

May 25, 2004

Timothy J. Jackson, Acting Director
West Valley Demonstration Project
10282 Rock Springs Road
West Valley, NY 14171-9799

Dear Mr. Jackson:

The purpose of this letter is to respond to your May 12, 2004, request for input on the U.S. Department of Energy's (DOE's) draft brochure on the West Valley Demonstration Project (WVDP) Decommissioning Plan and revised Schedule for Decommissioning Plan Public Involvement. This letter and its enclosure provides the U.S. Nuclear Regulatory Commission (NRC) staff comments on this information.

Based on the staff's review, DOE's draft brochure appears to provide an effective approach for obtaining public advice on institutional controls for restricted release. However, we hope the attached comments provide useful information to consider in finalizing the brochure. Your e-mail request along with the draft package is publically available on the NRC's Web site at <http://www.nrc.gov/reading-rm/adams.html> (ML041400161).

If you have any questions related to these comments, please contact me at (301) 415-7295, or Chad Glenn, of my staff, at (301) 415-6722.

Sincerely,

/RA/

Daniel M. Gillen
Deputy Director
Decommissioning Directorate
Division of Waste Management
and Environmental Protection
Office of Nuclear Material Safety
and Safeguards

Enclosure: As stated

Docket No.: POOM-32

cc: R. Armstrong, Seneca Nation of Indians
P. Giardina, USEPA
P. Piciulo, NYSERDA
A. Salame-Alfie, NYSDOH
B. Youngberg, NYSDEC

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DISTRIBUTION:

NMSS r/f DWMEP r/f DECD r/f

ML041410480

*See previous concurrence

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DATE	05/20/04	05/20/04	05/25/04

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COMMENTS ON THE MAY 12, 2004 DOE DRAFT BROCHURE FOR WEST VALLEY PUBLIC INVOLVEMENT

1. Page 2, first sentence: Suggest adding the word “decommissioning” before “criteria”.
2. Page 2, second paragraph, second sentence: This sentence states that the Decommissioning Plan will be submitted to NRC in the fall of 2004. This statement is inconsistent with DOE’s revised schedule for Decommissioning Plan Public Involvement which indicates that the Decommissioning Plan will be delivered to DOE in December 2004. It is not clear when the Decommissioning Plan would be submitted to NRC.
3. Page 2, third paragraph, second sentence states: The word “It” appears to refer to NRC’s review of the Decommissioning Plan, so the sentence is saying “NRC’s review of the Decommissioning Plan will validate that the preferred alternative in the EIS meets NRC criteria.” Suggest that this sentence be revised to read “NRC’s review of the Decommissioning Plan will evaluate whether the preferred alternative in the EIS meets NRC’s criteria.”
4. Page 2, under “License Termination Rule:” Suggest that this section be revised as follows: **NRC, as authorized by the WVDP Act**, has prescribed its License Termination Rule (**LTR**) as the decommissioning criteria for the WVDP. **The LTR is the criteria used by NRC for the decommissioning of facilities such as power reactors, source material sites, and fuel fabrication facilities.** The LTR requires that radiation doses to the public must not exceed 25 millirem/year **and are as low as reasonably achievable. In addition, if the site is released with restrictions on future site use doses must not exceed 100/500 millirem/year** if institutional controls fail. The actions being proposed in the WVDP Decommissioning Plan will **be evaluated for compliance with** these criteria.
5. Page 3, first paragraph, first sentence: This sentence states “At the beginning of Phase I, decontamination work in the Process Building ... will be complete” This statement is inconsistent with the second bullet on page 4, which indicates that decontamination and decommissioning of the Process Building will be completed in Phase III. Based on the March 23, 2004 Decommissioning Plan meeting, some decontamination of the Process Building would begin before the start of Phase I, but decontamination and decommissioning would not be completed until the HLW canisters are shipped offsite. Suggest that this sentence be revised to clarify this point.
6. Page 3, first paragraph: The word "that" at the beginning of the fourth line should be deleted.
7. Page 3, first paragraph: Suggest using plain language substitute for the term "excess ancillary facilities".
8. Page 3, second paragraph, first two sentences: Are these activities that will have been completed before Phase 1 begins, or are they Phase 1 activities. This needs to be clarified.

9. Page 3, second paragraph, third sentence: Suggest revising this sentence to read “Phase I will follow completion of the Decommissioning Plan, Decommissioning EIS, and issuance of a Record of Decision. Actions taken during Phase I will be.”
10. Page 3, second paragraph, third sentence: After “Record of Decision” it might be useful to note the year when this decision is expected to be made so the reader knows that actual decommissioning which will follow this decision, will not occur for many years into the future.
11. Page 5, first paragraph, fourth sentence: Add the word “Initially,” before “the Decommissioning Plan”. After this sentence, add the following new sentence: The final Decommissioning Plan cannot be approved by NRC until site stewardship responsibilities are resolved.
12. Page 5 lists examples of proposed institutional controls. DOE should consider providing a meeting handout with more specific information that it is considering such as a general map of the site illustrating the potential end-state and type of institutional controls for areas of the site using NRC’s risk-informed graded approach to institutional controls (even if it is based on preliminary dose assessments and judgement at this time). Such a map would illustrate which site areas would need controls and which areas would not. Duration and description of types of controls, such as prohibiting drilling and groundwater use, could be given. This approach would also illustrate how assessments of public health and safety (NRC’s dose criteria and dose assessments) will be used to risk-inform decisions about institutional controls, irrespective of the entity responsible for the controls.
13. Page 5, second bullet under "Examples of Proposed Institutional Controls" misstates NRC’s role. It is not clear how regulatory oversight by NRC *prevents* intruders from accessing the groundwater plume. The sentence should be revised to clarify that NRC may require the establishment of these controls to mitigate the potential for intruders accessing the groundwater plume. The site steward is responsible for implementing controls to prevent intruders from accessing the plume.
14. Page 5, third bullet under "Examples of Proposed Institutional Controls": This bullet might be clearer if it were written "Continued government ownership of the Project premises..."
15. Page 5, last bullet under “Examples of Proposed Engineered Controls” should be revised as follows: “A variety of engineered features on the Project, as well as surrounding the streams adjacent to the Project and the SDA, to mitigate potential impacts from erosion.”
16. Page 5, last sentence: It is unclear whether "these controls" refer to the institutional controls, the engineered controls, or both.
17. Page 6, first sentence: Suggest that this sentence be revised as follows: “NRC requires that any decommissioning plan which involves **the use of institutional controls to restrict future land use** must also ...”

18. Page 6, first paragraph, after the first sentence suggest adding the following: “Specific advice is required only for use of institutional controls and the related financial assurance, although other decommissioning information might be discussed to provide a broader understanding of DOE’s potential plans. NRC regulations require that advice be sought on the following four issues, whether or not: 1) proposed institutional controls will ensure that the LTR dose criteria of 25 millirem/year will not be exceeded, i.e., institutional controls will ensure safety; 2) proposed institutional controls will be enforceable; 3) proposed institutional controls will not impose undue burdens on the local community or other affected parties; and 4) financial assurance will be sufficient for any necessary control and maintenance.” The remainder of the existing paragraph could serve as a separate paragraph. Background information on each of these items could be provided in a handout at the meetings (see Attachment).
19. On page 6, consider revising the plan for public discussion. The NRC staff believes that various mechanisms that DOE plans to use (e.g., brochure, public meetings, and meetings with individual groups/organizations to discuss DOE’s proposed completion and obtain stakeholder input, and written comments) will provide a solid foundation for obtaining input on the use of institutional controls.

However, in the public meeting, it will be important that DOE provide: 1) necessary background information to understand the context of institutional controls; and 2) sufficient time to allow discussion on the institutional control issues. In the public meetings, the facilitator should work to promote discussion and dialogue on the institutional control issues.

In addition to these mechanisms, and as a followup to the town hall public meetings, DOE should also consider hosting a roundtable discussion with a smaller group of the representatives of the broad spectrum of stakeholder interests to ensure that there is a dialogue among those key interests on the specific institutional control issues.
20. Page 6: The section “Plan for Public Discussion of Project Completion” indicates that the public meetings will be held July 12 and 20, however the revised schedule for Decommissioning Plan Public Involvement indicates that the public meetings will be held July 12 and 19.
21. Page 7: The brochure indicates that NYSERDA is participating in DOE’s Decommissioning Plan public participatory process. NRC staff supports DOE and NYSERDA’s cooperation in this effort. As the licensee for the site, NYSERDA is clearly a stakeholder in this matter. The Commission’s Policy Statement also contemplates that NYSERDA could initiate license termination for all or part of the site after DOE completes its decontamination and decommissioning responsibilities under Section 2(a)(5) of the WVDP Act.
22. Page 7: Given that the opportunity for individual statements is limited to only 30 minutes (six speakers at 5 minutes per speaker), we encourage DOE to be flexible in allowing more time if there are requests for additional individual statements.
23. Page 7, at the end of the 6:10 agenda item, suggest adding: (provide handout on institutional controls).

24. Page 7: Under "Meeting with your organization" at the end of the first sentence suggest adding the following "...and institutional controls."

**BACKGROUND INFORMATION ON INSTITUTIONAL CONTROL ISSUES
AT THE WEST VALLEY SITE**

1. Proposed institutional controls (IC) will ensure that the LTR dose criteria of 25 millirem/year will not be exceeded, i.e., institutional controls will ensure safety.
 - 1a. LTR dose criteria and risk-informed graded approach;
 - 1b. General map showing areas of the site needing IC and type of IC (applying the risk-informed graded approach);
 - 1c. Examples of prohibited and permitted land uses tailored to hazard areas and associated scenarios used in dose assessments; and,
 - 1d. Duration of IC based on radionuclide decay (e.g., < 100 yrs for Cesium, <300 yrs for Strontium, perpetual for long-lived radionuclides).
2. Institutional controls will be enforceable.
 - 2a. Options and process for eventually determining entity responsible for IC. Recognize that identifying the responsible entity is required by the LTR, but this issue will take time to resolve by both DOE and NYSERDA. The Decommissioning Plan can not be approved by NRC until it is resolved.
 - 2b. NRC guidance in NUREG-1757 accepts government ownership as a method to enforce controls on land use and to meet the legally enforceable institutional control requirements.
3. Institutional controls will not impose undue burdens on the local community or other affected parties.
 - 3a. Maximize unrestricted use area to release for potential reuse and reduce burdens on local community.
 - 3b. Minimize restricted areas to reduce areas needing controls.
 - 3c. Determine prohibited and permitted land use on areas under control (e.g., permit industrial or recreational use but prohibit drilling and groundwater use).
4. Sufficient financial assurance for control and maintenance.
 - 4a. Assume sufficient funding would be provided by responsible government entity.
 - 4b. A cost estimate will be developed for long-term control and maintenance.

ATTACHMENT