

February 6, 1997

EA No. 97-062

Mr. James J. McGovern
President/Plant Manager
Cintichem, Inc.
P.O. Box 816
Tuxedo, New York 10987

Dear Mr. McGovern:

During a review of your radioactive materials license by U.S. Nuclear Regulatory Commission staff on November 19, 1996, NRC staff determined that Cintichem was in violation of Condition H of Radioactive Materials License SNM-639. Condition H of SNM-639 states "As outlined in the licensee's decommissioning plan, as supplemented, the licensee shall complete the decommissioning [of its Tuxedo, New York facility] by January 16, 1996. This deadline may be extended by the Commission if the licensee demonstrates good cause based on technical feasibility (including circumstances that arise which were not foreseeable or were beyond the control of the licensee) or risk reduction considerations." Contrary to Condition H, Cintichem failed to complete the decommissioning of the Tuxedo, New York facility by January 16, 1996, or request that this deadline be extended in accordance with Condition H of SNM-639.

NRC's General Statement of Policy and Procedures for NRC Enforcement Actions, NUREG-1600, April 1996, indicates that "A significant failure to meet decommissioning requirements, including a failure to notify the NRC as required by regulation or license condition, substantial failure to meet decommissioning standards, failure to conduct and/or complete decommissioning activities in accordance with regulation or license condition, or failure to meet required schedules without adequate justification" is a Severity Level III violation.

NRC staff typically requires that licensees include schedules for decommissioning projects in decommissioning plans, which are reviewed and approved as amendments to radioactive materials licenses, to ensure that licensees complete the decommissioning of their facilities in a timely manner. Cintichem has been actively decommissioning its Tuxedo, New York facility since the approval of the decommissioning plan in January 1992, and has demonstrated significant progress in completing the project (currently most remedial activities have been completed and final and/or confirmatory surveys are underway). Therefore, the staff does not believe that Cintichem has acted in a manner that is inconsistent with the goal of completing the decommissioning project in timely manner.

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In addition, although Cintichem failed to formally request that NRC amend Condition H of SNM-639 to reflect the date that the decommissioning would be completed, Cintichem has kept NRC staff informed of the status of the decommissioning project and has provided the NRC staff with updated estimates of the date that the decommissioning would be completed. Similarly, status updates were reported by telephone to NRC Region I staff as additional areas requiring remediation were identified and confirmatory surveys needed to be rescheduled. The most recent update occurred on November 12, 1996.

Finally, the failure to properly amend Condition H of SNM-639 to reflect the estimated date that decommissioning operations would be completed did not result in a real, or potential, increase in the risk to public health and safety, as Cintichem maintained an adequate health and safety program throughout the decommissioning project, as evidenced by the results of NRC inspections of the Cintichem facility.

Based on the factors outlined above, NRC staff has concluded that Cintichem's failure to complete the decommissioning of its Tuxedo, New York facility in accordance with Condition H of SNM-639 constitutes a Severity Level IV violation. Cintichem's failure to contact NRC staff and request that Condition H of SNM-639 be revised did not result in an increased risk to the public or workers. However, inadequate oversight of the terms and conditions of SNM-639 is indicated.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice (Enclosure 1) when preparing your response. For your consideration and convenience, an excerpt from NRC Information Notice 96-28 (Enclosure 2) "Suggested Guidance Relating to Development and Implementation of Corrective Action" is also enclosed. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

Because your response will be placed in the NRC Public Document Room (PDR), to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.790(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

Mr. James J. McGovern

3

If you have any questions concerning this matter, please contact Thomas F. Dragoun at (610)-337-5373.

Sincerely,

John R. White, Chief
Radiation Safety Branch
Division of Reactor Safety

Docket No. 70-687
License No. SNM-639

cc w/encl:

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Mr. James J. McGovern

4

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