

CINTICHEM, INC.

P.O. BOX 816

TUXEDO, NEW YORK 10987 (914) 351-2131

March 3, 1997

US Nuclear Regulatory Commission
Att: Document Control Desk
Washington, DC 20555
Gentlemen:

Subj.- Reply to a Notice of Violation(Docket 70-687,
SNM639), dated Feb. 6 1997

Ref.- (a) NRC Notice of Violation dated Feb. 6, 1997
(b) Cintichem letter, JJM/kfs, dated Feb. 20, 1997
(c) NRC letter, JW Hickey, dated Dec. 6, 1996
(d) Cintichem letter, JA/bjc, dated Nov. 21, 1996
(e) Cintichem letter, JJM/64.96, dated Nov. 14,
1996
(f) Cintichem letter, JA/bjc, dated Jul. 3, 1996
(g) Cintichem letter, JJMcG/bjc, dated Apr. 19,
1996
(h) Cintichem letter, JJMcG/bjc, dated Mar. 26,
1996(supplemented May 10, 1996)

The subject Notice of Violation (ref.(a)) was issued because Cintichem neither completed the decommissioning by the scheduled completion date stipulated in SNM639 license condition H nor requested an amendment to extend the schedule for completing the project.

Per the subject Notice we are required to respond; providing information as to the cause or, if contested, any basis for dispute(1), corrective measures addressing the immediate(2) and root(3) causes and a specified date when full compliance will be achieved(4).

Our response per this requirement follows:

1. The fact that decommissioning operations extended beyond the planned completion date stipulated in license condition H is acknowledged and our failure to apply for a new scheduled completion date is attributed to our failure to maintain a distinction between the scheduled date of completion in license

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condition H (Jan.'96) and the license termination or expiration date(Dec.'96). Our ultimate objective of the decommissioning project has always been the termination of the licenses. The predominant effort on this project since about Jan.'96 has been the performance of final surveys and remediation of areas requiring final cleanup as a result of the performance of these surveys. This has been a developmental and iterative process. Factual evidence of this effort is manifested in our final survey reports to the NRC listed as references (e) through (h) above. In addition to these survey reports we have made many status reports via telephone and in meetings with the NRC and other regulatory agencies over the past year. Our commitment to completing this project has been obvious. Our application for license amendment (Ref.(d)) to extend the termination date of the license beyond Dec. '96 is evidence of our attention to the administrative requirements and in this application, we expressed the inherent difficulty in predicting a time for completion of this final phase of the decommissioning. The NRC response to this application (Ref,(c)) approved the extension of the license for an indefinite period provided the termination of the decommissioning was actively pursued within the controls established in the Decommissioning Plan. Cintichem doesn't contest that literal (in the sense of formal) compliance with license condition H was not achieved; however, in view of the original reason for having a completion date stipulated in the license amendment that authorized the commencement of decommissioning, Cintichem has surely complied with the intent of this condition. We have been in the final-survey phase of the project since Jan. '96.

2. The immediate corrective action to amend license condition H was taken. Application to the NRC for license amendment reflecting the operational requirements of Cintichem and regulatory agencies during the final-survey phase of the project, was submitted on Feb. 20, 1997. (ref. b, copy enclosed).

3. Future occurrences will be avoided according to the final form of the revised license condition. We have requested that the project completion date be coincident with the license termination, which is dependant upon actions of the NRC as well as Cintichem. If a definite date for completion is required to remain in license condition H for this final-survey stage of the project, it will be recognized as a distinctive action point requiring, if necessary, another license amendment due to some delay in achieving license termination by the NRC.

4. Cintichem is currently in compliance with this license condition, awaiting approval of our latest application for amendment.

In summary, Cintichem acknowledges the cited non-compliance in that application was not made for a formal change to the scheduled completion date in license condition H, however we believe that, in

addition to the above mentioned considerations and those mentioned in the Notice as mitigating circumstances for the use of enforcement discretion, the following additional circumstances that are unique to the Cintichem decommissioning should be cause for application of broader enforcement discretion to reverse this notice of violation.

-Cintichem had the understanding from the beginning of the project that the completion date at issue, which was originally estimated and subsequently revised once by Cintichem since the initiation of this project, was established as a license condition in order to assure a diligent effort by the licensee to pursue the project to completion. Cintichem has done that and has been in the final-survey phase of the decommissioning for the past year or more.

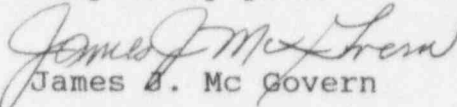
-A key aspect of the Cintichem decommissioning that is particularly related to its duration should also be taken into consideration as a strong mitigating circumstance. The acceptance criteria by which the end of the Cintichem decommissioning will be defined are based on a calculated annual dose limit of 10 mRem TEDE to a future resident farmer who will depend on the site for subsistence. This projected dose must be calculated without factoring in currently-existing municipal water supply systems and institutional controls on land use in the immediate area of the site. There is also no allowance for factoring in the probability that the future hypothetical resident will receive the calculated dose. Consequently, the acceptance criteria for this project are extremely conservative.

The dose limit in the currently proposed NRC regulations for decommissioning acceptance criteria is 15 mRem/yr and recent statements by the Commission on this proposed limit indicate that it may be set at 30 mRem/yr with allowances for institutional controls and for assessing probable risk of exposure to future occupants of decommissioned sites. If either of these recently proposed limits were adopted by the NRC and applied to the Cintichem project in lieu of the current license-specific criteria, significantly less final remediation and survey work would have been required and the project would have been finished much earlier. Based on our experience in the final phase of the decommissioning, if the 30 mRem limit were the basis for the acceptance criteria for the Cintichem decommissioning we can confidently state that the decommissioning would have been finished much earlier than Jan. '96.

-The Cintichem decommissioning project has been conducted diligently, effectively and safely since Jan. '92. It involved the expenditure of over 725 person-years of labor as one measure of the project scope. There have been no citations to date for non-compliance with license or regulatory requirements. We have taken some pride in this record and believe that this citation that essentially arises from a formality should not be cause to spoil it.

In view of all of the above considerations, we believe that more discretion should be allowed in this instance for not declaring this incident a violation or ,at least, reducing the matter to the class of a non-cited violation.

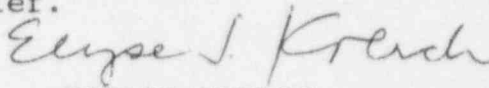
Very truly yours


James J. Mc Govern

March 3 , 1997

STATE OF NEW YORK
COUNTY OF ORANGE

Before me, a Notary Public for the County of Orange, personally appeared James J. Mc Govern who, being duly sworn, stated that he is President of Cintichem, Inc., that he has read the forgoing "Reply to a Notice of Violation", and that the information and statements contained therein are true and correct to the best of his knowledge and belief.


NOTARY PUBLIC

CC
NYS-DOL, R. Aldrich
ORISE, E. Abelquist
USNRC-Region I, T. Dragoun
USNRC-NRR, T. Michaels
USNRC-NMSS, D. Orlando
NYSDEC, B. Youngberg
Robinson, Silverman, Pearce, Ahronson And Berman, C. Warren
Tuxedo Town, K. Magar

ELYSE J. KOLICH
Notary Public, State of New York
No. 5003808
County Of Orange
Commission Expires 11-2-98

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CINTICHEM, INC.

P.O. BOX 816

TUXEHO, NEW YORK 10987 (914) 351-2131

February 20, 1997

Mr. Dominick Orlando
U.S. Nuclear Regulatory Commission
Office of Nuclear Material Safety and Safeguards
Division of Waste and Decommissioning Projects Branch
1 White Flint North
11555 Rockville Pike
Rockville, MD 20852

Dear Mr. Orlando,

Reference: (a) Docket 70-687, License SNM639, Amendment #7
Dated January 18, 1995

(b) USNRC letter (J.W. Hickey) dated December 6,
1996

The duration of the Cintichem decommissioning project has extended beyond the scheduled completion date that is specified in the last amendment to Condition H of the license (Ref. (a)).

It has been necessary to extend the project schedule for completion because:

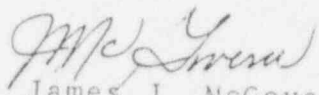
- additional work scope was discovered in the performance of final surveys in areas of the site that were not part of the original decommissioning plan and,
- the very low levels that were established for the acceptance criteria for surface contamination has required an iterative process of alternating survey work with final remediation work in order to establish confidence that the criteria have been satisfied. Consequently, the duration of the final surveys had to be extended beyond what was anticipated in the last revision to license Condition H.

Currently, all remediation and survey work is scheduled to be finished by April 30, 1997. It is not known for certain when the confirmation survey report will be issued by ORISE, NRC's contractor, and subsequently, when the license will be terminated by the NRC. Your letter of December 6, 1996 (Ref. (b)) concerning the extension of the SNM 639 license expiration date, allowed an indefinite termination date provided decommissioning efforts were actively pursued. In view of the developmental nature of the final work described above and the fact that the final decision about declaring the project completion will be made by the NRC, we believe that this rationale is very appropriate for this stage of the project and that Condition H of the license should be amended to be less definite.

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However, if there is still a requirement to specify a definite date by which the decommissioning will be completed, we recommend that an ample contingency period be provided to allow for the developmental nature of the final survey process and for the need to obtain NRC's concurrence through the confirmation survey process before the decommissioning project can be completed. In this event, we propose that December 31, 1997 be the new termination date specified in license Condition H.

Very Truly Yours,


James J. McGovern
President

JJM/kfs

CC:

USNRC/Region I/Mr. T. Dragoun
ORISE/Mr. E. Abelquist
NYDOL/Ms. R. Aldrich
NYDEC/Ms. B. Youngberg
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USNRC/NMSS/Mr. D. Orlando
Mr. C. Warren
Town of Tuxedo/Mr. K. Magar