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Docket: NRC-2020-0086

New York State Energy Research and Development Authority; Irradiated Nuclear Fuel Processing Plant, Western New York State Nuclear Service Center

Comment On: NRC-2020-0086-0001

New York State Energy Research and Development Authority; Irradiated Nuclear Fuel Processing Plant; Western New York State Nuclear Service Center

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Comment on FR Doc # 2021-05001

Submitter Information

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Organization: Citizens' Environmental Coalition --- multiple organizations and individuals involved in this submission

General Comment

These are joint comments submitted by activists working on West Valley Issues.

Attachments

Final Comments NYSERDA License Amendment 4.9.21

Deadline April 9, 2021
Posted at www.regulations.gov

Marlayna V. Doell
Office of Nuclear Material Safety and Safeguards
US Nuclear Regulatory Commission
Washington, DC 20555-0001

Re: **Docket ID NRC-2020-0086** NYSERDA License Amendment and Radiation Protection Plan for the Retained Premises of the Western NY Nuclear Service Center

Dear Ms. Doell,

We are writing in general to support the NYSERDA License Amendment and Radiation Protection Plan for the Retained Premises in Western NY. In general the **NYSERDA Retained Premises portion of the Western NY Nuclear Service Center** has received fewer impacts from the radiological and hazardous materials associated with the operations at the West Valley site since the beginning of operations, approximately 60 years ago. It should be noted that all of our major environmental laws were not passed until 1970 and beyond, and therefore our disposal facilities do not meet current requirements. Contamination from a blowout of stack emissions controls conveyed Cesium-137 contamination to the Retained premises. This is known as the Cesium prong. Contamination of the local creeks has not yet been fully assessed.

The NYSERDA License Amendment will enable NYSERDA to conduct minor maintenance to the “retained premises”, such as clearing trees and brush. NYSERDA is capable of managing the property acreage, while taking appropriate protective measures to protect the public and workers where necessary such as in and around the restricted area NYSERDA identified. This area should be marked clearly on the property so that workers will know the boundaries. We would appreciate notification when major updates to the Radiation Protection Plan occur so the public can review and offer comments.

Updating radiation health standards under 10 CFR Part 20 is an issue of concern because the major update in 1991/1992 led to higher allowable releases to air and water and added a new-10 times higher- allowable release to sewage. Under question #3 in the Federal Register notice the NRC raises the issue of **“updating to be in compliance with**

the current 10 CFR Part 20” only briefly. There is no detail or in depth discussion of exactly what this means. We interpret this to mean the major change that altered the Appendix B radionuclide concentrations. The word “current” here refers to standards that are now 28 years old.

Because the allowable release concentrations for the majority of the radionuclides are higher in the current 10 CFR 20 Appendix B, we oppose applying these to the license amendment under review. This would allow higher releases for radionuclides to air and water, and an order of magnitude higher released to sewage. We have no objection to using more stringent release concentrations than the concentrations previously in effect (before 1992). West Valley has since the 1960s dealt with highly radioactive and hazardous materials as part of operations from that time to the present day.

Therefore, we recommend deleting this particular provision, **“updating to current 10 CFR Part 20”**, from this License Amendment approval process. Simply put, we oppose changing the license to permit any higher allowable radiation release levels. Other factors unique to the West Valley situation speak to the importance of higher protective health standards:

- 1) There is an existing decades old license.
- 2) Waste disposal at West Valley does not meet NRC siting requirements for radioactive waste disposal sites.
- 3) West Valley plateaus are highly vulnerable to erosion and release of buried highly radioactive wastes.
- 4) Waterways draining West Valley area pass through the Zoar Valley, Seneca Nation of Indians, Cattaraugus Territory, farms and towns and lead to the Great Lakes potentially conveying long- lived radionuclides and potentially endangering the public health.
- 5) Since the 1960s highly radioactive and hazardous materials have been part of operations from that time to the present day. Long term cleanup and management of radioactive wastes will last for decades even if some proper offsite disposal sites are eventually identified.

Therefore, we recommend deleting this particular provision, “updating to current 10 CFR Part 20” from this License Amendment approval process. This provision is not a necessary component of the License Amendment for the retained premises. This would allow the adoption and use of higher concentrations of most radionuclides in air and water to be utilized as “so-called protective health standards.” West Valley’s unique vulnerability and connection to the extraordinary valuable resource of the Great Lakes make it critically important that the most protective radiation health standards be utilized.

NRC Summary Paragraph from Federal Register Notice. “The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to **Facility Provisional Operating License No. CSF-1 for provisional operation of the Irradiated Nuclear Fuel Processing Plant** located at the Western New York Nuclear Service Center (WNYNSC), in Cattaraugus and Erie Counties, New York. **The proposed amendment would amend the Radiation Protection Plan for the “retained premises of the licensed area” for modernization.** In addition, the New York State Energy Research and Development Authority (NYSERDA), the licensee, requested that the license be amended to clarify NYSERDA's health and safety and other responsibilities under the license. NYSERDA defines the “retained premises of the licensed area” as the area consisting of the WNYNSC, not including the U.S. Department of Energy (DOE) West Valley Demonstration Project (WVDP) premises and the State Licensed Disposal Area (SDA).”

NOTE: Our comments are shown in Italics.

NYSERDA has included a more complete explanation of the complex management situation in its Retained Premises- Radiation Protection Plan (RP-RPP). It is copied into the next paragraph and we have added information here about the changes to the operating licenses, based on personal communication with Paul Bembia, NYSERDA Project Director.

NYSERDA holds title to the Western NY Nuclear Service Center (WNYNSC) on behalf of the people of the State of New York. The WNYNSC, is located near West Valley, New York, approximately 30 miles south of Buffalo, in the towns of Ashford and Concord. The WNYNSC is approximately 3,300 acres and is divided into three separate operational areas: the 167- acre West Valley Demonstration Project (WVDP), the 15-acre State-Licensed Disposal Area (SDA), and the relatively undeveloped 3,100-acre Retained Premises. The Provisional Operating License for the property of the West Valley Demonstration Project, 167 acres, was transferred in 1981-82 to the US Department of Energy. Later when Nuclear Fuel Services left the site, the Operating License for the WVDP was then transferred to the US Department of Energy. The WNYNSC is licensed by the NRC under 10 CFR Part 50, except for the SDA, which is licensed and regulated by the State of New York. **The 167-**

acre WVDP premises, containing the former reprocessing facility, the NRC-Licensed Disposal Area, High-Level Waste tanks, waste lagoons, aboveground storage areas, and other facilities, are currently under the U.S. Department of Energy's (DOE) possession, control, and oversight in accordance with the WVDP Act and the Cooperative Agreement between the United States Department of Energy and the New York State Energy Research and Development Authority on the Western New York Nuclear Service center at West Valley New York (Cooperative Agreement⁴).

Our Comments: DOE has responsibility for decommissioning extensive facilities on the 167 acres that DOE now manages under the WV Demonstration Project Act. NYSERDA and New York State agencies have limited authority over the portion managed by DOE. The multiple facilities and remaining hazardous and radioactive materials on 167 acres under DOE authority and control do have the potential to cause accidents and spills that could be harmful to the retained premises.

The US DOE acreage includes numerous radioactive and other hazardous materials in and around other facilities that are being demolished. Some waste materials will be sent to other locations for final disposal, while some have no final disposition destinations at this time and will remain on site to be managed. The only other hazardous and radioactive facility at West Valley is the State Disposal Area, which has a NYS License.

Activity to reduce the hazards, properly containerize and store radioactive and hazardous materials, and transfer them for eventual disposal has been ongoing for approximately 50 years. However, Phase I activity was supposed to be completed in 2020 and it appears that completion may be postponed until 2030 or later. A planned Supplemental Environmental Impact Statement dealing with Phase 2 final decisions may also be delayed.

Our Comment: The NRC Analysis related to NYSERDA and a License Amendment for the Retained Premises focuses primarily on a Hazard Determination and the potential for accidents.

The NRC has made a proposed determination that the NYSERDA license amendment request involves no significant hazards consideration. Under the NRC's regulations in

§ 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that provisional operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated? NYSERDA answers No.

***Our Comments:** We see no issues or concerns related to NYSERDA's responsibilities for radiation protection related to the retained premises. We do not envision any proposed NYSERDA actions on the retained premises to involve a significant increase in the probability or consequences of an accident. However, given the nature of the entire site, we expect NYSERDA to evaluate the potential for adverse consequences and to be prepared for potential adverse events.*

The changes proposed in this license amendment involve the addition of license conditions to provide additional clarity on NYSERDA's authorities and responsibilities for health and safety of the facility under the license and replace existing radiation protection requirements in the license pertaining to the non-SDA, non-WVDP portions of the WNYNSC (the Retained Premises) where Part 50-Licensed radioactive materials are or may be present.

There are no proposed changes to structures, systems, and components (SSCs) of the plant. (See Comment below) There are no changes to any of the previously evaluated accidents in the final safety analysis report (FSAR). There are no changes to operating procedures or administrative controls that are credited as having the function of preventing or mitigating any accidents. Furthermore, there are no accidents previously evaluated involving the Retained Premises. In view of the foregoing and because the proposed license amendment would simply impose an upgraded and up-to-date radiation protection plan that is in compliance with the current 10 CFR part 20 and replace and supersede the outdated radiation protection requirements developed at the time of licensing the irradiated

fuel processing facility, the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Our Response: *We see no issues of concern related to NYSERDA's responsibilities for radiation protection on the retained premises. However, DOE is the current administrative authority for the property acreage it is managing for remediation and decommissioning.*

This sentence above is problematic: "There are no proposed changes to structures, systems, and components (SSCs) of the plant. "

In fact, DOE is planning to demolish the Main Plant Process Building in 2021, the site of both reprocessing activity and vitrification, which solidified HLRW into a glass like substance for storage. The contamination hazards at that building are significant. DOE actions or failure to take action reasonably could result in accidents that cause harm to property not under DOE management and control, such as the retained premises and waters of NYS. Most likely harms would include spills or spread of radioactive or hazardous material contamination.

We continue to have major concerns related to DOE management of the facilities it is responsible for. At the recent March Citizens Task Force meeting we could not obtain a reasonably accurate and comprehensive description of the Transuranic waste which was stored outdoors and leaked, exposing workers at the site. We also do not know whether the additional 5 degraded waste containers have been repackaged and moved to indoor storage. See GAO Report p.33-34. [GAO-21-115, NUCLEAR WASTE: Congressional Action Needed to Clarify a Disposal Option at West Valley Site in New York](#)

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated? NYSERDA said No.

Our Response: *We agree. The proposed change for the retained premises requires analysis and a radiation protection plan, which are adequate for the purpose.*

In the past, there was a Cesium-137 air emissions blowout from the baghouse of the Main Plant Process Building during reprocessing operations of the MPPB plant, referred to as the Cesium prong. This was a past event. The plume extended over the Retained premises. Further analysis will likely occur under the planned SEIS for Phase 2 cleanup at West Valley.

We are very concerned about DOE's failure to supply adequate characterization or radiological inventory information regarding the decommissioning and demolition plan to the NRC. Instead DOE in its most recent submission on December 15, 2020 repeatedly said that they had completed surveys and radiological inventory information, but supplied NRC and the public with none.

Our concerns have been increased by new information regarding plutonium removal activities. DOE and its contractors reported that in performing the current nitroclision activities, they have identified that it will not be possible to remove 3 inches of material in each corner of a wall or 6 inches where two walls meet. The Total area involved is also approximately 50 feet tall.

There is potential here for criticality accidents. In addition, under 10 CFR Part 74, Special Nuclear Material, such as plutonium, quantities must be strictly controlled and monitored for the protection of the common defense and security and to guard against the loss or diversion of Special Nuclear Materials.

3. Does the proposed change involve a significant reduction in a margin of safety?

NYSERDA Response: No with explanation below.

"The changes proposed in this license amendment involve the addition of license conditions to provide additional clarity on NYSERDA's authorities and responsibilities for health and safety of the facility under the license and replace existing radiation protection requirements in the license pertaining to the Retained Premises where Part 50-Licensed radioactive materials are or may be present. There are no safety margins that are used to demonstrate compliance with regulatory and licensing requirements described in the FSAR that apply to activities planned to be performed in the Retained Premises and the proposed license amendment would simply impose an upgraded and up-to-date radiation protection plan for the Retained Premises that is in compliance with the current 10 CFR part 20 and replace and supersede the outdated radiation protection requirements developed at the time of licensing the irradiated fuel processing facility." Thus, no safety margins are affected by the proposed changes and there is no significant reduction in any margin of safety previously identified in the license."

Our Response: *We are satisfied with NYSERDA responses and their efforts in preparing the Radiation Protection Plan. The majority of the risks and accident potential are not related to the Retained Premises. Concerning 10 CFR part 20, several of us met with NYSDEC officials related to weakening of radiation protection standards and state officials said they were committed to not allowing any weakening of the standards.*

There is no question that there is significant hazard potential related to the many facilities under the management and control of the DOE, some of which have not been remediated at all, some of which contaminate the Cattaraugus Creek, and major amounts of HLW which has no ultimate final disposal plan. This would include transuranics, Greater than Class C waste, the vitrified HLW in large canisters outdoors, the NRC Disposal Area and the NYSERDA State Disposal Area. Other hazard potential relates to the plateau itself which is very vulnerable to erosion and possible landslides. Climate change increases the vulnerability of the site to accidents that could result in the loss of containment and the spread of contamination offsite to the Seneca Nation, Zoar Valley, communities and farms along the Buttermilk and Cattaraugus Creeks, and the Great Lakes. The remediation work has been ongoing for fifty years, and with no clear end date it could take another 50 years. However, the site does not meet current standards and therefore should not be relied on for long term containment of HLRW. A major catastrophe could result in contamination of the drinking water for millions of people in the Great Lakes.

Finally, we want to mention that we previously commented on the NRC Greater than Class C proposal to deregulate the management of this class of radioactive waste and allow it to be disposed in surface disposal facilities. We argued that such disposal was inadequate to protect the public. NRC noted in the proceeding that West Valley held the majority of Greater than Class C waste in the nation. We know that the Main Plant Process Building held a major amount of this GTCC waste. We would like to see a detailed accounting of how much GTCC waste remains in this building that is to be demolished, how much is in the NDA, how much is in the SDA, and elsewhere on site and the measures that will be taken to prevent dispersal of this material to the workers and nearby communities.

In the past we were told that West Valley GTCC waste would not be able to go to WIPP because of the high concentrations of radionuclides. Some of this material must be remote-handled. However, we have never been provided with sufficient details regarding the GTCC waste currently stored at West Valley and whether any of this will be impacted by the planned demolition of the Main Plant Process Building.

Recent NRC information points to the fact that some GTCC concentrations are very high and such information will be very important for the radiological inventory of the MPPB in planning for

appropriate precautions and whether there will be the possibility of a final disposal option for West Valley GTCC waste. See Supporting Statement for Differing View on Path Forward (for GTCC):

“A technically well-grounded, stakeholder vetted, but unproven set of planned new NRC requirements that, according to Commissioner Baran, would permit the commercial near-surface disposal of a GTCC waste inventory in average radionuclide concentrations at least 50 times higher than those of the transuranic waste currently being shipped for deep geologic repository disposal at the WIPP plant. Some GTCC concentrations, he noted are 12,000 times higher than the transuranic waste bound for WIPP.”

Robert MacDougall, NMSS/REFS; SECY-20-0098; Adams ML20143A166 provides the entire Differing Review including the supporting statement here.

Closing Statement

We appreciate NRC’s oversight at West Valley, especially in requiring a thorough radiological inventory for the Main Plant Process Building, so sufficient measures can be provided to protect the health and safety of all the workers involved and local community members. A careful, methodical and accurate inventory is an essential first step to any subsequent air modelling and adequate protection of public health.

Thank you for facilitating a mechanism within the license to enable NYSERDA to perform necessary maintenance on the property of the Retained Premises. We are hopeful that NRC will be able to allow the adoption of more protective radiation health standards by NYSERDA.

Respectfully,



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