NON-CONCURRENCE PROCESS
COVER PAGE

The U.S. Nuclear Regulatory Commission (NRC) strives to establish and maintain an environment that encourages all employees to promptly raise concerns and differing views without fear of reprisal and to promote methods for raising concerns that will enhance a strong safety culture and support the agency's mission.

Employees are expected to discuss their views and concerns with their immediate supervisors on a regular, ongoing basis. If informal discussions do not resolve concerns, employees have various mechanisms for expressing and having their concerns and differing views heard and considered by management.

Management Directive (MD) 10.158, "NRC Non-Concurrence Process," describes the Non-Concurrence Process (NCP).

The NCP allows employees to document their differing views and concerns early in the decision-making process, have them responded to (if requested), and include them with proposed documents moving through the management approval chain to support the decision-making process.

NRC Form 757, "Non-Concurrence Process," is used to document the process.

Section A of the form includes the personal opinions, views, and concerns of a non-concurring NRC employee.

Section B of the form includes the personal opinions and views of the non-concurring employee's immediate supervisor.

Section C of the form includes the agency's evaluation of the concerns and the agency's final position and outcome.

NOTE: Content in Sections A and B reflects personal opinions and views and does not represent the official agency's position of the issues, nor official rationale for the agency decision. Section C includes the agency's official position on the facts, issues, and rationale for the final decision.

1. Was this process discontinued? If so, please indicate the reason and skip questions 2 and 3:
   Process was not discontinued
2. At the completion of the process, the non-concurring employee(s):
   Continued to non-concur
3. For record keeping purposes:
   This record has been reviewed and approved for public dissemination

NRC FORM 757 (06-2019) NRC MD 10.158	U.S. NUCLEAR REGULATORY COMMISSION	1. NCP Tracking Number NCP-2022-002
	NON-CONCURRENCE PROCESS (Continued)	Date 2022-04-14

Section A – To Be Completed by Non-Concurring Employee

2. Title of Subject Document		3. ADAMS Accession Number
University of Missouri Inspection Report		ML21342A167
4. Document Signer	**5. Document Signer's Office**	**6. Document Signer's Email**
Hills, David - BRANCH CHIEF	RIII	David.Hills@nrc.gov
7. Name of Non-Concurring Employees	**8. Non-Concurring Employee Offices**	**9. Employee Emails**
LaFranzo, Michael - ACTING BRANCH CHIEF; Poston-Brown, Martha - HEALTH PHYSICIST	RIII, NMSS	Michael.LaFranzo@nrc.gov; Martha.Poston-Brown@nrc.gov

10. Non-Concurring Employee's Role for the Subject Document

Document Author

11. Name of Non-Concurring Employee Supervisors	12. Non-Concurring Employee Supervisor Offices	13. Supervisor Emails
Hills, David - BRANCH CHIEF; Von Till, Bill - BRANCH CHIEF	RIII, NMSS	David.Hills@nrc.gov; Bill.VonTill@nrc.gov

14.

I would like my non-concurrence considered and would like a written evaluation in Sections B and C.

15. When the process is complete, I would like management to determine whether public release of the NCP Form (with or without redactions) is appropriate (Select "No" if you would like the NCP Form to be non-public):

Yes

16. Reasons for the Non-Concurrence, Potential Impact on Mission, and the Proposed Alternatives

The proposed violation was associated with the licensee's failure to get NRC approval for decontamination work (since their DP was still under review by the NRC) as detailed in 10 CFR 30.36(g). The NOV was removed by management based on identification that the contractor that performed the work filed for reciprocity with Region I to work at the university. The Region I approval of the NRC Form 241 for the contractor was considered NRC approval for the work, resulting in removal of the NOV from the IR. I have concerns associated with - (1) The assumption that the approval to work under reciprocity on a NRC 241 was "approval" for the work to be conducted as the normal NRC 241 approval process is to verify: (a) that the activity is approved on the license provided, (b) the work is not in an area of exclusive federal jurisdiction, and (c) that the appropriate fee was paid. (2) use of a contractor operating under reciprocity was used to bypass the NRC approval process for decommissioning activities by the contractor and the licensee. (3) Region III was not notified about the Region I reciprocity approval and therefore the opportunity to inspect the work conducted was not known to the responsible region.

17. Submitted By / Submitted On	2022-04-14
LaFranzo, Michael - ACTING BRANCH CHIEF; Poston-Brown, Martha - HEALTH PHYSICIST	

NRC FORM 757 (06-2019) NRC MD 10.158	U.S. NUCLEAR REGULATORY COMMISSION **NON-CONCURRENCE PROCESS (Continued)**	1. NCP Tracking Number NCP-2022-002 Date 2022-05-12

Section B – To Be Completed by Non-Concurring Employee's Supervisor

2. Title of Subject Document		3. ADAMS Accession Number
University of Missouri Inspection Report		ML21342A167
4. Name of Non-Concurring Employee's Supervisor	**5. Non-Concurring Employee's Supervisor Email**	**6. Office**
Hills, David - BRANCH CHIEF; Von Till, Bill - BRANCH CHIEF	David.Hills@nrc.gov; Bill.VonTill@nrc.gov	RIII, NMSS
7. Comments for the NCP Reviewer to Consider		
See Section B attachment for explanation of supervisor's position.		
8. Reviewed By / Reviewed On		2022-05-12
Hills, David - BRANCH CHIEF; Von Till, Bill - BRANCH CHIEF		

NRC FORM 757 (06-2019) NRC MD 10.158	U.S. NUCLEAR REGULATORY COMMISSION	1. NCP Tracking Number NCP-2022-002
	NON-CONCURRENCE PROCESS (Continued)	Date 2022-06-06

Section C – To Be Completed by NCP Coordinator

2. Title of Subject Document		3. ADAMS Accession Number
University of Missouri Inspection Report		ML21342A167
4. Name of NCP Coordinator	**5. NCP Coordinator's Email**	**6. Office**
Nick, Joe	Joseph.Nick@nrc.gov	RIII

7. Agreed Upon Summary of Issues

The summary of issues is consistent with Section A Attachment.

8. Evaluation of Non-Concurrence and Rationale for Decision

I would like to express my appreciation for the RIII and NMSS staff who have provided thoughtful consideration to this issue. It is clear to me that their intent is aligned with the NRC Values and Principles of Good Regulation, and I found all interactions with them to be collegial, informative, and technically astute. Though I will detail below my decision to disagree with the contention that there was a violation of NRC regulations, I do agree with the staff on one account and have taken action to ensure reciprocity requests do not become a substitute for decommissioning plan approval. I do not believe there is a violation of 10 CFR 30.36(g)(1) since the licensee submitted a decommissioning plan (currently in the review process and not yet approved). However, 10 CFR 30.36(g)(3) requires that procedures such as those listed in paragraph (g)(1) with potential health and safety impacts may not be carried out prior to approval of the decommissioning plan. I also do not believe that there is a violation of 10 CFR 30.36(g)(3). Specifically, due to the low contamination levels encountered during this work evolution, the procedural controls the licensee's contractor used for this work, the expertise and knowledge of the licensee's contractor, and the intent of the regulation to allow limited decommissioning activities to occur prior to decommission plan approval, these specific activities conducted by the licensee did not rise to the level of significant potential health and safety impacts described in 10 CFR 30.36(g)(3). Additionally, the inspector has not identified any specific safety deficiencies in the licensee's associated procedures or actions. In the Statements of Consideration for revision to the NRC's decommissioning regulations (59 FR 36034, July 15, 1994), the NRC responded to comments regarding the need to clearly specify what activities are permitted before approval of the decommissioning plan. The NRC did not adopt the suggested changes "because sufficient latitude currently exists for licensees to carry out decommissioning activities in the absence of an approved decommissioning plan provided the procedures used are approved under existing licensing conditions and do not increase the potential for health and safety impacts to workers or to the public or result in significantly greater release of radioactive material to the environment." The NRC left the regulation less specific and acknowledged that some decommissioning activities could proceed without an approved decommissioning plan so that licensees have sufficient latitude to conduct reasonable, limited characterization activities sufficient to support decommissioning plan development, review, and approval. In addition, I believe that the licensee's contractor (Chase Environmental) had appropriate approval for limited decommissioning work at the licensee's location through the reciprocity approval process. However, I do not believe that the approval of the reciprocity request by the licensee's decommissioning contractor is an approval for the licensee's overall decommissioning plan. Although the licensee's contractor submitted a reciprocity request for work that was allowed by the contractor's license from an Agreement State, the approval for this work was intended to assist in characterization and quantification of radioactive materials present at the decommissioning location. The approval for this work is only a small part of the entire decommissioning project and should not be represented as approval of the decommissioning plan by the NRC. Outside the scope of the non-concurrence process, I have tasked RIII/DNMS staff to develop a Technical Assistance Request to detail the concern about using the reciprocity approval process as a de-facto approval of a decommissioning plan. I strongly believe this potential loophole needs to be addressed by the program owner (NMSS).

9. Coordinated By / Coordinated On	
Nick, Joe	2022-06-06

10. Approved By / Approved On	
Brock, Kathryn	2022-06-06

Attachment to Section A

Explanation for the Non-Concurrence

An NRC decommissioning inspection at the University of Missouri – Columbia was conducted on July 13-15, 2021. The inspection identified that in July 2020, the licensee had enlisted the services of a contractor which filed for reciprocity under 10 CFR 150.20. The work was performed under a procedure developed by the contractor and submitted to the NRC within the same email at the NRC form 241.

The regulation that applies to this activity is as follows:

> Title 10 of the Code of Federal Regulations (10 CFR) Part 30.36(g)(1) requires, in part, that a decommissioning plan must be submitted if the procedures and activities necessary to carry out decommissioning of a separate building have not been previous approved by the Commission and could increase potential health and safety impacts to workers or to the public that could involve techniques not applied routinely during cleanup or maintenance operations and could result in significantly greater airborne concentrations of radioactive materials than are present during operation.
>
> 10 CFR 30.36(g)(3) requires procedures such as those listed in paragraph (g)(1) of this section with potential health and safety impacts may not be carried out prior to approval of the decommissioning plan.

There are two positions being considered:

1) There is no violation of NRC requirements for two reasons:
   a. The procedure that was submitted to the NRC at the same time as the NRC Form 241 as the signature at the bottom of the form was evidence that the procedure was "reviewed and approved;" and
   b. There was insufficient evidence that the type, quantity and form of radioactive material met the conditions of 10 CFR 30.36(g)(1) – i.e. a decommissioning plan must be submitted if the procedures and activities necessary to carry out decommissioning of a separate building have not been previous approved by the Commission and could not have increased potential health and safety impacts to workers or to the public that could involve techniques were routinely applied during cleanup or maintenance operations and could not result in significantly greater airborne concentrations of radioactive materials than are present during operation.

2) There is a violation of NRC requirement as during this work, the contractor removed concrete contaminated with approximately 7.2 uCi of Ra-226 through a scarification process which was to remediate radiological contamination on the surface. This scarification process uses mechanical impact to powder concrete flooring which is then removed and disposed of as radioactive waste. During this process, the licensee had conducted air sampling to monitor any potential intake of licensed material for the purposes of dose assessment. This scarification process is not used by the licensee during routine cleanup or maintenance operations and the powder, which was radioactive, was generated in sufficient quantities that could have resulted in significantly greater airborne concentrations of radioactive materials than were present during operations.

   The facility in question has been under NRC regulatory jurisdiction since approximately 2009. The original contamination was laid down in the early 20th century when there were

no federal laws governing the use/control of the material. Since 2009, the building has been in storage only pending decommissioning.

Appendix B to Part 20 states that the Annual Limit Intake (ALI) for Ra-226 for oral ingestion is 2uCi for bone and 5 uCi whole body while the Inhalation ALI is 0.6 uCi. It is clear that there was a sufficient quantity of licensed material that NRC regulatory conditions under 10 CFR 20; Subpart H could have been needed and certainly enough that the airborne concentration could have been higher than in normal operations.

The non-concurring employee takes issue with the opinion that the signature at the bottom of the NRC Form 241 is documented evidence that the NRC approved the document. Within the Form 241, 10 CFR 150.20 and NUREG-1556 Vol 19 and Vol 20, there is no evidence that procedural submittal under reciprocity is approved. Section 7.8 of NUREG-1556 Vol. 19 only references activities to be performed and not the submittal of procedures. In addition, NUREG-1556 Vol. 20 under "Processing Changes to NRC Form 241" subsection 6 only reference review of the NRC Form 241.

I am also concerned that this interpretation of signature review and approval will bypass the Decommissioning Rule by requiring that procedures which meet the condition of 10 CFR 30.36(g)(1) do not have to be reviewed and approved by NRC. As evidence, NUREG-1556 Vol. 20 "Processing Changes to NRC Form 241" specific state that "An Agreement State licensee that is operating under an amended NRC Form 241 general license authorization pursuant to the general license provisions of 10 CFR 150.20 does not have to obtain a "signature review" from NRC before performing reciprocity activities on the amended NRC Form 241. Please note that this section refers to "signature review" and does not reference approval.

The proposed violation:

Title 10 of the Code of Federal Regulations (10 CFR) Part 30.36(g)(1) requires, in part, that a decommissioning plan must be submitted if the procedures and activities necessary to carry out decommissioning of a separate building have not been previous approved by the Commission and could increase potential health and safety impacts to workers or to the public that could involve techniques not applied routinely during cleanup or maintenance operations and could result in significantly greater airborne concentrations of radioactive materials than are present during operation.

10 CFR 30.36(g)(3) requires procedures such as those listed in paragraph (g)(1) of this section with potential health and safety impacts may not be carried out prior to approval of the decommissioning plan.

Contrary to the above, on or about July 7 through 14, 2020, the licensee failed to submit and obtain prior approval of a decommissioning plan procedure which involved techniques not applied routinely during cleanup or maintenance operations and could have increased the potential health and safety impacts to workers before carried out by the licensee . Specifically, the licensee used a mechanical scarification process to remove approximately 7.2 microcuries of Ra-226 from concrete producing a fine powder of concrete which was radioactive which is not a technique routinely applied during cleanup or maintenance operations.

Attachment to Section B Input from David Hills, RIII

Evaluation of Potential Violation Involving Chase Environmental Characterization Activities at Pickard Hall

Background

The reciprocity request was submitted 6/24/20. On the NRC Form 241, Item 8 Activities to be conducted under the general license given in 10 CFR 150.20, the contractor, a Kentucky agreement state licensee, checked the Other box and wrote in "radiological characterization." Also prior to that, the contractor submitted a 5/11/20 letter that included a description of the Pre-Demolition activities, and later provided a Pre-Demolition Radiological Work Plan dated 5/29/20. These documents were quite detailed describing several activities involved in planned characterization activities (i.e. cutting and removal of contaminated drain piping, scarifying floors and walls with an electric portable milling machine, removal of walls and disposal of as radioactive waste, etc.) The reciprocity request referenced the "previously submitted work plan." The Region I license reviewer approved the reciprocity request on 6/25/20. The contractor sometime between July 7 and 14, 2020, removed concrete contaminated with approximately 7.2 microcuries of Ra-226 via a scarification process while using air sampling to monitor potential intake of licensed material.

NUREG 1556 Consolidated Guidance About Materials Licensees, Volume 20 - Guidance About Administrative Licensing Procedures, 3.2.10 Processing Reciprocity Applications (Form 241) simply requires the reviewer to verify the fee has been paid and the licensee's Agreement State License authorizes the proposed activities. In this case, the contractor's Kentucky agreement state license authorized decontamination and decommissioning services including demolition, remediation, radiological survey, and sampling. The license reviewer confirmed that is all he did for this approval. He did not perform a critical review of the pre-demolition activities description against NRC decommissioning regulations nor perform a review of the radiological work plan for adequacy, believing that NRC inspectors had the option of conducting an inspection and doing that review. He also believed that his reciprocity approval authorized the licensee to proceed with the radiological characterization described in the work plan.

Pertinent Regulations for Proposed Violation

10 CFR 30.36(g)(3) - Procedures such as those listed in paragraph (g)(1) of this section with potential health and safety impacts may not be carried out prior to approval of the decommissioning plan.

10 CFR 30.36(g)(1) - A decommissioning plan must be submitted if required by license condition or if the procedures and activities necessary to carry out decommissioning of the site or separate building or outdoor area have not been previously approved by the Commission and these procedures could increase potential health and safety impacts to workers or to the public, such as in any of the following cases:
(i) Procedures would involve techniques not applied routinely during cleanup or maintenance operations;

(ii) Workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;
(iii) Procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or
(iv) Procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation.

Pertinent Considerations

In order to proceed with the proposed enforcement action, several pertinent aspects must be evaluated:

1) The Region III Enforcement Officer and two Regional Counsels took the position that the reciprocity request was clear on the work that was to be done and the NRC's reciprocity approval authorized the licensee to proceed with that plan. Specifically, Condition 21 of the contractors' Kentucky agreement state license states that the licensee shall submit a decontamination, decommissioning, and remediation and/or project work plan for each project to be performed, under this license. The contractor submitted a project work plan to the NRC and the NRC's reciprocity approval authorized the licensee to proceed with that plan. Hence, it was reasonable for both the contractor and the licensee to believe those activities had been previously approved by the Commission per 10 CFR 30.36(g)(1) and it could proceed with that work. While the NRC license reviewer did not perform a critical review of the pre-demolition activities description against NRC decommissioning regulations nor perform a review of the work plan for safety adequacy, the NRC inspectors had the option of conducting an inspection and doing that review if they desired. Their position remained steadfast despite multiple discussions whereby the inspector and myself advocated otherwise.

2) I remain in alignment with the non-concurring individuals regarding Item 1 above. While this particular example was of minimal safety concern, allowing the reciprocity approval to circumvent the decommissioning plan review and approval process could have more substantive adverse implications, especially if those activities involve more risk significant portions of decommissioning and remediation. The reciprocity reviewer did not perform a critical review of the pre-demolition activities description against NRC decommissioning regulations nor perform a review of the radiological work plan. NRC guidance prescribes only that the reviewer verify the submitter has an agreement state license and that it allows the type of activity proposed. As reciprocity requests only need be submitted three days prior to the onsite work, it was never intended to be a more detailed safety or regulatory review. In addition, regional personnel responsible for decommissioning oversight are informed about the reciprocity request only after it has been approved, leaving precious little to no time to mount an inspection. Further, the reciprocity approval could complicate resolution of any legitimate safety concerns an inspector might later identify. Allowing the reciprocity approval to circumvent decommissioning regulations, specifically the need to have an approved decommissioning plan prior to proceeding with certain work, essentially gives the license reviewer the authority to grant an exemption to that regulation, which the license reviewer clearly does not have. Further, this position would allow bypassing the public engagement/comment portion of the decommissioning plan review process. In addition, an equity situation is created here, in that unlike agreement state licensees, NRC

licensees do not have the ability to use the reciprocity process to gain approval of decommissioning activities in NRC jurisdictions.

3) The inspector originally proposed a violation of 10 CFR 30.36(g)(1). That regulation effectively only requires the licensee submit a decommissioning plan if certain conditions are met. The licensee submitted a decommissioning plan and hence there is no violation of that regulation. Instead, the pertinent regulation here is 10 CFR 30.36(g)(3) which requires that procedures such as those listed in paragraph (g)(1) with potential health and safety impacts may not be carried out prior to approval of the decommissioning plan. In the Statements of Consideration for revision to the NRC's decommissioning regulations (at 59 FR 36034, July 15, 1994), the NRC responded to comments regarding the need to clearly specify what activities are permitted before approval of the decommissioning plan, the NRC did not adopt the suggestions "because sufficient latitude currently exists for licensees to carry out decommissioning activities in the absence of an approved decommissioning plan provided the procedures used are approved under existing licensing conditions and do not increase the potential for health and safety impacts to workers or to the public or result in significantly greater release of radioactive material to the environment." So, the NRC chose to leave the regulation rather ambiguous, but acknowledged that some decommissioning activities could proceed without an approved decommissioning plan. In particular, licensees must have sufficient latitude to conduct reasonable, limited characterization activities sufficient to support decommissioning plan development, review, and approval. Being overly conservative here creates impediments to obtaining this information, certainly not commensurate with the minimal risk, and so potentially causes unnecessary delays, or worse, catch-22 roadblocks, such that the licensee can't proceed further in obtaining information needed for the decommissioning plan review without first having an approved decommissioning plan. When asked, the inspector was not aware of a process to gain NRC approval for this one procedure without essentially going through all the review/approval tasks (e.g. public comments, etc.) of a decommissioning plan, essentially a multiyear process. Hence, being overly conservative here would not be in the best interest of public health and safety if it results in an impediment to removing a long-term radiological hazard on a crowded college campus from the public domain, especially if the hazard increases as the building continues to age and deteriorate. However, the NRC must ensure that any work performed to support decommissioning plan review is necessary and done safely.

4) The scarification performed was part of characterization efforts aimed at obtaining additional information requested by the NRC for the decommissioning plan acceptance review (i.e. exploring extent of contamination below the surface). It was not being conducted as a widespread remediation activity. The key phrases include "procedures such as those listed in paragraph (g)(1) with potential health and safety impacts" from 10 CFR 30.36(g)(3), and "procedures could result in significantly greater airborne concentrations" and "procedures could result in significantly greater releases of radioactive material to the environment" than are present during operation' from 10 CFR 30.36(g)(1). These words are intentionally somewhat ambiguous and leave much to judgement. During discussions, the Region III Enforcement Officer and two Regional Counsels took the position that the activity was being conducted by an experienced contractor familiar with that work while properly monitoring for airborne contamination, the work did not reach the "significantly" threshold and was certainly of no greater risk than comparable cleanup and maintenance operations activities routinely performed under the University of Missouri material license or under the contractor's agreement

state license. While some portions of the licensee's work plan might be of a heightened safety risk, this particular application could reasonably be surmised as minimal to no additional risk, especially considering the contamination levels were very low. Further, 10 CFR 30.36(g)(1) provides an out for the licensee if the procedures that were used in this activity had been previously approved by the Commission. As the NRC recognizes agreement state licensee regulatory processes as equivalent to the NRC's, whether these procedures had been approved by an agreement state would be pertinent. The inspector declined to pursue that line of questioning, believing that is not pertinent to the subject regulations.

5) During the above discussions with the Region III Enforcement Officer and two Regional Counsels, the inspector was uncertain regarding the extent of scarification that was performed. Specifically, whether only in discrete spots necessary for an underlying sample at that location, or more widespread, more than necessary. During a subsequent inspection conducted the week of January 10, 2022, it became apparent that the contractor had in fact, performed scarification over a significant portion of some rooms. In my mind, whether the licensee performed scarification over a much wider area than necessary to obtain information needed for the decommissioning plan review, is key to how conservative we want to be in our judgements pertinent to these regulations. While scarification is a remediation activity, it can also be used as part of a characterization activity. If the licensee, took unnecessary risk as to get a head start on remediation, then enforcement might be prudent to send a strong message. Likewise, if the licensee performed scarification over a wider area as it was simpler when sampling multiple locations, when it could have just scarified those discrete locations thereby minimizing risk, then there likewise could be a message to be sent. However, to proceed forward on that premise, we would need to ask the licensee why their contractor had scarified that large an area in some rooms, why was it necessary to obtain the needed information. The inspector has declined to pursue that line of questioning, believing that is not pertinent to the subject regulations.

6) In making a final enforcement decision, we must think strategically regarding potential outcomes. This project has languished for years with the NRC pushing the licensee to move forward, and with several false half-hearted starts. Now the licensee finally seems determined to proceed in earnest. We need to be careful not to dampen that enthusiasm by throwing up unnecessary regulatory impediments that do not have a real safety nexus, especially where the regulatory basis is blurred (i.e. subject to judgement). While the activities in question do have potential safety implications if assumptions are taken to extreme (i.e. licensee does not take proper safety precautions or monitoring), the inspector has not identified any specific safety deficiencies in the licensee's associated procedures or actions themselves. We are at risk here of appearing arbitrary to the licensee regarding which characterization activities, and processes used for that, can and cannot be done prior to decommissioning plan approval. And how do they proceed if a prohibited activity is necessary to support obtaining information needed for decommissioning plan review. If we move forward on enforcement, we must be more clear on that aspect. Appearing arbitrary is especially pertinent considering this licensee is inexperienced in decommissioning and relying substantially on its contractor, one of the only three main ones in the US who routinely do this type work, and that contractor believing that they have done similar work routinely in the past without an approved decommissioning plan and with no objections from the regulatory body. Also note that we have already addressed this concern by implementing monthly calls with the Pickard

Hall licensee to ascertain and evaluate near term activities and can intervene if necessary.

Conclusion

Given the very low contamination levels, the procedural controls and precautions the contractor had in place, the expertise of this contractor, the absence of any specific safety nexus to how the work was performed, and the intent of the regulation to allow limited decommissioning activities to occur prior to decommission plan approval, these specific activities conducted by the licensee did not rise to the level of presenting potential health and safety impacts described in 10 CFR 30.36(g)(3). Specifically, there was no opportunity to reach the threshold of "significantly greater" attributes described in 10 CFR 30.36(g)(3) without hypothesizing unreasonable assumptions or failures. Further, licensees must have sufficient latitude to conduct reasonable, limited characterization activities sufficient to support decommissioning plan development, review, and approval. Being overly conservative in interpreting a regulation, that was purposely left not well defined, creates impediments to obtaining this information, certainly not commensurate with the minimal risk, and hence is not in the best interest of the public health and safety need here. Further, additional follow-up with the licensee would be necessary to ascertain that a violation did in fact occur, specifically whether the procedure had been previously approved by the agreement state.

Attachment to Section B Input from Bill Von Till, NMSS

Evaluation of Potential Violation Involving Chase Environmental Characterization Activities at Pickard Hall

This project is a Region III lead with my employee providing technical assistance from HQ/DUWP. I am supportive of staff's professional opinions and encourage them to speak out if they do not agree. For this case as it is a Region III lead, I have read the information in section A and B, however, I do not have enough awareness and history to make an informed opinion on the differing views. I do recommend that the use of the reciprocity process under 10 CFR 150.20 be reviewed closely in this case so that it does not circumvent the decommissioning planning rule.