

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, NY. 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 ~~important~~ 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 announced last month that it may withdraw from the joint EIS process for site closure and/or long-term stewardship. We do not believe this would be a responsible course of action by NYSERDA, and we urge the agency not to withdraw. 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, but we cannot agree that withdrawal from the EIS process is appropriate.

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 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 NEPA 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. *This means removal of all source terms, including the SDA and NDA burial sites.*

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, 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 alternative. The delay in presenting an EIS for 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 *either* 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 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 onsite 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 with NYSERDA, and to redouble its efforts to resolve important issues and work constructively within 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 demonstrate proper cleanup of radioactive waste. Obviously, the Act was not intended to allow contaminated land to be left behind unless it was absolutely unavoidable.*

Regarding recommendation 4. We urge DOE to seize this opportunity to be a leader in preserving the environment for future generations by accepting the suggestion from EPA to include clean closure of the North Plateau as the preferred alternative in the EIS. *Simply* demonstrating safe removal of the four underground tanks at West Valley (the only ones not on federal land) could lead to technology innovations that might lead to safe removal of the remaining 239 high-level radioactive waste tanks in the country.

As we indicated above, DOE should not pursue narrow interpretations of its role under federal law, but consider the purpose of the Project and interpret its mandate in light of the need for safe, prudent, long-term resolution of the issues at this difficult site.

Conclusion

In addition to making the above recommendations, we acknowledge another possibility – that federal legislation might provide a way to resolve some of these issues – but this letter deals primarily with actions and policies that could be implemented directly by DOE and NYSERDA. Our main concerns are that the ongoing deterioration of the relationship between DOE and NYSERDA must be prevented and reversed; that a joint EIS process is the appropriate vehicle for identifying and documenting site closure decisions; and that real progress is needed in reaching site closure decisions. As stated earlier, our goal is that these decisions must be guided by the need for safe, prudent, long-term protection of surrounding communities, downstream communities, and the Great Lakes, not by attempts to minimize short-term expenditures.

As always, we welcome the opportunity to discuss these issues with you in more detail. Please do not hesitate to contact us.

Sincerely,