

## MINUTES

Meeting of the Northwest Interstate Compact on  
Low-Level Radioactive Waste Management  
September 25, 2007  
Jackson, Wyoming

### **Present:**

Roy Kemp, Montana  
Bill Sinclair, Utah  
Carl Anderson, Wyoming  
Ken Niles, Oregon  
Mike Garner, Washington (Executive Director)  
Alice Blado, Compact Counsel  
Lynn Noah, Compact Staff

Mr. Mike Garner substituted for Compact Chair, Mr. Larry Goldstein, who was unable to attend the meeting. Mr. Garner convened the meeting at 9:00 a.m. Mr. Carl Anderson welcomed members to the state of Wyoming.

The committee unanimously approved the minutes from the April 14, 2005 meeting.

Mr. Garner reported Mr. Jerry Haruno, Hawaii's representative, is stepping down and is being replaced by Mr. Russell Takata. Also, Alaska is in the process of appointing a new committee member.

### **Party State Reports**

The states of Wyoming, Oregon, and Montana had nothing to report.

### Utah

Mr. Bill Sinclair reported that increasing uranium prices has resulted in renewed interest in the mining and processing of uranium. Several mines are ready to reopen in Southeastern Utah. One mill site is undergoing renovation in preparation to process uranium ore next year, and another mill that has been processing alternate feed sources is preparing to process ore.

The cleanup of the Moab millsite is under the stewardship of the U.S. Department of Energy (USDOE). A decision was made to move the tailings pile (13 million tons) to an area near Crescent Junction, Utah. One of the contractors hired for the cleanup work is EnergySolutions. A plan is being developed for moving the tailings. It was originally thought the tailings pile would be moved by train but other options are also being considered. Parties hope to start moving tailings in the summer of 2009, and it is estimated to take ten years to complete the project. The proposed schedule is subject to funding provided by USDOE.

The U.S. Nuclear Regulatory Commission (NRC) has licensed the Private Fuel Storage (PFS) facility to store spent nuclear fuel rods. Two significant actions occurred following our last meeting in Helena, Montana. The Department of Interior denied a proposed land lease requested by PFS for a rail spur to the proposed facility. The lease was previously approved by the Bureau of Indian Affairs. In addition, the Bureau of Land Management denied a request to build a transfer station necessary to transfer

containers from rail to trucks for shipment to the proposed storage facility. These actions have stopped activities related to the site and have been appealed by PFS to the appropriate federal agencies.

#### Washington

Mr. Garner announced he would summarize Washington issues later during the meeting.

#### **US Ecology Activities**

Mr. Simon Bell, Vice President, reported the Richland facility accepted 25,552 cubic feet of low-level radioactive waste and 8,766 cubic feet of NARM and exempt waste in 2006. In 2006 the company received approximately \$6.7 million in revenue compared to its annual revenue requirement of \$5.67 million. The difference will be rebated to the generators. Through August 2007 the facility has received 84,858 cubic feet of low-level radioactive waste and 5,118 cubic feet of NARM and exempt waste. The elevation in the volume of low-level radioactive waste received in 2007 is the result of Energy Northwest's efforts to clear out its on-site waste inventory.

Mr. Bell reported the company's revenue requirement for 2007 is \$5.2 million. The previous rate structure comprised of five cost components has been extended for another six years. The company projects low-level radioactive waste disposal volumes will average approximately 30,000 cubic feet for 2008 and 2009.

#### **Washington Activities**

##### US Ecology - Site Investigation

Mr. Garner reported the state and US Ecology reached agreement on a contract to begin phase 2 of the facility investigation. US Ecology has entered into a contract with a subcontractor who will conduct the remedial investigation and feasibility study at the facility. Phase 2 is scheduled to begin this December.

##### US Ecology - Cover Design and Installation Status

Mr. Garner reported parties originally anticipated the first phase of the final cover would be completed in 2005-06. This involved placing the first stage of the final cover over filled trenches occupying approximately 40 acres of the facility. However, there has been no activity to date.

US Ecology hired a cover design subcontractor who has completed most of the work on the cover design. Originally, the preferred alternative of the final EIS was to construct the cover over the filled trenches in two phases. However, following discussions with the subcontractor it became apparent it would be much cheaper to construct all phases of the final cover at one time. Consultants with the Washington State Department of Health will identify if the change in the timing of cover placement will result in an unacceptable future dose. Assuming it doesn't, parties have determined they will wait until the investigation is completed in 2010 to place the final cover on all filled trenches.

The subcontractor identified the soils required for the cover will be the most costly component of the cover. One option being considered is using excavated soils from either the U.S. Department of Energy's (USDOE) Environmental Remediation Disposal or Integrated Disposal Facility. If these soils are technically sound and USDOE agrees to their use, a road to transfer soils to the site may need to be built. A new road requires an environmental review to identify the impact road construction and truck traffic will have on the natural habitat in the area.

### Cleanup Priority Act – I-297

Mr. Garner reported the Cleanup Priority Act (CPA) would prohibit USDOE from disposing of wastes into unlined trenches. It also restricts new wastes from being transferred to the facility until the facility is in full compliance with state and federal regulations. The CPA does provide an exemption for Compact waste but it is uncertain at this time if it would prohibit unlined trenches at the commercial disposal facility.

On December 2, 2004, a U.S. District Court judge granted USDOE a temporary restraining order barring full application of the Cleanup Priority Act. On December 9, 2004, U.S. District Court issued a revised stipulation barring implementation of the CPA until the court decides the case. The stipulation also bars USDOE from accepting off-site waste during this time. In June 2006 the U.S. District Court for the Eastern District of Washington struck down the CPA. The court ruled the initiative is preempted by the Atomic Energy Act and violates sovereign immunity. The court ruled the initiative is facially invalid and cannot be applied constitutionally in any circumstance, i.e. – severability is not an issue.

In December 2006 Washington State filed an appeal to the U.S. District Court for the Eastern District of Washington June decision. In May 2007 the state submitted its final brief to the Ninth Circuit Court of Appeals. The brief was in reply to briefs filed by the United States, Fluor Hanford, and TRIDEC. Parties are currently waiting for the court to schedule oral arguments on the appeal.

### Site Closure Account

Mr. Garner reported in March 2003 the Washington State Legislature passed a bill allowing \$13.8 million to be transferred from the Site Closure Account to the state general fund. This transfer took place during a period when the state was looking to supplement depressed revenues. The agency explored using interest generated by the Perpetual Surveillance and Maintenance Account to pay back the Site Closure Account. However, expenditures from this account require concurrent approval by USDOE, and USDOE did not agree this was an appropriate use of the interest. Repayment will be made from the state general fund beginning on July 1, 2008 in the amount of \$966,000 and will be completed in 2033. Annual payments will be increased by a Consumer Price Index factor to capture interest earnings.

### **Utah Activities**

#### 2006 Interim Session of the Legislature

Interim sessions run from the end of the general session in March until the beginning of the next general session in January. The Utah Department of Environmental Quality (DEQ) is assigned to the Natural Resources, Agriculture, and Environmental Interim Committee which meets about once per month during the interim session.

In November 2006 the committee met to discuss DEQ's statutory authority to reexamine the adequacy of the Closure, Post Closure, and Perpetual Care Fund requirements for hazardous and radioactive waste facilities. DEQ reviewed the findings of a contractor's report on these issues. Committee members accepted the findings of the report regarding surety requirements for closure and post closure funds. The report recommended a Perpetual Care Fund be established for hazardous waste facilities. Currently, RCRA facilities are required to maintain closure and 30 year post closure funds. If everything looks good following post closure the requirements are completed. The policy issue being examined is the need to develop a new fund that would fund oversight efforts following the post closure period. In 2001 a Perpetual Care Fund was put in place for the EnergySolutions facility and

the company deposits \$400,000 into the fund annually. The committee decided to recommend this fund be eliminated.

#### 2007 General Session

Legislation was forwarded to create a Perpetual Care Fund for hazardous facilities and to reexamine the requirement for radioactive facilities. DEQ stated the contractor's report recommended more up front funding for radioactive facilities by placing \$13 million into the fund now and continuing the annual payments of \$400,000. The report stated it would like to see the fund balance grow to \$20 million in the short term, as the fund would then grow to \$90-100 million following the post closure period. Parties thought this may provide incentive for USDOE to take over the site once closed. This is currently the responsibility of EnergySolutions. These bills did not move forward, and companies were directed to go back to the respective boards within DEQ (Radiation Board and Solid and Hazardous Waste Board) to attempt to identify preferred funding options for the Perpetual Care Fund.

Another bill (SB155 - Waste Amendments) will eliminate the requirement for local government, legislative, and gubernatorial approval for certain EnergySolutions license amendment requests. Approval from the three entities would still be required if the facility were to expand beyond its current boundaries. The bill passed by a large margin.

The Governor allowed the bill to go into law without his signature, and then requested that the Northwest Compact use its authority to control the volumes of waste received at the EnergySolutions facility. In March 2007 the Governor and EnergySolutions reached an agreement. The Governor withdrew his request for the Northwest Compact to limit the volume of waste allowed at the EnergySolutions facility. EnergySolutions withdrew its supercell request and the parties reached agreement allowing EnergySolutions to use the unused portion of its 11e.(2) disposal capacity for low-level waste disposal. EnergySolutions also restated its intent not to accept class B/C low-level waste. The Governor reported the agreement would reduce the volume of low-level waste coming to Utah during the life of the facility.

#### 2007 Interim Session

On August 3, 2007 Utah's Radiation Control Board voted unanimously to accept EnergySolutions proposal to place \$13 million into a surety for the Perpetual Care Fund for its facility. The surety requirement would decrease by \$400,000 annually, an amount equivalent to EnergySolutions annual payment to the fund.

#### Other

The DEQ is in the process of renewing the EnergySolutions operating license. The license is currently in timely renewal.

#### **EnergySolutions Activities**

Mr. Tye Rogers, Vice President, reported disposal volumes that increased steadily during the period of 2000 to 2005 are now declining. In 2005 the facility received its highest annual volume of almost 25 million cubic feet of waste. Waste from USDOE cleanups such as Rocky Flats contributed to the large annual volume in 2005 and carried over to 2006. In 2006 the facility received a total of approximately 14 million cubic feet of low-level radioactive waste. This consisted of approximately 11 million cubic feet of USDOE and 3 million cubic feet of commercial low-level radioactive waste.

The company is seeing a significant decline in the volume of waste received in 2007. Through August 2007 the facility has accepted approximately 2.7 million cubic feet of low-level waste. The company

projects it will receive a total approaching 5 million cubic feet for 2007. The company anticipates disposal volumes will stay at this level during coming years, but we may see an occasional spike due to future USDOE cleanups.

Mr. Rogers reported as part of the company's agreement with Governor Huntsman, the company has dropped its pursuit of a supercell and emphasized it does not intend to pursue authorization to accept class B/C waste. In return the state authorized the company to convert the remaining capacity in its 11e.(2) disposal cell to low-level waste. A barrier will be placed between the 11e.(2) and low-level waste portions of the disposal cell. This conversion brings the low-level waste disposal capacity remaining at the facility to approximately 150 million cubic feet.

Mr. Rogers stated the company is focusing its efforts on efficiency and volume reduction. To assist with these efforts the company has purchased a new waste cell compactor, a 6000 horsepower waste shredder, and constructed a new railcar turnover facility.

### **Northwest Compact History**

Mr. Garner gave a brief overview of the history of the Northwest Compact.

In the late 70's the three sited states (Nevada, South Carolina, and Washington) had grown tired of being the nations dumping grounds. These states felt the burden of low-level waste disposal needed to be distributed more equitably among states throughout the nation. This action led to enactment of the Low-Level Radioactive Waste Act of 1980 and the Low-Level Radioactive Waste Policy Amendments Act of 1985. These federal laws made states responsible for management and disposal of low-level waste generated within their state.

Federal law provides incentive for states to form interstate compacts for the management of low-level waste within their region. The law provides an exemption to the interstate commerce clause to interstate compacts that develop operating disposal facilities. Effective January 1, 1993 interstate compacts with operating sites may begin denying access to out-of-region low-level radioactive waste, ensuring operating disposal facilities would not have to accept low-level radioactive waste from states throughout the nation.

The Northwest Compact implemented its exclusionary authority on January 1, 1993. The host state, Washington, is willing to do its fair share and is prepared to maintain its commercial disposal facility through 2056. The state does not want to be placed in a position of having to again accept waste from states throughout the nation. To ensure this did not occur, the state, in agreement with US Ecology added language to the sublease renewal in 2005 that allows the state to terminate the sublease should interstate compacts lose their exclusionary authority. The exclusionary authority applies to low-level radioactive waste only. The Richland commercial disposal facility may accept NARM and exempt waste from states throughout the nation.

Prior to 1993, the Northwest Compact, state of Washington, and the Rocky Mountain Compact (RMC) entered into a contract. The RMC paid \$2.5 million to the state of Washington, and the state deposited the payment into the Site Closure Account. In return, generators from the three member states of the Rocky Mountain Compact retain access to the Richland facility for disposal of limited quantities of low-level waste after January 1, 1993.

At the request of the state of Utah and Envirocare (now EnergySolutions) the committee adopted a Resolution and Order providing an exemption to the Northwest Compact's exclusionary authority. It

provides access to the region for disposal of certain out-of-region low-level radioactive wastes at the EnergySolutions facility in Clive, Utah. Initially low-level waste was limited to very large volume, low-activity cleanup wastes. The R&O has been amended over the years as has EnergySolutions' operating license. The facility can now accept most class A low-level radioactive wastes. The R&O requires authorization of the state/compact in which the waste is generated prior to shipment to EnergySolutions. This allows states/compacts that have operating facilities or are developing disposal facilities to ensure their waste goes to their facility, protecting the economic viability of their facility.

All generators using the Richland facility are required to obtain a site use permit from the Washington State Department of Ecology. Revenue generated through the issuance of site use permits funds administration of the site use permit system and the activities of the Northwest Compact. Over the years we have been able to reduce the annual funds required for these activities to approximately \$250,000.

The Washington Utilities and Transportation Commission regulates the disposal rates charged by the site operator, US Ecology. Rate regulation provides US Ecology with an annual revenue requirement. Disposal fees are determined by five cost components. The average disposal cost at the Richland facility using an annual volume of 30,000 cubic feet and a revenue requirement of \$6.0 million is approximately \$200 per cubic foot. Under the rate regulation agreement the company decreases its annual revenue requirement by 50% of the net revenue realized through the disposal of NARM waste at the Richland facility.

### **National and Regional Issues**

Mr. Garner reported on national and regional issues involving low-level radioactive waste management.

The pending closure of the Barnwell, South Carolina facility to out-of-region low-level radioactive waste on July 1, 2008 will exert pressure on the federal law. Barnwell's closure will leave thirty-six states with no access for disposal of class B/C wastes. Parties throughout the U.S agree this action will not create an immediate crisis. Over the past few years the Barnwell facility has accepted an average of 16,000 – 20,000 cubic feet of class B/C low-level radioactive waste annually. Utilities generate all but 2,000 – 4,000 cubic feet of the class B/C low-level radioactive waste accepted by the Barnwell site, and they have the ability to properly store this waste. Utilities also are altering their operations so they generate less class B/C wastes. Storage will be more difficult for research institutions, hospitals, and other small organizations. These thirty-six states retain access for disposal of class A low-level radioactive waste as it can be shipped to the EnergySolutions facility.

The Barnwell site operator, EnergySolutions, is projecting the facility will receive about 11-12,000 cubic feet of waste annually once closed to out-of-region low-level waste. At this annual volume it is estimated the average disposal cost will be about \$670 per cubic foot.

The U.S Environmental Protection Agency (EPA) is establishing drinking water standards for uranium. All drinking water systems must complete testing by December 31, 2007. It is estimated that as many as 800 systems will be required to install treatment systems to meet the EPA standards for uranium. EPA is also concerned about radon exposures that service technicians and others could receive due to elevated radon levels that may be found within the treatment system buildings.

The new drinking water standard led the Clean Harbors Deer Trails RCRA facility in Colorado to pursue authorization to accept radium wastes. In 2005 the Rocky Mountain Compact declared the

Deer Trails facility a regional facility for acceptance of radium waste. Organizations within the Rocky Mountain Compact became concerned they would be forced to dispose of waste generated by water treatment systems at the Deer Trails facility. The Rocky Mountain Compact adopted an exemption that allows generators to dispose of water treatment system waste at any facility licensed to accept these wastes.

In September 2006 the regional facility designation for the Deer Trails facility was expanded to include NORM and TENORM waste. In August 2007, the Rocky Mountain Compact approved two import license applications to send waste to the Deer Trails facility – one from New York and one from Utah. The host state, Colorado, retains the right to veto import applications for the facility.

Louisiana Energy Services has been approved to operate a uranium enrichment facility in New Mexico. A stipulation in the operating license prohibits the disposal of depleted uranium generated by the facility within the state of New Mexico. It is estimated the facility will generate 17-18 million pounds of depleted uranium annually.

The NRC expects to issue guidance regarding the storage of low-level waste in early 2008. This is a priority for NRC due to the proposed closure of the Barnwell facility to out-of-region low-level radioactive waste. The NRC will be working on making its 20.2002 request process more transparent. These are requests that seek alternate disposal for certain materials.

Waste Control Specialists is hopeful the state of Texas will issue a decision on its application to operate a low-level radioactive waste disposal facility by October 2007.

Approximately fifteen months ago the state of Tennessee revised its regulations regarding the attribution of incinerator ash. Once incinerated, it may now become Duratek (Tennessee) low-level waste. Letters were sent to generators within the Northwest Compact indicating they could send their incinerable wastes to Duratek. Mr. Larry Golstein and I met with representatives of EnergySolutions and Duratek and reached agreement they would stockpile Northwest Compact waste and then run it as a campaign. The resulting incinerator ash would be attributed to Northwest Compact generators and sent to the Richland facility for disposal.

The Allied Technology Group legacy waste issue has been resolved by the Washington State Department of Health (Health). Following an extensive review of records pertaining to this waste Health determined ten percent of the legacy waste will be disposed at US Ecology's Richland facility and the remaining waste will be sent to the EnergySolutions facility.

#### **Next Meeting**

The committee decided to hold its next meeting in the spring of 2008 in Boise, Idaho.

#### **Public Comment**

No public comment was received