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LLWnotes

Volume 11, Number 8 December 1996

Texas Compact/Texas

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Parties Designated for LLRW Hearings in Texas

On October 31, 1996, two administrative law judges from the Texas State Office of Administrative Hearings issued a procedural order listing parties who may participate in the upcoming hearings on the Texas Low-Level Radioactive Waste Disposal Authority's license application to construct and operate a low-level radioactive waste disposal facility in Hudspeth County, Texas. Most requests by individuals and entities for standing to participate in the process were granted, but a few requests were denied. Approximately 28 individuals and entities have been named as parties to the hearings.

Initial Public Comment Hearings

A public comment hearing on the planned Texas disposal facility was held before two administrative law judges in Sierra Blanca on August 6 and 7. Of the approximately 300 persons who attended the two-day hearing, most reportedly reside outside of Hudspeth County. Local area residents, public officials, Mexican officials, members of the Sierra Blanca Legal Defense Fund, Greenpeace, Advocates for Responsible Disposal in Texas (ARDT), and other environmental and/or antinuclear organizations all participated in the hearings. Of the approximately 125 comments received on behalf of individuals, groups, and governmental entities, about 90 commentators opposed the site, 32 supported it, and three were neutral. Two additional public comment hearings were held in El Paso and Alpine, Texas, on September 9 and 11, respectively. More than 100 persons attended each session, and the majority testified in opposition to the planned facility.

During the public comment hearings, the judges announced that persons interested in being named as parties to the formal hearings on the license application must submit a request in writing, including a statement explaining why they are interested in the matter and how they expect to be affected by the planned facility. Under the process specified by the judges, an order was subsequently issued setting out the criteria for party designation, after which persons seeking such designation were given two weeks to submit their written requests, following which the statutory parties (license applicant, Executive Director of the Texas Natural Resources Conservation Commission, and Public Interest Counsel) were given 10 days to respond to the requests. The judges then ruled on each request for party status.

MASTER

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Low-Level Radioactive Waste Forum

LLW Notes

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Key to Abbreviations

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

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Texas Compact/Texas (continued)

Designation and Alignment of Parties

Three evidentiary hearings—one in Austin on October 21 and two in Sierra Blanca on October 23 and 24—were held to determine who among the more than 30 individuals and entities that applied in writing for party status would be named as parties to the hearings. Then, on October 31, the judges issued Procedural Order Number 10 identifying which applicants were granted party status and which were denied status and explaining why.

In explaining the rationale behind their decisions, the judges stated as follows:

Taken as a whole, the evidence presented indicates that much of the Trans-Pecos area surrounding the Sierra Blanca site forms a socio-economically cohesive community or set of communities, despite the relatively large distances that often separate the region's population centers. The evidence further shows a reasonable potential for the proposed project to create significant socio-economic impact upon this area. The [administrative law judges] ... therefore have concluded that most of those entities that demonstrated specific, concrete links to this area have established a justiciable interest relating to this proceeding.

For information on which applicants were granted party status and which were denied, see box on pages 4 and 5.

As part of the order, the judges required that the parties be aligned together in order to maintain a workable discovery and hearing process. Aligned parties will be expected to make a single presentation of evidence or cross-examination. More than one person may present the case for an aligned group, but only one person may question or cross-examine any single witness on behalf of the group.

The order suggested the following alignment of parties, although it may be revised based upon agreement among or persuasive argument by the parties themselves:

- Texas Low-Level Radioactive Waste Disposal Authority, Houston Light and Power, Texas Utilities Electric Company, Sierra Blanca Community Development Corporation
- Sierra Blanca Legal Defense Fund, Gloria Addington, Alert Citizens for Environmental Safety, Border Environmental Network, David French, Nuclear Information and Resource Service, Edward Patrikus, Texas Pacific Land Trust
- City of El Paso, El Paso County, Greenpeace Mexico, International Environmental Alliance of the Bravo, Municipio de Juarez, Sierra Club—El Paso Group, Alberto Torres, Michael Wyatt
- Presidio County, Culberson County, Susan Curry, Patti Godbold, Donald Judd Estate, Gary Oliver
- Executive Director of the Texas Natural Resource Conservation Commission
- Public Interest Counsel

The designated parties must submit by November 20 any written proposals for a logical alignment of parties.

Discovery—The Next Step

The next step in the process is setting a discovery schedule. Discovery is the process whereby the parties exchange information and examine evidence, identify witnesses, take depositions, and complete other prehearing matters. The Texas Authority anticipates that six to nine months will be needed to complete the discovery process, after which time the hearings will begin. The parties have been ordered to submit a proposed discovery schedule by November 20.

—TDL

Texas Compact/Texas (continued)

Summary—Order Number 10 of the Texas State Office of Administrative Hearings

Order Number 10 addresses the designation of parties for formal hearings on the Texas Low-Level Radioactive Waste Disposal Authority's application for a license to construct and operate a low-level radioactive waste disposal facility in Hudspeth County, Texas.

Individuals/Entities Granted Party Status

Under the order, the following are designated as additional parties to the licensing proceedings:

- Alert Citizens for Environmental Safety;
- Border Environmental Network;
- Culberson County;
- Susan Curry;
- City of El Paso;
- El Paso County;
- Patti Godbold;
- Greenpeace Mexico;
- Houston Light and Power;
- International Environmental Alliance of the Bravo;
- Municipio de Juarez;
- Donald Judd Estate;
- Nuclear Information and Resource Service;
- Gary Oliver;
- Edward Patrykus;
- Presidio County;
- Sierra Club—El Paso Group;

- Texas Utilities Electric Company;
- Alberto Torres; and
- Michael Wyatt.

In addition, at the first comment hearing on August 6, the following individuals and entities were granted party status:

- Texas Low-Level Radioactive Waste Disposal Authority (the license applicant);
- Sierra Blanca Community Development Corporation;
- Sierra Blanca Legal Defense Fund;
- Gloria Addington;
- David French;
- Texas Pacific Land Trust;
- Executive Director of the Texas Natural Resource Conservation Commission; and
- Public Interest Counsel.

States and Compacts *continued*

The order identifies several reasons for granting party status, including

- being located near the proposed facility;
- being potentially subject to regional socio-economic effects related to the proposed facility;
- having an organizational purpose relating directly to the subject matter of the proceedings;
- living, owning property, operating or owning a business, working, or pursuing recreational/educational activities in areas close to the planned disposal site or in areas that are potentially subject to socio-economic effects related to the proposed facility;
- having significant obligations for financing of the project and anticipating major use of the proposed facility; and
- being located in an area that has potential hydrologic connections to the proposed site.

Individuals/Entities Denied Party Status

Under the order, the following are denied designation as additional parties to the licensing proceedings:

- Ciudad Acuna;
- Senator Luis Alvarez;
- Chemical Sensitive Network;
- Congreso de Chihuahua;
- Congreso de Coahuila;
- Hudspeth County Attorney's Office;
- Indian Hot Springs Ranch;
- Alfredo Reza;
- Cathy Baylor Rush;

- San Antonio Citizens Concerned About Sierra Blanca Low-Level Radioactive Waste Disposal Project; and

- Texas Rural Legal Aid Clients' Council.

In addition, one prospective party formally withdrew his request for party status.

The order identifies several reasons for denying party status to the above-listed individuals and entities, including

- being remotely located from the proposed site;
- having primary concerns which are adequately and better addressed by other individuals or entities that have attained party status;
- not having offered any testimony or other evidence in support of one's application for party status;
- not adequately identifying an interest or organizational purpose significantly related to the subject matter of the proceedings;
- not having the autonomy to assert independent standing; and
- not having appeared on the scheduled hearing date.

—TDL

Southeast Compact/North Carolina

North Carolina Authority Adopts Resolutions Sought by Compact *Gears up to Restart Project*

Background: Funding Conditions On October 3, the Southeast Low-Level Radioactive Waste Compact Commission authorized the quarterly release of funds to reach decision point 2 in the Licensing Work Plan (LWP) for the proposed regional low-level radioactive waste disposal facility in Wake County, North Carolina. (See *LLW Notes*, October/November 1996, p. 18.) Reaching this decision point, which entails "configuration of facility and buffer zone," is estimated to cost \$6 million.

Release of the funds was dependent on five conditions. (See box.) A procedure for certifying that the conditions had been met was later established at a meeting of the Southeast Compact's monitoring committee on October 17.

At a meeting on November 14, the North Carolina Low-Level Radioactive Waste Management Authority adopted the following two resolutions designed to address the stipulations for further funding from the Southeast Compact Commission:

Resolution 1

Be it resolved that the North Carolina Low-Level Radioactive Waste Management Authority approves the resolutions of the conditions in the October 3, 1996 Southeast Compact Commission's motion regarding further funding, as these resolutions were achieved at the October 17, 1996 meeting of the Compact's Monitoring Committee; and be it further resolved that the Authority hereby instructs its Executive Director to implement those resolutions with the Southeast Compact Monitoring Committee.

Resolution 2

Be it resolved that the North Carolina Low-Level Radioactive Waste Management Authority, in response to the October 3, 1996 Southeast Compact motion on future funding, reaffirms its commitment to perform the Licensing Work Plan (LWP) in accordance with the projected cost and schedule. This commitment is subject to adjustments to the LWP based on technical developments, and is dependent on the continuity of future funding.

In addition, the Authority is committed to inform the Southeast Compact Commission immediately upon the determination of a disqualifying feature at the Wake County site.

In other action at the meeting, the Authority prepared for the resumption of contractor work by revising its agreement with Harding Lawson Associates to cover the additional work that will be needed to restart the project. Harding Lawson Associates had been selected by the Authority in June 1996 to oversee a new team to implement the Licensing Work Plan. (See *LLW Notes*, June/July 1996, p. 15.)

The Authority also announced its intention to begin searching for a new Executive Director to replace John Mac Millan, who has been serving on a part-time basis since his retirement earlier this year. (See *LLW Notes*, August/September 1996, p. 10.)

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

Inter-agency Committee on LLRW Demonstrates Commitment to North Carolina Project

On November 15, the North Carolina Inter-Agency Committee on Low-Level Radioactive Waste met concerning the Southeast Compact's prerequisites for additional funding. The committee adopted a resolution that responds primarily to condition 5, but which was also intended to facilitate resolution of the issue mentioned in condition 2 concerning tracers.

With respect to condition 2, it was noted that the state's regulatory agencies possess and will apply the necessary resources to perform their regulatory role in conjunction with implementation of the Licensing Work Plan through decision point 2. However, it was also noted that additional funding would be needed in the next fiscal year to support the agencies' role beyond decision point 2.

Conditions for \$6 million

- 1) Commitment by the Authority to adhere to a cost and schedule consistent with the Licensing Work Plan.
- 2) Commitment by the state to provide the necessary resources "to support state performance consistent with the LWP, including the resolution of state restrictions on and selection of appropriate tracers for proposed field activities."
- 3) Agreement by the Authority to develop detailed information for the LWP schedule.
- 4) Commitment by the Authority to establish and adhere to periodic reporting requirements.
- 5) Continued involvement in the LWP of senior management of the Authority and the Division of Radiation Protection, which is reviewing the license application.

Committee's Resolution

Among other things, the resolution declares that

- "the Committee will meet approximately quarterly, or more frequently as needed, to receive reports" from the North Carolina Low-Level Radioactive Waste Management Authority and the North Carolina Division of Radiation Protection (DRP), such reports to "include, but not be limited to, the status of implementation of the LWP, and concerns that may arise regarding the LWP, and any modifications to the LWP that may be required," and such committee meetings, "where possible," to be "scheduled to correspond to the completion of the LWP decision points";
- "the Committee will facilitate a process for continuing consensus endorsement of the overall LWP";
- "the DRP will notify the Committee and the Authority immediately upon determination of a disqualifying condition of the Wake County site";
- "the DRP, the Authority and the N.C. Division of Epidemiology will devote resources as necessary to resolve any issues concerning the use of tracers for proposed field activities and, if unable to do so, will promptly bring such issues before the Committee for discussion"; and
- "the Committee will provide regular reports" to the Southeast Compact Commission's Monitoring Committee, and it "encourages" the Monitoring Committee to "attend and participate in" the meetings of the Inter-Agency Committee.

continued on page 8

Southeast Compact/North Carolina (continued)

Committee Membership

The following persons constitute the Inter-Agency Committee:

Steven Levitas, Chair

Deputy Secretary
Department of Environment, Health and Natural Resources

Dayne Brown

Director, Division of Radiation Protection
Department of Environment, Health and Natural Resources

Warren Corgan

Chair
North Carolina Low-Level Radioactive Waste Management Authority

Jeff Gobel

Air Quality Section
Department of Environment, Health and Natural Resources

Robert Heater

Member
North Carolina Low-Level Radioactive Waste Management Authority

Perry Newson

Office of the Attorney General
(Counsel for the Authority)

Robin Smith

Office of the Attorney General
(Counsel for the Radiation Protection Commission)

Kai Ping Wang

Groundwater Section
Department of Environment, Health and Natural Resources

James Watson

Commissioner
Radiation Protection Commission

Rick Wooten

Geological Survey Section
Department of Environment, Health and Natural Resources

—CN

Midwest Compact/Ohio

Ohio Authority Selects Screening Contractor

On December 9, the Board of Directors of the Ohio Low-Level Radioactive Waste Facility Development Authority announced that they will negotiate with URS Consultants to provide statewide screening for potential low-level radioactive waste disposal facility sites. The proposal submitted by URS Consultants, which is based in Cleveland, includes Bechtel National and US Ecology as subcontractors.

After agreement is reached on the specific scope of work, schedule of deliverables, cost, and other provisions, the contract must be submitted to the

Midwest Interstate Low-Level Radioactive Waste Compact Commission for funding.

URS Consultants' proposal was chosen from among four finalists announced in October. The board made its selection based on evaluations by the board's RFP Task Force, comments received from the public, and interviews by the board.

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

Southwestern Compact/California

California: NRC Should Advise Interior on Ward Valley

In a November 7 letter to NRC Chairman Shirley Ann Jackson, Carl Lischke, Manager of the California Department of Health Services (DHS) Low-Level Radioactive Waste Program, wrote

As you know, the U.S. Department of the Interior (DOI) is in the process of carrying out a second Supplemental Environmental Impact Statement (SEIS) for California's proposed low-level radioactive waste disposal facility at Ward Valley. In our view, this process is completely illegitimate. Since the Nuclear Regulatory Commission (NRC) has taken the position that the SEIS process is legitimate, it is unsettling that neither the Nuclear Regulatory Commission (NRC) nor the Department of Energy submitted any comments during the scoping process for the SEIS, although the Environmental Protection Agency did so.

We understand that the Request for Proposal (RFP) for the preparation of the SEIS will be released shortly. In light of the fact that neither NRC nor the DOE commented on the scope of the SEIS, it is likely that the scope of the RFP will be inappropriate, particularly with respect to matters related to radiation safety. We therefore request that the NRC review the RFP when it becomes available and provide appropriate comments. We further request that the NRC provide comments on any draft or final SEIS which is prepared. Since the DOI lacks expertise in the area of health and safety issues related to the disposal of radioactive materials, the process will, no doubt, greatly benefit from your agency's involvement.

Federal Agency Consultation under NEPA

Under the National Environmental Policy Act (NEPA), all federal agencies are required to prepare an environmental impact statement in "every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment."

NEPA states

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved.

According to NRC staff, the DOI has not requested a consultation with NRC or NRC comments on the radiological issues associated with the Ward Valley SEIS process. The California Environmental Quality Act's provisions for consultation are compatible with NEPA provisions.

—LAS

New Forum Participant for Washington

Jeff Breckel has been appointed by Washington Governor Mike Lowry to serve as the state's Forum Participant and as the state's representative on the Northwest Interstate Compact Committee, which Breckel chairs. In these capacities, Breckel replaces Terry Strong of the Washington Department of Health.

Breckel currently serves as a policy advisor for the Nuclear Waste Program in the Washington State Department of Ecology. He advises on issues relating to nuclear waste management and disposal, such as Hanford cleanup activities, commercial radioactive waste disposal, regulatory compliance, federal hazardous waste legislation and appropriations, and technology development programs.

Breckel also serves as a liaison to other states hosting DOE facilities and to other organizations such as the National Governors' Association, the Western Governors' Association, and the National Association of Attorneys General. Breckel sits on both DOE's Environmental Management Board and DOE's State and Tribal Working Group. He is also a member of EPA's National Advisory Committee on Federal Facility Environmental Restoration.

Previously, Breckel served as Executive Director of the Oregon and Washington Columbia River Gorge Commissions. The bi-state program was responsible for overseeing the management and protection of the natural resources of the Columbia Gorge. He also served as a Headquarters Staff Assistant for the Navy Nuclear Propulsion Program from 1972 to 1977.

—JMC

NECONA: 68 Tribes Now "Nuclear Free Zones"

The National Environmental Coalition of Native Americans (NECONA) has compiled a list of Native American tribes that have declared themselves Nuclear Free Zones. The organization identifies the following "nuclear free zone tribes" in the United States:

Alaska	Chickaloon Village Kenitze Village
Arizona	Hopi Tribes Navajo-Chinle High School White Mountain Apache
California	Fort Mohave Tribe
Kansas	Kickapoo Tribe
Minnesota	Prarie Island Sioux Indian Community
Montana	Flathead Indian Reservation Salish Kootenai Tribes
New York	Onondaga
Nevada	Western Shoshone Tribe
North Dakota	Devil's Lake Sioux
Oklahoma	Delaware Caddo Kaw Pawnee Ponca Sac and Fox Wichita
South Dakota	Cheyenne River Sioux Tribe
Washington	Shoalwater
Wisconsin	Red Cliff Band Lake Superior Chippewa

NECONA is a nonprofit organization with four goals: to oppose establishment of nuclear waste facilities on Indian land; to establish Nuclear Free Zones; to educate tribal members about the "health hazards of radioactivity"; and to educate tribal members about the "dangers of transporting nuclear waste on ... North America's rails and roads."

—LAS

States and Compacts

Michigan

☀ On November 14, legislation to revise Michigan's siting process for a low-level radioactive waste disposal facility was introduced in the state House of Representatives. The bill would implement a volunteer siting process and replace the state's siting criteria with the federal standards.

The proposed changes are in keeping with recommendations of both the Michigan Environmental Science Board (see *LLW Notes*, August/September 1996, p. 10) and the Board of Governors of the state Low-Level Radioactive Waste Research and Education Institute (see *LLW Notes*, August/September 1995, p. 6).

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

Federal Agencies and Committees

U.S. Department of Energy

☀ Decisions in favor of DOE Secretary Hazel O'Leary have recently been issued in all cases that were filed challenging DOE's distribution of surcharge rebates, including those brought by the Appalachian Compact, Central Midwest Compact, Midwest Compact, and Commonwealth of Massachusetts. As both

Massachusetts and the Midwest Compact have decided not to appeal the decisions, rebate payments to generators in those regions were resumed on November 1 and December 2, respectively. Rebate payments have not been resumed to generators in the Appalachian Compact and Central Midwest Compact regions since both compact commissions are appealing court decisions on the rebate issue. (See Court Calendar in this issue for additional information.)

—CN

—TDL

U.S. Nuclear Regulatory Commission

☀ On November 22, the NRC issued a final certification decision for the U.S. Enrichment Corporation's uranium enrichment plants near Paducah, Kentucky and Portsmouth, Ohio. An initial certification decision had been issued in September 1996, after which five petitions were filed protesting the certification ruling on environmental grounds. NRC certification of the plants is required under the Energy Policy Act of 1992, which first established the USEC. Though the plants are currently under DOE's regulatory authority, that authority will be transferred to NRC by March 3, 1997. A decision on renewal of the plants' certification will be made by NRC in 1998, after which certification renewal will be required only every five years.

—TDL

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afton.com/llwforum](http://www.afton.com/llwforum)***

Upcoming State and Compact Events

December	Event	Location/Contact
Midwest Compact	meeting: includes renewal of Interregional Access Agreement with the Central Midwest Compact, discussion of annual waste disposal survey analysis	Worthington, OH (612)293-0126
Ohio LLRW Facility Development Authority	public hearing (second of two) re finalist contractors for statewide screening RFP Task Force meeting: discussion of statewide screening contractor selection Administration and Finance Committee meeting: discussion of 1988-99 budget, fiscal procedures, and staffing issues meeting: election of officers, presentation of Administration and Finance Committee report, selection of a contractor for statewide screening	Worthington, OH (all below) Melissa Herby (all below) (614)644-2776
Illinois LLRW Task Group	meeting: approval of final site selection criteria report	Springfield, IL Helen Adorjan (217)528-0538
Northeast Compact, New Jersey LLRW Disposal Facility Siting Board, New Jersey Radioactive Materials Management Group	"The Radioactive Waste Disposal Dilemma: Process and Progress in the Search for a Suitable Solution": includes annual meeting of the New Jersey LLRW generators, update on siting and national waste management, discussion of FY '98 budget and generator fee assessment	Princeton, NJ Janice Deshais of the Northeast Compact at (860)633-2060, or John Weingart of the Siting Board at (609)777-4247
Connecticut Hazardous Waste Management Service	meeting: includes action on the (draft) <i>Report to the General Assembly on the Volunteer Siting Approach</i> , the (draft) <i>Report to the General Assembly on the Need for a Temporary Storage Facility</i> , and <i>LLRW Management in Connecticut—1995</i>	Hartford, CT (860)244-2007
New Jersey LLRW Disposal Facility Siting Board	meeting	Trenton, NJ John Weingart (609)777-4247
New Jersey League of Women Voters, New Jersey League of Municipalities, and Rutgers University	"Municipal Issues in LLRW Management" (workshop funded by the New Jersey LLRW Disposal Facility Siting Board)	Glassboro and Montclair, NJ (workshop to be held twice) (609)394-3303
Texas LLRW Disposal Authority	public tour of the exploratory trench at the proposed disposal site (conducted by the Authority) public hearing on the Authority's application to the Texas Natural Resource Conservation Commission for a wastewater discharge permit	Hudspeth County, TX Joe Castro or Lindsey Alvarez (915)369-3391 Sierra Blanca, TX Ruben Alvarado (512)451-5292

Upcoming State and Compact Events *continued*

Maine Advisory Commission on Radioactive Waste	meeting: discussion of a proposal to transfer funds from the LLRW fund to provide support for educational efforts advocating congressional consent for the Texas Compact	Augusta, ME Dale Randall (207)287-8404
Massachusetts LLRW Management Board	public hearing on proposed changes in LLRW Management Plan regulations and Operator Selection Criteria regulations meeting: includes discussion of the proposed changes, discussion of scientific literature on radiation health studies relating to very low-dose radiation exposure, discussion of outstanding issues involving the draft <i>Volunteer Sites Program</i>	Boston, MA 617)727-6018 Boston, MA 617)727-6018
January 1997	Event	Location/Contact
Central Compact	mid-year meeting	Oklahoma City, OK (402)476-8247 or e-mail don@cillrwcc.org
Ohio LLRW Facility Development Authority	meeting	Worthington, OH Melissa Herby (614)644-2776
New Jersey LLRW Disposal Facility Siting Board	meeting	Trenton, NJ John Weingart (609)777-4247
Southeast Compact, Policy and Planning Committee	(tentative) workshop: solicitation of public input re how to pay for completion of site development activities in North Carolina	location to be determined Kathryn Haynes (919)821-0500
North Carolina LLRW Management Authority	quarterly meeting	Raleigh, NC Andrew James (919)733-0682
Southwestern Compact	meeting	Needles, CA Don Womeldorf (916)323-3019
Maine Advisory Commission on Radioactive Waste	meeting	Augusta, ME Dale Randall (207)287-8404
Massachusetts LLRW Management Board	Massachusetts radioactive materials users' semiannual meeting Minimization Working Group meeting Assessment Committee and Assessment Fee Working Group meeting: preliminary discussion of issues relating to the FY '98 assessment	Worcester, MA Rich Fairfull Worcester, MA Paul Mayo Boston, MA Carol Amick (617)727-6018 (all above)

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 1996, p. 24.)	Seeks the release of all surcharge fees, collected from Appalachian region generators, being held in an escrow account by Department of Energy Secretary Hazel O'Leary.	United States Court of Appeals for the Third Circuit	October 3, 1996	Appalachian Commission filed a reply to the Secretary's answer to the petition for a panel rehearing of a portion of the appellate court's decision.
<i>Stilp v. Knoll</i> (See <i>LLW Notes</i> , October 1996, p. 25.)	Challenges the legislative procedures used to pass Act 12 of 1988, known as the Low-Level Radioactive Waste Disposal Regional Facility Act.	Supreme Court of the Commonwealth of Pennsylvania	November 8, 1996	Plaintiffs filed a brief in opposition to the commission's petition for review of the lower court's refusal to allow it to intervene in the action.
<i>Central Midwest Interstate Low-Level Radioactive Waste Commission v. O'Leary</i> (See <i>LLW Notes</i> , August/September 1995, pp. 14-15.)	Seeks payment of all remaining Central Midwest region surcharge rebates held in escrow and payment of an amount equal to 12/36 (one-third) of the total Central Midwest region escrow funds.	United States Court of Appeals for the Seventh Circuit	December 2, 1996 within 30 days of service of the commission's brief on appeal	Central Midwest Commission filed a brief on appeal re the decision of the U.S. District Court for the Central District of Illinois. Reply brief of U.S. Energy Secretary Hazel O'Leary is due.
<i>Nebraska v. Central Interstate Low-Level Radioactive Waste Commission</i> (See <i>LLW Notes</i> , October 1996, pp. 16-17.)	Seeks a declaration that the Commission's action to adopt a range of dates for Nebraska's issuance of a draft license decision and related documents and to consolidate public comment and hearings is without authority; or, in the alternative, is unreasonable and invalid.	United States District Court for the District of Nebraska	November 27, 1996 December 24, 1996	Plaintiff filed its complaint and demand for jury trial. Defendant's answer to the complaint is due.

Federal Agencies and Committees

U.S. Department of Energy (DOE)

O'Leary to Leave DOE

In a November 13 press release, DOE announced that Energy Secretary Hazel O'Leary had submitted her resignation to President Clinton. Her resignation will be effective January 20, 1997. President Clinton has not yet announced his intended nominee to succeed O'Leary as Energy Secretary. The position of Secretary of Energy requires confirmation by the U.S. Senate.

Other Administration Positions

Three additional Clinton Administration cabinet changes have been announced:

- Madeleine Albright, current Ambassador to the United Nations, was named to replace departing Secretary of State Warren Christopher;
- William Cohen, former Republican Senator from Maine, will replace departing Secretary of Defense William Perry; and
- Federico Pena will leave the U.S. Department of Transportation, with no replacement announced at press time.

Secretary of the Interior Bruce Babbitt is expected to remain in his position.

In addition, the White House announced in November that Erskine Bowles will succeed Leon Panetta as the White House Chief of Staff.

—LAS

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

U.S. Nuclear Regulatory Commission (NRC)

NRC Commissioner Dicus re Decommissioning Issues

The following excerpts regarding issues related to decommissioning are from a speech by NRC Commissioner Greta Dicus at the 1996 TLG Decommissioning Conference on October 14 in Captiva, Florida.

I would like to turn now to some major decommissioning issues we face. These issues include release criteria, costs, recycle and reuse and power reactor decommissioning.

In these roles, I was fortunate in getting a broad view of LLW and all of its associated issues and concerns in the U.S. In fact, my staff tells me that I'm referred to as "the waste Commissioner" by some people. I'm not sure I deserve or even want that title, but I will take it as a compliment. As the [Central States] compact Chair, I could see firsthand the many interests of the different groups involved—the generators wanting new disposal capacity developed quickly and economically; the host State wanting a thorough review by the regulatory organizations to ensure public health and safety, control of the operations, and limits on long-term liability; the public wanting information and openness by the State and compact officials, and a chance to have its concerns addressed thoroughly; and the compact members wanting a regional facility so that their generators could safely and economically dispose of their waste.

As a member of the LLW Forum, I was fortunate to be exposed to the full range of national issues that could affect the design, public acceptance, cost, and licensing of a LLW disposal facility. These included utility plans for decommissioning—when they would occur and how much waste they would generate, Below Regulatory Concern, modeling of future performance of sites to demonstrate compliance with NRC regulations, and acceptable risk and related issues.

—LAS

104th Congress Adjourns, 105th to Start in January

In October 1996, the 104th Congress adjourned having enacted several major environmental bills but leaving various pieces of legislation related to nuclear waste unfinished. Many of these unfinished bills, such as the Ward Valley Land Transfer Act and the Texas Compact, are expected to be reintroduced in the 105th Congress.

The following is a short summary of action during the 104th Congress.

Ward Valley Land Transfer

Language conveying federal land in Ward Valley, California, to the state for use in siting a low-level radioactive waste disposal facility was included in the reconciliation bill vetoed by President Clinton on December 6, 1995. Clinton cited the Ward Valley land transfer language as one of many reasons for the veto. (See *LLW Notes*, January/February 1996, p. 22.)

Subsequently, two identical bills—S. 1596 and H.R. 3083—were introduced in the House and Senate to transfer the land. The legislation, however, never reached the floor of either chamber before adjournment, although S. 1596 did win passage from the Senate Energy and Natural Resources Committee. (See *LLW Notes*, May 1996, p. 29.)

In addition, Senator Frank Murkowski (R-AK) was expected to offer an amendment to the FY '97 appropriations bill for the Department of Interior. This amendment would have required the department to transfer the land subject to certain conditions, including NRC oversight and a written commitment by the state to carry out environmental monitoring and protection measures recommended by the National Academy of Sciences. (See *LLW Notes*, August/September 1996, p. 36.) However, faced with a rapidly approaching close to the fiscal year, Congress folded the Interior appropriations bill into an omnibus spending measure, and Murkowski's proposed amendment was never offered.

Transferring LLRW Responsibility to Interior

Language to repeal the 1980 Low-Level Radioactive Waste Policy Act and to transfer disposal responsibility to the U.S. Interior Secretary for "waste generated within any State outside a sited compact region" was introduced during the 104th Congress by Representative Jerry Lewis (R-CA). The bill, H.R. 3394, was never acted on by the House, and companion legislation was not introduced in the Senate. (See *LLW Notes*, May 1996, pp. 30–31.)

Texas Compact

Legislation to grant congressional approval to the Texas Low-Level Radioactive Waste Disposal Compact—H.R. 558—was brought up for a vote on the suspension calendar in the House on September 19, 1995. The House voted 243 to 176 against the motion to suspend debate on the legislation and enact the bill. A two-thirds majority would have been required to pass the motion, as is the case with all legislation placed on the suspension calendar. (See *LLW Notes*, October 1995, p. 29.)

On December 19, 1995, the House Rules Committee granted an "open rule" for consideration of the compact legislation on the House floor using the normal procedure, under which bills need only a majority vote for passage. (See *LLW Notes*, January/February 1996, p. 16.) The bill, however, never made it to the House floor for a vote.

Similar legislation, S. 419, was approved by the Senate Judiciary Committee on May 18, 1995, without amendments. The bill was not scheduled for a vote on the full Senate floor before adjournment.

Privatization of the U.S. Enrichment Corporation

Under the Energy Policy Act of 1992, the U.S. Enrichment Corporation (USEC) was established to lease enrichment facilities owned by the DOE. Although the corporation was established as a wholly owned government entity, the law directed that a privatization plan be developed. Accordingly, language to privatize the USEC was included in the omnibus appropriations bill for fiscal year 1996, which was signed into law as Public Law Number 104-134 by President Clinton on April 26, 1996. Part of the privatization language concerns state and compact liability for the disposal of USEC's low-level radioactive waste. The provision states that "no State or interstate compact shall be liable for the treatment, storage, or disposal of any low-level radioactive waste (or mixed waste) attributable to the operation, decontamination, and decommissioning of any uranium enrichment facility." (See *LLW Notes*, May 1996, p. 31.)

Interstate Solid Waste/Flow Control

Once again, Congress was unable to pass comprehensive legislation concerning solid waste transport. At issue is the ability of states to enact statutes that prohibit or restrict the importation of solid waste from other states. As several courts have struck down such legislation as unconstitutional, holding that it constitutes an impermissible interference with interstate commerce, many members of Congress have sought to implement federal legislation authorizing states or localities to restrict the importation of municipal waste. Moreover, some members of Congress have sought to authorize flow control ordinances—local laws permitting municipalities to require that a particular community's trash be disposed of at a designated facility. (See *LLW Notes*, April/May 1995, p. 14.) Flow control ordinances are intended to ensure that adequate waste volumes enter locally financed disposal sites. The U.S. Supreme Court invalidated flow control ordinances in 1994. (See *LLW Notes*, July 1994, pp. 14–15.)

The Senate passed a comprehensive interstate solid waste/flow control bill (S. 534) in May 1995. However, the House bill, H.R. 2323, passed the Commerce, Trade, and Hazardous Materials Subcommittee, but never made it any further. A House bill dealing with flow control only, H. Res. 349, was defeated by a vote under suspension of the rules in January 1996, largely due to members' objections to action on flow control without addressing interstate waste.

Superfund

Although many anticipated that the 104th Congress would tackle Superfund reform, neither the House nor the Senate reported a bill out of committee. A bill, S. 1285, was introduced in the Senate, but met with much criticism and controversy. The House bill, H.R. 2500, met with equal skepticism and also failed to advance.

Elimination of DOE

As during the 103rd Congress, the elimination of the DOE was a topic of debate during the 104th Congress—purportedly as part of an effort to reduce the size of the federal government and cut government spending. However, legislation to abolish DOE never made it to the floor of either chamber of Congress.

Nuclear Waste Storage

A bill (S. 1936) to allow the construction of an interim high-level radioactive waste storage facility at Yucca Mountain passed the Senate on July 31, 1996 by a vote of 63 to 37. The bill required that construction begin by December 31, 1998, and that waste be accepted in phases beginning in 1999. The final tally was four votes shy, however, of the two-thirds majority needed to override a threatened Presidential veto. (See *LLW Notes*, August/September 1996, p. 37.) The House, which was widely expected to move quickly on similar nuclear waste legislation (H.R. 1020), never brought its version of the bill to the floor.

Utility Restructuring

A number of hearings were held in both the House and Senate on issues related to deregulation of the electric utility industry, with the primary focus on steps currently being taken at the state level to increase competition and on the role of the federal government in setting electricity market policy. A comprehensive bill to bring greater competition to the electric utility industry—known as the Electricity Consumers Power to Choose Act, H.R. 3790—was introduced late in the session by Representative Dan Schaefer (R-CO), Chair of the House Commerce Committee's Subcommittee on Energy and Power. Legislation (S. 1317) was also introduced in the Senate by Banking Committee Chair Alfonse D'Amato (R-NY) to repeal a primary utility regulatory law known as the Public Utility Holding Company Act (PUHCA). Neither bill made it to the floor for a full vote by the House or Senate. However, the concept of utility restructuring will likely return as it is expected to be a major issue for the 105th Congress.

Nuclear Waste Independent Review Act

A bill to establish an independent commission on nuclear waste was introduced in the Senate on March 13, 1995, by Senator Richard Bryan (D-NV). The legislation would have required the President to establish a Nuclear Waste Policy Review Commission to consider issues relating to policy on high-level, transuranic, low-level, and other radioactive wastes. It never made it out of committee, and companion legislation was never introduced in the House. (See *LLW Notes*, April/May 1995, p. 13.)

—TDL

New Materials and Publications

Document Distribution Key	
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LLW Forum

^P Letter from Stephen Cowan, DOE Deputy Assistant Secretary for Waste Management to Gregg Larson, Forum Convenor, responding to the LLW Forum resolution re delegation of authority to DOE Operations and Field Offices Managers to allow for disposal of DOE low-level radioactive waste at non-DOE facilities. A copy of the DOE October 24 memorandum implementing the policy was attached. November 22, 1996. (Distributed by facsimile transmission without the October 24 memorandum on December 4, 1996.)

States and Compacts

Southwestern Compact/ California

^D Letter from Dana Mount, Chair, Southwestern Low-Level Radioactive Waste Commission, to President Bill Clinton, urging him to "assign oversight of Ward Valley health and safety issues" to NRC and to direct the Department of Interior to "immediately transfer title to the State of California." November 21, 1996.

Federal Agencies and Committees

Nuclear Regulatory Commission (NRC)

Field Testing Plan for Unsaturated Zone Monitoring and Field Studies. (NUREG/CR-6462). Prepared for the Division of Regulatory Applications, Office of Nuclear Regulatory Research, NRC. October 1996. The University of Arizona, in cooperation with the Bureau of Economic Geology at the University of Texas at Austin, and Stephens and Associates of Albuquerque, New Mexico, has developed a field testing plan for evaluating subsurface monitoring systems. The NRC has requested development of these testing plans for low-level radioactive waste disposal sites and for monitoring at decommissioned facilities designed under the "Site Decommissioning Management Plan" (SDMP).

Nuclear Materials; 1994—FY 95 Annual Report. (NUREG-1272, Vol. 9, No. 2). Office for Analysis and Evaluation of Operational Data, NRC. September 1996. NRC's Office for Analysis and Evaluation of Operational Data (AEOD) was created in 1979 to provide a strong, independent capability to analyze operational data. This report addresses nuclear materials and presents a review of the events and concerns associated with the use of licensed material in non-power reactor applications.

Other

Mortality of Veteran Participants in the Crossroads Nuclear Test. National Academy Press. October 1996. A study by the Institute of Medicine (IOM) reveals the Navy personnel who served in Operation Crossroads have died at a 4.6 percent higher rate than a comparable group of sailors who were not involved in the tests, but radiation does not appear to be the cause. Copies of the publication cost \$29.00 plus \$4.00 for shipping and handling of the first copy. The shipping and handling for each additional copy is \$0.50. To order a copy, contact the National Academy Press at (800)624-6242.

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Receiving LLW Notes by Mail

LLW Notes and the *Summary Report: Low-Level Radioactive Waste Management Activities in the States and Compacts* are distributed to state, compact and federal officials designated by LLW Forum Participants or Federal Liaisons. 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 apply to DOE's National Low-Level Waste Management Program at the Idaho National Engineering Laboratory (INEL) to be placed on a public information mailing list for copies of *LLW Notes* and the supplemental *Summary Report*. Afton Associates, the LLW Forum's management firm, will provide copies of these publications to INEL. The LLW Forum will monitor distribution of these documents to the general public to ensure that information is equitably distributed throughout the states and compacts.

To be placed on a list to receive LLW Notes and the Summary Report, by mail, please contact Donna Lake, Senior Administrative Specialist, INEL at (208)526-0234. As of March 1996, back issues of both publications, are available from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161, (703)487-8547.

Low-Level Radioactive Waste Disposal Compact Membership

Appalachian Compact

Delaware
Maryland
Pennsylvania *
West Virginia

Central Compact

Arkansas
Kansas
Louisiana
Nebraska *
Oklahoma

Central Midwest Compact

Illinois *
Kentucky

Midwest Compact

Indiana
Iowa
Minnesota
Missouri
Ohio *
Wisconsin

Northwest Compact

Alaska
Hawaii
Idaho
Montana
Oregon
Utah
Washington * •
Wyoming

Rocky Mountain Compact

Colorado
Nevada
New Mexico

Northwest accepts Rocky Mountain waste as agreed between compacts.

Northeast Compact

Connecticut *
New Jersey *

Southeast Compact

Alabama
Florida
Georgia
Mississippi
North Carolina *
Tennessee
Virginia

Southwestern Compact

Arizona
California *
North Dakota
South Dakota

Texas Compact

Maine
Texas *
Vermont

The compact has been passed by all three states and awaits consent by the U.S. Congress.

Unaffiliated States

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

The Low-Level Radioactive Waste Forum includes a representative from each regional compact, each designated future host state of a compact *, each state with a currently operating facility •, and each unaffiliated state.