

DRAFT MINUTES

APPALACHIAN STATES LOW-LEVEL RADIOACTIVE WASTE COMMISSION ANNUAL MEETING

October 26, 2018

CALL TO ORDER

Mr. Frame called the meeting to order at 10:12 a.m.

INTRODUCTION AND ROLL CALL

Mr. Janati conducted the roll call and the members introduced themselves. The attendees are listed below:

Members and Alternates

- Dave Allard, Alternate Member from Pennsylvania
- Frieda Fisher-Tyler, Alternate from Delaware
- Jason Frame, Member from West Virginia
- Edward Hammerberg, Alternate from Maryland
- Matthew Higgins, Alternate from Delaware
- Kaley Laleker, Member from Maryland
- Clifford Mitchell, Member from Maryland
- Richard Roman, Alternate from Pennsylvania
- Albert Romanosky, Alternate Member from Maryland
- Matthew Smith, Alternate from West Virginia

Commission Staff

- Rich Janati, Administrator, PA DEP
- Timothy Anderson, Esquire, Pepper Hamilton
- Michelle Skjoldal, Esquire, Pepper Hamilton

Others Present

- Andrew Taverna, Staff Member, PA DEP
- Stefanie Muzic, Administrative Support, PA DEP

ADOPTION OR MODIFICATION OF THE AGENDA

There were no modifications to the proposed meeting agenda.

APPROVAL OF THE MINUTES OF THE PREVIOUS MEETING

Mr. Frame asked if any member had modifications or changes to the minutes of the October 27, 2017 annual meeting. There were no comments and the Commission voted to approve the minutes unanimously.

REPORT OF THE CHAIRMAN AND EXECUTIVE DIRECTOR

Review of Treasurer's Report for FY 2017-18

Mr. Janati discussed the Treasurer's Report, which is a statement of revenues and expenditures for the Commission's Operating Fund during fiscal year (FY) 2017-2018. This fund is being invested by the Pennsylvania Treasury Department under the INVEST Program. Interest from the Operating Fund during this FY was \$1,462. Actual expenses for this period totaled \$30,209, which exceeds the budgeted amount of 30,200 by \$9. The Commission's expenditures exceeded its revenues by \$28,747.

Review of Audit Report for FY 2017-18

Mr. Janati discussed the Independent Auditor's Report for FY 2017-2018. The audit was conducted by Greenawalt and Company in accordance with the Government Auditing Standards and included a review of the Commission's internal control structure, laws, and regulations. The audit concluded that there were no findings or items of non-compliance.

Mr. Janati said the balance sheet reflects the Commission's assets, consisting of "cash" and "investments." The checking account maintained by Citizens Bank reflects a cash balance of \$10,951 as of June 30, 2018. The Commission's total net assets were \$2,831,126 as of June 30, 2018. The balance sheet also reflects an amount of \$97,478 as appropriated funds, including \$10,000 for legal services and \$87,478 for fiscal stabilization. The money received from the Department of Energy (DOE), the surcharge fund, is being retained in a restricted fund with the INVEST Program. As of June 30, 2018, this fund had a balance of \$2,722,697 and earned an interest amount of \$23,479 during FY 2017-18. He said the audit report noted that the Commission was not involved in any litigation that could adversely affect its financial position. The Commission voted to accept the Treasurer's Report as well as the Independent Auditor's Report for FY 2017-18 as presented.

STATUS OF COMMERCIAL LLRW DISPOSAL FACILITIES

Mr. Janati provided an overview of the federal and state laws pertaining to LLRW management and disposal and the formation of LLRW regional compacts. He also provided an update on the status of commercial LLRW disposal facilities and recent developments involving these facilities.

There are currently four (4) commercial LLRW disposal facilities in the United States. These facilities are Barnwell in South Carolina; the EnergySolutions facility in Clive, Utah; Richland in Washington; and the Waste Control Specialists (WCS) facility in Texas.

1. The Barnwell facility accepts all classes of LLRW from the three members of the Atlantic Compact (Connecticut, New Jersey and South Carolina). As of July 1, 2008, this facility no longer accepts LLRW from outside the Atlantic Compact. The current projected closure date for this facility is 2038.
2. The EnergySolutions Clive facility accepts Class A waste from all states except those in the Northwest and Rocky Mountain Compacts. The facility also provides for disposal of bulk waste and large components such as steam generators from the nuclear power plants. This facility is not a regional facility and is regulated by the State of Utah. The Utah Department of Environmental Quality is currently conducting a regulatory review for disposal of large quantities of depleted uranium and Class A radioactive sealed sources at this facility. The current projected closure date for this facility is 2050.
3. The Richland facility is a regional facility and accepts all classes of LLRW but only from the Northwest and Rocky Mountain Compacts. The current closure date for this facility is 2056.
4. The WCS facility is a regional facility for the Texas Compact (Texas and Vermont) and accepts all classes of LLRW from both commercial and federal facilities. In April 2012, the Texas Commission on Environmental Quality (TCEQ) authorized WCS to accept waste and begin disposal activities. Additionally, the Texas Compact Commission has established rules for the importation and exportation of LLRW into and out of the Texas region. The annual limit on radioactivity for out-of-compact waste is 275,000 curies (Ci), but there is no annual limit on volume for out-of-compact waste. The TCEQ granted an increase in the total capacity of the commercial facility from 2.3 million cubic feet (ft³) to 9 million ft³. Additionally, disposal of large quantities of depleted uranium and Greater-Than-Class C (GTCC) waste is being considered by WCS. The current projected closure date for this facility is 2045.

In June 2017, Texas legislation became effective that reduces the state fees for disposal of LLRW at the facility. It is expected that the reduction in fees will increase WCS revenue by about 20 percent. Mr. Janati said WCS is also working with the TCEQ to lower LLRW disposal rates at the WCS facility.

Recent Developments

Mr. Janati provided an overview of several recent national developments as follows:

- WCS Acquired by J.F. Lehman & Company - In January 2018, WCS announced the completion of their sale by Valhi, Inc. to an investment affiliate of J.F. Lehman & Company, which is a leading middle-market private equity firm focused on the government, defense and aerospace sectors. J. F. Lehman stated that it has a proven track record that will help WCS achieve its strategic plan and support its continued growth.

- NRC Issues a Federal Register Notice re Greater-Than-Class C (GTCC) Waste - In February 2018, the Nuclear Regulatory Commission (NRC) issued a Federal Register Notice to seek input from various stakeholders in identifying issues associated with the development of a regulatory basis for GTCC waste. In December 2015, the Commission directed the NRC staff to develop a regulatory basis for disposal of GTCC and transuranic waste through means other than a deep geologic disposal. The Commission also directed the staff to receive input from stakeholders during the development of the regulatory basis. Currently, there is no disposal facility in the United States for GTCC waste. GTCC is LLRW but its concentration exceeds the concentration limits in 10 CFR Part 61 waste classification table and therefore, it is not acceptable for disposal at the existing commercial LLRW disposal facilities. By statute, NRC is the regulatory agency and DOE is responsible for management and disposal of GTCC waste. In February 2016, DOE issued the final Environmental Impact Statement (EIS) for GTCC waste. The EIS considers several alternatives for disposal of GTCC waste. DOE has submitted a report to Congress on disposal alternatives and is awaiting action by Congress before it issues a Record of Decision.
- NRC Issues a Federal Register Notice re Very Low-Level Waste (VLLW) Scoping Study - In February 2018, NRC issued a Federal Register Notice announcing the agency's plan to conduct a scoping study and identify possible options to improve and strengthen the NRC's regulatory framework for the disposal of anticipated large volumes of VLLW associated with the decommissioning activities and waste that might be generated by a radiological dispersal device. NRC is seeking stakeholder input and perspectives. This task is given a medium priority in the NRC's Low-Level Waste Programmatic Assessment since there is no significant safety issue driving VLLW disposal. Mr. Janati said the NRC should consider economic impact on the existing LLRW disposal facilities if large amount of VLLW can be disposed of at hazardous or municipal solid waste landfills. He also said it is unknown at this time if the new waste stream would fall under the authority of the LLRW compacts.

In response to a question by Mr. Allard, Mr. Janati stated that several years ago, the Environmental Protection Agency (EPA) published an Advanced Notice of Proposed Rulemaking for disposal of low-activity radioactive waste, but the agency decided not to proceed with the proposed rulemaking.

- NRC Issues Staff Requirements Memorandum (SRM) re Final Rule for LLRW Disposal (10 CFR Part 61) - In September 2017, the NRC issued a SRM in response to SECY-16-0106, which sought Commission approval to publish a final rule that would amend 10 CFR Part 20, "Standards for Protection Against Radiation," and 10 CFR Part 61, "Licensing Requirements for Land Disposal of Radioactive Waste." The SRM states that the draft final rule published in SECY-016-0106 should be revised to incorporate several changes. One of the most significant changes is to reinstate the "grandfathering provision" for applying requirements to only those sites that plan to accept large quantities of depleted uranium for disposal. The NRC staff prepared the revised draft final rule and is awaiting Commission's review and approval to proceed with the final rule.

INFORMATION ON LLRW DISPOSAL FOR THE APPALACHIAN COMPACT

Mr. Taverna provided background information on the DOE's Manifest Information Management System (MIMS). The MIMS contains information on LLRW disposal at the current commercial LLRW disposal facilities. Mr. Taverna said he also contacts the generators of LLRW directly, if needed, to verify that the information contained in the MIMS is accurate.

Mr. Taverna discussed the waste disposal information for calendar year 2017. The Appalachian Compact disposed of about 495,889 ft³ of LLRW. Pennsylvania disposed of about 489,266 ft³, most of which was generated by the government (due to the decommissioning of the Safety Light site in PA by the EPA), the industrial and the utility sectors. Maryland disposed of about 6,588 ft³ of waste, most of which was generated by the utility sector. Delaware and West Virginia disposed of about 34.1 ft³ and 0.68 ft³, respectively. Almost all Class A waste generated within the Compact was shipped to the EnergySolutions Clive facility. Mr. Taverna also provided information on the radioactivity (curie) of waste generated in the Compact. The Compact generated about 1,893 Ci of LLRW. Pennsylvania generated about 1,714 Ci of waste, and Maryland generated about 179 Ci of waste. West Virginia and Delaware generated about 0.0017 Ci and 0.00001 Ci, respectively.

Mr. Taverna provided a brief discussion of waste disposal trends in the Compact for the period of 1997 through 2017. The Barnwell disposal facility in South Carolina stopped accepting waste from outside the Atlantic Compact in 2008, resulting in the storage of Class B and C wastes, mainly by the nuclear utilities, during 2009 through 2013. The total radioactivity reported during this period represents only Class A waste that was shipped to the Clive facility in Utah. Beginning in 2014 and through 2017, the reported radioactivity also includes Class B waste that was shipped to the WCS facility in Texas. Mr. Janati said the Appalachian Compact has not yet made any shipments of irradiated reactor components to the WCS facility. He also said due to blending of Class A waste with Class B waste, the volume of Class B waste that would have been disposed at the WCS facility has diminished significantly.

Mr. Taverna presented a pie chart showing that in 2017, about 99.74% of the Compact's LLRW by volume was disposed at the Clive facility in Utah, and only 0.26% by volume was disposed at the WCS facility in Texas. In comparison, about 69% of the Compact's LLRW by radioactivity was disposed at the Clive facility, and about 31% by radioactivity was disposed at the WCS facility.

UNFINISHED BUSINESS

Proposed Amendment to the Bylaws

Mr. Anderson discussed the proposed amendment to the bylaws involving Article IV, Section One, "Annual and Regular Meetings". He said the amendment would remove the requirement that the annual meeting be held in June. He said the bylaws will change to reflect that the Commission may hold its annual meeting during any month of a calendar year and within any county selected by the Chairman, because the compact has not yet selected a county to host the Regional Facility.

The Commission voted unanimously to approve the proposed amendment to the bylaws.

Discussion of Commission’s Suggested Action to Support Educational Activities in Collaboration with Academic Institutions

Ms. Skjoldal stated that at the 2017 annual meeting of the Commission, an issue was raised as to whether the Commission has the general authority to undertake public education programming efforts and whether the use of surcharge funds would be appropriate to fund such efforts. She said the Commission clearly has the authority to undertake such efforts and is authorized to conduct public education activities. She also said because the siting process for a LLRW disposal facility has been suspended, the Commission is not able to use surcharge funds, the money received from DOE, for its public education efforts. She also pointed out that the compact imposes certain limitations on the Commission, including the restriction that the Commission “not accept any donations, grants, equipment, supplies, materials, or services conditional or otherwise, from any source except from any Federal agency and from party states, which are certified to being legal and proper under the laws of the donating party state.”

Mr. Mitchell said if the Commission decides to undertake this effort in collaboration with an academic institution, the most likely source of the funding would either be a state government, if it is a state university, or Federal funds. Mr. Janati recommended that the Commission establish a working group to implement the suggested action for educational activities. Upon further discussion, the Commission agreed to form a working group to support educational activities in collaboration with academic institutions that further the understanding of LLRW management and disposal through the development of curriculum or case studies that could be used by those academic institutions including risk communications. The working group consists of four members; one from each of the four party states of Pennsylvania (Mr. Allard), Maryland (Mr. Mitchell), Delaware (Ms. Fisher-Tyler), and West Virginia (Mr. Smith). Mr. Mitchell suggested that the Commission partner with at least one academic institution, preferably a university in Pennsylvania, to develop a model curriculum.

Mr. Mitchell asked if the analysis contained in the counsel’s memorandum would have any implications for the movement of Commission’s funds from surcharge fund to operating fund. Mr. Anderson said it will not have any direct impact. He said for any conceivable use of surcharge money, other than just having it in a safe account, the Commission needs some action by DOE. At the recommendation of Mr. Allard, the Commission directed the counsel to draft correspondence to DOE with regard to the use of surcharge funds received and held by the Commission under the Low-Level Radioactive Waste Policy Amendments Act of 1985, as amended.

NEW BUSINESS

Election of Officers

The Commission members voted unanimously to elect Jason Frame, Director, Office of Medical Cannabis, West Virginia Department of Health and Human Resources, as the chairman and

Kaley Laleker, Deputy Director, Land and Materials Administration, Maryland Department of the Environment, as the Vice-Chairman of the Commission.

Adoption of Revised Approved Budget for FY 2018-19 and Proposed Budget for 2019-20

Mr. Janati presented the proposed revised budget for FY 2018-19. He said the revised budget reflects a projected increase in the interest income for the operating fund from \$500 to \$1,000. He also presented the proposed budget for FY 2019-20. The proposed budget is similar to the revised budget for FY 2018-19. The Commission voted unanimously to approve the proposed revised budget of \$30,200 for FY 2018-19 and the proposed budget of \$30,200 for FY 2019-20.

Mr. Janati said the LLW Forum (Forum) is currently addressing issues related to transparency and the salary and benefit package for the executive director. He said the Commission should continue its membership with the Forum until those issues are resolved.

2019 Annual Meeting

The Commission decided to hold its next annual meeting on November 8, 2019, with an alternate date of October 25, 2019. The meeting will be held at the Hilton Hotel in Harrisburg, PA.

PUBLIC COMMENT

There were no members of the public in attendance.

ADJOURNMENT

Mr. Frame adjourned the meeting at approximately 12:37 p.m.