

# **RULES OF THE ROCKY MOUNTAIN LOW-LEVEL RADIOACTIVE WASTE BOARD**

December 3, 2010

## **RULE 1**

### **SCOPE AND DEFINITIONS**

#### 1.1 Authority

These rules regarding the organization and procedures of the Board are adopted pursuant to Article 4, Section F. of the Rocky Mountain Low-Level Radioactive Waste Compact.

#### 1.2 Definitions

As used in these rules the following words shall have the following meanings, unless the context otherwise requires:

- A. "Board" means the Rocky Mountain Low-Level Radioactive Waste Board;
- B. "Compact" means the Rocky Mountain Low-Level Radioactive Waste Compact;
- C. "Disposal" means the isolation of waste from the biosphere, with no intention of retrieval, such as by land burial. Disposal does not mean placement or injection of oil and gas NORM in oil and gas wells in accordance with any applicable state regulations, as long as the oil and gas NORM is produced within the region and the wells are owned or operated by the person(s) who produced the oil and gas NORM;
- D. "Executive Director" means the Executive Director of the Board;
- E. "Facility" means any property, equipment or structure used or to be used for the management of low-level waste or state waste;
- F. "Generate" means to produce low-level waste or state waste;
- G. "Generator" means a person who generates low-level waste or state waste;
- H. "Host state" means a party state in which a regional facility is located or being developed;

- I. "Licensed Facility" means a facility which is licensed by the United States Nuclear Regulatory Commission or a state which has entered into an agreement under Section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021);
- J. "Low-level waste"\* or "waste"\* means radioactive waste, other than:
  - (1) Waste generated as a result of defense activities of the federal government or federal research and development activities;
  - (2) High-level waste such as irradiated reactor fuel, liquid waste from reprocessing irradiated reactor fuel, or solids into which any such liquid waste has been converted;
  - (3) Waste material containing transuranic elements with contamination levels greater than ten nanocuries per gram\* of waste material;
  - (4) Byproduct material as defined in Section 11 e. (2) of the "Atomic Energy Act of 1954," as amended on November 8, 1978; or
  - (5) Wastes from mining, milling, smelting, or similar processing of ores and mineral-bearing material primarily for minerals other than radium;
- K. "Management" means collection, consolidation, storage, treatment, incineration or disposal;
- L. "Naturally occurring radioactive material" (NORM) means any nuclide which is radioactive in its natural state (i.e., not manmade) but does not include by-product, source, or special nuclear material;
- M. "Oil and gas NORM" means naturally occurring radioactive waste produced by extraction, processing or pipeline transportation of oil and gas;
- N. "Oil and gas wells" means: (1) wells that were formerly operated for the production of oil and gas; (2) wells that are operated for the injection of fluids to enhance the recovery of oil and gas; or (3) wells that are operated for the disposal of produced salt water or other wastes from oil and gas operations;
- O. "Operator" means a person who operates a regional facility;
- P. "Out of region waste" means state waste which was generated at least in part outside the region;

- Q. "Party state" means a state which is a member of the compact;
- R. "Person" means an individual, corporation, partnership or other legal entity, whether public or private;
- S. "Region" means the combined geographical area within the boundaries of the party states;
- T. "Regional facility" means a facility within any party state which either:
  - (1) Has been approved as a regional facility by the Board; or
  - (2) Is the low-level waste facility in existence on January 1, 1982, at Beatty, Nevada;
- U. (1) "State Waste" means waste that consists of or contains:
  - (a) Class A, B, or C Radioactive Waste as defined by Section 61.55 of Title 10, Code of Federal Regulations, as in effect on January 26, 1983, except waste that is--
    - i. owned or generated by the United States Department of Energy;
    - ii. owned or generated by the United States Navy as a result of the decommissioning of vessels of the United States Navy; or
    - iii. owned or generated as a result of any research, development, testing or production of any atomic weapon.
  - (b) "Naturally occurring and accelerator produced radioactive materials" generated within the region;
- (2) State waste does not include any material that is--
  - (a) not low-level radioactive waste as defined by Section 61.55 of Title 10, Code of Federal Regulations, as in effect on January 26, 1983, except as provided in R.(1)(b);
  - (b) identified under the formerly utilized sites remedial action program or;

- (c) waste with concentrations of radionuclides that exceed the limits for Class C radioactive waste, as defined by Section 61.55 of Title 10), Code of Federal Regulations, as in effect on January 26, 1983; and

V. "Violator" means a person who violates the provisions of Article 7 of the compact.

1.3 Effective Date

These rules shall take effect on February 28, 2006.

## **RULE 2**

### **PROCEDURES FOR DETERMINING WHEN A STATE BECOMES A HOST STATE**

#### 2.1 Annual Report to the Board

Each party state shall develop and submit to the Board on or before October 1 of each year an annual report. This annual report shall include:

- A. an inventory of all generators of state waste in the state whose waste is managed at licensed facilities other than the facility at which the waste is generated. The inventory shall show the amount of waste, measured in curies and in cubic feet produced by each generator;
- B. the amount of state waste, with radioactivity measured in curies and with volume measured in cubic feet, which the state projects will be generated within its borders during each of the following five years and which will require management at a licensed facility other than the facility at which the waste is generated;
- C. a list and narrative description of all actions brought in the state pursuant to (1) Article 3, Section F of the compact and (2) the rules, regulations, or statutes through which the state is attempting to meet the obligations imposed on it by Article 3, Section F of the compact;
- D. if the state submitting the report required by this Rule is a host state, then in addition to meeting the requirements of parts of (a), (b), and (c) of this Rule, the report shall contain the following:
  - (1) the remaining capacity of each regional disposal facility within the state and the projected date by which such remaining capacity will be exhausted;
  - (2) the amount of waste measured both by volume and radioactivity managed at each regional facility within the state during the previous year; and
  - (3) a list of all fees, surcharges and taxes being charged by the facility operator and local and state governments for waste managed at each regional facility within the state.

## 2.2 Evaluation of Contribution

Using all available data sources it deems appropriate, including but not limited to the annual reports required to be filed pursuant to Rule 2.1, the Board annually shall evaluate the relative contribution of each party state to the total state waste generated within the region. In evaluating the relative contribution of waste, the Board shall include all radioactive material which is managed at regional facilities.

## 2.3 Projection of Contribution

In addition to evaluating the relative contribution of each party state to the total state waste generated within the region as provided in Rule 2.2, the Board annually shall project the amount of state waste which is expected to be generated by each party state during the following five years. This projection may be based on any available data, including, but not limited to, the annual reports required by Rule 2.1. All states which, according to the projections made by the Board pursuant to this Rule 2.3, are projected to generate 20 percent or more of the region's state waste, whether measured by radioactivity or volume, in any year within the period of the projection have an obligation to become a host state pursuant to Article 3, Section C of the compact.

## 2.4 Direction to Prepare Application

Subject to the provisions of Article 3, Section E of the compact, if any state becomes obligated to become a host state pursuant to Rule 2.3, the Board may direct that state to prepare within two years an Application for Approval of Regional Facility pursuant to Rule 3 of these rules.

### **RULE 3**

#### **STATE APPLICATION FOR BOARD APPROVAL OF REGIONAL FACILITIES**

##### 3.1 Approval Required for Regional Facility

Approval by the Board pursuant to these rules is required for any facility in the compact region that will accept low-level radioactive waste for disposal and only a party state may seek approval under Article 4 of the compact.

##### 3.2 Filing of Application by State for Approval of Regional Facilities

Any state seeking approval of a Regional Facility shall submit a written Application for Regional Facility conforming to the requirements of Rule 3.3 and 3.4 to the Executive Director. Upon receipt of such application, the Executive Director shall notify the members of the Board and the operators of all existing regional facilities and a meeting of the Board shall be scheduled to consider the application.

##### 3.3 Contents of Application for a Regional Facility

Each Application for a Regional Facility shall include the following:

- A. name, address and telephone number of the owner and/or operator of the proposed facility and the property upon which it will be located;
- B. ownership, legal description and map showing the location of the property on which the proposed facility will be located;
- C. type of facility for which approval is being sought (e.g., land burial, incinerator, etc.), and a description of the manner in which the waste is to be treated;
- D. types of waste(s) that are to be managed at the proposed facility;
- E. projected capacity and number of years that the proposed facility will be operational;
- F. proposed schedule for the development of the proposed facility, including phasing, if any, and a date by which it is anticipated the proposed facility will be operational;

- G. initial charges which the operator intends to impose on waste managed at the proposed facility, exclusive of state and compact surcharges, as defined in Article 5 of the compact;
- H. a statement describing the need for and a projection of the demand for the proposed facility;
- I. a statement describing what the economic consequences would be on existing regional facilities, if any, of the proposed facility; and
- J. documentation that the state has complied with Article 3 Section D of the compact, along with copies of all such comments and any written responses thereto.

#### 3.4 Application Fee for a Regional Facility

The Executive Director shall charge an Application Fee for an Application for a Regional Facility in the amount of \$50,000, or the amount of costs incurred by the Board to review and process the application, whichever is greater. The costs shall include the costs of personnel, based upon the annual budget, and contractor time spent to review and process the application. The \$50,000 shall be submitted by the proposed owner/operator of the facility at the time of submittal of the application. Any costs in excess of the \$50,000 shall be paid by the owner/operator within 30 days of receipt of an invoice.

#### 3.5 Role of the Executive Director

- A. **Completeness determination.** Upon receipt of an Application for a Regional Facility, the Executive Director shall review the application and determine whether it is complete based on the requirements of Rule 3.3 and Rule 3.4. If the application is not complete, the Executive Director shall return the application to the state together with a written statement of the reason(s) why the application is not complete.
- B. **Public notice.** Once the Executive Director has determined that the Application for a Regional Facility is complete, it shall send a notice of the application to the parties on the board mailing list and cause the notice to be published in a newspaper of general circulation within each party state.



- C. Executive Director report. The Executive Director shall review the Application for a Regional Facility in light of the requirements of the compact and shall prepare a report for the board recommending approval, together with any proposed conditions, or disapproval of the Application for a Regional Facility.

### 3.6 Board Consideration of an Application for a Regional Facility

Within ninety days after the Executive Director has determined that the Application for a Regional Facility is complete, the Board, after considering the application at a regular meeting, shall approve, conditionally approve, or disapprove the proposed facility. The Board shall approve the proposed facility only if it finds, after considering information presented in the Application for a Regional Facility, any written comments, and testimony received at the meeting, that (1) there will be for the foreseeable future sufficient demand to render the operation of the proposed facility economically feasible without endangering the economic feasibility of the operation of any other regional facility; and (2) that the proposed facility will have sufficient capacity to serve the needs of the region for a reasonable period of years. The Board may impose on an approved regional facility reasonable conditions that may be necessary to carry out the intent of the compact.

## **RULE 4**

### **COMPACT AND HOST STATE SURCHARGES**

#### 4.1 Compact Surcharges

At a regular meeting, the Board shall adopt a compact surcharge to be imposed on each unit of waste received at any regional facility. The Board shall ensure that the total monies collected from such surcharges shall be sufficient to pay the costs and expenses of the Board in the conduct of its authorized activities. The surcharge may be increased or decreased as the Board deems necessary.

#### 4.2 Collection of Compact Surcharges

The operator of each regional facility shall collect the compact surcharge on each unit of waste received at the regional facility or facilities which they operate and shall transmit the sums collected to the Executive Director on a monthly basis. Said sums shall be transmitted within twenty days following the month of their collection by the operator.

#### 4.3 Approval of Host State Surcharges

Any host state that wishes to impose or change a host state surcharge pursuant to Article 5, Section B of the compact, shall notify the Board sixty days prior to the imposition or change in the host state surcharge. The notice of proposed host state surcharge shall include a description of the charges for which the host state is seeking approval, along with an explanation supporting the reasonableness of the requested surcharge. Within forty-five days of receipt of the notification, the Board shall approve or disapprove, the proposed surcharge. In deciding whether to approve or disapprove the proposed surcharge, the Board shall consider the intent of the compact, and the use of the proposed surcharge in light of the host state's laws regarding the purposes of the surcharge.

## **RULE 5**

### **APPROVAL OF REGIONAL FACILITY WASTE MANAGEMENT RATES**

#### 5.1 Contents of Host State Request for Board Approval of Regional Facility Rates

- A. Any host state which seeks Board approval of waste management rates for a regional facility pursuant to Article 3, Section D(3) of the compact shall notify the Executive Director at least thirty days prior to the date on which the proposed waste management rates are to be effective, or at such other time as the Board may determine. This notice shall include a description of the type of waste, the type of management for which the rate is to be imposed, the date on which the proposed rate is to take effect, and a statement justifying the proposed rate as reasonable.
- B. The statement of justification of the proposed waste management rates shall include the following:
  - 1. all information submitted to the host state by the operator of the regional facility;
  - 2. audited annual financial statements prepared in accordance with generally accepted accounting principles adopted by the American Institute of Certified Public Accountants for the operator's most recent fiscal year. The financial statements shall include, at a minimum, (i) information describing the rates which have been charged for each type of waste managed at the regional facility; (ii) data regarding the total local, state, and compact surcharges and fees collected and paid by the operator of the facility; (iii) documentation of the expenses that are reasonable and necessary to operate the facility; and (v) data on the actual return received on invested capital;
  - 3. forecasts prepared according to standards established by the American Institute of Certified Public Accountants of expected income and expenses generated by the operator under current and proposed waste management rates for the twelve-month period beginning on the date the proposed rate would become effective; and

4. such additional information as is necessary to determine that the proposed waste management rates are reasonable in light of the purposes of the compact.

#### 5.2 Notification to Board of Request for Board Approval of Regional Facility Rates

Upon receipt of the notice under Rule 5.1, the Executive Director shall immediately transmit said notice to members of the Board. If any Board member wishes to hold a Board meeting to consider the reasonableness of the proposed waste management rates, the host state and the operator shall be so informed and the Board shall review the proposed rates at a special meeting held as soon as practicable thereafter. If the Board requests a meeting to review the proposed waste management rates, then no proposed waste management rates shall become effective until they are approved by the Board following the meeting. If within fifteen days from receipt of notice under Rule 5.1 no member of the Board has requested that a meeting be held to consider the reasonableness of the proposed waste management rates, the rates shall be deemed approved.

#### 5.3 Board Approval of Proposed Regional Facility Rates

At any meeting held to consider the proposed waste management rates, the Board shall determine whether the rates are reasonable. In determining whether the rates are reasonable, the Board shall consider the purposes of the compact and in so doing may choose to disregard as inappropriate any categories of costs and types of expenses used by the operator to calculate the proposed rates.

#### 5.4 Board Review of Approved Regional Facility Rates

The Board shall review regional facility rates when deemed necessary to further the purposes of the compact, and may increase or decrease the rates based on the actual performance of the operator of the regional facility during the prior twelve-month period preceding the review. For purposes of the rate review, the Board may perform independent audits and inspections of the host state and host state operators, and shall have access to all records necessary for such audits and inspections.

#### 5.5 Approval of State Management Fee

In addition to approving the regional facility rates, the Board shall review and approve or deny any state management fee imposed on a regional facility, including but not limited to, the allocation of state salaries and administrative costs related to administering the regional facility.

## **RULE 6**

### **EXPORTATION OF WASTE FROM THE REGION**

#### 6.1 Purpose and General Provisions

The purpose of this Rule 6 is to implement Article 7 Section B of the Compact which prohibits any person from exporting from the region any waste generated in the region, without authorization from the Board.<sup>1</sup>

Sections 6.1 through 6.9 of Rule 6 apply to all wastes that are to be exported from the region except for the return of sealed sources to the manufacturer or supplier of the sealed sources.

#### 6.2 Export Permit Required

Any person seeking the authorization of the Board pursuant to Article 7, Section B of the Compact to export waste generated within the region shall comply with this Rule 6.

6.2.1 The export of waste, other than return of sealed sources to the manufacturer or supplier of the sealed source, shall require an Export Permit.

6.2.2 No person shall export waste generated in the region, except for the return of sealed sources to the manufacturer or supplier of the sealed source, until the Board or Executive Director has issued an Export Permit pursuant to this Rule 6.

#### 6.3 Export Application

Any person seeking an Export Permit shall file an application with the Executive Director in accordance with the following procedures:

##### 6.3.1 Filing of Application with Executive Director

The applicant shall file the Export Application together with the appropriate Export Application Fee with the Executive Director at least three weeks prior to the date that the export of waste is intended to take place.

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<sup>1</sup> Please note that the state and/or compact in which a disposal facility is located may have independent requirements (such as the issuance of a site use permit) that apply to generators and brokers who wish to dispose of waste.

6.3.2 Application Fee

A. The Export Application Fee shall be calculated as follows:

<u>VOLUME</u>	<u>FEE</u>
0-399	\$200
400-999	\$0.50/cubic foot
1,000 – 9,999 cubic feet	\$250 + \$0.25/cubic foot
10,000 – 99,999 cubic feet	\$750 + \$0.20/cubic foot
>100,000 cubic feet	\$15,750 + \$0.05/cubic foot
	MAXIMUM FEE NOT TO EXCEED \$50,000.

Please note that if an Export Application is approved, a Permit Fee as specified under Section 6.8 must also be paid by the applicant before the Export Permit is issued.

B. Any amendment to an Export Permit that does not result in an increase in the volume of waste shall be accompanied by a fee of \$100.00. Amendments that result in an increase in volume shall be charged the same fee as a new Export Application for the increase in volume.

6.3.3 Contents of Export Application

Applications must be on official letterhead signed by an authorized official of the entity seeking an Export Permit. If the applicant is different than the generator, both the applicant and the generator must sign the application. The Export Application shall contain the following:

- A. The name, address, and telephone number of the person seeking to export the waste;
- B. The name, address, and telephone number of the person who generated the waste;
- C. The type of waste (categorized according to Appendix A) which the applicant seeks to export and certification from the generator as to whether any portion of the waste is NORM/TENORM;
- D. A certification from the generator that the waste was generated within the region;
- E. For each type of waste the applicant seeks to export, the volume of waste (in cubic feet) including the outermost container;

- F. For each type of waste which the applicant seeks to export:
- (1) The quantity of:
    - (a) Byproduct material in curies;
    - (b) Source material in kilograms and the total Uranium and Thorium content in percent by weight;
    - (c) Special nuclear material in grams;
    - (d) Transuranic waste in nanocuries per gram and total weight in grams of the transuranic elements;
    - (e) The summed activity of all naturally-occurring radioactive material (NORM) and technologically-enhanced naturally-occurring radioactive material (TENORM) radionuclides in picocuries per gram and accelerator produced radioactive material (NARM) in nanocuries per gram and total weight in grams of the waste containing NORM, TENORM, and/or NARM; and
    - (f) The concentration of Radium-226 in picocuries per gram.
  - (2) The quantity of waste the applicant seeks to export that could lawfully be accepted for disposal by the Regional Facility.
- G. The date on which the export is estimated to take place;
- H. For waste that will be exported for management prior to disposal, the name and location of all facilities where the management will take place and the volume of waste that will be sent for management at each such facility;
- I. For the disposal of the waste which the applicant seeks to export:
- (1) The disposal facilities at which the waste will be disposed;
  - (2) The volume of the waste in cubic feet including the outermost container that will be disposed of at each disposal facility (following management, if applicable);
  - (3) The date by which disposal will occur at each facility;
  - (4) If any portion of the waste is to be disposed of at the Benton County, Washington facility, an explanation of whether the waste is acceptable at disposal facilities other than the Benton County, Washington facility; and

- (5) For devices containing sources or sealed sources being exported for disposal by the manufacturer of the devices, documentation of:
  - (a) The date(s) when the device(s) were manufactured;
  - (b) The date(s) when the manufacturer transferred the device(s) to a third party; and
  - (c) The date(s) when the third party returned the device(s) to the manufacturer.
  
- J. A certification from the generator that the generator is licensed (for radioactive material) and/or permitted (for hazardous waste), if applicable, and agrees to receive back the waste if its management or disposal is not allowed;
  
- K. For waste that will be exported to another low-level radioactive waste compact, a copy of all necessary documents (if any) issued by the appropriate compact commission(s) authorizing the import of the waste into that compact region; and
  
- L. The reasons that the Export Permit should be granted, including the economic impact on the generator if the Export Application is denied.

#### 6.4 Transmission of Export Application and Comment by Regional Facility

Upon receipt of a complete application in conformance with Rule 6.3, if any portion of the waste is acceptable at the Regional Facility, the Executive Director shall transmit a copy of the application to the Regional Facility for comment and shall notify the Board that an application has been received. Within five (5) days of receipt of the application, the Regional Facility shall submit written comments, if any, to the Executive Director regarding the economic impact of the Export Application on the Regional Facility.

#### 6.5 Factors to be Considered in Review of the Export Application

The Board shall consider the application utilizing the following factors:

- A. The availability of a regional facility appropriate for the disposal of the waste involved;
  
- B. The economic impact of the export of the waste on the regional facilities;
  
- C. The economic impact on the generator of refusing to permit the export of the waste;



- D. The existence of any reciprocal agreements or arrangements with other regional compact commissions or individual states;
- E. Whether the applicant has the authority to import the waste into the compact region in which the management and/or disposal is to take place;
- F. The ability of the generator to store its waste;
- G. The existence of unresolved violations pending against the applicant, generator, management company, or disposal facility involved in the application; and
- H. For waste to be exported to the Benton County, Washington facility:
  - (1) The availability of disposal capacity under the annual volume limitation contained in the Board's contract with the Northwest Low-Level Waste Compact Committee;
  - (2) The volume of waste which has previously been authorized for export to the Benton County, Washington facility during the period in which export is sought;
  - (3) The anticipated needs for disposal capacity at the Benton County, Washington facility for other generators in the Rocky Mountain region during the period in which export is sought;
  - (4) The volume of waste which the applicant has previously been authorized to and/or has disposed of at the Benton County, Washington facility;
  - (5) The volume of waste that was generated in the applicant's state which has been authorized for or disposed of at the Benton County, Washington facility during the period in which export is sought;
  - (6) A comparison reflecting any volumes of waste previously authorized for disposal by the generator for the preceding year and the actual amount of waste disposed of during the previous year; and
  - (7) The availability of a facility other than the Benton County, Washington facility for the disposal of the waste.
- I. Compliance of generator, applicant, and proposed management facility(ies) with Export Permit conditions to provide notices and reports to the Board.

6.6 Decision by the Board on the Export Application

The Board may take one of the following actions on the Export Application:

- A. Approve the Export Permit; or
- B. Deny the Export Permit; or
- C. Approve the Export Permit with conditions.
  - (1) The Board may impose any conditions on the Export Permit reasonably related to furthering the purposes of the Compact and these Rules.
  - (2) The applicant shall either accept the conditions in writing within thirty (30) calendar days of the conditional approval or prior to the export of the waste (whichever occurs first). If timely written acceptance is not received, the Export Permit shall become void.

6.7 Delegation of Authority to the Executive Director

The Board hereby delegates to the Executive Director the authority to act on an Export Application in the circumstances described in Section 6.7 A, below. The Executive Director may at his discretion refer the application to the Board for action rather than exercise this delegated authority.

- A. The Executive Director has determined that the waste is not acceptable for disposal at a regional facility or the export of the waste will not cause or contribute to a significant adverse economic impact on any regional facility.
- B. For waste to be disposed of at the Benton County Washington Facility:
  - (1) The volume cap for the Benton County, Washington facility will not be exceeded;
  - (2) The volume of waste for disposal at the Benton County, Washington facility does not exceed 1,000 cubic feet; and
  - (3) The total volume of waste authorized for disposal by the Board and Executive Director at the Benton County, Washington facility has not exceeded 75 percent of the annual volume cap for the Benton County, Washington facility during the calendar year in which disposal will occur,

or the volume of each generator's waste to be disposed of at the Benton County, Washington facility does not exceed 150 cubic feet in the calendar year in which disposal is sought.

- C. For waste to be disposed at facilities other than the Benton County, Washington facility the volume does not exceed 10,000 cubic feet; and
- D. The Executive Director considers the factors set forth in Rule 6.5.

6.7.1 Executive Director Decision

The Executive Director may take one of the following actions on the Export Application:

- A. Approve the Export Permit; or
- B. Deny the Export Permit; or
- C. Approve the Export Permit with conditions.
  - (1) The Executive Director may impose any conditions on the Export Permit reasonably related to furthering the purposes of the Compact and these Rules.
  - (2) The applicant shall either accept the conditions in writing within thirty (30) calendar days of the conditional approval or prior to the export of the waste (whichever occurs first). If timely written acceptance is not received, the Export Permit shall become void.

6.7.2 Request for Reconsideration

If the Executive Director denies a complete application, the applicant may, within ten days of notification of the denial, file a written request for reconsideration of the application. Any such application will be considered by the Board, de novo, pursuant to Rule 6.5 and 6.6

6.8 Permit Fee

No Export Permit shall be issued until the applicant has paid a permit fee calculated as follows:

<u>VOLUME</u>	<u>FEE</u>
0-100 cubic feet	No Fee
101-399 cubic feet	\$2.00 cubic foot, less the application fee of \$200
400-999 cubic feet	\$1.50 cubic foot

1,000 – 9,999 cubic feet	\$750 + \$0.75/cubic foot
10,000 – 99,999 cubic feet	\$5,250 + \$0.30/cubic foot
>100,000 cubic feet	\$30,250 + \$0.05/cubic foot
	MAXIMUM FEE NOT TO EXCEED \$50,000.

6.9 Agreements to Export

Nothing in this Rule shall limit the authority of the Board to enter into agreements with the United States, regional compact commissions, or individual states for the exportation of waste.

## **RULE 6.10**

### **EXPORTATION OF SEALED SOURCES FROM THE REGION AND APPLICATION FOR DISPOSAL OF SEALED SOURCES AT THE BENTON COUNTY, WASHINGTON FACILITY**

#### 6.11 Purpose

This section of Rule 6 authorizes the export of sealed sources from the region to the manufacturers or suppliers of the items. Thus, a specific export application and permit to return such items to the manufacturer or supplier is not necessary.

This section of Rule 6 also sets forth the procedure for manufacturers and suppliers of sealed sources to obtain authorization from the Board for the disposal of such items at the Benton County, Washington facility. Please note that State of Washington law requires that all generators and brokers using the Benton County, Washington facility must first obtain a site use permit from the State of Washington.

Applications should be submitted at least four weeks prior to the time disposal at the Benton County, Washington facility is intended to take place. No sealed sources may be disposed of at the Benton County, Washington facility until a permit is issued.

Applications for the export and disposal of sealed sources directly from generators in the region to the Benton County, Washington facility should be filed pursuant to Rule 6.1. Applications for sealed sources that are to be managed (e.g., processed/treated), by a person outside the region (broker/processor), other than the manufacturer or supplier of the item, should also be filed pursuant to Rule 6.1.

In section 6.15, items B through I must be separately provided for each last user whose sealed source is included in the application.

There is no requirement that any sealed source be disposed. There is also no requirement that if a sealed source from the region is going to be disposed of, that the disposal must occur at the Benton County, Washington facility. The Board's jurisdiction is limited to "waste." Hence, no export authorization is required for sealed sources that will continue to be used for their radiologic properties.

6.12 Definitions

For the purpose of Rule 6.10, "Sealed Source" means any radioactive material that is encased in a capsule designed to prevent leakage or escape of the radioactive material, and Technicium-99m generators.

6.13 Authorization of Export of Sealed Sources

Sealed sources may be exported from the region to the manufacturer or supplier thereof without additional authorization from the Board.

6.14 Filing of Application to Dispose of Sealed Sources at the Benton County, Washington Facility

Any person seeking the authorization of the Board pursuant to Article 7, Section B of the compact to dispose of sealed sources from the region at the Benton County, Washington facility shall submit a written Application to Dispose of Sealed Sources to the Executive Director. The application filed pursuant to this Rule 6.10 shall be accompanied by an Application Fee to be calculated as follows:

<u>VOLUME</u>	<u>FEE</u>
0-999 cubic feet	\$200 or \$2.00/cubic foot, whichever is greater
1,000 – 9,999 cubic feet	\$1,000 + \$1.00/cubic foot
10,000 – 99,999 cubic feet	\$6,000 + \$0.50/cubic foot
>100,000 cubic feet	\$46,000 + \$0.10/cubic foot
	MAXIMUM FEE NOT TO EXCEED \$100,000

6.14.1 Amendments to an Application to Dispose of Sealed Sources

Any amendment to an Application to Dispose of Sealed Sources that does not result in an increase in the volume of waste shall be accompanied by a fee of \$100.00. Amendments that result in an increase in volume shall be charged the same fee as a new Application to Export Waste.

6.15 Contents of Application to Dispose of Sealed Sources at the Benton County, Washington Facility

The application for permission to dispose of a sealed source shall contain the following:

- A. the name, address and telephone number of the person seeking to dispose of the sealed source;

- B. the name, address, telephone number, and radioactive materials license number of the person who last used the sealed source in the region;
- C. The date the applicant received the sealed source from the last user in the region;
- D. the type of sealed source (major isotope(s)) which the applicant seeks to dispose;
- E. the volume (in cubic feet), including the outermost container that is intended to be disposed, of each sealed source the applicant seeks to dispose;
- F. for each sealed source which the applicant seeks to dispose: the quantity of byproduct material and naturally occurring and accelerator produced radioactive material in curies; and special nuclear material in grams;
- G. the date on which the shipment for disposal is estimated to take place;
- H. a certification from the applicant that the sealed source was last used by the person listed in item 6.15 B;
- I. an explanation of whether the sealed source is acceptable at disposal facilities other than the Benton County, Washington facility;
- J. the reasons that disposal should be permitted, including the economic impact on the applicant of refusing to permit the disposal of the sealed source;
- K. a statement that it is utilizing reasonably available waste minimization practices; and
- L. a statement from the applicant that storage for decay of the sealed source has been considered as an alternative to disposal of the sealed source.

#### 6.16 Transmission of Application to Dispose of Sealed Sources

Unless the Executive Director chooses to exercise the power delegated under Rule 6.17, upon the receipt of an application conforming with the requirements of Rule 6.14 and 6.15, the Executive Director shall notify the members of the Board of the receipt of the application. The Board shall consider the application utilizing the following factors:

- A. the economic impact of the export of the waste on regional facilities;
- B. the economic impact on the generator of refusing to permit the export of the waste;

- C. the availability of a regional facility appropriate for the disposal of the waste involved;
- D. the existence of any reciprocal agreements or arrangements with other regional compact Boards or individual states;
- E. whether the sealed source is required to be accepted at the Benton County, Washington facility pursuant to the Board's contract with the Northwest Low-Level Waste Compact Committee;
- F. the volume of waste which has previously been authorized for disposal at the Benton County, Washington facility during the calendar year in which disposal is sought;
- G. the availability of disposal capacity under the annual volume limitation contained in the Board's contract with the Northwest Low-Level Waste Compact Committee;
- H. the volume of waste which the applicant has previously been authorized to and/or has disposed of at the Benton County, Washington facility;
- I. the volume of waste from the last user's state which has been authorized for, or disposed of at the Benton County, Washington facility during the calendar year in which disposal is sought;
- J. the anticipated needs for disposal capacity at the Benton County, Washington facility for other generators in the Rocky Mountain region during the calendar year in which disposal is sought;
- K. the ability of the applicant and the last user to store the sealed source;
- L. the availability of a facility other than the Benton County, Washington facility for the disposal of the sealed source;
- M. the existence of unresolved violations pending against the applicant or the last user of the sealed source which is included in the application; and
- N. a comparison reflecting any volumes of waste previously authorized for disposal by the applicant for the preceding year and the actual amount of waste disposed of during the previous year.



In ruling on the application, the Board may: (1) grant the application, (2) deny the application, or (3) grant the application subject to conditions. These conditions may include, but are not limited to, fulfilling any obligations which the applicant has to the Board and scheduling the date of disposal of the sealed source. If the Board grants its approval subject to conditions, the applicant shall either accept the conditions in writing prior to the shipment of the sealed source for disposal or the application will be deemed denied.

#### 6.17 Power of the Executive Director: Disposal

The Board hereby delegates to the Executive Director the authority to approve or deny any application submitted pursuant to Rule 6.10, so long as: (a) the volume of sealed source(s) sought to be disposed by the applicant does not exceed 100 cubic feet; (b) the total volume of waste authorized for disposal by the Board at the Benton County, Washington facility has not exceeded 75 percent of the annual volume cap for the Benton County, Washington facility during the calendar year in which disposal is sought; or (c) the authorized volume of sealed source(s) sought to be disposed by the applicant will not exceed 50 cubic feet in the calendar year in which disposal is sought and the annual volume cap for the Benton County, Washington facility will not be exceeded; and (d) the Executive Director uses the criteria set forth in Rule 6.16. Within ten days of approving or denying the disposal of sealed source(s) pursuant to this section, the Executive Director shall give written notice of such action to each member of the Board and the applicant. If the Executive Director denies a complete application, the applicant may, within ten days of notification of the denial, file at the Board's offices a written request for reconsideration of the application. Any such request for reconsideration shall be considered by the Board de novo, pursuant to Rule 6.16.

In ruling on the application, the Executive Director may: (1) grant the application, (2) deny the application, (3) grant the application subject to conditions, or (4) refer the matter to the Board for determination. The conditions may include, but are not limited to, fulfilling any obligations which the applicant has to the Board and scheduling the date of disposal of the sealed source(s). If the Executive Director grants approval subject to conditions, the applicant shall either accept the conditions in writing prior to the shipment of the sealed source for disposal or the application will be deemed denied.

#### 6.18 Agreements to Export

Nothing in this Rule 6.10 shall limit the authority of the Board to enter into agreements with the United States, regional compact Boards, or individual states for the exportation of waste.

## **RULE 7**

### **APPLICATION FOR PERMISSION TO IMPORT WASTE GENERATED OUTSIDE THE REGION**

#### 7.1 Purpose and General Provisions

The purpose of this Rule 7 is to implement Article 7, Section C of the Compact which prohibits any person from managing waste in the region which was generated outside the region, without authorization from the Board and to authorize the import of devices containing sources or sealed sources to the region for return to the manufacturer of the device.

##### 7.1.1 Import Permit Required

No person shall import waste generated outside the region, other than devices containing sources or sealed sources that are to be imported for return to the manufacturer of the device, for management within the region unless an import permit has been issued pursuant to this Rule 7.

##### 7.1.2. Applicability

Sections 7.2 through 7.11 apply to all wastes generated outside the region that are to be imported into the region for disposal at the Clean Harbors Deer Trail Regional Facility (Regional Facility).

Sections 7.12 through 7.21 apply to all wastes generated outside the region that are to be imported into the region for management at facilities other than the Regional Facility.

Section 7.22 shall apply to all devices containing sources or sealed sources that are to be imported to the region for return to the manufacturer of the device.

#### **Import for Disposal at the Regional Facility**

##### 7.2 Import Application for Disposal at the Regional Facility

Any person seeking the authorization of the Board pursuant to Article 7, Section C of the Compact to import waste which was generated outside the region for disposal at the Regional Facility shall submit a written application (“Import Application”) to the Executive Director for permission to import waste. Import Applications along with the applicable application fee should be submitted to the Executive Director at least three weeks prior to the time importation is intended to take place.

No person shall import waste generated outside the region until the Board or Executive Director has issued an Import Permit pursuant to this Rule 7.2 through 7.11.

7.3 Import Application for Disposal at the Regional Facility

The following application materials and application review process shall apply to Import Applications for disposal at the Regional facility.

7.3.1 Import Application for Disposal at the Regional Facility

The applicant shall file the Import Application together with the appropriate Import Application Fee with the Executive Director at least three weeks prior to the date that the import of the waste is intended to take place.

7.3.2 Application Fee to Import Waste for Disposal at the Regional Facility

- A. The Import Application Fee for disposal at the Regional Facility shall be calculated as follows:

<u>VOLUME</u>	<u>FEE</u>
0-1,300 tons	\$200
>1,300 tons	\$100 + 0.07/tons
	MAXIMUM FEE NOT TO EXCEED \$10,000

- B. Any amendment to an Import Permit that does not result in an increase in the weight of waste shall be accompanied by a fee of \$100.00. Amendments that result in an increase in weight shall be charged the same fee as a new Import Application for the increase in weight.

7.3.3 Contents of Application to Import Waste for Disposal at the Regional Facility

The Import Application for Disposal at the Regional Facility must be on official letterhead signed by an authorized official of the entity seeking an Import Permit. If the applicant is different than the generator, both the applicant and the generator must sign the application. The Import Application shall contain the following:

- A. The name, address and telephone number of the person seeking to import the waste;
- B. The name, address, telephone number, and radioactive materials license number of the person who generated the waste;

- C. A description of the type of waste which the applicant seeks to import;
- D. The weight (in tons) of the waste that applicant seeks to import;
- E. The quantity of Uranium and Thorium in the waste in kilograms and in percent by weight;
- F. The summed activity of all naturally-occurring radioactive material (NORM) and technologically-enhanced naturally-occurring radioactive material (TENORM) radionuclides in picocuries per gram;
- G. The concentration of Radium-226 in picocuries per gram;
- H. The date on which the import is estimated to take place; and
- I. A certification from the generator that the generator is licensed and/or permitted to, and agrees to, receive back the waste if it cannot be disposed of.

7.4 Transmission of Application to Import Waste for Disposal at the Regional Facility

Upon receipt of an application conforming to the requirements of Rule 7.3., the Executive Director shall notify the members of the Board of the receipt of the application. In the notification, the Executive Director shall notify the Board whether he intends to exercise the authority under Rule 7.7 to make the permit decision, or whether the Board will make the decision on the permit application.

7.5 Factors to be Considered in Review of Import Applications for Disposal at the Regional Facility

The following factors shall apply to the Board's review of an import application:

- A. The impact of importing waste on the available capacity and projected life of the regional facilities;
- B. The economic impact on the regional facilities;
- C. The availability of a regional facility appropriate for the disposal of the type of waste involved;
- D. The existence of any reciprocal agreements or arrangements with other regional compact Boards or individual states;

- E. The weight, type, radioactivity, and source of waste; and
- F. The existence of unresolved violations pending against the applicant or generator whose waste is included in the application.

#### 7.5.1 Host State Authorization

The Board shall not give its approval to the importation of waste pursuant to this Rule 7 unless or until the authorization of the State of Colorado is obtained pursuant to Rule 10.

#### 7.6 Decision by the Board on the Import Application for Disposal at the Regional Facility

The Board may take one of the following actions on the Import Application:

- A. Approve the Import Permit; or
- B. Deny the Import Permit; or
- C. Approve the Import Permit with conditions.
  - (1) The Board may impose any conditions reasonably related to furthering the purposes of the Compact and these Rules.
  - (2) The applicant shall either accept the conditions in writing within thirty (30) calendar days of the conditional approval or prior to the import of the waste (whichever occurs first). If timely acceptance is not received, the Import Permit shall become void.

#### 7.7 Delegation of Authority to the Executive Director to Act on Import Applications for Disposal at the Regional Facility

The Board hereby delegates to the Executive Director the authority to act on an Import Application for disposal at the Regional Facility in the circumstances described in Section 7.7 A, below. The Executive Director may at his discretion refer the application to the Board for action rather than exercise this delegated authority.

- A. The total weight of waste sought to be imported in the application does not exceed 65,000 tons; and
- B. The Executive Director considers the factors set forth in Rule 7.5; and
- C. The import has been authorized by the State of Colorado pursuant to Rule 10.

7.8 Executive Director Decision on Import Applications for Disposal at the Regional Facility

The Executive Director may take one of the following actions on the Import Application:

- A. Approve the Import Permit; or
- B. Deny the Import Permit; or
- C. Approve the Import Permit with conditions.
  - (1) The Executive Director may impose any conditions on the Import Permit reasonably related to furthering the purposes of the Compact and these Rules.
  - (2) The Applicant shall either accept the conditions in writing within thirty (30) calendar days of the conditional approval or prior to the import of the waste (whichever occurs first). If timely written acceptance is not received, the Import Permit shall become void.

7.9 Transmission of Import Permits for Disposal at the Regional Facility

Whenever an application to import waste for disposal at the Regional Facility has been approved, the Executive Director shall notify the applicant, the members of the Board, the operator of the Regional Facility, and the State of Colorado.

7.10 Request for Reconsideration of Executive Director Denial of Import Application for Disposal at the Regional Facility

If the Executive Director denies a complete application, the applicant may, within ten days of notification of the denial, file a written request for reconsideration of the application. Any such application will be considered by the Board, de novo, pursuant to Rule 7.3 and 7.5.

7.11 Agreements to Import Waste

Nothing in this Rule 7 shall limit the authority of the Board to enter into agreements with the United States, regional facility operators, other regional compact Boards, or individual states to import wastes on a continuing basis.

## **Import for Management at Facilities Other than the Regional Facility**

### 7.12 Import Application for Management at Facilities Other than the Regional Facility

Any person seeking the authorization of the Board pursuant to Article 7, Section C of the Compact to import waste which was generated outside the region for management at any facility other than the Regional Facility shall submit a written application to the Executive Director for permission to import waste. Applications should be submitted at least three weeks prior to the time importation is intended to take place.

No person shall import waste generated outside of the region until the Board or Executive Director has issued an Import Permit pursuant to this Rule 7.12 through 7.21.

### 7.13 Import Application for Facilities Other than the Regional Facility

The following application materials and application review process shall apply to Import Applications for management at any facility other than the Regional facility.

#### 7.13.1 Import Application for Facilities Other than the Regional Facility

The Applicant shall file the Import Application together with the appropriate Import Application Fee with the Executive Director at least three weeks prior to the date that the import of the waste is intended to take place.

#### 7.13.2 Application Fee for Facilities Other than the Regional Facility

- A. The Import Application Fee for facilities other than the Regional Facility shall be \$500 or \$0.10 per cubic foot of waste for which import approval is sought, whichever is greater.
- B. Any amendment to an Import Permit that does not result in an increase in the volume of waste shall be accompanied by a fee of \$100.00. Amendments that result in an increase in volume shall be charged \$500 or \$0.10 per cubic foot of waste for which import approval is sought, whichever is greater.

#### 7.13.3 Content of Application to Import Waste to Facilities other than the Regional Facility

Applications must be on official letterhead signed by an authorized official of the entity seeking an Import Permit. If the applicant is different than the generator, both the applicant and the generator must sign the application. The Import Application shall contain the following:

- A. The name, address and telephone number of the person seeking to import the waste;
- B. The name, address, telephone number, and radioactive materials license number of the person who generated the waste;
- C. Type of waste (categorized according to Appendix A) which the applicant seeks to import;
- D. For each type of waste which the applicant seeks to import, the volume (in cubic feet) and principal chemical form of the waste;
- E. The identity of waste classified as Class A, Class B, or Class C in accordance with Section 61.55 of Title 10, Code of Federal Regulations, as in effect on January 26, 1983; or a list of the radionuclides and their concentrations contained in the waste if it is not Class A, B, or C;
- F. For each type of waste which the applicant seeks to import: the quantity of byproduct material in curies; source material in kilograms; special nuclear material in grams; transuranic waste in nanocuries per gram and total weight in grams of the transuranic elements; and naturally occurring and accelerator produced radioactive material in picocuries per gram and total weight in kilograms;
- G. The facility at which the waste will be managed;
- H. The manner in which each type of waste will be managed;
- I. Following treatment, the volume (in cubic feet) of waste and the quantity of byproduct material in curies; source material in kilograms; special nuclear material in grams; transuranic waste in nanocuries per gram and total weight in grams of the transuranic elements; and naturally occurring and accelerator produced radioactive material in picocuries per gram and total weight in kilograms which will require disposal;
- J. The facility at which the disposal of wastes and residues resulting from waste management will take place;
- K. The date on which the wastes and residues are estimated to be disposed of; and



- L. A certification from the generator that the generator is licensed and/or permitted to, and agrees to, receive back the waste and residues if they cannot be managed or disposed of.

7.14 Transmission of Application to Import Waste to Facilities Other than the Regional Facility

Unless the Executive Director chooses to exercise the power delegated under Rule 7.17, upon receipt of an application conforming with the requirements of Rule 7.13, the Executive Director shall notify the members of the Board and the state in which management of the waste would take place of the receipt of the application.

7.15 Factors to be Considered in Review of Import Applications for Facilities Other than the Regional Facility

The Board shall consider the application utilizing the following factors:

- A. The impact of importing waste on the available capacity and projected life of the regional facilities;
- B. The economic impact on the regional facilities;
- C. The availability of a regional facility appropriate for the disposal of the type of waste involved;
- D. The existence of any reciprocal agreements or arrangements with other regional compact Boards or individual states;
- E. The facility at which disposal of managed wastes and residues resulting from waste management will take place;
- F. The volume, type, radioactivity, and source of waste involved and the volume, type, radioactivity, of waste remaining for further management or disposal;
- G. Whether the waste will be managed at a regional facility;
- H. The length of time the waste will remain in the Rocky Mountain Compact Region for management;
- I. The availability of disposal facilities to dispose of the waste following management; and

- J. The existence of unresolved violations pending against the applicant or generator whose waste is included in the application.

#### 7.15.1 Host State Authorization

The Board shall not give its approval to the importation of waste pursuant to this Rule 7, unless or until the authorization of the state in which said management would take place is obtained pursuant to Rule 10.

#### 7.16 Decision by the Board on Import Applications to Facilities Other than the Regional Facility

The Board may take one of the following actions on the Import Application:

- A. Approve the Import Permit; or
- B. Deny the Import Permit; or
- C. Approve the Import Permit with conditions.
  - (1) The Board may impose any conditions reasonably related to furthering the purposes of the Compact and these Rules.
  - (2) The Applicant shall either accept the conditions in writing within thirty (30) calendar days of the conditional approval or prior to the import of the waste (whichever occurs first). If timely acceptance is not received, the Import Permit shall become void.

#### 7.17 Delegation of Authority to the Executive Director to Act on Import Applications for Facilities Other than the Regional Facility

The Board hereby delegates to the Executive Director the authority to act on an Import Application for Facilities Other than the Regional Facility in the circumstances described in Section 7.17 A, below. The Executive Director may at his discretion refer the application to the Board for action rather than exercise this delegated authority.

- A. The total volume of waste sought to be imported in the application does not exceed 5,000 cubic feet;
- B. The Executive Director considers the factors set forth in Rule 7.15; and

- C. The state in which the management is proposed to occur authorizes the import pursuant to Rule 10.

7.18 Executive Director Decision on Import Applications for Facilities Other than the Regional Facility

The Executive Director may take one of the following actions on the Import Application

- A. Approve the Import Permit; or
- B. Deny the Import Permit; or
- C. Approve the Import Permit with conditions.
  - (1) The Executive Director may impose any conditions on the Import Permit reasonably related to furthering the purposes of the Compact and these Rules.
  - (2) The Applicant shall either accept the conditions in writing within thirty (30) calendar days of the conditional approval or prior to the import of the waste (whichever occurs first). If timely written acceptance is not received, the Import Permit shall become void.

7.19 Permit Fee for Import to Facilities Other than the Regional Facility

No Import Permit for management at facilities other than the Regional Facility shall be effective until the applicant has paid a permit fee of \$500 or \$0.35 per cubic foot of waste for which approval is sought, whichever is greater. This permit fee is in addition to the Application Fee in Rule 7.13.2

7.20 Transmission of Import Permit for Management at Facilities Other than the Regional Facility

Whenever an application to import waste pursuant for management at facilities other than the Regional Facility has been approved, the Executive Director shall notify the members of the Board, the operator of the facility at which the waste is to be managed, and the state in which such management is to take place.

7.21 Agreements to Import Waste

Nothing in this Rule 7 shall limit the authority of the Board to enter into agreements with the United States, regional facility operators, other regional compact Boards, or individual states to import wastes on a continuing basis.

**Import of Devices Containing Sources or Sealed Sources that were Manufactured in the Region**

7.22 Authorization of Import of Devices Containing Sources or Sealed Sources for Return to Manufacturer of the Devices

Devices containing sources or sealed sources may be imported to the region for return to the manufacturer of the device without obtaining an import permit or other authorization from the Board.

**RULE 8**

**RESERVED**

## **RULE 9**

### **ENFORCEMENT PROCEEDING**

The following rule shall apply to the procedures to be utilized at all quasi-judicial hearings held by the Board to enforce violations of the compact.

#### 9.1 Commencement of Proceedings

The Executive Director may commence enforcement proceedings by filing a Complaint with the Board. The Complaint shall be served by putting it in the United States Mail, addressed to the Respondent at its last known address, certified return-receipt requested, or by personal service by a person who is not a party to the proceeding and is not less than 18 years of age.

#### 9.2 The Complaint

The Complaint shall set forth a short and plain statement of the facts which are alleged to constitute a violation of the compact, the provision of the compact or Board rules which the Respondent is alleged to have violated and the possible penalties which may be imposed.

#### 9.3 The Answer

Within 30 days of the service of the Complaint, the Respondent may file an answer to the Complaint. This answer shall respond to the charges with particularity. Any charges not denied will be deemed admitted. Any jurisdictional objections to be raised by the Respondent shall be included in the answer.

#### 9.4 Hearing

The Executive Director shall set a hearing to determine the merits of the Complaint. This hearing may be held at the same time as a regularly scheduled Board meeting. Unless otherwise ordered by the Board, the Respondent shall be given at least 30 days notice of this hearing. The hearing shall be conducted by the Board in the manner that it determines will permit the expeditious, full and fair presentation of the evidence and the arguments of the parties. The following procedures shall be utilized to the maximum extent practicable and shall be utilized absent a contrary order from the Board.

#### 9.5 Pre-Hearing Procedure

At least 30 days prior to the scheduled hearing or such other time as the Board may direct, the Executive Director and the Respondent shall exchange pre-hearing statements together with copies of all exhibits which they may wish to introduce into evidence at the hearing. Each party's pre-hearing statement shall include: (1) a list of all witnesses it intends to call at the hearing, together with the witnesses' addresses and telephone numbers; (2) if any of the listed witnesses are to be offered as an expert, a summary of all opinions to be expressed together with a summary of the witnesses' training, education and qualifications; (3) a list of all exhibits it intends to introduce at the hearing; (4) a statement as to whether counsel will be appearing to represent the party at the hearing. If so, counsel's name, address and telephone number shall be included in the pre-hearing statement. With the permission of the Board and for good cause shown, these lists may be supplemented up to 10 days prior to the hearing, so long as copies of any additional exhibits are provided to the opposing party simultaneously.

#### 9.6 Discovery

There shall be no right to discovery. The Executive Director shall, however, provide the Respondent with any exculpatory information in his possession promptly, but in any event no later than the time period specified in Rule 9.21.

#### 9.7 Hearing Procedure

Unless otherwise ordered by the Board, the hearing shall be conducted in the following manner and in the following order.

#### 9.8 Opening Statements

Each party shall be given an opportunity to make a brief opening statement setting forth the facts which it intends to prove.

#### 9.9 Stipulated Exhibits

The parties shall introduce all stipulated exhibits. The parties are urged to stipulate to the admission of as many exhibits as possible.

#### 9.10 Testimony

The Complainant will present its case through the testimony of witnesses and the introduction of any additional exhibits. The Respondent will then present its case in the same manner as the Complainant. The Board may in its discretion permit limited rebuttal and surrebuttal testimony if such testimony would assist the Board in rendering a fair decision. All witnesses called by either party may be cross-examined by the opposing party.

#### 9.11 Burden of Proof

The burden of proof of a violation shall be upon the Complainant and must be proved by a preponderance of the evidence.

#### 9.12 Rules of Evidence

Formal rules of evidence shall not apply. Any oral or documentary evidence may be received, but the Board may exclude irrelevant, immaterial or unduly repetitious evidence. Further, the Board may exclude any evidence, the probative value of which is substantially outweighed by the danger of unfair prejudice, confusion of the issues, waste of time or needless presentation of cumulative evidence. In considering the admissibility of evidence which would not normally be admissible in a court of law, the Board may consider the trustworthiness of the information. The Board may also look to the Federal Rules of Evidence for guidance.

#### 9.13 Record

Unless otherwise ordered by the Board, all evidentiary hearings relating to the enforcement of violations of Article 7 of the compact shall be recorded by a certified shorthand reporter.

#### 9.14 Witnesses

All witnesses shall swear or affirm to tell the whole truth. In the absence of a certified shorthand reporter, the Chair shall swear in all witnesses.

#### 9.15 Counsel and Non-Appearance

All parties may, but need not, be represented by counsel. In the event neither Respondent nor counsel appear at the hearing, the Board may nevertheless proceed with the hearing.

#### 9.16 Exhibits

The party offering a documentary exhibit into evidence shall submit the original and four copies for the Board and a copy for each party.



9.17 Closing Statements

Following the evidentiary presentations, the parties shall be given the opportunity to make a closing statement.

9.18 Deliberations

Following closing statements, the Board shall meet in executive session, with its counsel, to consider whether a violation has occurred and what penalty, if any, is appropriate. If necessary for a fair decision, the Board may continue the deliberations until another day. The Board may announce its decision at the public meeting, issue a written decision or outline its decision orally to be followed by a written decision. In all cases in which a written decision is issued, the written decision must be approved by a majority of the Board and shall supersede any oral announcements.

9.19 Penalties

In issuing its decision, and upon a finding that the Respondent has committed a violation of Article 7 of the compact, the Board shall impose a penalty. The amount of the penalty shall be determined using the following factors:

- A. The quantity of waste involved;
- B. The amount of damage or potential damage to the public, the environment and the operators of regional facilities as a result of the violation;
- C. The number of times the violator has previously violated Article 7 of the compact;
- D. The benefit which the violator received as a result of the violation; and
- E. The violator's intent and knowledge in committing the violations.

The Board may suspend, either conditionally or unconditionally, all or any portion of any penalty, on such terms and conditions as it believes serve the interest of justice.

## **RULE 10**

### **STATE APPROVAL**

Whenever the approval of a state is required before one of the prohibited acts set forth in Article 7 of the compact becomes lawful, the approval of that state may only be obtained: (1) by the written approval of the member of the Board or the Governor of that state; or (2) by the vote of the member of the Board from that state at a meeting of the Board. Any Board member, however, may note when voting that his or her affirmative vote does not constitute that state's approval of the action. In such instance, separate written approval of the member of the Board or the governor of the state shall be required to indicate approval.

## **RULE 11**

### **PUBLIC INSPECTION OF RECORDS**

#### 11.1 Meaning of Terms

For purposes of this Rule 11, the following terms shall have these meanings:

- A. “Records” shall mean documents, papers, letters, books, maps, tapes, photographs, recordings, and other materials that are maintained by the Board and related to the business of the Board;
- B. “Inspect” shall mean to review; and
- C. “Personnel records” shall mean home addresses, telephone numbers, financial information and other information maintained as part of the employer-employee relationship.

#### 11.2 Custodian of Records

The Executive Director shall be the custodian of the records of the Board.

#### 11.3 Records Available for Inspection

Subject to conditions herein, the Executive Director shall allow any person to inspect records of the Board at reasonable times except those records which are specifically protected from inspection by Rule 11.4.

#### 11.4 Records Not Available for Public Inspection

The following records are not available for public inspection:

- A. The record is not available for inspection under the laws of the United States, the regulation of any agency of the United States, or the laws of the state in which the records are located;
- B. Inspection of the records would violate an order of the Court;

- C. Personnel records of any employee, agent, member of the Board, former employee, former agent or member of the Board;
- D. The Record contains investigative information gathered as part of an on-going administrative enforcement proceeding being brought under Board Rule 9;
- E. Financial information or trade secrets obtained from a person that are confidential or privileged;
- F. Records protected by the attorney-client privilege;
- G. Advisory or deliberative materials assembled for the benefit of the Board, which express an opinion or are deliberative in nature and are communicated solely for the purpose of assisting the Board in reaching a formal decision; and
- H. Records when, in the opinion of the Executive Director, the harm to the public interest of allowing inspection of such records clearly outweighs the public's right to inspect.

#### 11.5 Procedure to Inspect Records

- A. Any person wishing to inspect records of the Board shall make a request in writing to the Executive Director.
- B. The request shall specify the records to be inspected.
- C. As soon as is practicable without interfering with day-to-day conduct of the Board's business, the Executive Director's office shall make the requested records available for inspection at a designated time and place.
- D. If a request to inspect records has been denied, the Executive Director shall provide the requester with a written explanation of the denial.

#### 11.6 Search, Review, Duplication and Special Fees

The Executive Director may charge the following fees for search, duplication and review of the records made available for inspection:

- A. The direct costs to the Board of personnel or contractor time spent to search for Board records;

- B. The direct costs to the Board of personnel or contractor time spent to generate a record requested in a format not used by the Board;
- C. The direct cost to the Board of personnel, contractors or legal advisors spent to review the request and the records identified as responsive to the request; and
- D. A charge for duplicating records, including the actual costs of the copy and staff time expended.

## **RULE 12**

### **DISPOSAL OF IN-REGION NATURALLY-OCCURRING RADIOACTIVE MATERIAL AND TECHNOLOGICALLY-ENHANCED RADIOACTIVE MATERIAL WASTES**

The following rule shall apply to the disposal within the Compact region of naturally-occurring radioactive material (NORM) and technologically-enhanced naturally-occurring radioactive material (TENORM) waste.

#### 12.1 Definitions.

For purposes of this Rule 12, “in-region NORM/TENORM waste” shall mean NORM or TENORM waste generated within the member states of the Rocky Mountain Low-Level Radioactive Waste Compact.

#### 12.2 Purpose.

Disposal of in-region NORM/TENORM waste in accordance with state policies and regulations regarding the disposal of such waste is not subject to regulation by the Board. The Board, however, will continue to regulate the import and export of NORM/TENORM to further the purposes of the Compact. Persons wishing to import NORM/TENORM wastes generated outside the Compact region for disposal at the Clean Harbors facility or for management at any other facility within the Compact region shall obtain authorization pursuant to Board Rule 7, Application for Permission to Manage Waste Generated Outside the Region. Persons wishing to export in-region NORM/TENORM wastes shall obtain authorization pursuant to Rule 6, Exportation of Waste from the Region.

The Clean Harbors regional facility was designated by the Board for the disposal of certain types of NORM/TENORM waste. The State of Colorado in its application asked that the Clean Harbors facility be designated as a “non-exclusive” facility. The purpose of this rule is to implement Colorado’s intent that the Board will not require in-region NORM/TENORM wastes to be disposed of at the Clean Harbors facility, except when such disposal is required by the states.

One of the primary purposes of the Compact is “to ensure the availability and economic viability of sufficient facilities for the proper and efficient management of low-level radioactive waste generated within the region while preventing unnecessary and uneconomic proliferation of such facilities.” Another primary purpose of the Compact is “to restrict management within the region of low-level radioactive waste generated outside the region.” (*See* Article 1. Rocky Mountain Low-Level Radioactive Waste Compact.) Currently, there are adequate disposal facilities for NORM/TENORM waste generated within the Region, and the economic viability

of Clean Harbors does not depend on being the exclusive facility for the disposal of in-region NORM/TENORM waste.

The responsibility for health, safety, and environmental protection regarding low-level radioactive waste is the responsibility of the member states. Each of the member states addresses the disposal of NORM/TENORM waste differently. States allow certain types or levels of NORM/TENORM to be disposed of at facilities other than facilities with radioactive materials licenses. Where disposal of NORM/TENORM is allowed under state law at facilities other than facilities with radioactive materials licenses, the Board finds that it furthers the purpose of the Compact to defer to such state policies and regulations for the disposal of in-region NORM/TENORM waste. There are certain types of NORM/TENORM wastes that the states require be disposed of at facilities with radioactive materials licenses. For example, the Colorado Department of Public Health and Environment requires that radium processing wastes be disposed of at a facility with a radioactive materials license.

The volume of NORM/TENORM generated outside the Compact region is substantial. Generators in states outside of the Compact region may seek to import such waste to the Compact region for disposal. To preserve the availability of facilities within the Compact region for disposal of in-region NORM/TENORM, the Board finds that it furthers the purpose of the Compact to regulate the import and disposal of waste generated outside the Compact region.

Although Uranium and Thorium are naturally-occurring radioactive materials, the U.S. Nuclear Regulatory Commission (US NRC)/Agreement States regulate material in any physical or chemical form that contains by weight one-twentieth of one percent (0.05%) or more of: Uranium, Thorium, or any combination thereof, as Source Material. Regulations of the US NRC/Agreement States require that Source Material be disposed of only at facilities licensed for Source Material. No such facilities currently are licensed within the Compact region. Thus, Source Material wastes must be exported from the Compact for disposal.

12.3 Disposal of In-Region Waste Within the Compact Region. In-region NORM/TENORM waste may be disposed of in the region at such facilities allowed by the policies and regulations of the state in which such disposal will occur.

12.4 Repealer. This rule repeals and supersedes Emergency Rule 2006-01 that was adopted by the Board on September 13, 2006.

## APPENDIX A

### WASTE TYPES

Absorbed gas on charcoal	Thorium or magnesium chips
Absorbed liquids	Tracer material
Absorbed scintillation fluid	Transuranics less than 10 nCi/gm
Animal carcasses	Transuranics 10 to 100 nCi/gm
Aqueous solution	Transuranics greater than 100 nCi/gm
Compacted trash or solids	Unused medical doses
Contaminated bulk	Uranium compounds
Contaminated oil	Uranium shavings
Contaminated plant hardware	
Demineralizers	
Depleted uranium MgF <sub>2</sub>	
Depleted uranium oxides	
Dewatered filter media	
Dewatered ion exchange resins	
Dry activated waste	
Gaseous sources	
Incinerator ash or residuals	
Inorganic or organic liquids	
Institutional lab or biological waste	
Irradiated reactor components	
Liquid medical doses	
Liquid scintillation wastes	
Miscellaneous wastes	
Non-compacted trash or solids	
Non-U mineral extraction waste	
Nuclear medicine generator	
Process residue-sludge	
Radioactive devices or gauges	
Radium compounds	
Sealed sources	
Solidified evaporator wastes	
Solidified filter media	
Solidified ion exchange resins	
Solidified liquids	
Solidified uranium wastes	
Spent silica gel columns	
Thorium compounds	