

LLWnotes

Volume 12, Number 6 July 1997

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U.S. General Accounting Office (GAO); Congressional Research Service (CRS)

GAO Concludes Most Ward Valley SEIS Issues Previously Addressed: New Information Favors Facility *CRS Finds Major Reduction in Total Activity for Ward Valley*

Two important documents concerning the planned low-level radioactive waste disposal facility in Ward Valley, California, were released in July: a General Accounting Office (GAO) report on the U.S. Department of Interior's review of the proposed land transfer, and a Congressional Research Service (CRS) memo on projected radioactivity at the proposed facility. Both documents were the subject of discussion at a Senate Energy and Natural Resources Committee hearing on July 22, 1997. (See related story, this issue.)

The GAO report—which addresses issues related to the Interior Department's process for the second Supplemental Environmental Impact Statement (SEIS) on the planned Ward Valley land transfer—was requested in a February 3 letter from nine Senators and Representatives. (See *LLW Notes*, March 1997, p. 22.) GAO released the report to the requesters on Tuesday, July 15, but the report was not made public until a hearing of the Senate Energy and Natural Resources Committee on July 22.

The memo by CRS, a nonpartisan branch of the Library of Congress, was authored by Mark Holt and updates a previous memo of his dated May 15, 1995. The new information was requested by Senator Barbara Boxer (D-CA) on July 9, 1997, and Holt responded on July 11. The most recent memo was released to the press on July 15 by the Senator's office.

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Supplement: Environmental Justice and Title VI

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Low-Level Radioactive Waste Forum

LLW Notes

Volume 12, Number 6 • July 1997

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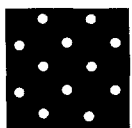
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The Low-Level Radioactive Waste Forum is an association of state and compact representatives, appointed by governors and compact commissions, established to facilitate state and compact implementation of the Low-Level Radioactive Waste Policy Act of 1980 and 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 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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Key to Abbreviations

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

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LLW Forum 1997 Calendar

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January	February	March	April
28 - 29 Host State Technical Coordinating Committee (TCC) Meeting Laughlin, NV	1 - 4 National Governors Association (NGA) Winter Meeting Washington, DC 11 - 14 LLW Forum Meeting San Diego, CA <i>Southwestern Compact/California</i>	2 - 7 Waste Management '97 Tucson, AZ 19 - 20 Nuclear Energy Institute (NEI) LLRW Workshop Salt Lake City, UT	4 National Conference of State Legislatures (NCSL) LLRW Working Group Meeting San Francisco, CA
May	June	July	August
7 - 9 LLW Forum Meeting Chicago, IL <i>Central Midwest Compact Illinois</i> 8 - 10 National	9 - 12 Radioactive Exchange LLRW Management Decisionmakers' Forum Amelia Island, FL	27 - 30 National Governors' Association (NGA) Annual Meeting Las Vegas, NV	6 - 9 National Conference of State Legislatures (NCSL) Annual Meeting Philadelphia, PA

<p>Conference of State Legislatures (NCSL) Federal Issues Meeting Washington, DC</p> <p>19 Host State TCC Salt Lake City, UT</p> <p>20-22 DOE LLRW Conference Salt Lake City, UT</p>	<p>8 Working Group Meeting Philadelphia, PA</p>	<p>Working Group Meeting Philadelphia, PA</p>	<p>Working Group Meeting Philadelphia, PA</p>
<p>September</p>	<p>October</p>	<p>November</p>	<p>December</p>
<p>21 -24 Environmental Council of the States (ECOS) Meeting Burlington, VT</p> <p>23 -24 Host State TCC Meeting Buffalo, NY</p>	<p>20 -22 LLW Forum Meeting Annapolis, MD <i>Appalachian Compact</i></p>	<p>5 - 7 National Conference of State Legislatures (NCSL) Assembly on Federal Issues and State Issues Joint Meeting Washington, DC</p>	<p>TBD Nuclear Energy Institute (NEI) LLRW Workshop TBD</p>

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January	February	March	April
	<p>10 -13 LLW Forum Meeting San Diego, CA <i>Southwestern Compact/California</i></p> <p>21 -24 National Governors' Association (NGA) Winter Meeting Washington, DC</p> <p>TBD Department of Defense LLRW Generators Meeting <i>TBD</i></p>	<p>1 - 5 Waste Management '98 Tucson, AZ</p>	
May	June	July	August
<p>27 -29 LLW Forum Meeting Jackson, WY <i>Northwest Compact</i></p>	<p>TBD Radioactive Exchange LLRW Management Decisionmakers' Forum <i>TBD</i></p>	<p>1 - 4 National Governors' Association (NGA) Annual Meeting Milwaukee, WI</p> <p>20 -24 National</p>	

	<p>Conference of State Legislatures (NCSL) Annual Meeting Las Vegas, NV</p>		
			<p>September</p> <p><i>TBD</i> Host State TCC Meeting <i>TBD</i></p> <p>28 -30 LLW Forum Meeting Annapolis, MD <i>Appalachian Compact</i></p>

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Midwest Compact

Midwest Compact Halts Facility Development

At its annual meeting on June 26, the Midwest Interstate Low-Level Radioactive Waste Commission voted to cease development of a regional disposal facility in Ohio and to revoke host state designations. The commission thanked those in Ohio who had supported facility development, and the commission agreed to fund the activities of both the Ohio Low-Level Radioactive Waste Facility Development Authority and the pertinent state regulatory program through September 30, 1997.

Compact Commission to Remain Active

In a separate vote, the Commissioners decided to maintain the current office and staffing of the Midwest Commission for one year, after which time the Commissioners will reevaluate the situation. With respect to the commission's future, Gregg Larson, Executive Director of the commission, noted in an interview with the *LLW Notes* that the resolution "recognizes the benefits of membership in a compact." He affirmed that the commission "continues to support the national system" and explained that the commission will "actively monitor national and regional waste management developments and explore any opportunities for consolidation, contractual disposal arrangement, or other means of assuring access to existing facilities."

Rationale for Decision re Ohio

Concerning why the commission voted to halt activities at this particular time, the resolution states, "The Commission stands at a critical point immediately prior to the commitment of considerable funds to a site selection process in Ohio." To date, \$3.2 million has been spent on the relatively new site selection process in Ohio—the lowest expenditure in any compact region without long-term access to an existing regional facility. The commission, however, had pending a request for \$2.4 million in FY '98 funding to support the activities of the Ohio Authority and the relevant state regulatory agency. Based on a number of considerations including declining waste volumes within the region, the commission decided to stop the siting process rather than expend the additional funds.

In discussions following the commission action, Executive Director Larson emphasized the compact's unique situation:

This action was based on circumstances specific to the Midwest Compact. Compacts and host states widely differ in siting approaches, environment, politics, waste volumes, development progress to date, financial resources, and many other characteristics. These different circumstances preclude inferences or conclusions that the action taken in our compact is similarly appropriate in another compact or unaffiliated state.

The full text of the relevant resolutions adopted by the commission follows. Both resolutions were adopted by votes of 5-0, with Ohio abstaining.

—CN

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RESOLUTION

CESSATION OF DEVELOPMENT ACTIVITIES FOR A REGIONAL LOW-LEVEL RADIOACTIVE WASTE DISPOSAL FACILITY, RELIEF OF THE STATE OF OHIO'S HOST STATE OBLIGATION, AND PHASE-OUT OF COMMISSION FUNDING OF DEVELOPMENT ACTIVITIES

Whereas, In 1991, the Midwest Compact Commission (hereafter, "the Commission") designated the State of Ohio, the member state projected to generate the largest amount of low-level radioactive waste in the Midwest Compact, as the host state for the first regional disposal facility; and

Whereas, Since its designation as host state, Ohio has acted in good faith in performance of its host state obligation, but has not yet fulfilled that obligation by siting, constructing, and operating a regional disposal facility; and

Whereas, Utility, medical, academic, industry, and government generators of low-level radioactive waste in the Midwest Compact have successfully instituted waste management and treatment practices that continue to dramatically reduce the amount of waste annually shipped to disposal facilities (e.g., during the last ten years Midwest Compact waste has decreased from a high of 114,700 cubic feet in 1989, to a low of 15,900 cubic feet in 1995, and to 20,000 cubic feet in 1996); and

Whereas, In other host states that have reached the licensing stage, the estimated cost of new disposal facilities has risen significantly and now ranges between \$105 to \$216 million, exclusive of operating costs; and

Whereas, Contrary to expectations, Midwest Compact generators currently have access to existing low-level radioactive waste disposal facilities, and these facilities appear to have sufficient capacity to accept waste for a lengthy, but indefinite, period of time; and

Whereas, The Commission stands at a critical point immediately prior to the commitment of considerable funds to a site selection process in Ohio; and

Whereas, The combined effects of the decline in waste disposal volumes, the continued access to existing disposal facilities, and the high cost of new disposal facilities, coupled with the impending commitment of funds to a site selection process in Ohio, warrant Commission reconsideration of the need to proceed with the lengthy and difficult task of developing a regional disposal facility and the need for the Commission to expend large amounts of money for such a facility;

Resolved, The Commission determines that development activities for a regional disposal facility for low-level radioactive waste should immediately and indefinitely cease; and

Resolved, The Commission revokes all previous resolutions that designated, selected, or confirmed host states for the first regional disposal facility; and

Resolved, The Commission will continue to provide reasonable funding for the actual, necessary expenditures of the Ohio Low-Level Radioactive Waste Facility Development Authority and the Ohio Department of Health's Agreement State Program through September 30, 1997; and

Resolved, The Commission commends Ohio Governor George Voinovich and his staff; the Ohio General Assembly and its leadership; Senator Gary Suhadolnik and Representative Bill Schuck and their staff; members of the Senate and House Committees that acted on the 1995 enabling legislation; Roger Suppes, Ohio's Commissioner and Chief of the Bureau of Radiation Protection at the Department of Health; the staff of the Bureau; Jane Harf, Alternate Ohio Commissioner and Executive Director of the Ohio Low-Level Radioactive Waste Facility Development Authority; the staff of the Authority; the Ohio Low-Level Radioactive Waste Facility Development Authority Board and its Chairman, Bob Teater; and many other Ohio citizens for their support, contributions, and commitment to this process and for their responsible actions on behalf of the Midwest Compact's member states and generators.

RESOLUTION

COMMISSION OFFICE AND STAFFING

Whereas, The member states of the Midwest Compact will benefit from the Commission's authority over the export of low-level radioactive waste from the region; and

Whereas, The member states of the Midwest Compact will benefit from the Commission's authority over the disposal of low-level radioactive waste in the region at a non-regional facility; and

Whereas, The member states of the Midwest Compact will benefit from the Commission's authority to enter into agreements to use existing or new treatment, storage, or disposal facilities outside the region; and

Whereas, The member states of the Midwest Compact will benefit from the continued monitoring of Midwest Compact region developments regarding the management of low-level radioactive waste; and

Whereas, The member states of the Midwest Compact will benefit from the continued monitoring of national developments regarding federal low-level radioactive waste laws or policies, existing or new state or compact disposal capacity, and generator or vendor management of low-level radioactive waste; and

Whereas, Such regional or national developments affecting the management of low-level radioactive waste may warrant Commission participation and action;

Resolved, The Commission shall maintain its current office and staffing for one year, and

Resolved, At the annual meeting in June, 1998, the Commission shall make any appropriate changes in office and staffing, taking into consideration regional and national developments, Commission activities during the previous year, and projected Commission activities in the upcoming year.

Texas Publishes Proposal to Issue WCS Radioactive Materials License

In June, the Texas Department of Health (TDH) published a notice in the *Texas Register* announcing the proposed issuance of a radioactive material license to Waste Control Specialists, LLC (WCS). WCS had submitted a license application to TDH on January 24, 1997.

The proposed license would authorize WCS to receive and process certain radioactive waste and byproduct material, uranium ore received as waste, and NORM waste and/or oil and gas NORM waste at its facility in Andrews County, Texas. WCS is currently in the business of storing, treating, processing, and disposing of hazardous and toxic wastes at the facility but is looking to expand its operations.

Under Texas law, the Department of Health is required to hold a hearing on the proposed license if one is requested, in writing, by a "person affected" within 30

days of publication of the notice in *Texas Register*. A "person affected" is defined as "a person who is a resident of a county, or a county adjacent to a county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he/she has suffered or will suffer actual injury or economic damage."

Subsequent to publication of the notice in the *Texas Register*, several persons requested a hearing on the proposed license. Accordingly, TDH will hold a preliminary hearing on August 7 to establish jurisdiction, to take public comment, and to determine party status. If jurisdiction is established and persons are determined to meet the requirements for party status, then a hearing will be set for a later date.

—TDL

Central Compact/Nebraska

Central Compact Issues Export Authorizations Over Nebraska's Objection *Nebraska's Veto Power Disputed*

At two successive meetings of the Central Interstate Low-Level Radioactive Waste Commission, representatives from Nebraska voted against export applications that were submitted for commission approval. The commission's administrative budget is funded largely by export fees, and prior to the first meeting, local press reported that Nebraska Commissioner F. Gregory Hayden intended to "veto" the applications in order to protest perceived abuses of the host state by the commission.

On June 25, Commissioner Hayden, claiming veto power pursuant to Article IV(m) of the compact, voted not to allow two major generators (nuclear power companies) to export waste for disposal outside the compact region. Article IV(m) provides as follows:

The Commission shall: ...

6. notwithstanding any other provision of this compact, have the authority to enter into agreements with any person for the importation of waste into the region and for the right of access to facilities outside the region for waste generated within the region. Such authorization to import or export waste requires the approval of the Commission, including the affirmative vote of any host state which may be affected ... (emphasis added)

All other Commissioners voted to approve the applications, however, and the effect of the 4-1 vote was unclear.

Subsequently, a special telephone conference meeting was held on July 16 for the purpose of considering additional export applications. At that time, Nebraska's Alternate Commissioner, Craig Zeisler, voted against all export applications from major generators, including Omaha Public Power District and Nebraska Public Power District. He did, however, vote to

approve applications by hospitals and other small generators. The other Commissioners again voted to approve all applications.

At the telephone conference meeting, outside legal counsel gave the commission an oral opinion to the effect that Nebraska's negative vote did not constitute a veto. Accordingly, export authorizations were mailed to all applicants. On July 21, the commission's legal counsel provided a written opinion analyzing the validity of the export permits. He determined that the export authorizations are not covered by the language of Article IV(m)(6), but rather by Article III(g), which provides as follows:

Unless authorized by the Commission, it shall be unlawful, after January 1, 1986, for any person: ...

3. to export from the region, waste which is generated within the region ...

This provision, according to the outside legal counsel, "does not provide that any affected host state's affirmative vote is required to authorize an export from the region of waste generated within the region." Such authorization can be granted by a simple majority vote of the Commissioners.

An issue has been raised as to whether the legal opinion implies that a host state would not have veto authority over the import of waste to a regional facility. In separate correspondence, also dated July 21, the compact's outside legal counsel expressed the opinion that the host state would have such authority. Additional information on this issue will be forthcoming in a future issue of the *LLW Notes*.

Persons interested in a more detailed explanation of the legal opinion are directed to the document itself.

—CNITDL

Nebraska Governor to Host LLRW Summit

Governor E. Benjamin Nelson of Nebraska has scheduled a regional summit on August 28 to "assure there is a full and open public discussion on the disposal of low-level radioactive waste." Issues for the summit include the need for the proposed low-level radioactive waste disposal facility in Boyd County as well as "other possible options for ... safe and economical disposal."

In announcing his plans, the Governor cited declining waste volumes, available disposal capacity, expense, and the Midwest Compact's recent decision to cease development of a regional disposal facility for low-level radioactive waste. (See related story, this issue.)

Among those invited to participate in the summit are compact, state, and federal officials as well as interested citizens.

For further information, contact Steve Moeller of the Governor's Policy Research Office at (402)471-2417.

-CN

Central Compact Responds to Governor's Offer

In acknowledging the Governor's invitation, Laura Mack Gilson of the Central Commission agreed, in a letter dated July 16, that a discussion of various developments would be appropriate. Gilson noted, however, that in January 1997 the commission and affected parties had discussed alternatives and options to the Boyd County facility and that no realistic alternatives had been identified.

For further information, contact A. Eugene Crump of the Central Commission at (402)476-8247.

Southwestern Compact/California

California Regulators Reassured re US Ecology Facility in Washington

By letter dated July 10, the State of Washington's Department of Health provided assurances to the California Department of Health Services (DHS) about the safety of the commercial low-level radioactive waste disposal facility at Hanford, Washington. The assurances came in response to an inquiry from DHS about reports of soil gas containing tritium in the unsaturated zone next to disposal trenches at the Hanford facility. The reports were filed over the past three years by the operator of the facility, US Ecology, Inc.

In the letter, Gary Robertson, Head of the Washington Department of Health's Waste Management Section, advised DHS that the levels of tritium found near the trenches do not pose a threat to human health. While tritium has been detected in soil and soil gas near the trenches, the soil at the facility is performing as anticipated. "The Department has always considered the soils surrounding the trenches to be part of the containment system and expected to detect some migration from the trenches," Robertson wrote.

According to Robertson's letter, no significant impact on the ground water under the site or on air quality at the site has occurred or is predicted as a result of the US Ecology facility, although there is a significant tritium plume in the ground water that is encroaching on the low-level radioactive waste area from an adjacent DOE facility.

DHS inquired about the reports because it regulates, measures, monitors and controls the use and handling of most radioactive materials in California. DHS has issued a license to US Ecology for a regional disposal facility at Ward Valley to accept low-level radioactive waste generated within the Southwestern Compact.

-CN

For further information, contact Gary Robertson of the Washington Department of Health at (360)753-3459.

Southeast Compact/North Carolina

Southeast Compact Augments Funding for North Carolina

At a called meeting on July 22, the Southeast Low-Level Radioactive Waste Compact Commission agreed to provide an additional \$1.4 million to the North Carolina Low-Level Radioactive Waste Management Authority for use in development of a regional disposal facility. The supplemental funding is intended to support resolution of issues related to decision point 1 in the Licensing Work Plan for the facility.

Monitoring Committee Action

The called meeting was held at the recommendation of the commission's Monitoring Committee which met on June 27. Just two weeks earlier, the committee Chair had called for the Authority and its contractors to reduce spending until the commission received certain assurances. (See *LLW Notes*, May/June 1997, p. 5.) Full funding was restored, however, at the June 27 meeting based on oral assurances resulting from talks between the Authority and the Division of Radiation Protection (DRP) of the North Carolina Department of Environment, Health and Natural Resources—the licensing agency for the proposed facility.

A meeting of the full commission was needed to approve the additional \$1.4 million because the committee was not authorized to release more than the \$6 million already approved by the commission in October 1996 for decision points 1 and 2. (See *LLW Notes*, October/November 1996, pp. 18–19.)

Licensing Schedule

The Authority and DRP agreed in June 1996 upon a Licensing Work Plan that contains a series of seven “decision points” for evaluating the project. (See *LLW Notes*, August/September 1996, p. 9.)

Decision point 2, which concerns the configuration of the facility and buffer zone, was reached by the Authority in June 1997. At that time, the Authority voted to proceed with obtaining information necessary for a proposed modified facility layout.

Decision point 1 concerns field investigative techniques. Work addressing this issue is scheduled to be submitted to DRP in August. Although previously allocated funding might have sufficed to support the initial submittal, the supplemental funds authorized on July 22 will likely be needed to address any questions that DRP may have.

For further information, contact Ted Buckner of the Southeast Commission at (919)821-0500 or Andrew James of the North Carolina Authority at (919)733-0682.

—CN

States and Compacts

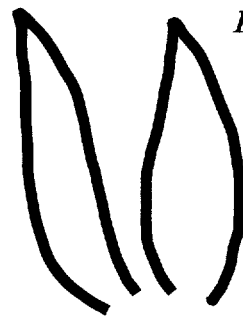
☀ **Appalachian Compact/Pennsylvania** At a meeting of the Appalachian States Low-Level Radioactive Waste Commission on June 24, the commission

- adopted a revised FY '97-'98 budget of \$1,412,817, of which \$1,114,650 had been set aside for grants to Pennsylvania and municipalities to support the volunteer siting program; and
- re-elected James Seif of Pennsylvania as Chair and Jane Nishida of Maryland as Vice-Chair.



Radbits

design concept by Bob Demkowicz



Federal Agencies and Committees

☀ **U.S. Nuclear Regulatory Commission** In a *Federal Register* notice dated July 22, NRC issued a final decommissioning rule, which is intended to

- provide specific radiological criteria for the decommissioning of lands and structures at NRC- and Agreement State-licensed facilities; and
- establish a consistent regulatory basis for determining the extent to which lands and structures must be remediated before decommissioning of a site can be considered complete and the NRC or Agreement State license terminated.

It was reported at the meeting that regional waste disposal volumes and curies continued to decline in 1996, but that the number of curies disposed of is approximately 4 to 5 times higher than it was in the late 1980s.

☀ **Southwestern Compact/California** According to press reports, the regional council of the Southern California Association of Governments (SCAG) voted on July 10 to oppose the planned low-level radioactive waste disposal facility in Ward Valley, California. The organization also voted to support changes in the federal Low-Level Radioactive Waste Policy Act. Two SCAG members—the counties of Los Angeles and San Bernardino—had previously adopted positions on these issues, and the regional council's resolution was adopted expressly in support of their positions. The regional council includes 70 entities out of the six counties and 184 cities that constitute SCAG's membership.

San Diego County, which has adopted a resolution supporting the Ward Valley facility, is not a member of SCAG.

For information on San Bernardino County's proposal to change the federal law and NRC's critique, see LLW Notes, April 1997, p. 14.

The rule will become effective on August 20. Licensees may defer implementation of the rule until August 20, 1998.

For further information regarding development of the decommissioning rulemaking, please see the following issues of the LLW Notes: May/June 1997, pp. 27-29; April 1997, pp. 32-36; Feb. 1997, pp. 26-27; Aug./Sept. 1996, pp. 34-35; Aug./Sept. 1994, p. 25; and July 1994, pp. 24-25.

State and Compact Events

August	Event	Location/Contact
<i>Central Compact/ Nebraska</i>	Compact Facility Review Committee meeting (via telephone)	Lincoln, NE Contact: Don Rabbe (402)476-8247 or e-mail don@cillrwcc.org
<i>Northeast Compact/ Connecticut/ New Jersey</i>	Connecticut Hazardous Waste Management Service Board of Directors meeting Northeast Interstate LLRW Commission meeting	Hartford, CT Contact: Ron Gingerich (860)244-2007 Saddle Brook, NJ Contact: Janice Deshais (860)633-2060
<i>Southeast Compact/ North Carolina</i>	Southeast Compact Commission meeting	Orange Beach, AL Contact: Ted Buckner (919)821-0500
<i>Texas Compact/ Texas</i>	Texas LLRW Disposal Authority Board meeting	Houston, TX Contact: Lee Mathews (512)451-5292
September	Event	Location/Contact
<i>Appalachian Compact/ Pennsylvania</i>	Pennsylvania LLRW Advisory Committee meeting	Harrisburg, PA Contact: Rich Janati (717)787-2163
<i>Central Compact/ Nebraska</i>	Central Interstate LLRW Commission fall quarterly meeting	Lincoln, NE Contact: Don Rabbe (402)476-8247 or e-mail don@cillrwcc.org
<i>Central Midwest Compact/ Illinois</i>	Central Midwest Compact Annual meeting	Chicago, IL Contact: Donn Lasswell (217)785-9982

State and Compact Events *continued*

Sept (cont)	Event	Location/Contact
<i>Northeast Compact/ Connecticut/ New Jersey</i>	Connecticut Hazardous Waste Management Service Board of Directors meeting	Hartford, CT Contact: Ron Gingerich (860)244-2007
	New Jersey LLRW Disposal Facility Siting Board meeting	Trenton, NJ Contact: John Weingart (609)777-4247
	Connecticut LLRW Advisory Committee meeting	Hartford, CT Contact: Ron Gingerich
<i>Massachusetts</i>	LLRW Management Board meeting: continued discussion of the Volunteer Sites Program; report on the status of the legislature's action on the FY '98 budget; and discussion on the budget for FY '99	Boston, MA Contact: Carol Amick (617)727-6018
October	Event	Location/Contact
<i>Northeast Compact/ Connecticut/ New Jersey</i>	Connecticut Hazardous Waste Management Service Board of Directors meeting	Hartford, CT Contact: Ron Gingerich (860)244-2007
	New Jersey LLRW Disposal Facility Siting Board meeting	Trenton, NJ Contact: John Weingart (609)777-4247
<i>Southwestern Compact/ California</i>	Southwestern LLRW Commission meeting	Sacramento, CA Contact: Don Womeldorf (916)323-3019
<i>Texas Compact/ Texas</i>	Maine Advisory Commission on Radioactive Waste meeting	Augusta, ME Contact: Dale Randall (207)287-8404 or e-mail dale.randall@state.me.us
<i>Massachusetts</i>	LLRW Management Board meeting	location to be determined Contact: Carol Amick (617)727-6018

State and Compact Events *continued*

November	Event	Location/Contact
<i>Central Compact/ Nebraska</i>	Facility Review Committee meeting	Lincoln, NE Contact: Don Rabbe (402)476-8247 or e-mail don@cillrwcc.org
<i>Northeast Compact/ Connecticut/ New Jersey</i>	Connecticut Hazardous Waste Management Service Board of Directors meeting	Hartford, CT Contact: Ron Gingerich (860)244-2007
	New Jersey LLRW Disposal Facility Siting Board meeting	Trenton, NJ Contact: John Weingart (609)777-4247
	Connecticut LLRW Advisory Committee meeting	Hartford, CT Contact: Ron Gingerich (860)244-2007
	Northeast Interstate LLRW Commission meeting	Norwalk, CT Contact: Janice Deshais (860)633-2060
<i>Texas Compact/ Texas</i>	Texas LLRW Disposal Authority board meeting	Sierra Blanca, TX Contact: Lee Mathews (512)451-5292
December	Event	Location/Contact
<i>Appalachian Compact/ Pennsylvania</i>	Pennsylvania LLRW Advisory Committee meeting	Harrisburg, PA Contact: Rich Janati (717)787-2163
<i>Northeast Compact/ Connecticut/ New Jersey</i>	Connecticut Hazardous Waste Management Service Board of Directors meeting	Hartford, CT Contact: Ron Gingerich (860)244-2007
	New Jersey LLRW Disposal Facility Siting Board meeting	Trenton, NJ Contact: John Weingart (609)777-4247
<i>Massachusetts</i>	LLRW Management Board meeting	location to be determined Contact: Carol Amick (617)727-6018

International Atomic Energy Agency

IAEA Director General to UN: Reexamine Nuclear Power

During a speech before a special session of the United Nations General Assembly on June 24, Hans Blix, Director General of the International Atomic Energy Agency, discussed some of the comparative environmental benefits of nuclear energy over other, more traditional energy sources. Following are excerpts from Blix's speech: —TDL

Energy, in particular electricity, is of fundamental importance to sustainable development and nuclear fission offers the world ways of generating vast amounts of electricity and heat without causing acid rain or contributing to global warming and without risk that the fuel will run out. Nuclear power, rather than being largely ignored or written off by reference to public concerns, would deserve to be examined on its merits by UN organs in search of a sustainable energy mix ...

Nuclear waste has special characteristics and its transportation and disposal call for prudent handling. However, compared to many other types of hazardous waste it has one great merit - the volumes are small and can be safely managed in their entirety. Thus, a 1000 MW(e) nuclear power plant produces about 35 tonnes of spent fuel per year, while a coal power plant of similar capacity emits *inter alia* some 6.5 million tonnes of carbon dioxide per year. Among the objections to nuclear power we often hear claims that "there is no solution to the problem of the disposal of nuclear waste". This is a misunderstanding. There is, indeed, remarkable agreement among nuclear scientists and engineers around the world about the techniques and methods of disposing of all nuclear wastes in ways which protect both present and future generations. For instance, the high level wastes can be encapsulated and embedded in the crust of the earth from where the uranium once came.

In the Rio process the IAEA was made the task manager for the question of nuclear waste. I am pleased to tell you that detailed internationally agreed safety standards on waste disposal have been adopted by the IAEA and a binding convention, as called for by the Commission on Sustainable Development, is expected to be concluded in a few months. This convention which covers spent fuel and radioactive waste management contains basic safety rules which are

universally supported and opens the way for registration with the IAEA of disposal sites and for mutual peer review of disposal practices among the parties ...

Let me note that all the rules applicable and techniques available for the disposal of civilian nuclear waste are fully compatible with sustainable development. They allow the present generation to make use of nuclear energy without posing any threats to future generations. What is not compatible with sustainable development is the way we dispose of the wastes from energy generation by fossil fuels. These wastes are so voluminous that for the most part they are released into the atmosphere or deposited on the surface of the earth. In particular the gigantic emissions of carbon dioxide, which are linked to the burning of all hydrocarbons, raise the risk of global warming. No viable method is in sight to segregate and neutralize these emissions.

While a welcome consensus has existed for quite some time on energy efficiency and on further efforts to develop and use renewable sources of energy, there ought to be a greater awareness and recognition that these measures do not offer an adequate answer to the risk of global warming. The stark reality is that, since Rio, carbon dioxide emissions have been going up, not down. Various energy scenarios show that an expansion of nuclear power can have a significant impact. As reported last year by the International Energy Agency, increased reliance on nuclear power accounted for the greater part of the lowering of the carbon intensity of energy economies of the OECD countries for the last 25 years. At the present time, there are good reasons to appreciate that much of the rapid economic development in North East Asia is supported by nuclear power. Experience shows that the alternative to such large base load electricity generation by nuclear power would be power generation by fossil fuels.

DOI Convenes Meetings on Ward Valley Title VI Complaint

Federal Health Care Funding for California Questioned

During two June meetings of representatives of DOE, DOI and the U.S. Department of Health and Human Services (HHS), the federal agencies discussed potential courses of action pertaining to the Title VI administrative complaint filed in February 1997 on behalf of five Native American Indian Tribes regarding the planned low-level radioactive waste disposal facility in Ward Valley, California. (See *LLW Notes*, March 1997, p. 14.) The administrative complaint alleges that

Ward Valley and the Colorado River are places of great spiritual and cultural significance to the Tribes and their members. The concerns of the Tribes cannot be mitigated. The State of California has completely ignored their concerns, and has taken actions which threaten the lives and spiritual existence of the Tribes and Indian peoples in the area.

The administrative complaint, which was submitted to DOE and DOI, requested, among other things, that the two agencies suspend all funding related to the Ward Valley facility to the State of California. Under the Title VI administrative complaint process, the only remedy for a finding of discrimination—if informal resolution fails—is termination of federal financial assistance.

DOI Convenes Meetings

According to federal agency staff, two meetings were held, on June 12 and June 23, at the request of DOI to explore the agencies' options for terminating federal financial assistance due to the filing of the administrative complaint. Although the Title VI complaint was not filed with HHS, DOI reportedly contacted HHS because HHS provides the majority of the federal financial assistance received by the California Department of Health Services (DHS). DOI requested that HHS attend the June 12 meeting, which was held at DOI's offices in Washington, D.C. The June 23 meeting was held at HHS offices in Washington, D.C. DOI representatives attended both meetings.

DOI's implementing regulations for Title VI, contained in 43 CFR Part 17, allow DOI to refer complaints to the Department of Justice when "there appears to be a failure or threatened failure to comply with [Title VI], and if the noncompliance or threatened noncompliance cannot be corrected by informal means ..." The implementing regulations also provide an opportunity for DOI to conduct a joint hearing—after there has been an express finding on the record of a failure of a recipient of federal financial assistance to comply with Title VI—with one or more other federal agencies if there is an assertion that the Title VI regulations of another federal agency have been violated. DOI's regulations do not, however, contemplate referring a Title VI administrative complaint to another federal agency on the basis of the other federal agency providing more federal financial assistance than DOI to the recipient.

Concerns re Impact of Health Funding Termination on Poor and Infirm

Range of Medical Programs Potentially Impacted

California DHS officials estimate that DHS receives over \$15 billion in federal financial assistance from HHS. The federal financial assistance is used in a variety of health care programs operated by DHS, including

- maternal and child health care services;
- breast and cervical cancer treatment services;
- vaccine programs; and
- the Indian Health Service.

Cancer Patients Express Concern

In a letter sent to HHS Secretary Donna Shalala on June 25, Nicki Hobson, Executive Director of the National Association of Cancer Patients, expressed concern over the environmental justice impacts of terminating federal financial assistance to California DHS based on the filing of an administrative complaint:

Just this week we were appalled to learn that individuals within Interior are leaning on your agency to cut off federal Health and Human Services funds to California based on a spurious claim that the civil rights of Native Americans have been violated by California's efforts to comply with the Low-Level Waste Policy Act! If they succeed, it could mean that funds intended to help poor and sick people in California would be withheld. Punishing the sick and poor to gain negotiating leverage hardly reflects the compassionate principles you have brought to the Department during your tenure as Secretary. Surely you will personally reject this mean-spirited game, recognizing it for what it is: An unconscionable attempt to blackmail California into submitting to Interior's unreasonable demands, and to divert attention away from a soon-to-be-released General Accounting Office report which we are confident will condemn Interior's handling of the Ward Valley issue.

Precedent Could Affect Nine States Subject to Pending Complaints

EPA has received approximately 41 environmental justice administrative complaints filed under Title VI of the Civil Rights Act, and EPA has dismissed or rejected approximately 17 of those complaints. EPA is currently either investigating or considering whether to investigate complaints against state agencies in nine states: Alabama, California, Connecticut, Florida, Illinois, Louisiana, Maine, Texas and Vermont. Other federal agencies have an unknown number of complaints pending before them (administrative complaints can be filed with more than one agency at a time).

DOI convened the meetings without taking any official action on the administrative complaint. Although federal agency representatives initially speculated that DOI's intent was to refer the administrative complaint to HHS for processing, DOI has not officially referred

California DHS Officials React

California DHS officials commented:

The civil rights complaint against DHS is completely without merit and should simply have been rejected. The Bureau of Land Management has itself stated in a February 14 letter to EPA Region IX that the Indian Tribes have been fully involved, consulted, and represented in the Ward Valley Land transfer process. The attempt by Interior to threaten federal medical assistance funding to California on the basis of this complaint is outrageous. Interior appears willing to take advantage of California's desire to assist potentially millions of poor and sick people to gain a tactical advantage in the dispute over the Ward Valley land transfer. This simply illustrates that Interior has lost all perspective on this issue, and continues to deal with California in bad faith.

or otherwise acted on the complaint—other than to convene the June meetings of federal agencies' staff to discuss termination of medical funding to DHS while the complaint, which was submitted on February 6, remains pending.

Federal Implementing Regs for Title VI

Following passage of the Civil Rights Act of 1964, each federal agency that provides federal financial assistance developed implementing federal regulations for Title VI. (See related story.) The agencies' implementing regulations, which are similar but not identical, are codified in federal regulations. DOI's implementing regulations for Title VI are contained in 43 CFR Part 17.

continued on page 16

DOI to Conduct "Prompt Investigation" of Complaints— *Ward Valley Complaint Filed February 6*

According to these federal regulations, a "prompt investigation shall be made" whenever an administrative complaint alleging a violation of Title VI is received by DOI. The investigation is to include

- a review of the pertinent practices and policies of the recipient of federal financial assistance;
- the circumstances under which the possible noncompliance with this part occurred; and
- other factors relevant to a determination of compliance or noncompliance with Title VI.

Federal regulations also require DOI to inform the recipient of federal financial assistance when DOI determines either that no federal action is warranted or that noncompliance has occurred. Federal regulations do not require DOI to inform the recipient of federal funding when an administrative complaint is initially filed. DOI has not informed DHS of the filing of the administrative complaint, nor has DOI informed DHS of any subsequent action taken by DOI on the administrative complaint.

Land Transfer Does Not Constitute "Federal Financial Assistance"

The proposed transfer of land to California for the planned low-level radioactive waste disposal facility in Ward Valley does not constitute federal financial assistance as defined in DOI's implementing regulations for Title VI. Although land transfers at less than fair market value do constitute federal financial assistance, California is paying fair market value for the Ward Valley land transfer.

If a federal agency does not provide federal financial assistance to a recipient, the federal agency typically rejects the complaint—as EPA has done with six administrative complaints after EPA determined that it did not provide federal financial assistance to the state entities identified in the complaints.

Federal Agency Actions Subject to Judicial Review

Federal agency actions under Title VI implementing regulations are subject to judicial reviews. A federal agency cannot terminate, suspend, or refuse to grant federal financial assistance until

- the agency has informed the recipient of the failure to comply and has determined that compliance cannot be achieved by voluntary means;
- there has been an express finding on the record of failure to comply—after opportunity for a hearing;
- the termination or suspension has been approved by the responsible agency official; and
- the expiration of thirty days after the agency has filed with the U.S. congressional committees of jurisdiction for the relevant program a full written report of the grounds for suspension or termination of federal financial assistance.

Ward Valley Complaint Alleges Judicial Process Constitutes Injustice

The administrative complaint filed by the five Native American Tribes against California DHS was submitted in response to DHS filing a lawsuit against DOI on January 31 to compel DOI to transfer the Ward Valley site to the state. (See *LLW Notes*, March 1997, pp. 1, 16-20.) Under DOI's regulations, an administrative complaint must be filed within 180 days of the alleged occurrence of noncompliance with Title VI to be considered timely. The administrative complaint asserts that the judicial process itself constitutes environmental injustice because the state's lawsuit would end the tribe's efforts "to achieve environmental justice by stopping the siting of this facility."

For further information, contact Carl Lischeske, California DHS, at (916)323-3693.

—LAS

California BLM: Tribes "Fully Represented and Consulted"

The following excerpts are from a February 14, 1997 letter from Ed Haste, Director of the California State Office of the U.S. Interior Department's Bureau of Land Management (BLM), to Felicia Marcus, EPA's Region IX Administrator. The letter follows a series of meetings that EPA Region IX held with Colorado River Indian Tribes and groups opposed to the Ward Valley low-level radioactive waste disposal facility.

"Every Step of the Way Has Been Paved with Extensive Public Involvement"

For over ten years my office has been working closely with the State of California on its application to transfer public lands in Ward Valley to the State. This cooperation has extended through the lengthy site selection process, through completion of a joint Environmental Impact Report/Statement and a subsequent BLM Supplemental EIS. As is the case with all of our Bureau's actions here in California, every step of the way has been paved with extensive public involvement. Where Native American values are involved we include participation and consultation with affected tribes. We are dedicated to assuring Native American tribes receive full opportunity to advise us of their cultural and religious values, and to express their concerns about the use of Ward Valley as a low-level radioactive waste disposal site.

"Colorado River Native American Tribes Were Fully Represented and Consulted"

The President's Executive Order 12898 on Environmental Justice brought increased attention to assuring potential project impacts to Native Americans were fully and objectively portrayed in environmental assessments. We have reviewed the Council on Environmental Quality (CEQ) guidance relative to the Executive Order and find we fully observe that direction in our ... work. Colorado River Native American Tribes were fully represented and consulted in the scoping and descriptive phases of the original EIR/EIS. In preparing for this supplemental EIS, those tribes again were full participants in the three scoping meetings we held, and will continue to be consulted throughout the entire environmental assessment process ... We continue to have government-to-government relations with these tribes, principally with the Ft. Mojave tribe, following the Bureau's procedural guidance developed in our manual and handbook on Native American consultation ... This on-going and

continuous association with the tribes is carried out by our line manager, the Needles Area Manager, directly with the tribal chairpersons.

"Your Direct Involvement ... May Create Interagency Disharmony"

In the past few months your office has held at least one meeting with Native American tribes impacted by the Ward Valley project. My staff participated with you in that meeting. I recognize this meeting was held at the request of the tribes. Subsequent to that meeting, EPA permitting authority ... was dropped from your regulations, leaving only your NEPA [National Environmental Policy Act] review authority under the Clean Air Act, (including effects on minority and low-income communities, including human health, social, and economic effects) as your entree to this project.

By your agency agreeing to continue to meet with the tribes, their expectations of your responsibilities under the Executive Order may be out of proportion to your authority. Your direct involvement is likely to interfere with the Bureau's established decisionmaking processes and may create interagency disharmony. A breakdown of our established government-to-government relationships with the tribes is an outcome we cannot afford.

"I Can Count on You to ... Respect the Bureau's Management Authorities"

I know I can count on you to understand and respect the Bureau's management authorities and responsibilities when it comes to working with Native American tribes. I would appreciate your directing all future requests from the tribes for meetings or consultations to our Needles Area Manager.

—LAS

California Department of Health Services v. Babbitt

Midwest, Northeast, and Southwestern Commissions File Amici Curiae Briefs in Ward Valley Suit *Northwest to File Shortly*

On June 30, the Midwest Interstate Low-Level Radioactive Waste Compact Commission and the Southwestern Low-Level Radioactive Waste Commission filed legal documents supporting the State of California in its lawsuit to compel the U.S. Department of Interior to transfer federal land for the planned low-level radioactive waste disposal facility in Ward Valley, California. Specifically, the two commissions filed the following documents:

- a Notice of Motion and Motion for Leave to File Memorandum of Amici Curiae Opposing Defendants' Motion to Dismiss, and
- a Memorandum of Amici Curiae Opposing Defendants' Motion to Dismiss.

Argument

In support of their position, the compact commissions argued as follows:

The [Low-Level Radioactive Waste Policy Act as amended] requires states to assume responsibility for ensuring that LLRW is properly disposed of and encourages states to work cooperatively in developing regional solutions to LLRW disposal. Meeting the responsibilities imposed by the Act upon the states is a significant challenge that requires the good faith efforts and cooperation of many state and federal entities. The refusal on the part of Secretary Babbitt to issue a patent in accordance with the Record of Decision dated January 19, 1993 unnecessarily delays California's development of a facility for the disposal of LLRW generated in Arizona, California, North Dakota and South Dakota. This delay and intrusion of the Department of Interior into areas of exclusive regulatory authority of the Nuclear Regulatory Commission and agreement states sends a message that, irrespective of the technical merits of an exhaustively studied and environmentally sound site, the federal

government is willing to sacrifice longstanding national policy to vocal, but parochial, interests. This message, unless corrected by the Court, will discourage state and compact compliance with national policy. (footnotes omitted)

NE and Others File Separate Briefs: Northwest Votes to Join MW & SW Brief

On July 24, the Northeast Interstate Low-Level Radioactive Waste Commission filed a separate amici curiae brief in the U.S. District Court for the District of Columbia in support of the State of California. On July 18, the Northwest Interstate Commission on Low-Level Radioactive Waste Management voted to file a motion to join the amici curiae brief previously filed by the Midwest and Southwestern Commissions. On July 16, the Committee to Bridge the Gap and others filed an amici curiae brief on the venue issue only.

For information about the Northeast commission's brief, contact Janice Deshais, Executive Director of the Northeast Commission, at (860)633-2060.

Background

The suit, which was originally filed on January 31, seeks to compel the Interior Department to transfer the Ward Valley site to the California Department of Health Services in accordance with a January 19, 1993 Record of Decision signed by then-Interior Secretary Manuel Lujan. The California Department of Health Services and its Director, S. Kimberly Belshé, initiated the suit. The U.S. Department of Interior, its Secretary—Bruce Babbitt—and the U.S. Bureau of Land Management are all named as defendants to the action. (See *LLW Notes*, March 1997, pp. 1, 16–20.) On April 28, the defendants filed both a motion to dismiss the action and a motion to transfer venue to the Northern District of California.

—TDL

Nebraska v. Central Interstate Low-Level Radioactive Waste Commission

Court Denies State's Motion for Protective Order, Allows Utilities to Intervene

On June 30, the U.S. District Court for the District of Nebraska filed an order addressing several issues that had been raised in an action brought against the Central Interstate Low-Level Radioactive Waste Commission by the State of Nebraska. The suit, which was filed in November 1996, challenges actions by the commission to adopt a schedule for the state to complete its review of a license application for the proposed low-level radioactive waste disposal facility in Boyd County, Nebraska. (See *LLW Notes*, February 1997, pp. 14-17.)

The court's order:

- denied the plaintiff's motions for a protective order concerning the defendant's discovery requests and awarded expenses and fees to the defendant in connection with the motions;
- granted the motion of four utility companies to intervene in the action as party defendants and ordered that their pleading in intervention be filed within five days of the date of the order; and
- granted to the plaintiffs additional time in which to disclose expert witnesses and gave them permission to submit a reply brief and an amended complaint.

Denial of Protective Order

Nebraska had asked the court to prohibit the Central Commission from deposing the Director of the state's Department of Environmental Quality and the state's Low-Level Radioactive Waste Program Manager because:

- the director, as an administrative decision maker, has immunity from giving deposition testimony by the predecisional privilege and public policy against deposing high-ranking government officials;
- the proposed discovery relating to the good faith conduct of the state, or lack thereof, is barred by res judicata and collateral estoppel as such claims and issues were settled and dismissed, with prejudice, in prior litigation; and

- the proposed discovery is irrelevant to the issues raised by the state in the suit and is prejudicial in that it may jeopardize the integrity of the application review process.

In response to the State of Nebraska's request, the court determined that "while certain questions to be propounded by the deponents may implicate the deliberative-process privilege, it is inappropriate to preclude altogether the taking of the depositions. Factual inquiry into actions taken or not taken, decisions made, directives given or received, and numerous other areas are allowable without treading upon the deliberative process."

The court rejected the state's argument, contained in a reply brief, that over 1,213 staff hours will be required to meet the defendant's discovery request. The court did so on the basis that the state did "not raise 'oppression and undue burden' as a ground for quashing the subpoenas" in its original motion and therefore waived any such claim. In addition, the court found that "the areas of inquiry are relevant to the allegations of the defendant in its answer."

The court also rejected the state's assertion of res judicata and collateral estoppel because issues of an alleged slowdown by the state in the licensing review process were not litigated in the previous case and because the settlement agreement document in that case did not manifest an intent to preclude a later assertion regarding alleged slowdowns. (Res judicata and collateral estoppel are legal doctrines that bar claims, demands or causes of action that were previously litigated between the parties.)

Granting of Intervenor Status

The court rejected arguments by four nuclear utilities—Energy Arkansas, Inc.; Energy Gulf States, Inc.; Energy Louisiana, Inc.; and Wolf Creek Nuclear Operating Corporation—that they are entitled to intervene as a matter of right.

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Nebraska v. Central Interstate Low-Level Radioactive Waste Commission (continued)

According to the court's order, the utilities did not meet their burden of showing that a ruling on the scope of the commission's authority will definitively "impair or impede the applicant[s'] ability to protect" their interests in the prompt creation of a waste disposal facility.

However, the court next considered the utilities' application as one for permissive intervention and granted it. A court may grant permissive intervention simply upon a "showing of either a question of law or a question of fact in common between the main action and the applicant's claim or defense."

The court rejected the state's argument that the Eleventh Amendment to the U.S. Constitution precludes the application for intervention. The court's order pointed out that whereas the Eleventh

Amendment restrains federal courts from hearing suits against unconsenting states, the state waived its claim of sovereign immunity by bringing this action in the first place.

Appeal

On July 11, the State of Nebraska filed a statement of appeal of the court's order alleging that portions of the order are clearly erroneous and contrary to law. The issues have been briefed to the court by both parties.

On July 16, the court entered an order granting the state's motion for stay of the June 30 order pending its appeal. The court also granted the state's motion to extend the time to respond to the commission's motion to compel.

—TDL

Waste Control Specialists, LLC v. Envirocare of Texas, Inc.

WCS Files Suit Against Envirocare and Others

On May 2, Waste Control Specialists—a Delaware limited liability company with its principal place of operation in Andrews County, Texas—filed suit in the District Court of Andrews County alleging, among other things, antitrust violations and business disparagement. The following parties are named as defendants to the action: Envirocare of Texas, Inc.; Envirocare of Utah, Inc.; Khosrow Semnani and Charles Judd, who are both officers of Envirocare; and other individuals. The defendants filed an answer to the suit in June.

WCS' lawsuit references allegations against Semnani and Envirocare contained in a separate action filed by Larry Anderson, a former state regulator with the Utah Division of Radiation Control, and Lavicka, Inc., a Utah corporation formed by Anderson. That suit, *Anderson v. Semnani*, is currently pending before the Third District Court of the State of Utah. (See *LLW Notes*, January 1997, pp. 1, 5–12.) WCS' suit is similar to one that was filed by Nuclear Fuel Services, Inc. in March 1997 alleging unlawful business practices by Envirocare and Anderson. That suit, *Nuclear Fuel Services v. Semnani*, is also pending before the Utah Third District Court. (See *LLW Notes*, April 1997, pp. 22–24.)

Factual Allegations

Business Opportunities Explored by WCS WCS is currently in the business of storing, treating, processing and disposing of hazardous and toxic wastes at a facility located in Andrews County. According to the complaint, WCS has been working for some years toward obtaining both a state permit for storage and treatment of commercial low-level radioactive waste and federal authorization for disposal of DOE low-level radioactive and mixed waste. In furtherance of these goals, WCS committed significant resources to obtain

- an amendment to its hazardous waste permit from the Texas Natural Resource Conservation Commission so that the permit would not preclude the receipt of radioactive materials;
- a permit from the Texas Department of Health (TDH) to store and treat low-level radioactive waste; and
- an authorization from DOE to be allowed to compete to receive for disposal DOE low-level radioactive and mixed waste.

Legal Requirements for Radioactive Waste Storage, Treatment and Disposal

Texas law precludes the issuance of a state license to a private entity for commercial low-level radioactive waste disposal and designates the Texas Low-Level Radioactive Waste Disposal Authority as the agency responsible for disposing of such waste. Texas law does not, however, specifically prohibit the issuance of a state license for the storage and treatment of commercial low-level radioactive waste.

Federal law precludes the disposal of DOE mixed waste at a private facility unless disposal authorizations are first granted for both the low-level radioactive components and the hazardous components of such waste.

Alleged Interference by Envirocare WCS alleges that, during the spring of 1996, Envirocare conceived of and implemented a plan to destroy WCS' ability to compete in the low-level radioactive and mixed waste business by

- using its monopoly power to prevent WCS from obtaining necessary government authorizations;
- engaging in improper communications with government officials in violation of Texas lobbying regulations;
- drafting letters from state legislators to federal officials that attack WCS, without disclosing Envirocare's role in their preparation;
- communicating false and defamatory information about WCS and its project to state and federal officials, business officials, and to the media; and
- creating a sham disposal operation in Andrews County, Texas.

According to WCS, "[t]he conduct complained of ... is consistent with prior illegal and tortious conduct taken by Envirocare against other potential competitors. Indeed, Envirocare has a common business practice of repeatedly acting to destroy potential competition through illegal and/or tortious means."

Causes of Action

WCS alleges four basic causes of action in support of its claim:

- **Free Enterprise and Antitrust Violations** WCS alleges that the defendants violated the Texas Free Enterprise and Antitrust Act of 1983 by acting to preclude or impede WCS' efforts to get necessary government authorizations, by creating a sham radioactive waste disposal operation to impose added expense and delay on WCS, and by suggesting to TDH officials that Envirocare would not dispose of mixed wastes stored at a WCS facility.
- **Libel and Slander** WCS complains that the defendants publicized defamatory statements about it and its business project in written documents provided to, and in oral communications with, state and federal officials, business officials, and media personnel. WCS alleges that the defendants knew, or recklessly disregarded, information that would have demonstrated that such statements were false, untrue, or misleading, and that they have willfully and continually failed to correct such statements.
- **Business Disparagement** WCS contends that the defendants made false, untrue, and misleading statements to key state and federal officials, business leaders, and the media about WCS' business in an effort to interfere with WCS' relations with others and to prevent others from dealing with WCS.
- **Tortious Interference with Prospective Business Relations** WCS argues that the defendants used illegal means and exercised a superior position in the marketplace in order to intentionally interfere with WCS' business relations with government agencies having authority over sought-after activities in relevant markets and/or authority to provide WCS with government contracts of substantial value.

Requested Relief

WCS is seeking an award of all damages sustained as a result of the defendants' alleged misconduct in an amount estimated at not less than \$500 million dollars for the first and second causes of action, and not less than \$175 million dollars for the third cause of action, with unspecified damages for the fourth cause of action. In addition, WCS is seeking an award of punitive or exemplary damages in an amount sufficient to punish and deter defendants and others from similar wrongful conduct.

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Waste Control Specialists, LLC v. Envirocare of Texas, Inc. (continued)

Defendants' Answer to the Action

In June, the defendants filed an answer, which included a general denial of all of the allegations put forth by WCS in its petition. In addition, the defendants requested that the court require WCS to replead its claims and/or to provide additional information in the following instances:

- The defendants challenge WCS' claim that the defendants violated the Texas Free Enterprise and Antitrust Act. They argue that low-level radioactive and mixed waste disposal exclusively involve interstate commerce and are therefore not subject to Texas antitrust laws, but rather are governed exclusively by federal antitrust laws. In addition, the defendants argue that the Texas statute does not apply because they were acting pursuant to their relationship of principal and agent. They also claim that WCS failed to identify the "relevant market" for antitrust purposes.
- The defendants challenge WCS' claim that they are liable for slander and libel, arguing that WCS has failed to identify the defamatory statements allegedly published by each of the particular defendants.
- The defendants assert that business disparagement is not a recognizable separate cause of action from libel under Texas law and cannot afford independent relief to WCS.
- The defendants object to WCS' claim regarding tortious interference with prospective business relations. They assert that the plaintiffs have failed to identify and give the defendants fair notice of the referenced business relations, governmental agencies, relevant markets, and government contracts. They also argue that WCS failed to adequately plead how the defendants' alleged actions violated antitrust laws or caused the governmental agencies and other entities to refuse to deal with WCS. Additionally, according to the defendants, WCS failed to show with a "reasonable probability" that it would have entered into a contract or business relationship with a governmental agency or other entity but for the defendants' alleged interference.
- The defendants argue that the damages claimed by WCS are not capable of reasonable ascertainment, but instead are speculative and conjectural.

- The defendants complain that WCS did not identify "specific lost sales" to support its claim of pecuniary loss and that WCS' failure to do so impairs the defendants' ability to raise appropriate defenses.
- The defendants contest WCS' assertion that the defendants are liable in their individual capacities, arguing that they were at all times acting, within the scope of proper authority, as agents of Envirocare of Utah and/or Envirocare of Texas.

The defendants' answer included six affirmative defenses:

- The alleged defamatory statements at issue are true and/or substantially true.
- The alleged defamatory statements at issue contain statements of opinion and other statements that are not actionable assertions of fact about WCS.
- Efforts to influence public officials are not deemed violations of antitrust laws, even if dishonest means are used and even if the intended result is the elimination of competition.
- If the defendants have obtained a monopoly, it was not willfully acquired or maintained but rather resulted from a superior product, business acumen, or historical accident.
- The defendants are not liable in their individual capacities.
- The defendants only engaged in reasonable competition within the realm of fair play—they are immune from liability for any of the complained of conduct.

The defendants—arguing that WCS' suit is groundless and was brought in bad faith or for the purpose of harassment—included a counterclaim for costs, reasonable attorney's fees, and other litigation expenses in their answer.

—TDL

Northern States Power Company v. U.S. Department of Energy
Michigan v. U.S. Department of Energy

States Attack DOE's Claim re Lack of Authority to Store Spent Fuel

On June 6, the U.S. Department of Energy filed a response to petitions filed in two lawsuits concerning DOE's statutory authority and contractual duties to provide for the storage or disposal of high-level radioactive waste pursuant to the Nuclear Waste Policy Act of 1982 (NWPA). In its response, DOE argues that it lacks statutory authority to store such waste in an interim facility pending completion of a permanent repository. The petitioners—a coalition of 43 utilities and 46 states and state agencies—disagree. Not only do they assert that DOE has such authority, but they claim that DOE successfully argued for this authority in a 1991 court filing in an unrelated matter. The issue is currently under review by the U.S. Court of Appeals for the District of Columbia Circuit.

Argument

According to the petitioners' June 16 court filing, DOE's claim that it lacks statutory authority to store spent fuel is contradicted by a 1991 court filing in *Idaho v. DOE*. In that case, DOE sought to store spent fuel from the commercial reactor located in Fort St. Vrain, Colorado at a DOE facility in Idaho over the state's objection. In so doing, the department made the following assertion.

The Atomic Energy Act of 1954 provides plenary authority for the government to own and possess source, special, and byproduct nuclear material, the principal components of spent nuclear fuel. It seems incredible that Idaho would suggest that while the government has full authority under the Atomic Energy Act to own and possess spent nuclear fuel, it has no authority under that act to store it.

But the State of Idaho disagreed, arguing that the NWPA does not permit interim storage of commercial spent fuel. DOE replied that the "contention that the NWPA provided the first and only authority for DOE to accept and store spent fuel from commercial reactors is clearly incorrect."

In that end, the court agreed with DOE, finding that the department had authority under the Atomic Energy Act to store the waste.

Background

The NWPA requires DOE to site, develop, license, and operate a deep geologic repository for the nuclear industry's spent fuel. It provides, however, that utilities have the primary responsibility for the interim storage of spent fuel until it is accepted by DOE in accordance with the act's provisions. In 1983, DOE developed a "standard contract" whereby utilities agreed to make payments to the Nuclear Waste Fund to cover the cost of the federal disposal program in exchange for DOE's provision of a repository. It was originally anticipated that the repository would begin accepting waste by January 31, 1998, but as time went on it became clear that this deadline was not going to be met. Accordingly, a coalition of nuclear utilities, states, and state agencies filed suit in the U.S. Court of Appeals for the District of Columbia Circuit in June 1995 to compel DOE to begin accepting spent fuel by January 31, 1998.

The court issued a decision on July 23, 1996, holding that DOE is required to accept spent fuel. However, several months later—on December 17, 1996—DOE issued a policy statement announcing that the department "will be unable to begin acceptance of spent nuclear fuel for disposal in a repository or interim storage facility by January 31, 1998." Thereafter, petitioners filed two lawsuits in the appellate court to compel DOE to comply with the July 1996 decision. The cases were subsequently consolidated. (See *LLW Notes*, April 1997, pp. 26–27.)

—TDL

Court Calendar

Case Name	Description	Court	Date	Action
<i>Byrd v. Raines</i> (See <i>LLW Notes</i> , May/June 1997, p. 20.)	Challenges the constitutionality of congressional legislation that grants to the President a line-item veto.	United States Supreme Court	June 26, 1997	Court issued order holding that appellees lack standing to bring suit, vacating the district court's judgment, and dismissing the action.
<i>California Department of Health Services v. Babbitt</i> (See <i>LLW Notes</i> , March 1997, pp. 1, 16-20.)	Seeks to compel the U.S. Interior Department to transfer federal land at Ward Valley, California to the state for use in siting a low-level radioactive waste disposal facility and to issue the patent approved by DOI four years ago.	United States District Court for the District of Columbia	June 30, 1997	Amici curiae brief filed by Midwest and Southwestern Commissions.
			July 16, 1997	Amici curiae brief on venue filed by Committee to Bridge the Gap and others.
			July 18, 1997	Northwest Commission voted to join amici curiae brief.
			July 24, 1997	Amici curiae brief filed by Northeast Commission.
<i>Idaho v. Coeur d'Alene Tribe of Idaho</i>	Seeks a judgment that an Indian tribe is entitled to the exclusive use and occupancy of an Idaho lake and its tributaries.	United States Supreme Court	June 23, 1997	Court ruled in favor of state sovereignty, holding that the Indian tribe may not seek control of the lake and its tributaries.
<i>Nebraska v. Central Interstate Low-Level Radioactive Waste Commission</i> (See <i>LLW Notes</i> , February 1997, pp. 14-16.)	Challenges recent motions of the commission seeking to impose deadlines and restrictions on state regulatory agencies.	United States District Court for the District of Nebraska	June 30, 1997	Court issued order denying plaintiff's motions for a protective order and granting utilities' motion to intervene.
			July 11, 1997	Nebraska filed a statement of appeal.
			July 16, 1997	Court entered an order staying the June 30 order pending appeal.

Court Calendar *continued*

Case Name	Description	Court	Date	Action
<p><i>Northern States Power Company v. U.S. Department of Energy</i> (See <i>LLW Notes</i>, April 1997, pp. 26-27.)</p> <p><i>Michigan v. U.S. Department of Energy</i> (See <i>LLW Notes</i>, April 1997, pp. 26-27.)</p>	<p>Involves the U.S. Department of Energy's contractual duties to provide for the storage or disposal of high-level radioactive waste pursuant to the Nuclear Waste Policy Act of 1982.</p>	<p>United States Court of Appeals for the District of Columbia Circuit</p>	<p>June 6, 1997</p>	<p>U.S. Department of Energy filed a response to petitions in which the department argues that it lacks statutory authority to store the waste in an interim facility pending completion of a permanent repository.</p>
<p><i>Nuclear Fuel Services v. Semnani</i> (See <i>LLW Notes</i>, May/June 1997, pp. 22-24.)</p>	<p>Involves a claim that Envirocare of Utah, Inc., and others engaged in unfair business practices in restraint of trade and conspiracy.</p>	<p>Third District Court of the State of Utah</p>	<p>July 7, 1997</p>	<p>Hearing was held on defendants' motion to dismiss the complaint.</p>
<p><i>US Ecology v. United States of America</i> (See <i>LLW Notes</i>, April 1997, pp. 18-19.)</p>	<p>Involves a claim of breach of contract for failure to sell 1,000 acres of federal land in Ward Valley to the state for use in siting a low-level radioactive waste disposal facility.</p>	<p>United States Court of Federal Claims</p>	<p>April 28, 1997</p> <p>June 3, 1997</p> <p>July 16, 1997</p>	<p>Federal defendants filed a motion to dismiss and a motion to transfer venue to the Western District of California.</p> <p>US Ecology filed a response to the April 28 motions.</p> <p>Committee to Bridge the Gap and others filed an application for leave to file an amicus curiae brief on the venue issue.</p>
<p><i>Waste Control Specialists, LLC v. Envirocare of Texas, Inc.</i> (See related story, this issue.)</p>	<p>Challenges the actions of Envirocare of Texas and others as constituting antitrust violations, libel, slander, and business disparagement.</p>	<p>District Court of Andrews County, Texas</p>	<p>May 2, 1997</p> <p>June 1997</p>	<p>Waste Control Specialists, LLC (WCS) filed suit in the district court.</p> <p>Defendants filed an answer to WCS action.</p>

U.S. General Accounting Office (GAO); Congressional Research Service (CRS), continued

GAO Report

The GAO report contains the following conclusions:

- Eleven of the 13 issues that Interior is addressing in the second Supplemental Environmental Impact Statement (SEIS), such as the effects of the proposed facility on Native Americans, have been considered in California's licensing process and in previous environmental statements prepared by the state and Interior's Bureau of Land Management. Neither of the two remaining issues—the findings and recommendations of the National Academy of Sciences, and new information from the U.S. Geological Survey on the migration of radioactive materials in the soil near Beatty, Nevada—were initially considered by Interior to be significant enough to require a supplement.
- Much of the new information that has become available since the preparation of previous environmental statements on Ward Valley is favorable to the proposed disposal facility.
- Interior's underlying reasons for preparing a second SEIS were to provide a forum for resolution of the public's concerns about the facility and to independently determine the site's suitability. Interior, however, has neither criteria nor technical expertise in radiological safety matters and has not sought technical assistance from the U.S. Nuclear Regulatory Commission or—with one exception—the U.S. Department of Energy. California, on the other hand, has met all of the state's procedural and substantive requirements for licensing the proposed facility.

In addition to the main body of the report, which is approximately 20 pages long, the report has over 30 pages of appendices including comments from Interior and California and corresponding responses from GAO.

The GAO report was released officially on Tuesday, July 22, during a hearing of the Senate Energy and Natural Resources Committee. (See related story, this issue.)

CRS Memo

The memo from CRS analyzes the amounts of radioactivity that are projected to be accepted at the Ward Valley facility from nuclear power reactors compared to all other generators. The memo includes the following information:

- Since the 1989 license application submittal, significant changes have occurred in the total radioactivity and sources of waste projected to be accepted by the facility in the next 30 years.
- There will be a substantial reduction in the total activity expected to be accepted at the facility, including 4.3 million fewer curies of tritium from ICN, a California firm. The license application assumed a total of 5.2 million curies from all sources over the 30-year life of the facility.
- "Subtracting the ICN waste eliminates virtually all tritium waste from the projections."
- There will be some increase in radioactivity received from nuclear power generators—the amounts vary significantly depending on the scenario used.
- Even assuming the most rapid method of decommissioning and assuming the unlikely event that all seven nuclear power plants are decommissioned before the facility closes, the maximum additional activity projected is 1.2 million curies—a fraction of the 4.3 million curies of tritium that have been eliminated.

With the elimination of the tritium curies, the percentage of waste from other sources to be accepted at the facility increases, but the total activity from all sources is greatly reduced.

For further information, see "New Materials and Publications."

—TDL

Most of the preceding information was distributed to Forum Participants and Alternate Forum Participants, Federal Liaisons and Alternates, via facsimile transmission in a News Flash on July 16, 1997.

U.S. House of Representatives

House Committee Passes Texas Legislation

On June 25, the Commerce Committee of the U.S. House of Representatives approved the Texas Low-Level Radioactive Waste Disposal Compact Consent Act during a markup of the legislation. The bill, H.R. 629, was approved by voice vote, without amendment. Committee Chair Thomas Bliley, Jr. (R-VA) spoke in favor of the bill, as did Representatives Dan Schaefer (R-CO) and Ralph Hall (D-TX). There were no statements made in opposition to the legislation.

Next Steps When H.R. 629 is reported out by the committee, it will be placed on the House calendar. The next step is the granting of a rule, after which the bill can be scheduled for debate and a vote by the House leadership.

Background S. 270, a companion bill that is identical to H.R. 629, was introduced in the U.S. Senate on February 5. On March 20, the Senate Judiciary Committee approved S. 270 without amendment. The legislation currently awaits enactment by the full Senate.

H.R. 629 and S. 270 are identical to legislation introduced during the 103rd and 104th Congresses.

For additional information on the Texas Low-Level Radioactive Waste Disposal Compact Consent Act, see LLW Notes, February 1997, pp. 20–21.

—TDL

Most of the preceding information was distributed to Forum Participants and Alternate Forum Participants, Federal Liaisons and Alternates, via facsimile transmission in a News Flash on July 25, 1997.

Governors of Texas, Maine and Vermont Support Texas Compact

On July 15, Texas Governor George Bush (R), Maine Governor Angus King, Jr. (I), and Vermont Governor Howard Dean (D) wrote the following letter to members of Congress expressing their support for the Texas Low-Level Radioactive Waste Disposal Compact Consent Act.

As the Governors of the member states, we strongly urge passage by the U.S. Congress of ... the Texas Low-Level Radioactive Waste Disposal Compact Consent Act.

The 1980 Low-Level Radioactive Waste Policy Act and its 1985 amendments make each state "responsible for providing, either by itself or in cooperation with other states," for disposal of its own commercial low-level radioactive waste. In compliance with this federal legislation, the states of Texas, Maine and Vermont have arranged to manage their waste through the terms of the Texas Compact. This compact passed the legislatures of the states involved and is supported by all three Governors. Texas, Maine and Vermont have complied with all federal and state laws and regulations in forming this compact. For the Congress to deny

ratification of the Texas Compact would be a serious breach of states' rights and a rejection of Congress' previous mandate to the states.

It is important to remember that [the legislation] is site neutral—a vote on [the legislation] is neither a vote to endorse nor oppose the proposed site in Texas. Federal legislation leaves the siting of a facility to state governments ...

Please vote to supply the member states of the Texas Compact with the same protections that you have already given 42 states in the nine previously approved compacts. Thank you for your time and attention on this very important matter. We appreciate all efforts made on behalf of states' rights.

U.S. Senate

Ward Valley Land Transfer Bill Introduced in Senate

On Thursday, June 26, Senator Frank Murkowski (R-AK) introduced S. 964—legislation to convey land in Ward Valley, California, to the state's Department of Health Services for use in siting a low-level radioactive waste disposal facility. The legislation, which is cited as the Ward Valley Land Transfer Act, has been referred to the Senate Committee on Energy and Natural Resources. The committee held a hearing on the legislation, among other issues, on July 22, 1997. (See related story, this issue.)

The legislation provides for the the Ward Valley site to be transferred upon

- payment to the Secretary of the Treasury of \$500,100 by the State of California, and
- issuance to the Chair of the U.S. Nuclear Regulatory Commission of a written commitment by the state to carry out, subject to NRC oversight, environmental monitoring and protection measures based on recommendations of the National Academy of Sciences.

—TDL

Excerpt from the Floor Statement made by Senator Murkowski in Support of S. 964

Today I rise to introduce legislation designed to end an impasse that we've endured for far too long—the stalemate over the Ward Valley low-level radioactive waste facility and efforts to implement an important federal law—the Low Level Radioactive Waste Policy Amendments [Act].

I am doing this today because of documents that have recently come to light under the Freedom of Information Act and due to the continuing differences between the words spoken under oath by a Presidential nominee before my Committee and his actions to date ...

On July 27, 1995, the President's nominee to be the Deputy Secretary of the Interior, Mr. John Garamendi, appeared before the Energy and Natural Resources Committee and testified under oath, that the Ward Valley issue "will be satisfactorily culminated shortly ... and I believe it should be."

With that testimony in mind, I recently reviewed documents made available under the Freedom of Information Act.

With the benefit of those documents and other evidence of the systematic delay fostered by the Department of the Interior to block Ward Valley, I have reached the sad conclusion that Congress must intervene to end this stalemate ...

Deputy Secretary Garamendi testified under oath that the Ward Valley issue would be, and should be, quickly resolved.

He then called for additional testing that did not conform to the recommendations of the National Academy of Sciences, creating a false linkage in the public's mind between the Beatty site and the Ward Valley site, despite the fact that his own USGS Director said that such a linkage could not be justified by the science.

Deputy Secretary Garamendi spread misinformation about the composition of the radioactive waste stream in Department press materials supplied by project opponents, making no effort to check their veracity with the Department of Energy, the Nuclear Regulatory Commission, or any other agency with expertise in such matters.

Deputy Secretary Garamendi persistently failed to get the testing underway, which he later blamed on the threats of a lawsuit that were not, in fact, made until long after the time he said the tests would be complete.

Indeed, the Department of the Interior has designed a process specifically intended to foster further delay ...

[O]ver the past month or so there has been a new twist that is frankly the straw that breaks the camel's back.

The State of California, in its continuing efforts to achieve a compromise, has agreed to perform additional testing pursuant to the National Academy of Sciences guidelines prior to the federal land transfer ...

California has always agreed to do the additional testing ... the issue of dispute is that Interior insisted the testing be done prior to the land transfer, while California and the National Academy of Sciences said the testing would be best accomplished after the land transfer.

So California has now agreed to perform additional testing prior to the land transfer. They have clearly made efforts to compromise.

I received a letter from Deputy Secretary Garamendi, dated February 27, 1997, which exclaimed that the delays at Ward Valley have gone on long enough, and that welcomed the decision by the State of California to undertake additional testing.

When I saw that letter I thought to myself: Finally, this issue will be resolved.

I was shocked by what happened next:

The BLM [Bureau of Land Management] produced an administrative determination, allegedly two years old, that nobody had ever seen, that will not permit California to undertake the testing that Interior insists must be undertaken prior to the land transfer! They have California in a "Catch-22."

BLM informed the California Department of Health Services that they could not proceed with the testing without a new permit from the BLM and yet another biological consultation with the U.S. Fish and Wildlife Service with respect to the Desert Tortoise.

The BLM based this requirement for a new permit on an "administrative determination," allegedly issued two years ago, which limits surface disturbance associated with pre-construction testing. But further examination revealed several points about this document:

This old administrative determination was unknown to the California Department of Health Services, US Ecology, and even the local BLM District Office until weeks ago.

The local BLM office is unable to provide any evidence that this "administrative determination" was provided to any of the parties whose actions it supposedly limits.

The administrative determination is absurd on its face. The U.S. Fish and Wildlife Service has determined that the 90 acres of surface disturbance associated with the construction and operation of the Ward Valley facility will not jeopardize the desert tortoise or its habitat. Moreover, under current BLM guidelines, ten acre mining operations on other BLM land would not trigger the need for a biological consultation if certain desert tortoise protection measures were incorporated into the plan submitted to BLM. Indeed, five acre mining operations would not even require the applicant to submit a tortoise protection plan for approval. Yet, it is BLM's sudden contention that less than 5 acres of surface disturbance associated with testing will require yet another full biological consultation by the U.S. Fish and Wildlife Service.

Clearly, ... this latest obstruction, and the reasons cited for it, make no sense in the context of the various other permits and administrative determinations that have been previously granted at the site.

The fact that this administrative decision suddenly surfaced in the midst of state planning to undertake the new tests is highly unusual—perhaps even worthy of investigation by the Inspector General ...

[E]arlier this year I asked the General Accounting Office to investigate this matter. That investigation is now underway. At this very moment, GAO auditors are reviewing documents in the District BLM office in California and at Department of Interior headquarters here in Washington.

The GAO report will not be complete until July 15, but let me simply say that their preliminary findings appear to agree with my understanding of the facts.

What we are seeing at the Department of the Interior is a blatant display of bad faith and obstructionism with regard to California's efforts to implement federal law through development of the Ward Valley site.

U.S. Senate

Senate Committee Holds Hearing on Ward Valley Legislation and Related GAO Report

On July 22, the Senate Energy and Natural Resources Committee held a hearing "to review the Department of Interior's handling of the Ward Valley land conveyance, the findings of a new General Accounting Office (GAO) report on the issue, and to receive testimony on S. 964, the Ward Valley Land Transfer Act." (See related stories, this issue.)

Committee Chair Frank Murkowski (R-AK) began the hearing by noting the need for the Ward Valley facility and the public health hazards and other dangers associated with storing low-level radioactive waste at over 2,000 locations across the State of California. In support of his arguments, Murkowski cited various instances in which storage facilities caught fire, were damaged by earthquake, or were burglarized. He also talked about the adverse impact to medical research and statewide employment caused by failure to open the Ward Valley facility. Murkowski then called upon Deputy Interior Secretary John Garamendi to cancel the planned second Supplemental Environmental Impact Statement on the requested Ward Valley land transfer and to "accept California's payment check and good faith promise to conduct the additional tests during the construction and operation of the facility as recommended by the National Academy of Sciences, and sign over the land." (emphasis original)

Testimony

The following individuals testified at the hearing:

- Senator Barbara Boxer (D-CA)
- Representative Bob Filner (D-CA)
- Representative Brian Bilbray (R-CA)
- Gary Jones; Acting Associate Director of Energy, Resources, and Sciences Issues; Resources, Community, and Economic Development Division; U.S. General Accounting Office

- Deputy Interior Secretary John Garamendi
- Michael Kahoe, Deputy Cabinet Secretary for the State of California

Written Statements

The following states and compacts submitted written statements to the committee for inclusion in the hearing record:

- Midwest Interstate Low-Level Radioactive Waste Compact Commission
- Northeast Interstate Low-Level Radioactive Waste Commission
 - New Jersey Low-Level Radioactive Waste Disposal Facility Siting Board
- Northwest Interstate Compact on Low-Level Radioactive Waste Management
- Rocky Mountain Low-Level Radioactive Waste Board
- Southeast Compact Commission for Low-Level Radioactive Waste Management
- Southwestern Low-Level Radioactive Waste Commission
 - North Dakota Department of Health
 - South Dakota Department of Environment and Natural Resources
- Michigan Low-Level Radioactive Waste Authority

In addition, the committee was given resolutions of support for the Ward Valley land transfer that have been previously adopted by the following entities:

- National Governors' Association
- Western Governors' Association
- Low-Level Radioactive Waste Forum

The Nuclear Regulatory Commission also submitted for inclusion in the record a copy of a July 22, 1997 letter from NRC Chairman Shirley Ann Jackson to Interior Secretary Bruce Babbitt that expresses concern about Garamendi's use of a Fact Sheet on Ward Valley. According to NRC, the Fact Sheet "contains several errors and statements that may mislead the reader." (See related story, this issue.)

Several other individuals and entities, including opponents of the proposed Ward Valley land transfer, also submitted written statements for consideration by the committee.

—TDL

Federal Agencies and Committees

U.S. Department of Energy (DOE)

NRDC Threatens to Sue DOE re Envirocare

On June 9, the Natural Resources Defense Council (NRDC) wrote to Energy Secretary Federico Peña

to inform the Department of Energy ("DOE") of a grave situation and to request that DOE comply with the National Environmental Policy Act ("NEPA") in its continued use of the Envirocare facility in Clive, Utah, for the disposal of DOE radioactive waste, and that shipments of additional waste to Envirocare be suspended until DOE comes into compliance with NEPA.

NRDC complains that DOE has been shipping large amounts of its low-level, mixed low-level, and mill tailings radioactive waste to the Envirocare facility via authorized exemptions from DOE Order 5820.2A, which otherwise requires the disposal of all such waste only at DOE facilities. According to NRDC, "with the exception of the exemption for Fernald wastes covered by a DOE NEPA categorical exclusion, there was no NEPA review of any kind to support the granting of the exemptions and use of the Envirocare facility." NRDC acknowledges that two separate NEPA reviews have been done for particular disposal operations of portions of the Envirocare site, but it argues that the associated environmental impact statements were narrowly focused and are largely inapplicable to the contested actions.

NRDC is requesting that DOE suspend immediately ongoing waste shipments to Envirocare until DOE completes "a new and comprehensive site-specific environmental impact statement, which adequately addresses at a minimum all current waste management activities at the site, groundwater and flooding issues, post-closure financial assurances and other federal liability issues, cumulative environmental effects of Envirocare and other hazardous and toxic waste activities in the vicinity, synergistic effects of radioactive materials and toxic chemicals, and the character and competence of Envirocare to operate the facility in an environmentally protective manner."

NRDC concludes its letter by threatening legal action if DOE does not agree to undertake the requested NEPA review.

—TDL

U.S. Nuclear Regulatory Commission (NRC)

NRC Chair Criticizes Deputy Interior Secretary's Use of Ward Valley Fact Sheet

On July 22, 1997, U.S. Nuclear Regulatory Commission Chairman Shirley Ann Jackson sent a letter to U.S. Interior Secretary Bruce Babbitt "to share ... [the commission's] views related to the Department of Interior's (DOI) actions regarding the proposed Ward Valley low-level radioactive waste (LLW) disposal facility in California." In the letter, Jackson expresses concern about a "Fact Sheet" distributed by Deputy Secretary John Garamendi at a press conference held on July 22, 1996. Jackson states that the document "contains several errors and statements that may mislead the reader." Moreover, Jackson writes that "it is NRC's view that some of the information that was referenced or relied on in the Fact Sheet may not represent a balanced perspective based on facts."

Fact Sheet Released by Garamendi

As an attachment to her letter, Jackson included NRC staff comments on the document, entitled "Medical, Research, and Academic Low-Level Radioactive Waste (LLRW) Fact Sheet." The following is a brief summary of those staff comments:

- The Fact Sheet erroneously attributes a table on waste streams projected to be sent to the Ward Valley facility. The Department of Energy, the U.S. Nuclear Regulatory Commission, the Southwestern Compact, US Ecology and the Ward Valley environmental impact statement are identified as the sources of the information. In fact, however, the figures in the table are identical to those in a table from a March 1994 Committee to Bridge the Gap report, are substantially different from California's projections, and are based on unidentified assumptions.
- The Fact Sheet is incomplete in that it provides only anecdotal evidence of the impact of not having the Ward Valley facility available to medical generators and it downplays the effects of not having the Ward Valley facility on generators that use longer-lived radionuclides.

- The Fact Sheet does not address the more complex issues that arise from the use of radioisotopes in medicine—such as how medical research has been affected by issues such as disposal and storage cost increases and the need to switch from longer-lived radionuclides to short-lived nuclides or non-radioactive materials.
- The Fact Sheet characterizes NRC's definition of low-level radioactive waste as "unfortunate and misleading," despite the fact that the definition is taken from federal law and that NRC received and considered extensive public comment during the development of the relevant regulations. Moreover, the Fact Sheet is misleading in that it focuses on the half-life of radionuclides and fails to discuss risk to the public, despite the fact that public health and safety is measured in terms of risk, not half-life
- In defining "radioactive half-life," the Fact Sheet states, "The general rule is that the hazardous life of a radioactive substance is 10–20 times its half-life." The term "hazardous life" is not defined in the Fact Sheet and is not used by the national or international health physics or radiation protection communities.

Reference to Proposed NAS Study

Jackson points out in her letter that "the issue of medical uses of radioisotopes and how they have been affected by the Ward Valley process is far less clear than the Fact Sheet portrays." In fact, she notes that the National Academy of Sciences Board on Radiation Effects Research has prepared a prospectus for a study entitled, "The Impact of United States Low-Level Radioactive Waste Management Policy on Biomedical Research." If approved, the study would, among other things, "[e]valuate the effects of higher disposal costs and on-site storage on the current and future activities of biomedical research, including the effects of state non-compliance [with the Low-Level Radioactive Waste Policy Act and its 1985 amendments] on institutions conducting biological and biomedical research and on hospitals where radioisotopes are crucial for the diagnosis and treatment of disease."

NRC Involvement in 2nd Ward Valley SEIS

In her letter, Jackson states that the commission intends to actively serve as a "commenting agency" in the preparation of a second Supplemental Environmental Impact Statement (SEIS) for the proposed Ward Valley land transfer.

As a commenting agency, we will review the draft SEIS, and provide comments based on the requirements in federal law and regulations, and our knowledge of policy, technical, and legal issues in LLW management. We would also be available to discuss these issues with DOI, both before and after publication of the draft SEIS.

NRC Review of DOI Documents

In closing, Jackson writes as follows:

Finally, since there are no formal arrangements that permit NRC to review and comment on the technical accuracy of various DOI documents on LLW and Ward Valley, we may not be aware such documents exist, thus the absence of NRC comments does not imply an NRC judgment with respect to the technical accuracy or completeness of such documents.

Copies of Jackson's letter can be obtained from the NRC Public Document Room at (202)634-3273.

—TDL

Most of the preceding information was distributed to Forum Participants and Alternate Forum Participants, Federal Liaisons and Alternates, via facsimile transmission in a News Flash on July 24, 1997.

Utility Consortium Submits License Application for Storage on Goshute Land to NRC

State of Utah Files Petition in Opposition

On June 25, Private Fuel Storage (PFS) Limited Liability Company applied to the U.S. Nuclear Regulatory Commission for permission to construct an above-ground facility for temporary storage of spent nuclear fuel on a Native American reservation in northwestern Utah. PFS is a consortium of seven nuclear utility companies, which is led by Minneapolis-based Northern States Power Company. None of the consortium's member utilities is located in the State of Utah.

PFS is seeking to build the facility—which would hold up to 40,000 metric tons of waste in 4,000 metal containers—due to the federal government's refusal to take spent fuel by early 1998, as originally contemplated in the Nuclear Waste Policy Act of 1982. (See *LLW Notes*, April 1997, pp. 26–27.) NRC has 30 days from the application date to certify PFS' submittal as complete and adequate, after which NRC will begin an environmental review of the project. The environmental review could take up to three years.

The following utility companies are members of the consortium:

- Northern States Power Company
- Genoa Fuel Technology (a subsidiary of Dairyland Power Co-Op)
- GPU Nuclear Corporation
- Southern Nuclear Operating Company
- Consolidated Edison of New York
- Illinois Power
- Indiana Michigan Power

continued on page 34

NRC (continued)

Tribal Involvement

PFS signed an agreement with the Skull Valley Band of Goshute tribal leaders in December 1996 to lease part of the tribe's 17,700-acre reservation, which is located within Tooele County, Utah. Tooele County contains a 100-square mile Hazardous Industries Zone, where Envirocare of Utah and other facilities including the Utah Test and Training Range are sited.

The agreement provides for a 25-year lease with a 25-year renewal option. The tribe is expected to receive an undisclosed amount of financial compensation for hosting the facility, which is anticipated to create 40 to 60 new jobs for tribal members.

State Position

Utah officials including Governor Michael Leavitt (R) oppose the facility and have vowed to fight it. Leavitt has expressed concern as to whether the site is really temporary or will become a de facto disposal site. He has also raised the issue of transportation risks and questioned whether a limited liability company has sufficient assets to maintain the site and address all financial liability. In April, Leavitt created a new task force opposing high-level nuclear waste storage. But the effect of the state's opposition is unclear given the powers granted to Indian tribes, which are deemed sovereign nations and are exempt from state authority in many instances.

Utah's HLW Task Force

On April 15, Governor Leavitt signed an Executive Order creating a multi-agency task force in opposition to the proposed temporary storage facility for high-level nuclear waste. The task force, headed by Dianne Nielson, Executive Director of the Utah Department of Environmental Quality (DEQ), is comprised of representatives from existing state agencies, and is responsible for researching and communicating all risks surrounding the proposed facility and coordinating efforts by the state to oppose siting of the facility.

Since 1993, the Leavitt administration has opposed storage of high-level nuclear waste in Utah. According to information provided by the state, Utah law prohibits storage without approval from both the Governor and the legislature. —RTG

In late July, the State of Utah filed a 2.206 petition requesting "NRC to find the [PFS] application 'incomplete,' return the application to PFS, and not accept an application from PFS until such time as PFS can craft an application that contains sufficient detail to meet the requirements of 10 CFR Part 72."

In support of its petition, the state argues as follows:

The [PFS] application is often simply a restatement of the NRC regulations with a general commitment to meet those requirements at some unspecified future date. It is a waste of NRC, State of Utah and the public's resources to review and comment on an application that lacks even the basic details required by Part 72. The Commission has directed that NRC's one stop licensing procedure requires "considerable detail." The PFS submittal falls woefully short of considerable detail and should not be accepted and docketed by NRC staff.

Federal Responsibility

Last year, a federal appeals court told the U.S. Department of Energy that it was obligated to take spent fuel from commercial nuclear power plants beginning in 1998 pursuant to the Nuclear Waste Policy Act of 1982 and "standard contracts" entered into between the department and the utilities. DOE decided not to appeal the court's decision, but the department has announced that it will not have a facility available to accept the waste by the 1998 deadline. Recently, several utilities and states filed suit to enforce the court's decision and suspend payments to the Nuclear Waste Fund. (See *LLW Notes*, April 1997, pp. 26-27.)

—TDL

Envirocare Cited for SNM Violation; EPA Begins Audit

Special Nuclear Materials Violation

On June 26, the U.S. Nuclear Regulatory Commission issued a confirmatory order directing Envirocare of Utah to stop receiving shipments of waste containing uranium 235, except for those shipments which were en route on or before June 11. The action was taken in response to the results of a June 10 inspection of the facility, during which NRC staff determined that more than 2,400 grams of uranium 235 were being held in temporary storage at Envirocare. Uranium 235 is one of three radioisotopes that are classified as special nuclear materials (SNM) under federal regulations. The other two are uranium 233 and plutonium. The state license under which Envirocare is operating allows only 350 grams of SNM to be held at the Envirocare facility without being placed in a permanent disposal cell.

Under NRC's order, Envirocare must submit a plan to the commission by July 7 explaining how the company will comply with federal regulations that limit the quantity of SNM that may be held on site by a private company. Under federal regulations, private companies are not allowed to possess and process more than 350 grams of SNM prior to burial in a disposal cell without a license issued by the NRC. Envirocare submitted a compliance plan on July 7 which outlined their compliance strategy for deliveries of SNM by rail and for deliveries of mixed waste for treatment and/or disposal. NRC must now review, approve and/or modify the compliance plan.

Excess uranium 235 at Envirocare's facility is dispersed throughout contaminated soil and other waste received from government and industrial cleanup projects. Federal and state officials have determined that no health or safety risk is posed by the quantity of excess uranium. Nonetheless, the order requires that Envirocare remove or dispose of the excess uranium 235 by August 4 and that company officials confirm its disposition in writing and under oath. (Envirocare submitted written confirmation on July 18.) The company will be authorized to resume receiving shipments of SNM four business days after the confirmation is provided unless written authorization is given earlier by NRC.

NRC staff are currently reviewing a petition for rulemaking submitted by Envirocare that would allow the company to possess larger quantities of SNM. In addition, Envirocare has informed NRC that it plans to

submit a 10 CFR Part 70 license application for processing SNM in mixed waste, a Part 61 license application for disposing of SNM waste, a petition for a direct final rulemaking, and several exemption requests. In addition to NRC's actions, the State of Utah Division of Radiation Control has issued a separate enforcement action against Envirocare for violation of its state license. A \$100,000 proposed penalty is associated with the state action. The NRC and the State of Utah have been working in concert to bring Envirocare back into compliance with their possession limits and to ensure future compliance.

Barnwell's NRC SNM License Terminated

Earlier this year, Chem-Nuclear requested that NRC terminate the SNM license previously granted to the Barnwell, South Carolina facility due to expense and lack of necessity. Accordingly, on April 29, NRC amended Barnwell's SNM license to limit the amount of SNM allowed to be possessed at the facility prior to burial in a disposal cell to 350 grams (the maximum allowed under federal law for agreement state jurisdiction) and transferred the license to the State of South Carolina. On June 9, 1997, South Carolina terminated the specific SNM license and amended Barnwell's existing byproduct materials license to allow 350 grams of SNM.

Environmental Protection Agency Audit

In mid-June, inspectors from the Environmental Protection Agency's Denver-based National Enforcement Investigation Center visited the Envirocare facility to determine if the site should be allowed to continue receiving Superfund wastes. Envirocare is one of the few facilities in the United States that is authorized by EPA to receive mixed wastes from Superfund sites across the nation. (In 1996, Envirocare disposed of approximately 19,543 tons of mixed waste.) Under the agency's off-site rule, however, EPA is prohibited from shipping or allowing shipment of wastes to a facility that is out of compliance.

The audit, which will focus on Envirocare's treatment and disposal of mixed wastes, is expected to take five days, with a draft report due in two months. It will include an investigation into Envirocare's compliance with rules governing air emissions, ground-water discharges, and releases to the soils. —TDL

US. Environmental Protection Agency (EPA)

EPA Rejects Title VI Claim re Texas Site

In a letter dated July 24, EPA's Office of Civil Rights rejected an administrative complaint filed under Title VI of the Civil Rights Act of 1964 in opposition to the proposed low-level radioactive waste disposal facility in Hudspeth County, Texas.

Parties named in the complaint are

- the Texas Natural Resource Conservation Commission (TNRCC),
- the Texas Low-Level Radioactive Waste Disposal Authority,
- the Maine Advisory Commission on Radioactive Waste, and
- the Vermont Low-Level Radioactive Waste Authority.

The administrative complaint was filed by Grover Hankins, Director of the Environmental Justice Clinic at the Thurgood Marshall School of Law, Texas Southern University, on behalf of Hudspeth County residents, Save Sierra Blanca, Sierra Blanca Legal Defense Fund, and the El Paso Regional Group of the Rio Grande Chapter of the Sierra Club. Hankins filed the complaint with three federal agencies: DOE, EPA and NRC. DOE and NRC have not yet issued determinations on the complaint.

This is the first environmental justice administrative complaint filed under Title VI that has been received by NRC. DOE staff could not confirm how many environmental justice complaints filed under Title VI had been received by DOE; however, both this complaint and the Ward Valley complaint (see related story) were filed with DOE. According to federal agency staff, this environmental justice complaint is also the first complaint to name compact states—or any state other than the state that allegedly performed the discrimination—as parties.

Basis of Allegations

The complaint asserts the following claim:

Complainants allege that the [Texas Low-Level Radioactive Waste Disposal Authority] and the [TNRCC] discriminate against People of Color and low-income individuals in Hudspeth County by ignoring their environmental protection and public health needs in violation of Title VI. Specifically, Complainants allege that the [Texas Low-Level Radioactive Waste Disposal Authority] and the [TNRCC] have engaged in discriminatory conduct by concealing information, circumventing state, federal and international laws, ignoring environmental protection regulations and responsibilities and participating in a conspiracy to deny minorities, including People of Color and low-income individuals, equal protection of the law.

According to the complaint, the Maine Advisory Commission on Radioactive Waste and the Vermont Low-Level Radioactive Waste Authority were named because they were created to manage their respective states' low-level radioactive waste and to enter into a compact with Texas for the siting and management of a low-level radioactive waste disposal facility.

EPA's Grounds for Rejection

The following excerpts from the July 24 EPA letter explain the grounds for EPA's Office of Civil Rights' rejection of the Title VI complaint.

No "Federal Financial Assistance" to Three of the Parties Named

EPA's Title VI regulations apply only to recipients of financial assistance from EPA. Unlike TNRCC, the Texas Low-Level Radioactive Waste Disposal Authority, the Maine Advisory Commission on Radioactive Waste, and the Vermont Low-Level Radioactive Waste Authority do not receive financial assistance from EPA, and, therefore, [the Office of Civil Rights] does not have jurisdiction over the Title VI claims against these entities.

Complaint against TNRCC is "Premature"

[A] Title VI complaint must describe an alleged discriminatory act. Your letter can be broadly read to allege that issuance by TNRCC of a draft license for the proposed facility is the discriminatory act at issue. It refers to TNRCC as "granting permission" or "permitting" the "low-level radioactive waste dump." TNRCC is the state licensing authority for the facility. However, TNRCC has not yet issued a license for the facility, and is not scheduled to do so before October or December 1998. The draft license published by TNRCC in April 1996 only means the application is complete and that it appears to meet all technical requirements. Publication of the draft license also initiates the public participation process, which has not yet concluded. Thus, the complaint is premature.

Complaint Forwarded for Consideration by Other EPA Offices

Your letter also raises concerns regarding enforcement of Executive Order 12898 on environmental justice, the National Environmental Policy Act, the Clean Air and Clean Water Acts, and several international agreements. [The Office of Civil Rights'] jurisdiction under Title VI is limited to alleged discrimination based on race, color or national origin by recipients of EPA financial assistance. However, [the Office of Civil Rights] will forward your letter to EPA's Office of Enforcement and Compliance Assurance and Office of International Activities for their consideration.

Texas LLRW Authority: Claim Has No Merit

Lee Mathews, general counsel for the Texas Low-Level Radioactive Waste Authority, commented:

We are pleased that EPA has found that the complaint is premature and that EPA does not have jurisdiction over Title VI claims against the Authority. Although EPA did not investigate the merits of the complaint, we are confident that any such investigation would show that the complaint is specious.

Federal Action Requested

The complainants requested that the three federal agencies take the following actions to respond to the complaint:

- investigate the allegations;
- recommend to President Bill Clinton and the U.S. Congress that the States of Maine, Texas and Vermont be required to administer their public health and environmental protection programs in a manner that does not discriminate against People of Color or low-income citizens of Texas, particularly the residents of Hudspeth County and Sierra Blanca;
- ensure that the states remedy the effects of past discrimination.

Under the Title VI administrative process, the only remedy for a finding of discrimination, if informal resolution fails, is termination of federal financial assistance.

For further information, contact Lee Mathews of the Texas Low-Level Radioactive Waste Disposal Authority at (512)451-5292.

—LAS

Much of the preceding information was distributed to Forum Participants and Alternate Forum Participants, Federal Liaisons and Alternates, via facsimile transmission in a News Flash on July 28, 1997.

New Materials and Publications

Document Distribution Key	
<p>^P Forum Participants</p> <p>^A Alternate Forum Participants</p> <p>^E Forum Federal Liaisons</p> <p>^L Forum Federal Alternates</p> <p>^T Forum Media Contacts</p> <p>^V Forum Press Monitors</p> <p>^D LLW Forum Document Recipients</p>	<p>^N LLW Notes Recipients</p> <p>^M LLW Forum Meeting Report Recipients</p>

Federal Agencies and Committees

Department of Energy (DOE)

Proceedings from the 18th U.S. DOE LLW Management Conference, held on May 20-22, 1997. National Low-Level Waste Management Program, DOE, Idaho National Engineering and Environmental Laboratory (INEEL). Included are papers, panel discussions, and speeches. Available on disk in Macintosh and IBM format.

Video from the 18th U.S. DOE LLW Management Conference. (See above.) Contains presentations given by Richard Rhodes and Llewellyn King, keynote speakers during the opening and closing plenary sessions respectively.

To obtain a copy of the video or the proceedings, contact the DOE NLWWP document center.

Nuclear Regulatory Commission (NRC)

Letter from Shirley Ann Jackson, Chairman, NRC, to Bruce Babbitt, Secretary, U.S. Department of the Interior (DOI), expressing concerns pertaining to a document recently distributed by John Garamendi, Deputy Secretary, DOI, entitled, "Medical, Research, and Academic Low-Level

Radioactive Waste Fact Sheet." July 22, 1997. To obtain a copy, contact the NRC public document room.

The Potential for Criticality Following Disposal of Uranium at Low-Level Waste Facilities. (NUREG/CR-6505, Vol. 1.) June 1997. Report on a study for determining whether or not fissile uranium in LLW facilities can be concentrated by hydrogeochemical processes to permit nuclear criticality. The outcome of this work indicates that criticality is possible given established regulatory limits on disposal of special nuclear materials. However, a review based on disposal records of an existing site operation finds that the potential for criticality is not a concern under current burial practices. To obtain a copy, contact the NRC public document room.

U.S. Congress

General Accounting Office (GAO)

Radioactive Waste: Interior's Continuing Review of the Proposed Ward Valley Waste Site. (GAO/RCED-97-184.) July 15, 1997. GAO report on the DOI's actions pertaining to the proposed transfer of federal land in Ward Valley, CA to the state for use in siting a low-level radioactive waste disposal facility. To obtain a copy, contact the GAO document room.

Memorandum from Mark Holt, Specialist in Energy Policy, Congressional Research Service (CRS), to U.S. Senator Barbara Boxer (D-CA) updating an earlier memo on the waste projected to be disposed of at the planned Ward Valley low-level radioactive waste facility. July 11, 1997. To obtain a copy, contact Mark Holt at (202)707-1704.

Other

Letter from Alan Pasternak, Technical Director, California Radioactive Materials Management Forum, to Federico Pena, Secretary of Energy, requesting, "that the Department of Energy (DOE) provide interim access to its LLRW disposal facilities in the States of Washington and Nevada for commercial LLRW generated within the Southwestern Compact region" and "that the Department return to the policy enunciated by former Secretary O'Leary that DOE's technical assistance under the Act is to be provided to States and compact regions who request it, not, as in the present circumstance at Ward Valley, to the Department of Interior." July 16, 1997.

—RTG

Obtaining Publications

To Obtain Federal Government Information

by telephone

- DOE Public Affairs/Press Office(202)586-5806
- DOE Distribution Center(202)586-9642
- DOE's National Low-Level Waste Management Program Document Center(208)526-6927
- EPA Information Resources Center(202)260-5922
- GAO Document Room(202)512-6000
- Government Printing Office (to order entire *Federal Register* notices)(202)512-1800
- NRC Public Document Room(202)634-3273
- U.S. House of Representatives Document Room(202)225-3456
- U.S. Senate Document Room(202)224-7860

by internet

- EPA Listserve Network • Contact Terri Dickson at (202)260-9581 or e-mail (leave subject blank and type help in body of message)listserv@unixmail.rtpnc.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)http://www.gpo.gov/su_docs/
- DOE's National Low-Level Waste Management Program, Document Information
.....<http://199.44.46.229/radwaste/>
- GAO homepage (access to reports and testimony) <http://www.gao.gov/>

**To access a variety of documents through numerous links, visit the LLW Forum website at
<http://www.afton.com/llwforum>**

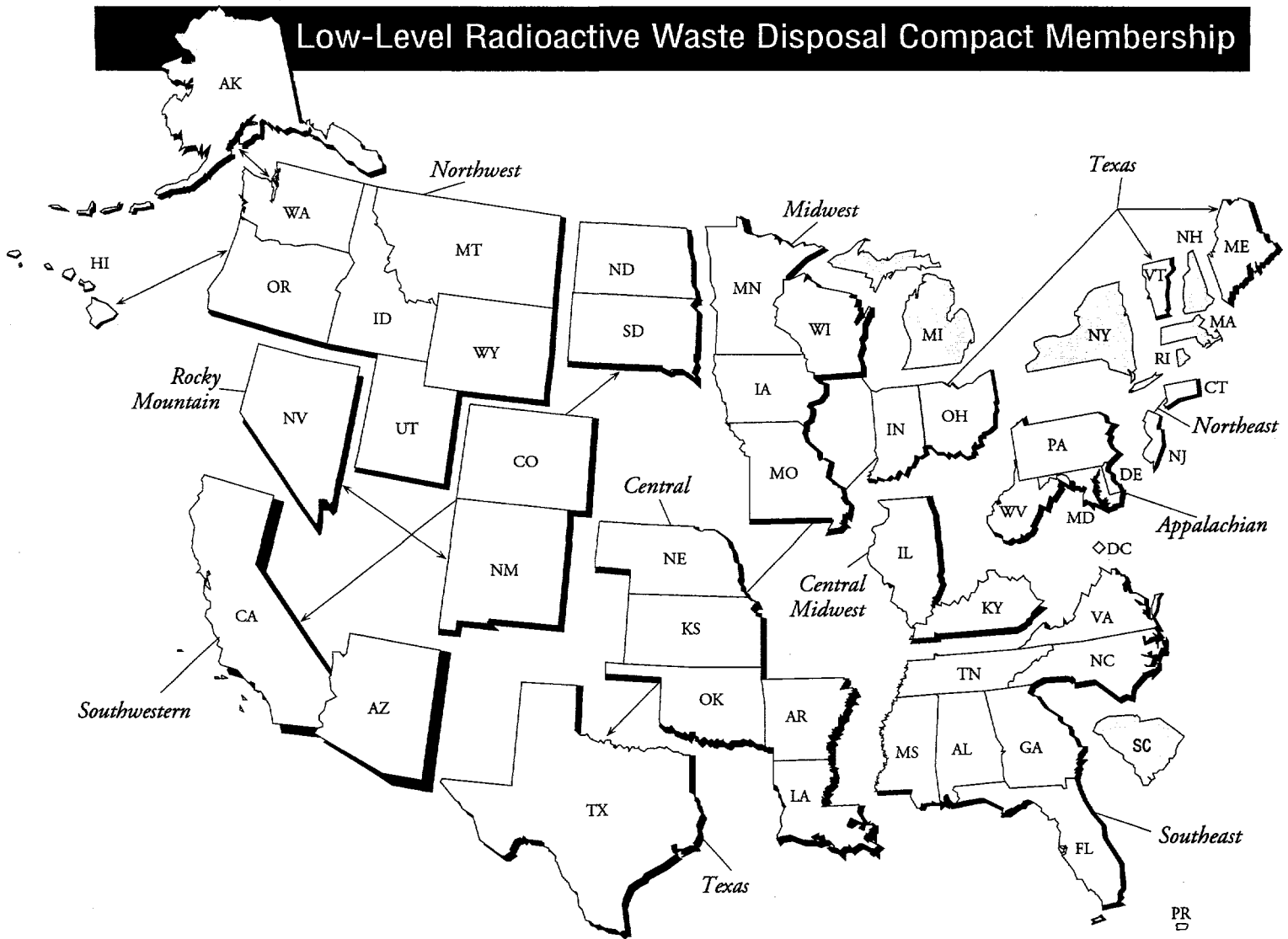
Receiving LLW Notes by Mail

LLW Notes and the *Summary Report: Low-Level Radioactive Waste Management Activities in the States and Compacts* are distributed to state, compact, and federal officials designated by LLW Forum Participants or Federal Liaisons.

Members of the public may apply to DOE's National Low-Level Waste Management Program at the Idaho National Engineering and Environmental Laboratory (INEEL) 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 INEEL. 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, INEEL 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.

