



STATE OF CONNECTICUT

DEPARTMENT OF ENVIRONMENTAL PROTECTION



February 8, 2002

Docket No.: NRC-0000/0201-1600

Mr. Larry W. Camper, Chief
Decommissioning Branch
Division of Waste Management
Office of Nuclear Material Safety and Safeguards
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dear Mr. Camper:

Thank you for the opportunity extended to the Connecticut Department of Environmental Protection (Department) to express its concerns about the Combustion Engineering (CE) proposal related to its Windsor, Connecticut site. As you are aware, radioactive contamination remains at the site. Currently, CE is responsible for decommissioning activities associated with its U.S. Nuclear Regulatory Commission (NRC) license and the U.S. Army Corps of Engineering (ACE) is responsible for cleanup of federally owned waste under the Formerly Utilized Sites Remedial Action Program (FUSRAP).

The CE proposal requests the NRC pre-empt State of Connecticut jurisdiction to allow cleanup of the entire site under the sole jurisdiction of the NRC. This would, in CE's view, eliminate "overlapping involvement of myriad state and federal regulators" allowing the process to be streamlined by reducing the number of oversight agencies, speeding up the cleanup process, and saving a projected \$750,000.

The Department has no objection in principle to reducing costs, promoting efficiency in regulatory compliance, or reducing the overlap of regulatory requirements. However, this should not to be done with an "agreement" between a facility and the agency of its choice. The Department has a vested interest in protecting its citizens. The Department has the expertise necessary to monitor compliance with its regulatory requirements and protect the citizens of Connecticut from all hazards under its jurisdiction. With regard specifically to reducing overlapping regulatory compliance, any decisions in this area must actively be worked out between the regulatory agencies involved. Compliance with regulatory requirements from different jurisdiction cannot be subject to a facility's desire to pick an agency's regulations. Reducing overlapping regulatory compliance is not an area that should or can be determined between the NRC and one of its licensees.

The Department is also concerned with the legal jurisdiction of NRC's actions. In LeBoeuf, Lamb, Greene & MacRae's (CE's Counsel) letter to NRC Region I Administrator Miller on October 16, 2001, CE proposes that "NRC assert regulatory jurisdiction over the cleanup of the Site under section 161 of the AEA." Section 161 of the Atomic Energy Act does not give the NRC blanket authority to exercise jurisdiction without justification. A desire for a licensee to

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save time, save money, and reduce regulatory oversight is not the criteria of section 161. The NRC has demonstrated confidence in the ACE's ability through its MOU with the ACE to safely perform cleanup activities that protect health and minimize the danger to life and property at FUSRAP sites. The physical characteristics and location of radioactive contamination associated with the FUSRAP cleanup at the CE site in Windsor has not changed since this site received FUSRAP designation in 1994 and the NRC has not previously indicated a need to assert regulatory authority. Since the potential threat to health and danger to life and property has remained unchanged for almost eight years, there is no justification for the NRC to assert jurisdiction at this time. However, if the NRC now determines that it is necessary to exercise its authority under section 161 of the AEA, the Department requests the NRC provide justification to the Department for both its decision and why the NRC failed to protect the health and minimize the danger to life and property of Connecticut's citizens for the past eight years.

CE's proposal also states that "the licensing exemption in AEA section 110 and 10 CFR section 70.11 does not apply to the Site" for special nuclear material (SNM). The Department requests the NRC provide to the Department its justification for its failure to properly license the FUSRAP materials at the CE site in Windsor for over eight years if it determines that the SNM must be licensed at this time.

Another concern of the Department is the ability of the NRC to enforce federal law regarding low-level radioactive waste disposal. The Low-Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPA) clearly separates responsibilities. It gives the federal government responsibility for the disposal of low-level radioactive waste (LLRW) generated by the Department of Energy and the State of Connecticut the responsibility for the disposal of LLRW generated by CE's NRC licensed activities. The NRC does not have statutory authority to preempt State of Connecticut jurisdiction under the LLRWPA. In addition, the LLRWPA requires that these waste streams remain separate for disposal purposes. The NRC does not have a regulatory program in place nor the sole jurisdictional authority to enforce this separation requirement for the low-level radioactive waste generated at the CE Windsor site. The Department has several areas of concern with the concept that NRC has sole jurisdiction including the following issues. How will NRC enforce the General Statutes of Connecticut? What regulations will be used to enforce LLRWPA requirements? How will the NRC monitor compliance with LLRWPA activities? How will the NRC ensure that these two waste streams are kept separate? How aggressive will the NRC be in monitoring and enforcing compliance with LLRWPA? If there is a violation of LLRWPA, what remedy does the State of Connecticut have through the NRC regulatory program? It is the Department's position that the State of Connecticut has sole jurisdictional authority authorizing disposal of LLRW in LLRWPA Compact-designated disposal facilities in non-emergency situations. The Department also believes that compliance with LLRWPA is naturally ensured with ACE performing FUSRAP cleanup and CE performing NRC license decommissioning at the CE site in Windsor, CT.

As stated earlier, the Department has no objection in principle to reducing costs, promoting efficiency in regulatory compliance, or reducing the overlap of regulatory requirements. But

there is nothing inherent in having multiple regulatory agencies involved that causes delays and cost increases if all parties cooperate up front. Compliance with state and federal regulations is successfully accomplished by industry in Connecticut everyday in a cost effective and efficient manner. The State of Connecticut believes that addressing multiple jurisdictional requirements early in the process is more effective than CE's proposal. Under CE's proposal, the State of Connecticut will perform its regulatory oversight after the NRC terminates CE's license. The CE proposal will only cause increases in cost, time, and regulatory confusion.

Again, thank you for the opportunity to express the Department's concerns about the CE proposal related to its Windsor, Connecticut site.

Sincerely,

A handwritten signature in cursive script that reads "Edward L. Wilds, Jr.".

Edward L. Wilds, Jr., Ph.D.
Director, Division of Radiation

cc: Deputy Commissioner Jane K Stahl, CT DEP