

May, 30, 2000

Dr. Paul J. Merges, Chief
Bureau of Radiation and Hazardous Site Management
New York State Department of Environmental Conservation
50 Wolf Road, Room 402
Albany, NY 12233-7255

SUBJECT: COOPERATION AGREEMENT REGARDING THE WESTERN NEW YORK
NUCLEAR SERVICE CENTER

Dear Dr. Merges:

On January 7, 2000, my staff and I received the New York State Department of Environmental Conservation's (NYSDEC) first draft of the Cooperation Agreement between NYSDEC and the U.S. Nuclear Regulatory Commission (NRC), regarding the Western New York Nuclear Service Center. NRC staff has conducted a review and made several proposed substantive and editorial changes, which are incorporated in the enclosed revised Cooperation Agreement. A list of the substantive changes is included to allow for easier review.

In developing our comments, we considered: 1) the NRC's involvement in the West Valley Demonstration Project (WVDP) Act along with the 1981 Memorandum of Understanding, entered into by the U.S. Department of Energy (DOE) and the NRC as required by Section 2(c) of the WVDP Act; 2) the role of NRC as a cooperating agency for the "Environmental Impact Statement for the Completion of the West Valley Demonstration Project and Closure or Long-Term Management of Facilities at the Western New York Nuclear Service Center," and; 3) NRC's policies for interacting with representatives of a State government on site specific regulatory issues.

NRC staff will be in contact with you to discuss our revisions and any comments you have on those revisions. In addition, as a follow-up to your April 20, 2000, telephone conversation with Larry Camper of my staff, we would be willing to discuss your interest in contacting the DOE to become a cooperating agency in the WVDP Environmental Impact Statement. I understand from DOE that it has no objection to NYSDEC attending meetings among DOE, NYSERDA, and the NRC. DOE has also informed us that it provides NYSERDA with copies of documents

provided to the NRC that are associated with the EIS review, and DOE has no objection to NYSERDA providing copies of such documents to you. If you are not receiving these documents, you might contact NYSERDA.

If you have any questions or comments, please contact Jack Parrott at 301-415-6700.

Sincerely,

/RA/

John T. Greeves, Director
Division of Waste Management
Office of Nuclear Material Safety
and Safeguards

Enclosures:

1. List of Substantive Changes
2. Revised Cooperation Agreement

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Sincerely,

Original signed by:

John T. Greeves, Director
Division of Waste Management
Office of Nuclear Material Safety
and Safeguards

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2. Revised Cooperation Agreement

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Dr. P. Merges

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List of Substantive Changes

1. Since the term "Cooperative Agreement" could be misinterpreted to mean an agreement in accordance with the Federal Grant and Cooperative Agreement Act of 1977, the title was changed to "Cooperation Agreement."
2. Description of the WNYNSC Site
 - (A) In the first paragraph, the third to the last sentence, "NFS opted... in 1975 and end its association with the WNYNSC site" was changed to "NFS opted... in 1975 and returned control of the facilities to NYSERDA."
 - (B) The last sentence in the first paragraph, "Active operations at the NDA ceased in 1986 after the DOE disposed of wastes there as part of the site preparation for the Project (see below)" was omitted since it is unclear when the "active operations" actually did cease.
 - (C) In the second paragraph, second sentence, "As part of the Act, the DOE became responsible for the 200 acres that encompassed the main operating area of the WNYNSC site...." was changed to, "To carry out its responsibilities under Section 2(a) of the Act, the DOE took control over the facilities at the WNYNSC...."
 - (D) In the second paragraph, last sentence, "The NRC license for the DOE controlled area...." was changed to, "The NRC license for the WNYNSC...."
 - (E) A footnote was added stating that NYSDOL was invited to participate in the Agreement, but declined the offer. The letter from Clayton J. Bradt of the NYSDOL to Paul Merges of the NYSDEC, dated January 19, 2000 is also referred to. Therefore, a copy of this letter will be placed in NRC's Public Electronic Reading Room.
3. Sections A. Specific Items of Agreement and B. Further, the NYSDEC and the NRC agree to the following were combined and replaced with new section, D. Specific Items of Agreement.
4. Section A. Specific Items of Agreement
 - (A) All references of a "full, complete and open exchange of information" were changed to simply, "an open exchange of information".
 - (B) "Subject to such conditions as may be necessary and appropriate for the protection of pre-decisional, classified, proprietary, and/or security and safeguards information" was added to item A.1.
 - (C) Item A.2. was revised to reflect the following:
 1. NRC will not commit to using the State Freedom of Information Law as a filter for NRC determination of withholding of documents.
 2. The information exchange will not include draft documents, pre-decisional documents, and documents exchanged between the DOE, NYSERDA, and the NRC as part of NRC's role as a cooperating agency under the National Environmental Policy Act.
 3. Item A.8. was reworded to reflect that the items would be transmitted in a rapid manner "as warranted" and included in item A.2. (new item D.2.).

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- (D) The following wording was added to Item A.3.: “NRC will afford NYSDEC the opportunity of attendance at NRC noticed meetings” to indicate that while NRC does not object to NYSDEC attendance at all meetings, certain meetings called by DOE or DOE and NYSERDA may not be noticed meetings and will involve outside persons only at the discretion of the agency or agencies calling the meeting.
 - (E) The following wording was also added to Item A.3.: “The agencies agree that attendance is for the purpose of achieving and maintaining an open exchange of information, views, and concerns relative to the performance assessment, decommissioning, and disposition of the WNYNSC. Each agency shall not unreasonably extend or change the scope or objective of such meetings.”
 - (F) Items A.4. and A.5. were combined (new item D.4.).
 - (G) Item A.7. (new item D.5.) was revised to state that meetings would be held between the agencies only if **both** agencies agreed. Also, a condition that these meetings will be open to public observation was added as this is NRC policy for meetings with outside persons on site-specific regulatory issues.
5. Section B. Further, the NYSDEC and the NRC agree to the following
- (A) Item B.1.: “Any decisions reached relative to the decommissioning and disposition of the WNYNSC site need to comply with applicable federal and state regulations pertaining to non-radioactive hazards at the site.” was omitted because the NRC cannot commit to ensuring that all of our decisions comply with state regulations. If this statement is meant only to reflect DOE and NYSERDA decisions, then that should be clearly stated.
 - (B) Item B.2. was reworded (new item D.8.).
 - (C) Item B.3. was omitted because it is unclear what dose limits are being referred to. The wording suggests that NYSDEC’s dose limits (10 mrem/yr) could possibly apply to the site. If this was not the intention, and the statement is meant to reflect that NRC’s dose limits should apply to the entire site, including the SDA and off-site areas, then that should be clearly stated. The NRC does not intend to apply the 10 mrem/yr dose limit to the portion of the site governed by the WVDPA.
6. Section C. Relative Regulatory Responsibility was reorganized to provide separate sections that specified NRC’s responsibilities and NYSDEC’s responsibilities, and is now Section B: Relative Regulatory Responsibility.
- (A) The second sentence of item C.1. was reworded to state that after the DOE fulfills its obligations under the Act, NYSERDA’s NRC license will be reactivated, instead of reactivated, terminated, or a new license issued. The last sentence in Item C.1., “This section is in no way intended to absolve the DOE of any stewardship obligations that they may retain under federal laws and regulations, or as a result of their activities at the WNYNSC site,” was omitted as not being germane to this agreement.
 - (B) Information on points of contact and the person responsible for implementing the terms of the Agreement for the NRC and the NYSDEC were added to this section.
 - (C) The following sentences in Item C.3. were omitted since they are covered in the Section A. Specific Items of the Agreement, Items 4 and 5: “Additionally, each

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agency will have the opportunity to review and comment on all remediation-related documents, field work and the resulting final remedy generated by their counterpart. Any such comments will be given due consideration.”

- (D) Item C.3.: The first and last sentences, “The results of any remediation of off-site contamination attributable to activities at the WNYNSC site must meet with the approval of both the NYSDEC and the NRC (off-site being defined as outside of the 3300 acres). Final approval for the remediation of off-site areas will be given only after resolution of any disagreements between the NYSDEC and the NRC, pursuant to the contents of sections A.4., A.5., and A.6.” were reworded and included in new Item 7 under D. Specific items of Agreement. The new statement is, “The agencies agree to coordinate on issues regarding contamination of off-site areas.”
 - (E) This sentence was added: “Under the Act, the NRC has the responsibility to provide informal review and consultation, monitor activities, and prescribe decommissioning criteria for the West Valley Demonstration Project.”
7. The Effective Date section was reworded to allow for termination of the Agreement by either agency upon a sixty day advance written notice to the other agency. The condition that states that the Agreement will continue in effect until completion of the DOE’s obligations under the WVDPA, was omitted.

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COOPERATION AGREEMENT (Rev.1)

This Agreement is between the staff of the United States Nuclear Regulatory Commission, an agency of the federal government of the United States of America, having an office at One and Two White Flint North, 11555 and 11545 Rockville Pike, Rockville, MD 20852 (NRC), and the New York State Department of Environmental Conservation, an agency of the State of New York, having an office at 50 Wolf Road, Albany, NY 12233 (NYSDEC). This document refers to the Western New York Nuclear Service Center, 10282 Rock Springs Road, West Valley, NY 14171 and the various Federal and State regulated facilities located there (collectively referred to as WNYNSC).

A. Description of the WNYNSC

The WNYNSC property consists of 3,300 acres owned by the State of New York and managed for the State by the New York State Energy Research and Development Authority (NYSERDA). NRC regulated two main activities at the WNYNSC. The first activity was the operation of the country's first and only commercial nuclear fuel reprocessing facility, and the second activity was the operation of an associated radioactive waste disposal area (NRC-licensed Disposal Area or NDA), both operated by Nuclear Fuel Services, Inc. (NFS). NFS and NYSERDA's predecessor, the New York State Atomic and Space Development Authority (ASDA), were co-licensees under NRC operating license CSF-1. Another major activity on the site was the operation of a commercial radioactive waste disposal area (State-licensed Disposal Area or SDA) by NFS and regulated by the State in New York's capacity as an Agreement State. In 1963, disposals at the SDA were regulated by New York State Department of Health

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under exemptions in Section 16.8 of the New York State Sanitary Code. The SDA was also regulated by the New York State Department of Labor (NYSDOL)¹ under Radioactive Materials License #0382-1139, issued to the ASDA and NFS as co-licensees. Since 1970, the SDA has been regulated under the aforementioned NYSDOL license and is currently regulated by the NYSDEC under 6 NYCRR Part 380 permits, consisting of permits 9-0422-00011/0011, 9-0422-00011/0007, and 9-0422-00011/0004. NFS opted to cease the fuel reprocessing operations in 1973 and operations at the SDA in 1975 and returned control of the facilities to the NYSERDA. Since the departure of NFS in 1983, the NYSERDA has been the sole licensee for the WNYNSC.

The Federal West Valley Demonstration Project Act of 1980 (the Act) directed the United States Department of Energy (DOE) to demonstrate the feasibility of stabilizing liquid high-level radioactive waste (HLRW) stored in below-grade tanks at the WNYNSC. To carry out its responsibilities under Section 2(a) of the Act, the DOE took control over the facilities at the WNYNSC, exclusive of the SDA. The NRC license for the WNYNSC was placed in abeyance until such time as the DOE completes its obligations under the Act.

B. Relative Regulatory Responsibility

Nuclear Regulatory Commission

Under the Act, the NRC has the responsibility to provide informal review and consultation, monitor activities, and prescribe decommissioning criteria for the West

¹ The NYSDOL was invited to participate in the Agreement, but it declined the offer (see letter from Clayton J. Bradt of the NYSDOL to Paul Merges of the NYSDEC, dated January 19, 2000).

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Valley Demonstration Project. Once the DOE fulfills its obligations under the Act, NYSERDA's NRC license will be reactivated. The NRC will then be responsible for enforcement of the applicable NRC requirements regarding maintenance or closure and release of the WNYNSC, exclusive of the SDA. The NRC is responsible for regulating any off-site contamination (contamination of areas outside of the 3300 acres of the WNYNSC property) that results from NRC-licensed activity at the site.

The NRC's Director of the Office of Nuclear Material Safety and Safeguards is responsible for ensuring the implementation of the terms of this Agreement. The NRC's West Valley Project Manager will be the NRC point of contact for all communications relating to carrying out the provisions of this Agreement. The Project Manager, on behalf of the NRC, will coordinate the exchange of written and oral information and comments between the NYSDEC and the NRC.

New York State Department of Environmental Conservation

As regulatory agencies representing New York State under the NRC Agreement State Program, the NYSDEC and the NYSDOL have now, and will retain, the radiological regulatory authority for the SDA and any areas outside of its boundary that are contaminated as a result of activities at the SDA. Additionally, the NYSDEC, pursuant to the authority delegated to it by the United States Environmental Protection Agency and the New York State Environmental Conservation Law, has regulatory responsibility for all issues related to the Resource Conservation and Recovery Act, Clean Air Act, Clean Water Act, and all other pertinent regulations, at the WNYNSC.

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The NYSDEC's Director of the Bureau of Radiation and Hazardous Site Management is responsible for ensuring the implementation of the terms of this Agreement. The NYSDEC's West Valley Project Manager will be the NYSDEC's point of contact for all communications relating to carrying out the provisions of this Agreement. The Project Manager, on behalf of the NYSDEC, will coordinate the exchange of written and oral information and comments between the NYSDEC and the NRC.

C. Rationale for Agreement

This Agreement was proposed by the NYSDEC and agreed to by the NRC in order to facilitate an open exchange of information regarding the ongoing performance assessment, decommissioning, and disposition activities, to clarify regulatory responsibilities, and to provide a mechanism to facilitate a comprehensive approach to determining the disposition of the various facilities at the WNYNSC.

D. Specific Items of Agreement

The NYSDEC and the NRC (collectively referred to as "the agencies") agree:

1. To effectuate an open exchange of information concerning the performance assessment, decommissioning and disposition of the WNYNSC, subject to such conditions as may be necessary and appropriate for the protection of pre-decisional, classified, proprietary, and/or security and safeguards information.

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2. To provide the other notice of or with copies of publicly available correspondence, reports, documents, or other written information, that are related to the performance assessment, decommissioning or disposition of the WNYNSC. The agencies agree to transmit these items, as warranted, in a rapid manner, meaning facsimile transmission, electronic mail, or overnight delivery.

This Agreement shall not extend to or include draft, pre-decisional, or other such documents, including those protected by the New York State Public Officers Law § 87, prepared or received by the parties hereto and/or their consultants and agents, or documents which are protected from disclosure under the Freedom of Information Act (5 U.S.C. § 552). In addition, this Agreement does not include documents exchanged between the DOE, the NYSERDA, and the NRC as part of NRC's role as a cooperating agency under the National Environmental Policy Act. Correspondence between the NYSERDA and the Commissioner of the NYSDEC that pertain to his activities as an ex officio member of the NYSERDA Board of Directors is not subject to this Agreement.

3. To provide, on a best efforts basis, the other with timely notification (approximately ten calendar days) of upcoming meetings pertaining to the performance assessment, decommissioning or disposition of the WNYNSC. NRC will afford NYSDEC the opportunity of attendance at NRC noticed meetings. The agencies agree that attendance is for the purpose of achieving and maintaining an open

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exchange of information, views, and concerns relative to the performance assessment, decommissioning, and disposition of the WNYNSC. Each agency shall not unreasonably extend or change the scope or objective of such meetings.

4. To provide, on a best efforts basis, the other with a reasonable opportunity (approximately ten calendar days) to review, comment on, and respond in a timely manner to any such documents or meetings specified above. The agencies further agree to duly consider the comments presented.
5. To provide for a meeting(s) between the agencies if both consider such a meeting(s) to be in the best interests of their agency or of the ongoing activities at the WNYNSC. Such meetings shall be held at least annually, and annual meetings shall alternate between the NRC office in Rockville, MD and the NYSDEC office in Albany, NY. In accordance with NRC policy, these meetings will be open to public observation.
6. To resolve any conflicting viewpoints through direct negotiations between the agencies. However, if the parties are unable to reach a resolution, the determination of the agency holding direct regulatory authority over the activity or facility under consideration will prevail.
7. To coordinate on issues regarding contamination of off-site areas.

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8. Nothing in this Agreement shall be deemed to restrict, modify or otherwise limit the application or enforcement of any laws of the United States with respect to matters specified herein, nor shall anything in the Agreement be construed as modifying the existing authority of the parties.

E. Effective Date

This Agreement shall take effect when it has been signed by the authorized representatives of the NRC and the NYSDEC. It may be modified by mutual written consent or terminated by either agency upon a sixty day advance written notice to the other agency.

For the United States Nuclear Regulatory Commission

William F. Kane, Director of the Office of Nuclear Material Safety and Safeguards

_____, 2000

For the New York State Department of Environmental Conservation

Carl Johnson, Deputy Commissioner

_____, 2000