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Ralph W. Deuster
PRESIDENT

Richard E. Cunningham, Director
Division of Fuel Cycle and Material Safety
Office of Nuclear Material Safety and Safeguards
United States Nuclear Regulatory Commission
Washington, D. C. 20555

Dear Mr. Cunningham:

In response to your letter of August 26, 1981, I must advise you that Nuclear Fuel Services, Inc. (NFS) will oppose, in accordance with 10 CFR Section 2.204, the issuance by NRC of the proposed amendment to Provisional Operating License No. CSF-1, submitted by the New York State Energy Research and Development Authority (ERDA) and joined by the United States Department of Energy (DOE). NFS, as the NRC licensed operator of the Western New York Nuclear Services Center, believes that NRC approval of the proposed amendment, requiring temporary suspension of NFS' license, would be detrimental to its legal and economic interests. Furthermore, it is questionable whether the proposed amendment would allow NRC properly to insure public health and safety during the West Valley Demonstration Project (Project) and after Project completion.

The proposed amendment leaves NFS subject to unknown and unspecified obligations under the terms of its license. NFS, as the licensed operator, is responsible for insuring that NRC regulations protecting health and safety are observed. While the amendment would turn over exclusive possession of the facility and premises to DOE, it would not relieve NFS of its health and safety responsibilities under NRC regulations. Since the amendment would only temporarily suspend rather than terminate its license, NFS would continue to have an undefined responsibility under the license for health and safety at the center, both during and subsequent to the Project.

Furthermore, the proposed amendment provides no protection to NFS for the consequences of DOE's Project activities. The amendment would expose NFS to unknown legal responsibilities and obligations if DOE modifies the facilities, if it

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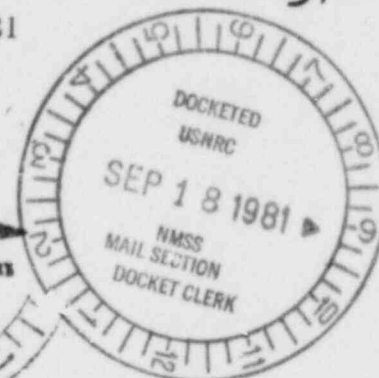
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causes damage or destruction for which NFS may be responsible to ERDA or third parties, or if it creates a different nuclear waste problem for which NFS may be made responsible to eliminate after DOE departs.

The relationship between DOE and NFS, which would exist under the proposed amendment, is also unclear. DOE has no responsibility to NFS. NFS would have no right to be consulted and no authority to object to any DOE actions affecting health and safety or altering potential NFS obligations, either during the Project or after Project completion. The proposed amendment, paragraphs 7.B(1)a and 7.C, suggests potential interest or responsibility of NFS under the license, but permits no action to fulfill those responsibilities unless DOE approves. This leaves NFS in the unacceptable position of having continuing responsibility under the NRC license without any authority to carry out that responsibility.

ERDA apparently desires NFS to surrender possession of the West Valley site⁽¹⁾ to DOE in order to implement the Project. However, if NFS did transfer its interests to DOE, NFS not only would be unable to fulfill its responsibilities under the license but also would breach the terms of its agreements with ERDA.

Under the terms of the Lease and Waste Storage Agreement between NFS and ERDA, NFS is obligated to surrender possession of the West Valley site only to ERDA. If NFS were to surrender the site to DOE without prior acceptance by ERDA, NFS would violate the terms of the agreement and materially and adversely affect its contractual rights, which are the subject of lawsuits initiated by NFS and ERDA. Consequently, NFS has advised ERDA that NFS will not consent to DOE possession and control of the site unless and until ERDA has executed the proper written acceptance of the site or the question has been resolved in legal proceedings.

(1) The term "site" as used in this letter includes the premises, facilities and waste.

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The complete termination of NFS' NRC license would have no effect on ERDA's contractual rights. In fact, NFS has informed ERDA that, if desired, NFS is prepared to stipulate that the complete termination of NFS' license would not prejudice or constitute a waiver of any claim against NFS for failure to comply with the terms of the Lease and Waste Storage Agreement.

ERDA is refusing to accept site turnover from NFS or to agree to the termination of NFS' license. Regardless of the dubious propriety of ERDA's position, it hardly justifies the unprecedented temporary suspension of NFS' operating license. By granting such a suspension, NRC would be supporting ERDA's intransigence and create a confusing situation involving unspecified and divided responsibility.

Such divided responsibility for the facility, including the responsibility for public health and safety, would exist throughout the Project's lifetime. Upon completion of the Project, the ability to insure public health and safety would become even more acute. The proposed amendment, paragraph 7.D, would require that NFS and ERDA reassume their respective interests under the license upon surrender of the site by DOE. NFS, however, will be technically unable to do so, even assuming that it now has any residual interest.

The DOE contractor, selected to conduct the Project, intends to hire all of the on-site NFS personnel. When this takes place, NFS will lose its technical capability to comply with NRC regulations or orders regarding health and safety. In addition, NFS will have no capability to reacquire operational control of the site on completion or termination of the Project. It will be financially and logistically infeasible for NFS to attempt to maintain the necessary technical capabilities during the indefinite duration of the Project or to restructure such a capability at an indefinite future time to satisfy an indefinite future requirement.

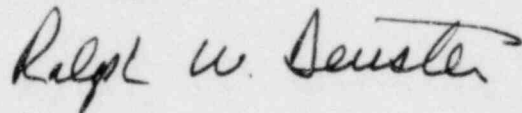
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For these reasons, NFS cannot provide the NRC with any representation that it can or will be able to carry out any future licensee responsibilities at the site. ERDA is seeking the transfer and it should be ERDA that provides appropriate representations and assurances to NRC that the transfer of possession to DOE is proper and that ERDA is prepared to carry out any actions required by NRC. Since ERDA has already made similar representations to DOE concerning assumption of site responsibility upon Project completion, it would be doing no more than reiterating that commitment to another Federal agency.

The logical method for initiating the Project would be for NRC to approve NFS' transfer of its site interests to ERDA, as called for in the ERDA/NFS agreements, and to terminate NFS' license. The NRC approval could be contingent upon ERDA immediately transferring all of its interests to DOE for the duration of the Project. There may be other methods of transfer, which the parties may wish to consider, but whatever method is chosen, NFS must insist that its NRC license be terminated before exclusive possession and control of the West Valley site can be assumed by DOE.

Sincerely,



Ralph W. Deuster
President

RWD:jnw

cc: James L. Larocca, Chairman
New York State ERDA

Warren E. Bergholz, Jr., Esquire
Office of the General Counsel, DOE

Orris S. Hiestand, Esquire
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