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:

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

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

The West Valley CTF began its mission in January, 1997 to develop a set of
stakeholder guidelines and recommendations which were to be presented to the
West Valley Site Managers (USDOE/NYSERDA) to aid in completing the EIS
and selecting a preferred alternative for the completion of the West Valley
Demonstration Project and long term management of the site. While
considering the many complex issues involving the twelve distinctive waste management areas
and listening to numerous presentations explaining the rationale behind present radiation dose
estimates for various exposure scenarios, the CTF questioned many times as to the apparent
futility of discussing such risks or evaluating the various cleanup alternatives without knowing
what NRC criteria and rules would apply to decommissioning and/or govern reliance on
institutional controls. We had been informed on several occasions that the release of official
NRC guidance on these subjects was forthcoming and we had hoped it would be available for our
consideration during the final development of our July 1998 report.

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

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

SECY-98-251 Suffers from a Lack of Clarity

We have found it difficult to determine the intended meaning of significant portions of the
Paper. We have spent a lot of time debating the meaning of certain key concepts and how one
part of the Paper may modify other parts. For example on page 4, the Paper states in part that
"...the staff proposes to inform DOE and NYSERDA that they should use NRC’s License
Termination Rule criteria as proposed decommissioning criteria for that portion of the EIS that
covers areas of residual waste or the closure of existing waste disposal areas.” The criteria are
then summarized to include unrestricted use criteria (25 mrem/year to average member of critical
group plus ALARA requirements), restricted use criteria (25 mrem/year to average member of
critical group plus ALARA requirements plus institutional controls) and a safety net or maximum
exposure level in the event of the failure of institutional controls (100 or 500 mrem/year to
average member of critical group plus ALARA requirements). However on page 5 the Paper
states that “Because of long-term erosion and source-term release problems at the West Valley
site, applying the NRC assumption of time-limited institutional control will likely make all
alternatives in the draft EIS that leave residual or stored waste on site, nonviable under the
proposed decommissioning criteria...” It thus appears the Paper is recommending the use of
criteria which cannot be achieved at this site. This recommendation, the acknowledgment that it
is “nonviable”, and the lack of specificity on any other criteria leaves the CTF unsure as to what
the Paper is proposing and what the NRC will have adopted should it approve this Paper.

Much is already known about the West Valley Site

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

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

CTF Alternative Recommendation

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

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

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

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

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

Decontamination Standard

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

From these statements it appears that the Paper is proposing that the West Valley site be decommissioned to a less protective standard because to meet the License Termination Rule standards would be costly, time consuming, controversial and prolonged. These same factors will be present at most if not all other sites to which the License Termination Rule will apply across the nation. Even if the West Valley site is more costly, more time consuming, more
controversial and have more delays, we believe the standards for determining if the site is
sufficiently safe to allow it to be declared decontaminated and decommissioned should still be
the same as those for the rest of the nation. The Paper does not indicate nor justify why West
Valley should be treated differently. We call on the NRC to reject this approach.

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

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

Prescribe or “Postscribe”

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

Delaying Prescription of Definitive Criteria

As noted, it had been anticipated that the NRC was preparing a definitive set of
decommissioning criteria which the USDOE and NYSERDA would necessarily have to aspire to
comply with in the completion of the EIS and final selection of a preferred alternative for cleanup
of the site. Rather, NRC staff are asking the Commission to merely approve an “approach” to
developing criteria which, in reality, only serves to delay that official action which is required by
the WVDP Act. The CTF believes that the establishment of such criteria would not just be a
“significant component” of an EIS as stated in the Paper’s summary (p. 1), but should be a
prerequisite. Furthermore, we are perplexed by the statement on p. 3 whereby if the preferred
alternative does not conform to the presently proposed decommissioning criteria, then
DOE/NYSERDA might “propose alternative criteria” and staff would then subsequently propose a new approach for approval by the Commission. We clearly do not understand under what authority or by what precedent a regulated agency could, in effect, prescribe the rules under which they are governed. This is clearly the province of NRC alone.

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

Facilitating DOE Fulfillment of WVDPA Requirements

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

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

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

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

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

Application of Incidental Waste Rule

The proposed classification of residual HLW as incidental waste is a new concept not previously presented to the CTF. The NRC staff proposal indicates that the resulting treated
waste will not exceed applicable limits for Class C LLW as per 10 CFR 61. Without sufficient
additional information as to the treatment methods, specific waste characterization, and estimated
volumes of waste involved, it is difficult to make an informed assessment of the appropriateness
of applying such criteria. Regardless, as presently proposed the criteria are merely a suggested
guideline, or worse, a deliberate means of allowing DOE to reclassify the HLW collected from
tank residue and decontamination of the process building and vitrification facility as LLW.
Again, this position would allow DOE to be absolved of responsibility, whereafter NRC will
reinstate the State license and hold New York wholly accountable for meeting the latent NRC
criteria.

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

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

1. Disapprove the approach to setting decommissioning criteria for West Valley as
proposed by NRC staff in SECY-98-251.

2. Comprehensively re-examine present policy concerning the NRC/DOE relationship and
also ponder the obligatory role of NRC in fulfilling their regulatory responsibilities from legal,
social, and ethical perspectives. The CTF believes that such policy decisions warrant the highest
level of consideration.

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

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

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

Respectfully submitted,

West Valley CTF