

To: West Valley Citizen Task Force
From: Bill Logue, Citizen Task Force Facilitator
Date: March 9, 2009
Subject: **Summary of the February 25, 2009 Meeting**

Next Meeting

The next Citizen Task Force Meeting will be:

Time & Date: **7:00 – 9:30 PM, March 11, 2009**
Location: Ashford Office Complex
9030 Route 219
West Valley, NY

There will also be a meeting on March 25, 2009 from 7:00 – 9:30 PM.

Note: All participants must be United States citizens and must bring photo identification. If you have questions or comments regarding the upcoming meeting or about this summary, please contact Bill Logue (860-521-9122, bill@loguegroup.com).

CTF Participants

CTF Members and Alternates attending: Chris Crawford, Rob Dallas, Judy Einach, Chris Gerwitz, Steve Kowalski, Paul Kranz, Lee Lambert, Anthony Memmo, Joe Patti, Pete Scherer, Warren Schmidt, Tim Siepel, Bill Snyder, Ray Vaughan.

Agency Participants and Observers

Department of Energy (DOE): Bryan Bower, Ben Underwood.

New York State Energy Research and Development Authority (NYSERDA): Tom Attridge, John Kelly (for Paul Bembia), Andrea Mellon.

West Valley Environmental Services, LLC (WVES): Sonja Allen, Charles Biedermann.

Observers: Kathy Kellogg (Buffalo News).

Introductions and Announcements

Bill Logue welcomed the group and reviewed the meeting documents.¹ He reminded the CTF that comments on the Decommissioning Plan to NRC for possible consideration in the Request for Additional Information should be submitted by the end of March. He also noted that several pages were added to the CTF website and encouraged members to refer their constituents to the website for information.

Bryan Bower noted that the stimulus bill signed by President Obama includes \$482 million in non-defense environmental cleanup funds. The West Valley Demonstration Project (WVDP) has submitted a request that will be reviewed within the Department of Energy (DOE) and then with the Office of Management of the Budget. He indicated that it would be premature to discuss any further. Steve Kowalski informed the CTF that he will attend a legislative breakfast hosted by Congressman Massa on February 28.

Summary of NYSDEC Public Participation Processes

At the February 10 meeting, the CTF requested a review of possible ongoing public participation opportunities relating to New York State Department of Environmental Conservation (NYSDEC) licensing

¹ The documents are listed at the end of this summary and may be found at www.westvalleyctf.org

and permitting. Bill Logue reviewed the information provided by NYSDEC in their presentations at the June 2008 CTF meeting and provided the following recap for the radiation program and the hazardous waste program.

Radiation Program Public Participation Elements:

- New York is an “Agreement State” for certain NRC regulatory authority. NYSDEC issues permits for discharges, transporters, Low Level Radioactive Waste (LLRW) site requirements and operations. NYSDEC is in the process of rule making that will likely adopt the NRC License Termination Rule (LTR) as the appropriate New York State regulation. Affected agencies have been approached for comment and it is unknown if the process will undergo State Environmental Quality Review Act (SEQRA) review. Bill Logue will inquire as to this on behalf of the CTF.
- Part 380 Permits for the monitoring and maintenance of radioactive waste have reporting requirements quarterly, annually and for non-routine events. Permits are renewed every 5 years and these are coordinated with the SPDES permits. NYSERDA has a Part 380 permit which is currently under review for renewal.
- The Uniform Procedures Act (UPA) establishes procedures and timeframes for filing and renewing, for public involvement and for reaching final decisions. The UPA requires public participation for new permits and *allows* for public participation for modifications and renewals.
- SEQRA (the state equivalent of NEPA) requires the assessment of the magnitude of potential environmental impacts before issuance of permits, regulations or funding for projects. SEQRA review is required for new permits, renewals or modifications with *increases* to discharges. However, most Part 380 permit renewals are Type II and are not subject to further SEQRA review.
- Possible future public involvement at the non-WVDP portion of the WNYNSC could be for: non-trivial physical changes to the State-Licensed Disposal Area (SDA) which would require a permit modification that could be considered a material change and a major project and then require public notice and comment, and a possible hearing. Examples include: complete/partial exhumation decisions and a pilot exhumation action (vs. a study).

Hazardous Waste Program Public Participation Elements:

- The Part 373/RCRA Program covers Treatment, Storage and Disposal Facilities. The West Valley site has been granted RCRA interim status through the submission of a RCRA Part A application to NYSDEC in 1990. The WVDP has a number of “interim status units” for active management of hazardous and radiological and hazardous mixed waste including the high level waste tanks, the treatment system, Vitrification Facility, and Remote Handled Waste Facility. Additionally, a corrective action consent order exists to regulate Solid Waste Management Units (SWMUs) at the WVDP and the SDA. NYSERDA continues to manage the SDA under Interim Status but has been granted a conditional exemption for the Tank T-1 contents and the Tank T-1 Building.
- When a unit is closed the facility notifies NYSDEC of the intent to close and provides a plan, which then undergoes comment and revision by NYSDEC. The plan is then publicly noticed for

review and comment, it may then be adjusted and finalized and, once implemented, a closure certification is issued and the unit is removed from the permit.

- Public notice is provided for interim status closure plans, draft and final environmental impact statements (EIS) and records of decision (ROD), SEQRA findings, draft permits/hearings, and renewal permits.

CTF Discussion Concerning Comments on DEIS

In opening the discussion of the CTF's approach to commenting on the DEIS, Bill Logue remind the group of the Policies and Priorities and Guidelines for a Preferred Alternative from their 1998 Final Report. (Available at www.westvalleyctf.org) Anthony Memmo of the Seneca Nation of Indians indicated that the Nation was likely to support site-wide removal and that a supporting resolution may be introduced to the Tribal Council in March.

Bill Logue distributed a draft document for discussion that compiles Overarching Goals and Core Response assembled since the February 10 meeting from CTF members thoughts provided to him in writing and over the telephone. The draft document is available with the meetings materials on the CTF website. The CTF then engaged in a wide ranging discussion of the document which will be revised and amended before the next meeting. Below are the general outcomes from this discussion followed by more specific comments. The CTF did not attempt to reach consensus at the meeting given the desire to reflect further and the need to consult with their constituents.

General Outcomes. The CTF generally supported the sentiment and language in paragraphs I-IV of the document which speak to appreciation for the progress made by the agencies and the work planned in Phase 1 while expressing a desire to have all wastes removed. They also expressed the desire that comments align with the 1998 Final Report and focus primarily on the Phase 2 aspects of the DEIS.

While many members would like a final decision for a site-wide cleanup at this time, they stated that if that decision is not made now, that Phase 2 decision should be subject to public review and comment. Tim Siepel noted that the Phased Decision Making Alternative was negotiated by the Core Team to overcome the impasse over DOE/NYSERDA responsibility for cleanup costs. Ben Underwood, counsel to DOE for the WVDP, stated that it was not unusual for DOE to have a tiered decision making process where secondary, tertiary and subsequent RODs may be filed. Depending upon the magnitude of any changes to the proposal or new circumstances or information relevant to environmental concerns, DOE will prepare the appropriate NEPA and complete any additional process prior to any additional RODS. He noted that requesting this NEPA review or other public participation would be an appropriate topic for comment on the current DEIS. Mr. Underwood noted that DOE and NYSERDA are in confidential negotiations concerning allocation of roles and responsibility for cleanup costs. He is unable to divulge any details but stated that there is reason to be cautiously optimistic that an agreement will be reached.

Several CTF members stated that further scientific study is warranted and noted their skepticism with the conclusions arrived at in the DOE erosion studies. Bryan Bower noted consensus had not been achieved among the erosion experts. He noted that DOE had hired an independent group of experts to review the DOE erosion models, these experts concurred with the DOE erosion analysis. He stated that the NYSERDA Independent Expert Review Team disagreed with the DOE erosion analysis but that did not

mean that the conclusions were incorrect. John Kelly of NYSERDA agreed that there was no consensus on the erosion studies and that the agencies had agreed to disagree on the long-term analysis. NYSERDA anticipates that DOE will improve this analysis and that the goal was to continue with short-term progress at the site while additional analysis is performed. Ray Vaughan noted that if the CTF agrees with Mr. Bower’s conclusion, the burden is on the CTF to convince DOE that this lack of scientific consensus indicates full cleanup as the wisest decision.

Chris Crawford noted that the CTF was struggling with whether to deal with uncertainty by applying adaptive management or the precautionary principle. With the precautionary principle, when there is uncertainty, one protects against the worst possible outcomes in making decisions and applies the maximum engineered solutions. With adaptive management, when there is uncertainty one makes the decision that seems to make sense at the time and which won’t negatively compromise future precautionary options. The decision is monitored for correctness and adapted if new information indicates changes are warranted. He also noted that model predictions should be used to better understand a situation but should not be used as the basis of decisions. Mr. Crawford also distributed excerpts from DOE cost estimates for each of the alternatives in the DEIS.

Specific suggestions:

- Section II should reflect that it is the North Plateau Ground Water Plume (NPGP) being referenced.
- Section IVa the clauses should be reversed to emphasize the primacy of human health and safety.
- Section IVb should be clear concerning “permanent storage or disposal.”
- Section V “conclusive decision” should be amended to read “conclusive decision on the appropriate procedures and methodologies for removal of wastes...”
- Section VI was highlighted as a section needing additional editing.
- A comment be added reflecting the fact that the site does not meet current site criteria and therefore a similar facility would not be licensed at this time.
- A comment be added that any storage be in above ground retrievable locations.

Next Meeting. In preparation for the next meeting the group agreed to review the NYSERDA View, the NYSERDA Independent Review Team Report, the Full Cost Accounting Study Executive Summary, and the DEIS Executive Summary and Stakeholder Guide. The meeting will focus on comments concerning erosion. If time allows, the CTF will begin to develop comments on the Decommissioning Plan for NRC.

Observer Comments

There were no observer comments.

Action Items

Action	Assigned To	Due Date
Contact NYSDEC concerning LTR adoption status and public participation in this and permit renewals.	Logue	3/11/2009

Provide CTF with copies of EPA letter on full exhumation	Logue	3/9/2009
Information on DOE tiered decision-making process and role of NEPA	DOE-Underwood	3/11/09

Documents Distributed

Document Description	Generated by; Date
Letter to CTF from Seneca Nation of Indians	Anthony Memmo
DEIS Alternatives – cost estimate excerpts	DOE; 11/2008
Draft CTF Overarching Goals and Core Response to DEIS	Logue; 2/25/2009
Compilation of News Articles	NYSERDA; 2/25/2009