

June 20, 2002

Dr. Paul L. Piciulo, Director
New York State Energy Resource
and Development Authority
10282 Rock Springs Road
West Valley, New York 14171-9799

Dear Dr. Piciulo:

I am responding on behalf of the U.S. Nuclear Regulatory Commission (NRC) to your letters of April 24 and May 1, 2002, transmitting New York State Energy Research and Development Authority (NYSERDA) comments on the NRC's Final Policy Statement on Decommissioning Criteria for the West Valley Demonstration Project (WVDP). Enclosed are specific responses to your comments.

NRC looks forward to working with NYSERDA and other stakeholders as the decommissioning of the West Valley site progresses. Should you have any further questions on this matter, please contact me.

Sincerely,

/RA/

Richard A. Meserve

Enclosure: As stated

cc: Alice Williams, DOE
Paul Giardina, EPA
Paul Merges, NYSDEC
Adela Salame-Alfie, DOH
Cyrus Schindler, Seneca Nation of Indians

**COMMENTS OF THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT
AUTHORITY ON THE U.S. NUCLEAR REGULATORY COMMISSION'S FINAL POLICY
STATEMENT ON DECOMMISSIONING CRITERIA FOR THE WEST VALLEY
DEMONSTRATION PROJECT**

Each of the New York State Energy Research and Development Authority's (NYSERDA's) comments are summarized and addressed below.

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

Comment:

NYSERDA requests clarification as to whether NRC intends to separately evaluate the dose contribution from the WVDP. Specifically, if NRC intends 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. 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.

Response:

In issuing the Final Policy Statement, the Commission has decided to prescribe the LTR criteria for the WVDP, reflecting the conclusion that the appropriate goal for the decommissioning is compliance with the LTR. Therefore, the doses from the WVDP and the NRC-licensed area need to be integrated to determine if the entire NRC-licensed site meets the LTR. It is not NRC's intent to specify a specific fraction of the dose limits to the WVDP versus the non-WVDP portion of the NRC-licensed site. Rather, as co-leads for the Decommissioning Environmental Impact Statement (EIS), U.S. Department of Energy (DOE) and NYSERDA are responsible for determining what fraction of the dose limit will be allocated to the WVDP versus the non-WVDP portion of the NRC-licensed site. Likewise, DOE and NYSERDA should also define which facilities, property, and contamination are part of the WVDP and which are part of the non-WVDP portion of the NRC-licensed site. This information should be addressed in the Decommissioning EIS. As a Cooperating Agency, NRC will be involved in the review and evaluation of this information in the development of the draft EIS for decommissioning. During this review, NRC will determine whether the criteria in the Commission's policy statement.

Waste Incidental to Reprocessing (WIR) Determination

Comment:

NYSERDA is concerned about the approach to WIR determinations that NRC announced in the "Final Policy Statement." NRC's involvement and role in the process for declaring WIR at West Valley should be further clarified. Other than the requirement to include the impacts of the residual source term in the EIS performance assessment, NRC has not established how it intends to approve or otherwise be involved in these determinations at West Valley. NYSERDA also seeks an explanation of why NRC eliminated the WIR criterion that waste "...not exceed the applicable concentration limits for Class C low-level waste as set out in 10 CFR Part 61."

Response:

The “Final Policy Statement” provides criteria for DOE to consider in its WIR determinations. It is DOE’s responsibility to demonstrate that it has removed radionuclides to the maximum amount technically and economically practical. The Decommissioning EIS will address DOE WIR determinations. NRC will review and comment on DOE WIR determinations as a Cooperating Agency. NRC will also be rendering its final decision on DOE’s WIR determination in NRC’s decision on whether the preferred alternative meets the criteria in the Commission’s Policy Statement. NRC’s decision with respect to WIR determinations will also apply to NYSERDA, when its license is reactivated.

NYSERDA correctly states that the criteria for WIR determinations at Hanford included the criterion that the waste “...not exceed the applicable concentration limits for Class C low-level waste as set out in 10 CFR Part 61.” This criterion does not appear in the Commission’s incidental waste criteria for West Valley. When the Commission considered the incidental waste issue at Savannah River, this criterion was dropped because the Commission adopted a risk-informed and performance-based approach to meeting the performance objectives in Part 61 that focuses attention on the potential health consequences of leaving waste on-site (i.e., doses which might occur), rather than considering more indirect measures of health risk, such as meeting specific radionuclide concentration limits. The Commission has adopted this same approach for West Valley. In effect, DOE should undertake cleanup to the maximum extent that is technically and economically practical and should achieve performance objectives consistent with those that the Commission demands for the disposal of low-level waste.

Flexibility and NRC Oversight

Comment:

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, for itself, a process for reviewing 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 (AEA).

Response:

We agree that to retain public confidence in actions taken, NRC must ensure that its activities are thorough, transparent, and open to public scrutiny. Under the authority of the WVDP Act, the Commission has prescribed NRC’s LTR as the decommissioning criteria for WVDP, reflecting the fact that the applicable decommissioning goal for the entire NRC-licensed site is compliance with the requirements of the LTR. In doing so, the Commission considered the public comments that were provided on the draft policy statement. NRC will continue to seek opportunities to involve stakeholders in its activities concerning the decommissioning of the West Valley site.

In addition, under the WVDP Act, NRC is charged with determining if the preferred alternative for the Decommissioning EIS satisfies the decommissioning criteria for the WVDP site. NRC will carry out its regulatory responsibilities, under AEA, when NYSERDA's license is reactivated. As a Cooperating Agency for the Decommissioning EIS, NRC will be reviewing key documents, such as characterization studies, engineering studies, and performance assessment modeling, with the same rigor that NRC reviews license applications under the AEA. NRC guidance is outlined in the following documents: 1) NMSS Decommissioning Standard Review Plan (NUREG-1727); 2) NMSS Handbook for Decommissioning Fuel Cycle and Materials Licenses (NUREG/BR-0241); 3) Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM) (NUREG-1575, Rev. 1); and 4) Environmental Review Guidance for Licensing Actions Associated with NMSS Programs (NUREG-1748). Guidance is also available in Volume 1 of the NRC's "Consolidated NMSS Decommissioning Guidance," (NUREG-1757), which has been issued in draft for comment. NRC is committed to working with NYSERDA and other involved State and Federal agencies in the development of a complete and defensible EIS for decommissioning.