

To: West Valley Citizen Task Force
From: Melinda Holland
Subject: Summary of February 19, 2003, CTF Meeting
Date: March 14, 2003

Next Meeting

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

Date: **Tuesday, March 25, 2003**
Time: 7:00 - 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 (828) 894-5963, or Tom Attridge at (716) 942-2453.

CTF Attendees

Attending were: Nevella McNeil, Chris Gerwitz (for Bill King), Mark Mitskovski (for Larry Rubin), Joe Patti, Paul Piciulo, Bill Kay, John Pfeffer, Mike Hutchinson, Pete Scherer, Ray Vaughan, Warren Schmidt, Alice Williams, John Beltz, and Eric Wohlers.

CTF Members not attending (nor represented by an alternate) were: Lee Lambert, Tim Siepel, and Lana Redeye.

Agency Attendees

In Person: Jack Krajewski, Tim Rice, and Paul Merges, New York State Department of Environmental Conservation (NYSDEC)

By Teleconference: Chad Glenn, U.S. Nuclear Regulatory Commission (NRC)

Meeting Highlights

Topics discussed included:

- ▶ Overview of NYSDEC's Resource Conservation and Recovery Act (RCRA) Program, its application at West Valley, and the letters exchanged between NRC and DEC;
- ▶ CTF Strategy for Continued Congressional Involvement
- ▶ West Valley Demonstration Project (WVDP) Act Language Regarding Requirements for Waste Disposal
- ▶ Report on New Member Search
- ▶ West Valley End-State Vision

Meeting Summary

Administrative Announcements

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 reviewed the agenda. The agenda was revised slightly with the following changes: 1) Work on the 2003 CTF Work Plan was postponed due to scheduling difficulties of the CTF Agenda Work Group; and 2) Alice Williams provided an update on the fiscal year 2003 budget.

Ms. Williams relayed that Congress submitted an omnibus budget bill to the President late last week and it is expected to be signed by the President in the next couple of days. The funding level for the WVDP has been submitted at \$95 million (with an additional \$2.3 million for safeguards and security). Ms. Williams also referred to the DOE Headquarters press release regarding the newly created DOE Office of Legacy Management, which she explained as DOE's effort to separate long-term stewardship issues from waste management issues. The Office of Legacy Management is expected to be functional by October 1, 2003.

In response to a CTF question regarding a meeting held late last week with Jessie Roberson, EM-1, Ms. Williams reported that Ms. Roberson had committed to proceeding with the Waste Management Draft Environmental Impact Statement (DEIS) and the Notice of Intent (NOI) for the Decommissioning and Long-Term Stewardship Environmental Impact Statement (EIS). Ms. Williams expects to see movement on those two issues in the near term.

Overview of NYSDEC's RCRA Program and Issues

Jack Krajewski, an Engineering Geologist for NYSDEC, provided an overview of the Resource Conservation and Recovery Act, known as RCRA, and NYSDEC's application of RCRA at the WVDP. During the discussion following his presentation, Mr. Krajewski responded to a CTF member question explaining that because the West Valley facility is under "RCRA interim status," newly constructed units such as the Remote-Handled Waste Facility, are also covered under interim status. Mr. Krajewski explained that interim status continues until the agency decides to require a Part B permit or the facility closes. The West Valley facility has been in the radioactive closure process for years. RCRA Closure Plans for the Vitrification Facility and the High-Level Tanks have been submitted to NYSDEC within the last nine months. After review, NYSDEC responded with a letter (a copy was distributed to the CTF) containing comments on DOE's Vitrification Facility RCRA Closure Plan and that DOE must begin the final closure process now as opposed to (interim closure) postponing closure until there is an EIS/ROD decision.

Another Task Force member asked if NYSDEC was seeking clean closure under RCRA and if that is not feasible, what proof would be required to show that it is not feasible. Mr. Krajewski responded that a demonstration must be made that the waste cannot be removed with currently available technology or it is prohibitively expensive. NYSDEC's recent letter asked DOE for more detail and data on the clean closure option.

In response to a question on whether the National Environmental Policy Act (NEPA) would overrule NYSDEC's administrative decision on closure, Mr. Krajewski responded that NYSDEC must first evaluate whether clean closure is technically and economically feasible, then look at NEPA issues. In response to another question, he stated that the issue of which agency pays for what and whether DOE/NYSERDA negotiations would not have any impact on NYSDEC's decision. Mr. Krajewski also explained that NYSDEC and EPA evaluated the West Valley site for regulation under RCRA and Superfund (CERCLA) and chose to regulate the site under RCRA.

A Task Force member questioned how NYSDEC's closure decision will address the radioactive wastes at the site, and how they will interface with the NRC's License Termination Rule(LTR) and decommissioning criteria. Mr. Krajewski stated that those questions have not yet been resolved. NYSDEC is currently working with NRC on the mixed waste (radioactive and hazardous waste mixtures) issues. If there is a disagreement between NYSDEC and NRC the issues will be elevated to higher levels within each agency for resolution.

Next, Dr. Paul Merges and Tim Rice of NYSDEC discussed the issues surrounding the recent exchange of letters between DEC and NRC. Dr. Merges explained the history of how the EPA and DEC RCRA Program use a "risk-based" approach to cleanup and DOE, DEC Radiation, and the NRC use a dose based

approach. He said that DEC disagrees with NRC/DOE over the application of the Waste Incidental to Reprocessing (WIR) concept to High-Level Waste at West Valley, particularly since it could result in leaving HLW on non-federal lands. When a State, such as New York, becomes an Agreement State, the NRC relinquishes its authority (except for power plants and other federal facilities) to that state. He noted that NRC's authority over the West Valley site ends when the license is terminated and the site would fall under NY's Agreement State regulatory authority. The WIR rule, if applied at West Valley, could result in HLW being reclassified as Class C LLRW till NRC's license was terminated, but could be considered HLW by NY's agreement state program after the license termination, even though NRC approved the NYS LLRW regulations. Finally, Dr. Merges explained that the EPA has recently agreed that, as applied at West Valley, the NRC's LTR should meet the EPA CERCLA risk range. He noted that the DEC is preparing regulations which, if adopted, would result in NY having regulations at least as stringent as the NRC's License Termination Rule. DEC has become a NEPA "Cooperating Agency" on the Decommissioning and/or Long-Term Stewardship Environmental Impact Statement (EIS). In response to a CTF member question on another issue, Dr. Merges stated that he would be concerned with any application of the LTR which could result in >100 mrem/year to a member of the general public.

Dr. Merges stated that DEC and NRC have 'agreed to disagree' on the WIR and TR application greater than 100 mrem/yr issues. A CTF member asked how these issues can be resolved. Dr. Merges responded that, if necessary, it could be resolved administratively between the agencies, possibly during the course of the EIS process, or by a legal challenge. If it came to a legal challenge, part of the process would be to investigate what other states are doing on this issue. It was suggested by a CTF member that all of these issues be discussed further in the May CTF meeting when NRC will be present.

Discussion of WVDP Act Language regarding Requirements for Waste Disposal

Ray Vaughan, CTF member, provided his views on the interpretation of Section 2(a)(4) of the WVDP Act (WVDPA). He invited the agencies to discuss the issues of the definition of "applicable", and who has jurisdiction, or makes the determination under this section of the WVDPA. A CTF member asked if the Task Force wants to re-visit making a recommendation on the issue of risk-based or dose-based decision making regarding remediation for the West Valley site. A Technical Work Group member suggested that the Work Group discuss this issue. John Pfeffer offered to draft a resolution for CTF consideration on the issues raised by Ray Vaughan.

CTF Membership

Ms. Holland reported that she sent a letter to Mark Steffan informing him of his termination from the CTF. Ms. Holland has an interview with a representative of the Concord Town Council tomorrow and hopes to locate a potential CTF candidate, to fill the vacancy left by Mr. Steffan, soon.

Congressional Involvement

The CTF discussed the recent Bill proposed by Congressman Houghton. Some CTF members expressed concerns over possible unacceptable amendments to the Bill and asked for an opportunity to meet with Congressional representatives or staff to discuss their concerns. Other CTF members expressed support for the Bill and discussed how to help the bill move through the legislative process. Eric Wohlers offered to call Bob Van Wicklin to inquire about a meeting with Congressional staff. Warren Schmidt offered to track action on the Bill through <http://thomas.loc.gov/> and keep the CTF posted. He also advised that if the CTF wishes to support the Bill, that the Task Force must keep in contact with Committee members and urge them to move the Bill out of committee.

A Task Force member asked DOE and NYSERDA representatives for their reactions to the Bill. A DOE representative responded that this proposed legislation acts on the recent General Accounting Office (GAO) report recommendations on the need for Congressional action at West Valley, and that her agency

will implement whatever law is passed by Congress. A NYSERDA representative stated that the Bill resolves the two major issues of concern to the state - the high level waste disposal fee and long term stewardship responsibility.

End-State Vision

A Task Force member asked other CTF members to re-read the CTF’s Recommendation Report before the next meeting and think about whether the report could be put forth as the CTF’s “End-State Vision” to DOE.

Next Steps

Alice Williams committed to providing the CTF with a firm date for the presentation on the Waste Management DEIS by March 14. If she is unable to commit to the March 25 date for the presentation, she will provide an alternate date on March 14, 2003.

The CTF will hold its next three meetings on March 25, April 23 and May 22.

Observer Comments

In response to an observer question, Ms. Williams responded that the NOI for the Decommissioning and Long-Term Stewardship EIS is expected to be published in the Federal Register in March.

A CTF member asked about the content of material presented at the recent Quarterly Public Meeting regarding the status of the North Plateau Groundwater Plume. A DOE representative responded that at a future CTF meeting DOE will provide the CTF with more information on the plume.

Action Items

Action	Assigned to	Due Date
John Pfeffer offered to draft a resolution for CTF consideration on the issues raised by Ray Vaughan	John Pfeffer	3/14
Call Bob VanWicklin to schedule a meeting. Follow up with notification to members with response and decide whether or not to draft letter to Congressman Houghton.	Eric Wohlers	3/14
Review CTF report to decide if the CTF wants to recommend the report as their recommended “End-State Vision” for West Valley.	All Task Force members	3/25
Confirm 3/25/03 date for the presentation on the Waste Management DEIS	Alice Williams	3/14

DOCUMENTS DISTRIBUTED AT MEETING		
DOCUMENT SUBJECT	DOCUMENT DESCRIPTION	GENERATED BY - DATE (if applicable/known)
NYSDEC Presentation	Division of Solid & Hazardous Materials; RCRA Corrective Action	Jack Krajewski 2/19/03
NYSDEC Letter	To: John Greeves, U.S. NRC Subject: NRC's Policy Statement on Decommissioning Criteria for West Valley	Paul Merges, Director, Bureau of Radiation (5/22/02)
U.S. NRC Letter	To: Paul Merges, NYSDEC Subject: Response to NYSDEC comments on NRC's Final Policy Statement on Decommissioning Criteria for the WVDP	John Greeves, Director, NRC Division of Waste Management, Office of Nuclear Material Safety and Safeguards (10/9/02)
NYSDEC Letter	To: Alice Williams, DOE-WV Subject: RCRA Stable State Hazardous Waste Closure Plan, High-Level Waste Vitrification Facility	Stephen Hammond, Director, Division of Solid & Hazardous Materials (no date available)
U.S. DOE Letter	To: Stephen Hammond, NYSDEC Subject: RCRA Stable-State Hazardous Waste Closure Plan, High-Level Waste Vitrification Facility	Alice Williams, Director, DOE-WV (2/12/03)
Proposed Legislative Language	HR 576, Proposed language introduced into the Energy and Water subcommittee by U.S. Congressman Houghton	2/5/03
Public Law 96-368	West Valley Demonstration Project Act	10/1/80
Melinda Holland and Associates Letter	To: Mark Steffan, Concord Town Supervisor Subject: Membership on West Valley CTF	Melinda Holland, CTF Facilitator (2/10/03)
NYSERDA Letter	To: U.S. Congressman Houghton Subject: Peter Smith Appointed Acting President of NYSERDA	Peter Smith, Acting President, NYSERDA (2/6/03)
Ray Vaughan Comments	Disposal of Low-Level Waste and Transuranic Waste "in Accordance with Applicable Licensing Requirements"	Ray Vaughan, Coalition on West Valley Nuclear Wastes (2/18/03)
Newspaper articles	Representatives propose feds assume control of West Valley	Olean Times Herald (2/6/03)
	Houghton bill could solve West Valley impasse between NYSERDA & DOE	Springville Journal (2/13/03)
	Ashford Town officials hear from company to build munitions building	Jamestown Post Journal (2/13/03)
	Bioinformatics program lands \$7.5 million	The Buffalo News (2/14/03)

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