

EDO Principal Correspondence Control

FROM: DUE: 08/29/05

EDO CONTROL: G20050556  
DOC DT: 08/05/05  
FINAL REPLY:

Patricia A. Bloomgren  
Minnesota Department of Health

TO:

Virgilio, DEDMRS

FOR SIGNATURE OF :

\*\* GRN \*\*

CRC NO:

Virgilio, DEDMRS

DESC:

ROUTING:

Minnesota Public Utility Commission Order for  
Spent Fuel Storage at Prairie Island

Reyes  
Virgilio  
Kane  
Silber  
Dean  
Burns  
Cyr, OGC  
Bell, OIG  
Miller, OEDO

DATE: 08/08/05

ASSIGNED TO:

CONTACT:

STP

Lohaus

SPECIAL INSTRUCTIONS OR REMARKS:

Note: Request for scheduled telephone call.  
OEDO POC: Chris Miller, 415-1726.

Template: EDO-001

E-RIDS: EDO-01



*Protecting, maintaining and improving the health of all Minnesotans*

August 5, 2005

Martin J. Virgilio, Deputy Executive Director  
Materials, Research, State & Compliance Programs  
Office of the Executive Director for Operations  
U.S. Nuclear Regulatory Commission  
11555 Rockville Pike OWFN- 16 E 15  
Rockville, MD 20852-2738

Dear Mr. Virgilio:

Thank you for your letter of June 16, 2005. Your letter primarily addresses federal preemption issues although it specifically only mentions the establishment of an exposure standard in the Minnesota Public Utility Commission (PUC) order for spent fuel storage at the Prairie Island nuclear facility. In a conference call with Mr. Paul Lohaus and numerous staff on Monday, August 1, I inquired about what other statutory language is considered a problem in acting on our application. Mr. Lohaus gave an articulate definition of two additional issues you are considering: the discrepancy between the definition of high-level radioactive waste by the NRC and the State; and language regarding reracking spent fuel storage in spent fuel pool. I am dismayed that these are issues that your staff have been assigned to research rather than consult with my staff and our attorneys who might give you the context within which this statutory language must be taken. A letter was sent to Mr. Lohaus on May 25 explaining the various statutes that NRC staff were working on at the time but we never heard from any of your staff regarding this.

I am also very concerned about the immense gaps in communication regarding this application. As you may know we received the NRC completeness review, dated September 9, 2004, and took care of the 12 comments and editorial suggestions in our response that was sent in mid-November. George Johns, Linda Bruemmer, and I had a conference call with Mr. Lohaus and members of his office on December 9, 2004, to discuss the problems encountered in the review of our application. We learned that the issue dealt with past state actions regarding the Prairie Island ISFSI and the proposal for on-site storage at the Monticello Nuclear Power Plant. At that time, Mr. Lohaus stated that he thought the issue would be addressed and resolved by the end of January and he said he would get us a response in writing by the end of January. Your letter of June 16 was the next correspondence we received.

EDO --G20050556

## LETTER TO MR. MARTIN J. VIRGILIO

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In the meantime, we worked closely with the Minnesota Environmental Quality Board and the Public Utilities Commission to insure that their analysis of the Monticello request indicated that radiation emission standards for the proposed dry cask storage site at Monticello were under the jurisdiction of the federal government. We were successful in getting the appropriate language in the state Environmental Impact Statement and the Public Utility Commission staff has indicated their acceptance of federal jurisdiction in this matter. I believe we have succeeded in taking care of the confusion that existed because of the lack of a statement from the NRC in 1991 relating to the Prairie Island emission discussion.

In an attempt to try to track NRC progress, Linda Bruemmer called Jim Lynch on March 15th to see if there was an NRC meeting she might attend to hear the discussion of the Negative Consent Paper in front of the Commission. Because we had heard nothing of substance since December, we assumed that these issues had been resolved. She was told that the Commission would not meet publicly as a group to discuss the staff paper.

The last update we received regarding our application was when Mr. Lohaus called Ms. Bruemmer on April 13<sup>th</sup> to tell her that they were still working on the issue of the different approaches used in review: the "combined approach," evaluating the application in the context of other activities that the State has or has the potential to carry out, and the "separate approach," considering the application only in the context of a freestanding document were explained. While we recognize that NRC is the final authority in making the decision of which method to use, it should come as no surprise that we have consistently recommended that the NRC utilize the "separate approach." As of today, I do not know if this has been resolved or not.

Ms. Bruemmer requested a copy of the Commission Paper and was told that it was pre-decisional and would not normally be available to the applicant. Mr. Lohaus offered to get permission to send out the paper since it was an unusual request and Ms. Bruemmer declined the offer, not wanting to hold up the process with a special request. He did commit to try to get us something in writing by the end of April.

The summary of the April 13th conversation was that the projected date of September 6, 2005, would not be met. You have now added four months to the anticipated agreement date "assuming routine scheduling timeframes." I must point out to you that it appears that nothing concerning this application has been handled routinely. The end result is that, based on your timelines in SA-700, even if you would decide to publish the notice of the Minnesota application process today in the Federal Register, your routine scheduling timeframe allows 21 weeks which will be the week of January 1st.

## LETTER TO MR. MARTIN J. VIRGILIO

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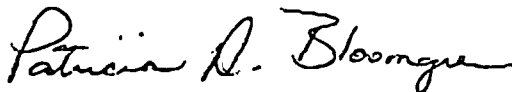
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One of the things that has been very troubling throughout the last year has been the way the NRC internally handles the application review. When we have inquired as to why the process is taking so long, we were told that there were "issues". We were also told that they had to do with pre-decisional internal processes and, as such, they couldn't be discussed with us. I question the efficacy of a process that specifically excludes people in the State that might be able to resolve your "issues" with expediency. This approach has to increase your costs for the Office of State and Tribal Programs. Processes established in previous decades need a review in light of the fact that the world has changed and the relationship between NRC and its state partners must be collaborative rather than paternalistic.

The other policy issue that I find troubling – or maybe just plain odd – is the NRC policy of letting regulated utilities enforce federal preemption. We have been told that it has been the NRC policy not to notify an offending state of federal preemption regarding radiation emission standards but to assume that the regulated utility would sue that state if they set a more restrictive standard. I can assure you that no one ever talked to me about federal preemption as we were advising the Public Utility Commission when they were finalizing their Order for Prairie Island in the early 1990's. I think this issue will be difficult for both of us if the NRC decides to analyze our application using the "combined approach".

There are a few other issues I would like to discuss with you but would prefer to do so via a telephone conversation. I will call your office to schedule the call as soon as possible.

Sincerely,



Patricia A. Bloomgren, Director  
Environmental Health Division  
P.O. Box 64975  
St. Paul, Minnesota 55164-0975

cc: Paul Lohaus  
Steve Reynolds, Region III

POB/pc