

Letter For Electronic Distribution

Original signed letter on file at the following address

Nevada Division of Environmental Protection
333 West Nye Lane
Carson City, Nevada 89706-0851

January 25, 2001

Carl Gertz
Environmental Management
U.S. Department of Energy
P.O. Box 98518
Las Vegas, Nevada 89193-8518

Re: DOE Nevada Operations Office (DOE/NV) Audit of the West Valley Demonstration Project (WVDP), Low-Level Radioactive Waste Certification Program - Audit No. RWAP-A-01-04

Dear Mr. Gertz:

The U.S. Department of Energy -- Nevada Operations Office (DOE/NV) has received a request from the West Valley Demonstration Project (WVDP) in New York State to be approved as an offsite waste generator eligible to dispose of Low Level Radioactive waste (LLW) at the Nevada Test Site (NTS). The Nevada Division of Environmental Protection (NDEP) received notification that an on-site audit has been scheduled by DOE/NV to evaluate a specific low level waste stream at the WVDP for compliance with the Nevada Test Site's Waste Acceptance Criteria (NTSWAC).

Upon receiving this notification, NDEP raised verbal concerns about the appropriateness of a decision by DOE/NV to accept the WVDP wastes for disposal as LLW at the NTS. Based on a further review of the WV site history regarding both the origin and ownership of the WVDP waste streams, NDEP's position is that the waste would be classified as commercial waste and need to be disposed of as such.

The State of Nevada concluded its obligation under the commercial LLW compact system for disposal of commercial LLW with closure of the Beatty commercial LLW site in 1992. Now it appears that DOE is moving toward accepting commercial LLW for disposal at the NTS. While NDEP does acknowledge DOE's self regulating authority, under the Atomic Energy Act for the management and disposal of "defense" LLW, the same cannot be said for commercial LLW. These wastes are regulated by the Nuclear Regulatory Commission (NRC) and its delegates, and DOE can not, through its own initiative, change the regulatory status of a waste.

NDEP is requesting that DOE provide the basis for the determination that the WVDP LLW streams are acceptable to be considered for disposal at the NTS. It is noted that the “West Valley Demonstration Project Act” gives DOE specific authority for demonstrating solidification techniques for high level waste and allows DOE to dispose of LLW in accordance with the applicable licensing requirements. What licensing requirements does DOE assert are applicable to the referenced waste streams?

With respect to origin, are these LLW streams generated from activities associated with nuclear weapons production or DOE energy research activities associated with the treatment of commercial high level waste? In terms of ownership, the Act does not authorize the transfer of title of the WVDP waste to the DOE. Given this consideration, under what authority will DOE accept the LLW streams being considered for disposal at the NTS?

NDEP is aware that DOE and the New York State Energy Research and Development Authority have developed an EIS that evaluates alternatives for cleanup and disposition of radioactive wastes at the West Valley site. Has a “Record of Decision” been issued for this EIS and has DOE adhered to National Environmental Policy Act (NEPA) Tiering requirements (40 CFR 1508.28) regarding the NEPA decision making process for the referenced LLW streams?

Questions regarding any matter addressed in this letter may be addressed to John Walker at (775) 687-4670 ext. 3027, or me at ext. 3039.

Sincerely,

Paul J. Liebendorfer, P.E.
Chief
Bureau of Federal Facilities

PJL/KKB/JW/nap

cc: Allen Biaggi, NDEP Administrator
Robert R. Loux, NWPO
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