

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

ATOMIC SAFETY AND LICENSING BOARD PANEL

July 21, 2005 (10:07am)

Before Administrative Judges:

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Alan S. Rosenthal, Chairman  
Dr. Richard F. Cole  
Dr. Charles N. Kelber

**SERVED July 21, 2005**

In the Matter of

YANKEE ATOMIC ELECTRIC COMPANY  
(Yankee Nuclear Power Station LTP)

Docket No. 50-29-OLA

ASLBP No. 04-831-01-OLA

July 21, 2005

MEMORANDUM AND ORDER

(Approving Settlement Agreement and Terminating Proceeding)

This license amendment proceeding is addressed to the application of the Yankee Atomic Electric Company (Yankee) for NRC approval of a license termination plan (LTP) for its Yankee Nuclear Power Station located in Rowe, Massachusetts. In response to a Federal Register notice of opportunity for hearing, Citizens Awareness Network (CAN) sought to obtain a hearing on the basis of six contentions that asserted broadly that there had not been compliance with a Commission regulation pertaining to the required content of LTPs. Finding that CAN had the requisite standing and that several of its contentions satisfied the admission requirements imposed by the governing Rule of Practice, the Board granted the CAN hearing request last November 22 in LBP-04-27, 60 NRC 539.

Albeit on different grounds, both Yankee and the NRC Staff appealed this action. On June 29, 2005, in CLI-05-15, 61 NRC \_\_\_, the Commission affirmed the grant of the hearing request. In doing so, however, it noted (61 NRC at \_\_\_ (slip op. at 18)) that "this case may have become somewhat overtaken by events" occurring while the appeals were under submission.

As a result of supervening developments, the Commission opined, “the Board may be faced with summary disposition motions.” Ibid.

Taking its cue from this observation, the Board issued an unpublished order the following day in which it called upon each of the parties to furnish it with a memorandum setting forth the genuine issues of material fact that, in light of the teachings of CLI-05-15, the party believed to remain for adjudication. The Board also indicated that, should a party conclude that no such issues remained, it could instead file a motion for summary disposition.

In response to the June 30 order, Yankee and CAN pursued a third course. On July 11, those parties filed a Joint Motion for Approval of Settlement Agreement and Termination of the Proceeding. Attached to the motion was the settlement agreement and a proposed order approving it and terminating the proceeding.

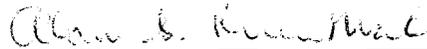
Given that the text of the settlement agreement is appended to this order, there is no need to set forth its terms here. It suffices to record the Board’s belief that the agreement entirely accords with the public interest and is in furtherance of the Commission’s policy encouraging the “fair and reasonable settlement and resolution of issues” such as those that were raised by CAN in this proceeding. See 10 C.F.R. § 2.338. That being so, both parties to the Settlement Agreement are to be commended.

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For the reasons stated, the Settlement Agreement appended to this order is hereby approved and the proceeding terminated as now moot.

It is so ORDERED.

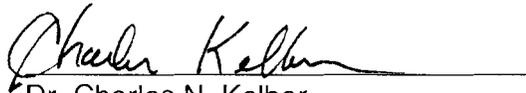
THE ATOMIC SAFETY  
AND LICENSING BOARD<sup>1</sup>



Alan S. Rosenthal, Chairman  
ADMINISTRATIVE JUDGE



Dr. Richard F. Cole  
ADMINISTRATIVE JUDGE



Dr. Charles N. Kelber  
ADMINISTRATIVE JUDGE

Rockville, MD  
July 21, 2005

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<sup>1</sup> Copies of this memorandum order were sent this date by Internet electronic mail transmission to counsel for the parties.

**SETTLEMENT AGREEMENT**

WHEREAS, Citizens Awareness Network ("CAN") has requested and been granted a hearing before the Atomic Safety and Licensing Board ("Board") relating to certain matters concerning Yankee Atomic Electric Company's ("Yankee") application for Nuclear Regulatory Commission ("NRC") approval of a License Termination Plan ("LTP") for the Yankee Nuclear Power Station ("YNPS"), located at Rowe, Massachusetts, Docket No. 50-29 ("NRC Proceeding");

WHEREAS CAN and Yankee have determined that it is in the public interest to seek dismissal of the admitted CAN contentions (Contentions 2, 3, and 4), regarding the completeness of the NRC required radiological characterization for YNPS and the alleged lack of a groundwater remediation plan in the LTP, because these contentions are now moot;

WHEREAS CAN and Yankee have agreed that because all the admitted contentions are now moot, this proceeding should be terminated;

THEREFORE, IT IS STIPULATED AND AGREED by CAN and Yankee that:

1. CAN and Yankee admit that the NRC has jurisdiction over the parties and the subject matter of this Settlement Agreement.
2. CAN agrees that CAN's Contentions 2, 3, and 4, as admitted by the Board, regarding the completeness of the characterization for YNPS and the alleged lack of a groundwater remediation plan in the LTP, are now moot and all matters

otherwise required to be adjudicated have been resolved by this Settlement Agreement and the Consent Order issued by the Board.

3. CAN further agrees that as a result of this agreement the NRC proceeding on the contentions should be terminated.

4. Yankee agrees to provide CAN, CAN's attorney, Jonathan Block, and expert, Robert Ross, all hydrogeological reports developed to satisfy Federal and State requirements. Draft reports will not be provided unless necessary for understanding the final reports. Yankee also agrees to provide reimbursement for any work done for CAN by Mr. Ross, up to, but not exceeding, \$1000.00 in the aggregate in fees related to providing CAN with an expert assessment of the hydrogeological issues in the EA and documents Yankee provides to CAN in performing this agreement. Mr. Ross will invoice Yankee directly for reimbursement of such fees.

5. Yankee agrees that a CAN representative will maintain its seat on the Community Advisory Board ("CAB") as long as it stays in existence.

6. Yankee hereby provides assurance to CAN that Yankee will perform down gradient offsite monitoring of the groundwater for tritium which will be conducted off the YNPS industrial site; specifically employing monitoring wells as necessary to meet Federal and State requirements. The offsite monitoring wells currently being used are described in Attachment A to this Exhibit 1. Attachment B to this Exhibit 1 provides the location of these wells.

7. Yankee hereby provides assurance to CAN that this monitoring will continue for such period as mandated by Federal and State requirements.

8. Yankee hereby provides assurance to CAN that the down gradient offsite monitoring of the groundwater for tritium will be conducted to demonstrate that the Environmental Protection Agency's Maximum Contaminants Level ("EPA MCL") standards are met, as is consistent with the YNPS LTP.

9. Yankee hereby provides assurance to CAN that this down gradient offsite monitoring will resume following completion of site demolition activities, anticipated to be completed in the fall of 2005.

10. All parties hereto agree to exercise due diligence in the performance of their various responsibilities under this Settlement Agreement and to cooperate with each other in carrying out its intent.

11. This Settlement Agreement supersedes all prior representations, negotiations, and understandings of the parties hereto, whether oral or written, and constitutes the entire agreement between the parties with respect to the matter hereof.

12. This Settlement Agreement shall not be effective, final and binding on the parties hereto unless this Settlement Agreement is approved in its entirety by the Board or the Commission and the proceeding terminated. If the Board or the Commission does not approve this Settlement Agreement in its entirety, then this Settlement Agreement shall not take effect and shall be deemed null and void. The parties agree that if the Board or the Commission does not approve this Settlement Agreement, they will negotiate in good faith to resolve any outstanding issues necessary to obtain its approval by the Board or the Commission.

13. In the event this Settlement Agreement becomes binding upon the parties in accordance with the terms herein, the Settlement Agreement shall be binding upon the parties successors, assigns, representatives, employees, agents, partners, subsidiaries, and affiliates.

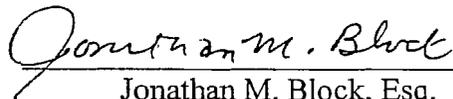
14. Yankee and CAN expressly waive the right to challenge, contest the validity of, or seek judicial review of any order entered as a result of this Settlement Agreement so long as such order is fully consistent with each provision of this Settlement Agreement.

15. When approved by the Board, the order entered as a result of this Settlement Agreement has the same force and effect as an order made after full hearing.

IN WITNESS WHEREOF CAN and Yankee have caused this Settlement Agreement to be executed by their duly authorized representatives on this 8th day of July 2005.



William A. Horin, Esq.  
David A. Repka, Esq.  
Amy C. Roma, Esq.  
Counsel for Yankee Atomic Electric Company



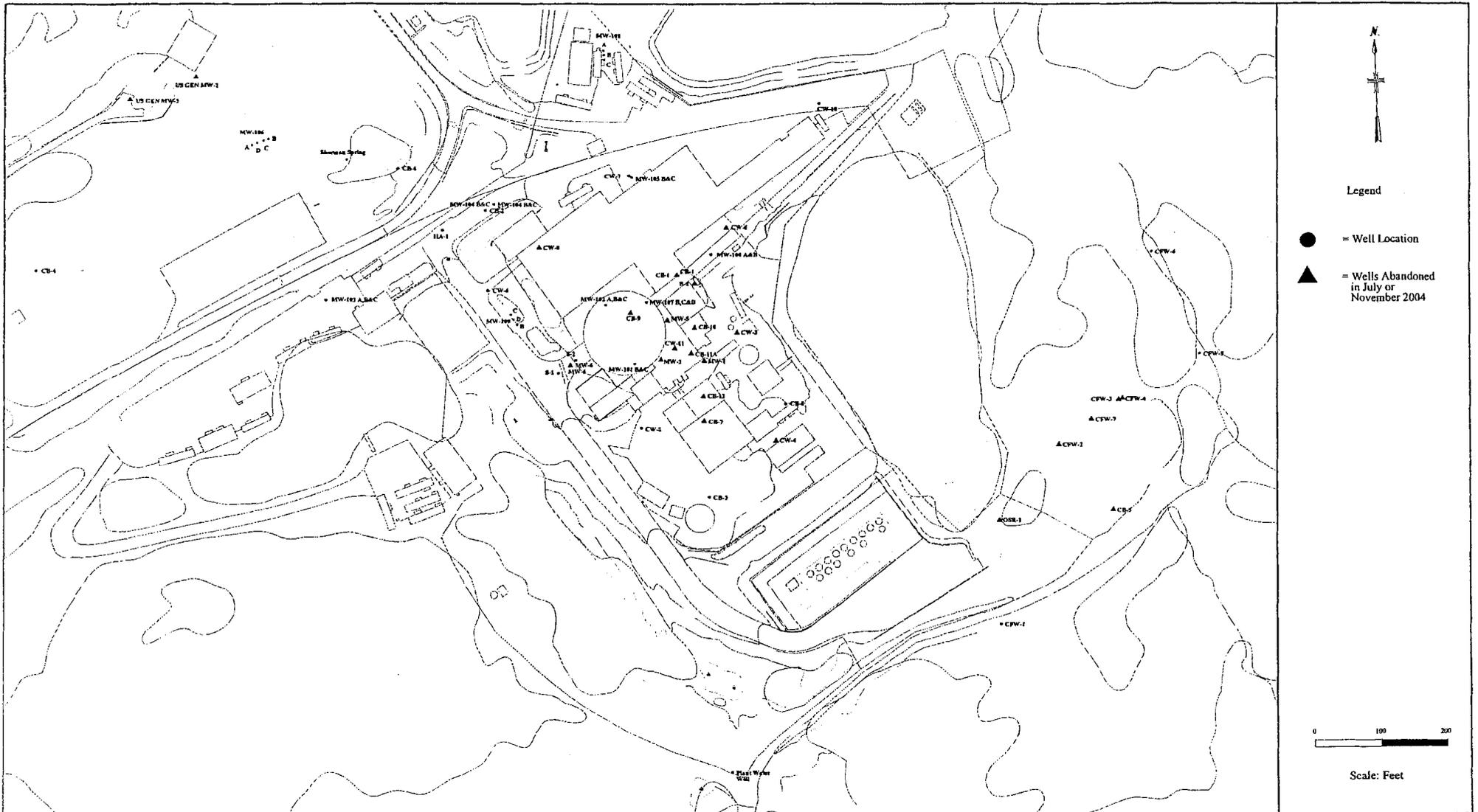
Jonathan M. Block, Esq.  
Counsel for Citizens Awareness Network

EXHIBIT 1 - ATTACHMENT A

Tritium in Ground Water from Off Site Monitoring Wells  
 Yankee Nuclear Power Station  
 Rowe, Massachusetts

Well No.	Aquifer Completion	Well Depth (feet)	Tritium (pCi/l)	
CB-6	Shallow	25	July-03	not detected
			November-03	430
			March-04	279
			May-04	not detected
			August-04	750
			November-04	750
			November-04	760
			Sherman Spring (SP-1)	Spring
November-03	not detected			
March-04	210			
May-04	890			
September-04	not detected			
November-04	323			
MW-106A	Shallow	22	November-04	620
			November-04	not detected
MW-106B	Bedrock	261	November-04	not detected
			November-04	not detected
MW-106C	Intermediate	95	November-04	not detected
			November-04	not detected
MW-106D	Intermediate	154	November-04	not detected
			November-04	not detected
MW-108A	Shallow	25	September-04	not detected
			November-04	not detected
MW-108B	Bedrock	215	September-04	not detected
			November-04	not detected
			November-04	not detected
MW-108C	Intermediate	65	September-04	not detected
			November-04	not detected

Note: EPA MCL for tritium is 20,000 pCi/l.



Yankee Nuclear Power Station  
Rowe, Massachusetts



Monitoring Well Location Map

Revision: 0  
FEBRUARY 2005

FIGURE 1

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
 )  
YANKEE ATOMIC ELECTRIC CO. ) Docket No. 50-29-OLA  
YANKEE NUCLEAR POWER STATION, )  
FRANKLIN COUNTY, MASSACHUSETTS )  
 )  
(Operating License Amendment) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (APPROVING SETTLEMENT AGREEMENT AND TERMINATING PROCEEDING) (LBP-05-18) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate  
Adjudication  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Administrative Judge  
Alan S. Rosenthal, Chair  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Administrative Judge  
Richard F. Cole  
Atomic Safety and Licensing Board Panel  
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U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Administrative Judge  
Charles N. Kelber  
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Bill Perlman, Chair  
The Franklin Regional Council  
of Governments Executive Committee  
425 Main Street  
Greenfield, MA 01301-3313

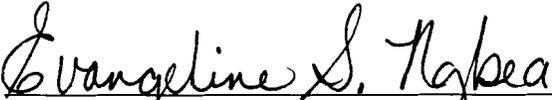
Linda Dunlavy  
Executive Director  
Franklin Regional Council  
of Governments  
425 Main Street  
Greenfield, MA 01301-3313

Docket No. 50-29-OLA  
LB MEMORANDUM AND ORDER (APPROVING  
SETTLEMENT AGREEMENT AND TERMINATING  
PROCEEDING) (LBP-05-18)

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94 Main Street  
P.O. Box 566  
Putney, VT 05346-0566

  
Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 21<sup>st</sup> day of July 2005