16-979501

M97001942

DOE/LLW--97001942

LLWnotes

Volume 11, Number 6 August/September 1996

Southwestern Compact/California

DISTRIBUTION OF THIS DOCUMENT IS UNLIMITED *ng*

California DHS Queries DOI re Accuracy of Waste Data

Following a July 22 press conference conducted by Deputy Secretary of the Interior John Garamendi, Peter Baldrige, Senior Staff Attorney for the California Department of Health Services (DHS) wrote to Garamendi requesting further information regarding the figures that Garamendi provided during the press conference regarding low-level radioactive waste generated in California from 1993 to 1995. Press reports on the July 22 press conference indicate that Garamendi cited the figures on California's low-level radioactive waste generation to support his assertion that advocates of the Ward Valley disposal facility are "engaging in nationwide scare tactics using inaccurate information" to further their cause.

In his August 7 letter, Baldrige requests a copy of "any correspondence, reports, compilations, data or analyses used to prepare your statements during the press conference." His letter notes:

You reportedly stated that you obtained these figures from the Southwestern [Low-Level Radioactive Waste] Compact Commission ... Mr. Don Womeldorf, the Executive Director of the [Southwestern Compact], has advised, however, that he received no request from either the Department of the Interior or the Bureau of Land Management for information on sources of [low-level radioactive waste] ... [H]e advised that Committee to Bridge the Gap, an anti-nuclear activist group which opposes the Ward Valley facility, is the only organization which has requested this information.

We also checked your waste production data against the records provided by the U.S. Department of Energy's National Low-Level Waste Management Program (NLLWMP) ... As you can see, neither your figures nor your waste categories match those of NLLWMP, the discrepancy between your categories and theirs being especially problematic.

Interior Provides Fact Sheet

In a letter dated August 21, Jana Prewitt, Communications Director for the U.S. Department of the Interior's (DOI) Office of the Deputy Secretary, provided to Baldrige a fact sheet and other material distributed by Garamendi at the July 22 press conference. In a letter to Prewitt dated September 10, Carl Lischeske, Manager for DHS' Low-Level Radioactive Waste Program, contrasts the figures shown in the fact sheet distributed by Garamendi with data supplied by DOE—an agency that the fact sheet had recognized as a primary source of information on low-level radioactive waste disposal.

continued on page 3

MASTER

In This Issue

Appellate Court Reverses Appalachian Surcharge Rebates Decision • Page 12

EPA Develops Environmental Justice Guidance • Page 24

NRC to Publish Performance Assessment Guidance • Page 34

Low-Level Radioactive Waste Forum

LLW Notes

Volume 11, Number 6 • September 17, 1996

Editor, Cynthia Norris; Associate Editor, Holmes Brown

Contributing Writers: Jean Colsant, Todd Lovinger, Cynthia Norris, Laura Scheele, M. A. Shaker

Materials and Publications: Jean Colsant

Layout and Design: M. A. Shaker

LLW Notes is distributed by Afton Associates, Inc. to Low-Level Radioactive Waste Forum Participants and other state, and compact officials identified by those Participants to receive *LLW Notes*.

Determinations on which federal officials receive *LLW Notes* are made by Afton Associates based on LLW Forum Executive Committee guidelines in consultation with key federal officials. Specific distribution limits for *LLW Notes* are established by the Executive Committee.

To assist in further distribution, all documents included in LLW Forum mailings are listed in *LLW Notes* with information on how to obtain them.

Recipients may reproduce and distribute *LLW Notes* as they see fit, but articles in *LLW Notes* must be reproduced in their entirety and with full attribution.

The Low-Level Radioactive Waste Forum (LLW 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.

LLW
FORUM

Low-Level Radioactive Waste Forum
c/o Afton Associates, Inc.
403 East Capitol Street
Washington, DC 20003

VOICE (202)547-2620
FAX (202)547-1668
INTERNET llwforum@aol.com

Table of Contents

States and Compacts	1
California DHS Queries DOI re Accuracy of Waste Data	1
States and Compacts (continued)	3
California Biotech Leaders: NRC Should Take Over Review	4
NRC Chairman: No NRC Authority re Land Transfer	5
NYSEDA Clarifies Basis for Reporting Survey Data	6
SE Commission Postpones Action on Funding for NC Project	7
Southeast Generators Conditionally Back Additional Funding	8
Mac Millan Retiring from North Carolina Authority	10
Michigan Study: Federal Siting Criteria Adequate	10
Radbits	11
Courts	12
Appellate Court Reverses Appalachian Surcharge Rebates Decision	12
Federal District Court Rules for DOE in Central Midwest's Rebates Litigation	14
Massachusetts Court Rules on Board's Assessment Policy	14
Appalachian Commission Denied Intervenor Status	16
Court Calendar	18
Courts (continued)	20
SC Sues to Enjoin Importation of Foreign Spent Fuel	20
Federal Agencies and Committees	21
Federal Committee on Wetland Classification Queries	21
DOE Considers Tritium Purchase Options	22
Report Recommends Increased Control Over Licensed Devices	23
Revised Risk Assessment Model Available from EPA	23
EPA Develops Environmental Justice Guidance	24
Possible Effects of EPA Guidance on LLRW Disposal	26
ACNW re Elements of an Adequate LLRW Program	28
Forum Participants Invited to Review Issue Papers re NRC Programs	31
NRC Information Notice re On-Site Land Burials	32
Petitioner Suggests Changes to Decommissioning Schedule	33
NRC to Publish Performance Assessment Guidance	34
U.S. Congress	36
Congress Races to Finish Appropriations Before Sept. Adjournment	36
HLW Bill Passes Senate; Presidential Veto Expected	37
Federal Agencies and Committees (continued)	37
Two Commissioners Join NRC	37
New Materials and Publications	38
Obtaining Publications	43
Receiving <i>LLW Notes</i> by Mail	43

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

DISCLAIMER

**Portions of this document may be illegible
in electronic image products. Images are
produced from the best available original
document.**

DISCLAIMER

This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof.

Southwestern Compact/California (continued)

After depicting the two different sources of information, Lischeske comments:

These figures [contained in Garamendi's fact sheet] are, to say the least, markedly different from those supplied by the DOE, and were clearly not derived from that source. For that matter, I am unaware of any official government publication which cites anything like them—either in terms of the categories used or the distribution of waste between categories. They are, however, identical to figures produced by Committee to Bridge the Gap (CBG), an anti-nuclear advocacy group ...

Your use of these numbers in your Fact Sheet is disturbing for two reasons. First, you did not attribute them to the CBG but presented them as though they were derived from your own analysis, thereby lending them the credibility of your Department. Second, the disparity between your figures and those provided by the DOE indicates that you did not consult your sister federal agencies to verify the validity of the numbers you were presenting.

Rather than accepting information provided by anti-nuclear activists without question, you may wish to consider utilizing instead the information services provided by the DOE and the U.S. Nuclear Regulatory Commission (NRC) in conducting any future analyses. This would facilitate your stated commitment to a balanced perspective since, as federal agencies, the DOE and the NRC are generally considered to be reliable, unbiased sources.

DHS Shares Data with DOI

In a letter to Prewitt dated September 11, Baldrige thanks Prewitt for forwarding his August 7 request for information to the appropriate DOI staff and for providing DHS with the materials distributed to the press on July 22. In response to a query regarding waste stream data in California contained in Prewitt's August 21 letter, Baldrige provides information obtained from the following sources: DHS Radiologic Health Branch, the Southwestern Compact, DOE, and the University of California. He also offers to provide photographs of radioactive waste storage at the Harbor/University of California—Los Angeles Medical Center. His letter concludes:

From this information, it is obvious that [low-level radioactive waste] generated in California which would be shipped to Ward Valley for disposal is not being shipped to either Barnwell or Envirocare, and is in fact being stored in densely-populated urban areas ...

Ironically, the storage of [low-level radioactive waste] in these heavily-populated areas presents an immediate public health threat to the very people which Mr. Garamendi's delay of the Ward Valley land transfer purports to protect. The safest way to deal with radioactive waste is to minimize the potential for human exposure. When compared to storage, the alternative of disposal at a remote, specially-engineered facility presents a much lower risk of exposure both now and in the future. This is one of the many reasons why the [NRC] has always preferred disposal over storage for managing radioactive waste ...

From a public health perspective, the current situation is unacceptable, and the Ward Valley facility is clearly needed.

—LAS

Southwestern Compact/California (continued)

California Biotech Leaders: NRC Should Take Over Review

On September 11, prominent members of three California biotechnology organizations called for an end to "the federal-state impasse over approval of the long-delayed Ward Valley low-level radioactive waste disposal facility." In an open letter to biotechnology executives and elected officials, the authors outlined how the failure to resolve the Ward Valley land transfer questions has adversely impacted the biotechnology industry and called for leadership by policy makers in the Clinton and Wilson administrations and in the U.S. Congress. The letter was signed by

- Tina Berger Nova, President of Nanogen, Inc., and Chair of the Democratic Biomedical Caucus;
- Mary Walker, Chair of the Environmental Committee of BIOCOM/San Diego; and
- John Vajda, President of the Silicon Valley Biomedical Industry Council.

View of Current Situation

The letter grimly assesses the current DOI initiatives for new field tests and preparation of a supplemental environmental impact statement (SEIS) for the land transfer:

The Interior Department's inability to even define the work it ordered last February is unsurprising. Given the agency's track record of ever-changing process and its lack of expertise in radiation safety and radioactive waste legislation, prospects for timely completion of a scientifically sound, objective review of the issues Interior considers unresolved are widely considered to be bleak.

Proposal

The letter advocates the following course of action:

By legislation, the Department of Interior should be directed to identify and forward its remaining radiological health and safety and related environmental questions to the U.S. Nuclear Regulatory Commission within 30 days. The federal NRC would then undertake an expedited review of these questions, drawing upon the substantial record created by the State of California's licensing and environmental review compliance actions, the National Academy of Sciences report, and input received through the Interior Department's recently completed SEIS scoping process. By March 1, 1997, the NRC would either conclude its review with a finding that California's license approval and related conditions were adequate to protect public health and safety, or specify deficiencies based on existing regulatory requirements. In the former instance, the Ward Valley property would transfer to the State of California by act of Congress with no further process by the Interior Department other than title delivery. In the latter instance, the transfer would be subject to those conditions deemed necessary by the Commission.

—LAS

NRC Chairman: No NRC Authority re Land Transfer

In a letter dated August 29, NRC Chairman Shirley Ann Jackson responded to a July 2 request for technical assistance submitted by Carl Lischeske, Manager of the Low-Level Radioactive Waste Program for the California Department of Health Services (DHS). California DHS had requested that NRC take the following actions:

1. Formally apprise the Department of the Interior [DOI] of your positive findings with respect to California's activities related to licensing the Ward Valley facility.
2. Advise the Department of the Interior that the development of LLRW disposal facilities pursuant to the LLW Policy Act is strictly within the purview of the NRC and its agreement states.
3. Support the legislation pending before both houses of Congress which would transfer the land for the Ward Valley facility to the State of California. This legislation recognizes and reaffirms the respective, legally authorized roles of the NRC and the State to protect the public from radiation hazards, and would obviate the Department of the Interior's unwarranted intrusion into the regulation of the Ward Valley project.

NRC's Response

NRC Chairman Shirley Ann Jackson responded to each of the requests in her letter:

- "The [NRC] staff previously has concluded ... that California has followed NRC's licensing guidelines and standard review plan for acceptance and review of the Ward Valley application; and that the California staff, advisory committees, and supporting contractual staff are well-qualified and capable of conducting a highly effective and thorough review. This information was previously provided to DOI by letter dated June 11, 1993, from Hugh L. Thompson, Jr., NRC, to Edward Haste, U.S. Bureau of Land Management."
- "Your suggestion that the NRC advise DOI that the development of Ward Valley is strictly within the purview of the NRC and its Agreement States does not take into account the fact that NRC authority and expertise to interpret and implement the AEA [Atomic Energy Act] and the LLRWPA [Low-Level Radioactive Waste Policy Act] does not extend to Federal law on public land transfer. Consequently, we have taken no position on DOI legal authority in this regard."
- "With respect to the Ward Valley legislation to transfer the land for the proposed disposal facility, we have followed this legislation with interest. If passed into law, we are prepared to fulfill the responsibilities that are to be entrusted to the NRC in the current legislation as part of our continued oversight of the adequacy and compatibility of the California Agreement State program."

—LAS

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

New York

NYSERDA Clarifies Basis for Reporting Survey Data

The New York Energy Research and Development Authority (NYSERDA) issued a statement on August 5 in response to accusations that its New York State Low-Level Radioactive Waste Status Report for 1995 contained inaccurate information. The accusations were made by the New York City chapter of Physicians for Social Responsibility (PSR), which faulted the manner in which data on storage capacity were presented.

"The insinuation that we manipulated data to create the impression of a waste crisis for the institutions in question is irresponsible and untrue," NYSERDA spokesperson Tom Collins stated.

Facilities that generate low-level radioactive waste are required to file annual reports with NYSERDA stating the quantity and types of waste being shipped for disposal or stored for future disposal. Generators are asked to describe their on-site storage capacity and estimate the maximum time, in months, they can continue to generate and store low-level radioactive waste in their facilities. NYSERDA writes its annual status reports based on this information.

Interpretation of "Indefinite" Capacity

While most generators estimate a specific number of months, some report an "indefinite" capacity, or other nonquantitative phrases. Jack Spath, NYSERDA Program Director for Radioactive Waste Policy and Nuclear Coordination, noted that answers like "indefinite" could be misinterpreted to mean anywhere from a few days to several years. NYSERDA staff routinely interpret these responses to equal 60 months. The interpretation is based on the fact that medical, educational, and industrial generators are licensed to receive, use, and store low-level radioactive waste for a five-year period, Spath explained. At the end of the license term, the generators must either stop generating the waste or renew their license for another five years.

Adequate Storage Capacity at Most Facilities

NYSERDA points out that other information in the report indicates that almost all of the institutions are storing less waste than they have space to accommodate. Because the kinds of waste generated by the institutions decay rapidly, all but a few of the facilities need to store for only a relatively short period of time before they can dispose of the wastes as non-radioactive. For this reason, the 60-month storage capacity suggests that the institutions have more capacity than they would need and they face no waste management problems.

"We thought the information in the report showed these particular generators were in good shape to be able to handle their own waste without a state disposal facility," Spath commented. "But we want the information in our reports to be as objective and accurate as possible," he continued.

Future Reports

Spath noted that, until now, none one had said they thought the presentation of data seemed misleading, including representatives of PSR who asked about and were told last February how the NYSERDA staff presented the data and why. However, NYSERDA will look closely at better ways to present the information in future reports.

—JMC

For further information, contact Jack Spath of NYSERDA at (518)465-6251, ext. 302. See also "New Materials and Publications."

Southeast Compact/North Carolina

Southeast Commission Postpones Action on Funding for North Carolina Project

The Southeast Low-Level Radioactive Waste Compact Commission met on August 27 to consider further funding for development of a regional low-level radioactive waste disposal facility in North Carolina. Various options were proposed, but action was postponed until the next commission meeting, on October 3 in Atlanta, Georgia.

During the course of the meeting, the commissioners heard reports from a number of interested parties. John Mac Millan, Executive Director of the North Carolina Low-Level Radioactive Waste Management Authority, spoke regarding progress on site development. Dayne Brown, Director of the Division of Radiation Protection in the North Carolina Department of Environment, Health, and Natural Resources, told the Commissioners that his agency's review of the license application for the facility will be able to keep pace with any further facility development efforts. And a group of Southeast Compact generators conveyed a message of support for additional funding of the project, subject to achieving consensus that the first four items on their list of recommendations to the commission had been resolved. (See related story.)

The full commission meeting and the committee meetings which preceded it on August 26 were held in St. Petersburg, Florida.

Authority's Contractor Ceases Work

As of July 18, the Authority's contractor, Chem-Nuclear Systems, Inc.—the license applicant for the proposed North Carolina facility—suspended its North Carolina project activities, due to lack of funds. At the direction of the Authority, the company mothballed project offices, assets, equipment, files and records.

Background

The Authority is able to continue its operations using state appropriations, but funding is not available for contractor activities specified under the Licensing Work Plan agreed upon by the Authority and the licensing agency. A measure for the compact to provide up to \$1 million in interim funding for the project stalled in July. (See *LLW Notes*, June/July 1996, p. 15.)

—CN

For further information, contact Ted Buckner of the Southeast Compact Commission at (919)821-0500, Andrew James of the North Carolina Authority at (919)733-0682, or Dayne Brown of the North Carolina Division of Radiation Protection at (919)571-4141.

Southeast Compact/North Carolina (continued)

Southeast Generators Conditionally Back Additional Funding

The following are excerpts from an August 26 report to the Southeast Compact Planning Committee by the Southeast Compact Utilities Generators Group (SEGG) on their review of the Licensing Work Plan (LWP) for the North Carolina facility. The Southeast Compact Commission had stated in a resolution adopted in June 1996 that it wished "to benefit from the technical expertise of waste generators who have offered to review and provide comment regarding the Licensing Work Plan." (See LLW Notes, June/July 1996, p. 14.)

NC LLRW Management Authority responses to SEGG questions indicate that both the depth and breadth of technical planning and procedural development and the amount of acceptable previously performed work to be utilized in the future are much greater than inferred from the LWP ...

We [SEGG] suggest that the Commission:

1. Obtain commitments to maintaining cost and schedule performance consistent with the proposed LWP.

... The Commission should initiate the discussions, negotiations or other processes necessary to establish a clear commitment by the NC LLRW Management Authority to maintain cost and schedule performance consistent with the proposed LWP unless fully justified by essential technical revisions to the LWP or other exceptional circumstances. Also a clear commitment should be established ... that DRP [Division of Radiation Protection] and other state agencies will devote resources as necessary to support state performance consistent with the LWP schedule. This commitment should include the resolution of state restrictions on and selection of appropriate tracers for proposed field testing activities.

2. Obtain agreement for an expanded level of detail in the near term LWP project schedule.

... [I]f the Commission determines to provide further funding, we recommend that funds be advanced to the Authority quarterly. The Commission should seek agreement from the Authority to develop and maintain an expanded

level of detail in the LWP project schedule for the quarter for which funding is being advanced.

3. Establish reasonable reporting requirements.

... We recommend a quarterly written report of project status including actual expenditures as measured against the original LWP project plan, an explanation of all schedule slippage or cost overruns, updated cost projections and an update of the LWP schedule, particularly details of the next quarter's planned activities and identification of the critical path(s) ...

4. Ensure continued DRP and DEHNR management level involvement.

The Commission should negotiate with the appropriate parties for provisions to ensure continued (e.g., quarterly) that DRP and DEHNR [Department of Environment, Health, and Natural Resources] management level involvement in monitoring and maintaining consensus endorsement of the overall LWP and to ensure prompt disclosure to the Commission of any new DRP concerns regarding the LWP.

5. Address site capacity issues.

The Commission should clarify with the Authority that the site will be characterized and a license sought, in accordance with the Compact, for a capacity clearly adequate for the volume to be generated during North Carolina's term (not to exceed 32 million cu. ft.) ...

6. Address funding needs and arrangements.

... The Commission should pursue the discussions, negotiations or other processes necessary to ensure that realistic models of costs and schedules for placing a site into operation are developed and to ensure that realistic strategic approaches to, and agreements for the funding of site licensing, litigation and construction are developed prior to extensively depleting the existing Commission reserves ...

7. Authorize initiation of LWP funding.

... [I]n order to preserve momentum of the North Carolina project and in view of the technical progress reflected in the LWP, we would support a determination by the Compact Commission to proceed with funding of the LWP upon resolution of items 1 through 4 above, with the further understanding that continued long-term funding would require resolution of items 5 and 6 above by not later than the completion of the LWP's decision point 2.

If the Compact decides to resume funding, we recommend that funds be advanced on a quarterly basis and that continuation of this voluntary LWP funding by the Compact Commission be conditioned upon:

1. Reasonable adherence to the cost and schedule established by the LWP;
2. Reasonable progress toward resolving items 5 and 6 by the completion of decision point 2;
3. Continued participation in LWP funding by North Carolina at its historic level;
4. The availability of Compact Commission funds not earmarked or reserved for other essential purposes; and
5. The absence of conditions disqualifying the Wake Co. site for its intended purpose.

To facilitate this, we recommend that the Commission seek from the Authority, in addition to the cost projections for reaching the various decision points, a projection of quarterly cash flow requirements to support execution of the LWP.

—CN

Licensing Work Plan

The Licensing Work Plan (LWP) agreed upon by the North Carolina Low-Level Radioactive Waste Management Authority and the Division of Radiation Protection in June calls for an approximately three-and-a-half year process that includes the following decision points and cost estimates. The cumulative costs listed below do not reflect any increases associated with the delay in project development.

Decision Point	Approximate Cumulative Project Cost Estimate
1. Field Investigative Techniques	\$4 million
2. Configuration of Facility & Buffer Zone	\$6 million
3. Infiltration Capacity of Site	\$15 million
4. Completion of Field Studies	\$17 million
5. Dose Assessment	\$18 million
6. Monitoring Program	\$24 million
7. Licensing Decision by DRP	\$26 million*

* Other Authority expenses bring the final proposed figure to approximately \$27 million.

Southeast Compact/North Carolina (continued)

Mac Millan Retiring from North Carolina Authority

John Mac Millan has announced his retirement as full-time Executive Director of the North Carolina Low-Level Radioactive Waste Management Authority. Mac Millan's retirement will be effective August 31; however, he will continue to serve as the Executive Director on a part-time basis until the Authority develops its plans for future staffing.

"John Mac Millan has been an invaluable asset to the Authority and the State of North Carolina during a most difficult process," said Warren Corgan, Chair of the Authority. "John brought a combination of technical competence, diligence and forthrightness to his assignment, qualities which have helped the Authority get through some critical times."

Mac Millan had postponed his retirement for more than a year to guide the Authority's initiative to site a regional low-level radioactive waste disposal facility during a crucial period. In a letter to Corgan, Mac Millan said of his waiting to retire: "While in the middle of the site assessment, I did not feel that I could resign without leaving the Authority in the lurch. With the completion on the consensus Licensing Work Plan and the formulation of a revised project management organization, I believe that the project is at a transition point where a change in leadership can be accomplished."

Kathryn Haynes, Executive Director of the Southeast Compact said: "For six years, the Commission has depended on John Mac Millan as a trustworthy, straightforward source of information. John ... brought unique business and technical qualifications to the project and quickly established an atmosphere of trust and mutual respect with the Commission."

Mac Millan will continue to act as the LLW Forum Participant for North Carolina until a new Participant is appointed by the Governor.

—JMC

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

Michigan

Michigan Study: Federal Siting Criteria Adequate

Central Facility Less Risky than On-Site Storage

A recent report to Michigan Governor John Engler by the Michigan Environmental Science Board includes the following conclusions regarding the state's siting criteria for a low-level radioactive waste (LLRW) isolation facility:

- "All of Michigan's 18 statutory and all but one of the state's 14 non-statutory LLRW facility siting criteria are either adequately addressed by the federal LLRW facility isolation siting criteria, standards and guidelines and/or contain arbitrary numerical restrictions without a methodological basis for determination, and, therefore, are unwarranted."
- "[F]ederal LLRW regulations, guidelines, and standards for performance assessment studies should be sufficiently comprehensive to recognize, evaluate, and protect the highly variable geological and environmental conditions found in Michigan."
- "Assuming compliance with federal requirements, 'the risks of locating and operating an engineered, centralized LLRW isolation facility are minimal.'"
- "The construction of an engineered, centralized LLRW isolation facility would provide a lower risk to Michigan's citizens than the previous (and potentially future) practice of LLRW generator on-site temporary storage."

The Michigan Low-Level Radioactive Waste Authority is currently pursuing amendments to state law that would change the siting criteria by adopting the federal standards.

—JMC, CN

For further information, contact Thor Strong of the Authority at (517)335-0430. See also "New Materials and Publications."

States and Compacts

Appalachian Compact/Pennsylvania

☀ On July 15, a Memorandum of Understanding (MOU) between NRC and the Pennsylvania Department of Environmental Protection regarding the decommissioning of sites located in Pennsylvania became effective. The MOU expresses the desire of both agencies to cooperate in order to facilitate the safe and timely remediation of sites at which both agencies exercise regulatory authority. Under the MOU, each agency will designate site coordinators for each site in the Site Decommissioning Management Plan, provide the other agency with a reasonable notice of inspections and meetings, and share information for review and comment. *For further information, contact Heather Astwood of NRC's Division of Waste Management at (301)415-5819.*

design concept by Bob Denkowicz

U.S. Nuclear Regulatory Commission

☀ In a July 3 *Federal Register* notice, NRC amended its regulations for decommissioning nuclear power plants to clarify the decommissioning requirements and to increase public participation. After a nuclear reactor has permanently ceased operations, the amendments state that no decommissioning activities can begin until certain information has been provided to NRC and the public. NRC approval is required

prior to commencement of decommissioning activities. The requirements also address certification requirements, information to be provided to NRC, public involvement processes, and use of decommissioning funds.

Federal Agencies and Committees

Interagency Steering Committee on Radiation Standards (ISCORS)

☀ The Risk Harmonization Subcommittee of ISCORS will conduct a seminar on comparative radiation risk on October 16. The seminar is open only to ISCORS members. The seminar participants will address the following two questions related to the risk associated with radiation exposure and radiation regulation:

- How effective and cost-effective are current U.S. radiation protection efforts?
- How might our nation do better?

There will be presentations by Dade Moeller of Dade Moeller Associates; Kate Probst of Resources for the Future; William Dornsife of the Pennsylvania Department of Environmental Protection; and a member of the subcommittee. In support of the seminar, the subcommittee is preparing a background information document on this topic.

☀ In an June 18 *Federal Register* notice, NRC proposed to amend its regulations to clarify that Agreement States licensees can seek reciprocal recognition of their license from NRC when the licensees conduct similar activities within areas of exclusive federal jurisdiction in Agreement States. An area of exclusive federal jurisdiction is an area over which the federal government exercises legal control without interference from the jurisdiction and administration of state law. Areas of exclusive federal jurisdiction exist in both Agreement and non-Agreement States. The proposed amendments would also clarify NRC regulatory requirements for reciprocity and clearly state the appropriate fees and filing procedures applicable to Agreement State licensees operating under reciprocity. *For further information, contact Mark Haisfield of NRC's Office of Nuclear Regulatory Research at (301)415-6196. See also "New Materials and Publications."*

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

Appellate Court Reverses Appalachian Surcharge Rebates Decision, Finds for DOE

On August 20, 1996, the U.S. Court of Appeals for the Third Circuit reversed a lower court's decision in a lawsuit filed by the Appalachian States Low-Level Radioactive Waste Commission against U.S. Energy Secretary Hazel O'Leary over the distribution of surcharge funds. The action, which was initially filed in the U.S. District Court for the Middle District of Pennsylvania, sought payment of all surcharge fees that were collected from generators of low-level radioactive waste in the Appalachian region from 1990 to 1992 and escrowed with the Secretary. The commission had argued that its contract for access to the Barnwell disposal facility from January 1, 1993, through June 30, 1994, satisfied the Low-Level Radioactive Waste Policy Amendments Act of 1985's eligibility requirements for full payment. (See *LLW Notes*, August/September 1994, p. 15.) The district court had agreed, and on May 22, 1995, it had granted summary judgment in favor of the commission. (See *LLW Notes*, June 1995, pp. 16-19.)

The appellate court, however, disagreed with the lower court. It determined that the Secretary's interpretation of the Low-Level Radioactive Waste Policy Amendments Act of 1985 was a permissible reading of an ambiguous statute and is therefore entitled to deference. Moreover, the appellate court rejected a finding by the district court that the Secretary's interpretation of the act was procedurally invalid. Accordingly, the court reversed the district court's decision and entered summary judgment in favor of the Secretary.

The Appalachian Commission has 45 days from the date that the decision was issued in which to seek reconsideration by the U.S. Court of Appeals or to seek direct review by the U.S. Supreme Court. The commission has not yet determined whether or not it will appeal the appellate court's decision.

Permissible Reading of an Ambiguous Statute

The Test Judicial review of federal agency administration of a statutory program requires a two-step inquiry. The reviewing court must determine whether Congress has directly spoken to the precise question at issue. If it has, and if its intent is clear, the court and agency must follow Congress' unambiguously expressed intent. If Congress has not spoken to the question, however, the court must determine "whether the agency's answer is based on a permissible construction of the statute." The court must defer to the agency's construction "unless it appears from the statute or its legislative history that the accommodation is not one that Congress would have sanctioned."

The Statute is Ambiguous Both the appellate court and the district court found the Low-Level Radioactive Waste Policy Amendments Act of 1985 to be ambiguous with regard to the question of whether the commission's 18-month contract for disposal of waste at the Barnwell facility satisfies the act's requirement that a state provide for the disposal of "all" of its low-level radioactive waste. The commission had argued that "all" refers only to quantity, meaning that in order to satisfy the act's requirements the commission merely had to be able on January 1, 1993, to dispose of "all" of its waste. The Secretary, on the other hand, argued that "all" includes aspects of duration, judged by the ability to dispose of waste over a three-year period from January 1, 1993, through January 1, 1996.

In finding the act to be ambiguous, the appellate court recognized that the U.S. Supreme Court in *New York v. United States* described the conditions imposed on the receipt of the surcharge rebates as "unambiguous." The Supreme Court found that "the Act informs the States exactly what they must do and by when they must do it in order to obtain a share of the escrowed account." However, the appellate court noted that statutory ambiguity is not necessarily the same thing in each case given the different questions at issue and given that the Supreme Court commented on the provisions in the abstract.

Moreover, the appellate court noted that even if the Supreme Court's comment were controlling, the court would have determined that the comment required entry of judgment for the Secretary. "If forced into an in-depth, independent analysis of the background, history, and structure of the LLRW Act to determine plain meaning, we would conclude that the Secretary captured the unambiguous meaning of the statute."

The Secretary's Interpretation is Permissible

Whereas the district court rejected the Secretary's interpretation of the act, however, the appellate court found the Secretary's interpretation to be a permissible reading. The appellate court found that the history and purpose of the Low-Level Radioactive Waste Policy Amendments Act suggest that "all" includes a durational aspect and that it therefore supports the Secretary's interpretation. For instance, the court found that the incremental structure of the rebate provisions exhibits a clear intent to promote the construction of new facilities, not merely the use of existing ones. The goal of encouraging new facility construction reveals, according to the appellate court, Congress' desire for a long-term solution. In fact, the appellate court went so far as to say that it believes that the Secretary's interpretation "is so well supported as to venture beyond the merely permissible. In our view, the Secretary was correct."

The court also referenced provisions in the act whereby rebates are to be distributed to generators on a prorated basis if a state or compact fails to provide for disposal. The court determined that it was permissible for the Secretary to use the same structure—prorating of payments—in regard to distributions to the states and compacts.

Procedurally Valid Interpretation of the Act

Exemption from Notice and Comment Procedures

The district court had held that the Secretary's interpretation of the Low-Level Radioactive Waste Policy Amendments Act was procedurally invalid because the Secretary failed to comply with Administrative Procedure Act requirements for notice and comment on rulemakings. The appellate court, however, found the Secretary's ruling on the act to be interpretative—one which merely clarifies or explains existing law or regulations—and therefore exempt from notice and comment procedures.

Not a Retroactive Rulemaking The district court also determined that the Secretary's position was invalid as an instance of retroactive rulemaking. "The court reached this conclusion largely because it believed that the Secretary's 1994 publication of her interpretation promulgated a new rule that could not be applied to a contract formed in 1992." The appellate court disagreed. Since it had deemed the Secretary's ruling to be interpretative, the ruling therefore could not have altered existing rights or obligations but instead merely clarified them.

Related Litigation

Status of Similar Suits To date, five separate lawsuits have been filed against the Secretary by compact commissions and unaffiliated states concerning the distribution of surcharge rebates—two by the Central Midwest Commission and one each by the Appalachian Commission, the Commonwealth of Massachusetts, and the Midwest Commission. Three different federal district courts recently ruled against Massachusetts, the Central Midwest Commission, and the Midwest Commission in their actions, although the Midwest Commission has voted to appeal its case. (See *LLW Notes*, April 1996, pp. 10–11 and June/July 1996, pp. 29–31. See also related story, this issue.)

Appellate Court References Other Court Decisions

In its opinion, the court referenced the decisions by courts in other jurisdictions.

In reaching this conclusion, the [Pennsylvania] district court disagreed with the only other district court to examine the issue. *Central Midwest Interstate Low-Level Radioactive Waste Comm'n v. O'Leary*. The Central Midwest court found the statute ambiguous, but held the Secretary's interpretation permissible. Following oral argument in this appeal, a second district court agreed with *Central Midwest. Massachusetts ex. rel. Low-Level Radioactive Waste Management Bd. v. O'Leary*. Another district court has since reached a similar conclusion in the context of examining a related issue under the LLRW Act. See *Midwest Interstate Low-Level Radioactive Waste Comm'n v. O'Leary*. (citations omitted)

—TDL

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

Federal District Court Rules for DOE in Central Midwest's Rebates Litigation

On August 30, the United States District Court for the Central District of Illinois issued a decision in a lawsuit filed by the Central Midwest Interstate Low-Level Radioactive Waste Commission against U.S. Secretary of Energy Hazel O'Leary. At issue in the litigation was whether the commission or waste generators in Illinois and Kentucky are entitled to receive surcharge rebates for the period July 1, 1994 to December 31, 1995. The court upheld the Secretary's position that generators, not the commission, are entitled to rebate payments for this period. Accordingly, the court denied the plaintiff's motion for summary judgment and granted summary judgment motions filed by the defendant and the intervenors.

As of press time, the commission had not yet determined whether to appeal the court's decision.

Position of the Parties

Plaintiff The Central Midwest Commission argues that the Low-Level Radioactive Waste Policy Amendments Act's requirement that states or compacts "provide for disposal" in order to be eligible to receive surcharge rebates has been satisfied by a combination of the reopening of the Barnwell disposal facility and the granting of export authorization by the commission to regional waste generators. The commission further asserts that the Secretary has violated the federal Administrative Procedure Act by promulgating a substantive rule without adequate notice and comment, by acting in an arbitrary and capricious manner, and by impermissibly changing her own regulations. Sound public policy, according to the commission, further dictates that it receive the surcharge rebates.

Defendant/Intervenors The Secretary and intervenors to the suit disagree, however, arguing that this action is barred by the doctrine of res judicata because it involves issues that could have been raised in the initial surcharge rebates litigation instituted by the commission. They also assert that the Secretary's decision to award rebates to the waste generators is based upon a permissible interpretation of an ambiguous statute and is therefore valid.

Court's Decision

Reference to Similar Suits In explaining its decision, the district court referenced the decisions of courts in similar litigation in other jurisdictions including decisions in *Midwest Interstate Low-Level Radioactive Waste Commission v. O'Leary* and *Appalachian States Low-Level Radioactive Waste Commission v. O'Leary*. The court explicitly rejected the Central Midwest Commission's argument that such decisions are distinguishable.

Permissible Interpretation of an Ambiguous Statute

The district court found the meaning of the term "provide for" in the Low-Level Radioactive Waste Policy Amendments Act to be ambiguous. However, it held that the Secretary's interpretation that "permit" does not mean "provide for" is a permissible construction of the statute.

No Federal APA Violations The court found that the Secretary's actions did not violate the Administrative Procedure Act. Specifically, the court determined that the Secretary's ruling was interpretative and therefore not subject to notice and comment requirements. In addition, the court determined that the Secretary did not act arbitrarily or in an inconsistent manner.

No Public Policy Concerns The court rejected the commission's public policy argument.

[T]he Court fails to understand why the Commission should be rewarded for basically doing nothing. The Commission's arguments to the contrary, the waste generators and citizens of Illinois and Kentucky are in the same precarious position today as they were in 1980 when the Low-Level Radioactive Waste Policy Act was implemented.

—TDL

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

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

DOE's 1992 Federal Register Notice and Subsequent

Litigation 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 surcharge funds if they meet one of several criteria, including having a valid contract with another state or compact for low-level radioactive waste disposal or storage. (See 57 *Federal Register* 45,248.) On December 1, 1992, the Appalachian Commission entered into an agreement with the Southeast Commission that provided Appalachian region generators with access to the low-level radioactive waste disposal facility at Barnwell, South Carolina, until June 30, 1994. Similar contracts were entered into by some other regional compact commissions and unaffiliated

states, including the Central Midwest Commission, the Midwest Commission, and the Commonwealth of Massachusetts. As of June 4, 1993, DOE had not made a determination regarding eligibility for surcharge funds based on the 1993 milestone, and the Central Midwest Commission initiated legal proceedings. (See *LLW Notes*, June 1993, pp. 14-15.)

DOE's 1994 Federal Register Notice and Subsequent

Litigation On March 31, 1994, however, DOE published a notice of final policies and procedures in the *Federal Register*. (See 59 *Federal Register* 15,188.) This notice, which addresses comments received in response to the first notice, indicates that states and compacts that have entered into the "standard contract of 18-month duration with the Southeast Compact Commission" are eligible to receive the surcharge funds on a prorated basis. (See *LLW Notes*, April 1994, pp. 1, 11.) On June 30, 1994, shortly after publication of the second notice, the Appalachian Commission initiated legal proceedings seeking payment of all surcharge fees that were collected from generators of low-level radioactive waste in the Appalachian region from 1990 through 1992 and that were being held in the escrow account. (See *LLW Notes*, August/September 1994, p. 15.)

Court Rulings and Distribution of the Funds in Escrow

On July 22, 1994, the U.S. District Court for the Central District of Illinois affirmed DOE's final policy on state/compact eligibility for surcharge payments, as detailed

in its *Federal Register* notice of March 31, 1994. Subsequently, on September 1, 1994, DOE distributed surcharge funds to eligible states, compacts, and generators on a prorated basis—with July 1, 1994, considered the end of the eligibility period, since contracts for access to Barnwell ended on that date. (See *LLW Notes*, August/September 1994, p. 1.) Since then, DOE has been distributing surcharge funds to eligible generators. Payments are made in either monthly or semiannual installments or in a single lump-sum payment at the end of the rebate period.

Then, on May 22, 1995, the U.S. District Court for the Middle District of Pennsylvania ruled that the Appalachian Commission's contract for 18-months' access to Barnwell satisfies the 1993 milestone and entitles the commission to full payment of the escrow funds. DOE appealed the district court's decision.

Suits by the Midwest Commission and Massachusetts

In July 1995, the Commonwealth of Massachusetts and the Midwest Commission filed separate suits in federal district court seeking payment of additional surcharge fees. (See *LLW Notes*, July 1995, pp. 12-14.) The U.S. District Court for the District of Massachusetts ruled against the Commonwealth on March 29, 1996. (See *LLW Notes*, April 1996, pp. 10-11.) The U.S. District Court for the District of Minnesota ruled against the Midwest Compact on May 28, 1996. (See *LLW Notes*, June/July 1996, pp. 29-31.)

Stilp v. Knoll

Appalachian Commission Denied Intervenor Status in Litigation Challenging Pennsylvania Siting Act

On May 13, the Attorney General of the Commonwealth of Pennsylvania filed an answer and new matter on behalf of the respondents to a lawsuit challenging the passage of the Commonwealth of Pennsylvania's Act 12 of 1988, known as the Low-Level Radioactive Waste Regional Disposal Facility Act. Shortly thereafter, the Appalachian States Low-Level Radioactive Waste Commission filed both a petition to intervene in the action and a proposed answer to the lawsuit. At a September 5 hearing on the commission's petition, however, the Commonwealth Court of the Commonwealth of Pennsylvania denied the commission's petition to intervene. According to the court, the Pennsylvania Attorney General is best suited to defend the constitutionality of the Commonwealth's laws and adequately represents the interests of the commission. The commission has not yet decided whether to seek reconsideration by the commonwealth court or seek review by the supreme court. The commission has at least 14 days from the date of the hearing to take further action.

Respondents' Answer and New Matter

The respondents deny that Act 12 violates the Pennsylvania Constitution or that it is procedurally defective. Moreover, they argue that the petitioners' claims are barred by the doctrine of laches because the petitioners failed to exercise due diligence in filing suit and such failure has prejudiced the respondents in that substantial actions have been taken in reliance on the validity of Act 12. The respondents point out that more than eight years elapsed between the passage of Act 12 and filing of the petitioners' suit. During that time, the legislature enacted a statute to provide a funding mechanism for Act 12; the Department of Environmental Protection entered into a contract with Chem-Nuclear Systems, Inc. for development and operation of a low-level radioactive waste disposal facility and spent considerable sums pursuant to that contract; and the Environmental Quality Board adopted final low-level radioactive waste management and disposal regulations. Accordingly, the respondents request that the court dismiss the petitioners' complaint.

Commission's Petition to Intervene

The Appalachian Commission argues that it should be able to intervene on behalf of the respondents in the action because the commission's rights and obligations would be affected if the relief requested by the petitioners were granted. In support thereof, the commission notes that Act 12 authorized the appointment of Pennsylvania's compact commissioners, established the procedures for developing and siting a regional waste disposal facility, and established certain funds and fees to provide for the regulated and safe disposal of waste generated within the compact region. If the act were deemed unconstitutional, the commission argues that Pennsylvania would be unable to fulfill its obligations to other compact member states—including voting duties which would likely stall the commission's business. The commission asserts that the named respondents do not adequately represent the interests of the other compact member states or the commission's interest in ensuring that a \$2 million grant to the Low-Level Waste Fund created by Act 12 is expended for the development of a regional low-level radioactive waste disposal facility.

Commission's Proposed Answer and New Matter

No Constitutional Violation According to the commission, the original purpose and title of Act 12 were not altered—only the bill number was altered. The commission argues that Act 12 began as H.B. 1808 and that all constitutional requirements relating to Act 12 were fulfilled by the printing of H.B. 1808, the referral of the bill to the House Conservation Committee, the consideration of the bill by that committee, and the reporting of the bill from that committee.

The commission further asserts that the petitioners' request to enjoin the state treasurer from disbursing the Low-Level Waste Fund must be denied because

- petitioners have not alleged the general appropriations enacted each year to be unconstitutional,
- there is no continuing General Fund appropriation,

Background: Stilp v. Knoll

Petitioners	Gene Stilp, Eric Epstein, Thomas Linzey—three individuals who serve as officers of Stop the Illegal Low-Level Program in Pennsylvania, Inc.
Respondents	Commonwealth of Pennsylvania, Pennsylvania Governor Thomas Ridge, and Treasurer Katherine Baker Knoll
Court	Commonwealth Court of the Commonwealth of Pennsylvania

Factual Allegations The petitioners allege that Act 12 of 1988, known as the Low-Level Radioactive Waste Regional Disposal Facility Act, originated in the Senate as a bill relating to the termination of the spending of certain funds related to the Pennsylvania Conservation Corps. They allege that after passage by the full Senate, the bill was introduced in the House of Representatives and referred to committee. After five months, it was reported out of committee and considered on two different days by the full House. It was then recommitted, amended and re-reported to the full House for consideration on a third day. According to the petitioners, after such consideration, the bill was amended such that all of the language in the bill was replaced with provisions dealing with the

establishment of a low-level radioactive waste disposal facility for the Commonwealth of Pennsylvania. The bill was then returned to the Senate, which concurred with the House amendment without first referring the bill to committee. The bill was signed in the Senate and in the House and thereafter approved by then-Governor Robert Casey. Subsequently, Casey signed into law Act 107 of 1990, which creates a fee system to cover costs associated with establishment of a low-level radioactive waste disposal facility in Pennsylvania.

Issues The plaintiffs contend that Act 12 was passed in violation of the Pennsylvania Constitution because it was altered or amended during its passage through the General Assembly in such a manner as to change its original

purpose; neither the House nor the Senate referred the bill to committee after its original purpose was changed; and the bill was not considered on three days in either house after its original purpose was changed. They also argue that the State Treasurer cannot legally disburse funds from the State Treasury unless the law is constitutionally passed.

Requested Relief The plaintiffs are asking the court to declare that Act 12 of 1988 was unconstitutionally enacted and to enjoin the defendants from enforcing any provisions of the act or from making any expenditure under its authority. They are also requesting that the court enjoin the defendants from enforcing any provisions of Act 107 of 1990 or from making any expenditure under its authority.

- not all of the money in the Low-Level Waste Fund is from the General Fund, and
- the General Fund will be reimbursed for all money transferred to the Low-Level Waste Fund.

The commission also argues that the doctrine of laches precludes petitioners from pursuing their claims since

Standing and the Doctrine of Laches The commission argues that the petitioners have no standing to bring suit because they have not been concretely, adversely affected by Act 12. The commission points out that all activities authorized by Act 12 will be entirely supported by funds other than tax revenues once the facility is operating and that the General Fund will be reimbursed for all money transferred to the Low-Level Waste Fund.

- the statutes at issue were passed as many as eight years ago;
- petitioners waited an unreasonable amount of time prior to filing suit; and
- a ruling in petitioners' favor would adversely affect the Commonwealth of Pennsylvania, Department of Environmental Protection employees, the Appalachian Commission, the Appalachian Compact and its member states, and the businesses which have relied on development of this program.

—TDL

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> , November/December 1995, pp. 8-9.)	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	August 20, 1996 October 4, 1996	Appellate court reversed the decision of the district court. Deadline for filing motion for reconsideration by appellate court or petition for writ of certiorari by U.S. Supreme Court.
<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 District Court for the Central District of Illinois	August 30, 1996	District court issued decision in favor of Energy Secretary Hazel O'Leary.
<i>Midwest Interstate Low-Level Radioactive Waste Commission v. O'Leary</i> (See <i>LLW Notes</i> , June/July 1996, pp. 29-31.)	Seeks payment of surcharge rebates held in escrow with respect to the period from July 1, 1995, through December 31, 1995.	United States Court of Appeals for the Eighth Circuit	August 12, 1996 October 2, 1996	Midwest Commission filed its brief on appeal. Responding brief of Energy Secretary Hazel O'Leary is due.

Court Calendar *continued*

Case Name	Description	Court	Date	Action
<i>South Carolina ex. rel. David Beasley v. O'Leary</i> (See related story, this issue.)	Seeks to prevent the importation of spent fuel assemblies from foreign nations for disposal or storage at the Savannah River Site.	U.S. District Court for the District of South Carolina	July 29, 1996 August 15, 1996 November 25, 1996	Petition for preliminary and permanent injunctive and declaratory relief filed. District Court denied the state's request for a preliminary injunction. Hearing on the merits is scheduled.
<i>Stilp v. Knoll</i> (See <i>LLW Notes</i> , May 1996, pp. 18-19.)	Challenges the legislative procedures used to pass Act 12 of 1988, known as the Low-Level Radioactive Waste Disposal Regional Facility Act.	Commonwealth Court of the Commonwealth of Pennsylvania	May 13, 1996 July 22, 1996 September 5, 1996	Respondents filed an answer and new matter. Appalachian Commission filed a petition to intervene and a proposed answer. Hearing held on commission's petition to intervene. Court denied the petition.

South Carolina ex. rel. David Beasley v. O'Leary

SC Sues to Enjoin Importation of Foreign Spent Fuel

On July 29, 1996, South Carolina Governor David Beasley filed a lawsuit on behalf of the state against U.S. Secretary of Energy Hazel O'Leary and the U.S. Department of Energy. The suit, which was filed in the U.S. District Court for the District of South Carolina, seeks preliminary and permanent injunctive and declaratory relief to prevent the importation of spent fuel assemblies from foreign nations for disposal or storage at the Savannah River Site.

On August 15, the district court denied the state's request for a preliminary injunction. A hearing on the merits is scheduled for November 25, 1996.

Background

In the past, the U.S. Department of Energy has used the Savannah River Site—a federal facility owned and operated by DOE in the South Carolina counties of Barnwell, Aiken, and Allendale—for the temporary wet storage of spent fuel from DOE's own production reactors, domestic research reactors, and foreign research reactors. Programs for the acceptance of foreign spent fuel were terminated in 1988 and 1992, although two "urgent relief" shipments of foreign spent fuel were accepted in 1994 and 1995. South Carolina sought court intervention to prevent the shipments, but the Fourth Circuit found that DOE had complied with National Environmental Policy Act and other specific statutory requirements.

In 1994 and 1995, DOE announced plans to import up to 22,700 foreign spent fuel rods beginning this fall over the course of the next 13 years, resulting in one or two shipments per month going to the Savannah River Site facility. Approximately 150 to 300 total shipments are expected. DOE issued a nearly 4,000-page final environmental impact statement (EIS) for this project in February 1996.

Issues

South Carolina contends that DOE plans to store the foreign spent fuel rods in wet-storage facilities that were never designed for long-term storage. The storage will occur while awaiting alternative plans involving new technology and construction, which South Carolina argues do not exist at this time and will likely take at least five years to complete, if completed at all.

South Carolina further asserts that the L-reactor disassembly basin at the Savannah River Site would be the only possible site for wet storage once the receiving basin for off-site fuels becomes full, which the state predicts will occur within the first year of the importation program.

South Carolina also complains that both DOE and the Defense Nuclear Safety Board have concluded that it is hazardous to use the receiving basin for off-site fuels for long-term storage of aluminum-clad spent fuel, such as the foreign spent fuel rods at issue in this case.

Moreover, the state asserts that DOE has in the past concluded that the L-reactor disassembly basin was not designed for long-term storage of spent fuel and that its use for such storage could present public health and safety concerns. The Defense Nuclear Safety Board also recently listed several public health and safety concerns that might arise from use of the L-reactor disassembly basin for continued storage of spent fuel.

Claims for Relief

South Carolina argues that the EIS prepared by DOE in regard to its planned importation of foreign spent fuel rods is deficient in that it "barely discusses the use of the L-Basin and utterly fails to make candid disclosure of the known potential environmental and safety hazards of storage at the L-Basin and [receiving basin for off-site fuels] ... Having failed to discuss environmental and safety hazards, the EIS likewise fails to address how, or whether, DOE plans to deal with those hazards." The state asserts that DOE's failure to prepare a proper EIS constitutes a violation of the National Environmental Policy Act (NEPA) and associated regulations.

In addition, the state points out that should DOE attempt to remedy the alleged deficiencies in its EIS by preparing additional studies or reports, regulations of the Council of Environmental Quality require that such additional material be prepared, circulated, and filed in the same manner as a draft or final EIS. Accordingly, South Carolina is asking the court to declare that any supplemental statements must meet these requirements.

Requested Relief

South Carolina is asking the district court to:

- issue preliminary and permanent injunctions preventing the importation of spent fuel assemblies from foreign nations until an adequate EIS has been prepared;
- issue preliminary and permanent injunctions preventing the transportation of spent fuel assemblies beyond the territorial limits of any foreign nations until an adequate EIS has been prepared;
- enter a declaratory judgment that defendants have violated NEPA and regulations adopted pursuant thereto by failing to prepare an adequate EIS; and
- order the defendants to make such amendments or revisions to the EIS as necessary to bring it into compliance with NEPA.

—TDL

Federal Agencies and Committees

U.S. Department of the Interior/Federal Geographic Data Committee (FGDC)

Federal Committee On Wetland Classification Queries

In a *Federal Register* notice dated July 29, the Wetlands Subcommittee of the Federal Geographic Data Committee (FGDC) announced the availability of responses to questions submitted to the agency regarding the proposed adoption of the Cowardin classification system as the FGDC standard for wetland classification. (See *LLW Notes*, Nov./Dec. 1995, p. 19.) The Cowardin system presents a method for grouping ecologically similar wetlands in various classes. If adopted as an FGDC standard, the Cowardin system would be followed by all federal agencies for data collected directly or indirectly (e.g., through grants, partnerships or contracts).

Standard Inconsistent with Other Federal Definitions

The FGDC proposed to adopt the Cowardin system as an FGDC standard in July 1995. The proposal created confusion due to the inconsistency between the Cowardin system and other federal definitions of wetlands—such as definitions used by the Army Corps of Engineers, EPA, and the USDA Natural Resources Conservation Service. In response to numerous queries regarding the scope of the FGDC standard, the FGDC response stated:

Adoption of the standard will not change the current status of National Wetlands inventory

maps produced by the U.S. Fish and Wildlife Service. Adoption of the standard will not affect wetland regulatory efforts undertaken by any Federal, State, or local unit of government.

Background: FGDC

The FGDC was established in 1990 by Office of Management and Budget Circular A-16 (revised) and is charged with coordinating the use and sharing of geographic data among federal agencies. In 1994, Executive Order 12906 directed the FGDC to coordinate the development of a National Spatial Data Infrastructure (NSDI). The NSDI extends the concept of shared data beyond the federal level to the national level—i.e., to any data gathered by national, state, local, commercial and/or academic organizations. The FGDC is comprised of representatives of all of the federal agencies that share spatial data—including the Bureau of Land Management, the National Oceanic and Atmospheric Administration, and the National Aeronautics and Space Administration. FGDC is co-located with the U.S. Geological Survey and receives funding through the U.S. Department of the Interior.

—LAS

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

U.S. Department of Energy (DOE)

DOE Considers Tritium Production Options

In a September 5 press release, DOE announced the award of a nearly \$3-billion contract to perform demonstration activities and to design an Accelerator Production of Tritium plant for the Savannah River Site in South Carolina. In December 1995, DOE decided to explore two methods of tritium production: the use of an existing commercial light-water nuclear power reactor and the construction of a linear accelerator. In 1998, DOE will select one method to be the primary means of tritium production, with the other method serving as a back-up means.

Use of Commercial Reactors

The use of existing commercial nuclear power reactors is subject to a range of issues, including the use of civilian commercial reactors for purposes that support military requirements. According to DOE's October 1995 Environmental Impact Statement on tritium production, the commercial reactor option could include purchasing or leasing existing commercial power reactors or procuring irradiation services from commercial reactors for tritium production. DOE believes the commercial reactor option will be less expensive and the faster technical path to production. Advantages of the accelerator option are that it will not produce any high-level radioactive waste, and it will advance the technology from a research to a production tool.

DOE-NRC Memorandum of Understanding

In May 1996, Energy Secretary Hazel O'Leary and NRC Chairman Shirley Ann Jackson executed a Memorandum of Understanding (MOU) between the two agencies to resolve issues related to the regulation of commercial nuclear facilities, projects and activities that may be involved in the production of tritium. As a contingency to meet national defense requirements, DOE intends over the next three years to

- complete confirmatory testing of the target assemblies;
- fabricate the first core load of target assemblies for tritium production; and
- develop a new tritium extraction capability.

DOE will likely explore agreements with utilities to use commercial power reactors for tritium production if the reactor option is needed in the future. DOE's use of target assemblies in commercial power reactors—whether for testing or for producing tritium—will likely require NRC's approval. The MOU notes:

Issues concerning the NRC's licensing and related regulatory authority over DOE and its contractors must be addressed if DOE opts to purchase an existing or a partially completed commercial reactor. Selection by DOE of this option, or of other options, may require amendment of the Atomic Energy Act of 1954 and NRC implementing regulations.

—LAS

Tritium Production

Tritium is a radioisotope that activates the fusion stage of a nuclear weapon. It decays at a rate of 5.5 percent per year, meaning that the supply of tritium in a nuclear weapon must be replenished periodically if the weapon is to remain operational. Since 1988, the United States has relied on recovering tritium from dismantled nuclear weapons—rather than producing tritium—to obtain tritium for nuclear weapons. DOE projects a need for a new production source of tritium in the 2005–2007 time frame.

Light-Water Reactors

All of the 109 operating commercial reactors in the United States are light-water reactors. Two types of light-water reactors are in use:

- the pressurized-water reactor (PWR), and
- the boiling-water reactor (BWR).

Theoretically, both PWRs and BWRs can be used for tritium production. However, DOE formerly had been working to develop target assemblies for tritium production to be used in a DOE reactor, and the target assemblies currently planned for use are designed for a PWR reactor.

U.S. Nuclear Regulatory Commission (NRC)

Report Recommends Increased Control over Licensed Devices

In a July 2 report, an NRC/Agreement State Working Group recommends methods to increase the regulatory control over and accountability for devices containing radioactive material. The NRC Commissioners approved the establishment of the working group in June 1995 to assess the current regulatory programs for general- and specific-licensed devices and to determine the baseline for regulating these devices. The report is publicly available, but has not yet been acted upon by the NRC Commissioners.

Recommendations The Working Group recommends that

- NRC and Agreement States increase regulatory oversight for users of certain devices;
- NRC and Agreement States impose penalties on persons losing licensed devices;
- NRC and Agreement States ensure proper disposal of orphaned devices;
- NRC encourage states to implement similar oversight programs for users of NARM; and
- NRC encourage non-licensed stakeholders to take appropriate actions, such as instituting programs for material identification.

NRC staff plan to publish the report as a NUREG document and to announce the publication in the *Federal Register*.

—LAS

For further information, contact John Lubinski (NRC) or Robert Free (Texas), co-Chairs of the Working Group, at (301)415-7868 or (512)834-6688, respectively. See also "New Materials and Publications."

U.S. Environmental Protection Agency (EPA)

Revised Risk Assessment Model Available from EPA

EPA's Office of Radiation and Indoor Air has released a new version of the PRESTO-EPA-CPG operation system. The operation system is a menu-directed risk assessment model designed to calculate the maximum individual dose equivalent to the critical population group residing at the downstream end of a low-level radioactive waste disposal facility. The model can be run for

- a preliminary evaluation of a selected site,
- an existing or planned site,
- a disposal system design, and/or
- a regulatory analysis.

A number of improvements have been made to this version, including an addition of the daughter nuclide in-growth effects; an update of dose and risk conversion factors; an addition of annual mortality and risk incidence calculations; and adoption of the international system of units.

The operation system can be downloaded via the Internet by accessing the following World Wide Web address: <http://ttnwww.rtpnc.epa.gov>. The operation system is available under "computer models" in the Radiation and Indoor Air technical information area. The hot-line number for downloading problems is (919)541-5384.

—LAS

For technically oriented questions regarding the operation system, call Cheng Hung of EPA's Office of Radiation and Indoor Air at (202)233-9204.

U.S. Environmental Protection Agency (continued)

EPA Develops Environmental Justice Guidance

In a July 12 *Federal Register* notice, EPA's Office of Federal Activities announced the availability of draft guidance for incorporating environmental justice concerns into EPA's compliance analyses required under the National Environmental Policy Act (NEPA). Under NEPA, federal agencies that undertake "major Federal actions significantly affecting the quality of the human environment" must prepare a detailed environmental impact statement (EIS) that assesses the proposed action and all reasonable alternatives.

Reviews under the Clean Air Act

Under the Clean Air Act §309, EPA is required to

review and comment in writing on the environmental impact of any matter relating to duties and responsibilities granted pursuant to this chapter [the Clean Air Act] or other provisions of the authority of the Administrator, contained in any (1) legislation proposed by any federal department or agency, (2) newly authorized federal projects for construction and any major federal agency action (other than a project for construction) [subject to Section 102(2)(c) of NEPA], and (3) proposed regulations published by any department or agency of the Federal government. Such written comments shall be made public at the conclusion of any such review.

The Presidential Memorandum of February 1994 that accompanied the Environmental Justice Executive Order further directed EPA to conduct §309 reviews which ensure that all federal agencies fully analyze environmental effects—including human health, social and economic effects—of the proposed actions on minority communities and low-income communities. EPA issued draft guidance in July 1995 for incorporating environmental justice concerns during §309 reviews, and EPA is planning to revise the §309 guidance to make it more comprehensive. The draft NEPA compliance document suggests referencing its draft environmental justice provisions for §309 reviews until the separate §309 guidance is revised and finalized.

The guidance is intended to

- heighten the awareness of EPA staff in addressing environmental justice issues within NEPA analyses—including both environmental impact statements and environmental assessments (EAs)—and in considering the full potential for disproportionately high and adverse human health or environmental effects on minority and/or low-income populations;
- present basic procedures for identifying and describing junctures in the NEPA process where environmental justice issues may be encountered;
- present procedures for addressing disproportionately high and adverse effects in order to evaluate alternative actions; and
- provide methods for communicating with the affected population throughout the NEPA process.

The draft guidance is available for public review and comment through September 30, 1996.

Applicability of Guidance

EPA is required to comply with NEPA—and thus follow the environmental justice guidance—when undertaking

- research and development activities;
- facilities construction;
- waste water treatment construction grants under Title II of the Clean Water Act and under Appropriations Bills; and
- EPA-issued National Pollution Discharge Elimination System (NPDES) permits for new sources subject to new source performance standards.

EPA is exempted from NEPA by statute for actions taken under the Clean Air Act and for most Clean Water Act programs. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) requires EPA to comply only with the substantive—not the procedural—requirements of other environmental laws for on-site responses. For other EPA programs, the courts have found EPA procedures to be "functionally equivalent" to the NEPA process and therefore these EPA programs are exempt from NEPA procedural requirements. (See related box story.)

Major Principles of the Guidance

- EPA officials should be vigilant in identifying where EPA actions may have disproportionately high and adverse human health or environmental effects on minority and/or low-income communities. Moreover, identification should occur as early as possible, preferably during any initial screening exercise.
- The screening exercise should identify the presence of minority or low-income communities and whether such communities are likely to experience adverse environmental or human health effects as a result of proposed federal actions.
- The sensitivity to environmental justice concerns should sharpen the focus of the analysis. While the analytical tools to be used are similar, the analysis should focus both on the overall affected area and population and on smaller areas and/or communities within the affected area.
- It is desirable that the team of analysts which is tasked with identifying and addressing environmental justice issues be comprised of an interdisciplinary staff mix that includes individuals familiar with environmental justice issues, public participation mechanisms and outreach strategies, Native American concerns and issues as necessary.
- Where proposed actions may affect or potentially affect tribal lands or resources (e.g., treaty-protected resources, cultural resources and/or sacred sites), EPA will request that the affected Indian Tribe seek to participate as a cooperating agency. Where differences occur regarding the preferred alternative or mitigation measures that will affect tribal lands or resources, the Indian Tribe may request that a dispute resolution process be initiated to resolve the conflict between the tribe and the Agency.
- Environmental justice concerns may lead to more focused analysis that identifies significant effects that may otherwise have been diluted by an examination of a larger population or area. Environmental justice concerns should always trigger the serious evaluation of alternatives as well as mitigation options.
- Identifying the "affected community" is particularly important. The effects of the action will often vary depending on the distance from the action and the type of effect created by the action (e.g. airborne or waterborne pollution, increased traffic). Effects on the community should be discussed in terms of reasonable increments from the site of the action.
- Community involvement is particularly important in cases of potential environmental justice issues. Early and sustained communications with the affected community throughout the NEPA process is an essential aspect of environmental justice.
- For meaningful community involvement to be achieved in circumstances where environmental justice is an issue, technical assistance supplied by EPA should be available to the community to assist in their full participation (e.g., interpretation of scientific documents, development of alternatives or mitigation measures).
- Every EA and EIS, and every FNSI (Finding of No Significant Impact) and ROD [Record of Decision], should document the analyses used to identify the presence or absence of disproportionately high and adverse effects and present the results of those analyses."

—LAS

For further information, see "New Materials and Publications." See also the following issues of the LLW Notes: Aug./Sept. 1995, p. 30; Nov./Dec. 1994, p. 30; Oct. 1994, p. 11; July 1994, p. 26; and April 1994, p. 12.

U.S. Environmental Protection Agency (continued)

Possible Effects of EPA Guidance on LLRW Disposal

EPA exercises authority in various program areas related to disposal of low-level radioactive waste. EPA programs fall into the following four categories:

- exempt from NEPA by statute;
- "functionally equivalent" to NEPA—i.e., exempt from NEPA procedural requirements;
- must comply with NEPA by mandate; and/or
- voluntarily complies with NEPA pursuant to EPA policy.

The draft guidance will apply to those programs that comply with NEPA either voluntarily or by mandate.

EPA Programs and LLRW Disposal

Atomic Energy Act Reorganization Plan No. 3 (1970) created EPA and granted EPA the authority to develop "generally applicable environmental standards" for protection of the general environment. EPA analyses, documentation and review procedures are exempt from NEPA on the basis of functional equivalency. However, EPA voluntarily complies with NEPA in setting radiation standards—e.g., for rulemakings such as the draft Radiation Site Cleanup Rule (40 CFR Part 196).

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)/Superfund Among other provisions, CERCLA directs EPA to oversee remediation of sites contaminated with hazardous constituents. CERCLA can also apply to sites—both federally and privately owned—that are also contaminated with radioactive constituents. EPA has a policy of deferring to NRC for the remediation of sites that are principally contaminated with radioactive materials and are listed under NRC's Site Decommissioning Management Plan.

EPA's activities under CERCLA are exempt from NEPA because CERCLA requires that EPA comply with only the substantive—not the procedural—requirements of other environmental laws for on-site responses. Remedial Investigations/Feasibility Studies (RIFS) conducted under CERCLA are functional NEPA equivalents.

Clean Air Act EPA established a limit for air emissions of radionuclides from NRC- and Agreement-State licensed facilities—including low-level radioactive waste disposal facilities—in Subpart I of the National Emission Standards for Hazardous Air Pollutants (NESHAPs). EPA voluntarily complies with NEPA requirements for standard-setting under the NESHAPs program—e.g., for promulgation of an emissions limit. EPA is planning to rescind the NESHAPs Subpart I standard once NRC finalizes the proposed constraint rule and finalizes the Agreement State policy on adequacy and compatibility. No further NEPA compliance documentation is required to rescind NESHAPs Subpart I.

EPA must issue an approval to construct prior to construction of facilities regulated by NESHAPs Subpart I. The NESHAPs approval to construct was exempted from NEPA compliance by the Energy Supply and Environmental Coordination Act of 1974, §7 [15 U.S.C.A. §793(c)(1)].

Clean Water Act In some states, wetlands regulations may apply during the siting process for disposal facilities. Under §404 of the Clean Water Act, the Army Corps of Engineers is authorized to issue permits for the discharge of dredged or fill material. EPA has "elevation" authority under §404 to veto a permit that the Army Corps has issued; however, EPA and the Army Corps have executed a Memorandum of Understanding that authorizes the Army Corps to make the final determination unless the EPA has designated an area a "special case."

The majority of Clean Water Act programs were exempted from NEPA compliance by §511 of the Clean Water Act. EPA's wetland permit review was found to be a functional NEPA equivalent.

Resource Conservation and Recovery Act (RCRA) Low-level radioactive waste mixed waste contains both a hazardous component under RCRA and a radioactive component regulated under the Atomic Energy Act. Under RCRA, EPA is responsible for developing standards for the regulation of hazardous wastes. The standard-setting program was found to be a functional NEPA equivalent, and the issuance of EPA permits for hazardous waste facilities is also a functional NEPA equivalent.

EPA Region VI Environmental Justice Index

EPA Region VI has developed an environmental justice formula that ranks facilities or actions on a scale of 0 to 100. Regional officials point out that although higher scores can indicate greater potential environmental justice concerns, specific data factors—such as population density, percent minority population, and percent of economically depressed households—are the more important analytical factors.

Environmental Justice Indicator = Exposure * Hazard

Where: **Exposure** = Population Exposed/Population * Population Density Ranking

Hazard = Degree of Impact * Degree of Vulnerability

Degree of Vulnerability is a mean ranking of values of demographic data for the minority, economic status, age, pregnancy, lifestyle factors, and pre-existing disease factors, as derived from the Human Health Risk Index Degree of Vulnerability Ranking Methodology. The **Degree of Impact** is equal to one.

The ethnicity sub-factor is derived from a comparison of the area's percent of minority population in the calculated state percent minority population and the economic status sub-factor is derived from a comparison of the area's percent economically stressed to the calculated state percent economically stressed population.

Programs Delegated by EPA to States

EPA is authorized to delegate certain programs—including programs under the Clean Air Act, Clean Water Act and RCRA—to states. The draft NEPA guidance is intended to be used only by EPA staff and would not be a requirement for programs delegated to states. EPA will follow the guidance for programs requiring NEPA compliance when conducting activities in states that do not have delegated authority.

§309 Reviews of Proposed Federal Actions

As noted, the Clean Air Act requires that EPA review all federal environmental impact statements, as well as the environmental impact of legislation and regulations proposed by other agencies. In the draft EPA guidance for addressing environmental justice during §309 reviews (July 1995), early EPA involvement in the NEPA scoping process conducted by other agencies is advocated.

The draft 1995 guidance indicates that EPA §309 reviews should have the following two goals:

- fulfill one of the directives in the Presidential Memorandum [accompanying the Executive Order on environmental justice] of ensuring that the involved agency has fully analyzed environmental effects on minority communities and low-income communities, including human health, social, and economic effects; and
- assist other federal agencies in achieving the goals of NEPA by identifying project impacts, range of reasonable alternatives, and mitigation measures that avoid or minimize adverse environmental effects, including identifying and addressing impacts to minority communities and low-income communities.

The draft 1995 guidance notes:

Some federal agencies have limited control over project siting, particularly if the federal action is only for the issuance of a license or permit. It is recommended that the agency work with "applicants" early in project planning to develop siting criteria.

—LAS

U.S. Nuclear Regulatory Commission/Advisory Committee on Nuclear Waste (ACNW)

ACNW re Elements of an Adequate LLRW Program

In a letter report dated July 24, NRC's Advisory Committee on Nuclear Waste (ACNW) describes the program elements that the committee members believe must be part of an adequate NRC low-level radioactive waste program. The letter was written in response to the NRC Commission's interest in the advisory committee's view on this subject due to the release of an NRC staff options paper—*Alternatives to Terminating the [NRC] Low-Level Radioactive Waste Disposal Program*—that suggested reductions in the NRC's low-level radioactive waste program. (See *LLW Notes*, Oct. 1995, p. 20.) The ACNW report emphasizes that the ACNW is addressing an adequate program—not an “ideal” or “comprehensive program”—and defines an adequate program as containing “those elements and sub-elements that are critical (or believed to be critical by the public) to the NRC's public protection role.”

Elements of an Adequate Program

The report describes the objective and scope of an adequate program. The committee identified the following elements as being necessary for an adequate program (included are excerpts from the description of each element):

Standards

An adequate LLW program must have available to it generally applicable environmental standards, preferably expressed in terms of risk ... The present standards may be acceptable, except that [EPA] ground water standards include resource protection that is not directly relevant to public health and safety.

Regulations

The regulations ... should be re-examined and revised so that their principal, obvious outcome is the protection of public health and safety when advanced concepts (e.g., above-grade vaults, advanced waste forms) of LLW disposal are utilized.

Licensing

The NRC staff should be capable of managing, with internal expertise, all important aspects of licensing a LLW facility. Similar capability must exist for the approval (e.g., review of topical reports) of concepts, equipment, and processes ... This implies that the LLW staff in an adequate program largely has technical capability no less than any applicant or intervenor.

Enforcement

An adequate LLW program should contain NRC inspection and enforcement activities to ensure that public health and safety is unequivocally protected ... the evaluation of the compatibility and adequacy of Agreement State programs must contain provisions measuring the quality of the enforcement process as well as the use of evaluation criteria that are directly related to public health and safety ...

Evaluation

The NRC staff must have sufficient technical skill ... and sufficient working knowledge to evaluate the submissions of potential licensees ... [T]he NRC staff must be able to support Agreement State activities by providing requested technical evaluations ... The NRC LLW staff must remain cognizant of activities in Agreement States and should provide requested comments and advice, especially when recognized deficiencies could lead to an unsatisfactory outcome.

The NRC LLW program staff should have the capability to evaluate all aspects of the performance of LLW facility licensees ... [T]he NRC LLW staff as the technically competent and vigilant Federal oversight agency should seek to ensure the protection of public health and safety.

Communication With the Public

The adequate LLW program must be able to communicate in terms clear to the public, the actions and their consequences of evaluating applications, granting licenses, evaluating Agreement State programs, rectifying deficiencies in licensee and Agreement State activities, etc. ... The interactions should be designed to address technical issues and to ensure that misconceptions and misunderstanding of LLW regulations or the NRC role in their application are corrected in a timely manner ... Regular reporting to the public on all facets of LLW disposal and management should be part of an adequate LLW program.

Technical Support

The NRC must be able to provide technical support to licensees and Agreement State programs when requested and also when such support appears to be required ... The NRC staff should be able to formulate peer review process protocols for LLW technical issues that would aid the potential licensee or Agreement States in developing a sound and defensible technical basis for license applications.

Research

An adequate NRC LLW program may encompass research activities. However, the LLW program need not involve a research component, except that the maintenance of technical skills of the staff could be implemented in part by research programs, and except in instances where important research broadly related to LLW is not being done by other groups.

Interfaces

An adequate LLW program should have identified points of contact with other agencies and organizations, as well as within the NRC.

Other Issues

International activities should be part of an adequate LLW program, owing to the importance of such activities to the U.S. and to the safe use of nuclear technology ... Import/export authorization need not be part of an adequate LLW program. This topic can be managed by other Federal agencies in consultation with NRC and DOE ... Emergency access to LLW facilities is not a necessary part of an adequate LLW program and could be managed by another Federal agency.

—LAS

For further information, contact Howard Larson of ACNW staff at (301)415-6805. See also "New Materials and Publications."

State, Compact Perspectives re ACNW Report

Import/Export Authorizations

In April 1994, the LLW Forum unanimously passed a resolution urging NRC to proceed with issuance of the import/export rule as soon as possible. NRC issued the final rule in July 1995, and it became effective in August 1995. The preamble to the rule states: "...in the case of a proposed import, the NRC recognizes the authority of LLW compacts to decide whether or not to accept an import of LLW for disposal in the compact region ... The NRC will not grant an import license for waste intended for disposal unless it is clear that the waste will be accepted by a disposal facility, host State, and compact (where applicable)." (See *LLW Notes*, July 1995, pp. 17-18.)

NRC undertook the development and promulgation of the import/export rule—a process that took approximately five years to complete. Before granting a specific license to import or export radioactive waste, NRC must evaluate information such as the volume and classification of the waste, the chemical and physical characteristics of the waste, its routing, and the disposition of the waste—including whether it will be accepted at its intended disposal location. NRC is the agency best-qualified to undertake this analysis and to make the final decision regarding import or export. NRC must continue to perform this important role in a primary, not advisory, capacity.

—*Janice Deshais*
Executive Director of the Northeast Compact

Emergency Access Provisions

Under the Low-Level Radioactive Policy Amendments Act, the U.S. Congress charged NRC with developing and implementing the regulations governing emergency access. NRC is the only federal agency able to override the import prohibitions of low-level radioactive waste compacts. Shifting the responsibility for emergency access to another federal agency would require both legislative and regulatory changes.

NRC was the agency responsible for issuing guidance on when emergency access to low-level radioactive waste disposal facilities can be invoked. States and compacts, including our own, followed the development of the guidance extremely closely and consulted frequently with NRC on a host of policy and technical issues associated with emergency access. The federal agency primarily responsible for regulating the disposal of low-level radioactive wastes must be the same agency that carefully weighs an emergency access request and determines when—if ever—emergency access is invoked. The responsibility for emergency access should not be shifted away from the NRC.

—*Gregg Larson*
Executive Director of the Midwest Compact

Emergency access can only be granted on the basis of public health and safety, and NRC is the federal agency responsible for safeguarding public health and safety from radiological hazards. The possibility that the responsibility for emergency access would change to another agency is extremely remote. However, in the event that there are questions in anyone's mind regarding the states' position on this issue, let me make clear that Pennsylvania will vigorously defend NRC's current responsibility for emergency access if the need to do so arises.

—*William Dornsife, Director of the Bureau of
Radiation Protection in the Pennsylvania Department
of Environmental Protection*

NRC Official Comments on ACNW Report

In response to a query regarding the ACNW report, John Greeves, Director of NRC's Division of Waste Management, commented

ACNW comments will be considered in NRC's Strategic Assessment activities. NRC's regulation in 10 CFR Part 62 for emergency access was developed to fulfill the responsibility assigned to NRC in Section 6 of the Low-Level Radioactive Waste Policy Amendments Act. Thus, any decision to transfer this responsibility to another agency would involve changing existing legislation. In our past reviews of the NRC low-level radioactive waste program, the staff has not recommended transferring this function to another agency. The level of effort estimated to process an emergency response request is small, and no such requests have been submitted to NRC.

Forum Participants Invited to Review Issue Papers re NRC Programs

In mid-September, NRC is releasing the issue papers developed under the strategic assessment process. During the May 1996 meeting of the LLW Forum, NRC Chairman Shirley Ann Jackson asked Forum Participants to review the strategic assessment issue papers pertaining to low-level radioactive waste management once the papers were released and to provide comments and suggestions to NRC. There will be issue papers relevant to low-level radioactive waste management, including one addressing NRC's low-level radioactive waste program and one addressing NRC's decommissioning program.

Comments on the issue papers are due November 15. NRC will be posting the issue papers on the Internet, distributing them to a wide range of people, and providing them upon request. NRC will conduct public meetings on the issue papers at the following locations and dates:

Washington, D.C. October 24-25

Colorado Springs, Colorado October 31-
November 1

Chicago, Illinois November 7-8

NRC will also hold a meeting with Agreement State representatives on October 23 at NRC's headquarters in White Flint, Maryland.

James Kennedy of NRC's Division of Waste Management will be distributing the strategic assessment issue papers and discussing the strategic assessment process during the September 1996 LLW Forum meeting in Austin, Texas.

—LAS

For further information, contact James Kennedy, NRC's Division of Waste Management, at (301)415-6668. See also the following issues of the LLW Notes: June/July 1996, pp. 1, 10-13; March 1996, p. 19; and October 1995, p.20.

U.S. Nuclear Regulatory Commission (continued)

NRC Information Notice re On-Site Land Burials

On August 19, NRC issued an information notice to

- inform recipients of problems identified at several sites where disposal of radioactive waste by land burial was made in accordance with former requirements;
- emphasize the record-keeping requirements currently in effect; and
- remind licensees of the submittal dates—September 15 and October 15, 1996—for notifying NRC if they have burial sites that may require decommissioning. The notification is required for compliance with the *Final Rule on Timeliness in Decommissioning of Materials Facilities* (Timeliness Rule), which became effective on August 15, 1994.

Background: On-Site Burial

From January 1959-January 1981 NRC authorized the land burial of certain quantities of radioactive waste on site by licensees without prior NRC approval. Since January 1981, licensees wishing to perform on-site land burial are required to obtain prior approval by NRC, which considers factors such as the location of the burial site, concentrations of the radioactive materials to be buried, form of packaging, and notification of NRC. Some licensees have experienced problems during the decommissioning of sites containing buried radioactive materials that were disposed prior to January 1981. A limited number of past burial sites have been required to be exhumed during decommissioning, and, in certain cases, portions of the buried radioactive materials had to be shipped to a licensed disposal facility before NRC released the site for unrestricted use.

Background: Regulatory Citations

The on-site land burials that occurred between 1959 and 1981 were conducted in accordance with 10 CFR 20.304. The requirement to obtain prior approval from NRC to perform on-site land burials was enacted in 1981 by 10 CFR 20.302. The same requirement is now contained in 10 CFR 20.2002—which is the revised 10 CFR 20.302.

Requirements for Compliance

- At the time of decommissioning, complete records of all on-site land burials conducted under the regulations listed above are necessary for NRC to evaluate the acceptability of the disposals. The contents and maintenance of such records differs according to whether the on-site land burials were performed under previous or current regulations. If NRC determines that the minimum records have not been kept for on-site disposals that may pose a significant risk to the public after the site is released for unrestricted use, NRC may require the licensee to characterize the disposal sites to compile the necessary information.
- Licensees who have unused outside areas (i.e., burial areas) that contain elevated levels of licensed radioactive materials and who have declared that licensed operations have ceased in those areas are subject to the Timeliness Rule. If a licensee has an outside area that has been unused for NRC-licensed operations for a 24-month period prior to August 15, 1996, the licensee should notify NRC of this fact by October 15, 1996. Once the licensee notifies NRC, the licensee should either begin decommissioning the area or submit a decommissioning plan (if required by the regulations) within 12 months of the notification.
- Licensees who are subject to the Timeliness Rule may submit a request by September 15, 1996 to NRC to extend the time periods shown above.

During decommissioning, NRC will evaluate the on-site land burials to determine the potential impact on public health and safety. NRC has developed a methodology that will be used as a screening tool to determine which burial sites have the greatest potential for impacting public health and safety. Sites that do not pass the screening will require more detailed analysis and, if necessary, will be remediated.

—LAS

For further information, contact David Fauver or Heather Astwood of NRC's Office of Nuclear Material Safety and Safeguards at (301)415-6625 and (301)415-5819, respectively. See also "New Materials and Publications."

Petitioner Suggests Changes to Decommissioning Schedule

In an August 15 *Federal Register* notice, NRC requested public comments on a petition for rulemaking received from the Nuclear Energy Institute (NEI), an organization that coordinates unified nuclear industry policy on matters affecting the nuclear energy industry. The petition suggests amending NRC's regulations to allow NRC's licensees to continue monitoring and maintaining facilities, separate buildings, or outside storage areas that have not been used for 24 months. Current regulations require licensees to begin the decommissioning process after 24 months of inactivity. (See related story, this issue.)

Rationale for Current Requirements

The current requirements were enacted to ensure the timely decommissioning of licensees' facilities following termination of the license or inactivity of the site for a specified period of time. The requirements were initiated after the owners of some facilities failed to perform decommissioning activities because they had gone into bankruptcy or could no longer be identified. In addition, a number of sites had unique decommissioning or financial issues that needed to be resolved in order to complete decommissioning.

Comments on Current Requirements

According to the *Federal Register* notice, NEI asserts that NRC regulations were not intended to give NRC jurisdiction over the commercial aspects of a licensee's activities. The notice states:

The petitioner believes that a company that has a valid NRC or Agreement State license and operates within the conditions of the license should make the commercial decision on starting and stopping operations, as well as deciding when to place buildings or facilities in the standby mode and how long to maintain them in this mode. The petitioner believes that NRC regulations should not impose restrictions on facilities or sites that have the potential to impact commercial decisions.

Proposal for Alternate Plan

The petition proposes that NRC allow licensees to submit a monitoring and maintenance plan to NRC for approval in lieu of requiring decommissioning activities to commence. The plan would address issues such as financial assurance for decommissioning; a description of the monitoring and maintenance procedures—which would be required to ensure that any remaining contamination is contained and that worker and public safety is assured; and financial assurance to support the monitoring and maintenance program for the standby period requested.

The public comment period on the NEI petition closes on October 30.

—LAS

For further information, contact Michael Lesar of NRC's Office of Administration at (301)415-7163. See also "New Materials and Publications."

U.S. Nuclear Regulatory Commission (continued)

NRC to Publish Performance Assessment Guidance

In a memo dated August 7, the NRC Commissioners directed NRC staff to publish the draft *Branch Technical Position on Performance Assessment of Low-Level Radioactive Waste Disposal Facilities* in the *Federal Register* for public comment. The Branch Technical Position should be published by the end of the year. NRC's goals in preparing this guidance are to "enhance in-house capability and to develop regulatory guidance for [low-level radioactive waste performance assessment] based on existing state-of-the-art technology."

Applicability of the Guidance

The staff discussion document—*Regulatory Issues in Low-Level Radioactive Waste Performance Assessment*—referred to in the August 7 memo states:

The [Branch Technical Position], which includes the recommendations on the four policy issues, is intended to provide guidance in performance assessment. It also serves to provide guidance for use by Agreement State regulatory agencies having LLW regulatory responsibilities. The guidance is not mandatory, but provides one acceptable approach for demonstrating compliance with the performance provisions of [10 CFR] Part 61. The staff has been sensitive to concern that the guidance not be disruptive to state licensing activities.

Approach to Performance Assessment

NRC has developed a strategy for performance assessment that promotes a modular approach to facility systems modeling. The modeling quantifies the potential release and transport of radionuclides through significant environmental pathways. The methodology contained in the Branch Technical Position is divided into the following five individual sub-models, each of which represents a different component of the performance assessment analysis:

- infiltration (i.e., the rate of percolation of water into the disposal unit(s) and recharge to the water table);
- source term;

- engineered barriers;
- transport of radionuclides via ground water, surface water and air; and
- dose.

The guidance relies upon an iterative performance assessment process that begins with relatively simple conservative models using both generic and site-specific information. The process becomes facility- and site-specific as required to either demonstrate compliance with the 10 CFR Part 61 requirements for performance objectives or to eliminate a site from further consideration. The performance assessment process is intended to be integrated with site characterization and facility design activities, so that the necessary information for demonstrating compliance with 10 CFR Part 61 is developed as an intrinsic part of the site characterization activities.

Key Regulatory Issues

The following excerpts from the discussion document describe the NRC staff's preferred approaches to four key regulatory issues.

Time Frame for Low-Level Radioactive Waste Performance Assessment

A technical analysis is required in 10 CFR Part 61.13a to demonstrate compliance with 10 CFR 61.41 performance objectives ... However, Part 61 does not specify a time of compliance for meeting the overall performance objective ... The preferred staff position is a time of compliance of 10,000 years. The [performance assessment] analysis (including sensitivity and uncertainty analyses) within this time frame would be used as a basis of determining compliance with 10 CFR 61.41. A time of compliance of 10,000 years is sufficiently long enough to capture the peak dose from the more mobile radionuclides, which will tend to bound the potential doses at longer times, and to demonstrate the relationship of site suitability to meeting the performance objectives.

Considerations of Future Site Conditions, Processes and Events

The natural site contributes to overall disposal system performance by providing a stable environment for waste disposal ... The Part 61 siting requirements emphasize site stability, waste isolation, long-term performance, and defensible modeling of future site behavior ... Thus, the need to speculate about future site conditions, processes, and events over thousands of years is substantially eliminated from LLW [performance assessment] analyses ...

Therefore, it should be possible to establish a set of natural conditions, processes, and events that comprise the "reference natural setting." Ranges of assumptions and parameters should be used to effectively represent conditions of the site as encompassed in the reference natural setting. To capture the variability in natural processes and events, the span of siting assumptions and data should be sufficient to understand the relevance to performance of distinct events as well as long-term trends in natural phenomena acting on the site. It is important to emphasize that the goal of the analysis is not to accurately predict the future but to test the robustness of the facility against a reasonable range of potential outcomes.

... it is acceptable to assume that current biological trends continue unchanged throughout the duration of analyzed performance. This is also the case for human behavior, where, for example, it may be assumed that current land and water use practices will be followed in the future ... In the future, some disposal site regions may be affected by glaciation or an interglacial rise in sea level in response to global climate changes. These types of events are envisaged disrupting the disposal site and its regional environment and human population. Therefore, it is believed that the population near a LLW facility would leave such affected areas as glaciation advances. Accordingly, an appropriate assumption would be that under conditions of glaciation no one would be living close enough to the facility to receive a significant dose ...

For disposal sites where the impacts of global climate change primarily consist of changes from present-day meteorological patterns, ascertaining the nature, timing, and magnitude of related meteorological processes and events ... and their

effects on disposal site performance is highly uncertain ... The proposed staff approach recommends establishing a broad range of infiltration rates based upon historical and current weather data and other site information (e.g., field tests).

Performance of Engineered Barriers

The preferred staff position ... is to generally limit the design life of the water-repelling characteristics of engineered barriers to 500 years. The position allows taking credit for longer periods of time for structural stability and chemical buffering effects ... [T]he 500-year time period is sufficiently long to allow the potential LLW inventories of short-lived radionuclides to decay to insignificant levels and represents a reasonable upper limit for engineered design life. The guidance, however, does allow a longer period of performance, if it can be supported.

Treatment of Sensitivity and Uncertainty

The staff has recommended that formal sensitivity analyses be conducted in support of compliance determination calculations. Staff has considered a range of different approaches for acceptable compliance demonstrations. On one end of the spectrum is a deterministic estimate of system performance that clearly and demonstrably bounds the potential doses and on the other end is a probabilistic approach with a distribution of potential outcomes for system performance.

When compliance with the dose standards in 10 CFR 61.41 is based on a single [deterministic] estimate of performance, the applicant is relying on the demonstration of the bounding nature of the analysis, rather than a quantitative analysis of uncertainty ... Therefore, a single estimate of performance must be at or below the performance objective [dose standards] ... In cases where a formal uncertainty analysis is performed and a [probabilistic] distribution of potential outcomes for system performance is provided, the staff recommends that the mean of the distribution be less than the performance objective [dose standards] and the 95th percentile of the distribution be less than 1 mSv (100 mrem) to consider a facility in compliance.

—LAS

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

Congress Races to Finish Appropriations Before September Adjournment

House and Senate officials are racing to complete FY '97 appropriations measures before Congress' adjournment—currently targeted for September 27. A number of spending bills remain outstanding, however, including the VA-HUD bill (H.R. 3666), which contains appropriations for the U.S. Environmental Protection Agency, and the Interior bill (H.R. 3662). It is widely assumed that a number of unfinished appropriations measures will have to be rolled into an omnibus spending bill.

The Energy and Water Development Appropriations bill—H.R. 3816—which details U.S. Department of Energy funding levels, was recently approved by both chambers of Congress following conference. It is currently awaiting Presidential signature.

Energy and Water Development Appropriations Bill

Conferees met in mid-September to resolve differences in the House- and Senate-passed versions of the Energy and Water Development Appropriations bill. There was an \$887-million difference between the \$20.3-billion Senate version and the \$19.4-billion House version. Among the inconsistencies holding up passage of the bill were the following:

- an amendment to the Senate bill that would provide local and state authority to regulate out-of-state waste while granting municipalities the ability to require disposal of local waste at specific facilities (an ability known as "flow control");
- language in the House bill intended to make the availability of a significant portion of DOE's nuclear waste management funds contingent upon congressional enactment of a subsequent authorization bill (the revised Nuclear Waste Policy Act, H.R. 1020); and
- the inclusion in both bills of across-the-board cuts to DOE administration accounts, including significant required cuts in staff.

The House approved the conference report to the Energy and Water Development Appropriations bill on September 12. It was approved by the Senate on September 17. The final \$20.4 billion measure contained approval of \$15.7 billion for the Energy Department in FY '97—\$410 million less than the President requested. The controversial interstate waste bill tacked on to the Senate version was stripped and across-the-board cuts, while remaining in the measure, were somewhat reduced. The bill awaits the President's signature.

VA-HUD Bill

Conferees are likely to meet in mid-September to discuss the VA, HUD and Other Independent Agencies appropriations bill. Both the House and Senate versions of the bill provide EPA with a nearly \$6.6-billion budget for FY '97, with only a \$30 million spending difference between the two chambers. However, significant differences exist in the allotment to various EPA accounts.

Interior Bill

The House passed a \$12.6-billion bill making FY '97 appropriations to the Interior Department and related agencies. The Senate, however, has yet to pass its version of the bill. In any event, President Clinton has threatened to veto the bill due to legislative provisions related to the Bureau of Indian Affairs and the Tongass National Forest, cuts in energy conservation programs, and prohibitions on implementing regulations regarding federal right-of-way disputes.

The Interior bill is expected to be a vehicle for a number of possible amendments, including an amendment anticipated to be offered by Senator Frank Murkowski (R-AK) to require the Interior Department to transfer land at Ward Valley to the State of California for use in siting a planned low-level radioactive waste disposal facility. The transfer would be subject to certain conditions, including written commitment by the state to carry out environmental monitoring and protection measures recommended by the National Academy of Sciences and subject to federal oversight by the U.S. Nuclear Regulatory Commission.

—TDL

HLW Bill Passes Senate, Pending In House; Presidential Veto Expected

On July 31, the U.S. Senate approved S. 1936, The Nuclear Waste Policy Act of 1996—a bill allowing construction of an interim high-level waste storage facility at Yucca Mountain—by a vote of 63 to 37. Although the bill passed, the final tally was four votes shy of the two-thirds majority needed to override a threatened Presidential veto. The House has not yet voted on the measure.

Senate Bill

The bill requires construction of an interim storage facility for the spent nuclear fuel generated by nuclear power plants around the country. Provisions call for construction to begin on December 31, 1998, and waste to be accepted in phases beginning in 1999. The bill mandates that an assessment must be conducted six months prior to construction to determine the viability of Yucca Mountain as a permanent facility. If deemed unsuitable, the bill allows the President 18 months to find an alternative site for the interim storage facility or construction must proceed.

House Action

In early September, five members of the U.S. House of Representatives—including Lindsey Graham (R-SC), Richard Hastings (R-WA), Charlie Norwood (R-GA), Zach Wamp (R-TN), and Michael Crapo (R-ID)—wrote to House Speaker Newt Gingrich (R-GA) seeking assurances that the nuclear waste bill would be brought up for floor action before Congress adjourns at the end of September. The five members represent districts that contain DOE facilities which could take possession of the waste in the absence of legislation directing storage at a specific site by 1998.

Recent Appellate Court Decision

In their letter, the Representatives cited a July 1996 decision by the U.S. Court of Appeals for the District of Columbia Circuit that DOE has a statutory obligation to begin taking the nuclear industry's spent fuel by 1998 even though a permanent disposal facility will not be ready by then. The decision, which was issued by a three-judge panel, was issued in a lawsuit brought against DOE by 25 nuclear utilities and 39 agencies from 29 states. —TDL

U.S. Nuclear Regulatory Commission (continued)

Two Commissioners Join NRC

On August 28, NRC announced that the two new NRC Commissioners—Nils Diaz and Edward McGaffigan—have begun their official duties with the NRC Commission. McGaffigan was sworn into office on August 28, and Diaz was administered his oath of office on August 23. Both Commissioners were confirmed by the United States Senate on August 2. President Clinton had announced their impending nominations in July. (See *LLW Notes*, June/July 1996, p. 35.)

The NRC now has a full five-member Commission for the first time since June 1993. NRC Commissioners serve staggered five-year terms; one term expires on June 30 of each year. Commissioner Rogers' term is the next to expire on June 30, 1997.

The NRC Commission cannot have more than three Commissioners with the same political party affiliation. According to NRC's Public Information Office, the current NRC Commissioners' party affiliations are as follows: Chairman Jackson (D), Commissioner Diaz (R), Commissioner Dicus (D), Commissioner McGaffigan (D), and Commissioner Rogers (R).

—LAS

Much of the preceding information was distributed to Forum Participants and Alternate Forum Participants, Federal Liaisons and Alternates via facsimile transmission in a News Flash on August 6, 1996.

For further information, contact NRC's Office of Public Affairs at (301)415-8200.

New Materials and Publications

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

LLW Forum

DM

Meeting Packet:

LLW Forum meeting, September 25-27, 1996.

- *LLW Forum Meeting Agenda.* Afton Associates, Inc. September 1996.
- *LLW Forum Meetings-at-a-Glance Schedule.* Afton Associates, Inc. September 1996.
- *LLW Forum Meeting Preattendance List.* Afton Associates, Inc. September 1996.
- *LLW Forum Site Tour Preattendance List.* Afton Associates, Inc. September 1996.
- *Status of Technical Assistance.* DOE's National Low-Level Waste Management Program. September 1996.

D Memorandum from M. A. Shaker, Management Advisor, LLW Forum, to LLW Forum Participants, Alternate Forum Participants, Federal Liaisons and Alternates, regarding DOE/LLW Forum correspondence on DOE use of commercial facilities with an August 8, 1996 letter from Stephen Cowan, Deputy Assistant Secretary for Waste Management, Department of Environmental Management, DOE, to Gregg Larson, LLW Forum Convenor; and a September 5, 1996 response letter from Larson to Cowan.

D *Provisions for Congressional Review of Low-Level Radioactive Waste Compacts.* Compiled by Afton Associates, Inc. September 1996.

D Excerpts (Tables 1 and 2) from *Improving the Regulation of Safety at DOE Nuclear Facilities.* Advisory Committee on External Regulation of Department of Energy Nuclear Safety. December 1995. Provides advice, information, and recommendations on whether and how new and existing DOE facilities and operations might be externally regulated to ensure nuclear safety. To obtain a copy, contact the committee at (800)736-3282. This document was previously listed in the "New Materials and Publications" section of the January/February *LLW Notes*.

D *Electric Utility Industry Restructuring* Docket No. 95-462. Maine Public Utilities Commission. Draft Plan. July 19, 1996. Responds to a legislative Resolve directed the commission to construct a plan for the legislature's consideration to achieve retail market competition for the purchase and sale of electric energy in Maine. Represents the commission's preliminary view on how to restructure the electric utility industry to allow Maine consumers choice in purchasing electric capacity and energy.

D Comments on *Notice of Intent to Prepare Supplemental Environmental Impact Statement for Transfer of Federal Land at Ward Valley.* California Department of Health Services. July 1996.

D "Questions of Municipal Liability Settled," *LLRW Up-Front*, Volume 5, Number 3—Summer 1996. Massachusetts Low-Level Radioactive Waste Management Board. Discusses the impact of a recent U.S. Supreme Court decision on state and volunteer community liability issues under federal "Superfund" law and other relevant statutes.

^D "Risks from Low Doses of Radiation." *Science*, May 3, 1996, pp. 631-632. Jerome Puskin and Neal Nelson, both of the Office of Indoor Air, EPA. Puskin and Nelson respond to Marvin Goldman's article (*Science*, March 29, 1996, pp. 1821-1822) challenging the traditional linear nonthreshold paradigm for estimating cancer risks at low doses in ionizing radiation. The authors respond to specific statements in Goldman's article and assert that the linear nonthreshold assumption "remains a sound basis for radiation protection policy."

^D Letter from Francis Cameron, Deputy Assistant General Counsel and Special Counsel for Public Liaison and Agreement State Programs, NRC, to Stanley Marshall, Supervisor, Radiological Health Section, Health Division, Nevada Department of Human Resources, responding to a March 20, 1995 request to Paul Lohaus of NRC regarding exemptions for the U.S. Department of Energy and its contractors. June 9, 1995.

States and Compacts

Northeast Compact/ Connecticut/New Jersey

New Jersey Low-Level Radioactive Waste Disposal Plan: 1996 Update. The New Jersey Low-Level Radioactive Waste Disposal Facility Siting Board. April 1996. Presents the volume and characteristics of low-level radioactive waste generated and disposed of by New Jersey generators from 1989 to 1993 based on the information provided in annual statewide surveys. The update contains information on waste characteristics; waste management; waste projections; transportation; disposal methods; and commercial viability of a proposed facility. To obtain a copy of the update, contact the Siting Board at (609)777-4247.

Low-Level Radioactive Waste Management in Connecticut—1995 (draft report). Connecticut Low-Level Radioactive Waste Program. September 1996. The report includes the names of active and potential generators, waste volumes and radioactivity for 1995 waste types, and the results of processing. Comments must be received by October 18, 1996. To order a copy of the draft report, contact Steve Levine or Anita Baxter of the Waste Program at (860)244-2007.

Michigan

Evaluation of Michigan's Low-Level Radioactive Waste Isolation Facility Siting Criteria. Michigan Environmental Science Board. June 1996. To obtain a copy of the report, contact Thor Strong of the MLLRWA, at (517)335-0430.

New York

New York State Low-Level Radioactive Waste Status Report for 1995. New York State Energy Research and Development Authority (NYSERDA). June 1996. Provides data on the volume and activity of low-level radioactive waste shipped for disposal, data on low-level radioactive waste stored at the end of the year pending disposal, and a list of facilities generating low-level radioactive waste by county. To obtain a copy, contact NYSERDA at (518)465-6251, extension 241.

Review of New York State Low-Level Radioactive Waste Siting Process. Committee to Review New York State's Siting and Methodology Selection for Low-Level Radioactive Waste Disposal; Board on Radioactive Waste Management; Commission on Geosciences, Environment, and Resources; National Research Council; National Academy of Sciences. 1996. To obtain a copy, contact the National Academy Press at (800)624-6242.

National Conference of State Legislatures (NCSL)

NAFTA and Its Effect on State Environmental Policies. National Conference of State Legislatures State Legislative Report. July 1995, Vol. 20, No. 10. Doug Farquhar, Program Principal. The report costs \$5.00 plus shipping and handling. To obtain a copy, contact NCSL at (303)830-2200.

continued on page 40

Western Governors' Association (WGA)/U.S. DOE

The following reports were prepared by the Federal Advisory Committee to Develop Onsite Innovative Technologies (DOIT Committee) For further information, contact WGA at (303)623-9378.

Collaborative Approaches that Save Time and Money in Western Federal Site Cleanup. Final Report June 1996. Recommends that state and federal agencies improve performance and reduce costs through expanded regulatory options that encourage innovation.

Mixed Waste Working Group: Final Report. June 1996. Reports on the activities that help frame public policy on the development and implementation of innovative technologies.

A Guide to Tribal and Community Involvement in Innovative Technology Assessment. June 1995. Developed by the Develop Onsite Innovative Technologies Tribal and Public Forum on Regional Technology Acceptance in Reno, Nevada on May 4-5, 1995. A draft framework for interstate cooperation in exploring mechanisms to streamline the regulatory process for deploying technologies.

Regulatory and Institutional Barriers Roundtable: Final Report. December 1993. The roundtable identified the most important issues and barriers and proposed possible solutions that could be tested in the context of technology demonstrations selected by the Develop Onsite Innovative Technologies Committee.

Federal Agencies

Environmental Protection Agency (EPA)

Guidance for Incorporating Environmental Justice Concerns in EPA's National Environmental Policy Act (NEPA) Compliance Analyses (Review Draft). Office of Federal Activities, EPA. July 12, 1996. The guidance is to assist EPA staff responsible for developing EPA NEPA compliance documentation in addressing environmental justice issues.

Department of Energy (DOE)

Summary of Expenditures of Rebates from the Low-Level Radioactive Waste Surcharge Escrow Account for Calendar Year 1995 (DOE/EM-0303). Report to Congress. Office of Environmental Management, DOE. June 1996. Summarizes the individual annual reports that are submitted in accordance with the federal Low-Level Radioactive Waste Policy Amendments Act by all states/compact regions receiving surcharge escrow account funds.

1995 Annual Report on Low-Level Radioactive Waste Management Progress (DOE/EM-0292). Report to Congress. Office of Environmental Management, DOE. June 1996. Summarizes the progress of states and compact regions during calendar year 1995 in establishing new disposal facilities for commercially-generated low-level radioactive waste.

"Board Policy on Board Oversight of Department of Energy Decommissioning Activities at Defense Nuclear Facilities," 61 *Federal Register* pp. 41597-416000. Defense Nuclear Facilities Safety Board. August 9, 1996. Action: Notice of board adoption of policy guidance. The Defense Nuclear Facilities Safety Board adopted a policy statement which establishes procedures that the board will use in carrying out its oversight responsibilities for decommissioning activities at the Department of Energy defense nuclear facilities.

Department of the Interior (DOI) U.S. Geological Survey

"Responses to Comments Received During Public Review of Wetlands Classification System," Federal Geographic Data Committee (FGDC); 61 *Federal Register* 146. July 29, 1996. pp. 39465-66. Action: Notice of availability of responses to comments. FGDC has prepared and made available responses to comments received regarding an FGDC proposal to adopt the "Cowardin" Classification system as the FGDC standard for wetland classification.

Proposal to Establish the Cowardin System as the Federal Wetland Classification Standard. Federal Geographic Data Committee, Wetlands Subcommittee. July 29, 1996. Contains the responses of the Wetlands Subcommittee of the Federal Geographic Data Committee (FGDC) to public comments and questions submitted in response to FGDC's proposal to adopt the Cowardin system as an

FGDC standard. Questions were pooled by FGDC according to similarity, and responses were drafted to address each public query. To obtain a copy of prepared responses, contact Jennifer Fox, FGDC Secretariat, at (703)648-5514. The questions and responses may also be downloaded from the Internet at the following World Wide Web address: <http://www.nwi.fws.gov/fgdcwet.html>.

Advisory Committee on Nuclear Waste

Letter from Paul Pomeroy, Chair, NRC's Advisory Committee on Nuclear Waste, to Shirley Ann Jackson, Chairman, NRC, regarding elements of an adequate NRC low-level radioactive waste program. July 24, 1996.

Nuclear Regulatory Commission (NRC)

^D Letter from Shirley Ann Jackson, Chairman, NRC, to Carl Lischeske, Chief, Low-Level Radioactive Waste Program, Department of Health Services, State of California, responding to a July 2, 1996 letter regarding the Ward Valley, California disposal facility. August 29, 1996.

Attached is a June 11, 1993 letter from Hugh Thompson, Deputy Executive Director for Nuclear Materials Safety and Safeguards, and Operations Support, NRC, to Edward Hastey, State Director, U.S. Bureau of Land Management, explaining NRC's role in the State of California's review of the proposed Ward Valley low-level radioactive waste disposal facility.

NRC Information Notice 96-47: Recordkeeping, Decommissioning Notifications for Disposals of Radioactive Waste by Land Burial Authorized Under Former 10 Code of Federal Regulations (CFR) 20.304, 20.302, and Current 20.2002. Office of Nuclear Material Safety and Safeguards, NRC. August 19, 1996. Informs licensees of problems identified at several sites where disposals of radioactive waste by land burial were made under the authorization of former regulations; emphasizes recordkeeping requirements of such burials; and reminds licensees of the submittal dates for compliance with NRC requirements.

“Nuclear Energy Institute, Receipt of a Petition for Rulemaking,” 61 *Federal Register*, p. 7590. NRC. August 15, 1996. Action: Petition for rulemaking; Notice of receipt. The Nuclear Energy Institute submitted a petition to the NRC on May 24, 1996, requesting NRC amend its regulations to establish a more flexible alternative to the current provisions required for decommissioning any facility, separate building, or outside area after it has been inactive for at least 24 months.

Memorandum from Emile Julian, Acting Secretary, NRC, to James Taylor, Executive Director for Operations, NRC, regarding regulatory issues in low-level radioactive waste performance assessment [SECY-96-103]. August 7, 1996.

Memorandum from James Taylor, Executive Director of Operations, NRC, to the NRC Commissioners, informing them about the proposed staff approaches on principal regulatory issues in low-level waste (LLW) performance assessment (PA); to discuss comments on these issues from the LLW PA workshop; and to obtain commission approval for staff to publish, for public comment, a draft branch technical position that states the staff's position on addressing these issues. May 17, 1996.

NRC-Agreement State Working Group to Evaluate Control and Accountability of Licensed Devices. NRC. July 2, 1996. Report recommends that the NRC and Agreement States increase regulatory oversight for users of certain devices; impose penalties on persons losing devices; ensure proper disposal of orphaned devices; NRC encourage Agreement States to implement similar oversight programs for users of Naturally-Occurring or Accelerator-Produced Material (NARM); and encourage non-licensed stakeholders to take appropriate actions, such as instituting programs for material identification.

continued on page 42

Recognition of Agreement State Licensees in Areas Under Exclusive Federal Jurisdiction Within an Agreement State. 10 CFR Parts 150 and 170. RIN 3150-AF49. NRC. June 18, 1996. Action: Proposed rule. NRC is proposing to amend its regulations to clarify that Agreement State licensees can seek reciprocal recognition of their license from the NRC when they are working within areas of exclusive federal jurisdiction in Agreement States. The proposed amendments would also clarify NRC regulatory requirements for reciprocity and the appropriate fees and filing procedures applicable to Agreement State licensees operating under reciprocity. The comment period expired September 3, 1996.

Control of Water Infiltration Into Near Surface Low-Level Waste Disposal Units. (NUREG/CR-4918, Vol. 9). NRC. August 1996. Progress report on field experiments at a humid region site, Beltsville, Maryland to assess means for controlling water infiltration through waste disposal unit covers in humid regions.

U. S. Congress

General Accounting Office (GAO)

Federal Facilities: Consistent Relative Risk Evaluations Needed for Prioritizing Cleanups. Report to the Chair, Committee on Government Reform and Oversight, U.S. House of Representatives. GAO. June 1996. The report assesses whether Superfund is identifying the highest-priority federal sites for cleanup and what progress is being made by the Departments of Defense, Energy, and the Interior in establishing approaches for ranking risks and setting priorities for cleaning up their facilities.

Other

The following articles appeared in the August 1996 issue of *Geotimes*.

"The Role of Mutual Trust in Siting Controversial Facilities," p. 6. Mary English. Difficult decisions demand that scientists, citizens, and policy-makers trust each other.

"Why Have Earth Scientists Failed to Find Suitable Nuclear Waste Disposal Sites?" pp. 16-19. John Robertson. Social and political forces vie with science in the site selection process.

"Unsaturated-Zone Characterization for Low-Level Radioactive Waste Disposal in Texas," pp. 22-25. Bridget Scanlon. Hydrologic studies provide vital data for evaluating potential waste disposal sites and monitoring their subsequent performance.

"Beneath the Surface: Geophysical Aspects of Radioactive Waste Disposal," p. 26. Don Steeples. Geophysical techniques can help us make decisions about the location and operation of waste disposal facilities.

"Almost Everyone's Backyard," p. 30. S. J. Clews. Most of the civilian low-level radioactive waste in the country goes to the Barnwell Low-level Radioactive Waste Disposal Site in Barnwell, South Carolina.

Obtaining Publications

to obtain federal government information

By Telephone

- DOE Press Office(202)586-5806
- DOE Public Information Office, Secondary Distribution Center(202)586-9642
- EPA Public Information Center(202)260-7751
- GAO Document Room(202)512-6000
- Government Printing Office (to order entire *Federal Register* notices)(202)512-1800
- NRC Public Document Room(202)634-3273
- U.S. House of Representatives Document Room(202)225-3456

By Fax

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

By Internet

- EPA Listserve Network • Contact John Richards for information on receiving *Federal Register* notices
.....VOICE (202)260-2253 • FAX (202)260-3884 • INTERNET richards.john@epamail.epa.gov
- GPO Access (for the *Congressional Record*, *Federal Register*, congressional bills and other government documents and access to more than two dozen government databases)
.....web browser—Superintendent of Document's home page at
http://www.gpo.gov/su_docs/aces/aaces001.html
.....dial-in by modem—(202)512-1661, type "swais" and log in as "guest"
.....general information—VOICE (202)512-1530 or INTERNET help@eids05.eids.gpo.gov

Receiving LLW Notes by Mail

LLW Notes and the *Summary Report: Low-Level Radioactive Waste Management Activities in the States and Compacts* are distributed to state, compact and federal officials designated by LLW Forum Participants 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.