Texas Agency Declines Envirocare’s LLRW License Application Cites Legal Impediments to All Such Facilities

By letter dated October 18, the Texas Natural Resource Conservation Commission (TNRCC) declined to process Envirocare of Texas, Inc.’s application to construct and operate a disposal facility in Andrews County for low-level radioactive waste and for mixed radioactive and hazardous waste. Envirocare had submitted the application on September 26. Preliminary information released by the company indicated that Envirocare did not expect the facility “to accept any LLRW from the Texas Compact states or any private or commercial generators for disposal.”

In the letter, which was addressed to Envirocare Executive Vice President Charles Judd, the TNRCC’s Executive Director, Dan Pearson, explained that the agency could not process the application at this time because

Texas statutes prohibit ... [the agency] from licensing a private company to dispose of waste received from others. Section 401.203 of the Texas Health and Safety Code states that “a radioactive waste disposal license may be issued only to a public entity specifically authorized by law for radioactive waste disposal.”

We interpret this statute to preclude the TNRCC from undertaking licensing or oversight of any private facility disposing of radioactive waste from private or public sources, as the agency has not been granted the necessary specific statutory authority and jurisdiction for such activities. This would apply whether the agency is called upon to directly license such a facility or oversee its operations through a contractual or similar arrangement and would be the case whatever the categorization and origin of waste coming into Texas from a federal agency, including the United States Department of Energy.

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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.

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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.
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LLW Forum Holds Fall Meeting

The Low-Level Radioactive Waste Forum met for three days in Austin, Texas, on September 25–27. Twenty-five Forum Participants, Alternate Forum Participants, and meeting designees representing 22 compacts and states participated. Additional information was provided by 15 resource people from, variously, the States of Utah, Maine and Texas; DOE; NRC; EPA; the National Academy of Sciences; the Nuclear Energy Institute; Maine Yankee; Envirocare of Utah; and Waste Control Specialists.

Also in attendance, as observers, were 17 other state and compact officials; one staff person from the Department of the Army; one DOE headquarters official; three DOE contractor staff members; one NRC staff person; 21 representatives of other interested parties including a national generators’ association, a national environmental/antinuclear organization, three regional generators’ associations, three facility operators, one broker/processor, three local community/anti-nuclear groups, one citizens’ opposition group, and four consulting firms; and two academicians from the University of Florida. Approximately five individuals attended portions of the meeting but refused to register or identify themselves.

Highlights of the meeting follow.

For further information, see LLW Forum Meeting Report, September 25-27, 1996, prepared by Afton Associates, Inc.

DOE Use of Commercial Sites

DOE’s Policy on Use of Commercial Disposal Facilities and Proposal to Delegate Exemption Authority to DOE Field Offices A DOE headquarters official described DOE’s policy on the use of commercial disposal facilities for disposal of DOE’s waste and explained DOE’s proposal to delegate exemption authority from DOE headquarters to DOE’s field offices and Facility Operations Managers.

Case Study: DOE Use of Envirocare A representative of Envirocare of Utah discussed the process by which Envirocare provides information to the State of Utah and the Northwest Compact regarding disposal of DOE waste at the Envirocare of Utah facility. The Director of the Utah Division of Waste Control then described state and compact policies and procedures regarding disposal of DOE waste at the Envirocare facility.

Waste Control Specialists’ Proposal for a Waste Management Facility Representatives of Waste Control Specialists (WCS) discussed the proposed waste management activities at and the potential users of the WCS site located in Andrews County, Texas; and described WCS’ perspective on the appropriate regulatory structure for a WCS facility.

A staff person with the Texas Department of Health provided an overview of
- the division of regulatory responsibilities for waste storage and waste disposal in Texas; and
- the current status of WCS’ application to the Texas Department of Health for a permit to provide storage and treatment for radioactive waste.

NRC’s Perspective on Regulating a Commercial Disposal Facility for Use by DOE A staff person in NRC’s Office of General Counsel discussed NRC’s perspective on
- the distinction between a DOE facility and a commercial facility; and
- alternatives for oversight by DOE, NRC and/or Agreement States.

continued on page 6
Low-Level Radioactive Waste Forum Resolution (Number 96.9.1)  
adopted on September 27, 1996  
(re: transfer of federal land in Ward Valley, California)

Whereas the federal Low-Level Radioactive Waste Policy Act (Policy Act) as amended assigned the states responsibility to safely and effectively manage such wastes and encouraged the formation of interstate compacts to undertake this responsibility; and

Whereas the State of California has enacted laws directing the development of a disposal facility to serve California and the other states of the Congressionally-ratified Southwestern Low-Level Radioactive Waste Compact; and

Whereas the California Department of Health Services issued a license to construct and operate the Ward Valley low-level radioactive waste (LLRW) disposal facility in September 1993, a decision subsequently upheld in its entirety by the California courts; and

Whereas the decision to issue a license was based upon a variety of credible scientific and engineering studies, and involved extensive public participation over a number of years, including dozens of hearings, workshops and meetings; and

Whereas the U.S. Nuclear Regulatory Commission (NRC), the federal agency designated under the Atomic Energy Act to deal with health and safety issues related to the use of radioactive materials, has determined that California's decision to issue a license for the Ward Valley facility followed the NRC's licensing guidelines and standard review plan; and

Whereas the State of California has requested that the U.S. Department of the Interior (DOI) transfer the property for the disposal facility to State ownership; and

Whereas DOI has issued final and Supplemental Environmental Impact Statements (EIS) which concluded that the transfer of the property would not result in environmental damage, and then commissioned a review by the National Academy of Sciences which concluded that any additional study need not delay the construction of the facility; and

Whereas, notwithstanding the above, DOI announced in February 1996 that it would prepare additional studies at Ward Valley related to public health and safety, and that it would prepare a second Supplemental EIS, even though the issues which it will address have either already been addressed in the final EIS or have been determined by the USGS to be "too tenuous to have much scientific value"; and

Whereas federal law provides NRC and Agreement States with exclusive authority to regulate the health and safety of commercial low-level radioactive waste disposal facilities; and

Whereas the Ward Valley LLRW disposal facility is a vital piece of infrastructure that will serve the needs of California's medical and biotechnical research industries, its academic institutions, and its electric utilities; and

Whereas the above groups have indicated that they have suffered and will continue to suffer economic harm due to the delay of the construction of the Ward Valley disposal facility caused by DOI's decision to prepare a second supplemental EIS, to the detriment of all California; and

Whereas a number of entities that generate LLRW are currently storing their waste in urban areas rather than shipping it for disposal at out-of-region facilities, thereby increasing the possibility that the public or emergency response personnel will be exposed to the material in the event of a fire or a natural disaster; and

Whereas the Low-Level Radioactive Waste Forum is an association of state and compact representatives, appointed by governors and compact commissions, established to facilitate state and compact implementation of the Policy Act and to promote the objectives of LLRW regional compacts;

Now, therefore, be it resolved that the Low-Level Radioactive Waste Forum supports California's efforts to secure the transfer of the land for the Ward Valley LLRW disposal facility by date certain.

Be it also resolved that the Low-Level Radioactive Waste Forum does not support activities by DOI to usurp the authority of the NRC and Agreement State to ensure the protection of public health and safety.
Low-Level Radioactive Waste Forum Resolution (Number 96.9.2)
Adopted on September 27, 1996
(re: DOE use of commercial disposal facilities)

Whereas the federal Low-Level Radioactive Waste Policy Amendments Act (Policy Act) assigns the states responsibility to safely and effectively manage commercial low-level radioactive wastes and encourages the formation of interstate compacts to undertake this responsibility; and

Whereas the Policy Act authorizes each compact to prohibit commercial low-level radioactive waste that is generated outside of the compact region from being disposed of within the region; and

Whereas the U.S. Department of Energy (Department) currently has a policy of allowing the Department’s Operations Offices, Field Offices and Sites to use commercial disposal facilities for “small quantities of mixed waste on a case-by-case basis” if the disposal meets several criteria, including the Department establishing that “the appropriate low-level waste compact or state has no objection to the acceptance of DOE waste at the [commercial] facility” prior to approval of the shipment; and

Whereas the Department has notified the LLW Forum of plans to delegate—from the Department’s Headquarters to the Operations and Field Office Managers—the authority to determine when any DOE low-level radioactive waste may be exempted from the current requirement that it may be disposed of only at DOE disposal facilities; and

Whereas the Department recognizes that the Policy Act allows compacts to prohibit the disposal of DOE low-level radioactive waste at regional commercial low-level radioactive waste disposal facilities; and

Whereas the Department has committed to establishing—prior to disposing of any DOE low-level radioactive waste at a commercial disposal facility—that the host state and (where applicable) the host compact has no objection; and

Whereas the Department has requested comments by the LLW Forum on the plan;

Now, therefore, be it resolved that the Low-Level Radioactive Waste Forum concurs with the U.S. Department of Energy’s plan:

• to delegate exemption authority,

• to continue to recognize the authority of compacts to prohibit disposal of the DOE low-level radioactive waste at regional low-level radioactive waste disposal facilities, and

• to establish—prior to approval of shipments—that the host state and (where applicable) the host compact have no objections to the disposal of the DOE low-level radioactive waste at a commercial low-level radioactive waste disposal facility.

Be it also resolved that the LLW Forum encourages the Department to reach agreement with the host state and (where applicable) the host compact regarding requirements for notification of disposal.
Who Will Regulate DOE Waste—States, NRC, EPA, Defense Nuclear Facilities Safety Board or Others?

Panelists representing EPA, DOE, and NRC, joined with Forum Participants from the Northwest Compact and Nebraska to discuss external regulation of DOE waste including

- the findings of the Advisory Committee on External Regulation of DOE Nuclear Safety;
- DOE’s ongoing analysis of the external regulation report;
- NRC’s perspective on regulating DOE’s waste;
- a state/compact perspective on regulating DOE’s waste; and
- an overview of other suggestions for external regulation of DOE’s waste.

Executive Session

Second Quarter Financial Report The Forum Management Advisor summarized the second-quarter financial report, noting that the LLW Forum operated under budget.

LLW Forum Structure and Funding Beyond 1996

The Forum Convenor reviewed the LLW Forum Development Plan and discussed its implementation, including incorporation of the LLW Forum and development of bylaws for the newly incorporated group.

The Forum Management Advisor reported that filing for a tax status with the IRS would be premature and noted that the Executive Committee has agreed to wait on this matter until the organization is formally incorporated.

It was the consensus of Forum Participants to continue exploring all funding mechanisms including grants from federal agencies and others, charging for products and services, and developing new products that can be sold. Afton Associates was instructed to look into the development of services and products by the LLW Forum as a means of raising funds and to report to the LLW Forum at its February 1997 meeting.

LLW Forum Business Session

At the recommendation of the Executive Committee, and in order to avoid conflict with the recently scheduled DOE Low-Level Waste Management Conference, Forum Participants unanimously agreed that

the LLW Forum meet in Chicago from May 7–9, 1997.

Low-Level Radioactive Waste Forum Resolution (Number 96.9.3) Adopted on September 26, 1996 (re: National Low-Level Waste Program management)

Whereas the Low-Level Radioactive Waste Forum recognizes its close ties with and dependence upon the U.S. Department of Energy’s National Low-Level Waste Program; and

Whereas the LLW Forum further notes that it also works closely with other entities of the federal government and that it maintains its own administrative offices in Washington, D.C.; and

Whereas the LLW Forum believes that implementation of the Low-Level Radioactive Waste Policy Act is an issue requiring visibility in Washington, D.C.;

Now, therefore, be it resolved that the Low-Level Radioactive Waste Forum strongly recommends that DOE maintain funding for the National Low-Level Waste Program, and

Be it further resolved that the Low-Level Radioactive Waste Forum recommends that core National Low-Level Waste Program positions continue to be located in the Washington, D.C. area and that they not be transferred to a field office.
Bylaws for the LLW Forum, Inc. The draft Bylaws for the LLW Forum, Inc. were reviewed and suggestions made for changes. By the end of 1996, another draft version incorporating the suggested changes will be distributed to Forum Participants. A final draft will then be distributed with the meeting packet for the February 1997 meeting, where a vote will be taken.

DOE Low-Level Waste Management Program

1996 Program Results and Plans for Carry-Over into 1997 A DOE/Idaho staff person reviewed Fiscal Year 1996 program accomplishments including

- the compilation of radionuclide reports into a single volume;
- the commercially available waste treatment technologies report;
- Manifest Information and Management System (MIMS) improvements;
- the mobile low-level radioactive waste verification system;
- the mixed waste project with the National Institutes of Health (NIH);
- cost studies with New Jersey and Connecticut;
- guided facilitation for Hudspeth county stakeholders; and
- 25 workshops held across the country.

He also reported that the following activities will be carried over into Fiscal Year 1997:

- the mobile low-level radioactive waste verification system,
- comparative approaches reports,
- the Texas trench monitoring project, and
- phase III of the NIH mixed waste project.

Overall Program Direction in 1997 and Specific Plan for Technical Assistance in 1997 The DOE staff person reported that the next DOE Low-Level Radioactive Waste Management Conference will be held in the spring of 1997. In addition, the program will continue to provide support for the Technical Coordinating Committee (TCC), the Conference of Radiation Control Program Directors (CRCPD), and the National Conference of State Legislatures (NCSL). The program will also provide performance assessment support to the State of Washington, workshops, technical modules, and responses to state-specific requests.

Waste Manifesting and Tracking

Report of the LLW Forum Waste Information Working Group The Alternate Forum Participant from Massachusetts reported on the activities of the Waste Information Working Group. (See related story, this issue.)

Liability Protection for States and Site Communities

Introduction The Alternate Forum Participant from Massachusetts explained how the issue arose in Massachusetts and the factors involved in analyzing municipal liability.

Prior Case Law The Forum Participant from the Northeast Compact gave a brief description of the Eleventh and Fourteenth Amendments to the U.S. Constitution, explaining their effect on state immunity. She then reviewed the U.S. Supreme Court’s decision in Pennsylvania v. Union Gas Company and its impact on municipal liability.

Recent U.S. Supreme Court Decision The Alternate Forum Participant from the Central Compact discussed the U.S. Supreme Court’s recent reversal of the decision in the Union Gas case and explained the possible implications for issues related to municipal liability.

continued on page 8
Panel Discussion: Utility Restructuring

Overview A consultant for Maine Yankee reported on the history, motivating forces, and competing factors behind utility restructuring. He described the anticipated benefits, potential drawbacks, and likely end results thereof.

Federal Regulations/Orders A staff person from the Nuclear Energy Institute reported on related federal regulations and orders, including a discussion of the enactment of the Energy Policy Act of 1992 and the expansion of the Federal Energy Regulatory Commission's (FERC) authority. He detailed the requirements of the act and its intended goal and discussed various orders and rules issued by FERC to provide open-access, nondiscriminatory transmission services.

NRC's Interest An NRC staff person discussed NRC's interest in the possible effects of restructuring on nuclear plant safety. He described efforts by NRC to work with other agencies to do an information exchange and help ensure that the money needed for decommissioning is available.

Potential Federal Legislation The NEI staff person reported on potential federal legislation concerning utility restructuring. He discussed bills introduced in the House and Senate to allow for retail choice.

Role of Public Utility Commissions and State Legislatures A Maine official discussed the role of public utility commissions and state legislatures. He noted that only a handful of states are uninvolved in this issue, whereas many of them are moving extremely quickly in this area.

Impact on Low-Level Radioactive Waste Management All of the panelists made general comments on the impact of utility restructuring on low-level radioactive waste management.

Conference of Radiation Control Program Directors' Activities on Low-Level Radioactive Waste

Committee Activities and Workshops The Forum Participant from Pennsylvania summarized the activities and workshops conducted by the Conference of Radiation Control Program Directors (CRCPD) relating to low-level radioactive waste management, including:

- activities related to the disposal of radium sources;
- the development of suggested state regulations for naturally occurring radioactive material (NORM) disposal;
- the development of guidance for adequate regulatory programs for low-level radioactive waste management;
- the development of guidance on how to respond to the discovery of radioactive waste in landfills; and

Regulatory Issues

The Alternate Forum Participant from Connecticut provided the report of the Regulatory Issues Working Group. (See related story, this issue.)
LLW Forum September 1996 Meeting—Other Topics

Other agenda items discussed at the meeting included:

- new developments in states and compacts, with a specific focus on the Texas hearing process and California's perspective on the federal Supplemental Environmental Impact Statement (EIS) for the transfer of Ward Valley;

- the National Academy of Sciences' report on New York's previous siting process and lessons to be learned;

- federal risk harmonization efforts including the activities of the Interagency Steering Committee on Radiation Standards (ISCORS) and a risk-based methodology for assessing radiation protection programs;

- EPA activities on risk including an EPA-funded study to determine whether a report of the Board on Biological Effects of Ionizing Radiation (BEIR) should be revised, the status of a Federal Guidance Report that will address the risks of specific exposures to specific radionuclides, and a letter written to Science magazine by EPA staff regarding the linear nonthreshold paradigm for estimating cancer risks at low doses of ionizing radiation;

- life-cycle risk analysis for the Pennsylvania low-level radioactive waste facility including the status of the analysis, the dominant risk factors identified, and the policy implications;

- compact reauthorization including a brief legislative history of the compact reauthorization language and a discussion of the differences in review language between low-level radioactive waste compacts and other compacts authorized by Congress;

- NRC's Strategic Assessment Process including the appointment of two new NRC Commissioners, the strategic assessment issue papers, and public involvement in NRC's strategic assessment process; and

- agenda planning for the February 1997 LLW Forum meeting.

LLW Forum Tours Proposed Texas Low-Level Radioactive Waste Disposal Site

On September 24, in conjunction with the LLW Forum's meeting in Austin, Forum Participants and others had the opportunity to tour the proposed site for the Texas Compact's low-level radioactive waste disposal facility located near Sierra Blanca, Texas, in Hudspeth County. Transportation to and from the facility was provided by the Texas Low-Level Radioactive Waste Disposal Authority.

Attendance

Ten Forum Participants and Alternate Forum Participants took part in the tour, along with five additional state and compact officials, and one DOE official.

A representative of a radioactive materials users' group and a staff person for a national generators' organization also attended the tour, as did one LLW Forum staff member.

Itinerary

The general tour of the site included visits to:

- the Texas Low-Level Radioactive Waste Authority's field offices located on the Hudspeth County site,
- the exploratory trench being excavated at the site, and
- a closed drainage basin just outside the boundaries of the site.

—HCB

—MAS, ed.
LLW Forum Waste Information Working Group Meets, Recommends Draft Agreement

Presentations and Discussion

The Waste Information Working Group met on September 25 in conjunction with the LLW Forum meeting. During the course of the meeting, members

- heard a presentation by Philip Wheatley of DOE’s National Low-Level Waste Management Program that included an update on the status of the Low-Track system, an update on the Manifest Information Management System (MIMS), and a report on the mobile packaged low-level radioactive waste verification system;

- prepared a draft agreement for presentation to the full LLW Forum concerning uniform application of manifesting policies by states and compacts with regard to the disposal of sealed sources, incineration waste, and decontamination waste; and

- discussed future activities of the working group.

Background: Interregional Access Agreement

In October 1992, LLW Forum Participants drafted the Interregional Access Agreement for Waste Management to establish a nationally uniform approach regarding access to treatment/processing facilities. Under the agreement, authorized representatives of compact commissions and unaffiliated states agree not to impede the return of radioactive waste that originated in their region or state.

At its fall 1992 meeting, the LLW Forum passed a resolution stating, in part, that

the Low-Level Radioactive Waste Forum recommend[s] that compacts and unaffiliated states enter into the interregional access agreement.

To date, seven compacts and seven unaffiliated states—representing a total of 38 states plus the District of Columbia—have signed the interregional access agreement. Others have signed bilateral agreements to accomplish the same goals as the Interregional Access Agreement for Waste Management.

Background: NRC Rule

On March 27, 1995, the NRC issued a final rule entitled “Low-Level Waste Shipment Manifest Information and Reporting.” In most instances, the rule provides a determination as to which entity will be identified as the generator of commercial low-level radioactive waste on the manifest form.

However, the rule affords states and compacts latitude to take an alternative approach in identifying the generator of

- discarded sealed sources,
- waste resulting from incineration, and
- waste resulting from decontamination processes.

As a result, it may not be clear who is responsible for disposing of these waste streams.

Consideration of Draft Agreement by LLW Forum

Working group members have drafted an agreement to address any ambiguities resulting from NRC’s rule and to provide uniform disposal responsibility guidelines for these waste streams. The draft agreement was presented for consideration to the full LLW Forum on September 26. LLW Forum Participants agreed to review the draft agreement prior to the February 1997 LLW Forum meeting.
Attendance

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

- Carol Amick of the Massachusetts Low-Level Radioactive Waste Management Board;
- Virgil Autry of the South Carolina Department of Health and Environmental Control;
- Janice Deshais of the Northeast Compact;
- William Dornsife of the Pennsylvania Department of Environmental Protection;
- Mike Klebe of the Illinois Department of Nuclear Safety (participating via conference call);
- Kevin McCarthy of the Northeast Compact; and
- Marc Tenan of the Appalachian Compact.

Others participating in the meeting were

- Tom Carlisle of the Illinois Department of Nuclear Safety;
- Jack Spath of the New York State Energy Research and Development Authority;
- Philip Wheatley of DOE’s National Low-Level Waste Management Program; and
- Holmes Brown, Todd Lovinger, and M. A. Shaker of the LLW Forum/Afton Associates, Inc.

Observing were

- Terry Sole of the Ohio Low-Level Radioactive Waste Facility Development Authority;
- Sandra Birk of DOE’s National Low-Level Waste Management Program;
- Susan Lee of Change of Heart (Austin);
- Steve Mapley of the U.S. Department of the Army;
- Sherry Meddick of Greenpeace, Inc.; and
- Erin Rogers of Feminists for a Compassionate Society (Austin).

—TDL

For further information, contact Todd Lovinger, Waste Information Working Group Coordinator, at (202)547-2620.
LLW Forum Regulatory Issues Working Group Meets

Presentations and Discussions

The Regulatory Issues Working Group met on September 26 in conjunction with the LLW Forum meeting. During the course of the working group meeting, members

- heard a report from a working group member regarding a pending license application for mixed waste treatment;
- heard a report from working group members on the status of the mixed waste pilot project and efforts to collect data;
- discussed the next steps for the mixed waste pilot project, including the schedule for compilation of data;
- heard a report from an NRC representative on the status and contents of NRC’s branch technical position on performance assessment;
- heard a report from a state staff person on a state perspective on NRC’s branch technical position on performance assessment;
- heard a report from an EPA representative on specific issues associated with the planned Federal Guidance Report 13 and discussed how the report could affect the regulation of radioactive and hazardous wastes;
- heard a report from an NRC representative on the status of the mixed waste testing guidance and the next steps pertaining to an NRC-Agreement State working group recommendation regarding increasing the regulatory oversight of certain licensed devices;
- heard a report from a working group member on a risk-based methodology for radiation programs and discussed the regulatory implications of the methodology; and
- discussed topics of interest for the next working group meeting.

Attendance

Attending the Regulatory Issues Working Group meeting were the following working group members:

- Carol Amick of the Massachusetts Low-Level Radioactive Waste Management Board;
- William Dornsife of the Pennsylvania Department of Environmental Protection;
- Ronald Gingerich of the Connecticut Hazardous Waste Management Service;
- Carl Lischeske of the California Department of Health Services;
- Lee Mathews of the Texas Low-Level Radioactive Waste Disposal Authority;
- Joe Stohr of the Northwest Compact and the Washington Department of Ecology; and
- Don Womeldorf of the Southwestern Compact.

Others participating in the meeting were

- Ruben Alvarado of the Texas Low-Level Radioactive Waste Disposal Authority;
- Jeff Breckel of the Washington Department of Ecology;
- Jack Spath of the New York State Energy Research and Development Authority;
- Randy Wood of the Nebraska Department of Environmental Quality;
- Tim Harris of NRC;
- Jerome Puskin of EPA; and
- Holmes Brown, Laura Scheele, and M. A. Shaker of the LLW Forum/Afton Associates, Inc.

Observing were

- Buddy Alford of Waste Control Specialists;
- Eugene Gleason of Envirocare of Utah, Inc.;
- Lynnette Hendricks of the Nuclear Energy Institute;
- Sherry Meddick of Greenpeace, Inc.; and
- Jim Shaffner of US Ecology, Inc.

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

—LAS
Texas Compact/Texas (continued)

Background: Envirocare of Texas

Envirocare of Texas, Inc. is an affiliate company of Envirocare of Utah, Inc. The company's plans to apply for a treatment and disposal license were announced in a "Statement of Basis and Purpose" released on September 25 and distributed at the Low-Level Radioactive Waste Forum meeting in Austin, Texas.

According to the statement, Envirocare "looked across the country to find the best site to expand its capabilities" before selecting a site in Andrews County—the same county in which Waste Control Specialists, L.L.C. owns a site. (See box.)

Envirocare acknowledged that "Texas state law may currently prohibit" the type of facility that the company was proposing, and the company stated that it would "not seek through technical legal means to escape" any "applicable legal and regulatory requirements."

—CN

See page 14 for related story.

For further information, contact Terry Hadley of the TNRCC at (512)239-5011.

Waste Control Specialists, L.L.C.

Waste Control Specialists (WCS) owns a 16,073-acre tract of land, the majority of which is located in Andrews County, Texas. Within that area, the company has a 1,338-acre facility licensed for landfill disposal under both the Resource Conservation and Recovery Act (RCRA) and the Toxic Substances Control Act (TSCA). The company also has a permit from the TNRCC to process hazardous waste.

In addition, a research, demonstration and development (RD&D) permit application pending with the TNRCC could allow WCS to operate a technology commercialization facility with the Battelle Memorial Institute on the site.

Promotional materials distributed by the company list the following "future capabilities" of the site:

- Treatment and storage of low-level radioactive waste (LLW);
- Disposal of Federal-facility LLW; and
- Disposal of by-product materials including §11c.(2) mine and mill tailings.

WCS has already applied to the Texas Department of Health for a permit to provide treatment and storage for radioactive waste at the facility. Subsequent to receipt of the application, the department wrote to WCS in May and June 1996 requesting additional information. WCS has supplied further documentation, which is currently under review.
DOE's Policy on the Use of Commercial Sites

Under DOE Order 5820, disposal options for DOE's low-level radioactive waste must be considered in the following order of preference:

- disposal at an on-site DOE disposal facility, and
- disposal at an off-site DOE disposal facility.

The DOE Order also contains provisions by which variances to the disposal options could be obtained through an exemption process. The exemption process includes obtaining the approval of DOE headquarters.

In 1993, then-Assistant Secretary Thomas Grumbly authorized DOE's operations offices, field offices and sites to use commercial disposal facilities—without the prior approval of DOE headquarters—for "small quantities of mixed waste on a case-by-case basis" if the disposal meets several criteria. The criteria include DOE's establishing that "the appropriate low-level waste compact or state has no objection to the acceptance of DOE waste at the [commercial] facility" prior to approval of the shipment to the commercial disposal facility.

In an August 8, 1996 letter to Forum Convenor Gregg Larson, DOE Deputy Assistant Secretary Stephen Cowan notified the LLW Forum that DOE is considering whether to authorize DOE's Operations and Field Office Managers to use commercial disposal facilities—without the prior approval of DOE headquarters—for DOE's low-level radioactive waste if the disposal meets several criteria. The criteria include the requirement that DOE consult with host states and compacts before approval of the exemption and notify the host state and host compact prior to shipments being made. Cowan requested comments from the LLW Forum on the proposal.

LLW Forum Resolution

On September 27, the LLW Forum adopted Resolution 96.9.2 regarding DOE use of commercial disposal facilities. The resolution states in part:

- to delegate exemption authority,
- to continue to recognize the authority of compacts to prohibit disposal of the DOE low-level radioactive waste at regional low-level radioactive waste disposal facilities, and
- to establish—prior to approval of shipments—that the host state and (where applicable) the host compact have no objections to the disposal of the DOE low-level radioactive waste at a commercial low-level radioactive waste disposal facility.

Be it also resolved that the LLW Forum encourages the Department to reach agreement with the host state and (where applicable) the host compact regarding requirements for notification of disposal.

(See page 5 for the full text of the motion.)

DOE Position

On October 24, DOE Assistant Secretary Alvin Alm issued a memorandum

- authorizing DOE's Operations and Field Office Managers to use commercial disposal facilities; and
- providing guidance for the decision to use commercial disposal facilities.
Host State TCC Meets in Kentucky

The Host State Technical Coordinating Committee (TCC) met in Covington, Kentucky, on September 23. The meeting was followed by a September 24 tour of the closed Maxey Flats low-level radioactive waste disposal site in Fleming County, Kentucky.

Attendance The TCC meeting and/or the tours were attended by seven state staff persons, one compact staff person, three DOE National Low-Level Waste Management Program staff members, two NRC staff persons, one Nuclear Energy Institute staff person, and two persons from private companies. Laura Scheele, an Afton staff member who serves as the LLW Forum liaison to the TCC, also attended to present a report on LLW Forum activities.

Meeting Program The following items constituted the TCC agenda:

- state highlights and reports;
- agency and organizational reports, including reports from NRC, the National Low-Level Waste Management Program, the Nuclear Energy Institute and the LLW Forum;
- position-sensitive radiation detection monitors;
- an overview of the cost study for various sizes of disposal facilities for New Jersey and the cost study on the comparison between an assured storage facility and a low-level radioactive waste disposal facility for Connecticut; and
- an overview of the closed Maxey Flats low-level radioactive waste disposal site, including a discussion of past operations, the geology, the environmental monitoring, and remediation activities and plans.

Upcoming Meetings The TCC plans to meet again on January 28 in Laughlin, Nevada. The meeting will be followed by a site tour of the planned Ward Valley low-level radioactive waste disposal facility. The TCC also plans to meet on May 19 in Salt Lake City, Utah prior to the 1997 DOE Low-Level Radioactive Waste Management Conference on May 20–22.

—LAS

For further information, contact TCC Moderator Thomas Kerr of DOE’s National Low-Level Waste Management Program at (208)526-8465.

LLW Notes October/November 1996 15
Central Compact/Nebraska

Central Compact Adopts Schedule for Nebraska’s License Review

At a meeting on September 30, the Central Interstate Low-Level Radioactive Waste Commission voted to adopt “a range of dates from December 14, 1996, through January 14, 1997” for the State of Nebraska’s issuance of a draft license decision and related documents for the proposed low-level radioactive waste disposal facility in Boyd County. Specifically, the commission’s resolution calls for the state to “issue the Draft Safety Evaluation Report (DSER) and Draft Environmental Impact Analysis (DEIA) with recommendations and conditions and the Draft License Decision with conditions/justifications so that the technical review will lead towards a public comment period.” The resolution passed by a vote of 4 to 1, with the Commissioner from Nebraska casting the opposing vote.

The commission also approved a motion “that there be a single consolidated public comment period and public hearing process on the draft documents and draft license decision conforming to Nebraska law, previous Nebraska regulations, and similar environmental permits and license applications, federal statutes, regulations, and guidance, and other NRC agreement states’ licensing processes.” This motion passed by a vote of 3 to 2, with the Commissioners from Nebraska and Kansas opposed.

In other action, the commission also voted unanimously “to receive the Draft Findings In The Matter Of A Reasonable Schedule For The LLRW License Review Process (with Draft Alternatives) into the record.” These draft findings resulted from a special meeting of the commission held on August 27, 1996, “for the purpose of receiving comments, evidence, and reports on a reasonable time period for completion of the processing of the pending license application for a LLRW disposal facility.”

Rationale for Adopting a Schedule

The commission’s findings reference language in the compact legislation that directs the commission “to require the appropriate state … to process all applications for permits and licenses required for the development and operation of any regional facility or facilities within a reasonable time period from the time that a completed application is submitted.” While acknowledging that the Nebraska Department of Environmental Quality (NDEQ) “contends that any schedule set by the Commission would interfere with its regulatory responsibility,” the findings state:

[It has become apparent to the Commission that NDEQ’s review of the license application is now resulting in unreasonable delays and increased costs to the project. The Commission therefore finds that it must now exercise its authority to require Nebraska to process the license application in a reasonable period of time, and does so by setting a schedule for the balance of the license review process.

Selection of a Time Range

In the commission’s discussion of an appropriate range of dates for issuance of the licensing documents, it was noted that, in a letter dated July 26, 1995, Low-Level Radioactive Waste Program staff representing both NDEQ and the Nebraska Department of Health (NDOH) expressed the belief that the final review activities would take “approximately one year to complete.”

The commission rejected a deadline of October 1997 that, according to the findings, was presented by NDEQ in August 1996 as the agency’s “most optimistic date” to complete the technical review portion of the licensing process.”
States and Compacts  continued

Background: Previous Action

At a meeting on January 18, 1996, the commission adopted a draft schedule as recommended by the Facility Review Committee on November 15, 1995. That proposal called for issuance of the draft licensing documents in July 1996. At the commission’s meeting on March 27, 1996, a motion was approved to reaffirm the action of the January 18 meeting. However, at the commission’s annual meeting on June 26, 1996, the Commissioners voted to rescind their actions regarding the draft schedule and called for a special meeting to be held in August. The Directors of NDEQ and NDOH were invited to participate in the special meeting, but the state declined.

Background: Licensing Process

The commission’s contractor, US Ecology, submitted an initial license application for the proposed facility in July 1990. After several rounds of interrogatories, the state initiated its final review activities in mid-July 1995 based upon US Ecology’s confirmation that the state had received a complete package of US Ecology’s final responses and application revisions.

For further information, contact Don Rabbe of the Central Interstate Commission at (402)476-8247.

Nebraska Licensing Agency Objects to Compact’s Resolution

In a prepared statement issued on October 1, Randy Wood, Director of the Nebraska Department of Environmental Quality, expressed “outrage” at the Central Interstate Low-Level Radioactive Waste Commission’s “attempt to impose a deadline” on the state’s licensing process.

Wood attributed the lengthiness of the review process to “serious deficiencies” in US Ecology’s license application and to a dispute with the commission concerning disbursement of surcharge rebate funds. (See LLW Notes, June/July 1996, p. 32.)

“We have in good faith done what we can to expedite the license review process without compromising our responsibility to ensure the protection of public health and the environment,” Wood maintained. “It is not acceptable for the Compact to be allowed to set the rules for review of its own license application.”

For further information, contact Carla Felix of the Nebraska Department of Environmental Quality at (402)471-3380.

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Southeast Compact/ North Carolina

Southeast Compact Grants Funds for NC Project

At a called meeting on October 3 in Atlanta, Georgia, the Southeast Compact Commission for Low-Level Radioactive Waste Management voted to provide up to $6.5 million in additional funding for activities of the North Carolina Low-Level Radioactive Waste Management Authority and its contractors.

Richard Hodes, Chair of the Compact, explained in a prepared statement that the compact's action "does not guarantee that the State will get $6.5 million. It establishes a process which would provide funds for continued development of the North Carolina site, if the State is willing to participate in that process."

The funding was approved in two separate motions, the first of which makes available up to $6 million subject to certain conditions, and the second of which grants $500,000 to allow immediate preparations for resumption of contractor work under the Licensing Work Plan for the facility. (See LLW Notes, August/September 1996, p. 9.)

**First Motion**

The commission's first motion authorized release of funds, on a quarterly basis, to the North Carolina Authority to allow it to reach decision point 2 in the Licensing Work Plan. Decision point 2 entails "configuration of facility and buffer zone" and carries an estimated price tag of $6 million. Release of the funds is subject to five conditions. (See box.)

The motion also directed the Commission to work with the Authority to address issues related to site capacity and the additional funding needed to complete the project. Generators and "other parties" are also to be involved in the funding discussions. Both matters are to be resolved no later than completion of decision point 2, which is expected in the spring of 1997.

These conditions and directives are in keeping with recommendations presented to the commission by Southeast Compact generators in August. (See LLW Notes, August/September 1996, pp. 8–9.)

**Second Motion**

The commission's second motion instructed staff to take the following three actions for implementation of the previous motion:

1) notify the N.C. Low-Level Radioactive Waste Management Authority that funds in an amount up to $500,000 will be made available for the Authority to provide an expanded level of detail in the Licensing Work Plan (LWP) and to re-deploy a project team for implementation of the LWP, such funds to be paid out upon receipt of documentation of actual expenditures;

2) organize a Special Meeting of the Monitoring Committee, to be held no later than October 20, 1996, for the purpose of developing a process to certify whether the five conditions in the previous motion have been met by the appropriate entities in North Carolina; and

**Conditions for $6 million**

1) Commitment by the Authority to adhere to a cost and schedule consistent with the Licensing Work Plan.

2) Commitment by the state to provide the necessary resources to support the Licensing Work Plan.

3) Agreement by the Authority to develop detailed information for the Licensing Work Plan schedule.

4) Commitment by the Authority to establish and adhere to periodic reporting requirements.

5) Continued involvement in the Licensing Work Plan of senior management of the Authority and the Division of Radiation Protection, which is reviewing the license application.
3) organize a meeting of the Policy and Planning Committee, representatives of the Authority, Southeast waste generators and other appropriate parties to begin development of approaches and agreements for funding the LW, litigation and construction in North Carolina.

**Monitoring Committee Action**

As provided for in the Southeast Compact Commission’s second motion, the monitoring committee met on October 17 concerning the process for certifying compliance with the funding conditions. At the meeting, which was held in Atlanta, Georgia, member Commissioners heard presentations by John MacMillan, Executive Director of the Authority, and by Steve Levitas, Deputy Secretary of the North Carolina Department of Health and Natural Resources, which includes the Division of Radiation Protection.

Based on recommendations by MacMillan and Levitas, the committee agreed to the following:

- A resolution by the Authority reaffirming its commitment to perform the Licensing Work Plan in accordance with the projected cost and schedule would meet funding condition number one.

- The committee’s Chair will determine whether condition 2 is met by a report to be submitted by Levitas acknowledging that each agency involved in the license review process currently has sufficient resources and is committed to work under the LW.

- Condition 3 will be met by a process under which the Authority will provide quarterly funding requests and detailed projections of upcoming activities and related costs in advance of each quarter, as well as detailed progress reports for the periods covered by prior projections.

- Condition 4 will be met by the process agreed upon for condition 3 and by the Authority’s adoption of a resolution committing to inform the commission immediately upon the determination of any disqualifying feature at the North Carolina site.

- Condition 5 will be met by a statement that the Inter-Agency Committee on Low-Level Radioactive Waste will meet at least bimonthly. This statement is to be included in the cover letter of the report submitted to meet condition 2.

**Next Steps**

The Authority is scheduled to meet on November 14 to consider a draft resolution designed to address conditions 1 and 4. Work could resume under the Licensing Work Plan in January 1997 if the compact commission receives the Authority’s resolution, the report from Levitas, and a quarterly funding request and projection by early December.

**Funding Availability and Requirements**

The commission specified at its October 3 meeting that release of funds for work beyond decision point 2 would be in accordance with funding agreements to be developed with the Authority, generators, and other parties.

Currently, the commission has approximately $22 million in funds that have not been reserved for other purposes and could potentially be used to support further facility development. Costs for completion of the licensing work plan were originally estimated at $27 million, before delays due to funding problems. Construction of the facility is estimated to cost an additional $40-60 million.

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

Some of the preceding information was distributed to Forum Participants and Alternate Forum Participants, Federal Liaisons and Alternates via facsimile transmission in a News Flash dated October 8, 1996.
Northeast Compact/Connecticut/New Jersey

**Governor Appoints New Head of Connecticut Hazardous Waste Management Service**

Effective October 1, Connecticut Governor John Rowland appointed R. Christopher Blake as Chair/Executive Officer of the Connecticut Hazardous Waste Management Service (CHWMS). Blake replaces Domenic Forcella, who left in October 1995. (See LLW Notes, October 1995, p. 19.)

Blake’s responsibilities will include overseeing the work of the 11-person Board of Directors and the day-to-day operations of the 18-person agency.

“This agency offers unique opportunities to bridge public concerns and business needs ... I look forward to working with the very professional people here at CHWMS to plan and promote appropriate management of the hazardous and low-level radioactive waste streams in Connecticut,” said Blake in a prepared statement. He also noted that “secure access to low-level radioactive waste disposal capacity is a very important factor in Connecticut’s economic vitality.”

Prior to his appointment, Blake was a partner in the law firm of Guion, Stevens & Rybak. Before entering private practice, he managed the Prosecutorial Unit at the Department of Public Utilities Control in New Britain, Connecticut. He continues to serve as a lawyer with the U.S. Naval Reserve, Judge Advocate General Corps.

—JMC

For further information, contact Anita Baxter of CHWMS at (860)244-2007.

South Carolina

**South Carolina State Employees Receive Award**

On August 22, Douglas Bryant, Commissioner of the South Carolina Department of Health and Environmental Control (DHEC), presented an Outstanding Customer Service Award to DHEC’s Division of Radioactive Waste Management. The award was presented to the Division for its work in “providing a team of health physicists for the development of standards, technical assistance as requested by EPA, and overseeing the radiological decommissioning and closure of the Charleston Naval Shipyard.”

DHEC praised the division’s handling of the job, stating:

Due to your extraordinary team efforts and personal sacrifices, this facility was safely decommissioned from a public health standpoint and turned over to civilian control for unrestricted use well ahead of schedule. Your permitting achievements have been noticed by the regulated community you serve for your timeliness, professionalism, kindness, and the extra efforts taken by staff members.

Virgil Autry, Director of the Division of Radioactive Waste Management, accepted the award on behalf of the Division. Each staff member also received an individual award.

—LAS

For further information, contact Virgil Autry of the South Carolina Department of Health and Environmental Control at (803)896-4244.
States and Compacts

Texas Compact/Maine

Robert Demkowicz and Mary Grow received engraved clocks and letters of appreciation for their service to the Advisory Commission on Radioactive Waste (ACORW) at a July 17 meeting in Augusta, Maine. Demkowicz—who served as the Forum Participant for Maine before the state joined the Texas Compact—was an environmental specialist for ACORW and continues to work for the Maine Department of Environmental Protection. (See LLW Notes, July 1995, p. 8.)

Mary Grow worked as a part-time media specialist for ACORW. She currently is a librarian and also under contract assisting the Office of the Public Advocate in producing public information materials.

Federal Agencies and Committees

U.S. Department of Energy (DOE)

In an October 16 Federal Register notice, DOE’s Office of Health Studies announced its continuing interest in receiving applications for grants and cooperative agreements to support studies to identify and assess the health effects and health risks associated with occupational or environmental exposures to ionizing radiation or toxic chemicals for specified populations. The specified populations are

- DOE employees and DOE contractors, particularly those at high risk due to exposure to ionizing radiation or toxic chemicals;
- residents of communities near DOE facilities; and
- populations throughout the world at high risk due to exposure to ionizing radiation or toxic chemicals resulting from accidental exposures or proximity to nuclear or other energy-related facilities.

DOE’s Office of Health Studies is located within the Office of Environment, Safety and Health. The Federal Register notice states that deadlines for applications will be contained in future Federal Register notices that will address specific program areas to be funded in fiscal year 1997. Available funding varies according to which office within DOE’s Office of Health Studies executes the grant or cooperative agreement.

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

On October 9, NRC announced that the NRC Commissioners have appointed George Hornberger to NRC’s Advisory Committee on Nuclear Waste. Hornberger has been a professor of environmental sciences at the University of Virginia since 1970. He has served as a visiting professor at both Stanford University and the U.S. Geological Survey and is a member of the Geological Society of American and the American Geophysical Union. Hornberger received his bachelor’s and master’s degrees from Drexel University and his doctorate from Stanford University.

The ACNW was established in 1988 to advise the NRC Commissioners on nuclear waste management issues, as directed by the NRC Commissioners. Other ACNW members are John Garrick, William Hinze and Paul Pomeroy (Chair).
Central Compact/Nebraska (continued)

State Attorney Protests August 27 Proceeding

On September 27, counsel for the State of Nebraska sent a letter to James O’Connell, Chair of the Central Commission, which expresses the state’s objection to the August 27 meeting. The state requested that O’Connell distribute its letter to all Commissioners for consideration prior to their taking any action on pending decisions.

According to the letter, the state objects to the process “insofar as it purports to be a ‘hearing’ or some type of quasi-judicial function to establish a reasonable schedule, and an attempt to enforce it against the State of Nebraska.” The state makes the following allegations in support of its objection:

- The compact is not authorized by any federal or state statute or regulation to establish a technical review or public participation schedule for the state licensing agency.

- Documents and statements made at the “hearing” challenge Nebraska’s good faith, violating the spirit and letter of the settlement agreement in the prior rebate litigation between the state and the compact. (See LLW Notes, June/July 1996, p. 32.)

- The “hearing” is unauthorized and improper for several technical reasons, including lack of notice, rules, and the inclusion of improper testimony and exhibits.

- The proceeding constitutes a distraction to the regulatory agencies which interferes with their limited time and resources.

- It is inappropriate for the commission to demand that regulators disclose and explain details of a license application review in a “hearing.” Such matters are internal and should be carried out without outside influence and without the appearance of impropriety.

- The commission should be stopped from retroactively attempting to impose a new schedule.

The letter concludes by urging the commission to direct its staff to work with the State of Nebraska and allow the licensing agencies to proceed with processing the license application as expeditiously as their resources will allow.

—TDL
Surcharge Rebates Still at Issue

Initial rulings have been issued by courts in all of the jurisdictions in which states and compacts have sued U.S. Secretary of Energy Hazel O'Leary over the distribution of low-level radioactive waste surcharge rebates. However, of the five lawsuits filed over the issue—two by the Central Midwest Compact and one each by the Appalachian Compact, the Midwest Compact and the Commonwealth of Massachusetts—two remain at issue, including the most recent suit by the Central Midwest Compact and the appeal of a lower court's decision in a suit filed by the Appalachian Compact.

Central Midwest Compact

The Central Midwest Interstate Low-Level Radioactive Waste Commission filed a notice of appeal to the U.S. Court of Appeals for the Seventh Circuit on October 22 in its most recent lawsuit concerning distribution of the rebates. At issue in the litigation is whether the Central Midwest 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 appeal challenges an August 30 decision by the U.S. District Court for the Central District of Illinois which upholds Secretary O'Leary's position that generators, not the commission, are entitled to rebate payments for this period. (See LLW Notes, August/September 1996, pp. 14-15.)

Appalachian Compact

The Appalachian States Low-Level Radioactive Waste Commission, which won its lawsuit at the district court level but subsequently saw the decision overturned on appeal, filed a petition for rehearing on October 3. Although the initial suit sought payment of all surcharge fees that were collected from generators of low-level radioactive waste in the Appalachian region from 1990 to 1992, the petition for rehearing only addresses surcharge fees collected during the last six months of that period. (See related story, this issue.)

Midwest Compact

On May 28, the U.S. District Court for the District of Minnesota, Fourth Division, granted summary judgment in favor of Secretary O'Leary in the suit filed against her by the Midwest Interstate Low-Level Radioactive Waste Commission. (See LLW Notes, June/July 1996, pp. 29-31.) The Midwest Commission had been seeking a return of surcharge fees for the six-month period from July 1, 1995, through December 31, 1995. The commission had argued that the situation that existed during this six-month period was the legal and functional equivalent of the situation that existed during the 18-month period for which DOE had determined states and compacts to be eligible to receive rebates if they had a valid contract for access to the Barnwell facility.

On August 12, the Midwest Commission filed its brief on appeal. A responding brief was filed on behalf of Secretary O'Leary on October 2. However, on October 21, the parties filed a stipulation with the court agreeing to dismiss the appeal, with each party agreeing to bear its own costs and fees.

Commonwealth of Massachusetts

The U.S. District Court for the District of Massachusetts granted summary judgment for Secretary O'Leary on March 29 in the lawsuit filed against her by the Attorney General of the Commonwealth of Massachusetts on behalf of the Low-Level Radioactive Waste Management Board. (See LLW Notes, April 1996, pp. 10-11.) The suit had sought payment (with interest) of all surcharge funds collected from generators in Massachusetts during the period from January 1, 1990, through December 31, 1992. Because DOE had won various other suits on this issue, elsewhere in the country, Massachusetts decided not to appeal the court's decision.

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

Appalachian Commission Petitions for Rebates Rehearing

On October 3, the Appalachian States Low-Level Radioactive Waste Commission filed in the U.S. Court of Appeals for the Third Circuit a petition for rehearing of a portion of that court’s decision in a case contesting the distribution of surcharge rebates by Department of Energy Secretary Hazel O'Leary. The petition argues that the appellate court failed to consider the impact of the reopening of the low-level radioactive waste disposal facility at Barnwell, South Carolina, to Appalachian region generators and asks that the court remand the matter to the U.S. District Court for the Middle District of Pennsylvania for consideration. O'Leary filed an answer to the petition on October 22.

Background

The Appalachian Commission initially filed suit on June 30, 1994, seeking payment of all surcharge fees in escrow that were collected from generators of low-level radioactive waste in the Appalachian region from 1990 through 1992. (See LLW Notes, August/September 1994, p. 15.) The U.S. District Court for the Middle District of Pennsylvania granted summary judgment in favor of the commission on May 22, 1995. (See LLW Notes, June 1995, p. 16.) The Department of Energy, however, appealed the district court’s decision, and on August 20, 1996, the U.S. Court of Appeals for the Third Circuit reversed the lower court’s decision, remanding the case to the district court with instructions to enter judgment in favor of the Secretary. (See LLW Notes, August/September 1996, pp. 14–15.)

Petition for Rehearing

In its petition, the Appalachian Commission points out that the reopening of the Barnwell facility to out-of-region waste in July 1995 occurred after the district court entered summary judgment for the commission but six months before the end of the three-year period during which surcharge rebates were measured. The commission further notes that on July 27, 1995, it amended its low-level radioactive waste export policy to authorize and encourage disposal at Barnwell of low-level radioactive waste from the Appalachian region. Accordingly, the commission argues that from July through December 1995 it was able to “provide for disposal” of all Appalachian region low-level radioactive waste and that it therefore met the Secretary’s stated conditions for return of the rebates during this period.

The commission notes that the parties did not anticipate, and could not have anticipated, the reopening of the Barnwell facility. The commission’s entitlement to a pro rata share of the escrowed surcharges for the remainder of the three-year period was therefore not argued by the parties or presented to the district court. The commission raised the issue at the appellate court level, asking that the court remand the matter to the district court for consideration of this new fact. The commission believes, however, that the appellate court overlooked the issue.

Answer to the Petition

The Department of Energy, in its answer to the petition for rehearing, recognizes that “[o]rdinarily, issues such as this would be raised and resolved in the district court in the first instance.” However, DOE points out that the appellate court has the discretion to resolve an issue for the first time on appeal and argues that there are strong reasons for so doing in this case. For instance, DOE asserts that prompt resolution of the issue would further Congress’ interest in avoiding delay in payment of the surcharge rebates. DOE also argues that the appellate court is well positioned to resolve the additional issue identified by the commission.

In response to the commission’s contention that it is entitled to an additional one-sixth of the rebate funds, DOE states that no court has accepted the position now asserted by the Appalachian Compact and cites such countervailing court opinions in litigation initiated by the Central Midwest and the Midwest Comacts. DOE further argues that the most natural reading of the phrase “provide for” suggests that some meaningful affirmative action must be taken by the commission to qualify for a rebate. DOE also contends the commission’s position contradicts the Low-Level Radioactive Waste Policy Act’s purpose in that providing rebates to the Appalachian Commission for merely authorizing and encouraging the use of Barnwell does not encourage development of new low-level radioactive waste disposal facilities. DOE thus argues that the commission’s petition for rehearing should be denied.

—TDL
Stilp v. Knoll

Appalachian Commission Appeals Denial of Intervenor Status to Higher Court

On September 19, the Appalachian States Low-Level Radioactive Waste Commission filed a petition for reconsideration by the Commonwealth Court of Pennsylvania of its decision to deny the commission intervenor status in Stilp v. Knoll—a lawsuit challenging the Commonwealth of Pennsylvania’s Act 12 of 1988, known as the Low-Level Radioactive Waste Regional Disposal Facility Act. The commission had been denied intervenor status at a September 5 hearing on the grounds that the Pennsylvania Attorney General is best suited to defend the constitutionality of the commonwealth’s laws and adequately represents the interests of the commission. (See LLW Notes, August/September 1996, pp. 16-17.)

The commonwealth court denied the petition for reconsideration on October 2. The court also denied a request from the Appalachian Commission to certify the petition to the State Supreme Court for review.

On October 30, the Appalachian Commission filed a petition for review directly with the State Supreme Court. As of press time, no further action has been taken.

—TDL

Background: Stilp v. Knoll

Petitioners Gene Stilp, Eric Epstein, Thomas Linzey—three individuals who are officers of Stop the Illegal Low-Level Program in Pennsylvania, Inc.

Respondents Commonwealth of Pennsylvania, Pennsylvania Governor Thomas Ridge, and Pennsylvania Treasurer Katherine Baker Knoll

The petitioners 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. They are asking the court to declare Act 12 to be unconstitutionally enacted and to enjoin the respondents from enforcing any provisions of the act or making any expenditure under its authority. (See LLW Notes, May 1996, pp. 18–19.)

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 have asked the court to dismiss the complaint. (See LLW Notes, August/September 1996, pp. 16-17.)
Clinton Administration Will Not Challenge Spent Fuel Decision

On October 22, 1996, the U.S. Department of Energy announced that it will not challenge a recent ruling by the U.S. Court of Appeals in Washington, D.C., which requires it to commence accepting spent fuel from nuclear utilities on or before January 31, 1998. It is unclear, however, how the department intends to comply with the court’s directive given that a decision on the suitability of the proposed temporary waste storage facility at Yucca Mountain, Nevada, is not scheduled to be made until 1998.

The Lawsuit

In 1995, several nuclear utilities, states, and state agencies filed suit against DOE seeking a court declaration that the Nuclear Waste Policy Act of 1982 requires DOE to begin accepting spent fuel from utilities on or before January 31, 1998. DOE took the position that, given the absence of a repository or interim storage facility, the department was not statutorily or contractually obligated to accept the spent fuel. The U.S. Court of Appeals for the District of Columbia Circuit, however, disagreed. On July 23, 1996, a three-judge panel of the court ruled that DOE has a statutory obligation to take spent nuclear fuel from the nation’s 109 commercial reactors no later than January 31, 1998.

Proposed Facility

For years the federal government has been studying Yucca Mountain as a possible site for high-level radioactive waste disposal. Nonetheless, a permanent disposal facility is not expected to be available until 2010 at the earliest.

Senate Action

Frustration over the time-consuming process led some members of Congress to introduce legislation earlier this year that would allow for construction of an interim high-level waste storage facility at Yucca Mountain. The bill, S. 1936—known as the Nuclear Waste Policy Act of 1996—passed the Senate on July 31 by a vote of 63 to 37. The final tally was four votes shy of the two-thirds majority needed to override a threatened Presidential veto. (See LLW Notes, August/September 1996, p. 37.) The House did not vote on the bill prior to Congress’ adjournment.

—TDL
Oregon Supreme Court Hands Down Important Decision re Applicability of Pollution Exclusion Clauses in Insurance Policies

The Oregon Supreme Court recently handed down a unanimous decision requiring a group of St. Paul insurance companies to pay for pollution cleanup despite a pollution exclusion clause in their policies. The decision is significant to persons in the waste management field in that it may further impact the availability of insurance for waste disposal facilities.

The case involves a $2 million claim by McCormick and Baxter Creosoting Company for cleanup costs related to its wood treatment operations in Stockton, California, and in Portland, Oregon. The pollution occurred as the result of the leakage of toxins into the subsurface and ground water from uncovered pits used to store waste in accordance with industry standards. Coverage was denied by the insurers—St. Paul Fire and Marine Insurance Company and St. Paul Mercury Insurance Company—because the policies contained language excluding liability for pollution unless it was “sudden and accidental.” The insured challenged in court the insurers’ decision to deny coverage.

The trial and appeals courts ruled in favor of the insurers, but the Oregon Supreme Court reversed those decisions. According to the court, “sudden and accidental” pollution includes contamination that is “unexpected and unintended” without any time limitation. The court found that the pollution exclusion clause was ambiguous and that the history of the drafting of the clause did not support the insurers’ claim that the clause was meant to bar coverage for cleanup in this instance. The court held that the word ‘sudden’ “may have, but need not always have, a temporal element.”

RAMP Industries Ordered to Pay Fines and Fees re Site Abandonment

In September 1996, the District Court for the City and County of Denver ordered RAMP Industries, Inc. and Daniel Caulk, its President, to pay the Colorado Department of Public Health and Environment $6,224,491 in total penalties and fees for permit and license violations at, and abandonment of, two hazardous and radioactive waste sites in Denver, Colorado, that the company owned and operated. RAMP had used the sites for the receipt, storage and processing of hazardous materials, low-level radioactive materials, and mixtures of the two prior to shipment for ultimate disposal.

EPA had seized control of the sites in an emergency action on August 31, 1994, after learning that the company’s only on-site employee was resigning, effectively leaving the sites unattended and abandoned. At the time, the RAMP sites contained over 4,500 drums of hazardous and radioactive materials. Prior to seizure of the property, RAMP had a long history of noncompliance with state and federal regulations.

EPA is currently in the process of cleaning up the sites. Approximately 3,000 drums and much debris and equipment have been shipped from one site. At the other site, the soil surface and the building’s interior have been cleaned up by the property owner with oversight by both EPA and the Colorado Department of Public Health and Environment.

—TDL
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<td>Appalachian States Low-Level Radioactive Waste Commission v. O'Leary</td>
<td>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.</td>
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<td>Central Midwest Interstate Low-Level Radioactive Waste Commission v. O'Leary</td>
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<td>Santini v. Connecticut Hazardous Waste Management Service</td>
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<td>Connecticut Superior Court, Judicial District of Hartford/New Britain at Hartford</td>
<td>October 30, 1996</td>
<td>Commission filed a petition for review by the Supreme Court of the Commonwealth of Pennsylvania.</td>
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<td>September 12 and 16, 1996</td>
<td>Oral arguments were held on motions for summary judgment.</td>
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<td><strong>Cohn v. Connecticut Hazardous Waste Management Service</strong> (See LLW Notes, April 1994, p. 25.)</td>
<td>Claims that the service’s selection process resulted in a taking of private property without due process and just compensation.</td>
<td>Connecticut Superior Court, Judicial District of Hartford/New Britain at Hartford</td>
<td>September 12 and 16, 1996</td>
<td>Oral arguments were held on motions for summary judgment.</td>
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<td><strong>Indiana Michigan Power Company v. U.S. Department of Energy</strong> (See related story, this issue.)</td>
<td>Seeks a court declaration that DOE is required by law to begin accepting spent fuel from utilities on or before January 31, 1998.</td>
<td>U.S. Court of Appeals for the District of Columbia Circuit</td>
<td>July 23, 1996</td>
<td>A three-judge panel ruled DOE has a statutory obligation to accept spent fuel. DOE announced it will not challenge the July 23 decision.</td>
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<td><strong>McCormick and Baxter Creosoting Company v. St. Paul Fire and Marine Insurance Company</strong> (See story, this issue.)</td>
<td>Challenges insurers decision to deny coverage for cleanup from waste leakage due to pollution exclusion clause.</td>
<td>Oregon Supreme Court</td>
<td>September 1996</td>
<td>Decision handed down by the court that requires insurers to pay for cleanup despite pollution exclusion clause.</td>
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<td><strong>Colorado Department of Public Health and Environment v. RAMP Industries, Inc.</strong> (See related story, this issue.)</td>
<td>Involves permit and license violations at, and abandonment of, two hazardous and radioactive waste sites.</td>
<td>District Court for the City and County of Denver</td>
<td>September 1996</td>
<td>District court ordered defendants to pay penalties and fees.</td>
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<td>October 2, 1996</td>
<td>Commonwealth Court denied petition for reconsideration.</td>
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<td>October 30, 1996</td>
<td>Commission filed a petition for review with State Supreme Court.</td>
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In a September 23 Federal Register notice, NRC outlined the agency's planned approach to its nuclear power reactor licensees as the electric utility industry moves toward economic deregulation. NRC is seeking public comments until December 9 on the planned approach. NRC issued the draft statement to clarify how the agency will respond to any changes in either licensee activities or external factors that could affect the ability of individual licensees to safely operate and decommission NRC-licensed nuclear power reactors.

Planned NRC Actions

The Federal Register notice states that NRC will

- continue to conduct its financial qualifications, decommissioning funding and antitrust reviews as described in the Standard Review Plans being developed in concert with this policy statement;
- identify all owners, indirect as well as direct, of nuclear power plants;
- establish and maintain staff-level working relationships with State and Federal rate regulators;
- evaluate the relative responsibilities of power plant co-owners/co-licensees; and
- evaluate its regulations for their adequacy to address changes resulting from rate deregulation.

Issues Related to Restructuring

The following excerpts from the Federal Register notice outline NRC's planned approach to several issues related to electric utility restructuring.

NRC Responsibilities vis-a-vis State and Federal Economic Regulators

The NRC has recognized the primary role that State and Federal economic regulators serve in setting rates that include appropriate levels of funding for safe operation and decommissioning ... In order for the NRC to make its safety views known and to encourage rate regulators to continue their practice of allowing adequate expenditures for nuclear plant safety as electric utilities face deregulation, the NRC intends to take a number of actions to increase cooperation with State and Federal rate and financial regulators to promote dialogue and minimize the possibility of rate deregulation or other actions that would have an adverse safety impact.

Co-Owner Division of Responsibility

Many of the NRC's power reactors own their plants jointly with other, non-related organizations. Although some co-owners may be only authorized to possess the nuclear facility and its nuclear material, and not to operate it, the NRC views all co-owners as co-licensees who are responsible for complying with the terms of their licenses ... The NRC is evaluating courses of action to ensure that operating and decommissioning costs are paid by owners.
Financial Qualifications Review

The NRC believes that the existing regulatory framework ... is generally sufficient at this time to provide reasonable assurance of the financial qualifications of both electric utility and non-electric utility applicants and licensees under the various ownership arrangements of which the staff is currently aware ... However, the NRC is evaluating the need to develop additional requirements to ensure against potential dilution of capability for safe operation and decommissioning that could arise from rate deregulation and restructuring ... The NRC intends to review [license] transfers to determine their potential impact on the licensee's ability both to maintain adequate technical qualifications and organizational control and authority over the facility and to provide adequate funds for safe operation and decommissioning.

Decommissioning Funding Assurance Compliance Reviews

The NRC believes that the existing decommissioning funding assurance provisions ... generally provide an adequate regulatory basis for new licensees to provide reasonable assurance of decommissioning funds. However, to address this and other issues related to decommissioning funding assurance in anticipation of rate deregulation, the NRC published an advance notice of proposed rulemaking ...

[See LLW Notes, April 1996, p. 9.]

Antitrust Reviews

The NRC must be able to accurately identify all owners of its licensees to meaningfully assess whether there have been “significant changes” since the licensing reviews ... The regulatory review addressing transfer to control of licenses ... will be used to determine whether new owners or operators will be subject to an NRC significant change review with respect to antitrust matters.

—LAS

For further information, contact Robert Wood of NRC's Office of Nuclear Reactor Regulation at (301)415-1255 or rsu1@nrc.gov. See also “New Materials and Publications.”
Federal Recycle/Reuse Rulemakings

NRC and EPA Discuss Scope of Recycle/Reuse Rule

NRC Staff Describe Scope

In a paper dated September 13, NRC staff informed the NRC Commissioners that the scope of the EPA recycle/reuse rulemaking on the recycling and/or reuse of radioactive scrap metal has changed since August 1994, when the NRC staff prepared a rulemaking plan. (See LLW Notes, Nov./Dec. 1994, p. 33.) The memo states:

In 1994, when the [NRC] Commission was informed of the action plan for this rulemaking, the EPA was considering a rule limited to restricted recycle for nuclear purposes (e.g., shielding, waste containers). Apparently, their thinking has evolved to considering only a rulemaking for clearance. Clearance is the internationally accepted term for release from jurisdiction of a regulatory authority—or unrestricted release. Clearance does not include restricted recycle by definition. At present, based on statements by EPA management at meetings of the ISCORS [Interagency Steering Committee on Radiation Standards], co-chaired by NRC and EPA, it appears that EPA intends to promulgate by its authority under the Atomic Energy Act (AEA) a generally applicable rule to address scrap metals for clearance. (emphasis in original)

The paper concludes that the change in scope could affect details of NRC’s rulemaking plan, but the change should not cause significant problems in NRC’s implementation of the plan.

EPA Staff Describe Scope

According to EPA staff, promulgating a clearance rule for scrap metal—not a restricted recycling rule—was identified as a goal several years ago. Furthermore, EPA staff say that a restricted recycling rule is not within EPA’s regulatory authority. Both EPA and NRC agreed to prioritize the rulemakings on decommissioning over a recycle/reuse rulemaking, particularly since the decommissioning rule could affect the volume of scrap metal that would be either disposed of or recycled/reused under a recycle/reuse regulation.

EPA/NRC Authorities under the Atomic Energy Act

Under the Atomic Energy Act, EPA has the authority to develop “generally applicable standards for protection of the general environment.” NRC is required under the Atomic Energy Act to implement any generally applicable standards established by EPA by setting consistent regulations for NRC licensees. Typically, EPA reviews the NRC regulations to determine whether the regulations are sufficiently protective. If EPA makes a positive determination, then EPA will exempt NRC and Agreement State licensees from compliance with the EPA standard to avoid dual EPA/NRC regulation.

—LAS

For further information on EPA’s recycle/reuse rulemaking, contact Reid Harvey or John MacKinney at EPA’s Office of Radiation and Indoor Air at (202)233-9429 and (202)233-9487, respectively. See also “New Materials and Publications.”
Federal Recycle/Reuse Rulemakings

DOE to Pursue Recycling of Contaminated Metals

In a September 20 memo, DOE Assistant Secretary Alvin AIm issued a policy statement in support of the recycling and reuse of radioactive scrap metal. The memo states:

Effective immediately, it is the policy of the Office of Environmental Management (EM) that, to the degree that it is economically advantageous and protective of worker and public health, radioactively contaminated carbon steel (RCCS) either in storage or to be generated shall be recycled...

Specifically, the policy for radioactively contaminated materials, including RCCS, generated by the EM Program, shall be: survey, decontaminate as necessary and appropriate (in compliance with DOE Orders), and release for unrestricted use any material that meets the applicable criteria. If decontamination for release for unrestricted use is not economically feasible, then the RCCS that is recycled shall be fabricated into one-time-use containers for disposal of low-level wastes generated by the EM Program, consistent with the attached radiological guidance.

The policy will be in effect for three years—until September 1999—and then will be reevaluated in light of the program’s efficacy. If EPA promulgates a recycle/reuse rule, DOE’s policy will be required to comply with the rule. DOE has consulted extensively with EPA and other stakeholders in developing this policy; however, EPA has not officially endorsed the new policy.

DOE Management of Radioactive Scrap Metal

DOE’s Office of Environmental Management previously managed radioactive scrap metal in one of three ways:

- released metals that meet existing release criteria under DOE Order 5400.5 (see related story, p. 34);
- packaged the contaminated metal as low-level radioactive waste and disposed of it in a low-level radioactive waste disposal facility; or
- stored the contaminated metal pending availability of funding for disposing of it in a low-level radioactive waste disposal facility or future recycling options.

As DOE facilities are decommissioned and remediated, hundreds of thousands of tons of radioactive scrap metal will be generated. DOE is pursuing the recycling and reuse of the radioactive scrap metal in order to minimize the volume of low-level radioactive waste requiring disposal, and thus reduce the costs associated with disposal and preserve disposal capacity.

To assist DOE staff in formulating a recycling/reuse policy, DOE held two workshops in 1994 and 1995 to identify and address concerns associated with establishing a recycling policy.

For further information, see “New Materials and Publications.”
Federal Recycle/Reuse Rulemakings

Radioactive Scrap Metal

The most common radioactive scrap metals are carbon steel, stainless steel, nickel, copper and aluminum. Precious metals are not considered scrap metal. The three largest generators of radioactive scrap metal are DOE, the nuclear power industry, and the oil and gas industries. The most common radionuclides found in radioactive scrap metals are Technetium 99, Cobalt 60, Uranium 235 and Uranium 238 due to the processes by which most of the radioactive scrap metal is generated.

DOE has approximately 1.3 million tons of carbon steel and stainless steel and 38,000 tons of copper stockpiled as radioactive scrap metal. Approximately 70 percent of the stockpile has not been surveyed or characterized, so the amount of radioactive contamination is unknown. The amount of radioactive scrap metal projected to be generated from the decommissioning of commercial nuclear power plants and from DOE facilities is unknown due to current uncertainties regarding options for decommissioning. The radioactive scrap metal generated by oil and gas drilling is contaminated with NORM. EPA does not plan at this time to address NORM-contaminated metals in the recycle/reuse rulemaking.

Current Criteria for Recycling/Reuse

National Criteria

Although explicit radiological criteria for the recycling/reuse of radioactive scrap metal do not exist, scrap metals from nuclear facilities are being released today. The recycling/reuse of radioactive scrap metal is determined on a case-by-case basis using the following guidance and practices:

- the general guidance contained in NRC's Regulatory Guide 1.86—Termination of Operating Licenses for Nuclear Reactors—or in DOE Order 5400.5—Radiation Protection of the Public and the Environment; and
- site-specific technical specifications and license conditions.

According to NRC's 1994 staff plan for recycle/reuse, NRC staff reviews requests to recycle/reuse commercial radioactive scrap metal "on a case-by-case basis with the general objective of ensuring individual doses to workers and members of the public would remain a small fraction of the public dose limit in 10 CFR Part 20 (e.g., no more than a few millirem/year dose to the average member of the Critical Population Group) and collective doses that are suitably small and As Low As Reasonably Achievable."

Regulatory Guide 1.86 and DOE Order 5400.5 contain radiological criteria that can be applied to contamination present on the surface of radioactive scrap metal. However, there is no risk basis for these radiological criteria with respect to the recycling of scrap metals.

No criteria exist for the release of radioactive scrap metals with residual contaminants that are dispersed in the mass of the metal rather than on the surface. As noted, such radioactive scrap metals can be released currently on a case-by-case basis with the approval of either NRC for commercial radioactive scrap metal or DOE for DOE's radioactive scrap metal.
International Atomic Energy Agency (IAEA) Criteria IAEA Safety Series Number 89—Principles for the Exemption of Radiation Sources and Practices from Regulatory Control—contains the accepted trivial individual dose level of 10 microsieverts per year (one millirem/year) per practice. The trivial individual dose is the level of dose that "should not be of any concern for the individual or the regulator." As a reference, the principles state, "The natural background radiation has been estimated to give, as an average, an individual dose of about 2 [millisieverts] per year [200 millirem/year]."

In January 1996, IAEA published Clearance Levels for Radionuclides in Solid Materials: Application of Exemption Principles (TECDOC-855) as an interim report for comment. The interim report provides radiological criteria—by radionuclide—for unrestricted release of materials. The criteria conform to the accepted trivial individual dose level and are intended to become international guidance within three years. IAEA guidance does not establish regulatory criteria or requirements, but is intended as a recommendation for IAEA member states.

Options for Recycling/Reuse

Broadly speaking, there are three main options for the recycling/reuse of radioactive scrap metal:

- disposing of all applicable radioactive scrap metal as low-level radioactive waste;
- conducting restricted recycling/reuse of radioactive scrap metal—such as DOE recycling radioactive scrap metal into containers for low-level radioactive waste disposal (being done now); and
- releasing scrap metal for unrestricted recycling/reuse—such as recycling radioactive scrap metal into industrial goods and consumer products (being done now).

EPA has not yet determined the level of protection—or the procedures necessary—to protect public health. EPA plans to conduct a series of meetings with stakeholders to discuss issues associated with recycling/reuse over the next several months. Technical work on the rule, including the development of risk assessments, is ongoing and is projected to be completed in winter of 1997. EPA's goal is to publish a proposed rule in 1997 and to finalize the rule in 1998.

—LAS
**New Materials and Publications**

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**LLW Forum**

- **Letter from Deputy Interior Secretary John Garamendi to Gregg Larson, LLW Forum Convenor,** responding to LLW Forum Resolution 96.9.1 concerning the transfer of federal land in Ward Valley, California. October 17, 1996. (Distributed on October 29, 1996.)

- **Memorandum from Carl Lischeske, Manager of the California Department of Health Services' Low-Level Radioactive Waste Program, to Forum Participants regarding Garamendi’s letter.** October 28, 1996. (Distributed on October 29, 1996.)

- **Letter from Teresa Hay, Chair, Midwest Interstate Low-Level Radioactive Waste Commission, to Bruce Babbitt, Secretary, U.S. Department of the Interior, addressing Garamendi’s letter and Interior’s position on the land transfer.** November 1, 1996.

**States and Compacts**

### Appalachian Compact/Pennsylvania

“Any Volunteers? Should Your Township Volunteer to Host Pa.’s Low-Level Radioactive Waste Disposal Facility?” *Pennsylvania Township News.* September 1996. Magazine examines the volunteer approach known as the Community Partnering Plan, how the facility will be designed, why the state is looking for a site, what low-level radioactive waste consists of and who generates it, what the proponents and critics of the facility and siting process are saying, what the benefits and risks of hosting the facility are, and how the Pennsylvania State Association of Township Supervisors can help interested townships explore the possibility of hosting the facility. To order a copy, contact Ginni Linn of the Pennsylvania Township News at (717)763-0930. Copies cost $5.00 which includes the shipping and handling.

### Central Compact/Nebraska

Midwest Compact/Ohio


Federal Agencies

Department of Energy (DOE)

Commercially Available DOE's National Low-Level Waste Management Program, Idaho National Engineering Laboratory (INEL). October 1996. Discusses what low-level radioactive waste and mixed waste streams exist in the commercial sector, the current commercially available treatments for those wastes, technical information regarding those specific treatments, and vendors that are currently available to provide a service to treat waste. To obtain a copy, contact Donna Lake of INEL at (208)526-6927.

Memorandum from Alvin Alm, Assistant Secretary for Environmental Management, DOE, to DOE Operations Office and Field Office Managers, regarding the delegation of authority to grant exemptions to DOE Order 5820.2A to allow for the use of commercial facilities for disposal of DOE low-level waste. October 24, 1996.

Memorandum from Tara O'Toole, Assistant Secretary, Environmental, Safety, and Health, DOE, to Alvin Alm, Assistant Secretary for Environmental Management, DOE, regarding requests for exemption from Order 5820.2A to authorize commercial disposal of DOE low-level and mixed low-level waste. August 27, 1996.


Memorandum from James Taylor, Executive Director for Operations, NRC, to the NRC Commissioners, regarding an updated status of the NRC recycle and refuse rulemaking plan. September 13, 1996. This NRC staff paper informs the NRC Commissioners that the scope of the Environmental Protection Agency (EPA) rulemaking on recycle apparently has changed since the NRC staff plan on a recycle rulemaking (SECY-94-221) was reviewed by the Commission. The contemplated changes by EPA potentially could affect details of the NRC's rulemaking plan on recycle and reuse, but should not cause significant problems in its implementation.

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Nuclear Regulatory Commission (NRC)


Other

Linking Science and Technology to Society’s Environmental Goals. Pre-Publication Draft. National Forum on Science and Technology Goals. Policy Division, National Research Council. 1996. Asserts a possible science and technology agenda for the environment, based on input from a range of experts and members of the interested public, including representatives from industry, government, academia, environmental organizations, and native American communities.

Announcing
the LLW Forum’s new Internet site

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Receiving LLW Notes by Mail

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

Members of the public may apply to DOE’s National Low-Level Waste Management Program at the Idaho National Engineering Laboratory (INEL) to be placed on a public information mailing list for copies of LLW Notes and the supplemental Summary Report. Afton Associates, the LLW Forum’s management firm, will provide copies of these publications to INEL. The LLW Forum will monitor distribution of these documents to the general public to ensure that information is equitably distributed throughout the states and compacts.

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

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- Maryland
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- West Virginia

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- Nebraska *
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- South Carolina *

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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.