Plan Backed to Build Class A Facility First in California

In a February 24 letter to the San Diego Biomedical Industry Council, the American Ecology Corporation indicated that it is "prepared to support implementation" of a compromise proposal to expedite construction of a low-level radioactive waste disposal facility in Ward Valley, California. US Ecology, the developer/operator for the California site, is a subsidiary of American Ecology.

Compromise Plan

Under the plan, proposed by California State Assembly Member John Vasconcellos (D-22), the U.S. Department of the Interior would promptly transfer land to the state for construction of a facility for class A waste, with the transfer contingent on successful defense of the state's licensing decision against legal challenges. Full evidentiary hearings would then be conducted by Interior as soon as possible to determine whether the facility should also accept class B and C waste.

Vasconcellos, who represents Santa Clara County and chairs the California Assembly Economic Prosperity Team, made his proposal in a January 19 letter to U.S. Congressional Representative Richard Lehman (D-CA), who had written to President Clinton earlier with a separate proposal concerning the facility. (See following summary of positions.) Vasconcellos' plan combines a proposal that he made in 1993 with elements of Lehman's proposal.

Response of Facility Developer

In order to evaluate the Vasconcellos and Lehman proposals, the Biomedical Industry Council posed a number of questions to the American Ecology Corporation. The questions were contained in a February 18 letter from Council President Kenneth Widder.

In the company's reply, American Ecology Chair and Chief Executive Officer Harry Phillips, Jr. made the following points:


- Disposal costs under the Vasconcellos plan are projected to be $309 per cubic foot for class A waste only. With the addition of disposal capacity for class B and C waste, costs are projected to increase to $312 per cubic foot. Costs for low-level radioactive waste disposal under the Lehman and Babbitt approaches are estimated at $314 and $342 per cubic foot, respectively. These estimates do not include surcharges for the mandatory closure and long-term care funds for the facility.
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The Low-Level Radioactive Waste Forum is an association of representatives of states and compacts established to facilitate state and compact commission 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 Forum provides an opportunity for states and compacts to share information with one another and to exchange views with officials of federal agencies.

Low-Level Radioactive Waste Forum  
c/o Afton Associates, Inc.  
403 East Capitol Street  
Washington, DC 20003  
(202) 547-2620 • FAX (202) 547-1668

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LLW Forum Meeting, January 26–28, 1994

The LLW Forum met for two-and-one-half days in San Diego, California, from January 26-28, 1994. Forum Participants and Alternates representing twenty-six states and compacts attended the meeting. Also in attendance were eighteen additional state and compact representatives including one staff person each from the local offices of a U.S. Senator and a U.S. Representative; four officials from federal agencies including DOE, NRC, EPA, and the Department of the Army; nine special resource people; six DOE contractor staff; two observers representing a local monitoring committee, two observers representing generator organizations, four observers representing citizen groups, three observers representing disposal facility operators, two observers representing nuclear power generators, two observers representing brokers/processors, and two observers from other companies.

Highlights of the meeting follow. For further information, see LLW Forum Meeting Report, January 26-28, 1994, prepared by Afton Associates, Inc.

LLW Forum Business Session

Meetings Attendance Policy The Forum unanimously approved a motion recommended by its Executive Committee that

The Forum business session and the session on state and compact reports be open to all interested parties for the January 1994 meeting.

The motion was intended to signal a change in Forum policy indicating that the business and state and compact report segments of future Forum meetings would be open to the public and that the Forum would go into executive session only to discuss proprietary contractual, legal, and personnel matters. Afton Associates was instructed to develop language that would incorporate these principles into the Forum Statement of Principles and accompanying Forum rules. Participants were asked to give suggestions on language to the Forum Management Coordinator. All interested parties were then invited to attend the business session of the Forum.

1994 Budget Report A contract has been signed by Afton Associates and the State of Washington for 1994 Forum services. The Executive Committee had approved a budget for 1994 based on a 4 percent increase over the 1993 budget. The Forum contractor is planning to request an adjustment in the current overhead rate approved by Washington State. If the overhead rate adjustment is approved, no change in the budget will be required, since an amount sufficient to cover the adjusted overhead rate is already included in available funds.

Staff Changes Afton Associates has hired a new Federal Liaison and shifted responsibility for program coordination and Legal Information Clearinghouse direction to other staff.

Forum Registration Policy At subsequent Forum meetings, every person who plans to attend the meeting will be encouraged to call and register in advance with Afton. All those who formally register will be provided with a printed badge and will be included on the preregistration list.

Designation of Forum Participants and Alternates The Forum Executive Committee has agreed that Forum rules leave the selection of Forum Participants—and, by reference, of Forum Alternates and Meeting Alternates—completely at the discretion of the compacts and states.

Distribution of LLW Notes Each Forum Participant will now be able to designate ten officials who may receive copies of LLW Notes. The number has been increased from six. In addition, the Forum’s management firm has completed the transfer of LLW Notes to the EPRINET on-line bulletin board, and Forum Participants will be notified in the near future of the accessibility of the EPRINET system to one individual designated by each Participant.
Federal Waste Working Group  Upon the recommendation of the Executive Committee it was agreed
that the LLW Forum abolish its Federal Waste Working Group.

EPRI Presentation of a Report on Waste Vitrification Project  Following a presentation to the Executive Committee, the committee recommended that a full presentation on EPRI's low-level radioactive waste vitrification project be made to the Forum in the summer of 1994.

Selection of Convenor

Gregg Larson of the Midwest Interstate Low-Level Radioactive Waste Compact Commission was elected Forum Convenor by acclamation.

Selection of Executive Committee

The following were elected to the Executive Committee by acclamation.

- William Dornsife  Commonwealth of Pennsylvania
- Eugene Gleason  State of New York
- Lee Mathews  State of Texas
- Kathryn Visocki  Southeast Low-Level Radioactive Waste Compact Commission
- Don Womeldorf  Southwestern Low-Level Radioactive Waste Compact Commission

Number of Meetings in 1995

Following consideration of a number of options, Participants agreed that
the Forum hold three meetings in calendar year 1995.

Length of 1995 Meetings

Following a discussion concerning the length and content of meetings and the internal meeting schedules, it was agreed that
the Forum meetings in 1995 be planned and scheduled to run for three days with the option of shortening them to less than three days if the agenda allows.

Location of 1995 Meetings

Forum meetings will be scheduled in:
- San Diego, California (January);
- Salt Lake City, Utah, with a site visit to Envirocare (May/June or September); and
- El Paso, Texas, with a site visit to the planned location of the Texas disposal facility (May/June or September).

By reducing the number of meetings to three in 1995, state and compact officials will save the travel expenses from one trip, as will the Forum contractor. Staffing costs for the 1995 meetings are projected to be similar to or slightly higher than those for 1994, since the Forum has scheduled
- nine and one-half days of meetings with no site visits in 1994, and
- nine days of meetings with an additional two days of site visits in 1995.
LLW Forum Executive Session

In executive session, the Forum discussed contractual and proprietary matters, with only Forum Participants in attendance.

Upon the recommendation of the Executive Committee, the Forum unanimously agreed that the 1994 Forum budget be approved as presented.

Tracking of Manifest Information: Two Demonstrations

Two demonstrations were held in accordance with a request made by the Forum at its October 1993 meeting.

Central Midwest Compact/Illinois Tracking System

During the first, an official from the Illinois Department of Nuclear Safety (IDNS) presented an overview of the manifest information tracking system developed jointly by IDNS and the Central Midwest Interstate Low-Level Radioactive Waste Commission. The system has been used in Illinois for about a year. It has four main purposes:

- to ensure that waste that is imported into Illinois returns to its state or compact of origin,
- to comply with a legislative mandate,
- to help build public confidence, and
- to monitor what type of waste goes into the Central Midwest Compact’s disposal facility.

Taking into account the ability of generators to provide the information requested, the effect the system would have on out-of-region generators, and criteria for disposal outside of the region, the compact and state developed a system that uses a telephone and a modem. The system requires pre-notification of shipments to ensure that they are allowable and to give the state an opportunity to check the waste handling procedures. The shipper must contact the tracking system again and provide more detailed information upon actual shipment of the waste, and the recipient must contact the system when the waste is received.

The system is able to produce monthly and annual reports that provide information such as waste volume and activity by generator category. It also gives information on volume reduction and decay.

DOE Waste Tracking System

An official of the National Low-Level Waste Management Program discussed the DOE waste tracking system, explaining that in order to do the demonstration, EG&G Idaho modified DOE’s hazardous waste tracking system. Another official then discussed the history of the DOE waste tracking system, explaining that the Idaho National Engineering Laboratory (INEL), as the lead laboratory for automatic identification, developed a waste tracking system for DOE to comply with regulations. The system has since been modified.

The system currently contains three parts:

- a hazardous waste module,
- a mixed waste module, and
- a low-level radioactive waste module.

Capabilities of the low-level radioactive waste module include inventory control, cradle-to-grave tracking, generation of a completed manifest, field-level help screens, production of ad hoc reports, and a bar-code feature. The waste tracking system will be available to anyone who wants to use it, and EG&G can provide some assistance with training.

After lively discussion, demonstrations were given of both systems. Demonstrations were also available to meeting attendees during the following day’s session.
Special Session on Low-Level Radioactive Waste Minimization:

The session covered

- the purposes of volume and source reduction,
- achieving waste minimization goals—regulations and the marketplace,
- storage—reducing volumes,
- treatment—reducing volumes of waste,
- generator practices current and future, with the participation of representatives from a hospital, power generator, biomedical company, and waste broker.

(For further information on the Special Session on Low-Level Radioactive Waste Minimization, see Special Session on Low-Level Radioactive Waste Minimization, an excerpt for the LLW Forum winter 1994 meeting report.)

Winter 1994 Forum Meeting—Other Topics

The meeting also addressed the following topics:

- new developments in states and compacts;
- storage of low-level radioactive waste, including the New York storage study, centralized storage for small military generators, and storage in Michigan;
- low-level radioactive mixed waste;
- DOE use of commercial mixed waste disposal facilities;
- LLW Forum agenda planning;
- DOE plans for greater-than-Class C waste;
- low-level radioactive waste disposal after July 1994, including plans at Barnwell, Southeast Low-Level Radioactive Waste Compact Commission activities, plans at Hanford, and activities of the Northwest Interstate Compact on Low-Level Radioactive Waste Management;
- California disposal facility development, including land transfer history, current status of lawsuits and recent events;
- the status of site development in other states, with particular information from Texas, North Carolina, and Illinois;
- preparations for military base closures;
- waste acceptance criteria, including criteria when sending waste to storage;
- new generator organizations, including presentations from representatives of Organizations United for Responsible Low-Level Radioactive Waste Solutions, the Nuclear Energy Institute, and the Council for Responsible Waste Solutions (Ohio); and
- the uniform manifest.
Forum Staff in 1994

In January 1994, Afton Associates filled a staff position that had been vacant since the fall of 1993 and reassigned Forum responsibilities for two other Afton staff members. Afton Associates, through a contract with the State of Washington Department of Ecology, provides the LLW Forum with management services including meeting planning, meeting facilitation, working group coordination, materials production (including meeting reports, LLWNotes, summary reports on state and compact disposal facility development progress, and calendars), access to the Legal Information Clearinghouse, and ongoing state/compact/federal liaison. For further information on the work of those individuals who staff the LLW Forum, contact

M. A. Shaker
Management Advisor, LLW Forum
c/o Afton Associates, Inc.
403 East Capitol Street
Washington, D.C. 20003
(202)547-2620 • FAX (202)547-1668

Forum Facilitator Holmes Brown, Afton's Director of State and Federal Programs, serves as the Forum Facilitator with responsibilities including issue development, meeting facilitation, and providing information on the Low-Level Radioactive Waste Policy Amendments Act of 1986. Brown also serves as a resource to Forum Participants, and, at the request of Forum Participants, provides information to members of the press and other state and federal officials.

State/Compact Liaison Cynthia Norris, Afton's Associate Director for State Programs and Publications, has added to her Forum duties the job of LLW Forum Program Director, with responsibility for overseeing agenda-planning. Norris continues as the Forum's State/Compact Liaison, Publications Director, and Editor of LLWNotes and other Forum publications.

Federal Liaison Laura Scheele has been hired as Afton's Associate Director for Federal Relations. Scheele serves as the LLW Forum's Federal Liaison in charge of communications links between state and compact officials and federal government agency staff. She also serves as the Secretary to the LLW Forum Executive Committee, and the coordinator of the Mixed Waste and Manifest Tracking working groups. She will be in charge of Forum Participant designations.

Legal Liaison Todd Lovinger, Afton's Associate Director for Legal and Congressional Affairs, now serves as the Director of the Forum's Legal Information Clearinghouse and its Congressional Liaison and Media Contact. Lovinger continues to track information about interregional agreements between states and compacts for shipment of waste for treatment and disposal.

Management Advisor M. A. Shaker, the President of Afton Associates, is the Forum Management Advisor with responsibility for Forum structure and operating rules, committee development, cost management, and interaction with the Forum Executive committee. Shaker also performs all of the layout and design work for Forum materials.

Logistics Manager Janice Euell, Afton's Administrative Director, is in charge of all Forum logistics matters including meeting registration and setup, and Forum site visit scheduling. Euell maintains all Forum contact information, manages all Forum mailings, and assists with Executive Committee and Forum Participant interaction.

Production Assistant Chris Eisenbrey, the Production Assistant at Afton, also serves in that capacity for the LLW Forum. Eisenbrey is responsible for materials listings in LLWNotes, maintaining electronic bulletin board communication for the Forum, and distributing information to Forum contacts through facsimile transmissions. He also serves as the Forum's Press Monitor and assists with production of visual materials.
Illinois Waste Task Group Organized; Process Restarts

The nine-member Illinois Low-Level Radioactive Waste Task Group held its third organizational meeting on February 25, 1994. The group, which is charged with developing criteria for selecting a location for a low-level radioactive waste disposal facility in the state, was created by legislation enacted in March 1993 (see LLW Notes, March 1993, pp. 4-5). Task group members were appointed by Illinois Governor Jim Edgar in December of that year, following passage of amendments that slightly altered the composition of the group.

Task Group Membership The task group consists of six private citizens and three directors of state agencies. As required by law, the private citizen members include

- four technical experts,
- an individual with local government experience, and
- an individual with expertise in environmental areas.

These six individuals must be confirmed by the Illinois Senate. They will be paid $300 for each day they meet plus expenses.

Also as required by Illinois law, the group includes

- the Director of the Illinois Environmental Protection Agency,
- the Director of the Illinois Department of Nuclear Safety, and
- the Director of the Illinois Department of Energy and Natural Resources.

One additional member was named by the Governor to fill the position that the Director of the Illinois Department of Nuclear Safety is required to vacate once the task group has adopted siting criteria.

Illinois Revised Siting Process

Task Group Mandate The task group will determine scientific requirements for the siting process including geographic, geologic, seismologic, tectonic, and hydrologic criteria. In addition, the task group may develop criteria related to land use, economics, transportation, meteorology or any other issue important to siting the waste disposal facility.

Task Group Criteria Process Once proposed criteria have been developed, they will be made available to the public, and hearings will be held to obtain public comment. After reviewing oral and written comments, the task group will adopt final criteria, which the Illinois State Geological and Water Surveys will use to identify ten or more locations encompassing at least 640 acres each that appear to meet the criteria.

Contractor Site Evaluation Following geologic and water survey screening, Chem-Nuclear Systems, Inc., the disposal facility developer/operator, will conduct further evaluations of the sites, select three that appear promising for facility development, and study these sites further. The company’s evaluations of the three sites will then be submitted to the task group.

Public Input on Contractor Report The task group will conduct public meetings to review the contractor’s report and will consider any additional information on the three evaluated sites. If any of these sites do not seem to meet the criteria, the contractor will propose additional sites and the task group will conduct additional public meetings until the group approves three sites satisfying the approved criteria. The work of the Illinois Low-Level Radioactive Waste Task Group ends with its approval of three final sites.

One Site Selected for Characterization Following the task group approval of three sites, Chem-Nuclear will select one site for characterization and will develop a license application to be submitted to the Illinois Department of Nuclear Safety for evaluation.

For further information, contact Patti Thompson of the Illinois Department of Nuclear Safety at (217) 783-0229.
Central Midwest Commission Acts on Facility Access Agreements

Extension of Past Access Authorizations

In a telephone conference on December 29, 1993, the Central Midwest Interstate Low-Level Radioactive Waste Commission voted unanimously to authorize continued access to certain of its waste management facilities for generators in the following regions:

- Appalachian States Low-Level Radioactive Waste Compact,
- Midwest Interstate Low-Level Radioactive Waste Compact,
- Southeast Low-Level Radioactive Waste Compact, and
- Southwestern Low-Level Radioactive Waste Compact.

The authorization expires on June 30, 1994, and applies to the following treatment and storage facilities:

- Chem-Nuclear’s volume reduction facility in Channahon, Illinois;
- ADCO Services’ facility in Tinley Park, Illinois;
- Amersham Corporation’s facility in Arlington Heights, Illinois;
- Medi-Physics’ facility in Arlington Heights, Illinois; and

The extensions were granted in order to allow time for the compact commissions involved to enter into formal interregional agreements. Access is contingent upon the party compacts’

- accepting return of their waste after treatment or storage in the Central Midwest, and
- allowing Central Midwest generators access to treatment and storage facilities in their respective regions.

Execution of New Agreement

A formal agreement for mutual access to regional treatment and storage facilities was recently executed between the Central Midwest Interstate Low-Level Radioactive Waste Commission and the Rocky Mountain Low-Level Radioactive Waste Board. The agreement was signed by Clark Bullard, Chair of the Central Midwest Commission, on December 22, 1993. Jerry Carlin, Chair of the Rocky Mountain Board, signed the agreement on December 30, 1993. Under the agreement, both commissions authorize the return of waste sent to treatment or storage facilities in the other region and of waste resulting from or attributable to such treatment or storage.

A similar agreement was entered into between the Central Midwest Commission and the Northeast Interstate Low-Level Radioactive Waste Commission on May 18, 1993. (See LLW Notes, June 1993, p. 5.)

For further information, contact Clark Bullard of the Central Midwest Compact at (217) 333-7734.
Massachusetts

Management Board Votes to Begin Siting

At a meeting on February 16, the Massachusetts Low-Level Radioactive Waste Management Board voted to initiate the search for an in-state disposal site. The board also voted to continue Massachusetts' quest for a disposal agreement with another state.

Siting process The board's vote triggers a three-year siting process specified in the Massachusetts Low-Level Radioactive Waste Management Act. A license application for a superior site that the board will select is expected to be submitted in early 1998.

Management Plan As required by Massachusetts law, a radioactive waste management plan was adopted prior to the Management Board's vote, along with regulations pertaining to siting, operator selection, waste minimization, licensing, operation, and so forth. The Management Board and the state Departments of Public Health and Environmental Protection had revised the plan and related regulations to respond to thousands of public comments.

Funding A bond bill passed by the Massachusetts legislature in early January authorizes expenditure of up to $45 million to fund development of an in-state or out-of-state waste management option. These funds will be reimbursed by low-level radioactive waste generators after the year 2000.

For further information, contact Carol Amick of the Management Board at (617) 727-6018.

Texas

Texas Authority Holding Public Meetings on Final License Application

On February 8, 1994, the Texas Low-Level Radioactive Waste Disposal Authority began a series of six public meetings to address the license application for the proposed low-level radioactive waste disposal facility in Hudspeth County, Texas. The meetings are designed to follow the format of the six chapters of the license application. The February meeting addressed general, institutional and financial information pertaining to the proposed project. Additional public meetings will be held monthly from March through July.

License Application On December 20, 1993, the Texas Authority submitted its final major license application amendment to the Texas Natural Resources Conservation Commission, the state's licensing agency. This was the third revision of the application filed initially in March 1992. Other revisions were filed in December 1992 and June 1993.

The Texas Authority's application includes information on the proposed site's geology, topography, meteorology, flora and fauna, archaeology, surface and subsurface hydrology, as well as on population density, volumes of waste produced by type and source, life expectancy of the facility, current use of the proposed land, transportation, and site access. This data was collected through site characterization and from other studies as required by the Texas Low-Level Radioactive Waste Disposal Authority Act.

After the revised application is declared "administratively complete," up to fifteen months may be needed to review the 28-volume, 8,000-page application file. Public hearings will be scheduled following the review process.

For further information, contact Lee Mathews of the Texas Authority at (512) 451-5292.
Plan Backed to Build Class A Facility First
(continued from page 1)

- Based on information from manifests, class A waste accounted for 95 percent of the volume and 8 percent of the curies that California generators shipped for disposal from 1988 through 1992. American Ecology “do[es] not anticipate significant changes in the future.”

- Although American Ecology and US Ecology “believe there is no valid scientific or regulatory basis for an evidentiary hearing” on the Ward Valley project, they have drafted amendments to the memorandum of understanding between US Ecology and the state of California that would “bind US Ecology to ‘participate fully in the hearing,’ and employ ‘best efforts to develop a record to support a decision by Interior’ to remove restrictions on disposal of Class B and C waste.”

- US Ecology believes that “implementation of the Vasconcellos plan is not prohibited” by the Low-Level Radioactive Waste Policy Amendments Act of 1985, the Southwestern Low-Level Radioactive Waste Disposal Compact, or the California Radiation Control Law. A legal analysis from the company legal counsel for the California project supports this view. (See following legal summary.)

San Diego Biomedical Industry Council Recommendation

On March 1, the Biomedical Industry Council wrote to President Bill Clinton asking him to consider the Vasconcellos plan. The letter notes that if disposal capacity is not available until 1996—as projected under the Babbitt approach—there will be deleterious consequences for California’s medical centers, academic institutions, biomedical and biotechnology industry, and health care patients.

The letter concludes:

The only alternatives capable of meeting California’s low-level radioactive waste management needs in sufficiently timely fashion involve disposal at Ward Valley. The Vasconcellos compromise offers a viable approach for safely handling the vast majority of our waste by 1996, while preserving the ability to hold meaningful evidentiary hearings on the most significant amount of radioactivity the site would receive. Holding the entire project hostage to such proceedings—the course now charted by Secretary Babbitt—is neither justified by the facts nor in the best interest of California’s citizens.
Congressional Proposals re California Facility Development

Recently, various members of Congress have written letters to the Clinton administration concerning its position on the proposed transfer of federal land in Ward Valley to the state of California for use as a low-level radioactive waste disposal facility. Late last year, U.S. Interior Secretary Bruce Babbitt suspended action on the proposed transfer until state court litigation over the planned facility is resolved. (See LLW Notes, Winter 1993, pp. 14-15.) Babbitt had earlier requested that California's Governor Pete Wilson conduct a formal hearing to assist Babbitt in reaching a decision on the transfer. (See LLW Notes, July/August 1993, pp. 1, 7.)

The following is a short summary of the letters from Congress:

**Representative Richard Lehman (D-CA)**

On January 5, 1994, U.S. Representative Richard Lehman wrote to President Bill Clinton urging him to direct Secretary Babbitt to "immediately commence his own hearing process consistent with the substance of his August proposal." Lehman recommends that the Interior Department—not the state of California—conduct the hearing in order to avoid disagreements with the state over issues such as the scope, location, procedures, and presiding officer.

Lehman strongly suggests that Babbitt need not wait for the outcome of the state litigation before holding the federal hearing. "Final resolution of state litigation (including expected appeals) may take several years," according to Lehman, "and is unlikely to provide the Secretary with any assistance in making his federal statutory decisions with respect to the land transfer."

**Representative Philip Sharp (D-IN)**

In a letter dated December 21, 1993, U.S. Representative Philip Sharp urged Secretary Babbitt to issue a decision on the proposed land transfer as promptly as possible. Sharp wrote that he understands Babbitt's belief that the pending litigation may provide useful additional information and that he respects Babbitt's decision to require an additional hearing. However, Sharp cautioned Babbitt to take care that his concern for ensuring a full and fair process does not result in undue delay and deferral.

I trust that you will balance your preference for awaiting the outcome of pending litigation against the need to reach a timely decision under [the Federal Land Policy and Management Act]. I would expect appeals to follow any judicial decision, and urge you to proceed at the earliest point at which you determine the relevant issues have been thoroughly aired.
**Special Feature: California Facility Development continued**

**Senator Barbara Boxer (D-CA)**

U.S. Senator Barbara Boxer, who for months has called for a halt to the land transfer process, wrote to President Clinton on November 24 to summarize her views of the situation. Boxer supports a full adjudicatory hearing—to be held after resolution of the state court litigation—to explore a wide range of issues concerning the planned Ward Valley facility.

In addition, Boxer’s letter requests that the administration:

- “cooperate with and support the efforts of the [California] State Senate Office of Research in developing an alternative for the producers of short-lived, low-risk waste,” and
- “dedicate resources to ensure a complete analyses [sic] of technical issues and alternatives” by U.S. Geological Survey geologists and U.S. Environmental Protection Agency experts.

**Senator J. Bennett Johnston (D-LA)**

U.S. Senator J. Bennett Johnston outlined his approach to the proposed land transfer in a December 13, 1993 letter to Thomas McLarty, Chief of Staff to the President. Johnston recommends that the state of California be allowed to proceed with a hearing as requested by Secretary Babbitt in his August 11 letter to California Governor Pete Wilson. (See *LLW Notes*, July/August 1993, pp. 1, 7.) This should be done immediately, without waiting for a final outcome in the pending litigation.

In the alternative, Johnston argues that “if the Administration insists on waiting for disposition of the litigation, [it] should ... agree to abide by the outcome. If the state courts again say that no hearing is required (as the Court of Appeal for the Third Appellate District did in May), the Secretary should then transfer the land without another hearing.”

In either event, Johnston is opposed to requests by Senator Barbara Boxer for additional commitments from the administration (see summary of Boxer’s requests). With regard to Boxer’s suggestion that alternatives can be developed for short-lived, low-risk waste, Johnston writes, “The notion that California could provide disposal for some generators and deny it to others is neither scientifically supportable nor legally permissible.”

**Senator Dianne Feinstein (D-CA)**

In a letter to U.S. Interior Secretary Bruce Babbitt dated January 28, 1994, U.S. Senator Dianne Feinstein notes that she has followed the Ward Valley debate over the past year and that she believes “the time has come to resolve the issue.” Accordingly, she urges Babbitt to “proceed with the hearing you promised on the Ward Valley siting issues and not wait for pending litigation to be resolved.”

Feinstein notes in her letter that hospitals, biotechnology companies and other research facilities will be required to store waste at their own facilities as access to a low-level radioactive waste disposal site outside of California is discontinued.
Legal Analysis of Ward Valley Land Transfer Proposals

The following is a short summary of a legal analysis performed by US Ecology's California project legal counsel on alternative proposals for transferring federal land in Ward Valley to the state of California for use as a low-level radioactive waste disposal facility. The analysis reviews U.S. Interior Secretary Bruce Babbitt's plan for making a decision on the land transfer—as announced in a November 24, 1993 letter to California Governor Pete Wilson (R)—as well as two alternative approaches suggested separately by California State Assembly Member John Vasconcellos (D-22) and U.S. Representative Richard Lehman (D-CA). (See related stories.)

The analysis addresses whether any of the three plans violates the Low-Level Radioactive Waste Policy Act and its 1985 amendments, the Southwestern Low-Level Radioactive Waste Disposal Compact Consent Act, or the California Radiation Control Law. The conclusion is that none of the plans is fully consistent with the general intent of these laws, since the laws encourage or require the expeditious establishment of a facility for class A, B and C low-level radioactive waste in California. However, the analysis also concludes that none of the plans is prohibited by these laws, and that the Vasconcellos alternative is likely to withstand any judicial challenges since it is a rational attempt to mitigate damages that may result from the Babbitt plan.

Federal Act

The analysis finds that in New York v. United States, the Supreme Court ruled that the Low-Level Radioactive Waste Policy Act and its 1985 amendments could not impose mandatory duties upon states, but could create incentives for the states to comply with the federal policy.

Since the Federal Act itself imposes no mandatory duties on states, a decision by California to accept the Vasconcellos proposal would not be prohibited by the Federal Act. The Federal Act also does not impose any specific duties on the Department of Interior. Thus, while Secretary Babbitt's decision to delay his land sale decision is inconsistent with the Federal Act's policy for expeditious establishment of regional low-level radioactive waste disposal facilities, his decision is not prohibited by its provisions. Since Congressman Lehman's proposal merely encourages the Secretary to make his land transfer decision sooner than the Secretary currently intends, it too would not be prohibited by the Federal Act.

Compact Law

Under the compact, the state of California is obligated to provide disposal capacity for all class A, B and C low-level radioactive waste which is a state responsibility under the federal act and which is generated within the compact. The analysis finds that California breached this duty by failing to establish a disposal facility by January 1, 1993. However, California has a continuing duty to exercise reasonable diligence toward establishing a facility. The analysis concludes that the Vasconcellos plan is consistent with this duty.

While the first phase of the Vasconcellos alternative would not satisfy the State's obligation to provide for Class B and C waste disposal, we do not believe that a court would prohibit the State from implementing this approach. Nothing in the Compact (nor for that matter in the Federal Act) precludes the phased development of a regional low-level radioactive waste disposal facility. In fact, given Secretary Babbitt's and the President's current insistence on a course of action which entails even greater overall delays, implementation of the Vasconcellos proposal probably would be regarded as a rational means of mitigating harm to the overall public health and welfare, and as an action consistent with the State's responsibility under the Compact and [state law].
The analysis concludes that the Vasconcellos plan would not result in a form of "waste-splitting" prohibited by the federal act or by compact law. "We see no basis for such a prohibition in either law, especially in light of the fact that establishment of a Class A disposal facility would not relieve the State of its ultimate responsibility to provide for Class B and C waste disposal."

**Radiation Control Law**

The analysis concludes that the California Radiation Control Law does not differ significantly from the compact law, and that it therefore would not prohibit implementation of the Babbitt, Lehman, or Vasconcellos plans.

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**Babbitt Requests National Academy of Sciences Review of Ward Valley Concerns**

In a letter dated March 14, U.S. Interior Secretary Bruce Babbitt asked the Radioactive Waste Management Board of the National Academy of Sciences to assemble an "independent expert panel to undertake a thorough evaluation of the earth sciences issues" raised by three geologists concerning the planned low-level radioactive waste disposal facility in Ward Valley, California.

In making his request, Babbitt indicated that resolution of these issues is relevant to his decision about whether to transfer ownership of the facility site from the federal government to the state of California. Babbitt noted that "it would be most helpful" if the expert panel's final report could be completed by December 1 of this year.

**Materials to be Analyzed** Babbitt asked that the expert panel be convened specifically to review

- a memorandum to Babbitt dated June 2, 1993, from geologists Howard Wilshire, Keith Howard, and David Miller, and
- a report by the same geologists entitled *Description of Earth-Science Concerns Regarding the Ward Valley Low-Level Radioactive Waste Site Plan and Evaluation*.

The report was released on December 8, 1993, in a press conference held by Senator Barbara Boxer (D-CA), who had requested that the report be prepared. (See *LLW Notes*, Winter 1993, pp. 14–15.) The report states that it does not represent the policies or positions of any government agency, although the authors are employees of the U.S. Geological Survey.

**Letter to Boxer** Babbitt forwarded a copy of his request for the review to Senator Boxer, commenting, "I hope you will agree that this should advance the prospect of putting the ultimate decision whether to transfer the site for the proposed Ward Valley facility to the State on a more sound scientific basis, and is an important step toward insuring that the siting issues are addressed in a comprehensive manner."

For further information, see "New Materials and Publications."
### Summary: Proposals re California Facility Development

<table>
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<tr>
<th>Author of Proposal</th>
<th>Where Proposed</th>
<th>Type of Waste Covered</th>
<th>Hearing Recommendation</th>
<th>Other Information</th>
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<tbody>
<tr>
<td>U.S. Senator Dianne Feinstein (D-CA)</td>
<td>January 28, 1994 letter to U.S. Interior Secretary Bruce Babbitt</td>
<td>no changes suggested to waste specified in facility license*</td>
<td>Babbitt should proceed with hearing &quot;promised ... and not wait for pending litigation to be resolved&quot;</td>
<td></td>
</tr>
<tr>
<td>California State Assembly Member John Vasconcellos (D-22)</td>
<td>January 19, 1994 letter to U.S. Representative Richard Lehman</td>
<td>recommends that the facility should accept class A waste immediately, but that a determination on whether the facility will accept class B and C waste should be postponed until after full evidentiary hearings are held</td>
<td>the land should be promptly transferred for class A waste facility, contingent on California's successful defense of pending legal challenges; then, U.S. Interior Department should conduct full evidentiary hearings on acceptance of class B and C waste at the facility</td>
<td>in a letter to the Biomedical Industry Council, American Ecology states disposal of class A waste under the Vasconcellos plan could begin in September 1996, with disposal of class B and C waste commencing in September 1998</td>
</tr>
<tr>
<td>U.S. Representative Richard Lehman (D-CA)</td>
<td>January 5, 1994 letter to President Bill Clinton</td>
<td>no changes suggested to waste specified in facility license*</td>
<td>a hearing should be immediately commenced, to be conducted by the U.S. Interior Department, without waiting for the outcome of state litigation</td>
<td>in a letter to the Biomedical Industry Council, American Ecology states disposal for all classes of waste under the Lehman plan could begin in September 1977</td>
</tr>
<tr>
<td>U.S. Representative Phillip Sharp (D-IN)</td>
<td>December 21, 1993 letter to U.S. Interior Secretary Bruce Babbitt</td>
<td>no changes suggested to waste specified in facility license*</td>
<td>Babbitt should proceed with hearing at the earliest point he determines the relevant issues have been thoroughly aired in the litigation</td>
<td></td>
</tr>
<tr>
<td>U.S. Senator J. Bennett Johnston (D-LA)</td>
<td>December 13, 1993 letter to Thomas McLarty, Chief of Staff to the President</td>
<td>no changes suggested to waste specified in facility license*</td>
<td>the state of California should proceed immediately with a hearing, as requested by Secretary Babbitt in his August 11 letter to California Governor Pete Wilson</td>
<td>alternative approach: wait for disposition of litigation, then transfer land immediately if state court says that no hearing is required</td>
</tr>
<tr>
<td>U.S. Senator Barbara Boxer (D-CA)</td>
<td>November 24, 1993 letter to President Clinton</td>
<td>has questioned construction of facility as licensed, but recommends developing &quot;an alternative for the producers of short-lived, low-risk waste&quot;</td>
<td>there should be a full adjudicatory hearing after the resolution of the state court litigation</td>
<td>additional request: President should dedicate resources to a complete analysis of technical issues and alternatives by USGS geologists and EPA experts</td>
</tr>
</tbody>
</table>
Ward Valley Designated as Critical Habitat for Tortoise

On February 8, the U.S. Fish and Wildlife Service designated 6.4 million acres of critical habitat for the Mojave population of the desert tortoise. The designation encompassed primarily federal lands in four southwestern states—including the planned site for the low-level radioactive waste disposal facility in Ward Valley, California.

Prior to the designation of critical habitat, U.S. Interior Secretary Bruce Babbitt had explained in an August 11, 1993 letter to California Governor Pete Wilson that if the Ward Valley site were designated, further consultations with the Fish and Wildlife Service would be necessary before the Bureau of Land Management could transfer ownership of the site from the federal government to the state. (See LLW Notes, July/August 1993, p. 7.) “Being in the tortoise’s critical habitat would not necessarily prevent the Ward Valley project from going forward, but it would require a more careful look at the project’s impacts on the tortoise and suitable mitigation measures.”

During the formal comment period on the Fish and Wildlife Service’s proposed designation, California’s Secretary for Resources had requested that the Ward Valley site be excluded from the designated habitat. However, state officials have long been aware of the possibility that the site would be designated and have acted accordingly throughout the licensing process for the Ward Valley facility.

Special measures have been planned to protect the tortoise and to mitigate the facility’s impact. As described by the Secretary for Resources, these measures include:

- relocation of all tortoises that are in the disturbed area;
- protective fencing along an existing section of highway traversing Ward Valley to prevent tortoises from entering the road and to direct them instead to culverts and underpasses leading beneath the road;
- protective fencing around the facility, with the fence top electrified to prevent ravens and other avian predators from perching;
- buried electrical service to avoid creation of additional perches on telephone wires;
- containment of all food wastes and other garbage that might attract tortoise predators;
- worker education on tortoise protection;
- documentation of any tortoise injuries or deaths;
- motorcycle-type escorts on the facility access road for all trucks hauling waste to maximize detection of any tortoises in the roadway;
- incorporation of the terms and conditions of a U.S. Fish and Wildlife Service Biological Opinion on Ward Valley, with any subsequent amendments, into the license conditions for the facility.

Other states affected by the habitat designation are Utah, Arizona, and Nevada. The proposed site for the high-level waste repository at Yucca Mountain, Nevada, is among the land included in the designated critical habitat.
U. S. Congress

House and Senate Members Request Presidential Commission to Review Nuclear Waste Programs

House Letter

On February 16, twenty-seven members of the U.S. House of Representatives sent a letter to President Clinton urging him to appoint a presidential commission to perform a comprehensive, public review of the United States' nuclear waste programs.

As described in the letter, the commission would:

- be independent from DOE;
- include members of communities affected by nuclear waste, tribal and state government representatives, facility workers, and representatives from environmental, consumer, and taxpayer organizations;
- make information easily accessible to the public;
- participate in an extensive public hearing process, including consideration of and response to all public comments;
- open all meetings to the public; and
- issue a comprehensive report that would evaluate current programs and recommend changes.

The letter was signed by the following Representatives:

- Ron Wyden (D-OR)
- James Bilbray (D-NV)
- John Bryant (D-TX)
- Ronald Coleman (D-TX)
- Ronald Dellums (D-CA)
- Peter Deutsch (D-FL)
- Anna Eshoo (D-CA)
- Lane Evans (D-IL)
- Bob Filner (D-CA)
- Elizabeth Furse (D-OR)
- Dan Hamburg (D-CA)
- Maurice Hinchey (D-NY)
- Amo Houghton (R-NY)
- Mike Kreidler (D-WA)
- Edward Markey (D-MA)
- Jim McDermott (D-WA)
- David Minge (D-MN)
- Bill Richardson (D-NM)
- Bernard Sanders (I-VT)
- H. James Saxton (R-NJ)
- Patricia Schroeder (D-CO)
- Jose Serrano (D-NY)
- Karen Shepherd (D-UT)
- David Skaggs (D-CO)
- Jim Slattery (D-KS)
- Barbara Vucanovich (R-NV)
- Sidney Yates (D-IL)
Senate Letter

On March 15, twelve U.S. Senators sent a letter to President Clinton with nearly identical language and content as that contained in the earlier House letter. The Senate letter was signed by the following Senators:

Paul Wellstone (D-MN)
Barbara Boxer (D-CA)
Richard Bryan (D-NV)
Russell Feingold (D-WI)
Dianne Feinstein (D-CA)
James Jeffords (R-VT)
Edward Kennedy (D-MA)
John Kerry (D-MA)
Herb Kohl (D-WI)
Patrick Leahy (D-VT)
Howard Metzenbaum (D-OH)
Harry Reid (D-NV)

Related Legislation

Also on March 15, Senator Paul Wellstone introduced a bill titled, "Second Generation Nuclear Waste Act." While introducing the bill on the Senate floor, Wellstone referenced the Senate letter to Clinton. The bill seeks to amend the Atomic Energy Act of 1954 to prohibit the issuance of a construction permit or operating license for a commercial nuclear power plant until the federal government licenses a disposal facility for spent nuclear fuel and high-level radioactive waste—with adequate capacity to accept all such waste generated during the reasonably foreseeable operational lifetime of future plants. According to Wellstone, "this bill would not impact any existing plants. It would apply only to plants that would be licensed after the date of enactment. It would, therefore, not apply to renewal of existing licenses."

The bill is cosponsored by Senators Mark Hatfield, James Jeffords, and Howard Metzenbaum.

NRC Staff Solicits Comments on Draft Radiological Criteria

On February 12, the U.S. Nuclear Regulatory Commission (NRC) circulated draft radiological criteria for the decommissioning of NRC-licensed nuclear facilities for an informal comment period. The release of the draft radiological criteria marks the first time that NRC has conducted a rulemaking using an enhanced participatory process. The informal comment period ended March 9, 1994.

In the past, the NRC staff has developed proposed rules for consideration by the Commissioners, published the proposed rule for public comment, considered comments received, and prepared a final rule for the Commissioners' approval. Under the enhanced participatory rulemaking process, NRC staff increased public participation in the early stages of the rulemaking's development by holding workshops and scoping meetings, operating an electronic bulletin board system, accepting written comments, and issuing the draft criteria for informal public review before the formal review and approval by Commissioners. An additional public comment period will be conducted in conjunction with any formal proposed rule issued by the Commission.

The draft radiological criteria are being developed in order to provide a basis for determining the extent to which lands and structures must be remediated when a site is decommissioned. The proposed rule on radiological criteria is expected in June 1994.

For further information, contact Chip Cameron of the NRC at (301) 504-3725. See also "New Materials and Publications."
Interregional Access Agreement for Waste Management

The Interregional Access Agreement for Waste Management is intended to establish a nationally uniform approach regarding access to treatment/processing facilities. Under the agreement, compacts and unaffiliated states agree not to impede the return of radioactive waste that originated in their region or state. The agreement is a legally binding contract.

At its fall 1992 meeting, the LLW Forum passed a resolution stating in part that “the Low-Level Radioactive Waste Forum recommend[s] that compacts and unaffiliated states enter into the interregional access agreement.”

Bilateral Access Agreement with the Central Midwest Commission

Bilateral Access Agreements have been signed between the Central Midwest Commission and other Compact Commissions, Committees and Boards. Under these agreements, each party grants access to certain treatment and storage facilities in their respective regions to generators in the other party’s region.

Current information on signatories to the Interregional Access Agreement for Waste Management and to bilateral agreements with the Central Midwest Commission is available to Forum Participants. Contact Todd Lovinger of Afton Associates at (202) 547-2620.
## Interregional Access Agreement for Waste Management

### Signatories

<table>
<thead>
<tr>
<th>Entity</th>
<th>Date Signed</th>
<th>Signatory</th>
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<tr>
<td>Appalachian States Low-Level Radioactive Waste Commission</td>
<td>April 13, 1993</td>
<td>Arthur Davis Chair</td>
</tr>
<tr>
<td>Central Interstate Low-Level Radioactive Waste Commission</td>
<td>January 29, 1993</td>
<td>Greta Dicus Chair</td>
</tr>
<tr>
<td>Midwest Interstate Low-Level Radioactive Waste Compact Commission</td>
<td>November 23, 1992</td>
<td>Teresa Hay Chair</td>
</tr>
<tr>
<td>Northeast Interstate Low-Level Radioactive Waste Commission</td>
<td>November 12, 1992</td>
<td>Kevin McCarthy Chair</td>
</tr>
<tr>
<td>Northwest Interstate Compact on Low-Level Radioactive Waste Management</td>
<td>December 10, 1992</td>
<td>Roger Stanley Chair</td>
</tr>
<tr>
<td>Rocky Mountain Low-Level Radioactive Waste Board</td>
<td>November 16, 1992</td>
<td>Jerry Griepentrog Carlin Chair</td>
</tr>
<tr>
<td>Southwestern Low-Level Radioactive Waste Compact Commission</td>
<td>December 18, 1992</td>
<td>Don Womeldorf Executive Director</td>
</tr>
<tr>
<td>District of Columbia</td>
<td>January 12, 1994</td>
<td>James Murphy Administrator, Service Facility Regulation Administration, Department of Consumer and Regulatory Affairs</td>
</tr>
<tr>
<td>State of Maine</td>
<td>November 23, 1992</td>
<td>Donald Hoxie Director, Division of Health Engineering</td>
</tr>
<tr>
<td>Commonwealth of Massachusetts</td>
<td>January 13, 1993</td>
<td>Carol Amick Executive Director, Low-Level Radioactive Waste Management Board</td>
</tr>
<tr>
<td>State of Texas</td>
<td>June 11, 1993</td>
<td>Lawrence Jacobi, Jr. General Manager, Texas Low-Level Radioactive Waste Disposal Authority</td>
</tr>
<tr>
<td>State of Vermont</td>
<td>May 12, 1993</td>
<td>Diane Conrad Director, Vermont Radioactive Waste Management Program</td>
</tr>
</tbody>
</table>
Court Rules California Not Required to Hold an Adjudicatory Hearing

On February 7, the Superior Court of the State of California granted motions filed by US Ecology—and joined by the state defendants—in two lawsuits concerning the planned low-level radioactive waste disposal facility in Ward Valley, California. While finding that the California Health and Safety Code required the state to hold a hearing on the record prior to issuing a license for the planned facility, the court held that the state did not have a duty to provide either an "adjudicatory" hearing or a hearing as described in the Administrative Procedure Act (APA). The court did not rule on the adequacy of the hearing previously held by the California Department of Health Services (DHS), or on other claims raised by the plaintiffs relating to the validity of the licensing decision, because these issues were not raised by US Ecology in its motions.

A similar lawsuit—City of Needles v. California Department of Health Services—was filed in the same superior court on October 20, 1993. DHS and the California Health and Welfare Agency are named as defendants to the action, and US Ecology is identified as a real party in interest. (See LLW Notes, Winter 1993, pp. 20-21.)

The superior court has ruled that the cases are similar and should be heard by the same judge, although the cases have not been formally consolidated.

The Issues The lawsuits seek to void the license for the planned Ward Valley facility on the grounds that

- the final joint environmental impact report/environmental impact statement is inadequate,

- the defendants failed to compensate the City of Needles for increased costs and burdens associated with the planned facility as required under the Southwestern Low-Level Radioactive Waste Compact,

- the defendants failed to hold an adjudicatory hearing on US Ecology’s license application as required by state and federal law, and

- the license application is incomplete and inadequate.

(See LLW Notes, Winter 1993, pp. 20–23.)

The Complaints

The Parties On October 15, 1993, several groups filed a lawsuit—Fort Mojave Indian Tribe v. California Department of Health Services—in California superior court seeking to void the September 16, 1993 license issued by DHS to US Ecology to construct and operate a low-level radioactive waste disposal facility in Ward Valley, California. The Fort Mojave Indian Tribe, Los Angeles Physicians for Social Responsibility, the Southern California Federation of Scientists, and the Committee to Bridge the Gap are all plaintiffs in the action. The California Department of Health Services and its acting director are listed as defendants, and US Ecology is identified as a real party in interest to the action. At a hearing on December 8, 1993 the court granted a motion by the California Radioactive Materials Management (CalRad) Forum to intervene in the action. (See LLW Notes, Winter 1993, pp. 22–23.)
The Motions

Motion for Summary Adjudication  On December 29, 1993, US Ecology filed motions in both lawsuits asking the court to rule on the issue of whether DHS was required to hold an adjudicatory or APA-type hearing prior to granting the license. In support of its motion, US Ecology argues that

- neither the state Radiation Control Law nor the federal Atomic Energy Act requires an adjudicatory or APA-style hearing prior to issuance of a license; and

- although interested third parties may have a right to request a hearing, they do not have the right to insist upon full participation in an adjudicatory or APA-type hearing.

US Ecology also argues that the Third District Court of Appeal already decided this issue in California Radioactive Materials Management Forum v. Department of Health Services (Cal Rad Forum). In that case, the appeals court ruled that neither state nor federal law requires formal adjudicatory hearings to be held in connection with US Ecology's license application. (See LLW Notes, May 1993, pp. 15-17.) US Ecology argues that California law makes the Cal Rad Forum decision binding in these actions.

State Defendants Join Motion  The state defendants in the current lawsuits joined in US Ecology's motion on December 29, 1993. They argue that the issue has already been previously and conclusively determined by the state appeals court, and that they did not have a duty to conduct such hearings.

The Court's Order

The court rejected the plaintiffs' claim that the defendants were legally obligated to provide a hearing which allowed for sworn testimony, discovery, cross-examination, and a statement of findings by an administrative law judge. Such procedures, according to the court, describe an APA-type hearing. Citing the California appeals court's decision in Cal Rad Forum, the court held that an adjudicatory or APA-type hearing is not required for the licensing proceeding.

Instead, the court ruled that California's Health and Safety Code requires only that a hearing on the record be held prior to licensing a low-level radioactive waste disposal facility. The court recognized that a hearing on the record was held by DHS. (See LLW Notes, August/September 1991, p. 17.)

The court's order does not address the plaintiffs' claims regarding the adequacy of the hearing provided by DHS because these issues were not raised in US Ecology's motion. These claims, as well as others about the licensing process raised in the original petitions, will be addressed at a trial currently scheduled for April 27, 1994.

Opportunity for Appeal  The plaintiffs can file an extraordinary writ seeking review of the superior court's order by the appeals court now. However, these writs are rarely granted. Otherwise, the plaintiffs can appeal the issue of whether an adjudicatory hearing is required at the conclusion of the litigation.

Compact Reaction  On March 1, Dana Mount, Chair of the Southwestern Low-Level Radioactive Waste Commission, sent a letter to U.S. Interior Secretary Bruce Babbitt noting that the court's decision has cleared the way for the Interior Department to reconsider California's request for transferring title to the Ward Valley property from the federal government to the state.

We request you to act appropriately to do so. If it remains your position that, regardless of the court's finding, a hearing must be held, then please work with Governor Wilson to get things moving.

Mount also wrote to President Bill Clinton asking him to instruct Babbit to act on the transfer. As of press time, no response to the letters had been received.
Alert Citizens for Environmental Safety v. Low-Level Radioactive Waste Disposal Authority of Texas

Texas State Court Rules in Favor of Defendants

On January 12, the District Court of Travis County, Texas, granted motions filed by the Texas Low-Level Radioactive Waste Disposal Authority, the board of directors of the Authority, Lawrence Jacobi, Jr.—the Authority's General Manager—and two intervenors for summary judgment in a lawsuit filed by Alert Citizens for Environmental Safety (ACES) and others. The lawsuit sought to void the Authority's selection of a site in Hudspeth County, Texas, as the location for a low-level radioactive waste disposal facility. A nearly identical lawsuit involving the same parties was dismissed by the United States District Court for the Western District of Texas—a federal court—on October 28, 1993. Dismissal of the federal action is currently on appeal.

Background

The Pleadings On June 4, Alert Citizens for Environmental Safety (ACES) and others filed a lawsuit in the United States District Court for the Western District of Texas seeking to nullify the selection of a site in Hudspeth County. (See LLW Notes, June 1993, p. 16.) On July 2, the same plaintiffs filed a nearly identical lawsuit in the state District Court of Travis County, Texas. (See LLW Notes, July/August 1993, pp. 14-15.) The plaintiffs amended the federal complaint on August 26, eliminating state law claims that were being pursued in the state court. (See LLW Notes, September 1993, p. 12.) Motions to intervene on behalf of the defendants were filed in both lawsuits by Houston Lighting and Power Company and by Texas Utilities Electric Company. (See LLW Notes, July/August 1993, pp. 14-15.) Hudspeth County filed a motion to intervene in the federal lawsuit. (See LLW Notes, September 1993, p. 12.) On October 28, 1993, the federal action was dismissed. (See LLW Notes, Winter 1993, p. 29.)

The Issues The plaintiffs claim that the Texas legislature unlawfully mandated selection of a site within Hudspeth County and that the designation of the Hudspeth County site by the Authority's board of directors was a violation of the procedural and substantive guarantees under which the board must operate. The plaintiffs argue that these actions deny them equal protection under the laws and due process of law. They also claim that the legislative directive to choose a site in Hudspeth County is unreasonable and arbitrary and constitutes either a taking of private property for public use without just compensation or a deprivation of property without due process of law. (See LLW Notes, June 1993, p. 16.)
Motions Filed in the State Court

Plaintiffs’ Motion for Summary Judgment The plaintiffs filed a motion for partial summary judgment in the Travis County District Court on September 16, 1993. The motion seeks a court order declaring the legislative enactment mandating selection of a site within Hudspeth County to be void as a violation of Texas constitutional and statutory law. The plaintiffs argue that the challenged legislation is a local or special law and that no notice was provided prior to its enactment, as is required by the state constitution and statutes. (See LLW Notes, Winter 1993, p. 29.)

Defendants’ Motion for Summary Judgment The defendants filed motions for summary judgment on December 15, 1993. They deny that the actions of the Texas Legislature and the Authority deprived the plaintiffs of equal protection of the laws and due process of law. They also deny that the legislative directive to choose a Hudspeth County site constituted a taking of private property for public use without just compensation or a deprivation of property without due process of law. According to the defendants, “[a] alleged decrease in fair market value, absent an actual release that has migrated onto plaintiffs’ land, does not constitute a cognizable deprivation.”

The defendants also argue that the legislative directive does not constitute a local or special law because it “operate[s] upon a subject matter in which the people of the State of Texas at large are interested, and persons or things throughout the state are affected by ... [it], and ... [it is] not arbitrary.”

The defendants claim that the plaintiffs are not entitled to injunctive or declaratory relief because they have not suffered any injury, they have other remedies available, their interests are outweighed by that of the public, and the defendants are entitled to sovereign or governmental immunity. The defendants also claim that the action is premature.

The State Court’s Order

On January 12, the state court granted the defendants’ motions for summary judgment. The court found that the legislative mandate directing the Authority to choose a site in Hudspeth County was not a local or special law, and therefore was not subject to the notice requirements associated with such laws. In a letter to counsel, the judge declared that “[w]here the waste site is to be located is within the legislature’s discretion.” Costs were assessed against the plaintiffs.

The plaintiffs’ motion for summary judgment was denied by the court on the same date.

Appeals

Dismissal of the federal lawsuit is currently on appeal to the United States Court of Appeals for the Fifth Circuit. The plaintiffs’ brief on appeal is due on March 21. The defendants’ reply brief is due 30 days after filing of the plaintiffs’ brief.

The court’s ruling in the state lawsuit is final, since the deadline for filing an appeal has passed.
Boyd County Local Monitoring Committee v. Nebraska Department of Environmental Quality

Responses Filed to Boyd County Local Monitoring Committee Action

The Nebraska Department of Environmental Quality and Save Boyd County Association recently filed answers to an action commenced by the Boyd County Local Monitoring Committee in the District Court of Lancaster County, Nebraska. The action challenges the recent dismissal of a contested case hearing on the announced intent of two Nebraska state agencies to deny US Ecology's application for a license to construct and operate a low-level radioactive waste disposal facility in Boyd County, Nebraska, for the Central Interstate Low-Level Radioactive Waste Compact region. US Ecology, which is also named as a defendant, filed a motion to dismiss the action on December 11, 1993. A hearing on the motion is scheduled for March 17.

Dismissal of the Hearing On August 27, US Ecology submitted revisions to its license application reducing the original 320-acre site to a 110-acre thereby eliminating the wetlands identified by Ecology in its original application. (See LLW Notes, July/August 1993, p. 8.) The Department of Environmental Quality and Health subsequently withdrew the Notice of Intent to Deny, stating that notice does not apply to the site characteristic described in the revised application and is there moot. (See LLW News, September 1993, p. 5.) In order dated October 26, the Director of the Department of Environmental Quality dismissed the contested hearing.

Background

The Contested Case Hearing On February 19, 1993, US Ecology filed a petition requesting a contested case hearing on the announced intent of the Nebraska Department of Environmental Quality and Health to deny US Ecology's license application for the proposed disposal facility in Boyd County, Nebraska. The intended denial was based on the departments' interpretation of state regulations pertaining to the presence of wetlands at the site of the facility. (See LLW Notes, February 1993, pp. 1, 8.) The request was subsequently granted, and a hearing was scheduled to begin in October. The Nebraska Department of Environmental Quality, US Ecology, Save Boyd County, and the Boyd County Local Monitoring Committee were identified as participants in the hearing. (See LLW Notes, June 1993, p. 4.)

The Petition for Review

On November 16, the Boyd County Local Monitoring Committee filed a petition asking the District Court of Lancaster County to review the dismissal of the contested case hearing. The committee claims:

- that the contested case hearing was dismissed on the basis of improper ex parte communications between the Department of Environmental Quality and US Ecology;
- that the department followed unlawful procedures in dismissing the contested case hearing; and
- that the decision to dismiss the hearing was supported by competent, material, and substantial evidence.

The committee is requesting that the court set aside the Department of Environmental Quality's order dismissing the contested case hearing and that it order the department to conduct a full hearing to determine whether the proposed site contains wetlands, is suitable to flooding or frequent ponding, and is generally drained. (See LLW Notes, Winter 1993, p. 28.)
The Answers

Nebraska Department of Environmental Quality The Nebraska Department of Environmental Quality filed an answer to the action on December 16, 1993. In the answer, the department notes that the dismissal order is not a final decision on the license application.

The department denies allegations of improper ex parte communication, pointing out that it sent the Local Monitoring Committee and Save Boyd County Association copies of its letter responding to questions posed by US Ecology. (See LLW Notes, July/August 1993, p. 9.) In addition, the department notes that, prior to the filing of the petition, neither the committee nor the association ever formally objected to the letter or to a meeting held between the department and US Ecology. The department argues that it followed proper procedure in dismissing the hearing and denies allegations that the dismissal was unsupported by competent, material, and substantial evidence.

In addition, the department argues that the issues addressed by the plaintiffs' petition are no longer relevant because the license application which is the subject of the petition no longer exists—it has been revised. The department also claims that the action is premature.

Save Boyd County Association An answer was filed by Save Boyd County Association on December 16, 1993. The association agrees with virtually every claim made in the committee's petition, and concurs with the committee in its grounds for relief. The association notes that it received no notice of the meeting between US Ecology and the Department of Environmental Quality and that it was not provided an opportunity to participate in the process leading to the decision to dismiss the hearing.

The Motion to Dismiss

US Ecology's Motion US Ecology filed a motion to dismiss the petition on December 11, 1993. In its motion, US Ecology argues that

- the Nebraska legislature gave the Local Monitoring Committee limited statutory authority and has not granted it the power to sue;
- the committee has no real interest in the license application, only the statutory right to provide input to and communicate with US Ecology and the Department of Environmental Quality, and therefore lacks standing;
- the committee is not a real party in interest because prosecution of its appeal will not relieve US Ecology from future litigation upon the issuance of a licensing decision; and
- the committee should never have been allowed to intervene in the contested case hearing.

Local Monitoring Committee's Response A brief opposing US Ecology's motion to dismiss the action was filed by the Local Monitoring Committee on February 22, 1994. The brief states that the committee is not seeking a full hearing on the merits of the license application. Instead, it is seeking a hearing to determine whether wetlands exist on the proposed site, whether the proposed site is subject to flooding or frequent ponding, and whether the proposed site is generally well drained.

The committee also asserts that the motion to dismiss is an inappropriate pleading and that arguments regarding the committee's standing, status, and power to sue are improper. The issue, according to the committee, is whether its participation in the administrative proceedings complied with requirements of the Administrative Procedures Act and other applicable rules and regulations. The committee contends that it did.

Next Step A hearing on the motion to dismiss is scheduled for March 17.
Courts continued

Boyd County Allege Fraud by US Ecology

On December 21, 1993, Boyd County and its Local Monitoring Committee filed a lawsuit alleging fraudulent representations by US Ecology during the process for selecting a site to host a low-level radioactive waste disposal facility in Nebraska. The suit also alleges fraudulent representations by the company concerning the need for “community consent” for the proposed facility. An answer, denying the allegations of fraud, was filed by US Ecology on January 11, 1994.

The Complaint

The Parties/The Court Boyd County and its Local Monitoring Committee filed the lawsuit as a class action on behalf of all of the county’s governmental entities and citizens. US Ecology is named as the sole defendant to the action, which was filed in the District Court of Boyd County, Nebraska. However, on December 30, US Ecology removed the case to the United States District Court for the District of Nebraska. The plaintiffs filed a motion on January 13, 1994, requesting that the case be sent back to the state court. On February 28, the federal district court denied the motion, concluding that the case was properly removed to the federal court.

The Issues According to the complaint, as part of the process to select a site for a low-level radioactive waste disposal facility in Nebraska, US Ecology held a series of public workshops, issued several documents, and made various public statements. The plaintiffs allege that these workshops, documents, and statements included fraudulent representations to the citizens of Nebraska. Specifically, the plaintiffs claim that false statements were made that an initial expression of interest in local screening efforts from a county board would not bind the county to host the disposal facility.

The plaintiffs also allege that during the site selection process US Ecology made fraudulent representations regarding the need for community consent to site a facility. The concept of community consent is included in Nebraska’s siting law, although the meanings of the terms “community” and “consent” are contested. Legislation to define “community” as the county and “consent” as requiring a popular vote has been rejected by the Nebraska legislature.

Damages Alleged/Relief Requested The plaintiffs assert that the Boyd County Board of Supervisors relied on the fraudulent representations in deciding to accept resolution expressing interest in hosting the facility. They claim that the board and the citizens of Boyd County have sustained damages as a result of reliance, including obligations and costs associated with hosting the facility. They are requesting final compensation for actual damages, general damages including pain and suffering, mental distress, and psychic disruption—and punitive damages. The punitive damages would be marked for use by the Boyd County public schools.

The Answer

US Ecology filed an answer on January 11, 1994, denying the allegations of fraudulent representation and arguing that the action is barred by res judicata—a legal doctrine which precludes relitigation of claims on grounds raised or could have been raised in a prior action. According to US Ecology, the plaintiffs are asserting the same claims presented in Nebraska Ex. Rel. Nels Central Interstate Low-Level Radioactive Waste Commission, an action which sought to prevent the licensing of a low-level radioactive waste disposal facility in Boyd County, or at any other site in Nebraska, until community consent is demonstrated. In that case, the United States District Court for the District of Nebraska granted summary judgment in favor of the defendants. The court held that, as a matter of law, equity, the state had waited too long before challenging the existence of community consent for the disposal facility. (See LLW Notes, September 1993, pp. 12 and Winter 1993, pp. 26–27.)

In addition, US Ecology asserted several affirmative defenses to the lawsuit, including that

- the Local Monitoring Committee lacks the capacity to sue;
- the plaintiffs do not have standing, waived their right to sue, and failed to state a cause of action; and
- the applicable statute of limitations has expired.

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US Ecology v. Washington Utilities and Transportation Commission

Richland Facility Disposal Rate Case Settled

On January 20, 1994, the parties to a dispute over disposal rates for low-level radioactive waste at US Ecology's Richland facility entered into a settlement agreement resolving all outstanding issues. Under the agreement, a temporary base disposal rate of $50.48 per cubic foot has been set for 1994.

Background

Rate Regulation Under state law, the low-level radioactive waste disposal rate at US Ecology's Richland facility is subject to regulation by the Washington Utilities and Transportation Commission once a monopoly is found to exist. In October 1992, an administrative law judge determined that the Richland facility would enjoy a monopoly as of January 1, 1993. A rate determination was entered for the facility. This decision was subsequently affirmed by the commission, although the rate determination was modified. (See LLW Notes, May 1993, p. 21.)

Court Activity US Ecology appealed the monopoly status finding and rate determination to the Thurston County Superior Court for the State of Washington. On February 9, 1993, the court stayed the rate determination pending resolution of US Ecology's appeal. The court permitted US Ecology to charge a higher rate than that ordered by the commission but required the company to deposit the excess fees into an escrow account, to be returned to generators should the rate regulation be upheld. (See LLW Notes, February 1993, p. 22.)

Rate Adjustment In October 1993, the Washington Utilities and Transportation Commission rejected a rate adjustment proposal by US Ecology that would have increased the maximum base disposal rate at the Richland facility to $46.02 per cubic foot. Instead, the commission ordered US Ecology to reduce the base rate for all customers to $19.61. (See LLW Notes, Winter 1993, p. 33.)

The Agreement

1993 Rate A settlement agreement was accepted by the Washington Utilities and Transportation Commission on January 24, 1994, and filed with the Thurston County Superior Court on the same day. Under the agreement, the base disposal rate for 1993 was set at $28.25 per cubic foot. Excess moneys charged to generators during 1993 are to be refunded from the escrow account.

1994 and 1995 Rates The agreement establishes a temporary base disposal rate for 1994 of $50.48 per cubic foot. This temporary rate will be adjusted on July 1, 1994, “by a percentage equal to the change in the Inflation Index for the fourth quarter of 1993 and the first quarter of 1994.” A method for calculating the 1995 temporary base disposal rate and surcharges is also set forth in the agreement. As with the 1994 rate, the 1995 temporary base disposal rate will be adjusted on July 1, 1995, in accordance with the Inflation Index.

Nuclear Decommissioning Waste The agreement provides that “waste streams from the decommissioning of nuclear generating stations warrant special pricing provisions during 1994 and 1995.” The base disposal rate for such waste will be 75 percent of the disposal rates that would otherwise apply, subject to certain limitations.

Moratorium and Future Rates Except for rate adjustments specifically authorized in the agreement, US Ecology is prohibited from seeking any general rate increases that would become effective prior to January 1, 1996. However, an exception is provided for “extraordinary circumstances.” In addition, the agreement provides that US Ecology must submit a general rate filing around May 31, 1995, for rates to become effective in 1996.
<table>
<thead>
<tr>
<th>Case Name</th>
<th>Description</th>
<th>Court</th>
<th>Date</th>
<th>Action</th>
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<tbody>
<tr>
<td>Alert Citizens for Environmental Safety v. Low-Level Radioactive Waste Disposal Authority of Texas (See related story, this issue.)</td>
<td>Alleges that the Texas legislature mandated selection of a site within Hudspeth County unlawfully and that the designation of the site by the Authority's board of directors was improper.</td>
<td>District Court of Travis County, Texas</td>
<td>January 12, 1994</td>
<td>Court granted the defendants' and intervenors' motion to dismiss the lawsuit.</td>
</tr>
<tr>
<td>Boyd County Local Monitoring Committee v. Nebraska Department of Environmental Quality (See related story, this issue.)</td>
<td>Challenges the dismissal of a contested case hearing on the announced intent of two Nebraska state agencies to deny US Ecology's license application to operate a low-level radioactive waste disposal facility in Boyd County.</td>
<td>District Court of Lancaster County, Nebraska</td>
<td>December 11, 1993</td>
<td>US Ecology filed a motion to dismiss the action.</td>
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<td>February 22, 1994</td>
<td>The Boyd County Local Monitoring Committee filed a response to US Ecology's motion.</td>
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<td>March 17, 1994</td>
<td>A hearing is scheduled on US Ecology's motion to dismiss the action.</td>
</tr>
<tr>
<td>Central Midwest Interstate Low-Level Radioactive Waste Commission v. O'Leary (See LLW Notes, Winter 1993, p. 32.)</td>
<td>Seeks payment of surcharges on low-level radioactive waste disposed between January 1, 1990, and December 31, 1992, from an escrow account over which the Secretary of Energy serves as trustee.</td>
<td>United States District Court for the Central District of Illinois</td>
<td>March 11, 1994</td>
<td>Central Midwest Commission filed a motion requesting a mandatory injunction ordering O'Leary to distribute rebate funds to the Commission or to publish a final determination regarding the distribution of the funds in the Federal Register that date.</td>
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<td>March 28, 1994</td>
<td>O'Leary's response to Central Midwest Commission's motion due.</td>
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<td>Case Name</td>
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<td><strong>City of Needles v. California Department of Health Services and Fort Mojave Indian Tribe v. California Department of Health Services (See related story, this issue.)</strong></td>
<td>Related actions that seek to void the certification of the final EIR/S and the issuance of a license for the planned Ward Valley facility on the basis of alleged violations of state and federal law.</td>
<td>Superior Court of the State of California</td>
<td>February 7, 1994</td>
<td>Court granted motion for partial summary judgment—on issue of whether an adjudicatory hearing is required—filed by US Ecology and joined by state respondents.</td>
</tr>
</tbody>
</table>
| **Nebraska ex. rel. Nelson v. Central Interstate Low-Level Radioactive Waste Commission (See LLW Notes, Winter 1993, pp. 20–23.)** | Appeal of a lawsuit that challenges the licensing or construction of a facility in Boyd County—or in any other county in Nebraska—until community consent is demonstrated. | United States Court of Appeals for the Eighth Circuit | January 18, 1994 | Appellant state of Nebraska's brief on appeal was filed.  
February 16, 1994 | Brief on appeal of appellees Central Interstate Low-Level Radioactive Waste Commission and US Ecology was filed. |
| **US Ecology v. Washington Utilities and Transportation Commission (See related story, this issue.)** | Challenges the Commission's finding that US Ecology's Richland facility for low-level radioactive waste disposal operates as a monopoly, and challenges the rate determination entered for the facility. | Washington Utilities and Transportation Commission  
Thurston County Superior Court for the State of Washington | January 24, 1994 | Settlement agreement was accepted by the Commission.  
January 24, 1994 | Settlement agreement was filed with the court. |
New Materials and Publications

**Document Distribution Key**

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

**LLW Forum**


**Meeting packet: quarterly meeting of the LLW Forum, January 26-28, 1994.** (Distributed on January 14, 1994.)

**Storage of Low-Level Radioactive Waste**


**Low-Level Radioactive Mixed Waste**


**DOE Use of Commercial Waste Disposal Facilities**


**D** Memorandum from Thomas Grumbles, Assistant Secretary for Environmental Restoration and Waste Management, U.S. Department of Energy, to Managers, DOE Operations Office; Acting Manager, Fernald Field Office; Acting Manager, Rocky Flats Office, authorizing the DOE operations offices, field offices, and sites to use commercial facilities for the disposal of small quantities of mixed waste on a case-by-case basis. October 12, 1993.

**D** Memorandum from Thomas Grumbles, Assistant Secretary for Environmental Restoration and Waste Management, U.S. Department of Energy, to Manager, Chicago Operations Office, authorizing the Battelle Columbus Laboratory, Site A/Plot M (Palos Park) and RMI Titanium Company projects to use commercial facilities for the disposal of radioactive waste. October 12, 1993.
Memorandum from Thomas Grumbly, Assistant Secretary for Environmental Restoration and Waste Management, U.S. Department of Energy, to Manager, San Francisco Operations Office, authorizing the Laboratory for Energy-Related Health Research, the Santa Susana Field Laboratory, the General Electric Vallecitos Nuclear Center, and the General Electric facility (San Diego) projects to use commercial facilities for the disposal of radioactive waste. October 12, 1993.


DOE Plans for Greater-Than-Class C Waste


California Disposal Facility Development


Superfund Reauthorization: Relevance to States and Compacts

Memorandum from Gregg Larson, Executive Director, Midwest Interstate Low-Level Radioactive Waste Commission, to LLW Forum Participants, re a proposed amendment to CERCLA that would limit liability under CERCLA for any state, political subdivision, or compact commission undertaking actions to discharge responsibilities under the 1985 federal act, and that would provide a specific exclusion to the definition of “owner or operator” where states acquire ownership or control of a disposal facility pursuant to 10 CFR 61. January 11, 1994. Document includes two enclosures:

Proposed resolution, re adoption of the proposed amendment during CERCLA reauthorization and transmittal of the proposed amendment to identified groups, and

Proposed amendment to CERCLA to eliminate liability in certain instances related to disposal of low-level radioactive waste.

Brainstorming Session with the Forum Facilitator: Waste Acceptance Criteria

- **Methods for Verifying Compliance With Low-Level Radioactive Waste Acceptance Criteria.** Prepared for EG&G Idaho, Inc. and the National Low-Level Waste Management Program, with assistance from Dames and Moore. September 1993. Summarizes the methods that are currently employed and those that can be used to verify compliance with low-level radioactive waste disposal facility waste acceptance criteria. Presents the applicable regulations representing the federal, state, and site-specific criteria for accepting low-level radioactive waste.


New Generator Organizations


- **Founding Member Groups: Organizations United.** Organizations United for Responsible Low-Level Radioactive Waste Solutions. October 1993. Lists the founding member groups of the new low-level radioactive waste coalition.


Uniform Manifest

- **Letter from Eric Beckjord, Director, Office of Nuclear Regulatory Research, NRC, to Gregg Larson, Convenor, LLW Forum, responding to the Forum Chair Ivan Selin concerning the forum's position on the importance of finalizing the uniform manifest rulemaking proposed.** December 2, 1993

Low-Level Radioactive Waste Minimization


States and Compacts

Appalachian Compact


Central Compact/Nebraska

Letter from Governor E. Benjamin Nelson (D-NE), to Thomas McLarty, Chief of Staff to the President, re the transfer of federal land to the state of California for a planned low-level radioactive waste disposal facility in Ward Valley, California. January 13, 1994. (Transmitted via facsimile on January 31, 1994, with a cover memo from Todd Lovinger and Cynthia Norris of Afton Associates, Inc.)

Central Midwest Compact/ Illinois


Northeast Compact/ Connecticut


Southeast Compact/ North Carolina/South Carolina

“Barnwell Site,” The State. January 9, 1994. Results of a survey done by a South Carolina newspaper regarding priorities for the 1994 South Carolina legislative session, including whether to allow the facility at Barnwell, South Carolina, to continue to accept waste from outside the Southeast Compact region. (Distributed at the quarterly meeting of the LLW Forum held January 26-28, 1994.)

Southwestern Compact/ California


Southwestern Compact/California

Items transmitted via facsimile re the planned low-level radioactive waste disposal facility in Ward Valley, California. Transmitted on January 7, 1994, with a cover memo from Todd Lovinger and Cynthia Norris of Afton Associates, Inc.

PAFL Letter from Vice President Al Gore to Senator Barbara Boxer (D-CA) stating the administration's decision not to transfer the Ward Valley site to the State of California until the completion of pending litigation on the state's licensing decision for the facility. January 3, 1994.

PAFL Letter from Dana Mount, Chair, Southwestern Low-Level Radioactive Waste Commission, to President Bill Clinton, asking him to instruct Babbitt to select a hearing officer or to transfer the land if the courts find an adjudicatory hearing is not required. January 3, 1994.

PAFL Letter from Philip Sharp (D-IN) to Bruce Babbitt, Secretary, U.S. Department of Interior, urging the Secretary to issue as promptly as possible a decision on the proposed transfer of ownership of federal land in Ward Valley for use in siting a low-level radioactive waste disposal facility. December 21, 1993. (Transmitted via facsimile on December 22, 1993, with cover memo from Todd Lovinger of Afton Associates, Inc.)

PAFL Letter from Representative Richard Lehman (D-CA) to President Bill Clinton urging the President to direct U.S. Interior Secretary Bruce Babbitt to "immediately commence his own hearing process" on the proposed transfer of ownership of federal land in Ward Valley for use in siting a low-level radioactive waste disposal facility. January 5, 1994. (Transmitted via facsimile on January 6, 1994, with cover memo from Todd Lovinger and Cynthia Norris of Afton Associates, Inc.)

PAFL Letter from President Bill Clinton to Representative Richard Lehman (D-CA), expressing the administration's commitment "to seeing that a formal hearing on the record, with expert witnesses and cross-examination, is held prior to any decision to transfer the Ward Valley site to the State of California." January 21, 1994. (Transmitted via facsimile on January 31, 1994, with a cover memo from Todd Lovinger of Afton Associates, Inc.)

PAFL Letter from state and compact officials to Thomas McLarty, Chief of Staff to the President, re Interior Secretary Babbitt's decision to delay the process transferring land for the Southwestern Compact's rec licensed low-level radioactive disposal facility in Ward Valley California. January 11, 1994. (Transmitted via facsimile on January 19, 1994, with a cover memo from Cynthia Norris of Afton Associates, Inc.)

PAFL Letter from Thomas McLarty, Chief of Staff to the President, Gregg Larson, Executive Director, Midwest Interstate Low-Level Radioactive Waste Compact Commission, re low-level radioactive waste sites and Ward Valley. February 17, 1994. Exemplifies White House response to signatories to the January 11, 1994, letter from and compact officials. (Transmitted via facsimile on February 23, 1994, with a cover memo from Todd Lovinger of Afton Associates, Inc.)

Forum Participants/Alternates and Federal Liaisons/Alternates may contact Afton Associates for copies of the following documents.


Letter from Bruce Babbitt, Secretary, U.S. Department of Interior, to Senator Barbara Boxer (D-CA), re Babbitt’s decision to have the National Academy of Sciences conduct a review of *Description of Earth-Science Concerns Regarding the Ward Valley Low-Level Radioactive Waste Site Plan Evaluation*. H. G. Wilshire et al., dated December 2, 1993. March 14, 1994.

Letter from Dana Mount, Chair, Southwestern Low-Level Radioactive Waste Commission, to President Bill Clinton, asking for the transfer of federal land to the state of California for a proposed low-level radioactive waste disposal facility in Ward Valley, California based on a court finding that a hearing is not necessary. March 1, 1994.

Letter from Dana Mount, Chair, Southwestern Low-Level Radioactive Waste Commission, to Bruce Babbitt, Secretary, U.S. Department of Interior, asking for the transfer of federal land to the state of California for a proposed low-level radioactive waste disposal facility in Ward Valley, California based on a court finding that a hearing is not necessary. March 1, 1994.

Letter from Kenneth Widder, President, Biomedical Industry Council, five other biomedical industry representatives and a representative of the National Association of Cancer Patients to President Bill Clinton asking him to consider the Vasconcellos plan. March 1, 1994.


Letter from Kenneth Widder, President, Biomedical Industry Council, to Harry Phillips, Chair and Chief Executive Officer, American Ecology Corporation, re development of the recently licensed Ward Valley low-level radioactive waste disposal facility. February 24, 1993. Letter includes three attachments:

Letter from Dana Mount, Chair, Southwestern Low-Level Radioactive Waste Commission, to President Bill Clinton, asking for the transfer of federal land to the state of California for a proposed low-level radioactive waste disposal facility in Ward Valley, California based on a court finding that a hearing is not necessary. March 1, 1994.

Letter from Kenneth Mossman of the Health Physics Society at (602) 991-4998.


Letter from John Vasconcellos, Chair, Committee on Ways and Means, Assembly, California Legislature, to Representative Richard Lehman (D-CA), U.S. House of Representatives, re compromise proposal to expedite development of the low-level radioactive waste disposal facility in Ward Valley, California. January 19, 1994.
New Materials and Publications continued

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N  LLW Notes Recipients
M  LLW Forum Meeting Report Recipients

Massachusetts


Public Comment Response Report. Prepared by the Massachusetts Low-Level Radioactive Waste Management Board, the Massachusetts Department of Public Health and the Massachusetts Department of Environmental Protection. December 1993. Summarizes the comments received on draft documents relating to the management of low-level radioactive waste in the Commonwealth of Massachusetts. The report also includes brief responses to the comments. To obtain a copy, contact Ben McKelway of the Massachusetts Board at (617)727-6018.


Federal Agencies

Department of Energy

Readiness Review for Low-Level Radioactive Waste Disposal Facility (DOE/LLW-190). Prepared for the U.S. Department of Energy the National Low-Level Waste Management Program at EG&G Idaho, Inc. December 1993. Provides information on how to conduct a readiness review for low-level radioactive waste disposal facility. Presents methods, techniques, and references that should be useful to a licensing authority to select a team lead and assemble a review team, construct a readiness review plan, conduct the readiness review, and prepare a final report. To obtain a copy contact Donna Lake of EG&G Idaho at (208)526-6927.

Michigan


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Environmental Protection Agency

PA Memorandum from Todd Lovinger, Afton Associates, Inc., to LLW Forum Participants and Alternates, re public meeting/conference call to be held by the NACEPT Radiation Cleanup Regulation Subcommittee. February 17, 1994. (Transmitted via facsimile on February 17, 1994.)

Nuclear Regulatory Commission

PA Memorandum from Todd Lovinger, Congressional Liaison, LLW Forum, and Holmes Brown, Facilitator, LLW Forum, to LLW Forum Participants and Alternates re extension of public comment period for NRC study on pressurized water reactor decommissioning. (Transmitted via facsimile on January 7, 1994.)

U. S. Congress

Items transmitted via facsimile re request to appoint an independent commission to publicly and comprehensively review the nation's nuclear waste program. Transmitted on March 16, 1994, with a cover memo from Todd Lovinger of Afton Associates, Inc.

PAFL Letter from twelve U.S. Senators to President Clinton, requesting the appointment of an independent commission to review the nation's nuclear waste program. March 15, 1994.


PAFL Letter from twenty-seven members of the U.S. House of Representatives to President Bill Clinton regarding nuclear waste. February 16, 1994. (Transmitted via facsimile on February 23, 1994, with a cover memo from Todd Lovinger of Afton Associates, Inc.)
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
- *South Carolina
- Tennessee
- Virginia

# Southwestern Compact
- Arizona
- California
- North Dakota
- South Dakota

Texas Compact
- Maine
- #Texas
- #Vermont

Unaffiliated State
- #District of Columbia
- #Massachusetts
- Michigan
- New Hampshire
- #New York
- Puerto Rico
- Rhode Island
- *current host state
- *future host state

# contract with the Southeast Compact
- LLW disposal until June 30, 1994

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. February 1994.