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CCN 105735

8x2 - 7/1/93 - jm

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DATE PROCESSED BY PDCC 07/02/93

COMM REF

ADMIN RCD

SUBJECT NFS - Response to Seay's ltr dtd 5/10/93, Installation of Final Cap

FROM Muszynski TO Grimm COMM DATE 6/24/93

ADDR CODE (NUMBER, ST) CLOSES CCN WBS 158

SUBJECT CODE 2552 AFFECTED DOCUMENT

RESPONSE TRACKING INFORMATION

ACTION DESCRIPTION:

PRIMARY:	PRIMARY:
OWED TO:	OWED BY (ORG)
(ORG) TARGET DATE / /	CLOSING CCN COMPL. DATE / / CLOSING REF
SECONDARY:	SECONDARY:
OWED TO:	OWED BY (ORG)
(ORG) TARGET DATE / /	CLOSING CCN COMPL. DATE / / CLOSING REF

MESSAGE:

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* 2 SIDED *

			W/A	W/O				W/A	W/O				W/A	W/O
DIRECTOR, FSRD:	L. Price	FSRD			PROGRAM MANAGER	J. King	SAIC			PROGRAM MANAGER:	R. Harbert	BPM		
DEP. DIRECTOR, FSRD:	W. Seay	FSRD		1	DEPUTY PROGRAM MGR	J. Waddell	SAIC			DEPUTY PROGRAM MGR	P. Crotwell	BPM		
SITE MANAGER:	D. Adler	FSRD			PROGRAM ADMIN	R. Wright	SAIC				W. Wagner	BPM		
	S. Cange	FSRD			PROJECT MANAGER:	T. Gangwer	SAIC			PROJECT MANAGER:	M. Redmon	BPM		
	R. Kirk	FSRD		1		M. Khan	SAIC		1		G. Palau	BPM		
	T. Perry	FSRD				T. Patterson	SAIC				C. Hickey	BPM		1
	M. Noe	FSRD			MGMT. SYSTEMS:	R. Tucker	SAIC				E. McNamee	BPM		
PROJECT SUPPORT GRP:	J. Hart	FSRD				C. Helle	SAIC			CONSTRUCTION		BFC		
	S. Oldham	FSRD				K. Renfro	SAIC			ENGINEERING & TECHNOLOGY		BET		
	G. Hartman	FSRD			SECRETARY:	S. Heptinstall	SAIC			ENGINEERING		BET		
	L. Marz	FSRD			TECH. DEV.:	W. McNeill	SAIC			ENVIR TECH		BET		
PRGM ANALYST:	B. Hughlett	FSRD								DATA MANAGEMENT		BET		
SECRETARY:	M. Selber/M. Dyke	FSRD			P.R. Duker				1	GEOTECH		BET		
FSRD CHRON FILE				1						ESH & WASTE MGMT		BEH		
FSRD NOTEBOOKS										SAFETY & HEALTH		BEH		
READING FILE										ENVIR COMPLIANCE		BEH		
DOE/P&CD:	French/Sistrunk	DCO								WASTE MGMT		BEH		
DOE/HQ:	J. Wagoner	DHO								PROCUREMENT		BPO		
										PROJECT ADMINISTRATION		BPA		
					TMA/EBERLINE		BET			TECHNICAL REPORTS		BTR		
ANL:	A.J. Dvorak	ANL			SITES: 158 NFSS					PROJECT AUTOMATION		BAU		
	A. Geisler	ANL			TONAWANDA INFO CTR.					PROJECT CONTROLS		BPC		
	G. Maraman	ANL			137 WISS					COMMUNITY RELATIONS		BCR		
	D. Dunning	ANL			138 MISS/INFO CTR					QUALITY ASSURANCE		BQA		
	J. Wing	BNI			139 COLONIE (CISS)					ADMIN RCD/INFO REPOSITORY				
ORISE:		ORISE			140 / 153 LATTY AVE/SLAPS					PDCC READ FILE	TO/FROM/DOE			1
ORNL:		ORNL								PDCC:	SENSITIVE/CHRON FILE			

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II
JACOB K. JAVITS FEDERAL BUILDING
NEW YORK, NEW YORK 10278

1993 JUL -1 PM 1:32

24 JUN 1993

Mr. Paul D. Grimm
Acting Assistant Secretary
Environmental Restoration and Waste Management
Department of Energy
Washington, DC 20545

Dear Mr. Grimm:

This is in response to William Seay's May 10, 1993 letter to Kathleen Callahan, my Acting Deputy Regional Administrator, regarding installation of a final cap on the Waste Containment Structure at the Niagara Falls Storage Site (NFSS), in Lewiston, New York. Although we appreciate the Department of Energy's (DOE) desire to initiate a final remedial action for the radioactively contaminated material at the NFSS, we have several major concerns regarding permanent storage of a portion of the waste material at the facility.

There are two very different and segregated waste materials at the NFSS. Specifically, there are 15,000 cubic yards of material referred to as "residues," containing 870 Curies (Ci) of radium-226, and 240,000 cubic yards of material referred to as "wastes," containing 7.8 Ci of radium-226. The residues represent about 6% of NFSS material by volume, yet contain 99% of the radium-226 at the site. While we are not opposed to the long-term on-site management of the NFSS wastes, we believe that long-term on-site management of the residues would be inappropriate.

As you know, despite repeated correspondence between DOE and the Environmental Protection Agency (EPA) Region II, we have not yet resolved definition of appropriate standards to be used for long-term on-site management of the residues. In particular, DOE has indicated that it considers the K-65 residues, which contain radium-226 with a half-life of 1,600 years and activity levels ranging from 117,800 to 355,680 picocuries per gram (pCi/g), to be naturally occurring radioactive material. As such, it has asserted that 40 CFR Part 192, Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings, would be suitably protective of human health and the environment.

The K-65 residues are similar in activity and half-life to transuranic waste (high-level radioactive waste), which is regulated under 40 CFR Part 191, Environmental Radiation Protection Standards for Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes. Specifically, radium-226 exhibits levels of activity at 100 to 1,000 times that of uranium mill tailings and is capable of generating dose rates in excess of 1,000 rem per year. Such doses could result in an incremental cancer risk on the order of one in two beyond its 1,600 year half-life. In addition, the K-65 residues clearly exceed the criterion of 100,000 pCi/g for qualification in the Nuclear Regulatory Commission's highest category of waste eligible for near surface disposal. The 40 CFR Part 192 regulations were not promulgated with such material in mind.

While we agree that, as stated in Mr. Seay's letter, "neither of these regulations are strictly applicable (legally) to the residues," we believe that the standards embodied in 40 CFR Part 191 are the most appropriate for management of the K-65 residues. Accordingly, it is EPA's position that the disposal of K-65 and other residues should be conducted in compliance with 40 CFR Part 191 standards.

Moreover, EPA does not anticipate that the NFSS can comply with the 40 CFR Part 191 Subpart B requirements for on-site disposal. In particular, although DOE has indicated that contamination is not expected to reach the site boundary within 1,000 years of waste emplacement with the final capping, EPA does not believe that the NFSS can prohibit migration of contaminants for the 10,000 years required by 40 CFR Part 191 Subpart B. With this in mind, EPA believes that the only viable long-term action for the K-65 and other residues (i.e., L-30, L-50, etc.) at NFSS is removal to a permitted high-level radioactive waste repository, when such a facility becomes available.

In April 1986, DOE issued the Final Environmental Impact Statement on Long-Term Management of the Existing Radioactive Wastes and Residues at the Niagara Falls Storage Site (FEIS). In this document, DOE identified long-term, "in-place management of wastes at the NFSS, with modified containment" as the preferred alternative. However, because of the lack of detailed technical, engineering/design, and ground water data available at the time of the FEIS, EPA found it inadequate for the purposes of determining the environmental acceptability of on-site management for the residues and/or contaminated soils. Accordingly, in our June 25, 1986 comment letter, we objected to the project because the FEIS did not present sufficient information to support the selection of the preferred alternative.

In response to EPA's comments, DOE's Record of Decision (ROD) for the project stated that DOE would "provide EPA with assurance that the selected option will meet applicable standards and/or guidance and will be environmentally acceptable." Additionally, DOE indicated that subsequent project documents would be subject to review pursuant to the National Environmental Policy Act (NEPA). Unfortunately, the DOE has met neither of these commitments. Accordingly, we strongly recommend that DOE prepare appropriate NEPA documentation assessing the impacts of the proposed action on human health and the environment.

In a related matter, the NFSS was listed in the Federal Agency Hazardous Waste Compliance Docket in November 1988; it has not been listed on the National Priorities List. Accordingly, Section 120 of CERCLA/SARA requires state concurrence with the final remedial action at the NFSS. As yet, DOE has not documented the State of New York's concurrence with long-term management of the wastes at the NFSS as the site's final remedial action. Therefore, until both the New York State Departments of Environmental Conservation and Health concur with DOE's preferred alternative, EPA does not believe that it can be implemented as the site's final remedial action.

In conclusion, EPA has several significant concerns about DOE's preferred remedial action for the NFSS. In particular, we do not believe that DOE has demonstrated that this alternative is adequately protective of human health and the environment. In addition, EPA does not believe that DOE has satisfied the commitments made in the project's NEPA ROD regarding the implementation of the preferred alternative. Lastly, DOE has not secured the State of New York's concurrence with its preferred alternative as the final remedial action for the NFSS.

With respect to the DOE's proposal to add additional capping material at the NFSS, EPA agrees that this approach may provide additional protection in the short-term. However, since the existing interim cap was designed to exceed RCRA specifications, there is no immediate need to add additional capping material at the NFSS. Accordingly, we believe that the funds for the placement of the additional capping material could be put to better use elsewhere. With this in mind, EPA cannot agree with DOE's current course of action for the NFSS. Further, we request that the DOE provide a written commitment that the residues will be moved to a permitted high-level radioactive waste repository when such a facility becomes available.

I believe that a meeting between our respective agencies, as well as appropriate state agencies, should be held as soon as possible to discuss EPA's outstanding concerns with DOE's preferred remedial action for the NFSS. Towards this end, my staff will contact your office to arrange for such a meeting. In the interim, if you need additional information, please call me at (212) 264-2525, or have your staff contact Robert W. Hargrove, Chief, Environmental Impacts Branch, at (212) 264-1892.

Sincerely,

William J. Muszynski, P.E.
Acting Regional Administrator

cc: P. Ziemer, DOE-ESH
W. Seay, DOE-FUSRAP
R. Kirk, DOE-FUSRAP
P. Merges, NYSDEC
K. Rimawi, NYSDOH