

Meeting of the Northwest Interstate Compact on  
Low-Level Radioactive Waste Management  
Downtown Sheraton  
Salt Lake City, Utah  
October 29, 2009

**Present:**

Russell Takata, Hawaii  
Brian Monson, Idaho  
Roy Kemp, Montana  
Ken Niles, Oregon  
Bill Sinclair, Utah  
Larry Goldstein, Washington  
Alice Blado, Compact Counsel  
Lynn Noah, Compact Staff  
Mike Garner, Executive Director

Compact Chair, Mr. Larry Goldstein, convened the meeting at 9:00 a.m. The Committee unanimously approved a motion to adjourn to Executive Session during the lunch hour to discuss the EnergySolutions' lawsuit. The committee then approved the minutes from the May 5, 2009 meeting.

**Party State Reports**

Mr. Russell Takata reported the U.S. Army continues its efforts to resolve the depleted uranium issue associated with its Davy Crockett System. The U.S. Nuclear Regulatory Commission (NRC) is reviewing the U.S. Army's application to maintain the involved facilities as is. Informational meetings were held in August and decision from NRC is anticipated in the near future.

Mr. Bill Sinclair introduced Ms. Amanda Smith, the new Executive Director of Utah's Department of Environmental Quality and Mr. Dane Finerfrock, Director of Utah's Division of Radiation Control. Mr. Sinclair, who is retiring in December, stated Mr. Finerfrock will be Utah's new representative to the Northwest Compact. Mr. Sinclair also introduced Ms. Denise Chancellor, an attorney with Utah's Attorney General Office, who is working on the EnergySolutions' Declaratory Judgment suit.

Mr. Larry Goldstein reported the U.S. Department of Energy (DOE) has released the Tank Closure and Waste Management Environmental Impact Statement (EIS). Due to the amount of information contained within the EIS, DOE is providing a 120 day public comment period. The EIS summarizes all the source term data at the Hanford facility, discusses how to proceed with tank closure, and includes the waste management initiatives required to bring the facility into compliance with federal and state laws.

Mr. Brian Monson, Mr. Roy Kemp, and Mr. Ken Niles stated they had nothing to report for Idaho, Montana and Oregon respectively.

## **US Ecology Washington Activities**

Mr. Mike Ault, Facility Manager, reported the Richland facility has accepted a little over 22,000 cubic feet of low-level radioactive waste (LLRW) to date in 2009. Mr. Ault reported that by the end of October the company will reach all its revenue requirements for the five cost categories. The facility has also accepted 2,000 cubic feet of NARM waste and very little exempt waste in 2009. Barring a cleanup activity by one of the larger generators, Mr. Ault projects the facility will receive approximately 30,000 cubic feet of LLRW annually in coming years.

## **Utah Activities**

Mr. Bill Sinclair stated he is retiring in December 2009 and he has really enjoyed his sixteen years serving on the committee and the relationships developed with fellow members and staff.

Mr. Sinclair reported at a September 2009 meeting of Utah's Radiation Control Board (URCB) there were discussions regarding NRC's future rulemaking on depleted uranium. The NRC recognized that when it put its waste classification system in place the agency had not anticipated the large quantities of depleted uranium that now require disposal. Therefore, when the classification system was established, NRC categorized uranium as a Class A waste. The main issue with depleted uranium is it becomes more radioactive over time and doesn't reach its peak hazard for at least a million years. The question becomes, is it appropriate to dispose of this waste in a shallow-land burial facility? The NRC is looking at this issue and plans to undertake a rulemaking to define the requirements for the safe disposal of depleted uranium.

Mr. Sinclair reported Heal Utah, an environmental group, asked the URCB to consider a moratorium on any future disposal of depleted uranium as it becomes more radioactive over time. NRC attended the URCB September 2009 meeting and discussed the issues surrounding the disposal of depleted uranium. The URCB asked its Executive Secretary, Mr. Finerfrock, to provide a license amendment capturing elements that EnergySolutions had proposed in a letter, to include a new performance assessment for depleted uranium. The URCB chose not to impose a moratorium on depleted uranium disposal at this time.

Mr. Sinclair reported on October 13, 2009, the URCB again discussed the depleted uranium issue, including the license conditions under consideration for disposal of depleted uranium at EnergySolutions' Clive facility. A key consideration was the depleted uranium at Savannah River that is awaiting disposal at the Clive facility. The URCB felt strongly the performance assessment should be completed prior to receipt of additional depleted uranium. It is anticipated to take approximately twelve months to complete the performance assessment. These new license considerations have been distributed for public comment. Mr. Sinclair anticipates the URCB will make a final decision on how these conditions will read and how they will be adopted at its December meeting. The Clive facility has already received approximately 49,000 tons of depleted uranium waste.

Mr. Sinclair reported that NRC held a Depleted Uranium Roundtable meeting in Salt Lake City in September 2009. There was considerable focus on site specific performance assessment at this meeting.

Mr. Sinclair reported the UCRB received a petition for rulemaking regarding LLRW down-blending in August 2009. The petition asked that EnergySolutions' Clive facility be prohibited from accepting wastes that had been down-blended. The petition was rejected as it did not meet the

specific regulatory requirements. At this time, the petitioner has not re-filed the petition. In an October 2009 press release, NRC stated it will be making a recommendation on the blending issue within six months. Utah has concerns and will follow this issue closely.

Mr. Sinclair reported based on the agreement put in place with Governor Huntsman in March of 2007, the state would consider EnergySolutions' request to convert the unused portion of the 11e2 cell to LLRW disposal. The state is currently processing this amendment request. One major issue still to be addressed is land ownership. DOE is obligated to take ownership of the 11e.(2) portion of the facility for perpetual care purposes, but not the low-level waste facilities. One of the designs incorporates a barrier to separate the 11e.(2) cell from the new low-level waste cell. This is a significant policy issue that has yet to be resolved.

Mr. Sinclair reported there are significant issues with the funding of state oversight activities associated with waste management. Fees associated with waste disposal support these efforts. As a result of the economy, disposal volumes have declined and revenues for regulatory oversight have dropped. Changes to many of these are statutory fees requiring legislative approval. A task force met four times over the summer in an attempt to address this revenue shortfall. This will probably be the top priority for the Department of Environmental Quality during the upcoming legislative session.

### **Washington Activities**

Mr. Goldstein reported the US Ecology facility investigation is scheduled to be completed in March 2010. The investigation includes eight quarters of vadose zone sampling and eight quarters of groundwater sampling. A public workshop held in April was controversial as some stakeholders felt our consultant was not totally forthcoming with some information and questioned the quality of the data. Four compounds were identified as contaminants of concern in the soil vapor samples including trichloroethene, chloroform, chlorotrifluoroethene, and 1-1-2 trichlorotrifluorethane. Four contaminants of concern were identified in the groundwater samples including hexavalent chromium, trichloroethene, uranium, and arsenic. As trichloroethene is not present in the up-gradient wells, it appears the facility is the source of this contaminant.

Mr. Goldstein reported the consultant will be developing a draft remedial investigation report. Closing the filled trenches continues to be a priority to ensure compliance with the NRC standard for off-site exposure limits. Although the investigation is ongoing, the Washington State Department of Ecology (Ecology) will propose an interim remedial action to begin construction of the lower layer of the cover on the filled trenches. In order to protect human health and the environment, agencies can initiate action anticipated to be consistent with the remedy identified at the conclusion of the investigation. An interim action requires a report detailing the action to be taken, and affords the public with an opportunity to comment.

Representatives of Ecology and the Washington State Department of Health (Health) met with representatives of the Yakama Nation, the Federated Tribes of the Umatilla Indian Reservation, and the Washington State Legislature. Concerns were raised regarding the adequacy of the site characterization, the transuranic wastes disposed at the facility, and whether the EIS published in 2004 is outdated. These parties made the point that covers always fail, and stated the cover described in the EIS would certainly fail. Parties indicated there are new technologies that could be

used at the facility to isolate the waste. One technology includes the injection of horizontal tubes of grout beneath the waste trenches.

Mr. Goldstein reported the Yakama Nation passed a resolution demanding that the state conduct a comprehensive investigation and characterization of the site. The resolution calls for the removal of all transuranic wastes as well as other long-lived radionuclides prior to development of final closure plans. A meeting is scheduled for December in which senior management from Ecology and Health will be meeting with state representatives to further discuss this issue.

Mr. Goldstein reported Ecology and Health have reviewed the cover design. The agencies submitted a number of comments to US Ecology to share with its consultant. Ecology is currently reviewing the adequacy of the investigation results. The agencies plan to approve the cover design, and then revisit it when the final results of the investigation are in. Based on the requirements of the cleanup action plan the cover design will then be revisited and adjusted as required. The cover design includes a geo-synthetic evapo-transpiration cover coupled with a robust vapor extraction system. The suitability of the Environmental Restoration Disposal Facility soils still needs to be analyzed.

Mr. Niles asked if it is ultimately the State of Washington's decision as to whether or not the transuranic waste would be retrieved and if so who would be liable for the retrieval cost.

Mr. Goldstein stated he was uncertain, but speculated it would be a State of Washington decision as Health licenses the facility. Regarding liability, Mr. Goldstein was uncertain and would not speculate as these are pre-1970 transuranic wastes and the accuracy of the documentation regarding these wastes is uncertain. Mr. Goldstein stated NRC has a policy that unless the location of deeply buried transuranic waste is clearly understood it is not recommended that such waste be retrieved.

#### **Overview of US Ecology Idaho, Inc. - Grand View, Idaho Facility**

Mr. Ault reported US Ecology's Grand View facility receives exempt source, by-product, and special nuclear material. The initial Part B permit for the Grand View facility allowed only Naturally Occurring Radioactive Material to be accepted. US Ecology went to the state seeking modifications to the permit and received authorization to accept generally and specifically exempted source, by-product, and special nuclear material. The facility has specific acceptance criteria and operating procedures for the receipt and disposal of such wastes.

Mr. Ault reported generators seeking to ship wastes to the Grand View facility must first submit samples and a waste stream profile for company review prior to shipment of any waste. Once shipments start, if the company identifies variations during the receipt of waste, future shipments are halted until the issue is resolved. Oil pipeline materials represent a significant portion of the rad-waste materials received at the facility.

Mr. Ault stated a recent license modification increased radium acceptance levels to 1,500 picocuries per gram. This change was sought in response to a demand from municipalities for disposal of water treatment resins. Non-production particle accelerator produced radionuclides are also allowed as this material is not regulated by the Atomic Energy Act. New regulations classify this waste as being exempt from the disposal requirements of the Low-Level Radioactive Waste Policy

Amendments Act. None of the materials received for disposal fall under the authority of the Atomic Energy Act.

Mr. Ault reported in those cases where generators are seeking exemptions, it must first be granted by the agreement state in which the materials are generated. If granted, this information is submitted to the Idaho Department of Environmental Quality for approval or denial. If approved, the company informs the generator it may ship its waste.

### **Overview of the Conference of Radiation Control Program Directors Source Collection and Threat Reduction (SCATR) Program**

Mr. Joe Klinger, Assistant Director for the Illinois Emergency Management Agency and Commissioner on the Central Midwest Compact Commission, stated he is here today representing the Conference of Radiation Control Program Directors (CRCPD). This group consists of representatives from states throughout the nation. Mr. Klinger stated he presently serves as the Chair of the E-34 committee, the committee for unwanted radioactive materials. CRCPD headquarters in Frankfort, Kentucky acts as a clearing house and generators can call and inquire about disposition of their unwanted radioactive sources.

Mr. Klinger stated there are two programs under the control of the E-34 Committee. The first is the orphan radioactive materials program and the second is the SCATR program. The orphan program was started back in 1998. There are monitors at scrap metal yards to detect sealed sources and other radioactive materials to prevent them from being melted. The average cost to industry to clean up a facility once a radioactive source is melted is ten million dollars. There have been thirty-three instances where sources had been inadvertently melted. CRCPD developed funding so these recycling companies would not be stuck with the sources that are found. These include sources that were used in hospitals, industry, and other applications for essential purposes. Worldwide since 1955, these sources have accounted for 64 inadvertent severe incidents, including 39 fatalities and the overexposure of 280 individuals. These episodes illustrate the importance of maintaining control over radioactive sources.

Mr. Klinger stated that CRCPD established a pilot program to address this issue with funding support from the U.S. Environmental Protection Agency (EPA). The program focused on the removal of orphan sources from the public domain. An initial pilot project in Colorado collected over thirty sources showing the program to be successful. A funding source was needed to expand this program nationwide. In October 2001, following the 9/11 attacks, funding was approved as the acquisition of these sources became a higher priority. There are sixteen states onboard and it has been a very successful program.

Mr. Klinger stated the SCATR program focuses on stored sources. There are three things that can happen to stored sources, including: 1) sources can be safely stored; 2) control is lost over the stored sources and; 3) sources may be stolen. Many times individuals forget about sources that are stored for long periods of time. This is especially prevalent at universities and hospitals that lack the funds to dispose of the sources. This creates a situation equivalent to an accident waiting to happen. To address this problem there must be financial incentive to remove the sources from long-term storage. In 2005, DOE provided four hundred thousand dollars for the program.

In 2007, the state of Florida worked with its licensees, and there was considerable incentive with the pending closure of the Barnwell facility to out-of-region waste. At a cost of ninety thousand dollars CRCPD was able to dispose of 2,569 sources.

Mr. Klinger reported that since the Florida project CRCPD has collected 1,800 cesium sources. In the SCATR program CRCPD knows who the licensee is and the licensee pays most of the cost. The current issue is thirty-six states have no disposal option. CRCPD now has generators register the source with the off-site recovery program operated by DOE at Los Alamos. This enables CRCPD to maintain an inventory of sources, as it bases its funding requests on the inventory listings. CRCPD's biggest issue is what can be done with sources originating within the thirty-six states that no longer have disposal access. CRCPD's one option is to seek exemptions from compacts that have facilities licensed to accept such sources.

Mr. Klinger stated CRCPD would appreciate the committee considering granting an exception for the sources the organization has collected so they may be disposed at the Richland, Washington facility. CRCPD recycles as many of the sources as it can. Right now the SCATR program has over 7,000 sources. This includes 4,600 cesium-137 sources, most of which are 20 millicuries each. These can be packaged in three drums for disposal. CRCPD has 390 strontium-90 sources that can be packaged in two drums for disposal. Currently, five drums of sources require disposal access. CRCPD would like the committee to entertain an exemption for these sources.

Mr. Garner requested that Mr. Klinger provide a letter describing the volume and the curie content of the waste involved. The description of the waste would assist in any attempt to convince the Washington State Legislature to altar the current restrictions placed on the Washington representative regarding those arrangements the representative can vote in favor of.

Mr. Kemp reported Montana, a non-agreement state, used the program for disposition of a number of sources with unknown origins that had been collected at locations throughout the state by an individual over the course of fifteen years. These sources were then stored in a room in a state lab. Mr. Kemp stated Montana greatly appreciated the assistance offered by CRCPD.

### **Overview of Depleted Uranium Round Table Meetings Hosted by NRC**

Mr. Garner reported attending the NRC Depleted Uranium Roundtable Meeting held in September in Salt Lake City. NRC only anticipated small volumes of depleted uranium would require disposal when it originally developed its waste classification system. As a result, depleted uranium was classified as a Class A LLRW. This has changed and now significant quantities of depleted uranium containing 470,000 curies are awaiting disposal.

Mr. Garner stated depleted uranium is a unique waste stream and it behaves differently than most LLRW disposed at shallow ground burial sites. Depleted uranium becomes more hazardous over time and doesn't reach its peak hazard until one million years following burial. Mitigation is possible through an increased burial depth, and installation of a robust radon barrier.

Mr. Garner reported that NRC is undertaking rulemaking that is expected to be completed in 2012. Until completed, NRC is requiring site specific assessments to be performed to ensure depleted uranium is safely disposed. NRC analysis shows disposal of depleted uranium at an arid facility at

a five meter depth with grout meets one hundred percent of the regulatory requirements after one thousand years. However after one million years it meets only sixty percent of all pathways; sixty percent of the drinking water; ninety percent of the inhalation; and eighty percent of the chronic intruder requirements. Assuming the same parameters except grout, these numbers fall to thirty percent; forty percent; ninety percent; and seventy percent after one million years.

Mr. Garner reported that new enrichment facilities are being developed in Lea County, New Mexico and Idaho Falls, Idaho. As a result, there will be significant quantities of depleted uranium requiring disposal in future years. This issue could impact future site development due to the term of protection that is required for depleted uranium.

Mr. Garner stated that Mr. Steve Nelson, a professor at Brigham Young University and a former Chair of Utah's Radiation Control Board, was a panel member at the roundtable meeting. Mr. Nelson recommended that depleted could be safely disposed in salt deposits similar to the Waste Isolation Pilot Plant in New Mexico. Mr. Nelson argued against disposal at EnergySolutions as it is pretty well assured the Great Salt Lake will rise to a level covering the Clive facility at some time during the next million years.

### **Overview of the Low-Level Waste Forum Meeting September 2009**

Mr. Garner reported on a number of issues that were discussed during the September 2009 meeting of the Low-Level Radioactive Waste Forum.

- Mr. Leonard Slosky, Executive Director of the Rocky Mountain Compact, reported International Isotopes plans to construct a depleted uranium deconversion facility in Lea County, New Mexico. International Isotopes deconversion process will produce anhydrous hydrofluoric acid and silicon tetrafluorine gas. These products are in demand for a variety of industrial applications. The company projects its facility will generate 70,000 cubic feet of waste annually. Mr. Slosky reported that Louisiana Energy Services (LES) is constructing an enrichment facility in Lea County, New Mexico.
- Ms. Susan Jablonski, Texas Commission on Environmental Quality (TCEQ), reported in September 2009 the District Court judge signed the final order for the mineral rights condemnation proceedings for the property on which Waste Control Specialists (WCS) plans to construct its proposed low level radioactive waste facilities. The final license for this facility was signed a day later. Prior to initiation of construction of the two WCS facilities, the licensee must submit its construction documents to TCEQ's executive director, at least 60 days prior to the planned commencement for construction of the two facilities in Andrews County, Texas.
- Ms. Jablonski announced that Studsvik, a Tennessee company that thermally processes certain wastes, has shipped its first high integrity container of class C LLRW to WCS for storage. WCS' storage and processing license is up for renewal.
- Mr. Rob Baltzer, WCS president, reported disposal fees for the compact facility will be regulated, but fees for the federal facility will be market driven. Mr. Baltzer stated that with the cooperation of the Texas Compact, WCS could offer a partial solution for disposal of B

and C wastes now that the Barnwell facility has closed to out-of-region LLRW. The compact facility is licensed to accept 2.3 million cubic feet of LLRW and the federal facility is licensed to accept 26 million cubic feet of LLRW. Mr. Baltzer reported the federal facility will help ensure the economic viability of the LLRW waste disposal operation.

- Mr. Larry Camper, Director of NRC's Waste Management Division, reported that Studsvik and Energy Solutions are promoting the LLRW blending proposal. Business supports the concept due to the lack of disposal capacity for Class B and C LLRW. Mr. Camper reported NRC is also looking at concentration averaging as well as its overall classification system to make it more risk based.
- Mr. Camper reported NRC Chairman Jaczko has directed staff to prepare a vote paper on the waste blending issue. Chairman Jaczko directed staff to specifically consider the following: issues related to intentional changes in waste classifications due to blending – including safety, security and policy considerations; protection of the public health and the environment; mathematical concentration averaging; homogeneous mixing; practical considerations in operating waste treatment and disposal facilities; the appropriate point at which waste should be classified; and recommendations for revisions to existing regulations, requirements, oversight, or guidance related to the blending of LLRW.
- Mr. Duncan White, NRC's Division of Materials Safety and State Agreements, reported NRC had done a review in Colorado and Nebraska to gain knowledge regarding the span of control Wal-Mart exhibits over exit signs at its facilities located in these two states. NRC identified that Wal-Mart had no idea where 15,000 of the 75,000 exit signs in inventory were located.
- Mr. Jim Kennedy, Senior Project Manager for NRC's Waste Management Division, indicated NRC is working on the regulations governing its import and export rules. Mr. Garner reported comments had been submitted encouraging NRC to clearly identifying all the disposition pathways for waste resulting from the importation of waste from another country. Mr. Garner referenced a case involving the Perma-Fix NW facility located in Richland, Washington. The compact's comments stated it had no issue with the license application for Canadian LLRW, provided that any materials that remained contaminated were shipped back to the Canadian company from which it was received. It was later learned that a portion of this material had been bulk surveyed for release making it exempt from NRC regulation. This material was then shipped to a Tennessee landfill that was licensed to take such material. The point made to NRC was for the general public to gain a greater acceptance of the use of nuclear materials regulatory entities need to know all disposition pathways. This will enable regulators to answer all questions the general public may have regarding disposition pathways.
- Mr. Duncan White indicated there is a national source tracking system in place. There are 1300 licensees, with over 50,000 sources. It covers category 1 and 2 sources. As Mr. Klinger indicated earlier today, it is certainly an area of concern in our country.

- Mr. Bill House, Vice President of Regulatory Affairs for Energy Solutions' Barnwell operation, reported the Barnwell facility has over a million cubic feet of capacity remaining. In fiscal year 09 the Barnwell facility accepted 12,866 cubic feet of LLRW. In fiscal year 10, Barnwell anticipates receiving 10,000 cubic feet of LLRW. Under the rate structure in the State of South Carolina, EnergySolutions is provided a minimum annual operating cost of approximately 7.1 million dollars to operate the Barnwell facility. Mr. House reported the Barnwell facility assesses the thirteen utilities within their region a quarterly access fee of \$87,700 each.
- Mr. Garner reported he made a brief presentation on waste attribution at the meeting. Materials such as HEPA filters, protective clothing, sandblasting grit, and other materials a processor uses on multiple generators' waste would be properly attributed as the processor's waste. However, the one exception would be if such materials are used on only one generator's material, then it would be attributed to the generator, but this is rare.
- Mr. Garner reported that Mr. Mike Mobley, Chair of the Southeast Compact, indicated the amount of waste being attributed to a processor following incineration is very small. The Bear Creek facility takes in 3 million cubic feet of waste annually, and the amount attributed to the processor is approximately 3% or 90,000 cubic feet. Mr. Garner stated when compared to the annual volumes accepted at the Barnwell (10-15,000 cubic feet) and Richland (25-30,000 cubic feet) perhaps the volume is not that small. The Texas Compact has similar concerns.

### **U.S. House of Representatives Energy and Commerce Committee Hearing on H.R. 515 - The Radiation Import Deterrence Act (RID Act)**

Mr. Garner reported receiving a request from Mr. Jeff Baran, staff for the Energy and Commerce committee, to testify at a hearing on the RID Act. Unfortunately, because of the short notice provided, Mr. Garner was unable to attend. Fortunately, Mr. Leonard Slosky, an expert on LLRW interstate compacts volunteered to testify. The hearing took place on October 16, 2009.

Mr. Garner stated that three parties testified including: Ms. Margaret Doane representing NRC; Mr. Val Christensen representing EnergySolutions; and Mr. Leonard Slosky representing the Rocky Mountain Compact. This bill was initially considered in 2008 and now is being reconsidered and has the support of about seventy-five co-sponsors.

Mr. Garner reported the bill would prohibit the importation of foreign low level waste. Exceptions provided access will include LLRW resulting from Department of Defense operations in another country. A provision also provides for a Presidential waiver for LLRW that meets an important national or international policy goal.

Mr. Garner reported that Ms. Doane indicated NRC's role is to ensure that the importation of LLRW does not pose safety or health issues for the citizens of the United States. Mr. Christensen indicated EnergySolutions will limit its acceptance of foreign low level waste to 5% of the available capacity at the Clive facility and acceptance of foreign LLRW will be limited to a ten year period. Mr. Christensen argued acceptance of foreign LLRW would assist EnergySolutions in becoming a

global player and would increase its opportunity to establish disposal facilities in foreign countries. Mr. Slosky stated this is a policy issue. Mr. Slosky asked if it is in the best interest of our country to bear the burden for disposal of foreign LLRW. Mr. Slosky stated the bill would address the foreign LLRW issue but as a result of the broad district court ruling, it would not address all the impacts that interstate compacts face as a result of the district court ruling. Mr. Garner indicated the complete testimony can be seen at the Energy and Commerce Committee website.

### **Public Comment**

No comments received.

### **Update on Legal Issues**

Ms. Alice Blado, compact counsel, reported the Northwest Compact signed on to an Amicus Brief in support of the Southeast Compact's suit against North Carolina. The Southeast Compact's suit attempts to recover funds it provided to North Carolina for development of a LLRW disposal facility to replace the Barnwell, South Carolina facility. North Carolina eventually stopped its siting efforts. Ms. Blado reported a section was prepared explaining the interest of the Northwest Compact in the case and this was added to the body of the brief prepared by Ms. Barbara Green, counsel for the Rocky Mountain Compact. The primary point made in the brief was the integrity of the compact system depends on states benefitting from the exclusionary authority acquired through their membership in a compact, and in return requires states to be accountable for their responsibilities under a compact.

Ms. Blado reported the District Court ruled in favor of EnergySolutions in its Declaratory Judgment suit. Judge Stewart's decision held that the Northwest Compact did not have authority to control the flow of waste to the Energy Solutions' site in Clive, Utah. Judge Stewart construed the 1980 Act as limiting the compact's authority to the Richland, Washington facility. Following the District Court ruling, the State of Utah, Rocky Mountain Compact, and Northwest Compact agreed to appeal the District Court ruling to the U.S. Tenth Circuit Court of Appeals. The State of Utah, the Rocky Mountain Compact, and the Northwest Compact all filed separate briefs and are awaiting the scheduling of the oral arguments.

Ms. Blado reported six interstate compacts, the State of New Mexico, and the Council of State Governments filed amicus briefs supporting the Northwest Compact's position. Their support is greatly appreciated.

### **Committee Business**

Mr. Garner reported comments were submitted to NRC on July 1, 2009 regarding AREVA's request to extend the expiration date of its current import license (IW009/01) from December 2010 to December 31, 2020. This enables AREVA to continue to import contaminated combustible materials from its sister facility in Lingen, Germany, to its Richland, Washington facility. Prior to approval of the initial import license AREVA provided extensive data showing it could recover 60-90% of the uranium contained within the ash following incineration of the combustible materials. The recovered uranium is used to make new fuel for nuclear reactors. On this import license application extension request, Mr. Garner indicated that all low level radioactive waste resulting from the uranium recovery process is eligible for disposal at the commercial low level waste facility operated by US Ecology, Washington in Richland. Second, this authorization is dependent on the

state of Utah authorizing Energy Solutions to accept any low level radioactive mixed waste generated by the uranium recovery project.

Mr. Garner reported that NRC, as a result of comments received from universities and research facilities at an earlier meeting, held a meeting in October 2009 to discuss the impact that lack of disposal access has on these institutions. During the meeting a generator from an institution located within the Northwest Compact indicated it ends up paying fifty percent higher disposal fees as they are not allowed to ship LLRW to EnergySolutions for disposal. This individual also indicated that the Northwest Compact forbids its generators from sending waste for incineration to the Bear Creek facility in Tennessee. The resulting waste after incineration would be comingled and considered secondary waste, would be attributed to the processor, and therefore it would be provided access to the Energy Solutions' Clive facility for disposal. Mr. Garner reported having a good conversation with the generator where the generator was able to voice his concerns while the concerns of the Northwest Compact were also discussed.

Mr. Garner reported that comments have been developed that will be submitted to NRC on this issue. One key comment is that generators within the Northwest Compact are provided ensured access for disposal of Class A, B and C LLRW at the Richland facility.

Mr. Goldstein reported being approached by senior staffer for EPA at the September LLW Forum meeting who related that in April 2010 there is going to be an exercise in Philadelphia, called the Liberty Rad Ex exercise. The scenario involves a radioactive dispersal device (RDD), otherwise known as a dirty bomb. The exercise will start 30 to 45 days after an RDD incident. The intent of the exercise is to emphasize the longer term recovery aspects rather than initial response activities. This is cleanup and disposal of contaminated materials resulting from the RDD incident.

Mr. Goldstein was asked what would be the position of the state of Washington on the use of the Richland facility to aid the cleanup efforts. Mr. Goldstein responded he anticipated the state would want to be part of the solution. This was confirmed in discussions with Ecology's senior management and this information was related to EPA.

Mr. Garner presented Mr. Sinclair with a letter of appreciation and thanked Mr. Sinclair for the many contributions made during his tenure as Utah's representative to the Northwest Compact.

The committee determined it would hold its next meeting in May 2010 in Helena, Montana.

After receiving no public comment the meeting was adjourned.