LLW notes

Volume 17, Number 3 May/June 2002

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

Southeast Compact and Four Member States Petition Supreme Court For Original Jurisdiction in Suit Against North Carolina

On June 3, the States of Alabama, Florida, Tennessee, and Virginia—as well as the Southeast Compact Commission for Low-Level Radioactive Waste Management—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.

"North Carolina did not live up to its promise to Alabama, Florida, Tennessee, Virginia and the other two states in the Compact," said James Setser, Chair of the Commission, in regard to the filing. "The member states and the Compact Commission have a moral and legal responsibility to ensure that North Carolina fulfills its obligations to all of the members of the Southeast Compact and the citizens of our region."

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."

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Low-Level Radioactive Waste Forum, Inc.

LLW Notes
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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.

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LLW FORUM, INC

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Key to Abbreviations

U.S. Department of Engergy ..... 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-occuring and accelerator-produced radioactive material ..... NARM
Naturally-occuring radioactive material ..... NORM
Code of Federal Regulations ..... CFR

Atlantic Compact/South Carolina

Chem-Nuclear's Operating Rights Approved: FY 2002/2003 Access Established

Several decisions have recently been made in regard to the continued operation of the Barnwell, South Carolina low-level radioactive waste disposal facility including

- the approval of operating rights by the Public Service Commission,
- the establishment of an access policy for 2002/2003, and
- allowance of shipments by out-of-region generators through June 30, 2002 without first obtaining an allocation.

The Barnwell low-level radioactive waste disposal facility serves the Atlantic Interstate Low-Level Radioactive Waste Disposal Compact. It is scheduled to close to out-of-region waste in 2008. Until then, the amount of out-of-region waste allowed to be disposed of at the facility will be reduced annually.

Approval of Operating Rights

On June 3, the South Carolina Public Service Commission approved a settlement that reduces Chem-Nuclear System's operating rights for the Barnwell low-level radioactive waste disposal facility to $5 million over the next eight year period, or $625,000 annually. The settlement between Chem-Nuclear and the State Budget and Control Board reduces the rights by $2.34 million from the previously established $7.34 million. The operating rights are, however, separate and apart from Chem-Nuclear's legislatively sanctioned 29 percent profit margin.

The Atlantic Interstate Low-Level Radioactive Waste Implementation Act provides a detailed mechanism for the setting of rates and recovery of allowable costs by a facility operator. Under the terms of the act, the state Budget and Control Board sets disposal rates, whereas the Public Service Commission is responsible for identifying allowable costs. The act defines allowable costs as those "costs to a disposal site operator of operating a regional disposal facility." Specific items to be included as allowable costs are identified in the act, whereas other items are expressly excluded.

The act entitles a facility operator to charge an operating margin of 29%. Under the act, the allowable costs and operating margin affect the amount of revenue which the operator must annually pay to the state.

2002/2003 Access Policy

The following access policy has been established for the Barnwell facilty for fiscal year 2002/2003:

> For fiscal year 2002/2003, which begins July 1, 2002, the Barnwell site will accept waste on a <u>first-come, first-served</u> basis.
>
> We believe there will be ample disposal capacity to accommodate the needs of all customers. Because of this <u>we do not plan to use an allocation system at this time</u>.
>
> All customers must have a current transportation permit from the Department of Health and Environmental Control.
>
> Disposal fees for fiscal year 2002/2003 are posted on . . . [the] website [at www.state.sc.us/energy.htm].

Shipments through June 30, 2002

The need for prior allocations for shipment of waste to the Barnwell facility has been temporarily suspended through June 30, 2002.

> Until further notice and through June 30, 2002, waste generators outside

the Atlantic Compact region may ship radioactive waste to the Barnwell facility for disposal *without first obtaining an allocation* through the allocation program, subject to waste acceptance criteria and other regulatory requirements.

As long as disposal capacity appears sufficient, we will allocate disposal volume to arriving waste, as necessary, at the time the waste is received at the Barnwell facility. This first-come, first-served policy will remain in place unless demand for disposal capacity makes it necessary to again restrict access.

If it becomes necessary to again limit access to the site, those generators who have obtained allocations and those who have previously made other arrangements for access to the Barnwell site will have first priority on the remaining disposal capacity for this fiscal year. In such an event, we will remove this notice and replace it with the most current information.

For additional information, please contact Patricia Tangney of the South Carolina Energy Office at (800) 366-2255 or (803) 737-8036.

Mayors Committee Expresses Concerns re Yucca

In mid-June, the Energy Committee of the U.S. Conference of Mayors passed a resolution calling on Congress to prohibit the transportation of high-level radioactive waste to a repository until cities along its route have adequate funding, training and equipment in the event of an accident. The committee voted to oppose transporting waste to a national repository unless federal officials can guarantee the safety of all such cities along proposed routes. The resolution, which was adopted on a unanimous voice vote, stopped short of opposing the creation of a national repository at Yucca Mountain, Nevada.

The full U.S. Conference of Mayors is expected to vote on the resolution in late June.

Midwest Compact/Ohio

Ohio Drafts Regulations for an Assured Isolation Facility

The State of Ohio recently drafted regulations pertaining to the storge of low-level radioactive waste, including the establishment of

- a fee for generators that store waste at their location for more than forty-two months,
- requirements for the long-term storage of radioactive waste in an assured isolation facility beyond five years, but no longer than 100 years for any given radioactive waste,
- quality assurance requirements for assured isolation facilities, and
- facility requirements for the processing of radioactive waste, other than a facility's own radioactive waste.

According to a state official, these draft regulations are independent of and unrelated to the Midwest Interstate Low-Level Radioactive Waste Compact.

Draft Regulations re Assured Isolation Facility

The draft regulations developed by Ohio pertain to an assured isolation facility (AIF) "used by more than one generator to hold radioactive waste for decay-in-storage or any radioactive waste generator who proposes to store radioactive waste at a location other than their currently licensed location." The draft regulations provide that generators who hold radioactive waste on-site for more than five years must apply for an AIF license. An Ohio official indicated that a provision will likely be added to the rule, however, allowing generators to apply to the Director of the Department of Health for an extension of up to an additional five years of storage.

License Application The draft regulations specify the contents of a license application to

operate an assured isolation facility. The license application must include, among other things, the following:

- a description of the licensed operating activities,
- a justification of site suitability for storage of licensed radioactive materials,
- a complete description of the AIF, including drawings, and details on facility operation,
- a description of the community awareness and communication program to be used,
- any applicable decommissioning funding plan and financial assurance including NORM, source and special nuclear material,
- an emergency response plan including NORM, source and special nuclear material, and
- a quality assurance program "to ensure that the maintenance and operation of the AIF meets the performance objectives, is consistent with the contents of the license application, and satisfies the requirements for the receipt, handling, emplacement and retrieval of waste."

Design The draft regulations, amongst other things, prohibit the location of an AIF in a one-hundred year flood plain or in the recharge area of a sole source acquifer "unless it can be demonstrated with reasonable assurance the new AIF will be designed, constructed, operated, and decommissioned without an unreasonable risk to the acquifer." The draft regulations also require that waste be stored in an AIF in individual containers that are readily retrievable and inspectable and prohibit the commingling of radioactive wastes from different generators in a single container.

Records and Reporting Records and reporting requirements are also included in the draft regulations. Specifically, the licensee is required to "prepare and send statements to each generator of their own waste status, including but not limited to volume, radionuclides, activity, waste container condition, regarding prior year inventory balances, additions and withdrawals of waste from the AIF, and final inventory balance." Copies of such reports must be maintained by both the licensee and the generator for three years. In addition, the licensee is required to prepare and send an annual summary report to the Ohio Department of Health and to publish a local notice of the report's availability to the public. The report must include, at a minimum, "a summary of waste in [the] AIF (prior year inventory balances, additions, withdrawals, and final balances), capacity utilization (volume and radionuclide license limits), incidents, environmental monitoring results, radionuclide releases to the environment, and a fiscal annual report." Copies of the annual report must be maintained by the licensee until after the license has been terminated.

Institutional Requirements Pursuant to the draft regulations, the waste generator retains title to waste placed in an AIF. The generator is responsible for the waste as shipped including, but not limited to, orignal containers and contents delivered, waste form, and radionuclide identification and quantification. The AIF operator, on the other hand, is responsible for the waste handling and storage conditions after acceptance of the waste until its ultimate disposition.

Active institutional control of the materials is required throughout the license term. The draft regulations require that each generator "issue an irrevocable trust [to be reviewed and updated every five years] to the AIF operator to cover the cost of disposal in the event that the generator becomes bankrupt."

Limitations The draft regulations state that "[a]ll users of the AIF shall contractually agree to the return of the radioactive waste to the generator, or transfer to the generator's designee licensed to receive such waste, at the end of the radioactive material storage, which may not exceed one

hundred years." The draft regulations specifically prohibit an operator from storing mixed waste.

Generator Reporting and Fee Requirements

The draft generator reporting and fee requirements regulations developed by Ohio require reporting by generators within sixty days of commencing generation, possession, or storage of any quantity of low-level radioactive waste in Ohio. In addition, annual reports are also required.

The draft regulations provide a fee structure for the generation and storage of low-level radioactive waste in Ohio. Among other things, the draft regulations provide for a $3.50 per cubic foot charge on low-level radioactive waste that was stored or held in storage for more than forty-two months "except that such waste held in storage by a uranium enrichment facility shall pay seventy-five cents rather than three dollars and fifty cents per cubic foot for such wastes."

A per cubic foot surcharge is added to the other charges based on the activity of the waste.

High-volume waste "which contains soil, building debris, or rubble typically resulting from decommissioning or decontamination efforts, in an amount containing at least fifty cubic feet," are charged a fee of one dollar per cubic yard for such wastes generated during the previous calendar year or for such wastes that have been stored for more than twelve months.

Generators who exclusively use radioactive materials with a half life of one day or less do not have to comply with reporting requirements under the draft regulations. For those generators who treat low-level radioactive waste, the fees are determined based on the volume of waste that remains after treatment.

The fee provisions of the draft regulations apply to low-level radioactive waste generated or first placed in storage on or after January 1, 1998.

Next Steps

The Radioactive Waste Committee of the Radiation Council is currently considering all comments received on the proposed draft regulations. Following such consideration, the regulations will then move through the formal adoption process via the Ohio Public Health Council.

Copies of the draft regulations and associated documents can be obtained at

http://www.odh.state.oh.us/Rules/Draft/Chap1_54/Dr54_lst.htm and

http://www.odh.state.oh.us/Rules/Draft/Chap1_54/Dr54_03.PDFDr54_03.url.

For additional information, please contact Roger Suppes or Robert Owens of the Ohio Department of Health, Bureau of Radiation Protection, at (614) 644-6811.

Northwest Compact/Utah

Proponents of Utah Waste Tax Initiative Claim to Have Votes Needed to Place Referendum on Ballot

Proponents 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 claim that they have enough signatures to place the initiative on the November ballot. County clerks are currently in the process of qualifying the signatures and have until July 1 to submit them to the State Elections Office. If state requirements are met, Lt. Governor Olene Walker has until July 6 to approve the initiative for the ballot.

The Signatures

Under state law, proponents were required to 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 in order to get the initiative on the ballot. Proponents claim to have garnered approximately 131,000 signatures. Moreover, proponents assert that they have enough signatures to qualify 28 of Utah's 29 counties, including Tooele County, where proponents claim to have collected 2,580 signatures—far more than the 1,231 signatures needed to qualify the county hosting the Envirocare low-level radioactive waste disposal facility.

"We were very pleased," said Mickey Gallivan, a spokesman for the coalition backing the initiative. "We didn't have a great deal of time. And we have what appears to be more signatures ever collected for an initiative in Utah. We think it bodes well for public concern in Utah about this issue, and we are hopeful (the signatures) represent support at the ballot box."

Background

General The initiative, which promotes draft legislation titled the "Radioactive Waste Restrictions Act," is being sponsored by Utahns for Radioactive Waste Control and others. Proponents 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. Envirocare of Utah strongly contests 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, argues 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, 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. In addition, the initiative 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.

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.

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.

Opposition's Response

Hugh Matheson, Chair of Utahns Against Unfair Taxes, a coalition formed to oppose the proposed waste tax initiative, offered the following comments on signatures garnered for the referendum:

"People didn't know what they were signing. Petition workers routinely told the public that the initiative would somehow stop high-level nuclear waste from entering Utah. Initiative proponents are taking advantage of publicity and confusion surrounding the Yucca Mountain issue and a proposal involving temporary storage of spent fuel rods on the Goshute Indian reservation in Utah."

"Once Utahns identify this initiative for what it really is—an effort by waste industry lobbyists to destroy Envirocare at the expense of hundreds of jobs and millions in tax revenues—they will not support it."

NAS Panel Says More Data Needed re Atlas Mill Site

On June 13, a committee of the National Academy of Sciences' Board on Radioacitive Waste Management (BRWM) publicly released an interim report on the disposition of 10.5 million tons of radioactive mill tailings from the Atlas Corporation mill site near Moab, Utah. The committee concluded "that the current technical basis is not adequate to support a decision [on which of the two main remediation alternatives should be chosen] at this time." The committee found, nonetheless, "that the additional data and analyses needed to enable a decision can be developed with a limited, focused effort."

Background

The Atlas Corporation, which processed mined uranium at the site for nuclear weapons from 1962 to 1984, filed for bankruptcy in 1998. Thereafter, the U.S. Nuclear Regulatory Commission took control over the site and a court-appointed trustee worked on site stabilization issues. In October 2001, at the direction of Congress, the U.S. Department of Energy took title to the 130-acre site.

Toxic materials from the Atlas site have been reported to be leaking into the nearby Colorado River and killing endangered fish. In response thereto, DOE has begun work on reducing toxins leaking into the river from the pile. In the meantime, DOE is monitoring air and water quality at the site.

In response thereto, Congress requested that the NAS assemble a panel to make recommendations to DOE on disposition of the tailings based on scientific study and to assist DOE in the development of a remediation plan. Two alternatives, in particular, are being considered by DOE. One, with an estimated cost of $137 million, is to cap the tailings in place. The other alternative, which is estimated to cost approximately $363 million, is to move the tailings to off-site disposal. Three possible off-site disposal locations have been identified: a landfill operated by the East Carbon Development Corporation, the International Uranium Corporation's White Mesa reprocessing facility, and the Envirocare of Utah disposal facility. In any case, the cleanup effort is expected to take at least nine years to complete.

BRWM's Findings

Based on its conclusions, the BRWM made the following recommendations in its report:

(I) DOE should undertake further, but bounded, investigations of several unresolved questions related to science and engineering in order to arrive at a sound remediation decision.

(II) DOE's decision-making process should recognize the connections

and potential tradeoffs between short- and long-term actions.

(III) DOE should critically examine important assumptions and conclusions in its analyses of the two primary alternatives, examine the likelihood that they might be invalid over the relevant time frames, and reassess the risks in this new light.

(IV) DOE should continue to plan remediation of the site in a way that explicitly involves the public, consistent with good risk-based decision-making practice.

(V) DOE should draw more explicitly from its own experience in managing tailings piles in developing its plan for remediation at Moab.

(VI) Issues that will not result in a net difference between the remediation alternatives (e.g., issues that require the same action under either remediation alternative) should not confuse the remediation decision-making process.

The committee's report concludes that "[u]ntil the relocate alternative is better characterized and the committee's findings and recommendations are addressed, it is premature to decide that one site is better than another or that one remediation alternative is better than another." Accordingly, the committee's report does not identify a preferred remediation alternative.

The questions raised by the committee could take up to 18 months to answer, according to DOE staff. As a result, DOE is considering delaying it's November target date for making a decision on the fate of the tailings pile.

ASLB Rejects Additional Economic Analysis of PFS Proposal

In mid-May, the U.S. Atomic Safety and Licensing Board (ASLB) rejected a complaint by the State of Utah that federal regulators failed to properly conduct economic studies of Private Fuel Storage's proposed spent fuel storage facility on the Skull Valley Band of Goshute Indian's reservation. The additional cost-benefit analysis requested by the state is already being considered by regulators separately, according to the ASLB, and is not deemed "essential."

At issue is the elements of the cost-benefit analysis which NRC must consider prior to making a decision on PFS' license application and whether the analysis should incorporate the 20-year term of the proposed license or the 40-year potential facility operating life. (Under the terms of the agreement between the eight-utility consortium and the indian tribe, PFS has an option to renew its lease with the Goshutes for an additional 20 years beyond the initial license term.) The state argues that PFS will suffer substantial financial losses if the license isn't renewed and could potentially go bankrupt. PFS disagrees, asserting that while the benefits may be smaller given the shorter operating term, a net positive benefit will still be realized.

The ASLB ultimately rejected the state's argument, determining that it's not a matter which needs to be considered. "Because the Skull Valley band has offered their reservation we are not dealing with a taking of public lands," said Michael Farrar, Chair of the three-judge ASLB panel. "So there is no assertion of gross environmental damage."

The licensing board continued to hold hearings in Utah and in Washington, D.C. in June. A final decision by the board is expected in late November.

PFS Faces Additional Transportation Route Challenges

U.S. Representative James Hansen (R-UT) recently included an amendment in the fiscal year 2003 defense authorization bill that would designate 500,000 acres within the U.S. Air Force's Utah Test and Training Range as a federally protected wilderness area -- thereby effectively blocking a key transportation route to the proposed Private Fuel Storage, LLC (PFS) spent fuel storage facility. The legislation, as amended, would bar plans to construct a rail spur through federally-owned land for shipment of spent reactor fuel to the proposed storage facility, which is to be located on the Skull Valley Band of Goshute Indians' reservation. The bill was approved by the U.S. House of Representatives in late May, with no public debate on Hansen's amendment. However, a conference still must be held to reconcile differences between the House and Senate versions of the legislation.

PFS, a consortium of eight nuclear utilities, had originally planned to ship spent nuclear fuel by rail to the edge of Utah's Skull Valley, and then ship it by truck to the proposed facility. The State of Utah, which opposed the PFS faciity, seized control of the county road to be used by such trucks. In response, PFS developed the idea for use of the rail spur.

It is unclear at this time what ultimate effect the legislation, if enacted into law, will have on the viability of PFS' proposal.

LLW Forum Office Has New Address

The offices of the Low-Level Radioactive Waste Forum, Inc. have moved. The new address is:

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Washington, D.C. 20009

The phone (202-265-7990), fax (202-265-7995), and email (llwforuminc@aol.com) remain the same.

Southwestern Compact/California

Southwestern Compact to Investigate Options

At the April meeting of the Southwestern Low-Level Radioactive Waste Management Compact, commission members directed staff to "investigate options, including Envirocare, the Atlantic Compact, the Northwest Compact and the U.S. Department of Energy for assured low-level waste disposal at existing disposal facilities and to coordinate the investigation with low-level waste generators." In response to this direction, letters of inquiry were sent to each of the identified parties in May. The results of the investigation, including any responses received from the letters, will be reported to the commissioners at the compact's next annual meeting. That meeting is currently scheduled for September 24, 2002—immediately after the close of the LLW Forum's meeting.

For additional information, please contact Don Womeldorf, Executive Director of the Southwestern Compact Commission, at (916)448-2390.

New Envirocare President Named

Envirocare of Utah has announced the appointment of Dwayne Nielson, a former telecommunications executive, as the company's new President and Chief Executive Officer. Nielson, who will begin his new post on June 1, previously served as an executive with Nextlink Communications (now XO Communications). Prior to that, Nielson served, among other positions, as Vice President of Marketing Operations for the consumer and small business segment of the Kansas City local telecommunications division of Sprint Corporation. He

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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."

Background

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.) In its brief, the state argued that (1) the Southeast Compact Commission cannot properly invoke the original jurisdiction of the Supreme Court, (2) the nature of the case does not justify the exercise of original jurisdiction, (3) alternative forums are available, and (4) the state did not breach its obligations under the compact.

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. The Solicitor General argued that the case does not fall within the Court's exclusive jurisdiction and should be resolved in another forum or through other means. Significantly, however, the Solicitor General concluded that the Court "would have exclusive jurisdiction over a suit brought by one or more of the States that are parties to the Southeast . . . Compact against North Carolina based on that State's alleged violations of the Compact." (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.

Entergy Arkansas v. State of Nebraska

Trial Begins in Nebraska v. Central Commission Lawsuit

On June 3, trial began in the U.S. District Court for the District of Nebraska in 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. 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 Trial

The trial is expected to continue for several weeks. During the course of the trial, a great deal of testimony will be held from various state and compact officials, expert witnesses and others. Early in the trial, former Nebraska Governor Benjamin Nelson testified. Nelson, who is now a U.S. Senator, denied allegations that he ordered his staff to "create noise and difficulties" to derail

the project. Members of Nelson's staff have also testified, denying allegations that they lobbied state agencies to defeat the licensing of the proposed facility.

Following Nelson's court appearance, Nebraska attorneys released a statement that the former-Governor's testimony puts to rest "conspiracy theories of 'political influence' and 'bad faith'" put forth by the plaintiffs. Nelson also released a statement—through his Washington, D.C. office—stating that, "My administration acted entirely appropriately . . . We did it by the book, we did it right then, the decision was right, it's still right and we have every confidence that the court will get it right."

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.

(Continued from page 10)

also served on the National Finance Committee of President Bush's 2000 Presidential Campaign. In announcing Nielson's appointment, Khosrow Semnani -- Chair of Envirocare's Board of Directors -- said, "We are pleased that, after an extensive search, we have found someone of Dwayne Nielson's stature and management experience to lead Envirocare."

Nielson takes over from Kenneth Alkema, who has served as Envirocare's President since the departure of Charles Judd in January. Alkema will now resume his duties as Senior Vice President of Compliance and Licensing.

Allen v. Utahns for Radioactive Control Act

Lawmakers Sue Waste Initiative Proponents

Five state senators and one state representative filed a lawsuit on June 14 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 in the Third District Court, alleges fraud and abuse on the part of the initiative's sponsors.

The Lawsuit

The petitioners argue that the initiative's backers hired a California company to recruit paid signature gatherers—paying them $3.15 per signature collected. They assert 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 petitioners are requesting that Lt. Governor Olene Walker, who has to approve the initiative by July 6 if it is to be placed on the ballot, throw out all signatures collected by those gatherers who do not meet state residency requirements.

The following Utah lawmakers are 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 are identified as respondents to the action: Utah lobbyist and petition co-organizer Frank Pignanelli, Utah Education Association President Phyllis Sorensen, Utah

Education Association Executive Director Susan Kuziak, and others. Lt. Governor Olene Walker is 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.

Other Protests

Local news reports indicate that county clerks—who are currently in the process of qualifying the signatures and have until July 1 to submit them to the State Elections Office—have been besieged with calls from persons who signed petitions and are now requesting that their names be removed. According to the reports, many callers are complaining that they were misled into believing that they were signing an initiative to keep spent fuel from being stored at the Skull Valley Band of Goshute Indians reservation—which is also located in Utah.

News reports further indicate that Salt Lake City Attorney Hugh Matheson, Chair of Utahn Against Unfair Taxes (a group of business leaders and others established in protest of the proposed ballot initiative), recently sent a letter to county clerks and county attorneys around the state requesting that a full investigation be undertaken into possible fraud during the signature gathering process. The letter is reported to identify the names and addresses of seven individuals who gathered signatures but whose state residency is deemed questionable. A false verification is a Class A misdemeanor under Utah law.

Background

Under state law, proponents were required to 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 in order to get the initiative on the ballot. Proponents claim to have garnered approximately 131,000 signatures.

The initiative, as proposed, 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. In addition, the initiative 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.

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.

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.

Court Agrees to Hear Dismissal Motion

On June 18, U.S. District Court Judge Michael Burton agreed to hear a motion by proponents of the waste tax initiative to dismiss the legislators' lawsuit. Burton ordered the proponents, however, to provide opponents with two documents—tax forms and employment contracts—for each petition circulator. In addition, Burton scheduled deadlines for written arguments on the question of whether it is proper for a state court to interfere with the legislative process at this point in time.

Judd v. Envirocare of Utah

Judd Sues Semnani and Envirocare

Charles Judd—who resigned as President and Chief Executive Officer of Envirocare of Utah in January reportedly due to a contract dispute—filed a lawsuit against the company and its owner, Khosrow Semnani, on May 23. In the suit, Judd accsuses Semnani of blocking a recent attempt to establish a competing business. In particular, the suit alleges that Semnani has engaged in "willful, malicious and intentionally fraudulent" conduct that has cost Judd more than $5 million. Craig Thorley, general counsel to Envirocare, reportedly responded that Judd "is a disgruntled former employee who is unhappy he is no longer with the company."

According to the lawsuit, following failed negotiations between the parties, Judd sought work at a tailings cleanup project in Grand County (Atlas mill tailings), but Semnani invoked a "no competition" clause in Judd's prior employment agreement with Envirocare to prevent him from getting the job. Judd argues that the Atlas project is not in competition with Envirocare. The lawsuit asserts that "Envirocare owns no land in Grand County or elsewhere south of the Tooele County line, and it is not economically feasible in a competitive environment for Envirocare to transport waste from Grand to Tooele counties." Envirocare attorneys have been quoted as disagreeing with this position, stating that "Envirocare is identified as an alternative site for the Atlas tailings."

Judd, who accuses Semnani of defamation, claims that Semnani "has established a history of eliminating potential competitors in the radioactive waste disposal business." Judd is seeking unspecified compensatory and punitive damages against Semnani and Envirocare.

Nevada v. United States of America

Nevada Files Another Suit re Yucca Mountain: U.S. Senate Moves Closer to Overriding State's Veto

On June 5, the State of Nevada filed another lawsuit against the federal government in an attempt to stop development of the proposed Yucca Mountain high-level radioactive waste repository -- the second such suit filed this year. In the new action, Nevada alleges that the federal government violated environmental and nuclear policy laws -- including the National Environmental Policy Act and the Nuclear Waste Policy Act -- in its selection of Yucca Mountain. The suit, which was filed in the U.S. Court of Appeals for the District of Columbia Circuit, specifically challenges the validity of the U.S. Department of Energy's final environmental impact statement as flawed for a lack of important details. Among the information alleged to be missing is the design of the storage facility,

specifications of the waste containers, and a transportation plan.

Background

Nevada's earlier lawsuit, which was filed in the same court in February of this year, argues that Energy Secretary Spencer Abraham's recommendation of Yucca Mountain site and President George Bush's decision to appove it are based on flawed guidelines. (See *LLW Notes,* January/February 2002, p. 11, 12.) That suit remains pending.

In addition, Nevada had previously filed suits challenging Yucca Mountain water rights, radioactivity standards, and the criteria on which Secretary Abraham made his decision.

Senate Action

On June 5, a resolution supporting President Bush's approval of the proposed Yucca Mountain repository advanced out of the Energy and Natural Resources Committee of the U.S. Senate by a 13 to 10 vote, moving the Senate one step closer to overriding Nevada Governor Kenny Guinn's (R) veto of the project. The House approved the resolution on May 8 by a vote of 306 to 117.

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

Court Rejects DOE Claims re Yucca Water Permits

On June 11, the U.S. District Court in Las Vegas denied the U.S. Department of Energy's request for an injunction to force the State of Nevada to extend temporary water permits at the site of the proposed Yucca Mountain high-level radioactive waste repository. A Nevada official had 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 contested the state's decision, adding its petition to a prior complaint challenging the state's denial of a permanent water supply at Yucca Mountain. (See *LLW Notes,* March/April 2002, p. 16.) In so doing, 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 court rejected DOE's claims, however, finding that the department had stockpiled more than 1 million gallons of water in tanks before the temporary water permits expired in April. That is enough water, according to the court, to support the projects current needs for more than a year—well beyond the July 25 date by which the U.S. Senate must act to override Nevada Governor Kenny Guinn's veto of the project. Accordingly, although the court recognized that "[t]he government has a legitimate concern," it held that the government "has failed to establish sufficient evidence to show they are facing irreparable harm at this time."

Nonetheless, the court did leave open the door to future filings by DOE in the event the water situation becomes dire. "There may come a time when the situation becomes urgent, and the water reaches a point where it is at a dangerously low level," said the court. "If it gets to that point and it appears that the Department of Energy cannot meet its responsibilities, a temporary restraining order can be filed and a preliminary injunction can again be sought."

Still pending before the court is the federal government's appeal of a state engineer's denial of permanent water rights for the project on the basis that using water for the operation of a nuclear waste repository is not in the state's interest. Nevada attorneys have argued that a hearing on that case is unwarranted, at this time, because if the Senate fails to act on Guinn's veto or to override it, the issue will be moot. The case was sent back to the district court by the U.S. Court of Appeals for the Ninth Circuit in San Francisco.

South Carolina v. U.S. Department of Energy

South Carolina Sues DOE re Plutonium Shipments: Court Refuses to Grant TRO

South Carolina Governor Jim Hodges filed a lawsuit in early May to stop plutonium shipments scheduled for delivery to the department's Savannah River Site. Hodges is demanding that DOE enter into an enforceable agreement with the state, prior to sending the shipments, to ensure that the nuclear material won't remain at the site indefinitely. In mid-June, however, a federal judge refused to block the shipments. Hodges responded by appealing the matter to the Fourth Circuit Court of Appeals in Richmond, Virginia. In addition, Hodges ordered South Carolina troopers to blockade the shipments. The judge, in a sharply worded opinion, ordered Hodges not to enforce his order to the state troopers.

As of press time, the matter remains pending before the appellate court.

The Lawsuit

The lawsuit claims that DOE should not be allowed to send the shipments because the department failed to file the appropriate environmental impact statements. It requests that the court block the shipments, which are scheduled to come from the department's Rocky Flats facility in Colorado, until DOE complies with its legal obligations. Preparation of the environmental impact studies, which require extensive public input, could seriously delay the shipments.

DOE wants to ship the plutonium to Savannah River for conversion into fuel for nuclear power plants. Hodges, however, argues that the fuel program may never be funded and that the plutonium could be left in South Carolina.

Representative Lindsey Graham (R-SC) has proposed a resolution whereby DOE would be fined $1 million a day starting in 2011 if at least 1 ton of the plutonium has not been converted into reactor fuel. To stop the fines, DOE would have to move the plutonium or speed up the conversion. The fines would start again in 2017, under the proposal, if all of the plutonium were not converted. The proposal places a $100 million cap on fines to the department. Hodges is not satisfied with Graham's proposal, however, arguing that it does not specify when the plutonium would leave the state.

The District Court's Decision

U.S. District Judge Cameron Currie disagreed with Hodges contention that alterations to DOE's storage plans at the Savannah River Site require new, additional analysis under the National Environmental Policy Act. Instead, she ruled that a 1996 environmental impact statement and later

analyses adequately considered the changes to DOE's program. Indeed, Currie ruled that an analysis prepared this past February "examined all of the factors that have been discussed" in court. Currie held that, while the Governor disagreed with the document's conclusions, he had not identified any factors not previously considered. Currie specifically noted that holding up the shipments could hinder DOE's program. In addition, she found it relevant that proceeding with the shipments is important in order for DOE to successfully proceed with its cleanup of the Rocky Flats complex in Colorado.

In response to Hodges order that troopers guard the state's borders against incoming shipments, Currie stated as follows: "Any action by the defendant, Hodges, or anyone acting in concert or participation with him to stop or interfere with shipments of plutonium . . . would be in violation of the United States Constitution and laws." Hodges, in a statement issued after Currie's decision, said that the blockade is over and that he will respect the court's order.

Media Sues to Keep Lawsuit Files Open

More than one dozen media companies have filed a motion to prevent the district court from sealing records in South Carolina Governor Jim Hodges lawsuit seeking to prevent federal shipments of plutonium to the Savannah River Site. The motion was filed in response to a request by the U.S. Department of Energy that documents in the case be sealed. DOE claims that certain information in the action should be protected under the Unclassified Controlled Nuclear Information provisions of federal law.

The media companies argue that the information does not qualify as controlled material because it does not contain information about production, use or transportation of nuclear material. Under the law, in order for the documents to be protected, DOE must meet a stringent First Amendment standard for keeping the material from public view.

The district court is expected to rule shortly on the motion.

LLW FORUM, INC.

September 2002 Meeting

Sponsored by the Southwestern Compact Commission

The fall meeting of the LLW Forum, Inc. will be held in

Sacramento, California
9:00 a.m. Monday, September 23, 2002 – 1:00 p.m. Tuesday, September 24, 2002

A meeting of the LLW Forum's Executive Committee will be held on Sunday, September 22, from 5:00 p.m. until 9:00 p.m.

Location The meeting will be held at: Hawthorn Suites Hotel, 321 Bercut Drive, Sacramento CA 95814. Phone: (916) 441-1200. Fax: (916) 441-6530. Toll-free reservations: (800) 767-1777.

Reservations A block of 34 rooms has been reserved for meeting attendees at the special rate of $79.00 + tax per night for a single suite and $94.00 for a double suite. Reservations must be made by September 8, 2002 to obtain the special rate. *Please ask for a room in the LLW Forum block.*

Registration The meeting is free for members of the LLW Forum, Inc. Registration for non-members is $500, payable to "LLW Forum, Inc.

Copies of the meeting registration form can be obtained on-line at www.llwforum.org or from Todd Lovinger, the LLW Forum's management contractor*, by calling (202) 265-7990.*

U.S. Department of Energy

Dose Limits for Release of Slightly Contaminated Materials Set by DOE

The U.S. Department of Energy recently released draft guidance that sets a 25 millirems per year limit on permissible radiation doses to the public from land, buildings or property that is released by DOE with residual contamination levels. In releasing the draft gudiance, DOE stated that its moratorium on the release and recycling of minimally contaminated scrap metal from its nuclear sites remains in place pending final agency action on new regulatory requirements and the completion of an environmental review. The moratorium was put into place by the Clinton administration in response to environmentalists' protests about large releases of slightly contaminated materials. The Bush administration, however, has indicated a desire to lift the moratorium .

The new guidance document, as drafted, specifies procedures for evaluating residual radiation levels and for determining appropriate public safeguards. Field sites are expected to set up independent assessment verification programs and to educate the public. Property being readied for release must be surveyed to ensure that potential doses to the public are "as low as reasonably achievable" (ALARA). Under the guidance, ALARA analyses would be used to assess different disposal or release options and to set appropriate residual radiation limits for materials or land being released. The guidance also contains documentation requirements for decisions to release slightly contaminated material.

The 25 millirem limit is one-quarter of DOE's overall 100 millirems per year limit on doses to the public from all radiation sources other than natural background radiation. The limit is well below the estimated 300 to 400 millirem per year that people are exposed to from natural sources.

U.S. Nuclear Regulatory Commission

NRC Renews Florida Power & Light Company's Reactor Licenses

The U.S. Nuclear Regulatory Commission recently announced that it has extended the operating licenses of Florida Power & Light Company's two Turkey Point nuclear reactors for an additional 20 years. Under the terms of the renewals, Turkey Point Unit 3's operating life will be extended to 2032 and Unit 4 to 2033. The reactors are located near Homestead, Florida. Their operating licenses were originally set to expire in 2012 and 2013, respectively.

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.

NRC has also approved license extension requests for eight other reactors on four sites—the Calvert Cliffs Nuclear Power Plant near Lusby, Maryland; the Oconee Nuclear Station near Seneca, South Carolina; the Arkansas Nuclear One plant; and the Edwin I. Hatch plants near Baxley, Georgia. (See *LLW Notes,* January/February 2002, p.21.) 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 *LLW Notes* 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.

NRC Seeks Public Input re Surry License Renewal

The U.S. Nuclear Regulatory Commission has issued a draft environmental impact statement on the proposed license renewal of the Surry Nuclear Plant in Virginia. The agency is seeking public comment on the draft report, which preliminarily concludes that there are no environmental impacts that would preclude renewal of the operating licenses for the plant's two units. The agency held public meetings on the draft report in May.

Renewal applications for the Surry plant, which is operated by Dominion Energy, were filed in May 2001. The current operating licenses for Unit 1 expires on May 25, 2012 and for Unit 2 on January 29, 2013. The draft report by NRC staff recommends that the Commission determine that "the adverse environmental impacts of license renewal for the two units at Surry are not so great that preserving the option of license renewal for energy-planning decision makers would be unreasonable."

The draft report is available in the NRC Public Document Room or on the Internet at www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1437/supplement6. Comments on the draft are due by July 12. At the conclusion of the public comment period, NRC staff will consider and address the comments provided and issue a final report. That report will contain a recommendation regarding the environmental acceptability for license renewal.

NRC Orders Increased Security at Spent Fuel Pools

The U.S. Nuclear Regulatory Commission recently ordered owners of 14 decommissioning nuclear power plants and one fuel storage facility to increase security at spent fuel pools, citing terrorist threats and the need for heightened security. The order includes requirements for increased patrols, additional security posts, new physical barriers, enhanced vehicle checks, better coordination with law enforcement and military authorities and more restrictive site access for personnel.

The order, according to NRC, was not triggered by a specific threat, but rather due to the fact that the overall threat environment has gone on longer than originally contemplated. The new requirements, according to NRC, formalize several spent fuel security measures that were recommended by the agency in advisories following the September 11 attacks. They also incorporate new steps approved by NRC Commissioners after the agency's recent top-to-bottom security review.

NRC Commissioners Testify to Congress re Yucca

In late May, members of the U.S. Nuclear Regulatory Commission testified before the U.S. Senate Energy and Natural Resources Committee on transportation risks associated with the disposal of high-level radioactive waste at the proposed national repository at Yucca Mountain, Nevada. NRC Chair Richard Meserve, in response to questions, testified that he saw no safety-related reasons why Congress should terminate the project. Meserve was, however, particularly careful in his wording during his testimony since NRC is identified as the licensing agency for the proposed repository. Meserve specifically stated that NRC had not prejudged any issues about the project itself.

Two other commissioners, Nils Diaz and Edward McGaffigan, testified that transportation risks associated with shipping high-level waste across country have been exaggerated and no major risks are anticipated. Both commissioners testified that concerns about terrorist attacks have been overblown because waste shipments are harder to damage and would cause less destruction than other potential targets.

Nevada's Senators and a private consultant hired by the state countered the commissioners testimony, arguing that terrorist threats are real and serious and that accidents could breach nuclear waste containers. The U.S. Senate is expected to vote on whether or not to override Nevada Governor Kenny Guinn's veto of the project at some point in July.

NRC Revises Worker Skin Dose Limits

The U.S. Nuclear Regulatory Commission has issued a final rule, based on recommendations from the National Council on Radiation Protection and Measurements, for dose limits to the skin of the whole body and extremities. The rule changes the method used for calculating the amount of radiation to the skin that workers could potentially receive when conducting certain licensed activities. It establishes a more risk-informed limit for potential doses received from small radioactive particles that can result in doses to very small areas of the skin.

Under current regulations, the dose to the skin is averaged over one square centimeter. The new rule, however, requires that the dose to the skin be averaged over the most highly exposed, 10 square centimeters. The change, according to NRC, is "based on scientific studies that demonstrate that risks from doses to small areas of the skin are less than risks to larger areas from the same dose."

The rule reduces the frequency of monitoring for small radioactive particles, thereby reducing whole-body doses and physical stress to workers. Analysis has shown that frequent monitoring and the use of excessive protective clothing exposed the workers to non-radiological hazards, such as heat stress, and required them to spend more time completing a job in radiation areas due to limitations on mobility and dexterity, thereby increasing the workers' whole body dose. The new rule aims to correct these problems.

NRC described its rule as follows:

> This rulemaking is expected to result in a decrease in the use of protective equipment used by nuclear power plant

> workers and others potentially exposed to skin contamination which will in turn lead to a reduction in an external occupational dose to workers onsite. This would be expected to result in an increase in worker safety, as well as a cost-effective reduction in unnecessary regulatory burden with little to no impact on worker safety.

For additional information, please contact Alan Roecklein at (301) 415-3883 or AKR@nrc.gov.

NRC Proposes Financial Info Revisions re Renewals

The U.S. Nuclear Regulatory Commission is proposing to amend its regulations to remove the requirement that those power reactor licensees which are not electric utilities must submit financial information in their license renewal applications. In announcing the proposed amendment, the agency stated that it "believes that its financial review processes conducted during initial licensing, license transfers or, as proposed in this rule, the transition from electric utility to non-electric utility status, provide a sufficiently comprehensive framework to assess financial qualifications." The license renewal process is not sufficiently unique, according to the commission, to warrant a separate financial review.

> The Commission believes that current regulatory processes adequately ensure that non-electric utilities are financially qualified before and after receiving a renewed license and that the NRC can detect any deterioration in a licensee's financial condition before it impacts public health and safety. Under these processes, applicants other than electric utilities are required to submit projections of revenues and expenses for the reactor being licensed for the first five years of operation, or transfer of a license. The NRC evaluation of the financial qualifications of an entity other than an electric utility applicant is based on the submitted five-year projections of income and expenses and on current information from financial rating service publications such as *Moody's* and *Value Line*.

The proposed change does not affect non-power reactor licensees—they will continue to be required to submit financial qualifications information when applying for a license renewal.

The NRC also is proposing to create a requirement that licensees which are transitioning from an electric utility to a non-electric utility without going through license transfers submit sufficient financial information to allow NRC to determine whether the licensee remains financially qualified to conduct the activities authorized by the license.

For additional information, go to http://ruleform.llnl.gov

NRC Revises Regulations re Medical Uses of Radioactive Material

The U.S. Nuclear Regulator Commission has revised its regulations on the medical uses of radioactive material—in part, in response to a petition for rulemaking filed by the University of Cincinnati. The revisions are designed to be both risk-informed and performance-based. They focus NRC's regulations on those medical procedures that pose a higher risk to workers,

patients and the public from a radiation safety aspect. Some of the detailed requirements for the performance of lower risk diagnostic medical procedures, such as bone or thyroid scans, have been eliminated by the revisions.

The new rule includes revisions to the following areas:

- patient notification and reportable events,
- authority and responsibility of the Radiation Safety Committee,
- the development of written procedures for those activities involving higher risk, and
- training and experience requirements.

The revisions also add a requirement for reporting unintended medical radiation exposure of an embryo, fetus, or nursing child. In response to the University of Cincinnati petition, the revisions also address the allowable radiation dose limit for certain individuals visiting patients who are required to be confined to the hospital while receiving radiation treatment, when such visitors are deemed necessary by physicians for a patient's physical or emotional support. In such cases, the revisions set the allowable radiation exposure for such visitors at 500 millirem. In so holding, the NRC found that the emotional benefit to the patient and the visitor outweigh any small increase in radiation risk.

The new regulation will become effective six months after publication in the *Federal Register*.

For additional information, please contact Roger Broseus at (301) 415-7608 or RWB@nrc.gov.

NRC Issues Draft Safety Evaluation Report re Proposed MOX Facility

The U.S. Nuclear Regulatory Commission has issued a draft safety evaluation report concerning the construction of a proposed mixed oxide (MOX) fuel fabrication facility at the U.S. Department of Energy's Savannah River Site near Aiken, South Carolina. DOE wants to build the facility to convert surplus weapons-grade plutonium into MOX fuel for use in commercial nuclear power reactors. Such conversion meets the department's nonproliferation goals by converting the material into a form unsuitable for use in weapons.

NRC's draft report concludes that DOE's contractor, Duke Cogema Stone and Webster, needs to provide additional information on a number of issues before a construction authorization can be granted. A complete list of the items deemed unresolved is provided in the draft report. A revised draft and a final safety evaluation report on construction of the facility are expected to be issued after further information is submitted by the contractor.

A copy of the "Draft Safety Evaluation Report on the Construction Authorization Request for the Mixed Oxide Fuel Fabrication Facility" is available at http://www.nrc.gov/materials/fuel-cycle-fac/mox/licensing.html. The report is also available through the NRC Public Document Room at (301) 415-4737 or (800) 397-4209.

Molycorp Seeks Additional Cleanup Time

The U.S. Nuclear Regulatory Commission is considering the issuance of a license amendment to Molycorp's source materials license that would allow the company to adjust the decommissioning schedule for its Washington, Pennsylvania site. The company's current license requires Molycorp to complete decommissioning of the site by August 2002—two years after NRC approved the company's decommissioning plan. Molycorp, however, requested an extension in a February 19 letter to NRC.

The company is proposing an alternate decommissioning schedule that would use a phased approach to complete decommissioning by the end of 2004. Molycorp's proposal involves the demolition of contaminated buildings, followed by characterization of the underlying soil—which would then be shipped off-site for disposal.

Molycorp's license amendment application and supporting documentation can be found at http://www.nrc.gov/NRC/ADAMS/index.html.

For additional information, please contact Tom McLaughlin of the NRC's Decommissioning Branch, Division of Waste Management, at (301) 415-5869.

NRC Seeks Public Comment re Packaging and Transportation of Rad Materials

The U.S. Nuclear Regulatory Commission has published proposed regulations regarding the packaging and transportation of radioactive material and is seeking public comment thereon. Current regulations are based, in part, on those developed by the International Atomic Energy Agency (IAEA). Periodic revisions to the transportation standards are made by the IAEA to reflect scientific and technical advances.

Issues to be addressed in the rulemaking were published by the NRC in the *Federal Register* in July 2001 and discussed at a series of public meetings. Of the 19 issues discussed in the proposed rule, 11 are designed for consistency with IAEA standards. The remaining 8 were NRC initiated.

The following four issues in the proposed rule attracted a high level of public interest and comment, according to NRC:

- radionuclide exemption values—specifically, whether to adopt the IAEA's uniform dose-based standard versus using the current concentration-based standard;
- special package approvals—specifically, whether NRC should propose a standard for review of large-object packages rather than address each request on a case-by-case basis through exemptions;
- change of authority for Part 71 certificate holders—specifically, whether such

certificate holders can safely make limited changes to the design of a transportation package, as permitted for reactor and spent fuel storage facility licensees; and

- single versus double containment requirements for plutonium packages.

The proposed rule will be discussed at a series of public meetings, to be announced shortly. It is available on the NRC web site at http://ruleform.llnl.gov

American Ecology Post Record First Quarter Earnings

American Ecology recently announced record financial results for the first quarter ending March 31, 2002 -- the best operating profit posted by the company in 10 years. Net income of $19.1 million, or $1.33 per diluted share, was posted by American Ecology after the recognition of a one-time gain from the implementation of a new accounting standard. This compares to net income of $1.5 million, or $0.8 per diluted share, for the quarter ending March 31, 2001.

Implementation of the new accounting standard in the first quarter of 2002 resulted in a one-time, cumulative effect gain of $16.3 million. American Ecology posted net income of $2.8 million or $0.19 per diluted share if the impact of the change in accounting is excluded. First quarter operating income increased to $3.5 million compared to operating income of $1.3 million for the first quarter in 2001. According to American Ecology, "[t]he first quarter operating profit, a key measure of financial performance, was the highest in almost ten years."

First quarter 2002 revenue for American Ecology was recorded at $18.4 million, a 43% increase over the $12.9 million reported for the first quarter of 2001. This was the largest quarterly revenue since the first quarter of 1995, when the company recorded $20 million in revenue. The 43% increase reflects higher revenues at both disposal and processing facilities along with growth in American Ecology's remediation and field services group. For instance, the Richland, Washington low-level radioactive waste disposal facility completed work on a $3.85 million U.S. Army Corps of Engineers contract during the quarter. The Grand View, Idaho, treatment and disposal facility also posted a solid quarter.

"We believe American Ecology is now well positioned to grow earnings from its core business and take fuller advantage of the ongoing consolidation of the environmental services industry," said Stephen Romano. "We will continue to pursue opportunities, like our Grand View, Idaho site acquisition in 2001, to expand our business, although the near term focus continues to be more volume at our existing facilities." In March 2002, Romano was appointed Chief Executive Officer by the American Ecology Board of Directors. Romano also holds the positions of President and Cheif Operating Officer.

Canada Reevaluating Waste Disposal Plans

In early May, Canada's Senate began debating a bill that seeks to redirect the country's current nuclear waste management strategy to include the alternative of storing radioactive material above-ground in either one centralized site or in multiple sites near existing reactors. This would be a substantial change to the country's decades long policy of burying radioactive material deep in the Canadian Shield.

Canadian utilities operate 14 reactors at five sites, most of which are located in Ontario. As a result, a move to centralized storage is not nearly as complicated of a proposition as it would be in the United States, where spent fuel is stored at 64 sites by 103 operating reactors. The small number of Canadian reactors also makes on-site storage a significantly less daunting proposition than it would be in the United States.

The Canadian bill, C-27, requires Canadian nuclear utilities to undertake a three-year analysis of different alternatives for managing the country's high-level radioactive waste. The bill, which codifies some 1998 recommendations of a federally-appointed review board, has already passed the House of Commons. (The review board had found that the "deep burial" concept pursued by Canada is technically safe, but lacks public support.) The bill would also require nuclear utilities to create a new waste management organization and to establish a trust fund to finance waste management costs. The waste management organization would be charged with completing, within three years of the law's enactment, a study assessing geologic disposal in the Canadian Shield, storage at nuclear reactor sites, and centralized storage (either above- or below-ground). Included in the study would be a detailed technical description, rough cost estimates, and an implementation plan for each option. Extensive public consultation during the study is required under the bill, after which time a recommendation for a national waste strategy would be made by the Canadian Minister of Natural Resources.

The bill faces quite a bit of opposition from environmental groups who argue that the waste management organization's make-up is too pro-industry. Canada's major nuclear players, on the other hand, have not voiced opposition to the legislation.

Scott Nicholson Appointed Director of Hazardous Waste Operations

American Ecology recently announced the appointment of J. Scott Nicholson as Director of Hazardous Waste Operations. Nicholson, who joined American Ecology in April 2001, will manage the company's three hazardous waste treatment, storage and disposal facilities in Nevada, Idaho and Texas, as well as American Ecology's industrial and municipal solid waste landfill also located in Texas.

"Scott Nicholson brings 22 years of increasingly responsible experience in hazardous waste management with industry and the U.S. Environmental Protection Agency," commented Stephen Romano. "Scott's promotion to Director of Hazardous Waste Operations underscores American Ecology's commitment to delivering safe, environmentally sound and cost-effective services to our growing, nationwide customer base."

Simon Bell has been promoted to Facility Manager for the Grand View, Idaho facility. Bell, who joined American Ecology in March 2001, previously served as Environmental Manager at US Ecology Idaho.

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
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by internet

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

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

- EPA • (for 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

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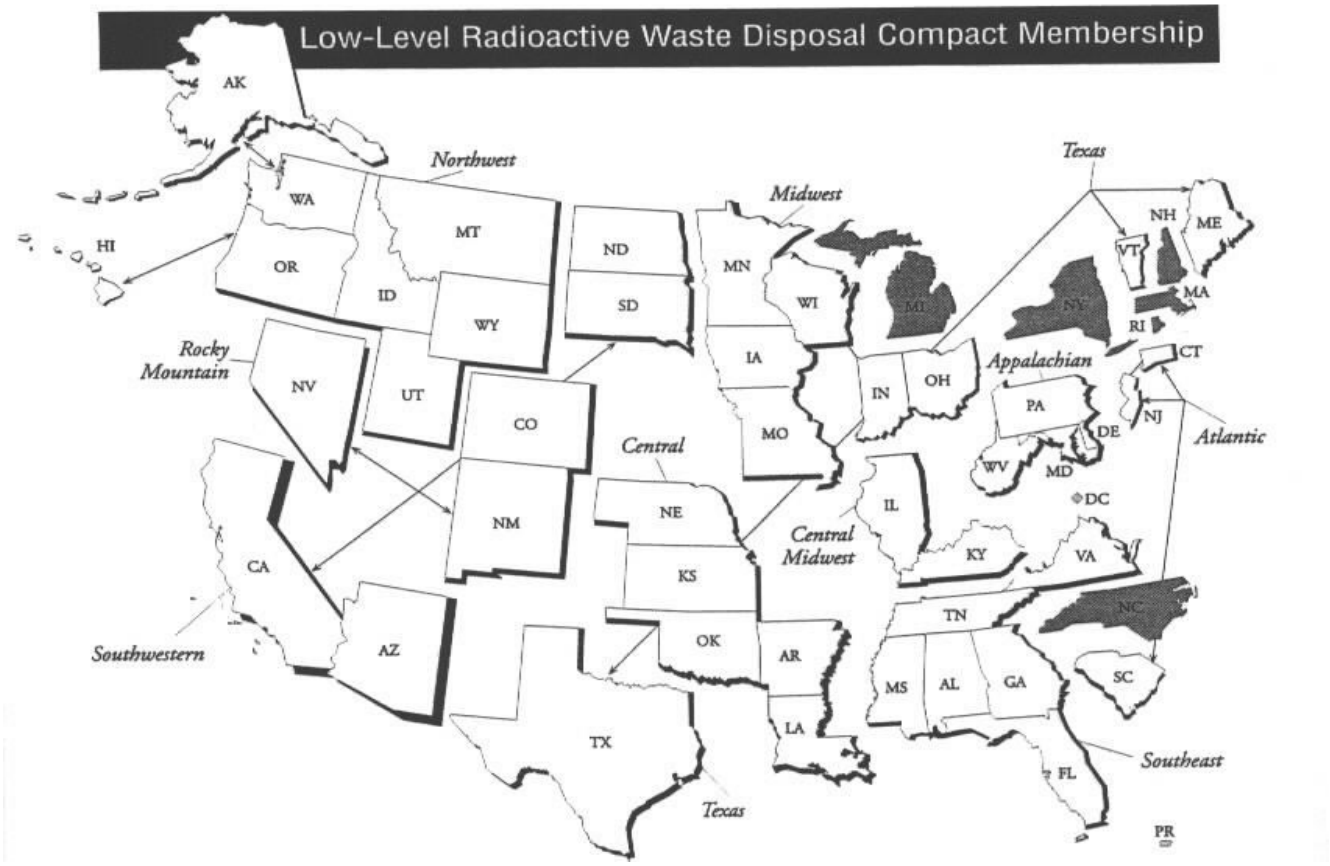
LLW Notes, LLW Forum Meeting Reports and the *Summary Report: Low-Level Radioactive Waste Management Activities in the States and Compacts* are distributed to the Board of Directors of the LLW Forum, Inc. As of March 1998, *LLW Notes* and LLW Forum Meeting Reports are also available on the LLW Forum 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.



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