

July 27, 2006

Chief, Rules Review and Directives Branch  
U.S. Nuclear Regulatory Commission  
Mail Stop T6-D59  
Washington, DC 20555-0001

ATTENTION: Anna Bradford

SUBJECT: NYSERDA Comments on *NUREG-1854, Standard Review Plan for Activities Related to U.S. Department of Energy Waste Determinations, Draft Report for Interim Use and Comment, May 2006*

The New York State Energy Research and Development Authority (NYSERDA) is submitting the attached comments on *NUREG-1854, Standard Review Plan for Activities Related to U.S. Department of Energy Waste Determinations, Draft Report for Interim Use and Comment, dated May 2006*.

NYSERDA believes that U.S. Nuclear Regulatory Commission (NRC) staff have done a commendable job in defining reasonable and technically sound Standard Review Plan (SRP) guidance. The SRP highlights, however, the glaring inconsistencies between the criteria for different sites. NYSERDA is particularly concerned that the criteria for West Valley are plainly less stringent than the criteria contained in the National Defense Authorization Act, without any apparent rationale. NYSERDA is planning to write to the Commission to request a revision of the West Valley Policy Statement to address this inconsistency.

Thank you for preparing such a high quality document and for providing the public with an opportunity to provide comments. If you have any questions regarding the enclosed comments, please contact Colleen Gerwitz of my staff at (716) 942-9960 ext. 4435.

Sincerely,

WEST VALLEY SITE MANAGEMENT PROGRAM



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Director

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CLG/amd

Attachment:

1. NYSERDA Comments on *NUREG-1854, Standard Review Plan for Activities Related to U.S. Department of Energy Waste Determinations, Draft Report for Interim Use and Comment, May 2006*

cc: P. R. Smith, NYSERDA-Albany (w/att.)  
D. E. Klein, Chairman, NRC (w/att.)  
E. McGaffigan, NRC (w/att.)  
J. S. Merrifield, NRC (w/att.)  
G. B. Jaczko, NRC (w/att.)  
P. B. Lyons, NRC (w/att.)  
L. A. Reyes, NRC (w/att.)  
L. W. Camper, NRC (w/att.)  
J. B. Davis, NRC (w/att.)  
CTF (w/att.)  
C. L. Gerwitz, NYSERDA-WVDP (w/att.)

**NYSERDA Comments on  
NUREG-1854, Standard Review Plan for Activities Related to  
U.S. Department of Energy Waste Determinations,  
Draft Report for Interim Use and Comment**

1. The New York State Energy Research and Development Authority (NYSERDA) has serious doubts about whether Waste Incidental to Reprocessing (WIR) criteria can be applied to reclassify residual high-level radioactive waste (HLRW) that may remain in tanks at West Valley. The West Valley Demonstration Project (WVDP) Act has a unique definition of HLRW, and West Valley differs from the U.S. Department of Energy (DOE) sites in South Carolina and Idaho where 3116 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (NDAA) applies in that West Valley is a state-owned site. Despite these concerns, NYSERDA has reviewed the Standard Review Plan (SRP) and submits the comments set forth below.
2. NYSERDA believes that the procedures and requirements set forth in the SRP should be uniformly applied to all sites where WIR determinations are permitted. Accordingly, NYSERDA submits that these requirements should be codified as regulations.
3. The U.S. Nuclear Regulatory Commission (NRC) should include information in the SRP regarding how DOE and NRC will comply with the National Environmental Policy Act (NEPA) at all sites where WIR determinations are made.
4. NYSERDA believes the West Valley site should be included in the SRP's discussion of monitoring. Section 2(c)(4) of the WVDP Act states:

“The Secretary shall afford the Commission access to the Center to enable the Commission to monitor the activities under the project for the purpose of assuring the public health and safety.”

In addition, NRC monitoring of DOE activities is included in the *West Valley Demonstration Project Memorandum of Understanding between the U.S. Department of Energy and the U.S. Nuclear Regulatory Commission*. NYSERDA contends that NRC monitoring of DOE's HLW tank disposal actions to assess and evaluate how they compare with the 10 CFR Part 61 performance objectives is a monitoring activity that falls within the WVDP Act description of monitoring to assure public health and safety. In the West Valley Policy Statement, the 10 CFR Part 61 performance objectives are described as “safety requirements.”

