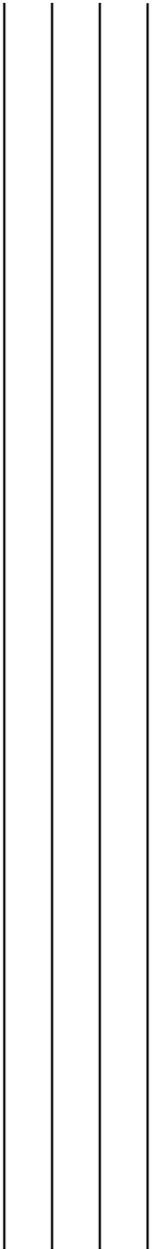


**West Valley  
Citizen  
Task  
Force**



April 17, 2002

Richard A. Meserve, Chairman  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

RE: Disagreements With the Final Policy Statement Establishing Decommissioning Criteria for the West Valley Demonstration Project

Dear Chairman Meserve:

In verbal testimony given at the public briefing on January 12, 1999, and in written comments dated December 22, 1998, and January 5, 2000, the West Valley Citizen Task Force (CTF) expressed general agreement with the U.S. Nuclear Regulatory Commission's (NRC) application of the License Termination Rule (LTR) as the decommissioning criteria for the West Valley Demonstration Project (WVDP). However, the CTF specifically detailed numerous objections we had with earlier wording and provisions in the draft policy statements which would have: 1) delayed NRC's prescription of definitive decommissioning criteria until after the current West Valley Environmental Impact Statement (EIS) process was completed; 2) allowed residual high level waste (HLW) at the site to be classified as incidental waste; and 3) allowed the U.S. Department of Energy (DOE) to depart from the LTR standards if they simply developed a rationale indicating that a particular cleanup alternative was considered technically infeasible or prohibitively costly. We clearly urged the NRC to reject any such approach and we were guardedly optimistic that the final policy statement would incorporate our recommendations and fulfill the NRC's obligation to prescribe a definitive set of criteria for decommissioning at the West Valley site, per the WVDP Act.

Consequently, we are extremely disappointed that the final policy statement as published in the Federal Register on February 1, 2002, contains provisions which: 1) create a "two-step process" whereby NRC will allow DOE to select a preferred alternative following completion of the EIS, and then "...verify that the approach proposed by DOE is appropriate;" 2) establish new criteria for making incidental waste determinations which effectively allow DOE to re-classify much residual HLW and ultimately dispose of it on site; and 3) will allow exemptions from the LTR criteria (i.e., higher human exposure dose limits) should the DOE choose to select a particular clean-up alternative, due to cost considerations. It should be noted that this would be first time that federal HLW would be left on non-federal land.

In short, the CTF now believes that the Commission has failed to fulfill its mandate from Congress of prescribing decommissioning criteria for the WVDP. A "criterion" is defined as "...a standard, rule, or test by which something can be judged." The Policy Statement, as issued, provides for outright exemptions from the LTR and re-evaluation following completion of the EIS. It is even stated therein that "... for those portions of the site that are unable to demonstrate compliance with the LTR's restricted release requirements, the dose limits should be viewed as goals...". Goals are not criteria! The policy only purports to establish criteria. The unusual number of qualifying provisions serve to diminish the NRC's relevance in the EIS process and reduce the proposed LTR criteria to mere goals which may, or need not, be adhered to by DOE. In our public briefing comments dated December 22, 1998, we stated our resolute opposition to the NRC extending DOE this form of *de facto* authority in establishing the cleanup standards for the Project.



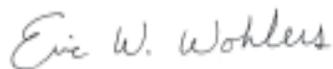
We question whether the WVDP Act authorizes the NRC to establish incidental waste determination criteria for the Project. We are increasingly concerned about revised DOE plans to accelerate decommissioning activities when the respective long-term responsibilities of the federal and state governments in the clean up and monitoring of the West Valley site have not yet been established. The CTF, therefore, necessarily opposes any actions which serve to facilitate premature withdrawal of DOE from the Project before all WVDP Act and National Environmental Policy Act (NEPA) obligations are fulfilled. Consequently, we request clarification of the Commission's authority for providing incidental waste determination criteria for West Valley, and documentation of any procedural or public participatory requirements which normally might apply to such an action.

In addition, we request formal definitions of "engineered barriers" and "institutional controls" (ICs) as they relate to the LTR and EIS analyses. As the NRC has previously acknowledged, the West Valley site presents unusual challenges should long-term ICs need to be relied upon as part of the preferred alternative for the site. The Commission indicates in the Policy Statement that it need not conduct an independent environmental review even though the generic EIS supporting the LTR requires that NRC "...conduct an independent environmental review for each site-specific decommissioning decision where land use restrictions or ICs are relied upon by the licensee...". Whether the NRC conducts an independent review or not, we believe it is crucial that formal guidance regarding ICs be issued because of: 1) the LTR dose criteria, should ICs fail; and 2) the presumptive failure of ICs in long-range EIS analyses (i.e. a few hundred years and beyond). Some views on this subject were presented in responses A.6 and B.6 in Section IV (Summary of Public Comments and Responses to Comments) of the Policy Statement, but definitive guidance is clearly necessary to ensure the proper evaluation of alternatives and completion of the EIS.

The CTF appreciates the effort put forth by the Commission and NRC staff over the past several years in developing this policy for West Valley. Unfortunately we cannot agree with the inordinate level of "flexibility" which has been built into the policy. The result is a document which neither ensures an adequate level of protection to local residents and the region, nor provides any definitive limitations on the range of clean-up alternatives which can still be considered by DOE. As the Policy Statement now reads, NRC will render no actual decision regarding any alternative until after the EIS has been completed. Again, we feel that this compromises NRC's integrity and express authority in providing impartial regulatory oversight of DOE activities, and fails to satisfy the Commission's legislated obligation for "prescribing" WVDP decommissioning criteria. Consequently the Final Policy Statement may be subject to a legal challenge, and certainly should be subject to Congressional scrutiny and possible rejection.

We expect the Commission to reconsider their position on this matter to include the consensus views of the community and local governmental interests, as represented by the CTF membership.

Respectfully submitted,



Eric Wohlers  
on behalf of the  
West Valley Citizen Task Force

cc: NRC Commissioner Greta Dicus  
NRC Commissioner Nils Diaz  
NRC Commissioner Edward McGaffigan  
NRC Commissioner Jeffrey Merrifield  
U.S. Senator Hillary Rodham Clinton  
U.S. Senator Charles Schumer  
U.S. Representative Amory Houghton  
U.S. Representative Thomas Reynolds  
U.S. Representative Jack Quinn  
U.S. Representative John LaFalce  
U.S. Representative Louise Slaughter  
NYS Senator Patricia McGee  
NYS Assemblyman Dan Burling  
NYS Assemblywoman Catharine Young  
DOE Secretary Spencer Abraham  
NYS Governor George Pataki  
NYSERDA President William Flynn  
Alice Williams (DOE)  
Paul Piciulo (NYSERDA)  
Larry Camper (NRC)  
Paul Giardina (U.S. Environmental Protection Agency)  
Paul Merges (NYS Department of Environmental Conservation)  
Gary Baker (NYS Department of Health)