

**NOTICED MEETING AGENDA  
AT WEST VALLEY DEMONSTRATION PROJECT  
April 17, 2002  
7:00 p.m. - 10:00 p.m.**

- 7:00 p.m.      Welcome, Meeting Objectives and Ground rules  
  
                 Francis "Chip" Cameron  
                 Facilitator
- 7:15 p.m.      Introductory material on status of the West Valley Site  
  
                 U.S. Department of Energy (DOE)  
                 Alice Williams  
  
                 New York State Energy Research and Development Authority (NYSERDA)  
                 Paul Piciulo
- 7:30 p.m.      U.S. Nuclear Regulatory Commission (NRC) Role and Responsibilities/NRC  
                 Policy Statement on West Valley  
  
                 Larry W. Camper, NRC  
                 Chad J. Glenn, NRC
- 8:15 p.m.      Roles and Responsibilities of Other Regulatory Agencies  
  
                 U.S. Environmental Protection Agency (EPA)  
                 Paul Giardina  
  
                 New York State Department of Environmental Conservation (NYSDEC)  
                 Paul Merges  
  
                 New York State Department of Health (NYSDOH)  
                 Gary Baker
- 9:00 p.m.      Open discussion with federal and state agencies
- 10:00 p.m.     Adjourn

## IX ACRONYMS

AEC	Atomic Energy Commission
ALARA	As Low as Reasonably Achievable
CAA	Clean Air Act
CERCLA	Comprehensive Environmental Response Compensation and Liability Act
CMS	Corrective Measures Study
CWA	Clean Water Act
DCGLs	Derived Concentration Guideline Limits
DOE	US Department of Energy
ECL	Environmental Conservation Law
EIS	Environmental Impact Statement
EPA	US Environmental Protection Agency
FFCA	Federal Facilities Compliance Act
GAO	US General Accounting Office
HEAST	Health Effects Assessment Summary Tables
HLW	High-Level Waste
IRIS	Integrated Risk Information System
LLRW	Low Level Radioactive Waste
LTR	License Termination Rule
MARSSIM	Multi-Agency Radiation Survey and Site Investigation Manual
MCL	Maximum Contaminant Level
NDA	NRC-Licensed Disposal Area
NEPA	National Environmental Policy Act
NESHAP	National Emission Standards for Hazardous Air Pollutants
NPL	National Priority List
NRC	US Nuclear Regulatory Commission
NYCRR	New York Code of Rules and Regulations
NYSDEC	New York State Department of Environmental Conservation
NYSDOH	New York State Department of Health
NYSDOL	New York State Department of Labor
NYSERDA	New York State Energy Research and Development Authority
RCRA	Resource Conservation and Recovery Act
SDA	State-Licensed Disposal Area
SDWA	Safe Drinking Water Act
SEQRA	State Environmental Quality Review Act
SPDES	State Pollutant Discharge Elimination System
SWMUs	Solid Waste Management Units
TAGM	Technical Administrative Guidance Memorandum
WNYNSC	Western New York Nuclear Service Center
WVDP	West Valley Demonstration Project
WVDPA	West Valley Demonstration Project Act



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North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams/html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland, this 28th day of January 2002.

For the Nuclear Regulatory Commission.

**Christopher Gratton,**

*Sr. Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 02-2498 Filed 1-31-02; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-327-OLA, 50-328-OLA, & 50-390-OLA; ASLBP No. 02-796-01-OLA]

### Tennessee Valley Authority; Sequoyah Nuclear Plant, Units 1 & 2; Watts Bar Nuclear Plant, Unit 1; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the *Federal Register*, 37 FR 28,710 (1972), and sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717, 2.721, and 2.772(j) of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding:

Tennessee Valley Authority, Sequoyah Nuclear Plant, Units 1 & 2, Watts Bar Nuclear Plant, Unit 1.

This Board is being established pursuant to two notices of consideration of issuance of operating license amendment, proposed no significant hazards consideration determination, and opportunity for a hearing published in the *Federal Register* (66 FR 65,000 and 65,005 (Dec. 17, 2001)). The proceeding involves petitions for intervention submitted January 16, 2002, by We the People, Inc., Tennessee, (WPIT) and the Blue Ridge Environmental Defense League (BREDL), respectively, challenging requests by the Tennessee Valley Authority (TVA) to amend the operating licenses for the Sequoyah Nuclear Plant, Units 1 and 2, and the Watts Bar

Nuclear Plant, Unit 1.<sup>1</sup> The amendments would change facility technical specifications to allow the plants to provide incineration services for the United States Department of Energy for the production of tritium for national defense purposes.

The Board is comprised of the following administrative judges:

Thomas S. Moore, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001

Dr. Peter S. Lam, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001

Dr. Thomas S. Elleman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001

All correspondence, documents, and other materials shall be filed with the administrative judges in accordance with 10 CFR 2.701.

Issued at Rockville, Maryland, this 28th day of January 2002.

**G. Paul Bollwerk, III,**

*Chief Administrative Judge, Atomic Safety and Licensing Board Panel.*

[FR Doc. 02-2500 Filed 1-31-02; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

### Decommissioning Criteria for the West Valley Demonstration Project (M-32) at the West Valley Site; Final Policy Statement

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final policy statement.

**SUMMARY:** On December 3, 1999 (64 FR 67952), the Commission issued, for public comment, a draft policy statement that would approve the application of the U.S. Nuclear Regulatory Commission's (NRC's) License Termination Rule (LTR), as the decommissioning criteria for the West Valley Demonstration Project (WVDP) at the West Valley site. It also held a public meeting, on January 5, 2000, to

<sup>1</sup> Although the TVA license amendment requests that are the subject of the WPIT and BREDL hearing requests that triggered this Licensing Board constitution notice were submitted separately, involve different facilities, and were the subject of separate hearing opportunity notices, both amendments are challenged by each of the petitioners. Under the circumstances, one Licensing Board is being established to consider both contested TVA applications in a consolidated proceeding. Any objection to this consolidation by any of the participants to the proceeding should be raised with the Licensing Board promptly.

solicit public comment on the draft. This final policy statement was developed after considering public comments on the draft, and continues to apply the LTR as the criteria for the WVDP at the West Valley site.

**EFFECTIVE DATE:** February 1, 2002.

#### FOR FURTHER INFORMATION, CONTACT:

Chad Glenn, Office of Nuclear Material Safety and Safeguards, Mail Stop T-8F37, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

#### SUPPLEMENTARY INFORMATION:

- I. Introduction
- II. Background (Draft Policy Statement)
- III. Overview of Public Comments
- IV. Summary of Public Comments and Responses to Comments
  - A. Comments on the LTR
  - B. Comments on LTR guidance
  - C. Comments on implementing the LTR
  - D. Comments on NRC's process for prescribing the decommissioning criteria
  - E. Comments on jurisdictional aspects of prescribing the decommissioning criteria
  - F. Comments on the use of incidental waste criteria at the West Valley site
  - G. Comments related to how the site should be decommissioned
  - H. Comments on the wording of the draft policy statement
  - I. Other comments
- V. Final Policy Statement

#### I. Introduction

This final policy statement is being issued under the authority of the WVDP Act, to prescribe decommissioning criteria for the WVDP.

#### II. Background (Draft Policy Statement)

From 1966 to 1972, under an Atomic Energy Commission (AEC) license, Nuclear Fuel Services (NFS) reprocessed 640 metric tons of spent fuel at its West Valley, New York, facility—the only commercial spent fuel reprocessing plant in the U.S. The facility shut down, in 1972, for modifications to increase its seismic stability and to expand its capacity. In 1976, without restarting the operation, NFS withdrew from the reprocessing business and returned control of the facilities to the site owner, the New York State Energy Research and Development Authority (NYSERDA). The reprocessing activities resulted in about 2.3 million liters (600,000 gallons) of liquid high-level waste (HLW) stored below ground in tanks, other radioactive wastes, and residual radioactive contamination.

The West Valley site was licensed by AEC, and then NRC, until 1981, when the license was suspended to execute

the 1980 WVDP Act, Pub. L. 96-368.<sup>1</sup> The WVDP Act authorized the U.S. Department of Energy (DOE), in cooperation with NYSERDA, the owner of the site and the holder of the suspended NRC license, to: (1) Carry out a liquid-HLW management demonstration project; (2) solidify, transport, and dispose of the HLW that exists at the site; (3) dispose of low-level waste (LLW) and transuranic waste produced by the WVDP, in accordance with applicable licensing requirements; and (4) decontaminate and decommission facilities used for the WVDP, in accordance with requirements prescribed by NRC. NYSERDA is responsible for all site facilities and areas outside the scope of the WVDP Act. Although NRC suspended the license covering the site until completion of the WVDP, NRC has certain authorities, under the WVDP Act, that include prescribing decommissioning criteria for the tanks and other facilities in which the HLW solidified under the project was stored, the facilities used in the solidification of the waste, and any material and hardware used in connection with the WVDP. It should also be noted that DOE is not an NRC licensee and DOE's decommissioning activities for the WVDP at the West Valley site are conducted under the WVDP Act and not the Atomic Energy Act (AEA).

The WVDP is currently removing HLW from underground tanks at the site, vitrifying it, and storing it onsite for eventual offsite disposal in a Federal repository. The vitrification operations are nearing completion. In addition to the vitrified HLW, the WVDP operations have also produced LLW and transuranic waste which, under the Act, must be disposed of in accordance with applicable licensing requirements. Besides the HLW at the site, the spent fuel reprocessing and waste disposal operations resulted in a full range of buried radioactive wastes and structural and environmental contamination at the site.

In 1989, DOE and NYSERDA began to develop a joint Environmental Impact Statement (EIS) for project completion and site closure, and to evaluate waste disposal and decommissioning alternatives. Because the WVDP Act authorizes NRC to prescribe decommissioning criteria for the project, NRC and DOE agreed on NRC's participation as a cooperating agency on the EIS, with DOE and NYSERDA, to aid

NRC in its decision on decommissioning criteria. The draft EIS was published in 1996. Subsequently, DOE decided to descope this EIS into two separate EISs to address: (1) Near-term decontamination and waste management at the WVDP; and (2) decommissioning, long-term monitoring, and stewardship of the site.<sup>2</sup> The NRC will not be a Cooperating Agency on the decontamination and waste management EIS because the Commission is not prescribing criteria for decontamination activities considered in this EIS. The NRC will be a Cooperating Agency on the EIS for decommissioning under the WVDP Act. The WVDP Act does not address license termination of the NRC license for the site, or portions thereof. Any such license termination will be conducted (if license termination is possible and pursued) under the Atomic Energy Act (AEA) of 1954, as amended. If NYSERDA pursues either full or partial license termination of the NRC license, NRC will need to conduct an environmental review to determine if an EIS is necessary to support license termination.

After public review of the draft EIS, the WVDP convened the West Valley Citizen Task Force (CTF), in early 1997, to obtain stakeholder input on the EIS. The CTF recommendations for the preferred alternative in the EIS were completed in July 1998. In the latter half of 1997 (during the period that the CTF was working on its recommendations), NRC's LTR was published (62 FR 39058; July 21, 1997).

The Commission published a draft policy statement on decommissioning criteria for the WVDP at the West Valley site, for public comment, and a notice of a public meeting in the **Federal Register** on December 3, 1999 (64 FR 67952).<sup>3</sup> The public meeting, to solicit public comment on the draft, was held

<sup>2</sup> 66 FR 16447 (March 26, 2001).

<sup>3</sup> Before issuing the draft policy statement for comment, the NRC staff proposed decommissioning criteria for West Valley to the Commission in a Commission Paper entitled "Decommissioning Criteria for West Valley," dated October 30, 1998 (SECY-98-251). On January 12, 1999, the Commission held a public meeting, on SECY-98-251, to obtain input from interested parties. Based on the results from this meeting, the Commission issued a Staff Requirements Memorandum (SRM), on January 26, 1999, requesting additional information on the staff's proposed decommissioning criteria for West Valley. In response to the January 26, 1999, SRM, the staff provided SECY-99-057, to the Commission, entitled "Supplement to SECY-98-251, 'Decommissioning Criteria for West Valley.'" Based on the contents of SECY-98-251, SECY-99-057, and written and oral comments from interested parties, the Commission issued an SRM on June 3, 1999, detailing its decisions on the decommissioning criteria for West Valley.

on January 5, 2000. As a result of that meeting, the Commission extended the comment period to April 1, 2000. This final policy statement was developed after considering the public comments on the draft. This final policy statement recognizes that a flexible approach to decommissioning is needed both to ensure that public health and safety and the environment are protected and to define a practical resolution to the challenges that are presented by the site. In that regard, the Commission has decided to prescribe the LTR criteria for the WVDP at the West Valley site, reflecting the fact that the applicable decommissioning goal for the entire NRC-licensed site is compliance with the requirements of the LTR. However, the Commission recognizes that health and safety and cost-benefit considerations may justify the evaluation of alternatives that do not fully comply with the LTR criteria. For example, the Commission would consider an exemption allowing higher limits for doses on a failure of institutional control if it can be rigorously demonstrated that protection of the public health and safety for future generations could be reasonably assured through more robust engineered barriers and/or increased long-term monitoring and maintenance. The Commission is prepared to provide flexibility to assure cleanup to the maximum extent technically and economically feasible.

It should be noted that the subpart E of 10 CFR part 20 (LTR) does contain provisions for alternate criteria and subpart N of 10 CFR part 20 contains provisions for potential exemptions,<sup>4</sup> with both alternatives based on a site-specific analysis which demonstrates that public health and safety will be adequately protected with reasonable assurance. If the NRC license cannot be terminated in a manner which provides reasonable assurance of adequate protection of the public health and safety, then the appropriate Commission action may be to require a long term or even a perpetual license for an appropriate portion of the site until, if and when possible, an acceptable alternative is developed to permit actual license termination.<sup>5</sup>

<sup>4</sup> Exemptions to NRC regulations can be issued to NRC licensees if the Commission determines that the exemption is authorized by law and would not result in undue hazard to life or property. NYSEDA is the licensee for the West Valley site and DOE is acting as a surrogate for NYSEDA until the NYSEDA license is reinstated at the end of the WVDP.

<sup>5</sup> If a long term or perpetual license is necessary for any portion of the site, it is the Commission's intent that that portion of the site will be decontaminated in the interim to the extent technically and/or economically feasible. In

<sup>1</sup> The State of New York licenses a low-level waste disposal area at the West Valley site. Unless otherwise indicated, the terms "West Valley site" or "site" used in this Policy Statement refers to the NRC-licensed portions of the site.

Based on the public comments received, the Commission has revisited the issue of "incidental waste" at West Valley. The Commission has decided to issue incidental waste criteria to clarify the status of and classify any residual wastes present after cleaning of the high-level radioactive waste (HLW) tanks at West Valley. Previously, the NRC has provided advice to DOE concerning DOE's classification of certain waste as incidental waste for clean-up of HLW storage tanks at both Hanford and Savannah River. As noted above, NRC intends to apply the LTR decommissioning criteria as the decommissioning goal for the entire NRC-licensed portion of the site. The Commission has decided that the most recent advice provided to DOE for the classification of incidental waste at Savannah River, with some additional modifications, provides the appropriate criteria which should be applied to West Valley. Specifically, the Commission is now providing the following criteria for classification of the incidental waste (which will not be deemed to be HLW) at West Valley:

(1) The waste should be processed (or should be further processed) to remove key radionuclides to the maximum extent that is technically and economically practical; and

(2) The waste should be managed, so that safety requirements comparable<sup>6</sup> to the performance objectives in 10 CFR part 61 subpart C, are satisfied.

Consistent with the overall approach in applying the LTR to the WVDP and to the entire NRC-licensed site following conclusion of the WVDP, the resulting calculated dose from the incidental waste is to be integrated with all the other calculated doses from the residual radioactive material at the NRC-licensed site to ensure that the LTR criteria are met. This is appropriate because the Commission does not intend to establish

addition, if a long-term or perpetual license is determined to be appropriate, the NRC takes no position on which entity should be the long-term licensee as that decision, as well as decisions regarding long term financial contributions, should be made pursuant to negotiations involving DOE, New York, and possibly the U.S. Congress. Also, under the WVDP Act, the NRC is only addressing the public health and safety aspects of decommissioning selected portions of the site. Other potential issues between DOE and NYSEDA concerning the West Valley Site are not within NRC's authority to resolve.

<sup>6</sup> The dose methodology used in 10 CFR part 61 subpart C is different from that used in the newer 10 CFR part 20 subpart E. However, the resulting allowable doses are comparable and NRC expects DOE to use the newer methodology in 10 CFR part 20 subpart E. Part 61 is based on International Commission on Radiological Protection Publication 2 (ICRP 2) and part 20 is based on ICRP 26.

separate dose standards for various sections of the NRC-licensed site.<sup>7</sup>

### III. Overview of Public Comments

Twenty-eight organizations and individuals submitted written comments on the draft policy statement. Comments also were provided at the public meeting held on January 5, 2000. The commenters represented a variety of interests. Comments were received from Federal and State agencies, citizen and environmental groups, a native American organization, and individuals. The commenters offered over 200 specific comments and represented a diversity of views. The commenters addressed a wide range of issues concerning the decommissioning and closure of the WVDP and West Valley site. The reaction to the draft policy statement was generally supportive. However, viewpoints were expressed on the LTR and LTR guidance and how both should be applied at West Valley. In addition, there were comments on NRC's process for prescribing the decommissioning criteria and other issues specific to West Valley.

### IV. Summary of Public Comments and Responses to Comments

The following sections A through I represent major subject areas and describe the principal public comments received on the draft policy statement (organized according to the major subject areas) and present NRC responses to those comments.

(A) Comments on the LTR (restricted release; institutional controls; as low as reasonably achievable (ALARA); financial assurance; alternate criteria; time line for dose calculations);

(B) Comments on LTR guidance (critical group, engineered barriers, cost/benefit analysis);

(C) Comments on implementing the LTR (continued Federal or State onsite presence, perpetual license);

(D) Comments on NRC's process for prescribing the decommissioning criteria (when to prescribe the criteria; use of the LTR "Generic Environmental Impact Statement" (GEIS) to support the use of the LTR at West Valley; NRC's National Environmental Policy Act (NEPA) obligation for prescribing the West Valley decommissioning criteria);

<sup>7</sup> Applying the LTR, the total annual dose to an average member of the critical group for the site, including the resulting doses from the incidental waste, should be less than or equal to 25 mrem/yr TEDE. The Commission is not establishing a separate dose standard for the incidental waste such that the average member of the critical group potentially receive a dose of 25 mrem/yr TEDE from the rest of the NRC-licensed site and 25 mrem/yr TEDE from the incidental waste.

(E) Comments on jurisdictional aspects of prescribing the decommissioning criteria;

(F) Comments on the use of incidental waste criteria at West Valley;

(G) Comments related to how the site should be decommissioned (waste disposition, consideration of pathways for dose, and contaminant transport);

(H) Comments on the wording of the draft policy statement (use of the word "prescribe," paraphrasing the LTR and other statements on West Valley); and,

(I) Other comments (implications of the policy statement regarding native Americans, transuranic waste issue).

The comments received from the public in writing during the comment period and verbally during the January 5, 2000, public meeting have been factored into the Commission's decision-making on this final policy statement.

#### A. Comments on the LTR

The draft policy statement presented NRC's LTR as the decommissioning criteria for the WVDP and the West Valley site. Although there was general support for the use of the LTR as the decommissioning criteria for both the WVDP and West Valley site, there were a number of comments on the LTR. Specifically:

A.1 Comment. A number of commenters were concerned that the use of the LTR's restricted release concept, which includes the use of institutional controls, to decommission West Valley may not be appropriate because of the magnitude of the waste currently on-site and the potential for this waste to provide an unacceptable dose to members of the public if controls fail.

A.2 Response. The LTR criteria consider doses to members of the public from the loss of institutional controls. The loss of institutional controls will need to be considered in the DOE/NYSEDA EIS.<sup>8</sup> Absent an exemption from the LTR provision in 10 CFR part 20, a site, or part thereof, that cannot meet the restricted release provisions of the LTR, must remain under an NRC license. The Commission will consider

<sup>8</sup> DOE has decided to descope the draft 1996 EIS into two separate EISs. DOE will be the lead agency on the EIS that will address WVDP facility decontamination and management of waste currently stored at the site. NRC expects to be kept informed of progress as required under the DOE/NRC Memorandum of Understanding (MOU). DOE and NYSEDA will be the lead agencies on the EIS that will address decommissioning. NRC expects to participate as an EIS cooperating agency. Hereafter, this second EIS where NRC will be a cooperating agency will either be referred to as the decommissioning EIS or the DOE/NYSEDA EIS, unless otherwise noted.

granting an exemption to the LTR criteria if it determines the exemption is authorized by law and would not result in undue hazard to life or property. The Commission intends to involve the public in the processing of any exemption request consistent with the "public participation" provision in 10 CFR 20.1405, and will involve the Environmental Protection Agency (EPA) if the exemption request involves criteria greater than the dose criteria of 10 CFR 20.1402, 20.1403(b), or 20.1403(d)(1)(i)(A). Such an exemption request will also require the approval of the Commission consistent with 10 CFR 20.1404(b).

A. 3 Comment. Some commenters also were concerned about the adequacy of the LTR's financial assurance requirements for maintaining institutional controls for restricted release at West Valley, especially if the financial assurance relies on future Government appropriations that are not guaranteed.

A. 4 Response. In general, it is assumed that when a Government agency certifies that it will seek appropriations, to maintain institutional controls for the purposes of protecting public health and safety, the appropriations will be authorized. The Commission believes that it is reasonable to expect Federal and State agencies to meet their commitments to obtain funding for institutional controls to provide for the protection of the public health and safety.

A. 5 Comment. A number of commenters were also concerned that the time line specified for dose calculations in the LTR (1000 years) is too short for difficult sites like West Valley.

A. 6 Response. In the development of the LTR, the Commission considered comments seeking a time period for dose analysis longer than 1000 years. Section F.7 in the LTR "Statement of Considerations," 62 FR 39058 (July 21, 1997). The Commission concluded that for the types of facilities and source terms considered, it was reasonable to use a 1000-year period. However, the West Valley site presents some unique challenges in that significant quantities of mobile, long-lived radionuclides are present on site. Because under NEPA an evaluation of reasonably foreseeable impacts is required, the Commission believes that an analysis of impacts beyond 1000 years should be provided in the DOE/NYSERDA EIS. Thus, information will need to be evaluated to determine if peak doses might occur after 1000 years and to define dose consequences and impacts on potential long-term management of residual

radioactivity at the site. Depending upon the outcome of the EIS review, the Commission may need to consider the need for environmental mitigation.

A. 7 Comment. Some commenters were concerned about the possible application of alternate criteria, as allowed under the LTR, to West Valley, or that the policy statement should at least clearly identify the dose limit cap under alternate criteria.

A. 8 Response. In addition to the unrestricted release limit of 25 mrem/yr TEDE, the LTR also contains alternate criteria for restricted release, which allows for a dose limit of up to 100 mrem/yr TEDE, with restrictions in place, and caps the public dose limit at 100 or 500 mrem/yr TEDE if the restrictions fail. Applying alternate criteria to a specific site requires opportunities for public involvement, coordination with the EPA, and direct approval of the Commission. The alternate criteria in the LTR were developed for difficult sites to minimize the need to consider exemptions to the LTR, although exemptions also may be considered. Under appropriate circumstances and based on a site-specific analysis, the Commission considers the application of alternate criteria protective of public health and safety. Absent a detailed site-specific analysis, it is premature for the Commission to make any judgments, at this time, on the acceptability or non-acceptability of applying alternate criteria or exemptions to the WVDP or any portion of the NRC-licensed site. In any event, neither the alternate criteria in the LTR nor exemptions will be approved by the Commission without full prior public participation, involvement of the EPA, and a Commission determination that there is reasonable assurance that there would not be undue hazard to life and property.

A. 9 Comment. There were also comments about the use of the ALARA process in the LTR at West Valley. Some believed that the ALARA process might be used to justify dose limits higher than those allowed by the LTR.

A. 10 Response. As stated previously, the LTR does allow for releases with different dose limits. Generally, ALARA is used to reduce doses below authorized limits. Under the LTR, the ALARA process is not used to permit doses above the 25 mrem/yr TEDE limit without restrictions, the 100 mrem/yr TEDE limit with restrictions, or the 500 mrem/yr TEDE cap if restrictions fail.

## B. Comments on LTR guidance

A variety of comments were received on NRC's LTR guidance as it relates to West Valley. Since the time that NRC's LTR became final in 1997, the NRC staff has been developing guidance to support it. In September 2000, the NRC released guidance for decommissioning, in the form of a standard review plan (SRP) ("NMSS Decommissioning Standard Review Plan," NUREG-1727).

B. 1 Comment. A number of commenters expressed concern with how the critical group would be defined for dose assessment purposes.

B. 2 Response. For the LTR, the critical group means the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances (10 CFR 20.1003). The "Statement of Considerations" for the LTR notes that the critical group would be the group of individuals reasonably expected to be the most highly exposed, considering all reasonable potential future uses of the site, based on prudently conservative exposure assumptions and parameter values within modeling calculations. NRC's SRP for decommissioning addresses two generic critical group scenarios—the "resident farmer" and the "building occupancy" scenarios. The SRP also presents approaches for establishing site-specific critical groups based on specific land use, site restrictions, and/or site-specific physical conditions. DOE/NYSERDA derivation of the critical groups for West Valley will need to be addressed in the EIS documents. In addition to NRC review and comment, the EIS documents will be available for public review and comment.

B. 3 Comment. There were also several comments relating concerns that long-term stewardship costs and impacts on special populations will not be properly factored into the cost/benefit analysis, or that there should be better guidance provided on what should be considered in the cost/benefit analysis.

B. 4 Response. DOE and NYSEDA will determine the extent to which these issues are covered in the DOE/NYSERDA EIS. In addition, NRC will review and comment on any cost/benefit analysis in the EIS. The cost/benefit analysis that DOE/NYSERDA develop for West Valley will need to be part of the EIS documents available for public review and comment.

B. 5 Comment. Some commenters suggested that there should be criteria for what are allowable engineered

barriers and whether or not they are considered institutional controls.

B. 6 Response. Because of the wide range of residual radioactive contamination encountered at decommissioning sites licensed by NRC, the LTR and NRC's decommissioning guidance are not prescriptive as to the criteria for, or acceptability of, site-specific institutional controls and engineered barriers. The "Statement of Considerations" for the LTR might be read to conclude that engineered barriers are included within institutional controls. However, neither term is defined. In the Commission's view, "engineered barriers" referred to in the "Statement of Considerations" for the LTR are distinct and separate from institutional controls. Used in the general sense, an engineered barrier could be one of a broad range of barriers with varying degrees of durability, robustness, and isolation capability. Thus, NRC guidance in Appendix I of the SRP on the LTR distinguishes institutional controls from physical controls and engineered barriers. Institutional controls are used to limit intruder access to, and/or use of, the site to ensure that the exposure from the residual radioactivity does not exceed the established criteria. Institutional controls include administrative mechanisms (e.g., land use restrictions) and may include, but not be limited to, physical controls (e.g., signs, markers, landscaping, and fences) to control access to the site and minimize disturbances to engineered barriers. There must be sufficient financial assurance to ensure adequate control and maintenance of the site and institutional controls must be legally enforceable and the entity charged with their enforcement must have the capability, authority, and willingness to enforce the controls. Generally, engineered barriers are passive man-made structures or devices intended to improve a facility's ability to meet a site's performance objectives. Institutional controls are designed to restrict access, whereas engineered barriers are usually designed to inhibit water from contacting waste, limit releases, or mitigate doses to intruders. The isolation capability, durability, and robustness of a specific barrier will need to be evaluated in the DOE/NYSERDA EIS. The ability of a barrier to inhibit access of the inadvertent intruder is a separate issue from whether a barrier is an institutional control. The dose analyses for a site with engineered barriers will need to consider the reasonableness of a breach by an inadvertent intruder.

### C. Comments on Implementing the LTR

C. 1 Comment. There were some comments identifying who should be the long-term steward of the site if long-term stewardship is required as part of site closure. Some commenters also provided suggestions on how site long-term stewardship should be maintained at West Valley if it is needed (onsite staff, perpetual license).

C. 2 Response. NRC expects that these site-specific issues will be covered in the DOE/NYSERDA EIS and addressed in the preferred alternative. The identification of a long-term custodian is not an NRC responsibility but will be determined from negotiations involving DOE and NYSEDA and possibly the U.S. Congress. From the NRC perspective, both DOE and NYSEDA represent governmental entities and either would be acceptable as a long-term custodian.

C. 3 Comment. One commenter requested consideration of how the LTR would be implemented on the decommissioned portions of the site if there were areas of the site that could not meet the LTR.

C. 4 Response. Although the LTR does not specifically address differing release standards on a single site, NRC recognizes that the approach to decommissioning at West Valley may include portions of the site being released for unrestricted use, and portions of the site being released for restricted use, as well as portions of the site remaining under license, because of a failure to meet the LTR. In the Commission's view, the LTR is sufficiently flexible to allow for such circumstances. In particular, the Commission believes that for those portions of the site that are unable to demonstrate compliance with the LTR's restricted release requirements, the dose limits should be viewed as goals in order to ensure that cleanup continues to the maximum extent that is technically and economically feasible. The Commission also believes that after cleanup to the maximum extent technically and economically feasible is accomplished, alternatives to release under the LTR criteria may need to be contemplated. Specific examples of these alternatives are a perpetual license for some parts of the site or exemptions from the LTR. The NRC expects that these issues will be fully addressed in the DOE/NYSERDA EIS.

### D. Comments on NRC's Process for Prescribing the Decommissioning Criteria

D.1. DOE recommended, for the reasons described in comments D.1.1,

D.1.3, and D.1.5 below, that NRC withhold assigning the LTR as the decommissioning criteria until NRC does a site-specific analysis of the environmental effects of decommissioning West Valley.

D.1.1 Comment. The LTR GEIS (NUREG-1496) does not support the use of the LTR at a complex site like West Valley; therefore, a specific EIS for this action needs to be completed by NRC to finalize the criteria.

D.1.2 Response. Although the LTR GEIS did not specifically address the decommissioning of a spent fuel reprocessing site, it did evaluate the decommissioning of a range of reference facilities (e.g., fuel cycle facilities and reactors). In promulgating the LTR, the Commission stated in Section VI of the "Statement of Considerations" that it will conduct an environmental review to "determine if the generic analysis encompasses the range of environmental impacts at the particular site." The Commission further stated that it "will conduct an independent environmental review for each site-specific decommissioning decision where land use restrictions or institutional controls are relied upon by the licensee or where alternative criteria are proposed" as it recognized that the environmental impacts for these cases cannot be analyzed on a generic basis. Thus, the environmental impacts from the application of the criteria to the WVDP will need to be evaluated for the various alternative approaches being considered in the process before NRC decides whether to accept the preferred alternative for meeting the criteria permitted by the LTR. NRC expects to be able to rely on the DOE/NYSERDA EIS for this purpose. NRC does not anticipate the need to prepare its own duplicative EIS as NRC can consider the environmental impacts described in the DOE/NYSERDA EIS in approving the particular decommissioning criteria for the WVDP under the LTR. As an EIS cooperative agency, NRC may adopt all or parts of the lead EIS agency's NEPA documents. Under this arrangement, if NRC is satisfied with the final DOE/NYSERDA EIS, then NRC will adopt it to fulfill its NEPA responsibilities under the WVDP Act. If NRC is not satisfied with the final DOE/NYSERDA EIS, then it will adopt as much of it as possible and modify or supplement it as necessary. In such a situation, NRC would publish its own draft EIS document for public review and comment before finalizing it. Once finalized, NRC's West Valley NEPA responsibilities would be fulfilled under the WVDP Act.

The WVDP Act does not address license termination for the site. The actual license termination for the site, if and when pursued, will be conducted under the Atomic Energy Act (AEA) of 1954, as amended. At the time of NRC license termination under the AEA (if license termination is pursued), NRC will need to conduct an environmental review to determine if an EIS is necessary to support license termination.

D.1.3 Comment. The NRC's prescription of decommissioning criteria is not being coordinated with the current NEPA process as suggested by the DOE/NRC Memorandum of Understanding (MOU) on West Valley.

D.1.4 Response. The process described in the DOE/NRC MOU (Section B (4)), for consulting on a site-specific analysis of decommissioning requirements was developed to allow DOE and NRC to evaluate a range of approaches to specifically address the decommissioning of the WVDP. Thereafter, NRC was to prescribe the decommissioning criteria. At the time the MOU was signed, no comprehensive general criteria existed for decommissioning NRC-licensed sites. Decommissioning criteria were determined on a case-by-case basis. However, through the rulemaking process completed in 1997, which promulgated the LTR, there was an evaluation of various regulatory approaches for decommissioning NRC-licensed sites and the selection of a range of regulatory approaches with criteria, in the final rule.

Except as provided in 10 CFR 20.1401, the LTR applies to all NRC's licensed sites. The Commission recognized, as noted in the "Statement of Considerations" for the LTR, that there would be sites with complex decommissioning issues that would be resolved by site-specific environmental reviews which considered various alternative methods for decommissioning and application of the LTR. In the Commission's view, the use of the two-step prescribing process—first, the decision to use the LTR, and second, to use the DOE/NYERDA EIS, to consider the impacts of the different approaches for decommissioning, before deciding whether to accept the particular approach that DOE intends to use to meet the LTR—is consistent with the intent of the MOU that various approaches be analyzed in developing the WVDP decommissioning criteria.

D.1.5 Comment. Finalizing the LTR now as the decommissioning criteria for the WVDP at the West Valley site limits the options for closure of the NRC-licensed Disposal Area (NDA).

D.1.6 Response. The Commission does not believe that prescribing the LTR criteria for the WVDP at the West Valley site as the applicable decommissioning goal for the entire NRC-licensed site will limit DOE from developing acceptable closure options for the NDA or any other part of the NRC-licensed site. Prescribing the LTR now is warranted because NYERDA, as a licensee of the Commission, is subject to the LTR after NYERDA's NRC license is reactivated at the conclusion of the WVDP. It follows that DOE should also be subject to the LTR as it is the surrogate for NYERDA in decommissioning facilities used for the project. Therefore, it is appropriate to prescribe the LTR now for the WVDP, with the site-specific decommissioning issues resolved through the process described in Response D.1.4 above. Applying the LTR to the WVDP will provide an opportunity to DOE, as would be given to any licensee, to consider a range of approaches to achieve acceptable decommissioning, consistent with public dose limits. If parts of the NRC-licensed site cannot meet the LTR, the Commission will consider alternatives to the criteria in the LTR if it can be demonstrated that public health and safety will be protected. The NRC expects that these issues will be fully addressed in the DOE/NYERDA EIS.

#### *E. Comments on Jurisdictional Aspects of Prescribing the Decommissioning Criteria*

E.1 Comment. Many commenters suggested that, because the State-licensed Disposal Area (SDA) is immediately adjacent to the WVDP and part of the West Valley site, the allowable dose from the closure and/or decommissioning of it should be considered comprehensively with the allowable dose from the NRC regulated part of the site.

E.2 Response. NRC's authority only extends to the NRC-licensed portion of the site. It also should be noted that the LTR recognizes that people can be exposed to up to four sources of radiation and still meet the nationally and internationally accepted public dose limit of 100 mrem/yr TEDE in part 20. In considering the environmental impacts for the entire site, the DOE/NYERDA EIS will need to consider the number of sources to which the critical group may be exposed. However, NRC continues to dialogue with State representatives to exchange information on issues of mutual interest regarding potential sources of public exposure.

E.3 Comment. A few comments were made indicating that NRC ought to

prescribe the dose limits in EPA's decommissioning guidance to West Valley, because they are more protective and could be applied to the site after NRC regulatory authority ceases. Likewise, a comment was made that the decommissioning criteria issue between NRC and EPA should be resolved before the criteria are prescribed.

E.4 Response. The Commission believes that the LTR dose limits plus ALARA requirements provide protection comparable to dose limits preferred by EPA in its guidance documents. The Commission notes that the LTR was promulgated by the Commission in 1997 pursuant to an Administrative Procedure Act rulemaking accompanied by a generic EIS and voluminous regulatory analysis, including consideration of numerous public comments. EPA's guidance documents have gone through no such public process. The Commission believes that decommissioning the site to the LTR criteria ensures that public health and safety and the environment will be protected. Although there is a lack of agreement between NRC's rule and EPA's guidance documents on the appropriate upper bounds on decommissioning criteria, the NRC practice of applying ALARA principles to NRC dose limits will most likely result in an NRC approved decommissioned site that satisfies the EPA criteria as well. In fact, EPA has indicated that it believes that the 25 mrem/yr TEDE cleanup dose limit in the LTR will be "protective at this site." See Letter from Paul Giardina, EPA to John Greeves, NRC (July 23, 2001). Because the LTR requirements do ensure adequate protection of the public health and the environment, and, as indicated in the preceding paragraph, EPA agrees with this conclusion for West Valley, the Commission believes that it is not necessary to wait for a formal resolution of the differences between NRC and EPA on generic decommissioning standards before proceeding with prescribing site-specific decommissioning criteria for the WVDP. As stated previously, EPA will be involved in any proposal to use alternate criteria in the LTR or exemptions from 10 CFR part 20, if so requested.

#### *F. Comments on the Use of Incidental Waste Criteria at West Valley Site*

F.1 Comment. Many comments were received concerning the use of the incidental waste criteria at West Valley. Most commenters did not want NRC to allow for the "reclassification" of any HLW at this site to waste incidental to reprocessing. If it were allowed, it

should be done in a way that provides for public participation. One commenter agreed that it will have to be done, but that the Commission should prescribe the criteria that are necessary and appropriate for the incidental waste determination. One other commenter believes that use of DOE's Order 435.1 is the appropriate process for reclassifying residual HLW as incidental.

**F.2 Response.** Section 6 (4) of the WVDP Act defines HLW as including both (1) liquid wastes which are produced directly in reprocessing, dry solid material derived from such liquid waste and (2) such other material as the Commission designates as HLW for the purposes of protecting the public health and safety. Since 1969, the Commission has recognized the concept of waste incidental to reprocessing, concluding that certain material that otherwise would be classified as HLW need not be disposed of as HLW and sent to a geologic repository because the residual radioactive contamination after decommissioning is sufficiently low as not to represent a hazard to the public health and safety. Consequently, incidental waste is not considered HLW. See, Proposed Rule—Siting of Commercial Fuel Reprocessing Plants and Related Waste Management Facilities (34 FR 8712; June 3, 1969), Final Rule—Siting of Commercial Fuel Reprocessing Plants and Related Waste Management Facilities (35 FR 17530; November 14, 1970), Advance Notice of Proposed Rule-making to Define HLW (52 FR 5992, 5993; February 27, 1987), Proposed Rule—Disposal of Radioactive Waste (53 FR 17709; May 18, 1988), Final Rule—Disposal of Radioactive Waste (54 FR 22578; May 25, 1989), and Denial of Petition for Rulemaking: States of Washington and Oregon, (58 FR 12342; March 3, 1993).

The Commission believes that practical considerations mandate early resolution of the criteria that should guide the incidental waste determination. Vitrification of the high-level wastes at West Valley is nearing completion, at which point DOE intends to close down the vitrification facility. To delay providing the Commission's view for incidental waste could adversely impact the DOE, as it may prove extraordinarily expensive after the vitrification facility is shut down to provide vitrification capacity for any additional waste that must be shipped elsewhere for disposal. Indeed, in light of the fact that the site will ultimately revert to control by NYSERDA under an NRC license, both NYSERDA and NRC have an interest in ensuring that the

incidental waste determination need not be revisited.

In light of these considerations, the Commission is now providing the following criteria for incidental waste determinations.

(1) The waste should be processed (or should be further processed) to remove key radionuclides to the maximum extent that is technically and economically practical; and

(2) The waste should be managed so that safety requirements comparable to the performance objectives in 10 CFR part 61 subpart C, are satisfied.

The resulting calculated dose from the incidental waste is to be integrated with all the other calculated doses from the remaining material at the entire NRC-licensed site to ensure that 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.

Previously the NRC has provided advice to DOE concerning DOE's classification of certain waste as incidental waste for clean-up of HLW storage tanks at both Hanford and Savannah River. As noted above, NRC intends to apply the LTR criteria for the WVDP at the West Valley site, reflecting the fact that the applicable decommissioning goal for the entire NRC-licensed site is in compliance with the requirements of the LTR. The Commission has decided that the most recent advice provided to DOE for the classification of incidental waste at the Savannah River site,<sup>9</sup> with some additional modifications, as the appropriate criteria that should be applicable to West Valley. These criteria are risk-informed and performance-based in that the criteria allow DOE the flexibility to develop innovative approaches to meeting the performance objectives in part 61. In effect, DOE should undertake cleanup to the maximum extent that is technically and economically practical and should achieve performance objectives consistent with those we demand for the disposal of low-level waste. If satisfied, these criteria should serve to provide protection of the public health and safety and the environment and the resulting calculated dose would be integrated with the resulting calculated doses for all other remaining material at the NRC-licensed site. It is the Commission's expectation that it will apply this criteria at the WVDP at the site following the completion of DOE's

site activities. In this regard, the impacts of identifying waste as incidental to reprocessing and not HLW should be considered in the DOE's environmental reviews.

#### *G. Comments Related to How the Site Should Be Decommissioned*

**G.1 Comment.** There were many comments and suggestions that all the waste at this site should be perhaps temporarily stabilized, or packaged and perhaps temporarily stored, but ultimately removed from the site. There were also some comments on what are the important pathways for, and man-made barriers to control, contaminant transport at the site.

**G.2 Response.** The Commission appreciates the public's identification of, and input on, these issues. The decisions related to alternative approaches to decommissioning the West Valley site will be evaluated in the DOE/NYSERDA EIS, and reviewed by NRC for their ability to protect public health and safety and the environment. The EIS will also be available for public comment before being finalized.

#### *H. Comments on the Wording of the Draft Policy Statement*

**H.1 Comment.** Several comments were made about the last part of a sentence in the Draft Policy Statement under the section entitled "Decommissioning Criteria for the WVDP." It states that " \* \* \* following the completion of DOE/NYSERDA's EIS and selection of its preferred alternative, the NRC will verify that the specific criteria identified by DOE is within the LTR and will prescribe the use of specific criteria for the WVDP." Many suggested that prescribing the use of the specific criteria after the selection of the preferred alternative in the EIS is confusing, not what is meant by the WVDP Act, and would allow adjustment of the criteria after the EIS is completed.

**H.2 Response.** As addressed above in response to the various comments, the Commission's intent is to prescribe the generally applicable requirements of the LTR now, before the completion of the site-specific EIS. After completion of the site-specific DOE/NYSERDA EIS, NRC will evaluate the compliance status of the preferred alternative with respect to the LTR, as described in the Commission's final policy statement. This is a two-step process. The first step is prescribing the LTR, a set of criteria that allows for unrestricted releases, restricted releases, and alternative releases, that applies to all NRC licensees. Prescribing decommissioning criteria now for the WVDP allows DOE to develop alternative approaches for

<sup>9</sup> See NRC Staff Requirements Memorandum "SECY-99-0284—Classification of Savannah River Residual Tank Waste as Incidental," May 30, 2000.

meeting those criteria and consider their impacts in its site-specific EIS.

The second step is for NRC to evaluate on a site-specific basis the approach for meeting the LTR. This will be done after the DOE/NYSERDA EIS is completed and NRC adopts it or otherwise produces its own NEPA evaluation of the site-specific criteria developed in the DOE/NYSERDA EIS. NRC will be evaluating DOE's and NYSEDA's preferred alternative for meeting the LTR and other alternatives presented in the DOE/NYSERDA EIS.

This process is in accordance with the "Statement of Considerations" for the LTR, which describes the relationship between the GEIS for the LTR and site-specific decommissioning actions. A site-specific EIS is prepared in cases where the range of environmental impacts of the alternatives at a specific site may not be within those considered in the GEIS for the LTR. This is similar to the approach that NYSEDA, as an NRC licensee, would need to meet if the license were not being held in abeyance. The Commission is satisfied that this approach is within the intent of the WVDP Act for the prescription of decommissioning requirements by NRC.

The WVDP Act does not address license termination for the site. The actual license termination for the site, if and when possible, will be conducted under the AEA, as amended. At the time of NRC license termination under the AEA (if license termination is pursued), NRC will need to conduct an environmental review to determine if an EIS is necessary to support actual license termination. The language from the draft policy statement was changed in the final policy statement to reflect the process described above.

**H.3 Comment.** The policy statement should not paraphrase the LTR and others' statements on West Valley.

**H.4 Response.** The Commission was attempting to provide context to the draft policy statement by paraphrasing the LTR or others' statements on West Valley. To avoid confusion or misinterpretation in the Final Policy Statement, it will contain a disclaimer to the effect that notwithstanding any paraphrasing of the LTR in the Policy Statement, the language of the LTR itself is controlling in determining how it is to be applied at West Valley. The paraphrasing of others' statements will be avoided.

#### *I. Other Comments*

**I.1 Comment.** What are the implications of the policy statement regarding NRC's policies regarding Native Americans.

**I.2 Response.** NRC staff has examined the draft policy on decommissioning criteria for the WVDP and has not identified any implications in relation to the Commission's guidance regarding Native Americans. The Commission has directed the NRC staff to implement the spirit and letter of President Clinton's April 29, 1994, Executive Memorandum to ensure that the rights of sovereign Tribal governments are fully respected and to operate within a government-to-government relationship with Federally-recognized Native American Tribes. In addition, the staff has been directed to address Native American issues on a case-by-case basis, operating with Tribal Governments on a government-to-government basis. In response to the interest expressed by the Seneca Nation of Indians in NRC activities at WVDP, the NRC staff has added the Seneca Nation to its service list which will provide the Seneca Nation with copies of documents and meeting notices related to NRC's activities at West Valley that the NRC may publically release. The NRC staff will address issues raised by the Seneca Nation of Indians in accordance with the Commission's guidance.

**I.3 Comment.** One commenter claims that NRC is required by law to define "transuranic waste" for West Valley and determine the disposition of that waste.

**I.4 Response.** Section 6(5) of the WVDP Act defines transuranic waste for the WVDP in terms of radioisotopes and the lower limit of concentration of those isotopes. It also states that NRC has the authority to prescribe a different concentration limit to protect public health and safety. NRC's position on this issue is detailed in a letter from M. Knapp, NRC, to W. Bixby, DOE, dated August 18, 1987. This letter states that, to demonstrate protection of public health and safety, the transuranic concentration of project wastes acceptable for on-site disposal will be such that, by analysis, safety requirements comparable to the performance objectives in 10 CFR part 61 subpart C are satisfied. The resulting calculated dose from the transuranic waste is to be integrated with all the other calculated doses from the remaining material at the NRC-licensed site to ensure that the LTR criteria are met. As with incidental waste, the Commission is not establishing a separate dose standard that applies solely to the transuranic waste.

#### **V. Final Policy Statement**

##### *Statement of Policy*

##### **Decommissioning Criteria for the West Valley Demonstration Project (WVDP)**

Under the authority of the WVDP Act, the Commission is prescribing NRC's License Termination Rule (LTR) (10 CFR part 20, subpart E) as the decommissioning criteria for the WVDP, reflecting the fact that the applicable decommissioning goal for the entire NRC-licensed site is in compliance with the requirements of the LTR. The criteria of the LTR shall apply to the decommissioning of: (1) The High Level Waste (HLW) tanks and other facilities in which HLW, solidified under the project, was stored; (2) the facilities used in the solidification of the waste; and (3) any material and hardware used in connection with the WVDP. Also under authority of the WVDP Act, the Commission is issuing criteria for the classification of reprocessing wastes that will likely remain in tanks at the site after the HLW is vitrified, subsequently referred to as "incidental waste."

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. The LTR does not apply a single public dose criterion. Rather, it provides for a range of criteria. Briefly stated, for unrestricted release, the LTR specifies a dose criterion of 25 mrem/yr total effective dose equivalent (TEDE) to the average member of the critical group plus as low as reasonably achievable (ALARA) considerations (10 CFR 20.1402). For restricted release, the LTR specifies an individual dose criterion of 25 mrem/year TEDE plus ALARA considerations using legally enforceable institutional controls established after a public participatory process (10 CFR 20.1403). Even if institutional controls fail, individual doses should not exceed 100 mrem/yr TEDE. If it is demonstrated that the 100 mrem/yr TEDE criterion in the event of failure of institutional controls is technically not achievable or prohibitively expensive, the individual dose criterion in the event of failure of institutional controls may be as high as 500 mrem/yr TEDE. However, in circumstances where restricted release is required, if the 100 mrem/yr TEDE criterion is exceeded, and/or the use of alternate criteria has

been determined, the area would be rechecked by a responsible government entity no less frequently than every 5 years and resources would have to be set aside to provide for any necessary control and maintenance of the institutional controls. Finally, the LTR permits alternate individual dose criteria of up to 100 mrem/yr TEDE plus ALARA considerations for restricted release, with institutional controls established after a public participatory process (10 CFR 20.1404). The Commission itself must approve use of the alternative criteria, after coordination with the U.S. Environmental Protection Agency (EPA) and after consideration of the NRC staff's recommendations and all public comments.<sup>10</sup>

The Commission also recognizes that decommissioning of the West Valley site will present unique challenges, which may require unique solutions. As a result, the final end-state may involve a long-term or even a perpetual license or other innovative approaches for some parts of the site where clean up to the LTR requirements are prohibitively expensive or technically impractical. It is important that all parts of the site be decommissioned to the extent technically and economically feasible. Therefore, in addition, the Commission expects decontamination to the maximum extent technically and/or economically feasible for any portion of the site remaining under a long term or perpetual license or for which an exemption from the LTR is sought. In sum, the Commission believes that for those portions of the site that are unable to demonstrate compliance with the LTR's restricted release requirements, the dose limits should be viewed as goals, in order to ensure that cleanup continues to the maximum extent that is technically and economically feasible. If complying with the LTR's restricted release requirements is technically impractical or prohibitively expensive, then an exemption from the LTR may be appropriate, provided that protection of the public and the environment can be maintained.

The Commission's application of the LTR to the WVDP is a two-step process: (1) NRC is now prescribing the application of the LTR; and (2) after the completion of the site-specific Department of Energy (DOE)/New York State Energy Research and Development Authority (NYSERDA) Environmental

Impact Statement (EIS)<sup>11</sup> and selection of the preferred alternative, NRC will verify that the approach proposed by DOE is appropriate. The WVDP Act does not address license termination of the NRC license for the site, or portions thereof, which will be conducted (if license termination is possible and pursued) under the Atomic Energy Act (AEA) of 1954, as amended. If full or partial license termination of the NRC license is pursued, at that time NRC will need to conduct an environmental review to determine if an EIS is necessary to support license termination.

Decommissioning Criteria for the NRC-Licensed Disposal Area (NDA) and State-Licensed Disposal Area (SDA)

NRC will apply the criteria in the LTR to the NDA within the West Valley site, because the NDA is under NRC jurisdiction. However, the NDA presents some unique challenges in that some of this material contains significant quantities of mobile, long-lived radionuclides which could potentially remain in this facility. It is recognized that because of the nature of radioactivity at West Valley, reasonably foreseeable impacts might occur after 1000 years, under certain scenarios. Under NEPA, an evaluation of the reasonably foreseeable impacts is required. Therefore, the Commission believes that an analysis of impacts beyond 1000 years should be provided in the DOE/NYSERDA EIS which will be subject to public comment.

NRC does not have regulatory authority to apply the LTR criteria to the SDA adjacent to the WVDP site boundary, because the SDA is regulated by the State of New York. However, NRC recognizes that a cooperative approach with the State to the extent practical should be utilized to apply the LTR criteria in a coordinated manner to the NRC-licensed site and the SDA.

Decommissioning Criteria for License CSF-1 (NRC Site License)

The criteria in the LTR will also apply to the termination of NYSERDA's NRC license on the West Valley site after that license is reactivated. For those portions

of the site covered by the WVDP Act, it is NRC's intent to authorize that any exemptions or alternate criteria authorized for DOE to meet the provisions of the WVDP Act will also apply to NYSERDA at the time of site license termination, if license termination is possible. The NRC site license termination is not addressed in the WVDP Act. Therefore the NRC site license termination is subject to the provisions of the Atomic Energy Act of 1954 as amended.

Use of Incidental Waste Criteria at West Valley

Section 6 (4) of the WVDP Act defines HLW as including both (1) liquid wastes which are produced directly in reprocessing, dry solid material derived from such liquid waste and (2) such other material as the Commission designates as HLW for the purposes of protecting the public health and safety. The Commission believes that practical considerations mandate early resolution of the criteria that will guide the classification of incidental waste. The vitrification of the wastes at West Valley is nearing completion, at which point DOE intends to close down the vitrification facility. To delay defining classification criteria for incidental waste could adversely impact the DOE as it may prove extraordinarily expensive after the vitrification facility is shut down to provide vitrification capacity for any additional waste that must be shipped elsewhere for disposal. Indeed, in light of the fact that the site will ultimately revert to control by NYSERDA under an NRC license, both NYSERDA and NRC have an interest in ensuring that the incidental waste determination need not be revisited.

In light of these considerations, the Commission is now providing the following criteria that should be applied to incidental waste determinations.

(1) The waste should be processed (or should be further processed) to remove key radionuclides to the maximum extent that is technically and economically practical; and

(2) The waste should be managed so that safety requirements comparable to the performance objectives in 10 CFR part 61 subpart C, are satisfied.<sup>12</sup>

Consistent with the overall approach in applying the LTR to the WVDP and to the entire NRC-licensed site following

<sup>11</sup> DOE has decided to descope the draft 1996 EIS into two separate EISs. DOE will be the lead agency on the EIS that will address WVDP facility decontamination and management of waste currently stored at the site. NRC expects to be kept informed of progress as required under the DOE/NRC Memorandum of Understanding (MOU). DOE and NYSERDA will be the lead agencies on the EIS that will address decommissioning. NRC expects to participate as an EIS cooperating agency. Hereinafter, this second EIS where NRC will be a cooperating agency will either be referred to as the decommissioning EIS or the DOE/NYSERDA EIS, unless otherwise noted.

<sup>10</sup> The material set out in the text is a brief summary of the LTR. Notwithstanding the words used in the text, the language of the LTR governs this matter.

<sup>12</sup> The dose methodology used in 10 CFR part 61 subpart C is different from that used in the newer 10 CFR part 20 subpart E. However, the resulting allowable doses are comparable and NRC expects DOE to use the newer methodology in 10 CFR part 20 subpart E. part 61 is based on International Commission on Radiological Protection Publication 2 (ICRP 2) and part 20 is based on ICRP 26.

conclusion of the WVDP, the resulting calculated dose from the incidental waste is to be integrated with all the other calculated doses from material remaining material at the entire NRC-licensed site.

#### Previous Burials Authorized Under 10 CFR Part 20

The "Statement of Considerations" for the LTR, Section C.3, Other Exemptions (62 FR 39074) provided that in regard to past burials the Commission " \* \* \* would continue to require an analysis of site-specific overall impacts and costs in deciding whether or not exhumation of previous buried waste is necessary for specific sites. In addition, the general exemption provisions of 10 CFR part 20 are available to consider unique past burials on a case-by-case basis." The NDA contains significant amounts of buried radioactive material that was previously authorized under older provisions of part 20. This material will require appropriate evaluation as part of site license termination.

#### Environmental Analysis

An EIS is not needed at this step of the process of prescribing the LTR because the Commission is not establishing a new requirement for the site. This site is licensed to NYSERDA and, therefore, is already subject to the LTR by operation of the Commission's regulations. DOE in essence is acting as a surrogate for NYSERDA. The environmental impacts of applying the LTR to NRC licensees were evaluated in the Generic Environmental Impact Statement (GEIS), NUREG-1496, that supported the LTR. In promulgating the LTR, the Commission stated, in Section VI of the "Statement for Considerations" that it will conduct an environmental review to "determine if the generic analysis encompasses the range of environmental impacts at the particular site." The Commission further stated that it "will conduct an independent environmental review for each site-specific decommissioning decision where land use restrictions or institutional controls are relied upon by the licensee or where alternative criteria are proposed" as it recognized that the environmental impacts for these cases cannot be analyzed on a generic basis. The environmental impacts from the application of the criteria will need to be evaluated for the various alternative approaches being considered in the process before NRC decides whether to accept the preferred alternative for meeting the criteria permitted by the LTR. NRC intends to rely on the DOE/NYSERDA EIS for this purpose.

For NEPA purposes, DOE is considered the lead Federal agency. NRC, in view of its responsibilities under the WVDP Act, is considered a cooperating agency for this EIS and is participating in the development of the DOE/NYSERDA EIS. NRC does not anticipate the need to prepare its own duplicative EIS, since it can consider the environmental impacts described in the DOE/NYSERDA EIS in approving the particular decommissioning criteria for the WVDP under the LTR. Under this arrangement, if NRC is satisfied with the DOE/NYSERDA EIS, this EIS will fulfill the NEPA responsibilities for NRC under the WVDP Act. If NRC is not satisfied with the final DOE/NYSERDA EIS, then NRC will adopt as much of it as possible and modify or supplement it as necessary. In such a situation, NRC would publish its own draft EIS document for public review and comment before finalizing it. Once finalized, NRC's West Valley NEPA responsibilities would be fulfilled under the WVDP Act.

The WVDP Act does not address license termination for the site. License termination of the NRC license for the site, or portions thereof, is conducted (if license termination is possible) under the AEA. If NYSERDA pursues either full or partial license termination of the NRC license, at that time NRC will need to conduct an environmental review to determine if an EIS is necessary to support license termination.

#### Availability of Documents

NRC's final policy statement on decommissioning criteria for West Valley is also available at NRC's Public Electronic Reading Room link (<http://www.nrc.gov/NRC/ADAMS/index.html>) on NRC's home page (<http://www.nrc.gov>). Copies of documents cited in this section are available for inspection and/or reproduction for a fee in the NRC Public Document Room, 11555 Rockville Pike, Room O-1F21, Rockville, MD 20852. The NRC Public Document Room is open from 7:45 a.m. to 4:15 p.m., Monday through Friday, except on Federal holidays. Reference service and access to documents may also be requested by telephone (301-415-4737 or 800-397-4209), between 8:30 a.m. and 4:15 p.m.; or by e-mail ([PDR@nrc.gov](mailto:PDR@nrc.gov)); fax (301-415-3548); or a letter (NRC Public Document Room, Mailstop O-1F13, Washington, DC 20555-0001). In addition, copies of: (1) SECY-98-251, "Decommissioning Criteria for West Valley;" (2) the transcript of the public meeting held January 12, 1999; (3) the Commission's SRM of January 26, 1999, concerning the January 12, 1999, public meeting on

SECY-98-251; (4) SECY-99-057, "Supplement to SECY-98-251, "Decommissioning Criteria for West Valley;" (5) the Commission's vote sheets on SECY-98-251 and SECY-99-057; (6) the Commission's SRM of June 3, 1999, on SECY-98-251 and SECY-99-057; (7) the draft policy statement issued December 3, 1999; (8) the transcript of the public meeting held January 5, 2000; and (9) the public comments on the draft policy statement can be obtained electronically on NRC's home page at the Commission's Activities link (<http://www.nrc.gov/NRC/COMMISSION/activities.html>).

Dated at Rockville, Maryland, this 25th day of January, 2002.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 02-2373 Filed 1-31-02; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-250 and 50-251]

### Florida Power and Light Company Turkey Point Plant, Units 3 and 4 Notice of Availability of the Final Supplement 5 to the Generic Environmental Impact Statement Regarding License Renewal for the Turkey Point Plant, Units 3 and 4

Notice is hereby given that the U. S. Nuclear Regulatory Commission (NRC) has published a final plant-specific Supplement 5 to the Generic Environmental Impact Statement (GEIS), NUREG-1437, regarding the renewal of operating licenses DPR-31 and DPR-41 for the Turkey Point Plant, Units 3 and 4, for an additional 20 years of operation. The Turkey Point Plant units are operated by Florida Power and Light Company (FPL). Turkey Point Plant is located in Dade County, Florida. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative methods of power generation.

In Section 9.3 of the report:

The staff recommends that the Commission determine that the adverse environmental impacts of license renewal for Turkey Point Units 3 and 4 are not so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable. This recommendation is based on (1) the analysis and findings in the Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants, NUREG-1437; (2) the ER [Environmental Report] submitted by FPL; (3) consultation with other Federal, State, and local agencies; (4) the staff's own independent review; and



## NRC PUBLIC MEETING FEEDBACK

Meeting  
Date: \_\_\_\_\_Meeting  
Title: \_\_\_\_\_

The NRC recognizes the public's interest in the proper regulation of nuclear activities and is committed to understanding and including public input into our decisions. The NRC seeks to elicit public involvement early in the regulatory process so that safety concerns that may affect a community can be resolved in a timely and practical manner. This process is considered vital to assuring the public that the NRC is making sound, balanced decisions about nuclear safety. If you would like more information about NRC, please visit our web site at [www.nrc.gov](http://www.nrc.gov).

1. Why did you attend this meeting?  
☐ a. I am a local resident  
☐ b. I work for an interested organization  
☐ c. I am concerned about environmental issues  
☐ d. I am concerned about economic issues  
☐ e. Other \_\_\_\_\_
2. Were you familiar with the meeting topic prior to coming today?  
☐ a. Very ☐ b. Somewhat ☐ c. Not at all
3. How did you find out about this meeting?  
☐ a. NRC mailing list ☐ d. Internet  
☐ b. Newspaper ☐ e. Other \_\_\_\_\_  
☐ c. Radio/TV \_\_\_\_\_
4. Have you attended an NRC meeting before?  
☐ a. Never ☐ c. 3 to 5 times  
☐ b. 1 or 2 times ☐ d. More than 5 times
5. Was sufficient notice given in advance of the meeting?  
☐ a. Yes ☐ b. No
6. How well do you feel you understand the NRC's role with regard to the issues discussed today?  
☐ a. Very well ☐ b. Somewhat ☐ c. Not at all
7. Were you able to find all of the supporting information you wanted prior to the meeting?  
☐ a. Yes  
☐ b. I did not try to find any information  
☐ c. No
8. Was the purpose of the meeting made clear in the preliminary information you received?  
☐ a. Yes ☐ b. No
9. In your opinion, were people's questions answered clearly, completely and candidly?  
☐ a. Yes ☐ b. No
10. Was the written material useful in understanding the topic?  
☐ a. Very ☐ b. Somewhat ☐ c. Not at all
11. Were NRC's presentations and material presented in clear, understandable language?  
☐ a. Yes ☐ b. No
12. In your opinion, did the meeting achieve its stated purpose?  
☐ a. Yes ☐ b. No
13. Has this meeting helped you with your understanding of the topic?  
☐ a. Greatly ☐ b. Somewhat ☐ c. Not at all
14. How well did NRC staff respond to your concerns at this meeting?  
☐ a. My concerns were directly addressed  
☐ b. I was provided an alternate source of information to address my concerns  
☐ c. I did not raise my concerns at this meeting  
☐ d. I raised my concerns but am not satisfied with the response
15. Was adequate time allotted for discussion with NRC staff on the topic of today's meeting?  
☐ a. Yes ☐ b. No
16. How satisfied are you overall with the NRC staff who participated in the meeting?  
☐ a. Very ☐ b. Somewhat ☐ c. Not at all
17. Were the next steps in this process clearly explained, including how you can continue to be involved?  
☐ a. Yes ☐ b. No

If you would like someone to contact you, please provide your name and phone number or email.

Name \_\_\_\_\_

Telephone \_\_\_\_\_

E-Mail \_\_\_\_\_

OMB NO. 3150-0197

Expires: 06/30/2003

Public Protection Notification: If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

**Please fold on the dotted lines with Business Reply side out, tape the bottom, and mail back to the NRC.**

[illegible]

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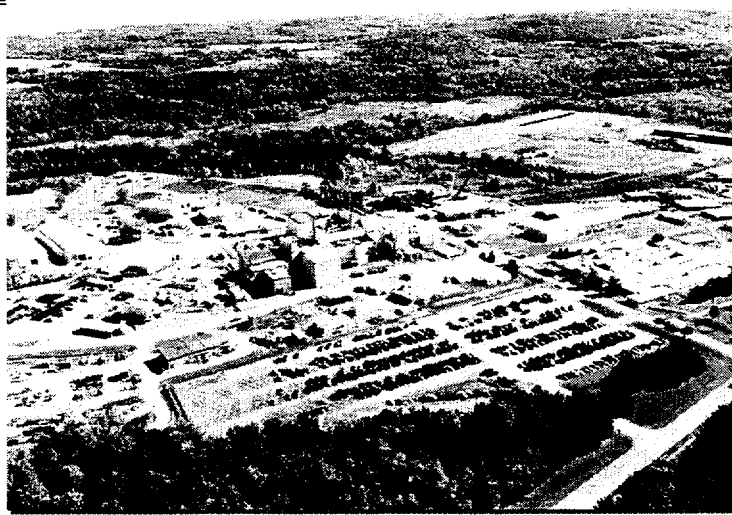
**NO POSTAGE  
NECESSARY  
IF MAILED  
IN THE  
UNITED STATES**

MAIL STOP



**West Valley Demonstration Project**

## **NRC Public Meeting**



**April 17, 2002**

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## **NRC Public Meeting**

### **West Valley Demonstration Project Summary of Roles and Responsibilities**

**Alice Williams, Project Director  
U. S. Department of Energy  
West Valley Demonstration Project**

2\_14417.ppt

## West Valley Demonstration Project Act (Public Law 96-368)

- Enacted October 1, 1980
- Under the WVDP Act, the Department of Energy shall:
  - ♦ Solidify the high-level radioactive waste
  - ♦ Develop containers suitable for permanent disposal
  - ♦ Transport the solidified waste to a Federal Repository
  - ♦ Dispose of low-level radioactive waste and transuranic waste produced by solidifying the high-level radioactive waste
  - ♦ Decontaminate and decommission the tanks, facilities, and any material and hardware used in connection with the Project

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## WVDP Act — Shared Responsibilities

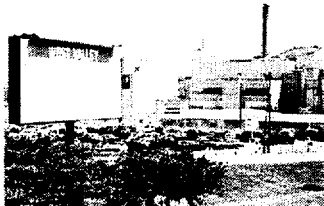
- September 1981
  - ♦ Cooperative Agreement between DOE and NYSDERDA
  - ♦ Provided working arrangements
  - ♦ Supplemental Agreement executed in February 1991
  - ♦ NRC license CSF-1 amended so DOE could take control of the site
  - ♦ New York State pays 10% of Project costs; DOE pays 90%
- November 1981
  - ♦ DOE and NRC signed a Memorandum of Understanding to outline respective roles and responsibilities
- 1982
  - ♦ DOE assumes control of reprocessing facilities; WVNS selected as Prime Contractor

### THE BUFFALO NEWS Local News

Meynihan Praises Start-up at West Valley



February 1982 — DOE assumes control of the reprocessing facility to conduct the WVDP.



Project work awarded to Westinghouse/West Valley Nuclear Services.

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## Relationship and Interactions with the Nuclear Regulatory Commission

- Memorandum of Understanding between DOE and NRC (1981)
- NRC Region I Quarterly Monitoring Visits
- Cooperating Agency Status (established 1991) on the 1996 Draft Environmental Impact Statement
- Per the WVDP Act the tanks and facilities used will be decontaminated and decommissioned "in accordance with such requirements as the Commission may prescribe"
  - ◆ Defined in February 1, 2002 NRC Final Policy Statement

5\_14417.ppt



## How the WVDP Premises is Regulated

- Air
  - ◆ Radiological Emissions - EPA
  - ◆ Toxic Air Emissions - NYSDEC
- Water
  - ◆ Stormwater and nonradiological point source discharges to surface water - NYSDEC
  - ◆ Wetlands - Army Corps of Engineers/NYSDEC
  - ◆ Drinking Water - NYSDOH



Groundwater sampling

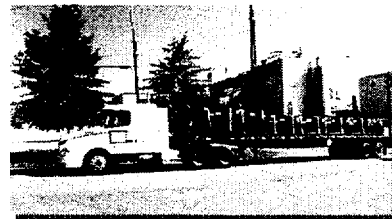
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## How the WVDP Premises is Regulated

### ■ Waste

- ♦ Solid, Hazardous and Mixed
- ♦ Radiological/hazardous waste - treatment, storage and disposal regulated by NYSDEC and EPA
  - RCRA corrective action order
  - Federal Facility Compliance Act consent order for mixed waste treatment



LLW shipping

7\_14417.ppt



## DOE Orders Mandate Operational Requirements for WVDP, Including...

- Radiological Waste Management Operations
- Environmental, Safety, Health and Quality Assurance
  - ♦ Environmental Monitoring Program ensures WVDP activities do not adversely impacting public health or the environment
  - ♦ Annual Site Environmental Report (data collected and evaluated since 1982)

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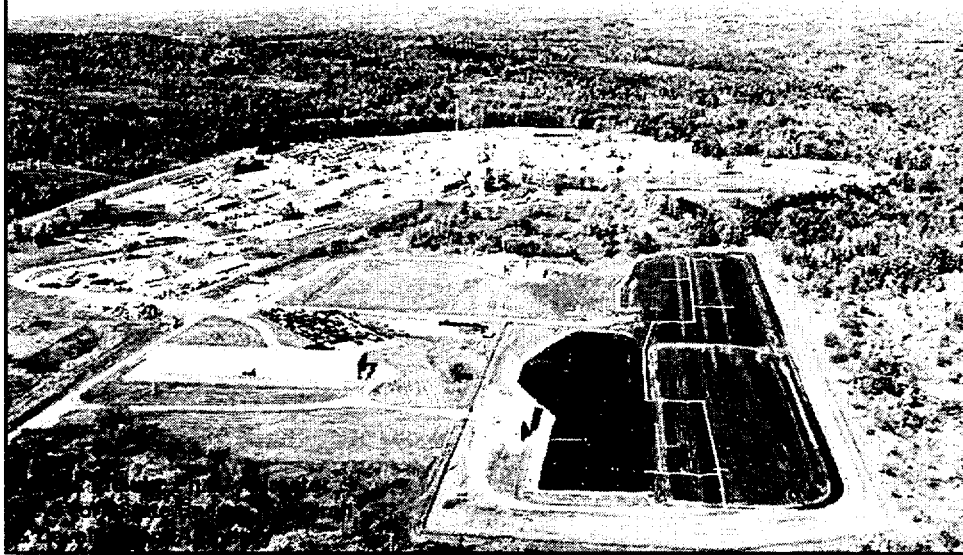
## **Path to WVDP Completion**

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- **Significant decontamination and waste management activities**
- **Regulatory involvement essential**
- **Interaction of agencies and the public key**

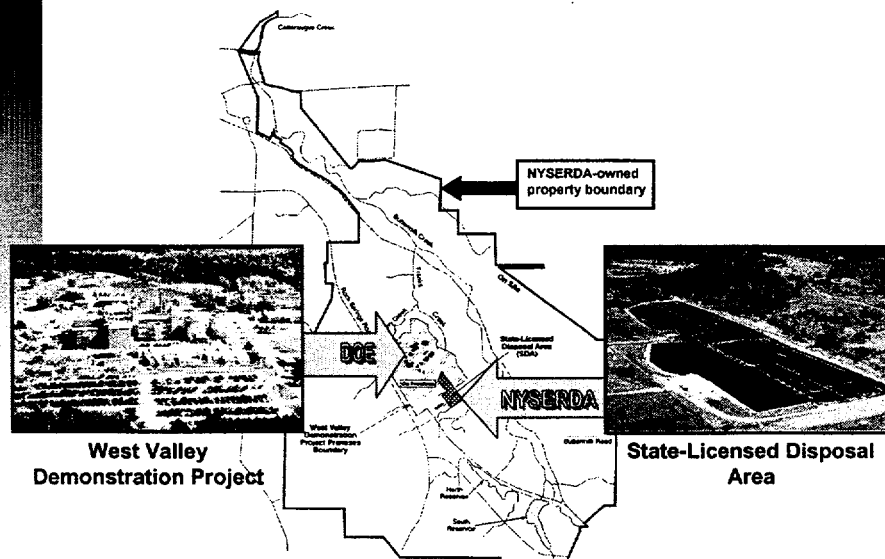
NYSDA

## Western New York Nuclear Service Center



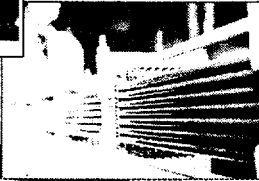
## Western New York Nuclear Service Center

NYSDA



## History

- 1962-66 Nuclear Fuel Services**  
Contracted to reprocess fuel;  
Licensed by the Atomic Energy  
Commission
- 1966-72 Fuel Reprocessing**  
Recovered uranium and  
plutonium from 640 metric tons  
of spent fuel, 60% U.S. govern-  
ment; 40% commercial reactor
- 1972 NFS Plans to Expand**  
Regulatory changes make  
expansion prohibitively  
expensive
- 1976 NFS Withdraws from  
Reprocessing**  
600,000 gallons HLW in  
underground tanks
- 1980 WVDP Act**  
Signed by President Carter
- 1981 Cooperative Agreement**  
between NYSERDA and DOE  
**NRC License put in Abeyance**



NYSERDA

041702.07  
3 of 4

## State-Licensed Disposal Area

Waste disposals conducted by  
NFS from 1963-1975.

NYSERDA assumed management  
responsibility in 1983.

**New York State Department of  
Labor**

➤ Radioactive Materials License

**New York State Department of  
Environmental Conservation**

➤ 6NYCRR Part 380 Permits

➤ RCRA Part A Permit

➤ RCRA Consent Order



A polymer cover and subsurface clay barrier have controlled  
water infiltration into the SDA trenches.

NYSERDA

041702.07  
4 of 4

# **U.S. Nuclear Regulatory Commission Roles and Responsibilities at West Valley**



**Larry W. Camper, Chief  
Decommissioning Branch  
April 2002**

## **What Are Our Goals?**

- Nuclear Regulatory Commission's (NRC's)  
Roles and Responsibilities**
- Commission's Final Policy Statement**
- Comments/questions on Final Policy  
Statement**

## **NRC Roles and Responsibilities**

- ⌘ **Atomic Energy Act (AEA)**
  - ⌘ **10 CFR Part 50 license**
  - ⌘ **Inspection**
  - ⌘ **Ensure public health and safety**
  - ⌘ **License termination**

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## **NRC Roles and Responsibilities**

- ⌘ **West Valley Demonstration Project Act (WVDPA)**
  - ⌘ **Decontamination and decommissioning criteria**
  - ⌘ **Review and consult on Department of Energy (DOE) plans**
  - ⌘ **Monitor activities**
  - ⌘ **Preferred alternative meets decommissioning criteria ?**

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## **NRC Roles and Responsibilities**

- **National Environmental Policy Act (NEPA)**
  - **Cooperating Agency in Decommissioning Environmental Impact Statement (EIS)**
  - **LTR-GEIS/Site-specific analysis**

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## **NRC Roles and Responsibilities**

- **Interface with stakeholders**
  - **Public**
  - **Regulators**
  - **DOE**
  - **NYSERDA**



6

## **NRC Performance Goals**

- **Maintain safety**
- **Increase public confidence**
- **Effective, efficient, and realistic decisions**
- **Reduce unnecessary regulatory burden**

7

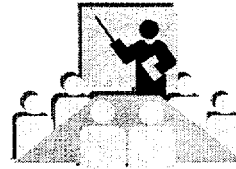
## **Decommissioning Criteria Background**

- **Commission public meeting (1/12/99)**
- **Draft Policy Statement published for comment (12/3/99)**
- **NRC public meeting on draft policy statement (1/5/2000)**
- **Final Policy Statement published (2/1/2002)**

8

## Implementation

- DOE to address decommissioning criteria
- EIS preferred alternative
- Several complex issues
- Avoid speculation



9

## License Termination Rule (LTR)

- |                                             |                                                     |
|---------------------------------------------|-----------------------------------------------------|
| • Unrestricted use<br>(No restrictions)     | 25 millirem/year+ALARA                              |
| • Restricted Release<br>(IC in place)       | 25 millirem/year+ALARA                              |
| • If IC fails                               | 100 millirem/year<br>500 millirem/year (rare cases) |
| • Alternate Criteria (IC in place)          |                                                     |
| • 25 millirem/year; up to 100 millirem/year |                                                     |

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## **License Termination Standards for Unrestricted Release (10 CFR 20.1402)**

- ☛ **Total Effective Dose Equivalent (TEDE)**  
(25 millirem/year) and is As Low As Reasonably  
Achievable (ALARA)
- ☛ **Average member of the critical group**
- ☛ **All path ways**
- ☛ **Period of performance 1,000 years**

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## **Perspective on Dose**

- ☛ **Average background radiation**
  - ☛ 360 millirem/year
- ☛ **Public dose Subpart D (Part 20)**
  - ☛ 100 millirem/year
- ☛ **Flight across U.S.**
  - ☛ 3-4 millirem
- ☛ **Chest X-Ray**
  - ☛ 20 millirem

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## Natural Background

☛ Radon	200 millirem/year
☛ Cosmic	27 millirem/year
☛ Terrestrial	28 millirem/year
☛ Internal	39 millirem/year
☛ Consumer products	5 to 13 millirem/year
☛ Environment	0.06 millirem/year
☛ Medical:	
☛ Diagnostic X-Rays	39 millirem/year
☛ Nuclear medicine	14 millirem/year

Taken from: United States Nuclear Regulatory Commission.  
Site Access Training Manual (October 1999)

13

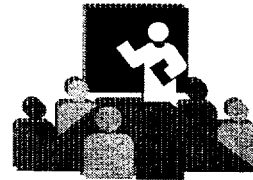
## Commission's Final Policy Statement on Decommissioning Criteria for West Valley Demonstration Project



Chad Glenn  
Project Manager  
Decommissioning Branch  
April 2002

## **Policy Statement Topics**

- **License Termination Rule (LTR)**
- **Application of LTR to WVDP**
- **Decommissioning Criteria**
- **Incidental Waste**
- **Previous Authorized Burials**
- **Decommissioning of West Valley**
- **Environmental Analysis**



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## **License Termination Rule (LTR)**

- **The License Termination Rule (LTR) is standard criterion for termination.**
- **LTR provides range of release criteria:**
  - **Unrestricted Release**
  - **Restricted Release**

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## **The Application of LTR to WVDP**

- **Two step process:**

- **NRC prescribes the LTR**

- **Independently evaluate  
preferred alternative satisfies  
criteria after completion of EIS**

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## **Decommissioning Criteria**

- **License Termination Rule (LTR) as  
decommissioning criterion**

- **West Valley Demonstration Project  
(WVDP)**

- **NRC-Licensed site**

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## **Decommissioning Criteria (Cont.)**

- **WVDPA specifies NRC's criteria:**
  - High Level Waste (HLW) tanks
  - Facilities used in solidification of waste
  - Material and hardware
- **Site/Facilities, such as:**
  - NRC-Licensed Disposal Area (NDA)
  - State-Licensed Disposal Area (SDA)

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## **Incidental Waste**

- **Early resolution of criteria is important.**
- **Incidental waste criteria:**
  - Remove key radionuclides to maximum extent technically and economically practical.
  - Safety requirements comparable to the performance objectives of LLW disposal sites (Part 61).
- **Resulting calculated doses integrated with all other calculated doses**
- **EIS to consider impacts of incidental waste**

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## **Previous Authorized Burials**

- **Site-specific impacts and costs**
- **Consider unique burials (case-by-case)**
- **NDA contains buried radioactive material**
- **EIS to evaluate disposition of previous burials**

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## **Decommissioning of West Valley**

- **Complex and unique site**
- **Decommissioned to extent technically and economically feasible**
- **Release requires protection of public health and safety**

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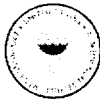
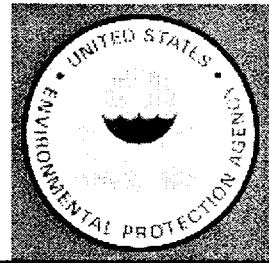
## **Environmental Analysis**

- **LTR does not establish new requirements**
- **Site-specific decommissioning decision**
- **Evaluate various alternatives**
- **EIS analysis of impacts beyond 1,000 years**
- **NRC reliance on quality EIS**

# West Valley

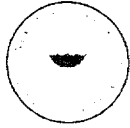
UNITED STATES  
ENVIRONMENTAL  
PROTECTION AGENCY

Paul A. Giardina, Chief  
Radiation & Indoor Air



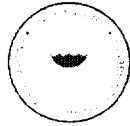
## Chronology of EPA's Recent Involvement at West Valley

- May 1999 Letter to DOE on the development of a supplemental EIS
- January 2000 EPA statement concerning the draft policy statement
- May 2000 Discussion with NRC at the Conference of Radiation Control Program Directors (CRCPD) Annual Meeting
- August 2000 Annual radiation program review with NYSDEC & NYSDOH



## Chronology, cont'd

- October 2000      Conference call among regulators
- May 2001      GAO report: "Agreement Among Agencies Responsible for West Valley Site Is Critically Needed"
- July 2001      DOE annual West Valley regulators roundtable  
Letter to NRC regarding 25 mrem & CERCLA risk range



## Chronology, cont'd

- July - November 2001      Staffs brief their respective agencies
- Nov. 2001 - April 2002      EPA, NRC, NYSDEC & NYSDOH develop the **Regulators Communication Plan**
- April 17, 2002      Public meeting to discuss the **Regulators Communication Plan**



## EPA's Responsibilities

- ☛ Atomic Energy Act
- ☛ Clean Air Act
- ☛ Superfund/CERCLA (Comprehensive Environmental Response, Compensation & Liability Act)
- ☛ National Environmental Policy Act
- ☛ Resource Conservation & Recovery Act
- ☛ Safe Drinking Water Act



## EPA's Role at West Valley

- Cooperating Agency in the development of the Decommissioning EIS
- Provide early input at West Valley to the public, regulators, DOE & NYSERDA
- Oversight of State delegated EPA programs



**New York State Department of Environmental Conservation**

**NRC's WEST VALLEY PUBLIC MEETING  
4/17/02**

**NYSDEC WEST VALLEY  
REGULATORY ROLES AND RESPONSIBILITIES**

**Presented by Paul J. Merges, Ph.D.**

3/17/02 West Valley Public Mtg

1

**New York State Department of Environmental Conservation**



**NYSDEC West Valley Staff**

<b>Tim Rice,</b>	<b>Radiation Program</b>	<b>(518)402-8579</b>
<b>Tim DiGiulio,</b>	<b>RCRA Program</b>	<b>(315)426-7471</b>
<b>Jack Krajewski,</b>	<b>Regional staff</b>	<b>(716)851-7220</b>

3/17/02 West Valley Public Mtg

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New York State Department of Environmental Conservation



## **DEC ROLE AT WEST VALLEY**

**Protection of the Environment and Public Health of the State.**

**Ensuring Compliance with Applicable State Regulations.**

**Working Cooperatively with the Other Regulators to Ensure All Closure Requirements Are Met.**

**Ensure that the Public is Informed and Involved in the Site Remedial Process.**

3/17/02 West Valley Public Mtg

3

New York State Department of Environmental Conservation



## **Broad range of regulatory responsibilities.**

- ◆ **Resource Conservation and Recovery Act (RCRA)**
- ◆ **Radiological Protection**
- ◆ **Clean Water Act (CWA)**
- ◆ **Clean Air Act (CAA)**
- ◆ **Endangered Species Protection**
- ◆ **Stream Protection**
- ◆ **Wetlands Protection**
- ◆ **Other**

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## **General Scope of Authority**

State-licensed Disposal Area (SDA) – The State, through regulation by the DEC and DOL, has sole regulatory authority.

Western New York Nuclear Service Center – RCRA, CAA, and CWA authority.

3/17/02 West Valley Public Mtg

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New York State Department of Environmental Conservation



## **RADIOLOGICAL**

### **Permits for ongoing activities at the SDA**

- Monitoring and Maintenance Permit
- Air Discharge Permit

### **NYS Low Level Radioactive Waste Management Act (LLRWMA)**

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New York State Department of Environmental Conservation



## **Low-level Radioactive Waste (LLRW) Transportation**

### **LLRW Disposal Facilities:**

- ◆ Site and Disposal Method Certification
- ◆ Operation from Design through Closure and Institutional

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New York State Department of Environmental Conservation



## **RCRA** (Resource Conservation and Recovery Act)

**RCRA Part 373 Interim Status Permit**  
**- Current Operations.**

**RCRA Corrective Action Consent Order with  
NYSERDA and DOE**  
**- Past Operations.**

3/17/02 West Valley Public Mtg

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New York State Department of Environmental Conservation



**FFCA** (Federal Facilities Compliance Act)

**CWA** (Clean Water Act)

3/17/02 West Valley Public Mtg

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New York State Department of Environmental Conservation



**CAA** (Clean Air Act)

**Endangered Species Protection**

**Stream Protection**

**Wetlands Protection**

3/17/02 West Valley Public Mtg

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New York State Department of Environmental Conservation



## **Other Regulatory Responsibilities**

- Closure of Abandoned Oil and Gas Wells
- Mined Lands Regulations
- Storage Tank Closure Requirements
- Solid Waste Disposal Requirements

3/17/02 West Valley Public Mtg

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**NYSDOH**

**West Valley Site**

## **NYSDOH Objective**

- **Protection of the Public Health**
- **Public Health Law**
- **Promulgation of Regulations**

## **NYSDOH Responsibilities**

- **Regulatory Role**
- **Advisory Role**

## **NYSDOH Regulatory Role**

- **SDWA Part 5**
- **Theoretical regulatory role if NYSDEC decided not to implement its' regulations**

## **NYSDOH Advisory Role**

- **Review and agreement with DEC**
- **Participation with other Regulatory Agencies**

## **NYSDOH Communications Plan items**

- **Regulatory Matrix Table I**
- **Communications Plan Page 4**
- **NYSDOH lead Agency for Protection of Public Health**
- **NESDEC Lead for Decommissioning Project**
- **Regulation of Water Supply Operators**

## **NYSDOH Activities**

- **Environmental Monitoring**
- **Split samples**
- **Review of results and Public Doses**

**U.S. Nuclear Regulatory Commission  
Roles and Responsibilities  
at West Valley**



Larry W. Camper, Chief  
Decommissioning Branch  
April 2002

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**What Are Our Goals?**

- ≈ Nuclear Regulatory Commission's (NRC's)  
Roles and Responsibilities
- ≈ Commission's Final Policy Statement
- ≈ Comments/questions on Final Policy  
Statement

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**NRC Roles and Responsibilities**

- ≈ Atomic Energy Act (AEA)
  - ≈ 10 CFR Part 50 license
  - ≈ Inspection
  - ≈ Ensure public health and safety
  - ≈ License termination

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### NRC Roles and Responsibilities

- ≈ West Valley Demonstration Project Act (WVDPA)
  - ≈ Decontamination and decommissioning criteria
  - ≈ Review and consult on Department of Energy (DOE) plans
  - ≈ Monitor activities
  - ≈ Preferred alternative meets decommissioning criteria ?

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### NRC Roles and Responsibilities

- ≈ National Environmental Policy Act (NEPA)
  - ≈ Cooperating Agency in Decommissioning Environmental Impact Statement (EIS)
  - ≈ LTR-GEIS/Site-specific analysis

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### NRC Roles and Responsibilities

- ≈ Interface with stakeholders
  - ≈ Public
  - ≈ Regulators
  - ≈ DOE
  - ≈ NYSDERDA



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### NRC Performance Goals

- ~ Maintain safety
- ~ Increase public confidence
- ~ Effective, efficient, and realistic decisions
- ~ Reduce unnecessary regulatory burden

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### Decommissioning Criteria Background

- ~ Commission public meeting (1/12/99)
- ~ Draft Policy Statement published for comment (12/3/99)
- ~ NRC public meeting on draft policy statement (1/5/2000)
- ~ Final Policy Statement published (2/1/2002)

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### Implementation

- ~ DOE to address decommissioning criteria
- ~ EIS preferred alternative
- ~ Several complex issues
- ~ Avoid speculation



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### License Termination Rule (LTR)

- Unrestricted use (No restrictions) 25 millirem/year+ALARA
- Restricted Release (IC in place) 25 millirem/year+ALARA
- If IC fails 100 millirem/year  
500 millirem/year (rare cases)
- Alternate Criteria (IC in place)
  - 25 millirem/year; up to 100 millirem/year

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### License Termination Standards for Unrestricted Release (10 CFR 20.1402)

- Total Effective Dose Equivalent (TEDE) (25 millirem/year) and is As Low As Reasonably Achievable (ALARA)
- Average member of the critical group
- All path ways
- Period of performance 1,000 years

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### Perspective on Dose

- Average background radiation
  - 360 millirem/year
- Public dose Subpart D (Part 20)
  - 100 millirem/year
- Flight across U.S.
  - 3-4 millirem
- Chest X-Ray
  - 20 millirem

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### Natural Background

~ Radon	200 millirem/year
~ Cosmic	27 millirem/year
~ Terrestrial	28 millirem/year
~ Internal	39 millirem/year
~ Consumer products	5 to 13 millirem/year
~ Environment	0.06 millirem/year
~ Medical:	
~ Diagnostic X-Rays	39 millirem/year
~ Nuclear medicine	14 millirem/year

Taken from: United States Nuclear Regulatory Commission,  
Site Access Training Manual (October 1999)

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**Commission's Final Policy Statement on  
Decommissioning Criteria for  
West Valley Demonstration Project**



Chad Glenn  
Project Manager  
Decommissioning Branch  
April 2002

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**Policy Statement Topics**

- ~ License Termination Rule (LTR)
- ~ Application of LTR to WVDP
- ~ Decommissioning Criteria
- ~ Incidental Waste
- ~ Previous Authorized Burials
- ~ Decommissioning of West Valley
- ~ Environmental Analysis



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**License Termination Rule (LTR)**

- ~ The License Termination Rule (LTR) is standard criterion for termination.
- ~ LTR provides range of release criteria:
  - ~ Unrestricted Release
  - ~ Restricted Release

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## The Application of LTR to WVDP

- ~ Two step process:
  - ~ NRC prescribes the LTR
  - ~ Independently evaluate preferred alternative satisfies criteria after completion of EIS

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## Decommissioning Criteria

- ~ License Termination Rule (LTR) as decommissioning criterion
  - ~ West Valley Demonstration Project (WVDP)
  - ~ NRC-Licensed site

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## Decommissioning Criteria (Cont.)

- ~ WVDPA specifies NRC's criteria:
  - ~ High Level Waste (HLW) tanks
  - ~ Facilities used in solidification of waste
  - ~ Material and hardware
- ~ Site/Facilities, such as:
  - ~ NRC-Licensed Disposal Area (NDA)
  - ~ State-Licensed Disposal Area (SDA)

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### **Incidental Waste**

- ≈ Early resolution of criteria is important.
- ≈ Incidental waste criteria:
  - ≈ Remove key radionuclides to maximum extent technically and economically practical.
  - ≈ Safety requirements comparable to the performance objectives of LLW disposal sites (Part 61).
- ≈ Resulting calculated doses integrated with all other calculated doses
- ≈ EIS to consider impacts of incidental waste

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### **Previous Authorized Burials**

- ≈ Site-specific impacts and costs
- ≈ Consider unique burials (case-by-case)
- ≈ NDA contains buried radioactive material
- ≈ EIS to evaluate disposition of previous burials

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### **Decommissioning of West Valley**

- ≈ Complex and unique site
- ≈ Decommissioned to extent technically and economically feasible
- ≈ Release requires protection of public health and safety

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### Environmental Analysis

- ≈ LTR does not establish new requirements
- ≈ Site-specific decommissioning decision
- ≈ Evaluate various alternatives
- ≈ EIS analysis of impacts beyond 1,000 years
- ≈ NRC reliance on quality EIS

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**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.

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 public meeting the need for further definition of the process and we look forward to working with you on that task.

**NYSERDA New York State Energy Research and Development Authority**

*William R. Howell, Chairman*

*F. William Valentino, President*

Corporate Plaza West, 286 Washington Avenue Extension, Albany, NY 12203-6399

(518) 862-1090 • Fax: (518) 862-1091 • <http://www.nyserda.org/>

March 1, 1999

The Honorable Jeffrey S. Merrifield  
Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

Dear Commissioner Merrifield:

During the Commission meeting of January 12, you expressed some concerns about the scope of the West Valley Demonstration Project (WVDP) and how it might affect the Commission's role at the West Valley site. Paul Piciulo and I briefly outlined the position of the New York State Energy Research and Development Authority (NYSERDA) on this issue, but the meeting did not seem the appropriate time to engage in extended discussion of this important question. Therefore, I am writing to elaborate on our discussion at the meeting.

While the issue of the extent of the Department of Energy's obligations under the WVDP Act is of the utmost importance to New York State, and while NYSERDA believes that the Commission should be aware of and informed about this matter, we do not believe the issue is, or should be, before the Commission for decision. The staff paper on Decommissioning Criteria for West Valley (SECY-98-251) appropriately proposes criteria for the site as a whole. NYSERDA has consistently taken the position that it would be technically infeasible and legally indefensible for the Commission to attempt to establish one set of criteria for the Department of Energy under the WVDP Act and another set of criteria that would apply to NYSERDA under the Part 50 license. We strongly urge the Commission to recognize that "decommissioning" must be given the same meaning, whether applied to a federal agency or to a licensee, and to adopt this aspect of the staff paper.

As with any statute, to interpret the meaning of the West Valley Demonstration Project Act one must look first to the language of the Act itself. While you correctly pointed out that it was the need to solidify the liquid high-level waste that provided the main impetus for the Act, the expressed obligations of the Department of Energy under the Act go well beyond solidification and transportation of the high level waste to a federal repository. The Secretary of Energy is also directed to dispose of the low-level and transuranic waste produced by solidification [Section 2(a)(4)] and to decontaminate and decommission the tanks and other facilities used to store the high-level waste, the materials and hardware used in connection with the project, and the facilities used in solidification of the waste [Section 2(a)(5)].

The decontamination and decommissioning aspect of the Department's mission at West Valley is

and always has been a critical issue for the State of New York. It was always anticipated that the Department would use and clean up as much of the site as is reasonably consistent with the solidification mission. This is demonstrated by the legislative history. In colloquy, Congressman Lundine stated:

The facilities and hardware already at the center, which will be contributed as part of the New York State share of this project and utilized by the Federal Government, will make this a cost-effective undertaking that otherwise would require a large infusion of taxpayer dollars to provide similar facilities and hardware at any other site elsewhere around the country.

Congressional Record, September 15, 1980, H. 8766.

Support for the proposition that Congress intended that the Department conduct extensive decontamination and decommissioning can also be found in the statement of Congressman Kemp, who said in colloquy:

The bill now before us establishes a Federal demonstration project to solidify the high-level wastes at the West Valley Center and move the wastes to a Federal repository for long-term burial. *The site is then to be decommissioned and decontaminated, and a plan for the safe removal of the wastes must be prepared.*

Congressional Record, September 15, 1980, H. 8767 (emphasis added).

But perhaps the most persuasive interpretation of the Department's decontamination and decommissioning obligations under the Act is the Department's own contemporaneous interpretation as reflected in the Cooperative Agreement negotiated between the Department and NYSERDA. Among many references in the Agreement to the Department's obligation to decontaminate and decommission is Section 4.03, which states:

Condition on Surrender. On the Project Completion Date, the Department shall surrender to the Authority

(a) the Process Plant and

(b) such other Project Premises, Project Facilities and any other non-federally owned facilities, material, and hardware which it uses in carrying out the Project

decontaminated and decommissioned in accordance with the Act and such requirements as the Commission may prescribe .

This section should be read with section 4.02 of the Agreement which states:

The Department shall use the Process Plant in carrying out the Project. Project Premises and Project Facilities shall be used solely for the purpose of carrying out the Project and for no other purpose whatsoever, except as expressly provided in this Agreement.

As I indicated at the Commission meeting, the Department insisted upon, and received the right to exclusive use and possession of the entire 175-acre Project Premises to use in carrying out the Project. Since obtaining use and possession of the Premises, the Department has in fact used the entire Premises in connection with solidification for such purposes as treatment, storage, transportation, security, and buffer.

These various sources support, and are entirely consistent with, the position that NYSDERDA stated at the meeting, which is that the Department is responsible, under the West Valley Demonstration Project Act, for decontaminating and decommissioning all premises and facilities within the 200- acre fence line other than the State-licensed Disposal Area and the waste disposed of in the Nuclear Regulatory Commission-licensed disposal area prior to commencement of the Project.<sup>1</sup>

If you have any additional questions, or would like any further documentation on this issue, please do not hesitate to contact me at 518-862-1090, extension 3280.

Sincerely,

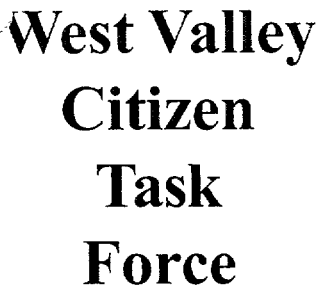


Hal Brodie  
Deputy Counsel

cc: Hon. Shirley Ann Jackson  
Hon. Nils J. Diaz  
Hon. Greta J. Dicus  
Hon. Edward McGaffigan, Jr.  
John T. Greeves  
Barbara A. Mazurowski, DOE  
Carl Johnson, DEC  
Duane J. Ray, Seneca Nation  
West Valley Citizen Task Force

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<sup>1</sup> The federal government has responsibilities above and beyond those delineated in the West Valley Demonstration Project Act. Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the federal government, as generator of the majority of the waste contained in the two disposal areas, is responsible for a substantial portion of the cleanup of those areas.

The logo for the West Valley Citizen Task Force. It features the words "West Valley" in a large, bold, sans-serif font, with "Citizen" and "Task Force" stacked below it in a similar but slightly smaller font. To the left of the text are four vertical lines of varying heights. To the right of the text are four vertical lines of varying heights, mirroring the ones on the left.

# West Valley Citizen Task Force

April 17, 2002

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

RE: Disagreements With the Final Policy Statement Establishing Decommissioning Criteria for the West Valley Demonstration Project

Dear Chairman Meserve:

In verbal testimony given at the public briefing on January 12, 1999, and in written comments dated December 22, 1998, and January 5, 2000, the West Valley Citizen Task Force (CTF) expressed general agreement with the U.S. Nuclear Regulatory Commission's (NRC) application of the License Termination Rule (LTR) as the decommissioning criteria for the West Valley Demonstration Project (WVDP). However, the CTF specifically detailed numerous objections we had with earlier wording and provisions in the draft policy statements which would have: 1) delayed NRC's prescription of definitive decommissioning criteria until after the current West Valley Environmental Impact Statement (EIS) process was completed; 2) allowed residual high level waste (HLW) at the site to be classified as incidental waste; and 3) allowed the U.S. Department of Energy (DOE) to depart from the LTR standards if they simply developed a rationale indicating that a particular cleanup alternative was considered technically infeasible or prohibitively costly. We clearly urged the NRC to reject any such approach and we were guardedly optimistic that the final policy statement would incorporate our recommendations and fulfill the NRC's obligation to prescribe a definitive set of criteria for decommissioning at the West Valley site, per the WVDP Act.

Consequently, we are extremely disappointed that the final policy statement as published in the Federal Register on February 1, 2002, contains provisions which: 1) create a "two-step process" whereby NRC will allow DOE to select a preferred alternative following completion of the EIS, and then "...verify that the approach proposed by DOE is appropriate;" 2) establish new criteria for making incidental waste determinations which effectively allow DOE to re-classify much residual HLW and ultimately dispose of it on site; and 3) will allow exemptions from the LTR criteria (i.e., higher human exposure dose limits) should the DOE choose to select a particular clean-up alternative, due to cost considerations. It should be noted that this would be first time that federal HLW would be left on non-federal land.

In short, the CTF now believes that the Commission has failed to fulfill its mandate from Congress of prescribing decommissioning criteria for the WVDP. A "criterion" is defined as "...a standard, rule, or test by which something can be judged." The Policy Statement, as issued, provides for outright exemptions from the LTR and re-evaluation following completion of the EIS. It is even stated therein that "... for those portions of the site that are unable to demonstrate compliance with the LTR's restricted release requirements, the dose limits should be viewed as goals...". Goals are not criteria! The policy only purports to establish criteria. The unusual number of qualifying provisions serve to diminish the NRC's relevance in the EIS process and reduce the proposed LTR criteria to mere goals which may, or need not, be adhered to by DOE. In our public briefing comments dated December 22, 1998, we stated our resolute opposition to the NRC extending DOE this form of *de facto* authority in establishing the cleanup standards for the Project.

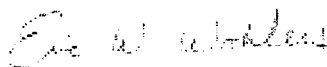
We question whether the WVDP Act authorizes the NRC to establish incidental waste determination criteria for the Project. We are increasingly concerned about revised DOE plans to accelerate decommissioning activities when the respective long-term responsibilities of the federal and state governments in the clean up and monitoring of the West Valley site have not yet been established. The CTF, therefore, necessarily opposes any actions which serve to facilitate premature withdrawal of DOE from the Project before all WVDP Act and National Environmental Policy Act (NEPA) obligations are fulfilled. Consequently, we request clarification of the Commission's authority for providing incidental waste determination criteria for West Valley, and documentation of any procedural or public participatory requirements which normally might apply to such an action.

In addition, we request formal definitions of "engineered barriers" and "institutional controls" (ICs) as they relate to the LTR and EIS analyses. As the NRC has previously acknowledged, the West Valley site presents unusual challenges should long-term ICs need to be relied upon as part of the preferred alternative for the site. The Commission indicates in the Policy Statement that it need not conduct an independent environmental review even though the generic EIS supporting the LTR requires that NRC "...conduct an independent environmental review for each site-specific decommissioning decision where land use restrictions or ICs are relied upon by the licensee...". Whether the NRC conducts an independent review or not, we believe it is crucial that formal guidance regarding ICs be issued because of: 1) the LTR dose criteria, should ICs fail; and 2) the presumptive failure of ICs in long-range EIS analyses (i.e. a few hundred years and beyond). Some views on this subject were presented in responses A.6 and B.6 in Section IV (Summary of Public Comments and Responses to Comments) of the Policy Statement, but definitive guidance is clearly necessary to ensure the proper evaluation of alternatives and completion of the EIS.

The CTF appreciates the effort put forth by the Commission and NRC staff over the past several years in developing this policy for West Valley. Unfortunately we cannot agree with the inordinate level of "flexibility" which has been built into the policy. The result is a document which neither ensures an adequate level of protection to local residents and the region, nor provides any definitive limitations on the range of clean-up alternatives which can still be considered by DOE. As the Policy Statement now reads, NRC will render no actual decision regarding any alternative until after the EIS has been completed. Again, we feel that this compromises NRC's integrity and express authority in providing impartial regulatory oversight of DOE activities, and fails to satisfy the Commission's legislated obligation for "prescribing" WVDP decommissioning criteria. Consequently the Final Policy Statement may be subject to a legal challenge, and certainly should be subject to Congressional scrutiny and possible rejection.

We expect the Commission to reconsider their position on this matter to include the consensus views of the community and local governmental interests, as represented by the CTF membership.

Respectfully submitted,



Eric Wohlers  
on behalf of the  
West Valley Citizen Task Force

cc: NRC Commissioner Greta Dieus  
NRC Commissioner Nils Diaz  
NRC Commissioner Edward McGaffigan  
NRC Commissioner Jeffrey Merrifield  
U.S. Senator Hillary Rodham Clinton  
U.S. Senator Charles Schumer  
U.S. Representative Amory Houghton  
U.S. Representative Thomas Reynolds  
U.S. Representative Jack Quinn  
U.S. Representative John LaFalce  
U.S. Representative Louise Slaughter  
NYS Senator Patricia McGee  
NYS Assemblyman Dan Burling  
NYS Assemblywoman Catharine Young  
DOE Secretary Spencer Abraham  
NYS Governor George Pataki  
NYSERDA President William Flynn  
Alice Williams (DOE)  
Paul Piciulo (NYSERDA)  
Larry Camper (NRC)  
Paul Giardina (U.S. Environmental Protection Agency)  
Paul Merges (NYS Department of Environmental Conservation)  
Gary Baker (NYS Department of Health)

**COALITION ON WEST VALLEY NUCLEAR WASTES**  
**Sharp Street · East Concord, NY 14055 · (716) 941-3168**

April 14, 2002

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

Dear Chairman Meserve:

We were encouraged to hear in late January that NRC was issuing the Final Policy Statement for West Valley decommissioning requirements. However, we find the contents of those requirements<sup>1</sup> to be very unsatisfactory. They are weak and unprotective compared to what NRC had already adopted in draft form as its West Valley requirements, as seen in the version of SECY-99-057 that the Commissioners adopted unanimously in 1999, the resulting Draft Policy Statement that was published in the *Federal Register*,<sup>2</sup> and subsequent NRC staff presentations to the Advisory Committee on Nuclear Waste.<sup>3</sup> These discrepancies aside, we find that the Final Policy Statement contains some rather serious defects as outlined below. Please see especially the legal issues raised in the second and third sections of this letter. We think all of these concerns are sufficiently serious to warrant your attention and the attention of the other Commissioners.

Excessive flexibility and lack of definiteness

We are concerned that the “flexible approach” of the Final Policy Statement<sup>4</sup> is too vague to set limits on DOE’s decommissioning alternatives. We believe the meaning of the West Valley Demonstration Project Act is clear: DOE’s mandate to decontaminate and decommission shall be bounded by requirements set by NRC, and those requirements shall be sufficiently definite that any given alternative may be judged “in accordance” or “not in accordance.”

NRC’s emphasis on flexibility, including potential exemptions and NRC’s willingness to consider alternatives that do not fully comply with the License Termination Rule (LTR) criteria,<sup>5</sup> is likely to confuse any determination of whether a given alternative is “in accordance” or “not in accordance.”

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<sup>1</sup> *Federal Register*, 67 FR 5003-5012 (February 1, 2002).

<sup>2</sup> 64 FR 67952-54 (December 3, 1999).

<sup>3</sup> Jack D. Parrott, “NRC’s Draft Policy Statement on Decommissioning Criteria for the West Valley Demonstration Project and West Valley Site,” presentation to ACNW, June 13, 2000; Amy M. Snyder, “Final Draft West Valley policy Statement: Significant Issues and NRC Staff Response,” presentation to ACNW, October 17, 2000.

<sup>4</sup> 67 FR 5004 (February 1, 2002).

<sup>5</sup> *Ibid.*, entire RH column on p. 5004; also part of LH column on p. 5011.

NRC's reluctance to set the LTR as clearcut requirements for West Valley is puzzling and worrisome. NRC waffles on whether departures from the LTR would be contingent on portions of the site being "*unable to demonstrate compliance*" or merely on compliance being "*technically impractical or prohibitively expensive*."<sup>6</sup> NRC's reason for excusing strict compliance with the LTR ("decommissioning of the West Valley site will present unique challenges"<sup>7</sup>) is not reassuring, inasmuch as it suggests that citizens living near such sites deserve less protection than other Americans. The LTR, after all, is not site-specific; it sets minimum safe standards that decommissioned sites elsewhere are expected to meet. Since the LTR is expressed in terms of *maximum allowable radiation doses*, it makes little sense to allow higher doses at sites that "present unique challenges." Indeed, given the greater difficulty of making reliable long-term predictions at such sites, and given the fact that radiation doses at decommissioned sites are typically projected into the future, one might expect the allowable dose limits at those sites to be lower, not higher, than the LTR dose limits.

Perhaps some comfort can be taken from footnote 10 on page 5011 of the *Federal Register* notice, where NRC indicates that "the language of the LTR governs this matter." The LTR may thus override some of the more extravagant language about flexibility, exemptions, unique solutions, and innovative approaches that appears in the *Federal Register* notice.

It should be noted that the NRC, in adopting the LTR in 1997, specifically expressed a preference for dealing with difficult sites "under the aegis of a rule rather than as exemptions."<sup>8</sup> Thus, NRC already provides flexibility for difficult sites *within* the LTR through alternate criteria (10 CFR 20.1404) and a two-tier dose "cap" (10 CFR 20.1403(e)). These flexible features of the LTR allow radiation doses somewhat higher than the limit normally imposed by the LTR, but they still fall under the umbrella of the LTR. NRC now suggests that even higher doses (*beyond* the LTR) might be allowed at West Valley through flexibility, exemptions, unique solutions, and innovative approaches. We do not believe that West Valley dose limits beyond the LTR would be warranted or wise.

In adopting the LTR in 1997, NRC specifically stated that the LTR was "intended to provide a clear and consistent regulatory basis for determining the extent to which lands and structures can be considered to be decommissioned."<sup>9</sup> NRC's decommissioning requirements for West Valley<sup>10</sup> fail badly in this respect. While the West Valley requirements "apply the LTR," they also emphasize that the strict requirements of the LTR can be avoided through flexibility, exemptions, unique solutions, and innovative approaches. The end result (in our opinion) is the *absence* of a clear and consistent basis for determining the extent to which lands and structures can be considered to be decommissioned at West Valley.

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<sup>6</sup> 67 FR 5011 (February 1, 2002), emphasis added.

<sup>7</sup> *Ibid.*

<sup>8</sup> 62 FR 39066 (July 21, 1997).

<sup>9</sup> 62 FR 39057 (July 21, 1997).

<sup>10</sup> 67 FR 5003 (February 1, 2002).

NRC may believe that its offers of flexibility, exemptions, unique solutions, and innovative approaches are well-constrained by the requirement that “public health and safety are protected”<sup>11</sup> or the requirement that “it can be rigorously demonstrated that protection of the public health and safety for future generations could be reasonably assured...”<sup>12</sup> We disagree. It makes no sense to relax strict limits on radiation dose based on assurances that public health, safety, and the environment can be protected. (What would be the purpose of limits on radiation dose, if not to protect health, safety, and the environment?) We recognize that NRC may argue otherwise, but this simply illustrates our point that NRC’s decommissioning requirements for West Valley fail to provide a clear and consistent basis for determining the extent to which lands and structures can be considered to be decommissioned. NRC’s decommissioning requirements for West Valley will continually require interpretation from NRC as to whether any given flexible approach is “in accordance” or “not in accordance.” This is not a clearcut standard for decommissioning.

### Incidental Waste

As part of its West Valley decommissioning requirements, NRC has “decided to issue incidental waste criteria to clarify the status of and classify any residual wastes present after cleaning of the high-level radioactive waste (HLW) tanks at West Valley.”<sup>13</sup> We are concerned that this plan by NRC is illegal.

NRC’s statement about what it has “decided” is admittedly vague and may be intended merely as “the Commission’s view for incidental waste”<sup>14</sup> or as “advice to DOE,”<sup>15</sup> in which case NRC may simply be encouraging DOE to classify HLW as “incidental” in violation of the law. In either case, we would like to clear up and eliminate any NRC role in this possible illegal action.

NRC mentions both Section 6(4) of the West Valley Demonstration Project Act and a series of NRC rulemakings in relation to its decision on incidental waste,<sup>16</sup> as if one of these might provide legal authority for reclassifying West Valley HLW as incidental waste. NRC’s purpose here is unclear, as NRC simply mentions the Act and rulemakings in passing, without actually claiming that they provide the necessary legal authority. In fact, neither the Act nor the NRC rulemakings provides legal authority for reclassifying any of the West Valley waste as “incidental.”

Any reclassification of West Valley waste as “incidental” is contrary to the West Valley Demonstration Project Act. Such reclassification would be illegal, regardless of whether

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<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

<sup>13</sup> 67 FR 5005 (February 1, 2002).

<sup>14</sup> 67 FR 5009 (February 1, 2002).

<sup>15</sup> See 67 FR 5005 and 5009 (February 1, 2002), where NRC refers to “advice” provided to DOE regarding “incidental” waste at Hanford and/or Savannah River. See also Amy M. Snyder, presentation to ACNW, October 17, 2000, Frame 7.

<sup>16</sup> 67 FR 5009 (February 1, 2002).

NRC intends to make the reclassification itself or merely encourages DOE to do so. Neither NRC nor DOE has the authority to override the West Valley Demonstration Project Act.

Section 6(4) of the West Valley Demonstration Project Act defines “high level radioactive waste” (HLW) and allows NRC to include “such other material as the Commission designates” in the HLW category. In other words, Congress created a definition of HLW in §6(4) and gave NRC the authority to *add* various types of **radioactive** material to the Congressional definition of HLW. There is no rational interpretation of §6(4) that would allow NRC to *remove* any HLW material from the Congressional definition of HLW. Any West Valley HLW must therefore remain HLW unless the West Valley Demonstration Project Act is changed.

The above argument is sufficient to show that West Valley HLW cannot be reclassified as “incidental” waste by either NRC or DOE. However, the following argument can also be made:

Even if it were possible to remove residual West Valley tank waste from the HLW category, the closed system of definitions in Section 6 of the West Valley Demonstration Project Act would require any such waste to be reclassified as *a) low-level radioactive waste, b) transuranic waste, or c) byproduct material*. The Act’s closed system of waste definitions does not allow the creation of additional new waste categories such as “incidental.” In the event that some of the HLW were reclassified as either low level radioactive waste or transuranic waste, the Act would require its disposal “in accordance with applicable licensing requirements.”<sup>17</sup> We understand the applicable licensing requirements for low-level radioactive waste to be either 10 CFR Part 61 or 6 NYCRR Part 382.

### NEPA problems

When agencies make discretionary decisions, the National Environmental Policy Act (NEPA) requires the environmental effects of those decisions to be considered beforehand in a NEPA (EIS) process. The EIS must focus on issues, impacts, and alternatives that are *directly relevant to the agency decision*.

NRC mistakenly claims that “An EIS is not needed at this step of the process of prescribing the LTR because the Commission is not establishing a new requirement for the site.”<sup>18</sup> This is faulty logic. The West Valley Demonstration Project Act gave NRC full discretion to set West Valley decommissioning requirements. In choosing one set of requirements from the universe of possibilities, NRC made a decision that invokes NEPA. The decision is both new and novel; it requires an EIS.

NRC’s decision is not trivial. It consists of *the adoption of decommissioning standards, including maximum allowable radiation dose limits that must be met after the West Valley site is decommissioned*. As part of this decision, NRC has chosen dose limits that 1) are based on the LTR but 2) may, under certain circumstances, exceed the dose limits allowed by

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<sup>17</sup> West Valley Demonstration Project Act, section 2(a)(4).

<sup>18</sup> 67 FR 5012 (February 1, 2002).

the LTR. NRC's NEPA process must therefore focus on this decision to allow a *range* of acceptable radiation doses at West Valley. It must focus especially on how and why NRC would allow radiation doses that exceed the LTR limits.

NRC needs to meet these NEPA requirements but has never done so. NRC seems to think it can satisfy NEPA by being generally involved in, and by doing a detailed internal review of, the DOE-NYSERDA EIS process.<sup>19</sup> Such a review role is useful but not sufficient; it does not satisfy NRC's obligation to do a NEPA review (an EIS process) to support NRC's *own* decisionmaking.

NRC's confusion about its NEPA obligation is echoed in the recently issued "Regulator's Communication Plan." This NRC document refers to the DOE-NYSERDA EIS process and states that "NRC may adopt this EIS for determining that the preferred alternative [as chosen by DOE and NYSEDA] meets NRC's decommissioning criteria, assuming that NRC will find it acceptable"<sup>20</sup> and that "If there are decommissioning issues that cannot be addressed through this EIS, these issues should be identified early in the NEPA process."<sup>21</sup> We do not mean to be disrespectful but must emphasize that *NRC is not paying attention*. As we have indicated repeatedly, there *are* issues that cannot be addressed through this EIS, at least not without substantial effort and cognition by NRC. We refer particularly to NRC's adoption of West Valley decommissioning requirements. In addition, NRC's comment that such issues "should be identified early in the NEPA process" is disingenuous, given the fact that the NEPA process has already been running for about 14 years!

We do not mean to suggest that NRC's adoption of West Valley decommissioning requirements is totally unrelated to the DOE-NYSERDA selection of an alternative that meets these requirements. NEPA recognizes that two or more agencies may need to make decisions that are closely linked or interrelated, as is the case here. This type of decisionmaking relationship is called "functional interdependence" and is covered by a section of the NEPA regulations, 40 CFR 1501.5. However, NRC does not meet the requirements of 40 CFR 1501.5, especially §§1501(a) and (c).

NEPA has specific substantive requirements. These include requirements for scoping (i.e., the identification of relevant issues for an EIS process), identification of impacts, review of alternatives, etc. NRC has not met these requirements with respect to its West Valley decisionmaking (i.e., its adoption of West Valley decommissioning requirements). NRC joined the DOE-NYSERDA West Valley EIS in 1991 as a "cooperating agency" but has never carried out a scoping process or identified impacts or developed alternatives that are pertinent to its own West Valley decisionmaking. Doing these things "early in the process" would have been a good idea in 1991, but it was never done.

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<sup>19</sup> For example, see 67 FR 5004, 5007, and 5012 (February 1, 2002).

<sup>20</sup> U.S. Nuclear Regulatory Commission, "Regulators Communication Plan on Application of Cleanup Requirements for Decommissioning the West Valley Site," March 27, 2002, p. 3.

<sup>21</sup> *Ibid.*, p. 5.

NRC now “expects to participate as an EIS cooperating agency” in the second of two “descoped” EISs that DOE intends to create.<sup>22</sup> NRC’s participation in this EIS may be problematic since 1) the EIS does not yet exist and 2) the Coalition on West Valley Nuclear Wastes considers DOE’s “descoping” plan illegal.

DOE agreed, as part of the Stipulation of Compromise Settlement signed with the Coalition in 1987, that “the closure Environmental Impact Statement process – including the scoping process – shall begin no later than 1988 and that this process shall continue without undue delay and in an orderly fashion consistent with applicable law, the objectives of the West Valley Demonstration Project, available resources and mindful of the procedural processes (including public input) needed to complete the aforesaid Environmental Impact Statement.”<sup>23</sup> NRC did not sign the Stipulation but is aware of it (copies were sent to NRC immediately after it was signed). NRC made no objection to the Stipulation when NRC joined the West Valley closure EIS process as a “cooperating agency” in 1991. The Coalition therefore believes that NRC must abide by the terms of the Stipulation, including the section quoted above. For example, NRC has no right to participate in the West Valley EIS in a manner that is inconsistent with applicable law or contrary to the procedural processes needed to complete the EIS.

As already noted, NRC has failed to meet many of the standard procedural requirements of NEPA (scoping, identification of impacts, evaluation of alternatives, etc.). These requirements arise from NRC’s discretionary decisionmaking at West Valley (i.e., NRC’s prescription of decommissioning requirements), as already described. NRC’s noncompliance with NEPA is unacceptable under NEPA’s own rules and is also unacceptable in the context of the West Valley EIS process (and the Stipulation that governs it), yet NRC somehow continues to believe that its NEPA obligations can be satisfied by NRC’s review role within the DOE-NYSERDA West Valley EIS process.<sup>24</sup> NRC is mistaken in this belief. The Coalition will not allow NRC to abuse the West Valley EIS process in this manner.

There are two relatively easy ways for NRC to avoid some or all of the above NEPA problems. One would be for NRC to adopt the LTR verbatim (without loopholes) as the decommissioning requirements for West Valley. The extensive NEPA process that NRC performed several years ago for the LTR would be sufficient, or essentially sufficient, to apply the LTR to West Valley. The other way for NRC to avoid some of the above NEPA problems would be for NRC to perform *its own* West Valley EIS. Such an EIS would need to focus on the proposed LTR loopholes (i.e., on West Valley decommissioning requirements that differ from the LTR, especially any radiation dose limits that would exceed the LTR limits). The NEPA requirements for a separate EIS would still be the same (scoping, evaluation of impacts, development of alternatives, etc.), but the advantage of a separate EIS would be that NRC could escape the procedural dilemma that it has created for itself within the DOE-NYSERDA EIS.

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<sup>22</sup> 67 FR 5005 (February 1, 2002), footnote 8; also p. 5004.

<sup>23</sup> Stipulation of Compromise Settlement, May 27, 1987, §4.

<sup>24</sup> For example, see 67 FR 5012 (February 1, 2002).

The Coalition is willing to work cooperatively with NRC to resolve this procedural dilemma, i.e., to allow NRC to fulfill its NEPA obligations *within* the DOE-NYSERDA EIS process at West Valley. However, any resolution of this dilemma will also require cooperation and good-faith effort by NRC. The dilemma cannot be resolved if NRC continues to forge ahead without regard for NEPA and the Stipulation.

The dilemma is as follows: NRC has never initiated or completed a NEPA process to justify West Valley decommissioning requirements that go beyond (i.e., are less strict than) the LTR. NRC has never performed scoping or done any of the other required steps. The Coalition has urged NRC to do so, but NRC has not done so. If NRC were to change its mind and decide to abide by NEPA, it could perform scoping this year (2002) and continue with the other required NEPA steps. This would be acceptable if NRC were to perform its own EIS but is highly questionable if done within the DOE-NYSERDA EIS that is governed by the Stipulation. The Stipulation, as quoted above, requires that the "Environmental Impact Statement process – including the scoping process – shall begin no later than 1988..." Doing new scoping fourteen years later – in 2002 – does not meet the requirements of the Stipulation. A delay of a few years for a truly new, unforeseen issue might be justified, but that is not the case here. NRC's NEPA obligations are not new or unforeseen; the obligations arise directly from NEPA, and the Coalition has urged NRC for several years to fulfill these obligations. Thus, NRC cannot simply demand new scoping in 2002 (nor can DOE do so). The Coalition would reject such a demand as an unreasonable violation of §4 of the Stipulation ("begin no later than 1988", "continue without undue delay", "in an orderly fashion consistent with applicable law", "mindful of the procedural processes", etc.).

At the same time, the Coalition remains open to proposals (but not demands) from either NRC or DOE. The Coalition may be willing to consider new scoping, for example, if such modifications to the original Stipulation can be mutually agreed upon and carried out with adequate safeguards. Any such proposals, whether from NRC or DOE, will require negotiation among the affected parties (including at least DOE and the Coalition). No party has the right to modify or disobey the Stipulation unilaterally.

If NRC were to ask the Coalition for permission to perform new scoping within the DOE-NYSERDA EIS process, the Coalition would be open to such a request but would expect to negotiate its terms. The Coalition's primary interest in such negotiations would be to ensure that new scoping 1) has an adequate and proper scope for assessment of impacts associated with NRC's decisionmaking and 2) does not involve shortcuts that bypass or bias the NEPA process. In addition, where the NRC Policy Statement is contradictory or not in accordance with law, the Coalition would seek a clear, binding commitment from NRC that the more protective interpretation will apply and that no portion of the decommissioning requirements will be inconsistent with applicable law. The Coalition already recognizes several issues that would need to be negotiated for the above purposes. The following issues (and perhaps others) would need to be considered:

1. Failure of institutional controls in relation to NRC's decision that "health and safety and cost-benefit considerations may justify the evaluation of alternatives that do not

fully comply with the LTR criteria.”<sup>25</sup> The LTR intended to set a “cap” on allowable radiation dose in the event of institutional control failure, based on the idea that failures of institutional controls were unlikely but could not be ruled out.<sup>26</sup> NRC’s West Valley decommissioning requirements would not set a definite “cap” but would defer the decision to a vaguely described future process that involves NRC, EPA, and the public.<sup>27</sup> This is a major divergence from the LTR.

2. Engineered barriers in relation to institutional controls<sup>28</sup> and the relevance of erosion to both engineered barriers and institutional controls. It is well known that geomorphic, watershed-scale erosion is a significant threat to containment of wastes at West Valley.<sup>29</sup> Maintenance of institutional controls at West Valley will necessarily require the type of “active institutional controls” and “ongoing active maintenance” to which the 10 CFR 61 Performance Objectives refer.<sup>30</sup> Thus, in any analysis of the West Valley site, it would be disingenuous to assume that engineered barriers “are distinct and separate from institutional controls” inasmuch as erosion will inevitably breach or topple engineered barriers unless active institutional controls are maintained. The NRC Policy Statement makes this “distinct and separate” argument<sup>31</sup> as if it were relevant to West Valley. NRC needs to recognize that these two concepts are historically interrelated (e.g., in the development of the LTR “cap” of 100 or 500 mrem/yr<sup>32</sup>) and cannot be divorced from each other in any protective approach to West Valley decommissioning. Engineered barriers may remain effective for some period of time following loss of institutional controls<sup>33</sup> but are not effective indefinitely.
3. Exemptions, especially in relation to NRC’s false claim that “DOE is acting as a surrogate for NYSERDA until the NYSERDA license is reinstated at the end of the WVDP”<sup>34</sup> or that “DOE in essence is acting as a surrogate for NYSERDA.”<sup>35</sup>
  - a) Exemptions are not part of the LTR *per se*. NYSERDA, upon resumption of the site license, could not obtain an exemption from the LTR under 10 CFR Part 20, Subpart N, inasmuch as Part 50 license termination requires compliance with “the criteria for decommissioning in 10 CFR part 20, subpart E.”<sup>36</sup>

<sup>25</sup> 67 FR 5004 (February 1, 2002).

<sup>26</sup> 62 FR 39070 (July 21, 1997).

<sup>27</sup> 67 FR 5005-5006 (February 1, 2002), response A.2.

<sup>28</sup> 67 FR 5007 (February 1, 2002), response B.6.

<sup>29</sup> See, for example, the DOE-NYSERDA West Valley Draft EIS (1996); responses thereto by NRC and NRC’s contractor, Center for Nuclear Waste Regulatory Analyses; and SECY-98-251, p. 5.

<sup>30</sup> See §61.42, §61.44, and the definition of “Active Maintenance” in §61.2.

<sup>31</sup> 67 FR 5007 (February 1, 2002), response B.6.

<sup>32</sup> 62 FR 39068 (July 21, 1997).

<sup>33</sup> See, for example, p. 6 of the NRC Task Plan (April 27, 1988) that governs West Valley waste which contains between 10 and 100 nCi/g of transuranic elements.

<sup>34</sup> 67 FR 5004 (February 1, 2002), footnote 4.

<sup>35</sup> 67 FR 5012 (February 1, 2002).

<sup>36</sup> 10 CFR 50.82.

- b) NRC's claim that DOE is acting as a "surrogate" licensee at West Valley is specious. We find no support for this idea in either the West Valley Demonstration Project Act or the NRC License Amendment that suspended the license. If NRC can make a compelling argument that DOE has not only the rights but also the *obligations* of a licensee at West Valley, then we may be willing to consider the idea. Our position otherwise is that DOE has neither the rights nor the obligations of a licensee at West Valley and therefore cannot apply for an exemption under 10 CFR 20, Subpart N. We note that NRC's formal "Statement of Policy" in the *Federal Register* notice<sup>37</sup> does not grant any explicit right of exemption to DOE, and we therefore deny that DOE has any such right.
- c) An exemption from the LTR "cap" of 100 or 500 mrem/yr would clearly invoke NEPA.
4. Selection of critical group. According to NRC, "The 'Statement of Considerations' for the LTR notes that the critical group would be the group of individuals reasonably expected to be the most highly exposed, considering all reasonable potential future uses of the site, based on prudently conservative exposure assumptions and parameter values within modeling calculations."<sup>38</sup> This is a reasonable approach and, to the extent that it matches 10 CFR 20.1003, is also the legally binding definition of "critical group." However, NRC seems willing to let the choice of the critical group be determined either by an existing NRC SRP document or by DOE and NYSERDA.<sup>39</sup> This may not be appropriate (and, in any case, cannot supersede the regulatory requirement to identify the group of individuals reasonably expected to be most highly exposed). As we have indicated previously,<sup>40</sup> those living downstream from the site (including the Seneca Nation of Indians, customers of Erie County Water Authority, residents of Buffalo, and others who live on the Great Lakes) need to be evaluated as critical group members. There is ample evidence that containment failures at the West Valley site (especially from erosion but also possibly from terrorist acts) will release large quantities of radionuclides into Buttermilk and Cattaraugus Creeks, Lake Erie, and other waters of the Great Lakes.
5. Combined dose. The NRC Policy Statement suggests that it may be permissible for the combined dose from the NRC-licensed and State-licensed portions of the West Valley site to exceed the LTR dose criterion and "cap."<sup>41</sup> This is not correct. The LTR does not allow the combined dose (including the SDA) to exceed the dose criterion and "cap" values specified in Part 20, §§20.1402, 20.1403, and 20.1404. The LTR dose limits are consistently expressed in terms of "residual radioactivity," which by definition includes "radioactive materials remaining at the site as a result of

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<sup>37</sup> Part V, under heading of "Final Policy Statement," 67 FR 5010-5012 (February 1, 2002).

<sup>38</sup> 67 FR 5006 (February 1, 2002), response B.2.

<sup>39</sup> *Ibid.*

<sup>40</sup> For example, see comments submitted September 21, 1996, by R. Vaughan on the DOE-NYSERDA Draft EIS, comments 115-119.

<sup>41</sup> 67 FR 5008 (February 1, 2002), response E.2.

routine or accidental releases of radioactive material at the site and previous burials at the site..."<sup>42</sup> Thus, in assessing compliance with the LTR, the dose from the SDA must be combined with the dose from portions of the site under NRC jurisdiction. The only exclusion from "residual radioactivity" is background radiation.

6. Method of combining dose projections for competing modes of failure. Given the fact that engineered barriers and other essential containment features may have various possible modes of failure, some reasonable method (such as probabilistic risk assessment) is needed for weighting and combining the doses predicted for each possible mode of failure. It is not acceptable for the LTR to be met by choosing a single mode of failure that meets the dose limit while ignoring another plausible mode of failure that produces doses that are orders of magnitude above the dose limit.

These are some of the issues that need to be addressed. We invite you to contact us to set up discussion of these issues before engaging in NEPA scoping activities.

Sincerely,



Raymond C. Vaughan

cc: A. Williams, DOE  
P. Piciulo, NYSERDA  
T. Attridge, CTF  
C. Schumer, Senate  
H. Clinton, Senate  
A. Houghton, House  
T. Reynolds, House  
J. Quinn, House  
J. LaFalce, House

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<sup>42</sup> 10 CFR 20.1003.

WEST VALLEY

# Panel raises concerns on cleanup

By KATHY KELLOGG

*Cattaraugus Correspondent*

WEST VALLEY — Larry Camper, the Nuclear Regulatory Commission's decommissioning branch chief, emphasized to the West Valley Citizens Task Force on Tuesday night that the commission's policy statement on decommissioning the nuclear waste site is final.

Camper spoke to the group about its concerns that the agency failed to do a job required by the 1980 West Valley Demonstration Project Act.

That law states the agency must set criteria for decommissioning the site. But the task force claims the policy creates new loopholes that could lead to higher radiation doses and perpetual licensing for the former fuel-reprocessing facility.

The task force invited the NRC and all other federal and state agencies involved in site activities to attend its meeting. The agencies will be meeting at 8 this morning to continue discussions on cleanup standards for regulators.

The NRC at 7 tonight will explain its policy statement, containing the cleanup criteria, during a public meeting beginning in the Ashford Office Complex on Route 219.

"There are a lot of assumptions. There's a good degree of speculation about what's going to happen down the road," said task force member Eric Wohlers, who also serves as the Cattaraugus County Environmental Health director.

Referring to the policy statement issued in January, he said the task force expected better definitions and guidelines on cleanup in case containment structures or site controls fail in the future.

Task force members, in inviting the agencies to the meeting, have raised concerns that the federal Department of Energy or the state Energy Research and Development Authority could receive exemptions in radiation-dose levels now spelled out in federal regulations.

They also have expressed concerns that the DOE could be dismissed from site activities in the future and that the research and Development Authority could be left holding a license to operate the site under fluctuating cleanup standards and with few resources.

Paul Merges of the state Department of Environmental Conservation told the group he has concerns about the policy's criteria for low-level radioactive waste and the possibility for exemptions on radiation dosages.

"I'm not sure whether I would change the document or reconsider the (West Valley Demonstration Project Act). Maybe there will be discussion about that later," said Merges, when asked how he would strengthen the policy.

Paul Giardina of the Environmental Protection Agency said the final yardstick will be how much radioactive contamination is left in the drinking water, soil and air pathways to the population. He challenged the group to take a new perspective.

James Liberman of NRC said the West Valley Demonstration Project Act was unclear about the criteria and reminded the group that the license may not be terminated if cleanup does not meet standards.

Susan Breckbill, director of the Department of Energy's Ohio field office, assured the group that decontamination is being accelerated, and her agency will continue to monitor its waste and fix what goes wrong.

She further urged the Energy and Research Development Authority to become more involved in finalizing an environmental impact statement that recommends a preferred closure alternative.

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WEST VALLEY

# Nuclear cleanup contractor to lay off 66 employees

By JOHN F. BONFATTI

News Staff Reporter

The West Valley Demonstration Project will lay off 66 employees by the end of September, the project's principal contractor announced Tuesday.

Jim Little, president of West Valley Nuclear Services, said 51 of the workers are salaried employees working in a variety of administrative, engineering and clerical jobs at the project 35 miles south of Buffalo. They will be gone by the end of May.

Little stressed that the layoffs aren't due to budget reductions at the project, a joint state-federal cleanup effort that has pumped nearly 600,000 gallons of highly radioactive liquid waste out of rotting underground tanks and turned it into glass cylinders using a process called vitrification.

"The reduction in force is not related to ... what we're going to get or not get," Little said. "It's simply based on what we see over the next few years."

Little said the job cuts are a function of the project's shift in emphasis from vitrification to decontamination and decommissioning.

"The project is changing," he said. "We've got to get a work force in place for the next phase, which is decontamination. We've been working over the last three years to determine what skills we needed to move forward."

The federal Department of Energy, which has funded 90 percent of the cleanup, and the New York Energy Research and Development Authority, which has provided the other 10 percent, have spent nearly \$2 billion here since 1980.

But the federal contribution to the West Valley budget was cut \$17 million last year, to \$91.6 million, as Congressional appropriators attempted to push stalled negotiations between the DOE and NYSERDA on an agreement for the site's future.

The vitrification part of the project will be complete by September, and West Valley Nuclear Services has been trimming jobs from its work force, which was at 716 as recently as last year. The new reductions will bring WVNS employment at the site to just under 500, Little said.

Until now, the company has used buyouts, retirements and reassignments to other projects to cut the work force. The layoffs announced Tuesday came after

the company concluded that those earlier cuts in personnel still left too many workers.

Workers will be offered severance packages, a chance to continue their health care benefits under several programs and retraining, Little said.

The 15 hourly workers who will be fired are represented by the International Association of Machinists and Aerospace Workers. The displaced workers, who will be determined according to union seniority rules, will be gone by September.

Their chief steward, Pete Cooney, said that while the layoffs aren't a surprise, he's disappointed that, as some citizen watchdog groups allege, the federal government seems to be planning a cutback on the scope of the cleanup.

"We were told from the start that there was going to be work for vitrification and ... in the decontamination and decommissioning," he said. "Now, all of a sudden, the company looks as if they're trying to make DOE happy and clean up only the hottest few areas."

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March 27, 2002

**REGULATORS COMMUNICATION PLAN  
ON APPLICATION OF CLEANUP REQUIREMENTS FOR DECOMMISSIONING  
THE WEST VALLEY SITE**

**I SCOPE**

On November 27, 2001, the US Environmental Protection Agency (EPA) Region 2, US Nuclear Regulatory Commission (NRC), New York State Department of Environmental Conservation (NYSDEC), and New York State Department of Health (NYSDOH) met to discuss applicable cleanup criteria and regulatory roles and responsibilities for the West Valley site. These agencies, together with New York State Department of Labor (NYSDOL), are herein referred to as the regulators. In this meeting, the regulators agreed to develop a communication plan that: 1) identifies applicable cleanup requirements and expectations that need to be addressed in decommissioning the West Valley site, and 2) describes the roles and responsibilities of involved regulatory agencies. While it may not represent consensus, compromise, or resolution of all differences between the regulatory agencies requirements or perspectives, the regulators intend to use this communication plan to foster a better understanding of cleanup requirements/expectations and roles/responsibilities related to decommissioning of the West Valley site. It is also intended to assist the scoping of issues that may need to be considered in the West Valley decommissioning Environmental Impact Statement (EIS) for the West Valley Development Project (WVDP).

**II GOALS AND OBJECTIVES**

- Identify applicable regulatory cleanup requirements and expectations.
- Identify roles and responsibilities of involved regulatory agencies.

**III BACKGROUND**

In October 2000, the regulators initiated a dialogue on the various cleanup standards that apply at West Valley. It was recognized that different Federal and State agencies have different cleanup standards that need to be addressed. The regulators agreed that it is a desirable goal to work together and present these requirements in a clear and coordinated way which will help facilitate planning and decision-making processes, eliminate redundancy, and make better use of resources.

A General Accounting Office (GAO) report on West Valley was made public on June 12, 2001. The report (GAO-01-314) includes several recommendations, one of these recommendations pertains to coordination among agencies on cleanup requirements. Specifically, GAO recommended that NRC and EPA, in coordination with New York State, agree on how their different regulatory cleanup criteria should apply to the site. On November 27, 2001, regulatory agencies met to discuss these and related issues on the decommissioning of the West Valley site. In this meeting, the regulators agreed to develop a communication plan that identifies

applicable cleanup requirements and expectations, and describes the roles and responsibilities of involved regulatory agencies.

#### **IV PRINCIPAL POINTS OF AGREEMENT**

Regulators agreed upon a number of general points, including:

- To work together in identifying cleanup criteria and expectations.
- To participate in a planned public meeting on NRC decommissioning criteria.
- To develop a communication plan that includes a description of roles and responsibilities of involved regulatory agencies, and a matrix of cleanup requirements and expectations.
- To address and resolve issues through the Decommissioning EIS.
- To consider respective roles as a cooperating agency for the decommissioning EIS.
- To address and resolve regulatory issues in a timely manner.
- To acknowledge that some waste may remain onsite.
- To acknowledge the possibility of partial site release and that some portion of the site may remain under license for the foreseeable future.
- To solicit stakeholder input on decommissioning and ability to meet site cleanup criteria.
- To agree in principle with cleanup to NRC dose limit of 25 mrem/yr with ALARA, for unrestricted release.

#### **V REQUIREMENTS AND EXPECTATIONS**

One objective of this plan is to identify the applicable cleanup requirements and expectations for decommissioning the West Valley site. Table 1 provides a matrix of requirements and expectations that all regulators endorse. Table 2 provides a matrix of requirements and expectations for individual regulators. Table 2 is intended to point out the various agencies clean-up standards and expectations resulting from the difference in the underlying statutes from which each agency has been charged with cleanup responsibility. It is designed to serve as a listing of applicable cleanup requirements and expectations that need to be addressed from the perspective of the listing agency. Together, these tables consolidate information in an effort to promote a common understanding among stakeholders involved in the West Valley site decommissioning.

#### **VI AGENCY ROLES AND RESPONSIBILITIES**

##### **NRC Role and Responsibility**

NRC has the regulatory responsibility under the Atomic Energy Act for the Western New York Nuclear Service Center (WNYNSC) which is the subject of the NRC license issued to NYSERDA pursuant to 10 CFR part 50, with the exception of the State-Licensed Disposal Area (SDA). The license is currently in abeyance pending the completion of the WWDPA.

The West Valley Demonstration Project Act (WVDP) specifies certain responsibilities for NRC, including: 1) prescribing requirements for decontamination and decommissioning; 2) providing review and consultation to DOE on the project; and 3) monitoring the activities under the project for the purpose of assuring the public health and safety. In addition, NRC has agreed to provide support as a cooperating agency with US Department of Energy (DOE) and New York State

Energy Research and Development Authority (NYSERDA), under the National Environmental Policy Act (NEPA), on the West Valley Decommissioning EIS. NRC may adopt this EIS for determining that the preferred alternative meets NRC's decommissioning criteria, assuming that NRC will find it acceptable.

Notwithstanding the WVDP, NRC retains the regulatory responsibility for the non-DOE activity in the non-project area and non-SDA area to the extent Part 50 contamination exist both on and offsite. Following the completion of the WVDP and reinstatement of the license, NRC will have the regulatory responsibility for authorizing termination of the license, should NYSERDA seek license termination.

#### **EPA Role and Responsibility**

EPA agrees to be a cooperating agency with DOE and NYSERDA, under NEPA, on the West Valley decommissioning EIS. EPA will review the cleanup plan, EIS and other documents developed by DOE in conjunction with NYSERDA to provide early input so the remediated site will also meet the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) risk range to avoid the potential need to list the WVDP on the National Priority List (NPL). Currently, the WVDP is not an NPL listed site. EPA will inspect and review West Valley's radionuclide air emissions for compliance with 40 CFR61 limit of 10 mrem/yr. Since a number of EPA programs have been delegated to New York State agencies, EPA will provide consultation and oversight for State implementation of the delegated Clean Air Act (CAA), Clean Water Act (CWA), Safe Drinking Water Act (SDWA) and Resource Conservation and Recovery Act (RCRA) programs that are applicable to the West Valley site.

#### **NYSDEC Role and Responsibility**

##### **Agreement State Authority**

In 1962, pursuant to Section 274b. of the Atomic Energy Act of 1954, New York State entered into an agreement with the Atomic Energy Commission (AEC), the predecessor to the NRC, whereby the Commission discontinued certain of its regulatory authority over byproduct, source, and small quantities of special nuclear material within the State. The State and AEC also adopted a related Memorandum of Understanding in 1965 clarifying certain mutual obligations relating to the regulation of Commission licensed activities within the State. As a result, the regulation of radioactive materials, except as pertains to production and utilization facilities, and facilities under exclusive federal jurisdiction, generally falls within the State's responsibilities for protecting the public health and safety under its police powers. As part of these responsibilities, NYSDEC regulates environmental discharges and disposal of radioactive materials, and transportation of low level radioactive waste within the State for non-federal facilities. Thus, the NYSDEC regulates the State-Licensed Disposal Area (SDA) through issuance of permits under 6 NYCRR Part 380 Rules and Regulations for Prevention and Control of Environmental Pollution by Radioactive Materials, and the transportation of Low-Level Radioactive Waste (LLRW) under 6 NYCRR Part 381 Low-level Radioactive Waste Transporter Permit and Manifest System. (Please note that NRC relinquishes its regulatory authority to the State. This is fundamentally different than the delegation to the State approach used by the EPA.)

NYSDEC's role at the SDA is to ensure that the site owner/operator, NYSERDA, properly maintains the integrity of the SDA, minimizes discharges of radioactive materials to the environment, and properly closes the facility in a manner that is protective of the public health and environment and in compliance with Part 380. NYSDEC also has a broader mandate under the Environmental Conservation Law (ECL) § 3-301, 1. i., to protect the public health and environment from sources of radioactive materials contamination beyond the specific regulation of sites subject to Part 380 permitting.

#### RCRA - Hazardous Waste and Mixed Waste

In 1990, the NYSDEC received authorization from the EPA to regulate Federal Facilities which contain Hazardous and Mixed Waste pursuant to 6 NYCRR Part 370 Series. This includes permitting activities under Interim Status for RCRA regulated units and Corrective Action Requirements for investigation and if necessary, remediation of hazardous constituents from Solid Waste Management Units.

#### RCRA Permitting

NYSDEC's role is to ensure compliance with applicable permitting requirements for RCRA regulated units storing or treating hazardous or mixed waste. This includes closure and if necessary, post-closure care of these units.

#### RCRA Corrective Action

NYSDEC's role is to ensure compliance with the 1992 joint NYSDEC/USEPA 3008 (h) [New York State Environmental Conservation Law, Article 27, Titles 9 & 13] Order issued to the USDOE and NYSEDA. The order required investigation of solid waste management units and to perform interim corrective measures, if necessary. A Corrective Measures Study (CMS), which evaluates selection of a remedial alternative(s) is required under the Order. NYSDEC has agreed to utilize the EIS process as a means to comply with the CMS requirements. NYSDEC's role is to ensure that the remedial option(s) and selection(s) under the EIS meet the requirements and standards for RCRA corrective action.

#### Protection of the Environment

NYSDEC is responsible for ensuring the protection of the State's environment under ECL and delegated federal responsibilities. This entails all aspects of the protection of natural resources, including the lands, streams, wetlands, groundwaters, mineral resources, and wildlife of the State not reserved by a federal agency.

In addition, NYSDEC program staff regularly consult with their counterparts in the NYSDOH to ensure that the DOH, in their role as lead agency for the protection of public health, is in concurrence with the remedial actions under review by the NYSDEC.

#### NYSDOH Role and Responsibility

As established in NYS Public Health Law, NYSDOH is the lead State agency for protection of public health from any public health threat, including ionizing radiation. However NYSDEC, under its responsibility as established in Environmental Conservation Law (ECL), will serve as the lead State agency for the decommissioning project. NYSDOH will ensure its responsibility for protection of public health via participation with NYSDEC staff in reviewing and concurring

with NYSDEC on any remedial actions. It is not expected that NYSDOH will routinely interact with DOE or NYSERDA. Additionally, NYSDOH regulates public water supply operators, including any that may be impacted by the site, to ensure compliance with the requirements of Part 5 of 10NYCRR.

### **NYSDOL Role and Responsibility**

NYSDOL has issued regulations under Industrial Code Rule 38 (12 NYCRR 38) for the commercial and industrial use of radioactive materials, not subject to the regulatory powers and jurisdiction of the NYSDOH. Statutory authority for these regulations derives from Section 483 of the General Business Law, and Section 27 of the Labor Law. Pursuant to Industrial Code Rule 38, NYSDOL has issued radioactive materials license number 0382-1139, authorizing NYSERDA to possess and manage emplaced radioactive waste at the SDA. The license requires NYSERDA to conduct its operations in accordance with a radioactive safety program, reviewed and approved by the Department, to minimize radiation exposures to workers and the public resulting from SDA operations.

## **VII DECOMMISSIONING ISSUES**

Significant issues exist that will need to be addressed in the West Valley Decommissioning EIS. The NEPA process will be used to address these issues, to the extent practical. Regulators have also agreed to consider working in the role of a cooperating agency to support the development of this EIS. The following issues are examples of the types of issues that will be addressed in the West Valley decommissioning EIS. If there are decommissioning issues that cannot be addressed through this EIS, these issues should be identified early in the NEPA process.

- **NRC Licensed Disposal Area (NDA)** - This 5-acre disposal area was used from 1966 to 1986 and includes a variety of waste types, activities and packaging configurations. The NDA was used for the disposal of radioactive waste from fuel reprocessing and associated processing, such as decontamination and decommissioning. Wastes were placed in the NDA both during the NRC licensed commercial operation of the site by Nuclear Fuel Services and under the WVDPA during the initial cleanup of the former reprocessing facility by the DOE. The buried waste includes: reactor hardware (all components, including hulls), spent fuel from the Hanford Site's N-Reactor (which was not processed because of ruptured cladding), ion exchangers and sludges, filters, failed and discarded equipment, and contaminated soil. The decommissioning EIS may evaluate unrestricted and restricted release scenarios, the possibility that the NDA may remain under license for some period of time, and the extent of the DOE's responsibility for wastes which they placed there.
- **State Licensed Disposal Area (SDA)** - This 16-acre commercial disposal area was operated from 1963 to 1975. It received radioactive wastes from various government, commercial, medical, and academic facilities, including the reprocessing operations at West Valley. Since the type of disposal operation that took place at the SDA falls under Agreement State authority, it is licensed by the NYSDOL and permitted by the NYSDEC. Thus the NRC does not have regulatory authority to set decommissioning criteria for the

SDA. This responsibility is held by the NYSDEC and the NYSDOL. However, since the cleanup activities at the site are subject to both NEPA and SEQRA, the decommissioning EIS will include consideration of closure of the SDA in order for NYSERDA to fulfill its SEQRA obligations.

- **High-Level Waste (HLW) Tanks** - There are four underground tanks that were used for storing and processing over 600,000 gallons of liquid HLW generated during the reprocessing era. This liquid waste has been solidified via a vitrification process. Total Cs-137/Sr-90 radioactivity vitrified is approximately 11.7 million Curies. DOE expects to complete the vitrification of liquid HLW by 2003. Removal of HLW heels in these tanks is proceeding slowly. DOE is presently examining concentrations of residual contamination in these tanks. Regulators have stressed the need to remediate residual contamination associated with these tanks, to the extent practical, due to long term risk to public health posed by this contamination. The decommissioning EIS will evaluate options for decommissioning and closing these tanks in-place, or removing these tanks. The impacts of identifying the waste in the tanks as incidental to reprocessing, and not HLW, should be considered in the decommissioning EIS.
- **Groundwater Plume** - Radioactively contaminated groundwater, which emanated from the reprocessing building and migrated on-site, has probably existed since the late 1960s to early 1970s, but was not identified or characterized until the mid-1990s. Under the building, the plume consists of several isotopes, but beyond the building footprint it consists only of the isotope Strontium-90. The plume now covers an area that is approximately 300 feet by 900 feet. Groundwater in the main flow path of this plume is being pumped and treated, and a below-grade permeable wall intended to prevent further migration is being tested on an arm of this plume. The decommissioning EIS will evaluate options to remediate or monitor this plume.
- **Partial Site Release** - Partial site release, in the context of West Valley, refers to the situation where a portion of the site is released for unrestricted use, while other portions of the site's use may remain restricted or under license. Regulators acknowledge the reality of partial site release and that some portion of the site may remain under license for some period of time. The decommissioning EIS should evaluate the scenario of partial site release.

## VIII AUDIENCE

This plan will help regulators communicate with both internal and external audiences. Internal audiences refer to the regulators with their respective management and staff. External audiences may include the following stakeholders and interest groups:

- DOE
- NYSERDA
- West Valley Citizen Task Force
- Seneca Indian Nation
- General public which include residents living near the West Valley site
- Environmental Organizations
- Community, professional, civic and public interest groups

- 
- Business organizations and Chambers of Commerce
  - Congressional representatives and their staff
  - Media representatives
  - Other Federal, State and Local Governments
  - Canada

## IX ACRONYMS

AEC	Atomic Energy Commission
ALARA	As Low as Reasonably Achievable
CAA	Clean Air Act
CERCLA	Comprehensive Environmental Response Compensation and Liability Act
CMS	Corrective Measures Study
CWA	Clean Water Act
DCGLs	Derived Concentration Guideline Limits
DOE	US Department of Energy
ECL	Environmental Conservation Law
EIS	Environmental Impact Statement
EPA	US Environmental Protection Agency
FFCA	Federal Facilities Compliance Act
GAO	US General Accounting Office
HEAST	Health Effects Assessment Summary Tables
HLW	High-Level Waste
IRIS	Integrated Risk Information System
LLRW	Low-Level Radioactive Waste
LTR	License Termination Rule
MARSSIM	Multi-Agency Radiation Survey and Site Investigation Manual
MCL	Maximum Contaminant Level
NDA	NRC-Licensed Disposal Area
NEPA	National Environmental Policy Act
NESHAP	National Emission Standards for Hazardous Air Pollutants
NPL	National Priority List
NRC	US Nuclear Regulatory Commission
NYCRR	New York Code of Rules and Regulations
NYSDEC	New York State Department of Environmental Conservation
NYSDOH	New York State Department of Health
NYSDOL	New York State Department of Labor
NYSERDA	New York State Energy Research and Development Authority
RCRA	Resource Conservation and Recovery Act
SDA	State-Licensed Disposal Area
SDWA	Safe Drinking Water Act
SEQRA	State Environmental Quality Review Act
SPDES	State Pollutant Discharge Elimination System
SWMUs	Solid Waste Management Units
TAGM	Technical Administrative Guidance Memorandum
WNYNSC	Western New York Nuclear Service Center
WVDP	West Valley Demonstration Project
WVDPA	West Valley Demonstration Project Act

**TABLE 1 REGULATORY MATRIX**  
**All Agencies Agreement on Requirement/Expectation**

\* = Agree

Requirement/Expectation	Agency	EPA	NRC	NYSDEC	NYSDOH	ADDRESS IN EIS
<b>ALL AGENCIES</b>						
All actions and final status adhere to the ALARA principle.		*	*	*	*	✓
Agree in principle with cleanup to NRC dose limit of 25 mrem/yr for unrestricted release <sup>1</sup> .		*	*	*	*	✓
Acknowledge different portions of site may be released for unrestricted use, restricted use with institutional controls, and portions likely to remain under license.		*	*	*	*	
DOE EIS should identify and satisfactorily address applicable cleanup guidance for all relevant regulatory agencies; the preferred alternative needs to meet the applicable regulatory requirements for the WVDP.		*	*	*	*	✓
Identify DCGL for unrestricted and/or restricted release scenarios.		*	*	*	*	✓
Follow Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM) guidance, or some other statistically valid and technically defensible approach, for the demonstration of compliance during the final status survey.		*	*	*	*	
Solicit stakeholder input on decommissioning and ability to meet site cleanup criteria.		*	*	*	*	✓

TABLE 2 REGULATORY MATRIX

Individual Agency Requirement/Expectation

X = Lead Agency Requirement/Expectation; + = Agency with Statutory Oversight/Coordination

Requirement/Expectation	Agency	EPA	NRC	NYSDEC	NYSDOH	ADDRESS IN EIS
<b>US ENVIRONMENTAL PROTECTION AGENCY (EPA)</b>						
Cleanup, for unrestricted release, to DCGLs developed consistent with NRC guidance to meet 10 CFR 20 Subpart E will meet CERCLA <sup>2</sup> risk range.		X				✓
Cleanup, for restricted release with restrictions in place, to DCGLs developed consistent with NRC guidance to meet 10 CFR 20 Subpart E will likely meet CERCLA <sup>2</sup> risk range.		X				✓
SDWA applies, and where applicable, must be met. State has primacy for determining compliance with SDWA.		+		+	X	✓
40 CFR61 (rad-NESHAP) applies and must be met.		X		+		✓
RCRA applies, and State has primacy for determining compliance with RCRA.		+		X		✓
<b>US NUCLEAR REGULATORY COMMISSION (NRC)</b>						
Preferred alternative for West Valley Decommissioning EIS will meet NRC decommissioning criteria for West Valley.			X			✓

TABLE 2 REGULATORY MATRIX

## Individual Agency Requirement/Expectation

X = Lead Agency Requirement/Expectation; + = Agency with Statutory Oversight/Coordination

Requirement/Expectation	Agency	EPA	NRC	NYSDEC	NYSDOH	ADDRESS IN EIS
NRC's LTR is the criteria for the WVDP, reflecting the fact that the applicable decommissioning goal for the entire NRC-licensed site is compliance with the requirements of the LTR. The criteria of the LTR shall apply to decommissioning of: HLW tanks and other facilities in which HLW was stored; facilities used in solidification of waste; and any material and hardware used in connection with the WVDP.			X			✓
The following criteria should be applied to incidental waste determinations: (1) the waste should be processed (or should be further processed) to remove key radionuclides to the maximum extent that is technically and economically practical; and (2) the waste should be managed so that safety requirements comparable to the performance objectives in 10 CFR Part 61 subpart C, are satisfied.			X			✓
Calculated dose for incidental waste to be integrated with all other doses from remaining material at the NRC-licensed site.			X			✓
Allow consideration of long-term or perpetual license or other approaches for parts of the site where cleanup to LTR is prohibitively expensive or technically impractical.			X			✓
LTR is decommissioning criteria for NDA.			X			✓

TABLE 2 REGULATORY MATRIX

## Individual Agency Requirement/Expectation

X = Lead Agency Requirement/Expectation; + = Agency with Statutory Oversight/Coordination

Requirement/Expectation	Agency	EPA	NRC	NYSDEC	NYSDOH	ADDRESS IN EIS
The decommissioning EIS will consider analysis of impacts beyond 1000 years.			X			✓
Coordinated approach with State in applying LTR criteria to NDA and SDA.			X			✓
LTR applies to termination of NRC license after the license is reactivated. NRC's intent is that any exemptions or alternative criteria authorized to meet provisions of VWDPA will also apply to termination of NRC license.			X			✓
Site-specific analysis of impacts and costs in deciding on whether or not to exhumate previous burials.			X (NDA)	X (SDA)		✓
Allow consideration of exemptions for unique past burials on case-by-case basis.			X (NDA)	X (SDA)		✓

TABLE 2 REGULATORY MATRIX

## Individual Agency Requirement/Expectation

X = Lead Agency Requirement/Expectation; + = Agency with Statutory Oversight/Coordination

Requirement/Expectation	Agency	EPA	NRC	NYSDEC	NYSDOH	ADDRESS IN EIS
<b>NEW YORK STATE DEPARTMENT OF HEALTH (DOH)</b>						
State regulates public drinking water supplies and sets Maximum Contaminant Levels (MCLs) for man-made beta and gamma emitters based on a 4 mrem/yr dose limit. Limit applies to community water systems, including any that might utilize waters from West Valley site.		+		+	X	✓
<b>NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION (NYSDEC)</b>						
<b>Radiological</b>						
Groundwater and surface water standards are based on State drinking water standards and includes Sr-90 and H-3 concentrations and a 4 mrem/yr dose limit. NYSDEC considers that best usage for all Class GA (fresh) groundwater is as source of potable drinking water (Part 701.15).				X		✓

TABLE 2 REGULATORY MATRIX

## Individual Agency Requirement/Expectation

X = Lead Agency Requirement/Expectation; + = Agency with Statutory Oversight/Coordination

Requirement/Expectation	Agency	EPA	NRC	NYSDEC	NYSDOH	ADDRESS IN EIS
TAGM-4003 Soil cleanup guidance of 10 mRem/year should be considered. Differences in modeling approaches generally make NYSDEC's 10 mRem/year equivalent to NRC's 25 mRem/year plus ALARA.				X		✓
<b>Part 380</b>						
SDA must remain in compliance with 6 NYCRR Part 380.				X		✓
<b>Parts 382 and 383</b>						
Any closure alternative for the SDA must make every reasonable effort to meet the Performance Objectives of 6 NYCRR Part 382.				X		✓
Any option requiring a new LLRW disposal facility, or expansion of an existing facility, would have to comply with the performance and dose objectives of Parts 382 and 383.				X		✓
NYSDEC expects that concentration averaging for the high-level radioactive waste tanks will conform to Part 382.80 (h)(2).				X		✓
Any residual waste left in place would fall under Agreement State authority.				X		✓

**TABLE 2 REGULATORY MATRIX**

Individual Agency Requirement/Expectation

X = Lead Agency Requirement/Expectation; + = Agency with Statutory Oversight/Coordination

Requirement/Expectation	Agency	EPA	NRC	NYSDEC	NYSDOH	ADDRESS IN EIS
Any LLRW facility considered for siting under the ECL, Title 3 Section 29, can not be considered for placement at West Valley.				X		✓
<b>RCRA</b>						
Operation, storage, closure and post-closure of RCRA Regulated Units must comply with all applicable NYCRR Part 370 series regulations.		+		X		✓
<b>3008(h) RCRA Consent Order</b>						

TABLE 2 REGULATORY MATRIX

## Individual Agency Requirement/Expectation

X = Lead Agency Requirement/Expectation; + = Agency with Statutory Oversight/Coordination

Requirement/Expectation	Agency	EPA	NRC	NYSDEC	NYSDOH	ADDRESS IN EIS
- A CMS, remedial activities and long-term monitoring and maintenance of Solid Waste Management Units (SWMUs) must comply with the Order and utilization of appropriate NYSDEC Technical Administration Guidance Memorandums, including TAGM-4048, "Contained-In" TAGM-3028, and other such pertinent documents including, but not limited to the NYS Groundwater standards 6 NYCRR Part 703, ASTM Risk-Based Corrective Action, USEPA Risk Assessment Guidance for Superfund utilizing the Integrated Risk Information System (IRIS) and Health Effects Assessment Summary Tables (HEAST), etc.		X		X	+	✓
- Interim Measures may be required if EPA/NYSDEC determines that they are necessary under the terms of the Order.		X		X		✓
- A public participation program shall include the RCRA components to be addressed in the EIS (CMS).		X		X		✓
<b>Federal Facilities Compliance Act (FFCA)</b>						
- Maintain compliance with the FFCA requirements during closure activities.		+		X		✓

TABLE 2 REGULATORY MATRIX

## Individual Agency Requirement/Expectation

X = Lead Agency Requirement/Expectation; + = Agency with Statutory Oversight/Coordination

Requirement/Expectation	Agency	EPA	NRC	NYSDEC	NYSDOH	ADDRESS IN EIS
<b>CWA</b>						
All actions at the site are subject to State Pollutant Discharge Elimination System (SPDES) requirements under 6 NYCRR Part 750 - 758.		+		X		✓
Surface and Groundwater Standards 6 NYCRR Part 700-705.		+		X		✓
Cleanup complies with NYSDEC 208 planning objectives.				X		✓
Cleanup meets requirements for 401 certification under CWA.				X		✓
<b>OTHER</b>						
Air discharges subject to the CAA, including Title V.		+		X		✓
Endangered species laws under 6 NYCRR Part 182 must be complied with.				X		✓
Cleanup activities that would leave solid waste on the site must comply with 6 NYCRR Part 360.				X		✓
Cleanup meets NYSDEC requirements for closure of abandoned oil and gas wells under 6 NYCRR Part 555.				X		✓

TABLE 2 REGULATORY MATRIX

## Individual Agency Requirement/Expectation

X = Lead Agency Requirement/Expectation; + = Agency with Statutory Oversight/Coordination

Requirement/Expectation	Agency	EPA	NRC	NYSDEC	NYSDOH	ADDRESS IN EIS
Cleanup meets ECL Article 15 stream protection requirements.				X		✓
Cleanup complies with Storage Tank closure requirements under 6 NYCRR Part 613.		+		X		✓
Federal and State wetlands protection requirements (33 CFR Part 320 and 6 NYCRR Parts 608 and 663) must be met.		+		X		✓
Use of WNYNSC soils for caps and erosion controls on the WVDP have to comply with Mined lands regulations in 6 NYCRR Parts 420 - 425.				X		✓

1. Assumes issues (such as, modeling methods and assumptions) related to application of this dose limit are resolved.

2. DOE Decommissioning EIS must demonstrate that DCGLs based on 10 CFR 20 Subpart E dose limits meet CERCLA risk range consistent with EPA Risk Assessment Guidance for Superfund.

North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams/html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland, this 28th day of January 2002.

For the Nuclear Regulatory Commission.  
**Christopher Gratton,**  
*Sr. Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 02-2498 Filed 1-31-02; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-327-OLA, 50-328-OLA, & 50-390-OLA; ASLBP No. 02-796-01-OLA]

### Tennessee Valley Authority; Sequoyah Nuclear Units 1 & 2; Watts Bar Nuclear Plant, Unit 1; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the *Federal Register*, 37 FR 28710 (1972), and sections 2.105, 2.700, 2.702, 2.711, 2.714a, 2.717, 2.721, and 2.772(j) of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding:

Tennessee Valley Authority, Sequoyah Nuclear Plant, Units 1 & 2, Watts Bar Nuclear Plant, Unit 1.

This Board is being established pursuant to two notices of consideration of issuance of operating license amendment, proposed no significant hazards consideration determination, and opportunity for a hearing published in the *Federal Register* (66 FR 65,000 and 65,005 (Dec. 17, 2000)). The proceeding involves petitions for intervention submitted January 10, 2002, by We the People, Inc., Tennessee, (WPIT) and the Blue Ridge Environmental Defense League (BREDL), respectively, challenging requests by the Tennessee Valley Authority (TVA) to amend the operating licenses for the Sequoyah Nuclear Plant, Units 1 and 2, and the Watts Bar

Nuclear Plant, Unit 1.<sup>1</sup> The amendments would change facility technical specifications to allow the plants to provide incineration services for the United States Department of Energy for the production of tritium for national defense purposes.

The Board is comprised of the following administrative judges:

Thomas S. Moore, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001

Dr. Peter S. Lam, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001

Dr. Thomas S. Elleman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001

All correspondence, documents, and other materials shall be filed with the administrative judges in accordance with 10 CFR 2.701.

Issued at Rockville, Maryland, this 28th day of January 2002.

G. Paul Bollwerk, III,  
*Chief Administrative Judge, Atomic Safety and Licensing Board Panel.*

[FR Doc. 02-2500 Filed 1-31-02; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

### Decommissioning Criteria for the West Valley Demonstration Project (M-32) at the West Valley Site; Final Policy Statement

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final policy statement.

**SUMMARY:** On December 3, 1999 (64 FR 67952), the Commission issued, for public comment, a draft policy statement that would approve the application of the U.S. Nuclear Regulatory Commission's (NRC's) License Termination Rule (LTR), as the decommissioning criteria for the West Valley Demonstration Project (WVDP) at the West Valley site. It also held a public meeting, on January 5, 2000, to

<sup>1</sup> Although the TVA license amendment requests that are the subject of the WPIT and BREDL hearing requests that triggered this Licensing Board constitution notice were submitted separately, involve different facilities, and were the subject of separate hearing opportunity notices, both amendments are challenged by each of the petitioners. Under the circumstances, one Licensing Board is being established to consider both contested TVA applications in a consolidated proceeding. Any objection to this consolidation by any of the participants to the proceeding should be raised with the Licensing Board promptly.

solicit public comment on the draft. This final policy statement was developed after considering public comments on the draft, and continues to apply the LTR as the criteria for the WVDP at the West Valley site.

**EFFECTIVE DATE:** February 1, 2002.

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### I. Introduction

This final policy statement is being issued under the authority of the WVDP Act, to prescribe decommissioning criteria for the WVDP.

### II. Background (Draft Policy Statement)

From 1966 to 1972, under an Atomic Energy Commission (AEC) license, Nuclear Fuel Services (NFS) reprocessed 640 metric tons of spent fuel at its West Valley, New York, facility—the only commercial spent fuel reprocessing plant in the U.S. The facility shut down, in 1972, for modifications to increase its seismic stability and to expand its capacity. In 1976, without restarting the operation, NFS withdrew from the reprocessing business and returned control of the facilities to the site owner, the New York State Energy Research and Development Authority (NYSERDA). The reprocessing activities resulted in about 2.3 million liters (600,000 gallons) of liquid high-level waste (HLW) stored below ground in tanks, other radioactive wastes, and residual radioactive contamination.

The West Valley site was licensed by AEC, and then NRC, until 1981, when the license was suspended to execute

the 1980 WVDP Act, Pub. L. 96-368.<sup>1</sup> The WVDP Act authorized the U.S. Department of Energy (DOE), in cooperation with NYSERDA, the owner of the site and the holder of the suspended NRC license, to: (1) Carry out a liquid-HLW management demonstration project; (2) solidify, transport, and dispose of the HLW that exists at the site; (3) dispose of low-level waste (LLW) and transuranic waste produced by the WVDP, in accordance with applicable licensing requirements; and (4) decontaminate and decommission facilities used for the WVDP, in accordance with requirements prescribed by NRC. NYSEDA is responsible for all site facilities and areas outside the scope of the WVDP Act. Although NRC suspended the license covering the site until completion of the WVDP, NRC has certain authorities, under the WVDP Act, that include prescribing decommissioning criteria for the tanks and other facilities in which the HLW solidified under the project was stored, the facilities used in the solidification of the waste, and any material and hardware used in connection with the WVDP. It should also be noted that DOE is not an NRC licensee and DOE's decommissioning activities for the WVDP at the West Valley site are conducted under the WVDP Act and not the Atomic Energy Act (AEA).

The WVDP is currently removing HLW from underground tanks at the site, vitrifying it, and storing it onsite for eventual offsite disposal in a Federal repository. The vitrification operations are nearing completion. In addition to the vitrified HLW, the WVDP operations have also produced LLW and transuranic waste which, under the Act, must be disposed of in accordance with applicable licensing requirements. Besides the HLW at the site, the spent fuel reprocessing and waste disposal operations resulted in a full range of buried radioactive wastes and structural and environmental contamination at the site.

In 1989, DOE and NYSEDA began to develop a joint Environmental Impact Statement (EIS) for project completion and site closure, and to evaluate waste disposal and decommissioning alternatives. Because the WVDP Act authorizes NRC to prescribe decommissioning criteria for the project, NRC and DOE agreed on NRC's participation as a cooperating agency on the EIS, with DOE and NYSEDA, to aid

NRC in its decision on decommissioning criteria. The draft EIS was published in 1996. Subsequently, DOE decided to descope this EIS into two separate EISs to address: (1) Near-term decontamination and waste management at the WVDP; and (2) decommissioning, long-term monitoring, and stewardship of the site.<sup>2</sup> The NRC will not be a Cooperating Agency on the decontamination and waste management EIS because the Commission is not prescribing criteria for decontamination activities considered in this EIS. The NRC will be a Cooperating Agency on the EIS for decommissioning under the WVDP Act. The WVDP Act does not address license termination of the NRC license for the site, or portions thereof. Any such license termination will be conducted (if license termination is possible and pursued) under the Atomic Energy Act (AEA) of 1954, as amended. If NYSEDA pursues either full or partial license termination of the NRC license, NRC will need to conduct an environmental review to determine if an EIS is necessary to support license termination.

After public review of the draft EIS, the WVDP convened the West Valley Citizen Task Force (CTF), in early 1997, to obtain stakeholder input on the EIS. The CTF recommendations for the preferred alternative in the EIS were completed in July 1998. In the latter half of 1997 (during the period that the CTF was working on its recommendations), NRC's LTR was published (62 FR 39058; July 21, 1997).

The Commission published a draft policy statement on decommissioning criteria for the WVDP at the West Valley site, for public comment, and a notice of a public meeting in the **Federal Register** on December 3, 1999 (64 FR 67952).<sup>3</sup> The public meeting, to solicit public comment on the draft, was held

<sup>2</sup> 66 FR 16447 (March 26, 2001).

<sup>3</sup> Before issuing the draft policy statement for comment, the NRC staff proposed decommissioning criteria for West Valley to the Commission in a Commission Paper entitled "Decommissioning Criteria for West Valley," dated October 30, 1998 (SECY-98-251). On January 12, 1999, the Commission held a public meeting, on SECY-98-251, to obtain input from interested parties. Based on the results from this meeting, the Commission issued a Staff Requirements Memorandum (SRM), on January 26, 1999, requesting additional information on the staff's proposed decommissioning criteria for West Valley. In response to the January 26, 1999, SRM, the staff provided SECY-99-057, to the Commission, entitled "Supplement to SECY-98-251, 'Decommissioning Criteria for West Valley.'" Based on the contents of SECY-98-251, SECY-99-057, and written and oral comments from interested parties, the Commission issued an SRM on June 3, 1999, detailing its decisions on the decommissioning criteria for West Valley.

on January 5, 2000. As a result of that meeting, the Commission extended the comment period to April 1, 2000. This final policy statement was developed after considering the public comments on the draft. This final policy statement recognizes that a \_\_\_\_\_ approach to decommissioning is needed both to ensure that public health and safety and the environment are protected and to define a practical resolution to the challenges that are presented by the site. In that regard, the Commission has decided to prescribe the LTR criteria for the WVDP at the West Valley site, reflecting the fact that the applicable decommissioning goal for the entire NRC-licensed site is compliance with the requirements of the LTR. However, the Commission recognizes that health and safety and cost-benefit considerations may justify the evaluation of alternatives that do not fully comply with the LTR criteria. For example, the Commission would consider an \_\_\_\_\_ allowing higher limits for doses on a failure of institutional control if it can be rigorously demonstrated that protection of the public health and safety for future generations could be reasonably assured through more robust engineered barriers and/or increased long-term monitoring and maintenance. The Commission is prepared to provide \_\_\_\_\_ to assure cleanup to the maximum extent technically and economically feasible.

It should be noted that the subpart E of 10 CFR part 20 (LTR) does contain provisions for alternate criteria and subpart N of 10 CFR part 20 contains provisions for potential \_\_\_\_\_,<sup>4</sup> with both alternatives based on a site-specific analysis which demonstrates that public health and safety will be adequately protected with reasonable assurance. If the NRC license cannot be terminated in a manner which provides reasonable assurance of adequate protection of the public health and safety, then the appropriate Commission action may be to require a long term or even a perpetual license for an appropriate portion of the site until, if and when possible, an acceptable alternative is developed to permit actual license termination.<sup>5</sup>

<sup>4</sup> \_\_\_\_\_ to NRC regulations can be issued to NRC licensees if the Commission determines that the \_\_\_\_\_ is authorized by law and would not result in undue hazard to life or property. NYSEDA is the licensee for the West Valley site and DOE is acting as a surrogate for NYSEDA until the NYSEDA license is reinstated at the end of the WVDP.

<sup>5</sup> If a long term or perpetual license is necessary for any portion of the site, it is the Commission's intent that that portion of the site will be decontaminated in the interim to the extent technically and/or economically feasible. In

<sup>1</sup> The State of New York licenses a low-level waste disposal area at the West Valley site. Unless otherwise indicated, the terms "West Valley site" or "site" used in this Policy Statement refers to the NRC-licensed portions of the site.

Based on the public comments received, the Commission has revisited the issue of "incidental waste" at West Valley. The Commission has decided to issue incidental waste criteria to clarify the status of and classify any residual wastes present after cleaning of the high-level radioactive waste (HLW) tanks at West Valley. Previously, the NRC has provided advice to DOE concerning DOE's classification of certain waste as incidental waste for clean-up of HLW storage tanks at both Hanford and Savannah River. As noted above, NRC intends to apply the LTR decommissioning criteria as the decommissioning goal for the entire NRC-licensed portion of the site. The Commission has decided that the most recent advice provided to DOE for the classification of incidental waste at Savannah River, with some additional modifications, provides the appropriate criteria which should be applied to West Valley. Specifically, the Commission is now providing the following criteria for classification of the incidental waste (which will not be deemed to be HLW) at West Valley:

(1) The waste should be processed (or should be further processed) to remove key radionuclides to the maximum extent that is technically and economically practical; and

(2) The waste should be managed, so that safety requirements comparable<sup>6</sup> to the performance objectives in 10 CFR part 61 subpart C, are satisfied.

Consistent with the overall approach in applying the LTR to the WVDP and to the entire NRC-licensed site following conclusion of the WVDP, the resulting calculated dose from the incidental waste is to be integrated with all the other calculated doses from the residual radioactive material at the NRC-licensed site to ensure that the LTR criteria are met. This is appropriate because the Commission does not intend to establish

addition, if a long-term or perpetual license is determined to be appropriate, the NRC takes no position on which entity should be the long-term licensee as that decision, as well as decisions regarding long term financial contributions, should be made pursuant to negotiations involving DOE, New York, and possibly the U.S. Congress. Also, under the WVDP Act, the NRC is only addressing the public health and safety aspects of decommissioning selected portions of the site. Other potential issues between DOE and NYSEDA concerning the West Valley Site are not within NRC's authority to resolve.

<sup>6</sup> The dose methodology used in 10 CFR part 61 subpart C is different from that used in the newer 10 CFR part 20 subpart E. However, the resulting allowable doses are comparable and NRC expects DOE to use the newer methodology in 10 CFR part 20 subpart E. Part 61 is based on International Commission on Radiological Protection Publication 2 (ICRP 2) and part 20 is based on ICRP 26.

separate dose standards for various sections of the NRC-licensed site.<sup>7</sup>

### III. Overview of Public Comments

Twenty-eight organizations and individuals submitted written comments on the draft policy statement. Comments also were provided at the public meeting held on January 5, 2000. The commenters represented a variety of interests. Comments were received from Federal and State agencies, citizen and environmental groups, a native American organization, and individuals. The commenters offered over 200 specific comments and represented a diversity of views. The commenters addressed a wide range of issues concerning the decommissioning and closure of the WVDP and West Valley site. The reaction to the draft policy statement was generally supportive. However, viewpoints were expressed on the LTR and LTR guidance and how both should be applied at West Valley. In addition, there were comments on NRC's process for prescribing the decommissioning criteria and other issues specific to West Valley.

### IV. Summary of Public Comments and Responses to Comments

The following sections A through I represent major subject areas and describe the principal public comments received on the draft policy statement (organized according to the major subject areas) and present NRC responses to those comments.

(A) Comments on the LTR (restricted release; institutional controls; as low as reasonably achievable (ALARA); financial assurance; alternate criteria; time line for decommissioning);

(B) Comments on LTR guidance (critical group, engineered barriers, cost/benefit analysis);

(C) Comments on implementing the LTR (continued Federal or State onsite presence, perpetual license);

(D) Comments on NRC's process for prescribing the decommissioning criteria (when to prescribe the criteria; use of the LTR "Generic Environmental Impact Statement" (GEIS) to support the use of the LTR at West Valley; NRC's National Environmental Policy Act (NEPA) obligation for prescribing the West Valley decommissioning criteria);

<sup>7</sup> Applying the LTR, the total annual dose to an average member of the critical group for the site, including the resulting doses from the incidental waste, should be less than or equal to 25 mrem/yr TEDE. The Commission is not establishing a separate dose standard for the incidental waste such that the average member of the critical group potentially receive a dose of 25 mrem/yr TEDE from the rest of the NRC-licensed site and 25 mrem/yr TEDE from the incidental waste.

(E) Comments on the LTR (continued Federal or State onsite presence, perpetual license);

(F) Comments on the use of incidental waste criteria at West Valley;

(G) Comments related to how the site should be decommissioned (disposition, consideration of pathways for dose, and contaminant transport);

(H) Comments on the wording of the draft policy statement (the word "prescribe," paraphrasing the LTR and other statements on West Valley); and, (I) Comments (implications of the policy statement regarding native Americans, transuranic waste issue).

The comments received from the public in writing during the comment period and verbally during the January 5, 2000, public meeting have been factored into the Commission's decision-making on this final policy statement.

#### A. Comments on the LTR

The draft policy statement presented NRC's LTR as the decommissioning criteria for the WVDP and the West Valley site. Although there was general support for the use of the LTR as the decommissioning criteria for both the WVDP and West Valley site, there were a number of comments on the LTR. Specifically:

A.1 Comment. A number of commenters were concerned that the use of the LTR's restricted release concept, which includes the use of institutional controls, to decommission West Valley may not be appropriate because of the magnitude of the waste currently on-site and the potential for this waste to provide an unacceptable dose to members of the public if controls fail.

A.2 Response. The LTR criteria consider doses to members of the public from the loss of institutional controls. The loss of institutional controls will need to be considered in the DOE/NYSEDA EIS.<sup>8</sup> Absent an LTR provision in 10 CFR part 20, a site, or part thereof, that cannot meet the restricted release provisions of the LTR, must remain under an NRC license. The Commission will consider

<sup>8</sup> DOE has decided to descope the draft 1996 EIS into two separate EISs. DOE will be the lead agency on the EIS that will address WVDP facility decontamination and management of waste currently stored at the site. NRC expects to be kept informed of progress as required under the DOE/NRC Memorandum of Understanding (MOU). DOE and NYSEDA will be the lead agencies on the EIS that will address decommissioning. NRC expects to participate as an EIS cooperating agency. Hereafter, this second EIS where NRC will be a cooperating agency will either be referred to as the decommissioning EIS or the DOE/NYSEDA EIS, unless otherwise noted.

granting an \_\_\_\_\_ to the LTR criteria if it determines the \_\_\_\_\_ is authorized by law and would not result in undue hazard to life or property. The Commission intends to involve the public in the processing of any \_\_\_\_\_ request consistent with the "public participation" provision in 10 CFR 20.1405, and will involve the Environmental Protection Agency (EPA) if the \_\_\_\_\_ request involves criteria greater than the dose criteria of 10 CFR 20.1402, 20.1403(b), or 20.1403(d)(1)(i)(A). Such an \_\_\_\_\_ request will also require the approval of the Commission consistent with 10 CFR 20.1404(b).

A. 3 Comment. Some commenters also were concerned about the adequacy of the LTR's financial assurance requirements for maintaining institutional controls for restricted release at West Valley, especially if the financial assurance relies on future Government appropriations that are not guaranteed.

A. 4 Response. In general, it is assumed that when a Government agency certifies that it will seek appropriations, to maintain institutional controls for the purposes of protecting public health and safety, the appropriations will be authorized. The Commission believes that it is reasonable to expect Federal and State agencies to meet their commitments to obtain funding for institutional controls to provide for the protection of the public health and safety.

A. 5 Comment. A number of commenters were also concerned that the time line specified for dose calculations in the LTR (1000 years) is too short for difficult sites like West Valley.

A. 6 Response. In the development of the LTR, the Commission considered comments seeking a time period for dose analysis longer than 1000 years. Section F.7 in the LTR "Statement of Considerations," 62 FR 39058 (July 21, 1997). The Commission concluded that for the types of facilities and source terms considered, it was reasonable to use a 1000-year period. However, the West Valley site presents some unique challenges in that significant quantities of mobile, long-lived radionuclides are present on site. Because under NEPA an evaluation of reasonably foreseeable impacts is required, the Commission believes that an analysis of impacts beyond 1000 years should be provided in the DOE/NYSERDA EIS. Thus, information will need to be evaluated to determine if peak doses might occur after 1000 years and to define dose consequences and impacts on potential long-term management of residual

radioactivity at the site. Depending upon the outcome of the EIS review, the Commission may need to consider the need for environmental mitigation.

A. 7 Comment. Some commenters were concerned about the possible application of alternate criteria, as allowed under the LTR, to West Valley, or that the policy statement should at least clearly identify the dose limit cap under alternate criteria.

A. 8 Response. In addition to the unrestricted release limit of 25 mrem/yr TEDE, the LTR also contains alternate criteria for restricted release, which allows for a dose limit of up to 100 mrem/yr TEDE, with restrictions in place, and caps the public dose limit at 100 or 500 mrem/yr TEDE if the restrictions fail. Applying alternate criteria to a specific site requires opportunities for public involvement, coordination with the EPA, and direct approval of the Commission. The alternate criteria in the LTR were developed for difficult sites to minimize the need to consider exemptions to the LTR, although exemptions also may be considered. Under appropriate circumstances and based on a site-specific analysis, the Commission considers the application of alternate criteria protective of public health and safety. Absent a detailed site-specific analysis, it is premature for the Commission to make any judgments, at this time, on the acceptability or non-acceptability of applying alternate criteria or \_\_\_\_\_ to the WVDP or any portion of the NRC-licensed site. In any event, neither the alternate criteria in the LTR nor \_\_\_\_\_ will be approved by the Commission without full prior public participation, involvement of the EPA, and a Commission determination that there is reasonable assurance that there would not be undue hazard to life and property.

A. 9 Comment. There were also comments about the use of the ALARA process in the LTR at West Valley. Some believed that the ALARA process might be used to justify dose limits higher than those allowed by the LTR.

A. 10 Response. As stated previously, the LTR does allow for releases with different dose limits. Generally, ALARA is used to reduce doses below authorized limits. Under the LTR, the ALARA process is not used to permit doses above the 25 mrem/yr TEDE limit without restrictions, the 100 mrem/yr TEDE limit with restrictions, or the 500 mrem/yr TEDE cap if restrictions fail.

## B. Comments on LTR guidance

A variety of comments were received on NRC's LTR guidance as it relates to West Valley. Since the time that NRC's LTR became final in 1997, the NRC staff has been developing guidance to support it. In September 2000, the NRC released guidance for decommissioning, in the form of a standard review plan (SRP) ("NMSS Decommissioning Standard Review Plan," NUREG-1727).

B. 1 Comment. A number of commenters expressed concern with how the critical group would be defined for dose assessment purposes.

B. 2 Response. For the LTR, the critical group means the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances (10 CFR 20.1003). The "Statement of Considerations" for the LTR notes that the critical group would be the group of individuals reasonably expected to be the most highly exposed, considering all reasonable potential future uses of the site, based on prudently conservative exposure assumptions and parameter values within modeling calculations. NRC's SRP for decommissioning addresses two generic critical group scenarios—the "resident farmer" and the "building occupancy" scenarios. The SRP also presents approaches for establishing site-specific critical groups based on specific land use, site restrictions, and/or site-specific physical conditions. DOE/NYSERDA derivation of the critical groups for West Valley will need to be addressed in the EIS documents. In addition to NRC review and comment, the EIS documents will be available for public review and comment.

B. 3 Comment. There were also several comments relating concerns that long-term stewardship costs and impacts on special populations will not be properly factored into the cost/benefit analysis, or that there should be better guidance provided on what should be considered in the cost/benefit analysis.

B. 4 Response. DOE and NYSEDA will determine the extent to which these issues are covered in the DOE/NYSERDA EIS. In addition, NRC will review and comment on any cost/benefit analysis in the EIS. The cost/benefit analysis that DOE/NYSERDA develop for West Valley will need to be part of the EIS documents available for public review and comment.

B. 5 Comment. Some commenters suggested that there should be criteria for what are allowable engineered

barriers and whether or not they are considered institutional controls.

B. 6 Response. Because of the wide range of residual radioactive contamination encountered at decommissioning sites licensed by NRC, the LTR and NRC's decommissioning guidance are not prescriptive as to the criteria for, or acceptability of, site-specific institutional controls and engineered barriers. The "Statement of Considerations" for the LTR might be read to conclude that engineered barriers are included within institutional controls. However, neither term is defined. In the Commission's view, "engineered barriers" referred to in the "Statement of Considerations" for the LTR are distinct and separate from institutional controls. Used in the general sense, an engineered barrier could be one of a broad range of barriers with varying degrees of durability, robustness, and isolation capability. Thus, NRC guidance in Appendix I of the SRP on the LTR distinguishes institutional controls from physical controls and engineered barriers. Institutional controls are used to limit intruder access to, and/or use of, the site to ensure that the exposure from the residual radioactivity does not exceed the established criteria. Institutional controls include administrative mechanisms (e.g., land use restrictions) and may include, but not be limited to, physical controls (e.g., signs, markers, landscaping, and fences) to control access to the site and minimize disturbances to engineered barriers. There must be sufficient financial assurance to ensure adequate control and maintenance of the site and institutional controls must be legally enforceable and the entity charged with their enforcement must have the capability, authority, and willingness to enforce the controls. Generally, engineered barriers are passive man-made structures or devices intended to improve a facility's ability to meet a site's performance objectives. Institutional controls are designed to restrict access, whereas engineered barriers are usually designed to inhibit water from contacting waste, limit releases, or mitigate doses. The isolation capability, durability, and robustness of a specific barrier will need to be evaluated in the DOE/NYSERDA EIS. The ability of a barrier to inhibit access of the inadvertent intruder is a separate issue from whether a barrier is an institutional control. The dose analyses for a site with engineered barriers will need to consider the reasonableness of a breach by an inadvertent intruder.

#### C. Comments on Implementing the LTR

C. 1 Comment. There were some comments identifying who should be the long-term steward of the site if long-term stewardship is required as part of site closure. Some commenters also provided suggestions on how site long-term stewardship should be maintained at West Valley if it is needed (onsite staff, perpetual license).

C. 2 Response. NRC expects that these site-specific issues will be covered in the DOE/NYSERDA EIS and addressed in the preferred alternative. The identification of a long-term custodian is not an NRC responsibility but will be determined from negotiations involving DOE and NYSEDA and possibly the U.S. Congress. From the NRC perspective, both DOE and NYSEDA represent governmental entities and either would be acceptable as a long-term custodian.

C. 3 Comment. One commenter requested consideration of how the LTR would be implemented on the decommissioned portions of the site if there were areas of the site that could not meet the LTR.

C. 4 Response. Although the LTR does not specifically address differing release standards on a single site, NRC recognizes that the approach to decommissioning at West Valley may include portions of the site being released for unrestricted use, and portions of the site being released for restricted use, as well as portions of the site remaining under license, because of a failure to meet the LTR. In the Commission's view, the LTR is sufficiently flexible to allow for such circumstances. In particular, the Commission believes that for those portions of the site that are unable to demonstrate compliance with the LTR's restricted release requirements, the dose limits should be viewed as goals in order to ensure that cleanup continues to the maximum extent that is technically and economically feasible. The Commission also believes that after cleanup to the maximum extent technically and economically feasible is accomplished, alternatives to release under the LTR criteria may need to be contemplated. Specific examples of these alternatives are a perpetual license for some parts of the site or from the LTR. The NRC expects that these issues will be fully addressed in the DOE/NYSERDA EIS.

#### D. Comments on NRC's Process for Prescribing the Decommissioning Criteria

D.1. DOE recommended, for the reasons described in comments D.1.1,

D.1.3, and D.1.5 below, that NRC withhold assigning the LTR as the decommissioning criteria until NRC does a site-specific analysis of the environmental effects of decommissioning West Valley.

D.1.1 Comment. The LTR GEIS (NUREG-1496) does not support the use of the LTR at a complex site like West Valley; therefore, a specific EIS for this action needs to be completed by NRC to finalize the criteria.

D.1.2 Response. Although the LTR GEIS did not specifically address the decommissioning of a spent fuel reprocessing site, it did evaluate the decommissioning of a range of reference facilities (e.g., fuel cycle facilities and reactors). In promulgating the LTR, the Commission stated in Section VI of the "Statement of Considerations" that it will conduct an environmental review to "determine if the generic analysis encompasses the range of environmental impacts at the particular site." The Commission further stated that it "will conduct an independent environmental review for each site-specific decommissioning decision where land use restrictions or institutional controls are relied upon by the licensee or where alternative criteria are proposed" as it recognized that the environmental impacts for these cases cannot be analyzed on a generic basis. Thus, the environmental impacts from the application of the criteria to the WVDP will need to be evaluated for the various alternative approaches being considered in the process before NRC decides whether to accept the preferred alternative for meeting the criteria permitted by the LTR. NRC expects to be able to rely on the DOE/NYSERDA EIS for this purpose. NRC does not anticipate the need to prepare its own duplicative EIS as NRC can consider the environmental impacts described in the DOE/NYSERDA EIS in approving the particular decommissioning criteria for the WVDP under the LTR. As an EIS cooperative agency, NRC may adopt all or parts of the lead EIS agency's NEPA documents. Under this arrangement, if NRC is satisfied with the final DOE/NYSERDA EIS, then NRC will adopt it to fulfill its NEPA responsibilities under the WVDP Act. If NRC is not satisfied with the final DOE/NYSERDA EIS, then it will adopt as much of it as possible and modify or supplement it as necessary. In such a situation, NRC would publish its own draft EIS document for public review and comment before finalizing it. Once finalized, NRC's West Valley NEPA responsibilities would be fulfilled under the WVDP Act.

The WVDP Act does not address license termination for the site. The actual license termination for the site, if and when pursued, will be conducted under the Atomic Energy Act (AEA) of 1954, as amended. At the time of NRC license termination under the AEA (if license termination is pursued), NRC will need to conduct an environmental review to determine if an EIS is necessary to support license termination.

**D.1.3 Comment.** The NRC's prescription of decommissioning criteria is not being coordinated with the current NEPA process as suggested by the DOE/NRC Memorandum of Understanding (MOU) on West Valley.

**D.1.4 Response.** The process described in the DOE/NRC MOU (Section B (4)), for consulting on a site-specific analysis of decommissioning requirements was developed to allow DOE and NRC to evaluate a range of approaches to specifically address the decommissioning of the WVDP. Thereafter, NRC was to prescribe the decommissioning criteria. At the time the MOU was signed, no comprehensive general criteria existed for decommissioning NRC-licensed sites. Decommissioning criteria were determined on a case-by-case basis. However, through the rulemaking process completed in 1997, which promulgated the LTR, there was an evaluation of various regulatory approaches for decommissioning NRC-licensed sites and the selection of a range of regulatory approaches with criteria, in the final rule.

Except as provided in 10 CFR 20.1401, the LTR applies to all NRC's licensed sites. The Commission recognized, as noted in the "Statement of Considerations" for the LTR, that there would be sites with complex decommissioning issues that would be resolved by site-specific environmental reviews which considered various alternative methods for decommissioning and application of the LTR. In the Commission's view, the use of the two-step prescribing process—first, the decision to use the LTR, and second, to use the DOE/NYSERDA EIS, to consider the impacts of the different approaches for decommissioning, before deciding whether to accept the particular approach that DOE intends to use to meet the LTR—is consistent with the intent of the MOU that various approaches be analyzed in developing the WVDP decommissioning criteria.

**D.1.5 Comment.** Finalizing the LTR now as the decommissioning criteria for the WVDP at the West Valley site limits the options for closure of the NRC-licensed Disposal Area (NDA).

**D.1.6 Response.** The Commission does not believe that prescribing the LTR criteria for the WVDP at the West Valley site as the applicable decommissioning goal for the entire NRC-licensed site will limit DOE from developing acceptable closure options for the NDA or any other part of the NRC-licensed site. Prescribing the LTR now is warranted because NYSEDA, as a licensee of the Commission, is subject to the LTR after NYSEDA's NRC license is reactivated at the conclusion of the WVDP. It follows that DOE should also be subject to the LTR as it is the surrogate for NYSEDA in decommissioning facilities used for the project. Therefore, it is appropriate to prescribe the LTR now for the WVDP, with the site-specific decommissioning issues resolved through the process described in Response D.1.4 above. Applying the LTR to the WVDP will provide an opportunity to DOE, as would be given to any licensee, to consider a range of approaches to achieve acceptable decommissioning, consistent with public dose limits. If parts of the NRC-licensed site cannot meet the LTR, the Commission will consider alternatives to the criteria in the LTR if it can be demonstrated that public health and safety will be protected. The NRC expects that these issues will be fully addressed in the DOE/NYSERDA EIS.

#### *E. Comments on Jurisdictional Aspects of Prescribing the Decommissioning Criteria*

**E.1 Comment.** Many commenters suggested that, because the State-licensed Disposal Area (SDA) is immediately adjacent to the WVDP and part of the West Valley site, the allowable dose from the closure and/or decommissioning of it should be considered comprehensively with the allowable dose from the NRC regulated part of the site.

**E.2 Response.** NRC's authority only extends to the NRC-licensed portion of the site. It also should be noted that the LTR recognizes that people can be exposed to up to four sources of radiation and still meet the nationally and internationally accepted public dose limit of 100 mrem/yr TEDE in part 20. In considering the environmental impact of the entire site, the DOE/NYSERDA EIS will need to consider the number of sources to which the critical group may be exposed. However, NRC continues to dialogue with State representatives to exchange information on issues of mutual interest regarding potential sources of public exposure.

**E.3 Comment.** A few comments were made indicating that NRC ought to

prescribe the dose limits in EPA's decommissioning guidance to West Valley, because they are more protective and could be applied to the site after NRC regulatory authority ceases. Likewise, a comment was made that the decommissioning criteria issue between NRC and EPA should be resolved before the criteria are prescribed.

**E.4 Response.** The Commission believes that the LTR dose limits plus ALARA requirements provide protection comparable to dose limits preferred by EPA in its guidance documents. The Commission notes that the LTR was promulgated by the Commission in 1997 pursuant to an Administrative Procedure Act rulemaking accompanied by a generic EIS and voluminous regulatory analysis, including consideration of numerous public comments. EPA's guidance documents have gone through no such public process. The Commission believes that decommissioning the site to the LTR criteria ensures that public health and safety and the environment will be protected. Although there is a lack of agreement between NRC's rule and EPA's guidance documents on the appropriate upper bounds on decommissioning criteria, the NRC practice of applying ALARA principles to NRC dose limits will most likely result in an NRC approved decommissioned site that satisfies the EPA criteria as well. In fact, EPA has indicated that it believes that the 25 mrem/yr TEDE cleanup dose limit in the LTR will be "protective at this site." See Letter from Paul Giardina, EPA to John Greeves, NRC (July 23, 2001). Because the LTR requirements do ensure adequate protection of the public health and the environment, and, as indicated in the preceding paragraph, EPA agrees with this conclusion for West Valley, the Commission believes that it is not necessary to wait for a formal resolution of the differences between NRC and EPA on generic decommissioning standards before proceeding with prescribing site-specific decommissioning criteria for the WVDP. As stated previously, EPA will be involved in any proposal to use alternate criteria in the LTR or from 10 CFR part 20, if so requested.

#### *F. Comments on the Use of Incidental Waste Criteria at West Valley Site*

**F.1 Comment.** Many comments were received concerning the use of the incidental waste criteria at West Valley. Most commenters did not want NRC to allow for the "reclassification" of any HLW at this site to waste incidental to reprocessing. If it were allowed, it

should be done in a way that provides for public participation. One commenter agreed that it will have to be done, but that the Commission should prescribe the criteria that are necessary and appropriate for the incidental waste determination. One other commenter believes that use of DOE's Order 435.1 is the appropriate process for reclassifying residual HLW as incidental.

**F.2 Response.** Section 6 (4) of the WVDP Act defines HLW as including both (1) liquid wastes which are produced directly in reprocessing, dry solid material derived from such liquid waste and (2) such other material as the Commission designates as HLW for the purposes of protecting the public health and safety. Since 1969, the Commission has recognized the concept of waste incidental to reprocessing, concluding that certain material that otherwise would be classified as HLW need not be disposed of as HLW and sent to a geologic repository because the residual radioactive contamination after decommissioning is sufficiently low as not to represent a hazard to the public health and safety. Consequently, incidental waste is not considered HLW. See, Proposed Rule—Siting of Commercial Fuel Reprocessing Plants and Related Waste Management Facilities (34 FR 8712; June 3, 1969), Final Rule—Siting of Commercial Fuel Reprocessing Plants and Related Waste Management Facilities (35 FR 17530; November 14, 1970), Advance Notice of Proposed Rule-making to Define HLW (52 FR 5992, 5993; February 27, 1987), Proposed Rule—Disposal of Radioactive Waste (53 FR 17709; May 18, 1988), Final Rule—Disposal of Radioactive Waste (54 FR 22578; May 25, 1989), and Denial of Petition for Rulemaking: States of Washington and Oregon, (58 FR 12342; March 3, 1993).

The Commission believes that practical considerations mandate early resolution of the criteria that should guide the incidental waste determination. Vitrification of the high-level wastes at West Valley is nearing completion, at which point DOE intends to close down the vitrification facility. To delay providing the Commission's view for incidental waste could adversely impact the DOE, as it may prove extraordinarily expensive after the vitrification facility is shut down to provide vitrification capacity for any additional waste that must be shipped elsewhere for disposal. Indeed, in light of the fact that the site will ultimately revert to control by NYSERDA under an NRC license, both NYSERDA and NRC have an interest in ensuring that the

incidental waste determination need not be revisited.

In light of these considerations, the Commission is now providing the following criteria for incidental waste determinations.

(1) The waste should be processed (or should be further processed) to remove key radionuclides to the maximum extent that is technically and economically practical; and

(2) The waste should be managed so that safety requirements comparable to the performance objectives in 10 CFR part 61 subpart C, are satisfied.

The resulting calculated dose from the incidental waste is to be integrated with all the other calculated doses from the remaining material at the entire NRC-licensed site to ensure that 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.

Previously the NRC has provided advice to DOE concerning DOE's classification of certain waste as incidental waste for clean-up of HLW storage tanks at both Hanford and Savannah River. As noted above, NRC intends to apply the LTR criteria for the WVDP at the West Valley site, reflecting the fact that the applicable decommissioning goal for the entire NRC-licensed site is in compliance with the requirements of the LTR. The Commission has decided that the most recent advice provided to DOE for the classification of incidental waste at the Savannah River site,<sup>9</sup> with some additional modifications, as the appropriate criteria that should be applicable to West Valley. These criteria are risk-informed and performance-based in that the criteria allow DOE the flexibility to develop innovative approaches to meeting the performance objectives in part 61. In effect, DOE should undertake cleanup to the maximum extent that is technically and economically practical and should achieve performance objectives consistent with those we demand for the disposal of low-level waste. If satisfied, these criteria should serve to provide protection of the public health and safety and the environment and the resulting calculated dose would be integrated with the resulting calculated doses for all other remaining material at the NRC-licensed site. It is the Commission's expectation that it will apply this criteria at the WVDP at the site following the completion of DOE's

site activities. In this regard, the impacts of identifying waste as incidental to reprocessing and not HLW should be considered in the DOE's environmental reviews.

#### *G. Comments Related to How the Site Should Be Decommissioned*

**G.1 Comment.** There were many comments and suggestions that all the waste at this site should be perhaps temporarily stabilized, or packaged and perhaps temporarily stored, but ultimately removed from the site. There were also some comments on what are the important pathways for, and man-made barriers to control, contaminant transport at the site.

**G.2 Response.** The Commission appreciates the public's identification of, and input on, these issues. The decisions related to alternative approaches to decommissioning the West Valley site will be evaluated in the DOE/NYSERDA EIS, and reviewed by NRC for their ability to protect public health and safety and the environment. The EIS will also be available for public comment before being finalized.

#### *H. Comments on the Wording of the Draft Policy Statement*

**H.1 Comment.** Several comments were made about the last part of a sentence in the Draft Policy Statement under the section entitled "Decommissioning Criteria for the WVDP." It states that " \* \* \* following the completion of DOE/NYSERDA's EIS and selection of its preferred alternative, the NRC will verify that the specific criteria identified by DOE is within the LTR and will prescribe the use of specific criteria for the WVDP." Many suggested that prescribing the use of the specific criteria after the selection of the preferred alternative in the EIS is confusing, not what is meant by the WVDP Act, and would allow adjustment of the criteria after the EIS is completed.

**H.2 Response.** As addressed above in response to the various comments, the Commission's intent is to prescribe the generally applicable requirements of the LTR now, before the completion of the site-specific EIS. After completion of the site-specific DOE/NYSERDA EIS, NRC will evaluate the compliance status of the preferred alternative with respect to the LTR, as described in the Commission's final policy statement. This is a two-step process. The first step is prescribing the LTR, a set of criteria that allows for unrestricted releases, restricted releases, and alternative releases, that applies to all NRC licensees. Prescribing decommissioning criteria now for the WVDP allows DOE to develop alternative approaches for

<sup>9</sup> See NRC Staff Requirements Memorandum "SECY-99-0284—Classification of Savannah River Residual Tank Waste as Incidental," May 30, 2000.

meeting those criteria and consider their impacts in its site-specific EIS.

The second step is for NRC to evaluate on a site-specific basis the approach for meeting the LTR. This will be done after the DOE/NYSERDA EIS is completed and NRC adopts it or otherwise produces its own NEPA evaluation of the site-specific criteria developed in the DOE/NYSERDA EIS. NRC will be evaluating DOE's and NYSEDA's preferred alternative for meeting the LTR and other alternatives presented in the DOE/NYSERDA EIS.

This process is in accordance with the "Statement of Considerations" for the LTR, which describes the relationship between the GEIS for the LTR and site-specific decommissioning actions. A site-specific EIS is prepared in cases where the range of environmental impacts of the alternatives at a specific site may not be within those considered in the GEIS for the LTR. This is similar to the approach that NYSEDA, as an NRC licensee, would need to meet if the license were not being held in abeyance. The Commission is satisfied that this approach is within the intent of the WVDP Act for the prescription of decommissioning requirements by NRC.

The WVDP Act does not address license termination for the site. The actual license termination for the site, if and when possible, will be conducted under the AEA, as amended. At the time of NRC license termination under the AEA (if license termination is pursued), NRC will need to conduct an environmental review to determine if an EIS is necessary to support actual license termination. The language from the draft policy statement was changed in the final policy statement to reflect the process described above.

**H.3 Comment.** The policy statement should not paraphrase the LTR and others' statements on West Valley.

**H.4 Response.** The Commission was attempting to provide context to the draft policy statement by paraphrasing the LTR or others' statements on West Valley. To avoid confusion or misinterpretation in the Final Policy Statement, it will contain a disclaimer to the effect that notwithstanding any paraphrasing of the LTR in the Policy Statement, the language of the LTR itself is controlling in determining how it is to be applied at West Valley. The paraphrasing of others' statements will be avoided.

#### *I. Other Comments*

**I.1 Comment.** What are the implications of the policy statement regarding NRC's policies regarding Native Americans.

**I.2 Response.** NRC staff has examined the draft policy on decommissioning criteria for the WVDP and has not identified any implications in relation to the Commission's guidance regarding Native Americans. The Commission has directed the NRC staff to implement the spirit and letter of President Clinton's April 29, 1994, Executive Memorandum to ensure that the rights of sovereign Tribal governments are fully respected and to operate within a government-to-government relationship with Federally-recognized Native American Tribes. In addition, the staff has been directed to address Native American issues on a case-by-case basis, operating with Tribal Governments on a government-to-government basis. In response to the interest expressed by the Seneca Nation of Indians in NRC activities at WVDP, the NRC staff has added the Seneca Nation to its service list which will provide the Seneca Nation with copies of documents and meeting notices related to NRC's activities at West Valley that the NRC may publically release. The NRC staff will address issues raised by the Seneca Nation of Indians in accordance with the Commission's guidance.

**I.3 Comment.** One commenter claims that NRC is required by law to define "transuranic waste" for West Valley and determine the disposition of that waste.

**I.4 Response.** Section 6(5) of the WVDP Act defines transuranic waste for the WVDP in terms of radioisotopes and the lower limit of concentration of those isotopes. It also states that NRC has the authority to prescribe a different concentration limit to protect public health and safety. NRC's position on this issue is detailed in a letter from M. Knapp, NRC, to W. Bixby, DOE, dated August 18, 1987. This letter states that, to demonstrate protection of public health and safety, the transuranic concentration of project wastes acceptable for on-site disposal will be such that, by analysis, safety requirements comparable to the performance objectives in 10 CFR part 61 subpart C are satisfied. The resulting calculated dose from the transuranic waste is to be integrated with all the other calculated doses from the remaining material at the NRC-licensed site to ensure that the LTR criteria are met. As with incidental waste, the Commission is not establishing a separate dose standard that applies solely to the transuranic waste.

## **V. Final Policy Statement**

### *Statement of Policy*

Decommissioning Criteria for the West Valley Demonstration Project (WVDP)

Under the authority of the WVDP Act, the Commission is prescribing NRC's License Termination Rule (LTR) (10 CFR part 20, subpart E) as the decommissioning criteria for the WVDP, reflecting the fact that the applicable decommissioning goal for the entire NRC-licensed site is in compliance with the requirements of the LTR. The criteria of the LTR shall apply to the decommissioning of: (1) The High Level Waste (HLW) tanks and other facilities in which HLW, solidified under the project, was stored; (2) the facilities used in the solidification of the waste; and (3) any material and hardware used in connection with the WVDP. Also under authority of the WVDP Act, the Commission is issuing criteria for the classification of reprocessing wastes that will likely remain in tanks at the site after the HLW is vitrified, subsequently referred to as "incidental waste."

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. The LTR does not apply a single public dose criterion. Rather, it provides for a range of criteria. Briefly stated, for unrestricted release, the LTR specifies a dose criterion of 25 mrem/yr total effective dose equivalent (TEDE) to the average member of the critical group plus as low as reasonably achievable (ALARA) considerations (10 CFR 20.1402). For restricted release, the LTR specifies an individual dose criterion of 25 mrem/year TEDE plus ALARA considerations using legally enforceable institutional controls established after a public participatory process (10 CFR 20.1403). Even if institutional controls fail, individual doses should not exceed 100 mrem/yr TEDE. If it is demonstrated that the 100 mrem/yr TEDE criterion in the event of failure of institutional controls is technically not achievable or prohibitively expensive, the individual dose criterion in the event of failure of institutional controls may be as high as 500 mrem/yr TEDE. However, in circumstances where restricted release is required, if the 100 mrem/yr TEDE criterion is exceeded, and/or the use of alternate criteria has

been determined, the area would be rechecked by a responsible government entity no less frequently than every 5 years and resources would have to be set aside to provide for any necessary control and maintenance of the institutional controls. Finally, the LTR permits alternate individual dose criteria of up to 100 mrem/yr TEDE plus ALARA considerations for restricted release, with institutional controls established after a public participatory process (10 CFR 20.1404). The Commission itself must approve use of the alternative criteria, after coordination with the U.S. Environmental Protection Agency (EPA) and after consideration of the NRC staff's recommendations and all public comments.<sup>10</sup>

The Commission also recognizes that decommissioning of the West Valley site will present unique challenges, which may require \_\_\_\_\_. As a result, the final end-state may involve a long-term or even a perpetual license or other \_\_\_\_\_ for some parts of the site where clean up to the LTR requirements are prohibitively expensive or technically impractical. It is important that all parts of the site be decommissioned to the extent technically and economically feasible. Therefore, in addition, the Commission expects decontamination to the maximum extent technically and/or economically feasible for any portion of the site remaining under a long term or perpetual license or for which an \_\_\_\_\_ from the LTR is sought. In sum, the Commission believes that for those portions of the site that are unable to demonstrate compliance with the LTR's restricted release requirements, the dose limits should be viewed as goals, in order to ensure that cleanup continues to the maximum extent that is technically and economically feasible. If complying with the LTR's restricted release requirements is technically impractical or prohibitively expensive, then an \_\_\_\_\_ from the LTR may be appropriate, provided that protection of the public and the environment can be maintained.

The Commission's application of the LTR to the WVDP is a two-step process: (1) NRC is now prescribing the application of the LTR; and (2) after the completion of the site-specific Department of Energy (DOE)/New York State Energy Research and Development Authority (NYSERDA) Environmental

Impact Statement (EIS)<sup>11</sup> and selection of the preferred alternative, NRC will verify that the approach proposed by DOE is appropriate. The WVDP Act does not address license termination of the NRC license for the site, or portions thereof, which will be conducted (if license termination is possible and pursued) under the Atomic Energy Act (AEA) of 1954, as amended. If full or partial license termination of the NRC license is pursued, at that time NRC will need to conduct an environmental review to determine if an EIS is necessary to support license termination.

Decommissioning Criteria for the NRC-Licensed Disposal Area (NDA) and State-Licensed Disposal Area (SDA)

NRC will apply the criteria in the LTR to the NDA within the West Valley site, because the NDA is under NRC jurisdiction. However, the NDA presents some unique challenges in that some of this material contains significant quantities of mobile, long-lived radionuclides which could potentially remain in this facility. It is recognized that because of the nature of radioactivity at West Valley, reasonably foreseeable impacts might occur after 1000 years, under certain scenarios. Under NEPA, an evaluation of the reasonably foreseeable impacts is required. Therefore, the Commission believes that an analysis of impacts beyond 1000 years should be provided in the DOE/NYSERDA EIS which will be subject to public comment.

NRC does not have regulatory authority to apply the LTR criteria to the SDA adjacent to the WVDP site boundary, because the SDA is regulated by the State of New York. However, NRC recognizes that a cooperative approach with the State to the extent practical should be utilized to apply the LTR criteria in a coordinated manner to the NRC-licensed site and the SDA.

Decommissioning Criteria for License CSF-1 (NRC Site License)

The criteria in the LTR will also apply to the termination of NYSEDA's NRC license on the West Valley site after that license is reactivated. For those portions

of the site covered by the WVDP Act, it is NRC's intent to authorize that any \_\_\_\_\_ or alternate criteria authorized for DOE to meet the provisions of the WVDP Act will also apply to NYSEDA at the time of site license termination, if license termination is possible. The NRC site license termination is not addressed in the WVDP Act. Therefore the NRC site license termination is subject to the provisions of the Atomic Energy Act of 1954 as amended.

Use of Incidental Waste Criteria at West Valley

Section 6 (4) of the WVDP Act defines HLW as including both (1) liquid wastes which are produced directly in reprocessing, dry solid material derived from such liquid waste and (2) such other material as the Commission designates as HLW for the purposes of protecting the public health and safety. The Commission believes that practical considerations mandate early resolution of the criteria that will guide the classification of incidental waste. The vitrification of the wastes at West Valley is nearing completion, at which point DOE intends to close down the vitrification facility. To delay defining classification criteria for incidental waste could adversely impact the DOE as it may prove extraordinarily expensive after the vitrification facility is shut down to provide vitrification capacity for any additional waste that must be shipped elsewhere for disposal. Indeed, in light of the fact that the site will ultimately revert to control by NYSEDA under an NRC license, both NYSEDA and NRC have an interest in ensuring that the incidental waste determination need not be revisited.

In light of these considerations, the Commission is now providing the following criteria that should be applied to incidental waste determinations.

(1) The waste should be processed (or should be further processed) to remove key radionuclides to the maximum extent that is technically and economically practical; and

(2) The waste should be managed so that safety requirements comparable to the performance objectives in 10 CFR part 61 subpart C, are satisfied.<sup>12</sup>

Consistent with the overall approach in applying the LTR to the WVDP and to the entire NRC-licensed site following

<sup>11</sup> DOE has decided to descope the draft 1996 EIS into two separate EISs. DOE will be the lead agency on the EIS that will address WVDP facility decontamination and management of waste currently stored at the site. NRC expects to be kept informed of progress as required under the DOE/NRC Memorandum of Understanding (MOU). DOE and NYSEDA will be the lead agencies on the EIS that will address decommissioning. NRC expects to participate as an EIS cooperating agency. Hereinafter, this second EIS where NRC will be a cooperating agency will either be referred to as the decommissioning EIS or the DOE/NYSERDA EIS, unless otherwise noted.

<sup>12</sup> The dose methodology used in 10 CFR part 61 subpart C is different from that used in the newer 10 CFR part 20 subpart E. However, the resulting allowable doses are comparable and NRC expects DOE to use the newer methodology in 10 CFR part 20 subpart E. part 61 is based on International Commission on Radiological Protection Publication 2 (ICRP 2) and part 20 is based on ICRP 26.

<sup>10</sup> The material set out in the text is a brief summary of the LTR. Notwithstanding the words used in the text, the language of the LTR governs this matter.

conclusion of the WVDP, the resulting calculated dose from the incidental waste is to be integrated with the other calculated doses from material remaining material at the entire NRC-licensed site.

#### Previous Burials Authorized Under 10 CFR Part 20

The "Statement of Considerations" for the LTR, Section C.3, Other Exemptions (62 FR 39074) provided that in regard to past burials the Commission " \* \* \* would continue to require an analysis of site-specific overall impacts and costs in deciding whether or not exhumation of previous buried waste is necessary for specific sites. In addition, the general exemption provisions of 10 CFR part 20 are available to consider unique past burials on a case-by-case basis." The NDA contains significant amounts of buried radioactive material that was previously authorized under older provisions of part 20. This material will require appropriate evaluation as part of site license termination.

#### Environmental Analysis

An EIS is not needed at this step of the process of prescribing the LTR because the Commission is not establishing a new requirement for the site. This site is licensed to NYSERDA and, therefore, is already subject to the LTR by operation of the Commission's regulations. DOE in essence is acting as a surrogate for NYSERDA. The environmental impacts of applying the LTR to NRC licensees were evaluated in the Generic Environmental Impact Statement (GEIS), NUREG-1496, that supported the LTR. In promulgating the LTR, the Commission stated, in Section VI of the "Statement for Considerations" that it will conduct an environmental review to "determine if the generic analysis encompasses the range of environmental impacts at the particular site." The Commission further stated that it "will conduct an independent environmental review for each site-specific decommissioning decision where land use restrictions or institutional controls are relied upon by the licensee or where alternative criteria are proposed" as it recognized that the environmental impacts for these cases cannot be analyzed on a generic basis. The environmental impacts from the application of the criteria will need to be evaluated for the various alternative approaches being considered in the process before NRC decides whether to accept the preferred alternative for meeting the criteria permitted by the LTR. NRC intends to rely on the DOE/NYSERDA EIS for this purpose.

For NEPA purposes, DOE is considered the lead Federal agency. NRC, in view of its responsibilities under the WVDP Act, is considered a cooperating agency for this EIS and is participating in the development of the DOE/NYSERDA EIS. NRC does not anticipate the need to prepare its own duplicative EIS, since it can consider the environmental impacts described in the DOE/NYSERDA EIS in approving the particular decommissioning criteria for the WVDP under the LTR. Under this arrangement, if NRC is satisfied with the DOE/NYSERDA EIS, this EIS will fulfill the NEPA responsibilities for NRC under the WVDP Act. If NRC is not satisfied with the final DOE/NYSERDA EIS, then NRC will adopt as much of it as possible and modify or supplement it as necessary. In such a situation, NRC would publish its own draft EIS document for public review and comment before finalizing it. Once finalized, NRC's West Valley NEPA responsibilities would be fulfilled under the WVDP Act.

The WVDP Act does not address license termination for the site. License termination of the NRC license for the site, or portions thereof, is conducted (if license termination is possible) under the AEA. If NYSERDA pursues either full or partial license termination of the NRC license, at that time NRC will need to conduct an environmental review to determine if an EIS is necessary to support license termination.

#### Availability of Documents

NRC's final policy statement on decommissioning criteria for West Valley is also available at NRC's Public Electronic Reading Room link (<http://www.nrc.gov/NRC/ADAMS/index.html>) on NRC's home page (<http://www.nrc.gov>). Copies of documents cited in this section are available for inspection and/or reproduction for a fee in the NRC Public Document Room, 11555 Rockville Pike, Room O-1F21, Rockville, MD 20852. The NRC Public Document Room is open from 7:45 a.m. to 4:15 p.m., Monday through Friday, except on Federal holidays. Reference service and access to documents may also be requested by telephone (301-415-4737 or 800-397-4209), between 8:30 a.m. and 4:15 p.m.; or by e-mail ([PDR@nrc.gov](mailto:PDR@nrc.gov)); fax (301-415-3548); or a letter (NRC Public Document Room, Mailstop O-1F13, Washington, DC 20555-0001). In addition, copies of: (1) SECY-98-251, "Decommissioning Criteria for West Valley;" (2) the transcript of the public meeting held January 12, 1999; (3) the Commission's SRM of January 26, 1999, concerning the January 12, 1999, public meeting on

SECY-98-251; (4) SECY-99-057, "Supplement to SECY-98-251, 'Decommissioning Criteria for West Valley;'" (5) the Commission's vote sheets on SECY-98-251 and SECY-99-057; (6) the Commission's SRM of June 3, 1999, on SECY-98-251 and SECY-99-057; (7) the draft policy statement issued December 3, 1999; (8) the transcript of the public meeting held January 5, 2000; and (9) the public comments on the draft policy statement can be obtained electronically on NRC's home page at the Commission's Activities link (<http://www.nrc.gov/NRC/COMMISSION/activities.html>).

Dated at Rockville, Maryland, this 25th day of January, 2002.

For the Nuclear Regulatory Commission.  
Annette Vietti-Cook,  
Secretary of the Commission.

[FR Doc. 02-2373 Filed 1-31-02; 8:45 am]

BILLING C/

#### NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-250 and 50-251]

#### Florida Power and Light Company Turkey Point Plant, Units 3 and 4 Notice of Availability of the Final Supplement 5 to the Generic Environmental Impact Statement Regarding License Renewal for the Turkey Point Plant, Units 3 and 4

Notice is hereby given that the U. S. Nuclear Regulatory Commission (NRC) has published a final plant-specific Supplement 5 to the Generic Environmental Impact Statement (GEIS), NUREG-1437, regarding the renewal of operating licenses DPR-31 and DPR-41 for the Turkey Point Plant, Units 3 and 4, for an additional 20 years of operation. The Turkey Point Plant units are operated by Florida Power and Light Company (FPL). Turkey Point Plant is located in Dade County, Florida. Possible alternatives to the proposed action (license renewal) made no action and reasonable alternative methods of power generation.

In Section 9.3 of the report:

The staff recommends that the Commission determine that the adverse environmental impacts of license renewal for Turkey Point Units 3 and 4 are not so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable. This recommendation is based on (1) the analysis and findings in the Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants, NUREG-1437; (2) the ER (Environmental Report) submitted by FPL; (3) consultation with other Federal, State, and local agencies; (4) the staff's own independent review; and