

June 3, 1999

COMMISSION VOTING RECORD

DECISION ITEM: SECY-99-057

TITLE: SUPPLEMENT TO SECY-98-251, "DECOMMISSIONING CRITERIA FOR WEST VALLEY"

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of June 3, 1999. This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission, and the SRM of June 3, 1999.

Annette Vietti-Cook
Secretary of the Commission

Attachments: 1. Voting Summary
2. Commissioner Vote Sheets
3. Final SRM

cc: Chairman Jackson
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield
OGC
EDO
PDR
DCS

VOTING SUMMARY - SECY-99-057

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. JACKSON	X				X	3/26/99
COMR. DICUS	X				X	4/6/99
COMR. DIAZ	X				X	4/14/99
COMR. McGAFFIGAN	X				X	4/27/99
COMR. MERRIFIELD	X				X	3/19/99

COMMENT RESOLUTION

In their vote sheets, Commissioners Dicus, Diaz, and McGaffigan approved recommendation 1.(a) to apply the License Termination Rule now as the decommissioning criteria for the WVDP site. Chairman Jackson and Commissioner Merrifield approved option 1.(b) issue proposed criteria now with final criteria to be prescribed after issuance of the final EIS. All Commissioners approved recommendations 2. and 3. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on June 3, 1999.

Commissioner Comments on SECY-99-057

Chairman Jackson

I approve prescription of the original broad criteria presented in SECY-98-251, with the final criteria to be prescribed after issuance of the final Environmental Impact Statement (EIS), but before the record of decision. Use of the existing License Termination Rule (LTR) criteria for decommissioning at West Valley is appropriate and provides consistency with other NRC-licensed cleanup activities. However, the GEIS for the LTR did not consider a situation representative of West Valley. Therefore, the additional NEPA support provided by the ongoing EIS process appears necessary to guide the NRC prescription of the criteria.

In addition, prescribing criteria at this time for closure or long-term care of the remaining NYSEDA portion of the site licensed by the NRC represents a broad approach that meshes with the ongoing EIS. This approach avoids postponing prescription of onsite disposal criteria to a later date and unnecessarily jeopardizing New York State once the DOE withdraws. The narrow approach of prescribing only LTR criteria to the DOE now would not address clean-up of the entire site and would not cover NYSEDA responsibilities.

Although the supplemental paper clarified many aspects of this action, there remains an area that needs additional focus. As evident in the January 12, 1999, briefing, there is some misunderstanding of the incidental waste criteria by NYSEDA and DOE. The staff should clarify that the incidental waste criteria only require the waste to be managed such that the performance objectives of Part 61 are satisfied and the Class C waste concentration limits are met. The incidental waste criteria do not include specific provisions for the use of alternative waste concentrations and characteristics provided in 10 CFR 61.58.

Furthermore, I agree that the proposed Commission decision on the decommissioning criteria can be transmitted to DOE by public letter. The letter also should state clearly what the NRC role will be in determining whether the DOE has completed decontamination and decommissioning for the WVDP. Although the staff indicates that the WVDP Act gives the NRC no authority to enforce a completion determination, a review of a DOE Completion Report or similar document should be performed as envisioned by the House of Representatives during consideration of the bill.

However, using a public letter to prescribe the final criteria would not allow for further public comment. On the other hand, as OGC concludes, the WVDP Act provides no NRC licensing authority over the DOE, and as such, no authority to order the DOE to take or refrain from taking specific actions. Therefore, for the final criteria, the staff should use the Policy Statement option, with the statement first issued as draft to allow for public comment. In addition, concomitant to issuing the draft statement, the Commission should schedule a public meeting to solicit comment from appropriate parties.

Regulatory alternatives for potential long-term control of the site were presented for the Commission's information in SECY-98-251. These should not be included in any criteria prescribed at this time. Although I recognize the need for long-term control of the site, speculating on alternatives at this time has raised unnecessary controversy, appears to be premature, and could prejudice the eventual outcome of the EIS on closure of West Valley and associated Commission deliberations.

Lastly, I approve of the staff's plan to enter into an office-level cooperative agreement with NYSDEC regarding the West Valley site.

Commissioner Dicus

The following constitutes my vote on SECYs 98-251 and 99-057.

1. I approve the prescription of the License Termination Rule (LTR) now as the final decommissioning criteria applicable to the DOE West Valley Demonstration Project (WVDP).
2. The LTR criteria should be applied to the entire site.
3. The Commission decision on decommissioning criteria should be published for comment as a proposed policy statement.
4. After finalization of the Commission decision on decommissioning criteria, the decision should be transmitted to the DOE by public letter.
5. Following termination of the WVDP, staff should reinstate the NRC license for the purpose of regulating license termination activities and overseeing radioactive wastes that are stored on the site.
6. Staff should enter into an office-level cooperative agreement with NYSDEC regarding the West Valley site.

I do not approve on-site disposal of any WVDP wastes. While removal of this option has serious cost consequences and significant implications with respect to radioactive wastes that have been disposed at the West Valley site, I conclude that these impacts are offset by the potential consequences of using the West Valley site for disposal. There is a severe erosion threat to the site. Controlling this threat will require continued active maintenance of the site. While DOE regulations provide for long term institutional control, the significant radiological consequences that would result, should the active maintenance program be lost, render this option unacceptable. Therefore, the radioactive wastes generated as a result of the WVDP should be disposed off-site to the extent that the wastes can be accepted at off-site facilities. For those wastes that cannot be disposed to off-site facilities, I approve temporary storage only at the West Valley site until such time as off-site disposal or transfer arrangements are made.

Commissioner Diaz

The following comments are my combined vote on [SECY-98-251](#) and [SECY-99-057](#):

1. I approve prescribing the License Termination Rule (LTR) as the decommissioning criteria for the Department of Energy West Valley Demonstration Project. The use of the LTR is appropriate because it is the Commission's clearest and most comprehensive statement on what is

adequately protective of public health and safety in the realm of decommissioning.

Prescribing this standard is also important for reinforcing regulatory consistency and predictability over the long term. After the New York State Energy Research and Development Authority (NYSERDA) license has been reactivated, the licensee may desire to decommission all or part of the West Valley site. In such a case, the LTR would provide the decommissioning criteria.

2. I approve issuance of a draft Policy Statement for public comment. In addition, we should inform DOE and make the transmittal letter public.
3. I approve the staff's plan to enter into an Office-level cooperative agreement with New York State Department of Environmental Conservation (NYSDEC) regarding the West Valley site.

Commissioner McGaffigan

The following constitutes my vote on both staff papers. For the reasons set forth below, I join Commissioner Dicus and Commissioner Diaz in support of Option 1(a) in [SECY-99-057](#), under which the Commission would prescribe the License Termination Rule (LTR) (10 CFR 20.1401-1405) now as the final decommissioning criteria applicable to the Department of Energy (DOE [EXIT](#)) West Valley Demonstration Project (WVDP).

But first, I would like to acknowledge the complexity of the issues before us in dealing with this site and to thank all those who have contributed to the clarification of these issues over the past six months. I am proud of the open process which the staff and the Commission have utilized to aid our decision-making.

I support applying the LTR to the WVDP because that is consistent with our approach at NRC-licensed sites subject to Part 20. It is the rule which will apply to the New York State Energy Research and Development Authority (NYSERDA) once the [SECY-98-251](#), that it will be difficult for DOE to meet the LTR in the WVDP and for NYSEDA to meet the LTR following reactivation of the Part 50 license. I do not discount the possibility that some of the options discussed in [SECY-98-251](#) for long-term control of the site may indeed have to be explored. Hopefully, the discussion of long-term institutional controls at sites such as West Valley will have benefitted from the intervening broader dialogue which DOE will have had with its stakeholders on the use of institutional controls in the cleanup of DOE nuclear facilities (pursuant to the settlement reached in *NRDC v. Richardson*, Dec. 12, 1998) and which will likely take place in Great Britain as it proceeds with decommissioning of the Dounreay reprocessing facility. At Maxey Flats and at mill tailings sites, "perpetual" institutional controls have been adopted to ensure adequate protection of public health and safety. But it is also possible that new decommissioning technologies or disposal options may become available that facilitate cleanup of sites such as West Valley and obviate or reduce the need for very long-term institutional controls at West Valley.

I agree with Commissioner Dicus that a Commission decision to apply the LTR should be published now as a proposed policy statement for public comment. I have no objection to the suggestion that the Commission's final decision on the criteria be transmitted to DOE by public letter. However, I question whether the letter is necessary since the final policy statement would be published in the Federal Register as well. I also suggest that copies of the draft and final policy statements be provided to all relevant parties, including the appropriate State agencies, Congressional delegation, and citizens' groups.

I do not support prescribing Part 61 criteria or the current incidental waste criteria at this time. Decisions on waste management issues are important ones that can be made only when decommissioning of the site is more complete and answers to certain questions, such as whether it is technically feasible or cost-beneficial to excavate and remove certain wastes currently buried at the site, become more apparent.

I have no objection to the staff proposal to enter into an office-level cooperative agreement with the New York State Department of Environmental Conservation regarding the WVDP, and I agree with Commissioner Merrifield that a copy should be provided to DOE for information purposes. I also suggest that the staff consider issuing the draft cooperative agreement for public comment before it is finalized.

Commissioner Merrifield

This is a complex issue involving multiple distinct decisions and two Commission papers ([SECY-98-251](#) and [SECY-99-057](#)). The following paragraphs describe my vote on each issue and closes my actions on both Commission papers.

1. I approve issuance of the criteria in [SECY-98-251](#) as proposed criteria, with the final criteria to be prescribed after issuance of the final Environmental Impact Statement (EIS), but before the record of decision. Essentially, this decision reflects a desire to maintain the provisions of the NRC License Termination Rule but recognizes that there may be unique aspects of this site the NRC should consider before prescribing the final decommissioning criteria. I recognize and agree that whatever decommissioning criteria the NRC accepts for DOE for the 200 acre site should also apply to New York State Energy and Research Development Authority (NYSERDA) once the license is transferred. However, the actual date of the transfer and the criteria for the transfer is subject to negotiations between DOE and NYSEDA. Specific provisions of that negotiated transfer, such as continuing responsibilities of DOE, are not under NRC authority.
2. I approve finalizing the decommissioning criteria through a Commission Policy Statement using a process that allows for public comment. I believe that a Policy Statement would be the most efficient manner to establish the criteria, particularly since any rulemaking would only apply to NYSEDA and not DOE. I also believe it is important to observe some formality and to receive public input. Therefore I prefer a Commission Policy Statement.
3. Once the Commission decision on this matter is finalized, I approve transmittal of the decision to DOE by public letter with a copy provided to all relevant parties.

4. In regards to possible implications for reinstating the NRC license if long-term control alternatives are necessary, I prefer keeping a long-term license on the site as opposed to the other options discussed by the staff.
5. I approve the staff's plan to enter into an Office-level cooperative agreement with the New York State Department of Environmental Conservation (NYSDEC) regarding the West Valley site. The staff should provide a copy of the final agreement to DOE for informational purposes.