

January 26, 2007

Frederick B. Entwistle, Manager
3M Corporate Health Physics
3M Center, Building 0220-06-W-08
P.O. Box 33283
St. Paul, MN 55133-3283

Dear Mr. Entwistle:

We have completed our review of your financial assurance submittal dated March 30, 2006, and have determined that we will need additional information in order to complete our review.

3M Company submitted an escrow agreement for decommissioning financial assurance for its Brookings, SD gamma irradiator facility. NRC License No. 22-00057- 61 applies to the facility. 3M Company placed \$560,000 into escrow.

The staff reviewed the escrow agreement for compliance with NRC regulations and conformance to regulatory guidance in NUREG-1757, Vol.3, "Consolidated NMSS Decommissioning Guidance: Financial Assurance, Recordkeeping, and Timeliness." The escrow agreement must be revised as detailed below to be acceptable.

Please modify the submittal in the following ways:

I. Detailed Comments on Escrow Agreement Sections

[Note: Comments are listed by the section number of the escrow agreement]

A. Section 1.01 Receipt and Increase of Escrow Property

The primary criterion established by the NRC for evaluating funding methods is that funds for decommissioning will be available when needed (50 FR 5600, 5607, "Decommissioning Criteria for Nuclear Facilities," proposed rule, Feb. 11, 1985). Property used as financial assurance that is subject to a security interest, lien, or other encumbrance, does not satisfy the criterion because it may not be available when needed.

NUREG-1757, Vol. 3., Section A.5.4, Paragraph 2 provides that the licensee warrants that the escrow property is free of security interests. However, the escrow agreement does not provide that 3M warrants that the escrow property is free of security interests.

Therefore, Section 1.01 must be revised to specify that 3M warrants that the escrow property is free of security interests.

B. Section 1.02. Investments

NRC's regulations require the licensee to cover the cost of decommissioning at all times (10 CFR 30.35). Placing escrow property in non-guaranteed investments could result in market losses that reduce the amount below the regulatory requirement. Investing escrow funds is permitted, but shortfalls must be replenished if they occur. However, the escrow agreement does not provide for replenishment of market losses.

Section 1.02 must be revised to limit disbursements of earnings such that the account balance after disbursement will not fall below \$560,000 (or other NRC-approved cost estimate for decommissioning) any time before 3M meets the conditions for disbursement of the escrow property listed in Section 1.03, "Disbursements." Any earnings received before the conditions of Section 1.03 are met will be used, as necessary, to replenish the escrow property, in the event that the amount falls below the amount necessary to cover the decommissioning cost estimate.

C. Section 1.03 Disbursements

Revise the section to correct the typographical error in the sentence, "No withdrawal from the Escrow Property, concerning Gamma Sterilizer NRC License 22-00057-61, can exceed 10 percent of the outstanding \$560,000.00 [sic] whichever is greater, unless NRC approval is attached."

D. Section 1.05 Termination

NUREG-1757, Vol. 3., Section A.5.4, Paragraph 12 provides that the agreement may be terminated by written notice of termination to the escrow agent signed by 3M Company and the NRC, or the NRC alone if 3M Company ceases to exist.

However, the escrow agreement does not provide for termination of the agreement by written notification by 3M and NRC. Section 1.05 of the agreement should be revised to include that provision.

E. Section 2.01 Standard of Care

NUREG-1757, Vol. 3., Section A.5.4, Paragraph 6 provides that "the escrow agent will discharge its duties with respect to the escrow account solely in the interest of NRC and with the care, skill, diligence, prudence, and diligence, under the circumstances then prevailing, that persons of prudence, acting in like capacity and familiar with such matters, would use in the conduct of an enterprise of like character and like aims."

However, Section 2.01 does not require that standard of care. Therefore, Section 2.01 must be revised to included that standard of care.

F. Section 3.02 Resignation or Removal of the Escrow Agent

NUREG-1757, Vol. 3., Section A.5.4, Paragraph 8 states that the successor agent must make notifications by certified mail before assuming administration of the account. However, the escrow agreement does not require the escrow agent to make those notifications.

Therefore, Section 3.02 must be revised to add the following requirement: "The successor escrow agent shall specify the date on which it assumes administration of the account in writing sent to the licensee, NRC, and the current escrow agent by certified mail 10 days before the change becomes effective."

G. Section 3.06 Attachment of Escrow Property; Compliance with Legal Orders

Section 3.06 conflicts with the criteria established by the NRC for evaluating funding methods. The primary criterion is that funds for decommissioning will be available when needed (50 FR 5600, 5607, "Decommissioning Criteria for Nuclear Facilities," proposed rule, Feb. 11, 1985). However, the escrow agreement allows the funds set aside for decommissioning to be subject to attachment, which imperils the availability of the funds for their intended purpose. In the event that escrow property is paid out for non-decommissioning purposes, the amount remaining may fall below the regulatory requirement of 10 CFR 30.35 to cover the cost of decommissioning. Such payment could place the 3M into non-compliance with the regulations.

Section 3.06 conflicts with another section of the escrow agreement and does not conform to NRC's regulatory guidance. Specifically, Section 3.06 conflicts with Section 1.03, "Disbursements," which limits disbursements to legitimate decommissioning activities. Section 3.06 does not conform to regulatory guidance because NUREG-1757, Vol. 3 does not provide for attachment of decommissioning funds for purposes of satisfying levies upon the licensee. The conflict and non-conformance reduce the likelihood that funds for decommissioning will be available when needed.

In summary, Section 3.06 provides a method to disburse escrow property that may reduce the amounts to a level that places 3M in non-compliance with NRC regulations. Therefore, Section 3.06 must be removed in its entirety.

H. Section 4.01 Successors and Assigns

Section 3.06 conflicts with the criteria established by the NRC for evaluating funding methods. The primary criterion is that funds for decommissioning will be available when needed (50FR 5600, 5607, "Decommissioning Criteria for Nuclear Facilities," proposed rule, Feb. 11, 1985).

However, the provisions of Section 4.01 state that (1) the Escrow Agreement inures to the benefit of 3M and its respective successors and assigns; and (2) no other person has any rights under the agreement. These provisions reduce the likelihood that funds will be available when needed because they conflict with regulatory guidance and other provisions of the escrow agreement that establish the NRC's rights to approve and direct payments for decommissioning costs under certain conditions. The conflicts could raise challenges to payments for decommissioning, which could delay decommissioning activities.

The provisions of Section 4.01 noted above conflict with NUREG-1757, Vol. 3., Section A.5.4, Paragraph 6, which provides that the escrow agent shall discharge its duties solely in the interest of the NRC. Section 4.01 also conflicts with Section 1.03, which provides that NRC has approval rights over disbursements exceeding 10 percent of the account, and that NRC has the right to direct the escrow agent to make disbursements under certain conditions.

Therefore, Section 4.01 must be revised to state that the Agreement is for the benefit of the NRC, and that the NRC has rights under the Agreement.

I. Section 4.06 Amendment

NUREG-1757, Vol. 3., Section A.5.4, Paragraph 11 provides that an amendment to the escrow agreement requires written approval by the NRC, the licensee, and the escrow agent, or the NRC and the escrow agent if the licensee ceases to exist.

However, Section 4.06 permits 3M and the escrow agent to supercede, rescind, or cancel the agreement without NRC approval. Section 4.06 also conflicts with Section 1.05, which requires that the agreement remain in force until certain notifications and decommissioning activities have been completed.

Section 4.06 must be revised (1) to require NRC written approval of amendments to the agreement; and (2) to remove the provision that 3M and the escrow agent can supercede, rescind, or cancel the agreement.

II. Provisions of NUREG-1757, Vol. 3 To Be Added to the Escrow Agreement

NUREG-1757, Vol. 3., Section A.5.4, Paragraph 7 provides for an annual valuation to be furnished to the licensee and NRC within 30 days of the anniversary date of the establishment of the account.

However, the escrow agreement does not provide for delivery of an annual valuation statement. This provision must be added to the escrow agreement.

F. Entwistle

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When you submit your response, please reference as additional information to Control Number 300379. If you have any questions, please feel free to contact me at (630) 829-9854.

Sincerely,

/RA/

Kevin G. Null
Materials Licensing Branch

License No. 22-00057-61

Docket No. 030-14999

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