

DOE/EW/30330-T1

Quarterly Report for the NGA FFCA Project
From April 1, 1994 - June 30, 1994

Under the NGA cooperative agreement DE-FC01-94EW30330 effective on August 1, 1993, NGA has participated and coordinated the following activities during the third quarter of FY94.

April 1, 1994 - April 30, 1994

- ◆ Wrote and distributed summary of the Dallas Disposal Meeting to the State and DOE Task Force and other interested parties;
- ◆ Collected, reviewed, and forwarded state workplans to DOE for further review;
- ◆ Coordinated with the National Association of Attorneys General (NAAG) to identify areas of overlap in working on DOE issues related to environmental management (see attached memorandum);

May 1, 1994 - May 31, 1994

- ◆ NGA State and DOE FFCA Mixed Waste Task Force meeting in Washington, DC on May 25-26, 1994 (see attached agenda)
- ◆ Participant in the DOIT Mixed Waste Working Group activities regarding interstate permitting;
- ◆ Attended the NAAG/DOE meeting in Washington, DC;

June 1, 1994 - June 30, 1994

- ◆ Wrote and distributed summary of the NGA State and DOE FFCA Mixed Waste Task Force meeting in Washington, DC (see attached summary);
- ◆ Attended Options Meeting in Germantown, Maryland;
- ◆ Participated in the Mixed Waste Working Group meeting in Albuquerque, New Mexico on June 9-10, 1994;
- ◆ Wrote and distributed issue brief entitled *State Overview of the Federal Facility Compliance Act Implementation Process* (see attached copy);

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April 29, 1994

M E M O R A N D U M

To: NGA/DOE FFCA Task Force Members and Other Interested Parties
From: Jill Litt
Re: Summary of Disposal Meeting in Dallas, Texas on March 30-31, 1994

Members of the NGA/DOE FFCA task force met in Dallas on March 30-31. The meeting participants discussed the following key issues:

- DOE's screening process for evaluating disposal options
- Proposed next steps for disposal
- Discussion of the PEIS evaluation of disposal
- Next meeting

The following summary highlights the major issues discussed during the meeting. Attached to the summary is a participants list and information from the "DOE Disposal Site Screening Evaluation Results" that explains the application of exclusionary criteria to the initial 49 DOE sites for non-task force members. A complete copy has been included for state technical and policy representatives. For those who did not receive a complete copy of the screening analysis and would like one, please contact me at 202-624-5356.

DOE's Screening Process for Evaluating Disposal Options

Prior to the meeting, states were provided with the results of DOE's initial disposal site screening evaluation. The site-screening analysis evaluated 49 DOE sites that currently generate or store mixed low-level waste (MLLW) based on the following three exclusionary criteria¹:

- Site must be able to accommodate a 100 meter buffer zone.

¹ The exclusionary criteria were identified by the states at the joint NGA State/DOE Disposal workgroup meeting in Tucson on March 3-4. Please refer to the Tucson meeting summary (March 17, 1994) for more details.

- Sites must not be located within a 100-year floodplain/coastal high hazard;
- Sites must not be located within 61 meters of an active fault;

The evaluation of the 49 sites was carried out in four steps. In step 1, sites close in proximity were grouped together reducing the total number of sites to 44. The groupings in step 1 were: 1) California -- LLNL and SNL; 2) Idaho -- INEL and ANL-W; 3) New Mexico -- SNL-NM and ITRI; and 4) Tennessee -- ORR K-25, ORNL, and Y-12 Plant

Step 2 involved the application of the buffer zone criterion, further narrowing the number of sites under consideration down to 34. In step 3 the application of the floodplain/coastal high hazard criterion resulted in the elimination of an additional eight sites from the evaluation, leaving 26 sites for further screening. In step 4, no sites were excluded by the active fault criterion.

After states and DOE thoroughly reviewed and discussed the results of the initial screening, states reached a consensus that the 18 screened sites be dropped from further analysis and that the remaining 26 sites be further analyzed to demonstrate their strengths and weaknesses as potential disposal sites.

Proposed Next Steps For Disposal

States have emphasized throughout the FFCA process that for governors to make an informed decision on approving the site treatment plans, DOE must provide as much information as possible on disposal options for treatment residuals. DOE informed the states that the integration of disposal options by the deadline for the DSTPs was highly unlikely due to the magnitude of analysis required to evaluate sites in accordance with all Federal and state requirements. In response, states urged that DOE to identify disposal options by the final STPs.

Accordingly, states and DOE agreed to the following next steps:

- DOE will evaluate the 26 remaining sites based on additional factors agreed to at this meeting (see attached criteria list).
- DOE will identify by the DSTP deadline sites to go forward for evaluation and sites that will no longer be considered. For the sites no longer under consideration, DOE will provide the rationale for their elimination. The sites that will not be further evaluated will not be addressed in other sites' DSTPs.
- The DSTPs will identify the sites undergoing further evaluation as initial disposal options. Therefore, excluded sites would not identify on-site disposal as an option but rather list sites undergoing further evaluation as potential disposal sites.
- In the DSTP, sites that contain large quantities of waste may be more specific concerning the likelihood for on-site disposal.

DOE did not commit to identifying specific disposal options in the STPs. An implementation plan is being developed by the DOE disposal workgroup to lay out the process for continuing to determine the suitability of sites for disposal.

Next, states and DOE reviewed the original list of recommended criteria and considerations from the Predecisional Draft Report entitled *Potential Suitability of Forty-Nine DOE Installations for Disposal of Low-Level Radioactive Waste and Mixed Low-Level Radioactive Waste* (September 13, 1993, page 13)

and identified a set of technical criteria to be used in reviewing the strengths and weaknesses of the 26 remaining sites. The results of this exercise are summarized in the attached table.

Additionally, states requested that the information provided on each site should include information on how well the site satisfies state siting criteria. States agreed to identify state siting criteria and forward it to NGA by the third week in April.

Finally, states suggested that the DSTPs should include commercial facilities under consideration for disposal as well as any other site being considered by DOE.

At the close of the discussion, DOE indicated that based on contractual agreements with DOE, three California sites (General Atomics, General Electric Vallecitos, and Energy Technology Engineering Center), may be excluded from further evaluation. Although this is not consistent with states' request to evaluate all sites that survived the exclusionary criteria, states and DOE "agreed to disagree" on this matter.

Mini Performance Assessments (PAs)

As part of evaluating disposal options, DOE identified the mini-PA as a necessary tool to evaluate the suitability, design, and radionuclide inventory of potential disposal sites and to ensure compliance for 10,000 years. DOE briefly presented some background information on the mini-PAs and addressed how these assessments may impact disposal decisions. The mini-PAs will mainly be used to identify disposal options for the "hard-to-dispose of" waste streams. For example, long-lived radionuclides tend to determine the suitability of individual sites and because of rainfall and high water tables, no sites east of the Mississippi likely would be suitable to handle long-lived radionuclides.

Colorado questioned how DOE plans to evaluate the hazardous components of waste in the mini-PAs and indicated that the radionuclide components should not be the sole determinant of disposal suitability. Since the mini-PA is structured to estimate only the radionuclide component of waste, DOE agreed to work with Colorado to determine how states apply RCRA performance standards and whether the PA process will adequately address RCRA concerns.

Discussion of the PEIS Evaluation of Disposal

States and DOE revisited the issue of whether the PEIS is able to evaluate a "generic" set of disposal options. After consultation with their legal advisors and NEPA experts, DOE informed the states that according to the Council on Environmental Quality regulations, a "generic" evaluation is not acceptable when site-specific information is available. DOE proceeded to question the states as to whether the release of the Record of Decision (ROD) until after the states develop their compliance orders would address the states concerns with the PEIS. The states agreed that a delayed release of the PEIS ROD until after all compliance orders are signed would alleviate some of their concerns with the PEIS.

Commenting on the PEIS, states made several points. First, states recognize that an environmental impact statement (EIS) is an effective tool for informing decisions at the site level but emphasized that it is not, in itself, a decision-making document. Second, states agreed to send a letter to Mr. Grumbly, Assistant Secretary for Environmental Restoration and Waste Management, detailing the states' position regarding

the PEIS and how it relates to the STP development process. The primary objective of the letter is to request that DOE answer the following questions:

- Can DOE assure the states that the PEIS analysis will have no bearing on site treatment plan decisions?
- Will the PEIS evaluation be revised based on the selection of treatment and disposal options in the STPs?

Next Meetings

States and DOE agreed to a full task force meeting scheduled for May 25-26 in Washington, DC, to discuss major issues related to the FFCA project. Information regarding the meeting will be forthcoming.

Participants also suggested the planning of a meeting between Mr. Grumbly and the FFCA State steering committee. Task force members agreed that a meeting with Mr. Grumbly would be useful in reinforcing the major areas of concern to states with large volumes of waste as well as states with small volumes of waste.

Criteria and Considerations Identified at the Dallas Disposal Meeting

The recommended criteria and considerations have been divided into two tiers: Tier 1 and Tier 2. Tier 1 consists of exclusionary criteria identified at the states/DOE meeting in Tucson on March 3-4. The Tier 2 criteria were identified by states and DOE at a subsequent meeting among task force/disposal subgroup members in Dallas. The Tier 2 criteria will enable DOE to identify the strengths and weaknesses of each of the 26 sites that survived tier 1.

Table 1. Criteria and considerations for evaluating DOE installations¹

Tier 1 Exclusionary Criteria

- Area to accommodate a 100 meter buffer zone must be present
- Sites cannot be within a 100-year floodplain/coastal high hazard
- Sites must not be located within 61 meters of an active fault

Tier 2 Additional Factors

- Is there potential long-term DOE presence?
- Environmental restoration wastes or disposal site present?
- Existing disposal site in operation?
- Land and facilities-use issues absent?
 - Dedicated lands (physical description of site)
 - Comply with land-use regulations
- Distance to receptor
- Demographies
 - Population within a 10 and 50 km radius?
 - Socioeconomic factors?
- Tectonic hazards present?
 - Folding hazard present?
 - Ground shaking present?
 - Liquefaction present?
 - Water-movement hazard present?
 - Volcanic hazards present?
- Other Geological hazards present?
 - Soil expansion present?
 - Frost heave present?
 - Settlement present?
 - Slope movement present?

Water erosion present?

Wind erosion present?

■ Surface-water conditions

Description of surface water supplies

Stream flooding present?

Coastal-flooding hazard present?

Small upstream areas present?

Sites must be outside of drainage watershed

Sites must be 130 m (400 ft) from water supply point

Drainage unaffected by facility?

Wetlands present?

Actual water usage-domestic, agriculture, water rights

■ Groundwater conditions

Karst terrain absent (define)?

Groundwater discharges onsite/offsite present?

Sites must be outside of recharge areas

Sole-source aquifer absent?

Description of aquifer's depth

Groundwater withdrawal or injection?

■ Unique attributes and adverse conditions

Agricultural and forest value

Mineral resources

Endangered or threaten species

Value to wildlife

Recreational value

Archeological value

Cultural value

Historic value

Natural-resource exploration/exploitation

■ State laws/siting criteria

¹ Criteria listed above were selected from the recommended criteria and consideration list on page 13 of the DOE document entitled *Potential Suitability of Forty-Nine DOE Installations for Disposal of Low-Level Radioactive Waste and Mixed Low-Level Radioactive Waste Predecisional Report, September 13, 1993.*

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL
444 NORTH CAPITOL STREET, SUITE 339
WASHINGTON, DC 20001
(202) 434-8062
FACSIMILE: (202) 434-8058

CHRISTINE T. MILLIKEN
Executive Director
General Counsel

April 18, 1994

PRESIDENT
HUBERT H. HUMPHREY III
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Attorney General of Vermont

MEMORANDUM

To: Victoria Becker
John Thomasian
National Governors' Association

From: Wib Chesser *WC*
Ann Hurley
National Association of Attorneys General

Re: Overlap of NGA and NAAG Environmental Activities Relating to DOE

Per your request, we have prepared this memorandum describing National Association of Attorneys General (NAAG) activities under cooperative agreement with the U.S. Department of Energy (DOE). We believe that much of this work will be of interest to you because of the overlap of issues with National Governors' Association (NGA) members' activities relating to the Federal Facilities Compliance Act (FFCA). We believe that a cooperative approach would complement both the NAAG and the NGA efforts. Members of your organization who are interested in obtaining more information about NAAG activities or participating in NAAG efforts should contact Wib Chesser at 202-434-8062.

We have divided this memorandum into three parts. The first section provides background general description of the cooperative agreement among NAAG, DOE, and the U.S. Environmental Protection Agency (EPA). The second section details the on-going activities of NAAG workgroups and describes upcoming activities. The last section analyzes the overlapping interests of NAAG and NGA.

Background on Cooperative Agreement

The NAAG cooperative agreement provides for a number of activities, including establishing communication links among the states, DOE, and EPA, developing a legislative workgroup that includes state and federal participants, and setting up other workgroups and workshops. The agreement focuses primarily on compliance and enforcement issues at active

DOE facilities.

One significant part of the project is to facilitate communication among the states, DOE, and EPA. As part of this effort, the Environment Project Clearinghouse has been collecting Interagency Agreements (IAGs) for DOE sites, copies of enforcement orders, and other documents relating to compliance issues. In order to maintain contacts among the states and the federal parties, NAAG is hosting periodic conference calls, distributing a monthly bulletin focused on DOE compliance issues, and establish an e-mail conference on NAAG's Earth Defense Network (EDN) specifically targeted at DOE issues. (The EDN is an electronic bulletin board operated by the Environment Project to facilitate communication among offices of the Attorneys General.)

Three workgroups relating to DOE environmental issues are to be formed under the agreement. These workgroups will include, as appropriate, representatives of the states, DOE, and EPA. The first workgroup (Compliance Workgroup) was formed to concentrate on general compliance issues at DOE facilities. This includes developing measures of compliance and identifying activities at DOE facilities to be tracked, measuring the frequency of these activities, and determining how environmental progress at DOE sites should otherwise be evaluated.

The second workgroup (Legislative Workgroup) is identifying and discussing substantive issues regarding reauthorization of several federal statutes, including the Clean Water Act (CWA), the Resource Conservation and Recovery Act (RCRA), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and the Endangered Species Act (ESA).

The third workgroup (Pilot Project Workgroup) will focus on the implementation of a pilot project in one state that will bring together state and federal officials to help resolve compliance issues at a single DOE site. This effort is expected to serve as a model for other state and federal cooperative efforts at DOE facilities.

A workgroup will also be set up to develop three workshops on DOE compliance issues. It is anticipated that these workshops will take place during the second year of the agreement. One workshop will be held at the state or regional level and will be designed to brief DOE field office attorneys on state environmental and safety requirements and compliance and enforcement priorities. A second workshop, which will be at the regional or national level, is intended to familiarize state attorneys with the FFCAct, related statutes, and DOE priorities and policies regarding environmental management issues. The third workshop will be held at the regional level and will be designed to familiarize DOE and state attorneys with the Federal Administrative Dispute Resolution Act and other strategies for resolving federal facilities compliance issues by means other than litigation.

On-Going and Upcoming Activities of Workgroups

The state participants for two of the workgroups, the Compliance Workgroup and the Legislative Workgroup, have been meeting through conference calls to identify initial issues for discussion. The issues identified will serve as a focal point for upcoming conferences that will

include state, DOE, and EPA representatives.

The initial issue for discussion identified by the state participants for the Compliance Workgroup is model or suggested language for agreements. In order to facilitate discussion, the model language issues were categorized into eight areas, and subgroups have been formed to work on collecting and developing suggested model language for each. The issues areas identified are *force majeure*, releases from liability, Anti-Deficiency Act, Atomic Energy Act (AEA)/RCRA overlap, stipulated penalties, budget/Keystone issues, RCRA/CERCLA overlap, and dispute resolution. Each of these subgroups is identifying or developing model language for agreements, based on the collection of agreements and background documents the state contacts and NAAG have developed. Conference calls for these subgroups are being held on a regular basis.

The state contacts for the Legislative Workgroup have focused primarily on CERCLA and CWA reauthorization. For each act, the contacts have began discussing issues relating to federal facilities, including waiver of sovereign immunity, any change in state authorities, such as state authorized program provisions, and provisions for radionuclides.

The first full conference will be held in Washington to take advantage of NAAG and DOE facilities and to ensure high-level DOE headquarters participation in the initial meeting. The conference will be held on May 17-19, 1994, and will include meetings of both the Compliance and the Legislative Workgroups, with discussion sessions for each of the subgroups. State participants will identify model language issues and present them to DOE the last week in April to assist DOE with preparing for the conference. We expect presentations to be made on a variety of legislative and compliance issues.

A second conference will be held during the next few months near a DOE facility. The location will provide an opportunity for a site visit by the state participants. Suggested sites for this conference include Las Vegas, Nevada (Nevada Test Site or Yucca Mountain), Albuquerque, New Mexico (Los Alamos or Sandia National Laboratory), Denver, Colorado (Rocky Flats), and Richland, Washington (Hanford).

Periodic conference calls among the states and possible future calls that will include representatives of DOE and EPA will be held as needed. If you are interested in specific dates for conference calls, please contact Wib Chesser.

Overlap of Interests Between NGA and NAAG

Based on the discussions of the participants in the Dallas NGA FFCAct meeting, a number of areas of complementary interest between NGA and NAAG have become apparent. First, the discussions of the NAAG workgroup relating to development of suggested language for agreements in general may provide some information of use for the NGA workgroup, particularly information learned from the dialogue between the NAAG participants and DOE and the collection of background documents and agreements between states and DOE.

Second, the issue of budget concerns regarding DOE's ability to meet cleanup obligations

was raised at the NGA meeting. The NAAG subgroups on budget/Keystone issues and the Anti-Deficiency Act are in the process of discussing these issues as part of the effort by states to craft agreements. This dialogue and information gathering may be useful in support of the NGA effort. Discussion to date by state participants includes the need for the provision of information about the budget process by DOE with a demonstrated good faith effort to obtain funding to meet cleanup agreements. An example of another issue that may be linked to the budget is concern about control and oversight over DOE contractors. Related to the issue of budget concerns is need for development of dispute resolution provisions tailored to the type of agreement being developed.

Another issue that may prove complementary to the NGA effort is general discussion of the overlap of RCRA and the AEA. The differing approaches to land disposal by DOE and the states and EPA under the authority of these acts seemed to be a basis for some of the conflict that occurred during the NGA meeting. The discussions of the NAAG workgroup may support the resolution of some of these concerns.

For the NAAG participants, several of whom are already involved in the NGA FFCAct legal subgroup, meshing of activities offers the chance to learn about and participate in FFCAct activities and will be useful for obtaining better understanding of the perspective of the governors and agency representatives. We believe that the NAAG workgroup state contacts could benefit from the technical and other expertise provided by NGA participants.

Conclusion

We are looking forward to enhancing our working relationship with your association. Please let one of us know if you are interested in more information about NAAG activities or if you have any more thoughts about these issues.