

To: West Valley Citizen Task Force
From: Melinda Holland, Holland and Associates
Subject: Summary of April 11, 2000, Task Force Meeting
Date: May 12, 2000

Next Meeting:

The next Citizen Task Force (CTF) meeting is scheduled as follows:

Date: Tuesday, May 23, 2000
Time: 7:00 p.m. - 9:30 p.m.
Location: Ashford Office Complex
9030 Route 219, West Valley, NY

A meeting announcement and draft agenda for the next meeting will be circulated prior to that meeting. If you have questions or comments regarding the upcoming meeting or about this summary, please contact Melinda Holland at (864) 457-4202 or Tom Attridge at (716) 942-2453.

CTF Attendees:

Attending were: Pete Scherer, Bridget Wilson, Warren Schmidt, Lana Redeye, Ray Vaughan, Nevella McNeil, Larry Smith, Elizabeth Lowes (for Barbara Mazurowski), John Pfeffer, Eric Wohlers, Lee Lambert, Paul Piciulo, Rich Tobe, Bill King, Larry Rubin, and Joe Patti. Not attending were: Murray Regan, Tim Siepel, and Pete Cooney.

Regulatory Agency Attendees

Tim DiGuilio, Tim Rice, Jack Krajewski, NYSDEC, and Barbara Youngberg, New York State Department of Environmental Conservation (DEC)

Teleconference Attendees

Jack Parrott and Bob Nelson, U. S. Nuclear Regulatory Commission (NRC)

April 11th Meeting Summary:

Tom Attridge and Melinda Holland opened the meeting by reviewing administrative issues and the agenda.

Rich Tobe announced his official resignation from the CTF and distributed a letter to the CTF members. Rich has accepted a position as Associate Director of the Community Foundation for Greater Buffalo and will no longer represent Erie County on the Task Force¹. Paul Piciulo presented Rich with a letter of thanks from NYSERDA and DOE for his service to the Task Force and the site. Larry Rubin was introduced as the new Commissioner of the Erie County Department of Environment and Planning. Mr. Rubin has filled the Erie County seat on the Task Force. Mr. Rubin introduced Mark Mitskovski as his alternate.

¹Rich Tobe may be contacted at the Community Foundation for Greater Buffalo, 712 Main Street ; Buffalo NY 14202-1720; 716-852-2857 (email - cfgb@buffnet.net)

The first part of the meeting involved a presentation by Tim Rice, Tim DiGuilio, and Jack Krajewski with DEC on their regulatory role at the WVDP site.² They began with a history of the radiological regulatory history of the State-Licensed Disposal Area (SDA). Next, NYSDEC representatives explained the agency's regulatory activities regarding the SDA under the Resource Conservation and Recovery Act (RCRA) which governs hazardous and mixed waste. A Task Force member asked if DEC has independent, discretionary decision-making authority regarding the Environmental Impact Statement (EIS). NYSDEC representatives replied that the NYSDEC will evaluate not only the EIS, but all proceeding documents (ROD, Preferred Alternative) to determine if they meet the requirements of the RCRA Corrective Action process. Independent action would only be necessary if these requirements were not met. The CTF member further questioned what would happen if the final remedy failed to fit the requirements of RCRA - how would that conflict be resolved? If RCRA requirements and other laws controlling actions at the West Valley site conflict, which statute will take precedent? DEC representatives responded that they do not believe there will be a conflict as all the laws are seeking to protect human health and the environment. They have not seen any conflicts so far with RCRA requirements. A DOE representative explained that DOE's understanding of the process under the RCRA Consent Order is that DOE and NYSERDA are required to perform Corrective Measure Studies for review by DEC and that DEC's review is to ensure the measures selected will meet regulatory requirements. DOE and NYSERDA, however, remain the decision-makers in this process, similar to a permitting process.

Another CTF member asked how NYSDEC knows what is in the SDA. The agency representative stated that there is good monitoring data which shows that the corrective action measures are working because the down gradient monitoring wells show no release of contaminants from the SDA. The site and NYSDEC work to keep leachate levels in the SDA trenches very low and stable. The hydraulic gradient around the SDA is inward.

A question was asked about the future permit status for the SDA. NYSDEC responded that this site is fairly unique, because it still has an interim status permit. It was left this way because the intention is to close the site. The DEC views the EIS as fulfilling the RCRA Corrective Measure Study requirements, and they saw no need for two documents to accomplish the same thing.

Another member stated that some questions still remain such as the impacts of erosion and the use of institutional controls in the remedy; DEC representatives agreed that these are key unresolved issues.

DEC explained that they are currently negotiating a Cooperative Agreement with the U. S. Nuclear Regulatory Commission (NRC) which will facilitate communications between the agencies and define each agency's regulatory jurisdiction and application of cleanup criteria at the site.

A NYSDEC representative explained the NRC's Agreement States Program that gives New York authority over portions of the NRC's radioactive materials program. They stressed that the authority is relinquished to the states rather than delegated, and that the NRC does not take back responsibility for only a portion of a program. This means that the NRC has no regulatory authority over the SDA and can not apply their decommissioning criteria directly to it.

NYSDEC explained that their probable long-term radiological regulatory control mechanism for the SDA would be continuation of a Part 380 permit. Such a permit would be subject to regular

²Copies of presentation materials may be obtained from Sonja Allen, WVNS Communications, (716) 942-2152, or e-mail allens@wv.doe.gov.

inspections and renewal every 5 years. It is explained that the NYS DOL would continue to require a license for the SDA for as long as a NYSDEC permit is in place.

A CTF member requested a copy of the 1983 Part 380 permit which was transferred to NYSERDA from NFS and the supporting State Environmental Quality Review Act (SEQRA) documentation. DEC agreed to provide this information.

A Task Force member asked DEC whether they thought it was appropriate to treat the CTF's Recommendations as an Alternative to be analyzed under the EIS process. A NYSDEC representative stated the SEQRA requires all reasonable alternatives to be evaluated in an EIS. DEC must comply with SDQRA (as opposed to NEPA, which applies to DOE and NRC). DEC will not write another EIS because the FEIS is being done by the site, however, DEC will have to make SEQRA findings based on the FEIS. She concluded that the CTF members suggestion of having the site analyze the CTF's recommendation as an alternative could be useful. Another CTF member responded that he was not sure that the Task Force intended that its recommendations be used as an alternative, he felt that the CTF provided guidelines but that it was the sites job to define the alternatives.

A Task Force member asked if all the agencies with jurisdiction over the site could sit down together and work out an agreement on how they will regulate the site. He is concerned about the agencies waiting for the site's recommendation then saying they do not like the result. He was especially concerned about the U.S. Environmental Protection Agency (EPA) given its comments at the January 5, 2000 NRC public meeting at West Valley. NYSDEC responded that the primary problems lie between EPA and NRC and that it is a national issue, not West Valley specific and they are not sure how long it will take to resolve. NYSDEC feels it can satisfactorily work out its issues with NRC. Another member agreed that the issues with EPA are a problem, for example at the Tonawanda site, EPA was silent for 12 years then once choices were made, EPA showed up with its opinions and stakeholders were very upset. He felt the CTF could help with this issue by contacting congressmen to nudge EPA and NRC to avoid similar problems at West Valley. Other Task Force members agreed that it is important to push EPA and NRC to resolve these issues and that NRC should pro-actively seek resolution with EPA. A NRC representative stated that they are currently working on an Memorandum of Understanding with EPA but it is not yet complete. NRC said it would get back to the CTF on the time line for this agreement.

Next, Jack Parrott of NRC gave an update on the status of the Draft Policy Statement. He said that the comments submitted on the draft could be viewed on NRC's web site in the public document room. NRC staff will address all public comments, prepare a revised Draft Policy Statement and present it to the Commissioners by the end of August.

A CTF member again stressed the desire to see a preferred alternative soon and a resolution of the responsibility issues between DOE and NYSERDA. He requested that the site develop a time line to complete these activities. Who will be responsible for the long term institutional controls is a concern of local citizens. The failure to reach agreement on responsibility raises concerns in the community that long term institutional controls will not be taken care of.

In response to the CTF's request for information on cost-benefit analysis, a DOE representative explained that lacking a preferred alternative, there was not a great deal the site could provide beyond what has been provided to the CTF at previous meetings, in the context of the "pure" alternatives. DOE feels it would be much more productive to discuss cost-benefit analysis in the context of a preferred alternative. At that time, DOE and NYSERDA will also be able to discuss why that alternative was selected and how the CTF's recommendations were considered.

Some Task Force members expressed concern over the delay in presentation of the cost-benefit information. They indicated that DOE and NYSERDA must have some indication of what the agencies want to do and expressed a desire to at least begin to discuss actions the agencies have agreement on. A member stated that she felt the site has already decided on the remedy based on the grout demonstration, and feels that the CTF should be shown the figures which back up these decisions.

The meeting concluded with a discussion of next steps for the Task Force. The frequency of meetings between now and the release of the draft preferred alternative was discussed, with most Task Force members in support of having at least quarterly meetings. Topics listed for future meetings included the outcome of the negotiations, future use of the site, cost-benefit, DOE/NYSERDA sharing of thoughts on the approach for preferred alternative, erosion modeling, probability modeling (materials relevant to this issue were handed out), new earth quake modeling, inclusion of the CTF's recommendations in the alternatives analyzed in the FEIS, and the recent news article in the Olean Times Herald.

A Task Force member suggested that a meeting be set for May to find out if the DOE has met Secretary Richardson's one year target for resolution of the issues with NYSERDA. NYSERDA and DOE stated that the negotiations are progressing but are not yet final, another negotiating session is set for the end of April.

The Task Force agreed that the next meeting would be held on Tuesday, May 23rd. Meeting topics may include:

- ▶ Results of the negotiations
- ▶ CTF alternative/use of the CTF recommendations
- ▶ News article in the Olean Times Herald
- ▶ Erosion modeling update (though a DOE representative indicated that at this point in time, there is little that could be shared)
- ▶ General discussion between CTF members on future CTF activities
- ▶ Future land use at the site

WVNS announced that May 5th will be the next Open House at the site. Documents on Long-term Stewardship were also distributed to the CTF.

The first document was DOE-Ohio's Long-Term Stewardship Principles issued by Susan Brechbill, DOE-Ohio Field Manager. The second handout was DOE-WV's input for a report titled "National Defense Authorization Act (NDAA) Long-Term Stewardship Report," which will be submitted to Congress this coming October. Any comments from CTF members were requested to be mailed by April 28, 2000. Another opportunity to seek input from Stakeholders on Long-Term Stewardship is expected in early June.

Eric Wholers mentioned that he was not interviewed for the Olean Times Herald news article about the Cattaraugus County Legislature's resolution. He stated that he was invited to speak before the Legislature on the issue.

Action Items

- ▶ Provide the CTF with a copy of the 1983 Part 380 permit which was transferred to NYSERDA from NFS and the supporting SEQRA document.