LLW
FORUM

LLW Notes

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Southwestern Compact/California

Ward Valley Facility "Not Likely to Jeopardize" Desert Tortoise

On August 31, the U.S. Fish and Wildlife Service (FWS) issued a biological opinion on proposed action by two federal agencies relevant to the planned low-level radioactive waste disposal facility in Ward Valley, California. Specifically, the opinion considers a range of possible effects on the desert tortoise resulting from the following federal actions:

- the proposed transfer of federal land by the Bureau of Land Management (BLM) to the State of California for use in siting the facility,
- the proposed issuance of a right-of-way grant by BLM to the State of California to provide access to the facility, and
- the proposed issuance of an approval to construct a facility by EPA Region IX to US Ecology, the facility developer/operator.

The opinion stated that "the proposed action is not likely to jeopardize the continued existence of the desert tortoise or result in the destruction or adverse modification of critical habitat." FWS transmitted the biological opinion to EPA Region IX and to the State Director of BLM. The issuance of the biological opinion concludes the formal consultation among the three federal agencies that began on May 10 of this year. (See *LLW Notes Supplement*, June 1995, p. 6.)

Endangered Species Act Consultation

Under the Endangered Species Act, each federal agency must, in consultation with the Interior Secretary, ensure that any action authorized, funded, or carried out by the agency is not likely to jeopardize the continued existence of any endangered or threatened species or to result in the destruction or adverse modification of the species' critical habitat. Formal consultation is required for federal action regarding the Ward Valley site—such as the BLM land transfer and right-of-way grant—because

- the site is within the designated critical habitat for the desert tortoise, a threatened species, and
- the proposed federal action would lead to the relocation of desert tortoises, which requires authorization from the FWS.

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LLW Forum

LLW Notes

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The Low-Level Radioactive Waste Forum is an association of state and compact representatives, appointed by governors and compact commissions, established to facilitate state and compact implementation of the Low-Level Radioactive Waste Policy Act of 1980 and the Low-Level Radioactive Waste Policy Amendments Act of 1985 and to promote the objectives of low-level radioactive waste regional compacts. The LLW Forum provides an opportunity for state and compact officials to share information with one another and to exchange views with officials of federal agencies and other interested parties.

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Key to Abbreviations

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*

Southwestern Compact/California (continued)

Formal consultation under the Endangered Species Act is discretionary for the EPA approval to construct under the National Emissions Standards for Hazardous Air Pollutants (NESHAPs). EPA Region IX determined in June 1994 that the agency would participate in such a consultation before deciding whether to grant the approval to construct needed under NESHAPs for the Ward Valley facility. (See *LLW Notes*, July 1994, p. 6.)

“Reasonable and Prudent Measures”

The biological opinion lists four reasonable and prudent measure that the FWS believes are necessary and appropriate to minimize incidental take* of desert tortoises:

1. Worker education programs and well-defined operational procedures shall be implemented to reduce the take of desert tortoises and loss of their habitat during project activities.
2. Take of desert tortoises, through injury or death due to the straying of vehicles and equipment beyond project areas, shall be reduced through establishment of clearly defined work area boundaries across which vehicles must pass.
3. Take of desert tortoises, through injury or death, found within project areas shall be reduced through the removal of these animals to undisturbed areas out of harm's way.
4. Attraction of common ravens and other potential desert tortoise predators to project areas shall be reduced to the maximum extent practicable.

* *incidental take* The Endangered Species Act prohibits the take of listed species without special exemption. Taking is defined as harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, collecting, or attempting to engage in any such conduct. Taking that is incidental to and not intended as part of the consulting federal agencies' actions is not prohibited provided that such taking is in compliance with the biological opinion.

These reasonable and prudent measures—and the terms and conditions that implement the measures—are based on the mitigation measures contained in the biological assessment of the desert tortoise, which was prepared by US Ecology and submitted to FWS by BLM and EPA Region IX. The biological assessment was supplemented by a risk assessment prepared by EPA to assess the potential radiological impacts of the facility on the desert tortoise.

Next Steps re Federal Action

The FWS retains oversight authority for the desert tortoise and its critical habitat and will be reviewing information on the desert tortoise that will be prepared and submitted in accordance to the terms and conditions described in the biological opinion. BLM and EPA Region IX are responsible for ensuring that the terms and conditions specified in the opinion are adhered to when proceeding with federal action on the Ward Valley site. BLM and EPA do not have a specified time period in which they must take action on the land transfer, the right-of-way grant and the NESHAPs approval to construct.

California Perspective

California Department of Health Services officials commented

We completely agree with the U.S. Fish and Wildlife Service's finding that the Ward Valley project will not jeopardize the desert tortoise, or destroy or adversely modify its critical habitat. From the beginning, we have worked to mitigate the effects of this project on the tortoise and its habitat. In fact, a measure included in the Ward Valley project will greatly enhance 4,000 acres of tortoise habitat by requiring special fencing along both sides of Interstate-40 across Ward Valley. This will allow tortoises to safely reoccupy land on either side of the freeway and eliminate the most significant source of tortoise mortality in the area.

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

Central Midwest Compact/Illinois

Illinois Working Group Issues Draft Siting Criteria, Offers Funding for Review

The Illinois Low-Level Radioactive Waste Task Group recently released its proposed site selection criteria for a low-level radioactive waste disposal facility. Publication of the criteria in a report dated August 16, 1995, initiated a public comment period that will last until December 15, 1995. Final site selection criteria are expected to be adopted in early 1996.

Proposed Criteria

The criteria were issued in the form of 26 statements—each with an accompanying narrative—that pertain to the following issues:

- geology,
- hydrology,
- land use,
- natural resources,
- ecological and recreational areas, and
- cultural resources.

The report notes that the task group considered the issues of environmental justice and economic impact but “did not agree on language for criteria statements for either of these. The primary obstacle to agreement was a lack of consensus as to what information would objectively demonstrate that the criteria had been met.” Suggestions are solicited on “how or whether to develop criteria language to address these issues in the site-selection process.”

Public Comment Process and Grant Program

Meetings and Hearings Members of the public will have the opportunity to provide oral and written comments at two formal public hearings, as well as at five informational meetings to be held throughout the state. Written comments may also be mailed to the task group.

Financial Assistance The working group announced on September 6 that grants will be available to assist nonprofit groups in reviewing the draft siting criteria. A total of \$30,000—with a cap of \$5,000 per award—will be available to enable nonprofit groups to obtain technical advice in commenting on the criteria. Grants will be made only to “groups that can demonstrate that their ability to participate effectively in public comment activities would be impeded without the provision of grant funds for technical advisors.” The average grant is expected to be approximately \$1,500.

Funding for the grant program was provided by the Central Midwest Interstate Low-Level Radioactive Waste Commission.

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

Southeast Compact/North Carolina

Survey Predicts North Carolina Facility Will Not Impact Industrial Growth

Two professors of economics from North Carolina State University have concluded that siting a low-level radioactive waste facility in Wake County would have "no effect" on industrial growth in the area. In making their findings, the professors asked industrial location consultants throughout the United States to indicate how such a facility would "affect the number of firms who choose to locate" in the vicinity. Of the 10 respondents, six expected that there would be "no effect" or an increase. Nine of the 10 respondents expected that the facility would rank no higher than sixth on a list of either positive or negative factors relevant to selection of a business location.

John Mac Millan, Executive Director of the North Carolina Low-Level Radioactive Waste Management Authority, commented that the "results were pretty much what the Authority has suspected for some time." He also noted that the planned disposal facility "will have some positive impact on the immediate area with the creation of jobs and the attendant construction ..." The Authority had contracted for the independent survey at the request of opponents to the Wake site.

For further information, contact Andrew James of the North Carolina Authority at (919)733-0682.

Southeast Commission Passes Motion re Future Facility Funding

At a meeting on August 22, the Southeast Low-Level Radioactive Waste Compact Commission expressed its intent to seek a greater financial stake by Chem-Nuclear in development of a regional low-level radioactive waste disposal facility in North Carolina. The sense of the commission was conveyed in the following resolution:

The Commission instructs the Chairman and staff to express to the North Carolina Low-Level Radioactive Waste Management Authority the sense of the Commission that continued funding (to North Carolina) will rely on an agreement between the Authority and Chem-Nuclear Systems, Inc. that will assure financial participation by CNSI in future site development.

The resolution was passed the day after the commission held a strategic planning workshop and roundtable discussion. Among the questions on which the commission solicited and received input at the workshop were, "Should the Commission continue funding North Carolina's site development activities? Under what conditions should funding be continued?"

The commission action does not affect the \$8.2 million that the commission had previously committed to North Carolina. According to John Mac Millan, Executive Director of the North Carolina Authority, these funds will be sufficient to sustain site development through the first quarter of 1996.

Under the current terms of Chem-Nuclear's contract with the Authority, the company is reimbursed for actual expenses, with a fee (\$417,000) to be received only after a license is issued. Changes to these terms would require modification of the contract.

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

States and Compacts *continued*

Northwest Compact/Washington

Company in Washington to Accept 11.e(2) Waste

In August, the Dawn Mining Company announced the preparation of a disposal cell for receipt of 11.e(2) materials—i.e., byproduct materials consisting of uranium and thorium mill tailings. Dawn Mining received a license for the lined, below-grade disposal cell from the State of Washington's Department of Health in March 1995. The cell will be located in an existing tailings disposal pit at the company's uranium mill northwest of Spokane. After the disposal pit is drained of 140 million gallons of water, it will be used to accommodate 30 million cubic feet of 11.e(2) materials, including materials generated out of state.

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

Michigan

Michigan Board Approves Volunteer Siting Report

A report approved on August 11 by the Board of Governors of the state Low-Level Radioactive Waste Research and Education Institute lays out a blueprint for voluntary siting of a low-level radioactive waste facility. The report, which will be submitted to the state legislature, also recommends that the Michigan Low-Level Radioactive Waste Authority seek major amendments to the state's enabling legislation, including replacing the existing siting criteria.

For further information, contact Thor Strong of the Michigan Authority at (517)335-0430.

South Carolina

Partlow Designated as Forum Participant for South Carolina

On June 30, Elizabeth Partlow was appointed by South Carolina Governor David Beasley to be the new Participant representing the state on the LLW Forum. Partlow is currently Legal Counsel specializing in environmental issues for the Governor. She served previously as Deputy Director for the Environment for former South Carolina Governor Carroll Campbell. She is a member of the Natural Resources Section of the South Carolina Bar.

Partlow received her J.D. from the University of South Carolina School of Law, where she was a member of the Order of Wig and Robe and the South Carolina Law Review Editorial Board. She also has a B.A. from the University of South Carolina, where she was a member of Phi Beta Kappa.

Carlisle Roberts, General Counsel for the South Carolina Department of Health and Environmental Control (DHEC), and Virgil Autry, Director of the Division of Radioactive Waste Management in DHEC, were named by the Governor as Alternate Forum Participants.

Barnwell License Extended Until 2000

In August, the South Carolina Department of Health and Environmental Control extended the expiration date of the license for the commercial low-level radioactive waste disposal facility at Barnwell for five years—until July 31, 2000. According to a South Carolina regulator, five years is the standard increment for extension of all radioactive materials licenses.

Various other changes were also made to the license, including revisions to ensure consistency with new technical requirements that will be implemented by January 1, 1996. (See *LLW Notes*, July 1995, p. 3, and *LLW Notes*, June 1995, p. 34.)

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

Host State TCC Meets in Boston

The Host State Technical Coordinating Committee (TCC) met in Boston, Massachusetts, on August 16-17. The TCC meeting was attended by ten state officials representing six states, four staff persons from DOE's National Low-Level Waste Management Program, one university professor, one NRC official, and five persons from private companies. Laura Scheele, an Afton staff member who serves as the LLW Forum liaison to the TCC, also attended to present a report on LLW Forum activities.

The following items constituted the TCC agenda:

- state highlights and reports;
- agency and organizational reports, including reports from NRC, the National Low-Level Waste Management Program, the LLW Forum, and the Electric Power Research Institute (EPRI);
- the National Academy of Sciences report on Ward Valley;
- the EPRI waste cost estimation computer code;
- a demonstration of the Low-Track computer software for waste tracking and its interface with decay software, the uniform manifest, and the Barnwell manifest;
- a supercritical water oxidation treatment process; and
- assured storage, a different perspective on low-level radioactive waste management.

The meeting included a tour of the Molten Metal Facility. The TCC plans to meet again on December 11 in Phoenix, Arizona, in conjunction with the Department of Energy's annual Low-Level Radioactive Waste Management Conference.

For further information, contact TCC Co-Moderators Russ Garcia and Thomas Kerr of DOE's National Low-Level Waste Management Program at (208)526-0483 and (202)526-8465, respectively.

NRC Chair on LLRW Disposal

NRC Chair Shirley Jackson made the following remarks pertaining to low-level radioactive waste disposal at an August 28 symposium of the Nuclear Information and Records Management Association.

The disposal of low-level radioactive waste also presents an important issue. As many of you are probably aware, the responsibility for identifying sites and developing the disposal facilities rests with the States and Compacts. And most, if not all, low-level radioactive disposal sites will be licensed by Agreement States. NRC continues to provide technical support and guidance to these Agreement States.

The premature shutdown and decommissioning of nuclear facilities could add, in a compressed time frame, to the already projected quantities of low-level radioactive waste requiring disposal in this country. However, within the last months, there have been signs that some of the concerns with having adequate low-level radioactive waste disposal capacity have subsided. Of course, the Hanford disposal site has been available for low-level waste disposal to the Rocky Mountain Compact and the Northwest Compact for some time now. And, as of July 1, 1995, the disposal facility in Barnwell, South Carolina, has reopened and is accepting waste from all states except North Carolina. The National Academy of Sciences recently issued a report on the Ward Valley site in California. The report reviewed seven technical issues related to the site, and did not identify any reasons for not proceeding with the site licensing process.

Radbits

States and Compacts

☼ On September 7, Nebraska Governor E. Benjamin Nelson (D) announced his intention to run for the U.S. Senate seat being vacated by outgoing Nebraska Senator James Exon (D). In making his announcement, Nelson stated, "I based my decision to run for the Senate on my belief that I can make a positive difference for Nebraska and the nation. I will take to Washington a strong independent voice and a good dose of Nebraska common sense and fiscal conservatism." Nelson plans to officially file as a candidate in early 1996.

☼ The Massachusetts Low-Level Radioactive Waste Management Board is currently reviewing comments received on three documents issued in April for public review: the Draft Siting Plan, the Draft Volunteer Sites Program Plan, and draft regulations concerning the Volunteer Sites Program and technical assistance grants for groups representing candidate site communities. The public comment period closed on July 31, after three public hearings and three briefing sessions were held throughout the state. *For further information, contact Carol Amick of the Management Board at (617)727-6018.*

☼ South Carolina's Low-Level Radioactive Waste Negotiating Committee held an organizational meeting on August 3. The committee was formed in accordance with a proviso adopted with the state budget. (See *LLW Notes*, June 1995, p.1.) Additional meetings have not yet been scheduled.

Federal Agencies

☼ In a September 11 DOE newsletter, DOE Assistant Secretary Thomas Grumbly announced the planned rotation of the management team for the Office of Environmental Management. Among other staff reassignments, the proposed rotation would move Jill Lytle from the Office of Waste Management to the Office of Nuclear Material and Facility Stabilization. Steve Cowan would replace Jill Lytle at the Office of Waste Management. DOE is planning to develop new and revised mission and function statements and to align position descriptions to the newly defined work areas. At press time, the proposed reassignments and realignments of the DOE management team were being reviewed by the DOE Executive Review Board.

☼ On August 17, Charles Curtis was sworn in as DOE Deputy Secretary, the second-highest-ranking DOE official. Curtis had served as DOE Under Secretary since February 1994. All of DOE's energy program reports directly to the Deputy Secretary, and Curtis is now responsible for the management and administration of DOE's science and technology and national security programs. Press reports have indicated that Thomas Grumbly, the Assistant Secretary for Environmental Management, may succeed Curtis as Under Secretary.

☼ In an August 14 status report, the Co-Chairs of the Advisory Committee on External Regulation of U.S. Department of Energy Nuclear Safety identified existing problems with DOE's management system but cautioned against viewing external regulation as a solution to all of DOE's problems. The advisory committee was formed in February 1995 to provide advice and recommendations on whether and how new and existing DOE facilities and operations might be externally regulated to improve nuclear safety. (See *LLW Notes*, Jan./Feb. 1995, p. 25.) The final report from the committee—which will contain recommendations regarding external regulation of DOE—is due by the end of 1995.

- ☼ On July 26, NRC published a *Federal Register* notice amending its regulations applying to decommissioning funding assurance and the expiration and termination of NRC licenses for nonreactor licensees. The amendments clarify that financial assurance must be in place during licensed operations and must be updated when the licensee decides to cease operations and begin decommissioning. The regulations also require that licensees who have been in timely renewal since the promulgation of the earlier decommissioning funding rule—or who have ceased operations without having adequate decommissioning funding arrangements in place—must provide NRC with certification of adequate financial assurance for decommissioning by November 24, 1995.
- ☼ On July 19, NRC announced an extension in the schedule for the final rule on radiological criteria for decommissioning. The agency expects to issue a final rule in early 1996. According to the *Federal Register* notice, the reason for the extension is “to allow the NRC to more fully consider public comments received on the technical information base supporting the proposed rule and to develop the implementing regulatory guidance to be issued with the final rule.”
- ☼ The NRC’s Advisory Committee on Nuclear Waste (ACNW) has elected Paul Pomeroy as Chair and B. John Garrick as Vice-Chair, effective July 1. The ACNW was established by the NRC Commissioners in March 1988 to advise the NRC on nuclear waste matters. Pomeroy and Garrick will serve one-year terms.

California Superior Court Sets Hearing on Voter Initiative on Disposal Facility Siting

On August 15, a California superior court refused to grant a stay requested by San Bernadino County attorneys of their obligation to prepare a precirculation ballot title and summary for a citizen's initiative seeking to enact an ordinance purporting to regulate the siting of low-level radioactive waste disposal facilities in the county. The initiative, which is directed at the planned Ward Valley disposal facility, seeks to place the matter on the March 1996 primary ballot.

Although the superior court denied the temporary stay, the matter is set for a hearing on September 25, 1995 on the merits of the legal validity of the initiative. The county is arguing that the state has occupied the field of the siting of such facilities to the exclusion of local regulation and since the board of supervisors cannot zone it away by ordinance, the public cannot do so by initiative.

The stated purpose of the initiative is “to limit the disposal of radioactive waste in San Bernardino County to that waste generated within the County, to define and limit the nature of radioactive waste disposal sites/repositories and to establish buffer zones between radioactive waste repositories and existing or potential water resources in San Bernardino County.”

A total of 34,848 signatures are needed by mid-November in order to get the measure on the March 1996 ballot. A simple majority is needed to approve the measure.

Keyserling v. Beasley

Lawsuit Challenges Inclusion of Parts of the Barnwell Proviso in South Carolina's 1995 Budget Bill

On September 7, 1995, various parties filed a lawsuit in the Supreme Court of the State of South Carolina against Governor David Beasley (R) and several legislators. The suit—which was filed under the South Carolina Uniform Declaratory Judgments Act—challenges the inclusion of certain provisions relating to the Barnwell low-level radioactive waste disposal facility in the state's General Appropriations Act of 1995.

Parties and Procedure

Petitioners The action was filed by former state Representative Harriet Keyserling, the Sierra Club, the League of Women Voters of South Carolina, the South Carolina Wildlife Federation, the South Carolina Coastal Conservative League, the Energy Research Foundation, and a private citizen.

Respondents The following individuals, named as respondents to the action, are being sued in their official capacities: David Beasley, Governor of the State of South Carolina; David Wilkins, Speaker of the House of Representatives; and Robert Peeler, Lt. Governor and President of the Senate. The State of South Carolina is also listed as a respondent to the action.

Original Jurisdiction The petitioners are asking the state supreme court to accept original jurisdiction over the case. Under state law, original jurisdiction may be accepted "[i]f the public interest is involved, or if special grounds of emergency or other good reasons exist." The petitioners claim that it is in the public interest for the state supreme court to hear this case because, among other things, it involves policy issues that were debated in the legislature over many years. They also assert that an emergency exists because the prior statutory closure date for the Barnwell facility, which the petitioners want reinstated, is near in time.

The respondents have 20 days to file a response to the petition requesting original jurisdiction. The decision of whether or not to grant original jurisdiction is left completely to the discretion of the court. Attorneys for the petitioners have indicated, however, that they will refile the complaint at the trial court level if original jurisdiction is denied.

Facts

The complaint asserts that under article III, section 17 of the state constitution, the South Carolina General Assembly is required, when enacting legislation, to limit each act or resolution having the force of law to only one subject and to state that subject in the act's title. This requirement, according to the petitioners, is intended to afford the public the right to be reasonably apprised of the contents of legislation presented to and enacted by the General Assembly and to be subjected to laws that are enacted on their own merit.

During the 1995 legislative session, the General Assembly enacted and the Governor signed into law the General Appropriations Act of 1995. This law makes appropriations to meet the expenses of state government and to direct the manner in which the funds are to be expended. The act also includes a proviso—designated as section 79—relevant to the low-level radioactive waste disposal facility at Barnwell.

Among other things, the proviso

- imposes a tax of \$235 per cubic foot on low-level radioactive waste disposed of in the state, with most of the tax revenues allocated for the South Carolina Educational Assistance Endowment Fund;
- deletes a requirement that by January 1, 1996, the Barnwell facility cease to accept low-level radioactive waste generated outside the state;
- authorizes the Governor to appoint a committee to negotiate to establish a new compact;
- authorizes the new compact commission to negotiate contracts with other states and with individual generators directly;
- prohibits disposal within South Carolina of low-level radioactive waste from North Carolina; and
- withdraws the state from the Southeast Compact by repealing the compact legislation (chapter 47, title 48 of the 1976 Code).

(See *LLW Notes*, July 1995, pp. 1, 3.)

Issues

The petitioners claim that article III, section 17, of the state's constitution limits the constitutionally permissible scope of the 1995 Appropriations Act to "matters reasonably and inherently related to the raising and spending of the State's monies." They claim that the respondents violated this limitation by including parts B and D of section 79 in the act. (See box on page 12.)

The petitioners further assert that article III, section 17 prohibits the General Assembly from substantively amending existing programs or enacting substantive new programs as part of the Appropriations Act. Instead, they assert, the General Assembly is required to amend or enact any such programs in separately titled legislation that is limited to the subject of that particular program. They claim that parts B and D of the Barnwell proviso violate this constitutional prohibition because they fail to relate to the one subject of the act—namely the state budget.

The petitioners complain that parts B and D of the Barnwell proviso have the effect of subjecting the individual petitioners and members of the petitioner organizations to increased environmental risks, by increasing the amount of low-level radioactive waste that will be brought into, transported through, and disposed of in the State of South Carolina, by removing the legal protections afforded this state through membership in the Southeast Interstate Low-Level Radioactive Waste Management Compact, and by extending the life of the State's low-level radioactive waste landfill through elimination of the statutory closure deadline of December 31, 1995 and allowing the landfill to operate for the indefinite future.

The petitioners are not challenging the inclusion of a \$235 per cubic foot tax in the budget bill.

Requested Relief

The petitioners are asking the court to issue an order declaring those portions of section 79 of the General Appropriations Act of 1995 labeled as parts B and D to be unconstitutional and invalid as not reasonably and inherently related to the raising and spending of the state's tax monies. Such action by the court could result in the closure of the Barnwell facility to out-of-state waste at the end of 1995, as required by the law in existence prior to passage of the 1995 Appropriation's Act.

Background

According to statements released by the petitioner organizations, South Carolina business leaders filed suit in 1985 concerning a similar procedural issue. The suit challenged the practice known as "bobtailing," which involves the attachment of irrelevant items to the budget. The suit was abandoned, however, after then Governor-elect Carroll Campbell, then Lt. Governor-elect Nick Theodore, and then-Speaker of the House Bob Sheheen agreed not to allow bobtailing in the future.

The preceding information was transmitted to Forum Participants and Alternate Forum Participants, Federal Liaisons and Alternates via facsimile in a News Flash on September 8, 1995.

Challenged Portions of the Proviso

Part B This part replaces previous language restricting continued waste acceptance at the facility.

B. Section 48-48-80 of the 1976 Code, as last amended by Act 497 of 1994, is further amended to read:

Section 48-48-80. (A) The Governor shall appoint a Low-Level Radioactive Waste Compact Negotiating Committee. The committee shall be composed of seven members appointed by the Governor, three who shall be from the State at large, two who shall be members of the South Carolina Senate recommended by the President Pro Tempore of the Senate, and two who shall be members of the South Carolina House of Representatives recommended by the Speaker. The committee shall negotiate with representatives of other states to establish a new low-level radioactive waste management compact, subject to the following requirements:

(1) the committee shall only negotiate with states that have demonstrated a commitment to the compacting process and that have made substantial progress in implementing that process and who have passed an act authorizing representatives to enter compact negotiations;

(2) the State, as the initial host state, must have ultimate authority over access to the Barnwell facility and the terms and conditions for such access;

(3) the Compact Commission, subject to approval by the South Carolina representatives on the commission, must have authority to negotiate contracts with other states and with individual generators directly; and

(4) the compact must provide for an appropriate host fee to be paid to Barnwell County; [and]

(5) the compact must be ratified by a joint resolution of the General Assembly.

(B) In accordance with Section 13-7-30, the State Budget and Control Board, or its designee, is responsible for extended custody and maintenance of the Barnwell site following closure and license transfer from the facility operator. The department is responsible for continued site monitoring.

(C) Nothing in this section must be construed to alter or diminish the existing statutory authority of the department to regulate activities involving radioactive materials and radioactive wastes.

(D) No low-level radioactive waste generated within the State of North Carolina may be disposed of at a facility located in this State.

Part D This part withdraws the state from the Southeast Compact.

D. Chapter 47, Title 48 of the 1976 Code is repealed.

Compacts/States Request Additional Rebate Payments from DOE

Recently, several compacts and unaffiliated states have taken action to request additional payments of surcharge rebate funds from the U.S. Department of Energy. The funds, which are held in an escrow account by DOE in accordance with provisions of the Low-Level Radioactive Waste Policy Amendments Act, have been the subject of both correspondence and litigation.

Southwestern Commission's Correspondence

On August 8, 1995, Don Womeldorf, Executive Director of the Southwestern Commission, sent a letter to Terry Plummer, Manager of DOE's National Low-Level Waste Program, expressing the commission's belief that "the Department of Energy's distribution of surcharge fees to the Commission, and generators of our Region, may not be in accordance with the requirements of the Low-Level Radioactive Waste Policy Amendments Act of 1985." In support of this position, Womeldorf cited four ongoing lawsuits concerning the rebates issue, as well as renewed access to the Barnwell low-level radioactive waste disposal facility in South Carolina. He also pointed out that, on July 28, 1995, the commission "took action to provide for the disposal at Barnwell of waste generated in the Southwestern Compact for the period July 1, 1995 through June 30, 1996."

Central Commission's Correspondence

A. Eugene Crump, Executive Director of the Central Commission, has also sent correspondence to Plummer requesting additional rebate funds. The most recent letter, dated August 4, 1995, seeks funds representing the remaining 18-month interval of the 36-month period for the 1993 milestone. In support of this request, Crump enclosed an "agreement" advising the Central Commission and its regional generators that, effective July 1, 1995, the Chem-Nuclear Barnwell Low-Level Radioactive Waste Management Facility would accept for disposal waste from all states except North Carolina.

DOE's Response

DOE responded to the Southwestern Commission and to the Central Commission with separate letters, both dated August 31, 1995. The letters, which acknowledge that DOE is evaluating the commissions' requests for additional surcharge funds, state:

The implications of the opening of the South Carolina low-level radioactive waste disposal facility on eligibility for surcharge rebates are currently under legal review within the Department.

DOE agreed to forward a formal response to the commissions "as soon as this review is complete and the Department has formulated a final position on your request as well as others."

Action by Other States/Compacts

As reported in the previous issue of *LLW Notes*, both the Midwest Compact Commission and the Commonwealth of Massachusetts have recently filed lawsuits requesting additional payments of surcharge funds. (See *LLW Notes*, July 1995, pp. 12-14.) Litigation has also been initiated by the Central Midwest Commission. (See related story, this issue.) In addition, the U.S. Department of Energy recently filed an appeal of a decision by the U.S. District Court for the Middle District of Pennsylvania in a lawsuit concerning payment of rebates to the Appalachian Commission. (See *LLW Notes*, July 1995, pp. 10-11.)

Some states and compacts, however, have chosen not to act on the issue. In addition, not all states and compacts are eligible to receive rebate payments. Under the Low-Level Radioactive Waste Policy Amendments Act, compacts containing the sited states—which include the Northwest Compact, the Rocky Mountain Compact, and the Southeast Compact—did not pay any surcharges. Thus, no rebates were withheld.

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

Central Midwest Compact Sues DOE for Additional Surcharge Rebates

On August 8, the Central Midwest Interstate Low-Level Radioactive Waste Commission filed suit in the U.S. District Court for the Central District of Illinois against DOE Secretary Hazel O'Leary. The action seeks to compel O'Leary to distribute to the Central Midwest Commission in a lump sum

- all remaining surcharge rebates held in escrow by the Secretary with respect to low-level radioactive waste generated in the Central Midwest region; and
- an amount equal to 12/36 (one-third) of the total escrow funds, plus interest, that was collected on waste generated in the Central Midwest region for the 12-month period from July 1, 1994, through July 1, 1995. [Some of these funds were previously paid to generators.]

The suit also seeks injunctive relief compelling the Secretary to distribute the funds to the commission, and a preliminary injunction prohibiting further distribution of the funds to generators in the Central Midwest region.

O'Leary's response to the commission's complaint is due October 9, 1995.

Background

Renewed Access to Barnwell and Subsequent Correspondence As a result of South Carolina's recent withdrawal from the Southeast Compact, the Barnwell disposal facility became available as of July 1, 1995, to low-level radioactive waste generators in the Central Midwest region. On August 2, 1995, the Central Midwest Commission sent a letter to the U.S. Department of Energy stating that due to renewed access to Barnwell, the commission believes that it is entitled to additional trust funds for the period July 1, 1995, through December 31, 1995. Accordingly, the letter requested that DOE discontinue making surcharge payments to Central Midwest region generators.

On August 3, the commission was advised by DOE's legal counsel that the department intends to continue distributing the trust funds to waste generators in the Central Midwest region. Clark Bullard, Chair of the Central Midwest Commission, then sent a letter to DOE reiterating and amplifying the positions set forth in the August 2 letter and stating that the commission believes that it is entitled to receive all of the surcharge trust funds collected from Central Midwest region generators. DOE refused to pay the funds to the commission, and the Central Midwest Interstate Low-Level Radioactive Waste Commission filed suit on August 8.

Authorization to Export Low-Level Radioactive Waste Article IX(b) of the Central Midwest Compact prohibits the unauthorized export of low-level radioactive waste from the region and the unauthorized disposal of waste at a facility other than a regional facility. In 1988, however, the Central Midwest Commission authorized regional generators to export low-level radioactive waste for disposal at non-regional facilities. It is this authorization that allows Central Midwest region generators to take advantage of renewed access to Barnwell.

The Issues

In explaining its request for additional rebate funds, the commission's complaint states as follows:

Because generators of LLW in the Central Midwest Region have been provided access to the Barnwell, South Carolina disposal facility by the [Central Midwest] Commission, effective July 1, 1995, the Central Midwest Compact is in compliance with the January 1, 1993 milestone. Further, since the generators of the Central Midwest Region now can dispose of the waste they produced from July 1, 1994 through the present, and because they have always had access to the disposal facility at Clive, Utah, the Central Midwest Commission has fulfilled all the requirements of the [Low-Level Radioactive Waste Policy Amendments] Act.
(citation omitted)

In support of its claims, the commission argues that Secretary O'Leary's refusal to distribute additional rebates to the commission and her decision to continue making payments to generators violates

- the Low-Level Radioactive Waste Policy Amendments Act, and
- the Administrative Procedure Act (on the grounds that it conflicts with the procedures set forth in DOE's *Federal Register* notice on policies and procedures for distribution of the rebate funds).

The commission also asserts that the Secretary violated the Low-Level Radioactive Waste Policy Amendments Act by distributing surcharge payments to regional generators during the period from July 1, 1994, through July 1, 1995.

Payments to Generators

Checks representing surcharge payments for July 1995 were mailed to certain generators in the Central Midwest region on August 1, 1995—prior to the initiation of this litigation. However, after the complaint was filed, DOE voluntarily stayed further rebate payments to Central Midwest region generators while the parties negotiate a stipulation. As of press time, a stipulation had not been entered.

In the meantime, on August 31, 1995 the Central Midwest Commission filed a motion for a temporary restraining order. The motion asks the court to prevent further rebate distributions to generators in the Central Midwest region. A hearing on the motion was held on September 12, 1995.

Commonwealth Edison attended the September 12 hearing and filed a motion to intervene in the action. The Central Midwest Commission has seven days—i.e. until September 19—to file a response to Commonwealth Edison's motion to intervene.

Court Calendar

Case Name	Description	Court	Date	Action
<i>Appalachian States Low-Level Radioactive Waste Commission v. O'Leary</i> (See <i>LLW Notes</i> , July 1995, pp. 9-11.)	Seeks the release of all surcharge fees, collected from Appalachian region generators, being held in an escrow account by Department of Energy Secretary Hazel O'Leary.	United States Court of Appeals for the Third Circuit	September 26, 1995 30 days after filing of DOE's brief 14 days after filing of Appalachian Commission's brief	DOE's opening brief on appeal is due. Appalachian Commission's reply brief is due. DOE's reply brief is due.
<i>Central Midwest Interstate Low-Level Radioactive Waste Commission v. O'Leary</i> (See related story, this issue.)	Seeks payment of all remaining Central Midwest region surcharge rebates held in escrow and payment of an amount equal to 12/36 (one third) of the total Central Midwest region escrow funds.	United States District Court for the Central District of Illinois	August 8, 1995 September 12, 1995 September 19, 1995 October 9, 1995	Central Midwest Commission filed its complaint. Hearing was held on commission's motion for temporary restraining order. No ruling was issued. Also, Commonwealth Edison filed a motion to intervene in suit. Commission's response to Commonwealth Edison's motion to intervene is due. Answer of DOE Secretary Hazel O'Leary to the complaint is due.
<i>Keyserling v. Beasley</i> (See related story, this issue.)	Challenges the inclusion of certain provisions relating to the Barnwell low-level radioactive waste disposal facility in the state's General Appropriations Act of 1995.	Supreme Court of the State of South Carolina	September 7, 1995 September 27, 1995	Petitioners filed a complaint and petition for original jurisdiction in the state supreme court. Respondents' response to petition requesting original jurisdiction is due.

Court Calendar

Case Name	Description	Court	Date	Action
<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	November 22, 1995	Deadline for court to issue a ruling on the appeal.
<i>Massachusetts v. O'Leary</i> (See <i>LLW Notes</i> , July 1995, pp. 12-14.)	Seeks payment of all escrowed surcharge fees, collected from generators in Massachusetts, and a temporary restraining order and preliminary injunction to prevent additional generator payments.	United States District Court for the District of Massachusetts	July 28, 1995 August 31, 1995	Parties entered into a stipulation that DOE will not disburse surcharge payments to Massachusetts' generators until the district court issues a final order, or until November 1, 1995, whichever comes first. DOE filed a motion to dismiss the lawsuit.
<i>Midwest Interstate Low-Level Radioactive Waste Commission v. O'Leary</i> (See <i>LLW Notes</i> , July 1995, pp. 12-14.)	Seeks payment of all remaining surcharge rebates held in escrow with respect to low-level radioactive waste generated in the Midwest Compact region—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	August 1, 1995	Parties entered into a stipulation that DOE will not disburse surcharge payments to Midwest Compact generators until the district court issues a final order, or until November 1, 1995, whichever comes first.
<i>South Carolina v. O'Leary</i> (See <i>LLW Notes</i> , November/December 1994, p. 25.)	Seeks to enjoin the planned shipment of spent fuel from Europe for storage at the Savannah River Site weapons complex in South Carolina.	United States Court of Appeals for the Fourth Circuit	August 22, 1995	Appellate court reversed the district court's judgment and vacated its injunction, thereby authorizing the U.S. Department of Energy to ship spent fuel from Europe to the Savannah River Site Weapons Complex in South Carolina.

Chart: Reorganization of EPA's Office of Radiation and Indoor Air

Office of Radiation and Indoor Air:

Indoor Environments Division

★ Division Director: Mary Smith

EPA is reorganizing the Office of Radiation and Indoor Air effective October 1—the beginning of the next federal Fiscal Year. This chart depicts the planned reorganization, which is pending final approval.

Chart: Reorganization of EPA's Office of Radiation and Indoor Air

Director, Ramona Trovato

Radiation Protection Division

Division Director: Lawrence Weinstock

Afton Associates, Inc. September 1995

EPA, NRC Issue Joint Guidance on Mixed Waste Storage

In an August 7 *Federal Register* notice, EPA and NRC jointly published for public comment a draft guidance document on the storage of mixed radioactive and hazardous waste. The comment period expires on November 6, 1995. According to the *Federal Register* notice, the guidance is intended "to assist mixed waste generators forced to store their mixed waste, pending the development of adequate treatment and disposal capacity for commercially generated mixed waste."

Dual EPA and NRC Regulation

Mixed waste contains both a hazardous component regulated under the Resource Conservation and Recovery Act (RCRA) and a radioactive component regulated under the Atomic Energy Act. Persons who generate, treat, store or dispose of mixed waste are subject to both EPA and NRC regulations. In a June 7 letter to the RCRA Information Center, Michael Weber of NRC's Division of Waste Management suggested that EPA pursue the elimination of dual regulation of mixed waste by exempting from regulation under RCRA any mixed waste being managed in accordance with the applicable NRC or NRC Agreement State requirements for radioactive waste that meet the intent of the RCRA requirements for the hazardous component of the mixed waste. (See related story, this issue.)

Specific Mixed Waste Storage Issues

The *Federal Register* notice identified four issue areas where dual regulation has created compliance concerns for licensees. The guidance provides background information for each issue, discusses the current applicable regulations, and describes mixed waste management procedures that are generally acceptable to both NRC and EPA.

1. Decay-In-Storage of Mixed Waste

[T]he LDR [land disposal restriction] storage prohibition does not apply to mixed waste held pursuant to an NRC approved decay-in-storage program during the period of decay. EPA emphasizes that the inapplicability of the storage prohibition is coincident with the period of decay; once the waste has decayed to levels that are indistinguishable from background levels, the [LDR] provisions apply fully to any additional storage that occurs prior to completing the required BACT [best demonstrated available technology] treatment.

2. Inspection/surveillance requirements for mixed waste in storage

NRC and EPA recognize that increased exposures to workers may result from daily or weekly "walk through" inspections and suggest that licensees consider using methods other than walk-through inspections as a means to inspect high-activity mixed waste in storage. Alternative methods for inspection could include the use of remote monitoring devices to determine if a waste container is leaking or television monitors, or other means that are capable of detecting leakage or deterioration ... However, these measures should be coupled with a means to promptly locate and segregate or remediate leaking containers.

3. Allowable storage practices for stored mixed waste

The agencies agree that using low-exposure rate containers for radiation shielding is a reasonable practice ... Containers may be used for radiation shielding, so long as a licensee is capable of detecting, locating the source, and responding to a release within 24 hours of detection to mitigate any significant release ... So long as the container configuration does not compromise the ability to detect or respond to container leakage or deterioration, the configuration complies with RCRA requirements.

4. Waste compatibility, segregation and spacing requirements

RCRA storage facilities must ... maintain sufficient aisle space in waste storage areas "to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of the facility operation in an emergency, unless it can be demonstrated to the EPA Regional Administrator that aisle space is not needed for these purposes." In situations where high activity mixed wastes are monitored by remote means and/or stored using dense packing, a new facility has the flexibility to make such a demonstration to the Regional Administrator (or authorized state) based on the need to control the radiation hazard ... The determination to waive or alter the aisle space requirement will be made on a case-by-case basis and be incorporated into the facility's RCRA permit. (citations omitted)

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

NRC Seeks RCRA Revisions for Mixed Waste Management

In a June 7 letter to the Resource Conservation and Recovery Act (RCRA) Information Center, Michael Weber of NRC's Division of Waste Management stated, "NRC staff believes that EPA should pursue the elimination of dual regulation [of mixed waste] by exempting from regulation under RCRA any mixed waste being managed in accordance with the applicable NRC or NRC Agreement State requirements for radioactive waste that meet the intent of the RCRA requirements for the hazardous component of the waste." Weber was responding to EPA's request for comments on plans to develop a package of targeted legislative improvements to RCRA. The letter addresses a variety of issues associated with the NRC proposal, including RCRA permits, mixed waste management requirements, listing determinations, prescriptive requirements, and land disposal restrictions.

In closing, Weber commented:

NRC is ready to support any effort to resolve mixed waste issues that is consistent with our responsibility to protect the public health and safety and the environment. NRC is encouraged by EPA's willingness to undertake these improvements by soliciting input from the regulated community. NRC believes that through efforts such as these the problems surrounding the management of mixed waste can be resolved, and we look forward to working with EPA to achieve this goal.

For further information, contact Nick Orlando of NRC's Division of Waste Management at (301)415-6749.

U.S. Nuclear Regulatory Commission

NRC Inspector General Dismisses NIRS' Allegations No NRC Staff Misconduct Found

In a report finalized on August 2, NRC's Office of Inspector General detailed the findings of its investigation into a formal complaint filed on December 8, 1994, by the Nuclear Information and Resource Service (NIRS). NIRS made a number of specific allegations of NRC staff misconduct in connection with NRC's analysis of the amount of plutonium 239 projected to be disposed at the planned low-level radioactive waste disposal facility in Ward Valley, California. Some of these allegations were subsequently reiterated in a letter dated December 26. (See "Repeated NIRS Allegations.") The Inspector General's report, *Alleged NRC Cover-Up Involving Ward Valley*, found no evidence of staff misconduct.

Scope of the Investigation

The NRC Office of Inspector General (OIG) focused on the NIRS allegations that pertained to potential NRC staff misconduct. In performing the investigation, OIG staff met with the allegers (identified by the OIG as NIRS and the Committee to Bridge the Gap), interviewed NRC staff and other individuals involved with the Ward Valley disposal facility license, and reviewed the documentary record of the NRC's involvement with the issue of the amount of plutonium 239 (Pu-239) projected to be disposed of at the Ward Valley facility.

The OIG did not conduct a technical review of NRC's estimates of the amount of plutonium 239 projected to be disposed of at the Ward Valley facility.

Specific Findings of the Report

NIRS included nine summary points in the December 8 complaint to the NRC Inspector General. The Inspector General's report groups these points into five allegations, because several of the summary points related to the same issue.

Allegation One:

"NUREG-0782 Issues: That NUREG-0782 [the Draft Environmental Impact Statement for 10 CFR Part 61, which is also entitled "Licensing Requirements for Land Disposal of Radioactive Waste"] was NRC's official guidance for estimating radioactive waste, and that in responding to NAS [the National Academy of Sciences], the NRC failed to mention NUREG-0782 in an attempt to 'cook the books' by minimizing the amount of Pu-239."

Findings:

"NUREG-0782 was developed to provide guidance and support for the development of 10 CFR Part 61. It was not developed for site-specific application. Despite this, the NRC staff were aware that a number of organizations, including US Ecology and EPA, were citing NUREG-0782 data for site specific applications. The NRC response to NAS did not mention NUREG-0782 because staff members did not have an explanation for the very high Pu-239 waste estimates at the time the response was sent out. NRC staff members were also aware that CRS [the Congressional Research Service] had relied upon an earlier incorrect NRC explanation for the figures. Thus, the failure to even acknowledge the NUREG-0782 figures in the NAS response led to the 'cooking the books' allegation. (The earlier NRC explanation had cited the results of the Dresden reactor decontamination as the source of the high estimate.) No evidence was developed during the investigation that any NRC staff member intentionally distorted information in order to assist the Ward Valley licensing."

Federal Agencies and Committees *continued*

Allegation Two:

"NRC's subsequent claim of a typographical error in NUREG-0782 was a further attempt to assist the Ward Valley licensing."

Findings:

"This investigation did not develop any evidence to indicate NRC personnel falsely tried to explain away the NUREG-0782 Pu-239 estimate. The failure to address the questionable NUREG-0782 estimate when it first came to prominence gave credence to the allegation that the belated analysis was an attempt to assist the licensing of Ward Valley."

Allegation Three:

"The NRC failed to gather information from both sides before weighing in on the dispute over plutonium waste projections for Ward Valley, evidencing clear bias."

Findings:

"Several reasons were cited by NRC staff members for not contacting NIRS or CBG [Committee to Bridge the Gap] before responding to the NAS request. These reasons included: the short response time [one week], that CBG was not objective, that "other stakeholders" would have to be contacted, and that the NRC already had the CBG materials which they obtained from a Department of Energy contractor."

Allegation Four:

"The NRC failed to provide data to NAS for all six LLRW [low-level radioactive waste] facilities in the United States. Such data would have validated the higher estimates of 3500 Ci [curies] projected for Ward Valley. Instead, the NRC provided NAS with a table of Pu-239 shipments to only three of six LLRW facilities."

Findings:

"There was no evidence developed that the NRC failed to provide appropriate LLRW facility data to NAS. Current NRC regulations prohibit disposal activities that were once allowed at Sheffield and Maxey Flats."

Allegation Five:

"The NRC staff misled NAS by claiming that NUREG/CR-4289 ["Residual Radionuclide Contamination Within and Around Commercial Nuclear Power Plants"] could be relied upon to estimate plutonium estimates in primary coolant decontaminations. However, the inventories are incomplete in that they fail to include waste measurements from highly-contaminated reactor vessel internals."

Findings:

"OIG did not develop evidence that the staff misled NAS in suggesting that data found in NUREG/CR-4289 was reliable for estimating Pu-239 inventories in primary coolant decontaminations. Rather, the staff compared data collected from other sources to NUREG/CR-4289 before developing a bounding value for the Ward Valley LLRW facility. Information gathered by the staff indicated that, except for plants which may experience a high number of fuel failures, decontamination of reactor vessel or system internals are expected to result in extremely limited Pu-239 waste."

continued on page 24

Federal Agencies and Committees *continued*

*U.S. Nuclear Regulatory Commission
(continued)*

California's Perspective on the Findings

In response to the release of the OIG report, the California Department of Health issued the following statement.

"The California Department of Health Services is pleased but not surprised that the NRC Office of Inspector General investigation has found no evidence of impropriety on the part of NRC staff. The NRC's explanation of the reasons why the amounts of Pu-239 derived from NUREG-0782 are excessive was very helpful, and its estimates of the actual amounts confirmed the Department of Health Services' estimates. The results of the OIG investigation clearly show that the opponents of Ward Valley had no data to support their allegations. Hopefully, the entire plutonium argument can now be put to rest."

Background

NRC Review of Plutonium Estimates

In a November 1994 letter to the National Research Council of the National Academy of Sciences (NAS), Malcolm Knapp, then the Director of NRC's Division of Waste Management, stated that NRC agreed with the California Department of Health Services' (DHS) estimate of the amount of plutonium 239 projected to be disposed of at the planned Ward Valley facility. NRC's agreement with the California DHS estimate was based upon a review of the rationale used by California DHS in formulating the projection, as well as data obtained independently from

- NRC's research program over the last decade,
- current decommissioning activities in the United States, and
- inventory reports of disposal at the three recently operating low-level radioactive waste disposal sites—the Barnwell facility in South Carolina, the Beatty facility in Nevada, and the commercial disposal facility at Hanford, Washington.

The NRC review was requested by NAS to assist an NAS committee in its evaluation of the possible consequences of plutonium 239 entering the ground water at the Ward Valley site. (See *LLW Notes*, Nov./Dec. 1994, pp. 15-16.)

NIRS' Allegations

On December 8, 1994, NIRS filed a formal complaint with the NRC Inspector General regarding the NRC analysis of the plutonium estimates for the Ward Valley disposal facility. The NIRS complaint alleged that, in order to minimize the estimated amounts of plutonium 239 destined for low-level radioactive waste disposal facilities, NRC's review of the plutonium 239 estimates for Ward Valley failed to acknowledge official NRC estimates of the amount of plutonium that had been sent and will be sent to disposal facilities. According to NIRS, NRC employees suppressed the information "in an effort to improperly assist in the political battle to open new 'low-level' radioactive waste facilities." (See *LLW Notes*, Jan./Feb. 1995, p. 29.)

Federal Agencies and Committees *continued*

Repeated NIRS' Allegations According to the Inspector General's report, NIRS reiterated their allegations of staff misconduct after receiving a copy of the December 14, 1994, analysis attributing the plutonium overestimates in the DEIS for 10 CFR Part 61 to a typographical error. (See "Plutonium Overestimates in 10 CFR 61 Rulemaking Documents.") In a December 26, 1994, letter, NIRS wrote that "[i]t is clear NRC staff in their second letter once again engaged in precisely what we alleged in our initial complaint: attempting to 'cook the books' to lower the estimates of plutonium destined for radioactive waste facilities in an effort to help get such dumps sited."

Plutonium Overestimates in 10 CFR 61 Rulemaking Documents

Overestimates in the DEIS for Part 61 In a letter dated December 14, 1994, to the National Research Council of NAS, Malcolm Knapp, then Director of NRC's Division of Waste Management, stated that a new NRC analysis showed that the estimated activity concentration for plutonium 239 contained in the Draft Environmental Impact Statement (DEIS) prepared for 10 CFR Part 61 was high by two orders of magnitude. Knapp enclosed with his letter a memo from Andrew Campbell, then a Geochemist in NRC's Division of Waste Management, which stated that "the large discrepancy between Pu values calculated from the information in the DEIS for Part 61...and calculations based on actual disposal records and decontamination data, are primarily due to a two order of magnitude typographical error." The Campbell memo containing the analysis was dated December 5, indicating that NRC had conducted the analysis before NIRS filed the December 8 formal complaint. (See *LLW Notes*, Jan./Feb. 1995, pp. 26-28.)

Effect of Overestimates on Ward Valley Plutonium Estimates The license application for the Ward Valley disposal facility relied upon DEIS information—including the overestimated activity concentrations for plutonium 239—to project the waste stream to be analyzed for the regulatory safety analysis, a required component of the license application. Consequently, the license application for the planned disposal facility used a figure of 3,500 curies of plutonium 239 for the regulatory safety analysis. During the review of the license application, California DHS concluded that the plutonium 239 estimate was too high and instead stated that the plutonium 239 estimate would amount to no more than a few curies.

After the license was issued, U.S. Senator Barbara Boxer (D-CA) and various facility opponents publicly expressed alarm over the amount of plutonium 239 that they claimed would be disposed of at the Ward Valley disposal facility. (See *LLW Notes*, May/June 1994, pp. 14-15.) In an April 1994 letter to Senator Boxer, California Governor Pete Wilson explained the purpose of the 3,500 curie figure:

[T]he 3,500 curies of plutonium is not a waste stream projection but a deliberately much exaggerated overestimate which DHS used to err heavily on the side of safety. As described throughout the Administrative Record, .45 curies is the waste stream actually projected from historical data. The analysis based on 3,500 curies represents a conscious effort to assure over-capacity and safeguards far, far beyond possible need, to account for some uncertainty concerning decontamination wastes.

The preceding information was transmitted to Forum Participants and Alternate Forum Participants, Federal Liaisons and Alternates via facsimile in a News Flash on August 3, 1995.

Dagestan LLRW Export Application Submitted to NRC

On August 22, Master International Systems USA Corporation submitted an application to the U.S. Nuclear Regulatory Commission for a license to export low-level radioactive waste to the Russian Republic of Dagestan. (See *LLW Notes*, July 1995, p. 19.) The application is currently under consideration.

Type of Waste/Supplier

The application describes the material to be shipped as "[l]ow-level radioactive waste consisting of or containing (a) byproduct material classified under 10 C.F.R. § 61.55 as "Class A" waste ... and (b) source material in amounts not to exceed those which could be separately shipped to Dagestan pursuant to the general license specified in 10 C.F.R. § 110.22(a)(1)." Scientific Ecology Group (SEG) is expected to be the principal supplier of low-level radioactive waste for export. However, the application requests "authority to export ... [low-level radioactive waste] supplied by any NRC or NRC Agreement State licensee authorized to possess and transfer such ... [low-level radioactive waste] under a valid NRC or Agreement State specific or general license or exemption."

Transportation Issues

According to the application, the first shipment will be scheduled "as soon as possible," with subsequent shipments continuing for approximately four years. The international airport at Bangor, Maine, will serve as the point of departure for the waste, which will be transported on Russian-flagged air cargo planes. The planes will refuel in Shannon, Ireland, before flying on to Machazkala, the capital of Dagestan. Some individual shipments may require an additional refueling stop within Russia. Upon arrival in Dagestan, the Cosmos Company will take physical possession of the waste, which will be transported by truck approximately 66 kilometers to the disposal facility. Cosmos Company will be responsible for the safe handling and disposal of the waste once it arrives at the disposal facility.

DOE Secretary O'Leary on Commercial LLRW Management

In an August 18 discussion at the National Press Club, DOE Secretary O'Leary expressed the following views regarding commercial low-level radioactive waste management. She was responding to the question, "Finding a solution to storage of low-level and high-level radioactive waste remains an unresolved problem. How close are we to resolving it?"

Well, on the low-level waste, every day I see reason to have more confidence. Those are issues that the Congress wisely left to the states to determine on their own with no involvement of [a] ... federal agency, like the Department of Energy. And in this instance, the storage of low-level waste, quite frankly, has to do with community acceptance.

And you may know from watching your own colleagues in the press and the wires that Barnwell in South Carolina, which was about to be closed to all other commercial storage, has been reopened by the governor in what I think was a good sense decision ...

Other News *continued*

The following was included as an attachment to the license application submitted by Master International Systems USA Corporation.

Master proposes to export Class A LLW that consists of or contains the isotopes listed in Appendix F to 10 C.F.R. Part 110, in any physical or chemical form. However, those byproduct materials listed in 10 C.F.R. § 110.23(a)(2)-(6), (b), and (c) may be shipped only so long as the limits set forth in those provisions are not exceeded. Although not intended to be an exhaustive list, the primary waste types and physical and chemical forms presently planned for export include:

Waste Type	Physical Form	Chemical Form
Slag	Solid	Iron and iron oxide
Clean-up Bulk	Solid	Metal, stone, brick
Floor Sweepings	Solid	Soil, stone chips, brick chips
Aluminum	Solid	Aluminum metal
Copper	Solid	Copper metal
Solidified Fines	Solid	Solidified fine materials (Portland cement, epoxy cement, polymer cement)
Compacted Hearth Ash	Solid	Ash from incineration of paper, plastics, wood, etc.

Master will not export any LLW mixed with any listed or characteristic hazardous waste as defined in the Resource Conservation and Recovery Act. Master will not export liquid wastes or wastes which contain greater than 1% free liquid. All waste will satisfy NRC, DOT, IAEA [International Atomic Energy Agency] and IATA [International Air Transport Association] waste form and packaging requirements applicable to the transportation of the waste. A maximum volume of 9,750,000 ft³ of LLW will be exported. The LLW will be permanently disposed of in the Dagestan Disposal Facility to be operated by Cosmos Company in accordance with applicable laws and regulations of Russia and Dagestan.

U.S. Senate

Majority Staff of Senate Energy Committee Includes Ward Valley Transfer in Reconciliation Bill

The majority staff version of the U.S. Senate Committee on Energy and Natural Resources' draft reconciliation bill includes a provision conveying land at Ward Valley, California, to the state's Department of Health Services for use in siting a low-level radioactive waste disposal facility. At press time, the committee was scheduled to mark up the draft bill on September 20-21.

Transfer Language in the Draft Bill

The draft reconciliation bill calls for the conveyance to occur upon payment of \$500,100 by the State of California and the release of the United States from any liability for claims related to the property. Under the draft bill, the land will revert to the United States if it is not used to site a low-level radioactive waste disposal facility. The draft bill does not place any other conditions or terms upon the land transfer.

The Reconciliation Bill

Budget reconciliation bills are part of the overall budget process by which Congress has attempted to control federal spending. The process begins in the spring with the adoption of a joint budget resolution. The resolution sorts out federal spending according to 20 budget functions and specifies the dates for committee and floor action.

Two separate processes are used to implement the spending distribution outlined in the budget resolution—the appropriations process (for discretionary programs) and the reconciliation process (for changes in entitlement programs and taxes). The reconciliation process is only used if the budget resolution calls for levels of entitlement spending or taxation that differ from that specified under current law.

The Reconciliation Process

U.S. Senate Eleven different Senate committees are drafting portions of and holding hearings on the reconciliation bill. These committees will then send spending information contained in their draft bills to the Senate Budget Committee by September 22. The Budget Committee is then charged with combining the bills into a final package for consideration by the full Senate. The Budget Committee does not have the authority to change the reconciliation language which it receives from other committees. Amendments are permitted, however, once the bill reaches the floor of the full Senate.

According to committee staff, the Senate Budget Committee is tentatively scheduled to mark up the reconciliation bill on October 2. Its passage requires approval by a majority of the committee members. The reconciliation bill is expected to reach the Senate floor by October 10. Several days of mark-up are expected in both instances. If the reconciliation bill is approved by the full Senate, it will then be referred to conference, where differences with the House reconciliation bill will be worked out.

U.S. House of Representatives Committees of the U.S. House of Representatives are scheduled to report their reconciliation language to the House Budget Committee by September 22. As in the Senate, the House Budget Committee is then charged with combining the bills into a final package for consideration by the full House.

According to committee staff, the House Budget Committee anticipates marking up the reconciliation bill by mid-October. Floor action on the bill is expected to follow soon thereafter.

Wilson Asks Congress to Transfer Land

California Governor Pete Wilson (R) is seeking congressional assistance in transferring Ward Valley to the state. Wilson wrote to Representative Don Young (R-AK), Chair of the U.S. House of Representatives Committee on Resources, and to Senator Frank Murkowski (R-AK), Chair of the U.S. Senate Committee on Energy and Natural Resources, on September 12. The letters describe negotiations between the State of California and the U.S. Department of Interior following release of a National Academy of Sciences report on Ward Valley and propose that Congress intervene by legislatively transferring the land to the state.

Wilson's letter reads in part:

In discussions with State representatives, the Department of the Interior has insisted upon ways to make the Academy's recommendations binding on the State and enforceable by Interior and others. This is completely unnecessary. I will, of course, stand by my commitment. Interior's insistence upon reserving a regulatory role after the land transfer is a clear intrusion upon California's responsibility as an agreement state to regulate this kind of facility. Because the State cannot agree to such an intrusion by an agency that lacks the authority and regulatory expertise, the representatives of Interior have made clear that further negotiations for the transfer of the land are unlikely to produce a successful conclusion. No further negotiations are scheduled.

In order to bring an end to the debate over the conditions of transferring the Ward Valley land and forestall further litigation, I believe that it is time for Congress to transfer Ward Valley land to the California Department of Health Services.

Wilson attached proposed transfer legislation to his correspondence.

Other Transfer Legislation

Ward Valley transfer legislation has also recently been introduced in the U.S. House of Representatives. The bill, H.R. 2334, was introduced on September 14 by Representative Brian Bilbray (R-CA). It is unrelated to the Senate legislation and was written as a stand-alone bill. Nine Representatives were listed as original co-sponsors to the House bill, including Representatives Carlos Moorhead (R-CA), William Thomas (R-CA), David Dreier (R-CA), Ron Packard (R-CA), Duncan Hunter (R-CA), Robert Dornan (R-CA), Randy Cunningham (R-CA), Don Young (R-AK), and Dan Schaefer (R-CO).

The preceding information was transmitted to Forum Participants and Alternate Forum Participants, Federal Liaisons and Alternates via facsimile in a News Flash on September 18, 1995.

U.S. Senate (continued)

FFCA and DOE Liability

On September 6, Senator J. Bennett Johnston (D-LA) introduced an amendment to S. 1026—the Senate version of the fiscal 1996 defense authorization bill. The amendment includes a sense-of-Congress resolution that addresses liability issues facing the U.S. Department of Energy and its officials for failure to meet environmental requirements, including personal criminal liability for DOE cleanup managers under the Federal Facilities Compliance Act (FFCA). Under the FFCA, such liability would take effect October 5, 1995, for managers responsible for disposal of mixed wastes.

On September 6, following adoption of Johnston's amendment and other provisions, the text of S. 1026 was substituted for H.R. 1530—the National Defense Authorization Act of Fiscal Year 1996—which had previously been adopted by the House. H.R. 1530 was then approved by the Senate and referred to conference. No date has been set for a conference committee meeting.

Sense-of-Congress resolutions are advisory only and do not carry the force of law. The sense-of-Congress resolution reads as follows:

Certain Environmental Restoration Requirements.—It is the sense of Congress that—

“(1) No individual acting within the scope of that individual's employment with a Federal agency or department shall be personally subject to civil or criminal sanctions, for any failure to comply with an environmental cleanup requirement under the Solid Waste Disposal Act or the Comprehensive Environmental Response, Compensation, and Liability Act or an analogous requirement under comparable Federal, State, or local laws, where the failure to comply is due to lack of funds requested or appropriated to carry out such requirement. Federal and State enforcement authorities shall refrain from enforcement action in such circumstances.

Johnston indicated in the legislation and in his floor statements that if litigation is filed, Congress may revisit the issue in subsequent legislation.

U.S. General Accounting Office

GAO Looks at Siting Demographics

A June 1995 GAO report entitled *Hazardous and Nonhazardous Waste: Demographics of People Living Near Waste Facilities* conveyed the following results:

- GAO did not find that minorities or low-income people were overrepresented near a majority of the nonhazardous municipal landfills. According to GAO's nationwide survey of municipal landfills, less than half of such landfills had a percentage of minorities or low-income people living within 1 mile of the facility that was higher than the percentage in the rest of the county.
- The 10 studies that GAO summarized, which focused primarily on the demographics of people living near hazardous waste facilities, had varied conclusions. Some concluded that minorities and low-income people were disproportionately found near waste facilities, while others did not. It is difficult to generalize about the conclusions reached by the studies because the authors examined different types of facilities and used different methodologies and definitions of “racial minority.”
- EPA's limited requirements on where hazardous and nonhazardous waste facilities may be located have not addressed environmental justice. EPA's current requirements for public participation in decisions also have not addressed environmental justice, but the agency recently proposed regulations in which it requested public comment on how to address this issue.
- GAO found that few data were available on the health effects of hazardous and nonhazardous waste sites on minorities or low-income people.

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

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

PAFL Memorandum from Laura Scheele of Afton Associates, Inc. regarding NRC's Advisory Committee on Nuclear Waste (ACNW) letter report on a lesson learned from the Ward Valley siting process, including an August 10 letter from Paul Pomeroy, Chair, ACNW, to Shirley Jackson, Chair, NRC. August 28, 1995. (Transmitted via facsimile on August 28, 1995.)

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PA Memorandum from Todd Lovinger of Afton Associates, Inc. regarding the materials needed for the upcoming LLW Forum meeting session on the interregional shipment of waste for processing and disposal. August 23, 1995. (Transmitted via facsimile on August 23, 1995.)

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PAFL Memorandum from Laura Scheele of Afton Associates, Inc. regarding the NRC/EPA joint guidance on the storage of mixed waste. August 14, 1995. (Transmitted via facsimile on August 14, 1995.)

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PA Memorandum from Todd Lovinger of Afton Associates, Inc. regarding a new lawsuit filed in the Illinois district court re surcharge rebates. August 9, 1995. (Transmitted via facsimile on August 9, 1995.)

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PA Memorandum from Todd Lovinger of Afton Associates, Inc. regarding additional lawsuits filed in Massachusetts and Minnesota district courts on July 27 and July 28 re surcharge rebates. July 31, 1995. (Transmitted via facsimile on July 31, 1995.)

States and Compacts

Central Compact/Nebraska

Central Interstate Low-Level Radioactive Waste Commission 1994-95 Annual Report. August 1995. To obtain a copy, contact Don Rabbe, Public Information/Education Specialist, Central Interstate Low-Level Radioactive Waste Commission, at (402)476-8247.

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Low-Level Radioactive Waste Management in the Central Interstate Region. August 1995. Prepared by the commission's developer, US Ecology, Inc., the publication provides an overview of the actions taken to insure the health and safety of the public and the environment during the licensing, construction, and operational phases of the project. To obtain a copy, contact Don Rabbe, Public Information/Education Specialist, Central Interstate Low-Level Radioactive Waste Commission, at (402)476-8247.

Central Midwest Compact/ Illinois

Proposed Site-Selection Criteria for a Low-Level Radioactive Waste Disposal Facility. Illinois Low-Level Radioactive Waste Task Group. August 16, 1995. Report complies with the Illinois Low-Level Radioactive Waste Management Act requirement for publication and the opportunity to participate in the development of the criteria that will be used to select a site for the disposal facility. To obtain a copy, contact the Illinois Low-Level Radioactive Waste Task Group at (217)523-0817.

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Draft Revised Regional Management Plan. The Central Midwest Compact Commission. August 15, 1995. In order to ensure the safe and efficient management of waste generated in the region as required by the Central Midwest Compact, the Management Plan includes procedures for determining the type and number of regional facilities needed to manage the region's waste; sets forth policies promoting reduction of the amounts of waste generated in the region, and develops alternative means for the treatment, storage and disposal of waste. (The deadline to submit comments to the Management Plan was September 15, 1995.)

New Materials and Publications *continued*

States and Compacts (continued)

Northeast Compact/ Connecticut/New Jersey

Regional Management Plan Update. Northeast Interstate Low-Level Radioactive Waste Commission. July 1995. To obtain a copy, contact the Northeast Commission at (203)633-2060.

Northwest Compact/ Washington

Letter from Vernon Andrews, Corporate Radiation Safety Officer, Envirocare of Utah, Inc., to Dane Finerfrock, Utah Division of Radiation Control, regarding radioactivity concentration averaging in waste for disposal license No. UT 2300249.

Southeast Compact/North Carolina

Results of a Survey of Industrial Location Consultants Concerning a Low-Level Radioactive Waste Storage Facility in Wake County, North Carolina. Craig Newmark, Associate Professor of Economics, and Edward Erickson, Professor of Economics, of the Department of Economics, North Carolina State University. August 1995.

New York

New York State Low-Level Radioactive Waste Status Report for 1994. New York State Energy Research and Development Authority (NYSERDA). June 1995. Includes information provided by generators on how facilities in the state managed waste in the absence of disposal capacity. To obtain a copy, contact Suzanne Baker of NYSERDA at (518)465-6251, extension 241.

Federal Agencies

Department of Energy (DOE)

PA Letter from Thomas Grumbly, Assistant Secretary for Environmental Management, DOE, to Gregg Larson, Convenor, Low-Level Radioactive Waste Forum, thanking Larson for a June 29 letter containing information on low-level radioactive waste disposal capacity and facility development. August 21, 1995.

Status Report by the Co-Chairs. Advisory Committee on External Regulation of U.S. Department of Energy Nuclear Safety. August 14, 1995. Presents a synopsis of the observations, preliminary conclusions, and projected future efforts based on committee activities conducted through July 1995.

National Low-Level Waste Management Program Radionuclide Report Series, Volume 13: Curium-242 (DOE/LLW-129). DOE's National Low-Level Waste Management Program, Idaho National Engineering Laboratory (INEL). August 1995. Discusses radiological, chemical, and physical characteristics of curium 242. Includes discussion about the waste types and forms in which curium 242 can be found and the behavior of it in the environment and in the human body. To obtain a copy, contact Donna Lake of INEL at (208)526-6927.

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Summary of Expenditures of Rebates from the Low-Level Radioactive Waste Surcharge Escrow Account for Calendar Year 1994 (DOE/EM-0261). Report to Congress. Office of Environmental Management, DOE. June 1995. Report summarizes individual reports submitted at the end of each calendar year by all state and compact regions that receive surcharge escrow account funds.

New Materials and Publications *continued*

The following technology summaries were published by the Office of Environmental Management Technology Development, DOE. June 1995.

Contaminant Plumes Containment and Remediation Focus Area (DOE/EM-0248).

Efficient Separations and Processing Crosscutting Program (DOE/EM-0249).

Robotics Technology Crosscutting Program (DOE/EM-0250).

Landfill Stabilization Focus Area (DOE/EM-0251).

Mixed Waste Characterization, Treatment, and Disposal Focus Area (DOE/EM-0252).

Decontamination and Decommissioning Focus Area (DOE/EM-0253).

Characterization, Monitoring, and Sensor Technology Crosscutting Program (DOE/EM-0254).

Radioactive Tank Waste Remediation Focus Area (DOE/EM-0255).

To obtain a copy of any technology summary, contact the U.S. Department of Commerce, Technology Administration, National Technical Information Service at (703)487-4650.

Nuclear Regulatory Commission (NRC)

Transmittal of State Agreements Program Information: Draft Guidelines for Contaminated Flue Dust. NRC. August 28, 1995. NRC has received several letters from Agreement States responding to SP-95-093, which provided NRC's draft "Interim Guidelines for the Disposal of Cesium-137 Contaminated Emission Control Dust and Other Incident-Related Materials" for early review and comment. The transmittal includes information regarding current status of the guidelines, NRC's response to state comments, the draft guidelines, and a letter from NRC to EPA on the guidelines.

Application for License to Export Nuclear Material and Equipment. August 22, 1995. Master International Systems USA Corporation. Requests a license from NRC authorizing Master International to export low-level radioactive waste to the Russian Republic of Dagestan.

"Joint Nuclear Regulatory Commission/Environmental Protection Agency Guidance on the Storage of Mixed Radioactive and Hazardous Waste," 60 *Federal Register* 40204-11. NRC. August 7, 1995. Action: Publication of joint guidance and request for public comment. NRC and EPA are developing joint guidance to assist mixed waste generators forced to store their mixed waste, pending the development of adequate treatment and disposal capacity for commercially generated mixed waste.

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"Status and Notice of Availability of Two Policy Statements Concerning the Agreement State Program," 60 *Federal Register* 39463-4. NRC. August 2, 1995. Action: Status of policy statements and notice of availability. NRC is announcing the status of Commission action on the two policy statements: Statement of Principles and Policy for the Agreement States Program and the Policy Statement on Adequacy and Compatibility of Agreement State Programs.

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"Clarification of Decommissioning Funding Requirements," 60 *Federal Register* 38235. NRC. July 26, 1995. Action: Final rule. NRC is amending its regulations applicable to decommissioning funding assurance and the expiration and termination of licenses for nonreactor licensees.

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U.S. Nuclear Regulatory Commission Organization Charts and Functional Statements. (NUREG 0325, Revision 18). Office of Personnel, NRC. July 1995. Report consists of organization charts and functional statements for all NRC offices and regions and their components down through the branch level as of July 23, 1995.

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Streamlining NRC Oversight of Decommissioning. Hard copies of slides presented by NRC staff at the Advisory Committee on Nuclear Waste meeting on June 27, 1995. To obtain a copy of the slides, contact the NRC Public Document Room.

New Materials and Publications *continued*

U. S. Congress

General Accounting Office (GAO)

Hazardous and Nonhazardous Waste: Demographics of People Living Near Waste Facilities (GAO/RCED-95-84). GAO. June 1995. Report to Congressional Requesters. Report provides information on the race and income of people living near a sample of nonhazardous municipal landfills, on studies done of the demographics of people living near waste facilities, on EPA efforts to address environmental justice, and on the data that has been collected to measure the health effects of hazardous and nonhazardous facilities on minorities and low-income people.

U.S. House of Representatives

Letter from California Governor Pete Wilson to Don Young (R-AK), Chair, Committee on Resources, U.S. House of Representatives, urging him to "shepherd" through Congress legislation to transfer federal land in Ward Valley to the State of California for use in siting a low-level radioactive waste disposal facility. September 12, 1995.

U.S. Senate

Letter from California Governor Pete Wilson to Frank Murkowski (R-AK), Chair, Committee on Energy and Natural Resources, U.S. Senate, thanking him for his support for construction of the planned low-

level radioactive waste disposal facility in Ward Valley and urging him to "shepherd" through Congress legislation to transfer federal land in Ward Valley to the State of California. September 12, 1995.

Other

Biological Opinion for the Proposed Low-Level Radioactive Waste Disposal Facility, Ward Valley, California (1-8-95-F-26R). Fish and Wildlife Service, U.S. Department of the Interior. Letter report to David Howekamp, Director, Air and Toxics Division, EPA, and Ed Hastey, State Director, Bureau of Land Management. August 31, 1995. Responds to a request for formal consultation with the Fish and Wildlife Service regarding the habitat of the desert tortoise pursuant to section 7 of the Endangered Species Act of 1973, as amended.

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"Joint Counterpart Endangered Species Act Section 7 Consultation Regulations," 60 *Federal Register* 39921. Department of the Interior, Fish and Wildlife Service, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service. August 4, 1995. Action: Proposed rule. Proposal to promulgate counterpart section 7 consultation regulations (50 CFR 402) under the Endangered Species Act of 1973 to establish a more effective and efficient consultation process. Comments for this proposal must be received by October 3, 1995 in order to be included in the final decision.

"Federal Geographic Data Committee (FGDC); Public Review of Wetlands Classification System," 60 *Federal Register* 35217. U.S. Geological Survey. July 6, 1995. Action: Notice; Request for comments. The FGDC is sponsoring a public review of an existing wetlands classification system, "Classification of Wetlands and Deepwater Habitats of the United States," to be considered for adoption as an FGDC standard.

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Radioactive and Mixed Waste—Risk as a Basis for Waste Classification; symposium proceedings no. 2. National Council on Radiation Protection and Measurements. June 21, 1995. Contains proceedings and articles from the NCRP Symposia including the following:

- "Radioactive and Mixed Waste—Risk as a Basis for Waste Classification; Definition of the Problem," pp. 7-28; Kitty Dragonette, NRC.
- "Assessment of Risk," pp. 59-80; B. John Garrick, Stan Kaplan, both of PLG, Inc.
- "Practical Applications of a Risk-Based Waste Classification System," pp. 113-154; William Dornsife, Pennsylvania Bureau of Radiation Protection.

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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LLW
FORUM

1995 Calendar

January		February	March	April
31 - 2/3	LLW Forum <i>Southwestern Compact/California</i> San Diego, CA <ul style="list-style-type: none">• executive session• business session• selection of Convenor, Executive Committee• new developments in states & compacts• TCC report• agenda planning• tracking and manifesting• interregional shipments• mixed waste• DOE technical assistance	26 - 3/2	Waste Management '95 Tucson, AZ	
29 - 31	NGA Winter Meeting Washington, DC			
May				
16 - 18	LLW Forum <i>Southeast Compact</i> Knoxville, TN	3 - 4	Host State TCC Meeting Raleigh, NC	

<ul style="list-style-type: none"> • TCC report • agenda planning • tracking and manifesting • interregional shipments • mixed waste • DOE technical assistance • CRS re CA plutonium figures • NAS report re Ward Valley • federal waste management • DOE CTCC plans 	<ul style="list-style-type: none"> • license termination • 104th Congress & compacts • federal radiation protection standards • other regulated waste • performance assessment • insurance storage guidelines • institutional control • long-term care funding • DOT and LLRW • dialogue with LLRW processors 	5 - 8 Radioactive Exchange Decisionmakers Forum Amelia Island, FL	29 - 8/1 National Governors' Association Annual Meeting Burlington, VT	16 - 17 Host State Technical Coordinating Committee Meeting Boston, MA
19 LLW Forum Site Visit <i>Southeast Compact</i>	SEG			
September		October	November	December
26 - 28 LLW Forum <i>Northwest Compact</i> <ul style="list-style-type: none"> • executive session • business session • new developments in states and compacts • TCC report • agenda planning • tracking and manifesting • interregional shipments • mixed waste • DOE Low-Level Waste Management Program • federal waste management • types of radioactive waste 	<ul style="list-style-type: none"> • waste disposal in the Northwest Compact • international export of radioactive waste • recent developments and LLRW management • surcharge rebates • regulatory developments • insurance guidelines for storage • ACNW • EPRI projects • peer review • risk harmonization • dialogue with DOE, EPA, NRC 			11 Host State Technical Coordinating Committee Meeting Phoenix, AZ 12 - 14 DOE Annual Meeting Phoenix, AZ
29 LLW Forum Site Visit <i>Northwest Compact</i>	Envirocare

LLW
FORUM

1996 Calendar

January	February	March	April
	<div>3 - 6 NGA Winter Meeting Washington, DC</div> <div>13 - 16 LLW Forum San Diego, CA <i>Southwestern Compact/California</i><ul style="list-style-type: none">• executive session• business session• selection of Convenor and Executive Committee• new developments in states and compacts• TCC report• agenda planning• tracking and manifesting• interregional shipments• mixed waste• DOE Low-Level Waste Management Program• federal waste management• types of radioactive waste</div> <div>25 - 29 Waste Management '96 Tucson, AZ</div>		<i>tentative</i> Host State Technical Coordinating Committee Meeting
May	June	July	August
5 - 10 CRCPD Annual Meeting Albuquerque, NM	<i>tentative</i> Radioactive Exchange	13 - 16 National Governors'	

<ul style="list-style-type: none"> • executive session • business session • new developments in states and compacts • TCC report • agenda planning • tracking and manifesting • interregional shipments • mixed waste • DOE Low-Level Waste Management Program • federal waste management • types of radioactive waste 		<ul style="list-style-type: none"> • should credit be given for facility design? • conversation with EPA • conversation with DOE • conversation with NRC • conversation with DOT 	Puerto Rico	
September		October	November	December
24	LLW Forum Site Visit: <i>Texas Compact/Texas</i>	Hudspeth Co.	1 - 3 DOE Annual Meeting Salt Lake City, UT	
25 - 27	LLW Forum <i>Texas Compact/Texas</i>	Austin, TX		
<ul style="list-style-type: none"> • executive session • business session • new developments in states and compacts • TCC report • agenda planning • tracking and manifesting • interregional shipments • mixed waste • DOE Low-Level Waste Management Program • federal waste management • types of radioactive waste 				
30	Host State TCC	Salt Lake City, UT		

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