

LLW *notes*

Volume 17, Number 2 March/April 2002

National Academies of Science

National Research Council Releases Report re Disposition of Slightly Radioactive Material (Clearance Rule)

On March 21, the National Academies of Sciences' National Research Council publicly released its report regarding the disposition of slightly radioactive solid material. The report, which is titled "The Disposition Dilemma: Controlling the Release of Solid Materials from Nuclear Regulatory Commission-Licensed Facilities," is the result of a year-long study performed by a committee of experts put together by the National Research Council at the Nuclear Regulatory Commission's request. (See *LLW Notes*, January/February 2001, p. 20.)

In particular, the Commission asked the Research Council to recommend changes to the decision-making process for the disposition of slightly radioactive solid material and to determine whether sufficient technical information exists to establish a consistent system nationally. The Research Council committee's report finds that NRC's decision-making process is "workable" and protective of the public health and safety. However, the report states that NRC's process "could benefit from a new framework that uses broad input from stakeholders—including the general public—to develop and evaluate options for disposal, reuse, and recycling." The committee proposed a framework, which is intended as a policy-making tool only, that incorporates the need to assess

health, economic, and environmental impacts, among others.

The committee also reviewed NUREG-1640, a draft NRC report that provides technical guidance on future policy revisions. The committee found the methodology used in the draft guidance to assess potential health effects associated with salvage or disposal to be "state of the art," but recommended the consideration of additional scenarios for disposition, alternative exposure pathways, and the impact of human error. The committee's report suggests using 1 millirem per year as a starting point for determining an appropriate dose-based standard for the disposition of material.

The committee's report looked at three general categories for the disposal of slightly radioactive

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Low-Level Radioactive Waste Forum, Inc.

LLW Notes

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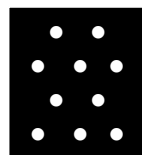
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Key to Abbreviations

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

LLW Forum Holds Meeting In Charleston, South Carolina

The Low-Level Radioactive Waste Forum, Inc. met in Charleston, South Carolina on March 11 and 12, 2002. The LLW Forum Executive Committee met on March 10. Sixteen LLW Forum Directors, Alternate Directors, and meeting designees representing fifteen different compacts, host states, and unaffiliated states participated in the meeting. In addition, three Associate Members representing two different federal agencies participated, as well as fourteen other state and compact representatives. Other individuals representing five different federal agencies attended, as did representatives from facility operators, industry organizations, and the private sector.

Topics Discussed

During the course of the two day meeting, attendees heard presentations on the following topics, among others:

- ◆ new developments in states and compacts;
- ◆ an Illinois Low-Level Radioactive Waste Management Report which contains economic modeling of disposal facility development, as well as information on the relationship between the timing of waste receipts and disposal fees;
- ◆ industry and NRC perspectives on the entombment option for the decommissioning of nuclear utilities;
- ◆ updates regarding the Barnwell, South Carolina and Envirocare of Utah low-level radioactive waste disposal facilities;
- ◆ an update on NRC activities, including agency action on Big Rock Point Plant's proposal to dispose of demolition debris with trace quantities of licensed material, the issuance of

a draft supplement to the final environmental impact statement on the decommissioning of nuclear facilities, and the status of license renewal requests;

- ◆ the U.S. Environmental Protection Agency's final rule on the storage, treatment, transportation and disposal of mixed waste;
- ◆ privatization of the Low-Track System;
- ◆ security at nuclear power plants;
- ◆ a proposal regarding the creation of a centralized agency to regulate radioactive materials;
- ◆ a draft agreement between states and compacts and the U.S. Department of Defense regarding the department's waste management practices;
- ◆ the U.S. General Accounting Office's recent report on the adequacy of NRC's assurances of decommissioning funding during utility restructuring; and
- ◆ the disposal of waste from the Formerly Utilized Sites Remedial Action Program (FUSRAP) by the Army Corps of Engineers.

In addition, at the Executive Committee meeting on March 10, Kevin Crowley gave a presentation on plans by the National Academies of Sciences to conduct a study on improving practices for the regulation and management of "low activity" radioactive waste in the United States. The study will be conducted by a 15-member National Research Council committee that has not yet been selected. (See *LLW Notes*, January/February 2002, pp. 1, 9–10.)

Other Items of Interest

During the course of the meeting, it was announced that the Low-Level Radioactive Waste Forum has been awarded a one-year grant of up

Low-Level Radioactive Waste Forum, Inc. *continued*

to \$150,000 from the U.S. Department of Energy, commencing March 2002. LLW Forum members discussed ways in which the additional monies should be used to assist members and the organization in its operations and expressed their sincere appreciation to DOE for the requested financial assistance.

Actions Taken

Election of Executive Committee and Officers

During the course of the meeting, the following persons were elected to serve on the Executive Committee and/or as officers of the LLW Forum, Inc. in 2002:

- ◆ Max Batavia of the Atlantic Compact,
- ◆ Kathryn Haynes of the Southeast Compact (Chair),
- ◆ William Sinclair of the State of Utah,
- ◆ Leonard Slosky of the Rocky Mountain Compact (Vice Chair),
- ◆ Thor Strong of the State of Michigan,
- ◆ Terrence Tehan of the State of Rhode Island, and
- ◆ Stanley York of the Midwest Compact (Secretary/Treasurer).

Resolutions During the course of the meeting, various resolutions were passed by the Board of Directors, including:

- ◆ approval of 2002 budget adjustments and authorization to officers to make any further adjustments that they deem necessary;
- ◆ authorization to the officers to take the administrative and management steps necessary to implement the DOE grant; and

- ◆ expressions of appreciation to Governors who supported the LLW Forum's grant request and to the U.S. Department of Energy for the requested financial assistance.

U.S. Army Becomes Associate Member

The U.S. Army recently became the second federal agency to purchase an Associate Membership in the Low-Level Radioactive Waste Forum. Other federal agencies—including the U.S. Nuclear Regulatory Commission—are reported to also be considering membership, while still others—such as the U.S. Environmental Protection Agency—have purchased specific services from the organization.

For additional information about becoming a member, please go to the LLW Forum's web site at www.llwforum.org or contact Mr. Todd D. Lovinger Lovinger—the LLW Forum's Management Contractor—at (202) 265-7990.

Atlantic Compact/South Carolina

S.C. House Votes to Use Barnwell Funds to Balance Budget

The South Carolina House voted on April 17 to take \$61 million from the cleanup fund for the Barnwell low-level radioactive waste disposal facility and use it to balance this year's budget, which has an estimated \$74 million shortfall. Budget work is stalled in the Senate, however, where members continue to debate a proposed cigarette tax.

Under the House plan, 40 percent of the monies taken from the Barnwell fund will go to local school districts, with the remainder going into the general fund to help make up for a 1.5 percent, across-the-board budget reduction. This will leave the fund with a balance of approximately \$300,000. Last year, legislatures took more than \$38 million out of the Barnwell cleanup fund to protect colleges from budget cuts.

In addition to voting to take money out of the fund, however, the House also passed a provision that will require the General Assembly to repay the fund. The General Assembly will be responsible for cleaning up the site, should the need arise.

Northwest Compact/Utah

Radioactive Waste Disposal Referendum Initiative Filed in Utah re New Taxes and Policies (Including Class B and C Waste Disposal Prohibition)

On April 3, a statewide ballot initiative was filed in Utah 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 initiative, which promotes draft legislation titled the "Radioactive Waste Restrictions Act," is being sponsored by Utahns for Radioactive Waste Control. Also supporting the initiative are the Utah Education Association (UEA), the Utah Crusade for the Homeless, former state Governor Calvin Rampton, and Mickey Gallivan—the son of Salt Lake Tribune publisher emeritus John Gallivan. In order to get the initiative on the ballot for the November elections, proponents 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—approximately 77,000 signatures—by the May 31 deadline.

Tax on the Disposal of Out-of-State Low-Level Radioactive Waste

The Proposed Tax Proponents of the referendum initiative claim 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. Specifically, the initiative calls 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.

States and Compacts *continued*

In explaining the need for such taxes at a news conference on Wednesday, initiative proponents noted that the State of Washington imposes a minimum tax of \$20 per cubic foot on waste disposed of at the Richland facility and the State of South Carolina imposes a \$235 tax on waste disposed of at the Barnwell facility. Utah, they claim, charges only 10 cents per cubic foot—a tax that only covers the cost of regulation. The proposed initiative would raise the tax in Utah to between \$4 and \$150 per cubic foot, depending on the specific type of waste being disposed.

A press release distributed by initiative proponents further described the tax as follows:

“The Radioactive Waste Restrictions Act would impose a tax on each cubic foot of radioactive waste disposed of in Utah. That rate would vary depending on the type of waste. This tax—passed through to the generator of the waste—would be less than that charged by the other sites that accept such waste, but substantially more than the 10-cent per cubic foot Utah currently charges.”

The act proposes the following specific surcharges on the disposal of low-level radioactive waste in Utah:

Class A LLRW – Containerized	\$150/ft ³
Class A LLRW – Bulk Disposal	\$20/ft ³
Mixed Waste – Containerized	\$150/ft ³
Mixed Waste – Bulk Disposal	\$30/ft ³
PCB Radioactive Waste – Containerized	\$150/ft ³
PCB Radioactive Waste – Bulk Disposal	\$30/ft ³
PCB Mixed Waste – Containerized	\$150/ft ³
PCB Mixed Waste – Bulk Disposal	\$30/ft ³
11e.2 Waste – Bulk Disposal	\$4/ft ³
NORM Waste – Containerized	\$150/ft ³

NORM Waste – Bulk Disposal
\$20/ft³

Envirocare’s Immediate Reaction Envirocare President Kenneth Alkema was quoted in the local papers as calling the proposed tax “unfair, exorbitant, arbitrary and capricious” and as arguing that the initiative is based on incorrect data about Envirocare’s business and the radioactive waste disposal market. Alkema disputes that such a tax could raise \$200 million annually and suggests it could put Envirocare out of business.

Another Envirocare representative points out that one of the initiative’s key proponents, Doug Foxley, failed in a previous attempt to site his own competing radioactive waste facility in Tooele County in 1997.

Prior Attempt re Tax In 2001, legislation was introduced in the Utah legislature which would have imposed substantial taxes on the disposal of low-level radioactive waste in Utah. Key portions of the bill, however, were defeated during debate and the final version passed imposed much lower fees and taxes than originally sought. (See *LLW Notes*, March/April 2001, pp. 7 – 9.)

Class B and C Disposal Prohibition

The initiative also seeks to prohibit Utah from licensing or siting a facility for the disposal of high-level radioactive waste, greater than Class C radioactive waste, or Class B or C low-level radioactive waste within the state. Envirocare of Utah previously filed an application to dispose of containerized Class B and C waste at its Tooele County facility, which application was approved—subject to specified limitations and conditions—by the Executive Secretary of the Utah Radiation Control Board on July 9, 2001. (See *LLW Notes*, July/August 2001, pp. 6 – 9.) Under Utah law, however, the Governor and legislature must approve any new waste disposal licenses. Envirocare has announced that, at this time, it will not seek the requisite legislative or gubernatorial approval.

Various entities appealed the Executive Secretary's July 9 decision. On March 1, the Utah Radiation Control Board granted summary judgment in favor of Envirocare of Utah on eight of the nine issues raised on appeal. The remaining issue is currently pending before the Board. (See LLW Forum News Flash titled, "Utah Radiation Control Board Grants Summary Judgment to Envirocare re 8 of 9 Issues on Appeal: Intervention Denied re Containerized Class A License Amendment," March 19, 2002.)

Other Aspects of the Proposed Initiative

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 seeks 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 seeks 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.

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

DEQ Review

The Utah Department of Environmental Quality is currently evaluating the proposal and has noted that the initiative raises some important technical, policy, administrative, and constitutional issues that will impact the future regulation of radioactive waste in Utah. The initiative makes numerous changes to the current Radiation Control Act, which would become effective as written if enough signatures are garnered to get it on the fall ballot and the initiative passes.

Envirocare Response to Radioactive Waste Disposal Referendum Initiative

In response to the proposed initiative, Envirocare put out a press release stating that it must be a "cruel hoax" and asserting that "[t]he proposed \$200,000,000 tax would exceed Envirocare's total revenues and would essentially 'kill the golden goose.'" Envirocare President Ken Alkema further stated that the proposed initiative "has nothing to do with helping education or the homeless and would effectively put 400 people out of work."

In its press release, Envirocare argues that the proposed initiative targets one company and punishes them for being successful. "Our company provides jobs, revenues, taxes and fees to Tooele County, the state of Utah, and the nation. It improves the environment by helping to provide a safe, appropriate place to permanently dispose of low-level radioactive waste," commented Alkema. "This tax is patently unfair and unconstitutional."

Envirocare argues that the numbers presented in the proposed initiative are inaccurate and misleading because

- ◆ they are based on Envirocare's volume of wastes and not on the radioactive content of the wastes,
- ◆ Envirocare takes in more volume, but far less radioactivity than its competitors,
- ◆ it is improper, given the above, to compare the Envirocare facility to those at Barnwell and Richland, and
- ◆ it is significant that the Barnwell and Richland facilities are owned by the states and take class B and C wastes, which can support much higher taxes.

Utah Radiation Control Board Grants Summary Judgment to Envirocare re 8 of 9 Issues on Appeal

Intervention Denied re Containerized Class A License Amendment

On March 1, the Utah Radiation Control Board granted summary judgment in favor of Envirocare of Utah on eight of nine issues raised in appeals of the Executive Secretary's July 9 decision to approve—subject to specified limitations and conditions—the company's application to receive and dispose of containerized Class A, B, and C low-level radioactive waste at its facility in Tooele County, Utah. (See *LLW Notes*, July/August 2001, pp. 6 – 9).

On the same date, the Board denied Families Against Incinerator Risk (FAIR) standing to intervene in the issuance of a license amendment to allow Envirocare to dispose of containerized Class A waste in an existing cell.

Containerized Class A, B and C Application (New Cell)

Approval of the License Request The July 9 technical decision to approve Envirocare's license request is based on a review by the Utah Division of Radiation Control and its contractor, URS Corporation, of Envirocare's application, supporting technical documents and public comments. It contains the following conditions:

- ♦ the legislature and Governor must both approve the facility;
- ♦ the legislature must determine ownership of the site after 100 years of closure of the facility; and

- ♦ the legislature must authorize sufficient resources to the Division of Radiation Control to oversee transportation and disposal activities associated with the license. A tentative decision to approve Envirocare's license request was originally issued on January 2, 2001. (See *LLW Notes*, January/February 2001, pp. 1, 6.)

Envirocare's Decision Not to Seek Legislative or Gubernatorial Approval Shortly after the license request was approved, Envirocare issued a statement that “[a]fter careful consideration, Envirocare has determined it will not seek legislative or gubernatorial approval for its Class B and C low-level radioactive waste proposal.” Under Utah law, the Governor and legislature must approve any new waste disposal licenses. Envirocare's decision was attributed to public confusion between the companies proposal and that of the Goshute Tribe and Private Fuel Storage (PFS) to accept high-level spent fuel rods from nuclear power plants.

The legislative session concluded on March 6, 2002 with no action being taken. A final agency action must occur prior to any legislative or gubernatorial action.

Summary Judgment In late 2001, five groups filed appeals to the Executive Secretary's decision. Three of them were granted intervenor status: (1) Families Against Incinerator Risk (FAIR), (2) Utah Legislative Watch, and (3) Citizens Against Radioactive Waste. A fourth, Sierra Club, withdrew its petition to intervene at a hearing on January 4, 2002. A decision regarding intervenor status of the last appellant, the U.S. Air Force, was delayed pending potential resolution of the issues that the Air Force brought before the board. All parties agreed that the Air Force issues could be decided separately on an issue and timing basis.

The March 1 grant of summary judgment goes to the following eight issues:

- ♦ whether issuance of the license application poses an unreasonable risk to the health and safety of the public;

States and Compacts *continued*

- ◆ whether proper procedures were followed in granting an exemption to land ownership requirements;
- ◆ whether the land ownership exemption previously granted for Class A waste can be properly applied to Class B and C waste disposal;
- ◆ whether it was improper to issue a license without the site access program being in place;
- ◆ whether issues regarding assumption of ownership were properly dealt with prior to issuance of the license;
- ◆ whether the license contains improper conditions and was improperly issued;
- ◆ whether the licensing decision violates compact law; and
- ◆ whether there was improper bias and prejudice on the part of the Board.

One issue - whether Envirocare's emergency response and contingency plans are adequate - was denied summary judgment. The Board gave FAIR until March 15 to raise any other issues that "may have been missed." Envirocare will then have until March 25 to respond to any such filing by FAIR. A hearing on any others that are raised by FAIR prior to March 15, will be held at the Board's April 5 meeting. Parties will present a schedule for hearing at the April 5 meeting for the outstanding issue.

Containerized Class A Amendment (Existing Cell)

Background On November 19, the Utah Radiation Control Board received from Families Against Incinerator Risk a Request for Agency Action and Review and Petition to Intervene in the matter of the issuance of license amendment #12 to Envirocare of Utah. The license

amendment, which was issued by the Board's Executive Secretary on October 19, amends Envirocare's existing license to allow the company to receive and dispose of containerized Class A low-level radioactive waste in the existing cell at Envirocare's facility in Tooele County, Utah. (See *LLW Notes*, September/October 2001, p. 7.) FAIR contests the issuance of the license amendment and requests, among other things, that it be invalidated.

For an explanation of the issues raised by FAIR in its appeal, see LLW Notes, November/December 2001, pp. 7 - 8.

Denial of Standing The March 1 decision denied FAIR standing to intervene in the issuance of the license amendment by a 10 to 0 vote.

Administratively, for the Utah Division of Radiation Control, the denial constitutes a "final agency action." However, FAIR may appeal the Board's decision to deny standing to the Utah Court of Appeals.

Documents related to Envirocare's application for the disposal of containerized Class A, B and C radioactive waste—including a copy of Envirocare's license application, the draft Safety Evaluation Report, the draft Radioactive Materials License, and the draft Groundwater Discharge Permit—as well as to the company's application to dispose of containerized Class A waste in the existing cell are available for review and downloading on the Division of Radiation Control's website at

www.deq.state.ut.us/eqradi/drc_hmpg.htm.

For further information about the application or the appeals, please contact Bill Sinclair of the Utah Division of Radiation Control at (801) 536-4250.

Potentially Radiologically Contaminated Tools Removed from Envirocare; May Have Been Sold to the Public

The Department of Environmental Quality (DEQ) of the State of Utah recently sent out an information notice stating that a former employee of Broken Arrow, Inc.—a contractor for Envirocare of Utah—allegedly removed contaminated tools intended for disposal as waste at the Envirocare facility and sold them to Oquirrh Trading Company, a Tooele County pawn shop. DEQ was notified of the problem by Envirocare after the company discovered the alleged theft. The trading company's records indicate that a number of tools may have been sold to members of the public from January to December 2001. The tools—which may include large ratchet and socket sets, large crescent wrenches, and other hand tools—may or may not be marked U.S., U.S. CCC, US EC and may be painted red. DEQ's Division of Radiation Control recently recovered some of the contaminated tools at the trading company. The Tooele County Health Department assessed potentially contaminated tools brought in by the public at named locations and times from February 27 to March 4. Local and state environmental health officials will arrange for the proper disposal of tools which are determined to be contaminated.

“While we do not believe these contaminated tools present any significant health threat to members of the public, it is prudent to make sure that these tools are rounded up and properly disposed,” said Bill Sinclair, Director of the Division of Radiation Control. Myron Bateman of the Tooele County Health Department stated, “We are happy to provide facilities and cooperate with the Department of Environmental Quality in assuring that our Tooele citizens can have the opportunity to assess if there is a problem with

tools that may have been purchased at the Trading Company.”

Further investigation revealed that the employee had more contaminated tools at his house and had sold a number of tools to the local pawn shop. Some of the tools sold by the pawn shop had been sold to members of the public. Not all the tools were contaminated and a dose assessment conducted confirmed that handling of the tools did not pose a significant health risk. However, the Division of Radiation Control believed it to be prudent to try to recover any contaminated tools for return to Envirocare for proper disposal.

All of the pawn shops in Tooele County have been visited by inspectors of the Division of Radiation Control and DEQ is satisfied that the problem is confined to the one business. This matter is still under investigation by the Division of Radiation Control. An Order to Modify License Procedures and License was issued by the Division to facilitate new preventative measures. Envirocare has and will implement the new preventative measures.

For your information, copies of press releases from both the Utah Division of Radiation Control and Envirocare of Utah are attached. For additional information, please contact Bill Sinclair, Director of the Division of Radiation Control, at (801) 536-4255, or Kenneth Alkema, Acting President of Envirocare of Utah, at (801) 532-1330.

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the state and private sectors. He served as the Director of the Division of Radiological Health in Tennessee for nearly 18 years until his retirement in 2000. He currently works as a consultant to government entities and private industry on matters of radiation safety.

For additional information, contact Kathryn Haynes, Executive Director of the Southeast Compact Commission for Low-Level Radioactive Waste Management, at (919) 821-0500.

Rocky Mountain Compact/Colorado

New Jersey Waste Shipments to Colorado Delayed

The Colorado Health Department recently delayed the issuance of a permit to the Cotter Corporation which would allow the shipment of slightly radioactive soil from New Jersey for disposal at the company's uranium mill near Canon City. The decision to delay the permit issuance was made after Colorado Governor Bill Owens raised questions about the plan, saying that the "health department should thoroughly review whether the proposed shipments from New Jersey are covered by the Cotter Corporation's current permit." In particular, Health Department officials are inquiring as to how the materials would be unloaded from railroad cars, how they would be stored, and how they would be tested to ensure that they meet the facility's permit limitations.

The waste in question consists of over 450,000 tons of pre-UMTRCA mill tailings from a Maywood, New Jersey Formerly Utilized Sites Remedial Action Program (FUSRAP) site. (See *LLW Notes*, September/October 2001, pp. 15-16.) The site is being cleaned up by the U.S. Army Corps of Engineers.

Over 100 local residents attended a meeting hosted by the Cotter Corporation in early March, with many of them expressing opposition to the company's plan. Shortly thereafter, Fremont County Commissioners requested a six-month moratorium on the disposal project in letters sent to the Army Corps of Engineers, U.S. Environmental Protection Agency Administrator Christine Whitman, and members of Colorado's congressional delegation.

In addition, House Majority Leader Lola Spradley (R-Beulah) recently introduced legislation to make it more difficult for Cotter and other such companies to accept out-of-state waste in the future. Under Colorado law, the General

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Southeast Compact

New Officers Elected to Southeast Compact Commission

At its April 12 meeting, the Southeast Compact Commission for Low-Level Radioactive Waste Management elected a new slate of officers—including a Chair, Vice-Chair and Secretary/Treasurer.

James Setser, who has served as one of the two Georgia Commissioners since the creation of the Commission in 1983, was elected Chair. He has over thirty-eight years of professional experience in managing environmental programs in the federal, state and private sectors and has served as Vice-Chair of the Commission since 1992. He currently serves as Chief of Program Coordination in the Georgia Environmental Protection Division, the state liaison officer to the U.S. Nuclear Regulatory Commission, the Governor's representative to the U.S. Department of Energy's State and Tribal Governments Working Group, and as a technical resource to the Governor's office on nuclear matters. Setser replaces Dr. Richard Hodes of Florida who recently passed away. (See *LLW Notes*, January/February 2002, p. 7.)

Richard Hunter was elected Vice-Chair of the Commission. Hunter, who has served as one of two Florida Commissioners since 1990, currently serves as President and CEO of Food Technology Service, Inc. He previously worked as Florida's Deputy State Health Officer where he oversaw, among other offices, the state Bureau of Radiation Control.

Michael Mobley was elected as Secretary/Treasurer—a position he has held since 1999. Mobley, who has served as one of two Tennessee Commissioners since 1984, has over thirty-eight years of environmental management experience in

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Southwestern Compact/California

Legislation Introduced in California re Disposal Facility Licensing

On February 20, 2002, California Assembly Member Fred Keeley (D) introduced a bill in the state 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.

As introduced, the bill would define terms and would prohibit the California Department of Health Services from issuing or renewing a low-level radioactive waste disposal facility license unless a specific determination were made that the design and operation of the facility meets certain criteria and requirements. Those criteria and requirements are as follows:

- ◆ ensure that no radioactive material will be introduced into the environment;
- ◆ provide continuous monitoring and repackaging of materials to prevent any release into the environment;
- ◆ store the waste in containers that will not leak into the environment and that are labeled with the name of the generator, shipper, date and contents by amount, type, and half-life;
- ◆ design the facility to prevent the escape of waste from a container;
- ◆ design the facility to include multiple, engineered barriers, including—but not limited to—redundant, impermeable floors, walls, ceilings, and effluent collection systems, designed to contain any spilled or leaked waste and prevent exposure to rain or other environmental hazards;
- ◆ store each container in a manner providing visual inspection and ready access;
- ◆ repackage any deteriorating containers; and
- ◆ collect and place into new containers any spilled or leaked radioactive materials and any resulting contaminated materials.

The bill, A.B. 2214, passed 6 to 2 out of Assembly Environmental Safety and Toxic Materials Committee on April 9. It was heard on April 24 in the Assembly Appropriations Committee.

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Assembly and the Governor have the authority to control where high-level radioactive waste is stored in the state. Spradely's bill, HB 1408, would extend this authority to low-level radioactive waste—although the terms of the bill do not extend to sites farther than five miles from incorporated cities and towns. In particular, the bill would require at least two public hearings, an environmental assessment, and approval from the Colorado Health Department before low-level radioactive material can be brought into the state.

A Cotter Corporation official was quoted in local papers as saying that the company has no intention of entering the radioactive waste disposal business, but rather needs the income from the Maywood contract to carry it through a down time in the uranium business. The same official was quoted as noting that soil from the Maywood site is five to 10 times less radioactive than the tailings already on the company's site. Cotter Corporation has acknowledged, nonetheless, that it is interested in accepting radioactive waste similar to that which can be found at the Maywood site from a site on Long Island, New York.

Texas Compact/Maine

Maine Drafts Legislation to Withdraw from Texas Compact

Recently, the State of Maine drafted legislation to withdraw from the Texas Low-Level Radioactive Waste Disposal Compact. 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 introduced into the Maine legislature and presented at hearing on March 20. In its current form, the bill 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 legislation is sponsored by Representative W. Savage (D) of Buxton. It has been referred to the Committee on Utilities and Energy. To date, there has been no opposition voiced to the legislative committee. Initial work sessions on the bill, which was introduced as emergency legislation, began in April.

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, 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 50% 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.

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.”

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.

Under Maine’s legislative procedures, a bill does not take effect after passage until 90 days after adjournment of the legislature. The bill withdrawing the state from the Texas Compact was introduced as emergency legislation, however, which raises the visibility of the issue and allows the bill to take effect upon signature by the Governor.

US Ecology v. State of California

Intervention Denied in US Ecology's Promissory Estoppel Action Against California

On March 29, Judge E. Mac Amos of the Superior Court of the State of California denied petitions by Committee to Bridge the Gap, the Los Angeles Chapter of Physicians for Social Responsibility, and the Southern California Federation of Scientists to intervene in the remaining cause of action in a lawsuit filed by US Ecology concerning the development of the proposed low-level radioactive waste disposal facility in Ward Valley, California. In so doing, Mac Amos held that "the Proposed Interveners, organizations concerned with the medical and environmental implications of nuclear technology, do not have a direct and immediate interest in the remaining cause of action for promissory estoppel."

The case—which names as defendants the State of California, the Governor, and the Department of Health Services and its Director—alleges breach of contract and promissory estoppel causes of action on the part of the defendants and seeks a writ of mandate directing the state to take the necessary steps to acquire the Ward Valley site. The suit, as originally filed, seeks in excess of \$162 million in damages. (See *LLW Notes*, May/June 2000, pp. 20-22.)

Procedural History

In September 2001, a three-judge panel of the State of California Court of Appeal for the Fourth Appellate District reversed in part and affirmed in part a lower court's decision in the action. The ruling affirmed the lower court's findings that US Ecology "cannot state a breach of an express or implied contract cause of action based on the . . . [Memorandum of Understanding], and that

Ecology has failed to state a contract cause of action based on any other alleged oral or written agreement." The appellate court also affirmed the lower court's holding that US Ecology could not sustain a claim to force the State of California to take action necessary to cause establishment of the Ward Valley site.

However, the appellate court reversed the lower court's findings in regard to US Ecology's claim for promissory estoppel, holding as follows:

"We conclude the complaint stated a cause of action for promissory estoppel. We emphasize, however, that this conclusion means only that Ecology has plead sufficient facts to overcome a demurrer. Ecology will still be required to prove its claims, and we offer no opinion as to the likelihood that Ecology will be able to do so. We note further that although Ecology seeks all of its preparation costs and alleged lost profits, the full scope of contract-based damages are not necessarily recoverable under the equitable promissory estoppel doctrine."

Both US Ecology and the State of California petitioned the California Supreme Court to review the Court of Appeals' September 5 decision. However, in December 2001 the California Supreme Court denied the petitions for review. (See *LLW Notes*, November/December 2001, pp. 1, 12-13.)

The case is now awaiting remand for trial in the Superior Court of the State of California, San Diego. Trial has been set for January 2003.

Denial of Intervention

In denying the petitions to intervene, the court found as follows:

"Plaintiff US Ecology's Fifth Cause of Action for Promissory Estoppel is based upon assurances made by defendants starting in December 1985 that they would remain committed to completing

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Committee to Bridge the Gap v. California Department of Health Services

Court Throws Out New California Waste Regulations

A Sacramento County Superior Court judge recently nullified new waste disposal regulations adopted by the California Department of Health Services (DHS) in November 2001. The DHS regulations mirror federal Nuclear Regulatory Commission regulations that allow, within specified limitations, the disposal of slightly contaminated radioactive materials in regular landfills. The regulations, according to DHS, follow federal guidelines for decommissioning nuclear facilities and pose no threat to the public. In fact, DHS notes that the new regulations actually tighten cleanup standards for contaminated sites. The court, however, found that the regulations “will have a significant adverse environmental effect.” Moreover, the court ruled that, contrary to claims of state officials, California has the authority to pursue more protective standards for radioactive waste disposal, but failed to consider that option in violation of state law. The court’s ruling was made in response to a lawsuit filed by Committee to Bridge the Gap, the California Federation of Scientists, and Physicians for Social Responsibility. The plaintiffs argue that landfills are not designed to safely accommodate nuclear waste.

Prior regulations required the elimination of radioactivity when sites are cleaned up. The new regulations, however, allow the release of sites for another use (and the disposal of debris from the site in an ordinary landfill) if the sites produce less than 25 millirem of radioactivity per year. Such low levels of radiation are not a risk, according to DHS, which notes that the average American receives 360 millirems of radiation each year—300 millirems from natural sources and about 60 millirems from man-made activities.

Opponents of the rules complain, however, that it is not sufficiently protective of public safety and the environment. As a result, state Senator Gloria Romero (D), Chair of the Senate Select Committee on Urban Landfills, has introduced legislation that would prohibit the disposal of radioactive materials in regular landfills and that would increase monitoring at landfills to prevent radioactive waste from being sent there. The bill, SB 1623, would expand the scope of radioactive materials that must be disposed of in a licensed facility. The bill was heard in the Senate Environmental Quality Committee on April 22.

According to news accounts, DHS currently licenses and monitors approximately 2,100 users of radioactive materials. Since 1962, approximately 4,000 sites in California have been released from state licensing. Since the new DHS regulation has taken effect, no soil or other radioactive waste has been disposed of at an ordinary landfill because no new sites have been decommissioned.

Romano Appointed CEO of American Ecology

Company Receives \$5 million BNFL Cleanup Contract

Earlier this week, the Board of Directors of American Ecology Corporation announced the appointment of Stephen Romano as Chief Executive Officer of the company, effective immediately. Romano, who has worked for American Ecology and its subsidiaries for more than 12 years, has served as President and Chief Operating Officer of the company since October 2001 and retains those titles.

In announcing the appointment, the Board stated:

“We are very pleased to appoint Steve Romano to lead American Ecology as Chief Executive

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U.S. Department of Energy v. State of Nevada

DOE Sues Nevada re Yucca Water Permits

The U.S. Department of Energy recently filed a petition in the U.S. District Court in Las Vegas to contest a state official's refusal to extend temporary water permits at the site of the proposed Yucca Mountain high-level radioactive waste repository. The state official refused to extend the temporary permits in February, after President George W. Bush approved the department's decision to build a permanent repository at the Yucca Mountain site, on the basis that the site characterization process was complete and the temporary permits were no longer necessary.

DOE added the petition to a prior complaint challenging the state's denial of a permanent water supply at Yucca Mountain. The department contends that the refusal decision contradicts state law and that, without water, DOE won't be able to complete scientific studies needed to provide "a reasonable assurance that the public and the environment will be adequately protected from the hazards posed by high-level radioactive waste and spent nuclear fuel."

The state filed its answer to both complaints in late March. As part of its response, the state is seeking dismissal of the federal request for the temporary water permit. In papers filed before the court, Nevada attorneys argue that the project is legally dead and water is not needed at the site until Congress acts to override Nevada Governor Kenny Guinn's veto of the proposed repository.

"Only if Congress passes new legislation overriding the Notice of Disapproval and if the President signs this new legislation, the Yucca Mountain Project may be revived. Until this eventually happens, a matter of considerable speculation at this point, the project is legally dead."

Walker v. Cheney

GAO/Congressional Leaders Sue Over White House Energy Policy

David Walker, Comptroller General of the General Accounting Office, filed a lawsuit in late February against the White House seeking information about the Bush administration's energy policy. Specifically, the action—which was filed at the request of Democratic lawmakers—seeks records of a task force led by Vice President Dick Cheney. It alleges that environmentalists were excluded from the closed-door task group meetings, while members of industry were not.

One of the controversial issues in Bush's energy policy challenged by supporters of the litigation is a revival of nuclear power and, more specifically, the decision to support the proposed Yucca Mountain high-level radioactive waste repository. The action seeks, among other things, to determine whether the task force impacted the Bush decision to support repository development.

The White House argues that releasing records from the energy task force would erode White House authority and blur the constitutional lines between the legislative and executive branches of government.

Russian Supreme Court Prohibits Hungary Imports

Environmentalists were handed a victory recently by the Russian Supreme Court when it struck down a government decision to allow the import of nuclear waste from Hungary for storage. The court found that a 1992 law which allows Russia to import spent fuel rods from the Ukraine, Bulgaria, Slovakia, and Hungary for reprocessing specifically requires the return of such waste to the countries of origin for permanent storage. The lawsuit was initially filed by Greenpeace and other environmental organizations last year when they became aware of a 1998 government decision to allow nuclear waste from Hungary to be sent to Russia for storage.

Environmentalists are also objecting to a law signed last year that allows the import of spent nuclear fuel from foreign countries for reprocessing and storage. (See *LLW Notes*, July/August 2001, p. 16.) Under the plan, spent fuel from foreign countries will be sent to Russia via armored train for reprocessing. Russia is expected to earn \$20 billion over the next decade under the plan, importing nearly 22,000 tons of spent nuclear fuel. Part of the revenues are slated for use to clean up existing nuclear pollution in Russia. Environmentalists, however, fear that Russia's crumbling infrastructure and weak government make a dangerous environment for importing radioactive materials.

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the process necessary to develop a low-level radioactive waste disposal facility at Ward Valley. US Ecology alleges that defendants promised they would make US Ecology the sole and exclusive low level radioactive waste disposal licensee in [] California for 30 years. It appears to the court that the Proposed Interveners' interests are not founded upon these alleged promises, but are founded upon environmental and safety concerns

related to the Ward Valley site. In this promissory estoppel claim, the court does not address the propriety of these alleged promises; rather, it must interpret the legal effect if such promises were made. Proposed interveners have not shown how they would directly gain or lose by the legal operation and effect of a judgment awarding damages for promises made by the State.” (citations omitted)

In response to the court's ruling, US Ecology issued a media advisory stating, in part, as follows:

“US Ecology believes its case against the State is strong, and expects to recover substantial damages at trial. Alternately, US Ecology is fully willing to work with the State of California to expeditiously complete the Ward Valley land transfer, allowing burial trench construction and subsequent radioactive waste disposal to proceed in accordance with the State's contractual obligations to the Company and member states of the Southwestern Compact.”

Russia's Cleanup Work to be Funded by Processing Foreign Waste

Officials in Russia's Atomic Energy Ministry have announced that they believe that the processing of imported foreign waste is an acceptable means of financing the processing of Russia's own waste. Estimates indicate that Russia has accumulated nearly 14,000 metric tons of radioactive waste from the production of power, and additional amounts from the production of nuclear weapons. Russia has been searching for the funds to process this waste in order to improve the ecological situation at production facilities. The Atomic Energy Ministry has concluded that the processing of foreign waste is a good way of collecting the needed funds.

U.S. Congress

NRC's FY 2003 Budget Now Available

The U.S. Nuclear Regulatory Commission has announced the availability of its budget to Congress for FY 2003. The budget requests \$605.6 million “for regulation of the nation’s nuclear power plants and nuclear materials to protect public health and safety, to promote the common defense and security, and to protect the environment.”

The FY 2003 budget request reflects a 4.7 percent (\$27.1 million) increase over the current budget. Approximately half of the increase is for new reactor licensing activities, whereas the remainder of the increase is for federal pay raises and increases in benefits and retirement costs; reactor license renewal; key safety research; keeping pace with the U.S. Department of Energy’s high-level waste program; and additional investments in the agency’s information technology, human capital, and facilities.

Two challenges highlighted by NRC in its budget request are an increased focus on homeland security and a renewed interest in building nuclear power plants. For instance, the budget request includes \$29.3 million for homeland activities and \$24.8 million for new reactor initiatives such as application reviews, regulatory improvements, and new technology research. The budget request also includes \$16.9 million to review five license renewal applications expected in FY 2002 and FY 2003.

Detailed information on NRC’s budget request is available at <http://www.nrc.gov/who-we-are/plans.html>

Whistleblower Bill Introduced in Congress

A bipartisan group of congressional members recently introduced legislation that seeks to protect whistleblowers who expose wrongdoings in either the federal government or the private sector. The bill, known as the Paul Revere Freedom to Warn Act, would allow employees and contractors who expose wrongdoings to file civil actions in federal courts using jury trials if they feel that they have been retaliated against. The laws, as currently written, do not provide for penalties if the federal government or private firms are accused of retaliation.

The legislation was announced at a February 27 news conference sponsored by Accuracy in Media, American Federation of Government Employees, Common Cause, Fund for Constitutional Government, Government Accountability Project, National Taxpayers Union, National Whistleblower Center, Patrick Henry Center, and Project on Government Oversight. The bill was sponsored by Senator Charles Grassley (R-IO) and Representatives Steve Israel (D-NY), Edward Markey (D-MA), and Constance Morella (R-MD).

U.S. Department of Energy

Sources Lost in Foreign Countries

The U.S. Department of Energy has lost track of hundreds of sealed sources sent to foreign countries over the years, including sources containing plutonium, according to a recent Inspector General report. The sources, many of which were loaned or given to foreign countries under the Atoms for Peace Program, were used to calibrate radiation measuring and monitoring instruments and for nuclear research and development.

According to the IG, the problem arose because proper enforcement requirements for reporting sealed source information to DOE's Nuclear Materials Management Safeguards System were not followed and efforts to maintain a separate Sealed Source Registry were discontinued. The report further found inconsistent information as to whether the United States still owns many of the loaned sources and who is responsible for the sources ultimate disposal. Accordingly, it encouraged DOE to make determinations promptly as to ownership, location, condition, and disposal responsibility.

The report attributed the lack of information about loaned sealed sources to three main factors:

- ◆ DOE and its predecessors failed to effectively monitor government-owned sources exported to foreign countries,
- ◆ international agreements limit reporting by foreign countries on loaned nuclear materials, and
- ◆ international safeguard controls applying to other forms of nuclear materials do not fully apply to sealed sources, depending on the amount and type of material that they contain.

The report calls on DOE to work with the International Atomic Energy Agency (IAEA) "to

ensure that the sealed sources are properly controlled and that existing record systems are updated and reconciled." This is especially important, according to the IG report, in light of recent world events.

"Recent world events have underscored the need to strengthen the control over all nuclear materials, including sealed sources. Individually and collectively, sealed sources represent a health, safety and material security concern."

The IG report, "Accounting for Sealed Sources of Nuclear Material Provided to Foreign Countries," (DOE/IG-0546), is available at <http://www.ig.doe.gov>.

DOE Proposes Rule to Protect Classified Info

The U.S. Department of Energy is proposing a new rule that would allow it to impose penalties on contractors and subcontractors who unlawfully and improperly divulge classified information. The proposed rule--which was published in the April 1 issue of the *Federal Register* (pp. 15,3339)--is a response to a controversial congressional requirement attached to the FY 2000 Defense Authorization Act which provides civil penalties of up to \$100,000 for specific security violations.

Under the proposed rule, DOE would assess civil penalties for violations of

- ◆ regulations related to classified information,
- ◆ any department rule, regulation or order related to the protection of restricted data, and
- ◆ compliance orders.

DOE held public meetings on the proposed rule on May 22 and 29 in Las Vegas and Washington, D.C., respectively. Comments on the proposed rule are due by July 1 to GERALYN PRASKIEVICZ, Office of Security, SO-1, Docket No. SO-RM-00-01, DOE, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

U.S. Department of Transportation

Transportation: DOT Study Expected Shortly, While NRC Continues Revisions

The U.S. Department of Transportation is expected to complete a study shortly on the risks to the public health, safety, environment and economy from the transportation of radioactive waste from nuclear power plants and U.S. Department of Energy sites to the proposed Yucca Mountain high-level radioactive waste repository. The study was commissioned by Senator Harry Reid (D-NV) who, along with environmentalists and other opponents, is highlighting transportation risks as a major factor in the bid to shut down the Yucca Mountain project.

The U.S. Nuclear Regulatory Commission is expected to publish for public comment shortly proposed regulations to make its radioactive materials packaging and transportation standards compatible with the latest International Atomic Energy Agency (IAEA) transportation standards. NRC, which coordinates its transportation regulations with DOT, discusses 19 issues in the proposed regulations—11 of which are designed to ensure consistency with IAEA standards and eight of which are initiated by NRC.

Some of the issues included in the rule are:

- ◆ whether to adopt the IAEA's uniform, dose-based radionuclide exemption standard or use the current concentration-based standard,
- ◆ whether Part 71 certificate holders can safely make limited changes to the design of a transportation package, as permitted for reactor and spent fuel storage facility licensees,
- ◆ whether single or double containment should be required for plutonium packages, and
- ◆ whether a standard should be developed for review of large-object packages, or whether each request should be reviewed through exemptions on a case by case basis.

A series of public meetings will be held on the proposed regulations. They have not been scheduled as of yet.

A copy of the proposed rule can be obtained from NRC's web site at <http://ruleforum.llnl.gov>.

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solid material: clearance, conditional clearance, and no release.

Clearance

The term "clearance" means that the material meets licensing criteria to be reused without restriction, recycled into a consumer product, or disposed of at a landfill. Many participants at the committee's information-gathering meetings -- including environmental groups, steel industry officials, and licensee representatives -- expressed concern about this category. The concerns included potential health risks, product stigmatization, liability and economic costs. The committee did not make a specific recommendation on how to deal with this category, but rather outlined how the NRC can evaluate the potential impacts of various options.

Conditional Clearance

The term "conditional clearance" means that material must be used in a specified application (such as being melted into shielding blocks for use at nuclear facilities) or disposed of at municipal solid waste landfills, construction and demolition waste landfills, and industrial nonhazardous landfills. Such material would not be used in general commerce.

No Release

The term "no release" means that "materials remain under the control of the Nuclear

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U.S. Nuclear Regulatory Commission

Hearings Set re Skull Valley Proposed Spent Fuel Facility

The U.S. Nuclear Regulatory Commission has established a schedule for a series of hearings, to be held in April and May 2002, on a request to license a spent nuclear fuel storage facility on the Skull Valley Band of Goshute Indians Reservation. The proposal is being sponsored by Private Fuel Storage, L.L.C.—a coalition of nuclear utilities seeking to site the proposed facility on the Goshutes reservation. To date, a great deal of opposition to the proposed facility—which would be located about 60 miles southwest of Salt Lake City—has been raised, including opposition by the State of Utah and its Governor.

The Atomic Safety and Licensing Board (ASLB) will preside over the hearings, taking testimony and cross-examinations. The hearings will be open to the public, but participation will be limited to interested parties previously admitted to the proceedings, including:

- ◆ Private Fuel Storage, L.L.C.,
- ◆ U.S. Nuclear Regulatory Commission staff,
- ◆ the State of Utah,
- ◆ the Skull Valley Band of Goshute Indians,
- ◆ Ohngo Gaudadeh Devia,
- ◆ the Confederated Tribes of the Goshute Reservation, and
- ◆ the Southern Utah Wilderness Alliance.

Four issues will be covered in the hearing:

- ◆ a contention that adequate consideration has not been given to hazards from military aircraft and other operations near the area,
- ◆ inquiries as to the ability of the facility to withstand possible earthquakes,

- ◆ potential groundwater contamination from non-radiological waste, and
- ◆ issues regarding whether the environmental impact statement adequately addresses alternatives to the placement of the proposed connection railway to the facility.

Information about the hearing locations and schedule can be found at <http://www.nrc.gov/public-meetings/meeting-schedule.html#ASLB>.

For additional information, contact the Atomic Safety and Licensing Board Office at (301) 415-5036.

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Regulatory Commission or an agreement state that has assumed the commission's authority to regulate certain licensees." Such materials today would need to be sent to Envirocare of Utah, Chem-Nuclear's Barnwell facility, or US Ecology's Richland site. According to the committee's estimates, the total cost to dispose of all slightly radioactive metal and concrete from U.S. power reactors would be \$4.5 billion - \$11.7 billion. In comparison, material that qualifies as "conditional clearance" can be sent to a landfill with estimated disposal costs ranging from \$300 million to \$1 billion.

The National Research Council committee's report cautioned that its "recommendations apply only to slightly radioactive solid material licensed by the U.S. Nuclear Regulatory Commission and agree-ment states, and not to the disposition of materials from the closing of government nuclear weapons facilities."

Copies of the National Research Council report can be found on the internet at <http://www.nap.edu>. Copies can also be purchased from the National Academy Press by calling (800) 624-6242.

NRC Opens New Security Office

On April 7, the U.S. Nuclear Regulatory Commission opened its new Office of Nuclear Security and Incident Response. Whereas, in the past, NRC had assigned security responsibilities based on the type of facility requiring protection, the new office allows for centralization and consolidation of security activities which NRC hopes will lead to improved communication and coordination—both within the agency and with external entities. The creation of the new office was, at least in part, a response to the September 11 terrorist acts.

The new office has a variety of responsibilities, including:

- ◆ managing the NRC operations center, developing and directing the NRC program for response to incidents, and interacting with the Federal Emergency Management Agency and other federal agencies,
- ◆ developing and implementing safeguards, security policy and oversight for a variety of types of facilities and for transportation activities,
- ◆ accounting and controlling materials and applying international safeguard activities of NMSS,
- ◆ providing technical support and coordination for safeguards, licensing and rulemaking activities implemented by NMSS and NRR,
- ◆ developing contingency planning and emergency response activities for safety and safeguards events,
- ◆ coordinating with intelligence and law enforcement communities,
- ◆ assessing threats, and
- ◆ administering NRC counterintelligence, secure telecommunications, and classification/declassification programs.

Revision 2 of Draft Yucca Review Plan Now Available

The U.S. Nuclear Regulatory Commission has released Draft Revision 2 of its plan to review an application to build a proposed high-level radioactive waste repository at Yucca Mountain, Nevada should the U.S. Department of Energy submit such an application. The plan's principal purpose is "to ensure the quality and uniformity of the NRC staff's licensing reviews."

The original draft plan was made public last year. It was revised, however, because it is out-of-date and inconsistent with NRC's final regulations—issued in November 2001.

The draft review plan has separate sections for potential reviews of safety of the repository prior to permanent closure, safety after permanent closure, the performance confirmation program, and administrative and programmatic requirements. Each section defines NRC's review of DOE's compliance with NRC regulations.

The NRC plans to accept public comments, and to hold public meetings, on the draft.

A copy of the "Yucca Mountain Review Plan, Draft Revision 2" is available on the NRC's web site at <http://www.nrc.gov/waste/hlw-disposal/draft-yucca-plan.pdf>.

NRC Orders Increased Reactor Security

In late February, the U.S. Nuclear Regulatory Commission ordered the implementation of interim compensatory security measures at all 104 commercial nuclear power plants in light of the generalized “high-level threat environment.” The order was, in part, a formalization of security measures implemented by NRC licensees following the September 11 terrorist attacks. Additional security measures are, however, included which emerged from a comprehensive security review undertaken by NRC following the attacks. According to the order, the requirements remain in effect until the commission either “determines that the level of threat has diminished, or that other security changes are needed following a comprehensive re-evaluation of current safeguards and security programs.”

Licensees had 20 days from issuance of the order in which to provide NRC with a compliance schedule. They also were required to notify NRC within 20 days and provide written justification of any inability to comply with specific requirements, of the inapplicability of requirements to their specific site, or of violations to operating license provisions or decreases in plant safety that would result from implementation of specific requirements.

Many of the new security measures were not released, for safety purposes. However, they are said to include things such as augmented security forces and capabilities, increased patrols, new security posts, installation of new physical barriers, vehicle checks at greater distances from the plants, greater coordination with law enforcement and military authorities and greater site access controls.

The releasable portions of NRC’s order have been posted to NRC’s web site at <http://www.nrc.gov>

NRC to Exempt Umetco from Groundwater Cleanup Requirements

The U.S. Nuclear Regulatory Commission is proposing to grant an amendment to source materials license of the Umetco uranium mill in Wyoming that would, in effect, alleviate the company of meeting certain groundwater cleanup requirements that it maintains are overly burdensome and financially impractical. The Umetco site, which involved the operation of a uranium mill site in Wyoming from 1960 to 1979, is now licensed to possess byproduct material in the form of uranium waste, such as mill tailings, generated by past uranium processing operations.

Specifically, the amendment would allow Umetco to apply alternate concentration limits to licensed constituents of groundwater. An environmental assessment determined that granting the amendment would not impact the likelihood or consequences of previously analyzed accidents, nor would it impact facility radiation levels or radiological effluents.

In addition to citing the high costs of compliance as a basis for the requested amendment, Umetco notes that the presence of contaminated water from other nearby mines would impact its ability to meet the standards.

Details of the proposed amendment can be found on NRC’s ADAMS Public Electronic Reading Room at <http://www.nrc.gov/reading-rm.html>.

Annual Report Issued by NRC Office of Enforcement

The U.S. Nuclear Regulatory Commission's Office of Enforcement has issued its FY 2001 Annual Report which describes enforcement activities which occurred during the year, as well as addresses significant policy changes, new initiatives, staff guidance and implementation issues for the agency's enforcement program. Also included in the report are summaries of enforcement cases and actions which the commission took against facility owners and materials users. Included in the report were two policy revisions, 89 escalated Notices of Violation without civil penalties, 20 proposed civil penalties, and 18 orders, five of which imposed civil penalties.

In issuing the report, NRC stated that its "enforcement program continues to emphasize the importance of compliance with regulatory requirements, and to encourage prompt identification and comprehensive correction of violations."

A copy of the enforcement program's annual report is available at NRC's Electronic Reading Room at www.nrc.gov as well as an Agencywide Document Access and Management System (ADAMS) document (accession number ML020250035).

ASLB Orders Goshutes to Detail Payment Information; NRC Blocks Ruling

The U.S. Nuclear Regulatory Commission's Atomic Safety and Licensing Board (ASLB) in February directed leaders of the Skull Valley Band of Goshute Indians to disclose how much money it has received from Private Fuel Storage, L.L.C.—the consortium of nuclear utilities seeking to site a spent fuel storage facility on the Goshute's reservation—and to detail how payments have been spent to date, as well as what payments are expected to be made in the future. The order was made in response to a request from dissident members of the Goshute tribe. Financial details were to be due on March 22.

The U.S. Nuclear Regulatory Commission, however, subsequently blocked the ASLB's decision—temporarily holding that tribal leaders need not disclose the requested financial information. In so ruling, the NRC commissioners noted that they rarely review ASLB procedures. However, in the case at hand, the commission found that "the board decision creates an exceptional situation that warrants immediate commission attention under this standard." The commissioners noted that nobody would suffer significant harm from the delay and that, following an NRC review, the ASLB's decision could be reinstated.

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Officer. The Board has full confidence in Steve's ability to manage the organization, deliver excellent services to our customers, and generate improved earnings for our investors."

In an unrelated action, American Ecology also announced this week that the company's Field Services Division has been awarded a \$5 million contract to decommission a nuclear equipment recycling facility owned by a British Nuclear Fuels, Ltd. (BNFL) subsidiary in Oak Ridge, Tennessee. The contract includes large nuclear component

removal, decontamination, and decommissioning of the Manufacturing Sciences Corporation Recycle Facility, which previously processed radioactively contaminated materials and equipment from nuclear power plants.

In announcing the award, Romano stated as follows:

"This large, competitively bid award highlights the continued expansion of American Ecology's remediation services business. The same highly

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NRC Issues Annual Assessment Letters to Nuclear Power Plants

The U.S. Nuclear Regulatory Commission recently issued annual assessment letters for all 103 operating nuclear power plants. In so doing, NRC stated as follows:

“Every six months each plant receives either a mid-cycle review letter or an annual assessment letter along with an NRC inspection plan. Updated information on plant performance is posted to the NRC web site every quarter. The next mid-cycle assessment letters will be issued in September.”

Public meetings at each plant are planned, to be announced as scheduled.

The assessment letters have been posted on NRC’s web site at <http://www.nrc.gov/NRR/OVERSIGHT/ASSESS/index.html> and are available on the Agencywide Documents Access and Management System.

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trained team that successfully decommissioned a closed nuclear facility in Oak Ridge under contract to the State of Tennessee is now hard at work at the new job site.”

For additional information, contact Chad Hyslop of American Ecology Corporation at (208) 331-8400.

NRC Proposes to Amend Fee Schedule

The U.S. Nuclear Regulatory Commission is proposing to amend its annual fees and fees charged for licensing and inspections in order to comply with federal laws that require the commission to recover approximately 96 percent of its budget authority—excluding amounts appropriated from the Nuclear Waste Fund and the General Fund.

The proposed increase is \$6/hour in the labor rate for NRC services in the reactor program and \$8/hour for services in the nuclear materials program. This would bring the proposed hourly rates to \$156 and \$152, respectively. In addition, the proposal seeks to increase annual fees for the following licenses and activities: operating power reactors, high-enriched uranium fuel cycle facilities, low-enriched uranium fuel cycle facilities, uranium recovery, radiographers, broad-scope medical, and distribution of radiopharmaceuticals. Other changes affecting fees are proposed also, including adjustments to or clarifications of fee waiver and exemption provisions.

NRC’s total budget authority for FY 2002 is \$559.1 million. Approximately \$59.7 million of that will come from the Nuclear Waste Fund and from the General Fund for homeland security activities. That means NRC must collect approximately \$479.5 million in FY 2002 through licensing, inspection, annual and other fees.

The proposed rule for the new fee schedule was published by NRC in the March 27 *Federal Register* (p. 14,818). Comments on the proposed changes were due April 27.

White House

Bush Recommends Yucca Mountain; Nevada Governor Exercises Veto

On February 15, President George W. Bush formally recommended the proposed Yucca Mountain site to the U.S. Congress for the development of a high-level radioactive waste repository. The recommendation follows U.S. Energy Secretary Spencer Abraham's January 10 announcement of his selection of the site. (See *LLW Notes*, January/February 2002, pp. 16-17.) The recommendation, made in a formal letter to Congress, noted the need for centralizing spent nuclear fuel storage and disposal and stressed issues of national security and American energy needs.

Immediately following Bush's recommendation, Nevada Governor Kenny Guinn (R) announced his intention to veto the President's recommendation, saying:

"I am outraged, as are the citizens of Nevada, that this decision would go forward with so many unanswered questions. I believe that we deserve a scientific response to the nearly 300 critical questions the Nuclear Regulatory Commission has stated must be resolved before going forward with Yucca Mountain."

Guinn formally vetoed Bush's recommendation on April 8. In so doing, Guinn argued that Yucca Mountain is not suitable for a high-level waste repository and that there is no emergency that requires use of the site.

Under federal law, the issue now goes to Congress for a vote. In order for the project to go forward, Congress must override the state's veto by a majority vote of both houses. Accordingly, Senate Joint Resolution 34 was introduced by Senator Jeff Bingaman on April 9 which approves Yucca Mountain as the site for a high-level waste repository. The bill has been referred to the Energy and Natural Resources Committee.

Mayors Write Bush re Rad Waste Transport

In a February letter to President George W. Bush, 18 mayors express concerns about the transportation of high-level radioactive waste and spent nuclear fuel rods through American cities to the proposed Yucca Mountain waste repository. The letter, which emerged from the U.S. Conference of Mayors' February 22 Leadership Meeting, calls on Bush to include a transportation analysis and an environmental impact study in the U.S. Department of Energy's final report on the proposed site. The Conference has not taken an official position on the proposed Yucca site. The letter was initiated by Reno Mayor Jeff Griffin.

The letter states, in part, as follows:

"We are concerned the DOE has not yet fully researched the methods for the transportation of nuclear waste. Regardless of the final repository location, we have serious concerns about the transportation of spent nuclear fuel from reactors all over the country to Yucca Mountain or any other repository. These shipments will travel through America's cities past our schools, homes and places of business."

The U.S. Conference of Mayors had adopted a transportation policy in 1996 that calls for the federal government to fund (1) training and equipment needed by local emergency response personnel along transportation routes, (2) upgrades to medical facilities that could potentially treat accident victims, and (3) upgrades to highways and railroads to ensure safe transportation corridors. The policy also calls on the U.S. Nuclear Regulatory Commission to certify shipping transportation containers after a public process that includes both physical testing and computer modeling to ensure that such containers are capable of withstanding severe accidents.

A copy of the letter can be obtained at www.usmayors.org.

Obtaining Publications

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). listserv@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.

Low-Level Radioactive Waste Disposal Compact Membership



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Oregon
Utah
Washington *
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Midwest Compact

Indiana
Iowa
Minnesota
Missouri
Ohio
Wisconsin

Rocky Mountain Compact

Colorado
Nevada
New Mexico

Northwest accepts Rocky Mountain waste as agreed between compacts

Southeast Compact

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Florida
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Mississippi
Tennessee
Virginia

Southwestern Compact

Arizona
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South Dakota

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