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Sent: Thursday, May 08, 2008 4:59 PM
To: Secy
Cc: Charlie Williams; Mike LaFleur; Chris Pugsley
Subject: RMD Operations Comments to D&D Rule Making
Attachments: RMD comments_proposed D&D rules_8May08.doc

Importance: High

Attached are RMD's comments to the NRC's proposed amendments to its site decommissioning regulations, as presented in 73 Fed. Reg. 3812 (January 22, 2008).

Respectfully submitted,
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USNRC
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OFFICE OF SECRETARY
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R.M.D. Operations, LLC

May 8, 2008

Secretary
United States Nuclear Regulatory Commission
Attn: Rulemakings and Adjudications Staff
Washington, D.C. 20555-0001

Dear Sir or Madam:

By this letter, R.M.D. Operations, LLC (RMD), an NRC licensee, hereby submits its comments on the United States Nuclear Regulatory Commission's (NRC's) January 22, 2008 proposal to amend its regulations to "improve decommissioning planning, and thereby reduce the likelihood that any current operating facility will become a legacy site." 73 Fed. Reg. 3812 (January 22, 2008). RMD currently is the holder of NRC License SUC-1591 which authorizes the conduct of licensed uranium water treatment operations at community water systems (CWS) that require such operations to comply with the United States Environmental Protection Agency's (EPA's) new maximum contaminant level (MCL) for uranium in drinking water.

RMD is aware of comments submitted by the National Mining Association (NMA) regarding the proposed rule. RMD hereby concurs with NMA's comments and believes that particular emphasis should be placed on NMA's General Comments #1 and 3 and Specific Comments #1 and 4. Further, RMD would like to offer the following specific comments:

1. **Page 3820, Column 1:** NRC's Federal Register notice provides a discussion of the potential effects of the proposed rule on municipal waste treatment facilities. This discussion states, "[t]he accumulation of radionuclides at municipal waste treatment facilities was the subject of an Interagency Steering Committee on Radiation Standards (ISCORS)...which concluded that these facilities do not have significant concentrations of long-lived radionuclides." 73 Fed. Reg. at 3820. However, this statement fails to account for the potential impacts to such facilities if the new uranium and radium MCLs are enforced effectively by EPA and their delegated States and uranium and/or radium water treatment residuals are released in an uncontrolled manner into sanitary sewers or other discharge points from which such residuals could migrate to such facilities. Indeed, the ISCORS study was conducted prior to the final promulgation and implementation of the new uranium MCL and the re-promulgated radium MCL. As a result, it would be prudent for NRC to reconsider the ISCORS conclusions.

With respect to licensable or licensed uranium over which NRC has regulatory jurisdiction, RMD believes, as it has stated in the past, that the current NRC licensing program has been an effective way to exert regulatory control over the source material uranium produced as a result of such water treatment operations.

2. **Page 3818, Column 2:** NRC's Federal Register notice provides a discussion of statements of intent and states that, "[i]t is available for use only by governmental entities." *Id.* at 3818. RMD believes that this statement is far too restrictive an interpretation of NRC's prior approach to financial assurance and is inconsistent with current NUREG-1757, Volume 3 guidance entitled *Consolidated Decommissioning Guidance-Financial Assurance, Recordkeeping and Timeliness* regarding statements of intent. Currently, NUREG-1757, Volume 3 states that statements of intent intended to be provided by governmental entities on behalf of a third-party licensee will be evaluated on a "case-by-case basis." See NUREG-1757, Volume 3 at __. As contemplated in RMD's current NRC license, statements of intent provided by governmental entities on behalf of a third-party licensee (e.g., RMD) can satisfy potential enforceability issues by requiring that the licensee modify commercial contracts and the NUREG-1757 template for statements of intent to ensure that funds guaranteed by the governmental entity are available if needed. Indeed, NRC's proposed rule requires that a *consent order* be entered into by a parent company seeking to provide a guarantee on behalf of its subsidiary. According to NRC, the basis for this requirement is that, "a parent company is not usually an NRC licensee subject to NRC's authority...." 73 Fed. Reg. at 3825. Thus, given that a governmental entity providing a statement of intent on behalf of a third-party licensee is "not... an NRC licensee subject to NRC's authority," NRC can simply utilize the RMD contractual requirements and/or a consent order to assure NRC access to financial assurance funds agreed to in governmental letters of intent. NRC should continue its policy of providing "case-by-case" review of proposals to provide statements of intent on behalf of third-party licensees.

3. **New Part 20 Requirements:** NRC's proposed rule also offers revisions to existing 10 CFR Part 20 requirements for radiation protection, including potential new survey and monitoring requirements. These revisions are intended to address the potential for short and long-term issues with subsurface contamination at licensed facilities. The proposed rule discusses potential application of these requirements to, among other sites, rare earth recovery facilities that generate licensable and/or licensed uranium or thorium source material. RMD believes that NRC should address the potential applicability to uranium water treatment licensees such as RMD or future license applicants as well to make it clear that such survey and monitoring requirements likely will not be necessary at such facilities. RMD's currently licensed operations involve the production of uranium-laden ion exchange (IX) resins that are substantially similar, if not identical, to those generated at *in situ* uranium recovery (ISR) facilities. All uranium water treatment equipment that generates such resins are, by license condition, contained within structures/buildings that provide primary and secondary containment to minimize, if not eliminate, potential releases of licensed material. Further, the nature of the uranium-laden IX resins themselves does not lend them to present credible release scenarios where potential subsurface contamination would be implicated. In addition, RMD's current license and associated environmental report already has strict monitoring and survey requirements for normal operations and media exchanges, including specifically media/resin spills. Thus, RMD believes that NRC should specifically state that licensed uranium water treatment operations such as those conducted by RMD will not be potential candidates for application of the new Part 20 requirements.

Secretary, U. S. NRC
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RMD appreciates the opportunity to provide comments on the proposed rule, and if you have any questions, please do not hesitate to contact me, or RMD's counsel, Christopher S. Pugsley, Thompson Simmons, PLLC, 202.496.0780. Thank you for your time and consideration in this matter.

Respectfully submitted,



Duane W. Bollig
Vice President – Environmental & Government Affairs

cc: Michael LaFleur
Christopher Pugsley, Esq.