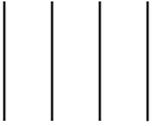


September 26, 2003



**West Valley
Citizen
Task
Force**

David Geiser, Director
Office of Long Term Stewardship, EM-51
Forrestal Building
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

Re: Draft Implementation Plan, DOE Policy 455.1, Use of Risk-Based End States

Dear Mr. Geiser:

The West Valley Citizen Task Force would like you to consider our comments on the draft Implementation Plan (IP) for Policy 455.1, regarding Risk-Based End States (RBES). Even though the Policy deals with the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) properties, and the site here is not a CERCLA property, we are concerned that an attempt might be made to implement the policy here, nonetheless.

Since the National Environmental Policy Act (NEPA) is the applicable law under which closure decisions are being made for West Valley, it is extremely important to us that staff here continue to work on the Environmental Impact Statement (EIS) for Decommissioning and Long-Term Stewardship and do not become preoccupied with a new policy. As the Coalition on West Valley Nuclear Wastes pointed out in their comments, under NEPA, an EIS is normally expected to be final. We are very concerned that an EIS-supported Record of Decision might be reopened as a result of RBES methods, delaying and jeopardizing final cleanup and closure of our site.

LAND USE PLANNING

The RBES vision calls for land uses to be defined before cleanup: *“Thus, the first step in the process of envisioning and then using risk-based end states as an effective planning tool for cleanup is building a comprehensive land use plan that includes both future use and consideration of adjacent properties”* (page 6). We find it difficult to understand how site contamination can be *“mapped in context of current and future use”* (page 2, Fig. 1), especially when site characterization has not been done at many sites (see enclosure, Energy Communities Alliance Letter, page 6) and is incomplete at West Valley as well.

Assuming that future use on this site or any of the hundred sites being considered for closure will not change over hundreds or thousands of years seems unrealistic. While the U.S. Environmental Protection Agency (EPA) directives may suggest that alternatives lead to *“activities ...consistent with the reasonably anticipated future land use”* (page 6), when it comes to expected long-term contamination there is no way that anyone can determine with certainty that the planned future land use will become or remain a reality (witness Love Canal). Even the assumption of *“perpetual federal ownership”* (page 8) or *“transfer of property for conservation purposes”* (page 8) becomes uncertain in light of material that remains radioactive for hundreds or thousands of years. It seems more logical to base future use on the greatest measure of cleanup that can be attained.



DEFINITIONS

We realize that the adjective “logical” is subject to interpretation. In order to reach decisions agreeable to all concerned parties we must somehow agree on the limitations and implications of certain terms and find a way to use them objectively as much as “possible.” Terms such as “credible,” “rational,” “reasonable,” and “unrealistic” (page 11) are also subject to interpretation. Others need definition to be properly understood; “risk-validation” (page 14), for instance. The attempt to reclassify some waste as “incidental” (page 21) is using a term to get a specific response (incidental implies a lack of importance). The term “clean,” used numerous times meaning “clean to a predetermined level,” is misleading and disturbing when a cleanup is supposedly complete, only to require further cleanup.

RISK

“All interested and affected parties must re-examine the role and use of risk in cleanup” (page 10); Radioactive waste presents a much more complicated scenario of risk of exposure than most substances considered a risk. The possible “adverse events” (page 10) will vary, as will the possible modes of failure, each with its own probability of occurrence, with the possibility of terrorism adding a new, unknown dimension to the equation.

“Reconsideration of the assumptions” (page 11) may be wise, even to “review the default assumptions used by the Nuclear Regulatory Commission (NRC), EPA- and/or state-generated risk guidance documents” (page 12), but the “baseline risk assessment” (page 15) which “appropriately defines risk posed by relevant pathways” (page 12) is the crucial step. Here again, we refer you to the Coalition comments, suggesting the Department use Probabilistic Risk Assessment. This risk assessment method can examine different possible adverse events, and the different modes of failure that may be associated with each of them. It is a widely accepted and scientifically-based method of risk assessment and should be at least recommended and probably required by the IP, particularly to handle probable modes of failure with significantly different consequences.

CHANGING THE RULES

While an option to “review the default assumptions used by the NRC, EPA- and/or state-generated risk guidance documents” (page 12) may be acceptable, changing regulations mid-stream is not always so. A recent attempt to amend laws applicable to our site is a case-in-point (see enclosure, DOE Letter). Obviously DOE intends to stay strictly within the law “... to be consistent with but not exceed statutory requirements” (page 31), or to seek waivers or amendments “...to identify or eliminate ARARs [appropriate or relevant and appropriate requirements]...” (page 18), or to “Amend CERCLA ... include federal facilities as having the ability to waive an ARAR...” (page 18).

A primary concern of the CTF still lies with DOE’s redefinition of high-level waste as “Waste Incidental to Reprocessing.” Although the court ruled that the incidental portion of the DOE order violates the Nuclear Waste Policy Act, DOE is continuing its efforts to find ways to declare “appropriate disposal fission products...other than high-level waste” (page 21). The IP suggests developing a risk-based classification “that includes an exempt category of waste” (page 21). These proposed actions will bear watching.

INSTITUTIONAL CONTROLS

Institutional Controls have not been defined and are a serious concern of people at all sites and their surrounding areas. The suggestion that they might “bolster the integrity of engineered remedies” (page 22) seems to address only one small part of the panorama of issues dealt with in the use of institutional controls. Further concerns we have with the institutional controls section of the IP are described below:

- “Use institutional controls to improve protectiveness” (page 22) - This runs contrary to the actions suggested in Section 4.4.1 to include early consideration of institutional controls, determine and compare costs with other “alternative remedial design strategies” (page 22), and ensure land

transfer agreements use a “*certified real property Specialist*” (page 22). Enforcing institutional controls would then seem to fall into another jurisdiction, or numerous jurisdictions depending on the number of sites choosing that option.

- “*Design and implement effective, site-specific ground water strategies*” (page 23) - DOE states that, after pump and treat, Monitored Natural Attenuation (MNA) is “*the long-term strategy for ensuring protectiveness*” (page 23). Whether MNA will work long-term will not be known for a long time. Meanwhile, contamination continues to migrate underground.
- “*Minimize damage to natural resources*” (page 24) - DOE will attempt to minimize natural resource damage and “*seek exemptions from liability*” (page 24). This is the heart of concern at West Valley: that DOE will walk away, exempt from further responsibility, leaving the legacy management to the local area.

COST

Cost must be considered, but the decision “. . . *whether costs are proportional to its overall effectiveness*” (page 19) is a judgment call, which are, in some cases, could place future health and safety in opposition to short-term safety. “*DOE should work with its regulators to provide transparency and clarity to the public in situations where trade-offs of cost versus protectiveness are a factor*” (page 19). On the surface this may appear to be logical and reasonable, but the emphasis throughout the plan is on changing the methodology as in business. Although good business practice requires finding ways to cut costs by reassessing what is done and how it is done, the final step is the actual “selling” of the product to the public. While a consumer normally compares cost with value, a trade-off of “*cost versus protectiveness*” (page 19) might be very difficult for the average citizen to assess.

At West Valley we are still waiting for an EIS that is long overdue and that must be completed under the West Valley Demonstration Project Act and the terms of NEPA. Decisions about site closure and end states must ultimately be supported by this EIS process. Although development and implementation of end-state visions may be useful within the context of the West Valley EIS, staff resources needed for completion of the EIS must not be diverted from that important task.

Enclosed you will find a copy of our Final Report, which summarizes the West Valley Citizen Task Force’s consensus end-state vision for the site.

Sincerely,



Lee Lambert
On Behalf of the
West Valley Citizen Task Force

Enclosures:

Energy Communities Alliance Letter, Seth Kirshenberg to David Geiser (DOE), Re: ECA comments to the DOE Draft Policy Titled “*Cleanup Driven by Risk-Based End State*” and Draft Guidance Titled “*Development of Risk-Based End State Visions;*” February 3, 2003

DOE Letter, Secretary Spencer Abraham to Dennis Hastert (Speaker of the House of Representatives), Re: Proposed legislative amendment to address management and disposal of high-level radioactive waste; August 1, 2003

West Valley Citizen Task Force Final Report, July 29, 1998

cc: U.S. Senator Charles Schumer
U.S. Senator Hillary Rodham Clinton
U.S. Representative Amory Houghton
U.S. Representative Thomas Reynolds
U.S. Representative Jack Quinn
U.S. Representative Louise Slaughter
Bob Warther, DOE
Elizabeth Lowes, DOE
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Peter Smith, NYSERDA
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