9/29/05
70FR56940

(12)

From: Jim Lieberman <jxlrc@comcast.net>
To: <decomcomments@nrc.gov>, <mtl@nrc.gov>
Date: 1/8/06 11:43AM
Subject: Comments on draft NUREG 1757,Supplement 1

Attached are my comments on the above NUREG for the staff's consideration.

Jim Lieberman

Regulatory and Nuclear Consultant
Home: 301-299-2294
Office: 301-299-3607
Cell: 301-526-4790
e-mail: jxlrc@comcast.net

CC: <dws2@nrc.gov>, <klb@nrc.gov>, <dmg2@nrc.gov>, <lwc@nrc.gov>, <scf@nrc.gov>

SISP Review Complete

Template = ADM-013

E-RIDS=ADM-03
Add = D. Schmidt (DWS2)
K. Barrow (KLB)

Mail Envelope Properties (43C14135.271 : 1 : 17009)

Subject: Comments on draft NUREG 1757,Supplement 1
Creation Date: 1/8/06 11:43AM
From: Jim Lieberman <jxlrc@comcast.net>

Created By: jxlrc@comcast.net

Recipients
nrc.gov
twf4_po.TWFN_DO
Decomcomments
MTL (Michael Lesar)
DWS2 CC (Duane Schmidt)
KLB CC (Kristina Banovac)
DMG2 CC (Daniel Gillen)
LWC CC (Larry Camper)

nrc.gov
owf1_po.OWFN_DO
SCF CC (Scott Flanders)

Post Office	Route
twf4_po.TWFN_DO	nrc.gov
owf1_po.OWFN_DO	nrc.gov

Files	Size	Date & Time
MESSAGE	564	01/08/06 11:43AM
decommissioing guidance final 1-8-06.doc	45568	
Mime.822	64497	

Options
Expiration Date: None
Priority: Standard
Reply Requested: No
Return Notification: None

Concealed Subject: No
Security: Standard

JAMES LIEBERMAN
REGULATORY AND NUCLEAR SAFETY CONSULTANT

11804 ROSALINDA DRIVE
POTOMAC, MARYLAND 20854
JXLRC@COMCAST.NET
301 – 299 -- 3607

January 8, 2006

BY EMAIL
Michael T. Lesar
Chief, Rules Review and Directives Branch
US Nuclear regulatory Commission

SUBJECT: COMMENTS ON DRAFT NUREG-1757 CONSOLIDATED NMSS DECOMMISSIONING GUIDANCE, SUPPLEMENT 1 (70 FR 56940)

I appreciate the opportunity to comment on the above document. The document reflects a substantial staff effort that will be of assistance to persons involved in the decommissioning process. I offer the following comments:

1) As a general comment, the staff should appreciate that guidance associated with restrictive releases should be considered a "work in progress" in light of the fact that no licensee has completed the regulatory process and has had its license terminated under the restrictive release provisions of 10 CFR Part 20, Subpart E (LTR). In the past, NRC has frequently issued guidance after it has accumulated experience in an area and the guidance reflected that experience. That experience is lacking in the Part 20 restrictive release area. That is not to say that guidance should not be issued and experiences from similar areas, e.g. Part 40, be considered. The staff internally, licensees, States, and other stakeholders need to understand the staff's expectations in this area. However, the staff needs to be mindful that there maybe unintended consequences in issuing guidance that has not been implemented and tested. The staff needs to maintain the flexibility to depart from the guidance based on commons sense and good judgment. Such flexibility must be exercised with appropriate management controls so that departures are understood, documented, and reasonably controlled. It needs to be emphasized that the staff guidance is only one way to meet the regulations and that given the performance based nature of the LTR there are likely other ways to achieve compliance with the rule. Thus, the staff should exercise caution in issuing this guidance to ensure that the guidance does not become de facto prescriptive standards. The NUREG should be modified to clearly state this philosophy For example, the Introduction to the NUREG should contain the last paragraph of section 1.1 of NUREG 1757, Volume 1, Rev 1.

2) Page II-40. SSAB. **Comment: Procedures for SSAB should be considerations.**

The LTR does not require the use of a SSAB. While advisory boards are helpful, this is an area that needs flexibility to address different communities and circumstances. Thus, I would change "Licensees should use the following guidance in establishing and convening a SSAB:" to "Licensees should consider the following guidance in establishing and convening a SSAB:"

3)Page II-37, Partial Site Release. **Comment: Prohibition on sale of unrestricted use property should be removed.**

The preferred approach in this section in my view attempts to rewrite the rule to require more than what the rule requires. The LTR requires sufficient financial assurance to provide long term protection to the public health and safety, i.e., sufficient financial assurance to enable a third party to assume and carry out responsibilities for any necessary control and maintenance of the site. However, the staff proposes to prohibit a licensee from releasing property that is suitable for unrestricted release because the unrestricted portion of the property which is not needed to maintain radiological protection may help ensure sustainability of owner/licensee controls where the restricted portion may not have value. Putting to one side the question whether the staff has performed an economic analysis that supports the staff's position, the staff position appears to be inconsistent with the requirements of 10 CFR 20.1403 that requires the staff to have reasonable assurance that the financial assurances provided by the licensee are adequate. The adequacy of the financial assurance is a key issue in the decision to allow a restrictive release. It is either adequate or not. If it is adequate, unless the continued ownership of the unrestricted portion of the property was factored into the financial assurance decision, it is irrelevant that "the unrestrictive use portion of the site could have resale value that balances the lack of resale value or even perception of liability associated with the restricted use portion." Under the staff's logic, maybe the next step is for the staff to require licensees that have potential restrictive use property without unrestrictive release portions to purchase valuable property to obtain the benefits that the staff is seeking by prohibiting the sale of adjacent releasable property.

The staff recognizes that there are pros and cons to its preferred approach. This is an example where in my view it is premature to issue definitive guidance given the lack of experience in restrictive releases. Clearly it is one approach that under some circumstances may be helpful but it should not be the expected outcome. I would modify the section to have the staff's preferred approach restated as an option that a licensee might consider but not to have it as a preference that by implication suggest that it would deny a license termination that does not follow the guidance. This will preserve flexibility.

4) page V-14. Intentional Mixing of Contaminated Soil. **Comment: Remove the term "rare" in addressing mixing with clean soil.**

In my view, the LTR does not prohibit mixing clean soil with contaminated soil to achieve the dose limits of the regulation. On the other hand expanding the footprint of contamination should not be the first choice for remediation. However, if removing contamination from a site and shipping it to a LLW site for disposal is not feasible such that the site will not be remediated, then mixing should be considered. As Chairman Diaz noted in his vote sheet on SECY 04-0035 that there may be sites where the licensee proposes to use clean soil outside the contaminated area footprint to meet the License Termination Rule (LTR) release criteria where that approach is the most practical and cost effective way to meet the LTR release criteria. Thus, I can accept the limitation that it should only be done "where the only viable alternative to achieving the dose levels of the LTR is to use clean soil from outside the footprint of the area containing the contamination." However, I recommend that the undefined term "rare" be deleted. There are not many sites where this will be an issue. What is rare to some may be considered frequent to others. The issue is not the number of times mixing might be used. The issue is, is whether mixing appears to be the only viable approach to achieve an adequate remediation. Safety not quotas or frequency should justify its use.

Comment: Soil from outside the site should be allowed to be mixed.

Notwithstanding that mixing to reduce the concentration with clean soil is a limited option to be used where it appears it is the only viable option (which is more restrictive than the Chairman's approach of using it where it is the most practical and cost effective way to meet the rule) the proposed guidance at V-14 does not allow for using mixing if clean soil came from outside the site boundary. What the staff is saying is that trucking clean dirt from across the street is unacceptable for mixing but shipping contaminated dirt thousand of miles is acceptable with the increased risk of injury and death. What happened to the issue of "net public or environmental harm" discussed in 10 CFR 20.1403(a)? It seems to me that if using clean dirt from outside the site appears to be the only viable approach, then why should it not be permitted. This should be changed. I appreciate that Commissioner Merrifield had reservations with mixing. His vote sheet for SECY 04-0035 provided that

> when it comes to intentionally mixing clean soil (particularly if the clean soil comes from off-site) with contaminated soil to achieve a waste acceptance criteria, I have serious reservations; and the Commission should be directly consulted if such a proposal is submitted by a licensee. This consultation should occur after the staff has conducted a technical review and is prepared to make a recommendation on the application. Again, this action is consistent with the staff's proposed option 3.

His views on using soil from offsite sources appear to be addressed at achieving waste acceptance criteria for offsite disposal and not for on site remediation. In any event, the SRM did not reflect his views. Again the test should be what is needed to achieve an appropriate remediation that meets the LTR. If the staff is uncomfortable with using soil from offsite sources even if it is the solution to a difficult remediation case, then the answer is not to outright prohibit it, it is to seek Commission guidance on a particular case. Of course that was what the staff proposed initially for the mixing issue in SECY 04-0035. The Commission responded in the May 11, 2004 SRM and told the staff that Commission consultation was not needed and the staff should make the decision. Accordingly, the limitation should be removed. In such a case, the test would be whether mixing appears to be the only viable approach to a successful remediation in accordance with the LTR.

Comment: Mixing in appropriate circumstances should be allowed to reduce classification of waste for disposal sites.

From a health and safety perspective, the appropriateness of the disposal of waste at a low-level waste site is not the pedigree of the waste but the characteristics, etc of the waste that arrives at the disposal site. Classification addresses what is shipped to a low-level waste site and what may be buried at the site. Why should it make a difference from a safety perspective whether the classification of material was reduced for technical and operational reasons which is permitted or for other reasons such as mixing was used as it was the only apparent way to have a viable disposal. This is an important public policy issue considering the limited burial capacity for B and C waste. From a practical view, it may be difficult to sufficiently mix higher classified material with cleaner material to reduce it to lower classified material. But if you can do it, and the resulting material is consistent with a performance analysis which demonstrated that the performance objectives of Part 61 are met, it seems that the material should be allowed to be disposed of at the new classification level. Decisions in this area should involve the regulators of the involved disposal site. This may well be an area consistent with Commissioner's Merrifield's view that the staff should seek Commission consultation on since it is not clear that this issue was not specifically raised to the Commission in SECY 0-0035. I

recommend that the NUREG be modified to allow it as an option noting the need for Commission consultation.

If you have any questions on these comments, please contact me at 301 299 3607.

Respectively submitted,

Jim Lieberman