

January 7, 2015

Mr. Lawrence J. Corte
President and General Manager
Western Nuclear Incorporated
2801 Youngfield Street, Suite 340
Golden CO 80401

SUBJECT: U.S. NUCLEAR REGULATORY COMMISSION STAFF ACCEPTANCE
REVIEW OF WESTERN NUCLEAR INCORPORATED'S (WNI'S) REQUEST
FOR LICENSE TERMINATION FOR WNI'S, SPLIT ROCK, WYOMING SITE
(DOCKET 040-1162)

Dear Mr. Corte:

I am writing to inform you that the U.S. Nuclear Regulatory Commission (NRC) staff has completed our acceptance review of Western Nuclear Incorporated's (WNI's) request for termination of the radioactive materials license for WNI's Split Rock site in Jeffery City, Wyoming, dated July 8, 2014 (Agencywide Documents Access and Management System (ADAMS) Accession Number ML14223A452).

During a June 17, 2014, meeting in Denver, Colorado, between representatives of WNI and the NRC staff to discuss the status of the decommissioning of the Split Rock site, WNI stated that it believed that all of the issues identified by the NRC staff regarding the suitability of the Split Rock site for termination of the license had been addressed. WNI also stated that they would be submitting documentation during the week of June 23, 2014, demonstrating that all of the approvals necessary to approve an "alternate approach" for terminating the license for the Split Rock site had been received from the NRC.

The July 8, 2014, letter from Mr. Anthony Thompson was provided in response to these commitments. The letter stated WNI's view that it has met all of the requirements for an NRC approved "alternate approach" to the requirements in 10 CFR Part 40, Appendix A for demonstrating that the Split Rock site is acceptable for license termination. The letter also summarized WNI's rationale for concluding that all of the approvals necessary for going forward with the alternate approach for license termination had been received from NRC and referenced numerous documents that WNI claimed supported its conclusion.

However, the cited documents were not included with the letter, and the NRC staff was informed by WNI that the letter was being provided directly to the NRC staff, via courier, as a courtesy. WNI's representative provided the NRC staff with numerous documents via email on July 8, 2014. However, because these documents were not submitted in accordance with NRC requirements for the electronic submission of information as provided in 10 CFR 40.5(a)(3), the documents could not be placed in ADAMS as an official submittal. This deficiency was communicated to WNI representatives via email on August 11, 2014 (ML14231B005), and again in writing on September 22, 2014 (ML14246A074). On October 7, 2014, WNI submitted 21 documents to the NRC in accordance with NRC requirements. The NRC staff reviewed the documents and determined that, of the 21 documents submitted, seven were in the ADAMS and

matched the ADAMS version, six were in ADAMS and did not match the ADAMS version, and eight were not in ADAMS. The submitted documents were placed in ADAMS as Package ML14296A287 (note: two of the documents are not publically available at this time).

In the July 8, 2014, letter, WNI stated that the NRC regulations at 10 CFR Part 40, Appendix A provide that a licensee may propose an alternate to the requirements of 10 CFR Part 40 Appendix A, as long as the licensee can demonstrate that the alternative is at least as protective as the requirements in the Appendix A criteria. WNI asserted that the following elements at the Split Rock site establish an alternative that is at least as protective as the Appendix A criteria:

1. The NRC's approval of Alternative Concentration Limits (ACLs) for the Split Rock site, showing that the Constituents of Concern in ground water at the site will not migrate off the area of the long-term surveillance boundary (LTSB) above the approved limits for the Point of Exposure within 1,000 years;
2. The NRC's approval of the LTSB based on the groundwater model used to develop the ACLs;
3. Purchase, in fee, of a significant portion of the LTSB by WNI, and;
4. Imposition of institutional controls for the remaining portions of the LTSB.

WNI also stated that the NRC has approved this alternate approach via Commission communications such as SECY papers and Staff Requirements Memoranda, Technical Evaluation Reports supporting licensing activities at the Split Rock site, and miscellaneous verbal or written communications between WNI and NRC staff. Furthermore, according to WNI, because the Department of Energy (DOE) will control most of the area within the LTSB through land ownership, and because institutional controls are in place for the area not owned by the DOE, access to the ground water while it is within the LTSB will be prevented and, as such, this alternate is as protective as the Appendix A criteria.

The NRC staff reviewed the information provided by WNI and agrees that the NRC approved the ACLs (ML062910216) and the ground water model for the site and the LTSB (ML032050480). In addition, NRC staff agrees that WNI has made a good faith effort to purchase the land within the LTSB and, in fact, has purchased significant portions of the land within the LTSB (ML053320206 and ML060930593).

However, based on a review of the docket in this matter it does not appear that there were any licensing actions wherein the NRC approved an alternate approach to site closure for WNI. Although there were several instances where WNI proposed, and the staff approved, ACLs for certain hazardous constituents or modifications to the ground water corrective action plan, there did not appear to be any documents wherein the NRC approved an alternate approach to site closure. Although WNI's 1999 site closure plan arguably may have proposed the use of institutional controls as an alternative to the land ownership requirements of UMTRCA, as provided for in 10 CFR Part 40, Appendix A, Criterion 11, the Commission rejected that premise by requiring WNI to make a good faith effort to acquire title to the property at issue.

Therefore, the NRC staff has concluded that, contrary to WNI's conclusion in its July 8, 2014, letter, WNI has not received all of the necessary approvals from the NRC to terminate the license for the Split Rock site using an alternate approach because the NRC has not reviewed or approved the site-specific institutional controls for the remaining portions of the site, title of which will not be transferred to the DOE. Until these site-specific institutional controls have

been reviewed and approved, the NRC cannot conclude its evaluation of the alternate approach.

In addition, in a letter dated September 11, 2013, the NRC staff raised concerns regarding the validity of the ground water model for the site, given the current results from ground water sampling at the site (ML13241A105). These concerns were further discussed with WNI on September 17, 2013 (ML1324A414). In the letter, the NRC staff stated that recent ground water monitoring data have shown results that are not consistent with the model's predictions and requested, among other items, that WNI update its ground water and transport models to reflect recent data and to demonstrate that the concentrations at the proposed institutional control boundaries will be protective (i.e., meet maximum contaminant levels or background). It does not appear that the docket for the license includes WNI's response to the staff's request. Because the ground water model's predictions are critical to the implementation of the alternate approach, the staff cannot complete its review of the alternate approach until the issues raised by the staff regarding the validity of the ground water model for the site have been resolved.

In the July 8, 2014, letter WNI also requested that NRC schedule a meeting with the DOE and the U.S. Army Corps of Engineers (USACE) to expedite the transfer of the site to the DOE. We believe that it is premature to hold a meeting with the DOE and the USACE at this time, but believe that a meeting with the WNI staff would be helpful to determine what additional information the NRC staff will need to complete its review of WNI's request. This meeting would be open to observation by interested members of the public and, at the conclusion of the business portion of the meeting, time permitting, the NRC staff will address questions by the public. WNI and its representatives would not be required to address questions from the public.

L. Corte

4

In accordance with 10 CFR 2.390 of the NRC's "Agency Rules of Practice and Procedure," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records component of NRC's ADAMS. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

If you have any questions concerning the evaluation, please contact me at 301-415-6749 or email at Dominick.Orlando@nrc.gov.

Sincerely,

/RA/

Dominick A. Orlando, Senior Project Manager
Materials Decommissioning Branch
Division of Decommissioning, Uranium Recovery,
and Waste Programs
Office of Nuclear Material Safety
and Safeguards

Docket No.: 040-01162

License No.: SUA-56

cc: Split Rock Distribution List

L. Corte

4

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If you have any questions concerning the evaluation, please contact me at 301-415-6749 or email at Dominick.Orlando@nrc.gov.

Sincerely,

/RA/
Dominick A. Orlando, Senior Project Manager
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Office of Nuclear Material Safety
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Docket No.: 040-01162

License No.: SUA-56

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