



DEPARTMENT OF THE NAVY
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
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5104
Ser N452RCO/20U132628
July 28, 2020

Ms. Robin Elliott
U.S. Nuclear Regulatory Commission
Region I
475 Allendale Road
King of Prussia, PA 19406

SUBJECT: PROPOSED EXEMPTION AMENDMENT TO MASTER MATERIALS LICENSE (MML) 45-23645-01NA TO THE DECOMMISSIONING TIMELINESS UNDER 10 CFR 30.36 AND FINANCIAL ASSURANCE REQUIREMENTS UNDER 10 CFR 30.35 FOR THE DEPARTMENT OF THE NAVY

Dear Ms. Elliott:

The United States (U. S.) Navy's radioactive materials program is licensed under Master Materials License (MML) 45-23645-01NA with the Nuclear Regulatory Commission (NRC). In accordance with Title 10 Code of Federal Regulations (CFR) Part 30.11, this request is submitted for the purpose of obtaining a relief exemption from the requirement of 10 CFR 30.35 (e) (2) to submit a decommissioning funding plan. The DON uses radioactive materials authorized by its master materials license at 26 Navy and Marine Corps commands. Six of these commands fall into the categories requiring submission of a decommissioning funding plan or financial assurance at either the time of license renewal or every three years. As authorized for federal agencies in NUREG 1757, Vol III, the Navy complies with this requirement by submitting a statement of intent with an estimated cost of decommissioning for each command. The Navy is requesting an exemption to this requirement for the reasons stated below.

As stated in appendix A, section 11 of NUREG-1757, Vol. 3, Consolidated Decommissioning Guidance, Financial Assurance, Recordkeeping, and Timeliness: "The purpose of a statement of intent is to ensure that, early in the life of their facilities, government licensees make their funding bodies aware of (1) decommissioning requirements and costs and (2) eventual funding." In the Navy's case, the MML has been issued to the Chief of Naval Operations (CNO), which is the Navy's funding authority and resource sponsor. The CNO requests funding from Congress as part of the Department of Defense (DoD) budget submission. Therefore, this NRC requirement is not necessary for the Navy because the CNO would be aware of the requirements and costs associated with decommissioning activities as the funding authority and resource sponsor for the MML.

The requirement that the statement of intent must include a site-specific cost estimate or a certification of financial assurance is not a wise use of taxpayer's money. A cost estimate from site-specific decommissioning studies requires that the Navy use contracting resources to

produce the document. In the latest financial assurance statement of intent submitted by the Navy, the cost estimate for one of our sites was partly based on a study conducted in 2006 and adjusted for inflation. While this is a practical way of calculating costs, it eventually will fail to reflect the true costs of decommissioning and a new cost-estimate will be required to determine a more realistic dollar value. The NRC recognized this point, which is why the 1988 financial assurance requirement was revised to add the triennial requirement. In this era of financial constraint for the Navy, money spent for conducting estimates could be better spent on projects that are more important to national defense.

In addition, the Navy requests an exemption to the decommissioning requirements for timeliness in 10 CFR 30.36, Expiration and Termination of Licenses and Decommissioning of Sites and Separate Buildings or Outdoor Areas. Specifically, the Navy requests an exemption from the two-year limit required for the timeliness decommissioning regulation, and proposes instead a 10-year limit for the Navy. This request is based on the fact that the two year requirement is impossible to meet based on the congressional funding process. In addition, the reasons for the timeliness regulation are not applicable to government agencies.

As stated in chapter 2 of NUREG-1757, Vol 3, Consolidated Decommissioning Guidance, Financial Assurance, Recordkeeping, and Timeliness, “The purpose of the Timeliness Rule is to avoid future problems and reduce potential risk, to the public and environment that may result from delayed decommissioning of inactive facilities and sites. Specific concerns that prompted the Timeliness Rule include the potential risk of safety practices becoming lax because of attrition of key personnel and lack of management interest at facilities once operations cease, as well as the potential for bankruptcy, corporate takeover, or other unforeseen changes in a company’s financial status that may complicate or delay decommissioning.”

When the Navy decides to close a decommissioning site, it is required to follow a well-defined, comprehensive process based on Comprehensive Environmental Response Compensation and Liability Act (CERCLA) requirements. This process is overseen by project management from the Naval Facilities Management command and prevents problems of personnel attrition and lack of management support. The potential for bankruptcy, corporate takeover and other financial reasons do not apply to a federal agency.

The NUREG also states that federal operators can explain “how an extension of the time period for initiation of decommissioning would better take into account a broader Federal plan for decommissioning that establishes priority, funding, and schedules, thereby reducing the public funds needed for decommissioning the facility.” The planning, programming, budgeting and execution process (PPBE) for Congressional funding is not compatible with the two year timeliness rule. The PPBE is based on a 5-year future financial plan and requests money for a budget two years into the future. Therefore, if the Navy decides to close an activity, Congress would not be allocating the money for three years. The Department of Defense has used this budgetary process since the 1960s, and the Services are required to utilize it.

While the NRC regulation allows for an alternate decommissioning schedule, according to NUREG 1757 the request must demonstrate “that the extension is not detrimental to public health and safety and is otherwise in the public interest.” The NUREG lists other information that needs to be submitted, such as a discussion of regulatory compliance and whether the health

and safety plan would remain in effect during the stand down. Other factors affecting the decision of alternate schedules are also listed in the NUREG, such as future needs of the national defense industry, increase efficiency of decommissioning, and reduced costs. While we understand how this additional information is useful to the NRC when a private entity requests an alternate schedule, it does not add value due to the budgetary issues faced by a government agency.

Lastly, in case of an emergency the Navy would remediate radioactive contamination under the CERCLA. Contrary to what is permitted for private enterprises by law, the Navy cannot legally abandon a contaminated site, and if unknown contamination is subsequently discovered, the Navy is obligated to decontaminate the site.

In summary, the Navy requests an amendment exempting the requirements of the financial assurance and timeliness regulations. This request is based on the significant time requirement for the Navy's decommissioning process and the stringent security measures in place on-site in place on facilities permitted under the Navy's MML. Budget submission, congressional and presidential approval, congressional funding approval, and program funding to issue contracts is a multi-year process. The current periodicity requirement presents an undue administrative burden, because though few changes occur on the permitted sites, the process requires multiple actions including preparing action memos, coordination parties, information memos, and briefings to leadership. The administrative burden is in excess of the risk to the public health and safety because the sites would still be under the regulatory control of the permit and would remain so until the permit is terminated. Relief from the periodicity requirement is in the best interest for the efficient use of the workforce and prudent use of budgetary resources. Notwithstanding this request, if any major changes happen in the program during the extended period, an updated statement of intent would be submitted to the NRC.

Thank you for your assistance in addressing these matters. For any questions regarding this request, my point of contact is Lino L. Fragoso at (703) 695-5272 or lino.fragoso@navy.mil.

Sincerely,

A.S. WILLIAMS
By Direction

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