

10/28/09 PRESENTATION TO WEST VALLEY CITIZEN TASK FORCE

SUMMARY OF SETTLEMENT OF
LITIGATION BETWEEN NYS AND THE
FEDERAL GOVERNMENT

Overview

- *The settlement reached between the state and federal governments relates only to allocation of financial responsibility*
- *It does not affect in any way the cleanup alternatives that are being or may be developed in the ongoing EIS process or any other process*

Background

- The site was contaminated as a result of reprocessing and waste disposal activities
- A 1980 Congressional statute- the West Valley Demonstration Project Act (WVDPA)- directed the U.S. Department of Energy to:
 - solidify high level radioactive waste (HLRW) at the site and transport it to a federal repository;

Background (cont.)

- decontaminate and decommission the facilities used in accordance with requirements prescribed by the Nuclear Regulatory Commission;
 - dispose of the low-level waste produced from the Project
- Longstanding disputes between the two governments regarding the scope of the WVDPA, allocation of financial responsibilities and other issues led to NYS filing suit in December 2006

Legal claims presented by NYS:

- The extent of DOE's duties under the WVDPA
- Federal Superfund Law (CERCLA)– recovery of costs incurred in responding to releases of hazardous substances (which includes radionuclides)
- Federal Superfund Law- claimed damages to the State's natural resources
- Nuclear Waste Policy Act- who pays for offsite disposal of the HLRW

Terms of settlement

- (a) Allocations for each facility and area based on various equitable and other factors, including:
 - (i) whether (or extent) covered by the WVDPA,
 - (ii) source of wastes,
 - (iii) ownership of the site,
 - (iv) which government operated the facility and when,
 - (v) each government's involvement in contamination of the facility,
 - (vi) other miscellaneous factors;

(b) Summary of Allocation - Major Facilities (please see Consent Decree for definitive terms)

Facility	Cost Allocation
State-licensed Disposal Area	US- 30% NY- 70%
NRC-licensed Disposal Area	US- 50% NY- 50%
Main Process Plant	US- 90% NY- 10%
North Plateau Groundwater Plume	US- 50% NY- 50%
Lagoons	US- 90% NY- 10%
Waste Tank Farm*	US- 90% NY- 10%

*The Consent Decree also allocates responsibility regarding areas of soil contamination, as well as piping and certain other matters (see paragraphs 24-30). The Waste Tank Farm allocation covers matters described in paragraph 31 of the Consent Decree. Claims and defenses for the Waste Tank Farm are reserved by the parties as described in paragraphs 32, 38(e) and 41 of the Consent Decree.

(c) Consultation provisions regarding designing and implementing remedies, documenting costs, etc.

- the two governments will develop detailed plans to assure continued consultation prior to and during the performance of remedy actions

(d) Dispute resolution re: implementation of Consent Decree

- (i) informal negotiation,
- (ii) if unsuccessful, either government can petition the court for relief.

Unresolved claims

(a) Natural resource damages claim- will be “tolled”

(b) Nuclear Waste Policy Act claim- parties will litigate this now

Public Comment process

(see Notice of Lodging of Consent Decree)

The Consent Decree was filed with the court on 10/27/09, but the court will not take any action now. The NYS Attorney General's office will receive comments in relation to the Consent Decree for a period of 30 days.

Comments on how the site should be cleaned up are not relevant to whether the settlement is appropriate.

Request for court approval of Consent Decree

(assuming the governments opt to move forward at the end of the comment process)

In deciding whether to approve the proposed settlement, the court will examine whether the proposed settlement is fair, reasonable, in the public interest, and furthers the objectives of the various laws cited by NYS in its complaint.

QUESTIONS?

Please feel free to contact:

- David Munro
Deputy Counsel, NYSERDA
dam@nyserda.org
(518) 862-1090 x 3361
- Paul Bembia
West Valley Program Director
pjb@nyserda.org
(716) 942-9960 x 4900