



DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
RESEARCH DEVELOPMENT AND ACQUISITION

December 13, 1996

Mr. Charles W. Hehl  
Director, Division of Nuclear Materials and Safety,  
Region 1, Nuclear Regulatory Commission  
475 Allendale Road  
King of Prussia, Pennsylvania 19406-1415

Dear Mr. Hehl:

As you are aware, the Army Contract Adjustment Board (ACAB) issued a decision on September 13, 1996, granting extraordinary contractual relief to Nuclear Metals, Inc. (NMI), based on NMI's essentiality to the national defense. This decision commits the Army to fund the cleanup of the holding basin at NMI's site at Concord, Massachusetts, in accordance with the terms and conditions specified. The contracting officer at Picatinny Arsenal, New Jersey, will implement the ACAB decision through a supplemental contractual agreement to be executed between the Army and NMI.

Since the issuance of the ACAB decision, I understand that you and your staff have had several discussions with Army and NMI personnel about whether the ACAB decision alone fully satisfies your agency's financial assurance requirements, or whether additional financial assurances still are needed for NMI to comply with Nuclear Regulatory Commission (NRC) regulations. This determination obviously is one that only your agency can make. However, recent correspondence to you from both NMI and the Army has prompted Mr. Ron Bellamy of your office to ask Mr. Doug DeMoss of the Army General Counsel's Office for additional Army input to help you interpret this correspondence. This letter responds to Mr. Bellamy's request.

NMI's Concord site consists of areas contaminated with depleted uranium (DU) waste generated through past research and production efforts that can be categorized as follows: (1) the holding basin, (2) government-furnished equipment used to support DU ammunition production, and, (3) all other potentially-contaminated areas at NMI's site. In addition, NMI will continue to produce scrap and/or waste products under current and future production contracts, to the best of our knowledge, these wastes will be disposed of as they are produced and charged directly to those contracts, and are not presently at issue.

The ACAB decision focuses primarily on the holding basin, and I understand that the NRC is satisfied that the Board's decision provides NMI an adequate means of meeting the NRC's financial assurance requirement as it relates to the holding basin. I also understand that the NRC is satisfied that the Army will handle the eventual decontamination and disposal requirement for its government-owned equipment at NMI's site, through the Army facilities contract administered by the contracting office at Rock Island, Illinois. The NRC has questioned, however, the adequacy of the ACAB decision in providing financial assurances related to any other potential contamination at NMI's site.

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Unlike the holding basin or the government equipment, the Army has not agreed to pay directly for the cleanup of the rest of NMI's Concord site. Instead, the supplemental agreement between the Army and NMI that will implement the ACAB decision will impose a requirement on NMI to do necessary site assessments and begin cleanup operations at the rest of the site. In accordance with the cost principles described in Part 31 of the Federal Acquisition Regulation (FAR), NMI will allocate the cost of performing these additional site assessment and cleanup efforts to appropriate overhead pools, and pass these costs on to NMI's customers in accordance with accounting practices sanctioned by the Defense Contract Audit Agency (DCAA). As one of NMI's principal customers, the Army will, over a period of time, indirectly pay a substantial part of the site assessment and cleanup costs associated with the other potentially contaminated areas at NMI's site.

In his letter dated November 12, 1996, Mr. Bob Quinn, NMI's President, stated that if NMI immediately ceases DU production, the cost of decontaminating and decommissioning the rest of NMI's site would flow to the Army through the facilities contract as well as through other Army work. Generally this assertion is true, although other NMI customers probably would bear part of the cost as well, the precise allocation formula used would be determined in accordance with applicable cost principles by DCAA. As indicated in the enclosed letter from the Army's Comanche Program Manager, the Army indeed does intend to place a substantial amount of future work with NMI during the period from 1998 to 2024.

Brigadier General Arbuckle states in his letter dated November 13, 1996, that the Army does not have any plan to pay for future cleanup work at NMI's Concord facility. This statement is essentially correct, in that the Army has no other plan for a specific cleanup project to be undertaken and paid for directly by the Army at NMI's site besides the holding basin cleanup. However, the Army acknowledges that when one of its contractors undertakes cleanup efforts at one of its sites as a matter of its own corporate responsibility, these costs are generally allowable overhead charges passed on to the Army in the contractor's prices in accordance with the FAR's cost principles.

I hope the information above proves helpful to you in interpreting the recent correspondence you received related to the ACAB's NMI decision. If you have any questions, please contact Mr. Doug DeMoss in the Army General Counsel's Office, telephone number (703) 687-4348.

Sincerely,



Kenneth J. Oscar  
Deputy Assistant Secretary of the Army  
(Procurement)

Enclosure