

**FOR FURTHER INFORMATION CONTACT:**

Donna M. Janda, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406, telephone (610) 337-5371, fax (610) 337-5269; or by e-mail: [dmj@nrc.gov](mailto:dmj@nrc.gov).

**SUPPLEMENTARY INFORMATION:****I. Introduction**

The Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to King's College for Materials License No. 37-28499-01, to authorize release of its facility in Wilkes-Barre, Pennsylvania for unrestricted use. NRC has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR Part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The amendment will be issued following the publication of this Notice.

**II. EA Summary**

The purpose of the proposed action is to authorize the release of the licensee's Wilkes-Barre, Pennsylvania facility for unrestricted use. King's College was authorized by NRC from April 1991 to use radioactive materials for research and development purposes at the site. On January 15, 2004, King's College requested that NRC release the facility for unrestricted use. King's College has conducted surveys of the facility and determined that the facility meets the license termination criteria in Subpart E of 10 CFR Part 20. The NRC staff has prepared an EA in support of the proposed license amendment.

**III. Finding of No Significant Impact**

The staff has prepared the EA (summarized above) in support of the proposed license amendment to terminate the license and release the facility for unrestricted use. The NRC staff has evaluated King's College's request and the results of the surveys and has concluded that the completed action complies with the criteria in Subpart E of 10 CFR Part 20. The staff has found that the environmental impacts from 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 Facilities" (NUREG-1496). On the basis of the EA, the NRC has concluded that the environmental impacts from the proposed action are expected to be insignificant and has determined not to

prepare an environmental impact statement for the proposed action.

**IV. Further Information**

The EA and the documents related to this proposed action, including the application for the license amendment and supporting documentation, are available for inspection at NRC's Public Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html> (ADAMS Accession Nos. ML040340246, ML041120317, ML042020325). These documents are also available for inspection and copying for a fee at the Region I Office, 475 Allendale Road, King of Prussia, Pennsylvania, 19406. Persons who do not have access to ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209 or (301) 415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at King of Prussia, Pennsylvania, this 21st day of July, 2004.

For the Nuclear Regulatory Commission.

**John D. Kinneman, Chief,**

*Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety Region I.*

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**NUCLEAR REGULATORY COMMISSION**

[Docket No. 70-157]

**Notice of Environmental Assessment and Finding of No Significant Impact for License Amendment for University of Texas at Austin, Austin, TX**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Environmental Assessment and Finding of No Significant Impact for license amendment.

**FOR FURTHER INFORMATION CONTACT:** Don Stout, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T8-A33, Washington DC 20555-0001. Telephone: (301) 415-5269; email [des1@nrc.gov](mailto:des1@nrc.gov).

**SUPPLEMENTARY INFORMATION:****I. Introduction**

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of an amendment to NRC Materials License SNM-180 (SNM-180), to allow the University of Texas at Austin (UT), to receive, possess and store 3.88 kilograms of special nuclear material (SNM) that is currently stored at Manhattan College in Riverdale, New

York. The NRC has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR Part 51. Based upon the EA, the NRC has determined that a Finding of No Significant Impact (FONSI) is appropriate.

**II. Environmental Assessment***Background*

The Nuclear Engineering Teaching Laboratory (NETL) at the University of Texas (UT) uses special nuclear material to supplement training and instruction programs in the field of nuclear engineering. UT's license SNM-180, currently authorizes them to possess 470 grams of uranium-235 (U-235). Under SNM-180, UT is also authorized to possess 128 grams of plutonium contained in sealed plutonium-beryllium neutron sources. Independent of license SNM-180, UT has a research reactor, which operates under NRC Reactor License R-129 and a charged particle accelerator which operates under a Certificate of Registration from the Texas Department of Health, Bureau of Radiation Control (License TDH L00485).

The NRC staff has received an amendment request (Ref. 1), dated May 3, 2004, to allow receipt, possession, and storage of 3.88 kilograms of SNM. The purpose of this document is to assess the environmental consequences of the proposed amendment.

*Review Scope*

The purpose of this EA is to assess the environmental impacts of an amendment request that would allow UT to receive, possess and store an additional 3.88 kilograms of SNM under their existing Part 70 license. The scope of this EA is limited to the receipt, possession and storage of SNM at UT. The transportation of the SNM to UT is not part of this EA and is being handled separately by the U.S. Department of Energy or an approved alternate. This EA does not approve or deny the amendment request. A separate Safety Evaluation Report (SER) will be issued at a later date in support of approval or denial of the amendment request. The SER will document the safety review in the areas of radiation protection, nuclear criticality safety, material control and accountability, and security.

The existing conditions and operations for UT were evaluated by NRC in March 1998, during renewal of the UT license (Ref. 2). At that time, the licensee was granted a categorical exclusion under 10 CFR 51.22(c)(14)(v) because their license authorized the use

of radioactive materials for research and development and for educational purposes. This amendment requests receipt, possession, and storage of SNM. The use of this SNM for research and development is still being developed and is not part of this EA. This assessment will determine whether to issue or prepare an Environmental Impact Statement (EIS). Should the NRC issue a FONSI, no EIS will be prepared.

#### *Proposed Action*

The proposed action is to grant an amendment to SNM-180 to receive, possess and store SNM in accordance with 10 CFR Part 70 and 10 CFR Part 20. There are no effluent releases associated with the SNM in this amendment request. The SNM is encased in aluminum. Initially, the material will be stored in U.S. Department of Transportation approved 6M shipping containers in a secure location at UT. After completion of storage racks, the SNM will be moved to another area within the same secure location. The licensee has committed to maintaining doses as low as reasonably achievable (ALARA) and is required to review radiation dose data at least annually and report the findings of the assessment to the Radiation Safety Committee or the Reactor Committee.

#### *Purpose and Need for Proposed Action*

UT currently possesses and uses 470 grams of U-235 for sub-critical research and development experiments at the NETL. UT is requesting permission to receive, possess, and store additional SNM that will be used in future research and development sub-critical experiments. Future research and development utilizing this SNM will require another license amendment. Allowing UT to possess and store this material will assist Manhattan College by removing the SNM from their site and permit them to complete decommissioning. UT will benefit from the receipt of this material by providing them with additional SNM to conduct future research and development for educational purposes.

#### *Alternatives*

The alternatives available to the NRC are:

1. Approve the amendment request as submitted; or
2. No action (*i.e.*, deny the amendment request).

#### *Affected Environment and Environmental Impacts of Proposed Action*

The affected environment for Alternative 1 is the UT site. A full

description of the UT site and its characteristics was given in the license application related to the March 1998 renewal of the UT license (Ref. 2). The NETL of the UT at Austin is located at the J.J. Pickle Research Campus. The proposed action will not result in the release of any chemical or radiological constituents to the environment because the SNM is a sealed source (metallic SNM encased in aluminum). Similarly, because the SNM is a sealed source and will remain in a secure location at UT, the proposed action will not cause any adverse impacts to local land use, biotic resources, or cultural resources.

#### *Environmental Impacts of No Action Alternative*

As an alternative to granting the proposed license amendment, the staff considered denying the amendment (the no action alternative). Under the no action alternative, Manhattan College in Riverdale, NY would be the affected environment. The 3.88 kilograms of SNM would continue to be stored at a site that no longer has an active nuclear engineering program. While continued storage of the material at Manhattan College would not have any immediate environmental significance, the facility cannot complete decommissioning until the SNM has been removed. The no action alternative would not have any environmental impacts associated with the UT affected environment.

#### *Conclusion*

Based on its review, the NRC staff has concluded that the environmental impacts associated with the proposed action and no action alternative are insignificant. The preferred action would be to relocate this unused material to a facility that could utilize it. Thus, the staff considers that Alternative 1 is the appropriate alternative for selection.

#### *Agencies and Persons Contacted*

On July 9, 2004, the NRC staff provided the Texas Department of Health (TDH), Bureau of Radiation Control (TDH) a copy of the EA. In an e-mail dated July 13, 2004, TDH indicated that they did not have any comments regarding the EA.

The NRC staff has determined that consultation under Section 7 of the Endangered Species Act is not required because the proposed action will occur entirely within the existing facility and will not affect listed species or critical habitat.

The NRC staff has determined that the proposed action is not a type of activity that has potential to cause effect on historic properties because it will occur

entirely within the existing facility. Therefore, consultation under Section 106 of the National Historic Preservation Act is not required.

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

Pursuant to 10 CFR Part 51, the NRC staff has considered the environmental consequences of amending SNM-180 to allow UT to receive, possess and store 3.88 kilograms of SNM. On the basis of this assessment, the Commission has concluded that the environmental impacts associated with the proposed action would not be significant and the Commission is making a FONSI. Accordingly, the NRC has determined not to prepare an EIS for the proposed action.

#### **IV. Further Information**

A copy of this document will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of the NRC's document system. 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. However, the documents related to this proposed licensing action will not be available electronically for public inspection in the NRC Public Document Room or from the PARS component of ADAMS due to the sensitive nature of the information regarding SNM specifics and detailed storage locations. The documents related to this notice are:

1. University of Texas—Austin, Letter dated May 3, 2004, to U.S. Nuclear Regulatory Commission, "Amendment Request for Special Nuclear Material License at The University of Texas at Austin." Accession Number ML041320555 (not publicly available).
2. The NRC, March 4, 1998, "Safety Evaluation Report: Renewal Application Dated October 24, 1997."

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 email to [pdr@nrc.gov](mailto:pdr@nrc.gov). Documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (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 Rockville, Maryland, the 21st day of July 2004.

For the Nuclear Regulatory Commission.

**Gary S. Janosko,**

*Chief, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50057; File No. SR-Amex-2004-50]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to the NASD's Sale of Its Interest in the American Stock Exchange LLC to the Amex Membership Corporation

July 22, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,<sup>1</sup> as amended (the "Act"), and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 30, 2004, the American Stock Exchange LLC ("Amex" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On July 15, 2004, the Exchange filed Amendment No. 1 to the proposal.<sup>3</sup> On July 21, 2004, the Exchange filed Amendment No. 2 to the proposal.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission proposed changes to its Constitution and certain other organizational documents in connection

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Michael J. Ryan, Jr., Executive Vice President and General Counsel to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated July 13, 2004 ("Amendment No. 1"). Amendment No. 1 replaced Amex's original filing in its entirety.

<sup>4</sup> See letter from Michael J. Ryan, Jr., Executive Vice President and General Counsel to Nancy Sanow, Assistant Director, Division, Commission, dated July 20, 2004 ("Amendment No. 2"). Amendment No. 2 corrected formatting errors in the Amex Constitution, the Amended and Restated Exchange Limited Liability Company Agreement, the Second Restated Certificate of Incorporation of The Amex Membership Corporation, and the Amended and Restated By-Laws of The Amex Membership Corporation that were filed with Amendment No. 1; no substantive changes to these documents were made in Amendment No. 2.

with a proposed transaction ("Transaction") under which The Amex Membership Corporation ("MC") will become the sole owner of the Exchange through the acquisition of 100% of the Class B Participation Interest in the Exchange from New NASD Holdings, Inc. ("NAHO"), a wholly owned subsidiary of the National Association of Securities Dealers, Inc. ("NASD"). The proposed changes to Amex's Constitution, together with the Amended and Restated Exchange Limited Liability Company Agreement, the Second Restated Certificate of Incorporation of MC and the Amended and Restated By-Laws of MC are collectively referred to herein as the "proposed rule change." The text of the proposed rule change is available for viewing on the Commission's Web site, [www.sec.gov/rules/sro.shtml](http://www.sec.gov/rules/sro.shtml), and at the Exchange and the Commission.<sup>5</sup>

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of the proposed rule change is to implement changes to the current Constitution of the Exchange that will become effective at the time of the closing of the Transaction, as well as changes to the current Exchange Limited Liability Company Agreement, MC Certificate of Incorporation and MC By-laws. On February 7, 2004, the Board of Directors of MC, which corporation is currently the owner of 100% of the Class A Participation Interest in the Exchange, approved the terms of an agreement (the "Transaction Agreement") pursuant to which it, through a newly formed, wholly owned subsidiary of MC ("MC Acquisition Sub"), will acquire 100% of the Class B

<sup>5</sup> The Commission notes that the texts of these documents that appear on the Commission's Web site are the texts that were filed as part of Amendment No. 2.

Participation Interest in the Exchange from NAHO, a wholly owned subsidiary of the NASD, giving MC sole ownership of the Exchange.<sup>6</sup> On February 26, 2004, the NASD Board of Governors unanimously approved the Transaction. On February 27, 2004, the Special Committee of the Board of Governors of the Exchange<sup>7</sup> unanimously determined that the Transaction was in the best interests of the Exchange and, subject to execution of a regulatory services agreement, recommended that the Board of Governors of the Exchange (each member of such Board, a "Governor") consider and approve the Transaction. In connection with the Exchange member approval of the Transaction, MC sent to all the Exchange regular and options principal members (referred to collectively as "Members") and seat owners an Information Memorandum dated February 17, 2004, which was supplemented on March 2 and March 12, 2004, respectively, describing the Transaction in detail. Attached as exhibits to the Information Memorandum were the Transaction Agreement (including exhibits thereto), the amended Exchange Constitution, the Exchange Amended and Restated Limited Liability Company Agreement (the "Amended Exchange LLC Agreement") the Second Restated MC Certificate of Incorporation, and the Amended and Restated By-Laws of MC (the "Amended MC By-Laws").<sup>8</sup> At a Special Meeting of Members held on March 18, 2004, the Members approved the Transaction. On March 31, 2004, the Board of the Exchange approved the

<sup>6</sup> Ownership interests in American Stock Exchange LLC currently consist of a Class A Participation Interest held by MC and a Class B Participation Interest held by NAHO.

<sup>7</sup> In connection with the Transaction, the Exchange Board of Governors, recognizing that certain of its members had actual or possible conflicts of interest in connection with the Transaction by virtue of their service on the NASD Board of Governors and the MC Board of Directors, recommended that the Special Committee consisting solely of Governors who were not members of the NASD Board of Governors or the MC Board of Directors be established. On December 11, 2003, the Exchange Board of Governors established the Special Committee to consider whether the Transaction is in the best interests of the Exchange and to make recommendations to the Exchange Board of Governors concerning actions to be taken by such Board in connection with the Transaction.

<sup>8</sup> Additional changes have been made to these governance documents since the distribution of the Information Memorandum and Supplements thereto to the Members and seat owners prior to the Special Meeting of Members on March 18, 2004. The Information Memorandum advised Members that the amendments to these governance documents required SEC approval and were subject to "such other changes that may be requested by the SEC that are reasonably acceptable to each of the Exchange, NASD and [MC]."