

SULLIVAN GREEN SEAVY LLC

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February 27, 2012

Via email: INIS_EIS.Resource@nrc.gov

Chief, Rules, Announcements and Directives Branch
Division of Administrative Services
U.S. Nuclear Regulatory Commission
Mail Stop TWB-05-B01M
Washington, D.C. 20555-0001

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RULES AND DIRECTIVES
BRANCH
2012

Re: *Environmental Impact Statement for the Proposed Fluorine Extraction Process and Depleted Uranium Deconversion Plant in Lea County, New Mexico ("INIS DEIS")*
Report Number NUREG-2113, draft

The following comments on the above-referenced INIS DEIS are being submitted on behalf of the Rocky Mountain Low-level Radioactive Waste Compact ("Compact.") The Compact is an agreement among the states of Colorado, New Mexico and Nevada, and was created pursuant to the federal Low-level Radioactive Waste Act, and approved by Congress. Thus, the Compact is both an agreement among its member states, and federal law. The Compact has jurisdiction over the import to, export from, and disposal of low-level radioactive waste within the Compact Region.

Import and Export of Low-level Radioactive Waste to and from the Facility

Pages 2-24 and 4-56 state that the Compact must approve shipments from the facility of depleted uranium to the WCS disposal facility in Texas. This statement is true because the facility is located in New Mexico, a member state of the Compact, and the Texas facility is not within the Compact region.

The DEIS notes that the U.S. Ecology facility in Richland, Washington may be a disposal option for depleted uranium. Please add that Compact approval is required for the export of any and all low-level radioactive waste to this facility.

ATTORNEYS & COUNSELORS AT LAW

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SUNSI Review Complete
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E-RIDS = ADM-03
Call = A. Mallikios (9041)

Chief, Rules, Announcements and Directives Branch
Division of Administrative Services, U.S. Nuclear Regulatory Commission
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Please add that the export of any and all low-level radioactive waste (as defined by the Compact) from the Compact region requires Compact approval.

Also add that the import of any low-level radioactive waste (as defined by the Compact) to the INIS facility from outside the Compact will require Compact approval, unless the material is depleted uranium oxide as described in the Declaratory Order issued by the Board dated September 14, 2010 ("Order"), attached to this letter. The Order describes the conditions under which import of DUF₆ to the facility from outside the Compact region would *not* require approval by the Compact.

The Compact will continue to require approval for import of out-of-region low-level radioactive waste not covered by the Order.

Please contact Leonard Slosky, Executive Director of the Rocky Mountain Low-level Radioactive Waste Compact, at 303-825-1912 if you have any questions.

Sincerely,



Barbara Green

Counsel

Rocky Mountain Low-level Radioactive Waste Compact

attachment: Declaratory Order, dated September 14, 2010
cc: Leonard Slosky (via email: lslosky@slosky.com)

BEFORE THE ROCKY MOUNTAIN LOW-LEVEL RADIOACTIVE WASTE
BOARD

DECLARATORY ORDER

**INIS RECEIPT OF DEPLETED URANIUM
HEXAFLUORIDE FROM OUTSIDE THE ROCKY
MOUNTAIN COMPACT REGION**

WHEREAS, Article VII(c) of the Rocky Mountain Low-level Radioactive Waste Compact ("Compact") makes it unlawful for any person to manage any low-level radioactive waste ("LLRW") within the Compact Region unless the waste was generated within the region or unless authorized to do so both by the Compact Board ("Board") and by the state in which said management takes place; and

WHEREAS, Compact Rule 7 prohibits any person from importing waste generated outside the Compact Region for management within the Compact Region unless an import permit has been issued pursuant to Rule 7; and

WHEREAS, the Board's jurisdiction under the Compact over material imported to the Compact Region is limited to LLRW; and

WHEREAS, INIS intends to receive depleted uranium hexafluoride (DUF₆) from URENCO USA/LES in New Mexico, and from proposed enrichment facilities located outside of the Compact Region; and

WHEREAS, INIS has requested an exemption from Board Rule 7 (Import) for the DUF₆ that INIS intends to receive from enrichment facilities outside the Compact Region; and

WHEREAS, the Board heard testimony from INIS at its meeting on April 13, 2010 that described the purpose and use of DUF₆ that INIS intends to receive from outside the Compact Region; and

WHEREAS, the Board considered a memorandum and testimony from Leonard Slosky that analyzed whether the DUF₆ to be imported to the Compact Region was "waste" subject to the Board's jurisdiction.

The Board hereby finds and determines as follows:

Section 1.0 Findings.

1.1 An integral part of the INIS processing system is the extraction of fluorine from DUF_6 .

1.2 INIS intends to manufacture the extracted fluorine into several commercial products to be sold.

1.3 The depleted uranium from which the fluorine has been extracted would then be "de-converted" into depleted uranium oxide (DUO).

1.4 The DUO would be transported out of the Compact for disposal, storage, or re-conversion into uranium hexafluoride for further enrichment.

1.5 The DUF_6 to be received by INIS from outside the Compact is not waste as long as it used to produce usable fluorine products that are sold.

Section 2.0 Determination and Order

2.1 Depleted uranium hexafluoride from outside the Compact Region. Receipt by INIS of DUF_6 from any facility outside the Rocky Mountain Compact Region does NOT require authorization pursuant to Compact Article VII(c) and Board Rule 7 because the DUF_6 is not waste as long as all of the following **CONDITIONS** are met:

2.1.1 Onsite storage of uranium, in any form, at the INIS Plant does not exceed 2,200,000 kilograms of uranium (KgU).

2.1.2 Onsite storage of DUO at the INIS Plant does not exceed 1,000,000 KgU.

2.1.3 The onsite storage of any one DUF_6 cylinder containing DUF_6 or DUO cylinder containing DUO has not exceeded two years.

2.1.4 At least 51% of the DUF_6 cylinders received by INIS within the last calendar year have been processed to extract the fluorine.

2.1.5 At least 51% (by weight) of the fluoride extracted by INIS within the last calendar year has been sold by INIS.

2.2 Depleted uranium hexafluoride from within the Compact Region. Receipt by INIS of DUF_6 from the URENCO USA/LES facility in New Mexico or any other facility within the Compact Region does NOT require Compact authorization because the transfer of material from one facility to another within the Compact Region is not "import."

2.3 Depleted Uranium Oxide. DUO received by INIS from the INIS pilot testing facility or any other facility outside the Compact is "waste" and therefore DOES require authorization pursuant to Compact Article VII(c) and Board Rule 7.

Section 3.0 Compliance with Conditions. If any of the conditions in Section 2.0 is not satisfied, this Declaratory Order is null and void, and INIS may need to obtain authorization pursuant to Compact Article VII(c) and Board Rule 7 prior to import of DUF_6 into the Compact Region.

Section 4.0 Reporting Requirements.

4.1 INIS shall provide notification to the Executive Director of the Board within 5 business days of any of the following occurrences:

4.1.1 The amount of total uranium, in any form, at the INIS Plant exceeds 2,000,000 KgU.

4.1.2 The amount of DUO at the INIS Plant exceeds 900,000 KgU.

4.1.3 The onsite storage of any one DUF_6 cylinder or DUO cylinder exceeds 23 months.

4.1.4 If after beginning commercial operation, the INIS Plant does not conduct fluorine extraction for more than 90 continuous calendar days.

4.1.5 If after beginning commercial operation, less than 25% (by weight) of the fluoride extracted by INIS within the prior 6 months has been not sold by INIS.

4.2 INIS shall provide a yearly report to the Executive Director of the Board, on or before January 15 of each year that the INIS Plant receives DUF_6 or DUO from any facility:

4.2.1 The amount (in KgU) of total uranium, in any form, at the INIS Plant.

4.2.2 The amount (in KgU) of DUO at the INIS Plant.

4.2.3 A spreadsheet in Microsoft Excel© (or another format approved by the Board) showing all of the cylinders of DUF₆ and DUO at the INIS Plant along with the date that each cylinder was received at the INIS Plant.

4.2.4 A spreadsheet in Microsoft Excel© (or another format approved by the Board) showing all of the DUF₆ cylinders received by INIS within the last calendar year and showing which of those cylinders have been processed to extract the fluorine.

4.2.5 The amount (by weight) of fluoride extracted by INIS within the last calendar year and the amount (by weight) of fluoride that has been sold by INIS within the last calendar year.

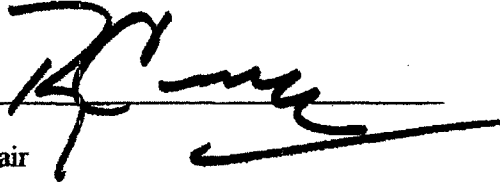
4.2.6 The amount of DUO (in KgU) received by INIS from any facility during the last calendar year and the total amount of DUO (KgU) received from other facilities that remains at the INIS Plant.

Section 5.0 **Effective Date.** This Declaratory Order shall become effective upon adoption by the Board.

Upon a motion duly made and seconded, this Declaratory Order was adopted by a unanimous vote on the 14th day of September 2010.

ROCKY MOUNTAIN LOW-LEVEL RADIOACTIVE WASTE BOARD

Ron Curry, Chair



ATTEST: Sheri Reynolds
Board Administrator

BY: _____

