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December 14, 2006

Mr. Amir Kouhestani  
U.S. Nuclear Regulatory Commission  
Two White Flint North Building  
11545 Rockville Pike  
Rockville, MD 20852-2738

**Re: Status of Phase I CT D&D Items and Meeting Record Corrections**

Dear Mr. Kouhestani:

As requested at the November 15, 2006 meeting with the NRC staff, I am submitting this letter to obtain a project status on certain outstanding issues from Mallinckrodt's Phase I D&D project and to discuss further the issue regarding delineation between FUSRAP and CT material at the St. Louis plant. Furthermore, I would like to request a correction to the meeting record from the November 15, 2006 meeting between Mallinckrodt and NRC staff.

1. Mallinckrodt has submitted to the NRC the following Final Status Surveys from the Phase I CT D&D project.

TITLE	DATE
Bldg. 101 Exterior	3/04
Bldg. 250 Exterior	3/04
Bldg. 250 Interior	3/04
Bldg. 250	4/03
Bldg. 235 Roof	7/03
Bldg. 222/223 roof	12/03
Bldg. 235/235 Exterior wall	12/03
Bldg. 240 Exterior	12/03
Bldg. 250 Exterior	3/04
Bldg. 245 Exterior	12/03
Bldg. 240 Interior	12/03
Bldg. 91 Crane pad	12/03
Bldg. 250 Interior	3/04
Bldg. 101 Exterior	3/04
Bldg. 200 Roof	12/03
Bldg. 235/236 interior	12/03

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The FSS for the Bldg 235 Roof and B250 Interior were previously approved by the NRC to support maintenance project needs at the Mallinckrodt facility. Mallinckrodt appreciates the prompt and cooperative review of these surveys by NRC to allow Mallinckrodt to continue its maintenance projects at the facility in a timely manner. However, all of the Phase I Final Status Surveys have been submitted and have been pending approval for quite some time. Mallinckrodt respectfully requests that NRC completes its review and approval of these FSS reports as soon as possible.

2. As we discussed at our meeting, both Mallinckrodt and the NRC are committed to making progress on the implementation of the CT Phase II D&D plan wherever possible. Unfortunately, due to the complicated nature of the St. Louis plant site and the FUSRAP remediation being conducted at the site and the impact of multiple NRC project personnel being assigned to Mallinckrodt's decommissioning project, there have been significant delays in completion of the CT Phase II D&D plan review resulting in a loss of continuity, loss of institutional memory, and repetitive review. Historically, NRC management recognized the complicated nature of this site and the impact and delays from multiple NRC personnel changes and had committed to keeping the same Project Manager assigned to the Mallinckrodt project until the plan was approved.

Mallinckrodt believes that NRC management needs to address the issue and agree to limit personnel assignment changes on this project to minimize delays and excessive oversight costs and to minimize any further impact to project schedule and agreements.

3. Mallinckrodt is requesting the following corrections be made to the NRC Meeting Record for the November 15, 2006 meeting between Mallinckrodt and NRC.
  - a. Page 1, **Discussion** section: Contrary to NRC notes, the meeting was not "... a request by Mallinckrodt to further clarify Mallinckrodt's Phase II decommissioning dose modeling rationale and its path forward for the Phase II site cleanup." Rather, the meeting was at the NRC request with discussions directed by a meeting agenda put forth by the NRC.
  - b. Page 2, **Other Items Discussed**, 1) For Plant 5: states that, "Mallinckrodt commits to accept full D&D responsibility for the revised and expanded Plant 5 entire site, with boundaries now extended and abutting to the rail-spurs located on the east and

west side of the Plant 5." Contrary to this statement, Mallinckrodt is willing to extend responsibility to include the area on the west side of B250 extending to the edge of Second Street and on the west side of B240 extending to the edge of the railroad right-of-way. FUSRAP has already taken responsibility for Second Street and the railroad right-of-way. They have recently been performing some remedial work in these areas. Other boundaries of Plant 5 remain as described in the CT Phase II DP.

- c. Page 2, **Other Items Discussed**, 2) For Plant 6W: misinterprets Mallinckrodt's position, stated in its CT Phase II Decommissioning Plan. Mallinckrodt restated the decommissioning intentions of conducting a "Source Removal" action only within the boundaries, or boxes, surrounding URO buried in Plant 6W and therefore do not see a need for decommissioning DCGL's for the area. As item 2.a indicates, Mallinckrodt had noted that it planned to meet with the USACE on November 30, which it did, for the purpose of defining the areal extent of the CT remediation of the burials in Plant 6W. The purpose of the meeting was to come to an agreement with USACE and to determine the size of the URO boundaries that would be removed by Mallinckrodt under the CT D&D project.

Consistent with Mallinckrodt's representation in the CT Phase II D&D plan, Mallinckrodt's position remains that it includes sewer piping leading from Plant 5 to the wastewater basins in Plant 7 and the wastewater basins themselves. Mallinckrodt stated that it cannot be held responsible for whether the USACE remediates MED-AEC material so as to achieve 25 mrem/yr to the satisfaction of the NRC. Such would be and must remain the responsibility of the USACE for the FUSRAP

- d. Page 3, At the bottom of the page add a section titled **Unresolved Issues**: Currently the NRC staff's emphasis on unresolved issues include:
- i. Site-wide compliance with 25 mrem/yr
  - ii. Compliance with NEPA on site-wide basis
  - iii. Delineation in Plants 6W and 7
  - iv. Universal resolution on a site-wide basis to allow license termination

The NRC staff wants the CT Phase II D&D plan to provide a universal resolution on the site, including CT and FUSRAP, in order

for the plan to be approved. Specifically, assurance of compliance with 25 mrem/yr on a site-wide basis must be met.

Mallinckrodt argued that MED-AEC residue belongs to the US Government and the decommissioning of MED-AEC residue is subject to remediation under the FUSRAP. Mallinckrodt does not have the authority nor the responsibility to remediate MED-AEC residues per the terms of the ROD governing remediation at the St. Louis plant site. Mallinckrodt cannot set cleanup criteria for MED-AEC material, cannot force USACE to change its remediation strategies or positions, and therefore cannot assure that the USACE will achieve a certain dose level after its remediation. Furthermore, USACE is conducting the remediation in accordance with a Federal Facilities Agreement and a Record of Decision governing remediation of MED-AEC residues at the St. Louis plant site. These documents take into account ARARs which includes NRC standards and have already been approved. It is duplicative and unnecessary for NRC to attempt to regulate materials which are subject to the FUSRAP program. In summary, Mallinckrodt does not believe that the NRC has regulatory jurisdiction over the MED-AEC material; notwithstanding, the practical consequence of 10 CFR Parts 20.1402 and 20.1003.

Mallinckrodt has stated numerous times that this is a prime example of why the MOU between the USACE and NRC was signed. The MOU was drafted to address sites where duplicative and/or conflicting regulatory actions could create unnecessary and costly effort. The MOU attempts to specifically avoid unnecessary duplication of regulatory requirements for decommissioning sites that are NRC-licensed facilities and are subject to the FUSRAP. As documented in the ROD for the St. Louis plant, the USACE is committed to following CERCLA requirements and the MOU with the NRC and agency requirements were considered when developing the ROD and the release criteria.

For over 10 years, Mallinckrodt has made a good faith effort to reach an agreement with first the DOE and then with USACE on a geographic delineation between CT and FUSRAP areas at the St. Louis plant site. In practice, these determinations have been completed as particular areas of the plant are remediated. For the past 5-6 years, Mallinckrodt has been working with the USACE to delineate the extent of remediation of the URO burials that would be

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removed by Mallinckrodt under the CT D&D project. NRC Deputy Director Gillen asked in March, 2006 whether Mallinckrodt intends to 1) settle delineation of FUSRAP responsibility for MED-AEC areas and Mallinckrodt responsibility for C-T areas or 2) to demonstrate radiological dose compliance with 25 mRem/yr on the entire site, including FUSRAP areas. In April, Mallinckrodt reiterated its intent to delineate areas of responsibility geographically. Mallinckrodt continues to believe geographic delineation of respective responsibilities is the practical resolution for the reasons stated in our letter to Mr. Gillen and continues to pursue this resolution with the USACE.

Our intentions have been clear and consistent since we commenced this project. We have not modified our position nor our approach to delineation at the St. Louis plant site. We are confident that we will reach an agreement with the USACE in order to understand the extent of the URO burials in Plant 6W that will be addressed under the CT Phase II D&D plan. This will be done so as soon as practical after agreement on delineation is settled with the USACE.

To ensure that there is no misinterpretation of Mallinckrodt's position we request that the meeting record be corrected. If you require any additional information, please let me know. I may be reached at 314-654-5838.

Sincerely,



Karen M. Burke

Cc: Patricia Duff  
Henry Morton  
File