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February 12, 1997

SECY-97-038

FOR: The Commissioners /s/  
FROM: Hugh L. Thompson, Jr.  
Acting Executive Director for Operations  
SUBJECT: RENEWAL OF LICENSES FOR NUCLEAR METALS, INC.

PURPOSE:

To inform the Commission of the staff's intention to renew the two source material licenses issued to Nuclear Metals, Inc. (NMI).

BACKGROUND:

NMI is listed in the Site Decommissioning Management Plan. NMI submitted renewal applications, in 1989 and 1990, that required substantial technical review, completion of an environmental assessment (EA), and significant staff interactions regarding financial assurance. The staff has completed its reviews and intends to renew the NMI licenses. However, the financial assurance issue, and particularly the commitment from the U.S. Army, a major NMI customer, are unusual and, therefore, Commission notification is warranted. Further, the NMI licenses are to be renewed before the Commonwealth of Massachusetts becomes a U.S. Nuclear Regulatory Commission Agreement State. NRC has coordinated with the Massachusetts Department of Public Health-Radiation Control Program, throughout the staff's review of this matter.

The EA has been completed, and the staff is preparing a Federal Register Notice announcing the availability of the EA with a Finding of No Significant Impact (FONSI). The staff contracted with Oak Ridge National Laboratory to prepare the EA to evaluate environmental issues associated with the renewal of licenses issued by NRC for continued operations. The purpose of the EA was to provide sufficient information and analysis for NRC to determine whether to prepare an Environmental Impact Statement or to issue a

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FONSI. The EA focuses on the potential impacts associated with radiological and other hazardous air emissions at NMI during routine and accidental releases because these were determined to be the most significant potential environmental impacts. Findings of the EA support a FONSI and renewal of NMI's licenses.

The remediation of the holding basin, which is no longer in use, and contaminated groundwater is a separate decommissioning action, and therefore, not addressed in the renewal EA. The Licensee has pending before the NRC a request to amend the licenses to approve the "Decommissioning Plan for the Holding Basin." Because the staff is unlikely to complete review of this amendment before the execution of the Section 274b Agreement with the Commonwealth of Massachusetts, the staff intends to defer making a determination on it. After execution of Agreement, the Commonwealth of Massachusetts will become responsible for determining whether to approve that Plan, since it will be responsible for all regulatory actions with respect to these licenses. The staff does not believe that continued operations at the Concord site will adversely affect decommissioning and reclamation activities.

#### DISCUSSION:

NMI, located in Concord, Massachusetts, has contracts with the government primarily for both radioactive and non-radioactive metal products. NMI estimates that commercial contracts are involved in four to eight percent of the depleted uranium products (and their resulting contamination). NMI possesses sufficient quantities of NRC-licensed material to require submission of Decommissioning Funding Plan and associated Decommissioning Cost Estimate (DCE) and financial assurance mechanism, in accordance with 10 CFR 40.36.

NMI provided a Letter of Credit (LOC) for \$750,000 on July 1, 1994, and an interpretation of its Army contracts that relied on funding from the Army for 96 percent of its DCE. However, NMI did not obtain written verification that the Army agreed with NMI's interpretation of those contracts. Therefore, NMI sought extraordinary relief from the Army Contract Adjustment Board (ACAB), with respect to site remediation costs, on the basis that NMI is a contractor essential to the national defense.

On September 16, 1996, NMI submitted an ACAB decision, dated September 13, 1996, to NRC,

which provided the Army policy for future Army funding of decommissioning costs associated with work performed for the government. The ACAB decision authorized direct funding of remediation of an onsite holding basin, obligated the Army to transport and dispose of wastes removed from the holding basin, and required NMI to complete all necessary additional environmental assessments and proceed at a reasonable pace with cleanup of all areas of the site not supporting current production. The decision authorized NMI to bill these costs against current open contracts with the Army. Waste processing and remediation costs associated with future work would be billed on a current basis against appropriate contracts.

Subsequent interactions and correspondence between NRC staff, NMI, and the Army provided further assurance that NMI could charge at least 92 percent of all decommissioning costs to the licensee's facilities contract with the Army, as an allowable overhead cost, if the facilities were to cease operations at Concord soon. Staff also received a December 13, 1996, letter from Kenneth J. Oskar, Deputy Assistant Secretary of the Army (Procurement) and Chairman of the ACAB, which stated that the Army, over a period of time, would indirectly pay a substantial part of the site assessment and cleanup costs associated with potentially contaminated areas at the NMI site, in addition to the costs associated with the holding basin. Thus, the ACAB decision and the Deputy Assistant Secretary's letter address how the Army would cover a substantial portion of site decommissioning costs, both if NMI were to continue performing production activities, or if it were to cease operations at Concord soon. Although information on the docket from the Army provides substantial likelihood that the Army will continue to contract with NMI, there is no unequivocal Army commitment to ensure that contracts will remain in place so that all necessary remediation work can be billed. Normally, government statements of intent, which are acceptable financial assurance mechanisms, provide a clear and unequivocal commitment that a government entity will request decommissioning funding at the time it is needed. Nevertheless, after a careful review of the NMI and Army submittals, the Office of the General Counsel concluded that the July 1, 1994, LOC, and the December 13, 1996, Army letter in conjunction with the ACAB decision, set forth functionally equivalent assurances from the Army that it will fund the vast preponderance of the decommissioning costs through various contracting mechanisms. Also, NMI has provided adequate assurance for

the  
portion of decommissioning costs that will likely not be covered by the Army. These assurances provide a legally sufficient basis for NMI to satisfy 10 CFR 40.36. Therefore, the staff intends to renew the NMI licenses, and anticipates transferring the renewed licenses soon, when Massachusetts becomes an Agreement State.

COORDINATION:

The Commonwealth of Massachusetts Department of Public Health-Radiation Control Program agrees with  
the staff's position on this matter. The Office of the General Counsel has reviewed this paper and has no legal objection.

Hugh L. Thompson, Jr.  
Acting Executive Director  
for Operations

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