

TEXAS LOW-LEVEL RADIOACTIVE WASTE DISPOSAL
COMPACT COMMISSION

Minutes of the July 21, 2009 Meeting
as Adopted August 19, 2009

8:30 A.M.
Hearing Room E2.012
Capitol Extension
1100 Congress Avenue
Austin, Texas 78701

1. Call to Order

The meeting was called to order at 8:38 a.m.

2. Roll Call

All commissioners were present except Commissioner Wilson who advised he would not be present due to a conflict.

3. Introduction of Guests

Guests introduced themselves at the request of the Chair. Also present were: Nichole Bunker-Henderson and Jim Crowson, Counsels representing the Commission from the Office of the Texas Attorney General and Margaret Henderson, Interim Executive Director.

4. Approval of minutes from the June 5, 2009, meeting

Draft minutes were approved as presented by a unanimous vote of those present.

5. Consider and act on a plan for the review and synopsis at a subsequent meeting of any public comment received during the public comment period on proposed Section 675.1, Part 21, Title 31, Texas Administrative Code (the so-called "volume" rule) that was approved for publication at the June 5, 2009 meeting

Commission counsels and Ms. Margaret Henderson will prepare a synopsis of comments and present them along with the rule at the August meeting for final adoption by the Commission. The comment period ends July 26, 2009, and this adoption schedule will allow the Commission to meet the statutory deadline for adoption of the "volume" rule.

6. Report of the Committee on exportation of low-level radioactive waste to management and disposal facilities outside of the Texas Compact (Ford, Vanags, White)

- a. Current status of export
- b. Discussion of the legal issues and requirements

Ms. Nichole Henderson met with Chair Ford, Vice Chair White and Commissioner Vanags for discussion of the status of export and considerations of rulemaking. The Chair explained the Committee's findings that there is no need for an emergency rule and the Commission should proceed on normal rulemaking basis because there are no circumstances such as eminent health and safety or contractual requirements necessitating emergency rulemaking. Ms. Nichole Henderson sent a letter to Advocates for Responsible Disposal in Texas (ARDT) on June 30, 2009, conveying this information.

The Commission then requested comments from generators, who provided requests for:

- assurance that VT and TX generators may continue to ship waste out of state for disposal until formally told otherwise
- a policy statement in open session or letter from the Commission
- a statement that the generator will not be subject to enforcement penalties under Article VI of the Compact
- assurance that the Commission will consider interim storage issues related to storage costs, form and class of waste, the high cost of specialized handling equipment, transportation to interim storage, scheduled shipments in accord with business timetables of generators, and uncertainty of future disposal rates at the location where waste is being stored

Regarding storage and disposal, Waste Control Specialists (WCS) offered comments explaining:

- the importance of export as it relates to the site to make it a productive facility and keep rates low through improved volume
- that a limited amount of storage space is available due to financial assurance agreement with TCEQ
- that free storage is being offered at this time

Ms. Nichole Henderson related her conversation with Bret Rogers, Senior Vice President of Energy Solutions, regarding ongoing shipments and intent to continue accepting shipments. Counsel confirmed with Energy Solutions that the company would continue to accept waste and there was no threat that Energy Solutions would not accept the waste. He also confirmed that no conflicting information was being sent to generators. Dan Shrum, Regulatory Compliance, Energy Solutions, confirmed waste acceptance criteria and conditions of their license have been met.

In the absence of formalized rules, the Commission considered options for the interim such as a policy statement regarding intent to not enforce. Counsels advised issuing a letter would be a type of permit.

Chair Ford noted that in the absence of a rule, the law states that “upon petition,” the Commission would proceed, noting that the Commission needs formal documentation presented in a petition to understand the true need of exportation and volumes involved.

Chair assured that the Commission understands the financial considerations and importance of the issue to the generators.

Between the hours of 9:30 and 10:15 a.m., the Commission met in Closed Session on this agenda item, as authorized by the Texas Open Meetings Act, Chapter 551, Texas Government Code, for the purpose of receiving advice of counsels.

7. Discussion of and possible vote to approve for publication a proposed new rule governing export of low-level radioactive waste as provided for in Section 3.05(7), Texas Low-Level Radioactive Waste Compact as compiled in Chapter 403, Texas Health and Safety Code

The Chair moved to table the rule to be sure that the rule proposed will be in substantial form as will be adopted. Counsel recommended a stakeholder meeting to take comments on drafting the rule. August 7, 2009, was selected for the stakeholder meeting to be held in Austin, Texas. Mr. Crowson will cover this meeting. Hearing no objections to the tabling, the August 7 stakeholder meeting was confirmed. The stakeholder meeting will encompass the subjects of exportation and importation with discussion periods separated into two topics for discussion:

1. draft rule on exportation
2. importation issue (no draft rule)

Commissioner Gregory proposed a resolution which was amended in discussion and adopted unanimously by those present and published as “Resolution to Consider Export Petitions Pursuant to Texas Compact (P.L. 105-236) Section 3.05(7),” shown as appended to these minutes. This resolution calls for generators to submit petitions for export to the Commission by July 31, 2009.

8. Discussion of and possible vote to approve the development of a plan to establish rules and procedures relating to importation of low-level waste pursuant to the Texas Low-Level Radioactive Waste Compact (in particular Sections 3.05(6) and 6;02) as compiled in Chapter 403, Texas Health and Safety Code

No action was taken on this issue. A plan has not been developed.

9. Report of the Committee on Amicus Brief (Dolgener, Vanags, Wilson) in the matter of Alabama v. North Carolina

a. Request by the Southeast Compact Commission on amicus briefing in a suit pending as an original action in the Supreme Court of the United States, No. 220132 ORG, styled State of Alabama et. al., Plaintiffs v. State of North Carolina

The deadline for signing has passed for the State of Alabama et. al., Plaintiffs v. State of North Carolina brief. Mr. Crowson reported that he spoke with Commission Wilson who does not recommended joining any of the briefs on the July 21 agenda.

b. Study of the brief being prepared by the Rocky Mountain Compact

No action was taken and this item will be revisited at the August meeting.

10. Discussion of and possible vote as to whether to join the Southeast Compact Commission as an Amicus Curiae in the Matter of Alabama v. North Carolina

No action was taken and this item will be revisited at the August meeting.

11. Discussion, consideration, and possible vote as to whether to join the Southeast Compact Commission as an Amicus Curiae in the matter of Northwest Compact v. Energy Solutions

No action was taken and this item will be revisited at the August meeting.

12. Report of the Bylaws Working Group (Ford, Vanags, White)

A draft of the Bylaws is being considered but not ready for presentation to the Commission for approval. Among the issues being considered are:

- including secretary and treasurer positions
- financial considerations
- conflict of interest policies

The Committee will continue to work with Counsels. Commissioner Vanags has sent the Vermont Attorney General copy of the Bylaws draft for comment. The Bylaws will be presented at the next meeting for deliberation for adoption.

Later in the meeting, the Chair directed the Bylaws Committee to begin considering the rulemaking needs for FY 10-11.

13. Discussion of and possible vote to approve Bylaws

The Bylaws will be presented at the next meeting for deliberation for adoption.

- 14. Discussion and possible action by the Commission with regard to
 - a. Policies and operating rules and the assigned priorities thereof
 - b. Operating plans for the Commission, including priorities for statutory duties

Ms. Henderson provided summary of committees and charges, as show in this summary table:

Name	Members	Charge
Bylaws Working Group	Ford, Vanags, White	Begin drafting bylaws
Finance Working Group	Ford, Smith, Wilson	Consider invoicing Vermont for party state pro-rata shares Consider ability to make deposits into independent bank account
Committee on exportation of LLRW to management and disposal facilities outside of the Texas Compact	Ford, Vanags, White	Evaluate, with advice of counsel, the promulgation of an emergency rule or order that might alleviate actual heath and safety concerns or potential violations of license conditions
Committee on Amicus Brief	Dolgener, Vanags, Wilson	Study amicus brief prepared by the Rocky Mountain Compact and report recommendations to the Commission (re: State of Alabama, et.,al., Plaintiffs v State of North Carolina)

- 15. Report of the Finance Working Group (Ford, Smith, Wilson)
 - a. Status of requested advances for equipment purchases and other reimbursements

This item was discussed under Item 20 of the agenda.

- b. Bank account(s)

Commissioners Ford and Smith have had discussion, as well as discussions with the Offices of the Texas Comptroller and Governor. Discussions confirmed the Commission is a separate legal entity and can open a bank account.

Mr. Crowson has talked with representatives of Attorney General and Comptroller of Vermont who confirmed there was no objection to the Commission setting up a bank account. Commissioner Smith confirmed Vermont agrees with the laws of Texas.

Bank account discussions continued under Item 16 of the agenda.

c. Commission funding options

Chair Ford advised that FY 10-11 funding from Texas will be occurring at the end of August and invoicing is acceptable approach and will be sent the first week of August.

16. Discussion of and possible action on a resolution concerning funding for operations (including the possibility of billing radioactive waste generators, radioactive waste processors, and the participating states) currently and after August 31, 2009, and the opening of financial accounts through a commercial financial entity

Vice Chair White proposed a resolution to establish a commercial bank account which was amended in discussion and was passed unanimously by those present. The Financial Resolution is appended to these minutes.

Mr. Crowson advised adopting the resolution proposed by Vice Chair White and another resolution to designate bank and three account signers since Bylaws have not been adopted.

Responding to inquiry by Commissioner Dolgener, Mr. Crowson advised that the Public Funds Investment Act does not have any relation to the Commission as it is operating now.

Motion was proposed and adopted unanimously by those present to adopt the Banking Resolution as prepared by Counsel as is appended to these minutes with these provisions:

- adopting Wells Fargo as the bank
- authorizing the Chair, Vice Chair and Interim Executive Director to be signatories on the account
- allowing the Chair to make such modifications to the banking resolution as necessary to open the bank account

Wells Fargo Bank was selected because of its multiple locations, convenient to the various locations of signatories.

Ms. Nichole Henderson noted that Ms. Margaret Henderson is to be authorized as long as she is under valid contract with the Commission.

17. Discussion and possible vote with regard to action to be taken on invoicing a party state for its pro rata share of the Commission's expenses

Chair Ford and Commissioner Smith confirmed the States of Texas and Vermont are prepared to receive invoices for their respective pro-rata shares for Fiscal Year 2010:

Texas	\$500,000
Vermont	\$175,000

By Commission letter the invoice will be submitted to the states the first week of August.

The motion to invoice the states was passed unanimously by those present. Invoices will ask for payment within thirty (30) days, understanding that it will be paid in a time frame that conforms to the statutory requirements of the states.

18. Discussion and possible action on funding and budget

a. Interagency Contract between the Commission and the Texas Commission on Environmental Quality (TCEQ) to include review and approval of possible revisions to initial budget for FY2009 per Health And Safety Code, Title 5. Sanitation And Environmental Quality, Subtitle D. Nuclear And Radioactive Materials, Chapter 403, Texas Low-Level Radioactive Waste Disposal Compact, Sec. 3.04(6)

- i. budget update
- ii. budget revisions to categories of expense

The current status of the budget was presented by Ms. Margaret Henderson, noting per category remaining balances after invoicing and encumbrances:

Operations (labor)	\$21,380.00
Operations (general):	14,014.70
Legal (contract):	37,500.00
TOTAL	\$72,894.70

Chair Ford noted appreciation for the contribution of the counsels from the Texas Attorney General's office of an estimated 300 hours, representing a substantial savings to the Commission when considering the market rate of \$200 per hour for such services.

The Office of the Attorney General counsels confirmed withdrawing their support has not been contemplated or anticipated. Commissioner Dolgener inquired about ability to contract with the Attorney General for future services and requested Counsel to investigate this. Ms. Nichole Henderson will investigate this possibility.

A motion to move \$37,500 designated for legal contract to Operations (General), was passed unanimously by those present in consideration of legal needs and travel and other expenses.

b. Review and approval and adoption of possible revisions to budgets for FY2010 and FY 2011 per Health And Safety Code, Title 5. Sanitation And Environmental Quality, Subtitle D. Nuclear And Radioactive Materials, Chapter 403, Texas Low-Level Radioactive Waste Disposal Compact, Sec. 3.04(6)

It was noted that the FY 10-11 budget adopted exceeds the amount being invoiced the states. The Chair clarified that this amount was reduced and agreed upon in discussion with the Texas Legislature.

19. Discussion and possible action to contract or hire for services necessary to carry out Commission duties and functions per Texas Low-Level Radioactive Waste Disposal Compact, Sec. 3.05(1) and (3), to include:

a. Legal Counsel

The Commission has been provided some assurance that the Office of the Attorney General will continue services. No action was taken on this item.

b. Certified Public Accountant

Proposals for independent audit and for monthly accounting and reporting services were received by the Commission.

The Commission needs confirmation from TCEQ that the audit of FY 09 financials which would occur in FY 10 could be paid for from the FY 09 budget. TCEQ has confirmed that certain "subscriptions" that extend into FY 10 could be paid; however, appropriated funds are otherwise limited for travel reimbursement only.

Mr. Crowson will seek confirmation. Additionally, he will investigate whether or not TCEQ audits done by their auditors would or would not suffice for the independent audit the statute requires. An additional factor to be considered it that the Commission will be receiving funds in FY 10 from sources other than TCEQ.

Regarding the audit, a motion was adopted unanimously with these two provisions:

- Counsel will investigate the need for an audit based on current financial circumstances and future sources of funding.
- The Commission approved the amount of \$4500 for an independent audit, contingent on need for the audit.

Regarding monthly accounting and reports, a motion was passed unanimously by those present, deferring the decision on accounting costs until the next meeting in order to obtain more information. Price reasonableness was discussed based on hourly rates of an Austin firm as compared to the proposal received, but not on the scope of work.

The Commission confirmed that separate CPA firms would be used for audit and monthly accounting services.

c. Other services as determined by the Commission

A motion was passed unanimously by those present to authorize expenditure of funds by staff to provide meeting space for the Commission as necessary and at reasonable cost. The Commission will continue to seek donated meeting space when possible, but will have an ongoing expense of meeting space if donated space is not available. Commissioner Dolgener offered facilities at Andrews, Texas, at no cost.

20. Status of Information Technology Service of email and Internet site design and hosting

Ms. Henderson reported that inquiry has been made to two agencies to determine compliance and provision of services relating to keeping records pursuant to the host state law:

Department of Information Resources (DIR)
Texas State Library

If the Commission is eligible to use DIR services, options are:

1. contracting for DIR service
2. using contractors of DIR

A web-hosting company has also provided an offer. It has not been confirmed that the specifications will meet the state requirements due to ability to contact the individual until July 31.

A discussion of advances for equipment purchase ensued. Ms. Nichole Henderson explained that TCEQ interpreted the contract with the Commission to mean that the check for advance would be paid to the Commission and a FDIC account was needed. Therefore, the request for advance was rejected. TCEQ required payment to the Commission, assigning the equipment to the Chair and limited use to “only by a commissioner.” Chair Ford noted these provisions were not in the

contract. The Chair expressed concern over incremental changes and requirements not in the contract.

21. Discussion and possible action to purchase essential equipment and materials necessary to carry out Commission duties and functions per Texas Low-Level Radioactive Waste Disposal Compact, Sec. 3.05(3)

Discussion of Item 21 on equipment was conducted in Item 20, as noted in the minutes for that item.

The Commission directed Ms. Henderson to research audio equipment that would be sufficient for recording Commission meetings using multiple microphones.

22. Discussion and possible action regarding Compact Commission

- a. Membership in LLW Forum
- b. Subscription to Monitor Publications
- c. Representative attendance at
 - i. LLW Forum Meeting in Park City, UT, 21-22 Sept.
 - ii. 3rd Annual Rad Waste Summit in Las Vegas, NV, 8-11 Sept.
 - iii. Attendance at subsequent meetings

Motion was passed unanimously by those present to support membership in the LLW Forum at a cost of \$4250 for the initial year, subscribe to Monitor Publications and send not fewer than 2 persons from the Commission to the LLW Forum, the Rad Waste Summit and subsequent meetings for a cost for each trip of \$3000 per person.

23. Agenda items for next meeting

Agenda items for the next meeting were identified:

- Draft “export” rule
- Import issues

- Discussion of amicus brief issues from the July 21 agenda
- Finance report update
- Bylaws for deliberation and voting
- Consideration of petitions to export
- Generators, compact facilities and interested persons standing agenda item Individuals are to provide topics by the Commission's deadline and the Commission will retain discretion in selecting items for the final agenda.

24. Selection of next meeting date and location

August 19, 2009, was scheduled for the next meeting to be held in Austin, Texas.

It was noted the State of Texas is hosting a March meeting of the LLW Forum. TCEQ is working on that currently and the Commission offered to work together with them if desired.

The Commission will determine meeting dates for the next three months, based on availability.

25. Public Comment

A member of the public questioned LLW Forum policy on materials for public distribution and the lack of transparency experienced. She requested that information obtained from LLW Forum by the Commission be made public to interested persons. Commissioner Vanags volunteered to inquire with the LLW Forum about publicizing their information, regarding copyright and other issues, to determine if that would be permissible.

26. Adjourn

The meeting adjourned at 2:03 p.m.