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Concerned Citizens of Cattaraugus County

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January 28, 2000

TO: Jack D. Parrott, Project Scientist
Office of Nuclear Material Safety and Safeguards
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

SUBJECT: Draft Policy Statement on the decommissioning criteria for the West Valley Demonstration Project and the West Valley site, 64 FR 67952 (Dec. 3, 1999)

Please accept the following comments on the NRC's Draft Policy Statement.

Preliminary Matters

1. Concerned Citizens of Cattaraugus County ("CCCC") is a nonprofit 501(c)(4) corporation formed in 1991 in New York State. As stated in its incorporation papers, CCCC's mission is: "To assure Cattaraugus County's air, soil, water and environment is clean and healthful, and to advocate with the public and governments that policies be implemented and that laws be passed to assure such a clean and healthful environment; to assure that local, state and federal environmental protection laws are enforced; to encourage skills for citizen advocacy for a clean and healthful environment." CCCC has over 400 individual and family members who pay regular dues to the organization. Membership is open to the public. CCCC distributes an irregular newsletter on local environmental issues to our members, area municipal official, libraries and other public places. Members of CCCC's Board of Directors sit on the Cattaraugus County Legislature's Farmersville Task Force of the Cattaraugus County Legislature and the Cattaraugus County Soil and Water Conservation District. CCCC has been a formal party to state environmental permit review proceedings in the Farmersville landfill proposal since 1993 and serves as a watchdog to Cattaraugus county citizens for environmental issues generally.

2. CCCC supports the NRC's proposed action prescribing the LTR for the West Valley site as a whole, including both the West Valley Demonstration Project ("WVDP") and the remainder of the site under NYSERDA's jurisdiction. However, the NRC's proposed action goes beyond prescribing the LTR and seeks to establish a policy for the site. Our concerns go primarily to the bifurcation or segmentation of the LTR's impacts on the site under the Draft Policy and the need to recognize under the Policy the unique features of the site.

3. The Citizens Task Force ("CTF") has never included representation from CCCC, nor has it included representation from the Cattaraugus County Legislature or any other small municipal officials beyond two small municipalities immediately contiguous to the West Valley site (the Town of West Valley and the Village of Ashford), except the Seneca Nation of Indians. Nor were local stakeholders not included in the CTF invited to the public meeting on decommissioning criteria for West Valley held in Rockville, Maryland, in December, 1998. CCCC learned about this meeting only during the present public comment period. In view of the restricted representation from local stakeholders in the CTF, their absence from the December, 1998, public meeting, and NRC Staff's regular attendance at CTF meetings, (*see* SECY-98-251, Attachment

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4), NRC Staff have only now begun to give local stakeholders outside the CTF a meaningful opportunity to offer independent comments on the Staff's thinking about decommissioning West Valley. Accordingly, we consider the Draft Policy Statement an early initial effort to encourage meaningful public participation in the process of developing a policy for setting exposure and cleanup standards for the West Valley site. The NRC should make additional efforts to reach out to local municipal officials and other stakeholders in Cattaraugus and Erie counties before deciding on a final policy for the West Valley site.

Impermissible Bifurcation or Segmentation

4. NRC cannot, as the Draft Policy Statement seeks to do, rely on the authority of the 1990 West Valley Demonstration Project Act to support bifurcating and segmenting the application of cleanup standards. The Draft Policy Statement bifurcates (or trifurcates) the application of cleanup standards between the WVDP and the remainder of the site deemed NYSERDA's. 64 FR 67954, at p. 67953 ("Decommissioning Criteria for the NDA and SDA" (bifurcating application of criteria between the NDA and the SDA) and "Decommissioning Criteria for License CSF-1" (deferring application of criteria "to the termination of NYSERDA's NRC license on the West Valley site [until] that license is reactivated"). Such bifurcation appears to be a substantial departure from NRC recent past policy. SECY-98-251, note 1 (October 30, 1998) ("NRC, DOE, and NYSERDA have long favored addressing environmental impacts on a site-wide basis. Therefore, the EIS, the decommissioning criteria, and long-term control alternatives discussed in [SECY-98-251] cover both DOE's completion of the project and NYSERDA's closure of the site."). *See also* id., Attachment 3 (recognizing no less than twelve distinct waste disposal areas (WMAs) inside and outside the boundaries of the WVDP and recognizing the presence of at least one "[c]ontaminated ground-water plume that crosses several WMAs"). The Draft Policy Statement should not only prescribe the LTR on a site-wide basis. The Policy on West Valley should apply decontamination and decommissioning ("DandD") criteria on a site-wide basis. Nothing in the WVDP Act precludes so doing, since applying standards on a site-wide basis includes and therefore cannot be inconsistent NRC's duties under the Act. Nor does the WVDP Act provide specific authority for bifurcating the application of cleanup standards. The Draft Policy therefore erroneously relies on the Act's authority to support bifurcation.

5. Moreover, bifurcation will have the result of substantially reducing the likelihood of cleanup of those areas within the West Valley site located outside the WVDP, and therefore triggers independent duties of the NRC under the National Environmental Policy Act of 1969 ("NEPA"). For the reasons given in the last comment, the NRC's Policy on West Valley bifurcating the application of cleanup standards is a federal action with environmental impacts that extend far beyond the decommissioning the WVDP. Under NEPA consideration of environmental impacts may not be segmented by deferring consideration of impacts of one portion of the same site when considering impacts of another portion of that site. Since the NRC Draft Policy bifurcates the application of cleanup standards and thereby defers consideration of impacts of applying those standards to areas of the West Valley site outside the WVDP, the Draft Policy impermissibly segments the consideration of impacts of NRC's action. NRC cannot now "rely on the DOE/NYSERDA's EIS for [NEPA] purpose[s]" to justify impermissible segmentation under NEPA. Draft Policy Statement, 64 FR 67952, at p. 67954 ("Environmental Analysis").

6. Segmentation may also be presented by the Draft Policy's treatment of "areas" yet to be characterized at the West Valley site. Will the twelve waste disposal areas at the West Valley site each be considered separate "areas" for purposes of the requirement that the final status survey be performed for "an area [that] has been fully characterized"? NRC has set forth as a general policy for decommissioning that "[t]he final status survey is the radiation survey performed after an area has been fully characterized, remediation has been completed, and the licensee believes that the area is ready to be released." DG-4006 (sect.2, para. 1). The Policy should set forth a definition of all "areas" at the West Valley site as a whole subject to the final status survey prior to decommissioning the West Valley site or any portion of the site. However, to avoid impermissible segmentation under NEPA the Policy must also set forth as a requirement a holistic final status survey that considers all characterized areas and their respective remediation plans. *Cf.* id. ("The purpose of the final status survey is to demonstrate that the area meets the radiological criteria for license termination.").

Inadequate Specificity for the West Valley Site

7. NRC, DG-4006 Regulatory Position 1.1 (para. 3) contemplates that a license termination plan is an optional obligation of the licensee. The Policy should state that DOE will be required to submit a license termination plan.

8. The Draft Policy fails to specify how the final status survey method will address groundwater contamination and cleanup standards for groundwater contamination. Where, as here, groundwater contamination is present and significant current guidance recommends survey methods tailored to the specific site. *Cf.* DG-4006, sect. 2.11.1 ("The MARSSIM final status survey method was designed specifically for residual radioactivity in the top 15 centimeters of soil."); id. at sect. 2.11.4. ("The nature of appropriate ground water surveys should be determined on a site-specific basis and is outside the scope of this guide.") The Policy on West Valley should therefore set forth with some specificity the survey method's treatment groundwater contamination and cleanup standards for groundwater contamination at the West Valley site.

9. For purposes of cost-benefit analysis under the Policy, benefits of remediation of any and all areas of the West Valley site cannot be calculated on the basis of "future occupants of the site," (DG-4006, sect. 3.1.1.), for a number of important reasons. The most important of these reasons follows from the high degree of erosion at the site and the significant known groundwater contamination and, while not fully characterized, highly likely potential for further and continuing groundwater contamination. Because the area is heavily used for hunting, sports fishing, and water recreation, it is unreasonable to expect that persons engaged in such activities can be kept from direct and indirect (e.g., through consumption of plants and animals exposed to contamination from the site) exposure to surface and subsurface waters from the site. Such persons include nearby residents as well as occasional tourists. Impacts on non-occupant hunting, fishing, and other recreational users should be included in any cost-benefit analysis under the Policy. Because the West Valley site is located over a federally-designated sole source aquifer, (52 FR 36100 (September 25, 1987) (Cattaraugus Creek Sole Source Aquifer)), thousands of residents who will not be "future occupants of the site" will be potentially directly effected by levels of remediation determined under the cost-benefit analysis. Impacts, including the potential for future impacts, on these off-site resident users of the site's underlying aquifer should be

included in any cost-benefit analysis under the Policy. Because members of the Seneca Nation of Indians ("SNI") use the waters of Cattaraugus Creek in special ways determined by their distinctive culture, compared to sports and recreational tourists and nearby non-Indian residents, and because these waters may be contaminated now or in the future as a result of the highly erosive conditions at the West Valley site, these special uses must be considered and the benefits of remediation for SNI members must be included in the calculation of benefits under the Policy. The Policy should state that benefits to non-occupants including the important groups discussed above must be included in any cost-benefit analysis of remediation alternatives.

10. DG-4006, sect. 3.1.6., recommends that where ground water contamination is present at a site and where the residual radioactivity is diluted in an aquifer of large volume and there is also an "'existing population deriving its drinking water from a downstream supply using a downstream supply,'" the required calculation of the collective dose from consumption of the ground water for purposes of achieving ALARA (i.e., reduction of radiation to levels that are "as low as is reasonably achievable") should not be limited to the site critical group. (Id., quoting LTR, 62 FR 39058, at 39075). Rather, the collective dose for the existing population that relies on the contaminated aquifer for its drinking water "should be included in the ALARA calculation" and "the possibility of reducing the collective dose [to those using the aquifer] by remediation should be one of the items evaluated." Id. Since a determination has been that the West Valley site is located directly over a sole source aquifer, (52 FR 36100 (September 25, 1987)), the Policy on West Valley should incorporate this determination and state that any collective dose calculation for purposes of a future final status survey must, under the Policy, include in its ALARA calculation the population within the area of the Cattaraugus Creek Sole Source Aquifer existing at the time of the final status survey is performed.

11. License termination under restricted conditions is possible if certain requirements are met. 10 CFR § 20.1403. Neither the disjunctive ("or") or the conjunctive ("and") is used in the list of requirements, but NRC's Draft Guidance states that all the requirements must be met. DG-4006(4). The Commission's Policy on West Valley should clarify the nature of certain of these requirements beyond what is set forth in DG-4006 and the Policy should explicitly rule out the use of certain requirements set forth in DG-4006, sect. 4, due to the unique nature of the West Valley site. Additional opportunities for public comment (*see above,* Comment #3) should include this question.

12. The Policy should clarify that the licensee may not avoid the dose requirements under the LTR by reliance on ALARA but rather that ALARA is to be applied only for purposes of remediation that exceeds the LTR's dose limits.

Respectfully submitted for CCCC by:

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