

**MINUTES OF THE REGULAR MEETING OF THE  
ROCKY MOUNTAIN LOW-LEVEL RADIOACTIVE WASTE BOARD**

*FAIRFIELD INN & SUITES*  
1350 W. Joe Harvey Blvd.  
Hobbs, New Mexico 88240

October 28, 2008

**ATTENDANTS**

Board Members:

Ron Curry, New Mexico, Chair  
Gary Baughman, Colorado  
Leo Drozdoff, Nevada

Barbara Green, Legal Counsel (*via telephone*)  
Leonard Slosky, Executive Director  
Sheri Reynolds, Recording Secretary

Others:

Gaylon Fuller, CAST Transportation  
Frank Whitaker, U.S. Army Department of Defense  
Julia Whitworth, Los Alamos National Laboratory  
Colleen Cripps, Nevada Division of Environmental Protection  
Kathi Beardin, Environmental Improvement Board, Hobbs News-Sun  
Brenda Brooks, National Enrichment Facility  
Reinhard Hinterreither, National Enrichment Facility  
Clint Williamson, National Enrichment Facility  
Marissa Stone, New Mexico Environment Department

**REGULAR MEETING**

Mr. Curry, Chair, called the meeting to order at 11:06 a.m.

The first item on the agenda was the approval of the minutes of the April 8, 2008 Regular and Annual Meetings and Notice of Actions Taken in August 1, 2008 Telephonic Meeting. Mr. Baughman moved to approve the minutes as submitted. Mr. Curry seconded; the motion carried unanimously.

Mr. Slosky took a few minutes to explain the history and function of the Rocky Mountain Compact. As explained, the Board serves as an interstate compact governed by state law, federal law, and contract law authorized by the U.S. Constitution. The Board regulates the flow of low-level radioactive waste and approves facilities that dispose of low-level waste. Waste coming in to or leaving the member states must be approved by this Board. The Board acts with unusual

authority since interstate commerce is generally regulated solely by the federal government. This authority was consented to by Congress when it passed the Compact as federal law.

The Rocky Mountain Low-Level Radioactive Waste Compact (Compact) outlines what is and what is not regulated by the Board. For example, down-hole disposal of oil and gas Naturally Occurring Radioactive Materials (NORM) is exempt at the request of the State of New Mexico six or seven years ago. Department of Energy waste and Navy nuclear propulsion wastes are exempt from the Compact. However, Department of Defense waste is not exempt. The Board does not regulate health and safety which is overseen by state agencies and the U.S. NRC. The only disposal facility designated by this Board currently is the Clean Harbors Deer Trail Facility (CHDTF) located in Deer Trail, Colorado. When the Board approved this facility it also authorized NORM and Technologically Enhanced NORM (TENORM) to be disposed of at any facility allowed by the applicable state.

Ten compacts exist across the U.S. The states of Texas and Vermont represent the Texas Compact which has been approved by Congress but has not been constituted. The WCS facility is in its final stages of licensing. A draft license has been issued and is in the public comment period. If WCS receives its license the compact will be formed and it will start to function. It exists on paper, but the Governor of Texas has not appointed a representative to the compact. In contrast, this Board first started functioning in 1983. At the end of 1985, Congress passed the Compact which was signed by the President in January of 1986. The Compact had been adopted by its member states then state governors appointed their representatives.

Mr. Curry added that the Board meetings rotate between the three member states. This meeting was scheduled in Hobbs, New Mexico since the Board members wanted to tour the National Enrichment Facility in Eunice, New Mexico while it was accessible and under construction after the Board's recent visit of the Urenco Netherlands Enrichment Facility in August.

#### **STATUS OF CLEAN HARBORS REGIONAL FACILITY**

Mr. Slosky explained that CHDTF is a disposal facility in Colorado that has functioned as a RCRA Subtitle C facility since 1991. In December of 2005, the facility was licensed by the State of Colorado, Department of Public Health and Environment to dispose of NORM and TENORM materials within certain limits. In February of 2006, CHDTF was designated by the Board as a regional facility.

Mr. Baughman added that CHDTF continues to operate as a hazardous waste disposal facility. The facility has not received much low-level radioactive waste since the completion of the Denver Radium Project last year.

There are a number of legal actions concerning this facility. A complaint was filed against CHDTF by Adams County claiming that the receipt of waste from the City and County of

Denver was in violation of the certificate of designation that was issued by the County. That case is ongoing and is scheduled for trial in Adams County District Court the week of December 15, 2008.

There are two additional legal actions that Adams County filed against the State of Colorado regarding the issuance of the hazardous waste permit and the radioactive materials license. Adams County believes that both were in conflict with the certificate of designation they had issued to the facility. Both cases have been heard in District Court and the State of Colorado's position prevailed. Both were appealed in the Court of Appeals whereby the State's position prevailed. It has now been appealed on to the Colorado Supreme Court. The only matter at hand is whether or not Adams County has the jurisdiction to file a complaint against the State since essentially they are a subdivision of the State. Briefings have been provided to the Supreme Court and a decision is pending.

Ms. Green added that because the only question being addressed is whether or not Adams County has the right to file a suit against the State of Colorado, many of the substantive issues raised may be left unresolved.

#### **STATUS OF ENERGYSOLUTIONS LITIGATION**

Mr. Slosky provided a general overview of the case initiated by EnergySolutions (ES) against the Northwest Compact (NWC). ES filed an import application with the U.S. NRC to import a large quantity of Italian waste into the U.S. for processing in Tennessee and disposal of residuals at the ES facility in Clive, Utah. The case is still pending before the U.S. NRC. The NWC decided not to allow the import of this waste. A day or two before the NWC took this position, ES filed a lawsuit in Federal District Court in Utah asking for a declaratory judgment that the NWC does not have authority to regulate the ES facility. The way in which this case is positioned in Federal Court, if successful, potentially none of the compacts would have authority to exclude the import of foreign waste. This Board convened a telephonic meeting and authorized the intervention in the lawsuit to protect the interests of this compact and its regional facility. The Board then filed a motion to intervene, as a defendant, which was granted by the Federal Court. Last week, this compact along with the NWC filed a joint brief in opposition to the ES motion for summary judgment and filed a counter motion for summary judgment that the NWC does have the authority to regulate the Clive facility. ES has 30 days from October 21, 2008 to file an answer and then the defendants will be allowed 10 days to respond. It is anticipated that the judge will call for oral arguments before rendering a decision. Ms. Green added that the State of Utah has also intervened in the lawsuit on the side of the NWC and has filed a brief in opposition to the ES motion for summary judgment.

Mr. Curry expressed his concern over the potential impact this lawsuit may have on all compacts. Mr. Slosky continued the discussion by adding that the fundamental purpose of each compact is to regulate waste coming into the region to avoid becoming a dumping ground for

waste generated outside its boundaries. Foreign countries being able to bring in waste without regulation would be a significant change. This Board felt it was essential to participate and obtain a satisfactory position. It is very possible that this case will be heard by the U.S. Supreme Court. The U.S. Supreme Court has previously ruled that a compact has exclusionary authority over waste generated outside its boundaries.

Another particular concern relating to this lawsuit is that this compact has established a contract for its generators to use the Washington State disposal facility currently operated by a private company, US Ecology. The NWC has made it clear that if they would lose exclusionary authority, which could happen if ES prevails in this case, that they would close their facility. If this facility closes, our generators would have no access for disposal of B and C low-level waste. There are only three facilities in the nation that can take a broad spectrum of low-level radioactive waste of which only two can take all types of low-level waste: the Barnwell facility in South Carolina and the Washington State facility. There are only 14 states that currently have access to these full-spectrum disposal facilities. The Atlantic Compact has access to the Barnwell facility. The Rocky Mountain Compact and Northwest Compact have access to the Washington State facility. Preserving the Washington State facility is critical to our generators.

#### **BRIEFING ON U.S. DEPARTMENT OF ENERGY SOURCE RECOVERY PROGRAM**

Ms. Whitworth of Los Alamos National Laboratory was invited to speak on the Offsite Source Recovery Project (OSRP). She provided background of the program and expanded on its accomplishments and ongoing security challenges.

The U.S. began manufacturing and distributing sealed radioactive sources in the 1950s which are still in wide use today. Funded primarily by the NNSA Global Threat Reduction Initiative (GTRI), the program was established in the late 1970s and has evolved into its most recent role of providing recovery and permanent disposal of excess, unwanted, or orphan sealed sources including: Am-241, Cm-244, Cs-137, Pu-238, Pu-239, Sr-90, Cf-252, Co-60, Ir-192, and Ra-226. Sealed sources have been utilized in a variety of applications including oil and gas service companies, colleges and universities, medical facilities, manufacturers, military, construction industry, and Department of Energy (DOE) and government sites.

Barnwell in South Carolina and US Ecology in Washington are the only facilities in the U.S. that can dispose of commercial sealed sources. Both facilities are closed to out-of-compact waste disposal. The Rocky Mountain Compact is fortunate to have access to the US Ecology facility since 36 states do not currently have a disposal pathway.

The OSRP program provides disposal options where there is no commercial disposition pathway. The 1985 Policy Act Amendments assigned DOE the responsibility for disposal of greater than Class C (GTCC) waste. Ownership of disused source material is transferred to OSRP on behalf of the DOE, then the sources are packaged and physically moved to a secure DOE or

subcontracted facility. As of June 2008, 33,000 unwanted radioactive sealed sources were registered with OSRP through their web site (<http://osrp.lanl.gov>). Currently, over 17,700 sources have been recovered domestically through the program.

The 2006 Radiation Source Protection and Security Task Force Report expresses increased concerns of “use of risk-significant radioactive materials in a malevolent act” such as radiological dispersal devices (RDD) intended to spread radioactive materials from the detonation of conventional explosives and radiological exposure devices (RED) intended to expose people to radiation. Additional security challenges include the use of foreign-origin materials and accumulation of smaller sources. With no replacement technology and limited public support for development of new disposal sites, security challenges will continue to grow.

Ms. Whitworth suggested that the Board consider incentives or conditions allowing disposal of sealed sources due to the unique national security problem posed by them. She asked if the Board would be interested in participating in a meeting held by the GTRI and Department of Homeland Security on challenges posed by sealed sources and potential solutions which will occur some time before the end of the year. The Board agreed to participate.

#### **BRIEFING ON NATIONAL ENRICHMENT FACILITY**

Mr. Hinterreither of Louisiana Energy Services, L.P. (LES) was invited to speak on the National Enrichment Facility in Eunice, New Mexico. Mr. Hinterreither provided an update on the project and explained the vision, mission, and values driving the facility. He believes that nuclear power needs to be part of the future supply for global energy needs. Their mission is “enriching the future.” In order to achieve their goal of providing more efficient solutions to their customers they have established strong values of safety, integrity, flexibility, development, and profitability. Safety is their overriding priority.

Mr. Hinterreither explained that they have been very successful in attracting nuclear qualified staff including retired people with prior nuclear experience to help train a new generation of workers and create a safer working environment. Collectively, they claim over 10,000 man-years of combined nuclear construction experience. A diverse group of people from existing enrichment plants in the UK, Holland, Germany and Austria have also joined the team. After obtaining high-level security clearance, local employees are sent to operating facilities in Europe for 3-6 months to gain operational skills. Currently, the LES facility employs 233 full-time onsite workers and over 900 subcontractors. Construction payroll is presently \$11,000,000 per month. Upon completion of the facility, the facility will employ 300+ people including security.

During the first ten months of 2008, LES paid over \$100,000,000 in construction related costs to New Mexico companies. Through June of 2008, \$270,000,000 was spent, and \$630,000,000 is estimated in total expenditures this year. A total of \$1.5 billion is estimated for completion of five buildings which will have 50% of the ultimate production capacity.

By early 2009, a small amount of uranium hexafluoride (approximately 20 kilos) will be introduced to the Centrifuge Assembly Building which will be used in testing centrifuges and establishing assembly line processes. Individual bottles of uranium hexafluoride will be delivered and connected to the building solely for testing purposes. Sealed radioactive sources will also be maintained onsite for use in hand/foot detectors, measurement devices, etc. By fall 2009, the UF6 Handling Area will prepare for arrival of large 48"x12.5' cylinders of uranium hexafluoride as the final step in the first cascade (group of centrifuges working together) becoming operational in the Process Building.

Mr. Curry asked if there might be opportunity to utilize existing supplies of depleted uranium (DU) tails at their facility. Mr. Hinterreither explained that the Government Accountability Office (GAO) and DOE have recognized that there is usable uranium stored in large quantities of DU. The GAO has requested that DOE find providers of enrichment services to extract uranium and recoup taxpayer money. He added that currently there are two large enrichment plants in US and France which are nearing end of life and are expected to close within 5-7 years. In order to replace capacity, centrifuge plants in Holland, UK, Germany, France, Eunice, New Mexico and three additional proposed sites in US will be needed to supply enrichment services. The biggest challenge will be to find a balance between supply and demand and determine whether it is cost effective to utilize stocks of DU tails or mine more uranium. Mr. Hinterreither further explained that they are currently licensed for natural feed or recycled DU created at the facility and are allowed storage of up to 5,016 UF6 containers. They are not licensed to utilize DU tails from other sources.

Mr. Slosky added that the NRC is currently reviewing the waste classification of spent DU and may be looking into different alternatives.

Mr. Slosky asked for an estimate of operational waste that will be generated at the facility for disposal. Mr. Hinterreither anticipates one drum per month once the facility is fully operational, but further assessments will be made.

#### **DISCUSSION OF FISCAL YEAR 2007-2008 AUDIT**

Mr. Slosky reminded the Board that the annual audit was completed and sent out a couple of months ago. He explained that the audit raised no issues. He added that, due to the additional expense for unexpected computer issues and a new Commercial General Liability Policy, the Board ended the Fiscal Year (FY) 2007-2008 slightly over the estimated budget amount in the Contract Services and Insurance – Non Health categories. As a result, he transferred \$1,084 out of the Operating Expense category to cover \$373 overage of Contract Services and \$711 overage of Insurance – Non Health pursuant to the Board's Fiscal Policy. The Board had no questions.

## **REVIEW OF DRAFT ANNUAL REPORT**

Mr. Slosky directed the Board to Tab H. He explained that the draft includes figures through September 2008 and that the final report will be updated with the most current numbers prior to distribution. A few refinements from previous years and updates in terms of the compact surcharge have also been made.

Mr. Slosky explained that by statute, the annual report is sent to the governor and the presiding legislative officers of each party state by December 15 of each year. He asked that the Board provide staff with any comments or updates by the end of November.

## **EXECUTIVE DIRECTOR'S REPORT**

Mr. Slosky directed the Board to Tab I and reported that the Board had \$217,402 in liquid assets as of September 30, 2008. He added that none of the Board's liquid assets or investments are at risk. The Board currently holds more than the federally insured (FDIC or NCUA) amount of \$100,000<sup>1</sup> at Wells Fargo Bank which is insured under a special State of Colorado program requiring that banks have reserves to cover public agency deposits in excess of \$100,000. This program will cover any funds that are not insured under FDIC.

## **BUDGET VS. EXPENDITURE COMPARISON**

Mr. Slosky directed the Board to Tab J and explained that there are three budget categories above the estimated amount through September 30, 2008. The Accounting category appears high because it includes the FY 2007-2008 audit. Legal is higher than expected due to the Board's recent intervention in the *EnergySolutions vs. Northwest Interstate Compact* lawsuit. The Travel category is also above the projected amount because it includes a portion of the expenses for travel to the Urenco facility. He explained that the expenses overlapped between the prior and current FY.

Mr. Slosky asked that the Board consider a budget adjustment for Legal to account for ongoing expenses in the *EnergySolutions vs. Northwest Interstate Compact* lawsuit. Ms. Green added that the Board retained a local legal firm in Salt Lake City, Utah to provide assistance with formatting, review and advisement. The attorney the Board is working with has experience working with the judge assigned to this case and will be a great addition to the team. Mr. Curry asked if the lawsuit will continue outside of the current FY. Ms. Green believes that litigation will likely continue for years. The District Court may take a year to make a ruling. From there an appeal will move to the Tenth Circuit Court of Appeals in Denver which may also take a year for a ruling. The next level of appeal is to the U.S. Supreme Court. If we win the Motion for Summary Judgment, the remaining issues to be decided and discovery will be limited. If ES

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<sup>1</sup> Increased to \$250,000 through December 31, 2009

wins at this stage they will drag in more discovery so it is difficult to determine Legal fees at this point. At this time, Ms. Green recommends a \$20,000 increase in the Legal category. Mr. Slosky recommended moving \$20,000 from Contingency into the Legal category.

Mr. Slosky also suggested the Board increase the Travel budget by \$5,000 to account for additional travel relating to the litigation. Mr. Curry made a motion to approve the budget modifications as discussed. Mr. Baughman seconded; the motion carried unanimously.

### **CONSIDERATION OF INVESTMENT OF BOARD FUNDS**

Mr. Slosky opened the discussion by explaining that the Board has \$150,000 of funds to reinvest. He directed the Board to Tab L for a rate sheet provided by Brenda Fredrickson at Wells Fargo. He added that based on the current ladder of investments the Board should consider a five-year term investment maturing in late 2013 or early 2014 which should yield close to 5%. Mr. Baughman made a motion to approve the purchase of investments based on finding the best available rates as discussed. Mr. Curry seconded; the motion carried unanimously.

Mr. Slosky introduced an issue of concern that was discussed at the NWC meeting last week called "waste attribution." Waste attribution guidelines were established by the compacts which determined that the majority of waste sent to a processor should be attributed to the original generator and only small quantities of incidental waste would be attributed to the processor. It was recently discovered that the State of Tennessee has changed the licenses for a number of their processors allowing the majority, if not all, of processed waste to be attributed to the processor. This is of grave concern to the NWC considering that states with no access to their facility and even foreign waste could potentially circumvent the compact system. Mr. Slosky will continue to follow this issue and keep the Board informed.

With no further issues, at 1:32 p.m. Mr. Curry moved to adjourn Regular Meeting of October 28, 2008. Mr. Baughman seconded; the motion carried unanimously.