MINUTES OF THE FORTIETH MEETING OF THE
WASTE AND FACILITIES MANAGEMENT COMMITTEE
HELD ON SEPTEMBER 13, 2010

Pursuant to a notice and agenda dated September 3, 2010, a copy of which is annexed hereto as Exhibit A, the fortieth (40th) meeting of the Waste and Facilities Management Committee of the NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY was convened at 12:00 p.m. on Monday, September 13, 2010 at the Authority's New York City Office at 485 Seventh Avenue, 10th floor, New York, New York, and by video conference in the Authority's Albany Office at 17 Columbia Circle, Albany, New York, and by video conference in the Authority's Buffalo Office at 726 Exchange Street, Suite 821, Buffalo, New York.

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

Elizabeth W. Thorndike, Ph. D., Chair
Vincent DeIorio

Also present in either New York City or Albany were Robert G. Callender, Vice President for Operations and Energy Services; Janet Joseph, Vice President for Technology and Strategic Planning; Jeffrey J. Pitkin, Treasurer; Hal Brodie, General Counsel; David A. Munro, Deputy Counsel; Alyse Peterson, Senior Project Manager; David Prior, Assistant Counsel and Secretary to the Committee, and several other members of the Authority's staff.

Dr. Thorndike called the meeting to order, noted the presence of a quorum, and stated that a Notice of the meeting was mailed to Committee members and the press on September 3, 2010. Each of the Committee members introduced themselves.

The first item on the agenda concerned approval of the minutes of the thirty-ninth meeting, held on April 8, 2010.

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

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

Mr. Bembia reported on a number of developments, as follows:

The Department of Energy (DOE) is presently replacing the subsurface ventilation lines for the High-level Waste tanks, and installing a drying system to remove water from those tanks. To mitigate the spread of the North Plateau Strontium 90 Groundwater Plume, DOE will be installing an 850' long Permeable Treatment Wall in the downgradient region of the plume. The wall will remove Strontium-90 from the groundwater as it flows through the wall. In addition, DOE is continuing to decontaminate the Main Plant Process Building. The goal is to make it "demolition ready" by July 1, 2011.

Mr. Bembia reported that there have been a number of worker skin and clothing contamination incidents in connection with the West Valley Demonstration Project so far this year. In all cases, the material was removed from the skin without injury or internal uptake. In response to these incidents, DOE is implementing work practice changes to reduce the potential for additional incidents.

DOE's decommissioning contract with the current site contractor, West Valley Environmental Services, will end on June 30, 2011. DOE has prepared a solicitation for bidders on the next contract, which will include the first part of the Phase 1 decommissioning activities, cover a period of seven years, and will include $420 million of work.

Mr. Bembia advised that Authority staff are also undertaking a variety of tasks. At the State Licensed Disposal Area (SDA), a new synthetic cover will be placed on three of the disposal trenches during October 2010. The existing cover was installed in 1993, and testing

shows it is nearing the end of its service life.

The WVSMP continues to work on obtaining a release of the Bulk Storage Warehouse and 190 acres of undeveloped property from its United States Nuclear Regulatory Commission (NRC) license and making it available for public use. Staff is preparing an application to amend the license and expects to submit the application to the NRC by the end of 2010.

Mr. Bembia advised that the Authority and DOE are also close to agreement on a process to identify and conduct additional scientific studies needed to support the Phase 2 decisions for the Center. An agreement between the Authority and DOE is being drafted and will lay out a framework for the joint management of contracts, 50/50 cost sharing, cooperative communications, and equal say in decision-making. It is very important that both agencies have an equal say in terms of the design and implementation of the studies.

The President's FFY 2011 budget includes $60 million for the WVDP. This funding level falls short of the desired annual appropriation of $80-85 million, although the impact of a $60 million federal appropriation in FFY 2011 will be offset by about $23 million in American Recovery and Reinvestment Act (ARRA) funds. Mr. Bembia noted that ARRA funds will not be available after 2011, so an appreciable funding increase in the base appropriation is needed for FFY 2012 to avoid a significant impact to site activities and the workforce.

Other discussion items included the installation of an Authority-funded seismic monitoring station at the West Valley Central School by the Lamont-Doherty Earth Observatory of Columbia University. The station will provide real-time earthquake data to the West Valley office and to the West Valley Central School.

In addition, Mr. Bembia testified before the Reactor and Fuel Cycle Subcommittee of President Obama's Blue Ribbon Commission on America's Nuclear Future. The session explored local government and community concerns relative to the development of new reactor and fuel cycle technologies. Mr. Bembia's testimony, which took no position on nuclear power, focused on what happened at the Center that led to the DOE/Authority cleanup. His testimony

was well received and the Co-Chair of the Subcommittee stated that it is important to have an understanding of the reprocessing program at West Valley that necessitated the DOE/Authority cleanup, so that mistakes of the past are not repeated.

Mr. Bembia asked Dave Munro, Deputy Counsel, to update the Committee on the Consent Decree between the federal government and New York State. Mr. Munro reminded the Committee that in October 2009, after approval by the Members, the State and Federal governments entered into a settlement agreement that resolved several of the key claims raised by New York in the lawsuit it filed against the federal government in December 2006. The agreement, formally known as a Consent Decree, resolves many of the long-standing disagreements between the Authority and DOE regarding their respective financial responsibilities for cleanup of the Center. The Consent Decree spells out what percent of costs will be borne by New York State and the Federal government for cleaning up various facilities and areas of the Site, regardless of what cleanup actions are selected in the future. Mr. Munro stressed that the Consent Decree does not select or advocate the selection of any particular cleanup program for the Site. Cleanup decisions are being made via the ongoing Environmental Impact Statement (EIS) process.

Although the State was not required to do so, it solicited comments from the public on the terms of the Consent Decree. The parties received comments from three groups- the Citizen Task Force, the Coalition on West Valley Nuclear Wastes, and Citizens' Environmental Coalition. The commenters all expressed a concern that the Consent Decree somehow compromises or adversely impacts the ongoing EIS process. The State responded by emphasizing that the Consent Decree involves only the allocation of financial responsibility for the various possible remedies to be chosen through the EIS process and does not affect selection of any particular remedy. State representatives also stressed that the State has reserved its rights to challenge any remedial decision made by the Federal government.

Mr. Munro stated that the State and Federal governments decided that none of the comments warranted any changes to the terms of the Consent Decree. On July 1, 2010, the two governments formally asked the court to approve the Consent Decree. On August 17, federal

Judge John Curtin in Buffalo heard legal arguments from the Attorney General's office and the U.S. Department of Justice as to why the settlement is in the public interest. Later that day, Judge Curtin signed the Consent Decree.

Mr. Munro explained that the Consent Decree does not resolve two claims raised in the State's lawsuit- the State's natural resource damages claim and its Nuclear Waste Policy Act claim. The first claim will be pursued by the Department of Environmental Conservation (DEC) (as trustee of the State's natural resources) and the Attorney General's office. Regarding the latter claim, the State asserts that the Federal government bears sole responsibility for the cost of disposing of the 275 canisters of vitrified high level waste remaining at the Site at a Federal repository once one becomes available. The State and Federal governments will attempt to resolve both these claims, and will litigate them if necessary.

Chairman DeIorio inquired about the natural resource damages claim. Mr. Munro advised that such a claim involves damages to the State's natural resources, such as groundwater and soils, after remedial activity has been completed. In other words, assuming not all radioactive materials are removed from the Site, such "residual" contamination may continue to impact resources. As the Commissioner of Environmental Conservation is the steward of the State's natural resources, the DEC will pursue this claim.

With regard to the Nuclear Waste Policy Act claim, Dr. Thorndike observed that since the Yucca Mountain disposal site in Nevada may not ever open, the high level radioactive wastes at West Valley may have nowhere to go. Mr. Munro agreed that since the Federal government does not presently have a repository for high level radioactive waste, it is not likely that the high level wastes will leave the West Valley site in the near future. The State will be moving forward on the claim and anticipates negotiation with DOE or litigating this issue. It is anticipated that the court will schedule a conference with the parties in the near future to discuss the possibility of resolving this issue and provide a litigation schedule.

Dr. Thorndike next called upon Alyse Peterson, Senior Project Manager, to provide a status report on issues relating to radioactive waste policy and nuclear coordination. Ms.

Peterson updated the Committee on the Authority's hosting of the 2010 Low Level Radioactive Waste Forum meeting on September 27 & 28, 2010, in Saratoga Springs. Members of the Forum include states, waste compacts, Federal agencies, nuclear utilities, disposal operators, brokers/processors, industry, and other interested parties. The Forum meetings provide an excellent opportunity for the Authority to stay up-to-date on the most recent and significant developments in the area of low-level radioactive waste management and disposal. Ms. Peterson advised that hosting Forum meetings every several years provides an important opportunity for the Authority to work with other government and industry officials and to participate in decision-making on future actions and endeavors affecting low-level radioactive waste management and disposal. The Authority also has three speakers on the agenda for the meeting. President Murray will be welcoming the group at the start of the meeting. Dr. Thorndike will be speaking, and Tom Attridge from the West Valley staff will give a presentation on West Valley.

The meeting will include a special International Session focusing on the radioactive waste management approaches used by foreign countries.

Dr. Thorndike asked Treasurer Jeff Pitkin to report on the Authority's revised Fiscal Year (FY) 2010-11 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 2010-11, which was approved at the January 2010 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 $19,247,000. Only minor changes among the expenditure categories were identified.

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 2010-11 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 2011- 12.

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 a reduction in funding for the West Valley program, from $19,247,000 to $15,310,000. The majority of this decrease is attributable to providing the State's 10% share for reduced DOE funding levels for next federal fiscal year which resulted from ARRA Federal Stimulus funding provided to DOE for West Valley – a total of about $74 million was received, which is being spread out over Federal fiscal years 2009 through 2011. In addition, a portion of the decrease is attributable to a decrease in costs for West Valley Demonstration Project activities subject to cost sharing contained in the Consent Decree.

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 2011-12 as presented. A copy of this Resolution is attached hereto as Exhibit C.

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

Respectfully submitted,

David A Munro

David A. Munro
Acting Secretary to the Committee

Exhibit A

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

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NOTICE OF MEETING AND AGENDA

September 3, 2010

TO THE MEMBERS OF THE WASTE AND FACILITIES MANAGEMENT COMMITTEE:

PLEASE TAKE NOTICE that the fortieth (40th) 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 New York City Office at 485 Seventh Avenue, 10th floor, New York, New York and by video conference in the Authority's Albany Office at 17 Columbia Circle, Albany, New York and the Authority's Buffalo Office at 726 Exchange Street, Suite 821, Buffalo, New York, on Monday, September 13, 2010, commencing at 12:00 p.m., for the following purposes:

1. To consider the Minutes of the thirty-ninth (39th) meeting of the Committee held on April 8, 2010.

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 and to consider and act upon recommending approval of a resolution approving revisions to the Authority's Fiscal Year 2010-11 budget.

5. To receive a report from the Treasurer regarding the Authority's Fiscal Year 2011-12 Preliminary Spending Plan and the Authority's State Appropriation Request For Fiscal Year 2011-12 and to consider and act upon a resolution recommending approval of the Authority's State Appropriation Request for Fiscal Year 2011-12.

6. 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.nyserda.org/governancemeetings2.asp.

David J. Prior
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Management Committee

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Exhibit B

Resolution No. _____

RESOLVED, that the Fiscal Year 2010-11 Budget and Financial Plan (Revised September 2010) 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 2011-12 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.