LLWnotes

Volume 12, Number 1 January 1997

Anderson v. Semnani

Suit Against Envirocare Sparks Investigations

Formal Petition Filed with NRC

On October 18, 1996, Larry Anderson and Lavicka, Inc. filed a lawsuit in the Third Judicial District Court of Salt Lake County, Utah, against Khosrow Semnani and Envirocare of Utah. The suit alleges that the defendants owe to the plaintiffs in excess of $5 million for site application and consulting services related to the licensing and operation of the Envirocare low-level radioactive waste disposal facility. Semnani and Envirocare filed an answer and counterclaim in early November stating that Semnani personally gave to Anderson cash, gold coins, and real property totaling approximately $600,000 in value over an eight-year period, but denying that such payments were for consulting services. Instead, the defendants allege that the payments were made in response to Anderson's ongoing practice of using his official position with the State of Utah to extort moneys from Semnani.

On January 2, 1997, Semnani took a two-month "leave of absence" from the Utah Radiation Control Board, which oversees the state's Division of Radiation Control. Meanwhile, the Utah Attorney General's Office is conducting a criminal investigation into the charges and counter-charges, and the Natural Resources Defense Council has filed a formal petition with the U.S. Nuclear Regulatory Commission asking that it revoke Envirocare's licenses, permanently bar the company and its owner from future operations anywhere in the United States, and suspend the State of Utah's status as an NRC Agreement State. The American College of Nuclear Physicians (ACNP) has also filed petitions with both NRC and the Utah Radiation Control Board.

The Complaint

Alleged Course of Events The plaintiffs contend that in 1987, while serving as Director of the Utah Bureau of Radiation Control, Anderson recognized the need for a low-level radioactive waste disposal facility in the State of Utah. After incorporating Lavicka, Inc. "for the express purpose of developing a plan for siting such a facility," the plaintiffs claim that Anderson approached Semnani to see if he was interested in undertaking the siting procedures. Plaintiffs allege that thereafter the parties agreed to enter into a business relationship wherein Anderson—through Lavicka, Inc.—would provide Semnani with site application and consulting services in return for an advance consulting fee of $100,000 and an ongoing remuneration of five percent of all direct and indirect revenues realized by the facility, should siting prove successful. According to the plaintiffs, although Anderson has provided the agreed upon services—including information and expertise necessary for the facility license application process and a business plan for operations of the facility—the defendants have to date only paid a portion of the advance consulting fee and ongoing remuneration.

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LLW Notes
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Key to Abbreviations

Code of Federal Regulations	CFR
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

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Southwestern Compact/California

Group Alleges Misconduct by USGS re Beatty Studies

In a letter dated December 19, 1996, a public employees' group requested the Inspector General of the U.S. Department of Interior to investigate actions of U.S. Geological Survey (USGS) officials and staff in connection with studies conducted at the closed low-level radioactive waste disposal site in Beatty, Nevada. (See *LLW Notes*, October 1995, pp. 12–13, re the studies.)The group, Public Employees for Environmental Responsibility (PEER), alleges that USGS personnel and senior officials engaged in "apparent misconduct … in the suppression of critical information about leakage" at Beatty as "part of an apparent effort to facilitate the opening of a similar waste site in Ward Valley, California." PEER's request was accompanied by a 33-page complaint, a "Chronology of Unsaturated Zone Contamination at the Beatty, Nevada Site and Its Impact on Ward Valley Site Considerations," and 50 exhibits.

Among other charges, PEER accuses USGS hydrologist David Prudic of having withheld information from a National Academy of Sciences (NAS) committee studying Ward Valley when he testified before them on July 7, 1994. (See *LLW Notes*, July 1994, p. 22.) PEER's complaint cites a July 14, 1994, e-mail message to Prudic from his colleague Robert Striegl that states:

> Dave, I've tried calling a couple of times, but am assuming you are out of town, since I haven't heard back … I got data on deuterium and 18-O, but am still confused on the tritium. Let's pursue possible sources of contamination as planned.

What is PEER?

PEER is an advocacy group organized in 1992 by a former U.S. Forest Service employee. According to its mission statement, it represents employees of "state and federal resource management and environmental protection agencies" and supports those individuals "who seek a higher standard of environmental ethics and scientific integrity" within their agencies.

PEER construes this message as evidence that the two hydrologists had previously discussed the tritium findings. The USGS, however, has maintained that Prudic, who interrupted his vacation travel to make the presentation to NAS, did not have the tritium analysis at the time of his testimony.

USGS Director Gordon Eaton explained the sequence of events as follows in a letter of April 4, 1996, addressed to Rep. Tom Campbell (R-CA):

> Gas samples were collected by the USGS during the spring of 1994 at a test hole approximately 350 feet south of the Beatty waste-burial site. The purpose of the sampling was to use what we thought would be the natural distribution of gases such as tritium and carbon-14 in the unsaturated zone to evaluate atmospheric air circulation in near-surface sediments. The first sampling was done in April 1994. The results of laboratory analyses for tritium were received by the USGS investigator in late July, after his testimony at the National Academy of Sciences (NAS) hearings on Ward Valley. The laboratory analyses for carbon-14 were not completed until May 1995, after publication of the NAS report.
>
> The tritium results, which were anomalously high, were interpreted at the time as probably resulting from either sample contamination or from atmospheric fallout from bomb testing. Contamination from the Beatty waste-burial site was considered a very remote possibility, given the distance of the test hole from the waste-burial site. We made the decision at this point to wait for the results of the analysis for carbon-14. It was not until these analyses were received in late May 1995 that contamination from the Beatty site appeared to be a significant possibility.

PEER has rejected Eaton's explanation, characterizing it as an apparent "cover-up."

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Southwestern Compact/California (continued)

Inspector General Investigating Charges

According to staff at the Office of the Inspector General in the Department of Interior, PEER's allegations are being investigated by the Denver office.

USGS staff will respond to any information requests from the Inspector General's office. In the meantime, USGS staff have indicated that it would be inappropriate for them to comment on PEER's complaint.

NAS Findings

On May 11, 1995, a National Academy of Sciences committee released a report on seven technical issues concerning the Ward Valley site. (See *LLW Notes Supplement*, June 1995, pp. 8–12.) The committee found no barriers to proceeding with site development.

PEER's complaint asserts that the National Academy of Sciences committee "rel[ied] heavily on Prudic's assurances that the existing Beatty data demonstrated no risk of deep migration in such locations …" However, the NAS report noted that the committee drew on "multiple lines of evidence" in concluding that ground-water contamination at the site appears "highly unlikely." The report also concluded that no threat would be posed to Colorado River water even under a very conservative scenario which assumed plutonium migration:

> [E]ven if all 10 curies (Ci) of plutonium-239 expected in the facility were to reach the river, the potential impacts on the river water quality would be insignificant relative to present natural levels of radionuclides in the river and to accepted regulatory health standards.

Most 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 January 9, 1997.

California DHS, Cancer Patients Support USGS

The California Department of Health Services (DHS), the state regulatory agency for the planned low-level radioactive waste disposal facility at Ward Valley, defended the USGS in a prepared statement:

> DHS believes that the USGS has acted responsibly in its handling of the soil vapor data from the Beatty, Nevada LLRW disposal site. No credible scientific agency would report or take a position on unconfirmed data—particularly in front of the National Academy of Sciences. Responsible scientists confirm their data before attempting analysis. This is precisely what the USGS appears to have done …
>
> Both the USGS and DHS have analyzed the confirmed data and the history of the Beatty facility. Both have concluded that the Beatty data have no relevance to the central issue of normal rainfall infiltration at either the Beatty or the Ward Valley site …

The National Association of Cancer Patients also supported USGS. In a January 6, 1997 letter to the Editor of the *San Jose Mercury News*, Director William Otterson denounced PEER's charges as "sensationalized accusations" that follow "the standard tactic, which is to attack and attempt to discredit any legitimate scientist or scientific organization that refuses to buy into their own biases."

"Let's review the record," he wrote. "Over the past few years, Ward Valley opponents have attacked the National Academy of Sciences, the Lawrence Livermore National Laboratory, the California Department of Health Services, the U.S. Nuclear Regulatory Commission, and the USGS. Have all of these prestigious organizations—recognized for their scientific integrity—conspired to falsify or conceal data? Of course not."

For further information, contact Carl Lischeske of DHS at (916)323-3693. For background information on analyses of the Beatty data, see LLW Notes, March 1996, p. 13, and LLW Notes, April 1996, pp. 5–7.

—CN

Anderson v. Semnani (continued)

Causes of Action The complaint states several causes of action against the defendants, including the following:

- *Breach of Contract* The plaintiffs claim that the defendants have breached an oral contract made between Anderson and Semnani. "Although Anderson made several attempts to embody this agreement in writing, Defendant Semnani refused to execute such written agreement, not because there was no agreement between the parties, but for the express reason that he did not desire to have any paperwork which could later be held against him or his operation."

- *Quasi-Contract (Unjust Enrichment)* Even if the court were to determine that a valid contract did not exist between the parties, the plaintiffs claim that they are entitled to compensation because it would be unjust for the defendants to have received the benefits of plaintiffs' information and specialized knowledge without having provided them with adequate compensation.

- *Quantum Meruit (Contract Implied in Fact)* The plaintiffs also invoke the equitable doctrine of quantum meruit, which states that even absent a specific contract, the law may imply a promise to pay a reasonable amount for services rendered. The plaintiffs claim to have acted in good faith towards the defendants, providing them with the requested work—including information and knowledge necessary for the grant of the NORM license—with the expectation of reasonable compensation. They allege that the defendants knew that compensation was expected and that they have acknowledged that fact by paying a portion.

- *Fraud* The plaintiffs allege that Semnani committed fraud by making representations to the plaintiffs that he would pay the agreed-upon compensation when he had no intention of doing so and by making such representations for the sole purpose of inducing Anderson to provide certain skills and knowledge. "Plaintiff Anderson reasonably and innocently relied on the representations made by Semnani, provided the requisite information, knowledge and skill, and in so doing foreclosed for him any other possible avenues to develop a site, inasmuch as a license for a facility of this type would be granted to another only after the showing there was still an unfilled need."

Demand for Relief The plaintiffs' prayer for judgment against the defendants include demands for

- $5,000,000, plus interest, in past unpaid compensation owed to the defendants, together with an order directing the defendants to continue with such compensation as they realize revenues;

- $2,500,000, plus interest, in exemplary and punitive damages for the egregious conduct of the defendants; and

- costs, expenses, and such other relief as the court deems just and proper.

The Answer

Semnani and Envirocare filed a joint answer and counterclaim in early November. Envirocare denies having paid or owing money to the plaintiffs. Semnani, on the other hand, states in official court documents that he personally gave Anderson cash, gold coins, and real property totaling $600,000 in value over an eight-year period. Semnani denies, however, that the payments were for consulting services and instead alleges that they were made in response to Anderson's ongoing practice of using his official position with the State of Utah to extort moneys from him.

In response to the allegations raised in the suit, the defendants argue as follows:

- *Failure to State a Cause of Action* The complaint fails to state a cause of action against the defendants upon which relief may be granted.

- *Lack of a Valid Contract* There is not now and never has been a valid agreement between either of the plaintiffs and either of the defendants.

- *Absence of Consideration* Lavicka has not provided anything of value to either of the defendants and the only value, if any, provided by Anderson was limited to information that he was otherwise required by law to provide to the general public by virtue of his duties as an officer and employee of the State of Utah.

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Anderson v. Semnani (continued)

- *Extortion* The demands made by Anderson constituted an ongoing felonious practice of extortion of moneys from Semnani. As such, neither of the plaintiffs could have reasonably understood that they were legally entitled to any payment from either of the defendants.

- *No Entitlement* The demands made by Anderson were illegal and unlawful. Accordingly, he was not entitled to rely on statements made to him by Semnani in response to the demands.

- *Violation of Public Policy* As a state employee and Director of the bureau responsible for processing, review, and determination of Semnani's license application, Anderson was duty bound to provide accurate, fair, and unbiased information and services to members of the general public whose business interests fell within the bureau's purview. He was precluded by law from requesting, demanding or accepting payment—other than his salary—for his services as a state officer and employee. As such, his requests from Semnani were illegal, and any contract he alleges to have made with Semnani was illegal and void as against public policy.

- *Duress* Semnani's statements and payments to Anderson were done upon his reasonable understanding and belief that failure to do so would result in Anderson's use of his official state position to deny Semnani's application a fair consideration, review, hearing and determination thereby causing the facility either not to be licensed or, if licensed, to be subject to an unfair and biased oversight and supervision of its operations.

- *Waiver* Anderson has waived any right to pursue his claims because his conduct was illegal and contrary to law and known by him to be so.

- *Statute of Frauds* The alleged verbal agreement is barred by Utah law, which states that any contract for the payment of moneys for a term in excess of one year must be in writing.

- *No Implied Contract* No services were provided to or received by the defendants, and there was no contract, implied either in law or fact, that will support a claim for quantum meruit or unjust enrichment.

The Counterclaim

Alleged Course of Events Simultaneously with their answer, Semnani and Envirocare filed a counterclaim. In this document, they allege that while Semnani's license application was pending, Anderson sought and received loans from Semnani for the stated purpose of paying medical expenses incurred by his mother. They also allege that Anderson approached Semnani "unexpected and unannounced," while the application was pending, and requested that Semnani make payment to him of $100,000, plus $5 per ton for all waste material received at the disposal facility should the license be approved. Semnani paid the $100,000 and, on a number of occasions over subsequent years, made other payments to Anderson.

1n 1989, Anderson is alleged to have requested that Semnani purchase for him a condominium unit. Semnani purchased the unit in his own name, executing and delivering a quitclaim deed to Anderson on the same day that Semnani received from Anderson the first of two promissory notes—totaling greater than $300,000—for repayment of the amount paid for purchase of the condominium. Semnani alleges that Anderson had agreed to hold and not record the deed until a mutually agreeable date, but then went ahead and recorded it anyway.

Anderson's employment with the State of Utah ended in 1993, but he is alleged to have continued to demand payments thereafter. Semnani made payments until January of 1995, at which time he advised Anderson that no further payments would be made. Semnani alleges that Anderson threatened legal action unless Semnani paid him $5 million. On October 18, 1996, the referenced lawsuit was filed.

Claims for Relief Semnani seeks the return of all moneys paid to Anderson as a result of his allegedly unlawful actions, reconveyance of the condominium unit and any other property delivered to Anderson, and $1.8 million in punitive damages for what he characterizes as Anderson's willful and malicious actions to deprive him of money and property with reckless disregard for his rights, entitlements, and interests.

Semnani and Envirocare together claim that the plaintiffs' legal action is precluded under state law, is a felonious attempt to extort moneys from them, is made without merit, and is neither brought nor asserted in good faith. Accordingly, both defendants seek an award of attorneys' fees.

—TDL

Related Issues re the State of Utah

Status of Envirocare's License Renewal

State officials are in the midst of a regularly scheduled review of Envirocare's operating license, which comes up for renewal every five years. A March 27, 1996 letter from Envirocare Executive Vice-President Charles Judd states that the application includes ten "significant changes since approval of the original license request and subsequent amendments ..." Most of these changes involve procedural matters, such as expanded waste characterization, consolidation of radiation safety plans, use of a uniform cover design, and so forth. (See *LLW Notes*, April 1996, p. 4.)

Dianne Nielson, Executive Director of the Utah Department of Environmental Quality (DEQ), sent Judd a letter on January 7, 1997, "to provide a current statement relating to the status of Envirocare of Utah." The letter states:

> Envirocare currently has a radioactive materials license from the Division of Radiation Control and is authorized to receive waste under the conditions of that license. Pursuant to State rules, the license is undergoing review for a five-year renewal. A license renewal application was submitted to the Division of Radiation Control on January 29, 1996 by Envirocare. The Division of Radiation Control continues to inspect and monitor the Envirocare site.

According to William Sinclair, who replaced Anderson as Director of the Division of Radiation Control, the state is currently reviewing responses to the first set of interrogatories on the application. Sinclair is uncertain how long the entire license review will take. During the review process, the license—which was set to expire on February 28, 1996—remains in effect under a timely renewal provision.

Utah AG Initiates Criminal Investigation

According to Sinclair, the Utah DEQ conducted an internal investigation into the relationship between Semnani and Anderson several years ago. The investigation, however, did not turn up any improprieties. The Utah Attorney General's Office is now conducting a criminal investigation into the matter. The investigation is expected to "take a period of months" and will involve the review of much paperwork and of many financial transactions.

In his complaint, Anderson claims to have obtained "informal advice" from the Attorney General's Office prior to incorporating Lavicka, the corporate plaintiff. The nature of that advice, however, is not clear. A staff member of the Attorney General's office was recently quoted as saying: "Nobody in our office advised him this arrangement was appropriate ... Conflict-of-interest laws make clear you can't be involved in a business you're regulating as a state official."

Utah's ethics laws prescribe that

> no public officer or public employee shall knowingly receive, accept, take, seek, or solicit, directly or indirectly, any gift, compensation, or loan, for himself or another if: (a) it tends to influence him in the discharge of his official duties; or (b) he recently has been, or is now, or in the near future may be involved in any government action directly affecting the donor or lender ...

Semnani Takes Leave of Absence from the Board of Radiation Control

On January 2, Semnani took a two-month "leave of absence" from the Utah Radiation Control Board. This entity, which was established pursuant to state law in 1991 and is comprised of eleven individuals representing various interests, oversees the state's Division of Radiation Control. (See box on page 12 for additional information on Utah's regulatory structure.) Semnani, who has been widely reported in the news to be a large political contributor in the state, was one of the original members of the Board. He is in his second term on the Board which is set to expire July 1, 2000.

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Anderson v. Semnani (continued)

Natural Resources Defense Council Files Petition with NRC

Petition

On January 8, the Natural Resources Defense Council (NRDC) filed a formal petition with NRC asking that it

- revoke the three major radioactive waste permits that are currently held by Envirocare (see box, page 10),
- prohibit the grant of future licenses anywhere in the United States for Semnani or any company with which he has a "significant relationship"; and
- suspend Utah's status as an NRC Agreement State.

NRC's Review Process

The petition was filed under section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR 2.206), which permits anyone to petition NRC to take enforcement action related to NRC licenses or licensed activities. Under the 2.206 process, the petitioner must submit a request in writing to NRC's Executive Director for Operations, identifying the affected licensee or licensed activity, the requested enforcement action to be taken, and facts that the petitioner believes provide sufficient grounds for NRC to take enforcement action. After receipt of the request, NRC determines whether the request qualifies as a 2.206 petition, whether an investigation is warranted, and whether an informal public hearing is appropriate. An acknowledgment letter is sent to the petitioner and a copy to the licensee. If the request is accepted, a notice is published in the *Federal Register*. After evaluating a petition, the Director of the appropriate office issues a decision and, if warranted, NRC takes appropriate enforcement action. Depending on the results of its evaluation, NRC may modify, suspend, or revoke an NRC-issued license or take any other appropriate enforcement action.

Scope of NRC's Authority

According to Richard Bangart, Director of NRC's Office of State Programs, the commission does not have the authority to suspend or revoke an individual license issued by an Agreement State. NRC does, however, have the authority to suspend or revoke a state's entire Agreement State authority or portions of that authority. For instance, NRC can terminate an Agreement State's authority to license low-level radioactive waste disposal, but leave the remainder of the state's program intact. NRC can only suspend or revoke program authority, based upon public health and safety concerns (the adequacy of the program) or compatibility problems with NRC regulations.

NRC Review of Utah Agreement State Program

On September 21, 1992, US Ecology filed a section 2.206 petition requesting that NRC revoke or suspend the State of Utah's Agreement State program for failure to require federal or state land ownership at the Envirocare disposal facility. NRC issued a decision to deny the petition, which was published in the *Federal Register* on February 2, 1995. The decision of denial constitutes NRC's final action on the petition. (See *LLW Notes*, April/May 1995, p. 24.)

NRC last reviewed Utah's Agreement State Program in 1994 using the old procedures which include 30 program indicators. (Under NRC's new procedures, only five indicators are used, all of which address a program's performance in assuring health and safety.) The evaluation concluded that Utah's Agreement State Program is "adequate" and "compatible" as required under the Atomic Energy Act. Also in 1994, the State of Utah participated in NRC's Integrated Materials Performance Evaluation Program (IMPEP) pilot project. NRC found Utah's program to be "adequate" and "compatible" under IMPEP.

Envirocare's Response

On January 13, Envirocare issued a press release challenging the charges contained in the NRDC petition as "political and public relations posturing." In addition, Envirocare alleges that the petition was submitted without approval from the NRDC Board or its membership.

—TDL

Nuclear Physicians Petition Utah, NRC re Envirocare

In letters dated January 21, the California chapter of the American College of Nuclear Physicians (ACNP) petitioned both the Utah Radiation Control Board and the NRC concerning the Envirocare of Utah facility.

The petition to the Utah Radiation Control Board asks the board to

- "obtain an indemnification [for the ACNP chapter members and employers] from the State of Utah and /or its licensee for contingent environmental liability costs related to the disposal of low-level waste disposed at the Envirocare facility";
- "consider promulgation of an emergency rule to prohibit the continued, non-containerized disposal of nuclear power plant ion exchange resins at the Envirocare facility"; and
- "evaluate the potential need to order the timely removal, packaging and off-site disposal of such waste consistent with ALARA principles and other occupational radiation safety considerations."

The petition to NRC references the petition to the Utah Radiation Control Board and cites concerns about "significant deficiencies in the State's regulation of the Envirocare disposal facility." ACNP asks the commission to "conduct a timely review of Utah's Agreement Sate Program with respect to the issues raised to ensure that Agreement State compatibility requirements are properly implemented." Financial assurance requirements are singled out for "particular attention," and NRC Chairman Shirley Ann Jackson's "personal involvement" is requested.

Both petitions were signed by Carol Marcus, President of the ACNP's California chapter.

—CN

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 January 14, 1997.

Statement of Support Offered by Tooele County Commission

The Envirocare facility is located in Tooele County, Utah. Recently, the Tooele County Commission issued a press statement emphasizing that it considers Envirocare to be "a responsible corporate citizen ... [that] provides jobs, purchases materials and services, pays property taxes and also pays millions of dollars in mitigation fees to Tooele County." The commission states that it wants to see this matter resolved quickly, but cautions that "it needs to be decided by a court of law or by some other appropriate method."

All three commission members—Teryl Hunsaker, Gary Griffith, and Lois McArthur—signed the statement. Hunsaker, who serves as Commission Chair, is also a member of the state's Radiation Control Board.

Background: Anderson v. Semnani

Licensing of Envirocare

NORM License

Envirocare of Utah, which is owned by Khosrow Semnani, was incorporated on December 4, 1987. Prior to its incorporation, the company had submitted an application to the Utah Bureau of Radiation Control for a naturally-occurring radioactive materials (NORM) license. At the time, Larry Anderson served as the bureau's Director. On February 2, 1988, the bureau issued a NORM license to Envirocare, and the company commenced operations shortly thereafter. The initial license allowed Envirocare to accept only materials having a radium content of up to two nanocuries per gram. No sealed sources or mixed wastes were accepted.

License Amendment

During Anderson's tenure as director of the Bureau of Radiation Control, Envirocare's license was amended to increase the storage capacity for waste on site that is not yet under final cover from approximately 17,000 cubic yards to 300,000 cubic yards. In addition, on March 21, 1991, the bureau granted an amendment to Envirocare's license authorizing the storage of low concentrations of licensed by-product and special nuclear material. This amendment, which was signed by Anderson, significantly expanded the types of radioactive waste that the facility could receive. After Envirocare satisfied certain conditions contained within its groundwater permit, disposal operations began for byproduct and special nuclear material.

Other Licenses

Envirocare of Utah has several additional licenses and permits that allow them to carry out their daily operations. Among the major ones are

- a hazardous waste permit from the Utah Department of Environmental Quality and a Hazardous and Solid Waste Act (HSWA) permit from EPA Region VIII, Denver which allows Envirocare to treat and dispose of mixed waste;
- a groundwater discharge permit from the Utah Division of Water Quality; and
- a uranium/thorium mill tailings license from NRC.

Background: Anderson v. Semnani

Northwest Compact Resolution and Order re Envirocare

Original Resolution

In December 1991, in response to a request by the State of Utah, the compact committee of the Northwest Interstate Compact on Low-Level Radioactive Waste Management adopted a resolution and order allowing access to the Envirocare site for certain radioactive wastes from outside the compact region. (See *LLW Notes*, January 1992, p. 4.) Larry Anderson was Utah's committee member through mid-1993.

The resolution authorized access for

- "[l]ow-level radioactive non-reactor mixed waste as defined in federal and/or State law," and
- specific "large volume non-reactor bulk media from a single site slightly contaminated with low-level radioactive waste" as defined in federal law and as allowed under Envirocare's state radioactive material license. The specific media allowed were soils, process sludge and rubble from decontamination, decommissioning, construction and demolition.

In terms of procedures and regulations, the resolution states that

- Utah retains the right to approve each disposal arrangement involving compact-authorized material,
- all federal and state environmental and other laws and regulations shall be complied with,
- no low-level radioactive waste from states that have been denied access to sited states' facilities shall be accepted at the Envirocare site without specific approval of the Northwest Compact,
- Envirocare shall provide the compact Executive Director with a record of all shipments of the compact-approved waste, and
- the compact retains the right to modify or rescind the authorization at any time.

Subsequent Amendments

The resolution was subsequently amended in May 1992—to delete the qualifier "non-reactor" from the provision allowing access for low-level radioactive mixed waste—and again in April 1995. (See *LLW Notes*, May/June 1992, p. 9 and April/May 1995, p. 6.) The 1995 amendment, among other things,

- deleted the previous language allowing access for large volume non-reactor bulk media from a single site, and
- substituted language allowing "large volume soil or soil like materials or debris slightly contaminated with low-level radioactive waste" as defined in the Low-Level Radioactive Waste Policy Amendments Act of 1985 and as allowed by Utah.

The amended policy declares the compact committee's intent "that only those wastes approved by the compact of origin (including the Northwest Compact) be allowed. For states unaffiliated with a compact, state approval for the export is required to the extent states can exercise such approval." The amended policy also establishes a three-year review cycle to evaluate compact/state siting progress with regard to access to Envirocare.

Subject to these conditions, the net effect of the policy is to allow access for any of the following that are consistent with Envirocare's license:

- mixed low-level radioactive wastes; and
- large volume, slightly contaminated low-level radioactive waste, including reactor wastes.

Background: Anderson v. Semnani

Utah's Regulatory Structure

Development of the State's Regulatory Structure

Prior to 1991, license applications for radioactive waste management and disposal facilities in the State of Utah had to be filed with the Utah Bureau of Radiation Control. The bureau, which operated under the jurisdiction of the state Department of Health, was charged with processing, reviewing, and making a determination on such license applications.

In 1991, the Utah legislature created a state Department of Environmental Quality. Kenneth Alkema, who now serves as Envirocare's Director of Governmental Affairs, was appointed as the department's original Director. In addition, the legislature upgraded the Bureau of Radiation Control to a division and transferred it to the jurisdiction of the new Department of Environmental Quality. Larry Anderson became the Director of the Utah Division of Radiation Control at the time of its creation, having served as director of the bureau since 1986.

As the legislation was being considered, the legislature undertook a review of the statutory boards that act as rulemaking bodies for the various state agencies. As no such board existed for radiation control, the legislature determined to create one. The authority and composition of the Utah Radiation Control Board is set forth in the state's Radiation Control Act.

The State Radiation Control Board

Membership The Radiation Control Act provides that the board is to be comprised of 11 members, one of whom shall be the Department of Environmental Quality's Executive Director, or his/her designee, with the remainder to be appointed by the Governor with the advice and consent of the Senate.

The act further requires that the board be constituted as follows:

- one physician;
- one dentist;
- one health physicist or other professional employed in the field of radiation safety;
- two representatives of regulated industry, at least one of whom represents the radioactive waste management industry;
- one person from academia having an x-ray machine or license to use radioactive materials;
- one representative of a local health department;
- one elected county official; and
- two members of the general public, at least one representing organized environmental interests.

Dianne Nielson is the current Executive Director. With the board's approval, she has appointed William Sinclair, Director of the Utah Division of Radiation Control, to serve as the board's Executive Secretary. Khosrow Semnani has served as a member since the board's inception.

Authority The board is authorized, among other things, to establish criteria for siting commercial low-level radioactive waste treatment or disposal facilities. Its Executive Secretary is authorized to receive, process, and make determinations on facility license applications. Appeals on license applications are heard by the board itself. The Division of Radiation Control serves as staff for the board.

All members of the state Radiation Control Board are required by law to fill out a conflict-of-interest statement. The board's conflict-of-interest policy states that board members should abstain from voting on motions in which they have an actual conflict of interest.

U.S. Environmental Protection Agency (EPA)

EPA Rescinds NESHAPs Subpart I

On December 30, following the December 10 *Federal Register* publication of NRC's final radionuclide emissions constraint rule, EPA issued its own final rule rescinding Subpart I of the National Emissions Standards for Hazardous Air Pollutants (NESHAPs). Subpart I had applied to NRC and Agreement State licensees—including low-level radioactive waste disposal facilities—other than nuclear power reactors. As a result of the rescission, developers of commercial low-level radioactive waste facilities will no longer need to secure NESHAPS approval from EPA in order to begin construction of those facilities.

NRC's Constraint Rule

NRC's final rule established a constraint level of 10 millirems (mrem) per year total effective dose equivalent (TEDE) to members of the public from air emissions of radionuclides from NRC- and Agreement State–licensed facilities other than nuclear power reactors. NRC issued the final rule in order to

- provide assurance to EPA that future emissions from NRC and Agreement State licensees will not exceed dose levels that EPA has previously determined will provide an ample margin of safety; and
- provide a basis for EPA to rescind Subpart I of the National Emissions Standards for Hazardous Air Pollutants.

Compliance Reports

The constraint rule requires that NRC and Agreement State licensees conduct surveys to demonstrate compliance with existing regulations. If the licensee determines that a dose from air emissions would exceed 10 mrem per year to the nearest resident, the licensee is required to report the dose to NRC in writing within 30 days.

The report must include

- the circumstances causing the dose,
- a description of proposed or actual corrective steps the licensee has taken or proposes to take to ensure that the constraint is not exceeded again,
- a timetable for implementation, and
- the expected results of the corrective steps.

The recently promulgated constraint rule also contains a new section on violation procedures. A *Notice of Violation* will be issued if a licensee

- fails to report an actual or estimated dose from airborne effluent releases from a facility that exceeds the constraint value, or
- fails to institute agreed-upon corrective measures intended to prevent further releases that would result in doses exceeding the constraint level.

EPA Rescission

In order to rescind NESHAPs standards for NRC- and Agreement State–licensed facilities, EPA had to determine that the NRC program provides an "ample margin of safety to protect public health."

The December 30 *Federal Register* notice states,

> As required by section 112(d)(9) of the Clean Air Act as amended in 1990, EPA has determined that the NRC regulatory program for licensed facilities other than commercial nuclear power reactors protects public health with an ample margin of safety, the same level of protection that would be afforded by continued implementation of subpart I.

continued on page 14

Background: Development of NESHAPs

In October 1989, EPA promulgated NESHAPs applicable to emissions of radionuclides from several source categories. Subpart I of NESHAPs applies to all NRC and Agreement State licensees except

- licensees possessing only sealed sources;
- high-level radioactive waste repositories; and
- uranium mill tailings piles.

Subpart I of NESHAPs limits radionuclide air emissions to that amount which would cause any member of the public to receive an effective dose equivalent of no more than 10 mrem in any year, of which no more than a 3-mrem effective dose equivalent may be from radioiodines.

In 1990, Congress amended the Clean Air Act to allow EPA to rescind radionuclide emissions standards as applied to NRC-licensed and Agreement State–licensed facilities if EPA determined that NRC's regulatory program provides an ample margin of safety to protect the public health.

EPA Studies After EPA promulgated the NESHAPs requirements, in 1992 the agency conducted two studies of air emissions for NRC and Agreement State licensees.

The *Federal Register* notice rescinding Subpart I states

> The first [study] was a survey of 367 randomly selected nuclear materials licensees. EPA determined that the highest estimated dose to a member of the public from air emissions from these facilities was 8 mrem (0.01 mSv) per year, based on very conservative modeling. In addition, 98 percent of the facilities surveyed were found to have doses to members of the public resulting from air emissions less than 1 mrem (0.01 mSv) per year. The second study evaluated doses from air emissions at 45 additional facilities that were selected because of their potential for air emissions resulting in significant public exposures. EPA found that 75 percent of these licensees had air emissions resulting in an estimated maximum public dose less than 1 mrem (0.01 mSv) per year. For the licensees evaluated, none exceeded 10 mrem (0.1 mSv) per year.

Stay and Litigation EPA stayed the effectiveness of Subpart I for non-nuclear power reactors licensees until November 15, 1992, because the agency concluded it was probable that most licensees were in compliance with the emissions standards. In light of a decision by the U.S. Court of Appeals for the District of Columbia Circuit in *Natural Resources Defense Council v. Reilly*, No. 912-1294, September 25, 1992, EPA decided not to extend the stay of Subpart I for non-nuclear power reactor licensees. Thus, Subpart I became effective for non-nuclear power reactor licensees on November 16, 1992. EPA published a proposal to rescind the standards for non-nuclear power reactors on December 1, 1992, but the rescission was not finalized due to outstanding issues between EPA and NRC.

Constraint Rule and Rescission In a December 21, 1994 letter, then–NRC Chair Ivan Selin stated that NRC was willing to adopt a rule containing a constraint level and proposed that EPA publish in the *Federal Register* a proposal to rescind NESHAPs Subpart I. In a response dated March 31, 1995, EPA Administrator Browner agreed that the NRC proposal, when fully implemented, would provide a satisfactory basis for EPA's rescission of NESHAPs Subpart I. EPA reopened the comment period on the rescission in September 1995. In December 1995, NRC published the constraint rule in the *Federal Register* for public comment. EPA held a public hearing on the rescission in February 1996.

For further information on EPA's rescission of NESHAPs Subpart I, contact Gale Bonanno of EPA's Center for Federal Guidance and Air Standards, at (202)233-9219.

EPA (continued)

NESHAPs and the Ward Valley Facility

In 1993, US Ecology formally requested the EPA Region IX office's approval to construct the planned low-level radioactive waste disposal facility in Ward Valley, California. (See *LLW Notes*, July 1994, p. 6.) US Ecology is the developer/operator for the facility. In a June 1994 letter, the EPA Region IX office responded:

> Before EPA takes final action on your application, EPA must comply with section 7 of the Endangered Species Act ... Section 7 requires federal agencies to ensure that their actions do not jeopardize the continued existence of a threatened or endangered species or destroy or adversely modify its designated critical habitat ... EPA is working with the Fish & Wildlife Service and other federal agencies to resolve Endangered Species Act issues.
>
> In addition, EPA is awaiting the resolution of pending litigation regarding this project. The litigation process may lead to additional information that warrants agency review as required by the radionuclide NESHAP. Because the Department of Interior has similarly decided to await the transfer of federal lands until all lawsuits have been resolved, this decision should have little additional impact on the project.

EPA, the U.S. Fish and Wildlife Service, and the U.S. Bureau of Land Management (BLM) entered into formal consultation to determine the effects on the desert tortoise resulting from the following proposed federal actions:

- transfer of federal land by BLM to the State of California for use in siting a low-level radioactive waste disposal facility;
- the issuance of a right-of-way grant by BLM to the State of California to provide access to the facilities; and
- the issuance of a NESHAPs approval to construct by EPA Region IX to US Ecology.

In August 1995, the U.S. Fish and Wildlife Service determined that "the proposed action is not likely to jeopardize the continued existence of the desert tortoise or result in the destruction or adverse modification of critical habitat." Since the issuance of the letter, all pending litigation regarding the planned Ward Valley disposal facility has been resolved. Prior to rescission of NESHAPs Subpart I, EPA Region IX did not take further action upon US Ecology's application for approval to construct.

—LAS

For further information on NESHAPs Subpart I, see the following issues of LLW Notes: Jan./Feb. 1996, pp. 12-13; Nov./Dec. 1995, p. 20; October 1995, p. 20; April/May 1995, p. 18; Jan./Feb. 1995, p. 22; and July 1994, p. 6. See also "New Materials and Publications."

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 December 20, 1996.

Northwest Compact/Washington

Northwest Compact Executive Director Changes Jobs

Effective January 6, 1997, Joe Stohr, Executive Director of the Northwest Interstate Compact on Low-Level Radioactive Waste Management, resigned from his position with the Washington State Department of Ecology's Nuclear Waste Program.

Stohr assumed a new position, Manager of the Operations and Support Section, in Ecology's Water Rights and Shorelands Management Program. He had been the compact's Executive Director since May 1994, and had served as the Forum Participant for the Compact. No successor has been named to either of the positions vacated by Stohr as of press time.

—JMC

Northeast Compact/Connecticut/New Jersey

New Forum Participant for the State of New Jersey

On November 6, 1996, New Jersey Governor Christine Todd Whitman appointed Michael Hogan, Counselor to the Commissioner of the New Jersey Department of Environmental Protection, as the new Forum Participant for the State of New Jersey. Hogan advises Commissioner Robert Shinn on policy implications of legal issues that arise in connection with the work of the New Jersey Department of Environmental Protection He represents the Commissioner's policy interests at the National Governors' Association and serves as the Commissioner's legal liaison to both the Governor's Counsel and the Attorney General.

Prior to joining the Department of Environmental Protection, Hogan was a member of the State of New Jersey Pinelands Commission from 1985 to 1994 and Special Counsel for Solid Waste and Environmental Matters in Burlington County, New Jersey, from 1992 to 1994.

—JMC

Southeast Compact/North Carolina

Director of North Carolina Division of Radiation Control Retires

On December 9, 1996, Dayne Brown, Director of the North Carolina Division of Radiation Protection (DRP), announced his retirement effective January 1, 1997. DRP has regulatory authority to license a low-level radioactive waste disposal facility in North Carolina. For the past several years, Brown has been closely involved in the review of the application for the proposed disposal facility in Wake County, slated to serve the Southeast Compact region. Richard Fry has been named as Acting Director until the position of Director is permanently filled.

—JMC

New Materials and Publications

Document Distribution Key	
P Forum Participants	N LLW Notes Recipients
A Alternate Forum Participants	
E Forum Federal Liaisons	M LLW Forum Meeting Report Recipients
L Forum Federal Alternates	
T Forum Media Contacts	
V Forum Press Monitors	
D LLW Forum Document Recipients	

States and Compacts

Central Midwest Compact/ Illinois

Site Selection Criteria for a Low-Level Radioactive Waste Disposal Facility. Illinois Low-Level Radioactive Waste Task Group. December 19, 1996. Presents the criteria developed by the Illinois Low-Level Radioactive Waste Task Group for the selection of a site for a low-level radioactive waste disposal facility. Also included are related information about risk management as it applies to low-level radioactive waste disposal and a description of the siting process.

Summary of Responses to Issues Raised by Public Comments. Illinois Low-Level Radioactive Waste Task Group. December 19, 1996. Presents the responses to issues that were raised by members of the public in many public meetings and during two public comment periods that preceded the adoption of the final site-selection criteria. This is a supplement to the *Site Selection Criteria for a Low-Level Radioactive Waste Disposal Facility*.

To obtain a copy of either or both reports, contact the Illinois Low-Level Radioactive Waste Task Group at (217)523-0817.

Midwest Compact/Ohio

Ohio Low-Level Radioactive Waste Facility Development Authority Annual Report, September 1995–June 1996. Ohio Low-Level Radioactive Waste Development Authority. October 1996. To obtain a copy, contact the Authority at (614)644-2776.

Northeast Compact/ Connecticut/New Jersey

1997 Report to the Connecticut General Assembly: Volunteer Approach to Siting a Low-Level Radioactive Waste Disposal Facility in Connecticut. Connecticut Hazardous Waste Management Service. December 1996. Describes the current status of the State of Connecticut's volunteer approach to siting a low-level radioactive waste disposal facility.

1997 Report to the Connecticut General Assembly: Need for a Centralized, Temporary Low-Level Radioactive Waste Storage Facility in Connecticut. Connecticut Hazardous Waste Management Service. December 1996. Contains analysis and a recommendation by the Connecticut Hazardous Waste Management Service that such a facility is not needed for the next five years.

To obtain copies of either or both reports, contact the Connecticut Hazardous Waste Management Service at (860)244-2007.

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Low-Level Radioactive Waste Management in Connecticut - 1995. Connecticut Hazardous Waste Management Service. December 1996. Provides information on low-level radioactive waste shipped off-site by Connecticut generators during 1995. Included in the report are names and locations of the state's active and potential generators, waste volumes, and radioactivities for 1995, waste types, radionuclide compositions, results of waste processing, and pathways to processing and ultimate disposal. To obtain a copy, contact the Connecticut Hazardous Waste Management Service at (860)244-2007.

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Conference of Radiation Control Program Directors

Environmental Monitoring Report for Commercial Low-Level Radioactive Waste Disposal Sites (1960's through 1990's) (DOE/LLW-241). Conference of Radiation Control Program Directors, Inc. Committee on Radioactive Waste Management. Prepared for DOE's Office of Environmental Restoration and Waste Management and the U.S. Nuclear Regulatory Commission. November 1996. Provides environmental monitoring data collected at six commercial low-level radioactive waste disposal facilities operated in the United States from the 1960's through the early 1990's. To obtain a copy, contact the National Low-Level Waste Management Program at (208)526-6927.

Federal Agencies

Department of Energy (DOE)

Selected Radionuclides Important to Low-Level Radioactive Waste Management (DOE/LLW-238). Idaho National Engineering Laboratory, National Low-Level Waste Management Program. Prepared for DOE's Assistant Secretary for Environmental Management. November 1996. Consolidates 15 individual reports on radionuclides that were written and used under the National Low-Level Waste Management Program Radionuclide Report Series. Each chapter incorporates waste and disposal information on the radionuclide and behavior of the radionuclide in the environment and in the human body. To obtain a copy, contact the National Low-Level Waste Management Program at (208)526-6927.

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1995 Annual Report on Low-Level Radioactive Waste Management Progress (DOE/EM-0292). Report to Congress. Office of Environmental Management, DOE. June 1996. Reports on the progress of states and compacts in establishing disposal facilities for commercially generated low-level radioactive waste. To obtain a copy, contact the National Technical Information Service at (703)487-4650.

Environmental Protection Agency (EPA)

"National Emission Standards for Radionuclide Emissions from Facilities Licensed by the Nuclear Regulatory Commission and Federal Facilities not Covered by Subpart H," 61 *Federal Register* 68972. 40 CFR Part 61, EPA. December 30, 1996. Action: Final rule. EPA is rescinding 40 CFR part 61, subpart I (subpart I) as it applies to Nuclear Regulatory Commission (NRC) or NRC Agreement State licensed facilities other than commercial nuclear power reactors.

Nuclear Regulatory Commission (NRC)

Letter from Shirley Ann Jackson, Chairman, NRC, to Carl Lischeske, Manager, Low-Level Radioactive Waste Program, Department of Health Services, State of California, responding to a November 7, 1996 letter regarding the U.S. Department of the Interior's preparation of a Supplemental Environmental Impact Statement for California's proposed low-level radioactive waste disposal facility in Ward Valley. January 10, 1997.

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The Role of Organic Complexants and Microparticulates in the Facilitated Transport of Radionuclides (NUREG/CR-6429, PNL-10897). Prepared for the Division of Regulatory Applications, Office of Nuclear Regulatory Research, NRC. December 1996. This progress report describes the results of ongoing radiological and geothermal investigations of the mechanisms of radionuclide transport in groundwater at two low-level radioactive waste disposal sites within the waste management area of the Chalk River Laboratories, Ontario, Canada. The information will aid NRC and other federal, state, and local regulators, as well as low-level radioactive waste disposal site developers and waste generators, in maximizing the effectiveness of existing or projected low-level radioactive waste disposal facilities for isolating radionuclides from the general public and thereby improving the health and safety aspects of low-level radioactive waste disposal. To obtain a copy, contact the NRC Public Document Room at (202)634-3273.

—JMC

to obtain federal government information

By Telephone

- DOE Press Office . . . . . **(202)586-5806**
- DOE Public Information Office, Secondary Distribution Center . . . . . **(202)586-9642**
- EPA Public Information Center . . . . . **(202)260-7751**
- 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**
- U.S. House of Representatives Document Room . . . . . **(202)225-3456**

By Fax

- U.S. Senate Document Room . . . . . **(202)228-2815**
  When making document requests, include a mailing address where the document(s) should be sent.

By Internet

- EPA Listserve Network • Contact John Richards for information on receiving *Federal Register* notices
  . . . . . .VOICE **(202)260-2253** • FAX **(202)260-3884** • INTERNET **richards.john@epamail.epa.gov**

- GPO Access (for the *Congressional Record*, *Federal Register*, congressional bills and other government documents and access to more than two dozen government databases)
  . . . . . .web browser—Superintendent of Document's home page at **http://www.gpo.gov/su_docs/aces/aaces001.html**
  . . . . . .dial-in by modem—**(202)512-1661**, type "swais" and log in as "guest"
  . . . . . .general information— VOICE (202)512-1530 or INTERNET **help@eids05.eids.gpo.gov**

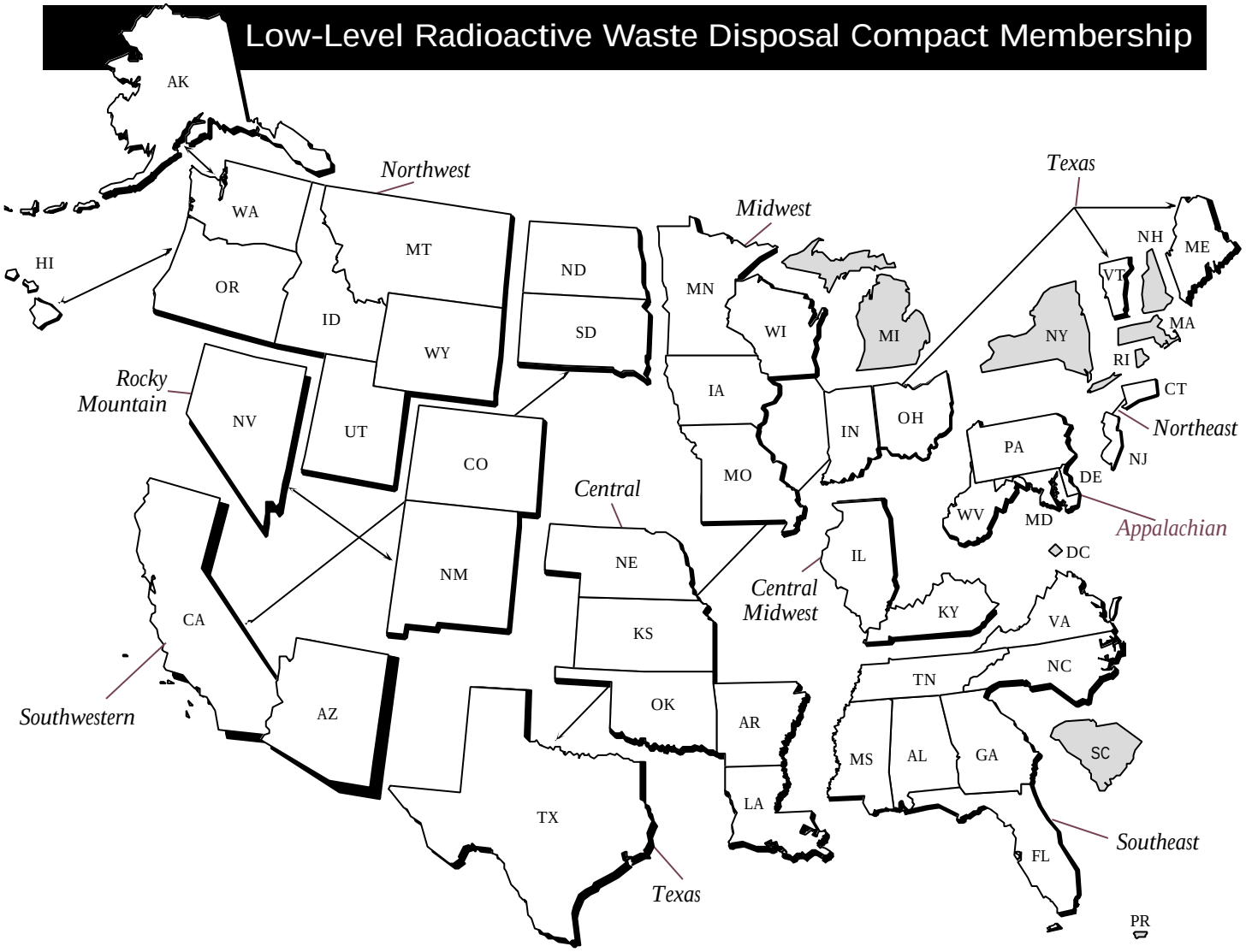
Receiving *LLW Notes* by Mail

LLW Notes 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.

Members of the public may apply to DOE's National Low-Level Waste Management Program at the Idaho National Engineering and Environmental Laboratory (INEEL) to be placed on a public information mailing list for copies of *LLW Note*s and the supplemental *Summary Report*. Afton Associates, the LLW Forum's management firm, will provide copies of these publications to INEEL. The LLW Forum will monitor distribution of these documents to the general public to ensure that information is equitably distributed throughout the states and compacts.

To be placed on a list to receive LLW Notes and the Summary Report, by mail, please contact Donna Lake, Senior Administrative Specialist, INEEL at (208)526-0234. Back issues of both publications, are available from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161, (703)487-8547.

Low-Level Radioactive Waste Disposal Compact Membership



Appalachian Compact
Delaware
Maryland
Pennsylvania *
West Virginia

Central Compact
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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
North Carolina *
Tennessee
Virginia

Southwestern Compact
Arizona
California *
North Dakota
South Dakota

Texas Compact
Maine
Texas *
Vermont

The compact has been passed by all three states and awaits consent by the U.S. Congress.

Unaffiliated States
District of Columbia
Massachusetts
Michigan
New Hampshire
New York
Puerto Rico
Rhode Island
South Carolina •

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. March 1996.