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FINAL REPLY:

Paul L. Piciuto
New York State Energy
Research and Development
Authority (NYSERDA)

TO:

Chairman Meserve

FOR SIGNATURE OF : ** PRI **

CRC NO: 02-0320

Chairman Meserve

DESC:

ROUTING:

Comments on Final Policy Statement on
Decommissioning Criteria for West Valley

Travers
Paperiello
Kane
Norry
Craig
Burns
Miller, RI
Cyr, OGC

DATE: 05/02/02

ASSIGNED TO:

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SPECIAL INSTRUCTIONS OR REMARKS:

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AFFILIATION: NY
ADDRESSEE: Richard Meserve
SUBJECT: Comments on final policy statement on decommissioning criteria for West Valley

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April 24, 2002

Dr. Richard A. Meserve
 Chairman
 United States Nuclear Regulatory Commission
 11555 Rockville Pike
 Rockville, MD 20852

Dear Chairman Meserve:

SUBJECT: Comments on Final Policy Statement on Decommissioning Criteria for West Valley

I am writing in regard to the final Policy Statement on Decommissioning Criteria for West Valley, published February 1, 2002. The New York State Energy Research and Development Authority (NYSERDA) is pleased that the Policy Statement acknowledges that the License Termination Rule, which is the applicable criteria for the termination of NYSERDA's license, is also the decommissioning criteria that the Department of Energy (DOE) must achieve for the West Valley Demonstration Project (WVDP). It remains important to NYSERDA that all regulatory criteria that will be applicable to NYSERDA for termination of the U.S. Nuclear Regulatory Commission (NRC) license that is currently held in abeyance be consistently applied to DOE for completion of the WVDP.

NRC staff, accompanied by representatives of the U.S. Environmental Protection Agency and the New York State Departments of Environmental Conservation and Health, met with the West Valley Citizen Task Force on April 16 and then with NYSERDA, DOE and the general public on April 17 to discuss the Policy Statement and the Regulators Communication Plan. I would like to acknowledge Mr. John Greeves, Director, Division of Waste Management, Nuclear Material Safety & Safeguards, for his role in bringing the regulatory agencies together to develop the communications plan which will be most valuable as we progress with the Environmental Impact Statement and cleanup at West Valley. I would also like to commend Mr. Larry Camper, Chief of the Decontamination Branch, for his leadership and patience during the recent public meetings.

During the April 17 public meetings, NYSERDA submitted comments on the Final Policy Statement for inclusion in the meeting transcript. I have attached a copy of NYSERDA's comments and would appreciate a written response. NYSERDA is striving to more clearly understand NRC's expectations with regard to implementation of the policy statement and decontamination and decommissioning at the Western New York Nuclear Service Center.

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Chairman Meserve
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I look forward to working with NRC on this very important cleanup activity. If you have any questions, please call me at (716) 942-4378.

Sincerely,

WEST VALLEY SITE MANAGEMENT PROGRAM



Paul L. Piciulo, Ph.D.
Director

PLP/amd

Attachment:

- (1) *Comments of the New York State Energy Research and Development Authority on the Nuclear Regulatory Commission's Final Policy Statement 4/17/02*

cc: J. Greeves, L. Camper, J. Lieberman, NRC (w/att.)
P. Giardina, EPA (w/att.)
P. Merges, Ph.D., NYSDEC (w/att.)
G. Baker, NYSDOH (w/att.)
A. Williams, DOE (w/att.)
H. Brodie, NYSERDA (w/att.)
C. Gerwitz, NYSERDA (w/att.)

**Comments of the New York State Energy Research and Development Authority on the
Nuclear Regulatory Commission's Final Policy Statement
4/17/02**

Application of the License Termination Rule (LTR) to the West Valley Demonstration Project (WVDP) and the Entire NRC-licensed Site

The final policy statement prescribes the LTR as the decommissioning criteria for the WVDP and states:

“The resulting calculated dose from the WVDP at the West Valley site is to be integrated with all other calculated doses to the average member of the critical group from the remaining material at the entire NRC-licensed site to determine whether the LTR criteria are met. This is appropriate because the Commission does not intend to establish separate dose standards for various sections of the NRC-licensed site.”

Based on this statement, it is unclear whether the NRC intends to separately evaluate the dose contribution from the WVDP. If, to complete the two-step process, NRC does intend to separately evaluate the dose from the WVDP, it is unclear what fraction of the dose limits will be granted to the WVDP versus the non-WVDP portion of the NRC-licensed site. This issue needs to be clarified.

In addition, if NRC does intend to separately evaluate the dose from the WVDP, then NYSERDA is concerned about how NRC will define which facilities, property and contamination are part of the WVDP for the purposes of this evaluation. NYSERDA has previously stated its position that DOE is required under the WVDP Act to decontaminate and decommission all premises and facilities within the 200-acre fence line other than the State-licensed Disposal Area and the waste disposed of in the NRC-licensed Disposal Area prior to commencement of the Project. (See attached letter from Hal Brodie to Commissioner Jeffrey S. Merrifield, March 1, 1999.)

Waste Incidental to Reprocessing (WIR) Determination

NYSERDA is concerned about the approach to waste incidental to reprocessing determinations that was announced by NRC in the Final Policy Statement. First, NRC's involvement and role in the process for declaring waste incidental to reprocessing at West Valley should be further clarified. NYSERDA has stated on numerous occasions that WIR determinations at West Valley are NRC decisions, not DOE decisions. Unlike other DOE facilities where the WIR criteria have been applied, West Valley is not a DOE-owned facility. DOE has repeatedly stated its intent to close facilities (including the high-level waste tanks) in place at West Valley and then return the site to New York State control and NRC regulation. DOE is preparing, or will be preparing WIR determinations for in-situ closure of various West Valley facilities (i.e., high-level waste tanks, process building, vitrification facility, etc.). Other than the requirement to include the impacts of the residual source term in the environmental impact statement performance assessment, NRC has not established how they intend to approve or otherwise be involved in these determinations. It is essential that NRC establish and make public a procedure for NRC decision-making on this issue.

Attachment A

In addition, in the Final Policy Statement, NRC eliminated any concentration criteria from the WIR determinations at West Valley. This is inconsistent with and less stringent than the criteria that have been set for other DOE facilities. For instance, in its decision on the WIR determination for Hanford (Denial of Petition for Rulemaking: States of Washington and Oregon, 58 FR 12342), NRC specifically required that the waste “not exceed the applicable concentration limits for Class C low-level waste as set out in 10 CFR Part 61.” NRC has failed to set forth any reason for eliminating this concentration criterion at West Valley.

Flexibility and NRC Oversight

The Policy Statement emphasized the flexibility that is present in the LTR without giving site specific guidance on the technical, regulatory, and public processes through which the policy statement and its inherent flexibility will be implemented or how NRC will oversee the decommissioning effort. NYSERDA believes that to retain public confidence, NRC must serve its statutory role to review and consult under the Act in a thorough and transparent manner. NYSERDA strongly encourages NRC to establish a process for NRC to review key documents, such as characterization studies, engineering studies, and performance assessment modeling, with the same rigor that NRC reviews license applications under the Atomic Energy Act. We are pleased that USNRC, USEPA, NYSDEC and NYSDOH have acknowledged in this morning’s (April 17, 2002) meeting the need for further definition of the process and we look forward to working with you on that task.