



NUCLEAR METALS, INC

15 August 1995

John D. Kinneman, Chief
Site Decommissioning Section, DRSS
U. S. Nuclear Regulatory Commission
Region I
475 Allendale Road
King of Prussia, PA 19406-1415

Subject: Request for partial exemption to D&D Requirements under 10CFR40.36
Re: License Nos. SMB-179 and SUB-1452
Docket Nos. 040-00672 and 040-08866
Control Nos. 117006 and 113010

Dear John,

We are hereby requesting that the Commission grant NMI a partial exemption to the decommissioning funding requirements required under 10CFR40.36. Based on our previous discussions and ongoing dialogue our understanding is that such an exemption can be granted under certain circumstances. We believe that granting of this exemption is authorized under 10CFR.14 and will not endanger life or property and will have a beneficial effect on the nation's defense and security. The basis of our 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. Currently the NRC regulations do not include government contracts as an approved funding mechanism in 10CFR40.36.

NMI's principal licensed activities under the NRC have been and continue to be the processing of Depleted Uranium products supportive of our nation's Defense Mobilization Base as a commercial resource. The productive capacity of defense contractors and subcontractors, in many cases, forms an essential part of this mobilization base. The mobilization base includes inactive or partially utilized facilities which may be required in the event of a national emergency which would require an increase in defense preparedness.

NMI has in the past discussed our views in comments during the promulgation process of the current Decommissioning and Decontamination (D&D) rules contained in 10CFR40.36. Below we restate some of these comments in support of this exemption request.

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Our Company 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. An industrial facility, such as NMI, contemplates continuing in existence as a licensee into the indefinite future. Our facilities are continually being modernized by the disposition of outdated equipment and the installation of newer replacements. An industrial plant, such as NMI, is not a single aging asset inexorably moving towards the end of a useful life and an inevitable requirement of decommissioning, but a continually evolving continually renewed production facility. Decommissioning activities are ongoing as part of our business as we are continually working to modify our facilities by removing facilities that are no longer needed or otherwise obsolete.

Activities Undertaken to Decommission Existing Facilities

As we indicated to you, the current and projected need for Army depleted uranium penetrators has been significantly reduced. Capacity at our facility is far more than what is needed for this product line and much of this space is now needed to support other products. For this reason we have been removing equipment and facilities contaminated with depleted uranium to make room for other product lines. Since we submitted our D&D cost estimate to you in May of last year we have removed both government and NMI equipment totaling over a half million pounds. This quantity represents nearly 25% of all the equipment listed in our original D&D plan document. We expect to continue to remove materials and equipment at this significant pace since in so doing we retrofit the existing facility with new non-source material activities and equipment. We also reduce the amount of funds needed to be set aside for this work by a "pay as you go" approach. Our objective, in this plant modernization effort, include a review of the company's D&D plan and cost estimate. And as allowed in the regulations we intend to revise our cost estimate. This review will be performed by outside qualified consultants with the information being provided to you by the end of the calendar year.

Army Support for Decommissioning

Since our meeting with the NRC staff in May, we have had ongoing dialogue and meetings with the Army regarding funding for both the Holding Basin remediation and clarification of contractual requirements regarding the funding of the D&D of our facilities.

In regards to the holding basin we are now pursuing funding for remediation via Public Law 85-804, as indicated in Mr. Quinn's letter to Mr. Kinneman of 30 June 1995. This is the Army's preferred funding mechanism and we have been encouraged by the Army to submit this request. This request for funds is based on the fact that certain activities conducted by NMI are essential to our nation's defense programs. PL 85-804 provides for a contract adjustment to be made, remedying the situation without the Army setting a precedent.



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Our request which is being prepared in accordance with Federal Acquisition Regulation, Part 50 will be submitted in August 1995. Our procurement consultants believe that the process will be completed by the end of this calendar year. (see attached letter from Engineering and Management Executives, Inc.) This time frame supports the removal of the balance in calendar year 1996 as per our Decommissioning plan schedule.

Despite our best efforts, the Army has yet to provide written confirmation of our view that they have responsibility in regards to decommissioning costs associated with our prior and existing government contracts for uranium penetrators and armor materials. In regards to the contractual mechanisms which will yield required out year funds for D&D activities, we have attached a letter from Mr. Darold L. Griffin, retired Army senior civilian procurement professional. This attachment is consistent and further substantiates our assertion that D&D funding is the responsibility of the government and our Army facilities contract # DAAK10-81-C-0323, is the appropriate funding mechanism.

Letter of Credit and Other Private Financial Assurance

We have in place an irrevocable Standby Trust Agreement through State Street Bank & Trust (SSB), for \$750,000. In addition to this financial instrument and in recognition that the NRC desires additional financial assurance on the part of the Company, we will establish an additional financial assurance vehicle.

The Company will establish an account at SSB which will be administered by the bank's trust department with the NRC identified as the sole authorization on distribution of funds from that account. The Company will fund an additional \$750,000 to this account on a quarterly basis at a rate of one half of one percent of total sales for the Company beginning October 1, 1995, which is the start of the Company's fiscal year. The timing of the quarterly funding of this trust account will be that deposit of funds will occur no later than fifteen days after the filing date of the Company's financial statements with the SEC. The Company reserves the right to replace this trust account at its discretion with a Letter of Credit from an accredited bank or appropriate documentation identifying Government obligation that results in a maximum exposure to NMI that is lower than existing financial assurance values.

This vehicle and the mechanics of the amount to be set aside are, in the opinion of the Company, responsive, reasonable and easily measurable. In establishing this account, a formal trust agreement will need to be developed between NRC, SSB and the Company. We will have this account operational to receive cash during our 1st fiscal quarter of FY96.



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Summary

1) NMI hereby requests that the NRC grant a partial exemption to the decommissioning funding requirements required under 10CFR40.36 allowing NMI's Army contract # DAAK10-81-C-0323 to serve as an approved funding mechanism for future facility decommissioning costs

2) NMI also requests that when the Army contract financial assurance vehicle is combined with the other company provided financial assurance mechanisms described above, that a determination be made that adequate financial assurance has been provided to the NRC

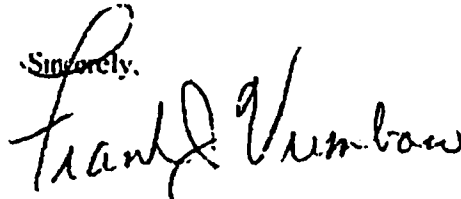
We are looking for the NRC to review this request for partial exemption to the D&D funding requirements and allow the Company to utilize the above mechanisms existing and proposed as sufficient financial assurance pending resolution of issues pertaining to the government participation in NMI's D&D funding plan.

There has been significant and tangible progress made toward resolving many of the outstanding issues with the government. We believe that we are near a solution to the impasse on holding basin funding. We also believe that in concert with the retooling of our facility, with the concomitant removal of no longer needed government and NMI equipment, liabilities for future decommissioning costs are reduced substantially.

In closing we would ask that full and thoughtful consideration be given to this request. NMI's record of compliance over the years demonstrates a sincere willingness to cooperate with the Commission. We have always been responsive to those who regulate our activities and will endeavor to do so in the future.

Attach 2 letters from FME, Inc.

Sincerely,



Frank J. Vunlago

Vice President, Health and Safety



ENGINEERING & MANAGEMENT EXECUTIVES, INCORPORATED

6462 LITTLE RIVER TURNPIKE
ALEXANDRIA, VIRGINIA 22312
(703) 642-6400 FAX: (703) 642-6405

August 12, 1995

Mr. Robert E. Quinn
President
Nuclear Metals, Inc.
229 Main Street
Concord, MA 01742

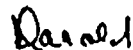
Dear Mr. ^{Bob} Quinn:

Of the alternatives presented to the NRC at the Enforcement Conference last December on the clean-up of the DU Waste Holding Basin, your acceptance of the Army's invitation to seek relief under P.L. 85-804 is clearly the best course of action. It has the support of the Army legal community at all levels, including the Army Secretariat, and provides the maximum flexibility for relief without compromising NMI's rights to other alternatives. This approach is ideal given the Army is seeking a business-like solution to the problem.

The work of preparing the P.L. 85-804 Request for Relief is progressing quite satisfactorily. While a lot of historical and current contract and corporate financial records are required, the collection and analyses are proceeding on schedule. Also, documentation and letters certifying that NMI is essential to National Defense have been received from industry and the Army.

The Request for financial assistance is planned to be submitted to the Army by August 31, 1995. We anticipate it will be acted upon by December 31, 1995.

Sincerely yours,



Darold L. Griffin
President and CEO

ENGINEERING & MANAGEMENT EXECUTIVES, INCORPORATED

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August 12, 1995

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Concord, MA 01742

Dear Mr. ^{Bob} Quinn:

Engineering and Management Executives, Inc. has studied the Army's responsibilities for clean-up and decontamination of your Concord depleted uranium facilities. Our experts have reviewed the Army policy, your active contracts, and the historical record of the Army under similar circumstances. It is the opinion of our experts that the Army has the obligation and intent of funding the clean-up and decontamination of the facilities, equipment, and tooling at Concord that have been used on Army contracts and subcontracts.

The Army industrial base policy documents, (e.g., AR 700-90, AMCCOMR 385-5) and the Army industrial base facilities and layaway contracts, contemplate clean-up and decontamination of equipment and production facilities. These policies allow the Army to attract industrial companies to participate on programs which create unique industrial hazards and clean-up risks. The Army must deliver on its promises as its industrial requirements are often spontaneous and indefinite. Suppliers must be available when needed.

The Army has historically included clauses in their contracts that provide for clean-up of PCB's, asbestos, explosive dust, depleted uranium and other unique environmentally hazardous materials when used or generated in performance of Army contracts. Nuclear Metals, Inc.'s (NMI) Army contracts contain such a clause pertaining to Safety Requirements for Hazardous Items Decontamination of Contractor/Sub-contractor Facilities which states

"Facilities and equipment contaminated with hazardous materials and which will not be used for similar hazardous materials and processes shall be decontaminated before being otherwise used or disposed of. The contractor shall request guidance from the Contracting Officer. Decontamination costs will be provided at the time the effort is directed. The Contracting Officer shall obtain a certification, from a knowledgeable agency, that complete decontamination of the facility/equipment has been accomplished."

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The clause permits the Army to recognize costs associated with the clean-up and decontamination of NMI's facilities and equipment and assure compliance with the terms and conditions of the applicable Nuclear Regulatory Commission (NRC) License. In fact, the U.S. Army Armament, Munitions and Chemical Command requested an estimate of these costs in letters of 15 April 1993 and 20 May 1993 and NMI submitted such costs on 17 June 1993.

The Army has a long and envious record of paying the costs associated with the clean-up and decontamination of research and development, production, and maintenance facilities and equipment involving a broad range of materials from PCB's, asbestos and explosive dust to depleted uranium. However, funds to finance clean-up of facilities are not budgeted until the year production is scheduled for completion. Written commitments by Army officials to finance the clean-up are unlawful unless funds have been provided by Congress.

The Anti-Deficiency Act, 31 U.S.C. Section 1341 prohibits the Army from making any commitment to spending money for the clean up and decontamination of production facilities until they receive the funds. The act states that:

(1) An officer or employee of the United States government or the District of Columbia Government may not--

(a) Make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation, or

(b) Involve either Government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law

The effect of this Act is that a contracting officer of the Government cannot enter into a contract or provide a letter obligating the Government to clean up the production facilities at Concord until the funds are duly authorized by Congress and available to him. Should any individual make a commitment without that authority, he would be in violation of the statute and subject to financial and criminal penalties or both. Production is still ongoing and planned to continue for several years. Therefore, the Army has no funds for the clean up of the Concord facilities at this time and cannot give a binding commitment.

Mr Robert E Quinn

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In summary, our experts have concluded:

(1) Army funding of the clean-up and decontamination of the Concord facilities is consistent with their policies and past practices,

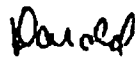
(2) They are clearly responsible for the clean-up and decontamination under current contracts,

(3) When the time comes, i.e., production is completed, the Army will provide the funds to clean-up and decontaminate the production equipment and facilities to comply with the applicable Nuclear Regulatory Commission license requirements, and

(4) Due to the harsh penalties in the Anti-Deficiency Act, no one in the Army will write a letter committing funds to the future Decontamination and Decommissioning Project until funds are appropriated by Congress and certified to the Army. The NRC's request for such a written commitment from the Army is not possible to achieve at this time.

Thanks once again, for the opportunity to assist NMI. If you need additional information please let me know.

Sincerely yours,



D: J.L. Griffin
President and CEO