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LLWnotes

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Texas Compact/Texas

Volume 11, Number 3 April 1996

MASTER

Licensing Documents Issued for Texas Site

Public Comment Period Begins

On April 1, the Texas Natural Resource Conservation Commission released an environmental and safety analysis and a draft license for the proposed low-level radioactive waste disposal facility in Hudspeth County, Texas. This action by the state regulatory agency culminates four years of review of the license application for the facility.

The initial installment of the application was submitted to the commission in March 1992 by the Texas Low-Level Radioactive Waste Disposal Authority (TLLRWDA), which is responsible for developing and operating the facility. After several rounds of interrogatories, a final update was submitted in December 1995. The complete application consists of more than 18,000 pages including various technical studies.

Opportunities for Public Input

Public notice of the availability of the documents will be published on April 5, launching a 31-day comment period. During this period, interested parties may request a public hearing on the proposed project. Such a proceeding would be conducted by the State Office of Administrative Hearings with testimony from expert witnesses. The hearing process is projected to last about a year.

Copies of the analysis, which is approximately 450 pages long, and of the 27-page draft license are available at ten locations throughout the state. Any state citizen may receive one free set of the documents.

Conclusions of Environmental Analysis

Based on their review of the license application, staff of the Texas Natural Resource Conservation Commission concluded that "issuance of a license for the proposed project will not pose an unacceptable risk to public health and safety or cause a long-term detrimental impact on the environment."

Principal findings of the commission staff, as summarized in the analysis, are listed below.

1. Radiation exposures to members of the public related to operation of the facility and to long-term site performance will be well below regulatory standards and as low as reasonably achievable.
2. The TLLRWDA's proposed occupational radiation protection program will also keep radiation exposures of facility workers and of other persons who come on the site well below regulatory standards and as low as reasonably achievable.

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Low-Level Radioactive Waste Forum

LLW Notes

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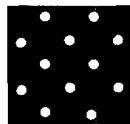
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Key to Abbreviations

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

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Appalachian Compact/Pennsylvania

Pennsylvania Releases Community Partnering Plan

On March 1, the Pennsylvania Department of Environmental Protection (DEP) released its Community Partnering Plan, which describes the process through which communities in Pennsylvania can evaluate whether they would like to host a regional low-level radioactive waste disposal facility.

The plan was developed in accordance with the department's announcement in July 1995 that the state would change its siting approach from a strictly technical process to a program incorporating volunteer elements. Finalization of the plan follows an extensive public involvement effort, in which copies of the draft were mailed to over 20,000 elected officials, citizens, and community leaders, and in which eight day-long public workshops were held.

Eligible Communities In order to volunteer as a potential host, a municipality or group of municipalities must have a parcel of approximately 500 acres of land not previously disqualified by the three-stage technical screening process completed in 1994.

Volunteer Process There is a four-step process for municipalities to evaluate whether they wish to be considered as a host:

- obtain information through either DEP, the Pennsylvania State Association of Township Supervisors, or Chem-Nuclear Systems, Inc., which is developing the facility;
- express interest;
- negotiate with the facility developer to develop a Community Partnering Agreement;
- approve the agreement through a referendum or other public means.

Municipalities will have until the end of 1997 to reach the final phase of the process. At that time, the DEP hopes to have three volunteer municipalities with suitable sites; otherwise, the state will consider a return to statewide technical screening.

Community Incentives Benefits available to the host municipality include employment opportunities for local residents, preferences for local suppliers during construction, cash payments, scholarships, tax

payments, and funding to hire local inspectors with authority to suspend operation of the facility on health and safety or environmental grounds. Additional benefits may be negotiated with the facility developer.

For further information, contact William Dornsie of DEP at (717)7837-2480.

Texas Compact/Texas (continued)

3. The natural geological and hydrological characteristics of the site, together with proposed facility design features and procedures for operating, monitoring, and closure of the facility preclude significant impacts on groundwater and surface water resources.
4. A seismic impact evaluation and other analyses demonstrate that tectonic processes will not significantly affect the ability of the facility to meet regulatory performance objectives.
5. The natural characteristics of the site will contribute to the long-term stability of the waste.
6. No federally endangered species have been found on the site. Development of the facility will not jeopardize the continuing existence of any known species of plants or animals.
7. The proposed facility will not cause a long-term adverse impact on area air quality, land use, or cultural resources.
8. The TLLRWDA is qualified by training and experience to operate the proposed facility and is capable of providing adequate financial assurance for facility closure and long-term institutional care of the closed site.

For further information, contact Lee Mathews of the Texas Authority at (512)451-5292.

The preceding information was distributed to Forum Participants and Alternate Forum Participants, Federal Liaisons and Alternates via facsimile transmission in a News Flash on April 4, 1996.

Northwest Compact/Washington

Envirocare License Up for Renewal

Envirocare of Utah's application for renewal of its radioactive material license is undergoing review by the Utah Division of Radiation Control. During the review process, the license—which was set to expire on February 28, 1996—remains in effect under a timely renewal provision. The state received the renewal application on January 29, 1996.

Content of Renewal Application

The application for license renewal consists of six volumes with accompanying engineering drawings, totaling about 5,000 pages. According to a March 27 letter from Envirocare Executive Vice-President Charles Judd to William Sinclair of the Utah Division of Radiation Control, the application includes ten "significant changes since approval of the original license request and subsequent amendments..." Most of these changes involve procedural matters, such as expanded waste characterization, consolidation of radiation safety plans, use of a uniform cover design, and so forth.

The following three items may be of interest to Forum Participants:

- "Ground water contaminant transport modelling has been based on the concept of the average concentration in waste being at the maximum concentration throughout and is not sensitive to distribution within a column. Therefore, the current proposal is for application of existing concentration limits to the average concentration within a lift area." (In September 1995, the State of Utah approved a proposal to allow Envirocare to "combine lower concentration wastes with higher concentration wastes prior to placement to meet the overall disposal concentration limit goal." This change in Envirocare's operating procedures did not require modification of the radioactive material license.)
- "Ground water contaminant modelling has demonstrated that nuclides with half-lives shorter than 10 years, e.g., tritium, do not reach a compliance monitoring well. Also, radionuclides with concentrations less than 500 pCi/g do not reach compliance monitoring wells in significant

concentrations regardless of half life. Therefore, this renewal request asks that all radionuclides not currently on the list of approved nuclides be included at a maximum concentration within a lift area of 500 pCi/g. In addition the concentrations for Cobalt and Cesium have been increased, due to their low impact on the environment and Envirocare's commitment to limit worker dose through operational controls." (Cobalt and cesium are two major isotopes from nuclear reactors. This change would allow acceptance of mixed fission products.)

- "All of the modelling done recently was done without relying on the sum of fractions. Therefore the new application does not include sum of fractions calculations."

Renewal Process

Radioactive material licenses issued by the State of Utah are subject to renewal every five years. Regulators are currently performing a completeness review of the renewal application, to be followed by a technical review. The length of time for the entire review process is yet to be determined. Rogers and Associates has been hired by the Division of Radiation Control to provide technical assistance.

Disposal of Out-of-Region Waste

Importation of low-level radioactive waste into the Northwest Compact region for disposal at Envirocare is authorized by the Northwest Compact's amended resolution and order of April 20, 1995. (See *LLW Notes*, April/May 1995, p. 6.) Subject to certain conditions, the resolution and order allows access for any low-level radioactive wastes that the State of Utah has licensed the facility to accept.

For further information concerning the review process, contact Dane Finerfrock of the Division of Radiation Control at (801)536-4250.

Southwestern Compact/California

New Report Finds Beatty Scenario Will Not Recur at Ward Valley

On April 8, the California Health and Welfare Agency released a report on data from the closed low-level radioactive waste disposal site in Beatty, Nevada, and the relevance of this data to the planned disposal site in Ward Valley, California. The report concluded that the migration of tritium and carbon 14 recently detected at Beatty could not recur in Ward Valley.

Background

In April 1994 and July 1995, the U.S. Geological Survey (USGS) collected gas samples from the unsaturated zone at the Beatty site. (See *LLW Notes*, October 1995, p. 12.) USGS's evaluation of the data showed that, while gaseous diffusion models could account for the presence of carbon 14 in the samples, the tritium concentrations were "probably the result of lateral liquid flow." However, USGS was unable to determine the specific factors responsible for producing the flow. Due to these uncertainties and to differences between disposal practices at Beatty and those planned at Ward Valley, USGS concluded that "extrapolations from Beatty to Ward Valley are too tenuous to have much scientific value." (See *LLW Notes*, March 1996, p. 13.)

Study Methodology

The study commissioned by the State of California included a review of records from both US Ecology, which operated the Beatty site, and from the State of Nevada, as well as a "scoping analysis to determine if simple calculation tools and current knowledge of the [Beatty] facility could be used to understand and explain the USGS measurements." The HELP code developed by EPA was used for "the main part of the liquid transport analysis." PORFLOW, a "more sophisticated" code, was used in estimating "the extent of evaporation of the disposed liquid radioactive wastes and the lateral and vertical water velocities" within the unsaturated, or vadose, zone. ERM Program Management Company and Rogers & Associates Engineering Corporation performed the study.

Analytical Results

In support of the USGS's evaluation, the results of the scoping analysis show that

liquid migration resulting from the disposal of 600,000 to 880,000 gallons of liquid radioactive wastes between 1962 and 1975 in disposal trenches at the Beatty site is a viable mechanism to explain the measured tritium concentrations in soil gas samples at the USGS research area ... Gaseous diffusion may have enhanced the movement of the tritium; however, ... gaseous diffusion alone cannot account for the measured tritium concentrations ... In contrast, ... gaseous diffusion alone can account for the measured carbon-14 concentrations.

The report also notes that, despite the migration of radioisotopes, "the vadose zone appears to have adequately protected the underlying groundwater at the Beatty site and the measured tritium concentration in the groundwater at the USGS research areas was below the level of detection. The findings of tritium and carbon-14 in soil gas samples in the USGS research area are, therefore, primarily of scientific interest rather than a health and safety concern."

continued on page 6

States and Compacts *continued*

Southwestern Compact/California (continued)

Implications for Ward Valley

The report concludes:

Given proper waste management and surface waste management practices at the Ward Valley site (see Table ES-1), the liquid migration in the vadose zone observed at the Beatty site will not occur. Changes in technical requirements for LLRW disposal since the cessation of disposal of liquid wastes at the Beatty site, as promulgated by the NRC in 10 CFR Part 61 and adopted by the State of California, preclude the Beatty problems. License conditions imposed by the State and the federal oversight by the NRC further ensure that the Beatty experience will not be repeated at the Ward Valley LLRW disposal facility.

For further information, contact Carl Lischeske of the California Department of Health Services at (916)323-3693.

See also "New Materials and Publications."

Analysis of Tritium and Carbon-14 Migration

Table ES-1: Comparison of Beatty, Nevada

Problems Encountered at Beatty

Liquid wastes were collected and trucked to the site for solidification.

Solidification of liquid wastes did not occur as required and liquid wastes were discharged directly into shallow trenches.

Liquid wastes were discharged directly onto the ground surface and allowed to infiltrate the soil.

Highly mobile tritium was disposed as liquid.

Surface water drainage may have ponded on trench covers and/or directly entered open disposal trenches.

Surface waste drainage carried contaminated soil off-site.

Trenches were open for long durations during which direct precipitation may have infiltrated through the trench floor.

Site surface and trench covers were kept barren.

Lateral inflow into trenches was observed on fine-grained sediments underlying shallow gravel layer.

Trench covers were thin and prone to subsidence effects.

No vadose zone monitoring.

States and Compacts *continued*

in the Vadose Zone at the Beatty, Nevada, Low-Level Radioactive Waste Disposal Site and Ward Valley, California Low-Level Radioactive Waste Disposal Facilities

Technical Requirements and License Conditions Imposed at Ward Valley

Waste generators will need a disposal permit. The state will inspect the waste generators to confirm characterization of the wastes and compliance with all waste form, waste classification, waste characteristic, and waste packaging requirements at the waste generator's facility.

The state will have full-time inspectors at the site. Liquid wastes are prohibited. No waste treatment will occur at the site.

The state will have full-time inspectors at the site. Liquid wastes are prohibited.

Special tritium waste packages are required for high activity tritium wastes. Limits have been placed on the amount of activity in a special tritium waste package. Liquids must be solidified, not just absorbed, by the waste generator.

The disposal site will be surrounded by an armored perimeter berm. The disposal trenches will be protected by berms and grading to prevent surface water from entering the trenches.

On-site drainage will not discharge off-site. One-site surface water drainage will be routed to a sedimentation pond for collection and analysis. Discharge of contaminated surface water is prohibited.

Only short segments of the disposal trenches will be open. Waste packages will be covered daily to provide soil to hold precipitation so it can evaporate. Trench floors will be sloped away from the disposed wastes to a sump. Water and/or wet soil will be removed from the trench. Disposal trenches will be filled from the high end to the low end to provide drainage of precipitation away from the disposed wastes. Trench segments will be covered and revegetated as filled in order to keep water out of the trenches and to maximize evapotranspiration of infiltrating precipitation.

Disturbed areas and trench covers will be revegetated to enhance removal of infiltration near the ground surface by evapotranspiration.

Shallow caliche layers will be removed under the perimeter berms to prevent lateral flow into the disposal site. The bottom elevation of the BC-30 trench is above the bottom elevation of the Class A trenches in order prevent lateral inflow from the Class A trenches to the BC-30 trench.

Trench covers are nearly 30 feet thick to promote retention of water for the vegetative zone (and removal of water by evapotranspiration.) Waste packages are filled to preclude void spaces within the packages. Backfill is placed around waste packages daily to preclude void spaces between waste packages. Drums are limited to two layers to minimize void spaces between the drums. Waste-to-trench-volume ratio is very low (approximately 23%) to minimize void spaces.

A state-of-the-art vadose zone monitoring program is required for the site. The monitoring program will include the cover, the area between the trenches, and directly below the trench floors. The license will employ a two-tiered (investigation level and action level) environmental monitoring response. Monitoring data will be available to the public.

Massachusetts

Massachusetts Board Suspends Some Siting Tasks

The Massachusetts Low-Level Radioactive Waste Low-Level Radioactive Waste Management Board voted March 27 to postpone certain scheduled siting tasks but to continue various other siting activities.

Lobbying efforts by various organizations that urged the Management Board to rescind the formal siting vote it took two years ago were unsuccessful, and the board reaffirmed its 1994 siting vote by a 6-to-1 vote.

Groups Urge Reduction of Siting-Related Activities

About 40 people attended the public hearing preceding the board's vote. Representatives of NELRAD (a New England generators' group) and Associated Industries of Massachusetts urged the board to slow down the siting process in order to save money. The groups also recommended that the board monitor developments in other states, such as the reopening of the Barnwell, South Carolina disposal site to states outside the Southeast Compact; the expansion of Envirocare of Utah's license; and speculation that the next Governor of the State of Washington might favor broadening access to the Hanford disposal site.

Long-time siting opponents argued that the board should cease all siting activities, rescind its 1994 siting vote, and reverse its 1994 determination that a need exists for low-level radioactive waste disposal capacity for Massachusetts generators.

Board Decides to Continue Some Activities

While the Management Board decided to put off some of the work relating to mapping areas that would be excluded from further consideration in its search for an in-state disposal site, the board agreed to continue its work to complete the *Statewide Mapping and Screening Protocol and Procedures*, the document necessary to conduct the mapping and screening stage of its siting process.

The board also agreed to the following additional siting-related tasks:

- completing revisions to the *Siting Plan*,
- completing revisions to the Volunteer Sites Program Plan,
- establishing policies on "conditional" and "preference" siting criteria, and
- collecting data for a source-term report on Massachusetts low-level radioactive waste.

Effort to Repeal 1993 Bond Fails

Also unsuccessful at the Management Board's meeting were efforts to get the board to recommend that the Massachusetts Legislature repeal a \$45-million bond authorized in 1993 to fund in-state disposal facility siting or an "entry fee" for out-of-state-access. Low-level radioactive waste generators, who had supported that bond during the 1993 legislative session, are now working for its repeal, since the full cost of the principal and interest on the bond must be repaid by the generator community, starting in the year 2000.

Rabbits *continued*

Central Midwest Compact/Illinois

On April 12, the Illinois Low-Level Radioactive Waste Task Group released revised criteria for selecting an Illinois site for a regional low-level radioactive waste disposal facility. The public comment period on the revised criteria runs from April 19 through May 20. Copies of the revised criteria have been mailed to interested parties and to a network of libraries across the state.

To aid nonprofit groups in reviewing the revised criteria, the Task Group is continuing a grant program under which eligible organizations may receive up to \$5,000 to obtain assistance in understanding and commenting on the criteria. (See

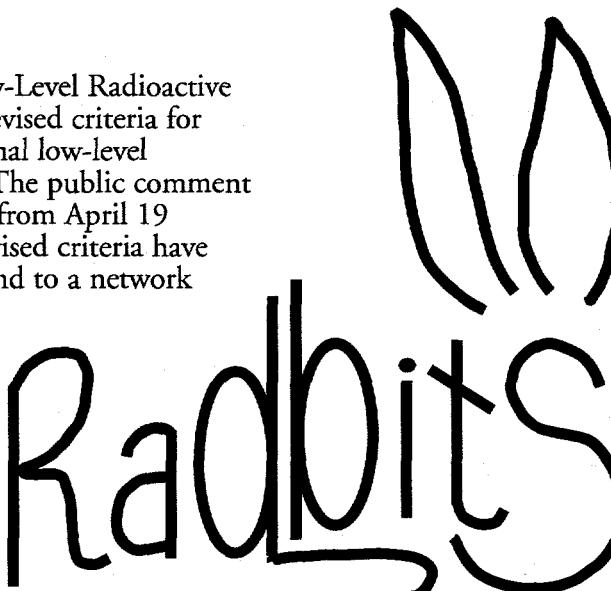
LLW Notes, August/September 1995, p. 4.) Organizations that already received grants during the public comment period on the initial criteria are also eligible for the funds; however, their expenditures from the previous grants must first be audited.

Texas Compact

Uldis Vanags has been appointed as Maine's new representative on the Texas Low-Level Radioactive Waste Compact Commission. Vanags is Nuclear Safety Advisor in the State Planning Office. Steve Ward, the Public Advocate for the state, has been named as an alternate. Vanags replaces Donald Hoxie, who resigned in January.

U.S. Nuclear Regulatory Commission

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design concept by Bob Demkowicz

In an April 8 *Federal Register* notice, NRC announced that it is considering amending the financial assurance requirements for the decommissioning of nuclear power reactors. The proposed revisions would require that electric utility licensees provide assurance that the full estimated cost of decommissioning be available through an acceptable guarantee mechanism if the licensees are no longer subject to rate regulation by Public Utility Commissions or the

Federal Energy Regulatory Commission and do not have a guaranteed source of income. The revisions would also allow licensees to assume a positive real rate of return on decommissioning funds during the safe storage period and would establish a periodic reporting requirement. The comment period on the issues involved in the change of regulation closes on June 24. For further information, see "New Materials and Publications."

U.S. Department of Energy

On March 29, DOE Secretary Hazel O'Leary named Dan Reicher the DOE Chief of Staff. Reicher had been serving as the Acting Assistant Secretary of Energy for Policy. He replaces Rich Rosenzweig, who left for a senior position with the Washington International Energy Group.

In a prepared statement, Secretary O'Leary said, "Dan Reicher is the right person at the right time to be Chief of Staff. He has a keen understanding of DOE's programs, is a skilled consensus-builder, and enjoys great respect inside and outside the Department." At DOE, Reicher has been involved in policy development and implementation in many areas, including environmental cleanup, nuclear waste management, contract reform, privatization, nuclear nonproliferation, and new uses for DOE lands.

Massachusetts v. O'Leary

Massachusetts District Court Rules For DOE re Rebates

On March 29, the U.S. District Court for the District of Massachusetts issued a memorandum and order granting a motion for summary judgment filed by the DOE in a lawsuit concerning the distribution of surcharge rebates. The suit, which was filed by the Attorney General of the Commonwealth of Massachusetts on behalf of the Low-Level Radioactive Waste Management Board, seeks the payment (with interest) of all surcharge funds collected from generators in Massachusetts during the period January 1, 1990, through December 31, 1992. (See *LLW Notes*, July 1995, pp. 12-14.) As part of its order, the district court denied both the Management Board's motion for summary judgment and its motion for a preliminary injunction to stay payment of the surcharge rebates.

Statutory Construction

Reasonableness of DOE's Interpretation of the Statute The court began its discussion by reviewing the Low-Level Radioactive Waste Policy Amendments Act of 1985 to determine how long after January 1, 1993, a state must be able to provide for disposal of all of its low-level radioactive waste in order to meet the 1993 milestone and be entitled to full payment of the rebates. In so doing, the court noted that a court must give deference to agency interpretations of ambiguous statutory provisions. "A court need not conclude 'that the agency's construction was the only reasonable one or even the reading the court would have reached if the question initially had arisen in a judicial proceeding.'" Having determined that the statutory language is ambiguous, the court then had to decide whether DOE's interpretation is based on a permissible construction of the statute. The court determined that it is—"Indeed, if faced with this issue *de novo*, this Court would reach the same result."

Conflicting Federal Register Notices? In explaining its decision, the court recognized that an agency interpretation that conflicts with the agency's earlier interpretation is entitled to considerably less deference than a consistently held agency view. The court found, however, that there is no inconsistency in the agency's published interpretations of the statute:

The September 1992 *Federal Register* notice did not address the issue of whether a contract for less than three years would qualify a State for full

payment of the escrow funds. That notice addressed the issue of whether contracts in general, in lieu of a State building its own LLRW disposal site or joining a Compact with a LLRW disposal site, could satisfy the requirements of the Act. As with the Act itself, the 1992 notice was ambiguous as to duration. The March 1994 *Federal Register* notice then fleshed out the details about how DOE would treat contracts of different durations. These notices are therefore not in conflict.

Statements at LLW Forum Meeting The court rejected Massachusetts's claim that statements made by Terry Plummer at the July 1992 LLW Forum meeting constituted an announcement of an official DOE position that conflicts with the position published in the 1994 notice. The court determined that Secretary O'Leary's interpretation is entitled to "some weight" since Congress made her trustee of the funds. Also, the court noted that DOE has no monetary interest in the result and that Massachusetts did not experience any detriment as a result of reliance on Plummer's statement.

Spending Clause

The court rejected Massachusetts's argument that the 1994 notice violated the Spending Clause of the U.S. Constitution by imposing a new condition on federal funding. The court recognized that "[t]he Supreme Court has long held that in legislation enacted pursuant to the spending power, 'if Congress intends to impose a condition on the grant of federal monies, it must do so unambiguously.'" However, the court also pointed out that every arguably ambiguous provision conditioning the receipt of federal funds by a state need not be construed in the state's favor.

Retroactive Rulemaking Claim

The court also dismissed Massachusetts' claim that the 1994 notice constitutes impermissible retroactive legislative rulemaking. In the first place, the court determined that the 1994 notice is an interpretive rather than a legislative rule. Moreover, the court found that "[a]ny retroactive effect of the Secretary's interpretation is reasonable under these circumstances." DOE is not seeking to retract payments already made. Nor has it "surprised" Massachusetts with retroactive conditions imposed after the receipt of funds.

Courts *continued*

Background: Massachusetts v. O'Leary

Federal Statute The Low-Level Radioactive Waste Policy Amendments Act of 1985 specifies that 25 percent of surcharges on low-level radioactive waste disposed of between January 1, 1990, and December 31, 1992, shall be paid, with interest, to the state or compact region in which the waste originated if the state or compact region is able to provide for the disposal of all low-level radioactive waste generated within the region by January 1, 1993, or if certain other conditions are met. Otherwise, generators may become eligible to receive the surcharge rebates on a prorated basis. Federal statute provides that the surcharge fees are to be held in an escrow account by the Secretary of Energy. (See *LLW Notes*, June 1993, pp. 14-15.)

DOE's 1992 *Federal Register* Notice and Subsequent Litigation The Department of Energy published a notice in the *Federal Register* on September 30, 1992, announcing that states or compacts may be eligible to receive the surcharge funds if they meet one of several criteria, including having a valid contract with another state or compact for low-level radioactive waste disposal or storage. (See 57 *Federal Register* 45,248.) In late 1992, the Commonwealth of Massachusetts entered into an agreement with the Southeast Low-Level Radioactive Waste Compact Commission that provided Massachusetts generators with access to the low-level radioactive waste disposal facility at Barnwell, South Carolina, until June 30, 1994.

Similar contracts were entered into by some other unaffiliated states and by other regional compact commissions, including the Central Midwest Interstate Low-Level Radioactive Waste Commission and the Appalachian States Low-Level Radioactive Waste Commission. As of June 4, 1993, DOE had not made a determination regarding eligibility for surcharge funds based on the 1993 milestone, and the Central Midwest Commission initiated legal proceedings. (See *LLW Notes*, June 1993, pp. 14-15.)

DOE's 1994 *Federal Register* Notice and Subsequent Litigation On March 31, 1994, however, DOE published a notice of final policies and procedures in the *Federal Register*. (See 59 *Federal Register* 15,188.) This notice, which addresses comments received in response to the first notice, indicates that states and compacts that have entered into "the standard contract of 18 month duration with the Southeast Compact Commission" are eligible to receive the surcharge funds on a prorated basis. (See *LLW Notes*, April 1994, pp. 1, 11.) On June 30, 1994, shortly after publication of the second notice, the Appalachian Commission initiated legal proceedings seeking payment of all surcharge fees that were collected from generators of low-level radioactive waste in the Appalachian region from 1990-1992 and that were being held in the escrow account. (See *LLW Notes*, August/September 1994, p. 15.)

Court Rulings and Distribution of the Funds in Escrow On July 22, 1994, the U.S. District Court for the Central District of Illinois affirmed DOE's final policy on state/compact eligibility for surcharge payments, as detailed in its *Federal Register* notice of March 31, 1994. Subsequently, on September 1, 1994, DOE distributed surcharge funds to eligible states, compacts, and generators on a prorated basis—with July 1, 1994, considered the end of the eligibility period, since contracts for access to Barnwell ended on that date. (See *LLW Notes*, August/September 1994, p. 1.) Since that time, DOE has been distributing surcharge funds to eligible generators. Payments are made in either monthly or semiannual installments or in a single lump-sum payment at the end of the rebate period.

Then, on May 22, 1995, the U.S. District Court for the Middle District of Pennsylvania ruled that the Appalachian Commission's contract for 18 months' access to Barnwell satisfies the 1993 milestone and entitles the commission to full reimbursement of the escrow funds for the entire 36-month period. DOE is appealing the district court's decision.

Massachusetts's Suit On July 27, 1995, the Commonwealth of Massachusetts filed suit in federal district court seeking payment of all escrowed surcharge fees collected from generators in Massachusetts.

Court Calendar

Case Name	Description	Court	Date	Action
<i>Envirocare of Utah v. Colorado Department of Public Health and Environment</i>	Challenges the disposal of soil contaminated with low levels of radioactivity as special solid waste at a landfill located in Adams County, Colorado under a CERCLA removal action order.	District Court, City and County of Denver, State of Colorado	February 2, 1996	Envirocare filed a motion for a temporary restraining order. The state filed a motion to dismiss.
			February 5, 1996	Envirocare filed a motion for a preliminary injunction.
			March 10, 1996	District court granted dismissal of the suit on jurisdictional grounds.
<i>Fort Mohave Indian Tribe v. California Department of Health Services</i> (See <i>LLW Notes</i> , January/February 1996, pp. 1, 8.)	Appeal of a suit that seeks to void the certification of the final EIR/S and the issuance of a license for the Ward Valley facility based on alleged violations of state and federal law.	Superior Court of the State of California	March 27, 1996	Court issued judgment vacating earlier judgment dated June 1, 1994 and denying petition for writ of mandate in its entirety.
<i>Nuclear Metals v. Low-Level Radioactive Waste Management Board</i> (See <i>LLW Notes</i> , July/August 1993, p.17.)	Challenges the validity of amendments to Massachusetts laws which authorize the Board to levy assessments against persons authorized to receive, use, possess, transfer, or acquire radioactive materials and challenges regulations passed by the Board pursuant to the amendments.	Supreme Judicial Court of the Commonwealth of Massachusetts	October 17, 1995	Court issued a ruling validating the assessment law, but directing the Board to review and change its assessment procedures. The court ruled that low-level radioactive waste stored for future disposal should be assessed the year it is placed into storage, not in the year in which it is shipped for disposal.

Court Calendar *continued*

Case Name	Description	Court	Date	Action
<i>Santini v. Connecticut Hazardous Waste Management Service</i> (See <i>LLW Notes</i> , October 1994, p. 9.)	Involves a claim of the temporary taking of private property. Claims that the service's site designation prevented the plaintiffs from completing property development, thereby resulting in negative economic impacts on the plaintiffs.	Connecticut Superior Court for the Judicial District of Hartford/New Britain at Hartford	April 3, 1995 February 20, 1996 March 19, 1996	Service filed a motion for summary judgment. Defendant filed a response to motion for summary judgment. Service filed a reply brief to defendant's response to the motion for summary judgment.
<i>Seminole Tribe of Florida v. Florida</i>	Challenges a 1988 federal law that allows Indian tribes to sue states in federal court over rules governing gambling enterprises on Indian reservations.	Supreme Court of the United States	March 27, 1996	The court ruled that the Constitution limits Congress' power to regulate interstate commerce. Accordingly, it found the 1988 law to be an unconstitutional intrusion on the sovereign powers of states.
<i>Massachusetts v. O'Leary</i> (See related story, this issue.)	Seeks payment of all escrowed surcharge fees, collected from generators in Massachusetts.	United States District Court for the District of Massachusetts	March 29, 1996	Court issued a memorandum and order granting summary judgment to the defendant and denying plaintiff's motion for summary judgment and denying plaintiff's motion for a preliminary injunction.
<i>Midwest Interstate Low-Level Radioactive Waste Commission v. O'Leary</i> (See <i>LLW Notes</i> , July 1995, pp. 12-14.)	Seeks payment of surcharge rebates held in escrow with respect to the period from July 1, 1995 through December 31, 1995.	United States District Court for the District of Minnesota	April 4, 1996	Prior stipulation extended to provide that DOE will not disburse surcharge payments to Midwest Compact generators until the district court issues a final order, or until May 1, 1996, whichever comes first.

New Materials and Publications

Document Distribution Key	
P Forum Participants	N LLW Notes Recipients
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States and Comacts

Midwest Compact/Ohio

Letter from Teresa Hay, Chair, Midwest Interstate Low-Level Radioactive Waste Commission, to President Bill Clinton, urging him to direct the Department of Interior to immediately transfer federal land in Ward Valley to the State of California. March 27, 1996.

Southeast Compact/ North Carolina

Letter from Kathryn Haynes, Executive Director, Southeast Compact Commission, to DOE Secretary Hazel O'Leary, requesting DOE to deny the request by the Department of the Interior that DOE conduct tritium testing at the state-licensed Ward Valley disposal site. The letter also asks O'Leary to honor California's request for DOE technical support. March 26, 1996.

Southwestern Compact/ California

Letter from Carl Lischeske, Supervising Engineer, Low-Level Radioactive Waste Program, California Department of Health Services (DHS), to Jeff Snook, Manager, National Low-Level Waste Program, Idaho Operations

Office, DOE, requesting technical support in the form of DOE participation in a "Ward Valley environmental monitoring committee to be established by DHS once the land is transferred to the state." March 14, 1996.

Analysis of Tritium and Carbon-14 Migration in the Vadose Zone at the Beatty, Nevada, Low-Level Radioactive Waste Disposal Site. Prepared by ERM Program Management Company and Rogers & Associates Engineering Corporation for the California Department of Health Services (DHS). March 1996. To obtain a copy of the executive summary, contact Carl Lischeske of DHS at (916)323-9869.

Federal Agencies

Department of Energy (DOE)

Letter from Raymond Pelletier, Director, Office of Environmental Policy and Assistance, DOE, to Emile Julian, Docketing and Service Branch, Office of the Secretary, NRC, responding to a January 9 *Federal Register* notice requesting comments on a petition from the Heartland Operation to Protect the Environment (Docket No. PRM-61-3). In the letter, DOE recommends that NRC deny the petition. March 11, 1996.

Nuclear Regulatory Commission (NRC)

"Financial Assurance Requirement for Decommissioning Nuclear Power Reactors," 61 *Federal Register* 15427-15430. NRC. April 8, 1996. Action: Advance notice of proposed rulemaking. The NRC is considering amending its regulations relating to financial assurance requirements for the decommissioning of nuclear power plants.

Other

Survey of Radioisotope Use in Life Science Research. DuPont/NEN Research Products. Gail Burnett. 1995. Presented at the 1995 Annual Meeting of the American Nuclear Society. Conveys results of a survey of scientific research journals to determine how many published papers reported on research involving the use of radioisotopes. The results chart the use of the following radioisotopes: carbon 14m tritium, sulfur 33, phosphorus 33, and phosphorus 32. To obtain a copy of the survey, contact Barbara Wagner of NEN Life Science Products at (617)350-9017.

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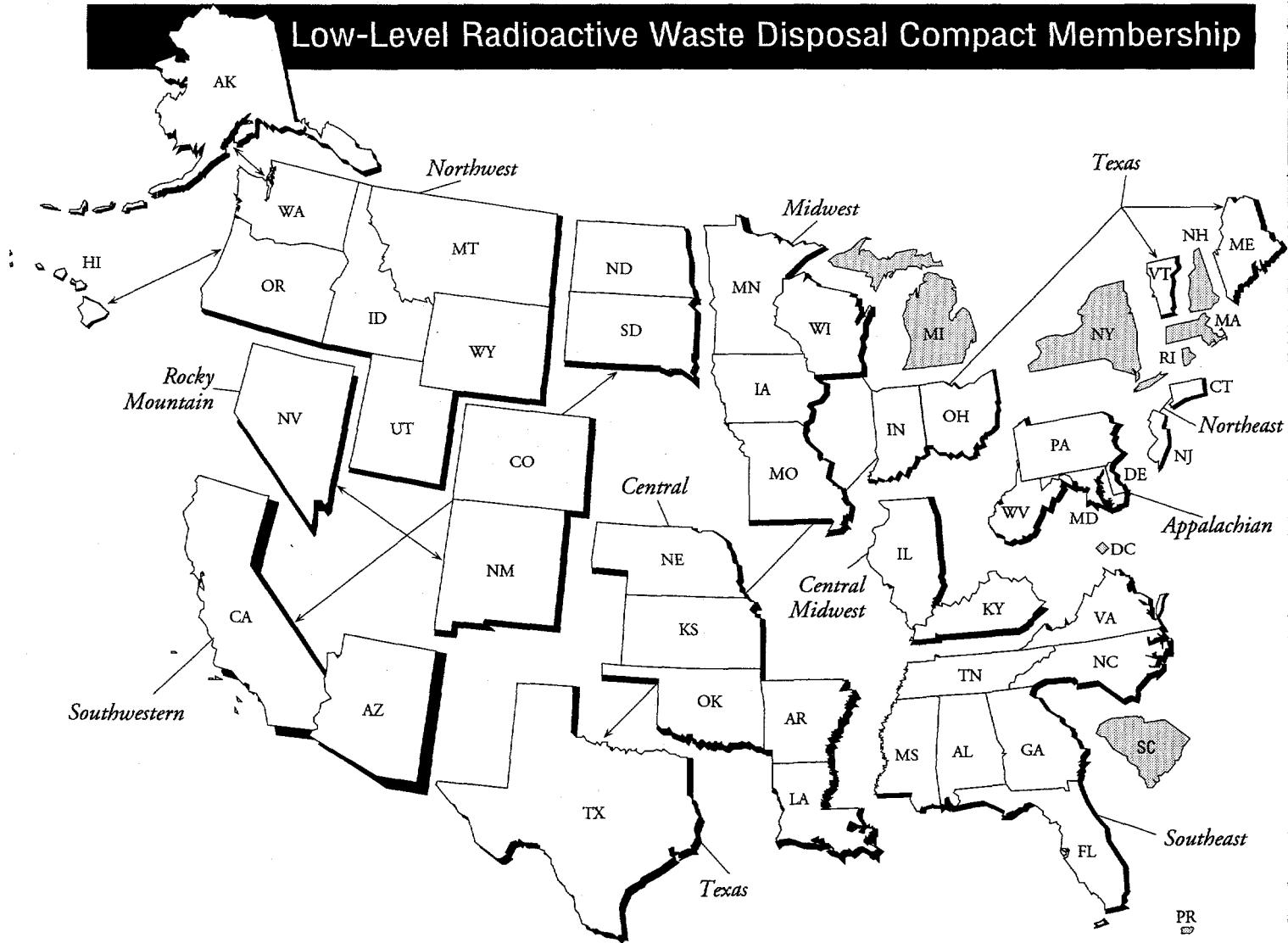
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Members of the public may apply to DOE's National Low-Level Waste Management Program at the Idaho Engineering Laboratory (INEL) to be placed on a public information mailing list for copies of *LLW Notes* and the supplemental *Summary Report*. Afton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

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

Low-Level Radioactive Waste Disposal Compact Membership



Appalachian Compact

Delaware
Maryland
Pennsylvania *
West Virginia

Central Compact

Arkansas
Kansas
Louisiana
Nebraska *
Oklahoma

Central Midwest Compact

Illinois *
Kentucky

Midwest Compact

Indiana
Iowa
Minnesota
Missouri
Ohio *
Wisconsin

Northwest Compact

Alaska
Hawaii
Idaho
Montana
Oregon
Utah
Washington * •
Wyoming

Rocky Mountain Compact

Colorado
Nevada
New Mexico

Northwest accepts Rocky Mountain waste as agreed between compacts.

Northeast Compact

Connecticut *
New Jersey *

Southeast Compact

Alabama
Florida
Georgia
Mississippi
North Carolina *
Tennessee
Virginia

Southwestern Compact

Arizona
California *
North Dakota
South Dakota

Texas Compact

Maine
Texas *
Vermont

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

Unaffiliated States

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

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