

To: West Valley Citizen Task Force  
From: Melinda Holland, Task Force Facilitator  
Subject: Summary of the August 18, 2004 Meeting  
Date: September 7, 2004

### **Next Meeting**

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

Date: Wednesday, September 15, 2004  
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 Attendees**

Attending were: Pete Scherer, Paul Piciulo, T. J. Jackson, Tim Siepel, Mark Mitskovski (for Larry Rubin), Ray Vaughan, Mike Hutchinson, Lee Lambert, Bill King, Eric Wohlers, Gayla Gray, and John Pfeffer.

CTF Members not attending (nor represented by an alternate) were: Rev. Bill Kay, Joe Patti, Warren Schmidt, Ron Buszak, John Allan, and Nevella McNeil.

### **Agency Attendees**

Hal Brodie, NYSERDA; Barbara Youngberg and Denise D'Angelo, New York State Department of Environmental Conservation (NYSDEC).

### **Meeting Highlights**

- < Discussion of proposed CTF edits to NYSERDA's Proposed Legislative Language; and
- < Future Meeting Topics, Observer Comments, and Next Steps.

### **Meeting Summary**

Tom Attridge, NYSERDA, reviewed the documents distributed at this meeting, then Melinda Holland reviewed the agenda.

### *Discussion of Draft Legislation*

The meeting began with a discussion of the possible schedule for completion and submittal of the draft legislation to the Western New York Congressional Delegation. Hal Brodie, NYSERDA Deputy General Counsel, explained that NYSERDA believes that it would be difficult, if not impossible, to expect legislation to be passed during this legislative session. Congress returns early in September but will recess after the first week in October until after the elections. However, if the CTF agrees that it wants legislation submitted this session, NYSERDA will make every effort to support that result. To do so would mean that the CTF comments would have to be submitted to NYSERDA by Friday, August 20. There was a mix of opinions among the Task Force on the desirability of moving ahead quickly, so the meeting moved into reviewing the draft comments prepared by the Legislative Work Group.

A CTF member suggested that, if a comprehensive piece of legislation could not be submitted this session, perhaps the bill which was introduced last year could be reintroduced. That bill only attempted to transfer title of the waste to DOE, not the entire site. During the ensuing discussion, the CTF concluded that such a law would create more confusion and problems than it would solve, and the idea was dropped.

A CTF member explained that the Coalition opposes repeal of the West Valley Demonstration Project Act [WVDPA] due to the fact that the Stipulation of Compromise references that Act. He asked that NYSERDA consider giving the new bill the same name. Mr. Brodie agreed to raise that suggestion with the state.

### Section 3 - Transfer of Site Title

To expedite the discussion, the CTF began by reviewing the changes to Section 3 - Transfer of Site Title proposed by the work group. The work group spokesperson explained that Section 3 has been changed to transfer title to only the 200 acre 'site' as opposed to NYSERDA's proposal of transferring title to the entire 3,340 acre 'Center'. The goal of this change is to keep NYSERDA involved in the site and the federal ownership small and at a minimum. A CTF member expressed a concerns with this approach regarding how the state could be depended upon to retain an adequate buffer for the level of cleanup selected by DOE. She also questioned what would happen in the instance of a release from the DOE-owned site onto the state lands and how responsibility for remediation of that release would be handled. She further questioned who would pay for and construct the engineered erosion controls which will be necessary under NYSERDA's ownership. Mr. Brodie stated that he believes these concerns are valid. Another CTF member expressed the opinion that the tension between DOE and NYSERDA under this scenario could benefit the public, as NYSERDA would be more likely to inform the public of any releases and demand that DOE take action.

Another proposal made by the work group is to remove the waiver for past or current liability for the state from Section 3. In response to a question about this proposed change, Mr. Brodie

explained that it could make NYSERDA vulnerable to a cost recovery law suit from DOE to recover DOE's cleanup costs. The work group spokesperson explained that the intent of this change was to allow the public to sue New York State for past or current injury caused by the state's nuclear waste disposal activities at the site.

In response to a question about what happens if the CTF and NYSERDA fail to agree on draft legislation, Mr. Brodie responded that it is NYSERDA's plan to submit legislation in any case. It might also be possible to submit the CTF's version and NYSERDA's to the delegation, then have a meeting with them to explain the differences and goals of each piece of legislation. However, he stated that NYSERDA would not be ready to do this during the current legislative session.

A Task Force member explained that she has very serious reservations about putting the 200 acre site or the entire 3,340 acre Center under DOE ownership based on DOE's performance at other sites around the country. She does not trust DOE to do the level of cleanup desired by the local stakeholders. However, she noted that she does not have an alternative to suggest. Another CTF member noted that the legislation needs to provide tighter controls over DOE so that a higher level of cleanup will be required. He also suggested a cautious, careful approach to drafting legislation.

Hal Brodie stated that NYSERDA's goal for the legislation is to improve the current situation, not to achieve an ideal result. There is currently no "regulator" over DOE's handling of nuclear wastes (DOE is self-regulating) thus there is no true oversight of DOE for the current cleanup. The Nuclear Regulatory Commission (NRC) currently only has authority to advise, not enforce. NYSERDA is at impasse in its negotiations with DOE. He noted that NYSERDA's draft legislation in Section 6, would provide the NRC with enforcement authority over DOE, which he views as a great improvement over the current situation. A Task Force member stated that if the CTF does nothing that the community may be faced with a worse situation than if this legislation is passed. Another agreed that it is important to pass legislation during the next year, but cautioned against losing the "rights" currently available under the WVDPA. A CTF member asked everyone to think about whether an acceptable alternative existed to transfer of title to DOE.

#### Section 4 - Remediation

The work group suggested adding "decommissioning and closure" after the term "remediation" throughout the bill. Mr. Brodie explained that NYSERDA has serious concerns over addition of that language as it may require that the burial areas be exhumed, though he added that it is something that needs more research. He explained that NYSERDA does not believe that exhuming the State-Licensed Disposal Area or the NRC-Licensed Disposal Area (SDA/NDA) makes sense based on the current Environmental Impact Statement (EIS) data. A Task Force member noted that erosion is likely to impact the SDA and NDA. Mr. Brodie responded that the erosion modeling effort will provide additional data on this issue. A DOE representative stated that he did not believe that Congress intended that the NDA and SDA be exhumed. A CTF

member responded that the NRC license, which is in abeyance, will subject the NDA to the License Termination Rule (LTR).

In response to a question, the work group spokesperson explained that the fact that DOE would hold title to the 200 acre site, yet be required to cleanup the entire 3,340 acre Center, was deliberate. A Task Force member expressed concern that this arrangement would only continue the dispute between DOE and NYSERDA.

#### Section 5 - Radioactive Waste Disposal Requirements

Hal Brodie explained that most of the language in this section was taken directly from the WVDPA. NYSERDA's goal for subdivision (c) of this section was to make it clear that transuranic waste (TRU) would be accepted at the Waste Isolation Pilot Plant (WIPP) and that the High-Level Waste (HLW) disposal fee would be paid by the federal government. A CTF member noted that this language is not strong enough to deal with TRU.

#### Section 6 - Regulation by the Commission

The work group spokesperson referred to new language (distributed at this meeting) which would further change this section. Most of the changes relate to EIS procedures. He noted that this section would benefit from more work and access to National Environmental Policy Act (NEPA) experts.

A CTF member questioned how NRC could be given more regulatory authority over DOE. Mr. Brodie explained that Congress can pass legislation giving NRC this authority at West Valley. In response to a question about why NYSERDA proposed early termination of its NRC license, Mr. Brodie explained that if title was transferred for the 3340 acre Center, there would be no need for NYSERDA to continue with a license as, after transfer, all responsibility would fall on DOE. CTF members posed the possibility that DOE would own the 200 acre site, but NYSERDA would continue to hold the NRC license. A work group member explained that they want to retain the procedural safeguards found in the license termination process. Mr. Brodie stated that the proposed legislation requires DOE and NRC to adhere to the procedures set forth in NRC's regulations for license termination. A CTF member asked if the license could be transferred to DOE along with title. Mr. Brodie explained that a new licensing proceeding would be required which could slow down the work currently in progress at the site.

A Task Force member asked about NYSDEC's interest in receiving delegation of regulatory authority from NRC over nuclear waste at West Valley. A NYSDEC representative explained that to qualify for this delegation, the agency would have to show that they have adequate legislation, regulations, and staffing to perform the enforcement activities. She was unsure whether any other state has regulatory authority over nuclear waste at DOE sites.

#### Section 7 - New York State Involvement

A CTF member questioned whether it would be preferable to give the state more authority than just having DOE consult with them regarding the cleanup. Mr. Brodie explained that, if NRC delegates it, then NYSDEC would have regulatory authority. He believes that to try to legislate a mandate for the state to regulate radioactive materials at a DOE site would result in the legislation failing to pass Congress. He also explained that Section 4 of the legislation confirms NYSDEC's existing Resource Conservation and Recovery Act (RCRA) authority.

#### Section 8 - Environmental Impact Statement

The work group spokesperson referred to new language (distributed at this meeting) which would further change Section 8. One of his goals in drafting this section was to protect the existing rights under the Coalition's Stipulation of Compromise and to define NRC's EIS obligations. He also noted that the new draft language was an attempt to address NYSERDA's concerns.

Hal Brodie stated that he would prefer not to take the approach proposed by the work group which would try to prescribe in legislation how the EIS process would occur at West Valley. Instead, he believes that the legislation should rely on the existing NEPA law, regulations, and policies. Mr. Brodie agreed to meet with Ray Vaughan on August 25 to work on this and other issues.

#### Section 9 - Independent Review of the Draft EIS and Decommissioning Plan

The work group spokesperson suggested new language for this section which recommended that the independent review be done by the University of Buffalo (UB). Mr. Brodie explained that the reason NYSERDA suggested the National Academy of Sciences (NAS) for the review panel, is that there are over 400 pieces of legislation which use NAS to conduct studies, only one law used another non-profit organization, and none used a university. He is concerned that this could be controversial and block passage of the legislation. A work group member expressed the concern that NAS is not sufficiently independent, and it might be better to just leave out Section 9 entirely. Other CTF members questioned whether UB has the requisite technical expertise for this type of review.

#### Section 10 - Disposition of Property

CTF members stressed their interest in having uncontaminated property transferred to local government, perhaps through a redevelopment authority, for economic redevelopment. They stated a preference for the state to retain ownership of the Center land surrounding the 200 acre site, to oversee the necessary environmental assessments, and see that the land is transferred to local government for reuse. CTF members were concerned that such transfer will be much harder to obtain if DOE takes ownership of the land. A DOE representative explained that uncontaminated land has been transferred for redevelopment at numerous DOE facilities and that

DOE has procedures for these transfers which include rigorous environmental assessment and review.

### Section 11 - Repeal of WVDPA

CTF members questioned why NYSERDA proposed repealing the act instead of amending it. Mr. Brodie stated that they believed the WVDPA could be repealed without a problem, and NYSERDA's draft legislation retains all key portions of the existing Act.

### Section 12 - Appropriations

A work group member stated that he understands NYSERDA's concern that the provision providing five percent of site funding annually to local governments could kill the legislation. However, the Town of Ashford feels strongly about this provision and may not support the legislation unless it is included. The Town is concerned over loss of existing Payment-In-Lieu-Of-Taxes (PILOT) payments from the state of New York if the site is transferred to DOE. Mr. Brodie noted that he has found no legal precedent for federal law providing municipalities a percentage of annual funding, but believes there are instances of PILOT in federal laws. A CTF member asked if DOE would investigate whether they make PILOT payments at other sites. A work group member noted that federal PILOT payments could work, but he would like to see an amount specified in the legislation.

The work group spokesperson stated that he sees four major goals for this legislation:

- Resolve some of NYSERDA's problems;
- Compensate some of the impacts on the Town of Ashford;
- Clarify EIS procedures; and
- Clarify principles governing cleanup and how the LTR will apply at West Valley.

A CTF member noted that the Seneca Nation of Indians written comments on the proposed legislation may not be available before September. One comment throughout the legislation is to add a reference to "tribal" to places where state and local government is mentioned.

In response to a question, a DOE representative stated that he has no comments on the draft legislation. DOE Headquarters will handle that, but he thinks DOE will push back on some of these provisions and give Congress DOE's opinion. He did note that he agrees with the Government Accounting Office report on West Valley which stated that legislation is needed to resolve difficulties at the site.

### *Future Meeting Topics, Observer Comments, and Next Steps*

The September 15<sup>th</sup> CTF meeting will focus primarily on the draft legislation.

There were no observer comments.

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