

COALITION ON WEST VALLEY NUCLEAR WASTES
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2/11/97

Please reply to: 135 East Main Street
Hamburg, N.Y. 14075
February 1, 1997

Michael F. Weber, Chief
Licensing Branch
Division of Fuel Cycle Safety and Safeguards
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Weber:

I enjoyed meeting and talking to you Wednesday evening at the first session of the West Valley Citizen Task Force (CTF). I look forward to working with you and Gary Comfort over the next few months as we attempt to coordinate D&D criteria with the activities of the CTF.

At the moment, however, I must try to resolve a couple of serious issues with you. If I understand correctly, you're the new chief of the Licensing Branch, so I think you're the right person. If not, please pass this letter on.

This afternoon I visited the Local PDR at the Buffalo & Erie County Public Library. In NRC's M-32 West Valley file I saw an October 3, 1996 letter from Gary Comfort to Narasi Sridhar of CNWRA (NRC PDR ACN 9610160177) which I certainly would have mentioned to you Wednesday if I'd been aware of it then.

Gary Comfort's letter refers to a report prepared by CNWRA on August 27, 1996, entitled "Review of Draft Environmental Impact Statement for Completion of the West Valley Demonstration Project." In my opinion, it is very improper for NRC to commission such a report without submitting the report or its results to DOE and NYSERDA during the West Valley DEIS comment period.

In general, NRC is in a very awkward position regarding the West Valley EIS process. NRC needs to decide whether it is on the inside (i.e., playing a valid role as a cooperating agency in this EIS) or on the outside where it can submit bona fide comments as EPA, DEC, and other agencies have done. Comments from NRC during the DEIS comment period were conspicuously absent (unless one counts the comments that James R. Wolf submitted as a private citizen). But now we find that an NRC review of the West Valley DEIS was done and that NRC chose to withhold the results from the normal public-review channels of NEPA. This strikes me as impropriety.

What to do? If you think I'm overreacting, perhaps we could consult a NEPA specialist from either CEQ or NRC's Office of

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General Counsel. But I'm more interested in moving forward than looking back at this matter. Here's what I'd like NRC to do:

1) Send me a copy of the August 27, 1996, CNWRA report so that I can review it.

2) Send the same report to DOE and NYSERDA along with a brief cover letter stating that the report is submitted as comments on the West Valley DEIS and should have been submitted before the nominal comment deadline of September 22, 1996. If NRC is reluctant, shall I take this step?

3) In general, decide what NRC's role will be from now on in the West Valley EIS process. As already noted, NRC's current role is awkward. If further illustration is needed, see page 2 of Gary Comfort's August 15, 1996, memo to Robert Pierson (NRC PDR ACN 9608220227). We will certainly keep reminding NRC, DOE, and NYSERDA that NRC will be making a NEPA-reviewable decision when it prescribes or approves the West Valley D&D criteria. As usual, we want the NEPA review(s) done properly. NRC needs to decide whether its own decisionmaking fits into the DOE-NYSERDA EIS process. We would like to be informed in the near future how NRC intends to handle the NEPA review of its own decisionmaking on the D&D criteria.

The second item that needs resolution is the matter that you and I discussed briefly after the CTF meeting last Wednesday. During the meeting I had said I wanted to ensure that the CTF worked in coordination with the evolving details of regulatory policy (especially D&D criteria) as NRC, DOE, and NYSERDA work them out in the near future. After the meeting I believe I repeated this, then asked you a direct question (I don't remember it exactly) to verify that NRC, DOE, and NYSERDA would indeed be working hard on regulatory policy (especially D&D criteria) during the next six months. I believe you then said no, NRC wanted to let the EIS process work, implying that NRC intended to step back from any major prescription or negotiation of closure requirements during the course of the EIS.

If this is essentially what you said (and please correct me if I'm wrong), then we need to discuss what's true and what's not. There are several things in the M-32 file that contradict what I thought you said.

Specifically, I find a flurry of memos and meeting notices involving NRC, DOE, and NYSERDA during the past few months (and clear indications of more to come), all on the topic of closure/long-term management requirements. Meetings or videoconferences were apparently held on July 31, September 24, December 10, and December 17, for example. Memos and letters include those written by Gary Comfort on August 15 (ACN 9608220227), by Barbara Mazurowski of DOE on September 6 (ACN 9610100043), by Colleen Gerwitz of NYSERDA on October 18 (ACN 9610230113), and by Gary Comfort on December 16 (ACN 9612200211).

These various meetings, memos, and letters dealt with important regulatory questions, including 1) whether a single set of

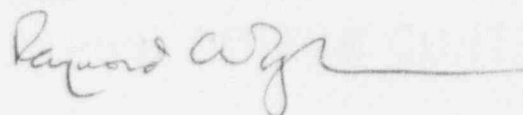
D&D criteria can be developed that encompass both the WVDP requirements and the Part 50 license requirements, and 2) whether NRC might deviate from longstanding national policy on institutional control in order to accommodate DOE and NYSERDA at West Valley. Some of the memos, letters, and meeting presentations suggest ways of expediting the regulatory process.

Much needs to be said on the substance of these regulatory questions, and on the level of NEPA review required for each, but my main point here is their timing. How involved do you expect NRC to be during the next 6 months in prescribing or negotiating criteria for West Valley D&D, site closure, or long-term management? If there's substantial NRC involvement in these areas, the CTF needs to be fully and promptly informed of progress and setbacks. It is unreasonable to ask the CTF to do its job without up-to-date knowledge of regulatory constraints. Please let me know what you think NRC's timetable will be for negotiating and/or prescribing the West Valley criteria.

In closing, let me repeat our interest in seeing the environmental review(s) conducted properly. We intend to protect our rights under NEPA, SEQRA, and §4 (and other sections) of the Stipulation of Compromise Settlement that DOE signed with us in 1987. NRC was of course not a party to our 1986-1987 litigation or settlement but needs to be a little cautious about getting entangled in DOE's headstrong attitudes. DOE is continually in a hurry, always impatient, yet rarely willing to do its homework to learn what legal and regulatory requirements lie ahead.

I hope you will take this letter in the cordial, straightforward way that's intended. You seem to be genuinely interested in doing things right. As I indicated, I'm looking forward to working with you and others from NRC as the CTF moves forward.

Sincerely,

A handwritten signature in dark ink, appearing to read "Raymond C. Vaughan", with a long horizontal flourish extending to the right.

Raymond C. Vaughan