LLWnotes

Volume 14, Number 5 June/July 1999

Southeast Compact/North Carolina

NC Legislature Passes Bill to Withdraw State from SE Compact

On July 20, the North Carolina General Assembly adopted legislation to withdraw the state from the Southeast Interstate Low-Level Radioactive Waste Management Compact. Senate Bill 247/H 316, the withdrawal bill, originally covered prescribed burning in forests. However, Representative George Miller (D-Durham), who serves as a Commissioner from North Carolina to the Southeast Compact, introduced an amendment in the House Rules Committee that totally substituted the withdrawal language for the bill's original content. The Rules Committee gave favorable approval to the amended bill on July 19, and it was passed by the full House and the Senate the following day.

The legislation, entitled "An Act to Withdraw North Carolina from the Southeast Interstate Low-Level Radioactive Waste Management Compact, to Limit the Authority of the Low-Level Radioactive Waste Management Authority and to Direct the Radiation Protection Commission to Study and Formulate a Plan for Low-Level Radioactive Waste Management,"

- withdraws the state from membership in the Southeast Compact;

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South Carolina

South Carolina Governor Forms Nuclear Waste Task Force

On June 10, South Carolina Governor Jim Hodges (D) announced the creation, by executive order, of a Nuclear Waste Task Force. The new group is responsible both for providing "a road map to discontinuance of South Carolina's role as the nation's nuclear dumping ground" and for recommending "actions to ensure that the future disposal needs of South Carolina low-level radioactive waste generators are met." Governor Hodges has indicated that he believes the state has at least two options for achieving these goals: "go[ing] it alone" or joining a compact. The task force is to report its findings and recommendations to the Governor and to the General Assembly by November 1, 1999.

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In This Issue

LLW Forum c/o Afton Associates, Inc. • 403 East Capitol Street • Washington, D.C. 20003
(202)547-2620 • FAX (202)547-1668 • E-MAIL llwforum@afton.com • INTERNET www.afton.com/llwforum

Low-Level Radioactive Waste Forum

LLW Notes
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Editor, Cynthia Norris; Associate Editor, Holmes Brown
Contributing Writers: Cynthia Norris, Todd Lovinger, M. A. Shaker, Joel Weiss
Materials and Publications: Joel Weiss
Layout and Design: M. A. Shaker

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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

Low-Level Radioactive Waste Forum
c/o Afton Associates, Inc.
403 East Capitol Street
Washington, DC 20003

VOICE **(202)547-2620**
FAX **(202)547-1668**
E-MAIL **llwforum@afton.com**
INTERNET **www.afton.com/llwforum**

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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Texas Compact/Texas

Texas LLRW Disposal Authority to Merge with TNRCC

In accordance with legislation enacted in June, the Texas Low-Level Radioactive Waste Disposal Authority will cease to exist as a separate agency on September 1, 1999. At that time, its funding, functions, and some of its staff will transfer to the Texas Natural Resource Conservation Commission (TNRCC).

The change was mandated by a conference report, adopted by the Texas legislature on May 29, that concerned many vital state agencies. The specific provision pertaining to the Authority was added to the report just before the legislature adjourned, when it became apparent that other legislation relating to the Authority's functions would not be passed.

Subsequent to passage of the conference report, the Authority's budget appropriation for the next two years was reduced from approximately $5 million to $1.179 million. The new budget eliminates expenditures that were expected to occur in the second year.

Unsuccessful Bill

Earlier in the legislative session, both the Texas Senate and the Texas House of Representatives passed HB 1171, a bill amending existing state law regarding management of commercial low-level radioactive waste. (See *LLW Notes*, May 1999, p. 14.) However, the House and Senate versions differed substantially, and the House sponsor of the bill chose not to call up a conference committee rather than risk passage of the legislation with changes that he deemed unacceptable. Major areas of contention concerned

- whether the existing regulations should be changed to allow a private company to be licensed for disposal of low-level radioactive waste,
- whether assured isolation should be the preferred waste management option,
- whether a new county should be designated as the location for a waste management facility, and
- whether DOE waste could be accepted at a disposal facility in Texas.

Because the legislature adjourned without passing HB 1171, current low-level radioactive waste disposal legislation will remain in effect at least until the next legislative session, scheduled to begin in January 2001.

Next Steps

Under existing law, the Authority is required to site a low-level radioactive waste disposal facility in Hudspeth County. Given the TNRCC's rejection of a proposed disposal site in that county in October 1998, such an endeavor faces major obstacles.

As an alternative, the Authority is considering siting an assured isolation facility, which would not be subject to the Hudspeth County location requirement. The Authority's merger with TNRCC would not affect the facility's licensing process, since such facilities are regulated by the Texas Department of Health. However, the Authority's budget reduction may compromise the TNRCC's ability to characterize potential sites or design a facility if funding is not available from other sources.

—CN

For further information, contact Lee Mathews of the Texas Authority at (512)206-3932.

South Carolina (continued from page 1)

Task Force Meetings

An organizational meeting of the task force was held on July 12, in Columbia, South Carolina. During the meeting, which was open to the public, the task force members received briefings on issues including

- the national status of efforts to develop new facilities for low-level radioactive waste disposal;
- provisions governing the admittance of new members to existing interstate low-level radioactive waste compacts; and
- the remaining disposal capacity at the commercial low-level radioactive waste disposal facility in Barnwell, South Carolina. (See related story, this issue.)

The task force also adopted a schedule that provides for future meetings on August 2, August 16, August 23, September 17, October 18, and November 1.

Compact Delegation

Governor Hodges' order establishing the task force directs three of its members to serve as a South Carolina Compact Delegation, which "shall meet with officials of regional nuclear waste disposal compacts, officials of other states, and other parties to determine terms under which South Carolina's interests can be served through affiliation with a regional compact ..."

Butler Derrick, Chair of both the task force and the compact delegation, wrote to the Chairs of all interstate low-level radioactive waste compact bodies on July 12 to invite compact and member state representatives to meet with the compact delegation to discuss affiliation. In his correspondence, Derrick noted the "limited" disposal capacity remaining at the Barnwell facility and emphasized the importance to South Carolina of "identify[ing] a path forward as quickly as possible." The delegation is to report its findings to the task force by September 15, 1999.

—CN

For further information, contact John Clark of the South Carolina Governor's Energy Office at (803)737-8030.

Task Force Members

At Large

Butler Derrick* **Chair**
former U.S. Representative (D-SC) instrumental in passage of the Low-Level Radioactive Waste Policy Act and its amendments
attorney, Washington, DC office of Powell, Goldstein, Frazier & Murphy—an Atlanta-based firm; a resident of Charleston, SC

Harriet Keyserling
former member of the South Carolina House of Representatives (D-Beaufort Co.)
former Southeast Compact Commissioner
designated to represent environmental groups
(See *LLW Notes*, March 1999, p. 30.)

Belton Ziegler
attorney, SCANA Corp., Columbia, SC
designated to represent in-state generators

Benjamin Johnson
attorney, Rock Hill, SC office of Robinson, Bradshaw & Hinson—a Charlotte, NC-based firm

Steven Glassman
physician, Columbia, SC
designated to represent in-state generators (hospitals)

Senate

John Courson	R-Richland Co.
Bradley Hutto	D-Orangeburg, Barnwell, Allendale, Hampton Cos.
Phil Leventis*	D-Sumter, Lee Cos.

Alternate Forum Participant for South Carolina

Thomas Moore	D-Edgefield, Aiken, McCormick Cos.

House

Lonnie Hosey	D-Barnwell, Allendale Cos.
Joseph Neal	D-Richland, Sumter Cos.
Lynn Seithel	R-Charleston Co.
Joel Lourie*	D-Richland Co.

** Compact Delegation Member*

Barnwell's Capacity Cut

South Carolina regulators have recently determined that the potential remaining disposal capacity at the low-level radioactive waste disposal facility in Barnwell, South Carolina, is only about 3.2 million cubic feet—approximately half of previous estimates. Virgil Autry of the South Carolina Department of Health and Environmental Control announced the revised estimate at the Low-Level Radioactive Waste Forum meeting on June 2.

According to Autry, the state reevaluated the unused acreage at the site and determined that approximately 17.4 acres are not suitable for disposal due to shallow ground water levels and other geohydrological conditions. That leaves about 16.6 acres of potentially suitable land, with an estimated disposal capacity of 3,172,010 cubic feet. Assuming an annual disposal rate of 300,000 cubic feet, this capacity will be sufficient for 10 years.

—CN

The preceding information was distributed to Forum Participants and Alternate Forum Participants, Federal Liaisons and Alternates via e-mail on June 4.

SC Legislature Postpones Action re Barnwell

During the legislative session that ended in early June, bills were introduced in the South Carolina General Assembly to rejoin the Southeast Interstate Low-Level Radioactive Waste Management Compact or to eliminate access for out-of-state generators. (See *LLW Notes*, March 1999, p. 3.) Neither measure was adopted, but they may be addressed during the second session, which begins in January 2000.

Tecklenburg Appointed Alternate Forum Participant for South Carolina

On June 1, South Carolina Governor Jim Hodges (D) appointed Michael Tecklenburg as the second Alternate Forum Participant representing the State of South Carolina. The state's other Alternate Forum Participant is South Carolina Senator Phil Leventis (D-Sumter).

As Director of the Governor of South Carolina's Washington, DC office, Tecklenburg coordinates representation of South Carolina's interests in the nation's capital.

Prior to being appointed to his current position by Governor Hodges in January 1999, Tecklenburg served for five years as litigation counsel to the Assistant Attorney General for Antitrust in the U.S. Department of Justice. In addition, he served as Assistant Counsel in the White House Office of Presidential Personnel, and spent three years as a private litigation attorney in a Washington, DC law firm. He is admitted to practice law in South Carolina.

He received an undergraduate degree in history from the University of South Carolina and his juris doctorate from Columbia University School of Law.

Tecklenburg is President-Elect of the Alexander Graham Bell Association for the Deaf and Hard of Hearing, a national non-profit association that advocates rights of individuals who are deaf and hard of hearing.

—MAS

Southeast Compact/North Carolina (continued)

- repeals the North Carolina compact law;
- limits the functions of the North Carolina Low-Level Radioactive Waste Management Authority to closing and restoring the proposed disposal site in Wake County and to finalizing all other responsibilities and business relating to the closure and restoration on or before June 30, 2000;
- repeals the chapter of the North Carolina General Statutes related to the North Carolina Authority as of July 1, 2000;
- directs the North Carolina Radiation Protection Commission to develop a plan for complying with North Carolina's responsibilities under the Low-Level Radioactive Waste Policy Act on or before May 15, 2000; and
- prohibits the North Carolina Department of Environment and Natural Resources from issuing or considering a license application for a low-level radioactive waste disposal facility prior to action by the General Assembly establishing a plan for future management of low-level radioactive waste.

North Carolina Governor Jim Hunt (D) is expected to sign the legislation. In a statement issued prior to the bill's passage, Governor Hunt made the following remarks concerning compact withdrawal:

> Throughout this process, we have worked to protect the health and safety of North Carolinians while meeting our obligations as members of the compact. The state of North Carolina has spent more than $30 million pursuing the development of a proposed waste storage facility in our state.
>
> But we have become convinced that continuing to belong to this Compact is no longer in the best interest of the people of this state. It is time now for North Carolina to withdraw from the Compact and investigate alternative methods for radioactive waste storage.

Southeast Compact's Response

Richard Hodes, Chair of the Southeast Compact Commission, issued the following statement in response to the North Carolina General Assembly's action:

> When North Carolina accepted its designation as a host state for the Southeast Compact in 1986, it accepted the responsibility to provide a disposal facility for the region for a period of twenty years. For this reason, we question whether North Carolina has the right to withdraw at this time. However, regardless of whether North Carolina remains a member of the compact, we firmly believe that the state is still obligated to build this facility for the Southeast region.
>
> The Southeast Compact Commission has worked with North Carolina in good faith to provide a regional disposal facility and it believes that North Carolina must fulfill its contract with the region. The Commission will be evaluating what its options are to ensure that North Carolina lives up to its commitment.

Compact Withdrawal Terms

Under Article 7(G) of the Southeast Compact, any party state may withdraw from the agreement by "enacting a law repealing the compact, provided that if a regional facility is located within such state, such regional facility shall remain available to the region for four years after the date the Commission receives verification in writing from the Governor of such party state of the rescission of the Compact."

According to Kathryn Haynes, Executive Director of the Southeast Compact Commission, the commission has not rendered a decision as to whether North Carolina is eligible to withdraw from the compact under the current circumstances.

—MAS/CN

Copies of the withdrawal bill are available on the North Carolina General Assembly's web site at

http://www.ncga.state.nc.us

For further information, contact Andy James of the North Carolina Authority at (919)733-0682 or Kathryn Haynes of the Southeast Compact Commission at (919)821-0500.

Two States Seek Sanctions against North Carolina for Compact Violation

On June 21, the States of Florida and Tennessee submitted an administrative complaint against the State of North Carolina to the Southeast Compact Commission for Low-Level Radioactive Waste Management. The complaint contends that North Carolina "has failed to fulfill its obligations as a party state of the Compact and as the second host state under the Southeast Interstate Low-Level Radioactive Waste Compact law (Compact Law) to provide a disposal facility for the Southeast region." The complaint also asserts that North Carolina received $79,930,337 in commission funds with "full knowledge that it was expected to develop a facility for the Compact."

Authority for Complaint

Florida and Tennessee filed the complaint in accordance with Article 7(F) of the compact, which provides that "any party state which fails to comply with the provisions of this compact or to fulfill the obligations incurred by becoming a party state to this compact may be subject to sanctions by the Commission, including suspension of its rights under this compact and revocation of its status as a party state."

Recommended Penalties

In their complaint, Florida and Tennessee recommended that the commission impose sanctions including

- requiring the return of the $79,930,337 plus interest;
- recovering $2500 per day from North Carolina "for every day beyond August 1, 2001 that an acceptable disposal facility is not provided for use by Southeast regional generators";
- limiting export of waste from North Carolina for treatment, storage, or disposal until a regional disposal facility is opened in North Carolina;
- prohibiting generators in North Carolina from using processing facilities in the Southeast Compact region until North Carolina opens a regional disposal facility; and
- requiring North Carolina to store all waste from the region pending availability of a new regional disposal facility.

As part of the sanctions, the complaining states also recommended that the commission direct the compact's Chair and Executive Director to "go directly to court for a declaratory judgment to require North Carolina to provide a facility or a court order for recovery of funds, interest, and damages."

Administrative Procedure

Under the Southeast Compact's administrative sanctions procedure, all member states of the compact have until July 21 to submit statements supporting or opposing the complaint to the compact's sanctions committee. The committee—which is currently composed of Commissioners from Georgia, Virginia, and Alabama—will meet on July 27 to recommend either dismissal of the complaint or a formal inquiry. If the committee recommends the latter, the full commission will decide on August 19 whether to initiate an inquiry, which entails a public quasi-judicial hearing in which the complaining states must prove their case by a preponderance of the evidence. At the conclusion of the hearing, a two-thirds vote by the commission is needed in order to find a violation.

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Southwestern Compact/California

CA LLRW Program Eliminated; Southwestern Compact Prepares for Cuts

Funding for the State of California's low-level radioactive waste program has been eliminated from the state's budget for fiscal year 1999-2000, which began July 1. Despite Governor Gray Davis's recommendation for an appropriation of $1.2 million, the state legislature adopted a budget on June 16 that did not include any money for the program. Governor Davis signed the budget on June 29.

The low-level radioactive waste program's staff consisted of an engineer, a staff attorney and a fiscal analyst. These persons have since been transferred to other programs.

Termination of the program's funding will not impact the functioning of a separate advisory panel on low-level radioactive waste that the Governor created on June 2.

Compact Commission Loses Funding Source

An ancillary effect of the program cut is to eliminate state support for the Southwestern Low-Level Radioactive Waste Commission, which has been operating for several years using funds borrowed from California until it has the ability to assess surcharges on disposal at the planned regional disposal facility.

In a special meeting conducted by teleconference on June 29, the commission reacted to the cut by adopting a reduced budget for the remainder of the calendar year. The commission's revised budget will provide for a minimal level of legally required activities including the commission's annual meeting; preparation of an annual report; and action on petitions to export low-level radioactive waste for disposal through the currently authorized period, which expires December 31, 1999. The commission will also continue to provide information through its web site, but it can no longer arrange workshops or send staff to meetings of other organizations.

Expenses through the end of the calendar year will be covered by cash on hand. The compact commission has no significant source of future income, however, and surcharge rebates from DOE have been turned over to the state. No funding mechanism exists for operations in 2000, although the commission plans to investigate alternative funding sources such as state or federal grants. At the teleconference meeting, the commission agreed to notify generators that there is no assurance that exportation can be authorized after December 31 of this year. The commission also voted to write to the Governor and legislative leaders of California informing them of the commission's budget change and of the need for funding.

—CN

For further information, contact Don Womeldorf of the Southwestern Commission at (916)448-2390.

Much of the preceding information was distributed to Forum Participants and Alternate Forum Participants, Federal Liaisons and Alternates via e-mail on June 30.

CA Advisory Group to Examine LLRW Disposal Alternatives

On June 2, California Governor Gray Davis (D) announced plans to establish an advisory group charged with proposing ways to find "workable alternatives for California's low-level radioactive waste disposal." The group is expected to include persons from the academic, scientific, and environmental communities, as well as biotechnology experts, industry representatives, and persons from appropriate state agencies. Governor Davis has asked the President of the University of California, Richard Atkinson, to chair the group, but no other members had been named as of press time.

Southwestern Compact to California: Restore Funds for Compact, State LLRW Program

On July 7, Dana Mount, Chair of the Southwestern Low-Level Radioactive Waste Commission, wrote to California Governor Gray Davis urging swift restoration of funding for California's low-level radioactive waste program and for the commission. Following are excerpts from the letter. As of press time, no response had been received.

—CN

The Southwestern Low-Level Radioactive Waste Commission has the sole legal authority to allow exportation of low-level waste from California, Arizona, North Dakota, and South Dakota for safe disposal outside of the region. Until such time as California meets its obligations under Public Law 100-712 to develop a low-level waste disposal facility for radioactive materials users in the four states, the Commission is willing to authorize continued exportation to the existing disposal facilities elsewhere in the nation. Its funding options are limited by Public Law 100-712 to assessing surcharges on disposal at the regional facility or accepting grants from federal or state governments.

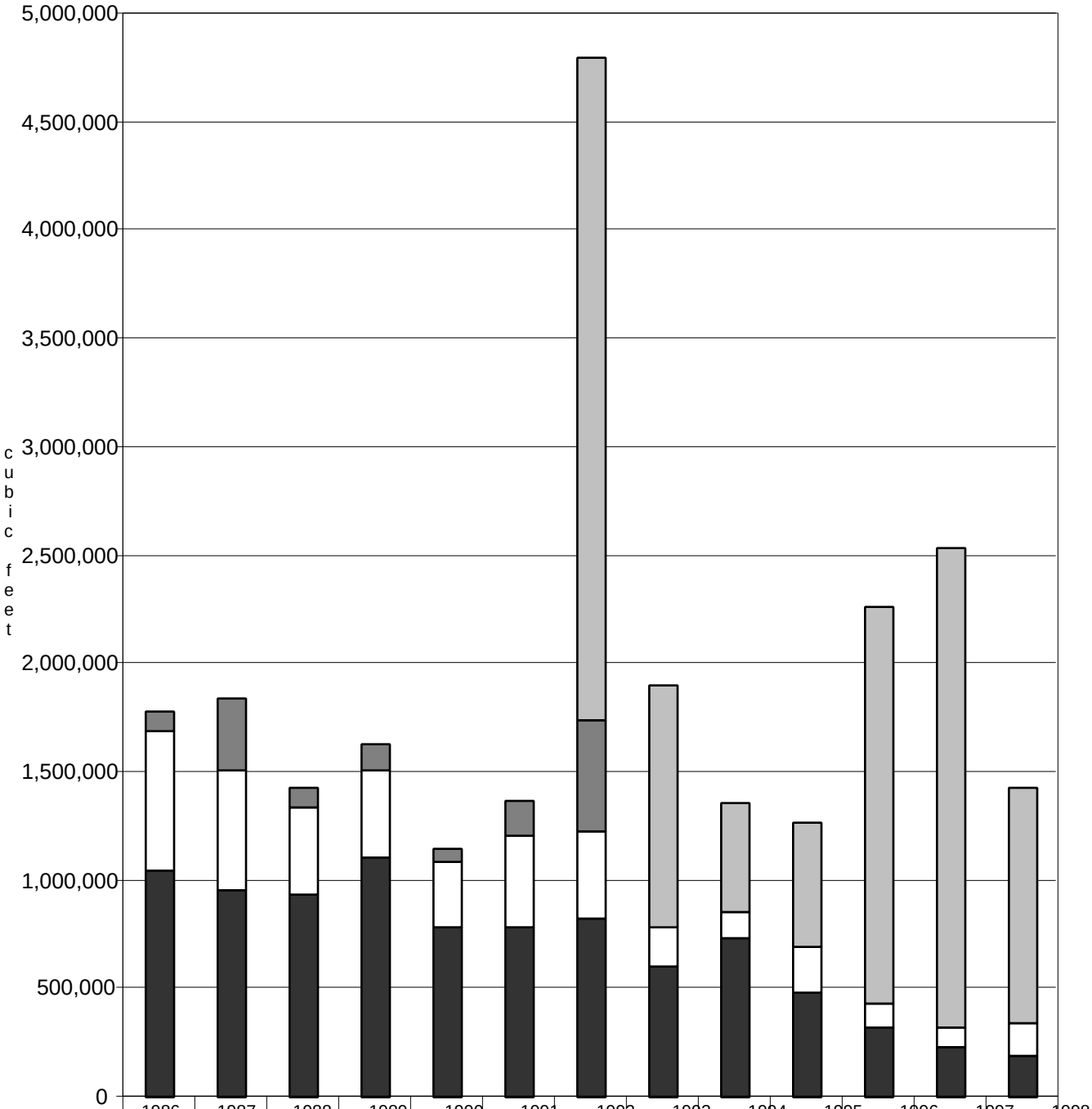
The State of California licensed the regional disposal facility at Ward Valley in 1993 but the facility has not been completed because of disagreement over title of the land upon which it is to be built. Since that time, the Commission has operated on State of California funds with the commitment that the expenditures will be repaid when the Commission can assess surcharges on disposal at the regional facility. Your Fiscal Year 1999-2000 budget as submitted contained $1.2 million for the State's low-level waste program, which included the Commission's staff support, but the Legislature deleted the funds in spite of the Commission's written and oral testimony at hearings of the appropriate subcommittees of both houses.

This leaves the Commission virtually helpless to carry out its legal obligations. At a special teleconference meeting on June 29, the Commission voted to expend most of its miniscule cash reserves … to continue to allow exportation through the end of Calendar Year 1999. The cash reserves are inadequate to carry the Commission's staff support through the end of the fiscal year. Unless funding can be obtained for Commission staff support after January 1, 2000, the Commission will be unable to authorize further exportation.

Unless funding can be obtained for Commission staff support after January 1, 2000, the Commission will be unable to authorize further exportation.

The Commission's view is that since it is the obligation of the State of California to provide for safe disposal of low-level waste produced not only by California generators but also those in Arizona, North Dakota, and South Dakota, it is incumbent upon California to support the Commission's staff activities until the regional disposal facility is developed. As Commission Chair I urge you and the California Legislature to take immediate action, on an emergency basis, to restore funding for California's low-level waste program, including support for the Commission's staff activities.

Commercial LLRW Volumes 1986–1998

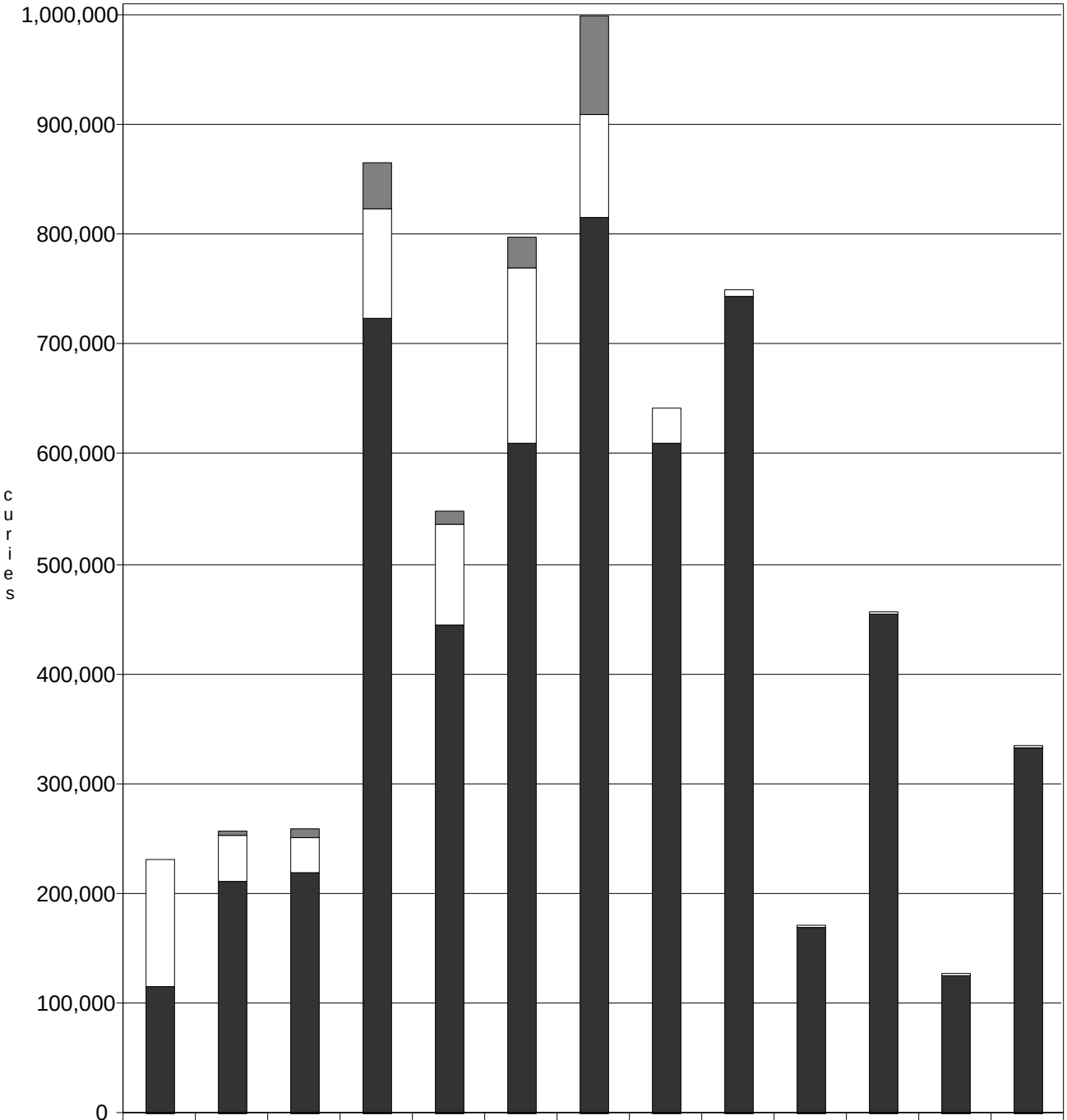


	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998
Envirocare							3,058,26	1,111,78	501,191	576,797	1,836,16	2,216,46	1,089,38
Beatty	94,221	331,092	93,412	116,222	59,479	160,262	514,723						
Richland	643,273	554,897	403,630	408,291	295,299	419,207	398,401	186,734	124,750	204,963	105,187	91,085	144,768
Barnwell	1,045,85	955,776	931,974	1,103,30	788,071	789,643	828,657	602,288	733,376	484,994	325,565	228,035	194,516

Barnwell, Beatty and Richland data obtained from the Manifest Information Management System of DOE's National Low-Level Waste Management Program at INEEL. Envirocare data obtained from the State of Washington's Department of Ecology.

Afton Associates, Inc. for the LLW Forum • July 1999

Commercial LLRW Activity 1986–1998



	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998
Envirocare							22	17	8	12	88	142	313
Beatty	672	3,353	8,691	42,678	11,323	29,679	90,210						
Richland	115,591	42,734	32,068	99,056	92,985	158,784	93,923	31,421	6,078	2,836	1,032	593	1,656
Barnwell	116,108	211,026	218,902	725,164	444,277	610,895	815,939	611,778	745,301	168,981	455,214	126,374	332,779

Barnwell, Beatty and Richland data obtained from the Manifest Information Management System of DOE's National Low-Level Waste Management Program at INEEL. Envirocare data obtained from the State of Washington's Department of Ecology.

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Waste Management Holdings, Inc. v. Gilmore

Municipal Solid Waste Case Raises Commerce Clause Concerns

On June 30, the U.S. District Court for the Eastern District of Virginia preliminarily enjoined the Commonwealth of Virginia from enforcing newly enacted statutes concerning the transportation and disposal of municipal solid waste within Virginia's borders. Although the challenged statutory provisions were written to be facially neutral, the court determined that they will likely have the effect of discriminating against out-of-state waste. The opinion may be of interest to Forum Participants due to the Court's analysis of the application of provisions of the Interstate Commerce Clause of the U.S. Constitution.

The following is a brief summary of the court's decision.

Background

Current Waste Disposal Practices in Virginia According to a November 1998 study, there are currently 70 active landfills that accept municipal solid waste operating in the Commonwealth of Virginia. However, ninety-seven percent of the out-of-state waste deposited in Virginia goes to seven "regional" landfills, while the vast majority of the state's landfills accept no out-of-state waste at all. Most of the regional landfills accept more than 2,000 tons of waste per day. By contrast, not one of the approximately 61 "local" landfills accepting waste only from Virginia has ever disposed of more than 2,000 tons per day, with the majority receiving less than 100 tons per day.

Future Plans for the Disposal of Out-of-State Waste In 1997, it was announced that a landfill in Staten Island which accepts the majority of New York City's residential municipal solid waste would cease accepting such waste in December 2001. Accordingly, the city began negotiating contracts for alternative disposal options. Waste Management, which operates five of Virginia's regional landfills, has been awarded two contracts to dispose of New York City's waste and recently bid on a third. The majority of this waste will be containerized and transported by barge to Virginia.

Political Reaction In August 1998, the Congressional Research Service issued a report finding that Virginia ranked second only to Pennsylvania as the nation's largest importer of municipal solid waste, having imported 2.8 million tons in 1997. Shortly thereafter, one of Virginia's Senators announced plans to introduce legislation aimed at curtailing the importation of out-of-state waste. Virginia's Governor, too, expressed concern about the increased imports and offered proposals to deal with the perceived problem, including a proposed moratorium on new landfill development.

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

- a cap on the amount of waste that any landfill may accept at either 2,000 tons per day or the average daily amount accepted by the landfill in 1998, whichever is greater—unless an exception is granted by the Virginia Waste Management Board;
- a mandate that the Virginia Waste Management Board promulgate regulations governing the transport of municipal solid waste by barge, ship, or other vessel and the loading and unloading of such waste, including a requirement that the regulations prohibit the stacking of containerized waste more than two high;
- a moratorium on receipt of waste by ship, barge, or other vessel prior to the promulgation and implementation of such regulations, despite the fact that no deadline is provided therefore; and
- a prohibition against "the commercial transport of hazardous or nonhazardous waste by ship, barge or other vessel [upon the] Rappahannock, James and York Rivers, to the fullest extent consistent with limitations posed by the Constitution of the United States."

The Lawsuit

Parties/Issues Earlier this year, various lawsuits and a request for injunctive relief were filed that challenge provisions of the new legislation—including the cap provision, the stacking provision, and the three-river ban. The suits, which have been consolidated into a single action, were filed by the following parties:

- Waste Management Holdings, Inc., whose affiliates operate several "regional" landfills in Virginia that accept substantial quantities of out-of-state municipal solid waste;
- Weanack Land Limited Partners, which owns a transfer facility on the James River that unloads containerized shipments of municipal solid waste;
- Hale Intermodal Marine Company, a barging company transporting, among other things, municipal solid waste;
- Charles City County, which leases property to Waste Management for use as a landfill; and
- Brunswick Waste Management Facility, which owns and operates a "regional" landfill in Virginia.

The following state officials are named as defendants in their official capacity to the action:

- Virginia Governor James Gilmore, III;
- John Woodley, Secretary of Natural Resources; and
- Dennis Treacy, Director of the Department of Environmental Quality.

Preliminary Injunction Standard The court explained the analysis as to whether or not to grant a preliminary injunction as follows:

> First, the plaintiff must make a "clear showing" that it will likely suffer irreparable harm in the absence of preliminary injunctive relief. If the plaintiff makes such a showing, then the district court must balance the likelihood of harm to the plaintiff against the likelihood of harm to the defendant if injunctive relief is granted. If the " 'balance of harms' tips decidedly in favor of the plaintiff," then a court may grant a preliminary injunction, so long as there are questions going to the merits that are sufficiently serious "as to make them fair ground for litigation and thus more deliberate investigation." If, however, the balance does not tip decidedly in the plaintiff's favor, then a preliminary injunction should issue only if there is a "strong probability" that the plaintiff ultimately will prevail. Finally, the court must consider "whether the public interest favors granting preliminary relief."(citations omitted)

The Court's Decision

Balancing the Risk of Harm to the Parties Upon review of the facts, the court determined that failure to enjoin the cap provision and barging restrictions would cause irreparable harm to the plaintiffs because they would be forced to immediately restrict the volume of waste disposed at certain landfills, diverting the waste to other landfills at a greater cost, and because they may lose potential business opportunities as well. Such losses, according to the court, could never be recovered because the Eleventh Amendment shields the state defendants against claims for money damages.

The court found the risk of harm to the Commonwealth, on the other hand, to be minimal. In the first place, the court noted that the regional landfills affected by the cap have enormous excess capacity. Moreover, the plaintiffs "presented substantial evidence that container barges are a safe and environmentally friendly mode of transporting waste, and the Commonwealth has presented no evidence to the contrary."

Setting and Applying the Appropriate Level of Scrutiny All of the parties agreed that the challenged statutes are facially neutral. The Commonwealth took the position, however, that the statutes at issue are directed to legitimate local concerns and are therefore subject to a more relaxed standard of review. The court disagreed, finding the statutes to be "protectionist measures" that are discriminatory in both their purpose and practical effect. As such, the court held that the statutes are subject to strict scrutiny and are presumptively invalid. (See box, next page.)

continued on page 14

Waste Management Holdings, Inc. v. Gilmore (continued)

In support of its finding of a discriminatory purpose, the court pointed to statements by state officials, including the Governor and one Senator, expressing a desire to restrict the importation of out-of-state waste, particularly from New York, into the Commonwealth. In support of its finding that the practical effect of the statutes will be to burden the flow of out-of-state waste across the Commonwealth's borders while leaving in-state waste unaffected, the court noted that

- the three-river ban and stacking provision will exclusively burden out-of-state waste since no in-state waste is transported on the rivers or by container barge, and
- the cap provision will affect only those landfills accepting out-of-state waste, since none of the "local" landfills takes close to 2,000 tons per day.

The court held that the fact that one of the plaintiffs to be negatively impacted by the statutes is a Virginia county is irrelevant to Commerce Clause concerns.

> Any time that a State attempts to limit the importation of an article of commerce, there will be some in-state interests that will suffer. The key inquiry is whether the legislation at issue erects a barrier to the flow of commerce across Virginia's borders while leaving traffic within the state unaffected.

General Commerce Clause Principles

The court's decision included the following discussion re general Commerce Clause principles and analysis.

> The Commerce Clause of the United States Constitution grants Congress "the Power … to regulate Commerce … among the several States." Although the Commerce Clause is phrased as a delegation of power to Congress, it "has long been understood to have a 'negative' aspect that denies the States the power to unjustifiably discriminate against or burden" the free flow of commerce across state lines … With this principle in mind, the Supreme Court has repeatedly held that the Commerce Clause forbids one State from attempting "to isolate itself from a problem common to many by erecting a barrier against the movement of interstate trade." Furthermore, states may not circumvent this prohibition simply by crafting restrictions which appear, on their face, to be neutral, for the Commerce Clause "forbids discrimination whether forthright or ingenious." Finally, it is beyond question that the free flow of waste across state lines is protected by the Commerce Clause, and that the States have no more power to discriminate against its importation than they do to discriminate against other articles of commerce.
>
> Over the years, the Supreme Court has developed a two-tiered analysis for determining whether a particular state law violates the "negative" aspect of the Commerce Clause. First, where a law discriminates against out of state interests "facially, in its practical effect, or in its purpose," it will only survive judicial scrutiny if the defendant can show that (1) it "is demonstrably justified by a valid factor unrelated to economic protectionism" and (2) "there are no nondiscriminatory alternatives adequate to preserve the local interests at stake." This standard has been characterized as "a virtual per se rule of invalidity," for the Supreme Court has upheld such discriminatory laws only in a few instances where the discrimination was justified by the threat of death or disease.
>
> A more forgiving standard of review applies, however, "[w]here the statute regulates even-handedly to effectuate a legitimate public interest, and its effects on interstate commerce are only incidental." Specifically, such legislation "will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits." This standard reflects the Court's recognition that "incidental burdens on interstate commerce may be unavoidable when a State legislates to safeguard the health and safety of its people." (footnotes and citations omitted)

Nor was the court persuaded that the cap provision is acceptable by virtue of the fact that affected landfills may apply for waivers. As the court pointed out, the Supreme Court has observed that "[t]he possibility of a waiver may decrease the number of impermissible applications of the statute, but it does nothing to remedy the statute's fundamental defect."

In responding to the Commonwealth's argument that a relaxed standard of review should apply because Congress has specifically authorized the states to interfere with the interstate flow of solid waste through Subtitle D of the Resource Conservation and Recovery Act (RCRA), the court found as follows:

> Although it is well-established that Congress may affirmatively allow the states to discriminate against interstate commerce and thereby validate what otherwise would be unconstitutional state action, "[i]n order for a state law to be removed from the reach of the dormant Commerce Clause … congressional intent to authorize the discriminating law must be either 'unmistakably clear or expressly stated.' " In the Court's view, none of the statutory and legislative history excerpts on which the Commonwealth relies express an "unmistakably clear" congressional intent to authorize the legislation at issue here. To the contrary, they merely express a general desire to leave the management of solid waste disposal largely in state and local hands rather than dramatically expand federal regulation over the activity. Indeed, the Commonwealth's characterization of RCRA as an "unmistakably clear" authorization is belied by the fact that Congress has debated interstate waste control legislation on numerous occasions over the last several years. Were RCRA's intent as clear as the Commonwealth would have it, there would be no need for such legislation.

Evaluation of Rationale for Discriminatory Action and Available Alternatives As noted above, a finding that the challenged statutes discriminate against interstate commerce triggers a virtual per se rule of invalidity unless the state can prove that they are "demonstrably justified by a valid factor unrelated to economic protectionism" and that "there are no nondiscriminatory alternatives adequate to preserve the local interests at stake." (See box titled "General Commerce Clause Principles.") In the present case, the court found that the state was not able to meet this burden.

The Commonwealth offered a variety of justifications for the challenged statutes, including a need to preserve landfill capacity and limit the growth of landfills at a reasonable level and a need to protect the health and safety of Virginia's citizens and the environment. The court rejected these arguments, noting that the Supreme Court has squarely rejected "resource protectionism" and the protection of public health and safety as valid defenses to a Commerce Clause challenge.

The court likewise rejected that Commonwealth's argument that no less discriminatory alternatives are available.

> With respect to the cap provision, for instance, Virginia might have imposed a cap that froze all landfills at current disposal levels, rather than one designed to affect only those that accept mostly out-of-state waste. As for the barging restrictions, Virginia clearly could address its health, safety, and environmental concerns without totally prohibiting the use of container barges for transporting solid waste. (footnote omitted)

Concluding Remarks

In granting the preliminary injunctive relief, the court made the following remarks concerning the plaintiffs' likelihood of success on the merits.

> Plaintiffs almost certainly will succeed on the merits … [I]t is clear that the challenged provisions constitute "an integral and interconnected discriminatory program" whereby Virginia has "attempted to isolate itself from a problem common to [the nation] by erecting a barrier against the movement of interstate trade." This is precisely what the Commerce Clause [of the U.S. Constitution] forbids." (citations omitted)

Appeal

The Commonwealth has filed a notice of appeal of the district court's decision to issue a preliminary injunction to the U.S. Court of Appeals for the Fourth Circuit. As of press time, a briefing schedule had not been established.

—TDL

Envirocare of Utah, Inc. v. United States

Court Dismisses Envirocare's Challenge to Corps' FUSRAP Activities

On May 28, the U.S. Court of Federal Claims issued an order in favor of the Army Corps of Engineers in a lawsuit challenging the solicitation for a multiple-award contract for the disposal of radioactive waste from the cleanup of sites in the Formerly Utilized Site Remedial Action Program (FUSRAP). In so doing, the court granted the defendant's motions to dismiss, in part, and for judgment on the administrative record. Envirocare of Utah was the plaintiff in the action.

Background

In December 1998, the Corps' Kansas City district office issued a request for proposals (RFP) for the disposal of five types of FUSRAP waste. The RFP anticipated the award of a total of ten contracts—worth approximately $400 million—to be based on a fixed unit price and to cover an indefinite quantity of waste. The types of waste included in the RFP are low-activity radioactive waste; NORM; 11e.(2) materials generated prior to November 8, 1978; hazardous mixed waste materials; and Resource Conservation and Recovery Act (RCRA) hazardous waste containing residual radioactivity.

Several companies that do not have licenses to dispose of low-level radioactive waste submitted proposals in response to the Corps' RFP. In February 1999, Envirocare of Utah filed a complaint arguing that

- the solicitation fails to utilize mandatory Federal Acquisition Regulations (FAR) procedures for the acquisition of commercial items;
- the solicitation allows for the award of an illusory contract;
- the solicitation does not elicit the best value because it fails to consider transportation costs;
- the solicitation contains defective specifications because it states that certain radioactive wastes are not subject to regulation under the Atomic Energy Act; and
- the Corps lacks a valid delegation of authority to conduct this procurement.

As part of its filing, Envirocare sought preliminary injunctive relief. Thereafter, the Corps agreed to refrain from awarding contracts pursuant to the RFP until the bid protest was resolved. The court rejected, however, Envirocare's request that the Corps be prohibited from accepting proposals from contractors that do not currently hold licenses from NRC or an Agreement State for the disposal of low-level radioactive waste and 11e.(2) material. Instead, the court authorized the corps to accept the proposals and perform all pre-award evaluation activities, but ordered the agency not to award a final contract until the court had reached a decision on the bid protest. (See *LLW Notes,* March 1999, p. 12.)

The Court's Decision

Need for an NRC License The court began by addressing the issue of whether or not the Corps is required to obtain an NRC license in order to conduct the FUSRAP activities. The Atomic Energy Act grants NRC licensing authority over specified radioactive materials, including 11e.(2) waste. In May 1999, however, NRC determined that the Corps' on-site FUSRAP activities do not require a license due to provisions in the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). (See *LLW Notes*, May 1999, p. 36.) The federal claims court determined that it does not have jurisdiction over NRC's determination in this case because, under federal regulations, all final NRC licensing decisions are subject to judicial review exclusively in the federal court of appeals.

Need for an 11e.(2) License The court dismissed the plaintiff's claim that the solicitation is "defective by misstating the law" since it asserts that 11e.(2) materials generated prior to November 8, 1978, are "not subject to regulation under the Atomic Energy Act authority." The court determined that the allegation fails to state a claim upon which relief can be granted because no award to an unlicensed vendor had been made and because the solicitation warns contractors to dispose of waste in accordance with "all applicable or relevant and appropriate Federal, State, and local regulations and permits."

Existence of an Illusory Contract The court rejected Envirocare's argument that the solicitation's provision that awardees "have 12 months from the date of contract award to acquire the applicable licenses and/or permits" results in an illusory contract. Whereas Envirocare intimated that some awardees may not even attempt to get the permits, the court held that awardees are subject to an implied duty to act in good faith.

> In agreeing to act in good faith and use its best efforts to obtain the required licenses, the awardee promises to do positive acts, constituting a legal detriment. This is sufficient consideration to support the government's return promise to hold the contract open. Moreover, the government itself tenders no performance until the appropriate licenses have been acquired. Therefore, the contract is not illusory. (footnote omitted)

Lack of Consideration of Transportation Costs The court also did not agree with the plaintiff's argument that the solicitation's failure to consider transportation costs precludes the Corps from conducting a reasonable best value analysis, especially in light of the defendant's statements that it will address transportation costs when awarding actual task orders under the contracts. Indeed, the court found that an accurate measure of transportation costs under the solicitation would be difficult at best given the range of distances separating the offerors from the 21 FUSRAP sites and the lack of knowledge as to the types of waste present at given sites. The court also found that

> the government has a legitimate basis for delaying the consideration of transportation costs, because it might engender greater competition and experience among other waste disposal firms (currently it appears that plaintiff is the only entity immediately capable of performing 11(e)(2) disposal).

Existence of Procurement Authority The plaintiff argued that despite congressional language in the 1997 appropriation directing the Corps to execute FUSRAP, the Corps lacks procurement authority over the program because an appropriation, standing alone, does not confer procurement authority. The court disagreed, finding that "Congress can and frequently does 'legislate' in appropriation acts." The fact that both the Senate and House of Representatives have rules which ostensibly prohibit legislating in appropriations acts did not sway the court.

> These rules are not self enforcing. Rather, they merely subject the offending provision to a point of order and do not affect the legislation's validity if the point of order is not raised (or is raised and not sustained) prior to enactment. As such, these rules do not render otherwise binding legislation invalid. (citations omitted)

Commercial Item Although Envirocare claimed that the solicitation failed to utilize mandatory FAR procedures for the acquisition of commercial items, the court held that FAR procedures did not apply because radioactive waste disposal is not a "commercial item." For a service to be a commercial item under FAR, there must be a competitive market for the service and established catalog or market prices. The key element of a market price is that it "can be substantiated from sources independent of the offeror." In the present case, the court found, however, that the only reliable way to obtain an offeror's price is to ask the offeror.

> Even if there were an established market price for radioactive waste disposal services, the court finds that the market is not competitive … It appears that, besides Envirocare, few, if any, sites are equipped to handle all five types of waste under the solicitation… In addition, for the largest portion of waste under the solicitation, 11(e)(2) waste generated prior to 1978 … the government is the only source. Therefore, there is no commercial market for 11(e)(2) waste.

—TDL

Envirocare and Corps React to Court's Decision

Envirocare Statement, June 11

In a decision today, Judge Diane Weinstein of the U.S. Court of Federal Claims found that the Nuclear Regulatory Commission (NRC) has failed to address the issue of whether a license is required for the disposal of certain radioactive waste.

Judge Weinstein's decision highlights a huge potential gap in the safe regulation of radioactive waste. The federal government has used this loophole in the past to dispose of radioactive waste in facilities that are not licensed by any radioactive materials oversight authority … [S]ince Judge Weinstein's decision was issued late last week, the U.S. Army Corps of Engineers has already indicated that it may dispose of thousands of tons of radioactive waste in waste disposal facilities that are not licensed to receive radioactive wastes.

Army Corps Statement, July 20

In a [June 23, 1999] letter to California's Senator Boxer, the U.S. Army Corps of Engineers recently responded that it is disposing of FUSRAP materials in accordance with all applicable regulations and in a manner that does not pose any threat to public health and the environment. The Corps uses permitted or licensed facilities for disposal because these facilities have human and environmental health and safety protections in place. Federal and/or state permitting and licensing regulators ensure that public health, safety and the environment are fully protected regardless of whether the disposal site is licensed under provisions of the AEA or permitted in accordance with Resource Conservation and Recovery Act (RCRA). All disposal facilities permitted to accept low levels of radioactivity must have protections in place for the environment, the community, and the workers as required by state and/or Federal regulations.

"In disposing of FUSRAP materials, the Corps determines the precise definitions that apply to the materials at each site for the purpose of establishing regulatory requirements and disposal options. If the regulatory requirements do not limit disposal of the material to one facility, there is a competitive process to locate the disposal facilities that best meet the project needs. The permits or licenses of the disposal facilities being considered are evaluated to determine if the material fits within the permit criteria. To meet the Corps criteria, a bidder must, among other things, possess the appropriate permit or license and offer the best economic value, considering both transportation and disposal. The facility meeting all of the Corps criteria is selected. The Corps then asks the selected disposal facility to contact its regulators to assure that the material planned for disposal fits within the intent of the permit.

"In addition, prior to use of a proposed facility for treatment or disposal of hazardous substances under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency's (EPA) off-site coordinator for the region in which the disposal facility is located must be notified in accordance with 40 CFR § 300.440. EPA then determines whether the facility proposed for the disposal of the specific wastes is in compliance with all permits or licenses, or has pending enforcement actions that indicate that the facility may present a risk of release to the environment. This notification and determination occurs before any materials are shipped.

"Additionally, the Corps follows all applicable transportation requirements when shipping FUSRAP waste. Department of Transportation (DOT) regulations governing radioactive waste are found at 49 CFR Chapter 1, Subchapter C, Hazardous Materials Regulations. The DOT regulations do not even include materials with an activity level of less than 2000 picoCuries/gram in the definition of radioactive materials found at 49 CFR § 173.403."

California Department of Health Services v. Babbitt
US Ecology v. Babbitt

US Ecology Appeals Ward Valley Decision; California Does Not

On May 28, US Ecology filed a notice of intent to appeal the U.S. District Court for the District of Columbia Circuit's March 31 decision in favor of the federal government in consolidated lawsuits concerning the site for the proposed low-level radioactive waste disposal facility in Ward Valley, California. The actions, which were filed by the State of California and US Ecology in January 1997, sought to compel the U.S. Department of Interior to transfer the federal land on which the site is located to the state. (See *LLW Notes*, March 1997, pp. 1, 16–20.) The court, however, declined to order the federal government to perform the transfer. (See *LLW Notes*, April 1999, pp. 14–17.)

Unlike US Ecology, the State of California decided not to appeal the court's decision. In a June 2 press release, California Governor Gray Davis' office explained the state's decision.

> Rather than fight a long, protracted appeal over a divisive and controversial site for low-level radioactive waste disposal, Governor Davis believes the state must find pragmatic alternatives that are both environmentally sound and make good business sense.

Instead, Governor Davis announced plans to establish an advisory group charged with proposing ways to find "workable alternatives for California's low-level radioactive waste disposal." (See related story, this issue.)

Separate lawsuits concerning the site remain pending before the U.S. Court of Federal Claims. In these suits, the State of California and US Ecology are pursuing financial relief for breach of contract claims related to the land transfer request. (See *LLW Notes*, April 1997, pp. 18–20.) It is not clear when a court decision will be made.

—TDL

US Ecology Position

On June 8, American Ecology President and Chief Operating Officer Joe Nagel sent a letter to Don Womeldorf, Executive Director of the Southwestern Low-Level Radioactive Waste Commission. The letter provided an update on the company's activities and position. Following are excerpts from Nagel's letter.

> US Ecology is fully prepared to build the Ward Valley facility in compliance with the radioactive materials license issued by California and the company's exclusive right to dispose of LLRW in the state. In the meantime, we will continue complying with all preconstruction license conditions including environmental monitoring program implementation, reporting, records management and other requirements …
>
> The company will protect and enforce its exclusive California disposal right unless other arrangements satisfactory to the company are reached. As you know, US Ecology expended tens of millions of dollars in reliance on existing laws and contracts arrangements with California. Subsequent changes in state policy would not alter the rights or obligations in effect at the time.
>
> As you know, US Ecology has expressed serious misgivings about the viability of the Low-Level Radioactive Waste ("LLRW") Policy Act. US Ecology continues to support an active national level dialogue on the failure of the LLRW Policy Act to provide the stable, national system envisioned by Congress. We believe the law must either be made to work or Congress should withdraw the authority of individual states to restrain interstate commerce through Compact instrumentalities.

Waste Control Specialists, L.L.C. v. U.S. Department of Energy

WCS Voluntarily Dismisses Suit against DOE

On June 2, Waste Control Specialists—a Texas-based company specializing in waste management services—filed a motion in the U.S. District Court for the Northern District of Texas requesting that its lawsuit against the U.S. Department of Energy be dismissed without prejudice. The action, which WCS initiated on July 31, 1998, challenged DOE's decision not to award the company a contract for the disposal of radioactive waste from the department's Fernald site in response to a Request for Proposals (RFP) issued by DOE's Ohio Field Office. WCS also challenged DOE's award of the same contract to Envirocare of Utah, the only other offeror. As of press time, the court had not ruled on WCS' motion.

In its motion, WCS offered the following explanation for its desire to dismiss the action.

> Plaintiff seeks dismissal for the simple reason that further litigation is not now in WCS' best interests. Specifically, WCS seeks to engage in future business relationships with DOE in several different areas, which would mutually benefit both WCS and DOE. WCS has recently received indications from DOE officials that the pendency of this lawsuit is forestalling such other business unrelated to the Ohio RFP. Thus, WCS concludes that dismissal of this lawsuit without prejudice is in its best interests.

This suit is not the first that WCS has filed with regard to the Fernald contract. WCS first sued DOE on August 12, 1997, arguing that DOE senior officials did not carefully or reasonably consider the company's proposal to dispose of waste from the Fernald facility and that DOE's rejection of the WCS bid was the result of political motivations and other factors. That suit was dismissed—without prejudice to WCS' due process and related procedural claims—as premature by the U.S. Court of Appeals for the Fifth Circuit on May 14, 1998. (See *LLW Notes*, May 1998, pp. 1,19-20..)

—TDL

For a complete description of the plaintiff's complaint, including allegations, issues and requested relief, see LLW Notes, August/September 1998, pp. 18–20.

Anderson v. Semnani

Semnani Moves to Dismiss Suit by Former Regulator

Earlier this year, Envirocare of Utah and its owner, Khosrow Semnani, moved to dismiss with prejudice a lawsuit filed against them in October 1996 by Larry Anderson, a former Director of the Utah Division of Radiation Control. The suit—which is pending before the Third District Court of Salt Lake County, Utah—alleges that the defendants owe Anderson in excess of $5 million for site application and consulting services related to the licensing and operation of Envirocare's disposal facility. In response to the litigation, Semnani admitted to giving Anderson cash, gold coins, and real property totaling approximately $600,000 in value over an eight-year period, but denied that such payments were for consulting services. Instead, he asserted that the payments were made in response to Anderson's ongoing practice of using his official position to extort money from the defendant. As of press time, the court had not ruled on the motion to dismiss.

In their motion, defendants argue that Anderson's suit should be dismissed because

- the alleged consulting agreement is illegal and contrary to law and, therefore, void as against public policy;
- the alleged agreement cannot constitute a contract implied in law (to enforce restitution) or a contract implied in fact (established by conduct) since the performance thereof is prohibited by Utah law;
- the defendants cannot be guilty of fraudulent misrepresentation since Anderson's demands for payment were illegal; and
- Envirocare cannot be liable for damages because no allegations have been made of privity between the parties or of improper representations by Envirocare.

In March, the U.S. District Court for the District of Utah indicted Anderson on charges of extortion, mail fraud, tax evasion and the filing of false tax returns. (See *LLW Notes*, March 1999, p. 8.) Semnani, who was not indicted, had previously pleaded guilty to a misdemeanor tax charge for helping to conceal one of his payments to Anderson. (See *LLW Notes*, August/September 1998, p. 32.)

—TDL

NRC Demands Information from Semnani

On July 12, the U.S. Nuclear Regulatory Commission issued a Demand for Information from Envirocare of Utah owner Khosrow Semnani concerning his past relationship with Larry Anderson, a former Director of the Utah Division of Radiation Control. The demand was made in response to a December 1998 petition from the Natural Resources Defense Council requesting that NRC issue an order to show cause as to why Semnani should not be permanently prohibited from participating in any NRC-licensed activity. NRDC filed its petition after Semnani provided testimony in various lawsuits confirming that he gave Anderson cash, gold coins, and real property totaling approximately $600,000 in value over an eight-year period. (See related story, this issue.)

The demand includes a series of questions that NRC wants answered so that the agency can determine if enforcement action is necessary. NRC explains the basis for the demand as follows:

> The NRC is concerned that your participation in the payment of money and other value to Mr. Anderson … in connection with Mr. Anderson's official responsibilities as a State of Utah official over matters subject to an Agreement State program … a program integrally related to the Federal regulatory process administered by the NRC, raises questions of whether your involvement in NRC-licensed activities would undermine the NRC's reasonable assurance of adequate protection of public health, safety, and interest. In particular, the NRC is concerned that you did not take advantage of avenues apparently available to you to prevent, cease, and/or report such payments. This raises concerns that you would engage in similar conduct in connection with NRC-regulated activities. Accordingly, the NRC needs further information to determine whether it should modify, suspend, or revoke, or take other appropriate action, regarding the Envirocare license, or take action to prohibit your involvement in licensed activities.

Semnani's response to the Demand for Information is due by August 11. The demand states that once Semnani's answer has been reviewed, or if no answer is filed, "the Commission may institute a proceeding pursuant to 10 CFR 2.202 or take such other action as may be necessary to ensure compliance with regulatory requirements, including prohibiting … [Semnani's] future involvement in licensed activities."

—TDL

A complete copy of the Demand for Information can be obtained from NRC's web site at

www.nrc.gov/OPA/gmo/nrarcv/99-143.htm

Pritikin v. U.S. Department of Energy

Downwinder Appeals Suit's Dismissal

In early June, Trisha Pritikin filed a notice of intent to appeal an April 1999 decision by the U.S. District Court in Yakima, Washington, dismissing her 1998 lawsuit alleging that exposure to Cold War radiation releases from the Hanford Nuclear Reservation damaged her thyroid gland. Pritikin, who grew up in Richland and is now an attorney in the State of California, is seeking through her suit to force DOE to fund nearly $13 million in medical monitoring for 14,000 persons who believe that their health was adversely affected by past Hanford radiation releases. The district court dismissed the action, finding that DOE has sovereign immunity and cannot be sued. In so ruling, the court specifically rejected the plaintiff's claim that federal Superfund law provides private citizens a right of action to force DOE to pay for the medical monitoring.

Pritikin's action arises from releases of radiation at the Hanford reservation during the production of plutonium for nuclear weapons in the 1940s and early 1950s. The releases were mainly radioactive iodine, which concentrates in the thyroid gland. However, a recent study of the releases was unable to detect a link between thyroid disease and those persons exposed to the Hanford radiation releases.

—TDL

Court Calendar

Case Name	Description	Court	Date	Action
Anderson v. Semnani (See *LLW Notes*, January 1997, pp. 1, 5-12.)	Alleges that Envirocare owner Khosrow Semnani owes Larry Anderson, former Director of the Utah Division of Radiation Control, in excess of $5 million for site application and consulting services related to the licensing and operation of the Envirocare radioactive waste disposal facility in Tooele County, Utah.	Third Judicial District Court of Salt Lake County, Utah	February 25, 1999	Defendants filed a motion for judgment on the pleadings arguing that the case should be dismissed because, among other things, any contract for consulting services by a public regulator to a licensee under his authority creates a conflict of interest, and thus is void under Utah law.
California Department of Health Services v. Babbitt and *US Ecology v. U.S. Department of the Interior* (See *LLW Notes*, April 1999, pp. 14-17.)	Seeks to compel the Interior Department to transfer land to the state for use in siting a LLRW disposal facility and to issue the patent approved by DOI over five years ago.	United States District Court for the District of Columbia	May 28, 1999	US Ecology filed a notice of appeal to the United States Court of Appeals for the District of Columbia Circuit; however, the State of California opted not to appeal the lower court's decision.
Entergy Arkansas v. Nebraska (See *LLW Notes*, April 1999, pp. 7-13.)	Challenges actions taken by the State of Nebraska and its officials in reviewing US Ecology's license application to build and operate a LLRW disposal facility in Boyd County as violative of state, federal, and compact law—as well as contractual obligations to exercise "good faith."	United States Court of Appeals for the Eighth Circuit	July 16, 1999 August 16, 1999 August 30, 1999	Nebraska's brief appealing the district court's April 16, 1999 decision to issue a preliminary injunction is due. The utilities' brief on appeal is due. Nebraska's reply to the utilities' brief on appeal is due.

Court Calendar *continued*

Case Name	Description	Court	Date	Action
Envirocare of Utah, Inc. v. United States (See *LLW Notes*, March 1999, p. 12.)	Challenges a request for proposals issued by the Army Corps of Engineers for the disposal of FUSRAP waste on the ground that some of the companies expected to bid on the RFP are not properly licensed to dispose of such waste.	United States Court of Federal Claims	May 28, 1999	The court issued an order granting the defendant's motion to dismiss, in part, and for judgement on the administrative record.
Nebraska v. Central Interstate Low-Level Radioactive Waste Commission (See *LLW Notes*, December 1998, pp. 16-17.)	Questions whether Nebraska may exercise veto authority over applications to export LLRW from the region.	United States Court of Appeals for the Eighth Circuit	May 12, 1999	Nebraska filed its reply to the commission's responsive brief on appeal.
Nuclear Fuel Services, Inc. v. Semnani (See *LLW Notes*, Oct./Nov. 1999, p. 27.)	Accuses Envirocare of Utah of engaging in conspiracy and unfair business practices.	Third Judicial District Court of Salt Lake County, Utah	October 12, 1999	The trial is scheduled to begin.
Midwest Interstate Low-Level Radioactive Waste Compact Commission v. Toledo Edison Co. (See *LLW Notes*, June/July 1998, pp. 24-25.)	Seeks to join all regional utilities into one action to resolve a dispute over whether Michigan utilities have a right to share in proceeds created by the dissolution of the Export Fee Fund.	United States District Court for the District of Minnesota	June 4, 1999	Separate motions for summary judgement were filed by the Michigan utilities, the non-Michigan utilities, and the Midwest Commission.

Court Calendar *continued*

Case Name	Description	Court	Date	Action
Spokane Tribe of Indians v. Washington	Seeks to prevent Dawn Mining Company (DMC) from importing slightly radioactive fill material to a depleted uranium mill located adjacent to reservation lands on the ground that state licensing of the project violates Title VI of the Civil Rights Act of 1964.	United States District Court for the Eastern District of Washington	April 26, 1999	The plaintiffs amended their complaint to challenge the Washington Department of Health's January 1999 decision to renew DMC's license to import 11e.(2) byproduct material for disposal at its facility.
			July 30, 1999	Deadline for the state and intervenor DMC to file motions to dismiss.
			August 20, 1999	Deadline for the plaintiffs to file responses to the state's and DMC's motions to dismiss.
			September 3, 1999	Deadline for the state and DMC to reply to plaintiffs' responses to their motions to dismiss.
			October 12, 1999	A hearing is scheduled on the motions to dismiss.
S.W. Shattuck Chemical Company, Inc. v. Rocky Mountain Low-Level Radioactive Waste Board	Seeks an injunction to prevent the Rocky Mountain Board from initiating or proceeding with any enforcement action against the Shattuck Chemical Company for solidifying and disposing of LLRW on its own property at the direction of EPA.	United States District Court for the District of Colorado	August 20, 1999	A hearing is scheduled on Shattuck's motion for partial summary judgment and on the board's motion to dismiss the complaint.

Court Calendar *continued*

Case Name	Description	Court	Date	Action
Waste Control Specialists, L.L.C. v. U.S. Department of Energy (See, *LLW Notes*, August/September 1998, pp. 18-20.)	Alleges that DOE violated government procurement law when it awarded a contract to dispose of DOE radioactive waste to Envirocare rather than to WCS.	United States District Court for the Southern District of Ohio	June 2, 1999	WCS filed a motion requesting that the court allow it to voluntarily dismiss its case without prejudice.
Consolidated Edison Co. v. U.S. Department of Energy (See *LLW Notes*, August/September 1998, p. 26.)	Seeks to prevent DOE from continuing to collect waste disposal fees from nuclear utilities and attempts to compel the agency to begin developing a program for acceptance of spent nuclear fuel.	United States Court of Appeals for the District of Columbia Circuit	April 16, 1999 June 1, 1999	The court dismissed the case on the ground that all of the relevant issues were resolved during previous litigation. Plaintiffs filed a petition for rehearing en banc.
Northern States Power Co. v. United States (See *LLW Notes*, June/July 1998, pp. 30-31.)	The lead case in a series of separate lawsuits filed by major utilities seeking a total of more than $4.5 billion from DOE for failing to meet a contractual deadline to begin disposing of commercial spent fuel.	United States Court of Federal Claims	May 20, 1999	Plaintiffs filed a notice of appeal to the United States Court of Appeals for the Federal Circuit contesting the lower court's ruling that they must exhaust their contractual remedies before bringing suit.

Army Corps of Engineers

Corps Awards Contracts for FUSRAP Disposal

In early June, the U.S. Army Corps of Engineers' Kansas City district office awarded three five-year indefinite delivery/indefinite quantity contracts for the disposal of low-activity radioactive waste from the cleanup of sites in the Formerly Utilized Site Remedial Action Program (FUSRAP). The contracts, which cover five schedules of low-activity waste, were awarded to Waste Control Specialists of Texas, Envirocare of Utah, and Envirosafe of Idaho. The contract awards followed a June 28 order by the U.S. Court of Federal Claims dismissing a lawsuit by Envirocare challenging the Corps' bidding and procurement process. (See related story, this issue.)

Envirocare and Envirosafe were awarded contracts for the disposal of 11e.(2) materials containing small amounts of radioactivity, which constitute almost 75 percent of the Corps' disposal projects. Unlike Envirocare, Envirosafe does not have a specific license for the disposal of radioactive waste, although the disposal of small quantities of low-activity radioactive materials is addressed in its RCRA permit. Accordingly, the Corps believes that each of the selected contractors has in place the necessary licenses and/or permits to receive the waste streams that they were awarded. In support of its position, the Corps points out that the NRC has issued guidance which states that pre-1978 FUSRAP 11e.(2) materials do not require disposal at a facility licensed pursuant to the Atomic Energy Act and may be disposed of at RCRA Subtitle C facilities.

Dawn Mining of Washington, which had submitted a joint bid with US Ecology to dispose of 20 to 30 million cubic feet of 11e.(2) materials from FUSRAP sites, has an Agreement State license to dispose of such materials, but was not awarded a contract. Corps' staff made the following comment in regard to the failed bid by Dawn Mining:

> The awards followed the formal source selection process. This procedure consisted of evaluating all of the proposals based upon technical merit and price. The awards were made to the responsible offeror whose proposal conformed to the solicitation and was determined to be the best value to the government.

Envirocare of Utah was awarded the pre-1978 11e.(2) type material and mixed waste schedules. Envirosafe of Idaho was awarded NORM, the pre-1978 11e.(2) type material, low-activity and RCRA schedules. The contract awarded to Waste Control Specialists includes NORM, low-activity, and RCRA schedules. The contracts are available to any Corps or other federal agency project nationwide that involves the categories of materials defined in the contract.

The low-level radioactive waste schedules are defined as follows:

- **Naturally Occurring Radioactive Materials (NORM)** Naturally occurring materials, not regulated by the Atomic Energy Act, whose radioactivity has been technologically enhanced usually by mineral extraction or processing activities. This term is not used to describe the natural radioactivity of rocks and soils or background radiation.

- **Low-Activity Radioactive Material (LARM)** Materials with a specific activity of less than 30 pCi/rm Ra-226 and less than 150pCi/gm of each other NORM radionuclides.

- **11e.(2) Materials Generated Prior to November 8, 1978** The tailings or waste produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content. This material is not subject to regulation under the Atomic Energy Act authority according to NRC.

- **Hazardous Mixed Waste** Includes hazardous waste identified in 40 CFR 261 (F-, K-, P-, and U-listings) or characteristic waste with residual radioactive material that is not NRC regulated.

- **RCRA Waste** Waste that contains residual radioactivity that is not NRC regulated (less than 30pCi/gm Ra-226 and less than 150pCi/gm of each other NORM radionuclide).

—TDL

U.S. Nuclear Regulatory Commission

NRC to Address Problems re Orphan Sealed Sources

On June 21, the NRC issued a press release announcing that it has signed a memorandum of understanding (MOU) with the U.S. Department of Energy concerning the management of certain "unwanted and uncontrolled radioactive materials." The announcement further stated that NRC "has approved the concept of funding the Conference of Radiation Control Program Directors (CRCPD) … to establish and implement a national program for safety dealing with the materials." CRCPD is currently conducting a pilot project to test portions of the program, which is expected to be completed some time next year.

The MOU generally applies to sealed sources or devices containing the sources that can be handled and transported through conventional means. Radioactive materials in other forms will be considered under the MOU on a case-by-case basis. Reactor incidents and other radioactive material incidents for which agreements or procedures are already in place are specifically excluded under the MOU.

> The recently signed MOU concerning management of sealed sources defines the agreed-upon roles and responsibilities of the NRC and DOE in situations involving orphan sources where the NRC is responsible for leading the Federal response, where immediate health and safety hazards have been addressed, and where assistance with the transfer of the radioactive material is determined to be necessary for continued protection of public health and safety and the environment. The agreement does not provide for decontamination or cleanup activities, except as a direct result of DOE activities during the response.
>
> Under the agreement, NRC may request DOE to assist in the recovery and transfer of radioactive materials that exceed the limits for disposal at commercial low-level radioactive waste facilities, known as "greater-than-Class-C" material. NRC and DOE will also consider, on a case-by-case basis, situations involving radioactive materials that do not exceed the Class C limits, if the circumstances represent an actual or potential threat to public health and safety and if there are no other reasonable alternatives for mitigating the threat.

Under the MOU, NRC is generally responsible for evaluating the need for DOE assistance, coordinating non-DOE activities, handling regulatory issues, and determining the responsibility/availability of other persons or organizations to provide assistance. DOE, on the other hand, is generally responsible for arranging the recovery and removal of the materials, including packaging, transportation, and storage or disposal.

—TDL

A complete copy of the MOU is available on the NRC web site at www. nrc.gov/OPA.

Huntoon Assumes Post at DOE Environmental Management

On July 13, Carolyn Huntoon was sworn in as Assistant Secretary for the Department of Energy's Office of Environmental Management. She was confirmed for that post by the U.S. Senate on July 1. Huntoon replaces Alvin Alm, who retired from his position in January 1998. Since January 30, 1998, James Owendoff has been serving as Assistant Secretary for Environmental Management, a position he was appointed to by then-Secretary of Energy Federico Peña. (See *LLW Notes*, February 1998, p. 36.)

Huntoon's new responsibilities include managing the assessment and cleanup of inactive waste sites. In addition, DOE assistance to states and compacts under the 1985 Low-Level Radioactive Waste Policy Amendments Act is provided by the Office of Environmental Management.

Huntoon has most recently been an Executive in Residence for Program and Project Management at George Washington University's School of Business and Public Management. From 1996–1998 Huntoon served as NASA's Agency Representative to the White House's Office of Science and Technology Policy. Prior to joining NASA, Huntoon worked nearly 20 years in a variety of different positions for the Lyndon B. Johnson Space Center, including two years as the center's director from 1994–1996.

—TDL

U. S. Nuclear Regulatory Commission

NRC Identifies Legal and Safety Problems in Waste Reclassification Proposal

In a letter dated June 7, John Greeves, Director of the Division of Waste Management in NRC's office of Nuclear Material Safety and Safeguards, wrote to the Southwestern Low-Level Radioactive Waste Commission conveying concerns about a waste reclassification proposal forwarded by the compact commission to NRC for review. Following are excerpts from Greeves' letter, which was addressed to the Southwestern Commission's Chair, Dana Mount.

—CN

I am writing in response to your letter of March 1, 1999, to me in which you requested our review and comment on various waste classification documents. You noted that members of the public have raised waste classification issues at meetings of the Southwestern Compact Commission from time to time. Because the U.S. Nuclear Regulatory Commission (NRC) has authority and jurisdiction over classification of low-level radioactive waste (LLW), you asked that we review the materials enclosed with your letter …

The materials you asked us to review advocate revisions to the current LLW classification system contained in our regulations in 10 CFR Part 61. The principal document is a proposed revision to the State of California's Radiation Protection Act of 1988 prepared by People Against Radioactive Dumping (PARD) of Needles, California … We have not conducted an exhaustive review of the proposal, but instead have focused on the major concepts and assumptions it contains.

The PARD proposal contains the following major features:

- It invents a term not used in the radiation protection field, "decay life." "Decay life" is defined as twenty half-lives of a radioactive isotope that decays into a stable isotope. Half-life, a term commonly used in the radiation protection field, means the length of time it takes for one half of a radioactive isotope to decay. When radioisotopes decay into other radioisotopes (i.e., progeny), decay life means the sum of twenty times the half-lives of all of the radioisotopes in the decay chain.

- It creates five new classes of radioactive waste, largely based on "decay life." Three categories have limits on decay life of 180 days, 30 years, and 100 years. Another class is for potentially recyclable materials, and the last class is based on a new definition of high-level radioactive waste (HLW)/materials, which includes not only the existing HLW, but also all of the current LLW that is not contained in the four new classes.

- It defines specific types of storage facilities for each class of radioactive waste or materials. Three of them are "decay-in-storage" facilities, meaning that after a certain period of time, virtually all of the waste will have decayed and can be disposed of as ordinary trash (the proposal states that fully decayed material can be disposed of "according to law.")

- It asserts that unless radioactive materials and wastes are stored in the types of facilities defined in the proposal, there must be a finding of "significant" contamination of the environment. Thus it is a prescriptive regulation that states there is only one way to safely manage waste.

Our LLW classification regulations are contained in 10 CFR Part 61, the regulation that defines our requirements for land disposal of LLW. These requirements have been adopted by the State of California. We classify wastes so that the controls used to prevent radiation exposures to people are commensurate with the hazard of the waste. These controls make up a system for the safe disposal of LLW in 10 CFR Part 61. They include siting criteria, design criteria for the facility and the waste form, and "institutional

controls" to ensure that the facility will be monitored by the State or local government after it is closed to ensure that it is functioning as planned.

When we promulgated 10 CFR Part 61 in 1983, we published extensive documentation of the bases for its requirements in the draft and final Environmental Impact Statements (EIS). We also examined alternative approaches to those in Part 61 and what they would cost. Our EIS contains over 100 pages of analyses and assumptions on waste classification alone, supported by dozens of technical reports. There was no analysis of safety or alternatives included with the PARD proposal.

Even without information on the bases for the proposal, we found provisions that conflict with law and good risk management practices. The approach focuses on "decay life" of LLW, which is neither scientific nor risk-based, and does not comport with accepted international views on radiation protection. Risk to human health is a function of radiation dose, and the determination of risk depends on a variety of factors, including the type of radiation, the concentration of radionuclides in the medium in which they are present, the likelihood that barriers containing the radionuclides will be fully effective in containing the radionuclide, and the likelihood of exposure if the radiation is not fully contained. The half-life of a particular radionuclide may also be a factor, but it is not controlling. "Decay-life" is derived from half-life, but is not controlling in determining risk for the same reasons.

Under the PARD proposal, most current LLW would be reclassified as HLW, because its "decay-life" would be in excess of 100 years. If the State were to adopt such a classification system and the attendant storage provisions that go along with it, California would not be fulfilling the provisions of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPAA). Under that Act, California is responsible for providing for disposal capacity for this LLW. The proposed changes to the California Radiation Protection Act provide only for the storage of the newly classified HLW, and do not address its disposal. The LLRWPAA also defines LLW based on NRC's classification system, so any new system would be in violation of the law. Finally, the proposed provisions are simply unnecessary for protection of public health and safety and the environment. LLW disposal facilities have been operating safely in this country under the provisions of 10 CFR Part 61, including the waste classification, since its promulgation in 1983.

[T]he proposed provisions are simply unnecessary for protection of public health and safety and the environment. LLW disposal facilities have been operating safely in this country under the provisions of 10 CFR Part 61, including the waste classification, since its promulgation in 1983.

Former LLW Forum Participant to Chair NRC

On June 16, President Bill Clinton announced his appointment of Greta Dicus as Chair of the NRC. Dicus replaced Shirley Jackson, who gave notice in December 1998 that she was accepting a position as President of Rensselaer Polytechnic Institute beginning in July. Jackson's term expired on June 30.

Dicus, who is a former Chair of the Central Interstate Low-Level Radioactive Waste Commission and a former Forum Participant, has served as an NRC Commissioner since February 1996. Prior to joining the NRC, Dicus served on the Board of Directors of the U.S. Enrichment Corporation.

U.S. Senate

Senate Energy Committee Backs DOE's Taking Title to Spent Fuel at Reactor Sites

On June 16, the U.S. Senate Committee on Energy and Natural Resources adopted by a vote of 14-6 S. 1287, an original bill addressing the disposition of spent commercial nuclear fuel. In an effort to avoid a Presidential veto, committee Republicans abandoned a provision calling for establishment of an interim storage facility at Yucca Mountain prior to the licensing decision on the permanent repository. The committee instead incorporated most of the program advanced by Secretary of Energy Bill Richardson in February, which authorizes DOE to take title to spent nuclear fuel at reactor sites and to compensate utilities for costs associated with DOE's failure to provide for disposal in 1998 as specified in the standard contract. (See *LLW Notes*, March 1999, p. 20.)

Despite concessions by the Republican majority on the Energy Committee, a veto threat still hangs over the bill. The version reported by the committee designates NRC as the federal agency that will set the radiation protection standard for the repository. Ranking minority member Senator Jeff Bingaman (D-NM) and administration spokespersons have indicated a preference for standard-setting by EPA.

Energy Committee Chair Frank Murkowski (R-AK) has indicated his intent to bring the bill to a vote in the Senate before the August recess. House sponsors of similar nuclear waste legislation have stated that they are awaiting the outcome of Senate consideration of the high-level radioactive waste bill before moving their version in the full chamber.

States Divided re On-Site Spent Fuel Storage

The long-time split between those who favor the timely construction of a centralized interim storage facility and those supporting on-site retention of spent fuel until the licensing of a repository is reflected in the states as well as in the Congress. On May 12, Vermont Governor Howard Dean (D) wrote to other Governors asking that they sign on to a statement opposing the on-site, take-title option and support instead plans to move spent fuel away from reactor sites. The statement is still being circulated, but a member of Governor Dean's staff reports that over one-third of the affected states have already responded affirmatively.

Senate Energy Committee Vote

Yeas—14
Jim Bunning (R-KY)
Conrad Burns (R-MT)
Ben Nighthorse Campbell (R-CO)
Larry Craig (R-ID)
Pete Domenici (R-NM)
Peter Fitzgerald (R-IL)
Slade Gordon (R-WA)
Bob Graham (D-FL)
Mary Landrieu (D-LA)
Blanche Lincoln (D-AR)
Frank Murkowski (R-AK)
Don Nickles (R-OK)
Gordon Smith (R-OR)
Craig Thomas (R-WY)

Nays—6
Daniel Akaka (D-HI)
Evan Bayh (D-IN)
Jeff Bingaman (D-NM)
Byron Dorgan (D-ND)
Tim Johnson (D-SD)
Ron Wyden (D-OR)

WGA Supports Richardson Position

On June 15, the Western Governors' Association (WGA), by a vote of 11 to 2, adopted Resolution 99-014, "Transportation of Spent Fuel and High-Level Radioactive Waste." Among other provisions, the resolution affirms that the Western Governors support efforts by the federal government to provide "funds to utilities for expanded on-site storage and taking title to spent nuclear fuel at individual reactor sites." The resolution was adopted on the final day of WGA's annual meeting, which was held in Jackson, Wyoming.

WGA Vote

Yeas—11
Benjamin Cayetano (D-HI)
Jim Geringher (R-WY)
Kenny Guinn (R-NV)
William Janklow (R-SD)
Mike Johanns (R-NE)
Gary Johnson (R-NM)
Tony Knowles (D-AK)
Michael Leavitt (R-UT)
Bill Owens (R-CO)
Edward Schafer (R-ND)
Marc Racicot (R-MT)

Nays—2
Dirk Kempthorne (R-ID)
John Kitzhaber (D-OR)

In other action at the meeting, WGA also adopted a policy relevant to the Waste Isolation Pilot Plant (WIPP) as well as a policy urging DOE to prohibit the transport of DOE-generated low-level radioactive waste across Hoover Dam.

—JW/HB

All policy resolutions are posted on the WGA web site at www.westgov.org.

Much of the preceding information was distributed to Forum Participants and Alternate Forum Participants, Federal Liaisons and Alternates via e-mail on June 17.

Bill to Allow Limits on Out-of-State Waste Introduced in Senate

On April 22, George Voinovich (R-OH), who chairs the U.S. Senate Transportation and Infrastructure Subcommittee, introduced S. 872, the Municipal Solid Waste Interstate Transportation and Local Authority Act of 1999. The bill would allow those states that receive the greatest amounts of out-of-state municipal solid waste to ratchet down future imports of such waste by as much as 65 percent. The legislation would also permit local governments to ban future receipt of out-of-state municipal solid waste for landfills and facilities that did not import such waste prior to 1993.

Under the Commerce Clause of the federal Constitution, states are prohibited from interfering with the free movement of objects of interstate trade without express congressional approval. This legislation would provide congressional approval for states to discriminate against out-of-state municipal waste.

The bill has been referred to the Senate Committee on Environment and Public Works. It had acquired six cosponsors as of press time:

- Spencer Abraham (R-MI),
- Evan Bayh (D-IN),
- Michael DeWine (R-OH),
- Russell Feingold (D-WI),
- Carl Levin (D-MI), and
- Richard Lugar (R-IN).

—JW

U.S. Senate (continued)

Bill to Expand INEEL Authority Introduced in Senate

On May 18, Senator Michael Crapo (R-ID) introduced S. 1071, the Environmental Stewardship and Natural Resources Act of 1999. The bill, which is cosponsored by Senator Larry Craig (R-ID), would designate the Idaho National Engineering and Environmental Laboratory (INEEL) as DOE's Center of Excellence for Environmental Stewardship. Under the legislation, the duties of the new center would include the following:

- development and introduction of new technologies that would aid in the long-term stewardship of contaminated land;
- development and introduction of new technologies and methods that would aid in the estimation of federal liability under § 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA);
- conducting basic research into the migration and transport of contaminants in the environment; and
- developing models that would aid in predicting and preventing possible future migration of contaminants at DOE facilities.

The bill would also establish a Natural Resources Institute as a pilot program within the Center of Excellence for Environmental Stewardship. Among the duties of the institute provided for in the legislation are the following:

- coordinating research regarding long-term stewardship among differing firms and institutions to minimize duplication of effort, maximize scientific advancement, and maintain public involvement in the development and implementation of research activities;
- acting as an information resource center by serving as a centralized repository for environmental data and data management techniques; and
- providing training to educate future scientists, educators, and the public through publicly funded seminars and through collaboration with colleges and universities, state and federal agencies, national laboratories, and the private sector.

The bill has been referred to the Senate Armed Services Committee.

—JW

Senate Passes Energy and Water Bill

On June 16, the Senate passed S. 1186, the Energy and Water Development Appropriations Bill for FY 2000. The bill was passed by a 97-2 vote, with Senators Jim Jeffords (R-VT) and Paul Wellstone (D-MN) dissenting.

The $21.2-billion measure contains discretionary spending authority in the amount of $17.02 billion for DOE, $3.72 billion for the Army Corps of Engineers, and $465 million for NRC.

The bill would slash funding for DOE's non-defense environmental management program from $425.5 million down to $328 million—a 23-percent cut. The non-defense environmental management program is the source of all funding for DOE's National Low-Level Waste Program.

Southeast Compact/North Carolina (continued from page 7)

North Carolina's Response

Prior to the filing of the complaint, the Southeast Compact as a whole had already voted in April to notify Governor Hunt (D) and the state legislative leadership that the state has not met its legal obligations as the compact's host state. (See *LLW Notes,* April 1999, pp. 1, 3.) A finding to this effect in an official inquiry is needed to allow the imposition of sanctions. However, it is not clear what impact North Carolina's impending withdrawal from the compact will have on the compact commission's sanctions process. (See related story, this issue.)

Development of a regional disposal facility in North Carolina has been at an impasse since December 1997, when the Authority resolved to "begin the orderly shutdown" of the project as a result of a funding dispute with the Southeast Compact Commission.

—CN

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

Much of the preceding information was distributed to Forum Participants and Alternate Forum Participants, Federal Liaisons and Alternates via e-mail on June 22.

Deshais Resigns as Executive Director of the Northeast Commission

On July 14, Forum Participant Janice Deshais submitted her resignation to the Northeast Interstate Low-Level Radioactive Waste Commission. She has accepted a position as Director of the Connecticut Department of Environmental Protection's Office of Adjudications, which conducts administrative hearings on regulatory matters.

Deshais, who has served as the commission's Executive Director for over eight years, departs the commission on August 13 and will assume her new duties on August 23.

During the transition, Kevin McCarthy, Chair of the commission, Commissioner for Connecticut, and Alternate Forum Participant for the commission, will handle the daily administrative functions of the commission's office. Richard Sullivan, Commissioner for New Jersey, will work with McCarthy on the commission's other ongoing activities.

—MAS

New Materials and Publications

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

States and Compacts

Central Midwest Compact/ Illinois

Regional Management Plan of the Central Midwest Interstate Low-Level Radioactive Waste Commission. May 1999. Central Midwest Commission. To obtain a copy, contact Marcia Marr of the commission at (217)785-9982 or by e-mail at marr@idns.state.il.us.

Southeast Compact

Report on the Management of Municipal Solid Waste in the Commonwealth of Virginia: A Historical Review. Office of Policy and Legislation, Department of Environmental Quality, Commonwealth of Virginia. November 1998.

Massachusetts

Minimization Working Group 1998 Annual Report. Massachusetts Low-Level Radioactive Waste Management Board. April 1999. Documents the working group's activities during 1998, its recommendations to advance source and low-level radioactive waste volume minimization, and its suggestions for working group activities during 1999.

New York

New York State Low-Level Radioactive Waste Status Report for 1998. June 1999. New York State Energy Research and Development Authority (NYSERDA). Provides data on the volume and activity of low-level radioactive waste either shipped for disposal or stored pending disposal in 1998, as well as a list of the facilities filing generator reports. To obtain a copy, contact Jack Spath of NYSERDA at (518)862-1090, ext. 3302.

Federal Agencies

DOE

The State of Development of Waste Forms for Mixed Wastes. U.S. Department of Energy's Office of Environmental Management. Committee on Mixed Wastes, Board of Radioactive Waste Management, National Research Council. 1999. Concludes that currently available waste forms are adequate to meet regulatory requirements for disposal of DOE's known and expected mixed waste inventory.

NRC

Generic Environmental Impact Statement for License Renewal of Nuclear Plants (NUREG-1437, Supplement 2). May 1999. Documents the NRC staff's review of the environmental issues at the Oconee Nuclear Station in support of Duke Energy Corporation's application for license renewal of Oconee Nuclear Station, Units 1, 2, and 3. To obtain a copy, contact the NRC Public Document Room or access the NRC Reference Library.

Office of the Inspector General's Semiannual Report: October 1, 1998-March 31 1999. Report to Congress summarizing significant activities at the Office of the Inspector General during the period from October 1, 1998 through March 31, 1999. To obtain a copy, contact the NRC Public Document Room.

Order exempting Envirocare of Utah from certain licensing requirements for special nuclear material (SNM). Docket No. 40-8989, SMC 1559. May 7, 1999. Allows Envirocare's disposal facility in Clive, Utah, to possess waste containing special nuclear materials in greater mass quantities than specified in 10 CFR Part 150. To obtain a copy, contact the NRC public document room.

U.S. Congress

Interstate Shipment of Solid Waste: 1998 Update. Environment and Natural Resources Policy Division, Congressional Research Service. August 6, 1998.

To Obtain Federal Government Information

by telephone

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

by internet

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

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

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

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

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

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

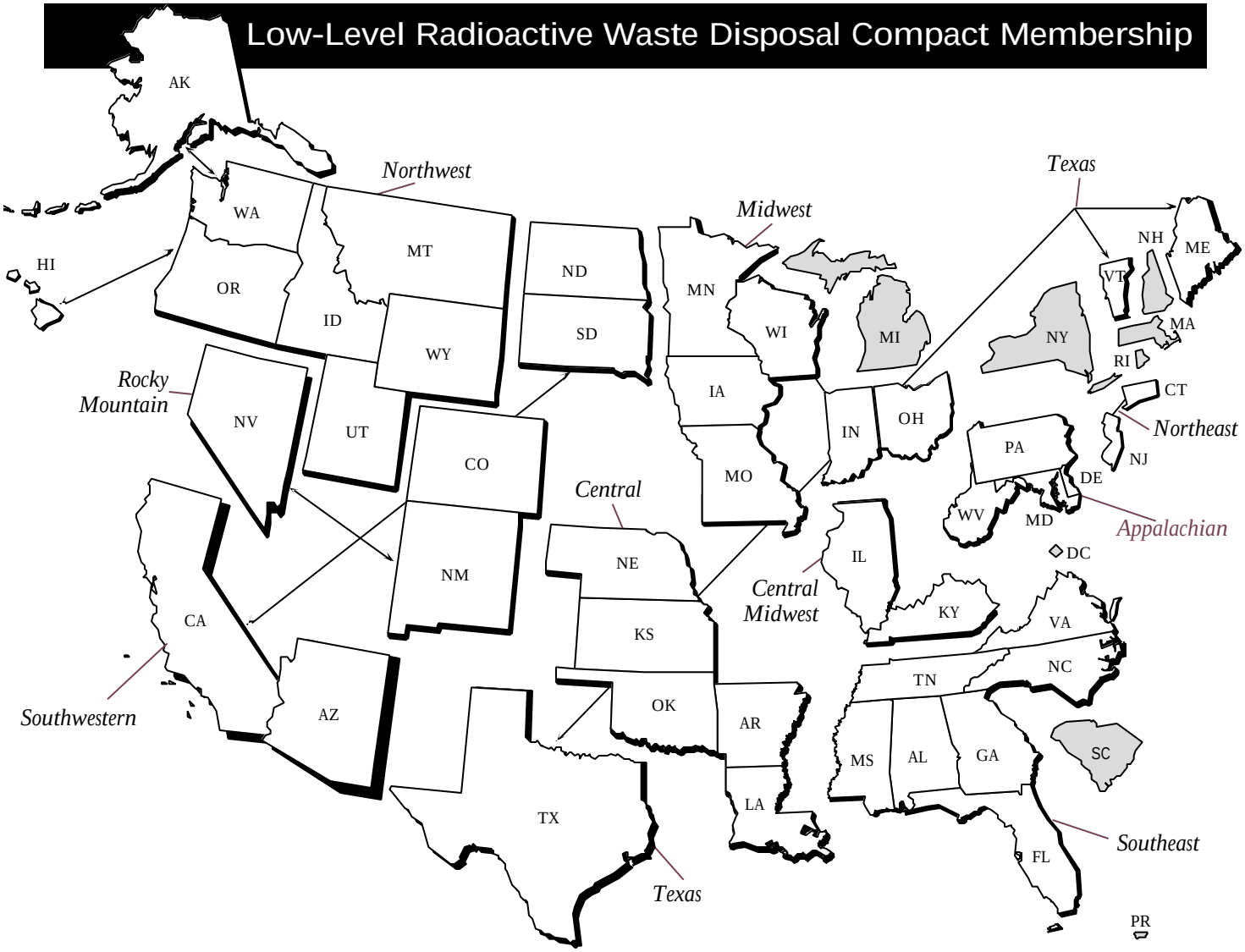
To access a variety of documents through numerous links, visit the LLW Forum web site at www.afton.com/llwforum

Accessing LLW Forum Documents on the Web

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

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

Low-Level Radioactive Waste Disposal Compact Membership



Appalachian Compact
Delaware
Maryland
Pennsylvania *
West Virginia

Central Compact
Arkansas
Kansas
Louisiana
Nebraska *
Oklahoma

Central Midwest Compact
Illinois *
Kentucky

Midwest Compact
Indiana
Iowa
Minnesota
Missouri
Ohio
Wisconsin

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

Rocky Mountain Compact
Colorado
Nevada
New Mexico

Northwest accepts Rocky Mountain waste as agreed between compacts.

Northeast Compact
Connecticut *
New Jersey *

Southeast Compact
Alabama
Florida
Georgia
Mississippi
North Carolina *
Tennessee
Virginia

Southwestern Compact
Arizona
California *
North Dakota
South Dakota

Texas Compact
Maine
Texas *
Vermont

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

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

Graphic by Afton Associates, Inc. for the LLW Forum. September 1998.