

Notice of Lodging of Consent Decree pertaining to the West Valley Site, Cattaraugus County, NY

Notice is hereby given that on October 27, 2009, a proposed Consent Decree in State of New York et al. v. United States et al., 06-CV-810 (JTC), was lodged with the United States District Court for the Western District of New York. The Consent Decree has been approved by all parties to the litigation and has been furnished to the Court pending the public comment period that is being announced today. The Consent Decree has not yet been entered by the Court as an Order.

The Consent Decree pertains to the Western New York Nuclear Service Center, located in West Valley, Cattaraugus County, New York (the "Site"). The Consent Decree does not select or advocate the selection of any particular cleanup program for the Site, but pertains only to the apportionment between the parties of costs arising from or in connection with certain cleanup actions that may be conducted by the parties.

Background. The New York State Energy Research and Development Authority ("NYSERDA"), a public benefit corporation, holds title to the approximately 3,340 acre Site on behalf of the State of New York and operates a portion of the Site. The Site has been used since approximately 1962 for various purposes involving the processing, treatment and storage of spent nuclear fuel and radioactive waste. From 1962 until 1975, Nuclear Fuel Services, Inc., ("NFS"), a private business, conducted nuclear fuel reprocessing and radioactive waste disposal activities on the Site. In 1980, Congress enacted the West Valley Demonstration Project Act ("WVDPA"), Pub. L. 96-368, directing the United States Department of Energy ("DOE") to conduct a high level radioactive waste demonstration project, known as the West Valley Demonstration Project (the "Project") "for the purpose of demonstrating solidification techniques which can be used for preparing high level radioactive waste for disposal." Since 1982, DOE has conducted the Project on approximately 200 acres of the Site, and has engaged in the solidification and storage of certain liquid high level radioactive waste left at the Site by NFS. NYSERDA and DOE have each taken a number of actions to decontaminate the Site and remediate the release or threatened release of hazardous substances at the Site.

Remedy Selection Process. The State, NYSERDA, and DOE are engaged in certain public processes, including a process to develop an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act and the State Environmental Quality Review Act. DOE and NYSERDA issued a draft EIS last December, and accepted comments from the public until September 8, 2009 on the draft EIS. The governments expect to issue a final EIS early next year. See <http://www.wv.doe.gov>. ***The EIS process, among other processes, not the terms of the Consent Decree, will determine the appropriate steps to be taken in the remediation and decommissioning of the Site.*** The Consent Decree comment period has an entirely different purpose and is outlined below.

The State's Lawsuit. The State of New York, NYSERDA and the New York State Department of Environmental Conservation filed a complaint against the United States and DOE on December 11, 2006. The complaint: (a) asserted claims for cost reimbursement and damages to the State's natural resources under section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq. ("CERCLA"); (b) sought a delineation by the court of DOE's responsibilities under the WVDPA; and (c) requested a ruling under the Nuclear Waste Policy Act ("NWPA"), 42 U.S.C. 10107, that the federal government must pay the fee for offsite disposal of the high level radioactive waste stored at the Site. The complaint did not seek an order requiring the federal government to perform any cleanup measures. The State concluded then that it had no legal basis for such a claim and it continues to be the State's view that it has no such claim at this time.

Terms of the Consent Decree. The Consent Decree resolves many of the long-standing disagreements between New York and the Federal government regarding their respective financial responsibility for the cleanup. It identifies a specific cost share for each government for specified facilities and known areas of contamination, and sets forth a process for determining cost shares for contamination that may be identified in the future. It also requires NYSERDA and DOE to develop detailed plans to assure continued consultation between the agencies during the remainder of the cleanup. The Consent Decree does not resolve either the State's CERCLA natural resource damages claim or its Nuclear Waste Policy Act claim. The State reserves its right to pursue those claims, and the federal government may dispute them, in further litigation.

Notably, the settlement reached between the state and federal governments relates only to allocation of financial responsibility ***and does not affect in any way the cleanup alternatives that are being or may be developed in the ongoing EIS process or any other process.*** Thus, for example, the Consent Decree states that each government will pay 50% of the long-term costs of remediating the NRC-licensed Disposal Area, one of two landfills at the Site, regardless of whether the final remedy involves exhumation of landfill wastes, maintenance of the wastes in place or some other remedy. The federal and state governments have similarly reached allocation agreements regarding other facilities at the Site, as stated in the Consent Decree. ***The EIS process, among other processes, will decide the appropriate remedy for each of these facilities. Comments on how the Site should be cleaned up are not sought at this time- the court has no legal authority in this case to decide cleanup issues.***

Public Comment Process. The New York Attorney General's Office ("NYOAG") will receive comments relating to the Consent Decree for a period of thirty (30) days from the date of this publication. Comments on the Consent Decree should be addressed to Assistant Attorney General Linda E. White, and either (1) e-mailed to her at linda.white@oag.state.ny.us, or (2) mailed to her at New York State Department of Law, Main Place Towers, 350 Main Street, Suite 300A, Buffalo, New York 14202.

During the public comment period, the Consent Decree as well as New York's complaint may be examined on the following NYOAG Web Site, www.oag.state.ny.us. A copy of the Consent Decree and complaint may also be obtained by mail or e-mail from AAG Linda White,

see contact information above. The Consent Decree and exhibits total 48 pages. The complaint consists of 38 pages. Copying costs are 25 cents per page.