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UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555

JUN 08 1992

Department of Energy  
Idaho Field Office  
ATTN: Mark L. Olsen, Esquire  
Office of Chief Counsel  
785 DOE Place  
Idaho Falls, ID 83401-1562

Dear Mr. Olsen:

I am responding to your letter of March 23, 1992, to James R. Wolf, in which you suggest that the Nuclear Regulatory Commission should prescribe, pursuant to the West Valley Demonstration Project Act, the threshold limit of transuranic (TRU) waste to be 100 nCi/g. The NRC staff does not believe rulemaking is warranted at this time for the reasons presented below.

In your letter, you state that the definition of waste under 10 CFR Part 61 expressly excludes transuranic waste. It does not follow, however, that this definition is a barrier to the disposal of the West Valley Demonstration Project waste either at West Valley or elsewhere. In fact, Table 1 of Section 61.55 recognizes that, under some circumstances, material containing transuranic radionuclides may be considered "waste" within the Part 61 definition. The important issue is whether the materials in question (solidified supernatant) may be acceptable for disposal under the criteria of Part 61. The standards of acceptability, as stated in Section 61.23, include compliance with various performance objectives as well as other design and control requirements for protection of the public from radioactivity. In addition, Section 61.58 authorizes:

... other provisions for the classification of waste on a specific basis, if, after evaluation, of the specific characteristics of the waste, disposal site, and method of disposal, [NRC] finds reasonable assurance of compliance with the performance objectives in Subpart C of this part.

We have previously provided guidance, which you cite, on the evaluation approach the Department of Energy (DOE) should follow to provide a basis to decide if Project waste could be classified and disposed of under Part 61. We believe that DOE should perform the requisite analyses (see also, Sections 61.12 and 61.13) that could form the basis of an informed decision on the acceptability of Project waste for near-surface disposal. The environmental impact statement being

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Mark D. Olsen

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prepared by DOE will provide a framework for accomplishing this task. In this context, we do not believe that rulemaking on TRU concentration is necessary or desirable.

In response to your question with respect to the means for DOE to formally request rulemaking, please refer to 10 CFR 2, Subpart H. If you have additional questions on this matter, please contact Mr. James Wolf of the Office of the General Counsel at (301) 504-1641 or Mr. James Shepherd of my staff at (301) 504-2567.

Sincerely,

A handwritten signature in cursive script, reading "Robert M. Bernero".

Robert M. Bernero, Director  
Office of Nuclear Materials Safety  
and Safeguards

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Sincerely,

Original signature  
Robert M. Bernero

Robert M. Bernero, Director  
Office of Nuclear Materials Safety  
and Safeguards

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GARlotto JWolf, OGC

PDR YES X NO \_\_\_ Category: Proprietary \_\_\_ or CF Only \_\_\_  
ACNW YES X NO \_\_\_

Subject Abstract: West Valley Demonstration Project TRU waste

\* See Previous Concurrence

OFC:	:LLDR *	:LLDR *	:LLWB *	:IMSB *	:OGC *
NAME:	JShepherd	MWeber	PLohaus	GComfort	JWolf
DATE:	5/20/92	5/20/92	5/28/92	5/20/92	5/27/92
OFC:	:LLDR *	:LLWM	:LLWM	:NMSS	:NMSS
NAME:	JAustin	EWBrach	RBangart	GARlotto	RBernero
DATE:	5/20/92	5/23/92	05/29/92	6/4/92	6/6/92

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6/4/92  
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