

West Valley  
Citizen  
Task  
Force

January 5, 2000

Jack D. Parrott  
Project Scientist  
Office of Nuclear Material Safety and Safeguards  
Mail Stop T-8F37  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Dear Mr. Parrott:

This statement is submitted on behalf of the West Valley Citizen Task Force (CTF) in response to the issuance of a draft policy statement in the Federal Register Notice of December 3, 1999 (64 FR 67952) with regard to the proposed application of the U.S. Nuclear Regulatory Commission's (NRC) License Termination Rule (LTR, 10CFR Part 20, Subpart E) as the decommissioning criteria for the West Valley Demonstration Project.

The CTF was formed by the U.S. Department of Energy (DOE) and the New York State Energy Research and Development Authority (NYSERDA) and held its first meeting January 29, 1997, almost three years ago. The CTF unanimously adopted a Final Report on July 29, 1998 which established Policies, Priorities and Guidelines for the decontamination and decommissioning of the West Valley Site. The CTF will support those governmental actions which advance the goals of the Final Report.

The CTF wants to thank the Commissioners and staff of the NRC for the hard work and detailed consideration which they have given to this matter. With the many issues of national significance which the NRC must confront, we are very grateful that so much time and attention has been spent on West Valley. The NRC's willingness to alter its position during the debate that has gone on over the past year is an example of the strength of our system of government. We all very much appreciate what has occurred.

The CTF has been an active participant in the considerations which the NRC has undertaken since the NRC staff proposed SECY-98-251. The CTF submitted written comments dated December 22, 1998 on SECY-98-251, verbal testimony before the NRC Commissioners on January 12, 1999 in Washington, D.C., and written comments dated March 29, 1999 in response to SECY 99-057. The CTF, as stated in its March 29, 1999 written comments, generally supports SECY 99-057 and supports the application of the LTR to West Valley. This important policy, when implemented, will guarantee that West Valley has the same cleanup goals as all other sites in the United States.



The CTF makes the following additional comments on the Draft Policy Statement:

1. **All Sources Must Be Considered in Application of LTR** - In the Statement of Policy under the section titled Decommissioning Criteria for the WVDP, it is indicated that the LTR will apply to the High-Level Waste (HLW) tanks and other facilities in which HLW solidified under the project was stored, the facilities used in the solidification of the waste, and any material and hardware used in connection with the WVDP. This section then discusses the range of exposure that will be permitted. This section should clearly state that the permitted exposure that will be allowed under the LTR will be from the aggregate of all sources at the site. Thus exposures that might be derived from the WVDP facilities must be added to exposures that might be derived from other facilities at the site such as the State-Licensed Disposal Area (SDA), which is not part of the WVDP, to determine if the LTR maximum exposures have been exceeded.
2. **Avoid Use of Word "Prescribe" in NRC's Proposed 2nd Step** - In the Statement of Policy under the section titled Decommissioning Criteria for the WVDP, the last sentence states that "... (2) following the completion of DOE/NYSERDA's Environmental Impact Statement (EIS) and selection of its preferred alternative, the NRC will verify that the specific criteria identified by DOE is within the LTR and will prescribe the use of specific criteria for the WVDP." We request that the term "prescribe" not be used since this term is also used in a somewhat different context in the WVDP Act. We suggest that the last 12 words of this sentence be dropped, so that it reads "... (2) following the completion of DOE/NYSERDA's Environmental Impact Statement (EIS) and selection of its preferred alternative, the NRC will verify that the specific criteria identified by DOE is within the LTR."
3. **Avoid Paraphrasing LTR** - In the Statement of Policy under the section titled Decommissioning Criteria for the WVDP, certain provisions of the LTR are paraphrased but not stated in full. We urge the NRC to be careful not to establish two different standards for the WVDP, one in the LTR and the other in the paraphrased restatement of the LTR. This could only lead to unintended and unnecessary confusion. We urge the NRC to either refer to the LTR without restating, or to quote it exactly.
4. **Clarify Meaning of "Institutional Controls"** - The LTR contains the term "institutional controls." For instance Section 20.1403 states in part that "A site will be considered acceptable for license termination under restricted conditions if...(e) Residual radioactivity at the site has been reduced so that if *institutional controls* (italics added) were no longer in effect, there is a reasonable assurance that..." exposures will not exceed certain values. The CTF in supporting the application of the LTR to the West Valley site, as has been proposed by the NRC, believes that the term institutional controls includes both legal protections such as deed restrictions, fences and surveillance and protective features such as physical barriers. Mr. Michael Weber from NRC briefed the CTF on April 2, 1997 and suggested that "institutional controls" would complement engineering controls (protective features). Mr. Russell Edge from DOE's Grand Junction Office briefed the CTF on September 21, 1999 regarding long-term stewardship and DOE's efforts now underway to develop standards for evaluating institutional controls. He advised the CTF that institutional controls include protective features. Any analysis of the suitability of an institutional control program must consider the impact of the failure of the protective features, such as the breaching of containment walls and barriers by natural processes such as erosion or earthquakes. As the LTR does not contain a definition of "institutional controls" and the CTF is not aware of any other authoritative, well-developed definition, we urge the NRC to clarify the meaning of the term, not just for West Valley but for the rest of the nation.

5. **Consider Longer Time Period** - The LTR uses a 1,000-year time frame for estimating future doses. This time period is based on the relatively low levels of radioactivity and on the low potential for changes in the physical characteristics of typical decommissioned sites (62 FR 39083). Certain sites such as West Valley may have higher levels of long-lived radionuclides and higher potential for changes in site characteristics than most sites. We ask that the Commission consider a longer time frame for such sites in applying the LTR.
6. **Five-Year Review Period, Long-Term Enforceability, and Financial Assurance for Institutional Controls** - The CTF sees some potential problems in applying institutional controls to complex sites such as West Valley. The CTF believes that periodic rechecks "no less frequently than every five years to assure that the institutional controls remain in place..." as required by the LTR under Section 20.1403(e), may be too infrequent, especially in view of the levels of exposure (up to 500 mrem/yr) if institutional controls are lost. In addition, the CTF is concerned about undue reliance on a governmental "statement of intent" or "arrangement that is deemed acceptable by such government entity" in providing financial assurance for long-term institutional controls. The CTF believes that such government statements and arrangements are not enforceable. By law, governments cannot make open-ended commitments that are binding on future government administrations. Likewise, governments cannot encumber money or guarantee future appropriations. For these reasons, the CTF is concerned that federal and state commitments made today in good faith are unenforceable. It is possible for them to be legally rescinded or scaled back in the future, resulting in either a reduced level of protection or a shifting of costs to local governments. These uncertainties are most acute at large, complex sites such as West Valley. Complex questions of institutional controls may arise at such sites, and large sums may be needed in perpetuity for routine purposes and/or emergency expenditures. For sites of this type, the CTF recommends consideration of dedicated trust funds and/or other highly reliable methods of financial assurance.
7. **CTF Positions** - In the Statement of Policy under the section titled Background, the position of the CTF regarding the suitability of West Valley for long-term isolation of waste is stated in brief. The CTF believes that its positions are not susceptible to paraphrasing and must be considered as a whole as stated in its Final Report dated July 29, 1998.
8. **Incidental Waste** - The CTF had opposed prior proposals regarding the application of an incidental waste policy to West Valley. We are pleased that this apparently has been deleted from the West Valley proceedings. We are still concerned that the proposed incidental waste proposal may find its way to West Valley through another pathway. We urge that the incidental waste proposal not be applied to West Valley now or in the future. Should a proceeding be commenced that would affect West Valley, we request notice and an opportunity to participate.
9. **Use of ALARA** - The CTF wants to emphasize the importance of using the As Low As Reasonably Achievable (ALARA) principles to the WVDP cleanup standards and not to automatically apply the thresholds of 25, 100, and 500 mrem. The requirement of achieving the best cleanup that is possible, given all the circumstances, is of great importance.

In conclusion, the CTF wishes to commend the NRC Commission and staff for their efforts on behalf of the West Valley site. We strongly urge that the LTR be applied to the site and that the Policy Statement, with the modifications which we have suggested, be adopted.

Respectfully submitted,



West Valley CTF