



UNITED STATES  
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

May 4, 2005

Mr. Robert E. Owen, Chief  
Bureau of Radiation Protection  
Ohio Department of Health  
P.O. Box 118  
Columbus, OH 43216-0118

Dear Mr. Owen:

This is in response to your February 16, 2005, letter in which you expressed concern regarding the continued onsite storage of transuranic (TRU) decommissioning wastes at Battelle's West Jefferson site. The temporary staging of the TRU waste was necessary to enable Battelle to continue decommissioning activities, at its West Jefferson site, specifically, decontamination of its JN-1 hot cell, given the Department of Energy (DOE) does not have a final disposal facility available and DOE's plans to move the TRU waste for temporary storage to a DOE location (Hanford) met with legal opposition.

You also expressed concern that DOE had not made significant progress in removing the TRU wastes to enable Battelle to meet its December 31, 2005 decommissioning completion date, as specified in Battelle's license. We share your concern regarding a defined success path to remove the TRU waste from the West Jefferson site such that the December 31<sup>st</sup> decommissioning date will be met. On March 30, 2005, NRC Region III senior management and staff met with Battelle and DOE representatives to discuss the status of decommissioning activities at the West Jefferson site, including DOE's plans for removing the TRU waste from the site. The NRC clearly communicated its expectation to both the licensee and DOE that decommissioning activities be completed and all wastes removed from the West Jefferson site by December 31, 2005, as required by Battelle's NRC license. Members of your staff observed the meetings with DOE and Battelle representatives, and the NRC met separately with you and your staff following those meetings to discuss your concerns.

Regarding regulatory jurisdiction at the Battelle site, the temporary storage of the TRU waste is part of the NRC-approved decommissioning activity at the West Jefferson site and is authorized by the current NRC license. As stated in our December 24, 2003 letter to the Ohio Department of Health, the Battelle West Jefferson site will remain an NRC-licensed site until the site has met all decommissioning requirements, and the NRC has issued an amendment terminating Battelle's NRC license. This position is consistent with the NRC's May 26, 1986 interpretive letter to all Agreement States (Enclosed).

We will continue to emphasize the on-going cooperation between our respective organizations and, as indicated above, we share your concern regarding Battelle's/DOE's progress toward removal of the TRU waste. We expect Battelle to complete its decommissioning project in accordance with the conditions of its NRC-approved decommissioning plan, and we are committed to continuing to engage DOE at the higher levels of management to ensure this endpoint is achieved. The Region III staff will continue to coordinate their inspections and other meetings relating to the Battelle West Jefferson site with your staff.

R. E. Owen

2

May 4, 2005

If you have any questions on the policy issues discussed, please contact me at 301-415-3340, Dennis Sollenberger at 301-415-2819, or Marc Dapas in the Region III office at 630-829-9800.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul H. Lohaus". The signature is fluid and cursive, with a large initial "P" and "L".

Paul H. Lohaus, Director  
Office of State and Tribal Program

Enclosure:  
As stated

cc: Marc Dapas, Region III

MAY 30 1986

Ref: SA/KNS

ALL AGREEMENT STATES

NRC VS. AGREEMENT STATE JURISDICTION OVER WASTE DISPOSAL RELATED TO  
DECOMMISSIONING - INTERPRETATIVE LETTER 86-01

Recently, there have been questions regarding the jurisdiction for decommissioning of NRC-licensed reactors and 10 CFR Part 70 fuel cycle facilities. NRC's current policy is that NRC will retain sole regulatory authority for shutdown NRC-licensed reactor and Part 70 fuel cycle facilities until the completion of decontamination and termination of the license after such decommissioning. Possible decommissioning options, such as SAFSTOR, ENTOMB or DECON are described in the NRC's proposed decommissioning rule which was published in the Federal Register (50 FR 5600) on February 11, 1985.

Agreement State licensing authority is precluded by the Atomic Energy Act and NRC regulations for all operating nuclear reactors and for all Part 70 fuel cycle facilities with quantities of special nuclear material exceeding the amounts specified in 10 CFR Part 150.11. Consideration may, however, be given to the transfer of licensing authority to an Agreement State for an operating Part 70 fuel cycle facility, if: 1) the facility is to continue to operate as a nuclear facility, 2) the quantities of special nuclear material have been reduced to less than 10 CFR Part 150.11 limits, and 3) the Agreement State involved is prepared to issue a State license.

If you have any questions on this matter please let me know.

Original signed by:  
D. Hussbaumer

Donald A. Hussbaumer  
Assistant Director for  
State Agreements Program  
Office of State Programs

R. E. Owen

2

May 4, 2005

If you have any questions on the policy issues discussed, please contact me at 301-415-3340, Dennis Sollenberger at 301-415-2819, or Marc Dapas in the Region III office at 630-829-9800.

Sincerely,

/RA/

Paul H. Lohaus, Director  
Office of State and Tribal Program

Enclosure:  
As stated

cc: Marc Dapas, Region III

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|--------|-------------------|--------------|-----------|-------------------------|----------|
| NAME   | DMSollenberger:kk | MRS Shaffer  | DK Rathun | MLDapas<br>(via E-Mail) | PHLohaus |
| DATE   | 5/4/05*           | 5/4/05       | 5/4/05    | 5/3/05*                 | 5/4/05   |

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