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GOVERNOR

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
ALBANY, NEW YORK 12233-1010

ERIN M. CR
COMMISSIONER

MAY 14 2001

Dr. Richard A. Meserve
Chairman
United States Nuclear Regulatory Commission
Washington, DC 20555

Dear Dr. Meserve:

I would like to take this opportunity to thank you for coming to New York State, and for your personal attention to decommissioning of the Western New York Nuclear Service Center (West Valley). The purpose of this letter is to provide you with New York State Department of Environmental Conservation's (the Department) thoughts on several important issues regarding the regulation and decommissioning of this facility. Department staff plan to discuss these issues during your meeting with them at the site on May 15, 2001.

Multiple Threats to the Environment

As the regulatory agency responsible for protection of the environment of the State of New York, we are concerned about all potential threats to its air, lands and waters. Our radiological regulatory authority over the federally regulated portion of the Western New York Nuclear Service Center, is limited. Our authority does include threats or potential threats regulated under the Clean Air Act, Clean Water Act, and Resource Conservation and Recovery Act (RCRA). It also includes radiological threats from the State-Licensed Disposal Area (SDA) regulated under our agreement with the United States Nuclear Regulatory Commission (NRC).

In light of the significant level of the potential environmental threats at West Valley, we wanted to take this opportunity to express the need for our two agencies to work cooperatively to ensure that our decisions about closure and decommissioning issues take all of the various regulatory needs into consideration. Given our agencies' joint history of cooperation and open and timely communication, we believe that as long as everyone keeps this need in mind we can accommodate all of our needs for protection of the environment of the State of New York.

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Demonstration Project vs. Licensed Facilities/Activities

The State has a significant concern that any closure criteria that NRC sets for the West Valley Demonstration Project be the same as that which it will apply to the NRC licensed facilities when the license comes back into effect.

Mutually Agreeable Closure Criteria

Both of our agencies have a radiological regulatory mandate to ensure an acceptable end-state for the facilities under our authority, in this case the Demonstration Project/NRC licensed facilities and the SDA. Under normal circumstances this would result in each of us applying our closure criteria to our own regulated facilities. However, given the close physical proximity of the various facilities at West Valley, there is a potential for additive doses to the public.

Therefore, we submit that our agencies should jointly consider this issue. We should evaluate the advisability of a single criteria for all of West Valley. As part of such an evaluation we would need to determine a regulatory mechanism by which we could apply a mutually agreeable single criteria to the entire site.

NRC vs. EPA Criteria

We have a real concern that our respective closure criteria (or mutually agreeable single criteria) are applied in a manner that ensures United States Environmental Protection Agency (EPA) would not be in a position where they are compelled to apply their closure criteria to the site at some point in the future. To ensure this will be the case we recommend that both of our agencies continue the dialog previously established with the EPA Region 2 radiation program. If this is not done, the State could conceivably be put in the position of having to comply with further mandates from the EPA after completion of the Demonstration Project/license closure activities.

Regulatory Status of Non-Project/Non-SDA Property

When the NRC license was put into abeyance, no distinction was made between what became the 200-acre Demonstration Project area and the balance of the 3,300 acres of West Valley. Currently, the United States Department of Energy (DOE) is responsible for the 200-acre Demonstration Project, and the Department is responsible for the 16-acre SDA. This leaves the radiological regulatory status of the rest of the site in question. We have posed this question to the NRC in the past and have not received a definitive answer. The regulatory status of this large portion of West Valley is something that we believe needs to be resolved.

DEC/NRC Cooperative Agreement

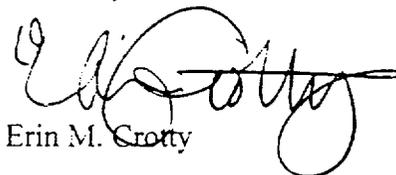
We were disappointed with the NRC response to the proposal for creation of a Cooperative Agreement between our agencies. The initial concept for this Agreement was to use it as a mechanism to deal with several critical issues regarding the cleanup of West Valley. We proceeded based upon the initial feedback from NRC staff that this was an acceptable mechanism for dealing with specific issues.

The original plan was for technical staff to exchange drafts until satisfied with the results and then submit it to our respective administrations for review and approval. The only non-technical review completed on the initial draft was a cursory legal check to ensure we had not made any significant errors. However, the NRC determined that drafts still needed a thorough review by senior radiological and legal staff. As a result the original valuable purpose of the agreement was significantly compromised. The latest draft from NRC staff basically only offered us access to publicly available documents and notification of public meetings.

Following our letter of April 10, 2001 to Mr. Larry Camper, we were informed that NRC staff is willing to explore other mechanisms to address issues of concern.

Thank you for providing the opportunity for us to discuss these issues with you in person. We look forward to working cooperatively with the NRC to reach a satisfactory conclusion to the process of decommissioning the West Valley site.

Sincerely,

A handwritten signature in black ink, appearing to read "Erin M. Crotty", with a large, stylized flourish extending from the end of the signature.

Erin M. Crotty