LLWnotes

Volume 14, Number 4 May 1999

U.S. Army Corps of Engineers

Officials Dispute the Legality of Disposing of FUSRAP Waste at California Hazardous Waste Facility

The U.S. Army Corps of Engineers recently disposed of 2,164 tons of building debris containing residual radiological contamination at a hazardous waste disposal facility in California that the state argues is not licensed to accept such waste. The 6,400 cubic yards of waste—which includes trace amounts of uranium, thorium, and radium—comes from the dismantlement of a World War II-era industrial facility in Tonawanda, New York, that separated uranium from ore as part of the Manhattan Project to produce the first atomic bomb. The waste is mainly in the form of broken concrete and wood. It was shipped to a facility in Buttonwillow, California, operated by the Safety-Kleen Corporation of Columbia, South Carolina (formerly known as Laidlaw Environmental Services).

The Buttonwillow facility possesses a hazardous waste disposal permit, issued by the California Department of Toxic Substances Control, which allows disposal of materials with low levels of naturally occurring radioactivity (NORM). The facility does not have a radioactive waste disposal license from the California Department of Health Services (DHS)—the state agency with jurisdiction over the shipment, storage, and disposal of radioactive materials.

continued on page 31

DOE on FUSRAP Waste (1983)

In October 1983, the Subcommittee on Nuclear Power of the National Governors' Association sent a letter to DOE inquiring, among other things, if FUSRAP waste qualifies as low-level radioactive waste under the definition contained in the Nuclear Waste Policy Act and if such waste constitutes a state responsibility under the Low-Level Radioactive Waste Policy Act.

DOE sent a response in December 1983 which states, in part, as follows:

> FUSRAP waste does not typically qualify as low-level radioactive waste under the definition contained in the Nuclear Waste Policy Act of 1982. Rather, FUSRAP waste generally qualifies as byproduct material as defined in Section 11(e)(2) of the Atomic Energy Act of 1954, as amended. To the extent that certain FUSRAP waste may qualify as low-level waste, it is the policy of the Department of Energy (DOE) that its disposal remains the responsibility of the Department.

In This Issue

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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.

Table of Contents

LLW FORUM

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Key to Abbreviations

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

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Appalachian Compact Names Maryland Officials Collins and Bowles as Forum Participant and Alternate Forum Participant

On April 13, Appalachian Compact Commission Chair James Seif named Richard Collins and Alvin Bowles of Maryland as Forum Participant and Alternate Forum Participant, respectively, for the Appalachian Compact.

Richard Collins, Forum Participant

Richard Collins is the Alternate Commissioner representing Maryland on the Appalachian Compact Commission. He is also the Director of the Waste Management Administration in the Maryland Department of the Environment. In this capacity, Collins has authority over permitting, enforcement actions, and response actions. He also has planning responsibility for programs concerning hazardous, municipal, medical and radioactive wastes; sewage sludge; recycling; state and federal Superfund; brownfields; above- and below-ground storage tanks; and lead poisoning prevention and abatement.

Before assuming the directorship of the Waste Management Administration in 1991, Collins held positions within the agency as Deputy Director and as an Administrator. He has also served the state as a staff person in the Environmental Evaluation Section of the State Highway Administration.

Collins holds a bachelor's degree in environmental resource management from the University of Maryland.

Collins negotiated on behalf of Maryland concerning membership in the Southeast, Northeast, Midwest and Appalachian low-level radioactive waste compacts. He has had extensive experience working with the Maryland General Assembly as a state agency spokesperson. He currently serves on the Governor's Solid Waste Management Task Force and has previously served on the Governor's Task Force on Hazardous Waste Initiatives and the Governor's Port of Baltimore Land Use Task Force. He is a member of both the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) and the Central Atlantic State Solid Waste Directors Caucus. In addition, he is an instructor for a waste management presentation at the semi-annual "Principles of Environmental Health" course taught to local government officials and inspectors, sponsored by the Maryland State Board of Environmental Sanitarians and the Department of Health's Association of Environmental Health Directors.

Alvin Bowles, Alternate Forum Participant

Alvin Bowles is the Administrator of the Regulatory and Technical Assistance Program in the Waste Management Administration of Maryland's Department of the Environment. As such, he directs policy development and coordinates plans for the Waste Management Administration in areas including hazardous waste, low-level radioactive waste, recycling, and lead poisoning prevention and remediation.

Before assuming his current position, Bowles served the state as the Administrator of the Planning and Resource Management Program, the Administrator of the Hazardous Waste Program, the Division Chief for Hazardous Waste, and as a section head and staff person for the Maryland Air Management Administration.

Bowles received a bachelor's and a master's degree in chemical engineering from the University of Maryland. He is a registered professional engineer in the State of Maryland.

Bowles is a member of the Maryland Citizens' Advisory Commission on Chemical Demilitarization and of the Maryland Lead Poisoning Prevention Commission.

—MAS

Nebraska Governor Appoints Forum Participant Linder and Alternate Forum Participant Ringenberg

On March 9, Nebraska Governor Mike Johanns (R) named two Nebraska officials, Mike Linder and Jay Ringenberg, as Forum Participant and Alternate Forum Participant to represent the state.

Mike Linder, Forum Participant

Mike Linder is the Director of the Nebraska Department of Environmental Quality and, as such, is responsible for administration and enforcement of environmental laws and regulations.

Linder has been affiliated with the department since 1986. Before assuming his current position in March 1999, Linder held positions as the department's Interim Director, as Legal Counsel to the department, and as a staff attorney. He has also served as Legal Counsel in the Nebraska State Fire Marshall's Office, and as a legislative aide for former State Senator Bernice Labedz.

Linder received a bachelor's degree in political science from the University of South Dakota and a juris doctorate from the University of Nebraska–Lincoln.

He has been active in the Environmental Trust Fund, the Midwest Environmental Enforcement Association, and the Nebraska State Bar Association.

Jay Ringenberg, Alternate Forum Participant

Jay Ringenberg is the Manager of Nebraska's Low-Level Radioactive Waste Program, and oversees the technical and legal team on aspects of low-level radioactive waste disposal. He is also the Deputy Director for Programs and is responsible for policy and management oversight of the agency's air, water and waste programs.

Before joining the Low-Level Radioactive Waste Program in 1988, Ringenberg served as Nebraska's National Pollutant Discharge Elimination System Permits and Compliance Chief.

Ringenberg holds a bachelor's degree in chemistry and math as well as a master's degree in public administration from the University of Nebraska–Lincoln.

In January 1999, he retired as a Colonel in the Nebraska National Guard after serving for 28 years. Ringenberg has also been President of the Nebraska Association of Water Pollution Control Federation, and has served on the Governor's State Housing Advisory Council as well as other civic boards and neighborhood associations.

Ringenberg has been involved in the work of the LLW Forum for many years and served on the LLW Forum's Mixed Waste Working Group.

—MAS

Governor of New Hampshire Appoints Patch, Brockway, Geiger Participant and Alternates

On March 22, New Hampshire Governor Jeanne Shaheen (D) appointed New Hampshire officials Douglas Patch as Forum Participant and Susan Geiger and Nancy Brockway as Alternate Forum Participants.

Douglas Patch, Forum Participant

Douglas Patch is Chair of the New Hampshire Public Utilities Commission and has been responsible for overall management and direction of the commission since March 1992.

His New Hampshire state government experience also includes service as Assistant Commissioner in the Department of Safety, as an Assistant Attorney General in the Bureau of Legal Counsel, and as a legislative attorney in the Office of Legislative Services.

Patch received a bachelor's degree in political science from the University of Massachusetts and a juris doctorate from the Boston College of Law.

He is Chair of the New Hampshire Nuclear Decommissioning Financing Committee, Vice-Chair of the New Hampshire Site Evaluation Committee, and Co-Chair of the Governor's Year 2000 Preparedness Task Force. Patch is also a member of the Enhanced "911" Commission, the National Association of Regulatory Utility Commissioners' Committee on Electricity and Subcommittee on Nuclear Issues–Waste Disposal, and the New Hampshire State Negotiating Committee. He has served as Chair of the New England Conference of Public Utility Commissioners and was a member of the Board of Governors of the United Way of Merrimack County.

Nancy Brockway, Alternate Forum Participant

Nancy Brockway is a Commissioner of the New Hampshire Public Utilities Commission and is responsible for regulating telecommunications and electric, gas, and water utilities in New Hampshire.

Prior to assuming her current position, Brockway was a consultant and advocate on low-income energy and utility issues for the National Consumer Law Center; General Counsel to the Massachusetts Department of Public Utilities; and an Advocate and Hearings Examiner for the Maine Public Utilities Commission. She also practiced law privately, specializing in representing low-income tenants, students and senior citizens on civil matters including access to housing and utility services.

Brockway received her bachelor's degree from Smith College and her juris doctorate from Yale Law School.

She is admitted to practice law in the States of New York, Massachusetts and Maine.

Susan Geiger, Alternate Forum Participant

Susan Geiger has been a Commissioner of the New Hampshire Public Utilities Commission since December 1993 and is responsible for regulating telecommunications and electric, gas and water utilities in New Hampshire.

Her New Hampshire state government experience also includes service as Chief of Staff and Senior Assistant to the Attorney General in the Department of Justice and as a Legal and Legislative Consultant for the Division of Welfare.

Prior to her service for the State of New Hampshire, Geiger engaged in the private practice of law.

Geiger received her bachelor's degree in political science from Mount Holyoke College and her juris doctorate from Suffolk University.

She is President of the New England Conference of Public Utilities Commissioners and serves on the Water Committee of the National Association of Regulatory Utility Commissioners.

—MAS

Central Midwest Compact/Illinois

Illinois Considers Centralized System for Interim Waste Management

Officials with the Illinois Department of Nuclear Safety (IDNS) have developed preliminary plans for a system to provide comprehensive waste management services for generators within the Central Midwest Interstate Low-Level Radioactive Waste Compact region. The plan is part of a proactive effort to meet generators' needs should they lose access to out-of-region disposal options prior to the opening of a disposal facility in Illinois. Such a disposal facility is not scheduled to begin operation until 2012, when the availability of decommissioning waste from the region's nuclear power plants is projected to render the new facility cost effective. (See *LLW Notes*, April 1997, p. 3.)

According to a paper presented in March by IDNS Director Thomas Ortciger, the proposed system would "accept waste from the region's LLRW generators, take title to this waste, provide appropriate waste processing, packaging and transportation, and safely store the waste until the permanent disposal facility is built and ready to operate." Since participation by the region's generators would be "essential" to the success of the program, the paper notes that "this would likely require the Central Midwest Commission to exercise its waste import and export control capabilities." The system would be implemented only if access is terminated to the currently operating disposal facilities in Utah and South Carolina.

Interim Facility Design

IDNS' plans call for a site of 30-40 acres, located near major transportation corridors. Although the site would need to comply with the requirements for radioactive materials licensees, IDNS asserts that "[s]ince this facility is temporary in nature, the facility would not need to comply with the siting requirements for a low-level radioactive waste disposal site."

The waste management complex would include a waste receipt and inspection facility, as well as storage facilities for holding waste pending shipment for processing, holding waste for decay, and holding waste pending development of a disposal facility in Illinois. IDNS suggests that storage buildings be "constructed incrementally on an as needed basis" in order to minimize start-up costs.

Waste Processing

Under the proposed system, generators would ship waste to the centralized facility prior to processing. The state would assume title to the waste and determine the appropriate treatment method, if any. Waste requiring treatment would then be shipped to processors who have contracted with the state to provide their services on an economical large-scale basis. Processed waste would be returned to the state facility for storage and eventual disposal.

—CN

For further information, contact Michael Klebe of IDNS at (217)785-9986.

Central Compact/Nebraska

Nebraska to Withdraw from Central Compact

On May 12, Nebraska Governor Mike Johanns (R) signed legislation to remove the state from the Central Interstate Low-Level Radioactive Waste Compact. The new law will take effect on August 29. Governor Johanns may then, as provided in the legislation, write to the Governors of the compact's other member states to notify them of Nebraska's withdrawal. Under the terms of the compact agreement, withdrawals generally do not take effect until five years from the date of such notification.

The legislation was introduced by Senator Merton Dierks, whose district includes the site of a proposed low-level radioactive waste disposal facility for the Central Compact region. Nebraska state regulators denied the license application for the proposed regional disposal facility in December 1998, but that decision is currently being litigated. (See *LLW Notes*, April 1999, pp. 7–13.)

Dierks' bill, LB 530, successfully advanced through the required three rounds of debate in the state's unicameral legislature. In each round the bill passed by large margins: 37 to 0 for the first vote, which took place on March 30; 39 to 8 for the second vote, on April 29; and 33 to 11 for the final vote, on May 6.

The Senators' passage of the bill followed their receipt of a study, commissioned last fall, on the legal implications of the state's withdrawal from the compact. (See related story, p. 8.) With the permission of the legislature, Governor Johanns' office also reviewed the full report prior to his approval of the bill.

Compact Commissioner Jim O'Connell, who represents Kansas and has previously served as Chair, expressed regret over the development. "Continuing to work within the compact is a better alternative," O'Connell said. He indicated that the compact commission would likely discuss the legislation at a meeting scheduled for June 9.

—CN

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

LEGISLATIVE BILL 530

Approved by the Governor May 12, 1999
Introduced by Dierks, 40

AN ACT relating to the Central Interstate Low-Level Radioactive Waste Compact; to withdraw from the compact; and to outright repeal section 71-3521, Reissue Revised Statutes of Nebraska.

Be it enacted by the people of the State of Nebraska,

Section 1. The State of Nebraska hereby withdraws from the Central Interstate Low-Level Radioactive Waste Compact. The Governor shall notify in writing each of the governors of the other compact states and the chairperson of the Central Interstate Low-Level Radioactive Waste Compact Commission that the withdrawal of the State of Nebraska from the compact is effective.

Sec. 2. The following section is outright repealed: Section 71-3521, Reissue Revised Statutes of Nebraska.

Legal Analysis re Nebraska Withdrawal from Central Compact

On September 16, 1998, pursuant to legislation enacted in April of the same year, the Executive Board of the Nebraska Legislative Council voted to have a legal analysis prepared addressing the potential consequences of the state's withdrawal from the Central Interstate Low-Level Radioactive Waste Compact (CIC). (See *LLW Notes*, October/November 1998, p. 7.) A report was prepared by the Washington, D.C.-based law firm of Arent, Fox, Kitner, Plotkin & Kahn and forwarded to the legislative Executive Board in November 1998.

In addressing the state's potential liability for withdrawal from the compact, the report's executive summary offers the following analysis of the legal standing of compacts and their enforceability.

> Whether and to what extent Nebraska may be held liable for withdrawing from the CIC depends in large measure on the interpretation of the terms of the CIC itself. The CIC is essentially a contract to which each of the States in the five-state region is a party. The Compact has received the imprimatur of Congress, and thus has become federal law. Courts interpret a Congressionally-approved compact's terms in much the same way they address federal statutes and contracts, examining closely the terms of the compact and the intent of the signatory States.

Following is a brief summary of some of the questions addressed in the report and the law firm's responses. The reader is cautioned to keep in mind that the report constitutes an interpretation of the law, not the law itself. Quoted material is drawn exclusively from the executive summary of the report since the full report is not publicly available.

Is there a right to withdraw?

The report concludes that the State of Nebraska has the right to withdraw pursuant to express provisions of the compact itself and points out that there are no penalties under the compact for a "procedurally correct" withdrawal. The report notes, however, that the terms of the compact provide that the withdrawal would not be effective until five years after the state passes legislation repealing the enabling statute and written notice of the withdrawal is given to the Governors of each of the other party states—unless the other party states vote unanimously to allow early withdrawal. The report finds that during the five-year withdrawal period, Nebraska would remain a member of the compact and would maintain its associated rights and duties, including financial obligations. In addition, the report finds that "[a]ny other liabilities already incurred by Nebraska prior to withdrawal would not be affected by the withdrawal itself."

What are the legal effects of withdrawal?

The report concludes that Nebraska's ability to permit, regulate, or otherwise control the construction of a low-level radioactive waste disposal facility in the state would not be diminished by withdrawal.

> After withdrawal takes effect, Nebraska would no longer be a member of the CIC and no longer subject to the obligations of membership. The Commission would not, at that point, have any authority to impose obligations on Nebraska and *Nebraska might simply bar the construction of any low-level disposal facility*. (emphasis added)

The report finds that since Nebraska would maintain its rights and obligations after notice of withdrawal is given but before the withdrawal itself becomes effective, notice of withdrawal would not affect Nebraska's power to regulate and/or permit a compact facility. Indeed, the report notes that the compact itself expressly provides that it is not intended to interfere with the party states' regulatory apparatus. "The Commission has the authority to seek a facility license from a host State, but it does not have the authority to force the construction of a facility when the State cannot, under its environmental laws and licensing procedures, approve a license for a facility to operate."

What is the legal difference between withdrawal and revocation or suspension?

The report specifically distinguishes between the consequences and legal ramifications of withdrawal and revocation or suspension, pointing out that the commission may impose penalties upon revocation of a state's membership from the compact whereas withdrawal itself does not entail penalties.

> *In our view, mere "withdrawal" in accord with the terms of the CIC does not provide grounds for "suspension" or "revocation" of membership and consequent imposition of penalties.* (emphasis original)

Can the commission impose additional liability for withdrawal?

The rules of the Central Commission specify consequences or penalties associated with a party state's withdrawal from the compact including, among other things, the payment of certain fees and lost revenues. In analyzing the rules, the report cautions that "[w]hether any specific rule adopted by the Commission may be enforced, and even whether the Commission may adopt rules at all, depends upon whether the Commission has acted within the scope of the authority granted to it by the CIC." The report concludes that the majority of the listed penalties "are either inapplicable to the circumstances under which Nebraska would withdraw or impose liabilities for withdrawal greater than those specified in the Congressionally-approved CIC itself, making them invalid exercises of authority under the CIC."

The rules specifically provide that "[a]ny state withdrawing from the Compact shall not be permitted to rejoin the Compact at a later date."

Is Nebraska subject to damages if it withdraws?

In regard to the issue of damages, the report finds that Nebraska would not have liability for damages to waste generators, to US Ecology (USE), to the Commission, or to the other party states in the event that it withdraws from the compact.

With respect to the waste generators and to USE, Nebraska would not have liability arising out of its decision to withdraw for two principal reasons: (1) Nebraska's sovereign immunity and its 11th Amendment immunity would prevent the generators from enforcing any such liability; and (2) even if Nebraska had waived its sovereign immunity (which it has not in any relevant way), the generators and USE would not suffer compensable damages because of the structure of their respective contracts with the CIC Commission.

With respect to the Commission, Nebraska has waived sovereign immunity in both federal and state court. Nonetheless, Nebraska would not have liability to the Commission arising out of a decision to withdraw for several reasons. The CIC Commission does not have a contract with Nebraska; consequently, liability could not be based on any contractual relationship. The Commission does have the authority to require party States to perform their duties and obligations under the CIC, but such a claim could only arise out of a failure on Nebraska's part to perform its obligations under the CIC. Because mere withdrawal alone does not constitute a violation of the CIC or a failure to perform obligations thereunder, withdrawal would not provide grounds upon which the Commission could seek to impose liability.

Finally, Nebraska would not have liability to other party States arising out of its decision to withdraw. For the same reasons Nebraska is not liable to the waste generators, the other party States would not be liable to the waste generators. They could not, therefore, seek contribution from Nebraska for alleged damages to their waste generators.

In sum, Nebraska would be responsible for contributing to the Commission's expenses as it ordinarily would as a member of the CIC in good standing during the withdrawal period. Nebraska could not be penalized further merely for withdrawing from the CIC so long as it complies with and fulfills its other duties under the CIC and under Nebraska law.

—TDL

Northeast Compact/Connecticut/New Jersey

Connecticut Releases Draft Assured Isolation Legal Study for Comment

On March 10, the Board of Directors of the Connecticut Hazardous Waste Management Service authorized a draft legal study on assured isolation to be released for public review and comment. The service has been studying various issues associated with the assured isolation concept since 1995 pursuant to advice from its advisory committee, and has participated in prior studies on the costs and licensing mechanism for such a facility. Comments on the draft legal study—which was prepared by Frank Santoro of Danaher, Tedford, Lagnese & Neal—will be accepted through June 15, 1999. A final report will be prepared once the comments are received and analyzed.

Following is a brief summary of some of the questions addressed in the draft study and the law firm's responses.

Would the development of an assured isolation facility in Connecticut comply with requirements relating to permanent isolation of waste contained in the Low-Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPAA)?

While the draft study points out that assured isolation is not expressly prohibited by law, it acknowledges that the federal statutory scheme presents a significant problem in that it mandates that states are responsible for providing for "disposal" of low-level radioactive waste—the term "disposal" being expressly defined as "permanent isolation" in the federal statute. The draft study concludes, however, that the problem may be resolved through application of the following four factors:

- interpretation of the term "providing for" in the LLRWPAA with sufficient flexibility to accommodate the assured isolation concept;
- acceptance of the Northeast Compact Act as an independent source of authority for the development of an assured isolation facility;
- development of the administrative record until there is greater acceptance of the assured isolation concept by the regulatory community; and
- recognition of the limitations of the enforcement mechanisms contained in the LLRWPAA.

In addition, the draft study finds that "[a]ssured isolation does not appear inconsistent with other sources of applicable law per se although a revision of the Northeast Compact Regional Management Plan will be necessary."

Could the Northeast Interstate Low-Level Radioactive Waste Commission exercise exclusionary authority over such a facility pursuant to the LLRWPAA?

According to the draft study, "[g]iven the lack of teeth in the remedial provisions of the LLRWPAA, exclusionary authority may be the only serious concern facing a state considering an assured isolation facility." Whether exclusionary authority applies to such a facility, however, is merely a subset of the above-identified question of whether assured isolation is consistent with federal law. Indeed,the draft study notes that the language in some of the congressional reports accompanying ratification of the compacts implies that full compliance with the 1980 Policy Act is a condition precedent for exclusionary authority. Thus, the draft study concludes that "[i]f assured isolation is deemed to be in compliance with federal law … exclusionary authority should follow as a matter of course."

The draft study notes, however, that the 1980 act does not provide for exclusionary authority by itself, but rather constitutes enabling legislation which allows compacts to request exclusionary authority.

> The subject of the independent nature of the Northeast Compact Act takes on special importance in the case of exclusionary authority. It is the Compact Act which is the direct source of such authority. Exclusionary authority is provided only indirectly in the LLRWPA and the LLRWPAA. If the Compact Act (which contains no impediment to assured isolation) is an independent source of law on this issue, any perceived impediments under the LLRWPA or LLRWPAA are significantly marginalized.

Does the existing regulatory regime permit an application for licensing of an assured isolation facility?

In regard to issues concerning the regulatory regime, the draft study refers readers to the following two documents, both of which were commissioned by the National Low-Level Radioactive Waste Program and prepared by the law firm of Morgan, Lewis & Bockius:

- Assured Storage Facility Licensing and Regulatory Analysis. October 10, 1996.

- Licensing an Assured Isolation Facility for Low-Level Radioactive Waste. July 1998.

The draft study maintains that together the documents constitute a thorough and comprehensive analysis of the means by which an assured isolation facility would receive regulatory approval. It cautions, however, that the analysis "relies primarily on the NRC's materials licensing regulations and does not deal with the question of whether assured isolation satisfies the statutory requirements for disposal." The draft study also notes that numerous regulatory hurdles at the state and local level would need to be surmounted to pursue an assured isolation facility, and that "legislative oversight is highly likely and court challenges are possible."

What are the effects of assured isolation on the incidence of liability?

Title to the Waste The question of ownership or title is significant because liability derives from ownership. The draft study analyzes various parties who would potentially have title at some time to waste destined for an assured isolation facility and who would therefore incur potential liability.

> [A]ny attempt to vest ownership either in the operator by contract, or the State by statute, will raise certain ambiguities. For example, a generator would always remain potentially liable due to the retroactive nature of [the Comprehensive Environmental Response Compensation and Liability Act (CERCLA)] and any contractual transfer of liability may not suffice to divest regulatory agencies of the ability to bring an action against any past party. The operator, due to its persuasive control of the site as well as due to the terms of any lease with the State, would become a current owner which status may not change just because it legally dissolves at some future point. Finally, even before the State assumes control of the site, its status as land owner and its ability to control the site will most likely cause it to be an "owner" under CERCLA [and therefore to face potential liability].

While this analysis is essentially the same for either a traditional disposal facility or an assured isolation facility, the draft study notes that an assured isolation facility creates the potential for additional liability due to the possibility that the waste may ultimately be removed. In such case, the draft study concludes that the party removing the waste would incur potential liability.

continued on page 12

Northeast Compact/Connecticut/New Jersey (continued)

Financial Assurance Requirements According to the draft study, financial assurance is essential to the successful development of an assured isolation facility, for "without it there would probably not be compliance with the federal statutory mandate to 'provide for' disposal." The draft study refers readers to the July 1998 Morgan, Lewis & Bockius licensing study and to a cost comparison report by Rogers and Associates for analyses of the legal requirement for financial assurance and of potential funding mechanisms.

In regard to the legal requirement for financial assurance, the Rogers and Associates report states as follows:

> It was assumed that enough money is collected during the operations phase to ensure that all activities following the cessation of waste receipt can be paid for. Part of that money is needed to ensure that after the end of operations both the disposal facility and the assured isolation facility will have sufficient funds available to cover the cost of retrieving all waste, cleaning up contaminated soil at the site (disposal only), and placing some of those materials in another disposal or assured isolation facility, as appropriate.

Sources of Law Governing Liability Liability is typically a product of either statute or common law. The draft study concludes that the following should be considered in addressing potential liability for an assured isolation facility:

- the LLRWPAA;
- other federal environmental statutes including the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act (RCRA), and CERCLA;
- federal regulations including 10 CFR Part 61;
- the Northeast Compact Act;
- Connecticut statutes governing low-level radioactive waste management; and
- common law sources including, among others, negligence, nuisance, trespass, and constitutional law theories of taking.

Would the development of an assured isolation facility trigger the requirements of the National Environmental Policy Act and the Connecticut Environmental Policy and Protection Acts?

The draft study found that development of an assured isolation facility would trigger the requirements of both the National Environmental Policy Act (NEPA) and the Connecticut Environmental Policy and Protection Acts. The draft study did not, however, come to any conclusion with regard to the type of the environmental review that would be triggered.

> The question of whether a full [environmental impact statement] rather than some lesser document will be required is probably a function of how developed the assured isolation concept is by the time it gets to the NRC licensing stage and whether the facility in question … is the first of such facilities in the nation or merely one of many.

May the development of an assured isolation facility be financed with existing resources such as the Low-Level Radioactive Waste Fund?

The Connecticut Low-Level Radioactive Waste Fund contains specific conditions and limitations on its use, including that expenditures must be made only to assist the state in fulfilling its responsibilities under the Northeast Compact. According to the draft study, "assured isolation is not inconsistent with the Northeast Compact which refers to 'management' of LLRW and is not limited to traditional 'disposal.' " Accordingly, the draft study determined that, with regard to the development of an assured isolation facility in Connecticut, "the use of the low-level fund for assured isolation related activities is consistent with law so long as those expenses do not include purchase of a site, facility construction, and operation or maintenance costs." These exceptions also apply to financing the development of a traditional disposal facility.

—TDL

Southwestern Compact/California

Interior Secretary Invites California Governor to Discuss Ward Valley

On March 12, Interior Secretary Bruce Babbitt wrote to California Governor Gray Davis inviting him to enter discussions with the agency's representatives concerning the state's request to purchase federal land in Ward Valley, California, for use in siting a low-level radioactive waste disposal facility. Babbitt's letter identifies a number of issues that would have to be resolved before Interior would act on the state's request. Given these conditions, Babbitt suggests exploration of alternatives to the transfer. The text of the letter follows.

—CN

I am writing to propose that the Department of the Interior and the State of California enter into discussions regarding the State's pending request to acquire from Interior federally owned land in Ward Valley for the purpose of siting a low-level radioactive waste (LLRW) facility. Based on the fresh perspective you bring to the issue, and in light of current information, I believe it would be in the best interests of the State and Federal governments, the public, the biotechnology industry, and US Ecology to explore alternatives to the proposed land transfer which would resolve the situation and potentially settle the pending litigation.

The steps necessary to conclude action on the State's request for transfer of the Ward Valley land would indeed be substantial. Among other things, an extensive program for the testing and analysis of tritium and related substances at the site would have to be conducted. The results of the testing and analysis would have to be included in a comprehensive supplemental environmental impact statement, which would also address the potential impacts of the transfer and the proposed LLRW site in light of the substantial amount of new information that has become available since completion of the initial environmental review in 1991.

An issue needing resolution, which is presumably of particular interest to you, is whether the California Department of Health Services (DHS), the State agency which is seeking to purchase the land, has the authority to pursue the acquisition on the State's behalf. Several State legislators have put forth the view that DHS does not have such authority. The Department of the Interior Solicitor's Office, in consultation with the U.S. Department of Justice, has reached the same conclusion with respect to the current request to purchase the land, and that issue is one of many before the courts in the pending litigation.

I also understand that, in addition to information on other issues, in the years since the State approved the Ward Valley site, much new information has come to light concerning the projected economic viability of the proposed facility.

If you share my view that discussions among affected parties may provide the best means of resolving the Ward Valley issues in a mutually satisfactory manner that is in the best interest of the public, I will be glad to make Interior representatives available to begin the discussions. Please let me know if you wish to proceed in this direction, or if you wish Interior to consider any alternative approaches.

I very much look forward to working with your Administration on this issue and hope that working together, we will be able to reach a final resolution.

Texas Compact/Texas

Texas Senate Passes LLRW Bill with Major Differences from House Version

On May 21, the Texas State Senate passed HB 1171, a bill relating to the regulation of radioactive materials and other sources of radiation, and amending existing state law regarding management of commercial low-level radioactive waste. The legislation as passed by the Texas Senate differs in important ways from HB 1171 as passed by the Texas House of Representatives.

Issues

Public vs. Private License Holder The Senate version of the legislation provides for either a public entity or a private company to be licensed to manage low-level radioactive waste at a disposal or assured isolation facility in the State of Texas. Conversely, the House version would permit only the Texas Low-Level Radioactive Waste Authority to be so licensed.

Commercial vs. DOE Waste The Senate version of the legislation allows for the management of both commercial low-level radioactive waste received "pursuant to the Texas Low-Level Radioactive Waste Compact" and DOE low-level radioactive waste. However, disposal of DOE waste would be subject to two restrictions:

- the activity (curies) must be below 80 percent of the activity of the commercial waste projected to be received from the three member states of the Texas Compact, and
- no licensed facility may accept "any discarded radioactive atomic weapon component or the radioactive waste resulting from the production or testing of any atomic weapon."

The House version of HB 1171 states that only commercial low-level radioactive waste received under the auspices of the Texas Compact can be sent to a disposal or assured isolation facility in Texas.

Options for Waste Management The Senate version of HB 1171 permits either disposal or assured isolation of commercial low-level radioactive waste and DOE low-level radioactive waste. Assured isolation is the preferred option in this version of the bill, which states that "underground disposal may be considered for the management of low-level radioactive waste received from the Compact states only if assured isolation is found not to be feasible."

The House version permits either assured isolation or disposal with no expressed preference.

Location of Facility The Senate version strikes the existing requirement that a waste disposal facility be located in Hudspeth County and substitutes a requirement that a waste management facility be located in Andrews County. The House version simply strikes the Hudspeth County requirement.

Next Steps

If HB 1171 is to become law, it must pass both houses of the Texas legislature in identical form. The House could accept the recently adopted Senate bill, but that is considered extremely unlikely. Alternatively, a conference committee of the House and Senate could convene and agree on a version of the legislation which would then need to be voted on again in both houses.

However, because the Senate and House versions of the bill are so different, the chances that any version will pass during this legislative session are uncertain. The legislature is currently scheduled to adjourn on May 31 and is not scheduled to reconvene until February 2001.

Implications for the Texas Authority

If no version of HB 1171 passes this year, current low-level radioactive waste disposal legislation would remain in effect. The Texas Authority has requested funding to continue operations through September 1, 2001.

—HCB/CN

Texas AG Provides Legal Opinion re LLRW

On May 18, the Texas Attorney General's Office provided a legal opinion on the disposal of low-level radioactive waste in Texas to Gary Walker, Chair of the Land and Resource Management Committee of the state House of Representatives. The following is a brief summary of the questions presented by Walker and the AG's responses.

Would development of an assured isolation facility for low-level radioactive waste satisfy the requirements of the Texas Low-Level Radioactive Waste Disposal Compact?

The AG concluded that development of an assured isolation facility for low-level radioactive waste would comply with the state's current obligations under the Texas Compact to manage and to provide for the disposal of such waste. In support of its position, the AG notes that "federal courts have held that 'provide for' means 'taking some affirmative step to supply, afford, or furnish means to dispose of' waste." According to the AG, assured isolation constitutes a step leading toward disposal because it provides for the temporary isolation of waste until a permanent solution can be developed. The AG also contends that the use of the term "management" in the compact suggests that some alternative short of permanent underground burial is permissible.

The AG notes, however, that "both the [Low-Level Radioactive Waste Policy] Act and the [Texas] Compact require Texas to develop a facility for the disposal of waste, with disposal meaning the permanent isolation of waste." Since assured isolation contemplates the retrieval of waste, the AG concluded that it does not constitute the permanent isolation of waste. The NRC has come to a similar conclusion, holding that assured isolation is not permanent disposal under 10 CFR Part 61. Accordingly, the AG concluded that development of an assured isolation facility would not currently satisfy the state's obligation to dispose of the compact's waste. The AG points out, however, that an assured isolation facility might ultimately be converted to a permanent disposal facility, thereby allowing the state in the future to satisfy its compact obligations.

> "We conclude that development of an assured-isolation facility would comply with the state's current obligations under the Compact to manage and to provide for the disposal of Compact waste. Assured isolation would not currently satisfy the state's obligation under the Compact to permanently dispose of the waste."
>
> *Letter from the Texas Attorney General John Cornyn to Representative Gary Walker. May 18, 1999.*

Would a law enacted for the purpose of precluding private disposal facilities from accepting waste generated by the U.S. Department of Energy be valid?

The AG determined that a law adopted specifically for the purpose of precluding private facilities from disposing of waste generated by DOE would violate the Supremacy Clause and Commerce Clause of the United States Constitution. The Supremacy Clause provides in general that a state law is preempted if it conflicts with federal law. Since the U.S. Supreme Court has held that Congress has the power to regulate the disposal of low-level radioactive waste to the exclusion of state regulation, the AG concluded that a law expressly intended to thwart federal disposal activities in the state would likely be found to violate the Supremacy Clause. The Commerce Clause, among other things, restricts the states' power to enact laws that interfere with interstate commerce. The AG concluded that the proposed law might violate the Commerce Clause, since the law could be deemed overt protectionism designed to stop goods at the state's border without an overriding state interest.

The AG determined, however, that current Texas law, "which allows only state entities to be licensed to dispose of low-level radioactive waste in the state, is not unconstitutional simply because, in combination with a DOE policy, it has the effect of precluding private companies from contracting with DOE for the disposal of waste in Texas." The AG concluded that in such a case the Supremacy Clause is not violated because the federal government is voluntarily deferring to the state. In a similar manner, the AG found that the Commerce Clause is not violated because the law "is facially neutral with respect to interstate commerce and its effect on the movement of DOE waste in interstate commerce is non-existent but for DOE's policy."

—TDL

Texas Compact/Texas (continued)

NRC Chair, Commerce Reps Answer Texas Query re Assured Isolation

In March, Texas State Representative Gary Walker (R) wrote to the NRC Chairman and the Chair and ranking minority member of the Subcommittee on Energy and Power of the Commerce Committee of the U.S. House of Representatives to request review and comment on HB 1910, the Texas Low-Level Radioactive Waste Management Authority Act. This bill, introduced by Representative Warren Chisum (R) in the Texas legislature in 1999, gives the state the option of using traditional disposal or assured isolation for commercial low-level radioactive waste. (See related story, p. 14.) Major portions of HB 1910 were subsequently incorporated into HB 1171.

—MAS

March 17 letter from U.S. Representatives Joe Barton (R) and Ralph Hall (D) to Texas State Representative Gary Walker (R). Barton and Hall were the chief sponsors of the federal Texas Compact Consent legislation. They are, respectively, the Chair and ranking minority member of the Subcommittee on Energy and Power of the House Commerce Committee, which has jurisdiction over the U.S. Department of Energy and low-level radioactive waste issues.

Thank you for your letter of March 1, 1999, regarding a bill before the Texas legislature, the Texas Low-Level Radioactive Waste Management Authority Act. This legislation would authorize an "assured isolation" facility for the storage of low-level radioactive waste. This "assured isolation" concept is significantly different from the concept of permanent disposal that is contained in the Texas Low-Level Radioactive Waste Disposal Compact which was approved by Congress in the Texas Low- Level Radioactive Waste Disposal Compact Consent Act (Public Law 105-236). The technical and legal experts on the House Commerce Committee staff, at the American Law Division of the Congressional Research Service, and at the Nuclear Regulatory Commission concur in this assessment, that "assured isolation" cannot be consider the equivalent of "disposal" as contained in the Compact and approved by Congress in the Consent Act.

This change, however, does not automatically force Congressional review. There are two events that would trigger Congressional review and reapproval of the Compact. The first would be the amendment of the Compact itself by the states party to that Compact. Second, Section 7.08 of the Compact provides for Congressional review every five years after its effective date. The timing of this automatic review was changed, however, in the Consent Act, which provides that "Congress may alter, amend, or repeal this Act with respect to the compact set fort in section 5 after the expiration of the 10-year period following the date of the enactment of this Act." This ten-year period began on September 20, 1998, so the next Congressional review would not occur until 2008.

As stated above, this legislation would not require immediate Congressional review. However, we have concerns about the legislation because it could have the ultimate effect of requiring reconsideration at the federal level of the Texas Low-Level Radioactive Waste Compact. As the lead sponsors of the federal bill signed into law last year, we do not wish to revisit this issue at the federal level, and would recommend that the broader implications of passing legislation with the term "assured isolation" be given proper consideration.

Thank you for contacting us on this important issue.

March 19 letter from NRC Chairman Shirley Ann Jackson to Texas State Representative Gary Walker (R)

I am responding to your March 4, 1999, letter requesting the views of the Nuclear Regulatory Commission (NRC) on assured storage (or assured isolation) as an alternative to disposal of low-level radioactive waste (LLW). Our views on assured storage remain the same as those expressed in my May 9, 1996 letter to David Leroy of Idaho. The Commission policy has been, and continues to be that LLW should be disposed of safely as soon as possible after it is generated. Thus, the Commission strongly supports State and compact efforts to develop new LLW disposal capacity in accordance with the Low-Level Radioactive Waste Policy Amendments Act of 1985. The Commission also is aware that there are a variety of complex waste disposal issues currently facing this Nation, many of which are within the purview of the Atomic Energy Act. In particular, in view of the many challenges in the area of site decommissioning that are tied closely to the availability of safe and economic means of managing LLW, the Commission is open to serious consideration of any feasible and safe proposals.

We also recognize that a few States have expressed interest in the assured storage concept. If a State came to the Commission directly seeking our views on the feasibility of assured storage, we would evaluate the request in accordance with our regulatory responsibilities. This evaluation would have to address several complex issues associated with assured storage, such as when does assured storage constitute disposal, what financial assurance would be required during the storage period, and how would current regulatory limits on the possession of special nuclear material apply to an assured storage facility.

Because no one has applied to the NRC for a license to construct and operate an assured storage facility, per se, the NRC has not licensed an assured storage facility. However, the NRC has licensed numerous commercial nuclear facilities that included LLW storage as an integral component of other nuclear activities. We do not consider assured storage to be the equivalent of permanent disposal of LLW. By its very nature, assured storage is considered a temporary facility. If it were intended to be permanent, we would review an application for such a facility under our requirements for LLW disposal in 10 CFR Part 81. As I stated in my letter to Mr. Leroy, the NRC would need to determine which regulations to apply in reviewing an application to construct an assured storage facility. The applicable safety requirements would vary based on the nature of the proposal and the potential risks to the public and the environment.

I trust that this response will be useful to Texas in your consideration of assured storage and safe management of LLW. If the NRC can be of further assistance, please do not hesitate to contact us.

NCSL Meets for Summit on Low-Level Radioactive Waste Issues

On April 9, the National Conference of State Legislatures (NCSL) held a "National Summit for the Evaluation of Low-Level Radioactive Waste Policy and the State and Compact System." The summit took place in Jacksonville, Florida and preceded NCSL's semi-annual Assembly on State Issues. NCSL invitations to the meeting noted that its purpose was "to discuss the current LLW disposal situation and the goals of the 1980 Low-Level Radioactive Waste Policy Act and its amendments," and that NCSL sought "to assemble a diverse representation of all parties interested in LLW management."

The one-day meeting began with presentations by

- the moderator,
- a staff person of the U.S. General Accounting Office,
- a member of DOE's National Low-Level Waste Management Program, and
- a panel consisting of representatives of the Nuclear Energy Institute, the Cal Rad Forum, the Commonwealth of Pennsylvania, and the State of Connecticut.

All attendees then participated in a discussion of four options for low-level radioactive waste management that had been outlined in advance:

- "dissolve the compacts to restore market incentives,"
- "federal disposal of commercial LLRW,"
- "allow the compact system to succeed," and
- "restore federal incentives for site development."

No consensus as to a preferable alternative emerged from the discussions.

The NCSL Low-Level Waste Working Group, which sponsored the summit, will next meet on Sunday, July 25 in conjunction with NCSL's Annual Meeting to be held in Indianapolis, Indiana from July 24 to 28. At that time, the group will review a written report and analysis of the April meeting, and discuss how the information should be presented to the NCSL's Assembly on Federal Issues Environment Committee later that day.

—HCB

For further information, contact L. Cheryl Runyon or Jeff Dale of NCSL at (303)830-2200. Information will also be available on NCSL's web site at

http://www.ncsl.org/programs/esnr/hazmats.htm#low

Attendance: NCSL LLRW Meeting/Summit

State Legislators and Legislative Staff

Idaho	Rep. Jack Barraclough
North Carolina	Rep. Joe Hackney Rep. George Miller
Utah	Sen. Peter Knudson Rep. Joseph Murray Mark Bleazard

Other State and Compact Officials

Pennsylvania	Denise Chamberlain
Illinois	Michael Klebe
Northeast Compact	Kevin McCarthy
Connecticut	Ronald Gingerich
New Jersey	Richard Sullivan Paul Wyszkowski
Rocky Mountain Compact	Leonard Slosky
North Carolina	Perry Newsom
Texas	Douglas Bryant Martin Nysynowitz
Michigan	Thor Strong
Rhode Island	Terry Tehan
South Carolina	Virgil Autry John Clark

State Organizational Representatives

Conference of Radiation Control Program Directors (CRCPD)	Steven Collins
LLW Forum (staff)	Holmes Brown
National Conference of State Legislatures (staff)	Jeff Dale Larry Morandi Cheryl Runyon
National Governors' Association (staff)	Chris Kadas

Federal Agencies

Government Accounting Office (GAO)	John Bagnulo Dwayne Weigel
National Academy of Sciences	Kevin Crowley
Nuclear Regulatory Commission	James Kennedy
DOE's National Low-Level Waste Management Program	Sandra Birk Ken Henry William Newberry

Moderator

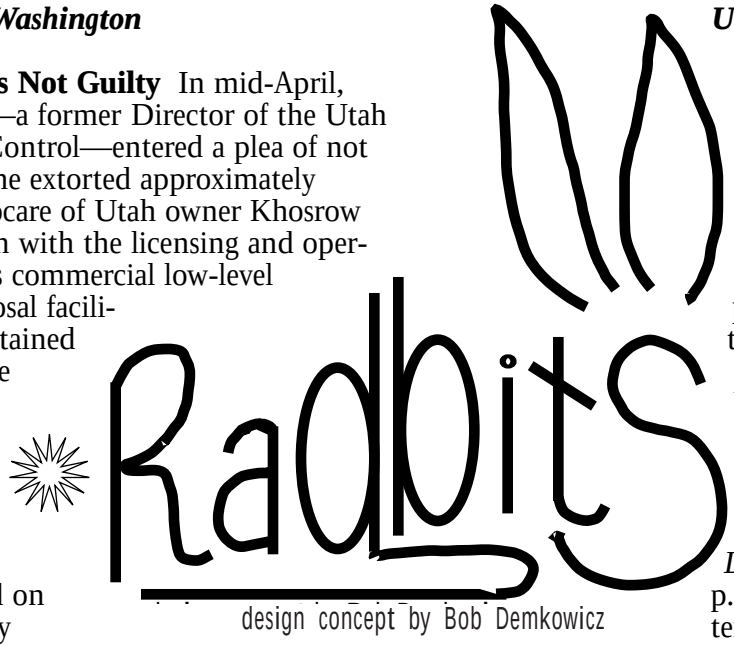
David Leroy

Other Interested Parties

Cal Rad Forum	Alan Pasternak
Chem-Nuclear Systems	George Antonucci
Exchange/Monitor Publications	Christopher Logan
GPU Nuclear	Ron Miranda
McGraw-Hill Publications	Tom Harrison
Nuclear Energy Institute (NEI)	Paul Genoa Julie Jordan
Northern States Power	John Closs
Nuclear Energy Resource Service (NIRS)	Diane D'Arrigo
Waste Control Specialists	William Dornsife
private citizen (North Carolina)	Mary MacDowell

Northwest Compact/Washington

Anderson Pleads Not Guilty In mid-April, Larry Anderson—a former Director of the Utah Bureau of Radiation Control—entered a plea of not guilty to charges that he extorted approximately $600,000 from Envirocare of Utah owner Khosrow Semnani in connection with the licensing and operation of the company's commercial low-level radioactive waste disposal facility. Anderson has maintained that the payments were the result of a legitimate business relationship between himself and Semnani.



Anderson was indicted on March 24 on six felony counts of extortion, mail fraud and tax evasion based on Envirocare-related matters. (See *LLW Notes*, March 1999, p. 8.) If found guilty on all counts, Anderson faces a maximum penalty of 37 years in prison and more than $3 million in fines. The court is allowing Anderson to remain free pending his trial, which is scheduled to begin June 21. Semnani, who was also the subject of a federal investigation into the payments, was allowed to plead guilty to a misdemeanor tax charge in exchange for his cooperation in the prosecution of Anderson.

—TDL

Semnani Loan Investigated by State Officials State of Utah officials are investigating whether a 1993 loan guarantee provided by Envirocare of Utah owner Khosrow Semnani for a then-fellow member of the Utah Board of Radiation Control violated conflict of interest rules. The $15,000 bank loan was recently made public as part of an unrelated lawsuit by Nuclear Fuel Services (NFS), which claims that Semnani and former state regulator Larry Anderson conspired to prevent NFS from opening a competing disposal facility. The loan was made to Preston Truman, Director of the Downwinders watchdog group that monitors issues related to radioactive waste disposal. Truman represented the environmental community on the 11-member board, whose mission is to establish rules for businesses handling radioactive material. Both Semnani and Truman have stated that the loan was strictly a business deal and that there were no resulting improprieties.

—TDL

U.S. Department of Energy

DOE and Industry Meet re Spent Fuel Proposal In late April, Energy Secretary Bill Richardson met with representatives from ten nuclear utilities to discuss his recent proposal to have DOE take title to spent fuel held on site at nuclear utilities. Under the proposal, DOE would assume management responsibility for the waste pending its placement in a permanent repository. (See *LLW Notes*, March 1999, p. 20.) Richardson has characterized the meeting as "productive" and has indicated that the department plans to work with individual utilities on amending their waste disposal contracts with DOE. Industry sources were more reserved in their characterization of the meeting, but at least some appeared optimistic about continuing discussions with the department. The meeting follows recent decisions by the U.S. Court of Federal Claims about the Energy Department's liability for violating its contractual obligation to begin disposing of spent nuclear fuel by January 31, 1998. In three of those cases, the court found DOE to be liable, although damages have yet to be set. (See *LLW Notes*, December 1998, p. 25.) In the most recent case, however, the court held that DOE was not liable to an operating utility because other remedies may exist. (See *LLW Notes*, April 1999, p. 18.)

—TDL

DOE Meets INEEL Deadline On April 27, the U.S. Department of Energy began shipping radioactive waste from the Idaho National Environmental and Engineering Laboratory (INEEL) to the Waste Isolation Pilot Plant (WIPP) in Carlsbad, New Mexico. The shipment represented a major success for the department, which will now meet a legally-enforceable cleanup agreement with Idaho concerning the disposal of such waste at the WIPP facility. DOE's ability to meet its commitment was in serious doubt due to a court challenge and other legal obstacles. But a recent decision by the U.S. District Court for the District of Columbia and New Mexico's withdrawal of its lawsuit have cleared the way for the waste shipments. (See *LLW Notes*, March 1999, p. 9 and related story, this issue.) The department estimates that 4,900 shipments of transuranic waste will be sent from INEEL to WIPP through the year 2018 pursuant to the cleanup agreement.

—TDL

U.S. Nuclear Regulatory Commission

NRC Reviews Policy re Private Meetings On May 10, NRC published a notice in the *Federal Register* announcing its intention to implement a regulation allowing three or more of the agency's Commissioners to meet in private starting June 1. Until now, NRC has followed a policy that any meeting of two or more Commissioners is considered a public meeting. Federal law provides for a maximum of five sitting Commissioners. Comments on the proposed rule are due by June 9.

—TDL

NRC Revises Policy re Troubled Plants NRC has announced that it will replace its semi-annual "watch list" of the country's most troubled nuclear power plants with an annual announcement of plants requiring "agency" or "regional" focus. Plants listed as needing agency focus would be identified as having serious problems requiring the involvement of the NRC Executive Director for Operations and the Commission itself. Plants listed as needing regional focus, on the other hand, would be identified as having lesser problems requiring only the attention of a regional administrator. All other plants would be listed as needing only routine oversight.

—TDL

IEER Recommendations re HLRW, Military Waste

Group Backs Temporary On-Site Storage

On April 13, the Institute for Energy and Environmental Research (IEER) called for DOE to abandon both the Waste Isolation Pilot Plant (WIPP) in New Mexico and the proposed high-level radioactive waste repository at Yucca Mountain, Nevada, as "technically unsound and politically motivated." The Maryland-based research group suggests that both sites be used as "high-tech research centers for geologic repositories" but that neither site actually handle radioactive wastes. Instead, IEER recommends that spent nuclear fuel and military wastes be stored on site while research is conducted on permanent disposal options.

Under the proposal, authored by IEER President Arjun Makhijani, Congress would create an independent, federally chartered nonprofit corporation financed by the Nuclear Waste Fund. The corporation would "take over" waste management at closed nuclear power plants and provide funding for on-site storage at operating plants, as well as for research and development efforts for alternative disposal methods.

IEER specifically recommends study of three such methods:

- "various types of geologic repositories and … engineered barriers that would mimic natural materials that prevent the spread of radioactivity for millions of years;"
- sub-seabed disposal; and
- "disposal outside the biosphere, by very deep burial beneath the Earth's crust, in a layer called the upper mantle."

—TDL

For further information, go to IEER's web site at www.ieer.org

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

Utah Denied Review of Tribe's Lease

On April 9, the U.S. District Court for the District of Utah ruled that the State of Utah is not legally entitled to participate in a lease agreement between a native American tribe and a consortium of nuclear power utilities concerning the proposed construction of a facility for temporary storage of spent fuel on tribal lands in Utah. In the same order, the court granted a motion to consolidate the state's lawsuit with a similar action contesting federal approval of the lease. The court also set out a briefing schedule on the remaining issues in both actions.

Background

The Proposal and Lease Terms Due to the federal government's refusal to take spent fuel by early 1998, the utilities that formed Private Fuel Storage (PFS) Limited Liability Company are seeking to build a spent fuel storage facility that would hold up to 40,000 metric tons of waste in 4,000 metal containers. (See *LLW Notes*, April 1997, pp. 26–27.) Accordingly, PFS signed an agreement with the Skull Valley Band of Goshute tribal leaders in December 1996 to lease part of the tribe's 17,700–acre reservation, which is surrounded by Tooele County, Utah. Tooele County contains a 100-square mile Hazardous Industries Zone, where Envirocare of Utah and other facilities including the Utah Test and Training Range are sited.

The agreement provides for a 25-year lease with a 25-year renewal option. The tribe is expected to receive an undisclosed amount of financial compensation for hosting the facility, which is anticipated to create 40 to 60 new jobs for tribal members.

In June 1997, PFS filed a license application with the U.S. Nuclear Regulatory Commission. (See *LLW Notes*, July 1997, pp. 34–35.)

Requirements re Approval of the Lease Federal law [25 U.S.C. § 415(a)] provides that any lease of trust lands must be approved by the Secretary of the Interior or his designee. Accordingly, the Goshutes submitted the proposed lease to the Bureau of Indian Affairs. The lease was approved by the Superintendent of the Uintah and Ouray Reservation, acting under authority delegated by the Interior Secretary. Approval of the lease was subject to evaluation of the environmental impacts of the lease in accordance with the National Environmental Policy Act and to the issuance of a license by NRC.

Utah's Opposition Utah officials including Governor Mike Leavitt (R) oppose the facility and have vowed to fight it. Indeed, the State of Utah filed a petition with the NRC opposing the license application and created a multi-agency task force to work against the proposed facility. (See *LLW Notes*, July 1997, pp. 34–35.) State officials have also enacted various forms of legislation in an attempt to block the facility. (See *LLW Notes*, April 1999, p. 19.) In May 1998, the state filed suit seeking to participate in the Interior Department's review of the lease agreement and to obtain a complete copy of the lease.

The Court's Decision

The court determined that federal law does not provide the state with standing to intervene in the lease approval proceedings or to appeal the Superintendent's decision approving the lease.

> [I]n approving or rejecting leases pursuant to § 415(a), the Secretary acts in a trust or fiduciary capacity. The legal attributes of such a relationship include a duty on the part of the trustee to act solely in the best interests of the trust beneficiary. To read § 415(a) to give legally enforceable rights to parties having interests that compete with the tribes' would be to impose a duty on the Secretary that is inconsistent with the statute's purpose of protecting tribal interests and resources. Requiring the Secretary to consider the interests of neighboring land owners is much different than extending to those land owners a legally enforceable right to ensure that their interests are not impaired.

The court rejected the state's argument that standing is provided under the terms of the Administrative Procedure Act (APA), holding that "APA procedures attach only in the event that an independent statute confers a right to a hearing."

—TDL

State of New Mexico v. Richardson
Environmental Defense Fund v. Richardson

New Mexico Withdraws Challenge to WIPP Certification

On May 1, New Mexico's Attorney General announced that the state is withdrawing its lawsuit challenging the U.S. Environmental Protection Agency's certification that the Waste Isolation Pilot Plant (WIPP) complies with all federal statutory and regulatory requirements. The state's announcement of withdrawal of its suit, which was initiated by former-Attorney General Tom Udall and several environmental organizations, follows the recent refusal of the U.S. District Court for the District of Columbia to enjoin the U.S. Department of Energy from shipping waste to WIPP from the Los Alamos National Laboratory. (See *LLW Notes*, March 1999, p. 9.) That decision has been appealed by the environmental organizations, without the participation of the State of New Mexico, to the U.S. Court of Appeals for the District of Columbia Circuit.

According to a press release from the state Attorney General's office, the withdrawal is largely based on the likelihood that the suit would fail on the merits. "It is extremely difficult to convince a court to overturn an administrative agency's discretionary decision-making," according to the press release.

The first shipment of radioactive waste arrived at the WIPP facility at 3:30 a.m. on March 25. The waste was placed under ground on March 29. The shipment contained almost 600 pounds of transuranic wastes—mostly protective clothing, gloves, tools, and other materials. The facility expects to accommodate at least 37,000 shipments from 23 DOE sites spread across 16 states over the course of its 30-year operational lifespan.

—TDL

El Paso Natural Gas Co. v. Neztsosie

Federal Courts Found to Supersede Tribal Courts in Certain Instances

On May 3, the U.S. Supreme Court unanimously held that federal courts, not Indian tribal courts, have jurisdiction to determine whether federal limits on liability apply to allegations that activities by the nuclear industry caused harm on Indian lands. In so doing, the Court held that tribal courts are preempted by federal law from ruling on such cases in order to avoid inefficiencies resulting from duplicative determinations of similar issues in multiple jurisdictions.

> The apparent reasons for the congressional policy of immediate access to federal forums are as much applicable to tribal- as to state-court litigation. The [Price Anderson] Act provides clear indications of the congressional aims of speed and efficiency in the provisions addressing consolidation and management of cases.

The case involved uranium mining on the Navajo reservation in Arizona. Under the 1988 Price-Anderson Act, the liability of companies engaging in nuclear industry related activities is limited, and such companies are allowed to remove suits against them to federal court. According to the Court, the law expresses Congress' "unmistakable preference for a federal forum at the behest of the defending party." Although the law is silent with regard to the removal of cases initiated in tribal courts, the Court found that the same principles apply.

—TDL

Court Calendar

Case Name	Description	Court	Date	Action
California Department of Health Services v. Babbitt and *US Ecology v. U.S. Department of the Interior* (See *LLW Notes*, April 1999, pp. 14-16.)	Seeks to compel the Interior Department to transfer land to the state for use in siting a LLRW disposal facility and to issue the patent approved by DOI over five years ago.	United States District Court for the District of Columbia	May 28, 1999	Deadline for the state to appeal the district court's decision declining to order the Interior Department to perform the land transfer.
El Paso Natural Gas Co. v. Neztsosie (See related story, this issue.)	Addresses the authority of federal courts and Indian tribal courts to determine whether federal limits apply to allegations that nuclear industry-related activities caused harm on native lands.	United States Supreme Court	May 3, 1999	The court issued a decision holding that federal law preempts tribal courts from ruling on whether federal limits on liability apply to allegations that nuclear industry activities caused harm on native lands.
Envirocare of Utah, Inc. v. United States (See *LLW Notes*, March 1999, p. 12.)	Challenges a request for proposals issued by the Army Corps of Engineers for the disposal of FUSRAP waste on the ground that some of the companies expected to bid on the RFP are not properly licensed to dispose of such waste.	United States Court of Federal Claims	April 27, 1999	Oral arguments were held.
*Santini v. Connecticut Hazardous Waste Management Service (*See *LLW Notes*, August/September 1998, pp. 20-21.)	Claims that a site designation made by the Connecticut Hazardous Waste Management Service prevented plaintiff from selling adjacent real estate for residential use, thus resulting in an unlawful taking of private property.	Supreme Court of the State of Connecticut	May 25, 1999	Oral arguments were held.

Court Calendar *continued*

Case Name	Description	Court	Date	Action
Entergy Arkansas v. Nebraska (See *LLW Notes*, April 1999, pp. 7-13.)	Challenges actions taken by the State of Nebraska and its officials in reviewing US Ecology's license application to build and operate a LLRW facility in Boyd County as violative of state, federal, and compact law—as well as contractual obligations to exercise "good faith."	United States District Court for the District of Nebraska	May 12, 1999	Nebraska filed a notice of appeal to the U.S. Court of Appeals for the Eighth Circuit challenging the district court's decision to enjoin state officials from collecting or expending utility funds, or from taking further action on a contested case proceeding.
Nebraska v. Central Interstate Low-Level Radioactive Waste Commission (See *LLW Notes*, December 1998, pp. 19-20.)	Challenges actions by the commission to impose deadlines on the state for processing a LLRW disposal facility license application filed by US Ecology.	United States Court of Appeals for the Eighth Circuit	May 10, 1999	Oral arguments were held.
New Mexico v. Richardson (See *LLW Notes*, March 1999, p. 9.)	Challenges EPA's determination that the Waste Isolation Pilot Plant (WIPP) complies with all federal statutory and regulatory requirements.	United States Court of Appeals for the District of Columbia Circuit	April 30, 1999	The state withdrew its lawsuit.
Greene v. Citigroup, Inc. (See *LLW Notes*, December 1998, pp. 21-22.)	Alleges that solidification and on-site disposal of LLRW on property owned by the S. W. Shattuck Chemical Company violates the Rocky Mountain Compact requirement that all LLRW be disposed of at a regional facility.	United States District Court for the District of Colorado	January 15, 1999	Intervenor Rocky Mountain Low-Level Radioactive Waste Board filed a motion for reconsideration requesting that the district court amend its final order.

Court Calendar *continued*

Case Name	Description	Court	Date	Action
Northern States Power Co. v. United States (See *LLW Notes*, June/July 1998, pp. 30-31.)	Seeks damages from DOE for failing to meet a contractual deadline to begin disposing of spent fuel.	United States Court of Federal Claims	June 7, 1999	Deadline to appeal the court's decision to dismiss the case for failure to exhaust administrative remedies.
Utah v. U.S. Department of the Interior and *United States ex. rel. Sammy Blackbear v. Babbitt* (See related story, this issue.)	Seeks a declaration that the State of Utah may participate in approval proceedings conducted by the Bureau of Indian Affairs for a lease agreement between the Skull Valley Band of Goshute Indians and a consortium of commercial utilities to store spent nuclear fuel on reservation lands.	United States District Court for the District of Utah	April 9, 1999	The court issued an order consolidating a class-action suit with Utah's suit against DOI and finding that the state lacks standing to participate in lease approval proceedings conducted by the Bureau of Indian Affairs (BIA).
			July 1, 1999	Deadline for the class-action plaintiffs to respond to DOI's motion for summary judgment on the issue of whether BIA complied with the Freedom of Information Act (FOIA) in reviewing the Goshute lease.
			August 1, 1999	Deadline for DOI to respond to plaintiffs' opposition to its motion for summary judgment on the FOIA issue.
			August 16, 1999	Deadline for class-action plaintiffs to reply to DOI's brief in support of its motion for summary judgment.
			August 24, 1999	Oral argument is scheduled on the FOIA issue.

U.S. Environmental Protection Agency (EPA)

EPA Releases WIPP Documents for Public Comment

On May 17, EPA released for public comment (64 *Federal Register* 26,713) the following two DOE documents on waste characterization programs:

- Los Alamos National Laboratory Transuranic Waste Quality Assurance Project Plan, Revision 2. April 26, 1999.

- Los Alamos National Laboratory Transuranic Waste Certification Plan, Revision 2. April 26, 1999.

The programs were designed in response to a proposal to dispose of certain Los Alamos National Laboratory (LANL) transuranic radioactive waste at the Waste Isolation Pilot Plant (WIPP) in Carlsbad, New Mexico. According to EPA's announcement, the documents will be used "to evaluate waste characterization systems and processes at LANL that primarily utilize a High Efficiency Neutron Counter (HENC) and other methods of solid coring and sampling to measure important waste characteristics." EPA plans to conduct an inspection of waste characterization systems and processes at LANL in mid-June.

Comments on the documents must be received on or before June 16, 1999, to be eligible for consideration.

—TDL

For additional information, contact Jim Oliver of EPA's Office of Radiation and Indoor Air at (202)564-9310 or visit EPA's web site at

www.epa.gov/radiation/wipp/announce.html

U.S. Nuclear Regulatory Commission (NRC)

NRC Expands Participation Opportunities for Indian Tribal Governments

In April 1999, NRC published a notice of final rulemaking in the *Federal Register* announcing the amendment of the agency's Rules of Practice so as to allow federally recognized Indian tribes to participate in NRC adjudicatory proceedings as "interested governmental participants" rather than to intervene as formal "parties." An NRC press release gave the following explanation for the amendment:

> The amendment … would recognize that [federally-recognized Indian tribes] exercise inherent sovereign powers over their members and territory, similar to the powers exercised by state and local governments. It would also give tribes the same options now available to state governments, units of local governments, and their official subdivisions, any of which can take part in NRC proceedings as an "interested governmental participant."

NRC published the rule in final form because the rule is considered to be a non-controversial and routine action. Unless significant adverse comments are received within 30 days of publication of the notice, the rule will become effective 60 days from the publication date.

—TDL

U.S. Nuclear Regulatory Commission (continued)

NRC Issues Documents re Envirocare Special Nuclear Materials Exemption

On May 14, the NRC released an environmental assessment and a "finding of no significant impact" for a proposed order to exempt Envirocare of Utah from certain licensing requirements for special nuclear material (SNM). The exemption would allow Envirocare's disposal facility in Clive, Utah, to possess waste containing SNM in greater mass quantities than specified in 10 CFR Part 150. That regulation provides that private companies are not allowed to possess and process more than 350 grams of SNM prior to burial in a disposal cell without an NRC-issued license.

Under the terms of the proposed order, Envirocare would be able to possess SNM without regard for mass. Instead, concentration-based limits would be applied to address criticality safety concerns. The exemption would be contingent upon Envirocare complying with specific conditions, which are listed in the *Federal Register* notice (64 *Federal Register* 26,463).

Publication of the notice follows an initial decision by Utah's Radiation Control Board to modify Envirocare's radioactive material license to allow acceptance of limited concentrations of radioisotopes of uranium, plutonium, and curium that may be present in SNM. This decision was made after consultation with NRC and in anticipation of the proposed exemption. (See *LLW Notes*, April 1993, p. 3.)

Background

The proposed exemption was requested by Envirocare after a May 1997 finding that the facility had exceeded the SNM possession limits contained in its state-issued radioactive material license. In response to the violation, NRC issued a confirmatory order in June 1997 directing Envirocare to stop receiving shipments of waste containing uranium 235 and to submit a plan to the commission explaining how the company would comply with federal regulatory limitations regarding SNM. (See *LLW Notes*, July 1997, p. 35.) NRC subsequently approved Envirocare's compliance plan and allowed shipments of uranium 235 to resume.

Need for the Proposed Action

The rationale for the proposed exemption is derived largely from a change in the mode of transportation of waste to the Envirocare facility following the 1997 violation. Prior to that time, rail shipments of waste were transported directly to a rail siding adjacent to the site. Afterwards, however, waste was often transferred from rail cars to trucks in the Salt Lake City rail yard and then taken to the Envirocare site either directly or after storage in transit at a transport facility. This practice, which NRC and the U.S. Department of Transportation determined complied with federal regulations, was operationally advantageous to the company in order to avoid exceeding SNM possession limits again. However, NRC has concluded that the change in mode of transportation has resulted in a "slightly higher probability" of a transportation accident and that the increased waste handling has increased the possibility of container rupture and spillage. Accordingly, NRC believes that the proposed exemption, which will allow Envirocare to resume rail shipments directly to the site, will increase safety in the handling, storage, and transportation of waste destined for the Envirocare facility.

—TDL

NRC Issues Draft Enrichment Facility License Review Process

In April 1999, the U.S. Nuclear Regulatory Commission published a draft report in the *Federal Register* detailing the review process for a license application for a facility employing laser technology to produce low-enriched uranium for power plants. The draft report, entitled the "Standard Review Plan for the Review of a License Application for the Atomic Vapor Laser Isotope (AVLIS) Facility," provides guidance for the evaluation of health, safety, and environmental protection measures in a license application. It was written in anticipation of a submittal from the U.S. Enrichment Corporation (USEC), which currently operates facilities in Portsmouth, Ohio, and Paducah, Kentucky. The existing facilities, which operate pursuant to NRC-issued certificates of compliance, employ a gaseous diffusion technology to perform enrichment. The anticipated facility would use an advanced vapor laser isotope system.

Although USEC originated as a wholly government-owned entity, the corporation was privatized pursuant to the Energy Policy Act of 1992. The FY 1996 omnibus appropriations bill, however, included the following language pertaining to state and compact liability for the disposal of low-level radioactive waste generated by USEC:

> Sec. 3113 (c) STATE OR INTERSTATE COMPACTS.—Notwithstanding any other provision of law, no State or interstate compact shall be liable for the treatment, storage, or disposal of any low-level radioactive waste (including mixed waste) attributable to the operation, decontamination, and decommissioning of any uranium enrichment facility.

(See *LLW Notes*, May 1996, p. 31.)

—TDL

NRC Extends Public Comment Period on HLRW Rule

NRC has lengthened the public comment period on a proposed rule establishing licensing criteria for the disposal of spent nuclear fuel and high-level radioactive wastes in a proposed geologic repository at Yucca Mountain, Nevada. Comments on the rule, which was published on February 22 (64 *Federal Register* 8640), were originally due by May 10. However, due to the receipt of several requests for additional time, NRC has decided to continue the comment period until June 30. Comments received after that date may be considered if it is practical to do so, but consideration is not guaranteed.

According to NRC, "[t]he requesters cited the complex, technical nature of the proposed rule, and their need to review other documents being developed as part of the nation's high-level radioactive waste management program, as principal reasons for the extension request." The proposed rule includes licensing procedures, as well as criteria for public participation, records and reporting, monitoring and testing programs, performance confirmation, quality assurance, personnel training and certification, and emergency planning.

—TDL

For further information, see LLW Notes, March 1999, p. 19. To obtain a copy of the proposed rule, see "New Materials and Publications," LLW Notes, March 1999, p. 30.

U.S. Nuclear Regulatory Commission(continued)

NRC to Review Decision Approving Disposal of FUSRAP at White Mesa

On April 28, the five NRC Commissioners agreed to review a February 24 decision by an NRC Atomic Safety and Licensing Board judge concerning a license amendment granted to International Uranium Corporation (IUC). The amendment, which the judge upheld, authorizes the company to accept waste from the Formerly Utilized Sites Remedial Action Program (FUSRAP) at the company's White Mesa Uranium Mill in Utah. (See *LLW Notes*, March 1999, p. 24.) The amendment was issued in August 1998 after NRC concluded that the waste qualified as feed material and is being processed primarily for its source material content. The amendment applies only to waste from the Ashland 2 site in Tonawanda, New York.

Background

The State of Utah petitioned the Commissioners to review the judge's decision on February 26, arguing that the acceptance of FUSRAP waste at White Mesa constitutes "sham disposal." According to the state, uranium extraction is only a pretext to allow the facility to offer cheap disposal rates, in violation of federal rules that allow alternate feed to be accepted only if processed "primarily for its source-material content." In addition, Utah asserts that the amendment essentially allows IUC to circumvent the State of Utah's regulatory process.

NRC staff opposed the requested review, asserting that IUC is processing the Tonawanda FUSRAP waste primarily for uranium rather than for some other mineral and that the company's operations therefore comply with federal requirements. IUC did not contest the requested review, taking the position that the review would "eliminate uncertainty" and "end the waste of resources involved in repeated litigation."

The Order

In their April 28 order, the Commissioners set the following briefing schedule:

- Utah's brief is due within 21 days of the date of the order and is limited to a maximum of 25 pages;
- responsive briefs by NRC and IUC are due within 21 days of receipt of Utah's brief and are also limited to 25 pages; and
- Utah's reply brief is due within 14 days of receipt of the NRC and IUC briefs and is limited to 15 pages.

A hearing date had not been scheduled as of press time.

—TDL

U.S. Army Corps of Engineers (continued)

Safety-Kleen Position

Safety-Kleen asserts that it believed it could take the Tonawanda waste, which it claims constitutes NORM with levels well below the 2,000 picocuries-per-gram limit specified in the company's hazardous waste disposal permit. Safety-Kleen officials say that they orally informed both of the licensing agencies that they would be taking the waste last October 21, and that the conversations were followed by a fax and letter containing the same information. Having received no reply from either agency for months, Safety-Kleen assumed that they could accept and dispose of the waste and began doing so.

Other Safety-Kleen Facilities

Safety-Kleen operates other hazardous waste disposal facilities around the country, including

- the **Grassy Mountain** facility in Tooele County, Utah, which is currently seeking to amend its license to allow for the disposal of certain types of low-level radioactive waste; and
- the **Deer Creek** facility in Last Chance, Colorado, which has submitted a proposal to DOE to accept low-level and mixed radioactive waste from the federal Rocky Flats facility in Denver, but which has not to date submitted license applications to the State of Colorado.

(See *LLW Notes*, January/ February 1999, p. 11.)

California Position

Edgar Bailey, the Chief of DHS' Radiological Health Branch, says that he did not see this letter until recently. On March 10, after obtaining a copy of the letter, Bailey wrote to Safety-Kleen stating that the waste had been improperly characterized and that the company was not licensed to dispose of it.

> Please be advised that any naturally occurring radioactive materials in concentrations exceeding the concentrations found in nature are subject to regulation and licensing as radioactive materials in California. The status accorded to a material or waste by another legal jurisdiction has no bearing on this California determination. Disposal of radioactive materials must be at a site that is licensed by this Department to dispose of radioactive waste or otherwise approved by this Department. At the present time there is only one site in California licensed to dispose of radioactive wastes from other persons, and that site is not currently built or operating.
>
> The Safety-Kleen (Buttonwillow), Inc., site is not licensed by [DHS] to dispose of any radioactive waste. In fact, this facility is not even licensed to receive or store radioactive material of any sort. For the facility to receive, store, or dispose of any radioactive waste, including the material described in your letter, would be a violation of California law and would subject you to potential monetary penalties. Such a violation is also a misdemeanor.

Bailey concluded his letter with a request for confirmation that no such wastes had been received by Safety-Kleen. According to company officials, however, the last shipment of Tonawanda waste arrived on the same day Bailey's letter did.

Background

The dispute and controversy derive, at least in part, from the 1997 congressional transfer of cleanup authority over the Formerly Utilized Sites Remedial Action Program (FUSRAP) from the U.S. Department of Energy to the Army Corps of Engineers. (See related story, this issue.) DOE, which oversaw the dismantlement of the Tonawanda plant until the transfer of authority, generally sent radioactively-contaminated waste from the plant to Envirocare's disposal facility in Utah or other similarly-licensed facilities. Seeking to minimize disposal costs, however, the corps set out to find a cheaper option. A subcontractor for the corps subsequently contracted with Safety-Kleen and began shipments of the waste.

Various entities, including the Natural Resources Defense Council, have recently challenged the corps' authority to regulate the disposal of FUSRAP waste and have asked other federal agencies, including the U.S. Department of Energy, to step in. (See related story, this issue.) NRC, however, does not have jurisdiction over radioactive wastes produced before 1978. The Tonawanda waste was generated in the 1940s.

The Corps also sends radioactively-contaminated FUSRAP waste to licensed facilities.

—TDL

U.S. Army Corps of Engineers (continued)

Comments on FUSRAP Disposal at California Facility

Army Corps

The industrial facility at Tonawanda was decontaminated and then dismantled, with low-level radiological waste sent to appropriate licensed facilities. The remaining construction debris, mostly broken concrete and wood, with residual amounts of radioactivity, was sent to the Buttonwillow facility by a Corps contractor in accordance with a RCRA subtitle C permit. The debris had very small amounts of radioactivity, averaging 335 pCi/g, which is well below the 2000 pCi/g limit contained in Safety-Kleen's permit. Because of the very small amount of radioactivity, such materials are not technically low-level radiological waste, or even listed as radiological waste by the Department of Transportation and other regulatory entities. If properly disposed of in accordance with a RCRA subtitle C permit, the materials do not pose a risk to the public health and safety, or the environment.

U.S. Army Corps of Engineers Public Affairs Office. May 1999.

New York Regulator

The Tonawanda waste that went to the Buttonwillow facility would not be allowed to be disposed of in Chemical Waste Management's Model City, New York, RCRA-C hazardous waste disposal facility, the only such commercially operated disposal facility in the Northeast. The RCRA-C permit for this facility does not allow radioactive materials to be disposed of therein. [The New York Department of Environmental Conservation] has a grant from the Corps to oversee their remedial efforts in that State and had requested documentation from the Corps that the disposal site had approval to accept these radioactive wastes, to which they were provided a letter from Safety-Kleen to the California officials informing them of their plans to dispose of Tonawanda waste as NORM waste.

Paul Merges, Director, Bureau of Radiation & Hazardous Site Management for the New York Department of Environmental Conservation. May 1999.

California Licensing Agency

This is in reply to your letter dated May 5, 1999, in which you express concern that the permits we have issued to the three hazardous waste disposal sites in California allow the disposal of low-level radioactive waste materials.

The Department of Toxic Substances Control (DTSC) has no jurisdiction over radioactive waste, and our permits do not authorize disposal of radioactive waste regulated by the Department of Health Services (DHS) or any federal agency.

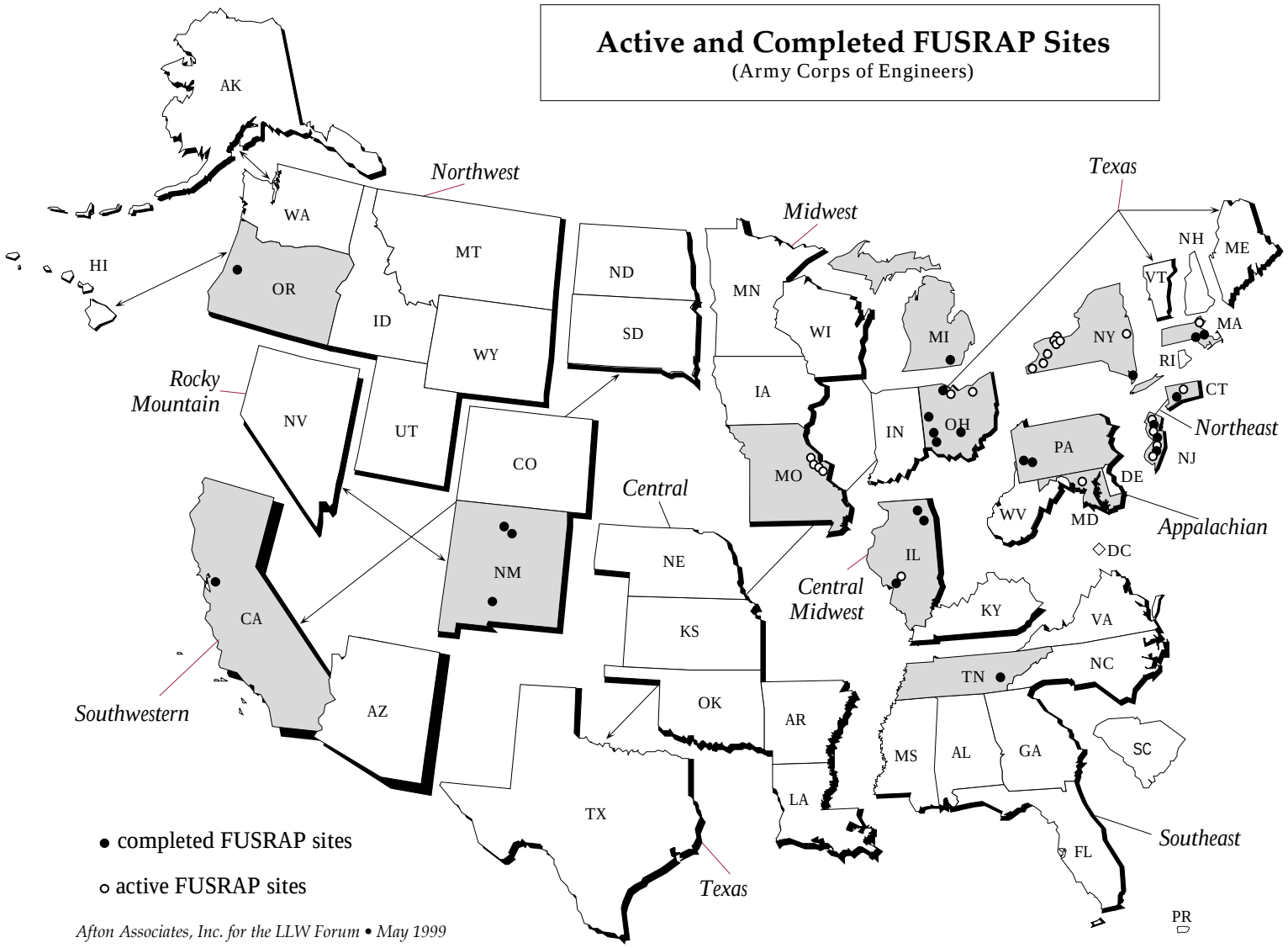
The section of the Safety-Kleen permit you refer to (Section II, C.I.a.) was intended to deal with hazardous waste that exhibits normally occurring radioactivity and does not authorize disposal of radioactive waste regulated by DHS or any federal agency.

Letter from Watson Gin, Acting Deputy Director, Hazardous Waste Management Program, Department of Toxic Substance Control, California Environmenal Protection Agency, to Edgar Baily, Chief, Radiological Health Branch, California Department of Health Services. May 17, 1999.

National Association of Cancer Patients

As a resident of California, I find it outrageous that the federal government can send their radioactive waste to a facility in California that is not licensed to take that waste, while at the same time preventing California from constructing its own licensed facility for radioactive waste disposal at a far superior site in Ward Valley. The Buttonwillow site is only one-half mile from the major water aqueduct in the state. In contrast, Ward Valley is twenty-two miles and two mountain ranges away from the Colorado River. The hypocrisy is obvious.

Nicki Hobson, Executive Director of the National Association of Cancer Patients (a supporter of the Ward Valley low-level radioactive waste disposal facility). May 1999.



Completed FUSRAP Sites			*Active FUSRAP Sites*		
Aliquippa, PA	Seymour, CT	Oak Ridge, TN	Curtis Bay, MD	Deepwater, NJ	Tonawanda, NY (4)
Springdale, PA	Jersey City, NJ	Berkley, CA	Madison, IL	Maywood, NJ	Lewiston, NY
Chicago, IL (2)	New Brunswick, NJ	Indian Orchard, MA	Hazelwood, MO	Wayne, NJ	Colonie, NY
Granite City, IL	Middlesex, NJ	Beverly, MA	St. Louis, MO (2)	Middlesex, NJ	Buffalo, NY
Oxford, OH	Albany, OR	Adrian, MI	Hazelwood & Berkley, MO		Norton, MA
Hamilton, OH	Los Alamos, NM (2)	Lewiston, NY	Luckey, OH		
Fairfield, OH	White Sands Missile Range, NM	New York, NY	Painesville, OH		
Columbus, OH			Windsor, CT		
Toledo, OH					

Source: DOE and the Army Corps memorandum of understanding. March 1999.

U.S. Army Corps of Engineers (continued)

House Commerce Committee and Army Corps Discuss FUSRAP Concerns

On April 21, the House Commerce Committee sent a letter to the U.S. Army Corps of Engineers expressing concern over their administration of the Formerly Utilized Sites Remedial Action Program (FUSRAP). The Corps responded by correspondence dated May 21.

The committee has primary jurisdiction over nuclear programs in general and over FUSRAP in particular. The committee's letter identified three main concerns: a lack of oversight by NRC and the Corps' use of disposal facilities that are not licensed by NRC, an incident involving the mistaken disposition of FUSRAP waste in an ordinary landfill, and the status of the Memorandum of Understanding between the Corps and DOE.

The following is a brief summary of the exchange between the committee and the Corps.

Lack of NRC Oversight and Corps' Use of Disposal Facilities Not Licensed by NRC

Committee's Concerns In its letter, the committee stated its understanding "that the Corps, with the concurrence of the Nuclear Regulatory Commission (NRC), has recently determined that byproduct materials generated prior to 1978 are not subject to regulation under Section 11(e)(2) of the Atomic Energy Act and may, therefore, be sent to disposal sites regulated under the Resource Conservation and Recovery Act (RCRA) rather than to disposal sites regulated by the NRC." The committee requested that the Corps provide a detailed justification for this decision, including any legal opinions that the Corps may have prepared. In addition, the committee asked the Corps to supply a cost-benefit analysis on the use of RCRA landfills as opposed to NRC-licensed disposal facilities for this material and to explain what impact this new approach may have on public health, safety, and the environment. The committee also requested the Corps to identify which RCRA landfill sites are being considered for the disposal of 11e.(2) materials.

Corps' Response The Corps' response referred to NRC's April 5 rejection of the Natural Resources Defense Council's petition asking that the agency exercise licensing authority over radioactive materials subject to FUSRAP. (See related story, this issue.) The Corps noted that the rejection includes a detailed explanation of NRC's findings that the Corps does not need an NRC license to conduct remediation at FUSRAP sites pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act and that byproduct materials generated prior to 1978 are not subject to regulation under Section 11e.(2) of the Atomic Energy Act (AEA). The Corps stated that it "relies on the federal and/or state permitting and licensing regulators to ensure that public health, safety and the environment are fully protected regardless of whether the disposal site is licensed under the provisions of the AEA or permitted in accordance with … RCRA."

In regard to the request for a cost-benefit analysis, the Corps responded as follows:

> Recent Corps experience with the use of RCRA, Subtitle C, permitted facilities for the disposal of certain low activity FUSRAP wastes resulted in estimated savings of up to 50% over the cost of disposal at NRC regulated sites, which generally are licensed to receive much higher activity materials. We are aware of a number of RCRA, Subtitle C facilities which are permitted for and may be willing to accept low activity radioactive wastes within the specific limits of their permits. In an effort to increase competition further, the Corps has requested proposals for disposal facilities to provide disposal alternatives for several different types of FUSRAP wastes. Under this solicitation, we may award contracts for some of the low activity FUSRAP waste types to one or more RCRA, Subtitle C facilities that are specifically permitted to accept low activity radioactive wastes.

In regard to the request for information about past and future disposal practices, the Corps responded as follows:

> The Corps has disposed FUSRAP materials at the Safety-Kleen facility in Buttonwillow, California and at the Envirosafe facility in Grand View, Idaho. Any RCRA, Subtitle C facilities used in the future will depend upon FUSRAP site specific and disposal facility specific circumstances. The Corps will not consider sending low activity wastes to any facility where radioactive waste is not addressed in their permits. For FUSRAP wastes which are regulated under the Atomic Energy Act, [the Corps] will only send those materials to treatment or disposal facilities properly licensed by the NRC or an agreement state.

Mistaken Disposition of FUSRAP Waste in an Ordinary Landfill

Committee's Concerns The committee's letter alluded to an incident last fall in which a rail car full of hazardous contaminated material from the FUSRAP site at Painesville, Ohio, was sent to a local nonhazardous landfill for disposal. The committee requested a full report detailing the Corps' response to the incident, any public health and environmental consequence that resulted from this incident, and the resolution of the situation at the local landfill. The committee also asked the Corps to explain its plans both to prevent such incidents in the future and to respond if another incident does occur.

Corps' Response The Corps' response included a thorough report about the mistake. According to the Corps, the shipper has taken responsibility and "all the FUSRAP material [has been removed] from the landfill to the satisfaction of regulatory authorities in the State of Ohio" and is awaiting disposal in a RCRA, Subtitle C, landfill.

In regard to the issue of future incidents, the Corps responded as follows:

> Lessons learned from this incident will help prevent a recurrence. Our transportation subcontractors now monitor the progress of all shipments on a daily basis to minimize the possibility of any railcars being accidentally diverted. In addition, we are establishing labeling requirements which help to immediately identify FUSRAP wastes. Our response to this incident was consistent with Federal requirements, our established emergency operations plans, and in accordance with the mandatory emergency response plans we require of our contractors. Our response to any future incidences will be consistent with this approach.

Status of the Memorandum of Understanding between the Corps and the U.S. Department of Energy

Committee's Concerns The committee noted that the recently completed General Accounting Office report on FUSRAP indicates that a number of transition issues remain unresolved between the Corps and DOE and that these matters will be addressed in a pending Memorandum of Understanding (MOU) between the two agencies. The committee requested that the Corps provide it with the text of the latest version of the MOU, the schedule for finalizing the MOU, and a description of any issues that are expected to be left unresolved.

Corps' Response The Corps forwarded a copy of the MOU, which was finalized in mid-March. (See related story, this issue.) According to the Corps, "[a]ll the issues remaining to be resolved between the two agencies which were mentioned in the General Accounting Office report were resolved before the MOU was signed."

—TDL

U.S. Army Corps of Engineers (continued)

NRC Denies NRDC Petition re FUSRAP Authority

On May 21, NRC issued a decision (64 *Federal Register* 27826) denying an October 1998 petition from the Natural Resources Defense Council (NRDC). The petition requested that the agency "exercise its licensing authority over the radioactive materials subject to [the Formerly Utilized Sites Remedial Action Program (FUSRAP)] and take steps to ensure that the [U.S. Army Corps of Engineers] henceforth administers FUSRAP only in accordance with a properly issued license and applicable laws and regulations." NRC regulations provide that the decision becomes final 25 days after issuance unless the NRC Commissioners institute a review.

Background

History of the Program Under FUSRAP, soil and other substances containing radioactive byproduct material are treated and/or removed from identified sites. In past years, DOE was in control of the program However, the FY 1998 Energy and Water Appropriations Act transferred budget and management authority over FUSRAP to the Army Corps of Engineers.

Federal law provides that no "person [shall] transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, own, possess, import, or export" byproduct material without an NRC-issued license. A "person" is defined under the law to include all government agencies except DOE and NRC. The Army Corps of Engineers is not considered to be a DOE contractor and is granted no exemption under the law. DOE, which has adopted the position that it has no regulatory authority over FUSRAP while the program is being managed by the Corps, has entered into a Memorandum of Understanding with the Corps concerning each agency's regulatory responsibilities. (See related story, this issue.)

NRDC's Petition In its petition, NRDC argues that the congressional transfer of budgetary authority from DOE to the Army Corps of Engineers was not intended to affect DOE's regulatory authority over FUSRAP. In the absence of DOE regulatory authority, however, NRDC asserts that NRC authority must be applied. Accordingly, NRDC argues that the Army Corps of Engineers is illegally operating FUSRAP because it "does not have the legal authority to run FUSRAP without first obtaining a license from the NRC." (See *LLW Notes*, January/Ferbuary 1999, p. 30.))

NRC's Decision

In part, NRC based its denial on permit waiver provisions contained in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

> Congress has given NRC no clear directive to oversee [the Corps'] ongoing effort under CERCLA to complete the FUSRAP cleanup project. Indeed, Congress has provided NRC no money and no personnel to undertake an oversight role. In addition, Congress has made it clear that the Corps is to undertake FUSRAP cleanup pursuant to CERCLA which waives permit requirements for onsite activities. In these circumstances, we are disinclined to read our statutory authority expansively, and to commit scarce NRC resources, to establish and maintain a regulatory program in an area where, under Congressional direction, a sister federal agency is already at work and has committed itself to following appropriate safety and environmental standards.

The denial was also based on NRC's lack of authority over the material contained at many of the FUSRAP sites, regardless of whether the Corps is serving as the lead agency implementing the program and regardless of whether the Corps' response actions are subject to CERCLA.

> In particular, of the 21 sites at which remediation has not yet been completed, 12 sites contain residual material resulting from activities that were not licensed by NRC at the time the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA) became effective or at any time thereafter. As defined by the UMTRCA, NRC does not have authority to regulate cleanup of covered residual material resulting from an activity that was not so licensed.

CRCPD Argues for NRC Authority over FUSRAP Material

By letter dated April 9, the Conference of Radiation Control Program Directors (CRCPD) expressed concern over the U.S. Army Corps of Engineers' performance of cleanups at FUSRAP sites without independent regulatory oversight. CRCPD also asserted in its letter that NRC has authority over contaminated materials found at FUSRAP sites.

According to CRCPD, a regulatory vacuum over the disposal of FUSRAP materials may arise due to a combination of two factors:

- the transfer of authority for the FUSRAP program from DOE, which has self-regulating authority under the Atomic Energy Act (AEA), to the Corps, which the AEA does not provide with self-regulating authority; and
- the NRC's recently expressed position that it has no regulatory authority over 11e.(2) byproduct material generated prior to the enactment of the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA).

CRCPD disagrees with NRC's position, arguing as follows.

> There are two mechanisms that give the NRC this authority. First, 10 CFR Part 40 indicates that any material that has greater than 0.05% uranium by weight is source material, unless otherwise specifically exempted by the rule. We believe that much of the FUSRAP material would be subject to regulation under 10 CFR Part 40 if it is not subject to the requirements of UMTRCA. Second, a precedence has been established by the U.S. Environmental Protection Agency (EPA) that wastes generated prior to the enactment of legal authority (Resource Conservation and Recovery Act) are regulated under that authority when they are newly exhumed during cleanup. (57 FR 37298, August 18, 1992). EPA requires that when a hazardous waste is exhumed, it must undergo classification per 40 CFR Part 261 as if it were newly generated. Wastes that are classified as hazardous waste are then subject to the current requirements for handling and disposal. Thus, wastes that pose a threat are handled protectively regardless of when they were originally generated.

If, after further examination of the above-suggested approaches, NRC still believes that it has no jurisdiction over this material, especially uranium and thorium, CRCPD's letter encourages NRC to approach Congress for additional regulatory authority.

—TDL

U.S. Army Corps of Engineers (continued)

DOE and Army Corps MOU re FUSRAP

In mid-March, the U.S. Department of Energy and the U.S. Army Corps of Engineers entered into a memorandum of understanding (MOU) concerning their respective responsibilities for the Formerly Utilized Sites Remedial Action Program (FUSRAP). James Owendoff, Acting Assistant Secretary for Environmental Management, signed the MOU on behalf of DOE, and Russell Fuhrman, a Major General in the U.S. Army and Director of Civil Works, signed on behalf of the Corps.

Under FUSRAP, contamination resulting from work performed as part of the nation's early atomic energy program is treated and/or removed from identified sites. In past years, DOE controlled the program. However, the FY 1998 Energy and Water Appropriations Act transferred management and execution authority over FUSRAP to the Army Corps of Engineers.

Scope of the MOU

The MOU delineates the responsibilities of the parties over the 25 completed sites where DOE had concluded response actions as of October 13, 1997, as well as over the 21 active sites where DOE had not completed response actions by that date. In addition, the MOU addresses the responsibilities of the parties for "determining the eligibility of any new sites and vicinity properties for response actions under FUSRAP, determining the extent of response actions necessary at any eligible site, and dealing with other matters necessary to carry out this Program."

Responsibilities

Completed Sites The MOU provides that the Corps has no responsibility for completed sites unless additional response actions are necessary and DOE refers the matter to the Corps in accordance with the MOU.

DOE has responsibility for "surveillance, operation and maintenance, including monitoring and enforcement of any institutional controls which have been imposed on a site or vicinity properties; management, protection, and accountability of federally-owned property and interests therein; and any other federal responsibilities, including claims and litigation, for those sites identified as completed."

The Corps will provide funding to DOE for administrative actions required to finalize completion of the sites, but DOE is "responsible for administration of payments in lieu of taxes for any federally-owned lands held in connection with FUSRAP."

Active Sites Under the MOU, the Corps is generally responsible for property management and response actions at active FUSRAP sites, as well as site cleanup and site close-out. In addition, during cleanup operations and for the first two years after site close-out, the Corps is responsible for "surveillance, operation and maintenance, as required, and for management and protection of federally-owned real property in connection with FUSRAP." The Corps is also charged with establishing cleanup standards at active sites in consultation with federal, state, and local regulatory agencies. As part of the MOU, the Corps accepts liability for court-ordered damages due to its own fault or negligence or that of its contractors and agrees to hold DOE free from such liability.

DOE's duties with regard to active sites, for the most part, begin two years after close-out, at which point the department is "responsible for long-term surveillance, operation and maintenance, including monitoring and enforcement of any institutional controls which have been imposed on a site or vicinity properties." The MOU also provides that, upon close-out, DOE will maintain administrative accountability for federally-owned real property that was acquired by the Corps as part of FUSRAP. DOE retains inventory reporting responsibilities for federally-owned real property and agrees to provide the Corps with authorization for access to such lands. As part of the MOU, DOE accepts general liability for court-ordered damages due to departmental actions prior to October 13, 1997.

New Sites The MOU provides that the Corps will conduct necessary field surveys and prepare a preliminary assessment for potential new FUSRAP sites. In addition, the Corps will determine the extent of contamination at the eligible sites, vicinity properties, and other locations and determine if the contamination is a threat to human health or the environment. Thereafter, the Corps will make a finding on the extent to which response action is warranted under CERCLA.

DOE's main responsibility in regard to potential new sites is to determine whether they were used for activities that supported the nation's early atomic energy program and are therefore eligible for FUSRAP. Thereafter, DOE will refer the information to the Corps to perform the above-described activities.

Regulatory Authority

The MOU specifically states that the parties "acknowledge that DOE does not have regulatory responsibility or control over the FUSRAP activities" conducted by the Corps or its contractors. The Corps is executing FUSRAP under both the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) and the National Oil and Hazardous Substances Pollution Contingency Plan.

The Natural Resources Defense Council (NRDC) has, however, challenged the NRC's position regarding licensing of Corps' activities under FUSRAP. On October 15, 1998, NRDC filed a petition requesting that the U.S. Nuclear Regulatory Commission "exercise its licensing authority over the radioactive materials subject to [FUSRAP] and take steps to ensure that the [U.S. Army Corps of Engineers] henceforth administers FUSRAP only in accordance with a properly issued license and applicable laws and regulations." (See *LLW Notes*, January/February 1999, p. 30.) NRC recently denied the NRDC petition. (See related story, this issue.)

—TDL

Legislation to Abolish DOE Introduced in Senate and House

In April, legislation designed to abolish the U.S. Department of Energy was introduced in both houses of Congress. The Senate bill (S. 896) was introduced on April 28, at which time it was referred to the Senate Energy and Natural Resources Committee. It currently has two cosponsors: Senators Spencer Abraham (R-MI) and Jon Kyl (R-AZ).

The House bill (H.R. 1649) was introduced on April 29 and was immediately referred to the House Committees on Commerce, Armed Services, Science, Resources, Rules, and Government Reform. Each Committee will consider those provisions that fall within its particular jurisdiction. The House bill currently has 30 cosponsors.

In addition to terminating many DOE programs, the legislation would transfer several DOE functions to other federal agencies:

- all duties currently assigned to DOE's Office of Civilian Radioactive Waste Management, including all contracts and obligations related to the construction and operation of a high-level waste repository, would be assumed by the U.S. Army Corps of Engineers;

- all matters related to the military use of nuclear energy and nuclear weapons, including the Lawrence Livermore, Sandia, and Los Alamos National Laboratories, would be moved to the U.S. Defense Department;

- all activities performed by non-defense energy laboratories would shift to the National Science Foundation; and

- several science and technology programs, including the Office of Nuclear Energy Science and Technology, would be transferred to the U.S. Interior Department

Similar legislation was introduced in both the104th and 105th Congressional sessions. In both cases the legislation failed to make it out of committee.

– JW

United States Senate

Domenici to Introduce Bill re Transmutation of Nuclear Waste

On March 24, during a U.S. Senate Energy and Natural Resources Committee hearing on the interim storage of spent nuclear fuel, Senator Pete Domenici (R-NM) announced plans to introduce legislation proposing a "revolutionary new approach" to waste storage and potential reuse of spent nuclear fuel. Domenici, who chairs the Senate Energy and Water Development Appropriations Subcommittee, said his legislation will attempt to bypass the "byzantine politics of nuclear waste disposal" by

- focusing on the transmutation of nuclear waste,
- constructing a new accelerator facility at an existing federal site, and
- reexamining the premise that nuclear waste should be buried underground.

In announcing his plans, Domenici made the following statement:

> We must review our old policy of believing that sticking high level waste underground forever is the best solution. It might have seemed good a generation ago, but we need time to begin a major evaluation of future strategies for this material, which is used in other parts of the world as a clean and non-polluting source of energy.

According to a press release from Domenici's office, the planned legislation could include the following:

- a mandatory review of national spent fuel strategy, in conjunction with international collaborators, to determine the best future option;
- identification of two spent fuel interim storage sites, including the Nevada Test Site;
- authorization to construct an accelerator for production of tritium to serve three different national missions: producing tritium, establishing a waste transmutation pilot program, and supplying isotopes for the medical community; and
- exploration of spent fuel management options, including the engineering and economics of transmutation as an alternative fuel strategy.

In addition, Domenici's announcement indicated that he is giving serious consideration to eliminating funding for the proposed high-level waste repository at Yucca Mountain, Nevada. Nonetheless, Domenici is cosponsoring S. 608—a bill introduced by Senator Frank Murkowski (R-AL) to authorize construction of an interim storage facility at the Nevada Test Site. That bill, entitled "the Nuclear Waste Policy Act of 1999," would require that the interim facility begin accepting spent fuel by June 30, 2003. The Clinton administration, however, has threatened to veto the legislation. (See *LLW Notes*, April 1999, p. 20.)

—TDL

U.S.General Accounting Office

GAO to Gather Further Data on DOE Disposal Costs

Senator Bob Smith (R-NH) has requested that the U.S. General Accounting Office evaluate the costs to the government associated with DOE's disposal facilities for low-level radioactive and mixed waste. Smith conveyed his request by letter dated April 29, which was received by GAO on May 7. In the letter, Smith expressed particular interest in four aspects of the costs:

> (1) the potential cost of requiring DOE sites to pursue on-site disposal, even if lower cost commercial disposal options are available, (2) the potential costs to the Federal Government for long-term monitoring and maintenance at DOE-owned disposal sites and any potential unfunded liabilities associated with such long-term custodianship, (3) the impact of DOE Order 58[20] on fair and open competition for disposal contracts at DOE sites, and (4) the validity of any criteria used by DOE site managers to determine which wastes are suitable for on-site disposal and which require off-site disposal.

In addition, Smith requested "a comparison of the total life-cycle costs associated with on-site and off-site low level waste disposal options." He specified that the comparison should include "recalculating DOE's estimates of on-site disposal costs using the commercial disposal standards found in the U.S. Nuclear Regulatory Commission's 10 CFR Part 61 regulations."

Similar Request

Smith, who chairs the Senate's Subcommittee on Strategic Forces, has acknowledged that his request resembles one made in February by Senator Frank Murkowski, Chair of the Senate Energy Committee. (See *LLW Notes*, March 1999, p. 28.) No agreement has yet been reached about the manner of GAO's response to Smith, but GAO staff have indicated that the Smith and Murkowski requests will likely be addressed together.

Other Reports

In a related effort, GAO expects by the end of July to complete another report previously requested by Murkowski on low-level radioactive waste. This report concerns the status of commercial waste management and alternatives to the present system. (See *LLW Notes*, October/November 1998, p. 32.)

GAO recently completed reports on two other waste-related issues: nuclear utility decommissioning and DOE's accelerated cleanup strategy for nuclear waste. (See "New Materials and Publications," this issue.)

—CN

DOE Order 5820

DOE Order 5820 is intended to "establish policies, guidelines and minimum requirements by which the Department of Energy (DOE) manages its radioactive and mixed waste and contaminated facilities." It applies to all DOE "elements" and all DOE contractors and subcontractors performing work involving management of radioactive waste under the Atomic Energy Act.

The order contains separate chapters on high-level, transuranic, low-level, naturally occurring and decommissioning radioactive wastes. It concludes with a chapter on DOE's waste management plan. The chapter on low-level radioactive waste addresses such topics as performance objectives and assessments; waste generation, characterization, treatment and shipment; and long-term storage and disposal.

The low-level radioactive waste chapter states as a matter of policy that "DOE low-level waste shall be disposed of on the site at which it is generated, if practical, or if on-site disposal capability is not available, at another DOE facility." It also notes that DOE mixed waste is subject both to Order 5820 and to the Resource Conservation and Recovery Act.

New Materials and Publications

Document Distribution Key	
P Forum Participants	D LLW Forum Document Recipients
A Alternate Forum Participants	N *LLW Notes* and *Meeting Report* Recipients
E Forum Federal Liaisons	M Meeting Packet Recipients
L Forum Federal Alternates	

Federal Agencies

EPA

Waste Characterization Program Documents Applicable to Transuranic Radioactive Waste at the Los Alamos National Laboratory Proposed for Disposal at the Waste Isolation Pilot Plant. (64 *Federal Register* 26713) May 17, 1999. Announces the availability of certain DOE documents on waste characterization programs applicable to certain transuranic radioactive waste at Los Alamos National Laboratory (LANL) proposed for disposal at the Waste Isolation Pilot Plant (WIPP). To obtain a copy, call the Government Printing Office, or download it from the GPO web site.

NRC

Government in the Sunshine Act Regulations; Final Rule. 64 *Federal Register* 24936) May 10, 1999. Announces NRC's intent to amend its regulations to allow discussions of preliminary or informal agency business by three or more Commissioners without triggering procedural requirements applicable to a "meeting" under the Sunshine Act. To obtain a copy, call the Government Printing Office, or download it from the GPO website.

Standard Review Plan for the Review of a License Application for the Atomic Vapor Laser Isotope (AVLIS) Facility (NUREG 1701) May 20, 1999. Provides guidance to NRC staff reviewers evaluating the health, safety, and environmental protection in applications for licenses to possess and use special nuclear material (SNM) to produce enriched uranium using AVLIS technology. To obtain a copy, call the NRC public documents room, or download it from the NRC Reference Library.

Use of Uranium Mill Tailings Impoundments for the Disposal of Waste Other Than 11e.(2) Byproduct Material and Reviews of Applications to Process Material Other Than Natural Uranium Ores. (SECY-99-012) April 8, 1999. Attempts to obtain NRC Commissioners' approval of the staff's approach to addressing concerns raised by the uranium recover industry on the use of uranium mill tailings impoundments for the disposal of wastes other than 11e.(2) byproduct material and the staff's review of mill licensee applications to process material other than natural uranium ores. To obtain a copy, call the NRC public documents room, or download it from the NRC Reference Library.

U.S. Congress

GAO

Accelerated Closure of Rocky Flats: Status and Obstacles (RCED-99-100). A review of DOE's plans for accelerating the site's closure by 2006, and possible challenges that could impede closure by that date; the condition of the site at closure, and the activities that will continue after closure; and the costs of closing the site and the savings expected from accelerating its closure. To obtain a copy, contact the GAO document room, or download it from the GAO web site.

Better Oversight Needed to Ensure Accumulation of Funds to Decommission Nuclear Power Plants (RCED-99-75). Reviews the adequacy of efforts by nuclear utilities to accumulate adequate funds for eventual decommissioning of their plants. To obtain a copy, contact the GAO document room, or download it from the GAO web site.

DOE's Accelerated Cleanup Strategy Has Benefits but Faces Uncertainties (RCED-99-129). Provides information on DOE's Accelerated Cleanup Program, including methodologies and assumptions used to develop the program, uncertainties in reports examining the likely effectiveness of the program, and funding implications related to the cost of cleanup. To obtain a copy, contact the GAO document room, or download it from the GAO web site.

Other

Sampling and Monitoring Releases of Airborne Radioactive Substances from the Stacks and Ducts of Nuclear Facilities (ANSI/HPS N13.1-1999). Compiled by the American National Standard Institute. To order a copy, call the Health Physics Society at (301) 657-2652.

—JW

To Obtain Federal Government Information

by telephone

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

by internet

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

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

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

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

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

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

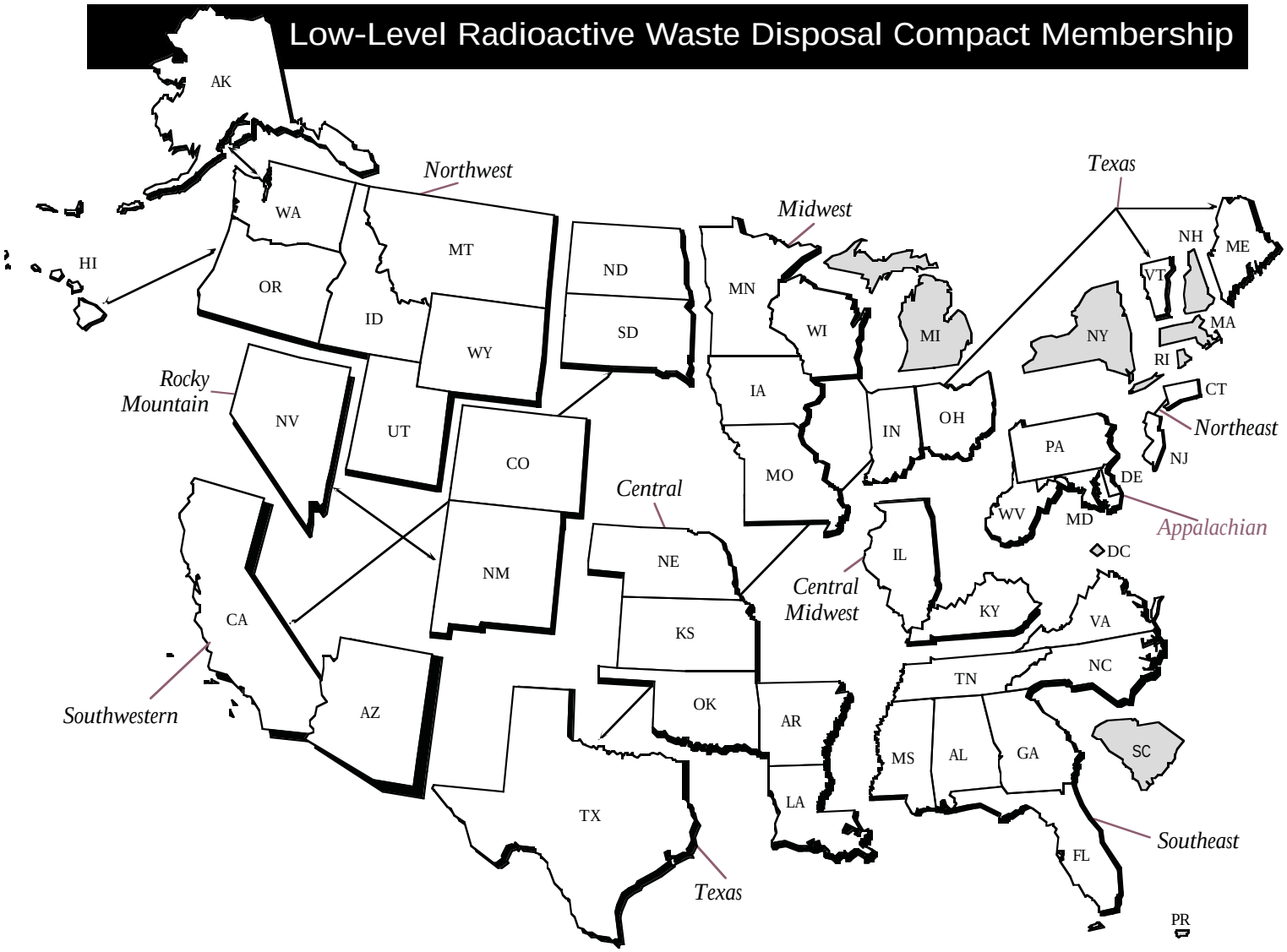
To access a variety of documents through numerous links, visit the LLW Forum web site at www.afton.com/llwforum

Accessing LLW Forum Documents on the Web

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

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

Low-Level Radioactive Waste Disposal Compact Membership



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

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