



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
631 PARK AVENUE
KING OF PRUSSIA, PENNSYLVANIA 19406

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OFFICE OF SECURITY
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MEMORANDUM FOR: John G. Davis, Director, Office of Nuclear Material Safety and Safeguards

FROM: Thomas E. Murley, Regional Administrator, Region I

SUBJECT: PESSES COMPANY AND FINANCIAL RESPONSIBILITY FOR DECOMMISSIONING

Region I fully supports the proposed rulemaking requiring material licensees to be financially qualified for clean-up of accidental releases and for decommissioning; however, recent experience has shown that we need interim procedures before the rules' effectiveness and that the rules do not cover all of the situations requiring clean-up by financially troubled licensees.

Recently here in Region I we have had another example of a material licensee unwilling or unable, due to financial considerations, to clean-up a contaminated site. On December 6, 1984, an NRC inspector visited the Pesses Company in Pulaski, Pennsylvania, and found that the licensee had vacated the property, abandoned licensed material, and was in bankruptcy. The bank holding a mortgage on the property was controlling access to the property. Other recent examples where a licensee's financial situation has jeopardized cleanup activities include the J. C. Haynes Company, Safety Light, Inc., and International Nutronics.

In each case the staff has been without guidance relative to how to respond to a financially insolvent licensee. The purpose of this memorandum is to convey our belief that we need a "game plan" so as to be better prepared in responding to these situations in the future. Questions with which we in Region I have struggled in both the Pesses and International Nutronics cases include:

1. When faced with a licensee whose capabilities to finance a decommissioning effort are questionable, under what conditions should the NRC invoke Section 232 of the Atomic Energy Act and seek to use the injunctive powers of the federal courts to "freeze corporate funds, and possibly funds of the corporate principals, to assure that whatever money is available will be devoted to cleanup? Has this ever been done? If not, why not? Should we consider it in the future?
2. Recognizing that often time is of the essence in injunction proceedings, who are the appropriate points of contact in NMSS, OGC or ELD? What will be required from the initiating office? What are the procedures to follow?

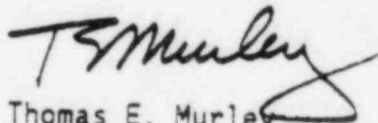
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3. Assuming bankruptcy proceedings have begun, should the NRC intervene in the bankruptcy proceeding seeking to have funds devoted to cleanup? What are the appropriate points of contact within NMSS, OGC and ELD? What will be required from the initiating office? What are the procedures to follow?
4. When faced with a contaminated site and an insolvent licensee, is Superfund money an option? If so, under what conditions? Who are the points of contact and how does an agency such as ours get a ruling on the availability of Superfund money? When is FUSRAP an appropriate avenue?
5. Are there ever circumstances when NRC will conduct or fund a cleanup? Are there options, such as action by the State government, which we have overlooked?

We recognize that answers to some of these questions may not be easy, but we also recognize that when a licensee is about to declare bankruptcy or abandon a site, our current enforcement tool of an administrative order may not have the persuasive force it has on an ongoing concern. Therefore, we feel answers to the above questions are needed so that a set of procedures can be written so that the NRC can adequately respond when next faced with a financially troubled licensee. Due to the issues involved, I feel this plan needs to be coordinated with the Regional Counsel, OGC and ELD. My staff contact on this issue is Jay M. Gutierrez.


Thomas E. Murley
Regional Administrator

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