

May 2, 2014

The Honorable Robert P. Casey, Jr.
United States Senate
Washington, DC 20510

Dear Senator Casey:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter of March 13, 2014, in which you expressed concerns regarding the remediation of the Shallow Land Disposal Area (SLDA) in Armstrong County, Pennsylvania. You indicated that your concerns were precipitated by the information contained in a March 6, 2014, report from the NRC's Office of the Inspector General (OIG). That report was prepared in response to a June 27, 2012, letter from you to the OIG requesting an investigation of the NRC's oversight of remediation activities at SLDA.

On March 27, 2014, NRC staff briefed your staff on the status of remediation activities at SLDA. I appreciate your office's willingness to give our staff that opportunity. In addition to responding to the concerns raised in your letter, I also would like to address several additional points raised during the March 27th briefing.

In your letter, you indicated that the safety of your constituents is of paramount importance and that various issues raised by the OIG report underscore the need for a coordinated effort to remove material from the site. The NRC shares this common goal of safety, and all of the actions we undertake with respect to SLDA are with that goal in mind.

The remediation of SLDA will be a coordinated effort among the U.S. Army Corps of Engineers (USACE), the NRC, and the U.S. Department of Energy's Office of Environmental Management and National Nuclear Security Administration. To facilitate that coordination, a Site-Specific Memorandum of Understanding (SMOU) among these Federal partners has been agreed to and is presently being circulated for signature. The SMOU specifies the roles and responsibilities of the Federal partners to facilitate that coordination. To further amplify the coordination occurring between USACE and the NRC, we shared with your staff some of the activities in which NRC have been engaged, including: (1) participating in public meetings; (2) contributing to USACE's Project Delivery Team; (3) providing input into USACE's lessons-learned exercises; and (4) sharing of NRC technical resources and expertise.

Several concerns were raised in your letter with respect to the lack of historic records, indirect evidence of non-compliance, the prolonged process of the remediation effort, and the retroactive application of the NRC's decommissioning requirements. Based on the March 27th briefing, our understanding is that these concerns were raised to emphasize the urgent need to resume the cleanup effort and to complete remediation expeditiously. The NRC fully supports the timely resumption of the cleanup efforts at SLDA. However, as discussed with your staff, the spectrum of materials that may be present and their potential challenges require a

measured approach that focuses on safety. The NRC will continue to work with USACE (and the other Federal partners) so that the remediation is completed both safely and expeditiously.

The NRC acknowledges that a lack of historical records and the indirect evidence of non-compliance due to limited information are challenging aspects of the SLDA cleanup effort. In your letter, you expressed concern that the amount of material present in the burial pits may be significantly underestimated in USACE's Record of Decision. The quantity of material to be excavated and disposed at a decommissioning site has operational and planning implications and underscores the importance of having robust plans, including contingency plans, to handle the waste in a safe and secure manner. The NRC believes that USACE, in conjunction with its Federal partners, will ensure that remediation of SLDA will be managed in safely under the Formerly Utilized Sites Remedial Action Program (FUSRAP).

You also asked whether the NRC has regulatory authority over a FUSRAP site managed by USACE. Public Law 107-117, Section 8143(a), requires USACE to clean up radioactive waste at SLDA in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) and consistent with the 2001 Memorandum of Understanding (MOU) between the NRC and the USACE. Therefore, the NRC does not have regulatory authority over USACE for conducting clean-up activities at the SLDA site.

Another concern you raised was whether the NRC's decommissioning requirements can be applied retroactively to SLDA. The 2001 MOU specifies that USACE will remediate to the NRC's standard specified for unrestricted use. While SLDA is a FUSRAP site and USACE is not an NRC licensee, under the 2001 MOU, the NRC requirements applicable to the remediation include the relevant and appropriate requirements in Title 10 of the *Code of Federal Regulations* (10 CFR) Part 20 "Standards for Protection Against Radiation," Part 70 "Domestic Licensing of Special Nuclear Material," Part 73 "Physical Protection of Plants and Materials," and Part 74 "Material Control and Accounting of Special Nuclear Material." These requirements are outlined in the 2001 MOU and the forthcoming SMOU.

During the briefing, your staff asked whether the NRC's license termination regulations in 10 CFR §70.38 would apply if the license were to be reinstated, and whether the NRC would require the licensee, BWXT, to complete decommissioning within 24 months. If SLDA was no longer a FUSRAP site and USACE was no longer responsible for the remediation, 10 CFR § 70.38 would apply to BWXT. The regulations, however, allow licensees to request an alternate schedule, which must be accompanied by an adequate justification for the request. An alternate schedule could result in decommissioning being completed in a period longer than 24 months. In addition, NRC regulations (10 CFR Part 20, Subpart E) contain radiological criteria for license termination under either unrestricted or restricted use, and permit the licensee to propose alternate radiological criteria greater than those requirements. The NRC does not dictate any specific method to be used for decommissioning as long as the licensee can demonstrate that the radiological criteria is achieved and work can be performed safely.

Finally, you asked whether the NRC had properly required compliance with the rules for decommissioning the site. The NRC required compliance as applicable to the licensed entity prior to the designation of SLDA as a FUSRAP site. Since that time, the NRC has adhered to the 2001 MOU between USACE and the NRC, as the site has come under USACE's authority.

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I appreciate your interest in SLDA, and assure you that we share a common goal of safe and timely cleanup at the SLDA site. If you need any additional information, or would like to arrange another briefing, please contact me or Amy Powell, Acting Director for the Office of Congressional Affairs, at (301) 415-1776.

Sincerely,

/RA/

Allison M. Macfarlane