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Matthew B. Byrne
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January 25, 2016

Rob Evans, CFM, State Floodplain Manager
Vermont Department of Environmental
Conservation - Rivers Program
One National Life Drive, Main 2
Montpelier, VT 05620-3522

Re: Entergy VY DFS River Corridor Permit Application

Dear Mr. Evans:

As requested in the August 14, 2015 testimony of Rob Evans in the Public Service Board's Docket No. 8300, Entergy Nuclear Vermont Yankee, LLC ("ENVY") is applying for a Vermont Flood Hazard Area and River Corridor General Permit for development within the River Corridor. The attached application materials include the following:

- Signed application form
- Project site plan with the River Corridor shown
- A copy of Exhibit ANR-REE-2 (VT DEC River Corridor at VY)
- Written description of project as required by Sections V(c)(1) and V(c)(2) of the General Permit. This description is located below in this letter.
- List of abutting landowners, contractors and consultants as required by Section V(c)(2)(B) of the General Permit

This permit application is being submitted in connection with ENVY's construction of a 93' x 76' concrete pad and 30' wide concrete apron for dry fuel storage ("DFS") of spent nuclear fuel and the installation of an emergency generator at the Vermont Yankee Nuclear Power Station in Vernon, Vermont.

The proposed construction is located on the west side of the existing DFS pad, such that the new construction meets the requirements of Appendix B of the VT DEC River Corridor Protection Procedure. Additional details concerning the proposed construction may be found in ENVY's filings and discovery responses in Docket No. 8300.

By filing this application, ENVY is not waiving and expressly reserves all rights. In particular, ENVY reserves its objections to the application of the VT DEC River Corridor

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Protection Procedure and Vermont Flood Hazard Area and River Corridor General Permit to the proposed construction on the grounds that any denial or delay in the issuance of the permit is preempted by the Atomic Energy Act ("AEA"). The federal government has "exclusive authority over [commercial nuclear] plant construction and operation." *Pac. Gas & Elec. Co. v. State Energy Resources Conserv. & Dev. Comm'n*, 461 U.S. 190, 212 (1983) ("PG&E"), as well as "nuclear safety concerns," *id.* Such exclusive authority extends to the nuclear phase of decommissioning. *See, e.g., Missouri v. Westinghouse Elec., LLC*, 487 F. Supp. 2d 1076 (E.D. Mo. 2007) (AEA preemption applies to decommissioning facilities); *Me. Yankee Atomic Power Co. v. Bonsey*, 107 F. Supp. 2d 47, 51 (D. Me. 2000) (state "authority to regulate [a nuclear power plant's] decommissioning activities is preempted"); *see also Me. Yankee Atomic Power Co. v. Me. Pub. Utils. Comm'n*, 581 A.2d 799, 805-06 (Me. 1990) (finding preempted Maine's attempt to regulate the decommissioning fund of the Maine Yankee Atomic Power Company). The same is true for the storage of spent nuclear fuel, as the NRC has "exclusive jurisdiction to license the transfer, delivery, receipt, acquisition, possession and use of nuclear materials," and "[u]pon these subjects, no role was left for the states." *PG&E*, 461 U.S. at 207 (citations omitted); *Skull Valley Band of Goshute Indians v. Nielson*, 376 F.3d 1223, 1250 (10th Cir. 2004) ("Under the federal licensing scheme... it is not the states but rather the NRC that is vested with the authority to decide under what conditions to license an SNF storage facility."); *Bullcreek v. NRC*, 359 F.3d 536, 538 (D.C. Cir. 2004) ("[T]he AEA confers on the NRC authority to license and regulate the storage and disposal of [SNF]."); Docket 7082, *Pet. of Entergy VY for a CPG to construct a dry fuel storage facility at the VY Station*, Order of 4/26/06 at 15 (recognizing federal preemption of state-level regulation of spent nuclear fuel management). The NRC has also regulated specifically in the area of flood risk evaluation. 10 C.F.R. Part 50, Appendix A, Criterion 2 ("Structures, systems, and components important to safety shall be designed to withstand the effects of natural phenomena such as earthquakes, tornadoes, hurricanes, floods, tsunami, and seiches without loss of capability to perform their safety functions.").

In addition, ENVY reserves its objections on the grounds that the Agency has not met the requirements under the statute or its regulations. More specifically, the Agency did not properly delineate and map the River Corridor for the applicable portion of the Connecticut River in compliance with the requirements of 10 V.S.A. § 1427 and the Vermont Flood Area and River Corridor Protection Procedure, including determining the true meander belt and buffer components of the river corridor and consulting with the Town of Vernon and regional planning commission prior to and during the assessment leading to its development of the "CT River Corridor at Vernon, VT" (Exhibit ANR-REE-2).

Notwithstanding these objections, ENVY is applying for this permit in an effort to reduce the number of contested issues at hearing and expenditures on legal challenges. In doing so, ENVY understands that the Vermont Agency of Natural Resources has already determined that the project meets the requirements for obtaining a permit. In particular, as stated in testimony of

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Rob Evans prefiled with the Public Service Board in Docket No. 8300 on August 14, 2015, the project meets the standards in the Flood Hazard Area and River Corridor Rule and the Flood Hazard Area and River Corridor Protection Procedure "since it will not increase flood elevations, velocities, or exacerbate fluvial erosion" and is located "behind the existing dry cask storage and further away from the Connecticut River."

Once again, ENVY reserves all rights.

Very truly yours,

GRAVEL & SHEA PC

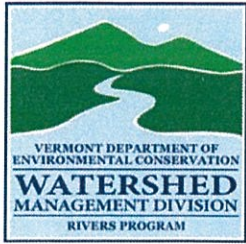
Matthew B. Byrne

MBB:nlt

Enclosures

bcc: Leslie A. Cadwell, Esq. (via e-mail)
Nancy S. Malmquist, Esq. (via e-mail)
John H. Marshall Esq. (via e-mail)
Tim Ngau, Esq. (via e-mail)
Mr. George Thomas (via e-mail)

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VERMONT AGENCY OF NATURAL RESOURCES
APPLICATION FOR COVERAGE UNDER THE
FLOOD HAZARD AREA & RIVER CORRIDOR GENERAL PERMIT^{*}
Reporting with Application Category
10 V.S.A. § 754

Category of Development Exempt from Municipal Regulation:

- ☐ State-owned or operated institution or facility
- ☐ Accepted agricultural or silvicultural practice
- ☒ Power generating, transmission, or telecommunication facility subject to Section 248/248a/10 VSA § 6522

Applicant Name: Entergy Nuclear Vermont Yankee, LLC

Mailing Address: 320 Governor Hunt Road, Vernon, Vermont

Phone: 802-451-3102

Cell:

Email: cwamser@entergy.com

Landowner (if different than applicant, attach easement): Entergy Nuclear Vermont Yankee, LLC

Landowner Mailing Address:

Phone:

Email:

Consultant or Designer: SVE /John E. Goodell, P.E.

Phone: 802-257-0561 Email: jgoodell@sveassoc.com

Contractor: Entergy Nuclear Vermont Yankee, LLC

Phone: 802-451-3072 Email: gthomas@entergy.com

Project Location Address: 320 Governor Hunt Road

Town: Vernon, VT

River or Stream Name: Connecticut River

Lat: 42-46'-49.10"

Long: 72-30'-35.43"

General description of proposed development:

Construction of a second, concrete dry fuel storage pad (DFS) and installation of an emergency generator at the Vermont Yankee Nuclear Plant located in Vernon, Vermont. The 93 ft by 76 ft dry fuel storage pad and 30 ft wide apron will be located approximately 30 ft west of the existing DFS pad at the plant site. See Entergy Nuclear Vermont Yankee, LLC's submissions and discovery responses in Public Service Board Docket No. 8300 for further details concerning the proposed development.

Eligible Activity (Section V(c)(1) of the General Permit¹):

Please check the box applicable to your proposed project. If none of the following apply, your project may require a different type of application or notice. For more information contact the regional floodplain manager: http://www.watershedmanagement.vt.gov/rivers/docs/rv_floodplain_regions.pdf

- ☐ Improvement or repair to an existing structure (walled/roofed building) in the flood hazard area, costing less than 50% of the fair market value of the structure.
- ☐ Construction or placement of an accessory structure less than 500 square feet in size in the flood hazard area, but not in the floodway or river corridor. The accessory structure must meet the Flood Hazard Area Standard in Section VI(b) of the General Permit.

¹ http://www.watershedmanagement.vt.gov/rivers/docs/2015_FHARC_GP.pdf

- ☒ New development that is located outside of the flood hazard area, but within the river corridor that complies with the requirements of Appendices A or B of the Flood Hazard Area and River Corridor Protection Procedure or that is within a designated center or farm production area and is not any closer to the river than immediately adjacent development.*
- ☐ Restoration projects to restore natural floodplain function including berm removal, natural channel design, floodplain excavations, wetland habitat improvements, and dam removal.

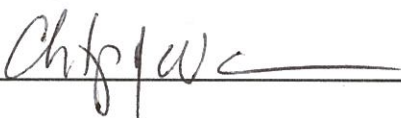
Submittal requirements (please attach the following with this form as appropriate to the proposed development):

- ☒ A map clearly showing the location of the proposed activity. To expedite review and authorization, provide a map generated from the ANR Natural Resources Atlas showing the river corridor and flood hazard area (if available) (<http://anrmaps.vermont.gov/websites/anra/>);
- ☒ A written description of the proposed project that clearly indicates which activity will be conducted under Section V(c)(1) of the General Permit and provides sufficient technical details demonstrating how it will meet the Flood Hazard Area & River Corridor Standards (Section VI of the General Permit);**
- ☐ For improvements or repairs to existing structures, the costs of materials, labor, and, for work in excess of \$5,000.00, and an estimate of fair market value (recent appraisal or tax assessment); and
- ☒ Contact information, including names and mailing addresses, and if available, email addresses and phone numbers, for adjoining landowners, contractors, and consultants.

****APPLICANT MUST FILE COPY OF THIS APPLICATION WITH TOWN CLERK, ADJOINING LANDOWNERS, and LOCAL AND REGIONAL PLANNING COMMISSIONS****

CERTIFICATION: I hereby certify that the information on this application is, to the best of my knowledge, true and accurate and that I have provided a copy of this application to the clerk of the municipality in which this activity is located, the local and regional planning commissions, and to each adjoining landowner as required in the Vermont Flood Hazard Area & River Corridor Rule. **I recognize that by signing this application I am giving consent to employees of the State to enter the subject property for the purpose of processing this application and for ensuring compliance with subsequent agency decisions relating to the project.**

Print Full Name Christopher Wamser, Site Vice President

Applicant Signature  Date 01/25/2016

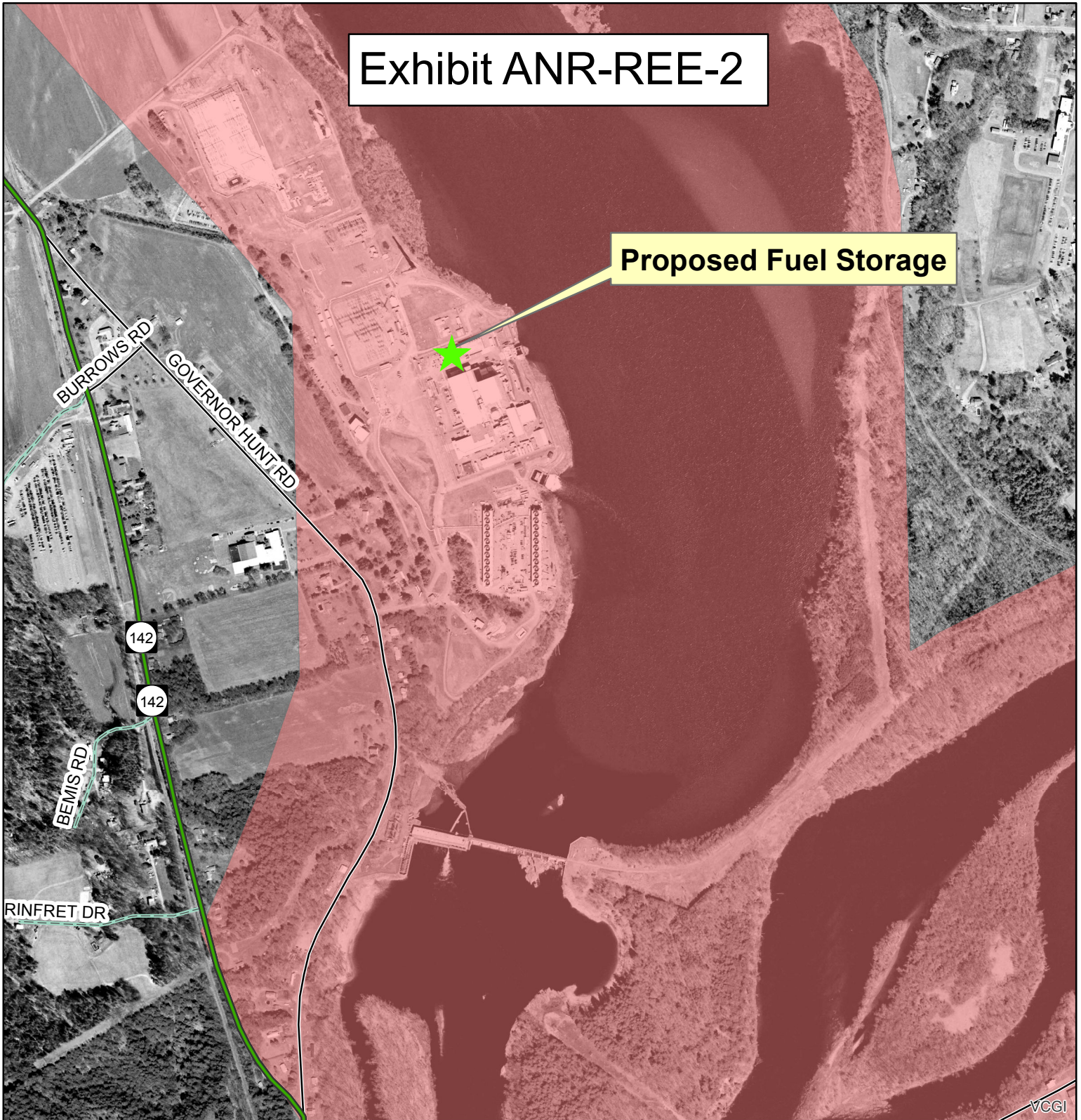
Submit application to:
 Department of Environmental Conservation – Rivers Program
 One National Life Drive; Main 2 – Montpelier, VT 05620-3522
ANR.WSMDRivers@state.vt.us

* By filing this application, Entergy Nuclear Vermont Yankee, LLC is not waiving and expressly reserves all rights. In particular, Entergy Nuclear Vermont, LLC reserves its objections to the application of the VT DEC River Corridor Protection Procedure and Vermont Flood Hazard Area and River Corridor General Permit on the grounds that any denial or delay in the issuance of the permit is preempted by the Atomic Energy Act. In addition, Entergy Nuclear Vermont Yankee, LLC reserves its objections on the grounds that the Agency has not met the requirements under the statute or its regulations. More specifically, the Agency did not properly delineate and map the River Corridor for the applicable portion of the Connecticut River in compliance with the requirements of 10 V.S.A. § 1427 and the Vermont Flood Area and River Corridor Protection Procedure, including determining the true meander belt and buffer components of the river corridor and consulting with the Town of Vernon and regional planning commission prior to and during the assessment leading to its development of the "CT River Corridor at Vernon, VT" (Exhibit ANR-REE-2). See also Entergy Nuclear Vermont Yankee LLC's January 25, 2016 cover letter accompanying this application.

**See Public Service Board Docket No. 8300 and the filings therein including the August 14, 2015 ANR prefiled testimony of Rob Evans at Q&A 16 ("Will the project meet the standards in the Flood Hazard Area and River Corridor Protection Procedure? Yes... The proposed location meets the No Adverse Impact standard in the Flood Hazard Area and the River Corridor Rule and the Flood Hazard Area and River Corridor Protection Procedure since it will not increase flood elevations, velocities, or exacerbate fluvial erosion.") and Q&A 17 ("Does the Agency have any additional concerns under Criterion 1D - Floodways? No.").

Exhibit ANR-REE-2

Proposed Fuel Storage



CT River Corridor at Vernon, VT

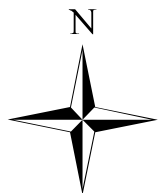
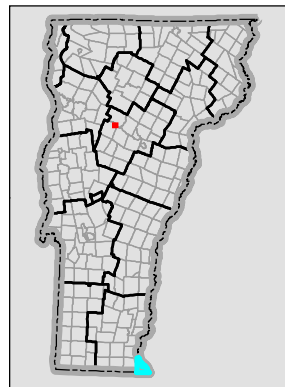
DEC Watershed Management Division
River Corridor and Floodplain Protection

Created 08.14.2015

This map is for illustrative purposes only. The accuracy of the data layers shown on this map are limited by the accuracy of the source materials. No warranty as to the accuracy or the usefulness of the data is expressed or implied.

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1,000 500 0 1,000
Feet



Legend

CT River Corridor



**List of Adjoining Landowners
Town of Vernon Grand List
Reviewed on January 14, 2016
Grand List Certified on April 1, 2015**

<p>Parcel ID: 30-1-1</p> <p>John J. Butterfield 349 Governor Hunt Road Vernon, VT 05354</p>	<p>Parcel ID: 36-1; 36-2; 36-27</p> <p>Town of Vernon 567 Governor Hunt Road Vernon, VT 05354</p>
<p>Parcel ID: 36-10</p> <p>Gary J. Shepard P.O. Box 12 Vernon, VT 05354-0012</p>	<p>Parcel ID: 36-14</p> <p>Stanley J. Jefferson 448 Governor Hunt Road Vernon, VT 05354</p>
<p>Parcel ID: 36-23</p> <p>Frank A. LaFlam Jr. P.O. Box 256 Vernon, VT 05354-0256</p>	<p>Parcel ID: 36-24</p> <p>John McKay 110 Honey Brim Road Vernon, VT 05354</p>
<p>Parcel ID: 36-25</p> <p>Vernon School District 381 Governor Hunt Road Vernon, VT 05354</p>	<p>Parcel ID: 36-26</p> <p>Sandra W. Revocable Trust 67 Scott Road Vernon, VT 05354</p>
<p>Parcel ID: 36-5</p> <p>Keith D. and Tina Marie Franklin 1741 Ft. Bridgman Road Vernon, VT 05354</p>	<p>Parcel ID: 36-7</p> <p>Faith M. Jobin 612 Governor Hunt Road Vernon, VT 05354</p>
<p>Parcel ID: 36-8.1</p> <p>William T. and Karen L. Gilbert 546 Governor Hunt Road Vernon, VT 05354</p>	<p>Parcel ID: 36-6</p> <p>Peter D. & Angela D. Miller 1732 Ft. Bridgman Road Vernon, VT 05354 And Arthur J. & Judy A. Miller 1730 Ft. Bridgman Road Vernon, VT 05354</p>

Parcel ID: 36-3 Maria A. Webb 1793 Ft. Bridgman Road Vernon, VT 05354	Parcel ID: 29-1; 30-2; 30-14 TransCanada Hydro NE Inc. 110 Turnpike Road, Suite 203 Westborough, MA 01581
Parcel ID: 30-1.2 David and Deborah Parsons 341 Governor Hunt Road Vernon, VT 05354	Parcel ID: 30-1.3 Deanna Macie 327 Governor Hunt Road Vernon, VT 05354
Parcel ID: 36-8-1 William Gilbert 546 Governor Hunt Road Vernon, VT 05354	Parcel ID: 37-7 & 35-7 Paul & Mary Miller LLC 5 Tyler Hill Road Vernon, VT 05354
Parcel ID: 36-11 Ryan R. McClelland 486 Governor Hunt Road Vernon, VT 05354	

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