

STATE OF VERMONT
PUBLIC SERVICE BOARD

Petition of Entergy Nuclear Vermont Yankee,)
LLC and Entergy Nuclear Operations, Inc., for a)
certificate of public good, pursuant to 30 V.S.A.)
§ 248 and 10 V.S.A. § 6522, authorizing the)
construction of a second independent spent fuel) Docket No. 8300
storage installation storage pad and related)
improvements, including installation of a new)
diesel generator with an electrical rating of)
approximately 200 kW, at the Vermont Yankee)
Nuclear Power Station in the Town of Vernon,)
Vermont)

**ENTERGY NUCLEAR VERMONT YANKEE, LLC, AND ENTERGY NUCLEAR
OPERATIONS, INC.’s SECOND SET OF DISCOVERY REQUESTS FOR
THE AGENCY OF NATURAL RESOURCES**

Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. (collectively, “Entergy VY”), serve the following discovery requests on the Agency of Natural Resources (“ANR”).

Entergy VY respectfully requests that the ANR answer the following discovery requests in writing and under oath and deliver one complete copy of all documents, plus an electronic version of such responses, by February 3, 2016, to Entergy VY’s counsel whose names and addresses are set forth on the service list accompanying this request.

DEFINITIONS

The following definitions apply to the following discovery requests:

1. **Communication.** The term “communication” means the transmittal of information in the form of facts, ideas, inquiries or otherwise.

2. **Document.** The term “document” is defined to be synonymous in meaning and equal in scope to the usage of this term in Vermont Rule of Civil Procedure 34(a) and includes any and all writings or other materials, whether handwritten, typed, printed, recorded or reproduced by any other physical, mechanical, electronic or electrical means, including, but not limited to, records, papers, correspondence, telegrams, memoranda, notes, letters, photographs, photographic slides or negatives, films, filmstrips, computer diskettes, computer files, tapes and recordings, summaries or records of telephone conversations, summaries or records of personal conversations, and all carbons or photocopies bearing any underlining, highlighting, additions, corrections, or marginal notations which are in the possession, custody, or control of the ANR, its agents, employees, representatives, attorneys or experts, wherever located.

3. Identify (With Respect to Persons). When referring to a person, to “identify” means to provide, to the extent known, the person’s full name, present or last known address, and when referring to a natural person, additionally, the present or last known place of employment. Once a person has been identified in accordance with this subparagraph, only the name of the person need be listed in response to subsequent discovery requesting the identification of that person.

4. Identify (With Respect to Documents). When referring to documents, to “identify” means to provide, to the extent known, information about (i) the type of document; (ii) its general subject matter; (iii) the date of the document; and (iv) its author(s), and each recipient.

5. You or Your(s): The terms you or your(s) means ANR, its employees, consultants, representatives, and designated fact and/or expert witnesses.

6. Person. The term “person” is defined as any natural person or any business, legal or governmental entity or association.

7. Concerning. The term “concerning” means relating to, referring to, describing, evidencing or constituting.

8. Produce. The term “produce” means to provide the original or an exact legible copy of a requested document that is within your custody, possession or control to Entergy VY’s counsel. A draft or non-identical copy is a separate document within the meaning of this term. Further, please furnish dynamic data files (e.g., databases, spreadsheets) in their native format, that is, in or compatible with Excel or other standard applications.

9. VY Station. This term refers to the Vermont Yankee Nuclear Power Station.

10. NRC. The term “NRC” refers to the United States Nuclear Regulatory Commission.

11. Store or Storage. The terms “store” or “storage” refers to the keep, holding or containment of wastes on-site, including for a temporary period at the end of which the waste is treated, disposed of, or stored at another location.

12. VHWMR. The term “VHWMR” refers to the Vermont Hazardous Waste Management Regulations, effective March 15, 2013.

13. Mixed Waste or Low Level Mixed Waste. The term “Mixed Waste” or “Low Level Mixed Waste” refers to a waste that contains both hazardous waste, as that term is defined in Section 7-103 of the VHWMR and under the federal Resource Conservation and Recovery

Act of 1976, and source, special nuclear, or byproduct material subject to the federal Atomic Energy Act of 1954.

14. Mixed Waste Rule. The term "Mixed Waste Rule" refers to the regulations promulgated by the United States Environmental Protection Agency that are codified in 40 C.F.R. Part 266, Subpart N, and that are incorporated by reference under Section 7-109(b)(2) of the VHWMR.

The following rules of construction apply to all discovery requests:

1. All/Each. The terms "all" and "each" shall both be construed as all and each.
2. And/Or. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.
3. Number. The use of the singular form of any word includes the plural and vice versa.

INSTRUCTIONS

1. Provide a separate page for each separate question. Reproduce the discovery request made before presenting the response.
2. The response to each request should be made under oath by a person competent to testify concerning the response and all documents and exhibits produced as part of the response. With respect to each request, state (1) the name(s) and title(s) of the person or persons responsible for preparing the response; and (2) the date on which each question was answered.
3. Where information requested is not available in the precise form described in the question or is not available for all years (or other periods or classifications) indicated in a series of years (or other periods or classifications), provide all information with respect to the subject matter of the question that can be identified in your work papers and files or that is otherwise available.
4. These discovery requests are continuing in nature, and require you to file supplementary answers pursuant to the Vermont Rules of Civil Procedure as incorporated by the Rules of the Vermont Public Service Board. Change, supplement and correct your responses to conform to all information as it becomes available to you, including the substitution of actual data for estimated data. Responses to requests covering a period not entirely in the past (or for which complete actual data are not yet available) should include all actual data available at that time.
5. Whenever responses include estimated information, include an explanation (or reference to a previous explanation) of the methods and calculations used to derive the estimates.
6. For any matter where a request for admission is being answered by a denial or objection, the answer should set forth in detail the reasons for the denial or objection, in conformity with Vermont Rule of Civil Procedure 36.
7. In construing these discovery requests, the terms "refer to" and "relate to" shall include any and all logical or factual connections to the subject of the discovery request as specified.
8. Organize responses and supporting documents using the identifying number to which they respond.

DISCOVERY REQUESTS

Q.EN.ANR.2-1: Describe in detail ANR's experience in administering the Mixed Waste Rule?

Q.EN.ANR.2-2: Identify and describe any instance other than with respect to the VY Station where Mr. Simoes and/or ANR undertook or oversaw actual management of the storage of Mixed Waste in lieu of NRC, at any Vermont site, location or facility pursuant to the Mixed Waste Rule, and produce all documents related to or reflecting such management of the storage of Mixed Waste in lieu of NRC at any Vermont site, location or facility, including any analysis that You and/or ANR performed with respect to any determination that NRC's requirements for the management of Mixed Waste were inadequate.

Q.EN.ANR.2-3: Outside of this case, has ANR ever administered the Mixed Waste Rule in lieu of NRC? Please identify those instances where the ANR has administered the rule and produce all documents related to ANR's prior administration of the Mixed Waste Rule, including any analysis that ANR performed concerning any determination as to whether NRC's requirements for managing Mixed Waste are adequate to protect the environment and human health.

Q.EN.ANR.2-4: Does ANR dispute that Entergy VY can classify material from dismantling the North Warehouse that is contaminated with radioisotopes as Low Level Mixed Waste?

Q.EN.ANR.2-5: Does ANR dispute that material classified as Low Level Mixed Waste under the storage and treatment exemption is exempt from RCRA and/or VHWMR requirements because they are not "hazardous waste" as defined by 40 C.F.R. § 261.3 and/or VHWMR?

Q.EN.ANR.2-6: Please refer to Mr. Simoes' Prefiled Surrebuttal Testimony beginning at page 6, line 1, "Additionally, facilities claiming either the storage and treatment exemption or the transportation and disposal exemption are required to identify the RCRA hazardous waste code(s) that would otherwise apply to the wastes, in accordance with VHWMR Section 109(b)(2) and the federal regulation. The RCRA hazardous waste codes that the facility would be required to refer to are specified in Subchapter 2 of the VHWMR." Please explain the basis of the statement that RCRA hazardous waste code(s) must be identified if the storage and treatment exemption, but not the transportation and disposal exemption with its notification provision in 40 C.F.R. § 266.345, is claimed.

Q.EN.ANR.2-7: Please refer to Mr. Simoes' Prefiled Surrebuttal Testimony beginning at page 8, line 21, "My recommendation to the Board regarding the process for representative sampling for purposes of performing a hazardous waste determination still applies to Entergy's

management of LLMW.” Please explain the basis of this statement. How is the statement consistent with 40 C.F.R. § 266.220 or 40 C.F.R. § 266.305?

Q.EN.ANR.2-8: Is it Mr. Simoes’ and ANR’s contention that if Entergy VY uses the storage and treatment exemption of the Mixed Waste Rule for the North Warehouse materials, it must take samples of the non-radiological hazardous portion of those materials? Please explain the basis for Mr. Simoes’ and ANR’s conclusion in detail.

Q.EN.ANR.2-9: Please refer to Mr. Simoes’ Prefiled Surrebuttal Testimony beginning at page 9, line 4, “Entergy will still be required to characterize the non-radiological component of any eligible LLMW.” Please explain the basis of this statement. How is the statement consistent with 40 C.F.R. § 266.220 or 40 C.F.R. § 266.305?

Q.EN.ANR.2-10: Is it Mr. Simoes’ and ANR’s contention that if Entergy VY uses the storage and treatment exemption of the Mixed Waste Rule for the North Warehouse materials, it must characterize the non-radiological hazardous portion of those materials? Please explain the basis for Mr. Simoes’ and ANR’s conclusion in detail.

Q.EN.ANR.2-11: Is it Mr. Simoes’ and ANR’s contention that Entergy VY’s dismantlement and packaging of materials from the North Warehouse for pick up and transportation by a third party vendor requires Entergy VY to use the transportation and disposal exemption if Entergy VY seeks to be relieved of compliance with RCRA requirements? If so, please explain the basis for Mr. Simoes’ and ANR’s conclusion that the dismantlement and packaging of the North Warehouse constitutes transportation and/or disposal for purposes of the Mixed Waste Rule.

Q.EN.ANR.2-12: Under what authority was the Procedure for Conducting Hazardous Material Investigations and Remediation Activities Under 30 V.S.A. Section 248 (Section 248 Procedure) written?

Q.EN.ANR.2-13: Identify, list and produce all documents related to the creation of the Procedure for Conducting Hazardous Material Investigations and Remediation Activities Under 30 V.S.A. Section 248 (Section 248 Procedure).

Q.EN.ANR.2-14: Identify each provision of the Mixed Waste Rule for which Mr. Simoes is responsible for administering in connection with his position and duties as Environmental Analyst VII with the ANR’s Hazardous Waste Program.

Q.EN.ANR.2-15: Regarding the ANR’s consultation with the Vermont Department of Health discussed in A5 of Mr. Simoes’ Prefiled Surrebuttal Testimony, please:

- i. Identify each representative of the ANR and Vermont Department of Health who participated in the referenced consultation;
- ii. Identify the “applicable provisions of the MWR” that the ANR will administer;

- iii. State whether the ANR consulted with any federal agencies regarding the determination that ANR will administer the MWR, and if so, identify each agency;
- iv. List and produce all documents related to ANR's consultation with the Vermont Department of Health or any other state or federal agency regarding the determination that ANR will administer the applicable provisions of the MWR.

Q.EN.ANR.2-16: Regarding A6 and A14 of Mr. Simoes' Prefiled Surrebuttal Testimony:

- i. Admit that the need to ensure compliance with the "LDR treatment standards" that you discuss in A6 and A14 of Mr. Simoes' Prefiled Surrebuttal Testimony is not implicated by the Mixed Waste Rule's "storage and treatment" condition exemption;
- ii. If (i) is not admitted, explain the basis for the denial or refusal to admit (i) and produce all documents supporting the same;
- iii. Identify the basis for the testimony in A6 of Mr. Simoes' Prefiled Surrebuttal testimony that "[i]n determining which LDR treatment standards apply to the LLMW, the generator must characterize the non-radiological hazardous waste component of the LLMW";
- iv. Identify, list and produce all documents supporting the statement in A6 of Mr. Simoes' Prefiled Surrebuttal testimony that "[i]n determining which LDR treatment standards apply to the LLMW, the generator must characterize the non-radiological hazardous waste component of the LLMW."

Q.EN.ANR.2-17: Regarding Mr. Simoes' Prefiled Surrebuttal Testimony in A9 "that ENVY intends to claim both the 'storage and treatment conditional exemption' as well as the 'transportation and disposal conditional exemption' of the MWR":

- i. Identify the basis for your understanding that Entergy VY "intends to claim . . . the 'transportation and disposal conditional exemption' of the MWR";
- ii. Produce all documents related to your understanding that Entergy VY "intends to claim . . . the 'transportation and disposal conditional exemption' of the MWR."

Q.EN.ANR.2-18: Regarding your recommended condition in A15 of the Prefiled Surrebuttal Testimony of Mr. Simoes that the Board include a condition stating "[i]f ENVY intends to store and/or treat eligible LLMW as part of the Project, it shall comply with all applicable conditions of this exemption under the MWR", please explain what is meant by the phrase "all applicable conditions of this exemption under the MWR."

Q.EN.ANR.2-19: Regarding A7 of Mr. Simoes' Prefiled Surrebuttal Testimony, identify the basis for the statement that notification for claiming the MWR storage and treatment exemption "must include specific information about the facility, and the hazardous waste code(s) and the specific storage unit(s) for which the facility seeks the exemption."

Q.EN.ANR.2-20: Is a facility claiming the transportation and disposal exemption under the MWR required to include specific information about the facility, and the hazardous waste code(s) and the specific storage unit(s) for which the facility seeks the exemption? Please identify the basis for your response.

Q.EN.ANR.2-21: Admit that Mr. Simoes and ANR lack expertise in overseeing management of the storage, treatment, transportation, disposal or other handling of radiologically contaminated material, including but not limited to Mixed Waste. If this request is denied or otherwise not admitted, explain the basis for your denial or failure to admit, including by producing all documents related to or evidencing Your and/or ANR's expertise in overseeing the management of radiologically contaminated waste or Mixed Waste.

Q.EN.ANR.2-22: Regarding A8 of Mr. Simoes' Prefiled Surrebuttal Testimony:

- i. Admit that under 40 C.F.R. Section 266.245 of the Mixed Waste Rule, the "storage and treatment" conditional exemption may be reclaimed if the conditions specified in 40 C.F.R. Section 266.230 of the Mixed Waste Rule are again met and notice that complies with 40 C.F.R. Section 266.230(a)(2) is sent;
- ii. Admit that under 40 C.F.R. Section 266.360 of the Mixed Waste Rule, the "transportation and disposal" conditional exemption may be reclaimed if the conditions specified in 40 C.F.R. Section 266.315 of the Mixed Waste Rule are again met and notice that complies with 40 C.F.R. Section 266.360 (a)(2) is sent;
- iii. If either (i) or (ii) above are denied or otherwise not admitted, explain the basis for such denial or refusal to admit and Produce all Documents related thereto.

Q.EN.ANR.2-23: In A4 of Mr. Spiese's Prefiled Surrebuttal Testimony he states that "Mr. Thomas' testimony appears to segregate soils into just two categories, hazardous waste or non-hazardous waste. In some cases, soils must be managed as a Solid Waste above Soil Screening Levels as opposed to a hazardous waste. The options for management of both soils that are Solid Waste above Screening Levels or a hazardous waste are outlined in the Investigation and Remediation of Contaminated Properties Procedure (IROCPP)."

- i. Please define the phrase "Solid Waste above Soil Screening Levels."
- ii. Identify each section of the IROCPP that relates to the management of Solid Wastes above Screening Levels.
- iii. Identify each section of the VHWMR that relates to the management of Solid Wastes above Screening Levels.

Q.EN.ANR.2-24: State the number of and identify all Vermont-located residential, commercial, or industrial facilities and/or businesses that are authorized under Vermont law, whether or not pursuant to a Vermont state agency-issued license or permit, to burn waste oil, including but not limited to those facilities that are authorized to burn used oil pursuant to the

provisions of Subchapter 8 of the Vermont Hazardous Waste Management Regulations, and list and produce all documents related to the authorization of such facilities and/or businesses to burn waste oil under Vermont law.

Q.EN.ANR.2-25: Identify all Vermont-located facilities and/or businesses authorized to burn waste oil, as described above in Q.EN.ANR.2-24, that ANR has deemed to be remediation sites or potential remediation sites due solely to such authorized burning of waste oil and resulting atmospheric deposition of contaminants on surrounding land or waters, and list and produce all documents related to ANR's treatment of such facilities and/or businesses as remediation sites or potential remediation sites on that basis.

Q.EN.ANR.2-26: Regarding A4 of Mr. Spiese's Prefiled Surrebuttal Testimony, identify the basis for your understanding that "the burning of waste oil" is "includ[ed]" among "the non-radiological hazardous waste activities" that have occurred at the North Warehouse.

Q.EN.ANR.2-27: Regarding A4 of Mr. Spiese's Prefiled Surrebuttal Testimony, identify the basis, if any, for concluding that any "older spills of non-radiological hazardous waste" have occurred at the North Warehouse.

Q.EN.ANR.2-28: Regarding A4 and A7 of Mr. Spiese's Prefiled Surrebuttal Testimony concerning waste oil:

- i. Admit that waste oil can constitute a Mixed Waste that can be managed pursuant to the Mixed Waste Rule if it contains both hazardous waste and radioisotopes;
- ii. If (i) above is denied or is otherwise not admitted, explain the basis for denial or refusal to admit and identify, list and produce all documents related thereto.

Q.EN.ANR.2-29: Regarding A4 of Mr. Spiese's Prefiled Surrebuttal Testimony:

- i. Admit that Entergy VY and/or its predecessors were authorized by ANR and/or Vermont law to burn waste oil using the North Warehouse waste oil burner;
- ii. Admit that Entergy VY and/or its predecessors disclosed to ANR the fact that waste oil was being burned at the North Warehouse using the North Warehouse waste oil burner;
- iii. Admit that ANR was otherwise aware that waste oil was being burned at the North Warehouse using the North Warehouse waste oil burner;
- iv. Admit that ANR took no action previously to compel Entergy VY and/or its predecessors to stop and/or refrain from burning waste oil at the North Warehouse;
- v. If any of (i)-(iv) above are denied or otherwise not admitted, explain the basis for Your denial(s) or refusal(s) to admit and identify, list and produce all documents related thereto.

Q.EN.ANR.2-30: Identify and describe any instance in which Mr. Spiese and/or ANR have determined that air emissions authorized under Vermont law constitute a “release” to the environment as that term is used in Exhibit ANR-RS-3 and/or Chapter 159 of Title 10 of the Vermont Statutes, and identify, list and produce all documents related to any such determinations.

Dated at St. Johnsbury, Vermont, January 8, 2016.

ENERGY NUCLEAR VERMONT YANKEE, LLC, AND
ENERGY NUCLEAR OPERATIONS, INC.

Respectfully submitted:

By their attorneys:



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