



**New York State Energy Research and Development Authority**

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March 5, 2007

Bryan C. Bower, Director  
U.S. Department of Energy  
West Valley Demonstration Project  
10282 Rock Springs Road  
West Valley, NY 14171-9799

Dear Mr. Bower:

**Subject: New York State Energy Research and Development Authority (NYSERDA) Support For Development and Implementation of a Preferred Alternative**

We have reviewed with great interest the Core Team's ongoing efforts to develop a preferred alternative for West Valley that would: (1) achieve significant reduction in the radioactive source term at the site, (2) reduce the spread of contaminated groundwater on the north plateau, and (3) make all necessary improvements to allow the residual source terms in the four High-Level Waste (HLW) tanks, the Nuclear Regulatory Commission Licensed Disposal Area (NDA) and the State-Licensed, Radioactive Waste Disposal Area (SDA) to be safely contained, maintained and monitored for up to 30 years. We applaud the Core Team's efforts and the U.S. Department of Energy's (DOE's) new willingness to support an alternative that is not a decommission in-place alternative. NYSERDA is encouraged that this proposed alternative may represent a viable path forward for the site, but we believe that any meaningful final outcome to this proposal is dependent on its preservation in a formal agreement. The agreement must define responsibilities for funding and implementation of the alternative so regulatory and public communication strategies can be defined and clarified. In addition, the agreement must provide each party with the assurances needed to consistently move the alternative and the associated implementation documents forward and it must ensure continuity of commitment from each agency regardless of changes within or external to each agency. NYSERDA believes that a lasting and meaningful direction for the site and the Environmental Impact Statement (EIS) can only come through the development of such an agreement, thus our participation in the Core Team process is contingent upon DOE demonstrating its commitment to the outcome of the Core Team process by expeditiously and demonstrably proceeding toward the development of such a formal agreement.

In addition to a formal agreement, NYSERDA believes that significant changes and/or improvements are needed to advance the EIS process. We have reviewed the suggested approaches presented in the DOE and SAIC Cross Cutting Analytical Issues Options paper and we do not believe these approaches will advance the EIS process. Instead, we believe that the suggested approaches will simply ensure that the majority of the significant unresolved technical issues will remain unresolved. Some of our concerns are listed below:

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- We disagree that a meaningful decommissioning EIS that evaluates in-place decommissioning can be prepared outside of the framework of the License Termination Rule and Policy Statement. If the approach identified in the DOE and SAIC Cross Cutting Analytical Issues Options paper is used, the EIS will be significantly separated from the regulatory framework under which the decisions must be made. As such, it appears that the EIS will be little more than "National Environmental Policy Act (NEPA) for the sake of NEPA" instead of NEPA for the purpose of assessing impacts from decommissioning and WVDP completion.
- We disagree that the receptors used in the September 2005 preliminary Draft EIS are a reasonable spectrum of receptors. The September 2005 Draft EIS dose calculation for erosion assumes that the nearest resident receptor will live 3 km from the major site contaminant sources. The assumption that no resident can live closer than 3 km from the major contaminant sources is not defended in the draft EIS, is not consistent with local practice, and is not a reasonable long-term assumption.
- We think it will be difficult to demonstrate that deterministic erosion predictions using SIBERIA, even for a range of cases, will be conservative or bounding.
- We disagree that the results of the SIBERIA model should be used to define the degree of degradation of engineered barriers for the sensitivity analysis for engineered barriers.
- We disagree that using the results of the SIBERIA model to define the degree of degradation of engineered barriers properly addresses the issue of the linkage between erosion and groundwater transport.
- NYSERDA and the independent expert Peer Review Group identified a number of significant concerns with the technical approach used in the September 2005 preliminary Draft EIS. These concerns were submitted in writing to DOE in March 2006. NYSERDA continues to expect that DOE will respond, in writing, to the comments provided by NYSERDA and the Peer Review Group.

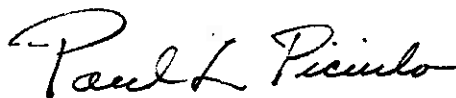
Having once again pointed out the deficiencies that, in our view, have plagued this EIS for the past 10 years, NYSERDA is proposing an alternative EIS approach that would not be burdened with the problems and deficiencies listed above. Our proposed approach would evaluate the proposed 30-year action and alternatives to it. It would bring to the EIS the same advantages that the proposed action has brought to the agency discussions of a preferred alternative, that is, it addresses those decisions and issues that are ripe to address and does not attempt to analyze actions that are not yet ripe from a scientific and policy perspective. A brief description of our proposed EIS approach is attached. We plan to discuss this option at the upcoming roundtable meeting.

NYSERDA would welcome the opportunity to work out an agreement with DOE regarding a preferred alternative and responsibilities. If you have any questions or would like to schedule a meeting with the appropriate parties, please contact me at (716) 942-9960, ext 4378.

Messr. Bryan C. Bower  
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Sincerely,

WEST VALLEY SITE MANAGEMENT PROGRAM



Paul L. Piciulo, Ph.D.  
Director

CLG/end

Attachment: Proposal for New West Valley Environmental Impact Statement

cc: Dr. Ines R. Triay, USDOE, (w/att.)  
Frank Marcinowski, USDOE, (w/att.)  
Cynthia V. Anderson, USDOE, (w/att.)  
Bruce Diamond, USDOE, (w/att.)  
Steve Hammond, NYSDEC, (w/att.)  
Edwin E. Dassatti, NYSDEC, (w/att.)  
Barbara Youngberg, NYSDEC, (w/att.)  
Pat Concannon, NYSDEC, (w/att.)  
Gary H. Baker, NYSDOH, (w/att.)  
Paul A. Giardina, USEPA, (w/att.)  
Jeanette Eng, USEPA, (w/att.)  
Larry Camper, USNRC, (w/att.)  
Keith McConnell, USNRC, (w/att.)  
Chad Glenn, USNRC, (w/att.)  
Judith Enck, Executive Chamber, (w/att.)  
David A. Munro, NYS Attorney General's Office, (w/att.)  
Linda White, NYS Attorney General's Office, (w/att.)  
Peter R. Smith, NYSERDA-Albany, (w/att.)  
Paul J. Bembia, NYSERDA-WV, (w/att.)  
Hal Brodie, NYSERDA-Albany, (w/att.)  
Colleen L. Gerwitz, NYSERDA-WV, (w/att.)  
Sheila Jones, Akin Gump et al., (w/att.)

## Proposal for New West Valley Environmental Impact Statement

### Proposal:

Issue a Notice of Termination for the current EIS, i.e., the *EIS for Decommissioning, and/or Long-Term Stewardship at the WVDP and Western New York Nuclear Service Center* and Issue a Notice of Intent for a new EIS for our proposed action, i.e, *30 Year Monitoring and Maintenance of the Existing Disposal Areas and the HLW Tanks with Removal of Other Facilities at the Western New York Nuclear Service Center*.

The new EIS preferred alternative would have as its starting point an enhanced interim end state, and would include the following actions:

- Remove the Process Plant and all structures (above and below-grade) on the north plateau other than the high-level waste (HLW) tanks, any facilities needed to maintain the HLW tanks, and any structure needed to store the solidified high-level waste HLW canisters.
- Continue to store, monitor and maintain the HLW canisters (if still located at the West Valley site) until they can be transported to a federal HLW repository or an alternate storage location.
- Continue to take all actions necessary and appropriate to control and stop the spread of groundwater contamination on the north plateau.
- Remove the source area of the north plateau groundwater plume and all long-lived radionuclides from contaminated soil on the north plateau, including but not limited to contaminated soil around and below the Process Plant, the lagoons, and the Construction and Demolition Debris Landfill (CDDL).
- Monitor and maintain the HLW tanks in a manner that minimizes corrosion and ensures that the tanks remain as dry as possible for a period up to thirty years, without taking actions that compromise any potential future remedial actions on the tanks, such as exhumation.
- Monitor and maintain the NDA and SDA, including infiltration controls, local erosion controls and environmental monitoring systems, for a period up to thirty years, without taking actions that compromise any potential future remedial actions on the NDA and SDA, such as exhumation.
- During this thirty year monitoring and maintenance period, perform five year reviews to: (1) evaluate and report on the success of the ongoing monitoring and maintenance activities; (2) identify the need for improvements to these monitoring and maintenance activities; and (3) assess and report on the availability of new technologies the could be used to implement a longer-term remedial option for the HLW tanks, the NDA, and the SDA.
- At the end of the monitoring and maintenance period (of up to thirty years), the DOE and NYSERDA shall, in accordance with all then applicable requirements, issue further environmental analyses to evaluate additional decommissioning activities or further monitoring and maintenance activities.

By redefining the proposed action to cover only a limited period of time, the EIS could proceed, and substantial work could get done, without the necessity of resolving some of the difficult issues (e.g., decommissioning in-place, waste incidental to reprocessing determinations, Resource Conservation and Recovery Act (RCRA) closure of the HLW tanks) that have stymied progress on the EIS in the past. Moreover, such a limited EIS would avoid disputes concerning long-term performance assessment and erosion modeling.

## **Proposal for New West Valley Environmental Impact Statement**

We believe a new EIS could propose the action described above, identify the preferred alternative set forth above and then consider alternatives for the next 30 years, such as the following:

1. No Action Alternative
2. Green Field Alternative - Removal / Exhumation of all facilities, including HLW Tanks, SDA, NDA, CDDL, and all soil contamination with off-site disposal
3. Monitored Retrievable Storage Alternative - Removal / Exhumation of all facilities, including HLW Tanks, SDA, NDA, CDDL, and all soil contamination with on-site storage

### **Opportunities Associated with a New EIS:**

#### Clarity

Redefining the scope of the EIS would allow us to draft a statement of purpose and need that aligns with the identified preferred alternative. The current EIS was scoped and defined to address long-term decisions for the site. Section 1.4 of the preliminary Draft EIS begins: "The Proposed Action is the completion of the WVDP and the decommissioning or long-term stewardship of the WNYNSC." The proposed preferred alternative does not meet those goals. The new EIS would clearly acknowledge that we have abandoned the previous EIS purpose and need and would clarify that this EIS will not result in a final decision or action at the site.

#### Policy and Regulatory Streamlining

The new EIS would not carry the NEPA burden associated with the WV Policy Statement or final decommissioning of the WVDP. A future EIS could address these issues.

The new EIS would not be burdened with the State Environmental Quality Review (SEQR)/RCRA or NEPA burdens associated with evaluation of in-place closure of the HLW tanks. The HLW tanks could remain operational and permitted for storage.

The new EIS would not need to include a performance assessment of the remaining source term for thousands of years, with the associated issues concerning erosion, receptor location, and climate change.

#### Defensibility

Defining a new, more limited EIS would allow this EIS to proceed on its own merits without the weight of 18 years of EIS drafts and supporting documents that were focused on achieving a different objective. It would also allow us to draft a new scope that would be consistent with the starting point and the end point of the preferred alternative. The proposed alternative is not consistent with the scope set forth in the last Notice of Intent published on March 13, 2003 (68 FR 12044).

#### Expediency

Due to the streamlining opportunities associated with avoiding policy-laden issues, the EIS has the potential for proceeding much faster if we do not have to finesse a way around all of the policy laden issues which are currently within the scope of the ongoing EIS.

## **Proposal for New West Valley Environmental Impact Statement**

### Terminating the EIS is Not Precedent Setting

DOE has precedents for terminating EISs as do other federal agencies. The US Department of the Interior has issued guidance regarding termination of an EIS, which states that an EIS should be cancelled after the draft EIS has been out for three years without being published in final form.