LLWnotes

Volume 15, Number 4 July/August 2000

Southeast Compact Commission v. North Carolina

SE Compact Commission Asks Supreme Court to Take Case against NC

Seeks $90 Million in Sanctions

On July 10, the Southeast Compact Commission for Low-Level Radioactive Waste Management filed a "Motion for Leave to File Bill of Complaint" and a "Bill of Complaint" in the U.S. Supreme Court against the State of North Carolina.

According to the commission's press release, the action was taken "to enforce $90 million in sanctions against North Carolina for the state's failure to comply with provisions of the Southeast Compact law and to fulfill its obligations as a party state to the Compact." The action contains various charges against North Carolina, including violation of the member states' rights under the compact, breach of contract, bad faith/deceit, unjust enrichment, and promissory estoppel.

North Carolina has 60 days from docketing of the compact's filings to file its response.

Basis for Original Jurisdiction

Factors: Considered and Applied Under Article III, Section 2 of the U.S. Constitution, the Supreme Court may exercise original jurisdiction over a lawsuit.

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Atlantic Compact/South Carolina

South Carolina Joins Atlantic Compact

On July 1, the State of South Carolina became a member of the Atlantic Low-Level Radioactive Waste Compact, formerly known as the Northeast Interstate Low-Level Radioactive Waste Compact. Connecticut and New Jersey are the other member states.

The Northeast Interstate Low-Level Radioactive Waste Commission had approved the admission of South Carolina into the compact in a meeting on June 13. The commission's approval was granted in an order conditionally declaring South Carolina eligible for membership. The order also formally adopted various policies sought by South Carolina.

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Low-Level Radioactive Waste Forum

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

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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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Senate Vote on Energy and Water Appropriations Likely in September

Federal Funding for LLW Forum in Doubt Unless House Language Overturned

On September 5, the U.S. Senate will take up the Energy and Water Development Appropriations Bill, 2001. The report that will accompany the bill to the Senate floor is silent on the use of federal funds to provide partial support to the LLW Forum.

Language inserted in the report accompanying the House of Representatives' version of the legislation states "as proposed by the Department [of Energy], no funds have been provided for the National Low-Level Waste Program in fiscal year 2001." This legislation was approved by the full House on June 27.

The Low-Level Radioactive Waste Forum has been funded in the past as part of the DOE National Low-Level Waste Program, so the House report language could jeopardize future federal contributions to the LLW Forum.

If no FY 2001 funds are made available by the federal government, funding for the LLW Forum and its coalition services will have to come solely from compact, state and other sources.

Debate over Bill

The Energy and Water Development bill is expected to provoke considerable debate in the Senate because Minority Leader Tom Daschle (D-SD) has raised objections to the bill in its present form and a number of contentious amendments are expected. Many other spending bills have encountered problems as Congress rushes to complete the appropriations process before the fall recess.

Further, President Clinton has threatened to veto the Energy and Water Development Appropriations Bill if the provision objectionable to the Minority Leader is not removed.

Conference Committee

If the Senate passes Energy and Water Development legislation, a House-Senate conference committee will be appointed to resolve the differences between the two version of the bill. In order for the bill to reach the President's desk, the conference committee will need to meet, and both chambers will need to adopt the conference report on the legislation before Congress adjourns on October 6.

Even if the legislation itself is significantly altered by the conference committee, report language from either house will stand unless specifically withdrawn or altered before final passage of the legislation.

Continuing Resolution

If an FY 2001 Energy and Water Development Appropriations Bill fails to pass, the agencies covered by the legislation will not be funded beyond September 30—the end of the federal fiscal year—unless a continuing resolution is voted out by the Congress. Such a resolution would keep in force all the spending levels and instructions of last year's appropriations bill and report. (See *LLW Notes*, October 1999, p. 1.)

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Senate Appropriations Committee

The Senate Appropriations Subcommittee on Energy and Water Development marked up the Energy and Water Development Appropriations Bill, 2001 on July 13. The bill was voted out of the subcommittee without any accompanying report language supporting funding of the LLW Forum.

On July 18, the full Senate Appropriations Committee voted out the Energy and Water Development Appropriations Bill, 2001. The full committee did not add any language supporting funding of the LLW Forum.

House Appropriations Committee

The House Appropriations Subcommittee on Energy and Water Development marked up the Energy and Water Development Appropriations Bill, 2001 on June 12.

The report that accompanied the bill out of the subcommittee contained language stating "as proposed by the Department [of Energy], no funds have been provided for the National Low-Level Waste Program in fiscal year 2001."

When the full House Appropriations Committee voted out the bill on June 20, this language in the accompanying report was unchanged despite a letter to the Committee Chair and Ranking Member from a bipartisan group of U.S. Representatives stating their support for continuation of the LLW Forum. (See *LLW Notes*, May/June 2000, p. 3.)

The language of the House Appropriations Committee report was not changed as a result of the floor debate preceding the vote in the full House.

—MAS

Members of Congress, Governors, Compacts, State Officials, Federal Officials and Others Who Have Expressed Support for Federal Support of the Low-Level Radioactive Waste Forum

United States Senate
Senator Jack Reed (D-Rhode Island)
Senator Olympia Snowe (R-Maine)

U.S. House of Representatives
Representative Joe Barton (R-Texas)
Representative Ed Bryant (R-Tennessee)
Representative Sam Gejdenson (D-Connecticut)
Representative Virgil Goode (I-Virginia)
Representative Patrick Kennedy (D-Rhode Island)
Representative Bob Weygand (D-Rhode Island)
Representative Albert Wynn (D-Maryland)

Governors
National Governors' Association Policy Statements February 2000, February 1999
(organization representing all Governors, 14 individual Governors)

Governor John Rowland (R-Connecticut)
Governor Frank O'Bannon (D-Indiana)
Governor Parris Glendening (D-Maryland)
Governor Thomas Vilsack (D-Iowa)
Governor John Engler (R-Michigan)
Governor Gary Johnson (R-New Mexico)
Governor Edward Schafer (R-North Dakota)
Governor Kenny Guinn (R-Nevada)
Governor Christine Todd Whitman (R-New Jersey)
Governor John Kitzhaber (D-Oregon)
Governor Lincoln Almond (R-Rhode Island)
Governor Jim Hodges (D-South Carolina)
Governor Michael Leavitt (R-Utah)
Governor Tommy Thompson (R-Wisconsin)

Compact Commissions
(8 compacts representing 38 states)
Appalachian Compact Commission (Delaware, Maryland, Pennsylvania, West Virginia)
Central Compact Commission (Arkansas, Kansas, Louisiana, Nebraska, Oklahoma)
Midwest Compact Commission (Indiana, Iowa, Minnesota, Missouri, Ohio, Wisconsin)
Northeast Compact* Commission (Connecticut, New Jersey)
Northwest Compact Committee (Alaska, Hawaii, Idaho, Montana, Oregon, Utah, Washington, Wyoming)
Rocky Mountain Board (Colorado, Nevada, New Mexico)
Southeast Compact Commission (Alabama, Florida, Georgia, Mississippi, Tennessee, Virginia)
Southwestern Compact Commission (Arizona, California, South Dakota, North Dakota)

Other State Officials
(13, some from compact member states)
Alabama Department of Economic and Community Affairs
Arizona Radiation Regulatory Agency
California Low-Level Radioactive Waste Program
Florida Commissioner to the Southeast Compact Commission
Georgia Commissioner to the Southeast Compact Commission
Massachusetts Low-Level Radioactive Waste Management Board
Mississippi State Department of Health, Division of Radiological Health
New Jersey Department of Environmental Protection; Commissioner to the Northeast Compact* Commission
Rhode Island Atomic Energy Commission
South Carolina Department of Health and Environmental Control
Tennessee Commissioner to the Southeast Compact Commission
Utah Department of Environmental Quality
Virginia State Senator, Virginia Department of Environmental Quality

Federal Agencies
Department of Defense Executive Agency for Low-Level Radioactive Waste Disposal
Department of the Interior, U.S. Geological Survey
U.S. Environmental Protection Agency Radiation Protection Division
National Research Council (The National Academies) Board on Radioactive Waste Management
former chair of NRC's Advisory Committee on Nuclear Waste

Others
California Radioactive Materials Management Forum (Arizona, California, North Dakota, South Dakota)
Appalachian Compact Users of Radioactive Isotopes (Delaware, Maryland, Pennsylvania, West Virginia)

For an up-to-date listing of written support for the LLW Forum, please access the LLW Forum web site at

http://www.afton.com/llwforum

* *On July 1, 2000 the Northeast Compact became known as the Atlantic Compact and added South Carolina as a member state.*

NGA Elects New Leadership

On July 11, the nation's Governors named Maryland Governor Parris Glendening (D) as Chair of the National Governors' Association (NGA).

Michigan Governor John Engler (R) was selected as Vice Chair, the position held by Glendening the previous year.

Iowa Governor Thomas Vilsack (D) and Oklahoma Governor Frank Keating (R) were chosen as Chair and Vice Chair, respectively, of NGA's Committee on Natural Resources. Vilsack had served as Vice Chair of the committee in the year preceding his elevation.

All appointments were made during the closing plenary session of NGA's annual meeting, held in State College, Pennsylvania.

—CN

Atlantic Compact/South Carolina (continued from page one)

Background

South Carolina Governor Jim Hodges (D) had submitted a petition to Northeast Compact Chair Kevin McCarthy in late April seeking a declaration that the state is eligible to join the compact. Governor Hodges' letter transmitting South Carolina's petition noted that the state's membership in the Northeast Compact would be contingent, in part, upon South Carolina's enactment of enabling legislation. Governor Hodges signed such legislation into law on June 6. (See *LLW Notes*, May/June 2000, pp. 1, 4–7.)

Basis for Commission Decision

The compact commission based its determination of South Carolina's eligibility upon criteria set forth in a rulemaking adopted in May. (See *LLW Notes*, May/June 2000, pp. 8–9.) In accordance with its rules, the commission also solicited written comments on the petition and held public hearings.

The commission found that South Carolina has already met in full all of the criteria except for one concerning adoption of a uniform fee schedule. The commission conditioned its admission of South Carolina on the state's adoption of specific fees by July 1, 2000.

The South Carolina Budget and Control Board unanimously approved a resolution adopting such fees in a meeting on June 21. (See related story.)

Governor's Certification

On the following day, June 22, Governor Jim Hodges of South Carolina sent a letter to the leadership of the state General Assembly certifying that the compact commission has taken all of the actions required by the state's compact implementation legislation. The Governor's certification was the final step needed in order to allow South Carolina's compact membership to take effect as scheduled on July 1, 2000.

—CN

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

CT, NJ Officials Hail Decision to Admit SC

Connecticut Governor John Rowland lauded the compact commission's decision to admit South Carolina into the compact. "This agreement protects Connecticut's environment by providing us with a reliable way to dispose of low-level radioactive materials," Governor Rowland said. "I am proud Connecticut, New Jersey and South Carolina were able to work together to produce an agreement that benefits the citizens of all three states."

New Jersey Governor Christie Whitman also welcomed the compact commission's decision. "Vital research in New Jersey's commercial and academic laboratories and the miracles of nuclear medicine inevitably generate small amounts of low-level radioactive waste," Governor Whitman said. "With South Carolina joining the compact, New Jersey is guaranteed the availability of disposal space for decades to come."

New Jersey Environmental Protection Commissioner Bob Shinn added further praise: "This new, three-state compact meets our waste generators' needs for secure, environmentally responsible disposal of low-level radioactive waste. In addition, South Carolina gains control of the amount of waste entering the Barnwell facility while securing long-term development funding for the host community."

GTS Duratek Acquires Chem-Nuclear Systems

On June 9, GTS Duratek, Inc. announced that it has completed the acquisition of Chem-Nuclear Systems, LLC and the other nuclear services businesses of Waste Management, Inc. Chem-Nuclear Systems operates the commercial low-level radioactive waste disposal facility at Barnwell, South Carolina.

GTS Duratek purchased the businesses for $65 million, consisting of $55 million in cash at closing and $10 million additional cash consideration upon the satisfaction of certain post-closing conditions. The final purchase price is subject to certain post-closing adjustments.

The acquired businesses are known collectively as Waste Management Nuclear Services. In addition to Chem-Nuclear Systems, the businesses includes two other major operating segments:

- the Federal Services Division, which provides radioactive waste handling, transportation, treatment, packaging, storage, disposal, site cleanup, and project management services mainly for the U.S. Department of Energy and other federal agencies; and

- the Commercial Services Division, which provides radioactive waste handling, transportation, licensing, packing, disposal, and decontamination and decommissioning services primarily to nuclear utilities.

According to a prepared statement from GTS Duratek, Waste Management Nuclear Services is expected to add approximately $100 million in revenues to the company, thereby increasing GTS Duratek's revenue run rate by approximately 55 percent.

GTS Duratek announced in March that it had entered into a definitive agreement with Waste Management to purchase Waste Management Nuclear Services. (See *LLW Notes*, March/April 2000, p. 7.) The proposed transaction was subject to certain regulatory approvals and other customary conditions, which have been met.

—CN

SC Representatives Appointed to Atlantic Compact Commission

South Carolina Governor Jim Hodges (D) has appointed the following persons to serve as the state's Commissioners and Alternate Commissioners for the Atlantic Low-Level Radioactive Waste Compact:

Commissioners
Benjamin Johnson
attorney
Robinson, Bradshaw & Hinson
Rock Hill, SC
former member, South Carolina Nuclear Waste Task Force
(See *LLW Notes*, June/July 1999, pp. 1, 4.)

Thomas Weeks
attorney
Ness, Motley, Loadholt, Richardson & Poole
Barnwell, SC

Alternate Commissioners
John Clark
Senior Director for External Affairs
Office of the Governor
LLW Forum Participant for South Carolina

Hank Stallworth
Senior Advisor for Natural Resources
Office of the Governor

The new representatives were appointed prior to the meeting of the Atlantic Compact Commission held in Columbia, South Carolina, on July 12. The meeting was the first held since South Carolina joined the compact on July 1.

At the meeting the commission discussed, among other things, the search for an Executive Director to run the commission's office after it is relocated to Columbia.

Atlantic Compact/South Carolina (continued)

Disposal Fees Set for Barnwell Facility

In a meeting on June 21, the South Carolina Budget and Control Board unanimously approved a resolution adopting rate schedules setting disposal fees for the commercial low-level radioactive waste facility at Barnwell. The resolution also allows the importation of low-level radioactive waste, subject to certain authorizations and restrictions; delegates to staff the power to approve special rates; and establishes surcharges to cover state and compact expenses.

Rate Schedules

The Budget and Control Board adopted two rate schedules: the Uniform Schedule of Maximum Disposal Rates for Atlantic Compact Regional Waste, and the Disposal Rate Schedule for non-Atlantic Compact Waste. The schedules take effect in conjunction with the beginning of the new fiscal year on July 1, 2000.

As required by South Carolina law, the initial rates for in-region generators do not exceed the approximate rates in effect on September 7, 1999. Rates for non-Atlantic Compact generators are similar, although the charge per millicurie is different. (See table of rate schedules.)

Neither schedule requires payment of the "access fee," a supplemental assessment previously imposed by facility operator Chem-Nuclear Systems. The access fee helped pay the contingent annual license tax that Chem-Nuclear Systems owed if there were shortfalls in the surcharge money collected for higher education scholarship grants. (See *LLW Notes*, August/September 1997, p. 7.) The contingent annual license tax was eliminated under South Carolina's compact implementation legislation.

Waste Importation

Under the congressionally approved Atlantic Compact, known in statute as the Northeast Compact, the compact commission has legal authority over importation of low-level radioactive waste into the region for disposal. When the compact commission declared South Carolina eligible for membership, it also adopted various policies sought by South Carolina including a policy granting the state authority to enter into agreements on behalf of the compact for waste importation, subject to certain restrictions.

The South Carolina Budget and Control Board resolution of June 21 declares:

> "[T]he board hereby enters into agreements with applicable persons for the importation of waste into the region for purposes of disposal at the regional disposal facility. Applicable persons consist of any person in the United States or its territories or any interstate compact, state, U.S. territory or U.S. Department of Defense military installation abroad that possess the necessary permits for disposal from the South Carolina Department of Health and Environmental Control and who ship waste for disposal to the regional disposal facility during fiscal year 2000-2001 … [T]he lessee disposal site operator is authorized and directed to accept non-regional waste so long as nonregional waste would not result in the facility accepting more than 160,000 cubic feet of waste in fiscal year 2000–2001.

Chem-Nuclear Systems issued disposal contracts for the Barnwell facility to all of its customers—both within and outside of the Atlantic Compact region—on June 22.

Special Rates

South Carolina law empowers the South Carolina Budget and Control Board to approve special disposal rates applicable to regional or non-regional generators based on "available disposal capacity, demand for disposal capacity, the characteristics of the waste, the potential for generating revenue for the State, or other relevant factors …"

The Budget and Control Board's June 21 resolution names the board's Executive Director as the board's designee to approve any special disposal rates that are different from the uniform schedules.

Surcharges

The Budget and Control Board's June 21 resolution directs the operator of the regional disposal facility to transfer to the board surcharge funds equivalent to $10 per cubic foot of waste disposed of at the facility, up to a maximum of $750,000 in fiscal year 2000–2001. These funds are to cover reimbursement of expenses incurred by the board, the state Public Service Commission, and the state treasurer in implementing new responsibilities under the state's compact implementation legislation. This surcharge is to be included in the disposal rates charged to generators.

The resolution also directs the facility operator to impose a surcharge of $4 per cubic foot of waste disposed of at the facility. The surcharge funds will be transferred to the board and used to cover the Atlantic Compact Commission's operational costs and expenses. This surcharge will be assessed in addition to the disposal rates charged to generators.

The surcharge of $235 per cubic foot of waste received at the facility that was imposed by the state in 1995 is no longer in effect. Under the approach outlined in the compact implementation law, state revenues from the Barnwell facility are no longer based on a per-unit amount associated with waste volume. Instead, the state receives the difference between gross disposal revenues and operational costs plus the facility operator's profit margin. (See *LLW Notes*, May/June 2000, p. 5.) These state revenues are used for scholarships and other purposes.

—CN

A copy of the rate schedules, as well as other information about the Barnwell facility, may be accessed on the South Carolina Energy Office's Low-Level Radioactive Waste Disposal Program web page at

http://www.state.sc.us/energy/llrwdisposal.htm

For further information, contact William Newberry of the South Carolina Budget and Control Board staff at (803)737-8037.

South Carolina Budget and Control Board Membership and Staff

Members

Jim Hodges (Chair)	Governor
Grady Patterson, Jr.	State Treasurer
James Lander	Comptroller General
John Drummond	Chair, Senate Finance Committee
Robert Harrell, Jr.	Chair, House Ways and Means Committee

Staff

Rick Kelly	Executive Director
William Newberry	Manager, Radioactive Waste Disposal Program

Disposal Fees for Barnwell Facility • *Effective July 1, 2000*

Minimum charge per shipment for all shipments, excluding surcharges and specific other charges, is $1000. Extended Care Fund, and Site Stabilization and Closure Fund both included in base disposal charge rates.

Base Disposal Charges: Standard and Special-Nuclear-Material Waste	**from "Uniform Schedule of Maximum Disposal Rates for Atlantic Compact Regional Waste"**	**from "Disposal Rate Schedule for Non-Atlantic Compact Waste"**
Weight – Density Range	*Atlantic Compact Rate*	*Non-Atlantic Compact Rate*
Equal to or greater than 120 lbs./ft^3	$ 4.40 per pound	$ 4.40 per pound
Equal to or greater than 75 lbs./ft^3 and less than 120 lbs./ft^3	$ 4.84 per pound	$ 4.84 per pound
Equal to or greater than 60 lbs./ft^3 and less than 75 lbs./ft^3	$ 5.94 per pound	$ 5.94 per pound
Equal to or greater than 45 lbs./ft^3 and less than 60 lbs./ft^3	$ 7.70 per pound	$ 7.70 per pound
Less than 45 lbs./ft^3	$ 7.70 per pound times the ratio of 45 lbs./ft^3 divided by package density	$ 7.70 per pound times the ratio of 45 lbs./ft^3 divided by package density
Millicurie Charge	$ 0.33 per millicurie (b.1) *or* $0.66 per millicurie for radionuclides with greater than 5-year half lives (b.2) *Option b.1 will apply unless generator specifically elects option b.2 for all of its shipments at the beginning of a fiscal year* maximum millicurie charge is $132,000/shipment	$ 0.36 per millicurie maximum millicurie charge is $144,000/shipment
Base Disposal Charges: Biological Waste	$1.00 per pound in addition to above rates	$1.00 per pound in addition to above rates
Dose Rate Surcharge	*Atlantic Compact Multiplier of Base Weight Rate*	*Non-Atlantic Compact Multiplier of Base Weight Rate*
Dose Level		
0 mR/hr - 200 mR/hr	1.00	1.00
>200 mR/hr - 1 R/hr	1.08	1.08
>1R/hr - 2R/hr	1.12	1.12
>2R/hr - 3R/hr	1.17	1.17
>3R/hr - 4R/hr	1.22	1.22
>4R/hr - 5R/hr	1.27	1.27
>5R/hr - 10R/hr	1.32	1.32
>10R/hr - 25R/hr	1.37	1.37
>25R/hr - 50R/hr	1.42	1.42
>50R/hr	1.48	1.48
Irradiated Hardware Charges (applicable only where shipment requires shut-down of other disposal operations) *Includes irradiated cask-handling fee.*	$50,000.00 per shipment	$50,000.00 per shipment
Special Nuclear Material Surcharge	$10.00 per gram	$10.00 per gram
Atlantic Compact Commission Administrative Surcharge	$4.00 per cubic foot *Subject to change during year*	$4.00 per cubic foot *Subject to change during year*

underlining indicates difference

Disposal Fees for Barnwell Facility • *Effective July 1, 2000*

Miscellaneous

Language the same in the "Uniform Schedule of Maximum Disposal Rates for Atlantic Compact Regional Waste" and the "Disposal Rate Schedule for non-Atlantic Compact Waste."

A. Large components (e.g., steam generators, reactor pressure vessels, coolant pumps)

Disposal fees for large components (e.g., steam generators, reactor pressure vessels, reactor coolant pumps) are based on the generally applicable rates, in their entirety, except that the weight and volume used to determine density and weight related charges is calculated as follows:

1. For packages where the large component shell qualifies as the disposal vault per South Carolina Department of Health and Environmental Control (DHEC) regulations, weight and volume calculations are based on all sub-components and material contained within the inside surface of the large component shell, including all internals and any stabilization media injected by the shipper, but excluding the shell itself and all incidental external attachments required for shipping and handling; and

2. For packages with a separate shipping container that qualifies as the disposal vault per DHEC regulations, weight and volume calculations are based on the large component, all sub-components and material contained within the inside surface of the shipping container, including any stabilization media injected by the shipper (including that between the large component and the shipping container), but excluding the shipping container itself and all incidental external attachments required for shipping and handling.

B. Transport vehicles with additional shielding features may be subject to an additional handling fee which will be provided upon request.

C. Decontamination services, if required: $150 per man hour, plus supplies at current Chem-Nuclear Systems (CNS) rate.

D. Customers may be charged for all special services as described in the Barnwell Site Disposal Criteria.

E. Terms of payment are net 30 days upon presentation of invoices. A per-month service charge of one and one-half percent (1.5%) shall be levied on accounts not paid within thirty (30) days.

F. Company purchase orders or a written letter of authorization in form and substance acceptable to CNS shall be received before receipt of radioactive waste material at the Barnwell Disposal Site and shall refer to CNS Radioactive Material License, the Barnwell Site Disposal Criteria and subsequent changes thereto.

G. All shipments shall receive a CNS shipment identification number and conform to the Prior Notification Plan.

H. All radioactive waste shall be packaged in accordance with Department of Transportation and Nuclear Regulatory Commission Regulations in Title 49 and Title 10 of the Code of Federal Regulations, Chem-Nuclear Systems, L.L.C.'s South Carolina Radioactive Material Licenses, Chem-Nuclear Systems, L.L.C.'s Barnwell Site Disposal Criteria, and amendments thereto.

Atlantic Compact/South Carolina (continued)

SC Budget and Control Board Staff Examining Options for Barnwell Capacity Allocation

Staff of the South Carolina Budget and Control Board are examining options for future allocation of disposal capacity at the low-level radioactive waste disposal facility in Barnwell, South Carolina.

State legislation enacted in June sets declining limits on the volume of waste that may be accepted at the facility annually through fiscal year 2008, which ends June 30, 2008. (See *LLW Notes*, May/June 2000, pp. 1, 4–7.) These limits constitute volume caps that cannot be exceeded due to the acceptance of waste from states that are not members of the Atlantic Interstate Low-Level Radioactive Waste Compact. After fiscal year 2008, the legislation prohibits acceptance of waste from such states.

Demand from all generators is not expected to exceed the limit during fiscal year 2001 (July 1, 2000 through June 30, 2001). Generators that possess the necessary permits from the South Carolina Department of Health and Environmental Control may ship waste to the facility by contracting with the facility operator.

However, when fiscal year 2002 begins on July 1, 2001, the volume cap for the Barnwell facility will drop to 80,000 cubic feet—far below the volumes disposed of at the facility in previous years. (See *LLW Notes* Supplement, March/April 2000, p. 1.)

To address potential imbalances in capacity supply and demand, staff of the Budget and Control Board expect the board to set a policy for allocation of the reduced capacity. According to Bill Newberry, Manager of the board's Radioactive Waste Disposal Program, the board will likely set a policy next spring.

Policy Options

Newberry indicated to *LLW Notes* that Budget and Control Board staff are considering the following policy options. The options would apply only to non-Atlantic Compact generators.

(a) Awarding future access for each generator in proportion to the amount of waste shipped to the facility during fiscal year 2001.

(b) Preference based on policy considerations.

(c) Access based on market conditions. Prices for non-Atlantic Compact generators would increase in relation to the reduced supply of disposal capacity. By law, prices for Atlantic Compact generators cannot exceed the approximate rates in effect on September 7, 1999, plus an inflation factor.

(d) Limiting the amount of waste on a waste-stream specific basis (e.g., limiting large shipments of tritium or other selected waste streams; and/or applying differential pricing for different waste forms from non-Atlantic Compact generators).

(e) Some combination of the above.

Limits on Waste Acceptance at Barnwell

Importation of non-Atlantic Compact waste may not result in the facility's acceptance of more than the following total volumes of all waste.

fiscal year	volume cap (cubic feet) of waste
2001	160,000
2002	80,000
2003	70,000
2004	60,000
2005	50,000
2006	45,000
2007	40,000
2008	35,000

Staff Preferences

Staff have shown an early preference for option (a), an allocation system based on waste shipped in the current fiscal year, Newberry said. By rewarding use of the facility this year, such a system would help ensure that waste revenue projections already built into the state budget are met.

Newberry explained that staff have reservations about option (b), which would link access to policy considerations, due to both the potential difficulty in developing consensus about suitable criteria and the complexity of administering such a program. He also noted that attempting to peg disposal prices to market demand as required by option (c) would entail frequent price changes, raising practical concerns. Newberry indicated, however, that option (d), differential pricing for some out-of-region waste streams, could be part of any recommendation offered to the board.

A final staff recommendation concerning the policy will be determined after consultation with the compact commission, the facility operator, the Governor's office, and others.

—CN

For further information, contact William Newberry of the South Carolina Budget and Control Board staff at (803)737-8037.

Safety-Kleen Files for Federal Bankruptcy Protection

On June 9, Safety-Kleen and 73 of its American subsidiaries filed voluntary petitions for Chapter 11 federal bankruptcy protection in the U.S. Bankruptcy Court for the District of Delaware. Safety-Kleen, which is the largest industrial and hazardous waste management company in North America, has more than $1.6 billion in outstanding claims from creditors. The company is based in Columbia, South Carolina.

Safety-Kleen operates a facility in Tooele County, Utah, that serves as a landfill for hazardous waste and polychlorinated biphenyls (PCBs). Safety-Kleen had previously explored the potential to use a portion of the site for disposal of low-level radioactive waste and, in March 1998, the Utah Division of Radiation Control found that Safety-Kleen's siting application for low-level radioactive waste management meets state criteria. The company abandoned the proposal in late 1999, however, after encountering opposition from the Tooele County Commission. (See *LLW Notes*, October 1999, p.14.)

In addition to the Tooele County facility, Safety-Kleen also operates a hazardous waste disposal facility in Buttonwillow, California. The U.S. Army Corps of Engineers has disposed of waste from the Formerly Utilized Sites Remedial Action Program (FUSRAP) at that facility. (See *LLW Notes*, October 1999, p. 12.)

Some of Safety-Kleen's operations were previously controlled by Laidlaw, Inc. Safety-Kleen purchased Laidlaw's environmental services in 1999.

—TDL

Northwest Compact/Washington

Envirocare of Utah's Radioactive Material License Amended

Applications Pending for New Class A/NORM Cell and for B & C Waste

On July 17, the Utah Division of Radiation Control approved amendments to Envirocare of Utah's radioactive material license. The amendments affect Envirocare's radioactive waste disposal operations in the following ways:

- Envirocare's financial assurance requirements are changed to allow use of an irrevocable letter of credit—i.e., a bank guarantee—instead of a fully funded trust agreement. The letter of credit provides equivalent financial assurance.

- Radioactive debris is no longer required to be uniformly distributed "throughout" each lift in Envirocare's disposal facility. Limits on the amount of debris by volume will remain in effect, and the debris and soil mixture in each lift will continue to be tested to meet compaction requirements.

- Use of temporary storage tanks for storm water runoff from the disposal facility is being minimized. Storm water will be managed predominantly in evaporation ponds. Construction has commenced on an additional evaporation pond to provide long-term capacity.

The amendments also reflect a personnel change in the position of radiation safety officer. Approval of the amendments followed a 30-day public comment period.

New Disposal Cell

Envirocare has also requested a license amendment to allow construction of a new waste disposal cell at the Envirocare facility. The Division of Radiation Control is currently evaluating this request.

If approved, the new cell would be licensed to accept both class A low-level radioactive waste and NORM. Licensing the cell to accept the general category of class A waste would represent a departure from the licensing approach used for the existing cell, which is licensed to accept specific concentrations of specific radioactive materials.

Discussions between regulators and Envirocare concerning the new cell have been under way since late 1999. The new cell was proposed because the existing cell is close to reaching capacity.

B and C Waste Application

The Division of Radiation Control is continuing its technical review of Envirocare's application for a license to dispose of class B and C low-level radioactive waste. (See *LLW Notes*, May/June 2000, p. 18.) In July, the division issued an interrogatory consisting of 56 questions for Envirocare. Envirocare has provided responses to 22 of the questions to date.

The duration of the technical review will depend on how quickly Envirocare provides necessary information, Division Director William Sinclair told *LLW Notes.* The division is awaiting revisions to the performance assessment portion of Envirocare's application in addition to further responses to the interrogatory.

If Envirocare is licensed to accept class B and C waste, the company must still obtain state legislative and gubernatorial approval.

—CN

For further information, contact William Sinclair of the Utah Radiation Control Board at (801)536-4250.

Central Compact/Nebraska

Central Commission Increases Major Generator Fees

Generator Contributions to Settlement Fund to Be Partly Reimbursed

On June 7, the Central Interstate Low-Level Radioactive Waste Commission approved an increase in the yearly fee charged to "major" generators for applications to export low-level radioactive waste from the region for treatment or disposal. The commission raised the fee to process the applications from $50,000 to $56,000.

"Major" generators are utility companies or entities—including federal facilities—that create at least 1001 cubic feet of low-level radioactive waste per year. Non-utility generators and generators that create less than 1001 cubic feet of waste per year are categorized as "large," "small," or "very small," depending on their annual waste volumes, and are charged lower application fees. (See box.) The commission did not increase the fees for these classes of generators.

In other action at the annual meeting, the commission discussed a proposal to reimburse major generators for funds that they contributed to the Rebate Settlement Guaranty Fund maintained by the commission. The fund was created in 1996 in accordance with a settlement agreement in a lawsuit between the State of Nebraska and the commission concerning the disbursement of surcharge rebate funds to the state. (See *LLW Notes*, June/July 1996, pp. 32–33.) The agreement stipulates that the fund will contain $1,000,000 to be available to the state in case of certain contingencies until the guaranty provision expires. Of the moneys in the fund, $400,000 were contributed by major generators.

Following the meeting, the commission voted during a teleconference on June 28 to reimburse generators for $300,000 of the $400,000 that they had contributed. The commission also voted to replace the disbursed funds with rebate funds that the commission has in a separate account.

—CN

For further information, contact Rita Houskie of the Central Commission at (402)476-8247.

Compact Export Fees for Commercial Low-Level Radioactive Waste

Federal and Non-Federal Facilities

Central Interstate Low-Level Radioactive Waste Commission	50 cu. ft. or less, once every 3 yrs $125	500 cu. ft. or less $ 500	501 to 1000 cu. ft. $7,000	utility company or 1001 cu. ft. or greater $56,000		
Rocky Mountain Low-Level Radioactive Waste Board	0 to 999 cu. ft. $200 or $2.00/cu. ft., whichever is greater			1,000 to 9,999 cu. ft. $1,000 + $1.00/cu. ft.	10,000 to 99,999 cu. ft. $6,000 + 50¢/cu. ft.	greater than 100,000 cu. ft. $46,000 + 10¢/cu. ft. *max. fee = $100,000*
Southwestern Low-Level Radioactive Waste Commission	$1.25/cu. ft., $50 minimum					

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Southeast Compact Commission v. North Carolina (continued from page one)

In determining whether or not to do so, the Court has generally considered two factors: (1) the "nature of the interest of the complaining State," focusing mainly on the "seriousness and dignity of the claim," and (2) "the availability of an alternative forum in which the issue tendered can be resolved."

The Southeast Compact Commission argues, with respect to the first factor, that serious public health concerns are at stake and that "the proper interpretation of an interstate compact is the archetypical matter warranting the Court's exercise of its exclusive, original jurisdiction." Furthermore, the commission asserts that the Court "rarely has declined to exercise its original jurisdiction in … a dispute among sovereign states concerning the interpretation and enforcement of an interstate compact." As to the second factor, the commission asserts that there is no other "jurisdiction available in which a state would not be 'its own ultimate judge in a controversy with a sister State.' " The commission goes on to argue as follows:

> Requiring Plaintiff to submit the determination of its compact claims to a North Carolina court or any other court is inconsistent with one of the central purposes of this Court's original jurisdiction: "the belief that no State should be compelled to resort to the tribunals of other States for redress, since parochial factors might often lead to the appearance, if not the reality, of partiality to one's own." Moreover, requiring the parties to litigate this dispute elsewhere will accomplish nothing but delay and expense.
>
> (citations omitted)

Interstate Compacts: Specific and General The Southeast Compact itself, while establishing the commission's authority to impose sanctions against member states that do not fulfill their obligations under the compact, does not provide an express mechanism for judicial review or relief. Accordingly, the commission argues as follows:

> The circumstances of this case, in which a supermajority of the member States have imposed a sanction on another State, pursuant to the method agreed upon by the States at the time of ratification of the Compact, present precisely the type of case that warrants the exercise of this Court's original jurisdiction. Were this Court to decline to exercise jurisdiction, the sanctions mechanism provided for in the Compact would be rendered useless and the States would be without an alternative forum in which to enforce their claims. Plainly, this was not the intent of the parties or Congress, and this Court is the appropriate institution to protect those expectations.

The Complaint

Issues to Be Litigated If the Supreme Court accepts the case, the Southeast Compact Commission is asking that the Court determine under the compact

> (1) whether the imposition of the sanctions in this case, including the disgorgement of the $79,930,337 provided to North Carolina to license and develop a regional disposal facility, that was never licensed let alone completed, was a valid exercise of the Commission's sanction authority, as set forth in Article 4(F) of the Compact; and
>
> (2) whether North Carolina is obligated to comply with the Sanctions Order issued by the Commission, including repaying to the Commission $79,930,337 plus interest.

Arguments The commission's lawsuit makes the following arguments in support of its claim for relief:

- North Carolina's failure to fund, license, construct, or operate a regional disposal facility constitutes a violation of the member states' rights under the compact;
- North Carolina's failure to perform its duties under the compact constitutes a breach of contract;
- North Carolina never intended to provide the promised facility and its misrepresentations otherwise constituted bad faith and/or deceit upon which the compact relied in providing funding to the state;
- North Carolina has been unjustly enriched through the receipt of funds from the compact for a facility which it never developed and never intended to develop;

- North Carolina unjustifiably failed to construct and operate a regional disposal facility, as promised, thereby harming the other member states of the compact; and

- North Carolina, in equity and good conscience, should return the nearly $80 million in funds that it has received from the compact toward siting and construction of the proposed facility.

Requested Relief The Southeast Compact Commission is requesting the following relief from the Court:

- a declaration that North Carolina is subject to the commission's jurisdiction and its sanctions decision, despite its withdrawal from the compact;

- a declaration that the commission's sanctions hearing was fair and valid;

- a declaration that the sanctions imposed by the commission against North Carolina were fair and reasonable and are subject to enforcement; and

- an award of damages, costs, and any other relief that the Court deems just and proper.

Background

The Southeast Compact became federal law on January 15, 1986. North Carolina was designated as a host state for the compact in September 1986 following a lengthy screening and review process. In August 1987, the North Carolina General Assembly created and provided funding for the North Carolina Low-Level Radioactive Waste Management Authority.

Schedule January 1, 1993 was targeted as the opening date for the new facility. However, due to a series of delays, the opening date was pushed back first to January 1, 1996, then to June 1997, June 1998, and finally 2001 or later.

During this time, South Carolina withdrew from the compact, allegedly over discontent with North Carolina's lack of progress in siting a new facility.

Project Funding Since 1988, the Southeast Compact had provided financial assistance to North Carolina for planning and administrative costs. To date, the Southeast Compact has provided $79,930,337 to North Carolina. When South Carolina withdrew from the compact, it took with it the compact's source of revenue for funding its operations as well as site development activities—namely, fees and surcharges on waste disposed of at the Barnwell facility. The compact's only remaining source of revenue was interest on accrued funds.

Accordingly, in January 1996, the Southeast Compact Commission notified North Carolina that it should consider alternative funding options. North Carolina responded through its Governor in June 1996, indicating that the state did not believe that it was responsible for paying the project costs and arguing that the funding burden lay with the compact.

Thereafter, the compact commission organized a task force to study the funding issue and to recommend alternative options. In August 1997, the compact commission submitted a proposed Memorandum of Understanding (MOU) to North Carolina under which the compact and volunteer generators would fund the remainder of the licensing costs if the North Carolina Authority would make various contractual commitments. (See *LLW Notes*, August 1997, pp. 4–5.) As a condition for continued funding, the compact commission gave North Carolina until December 1, 1997, to express agreement in principle with the MOU as proposed or to develop an alternative proposal for funding site development activities and obtain concurrences from the appropriate parties. When North Carolina did not take the required steps by the deadline, the Southeast Compact Commission suspended funding for facility development. (See *LLW Notes*, winter 1997, pp. 4–7.)

Project Shutdown On December 19, 1997, the North Carolina Authority voted to "begin the orderly shutdown" of the project, pending the Southeast Compact Commission's reversal of its funding position or receipt of other instructions from the state legislature. (See *LLW Notes*, February 1998, pp. 4–5.) The compact commission notified North Carolina in January 1998, and again in April 1999, that it viewed the shutdown as a breach of the compact.

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Southeast Compact Commission v. North Carolina (continued)

Sanctions and Withdrawal In June 1999, the States of Florida and Tennessee filed a sanctions complaint against North Carolina. In July 1999, North Carolina withdrew from the compact.

The Southeast Compact Commission held a sanctions hearing on December 9, 1999. Following the hearing, the compact commission found that North Carolina had violated the compact by

- failing to license and construct a regional disposal facility for the compact,
- ceasing all facility licensing activities,
- failing to act in good faith, and
- receiving approximately $80 million from the commission for development of a regional facility "with the full knowledge that in return [North Carolina] was expected to develop a facility for the Compact."

The Southeast Compact Commission voted to levy sanctions against North Carolina for the recovery of $79.9 million in funds previously provided by the commission plus interest, as well as $10 million for the loss of a source of funds for the commission's operating budget for 20 years and attorneys' fees. (See *LLW Notes*, November/December 1999, pp. 8-9.)

North Carolina did not respond by the July 10 deadline for payment, and the compact commission filed (1) a petition asking the U.S. Supreme Court to take original jurisdiction over the case and (2) a bill of complaint.

—TDL

For further information, contact Kathryn Haynes of the Southeast Compact Commission at (919)821-0500.

Santini v. Connecticut Hazardous Waste Management Service

U.S. Supreme Court Denies Certiorari in Connecticut Takings Case

On June 5, the U.S. Supreme Court entered an order denying a petition for a writ of certiorari in a lawsuit filed against the Connecticut Hazardous Waste Management Service (CHWMS) by a local real estate developer and his business.

The case was originally filed in the Superior Court of the Judicial District of Hartford/New Britain on June 8, 1994. (See *LLW Notes*, October 1994, p. 9.) The complaint concerns the CHWMS's announcement of three areas—including property being developed by the plaintiffs—as candidate sites for a proposed low-level radioactive waste disposal facility. According to the plaintiffs, the announcement prevented them from completing development of the property and selling homes and lots, and resulted in various other negative economic impacts. The plaintiffs claimed that the CHWMS's actions constituted an unlawful taking of their property without just compensation in violation of the Connecticut Constitution. They sought compensatory damages with prejudgment interest.

On July 13, 1998, the superior court issued a memorandum of decision in favor of the defendant. (See *LLW Notes*, August/September 1998, pp. 20–21.) In so doing, the court determined that the property at issue continued to have some use and value after the announcement was made and therefore no taking occurred. In addition, the court pointed out that a taking could not have occurred because the defendant did not designate the plaintiffs' property to be taken by the state, but rather merely named it as one of three properties under consideration.

The plaintiffs filed a notice of appeal to the Court of Appeals for the State of Connecticut on July 23, 1998. Three months later, the Connecticut Supreme Court transferred the case to itself. On November 9, 1999, the Supreme Court of the State of Connecticut affirmed the judgment of a lower court. (See *LLW Notes*, December 1999, pp. 24–25.)

—TDL

US Ecology v. State of California

California Responds to US Ecology Suit re Ward Valley

On July 6, the State of California and other defendants (collectively referred to as "California" or "the state") responded to a lawsuit filed by US Ecology which argues that the state has abandoned its responsibilities regarding the proposed low-level radioactive waste disposal facility in Ward Valley, California.

The suit seeks monetary damages exceeding $162 million, a judicial declaration that the state has breached contractual obligations to US Ecology, and a writ of mandate requiring California to take the necessary steps to purchase the Ward Valley site from the federal government.

In their response, the defendants request that the court dismiss the action because the plaintiff's complaint allegedly does not meet the standards for awarding mandamus relief (an order from a court to perform a particular act) and because the plaintiff allegedly fails to state a claim upon which contractual relief may be awarded. In particular, California argues that the court does not have power "to control the wide discretion of the Governor of California regarding the management of [low-level radioactive waste (LLRW)] … by limiting his options solely to establishment of a LLRW disposal site at one specific location in California." Moreover, the state asserts that US Ecology does not have the authority to contractually bind California to the obligations contained in the complaint.

The action was filed on May 2 in the Superior Court of the State of California for the County of San Diego. (See *LLW Notes*, May/June 2000, pp. 20–22.) The following individuals are named as defendants: State of California, California Governor Gray Davis, the California Department of Health Services (DHS), and DHS Director Diana Bontá.

Background

Alleged Facts According to the complaint, US Ecology and the defendants reached an understanding in December 1985 concerning the parties' efforts to establish a low-level radioactive waste disposal facility for the Southwestern Low-Level Radioactive Waste Disposal Compact region.

The complaint further maintains that the understanding provided that if US Ecology became the state's license designee—thereby taking on the cost and responsibility of siting, developing and operating the regional facility—then the defendants would agree that

- they would take all steps necessary to establish such a facility;
- the facility would be established at a site identified by US Ecology, approved by DHS, and acquired by California;
- US Ecology would be compensated for all necessary and reasonable costs associated with its attempts to site such a facility, regardless of where such a facility was ultimately established; and
- US Ecology would be allowed to make a reasonable return on its investment from the facility's operation.

The agreement was further memorialized, according to the complaint, in an express written contract between DHS and US Ecology dated August 15, 1988. The contract allegedly contains commitments by the state to use its best efforts to timely effectuate transfer of the Ward Valley site and establish the proposed facility. It contains a proposed timetable and provides for the establishment of a rate schedule by the state to ensure timely repayment to US Ecology of its costs.

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US Ecology v. State of California (continued)

Issues In the complaint, US Ecology argues that the defendants have shunned the company and walked away from the process required by state and federal law to establish a disposal facility by, among other things,

- abandoning efforts to complete the land transfer process;
- instructing an advisory group charged with proposing solutions to the state's low-level radioactive waste disposal problems not to consider the Ward Valley site, or any other specific disposal site;
- charging the advisory group with the responsibility to investigate preliminary issues and to undertake tasks that have been exhaustively studied and completed by US Ecology, the state, and others;
- refusing to meet with US Ecology to discuss Ward Valley or the state's plans for development of a regional disposal facility;
- making public statements repudiating the state's commitment to establish the Ward Valley facility; and
- providing no funding in the FY 2000-2001 budget request for the state's low-level radioactive waste disposal program.

US Ecology asserts that the defendants' alleged "retreat" from the Ward Valley project violates both the state's contract with US Ecology and the state's duty to implement federal and state laws, including the Southwestern Low-Level Radioactive Waste Disposal Compact. US Ecology specifically points to compact provisions requiring the state to "perform those acts which are required by" the Southwestern Compact and to "cause a regional disposal facility to be developed on a timely basis" within its territory.

Requested Relief US Ecology is seeking a writ of mandate directing the defendants to take certain actions in furtherance of the proposed land transfer and facility establishment, judicial declarations finding that the defendants have breached and/or repudiated certain binding promises and are liable accordingly, and monetary damages in an amount exceeding $162 million.

Defendants' Response

The State of California is asking that the court dismiss US Ecology's action on the grounds that the court does not have the authority to issue the mandamus relief requested and that contractual relief is not available.

Request for Mandamus Relief In its response, California characterizes US Ecology's complaint as alleging that the only means by which the state may fulfill its obligation to develop a regional disposal facility on a timely basis is to site a facility in Ward Valley. Thus, according to California, "the complaint seeks to limit the options of the Governor … to one specific choice." California, however, argues that there is no legal basis for limiting the Governor's options. Indeed, according to the state, "[i]t is an elementary principle that traditional mandamus cannot be utilized to compel the exercise of discretion in a particular manner, or to otherwise control the exercise of discretion by a public official or entity."

California also contends that the state may fulfill its obligations by other means than establishment of a facility in Ward Valley. Indeed, the state argues that an alternative course of action may be more expeditious given the federal government's opposition to transferring the land.

Moreover, California asserts that the compact itself is silent with regard to where the facility should be located, leaving such matters entirely to the discretion of the host state. California directs the court's attention to the following compact language:

> A regional disposal facility shall be approved by the host state in accordance with its laws. This compact does not confer any authority on the commission regarding the siting, design, development, licensure, or other regulation, or the operation, closure, decommissioning, or long-term care of, any regional disposal facility within a party state.

The state also points to language in the compact stating that its provisions should be broadly construed, that the sovereign powers of a party state shall not be unnecessarily infringed, and that party states shall not assume liability for activities related to the regional facility by joining the compact. In addition, California contends that a Governor has broad discretion in protecting the public interest and that a state cannot contract away its police power.

In regard to the timeliness of US Ecology's petition for a writ of mandate, California argues that the petition is premature because (1) the Governor is still reviewing his options for fulfilling the state's obligations under the compact, (2) the plaintiff's court action is pending on appeal, and (3) the plaintiff has other remedies available—namely, contractual relief.

Finally, California asserts that mandamus relief cannot be awarded at US Ecology's request because "[a] writ of mandate will only issue at the request of one who is beneficially interested in the subject matter." According to California, only the other party states to the compact have a beneficial interest worthy of bringing suit because California's obligations are limited under the compact to them. US Ecology's interest, according to the state, is purely commercial in nature.

Request for Contractual Relief California contends that "none of the plaintiff's theories for recovery in contract asserts a viable cause of action." In support thereof, the state advances the following theories:

Lack of Authority to Enter into a Contract The state claims that no contract exists—implied or otherwise—because the Department of Health Services has no statutory or constitutional authority to bind the state to the obligations asserted in the plaintiff's complaint. In support of its position, the state points to prior court decisions finding as follows:

> [N]o contractual obligation may be enforced against a public agency unless it appears the agency was authorized by the Constitution or statute to incur the obligation; a contract entered into by a governmental entity without the requisite constitutional or statutory authority is void and unenforceable.

Lack of Consideration to Form a Contract California asserts that an express contract could not have been formed via the parties' Memorandum of Understanding (MOU) because US Ecology did not offer any consideration—the MOU merely expressed the prior understanding of the parties.

Expiration of Obligations Even if a contract were found to exist, California argues that any obligations incurred by the state terminated at least seven years ago since the MOU provides that the land transfer be completed by late 1990. Alternatively, the state asserts that its obligations terminated on September 16, 1993—when plaintiff received its license. Accordingly, California claims that US Ecology's petition is time barred.

An Unlimited Obligation Does Not Exist California contends that US Ecology's petition alleges "an unqualified obligation on the State's part to establish a LLRW disposal facility operated by plaintiff, no matter what the circumstances." Such a contention, according to California, goes far beyond and contradicts representations made in the MOU. Instead, according to the state, the MOU merely states that California would use its "best efforts" for a stated period of time and for a stated purpose.

The State Used Its "Best Efforts" California argues that it has exceeded any duty it may have to use its "best efforts" to acquire the Ward Valley site. In regard to the state's decision not to pursue appeal of its suit against the federal government, California asserts that such a decision is within its discretion. As to US Ecology's request that the state be forced to reapply for acquisition of the Ward Valley site, California contends that such action would be impracticable given the federal government's opposition.

Promissory Estoppel Cannot Be Applied The state argues that promissory estoppel is not applicable in this case because no clear promise has been made. Instead, California asserts that any "promise" made was limited to the use of "best efforts," which the state contends it has applied. The state also argues that promissory estoppel does not apply because it would contravene the government's duty to act in the public interest and to enforce its police power.

No Grounds for Declaratory Relief California argues that "[t]he complaint fails to state a cause of action for declaratory relief because it seeks relief solely for acts alleged to have occurred in the past and seeks no prospective relief." The state also asserts that declaratory relief is improper since the request for declaratory relief seeks determination of the same issues regarding breach of contract as are contained in the main causes of action.

—TDL

Natural Resources Defense Council v. U.S. Nuclear Regulatory Commission

Appeals Court Denies Suit Challenging NRC Policy re Closed Meetings

On July 14, the U.S. Court of Appeals for the District of Columbia Circuit denied a petition for review filed by the plaintiff in a lawsuit challenging the U.S. Nuclear Regulatory Commission's ability to close certain Commissioner meetings to the public.

The suit was filed in 1999 by the Natural Resources Defense Council after NRC determined to implement a rule allowing some meetings to be exempted from the Sunshine Act—federal legislation designed to keep agency decision-making open to the public. NRC's rule was prompted by a 1984 decision of the U.S. Supreme Court which defined "meeting" to include at least a quorum of Commissioners gathering to make official agency decisions.

The Natural Resources Defense Council was, in part, asking the court to require NRC to keep minutes of any non-Sunshine Act meetings.

The appellate court held, however, that since NRC's rule copied verbatim the Supreme Court's definition of meeting, the agency's actions could not be challenged. In addition, the appellate court found that it does not have the authority to force NRC to perform additional administrative work.

The plaintiff has until August 28 to file a petition for rehearing.

—TDL

Lawsuits re Three Mile Island

Supreme Court Allows Three Mile Island Suits to Proceed

On June 5, the U.S. Supreme Court refused to hear appeals in nearly 2,000 cases involving the 1979 accident at the Three Mile Island nuclear power plant near Harrisburg, Pennsylvania.

The Supreme Court decision clears the way for future litigation against the plant's operators. The cases were brought mainly by persons living near the plant who claim to have suffered health problems as a result of the accident.

The court, without comment, rejected the plant owners' argument that all of the lawsuits should be thrown out because a trial judge ruled against 10 persons whose claims were already litigated as "test" cases. In so ruling, the district court judge determined that the majority of the plaintiffs' scientific expert testimony was inadmissible. She then threw out all of the nearly 2,000 cases.

In November 1999, the U.S. Court of Appeals for the Third Circuit upheld the district court judge's ruling on the expert testimony and dismissed all ten "test" cases. The appeals court reversed the lower court's dismissal of the rest of the cases, however, citing the plaintiffs' constitutional right to have their cases heard by a jury.

The nearly 2,000 remaining cases will now return to the U.S. District Court for the District of Pennsylvania for further action.

The Three Mile Island plant accident resulted from a combination of mechanical and human failures that allowed the plant's reactor core to lose cooling water and partially melt.

—TDL

U.S. Nuclear Regulatory Commission

NRC Restructures Waste Division; LLRW Deemphasized

The U.S. Nuclear Regulatory Commission has restructured the Waste Management Division of its Office of Nuclear Material Safety and Safeguards, placing a smaller emphasis on low-level radioactive waste issues while keeping decommissioning as an area of significant concentration.

Formerly the three branches of the waste division were (1) decommissioning, (2) high-level radioactive waste and performance assessment, and (3) uranium recovery and low-level radioactive waste. Under the restructuring, the branches are now (1) decommissioning, (2) high-level radioactive waste, and (3) environmental and performance assessment.

NRC's low-level radioactive waste program will be implemented and coordinated, albeit at a reduced level, by the new environmental and performance assessment branch. Tom Essig is the branch head.

The high-level radioactive waste branch has also been streamlined, with a reduction from three sections to two. It will continue to serve as the main point of interaction with DOE on the proposed federal repository at Yucca Mountain, Nevada.

—TDL

Utah Considers Re-examination of Envirocare's Land Ownership Exemption

In April, the U.S. Nuclear Regulatory Commission responded to earlier correspondence from the Utah Department of Environmental Quality concerning Envirocare of Utah's plans to expand its services to include the disposal of class B and C low-level radioactive waste. In the letter, NRC concurs with the state's opinion that the change in facility operations provides a good opportunity to re-examine continuation of the state policy of exempting Envirocare from the requirement for state or federal land ownership.

> This reexamination should evaluate continuation of the exemption in the context of the proposed expansion. We also believe it is worthwhile at the same time to revisit the original bases for the exemption to ensure they remain valid and continue to provide adequate long term control. This reexamination should serve to identify whether any changes are needed in the existing mechanisms that have been developed and applied in lieu of government land ownership. A reexamination at this time would provide continued assurance that long term controls, equivalent to those provided by government land ownership, are in place, and would remain in place through the operating lifetime of the facility and following closure.

NRC notes in its letter that part of the basis for granting Envirocare the original exemption was that the State of Utah does not have legislative authority to hold title to land used for radioactive waste disposal, despite compatibility of the state's implementing rule for government land ownership with federal regulations. NRC concludes that, as suggested in earlier correspondence by state officials, Utah should consider reexamining the current statute excluding state land ownership as well.

NRC's letter offers to assist state officials should they determine to revisit the land ownership exemption issue. The letter cautions, however, that "[s]uch assistance would not entail a *de novo* review of any submittal from Envirocare, but assistance in interpretation of NRC regulations in 10 CFR Part 61 and implementing guidance."

—TDL

U.S. NRC (continued)

NRC Asked to Consider Waste Systems in License Renewal

On July 10, the U.S. Nuclear Regulatory Commission published a notice announcing receipt of a petition for rulemaking filed by the Union of Concerned Scientists (UCS). The notice requests public comment on the petition.

In the petition, UCS requests that NRC amend its regulations governing requirements for renewal of operating licenses for nuclear power plants to address potential concerns about degradation of aging liquid and gaseous radioactive waste systems. UCS argues that "degradation from aging of piping and components of liquid and gaseous radioactive waste systems at nuclear power facilities may result in an increased probability and/or consequences from design and licensing bases events."

UCS' petition is part of a more extensive filing detailing the group's concerns over NRC's review of the license renewal application for the Edwin I. Hatch Nuclear Power Plant near Baxley, Georgia. UCS asserts that the Hatch plant is operating outside its design and licensing bases. The licenses for the Hatch units, which are operated by Southern Nuclear Operating Company, Inc., are due to expire on August 6, 2014, and June 13, 2018.

Comments on UCS' petition are due by September 25, 2000. They should be submitted to the NRC Secretary.

—TDL

For further information, contact David Meyer of NRC's Rules and Directives Branch at (301)415-7162.

NRC Responds to NAS Study Request

By letter dated June 15, the U.S. Nuclear Regulatory Commission responded to a request from the National Research Council of the National Academy of Science for participation in and partial financial support for a study entitled "Civilian Low-Level Radioactive Waste Disposal: Challenges and Opportunities Ahead." The National Research Council's Board on Radioactive Waste Management originally requested NRC's assistance in a letter dated April 11, 2000.

In its response, the NRC expressed its willingness to participate in such a study by, for example, briefing the study group on NRC's low-level radioactive waste disposal regulatory program.

NRC also indicated that it is currently investigating the extent to which it can provide the requested financial support.

NRC agreed that a study would be useful, stating:

> We recognize the potential value of such a study to low-level radioactive waste (LLW) generators in the United States and to the national LLW program. States and compacts have not been successful in developing new disposal capacity in the United States under the Low-Level Radioactive Waste Policy Amendments Act of 1985. Although disposal capacity is available today, the long-term disposal needs of LLW generators are not assured.

NRC suggested, however, that the scope of the study be expanded to include "an assessment of the key issues associated with managing waste streams other than LLW which pose a similar level of risk," including naturally occurring and accelerator-produced radioactive materials (NARM), technologically enhanced naturally occurring radioactive material (TENORM), material covered under the Formerly Utilized Sites Remedial Action Program (FUSRAP), and exempt source material.

—TDL

For further information, contact James Kennedy of NRC's Office of Nuclear Material Safety and Safeguards at (301)415-6668.

Quivira Mining Petitions to Amend Source Materials License

On June 9, the U.S. Nuclear Regulatory Commission published a notice in the *Federal Register* (65 *Federal Register* 36,741) announcing the receipt of an application from Quivira Mining Company to establish alternate concentration limits and to amend the source material license for its Ambrosia Lake Uranium Mill Tailings Site in New Mexico.

NRC's announcement provided notice of the opportunity for a hearing on the license amendment under NRC's informal hearing procedures. Persons interested in requesting a hearing must do so in writing within 30 days of publication of the *Federal Register* notice.

NRC approved a license amendment authorizing the disposal of 11e.(2) byproduct material from off-site generators at the facility in May 1997. (See *LLW Notes*, February 1998, p. 40.) The amendment limited the total annual disposal of byproduct material at the site to 2.7 million cubic feet—whether the material is produced on site or obtained from off-site generators. The amendment also provides that off-site 11e.(2) byproduct material that is disposed of at the site must be similar in physical, chemical, and radiological characteristics to the waste already there.

The Ambrosia site is operated by Quivira Mining Corporation, a subsidiary of Rio Algom Corporation and an indirect subsidiary of Rio Algom, Ltd., of Canada. The site contains a uranium mill that has been on stand-by for approximately 10 years. Currently Quivira conducts reclamation activities at the site.

—TDL

NRC Issues Proposed Rule re GTCC Storage

On June 16, the U.S. Nuclear Regulatory Commission issued a proposed rule (65 *Federal Register* 37,712) concerning amendments to its regulations dealing with the interim storage of greater-than-class C (GTCC) waste generated or used by commercial nuclear power plants.

The proposed amendments "would allow licensing for interim storage of GTCC waste in a manner that is consistent with licensing the interim storage of spent [nuclear] fuel and would maintain Federal jurisdiction for storage of reactor-related GTCC waste." The proposed amendments would also clarify and simplify the licensing process.

The proposed rule is derived from a November 1995 petition for rulemaking submitted by Portland General Electric Company (61 *Federal Register* 3,619). The petitioner requested that NRC amend its regulations to allow for the interim storage of GTCC due to the unavailability of a permanent disposal facility. NRC responded by preparing a draft rulemaking, holding hearings, and receiving comments. The current proposed rule is the result of NRC's efforts.

Comments on the proposed rule are due by August 30, 2000. Comments may be submitted in writing or electronically via NRC's interactive rulemaking web site (http://ruleforum.llnl.gov).

—TDL

For further information, contact Mark Haisfield of NRC's Office of Nuclear Material Safety and Safeguards at (301)415-6196.

U.S. NRC (continued)

Draft DEIS re Goshute Spent Fuel Proposal

On June 23, a notice was published in the *Federal Register* (65 *Federal Register* 39,206) announcing the availability of the draft environmental impact statement (DEIS) regarding the proposal of Private Fuel Storage (PFS), L.L.C. to construct and operate an independent spent fuel storage installation on the reservation of the Skull Valley Band of Goshute Indians. PFS intends to transport spent nuclear fuel to the proposed facility by rail from commercial power reactor sites to an existing rail line north of Skull Valley, in Tooele County, Utah. PFS proposes to construct a new rail line to transport the spent fuel from the existing line to the proposed facility.

The DEIS, entitled "Draft Environmental Impact Statement for the Construction and Operation of an Independent Spent Nuclear Fuel Storage Installation on the Reservation of the Skull Valley Band of Goshute Indians and the Related Transportation Facility in Tooele County, Utah," discusses the purpose and need for the PFS proposal and describes the proposed action and reasonable alternatives. It also discusses potential adverse effects on the environment from implementation of the proposal and identifies possible mitigation measures.

The DEIS was prepared through the cooperative efforts of the four federal agencies that must approve the project: the U.S. Nuclear Regulatory Commission, the Bureau of Indian Affairs, the Bureau of Land Management, and the Surface Transportation Board.

Conclusions

Based on the evaluation in the DEIS, staff of the four cooperating agencies have concluded "that (1) Measures required by Federal and State permitting authorities other than the cooperating agencies and (2) mitigation measures that the cooperating agencies recommend be required would reduce any short- or long-term adverse environmental impacts associated with the proposed action … to acceptable levels."

Public Comment

Two public meetings on the DEIS will be held in Utah on July 27 and 28. Both meetings will include an opportunity for public comment.

Written comments on the proposed action and the DEIS are due by September 21, 2000. Comments should be sent to David Meyer, Chief, Rules and Directives Branch, Division of Freedom of Information and Publication Services, Office of Administration, Mailstop T-6D-59, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Next Steps

The final environmental impact statement is scheduled for completion in February 2001. A safety evaluation report for the facility is expected to be issued by September 30, 2000.

—TDL

For further information about the public meetings, contact Scott Flanders of NRC's Office of Nuclear Materials Safety and Safeguards at (301)415-1172.

The DEIS is available for public inspection and duplication at NRC's public document room and on NRC's web site.

Hearings on PFS Application

Beginning June 19, NRC's Atomic Safety and Licensing Board held a series of hearings in Salt Lake City, Utah, on the application by Private Fuel Storage (PFS), L.L.C. to construct and operate an independent spent fuel storage facility on the Skull Valley Band of Goshute Indians' reservation. (See *LLW Notes*, May/June 2000, pp. 24–25.) The hearings addressed a variety of issues related to the proposal, including financial assurances, thermal design, emergency planning, and decommissioning. Most of the proceedings were conducted in closed session, but time was allotted at the end of the week for public comment.

U.S. Department of Energy

Utility Reaches Deal with DOE re Spent Fuel

On July 20, the U.S. Department of Energy announced that it reached an agreement with PECO Energy Company concerning the storage of spent nuclear fuel pending the opening of a permanent high-level radioactive waste repository.

Under the terms of the deal, DOE agreed to allow PECO to offset the costs to store spent fuel at its Peach Bottom plant in Delta, Pennsylvania, by reducing the company's payments to the Nuclear Waste Fund. In return, PECO agreed not to bring suit against the department for DOE's failure to meet its contractual deadline to begin accepting commercial spent fuel. The agreement remains in effect until DOE begins accepting spent fuel at a permanent repository.

The agreement does not contain a reimbursement ceiling—DOE estimates PECO could offset as much as $80 million in contributions over the next 10 years. Under the agreement, DOE may "take title" to the spent fuel kept in dry cask storage should PECO request the department to do so. In such case, however, the agreement states that DOE would leave the waste on site pending opening of a permanent repository.

This is the first such deal between DOE and a utility since the department failed to meet its January 1998 contractual deadline for accepting spent fuel. It may have implications for pending lawsuits filed by other utilities contesting DOE's contractual compliance. A major issue in many such suits has been whether the utilities are entitled to immediate judicial remedies or whether they must follow administrative procedures. Many companies argue that administrative remedies have been exhausted, but DOE disagrees.

—TDL

Maine Yankee to Construct Spent Fuel Facility

Maine Yankee Atomic Power Company has awarded a contract for the construction of a temporary dry spent fuel storage facility, with construction expected to begin this summer.

The $6.5 million facility is being built as part of the company's decommissioning efforts since no federal repository is currently available. It will be constructed on six acres of land and house approximately 64 spent fuel storage containers. The spent fuel rods will be kept in airtight concrete and steel cases, as opposed to a pool of water.

In response to a complaint filed by Maine Yankee, the U.S. District Court for the District of Maine recently issued a decision holding that the State of Maine may not assert regulatory authority over the company's proposed on-site storage facility. (See *LLW Notes*, May/June 2000, p. 19.)

Maine Yankee had filed the complaint after the Maine Department of Environmental Protection (DEP) began investigating whether DEP has the authority to assume jurisdiction over the facility pursuant to the state's Site Location of Development Act, which bans the construction or operation of certain facilities without prior state approval. Maine Yankee, however, argued that NRC has exclusive regulatory jurisdiction over the proposed facility. The court agreed, although it held that the state may enforce requirements in other areas, such as aesthetic landscaping, or flood- or erosion-control measures.

U.S. Environmental Protection Agency

EPA Issues ANPR re Hazardous Waste Land Disposal Restrictions

On June 19, the U.S. Environmental Protection Agency published in the *Federal Register* (65 F*ederal Register* 37,932) an advanced notice of proposed rulemaking (ANPR) for improving the Land Disposal Restrictions Program for treating hazardous waste under the Resource Conservation and Recovery Act (RCRA).

The Land Disposal Restrictions Program was created by Congress in 1984 to ensure that toxic constituents present in hazardous waste are properly treated before disposal. It includes technology-based treatment standards that all hazardous wastes must meet before they may be placed in a landfill. It is intended to minimize threats to human health and the environment.

The purpose of the ANPR is to identify issues and possible improvements to the Land Disposal Restrictions Program. The issues included in the ANPR were derived from a number of internal and external sources, including comments by participants at two round table meetings.

Comments on the ANPR are due by September 18, 2000. Comments may be submitted electronically or in paper format.

—TDL

For further information, contact Josh Lewis of EPA at (703)308-7877 or at lewis.josh@epa.gov.

ANS Names INEEL Official as President

The American Nuclear Society has named James Lake, a Research and Development Director at the Idaho National Engineering and Environmental Laboratory, as its new President. Lake's term of office will run until June 2001.

Lake has been involved in nuclear development and research since 1984. He is currently INEEL's Director of Strategic Business Development. Lake holds a master's degree and doctorate in nuclear engineering. He has been a member of the American Nuclear Society since 1967, where he has been elected to various posts, including Chair of the Reactor Physics Division and the Idaho local section.

The American Nuclear Society is a non-profit international, scientific, and educational organization. It was established in 1954 "to promote the advancement of engineering and science relating to the atomic nucleus and allied sciences and arts." The society currently has over 11,000 members.

—TDL

U.S. General Accounting Office

GAO Testifies re DOE's Privatization Initiative for Complex Cleanup Projects

On June 22, staff of the U.S. General Accounting Office (GAO) testified before the Subcommittee of Oversight and Investigations of the U.S. House of Representatives Commerce Committee regarding the U.S. Depart-ment of Energy's privatization initiative as applied to the department's nuclear waste cleanup program.

The privatization initiative was begun in 1995 as a way to reduce the cost and speed the cleanup of contaminated sites. DOE estimates that from 2000 to 2070, costs to clean up federal sites and provide long-term monitoring will be $150 billion to $195 billion.

GAO staff reported that DOE's privatization efforts have yielded little success in achieving cost savings, keeping projects on schedule, or improving contractor performance. Staff also identified several lessons to be learned from the department's privatization efforts:

- DOE can not rely on privatization alone to fix its contracting problems;
- two strategies that underpin the privatization initiative—fixed-price contracting and full private financing—will not work effectively for all cleanup projects;
- future analyses of financing options need to use more realistic assumptions about cost growth for various types of contracts and better reflect the actual government-assumed risks; and
- DOE needs to continue improving its technical, financial, and managerial oversight capabilities.

—TDL

U.S. Senate

Energy Bill Could Affect NRC Hearings Policy

On May 16, Senator Trent Lott (R-MS) introduced the National Security Act of 2000 (S. 2557). Although the bill focuses mainly on protecting energy security and reducing U.S. dependency on foreign oil sources, it also includes controversial language that could change the U.S. Nuclear Regulatory Commission's policies regarding licensing hearings from formal to informal actions, thereby allowing less public input and participation. Hearings on the proposed high-level radioactive waste repository at Yucca Mountain, Nevada, could be affected by the legislation, if passed.

In addition, the bill includes a provision that would require DOE to set up an Office of Spent Nuclear Fuel Research. The office would be charged with researching, developing, and demonstrating technologies for the treatment, recycling, and disposal of high-level radioactive waste and spent nuclear fuel.

As of press time, the bill has not been referred to committee, nor has companion legislation been introduced in the U.S. House of Representatives. The bill has seven co-sponsors: Senators Spencer Abraham (R-MI), Wayne Allard (R-CO), Larry Craig (R-ID), Kay Bailey Hutchison (R-TX), Frank Murkowski (R-AK), Rick Santorum (R-PA), and George Voinovich (R-OH).

—TDL

U.S. House of Representatives

Bill Introduced re Scrap Metal Contamination

On May 25, the Steel and Metal Consumers Radioactivity Protection Act (H.R. 4566) was introduced in the U.S. House of Representatives.

The bill is intended to "set standards for radioactive contamination content in both the domestic and international metals industry, to prohibit the release of radioactively contaminated scrap metal by the Department of Energy and nuclear fuel production, utilization, and fabrication facilities, and to require all nations exporting metals into the United States to certify and document the amount of radioactive contamination of any scrap metals being exported into the United States."

The legislation was introduced by Representative Ron Klink (D-PA) on behalf of himself and Representatives Peter Visclosky (D-IN), John Murtha (D-PA), John Baldacci (D-ME), William Coyne (D-PA), Tim Holden (D-PA), Frank Mascara (D-PA), Mike Doyle (D-PA), and Robert Brady (D-PA). It has a total of 27 co-sponsors.

On June 7, the bill was referred to the House Commerce Committee's Subcommittee on Energy and Power. As of press time, no hearing on the legislation has been scheduled, nor has companion legislation been introduced in the U.S. Senate.

On June 1, the United Steelworkers of America issued a press release endorsing H.R. 4566 as "an effective, practical solution to the [] dangers" of recycled metals. The organization's press release specifically hails the legislation as requiring the U.S. Nuclear Regulatory Commission "to set tough, enforceable standards protecting the public."

—TDL

DOE Suspends Metals Recycling

On July 13, Energy Secretary Bill Richardson announced his decision to suspend commercial recycling of all scrap metals recovered in DOE nuclear cleanup operations until it can be assured that such metals have no detectable contamination.

In addition, Richardson announced plans to conduct a feasibility study on the recycling of potentially contaminated steel into radioactive waste containers. In so doing, Richardson stated that current recycling operations involve contamination levels well below DOE and public health protection standards. He noted, however, that "even this very low potential exposure is not fully acceptable to the public."

Under the new policy, DOE metal recycling will be suspended until the department's safety standards are revised to include a requirement for no detectable contamination on materials being released for commercial use. In addition, DOE sites will need to hold public hearings on their decontamination programs, and receive department certification, before the programs may be resumed.

—TDL

U.S. General Accounting Office

GAO: DOE Plan for Paducah Site Cleanup Uncertain

On June 27, staff of the U.S. General Accounting Office (GAO) testified before the Subcommittee on Energy Research, Development, Production and Regulation of the Senate Committee on Energy and Natural Resources regarding the U.S. Department of Energy's efforts to clean up the uranium enrichment plant operated by the U.S. Enrichment Corporation (USEC) in Paducah, Kentucky

DOE began cleanup efforts at the site in 1988 after contamination was discovered in the drinking water wells of nearby residences. In 1999, radioactive ooze was found in the vicinity of the facility. (See *LLW Notes*, August/September 1999, p. 16.)

GAO Report GAO's testimony focused primarily on an April 28 report, entitled "Nuclear Waste Cleanup: DOE's Paducah Plan Faces Uncertainties and Excludes Costly Cleanup Activities."

The report addresses three issues

- DOE's planned activities, cost, and schedule for cleaning up the site;
- challenges in accomplishing the cleanup plan; and
- whether the plan is comprehensive.

GAO testified that DOE expects to complete the cleanup by 2010 at a cost of approximately $1.3 billion. However, GAO identified numerous technical, funding, and regulatory challenges to the plan and stated that many areas needing cleanup are not addressed under the plan. In fact, GAO testified that even if the plan were successfully completed, billions of dollars and several years would be needed to conduct additional cleanup. Accordingly, GAO made several recommendations for modifications or changes to the department's plan.

Disposal Responsibility State and compact responsibility for the disposal of USEC waste is limited by language contained in the FY 1996 omnibus appropriations bill. That bill provides that "[n]otwithstanding 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

A copy of Nuclear Waste Cleanup: DOE's Paducah Plan Faces Uncertainties and Excludes Costly Cleanup Activities (GAO/RCED-00-96; April 28, 2000) may be accessed on GAO's web site. Hard copies may be obtained by contacting the GAO document room.

USEC Votes to Close Ohio Plant

In mid-June, U.S. Enrichment Corporation (USEC) officials voted to shut down one of the company's two operating uranium enrichment plants despite strong objections from the Clinton administration. The decision was characterized by USEC officials as a "difficult but necessary" cost-cutting measure.

USEC is authorized under the Energy Policy Act of 1992 to lease uranium enrichment facilities owned by DOE at Paducah, Kentucky, and Portsmouth, Ohio. Pursuant to the recent vote, USEC will shut down the Ohio plant in June 2001. The move is expected to produce $55 million in savings in 2002.

Background USEC originated under the Energy Policy Act of 1992 as a wholly government-owned entity. President Clinton approved the sale of USEC on July 25, 1997. (See *LLW Notes*, August/September 1997, p. 25.) In late 1998, the U.S. Treasury Department approved a plan to privatize USEC through an initial public offering. (See *LLW Notes*, October/November 1998, p. 22.)

—TDL

U.S. House of Representatives

GAO Testifies re Radiation Standards

On July 18, U.S. General Accounting Office staff testified before the Subcommittee on Energy and Environment of the U.S. House of Representatives Science Committee regarding the regulatory standards used to protect the public from the risks of low-level nuclear radiation.

The U.S. Nuclear Regulatory Commission and the U.S. Environmental Protection Agency have disagreed over how restrictive U.S. radiation standards should be, setting different standards with varying limits on radiation exposure to the public. These standards cover a variety of regulatory applications, including cleaning up major weapons production sites, decommissioning commercial nuclear power plants, and constructing the proposed high-level radioactive waste repository at Yucca Mountain, Nevada.

GAO's testimony was based largely on a report entitled "Radiation Standards: Scientific Basis Inconclusive, and EPA and NRC Disagreement Continues." The report, which was completed in late June, addresses three major issues:

- whether current radiation standards have a well-verified scientific basis;
- whether EPA and NRC have made any progress in resolving their disagreement over the appropriate exposure limits in the standards; and
- how implementing these standards and limits may affect the cost of nuclear waste cleanup and disposal activities.

GAO staff reported the following conclusions with regard to their study of U.S. radiation standards:

- the consensus among recognized scientists is that U.S. radiation standards for public protection lack a conclusively verified scientific basis;
- despite acceptance by some scientists of the "linear no threshold hypothesis"—which holds that even the smallest radiation exposure carries a cancer risk, with the risk doubling as the exposure doubles—GAO found that the effects of radiation are unproven below certain radiation exposure levels, including regulated public exposure levels of 100 millirem per year;
- EPA and NRC have made no progress in resolving their disagreement over proper exposure limits in the standards, with both agencies favoring different policies and regulatory approaches for various nuclear cleanup and waste disposal activities, especially those relating to groundwater protection;
- the preferred protection levels put forward by both EPA and NRC are well below the range where radiation effects have been conclusively verified; and
- the costs of implementing radiation protection standards at nuclear cleanup and waste disposal facilities vary from site to site, with long-term overall costs expected to be very high.

—TDL

A copy of Radiation Standards: Scientific Basis Inconclusive, and EPA and NRC Disagreement Continues (GAO/RCED-00-152; June 30, 2000) may be accessed on GAO's web site. Hard copies may be obtained by contacting the GAO document room.

United States Senate

Senate Committee Holds Hearing on Low-Activity Rad Waste

On July 25, the Senate Committee on Environment and Public Works held a hearing to receive testimony on the disposal of low-activity radioactive waste. The hearing focused on management of wastes, such as mill tailings, that were generated at industrial sites involved in the national nuclear weapons program. In particular, the committee discussed the cleanup of such wastes under the Formerly Utilized Sites Remedial Action Program (FUSRAP).

The committee also discussed broader issues, however, including the current regulatory scheme for management of a range of other radioactive wastes.

Senators James Inhofe (R-OK), Michael Crapo (R-ID), Robert Bennett (R-UT), and Barbara Boxer (D-CA) attended the hearing, which lasted over two hours.

In opening remarks for the proceedings, Senator Inhofe expressed the intent to use his position as Chair of the Subcommittee on Clean Air, Wetlands, Private Property, and Nuclear Safety to examine radiation standards. He said that he had requested the Health Physics Society to develop legislative principles that will cover regulation of FUSRAP, nuclear power plant decommissioning, the proposed high level radioactive waste disposal facility in Nevada, and other areas. Senators Bennett and Boxer also made opening statements.

Testimony

Testimony was provided by the following persons:

Joseph Westphal
Assistant Secretary of the Army (for Civil Works)
U.S. Department of the Army
(see box, p.34.)

Carl Paperiello
Deputy Executive Director for Materials, Research and State Programs
U.S. Nuclear Regulatory Commission

Mike Shapiro
Deputy Assistant Administrator of the Office of Solid Waste and Emergency Response
U.S. Environmental Protection Agency

Max Scott
Professor
Louisiana State University

David Adelman
Staff Attorney, Nuclear Program
Natural Resources Defense Council

Scott Slessinger
Vice President for Governmental Affairs
Environmental Technology Council

Anthony Thompson
Uranium Recovery Industry

—CN

Copies of the testimony may be accessed on the Internet at

http://www.senate.gov/~epw/stm1_106.htm#07-25-00

Army Corps Policy re Disposal of FUSRAP Waste

FUSRAP was run by the U.S. Department of Energy from 1974 until 1997, when it was transferred through congressional action to the U.S. Army Corps of Engineers. (See *LLW Notes,* winter 1997, pp. 36–37.)

During DOE's administration of the program, the department required that radiologically contaminated FUSRAP wastes be disposed of in low-level radioactive waste disposal facilities licensed under NRC regulations.

The Army Corps, however, has taken the position that some low-activity FUSRAP waste may be disposed of at facilities that are permitted under the Resource Conservation and Recovery Act (RCRA). Use of one such facility, located in Buttonwillow, California, was challenged by the California Department of Health Services. (See *LLW Notes*, May 1999, pp. 1, 31–33.)

Following is an excerpt from testimony of Assistant Secretary of the Army Joseph Westphal concerning the Corps' policy. Westphal delivered the testimony on July 25 during a hearing held by the Senate Committee on Environment and Public Works.

> The Corps policy for the disposal of FUSRAP radioactively contaminated material requires that waste material first be characterized via an evaluation of historical data and the use of appropriate analytical testing. Based on the characterization information, the Corps will identify potential disposal facilities for that waste material. Only facilities licensed by the Nuclear Regulatory Commission or an Agreement State, or facilities permitted by a Federal or state regulator to accept radioactive materials in accordance with applicable laws and regulations, will be considered candidates.
>
> Prior to shipment of FUSRAP material to a disposal facility, the Corps policy requires that both the facility and its regulator be provided complete and accurate characterization information and that each agrees to its disposal at that facility. Moreover, the policy requires the written concurrence of the state and/or federal regulatory agency indicating that the proposed disposal is consistent with applicable regulations and the license or permit.

—CN

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- 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
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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**

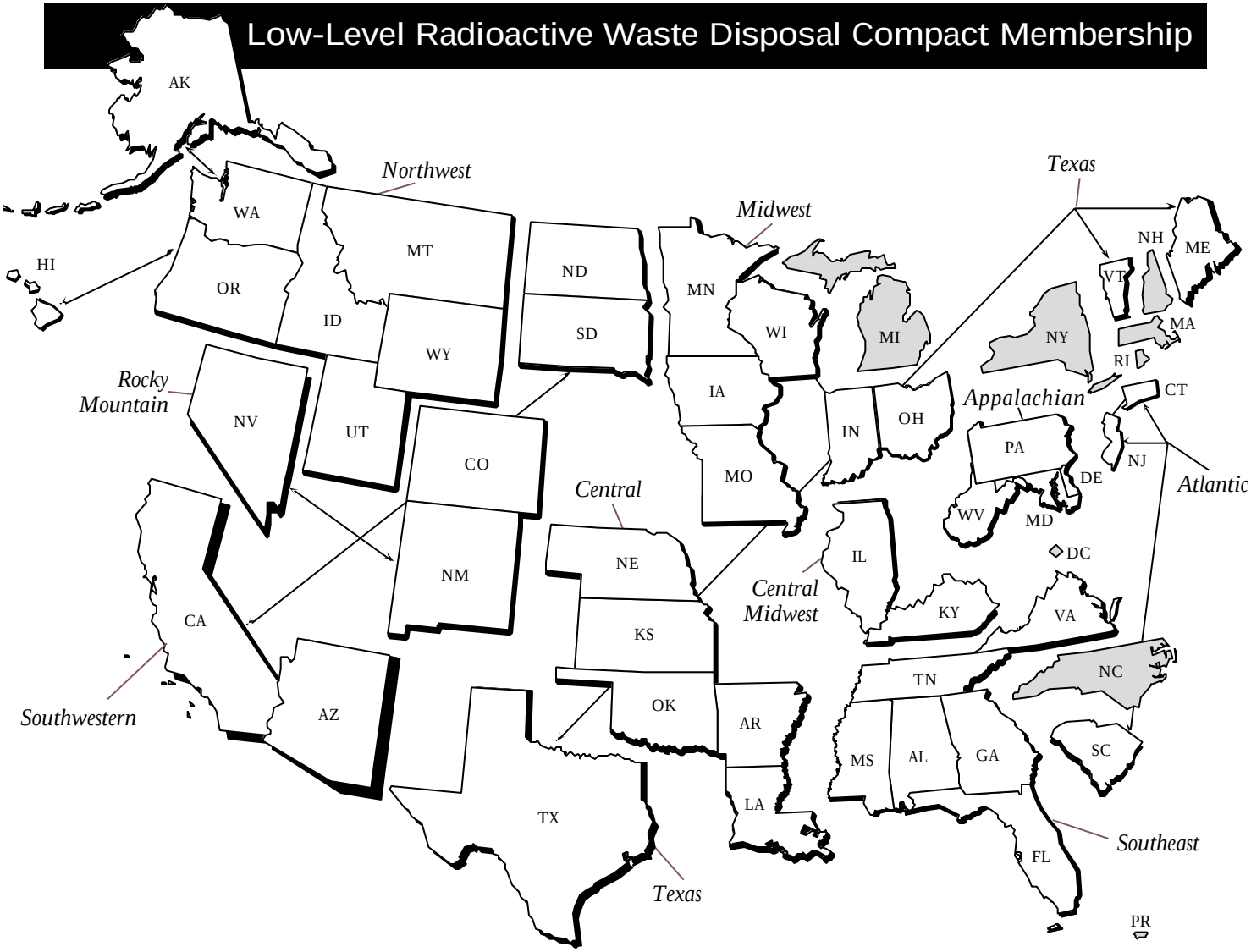
To access a variety of documents through numerous links, visit the LLW Forum web site at www.afton.com/llwforum

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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Northwest accepts Rocky Mountain waste as agreed between compacts.

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