

To: West Valley Citizen Task Force
From: Melinda Holland
Subject: Summary of April 16, 2002, CTF Meeting
Date: May 13, 2002

Next Meeting

The next full Citizen Task Force (CTF) meeting will be held as follows:

Date: Tuesday, May 7, 2002
Time: 7-9:30 p.m.
Location: Ashford Office Complex
9030 Route 219, West Valley, NY

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: Alice Williams, Eric Wohlers, Paul Piciulo, Ray Vaughan, Mark Mitskovski, Lee Lambert, Joe Patti, Bill King, Pete Scherer, Gayla Gray, John Beltz, Warren Schmidt, Tim Sipel, Lana Redeye, Michelle Enser, and John Pfeffer.

CTF Members not attending were: Nevella McNeil and Mark Steffan.

Agency Attendees

Larry Camper, Jim Lieberman, Charlotte Abrams, Claudia Craig, Chip Cameron, Anna Bradford, Norma Garcia-Santos, Inge Cerma, and Chad Glenn, U. S. Nuclear Regulatory Commission (NRC); Jeanette Eng and Paul Giardina, U.S. Environmental Protection Agency (EPA); Paul Merges, Tim Rice, and Jack Krajewski, New York State Department of Environmental Conservation (NYSDEC); Gary Baker, New York State Department of Health (NYSDOH); Susan Brechbill, DOE Ohio Field Office.

Meeting Highlights

CTF members expressed concerns on the vagueness, lack of specificity, and excessive flexibility of the provisions of the Policy Statement. NRC responded:

- ▶ The CTF objected to the provision of an exemption from the requirements of the License Termination Rule (LTR). NRC explained this process and its safeguards;
- ▶ NRC explained its role in the Environmental Impact Statement (EIS) process;
- ▶ The CTF and agencies discussed potential future impacts from the Policy Statement on NYSERDA;
- ▶ The U. S. EPA and NYSDEC explained their perspectives on the Policy Statement, its implementation, and the Regulators Communication Plan; and
- ▶ The CTF adjourned into a caucus session with NYSERDA representatives, which has been summarized separately.

Meeting Summary

Tom Attridge opened the meeting by briefly describing the written materials that were disseminated at the meeting (see the list at the end of this summary) and Melinda Holland reviewing the agenda. Next, Susan Brechbill head of the DOE Ohio Field Office bid farewell to the CTF (she is retiring in May) and thanked them for their efforts.

NRC Final Policy Statement for West Valley

The meeting then focused on discussion with NRC, EPA, NYSDEC and NYSDOH on the NRC Policy Statement for West Valley and its implementation. Representatives from these agencies sat as a panel and responded to CTF member questions. Larry Camper of NRC started the meeting with a brief overview of NRC's key messages on the final Policy Statement.

CTF members expressed concerns on the vagueness, lack of specificity, and excessive flexibility of the provisions of the Policy Statement. The Task Force members stated that they had expected the Policy Statement to contain clear, measurable criteria for decontamination and decommissioning as required by the West Valley Demonstration Project Act (WVDPA). NRC responded that the Policy Statement provides clear criteria through the application of the License Termination Rule (LTR). NRC will use the Standard Review Plan, NUREG-1727, as it's a starting point on how to apply the LTR at West Valley. A Task Force member requested that NRC develop national (and West Valley) criteria on what kind of institutional controls are acceptable (including engineered barriers).

Under the Policy Statement, DOE must propose how it will satisfy NRC's requirements (or request an exemption). Then NRC must decide if its criteria have been met. CTF members objected to this approach for several reasons including the fact that it allows DOE to spend a lot of time and money developing an approach which may not be acceptable.

The CTF objected to the provision of an exemption from the requirements of the LTR. An NRC representative explained that the LTR provides an exemption mechanism for any licensee, thus the Policy Statement merely reflects what is contained in NRC regulations. He stated that NRC has a high standard which must be met before an exemption could be granted which requires protection of health and safety. DOE will have to submit a request for an exemption, a plan, and must show that they have done everything technically and economically feasible to meet the LTR standards. DOE will be required to show how they meet the dose criteria, information that will be published for public comment. NRC stated that no exemptions have yet been approved under the LTR.

CTF members stated that the Policy Statement ignores and goes against the CTF's two prior sets of comments submitted to NRC on the drafts leading up to the final Policy Statement. NRC explained how they reviewed, used and responded to the hundreds of comments they received.

In response to CTF member questions about NRC's role in the Environmental Impact Statement (EIS) process, an NRC representative explained that the agency decided to be a cooperating agency (as did EPA) to save time and effort, as it would have taken an additional three years to do a its own separate EIS. NRC will work closely with DOE to develop the next EIS. Once a proposed alternative is presented, NRC ceases its cooperating agency role to perform it's a regulatory review to determine if the proposed alternative meets NRC criteria. EPA and NYSDEC will perform similar compliance reviews against their own legal requirements. If NRC concludes that the preferred alternative is satisfactory, it will publish a Safety Evaluation Report which will be released for public comment. An NRC representative explained that the EIS essentially functions as a decommissioning plan that will satisfy the NRC/DOE Memorandum of Understanding (MOU) requirement for a decommissioning plan. NRC representatives stated that the public's next opportunity to impact the decisions to be made for D&D of the site could be the EIS scoping or the public comment period for the draft EIS.

When asked about how the process impacts NYSERDA in the future, an NRC representative explained that NRC views this final Policy Statement as the D&D criteria required by the WVDPA. The site originally operated under an NRC license to the state of New York, which is currently in abeyance. Under the WVDPA, DOE will act as a “surrogate” for the New York license until the NYSERDA license is reinstated at the end of the WVDP. Then the license may be reinstated for NYSERDA. The Policy Statement will not apply if NYSERDA seeks license termination, in which case only the LTR criteria will apply. If license termination is sought, another Environmental Assessment (and an EIS if warranted) will be completed by NRC and a public comment opportunity will be required. In response to a question, NRC staff explained that if an exemption is granted to DOE, it will apply to NYSERDA once the license is reinstated. NYSERDA may also apply for an exemption to the LTR.

A NYSDEC representative expressed the concern that NRC might approve DOE’s cleanup then later tell NYSERDA that it has to redo DOE’s cleanup. This hypothetical concern shows that NRC could approve DOE closing the HLW tanks in place with grout, then a few years later tell NYSERDA to dig up the grouted tanks. An NRC representative responded that they do not expect NYSERDA to redo work done by DOE. An EPA representative added that EPA’s RCRA closure requirements must be met when DOE closes the HLW tanks. A CTF member raised the concern that the Policy Statement does not say when DOE’s responsibilities end. For example, if the perpetual license option is selected and the remaining tank waste is grouted in place, when is DOE’s role at the site done? An NRC representative responded that under the Act, NRC is not responsible for determining when DOE has completed the Project, nor will they determine long-term stewardship responsibilities for the site.

An EPA representative reminded the CTF that many environmental protection laws have been passed since the WVDPA. Thus the WVDPA should be interpreted in light of these newer laws. This also means the regulators must work together and take a holistic look at all laws which apply to the West Valley site. To do this, the regulatory agencies have developed a draft Communication Plan which catalogues the requirements of each agency - this document will be discussed further at the NRC’s April 17, 2002, Public Meeting. He stated that previously, EPA had concerns with NRC’s standards, but are comfortable now that they have looked at NRC’s assumptions, models, the process for the final site survey, along with the agreed-upon list of regulatory requirements in the Communication Plan. How much contamination is left in the air, water and soil is the key end point from his perspective. A NYSDEC representative added that his agency doesn’t see as rosy a picture, and that the agency still has concerns with the exemption from the 500 mrem/year standard. He also feels that redefining HLW as LLW (incidental waste) is inconsistent with the NYSDEC LLW regulations and stated that DEC is still looking at these issues. Further, if DOE seeks an exemption, he feels DOE needs to show how it will comply with the regulations, not why it deserves an exemption. A CTF member urged these agencies to perform independent oversight to reassure the public, and to require more testing of groundwater, soil, water and air. He stated that many area aquifers have never been tested.

In response to a question, an NRC representative stated that DOE has not petitioned NRC for a ruling on reclassifying the HLW remaining in the tanks as incidental waste.

Next Steps

The next meeting of the CTF is scheduled for May 7, 2002.

Action Items

Action	Assigned to	Due Date (2002)
Provide a copy of the NRC Standard Review Plan NUREG-1727 to the CTF.	NRC	May 7, 2002
Provide a reference to the regulation which authorizes exemptions to the LTR (which is Subpart N - Exemptions and Additional Requirements of 10 CFR Part 20. Also, exemptions are addressed in NRC regulations in 10 CFR Part 50; See section 50.11 of the regulations).	NRC	May 7, 2002
Provide a copy of all comments filed with NRC on the proposed Policy Statement and NRC's responses to the CTF.	NRC	May 7, 2002

Observer Comments

Susan Brechbill, DOE Ohio Field Office, cautioned the CTF to look closely at what NYSEDA's responsibilities are regarding the history of the West Valley site, the WVDPA, and the EIS process. Carol Mongerson applauded the CTF's excellent comments to NRC. Colleen Gerwitz reminded the CTF to be alert to more changes DOE has planned for the EIS process which have not yet been announced.

List of Documents Distributed

- ▶ Meeting agenda
- ▶ Letter from DOE Secretary of Energy Spencer Abraham to NYS Governor George Pataki, dated April 12, 2002
- ▶ Press clippings
- ▶ Draft talking points for CTF meeting with NRC on April 16, 2002
- ▶ Letter from Erin Crotty, NYS Department of Environmental Conservation, to Richard Meserve, NRC Chairman, dated May 14, 2001
- ▶ Letter from Martin Virgilio, NRC, to Erin Crotty, NYSDEC Commissioner, dated March 7, 2002
- ▶ Letter from Jeanette eng, EPA, to Jack Parrott, NRC, dated January 10, 2000
- ▶ Summary of Discussion and Agreement from Telephone Conference held October 13, 2002, Concerning Cleanup Standards for the WVDP
- ▶ Letter from Paul Merges, NYSDEC, to Larry Camper, NRC, dated April 10, 2001
- ▶ Letter from Robert Hargrove, NRC, to Dan Sullivan, DOE, dated May 17, 1999
- ▶ Letter from Paul Giardina, EPA, to John Greeves, NRC, dated July 23, 2001
- ▶ Summary of April 9, 2002, CTF Caucus Session
- ▶ Letter from the Coalition on West Valley Nuclear Wastes to Richard Meserve, NRC, dated April 14, 2002