

West Valley
Citizen
Task
Force

December 22, 1998

Dr. Shirley A. Jackson, Chairman
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

RE: PUBLIC BRIEFING COMMENTS
Commission Paper SECY-98-251
Decommissioning Criteria For West Valley

Dear Chairman Jackson:

1 Initially, the West Valley Citizen Task Force (CTF) would like to thank the
2 Commission for kindly accommodating our request for a postponement of the
3 earlier scheduled public briefing regarding the proposed decommissioning criteria
4 for the West Valley Demonstration Project site in SECY-98-251 (Paper). Since
5 each member of the CTF was appointed to represent one of several unique
6 constituencies, it is likely we would not have been able to schedule the necessary
7 number of meetings required to discuss and formalize a consensus set of
8 comments under the earlier time frame.

9 We would also like to thank the staff of the NRC for its active involvement in
10 the meetings of the CTF over these last two years. NRC staff have attended
11 meetings in West Valley, have participated in many of our meetings via video
12 conference and on several occasions have briefed the CTF. In particular we wish
13 to thank Jack Parrott for his attendance at our meeting on November 17, 1998,
14 where he briefed us on the Paper.

15 The West Valley CTF began its mission in January, 1997 to develop a set of
16 stakeholder guidelines and recommendations which were to be presented to the
17 West Valley Site Managers (USDOE/NYSERDA) to aid in completing the EIS
18 and selecting a preferred alternative for the completion of the West Valley
19 Demonstration Project and long term management of the site. While



20 considering the many complex issues involving the twelve distinctive waste management areas
21 and listening to numerous presentations explaining the rationale behind present radiation dose
22 estimates for various exposure scenarios, the CTF questioned many times as to the apparent
23 futility of discussing such risks or evaluating the various cleanup alternatives without knowing
24 what NRC criteria and rules would apply to decommissioning and/or govern reliance on
25 institutional controls. We had been informed on several occasions that the release of official
26 NRC guidance on these subjects was forthcoming and we had hoped it would be available for our
27 consideration during the final development of our July 1998 report.

28 And so it was with great anticipation that we received SECY-98-251. Having read the Paper
29 and then convening a CTF meeting to discuss the proposal, it quickly became apparent that the
30 Paper did not meet with the general expectations of the CTF. In fact, rather than resolving some
31 of our outstanding questions it raised some new ones.

32 We would respectfully request that the Commission consider the following comments and
33 recommendations submitted by the West Valley CTF prior to taking any official action to
34 approve the approach presented for establishing decommissioning criteria for the West Valley
35 site. Where indicated, references in brackets refer directly to the July 1998 CTF report found as
36 Attachment 4 in the Paper.

37

38 SECY-98-251 Suffers from a Lack of Clarity

39 We have found it difficult to determine the intended meaning of significant portions of the
40 Paper. We have spent a lot of time debating the meaning of certain key concepts and how one
41 part of the Paper may modify other parts. For example on page 4, the Paper states in part that
42 "...the staff proposes to inform DOE and NYSERDA that they should use NRC's License
43 Termination Rule criteria as proposed decommissioning criteria for that portion of the EIS that
44 covers areas of residual waste or the closure of existing waste disposal areas." The criteria are
45 then summarized to include unrestricted use criteria (25 mrem/year to average member of critical
46 group plus ALARA requirements), restricted use criteria (25 mrem/year to average member of
47 critical group plus ALARA requirements plus institutional controls) and a safety net or maximum
48 exposure level in the event of the failure of institutional controls (100 or 500 mrem/year to
49 average member of critical group plus ALARA requirements). However on page 5 the Paper
50 states that "Because of long-term erosion and source-term release problems at the West Valley
51 site, applying the NRC assumption of time-limited institutional control will likely make all

52 alternatives in the draft EIS that leave residual or stored waste on site, nonviable under the
53 proposed decommissioning criteria..." It thus appears the Paper is recommending the use of
54 criteria which cannot be achieved at this site. This recommendation, the acknowledgment that it
55 is "nonviable", and the lack of specificity on any other criteria leaves the CTF unsure as to what
56 the Paper is proposing and what the NRC will have adopted should it approve this Paper.

57

58 Much is already known about the West Valley Site

59 The Paper proposes that the "prescription of decommissioning criteria (by the Commission)
60 will be better informed by the EIS." The sentence from which this recommendation comes is
61 preceded by a discussion on the criteria that will be used to justify a departure by DOE and
62 NYSERDA from the requirements found in the License Termination Rule.

63 The CTF wishes to draw to the Commission's attention that there has already been a draft
64 EIS prepared for decontamination and decommissioning of the West Valley site. Although no
65 preferred alternative was identified, the data contained in the draft EIS has not been called into
66 question other than that to some extent more data has been sought. The draft EIS which was
67 released in March 1996 is voluminous and exhaustive. It will be the basis for the new EIS. The
68 characteristics of the waste at the site and its location are well known, as is the potential to cause
69 harm to humans and the environment. The CTF does not believe the new draft or final EIS are
70 necessary for the NRC to establish decontamination and decommissioning criteria at the West
71 Valley site.

72

73 CTF Alternative Recommendation

74 The March 1996 Draft EIS prepared by DOE and NYSERDA identified five alternatives for
75 the West Valley site. Alternative I would entirely remove the waste while Alternatives II-V
76 would permanently retain them on site. In the July 1998 CTF Final Report, the CTF essentially
77 recommended a new alternative which combines long-term on-site storage for some hard to
78 move wastes, with eventual removal off site.

79

80 Two Simple Questions

81

82 The CTF, in considering the Paper, poses two fundamental questions.

83

84 1. Should the Standard for the decontamination and decommissioning of the West Valley
85 site be different than that for the rest of the country?

86

87 2. Should the NRC deviate from its normal practice in which it sets in advance clear,
88 objective standards for the protection of human health and the environment so as to
89 guide, influence and finally judge proposed activities?

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91 The CTF has concluded that the answer to both questions is no.

92

93 Decontamination Standard

94 The NRC, in its License Termination Rule (10 CFR Part 20, Subpart E), established criteria
95 which must be met in order for a license to be terminated. For purposes of the West Valley site,
96 the part of the Rule which is most relevant deals with the length of time that institutional controls
97 can be relied upon to maintain protective features and establishes a maximum allowable
98 exposure should institutional controls fail. The Paper proposes that the NRC allow that these
99 standards be "departed" from if the EIS shows "some justification" regarding the balance
100 between gain and harm or prohibitively high cost or technical infeasibility. This could be done
101 so long as there is a "sufficient level of protection of human health and safety and the
102 environment and a reasonable balance of costs and benefits and represents a viable approach."
103 The Paper also states "Besides cost, offsite removal of significant amounts of waste may be
104 difficult to implement because of a lack of access to offsite waste disposal. Relocating the
105 radioactive waste may be controversial and may substantially delay site decommissioning and
106 closure."

107 From these statements it appears that the Paper is proposing that the West Valley site be
108 decommissioned to a less protective standard because to meet the License Termination Rule
109 standards would be costly, time consuming, controversial and prolonged. These same factors
110 will be present at most if not all other sites to which the License Termination Rule will apply
111 across the nation. Even if the West Valley site is more costly, more time consuming, more

112 controversial and have more delays, we believe the standards for determining if the site is
113 sufficiently safe to allow it to be declared decontaminated and decommissioned should still be
114 the same as those for the rest of the nation. The Paper does not indicate nor justify why West
115 Valley should be treated differently. We call on the NRC to reject this approach.

116 We prefer instead that the NRC apply the standards in the License Termination Rule, that it
117 recognize that decontamination and decommissioning of the West Valley site may not be
118 possible for a prolonged period of time and that certain interim protections must be taken. We
119 reject any attempt to weaken standards due to the difficulty in having them implemented or the
120 delay that may be inherent in a preferred alternative.

121 If the NRC does not apply the License Termination Rule to West Valley, it may have to
122 conduct a separate NEPA proceeding to support a unique decontamination and decommissioning
123 standard for West Valley.

124

125 Prescribe or "Postscribe"

126 The Paper proposes that the NRC adopt an "approach" for the setting of requirements but
127 that the formal adoption of standards occur at a later date, after the development of a draft or
128 final EIS. In most circumstances the NRC has set in advance clear, objective standards for the
129 protection of human health and the environment so as to guide, influence and finally judge
130 proposed activities. Both based on the sound past practice of the NRC and based on a plain
131 reading of the West Valley Demonstration Act, the NRC should prescribe (that is set in advance)
132 standards for the Decontamination and Decommissioning of the West Valley site.

133

134 Delaying Prescription of Definitive Criteria

135 As noted, it had been anticipated that the NRC was preparing a definitive set of
136 decommissioning criteria which the USDOE and NYSERDA would necessarily have to aspire to
137 comply with in the completion of the EIS and final selection of a preferred alternative for cleanup
138 of the site. Rather, NRC staff are asking the Commission to merely approve an "approach" to
139 developing criteria which, in reality, only serves to delay that official action which is required by
140 the WVDP Act. The CTF believes that the establishment of such criteria would not just be a
141 "significant component" of an EIS as stated in the Paper's summary (p. 1), but should be a
142 prerequisite. Furthermore, we are perplexed by the statement on p. 3 whereby if the preferred
143 alternative does not conform to the presently proposed decommissioning criteria, then

144 DOE/NYSERDA might “propose alternative criteria” and staff would then subsequently propose
145 a new approach for approval by the Commission. We clearly do not understand under what
146 authority or by what precedent a regulated agency could, in effect, prescribe the rules under
147 which they are governed. This is clearly the province of NRC alone.

148 At various times the CTF has been reassured by staff from all involved agencies that
149 protecting both worker and public health and safety is the single most important criterion relied
150 upon when making site management decisions. We felt so strongly about this issue that several
151 references were incorporated into our report [see Section III, Items 1 and 17; Section IV, Item 2].
152 NRC has already established definitive allowable radiation dose rates on a national basis in the
153 License Termination Rule. Should acceptable dosage rates not be the same for all
154 communities/populations, irrespective of geographical location? The CTF contends that the
155 NRC should establish firm criteria now, not just flexible guidance. Detailed EIS analyses of long
156 term risks and short term implementation risks for the various alternatives should not be based on
157 assumptions of what the applicable decommissioning criteria might be. The preferred alternative
158 which will be developed in this process should be tailored to meet the NRC’s “prescribed”
159 criteria, not vice versa.

160

161 Facilitating DOE Fulfillment of WVDPA Requirements

162 Should the NRC approve the proposed approach it would give the obvious impression that
163 they are providing DOE extraordinary leeway in completing the EIS, fulfilling WVDPA Act
164 requirements, and thereby facilitating DOE’s accelerated departure from the site. The CTF has
165 taken the position that a continued federal presence at the site will be essential to implementing
166 any preferred alternative cleanup, due to multiple factors including the burden of costs, necessary
167 reliance on defined institutional controls, the continued presence of wastes that originated from
168 DOE activities or came from other non-commercial sources, etc. [see Section III, Item 18;
169 Section IV, Items 8 and 9].

170 Furthermore, it appears that by broadening the definition of the term “decommissioning
171 criteria” and applying the “incidental waste” classification to residual HLW in the tanks at West
172 Valley, that NRC is going to great lengths to keep every option open to DOE and paving the way
173 for an expedited federal exit. The CTF recognized in the July report that some wastes will need
174 to remain at the site for a prolonged period of time, but that the only appropriate final action is
175 eventual removal from the site [Section III, Item 5].

176 Concerns With Extended Institutional Control

177 Perhaps the greatest shortcoming of the Paper is the failure to resolve the critical questions
178 concerning establishment of definitive guidelines for allowing extended use of institutional
179 controls (IC). 10 CFR 61 clearly states that IC cannot be relied on for more than 100 years, and
180 everyone unequivocally agrees that the West Valley site has significant nondesirable
181 characteristics that preclude indefinite reliance on active-maintenance IC. The CTF believes that
182 the concept of an "unlimited" IC period as assumed in the DEIS is a nonviable option [Section
183 III, Items 3, 4, 13 and 15; Section IV, Items 3 and 5]. Additionally, the NRC should not consider
184 relegating their authority to say what kind of institutional controls are appropriate to rely upon.
185 Especially not to the USEPA which has altogether different criteria.

186 The CTF believes (based on currently available information) the site is not suitable for the
187 long-term, permanent storage or disposal of long-lived radionuclides and that final action with
188 regard to these wastes is for them to be removed from the site. (Section III, Items 3 and 5). The
189 CTF may reconsider its opinion of site suitability if new evidence based on site characterization
190 is presented to the CTF in the near future. The CTF further understands that certain factors could
191 result in interim onsite storage with associated IC. Several assumptions made were that over
192 time permanent disposal options may develop, or new treatment/remediation technologies would
193 be discovered, or that a prescribed period of natural radioactive decay would make exhumation
194 of certain wastes safer at a later date. [Section III, Items 9 and 11; Section IV, Item 10]. For all
195 of these reasons the CTF recommended a path of retrievable interim storage with IC and eventual
196 off site disposal. Again, we feel that definitive NRC requirements for reliance on IC are a
197 prerequisite to the meaningful risk analyses required for completing the EIS and selecting a
198 preferred alternative.

199 The CTF recognizes that portions of the Center are not fully characterized and therefore
200 cannot be judged with certainty to be either suitable or unsuitable for long-term, permanent
201 storage or disposal of wastes under current regulations. Under present conditions, the CTF does
202 not believe that any portion of the Center can be considered suitable for long-term, permanent
203 storage or disposal of wastes.

204

205 Application of Incidental Waste Rule

206 The proposed classification of residual HLW as incidental waste is a new concept not
207 previously presented to the CTF. The NRC staff proposal indicates that the resulting treated

208 waste will not exceed applicable limits for Class C LLW as per 10 CFR 61. Without sufficient
209 additional information as to the treatment methods, specific waste characterization, and estimated
210 volumes of waste involved, it is difficult to make an informed assessment of the appropriateness
211 of applying such criteria. Regardless, as presently proposed the criteria are merely a suggested
212 guideline, or worse, a deliberate means of allowing DOE to reclassify the HLW collected from
213 tank residue and decontamination of the process building and vitrification facility as LLW.
214 Again, this position would allow DOE to be absolved of responsibility, whereafter NRC will
215 reinstate the State license and hold New York wholly accountable for meeting the latent NRC
216 criteria.

217 In summation, the CTF is resolutely opposed to the approval of SECY-98-251 in its present
218 form. The proposal does not set forth decommissioning criteria as advertised but rather is seen
219 as a guise for providing DOE defacto authority to dispose of their wastes onsite at the eventual
220 expense of New York. NRC has a statutory obligation to make discretionary decisions at West
221 Valley on the critical issues of decontamination and decommissioning, disposal, license
222 resolution, institutional controls, and has statutory authority to make discretionary decisions on
223 the definition of transuranic waste. This proposal if approved will render no actual decision on
224 any of these subjects and perhaps will only add considerably more confusion to the perceived
225 role of NRC in regulating the decommissioning and long term management of the West Valley
226 facilities. Approval of this approach which defers any decisions of consequence until after the
227 EIS is completed, will certainly erode future NRC authority. Public suspicion of collusion
228 between NRC and DOE should also be expected.

229 The West Valley CTF urges the Nuclear Regulatory Commission to contemplate the
230 following suggested actions:

- 231 1. Disapprove the approach to setting decommissioning criteria for West Valley as
232 proposed by NRC staff in SECY-98-251.
- 233 2. Comprehensively re-examine present policy concerning the NRC/DOE relationship and
234 also ponder the obligatory role of NRC in fulfilling their regulatory responsibilities from legal,
235 social, and ethical perspectives. The CTF believes that such policy decisions warrant the highest
236 level of consideration.
- 237 3. Direct staff to develop a policy statement for Commission approval, prior to completion
238 of the EIS, setting forth the definitive criteria for decommissioning at West Valley which are
239 consistent with all statutory requirements.

240 4. Direct staff to develop a policy statement for Commission approval, prior to completion
241 of the EIS, setting forth definitive criteria for allowing time-limited institutional controls which
242 are consistent with all statutory requirements.

243 5. Direct staff to develop a policy statement for Commission approval setting forth a clear
244 definition of incidental waste for West Valley and whether such definition conflicts with policy
245 already set for transuranic waste.

246 6. Direct staff to develop a policy statement for Commission approval setting forth the
247 criteria for reinstating the NRC license following completion of the WVDP.

Respectfully submitted,

West Valley CTF