

To: West Valley Citizen Task Force  
From: Melinda Holland  
Subject: Summary of May 22, 2003  
Date: June 12, 2003

### **Next Meeting**

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

Date: Wednesday, June 18, 2003  
Time: 6:30 -9:00 p.m.  
Location: **West Valley Demonstration Project**  
Rock Springs Road, West Valley, New York

If you have questions or comments regarding the upcoming meeting or about this summary, please contact Melinda Holland at (828) 894-5963, or Tom Attridge at (716) 942-2453.

### **CTF Attendees**

*Attending were:* Eric Wohlers, John Allan, John Beltz, Joe Patti, Pete Scherer, Alice Williams, Lee Lambert, Bill King, Paul Piciulo, Tim Siepel, Nevella McNeil, Warren Schmidt, Ray Vaughan, Mike Hutchinson.

*CTF Members not attending (nor represented by an alternate) were:* Larry Rubin, Bill Kay, and Lana Redeye.

Regulatory Agency Attendees: Anna Bradford, Jim Lieberman, Claudia Craig, Chad Glenn, Dan Gillen, U.S. Nuclear Regulatory Commission (NRC); Jeanette Eng, U.S. Environmental Protection Agency (EPA); Tim DiGiulio, Tim Rice, Barbara Youngberg, Denise D'Angelo, New York State Department of Environmental Conservation (NYSDEC); Jeanie Loving, DOE-Headquarters.

### **Meeting Highlights**

Topics discussed included:

- ▶ Discussion on the WVDP Act language "...applicable licensing requirements for disposal of radioactive waste..."
- ▶ Overview of Recent NRC Guidance on Decommissioning
- ▶ Overview of Waste Incidental to Reprocessing (WIR) Applicability at West Valley
- ▶ Overview of the NRC Implementation Plan
- ▶ Update on the Regulators' Communication Plan
- ▶ EPA / NRC Memorandum of Understanding
- ▶ NYSDEC / NRC Requirements for Decommissioning
- ▶ CTF Strategy for Continued Congressional Involvement

### **Meeting Summary**

### Administrative Announcements

Tom Attridge opened the meeting by reviewing the current list of CTF members signed up to attend the National Council of Radiation Protection (NCRP) meeting at the West Valley Demonstration Project (on Rock Springs Road) scheduled for May 28, 2003. Current attendees include: Pete Scherer, Ray Vaughan, Eric Wohlers and John Beltz. He then briefly described the written materials that were disseminated at the meeting (see the list at the end of the summary) and Melinda Holland reviewed the agenda.

### Discussion on the WVDP Act language "...applicable licensing requirements for disposal of radioactive waste..."

James Lieberman, legal counsel for the NRC, started by reviewing the language of the West Valley Demonstration Project (WVDP) Act and NRC regulatory requirements:

- ▶ For on-site disposal of low-level waste (LLW), the criteria is the License Termination Rule (LTR). For off-site disposal, the requirement is 10 CFR 61.
- ▶ Residual radioactivity remaining at a licensed site is not considered LLW subject to 10 CFR Part 61.
- ▶ Applicable requirements for material remaining at the site is the LTR.

A CTF member stated that "on-site" and "off-site" are not terms used in the WVDP Act and questioned how NRC interprets the WVDP Act, the License Termination Rule, and 10 CFR Part 61 under accepted principles of statutory construction. He also stated that he did not believe that Congress intended the disposal requirements in Section 2(a)(4) of the WVDP Act to be subsumed in the decommissioning requirements of Section 2(a)(5).

A NRC representative stated that NRC views material left after decommissioning as residual radioactive material, not as disposal. While Part 61 does not apply to disposal from on site activities, if DOE intends to leave as residual radioactive material LLW packaged for disposal, the performance objectives of Part 61 would be considered in applying the LTR. A CTF member responded that if someone goes to the trouble of building engineered barriers to contain the "residual" waste, that action should be considered disposal. NRC responded that the License Termination Rule (LTR) allows for engineered barriers. The CTF member agreed to disagree but indicated that this issue would have to be revisited in the future.

In response to a question, a NRC representative stated that if the West Valley site was transferred to DOE ownership via new legislation, it would be appropriate for the legislation to clarify NRC's regulatory role. This is due to the fact that generally NRC does not have authority to regulate DOE sites as DOE is self-regulating at most sites under the Atomic Energy Act and Energy Reorganization Act.

In response to a question on how much waste must be removed from a Waste Management Area before engineered barriers are allowed, an NRC representative stated that the concept of ALARA (As Low As Reasonably Achievable) must be applied. In addition, exposures must be considered to the average member of the critical group based on an all pathways exposure analysis. The West Valley Policy Statement says that as much cleanup as is feasible must be

done before allowing alternatives to the LTR such as exemptions or perpetual licenses. The NRC representative also explained that the consideration of engineered barriers would need to assume their degradation over time. He also explained that ‘reasonably achievable’ is determined using risk assessment and that cost and technology are important considerations in this determination. The analysis is usually very specific, but NRC’s ALARA guidance explains this in more detail.

A CTF member questioned the ability of engineered barriers to withstand the long term forces of erosion - NRC responded that the effectiveness of barriers over time would need to be evaluated.

NRC stated that the Policy Statement for West Valley provided criteria based on the LTR for the whole site, but it is up to DOE/NYSERDA to propose how they will meet the criteria - this information should be provided in the EIS and the Decommissioning Plan. The LTR is a performance-based rule: it gives flexibility to licensees to decide how to achieve certain levels. A CTF member asked NRC if the definition of residual material in 10 CFR Part 20 was the same for both DOE and NYSEERDA, to which NRC responded that it is the same and covers the NDA (NRC-licensed disposal area) but not the SDA (state-licensed disposal area). A CTF member requested additional information, such as legislative history, on why the NDA is covered and the SDA is not. NRC’s view is DOE’s obligation extends only to the area of the site used in the project as specified in section 2. A. 5 of the WVPDA.

#### Overview of Recent NRC Guidance on Decommissioning

Claudia Craig, NRC, explained that this three-volume document is an attempt to consolidate more than 80 NRC decommissioning guidance and supporting documents. The document, which will be updated every three years, contains guidance to licensees and NRC staff and is risk-informed and performance-oriented.

- ▶ Volume 1, Decommissioning Process for Materials Licensees (finalized in September 2002)
- ▶ Volume 2, Characterization, Survey, and Determination of Radiological Criteria (scheduled for completion in September 2003)
- ▶ Volume 3, Financial Assurance, Recordkeeping, and Timeliness (scheduled for completion in September 2003).

Documents considered in the development of this Guidance include: Decommissioning Standard Review Plans (SRPs), regulatory guides, technical assistance requests, rules, regulations, MOUs with other agencies, etc. Using its Standard Review Plan approach, NRC sought stakeholder input, published the plan in the Federal Register, held a public meeting, involved agreement states and the Nuclear Energy Institute (NEI, an industry group).

A CTF member asked if he should be concerned that there was no mention of Part 50 licensees; NRC responded that part 50 is specifically for nuclear power reactors, but language in these three volumes says this guidance may be applied to “other licensees”. NRC responded that NRC has asked DOE to submit a Decommissioning Plan in accordance with this Guidance and DOE has agreed to do so. When the NYSEERDA license is reinstated, NRC will determine which regulations apply at the site - it may be by adjudication, order, etc. NYSEERDA will be bound by the Part 50 Rules.

Subsequent discussions centered around financial assurance and how cleanup responsibilities are enforced when a facility has inadequate funding—either due to bankruptcy for private companies or due to discontinued funding for a government facility such as the WVDP. NRC responded that, if Congress discontinued funding for the WVDP and DOE left the site, that EPA could be called in to respond under Superfund (CERCLA) but ultimately the responsibility would reside with the state of New York as the site owner.

### Overview of Waste Incidental to Reprocessing (WIR) Applicability at West Valley

Anna Bradford, NRC, provided an overview of NRC's decisions regarding when reprocessing wastes are considered Waste Incidental to Reprocessing (WIR), citing the following three criterion that were included in a letter from NRC to DOE on March 2, 1993, in relation to a WIR classification at Hanford:

- ▶ The waste has been processed, or will be further processed, to remove key radionuclides to the maximum extent that is technically and economically practical.
- ▶ The waste is to be managed, pursuant to the Atomic Energy Act, so that safety requirements comparable to the performance objectives set out in 10 CFR Part 61, are satisfied.
- ▶ The waste will be incorporated in a solid physical form at a concentration that does not exceed the applicable concentration limits for Class C low-level waste as set out in 10 CFR Part 61.

The third criteria was not included in the West Valley Policy Statement to provide a risk informed performance based approach which should serve to provide protection to the public health and safety and the environment. A CTF member asked if NRC has given any thought as to whether or not the WVDP could meet Criterion 2 and whether the word “comparable” in the 2<sup>nd</sup> criterion will allow DOE to avoid the site suitability requirements of the Part 61 performance assessment objectives. NRC responded that they have not yet addressed this issue but they understand the concerns about erosion and will evaluate long-term site stability. West Valley would have to submit documentation that demonstrated the ability to meet the comparable performance objectives in 10 CFR Part 61, Subpart C. A CTF member stated that this issue could be looked at ahead of time to avoid a lot of controversy later on. Until NRC knows what approach DOE will propose for decommissioning, NRC cannot evaluate these issues.

A CTF member inquired about opportunities for public involvement on this issue. NRC responded that NRC acts in an advisory role to DOE, and at DOE sites, it was up to DOE to make the WIR information available. Public involvement would involve commenting on the DEIS and the Decommissioning Plan. There could also be opportunities for public involvement when the license comes out of abeyance and the licensing process resumes. Past determinations were advisory only and were made publicly available by the site after they were final. A DOE representative offered to check with other sites on what process they used.

A CTF member observed that NRC has never made a legally binding WIR determination, having only provided advice to DOE. He then asked if NRC intends to make a legally binding WIR determination for NYSERDA. NRC responded that the legally binding decision would take place when NYSERDA resumes the license. Public participation in this determination may happen when the license comes out of abeyance and during the EIS process.

A Task Force member requested a copy of the NRC WIR report for Idaho and SRS, NRC responded that it would provide a sample report. A CTF member asked if NRC is part of the National Resource Defense Council suit on WIR, to which NRC replied that they are not.

### Overview of the NRC Implementation Plan

Chad Glenn, NRC, provided an overview of the NRC Implementation Plan (IP) for the Final Policy Statement for West Valley, stating that its purpose is to:

- ▶ Describe decommissioning and license termination under the Atomic Energy Act (AEA)
- ▶ Describe decommissioning under the WVDP Act
- ▶ Identify NRC decisions under the WVDP Act and the AEA.

Mr. Glenn's presentation identified the NRC approach and administrative process for site decommissioning for DOE and NYSERDA.

A CTF member expressed concerns about some of the steps proposed by NRC in the IP being completed after the NEPA process has been complete (see Figure 1 of the IP). He asserted that the NRC Record of Decision (ROD) should follow the last agency (NRC) decision. NRC clarified that the NRC ROD is the decision that the Decommissioning Plan and preferred alternative meet the LTR (they're really one step, not several as indicated in Figure 1 of the IP). The Task Force member reiterated his concern that NRC's decision should be simultaneous with or precede the DOE/NYSERDA decision on decommissioning, but NRC disagreed.

### Update on the Regulators' Communication Plan

Tim Rice with NYSDEC gave a brief review of the purpose of the Regulators' Communication Plan and the revisions that have been made. There were no questions.

### EPA / NRC Memorandum of Understanding

Jeanette Eng with EPA provided an explanation of the MOU between EPA and NRC, stating that the MOU allows for early consultation on potential issues to prevent costly, duplicative cleanup efforts at NRC-Licensed facilities. This MOU does not apply directly at West Valley due to the fact that decontamination and decommissioning activities are being performed by DOE (not an NRC Licensee) under the WVDP Act. Because EPA and NRC are currently consulting on West Valley issues, they are in effect carrying out the intent of the MOU. After giving a brief background, Ms. Eng stated that EPA consultation triggers when NRC determines:

- ▶ Residual levels in groundwater will exceed radionuclide maximum contaminant levels (MCLs) established under the Safe Drinking Water Act, or
- ▶ Residual levels in soils will exceed concentrations listed in MOU Table 1, or
- ▶ Future use of the site will be restricted by conditions in license termination, or
- ▶ Site-specific dose for license termination will be greater than 25 mrem/year.

In response to questions, Ms. Eng stated that exposure is calculated as a life-time risk of  $10^{-4}$  and considered over a time frame of 35 years for residential use and 20 years for commercial use. If

proposed soil concentrations after cleanup do not meet the numbers specified in the MOU, that triggers a consultation with EPA. The concentrations in the table were developed by considering the mobility in the environment, uptake pathways, risk to health/environment, half-life, etc.

A Task Force member noted that an EPA decision on West Valley is needed because the site is in the Cattaraugus Creek basin and this should be in the Regulators Communication Plan.

### Other Business

The CTF thanked the regulators for participating in the meeting, expressing their appreciation for the face-to-face interaction that enhances communication and understanding.

In response to a final CTF question, NRC stated that if NRC disagrees with DOE's decisions on decommissioning, they assume that the Chairman of the Commission would meet with the Secretary of Energy to attempt to resolve the issues. If that failed, the issue could be resolved by Congress. Due to the fact that DOE is self-regulating, NRC is not in a position to demand compliance from DOE. If the public disagrees with DOE's decision, legal or Congressional action would seem to be the available options.

### CTF Strategy for Continued Congressional Involvement

Reporting on the status of the Energy bill, Alice Williams reported that, when the bill was moved out of the Senate committee, the West Valley amendment was not attached.

The CTF decided to issue a letter to the entire New York delegation encouraging them to support HR 576 and S619.

### Next Steps

The CTF will meet at 6:30 p.m. on June 18, at the WVDP site for an extensive site tour and discussion. Task Force members MUST notify Tom Attridge by June 11<sup>th</sup> that they will attend the site tour to allow time for security clearance.

Subsequent CTF meetings will be held on July 16 and August 20, 2003.

### Observer Comments

An observer asked if members of the public would be allowed to attend the June 18<sup>th</sup> CTF site tour. A DOE representative responded that it would depend on the national security level in effect, and said she would respond closer to June 18<sup>th</sup> once the level of security is known.

### Action Items

Action	Assigned to	Due Date
Investigate whether DOE sites make WIR determination reports available to the public.	A. Williams	June 11

Provide a sample WIR advisory report to the CTF.	A. Bradford	June 11
Provide additional information, such as legislative history, on why the NDA is covered and the SDA is not covered by the definition of residual material in 10 CTF Part 20.	J. Lieberman	June 11
Provide the number of the Senate bill to the CTF.	A. Williams	June 11
E-mail draft Congressional letter, DOE/NYSERDA negotiations summary	M. Holland/ T. Attridge	May 30
Determine if observers may attend the June 18 <sup>th</sup> CTF site tour	DOE	June 11

Documents Distributed

<b>Document Subject</b>	<b>Document Description</b>	<b>Generated by–Date (if applicable/known)</b>
CTF Meeting	May 22, 2003 Meeting Agenda	M. Holland
WVDP Act Requirements for Waste Disposal	Presentation - “Language in Section 2(a)(4) of the WVDP Act”	James Lieberman, NRC
Consolidation of Decommissioning Guidance	Presentation, “Process of Decommissioning Guidance Consolidation and Development”	Claudia Craig, NRC
Waste Incidental to Reprocessing	Presentation, “Incidental Waste”	Anna Bradford, NRC
NRC Final Policy Statement for West Valley	Presentation, “Implementation Plan for NRC Final Policy Statement”	Chad Glenn, NRC
NRC Final Policy Statement for West Valley	U.S. NRC Implementation Plan for the Final Policy Statement on Decommissioning Criteria for the WVDP at the West Valley Site	NRC, May 2003
Regulatory Coordination	Regulators’ Communication Plan on Application of Cleanup Requirements for Decommissioning the West Valley Site, Rev. 1	May 20, 2003

<b>Document Subject</b>	<b>Document Description</b>	<b>Generated by–Date (if applicable/known)</b>
Regulatory Coordination	EPA Fact Sheet, “Memorandum of Understanding (MOU) Between EPA and NRC”	Jeanette Eng, EPA
Regulatory Coordination	Document, “ Memorandum of Understanding between EPA and NRC”	EPA and NRC
Congressional Involvement in West Valley Issues	E-mail Messages, between Eric Wohlers, CTF, and Bob Van Wicklin, Congressman Houghton’s office, dated April 24 and 25, 2003	E. Wohlers, Bob Van Wicklin
Long-Term Stewardship	<i>Weapons Complex Monitor</i> , “DOE Stewardship Planning Given Short Shrift, Academy Panel Says”	May 12, 2003
Long-Term Stewardship	<i>Nuclear Waste News</i> , “Major Questions, Few Answers Seen in Long-Term Site Management”	May 1, 2003

For copies of any of the above documents, please contact Sonja Allen at (716) 942-2152.