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Date: 12/30/05 4:29PM
Subject: Comments on NUREG 1757, Supplement 1, draft

The attached pdf file is submitted in response to STP-05-0794 and the NRC's September 29, 2005 federal register notice (70 FR 56940-56941). The wpd file is included for your convenience.

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Denise M. Sheehan
Commissioner

December 30, 2005

Via E-Mail

Mr. Duane W. Schmidt
US Nuclear Regulatory Commission
Washington, DC 20555-0001

Dear Mr. Schmidt:

RE: NUREG 1757, Supplement 1, Draft Report for Comment
Decommissioning Guidance Updates to Implement the License Termination Rule
Analysis (STP-05-074)

The New York State Department of Environmental Conservation has reviewed the above-referenced draft report, and offers the following comments for your consideration:

1. Long-Term Control License

We concur with the concept of a long-term control license (LTC license), described on page II-6 and elsewhere in this document. Properly implemented, a LTC license can provide greater assurance that the necessary land use and other controls will remain effective at sites that are released for restricted use. In addition, we agree that the LTC license is preferred over the legal agreement and restrictive covenant option.

2. NRC Legal Agreement and Restrictive Covenant (LA/RC)

a. On Page II-7, it is stated, "The LA/RC option provides flexibility for a formerly licensed site where the current owner does not want to become a licensee or for current licensees where the owner may want license termination." This gives the impression that it is merely a matter of the licensee's preference. However, on page II-8 and elsewhere, certain conditions are described that must be met for the LA/RC option to be used. We suggest revising the statement on page II-7, to note that certain conditions apply.

b. The conditions necessary for using LA/RC include a demonstration "that the LA/RC would be a significant benefit to the licensee/owner and affected parties." Given that the LA/RC option would not entail the fees associated with the LTC license option, demonstrating that this option is a benefit to the licensee is hardly necessary. Rather, the licensee should demonstrate

that the LA/RC option is justified and provides the same level of protection for the public and the environment as the LTC license option. Therefore, we suggest revising the wording of the bullet on pages II-8 and 9, and elsewhere, to read (changed language underlined):

> LA/RC option may be used if:
>
> - Current licensee or formerly licensed site owner requests use of the LA/RC rather than the LTC license, demonstrates that the LA/RC option would be as effective as the LTC license option and legally enforceable by NRC in the jurisdiction where the site is located, and demonstrates that the LTC licensee option would impose an unreasonable economic, technological, or safety burden on the person or the public.

3. Onsite Disposal of Radioactive Materials under 10 CFR 20.2002

In new Section 15.12 (page III-4), three onsite disposal options are described. Under Option 2, the NRC would approve the on-site disposal of radioactive waste as long as the projected dose was less than 100 mrem/yr, and adequate financial assurance is provided if the projected dose exceeds 25 mrem/yr. In addition, the on-site disposal area is to be revisited at decommissioning: "Onsite disposals or burials may have to be remediated for license termination." This appears to go beyond the intent of section 20.2002, and we recommend deleting it. In New York State, a proposal for disposal under Option 2 would not meet the requirements of Section 380-3.5 of 6 NYCRR 380 (the State regulations comparable to 10 CFR 20.2002.). If this option is not deleted, the NUREG should be expanded to set clear and strict conditions under which the NRC would consider approving onsite burial in those cases where it is known, in advance, that the burial site will require remediation in the future. The NRC should explain the circumstances that would justify deliberately creating such a site.

4. Land Use

On Page IV-52, in Section 1.3.3.3, *Guidance on Specific Issues, Land Use*, there are two somewhat different time periods referenced. In the second paragraph of this section it is stated, "Any land uses that similar property in the region currently has, or may have in the near future (e.g., less than 100 years), should be characterized a reasonably foreseeable." Later, this sentence appears in the final paragraph on that page, "The societal uses of the site in the future should be based on advice from local land planners and other stakeholders on what possible land uses are likely within a time period of the next few decades to around a hundred years." Neither provides clear direction on the time period that should be evaluated. If there are conditions under which it would be adequate to evaluate less than 100 years (for example, short half-life of radionuclides), it would be helpful to explain those. Otherwise, we recommend revising both references to require consideration of a 100-year period.

5. Use of Intentional Mixing of Contaminated Soil

a. In the introduction to Section 12.13 (Page V-9), and elsewhere, the document refers to the use of intentional mixing for limited onsite disposal at operating facilities approved under 10 CFR 20.2002. In New York State, such disposals are governed by Section 380-3.5 of 6 NYCRR 380. It is unlikely that a proposal to use intentional mixing for on-site disposal could meet the requirements of Part 380.

b. In the second paragraph of Section 15.13.2, *Review Procedures*, (Page V-10), it is stated, "Intentional mixing should not be proposed as a sole remedy, for example to achieve the LTR release criteria using minimal funds, unless this is the only solution to achieving the license termination dose criteria."(underlining added). We are unaware of a situation in which the latter would be true. If intentional mixing is feasible, it must be feasible to move the contaminated soil. If the contaminated soil can be moved to be mixed, it can also be moved to be placed into a container for shipment to a radioactive waste disposal facility. We recommend deleting the phrase, "unless this is the only solution to achieving the license termination dose criteria."

c. On page V-14, the Approval Conditions for use of intentional mixing are listed. Condition 1 calls for the area containing the mixed contaminated soil to be equal to or smaller than the footprint of the zones of contamination before decommissioning begins. We recommend that this be changed, to limit the overall volume of contaminated soil, not just the area extent. Otherwise, licensees can propose creating mounds of mixed soil, as long as the areal extent remains the same. This could limit the future uses on a site, or lead to a subsequent increase in the areal extent of the contamination, when future occupants spread the pile for their own purposes (this would not necessarily result in further dilution, depending on the height of the pile). A more effective criterion would be to that the total volume of contaminated soil should not be increased by mixing. This would prevent the creation of mounds of contaminated soil on the site, and would place a reasonable limit on the use of mixing solely to avoid disposal.

d. We do not support the statement in condition 2, "Staff will consider rare cases where the only viable alternative to achieving the dose levels of the LTR appears to be using clean soil from outside the footprint of the area containing contaminated soil." We question whether this would ever be the case. If intentional mixing is feasible, then it must be feasible to move the contaminated soil. If the contaminated soil can be moved to be mixed, it can also be moved to be placed into a container for shipment to a radioactive waste disposal facility. We recommend deleting that sentence, on page V-14 and elsewhere. If not, at least the words "appears to be" should be changed to "has been clearly demonstrated to be."

e. In the fifth paragraph on Page V-14, it is stated,

> The staff will consider the inclusion of uncontaminated soil that comes from below the contaminated zones within the footprint as long as it is consistent with the overall approach described for achieving license termination, and considers the impacts associated with an increase depth (e.g. [e]ffect on groundwater).

Clean soil under the contaminated zone should be used as sparingly as clean soil on the surface. The goal should be to avoid contaminating clean materials, wherever they are present. We recommend deleting this option, and instead limiting the volume of mixed soil, as explained in our comment 5.c.

Thank you for the opportunity to review this document. If you have any questions, please contact me (518-402-8579).

Sincerely,

Barbara Youngberg

Barbara Youngberg
Chief, Radiation Section

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