

MINUTES OF THE THIRTIETH MEETING OF THE
WASTE AND FACILITIES MANAGEMENT COMMITTEE
HELD ON MARCH 13, 2006

Pursuant to a Notice dated March 2, 2006 a copy of which is annexed hereto, the thirtieth (30th) meeting of the Waste and Facilities Management Committee of the NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY was convened at 10:30 a.m. on Monday, March 13, 2006, in the Authority's Board Room, located at 17 Columbia Circle, Albany, New York, and by video conference in the Authority's Buffalo office, 617 Main Street, Suite 105, Buffalo, New York, and by video conference in the Authority's New York Office, 485 Seventh Avenue, 10th floor, New York, New York.

The following members of the Committee were present:

Elizabeth W. Thorndike, Ph. D., Chair
Vincent A. DeIorio
Parker D. Mathusa
William F. Edwards

Also in attendance were William M. Flynn, Member; Peter R. Smith, President; Robert G. Callender, Vice President for Programs; Wendy M. Shave, Vice President for Administration and Secretary to the Board; Roger D. Avent, General Counsel; Jeffrey J. Pitkin, Treasurer; Paul L. Piciulo, Director, West Valley Site Management Program; John P. Spath, Program Manager, Energy Analysis Program; Hal Brodie, Deputy Counsel; and Peter R. Keane, Senior Counsel and Secretary to the Waste and Facilities Management Committee. Various members of the Authority's staff were also present, as were Eliot Cutler and Sheila D. Jones of the firm of Akin Gump Strauss Hauer & Feld.

Ms. Thorndike called the meeting to order, stated that notice of the meeting had been forwarded to the Committee Members and the press on March 2, 2006, and noted the presence of a quorum. Ms. Thorndike stated that the first item on the agenda concerned approval of the minutes of the twenty-ninth meeting, held on September 12, 2005.

Whereafter, upon motion duly made and seconded, and by unanimous voice vote, the minutes of the twenty-seventh meeting were approved.

Ms. Thorndike then asked Director Paul Piciulo to report to the Committee on West Valley Site Management Program activities.

Dr. Piciulo reported that the most significant accomplishment of the West Valley Demonstration Project ("WVDP") in 2005 was the disposal of 335,000 cubic feet of low-level radioactive waste ("LLRW"). According to Mr. Piciulo, the President's fiscal year 2007 budget includes a request of \$73.4 million for the WVDP, which amount is nearly \$4 million less than the \$77.1 million in federal funding this year.

Dr. Piciulo advised that John Swailes, who was appointed WVDP Director last year, has left the Department of Energy ("DOE") to take a job in industry, and that Robert Warther, the Ohio Field Office Manager, is now the Acting WVDP Director. According to Mr. Piciulo, since 1999, there have been five WVDP directors or acting directors, and three different Ohio Field Office Managers. Mr. Piciulo expects that Mr. Warther will leave his position as Ohio Field Office Manager in May, and that the Ohio Field Office will close by the end of this year. Apparently DOE is considering having the WVDP report, thereafter, directly to DOE headquarters.

Dr. Piciulo next reported that, as anticipated, DOE extended their contract with West Valley Nuclear Services Company ("WVNSCO") through calendar year 2006. While DOE and WVNSCO were negotiating the milestones for this year, Authority staff had an opportunity to review an early draft of the scope of work and discuss our concerns with DOE site management. It appearing that the Authority's concerns would not be addressed, President Smith wrote to Assistant Secretary James Rispoli recommending the resumption of decontamination and characterization work in the highly contaminated Main Process Building.

The final scope of work agreed upon by DOE and WVNSCO focuses on waste disposal. The final scope incorporates, as a waste category in the contract incentive structure, disposal of low-level radioactive waste and mixed hazardous and low-level radioactive waste resulting from new decontamination work in the Main Process Building. While WVNSCO plans to decontaminate several areas of the Main Process Building, these areas are not highly contaminated.

In his letter to Assistant Secretary Rispoli, President Smith also recommended a renewed effort to mitigate the spread of the strontium-90 groundwater plume into uncontaminated areas of the site. Unfortunately, there are no plans this year for additional remediation. DOE has not provided a written response to President Smith's letter. Mr. Piciulo noted that, based on DOE estimates, the volume of contaminated soil resulting from the spread of the plume has increased from four million cubic feet in 1996 to 28 million cubic feet as of 2005.

DOE has issued a notice in the Federal Business Opportunities reporter stating that they anticipate issuing a solicitation for the WVDP in March. Three Authority staff are involved in the review of the draft Request for Proposals, and will review the proposals when they are available. DOE plans to have a new four-year contract signed before December 31, 2006.

Mr. Piciulo advised the Committee that, on September 15, DOE distributed a preliminary draft of the Decommissioning Environmental Impact Statement ("EIS") to the Authority, the Nuclear Regulatory Commission ("NRC"), the Environmental Protection Agency ("EPA"), the Department of Environmental Conservation ("DEC"), and the Department of Health ("DOH") for agency review. Agency comments are due to DOE on March 17, 2006.

In addition to its internal review, the Authority convened a group of nationally-recognized scientists (the "Peer Review Group") to review the analytical work being conducted for the EIS by DOE's EIS Contractor (SAIC). Mr. Piciulo explained that the Authority initiated this peer review process because, in prior years, the Authority's technical concerns were largely

unaddressed by DOE. DOE is participating in the peer review process; the Authority is managing the contracts with the reviewers, and is working to ensure that the integrity of the peer review process is maintained.

According to Dr. Piciulo, the Peer Review Group visited the site for two days in November, and the Group has reviewed numerous technical documents related to the site and the EIS analyses. The reviewers have communicated through conference calls and e-mails which have frequently included the agencies. The Peer Review Group met with the agencies and the EIS contractor at the contractor's office in Germantown, Maryland in December, and they presented their findings at a meeting in Buffalo at the end of February.

Dr. Piciulo advised the Committee that the Peer Review Group submitted its draft report on March 10. The draft report validates many of the technical concerns the Authority has raised with DOE over the last several years. The draft report's more significant concerns relate to the groundwater flow and contaminant transport analyses, modeling of erosion to predict landscape evolution over the long-term at the West Valley site, and the scenarios used in the decommissioning EIS to analyze exposures to the public. Mr. Piciulo advised that these issues are critical for the analysis of whether the EIS alternatives can meet the NRC's license termination criteria.

It is expected that the report will be made final in April, after the inclusion of input from the Authority and DOE. Under the current EIS schedule, the Draft EIS is to be issued for public review in January of 2007. In Mr. Piciulo's opinion, considering the results of the Peer Review, and our own technical concerns with the EIS, it is questionable whether DOE can correct the problems in this document for release to the public by that date.

Dr. Piciulo recalled discussion at the September meeting of DEC's authority over the operation and closure of solid waste management units at West Valley, both for the WVDP and the State-Licensed Disposal Area ("SDA"), under the Resource Conservation and Recovery Act ("RCRA"). Pursuant to a Consent Order with DEC, the Authority must prepare and submit a Corrective Measures Study for the SDA. A Corrective Measures Study ("CMS") consists of a remedial action alternative evaluation process that focuses on hazardous constituent releases or the potential for hazardous constituent releases. Hazardous constituents are non-radioactive chemicals that pose a threat to human health or the environment.

Dr. Piciulo advised that the Authority, DOE and DEC agreed, when the Consent Order was signed in 1992, to postpone CMS activities to allow them to be integrated with the EIS. Because of the many delays by DOE in the preparation of the EIS, DEC recently requested that the studies be prepared independently of the EIS. DOE is preparing CMSs for five WVDP units. The Authority is preparing a CMS for the SDA.

NYSERDA, with contractor support, is now preparing a CMS Work Plan. A draft CMS Work Plan is to be submitted to DEC for review and comment by April 28. Once approved by DEC, the Work Plan will be used in the development of the CMS Report, wherein the Authority will

recommend a corrective measure alternative for the SDA. Those recommendations must be consistent with our decisions based on the EIS. The final CMS Reports will be public documents.

Dr. Piciulo next reported on recent activities of the Citizen Task Force ("CTF"), which included a discussion with DOE regarding the groundwater plume. The CTF continues to raise concerns about the ongoing spread of the strontium-90 contamination. At DOE's request, three CTF members toured two DOE cleanup sites in Ohio to learn more about cleanup strategies and site redevelopment.

The CTF reviewed DOE's West Valley Demonstration Project Site Utilization Management Plan ("SUMP"). The SUMP presents DOE's three phase strategy for the completion of the WVDP, as was discussed at the September, 2005 Committee meeting. The CTF sent a letter to Mr. Warther, the Ohio Field Office Manager, requesting that DOE either withdraw the document until the EIS is complete, or explain in a credible manner why it is a valid document and not an attempt to bypass the EIS process. The CTF letter lists several reasons for objecting to the SUMP.

With regard to the pending legislation, Mr. Piciulo reported that Congressman Kuhl held a town meeting in West Valley on February 3, at which he expressed his optimism about moving the bill during the next four or five months. He added that he has been talking with the chairmen of several committees and with White House personnel.

Upon a motion made at the conclusion of Mr. Piciulo's report, the Committee entered an executive session to confer with the Authority's legal counsel regarding proposed litigation concerning our relationship with the DOE and the situation at West Valley.

At the conclusion of the executive session, and upon return to open meeting, Ms. Thorndike stated that no action had been taken. Ms. Thorndike then read aloud the resolution included with the March 2 mailing, and asked for a motion recommending that it be adopted by the Board.

Whereupon, upon motion duly made and seconded, and by unanimous voice vote, the Waste and Facilities Management Committee voted unanimously to recommend that the Board adopt the resolution authorizing the filing and service of a legal complaint against the United States and the United States Department of Energy. A copy of this resolution is attached hereto as Exhibit A.

The next agenda item concerned radioactive waste policy and nuclear coordination activities, upon which Jack Spath delivered a report. Mr. Spath advised that the Envirocare facility has agreed to merge with Duratek, the firm which owns the Barnwell, South Carolina waste management facility.

With regard to nuclear power plants, Jack reported that the NRC has completed its Special Investigation of the leakage that occurred at the Indian Point spent fuel pool, and that a public meeting has been scheduled for March 28. The site hydrological investigation undertaken by the

owner of the facility, Entergy, will continue.

Mr. Spath further advised the Committee that the Energy Policy Act of 2005 requires emergency siren systems at nuclear plants to incorporate backup power systems. The entire 156 siren emergency system at Indian Point is being replaced, with an operational date of January, 2007. According to Mr. Spath, the NRC recently consented to an independent assessment of Indian Point, upon the request of Senator Clinton. It is unclear at this time what such an assessment will include.

Finally, Mr. Spath reported that Authority staff is coordinating review by the responsible New York agencies of the license renewal applications filed for Nine Mile Units 1 and 2. According to Mr. Spath, no major issues have yet been identified.

Treasurer Jeffrey Pitkin next explained to the Committee that he would be presenting for consideration, at the April 3rd meeting of the Board, a revised Budget for fiscal year 2006-07, which will make certain changes to the Budget adopted by the Members at the September 2005 meeting. Mr. Pitkin advised that, with regard to the West Valley program and the Radioactive Waste Policy and Nuclear Coordination program, the revision will contain only minor changes from the Budget reviewed by the Committee in September 2005.

The last item on the agenda concerned other business. There being none, upon motion duly made and seconded and upon unanimous voice vote, the meeting was adjourned.

Respectfully submitted,



Peter R. Keane
Secretary to the Committee