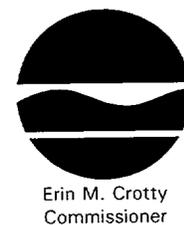


**New York State Department of Environmental Conservation**  
**Division of Solid and Hazardous Materials**  
**Bureau of Radiation**  
50 Wolf Road, Albany, New York 12233-7255  
**Phone:** (518) 402-8579 **FAX:** (518) 402-9025  
**Website:** www.dec.state.ny.us



May 22, 2002

Mr. John T. Greeves  
Director, Division of Waste Management  
U.S. Nuclear Regulatory Commission  
Mail Stop T-7J8  
11545 Rockville Pike  
Rockville, MD 20851

50-201  
Room 32

Dear Mr. Greeves:

Re: NRC's Policy Statement on Decommissioning Criteria for West Valley

The purpose of this letter is to convey the New York State Department of Environmental Conservation's (NYSDEC) comments on the United States Nuclear Regulatory Commission's (NRC) Policy Statement on Decommissioning Criteria for West Valley, published February 1, 2002. The NYSDEC is in general agreement with the application of the NRC License Termination Rule (LTR) as the cleanup criteria for West Valley. We appreciate that NRC has taken the concerns of the State of New York, and the interested public, into account and has applied to the West Valley Demonstration Project (Project) the same cleanup criteria as those applicable to NRC licensed facilities.

#### Dose Limits

We agree with the dose limit of 25 mrem/year to the average member of the critical group for unrestricted release of any part of the site. We also agree that the restricted release provisions in 10 CFR 20.1403 may be considered for certain parts of the site, provided that all reasonable efforts have been made to reduce the source term to the lowest level technologically feasible. We have reservations about the application of alternative criteria as provided in 10 CFR 20.1404. Due to the long-lived nature of the source term, it will be difficult demonstrate, as required in section 20.1404(a)(1), that doses from all sources combined will not exceed 100 mrem/year.

#### Waste Incidental to Reprocessing

The NYSDEC does not concur with application of the concept of Waste Incidental to Reprocessing (WIR) at West Valley. First and foremost, the NRC has not fully addressed the issue of the precedent setting nature of the application of WIR to this site, given that West Valley is not a federally owned facility. To date, the WIR has only been applied to tanks on federal land. This has provided some assurance that the Federal Government will retain responsibility for such decisions, at least as long as the federal ownership of that land continues. However, in this case, the NRC has sanctioned the use of this concept on state-owned land, and where the federal agency involved has made it clear that, at present, they have no intention of seeking federal ownership of the site.

Add John Greeves

Another serious deficiency in our view is the decision by the NRC not to include the requirement that the concentration of the residual radionuclides not exceed the applicable concentration limits for Class C waste. This was a condition of the WIR determination for the Hanford Reservation, and the NRC has not, to date, explained why it is not explicitly called for at West Valley. We view this as an essential criterion, particularly in view of the fact that Congress, in the 1985 Low-Level Waste Policy Amendments Act (LLWPA), clearly specified that the United States Department of Energy (DOE) is to be responsible for Greater than Class C (GTCC) radioactive wastes.

There are complicating factors involved in that there is an inconsistency between NRC and NYSDEC concentration averaging methods. The NRC accepts concentration averaging of the activity in wastes not only over the volume of the waste and any contaminated materials, but also over the volume of any fill material, such as concrete grout, placed in a waste container to ensure physical stability. Under our low-level radioactive waste regulations [6 NYCRR Part 382-80(h)], which the NRC found to be compatible with their own, we would not allow averaging over the mass of the fill material. Since this waste would be permanently placed on State land, the State's regulations should apply.

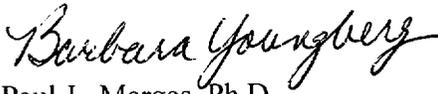
Therefore, with respect to any consideration of the waste tanks and contents as WIR, we believe that,

1. Concentration averaging must be used to determine whether or not the waste that DOE proposes to leave behind is GTCC;
2. Such concentration averaging should adhere to the NYSDEC method in 6 NYCRR Part 382.80(h), which is an applicable or relevant and appropriate requirement (ARAR); and
3. If the residual wastes are determined to be GTCC, the DOE is obligated to take responsibility for their disposition under the LLWPA.

Finally, the high-level waste at West Valley was created, stored, and managed under an NRC license. Therefore, the NRC is obligated to make any WIR determinations for this material—not the DOE, and certainly not a DOE contractor as has been proposed.

We look forward to working with the NRC to resolve these issues. If you have any questions, please contact me.

Sincerely,

  
for Paul J. Merges, Ph.D.  
Director  
Bureau of Radiation, DSHM

cc: P. Giardina, EPA, Reg. 2  
P. Piciulo, NYSERDA  
A. Williams, DOE  
A. Salame-Alfie, DOH