LLW Notes

Volume 12, Number 5 May/June 1997

Rocky Mountain Compact • Southwestern Compact/California DOE/LLW--98052638

USGS Report Supports Previous Conclusions re Tritium Migration at Beatty

Findings Irrelevant to Ward Valley

A report released by the U.S. Geological Survey (USGS) in May confirms earlier findings about water vapor and contaminant movement near the closed low-level radioactive waste disposal site at Beatty, Nevada. (See *LLW Notes*, March 1996, p. 13.) As in previous studies, highest concentrations of tritium were found in samples taken 5-10 feet below the land surface. Scientists continue to believe that the tritium migrated laterally to the test area from the disposal site. The new data also support previous conclusions that there is little or no downward percolation of rainfall. Instead, water in the soils is moving slowly toward the land surface.

One new result, noted in the report's abstract, is that "[t]ritium concentrations in water vapor increased from April 1994 to May 1996." USGS is conducting additional research to gain further understanding of the movement of water and contaminants proximate to the Beatty site.

PEER Complaint

Following the issuance of the report, which USGS announced in a press release date May 30, an advocacy group of public employees criticized the press release for "fail[ing] to disclose the central finding of the study—that contamination at each depth had increased substantially by factors as low as three and as high as 600, since samples were taken just a few years ago." Alleging that USGS had "tried to mask evidence of growing contamination," the group, known as Public Employees for Environmental Responsibility (PEER), filed a complaint with the Inspector General of the U.S. Department of the Interior on June 2.

continued on page 3

USGS re Applicability to Ward Valley

According to William Alley, Chief of the USGS Office of Groundwater, differences between disposal practices at Beatty and those planned at the Ward Valley facility make it difficult to apply the Beatty findings to the California site. "Assuming that the results are largely the result of liquid waste disposal and that liquid waste disposal is not planned for Ward Valley, it's difficult to transfer the results," Alley said in an interview with the *LLW Notes*.

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Low-Level Radioactive Waste Forum

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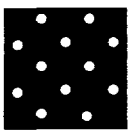

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Key to Abbreviations

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

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Rocky Mountain Compact • Southwestern Compact/California (continued)

PEER's latest filing supplements a previous complaint submitted to the Inspector General in December 1996. In that complaint, PEER alleged that USGS personnel and senior officials engaged in "apparent misconduct ... in the suppression of critical information about leakage" at Beatty as "part of an apparent effort to facilitate the opening of a similar waste site in Ward Valley, California." (See *LLW Notes*, January 1997, pp. 3–4.) The initial complaint is the subject of an ongoing investigation by the Office of the Inspector General, which is also addressing the new allegations.

As a matter of policy, USGS has not commented on the investigation. However, USGS Director Gordon Eaton has explained—in correspondence pre-dating PEER's initial complaint—that in the period when the alleged data suppression took place, USGS scientists either did not have access to the test results or were awaiting confirmation of seemingly anomalous results.

Information Sought by California Representative

Based on PEER's complaints, Representative George Miller (D-CA) wrote to Interior Secretary Bruce Babbitt on June 5 seeking a briefing. Miller also issued a press release expressing concern about PEER's accusations.

Carl Lischeske, Manager of the California Department of Health Services (DHS) Low-Level Radioactive Waste Program, responded to these concerns in a letter to Miller dated June 17. Noting that "the primary thrust of the allegations [by Peer] appears to be directed toward casting doubt" on DHS' decision to license the Ward Valley facility, Lischeske offered the following observations.

1. The disposal practices at the Beatty facility were very different from what is proposed for the Ward Valley site. Most importantly, in the 1960s and 1970s ... the operator of the Beatty facility ... illegally poured about 600,000 gallons of liquid wastes into the unlined disposal trenches ... The Ward Valley facility will only accept solid waste, and DHS will have two full-time inspectors at the facility to enforce this, and all other, operating requirements ...

2. The geology of the Beatty site is different from Ward Valley. Beatty has a number of buried stream channels at shallow depth that evidently allowed the disposed liquid wastes to flow some distance from the disposal trenches ... No such buried stream channels occur at the Ward Valley site.

3. Despite the historic dumping of liquid wastes and other deficient disposal practices at the Beatty facility, it is important to note that the concentrations of radionuclides in soil gas are orders of magnitude below regulatory limits ... The potential impact on the groundwater under the site is non-existent, since there are simply not enough tritium atoms in the soil gas to significantly [affect] the concentration of tritium in the groundwater. Also, tritium and carbon 14 alone of all the major radionuclides can travel in a gaseous phase. This explains why they were found in soil gases at depth. No other radionuclides have been identified in the soil gas samples collected by the USGS, nor would any be expected. (emphasis added)

Lischeske concluded by commenting that "if anything, the [USGS] data show how robust arid sites are in achieving the long-term isolation" of low-level radioactive waste, since, despite the "deficient disposal practices" at Beatty, "there is no reasonable indication that any environmental or public health effects will result."

Methodology of New Studies

Since January 1996, USGS scientists developed a method of extracting water from soil cores using cryodistillation. This method was used on cores that had been collected while drilling two test holes in November 1992 and September 1993. The extracted core water was analyzed for tritium—a radioactive isotope of hydrogen—and for deuterium and oxygen 18, both stable isotopes. The results were then compared with tritium concentrations in soil gas samples that had been collected in April 1994, July 1995, and May 1996 from one of the two test holes, UZB-2, which had yielded unexpectedly high tritium concentrations.

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

–CN

Midwest Compact/Ohio

Ohio Selects New Contractor for Screening

On May 13, the Board of Directors of the Ohio Low-Level Radioactive Waste Facility Development Authority announced its selection of Bechtel National, Inc. as the contractor to provide preliminary statewide screening for potential disposal sites. An agreement for Bechtel's services is subject to approval by the State Controlling Board, which must authorize all state agency contracts exceeding $50,000, irrespective of the funding source.

Funding A news release issued by the Authority noted that representatives of both the Authority and Bechtel have "expressed confidence that the statewide screening effort ... could be completed on schedule within the budget approved by the Midwest Compact Commission." The commission approved $901,429 for the project in March. (See *LLW Notes*, April 1997, pp. 4-5.) The funds, however, have not yet been transferred, and decisions made at the commission's upcoming meeting on June 26 could impact the future of the screening effort.

Prior Contractor Selection The Ohio Authority had previously accepted a proposal from URS Greiner to provide the screening, but was unable to reach agreement with the company on contractual terms and conditions. Bechtel National is one of the three team members that were included in URS Greiner's proposal.

For further information, contact Jane Harf of the Ohio Authority at (614)644-2776.

—CN

Midwest Compact to Reconsider Need for Facility Development

Among the items on the tentative agenda for the Midwest Interstate Low-Level Radioactive Waste Commission's meeting on June 27 is "Reconsideration of the Need to Proceed With Development of a Regional Disposal Facility."

Questions may be directed to Gregg Larson of the Midwest Commission at (612)293-0126.

Texas Compact/Texas

Maine Yankee's Future Uncertain

On May 27, the board of directors of the Maine Yankee Atomic Power Company announced that they are considering the permanent closure of the Maine Yankee pressurized water reactor if no buyer can be found. David Flanagan, Chair of the Maine Yankee Atomic Power Company's board of directors, noted that "an economic analysis of operations, rising expenses for plant upgrades and the cost of replacement power fueled the decision by Maine Yankee's eight owners to explore permanent shutdown."

In the event of a permanent shutdown, the decommissioning process would begin, following consultation with the U.S. Nuclear Regulatory Commission. This process, which involves dismantling the plant, disposing of the radioactive components, and restoring the site, is estimated to take at least 10 years and cost approximately $369 million.

Meanwhile, according to recent news reports, Philadelphia-based PECO Energy Company is considering making an offer for Maine Yankee, with the decision due by the end of July.

—RTG

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Southeast Compact/North Carolina

Southeast Compact Limits Funds for North Carolina Project

State Officials Meet to Address Concerns

On June 13, the Southeast Low-Level Radioactive Waste Compact Commission called for the State of North Carolina to scale back spending on development of a regional disposal facility until the commission receives certain assurances. The commission's action was precipitated by a letter from Richard Fry, Director of the Division of Radiation Protection (DRP) of the North Carolina Department of Environment, Health and Natural Resources—the licensing agency for the proposed North Carolina facility.

Regulator Questions Work

Fry wrote on June 11 to Walter Sturgeon, Executive Director of the North Carolina Low-Level Radioactive Waste Management Authority, expressing concerns about the work of the Authority and its lead contractor in implementing the Licensing Work Plan (LWP) agreed upon between the two agencies. Because of these concerns, Fry stated, "DRP hereby withdraws its consensus in the LWP as implemented." Fry also raised doubts about whether the work should proceed:

> DRP cannot in good conscience advise the Authority that HLA [Harding Lawson Associates] has adequately analyzed either the groundwater discharge issue or engineering considerations raised by the major modifications proposed for the facility reconfiguration. In light of these conclusions and HLA's failure to follow the consensus process regarding the implementation of tasks outlined in the Licensing Work Plan, there is a genuine question as to the prudence of further characterization of this site.

Commission Requires Assurances

Given Fry's statements, Richard Hunter, Chair of the commission's Monitoring Committee, wrote on June 13 to Richard Whisnant, Chair of the state's Inter-Agency Committee [IAC] on Low-Level Radioactive Waste, noting that DRP's withdrawal of consent for the Licensing Work Plan violates a condition for project funding adopted by the commission in October 1996. (See *LLW Notes*, October/November 1996.) Hunter explained that, in order to continue funding for development activities, the commission would require notification from the Inter-Agency Committee that "(1) both the Authority and DRP have consensus to the LWP or a revision of the LWP, and that (2) neither party still believes that it would be imprudent to proceed with characterization." Hunter recommended that such notification be provided to the commission prior to the next meeting of the Monitoring Committee on June 27.

Authority and Regulator Meet to Resolve Differences

As of press time, staff of the North Carolina Authority and DRP have met several times in an effort to improve communications and address DRP's concerns. In addition, both the Authority's Technical Committee and the full Authority are scheduled to meet prior to the compact Monitoring Committee meeting on June 27.

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

—CN

Southwestern Compact/California

California, Energy, and Interior Exchange Correspondence on Ward Valley Testing

On May 21, Secretary of the Interior Bruce Babbitt and Secretary of Energy Federico Peña sent a joint letter to California Governor Pete Wilson (R) "to invite the State of California's participation in a program for the sampling and analysis of tritium and related substances, as recommended by the National Academy of Sciences in connection with the proposal to transfer Federal Lands in Ward Valley to the State." Wilson sent a response the same day stating that he is "pleased that the federal government is showing an interest in pursuing the testing," but expressing certain concerns with the process to date.

The Department of Interior had previously stated that such sampling and analysis is a precondition to its approval of the requested land transfer, and California had requested limited technical assistance from the U.S. Department of Energy in this regard. However, it has yet to be resolved whether the testing should be conducted jointly between the state and the Interior Department, and if so, how joint testing would be carried out.

The following is the full text of both letters. —*TDL*

Letter from Peña and Babbitt to Wilson

We are writing to invite the State of California's participation in a program for the sampling analysis of tritium and related substances as recommended by the National Academy of Sciences in connection with the proposal to transfer Federal lands in Ward Valley to the State. We appreciate your May 5, 1997, letter requesting the assistance of the Department of Energy (DOE) in this effort and share your interest in expediting the process for resolving issues associated with the proposed land transfer.

As an initial step, the Department of the Interior has contracted with independent scientists to develop a protocol with public involvement and provide quality assurance during the testing and sampling. We invite the State to work with us to ensure that there is public confidence in the testing protocol. We also invite the State to serve an a panel with the independent scientists to interpret the laboratory analysis.

We also propose that the DOE, through the Lawrence Livermore National Laboratory, be responsible for the on-site drilling and collecting the necessary samples. Split samples would be provided for analysis to the Lawrence Livermore National Laboratory and other independent laboratories as appropriate. The results of the laboratory analysis and the panel's interpretation would then be made available for public review and comment as part of the draft Supplemental Environmental Impact Statement (SEIS) that the Department of the Interior is preparing on the proposed transfer.

The Department of the Interior is moving forward on the SEIS, and awarded a contract on May 5, 1997, to a private sector firm to draft the document. We suggest that the tritium and related materials testing be conducted at the same time that the SEIS is being prepared, so that the results of this testing will be incorporated in the draft SEIS. The final supplemental environmental impact statement is expected to be released in approximately one year. We invite your input on this effort as we move forward.

We believe that a cooperative program will best serve the interests of both the State and Federal governments, and produce a credible test that is accurate, reliable and objective. We would be pleased to meet with your staff to address any comments or suggestions you may have on our proposed approach. We have asked Dan Reicher, Senior Policy Advisor to the Secretary of Energy, and Chantale Wong, Chief of Staff to the Deputy Secretary of the Interior, to contact your office and schedule a meeting at your staff's convenience. We look forward to working with you to define and implement a technical program that effectively meets the Federal and State governments' interests.

Letter from Wilson to Peña and Babbitt

In response to your letter today, I am pleased that the federal government is showing an interest in pursuing the testing at Ward Valley in cooperation with the State of California as we have previously offered. I hope this is an indication of your willingness as well to resolve finally the long-standing dispute over the siting of a low-level radioactive waste facility as California has been required to do under federal law.

As you may know, a conference call between my staff and your offices has already been scheduled for Friday, May 23. We are prepared to discuss the issues raised in your letter, but I must raise the following concerns with several of the specific points:

1. Any further discussions must lead to a final resolution of this dispute. Coming to agreement on the specifics of a testing protocol must be combined with a definitive decision process in which the test's results will be used. Merely deferring a decision to yet another administrative process and the prospect of new rounds of litigation will only serve to lengthen the decade-long decision process on this project.

2. Any testing protocol must be grounded in good science as recommended by the National Academy of Sciences, and not subject to a politicized process.

3. We welcome the addition of federal resources and federal expertise to the testing and evaluation process. As you know, the California Department of Health Services has already contracted for an independent investigator and an oversight panel drawn largely from the National Academy of Sciences panel, with participation by Interior's contractor and the Lawrence Livermore National Laboratory. This independent science team has already begun work, and has been prevented in initiating the actual testing recommended by the National Academy only by a delay in permit approval by the Department of the Interior. The existing work by these nationally-recognized experts can be joined with the additional resources now offered by the Department of Energy.

As I have previously stated, we are eager to pursue a cooperative testing program if it leads to a final solution to this impasse with the federal government. In this respect, I am particularly heartened by your personal involvement and now the accepted role of the Department of Energy to assist the State in the fulfillment of its responsibilities under federal law.

I look forward to working with you on a technical program as well as a final decision process that meets the interests of California, our compact partners, and the federal mandates under which the low level radioactive program was constructed.

TCC Meets in Salt Lake City, Utah

On May 19, the Host State Technical Coordinating Committee (TCC) met in Salt Lake City, Utah, in conjunction with the 18th U.S. Department of Energy Low-Level Radioactive Waste Management Conference.

Agenda

During the course of the half-day meeting, TCC members and meeting attendees

- heard reports from staff of DOE's National Low-Level Waste Management Program on the status of field testing of the Mobile Low-Level Radioactive Waste Verification System and on the development of the Waste Form and Container Qualification Testing Program;
- discussed the development of a quality assurance working group that would be charged with reporting back to the full TCC;
- listened to reports from staff of the U.S. Nuclear Regulatory Commission about recent commission activities, including promulgation of a final rulemaking on air emissions, completion of a branch technical position on cesium electric arc furnace dust, publication of a decommissioning handbook, and issuance of a branch technical position on performance assessment;
- heard a report from staff of the Low-Level Radioactive Waste Forum; and
- discussed activities involving low-level radioactive waste disposal and related matters in various states and compacts around the region.

Attendance

Approximately 23 persons attended the TCC meeting, including officials from seven states, two compacts, and NRC; staff of DOE's National Low-Level Waste Management Program and the LLW Forum; and representatives from the University of Texas (Austin) and a consulting firm.

Workshop

The TCC Meeting was followed by an optional afternoon workshop, entitled "How to Survive an Adjudicatory Public Hearing." The workshop was conducted by two staff members of the Battelle Memorial Institute.

For further information, contact TCC Moderator Tom Kerr at (208)526-8465.

—TDL

Garner Named Executive Director and Forum Participant for Northwest Compact

In May 1997, Michael Garner began serving as the new Executive Director and LLW Forum Participant for the Northwest Interstate Compact on Low-Level Radioactive Waste. He was appointed to both positions by Jeff Breckel, Chair of the Northwest Compact.

Garner has worked since 1990 on policy development and administrative and regulatory issues for the compact and the State of Washington Department of Ecology. His previous experience also includes positions as a research biologist and operations manager for both Union Carbide (1971–1980) and the Campbell Soup Company (1980–1989).

Garner earned a bachelor of science degree from the University of Washington in 1971.

In assuming his new responsibilities, Garner succeeds Joe Stohr as both the compact's Executive Director and LLW Forum Participant. Stohr resigned in January 1997 to accept a position in Ecology's Water Rights and Shorelands Management Program. (See *LLW Notes*, January 1997, p. 16.)

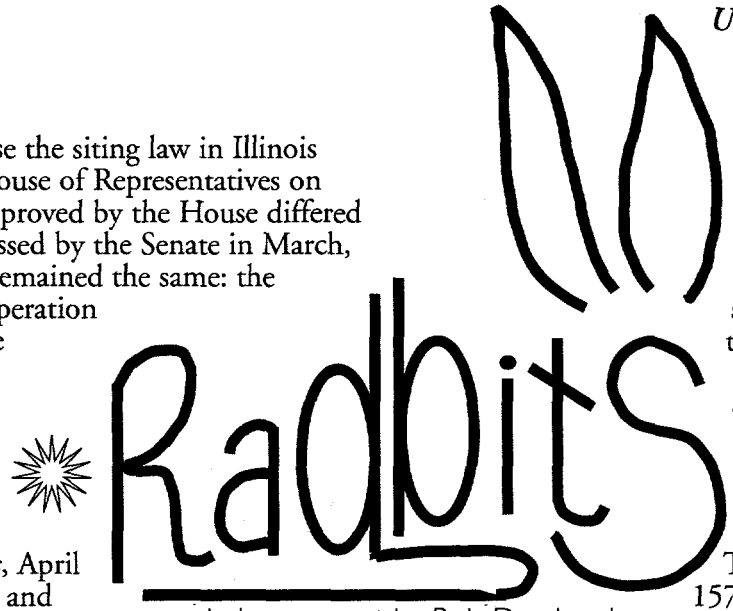
—RTG

Radbits

States and Compacts

Central Midwest/Illinois

Legislation to revise the siting law in Illinois passed the state House of Representatives on May 20. The version approved by the House differed slightly from the bill passed by the Senate in March, but the central impact remained the same: the target date for facility operation was set at 2012, and the Illinois Department of Nuclear Safety (IDNS) was directed to develop and implement a volunteer siting process. (See *LLW Notes*, April 1997, p. 3.) The House and Senate have since reached concurrence, and the bill is currently awaiting the Governor's signature.



design concept by Bob Demkowicz

For further information, contact Patti Thompson of IDNS at (217)785-0229.

—CN

Massachusetts

On March 21, 1997, Massachusetts became the 30th state to enter into an agreement with the NRC under the Agreement State program. The Massachusetts Department of Public Health's Radiation Control Program has been designated as the agency to exercise the regulatory authority delegated to the state via the agreement.

Through the Agreement State program, states gain authority to regulate radioactive materials and sources of radiation that would otherwise fall within NRC's jurisdiction. In order to become an Agreement State, Massachusetts had to adopt regulations compatible with NRC requirements. Massachusetts's application for Agreement State status was received by NRC in early April 1996. (See *LLW Notes*, May 1996, p.6.)

—RTG

U.S. Congress

On January 30, Senator Rod Grams (R-MN) introduced legislation in the U.S. Senate to abolish the U.S. Department of Energy. The bill, S. 236, has eight co-sponsors and was referred to the Committee on Energy and Natural Resources. Similar, though not identical, legislation was introduced in the U.S. House of Representatives on May 8 by Representative Todd Tiahrt (R-KS). The bill, H.R. 1577, has 45 cosponsors. It was referred to the Committee on Commerce, as well as to the Committees on National Security, Science, Resources, Rules, and Government Reform and Oversight for consideration of such provisions as fall within the committees' respective jurisdictions.

Legislation to abolish DOE has been introduced in each of the last two sessions of Congress. (See *LLW Notes*, April/May 1995, p.10.) However, no such bill has ever reached the floor of either chamber for a vote by the full House or Senate. *—TDL*

International

According to recent news reports, B & W Nuclear Environmental Services—a corporation based in the State of Virginia—entered into a contract on May 9 with the government of the sovereign nation of the Marshall Islands to study the feasibility of developing a storage site for low-level radioactive waste. It is unclear when the study will be conducted or how long it is expected to take.

The Marshall Islands are Hawaii's closest neighbor to the west. In recent years, several proposals have been made that involve developing a disposal facility on some of the islands that were previously contaminated by U.S. nuclear testing. (See *LLW Notes*, June/July 1996, p. 39.) To date, none of these proposals has advanced significantly. Although it is unclear where waste for any such facility on the Marshall Islands would originate, past proposals have indicated an intent to accept waste from countries other than the United States. *—TDL*

State and Compact Events

June	Event	Location/Contact
Appalachian Compact/ Pennsylvania	Appalachian States LLRW Commission annual meeting	Harrisburg, PA Contact: Marc Tenan (717)234-6295
Central Compact/ Nebraska	Central Interstate LLRW Commission annual information forum on fees, rates, and surcharges	Lincoln, NE Contact: Don Rabbe (402)476-8247 or e-mail don@cillrwcc.org
	Central Interstate LLRW Commission annual meeting: includes action on export applications; considerations of proposed bylaws and rules amendments; approval of 1997-98 commission budget and export application fee schedule; election of Chair	Lincoln, NE Contact: Don Rabbe
Central Midwest Compact/ Illinois	Illinois LLRW Task Group meeting	Oakbrook, IL Contact: Helen Adorjan (217)528-0538
Midwest Compact/ Ohio	Midwest Interstate LLRW Commission annual meeting: includes reconsideration of the need to proceed with development of a regional disposal facility; review of FY '98 budgets; and annual election of officers	Columbus, OH Contact: Sandy Schmidt (612)293-0126
	Ohio LLRW Facility Development Authority RFP Task Force meeting: evaluation of proposals submitted by potential contractors in response to the RFP for technical support	Worthington, OH Contact: Melissa Herby (614)644-2776
	Ohio LLRW Facility Development Authority Administration and Finance Committee meeting: review of FY '98 budget and discussion of formulation of a pre-operational funding agreement with the Midwest Compact	Worthington, OH Contact: Melissa Herby
	Ohio LLRW Facility Development Authority Board of Directors meeting: committee reports; action on FY '98 budget and contract for technical support	Worthington, OH Contact: Melissa Herby
	Ohio LLRW Facility Development Authority Public Information and Involvement Committee: comments on the Media Relations Plan	Worthington, OH Contact: Melissa Herby

State and Compact Events *continued*

June	Event	Location/Contact
Northeast Compact/ Connecticut/ New Jersey	Connecticut Hazardous Waste Management Service Board of Directors meeting	Hartford, CT Contact: Ron Gingerich (860)244-2007
	Connecticut Hazardous Waste Management Service Board of Directors special meeting	Hartford, CT Contact: Ron Gingerich
	New Jersey LLRW Disposal Facility Siting Board meeting	Trenton, NJ Contact: John Weingart (609)777-4247
	New Jersey LLRW Disposal Facility Siting Board display at New Jersey Association of Counties Conference	Atlantic City, NJ Contact: John Weingart
	New Jersey LLRW Disposal Facility Siting Board presentation at the Chamber of Commerce Environment Committee	location to be determined Contact: John Weingart
Rocky Mountain Compact	Rocky Mountain LLRW Board annual meeting and regular meeting	Santa Fe, NM Contact: Tracie Archibold (303)825-1912
Southeast Compact/ North Carolina	Southeast Compact Commission Monitoring Committee meeting: review of second quarter progress by North Carolina in implementing the Licensing Work Plan; review of projected schedule and cost estimates	Atlanta, GA Contact: Ted Buckner (919)821-0500
	North Carolina LLRW Management Authority Technical Committee meeting	Morrisville, NC Contact: (919)733-0682
	North Carolina LLRW Management Authority meeting via teleconference	Raleigh, NC Contact: (919)733-0682
Southwestern Compact/ California	Southwestern LLRW Commission meeting	La Jolla, CA Contact: Don Womeldorf (916)323-3019
Massachusetts	LLRW Management Board meeting: adoption of a schedule of assessments for FY '98; discussion of national and state LLRW management and disposal conditions; and review of March 1996 decision to cease certain in-state siting activities	Boston, Massachusetts Contact: Carol Amick (617)727-6018
	LLRW Management Board Minimization Working Group meeting: presentations re Toxic Use Reduction Act program; radioactive materials licensee minimization regulations, program and procedures	Boston, Massachusetts Contact: Carol Amick

State and Compact Events *continued*

July	Event	Location/Contact
Northeast Compact/ Connecticut/ New Jersey	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
Texas Compact/ Texas	Maine Advisory Commission on Radioactive Waste meeting	Augusta, ME Contact: Dale Randall (207)287-8404 or e-mail dale.randall@state.me.us
August	**Event**	**Location/Contact**
Central Compact/ Nebraska	Compact Facility Review Committee meeting	Lincoln, NE Contact: Don Rabbe (402)476-8247 or e-mail don@cillrwcc.org
Northeast Compact/ Connecticut/ New Jersey	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
	Northeast Interstate LLRW Commission meeting	Saddle Brook, NJ Contact: Janice Deshais (860)633-2060
Southeast Compact/ North Carolina	Southeast Compact Commission meeting	location to be determined Contact: Ted Buckner (919)821-0500
Texas Compact/ Texas	Texas LLRW Disposal Authority Board meeting	Austin, TX Contact: (512)451-5296

State and Compact Events *continued*

September	Event	Location/Contact
Central Compact/ Nebraska	Central Interstate LLRW Commission fall quarterly meeting	Lincoln, NE Contact: Don Rabbe (402)476-8247 or e-mail don@cillrwcc.org
Northeast Compact/ Connecticut/ New Jersey	Connecticut Hazardous Waste Management Service Board of Directors meeting	Hartford, CT Contact: Ron Gingerich (860)244-2007
	Connecticut LLRW Advisory Committee meeting	Hartford, CT Contact: Ron Gingerich
	New Jersey LLRW Disposal Facility Siting Board meeting	Trenton, NJ Contact: John Weingart (609)777-4247
Massachusetts	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**
Northeast Compact/ Connecticut/ New Jersey	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
	New Jersey LLRW Disposal Facility Siting Board display at New Jersey School Boards Association conference	Atlantic City, NJ Contact: John Weingart
Southwestern Compact/ California	Southwestern LLRW Commission meeting	Sacramento, CA Contact: Don Womeldorf (916)323-3019
Texas Compact/ Texas	Advisory Commission on Radioactive Waste meeting	Augusta, ME Contact: Dale Randall (207)287-8404 or e-mail dale.randall@state.me.us
Massachusetts	LLRW Management Board meeting	location to be determined Contact: Carol Amick (617)727-6018

Background: Central Midwest Interstate Low-Level Radioactive Waste Commission v. O'Leary

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

DOE's 1992 *Federal Register* Notice and Subsequent Litigation The Department of Energy published a notice in the *Federal Register* on September 30, 1992, announcing that states or compacts may be eligible to receive the surcharge funds if they meet one of several criteria, including having a valid contract with another state or compact for low-level radioactive waste disposal or storage. (See 57 *Federal Register* 45,248.) Accordingly, in late 1992 and early 1993, many compact commissions and unaffiliated states—including the Appalachian Commission, the Central Midwest Commission, the Midwest Commission, and the Commonwealth of Massachusetts—entered into an agreement with the Southeast Commission that provided their generators with access to the low-level radioactive waste disposal facility at Barnwell, South Carolina, until June 30, 1994. As of June 4, 1993, DOE had not made a determination regarding eligibility for surcharge funds based on the 1993 milestone, and the Central Midwest Commission initiated legal proceedings. (See *LLW Notes*, June 1993, pp. 14-15.)

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

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

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

The Reopening of Barnwell and Subsequent Litigation In June 1995, the State of South Carolina announced its intention to withdraw from the Southeast Interstate Low-Level Radioactive Waste Management Compact and reopen the low-level radioactive waste disposal facility at Barnwell to out-of-region waste, effective July 1, 1995. (See *LLW Notes*, June 1995, pp. 1, 13.) Subsequently, the Commonwealth of Massachusetts and the Midwest Commission filed separate suits in federal district court seeking payment of additional surcharge fees. (See *LLW Notes*, July 1995, pp. 12–14.) The Central Midwest Commission initiated a new action on August 8, 1995, also seeking the distribution of additional surcharge fees. (See *LLW Notes*, August/September 1995, pp. 14–15.)

The U.S. District Court for the District of Massachusetts ruled against the Commonwealth on March 29, 1996. (See *LLW Notes*, April 1996, pp. 10–11.) The U.S. District Court for the District of Minnesota ruled against the Midwest Commission on May 28, 1996. (See *LLW Notes*, June/July 1996, pp. 29–31.) Massachusetts and the Midwest Commission both determined not to appeal the courts' rulings. The U.S. District Court for the Central District of Illinois ruled against the Central Midwest Commission on August 30, 1996. The Central Midwest Commission filed a notice that it was appealing the district court's decision to the U.S. Court of Appeals for the Seventh Circuit on October 22, 1996.

Central Midwest Interstate Low-Level Radioactive Waste Commission v. Peña

Commonwealth Edison Company and Illinois Power Company v. Peña

Seventh Circuit Upholds Energy Secretary's Determination re Distribution of Surcharge Rebates

On May 20, 1997, the U.S. Court of Appeals for the Seventh Circuit affirmed a district court's decision in a lawsuit filed by the Central Midwest Interstate Low-Level Radioactive Waste Commission against former Secretary of Energy Hazel O'Leary concerning the distribution of surcharge rebates for the disposal of low-level radioactive waste. Pursuant to court rules, the lawsuit was amended to strike O'Leary as a defendant and to name current Secretary of Energy Frederico Pena as the defendant subsequent to his confirmation. The case had been argued before a three-judge panel of the appellate court on April 4, 1997. (See *LLW Notes*, August/September 1996, pp. 14–15.)

At issue in the litigation was whether the commission or waste generators in Illinois and Kentucky are entitled to receive surcharge rebates for the period July 1, 1994, to January 1, 1996—the period of time between the closing of the Barnwell, South Carolina disposal facility to out-of-region generators and the end of the rebate period for the January 1, 1993 milestone. The district court had agreed with the Secretary's position that generators, not the commission, are entitled to rebate payments for this period. In explaining why it upheld the district court's decision to accept the Secretary's interpretation of the contested milestone provision, the appellate court analyzed each argument put forth by the Central Midwest Commission. The following is a brief summary of the court's review of these arguments.

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Central Midwest Interstate Low-Level Radioactive Waste Commission v. Peña (continued)
Commonwealth Edison Company and Illinois Power Company v. Peña (continued)

Status of Waste Disposal During Period Covered by Litigation

On July 1, 1994, the Barnwell disposal facility closed to out-of-region generators, leaving generators in the Central Midwest region with no disposal options for low-level radioactive waste except for Envirocare of Utah, which accepts only limited types of such waste. The State of South Carolina subsequently determined to reopen the Barnwell facility to out-of-region waste, effective July 1, 1995. (See *LLW Notes*, July 1995, pp. 1, 3.)

Although generators in the Central Midwest region could not use the Barnwell facility from July 1, 1994 to July 1, 1995, the commission's suit nevertheless seeks rebates for this period (as well as the six-month period following the reopening of Barnwell). In support of its claim, the commission notes that (1) limited disposal access was available during this period via the Envirocare facility, and (2) Central Midwest generators were able to dispose of any waste stored during this period upon the reopening of the Barnwell facility to out-of-region generators.

Deference Was Not Warranted

The Central Midwest Commission argued that the district court erred in affording any deference to the Secretary's interpretation of the milestone provision because the Secretary does not have rulemaking authority, acted inconsistently, and violated her own rules. The appellate court agreed with the commission's position that the Secretary does not have rulemaking authority, but found that the district court was correct in its determination that the Secretary's interpretive rule is entitled to deference. "[T]he degree of deference we give to an interpretive rule depends on the 'thoroughness, validity, and consistency of the agency's reasoning.'"

Specifically, the court held as follows:

> The circumstances surrounding the Secretary's interpretation of the fourth milestone convince us that some deference is due. Section 2021e(d)(2) requires the Secretary to act as trustee and disburse escrow funds in accordance with the Act. In order to carry out that mandate she needed to develop criteria for determining whether a state or compact had provided for the disposal of its waste. And although the Secretary did not jump through all of the procedural hoops necessary to promulgate a full-fledged "rule" (interpretive rules are exempt from the notice and comment provisions of the Administrative Procedure Act), she published a notice on the topic in 1992, solicited written comments, considered the issue for 18 months, and released a final policy statement in March 1994. That seems, to us, like a thorough and "deliberate attempt to implement the will of Congress through the regulatory process."

The Commission "Provide[d] for" Disposal

Plain Meaning of the Words The contested milestone requires that each compact commission must "provide for" the disposal of its region's waste in order to be eligible to receive the surcharge rebates. The Central Midwest Commission argued that it provided for disposal because "but for" its 1988 decision to lift the compact's export ban, generators in its region would not have been able to ship waste to Barnwell. As support for its position, the commission noted that in *New York v. United States*, the Supreme Court mentioned that a compact could comply with the milestone by allowing a private party to build a disposal facility.

The appellate court, however, found merit to the Secretary's position that "provide for" means something more than simply allowing waste to leave the region.

> The plain meaning of "provide" is to supply, afford, contribute, make, procure, or furnish for future use ... After its Barnwell contract expired the Commission did not supply, afford, contribute, make, procure or furnish anything related to the disposal of the region's waste. Rather, the Commission sat back and let fate run its course ... [E]ven the Commission agrees that its decision to permit generators to ship their waste out of the region, standing alone, would not have been sufficient to provide for disposal. Instead, the Commission bases its claim on the fact that Barnwell reopened. The problem is that South Carolina—not the Commission—made that call, and the fourth milestone clearly states that a compact is entitled to incentives only when the compact provides for disposal.

In explaining its decision, the appellate court noted that the Low-Level Radioactive Waste Policy Amendments Act of 1985 holds states and compacts—not generators—responsible for the disposal of low-level radioactive waste generated within their borders. "Here the Commission did not take any responsibility for the region's waste. Rather, it simply relied on its 1988 decision to lift the export ban and hoped the generators would shoulder the responsibility for making sure their waste wound up at a proper facility."

Feasibility of Negotiating a New Contract The commission asserted that negotiating a new contract would have been a "weak and feeble" gesture, as meaningless as it was impossible. The appellate court disagreed, however, commenting (1) that generators worked out deals for access to Barnwell, so the commission could have done so also, and (2) that the use of contracts would have prevented the State of South Carolina from severely limiting the total amount of waste it would accept or from closing the facility altogether. "A contract could have guaranteed continued access or, at a minimum, provided for an avenue of recourse if Barnwell scaled back or shut down its operation."

Intended Use of the Surcharge Rebates

The Central Midwest Commission directed the court's attention to the fact that it is required to use the surcharge rebates to develop a disposal site, a precondition not placed upon the generators should they receive the refunds. The appellate court rejected this argument, however, noting that the surcharges were styled as incentive payments.

> [C]ongress could have directly allocated the funds to the compacts without setting up a system of milestones. Instead, Congress decided to reward only those compacts which took steps toward developing regional disposal facilities. Additionally, as the district court noted, the Commission is essentially arguing for a return to the situation existing before Congress stepped in. That is, the Commission's interpretation leaves generators ... to fend for themselves, gives states and compacts absolutely no incentive to increase disposal capacity, and hinders the development of a network of fairly and evenly distributed regional disposal sites. Such an interpretation would directly contradict the purposes of the 1985 Act.

Milestone is Unconstitutionally Vague

The Central Midwest Commission also argued that the Secretary's interpretation renders the contested milestone unconstitutionally vague, based on prior case law which holds that if Congress intends to attach a condition to the receipt of federal monies, it must do so unambiguously. The appellate court responded as follows:

> That statement is certainly good law, but it has nothing to do with this case. Congress expressly attached a condition on states and compacts receiving incentive payments under the fourth milestone—they had to provide for disposal of all low-level radioactive waste generated within their borders ... As a result, the issue in this case was not whether Congress imposed a binding condition—it clearly did—but rather what the proper "scope and interpretation" of that obligation should be.

—TDL

US Ecology v. Nebraska

US Ecology Sues Nebraska re Wetlands Mitigation

On April 14, US Ecology filed a lawsuit in the District Court of Lancaster County, Nebraska, alleging that the State of Nebraska has unlawfully concluded that the placement of fill in a "small depression" on the site of a proposed low-level radioactive waste disposal facility and the creation of a new wetland off site in mitigation constitutes the "commencement of construction" and is prohibited under state law until after the issuance of a license for the facility. The state responded to the action with a motion requesting that US Ecology correct certain perceived deficiencies in its petition. As of press time, the court has not ruled on the state's motion, and no additional filings have been made.

Background

US Ecology is the license applicant for the facility, which would serve the Central Interstate Low-Level Radioactive Waste Compact region. The proposed site is located in Boyd County, Nebraska.

The Parties

The following parties are listed as defendants to the action: the State of Nebraska; the Nebraska Department of Environmental Quality (NDEQ) and its Director, Randolph Wood; and the Nebraska Department of Health and Human Services Regulation and Licensure (NDOH) and its Director, Deb Thomas.

The Facts

Initial Correspondence In correspondence dated September 6, 1996, US Ecology informed NDEQ and NDOH that the Army Corps of Engineers had authorized the company to perform mitigation activities at the proposed low-level radioactive waste disposal site by filling a "0.98 acre headwater wetland," subject to the listed conditions. The company also requested the agencies' concurrence that the performance of such work does not constitute "facility construction." The agencies responded by letter dated October 21, 1996, notifying US Ecology of the state's determination that the filling of a wetland on site does constitute facility construction and advising that "[i]t is acceptable to proceed only upon issuance of a license."

In support of their determination, NDEQ and NDOH referenced the following excerpts from Nebraska statutes:

- "The department [NDEQ] shall prohibit any construction with respect to any activity for which an environmental impact analysis is required prior to the completion of such analysis."
- "Failure to obtain a license prior to commencement of construction may be grounds for denial of a license."
- " 'Commencement of construction' means any clearing of land, excavation, or other substantial action that may affect the environment of a facility."
- "Each person shall file an application with the Agency [NDOH] ... and obtain a license ... before commencement of construction of a management facility. Failure to comply with this requirement may be grounds for denial of a license."
- " 'Commencement of construction' ... The term does not mean disposal site exploration, necessary roads for disposal site exploration, borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the management site or the protection of environmental values."

Subsequent Correspondence In correspondence dated December 18, 1996, US Ecology requested that the agencies reconsider their decision that the proposed mitigation work constitutes the "commencement of construction" and may not be performed until after issuance of a license. According to US Ecology, the mitigation work is an environmental enhancement. "The mitigation site, which is not within the 110 acre site boundary, will be developed into a true functional wetland. The only work within the 110 acre site will be filling a small depression in the D-3 drainage way with about three inches of fill."

In response to the statutes and regulations cited in the agencies' October 21 letter, US Ecology

- noted that a permit authorizing the work was issued by the U.S. Army Corps of Engineers;
- argued that the proposed mitigation work does not constitute starting construction of the facility;
- asserted that the proposed mitigation work does not constitute a substantial activity such as excavation or land clearing; and
- stated that the listed exceptions to "construction" contained in Nebraska's statutes could be no less disruptive than the work proposed.

The agencies responded by letters dated December 31, 1996, and February 4, 1997, stating that they stand by their original determination and again advising US Ecology not to proceed with its mitigation plans prior to issuance of a license.

Issues

In its petition, US Ecology argues that the proposed fill and mitigation "neither constitutes construction since an environmental impact analysis is not required for this activity, nor does it constitute 'commencement of construction' since it is not a substantial action that may affect adversely the environment of the facility."

In addition, US Ecology asserts that NDOH is unlawfully exercising its authority and jurisdiction by applying its rules and regulations to US Ecology's proposed activities. According to US Ecology, NDOH's jurisdiction and authority over the licensing of commercial disposal of low-level radioactive waste in a disposal facility designated by the Central Commission is limited pursuant to federal and state law.

Relief Requested

US Ecology is asking the court to

- declare that the fill and mitigation proposed by US Ecology do not constitute "commencement of construction" under either state or federal law;
- declare that NDOH has no authority or jurisdiction to apply its rules and regulations regarding obtaining a license before commencement of construction of a management facility and declare that NDOH has no authority or jurisdiction to apply its definition of "commencement of construction" to US Ecology's proposed activities (i.e. the fill and mitigation);
- permanently enjoin NDEQ and NDOH from interfering with US Ecology's efforts regarding the fill and mitigation by actions including, but not limited to, denial of or ceasing to review US Ecology's applications;
- grant such other relief as the court may deem to be just and proper; and
- require NDEQ and NDOH to pay its legal costs.

Nebraska's Response

In response to US Ecology's petition, the defendants filed a Motion to Make More Definite and Certain on May 19, 1997. The motion requests that the court order US Ecology to correct certain perceived deficiencies in its petition by

- requiring US Ecology to specifically plead and separate its alleged causes of action arising under the Nebraska Administrative Procedure Act and the Nebraska Uniform Declaratory Judgment Act;
- requiring US Ecology to specifically set forth the basis for jurisdiction under the Administrative Procedure Act and other Nebraska statutes; and
- requiring US Ecology to specifically set forth the basis for jurisdiction under the Uniform Declaratory Judgment Act and to set forth the acts and actions, if any, of defendants Wood and Thomas that it alleges are invalid and an abuse of authority.

A hearing on the defendants' motion was held on June 6, 1997.

—TDL

Byrd v. Raines

U.S. Supreme Court Hears Line-Item Veto Challenge

On May 27, the U.S. Supreme Court heard oral arguments in a lawsuit challenging the constitutionality of the recently enacted Line-Item Veto Act (Pub. L. No. 104-130), which gives the President authority to cancel in whole, at any time up to five days after signing a bill into law, any dollar amount of appropriation, any item of new deficit spending, or any limited tax benefit contained in the bill. The U.S. District Court for the District of Columbia had previously struck down the act as violative of the separation of powers doctrine of the U.S. Constitution. (See *LLW Notes*, April 1997, p. 25.)

During arguments, several justices questioned the legal standing of the petitioners—six members of the U.S. Congress—to challenge the act in court. The petitioners argued, however, that the act specifically provided for a legal challenge by dissenting lawmakers and that they have standing due to the potential impact that the legislation has on the integrity of their votes as members of Congress.

But Justice Antonin Scalia expressed reservations, asking whether this case would set a bad precedent that would, for instance, allow a lower court judge to sue if he was overruled in a manner that diminished his perceived judicial power. Justice Sandra Day O'Connor also exhibited concern, noting that even congressionally approved rules changes alter the dynamics of the legislative process. Justice Anthony Kennedy, however, said that he found "some point to the argument that this [line-item veto] changes the legislative dynamics" between Congress and the President. But Justice Kennedy stopped short of saying that such a change is unconstitutional.

This case may be of interest to Forum Participants not only for its impact on federal agency budgetary matters, but also for its potential impact on the President's ability to veto state-sponsored legislation (such as the Ward Valley land transfer) that is attached to appropriations measures.

What Is Standing?

Standing is a legal doctrine which provides that a party must have a sufficient stake in an otherwise justiciable controversy to be eligible to bring suit.

The administration argued that petitioners do not have standing because the line-item veto has not been exercised to date and therefore no injury has occurred. In addition, in responding to the argument that the line-item veto could alter a bill's purpose, the administration pointed out that Congress has the ability to exempt any spending item from the line-item veto authority when passing new legislation.

The Line-Item Veto Act remains invalid pending a decision by the U.S. Supreme Court. The Court begins its summer recess on July 1 and returns on October 1. If the Court does not issue a decision prior to its recess, the President will not have line-item veto authority during summer-time budget negotiations.

—*TDL*

Animal Legal Defense Fund, Inc. v. Shalala

Court Rules NAS Must Provide Public Access

On May 6, the full U.S. Court of Appeals for the District of Columbia Circuit refused to reconsider a January 10 decision by a three-judge panel providing, in part, that the National Academy of Sciences (NAS) is subject to the Federal Advisory Committee Act (FACA) and therefore must provide open public access to its deliberations and documents. The case has been remanded to the U.S. District Court for the District of Columbia to determine whether there are documents to which the appellants may obtain access under FACA and whether other injunctive relief should issue.

The appellate court's decision stems from a suit initially filed in 1994 by the Animal Legal Defense Fund and others to prevent the U.S. Department of Health and Human Services from using an NAS committee's proposed revisions to the main federal guide for the care and use of laboratory animals. In the suit, the plaintiffs complain that they were denied access to committee meetings and minutes, records, or transcripts of the committee. They contend that they were entitled to such access under FACA. NAS, however, argued that Congress never intended for the institution or its decisions to be subject to FACA and that its reports are not committee documents, but rather draft findings that are subjected to rigorous external review and revision before publication.

—*TDL*

Federal Advisory Committee Act

FACA was enacted in 1972 to control the establishment of advisory committees to the federal government and to allow the public to monitor their existence, activities, and cost. Under the act, the term advisory committee includes "any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof ... which is—

(A) established by statute or reorganization plan, or

(B) established or utilized by the President, or

(C) established or utilized by one or more agencies,

in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government except that such term excludes (i) the Advisory Commission on Intergovernmental Relations, (ii) the Commission on Government Procurement, and (iii) any committee which is composed wholly of full-time officers or employees of the Federal Government."

WCS Sues Envirocare of Texas

On May 2, Waste Control Specialists, LLC filed suit in the District Court of Andrews County, Texas, against Envirocare of Texas, Inc.; Envirocare of Utah, Inc.; Khosrow Semnani and Charles Judd—officers of Envirocare; and other individuals.

As of press time, no response to the action has been filed.

The suit—which seeks over $500 million in damages, involves several causes of action, including:

- violations of the Texas Free Enterprise and Antitrust Act of 1983;
- libel and slander;
- business disparagement; and
- tortious interference with prospective business relations.

Further information will be forthcoming in future issues of the LLW Notes.

—*TDL*

Court Calendar

Case Name	Description	Court	Date	Action
Animal Legal Defense Fund v. Shalala (See related story, this issue.)	Involves the right of public access to National Academy of Sciences' deliberations and documents.	U.S. Court of Appeals for the District of Columbia Circuit	May 6, 1997	Full court refused to reconsider January 10 decision by three-judge panel mandating open public access.
Appalachian States Low-Level Radioactive Waste Commission v. O'Leary (See *LLW Notes*, October 1996, p. 24.)	Seeks the release of all surcharge fees, collected from Appalachian region generators, being held in an escrow account by the U.S. Secretary of Energy.	United States Court of Appeals for the Third Circuit	May 21, 1997	Oral arguments were held on the plaintiff's motion for reconsideration.
Byrd v. Raines (See *LLW Notes*, April 1997, p. 25.)	Challenges the constitutionality of congressional legislation that grants to the President a line-item veto.	U.S. Supreme Court	May 27, 1997	Oral arguments were held.
California Department of Health Services v. Babbitt (See *LLW Notes*, March 1997, pp. 1, 16–20.) *US Ecology v. U.S. Department of Interior* (See *LLW Notes*, April 1997, pp. 18-21.)	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.	U.S. District Court for the District of Columbia	April 28, 1997 June 2, 1997 June 16, 1997	Defendants filed (1) a motion to dismiss the action and (2) a motion to transfer venue to the Northern District of California. Plaintiffs filed briefs in opposition to the defendants' motion to dismiss and motion to transfer venue. Defendants filed a reply to plaintiffs' brief in opposition to defendants' motion to transfer venue.
Waste Control Specialists, LLC v. Envirocare of Texas, Inc.	Challenges the actions of Envirocare of Texas and others as constituting antitrust violations, libel, slander, and business disparagement.	District Court of Andrews County, Texas	May 2, 1997	Waste Control Specialists, LLC filed a complaint seeking a jury trial of the contested issues.

Court Calendar *continued*

Case Name	Description	Court	Date	Action
Nebraska v. Central Interstate Low-Level Radioactive Waste Commission (See *LLW Notes*, Feb. 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	May 6, 1997	A motion to intervene in the litigation was filed by several regional generators.
Nuclear Fuel Services, Inc. v. Semnani (See related story, this issue.)	Involves a claim that Envirocare of Utah, Inc. and others engaged in unfair business practices in restraint of trade and conspiracy.	Third District Court of the State of Utah	April 22, 1997 May 1997 June 13, 1997	Defendants filed a motion to dismiss. NSF filed a response to defendants' motion to dismiss. Defendants filed a reply to NFS' response to defendants' motion to dismiss.
Stilp v. Knoll (See *LLW Notes*, October 1996, p. 25.)	Challenges the legislative procedures used in Pennsylvania to pass Act 12 of 1988 known as the Low-Level Radioactive Waste Disposal Regional Facility Act.	Supreme Court of Pennsylvania	December 17, 1996 March 19, 1997 April 25, 1997 June 16, 1997 week of September 8, 1997	Petitioners filed a motion for preemptory judgment. Stay of proceedings was lifted. Defendants filed a motion for summary judgment. Appalachian Commission filed an *amicus curiae* brief in support of defendants' motion for summary judgement. Oral arguments are scheduled to begin on above-listed motions.
US Ecology v. Nebraska (See related story, this issue.)	Challenges determination by Nebraska that activities pro-posed by US Ecology constitute an unlawful "commencement of construction."	District Court of Lancaster County, Nebraska	April 14, 1997 May 19, 1997	US Ecology filed a complaint. The State of Nebraska filed a motion to make more definite and certain. —*TDL*

DOE and Envirocare Sign Consent Agreement

Semnani Resigns as Company President

On May 14, Envirocare of Utah issued a press release announcing the resignation of Khosrow Semnani, the company's President and founder, under the terms of a consent agreement with the U.S. Department of Energy. The agreement was reached after DOE refused to enter into new contracts with the company due to allegations contained in pending litigation filed against Semnani and Envirocare by Larry Anderson, the former director of Utah's Division of Radiation Control.

Although Semnani will retain ownership of Envirocare, he will not be part of the company's management for a period of eighteen months to three years. Charles Judd, who currently serves as Envirocare's Executive Vice President, will succeed Semnani and manage the daily operations of the company. Semnani has also submitted his resignation from the Utah Radiation Control Board, where he will be replaced by Judd.

Semnani, however, maintains his position as President of Envirocare of Texas—a newly formed company that is exploring low-level radioactive waste management options in Andrews County, Texas. Charles Judd serves as Vice-President of Envirocare of Texas.

DOE Information Request

The consent agreement was signed as a result of discussions stemming from a letter to Semnani dated February 18, 1997, sent by Richard Hopf—DOE's Deputy Assistant Secretary for Procurement and Assistance Management—in which Hopf expressed concern over allegations that Semnani made irregular payments to Anderson in connection with the Envirocare facility. Hopf requested that Semnani confirm or deny certain facts contained in materials previously submitted to the department by Semnani's outside counsel and, assuming that the facts are confirmed, explain why his company should be deemed presently responsible to perform government contracts. Hopf invited Semnani to submit additional information bearing on this matter and/or to schedule a personal meeting between department staff and Semnani or his representative. The letter stated, however, that it did not constitute either a notice of suspension or a debarment from government contracts.

Current and Past DOE Use of Envirocare

DOE presently has contracts with Envirocare for the disposal of low-level and mixed radioactive waste and uranium mill tailings. To date, DOE has shipped over 4 million cubic feet of waste to Envirocare under these contracts and plans to ship approximately 2 million additional cubic feet in 1997.

Related Litigation

The lawsuit against Semnani and Envirocare was filed by Anderson and Lavicka, Inc. on October 18, 1996, in the Third Judicial District Court of Salt Lake County, Utah. It alleges that the defendants owe to the plaintiffs in excess of $5 million for site application and consulting services related to the licensing and operation of the Envirocare facility. Semnani and Envirocare responded by filing an answer and counterclaim in early November. In those documents, Semnani admits that he personally gave to Anderson cash, gold coins, and real property totaling approximately $600,000 in value over an eight-year period, but denies that such payments were for consulting services. Instead, Semnani alleges that the payments were made in response to Anderson's ongoing practice of using his official position with the State of Utah to extort moneys from Semnani. (See *LLW Notes*, January 1997, pp. 1, 5–12.)

The Utah Attorney General's Office initiated a criminal investigation into the matter shortly after the lawsuit became public. The investigation was turned over to federal officials, including the Federal Bureau of Investigations (FBI), earlier this year. Anderson's allegations also formed the basis of a Natural Resources Defense Council (NRDC) petition to NRC to revoke Envirocare's permits and prohibit the granting of additional licenses to Semnani. NRC subsequently denied the petition, but indicated that it would be "closely monitoring the investigations of this issue." (See *LLW Notes*, March 1997, pp. 11–12.)

—TDL

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 May 16.

The terms and conditions of the consent agreement between DOE, Envirocare of Utah, Zhagrus Environmental, and Khosrow Semnani are summarized below:

- Semnani will resign his positions as Chief Executive Officer, President, and Director from Envirocare and Zhagrus, effective on May 14, 1997, with Judd to be named as his successor. Judd's employment agreements may not be altered or revoked except for acts inconsistent with the companies' best interests, intentional misconduct, or disability, and with advance notice to and prior approval of DOE.

- Judd will appoint at least one additional director to serve on each of the companies' Board of Directors. Semnani will have no input into the appointment of additional directors and will have no role in the management and control of the companies.

- Semnani will relocate his office and may not act on behalf of the companies or represent them before any state or federal government agencies and officials. He may provide them with financial support for the purposes of their operations.

- Semnani may not engage in any communications with the companies' directors, officers or employees that relate to the present or future management or control of the companies' operations. However, he may receive periodic written status reports on the companies' financial conditions and operations from their directors and he may receive monthly dividends and financial reports, compliance reports, audits, and other written information relating to the companies' financial status and operations from the directors. Subject to specified conditions, Semnani may discuss reports with the companies only if done through their directors and only in the presence of legal counsel representing the companies.

- Any conversations or interactions between Semnani and the companies shall be limited to issues relating to their environmental compliance with licenses and permits, bonding, trust accounts, and loans sought by the companies, the provision of monies by Semnani to the companies, and litigation involving the companies relating to events occurring while Semnani was President and Chief Executive Officer. Semnani may submit written questions to the directors as to the companies' operations and financial status. All such conversations and interactions shall be strictly monitored by and conducted in the presence of the companies' legal counsel.

- A knowing and willful violation of the terms of the agreement by Semnani, Judd, or the companies' directors may be asserted by DOE as independent grounds for the parties suspension and debarment from government contracting.

- The agreement will be effective for at least eighteen months after May 14, 1997 and, except as otherwise provided, shall be in lieu of any suspension or debarment proceedings or other exclusionary actions that may be taken for any reasons arising out of the facts alleged in *Anderson v. Semnani*. In the event that the criminal investigation being conducted by the U.S. Attorney, and any subsequent proceedings, have not concluded within eighteen months, the agreement will be extended through the conclusion of such proceedings—though not for longer than three years from its effective date. In the event Semnani is convicted of a crime that is a cause for debarment, the agreement will be extended through the end of the maximum three-year period of debarment and DOE may initiate debarment proceedings against Semnani personally, subject to credit for the period of his exclusion from the companies provided for in the agreement.

- The agreement does not prohibit DOE from initiating suspension or debarment proceedings against the companies, the companies' directors, or individuals employed by the companies other than Semnani, based on their direct involvement in matters alleged in *Anderson v. Semnani.*

- The agreement does not restrict DOE's right to initiate suspension or debarment proceedings against the companies, their directors, Semnani, or other individuals employed by the companies based on any matter other than the facts alleged in *Anderson v. Semnani.*

U.S. Nuclear Regulatory Commission

NRC Issues Performance Assessment Guidance

On May 29, NRC announced the availability of the performance assessment guidance—*Draft Branch Technical Position on a Performance Assessment Methodology for Low-Level Radioactive Waste Disposal Facilities*—in the Federal Register. The performance assessment guidance provides an approach considered by NRC staff to be acceptable for performing a technical analysis that can be used to demonstrate compliance with the performance objectives contained in 10 CFR Part 61—*Licensing Requirements for Land Disposal of Radioactive Waste*. NRC is accepting comments on the draft guidance until August 27, 1997.

Key Technical Issues

The draft guidance addresses the NRC's preferred approaches for five key regulatory areas:

- consideration of future site conditions, processes, and events;
- performance of engineered barriers;
- time frame for compliance for a low-level radioactive waste disposal facility;
- treatment of sensitivity and uncertainty analyses; and
- the role of performance assessment during the operational and closure periods.

The draft guidance is consistent with the NRC staff discussion paper—*Regulatory Issues in Low-Level Radioactive Waste Performance Assessment*—that was released on August 7, 1996. For a detailed description of the NRC staff's preferred approaches to the first four key technical issues, see *LLW Notes*, Aug./Sept. 1996, pp. 34-35.

The fifth key technical issue identified in the draft guidance—the role of performance assessment during the operational and closure periods of low-level radioactive waste disposal facilities—was not identified as a key issue in the August 1996 staff discussion paper. The draft guidance states:

> As noted ... 10 CFR 61.28(a) requires that the final revision to site closure plans should contain any additional geologic, hydrologic, or other disposal site data obtained during the operational period pertinent to the long-term containment of waste, and the results of tests, experiments, or analyses pertaining to long-term containment of waste. Site closure will be authorized if the final site closure plan provides reasonable assurance of the long-term safety of the facility. One way to address the site closure requirements is to update the performance assessment with new information that may bring into question the parameters or model assumptions of earlier assessments. For instance, the as-built permeability of concrete or the performance of engineered covers may be tested to ensure that the performance assessment assumptions remain conservative relative to an as-built facility.

—LAS

Draft Guidance Relies on Iterative Approach

The draft guidance states:

> The goal of the performance assessment process is to defensibly and transparently address uncertainty when analyzing future LLW disposal site performance. In developing an effective performance assessment process, several attributes and objectives are considered essential. *The central attribute of the process is that it is to be conducted* ***iteratively****—starting with a combination of generic and limited site-specific information in support of relatively simple conservative models and analyses, and progressing to more site-specific and detailed analyses,* ***as necessary****, to reduce uncertainty in assessing performance of a LLW disposal facility.* (emphasis original)

Most of the preceeding information was distributed to Forum Participants and Alternate Forum Participants, Federal Liaisons and Alternates, via facsimile transmission in a News Flash on June 5, 1997.

NRC to Publish Final Decommissioning Rule

On May 21, the NRC Commissioners approved a final decommissioning rule, which will revise 10 CFR Part 20 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.

The NRC Commissioners also issued a memo to direct staff to publish the final decommissioning rule in the *Federal Register.*

Specific Issues in Rulemaking

The following excerpts from the NRC Commissioners' memo to staff address a number of specific issues associated with the decommissioning rulemaking.

Dose Criteria for Release of a Site to Unrestricted Use

> "The Commission adopted a 25 mrem/year all-pathways dose limit coupled with a requirement to reduce radiological doses resulting from residual radioactivity to levels that are as low as reasonably achievable [ALARA]. The Commission believes that these criteria are consistent with the recommendations of national and international bodies tasked with the development of guidance for radiation protection; are appropriately based on risk, cost-benefit, and socio-economic standards; provide the needed flexibility to accommodate site-specific conditions; and are sufficiently conservative to ensure adequate protection of public health and safety and the environment."

Separate Standard for Protection of Ground Water

> "The Commission did not adopt a separate groundwater protection standard as proposed by [EPA] because the Commission believes that a separate single pathway standard for groundwater would not provide any significant enhancement of public health and safety and is unnecessary since the NRC final rule's all-pathways standard of 25 mrem/year plus ALARA should ensure adequate protection of public health and safety. Imposition of separate groundwater standards could also have the adverse effect of delaying cleanup and increasing public risk. Moreover, the Commission was not convinced that EPA's separate groundwater maximum contaminant levels were appropriately derived or soundly based from a technical standpoint ..."
>
> "A note should be made in the analysis of comments [in the Federal Register notice containing the final rule] that EPA's MCLs [maximum contaminant levels for protection of ground water] are based upon outmoded modeling that does not reflect current understandings of the uptake and doses resulting from ingestion of radionuclides through drinking water."

Alternate Criteria for License Termination

Alternate criteria for license termination would allow a limited number of contaminated sites to be released at radiation dose limits above 25 mrem/year if the licensee

- provides assurance that public health and safety would continue to be protected;
- demonstrates that it is unlikely that the radiation dose from all potential human-made sources combined would be more than 100 mrem/year—the dose limit contained in EPA's draft *Federal Radiation Protection Guidance for Exposure of the General Public* (see *LLW Notes*, Jan./Feb. 1995, p. 24);
- places restrictions on site use to the extent practical; and
- reduces the radiation dose to levels that are as low as reasonably achievable.

continued on page 28

The Commissioners' memo offers the following rationale for the alternate criteria:

> "The Commission adopted the NRC staff's recommendation to use alternate criteria for license termination for certain difficult sites since codifying such an approach in the text of the rule is expected to greatly reduce the likelihood that licensees will seek exemptions from the requirements of the regulation. Nevertheless, the Commission also approved a revision ... to require the NRC staff to obtain Commission approval for each application of the alternative criteria, to solicit comment from EPA during the public comment period required under ... the final rule, and to ensure a more substantive level of public participation. The Commission expects the use of such criteria to be relatively rare."

Public Participation

> "The Commission, in the absence of a provision that requires a Site Specific Advisory Board, which had been included in the proposed rule but not in the final rule, agreed to modify the final rule to require licensees proposing to decommission by restricting use of a site, or though the use of alternate criteria, to provide for participation by a broad cross section of community interests, an opportunity for a comprehensive discussion on the issues by participants, and to make public a summary of the results of such discussions."

Agreement State Compatibility Level

> "The Commission adopted Compatibility Level 2 [see related box], as proposed by NRC staff. This will afford the Agreement States flexibility to account for local needs and conditions."

Background: EPA's Maximum Contaminant Levels

The Safe Drinking Water Act contains the following requirements for EPA:

> "The [EPA] Administrator shall ... publish a maximum contaminant level goal and promulgate a national primary drinking water regulation for a contaminant ... if the Administrator determines that—
>
> (i) the contaminant may have an adverse effect on the health of persons;
>
> (ii) the contaminant is known to occur or there is a substantial likelihood that the contaminant will occur in public water systems with a frequency and at levels of public health concern; and
>
> (iii) in the sole judgment of the Administrator, regulation of such contaminant presents a meaningful opportunity for health risk reduction for persons served by public water systems."

Congress directed EPA to establish maximum contaminant level goals for each contaminant—including radionuclides—and then promulgate maximum contaminant levels—the regulatory standard for compliance—for each contaminant.

The Safe Drinking Water Act provides the following guidance to EPA:

Maximum Contaminant Level Goals

> "Each maximum contaminant level goal established under this subsection shall be set at the level at which no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin of safety."

Maximum Contaminant Levels

> "... each national primary drinking water regulation for a contaminant for which a maximum contaminant level goal is established under this subsection shall specify a maximum contaminant level for such contaminant which is as close to the maximum contaminant level goal as is feasible."

For further information regarding EPA's standards for protection of ground water and the regulation of radionuclides, see the following issues of the LLW Notes: Feb. 1997, p. 26; Nov./Dec. 1994, p. 33; Aug./Sept. 1994, p. 23; and May/June 1994, pp. 26-27.

EPA-NRC Interaction re Decommissioning Rule

EPA and NRC have recently exchanged correspondence reflecting disagreement between the two agencies on specific aspects of the decommissioning rulemaking. (See *LLW Notes*, April 1997, pp. 34-35.) NRC's press release announcing the NRC Commissioners' approval of the final decommissioning rule describes a meeting between NRC Chairman Shirley Ann Jackson and EPA Deputy Administrator Fred Hansen:

> "[On May 20] Shirley Ann Jackson, Chairman of the NRC, met with Fred Hansen, Deputy Administrator of the Environmental Protection Agency (EPA), to discuss the proposed final rule. At that meeting, she discussed the features of the rule, and NRC's position on the adequacy of the 25-millirems-per-year all pathways standard, the concept of "as low as is reasonably achievable" (ALARA) included in the NRC's rule, and the NRC's position that, in light of the all pathways standard and ALARA, there is no need for a separate groundwater standard. Hansen expressed EPA's interest in continuing discussions with NRC regarding timely notice to EPA of proposed NRC license termination in some specific categories of cases. The Commission has agreed to continue a dialogue with EPA following finalization of the rule."

According to EPA staff, EPA is reviewing the final decommissioning rule and will comment upon it as appropriate.

—*LAS*

Much of the preceeding information was distributed to Forum Participants and Alternate Forum Participants, Federal Liaisons and Alternates, via facsimile transmission in a News Flash on June 2, 1997.

What is Compatibility Level 2?

The Atomic Energy Act authorized NRC to enter into agreements with states (NRC "Agreement States") in order to discontinue NRC regulation of specified nuclear materials in favor of the states regulating those materials. Before entering into such an agreement with a state, NRC must make a determination that the state's radiation control program is adequate and compatible with NRC's program. Under current NRC guidelines, individual state radiation control provisions must conform to four categories of compatibility with NRC provisions. The compatibility requirements for individual state radiation control provisions range from essentially verbatim adoption of NRC regulations—Compatibility Level 1—to non-adoption of NRC regulations—Compatibility Level 4.

Compatibility Level 2 declares:

> "There are other provisions in NRC regulations that address basic principles of radiation safety and regulatory functions. Such principles include generally applicable safety requirements such as personnel monitoring and ALARA, and procedural requirements ... While States must address such principles in their regulations, the States may adopt requirements more restrictive than NRC rules. The use of language identical to that in NRC rules is not necessary provided the underlying principles are the same ..."

NRC is in the process of finalizing new compatibility categories for the Agreement State program. The compatibility levels described here are official NRC policy until the new categories are implemented.

House Subcommittee Passes Texas Compact Consent Act

On Tuesday, May 13, the Subcommittee on Energy and Power of the House Commerce Committee approved by voice vote, without objection, H.R. 629—the Texas Low-Level Radioactive Waste Disposal Compact Consent Act. This action immediately followed a hearing during which testimony was presented by members of Congress, as well as by proponents and opponents of the legislation.

Individuals Presenting Testimony on H.R. 629 on May 13, 1997

In Favor

Representative Joe Barton (R-TX, District 6)

Representative Gene Green (D-TX, District 29)

Roy Coffee, Director, Office of State-Federal Relations, State of Texas

Steve Ward, Public Advocate, State of Maine

Charles Williams, Associate Professor of Biochemistry and Anesthesiology, University of Texas Tech–El Paso

Opposed

Representative Henry Bonilla (R-TX, District 23)

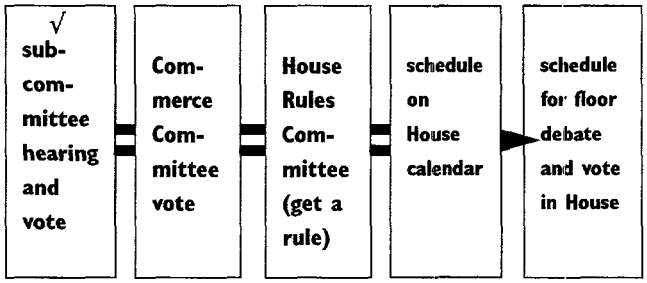
Representative Silvestre Reyes (D-TX, District 16)

Bill Addington, Save Sierra Blanca

Teresa Todd, Presidio County Attorney,

Next Steps

The legislation is expected to be considered by the full committee in June 1997. If approved, it will be sent to the House Rules Committee to be granted a rule governing floor debate and then be placed on the House calendar. Once the bill is placed on the calendar, it will be scheduled for floor 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/MAS

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 May 14, 1997.

Environmental Justice Bill Introduced in the House

On April 30, Representative Nydia Velazquez (D-NY) introduced the Community Environmental Equity Act in the U.S. House of Representatives "to prohibit discrimination regarding exposure to hazardous substances." The bill, H.R. 1506, has 43 cosponsors and has been referred to the Commerce Committee's Subcommittee on Health and the Environment. To date, companion legislation has not been introduced in the U.S. Senate.

Requirements

The bill prohibits any covered entity from disproportionately exposing any person or community to any substance covered in the legislation on the grounds of race, color, or national origin. In this regard, covered entities must consult and work in partnership with state and local government officials and the federal government.

In addition, the bill requires covered entities to "address the actual or potential disproportionate exposure to covered substances of individuals or communities, on the grounds of race, color, or national origin, when pursuing state and local administrative proceedings for the authorized handling, management, treatment, release, discharge, disposal, storage, transport, removal, movement, or delivery of covered substances."

Definitions

Covered Entity A covered entity is defined in the bill as "any entity which handles, manages, treats, releases, discharges, disposes, stores, transports, removes, moves, or delivers covered substances."

Covered Substance The bill defines a covered substance as any of the following:

- any contaminant identified under the Safe Drinking Water Act;
- any substance described in specified sections of the Federal Food, Drug, and Cosmetic Act and any material registered pursuant to the act;
- any chemical listed by the National Toxicology Program of the Department of Health and Human Services as a known or probable human carcinogen;
- any substance defined in specified sections of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and any chemical subject to specified sections of the Emergency Planning and Community Right-To-Know Act of 1986;
- any material subject to requirements concerning material safety data sheets for chemicals under the Occupational and Safety Health Act of 1970;
- any chemical substance or mixture regulated under the Toxic Substance Control Act;
- any hazardous waste identified under the Solid Waste Disposal Act; or
- such other contaminants, chemicals, materials, wastes, and substances as the President, acting through the head of the appropriate agency, determines to be appropriate.

Regulations

Issuance and Enforcement The President must require appropriate federal officials to issue regulations to implement the Community Environmental Equity Act consistent with terms of the Civil Rights Act of 1964. Compliance with such regulations may be effected

- by termination of or refusal to grant authorization to any covered entity to handle, manage, treat, release, discharge, dispose, store, transport, remove, move, or deliver covered substances, or
- by any other means authorized by law.

Compliance may also be effected because of specified terms of the Civil Rights Act of 1964 for any covered entity that is a recipient of federal financial assistance.

Timing The bill requires that all proposed regulations be issued within 180 days of its enactment and that all final regulations be issued within 18 months from then, taking effect within one year after such date. It also requires, within two years of the date on which final regulations are issued, that the Federal Interagency Environmental Justice Working Group submit a report to Congress on activities carried out to conform with the Community Environmental Equity Act.

—TDL

International Nuclear Safety Body Established

In late May, during a two-day meeting in Paris, the International Nuclear Regulators Association (INRA) was established "to influence and enhance nuclear safety, from the regulatory perspective, among its members as well as worldwide." The association, which plans to meet at least annually, has eight founding members: Canada, France, Germany, Japan, Spain, Sweden, the United Kingdom, and the United States. Shirley Ann Jackson, Chairman of the U.S. Nuclear Regulatory Commission, was elected to serve a two-year term as the INRA's first Chairman.

At the Paris meeting, senior regulators from the attending countries determined how the association will be organized, who will be its initial members, and how it will develop working relationships with other national and international nuclear safety and regulatory bodies. This information was documented in "Terms of Reference for the International Nuclear Regulators Association," which was signed by representatives from attending countries.

Objectives

The INRA's terms of reference identify the following objectives of the association:

- To establish a forum for the most senior nuclear regulatory officials to exchange views on broad regulatory policy issues (technical, legal, economic, administrative).
- To build a global nuclear safety culture.
- To encourage the most efficient use of resources in areas of common interest.
- To work to enhance the stature of nuclear regulatory organizations worldwide.
- To seek consensus on how nuclear regulatory issues can be approached and implemented; to facilitate international cooperation in regulation.
- To work to advance nuclear safety through cooperation among its members, cooperation with relevant existing intergovernmental organizations (e.g., IAEA, OECD/NEA), with other national nuclear regulatory organizations, and other groups and organizations, as appropriate.
- To identify emerging nuclear regulatory challenges.

Activities

The INRA's terms of reference assign to the association the following tasks:

1. Promote the exchange of information and experience among members.
2. Review and assess on a continuing basis the effectiveness of the Association's activities.
3. Make recommendations to other responsible bodies, both national and international, concerning issues of nuclear regulatory significance; support international cooperative activities and other nuclear safety initiatives; participate in relevant activities of other bodies concerned with nuclear safety, as appropriate; and review the nuclear safety programs of existing international bodies.
4. Consider, at an early date, the value of convening meetings comprising the most senior officials of a broad range of national nuclear regulatory organizations, relevant existing intergovernmental organizations, and other groups and organizations, as a useful means of advancing the Association's stated objectives.

In addition to establishing the INRA's terms of reference, attendees at the Paris meeting focused on two broad topics: (1) national trends in electric generation and their effect on nuclear safety and (2) an assessment of the effectiveness of nuclear regulatory and safety assistance.

—TDL

New Materials and Publications

Document Distribution Key	
P Forum Participants	N LLW Notes Recipients
A Alternate Forum Participants	
E Forum Federal Liaisons	M LLW Forum Meeting Report Recipients
L Forum Federal Alternates	
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V Forum Press Monitors	
D LLW Forum Document Recipients	

States and Compacts

Appalachian Compact/ Pennsylvania

D "Community Empowerment: Partnering for Pennsylvania's Future." Brochure. Department of Environmental Protection, Bureau of Radiation Protection, Low-Level Waste Regulatory Program. May 1997.

Northwest Compact/Washington

D *Envirocare Re-licensing Process: Briefing for the Northwest Interstate Compact on Low-Level Radioactive Waste Management.* Utah Division of Radiation Control. May 19, 1997. (Distributed at the LLW Forum meeting, May 1997.)

Northeast Compact/ Connecticut/New Jersey

1996 Annual Report. New Jersey Low-Level Radioactive Waste Disposal Facility Siting Board. March 1997. Includes information on past and planned activities of the siting board, as well as a financial summary for FY 1996. To obtain a copy, contact John Weingart of the LLRW Disposal Facility Siting Board at (609)777-4247.

Is There Still Orphan Commercial Mixed Waste? Report on a Survey of Commercial Mixed Waste Generators. Connecticut Hazardous Waste Management Service (CHWMS). April 1997. Summarizes data received from state members of the LLW Forum Regulatory Issues Discussion Group. This data provides information on orphan commercial mixed waste streams. To obtain a copy, contact Ronald Gingerich of CHWMS at (860)244-2007. (Distributed at the LLW Forum meeting, May 1997.)

Unaffiliated States

New York

West Valley Update, seventh edition, September 1996. New York State Energy Research and Development Authority (NYSERDA). To obtain a copy of this issue, previous, or subsequent editions, contact Jack Spath of NYSERDA at (518)862-1090 ext. 3302. (Distributed at the LLW Forum meeting, May 1997.)

Federal Agencies

Department of Defense (DOD)

DOD Tritium Waste Generations–1996. List, by state, of DOD installations, including amount of tritium generated by each installation and which branch of the DOD operates the installation. For further information, contact Steve Mapley of the U.S. Department of the Army at (309)782-2933. (Distributed at the LLW Forum meeting, May 1997.)

Department of Energy (DOE)

DOE, Low-Level Waste, and Privatization-What Can We Learn? Hard copies of slides presented by Martin Letourneau, Environmental Protection Specialist, Office of Program Integration, Office of Waste Management, DOE, at the LLW Forum meeting in Chicago, IL, May 1997.

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DOE (continued)

A Comparison and Cross-Reference of Commercial Low-Level Radioactive Waste Acceptance Criteria (DOE/LLW-239). National Low-Level Waste Management Program, DOE, Idaho National Engineering and Environmental Laboratory (INEEL). April 1997. Discusses waste acceptance criteria for commercial low-level radioactive waste disposal facilities. Includes criteria developed by compacts, states, and facility operators through agreements, regulations and license agreements. To obtain a copy, contact Donna Lake of INEEL at (208)526-6927.

Final Waste Management Programmatic Environmental Impact Statement (DOE/EIS-0200-F). Office of Environmental Management, DOE. May 1997. Study evaluating the management and siting alternatives for treatment, storage, and disposal of DOE's radioactive and hazardous waste.

Department of the Interior (DOI)

Tritium, Deuterium and Oxygen-18 in Water Collected from Unsaturated Sediments Near a Low-Level Radioactive-Waste Burial Site South of Beatty, Nevada (WRIR 97-4062). U.S. Geological Survey. 1997. To obtain a copy, contact the USGS at (303)202-4210. Copies cost $4.25 plus $3.50 per order for shipping and handling.

Environmental Protection Agency (EPA)

Statement on the NRC's Rule on Radiological Criteria for License Termination. April 21, 1997. Ramona Trovato, Director, Office of Radiation and Indoor Air, EPA. The statement presents EPA's concerns with the NRC draft rule. (Distributed at the LLW Forum meeting, May 1997.)

Nuclear Regulatory Commission (NRC)

Final Initial Decision –Louisiana Energy Services. (Docket No. 70-3070-ML), Atomic Safety and Licensing Board, NRC. May 1, 1997. This decision addresses the environmental justice contention filed in the NRC license applied for by Louisiana Energy Services. (Distributed at the LLW Forum meeting, May 1997.)

NRC Implementation of Environmental Justice. Hard copies of slides presented by Bill Reamer, Senior Supervisory Attorney, Office of General Counsel, NRC, at the LLW Forum meeting in Chicago, IL, May 1997.

Other

Letter dated May 6 from Jack Harrison, Vice President of Marketing and Sales, Chem-Nuclear Systems, to shippers of waste to the Barnwell facility, offering financial incentives for shipments sent to the facility by June 30, 1997. (Distributed at the LLW Forum meeting, May 1997.)

Application of Plasma Arc Technology to the Treatment of Radioactive and Hazardous Waste Streams. Hard copies of slides presented by Jeff Ruffner, Vice President, Technology Commercialization, MSE Technology Applications, Inc., at the LLW Forum meeting in Chicago, IL, May 1997.

Stable and Useful Ceramic Waste Forms. Argonne National Laboratory Energy Technology Division. A one page summary that discusses the ceramic bonding process for nuclear and hazardous wastes. For further information, or to obtain a copy of this summary, contact Paul Eichamer of Argonne National Laboratory at (630)252-9771. (Distributed at the LLW Forum meeting, May 1997.)

Destruction of Organics and Removal of LLRW from Soils. Hard copies of slides presented by Gerry Getman, Vice President, Research and Development, Commodore Applied Technologies, at the LLW Forum meeting in Chicago, IL, May 9, 1997.

Draft IAEA Convention on the Safety of Radioactive Waste Management. Hard copies of slides presented by Bill Reamer, Senior Supervisory Attorney, Office of General Counsel, NRC, at the LLW Forum meeting in Chicago, IL, May 1997. (Distributed at the LLW Forum meeting, May 1997.)

Privatization: Financing for the Future. April 1997. Hard copies of slides prepared for Alvin Alm, Assistant Secretary for Environmental Management, DOE, presented by Jeff Snook, Idaho Operations Office, DOE, at the LLW Forum meeting in Chicago, IL, May 1997.

—RTG

to obtain federal government information

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- DOE Press Office ..... **(202)586-5806**
- DOE Public Information Office, Secondary Distribution Center ..... **(202)586-9642**
- EPA Public Information Center ..... **(202)260-7751**
- GAO Document Room ..... **(202)512-6000**
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- NRC Public Document Room ..... **(202)634-3273**
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  ..... general information— VOICE (202)512-1530 or INTERNET **help@eids05.eids.gpo.gov**

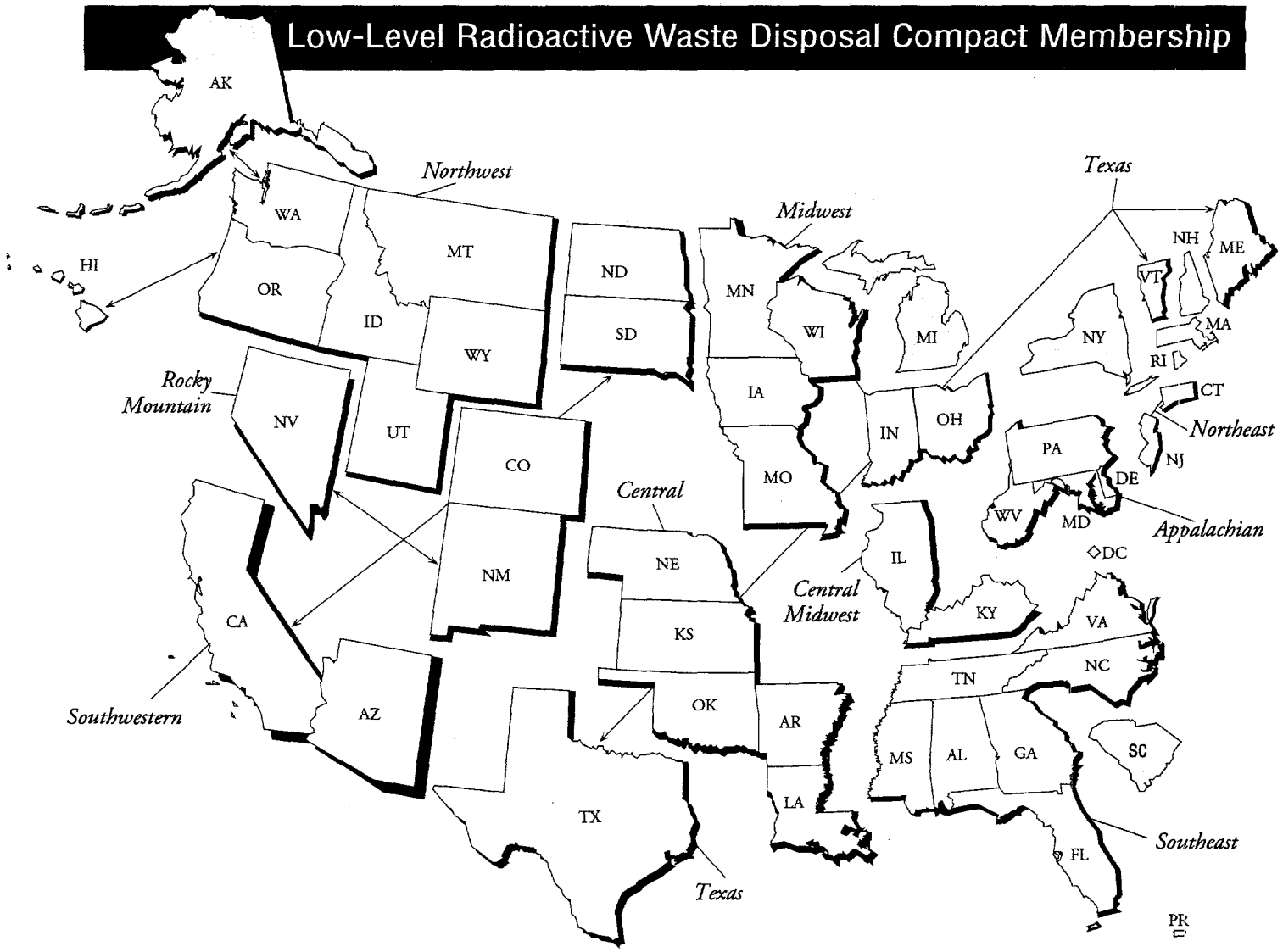
Receiving *LLW Notes* by Mail

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.

Graphic by Afton Associates, Inc. for the LLW Forum. March 1996.