

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

LA POSADA DE SANTA FE RESORT & SPA
330 East Palace Avenue
Santa Fe, New Mexico 87501

December 3, 2010

ATTENDANTS

Board Members:

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

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

Others:

James De Zetter, University of New Mexico
E. Joseph Hart, U.S. Army, Department of Defense, Joint Munitions Command
James Simpson, Thermo MF Physics
Abigail Cuthbertson, National Nuclear Security Administration
Larry McNamara, Oasis

REGULAR MEETING

Mr. Curry, Chair, called the meeting to order at 1:06 p.m.

The first item on the agenda was the approval of the minutes of the September 14, 2010 Regular Meeting. Mr. Baughman requested a typographical correction be made to the meeting minutes. Mr. Baughman moved to approve the minutes as corrected. Mr. Drozdoff seconded; the motion carried unanimously.

**BRIEFING BY DOE NATIONAL NUCLEAR SECURITY ADMINISTRATION ON
SEALED SOURCE MANAGEMENT**

Mr. Slosky explained that there have been ongoing discussions with the Department of Energy (DOE) about sealed sources. He explained that a report of the Disused Sources Focus Group is in the briefing book under Tab F. He added that Abigail Cuthbertson with the National Nuclear Security Administration (NNSA) has briefed the LLW Forum on a couple of occasions and requested at the last Forum meeting that a working group be set up to move this issue forward. Ms. Cuthbertson is going to facilitate a steering committee meeting in January in Washington to further explore the issue. After this meeting, the LLW Forum will make a decision whether or

not to form a working group. Mr. Slosky has agreed to chair the meeting in January and will be working with other members of the steering committee. The steering committee will be presenting some recommendations to Ms. Cuthbertson in terms of agenda items and participants. Mr. Slosky added that Ms. Cuthbertson made a trip to Denver to discuss concerns of the Board expressed at previous Board meetings. He believes that this is rapidly evolving in terms of defining issues, finding potential solutions, and how to best address these issues. This is a very complicated topic and there are thousands of sources that are very widely used. We all agree that there is a genuine threat from the potential misuse of certain sources. The driving force is really the national security threat that some of these sources pose if in the "wrong hands." He stressed that he feels this is a very important and multi-faceted issue that we all will need to work together on to find solutions to improve the safety and security of sealed sources. He added that the LLW Forum needs to take a holistic view of the problem. Some of the issues that the focus group will need to look more closely at are licensing and regulation, security, health and safety, reuse and recycling, along with management issues including disposal of sealed sources, and not focus on one issue to the exclusion of the others. He is hopeful that the steering committee meeting will initiate more involvement and that the LLW Forum will become active in this issue. Agreement state agencies will also need to become active since this is not just a compact issue. States that have disposal sites will obviously become very interested in this issue from a state perspective. Mr. Slosky added that he invited the EPA to present on the "dirty bomb" exercise that he assisted with in Philadelphia earlier this year. They were unable to travel for this meeting. He also invited Christine Gelles with DOE Environmental Management (EM) to participate; however, she was unavailable.

Ms. Cuthbertson was introduced and began by explaining that she will be working with Mr. Slosky and the LLW Forum to address these important issues. She referred to the questions that Mr. Slosky outlined in the briefing book and will answer them to the extent that she is able. Those that relate more specifically to EM will be brought back to Ms. Gelles for her response. Ms. Cuthbertson provided an overview of the NNSA disused sources program authorities and activities. Under NNSA there are a number of non-proliferation and nuclear security offices. She works for the Global Threat Reduction Initiative (GTRI) department and manages the Offsite Source Recovery Project (OSRP). The GTRI mission is to "reduce and protect high risk nuclear and radiological materials located at civilian sites worldwide." They work both domestically and internationally and provide voluntary physical protection upgrades for sites that have in-use high activity sources, research reactors, or isotope production facilities that use highly enriched uranium. Internationally, they work with regulators to secure storage facilities. They convert research reactors that use highly enriched uranium to use low enriched uranium. Similar conversion efforts are made at isotope production facilities. They also recover disused and unwanted radioactive sealed sources, which is the project that Ms. Cuthbertson manages. Originally, this program operated between the 1970s and late 1990s as a defense program and recovered sources from the DOE laboratory complex. In the late 1990s, it became a DOE EM program and began recovering offsite sources. In 2004, the GTRI was established from

numbers of other NNSA programs; the OSRP program became part of GTRI because there was increasing concern over the security of sources and the potential for terrorists using them in dirty bombs.

Ms. Cuthbertson explained that the authority placed for this program to recover sources falls under the Atomic Energy Act which allows DOE to take title of material in the interest of public, health, safety, and national security. The program's relationship with the Conference of Radiation Control Program Directors (CRCPD), brokers, and other significant players was established to provide support for use of commercial facilities and disposal pathways where they exist. NNSA gives grants to CRCPD annually for work with state regulators for roundups of sources that have commercial disposal pathways; to provide cost-sharing for licensees to use commercial brokers; and to work within the compact system, state regulations, and the commercial sector for disposal.

Ms. Cuthbertson explained that the relationship with EM and its waste program is a historical relationship. There is also a practical relationship since the program allows DOE to take title to sources. When a waste determination is made, OSRP follows Order DOE 435.1 and works with EM to find proper disposal pathways within the DOE system. If a pathway exists, they work to meet waste acceptance criteria of facilities.

Regarding current inventories, Ms. Cuthbertson explained that most of the disused sources that they have taken title to that have not yet been disposed of are stored at two offsite facilities: in Houston, Texas and in San Antonio, Texas. She explained that the OSRP learns of these sources and recovers them as they are registered voluntarily through their website <http://osrp.lanl.gov/>. She added that currently there are approximately 20,000 registered sources. Some of the sources that have commercial disposal pathways are turned over to the CRCPD for coordinating roundups. Some are transuranic sources and some are high-activity beta gamma sources, about 1,000 are at DOE sites and the rest are at commercial sites. Each year, approximately 2,500 to 3,000 sources are registered and they recover approximately 3,000 to 3,500. There are a number of logistical issues that they deal with when recovering sources including the shortage of safety containers and co-location of sources. They have developed prioritization criteria in coordination with the NRC to address the backlog. The main criteria taken into account are the activity, the isotope, the vulnerability of the source (orphan sources are given a higher priority), and if a state regulator is requesting their assistance.

Ms. Cuthbertson added that their anticipated budget is unclear because they are under continuing resolution. Overall, the GTRI budget has gone up and is expected to increase by 67% over last year's budget. The proposed budget is \$25M. The majority of that will be spent on designing transport containers and on subcontracting through Los Alamos for the recovery of the highest activity Cesium and Cobalt sources. Recovery ranges from \$50K to \$1M per device due to the shortage of transport containers and contractors with radioactive materials licensing.

The procedures currently in use for removal of commercially-generated sources begin with the registration at the OSRP website. The high-activity beta gamma recoveries are the most expensive and the highest priority. They subcontract with contractors that have the containers and the ability to work on those devices through Los Alamos. Transuranic sources are handled by Los Alamos staff and placed in special capsules, consolidated, and delivered in a specially designed vehicle used solely for recovery purposes. Smaller beta gamma sources are recovered on a case-by-case basis depending on if they are located in a major metropolitan area, if they are orphaned, or if co-located with something else listed for recovery. Other recovery efforts are made indirectly through CRCPD where DOE does not take title to any of the material and they work with state regulators and licensees to coordinate roundups. In some cases licensees self-ship to OSRP. Ms. Cuthbertson explained that when they take title to the sources they have the licensee and Los Alamos, on behalf of the DOE, sign an Authorization of Transfer of Relinquish Ownership (ATRO) before the sources leave the site of origin. If the source is a self-ship, they may not take title until it arrives at one of their consolidation points. If the source is shipped before they have taken title, the material is subject to compact import and export regulations and fees. If the source is being disposed at a commercial facility, which CRCPD sources generally are, it is subject to site-use fees of the commercial disposal facility as well as applicable import/export fees. Ms. Cuthbertson is confident that the commercial brokers utilized by the CRCPD program are familiar with the import/export regulations and fees.

Ms. Cuthbertson explained that she is aware of two anomalies that happened a few years ago which she discussed with Mr. Slosky and Mr. Drozdoff at length. In one case, the OSRP took title to some radium because it was over 1.2 curies which is the activity limit at the US Ecology facility in Richland, Washington (USEWA). The other case they took title to two cobalt sources from a university in Colorado whose activity they believed at the time exceeded the activity limits at USEWA. They took title to them, however, they learned afterward that there would likely have been commercial disposal pathways for these materials. Before they were able to determine if there was a commercial disposal pathway, it was determined that it would not have been cost effective, which is another criteria under DOE Order 435.1. Ms. Cuthbertson was not aware of how all of the decisions were made at the time, but explained that it is certainly not their intent to take title to materials that have a commercial disposal pathway.

Ms. Cuthbertson explained that the DOE would like the LLW Forum to help move this issue forward and believes that, from a broad perspective, the LLW Forum can bring the right people together. The DOE has resources available to support the recovery and disposition of disused sources; however, it is their goal to establish ways to work within the system in a way that everyone is comfortable with.

Ms. Cuthbertson addressed specific questions posed by the Board. She explained that the DOE understands that non-DOE wastes generated commercially are under the authority of the compact regardless of who contracts with DOE for the removal and disposal and added that wastes

handled by CRCPD or brokers are not exempt from compact authority. She assured the Board that the DOE understands and accepts the need to obtain permits for any non-DOE waste removal or disposal from the Rocky Mountain region. Ms. Cuthbertson added that a few of the questions would need to be addressed by Ms. Gelles with DOE EM. Specifically, any questions relating to the DOE's intended use of the WCS facility or relating to an agreement with USEWA or the Northwest Compact Commission.

Ms. Cuthbertson asked the Board about the State of Washington's plan to stop issuing site-use permits until the middle of March. She asked because they would like to continue working with CRCPD and are working on a pilot case where they will attempt to dispose of material over 30-curies. The goal of the pilot project is to better understand the activity limits at USEWA because the branch technical division talks about concentration averaging that the NRC issued is 30-curies per 55-gallon drum. The sources they are most concerned about can be hundreds or thousands of curies without being classified as GTCC. Once Washington State resumes issuing site-use permits they will begin working with CRCPD in providing technical assistance and funding so they can test the limits at USEWA.

Ms. Cuthbertson explained that the DOE is committed to ongoing communication with the states and compacts and will be meeting with the steering committee in January. She is hopeful that the LLW Forum will assist in keeping everyone engaged in future discussions.

Mr. Drozdoff added that he had the benefit of meeting with Ms. Cuthbertson earlier this week and considers the discussion very helpful. He explained that he is encouraged by their commitment to working with the states and compacts. His main concern is that as these issues continue to develop it will be important to have established procedures and communication.

Mr. Curry asked if Ms. Cuthbertson has a sense if the NNSA and the DOE EM are on the same page. Ms. Cuthbertson explained that she works very closely with EM and coordinates with them on a weekly basis and often a daily basis. She believes that to the extent that there are overlapping interests and equities they are on the same page. Mr. Curry expressed that he has been involved in recent discussions with DOE EM regarding the cleanup of sealed sources at Los Alamos and has witnessed different approaches between the NNSA and EM. DOE has acted as the "big dog" and Mr. Curry hopes that going forward the NNSA and the LLW Forum are not put in a position of submission as he has seen happen at Los Alamos. As an example of this, he further explained that there is a consent order with Los Alamos for its cleanup from fence to fence dealing with almost everything with the exception of radionuclides. There have been numerous occasions where the State of New Mexico, through this order, stipulated and assessed penalties. The DOE has held the position of paying penalties and getting in compliance with the order while the NNSA has refused to pay and intended to pursue dispute resolution. There has been a lot of miscommunication and confusion as to the outcome. He hopes that two different messages are not being carried forward. Ms. Cuthbertson explained that she works closely with

the DOE general counsel and NNSA general counsel and is hopeful that all legal and programmatic issues will be well coordinated. She further stated that any discrepancies or mixed messages should be brought to her attention so that she and Ms. Gelles can determine where the confusion is coming from.

Mr. Slosky added that the CRCPD has obtained export permits for a number of years and has no concerns over their practices. He echoed that it makes a lot of sense to the Board that sealed sources with commercial disposal pathways go through CRCPD without DOE taking title. He asked for clarification on the self-shipped materials being transferred outside the region to the DOE, whether shipped directly to the DOE or to contractor facilities, requesting that the DOE commit to not accepting materials unless the licensee has obtained an export permit from the Board. Ms. Cuthbertson explained that in some cases they self-ship to Los Alamos and in some cases they ship to Texas depending on the isotope and the materials. However, she could not think of any cases where in-region sources would be self-shipped to a Texas facility and stated that if she became aware of a case she would speak with Mr. Slosky beforehand. Mr. Slosky pointed out that he is aware of an instance where a Cobalt source was self-shipped from the University of Colorado to outside of the region. They obtained an export permit; however, in the process he learned that a number of other sealed sources were self-shipped to a facility outside of the region without obtaining an export permit. He clarified that any sealed sources being shipped to Los Alamos would not require an export permit; however, he emphasized that anything being shipped from within the Rocky Mountain region to anywhere outside of the region must be authorized by the Board with an export permit unless it is known in advance that the sealed source will be reused or recycled. He stated that in the Board's opinion this is not a gray area. Ms. Cuthbertson stated that she will take this back to their lawyers for official clarification and will commit to speaking with Mr. Slosky in advance if she becomes aware of any interest in self-shipping to a facility outside of the compact. Mr. Slosky added that he would like the department to take an official stand on this issue and explained that one of the key issues is making sure that the compact is being complied with.

Mr. Slosky also brought up a concern over the sealed sources that are either in the DOE's or a contractor's physical possession. He presumes that the DOE has already taken title to these materials and asked if EM or NNSA is ultimately responsible for disposing of those sources. Ms. Cuthbertson responded that they are required to comply with DOE Order 435.1 and follow the DOE waste acceptance criteria at the DOE sites. The only time the EM would be involved is if under Order 435.1 they were trying to dispose of something commercially. She knows that the site offices in Carlsbad and in Nevada work with the states and are more involved in reviewing the waste profile and determining if it meets the waste acceptance criteria. Mr. Slosky asked specifically if any of the waste in the DOE's possession would be disposed of commercially. Ms. Cuthbertson explained that she is not aware of any material that they hold title to that will be disposed of commercially. Mr. Slosky responded that once the DOE takes title it leaves the compact realm, but then clearly the states in which the DOE sites are located have issues that

need to be addressed. Drozdoff added that the Environmental Protection department's focus is on determining if the various waste profiles and state requirements are met.

Mr. Slosky changed the discussion to the site-use permits issued by the State of Washington. He explained that the woman who has administered this program for decades retired last month. As a result, the program is in the process of being transferred from the Department of Ecology to the Department of Health. He asked why this is of interest to the NNSA since site-use permits are used for commercial disposal. Ms. Cuthbertson explained that the interest is solely for the CRCPD.

Ms. Green asked how, when, and by whom were the decisions made for DOE to take title to and recover materials in the past. Ms. Cuthbertson explained that the sources are voluntarily registered and applied to the prioritization criteria and logistical considerations. The Los Alamos team implements the project and makes decisions based on those factors on a day-to-day basis. When something unusual comes up it is brought to Ms. Cuthbertson on a case-by-case basis and she works with management to make a decision on that level. Ms. Green explained that she is pleased that Ms. Cuthbertson will be working closely with the LLW Forum which should cut down on the confusion and help manage what has become a jurisdictional nightmare. She reiterated that going forward it is important that the DOE not take title to material where commercial disposal is available. Her concern is on how this commitment will be implemented when those involved have moved on. She asked will this be documented in a regulation or directive to guarantee that this is carried out? Ms. Cuthbertson believes that at Los Alamos there is institutional memory that will continue even as people turn over there. She is confident that with her active involvement with management and the various departments that the awareness of this commitment has spread throughout. Ms. Green asked that this topic remain on the table. Mr. Slosky added that he believes it would be helpful prior to the January Steering Committee meeting to have program principles written down. He explained that it would be helpful if the NNSA could put some of these basic principles down in writing for clarification. For example, the Northwest Compact expects DOE-owned sealed sources to be shipped to its compact at some point as Mr. Slosky also expected before the discussion a few minutes ago. This could be a draft working document that would get everyone on the same wave length and could easily clear up confusion. Ms. Cuthbertson responded that from a programmatic perspective everyone involved will know that this is their plan; however, she does not think that legal counsel would allow her to sign anything that might be legally binding or hinder DOE action. Mr. Slosky explained that he is looking for a working document that would articulate what their plans are so that everyone could finally have some clarity.

Ms. Green asked if the DOE will be seeking some sort of import agreement with the WCS facility in Texas that would allow the CRCPD to dispose of material there. Ms. Cuthbertson explained that she at this time is not looking at any agreements between her office and any of the facilities. She is willing to discuss these issues, but is not in a position to make an agreement.

Ms. Green explained that the only way to import to USEWA or to the Texas compact is with an agreement. Ms. Cuthbertson explained that she wants to assist the CRCPD with disposal issues and will continue in dialog with each of the sites, but she has no plans to enter into a formal agreement with any of them. Ms. Green simply asked if they would consider the WCS facility for commercial disposal in addition to the USEWA facility. Ms. Cuthbertson answered that they would.

Mr. Slosky stated for clarification that the DOE EM has contracts with the commercial disposal sites that all of DOE may utilize. He presumes that this model will be followed. Ms. Cuthbertson responded that these contracts are completely EM's decisions.

BRIEFING BY DOD ON SEALED SOURCE DISPOSAL

Mr. Hart began the discussion by explaining that he is with the Department of Defense (DOD) Joint Munitions Command and the Executive Agency for disposal of RadWaste for the Air Force, Navy, Department of Homeland Security, and other departments. Currently, the only sealed source management issues facing DOD are that there is no outlet for in-flight blade inspection systems (IBIS) for helicopters which are Sr-90 devices about 500 microcuries and chemical agent detectors (CAM and ACADA) which are Ni-63 sources about 10 mCi. They are currently exploring all options including returning them to the manufacturer, foreign facilities, DOE OSRP, and the WCS facility in Texas. He explained that the DOD has been assisted by OSRP in removing GTCC transuranics in the past. The DOD is open to any additional outlets which could include DOE facilities and programs. He is not aware of any sealed source management issues that the DOD has had with the Rocky Mountain Compact. The DOD has in the past sent sealed sources to USEWA in accordance with their waste acceptance criteria. He explained that the Army is trying to replace radioactive items with non-radioactive equivalent items. Mr. Hart looked at permits issued by the Rocky Mountain Compact over the past few years and has noticed a dramatic downward trend of material to be disposed of and a reduction in the number of export permits received.

Mr. Slosky stated that he is aware that the Board has issued many permits over the years and wanted to make sure that the DOD is aware that any sealed sources (other than GTCC or those exempt according to the Compact statute) are subject to the Board's jurisdiction whether they are shipped to the DOE or anywhere outside of the region unless the DOE takes title to them before they are shipped. He pointed out that 91B material is not exempt, as stated on Mr. Hart's slide, and explained that there was a similar, but not identical, exemption in the Compact. Mr. Slosky knows that the DOD has claimed a much broader exemption with which the compacts do not concur. He added that it might be important to refresh DOD's awareness of the Compact statutes for clarification of its exemptions. Mr. Slosky used an example of contaminated dirt at Fort Greeley, Alaska that DOD wanted to dispose of and DOD went to the Northwest Compact claiming that it was exempt under 91B, but it was not exempt. The Northwest and Rocky

Mountain Compacts exclude certain things similar to 91B, but are not the same. Mr. Slosky explained that 91B is a provision in the Atomic Energy Act, but an exemption for 91B is not contained in any of the compacts. Each Compact has certain exclusions and exemptions so the DOD should go to each to determine what is excluded. Mr. Hart appreciated the clarification and agreed to take the information back to his department. Mr. Slosky added that the Rocky Mountain Compact statute is included in the briefing book.

CONSIDERATION OF AMENDMENT TO RULE 7 – WASTE IMPORT, TO CHANGE MEASUREMENT OF WASTE FROM CUBIC YARDS TO TONS

Mr. Slosky directed the Board to Tab G. He explained that this amendment proposal is based on a recent discovery that the Board is issuing import permits in cubic yards while the Regional Facility is reporting waste receipts in tons. Since the conversion between cubic yards and tons varies due to the density of the particular waste stream or shipment, there is the potential for a discrepancy between the waste volume approved in the import permit, the waste receipt measurement, and compact surcharge. Mr. Slosky is proposing that Rule 7 be amended to measure waste in tons rather than cubic yards. He based the proposed amendment to Rule 7 on a conversion formula assuming 1.3 tons per cubic yard which is a “rule of thumb” in the landfill industry. The fees have been adjusted based on this conversion and are revenue-neutral. The Regional Facility operator has no expressed concerns over the proposed amendment and Mr. Slosky considers this a housekeeping matter, not a substantive change. Ms. Green added that she reviewed the proposed amendment for any hidden legal implications and found nothing of concern.

Mr. Drozdoff moved to approve the proposed amendment to Rule 7 which shall be effective January 1, 2011. Mr. Baughman seconded; the motion carried unanimously.

U.S. 10TH CIRCUIT COURT OF APPEALS DECISION IN *ENERGYSOLUTIONS* v. NW COMPACT, ET AL

Ms. Green announced that the 10th Circuit Court of Appeals overturned the Utah District Court’s decision writing a clear decision that compact language controls, and that the arguments that *EnergySolutions* (ES) was making as to why it did not have to comply with the Northwest Compact to import waste from Italy to the Clive facility were all based on a reading of the 1980 Act, which has been completely repealed by the 1985 Act. ES’ argument was that the compact, which by implication means any compact, only has authority as written in 1985 Waste Policy Amendments Act. The State of Utah, the Northwest Compact, and the Rocky Mountain Compact, argued that the compact itself is a federal statute, and the compact itself determines what is or is not subject to compact authority. The Court of Appeals wrote a very good opinion. Even though the Southeast Compact lost its case in the U.S. Supreme Court on whether or not North Carolina had to pay penalties for withdrawing from the Southeast Compact and not siting

a facility, that case was helpful because the Supreme Court decided that the language of a compact controls, and it is federal law. ES has publicly said that they are not interested in pursuing this further and has already withdrawn its application from the Nuclear Regulatory Commission (NRC) to import the waste from Italy. Ms. Green added that yesterday was the deadline for ES to file any motion for reconsideration, and she did not see anything come through her office. The 10th Circuit Court of Appeals sent out its mandate to the District Court for a ruling in keeping with its decision. Ms. Green is expecting within the next few weeks to receive a voluntary motion to dismiss from ES based on what has been released to the press. If they receive nothing within the next month from ES, efforts will be made to resolve these issues. Ms. Green added that she believes that the court's decision will make the compact system better understood.

Mr. Slosky added that there was initial concern since the Court of Appeals was taking so long to decide this case, but it is clear that the court was holding up the decision for the U.S. Supreme Court's decision because it was cited numerous times. He considers this a huge victory because even though the Southeast Compact Commission lost its case in the U.S. Supreme Court, it was clearly determined that compacts have authority as stated in their compacts. He explained that ever since January 1986 when the compacts received their exclusionary authority, he is approached regularly by people who believe that the compacts cannot regulate export, management, etc. because it is not written in the Policy Act. The Rocky Mountain Compact has many authorities in its text that are not reflected in the Policy Act and he has always argued that it is written in our compact and that Congress consented to same. This ruling validates all of the various authorities that this Board has been exercising for over 20 years. Ms. Green added that if this case had been decided in ES' favor, it would have been a huge loss to the compact system across the country which explains why six of the compacts joined as amici in this case. Beyond the low-level radioactive waste compact system, it also would have had considerable implications on other compact systems such as river compacts, port of authority compacts, etc. because it would have suddenly made compacts secondary rather than co-equal to any other federal statute.

STATUS OF CLEAN HARBORS REGIONAL FACILITY

Mr. Slosky directed the Board to Tab G for the monthly Clean Harbors Deer Trail Facility (CHDTF) waste receipts summary and opened the discussion by stating that, as the report shows, they are receiving small quantities of low-level waste from both inside and outside the Compact region. He added that he has a general sense that the disposal activity is increasing a bit.

Mr. Baughman updated the Board on the status of the license application and RCRA permit renewal. He explained that public hearings were held as scheduled in October with little turnout and no comments. He expects that the decisions will be made before the end of the calendar year. He added that negotiation discussions between CHDTF, Colorado Department of Public

Health & Environment (CDPHE), and Adams County continue and no agreements have been made at this point.

UPDATE ON NATIONAL DEVELOPMENTS

Mr. Slosky updated the Board on the waste blending issue and believes that the Nuclear Regulatory Commission (NRC) has charted a course of action. The NRC is planning to update their guidance and will continue an Unusual Waste Streams rulemaking. Up to this point, the NRC has been focused on Depleted Uranium; however, it intends to include blending as part of this effort. He added that Utah and Texas have regulatory prohibitions on blending and that Utah is very concerned about this matter. He expects to have an update next spring and will keep the Board posted on any updates.

Mr. Slosky provided an update on Areva's Eagle Rock Enrichment Facility in Idaho. The NRC recently issued a safety evaluation report and will be released its EIS shortly. Areva is expected to receive its license within a year.

Mr. Slosky also reported that Urenco USA (UUSA) experienced a significant shut down to complete seismic retrofits. He is not aware if they are operational again. Mr. Slosky will invite UUSA to an upcoming meeting of the Board.

Mr. Slosky stated that the County Bond Election was finally confirmed by the Texas Supreme Court for the Texas WCS facility. He believes that bonds have been issued or will be shortly and is told that they are very close to beginning construction which is expected to take a year. He added that the Texas Compact Commission is functioning again and has proposed a rule (for the second time) on waste import and export.

Ms. Green explained that she has reviewed the proposed rule from the Rocky Mountain and Northwest Compact Commissions' perspectives and would like to request that the Board authorize her to file an official comment before the rulemaking period ends on December 26, 2010. She added that the gist of the comment will be to support for their efforts in participating in the process that keeps the compacts on the same page. There were a couple of items that she noted in their proposed rule. They will be requiring export authorization from a compact before someone can export from the region similar to ours, taking into account the availability and capacity of the facility. However, there is no requirement in the current export rule that the compact to which waste is being exported must authorize the import. Regarding the proposed import rule, there is nothing that would require approval of the export from its compact before an import authorization is made. There are no requirements relating to sealed sources. There are no requirements relating to export for management other than to notify the Compact if exporting for management. Ms. Green would like to discuss these items in detail with Mr. Slosky to assess whether or not the Board should be concerned. She further explained that the Texas Compact is set up in the same way as the Northwest Compact requiring that in order to import to that region,

there must be an agreement between the compact and party seeking to do so. This agreement may be with any person, state, or regional body. It may make sense for the Rocky Mountain Board to establish an agreement with the Texas Compact at some point down the road. She added that the Southeast Compact in their last meeting actually passed a resolution that as soon as the Texas facility is up and running, the Southeast Compact will seek an import agreement for its generators. Ms. Green asked the Board if she could obtain authorization to work with Mr. Slosky on preparing a letter serving as an official comment on behalf of the Board which the Board members would have ample time to review and approve. The Board agreed.

Mr. Slosky reported that for a number of years the LLW Forum has moderated a panel at the Waste Management Conference in Arizona. This year, as Chair of the LLW Forum, Mr. Slosky will moderate the panel titled "Hot Topics of Low-Level Waste" and he will be speaking about the 10th Circuit Court of Appeal's decision. At the end of the conference, the NRC will be leading a workshop on the 10 CFR 61 overhaul which has a lot of implications to the compacts and agreement states. Mr. Slosky plans to attend this workshop.

DISCUSSION OF FISCAL YEAR 2009-2010 AUDIT

Mr. Slosky directed the Board to Tab J and explained that this was previously distributed to the Board members. As usual, the audit does not raise any issues. Mr. Curry added that he sees value to having these audits performed annually and is curious if the other compacts do the same. Mr. Slosky explained that most if not all do. He added that the statute requires an annual audit which has been performed each and every year for 25 years now and commented that there has never been a real issue reported. The only issue that was ever reported was that because of the size of the Board's staff there was not a double check on things because there are not enough people to perform a double check. He explained that the staff is bonded and has been since the early 90s when it started having significant cash. The Board began having the auditor look at certain monthly financial information on a monthly basis approximately 8-10 years ago. Additionally, Mr. Slosky has an employee of his consulting firm handle the mail and log all checks received so there is an added division of responsibilities.

REVIEW OF DRAFT 2010 ANNUAL REPORT

Mr. Slosky directed the Board to Tab K and explained that there is a statutory requirement to file an annual report to state Governors and legislatures by December 15 of each year. He encouraged the Board members, if they haven't already done so, to look at this and get to staff any comments. Ms. Green has agreed to update and revise the status of the ES litigation. He explained that the shaded areas will be updated next week with financial and permit information through November 30, 2010. He requested that all comments and questions be submitted to staff by Wednesday, December 8, 2010.

EXECUTIVE DIRECTOR'S REPORT

Mr. Slosky directed the Board to Tab L and reported that the Board had \$188,783 in liquid assets as of October 31, 2010. He added that \$260,000 of invested funds will be maturing in January 2011 and proposed that in early February or late January 2011 the Board schedule a telephonic meeting to look at investment options. He explained that one of the reasons the Board has been carrying so much liquid cash is due to the legal expenses and may recommend investing more than the \$260,000 after reviewing the budget projections for the upcoming year since legal fees will be significantly under the budgeted amount.

BUDGET VS. EXPENDITURE COMPARISON

Mr. Slosky explained that the Board is 33.3% through the fiscal year and expenditures are currently at 21.3%. He explained that Contract Services are slightly over the category estimate due to the office move and new computer server. The Furniture/Equipment/Computer category is higher for the same reasons. He further explained that the Accounting category appears high because the annual audit has been performed and paid for. He does not anticipate any problem completing the fiscal year at or under budget for any of these categories.

The following reports indicate the export permit revenue of \$14,649 which is running about half from previous years. He is not certain if we are seeing a downward trend of waste generation in general. He suspects that it may be a function of the economy.

The last reports in the briefing book are the export permits which show nothing remarkable.

Mr. Baughman took a few minutes to honor and recognize Mr. Curry for his service to the Board over the past seven years and presented him with a plaque noting his contributions as Chair and New Mexico Member.

With no further questions, Mr. Curry moved to adjourn Regular Meeting of December 3, 2010 at 3:05 p.m. Mr. Drozdoff seconded; the motion carried unanimously.