

May 1, 2002

MEMORANDUM TO: Larry Camper, Chief
Decommissioning Branch
Division of Waste Management
Office of Nuclear Materials
Safety and Safeguards

FROM: Norma García Santos, General Engineer
Decommissioning Branch
Division of Waste Management
Office of Nuclear Materials
Safety and Safeguards

SUBJECT: Meeting summary of the public meeting to discuss the Commission's
policy statement on the cleanup criteria of the West Valley site.

Enclosed is the meeting summary of the public meeting on the decommissioning criteria for the West Valley site held on April 17th from 7:00 p.m. through 10:00 p.m. The agenda, the presentations, the Federal Register Notice of the Final Policy Statement (67 FR 5003), and the Regulators Communication Plan are attached to the meeting summary.

If you have any questions don't hesitate to contact or email me at (301)-415-6262 or ngs@nrc.gov, respectively.

Attachments: West Valley Demonstration Project
(WVDP) Public Meeting Summary

West Valley Demonstration Project (WVDP) Public Meeting Summary
West Valley, New York
April 17, 2002
7:00 p.m. to 10:00 p.m.

On the evening of April 17, 2002, the U.S. Nuclear Regulatory Commission (NRC) staff met with the U.S. Environmental Protection Agency (EPA, Region II), the New York State Department of Health (NYSDOH), the New York State Department of Environmental Conservation (NYSDEC), the New York State Energy Research and Development Authority (NYSERDA), and the U.S. Department of Energy (DOE) in a public meeting to discuss the decommissioning criteria for the West Valley Demonstration Project (WVDP). The purpose of the meeting was to discuss: (1) the NRC's Final Policy Statement, (2) the Regulators Communication Plan, and (3) the roles and responsibilities of the Nuclear Regulatory Commission and the other federal and state agencies involved in the decommissioning of the West Valley Demonstration Project (WVDP). Approximately seventy stakeholders attended the meeting.

First, NYSERDA described the boundaries enclosing the DOE WVDP and NYSERDA owned property, the history of the site from 1962 through 1981, and their responsibilities on the site. NYSERDA discussed: (1) the WVDPA, (2) the cooperative agreement between NYSERDA and DOE, and (3) NYSERDA's responsibility for the State-Licensed Disposal Area (SDA). The SDA is inside the WVDP and is regulated by the New York State Department of Labor (NYSDOL) and New York State Department of Environmental Conservation (NYSDEC). NYSERDA explained that the SDA was covered by a cap to protect the disposal area from rain water.

Second, the DOE presented a summary of their roles and responsibilities on the WVDP. The DOE explained that their primary responsibilities under the WVDP Act (WVDPA) were: (1) the solidification of high level radioactive waste (HLW), (2) development of containers for the transportation and permanent disposal of solidify HLW in a Federal Repository, (3) the disposal of low level radioactive waste and transuranic waste produced by the solidification process, and (4) the decontamination and decommissioning of any material and hardware associated with the WVDP. Thereafter, DOE commented on the agreements between DOE and NYSERDA, the Memorandum of Understanding (MOU) between DOE and NRC, and the operational requirements of the project. The DOE also identified the federal and state agencies that regulate emissions to the air, water quality, and waste management. Finally, DOE emphasized the importance of the involvement of the public and the other agencies in the decommissioning process.

Third, NRC staff described their roles and responsibilities, the Regulators Communication Plan, and the Final Policy Statement. The staff discussed their responsibilities under the Atomic Energy Act (AEA), the WVDPA, the National Environmental Policy Act (NEPA), and their role in interfacing with stakeholders. The NRC stated that it will be a Cooperating Agency in the decommissioning EIS. The staff also discussed the Regulators Communication Plan. The Regulators Communication Plan was developed to identify each regulator's role and responsibility and expectations or requirements related to the cleanup of the West Valley site. The Final Policy Statement presentation included discussions on: (1) the License Termination Rule (LTR), (2) the application of the LTR to the WVDP, (3) the LTR as decommissioning criterion for the WVDP and the NRC-licensed site, (4) incidental waste criteria, (5) previous

authorized burials, (6) the decommissioning process for West Valley, and (7) the environmental analysis involved in the process. The staff emphasized the challenge involved in this decommissioning because of the characteristics and complexity of the site. The site will be decommissioned to the extent technically and economically feasible using NRC's standard criteria for license termination. The NRC staff explained that the EIS should consider: (1) the impacts of incidental waste, (2) the evaluation of impacts and costs for disposition of previous burials, and (3) analysis of impacts beyond 1,000 years. NRC staff expects to rely on a quality decommissioning EIS to determine whether or not the preferred alternative meets the NRC decommissioning criteria.

Fourth, the EPA discussion included: a chronology of EPA involvement at West Valley, and the agency's responsibilities and roles. EPA's involvement at the WVDP began with a letter to DOE on the development a supplemental EIS in May 1999 and continues through this public meeting on April 17, 2002. The EPA summarized their responsibilities under: (1) the AEA, (2) the Clean Air Act, (3) the NEPA, (4) the Comprehensive Environmental Response, Compensation and Liability Act, (5) the Resource Conservation and Recovery Act, and (5) the Safe Drinking Water Act. The EPA stated that it will be a Cooperating Agency in the decommissioning EIS and also will be providing input at West Valley to the stakeholders.

Fifth, the NYSDEC presented their roles and responsibilities in the WVDP. The NYSDEC and NYSDDL regulate the SDA. The NYSDEC will be involved in regulating the West Valley site during its decommissioning. The NYSDEC roles include: protecting the environment and public health, ensuring compliance, providing feedback to the public, and keeping the public involved in the process. This agency also has a range of responsibilities related to: (1) the Resource Conservation and Recovery Act (RCRA), (2) Radiological Protection, (3) Clean Water Act (CWA), (4) Clean Air Act (CAA), (5) storage tank closure requirements, (6) solid waste disposal requirements, and (7) the protection of endangered species, wetlands, and streams.

The last presentation was provided by NYSDOH. This agency stated that their main responsibilities were regulatory and advisory. The NYSDOH will participate with other regulatory agencies, but will mainly work through NYSDEC. In this agreement between these agencies, NYSDEC will lead the decommissioning project while NYSDOH's main role will be the protection of public health. The NYSDOH referred to their involvement in the development of the Regulators Communication Plan emphasizing key points of agreement listed in the plan.

Finally, an open discussion followed the formal presentations. The major public concerns included: (1) the flexibility of the NRC's Final Policy Statement and the possibility of exemptions, (2) the criteria to decommission the site, (3) the definition of technically and economically feasible, (4) the status and contents of the Environmental Impact Statement (EIS), (5) the classification of the waste incidental to reprocessing in the site, (6) waste transportation responsibilities, and (7) a need to be more responsive to public comments. A transcript of April 17th meeting will be available to the public on the NRC website.

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(WVDP) Public Meeting Summary

Distribution: DCB r/f DWM r/f C.W. Reamer

ADAMS ACCESSION NUMBER: ML021190100

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NAME	Norma Santos	Chad Glenn	Claudia Craig	Larry Camper
DATE	4/29/2002	4 /29/2002	4/30/2002	5/1/2002

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Package ADAMS Number: ML021290045

Meeting Summary for the West Valley Meeting on April 17th from 7:00 p.m. - 10:00 p.m

Attachments:

1. Noticed Meeting Agenda at West Valley Demonstration Project, April 17, 2002, 7:00 p.m. - 10:00 p.m.
2. NYSERDA Western New York nuclear Service Center - slides 1 and 2
3. NYSERDA History - slide 3
NYSERDA State-Licensed Disposal Area - slide 4
4. West Valley Demonstration Project NRC Public Meeting April 17, 2002 - slide 1
NRC Public Meeting - slide 2
5. West Valley Demonstration Project Act (Public Law 96-368) - slide 3
WVDP Act-Shared Responsibilities - slide 4
6. Relationship and interactions with the Nuclear Regulatory Commission - slide 5
How the WVDP Premises is Regulated - slide 6
7. How the WVDP Premises is Regulated - slide 7
DOE Orders Mandate Operational Requirements for WVDP, Including... - slide 8
8. Path to WVDP Completion - slide 9
9. U.S. Nuclear Regulatory Commission Roles and Responsibilities at West Valley - slide 1
What are our goals? - slide 2
10. NRC Roles and Responsibilities - slide 3
NRC Roles and Responsibilities - slide 4
11. NRC Roles and Responsibilities - slide 5
NRC Roles and Responsibilities - slide 6
12. NRC Performance Goals - slide 7
Decommissioning Background - slide 8
13. Implementation - slide 9
License Termination Rule (LTR) - slide 10
14. License Termination Standards for Unrestricted Release (10 CFR 20.1402) - slide 11
Perspective on Dose - slide 12
15. Natural Background - slide 13
Commission's Final Policy Statement on Decommissioning Criteria for West Valley Demonstration Project - slide 14
16. Policy Statement Topics - slide 15
License Termination Rule (LTR) - slide 16
17. The Application of the LTR to WVDP - slide 17
Decommissioning Criteria - slide 18
18. Decommissioning Criteria (Cont.) - slide 19
Incidental Waste - slide 20
19. Previous Authorized Burials - slide 21
Decommissioning of West Valley - slide 22
20. Environmental Analysis - slide 23
21. West Valley United States Environmental Protection Agency - slide 1
Chronology of EPA's Recent Involvement at West Valley - slide 2
22. Chronology, cont'd - slide 3
Chronology, cont'd - slide 4
23. EPA's Responsibilities - slide 5
EPA's Role at West Valley - slide 6
24. New York State Department of Environmental Conservation - slide 1

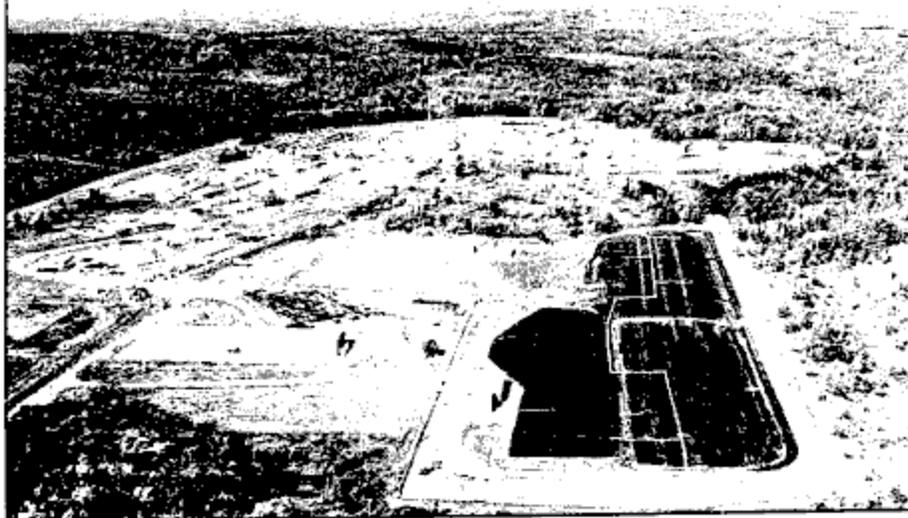
25. NYSDEC West Valley Staff - slide 2
26. DEC Role at West Valley - slide 3
27. Broad range of regulatory responsibilities - slide 4
28. General Scope of Authority - slide 5
29. Radiological - slide 6
30. Low-level Radioactive Waste (LLRW) Transportation - slide 7
31. RCRA (Resource Conservation and Recovery Act) slide 8
32. FFCA (Federal Facilities Compliance Act)/CWA (Clean Water Act) - slide 9
33. New York State Department of Environmental Conservation - slide 10
34. Other Regulatory Responsibilities - slide 11
35. NYSDOH West Valley Site - slide 1
NYSDOH - slide 2
36. NYSDOH Objective - slide 3
NYSDOH Responsibilities - slide 4
37. NYSDOH Regulatory Role - slide 5
NYSDOH Advisory Role - slide 6
38. NYSDOH Communications Plan Items - slide 7
NYSDOH Activities - slide 8
39. Nuclear Regulatory Commission
Decommissioning Criteria for the West Valley Demonstration project (M-32) at the West Valley Site; Final Policy Statement (67 FR 5003) - 10 pages
40. Regulators Communication Plan on Application of Cleanup Requirements for Decommissioning the West Valley Site - 18 pages

**NOTICED MEETING AGENDA
AT WEST VALLEY DEMONSTRATION PROJECT
April 17, 2002
7:00 p.m. - 10:00 p.m.**

- 7:00 p.m. Welcome, Meeting Objectives and Ground rules
Francis "Chip" Cameron
Facilitator
- 7:15 p.m. Introductory material on status of the West Valley Site
U.S. Department of Energy (DOE)
Alice Williams
New York State Energy Research and Development Authority (NYSERDA)
Paul Piciulo
- 7:30 p.m. U.S. Nuclear Regulatory Commission (NRC) Role and Responsibilities/NRC
Policy Statement on West Valley
Larry W. Camper, NRC
Chad J. Glenn, NRC
- 8:15 p.m. Roles and Responsibilities of Other Regulatory Agencies
U.S. Environmental Protection Agency (EPA)
Paul Giardina
New York State Department of Environmental Conservation (NYSDEC)
Paul Merges
New York State Department of Health (NYSDOH)
Gary Baker
- 9:00 p.m. Open discussion with federal and state agencies
⊕
- 10:00 p.m. Adjourn

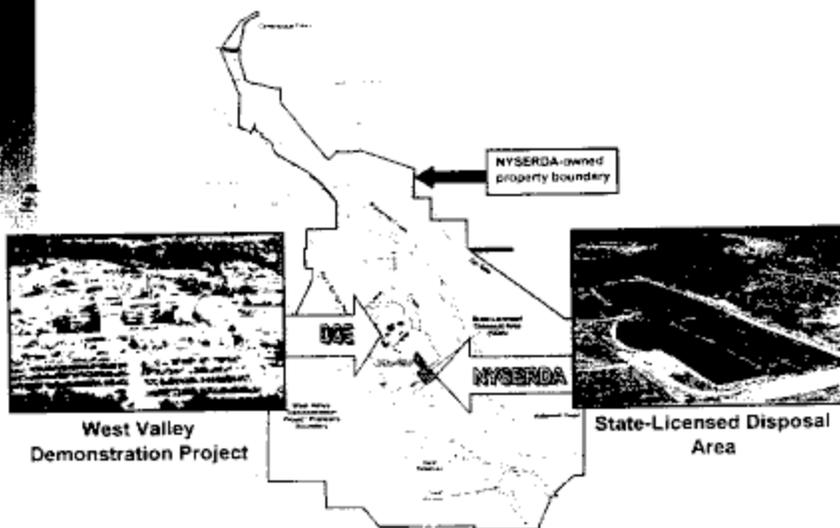
NYSERDA

Western New York Nuclear Service Center



Western New York Nuclear Service Center

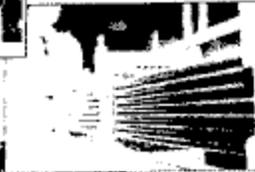
NYSERDA



NYSERDA

History

- 1962-66 Nuclear Fuel Services**
Contracted to reprocess fuel:
Licensed by the Atomic Energy
Commission
- 1966-72 Fuel Reprocessing**
Recovered uranium and
plutonium from 640 metric tons
of spent fuel, 80% U.S. govern-
ment; 40% commercial reactor
- 1972 NFS Plans to Expand**
Regulatory changes make
expansion prohibitively
expensive
- 1976 NFS Withdraws from
Reprocessing**
600,000 gallons HLW in
underground tanks
- 1980 WVDP Act**
Signed by President Carter
- 1981 Cooperative Agreement**
between NYSERDA and DOE
NRC License put in Abeyance



04-702-87
2 of 4

NYSERDA

State-Licensed Disposal Area

Waste disposals conducted by
NFS from 1963-1975.
NYSERDA assumed management
responsibility in 1983.

**New York State Department of
Labor**

- Radioactive Materials License

**New York State Department of
Environmental Conservation**

- 6NYCRR Part 380 Permits
- RCRA Part A Permit
- RCRA Consent Order



A polymer cover and subsurface clay barrier have controlled
water infiltration into the SDA trenches.

04-702-87
1 of 2



West Valley Demonstration Project

NRC Public Meeting



April 17, 2002

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NRC Public Meeting

West Valley Demonstration Project Summary of Roles and Responsibilities

Alice Williams, Project Director
U. S. Department of Energy
West Valley Demonstration Project

2 14417.pdf



West Valley Demonstration Project Act (Public Law 96-368)

- Enacted October 1, 1980
- Under the WVDP Act, the Department of Energy shall:
 - Solidify the high-level radioactive waste
 - Develop containers suitable for permanent disposal
 - Transport the solidified waste to a Federal Repository
 - Dispose of low-level radioactive waste and transuranic waste produced by solidifying the high-level radioactive waste
 - Decontaminate and decommission the tanks, facilities, and any material and hardware used in connection with the Project

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WVDP Act — Shared Responsibilities

- September 1981
 - Cooperative Agreement between DOE and NYSDERDA
 - Provided working arrangements
 - Supplemental Agreement executed in February 1991
 - NRC license CSF-1 amended so DOE could take control of the site
 - New York State pays 10% of Project costs; DOE pays 90%
- November 1981
 - DOE and NRC signed a Memorandum of Understanding to outline respective roles and responsibilities
- 1982
 - DOE assumes control of reprocessing facilities; WVNS selected as Prime Contractor

The Buffalo News Local News

Moynihan Praises Start-up at West Valley



February 1982 — DOE assumes control of the reprocessing facility to conduct the WVDP.



Project work awarded to Westinghouse/West Valley Nuclear Services

4-14417.pdf



Relationship and Interactions with the Nuclear Regulatory Commission

- Memorandum of Understanding between DOE and NRC (1981)
- NRC Region I Quarterly Monitoring Visits
- Cooperating Agency Status (established 1991) on the 1996 Draft Environmental Impact Statement
- Per the WVDP Act the tanks and facilities used will be decontaminated and decommissioned "in accordance with such requirements as the Commission may prescribe"
 - Defined in February 1, 2002 NRC Final Policy Statement

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How the WVDP Premises is Regulated

- Air
 - Radiological Emissions - EPA
 - Toxic Air Emissions - NYSDEC
- Water
 - Stormwater and nonradiological point source discharges to surface water - NYSDEC
 - Wetlands - Army Corps of Engineers/NYSDEC
 - Drinking Water - NYSDOH



Groundwater sampling

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How the WVDP Premises is Regulated

■ Waste

- Solid, Hazardous and Mixed
- Radiological/hazardous waste - treatment, storage and disposal regulated by NYSDEC and EPA
 - RCRA corrective action order
 - Federal Facility Compliance Act consent order for mixed waste treatment



LLW shipping

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DOE Orders Mandate Operational Requirements for WVDP, Including...

- Radiological Waste Management Operations
- Environmental, Safety, Health and Quality Assurance
 - Environmental Monitoring Program ensures WVDP activities do not adversely impacting public health or the environment
 - Annual Site Environmental Report (data collected and evaluated since 1982)

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Path to WVDP Completion

- Significant decontamination and waste management activities
- Regulatory involvement essential
- Interaction of agencies and the public key

U.S. Nuclear Regulatory Commission Roles and Responsibilities at West Valley



Larry W. Camper, Chief
Decommissioning Branch
April 2002

What Are Our Goals?

- Nuclear Regulatory Commission's (NRC's)
Roles and Responsibilities
- Commission's Final Policy Statement
- Comments/questions on Final Policy
Statement

NRC Roles and Responsibilities

- Atomic Energy Act (AEA)
 - 10 CFR Part 50 license
 - Inspection
 - Ensure public health and safety
 - License termination

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NRC Roles and Responsibilities

- West Valley Demonstration Project Act (WVDPA)
 - Decontamination and decommissioning criteria
 - Review and consult on Department of Energy (DOE) plans
 - Monitor activities
 - Preferred alternative meets decommissioning criteria ?

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NRC Roles and Responsibilities

- National Environmental Policy Act (NEPA)
 - Cooperating Agency in Decommissioning Environmental Impact Statement (EIS)
 - LTR-GEIS/Site-specific analysis

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NRC Roles and Responsibilities

- Interface with stakeholders
 - Public
 - Regulators
 - DOE
 - NYSERDA



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NRC Performance Goals

- **Maintain safety**
- **Increase public confidence**
- **Effective, efficient, and realistic decisions**
- **Reduce unnecessary regulatory burden**

Decommissioning Criteria Background

- **Commission public meeting (1/12/99)**
- **Draft Policy Statement published for comment (12/3/99)**
- **NRC public meeting on draft policy statement (1/5/2000)**
- **Final Policy Statement published (2/1/2002)**

Implementation

- DOE to address decommissioning criteria
- EIS preferred alternative
- Several complex issues
- Avoid speculation



License Termination Rule (LTR)

- | | |
|---|---|
| ➤ Unrestricted use
(No restrictions) | 25 millirem/year+ALARA |
| ➤ Restricted Release
(IC in place) | 25 millirem/year+ALARA |
| ➤ If IC fails | 100 millirem/year
500 millirem/year (rare cases) |
| ➤ Alternate Criteria (IC in place) | |
| ➤ 25 millirem/year; up to 100 millirem/year | |

License Termination Standards for Unrestricted Release (10 CFR 20.1402)

- Total Effective Dose Equivalent (TEDE)
(25 millirem/year) and is As Low As Reasonably
Achievable (ALARA)
- Average member of the critical group
- All path ways
- Period of performance 1,000 years

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Perspective on Dose

- Average background radiation
 - 360 millirem/year
- Public dose Subpart D (Part 20)
 - 100 millirem/year
- Flight across U.S.
 - 3-4 millirem
- Chest X-Ray
 - 20 millirem

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Natural Background

➤ Radon	200 millirem/year
➤ Cosmic	27 millirem/year
➤ Terrestrial	28 millirem/year
➤ Internal	39 millirem/year
➤ Consumer products	5 to 13 millirem/year
➤ Environment	0.06 millirem/year
➤ Medical:	
➤ Diagnostic X-Rays	39 millirem/year
➤ Nuclear medicine	14 millirem/year

Taken from: United States Nuclear Regulatory Commission.
Site Access Training Manual (October 1999)

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Commission's Final Policy Statement on Decommissioning Criteria for West Valley Demonstration Project



Chad Glenn
Project Manager
Decommissioning Branch
April 2002

Policy Statement Topics

- License Termination Rule (LTR)
- Application of LTR to WVDP
- Decommissioning Criteria
- Incidental Waste
- Previous Authorized Burials
- Decommissioning of West Valley
- Environmental Analysis



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License Termination Rule (LTR)

- The License Termination Rule (LTR) is standard criterion for termination.
- LTR provides range of release criteria:
 - Unrestricted Release
 - Restricted Release

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The Application of LTR to WVDP

- Two step process:
 - NRC prescribes the LTR
 - Independently evaluate preferred alternative satisfies criteria after completion of EIS

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Decommissioning Criteria

- License Termination Rule (LTR) as decommissioning criterion
 - West Valley Demonstration Project (WVDP)
 - NRC-Licensed site

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Decommissioning Criteria (Cont.)

- WVDPA specifies NRC's criteria:
 - High Level Waste (HLW) tanks
 - Facilities used in solidification of waste
 - Material and hardware

- Site/Facilities, such as:
 - NRC-Licensed Disposal Area (NDA)
 - State-Licensed Disposal Area (SDA)

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Incidental Waste

- Early resolution of criteria is important.

- Incidental waste criteria:
 - Remove key radionuclides to maximum extent technically and economically practical.
 - Safety requirements comparable to the performance objectives of LLW disposal sites (Part 61).

- Resulting calculated doses integrated with all other calculated doses

- EIS to consider impacts of incidental waste

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Previous Authorized Burials

- Site-specific impacts and costs
- Consider unique burials (case-by-case)
- NDA contains buried radioactive material
- EIS to evaluate disposition of previous burials

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Decommissioning of West Valley

- Complex and unique site
- Decommissioned to extent technically and economically feasible
- Release requires protection of public health and safety

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Environmental Analysis

- **LTR does not establish new requirements**
- **Site-specific decommissioning decision**
- **Evaluate various alternatives**
- **EIS analysis of impacts beyond 1,000 years**
- **NRC reliance on quality EIS**

West Valley

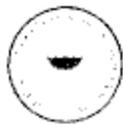
UNITED STATES
ENVIRONMENTAL
PROTECTION AGENCY

Paul A. Giardina, Chief
Radiation & Indoor Air



Chronology of EPA's Recent Involvement at West Valley

- May 1999 Letter to DOE on the development of a supplemental EIS
- January 2000 EPA statement concerning the draft policy statement
- May 2000 Discussion with NRC at the Conference of Radiation Control Program Directors (CRCPD) Annual Meeting
- August 2000 Annual radiation program review with NYSDEC & NYSDOH



Chronology, cont'd

- October 2000 Conference call among regulators
- May 2001 GAO report: "Agreement Among Agencies Responsible for West Valley Site Is Critically Needed"
- July 2001 DOE annual West Valley regulators roundtable
Letter to NRC regarding 25 mrem & CERCLA risk range



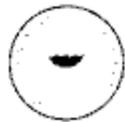
Chronology, cont'd

- July - November 2001 Staffs brief their respective agencies
- Nov. 2001 - April 2002 EPA, NRC, NYSDEC & NYSDOH develop the **Regulators Communication Plan**
- April 17, 2002 Public meeting to discuss the **Regulators Communication Plan**



EPA's Responsibilities

- Atomic Energy Act
- Clean Air Act
- Superfund/CERCLA (Comprehensive Environmental Response, Compensation & Liability Act)
- National Environmental Policy Act
- Resource Conservation & Recovery Act
- Safe Drinking Water Act



EPA's Role at West Valley

- Cooperating Agency in the development of the Decommissioning EIS
- Provide early input at West Valley to the public, regulators, DOE & NYSERDA
- Oversight of State delegated EPA programs



New York State Department of Environmental Conservation

**NRC's WEST VALLEY PUBLIC MEETING
4/17/02**

**NYSDEC WEST VALLEY
REGULATORY ROLES AND RESPONSIBILITIES**

Presented by Paul J. Merges, Ph.D.

New York State Department of Environmental Conservation



NYSDEC West Valley Staff

Tim Rice,	Radiation Program	(518)402-8579
Tim DiGiulio,	RCRA Program	(315)426-7471
Jack Krajewski,	Regional staff	(716)851-7220

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Bureau of Radiation
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Albany, NY 12233-7255

Timothy DiGiulio (Environmental Engineer - RCRA)
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Jack Krajewski (Engineering Geologist)
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Division of Solid & Hazardous Materials
270 Michigan Ave.
Buffalo, NY 14203

New York State Department of Environmental Conservation



DEC ROLE AT WEST VALLEY

Protection of the Environment and Public Health of the State.

Ensuring Compliance with Applicable State Regulations.

Working Cooperatively with the Other Regulators to Ensure All Closure Requirements Are Met.

Ensure that the Public is Informed and Involved in the Site Remedial Process.

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New York State Department of Environmental Conservation



Broad range of regulatory responsibilities.

- ◆ Resource Conservation and Recovery Act (RCRA)
- ◆ Radiological Protection
- ◆ Clean Water Act (CWA)
- ◆ Clean Air Act (CAA)
- ◆ Endangered Species Protection
- ◆ Stream Protection
- ◆ Wetlands Protection
- ◆ Other

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New York State Department of Environmental Conservation



General Scope of Authority

State-licensed Disposal Area (SDA) – The State, through regulation by the DEC and DOL, has sole regulatory authority.

Western New York Nuclear Service Center – RCRA, CAA, and CWA authority.

New York State Department of Environmental Conservation



RADIOLOGICAL

Permits for ongoing activities at the SDA

- Monitoring and Maintenance Permit
- Air Discharge Permit

NYS Low Level Radioactive Waste Management Act (LLRWMA)

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- 6 NYCRR Part 380 Rules and Regulations for Prevention and Control of Environmental Pollution by Radioactive Materials

permits subject NYSEDA to regulatory oversight and routine inspections, and require them to maintain adequately protective procedures and programs, perform numerous routine monitoring and inspection activities, maintain the trenches and water discharge pathways so as to preclude water infiltration and protect the integrity of the burial area, and to submit routine status reports to the Department.

- Section 5 of the LLRWMA precludes the State LLRW Siting Commission from considering West Valley for a site. (Also referred to as ECL Title 3, Section 29.)

New York State Department of Environmental Conservation



Low-level Radioactive Waste (LLRW) Transportation

LLRW Disposal Facilities:

- ◆ Site and Disposal Method Certification
- ◆ Operation from Design through Closure and Institutional

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These regulations exempt DOE and their contractors from coverage.

-6 NYCRR Part 381 Low-level Radioactive Waste Transporter Permit and Manifest System - **This Part applies to LLRW shipments made by NYSERDA.**

-6 NYCRR Part 382 Regulation of Low-level Radioactive Waste (LLRW) Disposal Facilities: Certification of Proposed Sites and Disposal Methods

- 6 NYCRR Part 383 Regulation of Low-level Radioactive Waste (LLRW) Disposal Facilities: Design, Construction, Operation, Closure, Post-Closure, and Institutional Control - **The requirements of Parts 382 and 383 are not applicable to the SDA, except through application of those requirements through incorporation into existing site permits (see Part 383-1.9 Transition).**

New York State Department of Environmental Conservation



RCRA (Resource Conservation and Recovery Act)

RCRA Part 373 Interim Status Permit
- Current Operations.

RCRA Corrective Action Consent Order with
NYSERDA and DOE
- Past Operations.

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RCRA Part 373 Interim Status Permit regulates the operation, storage, closure, and post-closure of facilities managing hazardous, and mixed hazardous and radioactive wastes.

NYSDEC/EPA entered into a 3008(h) Corrective Action Consent Order with NYSERDA and DOE, which required:

- A sitewide RCRA Facility Investigation of NYSERDA and DOE solid waste management units to determine the extent of contamination.
- Interim Corrective Measures
- Corrective Measures Study (CMS) – The Decommissioning EIS will fulfill the requirements of the CMS.

New York State Department of Environmental Conservation



FFCA (Federal Facilities Compliance Act)

CWA (Clean Water Act)

3/17/02 West Valley Public Mtg

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- **FFCA** requires DOE facilities that generate or store mixed (hazardous and radioactive) waste to develop plans for treating their mixed waste inventory.

Site Treatment Plans are updated annually.

- **CWA**

SPDES State Pollution Discharge Elimination System -- Delegated by EPA.

This program protects waterbodies through permitting of point source discharges.

- 6 NYCRR Parts 700 – 706 Water Quality Regulations

22



CAA (Clean Air Act)

Endangered Species Protection

Stream Protection

Wetlands Protection

3/17/02 West Valley Public Mtg

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- **CAA** – Under Title V, the Department has accepted regulatory authority from the EPA for most regulated pollutants. The Department has also promulgated ambient air quality standards under 6 NYCRR Part 257.

- 6 NYCRR Part 193.3 Protected Native Plants, impacts the site.

- Stream Protection regulations promulgated under ECL article 15.

- NYS Freshwater Wetlands act, ECL Article 24, and 6 NYCRR Part 663, Freshwater Wetlands Permit Requirements, apply to some site wetlands.



Other Regulatory Responsibilities

- Closure of Abandoned Oil and Gas Wells
- Mined Lands Regulations
- Storage Tank Closure Requirements
- Solid Waste Disposal Requirements

NYSDOH

West Valley Site

NYSDOH

- **GARY BAKER, CHP**
- **Chief, Field Operations Section**
- **Bureau Environmental Radiation**
- **Protection, Center for Health**
- **315 426 7629**
- **Adela Salame-Alfie, Ph.D. Dir.**
- **Steve Gavitt, CHP, Asst. Dir.**

NYSDOH Objective

- **Protection of the Public Health**
- **Public Health Law**
- **Promulgation of Regulations**

NYSDOH Responsibilities

- **Regulatory Role**
- **Advisory Role**

NYSDOH Regulatory Role

- **SDWA Part 5**
- **Theoretical regulatory role if NYSDEC decided not to implement its' regulations**

NYSDOH Advisory Role

- **Review and agreement with DEC**
- **Participation with other Regulatory Agencies**

NYSDOH Communications Plan items

- **Regulatory Matrix Table I**
- **Communications Plan Page 4**
- **NYSDOH lead Agency for
Protection of Public Health**
- **NESDEC Lead for
Decommissioning Project**
- **Regulation of Water Supply
Operators**

NYSDOH Activities

- **Environmental Monitoring**
- **Split samples**
- **Review of results and Public
Doses**

North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams/html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, 301-415-4737, or by e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland, this 28th day of January 2002.

For the Nuclear Regulatory Commission,
Christopher Gratton,

Sr. Project Manager, Section 2, Project Directorate 1, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02-2498 Filed 1-31-02; 8:45 am]
BILLING CODE 7590-01

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-327-OLA, 50-328-OLA, & 50-390-OLA; ASLBP No. 02-796-01-OLA]

Tennessee Valley Authority; Sequoyah Nuclear Plant, Units 1 & 2; Watts Bar Nuclear Plant, Unit 1; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the *Federal Register*, 37 FR 28,710 (1972), and sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717, 2.721, and 2.772(j) of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding:

Tennessee Valley Authority, Sequoyah Nuclear Plant, Units 1 & 2, Watts Bar Nuclear Plant, Unit 1.

This Board is being established pursuant to two notices of consideration of issuance of operating license amendment, proposed no significant hazards consideration determination, and opportunity for a hearing published in the *Federal Register* (66 FR 65,000 and 65,005 (Dec. 17, 2001)). The proceeding involves petitions for intervention submitted January 16, 2002, by We the People, Inc., Tennessee, (WPIT) and the Blue Ridge Environmental Defense League (BREDL), respectively, challenging requests by the Tennessee Valley Authority (TVA) to amend the operating licenses for the Sequoyah Nuclear Plant, Units 1 and 2, and the Watts Bar

Nuclear Plant, Unit 1.¹ The amendments would change facility technical specifications to allow the plants to provide incore irradiation services for the United States Department of Energy for the production of tritium for national defense purposes.

The Board is comprised of the following administrative judges:

Thomas S. Moore, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001

Dr. Peter S. Lam, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001

Dr. Thomas S. Elleman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001

All correspondence, documents, and other materials shall be filed with the administrative judges in accordance with 10 CFR 2.701.

Issued at Rockville, Maryland, this 28th day of January 2002.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 02-2500 Filed 1-31-02; 8:45 am]
BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Decommissioning Criteria for the West Valley Demonstration Project (M-32) at the West Valley Site; Final Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Final policy statement.

SUMMARY: On December 3, 1999 (64 FR 67952), the Commission issued, for public comment, a draft policy statement that would approve the application of the U.S. Nuclear Regulatory Commission's (NRC's) License Termination Rule (LTR), as the decommissioning criteria for the West Valley Demonstration Project (WVDP) at the West Valley site. It also held a public meeting, on January 5, 2000, to

¹ Although the TVA license amendment requests that are the subject of the WPIT and BREDL hearing requests that triggered this Licensing Board constitution notice were submitted separately, involve different facilities, and were the subject of separate hearing opportunity notices, both amendments are challenged by each of the petitioners. Under the circumstances, one Licensing Board is being established to consider both contested TVA applications in a consolidated proceeding. Any objection to this consolidation by any of the participants to the proceeding should be raised with the Licensing Board promptly.

solicit public comment on the draft. This final policy statement was developed after considering public comments on the draft, and continues to apply the LTR as the criteria for the WVDP at the West Valley site.

EFFECTIVE DATE: February 1, 2002.

FOR FURTHER INFORMATION, CONTACT: Chad Glenn, Office of Nuclear Material Safety and Safeguards, Mail Stop T-8F37, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

- I. Introduction
- II. Background (Draft Policy Statement)
- III. Overview of Public Comments
- IV. Summary of Public Comments and Responses to Comments
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 - G. Comments related to how the site should be decommissioned
 - H. Comments on the wording of the draft policy statement
 - I. Other comments
- V. Final Policy Statement

I. Introduction

This final policy statement is being issued under the authority of the WVDP Act, to prescribe decommissioning criteria for the WVDP.

II. Background (Draft Policy Statement)

From 1966 to 1972, under an Atomic Energy Commission (AEC) license, Nuclear Fuel Services (NFS) reprocessed 640 metric tons of spent fuel at its West Valley, New York, facility—the only commercial spent fuel reprocessing plant in the U.S. The facility shut down, in 1972, for modifications to increase its seismic stability and to expand its capacity. In 1976, without restarting the operation, NFS withdrew from the reprocessing business and returned control of the facilities to the site owner, the New York State Energy Research and Development Authority (NYSERDA). The reprocessing activities resulted in about 2.3 million liters (600,000 gallons) of liquid high-level waste (HLW) stored below ground in tanks, other radioactive wastes, and residual radioactive contamination.

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Dated at Rockville, Maryland, this 28th day of January 2002.

For the Nuclear Regulatory Commission,
Christopher Gratton,

Sr. Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02-2498 Filed 1-31-02; 8:45 am]
BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-327-OLA, 50-328-OLA, & 50-390-OLA; ASLBP No. 02-796-01-OLA]

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Dr. Thomas S. Ellerman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001

All correspondence, documents, and other materials shall be filed with the administrative judges in accordance with 10 CFR 2.701.

Issued at Rockville, Maryland, this 28th day of January 2002.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

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AGENCY: Nuclear Regulatory Commission.

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EFFECTIVE DATE: February 1, 2002.

FOR FURTHER INFORMATION, CONTACT: Chad Glenn, Office of Nuclear Material Safety and Safeguards, Mail Stop T-8F37, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

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From 1966 to 1972, under an Atomic Energy Commission (AEC) license, Nuclear Fuel Services (NFS) reprocessed 640 metric tons of spent fuel at its West Valley, New York, facility—the only commercial spent fuel reprocessing plant in the U.S. The facility shut down, in 1972, for modifications to increase its seismic stability and to expand its capacity. In 1976, without restarting the operation, NFS withdrew from the reprocessing business and returned control of the facilities to the site owner, the New York State Energy Research and Development Authority (NYSERDA). The reprocessing activities resulted in about 2.3 million liters (600,000 gallons) of liquid high-level waste (HLW) stored below ground in tanks, other radioactive wastes, and residual radioactive contamination.

The West Valley site was licensed by AEC, and then NRC, until 1981, when the license was suspended to execute

the 1980 WVDP Act, Pub. L. 96-368.¹ The WVDP Act authorized the U.S. Department of Energy (DOE), in cooperation with NYSERDA, the owner of the site and the holder of the suspended NRC license, to: (1) Carry out a liquid-HLW management demonstration project; (2) solidify, transport, and dispose of the HLW that exists at the site; (3) dispose of low-level waste (LLW) and transuranic waste produced by the WVDP, in accordance with applicable licensing requirements; and (4) decontaminate and decommission facilities used for the WVDP, in accordance with requirements prescribed by NRC. NYSERDA is responsible for all site facilities and areas outside the scope of the WVDP Act. Although NRC suspended the license covering the site until completion of the WVDP, NRC has certain authorities, under the WVDP Act, that include prescribing decommissioning criteria for the tanks and other facilities in which the HLW solidified under the project was stored, the facilities used in the solidification of the waste, and any material and hardware used in connection with the WVDP. It should also be noted that DOE is not an NRC licensee and DOE's decommissioning activities for the WVDP at the West Valley site are conducted under the WVDP Act and not the Atomic Energy Act (AEA).

The WVDP is currently removing HLW from underground tanks at the site, vitrifying it, and storing it onsite for eventual offsite disposal in a Federal repository. The vitrification operations are nearing completion. In addition to the vitrified HLW, the WVDP operations have also produced LLW and transuranic waste which, under the Act, must be disposed of in accordance with applicable licensing requirements. Besides the HLW at the site, the spent fuel reprocessing and waste disposal operations resulted in a full range of buried radioactive wastes and structural and environmental contamination at the site.

In 1989, DOE and NYSERDA began to develop a joint Environmental Impact Statement (EIS) for project completion and site closure, and to evaluate waste disposal and decommissioning alternatives. Because the WVDP Act authorizes NRC to prescribe decommissioning criteria for the project, NRC and DOE agreed on NRC's participation as a cooperating agency on the EIS, with DOE and NYSERDA, to aid

NRC in its decision on decommissioning criteria. The draft EIS was published in 1996. Subsequently, DOE decided to descope this EIS into two separate EISs to address: (1) Near-term decontamination and waste management at the WVDP; and (2) decommissioning, long-term monitoring, and stewardship of the site.² The NRC will not be a Cooperating Agency on the decontamination and waste management EIS because the Commission is not prescribing criteria for decontamination activities considered in this EIS. The NRC will be a Cooperating Agency on the EIS for decommissioning under the WVDP Act. The WVDP Act does not address license termination of the NRC license for the site, or portions thereof. Any such license termination will be conducted (if license termination is possible and pursued) under the Atomic Energy Act (AEA) of 1954, as amended. If NYSERDA pursues either full or partial license termination of the NRC license, NRC will need to conduct an environmental review to determine if an EIS is necessary to support license termination.

After public review of the draft EIS, the WVDP convened the West Valley Citizen Task Force (CTF), in early 1997, to obtain stakeholder input on the EIS. The CTF recommendations for the preferred alternative in the EIS were completed in July 1998. In the latter half of 1997 (during the period that the CTF was working on its recommendations), NRC's LTR was published (62 FR 39058; July 21, 1997).

The Commission published a draft policy statement on decommissioning criteria for the WVDP at the West Valley site, for public comment, and a notice of a public meeting in the *Federal Register* on December 3, 1999 (64 FR 67952).³ The public meeting, to solicit public comment on the draft, was held

¹ 66 FR 16447 (March 26, 2001).

² Before issuing the draft policy statement for comment, the NRC staff proposed decommissioning criteria for West Valley to the Commission in a Commission Paper entitled "Decommissioning Criteria for West Valley," dated October 30, 1998 (SECY-98-251). On January 12, 1999, the Commission held a public meeting on SECY-98-251, to obtain input from interested parties. Based on the results from this meeting, the Commission issued a Staff Requirements Memorandum (SRM), on January 26, 1999, requesting additional information on the staff's proposed decommissioning criteria for West Valley. In response to the January 26, 1999, SRM, the staff provided SECY-99-057, to the Commission, entitled "Supplement to SECY-98-251, 'Decommissioning Criteria for West Valley.'" Based on the contents of SECY-98-251, SECY-99-057, and written and oral comments from interested parties, the Commission issued an SRM on June 3, 1999, detailing its decisions on the decommissioning criteria for West Valley.

on January 9, 2000. As a result of this meeting, the Commission extended the comment period to April 1, 2000. This final policy statement was developed after considering the public comments on the draft. This final policy statement recognizes that a flexible approach to decommissioning is needed both to ensure that public health and safety and the environment are protected and to define a practical resolution to the challenges that are presented by the site. In that regard, the Commission has decided to prescribe the LTR criteria for the WVDP at the West Valley site, reflecting the fact that the applicable decommissioning goal for the entire NRC-licensed site is compliance with the requirements of the LTR. However, the Commission recognizes that health and safety and cost-benefit considerations may justify the evaluation of alternatives that do not fully comply with the LTR criteria. For example, the Commission would consider an exemption allowing higher limits for doses on a failure of institutional control if it can be rigorously demonstrated that protection of the public health and safety for future generations could be reasonably assured through more robust engineered barriers and/or increased long-term monitoring and maintenance. The Commission is prepared to provide flexibility to assure cleanup to the maximum extent technically and economically feasible.

It should be noted that the subpart E of 10 CFR part 20 (LTR) does contain provisions for alternate criteria and subpart N of 10 CFR part 20 contains provisions for potential exemptions,⁴ with both alternatives based on a site-specific analysis which demonstrates that public health and safety will be adequately protected with reasonable assurance. If the NRC license cannot be terminated in a manner which provides reasonable assurance of adequate protection of the public health and safety, then the appropriate Commission action may be to require a long term or even a perpetual license for an appropriate portion of the site until, if and when possible, an acceptable alternative is developed to permit actual license termination.⁵

⁴ Exemptions to NRC regulations can be issued to NRC licensees if the Commission determines that the exemption is authorized by law and would not result in undue hazard to life or property. NYSERDA is the licensee for the West Valley site and DOE is acting as a surrogate for NYSERDA until the NYSERDA license is reinstated at the end of the WVDP.

⁵ If a long term or perpetual license is necessary for any portion of the site, it is the Commission's intent that that portion of the site will be decontaminated in the interim to the extent technically and/or economically feasible. In

¹ The State of New York licenses a low-level waste disposal area at the West Valley site. Unless otherwise indicated, the terms "West Valley site" or "site" used in this Policy Statement refers to the NRC-licensed portions of the site.

Based on the public comments received, the Commission has revisited the issue of "incidental waste" at West Valley. The Commission has decided to issue incidental waste criteria to clarify the status of and classify any residual wastes present after cleaning of the high-level radioactive waste (HLW) tanks at West Valley. Previously, the NRC has provided advice to DOE concerning DOE's classification of certain waste as incidental waste for clean-up of HLW storage tanks at both Hanford and Savannah River. As noted above, NRC intends to apply the LTR decommissioning criteria as the decommissioning goal for the entire NRC-licensed portion of the site. The Commission has decided that the most recent advice provided to DOE for the classification of incidental waste at Savannah River, with some additional modifications, provides the appropriate criteria which should be applied to West Valley. Specifically, the Commission is now providing the following criteria for classification of the incidental waste (which will not be deemed to be HLW) at West Valley:

(1) The waste should be processed (or should be further processed) to remove key radionuclides to the maximum extent that is technically and economically practical; and

(2) The waste should be managed, so that safety requirements comparable⁶ to the performance objectives in 10 CFR part 61 subpart C, are satisfied.

Consistent with the overall approach in applying the LTR to the WVDP and to the entire NRC-licensed site following conclusion of the WVDP, the resulting calculated dose from the incidental waste is to be integrated with all the other calculated doses from the residual radioactive material at the NRC-licensed site to ensure that the LTR criteria are met. This is appropriate because the Commission does not intend to establish

in addition, if a long-term or perpetual license is determined to be appropriate, the NRC takes no position on which entity should be the long-term licensee as that decision, as well as decisions regarding long term financial contributions, should be made pursuant to negotiations involving DOE, New York, and possibly the U.S. Congress. Also, under the WVDP Act, the NRC is only addressing the public health and safety aspects of decommissioning selected portions of the site. Other potential issues between DOE and NYSERDA concerning the West Valley Site are not within NRC's authority to resolve.

⁶ The dose methodology used in 10 CFR part 61 subpart C is different from that used in the newer 10 CFR part 20 subpart E. However, the resulting allowable doses are comparable and NRC expects DOE to use the newer methodology in 10 CFR part 20 subpart E. Part 61 is based on International Commission on Radiological Protection Publication 2 (ICRP 2) and part 20 is based on ICRP 26.

separate dose standards for various sections of the NRC-licensed site.⁷

III. Overview of Public Comments

Twenty-eight organizations and individuals submitted written comments on the draft policy statement. Comments also were provided at the public meeting held on January 5, 2000. The commenters represented a variety of interests. Comments were received from Federal and State agencies, citizen and environmental groups, a native American organization, and individuals. The commenters offered over 200 specific comments and represented a diversity of views. The commenters addressed a wide range of issues concerning the decommissioning and closure of the WVDP and West Valley site. The reaction to the draft policy statement was generally supportive. However, viewpoints were expressed on the LTR and LTR guidance and how both should be applied at West Valley. In addition, there were comments on NRC's process for prescribing the decommissioning criteria and other issues specific to West Valley.

IV. Summary of Public Comments and Responses to Comments

The following sections A through I represent major subject areas and describe the principal public comments received on the draft policy statement (organized according to the major subject areas) and present NRC responses to those comments.

(A) Comments on the LTR (restricted release; institutional controls; as low as reasonably achievable (ALARA); financial assurance; alternate criteria; time line for dose calculations);

(B) Comments on LTR guidance (critical group, engineered barriers, cost/benefit analysis);

(C) Comments on implementing the LTR (continued Federal or State onsite presence, perpetual license);

(D) Comments on NRC's process for prescribing the decommissioning criteria (when to prescribe the criteria; use of the LTR "Generic Environmental Impact Statement" (GEIS) to support the use of the LTR at West Valley; NRC's National Environmental Policy Act (NEPA) obligation for prescribing the West Valley decommissioning criteria);

⁷ Applying the LTR, the total annual dose to an average member of the critical group for the site, including the resulting doses from the incidental waste, should be less than or equal to 25 mrem/yr TEDE. The Commission is not establishing a separate dose standard for the incidental waste such that the average member of the critical group potentially receive a dose of 25 mrem/yr TEDE from the rest of the NRC-licensed site and 25 mrem/yr TEDE from the incidental waste.

(E) Comments on jurisdictional aspects of prescribing the decommissioning criteria;

(F) Comments on the use of incidental waste criteria at West Valley;

(G) Comments related to how the site should be decommissioned (waste disposition, consideration of pathways for dose, and contaminant transport);

(H) Comments on the wording of the draft policy statement (use of the word "prescribe," paraphrasing the LTR and other statements on West Valley); and,

(I) Other comments (implications of the policy statement regarding native Americans, transuranic waste issue).

The comments received from the public in writing during the comment period and verbally during the January 5, 2000, public meeting have been factored into the Commission's decision-making on this final policy statement.

A. Comments on the LTR

The draft policy statement presented NRC's LTR as the decommissioning criteria for the WVDP and the West Valley site. Although there was general support for the use of the LTR as the decommissioning criteria for both the WVDP and West Valley site, there were a number of comments on the LTR. Specifically:

A.1 Comment. A number of commenters were concerned that the use of the LTR's restricted release concept, which includes the use of institutional controls, to decommission West Valley may not be appropriate because of the magnitude of the waste currently on-site and the potential for this waste to provide an unacceptable dose to members of the public if controls fail.

A.2 Response. The LTR criteria consider doses to members of the public from the loss of institutional controls. The loss of institutional controls will need to be considered in the DOE/NYSERDA EIS.⁸ Absent an exemption from the LTR provision in 10 CFR part 20, a site, or part thereof, that cannot meet the restricted release provisions of the LTR, must remain under an NRC license. The Commission will consider

⁸ DOE has decided to descope the draft 1996 EIS into two separate EISs. DOE will be the lead agency on the EIS that will address WVDP facility decontamination and management of waste currently stored at the site. NRC expects to be kept informed of progress as required under the DOE/NRC Memorandum of Understanding (MOU). DOE and NYSERDA will be the lead agencies on the EIS that will address decommissioning. NRC expects to participate as a cooperating agency. Hereafter, this second EIS where NRC will be a cooperating agency will either be referred to as the decommissioning EIS or the DOE/NYSERDA EIS, unless otherwise noted.

granting an exemption to the LTR criteria if it determines the exemption is authorized by law and would not result in undue hazard to life or property. The Commission intends to involve the public in the processing of any exemption request consistent with the "public participation" provision in 10 CFR 20.1405, and will involve the Environmental Protection Agency (EPA) if the exemption request involves criteria greater than the dose criteria of 10 CFR 20.1402, 20.1403(b), or 20.1403(d)(1)(i)(A). Such an exemption request will also require the approval of the Commission consistent with 10 CFR 20.1404(b).

A. 3 Comment. Some commenters also were concerned about the adequacy of the LTR's financial assurance requirements for maintaining institutional controls for restricted release at West Valley, especially if the financial assurance relies on future Government appropriations that are not guaranteed.

A. 4 Response. In general, it is assumed that when a Government agency certifies that it will seek appropriations, to maintain institutional controls for the purposes of protecting public health and safety, the appropriations will be authorized. The Commission believes that it is reasonable to expect Federal and State agencies to meet their commitments to obtain funding for institutional controls to provide for the protection of the public health and safety.

A. 5 Comment. A number of commenters were also concerned that the time line specified for dose calculations in the LTR (1000 years) is too short for difficult sites like West Valley.

A. 6 Response. In the development of the LTR, the Commission considered comments seeking a time period for dose analysis longer than 1000 years. Section F.7 in the LTR "Statement of Considerations," 62 FR 39058 (July 21, 1997). The Commission concluded that for the types of facilities and source terms considered, it was reasonable to use a 1000-year period. However, the West Valley site presents some unique challenges in that significant quantities of mobile, long-lived radionuclides are present on site. Because under NEPA an evaluation of reasonably foreseeable impacts is required, the Commission believes that an analysis of impacts beyond 1000 years should be provided in the DOE/NYSERDA EIS. Thus, information will need to be evaluated to determine if peak doses might occur after 1000 years and to define dose consequences and impacts on potential long-term management of residual

radioactivity at the site. Depending upon the outcome of the EIS review, the Commission may need to consider the need for environmental mitigation.

A. 7 Comment. Some commenters were concerned about the possible application of alternate criteria, as allowed under the LTR, to West Valley, or that the policy statement should at least clearly identify the dose limit cap under alternate criteria.

A. 8 Response. In addition to the unrestricted release limit of 25 mrem/yr TEDE, the LTR also contains alternate criteria for restricted release, which allows for a dose limit of up to 100 mrem/yr TEDE, with restrictions in place, and caps the public dose limit at 100 or 500 mrem/yr TEDE if the restrictions fail. Applying alternate criteria to a specific site requires opportunities for public involvement, coordination with the EPA, and direct approval of the Commission. The alternate criteria in the LTR were developed for difficult sites to minimize the need to consider exemptions to the LTR, although exemptions also may be considered. Under appropriate circumstances and based on a site-specific analysis, the Commission considers the application of alternate criteria protective of public health and safety. Absent a detailed site-specific analysis, it is premature for the Commission to make any judgments, at this time, on the acceptability or non-acceptability of applying alternate criteria or exemptions to the WVDP or any portion of the NRC-licensed site. In any event, neither the alternate criteria in the LTR nor exemptions will be approved by the Commission without full prior public participation, involvement of the EPA, and a Commission determination that there is reasonable assurance that there would not be undue hazard to life and property.

A. 9 Comment. There were also comments about the use of the ALARA process in the LTR at West Valley. Some believed that the ALARA process might be used to justify dose limits higher than those allowed by the LTR.

A. 10 Response. As stated previously, the LTR does allow for releases with different dose limits. Generally, ALARA is used to reduce doses below authorized limits. Under the LTR, the ALARA process is not used to permit doses above the 25 mrem/yr TEDE limit without restrictions, the 100 mrem/yr TEDE limit with restrictions, or the 500 mrem/yr TEDE cap if restrictions fail.

B. Comments on LTR guidance

A variety of comments were received on NRC's LTR guidance as it relates to West Valley. Since the time that NRC's LTR became final in 1997, the NRC staff has been developing guidance to support it. In September 2000, the NRC released guidance for decommissioning, in the form of a standard review plan (SRP) ("NMS Decommissioning Standard Review Plan," NUREG-1727).

B. 1 Comment. A number of commenters expressed concern with how the critical group would be defined for dose assessment purposes.

B. 2 Response. For the LTR, the critical group means the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances (10 CFR 20.1003). The "Statement of Considerations" for the LTR notes that the critical group would be the group of individuals reasonably expected to be the most highly exposed, considering all reasonable potential future uses of the site, based on prudently conservative exposure assumptions and parameter values within modeling calculations. NRC's SRP for decommissioning addresses two generic critical group scenarios—the "resident farmer" and the "building occupancy" scenarios. The SRP also presents approaches for establishing site-specific critical groups based on specific land use, site restrictions, and/or site-specific physical conditions. DOE/NYSERDA derivation of the critical groups for West Valley will need to be addressed in the EIS documents. In addition to NRC review and comment, the EIS documents will be available for public review and comment.

B. 3 Comment. There were also several comments relating concerns that long-term stewardship costs and impacts on special populations will not be properly factored into the cost/benefit analysis, or that there should be better guidance provided on what should be considered in the cost/benefit analysis.

B. 4 Response. DOE and NYSEDA will determine the extent to which these issues are covered in the DOE/NYSERDA EIS. In addition, NRC will review and comment on any cost/benefit analysis in the EIS. The cost/benefit analysis that DOE/NYSERDA develop for West Valley will need to be part of the EIS documents available for public review and comment.

B. 5 Comment. Some commenters suggested that there should be criteria for what are allowable engineered

barriers and whether or not they are considered institutional controls.

B. 6 Response. Because of the wide range of residual radioactive contamination encountered at decommissioning sites licensed by NRC, the LTR and NRC's decommissioning guidance are not prescriptive as to the criteria for, or acceptability of, site-specific institutional controls and engineered barriers. The "Statement of Considerations" for the LTR might be read to conclude that engineered barriers are included within institutional controls. However, neither term is defined. In the Commission's view, "engineered barriers" referred to in the "Statement of Considerations" for the LTR are distinct and separate from institutional controls. Used in the general sense, an engineered barrier could be one of a broad range of barriers with varying degrees of durability, robustness, and isolation capability. Thus, NRC guidance in Appendix I of the SRP on the LTR distinguishes institutional controls from physical controls and engineered barriers. Institutional controls are used to limit intruder access to, and/or use of, the site to ensure that the exposure from the residual radioactivity does not exceed the established criteria. Institutional controls include administrative mechanisms (e.g., land use restrictions) and may include, but not be limited to, physical controls (e.g., signs, markers, landscaping, and fences) to control access to the site and minimize disturbances to engineered barriers. There must be sufficient financial assurance to ensure adequate control and maintenance of the site and institutional controls must be legally enforceable and the entity charged with their enforcement must have the capability, authority, and willingness to enforce the controls. Generally, ~~engineered barriers are barriers made~~ structures or devices intended to improve a facility's ability to meet a site's performance objectives. Institutional controls are designed to restrict access, whereas engineered barriers are usually designed to inhibit water from contacting waste, limit releases, or mitigate doses to intruders. The isolation capability, durability, and robustness of a specific barrier will need to be evaluated in the DOE/NYSERDA EIS. The ability of a barrier to inhibit access of the inadvertent intruder is a separate issue from whether a barrier is an institutional control. The dose analyses for a site with engineered barriers will need to consider the reasonableness of a breach by an inadvertent intruder.

C. Comments on Implementing the LTR

C. 1 Comment. There were some comments identifying who should be the long-term steward of the site if long-term stewardship is required as part of site closure. Some commenters also provided suggestions on how site long-term stewardship should be maintained at West Valley if it is needed (onsite staff, perpetual license).

C. 2 Response. NRC expects that these site-specific issues will be covered in the DOE/NYSERDA EIS and addressed in the preferred alternative. The identification of a long-term custodian is not an NRC responsibility but will be determined from negotiations involving DOE and NYSERDA and possibly the U.S. Congress. From the NRC perspective, both DOE and NYSERDA represent governmental entities and either would be acceptable as a long-term custodian.

C. 3 Comment. One commenter requested consideration of how the LTR would be implemented on the decommissioned portions of the site if there were areas of the site that could not meet the LTR.

C. 4 Response. Although the LTR does not specifically address differing release standards on a single site, NRC recognizes that the approach to decommissioning at West Valley may include portions of the site being released for unrestricted use, and portions of the site being released for restricted use, as well as portions of the site remaining under license, because of a failure to meet the LTR. In the Commission's view, the LTR is sufficiently flexible to allow for such circumstances. In particular, the Commission believes that for those portions of the site that are unable to demonstrate compliance with the LTR's restricted release requirements, the dose limits should be viewed as goals in order to ensure that cleanup continues to the maximum extent that is technically and economically feasible. The Commission also believes that after cleanup to the maximum extent technically and economically feasible is accomplished, alternatives to release under the LTR criteria may need to be contemplated. Specific examples of these alternatives are a perpetual license for some parts of the site or exemptions from the LTR. The NRC expects that these issues will be fully addressed in the DOE/NYSERDA EIS.

D. Comments on NRC's Process for Prescribing the Decommissioning Criteria

D.1. DOE recommended, for the reasons described in comments D.1.1.

D.1.3, and D.1.5 below, that NRC withhold assigning the LTR as the decommissioning criteria until NRC does a site-specific analysis of the environmental effects of decommissioning West Valley.

D.1.1 Comment. The LTR GEIS (NUREG-1496) does not support the use of the LTR at a complex site like West Valley; therefore, a specific EIS for this action needs to be completed by NRC to finalize the criteria.

D.1.2 Response. Although the LTR GEIS did not specifically address the decommissioning of a spent fuel reprocessing site, it did evaluate the decommissioning of a range of reference facilities (e.g., fuel cycle facilities and reactors). In promulgating the LTR, the Commission stated in Section VI of the "Statement of Considerations" that it will conduct an environmental review to "determine if the generic analysis encompasses the range of environmental impacts at the particular site." The Commission further stated that it "will conduct an independent environmental review for each site-specific decommissioning decision where land use restrictions or institutional controls are relied upon by the licensee or where alternative criteria are proposed" as it recognized that the environmental impacts for these cases cannot be analyzed on a generic basis. Thus, the environmental impacts from the application of the criteria to the WVDP will need to be evaluated for the various alternative approaches being considered in the process before NRC decides whether to accept the preferred alternative for meeting the criteria permitted by the LTR. NRC expects to be able to rely on the DOE/NYSERDA EIS for this purpose. NRC does not anticipate the need to prepare its own duplicative EIS as NRC can consider the environmental impacts described in the DOE/NYSERDA EIS in approving the particular decommissioning criteria for the WVDP under the LTR. As an EIS cooperative agency, NRC may adopt all or parts of the lead EIS agency's NEPA documents. Under this arrangement, if NRC is satisfied with the final DOE/NYSERDA EIS, then NRC will adopt it to fulfill its NEPA responsibilities under the WVDP Act. If NRC is not satisfied with the final DOE/NYSERDA EIS, then it will adopt as much of it as possible and modify or supplement it as necessary. In such a situation, NRC would publish its own draft EIS document for public review and comment before finalizing it. Once finalized, NRC's West Valley NEPA responsibilities would be fulfilled under the WVDP Act.

The WVDP Act does not address license termination for the site. The actual license termination for the site, if and when pursued, will be conducted under the Atomic Energy Act (AEA) of 1954, as amended. At the time of NRC license termination under the AEA (if license termination is pursued), NRC will need to conduct an environmental review to determine if an EIS is necessary to support license termination.

D.1.3 Comment. The NRC's prescription of decommissioning criteria is not being coordinated with the current NEPA process as suggested by the DOE/NRC Memorandum of Understanding (MOU) on West Valley.

D.1.4 Response. The process described in the DOE/NRC MOU (Section B (4)), for consulting on a site-specific analysis of decommissioning requirements was developed to allow DOE and NRC to evaluate a range of approaches to specifically address the decommissioning of the WVDP. Thereafter, NRC was to prescribe the decommissioning criteria. At the time the MOU was signed, no comprehensive general criteria existed for decommissioning NRC-licensed sites. Decommissioning criteria were determined on a case-by-case basis. However, through the rulemaking process completed in 1997, which promulgated the LTR, there was an evaluation of various regulatory approaches for decommissioning NRC-licensed sites and the selection of a range of regulatory approaches with criteria, in the final rule.

Except as provided in 10 CFR 20.1401, the LTR applies to all NRC's licensed sites. The Commission recognized, as noted in the "Statement of Considerations" for the LTR, that there would be sites with complex decommissioning issues that would be resolved by site-specific environmental reviews which considered various alternative methods for decommissioning and application of the LTR. In the Commission's view, the use of the two-step prescribing process—first, the decision to use the LTR, and second, to use the DOE/NYSERDA EIS, to consider the impacts of the different approaches for decommissioning, before deciding whether to accept the particular approach that DOE intends to use to meet the LTR—is consistent with the intent of the MOU that various approaches be analyzed in developing the WVDP decommissioning criteria.

D.1.5 Comment. Finalizing the LTR now as the decommissioning criteria for the WVDP at the West Valley site limits the options for closure of the NRC-licensed Disposal Area (NDA).

D.1.6 Response. The Commission does not believe that prescribing the LTR criteria for the WVDP at the West Valley site as the applicable decommissioning goal for the entire NRC-licensed site will limit DOE from developing acceptable closure options for the NDA or any other part of the NRC-licensed site. Prescribing the LTR now is warranted because NYSEERDA, as a licensee of the Commission, is subject to the LTR after NYSEERDA's NRC license is reactivated at the conclusion of the WVDP. It follows that DOE should also be subject to the LTR as it is the surrogate for NYSEERDA in decommissioning facilities used for the project. Therefore, it is appropriate to prescribe the LTR now for the WVDP, with the site-specific decommissioning issues resolved through the process described in Response D.1.4 above. Applying the LTR to the WVDP will provide an opportunity to DOE, as would be given to any licensee, to consider a range of approaches to achieve acceptable decommissioning, consistent with public dose limits. If parts of the NRC-licensed site cannot meet the LTR, the Commission will consider alternatives to the criteria in the LTR if it can be demonstrated that public health and safety will be protected. The NRC expects that these issues will be fully addressed in the DOE/NYSERDA EIS.

E. Comments on Jurisdictional Aspects of Prescribing the Decommissioning Criteria

E.1 Comment. Many commenters suggested that, because the State-licensed Disposal Area (SDA) is immediately adjacent to the WVDP and part of the West Valley site, the allowable dose from the closure and/or decommissioning of it should be considered comprehensively with the allowable dose from the NRC regulated part of the site.

E.2 Response. NRC's authority only extends to the NRC-licensed portion of the site. It also should be noted that the LTR recognizes that people can be exposed to up to four sources of radiation and still meet the nationally and internationally accepted public dose limit of 100 mrem/yr TEDE in part 20. In considering the environmental impacts for the entire site, the DOE/NYSERDA EIS will need to consider the number of sources to which the critical group may be exposed. However, NRC continues to dialogue with State representatives to exchange information on issues of mutual interest regarding potential sources of public exposure.

E.3 Comment. A few comments were made indicating that NRC ought to

prescribe the dose limits in EPA's decommissioning guidance to West Valley, because they are more protective and could be applied to the site after NRC regulation. Likewise, a comment was made that the decommissioning criteria issue between NRC and EPA should be resolved before the criteria are prescribed.

E.4 Response. The Commission believes that the LTR dose limits plus ALARA requirements provide protection comparable to dose limits preferred by EPA in its guidance documents. The Commission notes that the LTR was promulgated by the Commission in 1997 pursuant to an Administrative Procedure Act rulemaking accompanied by a generic EIS and voluminous regulatory analysis, including consideration of numerous public comments. EPA's guidance documents have gone through no such public process. The Commission believes that decommissioning the site to the LTR criteria ensures that public health and safety and the environment will be protected. Although there is a lack of agreement between NRC's rule and EPA's guidance documents on the appropriate upper bounds on decommissioning criteria, the NRC practice of applying ALARA principles to NRC dose limits will most likely result in an NRC approved decommissioned site that satisfies the EPA criteria as well. In fact, EPA has indicated that it believes that the 25 mrem/yr TEDE cleanup dose limit in the LTR will be "protective at this site." See Letter from Paul Giardina, EPA to John Greeves, NRC (July 23, 2001). Because the LTR requirements do ensure adequate protection of the public health and the environment, and, as indicated in the preceding paragraph, EPA agrees with this conclusion for West Valley, the Commission believes that it is not necessary to wait for a formal resolution of the differences between NRC and EPA on generic decommissioning standards before proceeding with prescribing site-specific decommissioning criteria for the WVDP. As stated previously, EPA will be involved in any proposal to use alternate criteria in the LTR or exemptions from 10 CFR part 20, if so requested.

F. Comments on the Use of Incidental Waste Criteria at West Valley Site

F.1 Comment. Many comments were received concerning the use of the incidental waste criteria at West Valley. Most commenters did not want NRC to allow for the "reclassification" of any HLW at this site to waste incidental to reprocessing. If it were allowed, it

should be done in a way that provides for public participation. One commenter agreed that it will have to be done, but that the Commission should prescribe the criteria that are necessary and appropriate for the incidental waste determination. One other commenter believes that use of DOE's Order 435.1 is the appropriate process for reclassifying residual HLW as incidental.

F.2 Response. Section 6 (4) of the WVDP Act defines HLW as including both (1) liquid wastes which are produced directly in reprocessing, dry solid material derived from such liquid waste and (2) such other material as the Commission designates as HLW for the purposes of protecting the public health and safety. Since 1969, the Commission has recognized the concept of waste incidental to reprocessing, concluding that certain material that otherwise would be classified as HLW need not be disposed of as HLW and sent to a geologic repository because the residual radioactive contamination after decommissioning is sufficiently low as not to represent a hazard to the public health and safety. Consequently, incidental waste is not considered HLW. See, Proposed Rule—Siting of Commercial Fuel Reprocessing Plants and Related Waste Management Facilities (34 FR 8712; June 3, 1969), Final Rule—Siting of Commercial Fuel Reprocessing Plants and Related Waste Management Facilities (35 FR 17530; November 14, 1970), Advance Notice of Proposed Rule-making to Define HLW (52 FR 5992, 5993; February 27, 1987), Proposed Rule—Disposal of Radioactive Waste (53 FR 17709; May 18, 1988), Final Rule—Disposal of Radioactive Waste (54 FR 22578; May 25, 1989), and Denial of Petition for Rulemaking: States of Washington and Oregon, (58 FR 12342; March 3, 1993).

The Commission believes that practical considerations mandate early resolution of the criteria that should guide the incidental waste determination. Vitrification of the high-level wastes at West Valley is nearing completion, at which point DOE intends to close down the vitrification facility. To delay providing the Commission's view for incidental waste could adversely impact the DOE, as it may prove extraordinarily expensive after the vitrification facility is shut down to provide vitrification capacity for any additional waste that must be shipped elsewhere for disposal. Indeed, in light of the fact that the site will ultimately revert to control by NYSERDA under an NRC license, both NYSERDA and NRC have an interest in ensuring that the

incidental waste determination need not be revisited.

In light of these considerations, the Commission is now providing the following criteria for incidental waste determinations.

(1) The waste should be processed (or should be further processed) to remove key radionuclides to the maximum extent that is technically and economically practical; and

(2) The waste should be managed so that safety requirements comparable to the performance objectives in 10 CFR part 61 subpart C, are satisfied.

The resulting calculated dose from the incidental waste is to be integrated with all the other calculated doses from the remaining material at the entire NRC-licensed site to ensure that the LTR criteria are met. This is appropriate because the Commission does not intend to establish separate dose standards for various sections of the NRC-licensed site.

Previously the NRC has provided advice to DOE concerning DOE's classification of certain waste as incidental waste for clean-up of HLW storage tanks at both Hanford and Savannah River. As noted above, NRC intends to apply the LTR criteria for the WVDP at the West Valley site, reflecting the fact that the applicable decommissioning goal for the entire NRC-licensed site is in compliance with the requirements of the LTR. The Commission has decided that the most recent advice provided to DOE for the classification of incidental waste at the Savannah River site,⁹ with some additional modifications, as the appropriate criteria that should be applicable to West Valley. These criteria are risk-informed and performance-based in that the criteria allow DOE the flexibility to develop innovative approaches to meeting the performance objectives in part 61. In effect, DOE should undertake cleanup to the maximum extent that is technically and economically practical and should achieve performance objectives consistent with those we demand for the disposal of low-level waste. If satisfied, these criteria should serve to provide protection of the public health and safety and the environment and the resulting calculated dose would be integrated with the resulting calculated doses for all other remaining material at the NRC-licensed site. It is the Commission's expectation that it will apply this criteria at the WVDP at the site following the completion of DOE's

site activities. In this regard, the impacts of identifying waste as incidental to reprocessing and not HLW should be considered in the DOE's environmental reviews.

G. Comments Related to How the Site Should Be Decommissioned

G.1 Comment. There were many comments and suggestions that all the waste at this site should be perhaps temporarily stabilized, or packaged and perhaps temporarily stored, but ultimately removed from the site. There were also some comments on what are the important pathways for, and man-made barriers to control, contaminant transport at the site.

G.2 Response. The Commission appreciates the public's identification of, and input on, these issues. The decisions related to alternative approaches to decommissioning the West Valley site will be evaluated in the DOE/NYSERDA EIS, and reviewed by NRC for their ability to protect public health and safety and the environment. The EIS will also be available for public comment before being finalized.

H. Comments on the Wording of the Draft Policy Statement

H.1 Comment. Several comments were made about the last part of a sentence in the Draft Policy Statement under the section entitled "Decommissioning Criteria for the WVDP." It states that " * * * following the completion of DOE/NYSERDA's EIS and selection of its preferred alternative, the NRC will verify that the specific criteria identified by DOE is within the LTR and will prescribe the use of specific criteria for the WVDP." Many suggested that prescribing the use of the specific criteria after the selection of the preferred alternative in the EIS is confusing, not what is meant by the WVDP Act, and would allow adjustment of the criteria after the EIS is completed.

H.2 Response. As addressed above in response to the various comments, the Commission's intent is to prescribe the generally applicable requirements of the LTR now, before the completion of the site-specific EIS. After completion of the site-specific DOE/NYSERDA EIS, NRC will evaluate the compliance status of the preferred alternative with respect to the LTR, as described in the Commission's final policy statement. This is a two-step process. The first step is prescribing the LTR, a set of criteria that allows for unrestricted releases, restricted releases, and alternative releases, that applies to all NRC licensees. Prescribing decommissioning criteria now for the WVDP allows DOE to develop alternative approaches for

⁹ See NRC Staff Requirements Memorandum "SECY-99-0284—Classification of Savannah River Residual Tank Waste as Incidental," May 30, 2000.

meeting those criteria and consider their impacts in its site-specific EIS.

The second step is for NRC to evaluate on a site-specific basis the approach for meeting the LTR. This will be done after the DOE/NYSERDA EIS is completed and NRC adopts it or otherwise produces its own NEPA evaluation of the site-specific criteria developed in the DOE/NYSERDA EIS. NRC will be evaluating DOE's and NYSEDA's preferred alternative for meeting the LTR and other alternatives presented in the DOE/NYSERDA EIS.

This process is in accordance with the "Statement of Considerations" for the LTR, which describes the relationship between the GEIS for the LTR and site-specific decommissioning actions. A site-specific EIS is prepared in cases where the range of environmental impacts of the alternatives at a specific site may not be within those considered in the GEIS for the LTR. This is similar to the approach that NYSEDA, as an NRC licensee, would need to meet if the license were not being held in abeyance. The Commission is satisfied that this approach is within the intent of the WVDP Act for the prescription of decommissioning requirements by NRC.

The WVDP Act does not address license termination for the site. The actual license termination for the site, if and when possible, will be conducted under the AEA, as amended. At the time of NRC license termination under the AEA (if license termination is pursued), NRC will need to conduct an environmental review to determine if an EIS is necessary to support actual license termination. The language from the draft policy statement was changed in the final policy statement to reflect the process described above.

H.3 Comment. The policy statement should not paraphrase the LTR and others' statements on West Valley.

H.4 Response. The Commission was attempting to provide context to the draft policy statement by paraphrasing the LTR or others' statements on West Valley. To avoid confusion or misinterpretation in the Final Policy Statement, it will contain a disclaimer to the effect that notwithstanding any paraphrasing of the LTR in the Policy Statement, the language of the LTR itself is controlling in determining how it is to be applied at West Valley. The paraphrasing of others' statements will be avoided.

I. Other Comments

I.1 Comment. What are the implications of the policy statement regarding NRC's policies regarding Native Americans.

I.2 Response. NRC staff has examined the draft policy on decommissioning criteria for the WVDP and has not identified any implications in relation to the Commission's guidance regarding Native Americans. The Commission has directed the NRC staff to implement the spirit and letter of President Clinton's April 29, 1994, Executive Memorandum to ensure that the rights of sovereign Tribal governments are fully respected and to operate within a government-to-government relationship with Federally-recognized Native American Tribes. In addition, the staff has been directed to address Native American issues on a case-by-case basis, operating with Tribal Governments on a government-to-government basis. In response to the interest expressed by the Seneca Nation of Indians in NRC activities at WVDP, the NRC staff has added the Seneca Nation to its service list which will provide the Seneca Nation with copies of documents and meeting notices related to NRC's activities at West Valley that the NRC may publically release. The NRC staff will address issues raised by the Seneca Nation of Indians in accordance with the Commission's guidance.

I.3 Comment. One commenter claims that NRC is required by law to define "transuranic waste" for West Valley and determine the disposition of that waste.

I.4 Response. Section 6(5) of the WVDP Act defines transuranic waste for the WVDP in terms of radioisotopes and the lower limit of concentration of those isotopes. It also states that NRC has the authority to prescribe a different concentration limit to protect public health and safety. NRC's position on this issue is detailed in a letter from M. Knapp, NRC, to W. Bixby, DOE, dated August 18, 1987. This letter states that, to demonstrate protection of public health and safety, the transuranic concentration of project wastes acceptable for on-site disposal will be such that, by analysis, safety requirements comparable to the performance objectives in 10 CFR part 61 subpart C are satisfied. The resulting calculated dose from the transuranic waste is to be integrated with all the other calculated doses from the remaining material at the NRC-licensed site to ensure that the LTR criteria are met. As with incidental waste, the Commission is not establishing a separate dose standard that applies solely to the transuranic waste.

V. Final Policy Statement

Statement of Policy

Decommissioning Criteria for the West Valley Demonstration Project (WVDP)

Under the authority of the WVDP Act, the Commission is prescribing NRC's License Termination Rule (LTR) (10 CFR part 20, subpart E) as the decommissioning criteria for the WVDP, reflecting the fact that the applicable decommissioning goal for the entire NRC-licensed site is in compliance with the requirements of the LTR. The criteria of the LTR shall apply to the decommissioning of: (1) The High Level Waste (HLW) tanks and other facilities in which HLW, solidified under the project, was stored; (2) the facilities used in the solidification of the waste; and (3) any material and hardware used in connection with the WVDP. Also under authority of the WVDP Act, the Commission is issuing criteria for the classification of reprocessing wastes that will likely remain in tanks at the site after the HLW is vitrified, subsequently referred to as "incidental waste."

The resulting calculated dose from the WVDP at the West Valley site is to be integrated with all other calculated doses to the average member of the critical group from the remaining material at the entire NRC-licensed site to determine whether the LTR criteria are met. This is appropriate because the Commission does not intend to establish separate dose standards for various sections of the NRC-licensed site. The LTR does not apply a single public dose criterion. Rather, it provides for a range of criteria. Briefly stated, for unrestricted release, the LTR specifies a dose criterion of 25 mrem/yr total effective dose equivalent (TEDE) to the average member of the critical group plus as low as reasonably achievable (ALARA) considerations (10 CFR 20.1402). For restricted release, the LTR specifies an individual dose criterion of 25 mrem/year TEDE plus ALARA considerations using legally enforceable institutional controls established after a public participatory process (10 CFR 20.1403). Even if institutional controls fail, individual doses should not exceed 100 mrem/yr TEDE. If it is demonstrated that the 100 mrem/yr TEDE criterion in the event of failure of institutional controls is technically not achievable or prohibitively expensive, the individual dose criterion in the event of failure of institutional controls may be as high as 500 mrem/yr TEDE. However, in circumstances where restricted release is required, if the 100 mrem/yr TEDE criterion is exceeded, and/or the use of alternate criteria has

been determined, the area would be rechecked by a responsible government entity no less frequently than every 5 years and resources would have to be set aside to provide for any necessary control and maintenance of the institutional controls. Finally, the LTR permits alternate individual dose criteria of up to 100 mrem/yr TEDE plus ALARA considerations for restricted release, with institutional controls established after a public participatory process (10 CFR 20.1404). The Commission itself must approve use of the alternative criteria, after coordination with the U.S. Environmental Protection Agency (EPA) and after consideration of the NRC staff's recommendations and all public comments.¹⁰

The Commission also recognizes that decommissioning of the West Valley site will present unique challenges, which may require unique solutions. As a result, the final end-state may involve a long-term or even a perpetual license or other innovative approaches for some parts of the site where clean up to the LTR requirements are prohibitively expensive or technically impractical. It is important that all parts of the site be decommissioned to the extent technically and economically feasible. Therefore, in addition, the Commission expects decontamination to the maximum extent technically and/or economically feasible for any portion of the site remaining under a long term or perpetual license or for which an exemption from the LTR is sought. In sum, the Commission believes that for those portions of the site that are unable to demonstrate compliance with the LTR's restricted release requirements, the dose limits should be viewed as goals, in order to ensure that cleanup continues to the maximum extent that is technically and economically feasible. If complying with the LTR's restricted release requirements is technically impractical or prohibitively expensive, then an exemption from the LTR may be appropriate, provided that protection of the public and the environment can be maintained.

The Commission's application of the LTR to the WVDP is a two-step process: (1) NRC is now prescribing the application of the LTR; and (2) after the completion of the site-specific Department of Energy (DOE)/New York State Energy Research and Development Authority (NYSERDA) Environmental

Impact Statement (EIS)¹¹ and selection of the preferred alternative, NRC will verify that the approach proposed by DOE is appropriate. The WVDP Act does not address license termination of the NRC license for the site, or portions thereof, which will be conducted (if license termination is possible and pursued) under the Atomic Energy Act (AEA) of 1954, as amended. If full or partial license termination of the NRC license is pursued, at that time NRC will need to conduct an environmental review to determine if an EIS is necessary to support license termination.

Decommissioning Criteria for the NRC-Licensed Disposal Area (NDA) and State-Licensed Disposal Area (SDA)

NRC will apply the criteria in the LTR to the NDA within the West Valley site, because the NDA is under NRC jurisdiction. However, the NDA presents some unique challenges in that some of this material contains significant quantities of mobile, long-lived radionuclides which could potentially remain in this facility. It is recognized that because of the nature of radioactivity at West Valley, reasonably foreseeable impacts might occur after 1000 years, under certain scenarios. Under NEPA, an evaluation of the reasonably foreseeable impacts is required. Therefore, the Commission believes that an analysis of impacts beyond 1000 years should be provided in the DOE/NYSERDA EIS which will be subject to public comment.

NRC does not have regulatory authority to apply the LTR criteria to the SDA adjacent to the WVDP site boundary, because the SDA is regulated by the State of New York. However, NRC recognizes that a cooperative approach with the State to the extent practical should be utilized to apply the LTR criteria in a coordinated manner to the NRC-licensed site and the SDA.

Decommissioning Criteria for License CSF-1 (NRC Site License)

The criteria in the LTR will also apply to the termination of NYSEDA's NRC license on the West Valley site after that license is reactivated. For those portions

of the site covered by the WVDP Act, it is NRC's intent to authorize that any exemptions or alternate criteria authorized for DOE to meet the provisions of the WVDP Act will also apply to NYSEDA at the time of site license termination, if license termination is possible. The NRC site license termination is not addressed in the WVDP Act. Therefore the NRC site license termination is subject to the provisions of the Atomic Energy Act of 1954 as amended.

Use of Incidental Waste Criteria at West Valley

Section 6 (4) of the WVDP Act defines HLW as including both (1) liquid wastes which are produced directly in reprocessing, dry solid material derived from such liquid waste and (2) such other material as the Commission designates as HLW for the purposes of protecting the public health and safety. The Commission believes that practical considerations mandate early resolution of the criteria that will guide the classification of incidental waste. The vitrification of the wastes at West Valley is nearing completion, at which point DOE intends to close down the vitrification facility. To delay defining classification criteria for incidental waste could adversely impact the DOE as it may prove extraordinarily expensive after the vitrification facility is shut down to provide vitrification capacity for any additional waste that must be shipped elsewhere for disposal. Indeed, in light of the fact that the site will ultimately revert to control by NYSEDA under an NRC license, both NYSEDA and NRC have an interest in ensuring that the incidental waste determination need not be revisited.

In light of these considerations, the Commission is now providing the following criteria that should be applied to incidental waste determinations.

(1) The waste should be processed (or should be further processed) to remove key radionuclides to the maximum extent that is technically and economically practical; and

(2) The waste should be managed so that safety requirements comparable to the performance objectives in 10 CFR part 61 subpart C, are satisfied.¹²

Consistent with the overall approach in applying the LTR to the WVDP and to the entire NRC-licensed site following

¹¹DOE has decided to describe the draft 1996 EIS into two separate EISs. DOE will be the lead agency on the EIS that will address WVDP facility decontamination and management of waste currently stored at the site. NRC expects to be kept informed of progress as required under the DOE/NRC Memorandum of Understanding (MOU). DOE and NYSEDA will be the lead agencies on the EIS that will address decommissioning. NRC expects to participate as an EIS cooperating agency. Hereinafter, this second EIS where NRC will be a cooperating agency will either be referred to as the decommissioning EIS or the DOE/NYSERDA EIS, unless otherwise noted.

¹⁰The material set out in the text is a brief summary of the LTR. Notwithstanding the words used in the text, the language of the LTR governs this matter.

¹²The dose methodology used in 10 CFR part 61 subpart C is different from that used in the newer 10 CFR part 20 subpart E. However, the resulting allowable doses are comparable and NRC expects DOE to use the newer methodology in 10 CFR part 20 subpart E. part 61 is based on International Commission on Radiological Protection Publication 2 (ICRP 2) and part 20 is based on ICRP 26.

conclusion of the WVDP, the resulting calculated dose from the incidental waste is to be integrated with all the other calculated doses from material remaining material at the entire NRC-licensed site.

Previous Burials Authorized Under 10 CFR Part 20

The "Statement of Considerations" for the LTR, Section C.3, Other Exemptions (62 FR 39074) provided that in regard to past burials the Commission " * * * would continue to require an analysis of site-specific overall impacts and costs in deciding whether or not exhumation of previous buried waste is necessary for specific sites. In addition, the general exemption provisions of 10 CFR part 20 are available to consider unique past burials on a case-by-case basis." The NDA contains significant amounts of buried radioactive material that was previously authorized under older provisions of part 20. This material will require appropriate evaluation as part of site license renewal.

Environmental Analysis

An EIS is not needed at this step of the process of prescribing the LTR because the Commission is not establishing a new requirement for the site. This site is licensed to NYSERDA and, therefore, is already subject to the LTR by operation of the Commission's regulations. DOE in essence is acting as a surrogate for NYSERDA. The environmental impacts of applying the LTR to NRC licensees were evaluated in the Generic Environmental Impact Statement (GEIS), NUREG-1496, that supported the LTR. In promulgating the LTR, the Commission stated, in Section VI of the "Statement for Considerations" that it will conduct an environmental review to "determine if the generic analysis encompasses the range of environmental impacts at the particular site." The Commission further stated that it "will conduct an independent environmental review for each site-specific decommissioning decision where land use restrictions or institutional controls are relied upon by the licensee or where alternative criteria are proposed" as it recognized that the environmental impacts for these cases cannot be analyzed on a generic basis. The environmental impacts from the application of the criteria will need to be evaluated for the various alternative approaches being considered in the process before NRC decides whether to accept the preferred alternative for meeting the criteria permitted by the LTR. NRC intends to rely on the DOE/NYSERDA EIS for this purpose.

For NEPA purposes, DOE is considered the lead Federal agency. NRC, in view of its responsibilities under the WVDP Act, is considered a cooperating agency for this EIS and is participating in the development of the DOE/NYSERDA EIS. NRC does not anticipate the need to prepare its own duplicative EIS, since it can consider the environmental impacts described in the DOE/NYSERDA EIS in approving the particular decommissioning criteria for the WVDP under the LTR. Under this arrangement, if NRC is satisfied with the DOE/NYSERDA EIS, this EIS will fulfill the NEPA responsibilities for NRC under the WVDP Act. If NRC is not satisfied with the final DOE/NYSERDA EIS, then NRC will adopt as much of it as possible and modify or supplement it as necessary. In such a situation, NRC would publish its own draft EIS document for public review and comment before finalizing it. Once finalized, NRC's West Valley NEPA responsibilities would be fulfilled under the WVDP Act.

The WVDP license termination for the site. License termination of the NRC license for the site, or portions thereof, is conducted (if license termination is possible) under the AEA. If NYSERDA pursues either full or partial license termination of the NRC license, at that time NRC will need to conduct an environmental review to determine if an EIS is necessary to support license termination.

Availability of Documents

NRC's final policy statement on decommissioning criteria for West Valley is also available at NRC's Public Electronic Reading Room link (<http://www.nrc.gov/NRC/ADAMS/index.html>) on NRC's home page (<http://www.nrc.gov>). Copies of documents cited in this section are available for inspection and/or reproduction for a fee in the NRC Public Document Room, 11555 Rockville Pike, Room O-1F21, Rockville, MD 20852. The NRC Public Document Room is open from 7:45 a.m. to 4:15 p.m., Monday through Friday, except on Federal holidays. Reference service and access to documents may also be requested by telephone (301-415-4737 or 800-397-4209), between 8:30 a.m. and 4:15 p.m.; or by e-mail (PDR@nrc.gov); fax (301-415-3548); or a letter (NRC Public Document Room, Mailstop O-1F13, Washington, DC 20555-0001). In addition, copies of: (1) SECY-98-251, "Decommissioning Criteria for West Valley;" (2) the transcript of the public meeting held January 12, 1999; (3) the Commission's SRM of January 26, 1999, concerning the January 12, 1999, public meeting on

SECY-98-251; (4) SECY-99-057, "Supplement to SECY-98-251, 'Decommissioning Criteria for West Valley;'" (5) the Commission's vote sheets on SECY-98-251 and SECY-99-057; (6) the Commission's SRM of June 3, 1999, on SECY-98-251 and SECY-99-057; (7) the draft policy statement issued December 3, 1999; (8) the transcript of the public meeting held January 5, 2000; and (9) the public comments on the draft policy statement can be obtained electronically on NRC's home page at the Commission's Activities link (<http://www.nrc.gov/NRC/COMMISSION/activities.html>).

Dated at Rockville, Maryland, this 25th day of January, 2002.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 02-2373 Filed 1-31-02; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-250 and 50-251]

Florida Power and Light Company Turkey Point Plant, Units 3 and 4 Notice of Availability of the Final Supplement 5 to the Generic Environmental Impact Statement Regarding License Renewal for the Turkey Point Plant, Units 3 and 4

Notice is hereby given that the U. S. Nuclear Regulatory Commission (NRC) has published a final plant-specific Supplement 5 to the Generic Environmental Impact Statement (GEIS), NUREG-1437, regarding the renewal of operating licenses DPR-31 and DPR-41 for the Turkey Point Plant, Units 3 and 4, for an additional 20 years of operation. The Turkey Point Plant units are operated by Florida Power and Light Company (FPL). Turkey Point Plant is located in Dade County, Florida. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative methods of power generation.

In Section 9.3 of the report:

The staff recommends that the Commission determine that the adverse environmental impacts of license renewal for Turkey Point Units 3 and 4 are not so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable. This recommendation is based on (1) the analysis and findings in the Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants, NUREG-1437; (2) the ER (Environmental Report) submitted by FPL; (3) consultation with other Federal, State, and local agencies; (4) the staff's own independent review; and

**REGULATORS COMMUNICATION PLAN
ON APPLICATION OF CLEANUP REQUIREMENTS FOR DECOMMISSIONING
THE WEST VALLEY SITE**

I SCOPE

On November 27, 2001, the US Environmental Protection Agency (EPA) Region 2, US Nuclear Regulatory Commission (NRC), New York State Department of Environmental Conservation (NYSDEC), and New York State Department of Health (NYSDOH) met to discuss applicable cleanup criteria and regulatory roles and responsibilities for the West Valley site. These agencies, together with New York State Department of Labor (NYSDOL), are herein referred to as the regulators. In this meeting, the regulators agreed to develop a communication plan that: 1) identifies applicable cleanup requirements and expectations that need to be addressed in decommissioning the West Valley site, and 2) describes the roles and responsibilities of involved regulatory agencies. While it may not represent consensus, compromise, or resolution of all differences between the regulatory agencies requirements or perspectives, the regulators intend to use this communication plan to foster a better understanding of cleanup requirements/expectations and roles/responsibilities related to decommissioning of the West Valley site. It is also intended to assist the scoping of issues that may need to be considered in the West Valley decommissioning Environmental Impact Statement (EIS) for the West Valley Development Project (WVDP).

II GOALS AND OBJECTIVES

- Identify applicable regulatory cleanup requirements and expectations.
- Identify roles and responsibilities of involved regulatory agencies.

III BACKGROUND

In October 2000, the regulators initiated a dialogue on the various cleanup standards that apply at West Valley. It was recognized that different Federal and State agencies have different cleanup standards that need to be addressed. The regulators agreed that it is a desirable goal to work together and present these requirements in a clear and coordinated way which will help facilitate planning and decision-making processes, eliminate redundancy, and make better use of resources.

A General Accounting Office (GAO) report on West Valley was made public on June 12, 2001. The report (GAO-01-314) includes several recommendations, one of these recommendations pertains to coordination among agencies on cleanup requirements. Specifically, GAO recommended that NRC and EPA, in coordination with New York State, agree on how their different regulatory cleanup criteria should apply to the site. On November 27, 2001, regulatory agencies met to discuss these and related issues on the decommissioning of the West Valley site. In this meeting, the regulators agreed to develop a communication plan that identifies

applicable cleanup requirements and expectations, and describes the roles and responsibilities of involved regulatory agencies.

IV PRINCIPAL POINTS OF AGREEMENT

Regulators agreed upon a number of general points, including:

- To work together in identifying cleanup criteria and expectations.
- To participate in a planned public meeting on NRC decommissioning criteria.
- To develop a communication plan that includes a description of roles and responsibilities of involved regulatory agencies, and a matrix of cleanup requirements and expectations.
- To address and resolve issues through the Decommissioning EIS.
- To consider respective roles as a cooperating agency for the decommissioning EIS.
- To address and resolve regulatory issues in a timely manner.
- To acknowledge that some waste may remain onsite.
- To acknowledge the possibility of partial site release and that some portion of the site may remain under license for the foreseeable future.
- To solicit stakeholder input on decommissioning and ability to meet site cleanup criteria.
- To agree in principle with cleanup to NRC dose limit of 25 mrem/yr with ALARA, for unrestricted release.

V REQUIREMENTS AND EXPECTATIONS

One objective of this plan is to identify the applicable cleanup requirements and expectations for decommissioning the West Valley site. Table 1 provides a matrix of requirements and expectations that all regulators endorse. Table 2 provides a matrix of requirements and expectations for individual regulators. Table 2 is intended to point out the various agencies clean-up standards and expectations resulting from the difference in the underlying statutes from which each agency has been charged with cleanup responsibility. It is designed to serve as a listing of applicable cleanup requirements and expectations that need to be addressed from the perspective of the listing agency. Together, these tables consolidate information in an effort to promote a common understanding among stakeholders involved in the West Valley site decommissioning.

VI AGENCY ROLES AND RESPONSIBILITIES

NRC Role and Responsibility

NRC has the regulatory responsibility under the Atomic Energy Act for the Western New York Nuclear Service Center (WNYNSC) which is the subject of the NRC license issued to NYSERDA pursuant to 10 CFR part 50, with the exception of the State-Licensed Disposal Area (SDA). The license is currently in abeyance pending the completion of the WVDP.

The West Valley Demonstration Project Act (WVDPA) specifies certain responsibilities for NRC, including: 1) prescribing requirements for decontamination and decommissioning; 2) providing review and consultation to DOE on the project; and 3) monitoring the activities under the project for the purpose of assuring the public health and safety. In addition, NRC has agreed to provide support as a cooperating agency with US Department of Energy (DOE) and New York State

Energy Research and Development Authority (NYSERDA), under the National Environmental Policy Act (NEPA), on the West Valley Decommissioning EIS. NRC may adopt this EIS for determining that the preferred alternative meets NRC's decommissioning criteria, assuming that NRC will find it acceptable.

Notwithstanding the WVDP, NRC retains the regulatory responsibility for the non-DOE activity in the non-project area and non-SDA area to the extent Part 50 contamination exist both on and offsite. Following the completion of the WVDP and reinstatement of the license, NRC will have the regulatory responsibility for authorizing termination of the license, should NYSEDA seek license termination.

EPA Role and Responsibility

EPA agrees to be a cooperating agency with DOE and NYSEDA, under NEPA, on the West Valley decommissioning EIS. EPA will review the cleanup plan, EIS and other documents developed by DOE in conjunction with NYSEDA to provide early input so the remediated site will also meet the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) risk range to avoid the potential need to list the WVDP on the National Priority List (NPL). Currently, the WVDP is not an NPL listed site. EPA will inspect and review West Valley's radionuclide air emissions for compliance with 40 CFR61 limit of 10 mrem/yr. Since a number of EPA programs have been delegated to New York State agencies, EPA will provide consultation and oversight for State implementation of the delegated Clean Air Act (CAA), Clean Water Act (CWA), Safe Drinking Water Act (SDWA) and Resource Conservation and Recovery Act (RCRA) programs that are applicable to the West Valley site.

NYSDEC Role and Responsibility

Agreement State Authority

In 1962, pursuant to Section 274b. of the Atomic Energy Act of 1954, New York State entered into an agreement with the Atomic Energy Commission (AEC), the predecessor to the NRC, whereby the Commission discontinued certain of its regulatory authority over byproduct, source, and small quantities of special nuclear material within the State. The State and AEC also adopted a related Memorandum of Understanding in 1965 clarifying certain mutual obligations relating to the regulation of Commission licensed activities within the State. As a result, the regulation of radioactive materials, except as pertains to production and utilization facilities, and facilities under exclusive federal jurisdiction, generally falls within the State's responsibilities for protecting the public health and safety under its police powers. As part of these responsibilities, NYSDEC regulates environmental discharges and disposal of radioactive materials, and transportation of low level radioactive waste within the State for non-federal facilities. Thus, the NYSDEC regulates the State-Licensed Disposal Area (SDA) through issuance of permits under 6 NYCRR Part 380 Rules and Regulations for Prevention and Control of Environmental Pollution by Radioactive Materials, and the transportation of Low-Level Radioactive Waste (LLRW) under 6 NYCRR Part 381 Low-level Radioactive Waste Transporter Permit and Manifest System. (Please note that NRC relinquishes its regulatory authority to the State. This is fundamentally different than the delegation to the State approach used by the EPA.)

NYSDEC's role at the SDA is to ensure that the site owner/operator, NYSERDA, properly maintains the integrity of the SDA, minimizes discharges of radioactive materials to the environment, and properly closes the facility in a manner that is protective of the public health and environment and in compliance with Part 380. NYSDEC also has a broader mandate under the Environmental Conservation Law (ECL) § 3-301, 1. i., to protect the public health and environment from sources of radioactive materials contamination beyond the specific regulation of sites subject to Part 380 permitting.

RCRA - Hazardous Waste and Mixed Waste

In 1990, the NYSDEC received authorization from the EPA to regulate Federal Facilities which contain Hazardous and Mixed Waste pursuant to 6 NYCRR Part 370 Series. This includes permitting activities under Interim Status for RCRA regulated units and Corrective Action Requirements for investigation and if necessary, remediation of hazardous constituents from Solid Waste Management Units.

RCRA Permitting

NYSDEC's role is to ensure compliance with applicable permitting requirements for RCRA regulated units storing or treating hazardous or mixed waste. This includes closure and if necessary, post-closure care of these units.

RCRA Corrective Action

NYSDEC's role is to ensure compliance with the 1992 joint NYSDEC/USEPA 3008 (h) [New York State Environmental Conservation Law, Article 27, Titles 9 & 13] Order issued to the USDOE and NYSEDA. The order required investigation of solid waste management units and to perform interim corrective measures, if necessary. A Corrective Measures Study (CMS), which evaluates selection of a remedial alternative(s) is required under the Order. NYSDEC has agreed to utilize the EIS process as a means to comply with the CMS requirements. NYSDEC's role is to ensure that the remedial option(s) and selection(s) under the EIS meet the requirements and standards for RCRA corrective action.

Protection of the Environment

NYSDEC is responsible for ensuring the protection of the State's environment under ECL and delegated federal responsibilities. This entails all aspects of the protection of natural resources, including the lands, streams, wetlands, groundwaters, mineral resources, and wildlife of the State not reserved by a federal agency.

In addition, NYSDEC program staff regularly consult with their counterparts in the NYSDOH to ensure that the DOH, in their role as lead agency for the protection of public health, is in concurrence with the remedial actions under review by the NYSDEC.

NYSDOH Role and Responsibility

As established in NYS Public Health Law, NYSDOH is the lead State agency for protection of public health from any public health threat, including ionizing radiation. However NYSDEC, under its responsibility as established in Environmental Conservation Law (ECL), will serve as the lead State agency for the decommissioning project. NYSDOH will ensure its responsibility for protection of public health via participation with NYSDEC staff in reviewing and concurring

with NYSDEC on any remedial actions. It is not expected that NYSDOH will routinely interact with DOE or NYSERDA. Additionally, NYSDOH regulates public water supply operators, including any that may be impacted by the site, to ensure compliance with the requirements of Part 5 of 10NYCRR.

NYSDOL Role and Responsibility

NYSDOL has issued regulations under Industrial Code Rule 38 (12 NYCRR 38) for the commercial and industrial use of radioactive materials, not subject to the regulatory powers and jurisdiction of the NYSDOH. Statutory authority for these regulations derives from Section 483 of the General Business Law, and Section 27 of the Labor Law. Pursuant to Industrial Code Rule 38, NYSDOL has issued radioactive materials license number 0382-1139, authorizing NYSERDA to possess and manage emplaced radioactive waste at the SDA. The license requires NYSERDA to conduct its operations in accordance with a radioactive safety program, reviewed and approved by the Department, to minimize radiation exposures to workers and the public resulting from SDA operations.

VII DECOMMISSIONING ISSUES

Significant issues exist that will need to be addressed in the West Valley Decommissioning EIS. The NEPA process will be used to address these issues, to the extent practical. Regulators have also agreed to consider working in the role of a cooperating agency to support the development of this EIS. The following issues are examples of the types of issues that will be addressed in the West Valley decommissioning EIS. If there are decommissioning issues that cannot be addressed through this EIS, these issues should be identified early in the NEPA process.

- NRC Licensed Disposal Area (NDA) - This 5-acre disposal area was used from 1966 to 1986 and includes a variety of waste types, activities and packaging configurations. The NDA was used for the disposal of radioactive waste from fuel reprocessing and associated processing, such as decontamination and decommissioning. Wastes were placed in the NDA both during the NRC licensed commercial operation of the site by Nuclear Fuel Services and under the WWDPA during the initial cleanup of the former reprocessing facility by the DOE. The buried waste includes: reactor hardware (all components, including hulls), spent fuel from the Hanford Site's N-Reactor (which was not processed because of ruptured cladding), ion exchangers and sludges, filters, failed and discarded equipment, and contaminated soil. The decommissioning EIS may evaluate unrestricted and restricted release scenarios, the possibility that the NDA may remain under license for some period of time, and the extent of the DOE's responsibility for wastes which they placed there.
- State Licensed Disposal Area (SDA) - This 16-acre commercial disposal area was operated from 1963 to 1975. It received radioactive wastes from various government, commercial, medical, and academic facilities, including the reprocessing operations at West Valley. Since the type of disposal operation that took place at the SDA falls under Agreement State authority, it is licensed by the NYSDOL and permitted by the NYSDEC. Thus the NRC does not have regulatory authority to set decommissioning criteria for the

SDA. This responsibility is held by the NYSDEC and the NYSDOL. However, since the cleanup activities at the site are subject to both NEPA and SEQRA, the decommissioning EIS will include consideration of closure of the SDA in order for NYSERDA to fulfill its SEQRA obligations.

- High-Level Waste (HLW) Tanks - There are four underground tanks that were used for storing and processing over 600,000 gallons of liquid HLW generated during the reprocessing era. This liquid waste has been solidified via a vitrification process. Total Cs-137/Sr-90 radioactivity vitrified is approximately 11.7 million Curies. DOE expects to complete the vitrification of liquid HLW by 2003. Removal of HLW heels in these tanks is proceeding slowly. DOE is presently examining concentrations of residual contamination in these tanks. Regulators have stressed the need to remediate residual contamination associated with these tanks, to the extent practical, due to long term risk to public health posed by this contamination. The decommissioning EIS will evaluate options for decommissioning and closing these tanks in-place, or removing these tanks. The impacts of identifying the waste in the tanks as incidental to reprocessing, and not HLW, should be considered in the decommissioning EIS.
- Groundwater Plume - Radioactively contaminated groundwater, which emanated from the reprocessing building and migrated on-site, has probably existed since the late 1960s to early 1970s, but was not identified or characterized until the mid-1990s. Under the building, the plume consists of several isotopes, but beyond the building footprint it consists only of the isotope Strontium-90. The plume now covers an area that is approximately 300 feet by 900 feet. Groundwater in the main flow path of this plume is being pumped and treated, and a below-grade permeable wall intended to prevent further migration is being tested on an arm of this plume. The decommissioning EIS will evaluate options to remediate or monitor this plume.
- Partial Site Release - Partial site release, in the context of West Valley, refers to the situation where a portion of the site is released for unrestricted use, while other portions of the site's use may remain restricted or under license. Regulators acknowledge the reality of partial site release and that some portion of the site may remain under license for some period of time. The decommissioning EIS should evaluate the scenario of partial site release.

VIII AUDIENCE

This plan will help regulators communicate with both internal and external audiences. Internal audiences refer to the regulators with their respective management and staff. External audiences may include the following stakeholders and interest groups:

- DOE
- NYSERDA
- West Valley Citizen Task Force
- Seneca Indian Nation
- General public which include residents living near the West Valley site
- Environmental Organizations
- Community, professional, civic and public interest groups

- Business organizations and Chambers of Commerce
- Congressional representatives and their staff
- Media representatives
- Other Federal, State and Local Governments
- Canada

IX ACRONYMS

AEC	Atomic Energy Commission
ALARA	As Low as Reasonably Achievable
CAA	Clean Air Act
CERCLA	Comprehensive Environmental Response Compensation and Liability Act
CMS	Corrective Measures Study
CWA	Clean Water Act
DCGLs	Derived Concentration Guideline Limits
DOE	US Department of Energy
ECL	Environmental Conservation Law
EIS	Environmental Impact Statement
EPA	US Environmental Protection Agency
FFCA	Federal Facilities Compliance Act
GAO	US General Accounting Office
HEAST	Health Effects Assessment Summary Tables
HLW	High-Level Waste
IRIS	Integrated Risk Information System
LLRW	Low-Level Radioactive Waste
LTR	License Termination Rule
MARSSIM	Multi-Agency Radiation Survey and Site Investigation Manual
MCL	Maximum Contaminant Level
NDA	NRC-Licensed Disposal Area
NEPA	National Environmental Policy Act
NESHAP	National Emission Standards for Hazardous Air Pollutants
NPL	National Priority List
NRC	US Nuclear Regulatory Commission
NYCRR	New York Code of Rules and Regulations
NYSDEC	New York State Department of Environmental Conservation
NYSDOH	New York State Department of Health
NYSDEL	New York State Department of Labor
NYSERDA	New York State Energy Research and Development Authority
RCRA	Resource Conservation and Recovery Act
SDA	State-Licensed Disposal Area
SDWA	Safe Drinking Water Act
SEQRA	State Environmental Quality Review Act
SPDES	State Pollutant Discharge Elimination System
SWMUs	Solid Waste Management Units
TAGM	Technical Administrative Guidance Memorandum
WNYNSEC	Western New York Nuclear Service Center
WVDP	West Valley Demonstration Project
WVDPAA	West Valley Demonstration Project Act

TABLE 1 REGULATORY MATRIX

All Agencies Agreement on Requirement/Expectation

Requirement/Expectation	Agency	EPA	NRC	NYSDEC	NYSDOH	ADDRESS IN EIS
** Agree						
ALL AGENCIES						
All actions and final status adhere to the ALARA principle.		*	*	*	*	✓
Agree in principle with cleanup to NRC dose limit of 25 mrem/yr for unrestricted release.		*	*	*	*	✓
Acknowledge different portions of site may be released for unrestricted use, restricted use with institutional controls, and portions likely to remain under license.		*	*	*	*	
DOE EIS should identify and satisfactorily address applicable cleanup guidance for all relevant regulatory agencies, the preferred alternative needs to meet the applicable regulatory requirements for the WVDP.		*	*	*	*	✓
Identify DCGL for unrestricted and/or restricted release scenarios.		*	*	*	*	✓
Follow Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM) guidance, or some other statistically valid and technically defensible approach, for the demonstration of compliance during the final status survey.		*	*	*	*	
Solicit stakeholder input on decommissioning and ability to meet site cleanup criteria.		*	*	*	*	✓

TABLE 2 REGULATORY MATRIX

Individual Agency Requirement/Expectation

X = Lead Agency Requirement/Expectation; + = Agency with Statutory Oversight/Coordination

Requirement/Expectation	Agency	EPA	NRC	NYSDEC	NYSDOH	ADDRESS IN EIS
US ENVIRONMENTAL PROTECTION AGENCY (EPA)						
Cleanup, for unrestricted release, to DCGLs developed consistent with NRC guidance to meet 10 CFR 20 Subpart E will meet CERCLA ² risk range.		X				✓
Cleanup, for restricted release with restrictions in place, to DCGLs developed consistent with NRC guidance to meet 10 CFR 20 Subpart E will likely meet CERCLA ² risk range.		X				✓
SDWA applies, and where applicable, must be met. State has primacy for determining compliance with SDWA.		+		+	X	✓
40 CFR61 (rad-NESHAP) applies and must be met.		X		+		✓
RCRA applies, and State has primacy for determining compliance with RCRA.		+		X		✓
US NUCLEAR REGULATORY COMMISSION (NRC)						
Preferred alternative for West Valley Decommissioning EIS will meet NRC decommissioning criteria for West Valley.			X			✓

TABLE 2 REGULATORY MATRIX

Individual Agency Requirement/Expectation

X = Lead Agency Requirement/Expectation; ** = Agency with Statutory Oversight/Coordination

Requirement/Expectation	Agency	EPA	NRC	NYSDEC	NYSDOH	ADDRESS IN EIS
NRC's LTR is the criteria for the WVDP, reflecting the fact that the applicable decommissioning goal for the entire NRC-licensed site is compliance with the requirements of the LTR. The criteria of the LTR shall apply to decommissioning of HLW tanks and other facilities in which HLW was stored; facilities used in solidification of waste; and any material and hardware used in connection with the WVDP.			X			✓
The following criteria should be applied to incidental waste determinations: (1) the waste should be processed (or should be further processed) to remove key radionuclides to the maximum extent that is technically and economically practical; and (2) the waste should be managed so that safety requirements comparable to the performance objectives in 10 CFR Part 61 subpart C, are satisfied.			X			✓
Calculated dose for incidental waste to be integrated with all other doses from remaining material at the NRC-licensed site.			X			✓
Allow consideration of long-term or perpetual license or other approaches for parts of the site where cleanup to LTR is prohibitively expensive or technically impractical.			X			✓
LTR is decommissioning criteria for NDA.			X			✓

TABLE 2 REGULATORY MATRIX

Individual Agency Requirement/Expectation

X = Lead Agency Requirement/Expectation; + = Agency with Statutory Oversight/Coordination

Requirement/Expectation	Agency	EPA	NRC	NYSDEC	NYSDOH	ADDRESS IN EIS
The decommissioning EIS will consider analysis of impacts beyond 1000 years.			X			✓
Coordinated approach with State in applying LTR criteria to NDA and SDA.			X			✓
LTR applies to termination of NRC license after the license is reactivated. NRC's intent is that any exemptions or alternative criteria authorized to meet provisions of WVDPA will also apply to termination of NRC license.			X			✓
Site-specific analysis of impacts and costs in deciding on whether or not to exhume previous burials.			X (NDA)	X (SDA)		✓
Allow consideration of exemptions for unique past burials on case-by-case basis.			X (NDA)	X (SDA)		✓

TABLE 2 REGULATORY MATRIX

Individual Agency Requirement/Expectation

X = Lead Agency Requirement/Expectation; + = Agency with Statutory Oversight/Coordination

Requirement/Expectation	Agency	EPA	NRC	NYSDEC	NYSDOH	ADDRESS IN EIS
NEW YORK STATE DEPARTMENT OF HEALTH (DOH)						
State regulates public drinking water supplies and sets Maximum Contaminant Levels (MCLs) for man-made beta and gamma emitters based on a 4 mrem/yr dose limit. Limit applies to community water systems, including any that might utilize waters from West Valley site.		+		+	X	✓
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION (NYSDEC)						
Radiological						
Groundwater and surface water standards are based on State drinking water standards and includes Sr-90 and H-3 concentrations and a 4 mrem/yr dose limit. NYSDEC considers that best usage for all Class GA (fresh) groundwater is as source of potable drinking water (Part 701.15)				X		✓

TABLE 2 REGULATORY MATRIX

Individual Agency Requirement/Expectation

X = Lead Agency Requirement/Expectation; * = Agency with Statutory Oversight/Coordination

Requirement/Expectation	Agency	EPA	NRC	NYSDEC	NYSDOH	ADDRESS IN EIS
TAGM-4003 Soil cleanup guidance of 10 mRem/year should be considered. Differences in modeling approaches generally make NYSDEC's 10 mRem/year equivalent to NRC's 25 mRem/year plus ALARA.				X		✓
Part 380				X		✓
SDA must remain in compliance with 6 NYCRR Part 380.						
Parts 382 and 383				X		✓
Any closure alternative for the SDA must make every reasonable effort to meet the Performance Objectives of 6 NYCRR Part 382.				X		✓
Any option requiring a new LLRW disposal facility, or expansion of an existing facility, would have to comply with the performance and dose objectives of Parts 382 and 383.				X		✓
NYSDEC expects that concentration averaging for the high-level radioactive waste tanks will conform to Part 382.80 (h)(2).				X		✓
Any residual waste left in place would fall under Agreement State authority.				X		✓

TABLE 2 REGULATORY MATRIX

Individual Agency Requirement/Expectation

X = Lead Agency Requirement/Expectation; + = Agency with Statutory Oversight/Coordination

Requirement/Expectation	Agency	EPA	NRC	NYSDEC	NYSDOH	ADDRESS IN EIS
Any LLRW facility considered for siting under the ECL, Title 3 Section 29, can not be considered for placement at West Valley.				X		✓
RCRA						
Operation, storage, closure and post-closure of RCRA Regulated Units must comply with all applicable NYCRR Part 370 series regulations.		+		X		✓
3008(h) RCRA Consent Order						

TABLE 4 REGULATORY MATRIX

Individual Agency Requirement/Expectation

X = Lead Agency Requirement/Expectation; + = Agency with Statutory Oversight/Coordination

Requirement/Expectation	Agency	EPA	NRC	NYSDEC	NYSDOH	ADDRESS IN EIS
- A CMS, remedial activities and long-term monitoring and maintenance of Solid Waste Management Units (SWMUs) must comply with the Order and utilization of appropriate NYSDEC Technical Administration Guidance Memorandums, including TAGM-4046, "Contained-In" TAGM-3028, and other such pertinent documents including, but not limited to the NYS Groundwater standards 6 NYCRR Part 703, ASTM Risk-Based Corrective Action, USEPA Risk Assessment Guidance for Superfund utilizing the Integrated Risk Information System (IRIS) and Health Effects Assessment Summary Tables (HEAST), etc.		X		X	+	✓
- Interim Measures may be required if EPA/NYSDEC determines that they are necessary under the terms of the Order		X		X		✓
- A public participation program shall include the RCRA requirements to be addressed in the EIS (CMS).		X		X		✓
Federal Facilities Compliance Act (FFCA)						
- Maintain compliance with the FFCA requirements during closure activities.		+		X		✓

TABLE 2 REGULATORY MATRIX

Individual Agency Requirement/Expectation

X = Lead Agency Requirement/Expectation; + = Agency with Statutory Oversight/Coordination

Requirement/Expectation	Agency	EPA	NRC	NYSDEC	NYSDOH	ADDRESS IN EIS
CWA						
All actions at the site are subject to State Pollutant Discharge Elimination System (SPDES) requirements under 6 NYCRR Part 750 - 758.		+		X		✓
Surface and Groundwater Standards 6 NYCRR Part 700-705.		+		X		✓
Cleanup complies with NYSDEC 208 planning objectives.				X		✓
Cleanup meets requirements for 401 certification under CWA.				X		✓
OTHER						
Air discharges subject to the CAA, including Title V.		+		X		✓
Endangered species laws under 6 NYCRR Part 182 must be complied with.				X		✓
Cleanup activities that would leave solid waste on the site must comply with 6 NYCRR Part 360.				X		✓
Cleanup meets NYSDEC requirements for closure of abandoned oil and gas wells under 6 NYCRR Part 555.				X		✓

TABLE 2 REGULATORY MATRIX

Individual Agency Requirement/Expectation

X = Lead Agency Requirement/Expectation; + = Agency with Statutory Oversight/Coordination

Requirement/Expectation	Agency	EPA	NRC	NYSDEC	NYSDDP	ADDRESSED IN EIS
Cleanup meets ECL Article 15 stream protection requirements.				X		✓
Cleanup complies with Storage Tank Closure requirements under 8 NYCRR Part 613.		-		X		✓
Federal and State wetlands protection requirements (33 CFR Part 320 and 6 NYCRR Parts 634 and 663) must be met.		-		X		✓
Use of WNYNSC sites for caps and erosion controls on the WMDP have to comply with Mined Land regulations in 6 NYCRR Parts 420 - 425.				X		✓

1 Assumes issues (such as modeling methods and assumptions) related to application of this dose limit are resolved.

2 DOE Decommissioning EIS must demonstrate that DCLs based on 10 CFR 20 Subpart F dose limits meet CERCLA risk range consistent with EPA Risk Assessment Guidance for Superfund.