LLW notes

Volume 15, Number 1 January/February 2000

South Carolina

Compact Legislation Introduced in South Carolina General Assembly

In February, legislation was introduced in the South Carolina General Assembly to establish the state as a member of the Northeast Interstate Low-Level Radioactive Waste Compact, which currently comprises Connecticut and New Jersey. Upon South Carolina's membership, the compact would become known as the "Atlantic Low-Level Radioactive Waste Compact."

The legislation, entitled the Atlantic Interstate Low-Level Radioactive Waste Compact Implementation Act, incorporates the Northeast Compact by reference and specifies conditions for South Carolina's membership. It also specifies procedures for implementation of South Carolina's responsibilities in the compact. The legislation provides for South Carolina's membership in the Atlantic Compact to take effect on July 1, 2000, if by that date the Governor of South Carolina has certified that the Atlantic Compact Commission has taken certain actions.

Because the Northeast Compact, as ratified by the U.S. Congress, already contains a mechanism for adding member states, it is not anticipated that any federal approval would be needed in order for South Carolina to join the compact. (See "Northeast Compact Membership Process.")

Senate Bill Senator Phil Leventis, who served on the South Carolina Compact Delegation and Nuclear Waste Task Force, is the sponsor of the Senate legislation, S 1129, which was introduced on February 9. Co-sponsors include all the other Senate members of the task force—Senator Bradley Hutto, who represents Barnwell County; Senator John Courson; and Senator Thomas Moore. (See *LLW Notes*, June/July 1999, pp. 1, 4.) The bill is sponsored or co-sponsored by 13 of the 46 members of the Senate.

After the bill was read, it was referred to the Senate Agriculture and Natural Resources Committee, which Senator Leventis chairs. Senator Moore, Chair of the Senate Medical Affairs Committee, requested and was granted approval to reserve the right to take up the bill after it is passed by the Agriculture and Natural Resources Committee.

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Low-Level Radioactive Waste Forum

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The Low-Level Radioactive Waste Forum is an association of state and compact representatives, appointed by governors and compact commissions, established to facilitate state and compact implementation of the Low-Level Radioactive Waste Policy Act of 1980 and the Low-Level Radioactive Waste Policy Amendments Act of 1985 and to promote the objectives of low-level radioactive waste regional compacts. The LLW Forum provides an opportunity for state and compact officials to share information with one another and to exchange views with officials of federal agencies and other interested parties.

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LLW FORUM

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Key to Abbreviations

U.S. Department of Energy	DOE
U.S. Department of Transportation	DOT
U.S. Environmental Protection Agency	EPA
U.S. General Accounting Office	GAO
U.S. Nuclear Regulatory Commission	NRC
naturally-occurring and accelerator-produced radioactive materials	NARM
naturally-occurring radioactive materials	NORM
Code of Federal Regulations	CFR

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North Carolina

NC Committee Releases Draft LLRW Plan

On February 2, the Low-Level Radioactive Waste Management Committee of the North Carolina Radiation Protection Commission released for comment a draft report recommending a new plan for low-level radioactive waste management. Written comments on the draft report are due by March 1.

The report's conclusions, summarized below, are the result of a series of meetings conducted by the committee in which generators and the public were invited to submit comments and discuss relevant issues. (See *LLW Notes,* Nov./Dec. 1999, p. 9.)

LLRW Policy Act and Amendments

The report concludes that the federal Low-Level Radioactive Waste Policy Act of 1980 its 1985 amendments have "failed to provide a solution for the management of the nation's LLRW." The report recommends that the state General Assembly, working through the North Carolina congressional delegation and the National Conference of State Legislatures, advocate a change in national policy. The report also endorses "opening the disposal market for LLRW to private industry under the regulatory control of North Carolina, the other Agreement States, and the U.S. Nuclear Regulatory Commission …"

Status of LLRW Management in NC

The report concludes that a central facility for low-level radioactive waste is not needed, as long as generators retain access to treatment facilities and to the Envirocare of Utah disposal facility. Nevertheless, the report recommends a review of low-level radioactive waste management in North Carolina every three years. The report also notes that "work will be needed in the future" to obtain access to a disposal facility for class B and C low-level radioactive waste.

The committee discussed the feasibility of storing low-level radioactive waste from all of North Carolina's generators at nuclear power plant sites. The committee's report lists obstacles to this proposal:

1) The NRC licenses under which the utilities operate do not allow for the storage of LLRW from other generators;

2) The utilities are not prepared to handle all the different types of waste streams that are produced throughout North Carolina;

3) Several generators expressed opposition to utility storage because of the liability issue; and

4) The utilities do not wish to get into the waste storage business.

Assistance to Generators

The report encourages the Division of Radiation Protection in the North Carolina Department of Environment, Health and Natural Resources (DEHNR) to provide assistance to generators and other state agencies in the form of information exchange, education, and coordination.

State Legislation and Regulations

The report concludes that existing statutes and regulations covering the management of low-level radioactive waste are satisfactory to ensure public health and safety. Several long-term options for obtaining access to disposal capacity for class B and C waste are identified, but the report does not recommend a preferred option. The report does, however, recommend that the current prohibition against licensing a low-level radioactive waste facility remain in effect "until changes in the national policy or operational circumstances dictate differently."

Next Steps

The committee is scheduled to meet on March 15 and 22 to review and discuss comments received on the draft. After comments are incorporated and the report is approved by the full commission, a final report is to be submitted to General Assembly on or before May 15.

—JW/CN

For further information, contact Wendy Tingle of DEHNR at (919)571-4141.

South Carolina (continued from page one)

A subcommittee of the Agriculture and Natural Resources Committee met on February 10 and February 16 to hear testimony and technical amendments. The next subcommittee hearing is tentatively scheduled for February 23.

House Bill H 4608, which is identical to S 1129, was introduced on February 15. Its sponsor, Representative Joel Lourie, also served on the South Carolina Compact Delegation and Nuclear Waste Task Force. The bill's co-sponsors include all other House members of the task force—Representative Lonnie Hosey, who has constituents in Barnwell County; Representative Joseph Neal; and Representative Lynn Seithel. The bill is sponsored or co-sponsored by 28 of the House's 123 members.

After the bill was read, it was referred to the House Committee on Agriculture, Natural Resources and Environmental Affairs. The committee is chaired by Representative Charles Sharpe, whose district includes Barnwell County residents. Sharpe is not a co-sponsor of the legislation.

Access for Out-of-Region Waste

As a congressionally approved compact, the Northeast Compact has legal authority over import of low-level radioactive waste into the region for disposal. (See "Compact Interpretations of Import and Export Authority over Commercial Low-Level Radioactive Waste," prepared by Afton Associates for the Midwest Compact, August 1999.)

The recently introduced South Carolina legislation requires, as a precondition of South Carolina's membership in the compact, that the Atlantic Compact Commission adopt a "binding regulation or policy in accordance with Article IV(11) of the Atlantic Compact authorizing a host state to enter into agreements with any person for the importation of waste into the region for purposes of disposal, to the extent that these agreements do not preclude the disposal facility from accepting all regional waste that can reasonably be projected to require disposal at the regional disposal facility."

The legislation specifies that the South Carolina Budget and Control Board, with the authorization of the Atlantic Compact Commission, "may enter into agreements with any person in the United States or its territories or any interstate compact, state, U.S. territory, or U.S. Department of Defense military installation abroad for the importation of waste into the region for purposes of disposal at regional disposal facilities within South Carolina."

The legislation does not include any schedule for discontinuation of access for out-of-region generators. However, South Carolina officials have indicated that such access could be significantly reduced within one year of enactment of the legislation and discontinued entirely within 5-8 years.

Northeast Compact Membership Process

The Northeast Compact legislation, as enacted by the member states of Connecticut and New Jersey and ratified by Congress, authorizes the compact commission to approve the admission of additional member states.

This authority is conveyed by Article VII(e) of the compact, which provides as follows.

> Any state … may petition the Commission to be declared eligible [to become a party state]. The Commission may establish such conditions as it deems necessary and appropriate to be met by a state requesting eligibility as a party state to this compact pursuant to the provisions of this section, including a public hearing on the application. Upon satisfactorily meeting such conditions and upon the affirmative vote of the representatives of the host states in which any affected regional facility is located, the petitioning state shall be eligible to become a party state …

A rulemaking process that will address the admission of new member states into the compact is being developed.

For further information, contact Kevin McCarthy of the Northeast Compact Commission at (860)633-2060.

Disposal Rates

As an additional precondition for South Carolina's membership, the legislation requires the Atlantic Compact Commission to authorize South Carolina to "proceed with plans to establish disposal rates for low-level radioactive waste disposal in a manner consistent with" the procedures described in the legislation.

Under these procedures, the South Carolina Budget and Control Board will adopt a price schedule for in-region generators containing rates that are equal to or less than the approximate rates in effect at the end of calendar year 1999. The board will adopt this price schedule within thirty days of the enactment of the legislation and will review it in March of each subsequent year.

The price schedule must be "sufficient to reimburse the site operator for its costs of operating the facility and for its operating margin," which is established at 29 percent—the same margin allowed to the operator of the commercial low-level radioactive waste disposal facility at Hanford, Washington.

Allowable costs of the site operator include costs of those activities "necessary" for receipt of waste; construction of disposal trenches, vaults, and overpacks; construction and maintenance of physical facilities; purchase of equipment and supplies; accounting, billing, and record keeping; site monitoring; regulatory compliance; taxes other than income taxes; and licensing and permitting fees.

Least Cost Operating Plan Within 45 days of enactment of the legislation, the site operator is required to prepare and file a Least Cost Operating Plan. The plan is to include information concerning anticipated operations over the next ten years, and it is to evaluate "all options for future staffing and operation of the site to ensure least cost operation, including information related to the possible interim suspension of operations …"

If the site operator projects that the waste disposal volumes for a given period of time will be insufficient to cover the operational costs plus the operating margin, the operator "shall propose to the Atlantic Compact Commission plans including, but not necessarily limited to, a proposal for discontinuing acceptance of waste until such time as there is sufficient waste …"

Prices for Out-of-Region Generators Under the legislation, the South Carolina Budget and Control Board is empowered to approve special disposal rates applicable to non-regional generators based on "demand for disposal capacity, the characteristics of the waste, the potential for generating revenue for the State, and other relevant factors."

Distribution of Revenues The legislation requires the facility operator to pay to the South Carolina Department of Revenue and Taxation on a quarterly basis the difference between total revenues received and allowable costs plus the operator's margin.

From these payments, the South Carolina State Treasurer is to provide the first $500,000 each quarter to the governing body of Barnwell County for further distribution.

Revenues in excess of $500,000 are to be deposited in a fund called the "Nuclear Waste Disposal Receipts Distribution Fund." The legislation provides that "[a]ny South Carolina waste generator whose disposal fees contributed to the fund during the previous quarter may submit a request for a rebate of 33.33 percent of the funds paid by the generator during the previous quarter for disposal of waste at a regional disposal facility … Upon validation of the request …, the State Treasurer shall issue a rebate of the applicable funds to qualified waste generators within sixty days after the end of the quarter. If funds in the Nuclear Waste Disposal Receipts Distribution Fund are insufficient to provide a rebate of 33.3 percent to each generator, then each generator's rebate must be reduced in proportion to the amount of funds in the account for the applicable quarter."

Revenues remaining in the Nuclear Waste Disposal Receipts Distribution Fund after issuance of rebates to generators are to be deposited in the state's General Fund.

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South Carolina (continued)

Compact Commission

As further preconditions of South Carolina's compact membership, the legislation requires that the Atlantic Compact Commission agree "that the commission headquarters and office will be relocated to South Carolina" and that the commission will "to the extent practicable, hold most of its meetings in the host state for the regional disposal facility."

SC Governor Supports Atlantic Compact

In South Carolina Governor Jim Hodges' (D) 2000 "State of the State" Address, delivered on January 19, the Governor promoted joining the "Atlantic Compact." In support of the proposal, the Governor spoke as follows:

> South Carolina must control its own environmental destiny at the Barnwell landfill. My bipartisan task force, chaired by former Congressman Butler Derrick, recommends a solution that meets South Carolina's environmental needs. The task force unanimously suggests that we join the Atlantic Compact. We can reduce the overall volume and total radioactivity of waste at the Barnwell disposal facility and free up space for the decommissioning of our own nuclear plants in the future.
> I urge this General Assembly to petition for membership in the Atlantic Compact—South Carolina must no longer be the nation's nuclear dumping ground.

In December 1999, the Governor's Nuclear Waste Task Force recommended that he pursue state membership in the Atlantic Compact. (See *LLW Notes*, November/December 1999, pp. 4–7.)

The full text of Governor Hodges' address is available on the Internet at

www.state.sc.us/governor/speeches/sos2000.html

—CN

South Carolina Commissioners The legislation provides for the Governor to appoint two Commissioners to the Atlantic Compact. These Commissioners are forbidden to vote affirmatively on any motion to admit new member states to the compact "unless that state volunteers to host a regional disposal facility."

Commission Surcharge The South Carolina Budget and Control Board is directed by the legislation to "impose a commission surcharge per unit of waste received at any regional disposal facility located within the State in accordance with Article V.f.4 of the Atlantic Compact." The site operator will collect this surcharge.

Other Preconditions

In addition, the legislation requires the Atlantic Compact Commission to have taken the following steps before South Carolina's membership becomes effective:

- "Adopted a binding regulation or policy in accordance with Article VII(e) of the Atlantic Compact declaring South Carolina eligible to become a member of the compact."

- "Adopted a binding regulation or policy allowing all regional generators, at the generator's discretion, to ship waste to disposal facilities located outside the Atlantic Compact region."

- Agreed "that the commission will issue a payment of twelve million dollars to the State of South Carolina. Before issuing the twelve million dollar payment, the commission will deduct and retain from this amount seventy thousand dollars, which will be credited as full payment of South Carolina's membership dues in the Compact. The remainder of the twelve million dollar payment must be credited to an account in the State Treasurer's office … styled 'Barnwell Economic Development Fund'. This fund, and earnings on this fund … may only be expended for purposes of economic development in the Barnwell County area …"

- "[A]dopted a binding regulation or policy … limiting Connecticut and New Jersey to the use of not more than 800,000 cubic feet of disposal capacity at the regional disposal facility located in Barnwell County, South Carolina, and also ensuring that up to 800,000 cubic feet of disposal capacity remains available for use by Connecticut and New Jersey unless this estimate of need is later revised downward …"

—CN

For further information, contact John Clark of the South Carolina Governor's Office at (803)737-8030, or Bill Newberry of the University of South Carolina's Institute of Public Affairs at (803)777-0451.

The full text of the legislation is now posted on the web and linked to the LLW Forum's web site at www.afton.com/llwforum

Much of the preceding information was distributed to Forum Participants and Alternate Forum Participants, Federal Liaisons and Alternates via facsimile transmission in a News Flash on February 9.

Chem-Nuclear Writes to Customers

Chem-Nuclear recently sent the following letter, dated February 14, to customers with contracts for use of the low-level radioactive waste disposal facility at Barnwell, South Carolina. According to a company representative, most customers' contracts expire on June 30, 2000.

—CN

Presently the South Carolina Legislature is in session. One of the potential actions of this session concerns the status of the Barnwell Low-Level Radioactive Waste Disposal Facility (Barnwell). As a result of the recommendation of the South Carolina Governor's Task Force to join the Northeast Compact (thereby forming the Atlantic Compact), there is a degree of uncertainty concerning the future availability of Barnwell for all of our customers. We have been and are continuing to work with all the stakeholders to keep the Barnwell disposal option available to all of our customers for as long as possible beyond July 1, 2000. Even if the legislation is passed that forms the Atlantic Compact, we believe that the Atlantic Compact will allow for a gradual reduction of access to Barnwell for all non-Atlantic-Compact members.

We want to personally thank you for your continued support of Barnwell. Your business is greatly appreciated and it assists us in keeping Barnwell a viable disposal option for the entire nuclear industry. Chem-Nuclear Systems (CNS) continues to direct its efforts toward stabilizing the cost of low-level radioactive waste disposal. We are pleased to inform you that your disposal pricing schedule and your shortfall access fee will remain unchanged for the next fiscal year; this is being done in spite of the fact that current information assembled from our customers suggests that volumes will again fall. We are addressing this issue primarily by working creatively with our customers to increase volumes. Again for fiscal year 2000/2001, CNS will pay the largest percentage of the tax shortfall.

To ensure continuity of access to Barnwell for all of our customers in the event there are no changes to existing laws, CNS has developed contracts to provide for disposal effective July 1, 2000. Enclosed is the Pricing Schedule and Change Order to extend your disposal contract through June 30, 2001. Please sign both the original and the duplicate original, return the original to Mark Lewis by April 1, 2000, and retain the duplicate original for your files. In the event favorable legislation is passed, your contract will be modified accordingly.

CNS' goal remains to create a winning situation for you, our valued customer, the state of South Carolina and CNS. If you have any questions concerning your Pricing Schedule or Access Fee for fiscal year 2000/2001, please call Mark Lewis (803-758-1827), George Antonucci (803-758-1807) or me (860-677-0457).

Sincerely,

CHEM-NUCLEAR SYSTEMS, L.L.C.
Joseph E. Amico, Vice President Sales and Marketing

World Experts Discuss Radiation Safety, Policy

In December 1999, an international conference entitled "Bridging Radiation Policy and Science" was held in Warrenton, Virginia. The conference addressed issues similar to those raised at the Wingspread Conference in 1997. The following account of the conference was published in the February 2000 issue of the Health Physics Society newsletter.
—CN

Bridging Radiation Policy and Science: Conclusions and Recommendations

by Sigurður Magnússon, Program Chair

A number of conference conclusions and recommendations were suggested. Considering that many recommendations were not fully considered because of lack of time, the participants agreed that another conference should be organized to further develop these and other recommendations. The following unedited list reflects those recommendations and conclusions that received the broadest support.

Conclusions

- Ionizing radiation is a well-known human carcinogen. During the past 50 years numerous epidemiological studies of adult human populations exposed to radiation from medical, occupational, or military purposes have been conducted. The lowest dose at which a statistically significant radiation risk has been shown is ~ 100 mSv (10 rem). This does not imply the existence of a threshold.

- The effects of low-level radiation below 1 mSv per year (100 mrem per year) above background radiation cannot currently be distinguished from those of everyday natural health hazards.

- The concept of collective dose is often misapplied, e.g., to estimate health impacts of very low average radiation doses in large populations and/or doses delivered over long time periods. Collective dose can be a useful comparative tool for instance in the evaluation of protection options.

- It is essential to continue to foster international cooperation in radiation safety. In particular, international harmonization of radiation safety policies for radiation sources delivering low radiation doses should be developed.

- Consistent and coherent radiation policy on a national level is necessary for the effective implementation of radiation safety.

- Economic, environmental, ethical, psychological, and scientific factors are all essential in the policy and regulatory decision-making process, to assure public health and well-being. The way in which these factors are incorporated in nation-specific decision-making processes may vary.

- Concern over low doses should not deter the public from obtaining benefits of medical procedures.

Recommendations

Policy and Regulatory Process

- Policy discussions on the regulation of radiation sources delivering low-level radiation should include references to natural background radiation.

- The conference supports the evolving global framework of the IAEA [International Atomic Energy Agency] for the safe use of radiation.

- The conference supports further development and evaluation of the ideas associated with the proposal on controllable dose.

- No radiation dose is below regulatory concern but certain levels should be below regulatory action, and appropriate dose levels should be established.

Science

- Fundamental questions about the shape of the dose-response curve and mechanisms of effects of radiation at low doses are unlikely to be answered in the near future. Scientific research, including molecular and cellular radiobiology studies, are critical in order to better understand mechanisms of radiogenic effects, and providing important information about the likely shape of the dose-response curve at low doses of radiation, and should be coordinated and continued.

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Texas Compact/Texas

Maine AG Finds Rubblization Proposal May Create LLRW Disposal Facility

By letter dated February 8, Maine Attorney General Andrew Ketterer found that under a strict reading of Maine's Nuclear Waste Activity Act (the "State Act"), a proposal by Maine Yankee to implement rubblization as a decommissioning alternative may be seen as creating a low-level radioactive waste disposal facility. Ketterer suggests, however, that the state legislature revisit the issue due to significant changes over the years in the field of low-level radioactive waste management.

Background

Ketterer's letter was written in response to an inquiry about the Maine Yankee Nuclear Power Station from State Senator Sharon Anglin Treat (D). Maine Yankee submitted a draft License Termination Plan (LTP) to the U.S. Nuclear Regulatory Commission in January 2000 which includes its rubblization proposal. Ketterer's letter describes the proposal as follows:

> The rubblization project includes the following measures: removing a layer of radioactive concrete (but leaving a residue of radioactive concrete) from the insides of certain buildings at the Maine Yankee plant, including the reactor containment, fuel and primary auxiliary buildings; sending this radioactive material to a licensed nuclear waste disposal site; demolishing the remainder of these buildings; placing the resulting concrete rubble into one or more monolithic masses; and covering the solidified rubble with soil to grade. Maine Yankee also proposes to impose deed restrictions on the site of the demolished buildings that would prevent uses of this area that might expose humans to radioactivity from the buried wastes.

Ketterer's letter makes clear that the analysis presented is strictly a legal one—a health and safety evaluation of the rubblization proposal was not performed because, according to the letter, "[s]uch issues are for the NRC and other regulatory bodies to evaluate."

Rubblization Proposal and the State Act's Definition of an LLRW Disposal Facility

To determine whether Maine Yankee's rubblization proposal may create a low-level radioactive waste disposal facility, Ketterer looked at:

- whether the concrete rubble Maine Yankee seeks to bury or otherwise contain on site may be characterized as "low-level radioactive waste" as defined in the State Act, and
- whether burying this rubble meets the State Act's definition of a "low-level radioactive waste disposal facility."

Does the Rubble Fall Within the Definition of LLRW?

The State Act defines low-level radioactive waste to include, among other things, "any radioactive material that is generated through the production of nuclear power and that the United States Nuclear Regulatory Commission classified as low-level radioactive waste as of January 1, 1989 but which may be classified as below regulatory concern after that date." Ketterer found that NRC's rules suggest that any radioactive rubble left at the Maine Yankee site would constitute low-level radioactive waste.

Maine Yankee disagreed. The company argued that NRC's waste classification rules do not apply to the rubblization proposal because, according to Maine Yankee, NRC's rules apply only to the disposal of low-level radioactive waste in off-site disposal facilities. Maine Yankee's proposal, on the other hand, involves on-site disposal. Ketterer rejected this argument, noting that the State Act specifically cites NRC's waste classification rules when defining the state's responsibilities. Ketterer therefore concluded that the legislature intended to apply NRC's waste classification rules, regardless of where the waste may be deposited.

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Texas Compact/Texas (continued)

Does Burying the Rubble Create a LLRW Disposal Facility?

The State Act defines a low-level radioactive waste disposal facility as "a facility for the isolation of low-level radioactive waste from the biosphere inhabited by people and their food chains." Maine Yankee argued that its proposal falls outside of the definition because the risk assessment scenario contained in Maine Yankee's LTP contemplates unrestricted use of the site where the buildings that are to be demolished now stand. Ketterer rejected this argument as follows:

> [T]his argument is … based upon a risk assessment scenario used by Maine Yankee to show compliance with federal decommissioning rules rather than upon Maine Yankee's actual rubblization proposal … Maine Yankee's rubblization proposal includes solidifying the radioactive concrete rubble into one or more monolithic masses in order to decrease the potential of migration of radionuclides into the surrounding environment and then covering these masses with soils. Maine Yankee also proposes to impose deed restrictions that would prevent uses of the site that might expose humans to the buried wastes. While these proposed measures are positive steps designed to protect the environment from harm, these steps are also, arguably, techniques for isolating low-level radioactive waste from the biosphere inhabited by people and their food chains. Therefore, implementing Maine Yankee's rubblization proposal may be viewed as creating a low-level radioactive waste disposal facility.

In addition, Maine Yankee argued that its rubblization proposal will be found to comply with NRC's decontamination and decommissioning rules and that such a determination would be tantamount to a finding by NRC that the rubblized concrete does not constitute low-level radioactive waste.

Ketterer rejected this argument for the following reasons:

- Maine Yankee's LTP has not yet been presented to NRC, and NRC has not to date approved rubblization as a decommissioning technique;
- even if NRC's decommissioning rules were to be construed as an implied amendment to its waste classification scheme, such a construction would not change the definition of low-level radioactive waste as contained in the State Act; and,
- NRC's decommissioning rules were not intended to preclude states from enacting more stringent limitations.

Consequences of Characterizing Maine Yankee's Rubblization Proposal as an LLRW Disposal Site

Ketterer's letter lists the following "potentially significant consequences" of characterizing Maine Yankee's rubblization proposal as a low-level radioactive waste disposal facility under the State Act.

- The State Act requires that, "[a] low-level radioactive waste disposal facility developed in the State must be licensed by the United States Nuclear Regulatory Commission." Ketterer writes in his letter that his office has been advised that "it is highly unlikely that the NRC would consider licensing the rubblization project if, as Maine Yankee argues it will, the NRC decides to release the site for unrestricted use."
- The State Act requires legislative approval for the siting of a low-level radioactive waste disposal facility in Maine, with NRC licensing as a precondition for that approval.
- The siting of a low-level radioactive waste disposal facility in Maine requires approval by a majority of the voters, again with NRC licensing as a precondition.
- The State Act requires that a low-level radioactive waste disposal facility be owned and controlled by the state.

- The Texas Low-Level Radioactive Waste Disposal Compact provides that waste generated within the party states must be disposed of only at the regional facility and that the regional facility must be located in Texas.

- Maine Yankee officials have stated that if the rubblization proposal is found to constitute a low-level radioactive waste disposal facility under the State Act, then the company will abandon the proposal and opt to proceed under the "safe closure" measures authorized by NRC. These measures would allow Maine Yankee to leave standing all of the concrete structures for approximately 57 years without removing the radioactive materials from them.

Due to these implications, Ketterer's letter encourages the legislature to revisit the State Act to determine whether revisions or amendments may be appropriate. Ketterer concludes as follows:

> In sum, much has happened since the State Act was enacted in 1983 and amended in 1985. Had the Legislature known the facts that exist today and the important changes in the application of federal law to state involvement with such a facility, we believe the State Act might well have provided for a different state regulatory framework for the consideration of the type of project that Maine Yankee has now proposed. Furthermore, amendment of the State Act could remove the legal clouds presented by some of its provisions.

—TDL

The preceding information was distributed to Forum Participants and Alternate Forum Participants, Federal Liaisons and Alternates via facsimile transmission in a News Flash on February 17.

Land Swap to Finance Cleanup of Atlas Site

In January, U.S. Department of Energy Secretary Bill Richardson announced a plan to return over 80,000 acres of land to the Northern Ute Tribe. The agreement, which represents the largest voluntary land transfer to a Native American tribe in over a century, will provide DOE with necessary funds to clean up radioactive rock and soil at an abandoned mine near Moab in southeastern Utah. The mine, which was operated by the Denver-based Atlas Corporation, is located approximately 50 miles south of the land being returned to the Utes. Several years back, Atlas went bankrupt, leaving the federal government to clean up waste at the mine. However, the remediation bond left by Atlas was inadequate to cover the costs.

Under the terms of the agreement, the Utes can open the transferred land to oil and gas drilling—but, they have to pay a percentage of the royalties from these operations to the government. That money will then be used to help cover the costs associated with remediation of the Atlas site. The royalty percentage is still under negotiation, but is expected to be about 8 percent. The entire agreement is subject to approval by Congress.

The Utes were given the land in the 1880s, but the federal government took it back on the eve of World War I on the grounds that the petroleum deposits contained in the land might be needed in case of national emergency. Such reserves are no longer considered vital.

—TDL

Texas Compact/Texas (continued)

Envirocare of Texas' Storage Application on Hold

Parties Dispute Licensability

By letter dated December 2, 1999, the Texas Department of Health (TDH) notified Envirocare of Texas that the agency is temporarily suspending review of the company's license application for a Class III storage facility for low-level radioactive waste in Ward County, Texas. In support of its action, TDH identified several regulatory and technical problems with the application.

TDH staff and Envirocare officials met on December 16 to discuss the issues. In addition, Envirocare provided a written response by letter dated December 21. The letter indicates that Envirocare intends to submit revisions to the application to clarify that the company is seeking a license for storage and processing—with the process proposed being long-term radioactive decay.

Texas Department of Health's Letter

Regulatory Authority In its December 2 letter, TDH states that it does not believe its Bureau of Radiation Control (BRC) has the authority to issue a license for a long-term storage facility. As explanation, the agency states as follows:

> Title 25 of the Texas Administrative Code, Section 289.254(b)(12) defines a radioactive waste storage facility as a facility where radioactive waste is "stored while awaiting shipment to a licensed radioactive waste processing or disposal facility." The intent of a radioactive waste storage facility is not for extended or protracted storage, but for storage only so long as necessary to either (1) make up a shipment to a disposal facility, or (2) await the availability of a disposal facility. The intent was not to accumulate and store for extended periods of time, but only until disposal options could be exercised.

True Intent: Disposal or Assured Isolation? In addition, the letter points to several statements in Envirocare's November 23 press release which TDH finds to be "of concern."

> In paragraph (9) the statement is made that "Envirocare of Texas applied to build the facility to allow Texas to meet its interstate requirements to manage low-level radioactive waste generated in the States of Texas, Maine and Vermont." That statement is misleading, at best, and raises the question of the true intent of the facility described in the application submitted to the Bureau. The obligation for Texas as the host state of the compact is to provide for the disposal of the low-level radioactive waste, not storage. Thus, the implication would be that the facility being applied for is in fact a disposal facility. If that is the case, our agency is not the appropriate agency to submit an application to for that purpose.
>
> In paragraph (12), the statement is made "This storage method, sometimes referred to as assured isolation, ..." This statement either implies or reveals a purpose of the facility other than as presented in the application. As we have discussed on previous occasions, the agency does not have the authority or the rules in place to license an assured isolation facility. Furthermore, it seems clear from the last legislative session that the state is not ready to embrace the concept of assured isolation at this time.

Next Step The letter suggests that Envirocare needs to submit replacement pages for its license application "which conform to the intent of a Class III Waste Storage Operation (i.e., one in which a radioactive waste storage facility is a place where radioactive waste is stored while awaiting shipment to a licensed radioactive waste processing or disposal facility)." TDH has agreed to resume processing the application once the replacement pages are received.

The letter was signed by Ruth McBurney, the Director of the Bureau of Radiation Control's Division of Licensing, Registration and Standards.

Envirocare's Response

Regulatory Authority In its December 21 response to TDH, Envirocare takes the position that an application for a ten-year renewable license with a five hundred–year storage period "is consistent with state statutes, agency regulations, and the intent of the law." In support of this view, Envirocare points out that Texas law allows TDH to limit the term of a license, but does not compel or mandate such a limitation. In addition, Envirocare claims that normal rules of statutory construction and precedent from other areas of state government suggest that under the existing statutory structure, TDH has authority to issue a long-term license. Envirocare also notes that, while the Bureau of Radiation Control's practice is to limit the term for a storage license to less than ten years, agency rules do not require that it do so. To summarize the issue, Envirocare states as follows:

> [A] reasonable interpretation of agency rules would allow either short term storage or longer term storage—in both cases prior to permanent disposal of the wastes at an authorized facility. Envirocare's research shows that the rules themselves and the background information documenting rule development support a conclusion that waste storage need not be limited to temporary storage. To the contrary, TDH rules appear to contemplate decay in storage as a processing technique.

Storage vs. Disposal On the question of whether the proposed facility constitutes one for storage or disposal, Envirocare argues that the legislature has distinguished the two not by length of time wastes are retained at the facility but rather by intent to retrieve the waste. Envirocare states:

> This is a key distinction in consideration of Envirocare's license application. With disposal, there is no intent to retrieve waste once it is disposed. With storage, on the other hand, waste is placed in a facility with intent to retrieve it at a later time either for disposal or further management. The intent to retrieve wastes exists in Envirocare's application; therefore, it is not an application for disposal.
>
> (citations omitted)

As to compact obligations, Envirocare states that the compact obligated Texas to provide a facility "for the purpose of management or disposal of low-level radioactive waste for which the party states are responsible." Management is defined by the compact to include storage.

Moreover, Envirocare asserts that a May 1999 legal opinion by the Texas Attorney General's Office recognizes that long-term storage can meet Texas' obligation to manage wastes under the compact and that long-term storage is not disposal. (See *LLW Notes*, May 1999, p. 15.)

Ability to Pursue Assured Isolation Envirocare maintains that "the legislature's consideration of assured isolation during the 76th Session reveals strong support for assured isolation of low-level radioactive wastes." While acknowledging that assured isolation legislation was not adopted, Envirocare argues that bills embracing the concept were passed by both houses of the Texas legislature and that it was differences in the bills, other than assured isolation, that ultimately prevented passage.

Next Step: **Revisions re Storage for Decay** Envirocare's letter also seeks to clarify the company's original application to show that its intent was to provide for the safe storage of low-level radioactive waste in a monitored facility for a period of time sufficient to allow radioactive decay of much of the waste. In other words, Envirocare asserts that it is seeking a license for storage and processing, with the process proposed being long-term radioactive decay. According to Envirocare, the nature of the process necessitates the long-term license. Envirocare plans to submit license application revisions to clarify these points.

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Texas Compact/Texas (continued)

Outside Review

In addition to corresponding and meeting with Envirocare officials, TDH staff are taking various steps to determine the department's authority to issue a long-term storage license and the viability of so doing. For instance, the issue has been referred to both the department's legal staff and to the Texas Radiation Advisory Board (TRAB), a group of gubernatorial appointees responsible for reviewing and evaluating state radiation policies and programs, making recommendations and providing technical advice to state agencies, and reviewing proposed state rules and regulations relating to sources of radiation. TDH submitted a white paper to TRAB in January 1999 focusing on the length of time that waste could or should be stored in Texas while other disposal options are available. At its meeting on January 29, TRAB agreed to review the white paper and prepare recommendations. TRAB estimates it will take 3 to 6 months before such recommendations are available.

Background

Envirocare's application, which was filed on November 23, 1999, calls for the acceptance of waste for 40 years, followed by another 500 years of active monitoring and maintenance. Envirocare is referring to their project as an "assured isolation" facility. Envirocare's press release describes the facility as follows:

> [T]he proposed storage facility is an above-ground concrete vault housing concrete canisters. This new technique allows for easy accessibility for inspection and maintenance while preserving future options for removal or burial. Remotely operated visual inspection devices equipped with television cameras monitor the interiors of the vault, insuring the safety of workers and the public.

To date, TDH has issued only one other Class III radioactive waste license—a waste processing license which includes storage within the definition of processing. That license was issued to Waste Control Specialists (WCS) on November 3, 1997. It contains an activity and volume cap of 200,000 curies and 300,000 cubic feet for all waste at the facility. The main focus of WCS' operation is to process radioactive waste and either ship it to a disposal facility or return it to the generator. The activity and volume cap effectively preclude the company from storing large volumes of waste for long periods of time.

In contrast, the Envirocare application is seeking a much higher activity cap of approximately 1 million curies and a greater volume limit for an operation focused on storage for long-term decay. (See *LLW Notes*, November/December 1999, pp. 10-11.)

—TDL

The preceding information was distributed to Forum Participants and Alternate Forum Participants, Federal Liaisons and Alternates via facsimile transmission in a News Flash on January 12, 2000.

White Paper on Low-Level Radioactive Waste Storage

The Texas Department of Health (TDH) submitted its "White Paper on Low-Level Radioactive Waste (LLRW) Storage" to the Texas Radiation Advisory Board in January. The paper defined the main issue for the board's review and consideration as follows:

> Under TDH-[Bureau of Radiation Control]'s existing regulations, how long should a waste processing and/or storage licensee be allowed to store LLRW received from others when there is a commercial site available to dispose of the waste?

The paper states that Envirocare of Texas has taken the position that TDH has the regulatory authority to issue a long-term low-level radioactive waste storage license. In support of its position, Envirocare points to the absence of any specific limit under Texas statutes or regulations on the length of time low-level radioactive waste may be stored.

TDH takes the position that it cannot authorize unlimited long-term storage but that it can process an application for low-level radioactive waste storage without addressing the specific amount of time during which waste may be stored. In support of its position, TDH notes that in a March 1999 letter to Texas State Representative Gary Walker, then-NRC Chair Shirley Ann Jackson indicated that NRC policy "has been, and continues to be, that [LLRW] should be disposed of safely as soon as possible after it is generated."

The white paper identifies the following as potential options for the board:

a. Recommend TDH-[Bureau of Radiation Control] develop guidance to licensees based upon its current position which considers the total time specific lots of waste might be stored to be irrelevant. (This would result in an open-ended length of time licensees could store specific lots of waste.)

b. Recommend TDH-[Bureau of Radiation Control] develop guidance to licensees based upon its current position, but add performance-based limitations (e.g., drums must continually meet [Department of Transportation] specifications and be continually prepared for shipment).

c. Recommend TDH-[Bureau of Radiation Control] develop guidance to licensees which establish a specific length of time beyond which specific lots of LLRW may not be stored (e.g., 7 years (length of time equivalent to the expiration period of the license); or 1-2 years (previously, but not currently, used length of time beyond which LLRW could not be stored)).

—TDL

Midwest Interstate Low-Level Radioactive Waste Commission v. Toledo Edison Company

MI Utilities Won't Share in Export Fee Distribution

On December 3, 1999, the U.S. District Court for the District of Minnesota issued an order finding that Michigan utilities are not entitled to share in the dissolution of the Midwest Interstate Low-Level Radioactive Waste Compact's Export Fee Fund. As no appeal was filed by the January 5 deadline, the decision is final.

Background

Export Fee Fund In 1987, the Midwest Compact Commission resolved to assess fees against utilities operating nuclear reactors in the compact's member states in order to finance development of a regional low-level radioactive waste disposal facility. Once collected, the fees were deposited into a fund, known as the Export Fee Fund, which was administered by the commission for that purpose. To date, the defendant utilities have paid export fees totaling $14,593,965.50 to the fund.

Guaranty by Michigan Utilities On June 30, 1987, the State of Michigan was designated as the host state for the region's first low-level radioactive waste disposal facility. Negotiations followed concerning the transfer of funds from the commission to the Michigan Low-Level Radioactive Waste Authority.

The Michigan utilities eventually agreed that, should a facility not be established in the state, they would repay to the commission a portion of any funds transferred to the Authority. This guaranty covered only amounts transferred in fiscal years 1988 and 1989 and applied only to transferred amounts traceable to fee assessments paid by non-Michigan utilities. The guaranty matured only if the Michigan legislature failed to appropriate repayment monies within one year of being asked to do so.

A guaranty was not executed for funds transferred in 1990, but the Michigan utilities agreed in writing that such funds would be deemed to consist exclusively of fee assessments paid into the fund by the Michigan utilities.

Expulsion of Michigan as Host State and Fund Repayment On July 24, 1991, the commission revoked Michigan's membership in the compact and immediately requested the Michigan Authority to seek a legislative appropriation to repay monies transferred to it from the fund. The Michigan legislature failed to appropriate the necessary monies and, in early November 1992, the Michigan utilities and the commission reached an agreement to liquidate the Michigan utilities' repayment obligation.

Dissolution of the Fund After Michigan's expulsion from the compact, the State of Ohio was designated as the compact region's host state. However, on June 26, 1997, the commission resolved to halt development of a regional disposal facility "based on reduction in the levels of low-level radioactive waste generated in the Region and the continuing availability of low-level radioactive waste disposal facilities outside the Region with sufficient capacity to accept waste for a lengthy, although indefinite time." Accordingly, on November 3, 1997, the commission adopted a resolution authorizing dissolution of the Export Fee Fund and began making plans to distribute the balance of the fund by year's end. Shortly thereafter, the Michigan utilities claimed entitlement to a portion of the fund.

The Lawsuit On June 4, 1998, the Midwest Compact Commission filed a complaint for interpleader in district court. A complaint for interpleader is a legal mechanism whereby a plaintiff with possession or control of property to which the plaintiff claims no entitlement requests that the court join parties with competing claims to the property in a single action so that the plaintiff will not be exposed to multiple suits or liability.

The following utilities are listed as defendants to the action: Toledo Edison Company; Cleveland Electric Illuminating Company; IES Utilities, Inc.; Northern States Power Company; Union Electric Company d/b/a Ameren UE; Wisconsin Electric Power Company; Wisconsin Public Service Corporation; Detroit-Edison Company; Indiana Michigan Power Company; and Consumers Power Company.

For additional background information on the case, including contested issues and requested relief, see LLW Notes, June/July 1998, pp. 24–25.

The Decision

The Midwest Compact provides that, "Any person aggrieved by a final decision of the Commission may obtain judicial review of such decision in any court of competent jurisdiction by filing in such court a petition for review within 60 days after the Commission's final decision."

The Michigan utilities did not petition for review of the resolution within 60 days of its adoption. They claim, however, that the 60-day period is inapplicable for various reasons, all of which were rejected by the court.

- The Michigan utilities claim that they were not "aggrieved" by the commission's decision. Since no contributions from the Michigan utilities were included in the balance of the fee fund, the court held that their claim to a portion of the balance evidenced that they were indeed "aggrieved" by the decision.

- The Michigan utilities assert that the resolution was not a "final decision." The court found that the Dissolution Resolution was a "final decision" since no other decisions were necessary to effectuate a distribution.

- The Michigan utilities argue that the commission did not comply with the notice provisions of the Administrative Procedures Act. The court determined that it was within the commission's discretion to find that the Michigan utilities were not interested parties and therefore not entitled to notice.

- The Michigan utilities assert that if their claim is time-barred, then so is that of the non-Michigan utilities' to the money. The court determined that the non-Michigan utilities' claim is not time-barred because they are not "aggrieved" by the resolution and do not seek to have it overturned.

- The Michigan utilities state that the time limit does not address the interpretation or enforcement of the commission's decision. The court held that the 60-day time limit does indeed apply.

Resolution Interpretation Moreover, the court held that even if the 60-day time limit did not bar the Michigan utilities' claim, a genuine issue of material fact does not exist. According to the court, the Dissolution Resolution neither contemplated nor encompassed payment to the Michigan utilities.

> The language of the resolution is clear and unambiguous: "[T]he Midwest Compact Commission authorizes the distribution of the balance in the Export Fee Fund to the utilities that paid export fees, in proportion to the export fees that were paid by each utility …" At the time the Commission adopted the Dissolution Resolution, there was no rational basis to believe that the resolution's language referred to the Michigan Utilities. Michigan had been ejected from the Compact six years earlier. The Michigan Utilities had been refunded their 1991 export fees and were no longer contributing to the Export Fee fund. The Guaranty Agreement had been executed, returning the Non-Michigan Utilities' fees from the Michigan Authority. Finally, the Commission had sent the Michigan Utilities' 1990 fees to the Michigan Authority pursuant to the Consent to the Preoperational Funding Agreement amendment. The history of the dealings between the Commission and the Michigan Utilities reveals that the Michigan Utilities were no longer contributors to the Export Fee fund and had long before divested their interest in it.

The court specifically rejected the Michigan utilities' argument that it is unfair to impose 100 percent of the risk of Michigan's departure from the compact on them since the proposed facility was intended to benefit all of the member states. Such imposition is proper, according to the court, because the Michigan utilities willingly agreed to assume the risk by signing the guaranty. "That the Michigan Utilities received no unique benefits from the Michigan Authority's failed efforts to build a waste facility is an issue between them and does not implicate the Commission."

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Entergy Arkansas, Inc. v. State of Nebraska

Nebraska Court Takes Steps to Preserve Evidence

On December 21, 1999, the U.S. District Court for the District of Nebraska issued an order in a lawsuit challenging actions taken by the State of Nebraska and its officials in reviewing US Ecology's license application for a low-level radioactive waste disposal facility in Boyd County, Nebraska. (See *LLW Notes*, October 1999, p.15.)

The order was issued after Nebraska Deputy Attorney General Steven Grasz sent a letter informing the court that some or all of the documents requested in the plaintiffs' First Joint Request for Production—such as e-mails and computer records—are no longer available. The documents, which were produced before October 1998, are allegedly no longer contained on the state's computer system because Nebraska employees failed to adjust a computer process that automatically reuses memory for e-mail more than a year old.

A temporary restraining order, issued December 30, 1998, instructs the defendants not to destroy or alter any of the licensing documentation. After receiving a copy of Grasz' letter, the plaintiffs filed a motion requesting that the court supplement and enforce the temporary restraining order and allow for limited expedited discovery regarding the spoliation of evidence.

In its December 1999 order, the court

- reaffirmed that the defendants are restrained and enjoined from performing any actions out of the ordinary course of business which may result in the destruction, alteration, or reformatting of evidence;
- ordered the defendants to maintain any and all remaining existing evidence, without alteration, destruction, mutilation, damage, deletion, excision, reformation, or spoliation;
- instructed the defendants to file a report, within ten business days, providing specified information about the lost evidence; and
- ordered the Nebraska Attorney General's office to promptly issue a notice concerning the need to preserve and maintain evidence in its present form.

In addition, the court order provided for the appointments of both a Special Master and a computer forensics expert to assist the court in investigating possible violations of the temporary restraining order; to secure machines, media, and other possible items which may contain evidence related to the case; and to attempt to retrieve evidence that may have been destroyed or altered. Both parties were given the opportunity to submit written nominations for the appointments. The appointees fees are to be paid for by the State of Nebraska until further notice of the court, although the order specifically provided that the court will assess fees against the appropriate party at the conclusion of the case.

—TDL

Midwest Interstate Low-Level Radioactive Waste Commission v. Toledo Edison Company (continued)

Waiver The court also held that the Michigan utilities' claim is barred by the doctrine of waiver—a voluntary and intentional relinquishment or abandonment of a known right.

> The Michigan Utilities voluntarily waived their rights to claim money in the Export Fee fund by entering into the Guaranty Agreement and signing the Consent to amend the Preoperational Funding Agreement. The Commission was diligent in notifying the Michigan Utilities that the consequence of those acts was to segregate the Michigan Utilities' fees from those generated by the Non-Michigan Utilities in the event Michigan left the Compact. The Guaranty included a subrogation provision giving the Michigan Utilities an avenue for recovering their money from the Michigan Authority.

—TDL

Friends of the Earth v. Laidlaw Environmental Services, Inc.

Supreme Court re Standing in Environmental Cases

On January 12, the U.S. Supreme Court issued a decision in a closely watched case involving the public's ability to file lawsuits alleging environmental misconduct. The Court overturned an appellate court decision that otherwise had the potential to severely restrict the public's ability to pursue such actions.

Background

Events The case involves a 1992 lawsuit filed against Laidlaw Environmental Services, Inc. by Friends of the Earth (FOE), the Sierra Club, and the Citizen Local Environmental Action Network. The plaintiffs charged that Laidlaw had violated its Clean Water Act permit, discharging mercury and other metals from its hazardous waste incinerator in Roebuck, South Carolina, into the North Tyger River. In 1997, the U.S. District Court for the District of Columbia issued a judgment penalizing Laidlaw $405,800 for a total of 1,851 permit violations over a four-year period.

Appeals Both sides appealed the district court's decision. The plaintiffs argued that the penalty was inadequate, whereas the defendant asserted that the plaintiffs lacked standing. The U.S. Court of Appeals for the Fourth Circuit dismissed the case since Laidlaw had corrected the problems which led to the pollution—the plant had been retrofitted following the filing of the original suit. The appeals court rescinded the fine and ruled that the plaintiffs' attorneys could not collect over $2 million in fees and court costs.

The Issue At issue was the public's ability to assert standing in environmental actions. "Standing" is a legal principle which requires that a person have a sufficient stake in an otherwise justiciable controversy in order to bring suit. Many federal environmental laws allow for so-called "citizens suits," whereby members of the public can sue for pollution and alleged violations of law. Over the years the courts have curtailed the filing of such suits and have begun requiring a more direct threat before granting standing to citizens.

The Decision

In its ruling, the Supreme Court held as follows:

> An association has standing to bring suit on behalf of its members when its members would have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires individual members' participation in the lawsuit. The relevant showing for Article III standing is not injury to the environment but injury to the plaintiff. To insist on the former rather than the latter is to raise the standing hurdle higher than the necessary showing for success on the merits in a citizen's … enforcement suit. Here, injury in fact was adequately documented by the affidavits and testimony of FOE members asserting that Laidlaw's pollutant discharges, and the affiants' reasonable concerns about the effects of those discharges, directly affected those affiants' recreational, aesthetic, and economic interests.
>
> (citations omitted)

The Court specifically rejected Laidlaw's argument that the plaintiffs lacked standing to seek civil penalties payable to the government because such penalties offer no direct redress. The Court stated as follows:

> For a plaintiff who is injured or threatened with injury due to illegal conduct ongoing at the time of suit, a sanction that effectively abates that conduct and prevents its recurrence provides a form of redress. Civil penalties can fit that description. Insofar as they encourage defendants to discontinue current violations and deter future ones, they afford redress to citizen plaintiffs injured or threatened with injury as a result of ongoing lawful conduct.

The Court rejected the appellate court's determination that the plaintiffs' civil penalties claim became moot once the company came into compliance with its permit, noting that "[a] defendant's voluntary cessation of a challenged practice ordinarily does not deprive a federal court of its power to determine the legality of the practice." Instead, the Court ruled that the standard for mootness is much higher: subsequent events must make it absolutely clear that the alleged wrongful behavior could not reasonably be expected to recur.

—TDL

Anderson v. Semnani

Envirocare Seeks Judgment in Anderson Suit

On November 16, Envirocare of Utah and its owner, Khosrow Semnani, filed a motion for summary judgment in a lawsuit filed against them in October 1996 by Larry Anderson, a former Director of the Utah Division of Radiation Control. Anderson filed a response on November 29 identifying his objections and arguing that the defendants' motion should be denied.

The suit is pending before the Third District Court of Salt Lake County, Utah. As of press time, the court has not ruled on the motion.

Background

The suit alleges that the defendants owe Anderson in excess of $5 million for site application and consulting services related to the licensing and operation of Envirocare's radioactive waste disposal facility. In response to the litigation, Semnani admitted to giving Anderson cash, gold coins, and real property totaling approximately $600,000 in value over an eight-year period, but denied that such payments were for consulting services. Instead, he asserted that the payments were made in response to Anderson's ongoing practice of using his official position to extort money from the defendants.

Arguments in Support of Motion

The defendants argue that they should receive summary judgment on the pleadings on these grounds.

- The alleged consulting agreement is illegal and void as against public policy since it involved a conflict of interest in that Anderson was allegedly serving as both regulator and consultant for the applicant, it involved an improper gift or other compensation, and it violated the Utah Public Officers' and Employees' Ethics Act.

- Plaintiff's equitable claims of unjust enrichment and implied contract are dependent upon proof of illegal acts.

- Some of the elements required to form a contract were missing, including a meeting of the minds on essential terms of the contract.

- Anderson's payment demands were unlawful and therefore cannot support a claim for fraudulent misrepresentation.

Arguments in Opposition to Motion

Anderson responds by denying each of the defendants' four arguments in support of the motion for summary judgment. Among other things, Anderson notes that there are exceptions to the generally accepted doctrine that every contract in violation of law is void. Moreover, Anderson's response states as follows:

> [T]he Defendants assert that the contract entered into by Plaintiff Anderson with Defendant Semnani is "flagrantly illegal and unenforceable" and conclude that, as a matter of law, therefore, the Plaintiff cannot recover. The Defendants made virtually the identical argument in their Motion for Judgment on the Pleadings filed with this Court February 25, 1999. After carefully considering the merits of the Defendant's position, the Court rejected it and denied that motion … [T]he Court should reject it again.
>
> The Defendants point out that the United States indicted Plaintiff Anderson based upon his alleged dealings with Defendant Semnani, and appear to invite the Court to assume the Plaintiff's guilt of the charges alleged without any necessity for a trial. Fortunately, that is not how our system of justice operates.

Prior Court Rulings

On August 27, 1999, the district court issued an order denying the defendants' motion to dismiss the lawsuit with prejudice. The court found that dismissal is not proper "because there are disputed issues of material fact." In the same order, the court denied the plaintiff's motion for leave to file an amended and supplemental complaint "because granting such motion would cause prejudice to the Defendants and the motion was not timely filed." (See *LLW Notes*, October 1999, p. 24.)

—TDL

Waste Control Specialists, LLC v. Envirocare of Texas

WCS Suit Against Envirocare Remanded to State Court

On January 18, the U.S. Court of Appeals for the Fifth Circuit vacated a lower court's order in a lawsuit concerning various allegations of unfair business practices in the management and disposal of low-level radioactive waste. Having found that the case was improperly removed from state court, the appellate court remanded the suit to the federal district court with instructions to remand it back to the state court in which it was originally filed.

Waste Control Specialists (WCS) initiated the action, which named as defendants Envirocare of Texas, Inc.; Envirocare of Utah, Inc.; Khosrow Semnani and Charles Judd, who are both officers of Envirocare; and other individuals.

Background

On May 2, 1997, WCS filed a complaint in the District Court of Andrews County, Texas, alleging that during the spring of 1996 Envirocare conceived of and implemented a plan to destroy WCS' ability to compete in the low-level radioactive and mixed waste business. (See *LLW Notes*, July 1997, pp. 20–22.) The complaint contained exclusively state law causes of action including free enterprise and antitrust violations, libel and slander, business disparagement, and tortious interference with prospective business relations.

The defendants were nonetheless successful at removing the case to federal district court despite WCS' objections. To do so, the defendants noted that the allegations contained in WCS' amended complaint applied only to the non-commercial waste market—a market in which DOE is the only customer. Based on this fact, they alleged that WCS' case must involve federal antitrust law even though WCS' complaint made no reference to any federal law. WCS subsequently filed a motion to remand, which the district court denied. It also filed a motion to reconsider the order denying remand.

Subsequently, the defendants filed a motion to dismiss. The district court strongly suggested that WCS' only potentially viable claim was a federal one, so WCS amended its complaint to expressly allege a violation of the Sherman Act.

Nevertheless, the district court dismissed WCS' complaint on August 31, 1998, holding that Envirocare's activities are protected under the Noerr-Perrington Doctrine, which was established by the U.S. Supreme Court in 1960s. The doctrine provides that "[j]oint efforts to influence public officials do not violate the antitrust laws even though intended to eliminate competition." The doctrine is designed to protect both the participation of affected parties in government processes and the First Amendment right to petition the government. It recognizes that the outcome of valid government activity will often negatively impact economic competition.

The Decision

The court addressed two issues in rendering its decision:

- whether the district court erred in failing to remand the case to state court, and
- whether WCS waived its right to challenge federal jurisdiction because, after its efforts to remand had failed, it amended its complaint to state a federal cause of action.

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State of Utah v. U.S. Department of the Interior
United States of America ex. rel. Blackbear v. Babbitt

Appeals Filed re Lease Agreement for Spent Fuel Storage Facility

On February 1, the State of Utah filed a notice of appeal to the U.S. Court of Appeals for the Tenth Circuit in a lawsuit concerning Private Fuel Storage (PFS) L.L.C.'s plans to construct a temporary spent fuel storage facility on the Goshute reservation in northwestern Utah. At issue is a November 3, 1999, ruling by the U.S. District Court for the District of Utah finding that the U.S. Bureau of Indian Affairs acted lawfully when it redacted information from the lease agreement between the Skull Valley Band of Goshute Indians and PFS prior to disseminating the agreement in response to Freedom of Information Act (FOIA) requests from the state and individual tribal members. (See *LLW Notes*, November/December 1999, pp. 28-29.)

In the original complaint, filed in May 1998, the state also sought to participate in the Interior Department's review of the lease agreement. That issue, however, was segmented by the district court. In April 1999, the court ruled that Utah is not legally entitled to participate in lease approval proceedings. (See *LLW Notes*, May 1999, p. 22.) The ruling was appealed to the Tenth Circuit by the state on May 14, 1999. Appellate briefs have been filed by all parties, and oral argument is scheduled to take place on March 7, 2000.

Utah officials including Governor Mike Leavitt (R) oppose the facility and have vowed to fight it. Indeed, the State of Utah filed a petition with the NRC contesting the license application and created a multi-agency task force to combat the proposed facility. (See *LLW Notes*, July 1997, pp. 34–35.) State officials have also enacted various forms of legislation in an attempt to block the facility. (See *LLW Notes*, April 1999, p. 19.)

—TDL

For background information on the PFS plan and lease agreement, see LLW Notes, April 1997, pp. 26–27. For information concerning NRC's review of the proposal, see related story, this issue.

Waste Control Specialists, LLC v. Envirocare of Texas (continued)

Remand The appellate court held that since the Sherman Act does not completely preempt the Texas Antitrust Act, and since WCS' original complaint included claims under Texas antitrust law, the case should not have been removed from state court.

> Under these circumstances, WCS remained the master of its complaint. Although WCS could have alleged a federal cause of action in its state petition, it did not. It filed a complaint in state court alleging wholly state claims in a non-preempted field. Its choice is entitled to respect and precluded removing the case to federal court absent circumstances not presented here.

Waiver Citing prior case law, the appellate court noted that "a final judgment of a federal court may be binding even though the case has been improperly removed, if jurisdiction exists at the time judgment is entered." In such case, however, the plaintiff must voluntarily amend its complaint and there must be a final judgment on the merits.

In the case at hand, the appellate court found that there has been no waiver. The court noted in so ruling that the U.S. Supreme Court "has looked favorably upon a plaintiff's argument that diligent objection renders the waiver doctrine inapplicable." Moreover, the court found it compelling in this case that a trial on the merits had not been held—there was no hearing and, in the words of the appellate court, "[t]he case consumed, relatively, a minimum of judicial resources."

—TDL

Waste Management Holdings, Inc. v. Gilmore

Municipal Solid Waste Case Raises Commerce Clause Concerns

On February 3, the U.S. District Court for the Eastern District of Virginia invalidated newly enacted statutes concerning the transportation and disposal of municipal solid waste within Virginia's borders as violative of the Commerce Clause of the U.S. Constitution. Although the challenged statutory provisions were written to be facially neutral, the court determined that they will likely have the effect of discriminating against out-of-state waste. According to the court's decision, the Commerce Clause provides Congress, not states, with exclusive authority to regulate the interstate waste business. The opinion may be of interest to Forum Participants for this reason.

Virginia Governor James Gilmore III (R) has pledged to appeal the decision to the U.S. Court of Appeals for the Fourth Circuit.

Background: Virginia's Legislation

The legislation, which was signed into law in March and April 1999, contains various provisions that would impede the importation of out-of-state waste into Virginia, including the following:

- a cap on the amount of waste that any landfill may accept at either 2,000 tons per day or the average amount accepted by the landfill in 1998, whichever is greater;

- a mandate that the Virginia Waste Management Board promulgate regulations governing the transport of municipal solid waste by barge, ship, or other vessel and the loading and unloading of such waste, including a requirement that the regulations prohibit the stacking of containerized waste more than two containers high;

- a moratorium on receipt of waste by ship, barge, or other vessel prior to the promulgation and implementation of such regulations, despite the fact that no deadline is provided therefore; and,

- a prohibition against "the commercial transport of hazardous or nonhazardous waste by ship, barge or other vessel [upon the] Rappahannock, James and York Rivers, to the fullest extent consistent with limitations posed by the Constitution of the United States."

Court's Analysis

In reflecting on the legality of the legislation, the court wrote as follows:

> Virginia acted to staunch the importation of … [garbage] in a knee-jerk response to reports that increased levels of out-of-state … [garbage] would soon be flowing into the Commonwealth, which—while perhaps advantageous politically or commendable socially—is impermissible constitutionally.

In 1998, Virginia imported 3.9 million tons of municipal solid waste, making it the nation's second largest importer behind Pennsylvania. Like Pennsylvania, several other importing states have unsuccessfully attempted to regulate garbage imports on environmental and public safety grounds. As a result of these failures, the focus has turned toward lobbying Congress to give states explicit power to regulate such importation. Several such bills are currently pending, but none has made any significant movement in either chamber of Congress.

—TDL

For a detailed description of the lawsuit and the preliminary injunction that the district court issued earlier, see LLW Notes, June/July 1999, pp. 12–15.

Roedler v. U.S. Department of Energy

Court Rejects Class Action Suit Filed re Nuclear Waste Fund

On December 23, 1999, the U.S. District Court for the District of Minnesota issued an order dismissing a class action lawsuit demanding the return of $344.9 million to ratepayers of Northern States Power Company (NSP). The money was collected as a fee pursuant to the Nuclear Waste Policy Act of 1982 for the construction of a high-level radioactive waste disposal facility by the federal government. Construction of the facility, which is intended to accept spent nuclear fuel from the nation's civilian nuclear reactors, has been significantly delayed. The action also sought to prevent DOE from collecting additional payments to the fund in the future.

While the court recognized that significant delays have been encountered in the development of a permanent repository, it concluded that "the present lawsuit is not the appropriate remedy for the ill."

The court explained its ruling as follows:

> NSP is currently responsible for the interim storage of the spent nuclear fuel; DOE remains responsible for its ultimate disposal. The Plaintiffs, however, have no such responsibility. If the putative class prevailed, the Plaintiffs would disgorge the … [Nuclear Waste Fund], but NSP and DOE would still be responsible for the spent nuclear fuel with no funds to provide for its disposal. A refund would therefore give rise to the need for future rate increases to finance the permanent disposal of the nuclear waste already produced, thus passing the cost on to future ratepayers.

In addition, the court noted that the standard contract under which payments to the Nuclear Waste Fund are made delineates the rights and obligations between NSP and DOE only—not the ratepayers. "The fact that NSP may fund this payment through a charge to the Plaintiffs' electricity bills neither affords this Court with jurisdiction over the present matter, nor entitles the Plaintiffs to the forms of relief they seek."

On January 26, the plaintiff appealed the dismissal to the U.S. Court of Appeals for the Federal Circuit.

—TDL

"Bridging Radiation Policy and Science: Conclusions and Recommendations"
(continued from page 8)

- Multinational support and analysis of human data derived from studies such as the RERF Life Span Study, the Russian Mayak and Techa River studies, nuclear workers studies, and studies of populations living in high natural background areas to assist in reducing scientific uncertainties in risk and in elucidating mechanisms of radiation health effects are strongly encouraged. These data offer a unique opportunity to further quantify effects at low doses in human populations.

Constituent Concerns

- Groups involved in the development of policy and regulations, or making recommendations for such policies and regulations, should operate in an open and transparent manner and engage in dialogue with stakeholders.

- There is a pressing need for more effective communication by scientists with the public, politicians, policy makers, regulators, and other interested people. The science should be clearly articulated, emphasizing what we do and do not know, and explaining the limitations in the information and what we are doing about it.

Court Calendar

Case Name	Description	Court	Date	Action
Anderson v. Semnani (See *LLW Notes*, January 1997, pp. 1, 5-12.)	Alleges that Envirocare owner Khosrow Semnani owes Larry Anderson, former director of the Utah Division of Radiation Control, in excess of $5 million for site application and consulting services related to the licensing and operation of the Envirocare LLRW disposal facility in Toole County, Utah.	Third Judicial District Court of Salt Lake County, Utah	November 16, 1999 November 29, 1999 December 9, 1999	Envirocare filed a motion for summary judgment. Anderson filed a response to Envirocare's motion for summary judgment. Envirocare filed a reply brief.
Envirocare of Utah, Inc. v. United States (See *LLW Notes*, June/July 1999, p. 16.)	Challenges a request for proposals issued by the Army Corps of Engineers for the disposal of FUSRAP waste on the ground that some of the companies expected to bid on the RFP are not properly licensed to dispose of such waste.	United States Court of Federal Claims United States Court of Appeals for the Federal Circuit	July 19, 1999 September 21, 1999	Envirocare filed a notice of appeal of the district court decision dismissing its complaint. The court dismissed Envirocare's appeal.
Midwest Interstate Low-Level Radioactive Waste Commission v. Toledo Edison Co. (See related story, this issue.)	Seeks to join all regional utilities into one action to resolve a dispute over whether the Michigan utilities have a right to share in proceeds created by the dissolution of the Export Fee Fund.	United States District Court for the District of Minnesota	December 3, 1999 January 5, 2000	The District Court issued a decision finding that the Michigan utilities are not entitled to share in dissolution of the Export Fee Fund. The time to file an appeal expired.

Case Name	Description	Court	Date	Action
Spokane Tribe of Indians v. Washington (See *LLW Notes*, August/ September 1999, p. 17.)	Seeks to prevent Dawn Mining Company from importing slightly radioactive fuel material to a depleted uranium mill located adjacent to reservation lands on the ground that state licensing of the project violates Title VI of the Civil Rights Act of 1964.	United States District Court for the District of Washington	November 3, 1999	The stay of the case was extended until May 4.
Maine Yankee Atomic Power Company v. Bonsey (See *LLW Notes*, October 1999, pp. 20-21.)	Asserts that the State of Maine lacks regulatory authority over the closed utility's proposed on-site storage of high-level radioactive waste.	United States District Court for the District of Maine	October 29, 1999 November 3, 1999 December 10, 1999	The state filed a motion to dismiss the case, arguing that the court lacks subject matter jurisdiction. The utility filed a motion for partial summary judgment arguing that the regulatory authority of the NRC preempts that of the state to regulate or license the radiological health and safety aspects of the utility's on-site storage proposal. The state filed an opposition to the utility's summary judgment motion arguing that Congress expressed a clear intent in the Atomic Energy Act to preserve rather than preempt state environmental laws.

Court Calendar *continued*

Case Name	Description	Court	Date	Action
Maine Yankee Atomic Power Company v. United States (See *LLW Notes*, December 1998, p. 24.)	Similar lawsuits which seek contractual damages from DOE for its failure to take title to spent nuclear fuel by the January 31, 1998 deadline set forth in Article II of the Standard Contract.	United States Court of Appeals for the Federal Circuit	November 8, 1999	DOE filed a brief on appeal arguing that the lower court erred when it ruled 1) that the utilities did not fail to exhaust administrative remedies prior to filing the action and 2) that the "avoidable delays" clause of the standard contract does not provide the agency with complete relief from liability.
Northern States Power Company v. United States (See *LLW Notes*, June/July 1998 p. 30.)		United States Court of Appeals for the Federal Circuit	November 15, 1999	The utilities filed their reply to DOE's brief on appeal arguing that the agency's failure to accept their spent fuel does not constitute an excusable delay under the "avoidable delays" provision of the Standard Contract.
Wisconsin Electric Power Company v. U.S. Department of Energy (See *LLW Notes*, October 1999, pp. 22-23.)		United States Court of Appeals for the District of Columbia Circuit	October 12, 1999	DOE filed a motion to dismiss on the ground that the utility failed to exhaust its administrative remedies.

Advisory Committee on Nuclear Waste (ACNW)

ACNW Writes to NRC re Rubblization

On January 24, the Advisory Committee on Nuclear Waste wrote to U.S. Nuclear Regulatory Commission Chair Richard Meserve regarding the rubblization dismantlement approach to meeting NRC's license termination rule. In the letter, ACNW asserted that rubblization may represent a viable option, but cautioned that there are numerous technical and policy issues which need to be addressed.

As described by ACNW, rubblization is a "sequence of operations whereby the above-grade parts of concrete structures are emptied and the partially decontaminated structures are demolished and disposed of in the intact and partially decontaminated parts of the structures that are below grade." Following rubblization, fill material would be used to cover the sub-surface material. The goal is to produce a site that can be released for unrestricted use after license termination, with no requirement for ongoing monitoring of soil radioactivity.

ACNW's letter identified the following specific concerns:

> [T]he method of measuring and monitoring residual radioactivity should be consistent with that used for other decontamination and decommissioning (D&D) and waste disposal activities. We, furthermore, suggest that in light of the projected cost savings, industry should take the lead in developing a basis for this process. The quantification of release levels for the applicable standard should be resolved early on.

ACNW disagreed with concerns expressed by others that rubblization may lead to a proliferation of what are in essence low-level radioactive waste disposal sites. ACNW's letter states that "[i]t is the view of the ACNW that as presently conceived, rubblization has little in common with LLW disposal sites." Instead, ACNW identified the basic issue as "whether the NRC can reach a finding of reasonable assurance that rubblized sites meet the license termination requirements and are safe." ACNW noted that, due to the nature of rubblized material, evaluating its radioactive material content and resultant doses, both at the site and in ground water, may prove difficult and expensive.

> There will be a trade off between the hazards and costs associated with rubblization and the hazards and costs associated with removing the contaminated structural material offsite to an LLW burial site. In some cases, a combination of rubblization and removal offsite may prove to be the best approach. ALARA [the "as low as reasonably achievable" principle] considerations may play an important role in determining the best course of action.

ACNW concluded its letter by stressing the importance of studying a rubblization test case "to elucidate the problems and the potential approaches to their solutions."

—TDL

U.S. Nuclear Regulatory Commission

NRC Issues Preliminary Approval of White Mesa Reclamation Plan

On January 4, the U.S. Nuclear Regulatory Commission issued a Final Finding of No Significant Impact on the International Uranium Corporation's (IUC) request for an amendment to the source material license for its White Mesa Uranium Mill near Blanding, Utah. (65 *Federal Register* 308) Pursuant to federal regulation, interested parties have 30 days from the date of publication of the *Federal Register* notice in which to request a hearing on the decision.

NRC described the request as follows:

> The IUC site is licensed by the NRC … to possess byproduct material in the form of uranium waste tailings and other uranium byproduct waste generated by the licensee's milling operations, as well as other source material from multiple locations. Some of these locations include material from Formerly Utilized Sites Remedial Action Program (FUSRAP) sites managed by the U.S. Army Corps of Engineers (USACE). These materials generally have similar chemical, physical, and radiological composition to conventional mill tailings. The mill is currently operating. The license amendment would approve IUC's reclamation plan (RP). The proposed action is needed to minimize exposure of contaminated materials, once the mill operations have ceased, by reclaiming contaminated areas and stabilizing wastes.

The plan submitted by IUC included descriptions of the facilities to be reclaimed, as well as the designs, activities, schedule and estimated costs of the proposed action.

NRC staff performed an appraisal of the environmental impacts of the reclamation plan. Staff determined that the plan is consistent with federal regulations, will not be detrimental to public health and safety, and will not have long-term detrimental impacts on the environment.

The State of Utah is opposed to the acceptance of FUSRAP waste at the White Mesa facility. The state argues that the acceptance of such waste constitutes "sham disposal" and that uranium extraction is only a pretext to allow the facility to offer cheap disposal rates, in violation of federal rules that allow alternate feed to be accepted only if processed "primarily for its source-material content." (See *LLW Notes,* August/September 1999, p. 10.)

—TDL

For further information, contact William von Till of the Uranium Recovery and Low-Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, NRC, at (301)415-6251.

On February 10, 2000, NRC issued a memorandum and order upholding an NRC Atomic Safety Advisory Board judge's decision to allow IUC to accept FUSRAP waste at its mill in Utah. The memorandum and order, are available on the NRC web site.

U.S. Nuclear Regulatory Commission (continued)

NRC Considers Giving Advance Notice to Tribes

On December 21, the U.S. Nuclear Regulatory Commission issued an advance notice of proposed rulemaking "to seek public comments on a proposal which would require its licensees to notify federally recognized Native American Tribes of planned shipments of high-level waste or spent nuclear fuel through Tribal lands." (See 64 *Federal Register* 71,331.)

Current regulations only require licensees to provide such notice to state Governors or their designees. State notice must be provided at least seven days before a scheduled shipment. The notice must include specific contact information for the shipper, carrier and receiver, as well as information about the type of shipment and routes to be used.

Under the proposed rule, licensees would be required to provide similar information to federally recognized tribes. The change is being considered in response to a request from Native American tribes.

Interested parties may submit comments on the proposed rulemaking for up to 90 days after publication in the *Federal Register*. Comments may be submitted on the Internet at http://ruleforum.llnl.gov.

—TDL

NRC Proposes to Announce Open Meetings on Web

On January 25, the U.S. Nuclear Regulatory Commission issued a proposed policy statement regarding the announcement of meetings that are open to public observation. Under the proposal, the NRC would formally adopt its web site as its forum to announce the meetings, as well as any changes or cancellations. The proposal further states that staff meetings would be announced as soon as firm arrangements have been made, but generally no fewer than 10 calendar days before the meeting. The proposal also aims to eliminate the current practice of posting only meetings that are scheduled within the next 60 days.

NRC's web site can be accessed at

http://www.nrc.gov/NRC/PUBLIC/meet.html.

Interested parties may comment on the proposed policy statement until March 27 via the web site or direct mail.

Current policy requires that open meetings be announced primarily via an electronic bulletin board and a telephone recording. If the proposal is adopted, NRC will discontinue making announcements through these media.

—TDL

For further information, contact John Craig, Office of the Executive Director for Operations, NRC, at (301)415-8703.

NRC Issues Report re Spent Fuel Storage Application

In December 1999, the U.S. Nuclear Regulatory Commission issued a partial positive evaluation of safety and operational issues in response to a license application filed by Private Fuel Storage (PFS) L.L.C. to construct an above-ground facility for temporary storage of spent nuclear fuel on a Native American reservation in northwestern Utah. The report, entitled "Safety Evaluation Report of the Site-Related Aspects of the Private Fuel Storage Facility Independent Spent Fuel Storage Installation," is available in the NRC public documents room.

PFS is a consortium of seven nuclear utility companies, which is led by Minneapolis-based Northern States Power Company. None of the consortium's members is located in Utah.

PFS is seeking to build the storage facility due to the federal government's refusal to take spent fuel by early 1998, as originally contemplated in the Nuclear Waste Policy Act of 1982. (See *LLW Note*s, April 1997, pp. 26–27.) PFS submitted a license application to NRC on June 25, 1997. (See *LLW Notes*, July 1997, p. 33.) If approved, the facility would hold up to 40,000 metric tons of waste in 4,000 metal containers.

NRC's report concludes that PFS has the financial qualifications necessary to operate the facility and has provided adequate plans regarding safety and security. NRC staff, however, determined that PFS had not submitted sufficient information to make a determination on all of the requisite issues, including the suitability of the site soil composition. PFS has submitted additional information on these issues, and NRC plans to issue a supplemental safety evaluation report later this spring.

—TDL

For information concerning ongoing litigation regarding the proposal, see related story, this issue.

Clinton Nominates McGaffigan to NRC

On February 1, President Bill Clinton announced his intention to nominate Edward McGaffigan, Jr. for another term as a member of the U.S. Nuclear Regulatory Commission. McGaffigan has been a member of the NRC since August 1996.

Prior to that time, he served as a Senior Policy Advisor to Senator Jeff Bingaman (D-NM). His responsibilities included national security, science and technology, and government-wide research and development issues.

Before joining Senator Bingaman's staff in 1983, McGaffigan served in the Foreign Service for almost seven years. In an overseas assignment, McGaffigan served as a Science Attache in the U.S. Embassy in Moscow, where he worked to foster cooperation on nuclear energy matters.

He holds an M.S. degree in physics from the California Institute of Technology and a Master of Public Policy from Harvard University's Kennedy School of Government.

—TDL

EPA Releases Report re Cancer Risk Coefficients

In September 1999, the U.S. Environmental Protection Agency issued Federal Guidance Report No. 13, identifying cancer risk coefficients for over 800 radionuclides. The document, entitled Cancer Risk Coefficients for Environmental Exposure to Radionuclides, also provides information on sources of uncertainty in these risk coefficients and offers discussion on the dose-response relationship.

—TDL

Copies of the document may be ordered from the EPA National Service Center for Environmental Publications at (800) 490-9198 or downloaded the Internet at www.epa.gov/ncepihom.

DOE Proposes New Rules for Yucca Mountain

On November 30, 1999, the U.S. Department of Energy published a rule in the *Federal Register* proposing to alter its criteria for evaluating the suitability of the planned high-level radioactive waste repository at Yucca Mountain, Nevada. According to DOE, the new guidelines are based on proposed licensing regulations recently issued by the U.S. Nuclear Regulatory Commission. A 75-day comment period concludes February 14, 2000, with the final rule expected early next year.

—JW

Copies can be obtained by calling the DOE Distribution Center at (202)586-9642 or can be downloaded at www.access.gpo.gov/su_docs/fedreg/frcont99.html.

NRC Entombment Workshop Transcripts on Web

Transcripts from the U.S. Nuclear Regulatory Commission's recent workshop concerning the feasibility of entombment as a decommissioning option for nuclear reactors are available on the agency's web site at

www.nrc.gov/NRC/PUBLIC/ENTOMBMENT/entombment.html.

The workshop was held at NRC's offices in Rockville, Maryland, on December 14–15. (See *LLW Notes*, December 1999, p. 31.) Approximately 50 people attended the meeting, including state and federal officials, industry representatives, facility operators, and anti-nuclear activists. Information gathered at the meeting will be used by NRC staff in preparing recommendations for the NRC Commissioners. Staff expect to complete the recommendations in late April or early May 2000.

—TDL

For further information, contact Carl Feldman of NRC's Office of Nuclear Regulatory Research at (301)415-6194.

To Obtain Federal Government Information

by telephone

- DOE Public Affairs/Press Office . . . . . .(202)586-5806
- DOE Distribution Center . . . . . .(202)586-9642
- DOE's National Low-Level Waste Management Program Document Center . . . . . .(208)526-6927
- EPA Information Resources Center . . . . . .(202)260-5922
- GAO Document Room . . . . . .(202)512-6000
- Government Printing Office (to order entire *Federal Register* notices) . . . . . .(202)512-1800
- NRC Public Document Room . . . . . .(202)634-3273
- Legislative Resource Center (to order U.S. House of Representatives documents) . . . . . .(202)226-5200
- U.S. Senate Document Room . . . . . .(202)224-7860

by internet

- NRC Reference Library • (NRC regulations, technical reports, information digests, and regulatory guides) . . . . . .www.nrc.gov/NRC/reference

- EPA Listserve Network • Contact Lockheed Martin EPA Technical Support at (800)334-2405 or e-mail (leave subject blank and type help in body of message) . . . . . .listserver@unixmail.rtpnc.epa.gov

  EPA • (for programinformation, publications, laws and regulations) . . . . . .www.epa.gov

- U.S. Government Printing Office (GPO) (for the *Congressional Record*, *Federal Register*, congressional bills and other documents, and access to more than 70 government databases) . . . . . www.access.gpo.gov

- DOE's National Low-Level Waste Management Program, Document Information 199.44.46.229/radwaste

- GAO homepage (access to reports and testimony) . . . . . **www.gao.gov**

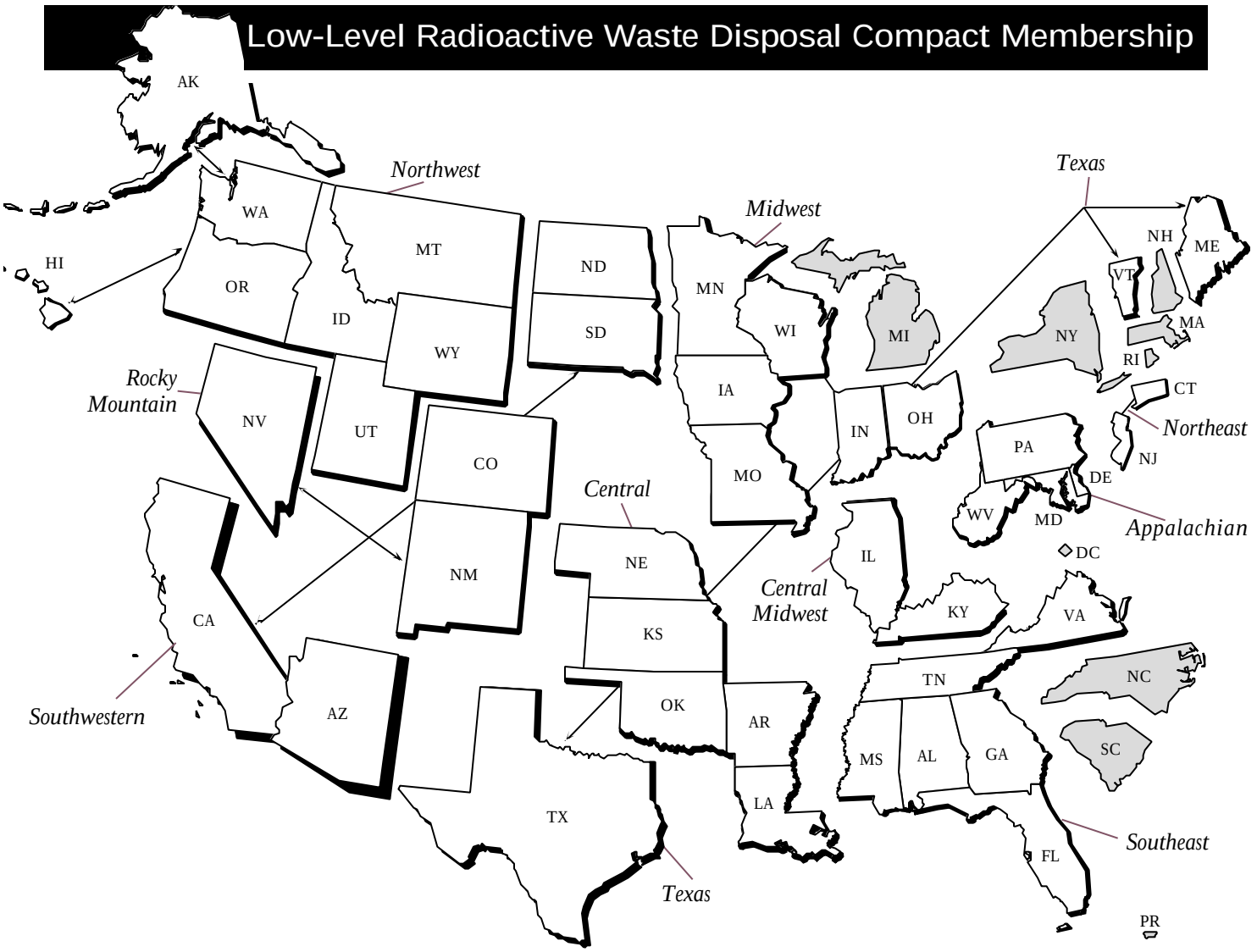
To access a variety of documents through numerous links, visit the LLW Forum web site at www.afton.com/llwforum

Accessing LLW Forum Documents on the Web

LLW Notes, *LLW Forum Meeting Reports* and the *Summary Report: Low-Level Radioactive Waste Management Activities in the States and Compacts* are distributed to state, compact, and federal officials designated by LLW Forum Participants or Federal Liaisons. As of March 1998, *LLW Notes* and *LLW Forum Meeting Reports* are also available on the LLW Forum web site at www.afton.com/llwforum. The *Summary Report* and accompanying *Development Chart*, as well as LLW Forum *News Flashes*, have been available on the LLW Forum web site since January 1997.

As of March 1996, back issues of these publications are available from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161, (703)605-6000.

Low-Level Radioactive Waste Disposal Compact Membership



Appalachian Compact
Delaware
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Pennsylvania *
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Arkansas
Kansas
Louisiana
Nebraska *
Oklahoma

Central Midwest Compact
Illinois *
Kentucky

Midwest Compact
Indiana
Iowa
Minnesota
Missouri
Ohio
Wisconsin

Northwest Compact
Alaska
Hawaii
Idaho
Montana
Oregon
Utah
Washington * •
Wyoming

Rocky Mountain Compact
Colorado
Nevada
New Mexico

Northwest accepts Rocky Mountain waste as agreed between compacts.

Northeast Compact
Connecticut *
New Jersey *

Southeast Compact
Alabama
Florida
Georgia
Mississippi
Tennessee
Virginia

Southwestern Compact
Arizona
California *
North Dakota
South Dakota

Texas Compact
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The Low-Level Radioactive Waste Forum includes a representative from each regional compact, each designated future host state of a compact *, each state with a currently operating facility •, and each unaffiliated state.

Graphic by Afton Associates, Inc. for the LLW Forum. September 1999