

PREPARED STATEMENT OF
LEONARD C. SLOSKY
CHAIR-ELECT OF THE LOW-LEVEL RADIOACTIVE WASTE FORUM, INC.
AND THE
ROCKY MOUNTIAN LOW-LEVEL RADIOACTIVE WASTE BOARD
REPRESENTING THE LOW-LEVEL RADIOACTIVE WASTE FORUM, INC.
AND THE STATES OF SOUTH CAROLINA, UTAH AND WASHINGTON
FOR THE U.S. NUCLEAR REGULATORY COMMISSION
MEETING ON LOW-LEVEL RADIOACTIVE WASTE
APRIL 17, 2009

I am Leonard C. Slosky, the Chair-Elect of the Low-Level Radioactive Waste Forum (LLW Forum) and the Executive Director of the Rocky Mountain Low-Level Radioactive Waste Board.

This statement is presented on behalf of the LLW Forum and the States of South Carolina, Utah, and Washington, as well as the Atlantic Interstate Low-Level Radioactive Waste Compact (Atlantic Compact) and the Northwest Interstate Compact on Low-Level Radioactive Waste Management (Northwest Compact). Although the State of Texas is an active and vital participant in the LLW Forum, Susan Jablonski of the Texas Commission on Environmental Quality will be participating in the briefing, and I therefore refer you to her remarks for the state's perspective.

As you may be aware, the LLW Forum was originally established to facilitate state and compact implementation of the Low-Level Radioactive Waste Policy Act and its 1985 Amendments and to promote the development of safe and cost-efficient waste management opportunities for low-level radioactive waste generators. In 2000, the organization incorporated into a non-profit entity and expanded our membership to include all interested stakeholders. Today, we count among our members and subscribers all 9 operating regional compacts, 11 host and unaffiliated states, 5 federal agencies (DOE, EPA, NRC, Army and the Corps of Engineers), all low-level radioactive waste disposal site operators (Barnwell, Richland, Clive, Clean Harbors and WCS), various waste brokers and processors, several individual utilities (as well as the Nuclear Energy Institute), user groups and associations, and other interested stakeholders.

I am first going to provide some observations based on my 30 years of active involvement on issues related to low-level radioactive waste (LLW) disposal and management. I will then make comments on issues that are shared by the three sited states and compacts. Thirdly, I will provide comments that are specific to a state and compact. Lastly, I will mention several emerging issues.

Observations

While the compact system has not produced as many new LLW disposal facilities as expected in 1985, it is important for everyone to recognize that it is the compact system that allows the existing LLW disposal facilities to remain operating and has allowed Texas and WCS to reach the threshold of constructing a new disposal facility.

I have been involved in this issue since 1979 when the three sited states – South Carolina, Washington, and Nevada – said that they would no longer shoulder the burden of disposing of all on the nation’s LLW.

While many aspects of LLW have changed over the last 30 years, one has remained constant – states are unwilling to host LLW disposal facilities unless they have the ability, through compacts, to control the flow of waste to the disposal sites.

Thus, the greatest threats to the LLW disposal system are those that jeopardize the ability of states and compacts to control the wastes to be received by the disposal facilities.

The most imminent of these threats is the lawsuit by *EnergySolutions* challenging the exclusionary authority of the Northwest Compact over the Clive, Utah disposal facility. While count one of the lawsuit is specific to the Clive facility, if *EnergySolutions* is successful on counts two or three, all of the compacts could lose their exclusionary authority.

As I discuss the positions of the three sited states/compacts, I will outline other issues that also have the potential to destabilize the LLW disposal system.

As the NRC and others implement existing programs and consider changes to regulations and guidance to “solve” particular waste disposal problems, the cumulative impact on the existing and potential new disposal facilities should be carefully considered. For example, approval of alternate disposal, disposal of waste at Resource Conservation and Recovery Act (RCRA) facilities, down-blending of Class B and C waste – may make sense in the particular situation; however, such actions decrease the demand for new LLW facilities. Only when the “demand” for LLW disposal is sufficient will new facilities be developed.

Common Comments

The Atlantic Compact and the State of Washington have stated that efforts to require the Barnwell or Richland, Washington sites to take non-regional waste (including foreign-

generated waste), either through change in federal law or policies, litigation, or grants of emergency access, would most likely result in the complete closure of the both facilities.

The sited compacts and states are concerned with activities that may circumvent the ban on non-regional waste at the Barnwell and Richland facilities by obscuring the identification of the original generator of waste such as:

Recent policy changes in Tennessee and practices by waste processors in Tennessee and other states that attribute waste only to the waste processing facility and not to the original generator.

Possible attempts to transport radioactive material into the sited compact regions and re-manifest it as compact waste.

The NRC and Agreement States should carefully consider the consequences that changes in regulations and policy have on the site states and compacts in this regard.

Atlantic Compact and South Carolina

South Carolina joined the Atlantic Compact to conserve the remaining space at the Barnwell disposal site so that disposal capacity would be available when the state's nuclear plants decommission.

The Atlantic Compact, the State of South Carolina, Chem-Nuclear, and the 6 nuclear utilities in the region have put together plans that should ensure the economic viability of the Barnwell site through mid-century, at reasonable disposal rates.

The Atlantic Compact Commission has stated that it is very unlikely that South Carolina elected officials would entertain the idea of amending the law to expand access to the Barnwell site – even for specific waste types such as sealed sources.

Atlantic Compact generators view regional disposal at Barnwell only as the current preferred option, and will continue to monitor the development of other options across the United States.

Barnwell site characteristics have proven less than ideal, with relatively fast groundwater travel times that have resulted in high tritium levels some distance from the waste disposal cells. As a result, expensive environmental remediation may be necessary at some time in the future.

State of Utah

The EnergySolutions Clive, Utah facility continues to operate in a safe and compliant manner. Waste volumes have trended significantly downward since 2005 when 25 million cubic feet were received to approximately 4 million cubic feet anticipated being received in 2009. Waste origin has also changed significantly from predominately government waste in 2005 to almost even volumes of government waste and commercial waste in 2009.

Foreign waste receipt continues to be an issue of concern for Governor Huntsman. He remains opposed to all efforts by EnergySolutions to receive foreign waste. During the 2009 General Legislative Session, the Governor opposed a proposal by EnergySolutions to provide “hundreds of millions” of dollars to the State of Utah in exchange for Utah’s approval to accept foreign waste. This proposal did not advance to a formal piece of legislation during the 2009 General Session.

The State of Utah is a defendant in the EnergySolutions versus Northwest Compact lawsuit, in which EnergySolutions is challenging the Northwest Compact’s authority to deny foreign waste access to the Clive facility. Also, on June 10, 2008, the State of Utah petitioned to intervene in EnergySolutions’ application to the NRC, to allow the importation of radioactive waste from nuclear facility operations in Italy.

The State of Utah continues to closely follow NRC efforts to update rules, policy, and guidance in several areas. The Clive facility is only authorized to take Class A LLW as a matter of state statute and policy. The following issues that might allow Class B and C waste to be reclassified are of utmost concern to the State of Utah:

- Concentration averaging.
- Blending of LLW that could allow waste classification to change Class B or C waste to Class A waste.
- Changes to the current waste classification system such as redefining Class A, B, and C wastes.

Changes in such policies could have the effect of making the Clive facility the de facto national disposal site for all classes of LLW. This would also further discourage development of new disposal facilities.

Only two areas at the Clive facility are now licensed to receive LLW. There is a much larger third area licensed for 11e.(2) mill tailings disposal. Currently under review is conversion of the remaining 11e.(2) capacity to LLW capacity. A major hurdle here will

be the willingness of the U.S. Department of Energy (DOE) to take ownership, upon closure, if the proposed cell design is approved to accept LLW. If *EnergySolutions* cannot obtain DOE concurrence with their current design proposal, the company may offer a different design that could segregate the cells.

Northwest Compact

In addition to the concern about down-blending waste, the Northwest Compact is very concerned with the potential for waste blending being implemented in a manner that obscures the original generator. Will waste processors be allowed, for example, to collect spent resins from utilities across the nation and then, following processing, attribute the blended waste to only the waste processor?

If waste processors are allowed to identify the waste, following processing, as only their own waste, processors may locate in the sited compact regions, collect waste from states outside of the compact region, and attempt to circumvent the ban on non-regional waste by disposing of the waste as their own.

The NRC's foreign waste import license application process could be improved. Import license applications need to clearly provide complete information identifying all disposition pathways for the imported waste, including licensed facilities, solid waste landfills, etc. NRC should then determine if the states and compacts of the proposed disposition facilities have agreed to accept the waste.

Under Import License IW017, waste was imported from Canada and processed in Tennessee. A portion of waste, following processing, was manifested as only Tennessee waste and disposed of at the Clive facility in violation of the Northwest Compact's requirements. Import license applications should clearly identify if foreign waste is to be reattributed as domestic wastes following processing. In addition, the NRC did not consult with the State of Utah or the Northwest Compact prior to granting the waste import license, as NRC may have been unaware of all of the disposition pathways.

There are two additional emerging issues on which the states and compacts are just beginning to be engaged:

- Wastes resulting from the release of a radiological dispersal device.
- Disposal of sealed sources that present a national security risk.

Further dialogue is needed between the federal agencies and states and compacts on these important issues.

Texas

The State of Texas is an active member and participant of the LLW Forum. On January 14, 2009, TCEQ Commissioners denied hearing requests and approved an order on Waste Control Specialists LLC (WCS) Radioactive Material License application, No. R04100. The license will be issued after condemnation proceedings are completed and the applicant has acquired the mineral rights on the underlying land at which the site will be located. The Commissioners approved the licensing order by a vote of 2 to 0.

The license allows WCS to operate two separate facilities for the disposal of Class A, B, and C LLRW—one being for the Texas Low-Level Radioactive Waste Disposal Compact, which is comprised of the States of Texas and Vermont, and the other being for federal waste as defined under the Low-Level Radioactive Waste Policy Act of 1980 and its 1985 amendments.

The WCS facility is currently authorized for the processing, storage and disposal of a broad range of hazardous, toxic, and certain types of radioactive waste. WCS is a subsidiary of Valhi, Inc.

Although the LLW Forum is aware of various issues and concerns by Texas officials, I have not included those items in my prepared remarks as Susan Jablonski from the Texas Commission on Environmental Quality will be participating in this NRC briefing and will therefore present the state's viewpoint. The LLW Forum is strongly supportive of Texas' activities toward the licensing and operation of a new LLRW facility and commends the state on its efforts and accomplishments.

For additional information on WCS license application, please go to the TCEQ web page at http://www.tceq.state.tx.us/permitting/radmat/licensing/wcs_license_app.html or contact the Radioactive Materials Division at (512) 239-6466.