Department of Energy
Washington, DC 20585

December 4, 2024

MEMORANDUM FOR UNDER SECRETARY FOR SCIENCE AND INNOVATION

FROM: TODD N. LAPOINTE
DIRECTOR
OFFICE OF ENVIRONMENT, HEALTH, SAFETY AND SECURITY

SUBJECT: **ACTION:** Approval of a permanent variance from certain requirements related to pressure safety in Title 10 CFR Part 851, *Worker Safety and Health Program*, conditioned on the fulfillment of the process described in the application from Fermi Forward Discovery Group

ISSUE: Whether to approve an application by Fermi Forward Discovery Group (FermiForward) for a permanent variance from certain pressure safety provisions of Title 10, Code of Federal Regulations, Part 851, *Worker Safety and Health Program* (10 CFR 851), to use a process that will ensure pressure equipment constructed to certain international codes is as safe and healthful as equipment constructed to the American Society of Mechanical Engineers (ASME) codes.

BACKGROUND: FermiForward, the selected management and operating contractor for Fermi National Accelerator Laboratory, effective January 1, 2025, submitted a request for a permanent variance to the following 10 CFR 851 requirements related to pressure safety:

- Appendix A(4)(b)(1)(ii-vii, xx-xxii, xxiv-xxviii, xxx-xxxi)
- Appendix A(4)(b)(2)(i, ii, iv, vii, viii)
- §851.23(a)(3) [§1910.103(b)(1)(i)(a)(1), §1910.103(c)(1)(i)(a), §1910.104(b)(4)(ii), §1910.104(b)(4)(iii)(a), §1910.106(b)(1)(iv)(b)(2), §1910.106(b)(1)(v)(b), §1910.169(a)(2)(i)]
- §851.27(d)(1)(ii-vii, xx-xxii, xxiv-xxviii, xxx-xxxi)
- §851.27(d)(2)(i, ii, iv, vii, viii)

The request adopts, in whole, the permanent variance application by Fermi Research Alliance (FRA) that was approved by the Department of Energy on May 22, 2024. The process, developed and institutionalized by FRA, evaluates and verifies that certain international pressure vessel and piping construction codes are as safe and healthful as the ASME boiler and pressure vessel codes and ASME B31 codes for pressure piping, prescribed by 10 CFR 851.

Pursuant to §851.31, the Office of Science (SC) Deputy Director of Operations has concurred with the variance application and forwarded it to the Director of the Office of Environment, Health, Safety and Security (EHSS Director) to review and make a written recommendation to the Under Secretary for Science and Innovation for consideration of final approval.

Based on the information provided in the variance application, I agree with the SC Deputy Director for Operations that the permanent variance application submitted by FermiForward should be approved (attachment), provided the conditions outlined in the Justification section are met.

JUSTIFICATION: The permanent variance application submitted by FermiForward is substantively identical to FRA's application previously approved on May 22, 2024. All 10 CFR 851 variance requirements are met, except:

> *§851.31(c)(4) A description of the steps that the contractor has taken to inform the affected workers of the application, which must include giving a copy thereof to their authorized representative, posting a statement, giving a summary of the application and specifying where a copy may be examined at the place or places where notices to workers are normally posted; and*
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> *§851.31(c)(4) A description of how affected workers have been informed of their right to petition the EHSS Director or designee for a conference.*

These requirements have not yet been met by FermiForward due to the upcoming transition, scheduled for January 1, 2025. EHSS recommends approval, with conditions, to ensure that affected workers not previously informed under the FRA permanent variance application process are informed of the variance and of their right to petition for a conference.

RECOMMENDATION: That you approve the permanent variance, subject to the following conditions:

- FermiForward implements the process outlined in the permanent variance application providing workers a place of employment that is as safe and healthful as would result from compliance with 10 CFR 851, Appendix A(4)(b), § 851.23(a)(3), § 851.27(d)(1), and § 851.27(d)(2), as required by Subsection (d)(2)(ii) of § 851.31, *Variance Process.*
- FermiForward informs affected workers not previously informed under the FRA permanent variance application process, of the variance. This must include providing a copy to their authorized representative, posting a statement, giving a summary of the application and specifying where a copy may be examined.
- FermiForward must inform affected workers not previously informed under the FRA permanent variance application process, of their right to petition the EHSS Director for a conference and provide details on how to request the conference.

APPROVE: GLR DISAPPROVE: _____ NEEDS DISCUSSION: _____ DATE: 12/27/2024