



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

March 7, 2002

Erin M. Crotty, Commissioner
State of New York
Department of Environmental Conservation
Albany, NY 12233-1010

SUBJECT: RESPONSE TO CONCERNS ON DECOMMISSIONING OF THE WEST VALLEY FACILITY

Dear Commissioner Crotty:

On October 24, 2001, we responded to the New York State Department of Environmental Conservation (NYSDEC) letters of April 10, 2001, and May 14, 2001, concerning the West Valley Development Project (WVDP). In that response, we stated that issues raised in NYSDEC's letters could be more fully addressed after the Commission completes its action on the final policy statement. On February 1, 2002, the Commission's final policy statement providing decommissioning criteria for the WVDP at the West Valley site was published (67 FR 5003). I would like to take this opportunity to more fully address the issues raised in the earlier letters. Because the issues overlap, we have prepared a single response (Enclosure) which corresponds to the issues raised in your letters.

If you have any questions, please contact John Greeves, Director, Division of Waste Management, of my staff, at (301) 415-7437.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Virgilio".

Martin J. Virgilio, Director
Office of Nuclear Material Safety
and Safeguards

Enclosure: Response to NYSDEC Issues

cc: Alice Williams, DOE WVDP
Paul Piculo, NYSERDA
Paul Merges, NYSDEC

**THE U.S. NUCLEAR REGULATORY COMMISSION STAFF RESPONSE
TO ISSUES RAISED BY
THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

1. Multiple Threats to the Environment

The U.S. Nuclear Regulatory Commission (NRC) is in favor of a coordinated effort to determine how the different State and Federal agency criteria apply and when and what process or processes would be required to achieve compliance. Over the past year, we have worked cooperatively with New York State Department of Environmental Conservation (NYSDEC), New York State Department of Health (NYSDOH), and U.S. Environmental Protection Agency (EPA) Region 2 to ensure that the different regulatory needs at West Valley are taken into consideration. This effort has led to the development of a draft regulators communication plan for the decommissioning of the West Valley site. Upon completion, this plan will identify the respective roles and cleanup requirements/expectations from the perspective of the various regulatory agencies involved in the oversight of the West Valley site. NRC also expects the full range of site-specific issues and potential environmental threats related to decommissioning will be addressed in the U.S. Department of Energy (DOE)/ New York State Energy Research and Development Authority (NYSERDA) Environmental Impact Statement (EIS).

2. Demonstration Project vs. Licensed Facilities

NRC intends to apply the same decommissioning criteria to the NRC licensed portions of the Western New York Nuclear Service Center (WNYNSC) as are applied to the West Valley Development Project (WVDP). On February 1, 2002, the Commission published a final policy statement providing decommissioning criteria for the WVDP at the West Valley site. The policy states that "The criteria in the LTR will also apply to the termination of NYSERDA's NRC license on the West Valley site after that license is reactivated. For portions of the site covered by the WVDP Act, it is NRC's intent to authorize that any exemptions or alternate criteria authorized for DOE to meet the provisions of the WVDP Act will also apply to NYSERDA at the time of site license termination, if license termination is possible."

3. Mutually Agreeable Closure Criteria

Same response as 1 above. In addition, the Commission's final policy statement also states that "NRC does not have regulatory authority to apply the LTR criteria to the SDA [State-licensed Disposal Area] adjacent to the WVDP site boundary, because the SDA is regulated by the State of New York. However, NRC recognizes that a cooperative approach with the State to the extent practical should be utilized to apply the LTR criteria in a coordinated manner to the NRC-licensed site and the SDA."

4. NRC vs U.S. Environmental Protection Agency Criteria

We agree with the recommendation that our agencies continue the dialog with the EPA Region 2 radiation program to minimize the potential that the State would need to comply with mandates from the EPA after the completion of the Demonstration Project/license closure. As you know, the U.S. General Accounting Office (GAO) issued a report (GAO-01-314) on West

Valley that recommended that NRC and EPA, in coordination with New York State, agree on how their different regulatory cleanup criteria should apply to the site. We believe that these agencies are actively working to implement this recommendation. Since the GAO report was issued, two developments appear to reduce the potential that the State will receive additional cleanup mandates after the completion of the Demonstration Project/license closure. First, in a letter dated July 23, 2001, EPA Region 2 indicated that it believes that the 25 mrem/yr TEDE cleanup dose limit in NRC's LTR will be "protective at this site." Second, NRC, EPA and the State regulatory agencies are actively working to identify cleanup requirements and expectations early to minimize the potential for additional cleanup mandates after the completion of site decommissioning and license termination, if license termination is possible. We believe these developments constitute significant progress in this area and largely address your concern.

5. Regulatory Status of Non-Project/Non- State-licensed Disposal Area Property

We agree that the regulatory status of the non-Project property and non-State-licensed Disposal Area (SDA) property needs to be clarified. NRC has regulatory jurisdiction over 10 CFR Part 50 activities. NRC has not relinquished its authority to Agreement States for radioactive waste from reprocessing of spent reactor fuel. Releases from the facility not associated with WVDP Act activities are within NRC regulatory responsibility.

Thus, non-DOE activity in the non-Project area and non-SDA area where Part 50 contamination exists is within NRC jurisdiction. However, neither DOE nor NYSERDA has established an environmental monitoring program nor radiological protection program designed to differentiate between contamination caused by Part 50 activities and DOE activities. There is contamination in the non-Project area and non-SDA area, which is known to be a result of Part 50 activities -- namely, the cesium-137 (Cs) prong soil contamination and surface seeping of the strontium-90 groundwater plume.

It is our understanding that DOE is taking action to ensure protection of the health and safety of the public, environment, and workers for the 200-acre area and any work it does in the non-Project area and non-SDA area. Furthermore, DOE informed NRC that DOE's environmental monitoring program at West Valley covers the entire 3300 acres. DOE considers the 3300-acre WNYNSC boundary as the offsite boundary for its environmental monitoring program. NRC is not aware of any threat to health and safety, in the non-Project area and non-SDA area, from residual contamination or effluent releases from Part 50 activities. NYSERDA/DOE is controlling access of the non-Project/non-SDA property in a way similar to that which would be required under an NRC license. Since there is no health and safety threat in this area, the NRC does not need to take formal regulatory action to further clarify responsibility under the 1981 license amendment resulting from the WVDP Act.

NRC holds the same position for contamination caused by 10 CFR Part 50 activities beyond the 3300 acres. Releases from the facility not associated with WVDP Act activities are within NRC regulatory responsibility. NRC is aware of the Cs prong attributed to Part 50 activity. Under its own initiative, NYSDEC established a monitoring program and cleanup guidance for soil contaminated with radioactive materials. NYSDEC's guidance is more restrictive than NRC's requirements. Based on information at hand: Atomic Energy Commission reports documenting 1968 releases of airborne radiation; the July 1972 NYSDEC Annual Report; several aerial

radiation surveys conducted between the '60s and '80s; the West Valley Nuclear Services Company's 1982 ground-level characterization of the off-site Cs prong; site annual environmental monitoring reports; and NYSERDA's 1995 radiation investigation on private properties near the WNYNS Center, NRC concluded, throughout the years, that contamination levels do not pose any imminent health risks to the general public. Therefore, no further action on NRC's part on this matter is necessary, at this time.

6. NYSDEC/NRC Cooperation Agreement

We agree that we need to continue to work together to address important regulatory issues. Given that we have not been able to develop a Cooperation Agreement with your agency, you have suggested that we both should consider other mechanisms to address important regulatory issues. We agree with this suggestion. We believe that the ongoing dialog with NYSDEC and other regulatory agencies on a regulators communication plan is presently serving as a mechanism for addressing important regulatory issues. We will continue to identify and utilize other mechanisms to address important regulatory issues.

Regarding the exchange of EIS information between NRC and NYSDEC, we are encouraged to hear that DOE has decided to copy NYSDEC on all EIS documentation sent to NRC. Because the EIS is a basic document for the evaluation of hazards and risks at West Valley, and because NYSDEC is a regulator at the site and has environmental responsibilities, it would be in the public's interest to have NYSDEC actively involved in the EIS process. In addition, the EIS process should develop a better understanding of the contamination at the site and should be helpful in determining how the various criteria should be applied at the site. In that regard, we have continued to encourage DOE to invite NYSDEC to be a participant in the decommissioning EIS process. We understand that NYSDEC is considering whether or not to become a Cooperating Agency for the DOE/NYSERDA Decommissioning EIS. In the NRC's view, the role of cooperating agency can also serve as an important mechanism for addressing regulatory issues.