLs define the maximum amount of residual radioactivity on building surfaces, equipment, and materials, and in soils, that will satisfy the NRC requirements in subpart E of 10 CFR part 20 for unrestricted release. The Licensee's final status survey results were below these DCGLs and are in compliance with the As Low As Reasonably Achievable (ALARA) requirement of 10 CFR 20.1402. The NRC thus finds that the Licensee's final status survey results are 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