

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BRIEFING ON DECOMMISSIONING CRITERIA
FOR WEST VALLEY

PUBLIC MEETING

Nuclear Regulatory Commission
Room 1F-16
One White Flint North
11555 Rockville Pike
Rockville, Maryland
Tuesday, January 12, 1999

The Commission met in open session, pursuant to notice, at 9:03 a.m., Shirley A. Jackson, Chairman, presiding.

COMMISSIONERS PRESENT:

- SHIRLEY A. JACKSON, Chairman of the Commission
- GRETA J. DICUS, Member of the Commission
- EDWARD McGAFFIGAN, JR., Member of the Commission
- JEFFREY S. MERRIFIELD, Member of the Commission

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STAFF PRESENT:

- KAREN D. CYR, General Counsel
- ANNETTE L. VIETTI-COOK, Secretary

PRESENTERS:

- DR. CARL PAPERIELLO, NMSS
- DR. JOHN GREEVES, NMSS
- MR. JACK PARROTT, NMSS
- MR. FRANK MIRAGLIA, EDO
- MR. JAMES TURI, DOE
- DR. PAUL PICIULO, NYSERDA
- MR. HAL BRODIE, NYSERDA
- MS. BARBARA MAZUROWSKI, DOE
- MR. WILLIAM DENNISON, DOE
- MR. PAUL MERGES, NYSDEC
- MR. TIM RICE, NYSDEC
- MR. RICHARD TOBE, Valley Citizen's Task Force

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P R O C E E D I N G S

[9:03 a.m.]

CHAIRMAN JACKSON: Good morning, ladies and gentlemen. Today the NRC staff, the representatives from the Department of Energy, from the New York State Energy Research and Development Authority, which I will refer to as NYSERDA, the State Department of Environmental Conservation, and the West Valley Citizen's Task Force will provide the Commission with their views on the staff's proposed decommissioning criteria for West Valley.

11 The West Valley commercial spent fuel reprocessing
12 plant site was licensed by the NRC, and its predecessor
13 agency, from 1966 until 1980, when the license was suspended
14 to execute the 1980 West Valley Demonstration Project Act.
15 This Act authorizes the Department of Energy, in cooperation
16 with NYSERDA, the owner of the site, and the holder of the
17 suspended NRC license, to carry out a liquid high level
18 waste management demonstration project that includes
19 decommissioning of the high level waste and associated
20 support facilities.

21 The NRC responsibilities under the Act include
22 prescribing decontamination and decommissioning criteria for
23 DOE. The decommissioning criteria proposed by the NRC will
24 be a significant component of the environmental impact
25 statement being prepared jointly by DOE and NYSERDA for

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1 decommissioning and closure of the site.

2 The staff has proposed a paper, Decommissioning
3 Criteria for West Valley for the Commission's Consideration
4 in SECY-98-251. This Commission paper, which was made
5 available publicly two months ago, currently is before the
6 Commission.

7 Because of the various interests associated with
8 the actions proposed in the paper, the Commission has
9 requested the stakeholder presentations we will hear this
10 morning. The NRC staff will open with an overview of the
11 proposed criteria. This will be followed by the other
12 presentations that will focus on points of agreement and
13 disagreement with the staff's proposal.

14 I understand that copies of the viewgraphs and
15 SECY-98-251 are available at the entrances to the meeting.

16 Unless my colleagues have anything to add, Mr.
17 Miraglia, please proceed.

18 MR. MIRAGLIA: Thank you, Madame Chairman. I
19 would just like to start by introducing the staff and
20 getting right into the overview of the project. On my right
21 is Dr. Carl Paperiello, Director of Nuclear Materials Safety
22 and Safeguards, and to my left is John Greeves, the Director
23 of the Division of Waste Management, and to his left is Jack
24 Parrot, the NRC's West Valley Project Manager.

25 With that, I will turn it to Carl and then we can

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1 proceed with the briefing.

2 DR. PAPERIELLO: Good morning.

3 CHAIRMAN JACKSON: Good morning.

4 DR. PAPERIELLO: The NRC staff has been involved
5 with the West Valley Demonstration Project since the
6 enactment of the West Valley Demonstration Act in 1980. The
7 staff recently submitted a Commission paper, SECY-98-251, to
8 request Commission approval on proceeding with proposed
9 decommissioning criteria for the project. The staff also
10 noted in the paper potential alternatives that may be
11 necessary if the preferred alternative requires long-term
12 institutional controls.

13 The staff has proposed decommissioning criteria
14 that are consistent with NRC precedents, that is 10 CFR Part
15 20 and 10 CFR Part 61. Exposure to the public is limited to
16 25 millirem per year, all pathways, and intruder doses are
17 capped at 25 -- rather, 500 millirem a year.

18 DOE is evaluating a number of alternatives. To
19 meet a criteria of unrestricted release, a great deal of
20 material would have to be removed to some other location.
21 If not other site is available, a long-term license or some
22 form of long-term institutional controls would be needed.

23 Such alternatives were included in the Commission paper and
24 I expect the stakeholders present today will comment on
25 these and other topics.

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1 John Greeves will make a short presentation on the
2 status of NRC activities and will be pleased to respond to
3 any questions from the Commission.

4 CHAIRMAN JACKSON: Thank you.

5 DR. GREEVES: Good morning. To try and keep
6 within time constraints, we have about seven slides that we
7 want to walk through this morning to allow other panels
8 adequate time. The first slide that I wanted to look at
9 goes back into some of the history, Chairman Jackson, which
10 you identified. The site was licensed originally by the
11 Atomic Energy Commission in 1966 and it was owned by
12 NYSERDA, but it was run by the Nuclear Fuel Services
13 Company. They were the only commercial spent fuel
14 reprocessing plant in this country.

15 The plant operated till '92 and then it shut down
16 for some upgrades, I think this included some seismic design
17 issues, among others, and it never restarted.

18 CHAIRMAN JACKSON: You mean till 1972?

19 DR. GREEVES: I'm sorry, maybe I misspoke. Yes.
20 Operated until '72.

21 The project reprocessed more than 640 metric tons
22 of spent fuel. This included then AEC type fuel and
23 commercial fuel, and produced 600 gallons of liquid high
24 level waste.

25 CHAIRMAN JACKSON: Six-hundred-thousand.

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1 DR. GREEVES: Six-hundred-thousand gallons of high
2 level waste.

3 CHAIRMAN JACKSON: I just wanted to let you we are
4 paying close attention.

5 DR. GREEVES: I am a little nervous with the first
6 slide. It will get better. Attached to the slides, you see
7 in the back the list of all these waste management areas. I
8 included that so you could be familiar with where these
9 various waste management areas are. If appropriate at some
10 point in time, we can focus on that.

11 But as we go through this, obviously, the 600,000
12 gallons is important and that is waste management area 3.
13 Additionally, there's a number of contaminated structures on
14 the site, buried waste. Some spent fuel is in the ground,
15 that is in waste management area 7, which is another
16 important waste management area. Hulls, transuranic wastes
17 are included, and adjacent to the project is the so-called
18 state disposal area, and that is labeled waste management
19 area 8.

20 All of these disposals pre-date the Part 61
21 criteria, which is an important aspect, and I think you will
22 hear from all parties that this is not a particularly good
23 site for disposal. It has poor site conditions. It is
24 located in the Northeast, a wet environment, and there's
25 active erosional problems associated with the site which I

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1 think you probably encountered in some of the background
2 material.

3 Up to chart 2, the Act was passed in 1980 and
4 consisted of three pages. I think in there you can note
5 that the definition of decommissioning is not included. It
6 has created some of the concerns raised by various
7 stakeholders. Back in that timeframe, we didn't have a

8 definition of decommissioning. This concept of intervention
9 that you encounter in the international arena has developed
10 over the last 18 years.

11 The Act directs DOE to demonstrate solidification,
12 transport and disposal of this liquid high level waste and
13 to decontaminate, decommission the high level waste tank and
14 related facilities. The Act also directs DOE to enter into
15 an agreement with NRC and we would provide informal review
16 and consultation to the Department of Energy on the project.
17 Essentially, what we have been doing over the last 18 years
18 is monitoring the activities to assure that the public
19 health and safety issues are addressed. The informal
20 approach did not lead to amendments, SERs or EAs. The focus
21 has been on solidifying this high level waste and the cement
22 wastes that were separated.

23 CHAIRMAN JACKSON: Does the informal consultation
24 with DOE apply also to how we work to establish the
25 decommissioning criteria?

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1 DR. GREEVES: In the past, the informal approach
2 has been addressing the operations of the facility. The
3 addressing of the decommissioning criteria has followed the
4 track of the environmental impact statement. I think,
5 ultimately, that the Commission will have to issue a view on
6 the decommissioning criteria and there is a certain amount
7 of formality associated with the EIS process, so I am not
8 sure I am totally answering your question.

9 CHAIRMAN JACKSON: Well, can you tell me how the
10 consultation -- I am asking you whether the informal
11 consultation with DOE, does it or have you extended it into
12 the EIS process vis-a-vis establishment of the
13 decommissioning criteria or not?

14 DR. GREEVES: We have consulted with DOE on the
15 decommissioning criteria. May of '97 we met with the
16 Citizen's Task Force and DOE and discussed decontamination
17 -- decommissioning criteria at that point in time, which
18 actually pre-dated the license termination rule. There has
19 been a number of these types of meetings with DOE and
20 others, including the Citizen's Task Force. I would
21 characterize those as informal. I would characterize the
22 EIS process as a more formal process. Maybe I could get
23 some help from OGC in terms of the formality here.

24 MS. CYR: The only thing I would note was the MOU,
25 which we adopted quite shortly after the Act was in place,

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1 contemplated at least some interchange between the
2 Department.

3 CHAIRMAN JACKSON: Contemplated?

4 MS. CYR: Interchange between. It talks about, in
5 the section on decontamination and decommissioning, the
6 Department was to perform analysis of impacts and the NRC
7 and the Department project managers were to consult on the
8 requirements and the disposition modes to be analyzed. And
9 then, subsequently, the Department was to provide analysis
10 and then we would prescribe. So there was, I think,
11 contemplated some exchange between the Department and the
12 NRC in terms of understanding what was there and what you
13 were trying to prescribe criteria for.

14 CHAIRMAN JACKSON: But not necessarily sitting
15 down to work out the criteria together.

16 MS. CYR: No, I don't believe so.

17 CHAIRMAN JACKSON: Okay. Commissioner.

18 COMMISSIONER McGAFFIGAN: Madame Chairman, I just
19 want to clarify the legal situation after the passage of the

20 Act. At that point, prior to the Act's passing, New York
21 State ERDA was the sole licensee at the site and it had an
22 active license, or it had a license. After the Act, and
23 except under our authority, presumably, the state disposal
24 area was licensed by New York State ERDA under the state low
25 level waste license.

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1 After the Act, we suspended our license and
2 adopted these informal procedures, right. So at the moment
3 there is a suspended license that would come back into play
4 once the West Valley Demonstration Project is complete. It
5 would become an active license again, we would cease the
6 suspension, is that correct?

7 DR. GREEVES: Yes. In the next slide I was going
8 to get to, I will be going into some of that.

9 COMMISSIONER MCGAFFIGAN: As for the New York
10 State licensed low level waste site, that also -- did the
11 Act treat how its status --

12 DR. GREEVES: No. Not as far as --

13 COMMISSIONER MCGAFFIGAN: I guess I can ask the
14 New York State folks later. Did they suspend their license?

15 DR. GREEVES: Not to my knowledge, no. I am going
16 to address some of these issues as we go through the slides.

17 COMMISSIONER MCGAFFIGAN: Okay.

18 DR. GREEVES: And if there are still questions, we
19 can address them.

20 CHAIRMAN JACKSON: Let me ask you another
21 question. In the SECY, you indicate that the Act requires
22 NRC to prescribe criteria, and this is a little different
23 from the Act gives NRC the authority to prescribe criteria
24 that you have shown on the slide. How exactly do we view
25 our role under the Act?

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1 DR. GREEVES: Well, as I mentioned earlier, the
2 Act is three pages long and the section that describes that
3 really starts with the Secretary shall decontaminate and
4 decommission, and then it has a series of items, and then it
5 goes, "Any material and hardware used in connection with the
6 project, in accordance with such requirements as the
7 Commission may prescribe," that is what is in the Act.

8 CHAIRMAN JACKSON: Okay. So that's different than
9 requiring the NRC to prescribe.

10 DR. GREEVES: I agree, yes.

11 CHAIRMAN JACKSON: So I just want to be clear,
12 because the public -- this paper has been in the public
13 domain for two months, and what you are saying today, and
14 what you are quoting from the Act, is a little different
15 than what is in that paper.

16 DR. GREEVES: That's why when we did the slides we
17 put the Act gives the NRC the authority. We may prescribe.

18 CHAIRMAN JACKSON: Commissioners, do you have a
19 comment you wanted to make?

20 COMMISSIONER MCGAFFIGAN: I think what you are
21 getting at is Congress may have intentionally used "may"
22 rather than "shall."

23 DR. GREEVES: I am speculating what Congress
24 intended.

25 MS. CYR: I am not familiar with the legislative

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1 history on this to see whether there was some indication in
2 there. I think it is just, I mean it could be an artifact
3 of drafting.

4 COMMISSIONER MCGAFFIGAN: Right.

5 MS. CYR: To say it that way, I mean in such
6 requirements as the Commission may prescribe.
7 COMMISSIONER MCGAFFIGAN: Congress fully may have
8 expected us to prescribe something and that could -- that
9 doesn't mean that the lack of the word "shall," --
10 MS. CYR: I mean I think at the time it was
11 enacted, if you look at the memorandum of understanding that
12 was executed by the agencies at the time, it provides that
13 upon receipt of the Department analysis, the NRC will
14 prescribe D and D requirements in accordance with the Act.
15 I mean I think the agency's interpretation at the time was
16 that the agency would in some manner prescribe requirements
17 for this project, for the particular items that were laid
18 out in the Act.
19 COMMISSIONER MCGAFFIGAN: That was my
20 understanding.
21 CHAIRMAN JACKSON: Well, was there accompanying
22 Congressional language when the law was passed?
23 DR. GREEVES: I do not have that information.
24 MS. CYR: There is some legislative history, but,
25 as I said, it doesn't --

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1 CHAIRMAN JACKSON: But it doesn't speak to this
2 distinction.
3 MS. CYR: I am not aware that it speaks to this
4 specifically. I mean, as I said, the contemporary
5 interpretation of the agencies, as reflected in the MOU, was
6 that the NRC would, in fact, prescribe criteria.
7 CHAIRMAN JACKSON: Okay.
8 DR. GREEVES: I am on --
9 COMMISSIONER MCGAFFIGAN: Just for the record, I
10 have a 1988 Commission paper before me that was the last
11 Commission paper the Commission received on this subject,
12 and, in passing, it says, "The Act also stipulates that the
13 high level waste tanks and other facilities at West Valley
14 used in the West Valley Demonstration Act must be
15 decontaminated and decommissioned in accordance with
16 requirements prescribed by NRC."
17 So in 1988, there has not yet been an exact
18 definition of what parts of the site will be covered by this
19 D and D requirement. But in 1988 there was an assumption
20 that we were going to prescribe some decommissioning for
21 some part of the site, and then some other parts of the
22 site, presumably, the license was going to be reactivated
23 and we were going to license it like we would in the other
24 site.
25 MS. CYR: It does have jurisdiction under other

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1 authority with respect to that.
2 COMMISSIONER MCGAFFIGAN: Right.
3 COMMISSIONER MERRIFIELD: If I may have --
4 CHAIRMAN JACKSON: Please.
5 COMMISSIONER MERRIFIELD: If the Chairman may bear
6 with me. There were actually three Congressional committees
7 that passed on this legislation, one in the Senate and two
8 in the House. I have one of the reports, and this is just a
9 quick summary of it, but the report from the House Committee
10 on Science and Technology, which was the first of the two
11 House committees to view on this, had a comment in relation
12 to the issue of Section 4, which, if you will bear with me,
13 I will read that, it is relatively brief.
14 "With the intent of encouraging comity between DOE
15 and the other federal agencies who may have some interest in
16 the project, this Section requires that the Secretary

17 consult throughout the project with the Nuclear Regulatory
18 Commission, Environmental Protection Agency, the Department
19 of Transportation, Geological Survey, New York State, and
20 the commercial operator of the site. However, the Committee
21 intends the Secretary to have the ultimate decision-making
22 authority pertaining to the timely conduct of the
23 Demonstration Project authorized under this Act."

24 That is one of the three committees that rules on
25 this. Now, whether that is dispositive or not, one would

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1 have to do a full review of the legislative history, but I
2 thought I would share that with the other members.

3 CHAIRMAN JACKSON: Okay.

4 DR. GREEVES: Okay. I am on slide 3, and,
5 Commissioner McGaffigan, some of your questions about the
6 license. The license was put in abeyance. Effectively,
7 what happened in August of '81, DOE did submit an
8 application consistent with the Act to take over the
9 project, and then in September, in that same year, '81, the
10 NRC issued a license amendment to give exclusive control of
11 and possession of the property, which is basically 200
12 acres, to the Department of Energy. So since that
13 timeframe, the Department of Energy has been safely managing
14 this particular project.

15 CHAIRMAN JACKSON: What has been NRC's role in
16 this safe operation of the site while the license is in
17 abeyance?

18 DR. GREEVES: The principal role over the last 18
19 years has been for the Department of Energy to focus on
20 solidifying the high level waste.

21 CHAIRMAN JACKSON: Now, I know activity-wise. I
22 asked a question about our role in the safe operation.

23 DR. GREEVES: Our role was to review those
24 activities. There was a project manager and the proposals
25 by the Department of Energy to solidify the waste were sent

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1 in and reviewed by the staff. The staff made comments on
2 those proposals. The Region, Region I, would go up and
3 monitor activities on the site, and go up several times a
4 year to review things and comment to the Department of
5 Energy. So, we were using the informal role in terms of
6 reviewing their activities, commenting and then the Region
7 would go up and monitor activities and give the Department
8 feedback on what they saw.

9 CHAIRMAN JACKSON: And so if we saw something we
10 didn't like from a safety perspective, we would be providing
11 that feedback?

12 DR. GREEVES: Yes, we would there. I think --

13 CHAIRMAN JACKSON: So we would be in a DNFSB role?

14 DR. GREEVES: I think that could be a parallel.
15 In the MOU that the General Counsel referred to, there is a
16 provision for an objection. If the staff had an objection
17 to something DOE was doing, we would identify what that was.
18 I do not recall any point of time where that type of
19 language came up.

20 COMMISSIONER MCGAFFIGAN: Did we put anything in
21 writing over this period as to how this review role, you
22 know, if it was being carried out, did we commit to paper
23 our views?

24 DR. GREEVES: Jack, try and help me out here. But
25 my memory, again, this is going back 18 some years and the

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1 project has passed hands a couple of times. But I know we

2 reviewed documents and did submit comments in writing to the
3 Department, but maybe Jack can help me out with some of the
4 details.

5 MR. PARROTT: Well, that's basically right. And,
6 also, the site monitoring visits, there would be a
7 monitoring report similar to an inspection report issued
8 each time.

9 CHAIRMAN JACKSON: Was there any particular
10 follow-up once we wrote those reports, or any review of what
11 happened as a consequence on a systematic basis?

12 MR. PARROTT: Mostly from the monitoring point of
13 view, I think is what we would look at, and, you know, we
14 would monitor against what commitments they had made in
15 their various documents.

16 DR. GREEVES: Let me give you an example. They
17 submitted a report on the stabilization of the cesium and
18 strontium waste. We did review that and give them comments
19 consistent with Part 61 criteria for classification and
20 stabilization. I recall there was a lot of effort put into
21 -- it is basically, I think, waste management area number 9,
22 the drum cell facility.

23 DOE presented what they thought the approach to
24 stabilizing low level waste were, what the materials were,
25 and the staff did review that and comment on that. And the

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1 Department reacted to that. I know we had a fair amount of
2 dialogue with them about how to stabilize those types of
3 materials. They also had some difficulty stabilizing some
4 of those cement wastes and we worked with them on those
5 issues.

6 CHAIRMAN JACKSON: All I am trying to say, is
7 there a documentary trail?

8 DR. GREEVES: There is documentation on these
9 activities.

10 CHAIRMAN JACKSON: Okay. I mean on both sides,
11 not just that we sent the comments, but that there was a
12 response?

13 DR. GREEVES: Yes. And if it is any different
14 than that, I will get back to you, but that is my memory.

15 CHAIRMAN JACKSON: Okay.

16 DR. GREEVES: We talked about the license in
17 abeyance. This is a unique position for the Commission and
18 DOE had exclusive use of the site for the last 18 years and
19 people have pretty much looked at this as a success path in
20 the sense of them stabilizing the high level liquid waste.
21 It does raise this question of the future -- what does the
22 future hold when this project passes back to NYSERDA?

23 And there is a range of alternatives of how that
24 could play out. It depends on the alternative selected by
25 the Department of Energy and NYSERDA. There, I understand,

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1 are negotiations that go on between DOE and NYSERDA. There
2 is a question of, would there be government presence at the
3 end of the day in terms of the long-term, when the site
4 comes back under license? And there is also the question
5 of, would there be material on-site, left on-site, or would
6 the material be removed?

7 So that is something that really does have to be
8 addressed and would involve negotiations between DOE,
9 NYSERDA and coordination with NYSDEC, New York Department of
10 Environmental Conservation. So those are things that will
11 have to be addressed.

12 COMMISSIONER McGAFFIGAN: Can I ask a question
13 again? The question of decommissioning, and to what part --

14 the West Valley Demonstration Project Act talks about us
15 setting criteria but it doesn't necessarily -- the criteria
16 will ultimately perhaps apply to the whole site, but because
17 once it comes back under our license, presumably it is under
18 our criteria, just as a normal licensee, but one of the
19 legal issues is how widespread the criteria are supposed to
20 apply right now and how much of the site, when it returns to
21 license, isn't covered by the Demonstration Project, is that
22 not right?

23 DR. GREEVES: Yes. No, that is accurate, and the
24 staff is focusing on this area holistically. The EIS covers
25 all of these areas. You have the 200 acres, which is the

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1 project premises. Adjacent to that, on the slide you have
2 attached at the end, you will see the state disposal area, I
3 believe that is about 16 acres. And there is another 3,000
4 acres surrounding all of this. And EIS is looking at all of
5 it holistically. The staff is looking at the criteria in
6 terms of the impacts of the adjacent area and the EIS will
7 be the vehicle that will evaluate all of these issues.

8 So it really does require DOE, NYSERDA, NYSDEC,
9 the NRC staff, and, ultimately, the stakeholders commenting
10 on the EIS. The EIS is the vehicle that will carry this
11 through.

12 COMMISSIONER MERRIFIELD: Madame Chairman?

13 CHAIRMAN JACKSON: Yes, please.

14 COMMISSIONER MERRIFIELD: I want to ask the staff
15 the extent to which we have gone back and taken a look at
16 the legislative history to see if the proposals prepared
17 within the context of the EIS are consistent with the
18 underlying legislative language and committee reports
19 associated with the West Valley Demonstration Project.

20 CHAIRMAN JACKSON: That's what I was trying to get
21 at earlier.

22 DR. GREEVES: We can do that. I have not done
23 that.

24 COMMISSIONER MERRIFIELD: I had an opportunity to
25 go back and ask my staff to get me copies of the reports,

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1 part of which I have already read from. As I was looking
2 through the reports last night, as well as the language from
3 the debate on the floor of both the Senate, which considered
4 this legislation first, and then later on the House, which
5 debated it, it seemed to me a flavor for this was that it
6 really was looking at simply the high level waste,
7 solidifying that waste as a Demonstration Project, and if
8 there were additional -- and I will quote from the Project,
9 quote from -- let me make sure I get the right report.

10 This is the House report. Bear with me for one
11 moment. From the report I quoted -- I believe this is from
12 the report I quoted earlier. "As the project will generate
13 additional quantities of low level radioactive waste and
14 transuranic contaminated waste, the Secretary will be
15 expected to dispose of such waste as part of the project.
16 However, the committee expects that this project will
17 encompass only those portions of the site, and only those
18 facilities directly related to the solidification
19 activities, and not include the existing state and NRC
20 licensed burial grounds which are presently located at the
21 site. They would then remain under the exclusive -- these
22 would remain under the exclusive jurisdiction and control of
23 the licensee, and any disposal of low level waste and
24 transuranic waste in those burial grounds would then have to

1 requirements."

2 So, I mean that seems to indicate that there are
3 -- that the committees did intend that there be boundaries
4 on the areas that will be looked at by DOE and, ultimately,
5 by us as we are overseeing their activities.

6 COMMISSIONER MCGAFFIGAN: But I could comment.

7 CHAIRMAN JACKSON: Please.

8 COMMISSIONER MCGAFFIGAN: That sounds like we have
9 got off -- if that, that may be just report language, and
10 there may have been further consultations with the Congress,
11 but that would indicate that our suspending the license for
12 the whole site, putting the whole -- our entire license in
13 abeyance, and we will have to ask the New York people later
14 what they did with their state disposal area -- we instantly
15 didn't do that. We didn't focus on a small piece, we
16 instantly suspended the entire license. Is that not
17 correct?

18 DR. GREEVES: Yes. DOE --

19 COMMISSIONER MCGAFFIGAN: So our actions, right
20 from the get-go, may not have been consistent with that
21 legislative history.

22 DR. GREEVES: There is logistical considerations
23 here. DOE needed a fair amount of the site to position
24 waste that they came up with. DOE, in fact, I understand,
25 did dispose of some of their waste. It would be difficult

1 for DOE to manage that site in a piecemeal fashion, so at
2 the time the amendment gave them exclusive use to the 200
3 acres, which, my understanding is they really did need that.
4 They needed the administrative buildings. As I think they
5 will present and show you, they put up some tents to house
6 the waste because some of these loose ends, the decisions
7 weren't made. It would have been very difficult for them to
8 kind of paint lines around areas to try and say --

9 CHAIRMAN JACKSON: Well, all of that may be true,
10 but I think it begs one question, and that is -- to what
11 extent, when we went through, and is it documented? And
12 that is really what my fundamental focus is here. In
13 putting the license in abeyance or suspending it, did we
14 address the issues from both the Commissioners' points of
15 view relative to whether there was difficulty in putting
16 bright lines around parts of the site, how we would handle
17 it relative to where our licensing authority normally would
18 be vice the responsibility of the licensee?

19 You know, that is the fundamental -- a fundamental
20 question for me, that's why I was asking the question of
21 what the NRC role has been in the safe operation of the site
22 while the license has been in abeyance, or whether we just
23 issued the suspension for everything and didn't think about
24 it anymore.

25 DR. GREEVES: I hope I left you with the

1 understanding that we had a role and we were participating.
2 We interacted with DOE, we reviewed their documents. We
3 gave them comments back on their stabilization approach, as
4 an example, and the Region did go up and monitor the site
5 and issue monitoring reports. So, there is documentation of
6 that.

7 CHAIRMAN JACKSON: Included for the balance of the
8 site that went beyond the specifics of stabilization.

9 MR. MIRAGLIA: The amendment to the license I
10 think is what the Chairman is talking about, that

11 evaluation.
12 CHAIRMAN JACKSON: I'm sorry. What did you say?
13 MR. MIRAGLIA: This is the activity that supported
14 the amendment to the license suspending the authority.
15 CHAIRMAN JACKSON: That's right.
16 MR. MIRAGLIA: We will have to go back and take a
17 look.
18 COMMISSIONER MERRIFIELD: Again, if I can make --I
19 am not going to refer from the report, but just to make a
20 clarification back to what Commissioner McGaffigan said.
21 The report does seem to indicate that it can be broadened
22 beyond those areas to assist, to facilitate in the issue of
23 cleaning up those areas.
24 CHAIRMAN JACKSON: Right.
25 COMMISSIONER MERRIFIELD: So, you know, to the

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1 extent to which there was a decision to increase it to the
2 size of the footprint of the facility as a whole, and then
3 for us to take the license action that we did, you know,
4 that may not be inconsistent. I just didn't want to leave
5 people with the impression that that was the case.
6 CHAIRMAN JACKSON: But my point is it is useful to
7 have the documentary trail when you are moving down the road
8 of the EIS process, that's all I am saying.
9 DR. GREEVES: Yes, I agree, and there is
10 documentation available on these various interactions that
11 have occurred between the staff and the Department. Just a
12 small example, the drum cell facility I spoke about earlier,
13 they needed the 200 acres to build that drum cell facility.
14 As you look at it, it is, I believe waste management area 9,
15 and it is quite removed from where the high level waste
16 tanks are and the reprocessing facility. They needed that
17 area to store the waste, and the staff was actively involved
18 in that review.
19 One of the things I think all the parties do agree
20 on is that solidifying the high level waste has been a
21 success story. Taking that high level waste and putting it
22 into a solid form has been a big improvement. So 85 percent
23 of that liquid waste has been solidified. The remaining
24 piece is the bottom, the sludge area. The tanks are in
25 waste management area 3 and it is more difficult to address

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1 the sludges, so that is going to be the next phase of the
2 solidification process.
3 As we have discussed, there's waste stored on the
4 site. There are tents that they have put up. We talked
5 about the drum cell facility. And, as I mentioned earlier,
6 I think the vehicle for pulling this together is the
7 environmental impact statement. DOE and NYSERDA did issue a
8 draft in '96. They identified these ten primary waste
9 management areas, but they did not identify a preferred
10 alternative.
11 The EIS will help us project what is project
12 completion, how to bring this thing to closure. Most of the
13 alternatives in that draft EIS did assume long-term control
14 of the site, and estimates of the cost of doing these things
15 vary from another billion dollars just to monitor activities
16 to \$8.8 billion to dig up the entire site, and that would
17 include both the project and the state disposal area would
18 be included in that particular estimate.
19 We have talked about the Commission paper and the
20 paper describes the staff's proposal for addressing and
21 describing decommissioning criteria. I am going to comment

22 that I think there has been more progress made since we sent
23 this paper up in its imperfect state. You have gotten a lot
24 of comments from the Department of Energy, NYSERDA, NYSDEC,
25 Citizen's Task Force, others, it has created a lot of

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1 dialogue that I personally have enjoyed in terms of getting
2 that information. I think just having the meeting has
3 advanced the project.

4 Over on page --

5 CHAIRMAN JACKSON: I think Commission Dicus --

6 COMMISSIONER DICUS: Yes, I have a question. One
7 of the technical issues that we clearly are going to
8 probably be faced with -- I will ask the question now. If
9 you plan to address this later, that's fine, or if you want
10 to address it now.

11 DR. GREEVES: Okay.

12 COMMISSIONER DICUS: The state, together with
13 other stakeholders, have commented on the rather large
14 change in the estimates of off-site doses if the
15 institutional controls fail, if that is the direction you
16 go. And given the magnitude of the change and the impact
17 that that has on consideration of institutional controls,
18 and, of course, the concerns that have been expressed,
19 number one, the first question probably is -- how much
20 confidence do you have in the numbers that we are seeing are
21 in this change, whether you agree with it or not? And in
22 case there is a great deal of uncertainty of dose estimates
23 in the case of institutional control failure, is there
24 reason to go with a third party, have a third party look at
25 this?

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1 DR. GREEVES: First, your first question was the
2 dose estimates, do we agree with it? I think that a lot of
3 that still needs to be crystallized. We have had
4 interactions with the Department. There have been some
5 moving targets. Over the last number of years, the
6 techniques available to do dose estimation have changed. So
7 I wouldn't say we, quote, agree with it yet. I don't think
8 we have seen all of it. And, Jack, jump in here and help
9 me.

10 As far as the third party question, I think with
11 DOE, NYSERDA, NYSDEC and the NRC already involved, I am not
12 thinking in terms of a third party. You are going to hear
13 from NYSDEC a little later and they are quite active in this
14 program. They have mentioned the concept of a MOU with the
15 NRC staff and we need to take a look at that. So I think
16 you are going to get your third party look from NYSDEC, and
17 we will have the public comment process on the EIS.
18 Individually, I don't see a third party concept but others
19 may.

20 COMMISSIONER DICUS: Okay. NYSDEC, when you
21 testify, you might want to address that.

22 DR. GREEVES: Jack, do you want to add anything on
23 the dose analyses?

24 MR. PARROTT: Yes. We are still in the reviewing
25 their reports on that, and I don't think they have given us

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1 everything yet. But, yes, the numbers that you have seen,
2 or that we have given you, are just the numbers that they
3 have given us. We haven't given them any kind of an
4 approval or anything like that yet.

5 COMMISSIONER DICUS: Thank you.

6 CHAIRMAN JACKSON: Okay.

7 DR. GREEVES: I am on chart 4 and this addresses

8 the staff-proposed criteria. I think you need to think
9 about this site in two pieces, one is the high level waste,
10 which is the important piece in terms of having that removed
11 and off-site. It is pretty much stabilized, but the
12 assumption is that will come off-site, but everybody needs
13 to know that with confidence. That is very important.

14 The second part is the rest of the site, and,
15 unfortunately, it is a little bit complicated. We think of
16 this site in three different categories. We did, in July of
17 '97, come out with the license termination rule, so that
18 gave the staff a good tool to use to decommission other
19 sites and have a view on this particular site.

20 The other piece is Part 61 performance objectives.
21 As I mentioned, the waste that is buried already predates
22 Part 61 and lots of times a question comes up, well, how
23 will we evaluate these things. So you really need to look
24 back at the Part 61 performance objectives.

25 The third is the so-called incidental waste

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1 criteria. This came up back in March of '93, when we were
2 talking to DOE about the Hanford site, it's come up again,
3 at the Savannah River site. This is the approach to
4 removing the high level waste and when you look at that, you
5 go back to the '93 document and you see we set up three
6 criteria, remove as much as you can, economically and
7 technical possible, stay within Class C type concentrations,
8 and, again, look at the Part 61 performance objectives.

9 Essentially, when you pull these together, you
10 come up with what I think is a consistent criteria, where we
11 are looking at a 25 millirem all pathways criteria, a 500
12 millirem cap with limited institutional control. All three
13 of these criteria, the license termination rule, the Part 61
14 performance objectives, and the incidental waste criteria
15 that we developed all point to these types of controls: 25
16 millirem all pathways, 500 millirem cap.

17 CHAIRMAN JACKSON: So -- I'm sorry. Go ahead.

18 COMMISSIONER MCGAFFIGAN: But legally, whatever
19 part of the site comes back under NRC license will be under
20 these controls. So that's yet another argument for this
21 approach that you're using here; whatever part is not
22 decommissioned under the Demonstration Project Act and
23 remains under NRC and presumably state license.

24 DR. GREEVES: Yes.

25 COMMISSIONER MCGAFFIGAN: These are our criteria.

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1 DR. GREEVES: And that's what the staff has
2 confidence in. You gave us the decommissioning rule last
3 year and now we have a tool to utilize. Yes, correct.

4 CHAIRMAN JACKSON: Does the intended consistency
5 with the license termination rule extend to the ultimate
6 criteria provisions of Part 20.1404?

7 DR. GREEVES: I would -- 1404 is which one? I
8 want to make sure I get the --

9 MR. PARROTT: The alternative criteria.

10 DR. GREEVES: The alternative criteria, by my
11 memory, says if you can't meet 25 millirem, you have to be
12 under 100 millirem, and come back and talk to the
13 Commission, consult with EPA -- Karen is maybe looking this
14 up. But 1404, I think, is a provision that addresses
15 alternatives between 25 millirem and 100 millirem in terms
16 of doses to the public.

17 Karen, can you help me out, if I've got that
18 wrong?

19 MS. CYR: I think that's right.
20 MR. PARROTT: It's 100 millirem per year.
21 CHAIRMAN JACKSON: I didn't ask for a recitation
22 of 1404.
23 DR. GREEVES: I'm sorry.
24 CHAIRMAN JACKSON: But whether, in fact, the
25 consistency with the license termination rule extended to

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1 the alternate criteria in 1404.
2 DR. GREEVES: I'd say yes. Kind of getting down
3 to what the issue is, the issue -- an issue at this site is
4 a hypothetical intruder. You've read some concerns raised
5 by parties in terms of the erosion issues at this particular
6 site. There are stream beds close to these disposal areas.
7 Both the project and the state disposal area, and I think
8 most of the parties agree with the concept of shrinking the
9 footprint and identifying what the areas of concern are at
10 that point.

11 You're going to hear some more about that from the
12 other panels.

13 So we feel that the process is comprehensive and
14 covers the project and the remainder of the site. We will
15 be looking at the state disposal area in terms of the EIS
16 project. In fact, there is some project contamination that
17 goes beyond the 200 acres that we will have to be
18 addressing.

19 As far as the proposed process, the staff thinks
20 that the EIS process is efficient. It will help us
21 prescribe the criteria based on the EIS input. NRC will be
22 able to consider public comments during that process. It
23 will conserve government resources and could eliminate
24 duplication, where we would have to go off and do our own
25 EIS process.

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1 The paper recognized that the criteria that we
2 just talked about in some cases may not be viable,
3 particularly the state disposal area and the so-called NDA
4 are areas that would be problematic, and the staff has
5 looked at other instances where these types of things have
6 been dealt with.

7 The Maxi Flats site in Kentucky also has this kind
8 of a problem and there was a record of decision there that
9 indicates perpetual institutional control. DOE has a number
10 of other sites where they're addressing these types of
11 issues, including the Idaho site, the Savannah River site,
12 and there are a number of RCRA landfills out there that also
13 would have to address these types of issues.

14 CHAIRMAN JACKSON: Let me ask you a couple of
15 questions, Mr. Greeves. The Coalition on West Valley
16 Nuclear Waste has submitted a statement of comments on the
17 SECY paper and they have a concern that NRC is improperly
18 redefining the term "decommissioning" by including waste
19 disposal in the proposal.

20 Could you comment? Do you have a comment?

21 DR. GREEVES: First, I don't think the Act defines
22 decommissioning itself. It's been unfortunate in terms of
23 some of the communication associated with these definitions.
24 Remember, back in the 1980 time-frame, where people were,
25 there was no definition of decommissioning. In fact, there

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1 was no Part 61 even at that point in time.

2 The reality is this site contains buildings,
3 equipment, et cetera, that needs to be decon'd,
4 decommissioned. This site also contains burials. This site

5 also contains the state disposal area. It also contains
6 high level waste liquids. All of those factors force you to
7 look at the three things I addressed earlier; license
8 termination regulation, which helps address part of that.

9 Part 61 for burials, it helps you address part of
10 it, and then the incidental waste criteria.

11 I feel forced to draw on all three of these and,
12 unfortunately, it's been a little bit difficult to explain
13 it to some other parties how this works.

14 So I hope I'm answering your question. There's
15 more issues at this site than just a clean decommissioning
16 criteria. If you were building a new project, if DOE just
17 went out there and built a new building, theoretically, all
18 they would have to have done was decon/decommission that
19 building, but they didn't do that. They took over a whole
20 building.

21 CHAIRMAN JACKSON: Let me complicate it further
22 for you. Do the EPA standards and 40 CFR 191 for disposal
23 of spent fuel apply to the spent fuel and other waste in the
24 NRC licensed disposal area?

25 DR. GREEVES: My answer is I think they do and

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1 maybe Karen wants to add to that. I think that's an issue
2 that we've recognized.

3 CHAIRMAN JACKSON: Karen, do you have any comments
4 you want to make?

5 MS. CYR: In the NRC license, there is.

6 CHAIRMAN JACKSON: And then my last question is,
7 does the staff intend to apply, in the license held by
8 NYSERDA, the same criteria it prescribes to DOE?

9 DR. GREEVES: Yes. That's my intention. We're
10 trying to look at this holistically. We can save some
11 government resources by doing one EIS, not two, and it needs
12 to be a consistent set of criteria that lives beyond that.
13 That's why the staff has pointed to things we're doing for
14 virtually all the other licenses that we encounter.

15 This one is a little unique. It includes an
16 incidental waste criteria aspect.

17 COMMISSIONER DICUS: Following up on one of the
18 Chairman's earlier questions, on this confusion that may
19 exist particularly with some stakeholders on D&D; versus
20 disposal. Would it be clearer if we are very -- we're very
21 clear on talking about decommissioning and decontamination
22 separately from disposal?

23 DR. GREEVES: Yes. I think we could have --

24 COMMISSIONER DICUS: I think we're putting them
25 together and perhaps we could separate them.

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1 DR. GREEVES: We could have done a better job in
2 taking it up in that context. Keep in mind that for 17 of
3 those 18 years, there was no decommissioning criteria. In
4 fact, the substantive meeting we had with the Citizens Task
5 Force occurred before you finalized the decommissioning
6 criteria.

7 We were able to go up. You did release the paper.
8 We gave them the paper and so we discussed what, at that
9 time, was a proposed decommissioning criteria.

10 COMMISSIONER DICUS: Understood. But now that we
11 have it, perhaps this is the time to make that distinction.

12 CHAIRMAN JACKSON: Did you have a question?

13 COMMISSIONER MCGAFFIGAN: I just wanted to follow
14 up. One of the things we need in dealing with this paper,
15 and we've had some discussions with the staff previously, is

16 context and you've mentioned Maxi Flats, which is being
17 handled under SuperFund, with the State of Kentucky, and you
18 said that they basically envision perpetual institutional
19 controls there.

20 Are the doses, if institutional controls fail at
21 Maxi Flats, similar to the sort of doses we see in Table 3
22 of your paper, where it's instant death or relatively rapid
23 death, thousands or tens of thousands of rem?

24 DR. GREEVES: We have tried to pursue that and
25 verbally we've been told that the waste at Maxi Flats would

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1 be lethal if you camped out on it, intruded on top of it.
2 So I think that's a partial answer. We're still trying to
3 get more information on that.

4 But if you assume somebody goes to Maxi Flats and
5 encounters the waste, stays there, it's -- verbally, we've
6 been told that it's a lethal combination.

7 COMMISSIONER MCGAFFIGAN: One of the interesting
8 things about this, interesting, is that institutional
9 controls, as I understand it, are going to be widely used in
10 the DOE system. Words like imperpetuity are used commonly
11 in referring to sites like the Savannah River site or Maxi
12 Flats or whatever, Hanford.

13 And there was a recent consent agreement between
14 where I think NRDC was the lead that will be studying it.
15 It, I think, gives them six-and-a-quarter million dollars
16 for, among other things, studying how long-term
17 institutional controls will be applied at DOE sites after
18 DOE does whatever cleanup it can do that's technically
19 feasible.

20 And we just have -- but if we're the lead, one of
21 the interesting things, and this is probably more for the
22 DOE witness, is the methodology we're using at this site, it
23 would be interesting to see if it's the same methodology
24 we're going to use across the system, whether it's us
25 regulating or EPA regulating, as it does at Maxi Flats.

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1 Then I think it will also have an impact -- the staff has
2 tried to learn about Doumreay, Scotland, and there is a
3 reprocessing plant there. It's still operating, but they're
4 going to -- it's basically mostly existing to decommission
5 itself.

6 The interesting thing there is they have a number,
7 seven billion dollars, some say it would be 17 billion, but
8 as best we can tell, they don't have criteria yet and they
9 do not have the methodology for guesstimating intruder
10 doses, if institutional controls failed. But I assume the
11 British and the Scots will have the same set of issues
12 before them, but we're the lead here, in some sense, in
13 trying to deal with these -- you know, how effective
14 institutional controls are going to be over a long period of
15 time, whether it's under license with us.

16 Because our rule doesn't define decommissioning
17 either, I don't think. We have a license termination rule.
18 If you want your license to terminate, this is what you have
19 to achieve. To do that, you have to decontaminate and
20 decommission, but what our rule says is if you want to
21 terminate your license, this is what you have to do.

22 And we have an active -- we have an inactive
23 license that will come back into, in some sense, this
24 debate. We have established what the criteria -- in 1997,
25 we established what the criteria at this site would be once

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1 it's returned to us, once the Demonstration Project Act

2 ends, whatever part of it applies. Now we're dealing with
3 the part that doesn't return to us.

4 DR. GREEVES: Okay. Up to page five. As the
5 paper indicates, the staff noted some options for long-term
6 control. Because the DEIS did evaluate the alternatives
7 that assume unlimited institutional control period, we felt
8 that a level of discussion should be provided regarding
9 options for that.

10 We identified three, the first of which is a
11 long-term license.

12 CHAIRMAN JACKSON: Who would be the licensee in
13 that instance?

14 DR. GREEVES: Can we give you some parallels? One
15 long-term license that does exist now is the uranium
16 recovery sites. DOE has a general license for all of those
17 sites that have been turned over to them. So we have a
18 precedent in one sense of a general license for the
19 Department of Energy.

20 The license termination rule itself recognized
21 that there might be some cases where failures of
22 institutional control would become a problem, and it
23 suggested a remedy to that would be to keep the site under a
24 license. I don't think it said who, but obviously for that
25 --

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1 CHAIRMAN JACKSON: But do you have a thought in
2 this particular instance?

3 DR. GREEVES: The thought is it would have -- my
4 thought is that it would have to be either the Federal
5 Government or state government.

6 CHAIRMAN JACKSON: So understand government then.

7 DR. GREEVES: Yes, under government control. I
8 think as complicated as this site is, there needs to be a
9 certain amount of negotiation on these details between DOE
10 and NYSERDA, and among the other responsible parties in
11 terms of their comments, and I understand those negotiations
12 are ongoing. Maybe you'll hear more about them.

13 The second alternative would be some form of new
14 legislative authority to give NRC authority similar to the
15 authority that the Environmental Protection Agency does have
16 at this time to utilize perpetual institutional controls.

17 DOE included similar language in their proposed
18 order 10 CFR 834, which we commented on.

19 The last item, just for completeness, under the
20 direction-setting issues, the Commission identified an
21 approach where, as a last resort, we would turn such sites
22 over to the CERCLA process, where EPA would take them over,
23 and they do have authority for long-term control provisions.

24 If anything like that were to be approved, it
25 would have to be approved by the Commission and EPA would

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1 have to agree that there would be a higher probability of
2 success for such an approach and it is basically the Maxi
3 Flats type approach.

4 COMMISSIONER DICUS: Given the situation, any of
5 these situations that you've raised here, particularly a
6 long-term license of either a Federal or state government,
7 has any thought been given, on the NRC side, as to what role
8 you would see for state and local communities or governments
9 to monitor the status of the site if we go forward in some
10 sort of long-term issue?

11 DR. GREEVES: As we all know, the license
12 termination rule sets up a process to address that question,

13 where people would come in and comment on the long-term
14 controls, including the state and the local government
15 process.

16 So I think these are things that would play out in
17 time. And as I said, I've talked to NYSDEC and they are
18 quite active in this program and they talked about
19 developing an MOU, which some of these things might be
20 addressed in.

21 The process for describing the criteria, the staff
22 view is that we would communicate to the Department of
23 Energy and NYSERDA this proposed criteria. It would end up
24 being an appendix in this supplemental EIS that people could
25 comment on. DOE and NYSERDA could factor the proposed

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1 criteria into their development of the supplemental EIS and
2 identify their preferred alternative. This is a key.

3 As a cooperating agency, we will provide support
4 in this process. We'll be cooperating with the Department
5 of -- NYSDEC and the -- this will require us to talk about
6 the SDA versus the 200 acres I mentioned earlier and the
7 3,000 acres which envelope these sites. All of those are
8 going to have to be taken into account. There are some
9 loose ends that do require further discussion.

10 The supplemental EIS would go out for public
11 comment and then we get the opportunity to review those
12 comments on the preferred alternative.

13 COMMISSIONER DICUS: Before you leave that slide,
14 I think that NYSDEC has suggested a cooperative agreement
15 with the NRC to go forward in the long term. Do you have
16 any reaction to that?

17 DR. GREEVES: I have no problem with that. I'd
18 actively pursue that with Paul Merges. We've talked on the
19 phone about it and we've done it elsewhere. So I think
20 that's something we should follow up on and talk to Paul
21 about.

22 COMMISSIONER DICUS: The other thing I want to
23 bring up, I think, also, NYSDEC has a soil cleanup standard
24 of ten millirem per year. Do you envision that as a problem
25 as we go forward with any kind of criteria?

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1 DR. GREEVES: From my memory, we would license the
2 site according to our license termination rule. I think a
3 state can be more restrictive if they choose to.

4 I think we just need to make all that transparent
5 in the EIS process, because NYSERDA is going to want to know
6 what is the criteria and if there is a more restrictive
7 state criteria, they need to know that.

8 The last slide I want to address is seven and it
9 really addresses the question of when. There's been some
10 controversy over this. The process prescribing this
11 criteria will follow the EIS and in thinking about this, we
12 looked at three options in terms of finalizing the criteria
13 in relationship to the EIS, the first of which would be if
14 it was finalized before the DOE NYSERDA EIS and a record of
15 decision were issued, that's one way to do it and that
16 would, I think, cause some problems.

17 The problems would be that we would likely have to
18 do our own EIS to finalize that particular decision. I know
19 the Citizens Task Force prefers doing it early and, also,
20 the West Valley Coalition. So that's one of the
21 time-frames.

22 COMMISSIONER DICUS: Is that the only down side to
23 doing it earlier in the process, is that we might have to do
24 our own EIS, or are there other down sides, as well?

25 DR. GREEVES: If there's others, I would have to

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1 get back to you on them, but I think that is the principal
2 down side. The staff was looking at the EIS process as a
3 holistic process, where we could use it, say, our government
4 resources for developing an independent EIS, but we've done
5 that elsewhere.

6 COMMISSIONER MCGAFFIGAN: Do we prescribe these
7 criteria by rule? I mean, would this be -- whatever time we
8 do it, is this going to be a rule-making, with a proposed
9 rule in which people comment, the public and DOE, et cetera,
10 and then a final rule? I mean, a normal rule-making
11 process. Is that ambiguous under the Act or what?

12 DR. GREEVES: I think I'd like to ask Karen to
13 help on that.

14 MS. CYR: I think it's ambiguous under the Act. I
15 mean, I think normally an agency acts by rule-making or
16 adjudication. In this case, rule-making would seem to be
17 the most appropriate. If you're building on the existing
18 Part 20 and you have already, in effect, done an EIS for
19 that, so what you might be looking at is something in terms
20 of taking advantage of the data that's already out there.

21 As John has suggested, depending on the timing of
22 that, to put out how, in any modified form, those criteria
23 that are already there in Part 20, would apply particularly
24 to this decision and you could do it in a rule-making
25 context.

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1 COMMISSIONER MCGAFFIGAN: So you wouldn't have to
2 do an EIS to go in that direction.

3 MS. CYR: Because we've already done a full EIS on
4 the Part 20 criteria, it specifically does not apply to West
5 Valley, so you would have to say is there some -- what is
6 the difference or what would I have to do to contemplate
7 those criteria, from an EIS standpoint, would -- if I would
8 now apply them. So you would have to look at the difference
9 and I think one of the parties suggested that you already
10 have -- in the draft EIS, you have a lot of data available.

11 So the question is could you draw on that data,
12 when could you draw on that data, or you could draw on the
13 final EIS in terms of -- we're in the process of working
14 with them now as a cooperating agency to do that. I think
15 there may be some flexibility in the timing of how you might
16 do that.

17 COMMISSIONER DICUS: That might be worthwhile
18 looking into if this is the primary down side that we have
19 with this issue and it seems so very important to several of
20 the stakeholders to look at that possibility.

21 CHAIRMAN JACKSON: Also, it seems that from what
22 we've been describing, it's not a pure D&D; rule, license
23 termination rule criteria that are being applied. Mr.
24 Greeves has already talked about this kind of blended
25 approach in terms of what criteria apply to what. So it's

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1 not as clean as one might like.

2 MS. CYR: But I think that's what has driven the
3 staff, because it is a blended approach. You're trying to
4 pull together disparate elements and a lot of different
5 things, and so how --

6 CHAIRMAN JACKSON: No, no.

7 MS. CYR: And that's most easily reflected in the
8 EIS process they have going and that's why they're looking
9 to that process.

10 CHAIRMAN JACKSON: That's relating to the
11 Commissioner's comment about the issue of whether the need
12 for us to do our own EIS is driving a decision as to when
13 the final criteria would be specified here.
14 COMMISSIONER DICUS: Right.
15 CHAIRMAN JACKSON: But what I'm trying to say is
16 that the issue of how complicated that is is a -- as you've
17 just pointed out, it's a question of how much of the license
18 termination criteria can be carried over. But I'm saying
19 the case has already been made that it's more than the
20 license termination criteria that are being applied here,
21 that you're actually blending a number of things.
22 Therefore, it wouldn't be so easy to just carry
23 over, to say that the --
24 MS. CYR: I think that's been the staff's concern,
25 because --

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1 CHAIRMAN JACKSON: Right. That the EIS that dealt
2 with the license termination rule, how can you say it -- I
3 mean, it can't cover it if you're doing --
4 MR. MIRAGLIN: Until that criteria is clearly
5 defined, the steps to go to closure for the facility is
6 delayed. I mean, the alternatives would have to be weighed
7 to make sure that that criteria is clearly understood and
8 goes through the process.
9 DR. GREEVES: It could cause a delay.
10 MR. MIRAGLIN: It could cause one in terms of --
11 CHAIRMAN JACKSON: How much of a delay?
12 MR. MIRAGLIN: That needs to be looked at.
13 CHAIRMAN JACKSON: It's not clear where it's all
14 going to go. I mean, the NRC is involved at Hanford. One
15 could argue that there are some parallelisms here and when,
16 in such a history of involvement with these sorts of things,
17 this one is very specific under a law, specified law, when
18 it's worthwhile to go through an EIS process that might
19 provide a basis for dealing with these things more
20 generically.
21 COMMISSIONER MCGAFFIGAN: Madam Chairman, could I
22 ask?
23 CHAIRMAN JACKSON: Please.
24 COMMISSIONER MCGAFFIGAN: One of the issues that
25 strikes me, I just -- is there a resource difference for the

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1 staff depending on these various options? Because this is
2 one of these areas where our current licensees, very
3 begrudgingly, pay fees to cover these sorts of costs when
4 they had nothing to do with the generation of the staff
5 activity and it was -- and this is stuff that clearly should
6 be outside the fee base, in my mind.
7 But if this becomes a major drain on resources,
8 we've got a lot of other priorities and I don't know whether
9 there is anything in the Act that would preclude DOE helping
10 us by shifting money this way, even though we can't charge
11 them fees or anybody fees while the license is in abeyance.
12 I'm looking at Karen to see --
13 CHAIRMAN JACKSON: You mean whether there could be
14 some kind of reimbursable --
15 COMMISSIONER MCGAFFIGAN: Like we have on MOX or
16 some of the other DOE activities, Hanford -- well, not
17 Hanford at the moment, but at one point, we had --
18 CHAIRMAN JACKSON: Right. Hanford is on the
19 general fund.
20 MS. CYR: I can't answer that. I think they
21 receive a specific appropriation for this. Whether there's

22 -- whether this is something we have to do ourselves and
23 we're obligated to do it under the statute, there is a
24 question of whether we could -- because it is something we
25 are obligated to do, whether we do it on behalf of DOE or

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1 whether, in fact, it would be appropriate for DOE -- I would
2 question whether it would be appropriate for DOE to enforce
3 in those circumstances, because it is an obligation.

4 COMMISSIONER MCGAFFIGAN: So this is not one of
5 these things like Hanford that belongs in the general fund
6 if they're going to get appropriated.

7 MS. CYR: Yes.

8 COMMISSIONER MCGAFFIGAN: Okay.

9 COMMISSIONER MERRIFIELD: Madam Chairman, I had
10 sort of two comments that came out of this. When I read
11 this particular slide, talking about the three options for
12 this, the thing that raised a concern, in my mind, is that
13 there is a disconnect between that slide and between the
14 paper.

15 Really, in the paper, the Commission is being
16 asked to endorse what is the recommended option without
17 having gotten a full analysis or even a description of what
18 the three options were.

19 CHAIRMAN JACKSON: Exactly, that's right.

20 COMMISSIONER MERRIFIELD: And that bothered me,
21 because I think this conversation brings out that there is
22 more information for us to look at.

23 We as a Commission may fully decide you gave us
24 the right option and we agree with you, but I don't feel as
25 if I've had the opportunity to weigh that.

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1 CHAIRMAN JACKSON: Exactly, that's right.

2 COMMISSIONER MERRIFIELD: And I think we ought to
3 go back and look at that.

4 CHAIRMAN JACKSON: So maybe you need to, in the
5 next couple of days, send the supplement to the Commission
6 relative to the options and addressing the various questions
7 that have come up of when in the process one should
8 prescribe the criteria and what are the considerations that
9 go into that, both from a resource expenditure point of
10 view, as well as the public policy point of view.

11 COMMISSIONER MERRIFIELD: Right. And the
12 associated question, this was brought out by some of the
13 testimony that we received, looking, by analogy, at what EPA
14 does, generally, they have a set of cleanup criteria,
15 whether it's DOE or other parties doing an EIS have to look
16 to those, analyze those to see whether they can get them,
17 and ultimately you're at the point where you have a -- where
18 you made a determination we're going to meet those and this
19 is the way in which we're going to do it or we're going to
20 have to waive those criteria and here is our other way of
21 doing it.

22 The process that we've created here is not
23 consistent with that and it does -- I mean, there are some
24 folks who we'll hear from today and we'll question on the
25 degree to which we're later on in the process.

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1 There is some clarity you can get by saying up
2 front, you know, here are your rules, analyzing them through
3 the EIS process, and then, after you do that and you decide
4 you can't meet that, for whatever reason, unreasonably
5 costly or whatever, then you go with the --

6 COMMISSIONER MCGAFFIGAN: It strikes me that that

7 may be what the staff is asking us to do. It may be more
8 analogous to the EPA process. I think they're asking us to
9 make a tentative decision as to what goes into the
10 supplemental EIS at this point, what we believe the criteria
11 should be, but then there's going to be public comment
12 through the EIS process and presumably part of the comment
13 will be about the ability to meet the criteria.

14 So they may actually -- I'll let them talk, but
15 they may actually be trying to do something somewhat
16 analogous. I regard any decision the Commission makes on
17 this paper and any supplements to it as a tentative decision
18 that we would then revisit in light of either this EIS
19 process in which we're a cooperating agency or some other
20 process we decide to undertake on our own.

21 COMMISSIONER MERRIFIELD: There's a little bit of
22 a nuance difference, though, and that is with EPA, you have
23 a standard.

24 COMMISSIONER McGAFFIGAN: Right.

25 COMMISSIONER MERRIFIELD: You go through it and

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1 you say can you meet the standard or not. And if you can't
2 meet the standard, then you come up with alternatives.

3 COMMISSIONER McGAFFIGAN: Right.

4 COMMISSIONER MERRIFIELD: Whereas, what we're
5 doing is we're going through the -- we're saying, well,
6 tentatively, this is what we do; you go through the EIS and
7 you determine, gee, well, we can't do that, so this is what
8 we're going to do instead.

9 CHAIRMAN JACKSON: Right. It sounds like it's
10 situational ethics as opposed to --

11 DR. GREEVES: It's even more complicated than
12 that. I'm not sure EPA has a standard for decommissioning.

13 COMMISSIONER MERRIFIELD: No, I'm not talking
14 about -- I'm talking about generally the way -- SuperFund or
15 --

16 DR. GREEVES: They do a parallel type of process.

17 COMMISSIONER MERRIFIELD: I'm using it by analogy.

18 CHAIRMAN JACKSON: Also, again, this is relevant
19 and as you bring forward this supplement, I mean, I think
20 you have to play it off against the fact that you are using
21 blended criteria and to what extent that would weigh into
22 whether one should have some proposed, and be up front about
23 it, criteria and how that would play off against whether we
24 go through this EIS process or do our own, as well as the
25 resource questions.

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1 But also on whether and where in the process the
2 NRC would make the determination on whether to include a
3 provision for long-term institutional controls, unless that
4 would naturally fall out of the considerations, because that
5 also seems to be at the heart of a lot of what we're being
6 faced with here.

7 DR. GREEVES: Yes.

8 CHAIRMAN JACKSON: Okay. Anything else?

9 DR. GREEVES: If you don't have anymore questions,
10 I think we've probably talked through the three options.

11 CHAIRMAN JACKSON: We'll look for the paper within
12 the next week. I'd like to call forward -- thank you very
13 much -- the Department of Energy and NYSERDA, the New York
14 State Energy Research and Development Authority.

15 Good morning.

16 MS. MAZUROWSKI: Good morning, Chairman Jackson
17 and Commissioners. I am Barbara Mazurowski of the United
18 States Department of Energy and DOE Director of the West

19 Valley Demonstration Project.

20 I would also like to introduce Mr. James Turi,
21 Associate Deputy Assistant Secretary for Waste Management,
22 and Mr. William Dennison, Assistant General Counsel for
23 Environmental Management.

24 The West Valley Demonstration Project is one of
25 five sites that reports to the Ohio Field Office, which is

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1 managed by Leah Dever, who signed our letter. The project
2 is part of EM-30, the Department's waste management program.

3 I am pleased to have the opportunity to present
4 the Department's response to the Commission staff's proposed
5 decommissioning criteria for West Valley and answer any
6 questions that you may have.

7 However, before I discuss any specific topics
8 regarding the Commission paper, I feel that it is important
9 for me to note three key points regarding DOE's role at the
10 West Valley Demonstration Project.

11 First, protection of worker and public health and
12 safety and the environment has and always will be paramount
13 in DOE's decision-making. Second, we are encouraged by
14 proposed options for decommissioning, the criteria presented
15 in the Commission paper. And, third, the West Valley
16 Demonstration Project is unique, both technically and
17 politically.

18 The success DOE has achieved in the cleanup and
19 management of radioactive waste at the site has been due to
20 cooperation with many stakeholders. We are dedicated to
21 continuing the progress toward project completion and to
22 working with all parties to overcome issues that must be
23 resolved.

24 Now, as I turn to the proposed Commission
25 approach, I want to give a brief overview of the topics I'm

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1 going to cover. I will start by reviewing the West Valley
2 Demonstration Project Act and how the Act defines DOE's
3 responsibilities, agreements and limitations.

4 Next, I will discuss DOE's response to the
5 Commission's approach for describing
6 decontamination/decommissioning criteria for the project.
7 After that, I will review how this approach fits into the
8 overall project completion process. Finally, I will
9 conclude by summarizing the major points the Department
10 would like to make and, of course, I'll answer any questions
11 in between that you may have. Otherwise, I will just
12 proceed with my prepared statement.

13 CHAIRMAN JACKSON: Please.

14 MS. MAZUROWSKI: The West Valley Demonstration
15 Project Act was passed into law in 1980 and this
16 Congressional Act put in place the framework and the steps
17 necessary for completing the project. In Section 2 of the
18 Act, DOE is assigned five major responsibilities: to develop
19 the containers for vitrified high level waste, to solidify
20 liquid high level waste, to transport the vitrified high
21 level waste to a Federal repository, to dispose of low level
22 and transuranic waste produced by the project, and to
23 decontaminate and decommission facilities used in accordance
24 with such requirements as the Commission may prescribe.

25 Section 2 --

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1 CHAIRMAN JACKSON: Tell me something.

2 MS. MAZUROWSKI: Yes.

3 CHAIRMAN JACKSON: Why did you underline and

4 highlight and italicize "may"?
5 MS. MAZUROWSKI: You're looking at my brief?
6 CHAIRMAN JACKSON: Right, the slide.
7 MS MAZUROWSKI: I believe that that is the
8 language that is included in the Act.
9 CHAIRMAN JACKSON: But is there a particular
10 reason that you highlighted it for us?
11 MS. MAZUROWSKI: It goes back to the discussion,
12 I'm sure you heard, when we were talking about what's
13 required or may, must we or can we and so forth, and if any
14 part of DOE wanted -- give us your opinion of what you
15 thought about it is.
16 COMMISSIONER DICUS: Because this is you have
17 "may" and have it underlined. So it seemed to emphasize it.
18 MS. MAZUROWSKI: Yes. I believe that I am just
19 quoting the Act here and that that has to be --
20 CHAIRMAN JACKSON: So this is a faithful lifting
21 from the printed page.
22 MS. MAZUROWSKI: Yes, it is.
23 CHAIRMAN JACKSON: Okay.
24 COMMISSIONER McGAFFIGAN: I'm not sure on the
25 printed page "may" is underlined or italicized.

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1 MS. MAZUROWSKI: I don't think it is.
2 COMMISSIONER McGAFFIGAN: So the lawyer might want
3 to help. Is this "may" rather than "shall"? You're saying
4 that was a conscious act of Congress?
5 MR. DENNISON: What I was speaking up to say was
6 that the italicization or underscoring caught me by
7 surprise, as well. I was wondering to myself why this was
8 italicized before you asked the question.
9 CHAIRMAN JACKSON: So nobody is taking ownership
10 here.
11 MR. DENNISON: It was not, to my knowledge, done
12 because at least the DOE lawyers thought there was some
13 great significance to this.
14 COMMISSIONER DICUS: So the slide gremlins got
15 hold of this.
16 MR. TURI: I worked -- I was a Headquarters
17 Program Manager from West Valley from '79 to about '85 and
18 there was a bout of discussion and passing legislation,
19 should it be a "shall" or whatever. The words "may" were
20 specifically included and they wanted NRC involved because
21 they felt that they were an independent agency and could do
22 the checks and balances.
23 There was concern by some, once DOE got on site
24 for the cleanup program, that some may ask us to clean up to
25 maybe more stringent standards than would be appropriate,

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1 and NRC was viewed as an independent body to make that
2 judgment.
3 COMMISSIONER DICUS: Fair statement.
4 CHAIRMAN JACKSON: Okay.
5 MS. MAZUROWSKI: Section 2 requires DOE to enter
6 into two major agreements. One agreement is with the State
7 of New York and the other is with the Nuclear Regulatory
8 Commission, and I will discuss some of the details of these
9 agreements.
10 Section 5 places restriction on what DOE is
11 allowed to do with respect to the project. The important
12 limitations are that the Act prohibits the Federal
13 Government for taking title to the high level waste or to
14 any portion of the Western New York Nuclear Service Center.
15 The Act also doesn't apply and can't be extended

16 to any facility or property at the center which is not used
17 in conducting the project.

18 CHAIRMAN JACKSON: Let me ask you a question about
19 that. I mean, what is DOE's view on the scope of the EIS
20 and the criteria and long-term control alternatives in the
21 staff's paper to the Commission? That is, you know, that
22 they include both DOE completion of the project and
23 NYSERDA's closure of the site.

24 MS. MAZUROWSKI: The EIS does address the site.

25 CHAIRMAN JACKSON: And you think that's

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1 appropriate.

2 MS. MAZUROWSKI: We do think that that is
3 appropriate. The site should be addressed holistically, as
4 Mr. Greeves pointed out. DOE concurs with that.

5 CHAIRMAN JACKSON: What about the long-term
6 control alternatives?

7 MS. MAZUROWSKI: It's DOE's goal to meet license
8 termination rule, to the extent possible. There may be some
9 facilities that will be required to be left in place. For
10 those facilities that will be left in place, institutional
11 control will be required.

12 CHAIRMAN JACKSON: Who should provide those
13 institutional controls?

14 MS. MAZUROWSKI: How those institutional controls
15 are provided is a matter that still has to be negotiated
16 between DOE and NYSERDA.

17 CHAIRMAN McGAFFIGAN: Could I ask a question? The
18 sentence you have from the Act is interesting because if you
19 -- could you be -- Mr. Greeves earlier said either DOE or
20 NYSERDA or New York State would be the licensee in the long
21 run.

22 Does that sentence, the first sentence cited under
23 Section 5, constrain you? If you cannot acquire title to
24 the center or any portion thereof, is it the view that that
25 only applies during the West Valley Demonstration Project

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1 Act and doesn't apply after it or would you need specific
2 authorization from Congress to be able to -- if the
3 negotiation between New York and DOE were that DOE was
4 better placed to be the long-term institutional controller?

5 Would you have to go to Congress to get relief
6 from this sentence?

7 MS. MAZUROWSKI: We don't believe that we need any
8 further legislature to complete our obligations under the
9 Act. How institutional controls would be provided would be,
10 as was already discussed here, either by a government
11 presence on site or perhaps providing moneys or funding for
12 continuing care, long-term care.

13 CHAIRMAN JACKSON: So you feel that the question
14 of the long-term alternatives -- long-term control
15 alternatives is a negotiable item --

16 MS. MAZUROWSKI: Yes.

17 CHAIRMAN JACKSON: -- between DOE and NYSERDA.

18 MS. MAZUROWSKI: Yes, we do.

19 MR. TURI: As well as the NRC, because I think you
20 have to play a role in that.

21 COMMISSIONER McGAFFIGAN: But can you be the --
22 can DOE, under this sentence -- it says it doesn't authorize
23 you to acquire title to the center or any portion thereof,
24 but if you are the long-term licensee under an NRC license,
25 you could be that without being the owner.

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1 MR. TURI: I think it would depend upon the terms
2 of the license. So it's hard to deal with that, because
3 it's hypothetical, but I don't know all the provisions. It
4 could have DOE potentially as a co-licensee with New York
5 State and New York State could still have remaining title.

6 So I think if we went that route, that would be
7 one of the things we'd have to deal with. But remember, to
8 put it in context, we have another 12 years of cleanup at
9 West Valley. So the specifics of some of these long-term
10 surveillance and maintenance activities and
11 responsibilities, we may be a decade away from dealing with
12 them.

13 MS. MAZUROWSKI: I think as I go on, you will see
14 that DOE has envisioned that DOE will complete its
15 obligations under the Act and then return the site to New
16 York for operational control.

17 CHAIRMAN JACKSON: Do you have a question?

18 COMMISSIONER DICUS: Yes. I have a question,
19 again, on the same sentence. Mine is to the issue of the
20 high level radioactive waste.

21 I'm under the impression, and Karen may have to
22 help me out here, that high level radioactive waste always
23 has to be under a Federal license. It can't be a state
24 license. Am I right or wrong?

25 MS. CYR: The way we have set up our -- I mean,

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1 under our agreement state policy, we do not transfer
2 jurisdiction to a state authority.

3 COMMISSIONER DICUS: Right, for high level waste.

4 MS. CYR: To be licensed.

5 CHAIRMAN JACKSON: For high level waste.

6 MS. CYR: For high level waste.

7 COMMISSIONER DICUS: For high level waste.

8 MS. MAZUROWSKI: The high level waste canisters
9 will be removed.

10 COMMISSIONER DICUS: They will be removed from the
11 site.

12 MS. MAZUROWSKI: Yes.

13 COMMISSIONER MERRIFIELD: We've got these two
14 sentences we're focusing on here from Section 5. You said
15 that the intention of the EIS was to look at this in a
16 holistic manner, look at the entirety of the site. Yet, the
17 Act, both the sentence here as well as what I believe the
18 legislative language that went along with that seemed to
19 indicate that the focus was to be on only those areas to be
20 associated with the high level waste, not thinking of it as
21 a holistic effort.

22 What authority are you using for that holistic
23 effort, the legal authority?

24 MS. MAZUROWSKI: The only legal authority we have
25 is the West Valley Demonstration Project Act. It just makes

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1 good sense to treat the site holistically and to determine
2 D&D; criteria for the whole site for project completion.

3 COMMISSIONER MERRIFIELD: But if the legislative
4 language, Congress' decision on this, indicated that it only
5 wanted you to look at the high level waste and not look at
6 it holistically, what other legal authority are you using
7 for that basis? I mean, it's not in the Act.

8 MS. MAZUROWSKI: Right. DOE only has authority
9 under the Act.

10 COMMISSIONER MERRIFIELD: So you're saying you're
11 acting inconsistent with the Act then.

12 MS. MAZUROWSKI: No.

13 MR. TURI: Let me ask that question of Barbara. I
14 think what we're doing is looking at future land use and as
15 Barbara is saying, we're looking holistically and we have
16 cooperating agencies with New York State. So the different
17 agencies, Federal and state agencies are cooperating to look
18 holistically at all the different parts to make sure we
19 don't make a decision and one part of the site is
20 inconsistent with decisions on other parts of the site, that
21 it all meshes together in some fashion.

22 It doesn't speak to who is financially responsible
23 or accountable for carrying out those particular elements.
24 Barbara, does that sound right?

25 MS. MAZUROWSKI: Yes, that is right.

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1 COMMISSIONER MCGAFFIGAN: If I might also try to
2 -- from what I know of NEPA and some of the precedents and
3 legal cases, NEPA tends to drive people to treat sites
4 holistically. So it may be prudent under NEPA, as long as
5 they preserve their legal responsibilities, to treat the
6 site holistically. They may be even driven to it by NEPA.

7 COMMISSIONER MERRIFIELD: No. I understand. The
8 reason I'm going down this line of questioning and thought
9 is we're going to hear from other folks today who are urging
10 us to go broader, to do more, to require more of DOE and the
11 state.

12 My reading of the Act is that we are limited in
13 what we can do here, because of the authority that Congress
14 has given us to -- while it's interesting to look at this in
15 the context of NEPA, the legal authority to require, to go
16 beyond the actual addressing of the high level waste is --
17 may not be there.

18 MR. DENNISON: If I may, I was just going to say
19 -- and I agree with you, Commissioner. We certainly
20 recognize we have particular responsibilities and
21 obligations under the West Valley Demonstration Act, as does
22 the State of New York, as does the NRC.

23 NEPA, as you suggested, does require that agencies
24 with an environmental review obligation under that statute
25 look at the reasonably foreseeable connected actions. We,

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1 in New York, recognize that we each have responsibilities at
2 this site. We have our decisions to make, they have their
3 decisions to make. There are areas to be negotiated. We
4 think it serves all of our interests and the public interest
5 if we try to work cooperatively to look at the big picture.

6 CHAIRMAN JACKSON: Right. But the Act says, aside
7 from the part that was highlighted, it says this Act shall
8 not apply or be extended to any facility or property at the
9 center which is not used in conducting the project. This
10 Act may not be construed to expand or diminish the rights of
11 the Federal Government.

12 So we kind of skipped a sentence there between
13 that and your last sentence. So it takes me back to the
14 Commissioner's fundamental question in terms of whether, in
15 making this expansion -- and I'm not dealing with the fact
16 of the logic of it. It really has to do with the process in
17 terms of how one is going about deciding what's in and
18 what's out and what you do about those things that really
19 are out, that it does say that it may not be construed to
20 expand or diminish -- though we're talking expansion at the
21 moment -- the rights of the Federal Government.

22 So I'm kind of confused in terms of how we work
23 our way through this process to where we are. Help me out

24 lawyer Commissioner.

25 COMMISSIONER MERRIFIELD: I think the Chairman is

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1 making a very good interpretation, which I concur with.

2 MS. MAZUROWSKI: I don't mean to confuse. We are
3 limited by what our authority is under the Act. However, we
4 believe that a holistic approach is necessary. So it is
5 more of the rationale and, of course, we're in a joint EIS
6 process with the State of New York and we've incorporated
7 our citizens in that process.

8 COMMISSIONER MCGAFFIGAN: One of the interesting
9 things we're going to get to in a couple charts is we've
10 been focused on the 200 acres, which is where most of the
11 problem is, presumably, but I'm only now understanding that
12 this Nuclear Service Center -- what does NSC stand for, West
13 New York NSC -- is actually 3,345 acres.

14 So there's lots of land around this core area
15 that's remained in New York State ERDA's hands.

16 MS. MAZUROWSKI: Right, that we have not used.
17 Absolutely. Yes. We have not used. We have only used that
18 portion which was required for completion of the project and
19 to treat the high level waste.

20 COMMISSIONER MCGAFFIGAN: And just as a factual
21 matter, was the whole site, this whole -- how much of the
22 site was licensed by us before the license was put in
23 abeyance? Was it just the 200 acres or was it this whole
24 3,345-acre site?

25 CHAIRMAN JACKSON: Maybe our staff should answer

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1 that. John?

2 DR. GREEVES: I asked this same question before
3 the meeting. Keep in mind, this was done back in the '60s,
4 but the answer I have so far is it's the 200 acres. If
5 there is a further answer, we will provide it for the
6 record.

7 CHAIRMAN JACKSON: Okay. Thank you. Okay. Let's
8 go on.

9 MS. MAZUROWSKI: As required by the Act, DOE --

10 CHAIRMAN JACKSON: Let's just note for the record
11 that there is a sentence in between those two on your slide
12 that talks about DOE limitations.

13 MS. MAZUROWSKI: Thank you. As required by the
14 Act, DOE entered into a cooperative agreement with New York
15 State in 1981. The purpose of the cooperative agreement was
16 to define DOE and New York State Energy Research and
17 Development Authority roles and responsibilities with
18 respect to the facilities at the Western New York Nuclear
19 Service Center.

20 The cooperative agreement divided the center into
21 two major categories; project facilities and retained
22 premises. Project facilities were placed under the
23 exclusive possession and control of DOE for the duration of
24 the project.

25 Project facilities, for example, include the

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1 former nuclear fuel service reprocessing building, the high
2 level waste tanks and low level waste water treatment
3 facility. DOE has overall management responsibilities for
4 certain other areas, such as Nuclear Regulatory Commission
5 licensed disposal area, although the cooperative agreement
6 specifically exempts DOE from having decommissioning
7 responsibility for pre-project waste buried there.

8 In addition, DOE has no operation or
9 decommissioning responsibility for the state licensed

10 disposal area. The 3,300 acres make up the retained
11 premises under continuing control of NYSERDA.

12 In addition to categorizing facilities, the
13 cooperative agreement also discusses the activities
14 necessary for project completion. Consistent with the West
15 Valley Demonstration Project Act, the cooperative agreement
16 states that DOE is responsible for decommissioning project
17 facilities in accordance with such requirements as the
18 Commission may prescribe.

19 CHAIRMAN JACKSON: There's that gremlin again.

20 MS. MAZUROWSKI: Right. Also, DOE is required to
21 provide licensing assistance so that operation and control
22 of the entire site can be returned to New York State.

23 I would now like to provide you with a brief
24 overview of the West Valley site, followed by a discussion
25 of major project and non-project facilities.

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1 The Western New York Nuclear Service Center, which
2 is owned by New York State, is located in a rural area
3 approximately 35 miles south of Buffalo, New York. The West
4 Valley Demonstration Project is located on 200 acres and
5 represents the developed portion of the center.

6 There are two major geographic areas of the
7 project, the north plateau and the south plateau. On the
8 north plateau, you can see the former reprocessing facility,
9 the newly constructed vitrification facility, and the area
10 where the high level waste tanks are located. The north
11 plateau also holds project low level waste storage areas and
12 the low level waste water treatment facility and lagoon
13 system.

14 There is contaminated ground water plume in this
15 area, originating beneath the reprocessing building, that
16 began during Nuclear Fuel Service operations in the 1970s,
17 prior to DOE's project.

18 CHAIRMAN JACKSON: What contamination poses the
19 greatest, the most significant risk to the public and to the
20 environment?

21 MS. MAZUROWSKI: The most significant risk that
22 was posed was the high level waste, that was the 600,000
23 gallons in the tanks underground. That has been a very,
24 very successful part of the project, in that DOE has been
25 able to stabilize the high level waste into a stable glass

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1 form, vitrification process.

2 CHAIRMAN JACKSON: Does the plume and all extend
3 to the boundary of the site?

4 MS. MAZUROWSKI: No. It does not extend to the
5 boundary of the site.

6 COMMISSIONER DICUS: Boundary of the project or
7 boundary of the entire 3,000 acres?

8 MS. MAZUROWSKI: It does not extend to the
9 boundary of the project nor the site. DOE has been involved
10 in a pump-and-treat operation that prevents the plume from
11 extending to the site. It's a mitigation process. DOE does
12 not believe it has any long-term responsibilities for the
13 plume since it was a pre-project waste event.

14 CHAIRMAN JACKSON: The Seneca Nation of Indians
15 has expressed a concern regarding the environmental
16 contamination, including ground water contamination. Are
17 they, as far as you know, referring to a particular existing
18 situation of ground water contamination by operations at
19 West Valley and, if so, is it related to the Demonstration
20 Project and are you addressing it in the EIS?

21 MS. MAZUROWSKI: The Seneca Nation of Indians and
22 the local community has been concerned over the plume. The
23 plume does not present any hazard or safety hazard to the
24 environment or to the community.

25 However, there is a concern by the citizens and

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1 other stakeholders that in some way the ground water may
2 become contaminated. DOE does not believe that that is in
3 danger of happening.

4 COMMISSIONER MCGAFFIGAN: Could I ask a question?
5 You said that once you leave, though, it's New York State
6 ERDA's responsibility to deal with the plume.

7 MS. MAZUROWSKI: Yes.

8 COMMISSIONER MCGAFFIGAN: Okay. And I guess New
9 York State ERDA isn't testifying yet, but they will be
10 shortly. So you're at the table, I'll ask you, do you
11 understand that is your responsibility?

12 MR. BRODIE: We do not agree with that statement,
13 no.

14 COMMISSIONER MCGAFFIGAN: Okay.

15 CHAIRMAN JACKSON: Do go on.

16 MS. MAZUROWSKI: The south plateau area includes
17 the two burial grounds, along with the drum cell that
18 contains cemented waste from high level waste pre-treatment.
19 The first burial ground is the five-acre Nuclear Regulatory
20 Commission licensed disposal area, which contains high
21 activity waste disposed by NFS during reprocessing
22 operations, along with low activity waste buried during the
23 early days of the project.

24 Approximately 99 percent of the activity in this
25 unit resulted from pre-project disposal. Pre-project

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1 burials include leached fuel house fuel assembly hardware, a
2 fuel assembly and various types of failed equipment,
3 contaminated soils, and treatment and processing media, such
4 as filters and resins. The entire NDA is estimated to
5 contain approximately 390,000 cubic feet of waste.

6 The second burial ground, which is not part of the
7 project, is the adjacent state licensed disposal area. This
8 unit was a commercial disposal facility licensed by the
9 State of New York that received a variety of waste from over
10 200 different generators. This 15-acre unit is estimated to
11 contain more than 2.2 million cubic feet of waste.

12 Also, on the south plateau are non-project
13 facilities, including the state licensed disposal area and
14 the pre-project portion of the NDA.

15 CHAIRMAN JACKSON: Let me ask you this. DOE
16 refers to an analysis of impacts and risks of potential
17 disposition modes for the tanks and other facilities at the
18 center. Is this analysis part of the EIS?

19 MS. MAZUROWSKI: There has been analysis done that
20 was in the draft EIS. Since that time, we have done further
21 re-engineering of those areas, the tanks and the process
22 building, and our new engineering analysis has a much better
23 performance assessment that will also be put out in the
24 supplement.

25 CHAIRMAN JACKSON: So it will be put out as a

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1 supplement to the EIS.

2 MS. MAZUROWSKI: Yes, it will be.

3 CHAIRMAN JACKSON: And is the site status report
4 basically a completion report of the Demonstration Project
5 or is it a more robust analysis relative -- or will it be, I
6 should say, because it supposedly relating to the NRC's

7 requirements, which we haven't quite promulgated.

8 MS. MAZUROWSKI: The site status report will
9 include the whole site. Is that the question?

10 CHAIRMAN JACKSON: That wasn't quite, but that's a
11 good answer.

12 COMMISSIONER McGAFFIGAN: Could I ask this
13 question? Maybe it's more for Mr. Turi. Are the practices
14 that Nuclear Fuel Services, in operating this plant up to
15 '72, which seem extraordinary from today's perspective, was
16 this what the AEC, the regulator at the time, was itself
17 doing at its own facilities and is this site and the
18 practices carried out there that were tolerated by the
19 regulator and the state regulator, are they what happened at
20 Savannah River and other DOE sites, more or less? I mean,
21 high level waste buried in the ground, et cetera.

22 MR. TURI: No. The West Valley site was regulated
23 by the regulatory side of the AEC during those early phases.
24 We do have some very highly contaminated areas at many of
25 our sites associated with previous practices that we're not

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1 particularly proud of. So we do have high levels of
2 contamination.

3 COMMISSIONER McGAFFIGAN: If we look at the two
4 sites, Hanford and Savannah River are the two sites that are
5 not analogous, they had reactors, they had reprocessing, et
6 cetera, we'll find stuff like this.

7 MR. TURI: Some of it. I'm not aware of any fuel,
8 for example, that's been disposed of in the ground. There
9 may be and I'm just not familiar enough.

10 CHAIRMAN JACKSON: Where, at Savannah River?

11 MR. TURI: Or Hanford. I'm just not familiar
12 enough with those sites, but to the best of my recollection,
13 that is not the case.

14 CHAIRMAN JACKSON: Well, having just visited
15 Savannah River, I don't believe there's any underground
16 disposition in these --

17 COMMISSIONER McGAFFIGAN: So the regulatory
18 actually tolerated behavior at this site that was worse than
19 they were themselves carrying out at sites we're not proud
20 of.

21 MR. TURI: I don't know if I'd want to go that
22 far, because I don't have the information. I don't want to
23 speculate on that.

24 MS. MAZUROWSKI: In addition to establishing the
25 cooperative agreement with New York, the Act also required

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1 the Department to establish an agreement with the Nuclear
2 Regulatory Commission. As a result, the memorandum of
3 understanding between the Department and the Commission was
4 completed in 1981.

5 The purpose of the MOU is to define the working
6 arrangement between DOE and the Commission for the various
7 phases of the project. Section 4 of the MOU clearly
8 discusses the stepped sequence of activities and agency
9 responsibilities necessary for D&D; of the project.

10 First, Section 4 requires DOE to perform an
11 analysis of the impacts and risks associated with
12 dispositioning project facilities. Second, once the
13 Commission receives the analysis, they are then required to
14 prescribe decommissioning criteria.

15 The process in the Commission paper is consistent
16 with that defined in the MOU.

17 DOE and the New York State Energy Research and

18 Development Authority will complete an environmental impact
19 statement and once the Commission reviews the EIS, the
20 Commission will then prescribe the decommissioning criteria.
21 Third, after the environmental impact statement
22 has been completed and the Commission has prescribed
23 decommissioning criteria, DOE is required to prepare a
24 decommissioning plan. This plan will be reviewed and
25 commented on by the Commission.

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1 And, finally, after the commissioning phase is
2 complete, DOE is required to prepare a site status report
3 describing in detail the condition of the site at the
4 completion of the project and the site status report would
5 serve as a basis for further licensing action, as described
6 in the cooperative agreement with New York State.

7 COMMISSIONER MCGAFFIGAN: You don't have a slide
8 on this, but I'd like to ask. How is this impacted or -- I
9 know it stays -- it's in effect, but by the 1988 agreement
10 with the West Valley Coalition and the Radioactive Waste
11 Campaign, under which, up to that point, I guess, you
12 weren't planning to do an EIS, right? Could you describe
13 the 1988 consent agreement, after you were brought to court
14 and what obligations that legally brings on you?

15 Because it's somewhat -- you know, the EIS is not
16 used on this slide and, yet, of course, we're doing one.

17 MS. MAZUROWSKI: I can't -- I don't have those
18 facts in front of me right now and my memory doesn't serve
19 me.

20 It's my recollection that we agreed to complete an
21 EIS, because we were putting -- we were storing -- and I may
22 need some help from my staff. We were storing the cement
23 drums on site and the citizens were afraid that this was a
24 disposal and so we agreed to do an EIS for project
25 completion when it -- at that time in the project, as would

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1 allow for us to determine what the project completion
2 forecast would be for the site.

3 Elizabeth, would you comment?

4 MS. LOWES: I think that's basically correct. A
5 major basis for that lawsuit was related to the drum cell
6 which was designed as a tumulus facility that could be
7 converted into a disposal cell. The Coalition -- an EA was
8 done for that facility and the Coalition had concerns about
9 the need to do an EIS for disposal, and it was settled out
10 of court, with the settlement agreement you're referring to,
11 and DOE agreed to do an EIS before disposing of any waste on
12 site.

13 We agreed to some other things, as well.

14 COMMISSIONER MCGAFFIGAN: But in some sense, that
15 EIS grew into the holistic EIS that we're talking -- that
16 we're considering today and have been drafting for several
17 years. Is that right?

18 MS. LOWES: My suspicion is that -- and I wasn't
19 around in those days, but the first EIS done for the
20 vitrification portion of the project, I think there was
21 probably a recognition that we couldn't do a holistic EIS on
22 the whole project at that point. So they decided to do an
23 EIS to cover solidification of the high level waste and then
24 at some point in the future, you know, an acknowledgment
25 that we'd have NEPA obligations for the D&D, as well. So we

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1 put it all together in one EIS.

2 COMMISSIONER MCGAFFIGAN: Just a thought. Is this
3 project decommissioning plan effectively the EIS now or are

4 you working on a separate document that is called a project
5 decommissioning plan and the site status report you would
6 presumably do in 2010 or whatever year you give up the site.

7 MS. MAZUROWSKI: Right.

8 COMMISSIONER MCGAFFIGAN: But is there a separate
9 document from the EIS entitled project decommissioning plan
10 that exists or is contemplated?

11 MS. MAZUROWSKI: No.

12 COMMISSIONER MCGAFFIGAN: Okay. So the EIS is
13 effectively substituted --

14 MS. MAZUROWSKI: Yes.

15 COMMISSIONER MCGAFFIGAN: -- for the project
16 decommissioning plan.

17 MS. MAZUROWSKI: Yes, it is.

18 MR. TURI: When we drafted the MOU with NRC back
19 in the early '80s, we weren't really sure how it was going
20 to play out. But in working with Lee Raus and I think
21 Charlie Hawney, who is still with the Commission, and Tom
22 Clark, we thought this was a reasonable set of documents to
23 prepare and we didn't think about NEPA and a lot of other
24 things at that time.

25 COMMISSIONER MCGAFFIGAN: Is there any need for

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1 this MOU to be updated to get the current terms and the
2 current state of play in it? I mean, just factually update
3 it without any change in obligation.

4 MR. TURI: I'd say from the DOE side, we kind of
5 feel it provides sufficient framework for the NRC/DOE
6 interactions. It doesn't prohibit other documents being
7 prepared, and so I think we can continue under the same
8 framework for DOE.

9 MS. LOWES: I just wanted to make one correction.
10 I believe what we plan to do is have a decommissioning plan
11 following issuance of D&D criteria by the Commission, and
12 then we would prepare a decommissioning plan.

13 So Barbara is correct. We don't have a separate
14 plan right now.

15 COMMISSIONER MCGAFFIGAN: But you will have one.

16 MS. LOWES: But we would prepare one following
17 receipt of the decommissioning criteria.

18 CHAIRMAN JACKSON: Just a point of clarification.
19 If you're doing this analysis of impacts and risks of
20 potential disposition modes for the tanks and other
21 facilities, I mean, against what are you making judgments
22 about impacts and risks? What do you work off of, if there
23 are no criteria requirements for you to work off of?

24 MS. MAZUROWSKI: We have been working against the
25 NRC's license termination rule.

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1 CHAIRMAN JACKSON: Except that in point of fact,
2 as Mr. Greeves told us, the proposed criteria may go beyond
3 the license termination criteria. Is that correct?

4 MS. MAZUROWSKI: From DOE's perspective, our goal
5 is to meet the license termination rule, to the greatest
6 extent we can. Our goal is to remove as much waste from the
7 site as possible to reduce the site footprint.

8 Any areas which would have to be remained, we
9 would then need to go to the institutional control option
10 and that's where DOE stands.

11 MR. TURI: I think that's why it's probably timely
12 for the Commission to allow it, to go ahead and proceed on
13 the criteria, because it allows us to, in a supplemental
14 draft EIS, to evaluate our cleanup possibilities against a

15 criteria. And a year from now, we, the staff and
16 yourselves, New York State Citizens Task Force, will be able
17 to see our progress against the criteria.

18 So the criteria coming out now is very timely.

19 CHAIRMAN JACKSON: So, in fact, you know, this
20 takes us back to our earlier discussion, that perhaps the
21 NRC needs to promulgate its criteria, do whatever EIS it
22 needs to do in order to do that, particularly where the
23 criteria that will at least putitively come into play go
24 beyond the license termination rule criteria.

25 COMMISSIONER MERRIFIELD: If we need to do an EIS.

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1 CHAIRMAN JACKSON: If we do one.

2 COMMISSIONER MERRIFIELD: We may not need to.

3 CHAIRMAN JACKSON: Right. That's right. But even
4 so, there still is this question of promulgating the
5 criteria.

6 MS. MAZUROWSKI: In another moment, I will go over
7 the process, as we understand it, and perhaps --

8 CHAIRMAN JACKSON: Good. That will help us
9 understand it.

10 COMMISSIONER McGAFFIGAN: Madam Chairman, the one
11 thing about the staff, in the proposal, as I understand it,
12 it's melded in the sense that we have license termination
13 rule, we have a waste finding that we've made, and we also
14 look to Part 61.

15 But in some sense, this is a complex site with all
16 of those aspects to it. So it's -- I think what the staff
17 is essentially saying is we would apply the rules that we've
18 established for the type of facilities that exist.

19 CHAIRMAN JACKSON: No, no, no. I don't think they
20 disagree.

21 COMMISSIONER McGAFFIGAN: They all contemplate
22 nothing more than 500 millirems if institutional controls
23 fail.

24 CHAIRMAN JACKSON: We don't disagree with that.
25 It really has to do with the fact that we're drawing on the

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1 license termination rule criteria in some places, incidental
2 waste criteria. There's the question of what kind of
3 long-term institutional controls.

4 So I think it's promulgating, it's propagating us
5 back to these three options that we've asked the staff to
6 send the supplemental paper on in terms of when those
7 criteria should be promulgated.

8 COMMISSIONER McGAFFIGAN: One of the surprising
9 things I find in the DOE analysis is that they can, to a
10 decimal point, after the billion dollar, guesstimate what
11 the cost is for achieving, if they did it today, \$8.9
12 billion would get you to --

13 CHAIRMAN JACKSON: The problem is that DOE is to
14 the left of the decimal point most of the time and we are to
15 the right of the decimal point. And so the decimal point is
16 battered.

17 COMMISSIONER McGAFFIGAN: But it's a remarkable
18 thing to be able to guesstimate to that precision how one
19 would get to 500 millirems when you start with a site where
20 today there are hundreds of thousands of rem, if
21 institutional controls aren't there. So I commend DOE.

22 CHAIRMAN JACKSON: Okay. Why don't you go on?

23 MS. MAZUROWSKI: I'll continue. The Commission's
24 paper, prepared by the NRC staff, is consistent with the
25 intent of the West Valley Demonstration Project Act and with

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1 the subsequent decontamination/decommissioning process
2 identified in the MOU, as well as other project completion
3 documents that were prepared almost two decades ago.

4 To explain further, I'd like to quickly go over a
5 figure that illustrates the major steps envisioned for
6 completing the West Valley Demonstration Project.

7 This figure is based on the information contained
8 in the Act, the cooperative agreement, the MOU, and the
9 Commission paper. From left to right are the major
10 activities necessary for project completion. Activities
11 above the shaded line represent DOE activities and
12 activities below the line are Commission activities.

13 CHAIRMAN JACKSON: At what points on this flow
14 diagram are the public and other stakeholders involved?
15 Where do they specifically have input?

16 MS. MAZUROWSKI: The stakeholders have input
17 throughout the project. We hold quarterly meetings.

18 CHAIRMAN JACKSON: I understand, but I'm just
19 talking about in terms of this particular, this completion.

20 MS. MAZUROWSKI: The stakeholders have been asked
21 to comment on the draft EIS and there was a six-month
22 comment period on that draft EIS.

23 The Citizens Task Force was formed and they gave
24 DOE and NYSERDA recommendations as to what they would like
25 to see in the preferred alternative and what their major

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1 objectives are for project completion.

2 So then when a supplement is issued, there will
3 again be a comment period to allow the public to comment on
4 that, and so they have been involved in -- from the
5 beginning of the DEIS process.

6 CHAIRMAN JACKSON: And what's the overall time
7 line here?

8 MS. MAZUROWSKI: That's very difficult to say. We
9 would -- the DOE would like to issue -- to have a preferred
10 alternative sometime this year. Of course, we need to work
11 with the State of New York to resolve our differences and to
12 prepare a preferred alternative.

13 And after a preferred alternative is agreed upon,
14 we would like to issue the supplement and then have a record
15 of decision in the year 2000. That's DOE's time line.

16 COMMISSIONER MCGAFFIGAN: And if we follow that,
17 Madam Chairman, then we're supposed to be finalizing our D&D;
18 criteria in the year 2000 and if, pursuant to the previous
19 conversation, we're supposed to do such by rule-making, then
20 we probably had best get on with it or else we'll -- what
21 isn't clear from down below here, it looks like DOE doesn't
22 envision a rule-making process for us in finalizing these
23 D&D; criteria.

24 We would just use something other than a formal
25 rule-making to make our views known at the end of this

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1 process as to what the criteria are and I'm not a lawyer, so
2 I'll look to the lawyers at the end of the table as to
3 whether there's any problem in the implied DOE approach,
4 that we wouldn't do it by rule-making, we would just do it
5 by fiat or something, after having seen all the comments.

6 CHAIRMAN JACKSON: Karen?

7 COMMISSIONER MCGAFFIGAN: I'm looking.

8 MS. CYR: The Act is very unclear on that. I
9 mean, it says such criteria requirements as the Commission
10 may prescribe. As I indicated earlier, normally when an
11 agency takes some action and tries to propound it, it does

12 it either by rule-making or adjudication.
13 The question is whether something short of that,
14 such as a policy statement, would be acceptable in this
15 circumstance, where we're prescribing criteria which the DOE
16 is to be, in a sense, sort of the final arbiter against.
17 So it's not requirements in the same sense as we
18 often do with respect to licensing a facility. I mean, it's
19 a different relationship, which the statute has set up in
20 this context, a more informal relationship, if you will,
21 than what we would have with the licensee.
22 So the question would be whether some kind of a
23 policy statement might be -- I mean, our initial read was
24 that we would probably need to do something like a
25 rule-making, but we can go back and examine whether

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1 something short of that might still be acceptable.
2 CHAIRMAN JACKSON: Right. But this plays into,
3 though, the question of long-term control and the staff is
4 talking about potential long-term licensee, and, therefore,
5 it propagates things back into the land of licenses and
6 licensees, and, therefore, to me, it plays into this
7 question of the rule-making again, because in a certain
8 sense, we're kind of in a sense of suspended animation with
9 respect to the West Valley Demonstration Project Act.
10 But once we are out of that mode, we are back into
11 licensee land.
12 COMMISSIONER MCGAFFIGAN: And that happens about
13 2010. Just to follow up on the Chairman's point, I guess,
14 from Mr. Turi's point earlier, this licensing action, return
15 of the site to New York State ERDA, comes back into our
16 normal NRC space around 2010.

17 CHAIRMAN JACKSON: Right.
18 COMMISSIONER MCGAFFIGAN: Having done
19 decommissioning operations and preparing this license
20 submittal over this period in the interim.
21 So it's very complex, because you have to do
22 whatever you're going to do in 2000 time-frame, with a view
23 to the site coming back into normal NRC licensing space in
24 the year 2010, approximately, or thereafter, depending on
25 how extensive the cleanup is prior to giving it -- putting

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1 the license back into effect.
2 MR. DENNISON: May I just say, I wouldn't want to
3 leave you with the impression that this slide was intended
4 to suggest a DOE view one way or the other, whether you do a
5 rule-making. That's the Commission's judgment to make,
6 obviously.

7 CHAIRMAN JACKSON: Okay. I understand.
8 MS. MAZUROWSKI: As stated in the MOU, DOE must
9 perform an assessment of the environmental impacts
10 associated with dispositioning project facilities. This
11 analysis, which will include the preferred alternative and
12 draft D&D; criteria, is the supplement to the draft
13 environmental impact statement.

14 Again, according to the MOU, the Commission will
15 review the analysis and then prescribe final decommissioning
16 criteria.

17 The approach in the Commission paper is consistent
18 with these initial steps and DOE supports the sequence of
19 events. After the decommissioning criteria are finalized,
20 DOE is then required to prepare a decommissioning plan. The
21 MOU requires the Commission to review the decommissioning
22 plan and comment on it before it's finalized.

23 Once decommissioning operations are complete, the

24 MOU requires DOE to prepare a site status report to document
25 the condition of the project premises and support future

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1 licensing action.

2 The cooperative agreement between New York State
3 and DOE requires DOE to provide technical assistance to
4 NYSERDA in preparing license submittal. The license
5 submittal will form the basis for subsequent regulatory
6 action that will disposition the license currently in
7 abeyance.

8 After the regulatory approvals of the proposed
9 license amendments, the cooperative agreement states the
10 project's complete and operational control of the entire
11 site reverts back to NYSERDA.

12 With respect to overall project completion
13 process, the majority of these steps were established when
14 the Act, MOU and cooperative agreement were written. The
15 Commission paper provides additional clarity on the
16 front-end of this process and has generally served to
17 reinforce an already existing project completion process.

18 Therefore, DOE supports the proposed Commission
19 approach, because it enables DOE to meet its obligations
20 under the West Valley Demonstration Project Act in a manner
21 that is protective of worker and public safety and safety of
22 the environment.

23 Public health and safety will be protected by
24 incorporating the license termination rule to the extent
25 feasible. For those facilities where it is not technically

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1 and economically feasible to meet the rule, DOE endorses the
2 use of an ongoing license as the means for ensuring that
3 durable institutional controls are established and
4 maintained.

5 The license termination release criteria for the
6 project facilities would be accomplished in two ways. The
7 first would be to remove the majority of contamination from
8 a particular area so that conditions for license termination
9 without restrictions can be met and the second would be to
10 decontaminate and stabilize a particular facility in place
11 so that conditions for license termination with restrictions
12 could be met.

13 In addition to recognizing the need for long-term
14 institutional controls, DOE supports the application of
15 incidental waste criteria. Although there is a need for
16 consistency in applying criteria for sites that have managed
17 high level waste, that criteria should also be flexible to
18 allow characteristics unique to each high level waste site
19 or facility to be factored into the incidental waste
20 determination.

21 For this reason, DOE believes the
22 performance-based approach provided in 10 CFR 61.58 is the
23 most appropriate method for West Valley to make incidental
24 waste determinations for high level waste facility closure.

25 I'd like to close by summarizing the major points

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1 DOE request the Commission --

2 CHAIRMAN JACKSON: Let me ask a question. Do you
3 think the criteria, these performance-based criteria in
4 61.58 ought to be used at Hanford, Savannah River and Idaho?

5 MS. MAZUROWSKI: I'm going to --

6 MR. TURI: Not knowing what we're doing at those
7 other sites, I'd be reluctant to answer that question at
8 this time.

9 CHAIRMAN JACKSON: Well, she was saying that we
10 should have flexibility and so our performance-based,
11 quote-unquote, criteria in 61.58 allows flexibility. So
12 there should be consistency of approach.

13 So would you endorse this approach applied, this
14 particular regulation at Hanford, Savannah River and Idaho?

15 MR. TURI: I guess, Madam Chairman, without
16 checking with my other staff, I would say yes, but I don't
17 know because I'm not familiar enough with the analysis
18 that's been done at Hanford and Savannah River. As a matter
19 of principal, Madam Chairman, I think the answer is yes.

20 CHAIRMAN JACKSON: Okay. And one other question.
21 You say you intend to take into account the recommendations
22 -- I'm flipping to your conclusions.

23 MS. MAZUROWSKI: Okay.

24 CHAIRMAN JACKSON: Of the Citizens Task Force and
25 other stakeholders. How do you intend to take into account

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1 those recommendations? What is the process?

2 MS. MAZUROWSKI: The process is since we have
3 already received their recommendations, we are incorporating
4 those recommendations into the development of a preferred
5 alternative.

6 CHAIRMAN JACKSON: Okay.

7 COMMISSIONER MCGAFFIGAN: If we're finishing up
8 with them, I have a couple questions.

9 CHAIRMAN JACKSON: Sure.

10 COMMISSIONER MCGAFFIGAN: Someone mentioned early
11 on, I think in passing, that the Act, and I meant to ask it
12 then, listed other agencies with which you were supposed to
13 cooperate and I think the Department of Transportation, EPA,
14 et cetera, were listed.

15 Is there anything that's formal? Have they
16 actually been involved in the West Valley Demonstration
17 Project, the other agencies that I think someone said were
18 listed in the Act?

19 MR. TURI: Yes, that was --

20 COMMISSIONER MCGAFFIGAN: I guess that was
21 Commissioner Merrifield. Or has it largely been just us
22 involved with you all? Do you know?

23 MR. TURI: I think the NRC has been the dominant
24 agency. I think Department of Transportation was included,
25 to my recollection, because the transportation of the high

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1 level waste to a repository. So going back 18 years, people
2 figured that DOT was going to be involved in that in some
3 way, shape, manner, and they weren't really sure.

4 We have had some EPA visits to the site.

5 MS. MAZUROWSKI: Yes. We do have EPA regulatory
6 visits to the site.

7 COMMISSIONER MCGAFFIGAN: But it isn't a
8 formalized MOU type of arrangement of anything like that.

9 MS. MAZUROWSKI: No, there is not.

10 COMMISSIONER MCGAFFIGAN: Okay. This true waste
11 issue and how true waste is defined, I guess there's a ten
12 nano curie per gram versus 100 nano curie per gram issue
13 that this process is supposed to come to resolution on and
14 there were some reports.

15 There was a process set up that was held in
16 abeyance and now this process is being used to solve that.
17 Could you just tell me a bit about how the true waste issue
18 is supposed to play out?

19 WIPP can have Defense true waste, but in some
20 part, this waste you could say was Defense because it's from

21 Hanford, one of the Hanford reactors, if there is any.
22 But if you, through this process, determine that
23 there is some transuranic waste under whatever
24 classification we define existent on the site, what do you
25 do with it? Because WIPP, by statute, can't receive stuff

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1 that isn't from the defense sector.

2 MR. TURI: Commissioner, our plans right now are
3 to have the transuranic waste and high level waste remain on
4 site until some alternate facilities are established. So
5 that would be our plans today. Barbara, is there anything
6 else you want to add?

7 MS. MAZUROWSKI: That is how we are currently --

8 COMMISSIONER McGAFFIGAN: Earlier, I thought we
9 heard that the vitrified high level waste would go off site
10 at some point, but not until there's some place to put it.
11 Does that mean that when this -- let's say we're at 2010 and
12 you've done whatever decommissioning you have and you have
13 the vitrified glass there, presumably in containers that
14 look like containers in which spent nuclear fuel is
15 contained; indeed, probably they're NRC licensed containers,
16 I'd imagine.

17 Do we -- it's a complex license that we have at
18 this site at that point, because we still have a lot of
19 stuff left at the site. Is that -- am I understanding that
20 right? Does this stuff -- if Yucca Mountain ever opens,
21 does this stuff have any priority in terms of when it would
22 get into Yucca Mountain?

23 MR. TURI: New York State has not signed a
24 contract with the Department of Energy for disposal of its
25 high level waste.

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1 COMMISSIONER McGAFFIGAN: Does it thereby avoid
2 fees?

3 MR. TURI: You'd have to ask New York State that
4 question.

5 COMMISSIONER McGAFFIGAN: Okay.

6 COMMISSIONER MERRIFIELD: I have two very brief
7 questions.

8 CHAIRMAN JACKSON: Please.

9 COMMISSIONER MERRIFIELD: One of the pieces that
10 we had here was a demonstration of the ground water plume,
11 which I presume is predominantly strontium-90. Are there
12 any indications that any of that plume is resultant from the
13 high level waste tanks at the site?

14 MS. MAZUROWSKI: No. That plume is a result of a
15 pre-project presence on site.

16 COMMISSIONER MERRIFIELD: Pre-project presence on
17 site.

18 MS. MAZUROWSKI: Yes.

19 COMMISSIONER MERRIFIELD: Is it your
20 interpretation -- and there may be some disagreement here.
21 Is it your interpretation that there is an obligation on the
22 part of the Department of Energy to address that plume in
23 the context of this action?

24 MS. MAZUROWSKI: The Department does not feel it
25 is their obligation under the Act to have any long-term care

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1 of that plume. As our presence on site, because we have
2 operational control, we are protective of the environment
3 and so we have done treatment which mitigates the progress
4 of that plume.

5 COMMISSIONER MERRIFIELD: Thank you.

6 CHAIRMAN JACKSON: There is this issue of on site
7 disposal of liquid, of waste removed from the high level
8 waste tanks, and there was a proposal -- and this is the
9 paper that has to do with this blending of criteria -- that
10 there were some criteria for incidental wastes that were
11 laid out in a letter from Mr. Bernero, when he was here at
12 NRC, to John Lisle at DOE, and that, in fact, the
13 performance objectives laid out in Part 61 would refer to
14 waste other than this waste.

15 So when you say that 10 CFR 61.58 should be used
16 to classify residual wastes, you mean residual, but not
17 including this waste from these high level waste tanks.

18 MS. MAZUROWSKI: Yes, that's correct. The
19 facilities where the incidental waste criteria would be
20 applied address stabilizing in place those facilities, not
21 classification of a waste form for disposal.

22 We believe Part 58 is more appropriate to
23 demonstrate compliance with Part 61 performance objectives,
24 because what we're really talking about here is highly
25 contaminated equipment and debris.

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1 CHAIRMAN JACKSON: Right. So tell me about the
2 liquid waste. What is your position?

3 MS. MAZUROWSKI: The liquid waste has been
4 stabilized into the glass canisters on site and we are
5 currently removing any heels that are in the tank. Whatever
6 remains in the tank would --

7 CHAIRMAN JACKSON: Yes, that's what I'm talking
8 about.

9 MS. MAZUROWSKI: There would be less than three
10 percent.

11 CHAIRMAN JACKSON: But what are you proposing be
12 the criteria for that stabilization in place?

13 MS. MAZUROWSKI: The Part 58.

14 CHAIRMAN JACKSON: Again, 61.58.

15 MS. MAZUROWSKI: Yes.

16 CHAIRMAN JACKSON: Not any criteria laid out in a
17 letter from one individual to another.

18 MS. MAZUROWSKI: Well, it's my understanding that
19 the letter -- that we have gotten written direction from the
20 NRC in the task plan and in the letter that I believe you're
21 referring to, Madam Chairman. That was issued in 1992 and
22 DOE was told to use 61.58 to determine near surface
23 disposal.

24 CHAIRMAN JACKSON: Okay. Fine. Anything else?

25 MS. MAZUROWSKI: Unless you have any other

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1 questions.

2 CHAIRMAN JACKSON: Let's hear from the New York
3 State Energy Research and --

4 MS. MAZUROWSKI: Thank you very much.

5 CHAIRMAN JACKSON: Don't disappear. Stick around.

6 MS. MAZUROWSKI: Okay.

7 DR. PICIULO: Thank you and good morning. If I
8 could have the first slide up, please, just so I can see my
9 name on the screen.

10 I'm Paul Piciulo. I'm the Program Director for
11 NYSERDA's West Valley Site Management Program. With me this
12 morning is Mr. Hal Brodie, our Deputy Counsel, from our
13 offices in Albany.

14 MR. BRODIE: Good morning, Commissioners.

15 MR. PICIULO: Hopefully, we'll be able to respond
16 to all the questions that I'm sure there will be throughout
17 the morning.

18 First, on behalf of NYSERDA, I --
19 CHAIRMAN JACKSON: I don't know where you'd get
20 that impression.
21 MR. PICIULO: Because I just don't think that all
22 your questions have been answered yet.
23 MR. BRODIE: It's what we call a hot bench.
24 MR. PICIULO: On behalf of NYSERDA, I want to
25 thank you for granting our request to allow stakeholders

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1 this opportunity to comment on the proposed decommissioning
2 criteria for West Valley. I would echo John Greeves'
3 comment, that I think this is a very beneficial process to
4 all the agencies involved.
5 In my remarks this morning, I will summarize the
6 comments that NYSERDA provided in our letter to Chairman
7 Jackson. Several of our comments address NRC's roles in
8 ensuring the Department of Energy fulfills its
9 responsibilities under the West Valley Demonstration Project
10 Act.

11 In order to place our comments in context, I would
12 first like to briefly review the history of the Federal
13 Government's involvement in creating the West Valley site,
14 and I know you've heard a fair amount already about the
15 history of the site.

16 If I could have the next slide, please.

17 As you know, NYSERDA holds title to the 3,300 acre
18 site known as the Western New York Nuclear Services Center.
19 The inset, and the viewgraph shows the center in green, the
20 West Valley Demonstration Project occupies approximately 200
21 acres, shown as the black area in the middle of the green.

22 The Department of Energy, as Barbara said, has
23 exclusive use and possession of the project premises and
24 facilities. This photograph simply shows the various
25 facilities and waste management areas at the site and

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1 Barbara did a very good job of pointing those various units
2 out.

3 I won't repeat that, other than to say that
4 directly adjacent to the project premises, shown in the
5 upper right-hand corner of the picture, it's kind of a gray
6 patch, as the SDA is covered with a synthetic geomembrane,
7 is the 15-acre shutdown low level radioactive waste disposal
8 facility known as the SDA.

9 NYSERDA is responsible for the management of the
10 SDA and the New York State Department of Environmental
11 Conservation and the New York State Department of Labor
12 permit and license our environmental monitoring and
13 maintenance activities of the SDA.

14 If I could have the next slide, please.

15 The Federal Government played a major role in
16 promoting, establishing and sustaining the reprocessing and
17 waste disposal activities at West Valley. In the 1950s and
18 '60s, the US Atomic Energy Commission strongly encouraged
19 the states and private companies to participate in its
20 program to commercialize the back end of the nuclear fuel
21 cycle.

22 The AEC made the technology and classified
23 information on Federal nuclear fuel available and it
24 guaranteed that it would provide spent fuel for the
25 reprocessing facility.

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1 By 1966, the only commercial nuclear fuel
2 reprocessing facility in our nation began operations. About

3 three-fourths of the 640 metric tons of spent fuel
4 reprocessed at West Valley came from the Federal Government.
5 High activity waste generated from the
6 reprocessing of the spent fuel were disposed of in what is
7 now referred to as the NRC licensed disposal area, or the
8 NDA.

9 The Atomic Energy Commission approved the
10 disposals, which included wastes from operations, obviously,
11 fuel house, and the ruptured spent fuel. Much of the waste
12 could be considered greater than class C waste today.

13 The state licensed disposal area opened and
14 operated between 1963 and 1975, received commercial waste,
15 but large portions of the waste disposed of in the SDA came
16 from the reprocessing facility and also from Federal
17 facilities around the country.

18 Reprocessing operations at West Valley stopped in
19 1972, when the plant was shut down for modifications, and in
20 1976, Nuclear Fuel Services, the then site operator,
21 notified the state and the NRC that it was withdrawing from
22 nuclear fuel reprocessing business.

23 Policies and incentives of the Atomic Energy
24 Commission created the West Valley site. Construction,
25 operation and waste disposal were conducted with AEC

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1 approval. However, changing Federal policies and
2 regulations ultimately led to the demise of the commercial
3 fuel reprocessing efforts.

4 Could I have the next slide, please?

5 In 1980, the Federal Government acknowledged its
6 responsibility for West Valley and addressed it, in part, by
7 passing the West Valley Demonstration Project Act.

8 COMMISSIONER MCGAFFIGAN: Could I ask a question?
9 In 1976, when Nuclear Fuel Services withdraws, is that the
10 point where New York State ERDA gets on the license or when
11 does New York State ERDA get on the license that exists
12 until '81, when it suspended or put in abeyance?

13 MR. PICIULO: I think the way the process went is
14 that NFS notified the state and NRC that it was going to
15 pull out. The Department of Energy took on a number of
16 studies in the late '70s to look at the site and what should
17 happen.

18 NYSERDA was always, I guess, identified as owner
19 on the license, but at the time of the Demonstration Project
20 Act, everything happened very quickly. The Demonstration
21 Project was started. The two conditions of the license were
22 then signed, which put the license in abeyance.

23 So there was no -- my point being that there was
24 no three or four year period that NYSERDA was the licensee.

25 COMMISSIONER MCGAFFIGAN: So you're saying that

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1 the legal situation, NYSERDA was the owner, but not the
2 operator. The operator walked away in '76 and there was
3 effectively no operator on the site for the --

4 MR. BRODIE: I will try and clarify that. We were
5 notified in 1976 that NFS was going to leave the
6 reprocessing business. NYSERDA and NFS had always been
7 co-licensees on the license.

8 COMMISSIONER MCGAFFIGAN: So you were an operator
9 as well as --

10 MR. BRODIE: We were not an operator. We were
11 licensed as the owner. NFS was licensed as the operator.
12 NFS stayed in possession of the site until exclusive use and
13 possession of the site were turned over to the Department of
14 Energy, I believe in 1982.

15 COMMISSIONER MCGAFFIGAN: So NFS was still on the
16 license at the time the West Valley Demonstration Project
17 Act is passed.

18 MR. BRODIE: That's correct.

19 COMMISSIONER MCGAFFIGAN: And at the point that
20 the license is put in abeyance as a result of the DOE
21 submission and our license amendment.

22 MR. BRODIE: That's correct. At that time, 1982,
23 I believe it was, there were two amendments, one of which
24 turned exclusive use and possession over to the Department
25 of Energy and suspended the technical specifications of the

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1 license, and the other of which took NFS off the license and
2 made NYSERDA the sole licensee of this license held in
3 abeyance.

4 COMMISSIONER MCGAFFIGAN: And were you a happy
5 party to that second license amendment? I mean, you
6 understood the implications. Because some of the questions
7 we've already had you intervene on, a lot of the differences
8 between you and DOE may well emanate from that period.

9 MR. BRODIE: Well, let me say that it was a
10 difficult period for a lot of parties and from New York
11 State's perspective, it was very important to get the
12 Department of Energy on the site.

13 The agreement with NFS that New York had entered
14 into in the 1960s was perhaps not one that we would like to
15 enter at this point, but it allowed NFS a lot of leeway and
16 we felt the best circumstances would be to get the
17 Department of Energy on there and NFS had to leave and that
18 was the negotiated agreement.

19 COMMISSIONER MCGAFFIGAN: So there's a 1960s
20 agreement that gives NFS lots of negotiating power vis- -vis
21 New York State ERDA, that, in turn, effects the 1981 and '82
22 transactions on the license amendment leaves you as the sole
23 licensee.

24 MR. BRODIE: I would say that's correct.

25 COMMISSIONER MCGAFFIGAN: And then now a lot of
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1 the issue between you and DOE is what happens when the
2 Demonstration Project Act ends and our license comes back,
3 presumably.

4 MR. BRODIE: Correct. It's an interpretation of
5 the West Valley Demonstration Project Act and the
6 cooperative agreement that was entered into between NYSERDA
7 and the Department of Energy.

8 COMMISSIONER MCGAFFIGAN: Do you believe that
9 you're the licensee once the project is terminated and the
10 license is put back into place?

11 MR. BRODIE: Of whatever materials remain at the
12 site, assuming that the Department of Energy completes the
13 project under the terms of the cooperative agreement, there
14 may be some residual licensing obligations for NYSERDA.

15 CHAIRMAN JACKSON: Does the cooperative agreement
16 itself speak to potential long-term responsibility or
17 long-term care responsibilities?

18 MR. BRODIE: What the cooperative agreement does
19 is define project completion. There's been a lot of
20 discussion about what the Department's limitations were
21 under the West Valley Demonstration Project Act. I believe
22 that the cooperative agreement provides a contemporaneous
23 interpretation by the Department of Energy and NYSERDA of
24 what the West Valley Demonstration Project Act meant and
25 NYSERDA has our position on what DOE's obligations are to

1 decontaminate and decommission project facilities and
2 project premises, as well.

3 COMMISSIONER MERRIFIELD: But that's not the
4 controlling legal authority. Obviously, this is subject to
5 review, but the control and legal authority would be the
6 Act, not the MOU.

7 The NRC can obligate itself to all kinds of
8 things, but if we have no legal basis upon which to do it,
9 we can't be held to that standard. Simply because DOE said
10 we'll agree to do X, Y and Z, if they don't have a basis
11 upon the West Valley Demonstration Act to do that, they
12 don't have a legal authority to do it.

13 MR. BRODIE: I agree with that. However, I
14 believe that the West Valley Demonstration Project Act gave
15 the Department of Energy authority to enter into the
16 cooperative agreement. It was specifically contemplated and
17 I believe that the terms, the substantive terms of the
18 cooperative agreement are consistent with the West Valley
19 Demonstration Project Act.

20 CHAIRMAN JACKSON: I'll let you lawyers argue a
21 little more down the line in the discussion. Let's go
22 further.

23 MR. BRODIE: I think Paul will talk to what our
24 position is in terms of what we're required to -- what DOE
25 is required to do under the Act.

1 MR. PICIULO: To jump ahead on the cooperative
2 agreement. As Barbara said, the cooperative agreement
3 defines the project premises, facilities, decontamination
4 and decommissioning responsibilities and the conditions on
5 the project completion. But it's NYSERDA's position that
6 the Act and the cooperative agreement together require DOE
7 to decontaminate and decommission all the premises and
8 facilities within the 200-acre fence line, in accordance
9 with the criteria that NRC prescribed.

10 It was acknowledged early on that DOE did not have
11 responsibility under the West Valley Demonstration Project
12 Act for the SDA, nor did they have responsibility for the
13 waste disposed of in the NDA prior to the project.

14 I would like to add at this point that NYSERDA is
15 very pleased with the success of the project thus far and
16 especially the vitrification of the bulk of the high level
17 waste, but there's a significant amount of work that remains
18 to be done, and we still believe that the organizations
19 responsible for the creation of West Valley must continue to
20 be responsible for the management of the site, to assure the
21 protection of public health and safety and the environment.

22 CHAIRMAN JACKSON: Let me ask you this question,
23 just for edification. Does NYSERDA anticipate the need for
24 long-term institutional controls for the state licensed
25 area?

1 MR. PICIULO: Yes. I will talk on that in a few
2 minutes.

3 CHAIRMAN JACKSON: Okay.

4 MR. PICIULO: Basically, the Federal Government
5 also must continue to bear responsibilities for the past and
6 present policies. A long-term Federal presence at the site
7 is needed, as long as Federally-generated waste require
8 maintenance and control at that site.

9 If I could have the next slide, please, I will
10 shift at this point to summarizing our comments on the
11 Commission paper. NYSERDA generally believes that the NRC

12 staff paper on decommissioning criteria for West Valley sets
13 forth a workable path for establishing decommissioning
14 criteria.

15 However, we have concerns that we have expressed
16 in the letter regarding assurance that there is a single set
17 of criteria for the site and there's been a fair amount of
18 discussion about that already, the application of the
19 license termination rule, and the application of the
20 incidental waste criteria.

21 If I could have the next slide, please. Thank
22 you.

23 NYSERDA has long held and expressed the opinion
24 that there is only one acceptable way for the Nuclear
25 Regulatory Commission to fulfill its responsibilities at

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1 West Valley, and that is to establish a single coordinated
2 decommissioning standard that is protective of public health
3 and safety and the environment.

4 We have repeatedly stressed that the
5 decommissioning criteria for the Department of Energy under
6 the Act must be the same as the criteria that NYSERDA is
7 held to as licensee.

8 Further, the impacts of all the facilities located
9 at the site, including the SDA, must be considered when
10 establishing decommissioning criteria.

11 We recognize that regulatory responsibilities must
12 be addressed. Due to the shared State and Federal
13 regulatory framework at the site, we recognize that NRC's
14 actions must be coordinated with the New York State
15 Department of Environmental Conservation. We encourage and
16 support a coordinated approach by both agencies to ensure
17 the unified decommissioning standard for West Valley is
18 agreed upon.

19 CHAIRMAN JACKSON: Expand upon your second bullet,
20 if you may, that the criteria for the site must consider
21 impacts from the State-licensed disposal area. You said you
22 were going to speak to that when I raised my question
23 earlier.

24 DR. PICIULO: If you have -- my -- basically when
25 you look at -- the first part you're looking at the whole

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1 site that we've talked about was that you would decommission
2 to some standard level, maybe 25 millirem, setting aside
3 that the disposal areas might be handled differently than
4 previously operating facilities. And then you're going to
5 need to look at which units get which portion of that 25
6 millirem unless you give everybody 25 millirem.

7 If you left facilities like the SDA, which is a
8 disposal facility, if it's not decommissioned, and I'll talk
9 to that in a moment, if it's not decommissioned, it would
10 have certain performance criteria that it would have to meet
11 so that decommissioning criteria for that site, whatever it
12 is, has to also consider the fact that there are performance
13 criteria for disposal areas that may not be decommissioned.

14 CHAIRMAN JACKSON: Okay.

15 COMMISSIONER McGAFFIGAN: Can I just understand,
16 are you saying that when you take -- when the license comes
17 back into effect, 2010, two thousand whatever, that the
18 criteria that you then face for terminating the license, if
19 you were to desire to do so at that point, have to be the
20 same as the criteria that we're going to be using in the
21 interim? In other words -- that sounds like you're saying
22 DOE basically has to terminate the license, you know, they

23 hand it to you for a nanosecond and then we all agree it's
24 been terminated or something. And that's a way to shift
25 costs to DOE.

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1 MR. BRODIE: Well, we don't think it's a question
2 of cost-shifting. We think that the Department of Energy
3 has to decommission the site under the --

4 COMMISSIONER MCGAFFIGAN: You said that all 200
5 acres.

6 MR. BRODIE: Decommission facilities used. Well,
7 the Department of Energy insisted upon and received from
8 NYSERDA exclusive use and possession of the project
9 premises, and the cooperative agreement interpreting the
10 West Valley Demonstration Project Act requires the
11 Department of Energy to decommission and decontaminate all
12 facilities and premises used in conducting the project. The
13 question then becomes what premises and facilities were
14 used. We believe the entire 200 acres were used in
15 conducting the project. You know, people ride, people walk,
16 people drive trucks, the facilities have been used in
17 various ways. We believe that the entire 200 acres was used
18 and the Department of Energy insisted upon using the entire
19 200 acres in conducting the project.

20 COMMISSIONER MERRIFIELD: You state you believe
21 it's the responsibility of the Department of Energy to clean
22 up the groundwater contamination, the strontium-90
23 contaminated water at the site --

24 MR. BRODIE: That's correct.

25 COMMISSIONER MERRIFIELD: Among these areas.

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1 There is no leak of any of that hazardous waste
2 facilities -- hazardous waste disposal, not drums but the
3 tanks, there's no leaking of the tanks.

4 MR. BRODIE: That's correct.

5 COMMISSIONER MERRIFIELD: So there's no -- and
6 there was no activity presumably of the Department of Energy
7 which led to continuing exposure to strontium-90. So how do
8 you make the analysis? What legal authority do you use in
9 that particular case?

10 MR. BRODIE: I believe that the --

11 COMMISSIONER MERRIFIELD: Mere presence on the
12 site?

13 MR. BRODIE: That's part of the premises that the
14 Department of Energy has used in conducting the
15 demonstration project.

16 CHAIRMAN JACKSON: Do you know what the source of
17 that contamination is?

18 MR. BRODIE: I can't speak with authority on it,
19 but there was some conjecture that it resulted from a leak
20 during NFS operations.

21 COMMISSIONER MCGAFFIGAN: In some sense all these
22 legal differences between the two parties before us are
23 interesting, but the most interesting question would be when
24 might there be a resolution of these legal differences so
25 that we, you know, we don't get, you know, it's her

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1 responsibility, it's his responsibility --

2 CHAIRMAN JACKSON: Maybe we should send the two,
3 you know, legal beagles back to the back of the room and
4 they could come back by the end of the meeting.

5 COMMISSIONER MCGAFFIGAN: Somehow I think that
6 that may be beyond their legal capabilities, at least in
7 that short period of time. But is there a schedule for --
8 or how do these differences get resolved? Is it 2010 before

9 they get resolved, or do they get resolved before you start
10 the decommissioning? Do they get resolved in the EIS
11 process? When do these legal differences get resolved?

12 MR. TURI: Commissioner, we've been talking with
13 our management over the last several months, and I imagine
14 New York State ERDA has also in terms of looking at people's
15 responsibility and accountabilities for the different parts
16 of the premises. And we have not completed that process
17 internally. We would envision in the not-too-distant future
18 that we'd be sitting down with New York State ERDA and
19 entering into formal discussions and deal with these issues,
20 and I think it would be our expectation and hopes that we
21 would be able to reach an agreement this year.

22 Now the parties may agree that some issues are not
23 ripe for decision making and may agree to put those off
24 several years, but I think to the extent possible, we would
25 like to reach agreement on all issues associated with the

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1 West Valley site.

2 COMMISSIONER MCGAFFIGAN: Since I'm not a lawyer,
3 I can ask this question, I hope. What is the probability
4 that you guys will end up in court on these matters?

5 MR. TURI: I don't think -- I'm not a lawyer,
6 either, so I don't think we will end up in court.

7 CHAIRMAN JACKSON: Let's go on.

8 DR. PICIUOLO: I'd like to speak to one of the
9 comments that Commissioner McGaffigan made when he talked
10 about the license being maybe back in place for a
11 nanosecond, because I think that's -- and I'm not a lawyer,
12 but just the way I think about this -- it's key to one of
13 the things we don't want to have happen. We talk about a
14 single set of criteria, but it's the application of that
15 criteria. We don't want DOE to be able to clean up the site
16 to a certain level just as you might say this table is clean
17 and then to have NYSERDA come in and have to take away the
18 water pitchers. Do you know what I mean? So it has to be
19 to that extent.

20 And I might add that, going out, is that if I
21 were -- as the licensee if I had responsibility alone to
22 clean up the facilities, I would have to clean them up to
23 whatever the standards were, and if there was long-term
24 institutional controls or monitoring and maintenance that I
25 came to agreement with the NRC with, I would have to provide

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1 those.

2 Under the Act, DOE is -- the licenses in
3 abeyance -- DOE has responsibility for all of those
4 radionuclides that NRC licensed in the past. So whatever
5 they do under the Act, if it requires some institutional
6 control, they should provide that institutional control.

7 CHAIRMAN JACKSON: Okay. Please go on.

8 DR. PICIUOLO: Okay. Let me move on to slide 7.
9 Unfortunately I didn't number the slides in your booklet.
10 But it has to do with the application of the license
11 termination rule. And we agree that the proposal to apply
12 the criteria contained in the License Termination Rule would
13 be protective of public health and safety and the
14 environment. However, as we indicated in our written
15 comments, there's a need for clarification of how and under
16 what circumstances alternative criteria can be established.

17 Just to shift gears a little bit, NYSERDA believes
18 that some of the facilities at the site may not be
19 decommissioned, and thus long-term licensing should remain a

20 regulatory alternative. For example, we share NRC staff's
21 concerns regarding the feasibility of exhuming large
22 quantities of waste from the SDA and the NDA. These are,
23 after all, disposal facilities, and they were created and
24 given regulatory approval with the understanding that they
25 would be closed, stabilized, and maintained in place over

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1 the long term.

2 Furthermore, analyses conducted for the
3 environmental impact statement suggest that the impacts and
4 expense of exhuming these facilities may not be justified.
5 We believe that it may be appropriate for the monitoring and
6 maintenance of the disposal facilities to remain under
7 license for an extended period of time. Under such a
8 scenario, the disposal facilities will not have been
9 decommissioned. Performance criteria therefore will be
10 needed for the disposal areas or for any other facilities
11 that may not be decommissioned, and these performance
12 criteria must be integrated with decommissioning criteria
13 established for the site.

14 And if I --

15 CHAIRMAN JACKSON: Let me understand something in
16 terms of the "provision for the establishment of alternate
17 criteria should be clarified." Can you explain what
18 criteria you -- are you talking about the actual criteria
19 being clarified or that separate guidance on the
20 circumstances for application of the alternate criteria be
21 developed?

22 DR. PICIULO: It's the latter. Can you --

23 MR. BRODIE: Yes, we were somewhat confused by the
24 discussion in the paper of alternative criteria since the
25 license termination rule itself has a provision for

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1 alternative criteria. We did not understand whether the
2 staff meant something different by the term "alternative
3 criteria" in the paper than in the License Termination Rule.
4 We believe that the License Termination Rule itself provides
5 the necessary flexibility and there's no need to go beyond
6 that.

7 CHAIRMAN JACKSON: What did the staff mean, Mr.
8 Greeves?

9 DR. GREEVES: Well, how long have we been at this
10 now?

11 CHAIRMAN JACKSON: That's for us to judge.

12 DR. GREEVES: No, I'm trying to articulate that
13 this discussion of terminology shows some of the
14 difficulties we've had over time. First we referenced the
15 License Termination Rule. In there you will find reference
16 to something called "alternate criteria." That's what I
17 spoke to earlier about the difference between a 25 millirem
18 and up to 100. It is in the license termination rule.

19 The paper proposed using existing criteria such as
20 the License Termination Rule. The paper noted that other
21 alternatives may be necessary for the very reasons that Paul
22 identified, Barbara identified, that as you shrink the
23 footprint here, there may come a time where you're faced
24 with a decision of I can't get the 500-millirem cap. And
25 that's part of what was in the paper, what alternatives

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1 beyond the License Termination Rule would be needed. So
2 unfortunately we've used the term "alternative criteria" a
3 number of times and ways, and it creates the confusion in
4 part that we see around the table. So hopefully I've been
5 clear from my perspective.

6 COMMISSIONER MCGAFFIGAN: Could I ask a question
7 just following up on the point that he was making a moment
8 ago about considering if we're going to have long-term
9 institutional controls at the State disposal area and the
10 NRC-licensed disposal area, we need to think about the
11 criteria for the rest of the site in light of those, what
12 we're doing at those sites.

13 I look at the paper, the appendix 3 to this -- our
14 staff's paper -- and if we do nothing in sites 7 and 8 I
15 guess they are, we come up to -- if institutional controls
16 fail, 6,500 rems for the NRC disposal area, 310 rems for the
17 State-licensed area, and the costs are 3.8 billion for the
18 State-licensed area, 1.8 billion to get them down to, you
19 know, to trivial levels -- or not trivial, but I suspect
20 you'd be hard-pressed to get to 500 millirems.

21 But how does that work? If you're telling us to
22 think about the rest of the site in light of using
23 institutional controls in two sites where we're
24 contemplating thousands or hundreds of rem per year if
25 institutional controls fail, are you telling us that -- are

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1 we talking about, you know, a potentially pristine area in
2 an otherwise pretty ugly sea of radionuclides? Or are you
3 telling us we should back up even higher than, you know, 500
4 millirems for institutional controls failing in the rest of
5 the site? I'm just trying to understand what you're saying.

6 DR. PICIULO: Let me give it a shot.

7 COMMISSIONER MCGAFFIGAN: Okay.

8 DR. PICIULO: First of all, if there's -- if there
9 are institutional controls around site management or
10 maintenance of the disposal units, as I guess perhaps it was
11 envisioned very early on that there would be some kind of
12 perpetual care, then we're talking about the actual
13 performance of those units. If the SDA was there alone they
14 would have 25 millirem that it could use and not be
15 decommissioned. It would have 25 millirem that it can
16 contribute to the environment per se if you adopt an
17 older -- and if you try to apply another standard.

18 Now when you try to decommission facilities that
19 are next to the SDA, that 25 millirem covers everything, so
20 those units would have to be decommissioned to less still.
21 So it may be, you know, and I believe that if there's active
22 maintenance of the disposal facilities and they're monitored
23 and maintained, everything could be kept, you know, well
24 within the 25 millirem. But just the, you know, as you go
25 through the logic in your mind and try to go through all

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1 these values, you run into this confusion. I'm just
2 bringing it up that it needs to be --

3 COMMISSIONER MCGAFFIGAN: You're saying the normal
4 operation of the State-licensed or the NRC-licensed disposal
5 areas, the normal operation would try to ensure that no
6 member of the public had more than 25 millirems per year.
7 You're not addressing, though, if institutional controls
8 fail there or at Maxi-Flats or at other of these sites
9 that -- where practices were carried out that we don't
10 tolerate today, you'd have a large number of rems, and so
11 you're saying if there's another footprint to the site other
12 than the two disposal areas, operationally it should ensure
13 the public it's no more than 25 millirems as a result of the
14 ongoing license, what are you saying about institutional --
15 how much should we tolerate if institutional controls fail
16 at the rest of the site? If we're tolerating thousands of

17 rems at one part of the site, do we tolerate thousands of
18 rems at another part of the site?

19 DR. PICIULO: Let me take two points. One is the
20 use of the word, you know, "operational," because the
21 disposal facilities would not be in essence operational,
22 they would simply be stabilized and remain there, and in
23 the -- since we have a lot of problems with terminology --

24 COMMISSIONER McGAFFIGAN: Okay.

25 DR. PICIULO: Because there are buildings above

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1 ground that, you know, store waste, and those things could
2 be decommissioned and those things could be viewed. But
3 basically what we're saying is that, you know, we believe
4 that you can rely on institutional controls to be protective
5 of public health and safety and the environment.

6 For example, it may be feasible for the SDA, for
7 example, or the disposal units to have a permit or a license
8 perhaps for 100 years to continue the monitoring and
9 maintenance under some regulatory authority, and then you
10 may review, you know, if there's other things that need to
11 be done at those -- for those units.

12 COMMISSIONER McGAFFIGAN: But the
13 license presumably is -- it's 100 years renewable for 100
14 years essentially like Maxi-Flats, for a long time.

15 MR. BRODIE: Let me just jump in if I may. I
16 think part of it has to do with what facilities will be
17 decommissioned. It may be, and we think it's likely, that
18 there will be a decision that it does not make sense to
19 decommission the disposal areas according to the License
20 Termination Rule at least at this time. But I think if
21 facilities are to be decommissioned, then they must meet the
22 requirements of the License Termination Rule. I think if
23 they do not meet the requirements of the License Termination
24 Rule, they cannot be considered decommissioned.

25 MR. TURI: Commissioner, if I could speak to those

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1 numbers for a moment, those are coming out of a June 1996
2 draft EIS and a number of that analysis is dated. And so
3 the analysis is in the process of being updated, and when
4 the supplemental draft EIS is issued later this year, we'll
5 all have better numbers and we'll be able to take a look at
6 what is the situation. So I would not want to make
7 decisions today or in the next couple months based upon June
8 1996 analysis.

9 CHAIRMAN JACKSON: I think we need to move along.

10 DR. PICIULO: Okay. Let me, if we can just go to
11 the last slide, NRC staff's proposal to apply the incidental
12 waste criteria to the closure of the high-level waste tanks
13 at West Valley must be very carefully reviewed. And the
14 incidental waste criteria have been developed and applied at
15 DOE facilities such as Hanford and the Savannah River site.
16 These facilities are owned and will be monitored by the
17 Department of Energy well into the future.

18 We've all said here today that the West Valley
19 site is unique. It's owned by NYSERDA, and New York State
20 should not be required to bear responsibility for DOE's
21 closure decisions. Specifically, New York State should not
22 be responsible for assuring the long-term performance of the
23 engineered closure of the high-level waste tanks.

24 In your review you will see that the success of
25 the closure approach is dependent on engineered barriers

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1 that are assumed to perform adequately for thousands of
2 years. NRC should carefully review these designs and

3 analyses to see whether or not you concur with the
4 reasonableness of this closure approach. Further, NRC
5 should condition any application of the incidental waste
6 criteria that may lead to a restricted release closure of a
7 project facility that should be conditioned on DOE's
8 presence at the site. Basically, NYSERDA believes a
9 restricted release closure of the high-level waste tanks
10 should include requirements for DOE to provide institutional
11 controls and to provide long-term monitoring and maintenance
12 of the unit.

13 What if the New York State Department of
14 Environmental Conservation and the NRC agree on what these
15 should be? Your position still remains? If your own New
16 York State Authority agrees you still feel DOE should stay
17 in the game --

18 DR. PICIULO: Yes.

19 CHAIRMAN JACKSON: -- and that you should have
20 that responsibility?

21 DR. PICIULO: No, because basically, you know,
22 they are applying the technologies and providing the
23 prediction that that would work in the long term.

24 I would go back to my comment before. If I as
25 licensee were going to make that closure, I would have to

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1 provide that long-term institutional control. If DOE to try
2 to close those units under the Act should have the same
3 parallel application -- if the closure is dependent on the
4 reliability of those, the performance rather of those
5 closure things, they should provide for the long-term care.

6 CHAIRMAN JACKSON: Well, in a certain sense,
7 doesn't the issue devolve to this, you know, we have the
8 West Valley Demonstration Project Act, and the question is
9 should the Act be interpreted or can it be interpreted that
10 DOE just does the best it can to clean it up, stabilize the
11 waste, according to somebody's criteria and they have done
12 that and when they have done it they have discharged their
13 responsibility?

14 DR. PICIULO: No.

15 CHAIRMAN JACKSON: Let me finish -- or, as you are
16 proposing, that the Act somehow obligates them for a longer
17 period of time and/or that there is a moral obligation that
18 obligates them for a longer period of time? I mean it seems
19 to me that as I have listened and we have gone through the
20 various pieces of the discussion in a certain sense that it
21 what it devolves to in the end.

22 MR. BIRD: We believe there is a moral and a legal
23 obligation for the Department of Energy to remain there to
24 decommission the facilities. Decommission cannot mean one
25 thing for the Department of Energy under the West Valley

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1 Demonstration Project Act and different thing for NYSERDA
2 under its license. Decommission in our view means
3 decommission.

4 CHAIRMAN JACKSON: No, but in the end,
5 decommissioning does and sometimes can involve long-term
6 institutional controls and so in a certain sense the
7 question that it seems to come down to in the end goes to
8 that point, that if somehow decommissioning means long-term
9 institutional controls that what we are really talking about
10 is in whose court that ball resides.

11 MR. BRODIE: That's correct, but we believe that
12 if decommissioning requires long-term institutional control
13 then long-term institutional control is part of

14 decommissioning, and must be provided by the Department of
15 Energy.

16 CHAIRMAN JACKSON: Well, it's a question, in terms
17 of the legal -- in terms of what the West Valley
18 Demonstration Project Act requires in terms of is it just --
19 does it just require DOE to clean it up, do the best it can
20 according to what the criteria are that are laid out, and
21 then that there is a separate determination and I don't want
22 to get into it, because you guys may end up in the court
23 about it, but it seems to me that in the end a lot of what
24 we are talking about devolves to that.

25 MR. BRODIE: The Chairman has correctly identified
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1 the issue.

2 CHAIRMAN JACKSON: Okay.

3 DR. PICIULO: Just one last point about the
4 application of the incidental waste criteria.

5 NRC's review of the high level waste tank closure
6 should also address DOE's approach to meeting the
7 concentration limits for the incidental waste criteria. In
8 short, DOE is proposing to meet two separate requirements of
9 the incidental waste criteria by showing that the
10 performance objective criterion will be met, which
11 essentially eliminates one of the criteria -- specifically,
12 the need to comply with the Class C low level waste
13 concentration limits.

14 We believe the NRC has an obligation to hold DOE
15 to the Class C concentration limits in 10 CFR Part 61.55 for
16 purposes of decommissioning. If the tanks do not meet those
17 concentration limits, then they cannot be considered
18 decommissioned.

19 That's it for my formal comments. I just would
20 like to say that --

21 CHAIRMAN JACKSON: So this has to do then with the
22 stabilization in place?

23 DR. PICIULO: Yes.

24 CHAIRMAN JACKSON: So in fact you are taking some
25 issue with using the incidental waste -- I mean --

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1 DR. PICIULO: In principle I guess the incidental
2 waste criteria could be applied.

3 CHAIRMAN JACKSON: Okay.

4 DR. PICIULO: But we shouldn't compromise -- one
5 of the criteria that you put in there was to meet the Class
6 C low level waste limits.

7 CHAIRMAN JACKSON: So that is an additional
8 performance objective --

9 DR. PICIULO: It is one of the original
10 performance objectives.

11 CHAIRMAN JACKSON: Right -- that we should ensure
12 that that is applied.

13 DR. PICIULO: Sure. I would like to thank the
14 Commission for this opportunity to meet and discuss the
15 cleanup criteria for West Valley -- still a long way to go
16 in planning for completion of the Demonstration Project and
17 long-term management of this site.

18 NRC has been very responsive and supportive in the
19 past for the work at West Valley, and it is very important
20 that you continue your active involvement in planning for
21 and monitoring the cleanup at the site.

22 If there could possibly be another question --

23 [Laughter.]

24 CHAIRMAN JACKSON: There's always the possibility
25 that there could be another one, so don't be surprised, but

1 don't invite that.

2 Thank you very much and thank you, DOE.

3 I think now we will hear from the New York State
4 Department of Environmental Conservation and the West Valley
5 Citizen's Task Force. Thank you.

6 Good morning. Would you introduce -- well -- he's
7 introduces himself.

8 MR. TOBE: I am Richard Tobe from the Citizen's
9 Task Force.

10 CHAIRMAN JACKSON: Thank you.

11 MR. MERGES: And I am Paul Merges. I am the
12 Chief, Bureau of Radiation and Hazardous Site Management
13 with the New York State Department of Environmental
14 Conservation, and with me is --

15 MR. RICE: My name is Tim Rice. I work for Mr.
16 Merges and I am Project Manager for the Department for the
17 West Valley site.

18 CHAIRMAN JACKSON: Okay.

19 MR. MERGES: As a member of the Capital District I
20 welcome you to the Capital District come July 1st.

21 CHAIRMAN JACKSON: Yes.

22 MR. MERGES: As a alum of RPI and an adjunct
23 associate --

24 [Laughter.]

25 MR. MERGES: -- I cannot help but observe that

1 since you have announced your choice of future professions
2 that RPI's hockey team has not lost a game yet.

3 [Laughter.]

4 MR. MERGES: We have moved into first place in the
5 ECA.

6 CHAIRMAN JACKSON: Well, I rest my case.

7 MR. MERGES: And I welcome you to the Agreement
8 States Program in New York State come July 1st too.

9 These are the comments of the New York State
10 Department of Environmental Conservation. I do not have any
11 overheads with me.

12 On the decommissioning criteria for West Valley,
13 we appreciate this opportunity the Commission has given us
14 to day to make these comments.

15 There's 13 major comments in New York State's
16 comments here, Department of Environmental Conservation.

17 The Commission should formally acknowledge the
18 status of New York State as a co-regulator at the Western
19 New York Nuclear Service Center.

20 The Commission should explicitly acknowledge the
21 State of New York. As a co-regulator in the Western New
22 York Service Center first through our capacity as an
23 Agreement State regulatory agency, New York State Department
24 of Environmental Conservation is responsible for
25 environmental permitting and oversight of sight monitoring

1 and maintenance for the formerly operated State License
2 Disposal Area at West Valley.

3 Next, the Environmental Agency of New York State
4 as New York's environmental agency, the DEC, has regulatory
5 responsibility over the Resource Conservation and Recovery
6 Act, RCRA and TSCA -- Toxic Substance Control Act, Clean
7 Water Act, Clean Air Act, and corresponding state laws and
8 regulations.

9 New York State DEC has signed a 3008-H consent
10 order with the DOE and NYSERDA to address hazardous wastes

11 at the site. It is important that any decision regarding
12 the radiological site decommissioning be acceptable from a
13 RCRA standpoint since the two wastes are commingled quite
14 often on the site.

15 Additionally, there are two licensing agencies in
16 New York State under the Agreement States Program -- the New
17 York State Department of Labor issues the license for
18 NYSERDA to possess and use radioactive material at that site
19 at the state license burial area, and the State Health
20 Department is conducting an environmental monitoring program
21 around the site.

22 Number 2 --

23 CHAIRMAN JACKSON: Let me ask you a quick
24 question.

25 How extensive is NYDEC's involvement as a

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1 cooperating agency in the EIS?

2 MR. MERGES: How much --

3 CHAIRMAN JACKSON: Yes, how much involvement do
4 you have as a cooperating agency in the EIS?

5 MR. MERGES: All right. There's two different
6 NEPAs here. One is Federal, the National Environmental
7 Policy Act, and under the CEQ regulations we consider
8 ourselves a cooperating agency. Also, the State has a state
9 NEPA, which is the State Environmental Quality Review Act,
10 and we are an involved State agency with NYSERDA in
11 implementing the State's NEPA equivalent.

12 We have participated with and reviewed drafts of
13 the documents as they were advanced by DOE AND NYSERDA, so
14 we have been involved probably --

15 COMMISSIONER MCGAFFIGAN: You say in your
16 statement that though it is a separate New York regulator --
17 the Department of Labor that is the licensing agency for the
18 State disposal area. I asked earlier in the day and I guess
19 I'll hold till now -- is that license still in effect?

20 MR. MERGES: Yes, it is.

21 COMMISSIONER MCGAFFIGAN: And do you agree that
22 this is a Maxi Flats -- does your counterpart in the state,
23 the Department of Labor, agree this is a Maxi Flats-like
24 place where perpetual institutional controls are likely to
25 be required?

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1 MR. MERGES: I can't speak for the Department of
2 Labor. I can speak for my department on that issue, which
3 is we think it is premature at this point in time to
4 prejudge the Environmental Impact Statement on the
5 determination of whether long-term institutional control is
6 necessary. I think that is what the EIS process is for.

7 However, if there is going to be long-term
8 institutional control we also expect the Federal Government
9 to provide the necessary resources and staff to support that
10 long-term institutional control.

11 COMMISSIONER MCGAFFIGAN: Even though -- I mean
12 there are lots of legal issues here, but the licensee for
13 that is solely New York State ERDA? Is that right -- that
14 they are the licensee?

15 MR. MERGES: For the low level waste disposal.

16 COMMISSIONER MCGAFFIGAN: For the low level waste
17 site, right.

18 MR. MERGES: That's correct.

19 COMMISSIONER MCGAFFIGAN: So why would the Federal
20 Government have responsibility for a state-licensed state
21 institution?

22 MR. MERGES: Okay. I was not addressing --

23 COMMISSIONER MCGAFFIGAN: Okay --
24 MR. MERGES: -- the state licensed burial area in
25 that.

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1 COMMISSIONER MCGAFFIGAN: That is what I was
2 trying to get at -- the state licenced burial area, which
3 is -- if you clean it up is a \$3.8 billion job according to
4 the EIS and if you don't has hundreds of REMs per year if
5 institutional controls fail. That's -- if you don't clean
6 it up and it costs a lot of money, you are talking then
7 about a perpetual license, a Maxi Flats type situation.

8 MR. MERGES: That's correct.

9 COMMISSIONER MCGAFFIGAN: And is that acceptable
10 to the State of New York -- or you are saying you don't want
11 to --

12 MR. MERGES: Well, further into our comments we do
13 mention that, that the low level waste -- well, it is not
14 quite a low level waste disposal site --

15 COMMISSIONER MCGAFFIGAN: Right.

16 MR. MERGES: -- since we have an entire SNAP
17 reactor in it as an example.

18 The low level and radioactive waste disposal area
19 in West Valley was designed as a disposal site and I don't
20 see any place in this country that is willing to come
21 forward and offer to be the host site for all the wastes
22 that are at that site -- even if we had the \$3.8 billion.

23 COMMISSIONER MCGAFFIGAN: So in that case
24 institutional controls would be paid for by New York State
25 ERDA with New York State Department of Labor watching it

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1 over a license --

2 MR. MERGES: Okay, they issue the license but the
3 majority of the low level and radioactive waste regulation
4 in New York State per the State Legislature rests in the
5 Department of Environmental Conservation.

6 COMMISSIONER MCGAFFIGAN: Okay.

7 MR. MERGES: So we issued siting criteria. We
8 issued design, construction, operation, closure,
9 environmental monitoring, site safety plan requirements and
10 financial assurance requirements for a low level waste
11 disposal facility to implement Part 61, for example.

12 The basic differences between us and the licensing
13 agencies in New York State is that we are responsible for
14 discharge and disposal of radioactive material under the
15 Agreement States Program and that is predominantly the front
16 door of the house where we consider the relative
17 jurisdictions of the two agencies, either the Labor
18 Department or the Health Department, on one side of the door
19 and the Department of Environmental Conservation on the
20 other side of the door, which is the outside.

21 Okay. The second comment we had was New York
22 State Department of Environmental Conservation recommends
23 the NRC and the DEC enter into a cooperative agreement on
24 regulating closure of the West Valley site.

25 There's been a lot of comments on that already

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1 today, but there's a lot of valid reasons for considering
2 that besides our experience with the Cintichem reactor in
3 Tuxedo Park.

4 There has been fair questions asked today about
5 the 3300 acre site versus a 200 acre site and this is where
6 that jurisdiction issue comes up, whether you people even
7 consider you have regulatory authority on the activities

8 over the 3100 acres that DOE does not control is an
9 interesting issue because there are activities on that site
10 that are going on currently and being proposed in the near
11 future and you should address the issue whether you have
12 regulatory authority of that other 3100 acres.

13 COMMISSIONER MCGAFFIGAN: Do you believe that we
14 ever did, based on your knowledge of the history?

15 MR. MERGES: The site was licensed by the AEC, all
16 3300 acres, under -- and there were co-licensees -- the
17 Atomic Space Development Authority at the time and Nuclear
18 Fuel Services. ASDA was the predecessor agency of NYSERDA.

19 This 200 acres came about subsequently as the West
20 Valley Demonstration Project Act.

21 COMMISSIONER MCGAFFIGAN: It did strike me
22 earlier, Madam Chairman, that when we got the answer from
23 the Staff and they said they were going to check it, it is a
24 little implausible that you would have a reprocessing plant
25 with that small a footprint with all of the security and

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1 everything you would need --

2 CHAIRMAN JACKSON: Good point.

3 COMMISSIONER MCGAFFIGAN: -- around it, so
4 defense-in-depth would have probably said have a large, we
5 may well have been regulating, as New York suggests, a
6 larger area.

7 CHAIRMAN JACKSON: Karen, maybe you could for the
8 Commission's benefit research this issue. I mean if, as Mr.
9 Merges has indicated, all 3300 acres were licensed by the --

10 MS. CYR: We'll work with the Staff and get an
11 answer.

12 CHAIRMAN JACKSON: Right -- that would be good.

13 MR. MERGES: That's probably one of those licenses
14 something like a nuclear power plant. We have a very large
15 site and the nuclear plants use -- they have apple orchards
16 at the Ginna plant for example, on the nonused area, that
17 are allowed, so I am not saying that there are major
18 problems with those areas, but your regulatory authority
19 does need to be addressed.

20 Three, dose-based criteria should include all
21 pathways and should apply to the entire site. I think Paul
22 Piciulo just mentioned this. Regulatory authority for the
23 SDA currently rests with New York State from the perspective
24 of releases to the environment of radioactive material the
25 Western New York Nuclear Service Center is one site. Any

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1 decommissioning and closure criteria expressed in terms of a
2 potential radiation dose, such as the NRC decommissioning
3 rule, must take into account the combined impacts of all
4 sources on the site.

5 Four, the criteria adopted -- NRC adopts for the
6 West Valley Project should apply to NYSERDA once the
7 demonstration project is completed. The Commission paper
8 does not make this explicitly clear that the decommissioning
9 criteria finally adopted will continue to apply after DOE
10 has met their obligations at West Valley.

11 I can give you an example on that is to allow DOE
12 to stabilize in place high level tanks by grouting it with
13 concrete and then turning around and telling NYSERDA they
14 have to greenfield that same spot on the site. It would
15 compound their problem to actually do the decommissioning in
16 that case or delicensing or however you call it in those
17 terms.

18 DEC cleanup guidelines for soil contaminated with
19 radioactive materials is an ARAR. Our technical and

20 administrative guidance memorandum 4003, Cleanup Guidelines
21 for Soils Contaminated with Radioactive Materials, is our
22 currently applicable, relevant and appropriate regulation
23 for release of areas of soil contamination under the West
24 Valley Demonstration -- decommissioning process. They are
25 more restrictive than the NRC's decommissioning criteria,

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1 therefore any areas of the site that are designated for free
2 release during the process are subject to our ARAR.

3 COMMISSIONER MCGAFFIGAN: Could I ask a question
4 about that? We did something by rule in one part of that
5 rulemaking, looked at soil and my recollection is, going
6 from 25 to 10 or 5, whatever was looked at in the generic
7 Environmental Impact Statement, was very expensive.

8 You know, we did give states the authority to go
9 to lower levels but we also assumed you would do a sort of
10 similar analysis in establishing your rules.

11 Is this a guidance memo or is this a rule?

12 MR. MERGES: This is guidance to the Department
13 staff. However, it has been an ARAR by DOE on all the DOE
14 sites in New York State to date, and --

15 COMMISSIONER MCGAFFIGAN: Have you all analyzed
16 the cost of going from 25 to 10?

17 MR. MERGES: Well, okay. Our interpretation of
18 that 10 is not far from EPA's 15 or your 25.

19 COMMISSIONER MCGAFFIGAN: Okay.

20 MR. MERGES: I heard Steve Simon -- I am on the
21 EPA Science Advisory Board, Radiation Advisory Committee --
22 and Steve Simon from the National Academy of Sciences
23 discussed the fact that the 15 and 25 really aren't that
24 different.

25 COMMISSIONER MCGAFFIGAN: Okay.

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1 MR. MERGES: While we believe in implementing our
2 10 on a realistic -- conservative but realistic scenario, as
3 opposed to extremely conservative and unrealistic scenarios
4 that are often applied on the Federal level.

5 From our perspective I don't really think there is
6 that much difference between them. As far as meeting a
7 drinking water standard for groundwater, the Department's
8 view on that is that it is a goal to be met in a cleanup.
9 We often do not meet it in hazardous-waste applications in
10 our State Superfund cleanups, but it is a goal that we try
11 for.

12 No. 6, the NRC should prescribe the criteria
13 before the Record of Decision is issued.

14 New York State DEC can find no adequate
15 justification in SECY-98-215 for delaying prescribing
16 criteria for cleanup of the Western New York Nuclear Service
17 Center until after the ROD has been signed. This is not
18 explained by the need for flexibility built into the
19 recommendations, which allow DOE and NYSERDA to propose
20 alternative limits if they cannot meet the proposed limits
21 taken for the NRC's decommissioning. The normal process --
22 and by the way this is a process on over 600 sites in New
23 York State, under CERCLA -- the normal process is for a
24 regulatory agency to determine the appropriate existing
25 limits or create appropriate site-specific values prior to

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1 reaching a Record of Decision on the appropriate site
2 cleanup.

3 So what we're looking for you basically is assure
4 that the EIS addresses your NEPA needs in addressing

5 alternative criteria, but adopt your criteria prior to DOE
6 and NYSERDA adopting the ROD.

7 No. 7, NRC should provide specific guidance on
8 justifying alternative criteria for the West Valley site.

9 It is apparent on page 5 of the paper that the NRC
10 staff expects that there will be some areas of the site
11 where NYSERDA and DOE cannot meet the proposed criteria
12 under the alternatives that have been presented in DEIS,
13 except for complete removal of all material from the site.
14 New York State DEC agrees with this assessment. If a
15 prudent review of the decommissioning and disposal options
16 convinces DOE and NYSERDA that they cannot realistically
17 meet the criteria, they would then have to present in the
18 EIS strong justification for proposing any site cleanup and
19 closure alternative that does not meet those criteria. A
20 guidance with DOE to justify these alternatives needs to be
21 developed.

22 No. 8, NRC should explain the three long-term
23 management alternatives, one being issuance of a long-term
24 license, over 100 years. NRC staff should include a
25 discussion of the possible circumstances under which such a

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1 long-term license would be appropriate.

2 The second one was seeking new legislative
3 authority. NRC staff should elaborate on the need for such
4 an expanded authority.

5 And, third, transferring the regulation of the
6 decommissioning process to EPA under CERCLA. We did review
7 this and we believe that under -- what we heard from EPA is
8 that it's correct, but they need to clarify circumstances
9 under which NRC staff believes that it would be necessary to
10 relinquish authority over the site to EPA.

11 No. 9, any new radioactive waste disposal units
12 must comply with current regulations.

13 There is the potential for the creation of new
14 waste disposal cells on the site. If there is a low-level
15 waste-disposal site being proposed, New York State DEC would
16 expect that the design and construction would be carried out
17 in such a manner as to meet the substantive requirements of
18 6 NYCRR Parts 382 and 383, which are our low-level waste
19 regulations which the Commission has deemed to be compatible
20 with Part 61, although they're much more extensive.

21 No. 10, NRC must apply 10 CFR 61.55 and DOE must
22 take responsibility for Greater Than Class C waste.

23 If any Greater Than Class C waste remains on the
24 West Valley Nuclear Service Center, New York State DEC
25 expects that as the responsible authority, the DOE will

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1 maintain a presence at the site until such time as the waste
2 is removed or the potential doses to the public reach the
3 point at which there is no further controls on the access of
4 that site if necessary.

5 New York State DEC would expect that all Greater
6 Than Class C waste would be removed from the site in a
7 timely manner for final disposition at a Federal repository
8 as required in Part 61. We are willing to consider leaving
9 it in place for an extended period provided that the Federal
10 Government makes a concrete commitment to maintain a
11 presence at the site for as long as the waste is at the
12 Nuclear Service Center.

13 No. 11, the Decommissioning Criteria should apply
14 to onsite and offsite contamination. We refer to the
15 presence of surface soil contamination both on and off the
16 Western New York Nuclear Service Center but outside of the

17 West Valley Demonstration Project 200-acre area.

18 No. 12 --

19 CHAIRMAN JACKSON: Let me ask you a question.
20 What is the extent of the offsite contamination, and are we
21 able to tell if there's any offsite contamination that's
22 been associated with that demonstration project?

23 MR. MERGES: Offsite relative to the demonstration
24 project I have not heard of any allegation to that effect.

25 CHAIRMAN JACKSON: Okay.

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1 MR. MERGES: There is offsite contamination as a
2 result of previous operations on that site, when there was
3 filter blowouts back in 1958. And there is cesium that is
4 in the adjacent area. We did work with NYSERDA, try to come
5 up with realistic cleanup of it, but we would like that to
6 be part of the understanding that we would have with the
7 Commission on this memorandum of understanding so that we
8 don't walk from an area that you guys say is much -- well,
9 you're going to go back and clean up, and we work together
10 as coregulators.

11 COMMISSIONER McGAFFIGAN: Your prepared testimony
12 says that this goes outside even the 3,300 acres?

13 MR. MERGES: Yes, it goes across the road, and
14 there's several areas of private lands in the area. But
15 this goes back all the way to 1968. This is not
16 high-activity waste. We're down in the range of 30-40
17 picocuries per gram of cesium. It's not a real
18 high-activity material we're talking about, and we're
19 talking about an area that is not extensively used and
20 they're talking significant ecological disruption in order
21 to go in and try and remove the material. But we do have to
22 recognize it did exist, and we would like you people on
23 board in whatever is finally resolved on that.

24 No. 12, the NRC should address the difference
25 between the decommissioning of an operating facility and the

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1 closure and stabilization of radioactive waste disposal
2 sites.

3 We've just mentioned this before.

4 And, No. 13, the terms referring to the Western
5 New York Nuclear Service Center and its subdivisions should
6 be used consistently.

7 We would like to see a clarification in the
8 document of terms such as "West Valley Demonstration
9 Project," the "West Valley site," and the "site," because as
10 we see today there's inconsistencies here.

11 That's the extent of our formal comments. Are
12 there any questions you have?

13 CHAIRMAN JACKSON: Thank you. Let me just ask you
14 a couple quick questions.

15 Leaving aside how this one got started, how does
16 NYSDEC handle similar situations where there's contamination
17 that may remain at a site and may pose long-term risks to
18 the public, if not adequately, you know, overseeing? Does
19 your regulatory program under various departmental statutes
20 allow for long-term institutional --

21 MR. MERGES: Yes. Our TAGM-4003, the 10 millirem
22 was for free release of a site. And we do realize there are
23 instances where you're not going to free-release a site, and
24 we actually have a site in New York where there was a deed
25 restriction imposed on the site. It's a time-restricted

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1 deed release. EPA was involved in the agreement with the

2 site owner. And it happened to do with a radioisotope that
3 was involved, cobalt-60, that would decay away over a period
4 of time but not immediately. So if the family can't use --
5 or sell the property, eventually it will go away as the
6 radioactive material decays away.

7 COMMISSIONER MERRIFIELD: As a followup to that,
8 although it's not within your bureau, the New York
9 Department of Environmental Conservation presumably also
10 allows long-term institutional controls at Superfund sites
11 that it has within the State.

12 MR. MERGES: That's correct.

13 CHAIRMAN JACKSON: Does the State consider the
14 drum cell wastes to be hazardous mixed waste, you know,
15 because they're derived from processing of this listed
16 hazardous waste?

17 MR. MERGES: I just started in the beginning of
18 October as the RCRA Corrective Action Bureau Director, and
19 I'm learning myself.

20 CHAIRMAN JACKSON: Okay.

21 COMMISSIONER MERRIFIELD: Lucky you.

22 MR. MERGES: I got rid of pesticides and picked up
23 RCRA corrective action. I believe that it's the case --

24 CHAIRMAN JACKSON: Okay.

25 MR. MERGES: And that was one of the reasons that

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1 the 3008-H order was entered into.

2 CHAIRMAN JACKSON: Okay, then let me ask one other
3 question procedurally. Do you conclude that a cooperative
4 agreement could be developed subsequent to issuing proposed
5 criteria --

6 MR. MERGES: Yes.

7 CHAIRMAN JACKSON: Or that the proposed criteria
8 should be held up while the cooperative agreement is being
9 finalized?

10 MR. MERGES: No, I believe that you could adopt a
11 criterion, enter into a cooperative agreement with New York
12 State subsequent to it. It worked out very well in
13 Cintichem. The cooperative agreement in that case was
14 relatively simple. Both agencies agreed that whichever was
15 the more restrictive cleanup criteria ended up being the
16 criteria that was ended up to be cleaned up.

17 CHAIRMAN JACKSON: But the more important point is
18 having those criteria in place before there's a record of
19 decision. Is that what you're saying?

20 MR. MERGES: I believe so. I don't -- I think
21 it's appropriate to do it -- it's a cart-before-the-horse
22 situation otherwise.

23 COMMISSIONER McGAFFIGAN: Could I ask, before the
24 record of decision there was this middle option the staff
25 had where we would do -- we'd allow the process to go, but

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1 there's a question of whether we do it before the EIS, the
2 supplement to the EIS, whether we do it before the Record of
3 Decision. Would you have us do it even before the -- right
4 now?

5 MR. MERGES: Under NEPA, your action at hand is
6 adopting the cleanup criteria, and as long as the
7 environmental impact statement that DOE and NYSERDA is
8 preparing would address your NEPA responsibilities, you
9 would not need to go out and prepare your own separately.

10 COMMISSIONER McGAFFIGAN: Okay.

11 MR. MERGES: And so I don't see any reason.

12 COMMISSIONER McGAFFIGAN: And should we do this by
13 rulemaking, piggybacking on the EIS in which we're a

14 cooperating agency, or can we do this outside of rulemaking,
15 sort of the equivalent of a policy statement or guidance
16 memo that you all use.

17 MR. MERGES: I think that's a policy decision of
18 the Commission on which way they want to go about that.

19 COMMISSIONER McGAFFIGAN: Okay.

20 CHAIRMAN JACKSON: Thank you.

21 I want to hear from Mr. Tobe.

22 MR. TOBE: Thank you.

23 First I want to thank the NRC for giving us the
24 extra month. This has to a very great extent allowed us to
25 prepare. I also want to publicly thank the NRC staff for

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1 spending so much time with us over so many months as we were
2 developing our preferred alternative for the site in our
3 final position paper. And I want to thank Jack Parrott for
4 briefing us on November 11 on 98-251. Although we didn't
5 fully understand it, he helped a great deal in allowing us
6 to see what we didn't understand.

7 I was also going to welcome Chairman Jackson to
8 New York, but I don't think that got us as far as I had
9 hoped.

10 [Laughter.]

11 Not that you're unwelcome, but -- welcome.

12 I also want to commend Commissioner Merrifield for
13 his very good judgment in not coming to western New York in
14 December. He might still be there.

15 [Laughter.]

16 I'm sorry, though, that we didn't get to see you
17 at that site.

18 COMMISSIONER MERRIFIELD: I intend to go up there
19 at some point in the future.

20 MR. TOBE: Great.

21 I'm Richard Tobe. I'm commissioner of a county
22 department called Environment and Planning, and have the
23 pleasure of also serving on a citizens' task force, and for
24 me the roles at least of this task force are somewhat
25 reversed from my normal duties, and it's fun.

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1 It's a 16-member task force, and we operate by
2 consensus, and happily all of our decisions have been
3 unanimous. I do want to point out that Ray Vaughn, who is a
4 task force member, is here in the audience today, and is
5 also here on behalf of the West Valley Coalition. There may
6 be some questions that are relevant to his knowledge.

7 We've provided a nine-page statement. I'd like to
8 summarize it, and obviously not go through it in detail. I
9 also want to deviate somewhat from it based on the way the
10 conversation went today.

11 First, though, I must tell you that we are not
12 very sophisticated in these matters. We've had to learn as
13 we've gone along. But we found it incredibly difficult to
14 understand what was being proposed in the Commission paper,
15 and if we had so much trouble, as unsophisticated as we are,
16 I think it should be clearer. And some of the issues that
17 were unclear were discussed today, and perhaps there's some
18 relevance, there was some clarity that came out of it. But
19 I do think the paper needs to just be more clear for the
20 general public to read and not for the more knowledgeable.

21 I'm going to repeat some of the things that have
22 been done already just so I can make a few points.
23 Obviously, the West Valley Demonstration Project Act
24 provides that the Secretary of Energy shall decontaminate

25 and decommission, not just decommission, a series of

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1 facilities at the site, and they shall do so in accordance
2 with such requirements as the Nuclear Regulatory Commission
3 may prescribe.

4 I was involved in New York State's efforts to try
5 and get that act passed. I worked with the State
6 legislature in the 1970s and 1980s, and it's interesting to
7 come back and see how work is later interpreted and focused
8 upon.

9 Most of our effort dealt with something that's not
10 been discussed at all today, and I think it will help
11 illuminate at least how I view all this. What we really
12 focused on was section 3 of the Act. That's where the
13 appropriation is made. That's also where the 90-percent
14 responsibility of the Federal Government is established for
15 the financial cleanup, decontamination, and decommissioning
16 of the site. That's what the act was primarily about, I
17 think.

18 It was nice that we found a demonstration project
19 that could be accomplished, a national objective that could
20 be achieved, but we thought at the time that the real
21 national objective was to bail out a State that had helped
22 the Federal Government in dealing with a very difficult
23 nuclear issue, the tail end of the nuclear cycle, dealing
24 with nuclear waste, and set the example that States that do
25 these things won't be left alone.

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1 At the time I participated in an Aspen Institute
2 conference in which this was discussed in the context of the
3 attempt to establish the compact State legislation dealing
4 with low-level waste, and I made the point at that session
5 that one cannot ask the States to go into this compact, this
6 new idea, if when things get tough the Federal Government's
7 not there on a Federal issue, nuclear waste. And that
8 effort and that reason for getting the Act passed I think
9 illuminates much of the discussion.

10 And so when the act says decontaminate and
11 decommission the site, DOE shall do it, I'm going to differ
12 slightly with what other people have said about whether or
13 not that should have two meanings or has two meanings. I
14 think those terms are really now, although not then, being
15 used in two very different contexts.

16 The first context is what we wanted DOE to do, the
17 Federal Government to do, pay for the cleanup of the parts
18 of the project that at least became the Demonstration Act.
19 Later, much later, those terms have been used in your
20 license termination rule, and they mean something different.
21 When can somebody give up a license? And although there is
22 this confusion that's been discussed about giving up a
23 license for an operating facility versus a waste storage
24 facility, you deal with that in your waste termination rule
25 somehow.

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1 But what I don't think is recognized and has not
2 yet been recognized in today's sessions is that we're not
3 really talking about decommissioning West Valley, we were
4 talking about decontaminating it as a Federal
5 responsibility. And as you then consider whether you will
6 establish a special rule for the decontamination of West
7 Valley and its decommissioning, I hope you'll bear that in
8 mind, and think through the difference between something
9 that's technical, having to do with a license, and the
10 environmental impacts related to it, and this relationship

11 that developed between the State and Federal Governments
12 about who pays for what.

13 Going now to the national rule itself -- I'm
14 sorry, to the 98-251 -- we hope that 98-251 will answer this
15 question as to what's decontamination and decommission.
16 Rather I think what it does is puts off the question, the
17 real answer to the question, and it invites one of two
18 things, and I'll deal with this later also. But it invites
19 either a sense that you're rubber-stamping a decision, which
20 we know you would not do, or that you're Monday morning
21 quarterbacking it because you're asking for a change well
22 after a long process has been carried out, a process in
23 which there's a preferred alternative, there's an
24 Environmental Impact Statement, there's perhaps a record of
25 decision.

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1 If it's going to be time-delaying to do an
2 Environmental Impact Statement if that's necessary for you
3 in your rulemaking or however you do this, think how much
4 more delaying it will be if later, after the process is
5 completed, you conclude that the regulations for
6 decontamination and decommissioning established by DOE are
7 unsatisfactory. Think of the uproar that will occur and the
8 delay that will then ensue if people have all come to a
9 conclusion that okay, let's try this. I don't think it's
10 the right way to do it. I think prescribing rather than
11 postscribing the regulations for decontamination and
12 decommissioning are called for.

13 Fundamentally with regard to the national rule,
14 though, for decontamination and decommissioning, when you
15 adopted the rule in 1997 you set some criteria. We think
16 that those criteria should apply to West Valley. We read
17 98-251, and this is where some of the confusion occurs, to
18 say use the national rule, but if it must be departed from,
19 it can be if the Environmental Impact Statement shows some
20 justification for doing so, and that that justification can
21 be found if it would cause more harm than good, be
22 prohibitively expensive, technically infeasible, and that
23 the new requirements would have to demonstrate sufficient
24 level of protection, reflect a reasonable balance of costs
25 and benefits, and be a viable approach. And then also

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1 indicates that the Nuclear Regulatory Commission assumption
2 regarding the failure of institutional controls will make
3 all West Valley decommissioning alternatives nonviable under
4 the proposed decommissioning criteria. The paper then
5 indicates that the other alternative, removal to an offsite
6 location, may be difficult, controversial, costly, and
7 time-consuming.

8 We concluded from all this as best we're able to
9 that 98-251 would allow West Valley to be declared
10 decommissioned under a less protective standard than the
11 national rule when the application of the national rule
12 would prove to be costly, controversial, time-consuming, and
13 difficult.

14 As an aside, we assume most things you do here
15 have all of those factors anyway. Most of the things you
16 have to deal with are costly, are difficult, are
17 controversial, and are time-consuming. And I don't think
18 that alone is a sufficient justification for making an
19 exception of West Valley.

20 But what this all means, probably means, is that
21 there could be greater reliance on institutional controls

22 and the maintenance of protective features. We assume that
23 98-251 would allow human exposure in the event of the
24 failure of institutional controls to an unspecified, at
25 least yet unspecified, but higher level than the 100

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1 millirems per year allowed in the alternative criteria under
2 the national rule. We believe this is wrong. Rather, we
3 think that the national rule should apply at West Valley and
4 if the standards cannot be met, we believe West Valley
5 should not be declared decontaminated and decommissioned,
6 and thus DOE's job is not yet complete.

7 I've talked about the postscribe versus prescribe,
8 and only to say again that we're quite concerned that the
9 rules not be established first, not be prescribed. We're
10 concerned Ray Vaughn made this word up, postscribed, can't
11 find it in the dictionary, but that they're being
12 postscribed, after the events are well under way you'll try
13 and decide what the rules are. That's very different from
14 normal rulemaking as we understand it, certainly at the
15 State level or at my involvement at the county level, and
16 unusual we think at the Federal level. And we don't
17 understand why. And if the only reason is what we've heard
18 today, concern about the delay and costs of doing an
19 Environmental Impact Statement, it seems all out of
20 proportion.

21 COMMISSIONER McGAFFIGAN: Madam Chairman, can I
22 ask a question?

23 CHAIRMAN JACKSON: Please.

24 COMMISSIONER McGAFFIGAN: One of the points you
25 make in your prepared statement is this notion of

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1 time-limited institutional controls, and I know from Mr.
2 Bond's letters he's uncomfortable as anybody would be with
3 the institutional controls in perpetuity, which is
4 contemplated at other DOE sites around the country, and
5 we've been trying to get some context today.

6 But realistically, and the State regulator has
7 just addressed, there may be parts of this site, the State
8 disposal area, the NRC disposal area, where it's just
9 unrealistic to get the stuff out and you really are
10 contemplating, as EPA does at other sites under CERCLA, Maxi
11 Flats has been mentioned in Kentucky, basically
12 institutional controls in perpetuity where if institutional
13 controls fail, you're in hundreds of rems, thousands of
14 rems.

15 Are you asking for the impossible with regard to,
16 when you say time-limited institutional controls, you're
17 implying at some point this is a green field, all of it, all
18 3,000 acres?

19 MR. TOBE: It is the hardest part about this site,
20 and we start, and it's the first significant point I think
21 we make on our own paper, that one would never pick this
22 site for a permanent nuclear waste repository. There are so
23 many factors that make it unsuitable. It's tributary to
24 Buffalo's drinking water, it's Lake Erie, it's on an active
25 geological fault, it's high water table, a lot of rain,

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1 seeps come to the surface where wastes are stored in the
2 ground. You would never pick this site to start with. And
3 I don't think anybody's criteria would now select this site.
4 And, as you say, removing wastes completely is very
5 difficult, very costly, perhaps more dangerous to the people
6 who will be doing it, to the public.

7 So how do you reconcile these things? What we

8 came up with was that come back and visit it frequently, not
9 do anything that is going to make it harder to eventually
10 remove the waste. Select solutions that make it easier to
11 monitor now, easier to retrieve now. Don't select a
12 solution that makes it a lot harder. Don't build this giant
13 monolith in which everything will be contained only to
14 discover that perhaps it gets out and it's really hard to
15 deal with, we've made a difficult problem even more
16 difficult.

17 CHAIRMAN JACKSON: So you're really talking about
18 a modified monitored retrievable storage.

19 MR. TOBE: With as much --

20 CHAIRMAN JACKSON: So that that would be focused
21 in initially as part of the criteria for the design for
22 anything that would be left in place.

23 MR. TOBE: With the other comment that as much as
24 can be removed --

25 CHAIRMAN JACKSON: Should be.

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1 MR. TOBE: Should be removed. Yes.

2 And none of the initial alternatives in the draft
3 Environmental Impact Statement provided that alternative.
4 And we would like as much to be removed as could be. We
5 want as much out of the ground as possible. We believe that
6 engineered solutions will fail over the life of these
7 wastes. We're quite concerned about long term having the
8 financial resources necessary to do a quick reaction if
9 there's something dramatic that happens at the site. We
10 want automatic triggers to reopen over periods of time to
11 revisit all the issues, and we want opportunities to reopen
12 when circumstances may warrant, earthquakes, floods --

13 CHAIRMAN JACKSON: Have we gotten copies of this
14 July '98 final report of yours?

15 MR. TOBE: Yes, it's included --

16 CHAIRMAN JACKSON: It's included in --

17 MR. TOBE: Yes, it's one --

18 CHAIRMAN JACKSON: It's one of the attachments.
19 So we need to look at that.

20 MR. TOBE: Yes. I just wanted to end with two
21 questions that we ask and then our suggested answer. The
22 first, should the standard for the decontamination and
23 decommissioning of the West Valley site be different than
24 that for the rest of the country, as I think the staff has
25 proposed? And we say no, it should be the same. And,

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1 secondly, should the NRC deviate from its normal practice in
2 which it sets in advance clear objective standards for the
3 protection of human health and the environment so as to
4 guide, influence, and finally judge proposed activities?
5 And we think no, the NRC should not deviate.

6 COMMISSIONER MCGAFFIGAN: Could I again follow up?
7 We're trying to learn in some respects, at least I am from
8 our sister agency at EPA, and as I say, they use their
9 CERCLA authority at Maxi Flats, a similar -- not really
10 similar, you've got a worse site. I mean, you've got --
11 they've got the low-level waste site with -- and then
12 they've got -- you've got everything else. But they set a
13 standard, and then they have technical and practicality
14 waivers and indefinite institutional controls under -- and
15 Commissioner Merrifield knows this stuff better than I do,
16 that I'm sure there's a high standard to get to use the
17 technical and practicality waiver.

18 Are you suggesting we do -- we don't actually have

19 that in our current rule because I don't think we
20 contemplated sites that would ever get above 500 millirems
21 if institutional controls failed, and here we're
22 contemplating a site where it's 100,000 rems if
23 institutional controls fail. So are you looking for a
24 unique rule that builds in some of the flexibility that EPA
25 has? It sets standards, but then it makes accommodations to

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1 those standards based on judgments of technical
2 practicality.

3 COMMISSIONER MERRIFIELD: Can I just interrupt
4 just for the sake of your answer?

5 CHAIRMAN JACKSON: Yes.

6 COMMISSIONER MERRIFIELD: One of the things that
7 EPA does is it uses a technical and practicability test --

8 COMMISSIONER McGAFFIGAN: Right.

9 COMMISSIONER MERRIFIELD: Technical and
10 practicability means is it technically feasible to do the
11 option being undertaken.

12 COMMISSIONER McGAFFIGAN: Right.

13 COMMISSIONER MERRIFIELD: And there's a separate
14 analysis for is it unreasonably costly.

15 COMMISSIONER McGAFFIGAN: Okay. So there's two
16 tests.

17 COMMISSIONER MERRIFIELD: It's a two-part test.

18 COMMISSIONER McGAFFIGAN: Okay.

19 MR. TOBE: And I have a two-part answer.

20 The first part deals with has it been
21 decontaminated and decommissioned as that term might have a
22 meaning in the West Valley Demonstration Project Act. Until
23 it's really clean and safe, we think it's not been, and the
24 Federal responsibility should continue.

25 How you then deal with it license-wise and

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1 regulatory-wise is a second question. But I feel as if what
2 the staff has proposed is to shoehorn in decontamination and
3 decommissioning where it doesn't belong, but rather say it's
4 not yet been decontaminated and decommissioned, and some
5 continuing license or presence or rule applies to it, and
6 then recognize the great difficulties in immediately
7 removing the waste and the fear that we all have from the
8 failure of institutional controls, which I think you dealt
9 with so well in the national rule.

10 And what we see is some kind of tradeoff, the
11 extent to which we rely upon institutional controls, the
12 consequence of their failure as the consequence becomes
13 greater, the things the agency has to show it can do become
14 higher. So maybe it has cash in the bank instead of just
15 the opportunity to go to the Federal Treasury to get the
16 money. Maybe it makes a commitment to have trained staff
17 there instead of just monitors.

18 But there's -- I think there's a -- these scales,
19 and as the consequences of institutional controls or the
20 protective features that are really important being damaged,
21 the consequences when they are damaged increases, and
22 something on the other side of the scale has to be put on to
23 bring it back into sort of balance to get close to what you
24 were seeking in the national rule. And I think that's the
25 only way to deal with it.

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1 CHAIRMAN JACKSON: Okay. Anything else?

2 MR. TOBE: Thank you very much.

3 CHAIRMAN JACKSON: Commissioner Dicus?

4 Commissioner McGaffigan?

5 COMMISSIONER MCGAFFIGAN: Nothing.
6 CHAIRMAN JACKSON: Commissioner Merrifield?
7 COMMISSIONER MERRIFIELD: Yes, I'll try and make
8 this very brief. Obviously you can see we're grappling with
9 what our appropriate role is here, and we had a variety of
10 people who have come forward with us today and said that we
11 should go in one direction or another.

12 I've always been very impressed with the direction
13 the Chairman has always said of let's -- what are the facts?
14 Let's look at what we have available to us and decide how
15 we're going to go from there. In doing that, and I agree
16 looking back at the West Valley Demonstration Project
17 language, and this is a demonstration project, looking at
18 the legislative history going along with that -- and it took
19 almost five years for this bill to work its way through
20 Congress in various forms -- it would appear to me, and I
21 haven't heard anything otherwise today, that this act was
22 focused on addressing and demonstrating the ability to
23 solidify waste contained in the steel tanks there.

24 There are some attendant obligations on the part
25 of the Secretary which we may, as has been pointed out,

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1 prescribe related to the cleanup of those tanks. And while
2 we may want to go further and deal with a whole variety of
3 other cleanup issues which may be very justifiable at the
4 site, I think we need to go back and have our counsel look
5 back, what are the limitations for us in how we judge the
6 appropriateness of the options based on the laws.

7 There very well may or may not be limits. If
8 there are, we may have to go back to Congress and seek more
9 authority, or others may have to go back and seek more
10 authority. But I think we are limited by the law, and I
11 think that's one of the things we're going to have to
12 grapple with our staff.

13 CHAIRMAN JACKSON: Well, I would like to thank the
14 Citizens' Task Force representatives of the State of New
15 York, DOE, and the NRC staff for today's briefing, full and
16 robust discussion. The Commission will as always give
17 serious consideration to all of the views expressed here,
18 and I guess what this briefing has done is to make it clear
19 the complexity of the issues. And we will then have to fold
20 that into with the additional inputs we've already asked for
21 into our review of the NRC staff proposal for the West
22 Valley site decommissioning and decontamination criteria.

23 It's clear that there are significant areas of
24 disagreement on the criteria proposed as well as on the
25 process by which the criteria would be applied, and these

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1 areas then require a lot of close attention by the
2 Commission, and we will do that. And I would like to thank
3 all of the presenters. I originally was going to try to
4 have a few comments from the floor, but in fact we have
5 someone waiting for the Commission. We have another
6 meeting. And so I want to thank everyone and thank you for
7 your attention. We're adjourned.

8 [Whereupon, at 12:43 p.m., the briefing was
9 concluded.]

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