

To: West Valley Citizen Task Force
From: Tom Attridge
Subject: Summary of the January 4, 2005 Meeting of CTF Legislative Work Group (held at the NYSERDA Buffalo Office)
Date: January 12, 2005

Next Meeting

The next Citizen Task Force meeting will be held as follows:

Date: Thursday, January 27, 2005
Time: 7:00 - 9:30 p.m.
Location: West Valley Demonstration Project Site
10282 Rock Springs Road
West Valley, NY

NOTE: All participants must bring photo identification to enter the site.

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 Legislative Work Group Attendees

Gayla Gray, Bill King (by telephone), Lee Lambert, Mark Mitskovski, and Ray Vaughan.

Agency Attendees

Paul Piciulo, Hal Brodie, Paul Bembia, and Colleen Gerwitz from NYSERDA.

Meeting Summary

Hal Brodie opened the meeting by reviewing the objective of the meeting and the main issue up for discussion regarding the draft legislation (the application of the U.S. Nuclear Regulatory Commission's (NRC) License Termination Rule (LTR) for all portions of the Center at West Valley, including the disposal areas). At the last CTF meeting (held on December 15, 2004) there was much discussion on this issue without agreement on how it should be addressed in the legislation. Mr. Brodie disseminated a one-page chart on the application of the LTR that described NYSERDA's interpretation of how the LTR would be applied at West Valley. He said that NYSERDA put this chart together to attempt to clarify the steps in the LTR process, with hopes that it might identify possible ways to come to agreement with the CTF.

A CTF member asked Mr. Brodie whether the NRC-Licensed Disposal Area (NDA), a facility that the State has a major responsibility for, would fall under the requirements of LTR. Mr. Brodie responded that, in his opinion, the NDA ultimately would have to step through the LTR process, adding that he also believes the Federal government has responsibility for the NDA both under the West Valley Demonstration Project Act and under the Superfund law.

Hal Brodie stated that the relevant sections of draft legislation that cover the application of the LTR are Sections 5 (b) and 5©). A CTF member stated that he would like to see more substantive discussion of the application of the LTR in these sections. Mr Brodie suggested that they walk through the one-page chart, stating that it might help inform the discussion. The Work Group members agreed. Colleen Gerwitz took the lead in describing the steps of the LTR process as shown on the one-page chart.

A CTF member asked whether the LTR allows a licensee to assume that ICs will be effective for a certain number of years. Paul Bembia responded that the LTR requires the licensee to meet certain dose limits assuming that ICs are in place and certain dose limits assuming that ICs are lost. A CTF member noted that under 10 CFR Part 61 a licensee can assume ICs will be effective for 100 years, but that regulation does not apply at West Valley. There was some discussion about what ICs are and what constitutes loss of ICs. Colleen Gerwitz noted that NRC does not consider engineered barriers to be ICs. A CTF member asked whether a facility could remain under license even if it were a restricted release site. Hal Brodie responded that under the LTR you can terminate the license as a restricted release site, as long as you can demonstrate that doses could not be further reduced and the doses limits are not exceeded (with and without loss of ICs). However, he noted that NRC has applied the LTR at other sites and has started to utilize different licensing mechanisms to account for special situations. Mr. Brodie noted that at the Shield Alloy site, NRC has discussed issuing a different kind of license by NRC called a Long-Term Control License. NRC considers the Long-Term Control License to be a durable IC similar to state or federal ownership. A CTF member asked how he could get more information about this site and Mr. Brodie said he would provide a reference for him. Ms. Gerwitz asked the CTF member if he had seen the NRC's *SECY-03-0069 Paper - Results of the License Termination Rule Analysis*. The CTF member said he had not and asked if NYSERDA could provide this. Ms. Gerwitz agreed to provide this paper to the CTF member.

A CTF member stated that he would like to see two points considered in the legislation to ensure that the cleanup proceeds under clear regulatory oversight. One is the application of the LTR to all portions of the Center, including the disposal areas. The other is ensuring that modern licensing requirements are implemented if, and when, DOE takes title to the Center. He does not want DOE to assume the NYSERDA license, currently being held in abeyance, when any title transfer takes place. He would rather the DOE apply for a new license for those facilities that cannot be decommissioned. Mr. Brodie suggested some language changes to Section 5 (f) of the draft legislation to attempt to address these concerns, specifically inserting "If, after application of the LTR to all portions of the Center," at the beginning of the first sentence. The CTF member said that he may be able to support that change and offered another language change to the same section to further clarify the language. Specifically, he suggested replacing "required by the Commission" at the end of the last sentence with "needed to qualify for a license".

A CTF member asked about the state's role as defined in the new legislation, specifically the language in Section 5 (b) (2) regarding "the opportunity for the state to review, comment on and concur or not concur with the decommissioning plan..." Mr. Brodie explained that the New York State Department of Environmental Conservation (NYSDEC) reviewed the draft legislation and wanted to ensure that there was adequate opportunity for state review and comment. In addition, NYSDEC wanted the ability, within a public process, to concur or not concur with federal decision making. Another CTF member asked whether the legislation limits the funding as it lists a certain dollar amount (\$95 million). Mr. Brodie responded that the language says "not less than \$95 million" which provides for funding increases should the need arise. Another CTF member suggested that the language in the legislation be clarified to ensure that the money appropriated is actually used for cleanup at West Valley and not some other purpose. Mr. Brodie said he would try to address this.

A CTF member commented that he was concerned about arbitrarily assigning monetary values for impacts that are used in the cost-benefit analyses with the LTR process. He is concerned that something could develop in the future that may have been overlooked in the earlier analyses. Mr. Brodie explained that decisions at West Valley will be based on projected benefits and costs of the various alternatives. If a license is in place because facilities could not be decommissioned, any future actions would be determined under the conditions of the license.

Mr. Brodie said that a representative of the Akin Gump law firm in Washington, DC (consultants to NYSERDA) recently told him that there is no particular legislative significance to the February 15, 2005

deadline the CTF is shooting for with this legislation. Mr. Brodie said he wanted to let the CTF know this, adding that the consultant said that legislation can be introduced any time of the year and that it would be up to us (NYSERDA and the CTF) to decide when it is right to submit the legislation. A CTF member suggested that although this may be the case, the CTF should still try to get the legislation done as soon as possible. Hal Brodie said that he would do his best to revise the legislation with the suggested changes, get concurrence from his management chain, and send the revised draft out to the CTF before the next scheduled meeting (January 27, 2005).

A CTF member asked about the role of NYSEERDA under this legislation. Mr. Brodie responded that NYSEERDA would continue to be the land owner for up to 20 years, depending on how far along the DOE gets in the cleanup. He said that, during that time period, NYSEERDA likely would not be participating at the same level as they currently are at the site, adding that NYSDEC would likely have more responsibility at the site. A CTF member noted that the Washington State Department of Ecology, much like the NYSDEC, has an active involvement in the cleanup of the Hanford site. Another CTF member asked if any parallel State legislation would need to be passed to which Mr. Brodie replied that he did not think it would be necessary. A CTF member asked if the New York State Attorney General's office has been involved in the developments at the site. Mr. Brodie said that Ms. Linda White, from the AG's office in Buffalo, has been keeping up with the developments at West Valley and represented NYSDEC as amicus in the incidental waste litigation.

There was some discussion about the definition of high-level waste (HLW) in the legislation. Mr. Brodie stated that he used the definition of HLW that is in the West Valley Demonstration Project Act, adding that it would not be a good idea to change this definition in the middle of the cleanup process. A CTF member asked whether spent nuclear fuel would be defined as HLW. Mr. Brodie said that he would look into that issue.

Action Items

Action	Assigned To	Due Date
Prepare a revised draft of the legislation, addressing the comments of the CTF Legislative Work Group and disseminate to all CTF members	Hal Brodie (NYSEERDA)	1/27/05
Provide Ray Vaughan with a reference for obtaining more information on the Shield Alloy site	NYSEERDA	1/27/05
Provide Ray Vaughan with a copy of NRC's SECY-03-0069 Paper on Results of the License Termination Rule Analysis	Colleen Gerwitz (NYSEERDA)	1/27/05

Documents Distributed

Document Subject	Document Description	Generated by-Date (if applicable/known)
Decommissioning Options Chart	One-page chart	NYSEERDA - 1/4/05
Radiological Criteria for License Termination - Final rule	Federal Register Notice	U.S. Nuclear Regulatory Commission - 7/21/1997

Document Subject	Document Description	Generated by–Date (if applicable/known)
Decommissioning Criteria for the West Valley Demonstration Project (—32) at the West Valley Site; Final Policy Statement	Federal Register Notice	U.S. Nuclear Regulatory Commission - 2/1/2002
ALARA Analyses	NUREG 1727 - NMSS Decommissioning Standard Review Plan Volume 2, Appendix N	U.S. Nuclear Regulatory Commission - 9/2000

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