



THE WEST VALLEY CITIZEN TASK FORCE

August 13, 2012

Mr. Dan Sullivan
U.S. Department of Energy
West Valley Demonstration Project
10282 Rock Springs Road
West Valley, NY 14171-9799

**RE: Comments on Waste Incidental to Reprocessing Draft Evaluation
for Concentrator Feed Makeup Tank/Hold Tank**

Dear Mr. Sullivan,

Below please find the comments of the West Valley Citizen Task Force (CTF) concerning the draft Waste Incidental to Reprocessing (WIR) evaluation for two large pieces of contaminated equipment – the Concentrator Feed Makeup Tank and the Melter Feed Hold Tank – which for years have been considered high-level radioactive waste.

The CTF has maintained and continues to maintain that the ultimate solution for the site is the safe full removal of all wastes. As we have stated previously, we believe that the West Valley Demonstration Project Act contains the appropriate definition of wastes to be applied in making decisions for the site.

We incorporate by reference our letter dated July 28, 2006 to the U.S. Nuclear Regulatory Commission (NRC) regarding WIR reclassification. In that letter we referred to and reiterated the “serious misgivings” that we originally expressed in December 1998 and January 1999 “about the legality of using the WIR reclassification at West Valley.” Our concern is that agencies such as DOE and NRC are substituting their own interpretations of waste classification for the classifications established by Congress in the West Valley Demonstration Project Act. Since we see no ambiguity in the waste classifications set forth in the Act, we think this is an instance in which Congress “has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.” See *Chevron v. NRDC*, 467 US 837, 842-43 (1984).

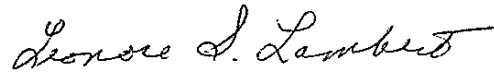
We also incorporate by reference our letter to DOE dated May 6, 2011. In that letter we express our concern that WIR determinations may set precedent for other wastes at the West Valley site, but we also recognize that any such precedent may be limited or curtailed by differences in the requirements

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applied to onsite and offsite disposal. We see no reason to discuss such differences here since there is currently no plan for onsite disposal of wastes resulting from the demonstration project. At the same time, we continue to assert that onsite disposal will never be a realistic option because the site's geology and topography will make it unable to meet long-term site integrity requirements.

Thank you for this opportunity to comment. After fifteen years of service in this endeavor we sincerely hope you will carefully consider our comments and act accordingly.

Sincerely,



On behalf of the West Valley Citizen Task Force

Copy:

Senator Charles E. Schumer

Senator Kirsten Gillibrand

Congressman Brian M. Higgins

Congressman Tom Reed

Governor Andrew M. Cuomo

Senator Catharine M. Young

Representative Joseph Giglio

Norman L. Marsh, Chairman Cattaraugus County Legislature

Betty Jean Grant, Chairperson Erie County Legislature

David Huizenga, Senior Advisor for Environmental Management, DOE

Bryan C. Bower, Director DOE WVDP

Paul J. Bembia, Director NYSERDA WVSMP

Paul A. Giardina, Chief, Radiation and Indoor Air Quality Branch, USEPA, Region II

Chad Glenn, Sr. Program Manager, U.S. Nuclear Regulatory Commission