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To: <DECOMCOMMENTS@nrc.gov>
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Please see attached. Hard copy to follow.

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December 21, 2005

Chief, Rules Review and Directives Branch
U.S. Nuclear Regulatory Commission
Mail Stop T6-D59
Washington, DC 20555-0001

Re: Consolidated NMSS Decommissioning Guidance, Updates to Implement the License
Termination Rule Analysis

To Whom It May Concern:

The Association of State and Territorial Solid Waste Management Officials (ASTSWMO) is a national non-profit organization representing the managers of solid waste, hazardous waste, remediation, and underground storage tank programs of the State and Territories. The ASTSWMO Radiation Focus Group has reviewed the revisions to NUREG1757, entitled "Consolidated NMSS Decommissioning Guidance, Updates to Implement the License Termination Rule Analysis," and has a few general comments for your consideration.

On its broadest interpretation, the revisions to NUREG 1757 provide mechanisms for site cleanups to achieve less than unrestricted release. Although we realize that environmental cleanups in general have allowed increasing use of restricted use cleanups, we would caution the Commission to continue to clearly state that the preferred course of action is to achieve cleanup to unrestricted use levels. Lesser cleanup, while allowable in certain situations, should continue to be an option that requires additional justification and scrutiny.

We recognize that the main purpose of this document is to strengthen this scrutiny, and to provide information regarding the types of controls required on restricted use sites to ensure that they remain protective of human health and the environment. In that regard, we do support the use of a Long Term License as a strong institutional control. It should be noted that States continue to improve the effectiveness of institutional controls at the State level, including the development of environmental covenants that are enforceable and run with the land in perpetuity. It is possible for these covenants to also provide NRC or other agencies with enforcement authority.

In a related matter, restricted use releases rely on the concept of future land use, with the cleanup being tailored to be protective of some estimate of that land use. The Focus Group recognizes that for sites with long-lived isotopes, there is no reasonable means to estimate land use thousands of years into the future. While we can support the 100-year time frame as a way to address this uncertainty, the Commission should ensure that adequate mechanisms exist to revisit and update these assumptions on a regular basis.

Coming full circle on this issue, the use of foreseeable land use must be accompanied by the inclusion of appropriate institutional land use controls to maintain the underlying land use

assumption. The entire concept of a use-based cleanup results in the maintenance of this land use becoming a restriction on the cleanup. Conversely, the cleanup cannot be unrestricted if it is conditional on a land use to be protective. The document must be very clear on that concept. The NRC license could be one of these institutional controls (along with others) that could provide this protection as long as it is needed.

The section on engineered barriers warrants several comments. First, a concept is expressed in the document of unrestricted release on a site with an engineered barrier. This seems conceptually inaccurate. The presence of a barrier, which requires monitoring, inspection, and maintenance, as well as restrictions that ensure the protection and continued functionality of the barrier, precludes unrestricted use. Second, the concept of a barrier being passive and not requiring maintenance is also not accurate. Experience in the UMTRA program, which is widely referenced in the document as having robust barriers that do not require maintenance, is that inspection and maintenance of these barriers is required. Lastly, we believe that references to barrier technology in the document are outdated. Both the Department of Energy and the Environmental Protection Agency have ongoing studies of barrier performance. This has led to new recommendations in barrier design, including the emerging use of evapotranspiration barriers in place of multiple layers. The document should reference the appropriate state of the art in this technology.

The section on intentional mixing is likely to be one of the more controversial aspects of the document. Although most federal and state agencies have historically opposed the dilution of contaminated media as a means to achieve cleanup, we believe that there is a place for the concept of intentional mixing. Specifically, the Focus Group supports the intentional mixing of contaminated materials to meet waste acceptance criteria. This appears to be a practical means of achieving site cleanups in a cost effective manner. Two important aspects of this concept are that the footprint of the contaminated area cannot be expanded (clean material cannot be used to dilute contaminated material), and that the objective is to excavate all contamination and achieve unrestricted release. However, we are much less comfortable with the concept of intentional mixing designed to leave contamination in place, and fully oppose the use of clean materials to dilute contamination.

Thank you for your consideration in this matter. If you should have any questions, need any additional information, or wish to discuss this matter further, please contact me at 303-692-3387.

Respectfully,

Jeff Deckler, Chair
ASTSWMO Radiation Focus Group

cc: Jim Woolford, EPA
Dan Schutlheisz, EPA
Radiation Focus Group
Federal Facilities Subcommittee