# MINUTES OF THE FORTY-FIRST MEETING OF THE WASTE AND FACILITIES MANAGEMENT COMMITTEE HELD ON JANUARY 14, 2011

Pursuant to a notice and agenda dated January 6, 2011, a copy of which is annexed hereto as Exhibit A, the forty-first (41<sup>st</sup>) meeting of the Waste and Facilities Management Committee of the NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY was convened at 1:00 p.m. on Friday, January 14, 2011 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, 10<sup>th</sup> 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:

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

Member Townsend did not attend.

Also present were Robert G. Callender, Vice President for Operations and Energy Services; Janet Joseph, Vice President for Technology and Strategic Planning; Peter V. Mahar, Controller and Assistant Treasurer; Hal Brodie, General Counsel; David A. Munro, Deputy Counsel and acting Secretary to the Committee; Paul J. Bembia, West Valley Program Director; and Alyse Peterson, Senior Project Manager.

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 January 6, 2011. Each of the Committee members introduced themselves.

The first item on the agenda concerned approval of the minutes of the fortieth meeting, held on September 13, 2010. A copy of the Minutes was included with the January 6<sup>th</sup> mailing.

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

The next agenda item was a status report on West Valley Site Management Program (WVSMP) activities by Program Director Paul Bembia. Mr. Bembia stated that he was pleased to report that several field projects he reported on during the September 2010 Committee meeting were successfully completed before the arrival of the winter snows in Western New York.

## A. For the West Valley Demonstration Project:

- The U.S. Department of Energy ("DOE") completed the installation of a drying system to remove water from the High-Level Waste (HLW) tanks. DOE also replaced tank ventilation piping to prevent additional groundwater from entering the tanks and vaults. The drying system is expected to remove all of the water from the HLW tanks and vaults within a three- to six-year period.
- DOE also completed the installation of an in-ground permeable treatment wall that will remove Strontium-90 from the North Plateau groundwater plume. The treatment media is placed in the ground in the path of the plume, and it removes the strontium as the water flows through this treatment wall. DOE will now be assessing the effectiveness of the wall through an extensive groundwater sampling program.
- DOE is also continuing to make progress at decontaminating and removing piping, vessels, and other equipment from the highly contaminated hot cells in the Main Plant Process Building. This is to prepare the building for demolition as part of the Phase 1 decommissioning activities.
- DOE's decommissioning contract with the current site contractor, West Valley Environmental Services, ends on June 30, 2011. DOE is now conducting a procurement activity to select the next contractor. This contractor will conduct the first part of the Phase 1 decommissioning work. The Phase 1 decommissioning activities that are the focus of this solicitation include:

- The construction of a new HLW Storage Facility, and the transfer of the HLW Canisters from the Main Plant Process Building to this new storage facility.
- The demolition of the Main Plant Process Building, the Vitrification facility, the Fuel receiving and storage facility, and a number of other facilities.
- The contract also includes safe site operations, and monitoring and maintenance of the remaining facilities including the HLW Tanks, the North Plateau groundwater plume and the Nuclear Regulatory Commission (NRC)-Licensed Disposal Area (NDA).
- DOE estimates that this phase of the Phase 1 work will cost about \$420 million over seven years. Six proposals were received from teams of engineering and remediation contractors, and the proposals are currently being reviewed by the DOE Source Evaluation Board.
- Two members of NYSERDA's West Valley staff are participating in the proposal review. We are non-voting members of the Source Evaluation Board, and we will be providing our input directly to the DOE Source Evaluation Board.
- Under DOE's current procurement schedule, the agency plans to have the new contract awarded by the end of April of this year.

## **B.** For the State-Licensed Disposal Area:

• In October 2010, the NYS Department of Environmental Conservation's (DEC) Radiation Control Permit group conducted a three-day inspection of the State Licensed Disposal Area (SDA) and NYSERDA's programs for managing the SDA. The DEC inspectors were highly complimentary of the Authority's programs, and determined that the SDA and NYSERDA's programs were in compliance with the NYS Radiation regulations and NYSERDA's Radiation Control Permit for the SDA.

- In November 2010, NYSERDA contractors installed a new synthetic cover on three
  of the SDA disposal trenches to replace the previous cover that was installed in 1993.
   Testing showed that the existing cover was nearing the end of its service life.
- Also in November 2010, NYSERDA completed a project to collect high-resolution aerial photographs and a very detailed LiDAR topographic survey of the Center and the entire Buttermilk Creek watershed. LiDAR is a laser pulse imaging method that is conducted using small aircraft. Through this effort, NYSERDA is generating the most detailed and comprehensive topographic map of the site ever developed. NYSERDA also obtained some very detailed aerial photographs of the site. This work will be used in erosion monitoring and erosion evaluation work.
- The WVSMP continues to work on obtaining a release of the Bulk Storage Warehouse and approximately 200 acres of undeveloped Center property from the site's NRC license. If the NRC releases this property from the license, NYSERDA will seek approval from the Board to disposition this property under the requirements of the Public Authorities Law. Town elected officials and the community requested that NYSERDA do this with the intent of returning property to the tax rolls. At this time the Authority is collecting information needed by the NRC to make its determination.

The next agenda item, also presented by Paul Bembia, pertained to a proposed agreement between the Authority and DOE regarding the West Valley site, referred to as a "Second Supplemental Agreement" to the original Cooperative Agreement between NYSERDA and DOE. Dr. Thorndike stated that at the close of the presentation, the Committee would be asked to recommend that the Board authorize NYSERDA's President or his designee to enter into a Second Supplemental Agreement with the Department of Energy.

Mr. Bembia first provided some background on the need for this new agreement, as follows:

- NYSERDA and DOE jointly issued a Final Environmental Impact Statement (EIS) for Decommissioning at West Valley in January 2010.
- NYSERDA staff identified significant issues with several EIS analyses which, in NYSERDA's opinion, called into question the defensibility of portions of the EIS.
- During the preparation of the EIS, NYSERDA convened two separate independent peer review groups of nationally recognized experts, and both groups agreed with NYSERDA's view that certain analyses in the EIS were flawed. DOE said that its own experts had determined the EIS to be valid, and DOE declined to address NYSERDA's concerns or to change the EIS.
- To avoid an impasse on the EIS that would stop the West Valley Demonstration Project cleanup, NYSERDA and DOE agreed on a phased approach to continue the cleanup process. The first Phase of the cleanup will include removal actions on certain facilities (the Main Plant Process Building, Vitrification facility, Fuel pool, the plume source, and lagoons). As the Phase 1 removal work proceeds, NYSERDA and DOE will conduct additional scientific studies to evaluate the open technical issues before we decide on the remaining facilities for Phase 2. (These remaining facilities include: the SDA, the NDA, the non-source area of the North Plateau groundwater plume, and the Waste Tank Farm).
- By conducting these studies cooperatively with DOE during Phase 1, NYSERDA hopes to resolve, or at least narrow the gap between, the open issues before the decisions are made on the remaining facilities in Phase 2.
- To avoid later disagreements on the studies to be conducted, DOE and NYSERDA
  agreed that the two agencies should conduct the studies within the framework of an
  interagency agreement.
- NYSERDA and DOE staff have been working for the last several months to prepare
  this new interagency agreement, which we are calling the Second Supplemental
  Agreement. The Second Supplemental Agreement:

- Governs the overall approach, cost responsibilities and contracting arrangements between NYSERDA and DOE for the Phase 1 studies.
- Identifies a number of potential study areas and identifies "Core Values" for the agencies as they conduct the studies. For example, it says that individuals will "act with integrity and transparency," and will "strive to put sound science and the needs of the site ahead of the agency's needs."

#### - The SSA states that:

- 1) Studies will be of sufficient scope to address the issues associated with facilitating interagency consensus;
- 2) Studies are expected to take approximately eight years to complete, allowing for Phase 2 decisions within ten years; and
- Agencies will have regular meetings with the regulatory agencies and with the public (including the Citizens Task Force, local environmental groups and other interested parties) in order to discuss and seek input on the Phase 1 studies process; on individual scientific studies; and on the study implementation and results.
- NYSERDA and DOE will engage subject matter experts for recommendations of specific studies in a number of technical areas. The Phase 1 studies process also includes a panel of nationally recognized scientists who will be tasked with upperlevel oversight and guidance on the scientific process and resolution of technical disagreements.
- To ensure that both NYSERDA and DOE have an equal voice during the Phase 1 studies process, the Second Supplemental Agreement provides that:
  - Each agency will pay 50 percent of the costs of all scientific study activities conducted during Phase 1; and

- The two agencies will jointly select and contract with various subcontractors to undertake various tasks, including a facilitator, technical experts, individuals or organizations that will do the data collection and analysis.

Mr. Bembia explained that the concept of using an interagency agreement as a framework for conducting work at West Valley is not new. This will actually be the third such agreement entered into between NYSERDA and DOE:

- The Cooperative Agreement was entered into by NYSERDA and DOE in 1980. This
  agreement provided the framework for the implementation by the two agencies of the
  West Valley Demonstration Project.
- NYSERDA and DOE also entered into the Supplemental Agreement in 1990. This
  agreement set forth the procedures and responsibilities associated with preparation of
  the joint EIS.

Mr. Bembia emphasized that the Second Supplemental Agreement <u>does</u> represent a departure from some arrangements under the prior agreements – in a beneficial way. Under the Supplemental Agreement that governed EIS preparation, for example, DOE paid the majority of costs and managed the EIS contractor. This put NYSERDA at a disadvantage in terms of influence over the development of the EIS. This new agreement will put both agencies on an equal footing.

• NYSERDA's annual cost for the Phase 1 studies will be approximately \$1 million for the next eight to ten years. Because the Authority's budget has included an average annual expenditure of \$957,000 for EIS preparation and the services of NYSERDA's external experts for each of the last six years, it is not expected that the Phase 1 studies process will result in a significant increase in the Authority's West Valley expenditures.

Mr. Bembia committed to keep the Committee apprised as NYSERDA and DOE move forward with the studies.

Based upon Mr. Bembia's report and subsequent discussion, upon motion duly made and seconded, and by unanimous voice vote, the Committee recommended that the Board adopt the resolution authorizing NYSERDA's President or his designee to enter into a Second Supplemental Agreement with the Department of Energy. A copy of this Resolution is attached hereto as Exhibit B.

The next item on the agenda was a report from Alyse Peterson, Senior Project Manager, on issues relating to radioactive waste and nuclear coordination.

## **Nuclear Coordination**

Ms. Peterson advised that the State has been invited by the U.S. Nuclear Regulatory Commission (NRC) to make a presentation at a decommissioning funding workshop in March 2011. The workshop is part of a national effort by NRC to revamp what are seen as antiquated and inadequate requirements for nuclear power plant decommissioning funding. Ms. Peterson is working with the Department of Public Service (DPS), the Attorney General's office, and other interested State agencies to develop a response to the invitation. It is anticipated that the State will accept the invitation and that staff from either DPS or the Attorney General's office will make the presentation. Staff from all of the interested agencies will work together to develop the presentation.

In February or March of 2011, NRC will be sending letters to all of the new Governors across the country requesting that they appoint a State Liaison Officer (SLO). This is standard procedure when a new Governor takes office. As NYSERDA's President and CEO, Frank Murray is New York's current SLO. NYSERDA will be given a heads-up shortly before the letter goes out. The SLO program ties in very closely with NYSERDA's Nuclear Coordination program.

#### Radioactive Waste Policy

In late December 2010, the operator of a proposed new Low Level Radioactive Waste (LLRW) disposal facility in Texas received final approval from the State of Texas to commence construction. Disposal operations are scheduled to begin near the end of 2011.

The Texas Low-Level Radioactive Waste Disposal Compact Commission (Texas Commission) then voted to allow importation of LLRW into the Compact from non-Compact states such as New York. This is very positive news for New York and 35 other states that have been without disposal access for Class B and C waste since the closure of the Barnwell, South Carolina facility to out-of-Compact waste. Over the next year, the Texas Compact Commission will be working on detailed requirements, procedures, forms, and the like to implement importation of waste.

Ms. Peterson stated that there will likely be legal challenges to the importation rule. A few days prior to the Texas Commission vote, opponents of importation obtained a restraining order from a Texas district court that would have prohibited the Texas Commission from adopting the rule. That restraining order was dismissed by a federal district court the day before the vote. Additionally, the new Governor of Vermont, Peter Shumlin, who took office two days after the vote, has publicly opposed importation and has the authority to replace Vermont's two current Commissioners, both of whom voted in favor of importation.

Ms. Peterson stated that she will continue to follow developments closely.

The next agenda item was a report from Controller and Assistant Treasurer Peter Mahar regarding the Authority's proposed Fiscal Year 2011-12 Budget for the WVSMP and radioactive waste policy and nuclear coordination activities.

Dr. Thorndike stated that at the close of Mr. Mahar's presentation, the Committee will be asked to recommend that the Board adopt the resolution approving the portion of the Authority's FY 2011-2012 Budget pertaining to the WVSMP and radioactive waste policy and nuclear coordination activities.

Mr. Mahar stated that he would only address those portions of the Budget specifically subject to the Committee's review. He advised that the Budget for the West Valley program totals \$15.3 million, as compared to \$19.2 million included in the current, FY 2010-11 Budget. The decrease is primarily due to a decrease in DOE funding for the West Valley Demonstration

Project, which was provided through Federal Stimulus funding. The Budget includes \$9.5

million for the State's share of the Project costs under the Cooperative Agreement, \$378,000 for

the State's share of costs under the Consent Decree, \$944,000 for the State's share of EIS costs,

and \$4.5 million for SDA maintenance and monitoring activities and other non-Project costs,

including outside counsel support costs associated with the recent litigation against the federal

government.

Mr. Mahar advised that the Authority is proposing to use \$500,000 of unrestricted

revenues to pay a portion of the West Valley costs, in order to assist the State with its fiscal

condition and provide the State with budgetary relief.

Included in the Energy Analysis program budget is 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 sub-allocated from an

appropriation provided to the NYS Department of Health, which is funded through an

assessment collected on operating nuclear power plant licensees. Mr. Mahar advised that this

amount is unchanged from the amount included in the prior year budget.

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 2011-12 Budget for the WVSMP and radioactive waste policy and

nuclear coordination activities 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,

David A.Munio

David A. Munro

Acting Secretary to the Committee

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#### Exhibit A

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

**Vincent A. Delorio**, **Esq.**, *Chairman* **Francis J. Murray**, **Jr.**, *President and CEO* 

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### NOTICE OF MEETING AND AGENDA

January 6, 2011

#### TO THE MEMBERS OF THE WASTE AND FACILITIES MANAGEMENT COMMITTEE:

PLEASE TAKE NOTICE that the forty-first (41<sup>st</sup>) 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, 10<sup>th</sup> 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 Friday, January 14, 2011, commencing at 1:00 p.m., for the following purposes:

- 1. To consider the Minutes of the fortieth (40<sup>th</sup>) meeting of the Committee held on September 13, 2010.
- 2. To receive a status report on West Valley Site Management Program activities.
- 3. To consider and act upon a resolution approving a "Second Supplemental Agreement to the Cooperative Agreement between the United States Department of Energy and the New York State Energy Research and Development Authority Setting Forth Special Provisions for the Identification, Implementation and Management of the Phase 1 Studies for the Decommissioning and/or Long-term Stewardship at the West Valley Demonstration Project and Western New York Nuclear Services Center."
- 4. To receive a status report on radioactive waste policy and nuclear coordination activities.
- 5. To receive a report from the Treasurer regarding the Authority's Fiscal Year 2011-12 Budget and to consider and act upon a resolution recommending approval of the Authority's Fiscal Year 2011-12 Budget.
- 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 <a href="http://www.nyserda.org/governancemeetings2.asp">http://www.nyserda.org/governancemeetings2.asp</a>.

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David A. Munro
Acting Secretary to the Waste and Facilities
Management Committee

David A. Munio

Fax: (518) 862-1091

## Exhibit B

Resolution	No.	
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RESOLVED, that the President and Chief Executive Officer or his designee is hereby authorized to enter into a Second Supplemental Agreement with the United States Department of Energy, in accordance with the terms and conditions presented to and discussed with and by the Members, with such non-substantive, editorial changes and supplementary schedules as the President and Chief Executive Officer, in his discretion, may deem necessary or appropriate.

## **Exhibit C**

Resolution No.
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RESOLVED, that the proposed fiscal year 2011-12 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 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.