



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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SEP 01 2009

Mr. Bryan C. Bower, Director
West Valley Demonstration Project
U.S. Department of Energy
10282 Rock Springs Road
West Valley, NY 14171-9799

Dear Mr. Bower:

The purpose of this letter is to provide further EPA programmatic guidance to the U.S. Department of Energy (DOE), taking into account events that have occurred between October 2008, when EPA, as a member of the Core Team, signed off on the release of the revised draft environmental impact statement (RDEIS) for Decommissioning and/or Long-Term Stewardship at the West Valley Demonstration Project (WVDP) and Western New York Nuclear Service Center (WNYNSC) (CEQ #20080489), and the present. This guidance concerns decisions that would be made as part of Phase 2 if the Preferred Alternative were to be chosen.

EPA concurred with the Preferred Alternative contained in the RDEIS and was a cooperating agency in the development of the RDEIS which was prepared through the use of a DOE Core Team approach. Phase 1 proposes disposing off-site over six million cubic feet of radioactive waste in 8 years and concurrently allowing a period of no more than 30 years to investigate additional geologic studies, seek advancements in waste management, and make a Phase 2 decision. Making a Phase 2 decision in a shorter period is consistent with the Preferred Alternative as described in the RDEIS but disparate treatment of the State licensed disposal area (SDA) and the NRC licensed disposal area (NDA) either from an ultimate timing perspective or an end state perspective is not. The final concurrence meeting for the RDEIS occurred in October 2008.

Subsequently, during Core Team meetings held on August 19 and 20, 2009, the New York State Energy Research and Development Authority (NYSERDA) requested that the Phase 1 portion of the Preferred Alternative be shortened from thirty years to ten. Further, NYSERDA announced that it did not plan to decide on the ultimate fate of the SDA at the WNYNSC during the 10-year period it proposes for Phase 1, but instead would maintain it as a licensed, closed, low-level radioactive waste burial site indefinitely. In addition, NYSERDA indicated that it would not find the same arrangement acceptable for the NDA, which is immediately adjacent to the SDA and which is, in part, a Federal responsibility under the West Valley Demonstration Project Act (WVDPA).

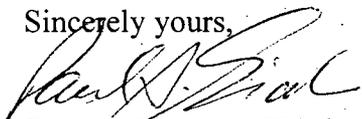
Because the viability of Yucca Mountain as a high-level radioactive waste repository has been called into question, the disposition for the 275 high-level radioactive waste canisters off-site is uncertain and is likely to remain so for the foreseeable future. The availability of off-site waste disposal capacity for other wastes at the WNYNSC site is also uncertain. This means that both the high-level waste canisters currently located at the West Valley site and other wastes at the SDA and the NDA would require long-term care.

It is the position of the EPA that certain radioactive wastes located at the site require a level of protection equivalent to that which would have been provided at a designated storage or disposal site for spent nuclear fuel and high-level waste. As such, we recommend that 40 CFR 191 now be considered as the equivalent of an Applicable or Relevant and Appropriate Requirement (ARAR) for the WNYNSC site and that the FEIS contain a discussion of this standard. For wastes remaining on the site for periods longer than 10,000 years, the only precedent is the standard mandated by Congress through the Energy Policy Act of 1992. These are 40 CFR 197 and apply only to the proposed Yucca Mountain Repository. Any planning for Phase 2 of the Preferred Alternative needs to address this issue.

Without disposal capacity for the 275 high-level waste canisters, as well as certain other wastes, the site-wide cleanup of the West Valley storage site is not possible. EPA believes that changing the time frame for decision-making on the course of action to be pursued in Phase 2 of the Preferred Alternative from 30 years to 10 years is ill-advised since disposal capacity for these wastes is not likely to be available in so short a time. Further, whatever time frame is chosen for decision-making on Phase 2 and whatever outcome is chosen for the wastes in the SDA must be consistent for the NDA.

If you have any questions, please feel free to call me at (212)-637-4010.

Sincerely yours,



Paul A. Giardina, Chief
Radiation and Indoor Air Branch

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