

POLICY ISSUE NOTATION VOTE

October 28, 2005

SECY-05-0200

FOR: The Commissioners

FROM: Luis A. Reyes
Executive Director for Operations

SUBJECT: EFFORTS BY WESTERN NUCLEAR, INC., TO ACQUIRE
OFF-SITE PROPERTIES IN CONJUNCTION WITH
DECOMMISSIONING ITS URANIUM RECOVERY SITE AND
THE NEED FOR INSTITUTIONAL CONTROLS

PURPOSE:

To inform the Commission of the actions taken by Western Nuclear, Inc. (WNI), to acquire the offsite properties in the Red Mule Acres subdivision, and discuss and recommend actions to resolve the remaining ownership and institutional control issues.

SUMMARY:

WNI is a uranium recovery licensee whose facility is located at the Split Rock site in Jeffrey City, Wyoming. WNI is required to remediate groundwater contamination at the site under 10 CFR Part 40, Appendix A (hereinafter Appendix A). WNI had proposed to use institutional and engineered controls on offsite properties, to protect human health from site-derived constituents, in lieu of active corrective action. In SECY-02-0183, dated October 11, 2002, the staff recommended that it require WNI to make a good-faith effort to purchase the properties. If unsuccessful, WNI would need to provide durable and enforceable institutional controls for the properties it could not purchase, and install an alternate water supply before license termination.

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In a Staff Requirements Memorandum (SRM) dated November 19, 2002, the Commission agreed that WNI should make a good-faith effort to purchase the properties, noting, that if this goal was not achievable, WNI would have to provide both durable and enforceable institutional controls. The SRM provided additional comments and conditions.

WNI has not met the conditions established by the Commission in the SRM dated November 19, 2002. WNI has neither acquired all of the properties nor has it established institutional controls for the one property it could not acquire. However, both the staff and the U.S. Department of Energy's (DOE's) Office of Legacy Management have concluded that WNI has completed a good-faith effort to acquire the remaining property. In addition, DOE has requested several additional actions before site transfer, and WNI has verbally agreed to these actions. Consistent with these actions, the staff recommends that: (1) WNI should make one final offer to purchase the property or real estate rights immediately before site transfer; (2) If unsuccessful, WNI should include funds equivalent to the final offer in its long-term surveillance payment; and (3) With staff review and approval, WNI should relocate offsite monitoring wells; redefine the long-term care boundary to include all wells currently located offsite; or provide for institutional controls to provide DOE access to the wells and enforce use restrictions.

BACKGROUND:

WNI is a uranium recovery licensee whose facility is located at the Split Rock site in Jeffrey City, Wyoming. WNI is required to remediate ground water contamination at the site under Appendix A. In SECY-02-0183, dated October 11, 2002, the staff sought the Commission's approval of the staff's approach for addressing WNI's proposal for termination of its license, including the use of certain institutional controls as alternatives to the requirements in Appendix A. WNI had proposed to use institutional and engineered controls on offsite properties, to protect human health from site-derived constituents, in lieu of active corrective action. The staff recommended that it require WNI to make a good-faith effort to purchase the properties. If unsuccessful, WNI would need to provide durable and enforceable institutional controls for the properties it could not purchase, and install an alternate water supply before license termination (Option 2).

In an SRM dated November 19, 2002, the Commission approved this recommendation with comments and conditions. The Commission agreed that WNI should make a good-faith effort to purchase the properties, noting, that if this goal were not achievable, WNI would have to provide both durable and enforceable institutional controls. In the SRM, the Commission directed the staff to:

1. Retain flexibility in its consideration of approaches, as outlined in the Uranium Mill Tailings Radiation Control Act;
2. Provide a schedule for addressing termination of WNI's license;
3. Advise the Commission if information becomes available that impacts the use of Option 2 as the basis for developing requirements for termination of WNI's license;
4. Evaluate the use of water used for ranching and agriculture;

5. Contact the Wyoming Department of Environmental Quality (WDEQ), provide it with the Commission's preliminary conclusions, and request concerns and comments from the State of Wyoming; and
6. Engage DOE with regard to funding the installation of an alternate water supply.

In a memorandum to the Commission dated July 16, 2003, the staff addressed Items 1, 2, 3, 5, and 6 above. The staff did not address Item 4 in that memorandum because of the staff's on-going review of WNI's March 7, 2003, "Supplemental Ground Water Modeling Report." The staff noted that the outcome of that review would not affect the Commission's preliminary conclusions in the SRM, nor the comments provided by DOE and Wyoming Department of Environmental Quality. In this memorandum, the staff stated that it would provide future updates as the technical review progressed and the interaction with WNI evolved. Such an update was provided in SECY-05-0047, dated March 23, 2005.

DISCUSSION:

As discussed in SECY-05-0047, WNI has acquired all but one of the offsite properties (referred to herein as "Lot 1") in the Red Mule Acres subdivision. A summary of WNI's efforts to acquire the offsite properties is provided in Enclosure 1. Based on an analysis of the information supplied by WNI, the staff has concluded that WNI has completed a good-faith effort to acquire the properties.

DOE had expressed reluctance to being put into a position to install an alternate water supply for Red Mule Acres residents, should it ever become necessary, as proposed in WNI's October 1999 site closure plan. In its submittal dated February 10, 2005, WNI modified that proposal. WNI proposed to provide a well and pipeline for domestic water to the edge of Lot 1 from a location outside of the proposed long-term care area and where the water quality is, and will be, better than that currently used by the owners of Lot 1. The proposed well and pipeline would be installed before license termination and site transfer to DOE, so DOE would not have a future obligation to do so. Easements would be provided and an appropriate amount for maintenance would be added to the long-term care payment at license termination.

In a letter dated May 9, 2005, the staff consulted with DOE concerning WNI's good-faith effort and WNI's modified proposal for an alternate water supply. DOE responded in a letter dated July 13, 2005 (Enclosure 2). The letter states, in part, that based on the information presented, DOE agrees that WNI has made a reasonable effort to acquire the one remaining property. Regarding the proposed alternate water supply, DOE stated that it sees no value in having WNI provide such a supply. Additionally, DOE made the following points:

- U. S. Nuclear Regulatory Commission (NRC) should remove Lot 1 from the long-term surveillance boundary based on a reassessment of the likelihood of the contaminants reaching and impacting the groundwater at this property; or retain the property within the boundary and agree that the funds transferred to the Federal government should be adjusted to include the amount of WNI's final offer made to the property owners.

- If NRC cannot make a determination that this property can be removed from the long-term surveillance area, WNI should make one final attempt to purchase the property or the real estate rights that affect the ground water use restriction before providing the additional funds to the U.S. Treasury at the time of site transfer.
- Some of the monitoring wells are currently outside the site's proposed long-term surveillance boundary. DOE would like to see the site boundary redrawn to include all wells that will be in the long-term monitoring plan. Ownership or institutional controls should convey to DOE to provide access for monitoring, maintenance, and well replacement and to enforce the appropriate use restrictions within the boundary.

The staff shared DOE's letter with WNI. Staff conducted a telephone conference with WNI on August 1, 2005, for the purpose of obtaining WNI's reaction to DOE's positions. WNI had no objection to any portion of DOE's letter.

Regarding the inclusion of Lot 1 within the long-term care boundary, the staff has concluded that it is prudent to retain this property within the boundary. If future groundwater monitoring demonstrates that this property will not be impacted, staff would entertain a request, at that time, to revise the boundary. Regarding the offsite monitoring wells (there are four), the staff has requested that WNI reassess the placement of these wells or provide for the controls, as discussed in DOE's letter. In response, WNI has stated that it wants to acquire more monitoring data before it decides on an approach for these wells.

Regarding Item 4 of the November 19, 2002, SRM, the staff has concluded that there should be no adverse impacts to human health, or the environment if water inside the proposed long-term care boundary were to be used for agricultural or livestock purposes.

WNI has not met the conditions established by the Commission in the SRM dated November 19, 2002. WNI has neither acquired all of the properties nor has it established institutional controls for the one property it could not acquire. However, both the staff and DOE have concluded that WNI has completed a good-faith effort to acquire the remaining property. In addition, DOE has requested several additional actions before site transfer and WNI has verbally agreed to these actions. Therefore, the staff has developed two options.

Option 1: Continue to require WNI to provide durable and enforceable institutional controls for the remaining property, and install an alternate water supply before license termination.

Pros:

- Establishing institutional controls and an alternate water supply before license termination would eliminate any future problems with these actions by the Federal government, should these actions become necessary.

Cons:

- Any durable and enforceable institutional controls will require the consent of the property owners. The property owners have demonstrated that it is highly unlikely that they would agree to such controls at a reasonable price.

- Negotiations regarding such controls would further delay license termination.
- The property owners have rejected WNI's offer to provide an alternate water supply and DOE sees no value in WNI establishing provisions for a future alternate water supply.
- The application for alternate concentrations limits (ACLs) cannot be approved until the institutional control issues are resolved. A groundwater corrective action program is required until ACLs are approved. This corrective action program is costly.

Option 2: Take the actions described in DOE's letter of July 13, 2005: (1) WNI would make one final offer to purchase the property or real estate rights immediately before site transfer; (2) If unsuccessful, WNI would include funds equivalent to the final offer in its long-term surveillance payment; and (3) With staff review and approval, WNI would relocate offsite monitoring wells; redefine the long-term care boundary to include all wells currently located offsite; or provide for institutional controls to provide DOE access to the wells and enforce use restrictions.

Pros:

- Finalization of the ACL application, cessation of the groundwater corrective action program, and license termination activities can proceed.

Cons:

- Some delays may be experienced in establishing acceptable institutional controls if all the monitoring wells cannot be located within the long-term care boundary.

RESOURCES:

Option 1:

Estimated full-time equivalent (FTE) 0.5 each Fiscal Year (FY)

Budget Years: FY06 and FY07

Work Impacts: Anticipated amendments for new in situ leach satellite facilities and anticipated ACL applications would need to be prioritized, if and when received.

Resources Currently Budgeted: None. The staff's last budget submission assumed that these issues would be resolved and the ACL application would be approved in FY05. In FY06 and 07, NMSS will be able to absorb the resources within its budget by reallocating resources from lower priority activities.

Schedule: Refer to Enclosure 3.

Option 2:

Estimated FTE: 0.3 each FY

Budget Years: FY06 and FY07

Work Impacts: Anticipated amendments for new in situ leach satellite facilities and anticipated ACL applications would need to be prioritized, if and when received.

Resources Currently Budgeted: None. The staff's last budget submission assumed that these issues would be resolved and the ACL application would be approved in FY05. In FY06 and 07, NMSS will be able to absorb the resources within its budget by reallocating resources from lower priority activities.

Schedule: Refer to Enclosure 3.

The information on resources and schedule reflect the current environment and if a significant amount of time (greater than 30 days) passes or the Commission provides the staff direction that differs from or adds to the staff's recommended action(s), this section of the paper would need to be revisited after issuance of the draft SRM.

COMMITMENTS:

The staff's commitments and schedule for both options are provided in Enclosure 3.

RECOMMENDATIONS:

That the Commission:

1. Agrees that WNI has made a good-faith effort to acquire all of the offsite properties; and
2. Approves Option 2.

COORDINATION:

The Office of the General Counsel has reviewed this paper and has no legal objections. The Office of the Chief Financial Officer has reviewed this paper and has no objections.

/RA/

Luis A. Reyes
Executive Director
for Operations

Enclosures:

1. Summary of Efforts to Acquire Off Site Properties
2. DOE Letter of July 13, 2005, Re: "Efforts
of Western Nuclear, Inc. to Acquire Institutional
Controls within Long-Term Surveillance Boundary" (ML052100370)
3. "Staff Commitments and Schedule for Options"

COORDINATION:

The Office of the General Counsel has reviewed this paper and has no legal objections. The Office of the Chief Financial Officer has reviewed this paper and has no objections.

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ML051960513

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