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March 31, 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. 20555-0001

Dear Mr. Parrott:

On behalf of Eliot Spitzer, Attorney General of the State of New York, we submit the following comments on the U.S. Nuclear Regulatory Commission's (NRC) draft Policy Statement regarding the proposed application of the License Termination Rule (LTR) §10 C.F. R. § 20.1401 -1406, as decommissioning criteria for the West Valley Demonstration Project.

The LTR is subpart E of Part 20 of the Code of Federal Regulations, "Standards for Protection Against Radiation." Part 20 provides standards and guidance for protecting the public from the effects of radiation "resulting from activities conducted under licenses issued by the Nuclear Regulatory Commission." 10 C.F.R. § 20.1001(a). Application of the LTR is a significant step toward the ultimate goal of cleaning up the entire Western New York Nuclear Service Center in a manner that protects the public health, safety, and the environment for this generation and those to follow.

This office supports application of the LTR to the West Valley Demonstration Project. However, the NRC may impose more stringent requirements than those set forth in Part 20 where further measures may be necessary to protect public health and safety: "... nothing in this part shall be construed as limiting actions that may be necessary to protect health and safety." 20 C.F.R. §1001 (b). Therefore, in order to protect the public health and safety, we recommend that the NRC take the following actions:

1. Provide guidance on the elements of a cost/benefit analysis where such an analysis is applied to decision-making for decommissioning the West Valley Demonstration Project.

The LTR requires cost/benefit analyses in several sections. The term "ALARA," (acronym for "as low as reasonably achievable") as defined at 10 C.F.R. §20.1003 is based on a

cost/benefit analysis. This term appears in §§20.1402, 1403, and 1401. Cost/benefit analyses are also required by implication in §20.1403(d)(1)(i)(c) to determine whether provisions for institutional controls “will not impose undue burdens on the local community or other affected parties;” and §20.1403(e)(2)(i) allowing a 500 millirem per year (mrem/yr) exposure if meeting the 100 mrem/yr standard “would be prohibitively expensive.”

In order fairly to assess closure alternatives any cost/benefit analysis must be consistently applied and take into account, *inter alia*, the types of institutional controls needed to meet LTR standards, and the effects of potential system failures on current and projected populations for the entire time period such controls would have to be maintained, as well as the cost and long-term funding of those controls. Without adequate guidance on the factors which must be included, a cost/benefit analysis can easily be skewed to yield a result which achieves immediate economies without taking into account long term costs.

2. Require that a longer time period than the one thousand years provided in 10 C.F.R. § 20.1401(d) be considered for estimating future doses for the Center given the high rainfall and the highly erodible nature of the soils in the area.

Alternatives for closure of the Center which would permit radioactive material to remain there must include dose estimates based on the actual longevity of the radionuclides to remain. To arbitrarily impose a time period not tied to actual potential exposure is a means of avoiding a burden created in our time and imposing it on future generations.

3. Not permit the language of the LTR to be confused by paraphrasing the LTR in the draft Policy Statement.

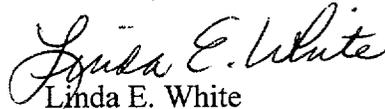
Such paraphrasing could be interpreted as allowing unintended leeway in applying the LTR. To the extent the NRC believes that paraphrasing is necessary to explain the LTR, a sentence should be added to the Policy Statement such as “Notwithstanding any paraphrasing of the LTR herein, the language of the LTR itself is controlling in determining how it is to be applied at the West Valley Demonstration Project.”

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4. Specifically state that potential radiation exposure from all sources at the Center, including the State Disposal Area at West Valley be included in all analyses and decision-making regarding decommissioning the West Valley Demonstration Project.

As part of the basis for determining potential radiation exposures, the NRC should specifically state that potential exposure from all radioactive material within the boundaries of the Center and all other affected areas be considered in determining potential exposure, not just potential exposure from the area to which the NRC will apply the LTR. This potential exposure should be determined for entire life of the radioactive material which may be left at the Center, not just the 1000 year period required to be considered in §20.1401(d). (See comment 2.)

Sincerely,



Linda E. White

Assistant Attorney General
Environmental Protection Bureau