

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

ELDORADO HOTEL
309 West San Francisco Street
Santa Fe, New Mexico

March 25, 2005

ATTENDANTS

Board Members:

Larry Boschult, Nevada
Ron Curry, New Mexico
John Marshall, Colorado

Barbara Green, Legal Counsel
Leonard Slosky, Executive Director
Vicki Green, Recording Secretary

Others:

Dave Martin, Core6 Solutions
Jon Goldstein, New Mexico Environment Department
Richard Conley, Department of Defense
Marshal Cohen, Louisiana Energy Services (LES)
Rod Krich, LES
John Lawrence, LES
Tannis Fox, New Mexico Environment Department
Cass Thompson, School
Don Peterson, Los Alamos
William R. Stratton, Los Alamos
Jim DeZetter, University of New Mexico
Ralph Becker, University of New Mexico
Mark Turnbough, National Energy Facility
Glen A. Graves, Los Alamos
Tim Fink
Pamela Bamgartel
Penelope McMullen, Loretto Community, Sisters of Loretto
Geoff Petric, Nuke Watch
Tina Larkin, Santa Fe New Mexican

REGULAR MEETING

Mr. Boschult, Chair, called the meeting of the Rocky Mountain Low-Level Radioactive Waste Board (Board) to order at 9:08 a.m.

ELECTION OF OFFICERS

The first item on the agenda was the election of the Vice Chair/Secretary/Treasurer. After some discussion, Mr. Marshall moved to make Mr. Curry Vice Chair/Secretary/Treasurer for the remainder of fiscal year 2004-2005. Mr. Boschult seconded; the motion passed unanimously.

APPROVAL OF THE MINUTES

The second item on the agenda was the approval of the minutes of the November 19, 2004 Regular Meeting. Mr. Curry moved to approve the minutes of the November 19, 2004 Regular Meeting as submitted. Mr. Marshall seconded; the motion carried unanimously.

CONSIDERATION OF AMENDMENT FROM THE U.S. ARMY CORPS OF ENGINEERS CONCERNING SHATTUCK WASTE EXPORT

Mr. Slosky referred the Board to Tab G, which contained a request filed by the U.S. Army Corps of Engineers (USACE) to amend the permit for the Shattuck waste. The amendment requests an increase in the volume of waste from 149,000 cubic yards to 220,000 cubic yards. He explained that the amendment fee was to be transferred via wire on Monday, March 28, 2005. He suggested that the Board approve the amendment contingent upon receipt of the fee.

After some discussion regarding the Board's fees, Mr. Boschult moved to approve the February 25, 2005 request to amend Permit No. USACE-02-1, subject to the receipt of the required application fee. Mr. Curry seconded; the motion passed unanimously.

BRIEFING BY LOUISIANA ENERGY SERVICES & PUBLIC COMMENT

LES provided the Board a briefing on the proposed uranium enrichment facility in New Mexico. This portion of the meeting was transcribed by a court reporter. A copy of the transcript can be ordered by sending a request, along with \$25.00, to the Rocky Mountain Low-Level Radioactive Waste Board.

Following briefing and discussion, the Board continued with the rest of the meeting.

STATUS REPORT ON ANTICIPATED APPLICATION FOR DESIGNATION OF THE CLEAN HARBORS FACILITY IN COLORADO AS A REGIONAL LIMITED LLW DISPOSAL FACILITY

Mr. Slosky reported that the Board is likely to receive a formal application in April or May. The state asked for comments on the draft application as well as the radioactive materials license application. Legal Counsel and Mr. Slosky have reviewed the documents. Ninety-five percent of Mr. Slosky's review was on the draft application to this Board and he only glanced at the radioactive materials license application. Mr. Slosky and Ms. Green have prepared a draft letter dated March 23, 2005 that they are proposing as comments from staff back to the Colorado Department of Public Health and Environment. Mr. Slosky recommended, since there had not been application filed before the Board, that the Board itself not provide comments at this time. He felt it was appropriate for the staff to provide comments, and he wanted the Board to be comfortable with staff's comments. Ms. Green explained that the letter contains, for the most part, questions about issues that she and Mr. Slosky had been unable to understand from the submitted materials. After some discussion, the Board decided to wait until the Executive Session to make a decision regarding the comment letter.

CONSIDERATION OF AMENDMENT TO RULE 6 - WASTE EXPORT, CONCERNING REQUIREMENTS REGARDING A REGIONAL DISPOSAL FACILITY

The next item under Tab I contained the proposed amendments to Rule 6 regarding a potential regional disposal facility. Mr. Slosky explained that the Board had not had a regional facility in over a decade, and Rule 6 was not currently structured to deal with a regional facility. Mr. Slosky and Ms. Green have drafted some proposed changes to Rule 6 to provide the Board and the Executive Director the information needed to decide whether to grant an application for waste export.

The way that the Board's statute is structured, if there is a regional facility, waste that falls within the waste acceptance criteria for that facility should go to that facility, unless certain criteria are considered. The default position is that the waste goes to the regional facility. For people to export waste and not go to the regional facility, the Executive Director or the Board needs to consider the criteria that are spelled out in the statute and the bylaws. Mr. Slosky recommended that the Board not adopt the draft amendments today but discuss the potential changes. Mr. Slosky suggested the Board distribute the proposed rule changes to its normal mailing list when it provides its next public meeting notice. Then, the public would have, in advance of the Board taking action, the actual proposed changes to provide for more public review.

Mr. Slosky reviewed the proposed changes with the Board. He explained that there were no recommended changes to section 6.1 and 6.2, or Rule 6.3.

Mr. Slosky referred the Board to the proposed addition of 6.3 I. He explained that if waste is going to the regional facility, then no export application would be submitted. For export applications where applicants are proposing to dispose of waste other than at the regional facility, we are now asking for several pieces of information so that the Board and the Executive Director will have adequate information to evaluate the request under the Compact criteria.

The first proposed change under 6.3 I(1) is certification from the generator as to whether it is waste primarily from radium processing (which is what draft application from Colorado is proposing for the regional facility). All the details are based on Colorado's draft application. If the actual application ends up being different in terms of the universe of waste that Colorado is proposing, then this rule will need to be changed to mirror what Colorado is proposing and, more particularly, what this Board may approve.

The substance of section 6.3 I would have to be coordinated and tailored exactly to the universe of waste that Colorado is proposing and this Board ultimately may approve. Ms. Green explained that this is another way of saying are you planning to export something that the regional facility is licensed to accept and, if you are planning to do that, why? Mr. Slosky explained that the way the compact statute is structured; waste exported is prohibited unless you meet certain criteria. That is why the threshold question is, is this waste that could go to the regional facility? If it is not, the waste export application is approved. If it is waste that could go to the regional facility, then the Board or the Executive Director have to consider the criteria that are spelled out in the statute and the rules. So, (1), (2), and (3) are the informational items to know whether the waste is acceptable at the regional facility. These are the three basic waste acceptance criteria that Colorado has in its draft application.

In item 4, we have to deal with the two criteria in the statute. The first is 6.3 I(4)(A) the economic impact of the export on the regional facility and (B) whether there is capacity for the waste at the regional facility. So, under this item we are asking for a letter from the operator of the regional facility providing information on the two statutory criteria, (A) and (B). Ms. Green explained the thinking was that the best source for that information is the regional facility operator, itself. Mr. Slosky noted that the other reason to structure it this way is to avoid, in routine applications, having the Board convene a hearing. The intent is to try to get the necessary information in writing so that the Board can consider the application telephonically where it feels appropriate.

In item 6.3 I(5) is the third of the statutory criteria, and that is the economic impact of refusing the export on the generator. So, under our statute this is really a balancing act. If people want to export waste that would otherwise be acceptable at the regional facility, we are balancing the economic impact on the regional facility of not receiving the waste and, therefore, not receiving the fees versus the economic impact on the generator. This is intended to get the information necessary to assess this.

Item J. is the previous Item M, just reordered.

The next change is under 6.6. This is the part of the rule that delegates to the Executive Director authority to approve or deny applications. There was discussion regarding the delegation of authority and the application process. Mr. Slosky explained that the addition of 6.6 C is an attempt to deal with now having a regional facility. If the Executive Director determined that either it is not acceptable at the regional facility, then it would not go to the Board; and the Executive Director could approve it. Or, if it was acceptable at the regional facility but the evidence which would be a statement from the operator that it would have an insignificant impact on the regional facility, then the Executive Director could approve it. Mr. Boschult suggested that perhaps "insignificant" needed definition. After much discussion, it was determined that the Ms. Green would redraft the proposed changes which would then be sent out for Board and public comment.

The need to determine compact surcharges and other costs were also discussed.

STATUS OF ISSUES CONCERNING THE U.S. DEPARTMENT OF DEFENSE

Per the Board direction at the November 19, 2004 meeting, Mr. Slosky sent a letter to the Department of Defense (DoD) regarding a compliance matter which had been pending almost two years. He directed the Board to Tab J, which provided DoD's response. According to the letter, there is a matter pending in the U.S. Air Force's (USAF) general counsel's office.

Mr. Conley of the DoD commented that the Executive Agent has been unable to ascertain the status of the matter with the USAF. However, the Executive Agent is working on other alternatives with regard to non USAF portion of the DoD. He noted that the DoD was doing what they could, applying for amendments, etc., to stay in compliance with the Board.

Mr. Slosky reminded the Board that since there was an outstanding compliance issue with the USAF, the Board and Executive Director have not been processing permits for any DoD waste. To the Executive Director's knowledge, DoD waste has been exported from the compact for almost two years.

UPDATE OF NATIONAL COMPACT DEVELOPMENTS

Mr. Slosky asked the Board to defer the national compact development topics to a later time.

EXECUTIVE DIRECTOR'S REPORT

Mr. Slosky reported that the Board had a little over \$132,000 cash on hand at the end of February. He reminded the Board that the next security, a Federal Farm Credit Note of \$290,000, would mature on June 17, 2005.

PERMIT FEE REVENUE

Mr. Slosky directed the Board to the final 2004 Permit Fee Revenue Report as well as the 2005 Permit Fee Revenue Report to date. These reports show how much money we received for each export application, broken down by state, through the end of February. It shows how many permits and amendments have been issued and the fee that has been received.

BUDGET VS. EXPENDITURE COMPARISON

Mr. Slosky referred the Board to Tab M. He reported that while 67% of the fiscal year has elapsed, total expenditures as of February 28, 2005 were at 53 percent of the budget, excluding the contingency. If the Board receives the regional facility application, the activity could increase significantly, but it is difficult to project cost increases at this time. The one item which may be exceeded is Contract Services. After much discussion, Mr. Boschult made a motion to move \$2,000 from the contingency for web services. Mr. Curry seconded; the motion carried unanimously.

With no further questions or comments, Mr. Curry made a motion to adjourn the meeting. Mr. Boschult seconded; the motion carried unanimously. The Board meeting was adjourned at 12:13 p.m.