

May 2, 2001

James C. Forney, Director  
Closed Sites  
Waste Management, Inc.  
3970 Heritage Avenue, Suite A  
Okemos, MI 48864

SUBJECT: ACKNOWLEDGMENT OF REQUEST FOR EXTENSION OF THE SUBMISSION  
DATE FOR THE DECOMMISSIONING PLAN FOR THE SCA SERVICES  
(HARTLEY AND HARTLEY) LANDFILL

Dear Mr. Forney:

I am responding to your letter dated April 12, 2001, which forwarded a request for a license amendment to extend the due date for the subject decommissioning plan for U.S. Nuclear Regulatory Commission staff review and approval. We have completed the initial processing of your request, which is an administrative review.

During the initial processing, numerous omissions, inconsistencies, and errors were identified. These deficiencies are noted in the enclosure. The requested due date can not be approved. The schedule described in the enclosure with the associated revised due date should be provided within 30 days of the date of this letter, so that your request can be forwarded for technical review. Please note that the technical review may identify omissions in the submitted information or technical issues not identified during the administrative review that require additional information.

I will be contacting you shortly to schedule a meeting to discuss these comments.

We acknowledge your request to withdraw your prior request for a one year extension dated November 3, 2000.

Regarding your draft minutes from our February 23, 2001, we forwarded comments to you on April 30, 2001.

J. C. Forney

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If you have any questions, please call me at (301) 415-6694.

Sincerely,

**/RA/**

Sam Nalluswami, Project Manager  
Facilities Decommissioning Section  
Decommissioning Branch  
Division of Waste Management  
Office of Nuclear Material Safety  
and Safeguards

Enclosure: Comments on Extension Request

Docket No.: 040-09022

License No.: SUC-1565

cc: w/o Encl: T. Bertram, MDEQ  
D. Minnar, MDEQ  
D. Gruben, MDEQ

**COMMENTS ON REQUEST FOR AN EXTENSION TO  
THE DUE DATE FOR SUBMITTING A DECOMMISSIONING PLAN  
FOR THE SCA HARTLEY & HARTLEY LANDFILL**

A. GENERAL COMMENT

1. We have chosen not to comment on the "History" section of your letter because the bottom line remains unchanged - a decommissioning plan (DP) must be submitted and it's overdue.
2. There appears to be some confusion regarding the timeliness rule requirements for submission of a DP and the timeliness rule requirements to complete decommissioning. These are separate but related requirements.
3. There appear to be a number of inconsistencies in your attachment. For example, the seventh activity under RI/FS Activities is "Revise RI/FS and resubmit to MDEQ". However, at this point in the schedule a draft FS has not been submitted. In addition, there appear to be inconsistencies between the schedule discussed in paragraph 3 of your letter and your attachment. For example, your letter states that "...within approximately 12 weeks after the approval of the RI, Waste Management will submit an abbreviated [emphasis added] FS to the State..." Your attachment does not include an "abbreviated" FS and the time to develop and submit the draft FS is 10 weeks.

D. SPECIFIC COMMENTS

1. There are several references in the letter to a one year limit on extensions under the timeliness rule. There is no such specific limit in the regulations nor does our guidance suggest that extensions be limited to one year.
2. We agree with your request on page 5 that we receive copies of your submittals to the Michigan Department of Environmental Quality (MDEQ). We will coordinate our review with MDEQ. However, you state that the remedial investigation and combined risk assessments reports will not contain radiological data. Therefore, any conclusions that we reach in reviewing these reports would be preliminary and subject to revision when the radiological data is provided.
3. You state on page 5 that you will be proposing site institutional controls in the Remedial Action Plan and that NRC must review the RAP to insure the institutional controls "comport with the NRC plan [emphasis added] for the site". It is the obligation of Waste Management, not NRC, to develop a plan (i.e., a DP) for this site. NRC's obligation is to review this plan for compliance with NRC's regulations.
4. a. The "... attached draft schedule from the MDEQ Addendum..." referenced on page 5 of your letter was not included. The draft schedule was faxed to us on April 30, 2001. The delay in receiving this information has delayed our response.

Enclosure

- b. To gain a better understanding of the estimated dates for completing related tasks required to meet your obligations with the MDEQ, we have converted the schedule that you provided into a Gantt chart with calendar dates. In this conversion, we assumed that the “days” in the timeframe column of your attachment are calendar days. The relationship between the Interim Response Activities and the other two groups of activities is unclear. The Interim Response Activities have not been included in the Gantt chart because they do not appear to be on the critical path. Because the footnote states that the preparation of the Remedial Action Plan (RAP) will begin upon approval of the FS, the initiation of RAP activities is assumed to begin immediately upon conclusion of the RI/FS activities. The resulting Gantt chart is attached. Please note that chart represents our understanding/interpretation of the information you provided. The chart should not be misconstrued as our proposed schedule.
  - c. Based on the attached chart, it appears that the draft RAP would be submitted in May of 2003. However, you state on page 6 of your letter that “...these documents will not be completed and submitted until 4 years after the execution of the Addendum”. To correct this misunderstanding, we request that you develop a calendar schedule similar to the one we have developed. The schedule should include clearly defined assumptions and reference associated State requirements.
  - d. Assuming that the RI/FS must be approved before a DP can be submitted, it is unclear why the DP could not be submitted at the same time as the draft RAP.
  - e. Your attachment does not include a schedule for developing the final remedial design that is discussed on page 5 of your letter.
5. We agree with your conclusion on page 6 of your letter that the installation and operation of a leachate extraction system will require an amendment to your license. However, we do not agree that WM cannot finish the “DP process” with the system operating. The DP can, and should, be submitted as soon as the proposed remedy is known rather than after the remedy is installed, operated as required, and shutdown. Furthermore, if the extraction system is not required to meet the requirements of 10 CFR 20 Subpart E, the license could be terminated with the extraction system still operating.
6. The argument beginning on page 6 regarding the absence of a trigger event is without merit. Contrary to your assertion, there are no principal activities occurring at this site. The term “principal activities” is defined in 10 CFR 40.4:

*Principal activities*, as used in this part, means activities authorized by the license which are essential to achieving the purpose(s) for which the license was issued or amended. Storage during which no licensed material is assessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities [emphasis added]

The authorized use, as stated in the license, is “site activities leading to decommissioning of the SCA site”. Because the authorized use involves activities incidental to decommissioning, there are no “principal activities”, as defined in the regulations, at this site. In addition, a decommissioning plan is required by condition 11.A of the license. Therefore, the timeliness rule for submission of a DP applies and a DP must be submitted.

7. The argument on page 8 regarding an alternate schedule to complete decommissioning is somewhat irrelevant. At issue is the schedule for submitting a decommissioning plan. The DP may include a proposed alternate schedule to complete decommissioning in accordance with 40.42(i). That alternate schedule, if proposed, would be included in the review of the DP. However, this provision of the regulations does not relieve the licensee of the obligation to submit a DP.

## CONCLUSION

Regarding your request on page 8, we know of no reason why the submission of the DP should be delayed until the shutdown of the leachate extraction system. Based on the information provided to date, it appears that the DP should be submitted at the same time that the draft RAP is submitted to MDEQ.

J.C. Forney

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If you have any questions, please call me at (301) 415-6694.

Sincerely,

**/RA/**

Sam Nalluswami, Project Manager  
Facilities Decommissioning Section  
Decommissioning Branch  
Division of Waste Management  
Office of Nuclear Material Safety  
and Safeguards

Enclosure: Comments on Extension Request

Docket No.: 040-09022  
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cc: w/o Encl: T. Bertram, MDEQ  
D. Minnar, MDEQ  
D. Gruben, MDEQ

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