MINUTES OF THE THIRTY-FIRST MEETING OF THE
WASTE AND FACILITIES MANAGEMENT COMMITTEE
HELD ON SEPTEMBER 11, 2006

Pursuant to a notice dated September 7, 2006, a copy of which is annexed hereto, the thirty-first (31st) meeting of the Waste and Facilities Management Committee of the NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY was convened at 10:00 a.m. on Monday, September 11, 2006, in the Authority's New York City office, at 485 Seventh Avenue, 10th floor, New York, New York and by video conference in the Authority's Albany Office at 17 Columbia Circle, Albany, New York, and by video conference from the Authority's Buffalo office at 617 Main Street, Buffalo, New York.

The following members of the Committee were present:

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

Peter R. Smith, President and Chief Operating Officer; Robert G. Callender, Vice President for Programs; Roger D. Avent, General Counsel; Jeffrey J. Pitkin, Treasurer; Paul L. Piciulo, Director, West Valley Site Management Program; Hal Brodie, Deputy Counsel; and Peter Keane, Senior Counsel and Secretary to the Waste and Facilities Management Committee; all of the Authority, were present, as were various members of the Authority's Staff. John P. Spath, Program Manager, Energy Analysis Program, attended by video-conference.

Ms. Thorndike called the meeting to order, stated that notice of the meeting had been forwarded to the Committee Members and the press on September 7, 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 thirtieth meeting, held on March 13, 2006.

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

Ms. Thorndike next called upon President Peter Smith, who provided a summary of recent developments with the Authority's litigation and legislation efforts regarding West Valley.

President Smith advised that the Authority was involved in final preparations to move forward with litigation against the United States with respect to West Valley issues. Mr. Smith recalled the June 2006 meeting of the Board, where he reported that the Environmental Protection Agency (EPA) had issued a proposal for a preferred cleanup alternative at West Valley that would have involved exhumation of the high-level waste tanks and complete decommissioning of the north plateau facilities. As was discussed at the June meeting, the Authority viewed the EPA proposal as a positive development, with the potential to help resolve many of the issues dividing the Authority and the Department of Energy (DOE).

Mr. Smith advised that he had written in June to David Garman, DOE Undersecretary, supporting the EPA initiative and seeking a positive response from DOE. The Authority has not received any written response from Mr. Garman. However, Mr. Smith explained that at a recent unrelated event, Mr. Garman stated that DOE was considering a response, but that such response would not be positive. President Smith expressed his belief that it is unlikely that the Authority will be able to resolve these issues short of litigation.

Mr. Smith further advised that Authority Staff has been contacted by representatives of the New York Attorney General, who have indicated that the Attorney General is interested in having the State join the Authority as a co-plaintiff in the lawsuit. The Attorney General believes that the State has an independent interest in the West Valley issues, because the Authority will use appropriated funds to pay for West Valley expenses and because the ground water and other natural resources that could be affected belong to the State.

According to Mr. Smith, the Attorney General's representatives have indicated that they concur with the general direction of the draft Complaint. Authority Staff believes that the addition of the State as a plaintiff would strengthen the litigation in several respects; discussions are underway with the Attorney General's representatives regarding the potential addition of the State of New York as a plaintiff. Mr. Smith advised that when these discussions are completed, we will serve and file the Complaint. Mr. Smith advised that, unfortunately, the West Valley legislation has not progressed, and that it is unlikely to be addressed by this Congress

President Smith then asked Paul Piciulo to provide the Committee with an overall status report on West Valley Site Management Program activities.

Dr. Piciulo informed the Committee that DOE has appointed Bryan Bower as Director of the West Valley Demonstration Project (WVDP). Mr. Bower is a twenty-year DOE employee who has been a member of the DOE management team at West Valley for the past 11 years. Mr. Piciulo explained that, because of the pending closure of DOE's Ohio Field Office, the WVDP now reports to directly to DOE headquarters. Mr. Bower reports to Cynthia Anderson, head of the Office of Site Support and Small Projects, who reports to the Office of Environmental Management's Chief Operating Officer, Ines Triay. Ms. Triay reports to James Rispoli, the Assistant Secretary for Environmental Management.

Mr. Piciulo reported that Albert Konetzni, a retired Navy Admiral, is now the president the West Valley Nuclear Services Company (WVNSCO). As was anticipated, DOE issued a request for proposals (RFP) for the WVDP contract in March, and is now in the process of reviewing the proposals. NYSERDA staff has commented on the technical portions of the proposals. DOE expects to award a contract this calendar year, for a contract period beginning in January 2007 and extending through December of 2010. The RFP stated that there would be a 30 to 60 day transition period; thus, if the contract is not awarded before December the WVNSCO contract may be extended.

Mr. Piciulo recalled that early this year President Smith wrote to Mr. Rispoli expressing the Authority's concerns about the draft WVDP work plan, which operates through performance-based incentives that focus solely on shipping waste for disposal. NYSERDA requested that DOE revise the milestones to include decontamination work in the process building and a renewed effort to mitigate the spread the groundwater plume. The DOE responded by revising the incentives to include some decontamination work in the process building. DOE has not responded, however, to the Authority's concerns about the continued spread of the groundwater plume.

With regard to the groundwater plume, Mr. Piciulo reported that, at its semiannual monitoring visit in April, the Nuclear Regulatory Commission (NRC) reviewed WVDP activities and data regarding the environmental monitoring of the North Plateau groundwater plume. Authority Staff discussed their views on the monitoring data and the interpretation of that data with NRC Staff, and expressed concerns over the lack of attention that DOE and NRC are giving to the continued spread of contamination. The Authority expressed particular concern that DOE is allowing the plume to continue to spread off of the Project premises onto the NYSERDA retained portions of the West Valley site.

According to Mr. Piciulo, however, a recent NRC letter concluded that "the current monitoring program is adequate to ensure the health and safety of the public." In staff's view, DOE's management of the plume is grossly inadequate. The Citizens Task Force has also repeatedly questioned the continuing spread of the ground water plume and Mr. Piciulo reported that the CTF is currently drafting a letter to NRC to express their concerns.

Ms. Thorndike inquired as to whether, under these circumstances, some form of injunctive relief might be available. Deputy Counsel Brodie advised that, because of the broad discretion afforded to DOE and the budgetary nature of the decisions that would be challenged, the prospects for injunctive relief are very problematic.

Mr. Piciulo advised that DOE has prepared and issued for comment a draft Environmental Assessment for the demolition of 42 facilities that DOE contends will no longer be needed for the WVDP, including six facilities to be demolished this year. Authority Staff expressed concern with the Environmental Assessment, which proposes removal of all waste storage facilities, warehouse capacity, the sewage treatment plant, training equipment and maintenance facilities. The CTF and others have urged DOE to abandon the approach and address early removal of the facilities through the Decommissioning EIS. According to Mr. Piciulo, the Environmental Assessment is now in DOE Headquarters for review.

Mr. Piciulo also reported to the Committee on the Authority's preparation of a Corrective Measures Study (CMS) for the State-licensed Disposal Area (SDA), as is required by the Department of Environmental Conservation under the 1992 Consent Order. The CMS will focus on the hazardous wastes in the SDA, and will include additional analyses and environmental work such as erosion monitoring and groundwater modeling. The DEC has reviewed and

approved the Authority's draft CMS work plan.

Regarding the eventual redevelopment of the West Valley site, Mr. Piciulo reported that an entity known as Bell IPC has requested that the Authority release 50 acres of West Valley property for the construction of a cellulosic ethanol demonstration plant. Bell has submitted a proposal in response to a DOE solicitation for such a demonstration plant. The Ashford Town Supervisor and members of the CTF are supportive of the proposal. According to Mr. Piciulo, it has been explained to Bell IPC and the Town that, in order to go forward, the Authority would have to apply to NRC for release of a portion of the property, and that any release of acreage would be governed by the Public Authorities Accountability Act of 2005.

Mr. Piciulo reported that Authority Staff had made presentations at the August meeting of the CTF. Colleen Gerwitz provided an educational presentation on the complex regulatory framework for the clean up at West Valley. Paul Bembia presented NYSERDA's views on the preliminary draft EIS.

President Smith then addressed the Committee regarding the next item on the Agenda, consideration of the resolution terminating the Supplemental Agreement with DOE concerning the conduct of a joint environmental impact statement process for the West Valley site. Mr. Smith made reference to the Memorandum included with the September 7 mailing, which sets forth the reasons why Authority staff believes this is the correct course of action for the Authority.

Mr. Smith explained that, after the Agenda and Memorandum were distributed to the Members, the Authority received a draft letter from the Citizens Task Force expressing serious concern about the Authority's proposed termination of the joint EIS process. The draft letter expressed the view that the Authority should continue with the EIS process and resolve the outstanding issues with DOE at a future date.

President Smith advised that he and Authority Staff disagree with the CTF recommendations, and believe that, until the larger issues of agency responsibility are resolved, there will be no real further progress at the site. He advised that the Authority's views would be communicated to the CTF at its meeting on September 27, and that he would report back to Committee at the next meeting.

Mr. Smith asked that, under the circumstances, the Committee should consider tabling the resolution. Chair Delorio stated that, given the importance of maintaining the confidence of the CTF, a delay in considering the adoption of the resolution was appropriate.

Whereafter, upon motion duly made and seconded, and by unanimous voice vote, the resolution terminating the Supplemental Agreement with DOE concerning the conduct of a joint environmental impact statement process was tabled.

Jack Spath next reported to the Committee on radioactive waste policy and nuclear coordination activities. Mr. Spath advised that the Annual Low Level Radioactive Waste (LLRW) Status Report for 2005 was delivered to the Governor and legislative leaders by July 1, as is required by statute. The annual report indicates that 42,000 cubic feet of LLRW, containing about 5,300 curies of radioactivity were shipped to out-of-State disposal facilities. Of that amount, 60% of the volume and nearly 100% of the radioactivity came from the nuclear power plants.

Mr. Spath advised that the NRC's recent Semi-Annual Performance Assessment found all New York State plants to be operating at the highest level of performance. Finally, Mr Spath advised that Authority Staff is currently working with the NRC, the Governor's Office, and the State's radioactive materials regulating agencies to clarify the regulatory relationship between the federal government and the State.

Treasurer Jeffrey Pitkin reported to the Committee regarding the Authority's fiscal year 2007-2008 Preliminary Spending Plan. Mr. Pitkin pointed out that all Members of the Waste and Facilities Management Committee had been present at the meeting of the Program Planning Committee, which had taken place in the same room immediately beforehand. Given that the Preliminary Spending Plan had been explained and discussed in its entirety at that meeting, the Members unanimously agreed that no further discussion was necessary.

Mr. Pitkin pointed out that the State Appropriations budget request with regard to the West Valley program has been reduced by $500,000 to $13.5 million due to revised assumptions regarding DOE funding and carryover levels. Mr. Pitkin further explained that the funding request for the SDA and other non-project costs is slightly higher than last year, and that the request for the low-level radioactive waste program is unchanged.

Based upon the reports and discussions, upon motion duly made and seconded, and by unanimous voice vote, the Committee unanimously recommended that the Board adopt the resolution recommending that the Board approve the Authority's State Appropriation Request for fiscal year 2007-2008. A copy of this Resolution is attached hereto as Exhibit A.

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