LLW notes

Volume 17, Number 4 July/August 2002

Gallivan v. Walker

Utah State Supreme Court Orders Waste Tax Initiative Put on November Ballot

On August 26, the Utah Supreme Court issued a landmark ruling declaring part of the state's citizen-initiative law unconstitutional and ordering that a ballot initiative that seeks, among other things, to impose substantial taxes on the disposal of out-of-state low-level radioactive waste and to prohibit the disposal of Class B and C radioactive waste within the state (the Radioactive Waste Restrictions Act) be placed on the November ballot.

The court's 3 to 2 decision was based largely on the disparate impact of the citizen's initiative law on votes cast by urban versus rural voters. It cited U.S. Supreme Court decisions from the civil rights era and from a recent presidential case in interpreting the one-person, one-vote principle. In explaining the decision, the justices wrote, "Because the people's right to directly legislate through initiative and referenda is sacrosanct and a fundamental right, Utah courts must defend it against encroachment and maintain it inviolate."

A copy of the court's decision can be obtained on-line at

http://courtlink.utcourts.gov/opinions/supopin/galliv~1.htm.

The Case

The Utah Supreme Court agreed to hear the waste tax initiative case on July 29 by a vote of 4 to 1. The lawsuit, which was brought by proponents of the initiative after the state determined not to put it on the November ballot, sought to overturn portions of a state law that require citizen support in 20 of Utah's 29 counties as unconstitutional because it gives rural counties a greater say than urban counties as to whether an issue can get on the ballot. As part of the requested relief, the petitioners asked that the court specifically order the state's Lieutenant Governor to place the radioactive waste initiative on the November ballot.

(Continued on page 9)

In This Issue

Monies Begin to be Collected Under Iowa Transportation Fee - page 4

Maine Legislation to Withdraw from Texas Compact Signed by Governor - page 7

Central Commission Proposes Novel "Equity Remedy" in Post-Trial Brief - page 14

LLW Forum, Inc • 1619 12th Street, N.W. • Washington D.C. 20009
(202) 265-7990 • FAX (202) 265-7995 • EMAIL llwforuminc@aol.com INTERNET www.llwforum.org

LLW Notes
Volume 17, Number 4 July/August 2002
Editor and Writer: Todd D. Lovinger
Layout and Design: Rita Houskie, Central Interstate Low-Level Radioactive Waste Compact

LLW Notes is published several times a year and is distributed to the Board of Directors of the Low-Level Radioactive Waste Forum, Inc. - an independent, non-profit corporation. Anyone - including compacts, states, federal agencies, private associations, companies, and others - may support and participate in the LLW Forum, Inc. by purchasing memberships and/or by contributing grants or gifts. For information on becoming a member or supporter, please go to our web site at www.llwforum.org or contact Todd D. Lovinger - the LLW Forum, Inc.'s management contractor - at (202) 265-7990.

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

LLW FORUM, INC

Low-Level Radioactive Waste Forum, Inc.
1619 12th Street N.W.
Washington, DC 20009
(202) 265-7990
FAX (202) 265-7995
E-MAIL llwforuminc@aol.com
INTERNET www.llwforum.org

Table of Contents

Courts (Cover Story) **1**
Utah State Supreme Court Orders Waste Tax Initiative Put on November Ballot 1

Low-Level Radioactive Waste Forum, Inc **3**
LLW Forum Expands Membership - Welcomes NRC 3
LLW Forum to Hold Fall Meeting in Sacramento 3

States and Compacts **4**
Monies Begin to be Collected Under Iowa Transportation Fee 4
Utah DEQ Responds to Questions from Utahns Against Unfair Taxes 4
Envirocare Reports Success re Containerized Waste Facility 5
Legislation Passed in California re Disposal Facility Licensing 6
Maine Legislation to Withdraw from Texas Compact Signed by Governor 7
CRCPD Undergoes Significant Changes 8
Orphan Sources/Clearance Remain State Concern 8

Courts (continued) **9**
Legislators and Envirocare React to Court's Decision 10
Legislative Office Ordered to Prepare Voter Info on Initiative 11
Utah Court Dismisses Suit Against Waste Initiative Proponents 12
Both Sides Rest in Nebraska/Central Commission Lawsuit 12
Commission Proposes Novel "Equity Remedy" in Post-Trial Brief 14
Briefs Filed in Action Against North Carolina 15
Court Strikes Down Utah Laws Banning Waste 17
DOE Reclassification Case to Proceed 18
PFS to Lose Financial Backing 19
Lawsuit Filed Alleging Harm from Transportation to Yucca Facility 20
Nevada Looks at Potential Constitutional Challenges re Yucca 20
NAS Considers Study re Yucca Waste Transportation 21

Federal Agencies and Committees **22**
Butterfield Departs DOE/GSA for EPA 22
NRC Announces Opportunity for Hearing re H.B. Robinson License Renewal 22
Merrifield Takes Oath for Second Term at NRC 23
NRC Announces Availability of R.E. Ginna Renewal Application 23
NRC Unveils New System re Terrorist Threats 24
NRC Seeks Public Comment re Use of ADR 24
NRC Seeks Public Comment re Spent Fuel Storage 25
NRC Accepts Application re Advanced Reactor Design 25
NRC Amending Rules re Electronic Documents Submittal 26
NRC Orders Enhanced Security for Enriched Uranium Fuel Fabricators 26

Obtaining Publications **27**

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 material	NARM
Naturally-occurring radioactive material	NORM
Code of Federal Regulations	CFR

LLW Forum Expands Membership—Welcomes NRC

Several entities, including the U.S. Nuclear Regulatory Commission, recently purchased memberships in the Low-Level Radioactive Waste Forum, Inc.—allowing the organization to expand its membership to include more federal agencies and private industry. As a result, the LLW Forum now counts amongst its members and subscribers

- eight of the nine operating low-level radioactive waste compacts;
- seven host states;
- four unaffiliated states and one other state;
- four federal agencies, including the U.S. Department of Energy, the U.S. Nuclear Regulatory Commission, the U.S. Environmental Protection Agency, and the U.S. Army;
- four utilities;
- one operator of a low-level radioactive waste disposal facility and one operator of a mixed waste processing facility;
- and several other agencies, associations and individuals—including the Nuclear Energy Institute.

In addition, several others—including facility operators, federal and state agencies, and industry associations—have committed to joining the LLW Forum in the near future.

To become a member of the LLW Forum, please contact Todd Lovinger—the organization's management contractor—at (202) 265-7990 or go to the LLW Forum's web site at www.llwforum.org.

LLW Forum to Hold Fall Meeting in Sacramento

The Low-Level Radioactive Waste Forum, Inc. will be holding its fall 2002 meeting in Sacramento, California from September 23 – 24. A meeting of the Executive Committee will be held on the evening of September 22. The meeting, which will be held at the Hawthorn Suites Hotel, is being sponsored by the Southwestern Compact Commission.

Presentations will be given on the following topics, among others, at the meeting:

- pending litigation in the Central Compact/ Nebraska, Southeast Compact/North Carolina, and Southwestern Compact/California;
- studies by the National Academies of Sciences on (1) alternatives for controlling the release of solid materials, and (2) improving practices for the regulation and management of low-activity radioactive waste;
- the status of operating disposal facilities including the Barnwell facility in South Carolina, the Envirocare of Utah facility, the Waste Control Specialists' facility in Texas, and various facilities operated by US Ecology;
- EPA's proposed regulatory approach to the disposal of low-activity and mixed waste;
- the California siting experience and future directions;
- the proposed Yucca Mountain high-level radioactive waste repository; and
- Private Fuel Storage consortium's proposed spent nuclear fuel facility in Utah.

In addition, an optional lunchtime discussion will be held at the meeting on the status of the Manifest Information Management System (MIMS).

For additional information about the meeting and/or to register to attend, please contact Todd Lovinger—the organization's management contractor—at (202) 265-7990 or go to the LLW Forum's web site at www.llwforum.org.

Midwest Compact/Iowa

Monies Begin to be Collected Under Iowa Transportation Fee

In July 2002, monies began to be collected pursuant to a new rule imposing fees for the transportation of both high- and low-level radioactive waste across the State of Iowa. The rule was originally adopted on March 14, 2001 by the Iowa Board of Health, but had been suspended by the state Administrative Rules Committee due to concerns expressed by industry and transportation officials about setting a precedent in this area. (See *LLW Notes,* May/June 2001, p. 5.) Nonetheless, the rule became effective March 14, 2002, with a stipulation that fees could not be collected until July.

The rule is intended to collect revenues to support a program initiated by the Iowa Department of Public Health for proper response in case of an accident involving the transportation of radioactive waste in Iowa. Three major interstates cross Iowa and large amounts of radioactive waste are transported on these roads.

The rule, Iowa Administrative Code Chapter (IAC) 641-38.8(11), states as follows:

> a. All shippers of waste containing radioactive materials transporting waste across Iowa shall pay the following fee(s) unless the agency is able to obtain funding from another source (i.e., federal agency).
>
> (1) $1750 per truck for each truck shipment of spent nuclear fuel, high-level radioactive waste or transuranic waste traversing the state or any portion thereof. Single cask truck shipments are subject to a surcharge of $5 per mile for every mile over 250 miles for the first truck in each shipment.

(Continued on page 8)

Northwest Compact/Utah

Utah DEQ Responds to Questions from Utahns Against Unfair Taxes

Recently, Hugh Matheson, Chair of Utahns Against Unfair Taxes, sent a letter containing a list of inquiries about the Envirocare of Utah low-level radioactive waste disposal facility to the Utah Department of Environmental Quality's Division of Radiation Control. On May 23, Director William Sinclair sent a letter to Matheson with responses to his questions.

The following are the questions posed by Matheson and the responses provided by Sinclair.

1. ***Does Envirocare's Financial Surety through Wells Fargo Bank for closure and post-closure cost for existing requirements meet the requirements of Utah law?***

Response: Utah Radiation Control Rules R313-25-31 and 32 require, in part, that Envirocare provide assurances that sufficient funds are available to carry out disposal site closure and stabilization. The estimates for these costs take into account the total costs that would be incurred if an independent contractor were hired to perform the closure and stabilization. The financial mechanism assuring funding and accepted by the Executive Secretary of the Radiation Control Board is an Irrevocable Letter of Credit established by Wells Fargo Bank at the request of Envirocare. Therefore, the requirements of the regulations have been met.

2. ***How would the Surety work if Envirocare went out of business?***

Response: If the Executive Secretary were required to use the funds guaranteed by the Irrevocable Letter of Credit, Wells Fargo

Bank, upon written request by the Executive Secretary, would make disbursements to the State of Utah Accounts. The disbursements would be determined by the Executive Secretary as necessary to carry out site closure and stabilization and environmental monitoring and minor maintenance during the post closure period.

3. How do you know the money will be there if ever needed?

Response: The Irrevocable Letter of Credit has been established by Wells Fargo Bank.

4. Who controls the disbursement of the Financial Surety?

Response: The Executive Secretary of the Utah Radiation Control Board directs disbursements under the Irrevocable Letter of Credit.

5. Does Envirocare have any control over the disbursement of these funds?

Response: The Irrevocable Letter of Credit is established in the name of the Executive Secretary of the Utah Radiation Control Board. Only the Executive Secretary can request funds.

6. ***In your professional opinion, are the funds in the Financial Surety sufficient to provide for the closure and post-closure care of the Envirocare facility?***

Response: The Division of Radiation Control considers the funding for closure and stabilization of the low-level radioactive waste disposal site is adequate. (see response to question 1)

For additional information, please contact Dane Finerfrock of the Utah Division of Radiation Control at (801) 536-4257. Also see related story, this issue, regarding Utah Supreme Court's recent decision on the constitutionality of the state's voter initiative law and need to place the Radioactive Waste Restrictions Act referendum on the November ballot.

Envirocare Reports Success re Containerized Waste Facility

Envirocare of Utah recently issued a press release announcing that its "state-of-the-art" Containerized Waste Facility (CWF) has experienced a significant increase in shipment activity over nearly 10 months of operation, which increase the company attributes to a growing acceptance of this disposal option across the industry. In its release, Envirocare states that the facility has maintained an outstanding operational safety and oversight record with the state and that actual exposure rates have been significantly lower than projected. The facility receives shipments on a regular basis from processors and generators across the country. To date, the facility has received nearly 11,500 cubic feet of waste.

"This obviously speaks well of our process and our intention to continue providing safe and cost effective alternatives for the containerized waste business. We are please[d] with our ability to offer our customers more solutions and to operate our facilities in line with regulatory expectations," said Dwayne Neilson, President of Envirocare.

Envirocare says that it expects continued expansion of its Containerized Waste Facility. The facility began operations in 2001.

For additional information, please contact Al Rafati, Executive Vice President of Envirocare, at (801) 532-1330.

Southwestern Compact/California

Legislation Passed in California re Disposal Facility Licensing

In late August, legislation was passed by both chambers of the California legislature that would, among other things, prohibit the proposed Ward Valley low-level radioactive waste disposal site from serving as the state's facility for purposes of the Southwestern Low-Level Radioactive Waste Disposal Compact and that would prohibit the state from accepting ownership or other property rights to the site of that facility. In addition, the bill would repeal the authority of the State Director of Health Services to lease specified property to construct, operate and close a low-level radioactive waste disposal facility. The bill is currently awaiting signature by California Governor Gray Davis (D), who is expected to sign it.

Legislative History

The bill, A.B. 2214, was initially introduced by California Assembly Member Fred Keeley (D) on February 20, 2002.

It was amended in the Assembly on April 25 and re-referred to the Committee on Appropriations. It was again amended by the Assembly on May 28. The Senate amended the bill on August 5 and re-referred it to the Committee on Appropriations. The Senate again amended the bill on August 27.

Final concurrence on the Senate amendments came on August 31.

The Text

As introduced, the bill would define terms and would prohibit the California Department of Health Services (the department) from issuing or renewing a low-level radioactive waste disposal facility license unless the department determines that the siting, design, operation, and closure of the facility will, at a minimum, meet U.S. Nuclear Regulatory Commission performance requirements and objectives. In addition, the disposal facility must be sited, designed, constructed, and operated to do all of the following:

- consist of multiple, engineered barriers to ensure retention of the waste for at least 500 years using the best available technology;
- provide visual inspection or remote monitoring to detect releases and provide methods to prevent or remediate such releases; and
- be sited in a location with soils and hydrology that would minimize migration of radioactive materials in the event of failure of the engineered barriers.

The legislation specifically prohibits the use of shallow land burial for the disposal of radioactive waste. In addition, the legislation states that a low-level radioactive waste disposal license may only be issued "if the department determines there is a preponderance of scientific evidence that there is not a hydrologic pathway whereby the Colorado River or any other agricultural or drinking water source could be contaminated with radioactive waste and harm public health or the environment."

The legislation also requires the department to promote the reduction of low-level radioactive waste generated, both in volume and radioactivity, by encouraging waste reduction practices.

Texas Compact/Maine

Maine Legislation to Withdraw from Texas Compact Signed by Governor

Legislation to withdraw the State of Maine from the Texas Low-Level Radioactive Waste Disposal Compact was signed into law by Governor Angus King, Jr. (I) on April 5, 2002. The bill, titled "An Act to Repeal Provisions Imposing Financial Obligations on Electric Consumers Resulting from the Texas Low-Level Radioactive Waste Disposal Compact," was originally introduced into the Maine legislature and presented at hearing on March 20, 2002. (See *LLW Notes,* March/April 2002, p. 13.)

The legislation states, in part, as follows:

"Pursuant to Sections 7.03, 7.04 and 7.05 of the Texas Low-Level Radioactive Waste Disposal Compact, the State of Maine hereby unilaterally and irrevocably withdraws from and terminates its agreements under the Compact. The State of Maine takes this step due to the closure of the State's largest generator of low-level radioactive waste in 1997, obviating the need for Maine's membership in the Compact, and due to the failure of the host state to cause a facility to be built in a timely manner pursuant to Section 4.04 of the Compact agreement."

The voters of Maine approved the state's entry into the Texas Compact in 1993 and the compact was ratified by Congress in 1998. Under the terms of the compact, the State of Texas has sole responsibility for building, operating and decommissioning a low-level radioactive waste disposal facility and the states of Maine and Vermont are each required to pay Texas $25 million to offset construction costs. Under a letter agreement between the Governors of the three states in 1998, payments by Maine and Vermont were suspended indefinitely—despite a compact paragraph calling for a $12.5 million payment from each state within 90 days of Congressional ratification.

At the time of entry into the compact, Maine Yankee—the state's sole nuclear power plant—was expected to begin decommissioning at the termination of its operating license in 2008. In 1997, the owner of Maine Yankee decided to terminate operations and undertake immediate decommissioning of the unit. Currently, more than 60% of the decommissioning process has been completed and substantial amounts of waste have been shipped for disposal at the Barnwell, South Carolina and Envirocare of Utah facilities. Additionally, in 1998, the Texas siting authority unanimously rejected a license application for a low-level radioactive waste disposal facility in Sierra Blanca, Texas.

According to Public Advocate, "[g]enerators of radioactive waste in Maine, other than Maine Yankee, account for less than 2000 cubic feet of radioactive waste shipments annually, chiefly from laboratories and medical facilities. All of this waste is classified as eligible for disposal at the Envirocare facility in Utah or at the Barnwell, South Carolina facility."

Under the provisions of the Texas Compact, either non-host state may enact legislation withdrawing itself from the compact provided that the withdrawal does not take effect for two years. During that two year period, the withdrawing state remains liable for operating costs of the Texas Compact Commission and for any payments that are due and payable to the host county. Currently, no compact commission has been formed and a host county has not been designated.

For additional information, please contact Steve Ward of Maine Public Advocate at (207) 287-2445.

CRCPD Undergoes Significant Changes

The Conference of Radiation Control Program Directors (CRCPD) is undergoing some significant changes following the retirement of the organization's Executive Director, Charles Hardin, after 22 years. Hardin has been replaced by Ron Fraas, who was with the Kansas Radiation Control Program for 10 years and most recently served as supervisor of the radiation and emergency preparedness unit.

Amongst the organizational changes being made to CRCPD are the following:

- the modification of working groups, including the elimination of some and placement of others on inactive status;
- the examination of suggested state regulatory processes (SSR); and
- the placement of time frames on committees and products that they produce.

Details about CRCPD's internal changes can be found on the organization's web site at http://www.crcpd.org.

Orphan Sources/Clearance Remain State Concern

Officials from two multi-state organizations recently reported that the proper disposal of orphan sources remains an important state concern with no end in sight. In addition, according to the state officials, the clearance of very low activity materials is another state concern with no near-term solution expected.

The comments were made during an August 21 briefing before commissioners of the U.S. Nuclear Regulatory Commission by representatives of the Organization of Agreement States (OAS) and the Conference of Radiation Control Program Directors (CRCPD). Problems concerning orphan sources and clearance, according to these officials, are made greater by budget issues and economic problems which many states are currently experiencing. Budget issues are so problematic that some states, such as New Hampshire, have been reported to be considering opting out of agreement state status.

(Continued from page 4)

(2) $250 per truck for transport of low-level radioactive waste.

(3) $1250 for the first cask and $100 for each additional cask for each rail shipment of spent nuclear fuel, high-level radioactive waste or transuranic waste traversing the state or any portion thereof.

(4) $250 for the first rail car and $50 for each additional rail car in the train for transport of low-level radioactive waste.

b. All fees must be received by the Department of Public Health prior to shipment.

c. All fees received pursuant to this subrule shall be used for purposes related to transporting hazardous material, including enforcement and planning, developing, and maintaining a capability for emergency response.

The rule originally had an effective date of May 9, 2001. The American Council of Users of Radioactive Waste (ACURI), among others, wrote a letter expressing concern about the rule and requesting that it be rescinded.

For additional information, please contact Don Flater of the Iowa Department of Public Health at (515) 281-3478.

(Continued from page 1)

State officials determined not to put the waste tax initiative on the ballot in early July because the requisite number of signatures from enough counties were not collected. (See News Flash titled, "Utah Waste Tax Initiative Fails: Referendum Will Not Appear on the Ballot," July 3, 2002.) Utah law requires that, for an initiative to make it on the ballot, supporters must procure in 20 of Utah's 29 counties the signatures of registered voters equal to at least 10 percent of the votes cast in the last gubernatorial election—in this case, approximately 77,000 signatures—by the May 31 deadline. Supporters of the waste tax initiative collected approximately 95,000 certified signatures, but were deemed to be short of the requisite number of signatures in six of the 20 counties needed to get the initiative on the ballot. In total, supporters were reported to be only 147 signatures short of meeting the state's legal requirements.

The Issues The petition was filed before the state Supreme Court by initiative supporters John W. and Michael D. Gallivan, Linda Sue Dickey, lobbyist Frank Pignanelli and Utah Education Association officials Susan Kusiak and Phyllis Sorenson. It argued that "Utah's multi-county requirement discriminates against urban voters by making rural voters gatekeepers who can effectively keep initiatives off the ballot."

The number of counties that must deliver the 10 percent signature threshold was increased by lawmakers from 15 to 20 in 1998.

In a landmark court case decades ago, the U.S. Supreme Court struck down provisions of a Utah law providing one senator for each of Utah's 29 counties. The Court found that the provision violated the one man, one vote guarantees of the U.S. Constitution because it gave sparsely populated rural counties a disproportionate power in the legislature. A similar argument was made in the petition filed by initiative supporters in the state Supreme Court.

Written Briefs Supreme Court justices gave both sides until August 6 to submit additional written briefs on the constitutionality of certain provisions of the state initiative law.

On August 5, the Utah Legislative Management Committee voted unanimously to oppose changes to the state's citizen initiative law by filing an amicus brief with the court. The brief, which was accepted by the court, urged justices to review the act in its entirety, rather than simply probing separate provisions for constitutionality. It argued that proponents of the Waste Restrictions Act "threaten to subvert the Legislature's constitutional authority, threaten to disrupt the integrity of the initiative process that the Legislature created in statute, and seek to void the Legislature's intent."

The court rejected without explanation, however, a request by Envirocare of Utah to join the litigation. Envirocare had argued, among other things, that the court would be wasting its time reviewing the state initiative law because the Radioactive Waste Restrictions Act promoted by the petitioners is "patently unconstitutional." If it chooses to rule on the initiative law, according to Envirocare, "the Court will be expending its judicial capital on an exercise which is designed to ultimately determine if an unconstitutional initiative should be submitted to the electorate, only to be inevitably stricken down either by the state or federal courts upon its passage (if such occurs)."

The Court's Decision

In reviewing the citizens-initiative law, the Utah Supreme Court found unconstitutional the 20-county rule part of the legislature's two-prong test for placing an initiative on the ballot. The rule, according to the court, rendered a rural county signature "1,000 times as valuable as the signature" of an urban county voter. Lawmakers lacked a "legitimate legislative purpose," according to the court, for passing a rule which so

"invidiously discriminates against urban registered voters."

Overall, the court found as follows:

"The statutory scheme is discriminatory in that it essentially raises registered voters in rural communities to the level of gatekeepers who can effectively keep initiatives off the ballot despite the existence of significant numeric support for the initiative in urban portions of the state."

Opponents of the waste tax initiative say that they have not ruled out challenging the court's decision and vow to be out in full force this fall to try to defeat it.

Background

General The initiative, which promotes draft legislation titled the "Radioactive Waste Restrictions Act," was sponsored by Utahns for Radioactive Waste Control and others. Proponents claimed that it could generate as much as $200 million annually—which monies would be earmarked for education, environmental regulation, economic development, and assistance to the impoverished and homeless. Envirocare of Utah strongly contested this claim, arguing that the claimed benefit is more than the company's total annual revenues and that such a tax could put Envirocare out of business. Kenneth Alkema, Vice President at Envirocare, argued that the tax is "unfair, exorbitant, arbitrary and capricious" and that the initiative is based on incorrect data about Envirocare's business and the radioactive waste disposal market.

Particulars The initiative, as proposed, called for the imposition of a time-of-disposal tax—the amount of which tax would depend on the kind of low-level radioactive waste being disposed of in Utah—as well as a gross receipts tax of 15 percent on radioactive waste disposal facilities operating in the state. In addition, the initiative sought to prohibit Utah from licensing or siting a facility for the disposal of high-level radioactive waste,

(Continued on page 11)

Legislators and Envirocare React to Court's Decision

Legislators Many legislators expressed disappointment at the Utah Supreme Court's decision striking down portions of the voter initiative law as unconstitutional. Senator Ron Allen (D), Senate Minority Whip, said in response that "[t]he Utah Supreme Court put themselves in a situation where they appear to be making a new law rather than just interpreting it." Allen complained that the court's decision opens the floodgates for a "whole new lobbying industry in Utah" and expressed concerns that "people will be asked to vote on things that they don't understand." This could lead, according to Allen, to the voters putting a company such as Envirocare out of business.

"It's not a good thing. It's disappointing. Most voters won't understand how this impacts them until this shows up on the ballot. It's not my interest that the Legislature be all powerful, but it should represent a democratic government."

Allen vowed to begin work right away on reworking the initiative law, which he said will be a priority in the next legislative session. He said that the legislature will look at other states laws, rather than trying to reinvent the wheel.

Envirocare Craig Thorley, General Counsel to Envirocare, was reported in the press as expressing the companies opinion that the court's decision is wrong. Thorley noted that Envirocare, nonetheless, has been preparing its campaign against the initiative.

"We are confident we will ultimately prevail on this issue and it will fail. We believe that once people are educated about this issue they will not vote for it, and we will be able to defeat it in November."

It was also reported that following the court's decision, Dwayne Nielson, President of Envirocare, went to the facility and assured employees that the company is doing well and that their jobs are not in jeopardy.

(Continued from page 10)

greater than Class C radioactive waste, or Class B or C low-level radioactive waste within the state.

In addition to imposing new and additional taxes on the disposal of radioactive waste in Utah and prohibiting the disposal of certain types of waste, the proposed initiative also sought to "[a]dequately capitalize[] the Perpetual Care and Maintenance Fund to finance perpetual care of the [Envirocare] facility and for its eventual closure." The proposal also sought to increase the quality of monitoring of deposited radioactive waste, clarify the definitions of all radioactive waste, and prohibit the further licensing of radioactive waste disposal facilities in the state. In response to the proposal, Envirocare states that it "believes that the closure fund, with over $35 million, is already adequately capitalized and that Envirocare is properly monitored, meeting exhaustive regulatory requirements."

The Radioactive Waste Restrictions Act promoted by the proposed initiative also contained ethical protections that further regulate the relationships between Utah Department of Environmental Quality employees, Radiation Control Board members and disposal operators.

For additional information, please see LLW Notes, March/April 2002, pp. 5-7 or go to the initiative proponents web site at www.saferbetterutah.org *or contact Ken Alkema of Envirocare of Utah at (801) 532-1330.*

(Continued from page 25)

Comments are due within 75 days of publication of a *Federal Register* notice on this subject, expected shortly. The proposed rule will be available on the NRC web site at http://ruleforum.llnl.gov.

Comments may be submitted electronically at the web site or by mail to the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, Attention: Rulemaking and Adjudications Staff.

Gallivan v. Walker (continued)

Legislative Office Ordered to Prepare Voter Info on Initiative

On August 27, the Utah Supreme Court ordered the state's Legislative Office of Research and General Counsel to help prepare voter information on a ballot initiative that seeks, among other things, to impose substantial taxes on the disposal of out-of-state low-level radioactive waste and to prohibit the disposal of Class B and C radioactive waste within the state (the Radioactive Waste Restrictions Act). The order was issued one day after the court declared part of the state's citizen-initiative law unconstitutional and ordered the ballot initiative to be placed on the November ballot.

State law requires that a 1,000 word impartial analysis of all ballot initiatives be included in the statewide election guide that is generally circulated to voters. The purpose is to provide an unbiased review of such initiatives. Following the court's initial order, however, the state's legislative office said that it could not meet the elections office's deadline for providing voter-guide text on the Radioactive Waste Restrictions Act. Moreover, the state's Legislative General Counsel was reported in local papers as saying that she believed that the initial order "did not order her office to prepare the voter-pamphlet information."

The court clarified its position, nonetheless, in its second order and directed that the voter information be prepared for the waste tax initiative.

For additional information, see related story, this issue.

Allen v. Utahns for Radioactive Control Act

Utah Court Dismisses Suit Against Waste Initiative Proponents

In early August, the Third District Court of the State of Utah agreed to dismiss, without prejudice, a lawsuit filed by five state senators and one state representative against the sponsors of a Utah ballot initiative that seeks, among other things, to impose substantial taxes on the disposal of out-of-state low-level radioactive waste and to prohibit the disposal of Class B and C radioactive waste within the state. The suit, which was filed on June 14, alleges fraud and abuse on the part of the initiative's sponsors. (See *LLW Notes,* May/June 2002, p. 13.) The court determined that the case is moot, at least for the time being, since the initiative sponsors failed to meet state requirements to get the initiative on the November ballot. Initiative sponsors are challenging the state's requirements, however, before the Utah Supreme Court. (See related story, this issue.)

In the lawsuit, the petitioners argued that the initiative's backers hired a California company to recruit paid signature gatherers—paying them $3.15 per signature collected. They asserted that at least four of the individuals gathering signatures are not residents of the state. Utah law requires that persons collecting signatures for a ballot initiative be state residents.

The following Utah lawmakers were named as petitioners in the suit: Senate Minority Whip Ron Allen (D-Tooele), Senate Minority Leader Mike Dmitrich (D- Price), Senator Howard Stephenson (R-Draper), Senator Michael Waddoups (R-Taylorsville), Senator Peter Knudsen (R-Brigham City), and Representative Jim Gowans (D-Tooele). In addition to Utahns for Radioactive Control Act, the following were identified as respondents to the action: Utah lobbyist and petition co-organizer Frank Pignanelli, Utah Education Association

(Continued on page 21)

Entergy Arkansas v. State of Nebraska

Both Sides Rest in Nebraska/ Central Commission Lawsuit

Final Arguments Scheduled for September 10

In late July, both sides rested their cases in the trial of a lawsuit between the Central Interstate Low-Level Radioactive Waste Commission and the State of Nebraska. The case—which was initiated in December 1998 by the Central Commission, US Ecology, and several regional generators—challenges the State of Nebraska's actions in reviewing US Ecology's license application for a low-level radioactive waste disposal facility in Boyd County. The procedural and substantive due process claims of US Ecology and five generators were dismissed by the court in August 2001. (See *LLW Notes,* September/October 2001, pp. 11.) However, the dismissal did not result in their complete removal from the lawsuit because of their pending cross-claims and equitable subrogation claims against the Central Commission. The court has scheduled final arguments in the case—which is being tried in the U.S. District Court for the District of Nebraska—for September 10.

The case—which involves nearly 2 million documents, many attorneys and a lot of witnesses—is being followed closely in the Nebraska press. At issue is potentially hundreds of millions of dollars, as well as the integrity of the Nebraska licensing process. Officials in other states and compacts are also watching the case closely for its potential impact to other siting processes.

Background

On December 21, 1998, Nebraska regulators announced their decision to deny US Ecology's license application. (See *LLW Notes,* January/February 1999, p. 8.) Nine days later, five regional utilities filed suit, arguing that Nebraska regulators violated the compact, state, and federal law—as well as a statutory and contractual obligation to

exercise "good faith"—in their review of the license application. (See *LLW Notes,* January/February 1999, pp. 16–17.)

The Parties The utilities which filed the original action included Entergy Arkansas, Inc.; Entergy Gulf States, Inc.; Entergy Louisiana, Inc.; Wolf Creek Nuclear Operating Corporation; and Omaha Public Power District. One Nebraska utility opted not to join the action. In addition, US Ecology joined the action as a plaintiff in March 1999. The Central Interstate Low-Level Radioactive Waste Commission was originally named as a defendant in the suit, but subsequently realigned itself as a plaintiff.

Various Nebraska agencies, officials, employees and individuals were named as defendants to the original action. However, during the course of the litigation, several amended complaints were filed and certain claims—such as the due process claims put forth by the generators and US Ecology—were dismissed. Accordingly, the current defendants to the action, as identified in the Central Commission's outstanding amended complaint, include the State of Nebraska, its Governor, and the Directors of the Department of Environmental Quality (NDEQ) and Department of Health and Human Services Regulation and Licensure (NDHHS).

The Issues In the original action, the generators and US Ecology claimed that the license application was denied on improper grounds and that the entire license review process was tainted by bias on the part of Nebraska and by the improper involvement of NDHHS. They cited various instances of bad faith by the state, all of which have been disposed of by the court in regard to US Ecology's and the generators' suit, including but not limited to improper delays and impediments, the state's refusal to adopt adequate budgets or schedules, and the filing of repeated litigation against the project. They also challenged the constitutionality of the procedures employed in making a licensing decision, and they alleged various related statutory and constitutional violations. (For a more detailed explanation of the issues raised by US Ecology and the generators, see *LLW Notes,* January/February 1999, pp. 16–17.)

In its amended complaint, the Central Commission argues that "the defendant State of Nebraska has violated its contractual, fiduciary, and statutorily established obligations of good faith toward sibling Compact states and the administrative entity comprised of the representatives of the five states, that is, this Commission." *(Persons interested in a listing of the specific alleged violations are directed to the amended complaint themselves.)*

Requested Relief In its pending amended complaint, the Central Commission is seeking declaratory and monetary relief including, among other things

- an accounting of all funds received by the State of Nebraska in furtherance of the project and the exact uses of said funds;
- compensatory damages for costs incurred due to Nebraska's alleged misconduct, and
- the creation of "a just and equitable remedy . . . including the removal from the State of Nebraska's independent control, supervision, and management any further aspect of the regional facility's license application process."

In particular, the Commission requests that the court "substitute an appropriate manner of completing the licensing, such as through an appointed Master, or through a scientifically qualified, appointed entity or group representing either all of the five Compact states equally, or in the alternative, none of them, or through another impartial appropriate governmental agency."

For additional background information, see LLW Notes, May/June 2001, pp. 1, 11-12.

Commission Proposes Novel "Equitable Remedy" in Post-Trial Brief

Seeks Possible Termination of Nebraska's Regulatory Authority Over LLRW Disposal

In its post-trial brief, the Central Interstate Low-Level Radioactive Waste Commission seeks, among other things, what it terms "the equitable remedy of a fair opportunity to obtain its license for the Butte site." The recommended remedy, in part, is stated as follows:

> A license review completion process should be headed by a Special Master selected by the Court, and should have the right to appoint one or more technical review experts to assist in his or her proposed license review process and decision. Short of proof of fraud, the Court should approve the Master's decision. The State of Nebraska, by withdrawing from the Compact, will no longer qualify as a 'host state and will not have Compact rights to grant or deny the license itself once that withdrawal is effective in August, 2004. Nebraska should offer additional informational input to the review, but should not have deciding authority, due to the proof of its continuing bad faith. The cost, assuming the Commission is also granted damages [as requested in the post-trial brief] . . . should be paid for by the Commission. Plaintiffs by separate letter will suggest possible candidates for the Special Master role.

The Central Commission proposes in its brief that the Draft Safety Evaluation Report and Draft Environmental Impact Analysis represent a fair starting point for the completion process and that remaining details of the review should be proposed by the Special Master—with an opportunity for comment by the parties. The Commission requests that the Court "retain jurisdiction through the thirty-year operational period, unless the Commission succeeds in its intended effort to have Nebraska's agreement state status voluntarily or mandatorily revoked as to low-level waste disposal, in which case the NRC would regulate and no continuing jurisdiction need be retained at that point."

Termination of Nebraska's Regulatory Authority Over LLRW Disposal In regard to efforts by the Commission to terminate Nebraska's agreement state authority, the brief states as follows:

> The plaintiff . . . [Central Interstate Commission's] non-host state Commissioners have requested counsel to represent to the Court that if Nebraska is found by this Court to have acted in bad faith in the licensing proceeding and a license review is allowed by order of this Court and a license granted, the said four Commissioners, in behalf of their states, will then ask Nebraska's Governor to make the request permitted under U.S. Code Title 42, Section 2021(j), to terminate Nebraska's regulatory authority over disposal of low-level radioactive waste, and have the Nuclear Regulatory Commission reassert its jurisdiction. At least two other states, Iowa and Maine, are believed to have similar partial agreement state status whereby they do not have regulatory or licensing power over low-level radioactive waste disposal.

In addition to the proposed equitable remedy, the Central Commission is seeking monetary damages—with prejudgment interest, an accounting of rebate funds turned over to the state, a declaratory judgment that the state breached its duties under the compact, and other identified relief.

US Ecology's Proposed Remedy The Central Commission's post-trial brief states as follows in regard to the position of US Ecology, the operator of the proposed regional waste disposal facility:

> US Ecology concurs with the plaintiff Commission's foregoing remedies section. It will have serious concerns about Nebraska . . . [Department of Environmental Quality] remaining as site regulator, but particularly if this Court will retain oversight jurisdiction unless and until the NRC

is prevailed on to resume jurisdiction over low-level radioactive waste disposal in Nebraska, USE will in all respects second the Commission's remedy request.

Alternative Remedy Sought by Two Generators The Central Commission's brief notes that two regional generators, Entergy and Wolf Creek, oppose the grant of equitable relief because they believe it to be "inadequate, impractical and improvident." These generators assert that "money damages is the **only** relief appropriate under the existing circumstances."

Southeast Interstate Low-Level Radioactive Waste Management Commission v. State of North Carolina

Briefs Filed in Action Against North Carolina

On August 5, the State of North Carolina filed a brief in opposition to an attempt by the Southeast Compact Commission for Low-Level Radioactive Waste Management and four of its member states to invoke the original jurisdiction of the U.S. Supreme Court in a dispute over the siting of a regional low-level radioactive waste disposal facility. The petitioners filed a reply brief on August 21.

Background

The Petitioners' Motion On June 3, the States of Alabama, Florida, Tennessee, and Virginia—as well as the Southeast Compact Commission—filed a "Motion for Leave to File a Bill of Complaint" and a "Bill of Complaint" in the U.S. Supreme Court against the State of North Carolina. The action, which accuses North Carolina of "failing to comply with the provisions of North Carolina and the Southeast Compact laws and of not meeting its obligations as a member of the Compact," seeks to enforce $90 million in sanctions against the defendant state. It contains various charges against North Carolina, including violation of the member states' rights under the compact, breach of contract, unjust enrichment, and promissory estoppel. (See *LLW Notes,* May/June 2002, pp. 1, 11.)

Original Jurisdiction Under Article III, Section 2 of the U.S. Constitution, the U.S. Supreme Court may exercise original jurisdiction over a lawsuit. In determining whether or not to do so, the Court has generally considered two factors: (1) the "nature of the interest of the complaining State," focusing mainly on the "seriousness and dignity of the claim," and (2) "the availability of an alternative forum in which the issue tendered can be resolved."

The petitioners argue, with respect to the first factor, that serious public health concerns are at stake and that the proper interpretation of an interstate compact is the "archetypical matter" warranting the Court's exercise of its exclusive, original jurisdiction. Furthermore, the petitioners point out that the Court has rarely declined to exercise its original jurisdiction in a dispute among sovereign states concerning the interpretation and enforcement of an interstate compact. As to the second factor, the petitioners assert that there is no other venue available for resolution of the matter in which a state would not be "its own ultimate judge in a controversy with a sister State."

Prior Filings The Southeast Compact Commission filed a similar motion for leave to file a bill of complaint in the U.S. Supreme Court against the State of North Carolina on July 10, 2000. (See *LLW Notes,* July/August 2000, pp. 1, 16-18.) North Carolina filed a brief in opposition to the commission's motion on September 11, 2000. (See *LLW Notes,* September/October 2000, pp. 20-22.) The Solicitor General of the United States filed an amicus brief in the action on May 30, 2001 in response to an October 2000 invitation from the Court. (See *LLW Notes,* May/June 2001, pp. 13–15.)

On June 25, 2001, the U.S. Supreme Court issued an order denying the Southeast Compact Commission's motion without ruling or commenting on the merits of the complaint itself. In so doing, the Court held that a state, and not solely the Commission acting on behalf of a state or states, could invoke the Court's original jurisdiction.

Respondent's Brief in Opposition

In asserting that the petitioners' Motion for Leave to File a Bill of Complaint should be denied, the State of North Carolina puts forth the following four arguments:

- The commission cannot invoke the original jurisdiction of the Court by adding four states as nominal parties. North Carolina argues that to invoke original jurisdiction, the complaining states must have a "direct interest." In this case, however, North Carolina asserts that the complaining states are merely lending their name for the benefit of the commission. In support of this argument, North Carolina points out that the money at issue in this case came from generators, not state treasuries, and that the requested relief involves payment to the commission, not the complaining states.
- The nature of the case does not justify the exercise of original jurisdiction. North Carolina asserts that the Court's original jurisdiction "should be invoked sparingly and only in appropriate cases." "Neither the nature of the case, the magnitude of the claim nor the rights asserted against North Carolina are of sufficient scope and breadth to implicate issues of federalism and sovereign state interests requiring initial resolution by this Court," according to North Carolina.
- Alternative forums are available to hear the commission's case. North Carolina argues that state courts, particularly those of the State of North Carolina, are an appropriate alternative forum in which to hear the commission's case.
- North Carolina did not breach its obligations under the compact. Aside from the jurisdictional issues raised above, North Carolina argues that it "has at all times acted in good faith in its efforts to site and license a disposal facility for the Compact." Moreover, North Carolina asserts that the compact is not authorized to impose sanctions on a withdrawing state.

Petitioners' Reply Brief

In their reply to the State of North Carolina's Brief in Opposition, the petitioners make the following arguments:

- The plaintiff states are not nominal parties. The petitioners argue that the complaining states are not nominal parties and that the Court "has routinely exercised its original jurisdiction to interpret and enforce such interstate compacts." Some of the direct interests attributable to the complaining states, according to the brief, include the loss of invaluable time, substantial funds, and access to a disposal facility. As for the source and payment of commission funds, the petitioners point out that "the Compact expressly provides that the funds resulting from the levy represent 'the financial commitments of all party States to the Commission.'"
- The nature of the case strongly supports the exercise of original jurisdiction. The petitioners argue that important federal questions, including the enforcement and interpretation of an interstate compact, are raised in the case at hand. "The fact that the States seek compensatory damages," according to the petitioners, "does not detract from the important federal questions and policies implicated." Moreover, they argue that public health and safety concerns are an additional reason to invoke original jurisdiction.
- The imposition of sanctions was fully warranted. The petitioners dispute North Carolina's contention that it has acted in good

faith and argue that "the plain language of the Compact explicitly addresses a member State's continuing obligations despite withdrawal or any other attempt to evade sanctions."

Private Fuel Storage, L.L.C. v. State of Utah

Court Strikes Down Utah Laws Banning Waste

On July 30, Judge Tena Campbell of the U.S. District Court for Salt Lake City, Utah, issued a ruling which strikes down several state laws erected by the State of Utah last year in an attempt to block plans by a coalition of nuclear utilities (Private Fuel Storage, L.L.C.) seeking to site a spent nuclear fuel storage facility on the Skull Valley Band of Goshute Indians Reservation. In so ruling, Campbell held that the laws are unconstitutional because they violate federal jurisdiction over matters of nuclear safety.

Upon hearing news of the court's ruling, Utah Governor Mike Leavitt (R)—a vocal opponent of the PFS' plan—vowed to appeal the court's ruling. An appeal to the U.S. Court of Appeals for the 10th Circuit was filed by the state on August 15.

Background

The lawsuit, which was originally filed in April 2001, complains that six recently enacted state laws erect unfair and unconstitutional barriers to the plaintiffs' facility siting plans. In particular, the suit alleges that the laws unlawfully interfere with interstate commerce and infringe upon exclusive federal authority over the regulation of Indian affairs and nuclear power. (See *LLW Notes,* May/June 2001, p. 18.) The plaintiffs allege that, among other things, the contested laws

- seek to block access to the Goshute reservation by closing state roads leading thereto;
- require PFS to post a $2 billion cash bond for the proposed facility;
- assert state regulatory authority over reservation lands;
- create unlimited liability by PFS' officers, directors and shareholders;
- criminalize actions necessary to plan for the possibility of storing spent fuel in the State of Utah;
- require PFS to comply with unfair state permitting requirements, including the payment of a $5 million application fee; and
- bar the storage of spent fuel in the State of Utah and void any private contracts relating to such storage.

On September 20, 2001, the State of Utah filed a motion to dismiss the action. In the motion to dismiss, the state argues that the Nuclear Waste Policy Act of 1982 prohibits high-level radioactive waste from being stored off-site at a facility that is not owned and operated by the federal government. Accordingly, the state claims that the proposed storage facility is unlawful and that there is no basis for the plaintiffs' lawsuit. The motion to dismiss follows a July 2001 counterclaim filed by the state questioning the legitimacy of the siting proposal. (See *LLW Notes,* July/August 2001, pp. 20-21.)

The Department of Justice, however, filed a motion earlier this year requesting that the court dismiss claims by the state that the U.S. Nuclear Regulatory Commission has no jurisdiction to license the facility. (See *LLW Notes,* January/February 2002, p. 11.) In so arguing, DOJ cites a federal procedural law called the Hobbs Act to assert that Utah can only dispute NRC's authority after regulators have licensed the facility. In addition, DOJ asserts that the jurisdictional question should be raised before the U.S. Court of Appeals. According to DOJ's brief, the district "court is without jurisdiction to address Utah's counterclaim."

NRC has already rejected the state's jurisdictional claim through its Atomic Safety and Licensing Board. DOJ asserts that Utah may challenge that decision in an appeal to the commission itself. The appeals court only has jurisdiction over appeals of commission rulings. DOJ's brief argues that "[t]he lack of agency action is fatal to Utah's claim" and that the court should therefore dismiss it as "premature."

The commission tentatively plans to make a decision on PFS' and the Goshutes' licensing request in September.

For background information on the PFS/Goshute proposal, see LLW Notes, July/August 2000, p. 26.

The Court's Ruling

The district court's decision focused largely on its belief that "Congress has pre-empted the entire field of nuclear safety." While the court recognized that state's do have some jurisdiction over nuclear issues—such as a State of California law which suspended the approval of new nuclear power plants—it found that the Utah laws fall squarely within that area reserved for federal oversight by the U.S. Nuclear Regulatory Commission. In particular, the court noted that the licensing scheme put forth by the state "duplicates the NRC licensing procedure in significant ways" and attempts to regulate areas covered by the Atomic Energy Act. Another Utah law, which impacts limited liability protections for PFS officials, was found to also be preempted by federal authority.

The ruling alleviates some difficult obstacles for PFS, including a $5 million license application fee and a requirement that PFS pay a "transaction fee" equal to 75 percent of the value of its contracts. In addition, the court struck down laws banning spent nuclear fuel in the state, requiring a $150 billion bond for the proposed PFS facility, and establishing a $10,000 fine for anyone doing business with PFS. The court, nonetheless, left intact state laws which mandate drug and alcohol testing for project employees and which allow the state to challenge water rights at the site. But, as for the ultimate decision regarding licensing of the facility, the court left that up to the NRC. "The question of whether [PFS has] a right to own and operate a spent nuclear fuel facility will be resolved by the Nuclear Regulatory Commission, with the right of appeal to the appropriate court of appeals, and not by this court," wrote Judge Campbell.

Natural Resources Defense Council v. U.S. Department of Energy

DOE Reclassification Case to Proceed

In early August, the U.S. District Court in Idaho denied a motion by the U.S. Department of Energy to dismiss a lawsuit challenging the department's plans to reclassify residual high-level radioactive waste at three federal sites to allow for on-site disposal.

The Lawsuit

The suit was filed by the Natural Resources Defense Council, the Snake River Alliance, and the Yakama Nation in protest of a 1999 DOE rulemaking which provides DOE authority to reclassify some high-level radioactive waste as "incidental" waste suitable for disposition in underground storage tanks. The rulemaking allows DOE to reclassify waste as incidental if steps are taken to reduce its radioactivity levels to the extent practicable and if those levels are no higher than the most radioactive waste classified as low-level radioactive waste. If upheld, the rulemaking would allow DOE to dispose of high-level radioactive waste at the Idaho National Engineering and Environmental Laboratory, the Hanford facility in Washington, and the Savannah River Site in South Carolina. The State of Washington filed an amicus brief on behalf of the plaintiffs in late July.

(Continued on page 19)

PFS to Lose Financial Backing

In July, six of the eight utilities that form the Private Fuel Storage, L.L.C. consortium vowed to drop financial backing for the group's plan to site a spent fuel storage facility on the Skull Valley Band of Goshute Indians reservation in Utah. The promise was made in an effort to get support for the Yucca Mountain facility from Senators Orin Hatch (R-UT) and Robert Bennett (R-UT)—both of whom bitterly oppose the PFS plan. The utilities wrote in a letter to the Senators as follows:

"We will pledge to both of you that our companies will commit no further funds to construction of the [Utah] facility past the licensing phase so long as the Yucca Mountain project is approved by Congress and the repository development proceeds in a timely fashion."

Shorlty after the utilities sent their letter, the Senate voted 60 to 39 to support the Yucca Mountain project—with the support of both Hatch and Bennett. The six utilities then notified the consortium that they will no longer provide funding beyond the licensing phase. This leaves the other two consortium members with full financial responsibility thereafter. According to those two members, this "makes the project more difficult," but does not kill it because long-term funding was meant to come from contracts with storage customers, not specifically the consortium partners. Whether or not the withdrawing partners can now turn around and support the project as customers, however, remains uncertain.

(Continued from page 26)

document will be held on October 3 in the NRC Auditorium at Two White Flint North in Rockville, Maryland from 8:30 a.m. until noon.

Written comments on the rule and guidance document may be mailed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, Attention: Rulemakings and Adjudications Staff or submitted electronically at http://ruleform.llnl.gov.

(Continued from page 18)

DOE stands by its rulemaking, contending that it has "unfettered discretion" in deciding how to dispose of radioactive waste. The department argues that residual amounts of waste can be safely disposed in underground storage tanks using grouting—a procedure which involves filling mostly empty tanks with concrete.

The plaintiffs, however, argue that the rulemaking violates federal nuclear waste disposal laws and is merely an effort by DOE to save cleanup money. They contend that the rulemaking violates the Nuclear Waste Policy Act, which requires that DOE dispose of all high-level nuclear waste in a federal underground repository. The law defines all waste generated by past nuclear reprocessing operations as high-level, so the plaintiffs argue that all tank wastes must be disposed in an underground repository.

The Court's Ruling

The court, in refusing to dismiss the action, rejected DOE's argument that the rulemaking was carried out under the Atomic Energy Act and therefore the plaintiffs could not challenge it under the Nuclear Waste Policy Act.

"[T]his court cannot rule out the possibility that [the department's rulemaking] will be used, as [the plaintiffs] fear, as a tool to circumvent the more stringent disposal requirements of the Nuclear Waste Policy Act."

The court noted that DOE's compliance with the Nuclear Waste Policy Act is not voluntary and that "[b]y defining a specific class of radioactive waste, i.e., high-level radioactive waste, Congress has issued a de facto limitation upon the DOE's authority to classify radioactive waste for management purposes."

Galaviz v. Office of the President

Lawsuit Filed Alleging Harm from Transportation to Yucca Facility

On June 28, Jonathan Galaviz filed a lawsuit in the U.S. District Court of Nevada opposing the proposed Yucca Mountain high-level radioactive waste repository. Galaviz, a Hispanic-American filing pro-se, filed the action against the Office of the President, President George W. Bush, the U.S. Department of Energy, Energy Secretary Spencer Abraham, and the United States. In his twelve-page complaint, Galaviz argues, among other things, that both the Nuclear Waste Policy Act of 1982 (as amended) and the Yucca Mountain transportation plan violate the Equal Protection Clause of the U.S. Constitution because "high-level nuclear waste shipments are intentionally routed through minority communities across the U.S."

Issues

Galaviz makes the following allegations, among others, in his complaint:

- designated national transportation routes to the proposed Yucca Mountain facility "were intentionally selected by DOE (and its private contractors) to maximize the exposure and negative impacts to the minority communities of the United States," including the infliction of financial damages; and
- the Nuclear Waste Policy Act of 1982 and the associated Yucca Mountain environmental impact statement authorized by the act violate and are in conflict with the civil rights guaranteed to Galaviz and minorities under the Equal Protection Clause of the 14th Amendment to the U.S. Constitution.

Requested Relief

Galaviz is seeking, among other things, the following relief:

- a declaration that the Nuclear Waste Policy Act of 1982, as amended, is unconstitutional "because of its intentional discriminatory direct and indirect impact on Plaintiff, minority citizens, and all affected citizens across the United States of America;"
- a declaration that the Yucca Mountain environmental impact statement is invalid and therefore rescinded; and
- a declaration that "DOE's intentionally discriminatory policies and procedures for evaluating the Yucca Mountain site and associated national high-level nuclear waste transportation routes" are unlawful and the granting of a permanent injunction to halt all associated development of the Yucca Mountain project.

A copy of the complaint can be obtained on-line at http://www.geocities.com/yuccalawsuit.

Nevada Looks at Potential Constitutional Challenges re Yucca

Charles Cooper, a high-profile Washington, D.C. attorney hired by the State of Nevada, was recently quoted in the press as saying that he is "very encouraged" that the state may have a case against the proposed repository on constitutional grounds. Cooper declined to elaborate, other than to say that his review is not limited to the question of states' rights. Another state official, however, was quoted as saying that one possibility would be to challenge the constitutionality of the Nuclear Waste Policy Act itself. The act provides the framework for siting and developing a high-level nuclear waste repository. The official cautioned, nonetheless, that the review of potential challenges is in a very early stage and no decisions have been made as of yet.

In the meantime, the proposed Yucca facility is being challenged on several other legal fronts. Lawsuits are currently pending against the U.S. Environmental Protection Agency over groundwater protection and the U.S. Nuclear Regulatory Commission over licensing and safety issues. Two lawsuits remain pending against the U.S. Department of Energy involving site suitability rules and aspects of the environmental impact statement prepared for the project.

NAS Considers Study re Yucca Waste Transportation

The National Academy of Sciences' National Research Council is preparing to begin a two-year study on the shipment of nuclear waste to the proposed Yucca Mountain high-level radioactive waste repository. The study, which will focus on technical and societal issues associated with the transportation of such waste, will be conducted in conjunction with the Transportation Research Board. The U.S. Department of Transportation is providing $100,000 for the study. Panel members have not yet been named.

Transportation concerns have been a major issue highlighted by opponents to the proposed Yucca Mountain repository, including the Nevada congressional delegation. The U.S. Department of Energy's national transportation plan for the proposed repository is expected to be completed in 2003 and a record of decision on transportation is expected to be issued by fall of 2003.

For additional information, please contact Kevin Crowley of the National Academy of Sciences' Board on Radioactive Waste Management at (202) 334-3066.

(Continued from page 23)

to the events of September 11th, and ensuring that the nuclear plants that we regulate remain among the securest industrial facilities in the United States. Additionally, now that Congress has chosen to move forward on Yucca Mountain, our Agency will be actively engaged in determining whether this site is safe to be licensed to store spent nuclear fuel."

Prior to joining NRC, Merrifield served since 1995 as the Counsel and Staff Director of the Senate Subcommittee on Superfund, Waste Control and Risk Assessment. From 1992 to 1995, he was an associate with the Washington, D.C. law firm of McKenna and Cuneo.

(Continued from page 12)

President Phyllis Sorensen, Utah Education Association Executive Director Susan Kuziak, and others. Lt. Governor Olene Walker was also named as a respondent in the suit in her capacity as state elections officer. Lobbyist Doug Foxley, who is reported to be a founder of the ballot initiative, was not named as a respondent to the action.

For additional background information about the ballot initiative and the signatures collected, see LLW Forum News Flash titled "Proponents of Utah Waste Tax Initiative Claim to Have Votes Needed to Place Referendum on Ballot," June 11, 2002, and LLW Notes, March/April 2002, pp. 5-7 or go to the initiative proponents web site at www.saferbetterutah.org or contact Ken Alkema of Envirocare of Utah at (801) 532-1330.

(Continued from page 24)

Enforcement web site at http://www.nrc.gov/what-we-do/regulatory/enforcement.html.

Comments on the proposed use of ADR are due within 60 days of publication in the *Federal Register,* which is expected shortly. Comments may be mailed to Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop T-6D59, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001. Comments may also be submitted to nrcrep@nrc.gov.

U.S. Department of Energy/U.S. Environmental Protection Agency

Butterfield Departs DOE/GSA for EPA

Fred Butterfield, the main point of contact for the Low-Level Radioactive Waste Forum at the U.S. Department of Energy, recently accepted a permanent federal position at the U.S. Environmental Protection Agency with EPA's Science Advisory Board (SAB), effective September 3. The SAB is a long-standing advisory committee chartered under the Federal Advisory Committee Act (FACA). Butterfield will be serving as the Designated Federal Officer (DFO) for the Clean Air Scientific Advisory Committee.

Prior to his departure from DOE, Butterfield served as Special Assistant/Technical Advisor for the Assistant Secretary for Policy, Planning and Budget. He has been on a detail assignment at the GSA and the Office of Homeland Security, however, since March of this year. Butterfield has been a strong advocate of the LLW Forum and was instrumental in securing 2002 funding for the organization. In announcing his departure, Butterfield stated:

> My experiences at the Department of Energy over the past eight years have been rewarding, both professionally and personally. As vitally important as the mission of DOE's Environmental Management program has been—and continues to be—to the nation, my fondest memories will involve the people with whom I have had the privilege of working.

Martha Crosland, the Director of DOE's Office of Intergovernmental and Public Affairs, will now take over as the LLW Forum's main point of contact at DOE. Ms. Crosland has worked with the LLW Forum for years and has been an important advocate in securing funding for the organization.

U.S. Nuclear Regulatory Commission

NRC Announces Opportunity for Hearing re H.B. Robinson License Renewal

The U.S. Nuclear Regulatory Commission recently announced the opportunity to request a hearing on the license application to renew for 20 years the operating license of the H.B. Robinson nuclear power plant in Hartsville, South Carolina. Carolina Power & Light Company (CP&L), the operator of the H.B. Robinson plant, filed an application to renew the license for Unit 2 on June 17.

CP&L's License Renewal Request

A notice of receipt of CP&L's license renewal request was published in the *Federal* Register by NRC on July 18. Since that time, NRC staff have concluded that CP&L has submitted sufficient information for the agency to formally docket, or file, the application and conduct a detailed review.

Requests for a hearing on the CP&L license renewal application must be filed within 30 days from the date of publication of the *Federal Register* notice, expected shortly. Requests should be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, Attention: Rulemakings and Adjudication Staff. Copies should also be sent to NRC's Office of General Counsel and CP&L.

Copies of CP&L's license renewal application can be found on-line at http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html and are available through the NRC's Agencywide Documents Access and Management System (ADAMS).

NRC Regulations/Status of Renewals

Under NRC regulations, a nuclear power plant's original operating license may last up to 40 years. License renewal may then be granted for up to an additional 20 years, if NRC requirements are met. To date, NRC has approved license extension

requests for ten reactors on five sites—the Calvert Cliffs Nuclear Power Plant near Lusby, Maryland; the Oconee Nuclear Station near Seneca, South Carolina; the Arkansas Nuclear One plant; the Edwin I. Hatch plants near Baxley, Georgia; and the Turkey Point nuclear reactors near Homestead, Florida. (See *LLW Notes,* May/June 2002, p.19.) NRC is currently processing license renewal requests for twelve other reactors at six sites. Several individuals, including the Senior Vice President and Chief Nuclear Officer of the Nuclear Energy Institute, have recently been quoted as predicting that most, if not all, nuclear reactors will apply for license extensions in the coming years. (See *LLW Notes,* March/April 2001, p. 14.)

NRC Guidance Document

NRC approved three guidance documents in July 2001 which describe acceptable methods for implementing the license renewal rule and the agency's evaluation process. (See *July/August 2001,* p. 26.) The documents are intended to, among other things, speed up the renewal process.

In addition, an existing NRC document—"Generic Environmental Impact Statement for License Renewal of Nuclear Plants" (NUREG 1437)—assesses the scope and impact of environmental effects that would be associated with license renewal at any nuclear power plant site.

Merrifield Takes Oath for Second Term at NRC

Jeffrey Merrifield was sworn in on August 5 for a second term as one of five members of the U.S. Nuclear Regulatory Commission. Merrifield had been confirmed for a second term as NRC Commissioner by the U.S. Senate by voice vote on August 1. His new term expires June 30, 2007.

Merrifield was first appointed to a vacant seat on the NRC by then-President Bill Clinton. His first term began October 23, 1998. While at NRC, Merrifield has participated in a number of important agency changes, including issuing 20-year license extensions for 10 nuclear reactors, overseeing 3,500 megawatts of power uprates for the existing plants, and responding to security issues associated with events of September 11, 2001.

In regard to his reappointment, Merrifield stated as follows:

> "I am honored that President George Bush and the Senate have put their faith in me that I can continue this Agency's important mission of protecting the health and safety of the American people from the peaceful, civilian uses of nuclear materials . . . I am eager to rejoin my colleagues in responding

(Continued on page 21)

NRC Announces Availability of R.E. Ginna Renewal Application

The U.S. Nuclear Regulatory Commission recently announced the availability of an application for renewal of the operating license of the R.E. Ginna nuclear power plant. The plant, which is owned by Rochester Gas & Electric Company, is located in Wayne County, New York. A 20-year renewal application for the plant's current operating license—which is set to expire on September 18, 2009—was submitted on July 30.

NRC staff is currently conducting an initial review of the license renewal application to determine if sufficient information has been submitted to warrant the conducting of the required formal review. If the application is deemed to warrant such a review, the NRC will formally "docket," or file, the application and will distribute an announcement regarding the opportunity to request a hearing.

A copy of the renewal application is available on the NRC's web site at http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html and is available through the NRC's Agencywide Documents Access and Management System (ADAMS).

NRC Unveils New System re Terrorist Threats

The U.S. Nuclear Regulatory Commission recently announced the development of a new, color-coded system designed to communicate the severity of terrorist threats to American nuclear facilities. The system was designed as part of the agency's response to the Bush administration's Homeland Security Advisory System (HSAS). The idea is to provide a consistent framework for government officials to communicate the nature and degree of severity regarding threats to the nation. Accordingly, NRC has adopted the following HSAS color code:

- Green (Low): low risk of terrorist attack;
- Blue (Guarded): general risk of terrorist attack;
- Yellow (Elevated): significant risk of terrorist attack;
- Orange (High): high risk of terrorist attack; and
- Red (Severe): severe risk of terrorist attack.

In addition to adopting the HSAS color code, NRC has conformed its system for activating the agency's Incident Response Center to the HSAS rankings and developed steps to be taken to enhance security at NRC buildings for each ranking.

According to NRC, the current threat condition is yellow. If the condition changes, NRC will promptly notify affected licensees and refer them to recommended protective measures.

NRC Seeks Public Comment re Use of ADR

The U.S. Nuclear Regulatory Commission is seeking public comment on the development of a pilot program to evaluate the potential use of alternative dispute resolution (ADR) in the agency's enforcement program. ADR—which is already used by the U.S. Environmental Protection Agency, the U.S. Navy and the Federal Energy Regulatory Commission—is defined as any procedure that is used to resolve issues in controversy. It may involve the use of a neutral third party to resolve conflicts via facilitated discussion, mediation, fact-finding, mini-trials, and arbitration.

In particular, the NRC is seeking public comment on whether or not it should use ADR at certain points in the enforcement process, such as

- after the identification of wrongdoing or an allegation of discrimination, but before a full investigation;
- after an investigation that substantiates the matter, but before an enforcement conference;
- after the issuance of a Notice of Violation and proposed civil penalty, but before imposition of that penalty; and
- after imposition of a civil penalty, but before a hearing on the matter.

As guidance for the types of comments that NRC is seeking, the agency's press release states as follows:

> The staff requests that comments be focused on issues related to the implementation of a pilot program to test the use of ADR at any of the four steps in the enforcement process, and include such factors as what techniques would be useful at each point, what pool of neutrals might be used, who should attend the ADR sessions, and what ground rules should apply. Also, the staff requests that comments be focused on the pros and cons of using ADR at points in the enforcement process and in maintaining safety, increasing public confidence, and maintaining the effectiveness of the enforcement program.

NRC plans to hold several public meetings and workshops on the possible use of ADR between September 2 and October 14 in Hanford, Washington; Chicago, Illinois; San Diego, California; New Orleans, Louisiana; and Washington, D.C. Specific dates and meeting locations will be announced on the NRC's Office of

(Continued on page 21)

NRC Seeks Public Comment re Spent Fuel Storage

The U.S. Nuclear Regulatory Commission is seeking public comment on proposed regulations regarding licensing requirements for the dry storage of spent nuclear fuel in an independent spent fuel storage installation (ISFSI) or in a U.S. Department of Energy monitored retrievable storage installation (MRS). The proposed changes, which reflect over 10 years of agency experience in licensing dry cask storage facilities and rapid advancements in the earth sciences and earthquake engineering, would make siting and design criteria for dry storage more risk informed and would require the consideration of uncertainties in seismic hazard evaluations.

In particular, the proposed regulations would

- require certain specific license applicants for a dry cask storage facility to account for uncertainties in seismic evaluations by the use of probabilistic seismic hazard analysis methods or other suitable sensitivity analyses;
- allow applicants for either an ISFSI or MRS facility to use a design earthquake ground motion appropriate for and commensurate with the associated risk; and
- require that analyses be conducted by general licensees to determine whether the designs of cask storage pads and areas adequately account for dynamic loads, in addition to static loads.

According to NRC's press release, "[d]etailed guidance on the procedures acceptable to the NRC for meeting the requirements is contained in a draft regulatory guide to be issued in parallel for public comment as Draft Regulatory Guide, DG-3021, 'Site Evaluations and Determination of Design Earthquake Ground Motion for Seismic Design of Independent Spent Fuel Storage Installations and DOE Monitored Retrievable Storage Installations.'"

(Continued on page 11)

NRC Accepts Application re Advanced Reactor Design

Staff of the U.S. Nuclear Regulatory Commission have accepted a design certification application from Westinghouse Electric Company for its AP1000 standard plant design after determining that it contains sufficient information to be formally "docketed" and processed. The AP1000 design, which involves a nuclear power plant capable of producing about 1,100 megawatts of electricity, features advanced safety systems that rely on gravity and natural processes to safely shut down the reactor or to mitigate the effects of an accident. The design encompasses a 60-year operating life.

Westinghouse submitted the application for design certification on March 28, referencing the AP600 standard certified by NRC in 1999. Changes to the standard were necessitated, however, due to the larger size of the AP1000. Additional details about the AP1000 design are available in a *Federal Register* notice published on June 28.

The certification process is described in Title 10 of the Code of Federal Regulations, Part 52, Subpart B. Pursuant to this process, NRC staff will now begin review of the AP1000 application, request any additional information deemed necessary, and then issue a draft Safety Evaluation Report to address any technical and safety questions. A final Safety Evaluation Report will be issued when all technical and safety questions have been resolved. NRC's rulemaking process, including the opportunity for public participation, will then be used to certify the design.

If certified, a company seeking to build and operate a new nuclear power plant could choose to use the design and reference it in its application. According to NRC, "[s]afety issues resolved within the scope of the design certification are not subject to litigation with respect to that individual license application, although site-specific design information and environmental impacts associated with building and operating the plant at a particular location could be litigated." To date, three other standard reactor designs have been certified by NRC.

NRC Amending Rules re Electronic Documents Submittal

The U.S. Nuclear Regulatory Commission recently announced that it is revising its rules on when and how licensees, applicants, vendors and members of the public may submit documents electronically to the agency. According to a press release on the topic, "[t]he NRC is modifying numerous provisions in its regulations to make clear it will accept electronic communications, if they comply with agency guidance."

Under the revised procedures, voluntary electronic submissions may be made to the agency through such means as CD-ROM, e-mail, and the agency's Electronic Information Exchange (EIE). The EIE enables electronic submissions to be made in a secure Web-based environment. The agency will, however, continue to accept paper documents.

NRC is seeking public comment on both the revised rule and the accompanying guidance document, which explains how electronic submissions may be made and identifies those methods that are deemed unacceptable. Once the revised rules become effective, the new guidance document will supercede the agency's earlier guidance on electronic submissions.

Neither the revised rule nor the guidance address the submission of documents in hearings. Nonetheless, NRC is currently conducting a pilot program for electronic filings in one adjudicatory proceeding. Upon conclusion of the program, NRC will seek public comment on a separate rule and guidance governing procedures for electronic filings in adjudicatory proceedings. Until such time, filings in such proceedings must be done in paper unless electronic filing is authorized on a case-by-case basis.

The rule will become effective 90 days after publication in the *Federal Register,* expected shortly, unless significant adverse comments are received. According to its press release, "NRC is publishing a direct final rule because it views this as a non-controversial action and anticipates few, if any, significant adverse comments on the rule itself."

A public meeting on NRC's proposal and guidance

(Continued on page 19)

NRC Orders Enhanced Security for Enriched Uranium Fuel Fabricators

The U.S. Nuclear Regulatory Commission recently ordered two companies which fabricate enriched uranium fuel for nuclear reactors to implement interim compensatory security measures for the current threat environment. The companies, BWX Technologies, Inc. and Nuclear Fuel Services, are located in Lynchburg, Virginia and Erwin, Tennessee.

The orders—like the agency's February 25 orders to operating commercial nuclear power plants—are effective immediately and formalize a series of security measures that NRC licensees have taken in response to NRC advisories in the wake of the September 11 terrorist attacks. Additional security enhancements derives from the agency's on-going comprehensive security review are also contained in the orders.

Details of the orders are not publicly available, but they are known to contain requirements for increased patrols, augmented security forces and capabilities, additional security posts, installation of additional physical barriers, vehicle checks at greater distances, enhanced coordination with law enforcement and military authorities, and greater restricted site access controls.

Each licensee is required to provide a schedule to NRC within 20 days for achieving full compliance. A licensee must provide written notice and justification to the agency within 20 days if it is unable to comply with any requirements in the order, if compliance with any requirement is believed unnecessary, or if implementation would cause the licensee to be in violation of any NRC regulation or the facility's license or would adversely impact safe operation of the facility.

According to NRC's press release, "[t]hese security requirements will remain in effect until the NRC determines that the threat level has diminished, or that other changes are needed as a result of the NRC's comprehensive safeguards and security program re-evaluation.

A copy of the non-sensitive portions of the security orders will be posted on the NRC web site at http://www.nrc.gov/what-we-do/safeguards/response-911.html, under Orders.

To Obtain Federal Government Information

by telephone

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

by internet

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

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

- EPA • (for program information, publications, laws and regulations) ..... **http://www.epa.gov/**

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

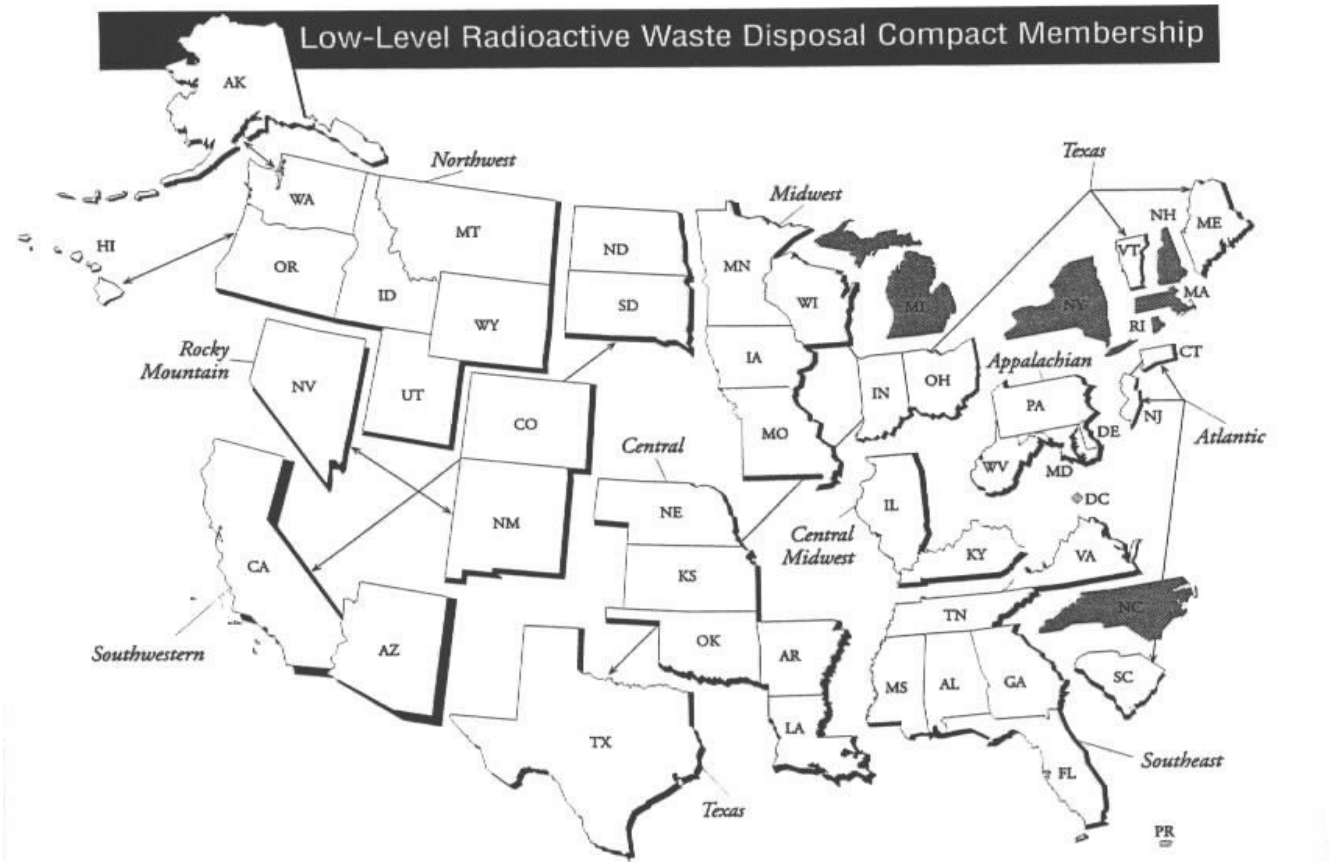
- GAO homepage (access to reports and testimony) ..... **www.gao.gov**

To access a variety of documents through numerous links, visit the web site for the LLW Forum, Inc. at www.llwforum.org

Accessing LLW Forum, Inc. Documents on the Web

LLW Notes, LLW Forum Meeting Reports and the *Summary Report: Low-Level Radioactive Waste Management Activities in the States and Compacts* are distributed to the Board of Directors of the LLW Forum, Inc. As of March 1998, *LLW Notes* and LLW Forum Meeting Reports are also available on the LLW Forum web site at www.llwforum.org. The *Summary Report* and accompanying Development Chart, as well as LLW Forum News Flashes, have been available on the LLW Forum web site since January 1997.

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



Appalachian Compact
Delaware
Maryland
Pennsylvania *
West Virginia

Atlantic Compact
Connecticut
New Jersey
South Carolina •

Central Compact
Arkansas
Kansas
Louisiana
Nebraska *
Oklahoma

Central Midwest Compact
Illinois *
Kentucky

Northwest Compact
Alaska
Hawaii
Idaho
Montana
Oregon
Utah
Washington *
Wyoming

Midwest Compact
Indiana
Iowa
Minnesota
Missouri
Ohio
Wisconsin

Rocky Mountain Compact
Colorado
Nevada
New Mexico

Nothwest accepts Rocky Mountain waste as agreed between compacts

Southeast Compact
Alabama
Florida
Georgia
Mississippi
Tennessee
Virginia

Southwestern Compact
Arizona
California *
North Dakota
South Dakota

Texas Compact
Maine
Texas *
Vermont

Unaffiliated States
District of Co.umbia
Massachusetts
Michigan
New Hampshire
New York
North Carolina
Puerto Rico
Rhode Island