

September 22, 1999

FOR: The Commissioners

FROM: William D. Travers /s/
Executive Director for Operations

SUBJECT: PUBLICATION, FOR PUBLIC COMMENT, OF A DRAFT POLICY STATEMENT ON DECOMMISSIONING CRITERIA FOR WEST VALLEY

PURPOSE:

The purpose of this paper is to inform the Commission of the staff's intent to: 1) publish, for public comment, a draft policy statement in the Federal Register, with copies to the U.S. Department of Energy (DOE [EXIT](#)) and all relevant parties, on decommissioning criteria for the West Valley Demonstration Project and West Valley site; 2) hold a public meeting to solicit public comment on the draft; and 3) finalize the policy statement for Commission consideration.

BACKGROUND:

By Staff Requirements Memorandum from the Secretary of the Commission to the staff, dated June 3, 1999 ([Attachment 1](#)), the Commission approved applying the U.S. Nuclear Regulatory Commission's (NRC) License Termination Rule ([10 CFR Part 20](#), Subpart E) as the decommissioning criteria for the West Valley Demonstration Project and the West Valley site. The Staff Requirements Memorandum directed the staff to issue a draft policy statement on the decommissioning criteria, for public comment, and to arrange a public meeting on the draft policy statement, to solicit public comment.

The Staff Requirements Memorandum was issued in response to two Commission Papers--[SECY-98-251](#) and [SECY-99-057](#). These two Commission Papers requested Commission approval of applying proposed decommissioning criteria to the West Valley Demonstration Project and the West Valley site.

DISCUSSION:

The draft Policy Statement, in Federal Register format, is attached ([Attachment 2](#) [EXIT](#)). The draft Policy Statement addresses applying the License Termination Rule as the decommissioning criteria for DOE's West Valley Demonstration Project. It also addresses applying the License Termination Rule to the West Valley site. The West Valley site, which includes the West Valley Demonstration Project and other areas, is under an NRC license issued to the New York State Energy Research and Development Authority. The license is in abeyance until the completion of the West Valley Demonstration Project. The Office of the General Counsel is submitting a separate memorandum to the Commission addressing the issue of the Commission's responsibilities under the National Environmental Policy Act associated with applying the License Termination Rule to the West Valley Demonstration Project. The enclosed draft policy Statement is consistent with the views in that memorandum.

Waste Disposal

The West Valley Demonstration Project Act directs DOE to dispose of low-level radioactive waste and transuranic waste produced by the West Valley Demonstration Project, in accordance with unspecified "applicable licensing requirements." However, the Commission was silent on this issue in the Staff Requirements Memorandum. Therefore, it is not addressed in the draft Policy Statement. If the preferred alternative in the Environmental Impact Statement for closure of the West Valley Demonstration Project and/or the West Valley site includes waste disposal, the issue of applicable licensing requirements will be determined at that time.

Disposition of Residual High-Level Radioactive Waste

After high-level radioactive waste (HLW) solidification operations cease at West Valley, residual HLW will remain at the site (e.g., in HLW tanks). DOE is required by the West Valley Demonstration Project Act to solidify and dispose of the HLW at West Valley and to decontaminate and decommission the tanks, facilities, material, and hardware used for the storage or solidification of HLW. DOE will manage anything residually contaminated with HLW as either HLW or consult with NRC regarding classifying it as incidental waste. Wastes classified as incidental are not HLW, as HLW has historically been defined, and are not required to be managed as HLW (i.e., requiring permanent isolation).

The Staff Requirements Memorandum, and therefore the draft Policy Statement, do not address the issue of classifying residual HLW as incidental. Criteria do exist for classifying waste as incidental. These criteria were developed as a guide to classifying, as incidental, certain wastes to be removed from HLW tanks at DOE's Hanford site and were approved by the Commission in a Staff Requirements Memorandum dated February 16, 1993, in response to [SECY-92-391](#), and described in a letter from R. Bernero, NRC, to J. Lytle, DOE, dated March 2, 1993. The Commission should be aware that the staff is reviewing DOE methodology for classifying as incidental the residual HLW left in tanks being closed at DOE's Savannah River site, as requested by letter from A. Watkins, DOE, to C. Paperiello, NRC, dated December 20, 1996, and as described in a memorandum from the staff to the Commission dated February 18, 1997. Staff requested additional information from DOE in a letter dated June 30, 1998. DOE responded on September 30, 1998. Staff is developing a response to the DOE incidental waste classification methodology for Savannah River that will be submitted to the Commission for approval. The staff also will provide to the Commission, for approval, any response to DOE regarding incidental waste classification methodology at West Valley.

Distribution of the Draft Policy Statement

In addition to publication in the Federal Register the draft policy statement will be provided to all relevant parties. They are:

1. The Honorable Albert J. Gore, Jr., President of the United States Senate
2. The Honorable J. Dennis Hastert, Speaker of the United States House of Representatives
3. The Honorable James M. Inhofe, Chairman, Subcommittee on Clean Air, Wetlands, Private Property and Nuclear Safety, Committee on Environment and Public Works, United States Senate
4. The Honorable Joe Barton, Chairman, Subcommittee on Energy and Power, Committee on Commerce, United States House of Representatives
5. The Honorable Frank Murkowski, Chairman, Committee on Energy, United States Senate
6. The Honorable Pete V. Domenici, Chairman, Subcommittee on Energy and Water Development, Committee on Appropriations, United States Senate
7. The Honorable Ron Packard, Chairman, Subcommittee on Energy and Water Development, Committee on Appropriations, United States House of Representatives
8. The Honorable Daniel Patrick Moynihan, United States Senate
9. The Honorable Charles E. Schumer, United States Senate
10. The Honorable Amo Houghton, United States House of Representatives
11. DOE, West Valley Demonstration Project
12. New York State Energy Research and Development Authority, West Valley Site Management
13. New York State Department of Environmental Conservation, Bureau of Radiation & Hazardous Site Management
14. U.S. Environmental Protection Agency, Region 2
15. New York State Attorney General's Regional Office
16. The West Valley Citizen Task Force
17. The Coalition on West Valley Nuclear Waste

Draft Congressional letters are in [Attachment 3](#).

The staff intends to publish the draft policy statement in the Federal Register in September 1999, and to request written comments. The publication of the draft Policy Statement in the Federal Register will also carry a notice of a public meeting to solicit public comment on the draft. Staff will address the public comments and produce a final policy statement for Commission consideration.

COORDINATION:

The Office of the General Counsel has reviewed this Commission Paper for legal implications and has no legal objection.

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Attachments: 1. [Staff Requirements Memorandum dtd. 6/3/99](#)
2. [Draft Policy Statement and Notice of Public Meeting](#)
3. [Draft Congressional letters](#)