LLW Forum Meets; Issues Discussed with DOE's Grumbly, EPA's Oge, and NRC's Knapp

The LLW Forum met for two days in Williamsburg, Virginia, from October 26-27. Twenty-eight Forum Participants and Alternates representing 21 states and compacts participated in the meeting, along with 11 resource people from the U.S. Department of Energy (DOE), the U.S. Nuclear Regulatory Commission (NRC), the U.S. Environmental Protection Agency (EPA), and two Michigan institutions that generate low-level radioactive waste.

Also in attendance as observers were 12 additional state and compact officials; 11 officials from federal agencies including the Department of Energy (DOE), the Environmental Protection Agency (EPA), the Advisory Committee on Nuclear Waste (ACNW), the General Accounting Office (GAO), and the Department of the Army; two DOE contractor staff; individual representatives of two facility developers/operators, one brokers/processors association, two brokers and processors, two national generator organizations, three local generator organizations, one generator, one national antinuclear organization, one local antinuclear organization; and two members of the press.

Highlights of the meeting follow.

For further information, see LLW Forum Meeting Report, October 26-27, 1994, prepared by Afton Associates, Inc.

A Conversation with the DOE Assistant Secretary

DOE Assistant Secretary Thomas Grumbly opened the conversation by discussing several issues, including the appropriate role for DOE in commercial low-level radioactive waste management, DOE acceptance of commercial mixed waste for treatment and disposal, and the privatization of former DOE facilities. A general discussion between Forum Participants and Grumbly included issues such as the disposal of radium sealed sources, privatization of DOE waste management operations, DOE use of commercial facilities, the LLW Forum Interregional Access Agreement for Waste Management, and stakeholder participation.

For further information, see "Summary of a Conversation between Assistant Secretary for Environmental Management Thomas Grumbly, Department of Energy, and the LLW Forum, October 26, 1994," page 3.

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***LLW Notes Supplement:
November 1994 Election Results***

MASTER

LLW Forum

LLW Notes

Volume 9, Number 7 • December 9, 1994

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

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From Gregg Larson to Thomas Grumbly, November 1994

Summary of a Conversation between Assistant Secretary for Environmental Management Thomas Grumbly, Department of Energy, and the LLW Forum October 26, 1994

The Department of Energy's Role in Low-Level Radioactive Waste Management

During the discussion, you stated the need to look beyond the legal drivers for commercial low-level radioactive waste management and explore ways in which the Department and states and compacts could share information and potential solutions for waste management issues.

- We agree that the exchange of information is beneficial and suggest that the Department and the LLW Forum continue to interact at regularly scheduled LLW Forum meetings, as well as through other mechanisms, such as meetings in Washington, D.C.
- We were encouraged by your statement that the Department would consider technical assistance on the demonstration and use of innovative technologies in the states, and we look forward to further discussions on implementation.
- For your information, James Turi of the Department's Office of Waste Management has tentatively agreed to attend the upcoming LLW Forum meeting in late January to discuss the Department's mixed waste treatment and disposal technologies.

The Department's Acceptance of Commercial Mixed Waste

Participants have requested that the Department consider accepting commercial mixed waste for treatment and disposal. Since the enactment of the FFCA legislation, the LLW Forum has established a dialogue and a working relationship with the FFCA Task Force state representatives. Four state officials who regularly attend LLW Forum meetings also participate in FFCA Task Force activities and serve as liaisons between the two groups. The LLW Forum and the Department recognize that DOE acceptance of commercial mixed waste will be addressed through the FFCA process.

- We welcomed your statement supporting the Department's acceptance of commercial mixed waste for treatment and disposal and recognize that the Department awaits consensus among the FFCA Task Force state representatives on this issue. As we discussed, the FFCA Task Force and the Department should consider opportunities to involve states that are not represented on the FFCA Task Force in the FFCA deliberations on commercial mixed waste.
- Later in the October meeting, the LLW Forum's Mixed Waste Working Group recommended that Forum Participants representing compacts make a special effort to discuss the FFCA process with those compact member states that are not members of the FFCA Task Force and to keep those states informed of the need to include commercial mixed waste in FFCA discussions. The LLW Forum accepted and concurred with the working group's recommendation.

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LLW Forum *continued*

Summary of a Conversation between Assistant Secretary for Environmental Management Thomas Grumbly, Department of Energy, and the LLW Forum, October 26, 1994 (continued)

Privatization of Former DOE Facilities

The Midwest and Central Midwest Compacts and host states have voiced strong concerns over the U.S. Enrichment Corporation's (USEC) position that the waste currently generated at the company's facilities in Kentucky and Ohio is a state disposal responsibility.

- Your offer of technical assistance to compile USEC waste stream information for affected states and compacts was appreciated. Those states and compacts will be encouraged to contact Jim Boyd at DOE Idaho to initiate compilation of this information.
- As we discussed, the affected states and compacts will also cooperate with you and with Terry Lash, Director of the Department's Office of Nuclear Energy, on a more productive dialogue with USEC and with Congress on this issue.

Disposal of Sealed Sources

Radium sealed sources are not defined as low-level radioactive waste and are not addressed in the Low-Level Radioactive Waste Policy Amendments Act. Some higher-activity radium sealed sources could pose a threat to public health and safety because of insufficient commercial disposal capacity for these sources. We understand that the Department's Office of Civilian Radioactive Waste Management is planning a rulemaking to address disposal of radium sealed sources.

- We would like to hear an update from the Department at an upcoming LLW Forum meeting on how the LLW Forum can work with the Department during this rulemaking process.

Privatization of Department of Energy Waste Management Operations

Recent Defense Nuclear Facilities Board recommendations concerning privatization of the Department's Waste Management Options created concern about the possible privatization of the Department's waste streams. Your statement that the Department will retain responsibility for its own waste streams was reassuring.

- We ask that you forward any relevant Department correspondence or other formal documents about this board recommendation to the LLW Forum as soon as they become available.
- We also look forward to hearing how the Department intends to proceed with privatization plans at future meetings.

The Department's Use of Commercial Facilities

The Department has agreed in the past to provide advance notice of plans to use commercial facilities, such as the Envirocare facility in Utah. We appreciated your reiteration of that commitment during our discussion. We understand that the site-specific plans developed under the FFCA process anticipate use of certain commercial treatment capabilities for the Department's mixed waste.

- It would be helpful if you would copy the LLW Forum on any such notification given to states, compacts or other government entities so that we can help in the public education process on this sensitive issue.
- We would also like to hear an update on the Department's plans regarding the use of commercial treatment capabilities at an upcoming LLW Forum meeting.

LLW Forum Interregional Access Agreement for Waste Management

During our discussion, you expressed interest in the interregional agreement developed by the LLW Forum. The agreement (copy attached) allows for the movement of low-level radioactive waste across state and compact boundaries for treatment purposes.

- If you or your staff would like a briefing or any further information regarding the agreement, contact the staff of Afton Associates, the management firm for the LLW Forum.

Stakeholder Participation in LLW Forum Meetings

All LLW Forum regular and working group meetings are open to the public. These meetings are essentially opportunities for information sharing among the states, compacts, and federal agencies assisting with development of new disposal capacity. Other stakeholders representing academic, medical, industrial, and utility generators; waste management companies; environmental and public interest organizations; and contractors also regularly attend LLW Forum meetings and often make presentations or statements.

- A summary of the stakeholders in attendance at the October meeting is attached for your information.
- The LLW Forum has always sought creative ways to expand its information-sharing role, despite budgetary restrictions. For your information, in October, the LLW Forum passed the following motions:

that the LLW Forum incorporate into its operating procedures a formal statement codifying the long-standing LLW Forum policy that observers can be recognized to speak at a LLW Forum meetings by Forum Participants, Alternate Participants or meeting alternates seated at the table and

that Afton Associates draft and submit at the next LLW Forum meeting language to be included in the LLW Forum operating procedures providing an opportunity for public comment before the LLW Forum votes on policy issues.

The first measure will enable those not familiar with LLW Forum meetings to understand the open nature of the proceedings. The second provides another opportunity to involve stakeholders when proposed policy is under consideration.

October 1994 Forum Meeting (continued from page 1)

Management of NARM

Federal Issues The reasons for state and compact interest in NARM management were discussed, and a description of NARM (naturally occurring and accelerator-produced radioactive materials) and NORM (a subset of NARM, referring to naturally occurring radioactive materials) was provided.

An NRC staff person then made a presentation on the sources and volumes of NARM. He reviewed various activities that produce NARM, identified existing problems with NARM disposal, and noted that NRC currently has no regulatory authority over NARM and that the commission has no plans to address NARM in future rulemakings.

An EPA staff person then presented information on

- what constitutes NARM,
- the regulatory status of NARM,
- EPA activities addressing NORM,
- EPA studies of NARM and NORM,
- NARM and low-level radioactive waste sites,
- NARM volumes contaminated with more than two nanocuries per gram of radioactivity,
- NARM and low-level radioactive waste annual volumes, and
- EPA's future plans regarding NARM.

CRCPD Proposal for Management of NARM A Forum Participant reported on a proposal for the management of NARM, which is being developed by the Conference of Radiation Control Program Directors (CRCPD). The presentation included

- recommendations from a CRCPD report on NORM and suggested guidance on NORM disposal,
- discrete radium disposal options,
- guidance from suggested state regulations, and
- CRCPD's NARM strategy and NARM activities.

Current Management of NARM Forum Participants reported on

- Envirocare and Richland license conditions pertaining to NARM acceptance,
- Barnwell license conditions affecting NORM acceptance,
- a Louisiana facility for nonhazardous oil-field waste containing radium, and
- authority of the Rocky Mountain Board over import and export of NORM.

Future Management of NARM Discussion of this topic included the following points:

- a legal analysis of compact and state authority to exclude NARM prepared by the Appalachian Commission at the request of Pennsylvania;
- a Pennsylvania statute that includes NARM in the definition of low-level radioactive waste;
- volume estimates for levels of NARM generated in the Central Midwest Compact, state NARM licensing conditions, provisions in the Central Midwest Compact's regional management plan on NARM management, and the compact's position regarding its authority to exclude out-of-region NARM;
- NARM licensing and inspection programs in states within the Midwest Compact region, the compact's definition of low-level radioactive waste, and a provision in the Midwest Compact amendments that allows for the disposal of NARM at the regional facility if certain conditions are met;
- volume estimates for radium sources in Connecticut and state plans for the future disposal of NARM;
- NARM levels in the Southeast Compact and license conditions relating to NARM disposal at the proposed North Carolina disposal facility;
- Massachusetts' surveys on NARM generation and storage, volume estimates, and a staff recommendation that the board consider accepting NARM at the proposed disposal facility; and
- future plans for the management of NARM in other states and compacts.

Executive Session

Third Quarter Budget Report Forum Participants were informed that, in the third quarter, costs had been reduced at the direction of the Executive Committee and that the LLW Forum budget would be met by the end of calendar year 1994. Given the success of budget adjustments, the Executive Committee decided in September not to discuss with the Department of Energy the availability of additional funds for LLW Forum activities.

State/Compact Cost-Sharing Forum Participants asked Afton Associates to determine the usefulness of the information collected to date on money spent by states and compacts in the first part of 1994 to participate in the activities of the LLW Forum. Afton will report to the Executive Committee.

1995 Budget Proposal Forum Participants unanimously approved a motion

to approve the 1995 proposed budget.

LLW Forum Operations After 1996 Forum Participants were informed that the Executive Committee is seeking other Participants for discussions concerning LLW Forum operations and funding after December 1996, when current funding from the State of Washington/U.S. Department of Energy ends.

1994 Contractor Review Forum Participants were notified that the Executive Committee had followed up on all recommendations made by Forum Participants and was satisfied with the resultant activities and changes outlined and undertaken by Afton Associates.

Executive Committee Report

LLW Notes Distribution to Federal Officials At the recommendation of the Executive Committee, Forum Participants agreed to increase the number of federal officials who may receive *LLW Notes* and *Summary Reports* by unanimously approving a motion

that the operating procedures of the LLW Forum be amended to read, "The LLW Forum's management firm may designate up to fifteen officials per federal agency department to receive these publications."

Distribution of *LLW Notes* via EPRINET The Executive Committee recommended that the pilot project to transfer *LLW Notes* and *Summary Reports* for downloading on EPRINET be discontinued because substantial resources were being spent and because the publications are now available to anyone on request through the LLW Forum's Outreach Project. Forum Participants unanimously agreed

that the pilot project to distribute *LLW Notes* on disc to EPRI for publication on EPRINET be discontinued.

Public Participation At the recommendation of the Executive Committee, Forum Participants agreed to the following motions:

that the LLW Forum incorporate into its operating procedures a formal statement codifying the long-standing LLW Forum policy that observers can be recognized to speak at LLW Forum meetings by Forum Participants, Alternate Participants or meeting alternates seated at the table

and

that Afton Associates draft and submit at the next LLW Forum meeting language to be included in the LLW Forum operating procedures providing an opportunity for public comment before the LLW Forum votes on policy issues.

Executive Committee and Convenor Elections Forum Participants were reminded that elections for LLW Forum Convenor and the Executive Committee would be held during the January/February 1995 meeting and that those wishing to serve or to nominate any individual to serve should contact any member of the Executive Committee.

1996 Meeting Locations

M. A. Shaker announced the balloting results for LLW Forum Meeting locations in 1996:

January/February San Diego;

May/June the area of Washington, D.C.;

September/October Texas.

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October 1994 Forum Meeting (continued)

Commercial Mixed Waste Management

Forum Participants heard a report from the Mixed Waste Working Group. (See related story, this issue.) The group recommended that Forum Participants representing compacts make a special effort to discuss the Federal Facility Compliance Act (FFCA) process with those compact member states that are not members of the FFCA Task Force and to keep those states informed of the need to include commercial mixed waste in FFCA discussions. The LLW Forum accepted and concurred with the working group's recommendation.

Environmental Justice

State and Compact Issues and Activities Forum Participants discussed

- environmental justice issues that have been raised in siting low-level radioactive waste disposal facilities;
- state and compact programs undertaken in order to address environmental justice concerns; and
- state and compact regulations or policies regarding environmental justice that apply to siting a low-level radioactive waste disposal facility.

Federal Activities and Impact on States An EPA official reported on

- EPA programs to address environmental justice concerns;
- a recent study entitled "Toxic Waste and Race Revisited" by the United Church of Christ, which examines potentially disproportionate impacts on minority populations;
- the use of the Resource Conservation and Recovery Act (RCRA) and Title VI of the Civil Rights Act to raise environmental justice issues and challenge siting decisions; and
- options for state leadership in addressing environmental justice issues with regard to siting, including examples from Arkansas, New York, and Massachusetts.

Waste Manifesting and Tracking

Progress on the Uniform Manifest An NRC staff person provided information on the status of the uniform manifest rulemaking and on the manifesting of sealed sources returned to the manufacturer and of waste sent for treatment that will be returned to the generator.

LLW Forum Waste Information Working Group Report The Waste Information Working Group reported on recent activities. (See related story, this issue.) Forum Participants were urged to contact Mike Mobley of the Tennessee Department of Environment and Conservation to exchange information on plans for tracking materials and waste.

An Interactive Dialogue: NRC & EPA

Forum Participants discussed issues of common interest with Malcolm Knapp, Director of NRC's Division of Waste Management, and Margo Oge, Director of EPA's Office of Radiation and Indoor Air, including

- the naming of three new NRC Commissioners, who will need to be confirmed by the Senate;
- NRC's activities on the Agreement State program, the enhanced participatory rulemaking for decommissioning criteria, and the preliminary draft performance assessment branch technical position;
- EPA work on cleanup standards for radiologically contaminated sites and waste management standards to address all radioactive waste other than high-level radioactive waste;
- the status of EPA's draft Low-Level Radioactive Waste Standard and EPA's potential use of the Memorandum of Understanding between EPA and NRC to exempt NRC licensees from the standard if NRC can demonstrate that its program is sufficiently protective of public health and the environment;
- EPA's proposal that NRC adopt standards for the protection of ground water to demonstrate to EPA that NRC's program is sufficiently protective; and
- the possibility that NRC could consider various options regarding monitored retrieval disposal if the facility in question could demonstrate compliance with the regulatory requirements for a disposal facility.

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NRC/TCC Sponsor Performance Assessment Workshop

The Nuclear Regulatory Commission (NRC) conducted a two-day performance assessment workshop at the NRC Public Auditorium in Rockville, Maryland, on November 16–17. The workshop was sponsored by NRC and the Host State Technical Coordinating Committee (TCC). (See *LLW Notes*, Aug./Sept. 1994, p. 10). One hundred-forty people attended the first day of the workshop, and 116 people attended the second day.

The following state agency people, listed alphabetically by state, attended the workshop. State agency designations are provided when known. *For further information and a list of the topics discussed at the workshop, see "New Materials and Publications," this issue.*

California

Ed Bailey and Carl Lischeske, Department of Health Services

Connecticut

Joe Amarello and Ronald Gingerich, Connecticut Hazardous Waste Management Service

Massachusetts

Salita Dakertson and Robert Hallisey, Department of Public Health

Nebraska

Jay Ringenberg, Department of Environmental Quality
Cheryl Rogers, Department of Health

New Jersey

Tom Amidon, Department of Environmental Protection
Jeanette Eng, Low-Level Radioactive Waste Disposal Facility Siting Board
Karl Muessig, Geological Survey

New York

Kathy Caval, Low-Level Radioactive Waste Siting Commission
Jack Kadlecsek, Department of Environmental Conservation
Paul Merges, Bureau of Radiation, Department of Environmental Conservation
D. Miller, Energy Research and Development Authority

North Carolina

Lee Cox, and Aaron Padgett; Division of Radiation Protection; Department of Environment, Health and Natural Resources
Paul Guichard, Low-Level Radioactive Waste Management Authority

Ohio

Marcia Howard and Robert Owen, Department of Health

Pennsylvania

Robert Barkanic, Rich Janati, and Steve Jones; Bureau of Radiation Protection

South Carolina

Henry Porter, Department of Health and Environmental Control

Tennessee

Mike Mobley, Division of Radiological Health, Department of Environment and Conservation

Texas

Ruben Alvarado and Susan Jablonski, Low-Level Radioactive Waste Disposal Authority
Steve Etter and C. D. Rao, Natural Resource Conservation Commission

Utah

Dane Finerfrock and Loren Morton, Division of Radiation Control

Washington

Earl Fordham and Gary Robertson, Department of Health

LLW Forum Mixed Waste Working Group Meets

The Mixed Waste Working Group met on October 26 in conjunction with the LLW Forum meeting. During the course of the meeting, working group members

- heard reports from Eugene Gleason and Domenic Forcella on recent developments concerning U.S. Department of Energy (DOE) acceptance of commercial mixed waste and the activities of the National Governors' Association (NGA)/DOE Federal Facilities Compliance Act (FFCA) Task Force;
- heard an update from Philip Wheatley regarding currently available information on mixed waste and plans for future reports;
- heard a report from M. A. Shaker on 1995 funding for mixed waste working group activities;
- heard a report from James Kennedy on U.S. Nuclear Regulatory Commission (NRC) plans regarding a branch technical position to address disposal of radioactively contaminated electric arc furnace baghouse dust (see *LLW Notes*, October 1994, pp. 23 and 24); and
- heard a report from Carol Amick regarding commercial mixed waste recommendations contained in letters from the Massachusetts Low-Level Radioactive Waste Management Board to President Clinton and the Massachusetts congressional delegation.

FFCA Task Force and Commercial Mixed Waste

Eugene Gleason, who serves as a state member of the FFCA Task Force and the LLW Forum Mixed Waste Working Group, reported that the FFCA Task Force will develop a common set of strategies on issues such as interstate transportation of DOE waste. (See *LLW Notes*, October 1994, p. 22.) Gleason stated that DOE acceptance of commercial mixed waste will be one of the strategies discussed during the next meeting

of the FFCA Task Force state members, which is scheduled for November 30 and December 1 in Salt Lake City, Utah. Domenic Forcella, who serves as a member of the FFCA Task Force Commercial Mixed Waste Subgroup and an affiliate member of the LLW Forum Mixed Waste Working Group, reported on the July 26 meeting of the FFCA Commercial Mixed Waste Subgroup and stated that the subgroup will continue to study the issues associated with DOE acceptance of commercial mixed waste for treatment and disposal. (See *LLW Notes*, August/September, p. 9.)

In preparation for the next meeting of the FFCA Task Force, the LLW Forum Mixed Waste Working Group members agreed to

- recommend to the LLW Forum that Forum Participants contact their FFCA representatives to provide them with state-specific commercial mixed waste volume information; and
- recommend to the LLW Forum that Forum Participants representing compacts make a special effort to discuss the FFCA process with those compact member states that are not members of the FFCA Task Force and to keep those states informed of the need to include commercial mixed waste in FFCA discussions.

Mixed Waste Working Group members also agreed to

- request that DOE's National Low-Level Waste Management Program provide a cost estimate for updating the *National Profile on Commercially Generated Radioactive Mixed Waste*; and
- request that DOE's National Low-Level Waste Management Program provide information regarding the accuracy of the data contained in the *National Profile on Commercially Generated Radioactive Mixed Waste*, given that changes in technology and waste streams have occurred since the profile was completed in 1992.

Attendance

Attending the Mixed Waste Working Group meeting were the following working group members and affiliate members:

- Harvey Collins of the California Department of Health Services;
- William Dornsife of the Pennsylvania Department of Environmental Resources;
- Domenic Forcella of the Connecticut Hazardous Waste Management Service;
- Ronald Gingerich of the Connecticut Hazardous Waste Management Service;
- Eugene Gleason of the New York State Energy Office;
- Lee Mathews of the Texas Low-Level Radioactive Waste Disposal Authority;
- Joe Stohr of the Northwest Interstate Compact on Low-Level Radioactive Waste Management and the Washington Department of Ecology; and
- Don Womeldorf of the Southwestern Low-Level Radioactive Waste Compact Commission.

Others in attendance were

- Carol Amick of the Massachusetts Low-Level Radioactive Waste Management Board;
- James Boyd of the National Low-Level Waste Management Program, DOE/Idaho Operations Office;
- Diane D'Arrigo of the Nuclear Information and Resource Service;
- James Kennedy of the NRC;
- Terry Plummer of the National Low-Level Waste Management Program, DOE/Headquarters;
- Philip Wheatley of DOE's National Low-Level Waste Management Program at Idaho National Engineering Laboratory; and
- Holmes Brown, Laura Scheele, and M. A. Shaker of the LLW Forum/Afton Associates, Inc.

For further information, contact Laura Scheele, Mixed Waste Working Group Coordinator, at (202)547-2620.

October 1994 Forum Meeting (continued from page 8)

Storage Plans and Activities in States and Compacts

Forum Participants heard presentations on

- low-level radioactive waste generation and management at the Palisades Nuclear Power Plant in Covert, Michigan, and the significant impact that lack of disposal access has had; and
- low-level radioactive waste generation at a large community hospital, and how the hospital had addressed its waste storage problems through a combination of waste minimization and construction of additional storage space.

Forum Meeting—Other Topics

The following topics were also part of the agenda:

- new developments in states and compacts;
- distribution of surcharge rebate funds by DOE, and a pending lawsuit filed against Department of Energy Secretary Hazel O'Leary by the Appalachian States Low-Level Radioactive Waste Commission;
- interregional shipment of waste for processing;
- NRC land ownership requirements;
- DOE's National Low-Level Waste Management Program, including the recent contractor change at Idaho National Engineering Laboratory (INEL) and 1995 DOE technical assistance to states and compacts;
- liaison report on the Host State Technical Coordinating Committee; and
- LLW Forum agenda planning.

LLW Forum Waste Information Working Group Meets

The Waste Information Working Group met on October 27, in conjunction with the LLW Forum meeting. During the course of the meeting, working group members

- discussed the state of Tennessee's plans to track materials and waste;
- reviewed state and compact responses to a questionnaire on tracking of materials and waste;
- discussed the collection and review of additional information on state and compact tracking plans and on available tracking systems; and
- discussed past and future interaction with the U.S. Department of Transportation.

Future Activities of the Working Group

Waste Information Working Group members agreed to

- recommend that LLW Forum Participants contact Mike Mobley of the Tennessee Department of Environment and Conservation to exchange information on plans for tracking materials and waste;
- invite Mobley to the Waste Information Working Group meeting scheduled for February 1995;
- instruct Afton Associates to continue to collect responses to the materials/waste tracking questionnaire and to compile the data for presentation to the LLW Forum at its February 1995 meeting;
- review new tracking systems or new developments to existing tracking systems as appropriate;
- meet early next year with DOT staff in Washington, D.C. to discuss issues related to materials transportation; and
- instruct Afton Associates to invite a representative of the U.S. Department of Transportation (DOT) to the February 1995 meeting.

Attendance

The following Waste Information Working Group members were present at the meeting:

- Janice Deshais of the Northeast Interstate Low-Level Radioactive Waste Commission;
- William Dornsife of the Pennsylvania Department of Environmental Resources;
- Michael Klebe of the Illinois Department of Nuclear Safety; and
- Marc Tenan of the Appalachian States Low-Level Radioactive Waste Commission.

Others in attendance were

- Aaron Padgett of the North Carolina Department of Environment, Health and Natural Resources;
- Babette Salus of the Central Midwest Interstate Low-Level Radioactive Waste Commission; and
- Holmes Brown, Todd Lovinger, and M. A. Shaker of the LLW Forum/Afton Associates, Inc.

States and Compacts

Central Compact/Nebraska

Nebraska Transmits Final Round of Questions on License Application

On October 31, the Nebraska Departments of Environmental Quality (DEQ) and Health (DOH) provided their final round of comments to US Ecology, the developer of the proposed low-level radioactive waste disposal facility in Boyd County. These comments constitute the fourth set of technical interrogatories concerning US Ecology's license application for the facility.

Background: License Review US Ecology submitted its application to DEQ and DOH in July 1990, and the application was deemed complete by the two regulatory agencies in December 1991. The intervening time has been spent in technical review of the application, including a series of interrogatories and responses.

License Update Not Currently Planned In a November 2 letter to DEQ and DOH, John DeOld, Project Manager for US Ecology, indicated that the company does not believe that a revision or update of the license application for the proposed disposal facility is warranted at this time. State regulators had asked the company to update the application after the U.S. Army Corps of Engineers notified US Ecology in August 1994 that a wetland that "appears to be less than one acre" is located within the buffer zone of the proposed facility. (See *LLW Notes*, August/September 1994, p. 12.)

DeOld noted that the company maintains the area in question is not a wetland, adding, "We are continuing to evaluate the Corps of Engineers most recent visit to the site as well as our own work and anticipate a resolution to this issue in the near future." US Ecology had previously provided the state with documentation on this matter, including copies of an October 7 letter to the Corps of Engineers, in which the company offered data to support its position that hydric soils characteristic of a wetland are not present in the area.

Midwest Compact/Ohio

Enabling Legislation Introduced in Ohio Consideration Expected Next Year

On November 16, legislation to enable development of a low-level radioactive waste disposal facility in Ohio was introduced in the Ohio Senate by Senator Gary Suhadolnik, who chairs the Senate Committee on Energy, Natural Resources and Environment. According to Suhadolnik, "there will be no effort to pass this bill this year." Rather, as he explained in a letter to his colleagues in the Ohio House and Senate, the bill's introduction was timed to allow state legislators to "gain a better understanding of a difficult issue" before considering it "more seriously" next year. The bill will need to be reintroduced at the start of the next session of the General Assembly in January 1995.

The legislation has four major components:

- amendments to the Midwest Interstate Low-Level Radioactive Waste Compact;
- establishment of an administrative structure and process, including creation of the Ohio Low-Level Radioactive Waste Facility Development Authority;
- siting criteria and development requirements; and
- Agreement State authorization and facility licensing.

Suhadolnik points out that the legislation is based upon the work of the Ohio Blue Ribbon Commission and Ohio Low-Level Radioactive Waste Advisory Committee, whose recommendations were delivered to Governor Voinovich and the state legislative leadership in September 1993. (See *LLW Notes*, September 1993, p. 6.)

For further information, contact Jane Harf of the Ohio Environmental Protection Agency at (614) 644-2776. See also "New Materials and Publications," this issue.

Southeast Compact/North Carolina/South Carolina

Hydrogeologic Data for North Carolina Site to Undergo Independent Review

The North Carolina Low-Level Radioactive Waste Management Authority has agreed to contract with Harding Lawson Associates for an independent review of the hydrogeologic suitability of the proposed low-level radioactive waste disposal site in Wake County. The Authority agreed to the independent review during a meeting on October 26. Cost of the review, which is expected to be completed in March 1995, is not to exceed \$250,000.

The project director for Harding Lawson Associates will be Eric Lappala, who, according to the company, served as the "principal technical consultant for site selection, characterization, and preparation of the license application" for the planned low-level radioactive waste disposal facility in Ward Valley, California.

Rationale In a letter dated October 5 sent to Authority members and staff, John Mac Millan, Executive Director of the Authority, explained his reasons for recommending the review. He noted that state regulators' first round of interrogatories concerning the license application for the proposed facility—especially the first 32 that dealt with hydrogeology—"indicated the desire for additional field testing to develop the level of technical information which the regulators believe will be necessary to meet and fulfill the regulations." (See *LLW Notes*, August/September 1994, p. 11.) These regulations require, in part, that "[t]he disposal site shall be capable of being characterized, modeled, analyzed, and monitored."

Mac Millan comments that this regulatory requirement is "very general and therefore subject to individual interpretation." He points out that while the Authority's siting and development contractor, Chem-Nuclear, has certified that the site will meet all licensing requirements, this position is disputed by technical consultants hired by Wake County and adjacent Chatham County. Given "the wide range of professional opinions on this important licensing issue," Mac Millan sought a contractor to provide an independent review.

Scope of Work The overall purpose of the consultation is to review past hydrogeologic characterization work and plans for future such work and "to render a professional opinion about whether there is a reasonable probability that the Wake County site can be shown to meet the NC State regulations."

Specific tasks listed in the scope of work include:

- reviewing the hydrogeology and ground-water modeling portions of the license application and Site Characterization Report;
- reviewing the interrogatories that deal with the hydrologic characteristics and related modeling studies;
- reviewing the key reports of the counties' consultants;
- reviewing, with Chem-Nuclear and its subcontractors, the Equivalent Porous Media model, its calibration, and its applicability to the site's geologic setting;
- reviewing the integrated test program for further tests at the site, based on the original 32 interrogatories related to hydrogeology;
- developing a professional judgment about the quality of the scientific information on which the license application was based and about the validity of the method that has been recommended for ground-water modeling; and
- preparing and presenting a report of the findings.

For further information, contact John Mac Millan of the North Carolina Authority at (919) 733-0682.

Southwestern Compact/California

NRC Agrees with California's Ward Valley Plutonium Estimates

In a letter dated November 23, Malcolm Knapp, Director of the U.S. Nuclear Regulatory Commission's Division of Waste Management, stated that NRC agrees with the California Department of Health Services' (DHS) estimate of the amount of plutonium 239 projected to be disposed of at the planned low-level radioactive waste disposal facility in Ward Valley, California. NRC's agreement with the California DHS estimate is based upon a review of the rationale used by California DHS in formulating the projection. The NRC review was requested by the National Research Council, the principal operating agency of the National Academy of Sciences (NAS).

NAS Review of Ward Valley

At the request of Interior Secretary Bruce Babbitt, an NAS committee is assessing certain issues raised in a memorandum and report on the Ward Valley site written by three geologists employed by the U.S. Geological Survey. (See *LLWN* Notes, October 1994, p. 5.) The geologists' report, which was prepared at the request of Senator Barbara Boxer (D-CA), states that it does not represent the policies or position of any government agency.

The NAS committee has held two public meetings and expects to complete its report in late January 1995.

Use of Hypothetical Plutonium Figures in the License Application

In a letter dated September 22, DHS attorneys provided to the National Research Council the rationale for the plutonium 239 estimates for the planned Ward Valley facility. The DHS correspondence—from Elisabeth Brandt, DHS Deputy Director and Chief Counsel, and Peter Baldrige, Staff Attorney—explained that the

rationale was being provided in response to a presentation made by Dan Hirsch of the Committee to Bridge the Gap during the second public NAS committee meeting. According to the DHS letter, Hirsch contended that 124 pounds of plutonium 239 (Pu-239 or ²³⁹Pu) would be disposed of at the Ward Valley site, based on the approximately 3,500 curies of plutonium 239 assumed in the license application to be in the waste stream for purposes of site and facility analysis. (See *LLWN* Notes, May/June 1994, pp. 14-15.)

In response, Brandt and Baldrige state:

Since the time that the License Application was submitted, considerable additional information has become available concerning the waste to be expected from primary coolant loop decontaminations

Based upon this information, one can conclude with considerable assurance that the quantities of primary coolant loop decontamination waste generated in the Southwest Compact will contain far less Pu-239 than the 3,447 curies hypothetically applied in the License Application performance assessment. Since over 98 percent of the Pu-239 volume claimed by Mr. Hirsch is based upon this hypothetical decontamination waste, and the hypothetical assumes quantities of Pu-239 which exceed more reasonably expected levels by six orders of magnitude, it follows that Mr. Hirsch's fundamental premise is incorrect. There will not be 124 pounds of Pu-239 disposed at Ward Valley. At most, there will be a fraction of a curie to two curies of Pu-239 from decontamination waste, and a fraction of a curie to several curies from other sources. The 3,500 curies was hypothetical only. Reality is ... quite different.

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States and Compacts *continued*

Southwestern Compact/California (continued)

NAS Request for Nuclear Regulatory Commission Review

Ina B. Alterman, a Study Director for the National Research Council, requested in a letter dated November 10 that NRC review the California DHS discussion of the plutonium 239 estimates and determine "if either of the estimates are reasonable, or, if not, what would be a conservatively realistic estimate."

Her letter states:

An issue that has been raised, not by the geologists but by opponents of the site who presented information to the committee, concerns the amount of plutonium 239 that is projected to go into the proposed facility should it eventually be licensed and constructed. While this is not an issue that the [National Academy of Sciences/National Research Council] committee has been asked to address, it plays a role in bounding calculations that the committee wishes to make to evaluate certain possible consequences of it getting into the ground water.

Nuclear Regulatory Commission Findings

According to Knapp's letter, NRC staff relied upon data obtained independently from NRC's research program over the last decade, from current decommissioning activities in the United States, and from inventory reports of disposal at the three recently operating low-level radioactive waste disposal sites—the Barnwell facility, the Beatty facility, and the commercial disposal facility at Hanford. The letter notes:

Waste facility inventory projections are inherently uncertain because they are made prospectively. There are a number of factors that could affect the amount of ²³⁹Pu that would require disposal at the Ward Valley site, and the effects of these factors are not known a priori prior to the generation of the waste. In recognition of these uncertainties, disposal facility applicants and regulators often assume inventories that may overestimate the actual amounts that may be received at the disposal facility during its operating lifetime. Thus, if the performance assessment for the facility demonstrates that the public and environment will be suitably protected at this larger inventory, there would be additional assurance of protection at reduced inventories.

Knapp concludes: "To summarize, our data from decontamination of nuclear plants, the major contributor of ²³⁹Pu to the Ward Valley source term for this isotope, shows values of ²³⁹Pu in the range of a fraction of a curie to a few curies Although there are many variables that will affect the amount of ²³⁹Pu that will be disposed of at Ward Valley, based on the review described in this letter, we agree with the DHS estimate of several curies of ²³⁹Pu."

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

Massachusetts

RFP Issued for Mapping and Screening Work in Massachusetts

In November, the Massachusetts Low-Level Radioactive Waste Management Board issued a request for proposals to provide technical assistance in excluding unsuitable areas from consideration as sites for a low-level radioactive waste disposal facility. The scope of work for the project includes

- reviewing the Management Board's Siting Plan, and
- performing the exclusionary screening portion of the Massachusetts siting process, using the Massachusetts geographic information system (MassGis).

Proposals are due by January 6, 1995.

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

Massachusetts Board Writes to Clinton, Legislators re Waste Policy

In letters addressed to President Clinton and to the individual members of the Massachusetts congressional delegation, the Massachusetts Low-Level Radioactive Waste Management Board encouraged review of the following issues whenever Congress reviews low-level radioactive waste management policy:

- Requiring the U.S. Department of Energy to provide for the disposal of commercial mixed waste.
- Clarifying the liability that ownership of an LLRW [low-level radioactive waste] management facility could pose under CERCLA [Comprehensive Environmental Response, Compensation and Liability Act of 1980, or "Superfund"].
- Requiring radioactive materials users nationwide to institute radioactive source and LLRW volume minimization programs.
- Providing further incentives to promote the consolidation of regional LLRW compacts.
- Devising strategies for the federal government to assist states in making progress toward LLRW management solutions.

In enumerating these issues for review, the Management Board cautioned that "because the momentum currently propelling many siting states could be lost during a reassessment, consideration should be given to LLRW management practices (i.e., packaging, storage, treatment, transportation, or disposal) while the review is in progress."

The letters, dated October 7, were signed by Management Board Chair Charles Killian.

For further information, contact Carol Amick of the Management Board at (617)727-6018. See also "New Materials and Publications," this issue.

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

Appalachian Commission Requests Summary Judgment in Rebates Action, Votes to Settle Suit

On October 11, the Appalachian States Low-Level Radioactive Waste Commission filed a cross-motion for summary judgment in the U.S. District Court for the Middle District of Pennsylvania in its lawsuit concerning surcharge rebates. The cross-motion is part of the compact's response to U.S. Department of Energy Secretary Hazel O'Leary's earlier motion requesting that the court dismiss the suit or, in the alternative, grant summary judgment in her favor. (See *LLWN* Notes, October 1994, pp. 6-7.) In addition, various other motions and briefs have been filed by both parties. (See court calendar, this issue.)

After the cross-motion was filed, the Appalachian Commission voted by notational ballot to "direct its counsel to negotiate and its Executive Director to enter into a settlement with the Secretary of Energy pursuant to which (a) the Commission accepts the first half of the surcharge funds in satisfaction of its claims against the Secretary of Energy for payment of surcharge monies, (b) the Commission and the Secretary of Energy release each other from all claims relating to the payment of surcharge monies, and (c) the Commission discontinu[e] with prejudice its pending surcharge litigation." As of press time, no settlement agreement had been reached.

Plain Language of the Act

In its motion, the Appalachian Commission argues that Secretary O'Leary was required to pay all of the escrowed Appalachian region surcharges by January 31, 1993. In support of this position, the commission points to the Low-Level Radioactive Waste Policy Amendments Act of 1985, arguing that the act's plain language mandates that compliance with the milestone for January 1, 1993, "is measured as of January 1, 1993, and is not affected by subsequent events." Accordingly, the commission encourages the court to reject O'Leary's finding that the commission must have provided for low-level radioactive waste disposal for three years—from January 1, 1993, through January 1, 1996—to receive all of the escrowed surcharges.

General Principles of Interpretation

The Commission cites the following general principles of interpretation to support its arguments:

- **Design of the Act** The act's design confirms that compliance with the January 1993 milestone is measured as of its effective date and is not affected by subsequent events because
 - the surcharges were to have been paid in a lump sum on or before January 31, 1993, without any provision for repayment;
 - the act's earlier milestones were measured as of their effective dates and imposed no continuing obligations on the commission; and
 - the act provides that states that do not meet the milestone may receive the surcharges in a lump sum on or before its effective date, without any provision for repayment, if they "take title" to the waste.
- **Object and Policy of the Act** The object and policy of the act—to encourage waste disposal on a regional basis—confirm that the commission is entitled to payment of all of its escrowed surcharges.
- **Legislative History** The report of the House Committee on Energy and Commerce confirms that compliance with the January 1993 milestone is measured as of its effective date and is not affected by subsequent events. The report states in part, "If States or compact regions meet the milestones on the milestone dates, a percentage of the surcharge will be paid to the State or the compact region where the waste originated." (emphasis added)
- **Construction of Trusts and Instruments** The act constitutes an instrument creating a trust for the commission's benefit, with O'Leary serving as trustee. Under general rules of the construction of written instruments, an ambiguous trust instrument is construed in favor of the beneficiary, which is the commission in this case.

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

Plaintiff Appalachian States Low-Level Radioactive Waste Commission

Defendant U.S. Department of Energy Secretary Hazel O'Leary

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

The Department of Energy published a notice in the *Federal Register* on September 30, 1992, announcing that states or compacts may be eligible to receive

the rebates if they meet one of several criteria, including having a valid contract with another state or compact for low-level radioactive waste disposal or storage. (See 57 *Federal Register* 45,248.) On December 1, 1992, the Appalachian Commission entered into an agreement with the Southeast Compact Commission that provided generators in Pennsylvania, Delaware, Maryland, and West Virginia access to the Barnwell disposal facility until June 30, 1994. On March 31, 1994, however, DOE published a second notice in the *Federal Register* (see 59 *Federal Register* 15,188). This notice, which addressed comments received in response to the first notice, indicated that states and compacts that have entered into "the standard contract of 18 month duration with the

Southeast Compact Commission" are eligible to receive the rebates on a prorated basis. (See *LLW Notes*, April 1994, pp. 1, 11.)

On June 30, 1994, the Appalachian Commission initiated legal proceedings seeking return of all surcharge fees that were collected from generators of low-level radioactive waste in the Appalachian region and were being held in the escrow account. (See *LLW Notes*, August/September 1994, p. 15.) Subsequently, on September 1, 1994, DOE distributed surcharge rebates to eligible states, compacts, and generators—including the Appalachian Compact—on a prorated basis in accordance with its *Federal Register* notice of March 31, 1994. (See *LLW Notes*, August/September 1994, p. 1.)

Judicial Deference for the Secretary's Interpretation

The Appalachian Commission argues that O'Leary's finding that states and compacts must provide for low-level radioactive waste disposal for three years—from January 1, 1993, through January 1, 1996—to receive all of the escrowed surcharges is not entitled to any judicial deference for the following reasons:

- **No Ambiguity** Where a statute is clear and unambiguous, an agency's interpretation is not entitled to deference.
- **No Regulatory Authority** All of the cases relied upon by O'Leary arise out of statutes in which Congress has delegated specific regulatory authority to an administrative agency. In this case, however, no such regulatory authority exists.
- **Recent, Interpretive Ruling** Greater deference is accorded to a regulation than to an interpretative ruling. Moreover, in the case of relatively recent agency policies, courts often refuse to accord deference. This case involves an interpretive ruling that is relatively recent.
- **Change of Position** O'Leary's finding is not entitled to deference because her June 30, 1994 *Federal Register* notice on surcharge rebates represents a change in position from her September 30, 1992 *Federal Register* notice on the same issue.
- **No Factual or Technical Determination** Less deference is accorded to an agency's statutory interpretation than to an agency determination on factual or technical matters. O'Leary's interpretation of the act does not involve any factual or technical determination.

Hess v. Port Authority Trans-Hudson Corporation

U.S. Supreme Court Says Multistate Agencies May be Sued in Federal Court Without Their Consent

On November 14, the U.S. Supreme Court issued a decision in a lawsuit concerning the applicability of the Eleventh Amendment of the U.S. Constitution to a multistate agency. The Eleventh Amendment prevents private citizens from suing states in federal court without their consent. The Court's decision makes clear, however, that the protections accorded to states by the Eleventh Amendment are not applicable to all multistate agencies. Accordingly, some multistate agencies may be sued in federal court without their consent.

The Eleventh Amendment

The Eleventh Amendment provides, "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."

Background

Facts The Port Authority of New York and New Jersey was created in 1921 when Congress, under the Interstate Compact Clause of the U.S. Constitution, consented to a compact between the Authority's parent states. The Port Authority Trans-Hudson Corporation (PATH), a wholly owned subsidiary of the Port Authority, operates a commuter railroad connecting New York City to northern New Jersey. Two of PATH's workers—Albert Hess and Charles Walsh—were injured in unrelated incidents during the course of their employment. Both individuals sued PATH in federal district court under the federal law governing injuries to railroad workers—the Federal Employers' Liability Act (FELA). Although Hess and Walsh filed their cases within the three-year time limit established under FELA, neither individual filed within the one-year time limit prescribed in the states' statutory consent to sue the Port Authority.

Lower Court Decisions PATH moved to dismiss both actions by asserting that

- it is entitled to the same Eleventh Amendment immunity from suit in federal court that is accorded to New York and New Jersey, and
- Hess and Walsh failed to file their complaints within the one-year time limit statutorily set by New York and New Jersey.

The United States District Court for the District of New Jersey agreed with PATH and dismissed both actions. The cases were subsequently consolidated on appeal, and the United States Court of Appeals for the Third Circuit summarily affirmed the district court's judgments.

The Majority Opinion

Associate Justice Ruth Bader-Ginsburg authored the opinion, which reversed the lower courts' decisions. The opinion was joined by Associate Justices Anthony Kennedy, David Souter, and Stephen Breyer. Associate Justice Paul Stevens concurred in the majority opinion, but wrote separately to indicate his belief that much of the Court's Eleventh Amendment jurisprudence is judge-made law that should be contained rather than extended.

Approach Used to Determine if a Multistate Agency is Entitled to Eleventh Amendment Immunity To determine whether or not the Port Authority is entitled to immunity under the Eleventh Amendment, the Supreme Court applied an approach that it established in *Lake Country Estates, Inc. v. Tahoe Regional Planning Agency*—the only other case to date in which the Court addressed the applicability of such immunity to a multistate agency. Under the Lake Country approach, the Court presumes that a Compact Clause agency does not qualify for such immunity "[u]nless there is good reason to believe that the States structured the new agency to enable it to enjoy the special constitutional protection of the States themselves, and that Congress concurred in that purpose."

In Which Direction Do the Indicators of Immunity Point? In applying the *Lake Country* approach to the Port Authority, the Court found that indicators of immunity point in different directions. For instance, the Authority contains characteristics of local governance, such as a requirement that a majority of its Commissioners be qualified voters of the Port of New York region, thereby suggesting that Eleventh Amendment immunity does not apply. However, New York and New Jersey exercise significant controls over the Authority, which would suggest that it is entitled to immunity.

Other indicators, yielding conflicting results, failed to advance the Court's Eleventh Amendment inquiry. For example, although the compact and its implementing legislation do not typify the Authority as a state agency, state courts have repeatedly done so. Also, the Authority's functions are not easily classified as typically state or unquestionably local.

Was the Authority Designed to Enjoy Eleventh Amendment Immunity? Finding that indicators of immunity for the Port Authority point in different directions, the Court turned its inquiry, as directed by *Lake Country*, to whether there is "good reason to believe" that New York, New Jersey, and Congress designed the Authority to enjoy Eleventh Amendment immunity. PATH had argued that the Authority should be classified as a state agency for Eleventh Amendment purposes because the states wield considerable control over it. New York and New Jersey appoint and can remove the commissioners, their governors can veto Authority actions, and their legislatures can decide which projects the Authority will undertake.

The Court, however, rejected PATH's argument, noting that "ultimate control of every state-created entity resides with the State, for the State may destroy or reshape any unit it creates." According to the Court, "rendering control dispositive does not home in on the impetus for the Eleventh Amendment: the prevention of federal court judgments that must be paid out of a State's treasury ... Accordingly, Courts of Appeals have recognized the vulnerability of the State's purse as the most salient factor in Eleventh Amendment determinations."

Financial Considerations PATH had argued that, since the Port Authority donates a portion of its surplus to public projects the states might otherwise have to finance, a judgment against the Authority would have the same impact as a judgment against the state. The court rejected this argument, however, holding:

The proper focus is not on the use of profits or surplus, but rather is on losses and debts. If the expenditures of the enterprise exceed receipts, is the State in fact obligated to bear and pay the resulting indebtedness of the enterprise? When the answer is "No"—both legally and practically—then the Eleventh Amendment's core concern is not implicated.

The Court found that the Authority has a long history of paying its own debts and is financially independent. Authority debts and obligations are not deemed liabilities of New York and New Jersey, and the states do not appropriate funds to the Authority. Moreover, the Authority is barred by the compact and its implementing legislation from drawing on state tax revenue, pledging state credit, or otherwise imposing state charges. Although New York and New Jersey have agreed to appropriate sums to cover "salaries, office and other administrative expenses" not to exceed \$100,000 annually from each state, the Court found this promise of support to be "notably modest."

Conclusion Upon completing its analysis, the Court held as follows:

A discrete entity created by constitutional compact among three sovereigns, the Port Authority is financially self-sufficient; it generates its own revenues, and it pays its own debts. Requiring the Port Authority to answer in federal court to injured railroad workers who assert a federal statutory right, under the FELA, to recover damages does not touch the concerns—the States' solvency and dignity—that underpin the Eleventh Amendment.

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Hess v. Port Authority Trans-Hudson Corporation (continued)

Dissenting Opinion

Associate Justice Sandra Day O'Connor authored the dissenting opinion, which was joined by Chief Justice William Rehnquist and Associate Justices Antonin Scalia and Clarence Thomas.

The Impact of the Need for Congressional Consent on the Court's Inquiry According to O'Connor, the majority placed too much significance on the need for Congressional consent to interstate compacts. Such consent, writes O'Connor, "neither transforms the nature of state power nor makes Congress a full-fledged participant in the underlying agreement ... Once Congress consents to cooperative state activity, there is no reason to presume that immunity does not attach." In fact, notes O'Connor, precedent suggests that the Court "should be reluctant to infer abrogation [of Eleventh Amendment immunity] in the absence of clear signals from Congress that such a result was ... intended." As a result, O'Connor would presume that

interstate entities are cloaked with Eleventh Amendment immunity unless Congress clearly and expressly signals otherwise.

Does the State Exercise Control Over the Multistate Agency? O'Connor disagrees with the majority's belief that protection of state treasuries is the driving concern of the Eleventh Amendment. After all, she writes, the text of the amendment and its interpretation by the Court makes clear that it extends beyond actions seeking money damages. Accordingly, O'Connor believes the proper question to be "whether and to what extent the elected state government exercises oversight over the entity. If the lines of oversight are clear and substantial—for example, if the State appoints and removes an entity's governing personnel and retains veto or approval power over an entity's undertakings—then the entity should be deemed an arm of the State for Eleventh Amendment purposes." In the case at hand, O'Connor finds that there are sufficient indicators of state control to support the application of Eleventh Amendment immunity to the Port Authority, and therefore to PATH.

County of Boyd v. US Ecology

Appellate Briefs Filed in Nebraska Suit Alleging Fraud

Parties to a lawsuit alleging fraudulent representations by US Ecology during the site selection process in Nebraska recently filed briefs on appeal in the U.S. Court of Appeals for the Eighth Circuit. The action had been resolved in favor of the defendant, US Ecology, earlier this year when the U.S. District Court for the District of Nebraska determined that the plaintiffs' claims were barred by the doctrine of *res judicata*. According to the district court's decision, rulings in two earlier actions contesting the presence of community consent for the Boyd County site—both of which were titled *Nebraska ex. rel. Nelson v. Central Interstate Low-Level Radioactive Waste Commission*—precluded litigation of the plaintiffs' claims. (See *LLW Notes*, August/September 1994, pp. 18–19.)

The Appellants' Briefs

Boyd County and the local monitoring committee filed separate briefs on appeal on September 10.

Jurisdiction After the complaint was filed, the case was removed from state court to federal district court. The appellants argue that the removal was improper because

- US Ecology failed to meet its burden of proving to a legal certainty that the claim of each and every plaintiff in the jurisdictional class is not less than the jurisdictional amount;
- the court improperly aggregated the claims of all class members in order to reach the jurisdictional threshold; and
- the court failed to consider whether Nebraska was the principal place of business of US Ecology.

LLW
FORUM

LLW Notes *Supplement*

Nov./Dec. 1994

November 1994 Election Results

Congressional Elections: Republicans Win Control of U.S. House, Senate

On November 8, elections were held for seats in the 104th Congress of the United States. All 434 seats in the U.S. House of Representatives were up for election, and 35 out of 100 seats were up for election in the U.S. Senate. Republicans scored major victories in the elections, taking control of both houses of Congress. This marks the first time since 1986 that the Republicans have controlled the Senate. The Republicans have not had control of the House since 1954.

Impact on Leadership Posts The Republican victories will have a major impact on the 104th Congress. The majority leader of the Senate—a position that carries considerable power in terms of scheduling legislation and debate—will be a Republican. In addition, the House Speaker will be a Republican, as will the Chair of the House Rules Committee. The House Rules Committee makes decisions on the scheduling of legislation, the ability to amend legislation, and the duration of debate for a large portion of the legislation brought before the U.S. House of Representatives. All other committees and subcommittees also will now be chaired by Republicans, and a majority of committee and subcommittee staff members will be named by Republicans. Although the ratio of majority to minority staff varies by committee and subcommittee, the majority are always entitled to more staff than are the minority. Many committees in the House had a two-thirds majority to one-third minority staff ratio in the past.

Impact on Committees/Subcommittees It is anticipated that the Republicans will make major changes in the jurisdiction, composition, and numbers of committees and subcommittees in the House, possibly even eliminating some of the subcommittees that have had

considerable influence over the nation's nuclear waste policy in the past. Few such changes are expected, however, in the Senate.

Also of interest is the fact that the powerful House Committee on Appropriations will be controlled by Republicans. The federal budget process always begins in the House Committee on Appropriations and all federal programs are funded through this process.

General Impact on Low-Level Radioactive Waste Policy While the effect of the congressional changes on the future of low-level radioactive waste policy may not be clear for quite some time, there has been an enormous change in the players who will influence the nation's nuclear waste policy. Also, many of the individuals who were architects of the Low-Level Radioactive Waste Policy Act and its 1985 Amendments are no longer in office.

Republicans Win a Majority of State Houses

On November 8, 1994, gubernatorial elections were held in 36 states. Republicans won a majority of the elections, giving them control of 31 state governorships. Democrats control 18 state governorships and Independents control one. The governorships of four of the five U.S. territories are held by Democrats, with the fifth territory having a Governor who is an Independent. Republicans now control the governorships in seven of the country's eight largest states—California, Texas, New York, Pennsylvania, Illinois, Ohio and Michigan—with Florida being the sole exception.

November 1994 Election Results *continued*

Congressional Leaders in the New Congress

In early December, the Republican and Democratic caucuses chose the following individuals as leaders of the U.S. Senate and House of Representatives for the 104th Congress.

United States Senate

Majority Leader	Robert Dole (R-KS)	Minority Leader	Thomas Daschle (D-SD)
Majority Whip	Trent Lott (R-MS)	Minority Whip	Wendell Ford (D-KY)
Majority Deputy Whip	Judd Gregg (R-NH)	Minority Deputy Whip	John Breaux (D-LA)
Majority Conference Chair	Thad Cochran (R-MS)		
Majority Conference Secretary	Connie Mack (R-FL)	Minority Conference Secretary	Barbara Mikulski (D-MD)
Majority Policy Committee Chair	Don Nickles (R-OK)	Minority Policy Committee Chair	Harry Reid (D-NV)
Majority Steering Committee Chair	Larry Craig (R-ID)	Minority Steering Committee Chair	John Kerry (D-MA)
Majority Assistant Floor Leader	Trent Lott (R-MS)	Minority Assistant Floor Leader	Byron Dorgan (D-ND)
Chair, National Republican Senatorial Committee	Alfonse D'Amato (R-NY)	Chair, National Democratic Senatorial Committee	to be appointed by the President

United States House of Representatives

Speaker	Newt Gingrich (R-GA)		
Majority Leader	Richard Armey (R-TX)	Minority Leader	Richard Gephardt (D-MO)
Majority Whip	Tom DeLay (R-TX)	Minority Whip	David Bonior (D-MI)
Majority Conference Chair	John Boehner (R-OH)	Chair, Democratic Caucus	Vic Fazio (D-CA)
Majority Conference Vice-Chair	Susan Molinari (R-NY)	Vice-Chair, Democratic Caucus	Barbara Kennelly (D-CT)
Majority Conference Secretary	Barbara Vucanovich (R-NV)		
Majority Policy Committee Chair	Christopher Cox (R-CA)		
Chair, National Republican Congressional Committee	William Paxon (R-NY)	Chair, National Democratic Congressional Campaign Committee	to be appointed by the President

Committee Chairs in the 104th Congress

The House Republican caucus has announced chairs for many of the committees that have an impact on the nation's low-level radioactive waste policy. Some of these committees' titles will be changed and, in certain instances, jurisdiction will be transferred among committees. In addition, the House Republicans have announced a plan to eliminate the budgets, staffs, and offices of 28 caucuses including the Environmental and Energy Study Conference.

The following is a list of individuals who have been named to chair House committees in the new Congress. They will have to be formally elected to these posts, however, when the House convenes in January.

United States House of Representatives: Committee Chairs

Committee—103rd Congress	Proposed Committee — 104th Congress	Committee Chair
Appropriations	Appropriations	Bob Livingston (R-LA)
Energy and Commerce*	Commerce	Thomas Bliley Jr. (R-VA)
Government Operations	Government Reform and Oversight	William Clinger Jr. (R-PA)
Natural Resources	Public Lands and Resources	Don Young (R-AK)
Rules	Rules	Gerald Solomon (R-NY)

* Portions of this committee's jurisdiction are expected to be transferred to other committees, including Agriculture, Transportation and Infrastructure, Public Lands and Resources, and Technology and Competitiveness.

Effects of 1994 Election Results on Congressional Committees and Subcommittees

The following lists show relevant committee and subcommittee memberships of the U.S. House of Representatives and the U.S. Senate as they were constituted during the 103rd Congress. Members are listed in order of seniority. Those whose names appear with a line through them will not be returning.

In the 104th Congress, Republicans will chair all committees and subcommittees in both the House and the Senate. However, the current ranking minority member for each committee or subcommittee in the 103rd Congress will not necessarily chair that committee or subcommittee in the 104th Congress.

In addition, committee memberships for returning Senators and Representatives may change.

United States House of Representatives—103rd Congress

Committee on Energy and Commerce

John Dingell—Chair (D-MI)

Henry Waxman (D-CA)

~~Philip Sharp (D-TN)~~

Edward Markey (D-MA)

~~Al Swift (D-WA)~~

Cardiss Collins (D-IL)

~~Mike Synar (D-OK)~~

W. J. Tauzin (D-LA)

Ron Wyden (D-OR)

Ralph Hall (D-TX)

Bill Richardson (D-NM)

~~Jim Slattery (D-KS)~~

John Bryant (D-TX)

Rick Boucher (D-VA)

~~Jim Cooper (D-TN)~~

~~J. Roy Rowland (D-GA)~~

Thomas Manton (D-NY)

Edolphus Towns (D-NY)

Gerry Studds (D-MA)

~~Richard Lehman (D-CA)~~

Frank Pallone (D-NJ)

~~Craig Washington (D-TX)~~

~~Lynn Schenk (D-CA)~~

Sherrod Brown (D-OH)

~~Mike Kreidler (D-WA)~~

~~Marjorie Margolies-Mezvinsky (D-PA)~~

Blanche Lambert (D-AR)

Carlos Moorhead—Ranking

Minority Member (R-CA)

Thomas Bliley, Jr. (R-VA)

Jack Fields (R-TX)

Michael Oxley (R-OH)

Michael Bilirakis (R-FL)

Dan Schaefer (R-CO)

Joe Barton (R-TX)

~~Alex McMillan (R-NC)~~

J. Dennis Hastert (R-IL)

Fred Upton (R-MI)

Cliff Stearns (R-FL)

Bill Paxon (R-NY)

Paul Gillmor (R-OH)

Scott Klug (R-WI)

Gary Franks (R-CT)

James Greenwood (R-PA)

Michael Crapo (R-ID)

Subcommittee on Energy and Power

~~Philip Sharp—Chair~~

Edward Markey

~~Richard Lehman~~

~~Craig Washington~~

~~Mike Kreidler~~

Blanche Lambert

~~Al Swift~~

~~Mike Synar~~

W. J. Tauzin

Ralph Hall

Rick Boucher

~~Jim Cooper~~

John Dingell (ex officio)

Michael Bilirakis

Joe Barton

J. Dennis Hastert

Cliff Stearns

Scott Klug

Gary Franks

Michael Crapo

Carlos Moorhead (ex officio)

November 1994 Election Results *continued*

Committee on Natural Resources

George Miller—Chair (D-CA)

~~Philip Sharp (D-IN)~~
Edward Markey (D-MA)
~~Austin Murphy (D-PA)~~
Nick Joe Rahall (D-WV)
Bruce Vento (D-MN)
Pat Williams (D-MT)
~~Ron de Lugo (D-VT)~~
Sam Gejdenson (D-CT)
~~Richard Lehman (D-CA)~~
Bill Richardson (D-NM)
Peter DeFazio (D-OR)
Eni Faleomavaega (D-AS)
Tim Johnson (D-SD)
~~Larry LaRocco (D-ID)~~
Neil Abercrombie (D-HI)
Calvin Dooley (D-CA)
Carlos Romero-Barcelo (D-PR)
~~Karan English (D-AZ)~~
~~Karen Shepherd (D-UT)~~
Nathan Deal (D-GA)
Maurice Hinchey (D-NY)
Robert Underwood (D-GU)
Patsy Mink (D-HI)
Howard Berman (D-CA)
Lane Evans (D-IL)
~~Thomas Barlow (D-KY)~~
Thomas Barrett (D-WI)

Don Young—Ranking
Minority Member (R-AK)

James Hansen (R-UT)
Barbara Vucanovich (R-NV)
Elton Gallegly (R-CA)
~~Robert Smith (R-OR)~~
~~Craig Thomas (R-WY)~~
John Duncan, Jr. (R-TN)
Joel Hefley (R-CO)
John Doolittle (R-CA)
Wayne Allard (R-CO)
Richard Baker (R-LA)
Ken Calvert (R-CA)
Scott McInnis (R-CO)
Richard Pombo (R-CA)
Jay Dickey (R-AR)

Subcommittee on Energy and Mineral Resources

~~Richard Lehman—Chair~~

~~Philip Sharp~~
~~Austin Murphy~~
Edward Markey
Nick Joe Rahall
~~Larry LaRocco~~
Nathan Deal
Peter DeFazio
~~Thomas Barlow~~

Barbara Vucanovich
~~Craig Thomas~~
John Doolittle
Wayne Allard
Scott McInnis
Richard Pombo

Committee on Rules

John Joseph Moakley (D-MA)—
Chair

~~Butler Derrick (D-SC)~~
Anthony Beilenson (D-CA)
Martin Frost (D-TX)
David Bonior (D-MI)
Tony Hall (D-OH)
~~Alan Wheat (D-MO)~~
Bart Gordon (D-TN)
Louise Slaughter (D-NY)

Gerald Solomon (R-NY)
James Quillen (R-TN)
David Dreier (R-CA)
Porter Goss (R-FL)

November 1994 Election Results *continued*

United States Senate—103rd Congress

Committee on Energy and Natural Resources

J. Bennett Johnston—Chair (D-LA)	Malcolm Wallop—Ranking Minority Member (R-WY)
Dale Bumpers (D-AR)	Mark Hatfield (R-OR)
Wendell Ford (D-KY)	Pete Domenici (R-NM)
Bill Bradley (D-NJ)	Frank Murkowski (R-AK)
Jeff Bingaman (D-NM)	Don Nickles (R-OK)
Daniel Akaka (D-HI)	Larry Craig (R-ID)
Richard Shelby (D-AL)	Robert Bennett (R-UT)
Paul Wellstone (D-MN)	Arlen Specter (R-PA)
Ben Nighthorse Campbell (D-CO)	Trent Lott (R-MS)
Harlan Mathews (D-TN)	
Robert Krueger (D-TX)	

Subcommittee on Energy Research and Development

Wendell Ford—Chair
Richard Shelby—Vice Chair
Dale Bumpers
Jeff Bingaman
Paul Wellstone
~~Harlan Mathews~~
Bob Krueger
J. Bennett Johnston (ex officio)

Pete Domenici
Arlen Specter
Don Nickles
Larry Craig
Trent Lott
~~Malcolm Wallop (ex officio)~~

Committee on Environment and Public Works

Max Baucus—Chair (D-MT)	John Chafee—Ranking Minority Member (R-RI)
Daniel Moynihan (D-NY)	Alan Simpson (R-WY)
George Mitchell (D-ME)	Dirk Kempthorne (R-ID)
Barbara Boxer (D-CA)	Dave Durenberger (R-MN)
Frank Lautenberg (D-NJ)	John Warner (R-VA)
Harry Reid (D-NV)	Lauch Faircloth (R-NC)
Bob Graham (D-FL)	Robert Smith (R-NH)
Joseph Lieberman (D-CT)	
Howard Metzenbaum (D-OH)	
Harris Wofford (D-PA)	

Subcommittee on Clean Air and Nuclear Regulation

Joseph Lieberman—Chair
Daniel Moynihan
Bob Graham
~~Howard Metzenbaum~~

Alan Simpson—Ranking
Minority Member
Lauch Faircloth
Dirk Kempthorne

1994 Gubernatorial Election Results

The following individuals will serve as Governors in 1995. Asterisks denote incumbents, bold designates elected or reelected in 1994.

Alabama—Fob James, Jr. (R)	Nebraska—E. Benjamin Nelson* (D)
Alaska—Tony Knowles (D)	Nevada—Bob Miller* (D)
Arizona—Fife Symington* (R)	New Hampshire—Stephen Merrill* (R)
Arkansas—Jim Guy Tucker* (D)	New Jersey—Christine Todd Whitman (R)
California—Pete Wilson* (R)	New Mexico—Gary Johnson (R)
Colorado—Roy Romer* (D)	New York—George Pataki (R)
Connecticut—John Rowland (R)	North Carolina—James Hunt, Jr. (D)
Delaware—Tom Carper (D)	North Dakota—Edward Schafer (R)
Florida—Lawton Chiles* (D)	Ohio—George Voinovich* (R)
Georgia—Zell Miller* (D)	Oklahoma—Frank Keating (R)
Hawaii—Ben Cayetano (D)	Oregon—John Kilzhaber (D)
Idaho—Phil Batt (R)	Pennsylvania—Tom Ridge (R)
Illinois—Jim Edgar* (R)	Puerto Rico—Pedro Rossello (NPP)
Indiana—Evan Bayh (D)	Rhode Island—Lincoln Almond (R)
Iowa—Terry Branstad* (R)	South Carolina—David Beasley (R)
Kansas—Bill Graves (R)	South Dakota—Bill Janklow (R)
Kentucky—Brereton Jones (D)	Tennessee—Don Sundquist (R)
Louisiana—Edwin Edwards (D)	Texas—George W. Bush (R)
Maine—Angus King (I)	Utah—Mike Leavitt (R)
Maryland—Parris Glendening (D)	Vermont—Howard Dean* (D)
Massachusetts—William Weld* (R)	Virginia—George Allen (R)
Michigan—John Engler* (R)	Washington—Mike Lowry (D)
Minnesota—Arne Carlson* (R)	West Virginia—Gaston Caperton (D)
Mississippi—Kirk Fordice (R)	Wisconsin—Tommy Thompson* (R)
Missouri—Mel Carnahan (D)	Wyoming—Jim Geringer (R)
Montana—Marc Racicot (R)	

Comments from Forum Participants/Alternate Participants on Election Results ...

Appalachian Compact/Pennsylvania

"Low-level radioactive waste wasn't a major election issue in Pennsylvania."

—William Dornsife,
Pennsylvania Department of Environmental Resources

"I'm pleased that the administration in California didn't change, since a change could have led to further delay in the Ward Valley project."

—Don Womeldorf,
Southwestern Low-Level Radioactive Waste Compact Commission

Central Compact/Nebraska

"Governor Nelson was reelected with the overwhelming support of the Nebraska electorate. The Central Interstate Compact Commission expects continued, uninterrupted, arduous review of the license application for the planned low-level radioactive waste disposal facility in Boyd County, Nebraska."

—A. Eugene Crump,
Central Interstate Low-Level Radioactive Waste Commission

Michigan

"Michigan's low-level radioactive waste siting program should begin to make progress with the reelection of Governor John Engler and the expected passage of amendments to siting legislation before year's end. The principal focus will be the development and implementation of a volunteer host community process."

—Thor Strong,
Michigan Low-Level Radioactive Waste Authority

Southwestern Compact/California

"The fact that Pete Wilson was reelected as California's Governor should be considered great news from the point of view of those who advocate for the responsible management of low-level radioactive waste. He is well aware of the need for the Ward Valley low-level radioactive waste site, and he is in full agreement with the Department of Health Services' decision to license the site."

—Harvey Collins,
California Department of Health Services

New York

"It's really difficult to tell what impact the election results will have, because it wasn't an issue in the campaign. I really don't expect there to be any change—New York State will probably continue to implement its obligations under federal law."

—Eugene Gleason,
New York State Energy Office

Courts *continued*

Background: *County of Boyd v. US Ecology*

Plaintiffs Boyd County and the Boyd County Local Monitoring Committee

Defendant US Ecology, developer of the proposed low-level radioactive waste disposal facility in Boyd County

Issues The plaintiffs allege that, during public workshops and in several documents and public statements, US Ecology made fraudulent representations to the citizens of Nebraska that an initial expression of interest in local screening efforts from a county board would not bind the county to host a low-level radioactive waste disposal facility. In addition, the plaintiffs claim that during the site selection process US Ecology made fraudulent representations about the need for community consent to site a facility. (See *LLW Notes*, February/March 1994, p. 28.)

What is *Res Judicata*? *Res judicata* is a legal doctrine that precludes the relitigation of a claim on grounds that were raised or could have been raised in a prior action. *Res judicata* applies only if (1) the prior judgment was rendered by a court of competent jurisdiction; (2) the decision was a final judgment on the merits; and (3) the same cause of action and the same parties (or those in privity) were involved in both cases.

What is Privity? "Privity" refers to "the relationship between a party to a suit and a person who was not a party, but whose interest in the action

was such that he will be bound by the final judgment as if he were a party." (*Black's Law Dictionary*, fifth edition.)

What is Jurisdiction? Jurisdiction refers to the power and authority of a court to hear and determine a particular case. Federal courts are vested with jurisdiction in civil cases that (a) arise under the U.S. Constitution, acts of Congress, or treaties and that involve their interpretation and application (federal question jurisdiction), or in cases that (b) involve citizens of different states and in which the amount in controversy exceeds \$50,000 (diversity jurisdiction).

Res Judicata The appellants also argue that the district court erred in finding the action is barred by previous court rulings in the community consent lawsuits because

- the state of Nebraska did not assert, and the court did not rule upon, the same issues in the community consent litigation as are asserted by the appellants in this action;
- the state of Nebraska would not have had standing to assert the issues raised in this action in the community consent litigation; and
- privity does not exist between the state of Nebraska on its claim in the community consent litigation and the appellants on their claims in this litigation.

The Appellee's Brief

US Ecology filed its reply brief on October 7.

Jurisdiction US Ecology contends that the appellants may not challenge the propriety of the removal of this case to federal court because they did not appeal the district court's order denying remand. Consequently, US Ecology argues that the question on appeal becomes

whether the federal district court would have had jurisdiction had the case been originally filed in that court. US Ecology argues that the court would have had diversity jurisdiction because

- diversity of citizenship exists since US Ecology is a California Corporation with its principal place of business in Texas, and
- the amount of controversy is greater than \$50,000 since aggregation of the claims of the members of the class is allowed and since the appellants have acknowledged that at least some of the claims would exceed \$50,000.

In addition, US Ecology argues that federal question jurisdiction exists in this case.

Res Judicata US Ecology disputes the appellants' claim that *res judicata* does not exist in this action. According to the company, "the 'gist' of all of the Appellants' claims in the present action are based on community consent, but are 'dressed up' to look different. The claims therefore are the same as those in ... [the community consent litigation], since they are based on the same factual predicate and arise out of the same nucleus of operative facts."

Nebraska ex. rel. Nelson v. Central Interstate Low-Level Radioactive Waste Commission

U.S. Supreme Court Declines to Review Nebraska's Community Consent Suit

On November 7, the U.S. Supreme Court denied a petition for a writ of certiorari—i.e., refused to hear an appeal—filed by the State of Nebraska in a lawsuit against the Central Interstate Low-Level Radioactive Waste Commission and US Ecology. (See *LLW Notes*, October 1994, pp. 8–9.) The lawsuit had sought to prevent the licensing or construction of a low-level radioactive waste disposal facility in Boyd County, Nebraska—or anywhere else in the state—until community consent is demonstrated.

Lower Court Decision The U.S. District Court for the District of Nebraska had previously ruled in favor of the Central Commission and US Ecology, finding that the state's lawsuit had not been timely filed and that the action is barred by the equitable doctrines of estoppel and laches. (See *LLW Notes*, September 1993, pp. 13–14.) The estoppel doctrine is a defense that “requires proof of words or deeds (or sometimes omissions to speak or act) that create a misleading impression upon which a reasonable person would rely.” Under the laches doctrine, a party is barred from pursuing an action where that party “is guilty of unreasonable and inexcusable delay that has resulted in prejudice” to the defending party. The U.S. Court of Appeals for the Eighth Circuit subsequently affirmed the district court's ruling. The appeals court saw no need to address the applicability of the doctrines of estoppel and laches to the lawsuit, however, because it found that the district court had properly determined the action to be time barred. (See *LLW Notes*, July 1994, pp. 11–12.)

Next Step Since the Supreme Court refused to grant Nebraska's petition for a writ of certiorari, the appellate court's decision is final. The Supreme Court did not give any reason for denying Nebraska's petition.

Burton v. Central Interstate Low-Level Radioactive Waste Commission

U.S. Supreme Court Refuses to Review Suit Challenging Central Commission Bylaws, Rules and Budget

The U.S. Supreme Court, on October 17, denied a petition for a writ of certiorari—i.e., refused to hear an appeal—filed by two citizens of Nebraska against the Central Interstate Low-Level Radioactive Waste Commission. At issue was a challenge to the compact commission's bylaws, rules, and budget, which the petitioners claim are unlawful and in violation of compact law. (See *LLW Notes*, October 1992, p. 11.)

Lower Court Decisions Decisions had been previously issued in favor of the Central Commission by both the U.S. District Court for the District of Nebraska and the U.S. Court of Appeals for the Eighth Circuit. The lower courts had determined, among other things, that the plaintiffs lack standing to sue. (See *LLW Notes*, May/June 1994, p. 24.)

Next Step No reason was stated for the Supreme Court's refusal to hear the appeal. As a result of the Court's denial of the petition, the appellate court's decision is now final.

South Carolina v. O'Leary

Oral Arguments Held in South Carolina Suit re Spent Nuclear Fuel Shipments

On November 1, oral arguments were held in a lawsuit seeking to enjoin the planned shipment of spent nuclear fuel from Europe for storage at the Savannah River Plant weapons complex in South Carolina. The United States had agreed to take back spent nuclear fuel of U.S. origin as part of its nonproliferation efforts. However, the State of South Carolina is asking the U.S. District Court for the District of South Carolina to require the preparation of a detailed environmental study of the effects of storing the spent fuel before it is allowed into the country.

Background In September, a federal judge granted an injunction barring two freighters containing the first shipments of spent nuclear fuel from entering U.S. waters. The freighters were at sea when the injunction was issued. The injunction was subsequently lifted by the U.S. Court of Appeals for the Fourth Circuit, and the spent fuel was unloaded and sent to South Carolina. In lifting the injunction, the court determined that South Carolina "has not at this stage demonstrated an immediate, irreparable and actual harm" that would override the federal governments' argument that the fuel shipments are an urgent national security issue. The court's order only applied to the two shipments already at sea. As a result, the fate of future spent fuel shipments from Europe was at issue during the November 1 oral arguments.

Nevada v. O'Leary

DOE Seeks Dismissal of Suit over Waste Shipment to Nevada Test Site

On October 14, U.S. Department of Energy Secretary Hazel O'Leary asked the U.S. District Court for the District of Nevada to dismiss a lawsuit concerning waste disposal at the Nevada Test Site. In the alternative, O'Leary asked that the court grant summary judgment in her favor. As of press time, the court had not ruled on O'Leary's motion.

The Complaint The lawsuit was originally filed by the State of Nevada on June 28, 1994. It seeks to enjoin the Department of Energy from shipping 300,000 cubic yards of low-level radioactive waste from its Fernald Environmental Management Project to the Nevada Test Site until a single, comprehensive site-wide environmental impact statement (EIS) for the test site has been published and studied and appropriate alternatives have been considered. The action also requests that the court block any further transportation, receipt, processing, storage, or disposal of low-level radioactive waste generated off site, transuranic waste, radioactive mixed waste, hazardous waste, high-level nuclear waste, spent fuel, or other defense nuclear waste to the Nevada Test Site until after completion of the EIS. The State of Nevada alleges that the preparation of such an EIS is required by the National Environmental Policy Act (NEPA).

O'Leary's Motion In her motion, O'Leary argues that the plaintiffs do not have standing to bring such an action and that the court does not have jurisdiction over the matter. She contends that the doctrine of laches—which bars the pursuit of claims in which the defendant is prejudiced due to the plaintiff's failure to timely assert his rights—applies to this case. O'Leary characterizes the plaintiff's claims under NEPA as moot and challenges claims concerning the content of an EIS for the Nevada Test Site as premature. According to O'Leary, the plaintiff has failed to establish sufficient injury for the issuance of injunctive relief.

Court Calendar

Case Name	Description	Court	Date	Action
<i>Appalachian States Low-Level Radioactive Waste Commission v. O'Leary</i> (See <i>LLW Notes</i> , October 1994, pp. 6-7.)	Seeks the release of all surcharge fees, collected from Appalachian region generators, being held in an escrow account by Department of Energy Secretary Hazel O'Leary.	United States District Court for the Middle District of Pennsylvania	October 11, 1994	Appalachian Commission filed (a) a brief opposing defendant's dismissal/summary judgement motion and (b) a cross-motion for summary judgement.
			October 31, 1994	O'Leary filed briefs (a) opposing plaintiff's motion for summary judgement and (b) supporting her dismissal/summary judgement motion.
			November 14, 1994	Appalachian Commission filed brief supporting its cross-motion for summary judgement.
			November 22, 1994	Appalachian Commission votes to attempt to settle the lawsuit.
<i>Burton v. Central Interstate Low-Level Radioactive Waste Commission</i> (See <i>LLW Notes</i> , May/June 1994, p. 24.)	Appeal of a lawsuit that challenges the Central Commission's bylaws, rules and budget as unlawful and in violation of compact law.	United States Supreme Court	October 17, 1994	U.S. Supreme Court denied the state of Nebraska's petition for a writ of certiorari—ie. refused to hear an appeal of the matter.
<i>Fort Mojave Indian Tribe v. California Department of Health Services</i> (See <i>LLW Notes</i> , August/September 1994, pp. 16-17.)	Seeks 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.	Superior Court of the State of California, County of Los Angeles	August 31, 1994	Court denied petitioners motion for reasonable attorneys fees.
			October 28, 1994	Petitioners filed an appeal of the court's August 31 ruling denying their motion for reasonable attorney's fees.

Court Calendar

Case Name	Description	Court	Date	Action
<i>Hess v. Port Authority Trans-Hudson Corporation</i> (See related story, this issue.)	Involves the applicability of the Eleventh Amendment of the U.S. Constitution to a multistate agency.	United States Supreme Court	November 14, 1994	U.S. Supreme Court issued a decision indicating that some multistate agencies are not entitled to the Eleventh Amendment immunity from suit in federal court.
<i>Nebraska ex. rel. Nelson v. Central Interstate Low-Level Radioactive Waste Commission</i> (See LLW Notes, October 1994, pp. 8-9.)	Appeal of a lawsuit that challenges the licensing or construction of a low-level radioactive waste disposal facility in Boyd County until community consent is demonstrated.	United States Supreme Court	November 7, 1994	U.S. Supreme Court denied petitioners' request that it hear an appeal—ie. refused to grant certiorari.
<i>Nevada v. O'Leary</i> (See related story, this issue.)	Seeks to enjoin DOE from shipping low-level radioactive waste to the Nevada Test Site until a comprehensive site-wide environmental impact statement has been published and studied and appropriate alternatives have been considered.	United States District Court for the District of Nevada	June 23, 1994 October 14, 1994 November 18, 1994	Nevada filed a complaint for a declaratory judgement and an injunction. DOE Secretary Hazel O'Leary filed a motion to dismiss the action, or in the alternative, a motion for summary judgement. Nevada filed a memorandum opposing O'Leary's motion to dismiss.
<i>South Carolina v. O'Leary</i> (See related story, this issue.)	Seeks to enjoin the planned shipment of spent fuel from Europe for storage at the Savannah River Site weapons complex in South Carolina.	United States District Court for the District of South Carolina	September 13, 1994 September 23, 1994 November 1, 1994	District Court enjoined two freighters with spent fuel from entering U.S. waters. U.S. Court of Appeals for the Fifth Circuit lifted the district court's injunction. Oral arguments were held.

Federal Agencies and Committees

U.S. Department of Energy (DOE)

DOE Requested by U.S. Representative to Accept Baghouse Dust

In a letter dated October 21, Representative John Tanner (D-TN) requested that Thomas Grumbly, the Assistant Secretary for the Department of Energy's Office of Environmental Management, review the issue of electric arc furnace (EAF) baghouse dust contaminated with radiation and advise Tanner's office as to whether DOE can take action to assist affected steel companies in the disposal of the dust. The letter states, "Until an adequate solution is found to remove radioactive material from the scrap metal stream and until regulations are implemented allowing radioactive EAF dust to be treated and disposed of at hazardous waste facilities, the NRC, EPA, and DOE should negotiate jointly a program under which DOE would accept radioactive EAF dust for treatment and disposal at DOE facilities." Tanner represents Tennessee's Eighth District and retained his seat in the November election.

Accidental Melting of Sealed Sources

Baghouse dust can become radioactively contaminated when scrap metal containing radioactive sealed sources is inadvertently melted. The sealed sources are generally shielded in lead containers, which can pass undetected through the steel companies' radiation detection monitors. The melting of a source can contaminate the finished metal product, existing dust already in storage, equipment and duct systems, and the surrounding facility.

Radioactively contaminated baghouse dust is a commercial mixed waste regulated by both EPA and NRC. According to Tanner, six U.S. steel producers are currently storing on site approximately 25,000 tons of low-level radioactive baghouse dust. A Florida Steel Corporation's steel mill, located in Tanner's district in Tennessee, recently experienced an inadvertent melting of a sealed source and is storing its contaminated baghouse dust on site.

NRC Letter to DOE

In May 1994, Robert Bernero, Director of NRC's Office of Nuclear Material Safety and Safeguards, encouraged Grumbly to consider accepting radioactively contaminated baghouse dust for treatment and disposal at DOE facilities. In response, Jill Lytle, Deputy Assistant Secretary for DOE's Office of Waste Operations, stated that DOE would have difficulty in committing to receive a hypothetical waste stream. Lytle suggested reviewing the proposal once the Federal Facility Compliance Act (FFCA) discussions regarding DOE acceptance of commercial mixed waste have concluded. (See *LLW Notes*, October 1994, pp. 23-24.) Tanner attached Bernero's letter to his letter to Grumbly.

NRC Plans for Baghouse Dust Disposal

During the LLW Forum's Mixed Waste Working Group meeting in October, NRC staff announced plans to develop a branch technical position to regulate the disposal of radioactively contaminated baghouse dust in hazardous waste landfills. NRC staff anticipate that a draft branch technical position would be available for public comment in April of 1995. NRC may also examine possible alternatives for preventing the meltdown of the sealed sources.

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

Secretary O'Leary Accepts Safety Board Recommendations

In a letter published in the Federal Register, U.S. Department of Energy (DOE) Secretary Hazel O'Leary accepted the recommendations of the Defense Nuclear Facilities Safety Board concerning DOE's management of low-level radioactive waste. (See *LLW Notes*, October 1994, p. 18.) O'Leary stated that DOE "will undertake a complex-wide baseline assessment of DOE low-level radioactive waste disposal requirements and practices with the objective of identifying problems affecting worker and public safety" and that DOE will develop an Implementation Plan to address the Safety Board recommendations. A public comment period, which expires on December 16, 1994, has been established for O'Leary's response to the Safety Board.

Recommendation re Privatization

One of the Safety Board's recommendations was that DOE develop an Implementation Plan to include, among other things, "assessments of the safety merits/demerits of privatization of facilities for disposal of DOE low-level waste." In response, O'Leary states that the Implementation Plan "will also address an assessment of the safety merits and demerits of privatization of facilities for low-level radioactive waste disposal for exclusive use by DOE." Thomas Grumbly, DOE Assistant Secretary for Environmental Management, is listed as a DOE contact in addition to O'Leary for the Safety Board recommendations and the DOE Implementation Plan.

Assistant Secretary Grumbly's Remarks to the LLW Forum

During Grumbly's presentation at the October LLW Forum meeting, Forum Participants noted that the Safety Board recommendations concerning privatization of DOE's waste management operations created concern about the possible privatization of DOE's waste streams. In response, Grumbly stated that DOE will retain responsibility for its own waste streams. In a summary of the conversation conveyed to Grumbly by letter, the LLW Forum requested that DOE forward any relevant DOE correspondence or other formal documents about this Safety Board recommendation to the LLW Forum as soon as they become available.

Submission of Comments

DOE is requesting that "comments, data, views or arguments" concerning Secretary O'Leary's response be sent to the Defense Nuclear Facilities Safety Board; 625 Indiana Avenue, NW; Suite 700; Washington, DC 20004. The notice containing the response was published in the *Federal Register* on November 16, 1994 (Vol. 59, No. 220, p. 59214).

The preceding information was distributed to Forum Participants and Alternate Participants, Federal Liaisons and Alternates via facsimile in a News Flash on November 30.

Environmental Protection Agency (EPA)

EPA Region Six Raises Environmental Justice Concerns to NRC

In an October letter to the Nuclear Regulatory Commission's (NRC) Enrichment Branch, Norm Thomas of EPA Region Six's Federal Activities Branch questioned the analysis supporting NRC's conclusion that the site selection process for a proposed uranium enrichment facility in Louisiana was based solely on business and technical considerations and was not an example of environmental injustice. NRC's conclusion is contained in the Final Environmental Impact Statement (EIS) for the facility, which EPA Region Six reviewed in accordance with Section 309 of the Clean Air Act, the National Environmental Policy Act (NEPA), and the Council on Environmental Quality Regulations for Implementing NEPA. EPA Region Six includes Arkansas, Louisiana, New Mexico, Oklahoma and Texas.

Region Six's Recommendations

The letter notes that the Executive Order on Environmental Justice, which was signed by President Clinton in February, directs federal agencies to analyze the environmental effects—including human health, economic and social effects—of federal actions. The letter states:

The E.O. [Executive Order] calls for collection and analysis of information on race, national origin, income level and other appropriate information for areas surrounding facilities or sites that have expected environmental, health and economic effect on those populations. It would appear that information such as city or community census data for areas surrounding the facility would be more appropriate [than data on the parish level] in this case. The analysis should evaluate such factors as community disruption, or impacts on the community economic structure. Also, cumulative impacts occurring in the area to which this project could add [an] additional environmental burden (i.e., other polluting industries in or near the affected communities) were not considered in the Final EIS.

NRC Response

John Hickey, Chief of NRC's Enrichment Branch, stated that the Final EIS is under litigation and that NRC will be presenting testimony related to the EPA comments before the Administrative Law Board in March of 1995. Environmental justice is one of the issues involved in the litigation. Hickey reported that NRC staff had met with EPA Region Six staff to discuss the EPA letter. "We're seriously considering their comments," Hickey said. However, NRC is not planning to revise the Final EIS at this time.

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

Environmental Justice Working Definitions

from the Pre-Application Kit for Assistance from EPA's Office of Environmental Justice Small Grants Program.

Environmental Justice

[T]he fair treatment of people of all races, cultures, and income with respect to the development, implementation and enforcement of environmental laws, regulations and policies. Fair treatment means that no racial, ethnic or socioeconomic group should bear a disproportionate share of the negative environmental consequences resulting from the operation of industrial, municipal, and commercial enterprises and from the execution of federal, state and local, and tribal programs and policies. Environmental justice seeks to ensure that the communities, private industry, local governments, states, tribes, federal government, grassroots organizations, and individuals act responsibly and ensure environmental protection to all communities.

Low-Income Community

[A] population that is classified by the U.S. Bureau of the Census as having an aggregated mean income for a family of four that correlates to \$13,359, adjusted through the poverty index using a standard of living percentage change where applicable, and whose composition is at least 25% of the total population of a defined area or jurisdiction.

Affected Communities

[I]ndividuals or groups of individuals which are subject to an actual or potential health, economic, or environmental threat arising from, or which arose from, polluting source(s), or proposed polluting source(s). An example of affected parties include[s] individuals who live near polluting sources and whose health is or may be endangered or whose economic interest[s] are directly threatened or harmed.

People of Color Community

[A] population that is classified by the U.S. Bureau of the Census as African American, Hispanic American, Asian and Pacific American, American Indian, Eskimo, Aleut and other non-white persons, whose composition is at least 25% of the total population of a defined area or jurisdiction.

Maine Official Questions Babbitt on Ward Valley Hearing

Senator Johnston introduced his bill to force the Ward Valley land transfer because Secretary of the Interior Bruce Babbitt has refused to do it after another hearing on environmental issues related to the proposed facility. While the Secretary was in Maine the afternoon and evening of Sept. 29, Advisory Commission staff member Robert A. Demkowicz took advantage of the opportunity to question him personally about Ward Valley.

During a brisk walk with Secretary Babbitt and several reports after the Secretary spoke at an environmental forum at the University of Maine in Orono, Mr. Demkowicz asked the Secretary, "Ward Valley, California. Are you going to order a hearing on that low-level radioactive waste site?"

"I am going to wait until the state figures it out, until it [the state lawsuit, presumably] is all over," Secretary Babbitt replied.

"So you are not going to have one [hearing]?" Mr. Demkowicz said.

"If I have to have one, I'll have one," the Secretary said.

Mr. Demkowicz commented that Secretary Babbitt seemed taken aback at a question about California during a Maine visit. However, Mr. Demkowicz said, during his address the Secretary talked about the value of desert areas, like Ward Valley, and expressed support for pending federal legislation to designate seven million acres of desert as protected lands. While early European settlers, used the woods and fields of their homelands, didn't appreciate American deserts, people now recognize them as important parts of the continent's diverse ecosystem, Secretary Babbitt said.

Text reprinted from *Update '94*, the newsletter of the Maine Advisory Commission on Radioactive Waste. October 1994.

Environmental Protection Agency (EPA) continued

EPA Recommends NRC Adopt Ground-Water Standard

In an October 21 letter to Robert Bernero, Director of NRC's Office of Nuclear Material Safety and Safeguards, Margo Oge, the Director of EPA's Office of Radiation and Indoor Air, stated that "EPA's preferred option for dealing with groundwater protection at commercial disposal sites would be for NRC to amend its LLW [low-level radioactive waste] disposal regulations to protect underground sources of drinking water to the level of the MCLs [maximum contaminant levels]." Oge wrote that if NRC adopts a ground-water standard, EPA would propose excluding NRC licensees from EPA's Low-Level Radioactive Waste Standard. She noted that resolution of the ground-water issue "will help protect the environment and provide regulatory certainty to the State Compacts as soon as possible." ...

Memorandum of Understanding

A 1992 Memorandum of Understanding (MOU) between EPA and NRC provides the framework within which the two agencies work to resolve issues concerning the regulation of radionuclides. The MOU states that "EPA's decisions to impose or not impose other regulations regarding NRC licensed materials or facilities will be based upon a determination as to whether NRC's regulatory program achieves a sufficient level of protection of the public health and environment." In her letter, Oge stated that an EPA review of current NRC regulations for disposal of low-level radioactive waste found one area—the absence of a specific standard for ground-water protection—that must be addressed in order for EPA to find that the NRC program provides a sufficient level of protection.

The MOU process is being used in the development by both agencies of regulations to address the decommissioning of radioactively contaminated sites. NRC proposed radiological criteria for decommissioning in August (see *LLW Notes*, Aug./Sept. 1994, p. 25), and EPA is planning to propose decommissioning criteria in the spring of 1995. If NRC's proposed criteria do not change significantly, EPA staff has indicated that EPA will use the MOU process to exempt NRC licensees from EPA's decommissioning regulations.

NRC Reaction to EPA Proposal

At press time, NRC had not formally responded to the proposal contained in the Oge letter. NRC staff are planning to inform the NRC Commissioners of the EPA proposal and of various NRC options for responding to the proposal.

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

Oge, Gunter Leave EPA's Office of Radiation and Indoor Air

Margo Oge, Director of EPA's Office of Radiation and Indoor Air (ORIA), has left ORIA to become Director of EPA's Office of Mobile Sources. Stephen Page, formerly the Division Director for ORIA's Radon Division, will be the Acting Director for ORIA.

William Gunter, Division Director for ORIA's Criteria and Standards Division, has announced that he will retire effective December 2. Lawrence Weinstock, formerly the Branch Chief for the Criteria and Standard Division's Radioactive Waste Management Branch, will become the Acting Division Director. Al Colli, formerly Branch Chief of ORIA's Air Standards and Economics Branch, will become the Acting Branch Chief for the Criteria and Standard Division's Radioactive Waste Management Branch.

EPA's Low-Level Radioactive Waste Standard
ORIA's Criteria and Standards Division is responsible for developing EPA's Low-Level Radioactive Waste Standard. (See *LLW Notes*, October 1994, pp.16-17) According to EPA staff, EPA is still planning to publish a proposed Low-Level Radioactive Waste Standard in the *Federal Register* for public review and comment in the spring of 1995.

Nuclear Regulatory Commission (NRC)

NRC, EPA Look at Options for Recycle and Reuse of Contaminated Materials

The Nuclear Regulatory Commission has announced plans to proceed with an enhanced participatory rulemaking to establish radiological criteria to determine whether slightly contaminated equipment and material from nuclear facilities could be released by licensed facilities in order to recycle or reuse the material for both restricted and unrestricted use. Under existing guidance, NRC currently determines on a case-by-case basis whether material and equipment from nuclear facilities can be released. According to an NRC staff action plan, the rulemaking process could begin in the fall of 1995.

Issues to Be Considered

The NRC Commissioners directed NRC staff in March to consider the following issues while proceeding with plans for a rulemaking:

- whether slightly contaminated materials resulting from decommissioning activities might be used for certain useful commercial or industrial purposes (e.g., industrial uses such as in reinforcing rods, highway bridge structural steel, industrial equipment, concrete aggregate for roadway construction, etc.);
- whether slightly contaminated material should be excluded from some commercial or industrial uses; and
- what criteria (including level of residual contamination) should be utilized in determining which materials might be used for or excluded from such purposes.

The Commission stated that "[t]he process should also include issues raised by steel manufacturers in the accidental smelting of gauges which contain radioactive materials." (See related story, this issue.)

EPA Plans

The Environmental Protection Agency has indicated that the recycle and reuse of contaminated materials will be addressed during the development of the Comprehensive Waste Management Strategy. According to EPA staff, EPA is planning to examine options to allow for restricted recycling—i.e., the use of contaminated materials for nuclear purposes, such as waste containers or shielding. Current EPA plans call for a proposed rule to be issued in the fall of 1995.

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

Nuclear Regulatory Commission (NRC) continued

NRC Reviews Agreement State Authority to License, Inspect Interim Storage at NRC-Licensed Facilities

In a letter dated October 6, Richard Bangart, Director of NRC's Office of State Programs, transmitted the results of a staff review of NRC laws, regulations and policies relating to storage. The review was conducted at the request of R. Lewis Shaw, Deputy Commissioner of South Carolina's Department of Health and Environmental Control, who requested an NRC determination on whether NRC would allow Agreement States to

- issue specific radioactive materials licenses at low-level radioactive waste storage facilities that are under NRC's regulatory jurisdiction; and
- conduct inspections for compliance with applicable waste processing and acceptance standards at low-level radioactive waste storage facilities that are under NRC's regulatory jurisdiction.

South Carolina Request

NRC-licensed Facilities In a letter dated July 1, Shaw acknowledged that the Low-Level Radioactive Waste Policy Amendments Act of 1985 "did not convey any additional authority for the states to regulate and inspect NRC licensed facilities." He recognized that NRC does not intend to require a license at interim storage facilities under NRC's jurisdiction unless the waste is stored or processed for others. NRC retains the authority to license nuclear power reactors and non-DOE federal facilities even in Agreement States.

Areas of State Authority Shaw pointed out, however, that the Low-Level Radioactive Waste Policy Amendments Act, as ratified in the Southeast Low-Level Radioactive Waste Compact, requires the Southeast Compact party states to "establish the capability to regulate and license any facility used for the treatment, storage or disposal of low-level radioactive waste."

He also cited other state responsibilities under the law:

[E]ach party state [to the Southeast Compact] must establish the capability to enforce any applicable federal or state laws for the packaging and transportation of waste. The Act also conveyed considerable responsibilities to the states for the overall management and availability of storage and disposal capacity for low-level radioactive waste generated within their borders. It seems apparent that the states have been mandated a greater interest for the regulatory responsibility regarding the interim storage of these wastes.

State Regulations Shaw noted that South Carolina has developed regulations for the interim storage of low-level radioactive waste, and that these regulations have been approved by the South Carolina Board of Health and Environmental Control for submission to the General Assembly for final approval and codification. In anticipation of the need to implement these regulations following the Barnwell facility's scheduled closure in December 1995, Shaw requested that NRC undertake a review of its policies regarding Agreement State authority in these areas.

South Carolina Response

South Carolina has requested that NRC issue a second letter to clarify its findings. Virgil Autry, Division Director for South Carolina's Department of Health and Environmental Control, stated: "We believe that Agreement States do have the authority to issue specific radioactive materials licenses for and conduct inspections at interim storage facilities located outside the exclusion area of nuclear power plants. NRC's letter did not specifically address this issue, and we intend to follow up on it with NRC staff."

NRC Findings

In his letter, Bangart stated that the term "specific radioactive materials license" was interpreted to mean "a radiological health and safety license issued under SC (South Carolina) regulations compatible with NRC's 10 CFR Parts 30, 40, and 70 to regulate and control the use of byproduct, source, and special nuclear materials respectively only for the purposes of protecting the public health and safety and the environment against the hazards of radiation." NRC concluded that

- such state-issued licenses would not be applicable to NRC-licensed facilities located in South Carolina;
- NRC's statutory authority to license nuclear power plants and non-DOE federal facilities in Agreement States preempts any state or compact legislation regarding the radiological health and safety aspects of treatment or storage at those facilities; and
- NRC has an existing procedure to allow Agreement States to conduct inspections for compliance with applicable waste processing and acceptance standards at NRC-licensed facilities. The procedure allows for NRC and Agreement States to enter into Memorandums of Understanding to enable Agreement States to supplement NRC inspections of NRC-licensed facilities to ensure compliance with specific sections of NRC's requirements.

NRC based its findings upon Sections 4 (b) (3) and (4) of the Low-Level Radioactive Waste Policy Amendments Act of 1985 and Article VI of the Southeast Compact legislation. Bangart enclosed staff comments on South Carolina's low-level radioactive waste storage and disposal regulations with his letter.

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

NRC Chair Optimistic about Low-Level Radioactive Waste

The following comments are excerpted from remarks made by Ivan Selin, Chair of the U.S. Nuclear Regulatory Commission, at the winter meeting of the American Nuclear Society.

In the area of nuclear waste disposal the NRC is providing the regulatory framework that will assist the States in regulating disposal of low-level radioactive waste. NRC has worked with the States and Compacts toward further development of low-level waste disposal facilities. NRC's role was one of issuing guidance on a variety of topics, including methods to assess performance at waste disposal facilities. Although States are still having difficulty siting and licensing low-level waste facilities, measurable progress in Texas and in the Central and Appalachian Compacts has been made in the last year. I remain quite optimistic on the eventual solution to the low-level waste problem.

NRC Rotates Branch Chiefs

NRC is planning to rotate branch chiefs for three-month assignments in order to increase staff expertise across the range of NRC program areas. Effective December 5, John Austin will leave the Low-Level Waste and Decommissioning Branch and move to the Performance Assessment and Hydrology Branch in the Division of Waste Management. Margaret Federline will leave the Performance Assessment and Hydrology Branch and move to the Medical, Academic and Commercial Use Safety Branch in the Division of Industrial and Medical Nuclear Safety. John Glenn will leave the Medical, Academic and Commercial Use Safety Branch and move to the Low-Level Waste and Decommissioning Projects Branch in the Division of Waste Management. Both the Division of Waste Management and the Division of Industrial and Medical Nuclear Safety are located in the Office of Nuclear Material Safety and Safeguards.

General Accounting Office (GAO)

GAO Recommends Broader Consensus on Federal Radiation Standards

Senator John Glenn (D-Ohio) released a General Accounting Office (GAO) report on October 27 that examines the consistency and compatibility of the various public exposure limits contained in federal radiation standards and the various protective strategies associated with the standards. GAO found at least 26 different draft or final radiation standards and guidelines, many of which differ according to numerical dose limits, units of measurement, and estimated risk levels. The report recommends that the Environmental Protection Agency (EPA), in cooperation with the Nuclear Regulatory Commission (NRC), "take the lead in sustaining and broadening the ongoing EPA-NRC harmonization effort to include the effective participation of other agencies and CIRRPC [Committee on Interagency Radiation Research and Policy Coordination] in pursuing interagency consensus on preferred radiation dose and risk calculation methods and radiation protection strategies, as well as an overall consensus on how much radiation risk to the public is acceptable."

In a prepared statement, Glenn announced that he would send the report to EPA, NRC, and the White House Office of Science and Technology, which oversees CIRRPC, and request that the agencies develop and submit to him, within 90 days, a comprehensive plan for addressing the inconsistencies in the federal standards. He stated, "If I don't see such a plan—or the proposal submitted is insufficient—I intend to introduce legislation next year to change the current government framework." Senator Glenn has served as chair of the Senate Committee on Governmental Affairs and will remain so until the adjournment of this Congress.

Different Calculation Methods

The report finds that differences in the various radiation exposure limits reflect the lack of interagency agreement on underlying technical assumptions, which can result in different calculation methods for estimating dose and risk. EPA and NRC, for example, use different scenarios for depicting how human exposure may occur,

including different assumptions about human intrusion into a site and the time period of human exposure. GAO found that assumptions that result in overestimating risk are sometimes used in these scenarios, which "can lead to levels of regulatory dose and risk limitation that require large expenditures for compliance but do not necessarily reduce the health risk to the public."

Different Protective Strategies

GAO found that the agencies have different conceptual approaches to radiation standards and guidelines. NRC has favored the "as low as reasonably achievable" approach, which sets an upper dose limit and then reduces dose and risk well below the limit in site-specific compliance situations. Conversely, EPA has favored a "best available technology" approach, which involves setting a lower, more stringent goal and using technology to control exposure or to remove environmental contamination. If the goal is not achievable due to technical feasibility, cost and other factors, the regulator may decide to accept a less stringent level of achieved protection.

Implications

GAO asserts that the lack of agreement on how radiation limits are associated with human health effects means that regulators may not have assurance that relatively stringent standards have better protected the public health at an optimal cost. The report states that the lack of consensus will complicate upcoming regulatory decisions that "may involve trade-offs between affordability and radiation protection, as well as potentially immense regulatory costs. Regulatory areas involved in such decisions may include low-level waste, cleanup of residual radioactive contamination, nuclear facility decommissioning, high-level waste storage, and potentially even indoor radiation in residences."

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

New Materials and Publications

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LLW Forum

DM *Meeting Report.* Afton Associates, Inc. October 1994. Proceedings from the LLW Forum fall meeting, October 26-27, 1994. (Distributed on November 23, 1994.)

DM *LLW Forum Contact Information.* Afton Associates, Inc. November 1994. (Distributed on November 23, 1994.)

States and Compacts

Central Compact/Nebraska

Central Interstate Low-Level Radioactive Waste Commission 1993-94. Annual report. To obtain a copy, contact Donald Rabbe of the Central Commission at (402) 476-8247.

Central Interstate Low-Level Radioactive Waste Commission 1994 Survey Results. Approximately 85 waste survey forms were sent to low-level radioactive waste generators throughout the five states in the Central Compact, and 55 forms were completed and returned. To obtain a copy of the survey results, contact Rita Roe of the Central Commission at (402) 476-8247.

Midwest Compact/Ohio

D *Low-Level Radioactive Waste Enabling Legislation Executive Summary.* November 16, 1994.

Northeast Compact/Connecticut/New Jersey

D Letter from John Weingart, Executive Director, New Jersey Low-Level Radioactive Waste Disposal Facility Siting Board, to Thomas Grumbly, Assistant Secretary for Environmental Management, U.S. Department of Energy, regarding public education and a voluntary siting process in New Jersey. November 3, 1994.

Report to the General Assembly on the Need for a Centralized, Temporary Low-Level Radioactive Waste Storage Facility in Connecticut (draft). Connecticut Hazardous Waste Management Service. October 1994. Contains an analysis of the State of Connecticut's need for a temporary storage facility and a recommendation by the Management Service that such a facility is not needed for the next five years. The comment period closes on December 9, 1994. To obtain a copy, contact Steve Levine of the Management Service at (203) 244-2007.

Report to the General Assembly on the Volunteer Approach to Siting a Low-Level Radioactive Waste Disposal Facility in Connecticut (draft). Connecticut Hazardous Waste Management Service. October 1994. Recommendations for modifications to the volunteer plan approved by the General Assembly in 1993. The Management Service recommends that the volunteer approach be given an additional two years to run and that the types of organizations eligible for study grants be expanded to include not-for-profit civic and state-wide organizations of government officials. To obtain a copy, contact Steve Levine of the Management Service at (203) 244-2007.

Projections of Low-Level Radioactive Waste Characteristics and Volumes to be Disposed at the Connecticut LLRW Disposal Facility, Volumes 1 and 2. Prepared for the Connecticut Hazardous Waste Management Service by Rogers & Associates Engineering Corporation. September 1994. Provides 20-year and 50-year projections. To obtain a copy, contact Steve Levine of the Management Service at (203) 244-2007.

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Massachusetts

Letter from Charles Killian, Chair, Massachusetts Low-Level Radioactive Waste Management Board, to President Bill Clinton, commenting on the Low-Level Radioactive Waste Policy Amendments Act. October 7, 1994. A background paper, "LLRW Management Issues for Review," was also included with the letter. Both items were distributed at the October 1994 LLW Forum meeting in Williamsburg, Virginia. To obtain a copy, contact Ben McKelway of the Management Board at (617)727-6018.

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1994 Annual Report to the Commonwealth: July 1, 1993 - June 30, 1994. Massachusetts Low-Level Radioactive Waste Management Board. To obtain a copy, contact Ben McKelway of the Management Board at (617)727-6018.

Michigan

^D *Michigan Storage Plans and Activities.* Daniel J. Malone, Acting Radiological Services Manager, Palisades Nuclear Plant. Hard copies of slides presented at the LLW Forum Meeting, in Williamsburg, Virginia, on October 27, 1994. Contains information on storage at Palisades including interim storage decision factors, volume reduction and storage considerations, regulatory and interstate considerations, future plans, and charts of waste generation and inventory as well as background information on low-level radioactive waste management in Michigan. Copies of the slides were distributed at the meeting.

Federal Agencies

Memorandum of Understanding between the U.S. Department of Agriculture: Forest Service; U.S. Department of Defense; U.S. Department of the Army: Corps of Engineers; U.S. Department of Commerce: National Marine Fisheries Service; U.S. Department of the Interior: Bureau of Land Management, Bureau of Mines, Bureau of Reclamation, Fish and Wildlife Service, Minerals Management Service, National Park Service; U.S. Department of Transportation: Coast Guard, Federal Aviation Administration, Federal Highway Administration; and the U.S. Environmental Protection Agency on the implementation of the Endangered Species Act. September 1994. The purpose of the memorandum is to establish a general framework for cooperation and participation among the above agencies listed in the exercise of their responsibilities under the Endangered Species Act. For further information, contact Megan Durham, Deputy Chief of Public Affairs, Department of Interior at (202)208-5650.

New Materials and Publications *continued*

Department of Energy (DOE)

"DOE Response to Recommendation 94-2, Conformance With Safety Standards at DOE Low-Level Nuclear Waste and Disposal Sites of the Defense Nuclear Facilities Safety Board," 59 *Federal Register* 94-28298. DOE. November 16, 1994. A response letter from Hazel O'Leary, Secretary, DOE, to John Conway, Chair, Defense Nuclear Facilities Safety Board, approving Recommendation 94-2.

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Assistance Available Through the National Low-Level Waste Management Program (DOE/LLW-68T). National Low-Level Waste Management Program, Idaho National Engineering Laboratory (INEL). November 1994. This document is a handbook for State and compact region representatives to use in understanding the various technical services and projects available through the National Low-Level Waste Management Program. Distributed to state and compact officials and generator organizations by INEL. To obtain a copy, contact Donna Lake of INEL at (208)526-6927.

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Revised "Table 3, Radionuclides Received," for the *1993 State-by-State Assessment of Low-Level Radioactive Waste Received at Commercial Disposal Sites*. (DOE/LLW-205-RLF-39-94). DOE's National Low-Level Waste Management Program, Idaho National Engineering Laboratory (INEL). November 16, 1994.

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The following three reports, dated November 1993, have recently been made available by the Secretary of Energy Advisory Board (SEAB) Task Force on Radioactive Waste Management:

- *Earning Public Trust and Confidence: Requisites for Managing Radioactive Wastes*. Final Report of the Secretary of Energy Advisory Board Task Force on Radioactive Waste Management.
- *Responses to Comments Received on the Draft Final Report of the Secretary of Energy Advisory Board Task Force on Radioactive Waste Management*.
- *Compilation of Reports Prepared for the Secretary of Energy Advisory Board Task Force on Radioactive Waste Management*.

To obtain a copy, contact DOE's Civilian Radioactive Waste Information Center at (202)488-5513.

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"Federal Facilities Compliance Act: Issue Update." November 1994. Four-page description of DOE's *National Summary Report of the Draft Treatment Plans*, the evaluation process and the next steps in the implementation for the Federal Facility Compliance Act. To obtain a copy of the description and/or a full copy of the report, contact the Center for Environmental Management Information at (800)736-3282.

Environmental Protection Agency (EPA)

• *U.S. EPA NARM Activities*. William Russo, Environmental Engineer, Radioactive Waste Management Branch, Criteria and Standards Division, Office of Radiation Programs, Office of Radiation and Indoor Air, EPA. Hard copies of slides presented at the LLW Forum Meeting, in Williamsburg, Virginia, on October 26, 1994. The slides contains descriptions of what NARM is, the regulatory status of NARM, EPA activities addressing NORM, EPA studies and other relevant information. (Distributed on November 23, 1994.)

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Letter from Norm Thomas, Chief, Federal Activities Branch, EPA Region 6 to John Hickey, Chief, Enrichment Branch, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission (NRC), regarding environmental justice issues and the completion of the Final Environmental Impact Statement for NRC's proposed licensing of a uranium enrichment facility near Homer, Louisiana. October 25, 1994.

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Guide to Environmental Issues (520/B-94-001). Office of Solid Waste and Emergency Response, EPA. August 1994. Handbook that lists addresses and telephone numbers of federal and state agencies as well as health, safety, and environmental considerations on a range of environmental issues. To obtain a copy, contact EPA's Public Information Center at (202)260-7751.

New Materials and Publications *continued*

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Nuclear Regulatory Commission (NRC)

Paper presented by NRC Commissioner Gail de Planque at the NRC Workshop on Site Characterization for Decommissioning, November 29, 1994. Discusses risk-based decision-making, risk assessment, the selection of an acceptable level of risk and risk management in the context of NRC's proposed radiological criteria for decommissioning. To obtain a copy, contact the NRC Public Document Room at (202)634-3273.

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Letter from Richard Bangart, Director, Office of State Programs, NRC, to R. Lewis Shaw, Deputy Commissioner, Environmental Quality Control, South Carolina Department of Health and Environmental Control, regarding licensing of low-level radioactive waste storage facilities in South Carolina. NRC distributed this letter to State Liaison Officers, Agreement and Non-agreement States and low-level radioactive waste compacts. To obtain a copy, contact the NRC Public Document Room at (202)634-3273.

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Hard copies of slides presented at the Low-Level Radioactive Waste Performance Assessment Workshop, in NRC's Public Auditorium, Rockville, MD, on November 16 and 17. The slides addressed:

- Overview of Performance Assessment Strategy and Program;
- Branch Technical Position for Performance Assessment of Low-Level Radioactive Waste Disposal Facilities;
- Branch Technical Position on Low-Level Waste Performance Assessment—Technical Issues and Approaches;
- Environmental Protection Agency's Preproposal Draft—LLW Standards;
- Branch Technical Position on Low-Level Waste Performance Assessment—Overview of Comments on Preliminary Draft BTP;
- Regulatory Issue—Role of Engineered Barriers
- Consideration of Conditions, Processes and Events in Site Selection and Performance Assessment Modeling;

- Uncertainty and Sensitivity in Regulatory Decision Making;
- Time Frame for Performance Assessment;
- Role of Performance Assessment in Demonstrating Compliance;
- Overview of NRC Staff LLWPA Modeling Efforts;
- Test Case Results and Lessons Learned;
- The U.S. Department of Energy Approach to Performance Assessments for Disposal of Low-Level Waste;
- Performance Assessment Process for DOE LLW Disposal Facilities and Lessons Learned from Reviews;
- LLW Source Term: Geochemical Data and Modeling.

To obtain a copy of these documents, contact the NRC Public Document Room at (202)634-3273.

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New Materials and Publications *continued*

"Draft Policy Statement on Agreement States Program: Extension of Comment Period," 59 *Federal Register* 94-25586. NRC. October 17, 1994. The draft policy statement established Agreement State program principles, and described the respective roles and responsibilities of the NRC and the states in the administration of this program.

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U.S. Nuclear Regulatory Commission Organization Charts and Functional Statements (NUREG-0325, Revision 17). NRC. October 1994. Contains organizational charts and functional statements for all NRC offices and regions and their components down through the branch level as of October 1994.

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Summary of Determinations and Conclusions reached as a Result of the Generic Environmental Impact Statement (GEIS) Scoping Process. NRC. September 15, 1994. The NRC prepared the GEIS in conjunction with a proposal to codify in its regulations radiological criteria for decommissioning of lands and structures at nuclear facilities. To obtain a complete copy of the GEIS, write to the Distribution Services, Printing and Mail Service Branch; Office of Administration; NRC; Washington, DC 20555. Requests can be made by facsimile at (301)504-2260. The GEIS is also available for downloading and viewing on the NRC Enhanced Participatory Rulemaking on Radiological Criteria for Decommissioning Electronic Bulletin Board at (800)880-6091.

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"Review Process for 10 CFR 2.206 Petitions," *New Management Directive and Handbook 8.11*. Office of Nuclear Reactor Regulation, NRC. September 1994. Discusses NRC's new procedures to increase participation of petitioners in the NRC process to review 2.206 petitions. This management directive supersedes any previously issued office letters on 10 CFR 2.206 petitions. To obtain a copy, contact the U.S. Government Printing Office at (202)512-2409.

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"Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for Decommissioning of NRC-Licensed Nuclear Facilities" (NUREG-1496, Vols. 1 and 2). NRC. August 1994. Volume 1, the main report, is a draft Generic Environmental Impact Statement. It contains an amendment to the NRC's regulations in 10 CFR Part 20 to include radiological criteria for the decommissioning of lands and structures at nuclear facilities. Volume 2 comprises the appendices.

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"Staff Action Plan for an Enhanced Participatory Rulemaking for Recycle/Reuse Criteria" (SECY-94-221). NRC. August 1994. Informs the NRC Commissioners of the staff action plan for preparation of an enhanced participatory rulemaking for recycle/reuse criteria in response to the request in the Staff Requirements Memorandum of March 10, 1994.

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Background paper and five attachments presented by the Steel Manufacturers Association to Ivan Selin, Chair, and E. Gail de Planque, Commissioner, of the U.S. Nuclear Regulatory Commission, on radioactive scrap metal and mixed radioactive wastes. The attachments are

- a chart depicting radioactive material in metal scrap in the U.S. from 1983 to June, 1993;
- a table of worldwide smeltings of radioactive sources;
- a chart depicting decontamination, storage, and disposal costs resulting from the smelting of radioactive sources;
- a report regarding risk assessment of options for disposition of electric arc furnace dust following a meltdown incident of a radioactive cesium source in scrap steel;
- a letter from Robert Bernero, Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, to Thomas Grumbly, Assistant Secretary for Environmental Management, U.S. Department of Energy, regarding the DOE's acceptance and disposal of radioactively contaminated baghouse dust from electric arc furnaces.

To obtain a copy, contact the U.S. Nuclear Regulatory Commission Public Document Room at (202)634-3273.

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U. S. Congress

House of Representatives

Letter from the Honorable John Tanner (D-TN), U.S. House of Representatives, to Thomas Grumbly, Assistant Secretary for Environmental Management, U.S. Department of Energy, regarding radioactively contaminated scrap metal sold to electric furnace steel producers. October 21, 1994.

General Accounting Office (GAO)

Environmental Cleanup: Better Data Needed for Radioactively Contaminated Defense Sites (GAO/NSIAD-94-168). National Security and International Affairs Division, GAO. August 1994. Report to the Chair, Committee on Governmental Affairs, U.S. Senate. Evaluates the accuracy and adequacy of data that the Department of Defense provided in July 1992 and April 1993 on identification and cleanup of military sites contaminated with low-level radioactive waste. To obtain a copy, contact GAO at (202)512-6000.

Nuclear Waste: Comprehensive Review of the Disposal Program is Needed (GAO/RCED-94-299). Comptroller of the United States, GAO. September 1994. Report to Congress. Concludes that "an independent review of the disposal program could ensure that the Congress has the best possible information as a basis for evaluating the performance of DOE's program, making future funding decisions, and making any necessary changes to the program." To obtain a copy, contact GAO at (202)512-6000.

Nuclear Health and Safety: Consensus on Acceptable Radiation Risk to the Public is Lacking (GAO/RCED-94-190). Resources, Community, and Economic Development Division, GAO. September 1994. Report to the Chair, Committee on Governmental Affairs, U.S. Senate. Discusses the consistency and compatibility in the limits on public exposure to radiation included in the federal radiation standards and the protective strategies associated with the standards. To obtain a copy, contact GAO at (202)512-6000.

Other

"Grumbly Says DOE May Take Commercial Mixed LLW for Disposal," *Nucleonics Week*, pp. 11-12. Richard Zuercher. November 3, 1994.

Radioactive Materials, Waste and Pollution: A Guide for States and a Proposal for Legislation. National Association of Attorneys General. September 1994. \$15.00. An overview of radioactive materials, waste and pollution, and the statutory authorities that apply to these substances. To obtain a copy, contact the National Association of Attorneys General at (202)434-8030.

"Book Review: *Public Reactions to Nuclear Waste: Citizens' Views of Repository Siting*." Domenic Forcella, Chair, Connecticut Hazardous Waste Management Service. April 1994 issue of *Radwaste Magazine*.

Public Reactions to Nuclear Waste: Citizens' Views of Repository Siting. Riley Dunlap, Michael Kraft and Eugene Rosa. Duke University Press. Paper, \$24.95; hardback, \$49.95 plus shipping/handling. Social and political factors associated with the disposal of high-level nuclear waste. To obtain a copy, call (919)687-3600.

New Materials and Publications *continued*

Correspondence re Plutonium Estimates for Ward Valley, California

Letter from Elisabeth Brandt, Deputy Director and Chief Counsel, and Peter Baldridge, Staff Attorney, of the Department of Health Services, California Health and Welfare Agency, to Ina Alterman, Study Director, Board on Radioactive Waste Management, National Research Council, regarding the amount of plutonium 239 to be sent to the planned low-level radioactive waste disposal facility at Ward Valley, California. September 22, 1994.

Letter from Ina B. Alterman, Study Director, Board on Radioactive Waste Management, to Paul Lohaus, Deputy Director, Office of State Programs, U.S. Nuclear Regulatory Commission (NRC), regarding whether the projected amount of plutonium-239 to be stored at the proposed Ward Valley, California low-level radioactive waste disposal facility should be licensed and constructed. November 10, 1994.

Letter from Malcom Knapp, Director, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, NRC, to Ina Alterman, Study Director, Board on Radioactive Waste Management, National Research Council, responding to her letter of November 10, 1994, requesting the NRC to review the amount of plutonium 239 projected for disposal in the planned Ward Valley, California low-level radioactive disposal facility. November 23, 1994. To obtain a copy, contact the NRC Public Document Room at (202)634-3273.

**The LLW Forum is now available on the internet at
LLW Forum@aol.com**

Send Jean Colsant of Afton Associates, Inc. your internet address.

Receiving *LLW Notes* by Mail

LLW Notes and the *Summary Report: Low-Level Radioactive Waste Management Activities in the States and Compacts* are distributed to state, compact and federal officials designated by LLW Forum Participants and Federal Liaisons. In April 1994, Forum Participants unanimously approved a change in LLW Forum procedures in order to allow representatives of industry, environmental and citizen groups—as well as other interest groups and members of the public—to receive these two publications directly by mail.

Members of the public may now apply to the National Low-Level Waste Program at the Idaho National Engineering Laboratory (INEL) to be placed on a public information mailing list for copies of *LLW Notes* and the supplemental *Summary Report*. Afton Associates, the LLW Forum's management firm, will provide copies of these publications to INEL. The LLW Forum will monitor distribution of these documents to the general public to ensure that information is equitably distributed throughout the states and compacts. This system of distribution is being established on a trial basis and will be reviewed before the end of 1994 to determine whether it meets the needs of citizens and is affordable to the LLW Forum.

For further information on receiving LLW Notes and the Summary Report by mail, please contact Donna Lake, Senior Administrative Specialist, INEL, at (208)526-0234.

Low-Level Radioactive Waste Disposal Compact Membership

Appalachian Compact

- Delaware
- Maryland
- Pennsylvania
- West Virginia

Central Compact

- Arkansas
- Kansas
- Louisiana
- Nebraska
- Oklahoma

Central Midwest Compact

- Illinois
- Kentucky

Midwest Compact

- Indiana
- Iowa
- Minnesota
- Missouri
- Ohio
- Wisconsin

Northwest Compact

- Alaska
- Hawaii
- Idaho
- Montana
- Oregon
- Utah
- * • Washington
- Wyoming

Rocky Mountain Compact

- Colorado
- Nevada
- New Mexico

Northwest accepts Rocky Mountain waste as agreed between compacts

Northeast Compact

- Connecticut
- New Jersey

Southeast Compact

- Alabama
- Florida
- Georgia
- Mississippi
- North Carolina
- * South Carolina
- Tennessee
- Virginia

Southwestern Compact

- Arizona
- California
- North Dakota
- South Dakota

Texas Compact

- Maine
- Texas
- Vermont

Unaffiliated States

- District of Columbia
- Massachusetts
- Michigan
- New Hampshire
- New York
- Puerto Rico
- Rhode Island

* *current host state*

• *future host state*

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

The Low-Level Radioactive Waste Forum includes a Participant from each regional compact, current host state, future host state and unaffiliated state. Graphic by Afton Associates, Inc. for the LLW Forum. June 1994.