



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
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MAY 17 1999

Mr. Dan Sullivan  
West Valley Area Office  
U.S. Department of Energy  
P.O. Box 191, WV-37  
West Valley, New York 14171-0191

Dear Mr. Sullivan:

As you know, the Environmental Protection Agency (EPA) reviewed the draft environmental impact statement (EIS) for the Completion of the West Valley Demonstration Project (WVDP) and Closure or Long-Term Management of the Western New York Nuclear Service Center, located in Cattaraugus County, New York.

Our October 4, 1996, comment letter (copy enclosed) expressed environmental objections to the proposed project and requested additional information to address these objections in the final EIS; we understand that the Department of Energy (DOE) is in the process of preparing a supplemental EIS. Our specific objections included: the limited information on existing site contamination; the uncertainty in achieving the stated cleanup levels; waste disposal; ground and surface water related impacts; the potentially adverse radiation impacts; the questionable accuracy of the risk assessment; and the potential loss of institutional controls. Of particular concern were issues regarding the radiation risk assessment. We stated that the selection of 15 mrem/yr total effective dose equivalent would be consistent with the risk range specified in the National Contingency Plan (NCP), and with the treatment of non-radioactive contaminants as presented in the draft EIS. Therefore, we stated that the final EIS should include a commitment to use either 15 mrem/yr or 10 mrem/yr (as established in the New York State Department of Environmental Conservation's Technical Assistance Guidance Memorandum) as the final dose constraint for remedial activities.

It has come to our attention that the Nuclear Regulatory Commission (NRC) has written two Policy Issue Papers, SECY-98-251 and SECY-99-057, regarding the decommissioning criteria for the West Valley site. We further understand that the papers propose a dose for unrestricted use of no more than 25 mrem/yr to the average member of the critical group with application of the As Low As Reasonably Achievable (ALARA) principle; higher doses will be allowed for restricted use of the site. Additionally, SECY-98-251 proposes to not prescribe the decontamination and decommissioning requirements until after DOE and the New York State

Energy Research and Development Authority (NYSERDA) have issued the final EIS and Record of Decision; it also provides for license termination at a higher dose limit provided there are site restrictions. The options recommended in SECY-99-057 are to: prescribe use of the License Termination Rule (10 CFR 20 Subpart E), or issue the criteria in SECY-98-251 as proposed criteria with final criteria to be prescribed after issuance of the final EIS but before the Record of Decision (ROD).

EPA urges that the dose assessment for the WVDP be made with cognizance of how decisions will affect/contribute to doses for the other facilities and activities at the West Valley site. Segmenting dose assessment by areas under different agency programs or regulatory authorities may result in unforeseen impacts on other areas of the West Valley site outside of the 200-acre WVDP, and may cause increased technical difficulties as well as increased doses for these other areas.

With respect to the dose limit NRC proposes for the West Valley site, EPA does not believe that a 25 mrem/yr dose constraint is adequately protective of human health or the environment because the NRC dose limit of 25 mrem/yr is outside of the risk range of  $10^{-4}$  to  $10^{-6}$  as established in the 1990 revisions to the NCP and EPA guidance under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA); the 25 mrem/year dose limit proposed by NRC is equivalent to approximately  $5 \times 10^{-4}$ . In addition, SECY-98-251 proposes the possibility of transferring regulation of decommissioning to EPA if there is no workable remedy under NRC's authority. Transferring the site to another agency with more stringent public dose criterion in exchange for allowing a longer institutional control period may result in revisiting the cleanup standard. Revisiting a cleanup standard or evaluating a site against a more stringent cleanup standard after a remediation has been "completed" usually leads to requiring additional remediation. To avoid a situation where additional cleanup activities are necessary, we urge NRC and DOE to give serious consideration to using the more stringent cleanup number so that remedial activities are conducted one time.

In addition, not prescribing the decontamination and decommissioning criteria until after issuance of the final EIS makes it difficult to compare and assess the impact of volumes of material to be remediated and goals for treatability studies for each alternative, which depend on establishing Derived Concentration Guidance Limits (DCGLs) based on the cleanup level selected. At the end of the decontamination process, we expect that the Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM) approach to demonstrate compliance will be used since it is a consensus document that was developed collaboratively by NRC, DOE, and EPA. Additionally, electing to prescribe the criteria after issuance of the final EIS could mislead the public to believe that there are continuing significant opportunities beyond the EIS and ROD process to provide input to determining the decontamination and decommissioning requirements for the WVDP.

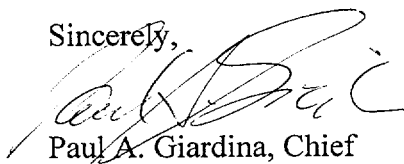
agreed that each standard applies at the site and, where applicable, must be met. This point was discussed at the WVDP roundtable and this should put to rest any belief that there is conflict between these standards. The actual determination as to compliance with the SDWA radionuclide standards is primarily vested with the State of New York which has received primacy for these standards from EPA.

It seems clear that as future EISs are developed by DOE, options will be developed and considered which will include leaving some radioactive material on a portion of the site. Such options will likely require that a license be obtained and that some institutional controls be maintained for some period of time into the future. As you pointed out at the roundtable meeting, these scenarios provide a challenge since they represent a different set of circumstances from a free release scenario for which we have provided an agreement on cleanup standards. We concur with your assessment and we believe that the best approach for the DOE to address health and environmental protection in future EISs for such scenarios is to use the NRC cleanup requirements in 10 CFR 20, Subpart E which allows for 100 and 500 mrem/yr dose levels for restricted release and for the DOE to show that with restricted release and controls such scenarios can still remain within the CERCLA risk range.

During the roundtable meeting you recommended on several occasions that the DOE needs to use the National Environmental Policy Act (NEPA) process to identify all applicable cleanup guidance from all relevant regulatory agencies. I believe you also emphasized the need for DOE to be inclusive in this process. We fully concur with that recommendation.

I would like to conclude with a personal note. I want to express my thanks and gratitude for your efforts and those of your staff. I believe our cooperative efforts over the past year to reach agreement on these issues has set the tone for the future.

Sincerely,



Paul A. Giardina, Chief  
Radiation and Indoor Air Branch

Attachments [3]

cc: Alice Williams, U.S. DOE WVDP  
Dan Sullivan, U.S. DOE WVDP  
Colleen Gerwitz, NYS ERDA  
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