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July 31, 2015

CERTIFIED MAIL
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Dear Ms. Zoli:

The Agency of Natural Resources (Agency) appreciates the information Entergy Nuclear Vermont Yankee (ENVY) has provided to date and looks forward to further constructive discussions about ENVY's compliance with applicable state standards under the Agency's authority. In an effort to resolve any possible miscommunication about certain information the Agency seeks from ENVY, the Agency wishes to further explain its request regarding the Pre-Closure Notification Form and closure plan requirements of the Vermont Hazardous Waste Management Regulations and to respond to your letters of March 27, 2015 and June 5, 2015.

Specifically, the Agency requests written assurance from ENVY that ENVY will submit the required Notification Form at least 90 days before commencing non-radiological aspects of any future closure or partial closure activities at the site and, if requested by the Agency, a closure plan specific to such closure or partial closure activities.¹ As discussed in greater detail herein and in the attached Agency memorandum of July 31, 2015, ENVY is a generator of non-radiological hazardous waste ("generator") and thus must comply with the general management standards of the Vermont Hazardous Waste Management Regulations (VHMWR) subchapter 3, including the notification and closure plan provisions of VHMWR § 7-309(c), and the State of Vermont is not preempted from regulating ENVY and the VY Station Site under these regulations.

¹ The submission of partial closure plans for future closure activities is expected to be sufficient at this time given the timeline and activities associated with ENVY's radiological decommissioning processes. However, the Agency reserves the right to require that ENVY submit a comprehensive plan for non-radiological final site closure if Entergy's plans warrant it.

BACKGROUND

On March 6, 2015, the Agency issued a Request for Information and Records to ENVY, to which ENVY responded on March 27, 2015. On May 14, 2015, the Agency issued a Supplemental Request for Information restating its March 6 request and requesting additional information prompted by ENVY's response to the first information request. In both Agency requests for information and in correspondence issued to ENVY on March 27, the Agency requested that ENVY submit a plan for compliance with the non-radiological hazardous waste generator closure requirements of VHWMR § 7-309(c) (hereinafter "closure plan"). The Agency has also stated in its March 27 letter that ENVY must submit a Pre-Closure Notification Form (Notification Form) to the Secretary prior to commencing future non-radiological closure activities. In response to the Agency's requests, ENVY has asserted that it is not subject to the hazardous waste management standards of VHWMR subchapter 3, including the generator closure requirements of § 7-309(c).

ENVY claims noncompliance with the VHWMR subchapter 3 (including generator closure requirements) is justified because: (1) the Agency's authority to oversee the ENVY site remediation is limited only to negotiation of site restoration standards; (2) a vast majority of the waste generated by ENVY is "universal waste" and not conventional hazardous waste, and therefore is not subject to VHWMR subchapter 3 standards; (3) ENVY's on-site waste storage and/or accumulation areas are merely being "relocated" on site as opposed to being closed; and (4) ENVY's remediation of the site is part of its site restoration obligations, which will only occur after radiological decommissioning has been completed. *See* March 27, 2015 and June 5, 2015 letters from ENVY (E. Zoli) to the Agency (C. Schwer). In short, none of ENVY's arguments has merit and ENVY must comply the VHWMR, including the generator closure requirements of 7-309(c).

I. ENVY MUST COMPLY WITH THE VHWMR

A. The Agency's Regulatory Authority over Non-Radiological Aspects of Generator Closure Activities has not been Limited by the 2013 Settlement Agreement.

ENVY first contends that the Agency's sole role with respect to the post-closure period is strictly circumscribed in the December 2013 Settlement Agreement between ENVY and the State to discussing and negotiating site restoration standards. ENVY March 27 letter at p. 2; ENVY June 5 letter at p. 5. This stance ignores clear language in the Settlement Agreement to the contrary; language which unambiguously reserves the inherent authority and jurisdiction of the Agency over ENVY and the site, and requires ENVY to comply with and adhere to all applicable state laws.

In the Settlement Agreement (and in similar provisions of the December 2013 MOU entered into by the State and ENVY) ENVY has committed itself to conducting all its activities in Vermont, including at the VY Station Site, in accordance with all applicable federal and state laws. Settlement Agreement, ¶ 4 ("Entergy VY shall conduct all activities in Vermont, including at the VY Station, in accordance with federal and state laws, including VDH's Radiological Health Rule."). As ENVY points out in its correspondence, this includes the obligation to "work in good

faith” with the State to determine “overall site restoration standards necessary to support use of the property without limitation.” *Id.* at ¶ 8. However, the Agreement also addresses the State’s other authorities and roles in the non-radiological processes occurring on the ENVY site. Most importantly, paragraph 20 of the Agreement expressly preserves the jurisdiction and regulatory authority of any state agencies over ENVY or the VY Station site: “Nothing in this Agreement shall affect, restrict, or limit the jurisdiction or regulatory authority of any state or federal agencies over Entergy VY or the VY Station Site”.² This paragraph includes the Agency of Natural Resources, and nothing in this paragraph is limited by negotiating site restoration standards.

There can be no dispute about interpretation of the Agreement, *see* ¶ 26 (“The Parties’ obligations under this Agreement are to be applied and enforced consistent with the plain meaning of the language used herein.”): the Settlement Agreement in no way affected, restricted, or limited the Agency’s regulatory authority over ENVY’s generation and management of non-radiological hazardous waste. The Agency’s specific oversight over non-radiological aspects of closure activities at the ENVY site under VHWMR subchapter 3 is therefore not restricted by the Settlement Agreement. Additionally, the Agency retains all authorities to take any actions authorized by law to ensure that ENVY achieves compliance with applicable state laws and regulations within the Agency’s jurisdiction.

B. ENVY is a Small Quantity Generator of Non-Radiological Hazardous Waste, and is Therefore Subject to VHWMR Subchapter 3.

ENVY further contends that it is not subject to the standards of VHWMR subchapter 3 because, although “Vermont Yankee is a small quantity generator of waste...the vast majority of the waste that it generates is ‘universal waste’” and that therefore, the generator management standards of VHWMR subchapter 3, including the generator closure requirements, do not apply to ENVY. ENVY June 5 letter, at p. 2. This argument misinterprets VHWMR’s classification of non-radiological hazardous waste generators.

As outlined in the attached July 31 Agency memorandum at Section III, ENVY qualifies under VHWMR § 7-307 as a “small quantity generator” regardless of any volume of universal waste that it generates. Generator status is determined pursuant to VHWMR § 7-305 by accounting for all non-radiological hazardous waste generated by a facility except those wastes specifically identified in subdivisions (a)(1) through (a)(7) of that section. Universal wastes (i.e., those wastes required to be managed in accordance with subchapter 9 of the VHWMR) are not considered in, and are specifically excluded from, a determination of generator status. VHWMR § 7-305(a)(6). Not only does ENVY acknowledge its status as a small quantity generator in its June 5 letter (see p. 5), but ENVY has recently certified its status as a small quantity generator to the Agency based

² As ¶ 18 of the Agreement notes, paragraphs 1-33 represent “the binding obligations of the Parties.”

on its recent non-radiological hazardous waste-related activities.³ ENVY's status as a small quantity generator subjects ENVY's non-radiological hazardous waste-related activities to subchapter 3 of the VHWMR, including the closure requirements of § 7-309(c). *See* VHWMR § 7-309(c)(5) ("Any generator identified as a small or large quantity generator on or after October 15, 2006, is subject to the requirements of this section regardless of their generator status at the time of closure.").

ENVY also argues that areas on the ENVY site containing non-universal non-radiological hazardous waste (waste storage and/or accumulation areas) are not subject to closure requirements of VHWMR subchapter 3 because they are not being "closed", but "have merely undergone a process of relocation" on the site. ENVY June 5 letter, at pp. 3-4. This argument attempts to apply the VHWMR closure requirements in an unauthorized and unsound manner. The generator closure standards of VHWMR subchapter 3 require ENVY as a generator to employ certain activities when closing the site or portions of the ENVY site (i.e., when non-radiological hazardous waste accumulation, handling, and storage areas are no longer used; when buildings containing non-radiological hazardous wastes are demolished or deconstructed; as historic non-radiological hazardous contamination becomes accessible for further remediation, etc.) to satisfy the requirements of VHWMR § 7-309(c). "Mere relocation" of non-radiological hazardous waste storage and/or accumulation areas do not render the closure requirements inapplicable as ENVY asserts; rather, moving non-radiological hazardous wastes stored or accumulated on site to other portions of the site may create new non-radiological hazardous waste management units (HWMUs), while creating the requirement to close the HWMU's no longer in use through partial closure requirements of VHWMR § 7-309(c)(6). Therefore, ENVY is required to close each portion of the site where non-radiological hazardous waste has been stored or accumulated in accordance with VHWMR § 7-309(c).

C. ENVY's Non-Radiological Hazardous Waste Closure Requirements are Distinct from ENVY's Site Restoration Obligations.

Lastly, ENVY contends that the Agency's request for a plan for closure is "premature" and "not objectively reasonable" in the face of the prolonged timeline predicted for radiological decommissioning. ENVY June 5 letter, at pp. 4-5. This argument depends in part on ENVY's

³ ENVY's most recent Hazardous Waste Handler Site ID Form, submitted by Lynn DeWald (Senior Environmental Specialist) and received by the Agency on April 6, 2015, identifies specifically ENVY as a small quantity generator under Section 10(A) of the form (i.e., 220-2,200 lbs (or 100 to 1,000 kg) of non-acute hazardous waste and less than 2.2 lbs (1 kg) of acutely hazardous waste generated in a calendar month; and less than 13,200 lbs (6,000 kg) accumulated). The attachment addressing Section 11 of the form (Description of Hazardous Waste) also identifies that on a monthly basis, ENVY handles approximately 780 lbs of hazardous wastes at the ENVY facility, which qualifies ENVY as a small quantity generator under VHWMR § 7-307. Prior to its April 6, 2015 reporting, ENVY has consistently reported as either a large quantity or small generator of hazardous waste since 1980, with one exception (in 1998, ENVY reported as a conditionally exempt generator, generating less than 100kg/mo or 220 lbs of hazardous waste).

contention that all VHWMR requirements related to handling, storage and disposal of non-radiological hazardous waste fall under its “site restoration” obligations, which will be implicated “only after the NRC decommissioning process has been completed.” ENVY March 27 letter, at p. 2.

Site restoration and the VHWMR requirements are separate obligations. Site restoration includes the obligation that “the Site will be restored by removal of all structures and, if appropriate, regrading and reseeded the land.” Master Decommissioning Trust Agreement, July 31, 2002, at Exh. D. The VHWMR address the “generation, storage, collection, transport, treatment, disposal, use, reuse, and recycling of [non-radiological] hazardous waste in Vermont.” VHWMR §7-102. The latter generally focuses on ongoing management of non-radiological hazardous waste.

Further, we agree that the December 2013 Settlement Agreement between ENVY and the State recognizes that the State (including the Agency) has jurisdiction over site restoration (*see* 2013 Settlement Agreement at ¶8), but it is also clear that nothing in the Agreement affects, restricts, or limits any other jurisdiction or regulatory authority of the Agency over ENVY or the VY Station Site (*id.* at ¶ 20). In addition to its status as an operator of a decommissioning nuclear power plant, ENVY has been and is a Vermont generator of non-radiological hazardous waste as defined by VHWMR § 7-301, and therefore is subject to the Agency’s federally-authorized regulatory program for non-radiological hazardous waste. As a generator, ENVY is required to comply with specific standards in VHWMR subchapter 3 applicable to the generation and management of non-radiological hazardous waste as a product of its routine operations (i.e., electricity generation). In December 2014, ENVY ceased its electricity generating operations, triggering ENVY’s obligation to comply with specific subchapter 3 requirements as it closes the VY Station site in order to minimize or eliminate further clean-up of non-radiological hazardous waste contamination, and to minimize or eliminate any environmental or public health-related risks associated with non-radiological hazardous waste managed on site. The requirements of VHWMR subchapter 3, § 7-309(c) are implicated by cessation of hazardous waste activities and ENVY’s closure activities, and are not, as ENVY suggests, only applicable after radiological decommissioning has been completed.

D. The Agency’s Regulation of ENVY’s Non-Radiological Hazardous Waste Activities under VHWMR Subchapter 3 is Not Preempted.

Generally, please refer to the attached July 31 Agency memorandum at Section IV with regard to the Agency’s response to ENVY’s suggestion that the Agency’s regulatory authority over non-radiological hazardous waste has been preempted by federal regulation of nuclear activities.

ENVY also expresses concern that the Agency’s request for a closure plan is an attempt to “force the development of documents that unavoidably relate to the NRC process...encroach[ing] on preempted space.” ENVY March 27 letter, at pp. 3-4.⁴ The Agency acknowledges that the

⁴ The cases ENVY cites to support its preemption claim are inapposite. All of these cases involve attempts by states to regulate radiological waste. In *Boeing v. Movassaghi*, the court struck down a state law that

radiological decommissioning of the ENVY facility and site will proceed in a phased manner over the course of a period of years, the timing of which will depend on factors outside of the scope of the Agency's authority. Accordingly, the Agency anticipates that non-radiological generator closure activities may also proceed throughout the radiological decommissioning timeline in a phased manner (i.e., as non-radiological hazardous waste accumulation, handling, and storage areas are no longer used; as buildings containing non-radiological hazardous wastes are demolished or deconstructed; as historic non-radiological hazardous contamination becomes accessible for further remediation, etc.).

In requiring advanced notice (via a Notification Form) and a closure plan for future closure activities (if requested), the Agency does not seek to direct or regulate ENVY's radiological decommissioning process or timelines for such activities or its plans for closure of part or all of the site, or issues related to nuclear safety or hazards associated with radiological waste. Rather, the required advanced notice and closure information is necessary for the Agency to anticipate and understand the scope of and potential risks associated with any planned non-radiological waste-related closure activities. This information helps the Agency ensure that non-radiological risks associated with non-radiological hazardous wastes generated or managed by ENVY are minimized and any issues are resolved in accordance with applicable state standards. The Agency's request for advanced notice therefore takes into consideration and defers to the NRC's decommissioning process, and ENVY's compliance with the Agency's non-radiological hazardous waste closure requirements in no way conflicts with ENVY's decommissioning obligations or timelines for such activities.

II. SUMMARY OF REQUIREMENTS OF VHWMR § 7-309(C)

In an effort to resolve any misconceptions regarding the Agency's regulation of ENVY's non-radiological hazardous waste-related activities, the Agency further explains the information it seeks regarding ENVY's plan for future closure activities. The Agency also reiterates ENVY's obligation to notify the Secretary of the commencement of future closure activities involving non-radiological hazardous waste.

established cleanup standards for pollutants with both radioactive and chemical (non-radioactive) characteristics that were more stringent than the applicable federal standard for the clean-up of radioactive chemicals. 768 F.3d 832 at 837-38 (9th Cir. 2014). Similarly, the court in *Brown v. Kerr-McGee Chemical Corp.* invalidated a state action ordering the removal of all hazardous waste, including radiological waste, from a nuclear processing facility site. 767 F.2d 1234 at 1236 (7th Cir. 1985). Finally, in *Missouri v. Westinghouse Electric, LLC*, the court found that the state's attempt to regulate areas on the facility site that were known to be contaminated with radioactive materials was preempted. 487 F. Supp. 2d 1076 at 1087-88 (E.D. Mo. 2007). These cases represent attempts by states to regulate radiological wastes managed by nuclear facilities, and are distinguishable from the Agency's regulation of ENVY's non-radiological hazardous waste activities pursuant to its federally-authorized hazardous waste regulatory program.

Prior to commencing non-radiological aspects of generator closure activities at any portion of the site, ENVY must provide notification of its intent to commence such activities. When ENVY decides that closure activities involving non-radiological hazardous waste will take place on any portion of the site, ENVY shall notify the Secretary by submitting a complete Pre-Closure Notification Form⁵ in accordance with the rule prior to commencing such activities. If required by the Agency, ENVY must submit a plan for achieving generator non-radiological closure for the area of the ENVY site specific in the Pre-Closure Notification Form. A closure plan submitted by ENVY must indicate what areas on the ENVY site or a portion of the ENVY site to be closed will be subject to the applicable closure standards in VHWMR § 7-309(c), and what activities will be taken by ENVY to ensure that the site or the identified portion of the site will be closed in accordance with those standards. Ultimately, closure activities must be completed to achieve the final closure standard of VHWMR§ 7-309(c)(1) for non-radiological hazardous waste, and may be conducted through a series of partial closures.

CONCLUSION

In summary, the Agency seeks written assurance from ENVY that ENVY will comply with Section 7-309(c) of the VHWMR, submit a Notification Form in accordance with the rule prior to commencing any non-radiological closure or partial closure activities related to non-radiological hazardous wastes and, if required, a closure plan for proposed non-radiological closure or partial closure activities.

If you have any questions concerning this letter, please feel free to contact me at (802) 249-5324 or chuck.schwer@state.vt.us.

Sincerely,



Chuck Schwer, Director
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cc: Michael Twomey, Entergy Nuclear Operations, Inc., Vice President of External Affairs
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Jeffrey Fowley, Regional Counsel, Environmental Protection Agency, Region 1
Scot Kline, Assistant Attorney General, Vermont Office of the Attorney General
Christopher Recchia, Commissioner, Vermont Department of Public Service
Dr. Harry Chen, Commissioner, Department of Health

⁵ A copy of the Pre-Closure Notification Form can be found at the following link:
<http://www.anr.state.vt.us/dec/wastediv/rcra/documents/Preclousurenoficationform.pdf>.

Mr. Perry Plummer, Director, New Hampshire Department of Safety
Mr. John Giarrusso, Jr., Nuclear Preparedness Manager, Commonwealth of Massachusetts