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ADDRESSEE: Mr. Michael Raddatz

SUBJECT: RMD Operations, LLC's response to questions raised in SECY-06-0069 and NRC staff 5/16/06 request for additional information

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CHAIRMAN - RMD Operations, LLC's Response to Questions Raised in SECY-06-0069 and NRC Staff 5/16/06 Request for Additional Information

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Mike:

Please find attached a copy of RMD Operations, LLC's Response to Questions Raised in SECY-06-0069 and NRC Staff's May 16, 2006 Request for Additional Information regarding RMD's proposed performance-based, multi-site service provider license application. Please provide copies of this document to any Staff members you deem appropriate so that this response may be discussed at our June 1, 2006 meeting. If you have any problems with receipt of this document, please do not hesitate to contact me. Thank you.

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MEMORANDUM

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May 26, 2006

To: Robert Pierson, United States Nuclear
Regulatory Commission (NRC)

From: Thompson & Simmons, PLLC

Re: Response to Issues Raised by NRC Staff in SECY-06-0049 Regarding R.M.D.
Operations, LLC Application for an NRC Performance-Based, Multi-Site
Service Provider License

On May 1, 2006, the Commission issued its Staff Requirements Memorandum (SRM) entitled *Staff Requirements-SECY-06-0049-Actions Related to Regulation of Maximum Contamination Levels for Uranium in Drinking Water* in response to NRC Staff's SECY paper (SECY-06-0069) requesting guidance on the proper approach to regulating uranium source material concentrated as a result of compliance with the Environmental Protection Agency's (EPA's) uranium in drinking water maximum contaminant level (MCL). In the SECY paper, NRC Staff stated that "[RMD's] multi-site license scheme raises significant policy questions, such as whether it is appropriate to permit a service provider to possess source material or whether the water treatment facilities would also be required to obtain a specific license. Also, the staff needs to determine who is responsible for decommissioning, if the service provider contract is terminated or if there is a change of service providers at a site." SECY-06-0049 at 5. NRC Staff further states that, "[t]he *primary* concern revolves around who is responsible for cleanup if the original provider (licensee) contract is terminated and either the water treatment facility takes over or another service provider continues service." *Id.*, Enclosure 4 at 5. Then, on May 16, 2006, NRC Staff issued a Request for Additional Information (RAI) in which additional questions were raised. In response to these documents, RMD Operations, LLC (RMD) presents this memorandum to provide NRC Staff with its answers to these questions.

1. **Issue, SECY-06-0069: Can a service provider licensee possess licensed material (e.g., *licensable* source material)? Does NRC currently allow any service provider licensees to possess licensed material?**

Response to NRC Staff Concern:

NUREG-1556, Volume 18 entitled *Consolidated Guidance About Materials Licenses, Program-Specific Guidance About Service Provider Licenses* (hereinafter "NUREG-1556") provides guidance for applicants seeking to obtain an NRC service provider license. The text of NUREG-1556 supports the notion that RMD can qualify as a service provider licensee and that service provider licensees are permitted to possess *licensed* material.

First, Section 1 of NUREG-1556 entitled *Purpose of Report* states that "[s]ervice providers addressed in this NUREG are limited to licensed entities providing the following types of commercial services...[i]nstallation, relocation, removal from service, disposal, radiation surveys, routine and preventative maintenance, adjustment of equipment, training of personnel or repair of devices containing licensed materials...[w]aste management services...." NUREG-1556 at 1-2. RMD provides a waste management service that requires the installation of and routine and preventative maintenance for a Uranium Removal System, each of which will contain varying quantities of licensed source material. Further, RMD will be responsible for providing trained RMD personnel to handle *all* resin loading and unloading, potential spills of licensed source material, adjustment of the Uranium Removal System to the extent it results in interaction with or handling of licensed source material, loading of licensed source material into properly approved transport containers and vehicles for final disposition, and for D&D of the Uranium Removal System when required. Moreover, NRC's *Service Providers Licensee Toolkit* prescribes a "catch-all" License Code (# 03225) under which RMD's proposed licensed activity could be classified. Thus, RMD's proposed license fits within the parameters of NUREG-1556's description of potential service provider licensees.

Secondly, Section 8, Subsection 8.3 of NUREG-1556's is entitled *Item 3: Address(es) Where Licensed Material Will Be Used or Possessed*. On its face, this title suggests that NRC assumes that service provider licensees will use and/or possess licensed material.

Third, Subsection 8.3 specifically describes the information NRC requires for service provider licensees who use and/or possess licensed source material. NRC requires that the applicant specify the specific address of the facility at which licensed source material will be used and/or possessed and what specific activities are to be conducted at such facility. RMD intends to provide NRC with a "registration" package pursuant to its proposed performance-based, multi-site license which will include the specific address of each facility. Given that the specific activities to be conducted at each site will be identical, RMD will include the same description of activities in each "registration" package but will also delineate the flow-rates and uranium concentrations in water to assure that each community water system (CWS) facility will be within the parameters assessed and approved with the grant of its NRC license.

Finally, Subsection 8.5 entitled *Radioactive Material* discusses the types of radioactive materials that may be used and/or possessed by an NRC service provider license. This subsection states that NUREG-1556's service provider licensees may possess licensed source material in the form of uranium or thorium. RMD's proposed license seeks to allow possession of uranium in the form of water treatment residuals in Uranium Removal Systems at multiple CWS water treatment facilities. This Subsection is *prima facie* evidence that NRC intended service provider licensees to be able to use and/or possess licensed material in the form of licensed (source) material.

An example of a service provider licensee that NRC currently permits to use and/or possess licensed material can be found in NUREG-1556, Volume 9, Appendix V, which provides guidance for a class of licensees termed "mobile medical service providers." NUREG-1556, Vol. 9, Appendix V at V-1. This guidance specifically states "[s]ervice providers who only transport and store a therapy device [using licensed material] need only apply for authorization for *possession* and transport of the byproduct material." *Id.* However, NRC also permits a second form of license that is termed a "*transport and use*" license for "transportation of byproduct [licensed] material to a client's facility for use within a client's facility by the mobile medical service's employees (i.e., transport and use)." *Id.* This type of license also requires the description of a "base location" which may be in a "commercial facility." *Id.* The guidance also permits a mobile medical service provider licensee to "request multiple base locations." *Id.*

RMD's license application requests NRC's authorization to control the concentration and storage of licensed source material uranium inside of an RMD-provided Uranium Removal System to maintain the System and to remove and transport such licensed source material uranium to a properly licensed/permitted processing or disposal facility as necessary during operations and at the time of final D&D of the System. This proposed activity, similar to that offered by some mobile medical service providers, will allow RMD to possess and control licensed source material resulting from the uranium water treatment service provided to CWSs.

Moreover, NRC licenses *in situ* leach (ISL) uranium recovery operations under circumstances that are analogous to those encountered at CWS facilities where RMD would be the licensee as follows:

- In both cases, groundwater resources are accessed to remove source material uranium that reaches *licensable* concentrations in surface removal facilities which can be on land owned or controlled by entities other than a licensee:

- ISL---lessor(s);
- CWS---municipality.
- In both cases, there will be commercial contracts delineating the basis upon which the licensee will provide the facilities to access the groundwater resources to remove the source material uranium:
 - ISL---royalty and/or other commercial considerations for lessor(s) from recovered source material uranium;
 - CWS---commercial contracts to pay for removal of source material uranium from drinking water supplies.
- In both cases, the licensee is (or can be) some entity other than the landowner(s)/lessor(s) that controls access to the groundwater resource:
 - ISL---specific license that, through NRC/Agreement State license conditions and contractual terms, is responsible for installation of uranium recovery/removal facilities, removal of uranium from groundwater resources, waste management, and final D&D of such facilities after cessation of uranium recovery/removal operations without the active involvement of the landowner(s)/lessor(s). Based on the contractual arrangements, the licensee is or can be the owner of the recovered licensed source material;
 - CWS---specific license that, through NRC/Agreement State license conditions and contractual terms, is responsible for installation of uranium removal facilities, removal of uranium, waste management, and final D&D of uranium removal equipment after cessation of uranium removal operations with minimal involvement of the landowner(s)/lessor(s) (i.e., CWS personnel will be trained by RMD personnel to do minimal remote monitoring of the Uranium Removal System which will be isolated from the rest of the CWS facility, but CWS personnel will not, under any circumstances, be involved in handling licensed source material uranium. Based on the proposed contractual arrangements, the licensee (RMD) will be the owner of the recovered licensed source material.
- In both cases, the licensee is subject to NRC/Agreement State and EPA/State regulatory oversight, including enforcement action:
 - ISL---for licensed activities at single or multiple sites (e.g., satellite facilities) involving multiple wells;

- CWS---for licensed activities at single or multiple sites involving single or multiple wells
- In both cases, licensees are responsible for providing adequate financial assurance for D&D operations pursuant to 10 CFR Part 40:
 - ISL---through financial assurance instruments for private entities (10 CFR Part 40, Appendix A, Criterion 9);
 - CWS---through financial assurance instruments for public (i.e., municipalities) or private entities (10 CFR § 40.36(e)(4) and Appendix A, Criterion 9)

RMD recognizes that there are some differences in the two aforementioned licensing situations. For example, ISL uranium recovery licensees mobilize the uranium to put it into solution for recovery/removal from groundwater resources which has the potential (albeit small) to adversely impact drinking water sources, while a CWS contractor/licensee removes uranium already in solution in groundwater resources and poses no potential adverse threat to drinking water sources. Indeed, a CWS contractor/licensee engages in uranium water treatment operations to purify groundwater resources in compliance with a federal mandate (i.e., EPA uranium MCL).

- ISL licensees are faced with substantial D&D costs to restore affected groundwater resources after cessation of active uranium recovery operations, while a CWS is not;
- A *non*-licensee ISL lessor likely is not involved, or even present, at the licensed facility constructed/installed on its property, while a CWS water treatment facility operator will have employees tangentially involved with the licensed portion of the facility at the site.

The similarities, however, are far more significant than the differences. For example:

- In both cases, specific licensees install, control, and maintain the facilities used to recover/remove source material in *licensable* quantities from groundwater resources;
- In both cases, the licensee has the authority and responsibility for possession, control, and, by contract, *ownership* of the licensed source material recovered/removed in a manner that assures adequate protection of public health and safety and the environment;
- In both cases, a specific licensee is responsible for D&D of the facility after cessation of licensed operations unless there is a license transfer;

- In both cases, acceptable financial assurance must be provided to assure final D&D of the facilities used to remove/recover licensed source material;
- In both cases, the specific licensee is subject to regulatory oversight, including enforcement by NRC/Agreement States;
- In both cases, the specific licensee assumes *ownership* and control of and liability for the licensed source material

2. **Issue, SECY-06-0669: Who is responsible for decommissioning and decontamination (D&D) of a Uranium Removal System at a CWS water treatment facility under the following three (3) scenarios?**

Scenario 1: RMD goes bankrupt and is unable to perform D&D activities at the CWS water treatment facility.

Response to NRC Staff Concern: If RMD were to go bankrupt affecting one or more CWS water treatment facilities registered under its NRC license, the appropriate financial assurance instruments provided by CWSs will be triggered and the required funds associated with those instruments will be made available for the CWS or its independent contractor for D&D of the Uranium Removal System. Pursuant to 10 CFR § 40.36(e)(4), RMD has proposed statements of intent to be provided by municipalities that own and control CWS water treatment facilities in accordance with 10 CFR Part 40 as follows:

“In the case of...*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.”

10 CFR § 40.36(e)(4) (emphasis added).

Further, as will be discussed below, NUREG-1757, Volume 3 entitled *Consolidated NMSS Decommissioning Guidance - Financial Assurance, Recordkeeping, and Timeliness* acknowledges that statements of intent can be offered by governmental entities *on behalf of a private contractor*:

“if a government entity (e.g., a Federal agency) submits a statement of intent on behalf of a nongovernment licensee, *NRC will consider accepting the statement of intent provided that the statement of intent meets all of the guidance outlined in this section, including specification of the dollar amount being assured by the government entity.*”

NUREG-1757, Vol. 3 at A-149 (emphasis added).

Under the scenario embodied in RMD's license application; this is the only financially feasible way to provide adequate financial assurance for D&D of affected public CWS facilities and equipment. Given that the commercial contracts between RMD and either public or privately owned/controlled CWS facilities will be for 20 to 50 years and that there may be hundreds of such facilities requiring uranium water treatment, the CWS must provide the financial assurance mechanism. Since statements of intent are deemed acceptable by regulation for municipalities, they should be adequate for the third-party contractor/licensee that is performing specific services involving ownership, possession, transport, and final disposition of licensed source material uranium.

RMD also has proposed that privately-owned and/or controlled CWS facilities will utilize financial assurance instruments acceptable under 10 CFR Part 40. RMD intends to obtain appropriate financial assurance arrangements (e.g., surety bond, letter of credit, certificate of deposit, etc.) from privately-owned CWSs to be placed in stand-by trusts prior to the commencement of licensed activities.

Further, RMD's Environmental Report submitted as part of its license application provides financial assurance estimates for a range of Uranium Removal Systems that will be employed at CWS facilities, including "upper" and "lower" bound Systems that provide the highest and lowest potential D&D cost estimates for Systems covered by RMD's requested license. Should it seek to utilize a System that exceeds the flow-rate and uranium concentrations associated with the "upper" bound System, RMD will submit revised D&D cost estimates for NRC approval along with a request for a license amendment to authorize the use of such a System.

In the unlikely event that RMD were to go bankrupt, pursuant to NUREG-1757, Volume 3 requirements, NRC or other relevant entity will be able to access the funds allocated under the financial assurance mechanism offered by a given CWS so that D&D activities can be performed. Further, pursuant to the same requirements, RMD will immediately inform NRC that a bankruptcy proceeding has been initiated and that actions should be taken to access relevant financial assurance instruments. See NUREG-1757, Volume 3 at 5-1 *et seq.* Therefore, in the unlikely event that RMD were to go bankrupt, financial assurance acceptable under NRC regulations and associated guidance will be available for each CWS facility at which licensed activities, including D&D, will occur.

Scenario 2: RMD's water treatment contract with a given CWS is terminated and the CWS requests that the Uranium Removal System be removed from the water treatment facility.

Response to NRC Staff Concern: In the event that a CWS terminates RMD's water treatment contract and requires the removal of the Uranium Removal

System from the water treatment facility for whatever reason (e.g., using a different water resource), RMD will remove all spent treatment resins from the System and dispose of such resins at an appropriately licensed/permitted facility such as an NRC/Agreement State-licensed uranium milling facility. Then, RMD will D&D the Uranium Removal System and any associated equipment so that it will be suitable for unrestricted release pursuant to relevant NRC/Agreement State standards. RMD will submit a request to NRC for removal of the CWS facility from its license.

Scenario 3: RMD's CWS-specific water treatment contract is terminated and the CWS continues to possess and/or operate the Uranium Removal System at its water treatment facility under the supervision of CWS employees or a new contractor.

Response to NRC Staff Concern: In the event that a CWS terminates its water treatment contract and retains the Uranium Removal System for operation by CWS personnel or a new independent contractor, RMD can remove any spent water treatment resins containing uranium from the Uranium Removal System and D&D the System and any associated equipment, and either leaves the CWS with a "clean" System *or* removes the equipment for use elsewhere *or* transfers the license for the facility, along with ownership of the equipment to the CWS or its new independent contractor. Thereafter, the CWS or the contractor will be responsible for operating the Uranium Removal System and for generating and disposing of *licensable* source material in a manner that is protective of public health and safety. In the second case, if necessary, the CWS or its new contractor will have to install and license new uranium water treatment equipment. In either case, RMD will submit a request to NRC Staff for removal of the relevant CWS facility from its license.

3. **Issue, NRC Staff RAI Questions #1 & 2:** Does RMD qualify for use of a statement of intent as a viable financial assurance instrument for uranium water treatment operations at municipal CWSs? Does RMD require a specific exemption from 10 CFR Part 40 financial assurance requirements?

Response to NRC Staff Concern: As noted above, pursuant to the requirements of NUREG-1757, Volume 3, RMD qualifies for a statement of intent issued by a government entity (e.g., a municipality) on its behalf. 10 CFR § 40.36(e)(4) specifically states that, "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." 10 CFR § 40.36(e)(4).

While Part 40.36(e)(4) only discusses government licensees using statements of intent, NRC guidance does permit the submission of a statement of intent by a government entity on behalf of a non-government licensee. As stated in NUREG-

1757, Volume 3, “if a government entity...submits a statement of intent on behalf of a nongovernment licensee, NRC will consider accepting the statement of intent provided that the statement of intent meets all of the guidance outlined in this section, including specification of the dollar amount being assured by the government entity.” NUREG-1757, Volume 3 at A-149. The requirements in this section of NUREG-1757, Volume 3 are as follows: (1) qualifications of the issuer, (2) level of coverage equal to or greater than required decommissioning cost estimate, and (3) recommended documentation. *Id.* at A-150-152. RMD submits that each of these requirements will be satisfied as part of its proposed “registration” package for each separate municipal CWS and assumes that there will be a license condition requiring satisfaction of such requirements. RMD also notes that this approach to financial assurance is the only mechanism available that will enable RMD to operate at hundreds of CWS facilities and that NRC should exercise flexibility in accordance with the above-noted guidance when evaluating this financial assurance proposal.

In addition, RMD is willing to discuss potential modifications to the language in NUREG-1757, Volume 3’s Model Statement of Intent to assure that adequate funding will be available in the unlikely event that RMD is unable to perform D&D activities at a CWS.

Further, with respect to NRC Staff’s RAI, Question #2, if NRC follows NUREG-1757, Volume 3 and accepts this form of financial assurance, RMD will not require a specific exemption for its use. However, with respect to NRC Staff’s conclusion that RMD’s request for a specific exemption is inadequate, RMD asserts that several of the stated reasons for such conclusion are misguided.

First, NRC Staff states that RMD needs to offer a generic showing that locality/municipality laws or ordinances permit the issuance of statements of intent for third-party contractors prior to the offering of such statements as acceptable financial assurance. This proposed requirement is unnecessary as any locality/municipality that issues a statement of intent as required by NUREG-1757, Volume 3 must submit documentation demonstrating that the official issuing the statement of intent has the appropriate authority to issue the statement and to obtain the necessary funding when D&D is required. If the locality/municipality is not able to demonstrate appropriate authority, then it will not be eligible to be registered under RMD’s license. Thus, RMD does not have to make a generic showing that localities/municipalities can issue such statements of intent to satisfy the specific exemption requirements but only that any one statement of intent proposed for registration can do so.

Second, NRC Staff’s concerns about potential competitive advantage and its impacts on the public interest in light of the use of statements of intent are outside the scope of NRC’s authority and, therefore, are irrelevant to the public interest. It has been well-settled by the Commission that economic considerations do not present an adequate basis for examining an applicant/licensee’s proposed action.

See e.g., In the Matter of International Uranium (USA) Corp. (White Mesa Mill), 51 NRC 9 (February 10, 2000). Further, it is not reasonable or logical to assume that RMD would gain some form of competitive advantage if NRC Staff permits the use of statements of intent for RMD and for CWSs or their independent contractors. Since it will be impossible for RMD or any other third party contractor to provide the financial resources to support adequate financial assurance for hundreds or, potentially, thousands of public CWSs, it is illogical to argue that it serves the public interest to thwart timely compliance with EPA's uranium MCL on the basis of competitive concerns.

4. **Issue, NRC Staff RAI Question #3: The decommissioning cost estimates provided in the schedule (RMD's license application) require additional detail before the staff can assess their adequacy.**

Response to NRC Staff Concern: Given that the CWS water treatment facility and its components have no effect on RMD's Uranium Removal System or its required D&D activities, RMD will address each of the requirements in Appendix A.3 of NUREG-1757, Volume 3 as follows:

Appendix A-3.1.1

- a. **Facility Description:** See RMD Environmental Report at Section 3. In addition, RMD will complete a copy of NUREG-1757, Appendices 3.4 & 3.5 in its site-specific "registration" package when a CWS facility is added to its license. This approach is consistent with RMD's proposed performance-based licensing format;
- i. **License Number and Type:** RMD does not yet possess a license number but has requested a performance-based, multi-site service provider license to provide uranium water treatment services to CWS facilities. The requested license qualifies as a "materials license," because it authorizes the possession or licensed uranium source material. As stated above, RMD will complete a copy of NUREG-1757, Appendices 3.4 & 3.5 in its site-specific "registration" package when a CWS facility is added to its license;
- ii. **Specific Quantities and Types of Materials Authorized by the License:** See RMD Environmental Report at Section 2, Table 2-2. The proposed license is intended to authorize the possession of uranium source material;
- iii. **General Discussion of How Licensed Materials Are Used In Licensee Operations:** See RMD Environmental Report at Pages 43-73;
- iv. **Description of Facility:** See RMD Environmental Report at Section 3, Pages 38-40;

- v. **Number and Dimensions of Facility Components and Levels of Contamination:** RMD's Uranium Removal System is designed to be a self-contained System where no licensed material in any form will be released to other parts of the CWS facility. In the event that a process upset or other event results in a release of licensed material, RMD proposes to remediate all affected areas in accordance with its Environmental Report and applicable license conditions;
- vi. **Quantities of Materials Accumulated Prior to Shipping:** Total accumulated licensed uranium source material may vary depending on the rate at which treatment resins are exchanged. See RMD Environmental Report at Section 2, Table 2-2.

Appendix A.3.1.2.1-2

- i. **Labor and Non-Labor Costs:** RMD will complete and submit copies of NUREG-1757, Volume 3, Appendices A.3.6-A.3.13 for each assessed Uranium Removal System;

Appendix A.3.1.2.3

- i. **Contingency Factor:** RMD's Environmental Report proposes the use of a 20% contingency factor. See Environmental Report at Pages 72, Table 3-2. For further discussion on this issue, see Issue # 6 below;

Appendix A.3.2

- i. **Determining the Means for Adjusting the Cost Estimate:** Pursuant to 10 CFR Part 40, RMD will adjust its decommissioning cost estimates *annually* based on inflation, the costs of goods and services, final disposition costs, and other relevant market forces. These revisions will be provided to NRC, via written submission, one year from the "registration" date of a CWS facility under its license and every following year on such anniversary. This written submission will include any revised financial assurance instrument(s), as necessary, and a licensee certification that the adjusted financial assurance amount has been authorized under such instrument(s);
 - ii. **Required Documentation:** As stated in Issue # 7 below, RMD will submit the required documentation for each CWS facility in its proposed "registration" package.
5. **Issue, NRC RAI Question #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.

Response to NRC Staff Concern: As noted above, NRC's guidance (NUREG-1757) specifically allows a government entity to provide a statement of intent for a non-government licensee (third party contractor) so long as appropriate requirements for such an instrument are satisfied. Nowhere in NUREG-1757 does it suggest that the non-government licensee also has to demonstrate its ability to provide necessary financial assurance. Indeed, allowing the government entity to offer a statement of intent serves no purpose if the non-government licensee is forced to demonstrate that it can satisfy the financial assurance obligation and effectively would "double" the financial assurance requirement.¹

With respect to privately-owned or operated CWSs, RMD intends to obtain an acceptable financial assurance instrument (e.g., letter of credit, surety bond, prepayment mechanism) and to place such instrument in a stand-by trust with NRC as the beneficiary. This will allow the financial assurance provided by the private CWS to be available in the event that the private CWS can no longer pay. This approach is no different from any other surety situation where an obligation is assured.

RMD's commercial contract with CWSs specifically states that RMD will D&D the Uranium Removal System and associated equipment, whether or not the CWS reneges or defaults on its contract. Under such circumstances, RMD likely will file a civil action against the CWS using the statement of intent as prima facie evidence that the funds guaranteed in the statement plus penalties must be obtained and made available for D&D costs incurred by RMD.

6. Issue, NRC Staff RAI Question #5: Is RMD required to impose a 25% contingency factor on each of its decommissioning cost estimates?

Response to NRC Staff Concern: Given that the proposed uranium water treatment operations closely resemble that of ISL uranium recovery operations, without the purposeful mobilization of uranium into the groundwater and the post-operational groundwater restoration requirements, NUREG-1569 entitled *Standard Review Plan for In Situ Leach Uranium Extraction License Applications* should provide acceptable guidance for financial assurance cost estimate contingencies. Section 6.5.3 of NUREG-1569 entitled *Acceptance Criteria* states that Requirement #10 that acceptable financial assurance for ISL uranium recovery operations subject to 10 CFR Part 40 and Appendix A requires that "[s]urety documentation includes a breakdown of costs; the basis for cost estimates with adjustments for inflation; a minimum 15-percent contingency...." NUREG-1569 at 6-25. Given NRC Staff's statement in SECY-06-0049 that

¹ RMD also notes that NRC Staff's RAI assumptions regarding the availability and cost of financial assurance instruments are significantly flawed and do not represent existing market conditions.

“[b]ased on the expectation of relatively low impacts to public health and safety,” uranium water treatment operations represent a “disproportionately low risk,” and since ISL uranium recovery financial assurance is designed to address more significant D&D activities (including restoration of groundwater resources, decontamination of large amounts of uranium recovery equipment, and remediation of surface soils for unrestricted release), RMD’s proposed D&D of the Uranium Removal System and associated equipment involves minimal risk (i.e., decontamination of uranium removal equipment) and the 20% contingency factor offered by RMD should be acceptable.

7. **Issue, NRC Staff RAI Question #6:** The decommissioning funding plan is missing some required elements. The decommissioning funding plan must contain the following elements, as provided by 10 CFR § 40.36(d).

Response to NRC Staff Concern: RMD’s response to this question is outlined below:

- (a) **Decommissioning cost estimate:** RMD’s 2006 Environmental Report provides a decommissioning cost estimate for a wide range of flow-rate-specific Uranium Removal Systems and includes a 20% contingency for its decommissioning cost estimate, which RMD believes is appropriate. See *Issue #6* above;
- (b) **Description of method of assuring funds from 10 CFR § 40.36(e):** Revised as discussed in *Issues #3 & 5* above;
- (c) **Description of means for adjusting the cost estimate:** For municipalities or other government entities, RMD will obtain an initial statement of intent letter guaranteeing adequate financial assurance for D&D. On a yearly basis, RMD will adjust its financial assurance cost estimate pursuant to 10 CFR Part 40, Appendix A, Criterion 9 and will obtain revised statements of intent or supplemental letters from each municipality or other government entity attesting that such cost estimates have been adjusted and guaranteed. These revised statements of intent or supplemental letters will be submitted as part of RMD’s required annual financial assurance updates. See *Issue #4* above;

For privately-owned or operated CWSs, RMD will obtain acceptable financial assurance instruments from these entities prior to commencing licensed operations as described in *Issues #3 & 5* above. On an annual basis, RMD will ensure that such financial assurance instruments are updated in compliance with 10 CFR Part 40, Appendix A, Criterion 9.

- (d) **Certification by the licensee that financial assurance has been provided in the amount of the cost estimate:** As part of its site-specific “registration” package, RMD will submit a letter certifying that it has

obtained an acceptable financial assurance instrument. The certification letter will identify: (1) the new CWS for which the financial assurance instrument has been obtained, if necessary; (2) whether the CWS is owned/controlled by a public (e.g., municipality) or a private (e.g., corporation) entity; (3) the type of financial assurance instrument obtained for the CWS; and (4) the monetary amount of the financial assurance instrument.

- (e) **Signed original of the financial assurance instrument:** RMD will submit a signed copy of each financial assurance instrument used for each CWS.

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Creation Date Fri, May 26, 2006 12:21 PM
From: "Christopher Pugsley" <cpugsley@athompsonlaw.com>
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