



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

February 15, 2002

David J. Allard, CHP, Director
Bureau of Radiation Protection
Pennsylvania Department of Environmental Protection
Rachel Carson State Office Building
P.O. Box 8469
Harrisburg, PA 17105-8469

Dear Mr. Allard:

This letter is in response to your letter dated July 6, 2001, and subsequent discussions between yourself and members of the Nuclear Regulatory Commission (NRC) staff. We previously responded, in a letter to Mr. David Hess on October 29, 2001, to some of the issues that were raised in your letter and the discussions.

We now have completed our consideration of the other issues. These issues regard certain licensed and unlicensed sites, contaminated by radioactive material, and the transfer of regulatory responsibility over them.

In your letter, you suggested that the proposed Agreement with Pennsylvania be structured so that NRC would retain authority over three sites. These sites are known as Cabot-Reading, Whittaker, and Safety Light. NRC would retain authority until decommissioning plans were approved for each site. This, in essence, seeks a limited Agreement from the NRC, based on the reasoning that ". . . transfer of the sites that do not have approved decommissioning plans will most likely result in unnecessary delays in decommissioning plan development and additional expense for the licensees." We do not believe the Agreement would result in unnecessary delays or additional expense. We believe that if we continue to work cooperatively on these sites we can affect an orderly transition in authority at the time the Agreement becomes effective. Further, it is our view that such a limited Agreement would be contrary to Section 274(b) of the Atomic Energy Act and NRC policy.

Section 274(b) provides for "discontinuance of the regulatory authority of the Commission . . . with respect to any one or more of the following materials," (emphasis added). The materials include byproduct, source, and special nuclear materials (SNM) in quantities not sufficient to form a critical mass. The wording of Section 274(b) allows NRC to relinquish regulatory authority to the States only over categories of nuclear material. It does not provide for retention of NRC authority over an individual license while relinquishing authority over all other licensees in the same category. This is consistent with the stated purpose of Section 274, which is promotion of "an orderly pattern between the Commission and the State governments with respect to the development and use and regulation of byproduct, source, and special nuclear materials."

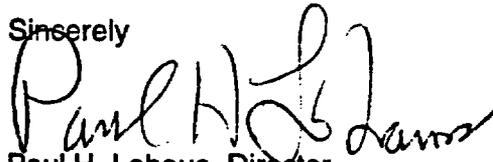
Under NRC policy, proposals for limited 274(b) Agreements must identify discrete categories of material or classes of licensed activity that (1) can be reserved to NRC authority without undue confusion to the regulated community or burden to NRC resources, and (2) can be applied

logically and consistently to existing and future licensees over time. This policy ensures that Agreements do not provide piecemeal authority over licensees, creating a confusing and duplicative system of regulation. The categorical approach to relinquishment of NRC regulatory authority mandated by the text of Section 274(b) provides for an orderly division of regulatory authority between the Commission and the State, consistent with the purposes of Section 274.

Applying this policy to your proposal, we note that the proposal does not identify discrete categories of material or classes of licensed activity to be excluded from the Agreement. Rather, it singles out three specific licensees for retention under NRC regulatory authority without regard to their activities or the materials used at the site. This effort to split regulatory authority is not only contrary to the categorical language of Section 274(b), it also has the potential to create a regulatory pattern in which similar licensees carrying on the exact same activities might nevertheless be subject to different rules. For these reasons, NRC is not prepared to accept the proposal to exclude Pennsylvania's assumption of authority over the Cabot-Reading, Whittaker, and Safety Light licenses when the Agreement takes effect.

Enclosed is a tabular listing of decommissioning sites in Pennsylvania. As shown in the table, authority for two of the sites may not transfer under the Agreement for the reasons shown. If you have any questions about this letter or the enclosure, please call me at (301) 415-3340, or Mr. Blanton at (301) 415-2322.

Sincerely



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

Enclosure:
As stated

TRANSFER OF PENNSYLVANIA DECOMMISSIONING SITES*

(sites highlighted will not be transferred)

Site Name:	Transfer?	Basis for transfer decision:
<i>SDMP Sites</i>		
1. Babcock & Wilcox-Parks	YES	SNM License, but < Part 150.11 amounts
2. Babcock & Wilcox-SLDA	NO	Site may contain SNM in excess of Part 150.11 amounts
3. Cabot Corp-Reading	YES	Part 40 and non-Federal licensee
4. MolyCorp, Inc. - Washington	YES	Part 40 and non-Federal licensee
5. MolyCorp, Inc. - York	YES	Part 40 and non-Federal licensee
6. Permagrain Products	YES	Part 30 and non-Federal licensee
7. Safety Light	YES	Part 30 and non-Federal licensee
8. Westinghouse Electric-Waltz Mill	YES	Current license authorizes SNM in amounts exceeding Part 150.11. However, as there is currently less SNM at the site than the Part 150.11 limit, a license amendment could reduce the authorized amount below Part 150.11 levels.
9. Whittaker Corp	YES	Part 40 and non-Federal licensee
<i>Other Complex (per SECY-01-0156)</i>		
10. KVVCA	NO	Non-licensed but SNM believed to be in excess of Part 150.11 amounts
<i>Contaminated Formerly Licensed Sites (Non-Licensed)</i>		
11. Superior Steel	YES	Non-Federal responsible party & no SNM material
12. Westinghouse - Blairsville	YES	Yes because PM believes <350 grams of enriched U present. However, remediation should be complete prior to PA agreement
13. Frankford Arsenal	YES	May require further legal analysis...however, as the site is not Federal property, it appears it could not be excluded from the agreement as "exclusive Federal jurisdiction property"
<i>Other PA sites with NRC oversight role</i>		
14. Royersford	YES	No SNM...NRC is only monitoring activities at this site and anticipates that State will takeover all of these activities after Agreement is in place

*Assumes Licenses are not terminated prior to Pennsylvania Agreement

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/RA/

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

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Distribution:

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JGreeves, IMNS
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JLieberman, OGC
CMullins, OGC

DCD (SP05) PDR (YES)
Pennsylvania File

Response to Incoming Document: ML011940005

***See previous concurrence.**

***DOCUMENT NAME: G:\RLB\D Allard re proposed Agreement excluding 3 sites.wpd**

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OFFICE	STP	STP:DD	NMSS:DWM	OGC	STP
NAME	RLBlanton:gd:kk	JPiccone	LCamper <i>by email</i>	STreby	PHLohaus
DATE	2/07/02*	2/07/02*	2/11/02	2/11/02*	2/15/02

From: Larry Camper
To: Josephine Piccone
Date: 02/14/2002 5:03:49 PM
Subject: Re: ACTION/CONCURRENCE: Allard ltr on NRC retaining sites

I concur.

>>> Josephine Piccone 02/14/02 04:05PM >>>

Larry,

This is the letter you reviewed last week with a couple of sentences added to the 3rd para re. working cooperatively with the State.....so we have added you on concurrence (we have OGC concurrence)

Please give me a call (2792) thanks

David J. Allard

- 2 -

duplicative system of regulation. The categorical approach to relinquishment of NRC regulatory authority mandated by the text of Section 274(b) provides for an orderly division of regulatory authority between the Commission and the State, consistent with the purposes of Section 274.

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DATE	2/7/02		2/7/02	2/1/02	2/ /02		

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Down/Carper



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July 6, 2001

Bureau of Radiation Protection

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Fax: 717-783-8965

Mr. Paul H. Lohaus
Director
Office of State and Tribal Programs
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

01 JUL 12 PM 3:29
OSP

Dear Mr. Lohaus: *Paul,*

The Pennsylvania Department of Environmental Protection (DEP) Bureau of Radiation Protection (BRP) is in the process of preparing a response to the comments that were identified in your 1999 letters regarding the draft application for an Agreement under Section 274 of the Atomic Energy Act (Agreement). In order to expedite the overall process and to facilitate meeting DEP's goal of submitting the finalized Agreement State Application to your office by January, 2002 I would like to propose a meeting between our respective programs to discuss outstanding issues sometime in the month of August here in our Harrisburg office. If this is acceptable to you, we will propose potential dates and a draft agenda for your consideration.

One major issue I would like to discuss at this meeting is the process for oversight of complex decommissioning actions, in particular those actions pending for the NRC Site Decommissioning Management Plan (SDMP) sites in Pennsylvania. It is understood, that with the exception of the Parks Township Shallow Land Disposal Area, the SDMP sites will transfer to Pennsylvania when the Agreement becomes effective. Staff from the BRP Decommissioning Section have been working closely with the NRC on these sites for nearly two years and it is apparent that the NRC and the licensees involved have invested considerable time and resources to develop and, in many cases, implement decommissioning plans for remediation of these sites. The NRC has developed staff and contractors who are intimately familiar with these sites and the status of pending decommissioning activities. I believe that transfer of the sites that do not have approved decommissioning plans (e.g. Cabot-Reading, Whittaker, Safety Light) will most likely result in unnecessary delays in decommissioning plan development and additional expense for the licensees. I would propose that the Agreement be structured such that the NRC maintains authority for those sites that do not yet have an approved Decommissioning Plan until such time as the Decommissioning Plan is approved. The BRP Decommissioning Section would continue to support the NRC's process until the Decommissioning Plan is approved and the site transferred by abiding by the terms and conditions of the Memorandum of

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Understanding (Effective 7/15/96), which provides the basis for cooperation to facilitate the safe and timely decommissioning of SDMP and other decommissioning sites in Pennsylvania. I believe this approach will allow for a more efficient transfer and make it easier for the NRC, DEP and the licensees to plan their respective workloads over the next two to three years.

Please contact me at your earliest convenience as to whether a meeting in August is acceptable to you. I look forward to working with you and your staff toward the successful completion of our Agreement State application.

Sincerely,



David J. Allard, CHP
Director
Bureau of Radiation Protection

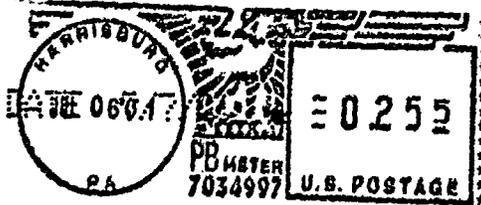
cc: R. Maiers
R. Urciuolo



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DIRECTOR
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