



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

June 14, 1996

MEMORANDUM TO: Charles W. Hehl, Director
Division of Nuclear Materials Safety
Region I

FROM: Margaret V. Federline, Acting Director *M. V. Federline*
Division of Waste Management
Office of Nuclear Material Safety
and Safeguards

SUBJECT: RESPONSE TO REQUEST FOR A PARTIAL EXEMPTION FROM
FINANCIAL ASSURANCE REQUIREMENTS BY NUCLEAR METALS, INC.

We reviewed the January 31, 1996, Nuclear Metals, Inc. (NMI) revised decommissioning cost estimate and Region I's recommendations concerning NMI's partial exemption request.

With regard to the partial exemption request, we reviewed the information provided by NMI and find its rationale insufficient for exempting NMI from the requirements in 10 CFR 40.36 to obtain an acceptable financial assurance instrument. The basis for our determination is described below.

NMI has made a request for a partial exemption from the requirements of 10 CFR 40.36. NMI indicated that the basis of the request "is due to NMI's special and possibly unique circumstance that funding of future decommissioning efforts at NMI is in large part the responsibility of the U.S. Government through an open facilities contract as the funding vehicle." This position derives from NMI's interpretation of the Army contract language. Just as important as NMI's interpretation of the contract, is the Army's interpretation. The Army, however, appears unwilling to provide a Statement of Intent implying that the Army may hold a different interpretation of their decommissioning obligation. Because of the apparent unwillingness of the Army to formally accept a decommissioning obligation at NMI, we consider NMI's rationale lacking sufficient justification for us to issue a partial exemption to 10 CFR 40.36.

NMI also indicates that "operations are expected to continue indefinitely and as such should be treated differently than licensees whose facilities have a determinable useful life and for whom decommissioning is a near term certainty." Firstly, when we evaluate financial assurance requirements for decommissioning, we assume that any licensee can suddenly cease operations, for any reason. As such, our financial assurance requirements are intended to provide a decommissioning funding mechanism in the event the licensee is unable to. We do not consider whether a licensee has a "determinable useful life." Secondly, while the intention of NMI may be to continue operations indefinitely, its operations will be greatly affected by continued business from the Army. Because, as NMI indicates in their submittal, the Army currently has a reduced need for depleted uranium penetrators, the future business conditions may not be as optimistic as NMI states. In fact, the

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economic viability of NMI could have been adversely affected without the recently awarded Army contract for anti-tank penetrators. Because there is also an alternative source for penetrators, it would be unreasonable to assume that the Army will indefinitely fund future operations. Despite efforts to expand commercial business lines, we consider that NMI's rationale that their operations will continue indefinitely to be inadequately supported.

In the NMI submittal there is a letter report from an NMI consultant. The letter report concludes that the Army is responsible under the contract for decommissioning and that the Army cannot obligate itself to fund future decommissioning efforts. As stated above, there apparently is a difference of opinion between NMI and the Army regarding the Army's decommissioning obligations. Until the Army formally presents a contract interpretation consistent with NMI's, we have insufficient justification to issue a partial exemption. Regarding the legal ability of the Army to obligate itself, the NRC's Statement of Intent (SOI) language does not require a Federal agency to obligate itself in conflict with the law. The SOI language states the following:

"... I intend to have funds made available when necessary in an amount up to (dollar amount) to decommission (description of facilities). I intend to request and obtain these funds sufficiently in advance of decommissioning to prevent delay of required activities."

The Army has submitted SOI's for several of its NRC licenses.

NMI has proposed to establish an additional \$750,000 trust fund with monies paid in at a rate of one-half of one percent of its total sales. When fully funded, this would increase the total amount of financial assurance to \$1,500,000. This amount would still be substantially less than NMI's current decommissioning cost estimate of \$11,600,000. Based on this substantial underfunding, we consider the proposed trust fund to be insufficient for meeting NMI's decommissioning costs and an insufficient basis for issuing a partial exemption.

The licensee should obtain a Statement of Intent from the U.S. Army or another acceptable instrument. With NMI's improved business forecast, it appears that NMI should be in a better position to obtain an acceptable financial assurance mechanism if the Army continues to refuse to provide a Statement of Intent. We do, however, agree with you that it would be useful to have a senior NRC official contact a senior official in the U.S. Army to determine the Army's position with respect to funding the remediation costs.

With regard to the NMI cost estimate, we reviewed the unit costs and labor rates used in the NMI decommissioning cost estimate. These data are in a

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reasonable range. Region I should review the NMI estimates of contaminated equipment, buildings, soils, and groundwater to determine if NMI has appropriately identified the contamination source term currently at the Concord site. Also, see attached review provided by L. Pittiglio of my staff.

Attachment: As stated

CONTACT: L. M. Bykoski, NMSS/DWM
415-6754

Subject: Review of the Nuclear Metals Cost Estimate, SNB-179, SUB-1452
By L. Pittiglio

I have completed my review of the Nuclear Metals, Inc., (NMI) Decommissioning Cost Estimate dated April 19, 1996, and, based on the information provided, have no basis to determine if the \$11,605,167.00 estimate is a reasonable estimate to decommission the NMI. Because only summary tables were provided (Table I through Table 12), and because the cost can vary significantly with changes in the quantities of material and surface area of material requiring decontamination, I was unable to determine if the quantities are in a reasonable range. In addition, the cost estimate did not provide a status of the activities that are currently being conducted at this facility, and did not indicate if a characterization survey had been conducted to determine/verify the level of contamination. Until this information is provided, the only parts of the cost estimate that can be evaluated are the unit costs and labor rates (discussed below).

The tables (Table 1 through Table 12) in the cost estimate identified the decontamination activity, the areas/volumes to be decontaminated, the hours to complete the activity, the cost to complete the activity, the volume of waste generated, the disposal cost associated with the activity (initial reaction is that it appears low), radiation survey costs, and a 25-percent contingency factor.

The basis for the comparison was the "1995 Means Building Construction Cost Data," the "1995 Means Labor Rates for the Construction Industry," and unit costs for similar decommissioning activities at Fort St. Vrain and Yankee Rowe. The cost estimate can vary significantly with changes in the material quantities. The unit costs and labor rates are in a reasonable range. Again, the review did not evaluate in detail the quantities of materials associated with the decommissioning of the facility because the necessary information to support the quantities was not provided.

The Region should review the source terms provided in the cost estimate for completeness and accuracy. Supporting information for the figures provided in the Summary Tables 1 through 12 has not been included. A site drawing and characterization information with respect to any soil or water contamination have also not been provided.

ATTACHMENT