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**re Decommissioning Criteria for WVDP (M-32) and the West Valley site:
Draft Policy Statement (Federal Register, Dec. 3, 1999)**

The League of Women Voters of the Greater Buffalo Area (LWVGBA) has followed the progress of the Citizens Task Force (CTF) for the West Valley site closely since its inception over three years ago. Some members have also followed activities at the site for up to twenty years previous to the formation of the Task Force.

As advocates for good government which includes opportunities for citizens to access information and to take part in the decision-making process, we are delighted to see the cooperation that has existed in recent years between site representatives and the Citizens Task Force. We are especially pleased by the openness of the various officials whose positions require technical expertise, yet who for the most part have shown a great deal of ability to explain the intricacies of various aspects of operations at the site in layman's terms.

We are impressed by the continued interest expressed by citizens in the community, despite the frustrations they have faced over the years in adjusting to changes in personnel, jurisdiction, regulatory authority, laws and applicable criteria for a proper cleanup. Several community groups and individuals have spent numerous hours studying the issues and have made comments on the draft policy statement. We urge you to implement their recommendations to the fullest extent possible.

The Citizens Task Force deserves applause for their unselfish dedication to the task which required countless volunteer hours learning about the complexities of the site, discussing options, composing comments and arriving at recommendations. The CTF report addressed many issues that are included in the League's position on Natural Resources. We urge you to implement their recommendations to the fullest extent possible.

THE LEAGUE OF WOMEN VOTERS

The League of Women Voters is a unique, multi-issue, nonpartisan, political organization. It encourages the informed and active participation of citizens in government and works to promote government policy and programs that include citizen input. League action is based on positions arrived at after study and general membership understanding and agreement. League positions have been established in many areas other than election law or government. We will quote today mostly from our national position on natural resources. The time line for these positions is attached.

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We find that we have a great deal of agreement with others who have commented on the draft policy statement and on real or potential issues at the West Valley site. The Seneca Nation, the Coalition on West Valley, Concerned Citizens of Cattaraugus County and many other groups and individuals across the country have expressed concern that the cleanup be as complete as possible. Numerous points make sense:

- West Valley is not a suitable place for long term storage or disposal of radioactive wastes.
- Use of the License Termination Rule (LTR) as the criterion for closure of the site seems reasonable.
- The License Termination Rule (LTR) should apply to the entire area: the Western New York Nuclear Service Center, including the NRC-Licensed Disposal Area (NDA), the State-Licensed Disposal Area (SDA) and the area occupied by the West Valley Demonstration Project.
- Decommissioning criteria must consider all residual radioactivity on the property with no one area exceeding the minimum allowable dose. The aim should be EPA's recommendation. There should be one overall set of criteria for the site.
- Levels of exposure that range from 25 mrem/yr to 500 mrem/yr belie a single set of consistent criteria.
- The aim of ALARA (reducing doses to As Low As Reasonably Achievable) could be thwarted by disagreement over what is reasonable, resulting in a choice that seems reasonable in terms of cost and risk today, but could present larger costs and risks in the future.
- A longer time frame for impact assessment seems prudent.
- The term "incidental waste" is misleading at best, dangerous at worst. Reclassifying high-level waste raises many questions.
- If facilities which were designed to be retrievable remain, do they not become de facto disposal facilities with need for regulation?
- Addressing "slumping" and the need for a proper erosion model seems essential for a site such as West Valley, which is subject to erosion.
- Federal and state commitments made today in good faith are unenforceable. It is possible for them to be legally rescinded or scaled back in the future, resulting in either a reduced level of protection or a shifting of costs to local/state governments.

INSTITUTIONAL CONTROLS

We find the CTF's sixth point to be especially significant in the light of suggestions that a great deal of radioactive material might remain in the ground at the site. Entitled FIVE-YEAR REVIEW PERIOD, LONG-TERM ENFORCEABILITY, AND FINANCIAL ASSURANCE FOR INSTITUTIONAL CONTROLS, this category of the CTF's paper suggests potential problems in applying institutional controls. Indeed, in section four, they call attention to the fact that the term "institutional control" itself has yet to be clearly defined, in West Valley or elsewhere.

LONG-TERM MONITORING

As we consider long-term monitoring of a toxic substance, we might consider a guiding principle provided by the Seneca Nation to protect the earth's natural resources. The report from the Stewardship Committee of the State and Tribal Government Working Group, dated February 1999, outlines their concerns about long-term planning and land restrictions proposed at various radioactive sites affecting

LAND USE/RESTRICTIONS

The Seneca Nation's report calls into question DOE's "Accelerating Cleanup: Paths to Closure", which states that most hazards present little imminent risk because physical and institutional controls greatly limit public access to the sites. This may be true in many instances of contamination of the land, but in the case of long-lived radionuclides, they point out that it would be necessary to develop land use plans that will allow long-term maintenance, not only for hundreds, but in some cases, thousands of years, well beyond the seventh generation. We question, along with the Seneca nation, how the DOE or any other government entity that happened to be in charge as the years go by, would control transfer of ownership or leasing of land or facilities on the land, to continue protection of the public. Future land use cannot be predicted except for relatively short periods of time. Restricting access and limiting development requires government entities in charge and sufficient funds to continue activities well beyond most institutional memory. Legal mechanisms to enforce land or water use restrictions often do not exist, or are challenged or ignored. Witness Love Canal, where restrictions and warnings were both ignored.

POLLUTION OF AREA WATERWAYS

The creeks which drain the site flow across the Seneca Nation land and into Lake Erie, which is a source of drinking water for Buffalo, Erie County and many other municipalities. In addition, on the Seneca land, fishing and hunting is a common pastime and source of food. Future leakage from the site could have potentially disastrous results.

OVERALL COST

Phrases like "cost prohibitive", "not feasible" or "too risky" are ambiguous. In-place closure may well be much more expensive over time, as the waste hazards outlast the plans or the will to fund them. Accelerating the cleanup in some instances may not be necessary except to secure funding while the interest and political will is at its peak. We may all want to "get it over with and move on" but the more that is left, the more some future generations will have to deal with it or suffer the consequences. Short-term fixes encourage long-term institutional controls, which at the time are themselves ambiguous.

FUNDING GUARANTEES

What guarantee will there be that Congress will continue to fund institutional controls, however they are eventually defined, when other pressing matters, or changes of administration and political will, create budget restraints? With administrations changing at the very maximum every eight years, with numerous shifts of personnel in between, and with appropriations voted annually, how can even a five- or ten-year plan be guaranteed to be reinstated for even fifty years, much less hundreds or a thousand?

POLITICAL REALITY

Knowing the complexities of overlapping and overriding governmental jurisdictions, we are concerned about the policy statement's apparent reliance on continued governmental attention to the issue. Several comments expressed concern about reliance on institutional controls and on the government's ability to provide assurance of funding for such a scenario. By law, governments cannot make commitments beyond their own administration. Political will changes; trust funds are not safe. Faith in future allocations of funds has often proved to be misplaced, and, in the case of guarding the public from radiation lasting over a thousand years, seems virtually impossible. We all need to be aware that if and when arrangements or commitments are rescinded in the future, the result may be a reduced level of protection and/or shifting of costs to local/state governments.

CLEAR LINES OF AUTHORITY/RESPONSIBILITY

Among the most perplexing problems in following governmental activities is determining who is ultimately responsible. Our experience with citizen education has shown that many people do not know which laws are state, which are national, or whose jurisdiction covers a particular issue. The radioactive waste issue presents a case in point. One would think that the Nuclear Regulatory Commission (NRC), with its charge to regulate, would know how safe a particular substance or activity is, and regulate it accordingly. The Environmental Protection Agency (EPA) would seem to be a likely partner with the

with its charge to regulate, would know how safe a particular substance or activity is, and regulate it accordingly. The Environmental Protection Agency (EPA) would seem to be a likely partner with the NRC, advising as needed in decisions on safety of the environment with the ultimate goal of the health and welfare of the people. In addition one would think that the DEC, New York State's Department of Environmental Conservation, would be looking at the effects on the environment of any substance or activity within the state. NYSERDA, it would seem, would be caring for research and development while observing all the rules and regulations provided by whomever made the rule, whether it be the NRC or the EPA.

The CTF waited almost two years for criteria from the NRC, assuming that the authority lay there, and that the decision on criteria would be at least as protective of the environment and public health as any other criteria across the nation. It was reasonable to assume that, given two choices, the NRC's or the EPA's recommendation, the more stringent regulation would apply, in the interest of public health and environmental protection. The public has a right to expect that some one agency/authority/department/person will ultimately take responsibility for the decision. Apparently that is not the plan.

The League of Women Voters is deeply disappointed that we cannot find the clear lines of authority and responsibility that the League has for many years considered a hallmark of good government. At this time we are unable to assure the public that someone is responsible for assuring the safety of their environment.

As we choose options and criteria for cleaning up contamination of the earth, we can all agree with the Seneca Nation that our goal should be long-term protection of human health, the environment and cultural resources. We might also want to consider the generation to follow, as they do: "May the world we leave them be a better one than was left us."

Sincerely,

Lyle Toohey, President
LWVGBA

Leonore Lambert
Monitor, radioactive waste issue

Attachment A - Natural Resources positions, time line
Attachment B - Pertinent NR positions

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