DECOMMISSIONING AND/OR LONG-TERM STEWARDSHIP
DRAFT ENVIRONMENTAL IMPACT STATEMENT
PUBLIC SCOPING MEETING
ASHFORD OFFICE COMPLEX
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ASHFORD, NEW YORK
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MR. CHAMBERLAIN: Okay. As I said, I'm John Chamberlain. I work in the Communications Department at the West Valley Project. And I'll be acting as the moderator for this meeting that is being held by the Department of Energy and the New York State Energy Research and Development Authority.

Throughout this evening, you will hear a number of acronyms used for various agencies, facilities, or regulations or we hope you won't hear them, but if you do, please ask. Note them down and when we have a break, we will be happy to explain them.

On March 13th, 2003, a notice was published in the Federal Register of Department of Energy and NYSERDA's intent to prepare an Environmental Impact Statement, or EIS, for Decommissioning and/or Long-Term Stewardship at the West Valley Demonstration Project and the Western New York Nuclear Service Center. This study will revise the draft EIS released in 1996 for public review and comment for Completion of the West Valley Demonstration Project and Closure or Long-Term

Management of Facilities at the Western New York Nuclear Service Center.

The DOE decided in 2001 to rescope the 1996 draft EIS into two studies. A new EIS developed by DOE focused on near-term management and off-site shipping of WVDP radioactive wastes, and a continuation of the joint DOE and NYSERDA Environmental Impact Statement to focus on the long-term issues and alternatives for WVDP completion and site closure or stewardship. A public meeting was held at that time to receive comments on the rescoping approach and on the content and scope of the waste management EIS.

The purpose of this meeting tonight is to receive comments on the scope of work to be considered in the revision of the 1996 draft EIS. Before we move forward with presentations on this EIS and the receipt of public comments, I think it would be valuable to provide some background on the site and the West Valley Demonstration Project. This will establish the context in which this Decommissioning and/or Long-Term Stewardship

EIS is being developed.

Western New York Nuclear Service Center is a 3,345 acre site owned by New York State and managed by the New York State Energy Research and Development Authority or NYSERDA. From 1966 to 1972, a private company operated the state-owned commercial used nuclear fuel reprocessing facility at the site. Following the 1976 announcement by the private operator of its intent to withdraw from reprocessing, the U.S. Congress passed legislation in 1980 directing the federal Department of Energy to come to the site and conduct a Demonstration Project to solidify the liquid high-level waste at the site. This very radioactive liquid was a byproduct of the reprocessing operation.

In 1982, DOE assumed control of approximately 200 acres of the Western New York Nuclear Service Center to conduct the project. New York State maintained ownership of the entire Center and control of the balance of the property outside the DOE project premises.

DOE and NYSERDA jointly began the EIS for Completion of the West Valley Demonstration Project and Closure or Long-Term Management of the Western New York Nuclear Service Center in December, 1988. This effort resulted in a draft EIS being issued for public review and comment in 1996.

DOE and NYSERDA will continue as joint lead agencies in revising the 1996 draft EIS. DOE, under the National Environmental Policy Act, and NYSERDA, under the State Environmental Quality Review Act, plan to evaluate the range of reasonable alternatives to address their respective responsibilities. The U.S. Nuclear Regulatory Commission, the U.S. Environmental Protection Agency, and the New York State Department of Environmental Conservation are participating as cooperating agencies.

In a moment, Dan Sullivan, DOE EIS Project Manager, and Paul Bembia, NYSERDA's Environmental Monitoring Manager, will further explain the work to be considered in this revised draft EIS.

After their presentations, there will be a brief question and answer period specifically to clarify items related to this EIS process or proposed actions being evaluated. As well as Mr. Sullivan and Mr. Bembia, Ms. Anna Bradford from the NRC, Mr. Paul Giardina from the EPA, Mr. Tim Rice from the NYSDEC will be available to answer questions.

Following the question and answer period, we will begin receiving oral comments from individuals who have registered to speak. Each speaker will be provided approximately five minutes. If you have not registered and would like to speak, you can sign up now at the table to my right.

For the official record I wish to note this scoping meeting is being held on April 9th, 2003, at Ashford Office Complex in Ashford Hollow, New York.

Before I turn the meeting over to Mr. Sullivan, I would ask if you have any questions regarding his presentation, please write them down and ask them during the

question and answer period that follows. Dan.

MR. SULLIVAN: Okay. I'm Dan Sullivan with the Department of Energy as John mentioned and I am the Project Manager for the EIS. I'm going to give you a little additional background in addition to what John said. I just want to make a few points.

DOE is here because Congress directed us to be here. The Act, the West Valley Demonstration Project Act, has certain tasks for us to complete and one of the big ones we've already completed is the certification, but there is more work to be done and this EIS is the document that is going to analyze some of the other actions, which are Decommissioning and/or Long-Term Stewardship.

The study is being done jointly with DOE and NYSERDA. They are the joint lead agencies. John mentioned this process started in 1988. And the scope of this original work, the scope of the EIS initially was completion of the Demonstration Project and Closure or Long-Term Management of the Center. We issued

a draft in 1996, without a preferred alternative.

John mentioned in 2001, we revised the scope to now consider waste management action as a separate NEPA document, a separate EIS. That EIS is not the subject of this meeting, but I can tell you that in probably the next couple of weeks that will be available for public comment.

Something else we did was we revised the alternatives. We modified the alternatives in the '96 draft to address what was in NRC's policy statement, which was issued in February of 2002.

In terms of the participants, there's a term we use, cooperating agencies, and essentially, the English version of what that is is, it gives special expertise or jurisdiction by law. The department invited those agencies that have fulfilled those two criteria to participate in EIS. They include NRC; Environmental Protection Agency, the EPA; NYSDEC, New York State Department of Environmental Conservation under NEPA; under

SEQR, the State Environmental Quality Review Act. NYSDEC is an involved agency with similar responsibilities. So again, special expertise or jurisdiction by law. And all those agencies bring that to the table. So those are the participants.

In terms of alternatives, we have posters and many folks had an opportunity to look at the posters before this session started, to help illustrate the concepts that we're going to analyze in the EIS. And I guess I should say the way the EIS is going to work is that these are the concepts right now. The way the EIS will be developed is for the decision maker to be able to compare across the alternatives. That's what it's all about. Prepare these alternatives and make an informed decision.

The alternatives that are being considered in the EIS are Unrestricted Site Release. I'm going to talk more about them in a second; Unrestricted Site Release, Partial Site Release without any Restrictions, Partial Site Release with Restrictions, Monitor and

Maintain under Current Operations and a No Action, a Walk Away. So those are the five alternatives that are being considered in the EIS and part of the scoping process is to get some feedback to say, is this all? Is this the complete set? Are there other things you'd like to see? Get some feedback. This is what we are considering in the EIS.

I'll talk a little about the first alternative and the picture that goes with the words is the first picture down here. And then the plain English version of this one is if this is what the site looks like today, the illustration for that first alternative is all the waste there is removed. All the waste and facility would be removed from the site including the underground storage tanks, all the buildings and the disposal facilities. So like I said, everything that you see on this picture is going to be removed. That would be Unrestricted Site Release. The property would be remediated such that it could be released without restrictions in accordance with NRC's license to termination criteria, 20 CFR 1402.

The second alternative that we are considering, that we are analyzing, Partial Site Release without restrictions, which is the second poster. So the easy way to think about that one is sort of like the first poster except the disposal units are still there and they will be managed under some sort of regulatory control. They stay where they are, but the rest of the site, the North Plateau, would be released. Other portions of the site could be released, also. So it's similar to alternative one with the exception of the burial grounds.

The third alternative is Partial Site Release with restrictions. And that's the third poster. It might be easier to start with the burial grounds. Again, the disposal units, they would stay under some sort of regulatory control. They would stay just like they look in that photograph. Just like it was in alternative two. Okay. The facilities on the North Plateau, the major facilities would be decommissioned in place, but there would be some facilities that would be removed

from the site. The North Plateau would be released with restriction. Other unimpacted portions of the Center could be released without restrictions. The License Termination Rule criteria that applies to the restrictions is 20 CFR 1403 of NRC's policy statement.

The fourth alternative is Monitor and Maintain. The site looks an awful lot like it does today and that's the fourth illustration. In this case, the VWDP, the project facilities and the Center and all property would be continued to be managed, monitored and maintained and remedial actions would be taken as necessary. Basically, we would continue to do what we are doing today. Okay.

The fifth alternative is the No Action Alternative. We always get questions. I will get questions today, No Action Walk Away. Why would you ever implement that alternative? It's not a case of implementing. It's a case of an analysis. It's not something that DOE is intending to do, but again, we compare across alternatives as a

useful tool to compare to the other alternatives. In this case what it means is, you assume all the activities that we are conducting today be stopped. No Long-Term monitoring or maintenance. Essentially, let nature have its way with the site. Again, not a viable alternative. It's used as the basis against which potential impacts from other alternatives could be compared.

So that's the alternative set that we are considering to analyze in this EIS. There's some other things we are going to look at. If you read the Notice of Intent, which I suggest you do, because there is more detail there than what I just said a minute ago. There is a list of proposed issues to be considered in our analysis and there's a partial list here but in the notice it's much longer. I just picked some key ones. Short-term and long-term impacts to the environment, workers and the population. These are issues the decision makers who want some information on it, we are going to analyze that.

Costs, long-term and short-term costs, that analysis would be part of this EIS.

Ability to comply with applicable requirements. Obviously, you'd expect to see that there as well.

Long-Term Stewardship, a key issue for many and that would be part of the analysis along with long-term site stability and waste disposition, including interim management and transportation, will be all part of that analysis.

I think this is my last view graph. In terms of schedule and process, we have another scoping meeting tomorrow night, same time, same place. The official scoping period is going to end April 28th. And that's just over 45 days.

In the past, we have been able to consider comments beyond the end of the scoping period. To the extent practical, we are going to continue to do that. But if you've got a comment and you want to make it, it would be best if do you it within the April

28th time frame. Comments are going to be considered during preparation at the revised EIS. It is my goal to issue a revised draft as soon as possible. The Notice of Intent says as soon as December of 2003, that's my goal. A public comment period will follow that, follow issuance of the draft up to 180 days, with a goal to reach a Record of Decision at the end of 2004. So that's the schedule. I think that was my last view graph so I believe I'll turn it over to Paul Bembia.

MR. BEMBIA: My name is Paul Bembia. And I'm the Program Manager with the New York State Energy Research and Development Authority, commonly known as NYSERDA. NYSERDA owns the Western New York Nuclear Service Center on behalf of New York State. We have 11 people at West Valley under management of Dr. Paul Piciulo. NYSERDA has a couple wells here at the Western New York Nuclear Service Center.

First of all, we manage a few areas of this site ourself. We manage the State-Licensed Disposal Area and we manage the

portion of the site known as the Retained Premises. I'll talk more about those in a moment.

In addition to that, NYSERDA funds 10 percent of the cost of the West Valley Demonstration Project. So as part of that role, we also monitor the activities of the West Valley Demonstration Project for NYSERDA.

I want to give you a little background on the Center. The Center is a 3,300 acre site. It's located primarily in the Town of Ashford in Cattaraugus County. A small portion the site is located in the Town of Concord in Erie County.

The Center is made up of a few different areas and I want to talk a little bit about those. First of all, we have got West Valley Demonstration Project premises. That's the area right here in green. This is the area where the majority of the reprocessing facilities were located when reprocessing operations were occurring at the site. It's the area of the site that the Department of Energy has control over for the

conducting the West Valley Demonstration Project. And it's also the area where the majority of the facilities that are going to be assessed through the Environmental Impact Statement are located.

Adjacent to the Demonstration Project premises is this little blue cross hatched area here. That is the State-Licensed Disposal Area. The State-Licensed Disposal Area is the shutdown commercial disposal facility on the site. It operated in the 1960's and 1970's. And that portion of the site is managed by NYSERDA.

The remainder of the site is the area of the site that we call the Retained Premises. NYSERDA manages that portion of the site as well. Now, there's a couple of green areas in here, also. Those are reservoirs and those are partly managed by the Department of Energy under the Demonstration Project. There are some other minor areas there in the Retained Premises as well. There's a firing range, a warehouse and environmental monitoring locations. Those are all

facilities that are managed by DOE under the West Valley Demonstration Project.

Now, while I have this slide up here, I just want to talk for a little bit about the regulatory structure for the site. The entire Center with the exception of the SDA is licensed by the Nuclear Regulatory Commission in 1966 when reprocessing began. That license or at least that technical specification of the license from the day to day operational parts of the license were put in abeyance and temporarily put aside when the Department of Energy came in to conduct the West Valley Demonstration Project and they took over the major facilities.

The State-Licensed Disposal Area, again, it's not under that license. It's regulated by the New York State Department of Environmental Conservation. There's a part 380 permit for the State-Licensed Disposal Area issued by NYSDEC and that's for the prevention and regulation of the release of radioactive materials. In addition to that, NYSDEC regulates hazardous waste and hazardous

constituents for the SDA and for the Demonstration Project.

The Environmental Protection Agency also has a role in the regulation of the hazardous materials onsite and have got other regulatory responsibilities as well.

As you heard, we have representatives here tonight from the Nuclear Regulatory Commission, the Environmental Protection Agency, and the New York State Department of Environmental Conservation. They are participating in this EIS process.

I want to talk a little bit about NYSERDA participating in the EIS. First as Dan mentioned, we are a joint lead agency with the Department of Energy on the EIS. And why is that? It's because the Environmental Impact Statement covers more than just the West Valley Demonstration Project. It covers the entire Western New York Nuclear Service Center and so it covers the areas of the site, the Demonstration Project part and it covers the parts of the site that NYSERDA is responsible for as well. I'll talk more about

that in a minute.

Since the EIS covers more than just the West Valley Demonstration Project, we had a written agreement with the Department of Energy regarding the management and cost for the preparation of the EIS. Under that written agreement, DOE manages the contractors for the preparation of the document.

How will we use this EIS to support our decisions? First, for the Retained Premises portion of the site, again, that portion of the site is managed by NYSERDA. NYSERDA has responsibility for it. It's under the NRC license and so as part of the EIS process, we will be looking at the direction of decommissioning the long-term management for the operation of the site. Because it is our intent that when DOE is completed with the Demonstration Project, that we will terminate the NRC license. We will also use the Environmental Impact Statement and analysis for the support of the license termination application.

The West Valley Demonstration

Project portion of the site, again, it's our intent that when DOE completes the project, we will terminate the license and we will use the Environmental Impact Statement analysis to support that license termination application.

The State-Licensed Disposal Area, this portion of the site is not under the NRC license but again, we're looking at the direction of the decommissioning of the long-term management of all of the facilities at the Center. So we'll be doing that at the State-Licensed Disposal Areas as well and because it's regulated by the New York State Department of Environmental Conservation, if there are any permitting actions or permitting activities that come out of that, the EIS would support those permitting actions.

I just wanted to say here that you can feel free to contact me. If you need any more information about NYSERDA, you can feel free to contact me. My telephone number is 942-4900 and my e-mail is pjb@nyserda.org. You can also get more information on NYSERDA's programs, general information at

www.nyserda.org and there's another web site there where you can get specific information on our West Valley Site Management Program. That's all I have. Thank you.

MR. CHAMBERLAIN: What I thought we do before the question and answer period before people provide their comments, I asked some people to come and sit up front just so that everyone can hear so if those folks would like to take a seat up here. While they are doing that, I just mentioned that we have been talking about the revision of the 1996 draft EIS and I don't know that I clearly pointed out at the beginning of the meeting, there are copies of that draft up here and there is a copy of the summary up here should anyone that doesn't have it like to know a little about the starting point, feel free to grab one on your way out. These folks all agreed to sit up front in hopes that there are a few questions. Paul and Dan, obviously, from the two lead agencies.

I'm proceeding slowly so we don't mispronounce anything this time around, Anne

and Paul and Tim from the three regulatory agencies that are cooperating in the development of this study. Again, these are basically questions that might clarify what the process is or why we are going forward in this way. It's not meant to be for detailed questions. Certainly, when we get done taking comments, we all will be around here for a while. If you want to talk to someone in more detail, it will be fine.

Does anybody have any questions about this EIS or the process or one of the agencies' roles? Have we got them all lined up and there's no questions? We'll all take a deep breath and go back and sit down.

MS. DARRIGO: I'm sorry I was a few minutes late. But why are we having this EIS? We already had one in '96.

MR. CHAMBERLAIN: Do you want to state your name for the transcriptionist?

MS. DARRIGO: My name is Diane Darrigo.

MR. CHAMBERLAIN: Thank you. For every one, that the question is why are we

having this EIS because we had a draft done in 1996.

MR. SULLIVAN: We have revised the scope of the EIS in 2001 and we are looking at -- initially the EIS considered waste management and decommissioning actions in the same document. In 2001, we revised the scope of the '96 draft to have waste management actions be in a separate document and decommissioning actions, a continuation of the '96, the EIS we are talking about right now. Some important things happened since 1996.

MS. DARRIGO: The decommissioning is continuing from the old one?

MR. SULLIVAN: Correct.

MS. DARRIGO: And waste management is the purpose of this new one?

MR. SULLIVAN: Is not the purpose of the meeting this evening. It's a separate NEPA document, separate EIS, which will be available for public review in the next couple weeks. Tonight's meeting is about the decommissioning of the EIS, the continuation

of the '96 EIS. And what I was going to say has happened that between the time where we are now and the '96 draft, was something very important. NRC issued their Final Policy Statement of West Valley, which I guess for lack of a better expression, it sort of set the end points. It described the closure criteria. So now, we have a target to shoot for. That was a key ingredient now and this EIS will consider what was said in that policy statement. The alternatives that are right behind you are the alternatives that were analyzed and that's the purpose of the meeting today, to get feedback on those alternatives.

MS. DARRIGO: This EIS today is -- you're redoing what we did in '96 because the NRC now has authority?

MR. SULLIVAN: The NRC always had authority.

MS. DARRIGO: Well, because we are now going to use the NRC's 10 CFR 20 in decommissioning --

MR. SULLIVAN: That's part of the reason. Yes, yes.

MS. DARRIGO: Because you are doing that, you had to do a new EIS?

MR. SULLIVAN: No, no, no. I'm just describing some of what happened in that time frame. Some of the history that will be incorporated in this NEPA document. One of the things the '96 draft didn't have was as clear a focus on what the final criteria was. We have that now.

MS. DARRIGO: Why are you -- I'm sorry.

MR. SULLIVAN: We're rescoping --

MS. DARRIGO: You're rescoping.

MR. SULLIVAN: Waste management actions are being considered a separate document. Initially --

MS. DARRIGO: So it doesn't cover as much. You're narrowing what the original one was going to be doing?

MR. SULLIVAN: Correct.

MS. DARRIGO: So the part of what it had to cover is being covered somewhere else?

MR. SULLIVAN: Correct. The way

to think of it, all of what was to be considered in the '96 draft EIS is now considered in two EIS's. The one we are talking about tonight, which is the decommissioning and/or long-term stewardship part of it. The waste management piece is covered in a separate EIS. Nothing is lost. All the parts are there. It's just in two pieces. Okay.

MR. CHAMBERLAIN: Okay.

MR. VAUGHAN: Dan, how do you deal with the segmentation question?

MR. CHAMBERLAIN: Excuse me, can you give her your name?

MR. VAUGHAN: Yes, my name is Ray Vaughan.

MR. CHAMBERLAIN: Thank you. Your question was how do you deal with the segmentation question. Dan, you want to -- I think you answered it before.

MR. SULLIVAN: I'll take a shot at it. We have attorneys here, too. You know, we have looked at it very closely. I know it's been a concern of yours. We don't

see that as an issue. Typically, segmentation comes up as a problem if you're trying to avoid an EIS. We are not doing that at all. We are, in fact, doing two EIS's. We don't see it as segmentation.

MR. CHAMBERLAIN: Anything else? Diane?

MS. DARRIGO: I actually have two questions. One is, there were options in the '96 that aren't in this EIS. So what happened to the option No. 2 or Alternative No. 2, which would have been to clean the site up and then have the waste packaged in a way it could go to a permanent site once one was available, but it wouldn't leave it in the ground.

MR. CHAMBERLAIN: I can just repeat that. Just make sure everybody heard. The question was there was an alternative in the '96 draft, tell me if I'm wrong?

MS. DARRIGO: Alternative two.

MR. CHAMBERLAIN: Alternative two was to dig up, tear down everything and package the waste and store it onsite, and that alternative is not here at least in that

form.

MS. DARRIGO: And that's the EIS that would cover it. The other one wouldn't necessarily cover it. This is where it would be if you weren't removing it as an option.

MR. SULLIVAN: That is correct. That is a good question. The concepts of storage, there are aspects of that that are included in the other alternatives. There are instances where interim storage of waste would have to take place. For instance, that first alternative is if everything was being removed and you couldn't send it off site right away for disposal somewhere else, you may have to have interim storage for select waste types for a period of time.

So concepts from that alternative are still preserved and are in this document. But something else important happened since 1996 and where we are today. We now have access to inexpensive and safe access to DOE sites where this waste could be disposed of. The Notice of Intent -- I tried to address that question under the section alternatives

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2 considered but eliminated from further
3 evaluation.
4 And real quickly, you ought to take
5 a look at that. I'm basically describing what
6 we have written here. That alternative is not
7 a viable alternative any longer because we now
8 have access to locations where it could be
9 disposed of. Storing it indefinitely is not a
10 reasonable alternative any longer. So I would
11 suggest, we can talk about it later if you'd
12 like or if you go back and take a look at the
13 Notice of Intent, I think it does a decent job
14 of describing in more words what I just said.
15 MR. CHAMBERLAIN: Anyone else?
16 Any other questions? Ray Vaughan.
17 MR. VAUGHAN: Yes, Ray Vaughan
18 again. I don't know whether this is a
19 question for you, Dan -- or Dan or who, but
20 let me ask several related questions. The
21 first is whether DOE and NRC considered the
22 issuance of NRC's Final Policy Statement to be
23 a discretionary NRC decision?
24 MR. CHAMBERLAIN: Would you like
25 to clarify that a little bit more?

MS. BRADFORD: I'm not sure what you mean by discretionary.

MR. VAUGHAN: Discretionary decisions are ones that are made using some exercise of judgment. They are not involved in just looking down the checklist, for example. So agencies that make a fairly broad decision where there's an element of judgment involved are called discretionary. Given that, would you regard the issuance of the NRC Final Policy Statement as a discretionary decision?

MS. BRADFORD: I don't think that the restriction of the License Termination Rule would be discretionary because that's the same rule that applies in other licenses.

MR. VAUGHAN: Do you believe that NRC had full authority given to it by Congress under the West Valley Demonstration Project Act in 1980 to adopt any regulations it wanted -- or excuse me, any requirements that it wanted for the decommissioning at West Valley?

MR. CHAMBERLAIN: Just give your name.

MR. LIEBERMAN: I'm Jim Lieberman, Attorney for the NRC. I think you're asking some legal questions here. I'm not familiar with the term discretionary as you're using it. I am familiar with the phrase discretionary versus administerial type actions. Clearly, the commission's actions involves judgment and we certainly think that issuance of the policy statement was within the authority of the commission in doing what Congress directed the agency to do. If that answers your question?

MR. VAUGHAN: Yes, but to clear up any misunderstanding, I also would make that distinction between discretionary and administerial. Can you give me your opinion what those two terms mean and what the difference is?

MR. LIEBERMAN: Administerial actions are pretty straight form. There is no judgment. It is or it isn't discretionary. It is some judgment. Expertise is needed to make the decision.

MR. VAUGHAN: Okay.

MR. CHAMBERLAIN: All right. All set.

MR. VAUGHAN: No, I have more.

MR. CHAMBERLAIN: I would just interject. We really would like -- these are certainly questions you can talk about after this period, but we would like to focus very clearly on scoping type questions related directly to this EIS.

MR. VAUGHAN: This definitely gets in that direction. It really has a lot to do with it. I'd like to ask Jim or Anne, again, do you see the issuance of the NRC Final Policy Statement as having been a major Federal action that may have a significant affect on the environment?

MR. CHAMBERLAIN: Ray, I'm not legal counsel here either, but in terms of a scoping meeting, I'm not sure that I understand how that applies to the scoping content of this particular study you are looking for.

MR. LIEBERMAN: I can answer that question. The commission is not establishing

a new requirement here. NYSERDA, as the licensee of the commission, is subject to the License Termination Rule and the commission decide and apply to the License Termination Rule. In itself, that's not an major federal action. In applying the License Termination Rule to this site or any other site, we have to do appropriate environmental reviews.

In a site that involves restricted release, potential restricted release, the commission has said that we need to consider how the impact under the potential restricted release compares to the impact of the generic environmental statement that is supported -- and that's why we need to consider the alternatives that DOE is considering for decommissioning to test against the generic environmental impact statement for the move and we do that through either an environmental assessment or an EIS. And in this case we are using the DOE's EIS assuming it's capable of being adopted by the agency.

MR. VAUGHAN: The concern that I have, Jim, is that NRC is attempting to

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2 participate in this EIS without recognizing
3 the need to do an EIS for adoption of the
4 Final Policy Statement. As I understand it,
5 from what you said, there was an exercise of
6 judgment in adopting the Final Policy
7 Statement, which sets the rules under which
8 this EIS will be conducted, but the adoption
9 of those rules has not received the
10 appropriate NEPA coverage and what you just
11 said, you said you would be looking at some
12 impact how those rules might be adopted, but
13 that is different from the adoption of the
14 rules. And I'm very concerned that NRC
15 continues to think that it can be a part of
16 this EIS not only to offer its expertise,
17 which is clearly needed, but also to some how
18 acquire NEPA coverage for the adoption of the
19 Final Policy Statement, which sorrily needs
20 it. Feel free to comment then. I would
21 welcome any comments to the contrary. That's
22 my concerns.
23 MR. CHAMBERLAIN: Accepted.
24 That's a little over 10 minutes. Does anyone
25 else have a question that maybe hasn't been

asked?

MR. CHAMBERLAIN: Okay. Our first commentor will be Carol Mongerson. Carol, if you wouldn't mind stepping up so the stenographer can hear you?

MS. MONGERSON: Let me ask you, can you hear me without it?

UNIDENTIFIED SPEAKER: No.

MS. MONGERSON: My name is Carol Mongerson. This hearing is unnecessary and I'm here to protest it. By holding it, you are breaking a contract that you signed with the West Valley Coalition. And you're forcing us to go back to court to stop you. We are going to court because what you are allowing here will adversely and irrevocably affect both the population and the environment for generations to come.

Now, why would they want to do such a thing? Because by splitting the EIS in two pieces and rescoping it like they are doing, that allows them to change the name of some very troublesome radioactive waste onsite from high level waste to incidental waste. That

will allow them to meet the standards. It's just a paper change.

It also allows the NRC to play the game before they set the rules and to get around doing their own EIS as Ray was just talking about for setting the safety criteria. It allows the NRC to play the game and it allows the DOE to ignore the people who commented at the original EIS hearing, the majority of people, the original scoping hearing.

The Coalition believes that the radioactive waste at West Valley should not be just squirreled away in some irretrievable form, like concrete, for instance, but that it should be held in above ground retrievable storage where it can be monitored.

Maybe I've been to too many of these hearings, these scoping hearings, but I'd like to tell you a little fable. Once upon a time, there was a rich and powerful king, who had a terrible problem. He had a beautiful golden treasure. It made everyone sick. They died of blue teeth. Of course, the king had blue

teeth. But he was the so rich and powerful, he made it very fashionable. People used to eat blueberries so they'd look like the king. But eventually, they began to protest. They complained because they were tired of dying. They took to the streets. They got louder and louder, reluctantly because it was very beautiful. The king decided to give up his treasure. He pondered and pondered about what to do with it. Where could he hide it so no one would ever find it. One dark night he went out and he dug a hole and he laid the treasure in it and kissed it good-bye promising to return when the protest died down. Then he covered it all over with concrete. Not just ordinary concrete you understand, special stuff. But alas, the king was mortal. He died carrying the knowledge of his treasure's hiding place to the grave.

Well, many, many, many, many years went by. The kingdom was now a queendom. A woman could handle the job now that so many people were dying of blue teeth. The queen was sad because the people were dying of blue

teeth. She had called in her advisors. They scratched their heads and said that although they were very wise and they knew a great many things, they did not know this one. They didn't know why people got blue teeth. There had always been rumors about a blue teeth treasure that was buried somewhere but nobody would remember where it was.

They sent for the oldest man in the queendom hoping he would remember something. And he said that was true. His great great grandfather had told him. Aha, said the queen, where is it? We will just dig it up and get rid of it. Simple. The old man who just laughed politely, of course, but he didn't know where the waste was hidden.

So the queen called in the record keeper. They scratched their heads and they said they didn't know. They no longer had any of those plastic boxes with the long black tails that people used to keep their records in.

She called in the scientists and the engineers. They thought and thought. They

gave everything new names. Then they scratched their heads and said they didn't know. She called in the diggers. They dug and dug. They looked and looked and they scratched their heads and said they didn't know either.

Finally, she called in the philosophers. They had a colloquium. They had another colloquium. They taught the queen some very long words and they scratched their heads and said they didn't know either.

Alas, the queen grew old. She lay dying on the royal bed in the darkened room. The learned doctors scratched their heads. Shook their heads over the near lifeless body. The mourners mourned. Sorrow hung in the air like a dank, vaporous effluent.

Suddenly she sat up. She reached towards the heavens and she said, through her blue teeth, I've got it. I've got it at last. The answer.

Retrievability! We should have kept it above ground and skipped the concrete. As she sank down, she said with her last breath,

of course, we never should have made it in the first place. Thank you.

MR. CHAMBERLAIN: Next commentor is Gladys Gifford.

MS. GIFFORD: Good evening. My name is Gladys Gifford. I speak tonight as a private citizen, who happens to be deeply involved in my church and community. I live in Eggertsville on the north side of Buffalo.

I have served the Presbyterians in New York as an observer at the meetings of the Citizens Task Force here in Ashford since 1996. This Citizens Task Force has worked hard to bring together all segments of the public in their effort to find a reasonable solution to the unreasonable burden that has been laid on this community.

I applaud the Citizens Task Force. In so doing, I urge the DOE to respect their work and to listen carefully to their concerns and then do heed their recommendations. They have, over these many months, demonstrated good faith with their constituents. They provide a rare model of real representative

democracy in action.

The issue before us today is truly an unreasonable burden. How shall we grapple with it? We, the people, of this region are required by Congress to rely on our Federal Government to provide the answer. I submit that you, the Federal representatives, have two unpleasant choices. If you choose to mothball the radioactive waste at West Valley, they will continue to poison us and our descendants here in Western New York for hundreds and hundreds of years. If you choose to unearth the radioactive wastes at West Valley, we will all bear a large financial burden for the remaining years of our lifetimes and pass that burden on to our children. Which shall you choose?

This decision will be made in the political sphere, not the bureaucratic one. As such, it is a rare opportunity for our political leaders to exercise real statesmanship. Our politicians can choose to make this decision a clear instance of doing justice for both the people and the land of

our region.

We know that the political leaders look at this site as a precedent-setting move. If West Valley can be mothballed, then so can other and larger sites across the country, and huge financial costs can be avoided. Please tell our political leaders to consider otherwise.

Please tell them that this is not truly a political issue. It is a moral issue. The issue has to do with doing what's right for this region. If we fail to do what's right for this region, if we fail to remove these poisons out of the ground, if we fail to move them into sight in a place where the humans who continue to live here can monitor them for hundreds, even thousands of years, if we fail in this task, then we will have committed a grave sin against all of humanity and especially against our own people and our own land. We beg you to tell our leaders. Make this political decision the right decision.

The burden of nuclear waste has one

huge advantage over other sources of toxins that our modern civiliation dumped into the land: nuclear waste makes itself known. Nuclear waste can be found. It can be traced. We are able to know exactly where it is and in what form. Therefore, this is a problem that can be handled. This is a burden we can see. That we can put in one spot. That we can quantify and even touch. It is, therefore, an easier burden for the government to handle than the more diffuse burden of chemical toxic waste. This is an opportunity for the Federal Government to act in good faith by solving the problem of nuclear waste, not by burying it, not by keeping it out of sight but by bringing it to the surface where the people can see this burden and keep tabs on how the Federal Government is fulfilling its responsibility.

The proposal before us suggests that the remaining sludge in the underground tanks can be reclassified. I protest that to change the label put on the waste is irrelevant to the facts. The waste has not changed its characteristics just because politicians want

to handle it differently. Why create confusion? Why encourage the public to be even more distrustful of their leaders?

Exhume the buried waste and turn it into a mausoleum in full view for all to watch. Ensure that this burden becomes an object lesson of the costs that our nuclear technology has brought upon us for all to see. Put the waste where the community can see it as evidence that the Federal Government can act in this instance with the future firmly in mind regardless of current political power.

I sincerely hope that the Department of Energy will decommission the West Valley Nuclear Service Center. Let the DOE exhume the radioactive materials and store them on the surface in a form that can be eventually be moved to a permanent repository. Let the DOE honor the recommendations of the Citizens Task Force and let the land be healed. Thank you.

MR. CHAMBERLAIN: Next commentor is Ray Vaughan.

MR. VAUGHAN: I will try to use

just four acronyms: DOE for Department of Energy, NRC for Nuclear Regulatory Commission, EIS for Environmental Impact Statement, and NEPA for National Environmental Policy Act. And I will also try to read my own writing, which was written partly on the subway and the bus today so we'll see about that.

My first comment is that the Notice of Intent misrepresents the stipulation. The stipulation of compromised settlement is paraphrased incorrectly and badly in the Notice of Intent. In part, the Notice of Intent says that the stipulation involved an the agreement, quote, to evaluate the feasibility of onsite disposal of low level waste generated as a result of Project activities in a Cleanup and Closure EIS, and to initiate the EIS process by the end of calendar year 1988, end quote. The stipulation says what it says. It should not be paraphrased in that manner.

My second comment is that the proposal to engage in Decommissioning or Long-Term Stewardship is wrong as proposed in

the Notice of Intent. The West Valley Demonstration Project Act requires decommissioning. It does not authorize long-term stewardship.

My third comment is that under the stipulation, DOE has no authority to rescope this EIS. We, the Coalition, have not agreed and do not agree that this rescoping should take place.

My fourth comment is that DOE cannot replace the 1996 draft EIS. If any new draft EIS is produced, it must be as a supplement.

My fifth comment is that DOE cannot abandon alternatives such as alternative two, that were initiated based on the original scoping for this EIS in the 1980's, developed by proper procedures and presented in the 1996 draft EIS.

My sixth comment is that many of the comments in the 1996 draft EIS were comments on alternative two, and many were generally favorable. DOE cannot simply abandon this alternative.

My seventh comment is that when DOE

lists and responds to comments in a final EIS, including all the comments made on the 1996 draft EIS, as well as any new draft EIS that might be proposed, the comments should be shown individually, quoted verbatim, and responded to individually in the final EIS.

Speaking for myself, I don't want my detailed comments and I submitted a lot on the 1996 draft, I don't want my detailed comments lumped into a generic summary. DOE may rearrange the comments into related groups, but you keep the original language of each comment.

My eighth comment tonight is that in assessing impacts to various alternatives, DOE should use probabilistic risk assessment especially in any case where there are competing modes of failure. A prime example is DOE's re-engineering of the high level waste tank dose.

My nineth comment is that DOE cannot create gaps in the train of logic in the paper trail that will lead to the final EIS and Record of Decision. The jumping off point for

any new supplemental draft EIS is the 1996 draft EIS, as well as comments received on that draft EIS. Any changes made to the 1996 draft EIS must be made and justified explicitly in the supplement, not in some intermediate document.

My tenth comment is that any erosion modeling must take slumping, mass wasting, et cetera, into account.

My eleventh comment is that any erosion modeling must be calibrated against actual measured changes in representative stream profiles at valley cross sections including such changes in areas where slumping and mass wasting are occurring.

My twelfth comment is that any erosion modeling must take stream capture or stream piracy into account.

My thirteenth comment is that any erosion modeling must take piping and seepage into account.

My fourteen comment is that any erosion modeling must take gully formations into account.

My fifteenth comment is that any erosion modeling must take into account the different erodibilities of bedrock, till, sand, gravel, and other units.

My sixteenth comment is that any erosion modeling must include Buttermilk Creek at least from the major slump area on Buttermilk Creek to its confluence with Erdman Brook, Frank's Creek and Quarry Creek.

My seventeen comment is that any erosion modeling must take into account the loss of Buffalo, Rochester and Pittsburgh Railroad maintenance of the hill slope on which the railroad right-of-way is located.

My eighteenth comment is that any erosion modeling must take into account the leading term removal of Springville Dam, and the long-term downcutting of Cattaraugus Creek and its affect on the steepening gradient of Erdman Brook, Frank's Creek and Buttermilk Creek.

My nineteenth comment is that any erosion modeling must take into account climate change and the accompanying increase

in intense storm events.

My twentieth comment is that any dose projections should take into account the populations that are reasonably expected to be exposed including residents of the Seneca Nation of Indians, Erie County residents served by the Erie County Water Authority, Buffalo residents served by Buffalo's Municipal Water System, and residents in the United States and Canada whose drinking water comes from the Niagara River or Lake Ontario.

My twenty-first comment is that if there is any disposal involved in the decommissioning, Section 2A4 of the West Valley Demonstration Project Act will apply and disposal decisions made by the licensing agency must receive full and explicit NEPA review.

My twenty-second comment is if there is any discretionary NRC decision making involved in the decommissioning, it must receive full and explicit NEPA review.

My twenty-third comment is that NRC's adoption of the West Valley Final Policy

Statement was discretionary decision making.

My twenty-fourth comment is that any NRC decision on termination of the part 50 site license will involve discretionary decision making.

My twenty-fifth comment is that any NRC decision on creating a new license for all or part of the site will be discretionary decision making.

My twenty-sixth comment is that any discretionary decision making by state agencies will likewise require full and explicit NEPA review.

My twenty-seventh and last comment is that the West Valley Demonstration Project Act does not allow high-level waste to be reclassified as waste incidental to reprocessing. DOE must not use this rescoping to do so. Thank you.

MR. CHAMBERLAIN: Thank you, Ray. Is there anyone else here who did not sign up to make a comment but would like to at this time? Okay. As far as the official meeting, this is a close. The rest of us will be

waiting here for a while. It was advertised until -- oh, there is one.

MR. PICKERING: I signed up to speak.

MS. ALLEN: Oh, I'm sorry. I thought you were just submitting a written comment.

MR. CHAMBERLAIN: Mr. Pickering, Jim Pickering.

MR. PICKERING: My address is Post Office Box 51, Arcade, New York.

In my request to speak, I listed eight items and just to show you that we are not the only one that makes mistakes, I made a mistake. The second item I marked down that the notice fails to provide the publication date of the decommissioning criteria issued by NRC. In the margin I said it was hidden on page two. So I make mistakes, too.

The other thing that I want to say before I start with these lists, is you have asked that we limit our speeches to five minutes. If you had been specific and said you are limited to five minutes, you would

have encroached upon the First Amendment of the Constitution of the United States and I would ask that in the rest of your presentations from here on in, you do not attempt to limit the speeches of the people who are protesting and grieving the conduct of the Government.

Now, Public Law 96-368 is the West Valley Demonstration Project Act. Item No. 1, the statute provides for one EIS not two, not six or a hundred.

The department has exceeded its constitutional authority because only the Congress passed the law. The President doesn't have the right to change it. And no department head created by an act of Congress has the right to change it. It can only be done by the Congress. The statutory authority does not exist for a revision.

Congress is limited in the laws that it makes to those laws that are necessary and proper. Congress did not see that it was necessary or proper for the executive or anybody else to change the law that it passed.

So this organization, the Department of Energy, is limited by Public Law 96-368. We cannot change it. It has to be done exactly as Congress wrote it. I covered the executive and I covered the other.

October 1st, 1980, contract between DOE and NYSERDA must be completed as an obligation enforceable by the constitutional clause re: obligation of contracts. That pertains to a prohibition which the Constitution had applied to all of the states. They can pass no law setting aside the obligation of contracts.

Now, there is such a thing in law as defacto. And what does defacto mean? It means that this has already been accomplished and you can't change it. Well, when the Constitution says to all of the states you can pass no laws changing the obligation of contracts, the defacto applies to the Nation because it's an inverse power. It applies to the whole country. So we cannot change the obligation of this contract between DOE and NYSERDA. It must be enforced the way it was

1 written.

2 Now, if we do not do that, we are

3 going to create a constitutional crisis, which

4 will go before the U.S. Supreme Court. Common

5 law juries have the right to determine facts,

6 not judges and not lawyers. We, the People,

7 the first three letters of the Constitution,

8 we, the People, set this thing up. We want to

9 determine the facts. That's why you are all

10 here. We want to determine the facts. We

11 want to be able to tell you which way to go.

12 This is what we want. So if it becomes a

13 Constitutional crisis, you may find out that

14 you're going to have nine judges up there,

15 sitting up there and some little old citizen

16 is going to say, I want a jury here to

17 determine the facts and they will have to give

18 them to us.

19 On page number 7 here, on page

20 12045, in this notice of whatever it is,

21 there's no concern for the policy of who

22 determines what's reasonable? It doesn't say

23 that who determines what's reasonable. That's

24 only one word, but do we, the People, do it or

25

do our hired hands do it, the Department of Energy, NYSERDA? Who determines what's reasonable as far as the water I'm going to drink, the air I'm going to breathe, the area where I'm going to live? Who determines what's reasonable? That belongs to the people.

Page 12046, on alternative one, I've got marked down here A, no good. Let's see what alternative -- Unrestricted Site Release. Now, as far as I'm concerned, all of these alternatives do not apply to the whole NYSERDA complex. They only apply to that part of the complex that is run by the United States, the Department of Energy.

And the West Valley Demonstration Project Act specifically defines transuranic waste. The Department of Energy just lost a case entitled the State of Idaho versus DOE, where 10 nanojuries was redefined to a hundred nanojuries as a minimum exposure. My friends, transuranic waste as far as West Valley is concerned is in Public Law 96-368.

Additionally, Public Law 96-368 goes

further and it says, there will be no other regulations that apply to any other site in the country. What is done here at West Valley is a Demonstration Project and it is unique and nobody else is going to have something that is done to them what is done here. It's got to be unique because it is a Demonstration Project.

I would suggest that before you go any further with what you are doing with this illegal secondary EIS that is not authorized by the law, I would suggest you go back and read the Constitution. I suggest you go back and read Public Law 96-368 and find out what you can do and what you can't do.

And the reason I'm suggesting that is this. You have the Coalition in court already with an open ended case because you screwed up. I had to go downtown last week. I'm retired from Bethlehem Steel and you all read it in the paper. They started jerking around with my health benefits and my pension and the rest of that. There is a whole bunch of people out here that have a cause, that

live in the neighborhood that have a cause to go to Federal Court and ask for an injunction against what you're doing. Do you know what it costs to go to Federal Court? A hundred and fifty dollars plus the cost of serving the papers. I suggest unless you want a whole bunch of lawsuits telling you to stop, you best change your mind what you are doing, because are only supposed to be doing what's underneath Public Law 96-368. That was my principle objection to Unrestricted Site Release.

No. 2, I have marked down as no good. Partial site release, again, it's only for the Federal designated site. It does not apply to the rest of the site. That's a whole different ball game. We are going to cross that bridge down the street.

Alternative three I also have marked -- where did it go, that's open to objection. That's a Partial Site Release with restrictions. And my objection specifically is, if you are going to open it up, there best not be anything there that's going to hurt a

human being. So as far as that's concerned, it's another no go unless you can come up with some way that says nobody is going to be hurt by that.

Number four, to Monitor and Maintain under current operations, "absitively and posilutely" out. The Public Law 96-368 says you will clean it up and you will get all of the high-level waste out of here. That means out of here. So you're not going to maintain it under current operations. You are going to get that waste out of here. We'll fight with the State about what's going to happen to that land after you are out of here. We will fight with the State over that. But as far as the high-level waste, you are going to get it out of here or going to wind up in court with not just the Coalition but individual lawsuits from individual people.

Number five, where did it go, no action, walk away. When I was going to high school, I graduated from Buffalo Technical High School. When I was going high school, some of the socioeconomic things that you are

seeing around the world today was handled with baseball bats and lead pipes and I'm telling you you're not going to walk away and leave that mess for this community. We can find you one way or another. You're not going to walk away, absolute and positively out. That is not an alternative. I'm glad that you both agree to that. It's not an alternative. As far as NRC is concerned -- and you're only about 10 years too late, we wouldn't have this problem if your office and probably before you got there, we wouldn't have this problem if you would have come up with the regulations that are unique, unique regulations to this site if you would have come up with them 10 years ago. Quit smirking. Quit smirking. You know I'm right. All right. Who we got? Paul Giardina, EPA, you weren't even hardly alive -- well, you were, too. You were just in an infancy. You were. You still don't know what you are doing.

MR. GIARDINA: I might agree with the latter.

MR. PICKERING: Actually,

seriously, you guys could have got together years ago and come up with the stuff that these guys need to get this dirt out of here. Get this waste out of here. You could have done it years ago and you didn't do it. Bad, you're bad, bad news. Tim Rice, what, DEC. He's a new kid on the block.

MR. RICE: I won't dispute that.

MR. PICKERING: You won't dispute that. All right. I've got a long and bitter association with the DEC. It's not only this -- this facility and you heard things about the aquifer. There is an aquifer down in Sardinia that feeds this whole area that you are talking about, only from a different tributary. And there is a pond built underneath the landfill that is fed by four springs, that they could not stop the water from coming in. So when you start about talking about aquifers --

MR. CHAMBERLAIN: Jim, I'm sorry to interrupt, can you just stay on the topic on the scoping?

MR. PICKERING: I'm talking about

the aquifers. When you start talking about aquifers, you got to get down around the Federal area and make sure that when the seepage goes down from all this cleaning, it is not going to go into a surficial aquifer or into an underground aquifer.

So there's your three regulatory agencies and I hope you will take advisement and do a lot better job than what you've been doing. Thank you.

MR. CHAMBERLAIN: Thank you, Jim.

Is there anyone else who would like to make a comment who didn't sign up or we overlooked by accident? No? Okay. I just repeat that this same type of meeting will be repeated tomorrow night. If you know of anyone else who would like to make a comment or to attend and take part, please ask them to show up tomorrow night at 6:00 o'clock. We will be at the same time and same place. Thank you very much.

(Whereupon the proceedings were concluded.)

C E R T I F I C A T E

I, DOREEN M. SHARICK, do hereby certify that I have reported in stenotype shorthand the proceedings in the Public Scoping Meeting on the Draft Environmental Impact Statement at the Ashford Office Complex, at 9030 Route 219, Ashford, New York, on April 9, 2003.

That the transcript herewith numbered one through sixty-four is a true, accurate and complete record of my stenotype notes.

Doreen M Sharick

DOREEN M. SHARICK

Notary Public.

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