LLWnotes

Volume 12, Number 4 April 1997

Texas Compact/Texas

Conference Committee Approves Funding for Texas Authority

On April 29, Texas legislative conferees voted to include funding for the Texas Low-Level Radioactive Waste Disposal Authority in their report on the General Appropriations Bill (H.B. 1). The committee's recommended budget package must still be approved by both houses of the legislature in May, but it cannot be amended.

Conferees had been meeting since April 8 to reconcile the many differences in the versions of the General Appropriations Bill passed earlier by the House and the Senate. Although the House version of the bill did not allocate any moneys to the Authority, the Senate approved funding, and the Authority received a favorable report from the state auditor, which examined the Authority's financial records at the House's behest.

A conferee from the House district that includes the site for the Authority's proposed disposal facility moved to "zero out" the Authority's funding. Instead, the committee appropriated money for licensing activities for the next two fiscal years—through August of 1999.

An attempt by the same Representative to tie construction of the site to congressional consent for the Texas Low-Level Radioactive Waste Disposal Compact was defeated, although no funds were allocated for construction. A motion to increase payments to the host county was approved, however. Additional tracking and reporting requirements were also adopted.

Future Funding Needs

Under the Authority's schedule, the proposed facility should be licensed by December 31, 1998. In that case, the Authority will discuss funding for construction with the legislature after it reconvenes in January 1999.

Previous House and Senate Action

On February 27, the House Appropriations Committee eliminated the Authority's budget after expressing frustration with the lengthiness of the siting process for a disposal facility. Funding for the Authority was not included in the bill voted on by the House on March 20.

On March 11, the Senate Finance Committee allocated funding for the Authority. This funding was approved by the full Senate in its April 1 vote on the General Appropriations Bill.

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Low-Level Radioactive Waste Forum

LLW Notes
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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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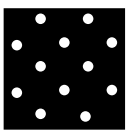

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Key to Abbreviations

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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Central Midwest Compact/Illinois

Revisions Likely for Illinois Siting Law

On March 20, the Illinois Senate approved amendments to the state's siting law by a vote of 54-0. House approval also seems imminent for the legislation, which would change the current siting process in several important ways. Most notably, the bill would move the target date for operation of a regional low-level radioactive waste disposal facility to 2012 instead of 2003. This change in time frame would synchronize the facility's opening with the planned decommissioning of nuclear reactors and is expected to result in lower disposal fees and decreased project costs. The longer time horizon would also allow for implementation of a volunteer siting process.

Cost Considerations The Illinois Department of Nuclear Safety (IDNS) has calculated that the average disposal cost for a low-level radioactive waste facility opening in 2003 would exceed $900 per cubic foot during the first five years of operation. If disposal costs were averaged over the first 10 years instead, they would still exceed $600 per cubic foot, or roughly twice as much as disposal fees at the commercial facility in Barnwell, South Carolina. Delaying facility operation until 2012, however, would reduce average projected costs to approximately $195 per cubic foot for the first 10 years. These savings would derive from economies of scale due to higher future waste volumes.

Volume Projections Illinois has 13 nuclear reactors within its borders—more than any other state. In 1995, operating waste from nuclear utilities accounted for 56,395 of the 57,763 cubic feet of low-level radioactive waste disposed of from Illinois. However, waste volumes have been declining and will probably continue to do so until 2012, when decommissioning wastes are expected to swell the annual volumes to approximately 110,000 cubic feet.

Bill Status The legislation has been assigned to the Energy and Environment Committee in the House of Representatives. The bill is scheduled for committee consideration on April 30.

The siting amendments are supported by IDNS and by Commonwealth Edison, the state's largest generator.

For further information, contact Patti Thompson of IDNS at (217)785-0229.

—CN

New Siting Process

The bill prescribes the following siting process.

- By June 18, 1997, the Illinois State Geological and Waster Surveys must screen the entire state to determine areas likely to meet the siting criteria developed by the Low-Level Radioactive Waste Task Group, evaluate the two current volunteered sites*, and document their findings in a written report. (See *LLW Notes*, February 1997, p. 5 for information on the siting criteria.)
- Within 24 months after submittal of the Surveys' report, IDNS will prepare a report and recommendations on various matters including out-of-state waste management options; life-cycle cost projections and volume estimates for a regional facility in Illinois; and development and implementation of a volunteer siting process.
- After submittal of its report, IDNS will implement a siting process that uses the screening data and allows land to be volunteered jointly by landowners and local governments if it meets the siting criteria
- Next IDNS's designated contractor for facility development and operation will propose one site that "appears likely to satisfy the criteria."
- The Low-Level Radioactive Waste Task Group must then hold at least one public meeting in the vicinity of the site and make a finding concerning whether the site meets the criteria. If so, the contractor proceeds with site characterization and seeks a license. If the site is rejected at any point, additional sites are proposed and evaluated until a licensable site is found.

** The volunteer sites are located near Geff in southern Illinois and near Ellsworth in central Illinois.*

Midwest Compact/ Ohio

Midwest Compact Votes on Ohio Funding

Less Approved for Screening than Requested

At a meeting on March 7, the Midwest Interstate Low-Level Radioactive Waste Commission approved funding in the following amounts for projects requested by the Ohio Low-Level Radioactive Waste Facility Development Authority:

$30,000	public opinion poll to be commissioned by the University of Akron's Institute for Policy Studies
$58,429	development of a statewide database and map by the Ohio Department of Natural Resources, Division of Geological Survey to identify areas of known or observable karst geologic features
$901,429	statewide screening in Ohio for potential low-level radioactive waste disposal facility sites
$50,000	quality assurance review and oversight for the statewide screening

Ohio's representative on the Midwest Commission initially moved that the statewide screening be funded at a level of $936,095, the amount approved by the Ohio Low-Level Radioactive Waste Facility Development Authority for its screening contractor, URS Greiner. This motion, however, failed for lack of a second. A subsequent motion to fund the project at a level $34,666 lower passed by a vote of 5-1, with Ohio's representative voting in the minority. This action marked the first instance of the commission's disapproving any portion of a funding request from Ohio. All other projects were funded at the host state's requested levels.

Charges for Subcontractors at Issue

Under the terms of the Midwest Compact, the compact commission is responsible for funding reasonable development costs for a regional disposal facility. The commission exercises fiscal oversight of these expenditures by approving an annual budget for the Ohio Authority. All costs for development of the facility in Ohio have been paid with commission funds. Total funds transferred or authorized to date amount to over $4.1 million.

Prior to the meeting, commission staff recommended against approval of the following two items in the $936,095 proposed contract with URS Greiner. The combined cost of the two items was $34,666. The full contract amount was supported by Ohio generators.

1) **Fees** The proposed contract included $8,557 in fees that URS Greiner, as the prime contractor, would have charged on all subcontractor costs except travel and subcontractor fees. These fees would have been in addition to the fees, profit and overhead costs allowed to URS Greiner and each of the subcontractors for their respective work.

2) **Subcontractor Support** A $26,109 item would have paid for each subcontractor's project manager to provide strategic planning and technical support to the URS Greiner project manager.

Ohio Governor's letters

Following the Midwest Commission's decision not to fund the amount requested for screening, the Governor of Ohio wrote to the Governors of the other Midwest Compact member states to object.

> I consider this to be totally unacceptable behavior on the part of the Midwest Compact Commission …
>
> Those in charge of the siting effort in Ohio take seriously the responsibility to develop a low-level waste facility in a safe, cost effective, and responsive manner. The Compact Commission has no legitimate basis for challenging a request that resulted from hours of consultation and review by technical and scientific experts, representatives of the public, environmentalists, and the major waste generators …

> Officials in Ohio have proceeded in good faith to uphold our agreement with the Midwest Compact … I would appreciate you bringing this matter to the attention of your Commissioner and request that he support the reasonable and necessary requests brought before the Commission by Ohio officials.

Letter were also written to the Commission Chair by Chairs of the respective committees of the Ohio House and Senate that had considered Ohio's enabling legislation. This correspondence expressed their displeasure at the actions taken by the commission to reduce the funding for statewide screening.

The Commission Chair responded to the legislators by defending the commission's role as a fiscal watchdog:

> Both the Compact and the Compact Amendments embody a system of checks and balances regarding the relationships among the member states. The Midwest Compact Commission has the authority and the responsibility to review and fund preoperational expenses that will be incurred by the host state, specifically the Ohio Low-Level Radioactive Waste Facility Development Authority and the Ohio Department of Health Agreement State Program. The funds are derived from utility ratepayers in our member states. The Commission is accountable for these public funds, and it is the Commission's duty to review how these funds will be spent. The system is working as it was intended, in accordance with the Provisions agreed to by our states.

Background: Higher Sum Previously Approved by Authority

The Board of Directors of the Ohio Low-Level Radioactive Waste Facility Development Authority had voted on February 24 to accept a $936,095 proposal from URS Greiner. This proposal resulted from negotiations between URS Greiner and Authority staff concerning a contract, scope of work, and cost. A Contract Specification Task Force, which included a staff representative of the Midwest Commission, assisted the Authority staff in these efforts.

The negotiations began after the Ohio Authority's Board of Directors announced its selection of URS Greiner (then URS Consultants) in December 1996. (See *LLW Notes*, December 1996, p. 8.) The contractor's initial proposal to the Authority projected a cost of $1,672,425. The cost was later reduced by $155,349, and the project divided into two parts: a base scope of work, priced at $936,095; and an optional scope of work, priced at $580,981, to be considered at a future date.

For further information, contact Gregg Larson of the Midwest Compact at (612)293-0126 or Jane Harf of the Ohio Authority at (614)644-2776.

—CN

Ohio Authority, Siting Contractor Still Negotiating

Discussions Unrelated to Funding

On April 11, the Board of Directors of the Ohio Low-Level Radioactive Waste Facility Development Authority announced that it was "unable to reach agreement" with URS Greiner on contractual terms and conditions of the statewide screening contract. Although the matters under discussion are privileged, an Ohio Authority spokesperson confirmed that the Midwest Commission's actions and the level of funding for the contract were not the cause of the current impasse.

Authority staff have been directed to "further research options that will fulfill the quality of the program" contained in URS Greiner's proposal, which was selected by the board last December. The board will continue discussions with two subcontractors that were included in the proposal—Bechtel National and US Ecology.

For further information, contact Jane Harf of the Ohio Authority at (614)644-2776.

Southeast Compact/North Carolina

Walter Sturgeon Named Executive Director of North Carolina Authority

In March 1997, Walter Sturgeon began serving as Executive Director of the North Carolina Low-Level Radioactive Waste Management Authority. Immediately prior to joining the Authority, Sturgeon worked as a consultant on nuclear and environmental issues. He also devoted much of his time to his volunteer duties as President of the International Wild Waterfowl Association, an organization that promotes preservation of the world's swans, ducks and geese. His previous experience includes a job as the first plant manager of the Seabrook nuclear facility in New Hampshire and a position at General Dynamics' Electric Boat Division.

Sturgeon has an undergraduate degree in mechanical engineering from Yale University and a master's degree in business administration from the University of Rhode Island. In addition, he has completed graduate work in nuclear engineering and has a professional engineer's license in nuclear engineering.

Sturgeon succeeds John Mac Millan as the Authority's Executive Director. Mac Millan, the former Forum Participant for North Carolina, had been serving part time as the Acting Executive Director since his retirement in the fall of 1996.

—MAS

Massachusetts

New Forum Participant for Massachusetts

Regina McCarthy has been appointed by Massachusetts Governor William Weld to serve as the commonwealth's Forum Participant. In this capacity, McCarthy replaces Leo Roy, formerly of the Executive Office of Environmental Affairs. McCarthy also replaces Roy as the Environmental Affairs Secretary's designee to the Massachusetts Low-Level Radioactive Waste Management Board.

McCarthy currently serves as Executive Director for the Toxics Use Reduction Administrative Council, a position responsible for the overall coordination of the Toxics Use Reduction Act Program in Massachusetts. In addition, McCarthy directs the Strategic Envirotechnology Partnership (STEP) between the Secretary of Environmental Affairs, the Commissioner of the Department of Economic Development, and the President of the University of Massachusetts. She also plays an important role in other state and interstate efforts to promote and deploy innovative environmental technologies.

Previously, McCarthy served as Executive Director of the Hazardous Waste Facility Site Safety Council, a small quasi-public state agency responsible for overseeing the siting of hazardous waste facilities. Her experience also includes 12 years of working for municipalities in a variety of capacities.

McCarthy has a master of science degree in environmental health engineering and urban environmental policy from Tufts University.

–RTG

CRCPD Holds Fifth Workshop for LLW Regulators

The Conference of Radiation Control Program Directors (CRCPD) held its fifth workshop for low-level radioactive waste regulators in Knoxville, Tennessee, on March 2-4. The workshop was followed by tours of various local treatment and processing facilities.

Meeting Program

During the meeting, members heard

- a report on the new pricing structure at the Barnwell, South Carolina low-level radioactive waste disposal facility (see *LLW Notes*, June/July 1996, p. 17);
- a presentation on current information on the waste treatment catalogue;
- a report on the status of NRC's uniform manifest requirements and on the waste tracking procedures of various states and compacts;
- a presentation on alternatives for the disposition of discovered radioactivity; and
- a report on activities of the Low-Level Radioactive Waste Forum and the Host State Technical Coordinating Committee.

Meeting attendees also participated in one of three discussion groups on the following topics:

- waste acceptance criteria;
- assured isolation of low-level radioactive waste; or
- check list for low-level radioactive waste site license review—financial assurance of site operators.

Attendance

The CRCPD low-level radioactive waste regulators' workshop was attended by

- fifteen regulators from fourteen different states (California, Colorado, Connecticut, Illinois, Massachusetts, Michigan, Nebraska, New Jersey, New York, Ohio, Pennsylvania, Tennessee, Texas, Washington);
- the LLW Forum liaison to the CRCPD;
- one person from DOE's National Low-Level Waste Management Program at Idaho National Engineering and Environmental Laboratory;
- seven persons from treatment and processing facilities;
- one person from a consulting company; and
- three persons hired by CRCPD to staff the meeting.

Upcoming Meeting

The next CRCPD Low-Level Radioactive Waste Regulators' Workshop is scheduled for early September 1997 in Richland, Washington. The meeting will include a tour of the commercial radioactive waste disposal facility at Richland.

For further information, contact Terry Devine of the Conference of Radiation Control Program Directors at (502)227-4543.

—TDL

Texas Compact/Texas (continued)

Source of Funds

Activities of the Authority and its contractors are funded by generator assessments paid into a dedicated treasury account. These funds must then be appropriated to the Authority by the legislature before they can be spent on facility development.

For further information, contact Lee Mathews of the Texas Authority at (512)451-5292.

—CN

The preceding information was distributed to Forum Participants and Alternate Forum Participants, Federal Liaisons and Alternates via News Flash on April 30, 1997.

DOD Generators Hold Annual Meeting

On February 18–20, the Department of Defense (DOD) held its seventh Annual DOD Low-Level Radioactive Waste Generators Meeting in Norfolk, Virginia. In attendance were state and compact officials, DOD personnel, and DOD generators.

State and Compact Panel

A highlight of the meeting was a panel that focused on the status of site development nationwide. Panelists were

- Kathryn Haynes of the Southeast Compact,
- Don Womeldorf of the the Southwestern Compact,
- Michael Garner of the Northwest Compact,
- Gregg Larson of the Midwest Compact,
- William Sinclair of the Utah Division of Radiation Control;
- Jack Spath of the New York State Energy Research and Development Authority; and
- Holmes Brown of the LLW Forum, who served as moderator.

Disposal Site Panel

Another panel was composed of representatives of the three companies that operate disposal sites for commercial low-level radioactive waste. The discussion focused on recent developments at the sites relevant to such matters as license renewal and amendments, closure plans, types of waste that can be accepted, and fees charged.

Other Topics

Additional issues covered at the meeting included

- decommissioning of a DOD facility,
- utilization of the private sector for disposal of some DOD materials,
- Defense Logistics Agency policy on the sale of unlicensed radioactive material,
- the changing role of DOE in low-level radioactive waste management, and
- using technology to conserve resources.

For further information, contact Steve Mapley of the Department of the Army at (309)782-2933.

—HCB

Gedden Joins Staff of LLW Forum

In April 1997, Rick Gedden joined Afton Associates, the management firm for the Low-Level Radioactive Waste Forum. Gedden, who will serve as the LLW Forum Internet and Information Specialist, replaces Jean Colsant. His duties will include writing stories and "New Materials and Publications" listings for the *LLW Notes*, maintenance of the LLW Forum web page, press monitoring, research, LLW Forum membership coordination, and managing production of LLW Forum meeting reports.

Gedden previously worked for a Washington, D.C. firm that provided management and support services to the American College of Nuclear Physicians. He has also served as a document clerk for a law firm, directed marine construction projects, and instructed in physical geography.

Gedden has a B.A. in English from the University of Iowa.

—MAS

State Legislators' LLRW Working Group Meets

On April 4, the Low-Level Radioactive Waste Working Group of the National Conference of State Legislatures (NCSL) met in San Francisco, California, in conjunction with the NCSL Assembly on State Issues.

During the half-day meeting, the group heard from both Carl Lischeske of the California Department of Health Services and California Senator Jim Costa regarding the state's efforts to secure the transfer of federal land in Ward Valley, California, to the state for use in siting a low-level radioactive waste disposal facility. Arizona Representative Paul Newman later provided a political perspective on Arizona's position regarding the planned facility.

Following the California presentations, Lawrence Jacobi of the Texas Low-Level Radioactive Waste Disposal Authority reported on the status of site development in his state and explained the Authority's extensive public information program.

The meeting concluded with a general discussion among legislators concerning low-level radioactive waste management in their respective states.

The working group's next meeting is scheduled for August 8 in Philadelphia, Pennsylvania.

Attendance

State Legislators and Legislative Staff

Arizona	Rep. Paul Newman
California	Sen. Jim Costa
Indiana	Glenn Howard
Idaho	Rep. Jack Barraclough
Kentucky	Kathy Campbell
Michigan	Rep. Tom Alley
	Loren Bennett
Nebraska	Sen. Chris Beutler
North Carolina	Rep. John Nichols
Ohio	Sen. Richard Finan
	Sen. Charles Horn
	Sen. Gary Suhadolnik (Chair, LLRW Working Group)
Pennsylvania	Rep. Ivan Itkin
South Carolina	Frank Caggiano
	Sen. Thomas Moore
Utah	Mark Bleazard

Other State or Interstate Compact Officials

Texas	Lawrence Jacobi, Low-Level Radioactive Waste Disposal Authority
California	Carl Lischeske, Department of Health Services
Ohio	Jane Harf, Low-Level Radioactive Waste Facility Development Authority
Southwestern Compact	Don Womeldorf

Other Interested Parties

Afton Associates/ LLW Forum	Cynthia Norris
American Ecology	Richard Paton
Cal Rad Forum	Alan Pasternak
Western Resources	Bud Burke (former President, Kansas Senate and NCSL)

Staff

NCSL	Rebecca Brady
	Jeff Dale
	L. Cheryl Runyon
DOE's National LLW Management Program	Sandra Birk
	Jeffrey Mousseau

For further information, contact L. Cheryl Runyon of NCSL at (303)830-2200. For information on the last LLRW Working Group meeting, see LLW Notes, February 1997, p. 10.

–CN

State and Compact Events

April	Event	Location/Contact
Central Midwest Compact/ Illinois	Central Midwest Interstate LLRW Commission meeting: includes hearing on draft *Regional Management Plan*	Frankfort, KY Contact: Donn Lasswell (217)785-9982
Midwest Compact/ Ohio	Ohio LLRW Facility Development Authority Administration and Finance Committee meeting: discussion of FY '98 budget, administrative policies and procedures	Worthington, OH Contact: Melissa Herby (614)644-2776
	Ohio LLRW Facility Development Authority Board of Directors meeting	Worthington, OH Contact: Melissa Herby
Northeast Compact/ Connecticut/ New Jersey	Connecticut Hazardous Waste Management Service Board of Directors meeting	Hartford, CT Contact: Ron Gingerich (860)244-2007
	New Jersey LLRW Disposal Facility Siting Board presentation to Delaware Township Planning Board	Sergeantsville, NJ Contact: John Weingart (609)777-4247
	New Jersey LLRW Disposal Facility Siting Board display at New Jersey Conference of Mayors meeting	Atlantic City, NJ Contact: John Weingart
	New Jersey LLRW Disposal Facility Siting Board presentation re New Jersey siting process at a Sierra Club meeting	Chatham, NJ Contact: John Weingart
	New Jersey LLRW Disposal Facility Siting Board meeting	Trenton, NJ Contact: John Weingart
	New Jersey LLRW Disposal Facility Siting Board display at Chamber of Commerce Conference	Bridgewater, NJ Contact: John Weingart
Southeast Compact/ North Carolina	Southeast Compact Policy and Planning Committee meeting: review and propose revision to the Five-Year Strategic Plan, review proposed FY '97–'98 budget with regard to the Strategic Plan	Chapel Hill, NC Contact: Ted Buckner (919)821-0500 or e-mail secclrw@interpath.com
	Southeast Compact Monitoring Committee meeting: review request from NC Authority for additional funds	Chapel Hill, NC Contact: Ted Buckner
	SE Compact Administrative Committee meeting: review FY '97–'98 budget, funding recommendation from Monitoring Committee	Chapel Hill, NC Contact: Ted Buckner
	SE Compact Commission business meeting: adopt five-Year Strategic Plan, adopt FY '97–'98 budget, act on funding recommendations	Chapel Hill, NC Contact: Ted Buckner
	Southeast Compact Task Force on Facility Funding meetings (2)	Raleigh, NC Contact: Ted Buckner
	North Carolina Interagency Committee on LLRW meeting	Raleigh, NC Contact: Richard Fry (919)571-4141

State and Compact Events *continued*

April *cont.*	Event	Location/Contact
Texas Compact/ Texas	Maine Advisory Commission on Radioactive Waste meeting	Augusta, ME Contact: Dale Randall (207)287-8404 or e-mail dale.randall@state.me.us
Massachusetts	LLRW Management Board meeting: includes public hearing on proposals to modify assessment regulations for FY '98, discussion of changes in the Volunteer Sites Program Plan.	Boston, MA Contact: Carol Amick (617)727-6018
May	**Event**	**Location/Contact**
Central Compact/ Nebraska	Central Compact Facility Review Committee meeting	Lincoln, NE Contact: Don Rabbe (402)476-8247 or e-mail don@cillrwcc.org
Midwest Compact/ Ohio	Ohio LLRW Facility Development Authority Public Information and Involvement Committee meeting	Worthington, OH Contact: Melissa Herby (614)644-2776
Northeast Compact/ Connecticut/ New Jersey	Northeast Interstate LLRW Commission meeting	Stamford, CT Contact: Janice Deshais (860)633-2060
	Connecticut Hazardous Waste Management Service Board of Directors meeting	Hartford, CT Contact: Ron Gingerich (860)244-2007
	Connecticut LLRW Advisory Committee meeting	Hartford, CT Contact: Ron Gingerich
	New Jersey LLRW Disposal Facility Siting Board presentation at Water Environment Conference	Atlantic City, NJ Contact: John Weingart (609)777-4247
Northwest Compact/ Washington	Northwest Compact Utah Division of Radiation Control briefing	Salt Lake City, UT Contact: Michael Garner (360)407-7102
	Northwest Interstate Compact on LLRW Management meeting	Salt Lake City, UT Contact: Michael Garner
SE Compact/ North Carolina	North Carolina LLRW Management Authority meeting (tentative)	Raleigh, NC Contact: Andy James (919)733-0682
Texas Compact/TX	Texas LLRW Disposal Authority board meeting	Austin, TX Contact: (512)451-5296
Massachusetts	LLRW Management Board public information meeting: health effects of low-level ionizing radiation and impacts on LLRW disposal	Amherst, MA Contact: Paul Mayo (617)727-6018

June	Event	Location/Contact
Appalachian Compact/ Pennsylvania	Appalachian States LLRW Commission annual meeting	Harrisburg, PA Contact: Marc Tenan (717)234-6295
Central Compact/ Nebraska	Central Interstate LLRW Commission annual information forum on fees, rates, and surcharges Central Interstate LLRW Commission annual meeting	Lincoln, NE Contact: Don Rabbe (402)476-8247 or e-mail don@cillrwcc.org
Midwest Compact/ Ohio	Midwest Interstate LLRW Compact Commission annual meeting Ohio LLRW Facility Development Authority Board of Directors meeting	St. Paul, MN Contact: Sandy Schmidt (612)293-0126 Worthington, OH Contact: Melissa Herby (614)644-2776
Northeast Compact/ Connecticut/ New Jersey	Connecticut Hazardous Waste Management Service Board of Directors meeting New Jersey LLRW Disposal Facility Siting Board meeting New Jersey LLRW Disposal Facility Siting Board display at New Jersey Association of Counties Conference	Hartford, CT Contact: Ron Gingerich (860)244-2007 Trenton, NJ Contact: John Weingart (609)777-4247 Atlantic City, NJ Contact: John Weingart
Rocky Mountain Compact	Rocky Mountain LLRW Board annual meeting	Santa Fe, NM Contact: Tracie Archibold (303)825-1912
Southwestern Compact/ California	Southwestern LLRW Commission meeting	La Jolla, CA Contact: Don Womeldorf (916)323-3019
Massachusetts	LLRW Management Board meeting: adoption of a schedule of assessments for FY '98; discussion of national and state LLRW management and disposal conditions, and review of March 1996 decision to cease certain in-state siting activities LLRW Management Board Minimization Working Group meeting: presentations re Toxic Use Reduction Act program; radioactive materials licensee minimization regulations, program and procedures	Boston, MA Contact: Carol Amick (617)727-6018 Boston, MA Contact: Carol Amick

State and Compact Events *continued*

July	Event	Location/Contact
Northeast Compact/ Connecticut/ New Jersey	Connecticut Hazardous Waste Management Service Board of Directors meeting	Hartford, CT Contact: Ron Gingerich (860)244-2007
	New Jersey LLRW Disposal Facility Siting Board meeting	Trenton, NJ Contact: John Weingart (609)777-4247
Texas Compact/ Texas	Maine Advisory Commission on Radioactive Waste meeting	Augusta, ME Contact: Dale Randall (207)287-8404 or e-mail dale.randall@state.me.us
August	**Event**	**Location/Contact**
Central Compact/ Nebraska	Compact Facility Review Committee meeting	Lincoln, NE Contact: Don Rabbe (402)476-8247 or e-mail don@cillrwcc.org
Northeast Compact/ Connecticut/ New Jersey	Northeast Interstate LLRW Commission meeting	Saddle Brook, NJ Contact: Janice Deshais (860)633-2060
	New Jersey LLRW Disposal Facility Siting Board meeting	Trenton, NJ Contact: John Weingart (609)777-4247
Texas Compact/ Texas	Texas LLRW Disposal Authority board meeting	Austin, TX Contact: (512)451-5296
September	**Event**	**Location/Contact**
Central Compact/ Nebraska	Central Interstate LLRW Commission fall quarterly meeting	Lincoln, NE Contact: Don Rabbe (402)476-8247 or e-mail don@cillrwcc.org
Northeast Compact/ Connecticut/ New Jersey	New Jersey LLRW Disposal Facility Siting Board meeting	Trenton, NJ Contact: John Weingart (609)777-4247
Massachusetts	LLRW Management Board meeting: continued discussion of the Volunteer Sites Program, report on the status of the legislature's action on the FY '98 budget, and discussion of the budget for FY '99	Boston, MA Contact: Carol Amick (617)727-6018

NRC Chairman Jackson Responds to Proposal to Amend the Policy Act

On March 27, 1997 NRC Chairman Shirley Ann Jackson responded by letter to Representative Jerry Lewis (R-CA) regarding recommendations to alter current NRC regulations which had been sent to Representative Lewis by Jon Mikels, a San Bernardino County Supervisor. The recommendations, which had been endorsed by the San Bernardino County Board of Supervisors on February 4 of this year, were forwarded to Chairman Jackson by Representative Lewis for NRC comment. (For further information, see "New Materials and Publications.")

Text of the Jackson letter

underlining added for reference purposes

Dear Congressman Lewis:

Thank you for giving the Nuclear Regulatory Commission the opportunity to comment on the recommendations to amend the Low-Level Radioactive Waste Policy Act (LLRWPA) of San Bernardino County Supervisor Jon Mikels. Our comments relate to the version of the recommendations (referred to below as "the proposal") faxed to the NRC by Jeff Shockey on February 4, 1997.

The proposal appears to be based on some misunderstandings of both the law and the facts related to low-level radioactive waste (LLW) and its disposal. In addition to requiring changes in the LLRWPA, the proposal would require extensive changes to NRC and State regulations and to LLW compacts. State representatives have advised us that extensive changes to the legislative or regulatory framework regarding LLW disposal would cause delays in their efforts to develop new disposal facilities.

A brief review of the history of the LLRWPA should help to put the proposal in perspective. Originally enacted in 1980, the Act was the result of nationwide concern about disposal of LLW. The National Governors' Association, which had studied the issue, had concluded that each state should accept primary responsibility for safe disposal of LLW generated within its borders. The Association also recommended that the best way to achieve the goals of the Act was for States to pursue a regional approach to the disposal problem. Congress adopted the Association's recommendations. However, in a few years, it became clear that the 1980 Act had not succeeded in resolving the disposal problem. The Act

Corresponding Excerpts from the Mikels Proposal and Cover Letter

"Legislators representing the County in Congress have requested that the County identify alternatives to the Ward Valley project and, more particularly, revisions to federal low-level radioactive waste policy and statutes that would address the nationwide problems that underlie management of LLRW."

was amended in 1985 by the Low-level Radioactive Waste Policy Amendments Act, which replaced virtually the entire substance of the LLRWPA with more detailed provisions. The amended Act left the States free to determine what type of disposal facilities to build. There continues to be widespread support for the Act.

"Amend the Act to revoke the current framework which permits disposal of "Low-level" radioactive waste by shallow land burial at regional facilities. Replace with a new framework of Engineered storage-to-decay facilities."

"The term "Engineered storage-to-decay facility" means a specially constructed building designed to safely contain the radioactive waste stored therein, without leakage to the environment for the decay life of the radionuclides contained therein."

While the NRC and the Department of Energy were given some roles to play, the central responsibility for implementation of the LLRWPA's goals was given to the States. Significant incentives were provided for States to carry out this responsibility through regional LLW compacts. Among other things, compacts formed pursuant to the Act are permitted to exclude LLW from non-party States. The terms of the compacts are arrived at through negotiation between the party States, and the compacts must be approved by the respective legislatures of the party States. After State enactment, the compacts are ratified by the Congress. This entire process easily can take several years. For this reason, efforts to make substantive changes in the compacts, to comport with the proposal's recommended legal and policy changes, could take years to complete.

"Amend the Act to provide that any State in which an Engineered Storage Facility for Low-level radioactive waste is located may prohibit the disposal at such facility of Low-level radioactive waste generated outside of the state." (emphasis added)

Turning to the substantive changes recommended by the proposal, at their heart there appears to be a lack of understanding of the considerations that are relevant to risk. The proposal focuses on a system of classification based on "decay life," which it defines in terms of "half lives." This approach is neither scientific nor risk-based, and it does not comport with accepted international views. Risk is a function of radiation dose, and the determination of risk depends on a variety of factors, including the type of radiation, the concentration of radionuclides in the medium in which they are present, the likelihood that barriers containing the radionuclides will be fully effective to contain the radionuclides, and the likelihood of exposure if the radiation is not fully contained. (The half-life of a particular radionuclide also may be a factor, but it is not controlling.)

"Amend the Act to change the definition of Low-level radioactive waste and add a new category of Intermediate-level radioactive waste based on decay life and quantity of the radioactive materials."

"The current statutory and regulatory definition of 'low-level' radioactive waste is widely viewed as irrational because it is based on source rather than risk."

"There is a serious problem with current law that permits low-level dumps to receive large amounts of wastes with hazardous lives that are much longer than the required monitoring period of only 100 years."

In fact, the type of management suggested for the waste by the proposal (visual and other inspection and repackaging) could be risky for the workers involved.

"The design of the Engineered storage-to-decay facility must be such that it permits visual and other inspection of and ready access to each waste container stored therein and prompt repackaging of any waste container whose integrity is found to be breached."

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Jackson to Lewis (continued)

There is another significant problem with the proposal. In redefining LLW, it makes no provision for radionuclides with a "decay life" of more than 100 years, thus creating orphan wastes. The proposal does not state how this new category of waste would be managed or who would be responsible for its management. Not only would this require statutory changes, but it also would require extensive changes to NRC and Agreement State LLW disposal regulations and guidance. The uncertainty this would create for some time would be likely to destabilize States' efforts to develop new disposal facilities.

It appears from the statements of background information and policy objectives accompanying the suggested amendments that the primary purpose of the proposal is to prevent the development of a LLW disposal site at Ward Valley. In that connection, it is important to point out that California is an Agreement State (that is, it has entered into an agreement with the NRC pursuant to section 274 of the Atomic Energy Act) and is responsible for licensing the proposed Ward Valley LLW disposal facility. California has adopted regulations that are compatible with NRC's regulations for land disposal of radioactive waste (10 C.F.R. Part 61), and the NRC has confidence in the State's Agreement State Program. While we have not made detailed findings on all the technical issues, we have no reason to believe that public health and safety would not be protected adequately by disposal of LLW at the Ward Valley site.

California is also a member of a LLW compact—the Southwestern Compact—and California has been designated as the host State of the Compact. This means that the State has undertaken to provide LLW disposal facilities for itself and other compact members. With respect to the appropriateness of shallow land disposal at the Ward Valley site, this is a decision that has been arrived at by the State of California after review at all levels of State government and considerable litigation. What problems may remain to enable California to effectuate this undertaking are not the result of any problem inherent in the LLRWPA.

Mikels' Proposal (continued)

"The County has consistently opposed the proposed Ward Valley low-level radioactive waste ("LLRW") facility."

"The design proposed for Ward Valley (shallow land burial in unlined trenches) and permitted under current law is the most primitive used for radioactive waste disposal virtually anywhere in the world."

"The proposed design for Ward Valley is merely to dig a trench in the ground, put waste in, and cover it up again. Virtually every radioactive waste site in the U.S. that has used such unlined trenches has leaked within one to three decades of opening, spreading contamination into the environment."

10 C.F.R. Part 61 is consistent with generally accepted international criteria for LLW disposal. It is true that there are other countries that have or are building engineered facilities, but this does not mean that shallow land disposal of LLW is prohibited by international standards. The determination of what is an appropriate facility depends to a large extent on site-specific environmental and other factors. Areas such as Ward Valley are vastly different from those surrounding many engineered facilities developed in other countries. In particular, there are significant environmental differences in terms of amount of rainfall and humidity, depth of water table, density of population, and agricultural usage in the surroundings.

"Practices far below international norms and the state-of-the-art are permitted in the United States."

"Ban shallow land burial of radioactive wastes. Require instead the use of engineered storage-to-decay facilities."

Under the Atomic Energy Act, the NRC is the licensing body in States that have not chosen to become Agreement States. The NRC also conducts periodic formal review of Agreement State programs to determine their adequacy to protect the public health and safety. The Atomic Energy Act recognizes the need for compatibility between NRC and Agreement State regulations, and the NRC has established a policy to define the necessary degree of compatibility. San Bernadino County Supervisor Jon Mikels' proposal however, would allow local government to regulate the packaging, treatment, and storage of LLW and to set limits for the amount of waste that would be permitted in an "engineered storage facility." Clearly, such a system would need to be examined closely with a view toward avoiding duplication and conflicts in the regulation of LLW disposal.

"Amend the Act to clarify that local government has the authority to regulate the storage of Low-level and Intermediate-level radioactive waste at Engineered Storage Facilities within its borders consistent with these amendments."

"Amend the Act to add a section regarding limitations on the quantity of waste accepted at an Engineered Storage Facility which specifies that the Nuclear Regulatory Commission, Agreement States, and local government have authority to set limitations on the amount of waste Engineered Storage Facilities may receive in terms of volume of waste, total radioactivity, and activity of specific radionuclides both in aggregate and per barrel or shipment."

Finally, we would like to point out that the proposal lacks any supporting estimates of health benefits or cost increases that would result from the redefinition of LLW and the restriction to engineered storage-to-decay LLW disposal. Given the magnitude of the policy changes proposed, it would seem important to provide some justification in terms of estimated health benefits to be gained and at what cost.

Again, thank you for the opportunity to review this proposal.

Sincerely,

Shirley Ann Jackson

—RTG

US Ecology v. United States of America • US Ecology v. U.S. Department of the Interior

US Ecology Sues to Recover Costs and Lost Profits and/or to Compel Ward Valley Land Transfer

On January 30, 1997, US Ecology filed a lawsuit in the U.S. Court of Federal Claims against the United States of America for breach of a contract to sell 1,000 acres of federal land in Ward Valley, California, to the state for use in siting a low-level radioactive waste disposal facility. Pursuant to its claims, US Ecology is seeking reimbursement for its past costs, lost future profits, and lost opportunity costs.

Then, on February 24, 1997, US Ecology filed a new lawsuit in the U.S. District Court for the District of Columbia against the U.S. Department of Interior (DOI), Interior Secretary Bruce Babbitt, Deputy Interior Secretary John Garamendi, and DOI's Bureau of Land Management seeking to compel transfer of the Ward Valley site. The action is very similar to a suit initiated by the California Department of Health Services and its Director, S. Kimberly Belshé, on January 31, 1997. That suit, which was filed in the same court, is still pending.

The following is a brief description of the two suits filed by US Ecology. Persons interested in a more detailed description of the litigation are directed to the briefs themselves. Persons interested in a detailed description of the suit filed by California should see LLW Notes, March 1997, pp. 1, 16–20.

US Ecology v. United States of America

Causes of Action

US Ecology's lawsuit is based upon a claim of breach of contracts—both express and implied—by the federal government to sell lands to the state and the resultant injury to the company.

Breach of Express Contract US Ecology alleges that the United States—by refusing to deliver the deed to the Ward Valley site to the State of California—has breached an express contract to sell the land for use in siting a low-level radioactive waste disposal facility. US Ecology alleges that a contract arose in 1993 when the Interior Department accepted the state's offer to purchase the land and US Ecology's payment of the purchase price.

> Under Interior regulations ... contractual rights against the United States regarding the direct sale of land undeniably arise upon Interior's acceptance of the purchaser's offer and payment of the purchase price.

US Ecology argues that there is no just basis for the federal government's refusal to deliver the deed, given that in 1993 then-Interior Secretary Manuel Lujan agreed to transfer the Ward Valley site following appropriate reviews which determined that all of the requirements of applicable federal laws had been met. Although California and Interior were the actual parties to the contract, US Ecology asserts that—as license-designee of the Ward Valley facility—it was the intended third-party beneficiary.

Breach of Implied Contract US Ecology alleges that it and the State of California had an implied contract with the United States that the federal government would (1) act fairly and honestly in conducting reviews and granting approval for transfer of the site, and (2) transfer the site upon satisfactory completion of the applicable review process. The United States formalized its intention to cooperate with the state and US Ecology, according to the complaint, by executing various agreements to prepare a joint environmental impact report/statement, to cooperate in establishing and meeting a timetable to transfer the land, and to bill US Ecology for costs incurred by the government with respect to the land transfer.

US Ecology alleges, however, that the United States has breached its contract to sell the Ward Valley site irrespective of a number of positive determinations made by the federal government regarding the site's suitability for sale and subsequent use as a regional disposal facility and is unjustly perpetuating its inaction. US Ecology argues that it has in the past acted in reliance on these determinations and has conducted significant and expensive investigations as a result.

In support of its allegations, US Ecology notes that in December 1996 the Interior Department issued a Request for Proposal (RFP) for preparation of an additional Supplemental Environmental Impact Statement (SEIS) for the land transfer that "contemplates revisiting all of the major issues already analyzed in the Final EIR/S." US Ecology states that, according to the RFP, preparation of the additional SEIS will take "at least a year to complete from the date of a yet-to-be-determined contract award date."

Requested Relief

US Ecology claims that it has been prevented from constructing and operating the waste disposal facility as a result of the United States' breach of its contracts—express and implied—to convey the Ward Valley site to the state and its failure to act in good faith. The company claims and seeks award for damages in the form of past costs of approximately $73.1 million as of December 31, 1996; unspecified lost profits; unspecified lost opportunity costs; plus interest and reasonable attorneys' fees.

Procedural Issues & Defendant's Response

The United States' response to the lawsuit is due April 30. Along with the complaint, US Ecology filed a motion requesting that the court notify the California Department of Health Services to appear in the action as a third-party plaintiff with an interest in the matter. US Ecology argues that such notification will prevent duplication of proceedings and determinations on the same set of facts by the court, thereby saving judicial time and resources, especially given that DHS may have a similar breach of contract claim against the United States.

Background: Factual Allegations

In December 1985, the California Department of Health Services (DHS) selected US Ecology as the license-designee for the Southwestern Compact's regional low-level radioactive waste disposal facility. As license-designee, US Ecology was obligated to implement the disposal facility siting and licensing plans using its own funds. It was also required to post $1,000,000 to guarantee its performance. However, US Ecology was to recoup its costs and a return on its investment through facility operation, which was slated to last for 30 years pursuant to law.

In February 1987, based on advice from the Bureau of Land Management (BLM), the California State Lands Commission applied for conveyance of three candidate site areas to the state via indemnity selection. Subsequently, BLM and DHS executed a memorandum of understanding to prepare a joint environmental impact report/statement for the project. A second memorandum of understanding was later executed requiring US Ecology to reimburse BLM for its costs in transferring the site. To date, the United States has billed US Ecology $152,781.34 for such costs. Approximately $34,000 remain as outstanding invoices.

The lawsuit contends that, based upon assurances from BLM, US Ecology invested a considerable amount of time and money to conduct detailed and expensive cultural resource, biological, climatic, seismic, hydrologic and other investigations and analyses of the Ward Valley site. In April 1991, BLM and DHS published the project's final environmental impact report/statement, determining that conveyance of the site to the state would comply with all relevant federal laws and regulations. A supplemental environmental assessment was issued after the land acquisition method was changed from indemnity selection to direct sale. It found that the change in land acquisition method would have no environmental consequences.

Given the findings of the final supplemental environmental impact statement, then–Interior Secretary Manuel Lujan determined in January 1993 to sell Ward Valley to the state for use in siting a disposal facility. On January 8, 1993, US Ecology paid the $500,000 purchase price. On January 19, 1993, Lujan issued a Record of Decision formally documenting direct sale of the site. Lujan was prevented from delivering the site's deed to the state before leaving office, however, by legal actions taken by site opponents. On January 20, 1993, Bruce Babbitt succeeded Lujan as Interior Secretary. Less than one month later, Babbitt executed a declaration stating that he would rescind Lujan's final land sale decisions, and in April 1993 Interior returned the purchase money to US Ecology. In September 1993, DHS issued a license to US Ecology to construct and operate the Ward Valley facility and executed a site lease conditioned upon Interior's delivery of the site's deed to the state. To date, Interior has not delivered title to the site to the state.

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US Ecology v. U.S. Department of the Interior

US Ecology's lawsuit seeks to compel transfer of the Ward Valley site from the federal government to the State of California based upon a variety of specific claims for relief.

Claims for Relief

Mandamus Compelling Action by Defendant Babbitt US Ecology argues that Interior Secretary Bruce Babbitt has wrongfully refused to deliver the Ward Valley site's patent to the state based upon "extra-procedural and improperly political" motivations. Such action on the part of Babbitt is, according to US Ecology, unreasonable, outside the scope of his statutory authority, outside the scope of his official duties, and in bad faith. In support of its claim, US Ecology notes that (1) in 1993, then-Secretary Lujan sold the site to California and US Ecology paid the agreed purchase price; (2) Lujan executed a Record of Decision that documented sale of the land and the sale's compliance with applicable federal laws and regulations; and (3) Lujan's decision to sell the land complied with the Federal Land Policy and Management Act's (FLPMA) requirements for direct sales and with the Endangered Species Act (ESA) and the National Environmental Policy Act (NEPA).

Violation of the Administrative Procedure Act (APA) by Abuse of Discretion in Purporting to Rescind the Land Sale Assuming that Secretary Babbitt did not have a ministerial duty to deliver the Ward Valley site's patent to the state (although US Ecology argues that such a duty did exist), US Ecology asserts that Babbitt acted arbitrarily and capriciously and abused his discretion when he purported to rescind Lujan's sale of the land. In support of its position, US Ecology notes that Lujan's decision followed seven years of extensive environmental reviews and scientific evaluations of the proposed facility and land conveyance, and that all studies ordered or performed by the defendants to date have confirmed the propriety and legality of Lujan's sale determination.

Arbitrary and Capricious Abuse of Discretion in Violation of the APA by Refusal to Transfer the Land US Ecology asserts that the defendants have acted arbitrarily and capriciously and abused their discretion by requiring that

- the state conduct federal adjudicatory hearings on Interior's behalf,
- a second supplemental environmental impact statement be prepared to review the environmental impacts of the change in land conveyance method,
- the land transfer be postponed until after a decision in a lawsuit before the California courts,
- the National Academy of Sciences review an unofficial report by three geologists concerning the proposed site, and
- California enter into a binding contractual agreement granting Interior enforcement powers over DHS' regulation of the facility's development and operation.

US Ecology further argues that the defendants abused their discretion and violated the separation of powers provisions of the U.S. Constitution by unlawfully subordinating the exercise of discretion delegated to them under FLPMA, NEPA, and ESA to the demands of Senator Boxer and staff of the White House or the Council on Environmental Quality.

Violation of the APA by Engaging in Actions in Excess of Statutory Authority US Ecology claims that the defendants have, by their actions, usurped regulatory functions vested in other agencies pursuant to state and federal law and have caused a de facto nullification of the lawful exercise of discretion by proper authorities, while simultaneously abusing their discretion in areas of responsibility delegated to them by Congress. Specifically, US Ecology argues that exclusive federal jurisdiction for the regulation of commercial low-level radioactive waste disposal facilities is delegated under the Atomic Energy Act to the U.S. Nuclear Regulatory Commission and that NRC has in turn delegated this authority in California to DHS.

DHS has determined that the proposed facility complies with all licensing standards, and NRC has informed the defendants that DHS is qualified to license the facility. Interior has no delegated authority to engage in the regulation of low-level radioactive waste disposal facilities.

Abuse of Discretion Under NEPA and the APA US Ecology alleges that the defendants acted arbitrarily and capriciously and abused their discretion under NEPA by ordering the preparation of an additional SEIS in the absence of significant new information or circumstances. US Ecology also contends that the defendants abused their discretion by deciding that Interior will conduct additional soil sampling at the site prior to delivering the patent and by selecting Martin Mifflin—who, US Ecology alleges, has an apparent bias against the Ward Valley project—to perform the work.

Further Abuses of Discretion by Deputy Secretary Garamendi US Ecology argues that Deputy DOI Secretary Garamendi has abused his discretion by misinforming the public of facts relevant to the Ward Valley project in a letter to the San Diego Tribune dated February 26, 1996; by misinforming the public about the nature of wastes to be disposed of at the facility in a July 22, 1996 press release; and by using his office to advance an anti-nuclear agenda rather than to faithfully discharge duties accorded to him under FLPMA, NEPA, and ESA. According to US Ecology, the Tribune letter falsely claimed that millions of dollars of taxpayer money had been spent responding to releases of radionuclides at the Beatty facility and that the Ward Valley facility was designed without a monitoring system to detect such releases. The July press release, according to US Ecology, published inaccurate waste projections prepared by the Committee to Bridge the Gap rather than using official projections prepared by DOE, DHS, NRC, or the Southwestern Compact.

Violation of the APA by Acting Contrary to Constitutional Right US Ecology's final claim is that Babbitt and Garamendi have, through deliberate acts and omissions in their official capacities, improperly interfered with the process by which Interior and BLM administer FLPMA and NEPA and have done so on the basis of extra-procedural and improper political considerations. US Ecology further alleges that, through such acts and omissions, the defendants have denied US Ecology a meaningful notice and hearing prior to depriving the company of its rights in the Ward Valley site, which are protected by the U.S. Constitution's Fifth Amendment Due Process Clause.

Requested Relief

US Ecology claims that the defendants have caused and will continue to cause the company irreparable injury by preventing it from constructing and operating the Ward Valley disposal facility as required by the terms of its license and relevant federal and state law. Accordingly, US Ecology is seeking the following relief:

- a judgment finding that the defendants have wrongfully refused to perform a ministerial duty to deliver the Ward Valley site's patent to California pursuant to Lujan's January 1993 Record of Decision—and an order compelling Babbitt to do so within 30 days;

- a judgment finding that the purported rescission of Lujan's Record of Decision and/or the subsequent and continuing failure to deliver the land patent in accordance with Lujan's determination constitute unlawful, arbitrary and capricious conduct and an abuse of discretion, or that such actions have been taken in excess of statutory authority—and an order compelling the defendants to deliver the site patent pursuant to Lujan's determination within 30 days;

- a judgment finding that the proposal for testing and an additional SEIS prior to the land transfer is arbitrary, capricious and an abuse of discretion—and an order prohibiting the defendants from performing such activities; and

- an award of attorneys' fees and other relief that the court deems to be just and proper.

Background: Factual Allegations

For a detailed description of the factual allegations regarding events leading up to the proposed land transfer, see *LLW Notes*, March 1997, pp. 18–20.

Defendants' Response

The defendants' response to the lawsuit is due April 28.

—TDL

Nuclear Fuel Services, Inc. v. Semnani

New Suit Against Envirocare and Others Alleges Unlawful Business Practices

On March 10, 1997, Nuclear Fuel Services, Inc. (NFS)—a Maryland corporation that serves as a prime contractor for the U.S. Department of Energy—filed suit in the Third District Court of the State of Utah against several defendants alleging conspiracy and unfair business practices in restraint of trade. The following parties are named as defendants to the action: Envirocare of Utah, Inc. and its President and CEO, Khosrow Semnani; Larry Anderson, a former state regulator with the Utah Division of Radiation Control; and Lavicka, Inc., a Utah corporation formed by Anderson.

NFS' lawsuit is based largely upon allegations contained in a separate action recently filed by Anderson and Lavicka against Semnani and Envirocare. That suit—*Anderson v. Semnani*—is currently pending before the same district court. (See *LLW Notes*, January 1997, pp. 1, 5–12.)

Factual Allegations

According to the complaint, in the late 1980s NFS conceived of a plan to acquire a uranium mining and milling complex in Garfield County, Utah, at which operations had been previously suspended. NFS planned to use the facility for the disposal of 11e.(2) tailings generated both on and off the site, as well as for the eventual re-opening of the uranium mining and milling operation. NFS' plan included possible use of the facility by DOE for the disposal of uranium and thorium tailings pursuant to DOE's Formerly Utilized Sites Remedial Action Program (FUSRAP), under which DOE planned to remove tailings from former mill and fabrication sites in densely populated areas of the country such as New York and New Jersey. In furtherance of its plan, NFS purchased the mining property in Garfield County in 1989.

Tailings: Definition and Governing Regulations

Tailings are what remains after usable metals such as uranium or thorium are extracted from ore. Uranium and thorium tailings, as well as FUSRAP material, are defined and governed by section 11e.(2) of the Atomic Energy Act, 42 U.S.C. § 2014(e)(2). Collectively referred to as 11e.(2) tailings, this material has a very low level of radioactivity such that the principal requirement for safe disposal is to contain it away from populated areas.

NFS contends that its business plan was made impossible because of a secret alliance between Khosrow Semnani and Larry Anderson under which Semnani, on behalf of Envirocare, agreed to compensate Anderson and/or Lavicka in exchange for Anderson's assistance in securing necessary permits and in driving off would-be competitors. (For a more detailed description of claims concerning the relationship between Semnani and Anderson, see *LLW Notes*, January 1997, pp. 1, 5–12.)

According to NFS, beginning in 1987, Anderson launched a campaign of overt and covert opposition to NFS' plan which included

- telling NFS that it needed to get a permit from the Utah Division of Radiation Control, even though Anderson knew, or should have known, that Utah had specifically disclaimed any intent to regulate 11e.(2) tailings;
- telling other state officials that Utah had regulatory authority over NFS' plan; and
- "tipping" the Salt Lake Tribune about NFS' plans and suggesting that the newspaper run a story to generate opposition.

NFS also contends that, as part of his opposition, Anderson repeatedly made false statements about NFS and its proposal, such as

- that NFS was an "irresponsible" entity;
- that the Garfield County site was in a National Recreation Area;
- that the site was located within five miles of an existing permanent dwelling and surface waters;
- that existing roads into the area were inadequate for hauling tailings;
- that the proposal was not economically viable and that the state might get stuck with cleanup and closure costs; and
- that annual monitoring costs to the state would exceed the fees to the state.

In fact, NFS claims that Anderson repeatedly stated publicly that any radioactive residues would go to Envirocare rather than to any competing site and that Anderson was instrumental in assisting Envirocare in getting an 11e.(2) license for the disposal of radioactive residues originally intended to go to the Garfield County facility. NFS also claims that Anderson made direct threats to NFS, including threats that he would

- cause the Utah Department of Transportation to prohibit transportation of 11e.(2) tailings along highways to the Garfield County site;
- induce the state to refuse to allow NFS to unload 11e.(2) tailings from rail cars for transportation to the Garfield County facility;
- prevent NFS from obtaining necessary state permits ancillary to the NRC disposal permit; and
- do everything in his power to block the NFS project.

NFS contends that it was forced to abandon its plan and sell the mining property in the 1990s as a result of Anderson's opposition. The company further alleges that as a result of Anderson's interference, Envirocare "is now the overwhelmingly dominant commercial 11e.(2) tailings disposal facility in the nation," having obtained a virtual monopoly on the line of business which it—with Anderson's assistance—blocked NFS from entering.

Causes of Action

NFS alleges four basic causes of action in support of its claim, which are as follows:

- **Contract or Combination in Restraint of Trade** The defendants' "secret alliance"—which NFS defines as a "contract, combination or conspiracy in restraint of trade or commerce"—had the intent and effect of preventing potential competitors to Envirocare from entering the radioactive residues disposal market.
- **Monopolization or Attempt at Monopolization** The "secret alliance" was an attempt by Envirocare to monopolize the radioactive residues disposal market, including disposal of 11e.(2) tailings. The arrangement had no legitimate business purpose and created a monopoly for the disposal of 11e.(2) tailings in violation of Utah law.
- **Civil Conspiracy** The "secret alliance" constituted an illegal civil conspiracy—"a combination of two or more actors with an object to be accomplished, namely, benefiting the private interests of Envirocare and obstructing and deterring all actual and potential competition, and a meeting of the minds on the object."
- **Interference with Prospective Economic Advantage** Defendants knew that NFS was intending to seek an NRC license for the commercial disposal of 11e.(2) tailings and intentionally and improperly interfered with NFS' business opportunity.

As a direct result of the defendants' actions, NFS claims that it was prevented from establishing a disposal facility for the commercial disposal of 11e.(2) tailings.

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Nuclear Fuel Services, Inc. v. Semnani (continued)

Requested Relief

NFS argues that Envirocare directed and/or knowingly benefited from Anderson's activities and therefore is legally liable for his actions as well as those of Lavicka. Accordingly, NFS requests that any judgment awarded be entered against Envirocare as well as the other defendants as agents of Envirocare.

NFS alleges that it has been injured as a result of the secret alliance in an amount not less than $193 million and that pursuant to Utah statute, the court should enter a judgment in favor of NFS for three times the amount of damages proven at trial together with interest and reasonable attorneys' fees. NFS further argues that, with regard to the latter two claims, it is entitled to an award of punitive damages or exemplary damages in an amount sufficient to punish the defendants and to deter others from similar conduct.

NFS included in its complaint a demand for trial by jury of issues that meet the test for a jury trial.

Envirocare's Response

Statement in Response to Filing of Complaint In response to the filing of NFS' lawsuit, Charles Judd, Executive Vice President of Envirocare, issued the following statement:

> The lawsuit filed ... by Nuclear Fuel Services, Inc. is nothing more than harassment. As NFS itself acknowledges, Envirocare did not even obtain a license for 11e.(2) waste until approximately four years after NFS abandoned its project. Moreover, the Envirocare license was issued by the Nuclear Regulatory Commission, not the State of Utah.
>
> Envirocare has a number of licenses granted by a wide range of state and federal agencies. No one agency or regulator has ever had sole authority over Envirocare's ability to operate and our company has a strong record of meeting or exceeding the many regulations and standards which govern our operations. It is curious that NFS never even applied for a disposal license, yet now seeks damages.
>
> We trust the court will see this lawsuit for what it is: harassment by a company who is seeking to use the legal system improperly.

Motion to Dismiss On April 22, Envirocare filed a motion to dismiss NFS' lawsuit. The motion states that NFS' claims of injury to its business or property are "beyond speculative." The motion contains allegations that

- NFS was not a competitor in the waste disposal business in Utah;
- NFS did not own or control any disposal facilities in Utah;
- NFS abandoned "even the most tentative of plans" to initiate the licensing and regulatory process; and
- NFS is suing "defendants who had no power to prevent the licensing of a possible waste facility" since it is the U.S. Nuclear Regulatory Commission, not Envirocare or Utah state officials, who is the primary licensing agency for an 11e.(2) license.

The motion concludes that it was NFS' "lack of a suitable facility and voluntary withdrawal of its plans without purchasing any disposal site, and without initiating or pursuing the licensing process," that excluded NFS from the market—not any action by Envirocare or state officials.

—TDL

Byrd v. Raines

Federal Court Finds Line-Item Veto Unconstitutional

On April 10, the U.S. District Court for the District of Columbia struck down the recently enacted Line-Item Veto Act (Pub. L. No. 104-130) as violative of the separation of powers doctrine of the U.S. Constitution. The act—which was signed into law on April 9, 1996, and became effective on January 1, 1997—was intended to give the President authority to cancel in whole, at any time up to five days after signing a bill into law, any dollar amount of appropriation, any item of new deficit spending, or any limited tax benefit contained in the bill. The White House has announced its intention to appeal the court's decision.

The court's ruling may be of interest to LLW Forum Participants not only for its obvious impact on federal agency budgetary matters, but also for its potential impact on the President's ability to veto state-sponsored legislation—such as the Ward Valley land transfer—which is attached to appropriations measures. (See LLW Notes, November/December 1995, pp. 14–16.)

The Decision

In a 37-page opinion, U.S. District Judge Thomas Penfield Jackson wrote that "[t]he power to 'make' the laws of the nation is the exclusive, nondelegable power of Congress." By giving the President the power to repeal laws or portions of laws that he does not like, Jackson held that the Line-Item Veto Act makes the President a "co-maker of the nation's laws." Jackson rules, however, that the Constitution does not allow the President to perform that role. "The president's contribution to the process is his approval of [or objection to] legislation as Congress presents it to him. His is merely a qualified check on the will of the legislature."

Jackson ruled that giving the President the power to remove portions of a statute after it has been signed into law would exceed the President's constitutional authority and prevent Congress from participating in the exercise of lawmaking authority. "The president's cancellation of an item unilaterally effects a repeal of statutory law such that the bill he signed is not the law that will govern the nation."

In addition, Jackson found that the act gives away powers exclusively reserved to Congress, thereby allowing Congress to duck its responsibilities.

> The line-item veto act ... hands off to the president authority over fundamental legislative choices. Indeed, that is ... [Congress'] reason for being. It spares Congress the burden of making those vexing choices of which programs to preserve and which to cut. Thus, by placing on itself the 'onus' of overriding the president's cancellations ... Congress has turned the constitutional division of responsibilities for legislating on its head.

Impact of Ruling

To date, the President has not exercised his authority under the act because Congress has not yet passed bills that might qualify for a line-item veto. Although the administration has announced its intention to request that the Supreme Court take up the matter for further review, the Court rarely takes such cases on short notice, making it unlikely that the case will be heard before the Court recesses this summer. Thus, the President is unlikely to have line-item veto power during this budget session unless the administration asks for a stay of the order and the judge grants the request.

Background

The lawsuit was filed on January 2, 1997 by Senators Byrd (D-WV), Hatfield (R-OR), Levin (D-MI), and Moynihan (D-NY); and Representatives Skaggs (D-CO), and Waxman (D-CA) against Franklin Raines, Director of the Office of Management and Budget, and Robert Rubin, Secretary of the Treasury. (See *LLW Notes*, February 1997, p. 19)

The plaintiffs claimed that passage of the Line-Item Veto Act caused direct and concrete injuries to them "by (a) altering the legal and practical effect of all votes they may cast on bills containing such separately vetoable items, (b) divesting the plaintiffs of their constitutional role in the repeal of legislation, and (c) altering the constitutional balance of powers between the Legislative and Executive Branches, both with respect to measures containing separately vetoable items and with respect to other matters coming before Congress." They requested that the court declare the act to be unconstitutional and that it find that any cancellations under the act are invalid.

—TDL

Northern States Power Company v. U.S. Department of Energy • Michigan v. U.S. Department of Energy

States/Utilities Seek to Escrow Nuclear Waste Payments

On January 31, two separate but similar petitions for review were filed against the U.S. Department of Energy concerning DOE's statutory and contractual duties to provide for the storage or disposal of high-level radioactive waste pursuant to the Nuclear Waste Policy Act of 1982 (NWPA). The petitions were filed in the U.S. Court of Appeals for the District of Columbia Circuit by a group of nuclear utilities and by a national coalition of states and Attorneys General, respectively.

Background

Nuclear Waste Policy Act The NWPA requires DOE to site, develop, license, and operate a deep geologic repository for the nuclear industry's spent fuel. It provides, however, that utilities have the primary responsibility for the interim storage of spent fuel until it is accepted by DOE in accordance with the act's provisions. Under the terms of the act, nuclear utilities and DOE are to enter into contracts whereby the utilities agree to make payments to the Nuclear Waste Fund to cover the cost of the federal disposal program in exchange for DOE's provision of a repository. In 1983, DOE developed a "standard contract" for this purpose.

Original Litigation In June 1995, several nuclear utilities, states, and state agencies filed suit against DOE—*Indiana Michigan Power Company v. U.S. Department of Energy*—seeking a court declaration that DOE is required to begin accepting spent fuel from utilities on or before January 31, 1998. DOE took the position that, given the absence of a repository or interim storage facility, the department was not statutorily or contractually obligated to accept the spent fuel. The U.S. Court of Appeals for the District of Columbia Circuit disagreed, ruling in favor of the plaintiffs on July 23, 1996. (See *LLW Notes*, October/November 1996, p. 26.)

DOE's Policy Statement On December 17, 1996, DOE sent a letter to signatories of the standard contract notifying them that it "will be unable to begin acceptance of spent nuclear fuel for disposal in a repository or interim storage facility by January 31, 1998 ... and is inviting the views of all contract holders on how the delay can best be accommodated."

The Petitions

The recently filed petitions for review allege that the petitioners and the ratepayers represented by them have been harmed by DOE's anticipated failure to meet its statutory and contractual duties in that they have paid more than $12 billion, including interest, into the Nuclear Waste Fund. DOE's default, according to the petitioners, will cause them to incur unnecessary and continuing costs, and also duplicative costs, including increased costs to provide for alternative on-site storage facilities, costs for reracking or rearranging storage capacity within generating facilities, added expenses for providing security and monitoring of storage sites, and higher nuclear decommissioning funding requirements.

The petitions request, among other things, that

- the court issue a declaration that petitioners and other standard contract signatories are relieved of their obligation to pay fees into the Nuclear Waste Fund and are authorized to place such fees in escrow—without penalty—unless and until DOE commences disposing of their spent fuel; and

- the court grant declaratory, injunctive, and other affirmative relief to enforce the court's decision in *Indiana Michigan* that DOE has an unconditional obligation to begin accepting spent nuclear fuel by January 31, 1998.

Scheduling: Next Steps

Earlier this year, DOE filed unopposed motions to exceed page limitations in anticipation of filing motions to dismiss the cases based upon (1) petitioners' failure to exhaust contractual remedies, and (2) language in the *Indiana Michigan* decision finding that the granting of remedies prior to the January 1998 deadline would be premature. In March, the court denied DOE's motions, indicating that the filing of motions on such grounds would not be appropriate at this time and that jurisdictional issues should instead be raised in briefs on the merits. It also consolidated the two cases and granted the motions of several public utility commissions and other groups to intervene.

On April 11, the petitioners filed a motion to expedite consideration of the cases by the court. DOE's responses to the motions are due on April 20. —*TDL*

Northern States Power Company v. U.S. Department of Energy

Petitioners

Northern States Power Company (MN)
Florida Power and Light Company (FL)
Duke Power Company (NC)
Vermont Yankee Nuclear Power Corporation (VT)
Niagara Mohawk Power Corporation (NY)
GPU Nuclear, Inc. (NJ)
Jersey Central Power and Light Company (PA)
Metropolitan Edison Company (PA)
Pennsylvania Electric Company (PA)
Wisconsin Public Service Corporation (WI)
Union Electric Company (MO)
Detroit Edison Company (MI)
Public Service Electric and Gas Company (NJ)
Florida Power Corporation (FL)
Wolf Creek Nuclear Operating Corporation (KS)
Kansas Gas and Electric Company (KS)
Kansas City Power and Light Company (MO)
Kansas Electric Power Cooperative, Inc. (KS)
Indiana Michigan Power Company (IN)
Peco Energy Company (PA)
Virginia Electric and Power Company (VA)
Consumers Power Company (MI)
Baltimore Gas and Electric Company (MD)
Centerior Energy Corporation (OH)
Consolidated Edison Company of New York, Inc. (NY)
Duquesne Light Company (PA)
MidAmerican Energy Company (IO)
New York Power Authority (NY)
Pennsylvania Power and Light Company (PA)
Entergy Operations, Inc. (MS)
Rochester Gas and Electric Corporation (NY)
Texas Utilities Electric Company (TX)
Carolina Power and Light Company (NC)
Pacific Gas and Electric Company (CA)
Commonwealth Edison Company (IL)
Boston Edison Company (MA)

Respondents

U.S. Department of Energy
United States of America

Michigan v. U.S. Department of Energy

Petitioners

State of Michigan
Michigan Public Service Commission
State of Minnesota
Minnesota Department of Public Service
Minnesota Public Utilities Commission
State of Connecticut
Connecticut Department of Public Utility Control
State of Florida
Florida Public Service Commission
Arkansas Public Service Commission
Commonwealth of Massachusetts
Maryland Public Service Commission
South Dakota Public Utilities Commission
Missouri Public Service Commission
State of Delaware
Wisconsin Public Service Commission
State of Kansas
Kansas Corporation Commission
Iowa Utilities Board
California Public Utilities Commission
State of Vermont
Vermont Public Service Board
New York State Public Service Commission
Pennsylvania Public Utility Commission
Alabama Public Service Commission
Commonwealth of Kentucky
State of Rhode Island and Providence Plantations
State of Arkansas
State of Maryland
New Hampshire Office of the Consumer Advocate
State of New Hampshire
State of Nebraska
State of Iowa
New Jersey Board of Public Utilities
State of Illinois
Illinois Commerce Commission
State of Georgia
State of Mississippi
Mississippi Public Service Commission
North Dakota Public Service Commission
Commonwealth of Virginia
State of Indiana
Public Service Commission of South Carolina
North Carolina Utilities Commission
State of Maine
Public Utilities Commission of Ohio

Respondents

U.S. Department of Energy
Secretary of the Department of Energy
United States of America

Court Calendar

Case Name	Description	Court	Date	Action
Appalachian States Low-Level Radioactive Waste Commission v. O'Leary (See *LLW Notes*, October 1996, p. 4.)	Seeks the release of all surcharge fees, collected from Appalachian region generators, being held in an escrow account by Department of Energy Secretary Hazel O'Leary.	United States Court of Appeals for the Third Circuit	March 10, 1997 May 21, 1997	DOE filed a response to the commission's Reply to the Answer to Petition for Panel Rehearing. Oral argument is tentatively scheduled to begin.
Byrd v. Raines (See related story, this issue.)	Challenges the constitutionality of recent congressional legislation that grants to the President a line-item veto.	U.S. District Court for the District of Columbia	April 10, 1997 April 1997	Court issued an order striking down Line-Item Veto Act as violative of the U.S. Constitution. President Clinton announced his intent to appeal the district court's decision to the Supreme Court.
California Department of Health Services v. Babbitt (See *LLW Notes*, March 1997, pp. 1, 16–20.)	Seeks to compel the Department of Interior to transfer the Ward Valley land to California and to issue the patent approved by DOI four years ago.	U.S. District Court for the District of Columbia	April 28, 1997	Defendants' answer to the filing of the complaint is due.
Nebraska v. Central Interstate Low-Level Radioactive Waste Commission (See *LLW Notes*, February 1997, pp. 14-16.))	Seeks a declaration that recent motions of the commission seeking to impose deadlines and restrictions on state regulatory agencies are unlawful, or unreasonable and therefore invalid. The complaint requests a jury trial on the matter.	United States District Court for the District of Nebraska	April 10, 1997 April 15, 1997	Court issued an order striking the state's jury demand. Court issued an order denying commission's motion to dismiss portions of the complaint.

Court Calendar *continued*

Case Name	Description	Court	Date	Action
Nuclear Fuel Services, Inc. v. Semnani (See related story, this issue.)	Involves a claim that Envirocare, its president, and a former Utah state regulator engaged in unfair business practices in restraint of trade/conspiracy.	facility. Third District Court of the State of Utah	Federal Claims March 10, 1997 April 22, 1997	NFS filed a complaint. Envirocare filed a motion to dismiss the complaint.
Stilp v. Knoll (See *LLW Notes*, October 1996, p. 25.)	Challenges the legislative procedures used in Pennsylvania to pass Act 12 of 1988, known as the Low-Level Radioactive Waste Disposal Regional Facility Act.	Supreme Court of Pennsylvania Common-wealth Court of Pennsylvania	February 18, 1997 March 3, 1997	Court issued an order upholding the decision of a lower court to deny the commission's request to intervene in the action. Petitioners filed a Motion to Lift Stay of Proceedings.
US Ecology v. Nebraska	Challenges the determination by Nebraska regulatory agencies that the placement of fill in a depression constitutes an unlawful "commencement of construction."	District Court of Lancaster County, Nebraska	April 14, 1997 May 17, 1997	Plaintiff filed a Petition for Declaratory Judgement and Injunctive Relief and Praecipe. Defendant's response to the petition is due.
US Ecology v. United States of America (See related story, this issue.)	Involves a claim of breach of contract for failure to sell 1,000 acres of federal land in Ward Valley to the state for use in siting a LLRW disposal	U.S. Court of	January 30, 1997 April 30, 1997	U.S. Ecology filed a complaint. Defendant's response is due.
US Ecology v. U.S. Department of Interior (See related story, this issue.)	Seeks to compel the Department of Interior to transfer the Ward Valley land to California and to issue the land patent approved by DOI four years ago.	U.S. District Court for the District of Columbia	February 24, 1997 April 28, 1997	US Ecology filed a complaint. Defendants' response is due.

High-Level Waste Bill Passes Senate

On April 15, following weeks of legislative maneuvering and negotiation, the U.S. Senate passed S. 104—the Nuclear Waste Policy Act of 1997—by a vote of 65 to 34. The final tally was two votes shy of the two-thirds majority needed to override a threatened presidential veto—but two votes higher than last year's tally on similar legislation. Twelve Democrats and 53 Republicans voted in favor of this year's bill, and 32 Democrats and 2 Republicans opposed it.

Attention will now focus on the U.S. House of Representatives, whose Commerce Committee is scheduled to begin hearings on the House version of the high-level waste bill on April 29. That bill, H.R. 1270, is expected to pass the House by a wide margin.

Senate Bill

S. 104 was introduced in the Senate by Senators Frank Murkowski (R-AK), Chair of the Energy and Natural Resources Committee, and Larry Craig (R-ID) on January 21. (See *LLW Notes*, February 1997, p. 22.) The bill calls for construction of a temporary storage facility for high-level radioactive waste and spent nuclear fuel at Yucca Mountain, Nevada. Such waste and spent fuel is currently being stored at reactors in 41 states across the country.

The legislation is highly controversial, however, and President Clinton has threatened to veto it. In an effort to gain support and avoid a veto, the bill was amended several times prior to passage. The amended bill allows for acceptance of waste at an interim storage facility as early as 2003—provided, however, that the proposed permanent facility at Yucca Mountain is found to be suitable. As amended, the bill prohibits use of the Oak Ridge, Savannah River, or Hanford nuclear facilities for interim storage if the permanent repository at Yucca Mountain does not prove to be viable.

House Bill

H.R. 1270 was introduced in the House by Representative Fred Upton (R-MI) on April 10. The bill, which has more than 60 co-sponsors, is similar to the nuclear waste bill Upton introduced in 1995. It contains, however, at least one significant difference in that the new bill postpones commencement of operations at the interim facility from 1998 to 2000. The delay is an attempt to address White House concerns that an interim storage facility will take away resources from the proposed permanent repository or that it will bias the Energy Department's scheduled 1998 decision on the suitability of a permanent repository at Yucca Mountain.

Related Issue

In 1996, a federal appeals court told DOE that it was obligated to take spent fuel from commercial nuclear power plants beginning in 1998 pursuant to the Nuclear Waste Policy Act of 1982 and to the "standard contracts" entered into between the department and the utilities. DOE decided not to appeal the court's decision, but subsequently announced that it will not have a facility available to accept the waste by the 1998 deadline. Recently, several utilities and states filed suit to enforce the court's decision and to suspend payments to the Nuclear Waste Fund.

(See related story, this issue.)

—TDL

Senate Vote on S. 104, the Nuclear Waste Policy Act of 1997

Appalachian Compact				
DE	Joseph	Biden	D	N
DE	William	Roth	R	Y
MD	Barbara	Mikulski	D	N
MD	Paul	Sarbanes	D	N
PA	Rick	Santorum	R	Y
PA	Arlen	Specter	R	Y
WV	Robert	Byrd	D	N
WV	Jay	Rockefeller	D	NV
Central Compact				
AR	Dale	Bumpers	D	N
AR	Tim	Hutchinson	R	Y
KS	Sam	Brownback	R	Y
KS	Pat	Roberts	R	Y
LA	John	Breaux	D	N
LA	Mary	Landrieu	D	N
NE	Chuck	Hagel	R	Y
NE	Bob	Kerrey	D	N
OK	James	Inhofe	R	Y
OK	Don	Nickles	R	Y
Central Midwest Compact				
IL	Richard	Durbin	D	N
IL	Carol Moseley-Braun		D	Y
KY	Wendell	Ford	D	N
KY	Mitch	McConnell	R	Y
Midwest Compact				
IN	Dan	Coats	R	N
IN	Richard	Lugar	R	Y
IA	Charles	Grassley	R	Y
IA	Tom	Harkin	D	Y
MN	Rod	Grams	R	Y
MN	Paul	Wellstone	D	N
MO	John	Ashcroft	R	Y
MO	Christopher	Bond	R	Y
OH	Mike	DeWine	R	Y
OH	John	Glenn	D	N
WI	Russ	Feingold	D	N
WI	Herb	Kohl	D	Y

Northwest Compact				
AK	Frank	Murkowski	R	Y
AK	Ted	Stevens	R	Y
HI	Daniel	Akaka	D	N
HI	Daniel	Inouye	D	N
ID	Larry	Craig	R	Y
ID	Dirk	Kempthorne	R	Y
MT	Max	Baucus	D	N
MT	Conrad	Burns	R	Y
OR	Gordon	Smith	R	Y
OR	Ron	Wyden	D	Y
UT	Robert	Bennett	R	Y
UT	Orrin	Hatch	R	Y
WA	Slade	Gorton	R	Y
WA	Patty	Murray	D	Y
WY	Michael	Enzi	R	Y
WY	Craig	Thomas	R	Y
Rocky Mountain Compact				
CO	Wayne	Allard	R	Y
CO	Ben Nighthorse	Campbell	R	N
NV	Richard	Bryan	D	N
NV	Harry	Reid	D	N
NM	Jeff	Bingaman	D	N
NM	Pete	Domenici	R	Y
Southeast Compact				
AL	Jeff	Sessions	R	Y
AL	Richard	Shelby	R	Y
FL	Bob	Graham	D	Y
FL	Connie	Mack	R	Y
GA	Max	Cleland	D	Y
GA	Paul	Coverdell	R	Y
MS	Thad	Cochran	R	Y
MS	Trent	Lott	R	Y
NC	Lauch	Faircloth	R	Y
NC	Jesse	Helms	R	Y
TN	Bill	Frist	R	Y
TN	Fred	Thompson	R	Y
VA	Charles	Robb	D	Y
VA	John	Warner	R	Y

Northeast Compact				
CT	Christopher	Dodd	D	N
CT	Joseph	Lieberman	D	N
NJ	Frank	Lautenberg	D	N
NJ	Robert	Torricelli	D	N
Southwestern Compact				
AZ	Jon	Kyl	R	Y
AZ	John	McCain	R	Y
CA	Barbara	Boxer	D	N
CA	Dianne	Feinstein	D	N
ND	Kent	Conrad	D	N
ND	Byron	Dorgan	D	N
SD	Thomas	Daschle	D	N
SD	Tim	Johnson	D	Y
Texas Compact				
ME	Susan	Collins	R	Y
ME	Olympia	Snowe	R	Y
TX	Phil	Gramm	R	Y
TX	Kay Bailey	Hutchison	R	Y
VT	James	Jeffords	R	Y
VT	Patrick	Leahy	D	Y
Massachusetts				
	Edward	Kennedy	D	N
	John	Kerry	D	N
Michigan				
	Spencer	Abraham	R	Y
	Carl	Levin	D	Y
New Hampshire				
	Judd	Gregg	R	Y
	Robert	Smith	R	Y
New York				
	Alfonse	D'Amato	R	Y
	Daniel	Moynihan	D	N
Rhode Island				
	John	Chafee	R	Y
	Jack	Reed	D	N
South Carolina				
	Ernest	Hollings	D	Y
	Strom	Thurmond	R	Y

U.S. Nuclear Regulatory Commission (NRC)

NRC Releases Decommissioning Rule

On April 2, the NRC Commissioners made available to the public the proposed final version of NRC's decommissioning rule, which will set standards for the decontamination, closure, and license termination of facilities licensed by NRC. Agreement States will be required to adopt regulations compatible with NRC's decommissioning rule. NRC has not yet determined when the decommissioning rule will be published in the Federal Register as a final rule, and NRC is not requesting public comments on the proposed final decommissioning rule at this time.

Changes From 1994 Proposed Rule *The current rule contains modifications from the proposed rule that NRC published in August 1994. (See LLW Notes, Aug./Sept. 1994, p. 25 and July 1994, pp. 24-25.) The following excerpts from the staff analysis paper that accompanies the decommissioning rule highlight the modifications.*

Dose Criterion for Release of a Facility for Unrestricted Use

> The dose criterion for release of a facility for unrestricted use has been modified in §20.1402 of the rule to be 25 mrem/yr Total Effective Dose Equivalent (TEDE) to the average member of the critical group. The proposed requirement that facilities demonstrate that they have also reduced the dose to ALARA [As Low As Reasonably Achievable] levels below the dose criterion has been retained. The value of the dose criterion in the proposed [1994] rule was 15 mrem/yr TEDE which, as noted in the preamble to the proposed rule ... was selected to provide a substantial margin of safety below the public dose limit of 100 mrem/yr in 10 CFR Part 20 ...
>
> In its review of public comments, the staff reevaluated the principal basis for the 15 mrem/yr criterion in the proposed rule based on its review of potential exposure scenarios; on health physics protection principles and recommendations contained in ICRP [International Council on Radiation Protection] No. 60, NCRP [National Council on Radiation Protection] No. 116, and the Draft Federal Radiation Protection Guidance (FRG); and recommendations from the Advisory Committee on Nuclear Waste (ACNW). Based on this reevaluation, the staff concludes that 25 mrem/yr is a more appropriate criterion because it provides a sufficient and ample margin of safety in protection of public health and safety considering the low probability that a person may be exposed to more than a few potential sources over a lifetime.

Release of a Facility for Restricted Use

> Restricted use has been retained as an option in the final rule (§20.1403). The final rule continues to note that unrestricted use is preferable because it results in sites that generally have lower levels of contamination than at restricted sites. However, based on the analysis in the Final GEIS [Generic Environmental Impact Statement] and on staff experience with actual sites, restricted use, when properly designed in accordance with the rule's provisions, can provide a more cost-effective alternative than unrestricted use for some facilities. Thus, the level of justification has been modified from a showing that remediation to unrestricted levels is prohibitively expensive to an ALARA consideration.

Alternate Site Specific Criteria

> The preamble to the proposed rule recognized that there would likely be facilities which would seek exemptions from the proposed rule ... [B]ecause it is preferable to deal with those facilities under the aegis of a rule rather than as exemptions and because the 25 mrem/yr dose criterion is established as providing a sufficient and ample, rather than necessary, margin below the public dose limit, the staff has included a provision for alternate criteria in the final rule.

Removal of a Separate Standard for Ground Water

> The final rule has deleted the requirement that a separate groundwater requirement be met. The proposed rule indicated that, in addition to meeting the 15 mrem/yr TEDE dose criterion, any contamination in groundwater must be reduced to levels less than the values in 40 CFR 41 ... The rationale for dropping this provision in the final rule is that such a requirement is unnecessary

and inappropriate for protection of public health and safety with the promulgation of the all-pathways standard in this rule; i.e., there is no reason from the standpoint of protection of public health and safety to have a separate, lower criterion for a single pathway as long as, when combined, the contributions from all pathways do not exceed the total dose standard established in the rule.

Public Involvement Provisions

The final rule has retained the requirement in §20.1403 to seek advice from affected parties and to document how this advice was sought, specifically, when a licensee proposes restricted use. However, this requirement has been modified to make it more flexible. The final rule still requires the licensee to seek advice from the public but has deleted the specific requirement for an SSAB [Site Specific Advisory Board] ... The reasons for the requirement to seek such advice is that it is reasonable, particularly when a licensee is proposing a restricted use, to obtain advice from those in the community who will be affected by the restrictions placed on land use and will have knowledge of whether the proposed institutional controls perform the intended functions of keeping the dose below the criteria of the rule.

—LAS

Commission Decision on Future of LLRW Program

The Commission …support[s] Option 3 to maintain the current low-level waste program ... In carrying out Option 3, the staff should make every effort to maintain the core technical disciplines needed to assess low-level disposal issues, but these technical experts should be utilized in other NRC programs as appropriate.

For further information, see "New Materials and Publications."

U.S. Environmental Protection Agency (EPA)

EPA Region VI re La Paz Agreement

In a January 29 letter, Samuel Cohen, Director of EPA Region VI's Compliance Assurance and Enforcement Division, responded to questions regarding EPA's jurisdiction over the proposed low-level radioactive waste disposal facility in Hudspeth County, Texas. The questions were raised by Richard Boren, Coordinator of the International Environmental Alliance of the Bravo, during the October 1996 Environmental Justice Enforcement Roundtable in San Antonio, Texas.

EPA Region VI includes the states of Arkansas, Louisiana, New Mexico, Oklahoma and Texas.

1. What is EPA's position on the proposed siting of …[a low-level radioactive waste disposal facility in Hudspeth County, Texas] on the [U.S.-Mexico] Border as it relates to the La Paz Agreement?

The La Paz Agreement states that Parties agree to coordinate their efforts, in conformity with their own national legislation and existing bilateral agreements, to address problems of air, land and water pollution in the border area (Article 5). It further states that, to implement the Agreement, the Parties shall consider and, as appropriate, pursue in a coordinated manner practical, legal, institutional and technical measures for protecting the quality of the environment in the border area (Article 6).

Members of the Mexican government have interpreted these statements to mean that the establishment of any new sources of pollution in the border area are prohibited. However, EPA disagrees, and interprets the statements as only requiring consultation and notification. EPA has no authorities to prohibit new sources of emissions in the border area, if those sources otherwise meet applicable legal requirements. EPA consulted with the State Department on this point, and the State Department agreed with EPA's interpretation.

—LAS

EPA, NRC Debate NRC's Decommissioning Rule

No Progress re Approaches to Risk Harmonization

Prior to NRC's April 2 release of the decommissioning rule—*Radiological Criteria for License Termination* (10 CFR Part 20)—EPA and NRC exchanged correspondence related to specific aspects of the rule. The correspondence reflects disagreement between the two agencies on

- the approach to environmental pathways (whether there should be a separate standard for the protection of ground water);
- acceptable risk (numerical cut-points and processes for ensuring compliance);
- internal consistency of both EPA and NRC guidance and rules;
- consistency between the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and NRC's decommissioning rule; and
- comparative risks posed by the remediation of sites or facilities contaminated by source material, NORM, or indoor radiation.

EPA and NRC Authority re Decommissioning

Reorganization Plan No. 3 (1970) created EPA and granted EPA the authority to develop "generally applicable environmental standards" for protection of the general environment. Under several major federal statutes, EPA also has the authority to regulate specific hazardous materials, including radionuclides. NRC's authority to regulate radioactive materials is derived from the Atomic Energy Act of 1954, as amended. For several years, both EPA and NRC have been developing rulemakings to address the cleanup of sites contaminated with radioactive materials.

EPA's rule would apply to federal facilities, including DOE and U.S. Department of Defense facilities, but NRC licensees could also be potentially subject to EPA's radiation site cleanup rule (40 CFR Part 196). However, EPA and NRC signed a 1992 Memorandum of Understanding (MOU) under which EPA can make a determination as to whether NRC's standards provide a sufficient level of protection for public health and safety and the environment. In cases where EPA concludes that the NRC standards are sufficient, then EPA publishes its findings in the *Federal Register* for notice and comment, and proposes that NRC licensees be exempt from the EPA standards. This process was used by EPA to rescind Subpart I of the National Emissions Standards for Hazardous Air Pollutants (NESHAPs) in December 1996. (See *LLW Notes*, Jan. 1997, pp. 13-15.)

In a December 19 letter to the Office of Management and Budget (OMB), EPA Assistant Administrator Mary Nichols stated that EPA was withdrawing its radiation site cleanup rule from OMB review. (See *LLW Notes*, Feb. 1997, pp. 26-27.) OMB must review and approve regulations having a significant fiscal impact that are promulgated by executive branch agencies before the regulations are finalized. The Nichols' letter stated that EPA will continue to work with DOE, however, and reserves the right to resubmit the radiation site cleanup rule to OMB at a later date.

Absent an EPA radiation site cleanup rule, an NRC decommissioning rule—once finalized—would set the standards for the remediation of lands and structures for site closure for facilities licensed by NRC. (See related story, this issue.)

EPA Concerned re "Significant Changes" to NRC's Rule

Despite withdrawal of the EPA rule, EPA Administrator Carol Browner, in a February 7 letter to NRC Chairman Shirley Ann Jackson, described some EPA concerns regarding the NRC decommissioning rule.

> We are concerned that NRC is giving particular consideration to making significant changes from its proposed rule of August 22, 1994. The [EPA] finds these changes, such as increasing the proposed dose limit from 15 mrem/yr and eliminating a separate requirement for protecting ground water that could be used as drinking water to the Maximum Contaminant Levels (MCLs) established under the Safe Drinking Water Act, to be disturbing ...
>
> If in fact our understanding is correct, then EPA would also consider NRC's rule to be not protective under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) and not consistent with this and previous Administrations' Ground Water Policy. EPA has the authority to choose not to respond to certain types of releases under CERCLA because existing regulatory or other authority under other Federal statutes provides for an appropriate response. EPA has previously chosen not to list on its National Priorities List (NPL) for CERCLA releases of source, by-product, or special nuclear material from any facility with a current license issued by the NRC. This decision was made on the grounds that the NRC has full authority to require cleanup of releases from such facilities.
>
> If NRC were to promulgate its rule with the above-referenced changes, EPA would be forced to reconsider its policy of exempting NRC sites from the NPL. This change in EPA listing policy for the NPL would reflect the EPA view that NRC regulation would not be adequately protective of human health and the environment under CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP).

NRC: Final Rule "May Differ" from EPA Recommendations

NRC Chairman Jackson responded to these issues in a February 21 letter to EPA Administrator Browner. NRC's letter provides the general principles that the Commission is following in the decommissioning rulemaking:

> [T]he nation deserves a uniform approach to radiation regulation which protects people from significant hazard regardless of the source, whether it is Atomic Energy Act materials, naturally occurring materials, or other materials, and which focuses regulatory resources on the most significant hazards. Further, below an upper safety limit, cost-benefit considerations must apply in site-specific implementation of the radiation protection standards...
>
> The NRC staff is currently engaged in preparing a final rule for Commission consideration ... [T]here is a possibility that in the final rule, when promulgated, the NRC approach may differ from what EPA is recommending. However, the Commission believes that its position on these matters will be consistent with the above principles, as well as with the proposed Federal Radiation Protection guidance. [See *LLW Notes*, Jan./Feb. 1995, p. 24.]

continued on page 36

NRC/EPA (continued)

Status of Risk Harmonization Activities

1992 Memorandum of Understanding

Under the 1992 MOU, both EPA and NRC agreed to pursue harmonization of risk goals and to cooperate in developing a mutually agreeable approach to risk assessment methodologies. If differences cannot be resolved, the MOU states that the issues in question are to be presented to the heads of both agencies for resolution. The MOU also states,

> If both agencies agree ... that duplicative regulation in a particular area is undesirable, but nevertheless required by law, then the agencies will cooperate in considering and, if appropriate, supporting legislative changes.

GAO Recommends Broader Consensus on Federal Radiation Standards

In 1994, the U.S. General Accounting Office (GAO) completed a report—Nuclear Health and Safety: Consensus on Acceptable Radiation Risk to the Public is Lacking—recommending that EPA and NRC, in cooperation with other federal agencies, broaden risk harmonization efforts to pursue "interagency consensus on preferred radiation dose and risk calculation methods and radiation protection strategies, as well as an overall consensus on how much radiation risk to the public is acceptable." (See *LLW Notes*, Nov./Dec. 1994, p. 36.)

Senator John Glenn (D-Ohio), who released the GAO report, requested that EPA and NRC develop a plan "to address inconsistencies, gaps, and overlaps in current radiation protection standards."

Interagency Steering Committee on Radiation Standards Expanded

In January 1995, EPA and NRC transmitted the plan for federal radiation protection risk harmonization activities to Senator Glenn. (See *LLW Notes*, Jan./Feb. 1995, pp. 20-24.) A key provision of the plan was to expand the focus of the Interagency Steering Committee on Radiation Standards (ISCORS) to "review, prioritize and reduce the gaps and overlaps in radiation protection standards in key policy areas." ISCORS is comprised of federal agency staff members. In addition, William Dornsife, Pennsylvania Department of Environmental Protection and Chair of the Conference of Radiation Control Program Directors, attends ISCORS meetings as an observer.

No Progress on Mutually Agreeable Approach

NRC Chairman Jackson's February 21 letter to EPA Administrator Browner describes the status of risk harmonization efforts undertaken by ISCORS:

> As you know, the two staffs [EPA and NRC] have been engaged in continuous dialogue on the difficult issues related to this [decommissioning] rulemaking for some time, and the Commission believes that a thorough exchange of views at the staff level has already occurred without progress on reaching a mutually agreeable approach to risk harmonization. However, if you would find it useful, I would be pleased to meet with you to discuss general EPA-NRC interface issues. In the event that we agree that legislation is needed to achieve risk harmonization, as contemplated in our 1992 MOU, I am prepared to discuss that option.
>
> —*LAS*

For further information, see "New Materials and Publications."

New Materials and Publications

Document Distribution Key	
P Forum Participants	N LLW Notes Recipients
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LLW Forum

DM *Meeting Packet: LLW Forum meeting, May 7-9, 1997.*

— *LLW Forum Meeting Agenda.* Afton Associates, Inc. May 1997.

— *LLW Forum Meetings-at-a-Glance Schedule*. Afton Associates, Inc. May 1997.

— *LLW Forum Meeting Preattendance List.* Afton Associates, Inc. May 1997.

— *Status of Technical Assistance. DOE's National Low-Level Waste Management Program.* May 1997.

— SECY-96-103 from James Taylor, Executive Director for Operations, NRC, to the NRC Commissioners re staff approached on the principal regulatory issues in the low-level radioactive waste performance assessment. May 17, 1996. The paper addresses concerns about the branch technical position, Low-Level Radioactive Waste Performance Assessment Development Program Plan (SECY-92-060). The paper also contains staff recommendations for resolving the four key regulatory issues in the branch technical position: the time frame for performance assessment; considerations of future site conditions, processes and events; performance of engineered barriers; and the treatment of sensitivity and uncertainty analyses.

States and Compacts

Central Midwest Compact/ Illinois

1995 Annual Survey Report. Illinois Department of Nuclear Safety (IDNS). December 1996. Summarizes data received from generators and brokers of low-level radioactive waste in Illinois in 1995. Includes information on volume and activity of LLRW shipped, radionuclides shipped, waste containers for direct shipments to disposal facilities, on-site storage for decay, on-site treatment and reduction techniques, mixed waste, and LLRW projections. To obtain a copy, contact Marcia Marr of IDNS at (217)785-9958.

Northeast Compact/ Connecticut/New Jersey

1996 Annual Report. Northeast Interstate Low-Level Radioactive Waste Commission. Includes information on activities of the commission and its member states for July 1, 1995, through June 30, 1996 (FY '96). Also includes data on low-level radioactive waste volumes and activity, as well as an auditor's report. To obtain a copy, contact the Northeast Compact at (860)633-2737.

Massachusetts

1995 Massachusetts Low-Level Radioactive Waste Survey Report. Massachusetts Low-Level Radioactive Waste Management Board. February 1997. Profiles and categorizes low-level radioactive waste produced, stored, treated, and shipped for disposal during 1995. Compares historic, current, and projected volumes and radioactivity of Massachusetts waste, and discusses the impact of radioactive decay on waste activity. Also contains an inventory of all companies and institutions that reported generating or storing low-level radioactive waste during 1995. To obtain a copy, contact the Management Board at (617)727-6018.

Southwestern Compact/ California

- Letter from John Pierson, Deputy Director and Chief Counsel, and Peter Baldridge, Senior Staff Attorney, California Department of Health Services (DHS), to Edward Hastey, State Director, U.S. Bureau of Land Management (BLM), Department of the Interior, in response to Hastey's March 21 letter advising DHS that a new permit would be required for BLM to allow additional testing in Ward Valley. Baldridge and Pierson take exception to this position and propose to move forward with the testing under the current BLM permit. April 2, 1997.

- Letter from Edward Hastey, State Director, BLM, Department of the Interior to Peter Baldridge, Senior Staff Attorney, California DHS, in response to Baldridge's April 2 letter. Hastey maintains BLM's position that the proposed testing would require a new permit. April 3, 1997.

Nuclear Regulatory Commission (NRC)

- Letter from NRC Chairman Shirley Ann Jackson to U.S. Representative Jerry Lewis (R-CA) re recommendations by San Bernardino County Supervisor Jon Mikels to amend the Low-Level Radioactive Waste Policy Act. March 27, 1997.

  Letter from John Hoyle, Secretary, NRC, to L. Joseph Callan, NRC Executive Director for Operations, announcing the final decision of the Commission regarding the future of NRC's low-level waste program under the strategic assessment initiative. March 7, 1997.

- Letter from NRC Chairman Shirley Ann Jackson to Carol Browner, Administrator, Environmental Protection Agency, in response to Browner's letter of February 7 concerning ground water remediation and cleanup levels. February 21, 1997. Available from the NRC Public Document Room.

Mousseau Heads DOE's National Low-Level Waste Management Program

Jeffrey Mousseau of Lockheed Martin Idaho Technologies Company has been appointed to oversee DOE's National Low-Level Waste Management Program at the Idaho National Engineering and Environmental Laboratory (INEEL). Mousseau, a registered professional engineer, is currently Department Manager in the Waste Operations Directorate Waste Technology Planning and Projects Department at Lockheed Martin. His sixteen years of managerial and technical experience include the areas of waste operations planning; technology development and privatization; environmental management and regulation; commercial resource utilization; cost estimating and funding; process, mechanical and electrical review; and equipment design and installation.

Mousseau has a bachelor of science degree in mechanical engineering. He has also done post-graduate work in the areas of waste management, environmental regulations, project management, business, and environmental and labor law. In addition, he has completed 15 months of the DOE/University of Washington Technical Japanese Program for Professionals.

—MAS

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**

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- U.S. Senate Document Room . . . . . **(202)228-2815**
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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. As of March 1996, 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
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
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.

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