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UNITED STATES NUCLEAR REGULATORY COMMISSION
REGION 1

In re: NUCLEAR METALS, INC.

An Enforcement Conference was held before
Loretta B. Devery, Registered Professional Reporter
and Notary Public, at the offices of the United
States Nuclear Regulatory Commission, Region 1, 475
Allendale Road, King of Prussia, Pennsylvania, on
Thursday, December 8, 1994, commencing at 1:00 P.M.

PRESENT FROM NRC:

WILLIAM HEHL
JOHN D. KINNEMAN
MARIE MILLER
DANIEL HOLODY
JUDITH JOUSTRA
DUNCAN WHITE
NADER NAMISH
KEITH McDANIEL

PRESENT FROM LICENSEE:

FRANK VUMBACO
JIM SPIEZIO
DONALD KING
JOHN JURY
PHILIP M. CRONIN, ESQ.
ROBERT McCALL
THOMAS WOOTERS

Via Telephone:
TIM JOHNSON
BRAD JONES, ESQ.
BILL LAHS
SAM MALLUSWAMI
LOU BYFOSKI

NOV 18 1994

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MR. HEHL: I'd like to welcome you again. I'm Bill Hehl. I'm the Director of the Division of Radiation Safety and Safeguards here in Region 1. And this is an enforcement conference, as we identified in a letter I sent you on October 28th.

As a result of certainly a fairly lengthy iteration back and forth with regard to compliance with financial assurance requirements, we've been I guess up to this point unsuccessful in coming to a resolution of those issues.

And consistent with our enforcement policy, when there are violations identified which have a potential for resulting in some sort of escalated enforcement activity which can carry fines and such, we hold an enforcement conference in order to provide an opportunity for us to discuss the issues and make sure that there's a clear understanding on both sides of the issues.

As I indicated, there is certainly a number of things that we'd like to hear from you today, certainly with regard to your efforts to come up with the necessary financial assurance. And

1 certainly there needs to be some discussion -- I
 2 think Marie is going to give you a letter when we're
 3 finished here which outlines some additional
 4 information that we're going to need to better
 5 understand your submittals.

6 But at the close of this conference
 7 what we will wind up doing is we will take that
 8 information, we will digest it, discuss it with our
 9 headquarters organization and come to some sort of
 10 determination on where we go from here.

11 But why don't we go around -- has
 12 everybody had a chance to introduce themselves?

13 MR. KINNEHAN: We've done it piecemeal,
 14 but perhaps it would be a good idea to start again
 15 and introduce everyone.

16 MR. HOLODY: Dan Holody, Enforcement,
 17 Region 1.

18 MR. WOOTERS: Tom Wooters.

19 MR. MCCALL: Robert McCall.

20 MR. CRONIN: Philip Cronin.

21 MR. VUMBACO: Frank Vumbaco, Vice
 22 President of Health Safety/RSO.

23 MR. SPIEZIO: Jim Spiezio. I'm the
 24 V.P. of Finance.

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MR. JURY: John Jury. I'm a consultant with Engineering Management Executives out of Alexandria, Virginia.

MR. KING: I'm Don King. I'm the contracts manager for Nuclear Metals.

MR. McDANIEL: Keith McDaniel. I'm with the EEO's office at the NRC.

MS. JOUSTRA: Judy Joustra, Enforcement, Region 1.

MR. MANISH: Nader Manish, Enforcement, Headquarters.

MR. WHITE: Duncan White, Senior Health Physicist.

MS. MILLER: Marie Miller, Senior Health Physicist, Region 1.

MR. KINNEMAN: I'm John Kinneman, Chief of the Site Decommissioning Section here at Region 1. I have a principal responsibility for supervising all of Region 1's actions with regard to Nuclear Metals, Inc.

As you know, Duncan has in the past been the principal staff person assigned to Nuclear Metals. He's doing some other work right now and probably will be for the future. So Marie Miller

1 now is the senior health physicist and project
2 manager for Nuclear Metals.

3 Could we ask Brad, could you say who
4 you are?

5 MR. JONES: This is Brad Jones. I'm
6 from the Office of General Counsel.

7 MR. KINNEMAN: And Tim, would you
8 introduce your people and what they do?

9 MR. JOHNSON: They are Bill Lahs, who's
10 the technical person for the site here in our
11 Division of Waste Management. San Malluswani, who's
12 a hydrologist in the Division of Waste Management.
13 Lou Bykoski, financial analyst, Division of Waste
14 Management. And me, Tim Johnson, I'm a Section
15 Leader of the Materials Decommissioning Section.

16 MR. KINNEMAN: And as I explained
17 informally beforehand, we rely on Tim's section for
18 technical advice in a lot of areas, financial
19 assurance, hydrology, decommissioning issues. And
20 that's where our budget and our program direction
21 comes from.

22 MR. HEHL: Why don't you go ahead and
23 get started?

24 MR. KINNEMAN: What we thought we'd do

1 for the format is Bill, having finished the initial
2 remarks, is that I'll make a few remarks if it's
3 okay. And then basically since the purpose of the
4 meeting is to hear from you, we certainly have lots
5 of questions and things to say, but I'll just say a
6 few words and then turn it over to you, Frank, and
7 let you take it from there, if that's acceptable.

8 MR. VUMBACO: That's fine.

9 MR. KINNEMAN: All I wanted to say is
10 to echo what Bill had to say is we've been through,
11 over a period of time, over four years now, talking
12 about the requirement in 10 CFR 40.36 for financial
13 assurance, which is a requirement, kind of a graded
14 requirement on licensees in this circle.

15 Simplistically, you're required to
16 produce a cost estimate for the decommissioning of
17 the facility. And at end of facility life, whenever
18 that might be, based on everything that's available,
19 all the information that's available to you now and
20 then, to provide financial assurance in a form that
21 meets the requirement in that regulation.

22 So there's really two requirements. I
23 think what we're here to talk about today
24 principally, though we don't rule out talking about

1 anything else, is the provision of the financial
2 assurance. I wanted to just make a brief comment
3 about the cost estimate.

4 You've recently provided a cost
5 estimate, and I'll mention that one of the reasons
6 why this enforcement conference is closed is because
7 you consider that cost estimate and a number of the
8 other pieces of information that you may decide to
9 discuss today proprietary. And that while a record
10 of the transcript of the meeting is being made, we
11 recognize that there will be a necessity to review
12 that transcript and deal with the information that
13 is proprietary. But that the cost estimate that
14 you've given us we do have a few questions about
15 that.

16 We don't see that as the principal
17 purpose of this meeting. I had hoped to have the
18 questions clear and out to you ahead of the meeting,
19 but I still didn't want to have to have you focus on
20 it. So we have that letter complete and we propose
21 to give it to you at the end of the meeting, not
22 because we want to keep it secret, but I don't see
23 that as the main issue. I'd be happy to sit down
24 with you and read it at that time and go over it

1 with you.

2 So I don't want to give the impression
3 that we've completely accepted or agreed to the cost
4 estimate, but it seems like a reasonable place to
5 discuss the second issue, which is the principal
6 concern, which is that there is in place financial
7 assurance which does meet the form, in that you have
8 a letter of credit for 750 thousand dollars, which
9 is substantially less than the actual cost estimate
10 that you've submitted.

11 And I guess I would summarize you
12 submitted a tremendous amount of information and I
13 would summarize that as our understanding is that
14 you believe that the 750 that you've submitted takes
15 care of a certain portion of the responsibility,
16 that you believe that the remainder of the
17 responsibility will, through various means, be met
18 by the U.S. Government.

19 However, I guess our situation is that
20 that assertion by you does not meet the form that's
21 required in the regulation, and that's why we're
22 here today. That the failure to have that in the
23 proper form is an apparent violation of the
24 regulations, and it's a significant violation. And

1 we need to decide where we're going to go from here.

2 And so as Bill said, the purpose of the
3 meeting is to make sure that we've heard your
4 position clearly, that we've considered it and that
5 any action we take, which conceivably could be no
6 action, is based on appropriate consideration of all
7 the information that you'd like to present to us.

8 So with that kind of focus, we're
9 willing to -- we appreciate listening to everything
10 you have to say and ask questions about it or answer
11 whatever questions we can answer for you.

12 MR. VUMBACO: Okay. Let me just make a
13 statement and turn it over to Jim Spiezio from the
14 standpoint of where we're going with a relatively
15 brief presentation, because I think we want to get
16 into some contractual type documentation type
17 discussions.

18 MR. JOHNSON: Excuse me, we can hardly
19 hear the response.

20 MR. KINNEMAN: We'll adjust the
21 microphone and ask Frank to speak up just a little
22 bit.

23 MR. VUMBACO: What I'd like to do is
24 talk briefly about the outline and turn it over to

1 Mr. Spiezio and get into a discussion of contractual
2 documentation. Because I think that's clearly key
3 to understanding this unique situation that NMI is
4 currently in.

5 What we want to do is talk about
6 introductory comments, revisit some of the things
7 that we've provided to you over the past two years,
8 talk a bit about compliance from the standpoint of
9 the last paragraph in your letter to us and then
10 turn it over to Don King, our manager of contracts,
11 to talk about contract documentation. We will be
12 providing copies of that. And then a short
13 discussion with Mr. Jury, a consultant to us, on
14 ongoing Government property issues.

15 So with that, I'll turn it over to Mr.
16 Spiezio, who is our vice president of finance.

17 MR. SPIEZIO: You know, clearly it's
18 our view that the 750 constitutes compliance with
19 the piece of the responsibility that's ours. You
20 know the 750 thousand dollar letter of credit, it's
21 in a standby trust agreement out of our control.
22 When you look at the 11.8 million dollars, 96
23 percent of that number is Government related. If
24 you take the 4 percent that's left, the simple math

2 1 of it is that comes out to 550 thousand. The 750
2 seems adequate. In reality, more of that's
3 available even than that suggests.

4 We've spent far more than the 550
5 putting a cover on the basin, characterizing the
6 basin, doing various work. You could certainly make
7 an argument at this point that our real liability of
8 the ^{13.5} 13, 5 is probably zero.

9 Now the company, we've been at this
10 location since 1958. The equipment and the
11 facilities have been used to process Government
12 furnished DU, which is one of the key ingredients
13 here, long before the 1988 rule came into effect.
14 The basin, for example, we haven't used since '85 or
15 '86. If you look at the rest of the facility, the
16 contamination, if you would, that's occurred,
17 there's really no difference now in terms of the
18 quantity of that, etc., than there was in the mid
19 '80s.

20 So from our point of view, you know, we
21 went into that area of work and supported Government
22 contracts without a need for a financial assurance
23 mechanism in place at the time. And really since
24 the development of that rule, we have not

1 dramatically increased -- I think that's a point
2 that's relevant for consideration in terms of, you
3 know, we're a small company.

4 MR. KINNEMAN: I guess I don't quite
5 understand that point.

6 MR. HEHL: I think, you know, really in
7 response to that, you know, the rule was put in
8 place to address the issue that prior to the rule we
9 had a number of facilities that, because of past
10 activities, had resulted in contamination of the
11 facilities. And in some cases, these facilities went
12 out of business and there were significant problems
13 with obtaining finances necessary to clean them up.

14 But the application of the rule has
15 been and is considered to be applicable to whatever
16 past activities --

17 MR. JOHNSON: Could you speak up,
18 please?

19 MR. HEHL: The rule is applicable to
20 whatever past activities that have been conducted at
21 the site. The intent is to have sufficient moneys
22 available to clean up the site, whether or not the
23 activities took place prior to the rule or after the
24 rule.

1 MR. SPIEZIO: Well part of our point
2 with that is we entered that work with the
3 Government when those needs were not in place. Had
4 they been clearly defined when we started that work,
5 we would have looked for more specific contractual
6 coverage. But as we get into the presentation,
7 that's really something Don and Jack are going to
8 address a bit later. Maybe we should move past that
9 and after they've chatted --

10 MR. HEHL: But just as a clarification,
11 Brad, is that consistent with your understanding?

12 MR. JONES: Yes, it is.

13 MR. SPIEZIO: You know, in terms of the
14 company, we certainly have been dramatically
15 impacted by the downturn of defense spending. '92
16 and '93 were difficult years at best. '94 is going
17 to be another significant loss. We see '95 and
18 forward a rebound period, a return to profitability,
19 etc.

20 As a small business, we're already in a
21 difficult situation providing assurances at any of
22 these kind of numbers, and while our balance sheet
23 remains strong, this isn't a point in time that we
24 can make any solid financial commitments in that

1 direction. But also we believe that the
2 responsibilities for the decommissioning of that is
3 so strongly a Government responsibility that we
4 shouldn't have to. And again, Don and Jack will be
5 addressing that at a greater length.

6 One of the key things they're going to
7 be talking about is the policies, the contracts, the
8 guidelines that we think clearly support that the
9 Government is responsible. Frank, why don't you --

10 MR. VUMBACO: The purpose of the next
11 section is just to revisit the history of compliance
12 that NMI has had over the years with the NRC. I
13 mean the facility, as Jim has indicated, has been
14 licensed in Concord since 1958. And during the
15 current management of the company, we've been -- our
16 record hasn't been perfect, but it has been
17 reasonably good. We have had no violations since
18 1990. We've only had two Level 4 violations in the
19 last 10 years. In 1990, we had a Level 4 violation
20 for transportation; and in '86, we had a posting
21 violation in our Level 4.

22 Prior to that, in 1981, we were cited
23 for a Level 2 violation, but again it's the only
24 Level 2 violation we've had under current management

1 over the past 20, 25 years. The point here is that
2 NMI has always acted responsibly and professionally
3 and responsive to NRC's requests.

4 In terms of our view of the current
5 compliance position, it ties into what Jim was
6 saying and will tie into the contractual discussion
7 that follows this. And in that we feel that we are
8 currently in compliance relative to providing the
9 750 in terms of our portion. What we're asking here
10 for is the full understanding of the issue. It's a
11 complex one relative to Government involvement.

12 We're continuing to work that situation
13 towards resolution. We feel that this is a
14 contractual matter, not necessarily a health and
15 safety matter. We don't feel that it needs
16 escalated enforcement activity to get resolution.
17 We think that what you'll hear in a few minutes in
18 terms of the contractual remedies, that if provided
19 enough time in order to work those out, that that
20 will be something that will provide for adequate
21 compliance with the rule.

22 What we're requesting here is exercise
23 discretion, as is your ability, relative to this
24 matter, because it is a complex and unique

1 situation.

2 And the last thing I wanted to say here
3 is that we will provide periodic updates, as we have
4 in the past, as NRC requires and as the information
5 comes to us. With that, I'll turn it over to Don,
6 our contracts manager, who will talk about the
7 documentation that's in front of him.

8 MR. HOLODY: Before you get into that,
9 just one clarification. Do you feel now that you're
10 in compliance with the rule?

11 MR. VUMBACO: In regards to our
12 responsibility, assuming the fact that the 96
13 percent that Don will talk to is the Government's
14 responsibility, yes. In terms of the 13.8 cost
15 estimate, we feel the 750 that's in place currently
16 is more than adequate from the standpoint of the 4
17 percent of the 13.8.

18 MR. HOLODY: Even though we licensed
19 you and not the Government?

20 MR. VUMBACO: I understand your point,
21 and that's where the crux of the problem is from the
22 standpoint --

23 MR. HOLODY: We hold the licensee
24 responsible. Our regulations, when you read them,

1 they talk about the licensee is required to do the
2 following, not any contractor of the licensee.

3 MR. SPIEZIO: If we could, could we go
4 through this, and then I'd be happy to come back to
5 that. But I think it's very relevant to that
6 discussion.

7 MR. HOLODY: Okay.

8 MR. KING: As far as the contractual
9 documentation goes, it really falls into two parts.
10 The first part being the contractual provisions that
11 deal with the Government equipment and the
12 associated facilities decontamination, and the other
13 aspect of it is the holding basin. So we're going
14 to treat those -- they're slightly different
15 circumstances, and Jack's going to speak to the
16 holding basin and I'll speak to the equipment and
17 facilities.

18 The distinction being that the
19 equipment and facilities decontamination is provided
20 for at the point of the close-out of production of
21 the DU penetrater contracts, and the contract
22 provisions are already in place to provide for a
23 funding vehicle to effect the decontamination and
24 the disposal of facilities, etc.

1 On the holding basin, we're currently
2 pursuing funding to deal with the holding basin, so
3 that's active. Whereas, the other one has the
4 mechanism in place that we're not moving forward to,
5 of course, because we're not in a situation where we
6 need to be decontaminated.

7 MR. HEHL: So the contracts that you
8 have with the Army currently in place have a
9 provision in the contract that says that they will
10 clean up?

11 MR. KING: That's right. I'm going to
12 hand those out to you now. I've got three booklets
13 I'd like to give you. One of them is a facilities
14 contract for a Government facility. The second one
15 is a production contract. It's the current active
16 production contract for making large caliber DU
17 penetrators. And the third one consists of a
18 presentation that we gave at the Army just a couple
19 of weeks ago, a few weeks ago, relative to funding
20 on the holding basin.

21 MR. HEHL: And what percentage of the
22 equipment and facilities, that is current -- aside
23 from the holding basin -- are currently contaminated
24 are covered under these current contracts?

1 MR. KING: What percent of the
2 equipment?

3 MR. HEHL: Is it all covered under the
4 current contract?

5 MR. KING: There's Government equipment
6 that was contracted with depleted uranium, and then
7 there's NMI equipment that was contaminated with
8 Government supplied, Government furnished materials.
9 So each contract kind of provides for something a
10 little bit different. You'll see the distinction
11 between the facilities contract and the production
12 contract. And what I'd like to do is just kind of
13 walk you through the provisions on the contract.
14 And as we go through it, you can see it more.

15 MR. KINNEMAN: Okay.

16 MR. KING: That's a set of the three
17 sets.

18 MR. SPIEZIO: And Don is going to talk
19 to the relevant piece of that, for those that don't
20 have it in front of them.

21 MR. KINNEMAN: That's fine. Just
22 before we lose track, are you going to leave these
23 with us? Do you want to -- it's up to you.

24 MR. KING: We can leave them, sure.

1 MR. KINNEMAN: Do you consider these
2 proprietary or are these non-proprietary?

3 MR. SPIEZIO: Well they're Government
4 contracts.

5 MR. KING: The presentation may have
6 some proprietary information.

7 MR. KINNEMAN: You may say some things
8 that you will later say is proprietary.

9 MR. JURY: There is proprietary
10 information in the presentation I'm going to make.

11 MS. MILLER: In the one of the ^{b.1} on
12 the holding basin?

13 MR. JURY: Yes.

14 MR. SPIEZIO: I think the contractual
15 one that Don's passing out may be proprietary.

16 MR. KING: Not really. The public
17 information is this facilities contract. This
18 contract is a subcontract with Olin Ordnance, and we
19 would need Olin's permission to release it. So we
20 would need to treat this as proprietary.

21 MR. KINNEMAN: Just so we can keep it
22 straight, I realize this is not germane to your
23 presentation, but I don't want to lose track of
24 which is Olin.

1 MR. SPIEZIG: And the same with the
2 small binder.

3 MR. KING: The small binder has
4 proprietary information as well.

5 MR. KINNEMAN: Okay. This way we'll
6 know which ones are. I'm sorry to interrupt you.

7 MR. KING: That's okay. The facilities
8 contract, the one I'll be speaking to, at the top
9 left-hand corner you see that DAAA09-E-0013. This
10 is what the Army refers to as a consolidated
11 facilities contract.

12 What a consolidated facilities contract
13 does, it provides for the accountability, the
14 maintenance surveillance of Government equipment and
15 Government furnished materials. They are cost
16 reimbursable type contracts. They are reviewed
17 every five years. The Government always has to have
18 a contract vehicle in place for the surveillance,
19 accountability, maintenance ability. So this
20 contract replaced a prior contract, consolidated
21 facilities contract.

22 When the contract is initiated, the
23 consolidated facilities contract has no funding.
24 Funding is provided either on a fixed price basis or

1 on a cost reimbursable basis by contract
2 modification. As the need arises, the contract is
3 funded. It starts out life with no funding at all.
4 Today, as of today the contract's worth 2 and a half
5 million dollars. We've been funded incrementally
6 for different activities, including some
7 decontamination and disposal of Government
8 equipment.

9 MR. KINNEMAN: So if I could just
10 interrupt you, that means that a good portion of
11 that probably has already been paid to you for
12 activities done?

13 MR. KING: That's right.

14 MR. KINNEMAN: As opposed to there's
15 not 2 and a half million dollars worth of work
16 waiting?

17 MR. KING: That's right.

18 MR. KINNEMAN: There's some portion of
19 that waiting, but most of it is expensed?

20 MR. KING: Probably about 2 or 3
21 hundred thousand of that total has all been spent,
22 *billed* build and paid. So it's only really added as is
23 required.

24 MR. SPIEZIO: You might want to expand

1 on -- some Government equipment became obsolete and
2 this is how we see a lot of this being taken care
3 of in terms of the total 13.8.

4 MR. KING: One of the contract
5 modifications, and it's included in the contract
6 that's in your package, there's a scope of work in
7 there that provided for us to dispose and
8 decontaminate about 24 pieces of Government
9 equipment, which we did just fairly recently.
10 That's part of that funding. And that was added
11 based on our request that we've got excess equipment
12 we need to dispose of it. And the Government direct
13 funded us to do that.

14 MR. HEHL: You decontaminate, you folks
15 do and then you send off the --

16 MR. VUMBACO: Basically we look at a
17 project and determine on a case-by-case basis what
18 we would do with that particular piece of equipment.
19 In some cases where it lends itself to
20 decontamination, we would either do decontamination
21 inside our facility or send it out for
22 decontamination.

23 In the case of this equipment, most of
24 the equipment found its way to a facility down in

5 1 South Carolina that was doing metal melting at the
2 time on the basis of some of the equipment that just
3 didn't lend itself well to physical decontamination,
4 so would use a variety of means in order to
5 disposition the equipment.

6 MR. HEHL: But there's no residual
7 left? I mean does the facility then send you back
8 the radioactive material?

9 MR. VUMBACO: In terms of metal
10 melting, the way the industry does it today, I'm
11 sure people in the room know this, is that very
12 little residual contamination exists if you metal
13 melt. If you do decontamination, yes, there are
14 some residual wastes that would be returned back
15 under the current scheme relative to waste disposal.

16 But in the case of the metal melt
17 materials, I believe that if there was residual that
18 that would be sent back to the Government, from the
19 standpoint of the waste from that activity, be
20 dispositioned on the behalf of the Government by the
21 contractor.

22 In fact in this specific case, the
23 Government had a contract with NMI as well as a
24 contract with this third party, funded individually,

1 from the standpoint of taking care of what residuals
2 and what labor, etc. and equipment used at the
3 facility in Tennessee did after we shipped it to
4 them. In fact the Government made independent the
5 transportation of the equipment, again looking for
6 the lowest possible price to the Government.

7 MR. HEHL: Then none of that
8 radioactive material returned then to your facility
9 in Concord?

10 MR. KING: That's correct.

11 MR. KINNEMAN: I just want to be real
12 clear on the one point is that the reason it didn't
13 return was that the Government arranged for separate
14 disposition?

15 MR. VUNBACO: To the best of my
16 knowledge, that's correct. Don't

17 MR. KING: That's how it was handled.

18 MR. KINNEMAN: In other words, it
19 wasn't that you also paid a fee which then had to go
20 on to say B. rnwell?

21 MR. KING: No.

22 MR. KINNEMAN: Okay, thank you. That's
23 important.

24 MS. MILLER: I have a question. You

1 had said that the contract is funded as money is
2 needed. Is there an overall cap though as far as an
3 amount that would be provided?

4 MR. KING: No.

5 MS. MILLER: Basically you would come
6 in at one point and lay out what you need. Now do
7 they dispute costs so that, you know, basically
8 saying we know -- we think it should cost you less?

9 MR. KING: Yes, they do. They
10 negotiate with us. Any type of proposal that's not
11 a competitive type proposal, they would negotiate
12 the labor hours and materials and transportation
13 costs with us, sure.

14 MS. MILLER: But it's a good faith
15 contract that they will use you for this work?

16 MR. KING: That's right. In fact we
17 proposed -- when we first proposed disposing of some
18 of this equipment, we were going to pay the metal
19 melter, but the Government decided that they would
20 handle that separately so they could save some money
21 that way.

22 MR. KINNEMAN: Okay. Thank you.

23 MR. KING: The contract contains a
24 clause, a Government property clause. On page 19,

1 if you flip to D, there's a Government property
2 clause that relates to the facilities. And what
3 we've done in the next tab is we put in a copy of
4 that Government property clause for you to take a
5 look at. Normally they don't put the full text of
6 the clauses in the contracts.

7 And what that Government property -- if
8 you flip a couple of pages, we've done some
9 highlighting of that, just for convenience purposes.
10 And basically what it says is that at the point
11 either the contractor or the Government terminates
12 the use of the facilities, that the Government will
13 provide funding for rehabilitation or restoration
14 costs that's associated with the removal of those
15 facilities.

16 MR. HEHL: And where is that stated?

17 MR. KING: I think it's on the last --
18 the very last page. Actually it's stated kind of in
19 a negative way. It says, "Unless otherwise
20 specified, the Government shall not be obligated to
21 pay the contractor to restore or rehabilitate any
22 property, except for restoration or rehabilitation
23 costs caused by the removal of the facilities under
24 the prior paragraph."

1 MR. HEHL: So how are you interpreting
2 that?

3 MR. KING: So we interpret that very
4 consistent with the way the equipment that we just
5 removed, that the Government's responsible for
6 removing the equipment and also restoring the
7 facilities associated with that equipment.

8 MR. HEHL: Damage to your facilities as
9 a result of the equipment then they would --

10 MR. KING: Exactly.

11 MR. KINNEMAN: How would that -- I can
12 understand how that would work to say a lathe or a
13 press and also perhaps the things that happened when
14 you remove that from wherever it is, the air lines
15 and things like that, how about the building?
16 Because certainly some portion, in reviewing your
17 cost estimate, the building, the concrete might have
18 some contamination, the ventilation system. Is the
19 decontamination of that part of the building
20 consistent with that clause?

21 MR. KING: Well the ventilation, the
22 pieces that are associated with the equipment are
23 part of that. And we've already made that precedent
24 on this last contract change. As relates to the

1 rest of it, let's go to the next contract, which is
2 our production contract.

3 MR. KINNEMAN: So you're finished with
4 this one?

5 MR. HEHL: Would you reiterate what
6 percentage of the contaminated effluent would fall
7 under these facilities?

8 MR. KING: Maybe half.

9 MR. KINNEMAN: If I can just rephrase
10 your question, if I understand correctly, then this
11 would be all of the contaminated equipment that's
12 used under Government -- in other words, all the
13 things that we would normally think of as equipment,
14 presses and lathes and forming equipment?

15 MR. KING: It's the Government owned
16 equipment.

17 MR. KINNEMAN: Only the Government
18 owned equipment?

19 MR. KING: Only the Government owned
20 equipment.

21 MR. KINNEMAN: Not the NMI equipment?

22 MR. KING: The NMI equipment and
23 facilities, we want to speak to that under our
24 production contract.

1 MR. HEHL: So this covers about half of
2 the equipment that is currently being utilized under
3 your license that is contaminated?

4 MR. KING: That's right.

5 MR. KINNEHAN: And just again, and
6 that's -- that is equipment that is owned and
7 furnished by the Government?

8 MR. KING: Either owned or furnished by
9 the Government, right, equipment and materials.

10 MR. KINNEHAN: Okay.

11 MR. JURY: I might also say that the
12 Army, historically, for the last 20 years, has
13 honored the funding and cleanup of these type
14 facilities under many, many contracts. So there's
15 no reason to assume that when the time comes they
16 would not do it under the NMI contract.

17 MR. HEHL: Are you going to address at
18 some point in time though, since a lot of your
19 argument depends on Army activities, why the Army
20 has not provided, as they I guess -- as we've
21 requested, some sort of a letter of intent or
22 whatever?

23 MR. JURY: Yes.

24 MR. KING: The reason the Army hasn't

1 done it is because there hasn't been a motion, if
2 you will, for contract modification to add those
3 funds. So the Government doesn't see the
4 requirement in front of them.

5 On the consolidated facilities
6 contract, as the requirement comes up, the request
7 for funding is put in. There's been no request for
8 funding on decontamination of the facility.

9 MR. JURY: Well this portion of the
10 facility is still being used.

11 MR. SPIEZIO: Yes.

12 MR. KING: Oh, sure.

13 MR. JURY: And you would not go into a
14 cleanup situation till end of production of this
15 type of equipment.

16 MR. SPIEZIO: I think also in reference
17 to why there's not a letter, I don't think the Army
18 feels the need for the letter. It's contractually
19 covered.

20 When things become obsolete or no
21 longer used, like this Government equipment, they
22 fund those things accordingly. Truly the contract
23 language makes provision for, in the event these
24 facilities and/or equipment become unused, the

1 contract kicks in and covers it.

2 MR. HEHL: Is this the only equipment
3 that is currently unused? Is that what is covered
4 under this removal that you completed or is it --

5 MR. KING: Only the unused -- not
6 necessarily. It was really obsolete equipment. We
7 do have some equipment that's not probably currently
8 being used that may be used six months from now or
9 eight months from now.

10 MR. HEHL: So as far as you know,
11 there's really no intent on the part of the Army to
12 remove that equipment?

13 MR. KING: That's right. We've got
14 active bids for Government contracts. We need that
15 equipment to perform on the contracts.

16 MR. HEHL: Now I guess under the
17 facilities contract then if that -- if you did not
18 receive, for whatever reason, additional contracts,
19 then essentially that contract would go out of
20 existence, right?

21 MR. KING: Actually that contract
22 provides the vehicle for what they call the plant
23 clearance case, where they initiate all of the
24 actions to start clearing the plant of Government

7 1 equipment. So they may choose either to just
2 mothball it, in other words, kind of lay it away, or
3 they may choose to move it to another facility, or
4 they may choose to dispose of it. But that contract
5 has all the provisions in place for them to go down
6 that path.

7 MR. HEHL: Okay.

8 MR. VUMBACO: Don, while we're on that
9 point, you may want to touch upon a key factor with
10 this contract is we can't act unilaterally, that we
11 need direction.

12 MR. KING: Well I think that deals more
13 with the holding basin, with the GFM issue. We
14 always need to notify the customer first. All of
15 the actions are basically bilateral.

16 On the production contract, if you open
17 the production contract, we have an existing -- an
18 ongoing contract with Olin Ordnance to supply about
19 12 thousand large caliber depleted uranium
20 penetrators.

21 The contract has, in the body of the
22 contract, and you can see that, that they're
23 supplying 375 thousand pounds of uranium
24 hexafluoride for us to manufacture the penetrators.

1 And also there's an -- NMI requests of
2 the Government the use of the equipment under this
3 contract to be used on this contract. That becomes
4 part of the Olin contract that yes, indeed, we have
5 permission to use that. And the schedule of the
6 equipment becomes part of the Olin contract as well.

7 Now the Olin contract also has a
8 Government property clause for fixed price
9 contracts. That's on one of the Olin flysheets.
10 They call out this 52245.2.

11 MR. HEHL: Is there a tab?

12 MR. KING: Tab C.

13 MR. HEHL: And what was it?

14 MR. KING: It's a similar clause to the
15 consolidated facilities, but it's different, because
16 it's a different type of -- this is a production
17 contract versus a facilities contract. On tab D,
18 we've included the text of the file provision.

19 MS. MILLER: Now you made a point of
20 mentioning that the facility contract becomes a part
21 of the Olin contract for the facility because you've
22 asked permission to use the equipment?

23 MR. KING: The use of the facilities.

24 MS. MILLER: So then do all of the

1 provisions of that facilities contract --

2 MR. KING: No.

3 MS. MILLER: Just the one permission to
4 use?

5 MR. KING: That's right. And what the
6 Olin contract provides for is if Government
7 furnished property -- at the time Government
8 furnished property is withdrawn, that an equitable
9 adjustment would include restoration or
10 rehabilitation costs of the facilities.

11 Two things are happening. The first
12 thing is the Government is supplying uranium
13 hexafluoride, which is contaminating the facility.
14 Secondly, they require us to use it in the
15 manufacture of the product because it's part of the
16 product specification. When that material is
17 withdrawn, the Government then would provide an
18 equitable adjustment under this clause.

19 What we asked EME to do, Jack Jury, was
20 to take an independent look at the contract language
21 and kind of let us know if we're reading this right,
22 and these are really what the Government's
23 obligations are. Because obviously we've never come
24 to the point where we've had to test it.

1 On tab E we have a letter --

2 MR. HOLODY: Staying on tab D, just
3 reading, you had highlighted parts of item J-2. I'm
4 not a lawyer, but my reading of this says that the
5 Government can abandon its obligations at any time.

6 MR. KING: Right.

7 MR. HOLODY: Under J-1.

8 MR. KING: The Government cannot
9 abandon property that's contaminated with hazardous
10 materials.

11 MR. HOLODY: Where is that precluded?

12 MR. KING: That's precluded in the
13 Defense Logistics Agency internal regulations.
14 That's not something that's part of this contract
15 per se.

16 MR. HOLODY: So you're saying that this
17 particular contract applies only to noncontaminated
18 materials, noncontaminated equipment?

19 MR. KING: That's right. Well the
20 abandonment provision does.

21 MR. KINNEMAN: Well but again, I would
22 ask, however -- it says, "However, if Government --
23 Okay, I see. So it says it can -- that is confusing
24 because it says it has no obligation. It explicitly

1 starts out with it has no obligation to restore or
2 rehabilitate the premises under any circumstances.
3 That basically I guess as I would read it, I'm not
4 an attorney either, but as I would read it, it's
5 totally at the Government's discretion. I mean
6 there may be another clause that you think, but as
7 this reads -- it sounds like it's totally at the
8 Government's discretion whether they abandon or
9 restore it.

10 "If the property is withdrawn or is
11 unsuitable for its intended use or if other property
12 is substituted, then the equitable adjustment may
13 properly include restoration or rehabilitation."

14 It seems to say if the Government
15 decides to take the equipment or to do it then they
16 will pay for it, but if they don't, they won't.

17 MR. KING: Well two things at work.
18 Number one, the Government is not abandoning
19 property that's contaminated with hazardous
20 materials. And the other one is by policy and
21 precedent that the Army has always honored those
22 costs. And that's really part of the reason also
23 that we asked for an independent opinion. And
24 that's really what this letter helps clarify.

1 MR. HOLODY: You said -- tell me again
2 what it is that says they cannot abandon their
3 equipment.

4 MR. KING: Hazardous materials?

5 MR. HOLODY: Yes.

6 MR. KING: The DLA Handbook, the
7 Property Management Handbook.

8 MR. JURY: Defense Logistics Agency
9 serves as the property administrator for all
10 contracts with NMI. They discharge the property
11 administration for any of the -- any defense
12 customers that have contracts with NMI.

13 MR. KING: That's consistent with the
14 Government funding as the 240 thousand dollars to
15 dispose of contaminated equipment. If they could
16 have abandoned it for free, they would have done
17 that. They obviously can't do that because they're
18 prohibited from doing that.

19 MR. KINNEMAN: But what about an
20 alternative argument which says well we're not
21 abandoning it, we've already paid the contractor
22 under the terms of the contract for manufacturing
23 and we're not abandoning it, we're leaving it in the
24 hands of a licensed qualified individual to be

1 properly handled at their expense for which we've
2 already paid them overhead.

3 If you're going to address this later,
4 I don't mean to push you ahead, but that's kind of
5 the question that seems to come immediately to mind
6 that -- I mean I understand you've indicated that
7 they've done it before, but why wouldn't that be
8 their answer?

9 MR. KING: We haven't sought any
10 funding under our contracts to make a provision for
11 that because the provision already existed. So we
12 didn't put any extra money in our contract so that
13 we'd have some buffer in the future.

14 MR. JURY: At a point in time that the
15 company decides that the Government furnished
16 property is no longer needed, they will go to the
17 Government through the Defense Logistics Agency and
18 ask for disposition instructions of that property.
19 What do you want to do with it.

20 MR. KINNEMAN: That's the Government
21 furnished property?

22 MR. JURY: Government furnished
23 property.

24 MR. KINNEMAN: Which includes the

R 1 uranium.

2 MR. JURY: And again, we're talking
3 about the equipment in the facility rather than the
4 basin. I'll get to that a little later.

5 MR. KINNEMAN: I understand, but the
6 contamination say on the walls of the room.

7 MR. JURY: Right. And we'll ask for
8 disposition instructions of that -- instruction for
9 that equipment. Also advise the Government of that
10 equipment that has been contaminated. At that
11 point -- and also identify those dollars associated
12 with the cleanup of that contaminated equipment.

13 So they'll be asking for two things.
14 One, what do you want to do with it, and here's the
15 price tag, give us the money to clean up the
16 contaminated equipment and adjust the contract
17 equitably, adjust the contract, put dollars in that
18 contract for that cleanup. That's the normal
19 procedure that's followed.

20 MR. KINNEMAN: And you would not expect
21 the answer from the Army to be okay, for the
22 Government furnished equipment, the press or
23 whatever, give you the instructions and the money,
24 but the building's yours and we already paid you to

1 do that contract, including disposal of the waste.
2 Because in fact you did dispose of waste that was
3 generated under that contract. And therefore, we
4 feel no further obligation to pay you money for say
5 cleaning the concrete in the -- I don't know the
6 pickling room or something like that because we've
7 already paid you under previous production contracts
8 those costs and you should have set aside money.

9 MR. JURY: No, they have not been --

10 MR. SPIEZIO: Let me address that.

11 It's really a misnomer. They haven't already paid
12 it. They paid related overheads and whatnot as part
13 of a manufacturing company. From an allowability of
14 cost perspective, DCA audit review, as a contractor,
15 you can't set up a sinking fund to cover these kind
16 of things. It's not an allowable cost. Had we went
17 that route DCA would have turned around and said
18 hey, those are unallowable costs, they've got to
19 come out. So specifically it's not in there because
20 we're not allowed to put that in as a cost.

21 MR. KINNEMAN: But the cost of
22 disposing the actual waste, that's generated --

23 MR. SPIEZIO: That's a different
24 matter, and --

1 MR. KINNEMAN: And that was already
2 paid for.

3 MR. SPIEZIO: Yes, because that truly
4 is a flow-through cost.

5 MR. KINNEMAN: Because you pay for it
6 then.

7 MR. SPIEZIO: That's right. And I
8 think that the position that they don't allow
9 sinking funds is really consistent with the position
10 that contractually it's covered, that when the time
11 comes that we've got to worry about it, we'll step
12 up and pay for it, we being the Army.

13 If they allow us -- looking at it from
14 a Government perspective, if they had allowed us
15 over the past 10 years to put a sinking fund in
16 place for 20 million dollars, we would gain the
17 benefit of interest off that, etc., etc. It really
18 costs the Government excess money. When the time
19 comes to decommission it, how do we develop that
20 fund in the first place. We decide that we're going
21 to do a very exotic treatment to dispose of the
22 contamination of the building.

23 This way when it comes time to actually
24 decommission something, the Government has the

1 flexibility. They say hey, we're going to bury it
2 in Utah, we're going to metal melt it or this or
3 that. So I think those things are very consistent.
4 But we don't have a vehicle, had we wanted to in the
5 past to set up a sinking fund. And they truly
6 haven't paid that cost because it's not part of that
7 cost build-up that's in that overhead.

8 MR. HEHL: You mentioned the waste is
9 different. Are you talking about nonradioactive
10 material waste or is it other?

11 MR. VUMBACO: Both rad. waste and the
12 possibility of any hazardous waste that may come out
13 of say for instance the cleaning of the materials.
14 But specifically the rad. waste has always been
15 covered on a production contract, given the fact
16 that there's so many units and there's so much waste
17 that's generated per unit, and it's quoted that way
18 and covered in that contract. Is that correct, Don?

19 MR. KING: Yes.

20 MR. SPIEZIO: By Government design.
21 They could certainly take a position similar to the
22 building that hey, stockpile this and down the road
23 we'll decide what to do. They made a decision what
24 way they wanted to treat production waste, and that

1 way was hey, we'll dispose of that as it comes
2 again. Kind of consistent from a contractual point
3 of view.

4 MR. HEHL: So is there a stockpile
5 currently of production waste, or is that all gone?

6 MR. VUMBACO: Only because of the
7 inability of the Northeast to use Barnwell, so
8 there is 37 some drums of material that --

9 MR. HEHL: What's happening to the
10 contractual funds for disposal there? Is that not
11 being accumulated for disposal? If you've
12 already -- if they've already paid you for that
13 amount, then how is that going to be addressed?

14 MR. SPIEZIO: Well at this point they
15 truly haven't paid for that. Essentially the
16 remainder of the A-2 building?

17 MR. KING: Yeah.

18 MR. SPIEZIO: This is kind of -- we're
19 at a new point in time on that subject. We don't
20 currently have a stockpile of material that they've
21 already paid for that we haven't disposed of.

22 MR. HEHL: You have current production
23 in process?

24 MR. SPIEZIO: Right.

1 MR. HEHL: And that's generating waste?

2 MR. SPEIZIO: Yes.

3 MR. HEHL: And that waste is being
4 accumulated because you don't have any place to ship
5 it?

6 MR. SPIEZIO: Right.

7 MR. HEHL: So what's covering eventual
8 disposal of that waste?

9 MR. SPIEZIO: I guess we truly haven't
10 addressed that issue. We're accruing a cost -- this
11 is a different area that we haven't really got total
12 resolution from a DCA perspective how this is going
13 to get treated.

14 Typically DCA audit, you can't use
15 accrued cost any more than you can use a sinking
16 fund, that costs are costs. So this inability to
17 bury has -- we're on a new frontier with that, if
18 you would.

19 Over the next three to six months, I
20 would assume DCA and PCO, ACO, we're going to have
21 to reach some kind of conclusion on how we're going
22 to deal with that.

23 MR. WOOTERS: I think the simpler
24 question, and maybe the one you're asking, is that

1 there's money in the contract to cover the disposal
2 cost, we haven't incurred that cost and the Army
3 hasn't reimbursed it.

4 MR. SPIEZIO: At this point.

5 MR. KINNEMAN: So would it be fair to
6 say on a typical waste estimate, you have a hundred
7 drums, you go to the Army, and say today it's
8 costing a thousand dollars a drum, so I need a
9 hundred thousand dollars to bury the waste, if
10 that's the case, they say fine, go ahead. You send
11 it off, get an invoice and go to the Army and say we
12 spent a hundred thousand dollars, plus whatever the
13 other things are, and then you get reimbursed for
14 it.

15 But you can't say I have a thousand
16 drums, some day it's going to cost me a hundred
17 thousand dollars, give me the money and we're done
18 with it and that's my business risk. If I can get
19 it done for 50 thousand, I made 50 thousand. And if
20 I get it done for 250 thousand dollars, I lost a
21 hundred 50 thousand. It doesn't work that way?

22 MR. SPIEZIO: I guess I suspect it
23 will. I guess I don't envision that the Army is
24 going, on this type of production waste, is willing

1 to go to a we'll reimburse it somewhere down the
2 road. Just the way they work, you do a production
3 for 20 thousand pieces, everybody gets paid. You do
4 the work. The Government is not going to want to
5 have contracts for decades. And who knows what the
6 cost is and they've got to deal with it and put
7 funds back in. A reasonable assumption is you've
8 got a stockpile for two years and in two years we
9 probably will do X, Y and Z, that's a reasonable
10 number.

11 MR. HEHL: So I guess what I understand
12 is that for the current production waste that you
13 have on hand, that is covered by contractual
14 obligations to dispose of that waste as part of the
15 contract.

16 MR. SPIEZIO: Yes.

17 MR. HEHL: You don't have any waste
18 left over from other activities that are not covered
19 by it?

20 MS. MILLER: Well the holding basin.

21 MR. KINNEMAN: The holding basin, but
22 they said they're going to address that separately.

23 MS. MILLER: And a point of
24 clarification, this clause for the Government, be it

1 facilities for production, that really the
2 abandonment issue is covered under the Defense
3 Logistics Agency Handbook, and that this clause
4 would only cover if the Government is not seeing a
5 use for that type of material or they're withdrawing
6 it from the schedule of equipment that they want to
7 use?

8 MR. KING: That's right.

9 MS. MILLER: So really it's their call
10 as far as that equipment goes. Like would you be
11 able to say we don't want to use this equipment any
12 longer?

13 MR. KING: We would request direction
14 from the Government on the disposition of the
15 material if we're finished with all of our
16 contracts.

17 MR. SPIEZIO: We've done that from time
18 to time. That's not untried territory. We've done
19 that.

20 We could certainly take a position, and
21 we may from a business perspective, that even though
22 we've got equipment that could be productively used
23 for future contracts, because of space
24 considerations, we want the floor space or something

1 else, we would approach them on the facilities
2 contract.

3 MS. MILLER: So then by saying that
4 really it's the contract that covers the costs, it's
5 not only the contract but it's also then this
6 provision of the Defense Logistics Agency Handbook.
7 So it's the contract with that that holds them to
8 cover the costs, it's not just this clause.

9 MR. SPIEZIO: Well the DOA eliminates
10 their ability to abandon in place because it's got
11 hazardous material on it.

12 MS. MILLER: So it says that they may
13 abandon, but really with regard to hazardous
14 materials, that's not applicable then?

15 MR. SPIEZIO: Yes.

16 MS. MILLER: Thank you.

17 MR. KING: Under tab E is the letter,
18 and you might want to just take a minute to read it
19 over. And we've also added the resumes of the
20 people that have given us this independent opinion
21 with respect to the contract language.

22 MR. SPIEZIO: We probably want to
23 summarize that for record at least.

24 MS. MILLER: And for the people in

1 headquarters.

2 MR. SPIEZIO: And the people on the
3 bridge.

4 MR. KING: I think the first paragraph
5 gives a pretty good synopsis of it. From
6 Engineering Management Executives, Incorporated, in
7 Alexandria.

8 They have "studied both our
9 consolidated facilities contract with ANC Com and
10 our subcontract with Olin Corporation to determine
11 the Government's obligation to clean, restore and
12 rehabilitate NMI and Government owned facilities and
13 equipment which have been contaminated in the
14 manufacture of depleted uranium products for the
15 Government. Our review was restricted to the post
16 production period.

17 "It is our conclusion that the
18 Government is obligated by contract, policy and
19 longstanding practice to clean, restore and
20 rehabilitate the facilities and equipment, to
21 include special tooling and test equipment.
22 Furthermore, the Government has the flexibility to
23 use either the consolidated facilities contract or
24 the Olin purchase order or both to accomplish the

1 work."

2 That's the essence of their findings.

3 MR. MAMISH: Now in reaching these
4 findings, was your contractor -- did they discuss
5 this specific issue with the Army?

6 MR. KING: They --

7 MR. SPIEZIO: You might want to talk a
8 bit about the background of the consulting firm.

9 MR. JURY: No, we did not discuss it
10 with the Army. But both individuals that are now
11 working for EME were prior Army employees, retired.
12 So we've both, Darryl Griffin and myself, have a
13 significant amount of experience dealing in this
14 issue for the Army and have firsthand knowledge of
15 what had been done in the past on these issues.

16 MR. MAMISH: So it's based on the
17 history of how these sort of issues have been
18 treated?

19 MR. JURY: And the knowledge of the
20 regulations.

21 MR. HOLODY: Knowledge of what
22 regulations?

23 MR. JURY: Federal acquisition
24 regulations.

1 MR. HOLODY: Contract regulations?

2 MR. JURY: Contract regulations.

3 MR. HOLODY: So you're saying that if
4 the Army were to see this, they will be in full
5 agreement with this?

6 MR. JURY: Yes.

7 MR. HOLODY: Why is it that you would
8 not go to the Army then and obtain the vehicle or
9 the instrument, financial instrument that our
10 regulations say you need? I mean isn't that the
11 crux of the issue?

12 MR. JURY: The problem -- you know, the
13 problem in this particular area, the problem has not
14 occurred with regard to the need to clean up the
15 facility. It hasn't occurred. Maybe I'm missing
16 the question.

17 MR. JOHNSON: This is Tim Johnson. We
18 have allowed a number of licensees to use a
19 Government guarantee, but in each of those cases,
20 the Government agency responsible was able to
21 provide us a statement of intent that they would
22 provide the funds for the remediation.

23 Is there any reason why we can't get
24 that letter from the Army or Department of Defense

1 here? That's all we need.

2 MR. HOLODY: That's my question
3 essentially, stated better by him. What is the
4 problem getting such a letter of intent?

5 MR. JURY: There may be a problem.
6 We're dealing with a future problem, a future
7 funding by the Army in this particular area. There
8 may be a problem getting a letter of intent to say
9 that we were going to -- we will recognize X amount
10 of dollars in some future -- in some future budget,
11 because it will be funded out of current year funds.
12 As a matter of fact, I think there will be a problem
13 getting such a letter.

14 MR. KINNEHAN: I understand that issue,
15 and that may present a problem for us, but would you
16 believe that the Army would say -- essentially what
17 I take from your presentation -- I don't mean to
18 condense it too much -- but it is that the Army has
19 a contractual obligation to properly remediate. As
20 between the contract and the regulations, they must
21 satisfactorily remediate any hazardous material and
22 dispose of Government property, even if it's by
23 saying that we're done with it.

24 You and they may not agree on what it

1 costs, but it would seem to me the Army would at
2 least agree that they would agree to that, that yes,
3 at the time as yet uncertain when either NMI decides
4 not to pursue this business any longer or the Army
5 is no longer interested in having NMI do it, that
6 the Army has an obligation -- a contractual
7 obligation to clean up the equipment and facilities
8 and restore them in whatever, and that we'll
9 negotiate with NMI on. And we'll probably do what
10 we usually do, which is to say your overhead's too
11 high and we'll work that out and we'll negotiate on
12 that process, but we do have that obligation.

13 MR. JURY: That's correct.

14 MR. KINNEMAN: We're not yet willing to
15 agree what that will cost because we don't know what
16 it will be in X number of years. Do you think the
17 Army would be willing to say that?

18 First question is do you think the Army
19 agrees with that statement?

20 MR. JOHNSON: Well does the Army agree
21 with your interpretation of the contract?

22 MR. HEHL: That's the key issue.

23 MR. JURY: Yes, I think they will.

24 MR. JOHNSON: I'm sure you must have

1 had some discussions with them on this.

2 MR. JURY: I have not had any
3 discussions with the Army.

4 MR. HOLODY: So this is your -- this is
5 your reading of what the contract is?

6 MR. JURY: That's correct.

7 MR. HOLODY: And it's your belief that
8 the Army will agree with that reading?

9 MR. JURY: That's correct.

10 MR. HOLODY: But you have no
11 confirmation from the Army that they agree with that
12 reading of the contract?

13 MR. JURY: That's correct.

14 MR. HOLODY: And you've not gone back
15 to the Army and asked for a letter of intent to
16 clean up the facility?

17 MR. JURY: I have not.

18 MR. MANISH: And your reasoning is
19 because they've fulfilled that obligation in the
20 past, you have no reason to believe --

21 MR. JURY: With many, many contractors
22 on this same issue. And normally -- you know, in
23 this case Don mentioned there are two avenues.
24 Normally it is done under the facilities contract.

1 At the conclusion of production, the companies go to
2 the Government and say we have such and such a
3 problem and ask for disposition instructions. And
4 then the contract -- money is put in that facilities
5 contract for the cleanup. And that's happened many,
6 many times over many, many years. So I have no
7 reason to assume that will not be done in this case.

8 MR. HEHL: But that would only cover
9 about 50 percent of what obligation you have at NMI
10 with regard to contaminated equipment and things
11 that the facilities --

12 MR. KING: The Army can flow production
13 funds through the consolidated facilities contract.
14 So as Jack said, they could use the consolidated
15 facilities contract to fund the entire effort, if
16 they chose to.

17 MR. HEHL: Now this production contract
18 is -- you're a subcontractor to Olin?

19 MR. KING: Right.

20 MR. HEHL: And so the clauses in here
21 with regard to obligation of the Army, is that to
22 Olin or is that to NMI?

23 MR. JURY: That is in the Olin
24 contract, and those provisions are flowed down to

12

1 the Olin subcontractors.

2 MR. HEHL: And so the uranium, even
3 though it's furnished to Olin as Government
4 furnished material, is it then furnished to you as
5 Government furnished material or is it furnished to
6 you as Olin material?

7 MR. KING: Government furnished
8 material directly to us.

9 MR. SPIEZIO: Government maintains
10 title, does property audits.

11 MR. HEHL: Okay. Has NMI gone back to
12 the Army to ask about this letter of credit -- or
13 not letter of credit, but this letter of intent or
14 interpretation of the contract?

15 MR. KING: No, we haven't. We believe
16 the contracts speak for themselves. And we've had
17 an independent assessment of that by people who
18 wrote some of the very policies that the Army is
19 implementing today.

20 MR. HEHL: And certainly no -- nothing
21 intended, but it's still -- I guess our difficulty
22 is it would be better to hear it from the Army than
23 hear from them.

24 MR. KINNEAN: I think to put our

1 difficulty somewhat differently is that what you're
2 asserting is that there's a contractual obligation
3 between you and the Army for the Army to pay these
4 costs. And our problem at the moment is that that's
5 not a mechanism that's provided for in the
6 regulations, that that's not a mechanism that we
7 recognize. It may be valid, and perhaps we can
8 consider that, but at the moment it doesn't meet one
9 of the boxes that we put in the regulations. That's
10 not an intent to be bureaucratic, it's what the
11 regulations say.

12 Do you have any different view on that,
13 Brad?

14 MR. JONES: No. The situation -- I
15 mean we have situations where we have Government
16 licensees, and we may be just as certain based on
17 our regulation that they're obligated as we might
18 become by reviewing these contracts, but the fact
19 remains even in those situations we require a
20 statement of intent.

21 Now I'm not sure if the belief is the
22 hangup will be the Army putting a specific dollar
23 amount that they're committing themselves to into
24 such a letter, there may be a way to deal with that

1 if we're sure the letter describes exactly what
2 activities they'll be responsible for without
3 specifying the dollar amount. But you know we can
4 become just as certain as can be that under this
5 contract they're obligated, but unless they
6 acknowledge that, that doesn't really get us
7 anywhere.

8 MR. HEHL: Why don't we go on?

9 MR. KINNEMAN: I think we're delaying
10 you from your presentation by questions.

11 MR. HEHL: Certainly, you know, there
12 are a lot of good issues are coming out of this, and
13 we certainly need to explore later.

14 MR. CRONIN: We just wanted to clear up
15 one issue though, and that is if a letter of intent
16 is suitable, then a contract would be much more
17 suitable. We have a binding contract which we
18 regard --

19 MR. JOHNSON: Could speak up, please?

20 MR. CRONIN: Yes. What we're saying is
21 that if a letter of intent is suitable, a binding
22 contract is much more suitable. And that's what
23 we're trying to say here, that we have contractual
24 commitments on the part of the Department of Defense

1 that provides much more assurance than simply a
2 letter of intent.

3 MR. HEHL: And certainly I think those
4 are some of the issues that we need to digest
5 internally also. I think these are -- it's
6 certainly good information, and that's why we're
7 talking about it. So why don't we go on?

8 MR. KING: Jack, I'll turn it over to
9 you on the holding basin.

10 MR. JURY: Okay.

11 MR. HOLODY: Just one question before
12 you go on, who do you deal with on this type of an
13 issue? If you were to pose this question to an
14 individual with the Army, who would you talk to that
15 would say yeah, that is our intent?

16 MR. JURY: Initially it would be the
17 procuring/contracting officer with the Army at Rock
18 Island who's the contracting officer for the
19 facilities contract. So if you want an
20 interpretation, you would go back to that
21 contracting officer.

22 MR. HOLODY: And his name is listed in
23 one of these? What's his name?

24 MR. HEHL: It's on the front of the

1 documents.

2 MR. HOLODY: Charles Smith?

3 MR. KING: The acting
4 procuring/contracting officer -- the contract's been
5 modified several times. I think the acting is Jim
6 Munson.

7 MR. JURY: Jim Munson.

8 MR. HEHL: Okay.

9 MR. JURY: We would like to now move
10 into the holding basin.

11 MR. WOOTERS: Jack, excuse me, I didn't
12 mean to interrupt, but some of your background has
13 come out in earlier questioning, but I think it
14 would be helpful for the record just to tell us a
15 little bit about your background and experience.

16 MR. JURY: I am a former DOD employee.
17 I spent 30 years in Government contracts with Air
18 Force, Navy and ultimately the Army. My last
19 position was a senior executive for the Army
20 Material Command. And I was responsible for the
21 Army Material Command procurement mission. I was
22 also head of contracting activity for the Army, held
23 positions as contracting officer and numerous
24 positions in between.

1 My colleague, Darryl Griffin, who also
2 worked on these issues under this study, has 40
3 years with the Government with -- primarily with the
4 Army, and retired as the principal deputy assistant
5 for research and development and acquisition at Army
6 Material Command. In this book you will see his
7 resume and my resume and a brief bios. So both of
8 us have extensive Army experience.

9 Mr. Griffin retired the beginning of
10 this year. I retired in 1988. Subsequent to that,
11 I've been doing consulting work in contract issues
12 and problems, some of them very similar to the
13 problem that NMI has. So that's a thumbnail
14 background.

15 MR. HEHL: Thank you very much.

16 MR. JURY: So with that I'd like to
17 skip the first part of these -- the first number of
18 sheets which tells you who we are.

19 I'd like to say that EME was contracted
20 to look at the overall problem of the holding basin.
21 And during the course of that review, we reviewed
22 all the penetrator contracts from day one and all
23 the correspondence relating to the holding basin
24 problem.

1 As I go through, this particular
2 briefing was put together for the Pickatinny
3 Arsenal, we gave it to the Director of Procurement
4 and one of his division chiefs the 22nd of November.
5 We also had a subsequent -- we gave this also to
6 chief counsel at Pickatinny Arsenal. After the
7 briefing, we also left certain pieces of
8 correspondence which I'll mention a little later on,
9 asking for some Government decisions.

10 The company has long maintained that
11 the contents of the holding basin is Government
12 furnished property. Our review of that position
13 also concludes that it's Government furnished
14 property in the holding basin. The material
15 contains 350 thousand pounds of depleted uranium.
16 And if you recall, it was earlier mentioned that the
17 depleted uranium that was required for production
18 was Government furnished.

19 Currently, it's in a dehydrated salt
20 form, but could be recovered and provided back to
21 the Government as in its original form. And I'll
22 get into that a little later. In addition, it
23 contains 700 thousand pounds of copper. So the
24 contents, if you were, have value. They were worth

1 1.3 million dollars. With the price of copper going
2 up, that could continue to increase.

3 So the company, you know, it's our
4 opinion that the company cannot take arbitrary
5 action with regard to the contents of that basin and
6 must go to the Government and ask them what they
7 want done with it. Do they want it recovered or do
8 they want it disposed of. But there needs to be a
9 decision.

10 MR. KINNEMAN: Could I just interrupt
11 and ask -- I don't really know, is the copper
12 Government furnished also?

13 MR. JURY: Well it came as a result of
14 the process, and certainly since the Government paid
15 for the rounds, also they would be entitled to
16 whatever the scrap value of copper is once it's
17 recovered.

18 MR. KINNEMAN: Thanks.

19 MR. JURY: The next chart really takes
20 us through a historical summary. Some of this I
21 think you've heard before, particularly that the
22 holding basin was created in 1958. That the basin
23 was locally licensed and permitted.

24 The original process depended on a

1 pickling operation for the removal of the copper
2 jacket on the DU extrusions. This resulted in,
3 again, the depleted uranium for the penetrators
4 which was Government furnished material. And
5 currently the estimate is that 96 percent of the
6 contracts -- contents of the basin resulted from the
7 DU program. The next chart --

8 MR. HEHL: That's based on what, a
9 process valuation for those years, or is that based
10 on a material accounting?

11 MR. KING: It's based on the
12 production volumes and the volume of neutralized
13 scrap that went into the basin on a
14 program-by-program basis. We have records of the
15 amounts.

16 MR. HEHL: The other 6 percent comes
17 from other activities?

18 MR. KING: The other 4 percent came
19 from certain commercial -- we have some commercial
20 activities at a very small level associated with
21 depleted uranium manufacture and some that was
22 existing prior to discharge into the basin with
23 Government furnished materials.

24 MR. VUMBACO: Just let me state a point

1 is that we're talking about material that was placed
2 in the basin prior to 1985. So even though current
3 business mix may be significantly different than in
4 the past, we're talking about accumulation of
5 material that was prior, from '58 until 1985. In
6 the fall of 1985 is when we ceased use of the basin
7 and we capped the basin.

8 MR. HEHL: And I guess the contention
9 is that that's covered under previous facilities
10 contracts or the existing facility contract?

11 MR. JURY: This particular issue would
12 have to be handled under the production contracts.
13 It does not flow to -- and again this is a reading
14 that came out of correspondence with the Army, and I
15 did have discussions with the Army on that point,
16 that any relief given by the Army would be through
17 the production contract rather than a facilities
18 contract. It's a production issue.

19 MR. KINNEMAN: So that would be
20 through -- because production contracts -- the
21 facilities is kind of general, whereas production
22 sends me a thousand of this at this price.

23 MR. JURY: This material was generated
24 as a result of the production process.

4

1

MR. HEHL: Those contracts are
presumably closed, right?

2

3

MR. JURY: There is still an open
production contract.

4

5

MR. HEHL: Aside from the Olin?

6

MR. JURY: Yes.

7

8

MS. MILLER: But that open production
contract has been renegotiated since the close of
the basin, I assume. The contract's for five years.

9

10

MR. JURY: There have been several
production contracts issued to NHI since '85.

11

12

MS. MILLER: You said that the one
that's open, are there any that are open that were
started when the holding basin was still open?

13

14

15

MR. SPIEZIO: There's one.

16

MR. KING: Yes.

17

18

MR. SPIEZIO: We, by intent, have left
that as an open contract just because of this issue.
It's an open cost plus that actually has residuals
that went into the basin. But again from a
contractual viewpoint, not having one of those open
then you've got to reinvent the wheel and get
another one.

19

20

21

22

23

24

MS. MILLER: But I would assume that it

1 would only have covered the production for the
2 amount that that production contract was for, you
3 know, like say if you have 2 thousand --

4 MR. KINNEMAN: It sounds to me like --
5 let him go through the presentation and we can ask
6 that question at the end.

7 MR. JURY: The next chart gives a
8 pictorial of the penetrater process flow, the
9 production process flow and shows at the oval -- the
10 ovals on that chart show where the scrap occurs and
11 the type of scrap. And again, I won't dwell on that
12 chart.

13 As support to -- the next chart, as
14 support to the position that the material in the
15 basin is GFM, the Government was aware of the
16 process, they did know what was being generated, the
17 scrap that was being generated and going into the
18 basin, they were aware of it and approved it. As I
19 said earlier, NMI has always taken the position with
20 the Government that it's GFM. The Government has
21 never taken exception to that position, nor have
22 they issued directions for disposal, nor have they
23 accepted NMI proposals with regard to disposal. In
24 essence, the Government's been silent.

1 MR. HEHL: Are you going to address
2 those proposals?

3 MR. JURY: Yes. NMI has not -- the
4 Army has made several issues that NMI has not
5 submitted claims with regard to cleanup of that
6 basin, and that is true. The company has never
7 really had a basis for claims. What we're now
8 putting together and what we've got with the Army is
9 a request for disposition of that material, that
10 Government -- residual Government furnished material
11 and the cost for removal and cleanup of that
12 material.

13 Depending on that decision, we would
14 then, you know, if they come back and say yes, we
15 agree, it's Government furnished material, and we
16 agree with the dollar figures and there's no
17 problem. In the event that that does not occur,
18 then the company has other actions to be taken with
19 regard to claims. There's several avenues of claim
20 to the Government. As was said, there's still one
21 contract open.

22 The next chart indicates your concern
23 and states concerns with regard to removal of the
24 basin contents. And keep in mind again this was not

1 prepared for NRC but was rather prepared for the
2 Army. The company feels there's no immediate threat
3 to the environment, that the problem is contained
4 within the basin and has been contained for many
5 years. There have been adequate records kept, and
6 the consulting company went in and looked at those
7 records. So there has been -- there has been
8 records maintained.

9 A number of approaches, and again
10 there's some variance in the dollar figures. These
11 were the dollar figures that we looked at from a
12 consulting standpoint that if NMI had sole
13 responsibility, had no Government support, had to
14 use a commercial landfill. into problems with
15 NRC with regard to time del assessments,
16 whatever, it could amount to perhaps 20 million
17 dollars.

18 MR. VUMBACO: Let me just jump in there
19 for a moment then. The principal costs associated
20 with what that provides the biggest delta between
21 the numbers that follow relate to the Massachusetts
22 Management Board fee, the assessments over the next
23 several years from the standpoint of establishing an
24 instate -- an instate solution, whether that's an

1 instate burial facility. And basically that's a
2 significant portion of the 20 million dollar
3 estimate. Again, these are estimates.

4 MR. HEHL: So this is for disposal,
5 theoretically, at a Massachusetts developed low
6 level waste disposal site?

7 MR. VUNBACO: Or whatever the solution
8 is for Massachusetts, whether that's regional.

9 MR. JURY: Okay, the 11.4 million
10 dollars relates to a chemical separation and
11 recovery process that was developed by the company
12 wherein they could reclaim the depleted uranium and
13 the copper in a process that was funded and paid for
14 by the company.

15 The 5 million dollars relates to an
16 approach where the Government would assume
17 responsibility for -- recognized the company's
18 position with regard to GPM, would pick up the costs
19 associated with transportation, the removal,
20 transportation and burial, that would amount to 5
21 million dollars. Of that, NMI is looking at 3
22 million dollars to be funded in that outstanding
23 contract, in that open contract. That 3 million is
24 part of the 5. That would be the cost to NMI.

1 MR. VUMBACO: Excuse me, the reality of
2 the situation is in terms of disposal that the Utah
3 facility, which is a facility that is well suited
4 for this material, and we've been through this a
5 number of times with your staff, that the Army's
6 practice in terms of the use of the facility is that
7 they get a preferred rate which is significantly
8 less than the commercial rate for such disposal on a
9 per unit volume basis. And again which is reflected
10 in the difference between the NMI do it on their own
11 versus the Government. So there's two profits from
12 the Government participation.

13 MR. HEHL: You're saying that of the 5
14 million cost, that's 5 million for the burial costs
15 and then additional 3 million?

16 MR. KING: No, the 3 is included in the
17 5.

18 MR. JURY: That's part of that that 3
19 million is what would be funded under the contract.

20 MR. KINNEMAN: The other two would just
21 be paid directly?

22 MR. JURY: The other two would have to
23 be funded by the Government for transportation and
24 burial.

1 MR. VUMBACO: Like they had recently
2 done with the disposition of the 24 pieces of
3 equipment where they paid directly to the Tennessee
4 contractor, they would pay directly to the Utah
5 contractor. From the standpoint of disposal, they
6 would use a Government bill of lading in order to
7 move the material to the Utah site.

8 MR. SPIEZIO: Another difference in the
9 decommissioning numbers that are in the package,
10 these are also loaded. These are carrying overhead
11 rates, facilities costs, etc. Depends on the
12 audience. There's a real cost number and then
13 there's billable cost numbers.

14 MR. HEHL: This chemical separation
15 recovery, now that's the net recovery value; in
16 other words, that's once you are able to extract and
17 I guess recover this 1.3 million in that?

18 MR. SPIEZIO: Right.

19 MR. HEHL: So that's an addition.

20 MR. KINNEMAN: If I could, I thought I
21 understood from your previous -- some of the other
22 submissions, I can't point to it right at this
23 second, that you've pretty well abandoned, not that
24 there's any problem with the process.

15 1 MR. SPIEZIO: The Government has
2 abandoned it. Their preference seems to be with
3 burial. Certainly the economics of burying this
4 versus reprocessing shifts to burial. This is more
5 environmentally friendly, and we were in hopes that
6 they could use it at other sites. The net effect
7 would be a savings to the Government.

8 MR. JURY: Although the Government has
9 not provided that to the company in writing.

10 MR. SPIEZIO: Verbally they've said
11 their choice is burial.

12 MR. JURY: The unsolicited proposal
13 that was provided to the Government by the company
14 was returned with the statement that it was not
15 appropriate to be handled under the facilities
16 contract so it was returned. But the proposal was
17 never rejected; isn't that correct?

18 MR. KING: That's right.

19 MR. KINNEMAN: Let me make sure I
20 understand the sequence, because I think it's
21 documented elsewhere. You sent in an unsolicited
22 proposal under the facilities contract for the
23 chemical separation recovery, using your Denver
24 process, and the net cost of that was 11.4 million

1 dollars. And that was returned with, as I
2 understand, two things, one, there -- the official
3 finding is this is not appropriate under the
4 facilities contracts, go back and resubmit under the
5 production contract, and that was I guess in
6 writing. And the verbal was and we don't want to
7 see the reprocessing, we think you can -- it can be
8 done lots cheaper.

9 I don't know whether you provided those
10 numbers or they did, but in some way you came --
11 somebody came to the conclusion that there would be
12 about half the dollars spent if it was disposed.
13 And the other argument aside, environmentally
14 friendly, they said verbally give it back to us --
15 if you give it back to us, don't give it back for
16 reprocessing, give it back disposal. Is that fair?

17 MR. JURY: Yes, that's fair.

18 MR. HEHL: Was there an issue on the
19 residual contamination with the copper?

20 MR. VUMBACO: That's still an open
21 issue in terms of an amendment request. However,
22 that was discussed when we had several presentations
23 with the Army about the Denver process.

24 When you rate the riskiness of a

1 particular technology, that was certainly one of the
2 things that was a relatively high risk, because we
3 had no answer from the standpoint that the
4 petitions -- in fact I don't think we submitted the
5 petition till well after the earlier presentations
6 to the Army, so it was out there hanging as a high
7 risk item.

8 MR. KINNEMAN: And that's still an
9 important -- that's an important issue for
10 productio:

11 MR. VUMBACO: That's correct.

12 MR. KINNEMAN: No matter how this
13 decision is made.

14 MR. VUMBACO: That's correct.

15 MR. KINNEMAN: Okay.

16 MR. JURY: The next chart talks about
17 an issue with regard to a letter that came through
18 Congressional channels regarding the holding basin.
19 The Assistant Secretary of the Army, back in June,
20 provided a letter to the Congressman, indicating
21 that the Army would recognize, basically recognize
22 some liability, but only under certain conditions.
23 And those conditions came as a result of some
24 inaccuracies with regard to their reviewing at that

1 level the holding basin situation.

2 There was an issue that said that NMI
3 had previously been given an opportunity to recoup
4 costs for cleanup through overhead. That was not
5 factual. NMI has never been offered that
6 opportunity. And an allegation that the company
7 declined the offer because at that time they were
8 into a competition and to include those costs as
9 overhead would throw them out of the running for the
10 larger share. It was a split-type award. Not true.

11 They also indicated that the company
12 was looking for a lump sum settlement. Again, not
13 true. The company would be willing to start this
14 program and for the Army to fund it incrementally
15 over a period of time.

16 They also indicated that if they funded
17 it, it would be unfair to their competitor, Aerojet.
18 And currently there is an ongoing competition
19 between Aerojet and NMI, being run by Olin. It's a
20 subcontract competition. They said, you know, if we
21 provide relief to NMI, it would be unfair. Again
22 that's -- that is not accurate.

23 MR. HOLODY: This letter is to whom?

24 MR. JURY: This was a letter that went

1 to Congressman Meehan as a result of Congressional
2 inquiry. I think you may have a copy.

3 MR. KINNEMAN: You've previously
4 supplied copies of it.

5 MR. JURY: The point of raising this is
6 that there are inaccuracies in that letter. The
7 other thing the bottom line of the letter said,
8 "Notwithstanding all of the above, the Secretary's
9 office would be amenable for the company to include
10 the costs of cleanup in their current proposal in
11 the ongoing procurement."

12 Well, you know, from my view that
13 implicitly recognizes some Government liability with
14 regard to this problem. Otherwise they wouldn't be
15 willing to pay for it through overhead or any other
16 way. But the real problem, as far as from a
17 practical standpoint, it's very tight competition.
18 If the company includes the cost of cleanup in that
19 bid, they probably won't win the bid so they
20 won't -- so in that instance they wouldn't recoup
21 the money to get on with this thing. So it becomes
22 a very impractical way of settling the issue. But
23 the point of it is the letter does recognize
24 liability, from my viewpoint.

1 MR. VUMBACO: Also that volumes that
2 have been procured are very small relative to years
3 ago in terms of the absolute dollar amounts. So
4 it's just impractical to apply this.

5 MR. KINNEMAN: Isn't it also true that
6 that may not be a split procurement?

7 MR. JURY: That's exactly right. You
8 know, it proposes a split procurement, but as soon
9 as you say it will be a hundred percent award,
10 particularly in today's environment, it's going to
11 be a hundred percent award. Low offer is going to
12 win that thing.

13 MR. KINNEMAN: It's not going to be the
14 old days where the low bid gets 60 or 65 percent of
15 the contract, and to preserve the market, the other
16 one gets 30.

17 MR. JURY: They would only split the
18 award if it's more economical to split. And
19 obviously in this climate today, I can't see where
20 that would occur.

21 MR. KINNEMAN: Somebody is going to be
22 low bidder.

23 MR. JURY: Somebody is going to be low
24 bidder and take the whole thing, either NMI or

1 Aerojet. So the bottom line of this thing is
2 there's got to be some other way for the Government
3 to provide the funding.

4 MR. HEHL: And that's where your
5 November 22nd presentation came in.

6 MR. JURY: The next chart identifies
7 the actions. You know the company has long
8 maintained it's Government furnished material and
9 they've taken all the actions over time to maintain
10 it as Government furnished material. And the
11 bullets on this chart describe those actions.

12 For the telephone community there,
13 they've kept records on the GPM usage, they've kept
14 records on the basin contents, they provide physical
15 security, they've covered the basin with hypolon, a
16 plastic to prevent leaching. They've kept track of
17 any problems with ground water through installation
18 of test wells and they've monitored both water and
19 air extensively over that period of time.

20 Also they've -- in the next chart, as
21 we earlier indicated, they've moved away from the
22 pickling process and developed a machining process
23 to remove the copper jacket. We've talked about t'
24 recovery process that was developed at corporate

17

1 expense, that's there if the Government would chose
2 to recycle versus dispose. And they have qualified
3 the basic contents for bulk disposal.

4 The next chart is a synopsis --

5 MR. HEHL: Now the waste that's
6 generated in the current process, that is what we
7 talked about as far as the wastes currently on hand?

8 MR. VUMBACO: Yes. A portion of it. A
9 portion of it. Basically what we're talking about
10 is the waste from the production line, which is your
11 typical waste associated with the manufacturing
12 line.

13 But a subset of that would be this
14 alternate process that would place the discharge of
15 the neutralized pickling liquors to the basin years
16 ago. This is the sulphuric acid peroxide recycling
17 facility. There are certain amount of materials
18 that have to be bled off at stream. We use a closed
19 loop system basically to evaporate solids and the
20 like that really are residuals currently from the
21 alternate process that replaced this nitric acid
22 etching or pickling operation years ago.

23 MR. HEHL: All those production wastes
24 are currently being stored and are considered under

1 your production contract?

2 MR. VUMBACO: Yes, from '86 forward to
3 the time that Barnwell closed. Those materials did
4 go to either Barnwell or to Envirocare.

5 MR. KINNEMAN: So the cost for that was
6 included in the contract?

7 MR. JURY: Yeah. And there is specific
8 language in the production contract that recognizes
9 those costs for low level disposal.

10 MR. KINNEMAN: That's different than
11 when you were running the basin. Because while the
12 fate was different, nominally there's no difference
13 between the discharge to the basin and the discharge
14 to the 55-gallon drums which then goes offsite,
15 which is the question I asked before, which I
16 recognize it was a slightly different question, but
17 why wouldn't the answer be well, gee, you know, when
18 you were running that process discharging into the
19 lagoon, we paid you for disposal of that stuff. The
20 fact that you decided not to do it, that's up to
21 you.

22 MR. WOOTERS: It's not disposal. That
23 remains Government furnished material in our
24 possession.

1 MR. KINNEHAN: Okay. But I guess
2 that's your belief is that it was not, but why is
3 that the case? Why is the stuff that comes off the
4 sulfuric acid recycling line waste which you are
5 paid to dispose of, and the stuff that, very
6 similarly produced, went out into the holding basin
7 was not?

8 MR. VUMBACO: The volumes are
9 significantly less to begin with. And I think it's
10 a temporary storage facility.

11 MR. KINNEHAN: I'm sorry, I didn't mean
12 to interrupt.

13 MR. VUMBACO: It's a good point.

14 MR. KINNEHAN: I'm sorry, I didn't mean
15 to get you off the track.

16 MR. JURY: I don't know, did you get an
17 answer to that question?

18 MR. KINNEHAN: Yes.

19 MR. JURY: If we go to the next chart,
20 and again we've already touched on this, that the
21 company has invested a significant amount of money
22 to find these alternate technologies, upwards to 8
23 million dollars, and that was to move to a machine
24 process rather than the old process that generated

17

1 the contents that are in that holding basin, and
2 also costs associated with protection of that
3 holding basin contents all these years.

4 And you also heard that the basin
5 process was discontinued in 1985. From a Government
6 oversight standpoint, as you're aware, there is an
7 NRC license which controls the four classes of scrap
8 coming off that line. Each class of scrap is being
9 mixed with generally sand, placed in drums and
10 buried at licensed landfills.

11 The contract itself, the contracts over
12 time have provisions which incorporated the contents
13 of the NRC license, required records to be
14 maintained, provided provisions with regard to
15 disposal of the low level radioactive scrap that we
16 just talked about at Government expense. The open
17 contract has these provisions.

18 They required -- there were provisions
19 which required Government approval of those
20 processes, so that the Government did know in fact
21 what was being generated and how it was being
22 handled. And they also did provide the standard
23 language with regard to property administration.

24 So the records were being kept, the

1 inventory -- residual inventory was being maintained
2 properly and the Government had full knowledge of
3 it.

4 The next chart, the Government has
5 never refused its owner -- refuted its ownership.
6 As a matter of fact, NMI's competitors in the field,
7 they have submitted claims to the Government, and
8 the Government has recognized those claims for
9 reimbursement of the appropriate cleanup costs. In
10 those instances, the claims were not submitted as
11 Government furnished property.

12 In the case of the Aerojet contract,
13 that was clearly a cleanup job. There was major
14 contamination in the holding basin or pond, but
15 nevertheless, the Government did recognize 72
16 percent of their competitor's cleanup costs. The
17 same thing with National Lead of Albany.

18 MR. KINNEHAN: Could I just stop you
19 there and ask you why you think the National Lead of
20 Albany cleanup is relevant? Isn't that being done
21 under DEO, under a Congressional directive as
22 opposed to an Army discretionary?

23 MR. VUMBACO: Correct. It's not Army,
24 it's DEO. Basically what we're saying is it's

1 Government, not necessarily Army on this slide, but
2 the Government has never not --

3 MR. KINNEMAN: Let me ask the question.
4 Is the reason for Government liability the fact that
5 it was Government furnished material or any of the
6 contractual obligations that were discussed here
7 today, do they have anything to do --

8 MR. VUMBACO: I'm not sure exactly, but
9 I have some familiarity with the situation, because
10 early on I had worked there for a short period of
11 time.

12 MR. KINNEMAN: I didn't mean to call
13 upon that.

14 MR. VUMBACO: Basically there was DU
15 penetrater work conducted there early on in the
16 program -- well early on in the large caliber
17 program.

18 MR. KINNEMAN: I was not aware of that.

19 MR. VUMBACO: And competition basically
20 forced the company to look at other areas of
21 business. And that facility lingered for a couple
22 or three years before it was the subject of a piece
23 of legislation whereby the property was transferred
24 to DEO stewardship under an energy and waters bill

1 some years ago.

2 MR. KINNEMAN: Yeah, that's what I
3 mean.

4 MR. VUMBACO: I guess all we're trying
5 to say here is that the Government had
6 responsibility and they fulfilled that
7 responsibility by giving it to DEO. And DEO,
8 through its subcontractor, basically maintained the
9 facility.

10 MR. KINNEMAN: Okay. But I guess just
11 to -- you don't assert that any of the contract
12 provisions here worked to have that --

13 MR. JURY: No, we have -- you know, the
14 approach that we're taking here, the Government --
15 or the contractor has several approaches they could
16 be taking with the Army with regard to getting
17 redress and direction for cleanup. We chose to seek
18 that redress under the property clause and the
19 changes clause of that contract rather than throwing
20 this into a dispute or rather than going to some
21 extraordinary relief such as under Public Law 8504.

22 But nevertheless, those avenues are
23 still open to the company. This is the approach
24 that's being proposed, would require no litigation

1 on either side.

2 MR. KINNEMAN: Okay, thanks.

3 MR. JURY: So with regard to Government
4 ownership, it's never been refuted. To the
5 contrary, in certain areas under the contracts, the
6 Government has provided relief, particularly in the
7 low level radioactive waste area.

8 So the bottom line proposed resolution
9 is that the Government or the Army provide direction
10 for disposal, whether you want it recycled or
11 whether you want it disposed of, whether they give
12 the company that decision. Then at the same time
13 we're asking for equitable relief under the contract
14 as cited in the Government property clause which
15 relates to the changes article of the contract.

16 As I said, if you go to the next chart,
17 there are certainly other avenues for claim open to
18 the Government. If the Government should come back
19 and say we don't feel this is Government furnished
20 properties for whatever reason, then certainly the
21 company has an avenue for dispute under the open
22 contract under the disputes provision.

23 If the company faces a dire financial
24 burden, as they will if the Government does not

1 provide relief, then Public Law 8504 is another
2 avenue of relief, seeking extraordinary contractual
3 action through the Army Secretary's office.

4 There are also some relatively new
5 procedures which could be pursued. There's now an
6 alternate disputes resolution where the company
7 could seek arbitration with the Government. And
8 again it could -- this thing could be resolved at
9 some high level executive agreement.

10 The point of this chart is saying to
11 you that even though the Government rejects the
12 current proposal that's on the table, there are
13 other ways to go for them to find their money.

14 So in summary, it's been a longstanding
15 problem. We recognize -- the company recognized the
16 concerns of NRC and also the State agencies.

17 They've made a longstanding effort to minimize the
18 impact and the cost to the extent of spending their
19 own money to find alternative processes. The
20 Government has treated other contractors, to the
21 extent that they've provided relief, and
22 particularly with regard to competitors of NMI. And
23 I think ultimately the Government will step up to
24 that liability and responsibility and it will have

1 to do the same with NMI, whether it's through the
2 vehicle that's now in place or whether it's in some
3 litigation.

4 I think ultimately the Government is
5 going to have to recognize the liability that they
6 have in this case. Hopefully they'll accept the
7 proposal and letters that are in place.

8 I said earlier at the same time we gave
9 this briefing, the end of November, we also left a
10 letter with the contracting officer which highlights
11 essentially what we went over in the briefing, and
12 asked for a decision within 30 days.

13 Subsequent to that, we have heard that
14 a merit team has been established by Pickatinny, and
15 they are actively looking at the issues in here. My
16 own opinion is that I think they're looking for
17 money. That's an opinion.

18 MR. HEHL: When do you anticipate a
19 decision?

20 MR. JURY: Very shortly. I would say
21 with the holidays coming up, probably the first part
22 of January.

23 MS. MILLER: And Harry Santa is the
24 contracting officer for this issue and Jim Munson is

19

1 for the facilities contract?

2 MR. JURY: Santa is the PCO for the
3 production contract, and of course he's located at
4 Pickatinny Arsenal. Jim Munson is in Rock Island,
5 Illinois.

6 MR. HEHL: Now the production contract
7 on the 81C0323, does that have the same wording as
8 your current contracts? I mean that's what you're
9 pursuing.

10 MR. KING: No, it doesn't. We put some
11 excerpts from that contract in the back of that, but
12 the full contract is not in there. It's only to
13 show that the contract is funded. It's a cost
14 reimbursable type contract. We didn't put the full
15 text of the contract in there. We could give you
16 that.

17 MR. HEHL: How about the same wording,
18 that might be important from the standpoint that
19 you're --

20 MR. KINNEMAN: I think the question
21 he's asking is the wording that you relied on for
22 saying that this contract -- this new proposal will
23 be accepted, is that similar to the wording in the
24 contract, the current contract, protection contract?

1 MR. KING: It has the same Part 45
2 Government property management provisions.

3 MR. JURY: The other thing I might say
4 to you, at the conclusion of the two briefings that
5 we gave up there, there were no exceptions taken to
6 the position at that time. They left it that they
7 would take it under advisement and get back to the
8 company. But there was really no vocalizing of
9 objections to the company's position.

10 MR. HEHL: Now the two presentations
11 you made there was --

12 MR. JURY: This same presentation was
13 given to both the Bill Stank and Joe Parker in the
14 contracting office at Pickatinny. And then the
15 briefing was also given to chief counsel to the
16 legal office at Pickatinny. And in neither -- there
17 were no comments from either audience as to either
18 negative or positive, but merely they would take it
19 under advisement and get back to us.

20 MS. MILLEK: Now I think the point was
21 made that you felt that the contract was more
22 substantial than a statement of intent for the
23 current contracts. Did you ask for a statement of
24 intent for the holding basin since you don't have --

19

1 because you only have the one open contract? Was
2 that considered as a separate issue?

3 MR. JURY: Well I think that letter
4 that accompanies that and is in this package is a
5 request of intent. We're saying what do you want to
6 do with the stuff in the basin, it's yours.

7 MR. KINNEMAN: What would the form of
8 the answer be then? Maybe that's the -- assuming
9 they find this proposal satisfactory, how will they
10 tell you that and what will it look like?

11 MR. JURY: They'll come back and say --

12 MR. SPIEZIO: Here's 2 hundred thousand
13 dollars.

14 MR. JURY: They'll either give the
15 company a letter which says we want you to do thus
16 and so with that material, or they'll give them a
17 change order under contract, a modification of that
18 contract that gives that direction and the funding,
19 appropriate funding.

20 The company did recognize that it might
21 be more palatable for the Army to incrementally fund
22 this program. It's very, very difficult -- it would
23 probably be very difficult for them to come up with
24 the 5 million dollars out of current year

1 appropriation. They can get on with this effort for
2 a smaller amount of money to initiate that effort.
3 So -- and that seemed to be very -- strike a very
4 favorable response at the time we talked to them
5 about it. We mentioned an initial funding of 2
6 hundred thousand dollars.

7 MR. HEHL: Now the 5 million dollar
8 estimate for the Government or the Army that the
9 Army rates for disposal, is that a viable route for
10 you to process, package and send this stuff to
11 Envirocare?

12 MR. VUMBACO: Yes. On the basis that
13 we have prequalified the material a couple of years
14 ago where we actually have taken -- we did a
15 sampling study years ago where we removed about 20
16 thousand pounds of the holding basin, the material,
17 in order to go into the Denver process
18 characterization and pilot project. A portion of
19 that material did go to Utah. In fact was interred
20 at the burial site in Utah. So it has been
21 prequalified. It has been accepted from the
22 standpoint of their requirements.

23 MR. HEHL: And the characterization of
24 the holding pond shows a very homogeneous mixture of

19
1 this material?

2 MR. KINNEHAN: There's two -- There's
3 really two levels, right?

20
4 MR. VUMBACO: Yeah. When we removed
5 the 20 thousand pounds or the 10-ton sample back in
6 I believe 1990, what we did with that material is we
7 came up with a sampling plan that would account for
8 any variability of either vertically or horizontally
9 the material. And upon the moving of those 51 core
10 samples, we basically homogenized the material so we
11 came up with a representative material for -- well
12 first and foremost was a representative material
13 that we could develop a technology for.

14 Obviously if you were to develop
15 something, you needed to make sure that it would
16 work on the entire 35 hundred cubic yards of
17 material. So out of that came the sample or the
18 small amount of material, it was about a cubic yard
19 of material, about a third of a cubic yard or
20 about -- well a certain portion went to Utah. Well
21 that material came out of the homogenation process.

22 So I think we had a suitable sample for
23 characterization and fit with the Envirocare of Utah
24 site acceptance criteria.

70 1 MR. KINNEMAN: I think what I was
2 referring to, and you're right, I agree with that,
3 Frank. But there's really very -- grossly two
4 layers. There's the actual discharge layer which
5 would be removed and could potentially be recycled,
6 and then there's the subbasin gravel, which is much
7 lower in concentration which but still requires --
8 in fact it would not be appropriate for recycle.

9 MR. VUMBACO: Correct.

10 MR. KINNEMAN: And does the cost
11 estimate include both of those?

12 MR. VUMBACO: Yes, it's all inclusive.
13 35 hundred cubic yards of holding basin content per
14 se, plus the 15 hundred cubic yards of what we think
15 from the standpoint of the subbasin gravel report
16 that we submitted to you, that assumes a 36-inch
17 depth below the actual content, the sludge itself,
18 36 inches below that is this 15 hundred cubic yards.

19 So the proposal includes the 5 thousand
20 cubic yard total to go to Utah in two different
21 transportation packages. And we got into the detail
22 with the estimate. And I think there's some -- the
23 backup was provided to the Government in terms of
24 the cost of those two different types of containers.

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1 So we did include the subbasin gravel.

2 I think our point was that we were
3 shooting for an unrestricted release level at the 35
4 ⁷⁰⁰ microcuries per gram in order to cover the subbasin
5 gravel.

6 MR. KINNEMAN: Just as a point, I can
7 never absolutely promise an action, as I mentioned
8 to you before the meeting, the indication we've had
9 from our internal consultants is that we'll be able
10 to shortly give you indications that we think the
11 characterization is adequate for you to go ahead and
12 develop a remediation plan for the basin. We have
13 other questions about ground water which we'll
14 transmit to you. But that would permit you to go
15 ahead and develop an actual remediation plan for
16 submission to us.

17 MR. HEHL: Other questions?

18 MR. VUMBACO: We just wanted to
19 summarize I guess.

20 MR. KINNEMAN: We have some questions
21 when you're done with everything.

22 MR. SPIEZJO: I think our summary
23 position is that we think there's contractual
24 language in place that demonstrates obligations on

20 1 the part of the Government to take out facilities
2 and equipment and decommissioning costs. We do have
3 a multi-step plan of attack, if necessary, on the
4 basin.

5 I think the Army's already demonstrated
6 responsibility for it in that they've told us we
7 could put it in billing rates on future contracts.
8 That's just not a solution that we want to go with.
9 That we are in compliance with the decommissioning
10 requirements in that we don't think this is a matter
11 that needs further escalation at this time.

12 MR. KINNEMAN: Just actually one or
13 two, one is that in reviewing a lot of the
14 information submitted in the demand -- in response
15 to the demand for information, we noted that there's
16 an entry that indicates that there's a 1.3 million
17 dollar reserve for the holding basin. Could you
18 just comment on what that is? Is that real money,
19 an accounting kind of entry, and why is that in
20 there?

21 MR. SPIEZIO: The million is a P and
22 L number. It's a number that went to expense in
23 1991 with an offset in a reserve account. It's not
24 a cash item. There isn't a million there

20 1 available for anything. It's an accounting
2 related -- you do exposures on what your low, mid
3 and high exposures for all kinds of things from an
4 audit perspective, and we arrived at a million 3
5 being a reasonable number for the basin.

6 MR. KINNEMAN: So is that just a
7 reflection of the fact that that's a potential
8 liability to the company?

9 MR. SPIEZIO: Yes, exactly. You know
10 from a financial standards point of view, it's a
11 different problem on the basin than this one, but it
12 relates to the same subject. At what point is it
13 somebody's liability. That point grows ever nearer.
14 The million 3 is a reflection on our part that a
15 liability is there that is between us and the Army.
16 But it's not a cash -- it isn't a cash vehicle that
17 might --

18 MR. KINNEMAN: That's what I was -- so
19 there's not a million 3 in the bank somewhere?

20 MR. SPIEZIO: No, there isn't.

21 MR. KINNEMAN: Okay, thank you. Do you
22 want to ask headquarters if they have any questions?
23 Tim, does your group have any questions?

24 Are you finished with your

1 presentation?

2 MR. SPIEZIO: Yes.

3 MR. KINNEMAN: Tim, does your group
4 have any questions?

5 MR. JOHNSON: No, we don't have any
6 questions.

7 MR. KINNEMAN: Brad?

8 MR. JONES: No, I'm fine.

9 MR. HEHL: Okay, why don't we take
10 about a five-minute break and allow us to caucus for
11 a couple minutes, see if we have anymore questions.

12 MR. KINNEMAN: I have one other, if I
13 could ask now.

14 MR. HEHL: Sure.

15 MR. KINNEMAN: Just you mentioned --
16 this is just kind of an orientation question for
17 us -- you mentioned, and of course we looked at your
18 statements, that business hasn't been as good as you
19 would like it recently. And I know that we've heard
20 that there's been some layoffs. Can you just give
21 us a sense of where you're at now in terms of how
22 many employees you have and how business is going?
23 You said something I found interesting, that you
24 think next year you're in the cycle of improving.

1 MR. SPIEZIO: NMI is down to a
2 population of about a hundred 20 people. We're down
3 hundreds from what we were.

4 MR. MAMISH: And that includes your
5 South Carolina?

6 MR. SPIEZO: No, there's another 40 in
7 South Carolina.

8 MR. MAMISH: In addition to the hundred
9 20?

10 MR. SPIEZIO: That's correct. '92 we
11 saw a significant dropoff. '93 we posted a pretty
12 substantial loss. '94 we have yet to post that
13 loss, but it will be much higher than '93 was,
14 reflecting a downturn in business. Our financial
15 position is still reasonably good. You know, the
16 balance sheet remains firm.

17 The outlook for business is good. I
18 think we've truly hottomed and are on the rebound.
19 But some of the strengths we had a few years ago in
20 terms of cash position, etc. will take several years
21 going back in place.

22 MR. KINNEMAN: When you say
23 improvements in business, again looking at your
24 yearly reports and things like that, do you expect

1 more of your business to come from the non-uranium
2 base?

3 MR. SPIEZIO: Yes, we do.

4 MR. KINNEMAN: So you're really
5 expecting improvement in business to come from the
6 non-licensed activities?

7 MR. SPIEZIO: At the same time, you
8 know, there's a multi-year large caliber penetrater
9 contract. We're bidding on that. It's certainly
10 our opinion that work will not be split, that either
11 Aerojet will receive that contract or we will. And
12 then I think there will be a move to decommission
13 somebody.

14 That's something we didn't draw on in
15 our discussion, but that's certainly an issue for us
16 that as we move through this process, you know,
17 Aerojet doesn't -- our observation is Aerojet
18 doesn't suffer the same burden we do. I assume
19 they've got a parent company guarantee in place for
20 decommissioning. There's no issue from an NRC
21 perspective. That's just my assumption. I don't
22 know that as fact.

23 But every time we get into these
24 discussions with you or the demand for information,

1 Aerojet runs to the Army and says hey, these guys
2 are struggling, we're a big guy, they're a little
3 guy, they've got losses. It hurts us businesswise
4 significantly, and it concerns our private sector
5 customers.

6 You know, ^{beryllium}brilliant aluminum, a product ^{of}
7 that we're trying to bring on line that we're a sole
8 supplier of, it's an instrumental part of the
9 aerospace industry. When you're a sole supplier and
10 people are running around saying hey, there's all
11 these issues, it makes them nervous. It impacts our
12 ability. To some extent this process pushes us in a
13 direction of being less able to provide financial
14 assurance because it creates that uncertainty in the
15 marketplace.

16 MR. MAMISH: When do you anticipate
17 that the decision on this new contract would be?

18 MR. SPIEZIO: March.

19 MR. MAMISH: March of this year?

20 MR. SPIEZIO: March or April.

21 MR. MAMISH: Of '95?

22 MR. SPIEZIO: Yes.

23 MS. MILLER: I also saw a statement in
24 one of the attachments that you expected perhaps a

1 statement of intent in 1995. Is that really in
2 connection with how the new contract would be worded
3 so that there would be some wording for
4 decommissioning liability or whatever?

5 MR. SPIEZIO: Well I think we certainly
6 expect a position on the basin this year. I think
7 one of the problems in discussions we have with
8 various Army people, they don't want to talk about
9 decommissioning. There's contractual coverage, you
10 ought to be worrying about getting the contract.

11 MS. MILLER: But you had opened up
12 saying there wasn't a requirement at the time when
13 you went into the work, so now there's a new
14 contract out, is there wording then in the proposed
15 contract that would more clearly discuss the role of
16 decommissioning in the new contract, that type of
17 thing?

18 MR. SPIEZIO: No. The request for
19 quote came down consistent with what it's been for
20 the past two decades. The reality of the situation
21 is had we turned that -- in our response to that
22 request for quote, made it an imperative thing that
23 this kind of thing be covered, we probably would
24 have been considered as non-responsive to the bid

2 1 process.

2 MS. MILLER: Thank you.

3 MR. SPIEZIO: Olin might be able to
4 carry that clout and they may not. But for us
5 somebody that's got to supply that quote,
6 unfortunately that's just not how those things
7 really work.

8 MS. MILLER: I didn't know if you were
9 trying to make a point of how things were different.

10 MR. SPIEZIO: Now I think our point
11 there really is that had these rules been in effect
12 when we started doing penetrater work when initially
13 solicited by the Government to do that work, we
14 probably -- had they been having these discussions
15 and that knowledge then out front, we would have
16 said hey, that's all well and good, but you've got
17 to be more specific.

18 Instead, you know, they came to us
19 soliciting that we get in that line of business, we
20 did. The facilities and the contamination occurred
21 then after the fact. A rule changes, the structure
22 wasn't set up to accommodate that.

23 MS. MILLER: It's now the bid process.

24 MR. SPIEZIO: Right.

1 MR. HEHL: Now under your current
2 contract though, you indicate that I guess this
3 production waste that you've got stored right now,
4 why isn't that going under Army contract to
5 Envirocare?

6 MR. VUMBACO: It's an excellent
7 question, but it's not practiced. It's not the
8 practice of -- on the basis of the way the Army has
9 interpreted the Low Level Waste Policy Amendments
10 Act is that the waste that is generated from the
11 standpoint of disposition is tied to the generating
12 facility per se. The same exact thing would happen
13 regardless of whether it's private or commercial
14 waste going to a processor, such as an ASCG, that
15 regardless of who owned the material, where the
16 material was generated becomes the -- for the
17 purposes of disposition becomes the place where it's
18 tied to.

19 MR. HEHL: So why do you think the
20 holding basin is going to be able to go to
21 Envirocare?

22 MR. VUMBACO: Because this is a
23 Government furnished material as opposed to a waste
24 from production activity.

2 1 MR. HEHL: I thought you were
2 interpreting the current waste as Government
3 furnished material also.

4 MR. KINNEMAN: Forgive me, Frank, but
5 I'm not sure that I agree with your answer as you've
6 explained it to me at other times. Doesn't it have
7 to do with the agreements between Envirocare and the
8 Northwest Compact under the Low Level Policy Act,
9 the reason that you can't send production waste?

10 MR. VUMBACO: That's part of it as
11 well, and that's going to change. And I may have
12 misrepresented part of the production contract.
13 Waste was allowable a few years ago to Envirocare.
14 But on the basis that the holding basin is a
15 remediation project that there are allowances or
16 provisions for the Northwest Interstate Compact
17 Commission to admit that type of waste into the
18 compact site. So the production waste wouldn't go
19 there. That's been a recent change.

20 MR. KINNEMAN: At one time it did go
21 there?

22 MR. VUMBACO: Yes. On the basis of the
23 characterization of that waste being a bulk, low
24 level, certainly concentrated, on the basis of their

2 1 license with Utah, that was allowable. But the
2 Northwest Interstate Compact Commission decided that
3 that wasn't in the spirit of the Low Level Waste
4 Policy Amendment Act from the standpoint of trying
5 to get other regions to develop their own solutions.
6 And they basically cut us off with regard to that
7 type of production waste being accepted at a very
8 substantial -- substantially lower rate for burial.

9 MS. MILLER: The states were all
10 seeking this type of agreement and all the Armed
11 Forces would not allow it.

12 MR. HEHL: And you anticipate getting
13 some sort of determination on the current production
14 waste from the Army at some point?

15 MR. SPIEZIO: I think there's going to
16 have to be a conclusion reached between the ACO, DCA
17 and the contractors. We're kind of in a collision
18 course on that subject. You can't use accrued cost
19 as part of an allowable cost package unless the Army
20 says hey, we want to take that waste and go here, go
21 there with it. It's not got to be an accrued cost.
22 So it's got to be resolved. It's a near term thing
23 that will have to be resolved.

24 Like this new contract on a multi-area

2 1 A-2 buy, there will be a fairly significant level of
2 waste being generated. There's going to have to be
3 some guidelines, some agreements reached on how it
4 is going to be dealt with. You know, as a
5 contractor, you certainly won't take that work with
6 no ability to bill and no assurances that by the
7 time a site gets opened or disposition becomes
8 appropriate that they have obligated the funds.

9 On fixed price work, if it's truly a
10 competitive bid, one of the things DCA evaluates is
11 the appropriateness of the bid process. Accrued
12 costs really is one of those things. So it will
13 get attention I would think in the next six months.
14 We probably will be forcing the issue to some
15 extent. We're certainly billing those accrued costs
16 for lack of anything else to do with it. If we had
17 a site available, they would be in the ground.

18 MR. NEHL: So you're currently billing
19 for the --

20 MR. SPIEZIO: Well we will bill when we
21 ship, essentially that will be part of the residual
22 billing.

23 MR. VUMBACO: We're at a very low
24 production rate. And typically when we bill, Don,

1 correct me if I'm wrong, you produce a quantity of
2 product as basically a truckload quantity, and when
3 we ship that, that's when we bill.

4 MR. SPIEZIO: Well we take progress
5 billings. But the essence of it is until you really
6 close it out, you can say this bill versus bill, but
7 it's kind of just all in there. And it affects
8 our -- it obviously affects not only our billings to
9 Olin, it affects general Government overhead rates
10 as the waste costs flow and various components. So
11 it's an issue DCA has got to come to some resolve in
12 the fairly near future. We'd like to be able to
13 bury it. You know, if it gives other people
14 heartburn and they can help resolve that by making a
15 place to bury it, that's a good thing. We have no
16 way to deal with it.

17 MR. VUMBACO: Let me just summarize so
18 people understand the amount of waste that we're
19 currently generating is a very small fraction of
20 what it used to be. Even if you look at on the
21 basis of similar volume, similar quantities of
22 penetrators being produced, because we introduced a
23 number of processes over the years, including a
24 waste segregation, including some specific

1 product -- production line improvements in terms of
2 using less material going in. So the quantities
3 coming out are very small compared to what they used
4 to be say in the early '80s when we were wrapping up
5 with three or four different programs.

6 So illustrative of that is the fact
7 that since Barnwell is closed, we have only 80 some
8 drums that are in storage at the existing facility.
9 So it won't be the case in terms of a multi-year buy
10 over the course of the three or four years, because
11 that is a substantial production contract. So we
12 don't see any near term concern relative to health
13 and safety with regard to the onsite storage.

14 MR. SPIEZIO: I assume your main point
15 there though is that as that inventory builds,
16 there's a financial assuredness aspect there?

17 MR. KINNEMAN: Exactly.

18 MR. SPIEZIO: I think right now it's a
19 very minimal, certainly something we've all got to
20 be cognizant of, depending on what the future holds
21 and how these things are going to be dealt with. We
22 wouldn't see under the current contractual
23 arrangement that that's a liability the Government
24 would have.

1 As I would see it, they'll develop a
2 billing mechanism in an approved audit process that
3 says yes, that's a reasonable estimate of allowable
4 cost, here's your money, we're out of the picture.
5 And we would look at some kind of appropriate
6 funding mechanism for that.

7 MR. KINNEMAN: Do you want to caucus
8 for a few minutes?

9 MR. KINNEMAN: We'll go off the record
10 now.

11 (Brief recess.)

12 MR. HEHL: I guess two things that I
13 guess we decided -- we really don't have any other
14 questions at this point in time. Two things we'd
15 like to ask you to provide to us, perhaps by Express
16 Mail when you get back, and that is if you have
17 the -- if you have the wording that you referred to
18 in the DLA regulations precluding the abandoning of
19 the hazardous material, we'd like to, if you could
20 send us that, and also the wording out of that open
21 contract from the previous production that went into
22 the holding pond, the associated wording with regard
23 to the similar type that you pointed out in the new
24 contract.

1 MR. KING: Sure.

2 MR. SPIEZIO: No problem.

3 MR. HEHL: That would sort of help us
4 in deliberations. I think that's about it.

5 MR. KINNEMAN: We have two
6 administrative things we have to do.

7 MS. MILLER: Another administrative
8 matter, in practice, I know it's our favorite
9 subject, we'll treat these as proprietary
10 information, but we'll need an application to
11 withhold the documents as well as an affidavit. And
12 then again, you know, some of the things are already
13 public, so you may want to submit at that time a
14 redacted version and then we'll make a determination
15 on that and then give you 30 days to review our
16 determination.

17 MR. VUMBACO: Fine.

18 MR. KINNEMAN: And while we said we'd
19 give back two of the copies, because of the way
20 you've presented it, if you wouldn't mind, we'd like
21 to keep all three. And we'll treat them all as
22 proprietary. That way we can send one to
23 headquarters and share the information.

24 MR. VUMBACO: That's fine.

1 MR. HEHL: Dan, why don't you go ahead
2 and talk where we go from here in terms of -- from
3 an enforcement standpoint.

4 MR. HOLODY: As we said at the
5 beginning of this meeting, this is an enforcement
6 conference, which is a meeting that we called to
7 decide whether and what enforcement action we might
8 take.

9 You had gone through your enforcement
10 history for the last 10 years for some technical
11 issues. You mentioned a couple Level 4s and I think
12 a Level 2 and a civil penalty we had issued back in
13 the '83 time frame. This conference is for the same
14 purpose. I think back in '83 we had a similar
15 conference for the issue that existed at that time.

16 And what we will do is take what you've
17 told us today, we'll go over the information you've
18 presented and then determine what action we should
19 be taking or whether we should be taking an action
20 at this time.

21 The options available to us are
22 basically three-fold. We can issue notice of
23 violation, which we had done in the past. You
24 mentioned the Level 4s. We can issue a civil

1 penalty, or probably the most significant action,
2 which we have done in cases like this, is we can
3 issue an order, or we could suspend the license or
4 modify the license or revoke the license in the
5 worst case. We'll make that decision and we'll get
6 back to you on that decision.

7 Whatever action we do take, I will
8 point out that if we happen to issue any civil
9 penalty or any type of an order, there will be a
10 press release with it. We'll send you a copy of
11 that press release prior to issuance. When I say
12 prior to issuance, it will be a couple hours before
13 it goes out. You'll get a copy of the action before
14 it hits any media wires. Whatever action we take it
15 will spell out in the document itself what you need
16 to address as part of that response.

17 Do you have any questions about the
18 process?

19 MR. HEHL: It will probably be some
20 period of time. We usually try to get back a
21 resolution within a month, but I'm not sure in this
22 case. There's a lot of information here and it may
23 take us longer to work through it. But certainly as
24 we go through that process, as we go through that

4 1 process, if we have additional needs for
2 information, we'll be back in touch with you.

3 This is certainly kind of an unusual
4 situation from the standpoint that it's really a
5 determination as to whether you are or are not
6 currently complying with the regulations, and so
7 that may take a little bit longer.

8 I think certainly the information
9 presented today has been very, very helpful. And we
10 do appreciate you coming in, and we'll certainly be
11 back in touch. Anything else? I think we're done.

12 MR. KINNEMAN: Do you have any comments
13 or closing remarks?

14 MR. CRONIN: You said you had a letter
15 that raised some issues that you didn't want to --

16 MS. MILLER: Yes, it's right here.

17 MR. KINNEMAN: We weren't going to
18 forget it.

19 MR. CRONIN: All right.

20 MS. MILLER: And some of it you
21 discussed already about the different
22 decommissioning numbers, but if you put it on that
23 docket file and the specific reason why there's
24 different costs.

1 MR. KINNEMAN: I think actually you may
2 have -- I would prefer I guess that you read the
3 question and answer the question. I think you've
4 answered it, but I'd rather, since they're, as I
5 remember, there's not 25 questions in there, there's
6 two, it would be better if you answered the question
7 and that way we'll be clear.

8 MR. VUMBACO: When would you like to
9 see a response to this?

10 MR. KINNEMAN: The standard time.

11 MS. MILLER: Actually it's in response
12 to two other affidavits and applications for
13 withholding of information, and one of them has to
14 do with the decommissioning funding plan.

15 MR. VUMBACO: Okay.

16 MR. KINNEMAN: Anything else you'd like
17 to say before we close the record?

18 MR. VUMBACO: I think in summary we
19 certainly agree with you that this is an unusual and
20 complex situation. And we certainly thank you for
21 your time as well. And hopefully we can resolve
22 this thing as we go forward.

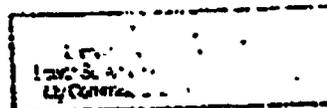
23 MR. KINNEMAN: Thank you very much.

24 (Proceedings closed.)

CERTIFICATION

I, Loretta B. Devery, do hereby certify that the testimony and proceedings in the foregoing matter, taken on December 8, 1994, are contained fully and accurately in the stenographic notes taken by me and that it is a true and correct transcript of the same.

Loretta B. Devery
LORETTA B. DEVERY, RPR



The foregoing certification of this transcript does not apply to any reproduction of the same by any means unless under the direct control and/or supervision of the certifying reporter.

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