

May 1, 2007

Peter R. Smith
President and CEO
New York State Energy Research
and Development Authority
17 Columbia Circle
Albany, New York 12203-6399

Dear Mr. Smith:

I am responding on behalf of the U.S. Nuclear Regulatory Commission (NRC) to your letter of March 6, 2007, expressing the concerns of the New York State Energy Research and Development Authority (NYSERDA) about the ongoing migration of strontium-90 (Sr-90) in groundwater at the Western New York Nuclear Service Center (Center). In your letter, you request that NRC take all possible steps within its statutory mandate to facilitate action by the U.S. Department of Energy (DOE) to control, contain and mitigate the groundwater plume. You expressed NYSERDA's concern that contaminated surface water is being allowed to flow freely from the West Valley Demonstration Project (WVDP) onto the Retained Premises. Your letter also stated that NYSERDA believes that the regulation of contaminated areas outside of the DOE-controlled WVDP area, and the establishment and maintenance of radiological controls in these contaminated areas, must be addressed in the near-term by NRC.

As your letter notes, DOE has the responsibility for protecting public health and safety with respect to its activities at the WVDP, and NRC retains public health and safety responsibility under the terms of the West Valley Demonstration Project Act (Act). The Act does not give NRC licensing or enforcement authority over DOE, and NRC review and consultation is to be conducted informally. NRC is continuing to fulfill these responsibilities under the terms of the 1981 Memorandum of Understanding with DOE, which incorporates these statutory directives.

NRC has focused particular attention on the North Plateau Groundwater Monitoring Program and the Sr-90 plume migration, which is presently situated approximately two miles from unrestricted areas at the site boundary. Over the past year, NRC has conducted three monitoring visits to evaluate ongoing activities related to the monitoring of the North Plateau groundwater. Based on these visits, the NRC believes that public health and safety has been protected, and expects that future actions will be consistent with protecting public health and safety.

NRC is actively participating in the Core Team, which is considering issues related to the WVDP in terms of the National Environmental Policy Act process. One issue the Core Team is considering is the Sr-90 plume. Preliminary results of the Core Team's efforts were described at the recent Interagency Roundtable meeting held on March 7, 2007, at which NYSERDA was a participant. At that meeting, NYSERDA and the DOE agreed to further meetings to discuss the Sr-90 plume. The NRC encourages this type of interaction and believes that NYSERDA's participation in the Core Team will facilitate efforts to reach consensus on effective options for resolving this and other technical issues.

NRC acknowledges that NYSERDA has limited authority and responsibility for licensed activities outside the project area and the NRC can still perform licensing actions outside the project area. If NYSERDA would like to establish radiation control measures outside the DOE-controlled WVDP area before effective measures can be taken under the anticipated decommissioning plan, NRC will consider a NYSERDA proposal. Under License Condition 7D, NYSERDA would need to obtain DOE's agreement that any actions NYSERDA plans to undertake would not inhibit or prevent DOE from taking any action under the Atomic Energy Act or the WVDP Act. Please don't hesitate to contact the NRC if you would like to discuss this option.

If you have any questions, please feel free to contact Larry W. Camper at (301) 415-7437, or Keith I. McConnell at (301) 415-7295.

Sincerely,

/RA/

Luis A. Reyes
Executive Director
for Operations

cc: Senator Charles E. Schumer
Senator Hillary Rodham Clinton
Rep. John R. Kuhl, Jr.
Rep. Brian M. Higgins
Rep. Louise M. Slaughter
Rep. Thomas M. Reynolds
NYS Senator Catharine M. Young
NYS Assemblyman Joseph Giglio
Judith Enck, Executive Chamber
Chairman Vincent A. Delorio, Esq., NYSERDA
James A. Rispoli, USDOE
Dr. Ines R. Triay, USDOE
Frank Marcinowski, USDOE
Bryan C. Bower, USDOE
Steve Hammond, NYSDEC
Edwin E. Dassatti, NYSDEC
Barbara Youngberg, NYSDEC
Paul A. Giardina, USEPA
Gary H. Baker, NYSDOH
Paul L. Piciulo, NYSERDA
Hal Brodie, NYSERDA
Maurice A. John, Sr., Seneca Nation of Indians