



## WEST VALLEY CITIZEN TASK FORCE

October 30, 2006

James A. Rispoli  
Assistant Secretary for Environmental Management  
U.S. Department of Energy  
EM-1/Forrestal Building  
1000 Independence Avenue  
Washington, DC 20585

Peter R. Smith  
President  
New York State Energy Research and Development Authority  
17 Columbia Circle  
Albany, NY 12203-6399

Dear Mr. Rispoli and Mr. Smith:

We are writing to express our concern about the deteriorating relationship between the U.S. Department of Energy (DOE) and the New York State Energy Research and Development Authority (NYSERDA) at the nuclear waste site at West Valley, New York. We call on both agencies to move away from confrontational attitudes and *focus on what needs to be done* to remediate this complex and erosion-prone site. The site poses a long-term threat not only to local communities but also to the Great Lakes basin.

Disagreements that have festered between DOE and NYSERDA include the choice of a preferred alternative and questions of agency responsibility; that is, which agency should carry out certain actions, and which agency should pay. Recently, the agencies have disagreed about methods for estimating long-term effects of erosion at the site, which is a crucial issue given the general agreement that uncontrolled erosion is a significant threat to site integrity and waste. In a major escalation of these disagreements, NYSERDA recently announced that it may withdraw from the joint EIS process for site closure and/or long-term stewardship. We do not believe withdrawing from the EIS would be a responsible course of action by NYSERDA and we urge both agencies to find ways to work together. As justification, NYSERDA cites various difficulties of working with DOE, especially the unresponsiveness of DOE to various NYSERDA attempts to communicate and resolve important issues.

In addition to the recommendations we made in our Final Report, dated July 29, 1998, we believe the over-arching principle governing the cleanup of radioactive and other waste in West Valley should be

Messrs. James Rispoli and Peter Smith

Page 2

October 30, 2006

that **nothing should take precedence over the need for safe, prudent, long-term protection of the surrounding and downstream communities, and the Great Lakes as a whole.** With that as our goal, we make the following recommendations for constructive steps that DOE and NYSERDA can take to *work together* toward prompt completion of the Environmental Impact Statement (EIS), the central decision-making document for site closure.

### **Recommendations**

1. Consistent with the National Environmental Policy Act and New York's own State Environmental Quality Review Act, the West Valley EIS process should deal primarily with what needs to be done, and secondarily with agency responsibilities.
2. NYSERDA should *lead by example*, take a greater leadership role, and make a commitment to adopt a responsible long-term closure plan for the State-Licensed Disposal Area (SDA) that is consistent with our goal.
3. DOE should not pursue narrow interpretations of its role under federal law, but consider the purpose of the entire Project and the large amounts of federally generated waste that came to the site when it operated in the 1960s and 1970s.
4. In choosing a preferred alternative for the EIS currently being evaluated, we urge DOE to adopt the recommendations of the Environmental Protection Agency (EPA) regarding the North Plateau: exhuming and removing the four, high-level waste tanks; removing the Process Building; removing the source of the North Plateau groundwater plume; and removing all contamination in excess of derived concentration guidelines for unrestricted release.

### **Background**

For many years, DOE and NYSERDA supposedly have been jointly preparing an EIS for closure and/or long-term stewardship of the site. This EIS process is long overdue. It was initiated in the late 1980s, which resulted in a Draft EIS in 1996, but has not yet produced a Final EIS. The lack of a completed EIS has already hindered good planning and allocation of resources as indicated, for example, by the sharp drop in the onsite work force *despite the large amount of work that remains to be done under any EIS alternative. The delay in presenting an EIS for public comment is both unprecedented and unconscionable.*

In our CTF Final Report dated July 29, 1998, we expressed our belief that the site is not suitable for the long-term, permanent storage or disposal of long-lived radionuclides. We also expressed our expectation that risks and costs should be borne primarily by our generation, not deferred to the future. The need for exhumation is driven partly by its site-specific sensitivity to erosion, and partly by the general concern that human societies may be unwilling or unable to maintain institutional controls for the thousands of years during which certain radionuclides remain hazardous.

### **Discussion of Our Recommendations in More Detail**

**Regarding Recommendation 1.** To the extent possible, both agencies should seek prompt completion of the EIS with greater emphasis on *what* needs to be done, and less emphasis on who performs and pays for various parts of the work. The EIS process should *not* be impeded, as it has in the past, by DOE and NYSERDA efforts to minimize their own agency roles and near-term expenses. Agency roles and responsibilities might possibly be deferred to the future, with the recognition that additional legislation and appropriations may be necessary for full implementation. If such a process can identify and prioritize what needs to be done, it may help resolve various difficult aspects of the site (including the strontium-contaminated groundwater plume, among others) that need attention, but are currently not perceived as a clear-cut responsibility of either DOE or NYSERDA.

**Regarding Recommendation 2.** To date, NYSERDA's primary approach has been to ask DOE to fulfill certain responsibilities. For the most part, these NYSERDA requests appear reasonable. However, we are concerned that NYSERDA also seeks to minimize its own agency role and near-term expenses with respect to the State-Licensed Radioactive Waste Disposal Area (SDA) by claiming that the SDA should remain under state care and state license for the indefinite future. Thus, NYSERDA provides a foothold for one of DOE's arguments (i.e., that NYSERDA could be the caretaker for wastes left behind by DOE), if NYSERDA intends to remain on site indefinitely. Somehow, we need to deal with this pair of interlocking, self-serving arguments, which are ultimately based on the risky idea that burial grounds can be safely left in place if an agency remains in charge. Since the entire site is not suitable for the long-term, permanent storage or disposal of long-lived radionuclides, and because of the particular site-specific sensitivity to erosion of the SDA, we ask NYSERDA to consider the need for exhuming the SDA, and, in so doing, to set an example for DOE.

A recent U.S. Nuclear Regulatory Commission document on which we commented (Draft NUREG-1854, p. 4-4) refers to "the relatively large uncertainty associated with predicting societal systems." As part of its recent argument for withdrawing from the West Valley EIS process, NYSERDA cited expert opinions that *reliable erosion predictions could not be made for thousands of years into the future*. Based on this concern, NYSERDA argued that the SDA should remain under state care and state license for the indefinite future. This argument is unsound and self-serving. Concerns about the long-term predictability of erosion at the site are somewhat valid, but an equal or larger concern exists about *predicting societal systems for thousands of years into the future*. An expert panel of social scientists would be unlikely to endorse NYSERDA's implied logic that social systems are more predictable than erosion rates over such long time frames.

Thus, we ask NYSERDA a) not to withdraw from the EIS process; b) to consider the need to exhume the SDA as part of the preferred alternative needed to reach our goal; and c) to set an example of leadership wherein the minimization of near-term agency expenditure does not take precedence over good decision-making.

**Regarding Recommendation 3.** Consistent with our recommendation to NYSERDA, we ask DOE to either create an example of leadership or follow suit. DOE needs to improve its overall communication

Messrs. James Rispoli and Peter Smith

Page 4

October 30, 2006

~~NYCERDA and the DOE are not to be held liable for any damages, including attorney's fees, incurred by the recipient of this document.~~

federal and New York State law toward the safe closure of the site. Not only should DOE avoid narrow interpretations of laws, but consider the intention of the West Valley Demonstration Project: to

Messrs. James Rispoli and Peter Smith

Page 5

October 30, 2006

U.S. Representative John R. Kuhl, Jr.

U.S. Representative Thomas M. Reynolds

U.S. Representative Louise M. Slaughter

New York State Governor George E. Pataki

Catharine M. Young, New York State Senate

Joseph Giglio, New York State Assembly

Bryan C. Bower, DOE Director/West Valley Demonstration Project

Paul L. Piciulo, Ph.D., Director/West Valley Site Management Program, NYSERDA

Paul Giardina, U.S. Environmental Protection Agency

Chad Glenn, U.S. Nuclear Regulatory Commission

Tim Rice, New York State Department of Environmental Conservation

CTF Members