



August 8, 2012

Ms. Barbara Warren, Executive Director
Citizens' Environmental Coalition
33 Central Avenue, 3rd Floor
Albany, New York 12210

Dear Ms. Warren:

SUBJECT: Process for Phase 1 Studies

On February 15, 2012, we received your letter that provided detailed recommendations for the Phase 1 Studies process. DOE and NYSEERDA have prepared the attached matrix, which includes a response to each of the points raised in your letter.

Both agencies are committed to meaningful stakeholder input throughout the Phase 1 Studies process. DOE and NYSEERDA will hold routine meetings with the public to discuss the Phase 1 Studies process, Potential Areas of Study, individual scientific studies, and their implementation and results. DOE and NYSEERDA will carefully consider your input, and will make it available to the Independent Scientific Panel (ISP) members and to appropriate subject-matter experts as they evaluate the Potential Areas of Study. The ISP will attend public meetings as requested by DOE and NYSEERDA, either in person or on the telephone.

We wish to thank both you and the other signatories of the February 15, 2012 letter for your dedication to the West Valley Demonstration Project and look forward to your continued involvement as we move forward with the Phase 1 Studies.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Bower".

Bryan Bower, Director
US Department of Energy
West Valley Demonstration Project

A handwritten signature in black ink, appearing to read "Paul J. Bembia".

Paul J. Bembia, Director
West Valley Site Management Program
New York State Energy Research & Development
Authority

PJB/BB/amd

PJB/BB/12amd022.lmg

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Attachment:

1. *DOE/NYSERDA Responses to February 15, 2012 Comments Concerning the Process for Phase 1 Studies from the Center for Health, Environment, and Justice, the Citizens Environmental Coalition, the Coalition on West Valley Nuclear Wastes, the Indigenous Women's Initiatives, and the Nuclear Information and Resource Service, dated August 8, 2012.*

cc: Anne Rabe, Center for Health, Environment and Justice (w/att.)
Joanne Hameister, Coalition on West Valley Nuclear Waste (w/att.)
Kathy McGoldrick, Coalition on West Valley Nuclear Waste (w/att.)
Agnes Williams, Indigenous Women's Initiatives (w/att.)
Diane D'Arrigo, Nuclear Information and Resource Service (w/att.)
B. John Garrick, Ph.D., ISP Member (w/att.)
Chris Whipple, Ph.D., ISP Member (w/att.)
James Clarke, Ph.D., ISP Member (w/att.)
Kristin Shrader-Frechette, Ph.D., ISP Member (w/att.)
Moiria N. Maloney, DOE-WVDP (w/att.)
Lee M. Gordon, Ph.D., NYSERDA-WV (w/att.)

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bcc: H. Brodie, NYSERDA-Albany (w/att.)
M. N. Maloney, DOE-WVDP (w/att.)
A. L. Mellon, NYSERDA-WV (w/att.)
D. A. Munro, NYSERDA-Albany (w/att.)
P. B. Underwood, DOE-EMCBC (w/att.)
File: #60428 (w/att.)

DOE/NYSERDA Responses to February 15, 2012 Comments Concerning the Process for Phase 1 Studies from the Center for Health, Environment, and Justice, the Citizens Environmental Coalition, the Coalition on West Valley Nuclear Wastes, the Indigenous Women’s Initiatives, and the Nuclear Information and Resource Service.

#	Location	Comment	Response
1.	Page 2 Paragraph 1	<p><i>The Environmental Impact Statement (EIS) supporting Phased Decision-making failed to describe both the studies and a proposed process. As a result the public was blindfolded and prevented from having any real knowledge about Phase 1 studies at that time. We were told that this would be corrected after the Final EIS was issued. Unfortunately to a large extent the public continues to be hampered in our ability to understand the process and have any meaningful role.</i></p>	<p>After the publication of the Final EIS in January 2010, the DOE and NYSERDA began developing the Phase 1 Studies process. The Phase 1 Studies Process was described in the January 13, 2011 “<i>Guidance for Identifying and Conducting Potential Phase 1 Studies on the Decommissioning and/or Long-Term Stewardship of the West Valley Demonstration Project and Western New York Nuclear Service Center</i>,” referred hereafter as the Guidance. The Guidance details the Phase 1 Studies process including the Potential Areas of Study (PAS), the roles of the Independent Scientific Panel (ISP) and Subject Matter Experts (SME), and involvement of the regulatory agencies and the public in the Phase 1 Studies process. DOE and NYSERDA have also prepared a frequently asked questions document (FAQ) that describes the Phase 1 Studies process and associated public involvement in the Phase 1 Studies. The Guidance document and FAQ are available on the DOE WVDP (www.wv.doe.gov) and NYSERDA (www.nyserderda.ny.gov) websites.</p> <p>During the preparation of the Guidance, the DOE and NYSERDA discussed the proposed Phase 1 Studies process with the public at the June 23, 2010, and August 25, 2010 Citizen’s Task Force Meeting, and at the August 3, 2010 Quarterly Public Meeting (QPM).</p> <p>After its completion, the Guidance was discussed with the regulatory agencies and the public at the February 22, 2011, and the November 16, 2011 QPMs.</p> <p>During a January 31, 2012 conference call, DOE and NYSERDA discussed the Phase 1 Studies process with representatives of the Citizens Environmental Coalition (CEC); Center for Health, Environment and Justice;</p>

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			<p>Coalition for West Valley Nuclear Waste; Indigenous Women's Initiative; and the Nuclear Information and Resource Service.</p> <p>As the Phase 1 Studies process gets underway, the agencies will be gathering information and recommendations provided by the ISP and SME as they become available, and will use this information to provide stakeholders with an updated overview and timeline for the process as well as regular updates of progress.</p>
2.	Page 2 Paragraph 3	<i>The National Academy of Sciences book . . . is particularly relevant to the major problem we are facing related to meaningful public participation in Phase 1 studies, so that appropriate clean-up decisions can be made for Phase 2.</i>	The Phase 1 Studies process was not developed within the framework of the National Research Council process described in the report you quote. The process for the Phase 1 Studies is described in the Phase 1 Studies Guidance document and includes numerous opportunities for public participation.
3.	Page 3 Paragraph 1	<i>What are the decisions being used to direct the scientific effort at West Valley? The Agencies seem to believe that science should be conducted in separate closed meetings with little public input. The current process does not recognize all significant concerns and while it can be geared to scientific analysis it does not provide for adequate deliberation from interested and affected parties.</i>	<p>The Phase 1 Studies decision process is identified in both the Guidance document and FAQ, which are available on the DOE WVDP and NYSERDA websites. The SME participating in the SME Working Groups will evaluate their respective PAS and make recommendations to the agencies on studies to be performed. These recommendations will be made available to the public through the Phase 1 Studies website (www.westvalleyphaseonestudies.org). Currently, the Erosion SME recommendations are available for public review. The SME Working Groups will be closed to the public and the agencies to allow the SME to work independently and efficiently.</p> <p>The public will be briefed on the recommendations during a QPM where the agencies, supported by the ISP and SME, as appropriate, will respond to questions and comments from the public. Written comments and</p>

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			<p>questions may be submitted to the agencies which will be responded to in a timely manner. The agencies will decide on whether to proceed with the recommended studies after considering the SME recommendations and input from the ISP and the public. The Phase 1 Studies process, as outlined in the Guidance document, recognizes the need for public input and provides a means for public input during this process.</p>
4.	Page 4 Paragraph 1	<p><i>The Agencies have emphasized the need for and value of scientists in particular fields. While we have been provided an opportunity to recommend experts, the process so far is not Decision-driven, and deliberations have not occurred. In addition, the plan is for scientists to be kept completely separate from the public until they have conclusions to share.</i></p>	<p>The public has been encouraged to recommend ISP and SME members as part of its participation in the Phase 1 Studies process. Two public recommendations have resulted in the addition of Dr. Kristin Shrader-Frechette to the ISP and Dr. Richard Young as a SME in the Erosion Working Group.</p> <p>There is no plan to keep the ISP and SME completely separate from the public during the Phase 1 Studies process. The SME and ISP will attend public meetings as requested by DOE and NYSERDA, either in person or on the telephone. They will be available to the public during these meetings to respond to questions and comments early (before studies begin), and often throughout the Phase 1 Studies process.</p>
5.	Page 7 Bullet 1	<p><i>Detailed discussion of the Characterization, Sampling and Analysis Plan with the public, SMEs and ISP. Adequate site characterization and waste characterization are important steps toward risk characterization.</i></p>	<p>The “Phase 1 Characterization Sampling and Analysis Plan for the West Valley Demonstration Project, Revision 1, June 2011” (CSAP) is not part of the Phase 1 Studies process. The preparation of the CSAP was a requirement in Section 9.0 of the “Phase 1 Decommissioning Plan for the West Valley Demonstration Project, Revision 2, December 2010.”</p> <p>The CSAP describes the radiological environmental data collection activities that will specifically support the implementation of the Phase 1 decommissioning actions within the WVDP premises, which are described in the</p>

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			<p>DP. Section 9.0 of the DP, Facility Radiation Surveys, identified facility radiation surveys (background, characterization, final status) required to support the Phase 1 Decommissioning of the WVDP. The DP required the preparation of two supplemental documents, the CSAP and the Phase 1 Final Status Survey Plan (FSSP), which would provide the specific details of the sampling activities to support Phase 1 decommissioning.</p> <p>The sampling activities identified in the CSAP and FSSP are independent of, and should not be confused with, the statement <i>“Phase 1 activities would also include additional characterization of site contamination and scientific studies to facilitate consensus decisionmaking for the remaining facilities and areas”</i> presented in the <i>“Final Environmental Impact Statement for the Decommissioning and/or Long-Term Stewardship at the West Valley Demonstration Project and Western New York Nuclear Service Center”</i> (EIS).</p> <p>Phase 1 activities to facilitate Phase 2 consensus decisionmaking will be addressed in the joint DOE/NYSERDA Phase 1 Studies process that was described to the public during the February 23, 2011, and November 16, 2011 QPMs. Additional characterization needs have been identified as a Potential Area of Study (PAS) for the Phase 1 Studies Process as discussed during these QPMs.</p> <p>The DOE has provided written responses and has had personal discussions with the CEC explaining the intent of the CSAP on several occasions.</p> <p>The DOE responded to a May 11, 2010 CEC</p>

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			<p>correspondence on July 7, 2010. This correspondence was returned to the DOE on July 20, 2010 after Federal Express failed in several attempts to deliver the letter to the CEC address in Albany, NY 12210. On July 22, 2010, the DOE sent the letter via US Mail and Federal Express to Barbara Warren’s personal address. During a telephone conversation with Barbara Warren on October 25, 2010, Moira Maloney (DOE) described the CSAP as a specific support document for the Phase 1 Decommissioning Plan for the WVDP (DP), which is not considered as a Phase 1 Study. In a May 12, 2010 e-mail response to Barbara Warren, Paul Piciulo of NYSERDA explained why the NYSERDA-managed WMA 8 and WMA 11 are not included in the CSAP, which is a specific document required for the DP. The DOE responded to the February 2011 CEC comments on the CSAP in a March 2, 2011 letter to Barbara Warren.</p>
6.	Page 7 Bullet 2	<p><i>An Overview and Timeline associated with the subjects to be addressed, so that we may recommend particular experts.</i></p>	<p>The agencies are preparing a timeline for the Phase 1 Studies process and will make it available on the Phase 1 Studies website. The public may, at any time, identify potential SME for various PAS, and submit their names and qualifications to the agencies for consideration for future PAS SME working groups.</p>
7.	Page 7 Bullet 3	<p><i>As currently constituted the Subject Matter Experts (SMEs) and the Independent Scientific Panel (ISP) are being isolated from the public and held primarily accountable to the Agencies. These Agencies have reaching consensus between themselves as their primary goal. It is a goal we support but not to the exclusion of the public.</i></p>	<p>The SME and ISP are not being isolated from the public during the Phase 1 Studies process. As described in the Phase 1 Studies Guidance and the FAQ, the SME and ISP will attend public meetings as requested by DOE and NYSERDA, either in person or on the telephone. The public will be able to interact with the SME and ISP during these meetings by providing their input, questions, and comments to the SME and ISP. The public will also be able to submit written comments and questions to the agencies, which the agencies will respond to in a timely manner. The Phase 1 Studies</p>

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			Process was set up to allow the SME and ISP to have working meetings without the agencies or the public present.
8.	Page 7 Bullet 4	<i>Financial concerns are also prominent for the Agencies. The current process does not meet the criteria identified by the National Research Council Committee that produced the report quoted here.</i>	<p>The Phase 1 Studies process was not developed within the framework of the National Research Council process described in the report you quote. The process for the Phase 1 Studies is described in the Phase 1 Studies Guidance document.</p> <p>In addition, DOE and NYSERDA have not eliminated site decommissioning alternatives based solely on cost.</p>
9.	Page 7 Bullet 5	<i>Time with various subject matter experts early in the study of a particular subject and at reasonable intervals. The Independent Scientific Panel should also meet with the public at regular intervals. Agencies should not be limiting our ability to talk with experts, except for creating an orderly process, so that their time is efficiently utilized.</i>	The Phase 1 Studies will be performed over a six-year period and the public will have numerous opportunities to interact with the SME and ISP throughout the evolution of these studies. As stated in the Guidance document and FAQ, the ISP and SME will attend public meetings as requested by DOE and NYSERDA, either in person or on the telephone. The public will be able to ask the SME and ISP questions at these meetings, and provide comments that will be responded to. The public will also be able to submit written comments and questions to the agencies, which will be provided to the SME, ISP, and responded to in a timely manner.
10.	Page 7 Bullet 6	<i>Open Scientific Meetings with SMEs & ISP & Opportunity for Public Participation, so that the public is informed of topics to be discussed and could observe, with the ability to provide input at a specified time.</i>	The public will be informed of upcoming QPMs and provided agenda information through the Phase 1 Studies website (www.westvalleyphaseonestudies.org), which recently launched in May 2012. The ISP and SME will attend public meetings as requested by DOE and NYSERDA, either in person or on the telephone. The public will be able to interact with the SME and ISP during these meetings, and be able to ask questions, provide comments, and review technical reports provided during these meetings. Since individual Phase 1 Studies may take years to complete, there will be numerous opportunities for public participation during

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			<p>the Phase 1 Studies process. DOE and NYSERDA will respond to written comments and questions received from the public. The Phase 1 Studies Process was set up to allow the SME and ISP to have working meetings without the agencies or the public present.</p>
11.	Page 7 Bullet 7	<p><i>There should be more balance in the Scientific Panels, so that public concerns are adequately investigated. The Agencies have largely been the ones selecting the experts. They also have control over the contracts, scopes of work and the problems to be addressed. We recommend the addition of a Public Health Expert to the Independent Scientific Panel. An appropriate selection of this expert could help address our concerns about potential underestimation of risks.</i></p>	<p>The agencies will limit the size of the ISP to four members after adding Dr. Kristin Shrader-Frechette, who was recommended by the public. The three original members of the ISP are knowledgeable of public health impacts associated with radiological and chemical contaminants in the environment. Two of these ISP members were past presidents of the Society for Risk Analysis.</p>

