

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONBEFORE THE ATOMIC SAFETY AND LICENSING BOARD PANEL

In the Matter of)	
)	
YANKEE ATOMIC ELECTRIC COMPANY)	Docket No. 50-29
)	
(Yankee Nuclear Power Station))	
)	
License Termination Plan)	

NRC STAFF RESPONSE TO CAN'S
REQUEST FOR HEARING AND PROPOSED CONTENTIONSINTRODUCTION

On June 22, 2004, a "Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing" (Notice of Opportunity for a Hearing) related to a request from the Yankee Atomic Electric Company (Licensee) for an amendment to the license for the Yankee Nuclear Power Station (Yankee-Rowe) was published in the *Federal Register*. 69 Fed. Reg. 34,707-08 (June 22, 2004). The amendment addressed the Licensee's license termination plan (LTP). In response to the Notice of Opportunity for a Hearing, on August 20, 2004, Citizen's Awareness Network (CAN) filed its "Request for Hearing, Demonstration of Standing, Discussion of Scope of Proceeding and Contentions" (Hearing Request).¹ The NRC staff (Staff) herein files its response to CAN's Hearing Request.

¹ The Staff notes that the Biweekly Notice which included the Notice of Hearing for Yankee-Rowe specifically stated that all requests for a hearing and petitions for leave to intervene should be sent to the Office of the General Counsel (OGC). 69 Fed. Reg. 34,697. CAN filed its Hearing Request with the Office of the Secretary, but did not file its Hearing Request with OGC. The certificate of service accompanying CAN's Hearing Request indicated that service to the Licensee was made by mail. Accordingly, the Staff is responding as if it were served by U.S. Mail and is adding five days to the reply period. See 10 C.F.R. §§ 2.306, 2.309(h)(1).

BACKGROUND

Yankee-Rowe was permanently shut down in 1992 and is currently undergoing dismantlement. See *Yankee Atomic Power Company, Yankee Atomic Power Station (Rowe); Notice of Receipt and Availability for Comment of License Termination Plan*, 69 Fed. Reg. 24,695 (May 4, 2004). In accordance with section 50.82(a)(9), all power reactor licensees must submit an application for termination of their license for facilities undergoing dismantlement and decommissioning. The application for termination must be accompanied by or preceded by a license termination plan (LTP). *Id.* The Licensee filed an LTP for Yankee-Rowe on November 24, 2004 (ADAMS Accession No. ML033450398).² On May 4, 2004, the Staff published a "Notice of Receipt and Availability for Comment of License Termination Plan" (Notice of Receipt) for Yankee-Rowe in the *Federal Register*. 69 Fed. Reg. 24,695. The Notice of Receipt explained that if "found acceptable by the NRC staff, the LTP is approved by license amendment, subject to such conditions and limitations as the NRC staff deems appropriate and necessary." *Id.*

On June 22, 2004, the Staff published in the *Federal Register* the Notice of Opportunity for a Hearing for Yankee-Rowe. 69 Fed. Reg. 34,707-08. The Notice of Opportunity For a Hearing described the proposed amendment:

The licensee has proposed to amend its license to incorporate a new license condition addressing the license termination plan (LTP). The new license condition would document the date of NRC approval of the LTP and provide criteria to determine the need for NRC approval of changes to the approved LTP.

Id. at 34,707. The Notice of Opportunity for a Hearing also provided that interested parties could request a hearing on the matter within 60 days after publication of the Notice. *Id.* at 34,696.

² Yankee supplemented its LTP on December 10, 2003 (ADAMS ML033530147); December 16, 2003 (ADAMS ML041110261); January 19, 2004 (ADAMS ML040280024, ML040280028, ML040280031, ML040280036, ML040280140); January 20, 2004 (ADAMS ML040330777); February 2, 2004 (ADAMS ML040420388); February 10, 2004 (ADAMS ML041100639); and March 4, 2004 (ADAMS ML040690034). See 69 Fed. Reg. 24,695 (May 4, 2004).

On August 20, 2004, CAN filed its "Motion to Dismiss Proceedings as Improperly Noticed or Clarify and Re-notice the Proceedings" (Motion to Dismiss).³ In conjunction with its Motion to Dismiss, CAN timely filed its Hearing Request. The Commission referred CAN's Hearing Request to the Atomic Safety and Licensing Board Panel (Panel), but specifically retained CAN's Motion to Dismiss for consideration. Memorandum to G. Paul Bollwerk, III, Chief Administrative Judge, Atomic Safety and Licensing Board Panel, from Annette L. Vietti-Cook, Secretary, U.S. Nuclear Regulatory Commission, September 2, 2004.⁴

DISCUSSION

I. STANDING

A. Legal Requirements for Standing

Any person who requests a hearing or seeks to intervene in a Commission proceeding must demonstrate that they have standing to do so. 10 C.F.R. § 2.309(a). To demonstrate standing, a petitioner must satisfy the requirements for standing as set out in 10 C.F.R. § 2.309(d). A hearing request must include: (1) the name, address, and telephone number of the requester; (2) the nature of the requestor's right to be made a party to the proceeding; (3) the nature and extent of the requester's property, financial or other interest in the proceeding; and (4) the possible effect of any decision in the proceeding on that interest. *Id.*

³ The Licensee and the Staff both responded to the Motion to Dismiss. Opposition of Yankee Atomic Electric Company to Motion to Dismiss, Aug. 27, 2004; Opposition of NRC Staff to Citizens Awareness Network's Motion to Dismiss, Sept. 7, 2004. On September 1, 2004, CAN filed "Points in Reply to Yankee Atomic Electric Company's Opposition to CAN's Motion to Dismiss Proceedings."

⁴ On September 15, 2004, the Chief Administrative Judge issued Memorandum (Deferring Appointment of Licensing Board) in which the Chief Administrative Judge deferred the appointment of a licensing board until the Commission ruled on CAN's Motion to Dismiss. *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station License Termination Plan), Docket No. 50-29, ASLBP No. 04-831-01-OLA (Sept. 14, 2004).

In addition, “the Commission has long looked for guidance to judicial concepts of standing.” *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195 (1998). In accordance with judicial concepts of standing, the petitioner must allege an injury-in-fact, “a concrete and particularized injury that is fairly traceable to the challenged action and is likely to be redressed by a favorable decision.” *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 92 (1993), citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992); *Dellums v. NRC*, 863 F.2d 968, 971 (D.C. Cir. 1988); *Public Service Co. of New Hampshire* (Seabrook Station, Unit 1), CLI-91-14, 34 NRC 261, 266-67 (1991)). This injury must be actual or threatened, rather than abstract and conjectural. *Perry*, CLI-93-21, 38 NRC at 92; see also *Lujan*, 504 U.S. at 560. The injury-in-fact also must be “arguably within the zone of interests protected by the governing statute,” in the case of the NRC, either the Atomic Energy Act or the National Environmental Policy Act. *Yankee*, CLI-98-21, 48 NRC at 195; *Perry*, CLI-93-21, 38 NRC at 92.

An organization may establish standing through “either immediate or threatened injury to its organizational interests, or to the interests of identified members.” *Georgia Institute of Technology*, (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 115 (1995); see also *Yankee*, CLI-98-21, 48 NRC at 194. An organization may attain standing through a member, or “representational standing,” by “demonstrat[ing] that the individual member has standing to participate, and has authorized the organization to represent his or her interests.” *Georgia Tech*, CLI-95-12, 42 NRC at 115. The alleged injury in fact to the member must fall within the purposes of the organization. *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-98-13, 48 NRC 26, 33-34 (1998).⁵

⁵ In addition the Commission has historically presumed standing in construction permit and operating license proceedings where the petitioners have resided within close proximity to the facility. See, e.g., *Virginia Electric Power Company* (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC 54, 56 (1979). There is no set distance at which standing will be presumed. See, e.g., *Northern States Power Co.* (Prairie Island Nuclear Generating Station, Units 1 and 2), ALAB-107, 6 AEC 188, 190 (1973) (30-40 miles from the site); *Virginia*

B. CAN's Standing

CAN has provided the information required by 10 C.F.R. § 2.309(d). Hearing Request at 1-2. CAN predicates representational standing on the individual standing of two of its members, Jean-Claude van Itallie and Deborah Booth Katz. *Id.* at 3. Mr. van Itallie and Ms. Katz have submitted declarations authorizing CAN to act on their behalf. Declaration of Jean-Claude van Itallie Supporting Standing of Citizens Awareness Network, Inc., Aug. 20, 2004; Declaration of Deborah Booth Katz Supporting Standing of Citizens Awareness Network, Inc., Aug. 20, 2004. Both declarants state that they live within 6 miles of Yankee-Rowe. *Id.* Both state that they are concerned about tritium levels in the area near the reactor site. *Id.* Both state that the contamination has an adverse effect on their abilities to use and enjoy their properties. *Id.*; Hearing Request at 3-4. They also state that they are in imminent danger of harm if they drink contaminated water. *Id.* Based on Mr. van Itallie's and Ms. Katz's expressed concerns, the Staff does not oppose CAN's claim to representational standing.

II. SCOPE OF THE PROCEEDING

CAN proposes that the proper scope of the proceeding is the sufficiency of the LTP for Yankee-Rowe. Hearing Request at 7. The Notice of Opportunity for a Hearing provides that the hearing will encompass the sufficiency of the LTP. 69 Fed. Reg. 34,696. Thus, the Staff does not dispute CAN's interpretation of the scope of the proceeding.

In order to clearly define the scope of the proceeding it is necessary to understand the nature of an LTP, as described in 10 C.F.R. § 50.82, the license termination rule. According to the license termination rule: "All power reactor licensees must submit an application for termination of

Electric and Power Company, 6 AEC at 634 (16 miles from the site); *Tennessee Valley Authority* (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421, n.4 (1977) (50 miles from the site, standing denied on other grounds). The proximity presumption also has been applied to other licensing actions where there is "obvious potential for offsite consequences." *Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329-30 (1989).

license. The application . . . must be accompanied or preceded by [an LTP] to be submitted for NRC approval.” 10 C.F.R. § 50.82(a)(9). The LTP must include: (1) a site characterization; (2) identification of remaining dismantlement activities; (3) plans for site remediation; (4) detailed survey plans for the final radiation survey; (5) a description of the end use of the site, if restricted; (6) an updated site-specific estimate of remaining decommissioning costs; (7) a supplement to the environmental report describing any new information or significant environmental change associated with the proposed license termination activities; and (8) identification of any parts of the site released for use before approval of the LTP. § 50.82(a)(9)(ii). The NRC is to approve the LTP by license amendment if the LTP “demonstrates that the remainder of decommissioning activities will be performed in accordance with the regulations.” § 50.82(a)(10). Approval of an LTP does not result in the termination of the license. A license will only be terminated after the conclusion of the activities described in the LTP and if the Commission determines that “dismantlement has been performed in accordance with the approved” LTP and that the “final radiation survey and associated documentation . . . demonstrate that the facility have met the criteria for decommissioning in 10 C.F.R. part 20, subpart E.” § 50.82(a)(11).

III. CONTENTIONS

A. Legal Requirements for Contentions

To gain admission to a proceeding as a party, a petitioner must submit at least one valid contention that meets the requirements of 10 C.F.R. § 2.309(f)(1). This section states that a petitioner must provide:

- (i) a specific statement of the issue of law or fact to be raised or controverted;
- (ii) a brief explanation of the basis for the contention;
- (iii) a demonstration that the issue raised in the contention is within the scope of the proceeding;

- (iv) a demonstration that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
- (v) a concise statement of the alleged facts or expert opinions which support the petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue; and
- (vi) sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief.

10 C.F.R. § 2.309(f)(1). "The contention rule is strict by design." *Dominion Nuclear Connecticut, Inc.*, (Millstone Nuclear Power Station, Unit 2), CLI-03-14, 58 NRC 433 (2003). The contention rule "seeks to ensure that the adjudicatory process is used to address real, concrete, specific issues that are appropriate for litigation." *Changes to Adjudicatory Process*, 69 Fed. Reg. 2182, 2202 (Jan. 14, 2004). One of the purposes of the rule is to assure that the parties are on notice concerning what issues they will have to defend against or oppose. *Philadelphia Elec. Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974). Proposed contentions also must concern matters within the scope of the proceeding. *See Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 118 (1995); *Duke Power Co.* (Catawba Nuclear Station, Units 1 & 2), ALAB-825, 22 NRC 785, 790 (1985). For the reasons set forth below, none of CAN's contentions meet these requirements.

B. CAN's Proposed Contentions

Contention 1:

CAN incorporates by reference herein the "Motion to Dismiss or Clarify and Re-notice" ['motion'] filed with its request for hearing, also attached hereto as Exhibit 4. CAN contends . . . that the notice in this case was defective.

* * *

Wherefore, CAN renews before this Panel, the relief requested in its "Motion to Dismiss or Clarify the Subject Matter of the License Amendment and Re-notice the Hearing Opportunity". In the event this motion is denied, CAN sets forth the following contentions based on its interpretation of the defective notice.

Hearing Request at 8

Staff Response to Contention 1:

This contention is inadmissible because it is outside the scope of the proceeding. See 10 C.F.R. § 2.309(f)(1)(iii). Contention 1 incorporates and reiterates the arguments made in the Motion to Dismiss. However, when the Commission referred CAN's Hearing Request to the Board, it retained jurisdiction over CAN's Motion to Dismiss. Therefore, the issues raised in Contention 1 are under consideration by the Commission and are outside the scope of the instant proceeding before the Panel.

Further, Contention 1 fails to raise a genuine dispute with the licensee on a material issue of law or fact, as required by 10 C.F.R. § 2.309(f)(1)(vi). As discussed in the Staff's Opposition to CAN's Motion to Dismiss, the Notice of Opportunity for a Hearing complies with the NRC's statutory and regulatory notice obligations and is sufficient to put any interested party on notice that a hearing, if granted, will encompass the Staff's approval of the LTP. See Staff Opposition at 3-6. The Notice for Opportunity of a Hearing complies with the notice requirements of the Atomic

Energy Act (AEA)⁶, as well as the agency's regulations.⁷ 69 Fed. Reg. 34,696-34,707. The Notice of Opportunity for a Hearing identifies the facility involved, briefly describes the requested amendment, and describes the nature of the action proposed. *Id.* at 34,707. It also explains the deadline and process for filing a hearing request. *Id.* at 34,696-97. Thus, the Notice of Opportunity for a Hearing conforms to the statutory and regulatory requirements. Therefore, CAN's Contention 1 is also inadmissible because it does not raise a genuine dispute with the licensee on a material issue of law or fact. See 10 C.F.R. § 2.309(f)(1)(vi).

Contention 2:

The LTP should not be approved at this time because Yankee Atomic has failed to provide documentation of the source, cause, and plan for remediation of the current high levels of tritium contamination in the ground water on site, in violation of 10 C.F.R. Part 20, subpart E, §50.52, §50.82. The samples collected in 2003 following the draining and emptying of the fuel pool still show an extremely high concentration of tritium (e.g., >45,000 pCi/L in monitoring well MW-107C). The LTP does not resolve the question as to whether this high level of contamination was previously overlooked or whether it relates to a new or recent release connected with work on the fuel pool in 2003. A supplemental Environmental Report and supplemental EIS should be prepared to explain the source and cause of the contamination, demonstrate that it is contained within the site, and provide a plan for cleaning up the contamination.

Hearing Request at 10. As basis for Contention 2 CAN relies on statements made by Robert Ross and "further testimony to be provided at hearing based upon his professional judgements and

⁶ In accordance with section 189 of the AEA, the Staff must "publish notice of any amendments issued, or proposed to be issued. . . . Such notice shall, with respect to each amendment . . . (i) identify the facility involved; and (ii) provide a brief description of such amendment." 42 U.S.C. § 2239(a)(2)(B).

⁷ Notice of a proposed action for an amendment to an operating license shall be published in the *Federal Register* and shall "set forth: (1) [t]he nature of the action proposed; [and] (2) [t]he manner in which a copy of the safety analysis and of the ACRS report, if any, may be obtained or examined." 10 C.F.R. § 2.105(a)-(b). The notice shall also set out the right of individuals who may be affected by the proceeding to request a hearing or file a petition to intervene if a hearing has already been requested. 10 C.F.R. § 2.105(d).

further study and review of the LTP documents and related materials.”⁸ Hearing Request at 10; Declaration of Robert J. Ross, CGWP, PG, Supporting Citizens Awareness Network’s Standing and Contentions One Through Five, August 20, 2004 (Ross Decl.).⁹ Mr. Ross’s statements reiterate the information provided in Contention 2. Mr. Ross discusses several examples of current contamination levels at the site. *Id.* at ¶¶ 6-7, 13, 15. Mr. Ross alleges that the presence of some of the contamination has not been clearly explained (*Id.* at ¶ 8) and that the extent of some of the contamination has not been fully characterized. *Id.* at ¶¶ 13, 15-16.

Staff Response to Contention 2:

Contention 2 is inadmissible because it fails to demonstrate that the issue is material to the findings the NRC must make to support the action that is involved in the proceeding and because it fails to raise a genuine dispute with the licensee on a material issue of law or fact. See 10 C.F.R. § 2.309(f)(1)(iv),(v). On its face, Contention 2 simply raises an issue concerning the cause of contamination found in the ground water at the site.¹⁰ However, the purpose of the LTP is to describe future activities a licensee proposes to perform in order to ensure that the remainder of decommissioning activities will be performed in accordance with the regulations, will not be inimical

⁸ CAN asserts as bases for Contentions 2-6 that it will rely on testimony to be provided at hearing. See Hearing Response at 10,11,12,15. However, CAN’s reliance on testimony to be provided at a later date to support the admission of its contentions is contrary to the NRC’s regulations. See 10 C.F.R. § 2.309(f)(1)(v).

⁹ Mr. Ross is referred to by CAN as “an expert in hydrogeology.” Hearing Request at 3. Mr. Ross’s Declaration does not include a statement of qualifications but instead refers to a statement posted on the internet at www.ross-environmental.com. Ross Decl. at ¶ 1. However, the link to Mr. Ross’s resume on the provided website does not lead to Mr. Ross’s resume. Therefore, CAN has provided insufficient information to make a determination on Mr. Ross’s qualifications.

¹⁰ Contention 2 does make reference to failure of the LTP to provide a remediation plan for the contamination found in the ground water. See Hearing Request at 10. None of Mr. Ross’s statements referenced by CAN as supporting Contention 2 even mention a remediation plan. Thus, this assertion of Contention 2 is not supported by a concise statement of expert opinion which supports CAN’s position. See 10 C.F.R. § 2.309(f)(1)(v).

to the common defense and security or to the health and safety of the public and will not have a significant effect on the quality of the environment. See 10 C.F.R. § 50.82(a)(10). Further, nothing in section 50.82 requires a licensee to provide information concerning the cause of contamination already on the site. See § 50.82(a)(9). In addition, neither Contention 2 nor Mr. Ross's statements make specific references to the LTP, as required by section 2.309(f)(i)(vi). See *Connecticut Yankee Atomic Power Co.* (Haddam Neck Plant), LBP-01-21, 54 NRC 33, 78 (2001). Accordingly, Contention 2 should not be admitted.

CAN also asserts that a supplemental Environmental Report and supplemental EIS should be prepared to explain the source and cause of the contamination, demonstrate that it is contained within the site, and provide a plan for cleaning up the contamination. Hearing Request at 10. To the extent that CAN intends to assert that the Licensee's environmental report is deficient, CAN fails to point to any specific portion of the Licensee's ER. Further, to the extent that CAN claims that an EIS is necessary, such a claim is premature. See *Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), LBP-04-4, 59 NRC 129,183 (2004) citing *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), LBP-99-25, 50 NRC 25, 39 (1999). The Staff will prepare an environmental assessment in connection with its review of the LTP and will decide at that point whether an EIS is necessary. See Transcript of Public Meeting on Yankee Rowe License Termination Plan, June 24, 2004, at 9 (ADAMS Accession No. ML0412180262).

Contention 3:

The LTP should not be approved at this time because Yankee Atomic has failed to adequately characterize several possible contaminated zones within the ground water under the site in violation of 10 C.F.R. Part 20, subpart E and the requirements of 10 C.F.R. §50.82. Without adequate characterization, there can be no assurance that the LTP will adequately safeguard public health by demonstrating compliance with 10 C.F.R. Part 20 standards.

Hearing Request at 11. As basis for Contention 3, CAN refers to one paragraph of Mr. Ross's declaration. *Id.* at 11 *citing* Ross Decl. at ¶ 15. In the cited paragraph, Mr. Ross asserts that "[r]eview of the geologic cross-sections and 'undisturbed ground water' samples indicate several possible contaminated zones that were not fully characterized." Ross Dec. at ¶ 15.

Staff Response to Contention 3:

Contention 3 is inadmissible because it fails to raise a genuine dispute with the licensee on a material issue of law or fact and is not supported by expert opinion or fact. See 10 C.F.R. §2.309(f)(1)(v),(vi). Contention 3 does not cite any portion of the LTP that CAN claims is insufficient, nor does the contention identify any information legally required to be in the LTP that is not in the LTP. See *Haddam Neck*, LBP-01-21, 54 NRC at 79.¹¹ Nor does Mr. Ross's statement support this contention. Although Mr. Ross states that there are "several possible contaminated zones that were not fully characterized," he does not explain in what way these zones were not fully characterized. See Ross Decl. at ¶ 15. Nor does Mr. Ross make any specific references to the LTP. It appears that Mr. Ross is referencing a 2003 hydrogeologic study and handouts from a teleconference to imply that the wells used to characterize possible contamination were inadequate. See *id.* at ¶¶ 14, 15. However, Mr. Ross fails to explain why the wells were inadequate or in what way the LTP is inadequate because of this. An expert opinion that merely states a conclusion without providing a reasoned basis or explanation for that conclusion is

¹¹ In the *Haddam Neck* proceeding, which also involved an LTP, the Board dismissed several contentions on the basis that the petitioner, CAN, the same petitioner as here, failed to point to specific portions of the LTP. *Haddam Neck*, LBP-01-21, 54 NRC at 79. Further, with respect to Contention 3, the Board in *Haddam Neck* dismissed a contention very similar to Contention 3. *Id.* CAN Contention 1.2 asserted that the Haddam Neck licensee's LTP lacked a sufficient site characterization. *Id.* Although CAN made several arguments concerning how the LTP did not meet the regulations and associated guidance, the Board ruled the contention as inadmissible because CAN failed to point to specific portions of the LTP. *Id.*; see also Citizens Awareness Network's Contentions (Mar. 15, 2001) (ADAMS ML010750235).

inadequate. *Private Fuel Storage, L.L.C.*, (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 181 (1998). Based on the above, Contention 3 should not be admitted.

Contention 4:

The LTP should not be approved at this time because it does not completely characterize the vertical extent of subsurface soil contamination beneath facility structures in violation of 10 C.F.R. Part 20 and §50.82. This is significant because without immediate characterization of the likely source area(s) of subsurface soil contamination beneath facility structures Yankee Atomic Electric Company cannot assure adequate protection of human health and that of nearby sensitive receptors under the LTP's site characterization as required by 10 C.F.R. Part 20 and §50.82.

Hearing Request at 11. As basis for Contention 4, CAN relies on a statement by declarant Ross that restates the Contention. Ross Decl. ¶ 16.

Staff Response to Contention 4:

Contention 4 is inadmissible because it does not raise a genuine dispute with the licensee on a material issue of law or fact and is not supported by expert opinion or fact. See 10 C.F.R. § 2.309(f)(1)(v), (vi). Contention 4 does not cite any portion of the LTP that CAN claims is insufficient, nor does the contention identify any information legally required to be in the LTP that is not in the LTP. See *Haddam Neck*, LBP-01-21, 54 NRC at 79. Nor does Mr. Ross's statement support this contention. Mr. Ross simply states that "[t]he vertical extent of subsurface soil contamination beneath facility structures does not appear to have been completely characterized. Immediate characterization of the likely source area(s) is extremely important with respect to ensuring the protection of human health and nearby sensitive receptors." Ross Dec. at ¶ 16. Mr. Ross provides no further explanation of why he believes the subsurface soil was not correctly characterized and makes no reference to the LTP. An expert opinion that merely states a conclusion without providing a reasoned basis or explanation for that conclusion is inadequate. *PFS*, LBP-98-7, 47 NRC at 181. Based on the above, Contention 4 should not be admitted.

Contention 5:

The LTP should not be approved at this time because Yankee Atomic Electric Company has failed to identify and characterize mixed waste in the ground water on site in violation of 10 CFR Part 20 and §50.82. Review of this data is important to properly characterize site conditions with respect to impacts to human health and the environment, and a supplemental EA and EIS are necessary to assure that the public health and safety will be protected under the conditions for release of the license.

Hearing Request at 12. As basis for Contention 5, CAN relies on a statement in the Licensee's hydrogeologic report that the non-radiological ground water quality would be discussed in a separate report. *Id.* CAN contends that no such report was ever filed, but should be filed. *Id.* CAN also relies upon a statement by Mr. Ross that the "containment plumes shown on the site plans and figures are confusing" and that a supplemental non-radiological ground water quality report "is important to properly characterize site conditions with respect to possible impacts to human health and the environment." Ross Decl. ¶ 17.

Staff Response to Contention 5:

Contention 5 is inadmissible because it is outside the scope of this proceeding, is not material to the findings the NRC must make, and fails to raise a genuine dispute with the licensee on a material issue of law or fact. 10 C.F.R. § 2.309(f)(1)(iii), (iv), (vi). The focus on Contention 5 is on "non-radiological ground water." See Hearing Request at 12; Ross Decl. at ¶ 17 ("The 2003 Hydrological Report also indicates that the non-radiological ground water quality data would be discussed in a separate report. . . . Review of this data is important to properly characterize site conditions."). However, the focus of the LTP is on radiological decommissioning. The Commission's regulations define "decommission" as the "means to remove a facility or site safely from service and reduce residual radioactivity" 10 C.F.R. § 50.2. See also 10 C.F.R. § 20.1003. Further the Commission's criteria for license termination only focus on radiological

dose. See 10 C.F.R. Part 20, Subpart E- Radiological Criteria for License Termination. For the reasons set forth above, Contention 5 is inadmissible.

With respect to the need for an EA and EIS, the Staff has stated that it will prepared an EA. Until the Staff has completed the EA and makes a decision concerning the need for an EIS, CAN's assertion with respect for the need for an EA and EIS is premature. See *Catawba*, LBP-04-04, 59 NRC at 183.

Contention 6:

The LTP should not be approved at this time because Yankee Atomic Electric Company has failed to use consistent professional hydrogeological "best practices" in the collection and presentation of data, leading to unreliability of data in key areas of hydrogeological characterization of the site in the LTP, and the unreliability of the hydrogeologic data relied upon to support the site characterization, conclusions, and projected levels of contamination in the LTP:

(a) YAEC's LTP ground water quality data has not been collected within as short a timeframe as possible;

(b) YAEC's LTP ground water quality data has not been correlated with ground water elevation data for corresponding sampling events to assess the possible relationship between contaminant trends and fluctuating ground water elevations;

(c) YAEC's LTP ground water elevation data has not been collected within a one-day period;

(d) YAEC's LTP hydrogeological reports have not adequately characterized the horizontal and vertical extent of subsurface contamination in order to characterize possible impacts within and down gradient of suspected contamination release areas;

(e) YAEC's LTP has failed to properly evaluate the vertical hydraulic flow regime at the Yankee Rowe site;

(f) YAEC's LTP has failed to properly evaluate the potential hydraulic connection between the various hydrogeologic units;

(g) YAEC's LTP has failed to identify the likely migration pathway between the source area(s) and the bedrock formation of Tritium detected in the bedrock aquifer based on ground water data collected from monitoring well MW-105B during the July and November 2003 sampling events;

(h) YAEC's LTP has failed to adequately characterize the stratigraphy of the site;

(i) YAEC's LTP inadequately characterizes site conditions by relying on monitoring using nested couplets consisting

of three monitoring wells without due regard for the thickness of the overburden and complexity of the hydrogeology of the site;

(j) YAEC's LTP relies upon the hydrogeologic studies that do not clearly present contaminant plumes on the site plans and figures are confusing, e.g., standard convention uses isopleths of equal concentrations, as shown on the figures, yet fill areas represent a range of concentrations of tritium (i.e., one range > 45,000 pCi/L, another range = 44,999 - 5,000 pCi/L, and another range = 4,999 – 2,500 pCi/L);

(k) YAEC's LTP relies upon hydrogeologic studies that use inconsistent color schemes and concentration ranges between figures which make it difficult to compare data between the different zones, leading to the potential for unreliable inferences based upon that data, and, upon which site characterizations rely.

These unprofessional practices in the collection and presentation of data, lead to the LTP's unreliability of data in key areas of hydrogeological characterization of the site. The LTP uses this unreliable hydrogeologic data to support the site characterization, conclusions, and projected levels of contamination on site. Thus, the LTP cannot be approved as it cannot provide reasonable assurance that it meets the health and safety standards of 10 CFR Part 20 and the plan approval requirements set forth in 10 CFR 50.82.

Hearing Request at 12-14. As basis for Contention 6, CAN relies upon statements by Mr. Ross that restate the issues presented by the Contention without providing additional information. See Hearing Request at 12-15; Ross Decl. ¶¶ 9-14, 17.

Staff Response to Contention 6:

Contention 6 is inadmissible because it fails to provide sufficient information to show that there is a genuine dispute exists with the licensee on a material issue of law or fact and it fails to demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the proposed license amendment. 10 C.F.R. § 2.309(f)(1)(iv), (vi). Further, the Contention fails to point to any specific portion of the LTP that is inadequate. § 2.309(f)(1)(vi); *Haddam Neck*, LBP-01-21, 54 NRC at 79.

CAN raises eleven purported deficiencies, each of which relies upon Mr. Ross's declaration. However, the declaration merely restates the deficiencies, without providing further information on

how these deficiencies are material to the findings the NRC must make to support the proposed license amendment. 10 C.F.R. § 2.309(f)(1)(iv). Issues raised in a contention “must be material to the grant or denial of the license application in question, i.e., they must make a difference in the outcome of the licensing proceeding so as to entitle the petitioner to cognizable relief.” *PFS*, LBP 98-7, 47 NRC at 179. In the context of decommissioning, there must be a “specific, tangible link between the alleged errors in the plan and the health and safety impacts they invoke.” *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 258; see also *PFS*, LBP-98-7, 47 NRC at 180. CAN has not explained how the alleged failure “to use consistent professional hydrogeological ‘best practices’ in the collection and presentation of data” will impact the health and safety of the public. See Hearing Request at 12-13. Therefore, Contention 6 fails to raise an issue material to the findings the NRC must make in the instant proceeding and should be dismissed.

CONCLUSION

For the foregoing reasons, CAN’s proposed contentions should not be admitted. Its hearing request, therefore, should be denied.

Respectfully submitted,

/RA/

Margaret J. Bupp
Counsel for NRC Staff

/RA/

Marian L. Zobler
Counsel for NRC Staff

Dated in Rockville, Maryland
this 20th day of September, 2004

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD PANEL

In the Matter of)
)
YANKEE ATOMIC ELECTRIC COMPANY) Docket No. 50-29
)
(Yankee Nuclear Power Station))
)
License Termination Plan)

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney enters an appearance in the above captioned matter. In accordance with 10 C.F.R. §2.314(b), the following information is provided.

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Respectfully submitted,

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Tyson R. Smith
Counsel for NRC Staff

Dated at Rockville, Maryland
this 20th day of September 2004

September 20, 2004

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD PANEL

In the Matter of)	
)	
YANKEE ATOMIC ELECTRIC COMPANY)	Docket No. 50-29
)	
(Yankee (Rowe) Atomic Power Station))	
)	
License Termination Plan)	

NOTICE OF APPEARANCE

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Shelly D. Cole
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Dated at Rockville, Maryland
this 20th day of September 2004

September 20, 2004

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD PANEL

In the Matter of)	
)	
YANKEE ATOMIC ELECTRIC COMPANY)	Docket No. 50-29
)	
(Yankee Nuclear Power Station))	
)	
License Termination Plan)	

NOTICE OF APPEARANCE

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Name of Party:	NRC Staff

Respectfully submitted,

/RA/
Marian L. Zobler
Counsel for NRC Staff

Dated at Rockville, Maryland
this 20th day of September 2004

September 20, 2004

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD PANEL

In the Matter of)	
)	
YANKEE ATOMIC ELECTRIC COMPANY)	Docket No. 50-29
)	
(Yankee Nuclear Power Station))	
)	
License Termination Plan)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO CAN'S REQUEST FOR HEARING AND PROPOSED CONTENTIONS" and "NOTICES OF APPEARANCE" for Marian L. Zobler, Shelly D. Cole, and Tyson R. Smith in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class; or as indicated by an asterisk (*), by deposit in the Nuclear Regulatory Commission's internal mail system; and by e-mail as indicated by a double asterisk (**), this 20th day of September, 2004.

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