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L. Bykowski

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July 14, 1999

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TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Protecting Texas by Reducing and Preventing Pollution

REGULATORY BRANCH  
US NRC

October 4, 1999

Rules and Directives Branch  
Office of Administration, DAS  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Re: Comments on Draft Regulatory Guide "DG-3014" (proposed Revision 1 to Regulatory Guide 3.66), "Standard Format and Content of Financial Assurance Mechanisms Required for Decommissioning Under 10 CFR Parts 30, 40, 70, and 72."

Dear Sir/Madam:

The Texas Natural Resource Conservation Commission (TNRCC) appreciates the opportunity to review and comment on the above captioned document. In general, our staff found the document to be comprehensive and thorough. However, please consider the following suggested comments to further enhance the utility of this document:

NOTE: In the following citations, the section and page numbers refer to those corresponding in the document.

**Title of DG-3014**

The title of the document: "Standard Format and Content of Financial Assurance Mechanisms Required for Decommissioning under 10 CFR Parts 30, 40, 70, and 72." (emphasis added)

Suggest replacing "Financial Assurance Mechanisms" with "Applications Containing Total Decommissioning Costs and Associated Financial Assurance Mechanisms". The reason for this request is that the document not only covers the funding mechanisms, but it also provides details for establishing total decommissioning costs.

**Financial Assurance Requirements**

**2.0 CERTIFICATIONS OF FINANCIAL ASSURANCE**

P.12, para 1, line 1: "A certification of financial assurance is a financial assurance demonstration that is based on one or more of the three amounts prescribed in the regulations -- \$75,000, \$150,000, and \$750,000." (emphasis added for clarity)

PDR REGGD

The use of the words "one or more of the three amounts" is confusing. It could mean one, or any combination of, the three dollar values stated...which does not seem to be the intent. Suggest replacing "one or more of the three amounts" with "one of the following three amounts".

### 3.0 DECOMMISSIONING FUNDING PLANS

P.18, para1, line 1: "A decommissioning funding plan (DFP) is a financial assurance demonstration that is based on a *site-specific cost estimate* for decommissioning the licensed facility." (underlined emphasis added)

Suggest changing "licensed facility" to "licensed facility or facility to be licensed for decommissioning". The reason behind this suggested change is that there are some buried waste facilities in Texas that are **unlicensed**, and which may apply for a license to decommission by January 1, 2000.

#### 3.1.2 Estimated Decommissioning Costs

P.21, para 1, line 1: "The cost estimate must account for the costs of all phases of the decommissioning process. The estimate should itemize each of the major decommissioning tasks or activities and should..."

This section omits specific mention of laboratory costs for performing radiological analysis. These laboratory costs would be incurred both during the preparation of documentation for funding costs for the regulatory agencies, and during the securing of confirmatory samples (soil, sedimentation, wipes, etc.) as part of the final radiation survey. Since these costs would be a significant component of the total estimated decommissioning cost, it would be prudent to identify them separately and distinctly, rather than lumping them under the category of "others."

Typically, the radiological samples taken from the field are always tested by an independent third party laboratory. Hence, besides the costs of collecting the samples, and providing for the supplies for the same, transportation costs from the site to the laboratories, and the actual laboratory costs for testing and analysis need to be identified. This comment applies both to the narrative part of the subsection, as well as the tables that follow.

## **Financial Assurance Mechanisms**

### **1.0 INTRODUCTION**

#### **1.4.2. Method 2: Surety, Insurance, or Guarantee**

P.9, para 1, line 3: "Insurance must be accompanied by a standby trust."

This paragraph proposes the addition of a standby trust mechanism to accompany the insurance mechanism. This is a new requirement. We understand that this requirement is being added to be consistent with the other financial assurance mechanisms. As an Agreement State, we do not consider a standby trust a necessity for an insurance demonstration. It is an additional cost to the regulated community in the form of an annual maintenance payment.

The TNRCC sees no benefit of the proposal either to a state or to the regulated community. Therefore, we view the proposed requirement as unacceptable. However, should the requirement be adopted, it is recommended that it be adopted in such a way that each state has the option of either including or excluding it as a financial assurance requirement.

### **13.0 PARENT COMPANY GUARANTEES**

#### **13.1 Qualifications of the Issuer**

P.93, para 1, line 6: "Parent Companies without an actual bond rating may still use the bond rating alternative of the financial test by securing a so-called "indicative" bond rating from either Standard & Poor's or Moody's. Indicative bond ratings, which are available for a fee, are for information only and are provided as an indication of what a rating would be if the firm were to issue debt." and

### **14.0 SELF-GUARANTEES**

#### **14.1 Qualifications of the Issuer**

P.108, para 3, line 1: "Licensee without an actual bond rating may still use the financial tests involving bond ratings by securing a so-called "indicative" bond rating from either Standard & Poor's or Moody's. Indicative bond ratings, which are available for a fee, are for information only and are provided as an indication of what a rating would be if the firm were to issue debt."

These two paragraphs propose to allow a new option for those entities, which do not have any issued bonds that are rated, to obtain an "indicative" bond rating from either Standard & Poor's or Moody's. We are not aware of any published documents stating that an extensive review of the use of "indicative" bond rating has been conducted, either by NRC or an outside consultant, to determine the acceptability of this rating. In the past, EPA worked with outside consultants who confirmed the acceptability of the

financial test. The financial test is a financial assurance option which allows an entity to use its audited annual report or bond rating to provide assurance that the company has the ability to pay for the cost of closure, post-closure, corrective action, or for custodial care, when required to do so. EPA's consultants have compared the financial test information for many different sized corporations with other data as a means of determining the probability of those corporations failing financially and leaving the holder at risk.

To better understand the proposed option, a thorough analysis should be performed of what an "indicative" bond rating by Standard & Poor's or Moody's entails, including a description of the financial protection the rating gives to either NRC or a state that accepts the "indicative" bond rating in lieu of a financial test or bond rating. As a recommendation, an analysis either by NRC or an outside consultant should be completed before the "indicative" bond rating is approved by NRC as an acceptable option for satisfying the financial test. At this time, the TNRCC does not support the use of the "indicative" bond rating without additional analysis. One issue that is of concern with the acceptance of the "indicative" bond rating is, "what or who is monitoring the financial condition of the entity using the "indicative" bond rating from the time the rating is completed until the analysis is again performed?" If no external review is taking place since the last review, then any entity accepting the "indicative" bond rating may be at risk for 12 months.

### **13.0 PARENT COMPANY GUARANTEE**

#### **13.3 Recommended Documentation**

P.96, para 5, line 7: "If the parent company does not have majority control of the licensee's voting stock, the licensee should provide details on the parent-subsidiary relationship to NRC for review."

This paragraph proposes that a parent company providing a guarantee on behalf of a licensee does not have to have "majority control" of the licensee. It is recommended that NRC continue to maintain its current definition for parent company. If the intention is to broaden the option of guaranteeing to other entities, then specify who can guarantee, i.e. a higher-tier parent.

The proposed statement, by allowing an exception to majority control, appears to allow for "substantial business relationship." As defined in EPA's rules at 40 CFR §264.141, "substantial business relationship" means the extent of business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. In NRC's current rules, it does not allow a substantial business relationship as a qualification to demonstrate financial assurance on behalf of the licensee.

Therefore, the TNRCC views the proposed statement to allow an exception to the majority control of the licensee's voting stock as unacceptable. It is recommended that "substantial business relationship" be disallowed because of the difficulty in administering it, and the focus be redirected to broadening the types of entities that can guarantee for a licensee through a higher-tier parent.

The following editorial oversight has also been observed:

**1. INTRODUCTION**  
**1.5 Recordkeeping**

P.11, line 1: "Reports that certifying completion of the activities for which financial assurance is provided must be submitted before the financial assurance mechanism may be canceled."  
(emphasis added)

Suggest replacing "certifying" with "certify".

Overall this Regulatory Guide provides a good, practical and detailed basis for fulfilling financial assurance requirements for decommissioning under the current NRC regulations, and corresponding TNRCC rules under 30 Texas Administrative Code Chapter 336.

If you have any questions, or would like to discuss the Financial Assurance Requirements portion of this document further, please contact Mr. Jim Shroff of my staff at 512/239-6074, or if by correspondence include Mail Code "MC 131" in the address printed on the letterhead; and for Financial Assurance Mechanisms portion of this document, please contact Mr. Sajeewa Chandrasoma at 512/239-6263, or using Mail Code "MC 184."

Sincerely,



Alice Hamilton Rogers, P.E., Manager  
Underground Injection Control and Radioactive Waste Section  
Waste Permits Division

AHR/JKS/jb

cc: Mr. Jim Shroff