

May 16, 2006

Mr. Duane Bollig
Vice President – Environmental
and Government Affairs
R.M.D. Operations, LLC
5460 Ward Road, Suite 100
Arvada CO 80002

SUBJECT: REQUEST FOR ADDITIONAL INFORMATION REGARDING R.M.D.
OPERATIONS, LLC'S DECOMMISSIONING FUNDING PLAN
(TAC LU0119)

Dear Mr. Bollig:

By letter dated September 27, 2005, R.M.D. Operations, LLC (RMD) submitted an application to the U.S. Nuclear Regulatory Commission (NRC), requesting a performance-based, multi-site license for a uranium water treatment program for removing uranium from drinking water. The request contained many unique features one of which was a proposal for decommissioning funding in a way not previously approved by the NRC. Our initial determination has found the following:

1. You are not qualified to use a statement of intent as financial assurance.
2. Your exemption request to allow non-licensee governments to issue a statement of intent on its behalf is not adequate;
3. The decommissioning cost estimates provided in the schedule require additional detail before the staff can assess their adequacy;
4. It is permissible for a third party to pay for financial assurance, provided in RMD's name, with the NRC as the beneficiary. However, RMD remains obligated for financial assurance, and must show its ability to provide financial assurance in the event the third party ceases to pay;
5. To conform to NRC guidance, the decommissioning cost estimates shown in your schedules require a contingency factor of 25%;
6. Finally, the decommissioning funding plan appears to be missing some required elements required by 10 CFR Part 40.36(d).

The enclosed document provides additional detail in support of the above issues..

In order to maintain our current review schedule, we request that you either respond to the above findings within 14 days of the date of this letter, or provide a date for your response.

D. Bollig

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In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> (the Public Electronic Reading Room).

Sincerely,

/RA/

Michael Raddatz, Sr. Project Manager
Fuel Cycle Facilities Branch
Division of Fuel Cycle Safety
and Safeguards
Office of Nuclear Material Safety
and Safeguards

Docket No.: 40-9050

License No.: TBD

Enclosure: Request for Additional Information

cc: Charles Williams, President
R.M.D. Operations, LLC
5460 Ward Road, Suite 100
Arvada CO 80002

Anthony J. Thompson, Esq.
Thompson & Simmons, PLLC
1225 19th Street, NW
Suite 300
Washington, DC 20036

D. Bollig

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REQUEST FOR ADDITIONAL INFORMATION

R.M.D. OPERATIONS, LLC

Introduction

By letter dated September 27, 2005, R.M.D. Operations, LLC (RMD) submitted a multi-site license application to operate as many as 1,000 uranium water treatment systems for community water systems (CWS). The CWS must comply with new provisions of the Safe Water Drinking Act to limit the amount of uranium in drinking water. RMD seeks to provide equipment and services to the CWS to meet the new requirement.

RMD made three requests regarding decommissioning financial assurance for its license application: (1) that it be allowed to use the statement of intent provisions of 10 CFR Part 40.36(e)(4) to provide financial assurance; (2) if not allowed to use the statement of intent, that it be granted an exemption to allow government CWS to provide statements of intent on its behalf; and (3) that the U.S. Nuclear Regulatory Commission (NRC) incorporate the financial assurance schedules presented in its application into its license. It stated that privately-owned CWS would provide financial assurance to satisfy the requirements of 10 CFR Part 40.36(e).

The staff concluded that: (1) RMD is not qualified to provide a statement of intent as financial assurance; (2) the exemption request is not adequate, because it does not adequately address the factors for an exemption; (3) the decommissioning cost estimates provided in the schedule require additional detail before the staff can assess their adequacy; (4) it is permissible for a third party to pay for financial assurance in RMD's name, with NRC as the beneficiary, subject to the qualifications that RMD remains obligated for financial assurance, and must show its ability to provide financial assurance in the event the third party ceases to pay; (5) the contingency factor for the cost estimates does not conform to the 25% allowance contained in NRC guidance; and (6) the decommissioning funding plan is missing some required elements.

Evaluation

(1) RMD does not qualify to provide financial assurance with a statement of intent.

The requirements for a statement of intent are stated in 10 CFR Part 40.36(e)(4):

In the case of Federal, State, or local government licensees, a statement of intent containing a cost estimate for decommissioning or an amount based on paragraph (b) of this section, and indicating that funds for decommissioning will be obtained when necessary.

The licensee must be a government entity to qualify to use a statement of intent. RMD is not a government entity, therefore, it is not qualified to use the statement of intent to provide financial assurance for decommissioning.

(2) The exemption request is not adequate, because it does not adequately address the factors for an exemption.

Enclosure

RMD seeks an exemption from the NRC's financial assurance regulations to the extent that a CWS could submit a statement of intent on RMD's behalf. To grant an exemption, three requirements must be met, as specified in 10 CFR Part 40.14. The exemption must be:

- authorized by law;
 - not endanger the public health and safety or the common defense and security; and
 - be in the public interest.
- (a) Regarding the requirement that the exemption be authorized by law, the staff agrees that it appears to be authorized under Federal law. However, RMD did not demonstrate that the exemption would be authorized by the laws governing the CWS. The ability of local government to assume the obligations of private organizations is subject to State and local law. RMD provided no data to show that a CWS has the authority to assume radiological decommissioning obligations of a private contractor.

Therefore, the exemption request does not meet the requirement to show that it is authorized by law.

- (b) Regarding the second requirement, that the exemption must not endanger the public health and safety or the common defense and security, RMD relies on its assertion that the licensing action meets the requirement to protect the public. However, RMD must show that an exemption from decommissioning funding requirements will not endanger the public health and safety or the common defense and security. To do so, it must show that the proposed substitute mechanism of a statement of intent issued on its behalf by a non-licensee CWS will provide at least equal assurance, when compared to mechanisms provided by the regulations, that funds will be available when needed for decommissioning. It is not enough to state that a government licensee would satisfy the requirement with a statement of intent. If a government licensee failed to meet its obligation to request funding for decommissioning, the NRC has authority to order it to do so. However, if the statement of intent is issued by a non-licensee, the NRC has no authority to issue an order to fund decommissioning. Consequently, a statement of intent issued by a non-licensee government does not provide equal assurance that funds will be available for decommissioning when needed.

Therefore, RMD has not demonstrated that the requested exemption will not endanger the public health and safety or the common defense and security.

- (c) Regarding the third requirement, RMD did not provide information that the exemption is in the public interest. RMD stated it cannot economically enter the business if it does not receive an exemption to allow it to provide financial assurance using a statement of intent issued by a CWS. However, the economic interest of a single business does not determine the public interest.

The application included information that the decommissioning cost for a site would range from \$11,800 to \$287,900, depending on size and disposal methods for the radioactive waste material. The staff notes that a letter of credit can be obtained for an annual cost of about one

per cent of the face value. Based on the decommissioning cost estimates provided, the cost of financial assurance provided by a letter of credit would vary from about \$10 per month to \$240 per month. Stated another way, the cost per gallon of water purified, assuming eight hours per day and 30 days per month operation at the flow rates stated in the application, ranges from \$0.0000055/gal. to \$0.0000069/gal. The cost does not appear burdensome. RMD has not provided information to demonstrate that its potential customers would be unable to bear the cost.

Furthermore, there are alternatives not involving a statement of intent that could satisfy the regulations, thereby making an exemption unnecessary. For example, if RMD established a trust fund for decommissioning costs, with the NRC as beneficiary, the CWS could provide the funding for the trust. Such an arrangement would be acceptable as a prepayment of decommissioning costs under 10 CFR Part 40.36(e)(1), and would not burden RMD with the carrying costs of a letter of credit.

Finally, the staff concluded that even-handed application of financial assurance regulations to provide all licensees providing uranium removal services for CWS will not work to any individual's competitive disadvantage.

Therefore, RMD has not demonstrated that the requested exemption is in the public interest.

- (3) The decommissioning cost estimates provided in the schedule require additional detail before the staff can assess their adequacy.

The cost estimates provided in Tables 3-2 and 3-3 of the application are line item summaries of costs. NUREG-1757, Vol. 3, "Consolidated NMSS Decommissioning Guidance: Financial Assurance, Recordkeeping, and Timeliness," Section 4.1 and Appendix A.3 provide guidance on the level of detail necessary for the staff to assess the adequacy of a cost estimate. The licensee should provide additional detail conforming to NUREG-1757, Vol. 3.

- (4) It is permissible for a third party to pay for financial assurance in RMD's name, with NRC as the beneficiary, subject to the qualifications that RMD remains obligated for financial assurance, and must show its ability to provide financial assurance in the event the third party ceases to pay.

The regulations do not forbid a third party from paying for the financial assurance instrument provided by the licensee as financial assurance for decommissioning costs. If the instrument meets regulatory requirements, a third party (including a government entity) can pay for any funding mechanism the licensee qualifies to use. The instrument must be in the licensee's name, and the NRC must be the beneficiary.

However, two qualifications apply to a third party payment of financial assurance costs for a licensee. First, the obligation to provide financial assurance remains with RMD as the licensee, regardless of arrangements with a third party to pay for the financial assurance. Second, under the provisions of 10 CFR Part 40.36(d), to describe how it will adjust funding levels, RMD must demonstrate its ability to provide financial assurance in the event the third party ceases to pay for financial assurance.

- (5) The contingency factor for the RMD cost estimates does not conform to the 25% allowance of NUREG-1757, Vol. 3, Appendix A.3.1.2.3.

The cost estimates provided by RMD include a 20% contingency factor. NRC guidance provides that a 25% contingency is needed to provide for unforeseen costs of decommissioning. Therefore, RMD needs to increase the contingency factor of its decommissioning cost estimates.

- (6) The decommissioning funding plan is missing some required elements.

The decommissioning funding plan must contain the following elements, as provided by 10 CFR Part 40.36(d):

- decommissioning cost estimate
- description of method of assuring funds from paragraph 10 CFR Part 40.36(e)
- description of means for adjusting the cost estimate
- description of the means for adjusting financial assurance funding levels over the life of the facility
- certification by the licensee that financial assurance has been provided in the amount of the cost estimate
- signed original of the financial instrument obtained to satisfy 10 CFR Part 40.36(e)

You provided the decommissioning cost estimate, although additional detail is necessary to complete the decommissioning funding plan. You described its proposed methods of assuring funds, but the statement of intent method proposed for government CWS does not comply with the methods of 10 CFR Part 40.36(e). You have not provided the other elements listed. Regarding the description of the means for adjusting funding levels, it must describe its ability to provide for adequate funding levels in the event that a third party CWS (whether government or privately-owned) ceases to pay for financial assurance.

Therefore, you must provide the missing elements.