



## Appalachian States Low-Level Radioactive Waste Commission

### DRAFT MEETING MINUTES

October 27, 2023

#### **PRE-CALL TO ORDER**

The Appalachian States Low-Level Radioactive Waste Commission Administrator, Rich Janati, introduced himself and asked for the nomination and election of a chair pro temp to conduct the meeting due to the absence of a chair and vice chair. The Commission unanimously voted to elect Tyler Abbott as the chair pro temp.

#### **CALL TO ORDER**

Mr. Abbott called the meeting to order at 10:05 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**

- Dwight Shearer – Alternate from Pennsylvania
- Daniel Farley – Alternate from Pennsylvania
- Adams Walters – Alternate from Pennsylvania
- Clifford Mitchell – Member from Maryland
- Tyler Abbott – Member from Maryland
- Ed Hammerberg – Alternate from Maryland
- Robert Brinsfield – Alternate Member from Delaware
- Matthew Higgins – Alternate Member from Delaware
- Tera Patton – Member from West Virginia
- Matthew T. Smith – Alternate for West Virginia

#### **Commission Staff**

- Rich Janati, Administrator, PA DEP
- Timothy Anderson, Esquire
- Maria Kennison, Esquire

#### **PA DEP Staff**

- Stephanie Banning
- Molly Adams



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- Michelle Foster
- Dave Baracco
- Ryan Bankert
- Kristina Hoffman
- Michael Karchner

### **Others Present**

- Vern Rogers, EnergySolutions
- Victoria Lantz, Transcriber

### **ADOPTION OR MODIFICATION OF THE AGENDA**

There were no modifications to the proposed meeting agenda.

### **APPROVAL OF THE MINUTES OF THE PREVIOUS MEETING**

Mr. Abbott asked if any member had modifications or changes to the minutes of the October 28, 2022 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 2022-23**

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) 2022-2023. Both the Operating Fund and Surcharge Fund are being invested by the Pennsylvania Treasury Department under the INVEST Program. Interest from the Operating Fund during this FY was \$1,181. Actual expenses for this period totaled \$30,729 which is \$12,971 less than the budgeted amount of \$43,7000. The reason the expenditures were significantly under the budgeted amount is because at the previous Commission meeting it was unknown whether Mr. Janati would be able to return as annuitant. Therefore, the Commission approved the hiring of a part-time administrator.

However, since Mr. Janati decided to stay through the end of 2023, the money was never spent. Mr. Anderson proposed renaming the budget item from administrator salary to administrator fee or contractor fee.

The Commission's revenue was \$12,971 short of the budgeted amount. Mr. Janati stated that this happens every year as the Commission has no revenue source aside from the interest collected on the Operating Fund. In the past the Commission had an office and staff when the member states provided contributions and that was how expenses were paid. To maintain the Operating Fund, funds are periodically transferred from the Surcharge Fund to the Operating Fund. The Surcharge



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Fund consists of restricted funds provided by the Department of Energy (DOE) and has accumulated interest. The Surcharge Fund had an interest amount of \$60,817. The Commission has been using the interest earned from the Surcharge Fund to fund day-to-day operations. The Commission informed the DOE of this and received no response, which has been interpreted as tacit permission. Mr. Janati said at the end of June 2023, the Operating Fund and the Surcharge Fund had a balance of \$62,467 and \$2,830,503 respectively. The current balance of interest accrued on the Surcharge Fund is \$1,183,200 and the remaining amount of \$1,647,303 constitutes the principal.

### **STATUS OF COMMERCIAL LLRW DISPOSAL FACILITIES AND RECENT DEVELOPMENTS**

Mr. Janati provided an update on the status of commercial LLRW disposal facilities and recent national developments involving management and disposal of low-level radioactive waste (LLRW).

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.
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. EnergySolutions recently received approval from the State of Utah to begin disposing of Class A radioactive sealed sources. This is significant as many of these Class A sources are being stored onsite at various locations, which has created a national security issue. EnergySolutions is also seeking approval for their Class A waste license to be renewed, licensing of a federal cell and an exempted waste cell. They hope to receive a significant amount of depleted uranium from the DOE and plan to dispose of this waste at the EnergySolutions facility in Utah.
3. The Richland facility is a regional facility and accepts all classes of LLRW but only from the Northwest and Rocky Mountain Compacts.
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



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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 Ci, but there is no annual limit on volume for out-of-compact waste. Disposal of large quantities of depleted uranium and Greater-Than-Class C (GTCC) waste is being considered by WCS. In August 2023, WCS submitted a license renewal application and approval is expected by September 2024. Additionally, the newest disposal cell is expected to be completed in November of this year

Mr. Janati stated most of the high-concentration waste from the compact is being disposed at the WCS facility in Texas, primarily originating from the nuclear power plants. Most of the low-activity waste in the compact is being disposed of at the Clive facility in Utah.

Plans do exist for an Appalachian Compact LLRW Disposal Facility, but those plans and the search for a suitable site were suspended in 1998. The process was suspended because at the time the Appalachian Compact had access to other waste disposal facilities outside the compact, namely, the EnergySolutions and Texas Compact waste disposal sites. Unless our compact were to lose access to these other sites, there would be no reason to restart the siting process for an Appalachian Compact LLRW Disposal Facility.

### **INFORMATION ON LLRW DISPOSAL FOR THE APPALACHIAN COMPACT**

Mr. Janati discussed the waste disposal information for calendar year 2022. The Appalachian Compact disposed of about 66,705 ft<sup>3</sup> of LLRW. Pennsylvania disposed of about 48,241 ft<sup>3</sup>, most of which was generated by the industry and the nuclear utilities. Maryland disposed of 18,462 ft<sup>3</sup>, most of which was generated by the industry, the nuclear power plants, and the government. West Virginia disposed of 0 ft<sup>3</sup> and Delaware disposed of 2 ft<sup>3</sup>. Most of Class A waste generated within the compact was shipped to the EnergySolutions Clive Facility in Utah. Mr. Janati also provided information on the radioactivity (curie) of waste generated in the compact.

The compact generated about 846 Ci of LLRW. Pennsylvania generated about 818 Ci of waste and Maryland generated about 27 Ci of waste. Delaware generated less than 0.1 percent Ci and West Virginia produced none. Information from the Manifest Management Information System (MIMS) and the relevant facilities is used for recording how much waste was shipped from the compact. Mr. Janati stated that the decommissioning of Three Mile Island Unit 2 will result in an increase of LLRW from the Appalachian Compact.

Mr. Mitchell asked how accurate the reporting information from the MIMS was and whether it was spot checked by the Commission for accuracy. Mr. Janati replied that the Commission also receives waste disposal information directly from the disposal facilities and if there are discrepancies between the two sources then the generator is contacted to resolve the issue.



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Ed Hammerberg inquired about the decommissioning of Three Mile Island Unit 2 and the impact on LLRW generation over the next couple of years. Mr. Janati stated that the TMI-2 decommissioning will mainly increase the volume of LLRW that is generated in the compact, but radioactivity generated will not increase by much.

Mr. Janati provided a brief discussion of waste disposal trends in the compact for the period of 2002 to 2022. The Barnwell disposal facility in South Carolina stopped accepting waste from outside the Atlantic Compact in July 2008, resulting in the storage of Class B and C wastes, mainly by the nuclear utilities, for about five years. Beginning in 2014 and through 2022, the reported radioactivity also includes Class B waste that was shipped to the WCS facility in Texas. In 2016, the Safety Light facility in PA started cleanup efforts under the EPA's Superfund Program. The cleanup continues but currently there is not much LLRW being generated by this facility.

Mr. Janati provided a brief discussion of radioactivity of waste disposal trends for the period of 2002 through 2022. From the years 2002 through 2008, the radioactivity of waste was very high due to the availability of the Barnwell facility to our compact. The nuclear power plants in the compact shipped large quantities of high activity irradiated components and reactor cleanup resins to Barnwell in 2007 and 2008, knowing that they will no longer have access to this facility.

The shipment of radioactive waste has been relatively low after the closure of the Barnwell facility to our compact beginning in 2009. We began shipping waste to the WCS facility in 2014 and we have been able to ship Class B and C wastes that contain higher activity to this facility. In 2018, the reported activity is very high because of a shipment of irradiated reactor components from a nuclear power plant in PA to the WCS facility in Texas.

Mr. Janati presented a pie chart showing that in 2022, about 61% of the compact's LLRW by volume was disposed at the Clive facility in Utah and about 39% by volume was disposed at the WCS facility in Texas. In comparison, about 58% of the compact's LLRW radioactivity was disposed at the Clive facility and about 42% of radioactivity was disposed at the WCS facility. Mr. Janati stated that these statistics show us that our generators are sending some of their higher concentrations of waste to the WCS facility.

Regarding disposal of TENORM (Technologically Enhanced Naturally Occurring Radioactive Material), Mr. Janati stated that in the Appalachian Compact the definition of LLRW does not include TENORM, and therefore, we ensure that the reported LLRW disposal information excludes TENORM.



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### UNFINISHED BUSINESS

#### **Annual Audit Recommendations and Commission's Response**

Attorney Kennison brought forward a new agenda item concerning the last audit from 2021-2022 conducted by Trout CPA. The first item to be addressed was internal controls over financial reporting. The audit found that the Commission does not have staff dedicated to preparing the Commission's financial statements and that the auditor was the entity that prepared these financial statements as part of the auditing agreement. Two associated risks were identified: (a) there could be a timing issue if these financial statements are needed before they are prepared by the auditor; and (b) there may be material differences between management-prepared statements and the audited financial statements. The Commission's response to this finding was to accept the risk because the cost of hiring accounting staff would be cost-prohibitive, particularly given the Commission's small operating budget, limited number of financial transactions, lean staffing, and single source of funds. The Commission also included in its response that it would annually evaluate this item. Mr. Janati added that these findings are from the previous audit performed by Trout CPA. Trout CPA has informed us in writing that they will no longer be providing audit services to government-related organizations. In response, the Commission has hired a new independent auditor, MaherDuessel. They conducted the latest audit of the Commission's financial statements (fiscal year 2022-2023) and made one recommendation involving the separation of duties. They recommended that an individual independent of the disbursement and bank reconciliation process review the original unopened bank statements for any unauthorized transfers, unauthorized disbursements, potential alterations, and/or verifying there are no gaps between check numbers. Mr. Janati said the review of bank statements by an individual independent of the disbursements and bank reconciliation process was being conducted randomly but we have already enhanced the cash disbursements approval process to implement the auditor's recommendation. At the conclusion of this discussion the members expressed satisfaction with the Commission's response to the audit recommendation regarding separation of duties. The Commission also determined that it is not feasible to hire staff to prepare financial statements at this time.

#### **Discussion of the Bylaws**

Attorney Anderson discussed two provisions in the bylaws related to signing contracts and writing checks and presented the recommended changes for the bylaws. The first recommended changes related to Article Five, Section Four, which concerns the executive director. Starting on page 13 of the bylaws, and page 14, items 17, 18, and 19. Those sections set up the signing requirements for contracts with values less than \$10,000, values more than \$10,000; and, for legal auditing, and technical services. When the Commission had a paid staff, the executive



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director primarily filled the roles laid out in that section. Since the Commission has not had an executive director in more than 20 years, a provision was added to the bylaws allowing the chair to fill the signing role of the executive director and for the vice-chair to fill the secretary/treasurer role. This means that any act called for under the bylaws that requires both the chair and the executive director or the secretary/treasurer is done by joint agreement of the chair and the vice-chair. While this provision addressed what happened when there was no executive director or secretary/treasurer, it did not address what happened when there was no chair or vice-chair. Attorney Anderson initially proposed a solution of allowing any member to be able to perform an act required of the chair or vice-chair in the event such positions were vacant. Mr. Janati suggested that if the chair and vice-chair positions were vacant, the Commission could hold a special meeting to elect people to those positions. Attorney Anderson agreed with the suggestion and added on that the special meeting could be in person, hybrid, full remote, or even notational voting. The additions could allow for an alternate to act as a backup for the chair and vice-chair. Additionally, the addition will also codify the administrator as being the chair's designee. Mr. Shearer recommended that the treasurer and secretary positions be separated from the chair and vice-chair positions to provide two additional signers. He also suggested that the positions should not all be filled by members or alternates from one state. Mr. Hammerberg suggested adding simple language to convey that not all officers maybe from the same state. Mr. Janati said he will work with counsel to draft the revisions to the bylaws for next year's meeting using the recommendations made by the Commission. Mr. Hammerberg asked if changing the bylaws was a two-year process, one for the draft to be submitted, and one for the voting on accepting them. Mr. Janati explained that as long as the proposed changes are sent out for review at least two weeks before the next meeting, the Commission can vote on the changes at the next meeting. At the conclusion of this discussion, the Commission passed a motion that instructs the Commission's counsel to draft an amendment to the bylaws to be distributed to members and alternates at least 14 days before the next meeting, to be adopted at the meeting. The amendment will separate the offices of secretary and treasurer; require the secretary and treasurer each be a member or alternate; and require that the chair, vice chair, secretary, and treasurer not all be appointed by the same state. This will result in four separate officers. The amendment will also require that checks in excess of \$10,000 be signed by two officers.

### **Update on LLW Forum Activities**

Mr. Hammerberg provided an update on recent activities of the LLW Forum (Forum), an organization that the Commission is a member of. The Forum also includes as members other interstate LLRW Compacts, several independent states and federal agencies including NRC, EPA, DOE, LLRW generators, and industrial sectors such as the processors and the disposal facilities. It provides an opportunity for the members to interact and discuss radioactive waste



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management and disposal issues. The DOE is a major supporter of the Forum and provides a large portion of the Forum's budget. While primarily established for use by the compacts, other related organizations are also included as well. The organization hosts two meetings each year. The most recent one was several weeks ago in Salt Lake City, Utah. The meetings are organized by the executive director of the Forum, the agenda is created by an Agenda Committee, and the meetings usually run a day and a half. Several years ago, the organization suffered from some difficulties with a previous executive director and there were those that were dissatisfied with the direction that the Forum was taking. All of that has since been addressed and the Forum is on a more sustainable track. In the most recent meeting, there were several interesting presentations. Peter Bradford, a former NRC Commissioner, was one of the keynote speakers and he spoke about the growing use of small modular reactors. Another presentation concerned fusion technology, its usage and challenges that stem from its use. Another interesting presentation was from the Government Accountability Office. Their presentation concerned their current investigation into the issues with the management of radioactive sealed sources. Mr. Janati stated that he serves on the Forum's Disused Sources Working Group (DSWG), which was formed at the request of the National Nuclear Security Administration (NNSA). In 2014, the DSWG published a report with 24 recommendations that the NNSA requested the DSWG begin to implement. The top five recommendations are currently the priority for the DSWG. Mr. Janati said the most significant achievement of the DSWG so far has been raising awareness about the current issues with the management of disused radioactive sealed sources.

### **NEW BUSINESS**

#### **Election of Officers**

The Commission voted unanimously to elect Frederick Siger, Secretary, Pennsylvania Department of Community and Economic Development, as the Chair and Tyler Abbott, Director, Land and Materials Administration, Maryland Department of the Environment, as the Vice-Chair of the Commission for the coming year.

#### **Adoption of the Revised Approved Budget for FY 2022-23 and Proposed Budget for FY 2023-24**

Mr. Janati presented a revised budget for the 2023-2024 fiscal year. The revision was made due to an increase in the interest amount and the increase in the cost of the audit. It is becoming very difficult to find an independent auditor who can do an audit of a government entity. We were able to find one with the help of a recommendation from our counsel. The audit cost has increased to \$5,500. With that included, the budget for fiscal year 2023-2024 is \$47,200. The budget for 2024-2025 is similar to the 2023-2024 budget except that the administrator fee is





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higher because that's going to be for one year, July 1, 2024 through June 30<sup>th</sup>, 2025. The Commission approved the revised 2023-2024 budget of \$47,200 and the proposed 2024-2025 budget of \$59,700.

**2024 Annual Meeting**

The Commission passed a motion to accept November 1<sup>st</sup> as the date for the 2024 annual meeting.

**PUBLIC COMMENT**

There were no members of the public in attendance.

**ADJOURNMENT**

Mr. Abbott adjourned the meeting at 12:14 pm.

DRAFT