

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of
NUCLEAR FUEL SERVICES, INC.

AND

NEW YORK STATE ENERGY RESEARCH
AND DEVELOPMENT AUTHORITY
(Western New York Nuclear
Service Center)

Docket No. 50-201 OLA

NRC STAFF MOTION FOR CLARIFICATION OF BOARD MEMORANDUM AND ORDER

I. INTRODUCTION

On April 30, the Atomic Safety and Licensing Board issued a memorandum and order on requests for hearing concerning Change No. 31 to the West Valley license (Provisional Operating License No. CSF-1). The Board's decision is consistent with the Staff's position that the ASLB lacks jurisdiction to consider the claims of Dr. Irwin Bross regarding the conduct of the West Valley Demonstration Project by the Department of Energy (DOE). The decision also grants the motion of Nuclear Fuel Services (NFS), supported by the Staff, to dismiss the proceeding insofar as it relates to the issues previously raised by NFS.

The Staff nevertheless moves that the Board clarify its memorandum. The matters addressed by this motion relate to: (1) the low-level waste site, referred to in footnote 13 of the Memorandum and Order, and (2) the

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Staff's position with respect to decontamination and decommissioning, referred to in footnote 33.^{1/}

II. DISCUSSION

A. Low-Level Waste Site

The Board's memorandum notes the situation with respect to the low-level waste site and suggests that the Commission may wish to obtain a status report from the Staff with respect to this matter. The Board states:

While NFS surrendered the low-level radioactive waste burial ground to NYSERDA pursuant to their Settlement Agreement, it is not clear from those materials before this Board who, if anyone, is to be in possession and control of that area of the West Valley site during DOE's conduct of the demonstration project.

Although the matter is not squarely before us, since these license amendments relate only to high-level waste and ancillary facilities, the NRC Staff should ensure that the various transfers have not neglected the need that a qualified licensee be in possession and control of the low-level waste site and that appropriate license conditions be implemented with respect to that site, so as to reasonably assure the health and safety of the public.

The Commission may wish to obtain a status report from the Staff with respect to this matter. The Board respectfully suggests that the Commission do so.

^{1/} The Staff calls the attention of the Board to the fact that NFS has not, to this date, been terminated as a licensee under License CSF-1. The Board may wish to consider clarifying the portion of its memorandum captioned "Change No. 32" to reflect this continued status of NFS. The Staff is not moving for clarification on this point, however, as its resolution would not affect the result arrived at by the Board.

The Board's language can be read to imply that the Staff should have taken some unspecified affirmative action with regard to the low-level waste site. The Board may not have realized that the low-level waste site is subject to the regulatory authority of the State of New York, acting as an Agreement State. The separation of Commission and State responsibilities is clearly reflected in the legislative history of the West Valley Demonstration Project Act, particularly in the House Committee on Interstate and Foreign Commerce's description of the site. H.R. Rep. No. 96-1100 Part II, 12 ("existing facilities at the site include...a New York State licensed burial waste ground.") The Committee, noting again its awareness of the State-licensed burial ground, specifically required that "nothing in the bill requires any corresponding action by the State of New York regarding the use of other portions of the site," Id. at 16.

The Staff moves for clarification of footnote 13 so as to afford the Board an opportunity to address, should it deem it appropriate to do so, the significance which it may attach to the regulatory jurisdiction of the State of New York.

B. Decontamination and Decommissioning

The Board concluded, as the Staff had urged, that the issues involving DOE's conduct of the Demonstration Project, which Dr. Bross sought to litigate, were specifically removed from consideration by the Commission.

While the Board thus held that the Commission lacked jurisdiction to engage in adjudicatory proceedings with respect to Changes Nos. 31 and 32, it suggested that DOE might be subject to NRC licensing with respect to decontamination and decommissioning. It observed (at footnote 33):

We concur with Staff's position in its March 8, 1982 filing at 17, however, that pursuant to Section 2(a)(5) of the West Valley Act, DOE's conduct of the subsequent decontamination and decommissioning of the West Valley facility may be subject to full NRC regulation and licensing requirements.

But the Staff had taken no such position. On the contrary, the Staff merely alluded to Section 2(a)(5) of the West Valley Act, which states that DOE "shall decontaminate and decommission [project facilities] in accordance with such requirements as the Commission may prescribe."

The Staff does not anticipate that DOE would be subject to NRC licensing with respect to D&D activities. The relationship between the two agencies is described in Article III.B.4. of the West Valley Memorandum of Understanding. This provides for DOE to submit to NRC an analysis of impacts and risks of potential disposition modes and for NRC then to prescribe D&D requirements "in accordance with the [West Valley] Act." DOE will then prepare, in consultation with NRC, a Project Decommissioning Plan. Thereafter DOE is to provide NRC with a Site Status Report analyzing the extent to which the prescribed D&D requirements have been satisfied.

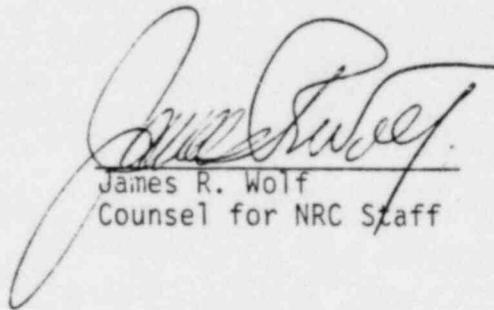
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