



November 28, 2007

Mr. Chad Glenn  
Senior Project Manager  
Materials Decommissioning Branch  
Division of Waste Management and Environmental Protection  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Dear Mr. Glenn:

Following up on our memo of March 28, 2007, your presentation to the CTF dated April 25, 2007, and your letter dated July 19, 2007, we believe that NRC's legal authority and legal obligations at the West Valley Demonstration Project are greater than you have indicated. Specifically:

1. Under section 2(a)(5) of the West Valley Demonstration Project Act, DOE must decontaminate and decommission certain parts of the West Valley site in accordance with such requirements as NRC may prescribe. Note that Congress used the word "requirements" in this section of the law, implying specific and mandatory criteria for DOE's decontamination and decommissioning activities. The general nature of these requirements can be understood from NRC's "West Valley Final Policy Statement," published in the Federal Register on February 1, 2002. However, the "requirements" set forth in the Final Policy Statement are not definitive; they lack both finality (with respect to exemptions) and specificity, so they apparently cannot yet be used to determine whether a given Preferred Alternative is acceptable or not. NRC must fix this problem in a timely manner by providing definitive requirements against which Preferred Alternatives can be judged. This would be consistent with NRC's authority and obligations under the West Valley Demonstration Project Act, but it is not clear that NRC intends to do so. In your April 25th presentation, for example, you indicated that NRC intends to wait until after completion of the Environmental Impact Statement (EIS) to determine whether DOE's Preferred Alternative satisfies the requirements set by NRC. In our view, this would largely defeat the purpose of the EIS, especially if NRC's definitive requirements for decontamination and decommissioning were withheld until afterward. We urge NRC to fulfill its role under the West Valley Demonstration Project Act with respect to these requirements.
2. Under section 2(a)(4) of the West Valley Demonstration Project Act, DOE must dispose of certain low-level waste and transuranic waste in accordance with applicable licensing requirements. The waste in question consists of low-level and transuranic wastes produced by high-level waste solidification under the West Valley Demonstration Project. NRC has tended to

ignore this section of the Act, especially its mandate of “applicable licensing requirements” for waste disposal. NRC apparently believes that sections 2(a)(4) and 2(a)(5) are redundant, and that disposal requirements under section 2(a)(4) are superseded by decontamination and decommissioning requirements under section 2(a)(5). Such an interpretation, however, is not legally permissible. In general, laws need to be interpreted according to the rules of “statutory construction.” One of the accepted principles of statutory construction is that *effect must be given to every word of a law* – in other words, none of the words or phrases of a law should be considered extraneous or redundant. Thus, in the context of the West Valley site, any disposal of low-level waste produced by high-level waste solidification must be in accordance with applicable licensing requirements (presumably 10 CFR Part 61 or 6 NYCRR Part 382). Disposal of transuranic waste must likewise be in accordance with applicable licensing requirements. Since the usual definition of disposal encompasses some of the tank-grouting and other in-place closure alternatives proposed by DOE, section 2(a)(4) and its “applicable licensing requirements” must be considered. The authority and obligation for licensing lie with NRC and/or NRC’s Agreement State partners such as New York.

3. Section 6(5) of the West Valley Demonstration Project Act defines transuranic waste based on a threshold of 10 nanocuries/g or “such other concentrations” as NRC may prescribe. The 10 nanocurie/g concentration, which effectively serves as a dividing line between transuranic and low-level waste, differs from the concentration of 100 nanocuries/g that has been adopted elsewhere and was thus one of the points at issue in the Coalition on West Valley Nuclear Wastes v. DOE lawsuit in 1986. The 1987 Stipulation of Compromise Settlement allowed NRC to decide between the 10 and 100 nanocurie/g thresholds. NRC subsequently made a policy decision that defines this threshold in a unique way, based on certain conditions. NRC remains in charge of this site-specific policy and its associated conditions which are legally binding.

4. Sections 6(4) through 6(6) of the West Valley Demonstration Project Act define high-level, transuranic, and low-level waste by means of interlocking definitions that exclude newly invented categories of waste. Under the West Valley Demonstration Project Act, NRC has an obligation to abide by the waste classes established by law and to avoid participating in waste-classification schemes that introduce new, illegal waste classes such as “Waste Incidental to Reprocessing.”

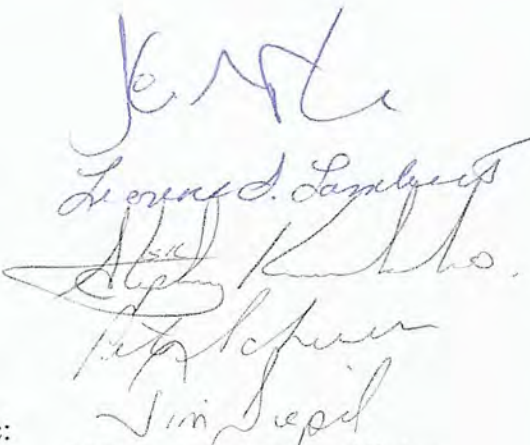
The above descriptions refer to a broader NRC legal authority and legal obligations than you have indicated. We believe the above descriptions are accurate but would welcome further discussion to narrow or resolve any differences.

The CTF appreciates the NRC’s willingness to engage in this dialogue. As we have stated before, we feel that the “flexibility” which has been built into the policy does not ensure the adequate level of protection to local residents and the region nor does it provide definitive limitations on the range of clean up alternatives. Further, we fail to see how a meaningful alternative can be evaluated or selected without knowing what NRC criteria and rules would

apply to decommissioning. We are concerned that the NRC's interpretation of its role compromises its integrity and express authority and could facilitate the premature departure of federal participation and oversight at the West Valley Demonstration Project or delay the clean up due to legal challenges.

As we have stated in our 1998 Final Report and in correspondence and testimony in 1998, 1999, 2000, 2002, 2006 and 2007 we feel that this has been left unresolved for too long and we hope that the NRC will take into account the views of the community and local government interests, as represented by the CTF. Given that DOE will be selecting a preferred alternative in the near future, we look forward to a prompt reply.

Sincerely,



Leonard L. Lazrus  
Stephen Kuhl  
Jim Siegel



Anthony Marino  
Christopher J. Lawrence  
Warren J. Smith  
Eric Wohlers

cc:

- U.S. Senator Hillary Clinton
- U.S. Senator Charles Schumer
- U.S. Representative Brian Higgins
- U.S. Representative John Kuhl, Jr.
- U.S. Representative Thomas Reynolds
- U.S. Representative Louise Slaughter
- New York State Governor Eliot Spitzer
- Catharine Young, New York State Senate
- Joseph Giglio, New York State Assembly
- Bryan Bower, U.S. Department of Energy
- Paul Bembia, New York State Energy Research and Development Authority
- Paul Giardina, U.S. Environmental Protection Agency
- Barbara Youngberg, New York State Department of Environmental Conservation
- Gary Baker, New York State Department of Health