LLW
FORUM

LLW Notes

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South Carolina

South Carolina Governor Signs Budget with Barnwell Proviso

On June 29, South Carolina Governor David Beasley (R) signed an appropriations bill for FY 1995-96 that contains a proviso relevant to the low-level radioactive waste disposal facility at Barnwell, South Carolina. The fiscal year began July 1.

For information on the legislature's adoption of the Barnwell proviso, see *LLW Notes*, June 1995, pp. 1, 13.

Proviso's Operative Language

Among other things, the proviso

- withdraws the state from the Southeast Compact by repealing the compact legislation (chapter 47, title 48 of the 1976 Code);
- authorizes the Governor to appoint a committee to negotiate to establish a new compact with other states "that have demonstrated a commitment to the compacting process and that have made substantial progress in implementing that process";
- authorizes the new compact commission, subject to approval by the South Carolina compact representatives, to negotiate contracts with other states and with individual generators directly;
- imposes a \$235 per cubic foot tax on low-level radioactive waste disposed of in the state; and
- prohibits disposal in South Carolina of low-level radioactive waste from North Carolina.

The proviso specifies that the majority of the fees will be allocated to the South Carolina Educational Assistance Endowment Fund.

Access to Barnwell

Since July 1, access to the Barnwell disposal facility has been available to generators from all states except North Carolina. In order to use the facility, the waste generator or broker/processor managing the waste must have a contract with Chem-Nuclear Systems, Inc.—the facility operator—and the shipper must have a transport permit issued by the South Carolina Department of Health and Environmental Control.

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MASTER

LLW Forum

LLW Notes

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Key to Abbreviations

Code of Federal Regulations	CFR
U.S. Environmental Protection Agency	EPA
U.S. Department of Energy	DOE
U.S. Department of Transportation	DOT
U.S. General Accounting Office	GAO
U.S. Nuclear Regulatory Commission	NRC

States and Compacts *continued*

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Disposal Fees Chem-Nuclear has revised its disposal fee schedule for the period of July 1, 1995, through June 30, 1996. The base disposal charge for standard waste and special nuclear material is now replaced with a graduated fee of \$59–75 per cubic foot, allowing for volume discounts. The base disposal fee for biological waste is a flat \$77 per cubic foot. These base fees include a charge of \$2.80 for extended care of the facility.

All waste is subject to the \$235 per cubic foot tax assessed by the State of South Carolina, as well as to a charge of \$4.20 per cubic foot for the site stabilization and closure fund.

Additional surcharges apply for containers weighing over 1,000 pounds, for shielded shipments, for nonshielded shipments containing tritium and carbon 14, and for class B/C waste. Effective January 1, 1996, surcharges will also apply to class A waste.

Transport Permit Fees As of July 1, the fees for transport permits increased to approximately double the previous levels, with a maximum fee of \$1500.

Waste Shipments According to an official from the South Carolina Department of Health and Environmental Control, the facility has already received shipments of waste generated by utilities in the following states:

- Connecticut,
- Maryland,
- Massachusetts
- Michigan,
- Minnesota,
- Mississippi,
- Nebraska,
- New Jersey,
- New York, and
- Pennsylvania.

Many of these shipments were sent directly from the Scientific Ecology Group (SEG) facility in Tennessee, where the waste had been held after treatment.

Potential Legal Challenge Governor Jim Hunt (D) of North Carolina has indicated that the ban on waste from his state may be challenged in court:

South Carolina's move to bar us from the Barnwell facility is clearly unconstitutional. The courts have consistently ruled that the commerce clause prohibits states from closing their borders and blocking shipments to private waste facilities. We are prepared to take this matter to court, and if we do I believe that we will prevail.

Capacity and Regulatory Issues

Capacity The disposal facility has capacity to accept another 7.4 million cubic feet of waste—sufficient to accommodate waste generated throughout the country for an estimated seven to 10 years without any expansion of the facility.

License Renewal Chem-Nuclear has applied for timely renewal of the facility license, and the South Carolina Department of Health and Environmental Control is expected to issue a decision on the renewal later this summer.

New Regulations Beginning in 1996, Chem-Nuclear will have to comply with new licensing requirements governing land disposal of radioactive waste in South Carolina. Among other things, the requirements provide that the facility "shall incorporate engineered barriers for all waste classifications."

Future Legislative Action

The South Carolina legislature is likely to address issues related to the Barnwell facility again after reconvening in January 1996, since details of how the access fees will be spent still need to be determined.

For further information, contact Virgil Autry of the South Carolina Department of Health and Environmental Control at (808)896-4244. See also "New Materials and Publications."

DOE Studying Disposal Costs at Barnwell

South Carolina Senator Phil Leventis (D-Sumter) announced on July 26 that DOE has agreed to study costs necessary to dispose of low-level radioactive waste in South Carolina. Leventis and twenty-one other South Carolina state legislators requested the study, which will be conducted by DOE's National Low-Level Waste Management Program at the Idaho National Engineering Laboratory (INEL).

Purpose

According to a July 26 letter from Leventis, the goal of the study is to determine "the charges that should be necessary to cover all costs for waste disposal at South Carolina's disposal facility under several different scenarios, not including state taxes and fees and profits for the company that operates the site. We hope this information will assist legislators and state officials in determining state policy related to costs and charges at a low-level radioactive waste disposal facility." Leventis noted in a press release—also dated July 26—that disposal fees at Barnwell are higher than those charged at the commercial low-level radioactive waste facility in Hanford, Washington, where the rates are regulated by the state. He suggested that South Carolina should consider rate regulation or competitive bidding for operation of the low-level radioactive waste disposal facility at the Barnwell site.

Leventis's press release called for an analysis of the cost basis for accepting waste from "most of the entire nation," versus from South Carolina generators only. "Is it really necessary," he asked, "to take waste from New York and Michigan in order to insure that our own nuclear waste generators have access to a disposal site?"

Methodology

With the assistance of Rogers & Associates of Salt Lake City, INEL staff will examine the costs of disposal of low-level radioactive waste in South Carolina:

- for South Carolina generators only,
- for Southeast Compact generators only, and
- for the entire country.

Schedule

According to Leventis's letter, the current schedule for the study is as follows:

- "9/1/95 Delivery of a draft generic report itemizing costs necessary for disposal of low-level radioactive waste in South Carolina. The report will consist primarily of a spreadsheet detailing cost elements.
- 9/21-22 A two-day workshop in Columbia SC, to review the draft generic report
- October A draft specific report itemizing disposal costs
- November A one-day workshop in Columbia, SC, to review the draft specific report

December Issuance of the Final Report"

For further information, contact Paul Smith of INEL at (208)526-6083.

Disposal Charges at Hanford

As of July 1, a base rate of \$37.61 is charged for disposal of radioactive waste at the commercial facility at Hanford, Washington. Various surcharges may apply, based on exposure and curies. Reduced rates apply for certain decommissioning waste and for waste shipments qualifying as an "extraordinary volume."

In addition to the base rate and any surcharges, the following taxes and fee riders apply:

Perpetual Care and Maintenance Fee	\$1.75 per cubic foot
Business and Occupation Tax	3.45 % of rates and charges
Site Surveillance Fee	\$2.55 per cubic foot
Surcharge (benefits the host county and the Hanford economic area)	\$6.50 per cubic foot
Commission Regulatory Fee	1 % of rates & surcharges

Midwest Compact/Ohio

Ohio Enabling Legislation Becomes Law

On June 9, Ohio Governor George Voinovich signed into law a 137-page legislative package including Midwest Compact amendments, language establishing a siting process and siting criteria for a regional disposal facility, and authorization for Ohio to seek Agreement State status from NRC. The law, which was approved by the Ohio General Assembly on June 8, takes effect 90 days after the Governor's signature.

Background The legislation was passed by the Ohio Senate on March 8, 1995. (See *LLW Notes*, March 1995, page 1.) The Ohio House amended the legislation and passed it on June 8 by a vote of 55 to 43. On the same day, the Senate concurred on the revised legislation in a vote of 19 to 14.

Governor Voinovich, when signing the bill, said: "This legislation represents the most responsible action Ohio can take to assure that low-level radioactive waste will be properly disposed of in our state. I sincerely believe that having a single site that is properly managed and maintained will provide the best protection for our citizens."

Northwest Compact/Washington

Washington Revises NARM Regulations

Effective July 22, the State of Washington amended its regulations governing disposal of naturally-occurring and accelerator-produced radioactive materials (NARM) at the commercial low-level radioactive waste disposal facility in Hanford.

Most NARM disposal is now limited to 8,600 cubic feet per year. NARM disposal access is available to generators throughout the United States on a first-come, first-served basis, with an annual cap of 1,000 cubic feet per generator. Exempted from these limits are discrete sealed sources and accelerator-produced material, excluding decommissioning waste. Exemptions may also be provided in emergency situations, by petition to the Secretary of the Washington Department of Health.

Prior to the amendments, the Department of Health had discretionary authority to approve large-volume shipments of diffuse naturally-occurring radioactive materials (NORM). A change to more restrictive criteria was proposed by the department in 1993, in response to a steep increase in requests for NORM disposal. (See *LLW Notes*, Winter 1993, p. 10.)

For further information, contact Mikel Elsen of the Washington Department of Health at (360) 753-1116.

Babbitt Responds to Ward Valley Query

In a July 25 letter, U.S. Interior Secretary Bruce Babbitt responded to issues raised by Representative Don Young (R-AK) in a June 20 letter to the Department of Interior and EPA regarding a risk assessment undertaken by EPA. The risk assessment was performed as part of the agency's Endangered Species Act consultation with the U.S. Fish and Wildlife Service and the Bureau of Land Management over the impact of the planned Ward Valley low-level radioactive waste disposal facility on the desert tortoise, a threatened species. (See *LLW Notes Supplement*, June 1995, p. 7.)

In his letter, Babbitt states:

Having received and considered the report I commissioned from the National Academy of Sciences, I intend to complete the steps necessary to allow final action with regard to the Ward Valley site in the near future. I am confident that the consultation pursuant to the Endangered Species Act will be carried out consistent with this course of action.

At press time, EPA was in the process of responding to Representative Young's letter.

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

Appalachian Compact/Pennsylvania

Pennsylvania Moves to Voluntary Siting

The Pennsylvania Department of Environmental Protection (DEP) announced on July 14 that it will seek a volunteer site for a low-level radioactive waste disposal facility. Preparation of plans for the new siting program are expected to take about six months, and the search itself is projected to take approximately three years. The estimated \$7 million cost of the program will be paid for through existing moneys collected by fees on utilities that generate low-level radioactive waste.

DEP and the facility developer hope to identify at least three volunteer sites, which will be required to meet the technical criteria previously established. Approximately 75 percent of the state has already been eliminated through a three-stage disqualification screening process, although potentially eligible areas remain in all counties. (See *LLW Notes*, July 1994, p. 7.)

Rationale

In a press release announcing the policy change, Environmental Protection Secretary James Seif explained that the recently restored access to the low-level radioactive waste disposal facility in Barnwell, South Carolina, was a factor in the state's decision to incorporate a volunteer element into the siting process:

With the reopening of the South Carolina site, we have a window of opportunity to try something radically different from the present, top-down site search. Seeking a volunteer community to host the disposal facility allows an opportunity for real public involvement in deciding what is acceptable risk, as well as greater potential for noncontentious siting.

Community Benefits

Seif noted that "state law spells out tax relief and other mandated benefits to the host community and the economic stimulus is estimated to bring over \$750 million in wages and services to the local economy over the 30-year life of the facility." These benefits include funding for emergency response training/planning and for the hiring of two full-time qualified inspectors to independently monitor activities and review records at the facility. Additional benefits may also be negotiated with the facility developer.

Next Steps

DEP has asked its Low-Level Radioactive Waste Advisory Committee for assistance in developing the plan. The department also plans to meet with elected officials, civic organizations, community leaders, business and environmental groups, and citizens across the state in order to seek input.

For further information, contact William Dornsife of DEP at (717)787-2480.

Pennsylvania LLRW Program Shifted to New Department

Two new departments in Pennsylvania are dividing the responsibilities of the former state Department of Environmental Resources (DER). On July 1, the Governor of Pennsylvania signed legislation replacing DER with a Department of Environmental Protection (DEP), which handles regulatory matters, and a Department of Environmental Conservation and Resources, which administers parks and forests. As part of the reorganization, the Bureau of Radiation Protection, which operates the state's low-level radioactive waste program, was transferred to the DEP. According to a state official, the move has not affected the program.

Audit by Pennsylvania General Assembly Finds “Reasonable Best Efforts” Made

On May 31, the Legislative Budget and Finance Committee, a joint committee of the Pennsylvania General Assembly, issued the results of a performance audit of Pennsylvania's siting program. The 172-page report, entitled *Status Report on Siting a Regional Low-Level Radioactive Waste Disposal Facility in Pennsylvania*, covers all aspects of Pennsylvania's siting program including the status of contract implementation and factors affecting costs and schedules, contract costs and sources of funding, and other low-level radioactive waste siting and development activities. The audit was conducted in response to a House resolution passed in March 1995.

Findings

Among other things, the committee made the following findings:

- “The process of siting an LLRW [low-level radioactive waste] disposal facility is taking much longer and costing substantially more than anyone originally projected.”
- “[P]ublic input and advisory committee recommendations, unanticipated increases in the amount of work required, and schedule delays beyond the control of either the DER [Department of Environmental Resources] or CNSI [Chem-Nuclear Systems, Inc.] have impacted project timetables and costs.”
- “What is occurring in Pennsylvania in siting an LLRW facility is very similar to other state experiences in terms of schedule delays, increasing costs, and controversy.”
- “Like other states, Pennsylvania appears to have both a practical need and a statutory obligation to proceed with the process.”

The committee also reported:

[W]e did not find evidence of noncompliance or material default of performance on the part of the contractor. We found no indication that the contractor did not exercise “due diligence” and believe that “reasonable best efforts” have been exercised to this point of the project ...

Recommendations

The committee recommended that

- the DER “formulate a plan for continued funding of the project” and “explore ways to bring the generators ... into the process”;
- “the Secretary of Environmental Resources should consider (a) an alternative to the current project management structure, ... and (b) the possible use of periodic, formal senior level LLRW project reviews”; and
- the DER Bureau of Radiation Protection “should survey Pennsylvania generators of LLRW to determine their interim storage capacities and procedures.”

DER Response

In a letter to the committee released at the time of the report, James Seif, Secretary of DER, noted that the department commented on the report and coordinated with committee staff on factual issues. He further stated that “[t]he report concisely and accurately assesses the problems and issues that had to be resolved during the course of this very difficult and controversial siting process” and added that DER will “carefully consider” the committee's recommendations.

For further information, see “New Materials and Publications.”

Other News

States and Compacts

- ☼ In June, US Ecology submitted to Nebraska regulators the last of eight revisions of its license application to construct and operate a low-level radioactive waste disposal facility in Boyd County, Nebraska.
- ☼ The Central Midwest Interstate Low-Level Radioactive Waste Commission is considering amending existing facility access agreements that it has concluded with the Northeast Interstate Low-Level Radioactive Waste Commission, the Rocky Mountain Low-Level Radioactive Waste Board, and the Southwestern Low-Level Radioactive Waste Commission to authorize generators in those regions to use two additional treatment facilities in the Central Midwest Compact region. The commission is also considering entering into similar agreements with other states and compacts.
- ☼ On July 26, the New York Low-Level Radioactive Waste Siting Commission met to approve the *Tentative Preferred Disposal Method Report*. The report reflects the Siting Commission's selection in May of covered above-grade concrete vaults as the "tentative preferred disposal method" for a facility in New York, with use of vertical shaft mines and drift mines identified as alternative methods. The Siting Commission also approved a final report that summarizes the commission's history, accomplishments, lessons learned, and recommendations for the future. No further meetings of the Siting Commission are contemplated at this time, due to budgetary constraints imposed by the reduction of the commission's budget to \$868,000 for FY 1996. (See *LLW Notes*, April/May 1995, p. 7.) For further information, contact Angelo Orazio of the Siting Commission at (516)621-2364.

☼ As a result of legislation approved in June by the Maine legislature, the Maine Advisory Commission on Radioactive Waste is now being staffed by the state Department of Human Services, instead of by the Department of Environmental Protection. Robert Demkowicz, who previously served as the Special Assistant to the Advisory Commission, remains at the Department of Environmental Protection working on other issues. Demkowicz attended LLW Forum meetings in the past and provided the design inspiration for Radbits.

State Organizations

- ☼ The Nation Conference of State Legislatures (NCSL) held an organizational meeting for its Low-Level Radioactive Waste Working Group on Sunday, July 16, in conjunction with the NCSL annual meeting in Milwaukee. Featured speakers were Gregg Larson of the Midwest Interstate Low-Level Radioactive Waste Compact Commission, Sandra Birk of DOE's National Low-Level Waste Management Program at the Idaho National Engineering Laboratory, Paul Genoa of Organizations United, and Allan Stalvey of Chem-Nuclear. Funding for the working group is provided by a DOE grant through the National Low-Level Waste Management Program.

U.S. Congress

- ☼ On June 30, Representative Todd Tiahrt (R-KS) introduced legislation to abolish the U.S. Department of Energy. The bill, H.R. 1993, was co-sponsored by 49 representatives. It has been referred to six different House committees, including Commerce, Government Reform and Oversight, National Security, Resources, Rules, and Science. As of press time, no action has been taken on the legislation.

Courts

Background: *Appalachian States Low-Level Radioactive Waste Commission v. O'Leary*
Midwest Interstate Low-Level Radioactive Waste Commission v. O'Leary
Massachusetts v. O'Leary

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

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

Commission that provided their generators with access to the low-level radioactive waste disposal facility at Barnwell, South Carolina, until June 30, 1994. Similar contracts were entered into by some other unaffiliated states and by other regional compact commissions, including the Central Midwest Interstate Low-Level Radioactive Waste Commission and the Appalachian States Low-Level Radioactive Waste Commission. As of June 4, 1993, DOE had not made a determination regarding eligibility for surcharge funds based on the 1993 milestone, and the Central Midwest Commission initiated legal proceedings. (See *LLW Notes*, June 1993, pp. 14-15.)

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

region from 1990-1992 and that were being held in the escrow account. (See *LLW Notes*, August/September 1994, p. 15.)

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

Then, on May 22, 1995, the U.S. District Court for the Middle District of Pennsylvania ruled that the Appalachian Commission's contract for 18 months' access to Barnwell satisfies the 1993 milestone and entitles the commission to full reimbursement of the escrowed funds for the entire 36-month period. Thereafter, on July 20, 1995, DOE filed a notice of appeal and discontinued payments of surcharge funds to generators in the Appalachian Compact region while the appeal is pending.

Appalachian States Low-Level Radioactive Waste Commission v. O'Leary

DOE Appeals Pennsylvania Court Decision re Distribution of Surcharge Funds; States and Compacts Seek Additional Disbursements

On July 20, the U.S. Department of Energy filed a notice of appeal to the United States Court of Appeals for the Third Circuit in an action concerning the distribution of surcharge funds that was initiated by the Appalachian States Low-Level Radioactive Waste Commission. As of press time, a briefing schedule had not been determined by the court.

Background

Court Cases The action, filed by the Appalachian Commission on June 30, 1994, seeks to compel Secretary of Energy Hazel O'Leary to disburse to the commission all of the surcharge funds which were collected from generators of low-level radioactive waste in the Appalachian region and which were or are being held in an escrow account by the Secretary in accordance with provisions of the Low-Level Radioactive Waste Policy Amendments Act of 1985. (See *LLW Notes*, August/September 1994, p. 15.) The U.S. District Court for the Middle District of Pennsylvania had ruled in favor of the Appalachian Commission on May 22, 1995. In so doing, the court ruled that the Appalachian Commission's contract of December 1, 1992, for 18 months' access to the Barnwell low-level radioactive waste disposal facility satisfies the Low-Level Radioactive Waste Policy Amendment Act's milestone for January 1, 1993, and entitles the commission to the full 36-month reimbursement. (See *LLW Notes*, June 1995, pp. 16-19.) The court declined to follow the ruling of the U.S. District Court for the Central District of Illinois in a previous lawsuit concerning the surcharge funds. In that case—*Central Midwest Interstate Low-Level Radioactive Waste Commission v. O'Leary*—the Illinois district court upheld DOE's decision to make payments only on a prorated basis to states and compacts for the 18-month period of the contract which they had entered into for access to Barnwell. (See *LLW Notes*, August/September 1994, pp. 14-15.)

Payments to Generators Following the district court's May 22 decision in *Appalachian Commission v. O'Leary*, DOE temporarily suspended distributions of surcharge rebates to all generators for one month. However, DOE resumed making distributions to generators in July 1995, with the exception of generators located in the Appalachian Compact region. Distribution to generators in the Appalachian Compact region was halted to preserve the status quo pending appeal.

Compacts/States Seek Payment of Additional Surcharge Funds

Requests Based on District Court's Decision On June 1, A. Eugene Crump—Executive Director of the Central Interstate Low-Level Radioactive Waste Commission—sent a letter to DOE requesting disbursement of the “second eighteen months of surcharge rebate funds withheld by DOE,” based upon the district court's decision in *Appalachian Commission v. O'Leary*. Crump wrote:

I am aware that the court decision may not be the final word on the issue of disposal access for the second eighteen months, however, I do not want to foreclose any possibilities of recovering surcharge rebate funds the Central Interstate Commission is entitled to for meeting the January 1, 1993 milestone.

Courts continued

A similar letter was sent to DOE by Charles Killian, Chair of the Massachusetts Low-Level Radioactive Waste Management Board, on June 16. The letter states that, based upon the district court's ruling in *Appalachian Commission v. O'Leary*, the Management Board renews its February 1993 and April 1994 requests for payment of all surcharge funds which were or are being held in escrow by DOE collected from Massachusetts generators from January 1, 1990, through December 31, 1992, plus interest. In addition, Carol Amick, Executive Director of the Management Board, wrote to DOE on May 26 and June 19 to request that the department "refrain from releasing any further surcharge rebate funds to generators [in the Commonwealth of Massachusetts], at least until final judgment is entered in the case of *Appalachian States Low-Level Radioactive Waste Commission v. O'Leary*." (See related story on litigation initiated by Massachusetts, this issue.)

Richard Ihrig, counsel for the Midwest Interstate Low-Level Radioactive Waste Commission, also sent correspondence to DOE concerning the surcharge funds on July 5. Ihrig's letter, like those from officials of the Central Compact and Massachusetts, referenced the district court's decision in *Appalachian Commission v. O'Leary*. Ihrig noted that the decision creates a possibility that other compacts and states will be entitled to additional surcharge payments. Accordingly he wrote, "The Midwest Commission would prefer that DOE not resume distributions [of surcharge rebate payments] to generators [in the Midwest Compact region] until the Third Circuit and, perhaps, other courts have addressed the issue."

Requests Based on Reopening of Barnwell In addition, Ihrig's letter states that the changed status of the Barnwell disposal facility precludes distributions to generators with respect to the period after July 1, 1995.

In anticipation of the changed status of Barnwell, the Midwest Commission, on June 13, 1995, adopted a resolution authorizing regional generators to export waste to Barnwell for disposal. By so doing, the Midwest Commission provided for the disposal of all low-level waste generated within its compact region. Consequently, even if it is ultimately determined the pre-January 1, 1993 contract with the Southeast Compact did not result in full compliance with the milestone, the Midwest Compact is now in compliance with the milestone, and, therefore, under section 5(d)(2)(C) of the 1985 Amendments Act is entitled to surcharge rebates with respect to the period July 1, 1995 to January 1, 1996. This conclusion is reinforced by the fact renewed access to Barnwell relieves generators of further storage costs, thereby eliminating one of the rationales for distributing rebates to them.

(See related story on litigation initiated by the Midwest Commission, this issue.)

Future Generator Payments

The U.S. Department of Energy has suspended the payment of surcharge rebates to generators located in the Appalachian Compact, Midwest Compact, and Massachusetts. DOE continues to make payments, however, to generators in all other states and compacts. The most recent generator payments were mailed out on August 1, 1995. (See related stories, this issue.)

Much of the preceding information was distributed to Forum Participants and Alternate Forum Participants, Federal Liaisons and Alternates, via facsimile transmission in a News Flash on July 26.

For background information, see box on page 9.

Midwest Interstate Low-Level Radioactive Waste Commission v. O'Leary
Massachusetts v. O'Leary

Midwest Compact and Massachusetts File Separate Lawsuits Seeking Additional Surcharge Fund Payments

On July 27, the Commonwealth of Massachusetts filed suit in the U.S. District Court for the District of Massachusetts against DOE Secretary Hazel O'Leary. The action seeks the payment of all surcharge funds collected from generators in Massachusetts during the period January 1, 1990, through December 31, 1992, plus interest—i.e., the remaining 18-month period of the 36-month period for the 1993 milestone. O'Leary has until September 27, 1995 to respond to the complaint.

The following day, on July 28, the Midwest Interstate Low-Level Radioactive Waste Commission filed a separate action against O'Leary. The action, which was filed in the U.S. District Court for the District of Minnesota, seeks to compel O'Leary to distribute to the Midwest Commission in a lump sum all remaining Midwest Compact region surcharge rebates held in escrow by the Secretary—i.e., funds payable with respect to the six-month period from July 1, 1995, through December 31, 1995. O'Leary must respond to the complaint by September 28, 1995.

Massachusetts v. O'Leary

The Issues

On December 1, 1992, Massachusetts entered into a contract with the Southeast Compact Commission for Low-Level Radioactive Waste Management which provided access for its generators to the Barnwell low-level radioactive waste disposal facility through June 30, 1994. By virtue of this 18-month contract, Massachusetts argues that it has "provide[d] for the disposal of all low-level radioactive waste generated within" the state as required under the Low-Level Radioactive Waste Policy Amendments Act's January 1, 1993 milestone and is therefore entitled to full payment of all escrowed surcharges collected from Massachusetts' generators. Accordingly, Massachusetts claims that DOE erred in applying a durational requirement to the Barnwell contract and in subsequently withholding one-half of the rebate payments.

In support of this claim, Massachusetts makes the following arguments:

- DOE violated the Spending Clause of the U.S. Constitution (Article I, sec. 8, cl. 1) by applying a durational requirement to the Barnwell contracts after the 1993 milestone had passed. Under the Spending Clause, the federal government is authorized to attach conditions to funds disbursed to the states if certain requirements are satisfied. One requirement is that there be a clear statement of such conditions to provide notice in a timely, adequate and proper fashion. Massachusetts argues that since neither the Low-Level Radioactive Waste Policy Amendments Act nor the September 1992 *Federal Register* notice included a durational requirement, it was unconstitutional for DOE to impose such a requirement via the 1994 *Federal Register* notice. Massachusetts points out that the 1994 notice was published after the deadline for state compliance with the 1993 milestone.

- DOE's refusal to pay Massachusetts all of the surcharge funds collected from its generators between January 1, 1990, and December 31, 1992, plus interest, is contrary to the plain meaning of the Low-Level Radioactive Waste Policy Amendments Act and in violation of the act's requirements.
- DOE's decision not to pay Massachusetts all of the surcharge funds, as provided in the March 1994 *Federal Register* notice, is a "final agency action" subject to judicial review under the Administrative Procedure Act. It should be reversed because it is based on errors of law; it is arbitrary, capricious, and an abuse of discretion; it is in excess of the statutory authority granted to DOE; and it is in excess of limits imposed by the U.S. Constitution regarding the retroactive imposition of conditions on funds to be disbursed to the states.

Relief Requested

Massachusetts is seeking both a temporary restraining order and a preliminary injunction to prevent DOE from making additional payments to generators in Massachusetts, or to any entity other than the Commonwealth, until a final decision is made by the court on the merits of the case. In addition, Massachusetts is seeking a declaratory order that DOE's decision to deny payment of one-half of the escrowed funds to Massachusetts is invalid under the Low-Level Radioactive Waste Policy Amendments Act and the U.S. Constitution and that all escrowed surcharges collected from Massachusetts generators during the period January 1, 1990, through December 31, 1992, plus interest, are payable, due, and owing to the Commonwealth. Following a hearing, Massachusetts requests that the court order DOE to pay such surcharges, plus interest, to the Massachusetts Low-Level Radioactive Waste Management Board.

Midwest Commission v. O'Leary

The Issues

Remaining Escrowed Funds The Midwest Commission points out that DOE's March 31, 1994 *Federal Register* notice (59 *Federal Register* 15,188) provides that states and compacts may become eligible for a prorated portion of the remaining escrowed funds if, at some time prior to January 1996, they come into compliance with the January 1, 1993 milestone in the Low-Level Radioactive Waste Policy Amendments Act. The commission argues that it is in compliance with the 1993 milestone as of July 1, 1995, and that it is therefore entitled to the remaining escrowed funds. The commission bases its claim of compliance on several recent events, including

- the State of South Carolina's decision, after having withdrawn from the Southeast Interstate Low-Level Radioactive Waste Management Compact, to 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); and
- a resolution, adopted by the Midwest Commission on June 13, 1995, authorizing regional generators to export low-level radioactive waste for disposal at the Barnwell facility.

Under the Midwest Compact, generators are prohibited from exporting low-level radioactive waste from the region unless authorization is granted by the Midwest Commission.

Full Compliance Although the commission's lawsuit only seeks payment of surcharge funds payable with respect to the period from July 1, 1995, through December 31, 1995, the commission specifically reserves the right to amend its complaint to seek additional moneys. Contrary to DOE's position in the March 1994 *Federal Register* notice, the Midwest Commission takes the position that its previous contract for 18 months of access to the Barnwell disposal facility resulted in full compliance with the 1993 milestone.

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Courts *continued*

Background

On July 5, 1995, counsel for the Midwest Commission sent a letter to DOE informing the department that the commission is in compliance with the 1993 milestone as a result of renewed access for Midwest Compact generators to the Barnwell disposal facility and of the commission's June 13 resolution. The letter requests that DOE suspend payments of surcharge rebates to generators in the Midwest Compact region. (See related story, this issue, pp. 10-11.)

On July 26, the Chair of the Midwest Commission sent a letter to DOE reiterating and amplifying the commission's position. The letter references a provision in DOE's March 31, 1994 *Federal Register* notice that states as follows:

Any state or compact that believes it is eligible for rebates after June 1994 should formally notify DOE in writing and provide the documentation described in section IV B of this notice. Upon formal notification, DOE will discontinue monthly or periodic payments to generators in those jurisdictions until an evaluation and determination is made of compliance with the remaining portion of the 1993 milestone by DOE.

On July 28, immediately prior to the filing of the Midwest Commission's lawsuit, commission officials were informed that—regardless of the commission's position—DOE intends to continue distributing surcharge rebates to generators in the Midwest Compact region.

Future Payments to Generators

Subsequent to the initiation of litigation by Massachusetts and the Midwest Compact, DOE decided to suspend surcharge rebate payments to generators in those regions. However, DOE will continue to make payments to generators in all other states and compacts—except for generators in the Appalachian Compact region, where the appeal by DOE of the Pennsylvania district court's decision is ongoing. According to a DOE official, checks representing surcharge payments for July 1995 were mailed out on August 1 to those generators receiving payments in monthly installments. The next generator payments are scheduled for early September.

The preceding information was distributed to Forum Participants and Alternate Forum Participants, Federal Liaisons and Alternates via facsimile in a News Flash on August 2.

For background information, see box on page 9.

Science Editorial Supports Development of Ward Valley Site

Science magazine recently published an editorial emphasizing the need for safe disposal of low-level radioactive waste. Phillip Abelson wrote the June 16, 1995 editorial, which focused on the situation in California. The following are excerpts:

By engaging in endless litigation and raising groundless fears, activists may succeed in drastically limiting U.S. availability of low-level radioactive substances. If so, the use of life-saving isotopes in medicine would be curtailed. Medical laboratory procedures involving 100 million tests per year would be adversely affected. Efforts to determine the safety of new pharmaceuticals would be hindered. The use of low-level radioactive substances in biotechnology research and development and in many aspects of science and industry would be inhibited ...

As of June 1995, most states have neither local facilities nor access to facilities elsewhere. California is an example. It has no major facility, though great efforts have been made to select and obtain a suitable site and to design a safe repository. Politics and litigation have thwarted 10 years of effort. As a result, LLRW [low-level radioactive waste] is piling up at 800 urban locations. With such a large number of sites, the danger of accidents is multiplied ...

The risks stemming from one carefully monitored Ward Valley LLRW site are trivial in comparison with those from 800 urban accumulations. Enough of groundless fears and litigation.

Court Calendar

Case Name	Description	Court	Date	Action
<i>Appalachian States Low-Level Radioactive Waste Commission v. O'Leary</i> (See related story, this issue.)	Seeks the release of all Appalachian region surcharge fees being held in an escrow account by DOE Secretary Hazel O'Leary.	United States District Court for the Middle District of Pennsylvania	July 20, 1995	Federal government filed a notice of appeal.
<i>Fort Mojave Indian Tribe v. California Department of Health Services</i> (See <i>LLW Notes</i> , March 1995, pp. 7-11.)	Appeal of a suit that seeks to void the certification of the final EIR/S and the issuance of a license for the Ward Valley facility based on alleged violations of state and federal law.	Court of Appeal of the State of California	August 24, 1995	Hearing is scheduled to begin.
<i>Massachusetts v. O'Leary</i> (See related story, this issue.)	Seeks payment of all escrowed Massachusetts surcharge fees and a temporary restraining order and preliminary injunction to prevent additional generator payments.	United States District Court for the District of Massachusetts	July 27, 1995 September 27, 1995	Commonwealth of Massachusetts filed its complaint. Answer of DOE Secretary Hazel O'Leary is due.
<i>Midwest Interstate Low-Level Radioactive Waste Commission v. O'Leary</i> (See related story, this issue.)	Seeks payment of all remaining Midwest Compact region surcharge rebates held in escrow —ie., funds payable with respect to the period from July 1, 1995 through December 31, 1995.	United States District Court for the District of Minnesota	July 28, 1995 September 28, 1995	Midwest Commission filed its complaint. Answer of DOE Secretary Hazel O'Leary is due.
<i>Nebraska v. Central Interstate Low-Level Radioactive Waste Commission</i> (See <i>LLW Notes</i> , January/February 1995, pp. 16-17.)	Seeks to compel the Central Commission to pay rebate funds recently received from the U.S. Department of Energy to the State of Nebraska.	United States District Court for the District of Nebraska	June 30, 1995	Plaintiff State of Nebraska filed a motion for summary judgment.

Federal Agencies and Committees

Environmental Protection Agency

EPA Consultants Complete Desert Tortoise Report

On June 26, EPA transmitted to the U.S. Fish and Wildlife Service (FWS) a report containing additional analyses that EPA conducted to address the biological and behavioral adaptations of the desert tortoise that would directly or indirectly affect the potential radiological impacts on the desert tortoise from the planned low-level radioactive waste disposal facility in Ward Valley, California. The report, *An Assessment of the Radiological Impacts by the Proposed LLRW Facility at Ward Valley on the Desert Tortoise*, was prepared by S. Cohen & Associates under an EPA contract and is a supplement to the biological assessment prepared by US Ecology, the facility developer/operator.

EPA provided the report to FWS in accordance with the joint consultation that the Bureau of Land Management, EPA and FWS entered into under the Endangered Species Act to determine the potential impacts from the Ward Valley facility on the desert tortoise—a threatened species—and its designated critical habitat. (See *LLW Notes Supplement*, June 1995, p. 6.)

Findings of the Report The EPA summary review of the report states:

On the basis of currently available data and exposure scenarios that reflected the behavioral adaptations of the Desert Tortoise, it appears that the average chronic low dose exposure calculations are either below natural background levels or much below levels set for radiation workers. Also as one moves away from the fence line dose estimates are even lower. There was no evidence found to suggest that the tortoise was more sensitive than humans. In fact, the evidence suggests that it is less sensitive to radiation than humans.

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

Nuclear Regulatory Commission

NRC Withdraws Land Ownership Rulemaking

In a *Federal Register* notice dated July 18, NRC announced the withdrawal of the advance notice of proposed rulemaking that presented a possible change to the NRC or Agreement State requirements to allow private ownership of low-level radioactive waste disposal facility sites. The notice states, "The basis for this decision [to withdraw the rulemaking] is that States and compacts have generally indicated that they do not need, nor would they allow, private ownership, and that this rule could be potentially disruptive to the current LLW program." The notice comments that Nebraska is the only state that indicated a desire to actively consider changes to allow private ownership and that the Commission believes that assisting Nebraska on a case-specific basis, if requested and appropriate, is preferable to developing a generic rule change.

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

NRC Answers Senator's Decommissioning Questions

In a letter dated June 22, NRC responded to Senator John Glenn's (D-OH) letter of May 8 regarding questions about the GAO report, *Nuclear Regulation: Slow Progress in Identifying and Cleaning Up Licensees' Contaminated Sites*. (See *LLW Notes*, June 1995, p. 29.) The response addressed nine specific questions posed by Senator Glenn and included information on every site in NRC's Site Decommissioning Management Program (SDMP). The response noted that Agreement States are not required to have a formal SDMP-type program, but that five Agreement States—Arizona, Illinois, Kansas, New Hampshire and Texas—reported having a similar program.

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

NRC Publishes Final Import/Export Rule; Will Consult with States and Compacts

The U.S. Nuclear Regulatory Commission's final rule on the import and export of radioactive waste was published in the *Federal Register* on July 21, 1995 (60 *Federal Register* 37,556). The rule amends prior NRC regulations in order "to establish specific licensing requirements for the import and export of radioactive waste and to clarify the requirements for the import and export of incidental radioactive material coming into or leaving the United States." It becomes effective 30 days after the date of publication.

Background

Prior to issuance of this rule, radioactive materials having no significant impact on national security—such as most of the radionuclides typically found in low-level radioactive waste—were allowed to enter and leave the country under general licenses. Imported waste was, however, subject to domestic regulations of the NRC and Agreement States upon entry into the United States. Accordingly, in April 1994, the Low-Level Radioactive Waste Forum unanimously passed a motion urging NRC to proceed with issuance of the import/export rule as soon as possible.

Procedure and Principles

Under the final rule, the import or export of radioactive waste, including mixed waste, requires a specific license from the NRC. To obtain a specific license, an application must be submitted to the NRC providing, among other things, information on the volume and classification of the waste, the chemical and physical characteristics of the waste, its routing, and its disposition. Applications to import radioactive waste must also include information on the industrial or other process responsible for generation of the waste and whether a host state and the applicable compact, if any, have agreed to accept the waste. NRC will publish a notification of receipt of each application for a specific license to import or export radioactive waste in the *Federal Register*.

Determinations on applications for a specific license to export radioactive waste will be governed by whether licensing the proposed export would be inimical to the common defense and security of the United States and whether the receiving country has consented to receive the radioactive waste. Extraterritorial impacts will normally not be considered.

Authority

The preamble to the rule states:

NRC has exclusive jurisdiction, vis-a-vis the States, for granting or denying all import licenses. However, in the case of a proposed import, the NRC recognizes the authority of LLW compacts to decide whether or not to accept an import of LLW for disposal in the compact region. The NRC will consult with interested States and LLW compacts prior to issuing an import license for LLW. The NRC will not grant an import license for waste intended for disposal unless it is clear that the waste will be accepted by a disposal facility, host State, and compact (where applicable). This will be part of the determination regarding the appropriateness of the facility that has agreed to accept the waste for management or disposal.

The preamble further states that during the review of proposed exports, NRC will consult with the State Department and other appropriate federal agencies. In addition, in all proposed import and export cases, NRC will request that the State Department consult with transit countries—as appropriate—to satisfy the recommendations of the International Atomic Energy Agency Code of Practice on the International Transboundary Movement of Radioactive Waste.

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Federal Agencies and Committees *continued*

Nuclear Regulatory Commission (continued)

Exclusions

Definition of Radioactive Waste The following are not included in the rule's definition of radioactive waste:

- radioactive material in used sealed sources, or devices containing used sealed sources, being sent to a qualified manufacturer that is authorized to receive or possess them;
- radioactive material that is a contaminant on equipment—including service tools—that is used in nuclear facilities, if the equipment is being shipped for use in another facility and is not being shipped for management and disposal;
- military and other federal radioactive waste that is being returned to the United States and that is destined for a federal or military facility authorized to possess the waste; and
- radioactive waste generated in support of federal waste research and development testing programs under international arrangements.

The preamble to the rule explains that, "[t]hese kinds of shipments will continue to enter or leave the United States under general or specific license, whichever is applicable under Part 110 to the nuclear material in question."

NARM In addition, the import and export of naturally-occurring and accelerator-produced radioactive materials (NARM) are not covered by the rule because these materials are beyond the scope of NRC's regulatory authority and are subject to health and safety regulation by the states and other federal agencies.

Incidental Radioactive Material A specific license is not required for the import and export of incidental radioactive material, i.e., "radioactive material not subject to the specific licensing controls of Part 110 that is contained in or a contaminant of any non-hazardous, non-radioactive material that is exported or imported for recycling or resource recovery." The import and export of incidental radioactive material is, instead, governed by the general license conditions of Part 110. If the total amount of an export containing incidental radioactive material exceeds 100 kilograms, an exporter must file an additional NRC form prior to shipment.

For further information, contact Ronald Hauber of the NRC Office of International Programs at (301)415-2344.

The preceding information was transmitted to Forum Participants and Alternate Forum Participants, Federal Liaisons and Alternates via facsimile on July 25.

President Nominates Greta Dicus to be NRC Commissioner

President Bill Clinton has formally nominated Greta Dicus to be an NRC Commissioner. Dicus is currently Director of the Division of Radiation Control and Emergency Management of the Arkansas Department of Health. She is also a Commissioner of the Central States Low-Level Radioactive Waste Commission, former chair of the commission, and a former Forum Participant.

President Clinton nominated Dicus to a term that expires June 30, 1998. Senate confirmation will be required.

At press time, no hearings on the nomination had been scheduled.

NRC Commission Quorum There are currently two NRC Commissioners—Chair Shirley Jackson and Kenneth Rogers—and three open seats on the commission.

Under the Energy Reorganization Act of 1974, as amended, three NRC Commissioners are needed to constitute a quorum for the transaction of business. In June of 1994, the NRC Commissioners approved a procedure to delegate authority to the NRC Chair in the event that a quorum could not be convened due to vacancies or the incapacitation of a Commissioner. The delegation of authority to NRC Chair Shirley Jackson became effective on July 2, when a quorum was no longer available due to the departures of former NRC Chair Ivan Selin and Commissioner E. Gail de Planque.

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

Westinghouse/SEG Investigate Disposal Options in Russian Republic of Dagestan

In a related matter, Westinghouse Electric Corporation is investigating the possibility of shipping radioactive waste to Dagestan, which is a republic located in southern Russia. Dagestan is bordered on the east by the Caspian Sea, on the South by Azerbaijan, and on the west by Georgia and Chechnya. Under the proposal, radioactive waste of U.S.

origin would be sent to a company named Cosmos in Dagestan by Scientific Ecology Group (SEG) — a wholly owned Westinghouse subsidiary. The waste would be buried in a decommissioned former Soviet military shelter which consists of a fortified concrete bunker 1,000 meters deep.

According to SEG, its "interest and involvement is only in the most preliminary stages of discussion and investigation. No agreements have been signed nor have any commitments been made by SEG to actually ship waste to Dagestan." It is unclear at this time what restrictions concerning origin, content, and processing of the waste may be imposed. In addition, SEG notes that "[c]onsideration is being given to the possibility of creating an Environmental Trust Fund out of the disposal fees charged to generators in the U.S. This fund would be dedicated to demonstrations of technology that could potentially be applied to the problems faced by Russia and its republics with radioactive contamination."

A New York-based company, called Master International Systems USA Corp. (MISU), is acting as the exclusive agent of Cosmos for export of the waste from the United States. Bangor International Airport in Maine has been approached by MISU as a possible point of exportation. New York's JFK International Airport is

reportedly also being considered. SEG says that it was approached by MISU last fall to act in the role of "consolidator" by collecting, preparing, and packaging the waste from U.S. generators for shipment to Dagestan.

Although some press reports have indicated that Russian

lawmakers are in favor of the proposal, others have suggested that it may violate the Russian Constitution. SEG, however, says that it "would proceed [with the proposal] only if we are convinced that the project could be undertaken with the highest degree of safety; that it made economic sense; and that it was in full accordance with all laws both here in the United States and in Russia." In addition, under NRC's new policy on the import and export of radioactive waste (see 60 *Federal Register* 37,556), this type of project would require a certain degree of federal oversight as the issuance of a specific license for the export of radioactive waste from the NRC is now required.

The preceding information was transmitted to Forum Participants and Alternate Forum Participants, Federal Liaisons and Alternates via facsimile in a News Flash on July 25.

New Materials and Publications

Document Distribution Key

P	LLW Forum Participants	D	LLW Forum Document Recipients
A	LLW Forum Alternates		
F	LLW Forum Federal Liaisons	N	LLW Notes Recipients
L	LLW Forum Federal Alternates		
T	LLW Forum Media Contacts	M	LLW Forum Meeting Report Recipients
V	LLW Forum Press Monitors		

LLW Forum

PA Letter from Gregg Larson, LLW Forum Convenor, to Thomas Grumbly, Assistant Secretary for Environmental Management, DOE, requested by Grumbly at his meeting with the Low-Level Radioactive Waste Forum Executive Committee meeting on June 20, 1995. June 29, 1995.

PAFL Memorandum from Cynthia Norris, State/Compact Liaison, LLW Forum, re the DOE/Idaho National Engineering Laboratory study of disposal costs at the Barnwell low-level radioactive waste disposal facility. Attached is a press release from South Carolina Senator Phil Leventis (D-Sumter) concerning the study, which was requested by 22 state legislators. July 26, 1995. (Transmitted via facsimile on July 26, 1995.)

States and Compacts

Appalachian Compact/ Pennsylvania

Status Report on Siting a Regional Low-Level Radioactive Waste Disposal Facility in Pennsylvania. Legislative Budget and Finance Committee, a joint committee of the Pennsylvania General Assembly. May 1995. To obtain a copy of the report, contact the Legislative Budget and Finance Committee at (717)783-1600.

Southwestern Compact/ California

Letter from Senator Barbara Boxer (D-CA) to U.S. Interior Secretary Bruce Babbitt and U.S. Energy Secretary Hazel O'Leary seeking authorization for the Lawrence Livermore National Laboratory to perform tritium and chlorine-36 tests at the planned low-level radioactive waste disposal site in Ward Valley, California. June 1995.

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Letter from Senator Barbara Boxer (D-CA) to U.S. Interior Secretary Bruce Babbitt recommending conditions for the transfer of federal land in Ward Valley to state ownership. June 5, 1995.

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PA Letter from Bruce Babbitt, Secretary, Department of the Interior, to Don Young, Chair, Committee on Resources, U.S. House of Representatives, responding to a June 20 letter regarding the consultation by EPA and the Bureau of Land Management with the U.S. Fish and Wildlife Service pursuant to section 7 of the Endangered Species Act on the impacts of the planned Ward Valley, California low-level radioactive waste disposal facility on the desert tortoise, a threatened species. July 25, 1995.

South Carolina

D *Section 79 of the South Carolina Appropriations Act of FY 1995-96; Proviso Relevant to the Low-Level Radioactive Waste Disposal Facility at Barnwell.* June 1995.

Federal Agencies

Environmental Protection Agency (EPA)

Memorandum from Lawrence Weinstock, Acting Director, Criteria and Standards Division, EPA, to recipients of the Criteria and Standards Division's preproposal draft of environmental standards for the management, storage and disposal of low-level radioactive waste (40 CFR 193) and interested parties. Announces that 40 CFR 193 will not apply to NRC or Agreement State licensees. July 13, 1995.

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An Assessment of Radiological Impacts by the Proposed LLRW Facility at Ward Valley on the Desert Tortoise. Prepared by S. Cohen & Associates, Inc. for the Office of Radiation and Indoor Air, EPA. July 12, 1995.

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New Materials and Publications *continued*

Letter from David Howekamp, Director, Air and Toxics Division, EPA, to Donald Steffek, Acting Field Supervisor, Ventura Field Office, U.S. Fish & Wildlife Service, providing supplemental information relevant to potential radiological impacts upon the desert tortoise at the proposed low-level radioactive waste disposal facility in Ward Valley, California. June 28, 1995.

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Memorandum from Arnold Den, Senior Science Advisor, Office of Radiation and Indoor Air (ORIA)/Region 9, EPA; Shelley Rosenblum, Environmental Engineer, ORIA/Region 9, EPA; and Neal Nelson, Radiobiologist, ORIA/Headquarters, EPA; to the Ward Valley File, regarding an EPA summary review of *An Assessment of Radiobiological Impacts by the Proposed LLRW Facility at Ward Valley on the Desert Tortoise*, prepared by S. Cohen & Associates. June 26, 1995.

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"Semiannual Regulatory Agenda," 60 *Federal Register* 95-FRL-5189-9. EPA. May 8, 1995. Action: notice. EPA's regulatory agenda is published each April and October. The agenda serves as a semiannual summary of current and projected rulemakings, of reviews of existing regulations, and of agency action completed since the previous publication of the agenda. To be placed on the mailing list for future agendas, contact Bridgette Dent, Regulatory Development Branch, EPA, at (202)260-5475.

Nuclear Regulatory Commission (NRC)

"Import and Export of Radioactive Waste," 60 *Federal Register* RIN 3150-AD36. NRC. Action: final rule. July 21, 1995. Amendments to establish specific licensing requirements for the import and export of radioactive waste and to clarify the requirements for the import and export of incidental radioactive material coming into or leaving the United States.

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"Land Ownership Requirements for Low-Level Waste Sites," 60 *Federal Register* RIN 3150-AESS. NRC. July 18, 1995. Action: advanced notice of proposed rulemaking; withdrawal. Withdraws an advance notice of proposed rulemaking that presented a rule change to allow private ownership of low-level radioactive waste disposal sites.

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"Radiation Protection Requirements: Amended Definitions and Criteria," 60 *Federal Register* RIN 3150-AE80. NRC. July 13, 1995. Action: final rule. Amends 10 CFR Parts 19 and 20 to clarify criteria that determine when radiation protection training is required and to restore a notification requirement.

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Criticality Safety Criteria for License Review of Low-Level Waste Facilities. (NUREG/CR-6284). C. M. Hopper. July 1995. Provides recommended safety criteria for NRC-licensed burial facilities. To obtain a copy, contact the U.S. Superintendent of Documents at (202)512-2409.

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Letter from Ivan Selin, Chair, NRC, to John Glenn, Ranking Minority Member, Committee on Governmental Affairs, U.S. Senate, responding to a May 8, 1995 letter regarding the General Accounting Office (GAO) report entitled, *Nuclear Regulation Slow Progress in Identifying and Cleaning Up Licensee's Contaminated Sites* and the NRC Site Decommissioning Management Plan program. June 22, 1995. Enclosed with the letter are responses to specific questions asked in the May 8 letter.

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Letter from Michael Weber, Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, NRC, to the Resource Conservation and Recovery Act (RCRA) Information Center, EPA, responding to a request for comments on the EPA's plan to develop a package of targeted legislative improvements to RCRA. June 7, 1995.

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New Materials and Publications *continued*

NRC *continued*

Auxiliary Analyses in Support of Performance Assessment of a Hypothetical Low-Level Waste Facility. (NUREG/CR-6114, Vol. 2). Concerns two-phase flow and contaminant transport in unsaturated soils with application to low-level radioactive waste disposal. Prepared by P. Binning, M. A. Celia, and J. C. Johnson of the Department of Civil Engineering and Operations Research at Princeton University for the Division of Regulatory Applications, Office of Nuclear Regulatory Research, NRC. May 1995.

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Field Lysimeter Investigations: Low-Level Waste Data Base Development Program for Fiscal Year 1994. (NUREG/CR-5229, INEL-94/0278, Vol. 7). Annual report. Prepared by INEL for the Division of Regulatory Applications, Office of Nuclear Regulatory Research, NRC. May 1995.

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Citizen's Guide to U.S. Nuclear Regulatory Commission Information. (NUREG/BR-0010, Rev.2). NRC. 1995. Provides telephone numbers, contacts, and other important information for all departments within the NRC.

Advisory Committee on Nuclear Waste (ACNW)

Regulatory Issues in Low-Level Radioactive Waste Disposal Performance Assessment. Letter report. June 28, 1995. Provides comments on regulatory issues related to the NRC's performance assessment program for low-level radioactive waste. To obtain a copy, contact NRC's Office of Public Affairs at (301)415-8200 and ask for the July 11, 1995 press release No. 95-85.

U.S. Congress

General Accounting Office (GAO)

EPA and the States: Environmental Challenges Require a Better Working Relationship (GAO/RCED-95-64). Resources, Community, and Economic Development Division; GAO. April 1995. Report to John Glenn, Ranking Minority Member, Committee on Governmental Affairs, U.S. Senate. Examines whether EPA and the states have had difficulty implementing federal environmental requirements, and where improvements can be made.

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Environmental Protection: Current Environmental Challenges Require New Approaches (GAO/T-RCED-95-190). Statement of Peter Guerrero, Director, Environmental Protection Issues; Resources, Community, and Environmental Development Division; GAO. May 17, 1995. Testimony before the subcommittee on Veterans Affairs, Housing and Urban Development, and independent agencies; Committee on Appropriations; U.S. Senate.

Other

"Editorial: Low-Level Radioactive Waste," *Science*, Vol. 268. Philip Abelson. June 16, 1995.

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President Clinton Names Greta Joy Dicus to the Nuclear Regulatory Commission. Press release. Office of the Press Secretary, the White House. July 14, 1995.

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D "Perspective 3: The Low-Level Radioactive Waste Situation: Storage or Disposal?" *GSA Today*, May 1995. Fred Donath, Geological Society of America Institute for Environmental Education.

D "Perspective 4: Why Geologists Should Care About Ward Valley Low-Level Radioactive Waste Disposal Site," *GSA Today*, May 1995. William Otterson, Director, University of California, San Diego CONNECT; Spokesperson, National Association of Cancer Patients; Commissioner, Southwestern Low-Level Radioactive Waste Commission.

Obtaining LLW Forum and Other Materials and Publications

To obtain federal government information

By telephone

- 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
- Government Printing Office (to order entire *Federal Register* notices) (202)512-1800
- NRC Public Document Room (202)634-3273
- U.S. House of Representatives Document Room (202)225-3456

By FAX

- U.S. Senate Document Room (202)228-2815
- When making document requests, include a mailing address where the document(s) should be sent.

By Internet

- EPA Listserve Network
Contact John Richards for information on how to subscribe to the Listserve Network to receive *Federal Register* notices via e-mail at
voice (202)260-2253 • FAX (202)260-3884 • e-mail richards.john@epamail.epa.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 and Federal Liaisons. In April 1994, Forum Participants unanimously approved a change in LLW Forum procedures in order to allow representatives of industry, environmental and citizen groups—as well as other interest groups and members of the public—to receive these two publications directly by mail.

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

To be placed on a list to receive *LLW Notes* and the *Summary Report* by mail, please contact Donna Lake, Senior Administrative Specialist, INEL, at (208)526-0234.

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

Unaffiliated States

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

* *current host state*

• *future host state*

Maine, Texas and Vermont are named as members of a compact passed by all three states. The compact is awaiting consent by the U.S. Congress.

The Low-Level Radioactive Waste Forum includes a Participant from each regional compact, current host state, future host state and unaffiliated state. Graphic by Afton Associates, Inc. for the LLW Forum. July 1995.

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