

MINUTES OF THE THIRTY-EIGHTH MEETING OF THE
WASTE AND FACILITIES MANAGEMENT COMMITTEE
HELD ON JANUARY 11, 2010

Pursuant to a notice and agenda dated January 5, 2010, a copy of which is annexed hereto as Exhibit A, the thirty-eighth (38th) 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 Monday, January 11, 2010, 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 Delorio

Members Townsend and Kelley were unable to attend.

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 January 5, 2010, 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-seventh meeting, held on September 14, 2009.

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

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

Mr. Bembia's presentation included an update on issues discussed at the September 14th Committee meeting including: (1) erosion impacts on the West Valley site due to the August 9 - 10, 2009 storm; (2) two land transfers; (3) the removal of leachate and a leachate storage tank from the State-Licensed Disposal Area (SDA); and (4) the Draft Environmental Impact Statement process. In addition, Mr. Bembia discussed the 2011 Federal Budget for the Department of Energy (DOE)'s cleanup program and the annual deer hunt at the West Valley site.

Mr. Bembia discussed a storm on August 9 and August 10, 2009, that resulted in significant flash flooding throughout the Cattaraugus Creek watershed. Due to the flooding, President Obama issued major disaster declarations for a three county area including Cattaraugus County, where the site is located.

The Western New York Nuclear Service Center (WNYNSC) site withstood the flooding very well. Although there was some erosion damage, there were no releases of any low-level radioactive waste or contamination from any facilities.

The erosion from the rains and flash flood damaged a West Valley Demonstration Project (WVDP) dam and spillway, and also along a railroad that serves the site, along two streams adjacent to the Authority-managed SDA, and along Buttermilk Creek at the northern portion of the site. Buttermilk Creek flowed offsite and into a neighbor's cornfield.

DOE completed repairs to the railroad in November, 2009. Damage to the WVDP dam and spillway was inspected by an engineering firm, the New York State Department of Environmental Conservation (NYSDEC), and the U.S. Army Corps of Engineers. The dams were determined safe, but DOE is nonetheless expected to conduct repairs in 2010.

The erosion damage at the base of the north slope of the SDA was also repaired in November, 2009. This important work stabilized the area and will prevent erosion from progressing and destabilizing the North Slope of the SDA over the near-term. Additional erosion controls will be installed next field season on Frank's Creek on the east side of the SDA.

In addition, the Authority will be conducting work on Buttermilk Creek at the north end of the site as soon as weather permits. This work will involve rebuilding a gravel berm that had been protecting a neighbor's farmland from stream damage, and clearing trees and tree stumps that are impeding flow of the creek.

Staff has reported all of this damage to SEMO and FEMA, and is seeking reimbursement for as much of this work as possible under the Federal disaster declaration.

Staff was considering whether, due to the disaster declaration, the Authority's share of flood repair costs at the WVDP is eligible for reimbursement from the Federal government (through a FEMA disaster relief program). There is a stipulation in the Cooperative Agreement between the Authority and DOE, however, that the Authority may not use Federal funds to pay for its share of the WVDP. Staff will continue to pursue reimbursement of flood repair costs that are not part of the WVDP.

Mr. Bembia discussed two property transfers at the WNYNSC.

The first involved the transfer of about 15 acres of land from DOE control to the Authority's control to establish an erosion control buffer zone around the SDA. This land transfer, which was required by the Authority's NYSDEC Radiation Control Permit, was completed in October 2009.

A second land transfer being considered by the WVSMP is the release of a portion of the 3,330 acres under the site-wide Nuclear Regulatory Commission (NRC) License to allow the possible future sale or transfer of a portion of land to a local business or other entity.

Authority staff has identified a parcel for release from the license. It includes about 395 acres of undeveloped property and a warehouse on a five acre plot within this parcel.

Representatives from the WVSMP presented this proposal to the Ashford Town Board and the West Valley Citizen Task Force. The proposal was supported by both groups. Staff is continuing to move forward with this activity.

NRC indicated that it would be beneficial for the Authority to send a letter to NRC stating its intentions to release a portion of the site for public use. NRC's review of an application to amend the license is typically charged to the licensee, and NRC expects that its fee to review the application will be \$257/hour. Staff will work with NRC to estimate the costs that will be involved with an NRC review of the License Amendment.

Work on the environmental documentation for the land transfer is underway. Field work and documentation of the radiological conditions of the Bulk Storage Warehouse will likely begin in the spring of 2010, and the application for release of property may be submitted to the NRC as early as the fall 2010.

If the property is released from the NRC license, the Authority would dispose of the property in accordance with the requirements of the Public Authorities Law.

Mr. DeLorio inquired whether a fee associated with the NRC license is based on the acreage of the site. Mr. Bembia advised that currently the Authority does not pay a license fee since technical specifications of the license are being held in abeyance because DOE is currently in possession of the site.

Mr. Bembia reported the removal of leachate and a leachate storage tank from the State Licensed Disposal Area. The WVSMP had been storing 8,000 gallons of contaminated water that was pumped from one of the disposal trenches in 1991 to reduce the possibility of a release from the trench. During November, the 8,000 gallons of leachate were removed and the liquid was shipped by

truck to a facility in Tennessee for thermal treatment. The removal of the liquid and shipment to Tennessee was accomplished without spills, injuries, or any other incidents.

The second phase of the work, which will be performed in early 2010, involves the dismantling and shipment of the empty tank, ancillary equipment, and other solid wastes to Richland, Washington for treatment, prior to disposal in Utah. WVSMP staff is currently completing the work plans for Phase 2 of the project.

Mr. Bembia reported on the Revised Draft Environmental Impact Statement (DEIS) for Decommissioning and/or Long-Term Stewardship at the West Valley Demonstration Project and WNYNSC.

During the week of November 17-20, 2009, WVSMP staff participated in an Interagency Concurrence Meeting on the DEIS held in Washington, DC. During the meeting, WVSMP staff presented a number of comments and suggestions to improve the document.

WVSMP staff continues to have significant concerns with the technical analyses to be presented in the Final Environmental Impact Statement (FEIS), and these concerns will be presented in an Authority-prepared "Foreword," as was the case in the DEIS.

The problems that the Authority identified in the DOE analyses do not impact the implementation of the preferred alternative (Phased Decision-making). The Authority supports the preferred alternative because it allows important work to progress in the short-term (8-10 years) during Phase 1, while DOE and the Authority conduct additional scientific studies to reduce uncertainties for the Phase 2 decision.

On December 4, 2009, the Authority notified DOE that, although it concurs with the release of the FEIS to the public, it should be clear that the Authority continues to have significant issues with the technical analysis.

The FEIS is expected to be issued in late January 2010. DOE expects to issue its Record of Decision (ROD) in March 2010. At that same time, the Authority, as a joint lead agency with DOE on the EIS, will issue a SEQRA Findings Statement to document the Authority's Phase 1 decision on the SDA and balance of the Center.

On December 11th, Frank Murray and members of the Authority's legal staff and West Valley staff met with representatives of citizen and environmental groups to discuss their concerns with the DEIS and the options being considered for site cleanup.

Although the groups continue to disagree with the preferred alternative and want all contamination and facilities removed now, all participants agreed that the conversation was productive, and additional discussions will be held between the Authority's technical staff and representatives from these groups.

At the close of Mr. Bembia's update on the DEIS, President and CEO Murray inquired about the environmental groups' meeting with DOE in November. Mr. Bembia indicated that DOE had relayed to him that it was a positive meeting, although the groups and DOE were not in agreement on several issues.

Chairman Thorndike inquired about the citizen and environmental groups that met on December 11th. Mr. Bembia advised that the Authority met with representatives of the Citizens' Environmental Coalition, the Center for Health, Environment and Justice, Nuclear Information and Resource Service, Citizens Campaign for the Environment, and the Atlantic Chapter of the Sierra Club to discuss their concerns with the West Valley Decommissioning DEIS, and the options being considered for site cleanup.

Mr. Murray explained that the citizen and environmental groups were concerned that they would not be included in the process going forward. The groups wrote to Congressman Massa expressing their concerns. Mr. Murray indicated that DOE's Assistant Secretary for Environmental

Management, Dr. Inés Triay, Ph.D., is supportive of continued citizen involvement in the DEIS process.

Information is circulating on the internet and in trade publications that DOE's cleanup program for Federal Fiscal Year 2011 will be cut by approximately \$1 billion from the cleanup program's current funding level. This reduction would represent one of the lowest budget requests for the DOE Office of Environmental Management since the early 1990s.

Since the 2010 Federal appropriation of \$60 million, WVDP has already fallen short of the desired annual appropriation of \$80 to \$90 million.

Once the Obama Administration formally submits its 2011 budget request to Congress in early February, it may be necessary for the Authority to visit key members of New York's Congressional Delegation to discuss the 2011 WVDP funding level.

At the close of Mr. Bembia's discussion of the anticipated Federal budget shortfall, Chair Thorndike inquired about the role of the American Recovery and Reinvestment Act (ARRA) funding at West Valley. Mr. Bembia advised that, although ARRA funding was not intended to supplant or replace other funding, the reduction in appropriations in FY 2009 and the anticipated Federal budget shortfall in FY 2010 has reduced DOE's base operating budget and the ARRA funding has helped reduce the impact of these lower Federal appropriations. Mr. Bembia advised that, unless the 2012 base appropriation is significantly increased from current levels, after the ARRA funding ends in 2011, it is anticipated that there will be a significant impact to site activities.

West Valley Staff completed another safe and successful Deer Hunting program at the Center on November 27, 2009. Approximately 250 hunters harvested 44 deer during archery and gun season.

At the close of Mr. Bembia's discussion of the Deer Hunting program, Chair Thorndike inquired whether the DEC inspected any of the deer taken this year. Mr. Bembia advised that, last

year, the Authority conducted an extensive program of radiation testing, and this year offered testing to anyone who requested it; there were no requests for testing this year.

Following Mr. Bembia's report, Dr. Thorndike asked Senior Project Manager Alyse Peterson to report on issues relating to nuclear waste and nuclear coordination.

Ms. Peterson reported that the Authority will be hosting the 2010 Low-Level Radioactive Waste (LLRW) Forum meeting on September 27 & 28, 2010 in Saratoga Springs. The last time New York hosted a Forum meeting was in 2004 in Niagara Falls. The Nuclear Energy Institute (NEI) has proposed to provide funding to invite several foreign representatives to participate in a special session during the fall 2010 Forum meeting. If the proposal goes forward, each representative would be asked to discuss his or her country's LLRW management. Additional details on this meeting will be available after the Forum meets in March, 2010.

With respect to LLRW disposal, access to disposal facilities for Class B and C radioactive wastes from New York generators is limited. The only disposal facility that accepted Class B and C LLRW from New York generators, the Barnwell, South Carolina facility, was closed to generators in states outside the Atlantic Interstate LLRW Compact (*i.e.*, outside South Carolina, New Jersey, and Connecticut) on July 1, 2008.

A proposed disposal facility for Class B and C radioactive wastes has been licensed in Texas. In September 2009, the Texas Commission on Environmental Quality (TCEQ) issued a permit to Waste Control Specialists to open and operate this proposed facility. Operations at the facility are expected to begin by the end of 2010.

The Texas Compact Commission (Texas and Vermont) is currently looking at draft rules for importation of out-of-Compact waste (waste from states such as New York). Ms. Peterson will report to the committee on future developments.

Chair Thorndike inquired how the leachate from West Valley was shipped to Tennessee,

if there were no facilities that could accept such wastes from New York. Mr. Bembia responded that the Tennessee facility is permitted to accept hazardous mixed wastes for treatment. After treatment in Tennessee, this waste is no longer a hazardous mixed waste, and since it is not Class B or C radioactive waste, the remaining solid residue is disposed of at a licensed radioactive waste disposal facility.

Ms. Peterson next reported on nuclear coordination activities. Entergy, the owner of the Indian Point Nuclear Power Plant, has submitted an application to renew its operating license with the NRC. The NRC's review of the Indian Point application includes two distinct review tracks: (1) plant safety, and (2) environmental issues. The Safety Evaluation Report (SER) covers plant safety systems and is separate and distinct from the Environmental Impact Statement (EIS) that will cover environmental issues.

The final SER was issued in November 2009 and incorporates the conclusions of both NRC staff and the Advisory Committee on Reactor Safeguards (ACRS), an independent body of experts that advises the Commission on reactor safety matters. The final SER concludes that there is nothing to preclude relicensing.

Environmental issues related to the plant relicensing are addressed in an EIS process. The final EIS is expected in February 2010. The Atomic Safety and Licensing Board Panel (ASLBP) granted New York State's request for a hearing which will be held after issuance of the FEIS.

The new nuclear plant proposed by UniStar to be built at the Nine Mile Point site in Oswego has been placed on hold. UniStar has asked the NRC to temporarily suspend review of the application. UniStar has slowed the pace of its investment due to the economic climate and due to its failure to receive Federal loan guarantees for the project. UniStar is currently focusing its attention on the new reactor it has proposed for the Calvert Cliffs site in Maryland.

Following Ms. Peterson's report, Dr. Thorndike asked Treasurer Jeff Pitkin to report on the next agenda item, the Authority's Fiscal Year (FY) 2010-11 Budget for the West Valley Site Management Program and radioactive waste policy and nuclear coordination activities.

The FY 2010-11 Budget for the West Valley program totals \$19.2 million, as compared to \$13.5 million included in the FY 2009-10 Budget. The difference is primarily due to an increase in the State's share of costs resulting from an increase in DOE funding for the WVDP through ARRA. In addition, the State's share of costs for certain portions of the Project has increased due to the fact that work will be proceeding under the proposed Consent Decree that was approved in December by the Board and which has been filed with the Federal district court.

The Budget includes \$14.7 million for the State's share of the WVDP costs under the Cooperative Agreement and proposed Consent Decree, approximately \$207,000 for environmental impact statement costs, and \$4.3 million for SDA maintenance and monitoring activities and other non-Project costs, including outside counsel support costs.

The Energy Analysis program budget includes funding to meet requirements under the State Low-Level Radioactive Waste Management Act of 1986 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 \$145,000 which is funded through an assessment collected on operating nuclear power plant licensees. This amount is unchanged from the amount included in the prior year budget.

At the close of Mr. Pitkin's discussion, Dr. Thorndike inquired about the Federal budget and how the reduction in Federal funding impacts the Authority's share of costs. Mr. Brodie indicated that, regardless of the Federal budget, the Authority is responsible for 10% of the costs of WVDP activities. Dr. Thorndike inquired whether activities addressed in the Consent Decree are also subject to this cost sharing arrangement. Mr. Brodie indicated that the Consent Decree included specific cost sharing arrangements for the cleanup of the remaining facilities.

Dr. Thorndike inquired about the Authority's annual budget and its effort to maintain its historic \$2 million margin of unrestricted net assets to allow it to cover any unforeseen expenses. She inquired whether the total cost of anticipated work is included in the budget and whether these costs exceed several hundred thousand dollars. Paul Bembia responded that items such as repairing aging membrane covers at the SDA are included in the budget.

Mr. Pitkin indicated that, as a result of the overlap of the State and Federal budgets, he believes that there is sufficient funding on hand to cover unexpected costs such as erosion repairs. Moreover, Mr. Pitkin advised that the Authority can meet its obligations by delaying other payments to accommodate work that needs to proceed immediately. The Authority only has to reconcile its budget at the end of the Federal fiscal year. This flexibility should allow the Authority to meet unanticipated obligations.

Mr. DeLorio asked which erosion repair costs would be reimbursable from the Federal government and which would not. Mr. Bembia indicated that the Authority's portion of the more significant erosion repair costs, such as repair of the dam and spillway and the railroad bed, would not be eligible for recovery from the Federal government.

Mr. Pitkin advised that costs such as these had been built into the Authority's budget over a time period and that the FY 2010-2011 budget is sufficient to meet such unanticipated expenses. Mr. DeLorio agreed that unrestricted net assets of \$1.4 million should be sufficient to cover unanticipated expenses of this magnitude.

Dr. Thorndike inquired how the Authority would fund any necessary recovery costs due to a terrorist event. Mr. Brodie advised that the Authority would avail itself of the fiscal year overlap that Mr. Pitkin discussed earlier and, if necessary, seek additional appropriations.

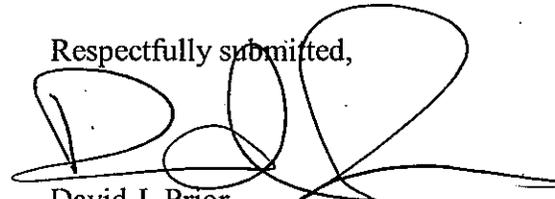
Mr. Murray indicated that he recognizes the Members' concern to maintain a "cushion" of approximately \$2 million of unrestricted net assets; however, the \$1.4 million budgeted for FY 2010-2011 is more than was available in last year's budget. He advised that if the Authority faced a

serious problem where costs for necessary immediate work exceed the budgeted unrestricted net assets, the NYS Division of the Budget would likely work with the Authority to address this shortfall. Dr. Thorndike added that Federal funds may also be available to address such unanticipated costs.

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 FY 2010-11 Budget for the WVSMP and radioactive waste policy and nuclear coordination activities as presented. A copy of this Resolution is attached hereto as Exhibit B.

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', with a large, sweeping flourish extending to the right.

David J. Prior
Secretary to the Committee

NOTICE OF MEETING AND AGENDA

January 5, 2010

TO THE MEMBERS OF THE WASTE AND FACILITIES MANAGEMENT COMMITTEE:

PLEASE TAKE NOTICE that the thirty-eighth (38th) 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, January 11, 2010, commencing at 12:00 p.m., for the following purposes:

1. To consider the Minutes of the thirty-seventh (37th) meeting of the Committee held on September 14, 2009.
2. To receive a status report on West Valley Site Management Program activities.
3. To receive a status report on radioactive waste policy and nuclear coordination activities.
4. To receive a report from the Treasurer regarding the Authority's Fiscal Year 2010-11 Budget and to consider and act upon a resolution recommending approval of the Authority's Fiscal Year 2010-11 Budget.
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/webcast.asp>.



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Secretary to the Waste and Facilities
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Exhibit B

Resolution No. _____

RESOLVED, that the proposed fiscal year 2010-11 Budget submitted to the Members for consideration at this meeting, with such non-material, editorial changes and supplementary schedules as the President and Chief Executive Officer, in his/her discretion, may deem necessary or appropriate, be and it hereby is approved for submission to the persons designated in Sections 1867(4) and 2801 of the Public Authorities Law.