

November 1, 2000

The Honorable Richard A. Meserve  
Chairman  
U. S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Dear Chairman Meserve:

**SUBJECT: COMMENTS ON NRC DRAFT POLICY STATEMENT ON DECOMMISSIONING  
CRITERIA FOR THE WEST VALLEY DEMONSTRATION PROJECT AND  
WEST VALLEY SITE**

During its 122<sup>nd</sup> meeting held October 17-19, 2000, the Advisory Committee on Nuclear Waste (ACNW) heard presentations from representatives of the NRC staff and of the West Valley Demonstration Project (WVDP). These presentations were also video teleconferenced with stakeholders and representatives of WVDP in New York.

The West Valley Site is unusually, perhaps uniquely, complex. While Department of Energy (DOE) sites such as Hanford and Savannah River have similar technical cleanup problems, they contain no major NRC-licensed facilities and do not have such divided regulatory responsibilities as does the WVDP.

The December 3, 1999 Decommissioning Criteria for the West Valley Demonstration Project and West Valley Site specifies that the License Termination Rule (LTR) be used as the criterion for the decommissioning of the WVDP. The Committee has not had the opportunity to review the revised final Draft Policy Statement. The Committee has reservations about whether the LTR is flexible enough for application to a site like West Valley in a risk-informed, performance-based framework. We remain concerned that a risk-informed approach may be precluded. For example, is it safer to remove buried waste or leave it in place? If risks are substantially lowered by permitting some portion of the waste to remain in place with long-term site stewardship to assure safety, is the LTR flexible enough to allow this option? Although the LTR has an exemption process, it is not clear to us that this process can be used effectively at West Valley. It is also not clear to the Committee whether the time of compliance specified in the LTR is appropriate for this unusual case.

Our review of the Draft Policy Statement and the comments received also identified what the Committee believes is an overarching issue. A number of laws, including the WVDP Act (Public Law 96-368) appear to limit the regulatory responsibility of the NRC for the site without clearly identifying who has the responsibility. The Commission's role for this site appears to be less than that for other licensed facilities.

Clear lines of regulatory responsibility are important so that in spite of the complex nature of the site, public health and safety is assured. Public comments on the Draft Policy Statement make it clear that the limited role of the NRC at the site is neither understood nor accepted. This misunderstanding could lead to loss of public confidence in the NRC. Those who commented, both the public and the state agencies, expect the Commission to have its usual oversight role in protecting the health and safety of the public for the entire site. The lack of a clear assignment of responsibility for the site could be resolved by an agency such as the Environmental Protection Agency (EPA) or a regulatory agency of the State of New York assuming all responsibilities not clearly assigned to NRC. Another solution could be a Memorandum of Understanding (MOU) among DOE, NRC, EPA, New York State Energy Research and Development Authority, and the appropriate New York State regulatory agencies. A third solution could be a clarification by Congressional action.

Recommendation

We recommend that the Commission consider taking a leadership role in ensuring that the overall site safety is the basis for project termination. This could be accomplished by a request to Congress, by convening a meeting to develop an MOU or other means of clarifying the regulatory responsibilities.

Sincerely,

***/RA/***

B. John Garrick  
Chairman

Reference:

*Federal Register Notice*, "Decommissioning Criteria for the West Valley Demonstration Project (M-32) and West Valley Site; Draft Policy Statement and Notice of Public Meeting (64 FR 67952)," dated December 3, 1999.