

June 6, 2003

Mr. Richard Janati  
Acting Director  
Bureau of Radiation Protection  
Pennsylvania Department of Environmental Protection  
Post Office Box 8469  
Harrisburg, Pennsylvania 17105-8469

Dear Mr. Janati,

We have reviewed your April 23, 2003, letter to Mr. Robert N. Kossack of the Kiski Valley Water Pollution Control Authority (KVWPCA) and are writing you for clarification. Your letter appears to provide direction to the Authority that is contrary to previous direction provided by the U.S. Nuclear Regulatory Commission (NRC). Thus, the Authority has raised concerns with developing a decommissioning approach that will be acceptable to both the NRC and PADEP. Accordingly, we seek an understanding of PADEP's concerns in the interest of completing the decommissioning of this site.

During our February 12, 2003, meeting at NRC headquarters, NRC staff took the position that it is up to Kiski Valley Water Pollution Control Authority (KVWPCA) to identify an appropriate option for decommissioning the site in compliance with our regulations. If their preferred option is to leave the material in place, it would be incumbent upon KVWPCA to perform a dose analysis to demonstrate that this option meets the dose criteria of our license termination rule, 10 CFR Part 20, Subpart E.

In contrast, your letter noted that PADEP believes that "the chemical constituents of the ash, the construction of the lagoon, the threat of groundwater contamination, the location of the lagoon within the 100 year flood plain of the Kiskiminetas River, and other factors, make closure in place undesirable." Your letter then went on to classify the material in the ash lagoon as "low level radioactive waste" and stated that "permanent placement of this ash in the Authority's lagoon would constitute unlawful shallow land burial of low level radioactive waste...(and that) portions of the waste with concentrations of uranium and other radioactive materials exceeding 30 picocuries per gram... (would be placed) under license or order of the Department, pursuant to the Department's authority under the Low Level Waste Act, the Solid Waste Management Act...and the Radiation Protection Act...Such waste would, therefore, be prohibited from disposal in a municipal waste landfill under Section 273.201(1)."

It is NRC's position that disposition of the ash at the KVWPCA site does not constitute disposal of low level radioactive waste regulated under 10 CFR Part 61. Instead, we would apply the regulatory criteria of our license termination rule, 10 CFR Part 20 Subpart E. As previously noted, if KVWPCA's preferred option is to leave the material in place, it would be incumbent upon KVWPCA to perform a dose analysis to demonstrate that this option meets the dose criteria of our license termination rule, 10 CFR Part 20, Subpart E.

In order to clarify the requirements that the Authority must meet in selecting an acceptable decommissioning option, please explain the basis for applying the State's regulatory provisions regarding material regulated under the Atomic Energy Act. It is not clear from the issues raised whether PADEP's concerns fall within the NRC's regulatory scope for AEA material, or whether there are additional State regulatory requirements beyond radiation concerns that need to be considered by the Authority. Specifically, it would be helpful if the State would identify specific state regulations that will not be satisfied should the Authority choose to leave the ash in place.

We are in the process of setting up a meeting with your staff in the very near future to discuss issues related to decommissioning the KVVPCA site. It would be helpful if your staff were prepared to discuss the issues highlighted in this letter at that meeting. If you have any questions, please contact Mr. Ken Kalman, of my staff, at 301-415-6664, or email [klk@nrc.gov](mailto:klk@nrc.gov).

Thank you,

**/RA/**

Daniel M. Gillen, Chief  
Decommissioning Branch  
Division of Waste Management  
Office of Nuclear Material Safety  
And Safeguards

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Thank you,

**/RA/**

Daniel M. Gillen, Chief  
Decommissioning Branch  
Division of Waste Management  
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and Safeguards

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\*see previous concurrence

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