

MINUTES OF THE THIRTY-SEVENTH MEETING OF THE
WASTE AND FACILITIES MANAGEMENT COMMITTEE
HELD ON SEPTEMBER 14, 2009

Pursuant to a notice and agenda dated September 8, 2009, a copy of which is annexed hereto as Exhibit A, the thirty-seventh (37th) meeting of the Waste and Facilities Management Committee of the NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY was convened at 11:30 a.m. on Monday, September 14, 2009, at the Authority's Albany Office at 17 Columbia Circle, Albany, New York; by video conference in the Authority's New York City Office at 485 Seventh Avenue, 10th floor, New York, New York; by video conference in the Authority's Buffalo Office at 726 Exchange Street, Suite 821, Buffalo, New York; and by webcast.

The following members of the Committee were present in Albany:

Elizabeth W. Thorndike, Ph. D., Chair

Vincent DeIorio

Roger B. Kelley (by video conference from Buffalo)

Michael J. Townsend participated in the meeting by telephone.

Francis J. Murray, Jr., President and CEO; Robert G. Callender, Vice President for Programs; Jeffrey J. Pitkin, Treasurer; Hal Brodie, Secretary and General Counsel; Paul Bembia, Director, West Valley Site Management Program; and David J. Prior, Secretary to the Committee and Assistant Counsel, all of the Authority, were present, as were various members of the Authority's staff.

Dr. Thorndike called the meeting to order, stated that notice of the meeting had been forwarded to the Committee Members and the press on September 8, 2009, and noted the presence of a quorum. Dr. Thorndike stated that the first item on the agenda concerned approval of the minutes of the thirty-sixth meeting, held on April 6, 2009.

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

Dr. Thorndike next called upon Paul Bembia, Director of the West Valley Site Management Program, to provide a status report on West Valley Site Management Program activities.

Mr. Bembia's presentation covered four topics: (1) erosion impacts on the West Valley site due to the August 9-10, 2009 storm; (2) two property transfers that are being evaluated by NYSERDA's West Valley Site Management Program; (3) the removal and disposal of leachate and a leachate storage tank from the State-Licensed Disposal Area (SDA); and (4) an update on the Draft Environmental Impact Statement (DEIS) process.

Mr. Bembia reported that on Sunday, August 9, and Monday, August 10, the southern tier area of western New York experienced a significant storm event. Rainfall totals near the West Valley site were in the range of 4-5 inches, with other areas reporting as much as 7 inches. There was significant flash flooding throughout the Cattaraugus Creek basin, with areas downstream of the site receiving the brunt of the flooding.

On September 1 and September 4, 2009, President Obama issued disaster declarations for a three county area due to the flooding, including Cattaraugus County, where the site is located.

Mr. Bembia noted that the site held up very well. Although the many roads, streams, and bridges in the surrounding area were significantly damaged and there was erosion damage on the West Valley site, there were no releases of radioactive waste or contamination from any facilities at the site.

The rains did, however, create significant erosion at the West Valley site. Mr. Bembia discussed several maps and photos of storm damage near the SDA, which included: (1) the spillway of one of the site reservoirs; (2) a dam of the second site reservoir; (3) the rail line leaving the site; and (4) the creeks near the SDA.

There are two man-made reservoirs on site and Mr. Bembia displayed a photograph showing how the southern-most reservoir's spillway overflowed on August 10, 2009. The spillway was operating as designed, however, there was significant erosion of the soil surface of the spillway. In the northern reservoir, the face of the dam was damaged by erosion.

The Erdman Brook, which runs adjacent to the SDA, experienced significant erosion by knickpoint migration. A knickpoint is a small waterfall that occurs in soil or rock. Erosion impacts a knickpoint by forcing it to migrate upstream. A knickpoint in Erdman Brook migrated upstream toward the SDA. A knickpoint in Frank's Creek, which is located to the east of the SDA, was similarly impacted by erosion.

Buttermilk Creek runs through the center of the site. The storm caused a large landslide at a section of the creek that has been actively monitored for erosion since the 1970s. The storm also caused a shift in Buttermilk Creek at the northern portion of the site that is threatening a neighbor's crop land. The shift caused water to migrate off-site into the neighboring cornfield.

In addition to the above damage, a rail bed on site was also damaged. Prior to the storm, the Department of Energy (DOE) had been repairing erosion damage on the lower portion of the railroad site. While this lower area remained stable, the storm damaged the area above the DOE's work including the rail bed.

Short-term and long-term repairs will be conducted by NYSERDA this year to repair the damage done by the storm. Specifically, erosion in Erdman Brook that is progressing toward the disposal trenches will be addressed immediately and more extensive erosion control measures will be installed next field season on both Erdman Brook and Frank's Creek.

NYSERDA will conduct a formal assessment of repair options for Buttermilk Creek storm damage. No decision has been made on whether any mitigating actions will be conducted there.

The Army Corps of Engineers is assessing the West Valley Demonstration Project's dams and will provide a recommendation on repairs. The dams have been inspected by dam engineers and determined to be safe. NYSERDA has reported this damage to the State Emergency Management Office (SEMO) and the Federal Emergency Management Agency (FEMA), and plans to file claims under the federal disaster declaration, if appropriate.

At the close of Mr. Bembia's discussion about storm damage, Chairman Thorndike inquired how NYSERDA determined that the storm event did not cause a release of contaminants. Mr. Bembia advised that the entire facility was inspected after the storm and, while there was damage on the site, there was no damage to any facilities or the SDA. Moreover, he advised that the impacted creeks are separated by some distance from the facilities, and sampling and monitoring activities have not shown any indication of releases.

Dr. Thorndike asked about whether costs associated with repairing erosion damage were contemplated in NYSERDA's budget. Jeff Pitkin advised that, due to the need to respond quickly to address the damage, these were exactly the types of expenses that are included in the budget.

Mr. Kelley asked whether any work was done immediately to stabilize the affected areas. Mr. Bembia advised that engineers were mobilized to repair the area north of the trenches on the Erdman Brook to realign the channel away from the SDA and to stabilize the area through Spring 2010 when a long-term repair may be implemented. NYSERDA is working with the New York State Department of Environmental Conservation (DEC) and the Army Corps of Engineers to develop more robust long-term erosion control activities. Although these activities are complicated by a protected wetland being located within portions of the stream, both agencies are pleased with NYSERDA's long-term erosion control planning.

In response to Mr. Delorio's inquiry about damage to the rail beds, Mr. Bembia advised that NYSERDA was exploring whether the rail bed damage would be eligible for disaster relief since DOE is conducting the repair and, as a federal agency, DOE cannot accept disaster relief. Mr. Bembia advised that, if appropriate, NYSERDA will apply for disaster relief.

Mr. Bembia next discussed two property transfers at the Western New York Nuclear Service Center (WNYNSC) that are being evaluated by NYSERDA's West Valley Site Management Program (WVSMP). The first property change is to establish an erosion control buffer zone around the SDA, which is required by NYSERDA's Radiation Control Permit. The second property change being considered by the WVSMP is to release a portion of the 3,330 acres from the site-wide Nuclear Regulatory Commission (NRC) license which will allow the possible future transfer of a portion of the WNYNSC property to a local business or municipality.

The SDA is regulated under 6 NYCRR Part 380, "Rules and Regulations for prevention and control of environmental pollution by radioactive materials." Under these regulations, DEC issues radiation control permits to "protect against ionizing radiation resulting from the disposal and discharge of licensed material to the environment." NYSERDA's permit from DEC requires a buffer zone of sufficient extent to allow for mitigation and remediation of erosion impacts at the site and its immediate surroundings. The main divisions of the WNYNSC property include the West Valley Demonstration Project (WVDP) Premises, which are managed by DOE, and the "Retained Premises," which are managed by NYSERDA. In order for NYSERDA to comply with its permit, it is necessary that a 15 acre portion of DOE's WVDP Premises be transferred to NYSERDA and added to the Retained Premises. This transfer will allow NYSERDA to conduct needed erosion monitoring and erosion mitigation work on this property.

Mr. Kelley inquired about legal implications of this property transfer. Mr. Brodie responded that NYSERDA is negotiating with DOE on financial responsibility for the site, but advised that the financial responsibility for this 15 acre parcel would be the same regardless of who manages this parcel.

DOE and NRC support this property transfer and a letter agreement between DOE and NYSERDA will document it. To amend the DEC permit, it will be necessary for NYSERDA to submit a written description of the transfer by October 20, 2009. After the transfer, signs and markers will be posted to delineate the new boundary.

With regard to the second property transfer, community leaders have had a long-standing request to get WNYNSC property “back on the tax rolls.” In response to this request, NYSERDA requested that NRC establish a process to release property from the license so it would be available if an alternate use was identified.

NRC provided guidance to NYSERDA in March 2006 and NYSERDA recently identified a candidate site location (375 acres) based on groundwater hydrology, surface water flow, erosion potential, knowledge of current and potential future site contamination, access to the area by road and railroad, and agreement from DOE that the release of the property will not negatively impact the WVDP.

The WVSMP is prepared to move forward with the release of an empty warehouse and up to 375 acres of surrounding vacant land from the NRC license so it could be made available for development. During reprocessing operations, the empty warehouse had served as a storage facility for triple-sealed containers of plutonium solution. After reprocessing ended, and with DEC’s approval in 1982, 326 empty and clean containers were disposed in a shallow trench near the empty warehouse. Since reprocessing ended, the facility was tested and cleared; from 1982 until July of 2009, it was used by DOE for storing excess non-contaminated equipment and it is presently vacant. DOE returned control of the warehouse to NYSERDA to allow NYSERDA to pursue options for reuse.

In response to Mr. Kelley’s inquiry, Mr. Bembia advised that the 326 storage containers were buried behind (southeast of) the warehouse. Mr. DeIorio inquired whether the potential property transfer would compromise ingress and egress on the site. Mr. Bembia advised that the property that is being considered for transfer was identified as a strong candidate for reuse based on a variety of factors including access to the area by road and railroad. This entire property would be released and the parcel would have at least two roadway access points. NYSERDA’s ingress and egress to the site would not be compromised.

As it evaluates the potential to transfer this property, staff is considering exhumation and removal of the 326 empty storage containers that were disposed near the empty warehouse. This process may cost several hundred thousand dollars, but it would help NYSERDA meet its overall goal to make property available to the community.

Staff is prepared to further explore the possibility of releasing the empty warehouse and the additional 375 acres of property from the license to make the properties available for reuse. NYSERDA must submit a request to NRC for release of property for unrestricted use along with a report showing that the property meets the requirements for unrestricted release.

Mr. Bembia provided the following schedule for the property release activities: Work on the environmental documentation could begin in the fall of 2009. Field work and documentation of the radiological conditions of the warehouse could begin in spring of 2010. The requests for release of property could be submitted to the NRC in the fall of 2010. Excavation of the storage containers could begin in 2011. The NRC would then approve or deny NYSERDA's request. If the NRC approves the request, it would amend NYSERDA's license.

After a license amendment, NYSERDA would dispose of the property in accordance with the requirements of the Public Authorities Law. Mr. Brodie asked whether any Members had concerns about the proposed property transfers or NYSERDA's plans to move ahead on these efforts. Mr. DeIorio indicated that Mr. Bembia had addressed the concerns identified by the Members.

Mr. Bembia next reported on the removal of leachate and a leachate storage tank from the SDA. NYSERDA has been storing 8,000 gallons of water contaminated with radioactive material in a leachate tank. This material was pumped from one of the disposal trenches in 1991 to reduce the water level and lessen the possibility of a release from the trench. Water infiltration controls, installed after this pumping activity, have been very effective at keeping water out of the trenches and have obviated the need for additional trench pumping events.

The WVSMP is now moving forward to dispose of the stored leachate, the tank, and any ancillary equipment. The WVSMP has just completed a competitive solicitation to select a contractor for the removal and proper disposal of the materials in licensed and permitted facilities.

The selected contractor will ship the leachate to a permitted facility in Kingston, Tennessee, via truck. It will be treated and the hazardous material destroyed via direct combustion in an industrial boiler that is permitted for hazardous waste and radioactive materials. Any residual solids will be the responsibility of the contractor, and will be disposed of at a permitted radioactive waste disposal facility in Utah.

The tank and ancillary equipment will be sent to a permitted facility in Richland, Washington, via truck, and will be thermally treated at temperatures of 1800 degrees F in bulk processing units. Any non-combustible materials and residuals will be sent for disposal to a permitted radioactive waste disposal facility in Utah.

Mr. DeIorio inquired whether NYSERDA would be protected from liability during this process. Mr. Brodie advised that the terms of the contracted work would be negotiated with the selected contractor in a manner so as to protect NYSERDA's rights.

Mr. Bembia advised that detailed planning is now underway, and the work is expected to be completed by the end of calendar year 2009.

Mr. Bembia next discussed progress on the DEIS for Decommissioning and/or Long-Term Stewardship at the West Valley Demonstration Project and Western New York Nuclear Service Center. The public comment period on the DEIS concluded on September 8, 2009.

While the citizen and environmental groups called for full exhumation and site-wide removal of all facilities, waste, and contamination, phased decision-making is the preferred alternative of NYSERDA and DOE. The phased decision-making approach includes over \$1 billion of removal actions, including the near-term removal of the main plant process building, vitrification facility, the

source area of the North Plateau Groundwater Plume, and five contaminated water treatment lagoons. This approach also provides that the SDA, NRC-Licensed Disposal Area, HLW Tanks, and a portion of the groundwater plume would remain under active management, monitoring, and maintenance for up to thirty years.

In response to citizen concerns, however, NYSERDA has revised its position regarding the timing for the decision on the second phase of cleanup work, and now supports making that decision within ten years rather than within thirty years so there will be no gap between the Phase 1 and Phase 2 decommissioning work. NYSERDA now believes that after eight to ten years of Phase 1 decommissioning activities and decommissioning studies, cleanup activities should immediately move to Phase 2. A final EIS reflecting the Authority's position is expected to be issued in January 2010 and the NEPA Record of Decision and SEQRA Findings Statement are scheduled to be issued by DOE and NYSERDA in March of 2010.

Dr. Thorndike asked whether there was opposition to NYSERDA's revised preferred alternative. Mr. Bembia advised that the agencies recognize that, since there is no final disposal facility available for high-level waste, advancing the decision process may not be beneficial.

NYSERDA believes that there is more study to do but it can be accomplished, and uncertainties can be addressed in eight to ten years. The DOE does not believe additional study is necessary. It is unclear whether the NRC may be supportive of NYSERDA's position. The NRC initially supported the preferred alternative's decision-making in thirty years, as a closure plan would include disposing waste off site at a final disposal facility (such as Yucca Mountain) that does not presently exist.

Mr. Bembia acknowledged that there are difficult issues such as erosion modeling over time that may not be adequately resolved in the short term. He advised that he planned a meeting between Frank Murray and DOE's Assistant Secretary for Environmental Management, Dr. Inés Triay, Ph.D. to discuss the DEIS.

President and CEO Francis Murray advised the Members that he and Dr. Triay held a web conference call with environmental and citizen groups to listen to the concerns voiced by these communities. These groups maintain their position that immediate site-wide exhumation is the proper path. NYSERDA should be able to address their concerns by doing necessary analysis and making decisions within ten years.

Following Mr. Bembia's report, Dr. Thorndike asked Treasurer Jeff Pitkin to report on the Authority's revised Fiscal Year (FY) 2009-10 Budget for the West Valley Site Management Program and radioactive waste policy and nuclear coordination activities.

Mr. Pitkin reported on revisions to the Authority's Budget for FY 2009-10, which was approved at the January 2009 meeting of the Board. Mr. Pitkin pointed out that the majority of the revisions to the Budget are in program areas reviewed by the Program Planning Committee, which had met earlier in the day.

Mr. Pitkin advised that, for the West Valley program, the revised Budget does not change the total program expenditures, which remain at \$13,500,000. Due primarily to changes in indirect costs, minor changes among the expenditure categories were identified.

With regard to radioactive waste policy and nuclear coordination activities, Mr. Pitkin reported that the total budgeted expenditures decreased from \$322,000 to \$262,000, principally due to changes in staff allocations and indirect expense allocations.

Based upon the reports and discussions, upon motion duly made and seconded, and by unanimous voice vote, the Committee recommended that the Board adopt the resolution approving the revised 2009-10 Budget for the West Valley Site Management Program and radioactive waste policy and nuclear coordination activities as presented. A copy of this Resolution is attached hereto as Exhibit B.

Dr. Thorndike next asked Mr. Pitkin to provide a report regarding the State Appropriation Request for Fiscal Year 2010-11.

Mr. Pitkin advised that the State Appropriation Request is submitted annually to the New York State Division of the Budget and sets forth the Authority's requests for State appropriations.

The State Appropriation Request includes an increase in funding for the West Valley program, from \$13,500,000 to \$19,247,000. This increase is due to four factors: (1) West Valley will receive \$74 million in ARRA Federal Stimulus funding during FY 2009-10 and the State must provide a 10% cost share; (2) State costs associated with the proposed settlement agreement with DOE; (3) Increased costs for implementing erosion controls at the SDA that are necessary as a result of the August 9 and 10, 2009 storm; and (4) Costs for Commencing replacement of the deteriorating geomembrane covers over three of the low-level radioactive waste disposal trenches.

No change is requested for the Low-Level Radioactive Waste program; as in prior years, the funding request of \$145,000 is expected to be provided from an appropriation which is funded from an assessment on operating nuclear power plant licensees.

Based upon the reports and discussions, upon motion duly made and seconded, and by unanimous voice vote, the Committee recommended that the Board adopt the resolution approving the proposed State Appropriation Request for Fiscal Year 2010-11 as presented. A copy of this Resolution is attached hereto as Exhibit C.

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 'D. J. Prior', written over a horizontal line.

David J. Prior
Secretary to the Committee

NYSERDA **New York State Energy Research and Development Authority**

Vincent A. DeLorio, Esq., *Chairman*

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September 8, 2009

NOTICE OF MEETING AND AGENDA

TO THE MEMBERS OF THE WASTE AND FACILITIES MANAGEMENT COMMITTEE:

PLEASE TAKE NOTICE that a regular (the 37th) meeting of the WASTE AND FACILITIES MANAGEMENT COMMITTEE of the New York State Energy Research and Development Authority will be held in the Authority's Albany Office at 17 Columbia Circle, Albany, New York, and by video conference in the Authority's New York City Office at 485 Seventh Avenue, 10th floor, New York, New York, by video conference in the Authority's Buffalo Office at 726 Exchange Street, Suite 821, Buffalo, New York, and by webcast, on Monday, September 14, 2009, commencing at 11:30 a.m., for the following purposes:

1. To consider the Minutes of the thirty-sixth (36th) meeting of the Committee held on April 6, 2009.
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 recommending approval of a resolution approving revisions to the Authority's Fiscal Year 2009-10 budget.
4. To receive a report from the Treasurer regarding the Authority's Fiscal Year 2010-11 Preliminary Spending Plan and the Authority's State Appropriation Request For Fiscal Year 2010-11 and to consider and act upon a resolution recommending approval of the Authority's State Appropriation Request for Fiscal Year 2010-11.
5. To transact such other business as may properly come before the Committee.

Members of the public may attend the meeting at any of the above locations. The meeting is also available through webcast at <http://www.nyserdera.org/governancemeetings.asp>.



David J. Prior

Secretary to the Waste and Facilities
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Exhibit B

Resolution No. _____

RESOLVED, that the Fiscal Year 2009-10 Budget and Financial Plan (Revised September 2009) submitted to the Members for consideration at this meeting, with such non-material, editorial changes and supplementary schedules as the President and CEO, in his discretion, may deem necessary or appropriate, be and it hereby is approved.

Exhibit C

Resolution No. _____

RESOLVED, that the proposed State Appropriation Request for Fiscal Year 2010-11 submitted to the Members for consideration at this meeting, with such non-material, editorial changes and supplementary schedules as the President and CEO, in his discretion, may deem necessary or appropriate, be and it hereby is approved for submission to, and at the request of, the New York State Division of the Budget.