

COALITION ON WEST VALLEY NUCLEAR WASTES
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June 1, 2000

Dr. Richard A. Meserve, Chairman
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Chairman Meserve:

We would like to comment on the March 31, 2000, letter regarding West Valley decommissioning requirements which was sent to you by Barbara Mazurowski of the U.S. Department of Energy (DOE), West Valley Demonstration Project.

First, DOE's main procedural concern (that "the sequence of agency action proposed in the draft decommissioning criteria appears to be inconsistent with the process outlined in the 1981 MOU") is disingenuous. For background, please see the April 10, 1996, letter that was sent to us by Carl J. Paperiello of NRC.

DOE's March 31 letter contends that NRC should have waited for DOE's analysis of risks and impacts before prescribing decommissioning requirements for West Valley. However, as indicated in the Paperiello letter and its attachments, NRC worked with DOE in accordance with the interagency MOU between about 1991 and 1995 for the purpose of developing D&D criteria. As described in the Paperiello letter and attachments, NRC expected DOE to provide an assessment of preferred D&D criteria during or prior to 1995, but DOE failed to do so. Thus, it is our understanding that DOE effectively thwarted the process for developing D&D criteria that was outlined in the DOE-NRC MOU. DOE's current complaint that the MOU is not being followed seems disingenuous and self-serving.

Second, we offer some observations on DOE's newfound enthusiasm for NEPA. DOE's March 31 letter raises some interesting and substantial questions about NEPA but ultimately seeks to draw NRC into a NEPA relationship that we have consistently characterized as illegal.

As you may know, we have frequently commented on NRC's NEPA obligations in relation to West Valley. See, for example, our letters of July 27, 1997, and February 1, 1998, to John Greeves; my letter of November 14, 1998, to Chairman Shirley Jackson; and our December 2, 1998, Statement of Position on Commission Paper SECY-98-251.

DOE, in its March 31 letter, seeks to convince NRC that 1) the West Valley D&D requirements should not be finalized until after the DOE-NYSERDA West Valley Final EIS has been issued and 2) NRC can use the DOE-NYSERDA West Valley Final EIS to satisfy NRC's NEPA obligation for prescribing D&D requirements. We have consistently challenged, and

continue to challenge, the legality of both of these ideas. Please see our prior correspondence with NRC and DOE, including the above-cited letters, in NRC's M-32 file.

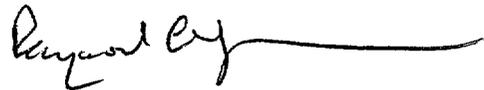
Specifically, an NRC decision to delay prescription of the D&D requirements for West Valley would effectively force DOE to develop its EIS alternatives for West Valley decommissioning without clear knowledge of the legally binding D&D requirements. This would be contrary to the intent of both NEPA and the West Valley Demonstration Project Act.

The idea that the DOE-NYSERDA EIS can satisfy NRC's NEPA obligation is likewise flawed. NRC's limited role (cooperating agency) and belated entry into the DOE-NYSERDA EIS is simply not sufficient to support NRC decisionmaking on West Valley D&D requirements. As currently structured, the EIS supports decisions that DOE and NYSEERDA will make; it does not clearly address or acknowledge NRC decisionmaking. Other deficiencies include the lack of scoping relevant to NRC participation in the EIS, development of relevant alternatives, etc. These various NEPA deficiencies would be especially acute if NRC's prescription of D&D requirements were to be regarded as a "major federal action," as DOE has suggested.

In our view, NUREG-1496 provides a large portion of the NEPA support needed for NRC's prescription of West Valley D&D requirements. Whether NUREG-1496 is sufficient for this purpose is not entirely clear. If NUREG-1496 is not sufficient, then NRC must undertake its own site-specific West Valley EIS which is properly scoped for NRC decisionmaking, etc., and which addresses the relatively large public health and safety implications of prescribing D&D requirements for a large site such as West Valley.

A major portion of the impacts and analyses in such a site-specific EIS would be associated with institutional control issues, especially the impacts and uncertainties associated with various assumptions about the durability of institutional controls. Assumptions about institutional controls are clearly the dominant factor in human radiation exposures at the West Valley site (as shown in the 1996 West Valley Draft EIS, esp. pp. D-36 to D-39, and in NRC's own comments on that Draft EIS, including the August 1996 report by Center for Nuclear Waste Regulatory Analyses entitled *Review of DEIS for Completion of the West Valley Demonstration Project and Closure or Long-Term Management of the Facilities at the Western New York Nuclear Service Center*). Assumptions about institutional controls would thus need to be a central element of any site-specific EIS that supports NRC's prescription of West Valley D&D requirements, if indeed the NEPA support of NUREG-1496 is not sufficient.

Sincerely,



Raymond C. Vaughan

cc: B. Mazurowski, DOE
P. Piciulo, NYSEERDA