



NUCLEAR METALS, INC.

DOCKET NUMBER
PROPOSED RULE PR 30,40,50,70 & 72
(58 FR 4099)

April 13, 1993

'93 APR 14 10:23

Secretary
U. S. Nuclear Regulatory Commission
Washington, D.C.

14

Attention: Docketing and Service Branch

Re: Proposed Rule Relating to Timeliness in Decommissioning
of Materials Facilities, RIN3150-AD85,
58 Fed. Reg. 4099 (January 13, 1993)

Dear Secretary:

Contained herein are the comments of Nuclear Metals, Inc. ("NMI") to the above-referenced proposed rule. NMI is a holder of two Nuclear Regulatory Commission (the "Commission or NRC") licenses SMB-179 and SUB-1452.

NMI has the following comments with respect to the above-referenced proposed rule:

SUMMARY POINTS

1. Rules dealing with acceleration of decommissioning of facilities should be coordinated with rules relating to decommissioning funding assurance.
2. Defense contractors and subcontractors, whose productive capacity forms a part of the nation's mobilization base, should not be required or encouraged to decommission these facilities.
3. Where the licensee's financial strength is adequate and public health and safety and the environment are not at material risk, maintenance of temporarily inactive facilities should be a business, not a governmental, decision.
4. The timetable in the rule, as proposed, is overly rigid and unworkable.
5. The proposed rule should take into account the unique circumstances of dual license holders.
6. In view of the subjective and unpredictable character of the factors that will influence judgments and determinations, notification and decommissioning schedule violations do not warrant a severity level 3 enforcement categorization.

9304200129 930413
PDR PR
30 58FR4099 PDR

13510

COMMENTARY

1. Coordination with Funding Assurance. The NRC is pursuing two independent strategies to assure effective decommissioning of licensed facilities: financial assurance, and the imposition of a mandatory time schedule (by these proposed rules). To the extent that the financial assurance rules accomplish their purpose, however, the need for rigid scheduling is undermined. The specter of "bankruptcy, corporate takeover or other unforeseen changes in the Company's financial status," referenced in the background discussion, is mitigated by the implementation of the financial assurance mechanisms.

2. Defense Mobilization Base - Commercial Resource. The productive capacity of defense contractors and subcontractors, in many cases, forms a part of the nation's mobilization base. The mobilization base includes inactive or partially utilized facilities which may be required in the event of a national emergency which would require an increase in defense preparedness. As an example, NMI has received orders from the Defense Department for items which had not been in production up to eight years. The rule should be amended to exempt contractors whose facilities represent a critical resource.

NMI's facilities, and those of other licensees, also are a scarce and valuable resource for commercial products, many of which are available from no other source. It is not at all uncommon for NMI to receive an order for goods which have not been produced for a number of years since the last order. Licensee companies should not be encouraged or required to decommission temporarily inactive facilities or equipment which is critical to commercial customers or which may be required in the event of a national emergency. The rule should be amended to exempt defense contractors whose facilities would be required in the event of a national emergency, and to exempt producers of commercial goods not in continual production but which are available from only one or a small number of sources.

3. Business Judgment. Where financial strength is adequate and public health, safety and the environment are not at material risk, the maintenance of temporarily inactive facilities should be a business, not a government decision. Obtaining and maintaining an NRC license entails a significant investment by a company. Such a license is, in fact, an asset of the company. To the extent that public health, safety and environmental quality are not jeopardized and that adequate resources are provided for decommissioning, the decision to maintain a license or initiate decommissioning should properly be a business decision and not an arbitrary regulatory requirement. A maximum two-year period of non-use, before



Secretary
U. S. Nuclear Regulatory Commission
April 13, 1993
Page 3

mandatory notification to the NRC triggering the decommissioning process, often would be incompatible with the business planning horizon and the mechanisms by which new uses for a licensed facility are identified and implemented.

The commentary suggests that involuntary acceleration of decommissioning actions will tend to benefit licensees because of rising waste disposal costs. This paternalistic point of view conflicts with the more traditional one that businesses are the most effective judges of their own best interests and are best qualified for making decisions on the employment of their resources. The trend of increasing waste management costs is well known to licensees, who can weight the potential benefits of having a licensed facility available for future use against the risk of higher future decommissioning costs.

4. Rigid Timetables. The schedules proposed in the rule are rigid and unworkable. The twelve-month period proposed for formulation and submission of decommissioning plan is likely to be unrealistic for most major materials licensees. It ignores two critical steps in the decommissioning process: submission and approval of a Site Characterization Plan (SCP), and preparation and approval of a Site Characterization Report (SCR). For complex facilities, these can be significant undertakings, and they are essential prerequisites to accomplishing decommissioning in an effective and economical manner. Appropriate periods of time for these actions and, for both the SCP and the SCR, for NRC approval, need to be explicitly factored into the decommissioning timeliness and milestones.

Under the proposed rule, NRC approval of a decommissioning plan begins the proposed eighteen months allowed for decommissioning actions. When other federal or state regulatory agencies assert some measure of jurisdiction over the decommissioning of a particular facility, the period of time provided should not begin until the final relevant agency approval has been obtained. There are apt to be cases where such multi-agency approvals will take substantially longer than the six months envisioned by the NRC for its own review. The eighteen month decommissioning time frame itself probably is unrealistic for many complex sites, especially if decommissioning" refers to the complete process to include final confirmatory surveys by NRC or its contractors.

Although the proposed scheme provides for the granting of extensions for key milestones, it seems likely that its application would require so many extensions in practice that adherence to the



regulatory schedule as written would be the exception and not the rule. This means that, for decommissioning, the site specific aspects tend to be more significant than the "generic" aspects. In such a situation, it would seem more reasonable to extend the maximum period substantially to make it realistic for more licensees; to establish a separate, more extended schedule for major materials licensees; or to abandon the mandatory decommissioning scheduling concept and rely instead on insuring the availability of resources and reviews during the license renewal process.

Decommissioning requirements should be based on factual and defensible considerations which relate to public health, safety, environmental quality, and business economics. The requirements should be driven by the process, not by the clock. The impracticability of scheduling is reflected in the NRC attitude toward scheduling of construction projects. The criteria established by the NRC should provide a credible basis for achieving decommissioning with sufficient flexibility to take site-specific factors and special circumstances into account. To allow agreement states additional flexibility to impose more restrictive standards will add little of societal benefit, and could delay remediation projects and unnecessarily increase their cost. We, therefore, urge that strict compatibility with NRC's rule be required.

5. Dual License Holders. Consideration should also be given to dual license holders, where a separate "4b" license permits the application of procedures covered by the primary source material license to materials or wastes of other parties. In cases where operations were not performed under the "4b" license for twenty-four months, but were carried out under the source material license, there should be no decommissioning driven requirement to terminate the "4b" license.

6. Severity Level. The assignment of notification and decommissioning schedule violations to a severity level 3 enforcement category seems excessive, especially in view of the subjective and unpredictable character of many of the factors that will influence determinations and actions regarding decommissioning.

CONCLUSION

For the foregoing reasons, the Commission should exempt defense mobilization base licensees and facilities which represent a scarce and valuable commercial resource from the proposed rule. In the case of financially strong licensees, the decision to decommission should remain a business decision. Rigid timetables should not be incorporated, as each facility is unique.

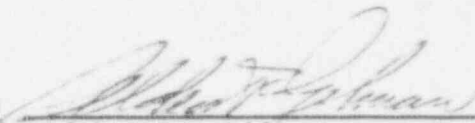


Secretary
U. S. Nuclear Regulatory Commission
April 13, 1993
Page 5

Consideration should be given to appropriate exemptions for dual license holders, and violations which involve matters of judgment or interpretation should be treated as less severe.

Very truly yours,

NUCLEAR METALS, INC.

By: 
Alden R. Gilman,
Vice President,
Health/Safety

