MEMORANDUM

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To: **Chad Hyslop, Director of External Affairs, American Ecology Corporation**

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Re: **Memorandum of Law – Rocky Mountain Compact Jurisdiction Over Low-Level Radioactive Waste**

I. INTRODUCTION

This memorandum responds to a request from American Ecology Corporation (AEC) to evaluate the legality of recent actions by the Rocky Mountain Compact Board (the "RM Compact") to designate the Clean Harbors Deer Trail (Deer Trail) facility located in eastern Colorado as a "regional facility," as defined in Section 2021(b) of the Low Level Waste Policy Act (LLWPA)[1] for the disposal of naturally occurring radioactive material (NORM) and technologically enhanced NORM (TENORM) wastes and to reject the City of Denver's application to export radium wastes for disposal outside of the Compact. We offer a synopsis of the federal mandates that established the regional Compact system, a discussion of the RM Compact's Congressionally-limited jurisdiction over radioactive wastes, and legal analyses of the RM Compact's authority to designate the Deer Trail facility as a "regional facility" for the disposal of NORM/TENORM and to approve or deny applications for export of radium wastes outside of the Compact.

II. SUMMARY OF ISSUES

The RM Compact is one of a number of regional low-level radioactive waste (LLRW) Compacts enacted by Congress in accordance with the LLWPA, as amended. Congress enacted the LLWPA in response to concerns about the limited and diminishing

[1] *See* 42 U.S.C. § 2021 *et seq* (2006).

LLRW disposal capacity in the United States.[2] In the 1980s, the three States (Nevada, Washington and South Carolina) in which the remaining LLRW disposal facilities were located objected to receiving and disposing of the nation's LLRW. In response, Congress enacted the LLWPA and created a regional Compact system in which groups of States in Congressionally-enacted Compacts are responsible for providing disposal capacity for LLRW generated within the boundaries of each Compact.

Currently, the RM Compact is composed of three member States: Colorado, New Mexico and Nevada. When the Beatty, Nevada LLRW disposal facility closed in late 1992, the RM Compact had no regional LLRW disposal facility. In 1993, the RM Compact executed an agreement with the Northwest Compact to allow disposal of LLRW generated within the RM Compact at the Northwest Compact's regional disposal facility in Washington State subject to specified volume limitations which have not been exceeded.

To implement the RM Compact, the member States were required to submit an empowering statute for Congressional approval. On January 15, 1986, P.L. 99-240, the RM Compact's enabling statute, was enacted into law by Congress. It defined LLRW *negatively* as:

> "Radioactive waste *other than*:
>
> (i) Waste generated as a result of defense activities of the federal government or federal research and development activities;
>
> (ii) High-level waste such as irradiated reactor fuel, liquid waste from reprocessing irradiated reactor fuel, or solids into which any such liquid waste has been converted;
>
> (iii) Waste material containing transuranic elements with contamination levels greater than ten (10) nanocuries per gram of waste material;
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> (iv) By-product material as defined in Section 11e.(2) of the Atomic Energy Act of 1954, as amended November 8, 1978, or;

[2] In the early 1970s, there were six operating LLRW disposal facilities in the United States. Between 1975 and 1979, three of those sites closed leaving only three sites to receive and dispose of the nation's LLRW: Barnwell, South Carolina; Beatty, Nevada; and Hanford, Washington.

(v) *Wastes from mining, milling, smelting or similar processing of ores and mineral-bearing material primarily for minerals* ***other than radium***."[3]

Omnibus Low-Level Radioactive Waste Interstate Compact Consent Act, Title II (Low Level Waste Policy Act Amendments,), P.L. 99-240, 99 Stat. 1859, 1903, Article II(g)(i-v) (January 15, 1986) (emphasis added).

Given that the LLWPA was designed to empower regional Compacts to control the disposition of LLRW generated within their borders, the above-referenced definition of LLRW contained in the RM Compact's Congressionally-enacted Compact statute expressly defines the materials over which the Compact Board may legally exercise control.[4]

The LLWPA also empowers regional Compacts to designate a waste disposal facility as a "regional facility." The RM Compact's enabling statute defines "regional facility" as:

"a facility within any party State which either:

(i) has been approved as a regional facility by the board; or

(ii) is the low-level waste facility in existence on January 1, 1982, at Beatty, Nevada."

[3] Given limited LLRW disposal capacity, it was logical for the RM Compact to exclude radioactive wastes from "mining, milling, smelting or similar processing of ores and mineral-bearing material primarily for minerals other than radium" as "[a]ccording to EPA, the metal mining and processing industry alone generates approximately one billion metric tons of waste per year and has already generated nearly 50 billion metric tons of such waste." *See* Anthony J. Thompson & Michael L. Goo, *Naturally Occurring Radioactive Material: Regulators Should Look Before They Leap*, Environmental Law Reporter, 22 ELR 10052, 10054 (January, 1992), *citing* United States Environmental Protection Agency, *Low Level and NORM Radioactive Wastes* (1987).

[4] Congress is the only entity empowered by the United States Constitution to regulate commerce among the several States (i.e., interstate commerce). *See* United States Constitution, Article I, Section 8 ("The Congress shall have Power…to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes"). The types of wastes over which a regional LLRW Compact, such as the RM Compact, can exercise jurisdiction under a Congressional enactment must be construed narrowly, because controlling the import and export of LLRW in interstate commerce, but for such Congressional enactment, would potentially violate the Commerce Clause of the United States Constitution. This legal interpretation is consistent with the findings of the United States District Court for the Eastern District of Washington that, based on the United States Supreme Court's findings that '"(all) objects of interstate trade merit Commerce Clause protection,"' "the movement of radioactive waste in interstate commerce fits within the definition of 'commerce' for constitutional purposes." *Washington State Building & Construction Trades Council AFL-CIO v. State of Washington*, 518 F. Supp. 928 (June 26, 1981), *quoting Philadelphia v. New Jersey*, 437 U.S. 617, 622 (1978).

P.L. 99-240, 99 Stat. 1903, Article II(l)(i-ii).

By designating a LLRW waste disposal facility as a "regional facility," the RM Compact effectively possesses the power to direct waste generators within the Compact region to dispose of designated LLRW at the "regional facility" and to deny, limit or approve the disposal of such waste outside the Compact boundaries. However, pursuant to the RM Compact's enabling statute (Article VII) and its implementing rules (Rule 6), waste generators within the Compact region may file applications to export LLRW within the scope of the RM Compact's jurisdiction to disposal facilities outside the RM Compact. *See* Rules of the Rocky Mountain Low-Level Radioactive Waste Board, Rule 6 *et seq*. If an export application is denied, the generator is permitted to request reconsideration or re-submit a new export application. When export applications are reviewed, the RM Compact's enabling statute designates three (3) factors that *must be considered*:[5]

> "(i) The economic impact of the export of waste on the regional facility;
>
> (ii) The economic impact on the generator of refusing to permit the export of the waste; and
>
> (iii) The availability of a regional facility appropriate for the disposal of waste involved."

P.L. 99-240, 99 Stat. at 1907, Article VII(b)(i-iii).

The RM Compact implementing rules expand the list of factors *that must be considered*[6] to fourteen (14) when evaluating an export application as initially filed and upon reconsideration. *See* Rules of the Rocky Mountain Low-Level Radioactive Waste Board, Rule 6.5.

On December 21, 2005, the State of Colorado issued a Hazardous Waste Permit (effective January 20, 2006) and a Radioactive Materials License (effective December 21, 2005) to the Deer Trail facility allowing it to dispose of various wastes. The RM Compact Board subsequently designated the Deer Trail facility as a "regional facility" for the disposal of LLRW falling under Article II(g)(v) of the RM Compact enabling statute (i.e., wastes from mining, milling, smelting or similar processing of ores and mineral-bearing material primarily for *radium content*).

On April 13, 2006, the State of Colorado submitted an application to the RM Compact requesting that the Deer Trail facility's "regional facility" designation be amended to include NORM/TENORM waste materials that satisfy the State of Colorado

[5] These factors *must be considered* because the plain language of the enabling statute states specifically that "the factors to be considered by the board *shall include*…." P.L. 99-240, 99 Stat. at 1907, Article VII(b).

[6] Similar to its enabling statute, the RM Compact's implementing rules also specifically state that "[t]he Board *shall consider the application* utilizing the following factors:" Rules of the Rocky Mountain Low-Level Radioactive Waste Board, Rule 6.5.

permit limits for the facility. This proposed expansion would empower the RM Compact to direct "in-Compact" generators of *any* NORM/TENORM wastes falling within the Deer Trail facility permit limits to send such wastes to the Deer Trail facility.[7]

On May 8, 2006, the City of Denver submitted an application to the RM Compact for permission to continue to export certain wastes generated as a result of radium production (Denver radium) to a facility in Idaho (i.e. outside the RM Compact region) for disposal. The City had exported radium wastes to the Idaho facility the previous two years with the Compact's approval and after paying the required Compact fees.

On May 30, 2006, the RM Compact Board considered the City of Denver's application. On a 2-1 vote (New Mexico dissenting), the Board denied the City's export application on the basis that the Denver radium waste is LLRW under the RM Compact enabling statute and its implementing rules and that the material could not be exported outside the RM Compact region because it failed to satisfy any of the factors articulated in Rule 6.5. Subsequently, the City submitted a request for reconsideration to the Board on the grounds, among others, that its argument regarding potential liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) should have been considered. On August 9, 2006, on a 2-1 vote (Nevada dissenting), the Board denied the City's request for reconsideration. Before voting, the Board was advised by counsel that its list of Rule 6.5 factors for the review of export applications is exhaustive and that no other factors may be considered. The Board indicated it would reconsider the City's export application should circumstances change.

III. QUESTIONS PRESENTED

This memorandum provides a legal analysis of the RM Compact's actions regarding the Deer Trail facility's designation as a "regional facility" for radium-production wastes and NORM/TENORM generally with specific attention to the following questions:

1. **Does the Rocky Mountain Compact Board have the authority to control the export of NORM/TENORM wastes that are not expressly addressed in its Congressionally-approved enabling statute and implementing rules?**

2. **Did the Rocky Mountain Compact Board properly designate the Deer Trail facility as a "regional facility" for purposes of disposal of wastes generated as a result of radium-production processes?**

These questions will also be answered in light of two letters from the RM Compact Board in response to a July 11, 2006 "Action Alert!" from the Colorado Association of

[7] Significantly, the Deer Trail facility permit imposes specific activity limits on its waste acceptance criteria. The facility cannot accept wastes qualifying under Article II(g)(v) of the RM Compact charter if the waste's specific activity exceeds the Deer Trail facility permit limits as defined in its State of Colorado Radioactive Materials License.

Commerce and Industry (CACI), and a July 27, 2006 letter from members of the Colorado Congressional Delegation suggesting that the RM Compact was attempting to expand its jurisdiction over wastes not covered by the Compact's federal enabling statute.

IV. LEGAL ANALYSIS

A. Does the Rocky Mountain Compact Board have the authority to control the export of NORM/TENORM wastes that are not expressly addressed in its Congressionally-approved enabling statute and implementing rules?

In its August 1, 2006 response to members of the Colorado Congressional delegation, the RM Compact asserted that it was not attempting to expand its jurisdiction to broad categories of NORM/TENORM. The RM Compact supported this position by claiming that it has considered NORM/TENORM wastes to be LLRW within the meaning of its empowering statute since 1983 and that it has been regulating NORM/TENORM wastes since 1986. The RM Compact concluded that, "NORM and TENORM wastes are not excluded from the definition [of LLRW]." Letter from Larry Boschult, Chair, Rocky Mountain Low Level Radioactive Waste Board to Colorado Congressional Delegation at Section 1.1, Page 2 (August 1, 2006).[8]

This position comports with the State of Colorado's pending request to expand the "regional facility" designation for the Deer Trail facility to all NORM/TENORM wastes that do not exceed its permit limits. *See generally* Letter from Steve Tarlton, Radiation Management Unit, Colorado Department of Public Health to Leonard Slosky, Executive Director, Rocky Mountain Low-Level Radioactive Waste Board (April 13, 2006).

Based on the plain language of its enabling statute, however, the RM Compact's decision to broadly expand the Clean Harbors facility's designation as a "regional facility" for all NORM/TENORM waste is contrary to the RM Compact's enabling statute and its charter. Specifically, RM Compact jurisdiction over NORM/TENORM wastes *only* extends to wastes generated as a result of radium-production activities. The RM Compact cannot expand the Deer Trail facility's designation as a "regional facility" to include NORM/TENORM waste materials other than wastes from radium-production processes. To do so would impermissibly extend RM Compact jurisdiction to wastes that are not expressly delineated in the Congressionally-enacted Compact enabling statute. Whether or not the RM Compact previously acted on belief that it has broad authority over NORM and TENORM wastes does not and cannot change the scope of its jurisdiction, as approved by Congress.

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[8] In its August 1, 2006 response to CACI's "Action Alert!," the RM Compact also states that, "[t]he Compact has been regulating certain NORM wastes that are considered important for the purposes of the Compact since the Compact received Congressional ratification in 1986….." and that "[t]he Compact's statute which was enacted by the member states in 1982/1983 and Congress in 1986 established the Compact's jurisdiction over NORM/TENORM as low-level radioactive waste." *See* Letter from Larry Boschult, Chair, Rocky Mountain Low Level Radioactive Waste Board to Donnah Moody, Colorado Association of Commerce and Industry, at Pages 1 & 3.

It is noteworthy that the term "NORM/TENORM" is not currently defined by any federal statute. However, various regulatory agencies, including the Nuclear Regulatory Commission (NRC), have classified certain waste materials as NORM/TENORM. *See In the Matter of Hydro Resources, Inc.* (Crownpoint Uranium Project), CLI-06-14, 2006 NRC LEXIS 109 (May 16, 2006) (concurring with Licensing Board classification of spoils from uranium mining operations as TENORM).[9] Certain States, including Georgia, Mississippi, Texas and Louisiana, have implemented regulatory programs for NORM/TENORM materials. In addition, the Conference of Radiation Control Program Directors (CRCPD) has promulgated model State NORM/TENORM regulations. It is apparent from these State regulations and CRCPD's model State regulations that States have the ability to regulate the possession, use, transport, and disposal of NORM/TENORM wastes to protect public health and safety and the environment under their normal police powers. Accordingly, federal agencies and States have found that the NORM/TENORM classification is valuable as a "term of art" when attempting to categorize radioactive waste materials that do not fall under the scope of statutory and/or regulatory definitions in the Atomic Energy Act of 1954 (AEA), as amended (e.g., source, special nuclear, byproduct material) or other federal statutes addressing hazardous materials.

The LLWPA, as amended, was enacted primarily to address disposal of a subset of AEA radioactive waste materials as distinct from non-AEA radioactive wastes such as NORM/TENORM. However, as was the case with the RM Compact, a regional LLRW Compact could submit a broader definition of LLRW to include non-AEA wastes (i.e., radium-production wastes). Once approved by Congress, the Compact's definition of LLRW serves as an express limitation on the types of radioactive waste that are subject to Compact jurisdiction.

The RM Compact, Article II(g)(v), by Congressional act, expressly excludes "wastes from mining, milling, smelting or similar processing of ores and mineral-bearing material primarily for minerals *other than radium*" from its definition of LLRW and, thus, from Compact jurisdiction. This exclusion effectively creates two categories of wastes from mining, milling or other processing operations: (1) wastes produced as a result of mining, milling or other processing of ores or mineral-bearing materials *primarily for their radium content* and (2) wastes produced as a result of mining, milling or other processing of ores or mineral-bearing materials primarily for minerals *other than radium* which are not subject to RM Compact jurisdiction.

[9] As NRC notes in NUREG-1310, *Naturally Occurring and Accelerator Produced Radioactive Materials-1987 Review*, radium is not an AEA material. (March 1988) ("Naturally-occurring radioactive materials—other than source materials—*such as radium* were deliberately left outside the scope of the AEA."). Further, until very recently when discrete sources of radium were designated 11e.(3) byproduct material, no NORM/TENORM wastes were classified as AEA materials, and such wastes were not subject to NRC jurisdiction. *See* Energy Policy Act of 2005, P.L. 109-58, amending 42 U.S.C. § 2014(e), *inserting* § 2014(e)(3) (2006) (defining as 11e.(3) byproduct material discrete sources of radium-226).

Numerous examples exist of industrial processes that result in the creation of large volumes of NORM/TENORM wastes. Many of these indisputably involve operations excluded from the definition of LLRW under Article II(g)(v) of the RM Compact. These include but are not limited to uranium/thorium mining and processing of ores for titanium, zircon, and rare earths recovery, and treatment of drinking water sources to facilitate compliance with federal or state regulatory standards.[10]

Further, with respect to radium water treatment residuals, it also appears that the RM Compact's recently proposed moratorium regarding the final disposition of such water treatment residuals further illustrates its fundamental misunderstanding of the Compact's statutorily-imposed jurisdiction. Water treatment residuals containing radium are not expressly listed in the RM Compact's definition of LLRW. While, conceivably, it could be postulated that processing radium-bearing materials (i.e., drinking water sources) to extract their radium content potentially could create wastes within the RM Compact's definition of LLRW, such an interpretation is contrary to traditional interpretations of processing "primarily" for mineral content. In the case of treating drinking water sources to remove their radium content, the proper interpretation is that the radium removed from such drinking water sources is not recovered for use as a product but rather to comply with a federally mandated drinking water standard. As a result, because the radium recovered from water treatment operations is not recovered for use as a product, it is logical to conclude that radium water treatment operations do not result in wastes falling within the scope of the RM Compact's jurisdiction.[11]

Based on the foregoing discussion, the RM Compact can designate a "regional facility" for radium-production NORM/TENORM wastes such as those from the Denver radium site. However, based on the plain language of the RM Compact's federal enabling statute and its implementing rules, the RM Compact cannot designate the Deer Trail facility as a "regional facility" for *other* NORM/TENORM wastes. Therefore, the State of Colorado's request to amend the designation of the Deer Trail facility as a "regional facility" for all NORM/TENORM meeting its permit limits is impermissible.

B. Review of the City of Denver's Application to Export Denver Radium Waste to an "Out-of-Compact" Facility

[10] For a more in-depth discussion of NORM/TENORM and the types of wastes this classification encompasses, *see generally* Anthony J. Thompson & Michael L. Goo, *Naturally Occurring Radioactive Material: Regulators Should Look Before They Leap*, Environmental Law Reporter, 22 ELR 10052, 10054 (January, 1992), *citing* United States Environmental Protection Agency, *Low Level and NORM Radioactive Wastes* (1987).

[11] This argument is consistent with NRC's traditional interpretation that uranium recovered in ion-exchange (IX) columns through which excess mine water was pumped to de-water underground uranium mines to facilitate access for miners was not recovered "primarily" for its source material content. Licensees removed uranium from these water sources to reduce its uranium content so that such water could be released "down the creek" in compliance with relevant regulatory standards. As a result, the primary purpose of the de-watering/process operation was de-watering the mine, since neither the spent IX resins nor the sludges from the de-watering process were designated 11e.(2) byproduct material (i.e., wastes from processing ores or other mineral-bearing materials *primarily* for their uranium content).

As discussed, the City of Denver submitted an application to the RM Compact for permission to export certain wastes resulting from radium-production activities to a waste disposal facility outside the Compact's boundaries in Idaho. This application and a subsequent request for reconsideration were denied by the RM Compact Board.

The materials sought to be exported by the City (wastes resulting from radium-production processing) fall within the scope of RM Compact jurisdiction. Under Article II(g)(v) of the Compact charter, wastes resulting from processes designed primarily to extract radium are expressly subject to Compact's jurisdiction. Thus, the RM Compact is empowered to direct generators of such wastes, such as the City of Denver, to a RM Compact "regional facility" if the wastes meet applicable permit conditions.

However, as also discussed, the RM Compact charter expressly provides that LLRW generators within the Compact's jurisdiction may be granted permission to export such wastes to an out-of-Compact facility. RM Compact Rule 6 expressly states that applications for export of wastes within the Compact's jurisdiction *must be* evaluated using several factors, including those explicitly listed in the Compact's enabling statute. Given that both the empowering statute and the RM Compact charter use the term "shall" when describing the requirements for consideration of a waste export application, a failure to consider such factors would be contrary to law.

In its export application, the City of Denver argued that it sought to continue its shipments to the out-of-Compact facility to avoid potential liability under CERCLA. While CERCLA liability is not an expressly listed factor in either the RM Compact's enabling statute or its implementing rules, both the enabling statute (Article VII(b)(ii)) and implementing rules (Rule 6.5(B)) specifically state that "the economic impact on the generator of refusing to permit the export of the waste" shall be considered as a factor when evaluating export applications. As discussed below, the RM Compact failed to adequately evaluate the City of Denver's export application in accordance with this provision of the Compact's enabling statute and its implementing rules.

When Congress enacted CERCLA on December 11, 1980,[12] its main purpose was to provide for the identification of potentially responsible parties (PRPs) contributing to environmental contamination at a given site so that such contamination could be remediated and liability could be apportioned. Identification of PRPs for a given site frequently turns on a determination that an entity arranged for disposal of materials at a disposal facility (e.g. City of Denver). The inevitable result of being identified as a PRP and being apportioned some form of joint and several liability for environmental remediation at a given site is being responsible for payment of all or some portion of the expenses for such remediation. The Environmental Protection Agency (EPA), which is charged with regulatory authority over CERCLA, maintains a database listing all sites currently placed on the CERCLA National Priorities List (NPL), each of which may have

[12] *See* 42 U.S.C. § 103 (2006).

multiple entities named as potentially responsible parties (PRPs).[13] By forcing the City to dispose of its remaining radium-production wastes at the Deer Trail facility, the RM Compact would create the potential for additional CERCLA liability to be apportioned to the City at a second site. Indeed, since the Denver radium waste will be the first waste of this type to be accepted at the Deer Trail facility, the City of Denver currently will be the only potential PRP. If the waste generator may suffer adverse economic impact from the inability to export a given waste stream, then the RM Compact has grounds for permitting export.

Additionally, given the extremely limited quantities of radium-production wastes available for disposal from generators within the Compact, the RM Compact should have considered the *minimal* economic impact on the Clean Harbors facility from the export of the Denver radium wastes when reviewing the City of Denver's export application. The RM Compact's enabling statute and its implementing rules require that the RM Compact consider "[t]he economic impact of the export of the waste on the regional facilities." P.L. 99-240, 99 Stat. at 1907, Article VII(b)(i); *see also* Rules of the Rocky Mountain Low-Level Radioactive Waste Board, Rule 6.5(A). The quantities of Denver radium wastes are minimal and do not represent a type of waste the Deer Trail facility has accepted in the past.[14] As a result, the potential economic impact realized by the Deer Trail facility if the Denver radium wastes are exported out of the Compact would be minimal.

Moreover, it is important to note that one of the RM Compact's criteria for designating a disposal facility as a "regional facility" is "[t]here will be, for the foreseeable future, sufficient demand to render operation of the proposed facility economically feasible without endangering the economic feasibility of operation of any other regional facility." Since no other "regional facility" is present in the RM Compact and the Deer Trail facility is not permitted to accept any AEA-regulated LLRW, it must be determined that the Deer Trail facility will be economically viable based on the demand for disposal capacity for NORM/TENORM wastes resulting from radium-production processes. Given that the limited volume of the City of Denver's radium-production waste, and that there are no other known, significant sources of radium-production wastes in the region requiring such a facility[15], the Deer Trail facility does not appear to be economically feasible on the basis of radium-production wastes alone.

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[13] *See* http://www.epa.gov/superfund/sites/npl/ny.htm. In fact, there already has been one AEA-regulated LLRW facility (i.e., Maxey Flats, Kentucky) that was remediated under CERCLA/Superfund and that had both private and governmental PRPs. Thus, it is reasonably foreseeable that an entity such as the City of Denver could be named as a PRP for waste disposed of at the Deer Trail facility.

[14] On May 8, 2006, the City of Denver applied to the RM Compact to export approximately 260,469 cubic feet of waste to an out-of-Compact facility. *See* Letter from Dennis Bollman, Supervisor, City of Denver, Colorado to Leonard Slosky, Executive Director, Rocky Mountain Low-Level Radioactive Waste Board, (May 8, 2006).

[15] Numerous municipal water supply entities within the region have gone on record with the RM Compact Board indicating that they have no need for the designated regional facility to dispose of the limited radioactive materials generated through their activities.

V. CONCLUSION

Based on the foregoing analysis:

1. The State of Colorado's pending request to amend the Deer Trail facility's "regional facility" designation to include all NORM/TENORM allowed under the facility's current State permit is impermissible because NORM/TENORM wastes other than wastes produced as a result of radium production processes are outside the RM Compact's jurisdiction;

2. The RM Compact inadequately evaluated the City of Denver's export application by failing to consider potential CERCLA liability as an economic impact, and by failing to consider the minimal economic impact on the Deer Trail Harbors facility by allowing the export of the Denver radium waste;

3. The RM Compact improperly designated the Clean Harbors facility as a regional facility due to the lack of regional demand for disposal capacity for wastes resulting from radium-production processes.