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COALITION ON WEST VALLEY NUCLEAR WASTES
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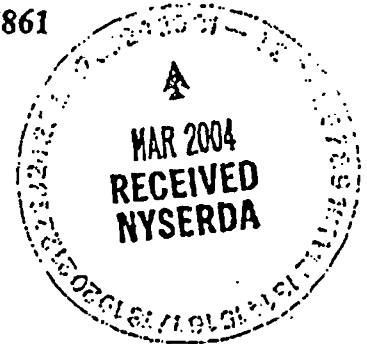

March 28, 2004

James Lieberman
Office of General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dear Mr. Lieberman:

A few days ago, when John Pfeffer and I were connected by video link to the March 23 NRC meeting in Rockville on DOE's West Valley Demonstration Project Decommissioning Plan, I offered several comments that led to brief discussions with you. For some of those comments that were left unresolved, I indicated I would follow up in writing; hence this letter.

I am also attaching, as an appendix to this letter, a list of the comments I made during the morning and afternoon comment sessions of the March 23 meeting. As I indicated then, I would like those comments to be part of the record for that meeting.

Disposal. The West Valley Demonstration Project, §2(a)(4), requires that DOE "shall, in accordance with applicable licensing requirements, dispose of low level radioactive waste and transuranic waste produced by the solidification of the high level radioactive waste under the project." In prescribing decommissioning requirements under §2(a)(5), NRC cannot diminish DOE's obligation to comply with §2(a)(4) for activities that involve disposal of low-level and transuranic wastes. Disposal of these types of wastes must be done "in accordance with applicable licensing requirements." The licensing requirements that are widely recognized as being "applicable" to low-level waste (LLW) disposal are 10 CFR 61 and 6 NYCRR 382. Any disposal of LLW resulting from the Demonstration Project must therefore be governed by one of these sets of requirements unless other licensing requirements can be shown to be "applicable." No convincing argument can be made that "no licensing requirements are applicable." DOE's traditional claims of non-licensed status cannot be used to justify unlicensed disposal by DOE on a site that it does not own and does not intend to occupy or maintain. I believe you indicated during the March 23 meeting that some portion of 10 CFR 20 might be interpreted as "applicable licensing requirements" for disposal of LLW in conjunction with decommissioning. Since I have not been able to find any language in Part 20 to support this idea, I would appreciate a more complete description, including an explanation of how all three words of the phrase "applicable licensing requirements" would be satisfied.

Prior onsite burials. Given the definitions of "residual radioactivity" and "site boundary" in 10 CFR 20.1003, NYSERDA will need to include the SDA in its dose calculations for the License Termination Rule (LTR). I see no way to avoid this conclusion, as residual radioactivity includes radioactivity from both licensed and unlicensed sources, includes previous burials at the site, and relies on a definition of "site boundary" that encompasses all the land that is owned,

leased, or otherwise controlled by the licensee. This clearly ties NYSERDA (but not necessarily DOE) to prior burials in the SDA. Thus, part of the LTR compliance process may not be "government neutral."

Partial site release. NRC's Final Policy Statement notwithstanding, DOE does not have the option of partial site release. DOE's mandate under §2(a)(5) of the West Valley Demonstration Act is to "decommission" the tanks, certain other facilities, etc. DOE's obligation to decommission cannot be diminished by any suggestions that NRC might make about partial site release. NYSERDA may also lack any meaningful option of partial site release, since partial site release normally depends on keeping an existing license in force for part of the site in question. The fact that NYSERDA's license is currently in abeyance would prevent any automatic reliance on partial site release. To achieve any sort of partial site release, NYSERDA would need to create or acquire a license (or possibly just its technical specifications if the license remains a Part 50 license) at the same time that NYSERDA is attempting to meet the LTR. This would be an unusual occurrence, and would not be a routine instance of partial site release.

Exemptions. As you know, any exemptions that DOE may seek from the LTR are 1) likely to be contested on the grounds that they would weaken the protection intended by the LTR and 2) are likely to be exemptions from subsection 20.1403(e) which sets a dose cap of 100 or 500 mrem that cannot be exceeded "if the institutional controls were no longer in effect." As discussed briefly on March 23, one of our longstanding concerns is that NRC lacks NEPA coverage for granting any exemption from subsection 20.1403(e). This subsection provides quantitative protection against a future possibility (loss of institutional controls) that cannot be precisely quantified but was analyzed in detail in the Generic Environmental Impact Statement for the LTR. Dropping the protection of 20.1403(e) – which is what any West Valley exemption is likely to consist of – cannot be done without new NEPA coverage. It is specious to argue, as NRC has done in the past, that the West Valley decommissioning EIS now being prepared by DOE and NYSERDA could support an NRC decision to drop the protection of §20.1403(e). The proposed actions are interrelated but not the same; the decisionmakers are different; and the sequence of steps required by NEPA has not been met by NRC.

Thanks for your attention to these matters, and we look forward to a dialogue in which we may resolve some of these questions that are crucial to the decommissioning plans of both DOE and NYSERDA.

Sincerely,

Raymond C. Vaughan

cc: R. Knoer
DOE
NYSERDA
CTF

Appendix to letter dated March 28, 2004

Comments made by R. Vaughan during morning comment period, DOE-NRC meeting on West Valley Demonstration Project decommissioning plan, March 23, 2004:

1. What I've heard today during DOE's presentation to NRC is mostly wishful thinking rather than a serious decommissioning plan. DOE shouldn't waste NRC's time with this.

2. For NEPA purposes, DOE cannot segregate "deactivation" and "decommissioning" activities. They must all be part of the same EIS process.

3. Is DOE preparing a decommissioning plan under 10 CFR Part 50? I assume they are, since DOE says the decommissioning plan will be "government neutral" and NYSERDA will need to do a Part 50 decommissioning.

4. Subsection 50.82(b)(4) indicates that delayed decommissioning may be considered "only when necessary to protect public health and safety." I don't believe this has been or can be shown. Available disposal capacity is a factor, but it's not clear that the vitrified high-level waste qualifies in this respect for subsection 50.82(b)(4). [NRC responded that "non-power reactor" is a defined term, and therefore the provisions of 50.82(b) do not apply to West Valley.]

5. Reclassification of high-level waste as "incidental waste" is illegal under the West Valley Demonstration Project Act.

6. What DOE is proposing in its decommissioning plan for the high-level waste tanks is *disposal*, not decommissioning. Disposal is governed by a different subsection of the West Valley Demonstration Project Act; it's not the same subsection that deals with decommissioning.

7. Geophysical testing of the hydrofracture test wells (WMA 11) needs to be done before those wells are grouted and closed. The tests should include downhole geophysical logging such as caliper, EM inductance, natural gamma, and imaging of the borehole walls by downhole video or acoustic televiewer.

8. Nothing in DOE's proposed decommissioning plan has addressed provisions of the License Termination Rule (LTR) that must be met for restricted release, such as consideration of the advice of the community and demonstrating that the loss of institutional controls does not produce unacceptably high radiological doses. These are crucial parts of the LTR; they need to be met before DOE gets too far down the road toward a decommissioning plan that can't be approved.

9. The gradually spreading North Plateau plume of Sr-90 contaminated groundwater is being used today as an excuse for major portions of DOE's proposed decommissioning plan. But there's a serious regulatory problem with the current status and evolution of this groundwater plume. The NRC license change that transferred authority to DOE, and put NYSERDA's license into abeyance, was granted on the assumption that DOE would have the expertise to take care of the site and that conditions would not worsen while DOE was in charge. But there's been a clear

and obvious worsening of the North Plateau plume because DOE claims it's not their problem, NYSERDA doesn't have license authority to take remedial action, and NRC isn't regulating. All the while, the plume keeps spreading, and now we hear that it's a major driver of the decommissioning plan.

10. We've heard discussion today of the decommissioning plan being "government neutral." This is not entirely true. For NYSERDA, the definition of "residual radioactivity" in section 20.1003 will require that the SDA burial ground be included in dose calculations. For DOE, it's not clear that the SDA must be included. [This was discussed briefly but not resolved.]

Comments made by R. Vaughan during afternoon comment period, DOE-NRC meeting on West Valley Demonstration Project decommissioning plan, March 23, 2004:

1. As before, I ask that my comments be part of the record.

2. Between the morning comment period and now, there has been further discussion that relates to the point I raised in my earlier comment regarding whether the decommissioning plan will be "government neutral." While DOE and NRC were discussing section 2E of the decommissioning plan, it was stated that DOE will need to consider prior onsite burials in the NDA burial ground but not in the SDA burial ground. The point I was making in my earlier comment [#10, above] is that NYSERDA will need to consider prior onsite burials in both the NDA and the SDA. Section 20.1003 defines "site boundary" as "that line beyond which the land or property is not owned, leased or otherwise controlled by the licensee." [This was discussed briefly but not resolved.]

3. DOE intends to rely on "available data," meaning old data, for too many parts of the decommissioning plan, including surface water hydrology where the most recent stream data is apparently from the 1980s and early 1990s. Given the importance of this type of data to decisionmaking about site release, NRC needs defensible, good-quality data.

4. With regard to meteorology and climatology, DOE needs to use the best and most current studies about the increasing frequency of severe weather events resulting from climate change (or global warming) in the Great Lakes region.

5. I don't think that NRC can approve a decommissioning plan that has gaps in it that DOE assumes will be filled in the future by the granting of exemptions to the License Termination Rule. [This was discussed but not resolved.]

6. Can we get some agreement today on whether or not the decommissioning plan can be approved if it includes illegal reclassification of high-level waste as "incidental waste"? [This was discussed briefly but not resolved.]

7. How do today's outline, and the decommissioning plan generally, deal with subsection 20.1403(e) which sets a dose cap of 100 or 500 mrem which cannot be exceeded "if the institutional controls were no longer in effect"? [This was discussed briefly but not resolved.]