North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 28th day of January 2002.

For the Nuclear Regulatory Commission.

Christopher Gratton,

Sr. Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–2498 Filed 1–31–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–327–OLA, 50–328–OLA, & 50–390–OLA; ASLBP No. 02–796–01–OLA]

Tennessee Valley Authority; Sequoyah Nuclear Plant, Units 1 & 2; Watts Bar Nuclear Plant, Unit 1; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717, 2.721, and 2.772(j) of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding:

Tennessee Valley Authority, Sequoyah Nuclear Plant, Units 1 & 2, Watts Bar Nuclear Plant, Unit 1.

This Board is being established pursuant to two notices of consideration of issuance of operating license amendment, proposed no significant hazards consideration determination, and opportunity for a hearing published in the **Federal Register** (66 FR 65,000 and 65,005 (Dec. 17, 2001)). The proceeding involves petitions for intervention submitted January 16, 2002, by We the People, Inc., Tennessee, (WPIT) and the Blue Ridge Environmental Defense League (BREDL), respectively, challenging requests by the Tennessee Valley Authority (TVA) to amend the operating licenses for the Sequoyah Nuclear Plant, Units 1 and 2, and the Watts Bar Nuclear Plant, Unit 1.[1] The amendments would change facility technical specifications to allow the plants to provide incore irradiation services for the United States Department of Energy for the production of tritium for national defense purposes.

The Board is comprised of the following administrative judges:

Thomas S. Moore, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Dr. Peter S. Lam, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Dr. Thomas S. Elleman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

All correspondence, documents, and other materials shall be filed with the administrative judges in accordance with 10 CFR 2.701.

Issued at Rockville, Maryland, this 28th day of January 2002.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 02–2500 Filed 1–31–02; 8:45 am]

BILLING CODE 7590–01–P

[1] Although the TVA license amendment requests that are the subject of the WPIT and BREDL hearing requests that triggered this Licensing Board constitution notice were submitted separately, involve different facilities, and were the subject of separate hearing opportunity notices, both amendments are challenged by each of the petitioners. Under the circumstances, one Licensing Board is being established to consider both contested TVA applications in a consolidated proceeding. Any objection to this consolidation by any of the participants to the proceeding should be raised with the Licensing Board promptly.

NUCLEAR REGULATORY COMMISSION

Decommissioning Criteria for the West Valley Demonstration Project (M–32) at the West Valley Site; Final Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Final policy statement.

SUMMARY: On December 3, 1999 (64 FR 67952), the Commission issued, for public comment, a draft policy statement that would approve the application of the U.S. Nuclear Regulatory Commission's (NRC's) License Termination Rule (LTR), as the decommissioning criteria for the West Valley Demonstration Project (WVDP) at the West Valley site. It also held a public meeting, on January 5, 2000, to solicit public comment on the draft. This final policy statement was developed after considering public comments on the draft, and continues to apply the LTR as the criteria for the WVDP at the West Valley site.

EFFECTIVE DATE: February 1, 2002.

FOR FURTHER INFORMATION, CONTACT: Chad Glenn, Office of Nuclear Material Safety and Safeguards, Mail Stop T–8F37, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

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B. Comments on LTR guidance
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E. Comments on jurisdictional aspects of prescribing the decommissioning criteria
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H. Comments on the wording of the draft policy statement
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V. Final Policy Statement

I. Introduction

This final policy statement is being issued under the authority of the WVDP Act, to prescribe decommissioning criteria for the WVDP.

II. Background (Draft Policy Statement)

From 1966 to 1972, under an Atomic Energy Commission (AEC) license, Nuclear Fuel Services (NFS) reprocessed 640 metric tons of spent fuel at its West Valley, New York, facility—the only commercial spent fuel reprocessing plant in the U.S. The facility shut down, in 1972, for modifications to increase its seismic stability and to expand its capacity. In 1976, without restarting the operation, NFS withdrew from the reprocessing business and returned control of the facilities to the site owner, the New York State Energy Research and Development Authority (NYSERDA). The reprocessing activities resulted in about 2.3 million liters (600,000 gallons) of liquid high-level waste (HLW) stored below ground in tanks, other radioactive wastes, and residual radioactive contamination.

The West Valley site was licensed by AEC, and then NRC, until 1981, when the license was suspended to execute

the 1980 WVDP Act, Pub. L. 96–368.[1] The WVDP Act authorized the U.S. Department of Energy (DOE), in cooperation with NYSERDA, the owner of the site and the holder of the suspended NRC license, to: (1) Carry out a liquid-HLW management demonstration project; (2) solidify, transport, and dispose of the HLW that exists at the site; (3) dispose of low-level waste (LLW) and transuranic waste produced by the WVDP, in accordance with applicable licensing requirements; and (4) decontaminate and decommission facilities used for the WVDP, in accordance with requirements prescribed by NRC. NYSERDA is responsible for all site facilities and areas outside the scope of the WVDP Act. Although NRC suspended the license covering the site until completion of the WVDP, NRC has certain authorities, under the WVDP Act, that include prescribing decommissioning criteria for the tanks and other facilities in which the HLW solidified under the project was stored, the facilities used in the solidification of the waste, and any material and hardware used in connection with the WVDP. It should also be noted that DOE is not an NRC licensee and DOE's decommissioning activities for the WVDP at the West Valley site are conducted under the WVDP Act and not the Atomic Energy Act (AEA).

The WVDP is currently removing HLW from underground tanks at the site, vitrifying it, and storing it onsite for eventual offsite disposal in a Federal repository. The vitrification operations are nearing completion. In addition to the vitrified HLW, the WVDP operations have also produced LLW and transuranic waste which, under the Act, must be disposed of in accordance with applicable licensing requirements. Besides the HLW at the site, the spent fuel reprocessing and waste disposal operations resulted in a full range of buried radioactive wastes and structural and environmental contamination at the site.

In 1989, DOE and NYSERDA began to develop a joint Environmental Impact Statement (EIS) for project completion and site closure, and to evaluate waste disposal and decommissioning alternatives. Because the WVDP Act authorizes NRC to prescribe decommissioning criteria for the project, NRC and DOE agreed on NRC's participation as a cooperating agency on the EIS, with DOE and NYSERDA, to aid NRC in its decision on decommissioning criteria. The draft EIS was published in 1996. Subsequently, DOE decided to descope this EIS into two separate EISs to address: (1) Near-term decontamination and waste management at the WVDP; and (2) decommissioning, long-term monitoring, and stewardship of the site.[2] The NRC will not be a Cooperating Agency on the decontamination and waste management EIS because the Commission is not prescribing criteria for decontamination activities considered in this EIS. The NRC will be a Cooperating Agency on the EIS for decommissioning under the WVDP Act. The WVDP Act does not address license termination of the NRC license for the site, or portions thereof. Any such license termination will be conducted (if license termination is possible and pursued) under the Atomic Energy Act (AEA) of 1954, as amended. If NYSERDA pursues either full or partial license termination of the NRC license, NRC will need to conduct an environmental review to determine if an EIS is necessary to support license termination.

After public review of the draft EIS, the WVDP convened the West Valley Citizen Task Force (CTF), in early 1997, to obtain stakeholder input on the EIS. The CTF recommendations for the preferred alternative in the EIS were completed in July 1998. In the latter half of 1997 (during the period that the CTF was working on its recommendations), NRC's LTR was published (62 FR 39058; July 21, 1997).

The Commission published a draft policy statement on decommissioning criteria for the WVDP at the West Valley site, for public comment, and a notice of a public meeting in the **Federal Register** on December 3, 1999 (64 FR 67952).[3] The public meeting, to solicit public comment on the draft, was held on January 5, 2000. As a result of that meeting, the Commission extended the comment period to April 1, 2000. This final policy statement was developed after considering the public comments on the draft. This final policy statement recognizes that a flexible approach to decommissioning is needed both to ensure that public health and safety and the environment are protected and to define a practical resolution to the challenges that are presented by the site. In that regard, the Commission has decided to prescribe the LTR criteria for the WVDP at the West Valley site, reflecting the fact that the applicable decommissioning goal for the entire NRC-licensed site is compliance with the requirements of the LTR. However, the Commission recognizes that health and safety and cost-benefit considerations may justify the evaluation of alternatives that do not fully comply with the LTR criteria. For example, the Commission would consider an exemption allowing higher limits for doses on a failure of institutional control if it can be rigorously demonstrated that protection of the public health and safety for future generations could be reasonably assured through more robust engineered barriers and/or increased long-term monitoring and maintenance. The Commission is prepared to provide flexibility to assure cleanup to the maximum extent technically and economically feasible.

It should be noted that the subpart E of 10 CFR part 20 (LTR) does contain provisions for alternate criteria and subpart N of 10 CFR part 20 contains provisions for potential exemptions,[4] with both alternatives based on a site-specific analysis which demonstrates that public health and safety will be adequately protected with reasonable assurance. If the NRC license cannot be terminated in a manner which provides reasonable assurance of adequate protection of the public health and safety, then the appropriate Commission action may be to require a long term or even a perpetual license for an appropriate portion of the site until, if and when possible, an acceptable alternative is developed to permit actual license termination.[5]

[1] The State of New York licenses a low-level waste disposal area at the West Valley site. Unless otherwise indicated, the terms "West Valley site" or "site" used in this Policy Statement refers to the NRC-licensed portions of the site.

[2] 66 FR 16447 (March 26, 2001).

[3] Before issuing the draft policy statement for comment, the NRC staff proposed decommissioning criteria for West Valley to the Commission in a Commission Paper entitled "Decommissioning Criteria for West Valley," dated October 30, 1998 (SECY–98–251). On January 12, 1999, the Commission held a public meeting, on SECY–98–251, to obtain input from interested parties. Based on the results from this meeting, the Commission issued a Staff Requirements Memorandum (SRM), on January 26, 1999, requesting additional information on the staff's proposed decommissioning criteria for West Valley. In response to the January 26, 1999, SRM, the staff provided SECY–99–057, to the Commission, entitled "Supplement to SECY–98–251, 'Decommissioning Criteria for West Valley.'" Based on the contents of SECY–98–251, SECY–99–057, and written and oral comments from interested parties, the Commission issued an SRM on June 3, 1999, detailing its decisions on the decommissioning criteria for West Valley.

[4] Exemptions to NRC regulations can be issued to NRC licensees if the Commission determines that the exemption is authorized by law and would not result in undue hazard to life or property. NYSERDA is the licensee for the West Valley site and DOE is acting as a surrogate for NYSERDA until the NYSERDA license is reinstated at the end of the WVDP.

[5] If a long term or perpetual license is necessary for any portion of the site, it is the Commission's intent that that portion of the site will be decontaminated in the interim to the extent technically and/or economically feasible. In

Based on the public comments received, the Commission has revisited the issue of "incidental waste" at West Valley. The Commission has decided to issue incidental waste criteria to clarify the status of and classify any residual wastes present after cleaning of the high-level radioactive waste (HLW) tanks at West Valley. Previously, the NRC has provided advice to DOE concerning DOE's classification of certain waste as incidental waste for clean-up of HLW storage tanks at both Hanford and Savannah River. As noted above, NRC intends to apply the LTR decommissioning criteria as the decommissioning goal for the entire NRC-licensed portion of the site. The Commission has decided that the most recent advice provided to DOE for the classification of incidental waste at Savannah River, with some additional modifications, provides the appropriate criteria which should be applied to West Valley. Specifically, the Commission is now providing the following criteria for classification of the incidental waste (which will not be deemed to be HLW) at West Valley:

(1) The waste should be processed (or should be further processed) to remove key radionuclides to the maximum extent that is technically and economically practical; and

(2) The waste should be managed, so that safety requirements comparable[6] to the performance objectives in 10 CFR part 61 subpart C, are satisfied.

Consistent with the overall approach in applying the LTR to the WVDP and to the entire NRC-licensed site following conclusion of the WVDP, the resulting calculated dose from the incidental waste is to be integrated with all the other calculated doses from the residual radioactive material at the NRC-licensed site to ensure that the LTR criteria are met. This is appropriate because the Commission does not intend to establish separate dose standards for various sections of the NRC-licensed site.[7]

III. Overview of Public Comments

Twenty-eight organizations and individuals submitted written comments on the draft policy statement. Comments also were provided at the public meeting held on January 5, 2000. The commenters represented a variety of interests. Comments were received from Federal and State agencies, citizen and environmental groups, a native American organization, and individuals. The commenters offered over 200 specific comments and represented a diversity of views. The commenters addressed a wide range of issues concerning the decommissioning and closure of the WVDP and West Valley site. The reaction to the draft policy statement was generally supportive. However, viewpoints were expressed on the LTR and LTR guidance and how both should be applied at West Valley. In addition, there were comments on NRC's process for prescribing the decommissioning criteria and other issues specific to West Valley.

IV. Summary of Public Comments and Responses to Comments

The following sections A through I represent major subject areas and describe the principal public comments received on the draft policy statement (organized according to the major subject areas) and present NRC responses to those comments.

(A) Comments on the LTR (restricted release; institutional controls; as low as reasonably achievable (ALARA); financial assurance; alternate criteria; time line for dose calculations);

(B) Comments on LTR guidance (critical group, engineered barriers, cost/benefit analysis);

(C) Comments on implementing the LTR (continued Federal or State onsite presence, perpetual license);

(D) Comments on NRC's process for prescribing the decommissioning criteria (when to prescribe the criteria; use of the LTR "Generic Environmental Impact Statement" (GEIS) to support the use of the LTR at West Valley; NRC's National Environmental Policy Act (NEPA) obligation for prescribing the West Valley decommissioning criteria);

(E) Comments on jurisdictional aspects of prescribing the decommissioning criteria;

(F) Comments on the use of incidental waste criteria at West Valley;

(G) Comments related to how the site should be decommissioned (waste disposition, consideration of pathways for dose, and contaminant transport);

(H) Comments on the wording of the draft policy statement (use of the word "prescribe," paraphrasing the LTR and other statements on West Valley); and,

(I) Other comments (implications of the policy statement regarding native Americans, transuranic waste issue).

The comments received from the public in writing during the comment period and verbally during the January 5, 2000, public meeting have been factored into the Commission's decision-making on this final policy statement.

A. Comments on the LTR

The draft policy statement presented NRC's LTR as the decommissioning criteria for the WVDP and the West Valley site. Although there was general support for the use of the LTR as the decommissioning criteria for both the WVDP and West Valley site, there were a number of comments on the LTR. Specifically:

A.1 Comment. A number of commenters were concerned that the use of the LTR's restricted release concept, which includes the use of institutional controls, to decommission West Valley may not be appropriate because of the magnitude of the waste currently on-site and the potential for this waste to provide an unacceptable dose to members of the public if controls fail.

A. 2 Response. The LTR criteria consider doses to members of the public from the loss of institutional controls. The loss of institutional controls will need to be considered in the DOE/NYSERDA EIS.[8] Absent an exemption from the LTR provision in 10 CFR part 20, a site, or part thereof, that cannot meet the restricted release provisions of the LTR, must remain under an NRC license. The Commission will consider

addition, if a long-term or perpetual license is determined to be appropriate, the NRC takes no position on which entity should be the long-term licensee as that decision, as well as decisions regarding long term financial contributions, should be made pursuant to negotiations involving DOE, New York, and possibly the U.S. Congress. Also, under the WVDP Act, the NRC is only addressing the public health and safety aspects of decommissioning selected portions of the site. Other potential issues between DOE and NYSERDA concerning the West Valley Site are not within NRC's authority to resolve.

[6] The dose methodology used in 10 CFR part 61 subpart C is different from that used in the newer 10 CFR part 20 subpart E. However, the resulting allowable doses are comparable and NRC expects DOE to use the newer methodology in 10 CFR part 20 subpart E. Part 61 is based on International Commission on Radiological Protection Publication 2 (ICRP 2) and part 20 is based on ICRP 26.

[7] Applying the LTR, the total annual dose to an average member of the critical group for the site, including the resulting does from the incidental waste, should be less than or equal to 25 mrem/yr TEDE. The Commission is not establishing a separate dose standard for the incidental waste such that the average member of the critical group potentially receive a dose of 25 mrem/yr TEDE from the rest of the NRC-licensed site and 25 mrem/yr TEDE from the incidental waste.

[8] DOE has decided to descope the draft 1996 EIS into two separate EISs. DOE will be the lead agency on the EIS that will address WVDP facility decontamination and management of waste currently stored at the site. NRC expects to be kept informed of progress as required under the DOE/NRC Memorandum of Understanding (MOU). DOE and NYSERDA will be the lead agencies on the EIS that will address decommissioning. NRC expects to participate as an EIS cooperating agency. Hereafter, this second EIS where NRC will be a cooperating agency will either be referred to as the decommissioning EIS or the DOE/NYSERDA EIS, unless otherwise noted.

granting an exemption to the LTR criteria if it determines the exemption is authorized by law and would not result in undue hazard to life or property. The Commission intends to involve the public in the processing of any exemption request consistent with the "public participation" provision in 10 CFR 20.1405, and will involve the Environmental Protection Agency (EPA) if the exemption request involves criteria greater than the dose criteria of 10 CFR 20.1402, 20.1403(b), or 20.1403(d)(1)(i)(A). Such an exemption request will also require the approval of the Commission consistent with 10 CFR 20.1404(b).

A. 3 Comment. Some commenters also were concerned about the adequacy of the LTR's financial assurance requirements for maintaining institutional controls for restricted release at West Valley, especially if the financial assurance relies on future Government appropriations that are not guaranteed.

A. 4 Response. In general, it is assumed that when a Government agency certifies that it will seek appropriations, to maintain institutional controls for the purposes of protecting public health and safety, the appropriations will be authorized. The Commission believes that it is reasonable to expect Federal and State agencies to meet their commitments to obtain funding for institutional controls to provide for the protection of the public health and safety.

A. 5 Comment. A number of commenters were also concerned that the time line specified for dose calculations in the LTR (1000 years) is too short for difficult sites like West Valley.

A. 6 Response. In the development of the LTR, the Commission considered comments seeking a time period for dose analysis longer than 1000 years. Section F.7 in the LTR "Statement of Considerations," 62 FR 39058 (July 21, 1997). The Commission concluded that for the types of facilities and source terms considered, it was reasonable to use a 1000-year period. However, the West Valley site presents some unique challenges in that significant quantities of mobile, long-lived radionuclides are present on site. Because under NEPA an evaluation of reasonably foreseeable impacts is required, the Commission believes that an analysis of impacts beyond 1000 years should be provided in the DOE/NYSERDA EIS. Thus, information will need to be evaluated to determine if peak doses might occur after 1000 years and to define dose consequences and impacts on potential long-term management of residual radioactivity at the site. Depending upon the outcome of the EIS review, the Commission may need to consider the need for environmental mitigation.

A. 7 Comment. Some commenters were concerned about the possible application of alternate criteria, as allowed under the LTR, to West Valley, or that the policy statement should at least clearly identify the dose limit cap under alternate criteria.

A. 8 Response. In addition to the unrestricted release limit of 25 mrem/yr TEDE, the LTR also contains alternate criteria for restricted release, which allows for a dose limit of up to 100 mrem/yr TEDE, with restrictions in place, and caps the public dose limit at 100 or 500 mrem/yr TEDE if the restrictions fail. Applying alternate criteria to a specific site requires opportunities for public involvement, coordination with the EPA, and direct approval of the Commission. The alternate criteria in the LTR were developed for difficult sites to minimize the need to consider exemptions to the LTR, although exemptions also may be considered. Under appropriate circumstances and based on a site-specific analysis, the Commission considers the application of alternate criteria protective of public health and safety. Absent a detailed site-specific analysis, it is premature for the Commission to make any judgments, at this time, on the acceptability or non-acceptability of applying alternate criteria or exemptions to the WVDP or any portion of the NRC-licensed site. In any event, neither the alternate criteria in the LTR nor exemptions will be approved by the Commission without full prior public participation, involvement of the EPA, and a Commission determination that there is reasonable assurance that there would not be undue hazard to life and property.

A. 9 Comment. There were also comments about the use of the ALARA process in the LTR at West Valley. Some believed that the ALARA process might be used to justify dose limits higher than those allowed by the LTR.

A. 10 Response. As stated previously, the LTR does allow for releases with different dose limits. Generally, ALARA is used to reduce doses below authorized limits. Under the LTR, the ALARA process is not used to permit doses above the 25 mrem/yr TEDE limit without restrictions, the 100 mrem/yr TEDE limit with restrictions, or the 500 mrem/yr TEDE cap if restrictions fail.

B. Comments on LTR guidance

A variety of comments were received on NRC's LTR guidance as it relates to West Valley. Since the time that NRC's LTR became final in 1997, the NRC staff has been developing guidance to support it. In September 2000, the NRC released guidance for decommissioning, in the form of a standard review plan (SRP) ("NMSS Decommissioning Standard Review Plan," NUREG–1727).

B. 1 Comment. A number of commenters expressed concern with how the critical group would be defined for dose assessment purposes.

B. 2 Response. For the LTR, the critical group means the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances (10 CFR 20.1003). The "Statement of Considerations" for the LTR notes that the critical group would be the group of individuals reasonably expected to be the most highly exposed, considering all reasonable potential future uses of the site, based on prudently conservative exposure assumptions and parameter values within modeling calculations. NRC's SRP for decommissioning addresses two generic critical group scenarios—the "resident farmer" and the "building occupancy" scenarios. The SRP also presents approaches for establishing site-specific critical groups based on specific land use, site restrictions, and/or site-specific physical conditions. DOE/NYSERDA derivation of the critical groups for West Valley will need to be addressed in the EIS documents. In addition to NRC review and comment, the EIS documents will be available for public review and comment.

B. 3 Comment. There were also several comments relating concerns that long-term stewardship costs and impacts on special populations will not be properly factored into the cost/benefit analysis, or that there should be better guidance provided on what should be considered in the cost/benefit analysis.

B. 4 Response. DOE and NYSERDA will determine the extent to which these issues are covered in the DOE/NYSERDA EIS. In addition, NRC will review and comment on any cost/benefit analysis in the EIS. The cost/benefit analysis that DOE/NYSERDA develop for West Valley will need to be part of the EIS documents available for public review and comment.

B. 5 Comment. Some commenters suggested that there should be criteria for what are allowable engineered

barriers and whether or not they are considered institutional controls.

B. 6 Response. Because of the wide range of residual radioactive contamination encountered at decommissioning sites licensed by NRC, the LTR and NRC's decommissioning guidance are not prescriptive as to the criteria for, or acceptability of, site-specific institutional controls and engineered barriers. The "Statement of Considerations" for the LTR might be read to conclude that engineered barriers are included within institutional controls. However, neither term is defined. In the Commission's view, "engineered barriers" referred to in the "Statement of Considerations" for the LTR are distinct and separate from institutional controls. Used in the general sense, an engineered barrier could be one of a broad range of barriers with varying degrees of durability, robustness, and isolation capability. Thus, NRC guidance in Appendix I of the SRP on the LTR distinguishes institutional controls from physical controls and engineered barriers. Institutional controls are used to limit intruder access to, and/or use of, the site to ensure that the exposure from the residual radioactivity does not exceed the established criteria. Institutional controls include administrative mechanisms (e.g., land use restrictions) and may include, but not be limited to, physical controls (e.g., signs, markers, landscaping, and fences) to control access to the site and minimize disturbances to engineered barriers. There must be sufficient financial assurance to ensure adequate control and maintenance of the site and institutional controls must be legally enforceable and the entity charged with their enforcement must have the capability, authority, and willingness to enforce the controls. Generally, engineered barriers are passive man-made structures or devices intended to improve a facility's ability to meet a site's performance objectives. Institutional controls are designed to restrict access, whereas engineered barriers are usually designed to inhibit water from contacting waste, limit releases, or mitigate doses to intruders. The isolation capability, durability, and robustness of a specific barrier will need to be evaluated in the DOE/NYSERDA EIS. The ability of a barrier to inhibit access of the inadvertent intruder is a separate issue from whether a barrier is an institutional control. The dose analyses for a site with engineered barriers will need to consider the reasonableness of a breach by an inadvertent intruder.

C. Comments on Implementing the LTR

C. 1 Comment. There were some comments identifying who should be the long-term steward of the site if long-term stewardship is required as part of site closure. Some commenters also provided suggestions on how site long-term stewardship should be maintained at West Valley if it is needed (onsite staff, perpetual license).

C. 2 Response. NRC expects that these site-specific issues will be covered in the DOE/NYSERDA EIS and addressed in the preferred alternative. The identification of a long-term custodian is not an NRC responsibility but will be determined from negotiations involving DOE and NYSERDA and possibly the U.S. Congress. From the NRC perspective, both DOE and NYSERDA represent governmental entities and either would be acceptable as a long-term custodian.

C. 3 Comment. One commenter requested consideration of how the LTR would be implemented on the decommissioned portions of the site if there were areas of the site that could not meet the LTR.

C. 4 Response. Although the LTR does not specifically address differing release standards on a single site, NRC recognizes that the approach to decommissioning at West Valley may include portions of the site being released for unrestricted use, and portions of the site being released for restricted use, as well as portions of the site remaining under license, because of a failure to meet the LTR. In the Commission's view, the LTR is sufficiently flexible to allow for such circumstances. In particular, the Commission believes 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 in order to ensure that cleanup continues to the maximum extent that is technically and economically feasible. The Commission also believes that after cleanup to the maximum extent technically and economically feasible is accomplished, alternatives to release under the LTR criteria may need to be contemplated. Specific examples of these alternatives are a perpetual license for some parts of the site or exemptions from the LTR. The NRC expects that these issues will be fully addressed in the DOE/NYSERDA EIS.

D. Comments on NRC's Process for Prescribing the Decommissioning Criteria

D.1. DOE recommended, for the reasons described in comments D.1.1, D.1.3, and D.1.5 below, that NRC withhold assigning the LTR as the decommissioning criteria until NRC does a site-specific analysis of the environmental effects of decommissioning West Valley.

D.1.1 Comment. The LTR GEIS (NUREG–1496) does not support the use of the LTR at a complex site like West Valley; therefore, a specific EIS for this action needs to be completed by NRC to finalize the criteria.

D.1.2 Response. Although the LTR GEIS did not specifically address the decommissioning of a spent fuel reprocessing site, it did evaluate the decommissioning of a range of reference facilities (e.g., fuel cycle facilities and reactors). In promulgating the LTR, the Commission stated in Section VI of the "Statement of Considerations" that it will conduct an environmental review to "determine if the generic analysis encompasses the range of environmental impacts at the particular site." The Commission further stated that it "will conduct an independent environmental review for each site-specific decommissioning decision where land use restrictions or institutional controls are relied upon by the licensee or where alternative criteria are proposed" as it recognized that the environmental impacts for these cases cannot be analyzed on a generic basis. Thus, the environmental impacts from the application of the criteria to the WVDP will need to be evaluated for the various alternative approaches being considered in the process before NRC decides whether to accept the preferred alternative for meeting the criteria permitted by the LTR. NRC expects to be able to rely on the DOE/NYSERDA EIS for this purpose. NRC does not anticipate the need to prepare its own duplicative EIS as NRC can consider the environmental impacts described in the DOE/NYSERDA EIS in approving the particular decommissioning criteria for the WVDP under the LTR. As an EIS cooperative agency, NRC may adopt all or parts of the lead EIS agency's NEPA documents. Under this arrangement, if NRC is satisfied with the final DOE/NYSERDA EIS, then NRC will adopt it to fulfill its NEPA responsibilities under the WVDP Act. If NRC is not satisfied with the final DOE/NYSERDA EIS, then it will adopt as much of it as possible and modify or supplement it as necessary. In such a situation, NRC would publish its own draft EIS document for public review and comment before finalizing it. Once finalized, NRC's West Valley NEPA responsibilities would be fulfilled under the WVDP Act.

The WVDP Act does not address license termination for the site. The actual license termination for the site, if and when pursued, will be conducted under the Atomic Energy Act (AEA) of 1954, as amended. At the time of NRC license termination under the AEA (if license termination is pursued), NRC will need to conduct an environmental review to determine if an EIS is necessary to support license termination.

D.1.3 Comment. The NRC's prescription of decommissioning criteria is not being coordinated with the current NEPA process as suggested by the DOE/NRC Memorandum of Understanding (MOU) on West Valley.

D.1.4 Response. The process described in the DOE/NRC MOU (Section B (4)), for consulting on a site-specific analysis of decommissioning requirements was developed to allow DOE and NRC to evaluate a range of approaches to specifically address the decommissioning of the WVDP. Thereafter, NRC was to prescribe the decommissioning criteria. At the time the MOU was signed, no comprehensive general criteria existed for decommissioning NRC-licensed sites. Decommissioning criteria were determined on a case-by-case basis. However, through the rulemaking process completed in 1997, which promulgated the LTR, there was an evaluation of various regulatory approaches for decommissioning NRC-licensed sites and the selection of a range of regulatory approaches with criteria, in the final rule.

Except as provided in 10 CFR 20.1401, the LTR applies to all NRC's licensed sites. The Commission recognized, as noted in the "Statement of Considerations" for the LTR, that there would be sites with complex decommissioning issues that would be resolved by site-specific environmental reviews which considered various alternative methods for decommissioning and application of the LTR. In the Commission's view, the use of the two-step prescribing process—first, the decision to use the LTR, and second, to use the DOE/NYSERDA EIS, to consider the impacts of the different approaches for decommissioning, before deciding whether to accept the particular approach that DOE intends to use to meet the LTR—is consistent with the intent of the MOU that various approaches be analyzed in developing the WVDP decommissioning criteria.

D.1.5 Comment. Finalizing the LTR now as the decommissioning criteria for the WVDP at the West Valley site limits the options for closure of the NRC-licensed Disposal Area (NDA).

D.1.6 Response. The Commission does not believe that prescribing the LTR criteria for the WVDP at the West Valley site as the applicable decommissioning goal for the entire NRC-licensed site will limit DOE from developing acceptable closure options for the NDA or any other part of the NRC-licensed site. Prescribing the LTR now is warranted because NYSERDA, as a licensee of the Commission, is subject to the LTR after NYSERDA's NRC license is reactivated at the conclusion of the WVDP. It follows that DOE should also be subject to the LTR as it is the surrogate for NYSERDA in decommissioning facilities used for the project. Therefore, it is appropriate to prescribe the LTR now for the WVDP, with the site-specific decommissioning issues resolved through the process described in Response D.1.4 above. Applying the LTR to the WVDP will provide an opportunity to DOE, as would be given to any licensee, to consider a range of approaches to achieve acceptable decommissioning, consistent with public dose limits. If parts of the NRC-licensed site cannot meet the LTR, the Commission will consider alternatives to the criteria in the LTR if it can be demonstrated that public health and safety will be protected. The NRC expects that these issues will be fully addressed in the DOE/NYSERDA EIS.

E. Comments on Jurisdictional Aspects of Prescribing the Decommissioning Criteria

E.1 Comment. Many commenters suggested that, because the State-licensed Disposal Area (SDA) is immediately adjacent to the WVDP and part of the West Valley site, the allowable dose from the closure and/or decommissioning of it should be considered comprehensively with the allowable dose from the NRC regulated part of the site.

E.2 Response. NRC's authority only extends to the NRC-licensed portion of the site. It also should be noted that the LTR recognizes that people can be exposed to up to four sources of radiation and still meet the nationally and internationally accepted public dose limit of 100 mrem/yr TEDE in part 20. In considering the environmental impacts for the entire site, the DOE/NYSERDA EIS will need to consider the number of sources to which the critical group may be exposed. However, NRC continues to dialogue with State representatives to exchange information on issues of mutual interest regarding potential sources of public exposure.

E.3 Comment. A few comments were made indicating that NRC ought to prescribe the dose limits in EPA's decommissioning guidance to West Valley, because they are more protective and could be applied to the site after NRC regulatory authority ceases. Likewise, a comment was made that the decommissioning criteria issue between NRC and EPA should be resolved before the criteria are prescribed.

E.4 Response. The Commission believes that the LTR dose limits plus ALARA requirements provide protection comparable to dose limits preferred by EPA in its guidance documents. The Commission notes that the LTR was promulgated by the Commission in 1997 pursuant to an Administrative Procedure Act rulemaking accompanied by a generic EIS and voluminous regulatory analysis, including consideration of numerous public comments. EPA's guidance documents have gone through no such public process. The Commission believes that decommissioning the site to the LTR criteria ensures that public health and safety and the environment will be protected. Although there is a lack of agreement between NRC's rule and EPA's guidance documents on the appropriate upper bounds on decommissioning criteria, the NRC practice of applying ALARA principles to NRC dose limits will most likely result in an NRC approved decommissioned site that satisfies the EPA criteria as well. In fact, EPA has indicated that it believes that the 25 mrem/yr TEDE cleanup dose limit in the LTR will be "protective at this site." *See* Letter from Paul Giardina, EPA to John Greeves, NRC (July 23, 2001). Because the LTR requirements do ensure adequate protection of the public health and the environment, and, as indicated in the preceding paragraph, EPA agrees with this conclusion for West Valley, the Commission believes that it is not necessary to wait for a formal resolution of the differences between NRC and EPA on generic decommissioning standards before proceeding with prescribing site-specific decommissioning criteria for the WVDP. As stated previously, EPA will be involved in any proposal to use alternate criteria in the LTR or exemptions from 10 CFR part 20, if so requested.

F. Comments on the Use of Incidental Waste Criteria at West Valley Site

F.1 Comment. Many comments were received concerning the use of the incidental waste criteria at West Valley. Most commenters did not want NRC to allow for the "reclassification" of any HLW at this site to waste incidental to reprocessing. If it were allowed, it

should be done in a way that provides for public participation. One commenter agreed that it will have to be done, but that the Commission should prescribe the criteria that are necessary and appropriate for the incidental waste determination. One other commenter believes that use of DOE's Order 435.1 is the appropriate process for reclassifying residual HLW as incidental.

F.2 Response. Section 6 (4) of the WVDP Act defines HLW as including both (1) liquid wastes which are produced directly in reprocessing, dry solid material derived from such liquid waste and (2) such other material as the Commission designates as HLW for the purposes of protecting the public health and safety. Since 1969, the Commission has recognized the concept of waste incidental to reprocessing, concluding that certain material that otherwise would be classified as HLW need not be disposed of as HLW and sent to a geologic repository because the residual radioactive contamination after decommissioning is sufficiently low as not to represent a hazard to the public health and safety. Consequently, incidental waste is not considered HLW. See, Proposed Rule—Siting of Commercial Fuel Reprocessing Plants and Related Waste Management Facilities (34 FR 8712; June 3, 1969), Final Rule—Siting of Commercial Fuel Reprocessing Plants and Related Waste Management Facilities (35 FR 17530; November 14, 1970), Advance Notice of Proposed Rule-making to Define HLW (52 FR 5992, 5993; February 27, 1987), Proposed Rule—Disposal of Radioactive Waste (53 FR 17709; May 18, 1988), Final Rule—Disposal of Radioactive Waste (54 FR 22578; May 25, 1989), and Denial of Petition for Rulemaking: States of Washington and Oregon, (58 FR 12342; March 3, 1993).

The Commission believes that practical considerations mandate early resolution of the criteria that should guide the incidental waste determination. Vitrification of the high-level wastes at West Valley is nearing completion, at which point DOE intends to close down the vitrification facility. To delay providing the Commission's view for incidental waste could adversely impact the DOE, as it may prove extraordinarily expensive after the vitrification facility is shut down to provide vitrification capacity for any additional waste that must be shipped elsewhere for disposal. Indeed, in light of the fact that the site will ultimately revert to control by NYSERDA under an NRC license, both NYSERDA and NRC have an interest in ensuring that the incidental waste determination need not be revisited.

In light of these considerations, the Commission is now providing the following criteria for incidental waste determinations.

(1) The waste should be processed (or should be further processed) to remove key radionuclides to the maximum extent that is technically and economically practical; and

(2) The waste should be managed so that safety requirements comparable to the performance objectives in 10 CFR part 61 subpart C, are satisfied.

The resulting calculated dose from the incidental waste is to be integrated with all the other calculated doses from the remaining material at the entire NRC-licensed site to ensure that the LTR criteria are met. This is appropriate because the Commission does not intend to establish separate dose standards for various sections of the NRC-licensed site.

Previously the NRC has provided advice to DOE concerning DOE's classification of certain waste as incidental waste for clean-up of HLW storage tanks at both Hanford and Savannah River. As noted above, NRC intends to apply the LTR criteria for the WVDP at the West Valley site, reflecting the fact that the applicable decommissioning goal for the entire NRC-licensed site is in compliance with the requirements of the LTR. The Commission has decided that the most recent advice provided to DOE for the classification of incidental waste at the Savannah River site,[9] with some additional modifications, as the appropriate criteria that should be applicable to West Valley. These criteria are risk-informed and performance-based in that the criteria allow DOE the flexibility to develop innovative approaches to meeting the performance objectives in part 61. In effect, DOE should undertake cleanup to the maximum extent that is technically and economically practical and should achieve performance objectives consistent with those we demand for the disposal of low-level waste. If satisfied, these criteria should serve to provide protection of the public health and safety and the environment and the resulting calculated dose would be integrated with the resulting calculated doses for all other remaining material at the NRC-licensed site. It is the Commission's expectation that it will apply this criteria at the WVDP at the site following the completion of DOE's site activities. In this regard, the impacts of identifying waste as incidental to reprocessing and not HLW should be considered in the DOE's environmental reviews.

[9] *See* NRC Staff Requirements Memorandum "SECY-99-0284—Classification of Savannah River Residual Tank Waste as Incidental," May 30, 2000.

G. Comments Related to How the Site Should Be Decommissioned

G.1 Comment. There were many comments and suggestions that all the waste at this site should be perhaps temporarily stabilized, or packaged and perhaps temporarily stored, but ultimately removed from the site. There were also some comments on what are the important pathways for, and man-made barriers to control, contaminant transport at the site.

G.2 Response. The Commission appreciates the public's identification of, and input on, these issues. The decisions related to alternative approaches to decommissioning the West Valley site will be evaluated in the DOE/NYSERDA EIS, and reviewed by NRC for their ability to protect public health and safety and the environment. The EIS will also be available for public comment before being finalized.

H. Comments on the Wording of the Draft Policy Statement

H.1 Comment. Several comments were made about the last part of a sentence in the Draft Policy Statement under the section entitled "Decommissioning Criteria for the WVDP." It states that "* * * following the completion of DOE/NYSERDA's EIS and selection of its preferred alternative, the NRC will verify that the specific criteria identified by DOE is within the LTR and will prescribe the use of specific criteria for the WVDP." Many suggested that prescribing the use of the specific criteria after the selection of the preferred alternative in the EIS is confusing, not what is meant by the WVDP Act, and would allow adjustment of the criteria after the EIS is completed.

H.2 Response. As addressed above in response to the various comments, the Commission's intent is to prescribe the generally applicable requirements of the LTR now, before the completion of the site-specific EIS. After completion of the site-specific DOE/NYSERDA EIS, NRC will evaluate the compliance status of the preferred alternative with respect to the LTR, as described in the Commission's final policy statement. This is a two-step process. The first step is prescribing the LTR, a set of criteria that allows for unrestricted releases, restricted releases, and alternative releases, that applies to all NRC licensees. Prescribing decommissioning criteria now for the WVDP allows DOE to develop alternative approaches for

meeting those criteria and consider their impacts in its site-specific EIS.

The second step is for NRC to evaluate on a site-specific basis the approach for meeting the LTR. This will be done after the DOE/NYSERDA EIS is completed and NRC adopts it or otherwise produces its own NEPA evaluation of the site-specific criteria developed in the DOE/NYSERDA EIS. NRC will be evaluating DOE's and NYSERDA's preferred alternative for meeting the LTR and other alternatives presented in the DOE/NYSERDA EIS.

This process is in accordance with the "Statement of Considerations" for the LTR, which describes the relationship between the GEIS for the LTR and site-specific decommissioning actions. A site-specific EIS is prepared in cases where the range of environmental impacts of the alternatives at a specific site may not be within those considered in the GEIS for the LTR. This is similar to the approach that NYSERDA, as an NRC licensee, would need to meet if the license were not being held in abeyance. The Commission is satisfied that this approach is within the intent of the WVDP Act for the prescription of decommissioning requirements by NRC.

The WVDP Act does not address license termination for the site. The actual license termination for the site, if and when possible, will be conducted under the AEA, as amended. At the time of NRC license termination under the AEA (if license termination is pursued), NRC will need to conduct an environmental review to determine if an EIS is necessary to support actual license termination. The language from the draft policy statement was changed in the final policy statement to reflect the process described above.

H.3 Comment. The policy statement should not paraphrase the LTR and others' statements on West Valley.

H.4 Response. The Commission was attempting to provide context to the draft policy statement by paraphrasing the LTR or others' statements on West Valley. To avoid confusion or misinterpretation in the Final Policy Statement, it will contain a disclaimer to the effect that notwithstanding any paraphrasing of the LTR in the Policy Statement, the language of the LTR itself is controlling in determining how it is to be applied at West Valley. The paraphrasing of others' statements will be avoided.

I. Other Comments

I.1 Comment. What are the implications of the policy statement regarding NRC's policies regarding Native Americans.

I.2 Response. NRC staff has examined the draft policy on decommissioning criteria for the WVDP and has not identified any implications in relation to the Commission's guidance regarding Native Americans. The Commission has directed the NRC staff to implement the spirit and letter of President Clinton's April 29, 1994, Executive Memorandum to ensure that the rights of sovereign Tribal governments are fully respected and to operate within a government-to-government relationship with Federally-recognized Native American Tribes. In addition, the staff has been directed to address Native American issues on a case-by-case basis, operating with Tribal Governments on a government-to-government basis. In response to the interest expressed by the Seneca Nation of Indians in NRC activities at WVDP, the NRC staff has added the Seneca Nation to its service list which will provide the Seneca Nation with copies of documents and meeting notices related to NRC's activities at West Valley that the NRC may publically release. The NRC staff will address issues raised by the Seneca Nation of Indians in accordance with the Commission's guidance.

I.3 Comment. One commenter claims that NRC is required by law to define "transuranic waste" for West Valley and determine the disposition of that waste.

I.4 Response. Section 6(5) of the WVDP Act defines transuranic waste for the WVDP in terms of radioisotopes and the lower limit of concentration of those isotopes. It also states that NRC has the authority to prescribe a different concentration limit to protect public health and safety. NRC's position on this issue is detailed in a letter from M. Knapp, NRC, to W. Bixby, DOE, dated August 18, 1987. This letter states that, to demonstrate protection of public health and safety, the transuranic concentration of project wastes acceptable for on-site disposal will be such that, by analysis, safety requirements comparable to the performance objectives in 10 CFR part 61 subpart C are satisfied. The resulting calculated dose from the transuranic waste is to be integrated with all the other calculated doses from the remaining material at the NRC-licensed site to ensure that the LTR criteria are met. As with incidental waste, the Commission is not establishing a separate dose standard that applies solely to the transuranic waste.

V. Final Policy Statement

Statement of Policy

Decommissioning Criteria for the West Valley Demonstration Project (WVDP)

Under the authority of the WVDP Act, the Commission is prescribing NRC's License Termination Rule (LTR) (10 CFR part 20, subpart E) as the decommissioning criteria for the WVDP, reflecting the fact that the applicable decommissioning goal for the entire NRC-licensed site is in compliance with the requirements of the LTR. The criteria of the LTR shall apply to the decommissioning of: (1) The High Level Waste (HLW) tanks and other facilities in which HLW, solidified under the project, was stored; (2) the facilities used in the solidification of the waste; and (3) any material and hardware used in connection with the WVDP. Also under authority of the WVDP Act, the Commission is issuing criteria for the classification of reprocessing wastes that will likely remain in tanks at the site after the HLW is vitrified, subsequently referred to as "incidental waste."

The resulting calculated dose from the WVDP at the West Valley site is to be integrated with all other calculated doses to the average member of the critical group from the remaining material at the entire NRC-licensed site to determine whether the LTR criteria are met. This is appropriate because the Commission does not intend to establish separate dose standards for various sections of the NRC-licensed site. The LTR does not apply a single public dose criterion. Rather, it provides for a range of criteria. Briefly stated, for unrestricted release, the LTR specifies a dose criterion of 25 mrem/yr total effective dose equivalent (TEDE) to the average member of the critical group plus as low as reasonably achievable (ALARA) considerations (10 CFR 20.1402). For restricted release, the LTR specifies an individual dose criterion of 25 mrem/year TEDE plus ALARA considerations using legally enforceable institutional controls established after a public participatory process (10 CFR 20.1403). Even if institutional controls fail, individual doses should not exceed 100 mrem/yr TEDE . If it is demonstrated that the 100 mrem/yr TEDE criterion in the event of failure of institutional controls is technically not achievable or prohibitively expensive, the individual dose criterion in the event of failure of institutional controls may be as high as 500 mrem/yr TEDE. However, in circumstances where restricted release is required, if the 100 mrem/yr TEDE criterion is exceeded, and/or the use of alternate criteria has

been determined, the area would be rechecked by a responsible government entity no less frequently than every 5 years and resources would have to be set aside to provide for any necessary control and maintenance of the institutional controls. Finally, the LTR permits alternate individual dose criteria of up to 100 mrem/yr TEDE plus ALARA considerations for restricted release, with institutional controls established after a public participatory process (10 CFR 20.1404). The Commission itself must approve use of the alternative criteria, after coordination with the U.S. Environmental Protection Agency (EPA) and after consideration of the NRC staff's recommendations and all public comments.[10]

The Commission also recognizes that decommissioning of the West Valley site will present unique challenges, which may require unique solutions. As a result, the final end-state may involve a long-term or even a perpetual license or other innovative approaches for some parts of the site where clean up to the LTR requirements are prohibitively expensive or technically impractical. It is important that all parts of the site be decommissioned to the extent technically and economically feasible. Therefore, in addition, the Commission expects decontamination to the maximum extent technically and/or economically feasible for any portion of the site remaining under a long term or perpetual license or for which an exemption from the LTR is sought. In sum, the Commission believes 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, in order to ensure that cleanup continues to the maximum extent that is technically and economically feasible. If complying with the LTR's restricted release requirements is technically impractical or prohibitively expensive, then an exemption from the LTR may be appropriate, provided that protection of the public and the environment can be maintained.

The Commission's application of the LTR to the WVDP is a two-step process: (1) NRC is now prescribing the application of the LTR; and (2) after the completion of the site-specific Department of Energy (DOE)/New York State Energy Research and Development Authority (NYSERDA) Environmental Impact Statement (EIS)[11] and selection of the preferred alternative, NRC will verify that the approach proposed by DOE is appropriate. The WVDP Act does not address license termination of the NRC license for the site, or portions thereof, which will be conducted (if license termination is possible and pursued) under the Atomic Energy Act (AEA) of 1954, as amended. If full or partial license termination of the NRC license is pursued, at that time NRC will need to conduct an environmental review to determine if an EIS is necessary to support license termination.

Decommissioning Criteria for the NRC-Licensed Disposal Area (NDA) and State-Licensed Disposal Area (SDA)

NRC will apply the criteria in the LTR to the NDA within the West Valley site, because the NDA is under NRC jurisdiction. However, the NDA presents some unique challenges in that some of this material contains significant quantities of mobile, long-lived radionuclides which could potentially remain in this facility. It is recognized that because of the nature of radioactivity at West Valley, reasonably foreseeable impacts might occur after 1000 years, under certain scenarios. Under NEPA, an evaluation of the reasonably foreseeable impacts is required. Therefore, the Commission believes that an analysis of impacts beyond 1000 years should be provided in the DOE/NYSERDA EIS which will be subject to public comment.

NRC does not have regulatory authority to apply the LTR criteria to the SDA 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.

Decommissioning Criteria for License CSF–1 (NRC Site License)

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 those 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. The NRC site license termination is not addressed in the WVDP Act. Therefore the NRC site license termination is subject to the provisions of the Atomic Energy Act of 1954 as amended.

Use of Incidental Waste Criteria at West Valley

Section 6 (4) of the WVDP Act defines HLW as including both (1) liquid wastes which are produced directly in reprocessing, dry solid material derived from such liquid waste and (2) such other material as the Commission designates as HLW for the purposes of protecting the public health and safety. The Commission believes that practical considerations mandate early resolution of the criteria that will guide the classification of incidental waste. The vitrification of the wastes at West Valley is nearing completion, at which point DOE intends to close down the vitrification facility. To delay defining classification criteria for incidental waste could adversely impact the DOE as it may prove extraordinarily expensive after the vitrification facility is shut down to provide vitrification capacity for any additional waste that must be shipped elsewhere for disposal. Indeed, in light of the fact that the site will ultimately revert to control by NYSERDA under an NRC license, both NYSERDA and NRC have an interest in ensuring that the incidental waste determination need not be revisited.

In light of these considerations, the Commission is now providing the following criteria that should be applied to incidental waste determinations.

(1) The waste should be processed (or should be further processed) to remove key radionuclides to the maximum extent that is technically and economically practical; and

(2) The waste should be managed so that safety requirements comparable to the performance objectives in 10 CFR part 61 subpart C, are satisfied.[12]

Consistent with the overall approach in applying the LTR to the WVDP and to the entire NRC-licensed site following

[10] The material set out in the text is a brief summary of the LTR. Notwithstanding the words used in the text, the language of the LTR governs this matter.

[11] DOE has decided to descope the draft 1996 EIS into two separate EISs. DOE will be the lead agency on the EIS that will address WVDP facility decontamination and management of waste currently stored at the site. NRC expects to be kept informed of progress as required under the DOE/NRC Memorandum of Understanding (MOU). DOE and NYSERDA will be the lead agencies on the EIS that will address decommissioning. NRC expects to participate as an EIS cooperating agency. Hereinafter, this second EIS where NRC will be a cooperating agency will either be referred to as the decommissioning EIS or the DOE/NYSERDA EIS, unless otherwise noted.

[12] The dose methodology used in 10 CFR part 61 subpart C is different from that used in the newer 10 CFR part 20 subpart E. However, the resulting allowable doses are comparable and NRC expects DOE to use the newer methodology in 10 CFR part 20 subpart E. part 61 is based on International Commission on Radiological Protection Publication 2 (ICRP 2) and part 20 is based on ICRP 26.

conclusion of the WVDP, the resulting calculated dose from the incidental waste is to be integrated with all the other calculated doses from material remaining material at the entire NRC-licensed site.

Previous Burials Authorized Under 10 CFR Part 20

The "Statement of Considerations" for the LTR, Section C.3, Other Exemptions (62 FR 39074) provided that in regard to past burials the Commission "* * * would continue to require an analysis of site-specific overall impacts and costs in deciding whether or not exhumation of previous buried waste is necessary for specific sites. In addition, the general exemption provisions of 10 CFR part 20 are available to consider unique past burials on a case-by-case basis." The NDA contains significant amounts of buried radioactive material that was previously authorized under older provisions of part 20. This material will require appropriate evaluation as part of site license termination.

Environmental Analysis

An EIS is not needed at this step of the process of prescribing the LTR because the Commission is not establishing a new requirement for the site. This site is licensed to NYSERDA and, therefore, is already subject to the LTR by operation of the Commission's regulations. DOE in essence is acting as a surrogate for NYSERDA . The environmental impacts of applying the LTR to NRC licensees were evaluated in the Generic Environmental Impact Statement (GEIS), NUREG–1496, that supported the LTR. In promulgating the LTR, the Commission stated, in Section VI of the "Statement for Considerations" that it will conduct an environmental review to "determine if the generic analysis encompasses the range of environmental impacts at the particular site." The Commission further stated that it "will conduct an independent environmental review for each site-specific decommissioning decision where land use restrictions or institutional controls are relied upon by the licensee or where alternative criteria are proposed" as it recognized that the environmental impacts for these cases cannot be analyzed on a generic basis. The environmental impacts from the application of the criteria will need to be evaluated for the various alternative approaches being considered in the process before NRC decides whether to accept the preferred alternative for meeting the criteria permitted by the LTR. NRC intends to rely on the DOE/NYSERDA EIS for this purpose.

For NEPA purposes, DOE is considered the lead Federal agency. NRC, in view of its responsibilities under the WVDP Act, is considered a cooperating agency for this EIS and is participating in the development of the DOE/NYSERDA EIS. NRC does not anticipate the need to prepare its own duplicative EIS, since it can consider the environmental impacts described in the DOE/NYSERDA EIS in approving the particular decommissioning criteria for the WVDP under the LTR. Under this arrangement, if NRC is satisfied with the DOE/NYSERDA EIS, this EIS will fulfill the NEPA responsibilities for NRC under the WVDP Act. If NRC is not satisfied with the final DOE/NYSERDA EIS, then NRC will adopt as much of it as possible and modify or supplement it as necessary. In such a situation, NRC would publish its own draft EIS document for public review and comment before finalizing it. Once finalized, NRC's West Valley NEPA responsibilities would be fulfilled under the WVDP Act.

The WVDP Act does not address license termination for the site. License termination of the NRC license for the site, or portions thereof, is conducted (if license termination is possible) under the AEA. If NYSERDA pursues either full or partial license termination of the NRC license, at that time NRC will need to conduct an environmental review to determine if an EIS is necessary to support license termination.

Availability of Documents

NRC's final policy statement on decommissioning criteria for West Valley is also available at NRC's Public Electronic Reading Room link (*http://www.nrc.gov/NRC/ADAMS/ index.html*) on NRC's home page (*http://www.nrc.gov*). Copies of documents cited in this section are available for inspection and/or reproduction for a fee in the NRC Public Document Room, 11555 Rockville Pike, Room O–1F21, Rockville, MD 20852. The NRC Public Document Room is open from 7:45 a.m. to 4:15 p.m., Monday through Friday, except on Federal holidays. Reference service and access to documents may also be requested by telephone (301–415–4737 or 800–397–4209), between 8:30 a.m. and 4:15 p.m.; or by e-mail (*PDR@nrc.gov*); fax (301–415–3548); or a letter (NRC Public Document Room, Mailstop O–1F13, Washington, DC 20555–0001). In addition, copies of: (1) SECY–98–251, "Decommissioning Criteria for West Valley;" (2) the transcript of the public meeting held January 12, 1999; (3) the Commission's SRM of January 26, 1999, concerning the January 12, 1999, public meeting on SECY–98–251; (4) SECY–99–057, "Supplement to SECY–98–251, 'Decommissioning Criteria for West Valley;' " (5) the Commission's vote sheets on SECY–98–251 and SECY–99–057; (6) the Commission's SRM of June 3, 1999, on SECY–98–251 and SECY–99–057; (7) the draft policy statement issued December 3, 1999; (8) the transcript of the public meeting held January 5, 2000; and (9) the public comments on the draft policy statement can be obtained electronically on NRC's home page at the Commission's Activities link (*http://www.nrc.gov/NRC/COMMISSION/activities.html*).

Dated at Rockville, Maryland, this 25th day of January, 2002.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

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NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–250 and 50–251]

Florida Power and Light Company Turkey Point Plant, Units 3 and 4 Notice of Availability of the Final Supplement 5 to the Generic Environmental Impact Statement Regarding License Renewal for the Turkey Point Plant, Units 3 and 4

Notice is hereby given that the U. S. Nuclear Regulatory Commission (NRC) has published a final plant-specific Supplement 5 to the Generic Environmental Impact Statement (GEIS), NUREG–1437, regarding the renewal of operating licenses DPR–31 and DPR–41 for the Turkey Point Plant, Units 3 and 4, for an additional 20 years of operation. The Turkey Point Plant units are operated by Florida Power and Light Company (FPL). Turkey Point Plant is located in Dade County, Florida. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative methods of power generation.

In Section 9.3 of the report:

The staff recommends that the Commission determine that the adverse environmental impacts of license renewal for Turkey Point Units 3 and 4 are not so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable. This recommendation is based on (1) the analysis and findings in the Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants, NUREG–1437; (2) the ER [Environmental Report] submitted by FPL; (3) consultation with other Federal, State, and local agencies; (4) the staff's own independent review; and