

**NYSERDA****New York State Energy Research and Development Authority**Vincent A. DeLorio, Esq., *Chairman*

Toll Free 1 (866) NYSERDA

www.nysesda.org • info@nysesda.org

April 17, 2003

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

Dear Ms. Williams:

I am writing to express my serious concern with the failure of the U. S. Department of Energy (DOE) to consult, cooperate with, and provide information to the New York State Energy Research and Development Authority (NYSERDA) with respect to the Joint Environmental Impact Statement as required under the *Supplemental Agreement to the Cooperative Agreement Between the United States Department of Energy and the New York State Energy Research and Development Authority Setting Forth Special Provisions for the Preparation of a Joint Environmental Impact Statement on West Valley Demonstration Project Completion and Closure of the Western New York Nuclear Service Center* (Supplemental Agreement).

Over the past few years, DOE has steadily reduced communications with regard to the preparation of the joint EIS. In fact, the erosion of DOE's communications with NYSERDA has become pervasive throughout the activities of the WVDP and culminated in a unilateral action by DOE in December 2002, when DOE cancelled all staff counterpart meetings, and then rescheduled the meetings without inviting NYSERDA representatives. This erosion of communication with NYSERDA is unacceptable. In regard to the joint EIS, the Supplemental Agreement governs the preparation of the joint decommissioning EIS and has clear provisions regarding communications between our organizations.

In an effort to improve communications and interactions related to the preparation of the decommissioning EIS, NYSERDA requested a meeting in May 2002 to discuss EIS coordination issues. At that meeting, we presented DOE with our concerns relative to EIS communications and described our expectations for improving these communications. We were hopeful that, as a result of that meeting, DOE would take a more inclusive approach with NYSERDA in regard to the preparation of the EIS. However, instead of improving, the situation has steadily deteriorated.

We met again on April 8 of this year to discuss EIS coordination issues. NYSERDA again presented DOE with our expectations regarding our participation in the EIS process (Attachment 1). We stated that, as a joint lead agency, we expect to be treated as an integral part of the EIS preparation process, not as an outside

Main Office
Albany
17 Columbia Circle
Albany, NY 12203-6399
Toll Free: 1 (866) NYSERDA
Phone: (518) 862-1090
Fax: (518) 862-1091

West Valley Site
Management Program
10282 Rock Springs Road
West Valley, NY 14171-9799
Phone: (716) 942-4387
Fax: (716) 942-2148

New York City
485 Seventh Ave., Suite 1006
New York, NY 10018
Phone (212) 971-5342
Fax (212) 971-5349

Buffalo
617 Main Street, Suite 105
Buffalo, NY 14203
Phone (716) 842-1522
Fax: (716) 842-1835

Ms. Alice Williams
Page 2
April 17, 2003

reviewer. However, from the discussions at that meeting, DOE appears to believe that it not only has responsibility for managing the EIS contract, but also has unilateral authority to make any and all decisions on the EIS without consulting with NYSERDA, or without regard to NYSERDA's position on EIS issues. You indicated that you felt that DOE was sharing as much information as it is required to share. I strongly disagree. Several provisions of the Supplemental Agreement contain specific requirements concerning the sharing of information and analysis, and for consulting with NYSERDA regarding the direction provided to the EIS contractor. DOE is not complying with these requirements.

For example, Section 4.3(b) of the Supplemental Agreement requires DOE personnel or representatives planning to visit the Joint EIS Contractor's facility or seek information directly from the Joint EIS Contractor to coordinate with NYSERDA's West Valley Program Director or his designee. Since DOE no longer includes NYSERDA in any EIS planning or technical meetings or discussions, it is clear that DOE is not coordinating with NYSERDA when it seeks information from the EIS contractor.

Section 4.3(d) provides that only DOE can directly give direction to the Joint EIS Contractor or make changes to the Joint EIS contract, but requires that DOE do so "with the advice of and in consultation and cooperation with NYSERDA's designated personnel." This section specifically states that DOE and NYSERDA will regularly exchange views on, and use their best efforts to agree on directions to be given to the Joint EIS Contractor. Despite this clear requirement, DOE does not seek NYSERDA's advice and consultation when it provides direction to the Joint EIS Contractor.

Section 4.4 provides a procedure to be followed for changes to the Joint EIS Contract. DOE has not followed that procedure.

Section 4.5 requires that DOE and the Joint EIS Contractor transmit to NYSERDA copies of all documents and records exchanged by DOE and the Joint EIS contractor (this includes the M&O Contractor's work on the EIS). According to the Supplemental Agreement, we are to receive copies of *all* documents, *including but not limited to, correspondence, evaluations, plans, drawings, reports, data, proposals, or analyses*. We do not routinely receive such documentation. Also, if DOE is providing routine written direction to the EIS contractors (and we would expect that DOE is providing such direction), DOE is not providing NYSERDA with copies of this written direction.

Section 5.1 of the Supplemental Agreement recognizes that DOE's M&O contractor will perform activities integrally related to the joint EIS. This section of the Supplemental Agreement stipulates that such integrally related activities shall be subject to the terms of the Supplemental Agreement. As such, the communications between the M&O contractor and DOE, and the M&O contractor and the EIS contractor, are subject to the consultation requirements cited above and to all other terms of the Supplemental Agreement.

It is NYSERDA's continued goal to complete this EIS in a cooperative, efficient and timely manner. We believe that DOE's reluctance to live up to the terms of the Supplemental Agreement only makes this process more difficult, and will lead to unnecessary delays and increased costs. If DOE truly wishes to move

Ms. Alice Williams
Page 3
April 17, 2003

the EIS process forward in a timely manner, then DOE will commit to immediately comply with all provisions of the Supplemental Agreement.

Sincerely,

WEST VALLEY SITE MANAGEMENT PROGRAM



Paul L. Piciulo, Ph.D.
Director

PLP/amd

Attachment:

(1) *NYSERDA Expectations Regarding our Involvement in the EIS Process*

cc: M. W. Frei, DOE-EM (w/att.)
R. R. Warther, DOE-OH (w/att.)
D. M. Gillen, USNRC (w/att.)
P. A. Giardina, USEPA (w/att.)
E. E. Dassatti, NYSDEC (w/att.)
P. R. Smith (w/att.)
H. Brodie (w/att.)
P. J. Bembia (w/att.)
C. L. Gerwitz (w/att.)

**NYSERDA EXPECTATIONS REGARDING OUR INVOLVEMENT IN THE EIS
PROCESS**

NYSERDA/DOE EIS Coordination Meeting
April 8, 2003

We expect to be viewed as an integral part of the process, not as an outside reviewer.

We expect to be consulted on changes in direction or scope of the EIS process.

We expect to be invited to participate in technical meetings and exchanges.

We expect to be copied on all transmittals between DOE and contractors doing EIS work and WVNS and other contractors doing EIS work.

We expect our comments on EIS technical work to be specifically addressed.

We expect DOE to hold routine EIS meetings with NYSERDA to discuss EIS activities, results and schedules.