

**MINUTES OF THE THIRTY-NINTH MEETING OF THE
WASTE AND FACILITIES MANAGEMENT COMMITTEE
HELD ON APRIL 8, 2010**

Pursuant to a notice and agenda dated April 1, 2010, a copy of which is annexed hereto as Exhibit A, the thirty-ninth (39th) meeting of the Waste and Facilities Management Committee of the NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY was convened at 12:30 p.m. on Thursday, April 8, 2010 at the Authority's Albany Office at 17 Columbia Circle, Albany, New York, and was available by video conference 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 Buffalo Office at 726 Exchange Street, Suite 821, Buffalo, New York.

The following members of the Committee were present in Albany, unless otherwise indicated:

Elizabeth W. Thorndike, Ph. D., Chair

Vincent Delorio

Roger B. Kelley (*by Buffalo video conference*)

Member Townsend did not attend.

Francis J. Murray, Jr., President and CEO; Robert G. Callender, Vice President for Operations and Energy Services; Jeffrey J. Pitkin, Treasurer; Hal Brodie, Secretary and General Counsel; Paul Bembia, Director, West Valley Site Management Program; John Williams, Director, Energy Analysis Program; Alyse Peterson, Senior Project Manager; 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 and welcomed Barbara Warren of the Citizens' Environmental Coalition who attended the meeting.

Dr. Thorndike then stated that notice of the meeting had been forwarded to the Committee Members and the press on April 1, 2010, and noted the presence of a quorum. The first item on the agenda concerned approval of the minutes of the thirty-eighth meeting, held on January 11, 2010.

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

Dr. Thorndike next called upon Paul Bembia, Director of the West Valley Site Management Program (WVSMP), to provide a report on the *Final Environmental Impact Statement for Decommissioning and/or Long-Term Stewardship at the West Valley Demonstration Project and Western New York Nuclear Service Center* (FEIS).

Mr. Bembia's report focused on the Phased Decisionmaking Alternative as presented in the FEIS. Mr. Bembia first provided a brief history of the Environmental Impact Statement (EIS) process. He indicated that the Authority and the Department of Energy (DOE) have been joint lead agencies throughout the EIS process. Although the FEIS was jointly prepared, the two agencies are not issuing joint decisions; DOE is issuing a record of decision on the West Valley Demonstration Project facilities while the Authority is issuing a findings statement on the state licensed disposal facility and Retained Premises of the Center.

The EIS process was initiated in 1988 and led to a 1996 Draft EIS. While the 1996 Draft EIS provided an opportunity to discuss some important issues with the regulatory agencies and the public and led to the Authority engaging the Citizen Task Force (CTF), it had many shortcomings. For instance, the 1996 Draft EIS did not include a preferred alternative. Moreover, additional analytical work was needed on long term erosion modeling. Finally, when the 1996 Draft EIS was issued, the Nuclear Regulatory Commission (NRC) had not yet developed its decommissioning criteria. Later, in 2002, the NRC issued its decommissioning criteria which was critical in the development of a second draft EIS in 2008 (the 2008 Draft EIS).

Authority staff identified several significant technical concerns in both the 1996 Draft EIS and the 2008 Draft EIS and previously briefed the Committee on these concerns. These technical concerns were identified by two expert panels assembled by the Authority – the first in 2005-06 and the second in 2008-09; concerns focused on long term erosion modeling and engineered barriers – in place closure, exhumation analysis, and the uncertainty analysis. DOE did not agree with the Authority's concerns. The Authority could have chosen to continue to debate technical issues, to withdraw as joint lead agency, or to continue as joint lead agency and identify its concerns in the Draft and Final EIS. To avoid unnecessary delay and to advance the cleanup efforts, the Authority has chosen to remain as joint lead agency.

In November 2008, the Authority and DOE jointly issued the 2008 Draft EIS. Four alternatives are presented in the EIS: (1) Sitewide Removal (with projected costs of \$6.5-9.3 billion over 60 years); (2) Sitewide Close-In-Place (with projected costs of \$1.1 billion to implement and \$4-5 million per year in perpetuity); (3) Phased Decisionmaking (with projected costs of \$1.2 billion for phase 1 activities); and (4) no action, which is required to be considered by the National Environmental Policy Act (NEPA) and SEQRA.

Mr. Bembia then briefly discussed the four alternatives and explained in greater detail the Phased Decisionmaking Alternative. Under the Phased Decisionmaking Alternative, Phase 1 activities would include work on contaminated facilities and soil over 10 years. This work would include removal of the Main Plant Process Building, the Vitrification Facility, five contaminated, unlined lagoons, the North Plateau Groundwater Plume source and two million cubic feet of contaminated soil. During Phase 1, additional characterization and technical studies will be undertaken to improve the analysis and Phase 2 decisionmaking.

After issuing the Draft EIS in November of 2008, there was a nine-month public comment period and four public hearings were held. The hearings were held in Albany, Buffalo, Ashford, and the Seneca Nation. DOE and the Authority received approximately 420 submissions containing 1,900 comments from individuals, the CTF, environmental groups, elected officials, local government bodies and agencies. Notably, most comments called for exhumation and removal of all facilities and contamination.

In the Draft EIS, it was stated that the period between the Phase 1 and Phase 2 cleanup activities could be “up to 30 years.” This raised significant concerns with elected officials, the CTF, environmental groups, and the public. In light of these concerns, the Authority initiated an effort with the other agencies to revise this alternative and shorten the period between the cleanup phases.

The FEIS, which was issued on January 29, 2010, commits to a Phase 2 decision within 10 years of the Phase 1 decision. It allows cleanup work to proceed directly from Phase 1 to Phase 2 without interruption. Moreover, it positions the WVDP to retain the trained workforce, continue momentum on the cleanup, and maintain Federal funding.

In evaluating Phase 2 actions, a full range of options will be considered including full removal, partial removal, or in-place closure of remaining facilities and contamination. These facilities include the State Licensed Disposal Area (SDA), the NRC-licensed Disposal Area (NDA), high level radioactive waste (HLW) tanks and main body of the plume. The Authority will evaluate these options in another EIS, thereby providing opportunity for public input. The Authority and DOE are working to develop a process for public involvement in the identification and selection of the additional scientific studies that will support the Phase 2 decisions.

Authority staff recommends the Phased Decisionmaking approach as the FEIS does not provide adequate information on the in-place closure and exhumation alternatives to demonstrate that either alternative avoids or minimizes adverse environmental impacts to the maximum extent practicable. Mr. Bembia advised that additional characterization and technical studies are necessary to improve the analysis for in-place closure and exhumation.

Phased Decisionmaking allows DOE and the Authority to pursue additional studies without slowing the cleanup. This approach allows \$1.2 billion in cleanup and removal work to proceed immediately, providing significant risk reduction. Finally, the SDA analysis prepared by the Authority’s consultants confirms that the public health risk from operating the SDA during Phase 1 is “well below widely applied radiation dose limits ...”

At the close of Mr. Bembia's presentation, Dr. Thorndike inquired about one item from the public comments that suggested that Phase 1 activities would only remove 1% of the waste from the site. Mr. Bembia explained that there are a number of ways to look at the effectiveness of the cleanup. He indicated that 1% reflects the amount of curies of radioactive material removed during Phase 1 versus the total amount of contamination buried at the site. Mr. Bembia said that the Phase 1 activities are expected to remove 63% of long half-life radioactive material on the North Plateau portion of the reprocessing site (which includes the Main Plant Process Building, the vitrification facility and the lagoons). The Phase 1 cleanup represents a significant step forward in the cleanup. Mr. Bembia added that 95% of the curies that were on-site when the project began have already been treated and solidified through the WVDP vitrification process.

In response to an inquiry from Mr. Kelley, Mr. Bembia advised that the Phase 1 work is scheduled to begin in Federal fiscal year 2012.

Dr. Thorndike inquired about the process to decide Phase 2 activities and the likelihood of DOE and the Authority agreeing on a way to move forward. Mr. Brodie responded that he is hopeful that the Phase 1 studies will bring the Authority and DOE into agreement on an approach to proceed during Phase 2. If DOE and the Authority cannot agree on a joint Phase 2 decision, however, the parties can engage in internal discussions and intergovernmental discussions on how to proceed. If the Authority disagrees with the course of action that DOE adopts, the Authority can proceed separately or consider challenging DOE's position in court. Mr. Bembia added that the Phase 1 studies will be reviewed by another independent group of scientists and engineers.

Mr. Murray explained that the Phased Decisionmaking approach is the preferred alternative; the alternative of litigation could cause the loss of a decade of cleanup work and fail to alleviate any threat to the region. Mr. Murray then discussed the importance of public involvement in the EIS process. Public involvement has both informed and influenced the process. At least in part as a result of public involvement, DOE and the Authority reduced the Phase 1 period from 30 years to 10 years, and proceeded to issue a joint EIS despite differences.

Mr. Murray indicated that there is no indication that DOE will be resistant to further public involvement.

Chairman DeIorio acknowledged the dedicated commitment of the citizen groups and the Authority over a long period of time. Mr. Murray indicated that the completion of a complex EIS process is a tribute to Paul Bembia and the Authority staff at West Valley and their effort to address public concerns and those of elected officials. Dr. Thorndike also acknowledged staff's efforts and thanked the West Valley team.

In closing, Mr. Bembia encouraged the Committee to recommend that the Board adopt the Phased Decisionmaking Alternative as presented in the EIS.

Whereafter, upon motion duly made and seconded, and by unanimous voice vote, the Committee recommended that the Board adopt the resolution approving the Phased Decisionmaking Alternative as presented in the *Final Environmental Impact Statement for Decommissioning and/or Long-Term Stewardship at the West Valley Demonstration Project and Western New York Nuclear Service Center*. A copy of this Resolution is attached hereto as Exhibit B.

The last item on the agenda concerned other business. Dr. Thorndike asked Senior Project Manager Alyse Peterson to report on issues relating to the license renewal of the Indian Point nuclear generating facility.

Ms. Peterson indicated that on April 2, 2010, the Department of Environmental Conservation (DEC) denied Entergy's request for the water quality certification that is required for license renewal of the Indian Point facility. This certification, known as a 401 Water Quality Certification, is required under Section 401 of the Federal Clean Water Act. Under the Clean Water Act, before a Federal license or permit can be issued, a state must certify that an activity which results in a discharge into navigable waters meets state water quality standards. This certification is separate and distinct from the State Pollutant Discharge Elimination System (SPDES) permit also required for plant operation.

In this case, DEC staff has determined that the Indian Point facility, whether operated with the existing cooling technologies or operated with the addition of a new wedge-wire screen system as proposed by Entergy, does not and will not comply with existing water quality standards. DEC's denial of the water quality certificate precludes issuance of a renewed Federal license for operation of the Indian Point facility with the proposed cooling system.

The DEC's April 2nd decision identifies a number of reasons for denial of Entergy's request for a water quality certification. Entergy can request an administrative hearing on the denial of the water quality certification. If Entergy does not request a hearing, then the current denial is DEC's final decision.

The NRC is evaluating the impact of the DEC decision, and will continue with the Federal review process for license renewal. NRC's schedule anticipates issuance of its final EIS on the operation of Indian Point at the end of May. The NRC would then hold hearings on New York's contentions on the license renewal application.

Ms. Peterson then advised of a second determination by New York State that could preclude the renewal of the license for Indian Point - the Coastal Zone Consistency Determination required by the NY Department of State (DOS) under the Federal Coastal Zone Management Act. The DOS's decision is expected in December of this year. If DOS determines that the proposed license renewal is not consistent with the State's coastal zone management policies, the NRC will be precluded from issuing a renewed license.

At the close of Ms. Peterson's presentation, Dr. Thorndike inquired how the DEC's action would affect the current operating licenses. Ms. Peterson indicated that the facility holds two licenses, one for Unit 2 and one for Unit 3, which will not be immediately affected by this decision. The licenses issued by the NRC will expire in 2013 and 2015 respectively.

Mr. DeLorio commented that it is important to monitor the progress of relicensing at Indian Point since the failure to relicense affects the availability of electric energy within the State.

John Williams, Director of the Energy Analysis Program, added that, if Indian Point were to close, the State Energy Plan projects that there would be a 5% increase in the wholesale market price within the State and that it would be necessary to replace Indian Point's generating capacity with 1800 MW of natural gas generation. Although still within the Regional Greenhouse Gas Initiative cap, added natural gas generation would cause an increase in pollutant emissions, such as NOx, for which downstate New York is a designated non-attainment area.

Mr. Williams continued by explaining that additional studies show that closing Indian Point is likely to create reliability issues which would require additional infrastructure cost. The Reliability Needs Assessment published by the Independent System Operator (ISO) developed scenarios that contemplated the closure of Indian Point 2 and 3; this study projects that after closure of Indian Point 2 in 2014, New York will not meet the ISO's Loss of Load Expectation standard, which would be further aggravated in 2016 if Indian Point 3 closes. If no new generation capacity came on line after these closings, modeling projects a 13% increase in the wholesale market price of electricity.

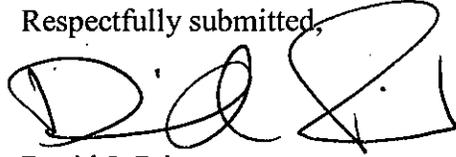
Mr. Williams advised that electricity could be imported into New York from New England, PJM Interconnection, L.L.C., or Canada; however, it is unclear how the transmission of the electricity could be distributed effectively.

A variety of other issues must be considered including an assessment of reliability costs, the issue of voltage/reactive power and finally, environmental impacts in the downstate Clean Air Act non-attainment areas.

Mr. Kelley indicated that he is familiar with the significant impact of the loss of capacity on the New York City area. He reiterated concerns regarding increases in air and thermal emissions due to building fossil fuel plants to replace this generating capacity. Mr. Kelley concurs with Mr. Williams that there are significant price, emissions, and reliability issues that will be necessary to consider.

There being no other business, upon motion duly made and seconded and upon unanimous voice vote, the meeting was adjourned.

Respectfully submitted,

A handwritten signature in black ink, consisting of several loops and a final vertical stroke, positioned below the text "Respectfully submitted,".

David J. Prior
Secretary to the Committee

Exhibit A

NYSERDA New York State Energy Research and Development Authority

Vincent A. DeIorio, Esq., *Chairman*
Francis J. Murray, Jr., *President and CEO*
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NOTICE OF MEETING AND AGENDA

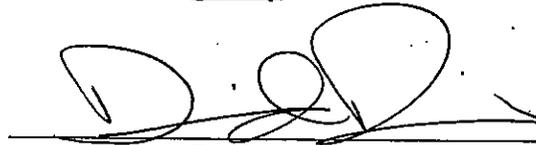
April 1, 2010

TO THE MEMBERS OF THE WASTE AND FACILITIES MANAGEMENT COMMITTEE:

PLEASE TAKE NOTICE that the thirty-ninth (39th) 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, and by video conference in the Authority's Buffalo Office at 726 Exchange Street, Suite 821, Buffalo, New York, on Thursday, April 8, 2010, commencing at 12:00 p.m., for the following purposes:

1. To consider the Minutes of the thirty-eighth (38th) meeting of the Committee held on January 11, 2010.
2. To consider and act upon a resolution adopting the Preferred Decisionmaking Alternative as presented in the *Final Environmental Impact Statement for Decommissioning and/or Long-Term Stewardship at the West Valley Demonstration Project and Western New York Nuclear Service Center*.
3. 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. In accordance with guidance from the Office of Taxpayer Accountability, the Authority will be posting a video of its Board and Committee meetings to the web within two business days of the meeting. The video will be posted at <http://www.nysesda.org/governancemeetings2.asp>.



David J. Prior
Secretary to the Waste and Facilities
Management Committee

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Exhibit B

Resolution No. _____

RESOLVED, that the Members hereby approve adoption of the Phased Decisionmaking Alternative as presented in the *Final Environmental Impact Statement for Decommissioning and/or Long-Term Stewardship at the West Valley Demonstration Project and Western New York Nuclear Service Center*, January 2010 and discussed in the Findings Statement presented at the meeting of April 12, 2010;

AND BE IT FURTHER RESOLVED, that the President and Chief Executive Officer is authorized to take any actions necessary to implement the adoption of such alternative.