



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

SEP 01 2009

Mr. Bryan C. Bower, Director
West Valley Demonstration Project
U.S. Department of Energy
10282 Rock Springs Road
West Valley, NY 14171-9799

Dear Mr. Bower:

The purpose of this letter is to provide further EPA programmatic guidance to the U.S. Department of Energy (DOE), taking into account events that have occurred between October 2008, when EPA, as a member of the Core Team, signed off on the release of the revised draft environmental impact statement (RDEIS) for Decommissioning and/or Long-Term Stewardship at the West Valley Demonstration Project (WVDP) and Western New York Nuclear Service Center (WNYNSC) (CEQ #20080489), and the present. This guidance concerns decisions that would be made as part of Phase 2 if the Preferred Alternative were to be chosen.

EPA concurred with the Preferred Alternative contained in the RDEIS and was a cooperating agency in the development of the RDEIS which was prepared through the use of a DOE Core Team approach. Phase 1 proposes disposing off-site over six million cubic feet of radioactive waste in 8 years and concurrently allowing a period of no more than 30 years to investigate additional geologic studies, seek advancements in waste management, and make a Phase 2 decision. Making a Phase 2 decision in a shorter period is consistent with the Preferred Alternative as described in the RDEIS but disparate treatment of the State licensed disposal area (SDA) and the NRC licensed disposal area (NDA) either from an ultimate timing perspective or an end state perspective is not. The final concurrence meeting for the RDEIS occurred in October 2008.

Subsequently, during Core Team meetings held on August 19 and 20, 2009, the New York State Energy Research and Development Authority (NYSERDA) requested that the Phase 1 portion of the Preferred Alternative be shortened from thirty years to ten. Further, NYSEERDA announced that it did not plan to decide on the ultimate fate of the SDA at the WNYNSC during the 10-year period it proposes for Phase 1, but instead would maintain it as a licensed, closed, low-level radioactive waste burial site indefinitely. In addition, NYSEERDA indicated that it would not find the same arrangement acceptable for the NDA, which is immediately adjacent to the SDA and which is, in part, a Federal responsibility under the West Valley Demonstration Project Act (WVDPA).

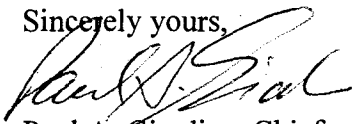
Because the viability of Yucca Mountain as a high-level radioactive waste repository has been called into question, the disposition for the 275 high-level radioactive waste canisters off-site is uncertain and is likely to remain so for the foreseeable future. The availability of off-site waste disposal capacity for other wastes at the WNYNSC site is also uncertain. This means that both the high-level waste canisters currently located at the West Valley site and other wastes at the SDA and the NDA would require long-term care.

It is the position of the EPA that certain radioactive wastes located at the site require a level of protection equivalent to that which would have been provided at a designated storage or disposal site for spent nuclear fuel and high-level waste. As such, we recommend that 40 CFR 191 now be considered as the equivalent of an Applicable or Relevant and Appropriate Requirement (ARAR) for the WNYNSC site and that the FEIS contain a discussion of this standard. For wastes remaining on the site for periods longer than 10,000 years, the only precedent is the standard mandated by Congress through the Energy Policy Act of 1992. These are 40 CFR 197 and apply only to the proposed Yucca Mountain Repository. Any planning for Phase 2 of the Preferred Alternative needs to address this issue.

Without disposal capacity for the 275 high-level waste canisters, as well as certain other wastes, the site-wide cleanup of the West Valley storage site is not possible. EPA believes that changing the time frame for decision-making on the course of action to be pursued in Phase 2 of the Preferred Alternative from 30 years to 10 years is ill-advised since disposal capacity for these wastes is not likely to be available in so short a time. Further, whatever time frame is chosen for decision-making on Phase 2 and whatever outcome is chosen for the wastes in the SDA must be consistent for the NDA.

If you have any questions, please feel free to call me at (212)-637-4010.

Sincerely yours,



Paul A. Giardina, Chief
Radiation and Indoor Air Branch

cc: P.J. Bembia, NYSERDA
K.I. McConnell, NRC
E.E. Dassati, NYSDEC
G. Baker, NYSDOH

September 4, 2009

Paul A. Giardina, Chief
Radiation and Indoor Air Branch
United State Environmental Protection Agency
Region 2
290 Broadway
New York, New York 10007-1866

Dear Mr. Giardina:

The New York State Energy Research and Development Authority (NYSERDA) is in receipt of your letter dated September 1, 2009 to Bryan Bower of the United States Department of Energy. We understand that the issues you raise will be the subject of discussions at the September 9 interagency meeting. We look forward to those discussions.

In anticipation of that meeting, we would like to correct a misimpression of NYSERDA's position on two issues reflected in your letter. First, NYSERDA has not made a Phase 2 decision for the State-Licensed Disposal Area (SDA) at West Valley. Our position has been, and remains, that more analytical work is necessary before a supportable Phase 2 decision can be made. We do believe that continued monitoring and maintenance of the SDA for some period of time is an option that should be considered in the EIS for the Phase 2 decision.

Second, we have not come to any decision as to whether continued monitoring and maintenance would be an acceptable alternative for the Nuclear Regulatory Commission-Licensed Disposal Area (NDA). We believe that option should be considered as well.

Further, we believe that whether the SDA and NDA should be treated identically in Phase 2 decisionmaking is an issue that will need to be decided based on applicable regulatory requirements, and on all the analysis that we have completed when the time for a Phase 2 decision arrives. We'd be happy to discuss this further on September 9.

Sincerely,

WEST VALLEY SITE MANAGEMENT PROGRAM



Paul J. Bembia, Program Director

PJB/hb

PJB/09amd042.hb

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Messr. Paul Giardina

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September 4, 2009

cc: B. C. Bower, USDOE
K.I. McConnell, USNRC
E. E. Dassatti, NYSDEC
G. A. Baker, NYSDOH
H. Brodie, NYSERDA



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
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OCT 01 2009

Mr. Paul J. Bembia, Program Director
West Valley Site Management Program
New York State Energy Research
and Development Authority
10282 Rock Springs Road
West Valley, New York 14171-9799

Dear Mr. Bembia:

The U.S. Environmental Protection Agency (EPA) is in receipt of your letter dated September 4, 2009. In that letter you indicated that the issues raised would be discussed during a September 9 inter-agency meeting. Subsequently, the meeting was postponed, and we look forward to having it rescheduled as soon as possible.

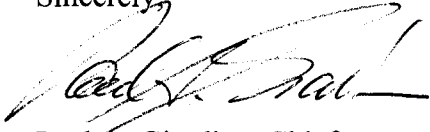
Your letter seeks to clarify the New York State Energy Research and Development Authority's (NYSERDA) position on two issues: first, that NYSERDA has not made a Phase 2 decision on the SDA and believes that more analytical work is a prerequisite to such a decision, and second, that NYSERDA has not come to any decision as to whether continued monitoring and maintenance would be acceptable for the NDA, but that this should be considered, just as NYSERDA intends to consider this option for the SDA.

I appreciate your re-stating NYSERDA's position on these issues, but I would point out that this does not obviate EPA's concerns, as expressed in my September 1, 2009 letter to Mr. Bower of the U.S. Department of Energy. Your September 4 letter to me still leaves open the possibility that the SDA and NDA, which contain similar radioactive wastes, could be treated differently. While EPA understands that responsibility for decommissioning of the NDA is subject to ongoing litigation, NYSERDA will likely be responsible for the care and disposition of those wastes in the NDA that predate the West Valley Demonstration Project (WVDP) Act, as well as for the similar wastes in the SDA. As such, we continue to question why NYSERDA would contemplate the possibility of different decisions for the two disposal areas.

The SDA contains radioactive waste that is not low-level waste, just as the NDA contains waste that is not low-level or was disposed of there prior to the WVDP Act. There are also waste pesticides and apparently hazardous wastes in the SDA according to burial records. NYSERDA has consistently raised the issue of erosion being a force that confounds the long-term storage of wastes at this location. Therefore, NYSERDA's willingness to consider deferring decisions on these disposal areas while maintaining that all other decisions for the site can be made within the next ten years is perplexing. We look forward to discussing these issues with you at a rescheduled inter-agency meeting soon.

We are also committed to working with you and your staff to address these issues so that solutions can be found that are protective of public health and the environment and meet all applicable Federal environmental standards, such as RCRA.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul A. Giardina". The signature is fluid and cursive, with a large initial "P" and "G".

Paul A. Giardina, Chief
Radiation and Indoor Air Branch

cc: Bryan Bower, NYSERDA
K.I. McConnell, NRC
E.E. Dassati, NYSDEC
G. Baker, NYSDOH