

MINUTES OF THE THIRTY-SECOND MEETING OF THE
WASTE AND FACILITIES MANAGEMENT COMMITTEE
HELD ON JANUARY 17, 2007

Pursuant to a notice dated January 8, 2007, a copy of which is annexed hereto, the thirty-second (32nd) meeting of the Waste and Facilities Management Committee of the NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY was convened at 12:45 p.m. on Wednesday, January 17, 2007, at the Authority's Albany Office at 17 Columbia Circle, Albany, New York, by video-conference from the Authority's New York City office, at 485 Seventh Avenue, 10th floor, New York, New York, by video conference from the Authority's Buffalo office at 617 Main Street, Buffalo, New York, and by video conference from the office of National Grid at 300 Erie Boulevard West, Syracuse, 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 (by videoconference)

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.

Ms. Thorndike called the meeting to order, stated that notice of the meeting had been forwarded to the Committee Members and the press on January 8, 2007, and noted the presence of a quorum. Ms. Thorndike stated that the first item on the agenda concerned approval of the minutes of the thirty-first meeting, held on September 11, 2006.

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

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

Recalling prior discussions of the Committee and the Board and the resolution adopted by the Board in April of 2006, President Smith stated that, in December of 2006, the Authority filed a complaint in the United States District Court for the Western District of New York against the United States and the Department of Energy with respect to responsibilities for the cleanup at West Valley. Plaintiffs in the lawsuit, in addition to the Authority, include the State of New York (by and through the Attorney General), and the New York State Department of

Environmental Conservation (DEC).

In summarizing events leading up to the decision to file the complaint, President Smith made reference to the June 2006 meeting of the Committee, at which he had described a proposal put forth by the Environmental Protection Agency (EPA) under which the Department of Energy (DOE) would exhume the high-level waste (HLW) tanks and complete decommissioning of the north plateau facilities (EPA Proposal). Mr. Smith had expressed support for the EPA Proposal by letter to David Garman, then DOE Undersecretary, on June 22. Copies of this letter, and of the three letters referenced below, were provided to the Members.

President Smith explained that, in response, he received a letter from Mr. Garman in September which invited the Authority to participate in a "Core Team" process to resolve technical issues concerning the Environmental Impact Statement (EIS), but which failed to make any mention of the EPA Proposal or the Authority's expression of support for the EPA Proposal. Mr. Smith replied the following week by letter noting DOE's silence on the EPA Proposal and stating that significant progress on the EIS and the cleanup was unlikely absent resolution of the larger issues of responsibility and agreement on an end state for the site. No response to this letter had been received, and Mr. Garman has since left DOE. A letter was received in December from James Rispoli, DOE's Assistant Secretary for Environmental Management, which discusses the EIS and the Core Team process, but which again does not mention the EPA Proposal or address the larger issues.

President Smith advised that, under the circumstances, it was apparent that DOE had no intention of negotiating with the Authority on the important issues that require resolution in order to make progress at West Valley. Accordingly, the Authority decided to proceed with the litigation. General Counsel Roger Avent advised the Committee that, during discussions regarding the contents of the complaint and its filing, the Attorney General had expressed its approval of the Authority's management of the matter, and of Akin Gump's performance as the Authority's outside counsel.

With regard to legislative efforts, Mr. Smith advised that the legislation that was developed and introduced in the House and Senate by members of the New York delegation did not pass during the last Congress. Mr. Smith advised that Congressman Kuhl has indicated an intention to re-introduce the legislation in the next Congress, and that Mr. Kuhl and the western congressional delegation were supportive of the decision to file the complaint. The Authority intends to discuss the legislation with the Governor's office and the delegation, and to develop a consensus on a legislative approach for the new Congress, which may include a request for additional sponsors, including Congresswoman Louise Slaughter.

President Smith next advised that the Authority will continue to participate in the Resource Conservation and Recovery Act (RCRA) hazardous waste permitting process that is ongoing before the DEC, and to press for cleanup of the site by DOE. President Smith then asked Dr. Paul Piciulo to provide an update on the ongoing regulatory processes and other developments at

West Valley.

Dr. Piciulo reported, first, that the Authority's West Valley staff continue to safely and successfully implement the ongoing State-Licensed Disposal Area (SDA) management activities. According to Dr. Piciulo, the DEC and the New York State Department of Health recently completed radiation permit inspections, and both reported that there were no significant issues.

Dr. Piciulo advised that, by request, West Valley staff made a presentation at a Citizen Task Force (CTF) meeting on the options for the future of the SDA. The presentation was introduced as a staff, rather than an Authority proposal, and was described as the beginning of what staff hoped would be an ongoing dialogue with the CTF and the public about the future of the SDA. As described by Dr. Piciulo, the presentation contrasted and compared two "Options" for the SDA: (1) exhumation, and (2) monitoring and maintenance for 30 years, followed by reevaluation. At the meeting, Staff expressed its current support for Option 2.

According to Dr. Piciulo, the presentation was generally well received, though CTF member Ray Vaughn expressed disappointment with staff's support of Option 2, rather than exhumation. Areas of continuing inquiry expressed by the CTF regarding Option 2 included evaluation of the potential radioactive decay benefits of Option 2, an evaluation of the pros and cons of removing the leachate prior to Option 2 time period, and analysis of the prospects for effective erosion management. Staff plans to follow-up with pertinent information gathering activities and to make additional presentations to the CTF in an effort to keep the dialogue alive.

Dr. Piciulo next reported that the Authority is operating under a compliance schedule to complete a Corrective Measures Study (CMS) of the technologies and alternatives that would be effective in addressing the chemical hazard at the SDA. While the CMS focuses only on chemical hazards, the Authority is exploring the additional radiological studies that must be conducted on a parallel path with the CMS in order to support a fully informed and integrated recommendation for the SDA. It is anticipated that groundwater and performance assessment modeling support, as well as erosion engineering support, will be necessary.

With regard to current progress on the Decommissioning EIS, Dr. Piciulo recalled that, based on its review of a pre-decisional draft of the document, the Peer Review Group had questioned the suitability of the Decommissioning EIS as a basis for an informed selection of a preferred site closure or decommissioning alternative. The Peer Review Group also stated its opinion that long-term computer modeling of erosion in the glaciated northeast United States, a cornerstone of DOE's effort to demonstrate that the West Valley Demonstration Project (WVDP) facilities can be closed in place, decommissioned and remain safe for tens of thousands of years, was beyond the current state of the science.

Dr. Piciulo reported that, despite the flaws identified by the Peer Review Group, DOE's EIS contractor hired a new erosion modeling expert in an effort to improve the long-term modeling, and DOE has brought in two "subject matter experts" to serve as DOE's own resource on the

erosion modeling issue.

With regard to DOE's invitation to join in its proposed "Core Team" issue-resolution process, Dr. Piciulo advised that the Authority had identified conditions for participation. These included an agreement that the erosion modeling issue be the initial topic discussed, that the discussions include the EPA Proposal, and an agreement to initiate discussions between DOE and the Authority on the long-term responsibility issues. Following discussions between James Rispoli, DOE and Peter Smith, Authority staff attended the first Core Team meeting as "observers." While there was much discussion at the meeting as to how the process would proceed, the approach selected by the agencies participating in the Core Team puts off any discussion on the significant overriding technical issues identified by the Authority and the Peer Review Group. DOE would not agree to the Authority's conditions for participation, and staff has not participated in any subsequent Core Team meetings. According to Dr. Piciulo, participants include DEC and NRC, but not EPA.

With regard to the Decommissioning EIS process, Dr. Piciulo advised that Authority staff had communicated, at the September and October meetings of the CTF, the Authority's reasoning for proposing to terminate our participation as a joint lead agency. According to Dr. Piciulo, while some members stated that they could understand the Authority's views, the CTF expressed continuing disappointment over delays in the EIS process and final site decommissioning. The CTF expressed those views by letter to DOE and the Authority dated October 30; a copy of this letter was provided to the Committee members.

According to Dr. Piciulo, the Authority intends to seek the input of the new administration before making any final recommendations on the Authority's participation in the Decommissioning EIS. President Smith stated an expectation that discussions with both the Governor's office and that of Attorney General Cuomo will be initiated by March. Board Chair DeIorio reiterated the Board's full support for staff's continued efforts, stating that the Authority needs to conduct itself as the driving force towards an acceptable resolution.

Dr. Piciulo reported that the North Plateau Sr-90 (strontium) groundwater plume continues to migrate toward the Authority-managed portion of the Center. The Permeable Treatment Wall is not functioning as designed, and the three groundwater extraction wells operated by DOE capture only a small portion of the contamination. At the CTF meeting in October, staff provided a report on the continued spread of the groundwater plume, and expressed concern that the current approach is inadequate. Several members of the CTF expressed significant concern about the migration of Sr-90 across the site, into creeks and potentially into the drinking water supply.

In December, the CTF sent a letter to the NRC asking the NRC to take steps to compel DOE to develop a plan to remediate the source of the plume. A copy of this letter was provided to the Members. Dr. Piciulo advised that staff is currently drafting a letter to the NRC expressing the Authority's continuing concern about DOE's management of the plume, and questioning NRC's approach to their oversight of DOE's management of the plume.

Dr. Piciulo next advised the Committee of concerns regarding water infiltration and resultant surface contamination at the NRC- Licensed Disposal Area (NDA), which DOE has used to dispose of wastes from the WVDP. According to Dr. Piciulo, agency responsibility for the NDA is an area of dispute between DOE and the Authority. Under the Cooperative Agreement between DOE and NYSERDA, DOE is not responsible for decommissioning waste buried in the NDA prior to commencement of the WVDP. Staff's analysis has concluded that the NDA disposal holes were full of water and had overflowed to the ground surface. DOE implemented some corrective actions to keep contaminated water from flowing into non-radiological areas. The issue was raised with NRC during its January and April, 2006 monitoring visits; NRC's monitoring visit report states that the WVDP has procedures for NDA maintenance, inspection, and monitoring activities, and that the work is being done according to those procedures. The NRC report states that the evaluation, tracking, and trending of NDA monitoring data will be further evaluated during upcoming monitoring visits. Dr. Piciulo stated his understanding that West Valley Nuclear Services Company (WVNSCO) will be designing a cover system for the NDA, similar to that employed at the SDA, in the coming months.

Dr. Piciulo next advised that, over the past year, DOE has removed eleven site structures they deemed no longer necessary for future operations, and has shipped for disposal nearly 400,000 cubic feet of waste, about 2/3 of which was low-level radioactive waste. As expected, DOE has extended the WVNSCO contract by six months; a contract award and transition to the new contractor under the recent solicitation is expected in July, 2007.

Dr. Piciulo then introduced Deputy Counsel Hal Brodie, who briefed the Committee with regard to the recently-filed litigation.

Mr. Brodie advised that the complaint, a copy of which was provided to the Members, was served on the United States government on December 18, 2006, and that the plaintiffs in the action are the State of New York, the Authority and DEC. Mr. Brodie explained that the complaint includes a rather detailed history of the site, and highlights the federal role in encouraging, incentivizing, licensing, and providing most of the spent nuclear fuel for the reprocessing operations at the site.

As summarized by Mr. Brodie, the Complaint asks the Court to determine federal responsibilities at West Valley under three statutes: the West Valley Demonstration Project Act (WVDPA); the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or "Superfund"); and the Nuclear Waste Policy Act (NWPA).

Mr. Brodie advised that the federal government has 60 days to respond to the Complaint, either by answering or by moving to dismiss, but that it is common for the Federal government to seek and receive extensions of this time. According to Mr. Brodie, the litigation will proceed from that point, unless there are settlement discussions or intervening legislation.

Treasurer Jeffrey J. Pitkin next reported to the Committee on the proposed Fiscal Year (FY)

2007-2008 budget for the West Valley Site Management Program and radioactive waste policy and nuclear coordination activities.

With regard to West Valley, Mr. Pitkin reported that the FY 2007-08 Budget includes \$8,250,000 for the State's 10% share of the West Valley Demonstration Project Act costs, based on funding of \$75 million assumed available from DOE. In addition, \$600,000 is provided for the Authority's additional 17% cost of the joint environmental impact statement under the terms of the Supplemental Agreement. Lastly, the Budget includes \$4,650,000 for SDA maintenance and monitoring activities and other non-Project costs, including outside counsel support costs associated with recent litigation initiated against DOE.

Mr. Pitkin pointed out that, pursuant to the State Low-Level Radioactive Waste (LLRW) Management Act of 1986, the Authority is responsible for collecting information and providing regular reports to the Governor and Legislature on LLRW generation in the State. These activities are funded with a State appropriation of \$150,000 suballocated from an appropriation provided to the New York State Department of Health, which is funded through an assessment on operating nuclear power plant licensees. The Authority is also responsible for coordination of nuclear materials matters, including serving as the State liaison with the Nuclear Regulatory Commission; no State funding is provided for these activities.

Finally, Mr. Pitkin advised that the Budget anticipates a balance of unrestricted net assets of \$2,358,000 as of March 31, 2008, representing less than six-tenths of a percent of total funding, which is consistent with historical and fiscally prudent balances.

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 approving the Authority's Fiscal Year 2007-2008 budget.

The Authority's Board Chair, Mr. DeIorio, presented the next item on the agenda, the adoption by the Committee of a proposed charter. A copy of the proposed charter was included with the January 8 mailing.

As explained by Mr. DeIorio, the Public Authorities Accountability Act of 2005 established an Authority Budget Office (ABO), whose purpose is to study, review, and report on the operations, practices, and finances of State and local public authorities, to promote the adoption of effective principles of model governance, and to provide the Governor and the Legislature with conclusions and opinions regarding the performance of those public authorities. The ABO has developed model charters for governance and audit committees, reflecting current best practices and incorporating the statutory requirements of the Act. The Authority has recommended charters for all of the Authority's Committees.

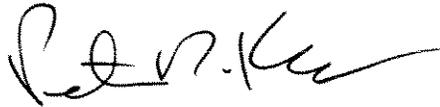
Among other topics, the proposed charter for the Waste and Facilities Management Committee lists the powers of the Committee, describes the composition of the Committee and selection of

members, continues the Committee's general responsibilities, and adds a description of its specific responsibilities. Mr. DeIorio explained that those specific responsibilities were detailed in the memorandum that was included in the January 8 mailing, and that they include review of the Authority's program and plans for management of the Western New York Nuclear Service Center, including the West Valley Demonstration Project, and for radioactive waste policy and nuclear coordination; review of the Authority's annual West Valley site management program and radioactive waste policy and nuclear coordination budgets; guidance to the Authority's officers and employees in the preparation of the plans and in preparation of such annual program budgets; and such other matters related to West Valley site management and radioactive waste policy and nuclear coordination as the officers of the Authority may refer to the Committee.

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 adopting the Waste and Facilities Management Committee Charter.

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,

A handwritten signature in black ink, appearing to read "P. R. Keane", written in a cursive style.

Peter R. Keane
Secretary to the Committee

NOTICE OF MEETING AND AGENDA

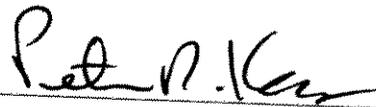
January 8, 2007

TO THE MEMBERS OF THE WASTE AND FACILITIES MANAGEMENT COMMITTEE:

PLEASE TAKE NOTICE that the thirty-second (32ND) meeting of the WASTE AND FACILITIES MANAGEMENT COMMITTEE of the NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY will be held at the Authority's Albany Office at 17 Columbia Circle, Albany, New York, and by video conference at the Authority's New York City Office at 485 Seventh Avenue, 10th Floor, New York, New York, and at the Authority's Buffalo Office at 617 Main Street, Buffalo, New York, and at the National Grid Office at 300 Erie Boulevard West, Syracuse, New York, on Wednesday, January 17, 2007, commencing at 12:30 p.m. for the following purposes:

1. To consider the Minutes of the thirty-first (31st) meeting of the Committee, held on September 11, 2006.
2. To receive a status report on West Valley Site Management Program activities.
3. To receive a report from the Treasurer and to consider and act upon a resolution approving the Authority's fiscal year 2007-2008 Budget.
4. To consider and act upon a resolution approving the Waste and Facilities Management Committee Charter.
5. To transact such other business as may properly come before the Committee.

Members of the public may attend the meeting at any of these locations.



Peter R. Keane

Secretary to the Waste and Facilities
Management Committee

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