

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

COURTYARD DENVER AIRPORT

6901 Tower Road
Denver, Colorado 80249

June 16, 2011

ATTENDANTS

Board Members:

Gary Baughman, Colorado, Acting Chair
Leo Drozdoff, Nevada, Acting Vice-Chair
David Martin, New Mexico

Barbara Green, Legal Counsel
Leonard Slosky, Executive Director
Sheri Reynolds, Recording Secretary

Others:

Judy Woodson, U.S. Army, Department of Defense
Craig Tessmer, Adams County
John Jarvis, Hazen Research, Inc.
Dan Snow, LOTUS, LLC
Jay Davenport, Particle Measuring Systems, Inc.
Michelle Law, University of Colorado, Boulder
Jennifer Opila, Colorado Dept. of Public Health & Environment

REGULAR MEETING

Mr. Baughman, Vice Chair, called the meeting to order at 1:04 p.m. He introduced Secretary David Martin, new Board member representing the State of New Mexico.

The first item on the agenda was the approval of the minutes of the December 3, 2010 Regular Meeting and Notice of Actions Taken during the February 10, 2011 meeting. Mr. Drozdoff moved to approve the minutes. Mr. Baughman seconded; the motion carried.

STATUS OF CLEAN HARBORS REGIONAL FACILITY

Ms. Opila of the Colorado Department of Public Health & Environment (CDPHE) was asked to provide an update on the CHDTF. She began by explaining that there is nothing new with the CHDTF litigation. She added that all of the litigation between the State of Colorado, Adams County, and CHDTF are currently stayed pending negotiations. Settlement negotiations are ongoing and from the State's perspective it is likely that the respective judges from each of the cases will move the cases forward later this year. There is no official deadline and the attorneys are required to provide a monthly update to the courts.

Mr. Slosky directed the Board to Tab F for the monthly Clean Harbors Deer Trail Facility (CHDTF) waste receipts summary and explained that staff tracks the waste receipts of NORM/TENORM, not the hazardous waste receipts since they are not under the Board's jurisdiction. He added that the Board has received \$10,717 in Compact surcharge payments so far this calendar year.

DISMISSAL OF ENERGYSOLUTIONS LITIGATION

Ms. Green began by providing an overview of the litigation (ongoing details of the litigation have been provided in prior meeting minutes located at <http://www.rmlwb.us/meetings.htm>). Since the last meeting of the Board, the 10th Circuit Court of Appeals in Denver ruled in favor of the Northwest Compact on the first and third claims, which were the most important, and will keep the Compact System intact. The opinion written by Judge Timothy Tymkovich can be found at <http://www.ca10.uscourts.gov/opinions/09/09-4122.pdf>. Just recently, EnergySolutions (ES) asked that the claims be dismissed without prejudice, which means that they could ultimately be re-litigated. The stipulation that was finally settled on and filed with the court is provided under Tab G. The first and third claims are dismissed with prejudice and the second claim is dismissed without prejudice. The second claim was never litigated and was never presented in the Motions for Summary Judgment. The theory behind the second claim is that somehow the Compact is preempted, which is a doctrine that organizes different levels of government. The Compact is federal law so it is difficult to understand how federal law can be preempted by federal law. The decision made to dismiss this claim without prejudice is not of real concern.

EXPORT OF EQUIPMENT CONTAINING NORM – DISCUSSION OF POTENTIAL APPROACHES TO CONSIDER REQUEST FOR EXEMPTION

Mr. Slosky opened the discussion by explaining that the Board received a request from LOTUS, LLC a few months ago to exempt equipment containing NORM that is being imported and

exported from the region. Jurisdiction over the import and export of waste is a fundamental statutory responsibility of the Board. The Board has adopted rules that regulate and set forth procedures on how waste is brought into and taken out of the Board's three member states that constitute the Compact. The issue today is not to determine whether or not the waste should be exempt. The issue today is to determine if the Board would like to contemplate the issue and, if so, decide how the Board would like to procedurally address this issue. Mr. Slosky explained that there are three approaches outlined in the briefing book and since they involve legal matters they would need to be further discussed in legal session. He suggested that the Board get the brief background and explanation from Mr. Snow to obtain more information and consider the different points of view that may be present.

Mr. Snow with Lotus, LLC was invited to speak. He explained that their facility is located in Andrews, Texas. He added that they hold a specific license to remove NORM from equipment used in the oil and gas industry. An increasing volume of NORM contaminated scale is being found on equipment at oilfield surface facilities and down-hole tubing. Ludlum meters indicate that equipment may be contaminated within the vessel or piece of tubing at levels in excess of exemption. Typically, the oilfield will remove waste that is accessible on location, which is the most economical way to do this. However, due to the difficulty of removing scale from tubing with conventional equipment, the tubing is typically delivered to facilities such as Lotus' to have the scale removed. He added that the waste is then disposed at the Salt Caverns in Texas. Processes used to remove the scale include air rattlers, vacuum systems, and ultra-high-pressure water lances. The piping can later be reused. He added that it is extremely difficult to ascertain the volume of waste generated because it is very difficult to remove waste from certain types of equipment. Mr. Snow explained that the purpose for this exemption request is to allow for transporting this equipment from the oilfield to their facility. Mr. Snow further explained that the exemption would only apply to the equipment that cannot be decontaminated on-site.

Mr. Drozdoff asked for an estimation of the amount of pipe referred to and an estimation of the total overall that Lotus handles. Mr. Snow explained that there is close to a ¼ million feet of pipe ranging from 2-3/8" to 3-1/2" in diameter that is contaminated with NORM scale in New Mexico. Lotus handles approximately one million feet of pipe each year. He added that the scale in this pipe must be removed with a lancing technique which is not a mobile service and must be completed at a facility. Mr. Baughman asked if there is an estimation of the volume of contaminated scale that is removed from a certain measure of pipe. Mr. Snow estimated that for every 3,000 feet of pipe that has 1/16" to 1/8" of scale it produces between three to ten barrels of scale.

Mr. Martin asked if all of the equipment is entirely in New Mexico. Mr. Snow explained that the vast majority of it is; however, some is in Colorado. Mr. Martin asked if the equipment remains

title to the operator and if it is returned to the site once decontaminated. Mr. Snow responded that this is difficult to answer these questions since there are many different scenarios. Some equipment is sold on location, moved to large pipe yards where the decontaminated pipe is stored and/or redistributed, or taken over by the state if it is an orphaned well site. Mr. Martin asked what safeguards are in place to protect the public from contaminated equipment. Mr. Snow explained that licensed companies are bound by state laws to perform complete decontamination. However, the equipment that is sold or stolen from sites, especially in Texas, is difficult to regulate.

Mr. Slosky added that Lotus, LLC has been obtaining export permits from the Board for a number of years. He asked Mr. Snow to further explain the current conditions. Specifically, he asked if the material that has been exported is scale that has already been removed from equipment or if it is equipment that is being moved to the Lotus facility for decontamination. Mr. Snow responded that they typically apply for an export permit on contaminated scale that has already been removed from the oilfield equipment. This is how they have been able to identify a measurable quantity of waste for export. He further explained that he is aware that some NORM contaminated pipe and/or small vessels are being exported as allowed by the State of New Mexico's identification laws. The NORM is often unidentifiable or is inaccessible at the time of export; thus, the waste is not found until it is removed from the equipment. Mr. Slosky confirmed with Mr. Snow that Lotus is requesting the opportunity to export the contaminated equipment to their facility for decontamination rather than being required to decontaminate the equipment on-site. Mr. Snow clarified that the primary issue is quantifying the waste before it is removed from the equipment. He added that they will continue to provide on-site decontamination services when accessible.

Mr. Slosky asked Mr. Snow if this issue could be resolved if the Board came up with a way of addressing the uncertainty of the volume of waste that is exported. Mr. Snow responded that this would resolve the issue for Lotus. Mr. Slosky added that if the volume is the crux of the issue it is a much easier problem to solve. The Board currently provides a written provision in the export permits issued to Lotus to amend the total volume of waste exported and to pay any additional fees that might apply within a certain number of days. This has been done administratively, not by rule or written policy. Mr. Slosky suggested that this be approached as a policy, a practice, or method that does not raise all of the issues that an exemption would raise. Mr. Drozdoff asked Mr. Snow if this fully resolves the issue. Mr. Snow responded that the generators would prefer to have something from the Board that will provide a path or guideline. It was decided that the Board would seek legal counsel for the best approach. Mr. Slosky suggested that the Board consider the drafted approach or framework at a subsequent meeting. Ms. Green asked Mr. Snow if he would be willing to withdraw his official request for an exemption if the Board commits to finding a solution along the lines discussed. Mr. Snow agreed.

CONSIDERATION OF SETTLEMENT WITH CONOCOPHILLIPS

Mr. Slosky directed the Board to Tab I and explained that oil and gas NORM was removed from the compact region without authorization. He added that ConocoPhillips has obtained permits in the past and is surprised that this violation occurred since they are well aware of the process. The waste was shipped and is residing outside of EnergySolutions in Clive, Utah awaiting resolution so that it can be buried. When Mr. Slosky becomes aware of a potential violation he attempts to determine what transpired and whether or not a violation has actually occurred. Once it is determined that a violation has occurred he becomes the prosecutor and the Board becomes the judge. In the process, Mr. Slosky seeks legal counsel and attempts to reach a settlement agreement. Once an agreement is reached, the Board is asked to consider the settlement agreement that Mr. Slosky has negotiated. When Mr. Slosky begins a proceeding, there are two options: 1) the violator can attempt to reach a settlement; or 2) the alleged violator can contest the violation or the penalty and in that case the Board will sit as judge to hear the evidence. In this case, ConocoPhillips exported NORM waste from two different facilities in New Mexico and shipped it to Utah. When Mr. Slosky presented this to ConocoPhillips, they admitted that they committed the violation and they agreed to the Settlement Agreement which is also found at Tab I. ConocoPhillips has agreed to obtain export permits in the future and to pay the Board \$3,000 as a penalty to resolve this violation. He added that it was difficult to get ConocoPhillips to admit to the violation and that the Board has never entered into a settlement without an admission of violation; however, the CEO of ConocoPhillips agreed to these terms. Mr. Slosky added that he recommends the settlement agreement to the Board.

Mr. Martin asked if it is common practice for the Board to settle with a small penalty. Mr. Slosky explained that the maximum penalty is set by calculating ten times the cost of disposing the waste. In the majority of cases, Mr. Slosky determines that they were inadvertent violations and generally does not impose the maximum penalty. Mr. Slosky attempts to set the penalty to cover legal and administrative costs associated with settling the case. Ms. Green added that in Paragraph 9 of the Settlement Agreement is another standard provision holding the respondent responsible for the maximum penalty if they do not comply with the terms of the agreement fully and timely. Mr. Baughman asked if ConocoPhillips was involved in any prior violations. Mr. Slosky responded that this is their first violation.

Mr. Martin moved to accept the Settlement Agreement. Mr. Drozdoff seconded; the motion passed unanimously.

UPDATE ON NATIONAL DEVELOPMENTS

Mr. Slosky explained that there is major concern over sealed sources and disused sources that may pose a national security threat. The NNSA made a presentation to the Board at the December 2010 Board meeting and made a series of presentations at recent LLW Forum meetings. The Forum convened a steering committee that met in Washington in January. At the March LLW Forum meeting, the LLW Forum's Board passed a resolution (enclosed in Tab J) establishing a formal working group to address the disused sources issue. As you can imagine, this is an important issue to many states and compacts. He added that the LLW Forum has applied for a grant from NNSA to fund the working group's activities and expects the grant to be in place in the near future. As outlined in the resolution, the LLW Forum is taking a comprehensive view of the issue. The DOE has agreed to fund the working group's efforts. Mr. Slosky is now ready to announce the appointments of the LLW Forum members and expects that the group will have its first meeting in a couple of months and again in Santa Fe during the Fall LLW Forum meeting. He expects state or compact members from New York, South Carolina, Washington, and the Southeast and Midwest Compacts. There will be eight members, but the group will be looking for input and advice from all of the states, compacts, federal agencies, and industry groups. Again, this is a very complicated issue that requires an understanding of how sealed sources are manufactured (half of which are manufactured overseas) to when the sources become a security threat. He added that the Atomic Energy Act was crafted during the 40s and 50s and that the federal government elected not to regulate accelerator produced radioactive material (ARM). The concern is that NARM material can be as harmful as by-product material. For example, an isotope coming out of a reactor is regulated; however, the exact same isotope coming out of an accelerator is not regulated. Mr. Martin asked if the working group will be looking at GTCC material. Mr. Slosky responded that the focus will be on the jurisdiction of the states and compacts and he does not believe much focus will be placed on GTCC because the DOE has complete responsibility over those sources. Mr. Slosky continued by explaining some of the compacts exercise jurisdiction over NORM and NARM and some do not. The Rocky Mountain Compact has always exercised jurisdiction because of statute. In fact, the first hearing in 1986 was when the State of New Jersey wanted to import millions of cubic feet of NORM material to the regional facility in Nevada. The Board has consistently from the beginning exercised authority over NORM and NARM even though most NORM and NARM is not regulated by the NRC nor is it regulated by most states outside of oil and gas activity.

Mr. Drozdoff asked how often the group will meet. Mr. Slosky responded that they expect to meet four times per year supplemented by teleconference meetings as needed. He explained that they are finding increasing trouble getting the federal representatives to travel, so a number of meetings will be held in Washington D.C, but he intends to move them around the country. Mr. Drozdoff asked about the distribution of the final report. Mr. Slosky explained that the content of the final report has not yet been determined. He reminded the Board that what initiated the

development of this group was a request from the DOE to prompt states to accept sources from outside their compact region. The DOE further requested changes to state law so that the Hanford facility in Washington could become one of the national repositories. The group intends to address this issue, but it will not be the totality of the group's focus. This is why the final report content is still unknown. He believes that there will be a number of helpful topics, but does not intend for the DOE to have a roadmap that marks which sources will be disposed of where. Mr. Slosky explained that he will continue to update the Board on the front-end discussions that develop from the working group and added that he expects that the vast majority of these meetings will be open to representatives from states or compacts. He will keep the Board members informed of meeting schedules.

Mr. Slosky informed the Board that the WCS facility in Texas is under construction and expects to start receiving waste later this year. He is not aware of any impediments that would keep the facility from coming online and added that Texas legislature recently made adjustments to statute that sets the groundwork for the Texas Compact to receive out-of-region waste with a cap on volume and activity. The statute also established a 20% surcharge on out-of-region waste and prohibits import of foreign waste. The Texas Compact has adopted rules outlining how they will consider import applications. He further explained that the WCS low-level waste facility will have a compact disposal cell and a federal disposal cell. When the facility starts receiving waste, he considers this another low-level waste milestone. The DOE announced that it put out a new procurement for their waste disposal contracts now that there will be two sites to which the DOE will have access to. Other good news from a parochial standpoint is that the compact received its first funding and will be able to hire staff and start to function. Ms. Green asked if Rocky Mountain generators would utilize this facility and, if so, should this compact consider the pros and cons of entering into an arrangement with the Texas Compact. She explained that the rules appear to have the same wording as the Northwest Compact where the compact will enter into an arrangement with other compacts or states or generators. She added that the Southeast Compact has already started the process of entering into an arrangement with the Texas Compact for its generators to have access to this facility. Mr. Slosky responded that he would be surprised if any in-region generators would be interested using the WCS facility since they have access to Energy Solutions and US Ecology in Washington. However, if in-region generators express an interest, he believes that the Board would want to facilitate their ability to use the WCS facility by entering into an arrangement. He will monitor the interest from the compact's generators.

Mr. Slosky updated the Board on the NRC efforts to update 10 CFR Part 61 which is the federal regulation over disposal of low-level radioactive waste. He explained that state representatives have been complaining about the lack of input they have been receiving on the NRC process. This has led to the LLW Forum adopting a resolution at the March meeting. The NRC intends to revamp all of 10 CFR Part 61 and revisit waste classification and performance standards. Their efforts can ultimately cause a lot of havoc in most of the states' views. He added that he does

not understand why the NRC thinks that now is the right time to spend millions of tax payer's dollars to revamp the system that may not be exercised for another twenty years. There are no new facilities being permitted. Every facility that is permitted now has an agreement state permit. The NRC holds licenses on none of the facilities. Texas, along with other host states, is very nervous about what changing the rules of the game will mean for a facility that they are just bringing into operation or intend to keep in operation. The LLW Forum has dedicated a half-day session at the October meeting in Santa Fe, New Mexico for interaction between state and compact representatives and the NRC. They will be discussing 10 CFR Part 61 rulemakings and policy guidance. Mr. Slosky provided recent slides in the briefing book that summarize what is going on with these issues. He stated that none of these issues directly impact the Rocky Mountain Compact, but have the potential to disrupt the national system. One issue that he is tracking in detail is the depleted uranium rulemaking which the NRC calls a "unique waste stream." Last month, the NRC came out with initial thoughts on what the depleted uranium rule might look like and now they are receiving a lot of flack from the industry because it varies from guidance over the last number of decades in terms of period of performance. The LLW Forum will be discussing uranium enrichment and uranium management at the October meeting.

Mr. Slosky included a memo regarding the DOE's release of the GTCC EIS, which is of great interest to several of our states. He wanted to stress the importance of this since the industry has been waiting since 1986 for the EIS to be released. As Secretary Martin mentioned previously, a number of the sealed sources are GTCC. The DOE is looking at this EIS and this decision process as part of the solution to GTCC sealed sources.

Mr. Slosky also shared that, during the Waste Management 2011 meeting held in March, he was asked to speak about the *EnergySolutions* lawsuit. He added that because of his position with the LLW Forum, he also moderated the LLW Forum's panel presentation. There were a number of panelists including the Radiation Director from Utah and the Waste Management Director from the NRC. He explained that this is the largest international radioactive waste meeting in the world and was started by the University of Arizona many years ago. The meeting went very well and was well attended, as always.

Mr. Slosky plans to attend the RadWaste Summit meeting held by the ExchangeMonitor Publications & Forums this fall September 6-9, 2011 in Las Vegas. He added that the LLW Forum is now considered a cooperative organization and he will be moderating a panel presentation on state and compact issues. The sponsoring organization will pay travel expenses for all states and compacts that participate. One of the topics on the agenda is the *EnergySolutions* litigation. He expects that his counterpart from the Northwest Compact will make the presentation.

EXECUTIVE DIRECTOR'S REPORT

Mr. Slosky directed the Board to Tab K and reported that the Board had \$320,484 in liquid assets as of May 31, 2011, which is more than usual because in February the Board decided to start holding more cash in a higher yielding savings account. This account is paying the same or more as other investments that were available. The following pages show a list of investments the Board currently holds, most of which are Certificates of Deposit. He added that nothing is coming due until next spring.

The next report in Tab K is a detail of the Permit Fee Revenues. He explained that this table is structured to compare revenues received for a portion of the year against the same period of time for previous years. The Board has received \$19,855 in export permit fees so far this year and is up considerably from recent years. He added that import permit fees are also summarized on this report and represent a small portion of the Board's revenues. Following this report are reports that detail each permit by state that includes volume and permit fees paid. He added that the Board issues an average of 100 permits and 10 or 20 amendments each year.

BUDGET VS. EXPENDITURE COMPARISON

Mr. Slosky directed the Board to Tab L for the Budget/Expenditure Comparison through May 31, 2011, which represents eleven months of the fiscal year. He explained that the Board is running well under budget since the *EnergySolutions* litigation is winding down. He added that there are a couple of budget categories that are slightly over the proportion of the year, the Accounting and LLW Forum Fee categories because virtually of the expenditures for those categories have been paid for the year. He added that the Board drew from the Contingency earlier in the year to cover additional costs for Contract Services.

Tab M provides another table that tracks the volumes authorized for export and tracks which facilities the waste is authorized for export to. Mr. Slosky further explained that there is a cap on how much waste can be exported to the Northwest Compact facility in Washington. This table tracks against the cap and allows us to monitor the Board's compliance with the contractual provision. He added that the Rocky Mountain Compact is one of three compacts (out of ten compacts) that have access for B and C waste disposal.

With no further questions, Mr. Baughman moved to adjourn Regular Meeting of June 16, 2011 at 2:52 p.m. Mr. Drozdoff seconded; the motion carried unanimously.