LLW*notes*

Volume 12, Number 8 Winter 1997

South Carolina

Chem-Nuclear Documents New Plan for Barnwell

By letters dated November 25, Chem-Nuclear Systems provided its customers with preliminary documentation for a plan to enhance the long-term prospects of the low-level radioactive waste disposal facility that the company operates in Barnwell, South Carolina. Prior to this correspondence, written information about the plan was generally unavailable, and elements of the proposal were reported based on oral descriptions. (See *LLW Notes*, August/September 1997, pp. 6–7.) As described in the various documents, the plan differs from previous accounts in several ways, including the following:

- The facility is assumed to remain in operation for twenty-five years, until 2023.
- Customers will pay Chem-Nuclear's fixed costs of operating the facility on an annual basis.
- Non-refundable "commitment fees" will range from $2.58 to $3.60 per cubic foot.
- A transfer tax, payable to South Carolina, will be imposed on all profitable secondary sales of reserved disposal capacity.
- Final documentation will be available on December 19, 1997.

Plan Overview

Chem-Nuclear proposes to enter into agreements with its customers to provide disposal for up to 25 years based on a predetermined fee schedule. In exchange, customers will prepay the State of South Carolina's tax on waste disposal. They will also pay annual "fixed service charges" to cover Chem-Nuclear's fixed costs of operating the facility.

To contract for services, customers will be requested to submit a commitment letter agreeing to purchase at least 100 cubic feet of waste disposal "units" at the facility. Letters must be received by January 16, 1998, although the date may be extended at the discretion of Chem-Nuclear to a date not later than January 23, 1998. Customers must certify in their letters that they have or will obtain a permit from South Carolina to use the facility or that they have reserved the capacity "for use by generators."

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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 http://www.afton.com/llwforum

Low-Level Radioactive Waste Forum

LLW Notes
Volume 12, Number 8 • December 1997
Editor, Cynthia Norris; Associate Editor, Holmes Brown
Contributing Writers: Rick Gedden, Todd Lovinger, Cynthia Norris, Laura Scheele, M. A. Shaker
Materials and Publications: Rick Gedden
Layout and Design: M. A. Shaker

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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 **http://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

Prepared by Afton Associates, Inc. for the LLW Forum under State of Washington Department of Ecology Contract Number C9700171 through a grant from the U.S. Department of Energy.

Central Compact/Nebraska

Nebraska Releases Technical Analysis of LLRW Facility

On October 29, Nebraska's Low-Level Radioactive Waste (LLRW) Program released two draft documents concerning the proposed regional disposal facility in Boyd County. The two documents, the *Draft Safety Evaluation Report* and the *Draft Environmental Impact Analysis*, represent the state's technical analysis of the application submitted by US Ecology in July 1990.

Regulators' Findings

Draft Safety Evaluation Report Of the 152 review areas that state regulators evaluated in the *Draft Safety Evaluation Report*, the LLRW Program found US Ecology's application acceptable in 123 cases. Sections of the application in which all of the findings were acceptable include site characteristics, design and construction, quality assurance, and financial assurance.

The application was determined to be unacceptable in 29 cases, some of which were in the area of safety assessment. In this area, however, the state conducted an independent performance assessment "for which the results indicated annual doses less than the regulatory limits."

In addition to the description of findings, the *Draft Safety Evaluation Report* also identified license conditions, where applicable, for acceptable evaluation findings. The recommended license conditions cover two broad categories: 1) procedures, or plans and specifications, and 2) administrative. If a license is granted, these conditions will require the licensee to submit additional operating procedures or updated administrative information to the state for review and approval prior to commencement of operations; or in the case of plans and specifications, prior to initiating bidding or construction activities.

Draft Environmental Impact Analysis The state evaluated the consequences of development of the proposed facility in comparison with four other alternatives, out of an initial set of 35 potential alternatives. The four alternatives evaluated were building the proposed facility on either of two former candidate sites, building an assured storage facility, and no action. While it was determined that the proposed facility would result in impacts to several environmental resources, the state found that "all potential adverse environmental impacts can be mitigated except for sociocultural impacts." The analysis reported that "sociocultural impacts cannot be fully mitigated" but that "the magnitude of these [sociocultural]impacts is expected to decline during the period of facility operations, provided no serious radiological accidents occur."

Public Input and Revision of the Documents

Although the documents constitute the technical basis of a future licensing decision, state officials have emphasized that they do not represent a proposed licensing decision. "A decision will be made in the future, and public input will have a significant role in the decision-making process," said Randy Wood, Director of the Nebraska Department of Environmental Quality, in a prepared statement. "The state will not make any licensing decisions until we've given full consideration to public comments."

The state will accept written public comments on the documents until February 4, 1998. In addition, a public hearing will be held on February 2–5 in two locations in Boyd County.

After considering public comments, including any from US Ecology, state regulators will prepare responses as necessary and incorporate them into the documents, which will be revised and issued as the *Environmental Impact Analysis* and the *Safety Evaluation Report*. The Director of the Department of Environmental Quality and the Director of the LLRW Program for the Department of Health and Human Services Regulation and Licensure will then make a tentative licensing decision.

If the Directors propose to grant US Ecology's application, they will prepare a draft license for public comment. If they propose to deny the application, they will prepare and distribute for comment a statement documenting their reasons. The state will then solicit comments on the proposed decision during a public comment period and hearing. After this opportunity for public input, the Directors will publish their decision and issue the Final Safety Evaluation Report and Final Environmental Impact Analysis.

—CN

For further information, contact Carla Felix of the Department of Environmental Quality at (402)471-3380 or John DeOld of US Ecology at (402)476-8049.

Southeast Compact/North Carolina

Southeast Compact Suspends Funding for North Carolina Facility Development

North Carolina Authority Operating on Reserves

On December 1, after providing over $78 million for development of a regional disposal facility, the Southeast Low-Level Radioactive Waste Compact Commission notified the North Carolina Low-Level Radioactive Waste Management Authority that the Authority had not met the commission's conditions for continued funding. These conditions were established in resolutions of August 21 and November 7, which set a deadline of December 1 for the Authority to respond to a nonbinding Memorandum of Understanding (MOU) proposed by the Southeast Compact Utility Generators Group (SEGG).

Under the terms of SEGG's suggested MOU, participating generators would lend funds to the Authority for implementation of the Licensing Work Plan. In exchange, the Authority would make various contractual commitments, and the Southeast Compact would agree to expend all of its funds available for facility development before the SEGG loan would be used. Other conditions would also apply. (See *LLW Notes*, August/September 1997, pp. 4–5.)

On August 21, the commission agreed in principle with SEGG's MOU and stated its "expectation" that by December 1 the Authority would either

- express agreement in principle with the MOU as proposed, or
- develop an alternative proposal for funding site development activities and obtain concurrences from the appropriate parties.

North Carolina Governor James Hunt responded to the commission's action on November 3 with a letter expressing reservations about the generators' proposal and suggesting that compact party states make up the funding shortfall. (See related story, this issue.)

The compact commission subsequently adopted a resolution on November 7 reaffirming its actions of August 21 and elaborating upon the consequences that would result from compliance or failure to comply with the commission's previous request.

The resolution stated, in part:

> [I]f the response from the Authority is agreement in principle with the MOU as offered, if the response is agreement in principle with a modified version of the MOU accompanied by a letter of agreement in principle from the SEGG, or if the response is an alternate proposal with a letter of agreement from each entity proposed to provide future funds for site development and/or proposed as a party to the agreement, the Chairman is authorized to release up to $500,000 to the Authority for implementation of the Licensing Work Plan up to the date when the SECC [Southeast Compact Commission] can convene to consider the response of the Authority.
>
> However, if by December 1, 1997, the Authority has neither agreed in principle with the MOU as offered, agreed to a modified version of the MOU with approval from SEGG, nor has offered an alternate proposal for funding with appropriate concurrences, Commission staff is directed to only pay invoices for work performed through November 30, 1997.

The commission also reiterated its support for the proposed MOU to Governor Hunt and attempted to allay his concerns. (See related story, this issue.)

Authority Agrees to Continue Work, Seeks Extension

Members and staff of the North Carolina Low-Level Radioactive Waste Management Authority held an emergency meeting via teleconference on November 25 to respond to the compact's resolution and to address the possibility that funding from the compact would soon cease.

The Authority agreed to use cash reserves to pay for consulting work needed to document completion of Decision Point 1 in the Licensing Work Plan. (See box.)

The Authority also agreed to send a letter to the Southeast Compact Commission explaining actions that the Authority had taken in response to the commission's resolutions of August 21 and November 7 and asking additional time to develop a funding arrangement.

In particular, the letter described the results of two "fact-gathering" meetings conducted by the Authority, with participation by the Southeast Compact Commission, SEGG, and state government entities, including Governor Hunt's office. The meetings, which took place on November 19–20, were authorized by the Authority on November 5 due to Hunt's concerns about the MOU.

Following the first meeting, which focused on funding the licensing process, Authority Chair Warren Corgen wrote to the generators' organization on the evening of November 19 asking it to provide funding via a grant instead of a loan. The generators' group declined.

The second meeting concerned funding for construction of the facility, particularly through the use of revenue bonds. Based on discussions at the meeting, the Authority concluded that a "guarantee similar to that proposed" in the SEGG's MOU will be needed to make the project attractive to bond purchasers, but that the proposed MOU "contains conditions that could possibly weaken that guarantee in the eyes of the financial markets."

Because the Authority does not expect compact funds available for the Licensing Work Plan to run out until mid-1999 and does not anticipate a need for construction bond revenues until 2010, the Authority wrote to the compact proposing to "proceed on an orderly basis to hammer out the details of these [funding] arrangements over the next twelve months."

Compact Reaffirms Host State Financial Responsibility

This response was not acceptable to the compact commission, which reiterated its position that "it is the legal responsibility of North Carolina to fund site development activities as a part of its obligation as a host state." The commission has, however, offered to "meet at any time with the Authority and other parties to address the means to resolve the funding issue." In the meantime, the commission expects the Authority to "seek and expend State funds to enable continued site development activities without interruption and to keep the project on schedule."

—CN

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

North Carolina's Licensing Work Plan

The Licensing Work Plan for the proposed North Carolina facility consists of 7 "decision points" for evaluating the project. (See *LLW Notes*, August/September 1996, p. 9.)

1. Field investigative techniques
2. Configuration of facility and buffer zone
3. Infiltration capacity of site
4. Completion of field studies
5. Dose assessment
6. Monitoring program
7. Licensing decision by North Carolina Division of Radiation Protection

Decision Point 2 was reached by the Authority in June 1997. On November 5, 1997, the Authority voted to report that Decision Point 1 had been "substantially met and that in the reasonable judgment of the Authority, it makes sense to proceed with the project."

Release of $2.9 million to the Authority conditional upon "affirmative recommendations from the Authority on Decision Points 1 and 2 that in the reasonable judgment of the Authority it makes sense to proceed with the project …" had been authorized by the Southeast Compact Commission in April 1997. This authorization, however, was superseded by the commission's resolutions of August 21 and November 7.

North Carolina Governor and Southeast Compact Differ on Proposed MOU

Governor Hunt to Chairman Hodes

On November 3, North Carolina Governor James Hunt wrote to Richard Hodes, Chairman of the Southeast Compact Commission, expressing doubts about the practicality of a Memorandum of Understanding (MOU) proposed in August by a generators' organization. (See related story, this issue.)

The following are excerpts from the Governor's letter.

> At the outset, it must be recognized that this proposal involves authority vested by statute in multiple State agencies (not all of which are in my cabinet), local units of government, and the North Carolina legislature. Since the Compact Commission endorsed this proposal in August, it has been reviewed by several of these agencies in North Carolina that have direct involvement … My staff has discussed the matter with representatives of each of these agencies, because the proposal calls for matters … that are outside the jurisdiction of the Governor's office.
>
> Based on my initial review, I find it doubtful that the practical, as well as legal, commitments envisioned would be approved by all the affected agencies and governmental bodies. I do not believe they or I can square the Compact Commission's statutory goal of "distribut[ing] the costs, benefits and obligations of successful low-level radioactive waste management equitably among the party states," Compact Art. I, with a proposal that, among other things, requires:
>
> - a North Carolina State agency to take on seven million dollars in debt with no budgeted or other means of repayment;
> - North Carolina to bear the brunt of any shortfall in funding, given that this State has already paid over $30 million towards the facility, while every other Compact State has paid around $25,000; and
> - North Carolina to limit the pricing and revenue stream from this future facility, at great risk to its ability to support bond financing, without the matter even being reviewed by the North Carolina legislature.
>
> Furthermore, they will wonder, as I do, why the Compact Commission and generators have insisted that North Carolina commit to these steps in a timeframe that comes just before the entire schedule and budget for the facility is to be reevaluated. This timeframe is even less appropriate given the events that have recently come to light in the region and the nation that suggest the emergence of a fundamentally different market for low-level radioactive waste.
>
> At the conclusion of Decision Point 1, I understand the contractor for the authority is to reevaluate the schedule and budget for this facility. At that point, if there does, indeed, appear to be a shortfall in projected licensing revenue, the simplest, most equitable approach would be for each party state that has not already contributed beyond its pro-rata share to make a pro-rata payment to cover the shortfall.

Chairman Hodes to Governor Hunt

Chairman Hodes responded to Governor Hunt by letter dated November 14. Hodes stated, in part:

> Under this proposal [from the generators' group] all parties would win—a facility would be opened to satisfy the needs of the compact and the generators, and the state would have a guaranteed revenue stream to recover its costs. The MOU acknowledges existing statutes and jurisdictions and does not ask the State to contractually commit to actions … contrary to those statutes. The agreement does not place absolute constraints on the State. It specifies conditions under which the participating generators would be released from their commitments but does not seek to contractually bind the State to preventing those conditions.
>
> Based on the wording of your letter, you appear to have received interpretations of the MOU that are contrary to its intent in several key areas … We encourage you to study the proposal before drawing a final conclusion …
>
> [T]he response [from the North Carolina Authority] will need to encompass several elements not indicated in your letter. First the proposal must address funding for all future phases of site development. In addition to the funds needed for licensing, funding must be addressed for litigation and for construction …
>
> You have questioned the appropriateness of committing to a funding plan before the schedule and budget are once again reevaluated. The Commission clearly has asked for no firm commitment at this time, but merely an agreement in principle to a non-binding MOU, intended to facilitate good faith development of a binding agreement before the existing Commission funds are exhausted. To delay … ignores the hard fact that Commission funds may be fully depleted in less than a year. Based on the fact that five months have already elapsed since the concepts in the MOU were first proposed to representatives of the Authority, seeking to assure that a year is available for completing a funding agreement does not seem excessive. By the time signatures to a binding agreement are required (on or before June 30, 1998) reevaluation of the budget and schedule will certainly be complete.
>
> Further, you question the time frame, "given the events … that suggest the emergence of a fundamentally different market for low-level radioactive waste." We have no knowledge of recent events which have changed the market …
>
> As for your concern with squaring the Commission's statutory goal of distributing the costs, etc. among the party states, I will restate the Commission's position that it is the intent of the compact law to accomplish this goal by obligating each party state, in turn, to develop and operate a facility. It has always been the intent of the law that each host state would be repaid for its expenses from facility revenues.

—CN

The information contained in this story and the preceding story was distributed to Forum Participants, Alternate Forum Participants, Federal Liaisons and Alternates via facsimile transmission in a News Flash on December 8, 1997.

South Carolina (continued from page 1)

Chem-Nuclear has indicated that it must receive commitments to purchase at least 5 million cubic feet of capacity in order to make the plan viable. If a sufficient response is received, customers will be assessed a commitment fee, payable on January 30, 1998. (See box.)

Based on these commitments, Chem-Nuclear will approach the South Carolina legislature in January 1998 and seek the adoption of "Required Legislation" to exempt holders of "qualified contracts" from the current state-imposed surcharge of $235 per cubic foot of waste disposed of at Barnwell. Instead, the state would receive a trust fund of at least $1,000,000,000 to be funded by disposal allotment charges. (See box.)

If such legislation is enacted by July 1, 1998, and other conditions are satisfied, Chem-Nuclear and each user will enter into agreements applicable to waste delivered on or after July 1, 1998. Under such agreements, all customers reserving space must pay the disposal allotment charge and the initial installment of the fixed service charge no later than October 30, 1998. Disposal service charges will also apply to any waste accepted at the facility.

Transfer of Disposal Units

Although no customer will be allowed to purchase more than 25 percent of the available disposal capacity, it is anticipated that some customers will purchase more space than required for their own needs. Excess capacity may be assigned to other qualified parties, including states or compacts. Sales of disposal units that result in a profit for the seller will be subject to a South Carolina transfer tax equal to a fixed percentage of the difference between the initial purchase price and the subsequent sale price.

Reserved and Unsold Capacity

Chem-Nuclear intends to sell no more than 7 million of Barnwell's estimated remaining 7.9 million cubic feet. Of the remaining 900,000 cubic feet, 100,000 will be set aside for use by small generators, and the rest will be available for South Carolina generators or "other generators as [Chem-Nuclear Systems] determines that disposal capacity is available."

After June 30, 1998, potential customers will be allowed to enter into agreements for remaining disposal capacity. However, according to Chem-Nuclear, "it is not anticipated … that such customers will have the ability to prepay taxes at the rate to be established by the Required Legislation. Accordingly, customers that do not enter into proposed Funding Agreements will be required to make tax payments to the State as Waste is delivered in an amount determined by the State."

Termination of Agreements

Customer agreements under the new plan would end if Chem-Nuclear's lease for the Barnwell site were terminated, if Chem-Nuclear were unable to accept waste at the facility, or if the agreement establishing South Carolina's trust were terminated.

South Carolina's Trust Fund

The preliminary trust agreement provides for a twenty-five year term. Ninety-five percent of the income from the trust would be paid to the state on a quarterly basis, to be used for educational programs, and five percent would be paid to Barnwell County. The trust's principal—between $1,000,0000,000 and $1,4000,000,000—would be distributed to the state at the end of the term. In the event of an early termination, the bulk of the principal would be distributed to customers based on a specific formula, and any remaining funds would be distributed to the state.

Events that would trigger early termination of the trust include the following:

- permanent closure of the facility for any reason;
- the inability of the facility to accept waste for more than 30 consecutive days due to a change in law by the state or a political subdivision, coupled with Chem-Nuclear's consent to the termination;
- the inability of the facility to accept waste for six consecutive months for any other reason;
- any change in law by the state or a political subdivision that either imposes any additional tax, fee, surcharge or other similar cost on the facility or modifies the terms of the trust in any way adverse to the customers' interests under the agreement with Chem-Nuclear;

- any change in law or uncontrollable circumstance, including a change in packaging requirements, that directly or indirectly decreases the amount of waste that can be accepted at the facility by an amount greater than 200,000 cubic feet. Chem-Nuclear shall have the right, but not the obligation, to accept the decreased capacity to prevent early termination if sufficient capacity remains for all customers.

continued on page 10

This information was distributed to Forum Participants, Alternate Forum Participants, Federal Liaisons and Alternates via facsimile transmission in a News Flash on December 3, 1997.

Informational Meetings

Chem-Nuclear officials will host group presentations during the week of December 8 to review the plan and answer questions. Scheduled presentations are as follows:

Tuesday, December 9	Boston, MA
Wednesday, December 10	Philadelphia, PA
Thursday, December 11	Chicago, IL
Friday, December 12	Atlanta, GA

—CN

Fees

Commitment Fees

Payable: January 30, 1998

The fees will range from $2.58 to $3.60 per cubic foot, with the exact amount to be determined by dividing $18,000,000 by the total number of cubic feet reserved. Customers that have disposed of waste at Barnwell from November 1, 1997, to January 23, 1998, will receive a commitment fee reduction equal to the difference between the disposal fees that they actually paid and the disposal fees that they would have paid under Chem-Nuclear's proposed new pricing schedule. Commitment fees will be used to pay Chem-Nuclear's fixed costs of operating the facility for the period from November 1, 1997, to June 30, 1998, and to make up any funding shortfalls for the State's Higher Education Scholarship Grants. (See *LLW Notes*, August/September 1997, p. 7.) Any funds collected in excess of those required for these purposes will be credited to the customers on a pro rata basis.

Disposal Allotment Charges

Payable: upon disposal after July 1, 1998, or by October 30, 1998, whichever is earlier

All customers reserving space will be required to pay up front $200 per cubic foot of reserved capacity. These charges will be placed in a trust fund for the State of South Carolina.

Fixed Service Charges

Payable: upon disposal after July 1, 1998, or by October 30, 1998, whichever is earlier, and then by April 1 of each subsequent year through 2023

Every year, each customer with reserved space will pay a pro rata share of Chem-Nuclear's estimated fixed costs of operating the facility even if they do not dispose of any waste at Barnwell that year. Charges will increase at a rate of 3.25 percent compounded annually to allow for inflation. Any customer that fully uses its reserved capacity prior to the year 2023 will prepay the remaining fixed service charges discounted to the rate then in effect. The schedule of fixed service charges on page 10 is based upon capacity sales of 5,000,000 cubic feet.

Disposal Service Charges

Payable: Upon disposal

Customers will be charged based upon both volume and the radioactive characteristics of the waste. Charges will increase at a rate of 3.25 percent compounded annually to allow for inflation. Assuming that at least 5 million cubic feet of disposal capacity are presold, the schedule of disposal service charges on page 11 will take effect on January 23, 1998, for all generators that have reserved disposal capacity. Generators that do not choose to reserve capacity will continue to be charged on the basis of their existing contracts.

Schedule A
Fixed Disposal Charge for Barnwell

Payment Date	Total Annual Charge	per cubic foot (based on 5,000,000 cubic feet reserved)
October 30, 1998	$12,316,900	$2.46
April 1, 1999	$10,989,653	$2.20
April 1, 2000	$11,288,720	$2.26
April 1, 2001	$11,597,506	$2.32
April 1, 2002	$11,916,328	$2.38
April 1, 2003	$12,245,512	$2.45
April 1, 2004	$12,585,394	$2.52
April 1, 2005	$12,936,322	$2.59
April 1, 2006	$13,298,656	$2.66
April 1, 2007	$13,672,765	$2.73
April 1, 2008	$14,059,033	$2.81
April 1, 2009	$14,457,854	$2.89
April 1, 2010	$14,869,638	$2.97
April 1, 2011	$15,294,804	$3.06
April 1, 2012	$15,733,788	$3.15
April 1, 2013	$16,187,039	$3.24
April 1, 2014	$16,655,021	$3.33
April 1, 2015	$17,138,212	$3.43
April 1, 2016	$17,637,107	$3.53
April 1, 2017	$18,152,216	$3.63
April 1, 2018	$18,684,066	$3.74
April 1, 2019	$19,233,201	$3.85
April 1, 2020	$19,800,183	$3.96
April 1, 2021	$20,385,592	$4.08
April 1, 2022	$20,990,027	$4.20
April 1, 2023	$21,614,106	$4.32

Source: Chem-Nuclear Systems

Schedule B
Disposal Service Charges for Barnwell

	class A (unstable) waste per cubic foot	class A (stable) waste per cubic foot	class B/C waste per cubic foot	irradiated hardware per cubic foot	large component per cubic foot	*For isotopes with greater than 5 year half-life*	
						per millicurie	not to exceed per shipment
1998	$30.00	$50.00	$145.00	$700.00	$60.00	$0.60	$120,000.00
1999	$30.98	$51.63	$149.71	$722.75	$61.95	$0.60	$120,000.00
2000	$31.98	$53.30	$154.58	$746.24	$63.96	$0.60	$120,000.00
2001	$33.02	$55.04	$159.60	$770.49	$66.04	$0.62	$123,900.00
2002	$34.09	$56.82	$164.79	$795.53	$68.19	$0.64	$127,926.75
2003	$35.20	$58.67	$170.14	$821.39	$70.40	$0.66	$132,084.37
2004	$36.35	$60.58	$175.67	$848.08	$72.69	$0.68	$136,377.11
2005	$37.53	$62.55	$181.38	$875.65	$75.06	$0.70	$140,809.37
2006	$38.75	$64.58	$187.28	$904.10	$77.49	$0.73	$145,385.67
2007	$40.01	$66.68	$193.37	$933.49	$80.01	$0.75	$150,110.71
2008	$41.31	$68.84	$199.65	$963.83	$82.61	$077	$154,989.30
2009	$42.65	$71.08	$206.14	$995.15	$85.30	$0.80	$160,026.46
2010	$44.04	$73.39	$212.84	$1,027.49	$88.07	$0.83	$165,227.32
2011	$45.47	$75.78	$219.76	$1,060.89	$90.93	$0.85	$170,597.20
2012	$46.94	$78.24	$226.90	$1,095.37	$93.89	$0.88	$176,141.61
2013	$48.47	$80.78	$234.27	$1,130.96	$96.94	$0.91	$181,866.22
2014	$50.05	$83.41	$241.89	$1,167.72	$100.09	$0.94	$187,776.87
2015	$51.67	$86.12	$249.75	$1,205.67	$103.34	$0.97	$193,879.62
2016	$53.35	$88.92	$257.86	$1,244.86	$106.70	$1.00	$200,180.70
2017	$55.08	$91.81	$266.24	$1,285.31	$110.17	$1.03	$206,686.58
2018	$56.88	$94.79	$274.90	$1,327.09	$113.75	$1.07	$213,403.89
2019	$58.72	$97.87	$283.83	$1,370.22	$117.45	$1.10	$220,339.52
2020	$60.63	$101.05	$293.06	$1,414.75	$121.26	$1.14	$227,500.55
2021	$62.60	$104.34	$302.58	$1,460.73	$125.26	$1.17	$234,894.32
2022	$64.64	$107.73	$312.41	$1,508.20	$129.27	$1.21	$242,528.38
2023	$66.74	$111.23	$322.57	$1,557.22	$133.48	$1.25	$250,410.56

Source: Chem-Nuclear Systems

Midwest Compact

Midwest Compact to Return Export Fees

At a meeting in Bridgeton, Missouri, on November 3, the Midwest Interstate Low-Level Radioactive Waste Commission voted to dissolve the fund containing fees formerly assessed by the commission on utilities' export of low-level radioactive waste from the compact region. The fund was established to finance development of a regional disposal facility. However, with the commission's decision in June 1997 to indefinitely cease development activities, the moneys are no longer needed. (See *LLW Notes*, July 1997, p. 3.) Recipients of the distribution will receive a refund in proportion to the export fees that they paid.

Dissolution of this fund does not affect the commission's ongoing activities. The commission, however, did vote to reassess its future needs for staff and an office, given that "the circumstances surrounding the work of the Midwest Compact Commission have changed dramatically." The commission charged its Chair with the responsibility of developing one or more proposals to meet these needs and resolved to hold a meeting in late winter to discuss them.

For further information, contact Gregg Larson of the Midwest Compact Commission at (612)293-0126.

—CN

National Conference of State Legislatures

State Legislators' Group Revises Radioactive Waste Policy

On November 7, the National Conference of State Legislatures' (NCSL) Assembly on Federal Issues (AFI) adopted by voice vote a substantially changed policy on radioactive waste management. NCSL staff are currently authorized to lobby Congress in favor of this new AFI policy, pending its anticipated adoption by the full conference at NCSL's annual meeting in July 1998.

NCSL staff have indicated that the policy is likely to be placed on the consent calendar for the annual business session. All items on the consent calendar are voted up or down as a block, although specific items may be removed by a majority vote of the AFI Steering Committee or at the request of three member jurisdictions.

On the following page is an excerpt from the policy that addresses low-level radioactive waste. The full policy also contains sections concerning high-level radioactive waste and related issues such as interim storage of spent nuclear fuel, the Waste Isolation Pilot Plant (WIPP) for DOE's transuranic waste, and transportation of these wastes.

For background information on NCSL's radioactive waste management policy, see LLW Notes, August/September 1997, p. 11.

—CN

Greenpeace Downsizes

Greenpeace, an international organization active on various environmental and anti-nuclear issues since its founding in 1971, has decided to severely curtail operations in the United States. According to a report in the *New York Times*, the organization has experienced many financial difficulties within this country.

As a result, Greenpeace has reportedly cut its annual budget in the U.S. by $8 million, laid off over three-quarters of its U.S. staff members and closed or relocated offices from Boston to Santa Cruz.

Due to the cutbacks, Greenpeace has announced that it intends to limit its focus in the U.S. primarily to campaigns against global warming and deforestation. Less attention will be given to toxic waste and overfishing, the *Times* reported. It is unclear how these measures will affect previous Greenpeace efforts to oppose the proposed low-level radioactive waste sites in California and Texas.

–RTG

NCSL AFI's OFFICIAL POLICY: RADIOACTIVE WASTE MANAGEMENT

Radioactive waste, the by-product of the production of nuclear weapons, the generation of nuclear power, and the advancement of medical research, presents a pressing problem for states and for the nation as a whole. If handled improperly, radioactive waste can pose a dire threat to human and environmental health. For that reason, the state and federal agencies responsible for overseeing the disposal and management of radioactive waste must work in partnership to develop effective, efficient, and safe methods for storing and disposing of radioactive waste, the legacy of America's fifty year relationship with nuclear power. Towards that end, the National Conference of State Legislatures urges Congress to adhere to the following guidelines in managing the nation's radioactive waste storage and disposal problems.

LOW-LEVEL RADIOACTIVE WASTE:
With the passage and enactment of the Low-Level Radioactive Waste Policy Act of 1980 and the Low-Level Waste Policy Amendments of 1985, Congress gave the states total responsibility for developing commercial low-level radioactive waste disposal facilities. NCSL believes that states, with the health and safety of their citizens in mind, are best prepared to oversee the management of low-level waste. As the states fully accept the responsibility for disposal of low-level radioactive waste, NCSL urges the federal government to use its authority and resources in the following ways in order to assist states—both the members of waste disposal compacts and unaffiliated states—to construct and operate facilities that will realistically meet the nation's predicted need for the disposal of low-level radioactive waste.

- As market forces and technological developments in low-level waste management have significantly reduced the volume of low-level radioactive waste and thus the need for numerous regional waste sites, the U.S. Department of Energy should assist state legislatures and state regulators in determining exactly what the long-term demand will be for disposal capacity, how best to meet that need with well-placed disposal facilities, whether the current compact system best serves the national interest, and how to develop only as many storage facilities as are really necessary.

- The federal government, especially the U.S. Environmental Protection Agency and the U.S. Department of [the] Interior, should streamline the environmental and regulatory review process in order to expedite the needed federal land transfer in California so that the Southwestern Compact states can proceed with their planned waste-disposal facility as needed.

- Liability issues surrounding the entire waste cycle and, in particular, the transportation of low-level waste should be clarified by the federal government. The liability and responsibilities of states forced or willing to accept out-of-state waste should also be clarified, as should the continuing liability of waste producers.

- Clarify that Congress should promptly ratify compact agreements and modifications approved by member states without revisions and that Congressional ratification of compact agreements should also mandate federal enforcement of those agreements.

- The U.S. Department of Energy and the Nuclear Regulatory Commission should encourage institutions that use radioactive isotopes to use materials which remain radioactive for shorter periods of time, thereby reducing the amount of radioactive waste in the disposal stream.

- Congress should insure that, in the debate over the restructuring of the electricity industry, much of the cost of radioactive waste disposal is not passed from the waste producers—the utility companies—to the states.

- The progress of the involved federal agencies with regard to the issues of mixed wastes, naturally occurring radioactive material, and accelerator produced radioactive material, should be closely monitored by Congress in order to ensure that a clear policy is defined and interagency differences are resolved.

In addition to managing low-level radioactive waste disposal, states are obliged by the 1959 Atomic Energy Act to maintain a system for inspecting facilities, such as laboratories and hospitals, that use radioactive isotopes. Federal agencies, including the Nuclear Regulatory Commission and the Environmental Protection Agency, can assist states by establishing up-to-date minimum standards for state inspectors to follow, though without burdensome regulations or mandates.

Southwestern Compact/California

Internal Documents Discuss Administration's Policy on Ward Valley

Sen. Murkowski Vows to Broaden Ward Valley Probe

Several documents have recently been made public that provide new information on the Clinton administration's policy regarding transfer of land from the federal government to the State of California for use in siting a low-level radioactive waste disposal facility. As a result of these revelations, Senator Frank Murkowski (R-AK), who chairs the Committee on Energy and Natural Resources, recently announced his intention to hold a series of investigative oversight hearings early next year regarding the Interior Department's refusal to transfer the land to date.

Documents re Ward Valley

Interior Department Memoranda The following is a reprint of a memorandum from Deputy Secretary of the Interior John Garamendi to Secretary Bruce Babbitt, which was recently made public by Senator Murkowski. The memorandum is dated February 21, 1996.

> Attached are the Ward Valley clips. We have taken the high ground. [California Governor Pete] Wilson is the venal toady of special interests (radiation business). I do not think Green Peace will picket you any longer.
>
> I will maintain a heavy PR campaign until the issue is firmly won.

The term "venal toady" means a deferential, fawning parasite who is open to bribery.

An earlier memorandum to Babbitt from Kevin Sweeney, Assistant to the Secretary and Director, Office of Communications, Interior Department—dated October 12, 1993—was also recently made public. In that memo, which addresses the politics of Ward Valley, Sweeney complains that no one in the industry is cheering Interior's actions (although they find Wilson to be a hero) and that Senator Barbara Boxer (D-CA) and the vocal environmentalists believe Interior to have prejudged the issue and do not see the agency as having been forthright. Sweeney then writes that "if the Secretary remains the person who alone makes the last decision in this process, I can imagine no scenario that allows us to go forward with the land transfer AND retain credibility with Boxer and the enviros."

CEQ Document re Ward Valley Politics Another frank comment on the politics of Ward Valley can be found in an internal Council on Environmental Quality (CEQ) document from Tom Jensen, Associate Director for Natural Resources, to Wesley Warren, Deputy Chief of Staff. In that document, dated December 21, 1995, Jensen summarizes the controversy surrounding the proposed land transfer and concludes as follows:

> Interior Department officials, relying on the NAS analysis and recommendations, believe that the site can be operated and used with complete safety. Interior would like very much to move ahead with the transfer and put the Ward Valley conflict behind the Administration. That said, they believe that, as a political matter, the Administration simply cannot of its own volition agree to hand the site over in exchange for a check and an unpopular governor's promise to do the right thing.

Memorandum to the President On November 22, 1995, Katie McGinty, Chair of the Council on Environmental Quality, wrote a memorandum to President Bill Clinton. The memorandum provides background information on the proposed Ward Valley land transfer and discusses the current status of the project, legislative language to compel transfer of the land, and new developments. McGinty acknowledges that the National Academy of Sciences (NAS) "gave the project essentially a clean bill of health" and that "Senator Boxer ... has been active in every decision-making step the Administration has taken with regard to Ward Valley." In fact, in discussing Interior's negotiations with the state on preconditions for the land transfer, McGinty admits that "[s]everal of the conditions we pursued were not recommended by the NAS but were included to help ease the mind of Senator Boxer."

In explaining the discovery of tritium migration at the Beatty, Nevada site and its relation to Ward Valley, McGinty cautions that "Beatty was an essentially unregulated waste site and had been rejected by the NAS panel as a good case study previously." However, McGinty notes that, despite these facts, Garamendi recently promised Boxer that Interior will not transfer the land until the U.S. Geological Service determines if the Beatty experience poses any risks at the Ward Valley site.

In conclusion, McGinty writes as follows:

> We have worked tirelessly to try to accommodate Senator Boxer's concerns. She is not completely happy with us because 1) Interior wants to transfer the site; 2) the conditions we have specified are not stringent enough for her; and 3) she thinks we have not consulted with her enough.
>
> However, she is a lot less happy with Pete Wilson and the State of California who are trying to sneak the transfer—without condition—through the budget bill.

The bottom of the memorandum contains the following statement in unidentified handwriting: "It would be very helpful if she would aim her fire at Pete Wilson instead of us!!!"

CEQ Document re Boxer's Involvement Another CEQ document, recently released, expresses discomfort with the level of Boxer's involvement in the federal decisionmaking process. In that document—dated May 15, 1997—Shelley Fidler, CEQ Chief of Staff, wrote as follows to Karen Skelton, Deputy Assistant to the President for Political Affairs:

> Are you in agreement with me that DOI [Department of the Interior] can stop clearing every draft letter with Boxer's office? I really think there's a difference between keeping them informed and having them on every conference call and reviewing every draft. DOI thinks you ordered them to do this and I can't quite believe that.

Murkowski Hearings

On November 7, during a speech on the floor of the U.S. Senate, Committee on Energy and Natural Resources Chair Frank Murkowski announced his intention to "explore the Ward Valley issue in greater detail early next session with a series of investigatory oversight hearings." Murkowski also stated that, in the interim, he will be seeking documents related to the Ward Valley controversy from both the Interior Department and the White House.

Characterizing the Interior Department as an agency "intent on waging a PR campaign designed to delay rather than enlighten," Murkowski stated that Congress' intent in passing the Low-Level Radioactive Waste Policy Act of 1980 and its 1985 amendments was to give responsibility to the states for the safe management of low-level radioactive waste.

Murkowski has previously held hearings on Ward Valley, including one in July of this year, to encourage state and federal officials to work together toward opening the facility. However, Murkowski's press release states that the February 1996 Garamendi memo suggests that "one side had no intention of working with the other." Murkowski believes, instead, that "Interior's actions suggest 'a cycle of continuous study and endless delay.'"

The dates for the hearings have not yet been announced by the committee.

—TDL

Southwestern Compact/California (continued)

BLM Issues EA for Ward Valley Testing

On November 3, the U.S. Bureau of Land Management (BLM) issued an environmental assessment evaluating the impacts of proposed testing at the Ward Valley site. Comments on the environmental assessment were due December 3.

The environmental assessment addressed four alternatives for the testing:

- testing by the U.S. Department of the Interior (DOI) and BLM;
- testing by the California Department of Health Services (DHS);
- separate testing by both DOI/BLM and DHS; and
- the no-action alternative.

Background: Ward Valley Testing

DOI has stated that sampling and analysis of tritium and related substances, as recommended by the National Academy of Sciences (NAS) in connection with the proposal to transfer the Ward Valley site to the State of California, is a precondition to its approval of the requested land transfer. California Governor Pete Wilson instructed DHS in January to immediately begin conducting infiltration tests at the Ward Valley site. (See *LLW Notes*, March 1997, pp. 1, 16-20.) However, Ed Hastey, the State Director of BLM's California State Office, wrote to Carl Lischeske, Manager of DHS' Low-Level Radioactive Waste Management Program, on March 21 claiming that DHS' proposed testing is outside the scope of permitted work at the site and "may not be carried out until a new permit is issued." (See *LLW Notes*, March 1997, p. 14.)

In an April 11 memo to Ed Hastey, Interior Deputy Secretary John Garamendi stated:

> I understand that you are meeting with the state to discuss a permit for the state to enter Ward Valley to drill. Do not issue any permit. A worthwhile SEIS [Supplemental Environmental Impact Statement] must include a credible tritium study which the state can not do alone. We are preparing a Fed/State study. (emphasis in original)

After several meetings and exchanges of correspondence, California officials and DOI officials were unable to reach agreement on the terms and conditions for joint testing. (See *LLW Notes*, May/June 1997, pp. 6-7.) In a September 4 letter to Interior Deputy Secretary John Garamendi, George Dunn, Chief of Staff for California Governor Pete Wilson, stated:

> Unless these matters are resolved by September 18, 1997, I see no basis for further negotiation. I have directed the Department of Health Services ... to file with BLM, without waiving any rights DHS or its licensees may have under any existing permit, an application for a permit to conduct testing. In light of your remarks before the Senate Energy and Natural Resources Committee that this is all the State must do to obtain access to the site, and correspondence from BLM that such application will be processed quickly, I will expect BLM's issuance of the permit to DHS within 30 days of the date of the application.

DHS submitted to California BLM a permit application to conduct testing on September 5. In a November 26 letter to Molly Brady, Field Manager of BLM's Needles Office, Carl Lischeske wrote:

> In April we were informed that [BLM] would process our application in three to four weeks ... Instead of taking three to four weeks as you had promised, it took you eight weeks just to complete your EA [environmental assessment]. You then added a 30-day public comment period, after which it will take an estimated additional two weeks to evaluate the comments prior to making a decision on whether to allow us to proceed with our study. Assuming you keep to this schedule, your processing time for our permit application will be close to four months—a far cry from the three to four weeks you had promised in April! ... [W]e ask you to approve our application by December 22, 1997, and allow us to proceed. This project has been delayed long enough as it is.

—LAS

California DHS, NRC Criticize DOI's Testing Protocols

On November 3, the U.S. Bureau of Land Management made available for public comment the protocols for DOI's proposed testing at the Ward Valley site. The protocols were developed by two consultants who served on the National Academy of Sciences (NAS) panel that previously studied Ward Valley and issued a report on its findings. One of the consultants, Martin Mifflin, was a dissenting member of the NAS panel. In September, U.S. Senator Larry Craig requested a formal investigation by the U.S. Department of the Interior Inspector General into the contract between BLM and Mifflin to determine compliance with federal procurement regulations. (See *LLW Notes*, Aug./Sept. 1997, p. 19.)

NRC: Testing "May Not Be Relevant to … Performance of the Facility"

In a November 25 letter to the BLM Needles Field Office, Carl Paperiello, Director of NRC's Office of Nuclear Material Safety and Safeguards, conveyed NRC's comments on DOI's protocols. NRC reviewed the protocols at the request of Interior Deputy Secretary John Garamendi. The comments state:

> The protocol objectives may not be entirely consistent with those recommended by the National Academy of Sciences (NAS) in its 1995 Ward Valley report. As a result, the testing may not be conclusive when measured against the protocol's objectives, and may not be relevant to determining the performance of the facility in isolating low-level radioactive waste ...
>
> As written, the protocol objective is to provide sufficient data from the unsaturated zone to define which conceptual model (or "process scenario") of water movement in the unsaturated zone is occurring. The staff recommends that the Department of Interior (DOI) reconsider the objectives of the protocol in light of the above comments, and the recommendations made by the NAS committee.

NRC's comments addressed both general and specific comments on the testing protocols.

continued on page 18

Senator Craig: California Should Receive Testing Permit

Following a November 4 meeting, U.S. Senator Larry Craig (R-ID) wrote to Interior Deputy Secretary John Garamendi concerning the Ward Valley environmental assessment and the issuance of a testing permit to the State of California. Craig stated in the letter that he will accept Garamendi's contention that the preparation of an environmental assessment is necessary, but that he "expect[s] a permit to be issued in the early December time frame" that will allow California to conduct its proposed water infiltration studies.

In regard to the issue of joint testing, Craig stated that he has no objection as such, but that he understands that fundamental differences persist between the state and Interior over the structuring of a joint program. If separate testing is problematic, then Craig suggests that Interior vacate its testing plans.

> If you are concerned about the potential environmental impacts of separate testing programs by the State of California and the Department of the Interior, then I strongly suggest you drop your program which is duplicative of the California tests and a waste of taxpayer funds. Since California has agreed to perform testing and share both its data and analysis with the Department of the Interior and the public, we can be assured of an open, visible process based on the recommendations of the National Academy of Sciences

—TDL

Southwestern Compact/California (continued)

California DHS: "Proposed Study Is Technically Flawed"

In a November 26 letter to Molly Brady, Field Manager of BLM's Needles Office, Carl Lischeske, Manager of DHS' Low-Level Radioactive Waste Management Program, commented:

> [A]s the enclosed comments point out, the Interior Department's proposed study is technically flawed and could produce false positive results. Indeed, Interior's study relies heavily on the same sampling technique (i.e., soil gas sampling), that was severely criticized by the National Academy of Sciences. If the purpose of the Interior Department's proposed study is to carry out an objective evaluation of rainfall infiltration at the Ward Valley site, substantial revisions to the draft protocols will be necessary. The issuance of a permit to the State for its study should not be delayed while these revisions are being made.
>
> *—LAS*

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

Army Removes Training Mines from Ward Valley Site

On October 28, personnel from the U.S. Army's Fort Irwin military base removed a training land mine from the site for the planned low-level radioactive waste disposal facility in Ward Valley, California. Army military ordnance personnel moved the device 300 meters from existing structures and detonated it. The U.S. Bureau of Land Management (BLM) had requested the Army's assistance under established procedures upon learning of the training land mine's existence.

In November, three additional training mines and portions of what may have been a fourth training mine were discovered. According to press reports, two of the mines had previously been detonated. In response to the discovery of the training mines, the U.S. Army Corps of Engineers will be conducting a limited minesweeping operation at the Ward Valley site.

According to a BLM fact sheet, such devices are prevalent throughout the Mojave Desert because of the desert's historic use for military training. Military exercises were conducted extensively throughout the desert in the 1940s and 1950s.

The fact sheet states:

> The Fort Irwin personnel described the device as a typical M-1 anti-tank training land mine, which usually contained a small amount of either black powder or dynamite for detonation. The devices were utilized by the military to teach tank drivers what to do if they hit land mines in combat. The devices, if driven over by a tank, would typically set off either the black powder, sending up a small plume of smoke, or ignite the small dynamite charge, enough for the tank driver to feel it, but small enough not to damage the tank.

In a prepared media statement issued October 30, BLM explained how it is responding to the incident.

> BLM and the Department of the Interior are taking strong, appropriate action to respond to the possibility of other such ordnance possibly being found at the site, including warning individuals already using the site, requesting the Army's assistance in quickly determining if an unexploded ordnance survey or clearance is necessary to ensure public safety at the site, and adding more detailed procedures for authorized users to follow in conducting their activities. Finally, BLM intends to more thoroughly analyze the potential hazard in the Supplemental Environmental Impact Statement currently being prepared on the land transfer proposal.
>
> *—LAS*

The 1997 Gubernatorial Elections and a Look Ahead to 1998

On November 4, Election Day, only two governorships were subject to a vote. In New Jersey, incumbent Christine Whitman defeated Democratic challenger Jim McGreevey by a narrow margin. In Virginia's open-seat race, Republican Jim Gilmore defeated the Democratic contender Don Beyer.

Next year, 36 states will hold governors' elections, with 10 of those states holding an open-seat race in which the incumbent will not run for reelection.

—RTG

Appalachian Compact (4)

Delaware	Thomas Carper	D
Maryland	*Parris Glendening*	*D*
Pennsylvania	*Tom Ridge*	*R*
West Virginia	Cecil Underwood	R

Central Compact (5)

Arkansas	*Mike Huckabee*	*R*
Kansas	*Bill Graves*	*R*
Louisiana	Mike Foster	R
**Nebraska*	*E. Benjamin Nelson*	*D*
Oklahoma	*Frank Keating*	*R*

Central Midwest Compact (2)

**Illinois*	*Jim Edgar*	*R*
Kentucky	Paul E. Patton	D

Midwest Compact (6)

Indiana	Frank O'Bannon	D
**Iowa*	*Terry Branstad*	*R*
Minnesota	*Arne Carlson*	*R*
Missouri	Mel Carnahan	D
**Ohio*	*George Voinovich*	*R*
Wisconsin	*Tommy Thompson*	*R*

Northeast Compact (2)

Connecticut	*John Rowland*	*R*
New Jersey	Christine Whitman	R

Northwest Compact (8)

Alaska	*Tony Knowles*	*D*
Hawaii	*Benjamin Cayetano*	*D*
**Idaho*	*Philip Batt*	*R*
Montana	Marc Racicot	R
Oregon	*John A. Kitzhaber*	*D*
Utah	Michael Leavitt	R
Washington	Gary Locke	D
Wyoming	*Jim Geringer*	*R*

Rocky Mountain Compact (3)

**Colorado*	*Roy Romer*	*D*
**Nevada*	*Robert Miller*	*D*
New Mexico	*Gary Johnson*	*R*

Southeast Compact (7)

Alabama	*Fob James, Jr.*	*R*
**Florida*	*Lawton Chiles*	*D*
**Georgia*	*Zell Miller*	*D*
Mississippi	Kirk Fordice	R
North Carolina	James Hunt, Jr.	D
Tennessee	*Don Sundquist*	*R*
Virginia	Jim Gilmore	R

Southwestern Compact (4)

Arizona	*Jane Dee Hull*	*R*
**California*	*Pete Wilson*	*R*
North Dakota	Edward Schafer	R
South Dakota	*William Janklow*	*R*

Texas Compact (3)

Maine	*Angus King, Jr.*	*I*
Texas	*George W. Bush*	*R*
Vermont	*Howard Dean*	*D*

Massachusetts

Argeo Paul Cellucci *R*

Michigan

John Engler *R*

New Hampshire

Jeanne Shaheen *D*

New York

George Pataki *R*

Rhode Island

Lincoln Almond *R*

South Carolina

David Beasley *R*

National Governors' Association

1997-98

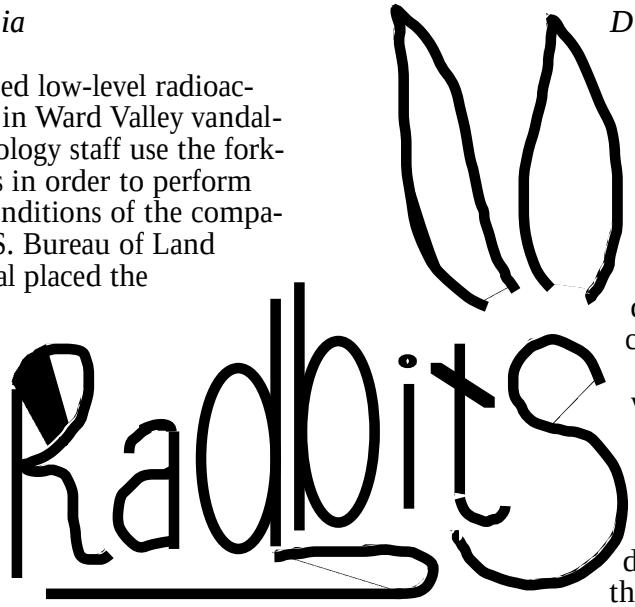
George Voinovich	Chair
Thomas Carper	Vice-Chair
E. Benjamin Nelson	Chair of Natural Reources Committee

Itlaics indicates that the state will hold an election in 1998.

* Indicates that the state will hold an open-seat election.

Southwestern Compact/California

An opponent of the planned low-level radioactive waste disposal facility in Ward Valley vandalized a forklift at the site. US Ecology staff use the forklift to remove concrete well caps in order to perform routine site testing under the conditions of the company's current permit with the U.S. Bureau of Land Management (BLM). The vandal placed the spikes of a cactus on the seat of the forklift. At dawn, on October 28, a female US Ecology employee sat on the protruding spikes and received a deep puncture wound that required immediate medical treatment. The perpetrator was subsequently identified by BLM and banned from the site.



–RTG

National Governors' Association

At the annual meeting of the National Governors' Association (NGA) in July, Governor George Voinovich (R-OH) was elected as Chair. Voinovich had served as Vice Chair during the preceding year. Replacing him in that capacity is Governor Tom Carper (D-DE).

Governor Ben Nelson (D-NE) was appointed Chair of the Natural Resources Committee, which has jurisdiction over NGA's policy on low-level radioactive waste disposal.

For further information, contact Tom Curtis of NGA's Natural Resources Committee at (202)624-5389.

—CN

DOE

On October 20, the Natural Resources Defense Council (NRDC) sent a letter to Energy Secretary Federico Peña to protest DOE's use of the Envirocare of Utah waste disposal facility. NRDC claims that the department's use of the Envirocare facility violates federal statutes. This is the second letter which NRDC has sent to DOE in recent months concerning this issue. In the first letter, dated June 9, 1997, NRDC threatened to sue DOE if the department does not agree to conduct a National Environmental Policy Act (NEPA) review of the implications of continued use of the facility. (See *LLW Notes*, July 1997, p. 31.)

—TDL

On October 31, Alvin Alm, DOE's Assistant Secretary of Energy for Environmental Management, informed Secretary of Energy Federico Peña that he was resigning from his DOE position effective at the end of January 1998. In a prepared statement, Peña commented that "Mr. Alm has accomplished a great deal, and he will be missed."

While at DOE, Alm initiated the Accelerated Cleanup Plan 2006, aimed at developing a more effective strategy for cleaning up DOE's weapons production sites. Alm's successor has yet to be named.

–RTG

International

Both Chem-Nuclear and Alaron Corporation have applied to the U.S. Nuclear Regulatory Commission for permission to import radioactively contaminated metal into the United States from abroad. The metal, which would come from a nuclear power plant in Taiwan, would ultimately be decontaminated and recycled. As of press time, no decision has been made on the import license applications.

—TDL

1997 and 1998 State and Compact Events

December	Event	Location/Contact
Appalachian Compact/ Pennsylvania	Pennsylvania LLRW Advisory Committee meeting	Harrisburg, PA Contact: Rich Janati (717)787-2163
Northeast Compact/ Connecticut/ New Jersey	Northeast Interstate LLRW Commission meeting: Executive Director's report; state progress reports	Norwalk, CT Contact: Jan Deshais (860)633-2060
	Connecticut Hazardous Waste Management Service Board of Directors meeting	Hartford, CT Contact: Ron Gingerich (860)244-2007
	New Jersey LLRW Disposal Facility Siting Board meeting	Trenton, NJ Contact: John Weingart (609)777-4247
Massachusetts	LLRW Management Board meeting	Boston, MA Contact: Carol Amick (617)727-6018
January	**Event**	**Location/Contact**
Central Compact/ Nebraska	Central Interstate LLRW Commission meeting	Little Rock, AR Contact: Don Rabbe (402)476-8247
Northeast Compact/ Connecticut/ New Jersey	New Jersey LLRW Disposal Facility Siting Board meeting	Trenton, NJ Contact: John Weingart
	Connecticut Hazardous Waste Management Service Board of Directors special meeting: action on LLRW budget for FY '98-'99	Hartford, CT Contact: Ron Gingerich
February	**Event**	**Location/Contact**
Central Compact/ Nebraska	Facility Review Committee meeting	Lincoln, NE Contact: Don Rabbe
Northeast Compact/ Connecticut/ New Jersey	Connecticut LLRW Advisory Committee meeting	Hartford, CT Contact: Ron Gingerich
	Connecticut Hazardous Waste Management Service Board of Directors meeting	Hartford, CT Contact: Ron Gingerich
Southwestern Compact/ California	Southwestern LLRW Commission meeting	San Bernardino, CA Contact: Don Womeldorf (916)323-3019
Massachusetts	LLRW Management Board meeting	Boston, MA Contact: Carol Amick

Stilp v. Hafer

Court Throws Out Case Challenging Pennsylvania's Siting Law

On November 7, the Commonwealth Court of Pennsylvania granted summary judgment to the respondents in a case challenging the passage of Act 12 of 1988, known as the Pennsylvania Low-Level Radioactive Waste Regional Disposal Facility Act. The court subsequently denied the petitioners' motion for reconsideration. As of press time, the petitioners have not filed an appeal with the Supreme Court of the Commonwealth of Pennsylvania.

Doctrine of Laches

In its written decision, the court held that the action is barred by the doctrine of laches. This doctrine "bars relief when the complaining party is guilty of want of due diligence in failing to promptly institute the action to the prejudice of another ... In order to prevail on an assertion of laches, respondents must establish: (1) a delay arising from petitioners' failure to exercise due diligence; and (2) prejudice to the respondents resulting from the delay."

General Principles

The petitioners first argued that the doctrine of laches does not apply because it cannot bar an action alleging that a statute has been passed in violation of basic procedural safeguards. The court, however, disagreed.

> [W]e hold that the doctrine of laches, if proven, is applicable to constitutional challenges to statutes on the basis of procedural irregularities. To permit a constitutional challenge to an enacted law on the sole basis of procedural irregularities several years after the statute's passage would result in the courts revisiting statutes which are constitutionally-sound substantively and that have been relied upon by the citizenry of this Commonwealth for possibly decades.

Next, the petitioners argued that the doctrine of laches is not a proper basis on which to grant summary judgment. The court, however, held that the doctrine may be applied if the fact of laches appears on the face of the pleading.

Court's Ruling

Whereas the respondents argued that the petitioners did not act diligently in filing their complaint since they waited eight years to do so, the petitioners contended that they were not aware of the unconstitutionality of the processes used to pass the statute until a recent court decision was issued in another case striking down the use of similar procedures in the passage of an appropriations bill. The court, however, found that the petitioners earlier had all of the information necessary to bring the action, given that the processes used to pass the bill were public and published at the time of its enactment, and given that the constitutional provisions that the petitioners claim were violated have remained largely unchanged for over 100 years.

The court also found that the petitioners' delay in bringing the action has prejudiced the respondents because they have, pursuant to the mandates of Act 12, promulgated regulations, entered into contracts, held public hearings, and prepared reports for the General Assembly. Such compliance, the court noted, has cost millions of dollars.

Since the court determined that the case is barred by the doctrine of laches, it did not rule on the issue of whether Act 12 was constitutionally enacted.

Appeals

On November 26, the petitioners field a motion for reconsideration with the Commonwealth Court. The court, however, denied the motion on DEcember 2 as being untimely filed—under court rules, the last fay for filing a motion for reconsideration was November 21.

As of press time, the petitioners have not tiled an appeal with the Supreme Court of the Commonwealth of Pennsylvania.

—TDL

Background*: Stilp v. Hafer*

Petitioners Gene Stilp, Eric Epstein, Thomas Linzey—three individuals who serve as officers of Stop the Illegal Low-Level Program in Pennsylvania, Inc.

Respondents Commonwealth of Pennsylvania, Pennsylvania Governor Thomas Ridge, and Pennsylvania Treasurer Barbara Hafer

The petitioners contended that Act 12 was passed in violation of the Pennsylvania Constitution because

- it was altered or amended during its passage through the General Assembly in such a manner as to change its original purpose;
- neither the House nor the Senate referred the bill to committee after its original purpose was changed; and
- the bill was not considered on three days in either house after its original purpose was changed.

They also argued that the State Treasurer cannot legally disburse funds from the State Treasury unless the law is constitutionally passed. They asked the court to declare Act 12 to be unconstitutionally enacted and to enjoin the respondents from enforcing any provisions of the act or making any expenditure under its authority. (See *LLW Notes*, May 1996, pp. 18–19.)

The respondents denied that Act 12 violates the Pennsylvania Constitution or that it is procedurally defective. Moreover, they argued that the petitioners' claims are barred by the doctrine of laches. (See *LLW Notes*, August/September 1996, pp. 16-17.)

Waste Control Specialists, LLC v. U.S. Department of Energy

DOE Files Notice of Appeal in WCS Suit

On November 25, a notice of appeal was filed in a lawsuit initiated by Waste Control Specialists (WCS) against the U.S. Department of Energy and others which challenges DOE's actions concerning WCS' proposal to dispose of the department's radioactive waste at its facility in Andrews County, Texas. In October, the U.S. District Court for the Northern District of Texas had denied the defendants' motion to dismiss the suit and had granted the plaintiff's motion for a preliminary injunction against DOE concerning the award of new contracts. The defendants are now appealing the district court's rulings to the U.S. Court of Appeals for the Fifth Circuit.

Shortly after the notice of appeal was filed, Envirocare of Utah announced that it is withdrawing its earlier motion to intervene in the action. In a December 8 press release, Envirocare President Charles Judd stated, "We are confident that DOE will prevail on the substantive legal issues in the case in the Fifth Circuit, and we see no need for Envirocare of Utah to intervene in this proceeding at this time."

For additional information about the lawsuit and the district court's earlier ruling, see LLW Notes, August/September 1997, pp. 15–17.)

—TDL

Nebraska v. Central Interstate Low-Level Radioactive Waste Commission

Central Compact Moves to Dismiss "Veto" Authority Suit

On October 21, the Central Interstate Low-Level Radioactive Waste Commission filed a motion to dismiss a lawsuit recently initiated by the State of Nebraska in the U.S. District Court for the District of Nebraska. The suit addresses whether or not the state has veto authority over applications to import and export low-level radioactive waste from the region. The commission simultaneously filed a motion to strike the state's demand for a jury trial of the matter.

The court granted the commission's motion to strike the jury demand on November 6. Nebraska appealed that ruling to the presiding district court judge on November 21. To date, the court has not ruled on the commission's motion to dismiss.

Background

During the summer of 1997, Nebraska's compact commission representative—claiming veto power pursuant to Article IV(m)(6) of the compact—voted to deny applications from a number of generators to export low-level radioactive waste for disposal outside the compact region. However, after receiving a legal opinion by outside counsel that Nebraska's negative vote was not a vote on "an agreement for access" to a disposal site outside the compact region and therefore did not constitute a veto, the commission declared the motions passed—on the basis of the affirmative votes by the other four compact states—and granted permission for all of the applicants to export their waste outside the compact region. (See *LLW Notes*, July 1997, p. 6.) Nebraska objected, and an attorney for the Boyd County Local Monitoring Committee wrote a legal opinion challenging that of the commission's legal counsel.

On August 22, the State of Nebraska filed suit in federal district court. The state argues that the commission violated the compact by failing to recognize that Nebraska's affirmative vote was required before the generators' applications could be authorized and by allowing the generators to export their waste despite the negative vote by Nebraska's Commissioner. Moreover, the state contends that "[t]he Commission, by those actions and contrary to Article IV(m)(6) of the Compact, implicitly denied as well that Nebraska's affirmative vote is required for the approval of all future applications for the [import and] export of low-level radioactive waste [to and] from the region." (See *LLW Notes*, August/September 1997, pp. 22-23.)

Motion to Dismiss

The commission argues that Nebraska's suit should be dismissed because the state failed to join "persons to be joined if feasible" pursuant to Federal Rules of Civil Procedure. Specifically, the commission complains that the seven low-level radioactive waste generators who have received export certificates are required to be joined as parties to the action because "each claim[s] an interest relating to the subject of the action and are so situated that the disposition of the action in these parties' absence may, as a practical matter, impair or impede their ability to protect their interests." Moreover, the commission asserts that proceeding with the case in the absence of the seven generators could subject the commission to a substantial risk of incurring inconsistent obligations between any decision by the court and the rights of the generators under their export permits.

The seven generators that the commission argues should be joined are as follows: Wolf Creek Nuclear Operating Corporation of Kansas; Cimarron Corporation of Oklahoma; Entergy Operations, Inc., River Bend Station of Louisiana; Entergy Operations, Inc., Waterford III of Louisiana; Entergy Operations, Inc., Arkansas Nuclear One, of Arkansas; Nebraska Public Power District of Nebraska; and Omaha Public Power District of Nebraska.

Motion to Strike Plaintiff's Jury Trial Demand

The commission argued that the state has no right to a jury trial under the Seventh Amendment to the U.S. Constitution nor under any statute of the United States and that the complaint raises questions of legal interpretation rather than of factual dispute. The court agreed, and issued an order dated November 6 granting the motion to strike the jury demand. The State of Nebraska appealed this order to the presiding district court judge on November 21.

—TDL

Animal Legal Defense Fund, Inc. v. Shalala

Congress Exempts NAS from FACA

On November 6, the U.S. Supreme Court declined to review a decision by the U.S. Court of Appeals for the District of Columbia Circuit that held, in part, that the National Academy of Sciences is subject to the Federal Advisory Committee Act and therefore must provide open public access to its deliberations and documents. Days later, however, the U.S. Congress passed legislation exempting the academy from the act, thereby limiting the impact of the appellate court's decision.

Background

The National Academy of Sciences (NAS) was chartered in 1863 to provide advice to government agencies. It does so on a contract basis by setting up committees of volunteer experts to prepare reports. NAS has traditionally kept all committee records confidential except final reports in order to assure "that the results of the NAS reports are accepted universally as apolitical, unbiased analyses of scientific issues." Final reports are kept confidential until they have gone through peer review.

In 1995, NAS released a report on the proposed low-level radioactive waste disposal facility at Ward Valley, California titled Ward Valley: An Examination of Seven Issues in Earth Sciences and Ecology. (See *LLW Notes Supplement*, June 1995, pp. 8–12.)

Lawsuit

The case stems from a lawsuit initially filed in 1994 by the Animal Legal Defense Fund and others to gain access to NAS meetings and documents relating to revisions to the main federal guide for the care and use of laboratory animals. (See *LLW Notes*, May/June 1997, p. 21.) The plaintiffs contend that they were entitled to such access under the Federal Advisory Committee Act (FACA), which applies to groups "utilized" by the federal government and which generally requires that a federal employee be present at each group meeting and that most group records be made available for public inspection.

NAS, however, argues that Congress never intended for the institution or its decisions to be subject to FACA and that its reports are not committee documents, but rather draft findings that are subjected to rigorous peer review and revision before publication. However, in a 1989 decision concerning FACA, the U.S. Supreme Court cited NAS committees as the "paradigmatic example" of groups "utilized" by the government because it is a "quasi-public organization in the receipt of public funds."

Congressional Action

Two days after the Supreme Court determined not to review the case, a House Committee on Government Reform and Oversight held hearings on the issue and on H.R. 2977—legislation to amend the Federal Advisory Committee Act to clarify public disclosure requirements that are applicable to the National Academy of Sciences and the National Academy of Public Administration. H.R. 2977 specifically excludes committees of full-time or permanent part-time government employees, committees from the National Academy of Sciences, and committees from the National Academy of Public Administration from FACA. However, it requires that such committees adhere to the following openness provisions:

- The names, biographies, and (if relevant) potential conflict of interest information about prospective committee members must be made available for public comment.
- Public notice must be given for all open meetings.
- The public must be allowed to attend data-gathering meetings, and written materials presented to the committees at such meetings must be made available to the public at a reasonable charge.
- The public must be given access to the names of reviewers who critique NAS reports after the final report is submitted.
- Brief summaries of closed meetings and a list of committee members in attendance must be made available to the public, as well as final reports.

H.R. 2977 passed the U.S. House of Representatives by voice vote on November 10. The bill then passed the U.S. Senate without amendment by unanimous consent on November 13.

—TDL

California Department of Health Services v. Babbitt
US Ecology v. U.S. Department of Interior

Judge Sets Schedule for Ward Valley Case

On October 23, a hearing was held in the U.S. District Court for the District of Columbia in related lawsuits initiated by the State of California and US Ecology in an attempt to compel the U.S. Department of Interior to transfer federal land for the planned low-level radioactive waste disposal facility in Ward Valley, California. The hearing was scheduled in order to address a motion to dismiss the action and a motion to transfer the cases to the Northern District of California. Both motions were filed by the defendant.

Two Courts Proceeding in Tandem

At the beginning of the hearing, however, Judge Emmett Sullivan raised an issue of his own: whether the district court should stay the cases pending the outcome of related actions filed by the state and US Ecology in the U.S. Court of Federal Claims. Those actions also involve issues regarding the proposed Ward Valley land transfer, but seek a different form of relief. Specifically, the district court actions seek an order instructing the Department of Interior to immediately issue a patent for the land transfer, whereas the court of claims actions seek financial compensation for the federal government's alleged breach of contract. (See *LLW Notes*, March 1997, pp. 1, 16–20, and *LLW Notes*, April 1997, pp. 18–19.) The filing of actions in two separate courts was necessary because neither court has jurisdiction to issue all of the relief requested.

In response to Judge Sullivan's inquiry, the state and US Ecology argued that although the cases involve similar issues, they are clearly distinguishable. The plaintiffs also noted that there is no way to consolidate the cases given the limited jurisdiction of the courts involved and that neither court is bound by the decision of the other. The federal government declined to respond to the judge's inquiry because it has different attorneys of record for each case and the attorney present was not familiar enough with the court of claims action to give an informed response. Accordingly, Judge Sullivan gave the federal government seven days in which to brief the court on the issue, with the plaintiffs then having seven days to file a responsive brief.

Motion to Transfer Venue

The plaintiffs argued against the motion to transfer venue, asserting that the Northern District of California has no relation to the case whatsoever; that the majority of the documents and persons involved in the litigation are located in Washington, D.C., and that the decision at issue was made in Washington, D.C.; and that the case has national implications and involves the federal government, which is based in Washington, D.C. The defendants, however, argued that cases involving the proposed Ward Valley land transfer—*Committee to Bridge the Gap v. Lujan*, *Desert Tortoise v. Lujan*, and *Natural Resources Defense Council v. Babbitt*—have previously been filed in the U.S. District Court for the Northern District of California and that the subject matter at issue—namely Ward Valley—is located in California.

Judge Sullivan agreed with the plaintiffs, however, and denied the motion to transfer venue. In so doing, Sullivan specifically noted that, although it is true that cases involving Ward Valley were previously filed in the court for the Northern District of California, a stipulation was quickly entered in those cases in March of 1993 suspending all court actions pending review of the land transfer by Interior Secretary Babbitt. (See *LLW Notes*, May 1993, pp. 20–21.) No significant action has been taken in those cases since the entry of the stipulation agreements.

Motion to Dismiss

Instead of making a decision on the defendants' motion to dismiss, Judge Sullivan set out a briefing schedule for the parties to file cross motions for summary judgment and determined to take the motion to dismiss under advisement. The schedule calls for all parties to file motions for summary judgment by February 2, responses by February 23, and reply briefs by March 2. A status conference has been scheduled for January 9, and the judge set aside three dates for oral argument—April 3, 17, or 20—depending upon the court's availability.

Intervenors

The following parties have filed amici briefs on behalf of the plaintiffs:

- American College of Nuclear Physicians,
- Health Physics Society,
- Society of Nuclear Medicine,
- Midwest Interstate Low-Level Radioactive Waste Commission,
- State of North Dakota,
- Northeast Interstate Low-Level Radioactive Waste Commission,
- Northwest Interstate Compact on Low-Level Radioactive Waste Management,
- Southeast Low-Level Radioactive Waste Compact Commission, and
- Southwestern Low-Level Radioactive Waste Commission.

The following parties have filed amici briefs on behalf of the defendants:

- Bay Area Nuclear Waste Coalition,
- California Lieutenant Governor Gray Davis, and
- Committee to Bridge the Gap.

—TDL

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

Court Won't Order DOE to Accept Spent Fuel by Deadline

DOE May Be Liable for Monetary Damages

On November 14, the U.S. Court of Appeals for the District of Columbia Circuit issued an opinion in two related lawsuits concerning DOE's statutory authority and contractual duties to provide for the storage or disposal of high-level radioactive waste pursuant to the Nuclear Waste Policy Act of 1982 (NWPA). In so doing, the court denied the petitioners' request for an order requiring DOE to begin accepting spent nuclear fuel for disposal by the statutory deadline of January 31, 1998, holding instead that "the Standard Contract between DOE and the utilities provides a potentially adequate remedy if DOE fails to fulfill its obligations." However, the court did find that DOE's plans for contractual remedies are inconsistent with the NWPA and an earlier court ruling and therefore issued an order precluding DOE "from advancing any construction of the Standard Contract that would excuse its delinquency on the ground that it has not yet established a permanent repository or interim storage program."

The Parties' Arguments

Petitioners In their court filings, the petitioners had argued that an order directing DOE to begin accepting spent nuclear fuel by the statutory deadline is an appropriate remedy for the department's refusal to comply with the court's earlier ruling and to perform its duties within the timeframe prescribed by Congress. The petitioners took particular note that DOE currently accepts spent nuclear fuel from 41 foreign countries, thereby concluding that the department is not unable but is simply unwilling to meet the 1998 deadline.

Respondents DOE recognized that the NWPA requires that the standard contracts provide for the department to begin accepting spent nuclear fuel by January 31, 1998, but argued that the relief sought by the petitioners is not an appropriate remedy. Instead, the department asserted that the standard contracts specify the available remedies and that, according to the contracts, DOE is not obligated to provide a financial remedy for the delay since it is "unavoidable." DOE did, however, express a willingness "to consider amendments to individual contracts that would mitigate the impacts of the delay particular contract holders will experience in the acceptance of their spent fuel."

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Northern States Power Company v. U.S. Department of Energy
Michigan v. U.S. Department of Energy (continued)

Contractual and Statutory Provisions

The remedies for dealing with delayed performance under the standard contract differ drastically depending on whether a party's delay is deemed to be "avoidable" or "unavoidable." Specifically, a party is not liable for damages caused by its failure to perform in a timely manner if such failure is determined to be unavoidable. If, however, the failure is found to have been avoidable, the charges and schedules in the contract must be equitably adjusted to reflect additional costs incurred by the other party. A delay is classified as unavoidable only if it "arises out of causes beyond the control and without the fault or negligence of the party failing to perform." In contrast, an avoidable delay is caused by "circumstances within the reasonable control" of the delinquent party.

The Court's Decision

Adequacy of the Contractual Remedy The court rejected the petitioners' claim that the contractual remedy is inadequate because DOE's delay will cost them billions of dollars in additional costs that they will not be able to recover because the department is excusing its own default.

> Such costs may in fact ensue if DOE fails to perform on time, but there is no reason to believe that these additional expenses will not be taken into account if the contractual processes operate as Congress intended ... Accordingly, we conclude that petitioners must pursue the remedies provided in the Standard Contract in the event that DOE does not perform its duty to dispose of the SNF [spent nuclear fuel] by January 31, 1998.

Accuracy of DOE's Contractual Interpretation The court found, however, that DOE's current approach toward contractual remedies violates the NWPA and the court's directives in prior litigation. Specifically, DOE concluded that its delay is unavoidable due to the unavailability of a repository or other facility and that the department is therefore not liable for monetary damages. The court issued an order to correct what it termed "the Department's misapprehension of our prior ruling."

> [W]e order DOE to proceed with contractual remedies in a manner consistent with NWPA's command that it undertake an unconditional obligation to begin disposal of the SNF by January 31, 1998. More specifically, we preclude DOE from concluding that its delay is unavoidable on the ground that it has not yet prepared a permanent repository or that it has no authority to provide storage in the interim.
>
> This necessarily means, of course, that DOE not implement any interpretation of the Standard Contract that excuses its failure to perform on the grounds of "acts of Government in either its sovereign or contractual capacity" ... We held in *Indiana Michigan* that the NWPA imposes an unconditional duty on DOE to take the materials by 1998. Congress, in other words, directed DOE to assume an unqualified obligation to take the materials by the statutory deadline. Under the Department's interpretation of the governing contractual provisions, however, the government can always absolve itself from bearing the costs of its delay if the delay is caused by the government's own acts. This cannot be a valid interpretation, as it would allow the Executive Branch to void an unequivocal obligation imposed by Congress. DOE has no authority to adopt a contract that violates the directives of Congress, just as it cannot implement interpretations of the contract that contravene this court's prior ruling. We hold that this provision in the Standard Contract, insofar as it is applied to DOE's failure to perform by 1998, is inconsistent with DOE's statutory obligation to assume an unconditional duty.

The court concluded by stating that it will retain jurisdiction over this case pending compliance with its order.

—TDL

Background: *Northern States Power Company v. U.S. Department of Energy and Michigan v. U.S. Department of Energy*

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

Original Litigation In June 1995, several nuclear utilities, states, and state agencies filed a lawsuit against DOE—*Indiana Michigan Power Company v. U.S. Department of Energy*—seeking a court declaration that DOE is required to begin accepting spent fuel from utilities on or before January 31, 1998. DOE took the position that, given the absence of a repository or interim storage facility, the department was not statutorily or contractually obligated to accept the spent fuel. The U.S. Court of Appeals for the District of Columbia Circuit, however, disagreed. On July 23, 1996, a three-judge panel of the court ruled that DOE has a statutory obligation to take spent fuel from the nation's 109 commercial reactors no later than January 31, 1998. (See *LLW Notes*, October/November 1996, p. 26.)

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

Petitions for Review On January 31, 1997, a group of nuclear utilities and a national coalition of states and Attorneys General filed with the appellate court two separate but similar petitions for review requesting, among other things, that

- the court issue a declaration that the petitioners and other standard contract signatories are relieved of their obligation to pay fees into the Nuclear Waste Fund and are authorized to place such fees in escrow—without penalty—unless and until DOE commences disposing of their spent fuel; and
- the court grant declaratory, injunctive, and other affirmative relief to enforce the court's decision in *Indiana Michigan* that DOE has an unconditional obligation to begin accepting spent nuclear fuel by January 31, 1998.

Parties For a complete listing of all parties involved in the litigation, see *LLW Notes*, April 1997, p. 27.

Court Calendar

Case Name	Description	Court	Date	Action
Animal Legal Defense Fund, Inc. v. Shalala (See *LLW Notes*, May/June 1997, p. 21.)	Involves the right of public access to National Academy of Sciences' (NAS) deliberations and documents.	United States Court of Appeals for the District of Columbia	November 6, 1997 November 10, 1997 November 13, 1997	U.S. Supreme Court denied certiorari (i.e., declined to review the case). U.S. House of Representatives passed H.R. 2977—a bill amending federal law to clarify public disclosure requirements. U.S. Senate passed H.R. 2977.
Atlantic Coast Demolition Recycling, Inc. v. State of New Jersey	Involves the appeal of a landmark appellate court decision in a case challenging as unconstitutional the regulations governing where all solid waste originating in New Jersey must be processed and disposed.	United States Supreme Court	May 1, 1997	U.S. Court of Appeals for the Third Circuit in Philadelphia held that the system regulating the disposal of New Jersey solid waste unconstitutionally discriminates against out-of-state businesses.
California Department of Health Services v. Babbitt and *US Ecology v. U.S. Department of the Interior* (See *LLW Notes*, March 1997, pp. 1, 16-20.)	Seeks to compel the U.S. Interior Department to transfer federal land at Ward Valley, California, to the state for use in siting a low-level radioactive waste disposal facility and to issue the patent approved by DOI four years ago.	United States District Court for the District of Columbia	October 23, 1997 February 2, 1998 February 23, 1998 March 2, 1998 April 1998	Court denied federal government's motion to transfer venue to the Northern District of California. Cross-motions for summary judgment are due. Responses to cross-motions are due. Reply briefs are due. Oral argument is scheduled.

Case Name	Description	Court	Date	Action
Michigan v. U.S. Department of Energy and *Northern States Power Company v. U.S. Department of Energy* (See *LLW Notes*, July 1997, p. 23.)	Involves the U.S. Department of Energy's contractual duties to provide for the storage or disposal of high-level radioactive waste pursuant to the Nuclear Waste Policy Act of 1982.	United States Court of Appeals for the District of Columbia Circuit	November 14, 1997	Court denied petitioners' request for an order requiring DOE to begin accepting spent nuclear fuel by January 31, 1998, but issued an order precluding DOE from concluding that the delay is "unavoidable" due to the lack of a permanent or temporary repository.
Nebraska v. Central Interstate Low-Level Radioactive Waste Commission (See *LLW Notes*, August/September 1997, pp. 22-23.)	Involves whether or not the state has veto authority over applications to import and export low-level radioactive waste from the region.	United States District Court for the District of Nebraska	October 21, 1997 November 6, 1997 November 21, 1997	Commission filed a motion to dismiss the lawsuit and a motion to strike the state's demand for a jury trial of the matter. District court granted the commission's motion to strike the jury demand. State of Nebraska appealed the November 6 ruling re jury demand to the presiding U.S. district court judge.

Case Name	Description	Court	Date	Action
Stilp v. Hafer (See *LLW Notes*, October 1996, p. 25.)	Challenges the legislative procedures used in Pennsylvania to pass Act 12 of 1988, known as the Low-Level Radioactive Waste Disposal Regional Facility Act.	Commonwealth Court of Pennsylvania	November 7, 1997 November 21, 1997 November 26, 1997 December 2, 1997	Commonwealth court granted summary judgment for the respondents. Deadline for filing motion for reconsideration with the Commonwealth Court. Petitioners filed a motion for reconsideration. Commonwealth Court denied petitioners' motion for reconsideration.
Waste Control Specialists, LLC v. U.S. Department of Energy (See *LLW Notes*, August/September 1997, pp. 15-17.)	Alleges that senior DOE officials have not carefully or reasonably considered a WCS proposal to dispose of DOE radioactive waste at the company's Andrews County site.	United States District Court for the Northern District of Texas	November 25, 1997 December 5, 1997	Defendants filed a notice of appeal to the U.S. Court of Appeals for the Fifth Circuit. Envirocare of Utah withdrew its earlier motion to intervene in the action.
Waste Control Specialists, LLC v. Envirocare of Texas (See *LLW Notes*, July 1997, pp. 20-22.)	Challenges the actions of Envirocare of Texas and others as constituting antitrust violations, libel, slander, and business disparagement.	District Court of Andrews County, Texas	October 24, 1997	District court denied Envirocare's motion to transfer venue to Travis County, Texas.

Nuclear Regulatory Commission

NRC Chairman Expresses Concern re CERCLA Reauthorization

The following is excerpted from an October 20 speech by NRC Chairman Shirley Ann Jackson to the Annual Meeting of the Organization of Agreement States. The emphasis is contained in the original speech. For further information, see "New Materials and Publications."

The first such issue is the Congressional action currently under way to reauthorize the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). CERCLA reauthorization is of great importance to the Commission because of its potential applicability to the cleanup of residual radioactivity resulting from material under NRC jurisdiction. The Commission is concerned with the CERCLA reauthorization because it may make statutory-specific residual risk standards applicable to the cleanup of radioactive material, without designating an NRC role in selecting or applying those cleanup standards. Given the NRC expertise in regulating commercial uses of radioactive material, the Commission believes that such an omission would be inappropriate. More importantly, statutory standards may differ from the cleanup standards that were properly established in NRC rulemaking and require different cleanup actions than what the NRC and the Agreement States find to be necessary.

The Commission has submitted draft legislative language that would resolve many of these concerns. In brief, the Commission has requested that any CERCLA reauthorization would provide that any remedial or cleanup action, when applied to source, byproduct, or special nuclear material falling under NRC or Agreement State jurisdiction, will be considered protective of public health and safety, and the environment if it complies with applicable NRC or Agreement State regulations. That is, a remedial action that complies with Commission or Agreement State regulations would automatically satisfy CERCLA requirements for remediation and control.

If the ability of an Agreement State to require cleanup of sites containing radioactive material is made subject to a determination by EPA, this ... could raise questions regarding the continuing viability of the Agreement State Program and the authority of Agreement States over Atomic Energy Act material and sites under their jurisdiction.

The Commission is fully aware that the reauthorization of CERCLA could have a significant impact on the NRC Agreement State program. If the ability of an Agreement State to require cleanup of sites containing radioactive material is made subject to a determination by EPA, this has the potential for creating duplicative requirements and findings and significant coordination problems between the NRC and the EPA, and could raise questions regarding the continuing viability of the Agreement State Program and the authority of Agreement States over Atomic Energy Act material and sites under their jurisdiction. The Commission intends to continue pursuing this issue with the Congress.

—LAS

Environmental Protection Agency

Senators Question EPA's Guidance on Remediation

In a September 9 letter to Office of Management and Budget (OMB) Director Franklin Raines, three Senators requested OMB clarification of the status of EPA's guidance. The letter was signed by Senator Frank Murkowski (R-AK), Chair of the Senate Committee on Energy and Natural Resources; Senator Pete Domenici (R-NM), Chair of the Subcommittee on Energy and Water Development of the Senate Committee on Appropriations; and Senator Don Nickles (R-OK), Chair of the Subcommittee on Energy Research, Development, Production and Regulation of the Senate Committee on Energy and Natural Resources. The Senators' letter states:

> Earlier this year, the Office of Management and Budget reviewed a proposed regulation prepared by [EPA] that would have set standards for permissible residual radiation levels for the remediation of radioactively contaminated sites. [See *LLW Notes*, Feb. 1997, pp. 26-27.] That regulation was never promulgated, largely on the grounds that the standards proposed by EPA would compel costs exceeding any benefit that the enhanced standards would achieve ...
>
> In what appears to be a substitute for the formal rulemaking, EPA has recently issued guidance for its Superfund Program indicating that standards such as that promulgated by NRC may not be sufficient for use at remediation sites, and more stringent Preliminary Remediation Goals should be used ... As you can imagine, this guidance could significantly increase cleanup costs at sites managed by [DOE], and may profoundly affect budget requirements for the Federal government and, ultimately, the taxpayer ...
>
> Please confirm OMB's understanding of the status of EPA's actions and the standing of this rule. We would also be interested in your thoughts about EPA's efforts to effectively promulgate a rule through "guidance" after having failed to promulgate it in the normal fashion.

—LAS

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

EPA Issues Guidance, Criticizes NRC Decommissioning Rule

On August 22, EPA issued clarifying guidance for establishing cleanup levels for radioactive contamination at sites being remediated under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). Remedial actions at CERCLA sites, including sites contaminated with radioactive materials, must comply with federal standards—Applicable or Relevant and Appropriate Requirements (ARARs)—unless a waiver is obtained. Under CERCLA, when cleanup standards for specific contaminants are not available, or if EPA determines that the existing standards are not sufficiently protective, EPA is authorized to set site-specific standards.

The August 22 guidance was issued jointly by Stephen Luftig, Director of EPA's Office of Emergency and Remedial Response, and Larry Weinstock, Acting Director of EPA's Office of Radiation and Indoor Air. The guidance notes that NRC's recently issued decomissioning rule—*Radiological Criteria for License Termination*—is a potential new ARAR for sites being remediated under CERCLA. (See *LLW Notes*, May/June 1997, pp. 27-29.) However, the guidance recommends that the NRC rule not be used for establishing cleanup levels at sites being remediated under CERCLA and states:

> We expect that NRC's implementation of the rule for License Termination (decommissioning rule) will result in cleanups within the Superfund risk range at the vast majority of NRC sites. However, EPA has determined that the dose limits established in this rule as promulgated generally will not provide a protective basis for establishing preliminary remediation goals (PRGs) under CERCLA ... Accordingly, while the NRC rule standard must be met (or waived) at sites where it is applicable or relevant and appropriate, cleanups at these sites will typically have to be more stringent than required by the NRC dose limits in order to meet the CERCLA and the [National Oil and Hazardous Substances Pollution Contingency Plan] requirement to be protective."

—LAS

Implementation of EPA Guidance: Excerpts from August 22 Guidance

Applicability of Guidance

This document provides guidance to EPA staff. It also provides guidance to the public and to the regulated community on how EPA intends that the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) be implemented. The guidance is designed to describe EPA's national policy on these issues. The document does not, however, substitute for EPA's statutes or regulations, nor is it a regulation itself. Thus, it cannot impose legally-binding requirements on EPA, States, or the regulated community, and may not apply to a particular situation based upon the circumstances. EPA may change this guidance in the future, as appropriate.

Overall Exposure Limit

Cleanup should generally achieve a level of risk within the 10-4 to 10-6 carcinogenic risk range based on the reasonable maximum exposure for an individual ... Cancer risks for radionuclides should generally be estimated using the slope factor approach identified in this methodology ... It is important for the purposes of clarity that a consistent set of existing risk-based units ... for cleanups generally be used ... Cancer risk from both radiological and non-radiological contaminants should be summed to provide risk estimates for persons exposed to both types of carcinogenic contaminants ... If a dose assessment is conducted at the site, then 15 millirems per year (mrem/yr) effective dose equivalent (EDE) should generally be the maximum dose limit for humans.

Background Contamination

Background radiation levels will generally be determined as background levels are determined for other contaminants, on a site-specific basis ... Background is generally measured only for those radionuclides that are contaminants of concern and is compared on a contaminant specific basis to cleanup level ... In certain situations, background levels of a site-related contaminant may equal or exceed [preliminary remediation goals] established for the site. In these situations, background and site-related levels of radiation will be addressed as they are for other contaminants at CERCLA sites.

Land Use and Institutional Controls

Land uses that will be available following completion of a response action are determined as part of the remedy selection process considering the reasonably anticipated land use or uses along with other factors. Institutional controls ... generally should be included as a component of cleanup alternatives that would require restricted land use in order to ensure the response will be protective over time.

Future Changes in Land Use

Where waste is left on-site at levels that would require limited use and restricted exposure to ensure protectiveness, EPA will conduct reviews at least once every five years to monitor the site for any changes, including changes in land use. Such reviews should analyze the implementation and effectiveness of any [institutional controls] with the same degree of care as other parts of the remedy. Should land use change in spite of land use restrictions, it will be necessary to evaluate the implications of that change for the selected remedy, and whether the remedy remains protective ...

Ground Water Levels

[R]esponse actions for contaminated ground water at radiation sites must attain (or waive as appropriate) the Maximum Contaminant Levels (MCLs) or non-zero Maximum Contaminant Level Goals (MCLGs) established under the Safe Drinking Water Act, where the MCLs or MCLGs are relevant and appropriate for the site ... The ARARs should generally be attained throughout the plume (i.e., in the aquifer).

(For further information regarding EPA's requirements under the Safe Drinking Water Act, see *LLW Notes*, May/June 1997, p. 28.)

Modeling Assessment of Future Exposures

Risk levels, ground water cleanup, and dose limits should be predicted using appropriate models to examine the estimated future threats posed by residual radioactive material following the completion of the response action ...

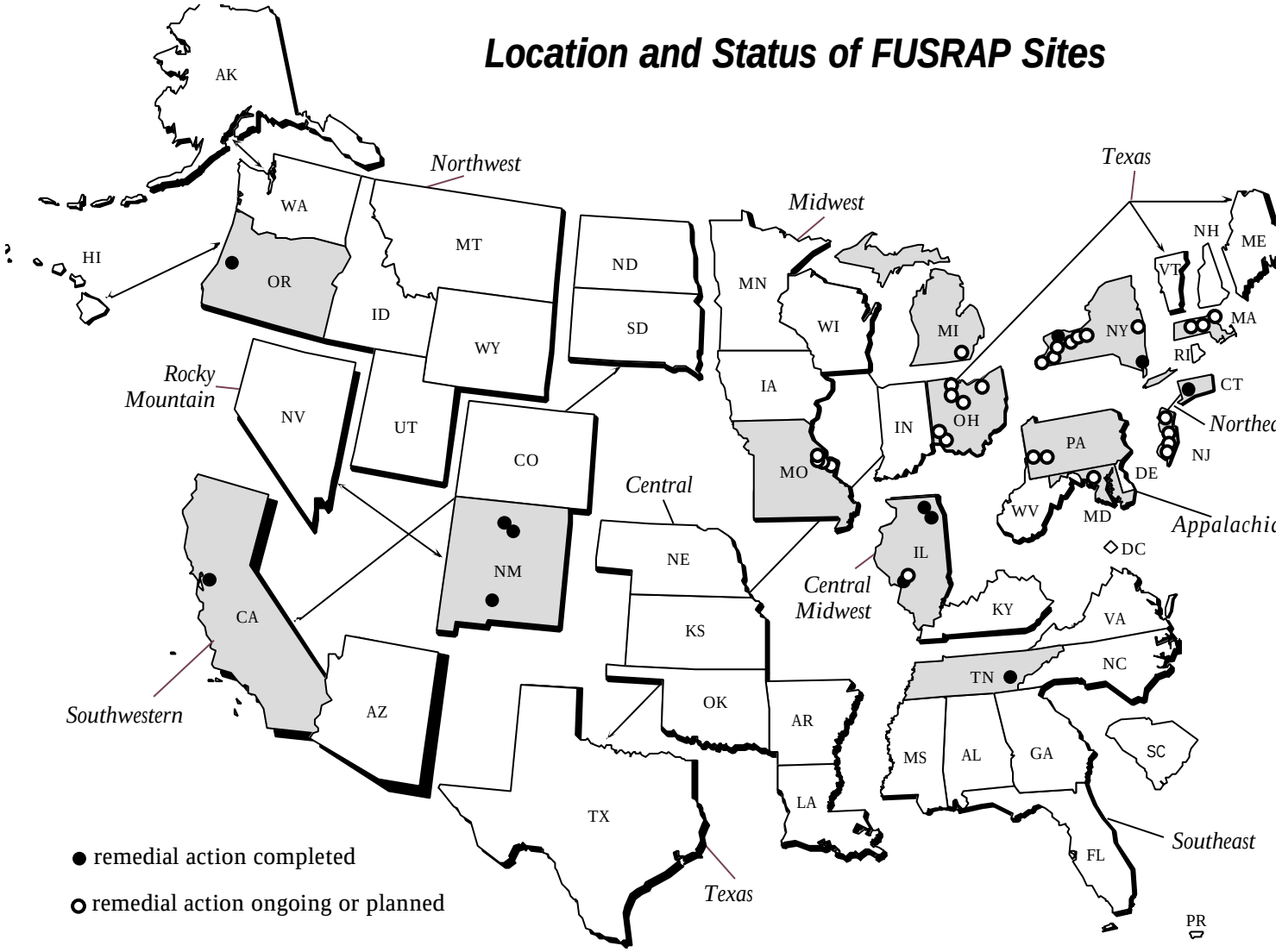
For further information, see "New Materials and Publications."

U.S. Army Corps of Engineers

Members of Congress Clarify FUSRAP Transfer

In a November 6 letter to Energy Secretary Federico Peña and Defense Secretary William Cohen, Senator Pete Domenici and Representative Joseph McDade clarify the intent of the House and Senate Appropriations Committees in transferring the Formerly Utilized Sites Remedial Action Program (FUSRAP) from DOE to the Army Corps of Engineers. (See *LLW Notes*, Aug./Sept. 1997, p. 29.) Senator Domenici is the Chair of the Senate Appropriations Committee, and Representative McDade is the Chair of the House Appropriations Committee.

FUSRAP was established in 1974 to provide for the cleanup of forty-six sites in fourteen states. These sites were contaminated with low levels of radioactive materials resulting from early nuclear weapons production activities under the Manhattan Project. Twenty-five FUSRAP sites to date have been remediated.



The November 6 letter states:

> There have been indications that some misunderstanding may exist as to the basic underlying authorities for the program with [DOE]. Transfer of the FUSRAP program to the U.S. Army Corps of Engineers makes management, oversight, programming and budgeting, technical investigations, designs, administration and other such activities directly associated with the execution of remediation work at the currently-eligible sites a responsibility of the Corps of Engineers. It should be emphasized that basic underlying authorities for the program remain unaltered and the responsibility of the DOE.
>
> Further, our legislative intent is not to effect a transfer of accountability for Government real property interests under the administrative control of the DOE to the Corps. We envision that DOE will exercise its authorities to acquire such additional real property interests as may be required by the Corps to implement the program and dispose of or manage such property as may be appropriate after remediation work is completed. The Committees also expect DOE to maintain final responsibility for determining eligibility of potential new FUSRAP sites after consultation with the Corps, and for the agencies to jointly develop mutually-acceptable procedures for including such sites in future FUSRAP program requirements ...
>
> The Committees further expect that a Memorandum of Understanding (MOU) will be entered into between DOE and the Corps to define the relationships necessary for underlying program execution and to describe specific roles and responsibilities in carrying out the intent of the Committees.

—LAS

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

Pennsylvania Forum Participant Dornsife Joins WCS

On December 3, Waste Control Specialists (WCS) announced that William Dornsife, former Forum Participant from Pennsylvania, has accepted an offer to oversee the company's waste management operations in Andrews County, Texas, including the proposed low-level and mixed radioactive waste disposal facility. Beginning December 22, Dornsife will join WCS as Vice President for Nuclear Affairs.

For the past 22 years, Dornsife has worked for the Commonwealth of Pennsylvania, most recently serving as Special Assistant to the Deputy Secretary in the Office of Air, Recycling and Radiation Protection. Prior to accepting that position, Dornsife was Director of Pennsylvania's Bureau of Radiation Protection, a position he held for over five years.

Dornsife is a graduate of the U.S. Naval Academy and served in the nuclear navy. He also holds a master's degree in nuclear engineering from Ohio State University. In 1976, he joined the Pennsylvania Bureau of Radiation Protection, and he was appointed Chief of the Nuclear Safety Division in 1979.

WCS President Ken Bigham noted that the company is "extremely pleased to hire an individual of Bill Dornsife's caliber and integrity."

–RTG

U.S. House of Representatives

HLW Legislation Passes House by Wide Margin

Bill Heads to Conference

On October 30, the U.S. House of Representatives passed H.R. 1270—the Nuclear Waste Policy Act of 1997—by a vote of 307 to 120 following rigorous debate. The highly contested bill has been a focus of attention for much of this legislative session. It calls for the construction of a temporary storage facility for high-level radioactive waste and spent nuclear fuel at Yucca Mountain, Nevada. The Nevada delegation opposes the bill, and the President has vowed to veto it, arguing that it would designate Yucca Mountain as the nation's nuclear waste disposal site without a thorough review and would divert resources from the permanent repository now under study.

The bill calls for the interim facility to be operational beginning January 31, 2002, with an initial capacity of 10,000 tons of waste, to which an additional 40,000 tons of capacity would be added later. Under the legislation, the radiation release standard for the facility is set at 100 millirems unless NRC determines this standard to be not protective of human health and safety, in which case EPA is allowed a consultative role.

Some transportation and emergency response amendments to the bill were accepted prior to its passage.

Background

H.R. 1270 was introduced in response to the federal government's refusal to take spent fuel from commercial nuclear power plants beginning in 1998, as provided for in the Nuclear Waste Policy Act of 1982 and in "standard contracts" entered into between the U.S. Department of Energy and the nuclear utilities. The legislation has 166 House cosponsors and has been amended several times in committee and on the floor. Hearings on the bill were held by both the Commerce Committee and the Committee on Resources. Similar legislation was introduced during the 104th Congress, but failed to pass the Senate by the two-thirds majority needed to override a threatened presidential veto, and it never received a vote in the House.

Companion Legislation

Similar legislation, S. 104, passed the full Senate on April 15 by a vote of 65 to 34. Although the bill was amended several times prior to its passage, the final tally was two votes shy of a veto-proof margin—but two votes higher than last year's total on similar legislation. (See *LLW Notes*, April 1997, pp. 30–31.)

Next Step

A conference committee will now be appointed to reconcile the House and Senate versions of the bill. Once completed, a conference report will be submitted to both chambers of Congress for final passage. If approved, the President will then have 10 days (not including Sundays) in which to sign or veto the legislation.

Related Issue

In July 1996, the U.S. Court of Appeals for the District of Columbia Circuit held, in a suit filed by nuclear utilities, that DOE has a statutory obligation to begin taking spent fuel by 1998 even though a permanent disposal facility will not yet be available. Following this decision, a group of nuclear utilities and a national coalition of states and Attorneys General filed two additional suits seeking, among other things, to enforce the district court's order. In November 1997, the court declined the petitioners' request that it order DOE to begin accepting spent fuel by the statutory deadline, but issued an order precluding DOE "from advancing any construction of the Standard Contract that would excuse its delinquency on the ground that it has not yet established a permanent repository or interim storage program." (See related story, this issue.)

—TDL

Takings Legislation Passes House

On October 22, 1997, H.R. 1534—the Private Property Rights Bill—passed the House by a vote of 248 to 178. The legislation represents an attempt to, among other things, "simplify and expedite access to the Federal courts for injured parties whose rights and privileges, secured by the United States Constitution, have been deprived by final actions of Federal agencies, or other government officials or entities acting under color of State law." The bill was received by the Senate on October 23 and has been referred to the Judiciary Committee. As of press time, no further action has been taken on the legislation.

H.R. 1534 may be of interest to Forum Participants due to its potential impact on cases involving claims of the "taking" of private property without just compensation. However, it should be noted that, in its current form, the bill applies only to cases involving "final actions" and would therefore most likely not apply to activities such as screening and preliminary site selection activities.

—TDL

Energy and Water Bill Signed Into Law

On October 13, President Clinton signed the FY '98 Energy and Water Development Appropriations Bill into law. The final $20.7-billion measure (compared with the administration's $23-billion request) contains approval of $4 billion for the Army Corps of Engineers and $15.9 billion for the Energy Department in FY '98. DOE was budgeted $15.7 billion in FY '97.

Under the terms of the final bill, the Formerly Utilized Site Remedial Action Program (FUSRAP) will be transferred from DOE to the Army Corps of Engineers. Approximately $140 million has been provided for the program, which is almost two times the funding level approved for FY '97. (See related story, this issue.)

—TDL

Senate Confirms 5 of 6 DOE Appointees

On October 28, the Senate confirmed five out of six appointees recently nominated to DOE positions by President Clinton, including:

- Ernest Moniz as DOE Under Secretary;
- Dan Reicher as DOE Assistant Secretary for Energy Efficiency and Renewable Energy;
- Michael Telson as the chief financial officer for DOE;
- Robert Gee as DOE Assistant Secretary, Policy and International Affairs; and
- John Angrell as DOE Assistant Secretary, Congressional and Intergovernmental Affairs.

(See *LLW Notes*, August/September 1997, p. 29.)

The sixth nomination, that of Mary Anne Sullivan as General Counsel, the chief legal officer for DOE, had not been acted upon by the full Senate as of press time.

—TDL

New Materials and Publications

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

States and Compacts

Central Compact/Nebraska

Governor E. Benjamin Nelson's Low-Level Radioactive Waste Summit. August 28, 1997. Videotape of Nebraska Governor Nelson's one-day summit aimed at exploring alternatives to the current low-level radioactive waste management system. For further information, contact Steve Moeller or Rick Becker of the Governor's Policy Research Office at (402)471-2414.

Draft Environmental Impact Analysis and Draft Safety Evaluation Report of the Central Interstate Compact Proposed Low-Level Radioactive Waste Disposal Facility License Application. State of Nebraska Low-Level Radioactive Waste Program. October 1997. CD-ROM containing the state's technical analysis of the license application submitted by US Ecology, Inc. to construct, operate and close a disposal facility in Boyd County, Nebraska. To obtain an order form for a free copy of the CD-ROM, contact Carla Felix of the Nebraska Department of Environmental Quality at (402)471-3380.

Central Midwest Compact/Illinois

Statewide Screening Activities for Illinois' Low-Level Radioactive Waste (LLRW) Disposal Facility. Illinois Department of Natural Resources. September 1997. Final report on statewide screening activities to the Illinois LLRW Task Group and the Director of the Illinois Department of Nuclear Safety. To obtain a copy, contact Mike Klebe of the Illinois Department of Nuclear Safety at (217)785-9986.

Midwest Compact

Midwest Interstate Low-Level Radioactive Waste Compact Commission Annual Report. August 1997. Midwest Compact Commission. Reviews the Midwest Compact's decision to halt the development of a regional disposal facility in the State of Ohio along with a look at other activities and actions within the Midwest Compact. To obtain a copy of this report, contact Sandra Schmidt of the Midwest Compact Commission at (612)293-0126.

Northwest Compact/Washington

[PA] *Envirocare Re-licensing Process: Briefing for the Low Level Waste Forum*. Hard copies of slides presented by Bill Sinclair, Utah Division of Radiation Control at the LLW Forum meeting in Annapolis, Maryland, October 21, 1997. (Distributed at the LLW Forum meeting, October 1997.)

Southwestern Compact/California

[D] Letter from Dana Mount, Chairman, Southwestern Low-Level Radioactive Waste Commission to Federico Peña, Secretary, DOE, seeking access to the Hanford Reservation and the Nevada Test Site as interim disposal facilities for the compact's low-level radioactive waste. October 23, 1997.

Federal Agencies

Department of Energy (DOE)

[PA] *Update: Department of Energy's Mixed and Low-Level Waste Program*. October 21, 1997. Presented by Mark Frei, Acting Deputy Assistant Secretary for Waste Management, DOE, at the LLW Forum meeting in Annapolis, Maryland, October 1997. (Distributed at the LLW Forum meeting, October 1997.)

[PA] *MLLW/LLW Treatment and Disposal Decision Plan*. Hard copies of slides presented by Mark Frei, Acting Deputy Assistant Secretary for Waste Management, DOE, at the LLW Forum meeting in Annapolis, Maryland, October 1997. (Distributed at the LLW Forum meeting, October 1997.)

PA *Waste Management Progress Report.* (DOE/EM-0329.) Office of Waste Management, DOE. June 1997. Report on DOE's waste management program, including information pertaining to accomplishments at the waste management offices around the nation. (Distributed at the LLW Forum meeting, October 1997.)

Comparative Approaches to Characterizing Low-Level Radioactive Waste Disposal Sites. (DOE/LLW-199B.) National Low-Level Waste Management Program, DOE, Idaho National Engineering and Environmental Laboratory (INEEL). October, 1997. Provides information on the process used to characterize potential LLRW disposal sites in the following seven states, CA, IL, ME, NE, NC, TX and VT.

Environmental Protection Agency (EPA)

EPA Mixed Waste Disposal. October 20, 1997. Report presented by Rajani Joglekar, EPA Office of Solid Waste, at the Regulatory Issues Meeting of the LLW Forum meeting in Annapolis, MD, October 1997. For further information, contact Rajani Joglekar at (703)308-8762.

Update on Mixed Waste. Hard copies of slides presented by Nancy Hunt, EPA Office of Solid Waste, at the LLW Forum meeting in Annapolis, Maryland on October 1997. For further information, contact Nancy Hunt at (703)308-8762.

Establishment of Cleanup Levels for CERCLA Sites with Radioactive Contamination. (OSWER No. 9200.4-18.) Office of Emergency and Remedial Response and Office of Radiation and Indoor Air. August 22, 1997. Policies to establish protective cleanup levels at CERCLA sites. (See related story, this issue.)

Nuclear Regulatory Commission (NRC)

NRC Strategic Direction and Issues Affecting Agreement States. (No. S-97-19.) October 16, 1997. Speech by Shirley Ann Jackson, Chairman, NRC, to the Annual Meeting of the Organization of Agreement States and the NRC. (See related story.)

Convention on the Safety of Spent Fuel Management and the Safety of Radioactive Waste Management. Presentation made by Michael Bell, Acting Chief, Performance Assessment and HLW Integration Branch, Office of Nuclear Material Safety and Safeguards, NRC, at the LLW Forum meeting in Annapolis, Maryland on October 20, 1997.

Briefing on Comments Raised During Public Comment on the BTP for LLW Performance Assessment. Hard copies of slides presented by Michael Bell, Acting Chief, Performance Assessment and HLW Integration Branch, Office of Nuclear Material Safety and Safeguards, NRC, at the LLW Forum meeting in Annapolis, Maryland on October 20, 1997.

Field Lysimeter Investigations: Low-Level Waste Data Base Development Program for Fiscal Year 1996 Annual Report. (NUREG/CR-5229, Vol. 9.) Division of Regulatory Applications, Office of Nuclear Regulatory Research, NRC. August 1997.

U.S. Congress

Letter from Senator Pete Domenici (R-NM) and Representative Joseph McDade (R-PA) to Federico Peña, Secretary, Department of Energy and William Cohen, Secretary, Department of Defense, regarding the intent of the House and Senate Appropriations Committees with respect to the Formerly Utilized Sites Remedial Action Program (FUSRAP). November 6, 1997.

Other

PAEL *NGA Issue Brief: Federal Interpretations of Environmental Justice Claims Threaten State Programs.* Examines federal interpretations of Title VI and the potentially significant effects on state environmental permitting programs. For further information, contact Debbie Spiliotopoulos of NGA at (202)624-7895.

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Other (continued)

Epidemiologic Study to Determine Possible Adverse Effects to Rocketdyne/Atomics International Workers from Exposure to Ionizing Radiation. UCLA School of Public Health. June 1997. Focuses on the possible effects of exposures to two types of ionizing radiation among Rocketdyne/AI workers. To obtain a copy of this study, call (800)970-6680.

Santa Susana Field Laboratory Epidemiological Study: Report of the Oversight Panel. September 1997. Report that claims to have found that workers at Santa Susana Field Laboratory have experienced excess deaths due to work-related exposure to radiation. To obtain a copy of this report, contact the Oversight Panel at (310)478-0829.

Letter from Senators Frank Murkowski (R-AK), Pete Domenici (R-NM) and Don Nickles (R-OK) to Franklin Raines, Director, Office of Management and Budget, asking for a review of EPA's actions to promulgate a rule on radiological criteria for Superfund sites. September 9, 1997.

Department of Interior (DOI)

Bureau of Land Management's Environmental Assessment on Ward Valley Drilling. The Bureau of Land Management released for review and comment an environmental assessment analyzing the potential impacts of proposed Federal and/or State scientific drilling tests at Ward Valley. For further information, contact BLM at (909)697-5215 or visit http://www.ca.blm.gov.

Letter from Carl Lischeske, Supervising Engineer, Low-Level Radioactive Waste Program, California Department of Health Services to Molly Brady, Field Manager, Bureau of Land Management, regarding DHS's attached staff comments to BLM's draft environmental assessment for the proposed infiltration studies at Ward Valley. November 26, 1997.

Letter from Carl Paperiello, Director, Office of Nuclear Material Safety and Safeguards, NRC to the Needles, CA Field Office, Bureau of Land Management, regarding NRC's attached staff comments to BLM's draft environmental assessment for the proposed infiltration studies at Ward Valley. November 25, 1997.

To obtain copies of public comments on the draft environmental assessment, contact the California office of the Bureau of Land Management at (909)697-5200.

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

- EPA Listserve Network • Contact Terri Dickson at (202)260-9581 or e-mail (leave subject blank and type help in body of message) . . . . . .listserver@unixmail.rtpnc.epa.gov

- U.S. Government Printing Office (GPO) (for the *Congressional Record*, *Federal Register*, congressional bills and other documents and access to more than70 government databases) . . . . . .http://www.gpo.gov/su_docs/

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

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

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

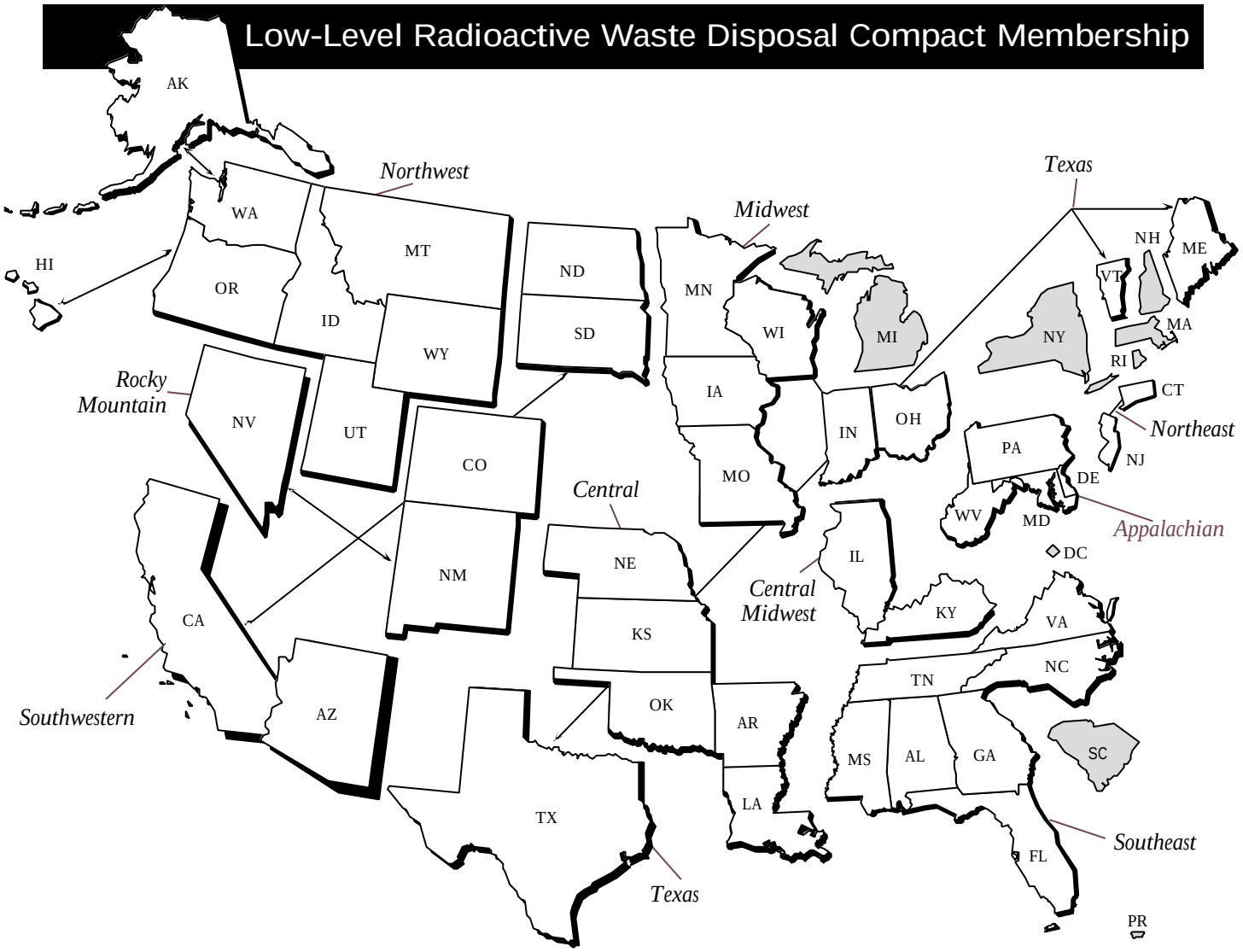
Receiving *LLW Notes* **by Mail**

LLW Notes and the *Summary Report: Low-Level Radioactive Waste Management Activities in the States and Compacts* are distributed to state, compact, and federal officials designated by LLW Forum Participants or Federal Liaisons.

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

To be placed on a list to receive LLW Notes and the Summary Report by mail, please contact Donna Lake, Senior Administrative Specialist, INEEL at (208)526-0234. As of March 1996, back issues of both publications are available from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161, (703)487-8547.

Low-Level Radioactive Waste Disposal Compact Membership



Appalachian Compact
Delaware
Maryland
Pennsylvania *
West Virginia

Central Compact
Arkansas
Kansas
Louisiana
Nebraska *
Oklahoma

Central Midwest Compact
Illinois *
Kentucky

Midwest Compact
Indiana
Iowa
Minnesota
Missouri
Ohio
Wisconsin

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

Rocky Mountain Compact
Colorado
Nevada
New Mexico

Northwest accepts Rocky Mountain waste as agreed between compacts.

Northeast Compact
Connecticut *
New Jersey *

Southeast Compact
Alabama
Florida
Georgia
Mississippi
North Carolina *
Tennessee
Virginia

Southwestern Compact
Arizona
California *
North Dakota
South Dakota

Texas Compact
Maine
Texas *
Vermont

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

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

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

Graphic by Afton Associates, Inc. for the LLW Forum. July 1997.