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January 20, 2000

Mr. Jack D. Parrott, Project Scientist
Office of Nuclear Material Safety and Safeguards
Mail Stop T-8F37
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Parrott:

The Seneca Nation of Indians has reviewed the draft policy statement for applying the License Termination Rule as the decommissioning criteria for the West Valley Demonstration Project (WVDP). We respectfully submit the following comments for your review.

Decommissioning Criteria for the WVDP

In some instances the policy statement paraphrases the License Termination Rule (LTR). For clarity and consistency and where practicable, the wording should be identical with the LTR. For example, on page 2, "plus ALARA considerations" is not as clear as the wording in the LTR.

We were not aware that 100 mrem per year is a general criteria. Section 20.1403 says that if "institutional controls were no longer in effect, there is reasonable assurance that the TEDE from residual radioactivity distinguishable from background to the average member of the critical group is as low as reasonable achievable and would not exceed either 100 mrem per year or 500 mrem per year..." Please explain what is meant by general criteria or delete the word "general" from the policy.

We think that the NRC's policy on applying the LTR should first and foremost be to require the 25 mrem per year criteria for unrestricted use plus "as low as reasonably achievable" (10 CFR Section 20.1402), as this is the most protective and restorative criteria in the LTR. We are opposed to the use of institutional controls and site restrictions as a way of limiting dose. We commented extensively on our position regarding long-term institutional controls in our letter to the NRC Commissioners dated January 11, 1999 and in our formal statement to the NRC on January 5, 2000.

The last sentence of this section is confusing because it states that DOE identifies the cleanup criteria. The second step of the policy should be to verify that DOE and NYSERDA's preferred alternative meets the NRC's LTR requirements.

Decommissioning Criteria for the NDA and SDA.

The policy should state that although the SDA is not under NRC jurisdiction this facility contributes to the total site dose and must be considered in the LTR decommissioning criteria.

Policy Implications

The draft policy should be reexamined for any implications in relation to NRC policy or guidelines regarding Native Americans. How does this policy reflect the NRC's federal trust responsibility to ensure that tribal treaty and other federally reserved rights and concerns are protected? What are the implications of this policy in relation to DOE's revised American Indian Policy?

In conclusion, since this statement will set NRC's method of action to guide and determine future decisions regarding the West Valley site, we think the policy statement should be written so that it is subject to as little interpretation as possible. We think the NRC's policy should always be to require the clean up level that most restores and protects the environment.

Sincerely,



Duane James Ray, President
SENECA NATION OF INDIANS

CC: Environmental Protection Department
Lana Redeye
File

COMMENTS ON THE DRAFT POLICY STATEMENT ON THE DECOMMISSIONING CRITERIA FOR THE WEST VALLEY DEMONSTRATION PROJECT AND WEST VALLEY SITE

Coalition on West Valley Nuclear Wastes
10734 Sharp Street, East Concord, NY 14055
January 28, 2000

Please accept and consider the following comments on the proposed use of the License Termination Rule (LTR) for the West Valley Demonstration Project and West Valley site..

1) Overall goals. For reasons of climate and geology West Valley is not a suitable place for long term storage or disposal of large activities of radioactive wastes. All contamination should be retrieved, packaged and eventually removed to a more suitable place. Exhumation of the burial grounds is technically possible (as outlined in the DOE Draft Environmental Impact Study) and exposures to the workers need not be excessive. Some say that it would cost too much to exhume the burial grounds. We argue that the cost of maintaining waste isolation at the site for a long period would be greater.

We recognize that, as a practical matter, some material will remain on site for the short term. We are prepared to accept this fact but only with the strongest possible assurance of continued monitoring and maintenance until it is removed. An NRC license and oversight may provide safeguards to the protection of public and environmental health and safety until the closure is completed.

2) Adoption of the License Termination Rule We recommend that the Proposed License Termination Rule be adopted as the decommissioning criteria for the West Valley site, provided that the time frame for analysis of future impacts be increased to 10,000 years.

3) Time frame for analysis of impacts. NEPA requires identification and analysis of all impacts that can reasonably be attributed to a proposed action. It has been clearly shown that significant impacts from the West Valley site will extend beyond 1,000 years. The NRC cannot escape the NEPA requirement to consider all impacts, and the NEPA process done for the LTR did not consider the longer time frames necessary for difficult sites like West Valley.

4) General agreement on need for a longer time frame. At meetings with NYSERDA, DOE, and SAIC (the DEIS document preparer) the Coalition requested that a 10,000 year time frame be used for assessing impacts in the DEIS analysis (comment #1 by James Rauch in his 9-22-96 comments on the DEIS and comment #96 by Raymond Vaughan.) In recent years it has generally been agreed by government agencies, such as DOE, NRC, NYSERDA, and NYSDEC that a longer time frame for impact assessment is necessary at West Valley.

5) Definition of "site". The definition of residual radioactivity in 10 CFR 20.1003 contains the word "site" and refers, for example, to "radioactive materials remaining at the site" and "previous burials at the site." The NRC Policy Statement should clearly indicate that the word "site" in this context means the entire Western New York Nuclear

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Service Center, including the NDA and SDA as well as the West Valley Demonstration Project.

6) **Rationale for definition of "site."** The NDA, SDA, and West Valley Demonstration Project must all be regarded as part of the same "site" in the context of 10 CFR 20.1003 to avoid undue impact on public health and safety and the environment. This conclusion is indicated by the values of the dose criterion and the "cap" as adopted in the LTR. For the dose criterion, NRC decided that 25 mrem/year would be an acceptable fraction of the 100 mrem/year dose limit, based primarily on the idea that "it is difficult to envision an individual receiving levels approaching constraint levels from more than one licensed or decommissioned source" (see 62 FR 39063). Treating the NDA, SDA, and West Valley Demonstration Project as separate "sites" would create this scenario which is considered "difficult to envision." In adopting the "cap" value of 100 mrem/year in the LTR, 10 CFR 20.1403e, NRC decided not to fractionate the 100 mrem/year public dose limit. Part of the reason for finding that a lower "cap" value was not warranted was the idea that "It appears arbitrary to assume that the same person would be an average member of the critical group both near a facility where there was a failure of controls and near another decommissioned facility" (see 62 FR 39070). Again, the NDA, SDA, and West Valley Demonstration Project must be defined as part of the same "site" to avoid multiple exposures. Any failure of institutional controls would presumably be simultaneous for the NDA, SDA, and West Valley Demonstration Project.

7) **Institutional Controls.** We are opposed to reliance on long term institutional control as a management tool at West Valley.

a. Institutional controls will be needed at West Valley for number of years as the site is decommissioned. However, to rely on them indefinitely would be unreasonably expensive because of the complex requirements of the site, including its severe erosion problems. Probable inflation and increased volume of contaminated material would contribute to the long term cost.

b. Institutional controls will rely on future funding and future political will, both of which are undependable for the West Valley site. A rural site is not likely to receive the constant supervision required. The "responsible government entity" or "independent third party" to check to see that institutional controls are still in place may have more urgent priorities than West Valley even if we could assume they would remember it. Yet the very fact of the general area being rural makes it attractive for recreation, vacation, and suburban housing. Equally importantly creeks draining the site flow into drinking water sources for Buffalo, Erie County and many other municipalities.

c. The term 'institutional controls' is not defined. We would appreciate an opportunity to meet with the NRC staff to discuss what the term means.

8) **Erosion.** The proposed policy should specifically state that the expected peak doses (under which a site could be released with institutional control) will be based, among other things, on correct erosion modeling. Even though the expected peak dose of the first 1000 years was under 500 mrem, in the 1100th year the trenches (for instance) could be breached by erosion. The 1996 draft EIS on closure of the site

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(Appendix D-38, Table D-13) predicts that the year of maximum impact from several facilities is beyond 1,000 years if institutional control is lost.

9) **Reclassification of HLW.** Residual waste in the high level waste tanks should not be reclassified as incidental waste under any circumstances. Existing requirements would be gutted by changing waste categories in mid stream. NRC must resist pressure from DOE to do this.

10) **Alternate criteria.** The alternate criteria in sec.20.1404 should not be allowed for West Valley. The 1996 DEIS clearly shows that a dose criterion well below 25 mrem/year can be achieved at West Valley. Replacing the 25 mrem limit in either sec. 20.1402 or 1403 with 100 mrem, even if conditions are imposed, would be clearly inappropriate at West Valley given the nature and complexity of the site. Their application would not be protective of human health and the environment.

11) **Alternate criteria and the "cap" requirement.** The NRC Policy Statement should indicate clearly that the "cap" requirement remains in effect in the event that alternate criteria (10 CFR 20.1404) are used for decommissioning. See our letter of December 17, 1999 to Chairman Dicus and our comments of December 14, 1999 on the SRP 16.0 Draft Module, NMSS Decommissioning Program.

12) **The two step process.** The proposed policy is described in the Federal Register notice as being a two step process. The second step should read " following the completion of DOE/NYSERDA's EIS and selection of its preferred alternative, the NRC will verify that the preferred alternative identified by DOE will meet the LTR. (changing two words and deleting "and will prescribe the use of this specific criteria for the WVDP.") The current wording implies that the acceptable criteria may be adjusted to accommodate whatever alternative DOE selects.

13) **Irreversibility.** We are concerned that an option will be chosen which can't be reversed. The motive for this choice would be cost or apparent low dose to workers, but such benefits would be short-lived compared to potential long term harm to health and the environment. Such an option could fail in several ways and then it would be too late for remedy.

14) **Retrievability.** As decommissioning is carried out facilities which were designed to be retrievable should not remain unretrieved; otherwise this constitutes the creation of a disposal facility. We have grave doubts that institutional controls could be relied on to retrieve them at some future time.

15) **Risk to Future Generations.** In the draft policy, to qualify for license termination the site managers must reduce doses to ALARA and then demonstrate that any further reduction would result in net public or environmental harm. They must show that further cleaning would cause more deaths or environmental damage than it would avoid. If the choice is between harm to the current generation or future generations we should take

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the risk. It is our mess. The same thing goes for cost; it should not be deferred for coming generations to deal with.

16) **Mixed Waste.** We want to be sure that no mixed waste is left on site indefinitely. Counting only the rems. when you decide what can be left, misses some of the hazard. Also, it would be a mistake to discount the synergism factor.

17) **Estimation of cumulative, collective dose.** The determination of what is a "reasonable" cost to satisfy the ALARA provisions of section 20.1402 and 1403 or a "prohibitive cost in section 20.1403e requires the estimation of cumulative collective dose. For example, in NRC Regulatory Guide DG-4006, NRC has set the level of prohibitive cost at \$20,000 per person-rem avoided. The validity of this type of cost-benefit measurement is dependent upon best estimates of cumulative, collective doses to all potentially affected populations.