

June 17, 2002

Mr. Eric Wohlers
West Valley Citizen Task Force
102882 Rock Springs Road
West Valley, NY 14171-9799

Dear Mr. Wohlers:

I am responding on behalf of the U.S. Nuclear Regulatory Commission (NRC) to your letter of April 17, 2002, on behalf of the West Valley Citizen Task Force (CTF), transmitting comments on the NRC's Final Policy Statement on Decommissioning Criteria for the West Valley Demonstration Project. We appreciate the CTF's involvement at the West Valley site. The enclosure provides responses to specific comments addressed in your letter.

We will continue to consider the views of the CTF and look forward to working with the CTF as decommissioning at West Valley 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 Piciulo, NYSERDA
Paul Giardina, EPA
Paul Merges, NYSDEC
Adela Salame-Alfie, NYSDOH
Cyrus Schindler, Seneca Nation of Indians

RESPONSE TO WEST VALLEY CITIZEN TASK FORCE APRIL 17, 2002, LETTER ON NRC'S FINAL POLICY STATEMENT ON DECOMMISSIONING CRITERIA FOR THE WEST VALLEY DEMONSTRATION PROJECT

Each of the West Valley Citizen Task Force's (CTF's) comments are summarized and addressed below.

Comment 1:

In past verbal briefings and written comments, the CTF has expressed general agreement with the U.S. Nuclear Regulatory Commission's (NRC's) application of the License Termination Rule (LTR) as the decommissioning criteria for the West Valley Demonstration Project (WVDP).

Response 1:

We appreciate the past general agreement the CTF expressed with NRC's application of the LTR as the decommissioning criteria for WVDP. 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. We believe that this approach is most likely to lead to a safe and timely decommissioning of the WVDP.

Comment 2:

CTF is disappointed that the final policy statement contains provisions that: (A) create a "two-step process" where NRC will allow the U.S. Department of Energy (DOE) to select a preferred alternative after completion of the Environmental Impact Statement (EIS), and then "...verify that the approach proposed by DOE is appropriate;" (B) establish new criteria for making incidental waste determinations; and (C) will allow exemptions from the LTR criteria.

Response 2 (A):

The Final Policy Statement states the "...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) and selection of the preferred alternative, NRC will verify that the approach proposed by DOE is appropriate." [See Statement of Policy, 67 FR 5011 (February 1, 2002)]. In other words, NRC will consider the different EIS alternatives for decommissioning before deciding whether to accept the preferred alternative that DOE intends to use to meet the LTR.

This two-step process is similar to NRC's process for reviewing Decommissioning Plans from NRC's licensees. A licensee applies the NRC's LTR as the decommissioning criteria for its site. The licensee then develops a Decommissioning Plan describing how it intends to meet the requirements of the LTR. NRC independently reviews the plan to determine whether the plan is adequate to satisfy the LTR. The licensee remediates the site in accordance with the Decommissioning Plan and submits a Final Status Survey Report. NRC reviews this report to verify that the remediated site meets the LTR.

Response 2 (B):

As stated in the Final Policy Statement, the Commission has decided that the most recent advice provided to DOE for the classification of incidental waste at the Savannah River site (SECY-99-0284, "Classification of Savannah River Residual Tank Waste as Incidental," May 30, 2000), with some modifications, constitutes the appropriate criteria for the West Valley site. This advice provides that radionuclides should be removed to the maximum extent technically and economically practical, and that residual waste be managed in a manner consistent with requirements for low-level waste disposal. This approach is risk-informed and performance-based in that it specifies that DOE is to focus 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. This approach also allows DOE to develop innovative approaches to meet the performance objectives of 10 CFR Part 61 and the requirements of the LTR. If both elements are met, the residual radioactivity in the tanks need not be treated as high-level waste and be disposed of at a geologic repository.

Response 2 (C): (See Response 4.)

Comment 3:

CTF believes that the Commission has failed to fulfill its mandate from Congress of prescribing decommissioning criteria for the WVDP. Specifically, the Final Policy Statement provides for exemptions from the LTR and re-evaluation following completion of the Environmental Impact Statement, thus reducing the proposed LTR criteria to goals.

Response 3:

NRC has fulfilled its mandate for prescribing decommissioning criteria for the WVDP. The Final Policy Statement states that "...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 compliance with the requirements of the LTR." [See Statement of Policy, 67 FR 5010 (February 1, 2002)] Multiple paths are possible in satisfying the LTR. The Commission recognized 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.

The Commission also addressed the application of alternate criteria, as allowed under the LTR, and the question of exemptions from the LTR under "Summary of Public Comments and Responses to Comments" in the Final Policy Statement. In response to this question, the Commission noted that Subpart N of Part 20 contains provisions for potential exemptions. [See Background, 67 FR 5006 (February 1, 2002)] The Commission explained that:

"...in addition to the unrestricted release limit of 25 mrem/yr TEDE, the LTR also contains alternate criteria for restricted release, which allows 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 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 EPA, and a Commission determination that there is reasonable assurance that there would not be undue hazard to life and property.”

Exemptions to NRC regulations can be issued if the Commission determines that the exemption is authorized by law and would not result in undue hazard to life or property. Any exemption, should one be requested, would need to meet the Commission’s expectation that all parts of the site be decommissioned to the extent technically and economically feasible. However, it should be noted that in NRC’s recent meeting on April 17, 2002, DOE staff stated that their goal is to decommission the WVDP in compliance with the LTR.

Finally, as stated in the Final Policy Statement, “If the NRC license cannot be terminated in a manner that provides reasonable assurance of adequate protection of public health and safety, then the appropriate Commission actions 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.” [See Background, 67 FR 5004 (February 1, 2002)]

Comment 4:

CTF requests clarification of the Commission’s authority for providing incidental waste determination criteria for West Valley, and documentation of any procedural or public participatory requirements that normally might apply to such an action.

Response 4:

Since 1969 the Commission has recognized the concept of waste incidental to reprocessing. The Commission has concluded that certain material, which otherwise would be classified as high-level waste and sent to a geologic repository because of residual radioactive contamination after decommissioning, may not represent a hazard to the public health and safety if kept in place. As to the question of authority, the Commission believes that the concept of incidental waste is implicit within the West Valley Demonstration Project Act.

This issue was one that commenters on the draft Policy Statement requested the Commission to address. The Commission believed that practical considerations mandated early resolution of the criteria that will guide the incidental waste determinations. These considerations included concerns that: 1) vitrification of high-level waste is nearing completion and DOE intends to shut down the vitrification facility; 2) delay in providing the Commission’s views for incidental waste could prove extraordinarily expensive after the vitrification facility is shut down if vitrification is needed for any additional waste that must be shipped elsewhere for disposal; and 3) since

control of the site will ultimately revert to NYSERDA under an NRC license, both NYSERDA and NRC have an interest in ensuring that the incidental waste determination need not be revisited.

The Commission has provided incidental waste criteria in the Final Policy Statement. 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 demonstrating that the performance objectives have been met, DOE should focus on the potential health consequences of leaving waste on-site (i.e., doses which might occur), rather than being concerned with more indirect measures of health risk, such as meeting specific radionuclide concentration limits. 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. [Response F.2] The Commission also states that "...the impacts of identifying waste as incidental to reprocessing and not high-level waste (HLW) should be considered in DOE's environmental reviews."

Comment 5:

CTF notes concern about DOE plans to accelerate decommissioning activities before long-term Federal and state government responsibilities have been established regarding cleanup and monitoring of the West Valley site. CTF opposes any actions that help to facilitate premature withdrawal of DOE from the WVDP before all National Environmental Policy Act (NEPA) obligations are fulfilled.

Response 5:

In NRC's April 17, 2002, West Valley meeting, DOE stated that it intends to complete the decommissioning EIS and publish a Record of Decision by 2005. NRC views DOE's commitment to complete the WVDP decommissioning EIS in this time frame as a positive development. The Final Policy Statement does not facilitate premature withdrawal of DOE from the WVDP before its NEPA obligations are fulfilled. We expect DOE to fulfill all its NEPA obligations and comply with the Commission's decommissioning policy statement before DOE withdraws from the site.

Comment 6:

CTF requests formal definitions of "Engineered Barriers" (EBs) and "Institutional Controls" (ICs) as they relate to the LTR and EIS analyses. CTF believes that it is crucial that formal guidance regarding ICs be issued.

Response 6:

As your letter points out, the Commission's Final Policy Statement explains and draws a distinction between ICs and EBs. NRC guidance in Appendix I of "NMSS Decommissioning Standard Review Plan" (NUREG-1727) on the LTR also distinguishes ICs from EBs. ICs are

used to limit access to, and/or use of, the site to ensure that the exposure from residual radioactivity does not exceed the established criteria. ICs include administrative mechanisms (e.g., land use restrictions) and may also include physical controls (e.g., signs, markers, landscaping, and fences) to control access to the site and minimize disturbances to EBs. Generally, EBs are passive man-made structures or devices intended to improve a facility's ability to meet a site's performance objectives. EBs are usually designed to inhibit water from contacting waste, limit releases, or mitigate doses to intruders. Examples of EBs include engineered cells, covers, or caps designed to isolate residual contamination and inhibit water from contacting waste. The isolation capability, durability, and robustness of a specific barrier will need to be evaluated in the DOE/NYSERDA EIS.

Further guidance on engineered barriers will be addressed in Volume 2 of NRC's "Consolidated NMSS Decommissioning Guidance," (NUREG-1757), which will be issued as a draft for public comment this Fall. However, as the Commission noted in the Policy Statement in regard to engineered barriers and institutional controls, guidance in these areas is not prescriptive due to the nature of decommissioning. Judgments will need to be made on a case-by-case basis.

Comment 7:

CTF believes that the Final Policy Statement 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 make no actual decision regarding any alternative until after the EIS is completed.

Response 7:

The LTR established dose limits for unrestricted and restricted release which are adequate to protect public health and safety as well as the environment. The decommissioning process is a two-step process whereby licensees must submit a plan demonstrating that NRC decommissioning standards are met and this plan undergoes an independent review by the NRC staff.

NRC is a cooperating agency for the development of the West Valley decommissioning EIS. As a cooperating agency, NRC will review and provide comments on the EIS as it is developed. This arrangement ensures that NRC views on the EIS are communicated to DOE, NYSERDA, and other cooperating agencies early in the process. The decision on whether or not the preferred alternative satisfactorily addresses the decommissioning criteria set forth in the NRC Policy Statement will be made by the NRC as an independent regulatory agency once the EIS is completed and submitted for review.

Comment 8:

CTF expects the Commission to reconsider its position, on this matter, to include the consensus views of the community, and local government interests, as represented by the CTF.

Response 8:

The Commission considered prior CTF comments in the development of the Draft and Final Policy Statement. The Final Policy Statement incorporated changes based on the CTF and other stakeholder comments. As stated in the April 17, 2002, public meeting, NRC has issued the "Final Policy Statement" and is now in the implementation phase. The CTF and other stakeholders will have the opportunity to continue their participation during the implementation of the policy statement. Specifically, there will be the opportunity to comment on the draft DOE/NYSERDA EIS. In addition, NRC intends to meet periodically with the CTF and other stakeholders.