

To: - Citizen Task Force
From: Melinda Holland, Clean Sites
Subject: Summary of February 17, 1998, Meeting - **Revised**
Date: February 24, 1998

Next Meeting:

The next Citizen Task Force (CTF) meeting will be on:

Date: Wednesday, March 4, 1998
Time: 7:00 p.m. - 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: Ray Vaughan, Pete Scherer, Joe Patti, Warren Schmidt, Nevella McNeil, John Pfeffer, Barbara Mazurowski (for Tom Rowland), Murray Regan, John Beltz (for Pete Cooney), Paul Piciulo, Tim Siepel, Rich Tobe, and Bill King. Not attending were: Elaine Belt, Larry Smith, Pete Cooney, Blake Reeves, Tom Rowland, Lana Rosler, and Eric Wohlers.

Regulatory Agency Attendees:

New York State Department of Environmental Conservation (NYSDEC)
Jack Krajewski and Tim Rice

Attending via conference call:

U.S. Nuclear Regulatory Commission (NRC)
John Greeves, Jack Parrott, and Tim Johnson

February 17th Meeting Summary:

Tom Attridge and Melinda Holland opened the meeting by reviewing administrative issues and the agenda. One edit was received on the last meeting summary.

At the CTF's request this meeting focused on institutional controls. The meeting began with a presentation on long-term site controls (another term for institutional controls) by Jim Gramling, WVNS and Paul Bembia, NYSERDA. Their presentation covered the definition of long-term site controls, and examples of their application at other sites and at West Valley.¹

The following is a summary of the discussion which followed the presentation. In response to questions asked during the presentation on how long-term site controls are used at the Maxey Flats site, Mr. Gramling stated that the Maxey Flats fund was estimated at \$33 million with an annual budget of approximately \$400,000 for operating costs. Approximately \$10 million is set aside for long-term operation and maintenance. The fund is also to cover initial remediation efforts but the closure cost will be revisited in about 100 years, which is the time estimated for natural subsidence to be completed and a permanent waste cap installed. A CTF member requested additional information on the Maxey Flats fund including the sources of the fund, how is the fund set up, and who is the fiduciary managing the fund. Another CTF member requested information on why Maxey Flats decided to allow for natural subsidence to occur and not grout the trenches now.

Another CTF member asked for information on federal or state policy on creating trust funds. Are there any long term site trust funds funded solely by federal or state government? Are there any examples of long term trust funds which have money set aside for unforeseen contingencies and/or of funds which have not been raised to pay for other government activities? A CTF member said that investigation of how trust funds could be established and maintained would be useful. He also stated that establishing a "trigger" or re-opener which would force action to address the site 30 to 50 years in the future is difficult to conceive.

CTF members noted that the sites given as examples for institutional controls are Superfund sites and asked whether NYSERDA or DOE have considered making West Valley a Superfund site to increase the pool of money available for closure. A site representative stated that West Valley had performed a Preliminary Assessment, per EPA's request, and determined that no further action under the Superfund Statute, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), was necessary. Some discussion ensued about the fact that the site was covered under the West Valley Demonstration Project Act and that it is a State-owned facility. However, it was noted that it is possible that CERCLA could be used to file a cost recovery suit against prior operators and contributors of waste to the site.

Regarding the Fernald DOE facility, a CTF member asked for additional information on the construction methods for the disposal cell. Another CTF member asked for a copy of the Fernald CTF recommendations [note - this report was provided to the CTF at a prior meeting]. Another member requested information on how DOE officially incorporated the Fernald CTF's recommendations. Yet another member noted that the Great Miami Aquifer beneath the Fernald Site was contaminated when the Fernald site lost controls over the wastes and that the current activities at Fernald do not constitute a true remediation, just containing the wastes and groundwater contamination.

¹For a copy of the presentation materials distributed at this meeting please call Sonja Allen (716) 942-2152.

At the Rocky Mountain Arsenal the Army and Shell Oil are negotiating the creation of a trust fund. Part of the Arsenal site will become a wildlife refuge and be maintained by the Department of Interior. The Arsenal is an example of where funds have been used to deal with problems in the community resulting from the site. For example, the U.S. Army provides an alternative drinking water source to the adjacent community because its current drinking water supply is contaminated.

A CTF member requested information on how other government-owned sites had dealt with payments in-lieu-of taxes.

Regarding West Valley, a member asked if there is assurance of long term state-ownership. A NYSERDA representative responded that the state plans to continue to own the site. Another CTF member asked if some long-term monitoring would be done under Alternative I to be sure that all wastes had been successfully removed. A site representative responded that monitoring would be performed as necessary, but not forever. In response to another question, a site consultant stated that the disposal areas (WMAs 7 and 8) will not require a wait of 100 years for natural subsidence to be completed (like Maxey Flats) if grout is injected into the trenches. However, if there is a decision that grout will not be injected into the trenches, the site would need to calculate the time estimated for complete natural subsidence to occur.

Ray Vaughan also gave a brief presentation on institutional controls. A copy of his overheads is attached to this summary. He stated that he favors the use of institutional controls but is uncomfortable about placing undue reliance on these controls. The CTF is being asked for recommendations which could have impacts 100s or 1000s of years in the future. He is not convinced that the CTF has seen realistic estimates for the costs of institutional controls over time, especially erosion control maintenance. He reminded the group that NRC and NYSDEC have limits on how much a site can rely on institutional controls. Mr. Vaughan referred to Arthur Toynbee's "A Study of History" for examples of ancient civilizations which had abandoned maintenance of institutional controls due to shifting priorities or internal difficulties. He stated that it is very difficult to predict what our government's priorities will be 100 or 1,000 years from now. He felt that government could be relied on to maintain institutional controls for 30 years, but predicted about a 30% chance of failure over 100 years. He suggested that the site conduct more comprehensive probability analysis on the loss of institutional controls over time. In response to a question from another CTF member, Ray responded that the alternative he favored ultimately was to remove all wastes to a more suitable disposal site at some time in the future. In the interim, storing wastes above ground would be acceptable as it is easy to monitor and move. He feels that the threats posed by erosion are too great to leave wastes here for the long term. He would like to see the engineering studies being done on erosion at the site.

A CTF member requested more information on how other CTF groups have dealt with the institutional controls issue. Another suggested that the CTF focus on goals which can be reached in a 25 to 30 year period, keep the facility under NRC license, and let a future CTF decide what to do after 30 years. A member stated that he could live with an interim use of Alternative III for WMAs 1 and 3, if a fund were created which would have enough money to do Alternative I in the future. Another stated that while he shares the same concerns, he feels that creating a fund would be very difficult and that the money is better left in circulation in society. If some re-opener or trigger were created to determine when additional action was needed, what would the trigger be?

The CTF concluded the meeting with a discussion of how they could come to closure on recommendations. One member suggested that they should determine what areas of agreement and disagreement exist within the group and work from there to develop recommendations. Another suggested that the site representatives have heard the CTF's concerns and preferences, now the CTF would like to have a proposal developed by site professionals which would flesh out details for the CTF's ideas for a combination of Alternatives II and III, which is temporary, with a reliable trigger to revisit the site at a future date and which deals with needs for future funding. The CTF agreed that at the March 4th meeting they would come prepared to identify criteria that they would want the site to address in development of a (preferred alternative) proposal.

3/2/98

Observer Comments:

There were no observer comments.

Action Items

- ◆ Provide information on how Maxey Flats or other site trust funds are set up. Who is the trustee or fiduciary? How is the money invested? How much growth is produced over time.
- ◆ Furnish information on the design of the Fernald disposal cell. Is it an above or below-ground facility?
- ◆ Provide a copy of the DOE document which adopts the Fernald CTF's recommendations.
- ◆ Furnish information on whether any government-only trust funds exist or do all government sites use only annual appropriations. Do any government trust funds set aside large sums for future contingencies? If they exist, are there any which have not been raided? Are there any policies/laws which preclude government from creating such funds?
- ◆ Provide information on why Maxey Flats decided not to use grout to close the disposal trenches.
- ◆ Furnish information on what has happened at other government-owned sites regarding payment in-lieu-of taxes.
- ◆ Provide information on how other CTF-type groups have dealt with institutional controls.