

**WASTE MANAGEMENT**

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March 26, 2001

Mr. Robert Nelson
United States Nuclear Regulatory Commission
Chief, Facilities Decommissioning Section
Division of Waste Management
Mail Stop T-7F27
Washington, D.C. 20555-0001

Subject: **Minutes of Meeting Between Waste Management and the NRC,
February 23, 2001
Hartley & Hartley Site (SUC 1565)
Kawkawlin, Michigan**

Dear Mr. Nelson:

On February 23, 2001, Waste Management (SCA Services, Inc.) and the Nuclear Regulatory Commission met to discuss the timing of the submission of a decommissioning plan (DP) for the above-referenced site. Attached are draft meeting minutes from that meeting and a copy of the amended DP acceptance review checklist. To the best of our recollection and note taking, these minutes are accurate, but we would be happy to correct them with any comments or changes you might have. Please review these minutes and identify any incorrect statements or misinterpretations so that we may have an agreed upon set of meeting minutes.

As you will note from the minutes, the NRC has requested a letter from Waste Management that would include the following points: (1) a short history from Waste Management regarding the 1998 meeting at which Waste Management and the NRC discussed the interplay of the timeliness rule and the need for a DP; (2) a description of the Michigan Superfund process; (3) a delineation of how certain milestones in the Michigan Superfund process would dovetail with the NRC decommissioning plan process; (4) where the Hartley Site is currently in the Michigan remedial process; (5) why Waste Management needs more time before submitting its DP; and (6) when Waste Management proposes to submit its DP.

This letter will be forthcoming. Waste Management is assembling the necessary documentation on the 1998 meeting, the follow up correspondence and materials on the Michigan Superfund process. Waste Management is also carefully considering its request in terms of when it will propose to submit its DP.

Enclosure

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In the meantime, please review the Minutes, comment on them or send an approval letter as to their contents. Waste Management expects to have its letter to the NRC covering the above 6 points by April 6, 2001.

Respectfully,

A handwritten signature in black ink, appearing to read "J. Forney". The signature is written in a cursive style with a long horizontal stroke at the end.

Jim Forney
Director, Closed Sites

JF/sc
Attachment

Cc: N.Nalluswami, NRC
P. Mazor, LM
K. Moerti, Q&B



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March 16, 2001

To: Participants in the February 23, 2001 Meeting Between Waste Management and the Nuclear Regulatory Commission
Jim Forney (WM)
Phill Mazor (WM)
Bob Nelson (NRC)
Ed Kulzer (NRC- Reg. 3)
Sam Nalluswami (NRC)
Jean Claude Dehmel (NRC)
Dave Peterson (Duke Eng.)
Matt Blevins (NRC)
Brian Smith (NRC)
Mark Thaggard (NRC)
Dr. Corey McDaniel (Dow Consultant)
Eric Pogue (NRC)
Robert Johnson (NRC)

From: Katie A. Moertl, Esq.

Re: **SCA Hartley & Hartley Landfill Located in Bay City, Michigan, Draft Minutes of Meeting** *Pre-Decommissioning Plan Planning*

The following is a summary of my notes from the meeting held between the Nuclear Regulatory Commission (NRC) and Waste Management (WM) on Friday, February 23, 2001, regarding the Hartley & Hartley Landfill. The list of meeting attendees is attached. The meeting was requested by Sam Nalluswami, the NRC ^{Project} ~~staff~~ member assigned to the Hartley site. After introductions, Sam stated that this was a ^{Manager} ~~public~~ meeting and that a consultant working for Dow Chemical was present to observe.

Robert Nelson Presentation:

Robert Nelson gave an overview of what the NRC process would be for approval of the decommissioning plan (DP) for the Hartley & Hartley site. The Acceptance Review Procedure for the application would take approximately three months. After acceptance of the DP, the NRC would issue a Public Notice of an Opportunity for a Hearing in the Federal Register regarding the application. Usually, a public notice

offers a 30-60 day period prior to the hearing to give the public adequate time to prepare for it.

Mr. Nelson then discussed issues related to whether or not the site would be decommissioned on a "restricted" or "unrestricted" basis. The choice between these two alternatives would determine the activities for the second step of the review. As part of the overall process, the NRC would look at all of WM's non-radioactive environmental impacts as well as the radiation impacts. The NRC would also review all site remediation activities whether conducted under the State of Michigan (State) or the NRC's requirements.

There was a long discussion on unrestricted release which actually would not apply to the WM Hartley site. In brief, the review for unrestricted release consists of

- Tech Review
- Safety Evaluation
- Environmental Assessment
- Finding of No Significant Impact
- Amend License

Mr. Nelson then provided a description of the restricted release process. Under this approach, the NRC would conduct a two-phased review. The first phase would be concerned with institutional controls and the financial assurance mechanism. Phase I would consume approximately nine months. Typical questions that would arise are as follows:

1. Is the proposed plan a feasible concept (i.e., has the third party already agreed to take control of the site at license termination or before); and
2. Have adequate funds been set aside to meet the regulatory requirements for the institutional controls plan?

During this initial phase, there would probably be one request for additional information (RAI). The agency might question certain portions or all of the proposed institutional controls and financial mechanism. If the NRC has a "positive finding" on this phase, the parties move on to the second phase. This does not constitute approval of the plan but merely a statement that the regulations have been met. If the NRC issues a negative finding, the applicant must revise its proposal accordingly and resubmit it.

Phase II consists of the technical review. This begins with a Safety Evaluation Report (SER). Concurrent with preparation of the SER, the NRC usually issues a Notice of Intent to Prepare an Environmental Impact Statement (EIS) under NEPA. Initial EIS activities typically include a public meeting to facilitate comments on the scope of the EIS. After a public meeting and after the NRC has reviewed any comments pursuant to the notice or meeting, the agency proceeds with a scoping of what will be included in the EIS. The agency proceeds to finish its review of the materials relevant to its EIS, and then publishes a Draft EIS (DEIS), again inviting public comments. After evaluating all comments received, the agency issues a Final EIS. The final part of Phase II is the issuance of a Record of Decision (ROD) for the site.

The time between the beginning and end of Phase II review is usually three years. At the same time that the EIS is being scoped and performed, the NRC is developing the Safety Evaluation Report (SER). Mr. Nelson stressed that the agency tries to coordinate the tracks of these two efforts. Approximately halfway through the EIS and SER, there is usually one RAI so that the parties involved can stay on the same page regarding the methods and the informational data bank used to develop the EIS and SER. This first RAI under Phase II usually occurs around the time of scoping and before the Draft EIS is issued. It is common to have a second RAI after the DEIS has been published and public comments on it have been received.

Questions/Answers:

Upon completion of Mr. Nelson's presentation, questions and answers were put forth by both NRC and WM personnel.

Dave Peterson of Duke Engineering asked about the dose evaluations. Dave stated that, as a result of Duke's previous evaluations of the groundwater and soil pathways, it would be appropriate to use RESRAD Version 6, instead of D&D, to conduct the dose evaluation for the DP. He was seeking to confirm that point with the NRC. Dave also discussed Duke's preliminary conclusion that, based on earlier site-specific assessments of the groundwater pathway, virtually no radiological impact on groundwater would be expected, even if relatively conservative parameters were applied.

Mark Thaggard from the NRC had a series of comments regarding Dave's questions and comments, as follows:

1. The NRC doesn't usually accept the argument that a landfill cap will be in place or in good repair indefinitely. However, he did caveat his discussion here about the cap by stating that he was not familiar with the Hartley site. ~~Because~~ The NRC is

concerned with ^{an assumption that the} ~~both cap failure and restriction failure~~ ^{will not} it will evaluate the site regarding such possibilities. The NRC pressed for physical measures to be taken to maintain the cap in the event that site restrictions failed.

2. The NRC is concerned about the site's status 100 years hence, and pays particular attention to potential scenarios wherein someone builds a house on the landfill or even sinks a well.

3. From the NRC's perspective, the scenario described in Item 2 above may take place even with strict land use restrictions in place, ^{assuming the restrictions fail at some point.}

4. Because of this possibility, it is difficult to successfully argue that the cap will never be disturbed over a 1000-year period. Mr. Thaggard said that such arguments are regarded as tenuous unless specific physical measures can be taken to preserve a cap's integrity.

5. Mr. Thaggard commented that a proposal to have the state or DOE take over the site doesn't necessarily help. Regardless of the institutional control mechanism, dose analysis must take into account the full doses that could potentially occur if the restrictions were to fail at some point. He stated that, in order to take credit for a cap in the dose analysis, ^{or appropriate size} physical limitations needed to be in place. Mr. Thaggard suggested, as examples, that a ~~ten foot thick cap or a solid stone rip rap layer~~ on top of the cap would be very persuasive.

At this point Dave raised another issue regarding the groundwater pathway. Specifically, he stated that the previous dose analyses using conservatively low, default soil-water partition coefficients (K_d) from NUREG/CR-5512 had indicated that doses from groundwater ingestion would be extremely low. Moreover, his earlier studies had shown that using K_d values more reflective of site-specific conditions (i.e., much higher K_d s representative of fine-grained soils) resulted in computed doses of zero. ^{without Th-230 at this time.} Accordingly, he was asking whether the adoption of the conservatively low soil-water partition coefficients suggested as default values in NUREG/CR-5512 ^{parameter values} would be acceptable to the NRC. Mark responded that the default standards may only apply to some but not all sites. That is, the NRC doesn't necessarily accept default physical parameters in D&D, which are based on NUREG/CR-5512.

Robert Nelson said that if WM believes the default K_d values in D&D are orders of magnitude below what applies to the Hartley site, ^{groundwater pathway} it should demonstrate so to the NRC within the DP. Mr. Thaggard seconded this statement by Mr. Nelson and added that the NRC might accept an such an argument; however, the NRC still requires that an analysis of the groundwater pathway be included in the dose evaluation.

Dave Peterson then asked if WM needed to do a probabilistic dose analysis, and Mark said that a ~~deterministic~~ ^{probabilistic} analysis would suffice. *is not a requirement.*

Dave then asked the agency to describe the difference between the 100 millirem per year (mrem/yr) and 500 (mrem/yr) standards that can be applied under the restricted release option. Mr. Nelson explained that, in order to qualify for the 500 mrem/yr requirement in lieu of 100 mrem/yr, the applicant would have to demonstrate "durable" institutional controls. The examples he gave of durable controls were as follows:

1. Some form of governmental (DOE or State) oversight rather than a non-governmental third party taking over the site;
2. Sufficient financial resources for five-year site rechecks by either WM or a third party; such checks would evaluate the efficacy of institutional controls (i.e., the adequacy of funds to conduct cap inspection and/or repairs over the period of institutional controls);
3. A few extra analyses would have to be made to technically demonstrate that ~~doses at the site would not fall into the 100 mrem/yr range.~~

There were other examples Mr. Nelson didn't want to go into at the meeting. He stated that within the NUREG-1727 guidance, the standard review plan (Chapter 16) and a related appendix (Appendix I) would explain all of this in detail. Mr. Nelson stated that it should not be difficult to show that the Hartley site will meet the 100 mrem/yr criterion under restricted release. WM should examine its intrusion scenarios and ask the question, "would a five-foot cap erode over a thousand years?" Dave reiterated the question, "then, the NRC favors durable controls?" Mr. Nelson responded affirmatively.

Issues with Restricted Releases:

Mr. Nelson continued and stated that, in practice, no one has obtained a restricted release permit. He said that some companies have proposed it, but all have backed off of their proposals. The examples he gave of entities falling within this category include the following:

1. Sequoyah Fuels in Connelly, Oklahoma - no Site Specific Advisory Board (SSAB).
2. MolyCorp. in Washington, Pennsylvania - an SSAB was proposed (Unocal is the parent corporation of MolyCorp).

further reductions in residual radioactivity necessary to comply with the 100 mrem/yr limit are not technically achievable, would be prohibitively expensive, or would result in net public or environmental impacts.

3. Fansteel Corporation (state not given).

He stated that the original proposed plans for restricted release by the first two companies were in the NRC docket.

I questioned why no corporations had gone to restricted release. The NRC responded that in each case the issues were significant and there was local opposition, either from the relevant state or from congressional representatives. The companies may have "sensed" that the NRC didn't "like" the institutional controls they were proposing. In the case of MolyCorp, the company tried to get Pennsylvania to take over the site and the State declined. Mr. Nelson stated that Unocal set up MolyCorp as a subsidiary of Unocal to take over the liabilities as an independent third party. He believed Unocal sensed that the NRC did not believe that MolyCorp would fit its criteria as to whether it was truly an independent third party.

Mr. Nelson stated that Fansteel applied for restricted release but subsequently withdrew the application. He believed they withdrew it for issues that were unrelated to those described above for MolyCorp and Sequoyah Fuels, and the company is currently reconsidering entering its application.

At this point, Dave asked a question about restricted release and use of a Site Specific Advisory Board (SSAB). Mr. Nelson responded that the adequacy of institutional controls and the financial assurance mechanism may not require the formation of an SSAB. WM, as part of its decommissioning of the Hartley site, will need to prove that it requested public participation and comments. Though the NUREG-1727 guidance generally recommends using an SSAB, WM may opt to involve the public using alternative measures such as sending letters to the concerned public and/or holding public meetings.

Around this time of the meeting some of the personnel needed to leave. Sam Nalluswami then raised the issue of a compliance management system (CMS) being put in place by WM to avoid another NOV. Jim Forney explained the WM CMS to the NRC. He noted that the CMS was put in place to prevent such an occurrence from happening again. The NRC staff member representing its compliance section acknowledged WM's CMS as being appropriate to prevent a recurring NOV for missed deadlines. Sam concurred and stated that the NOV had been resolved aside from establishing a new due date for the DP.

Questions Regarding Coordination Between CERCLA and NRC Site Work:

I asked for the agency to explain how it would coordinate its EIS with WM's work on CERCLA-type requirements under State of Michigan laws. My concerns were that (1) work performed by WM should not be duplicated and (2) that the NRC be apprised of all remedial work at the Hartley site so that it could consider that work when performing the EIS.

Mr. Nelson responded as follows: In Phase I of the review process, the NRC would initiate contacts with the State for its input on the Phase I review. Again, recall that Phase I would comprise an evaluation of the proposed institutional controls and financial assurance mechanism. For Phase II, the NRC would heavily involve the State in the scoping process, relying to a great extent on what the State had already approved regarding remedial measures for the site. All of these issues would be resolved with the State so that everyone was on the same page before the NRC went forward with issuing of any of its reviews.

Timing:

Jim Forney asked when the DP should be submitted and the decommissioning work performed. He reviewed, on behalf of NRC personnel present at this meeting, what had occurred in a meeting with the agency on July 1998. He explained that everyone left that meeting with the impression that the NRC remained undecided about the schedule of the DP. He related that the NRC felt it most likely that the DP would not be submitted until active site remediation was concluded, construction of the cap had been completed, and the operation and maintenance of the leachate treatment system had ceased. Mr. Forney stated that, at most Superfund sites, remediation occurs over a twenty-to-thirty-year period, from the time the treatment system is turned on until it is turned off.

In light of that July 1998 meeting, WM chose to move forward with its negotiations with the State and keep the NRC apprised of settlement negotiations. Mr. Forney also explained that the NRC had suggested WM request an extension based on its estimate of the time it would need to conclude its negotiations with the State and be ready to scope the DP. When WM did send in a letter requesting an extension of its license, Jack Parrot of the NRC told them that, per the regulations, he was only able to grant a one-year extension. Hence, WM has been submitting requests for license extension on one-year intervals since 1998.

Mr. Forney reiterated his question as to when the decommissioning plan should be submitted. Mr. Nelson replied that, ideally, he would like the NRC to have the DP by

October 1, 2001. However, in light of the explanations given, he couldn't specifically answer the question of "when." Before answering, the NRC would need to hold a meeting with the State of Michigan on that very issue.

Mr. Nelson stated that, while the RI for the Hartley site was underway, the risk assessment included with it would comprise a very similar study to the Draft EIS. However, the agency would not want the remedial activities at the site to precede the NRC activities, particularly if a Remedial ROD was issued by the State; such an occurrence might limit the NRC's options as to what must be done at the site to protect the public from the radiation. He posed the rhetorical question of, "What if the NRC comes to a different answer than the State on the remedial alternative needed?" He stated that such a result would call into question the validity of the ROD.

Dave noted that, if WM submitted a DP that did not agree with the FS, it would result in wasted money for the company, which is also a matter for concern. Dave reworded this issue to specifically ask, "Do you prepare an FS simultaneously with the DP?" Mr. Nelson responded that yes, practically, they should be prepared at the same time.

Phil Mazor interjected that this was a very confusing discussion in that the site will have active remediation and leachate treatment in operation as the DP is carried out. He suggested that WM would need a license amendment to do this type of work instead of a DP because, at this point, WM is only licensed to "possess" nuclear material. The second part of the question was "If we are getting license amendments to do remedial work, how can we close the license with a DP, and when would the DP be submitted so as not to conflict with active remediation?"

Mr. Nelson agreed that a license amendment would be needed before implementing any type of remediation. As an example, he stated that a pump-and-treat system would require a license amendment prior to activation of the system. He requested that when WM puts such information into an amendment request, it speaks in general and broad terms. Doing so would avoid the need to constantly amend the license if alternative forms of remediation are eventually applied at the site. Mr. Nelson then reiterated that he couldn't specifically answer "when" to prepare the DP without first meeting with the State of Michigan.

Ed Kulzer noted that the NRC was not receiving the results of leachate and groundwater sampling. Mr. Forney responded that the field work for the RI was complete and that he would be happy to send all such data to the NRC. Mr. Nelson then asked, "Would the NRC be receiving both radiation sampling results and hazardous sampling results?" Mr. Mazor said that he did not believe WM had any

radiation sampling results beyond those collected for the initial site characterization, but WM would be happy to provide all of the RI and raw data that it had.

Suggested Action

After a long discussion, it was decided that WM would send a letter to NRC outlining, in some detail (1) the CERCLA process as administered by the State, (2) the schedule WM must adhere to with the State, (3) the activities WM must conduct under CERCLA, and (4) WM's concerns regarding the coordination between the two programs, federal (NRC) and state (CERCLA). The meeting minutes presented in this memo would be submitted. The letter would also request a license extension beyond the previously-designated deadline of October 1, 2001, and formally request an answer on timing for submittal of the DP.

Mr. Nelson further stated that, if WM believes the Feasibility Study (FS) being prepared for the site will require a delay in preparing the DP, it should clearly state so in the letter. The NRC's main concern is that it would not want to amend the license twice. Accordingly, NRC specifically requested that WM carefully consider how much time it would need for all of its remedial activities so that they dovetail with NRC requirements. The NRC reiterated its need for complete expositions on (1) the CERCLA process within Michigan and (2) how this process might be synchronized with the needs of the NRC. Additionally, in accordance with 10 CFR 40.42, WM should be very clear about why it needs more time and propose a specific date for submitting its decommissioning plan. The letter that WM submits should be identified as an amendment to its previous request for license extension in a letter dated November 3, 2000.

Mr. Nelson stated that the aforementioned letter should also contain a description of the July 1998 meeting between WM and the NRC, and how a follow-up letter from WM to NRC included the company's understanding of events that had occurred during the meeting. Mr. Nelson stated that, contrary to the beliefs of some NRC personnel, the agency is not constrained to one-year license extensions. He referred 10 CFR 40.42(g), ~~which apparently says that alternative schedules are at the discretion of the NRC.~~ It was agreed that the NRC would hold onto WM's current extension request until the new letter is submitted. In addition, Sam Nalluswami would follow up by approving our NOV corrective measures and closing the NOV. All parties agreed with this process.

The one final caveat to the request for a time extension on the DP was that WM would likely have to revisit with the NRC all of the subissues discussed in this February 23rd meeting.

Jim Forney noted that, since WM has a request on file for a license renewal, it would need a formal communication from the NRC stating that there is no need for a license renewal to move forward with remediation at the Hartley site. Mr. Nalluswami agreed that the NRC would send this type of response to WM. It was also suggested that the request for this formal communication be made in the letter going to the NRC.

At this point, Phil Mazor produced a site map and several pertinent issues regarding the site's status were discussed. It was mentioned that the East Landfill does not contain any radioactive waste and that the Northwest Landfill contains both radioactive and chemical wastes. WM personnel informed the NRC that both landfills have complete slurry walls surrounding them, and the slurry walls are keyed into basal clays. Additionally, each of these sites has an existing cap.

Dave Peterson then discussed a radiological survey of the Northwest Landfill that was conducted by Oak Ridge Associated Universities (ORAU) at the behest of the NRC in 1985. The following approximate statistical measures of combined surface soil and subsurface soil concentrations from the ORAU study were mentioned:

Uranium 238 - maximum concentration = 22 picocuries per gram (pCi.g),
mean concentration = 2.5 pCi/g.

Thorium 232 - maximum concentration = 440 pCi/g,
mean concentration = 18 pCi/g.

Thorium ²~~232~~ - mean concentration = 18 pCi/g

Radium 226 - mean concentration = 0.6 pCi/g.

Dave Peterson noted that Jack Parrot of the NRC had previously approved the results of the ORAU study ^{may be} as being appropriate for dose analysis under the Site Decommissioning Management Plan (SDMP), which is the program that the Hartley site previously fell under. Dave stated that the report is part of the public record, and provided an additional copy to Sam Nalluswami. Mr. Nelson thanked Dave and said that they would talk to Jack Parrot about the report. Mr. Nelson also requested that WM state our intent in the letter discussed above to rely upon the ORAU study for conducting dose evaluations in the DP. *with suitable assumptions, indicated*

A short break was taken, after which it was decided that it would be helpful to go through the decommissioning Acceptance Review Checklist, a copy of which was given to each of the meeting attendees by Mr. Nalluswami. This checklist comprises Appendix A of NUREG-1727. The remaining meeting participants then began to

compare WM's perceptions as to what checklist items are applicable to the Hartley site with NRC's perceptions.

I have marked up the Acceptance Review Checklist in accordance with the decisions and clarifications given during the meeting. The following miscellaneous issues came up during our discussion of items under the checklist.

1. Dose modeling for restricted release and Thorium 230: Ed stated that it is likely that Thorium 230 also exists at the Hartley site. Since the waste material at the site and at a neighboring site operated by the State originated at the Wellman Bronze Company, it is the same material that is present at the Dow Bay City and Dow Midland plants. The NRC has noted the presence of Thorium 230 at the latter two sites; thus it is likely that this isotope also occurs at the Hartley site and must be taken into account in the DP. Dave noted that Duke Engineering did not model this nuclide because, to his knowledge, no concentration data for Thorium 230 had been collected from the site.

Jean-Claude supported the contention that, if Thorium 230 is present, WM will have to model doses from it. Jean-Claude was also concerned about any external doses that might occur at the site when carrying out remedial activities, such as changing filters on the leachate pump-and-treat system. WM responded that, when it submits the DP, the treatment system may only exist in conceptual design form. Jean-Claude stated that a conceptual understanding of the treatment system would suffice for inclusion in the DP.

(as opposed to a final design) but with sufficient technical information to evaluate its intended purpose, operation, and associated radiological concerns.

2. ALARA:- Dave asked whether or not WM could use the ALARA analysis to estimate total decommissioning costs in describing the financial assurance part of the DP. Jean-Claude and Sam both responded that we could use it to support the description of financial assurance.

3. Decommissioning schedules: Pages A11 and A12 of the Acceptance Review Checklist indicate that charts showing the proposed decommissioning schedule will be required in the DP. The NRC requested that such charts show how site decommissioning will be tied in with remedial activities under the State's purview. They suggested using GANTT, PERT, or PRIMAVERA charts. The NRC requested that major milestones and interdependent activities be listed in these charts and that the NRC be informed as to when activities overseen by the State were taking place so that the two regulatory agencies could remain on the same page. The NRC requested this chart include an assumed start date even if it is tentative, and that the chart clearly identify which activities were State-driven versus those that are NRC-driven.

*Under an amended
license*

4. Notification: The NRC requested that it be notified when WM moves the small amount of radioactive material not currently located in the landfill to place it under the cap now covering the Northwest Landfill. WM agreed to give such notice.

5. Final Status Survey Design: In meeting the requirements under this DP component, as stated on page A21 of the checklist, Dave suggested that Duke Engineering/WM prepare a very detailed survey plan now rather than waiting until the DP has been approved. The NRC agreed that this was a very good idea and it would likely require another meeting between WM and the agency prior to the DP submittal in order to finalize the details of the survey design.

6. Notice of Violation: Mr. Nalluswami noted that he would be sending WM a letter closing out the NOV. He also stated that he could close out the NOV without having

*The Nov was closed with a letter from The
NRC to Phil Magor on March 6, 2001.*