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LLWnotes

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Keyserling v. Beasley

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South Carolina Supreme Court Rules in State's Favor: Barnwell Proviso Deemed Valid

On Monday, April 22, the Supreme Court of the State of South Carolina ruled in favor of the state in a lawsuit challenging the inclusion of certain provisions relating to the Barnwell low-level radioactive waste disposal facility in the state's General Appropriations Act of 1995. The court ruled that the inclusion of the Barnwell proviso did not violate the state's constitutional requirement that the Appropriations Act be limited to "matters reasonably and inherently related to the raising and spending of the State's monies." In so doing, the court specifically noted that it was not ruling on "the sagacity of leaving open the Barnwell facility." That decision is outside of the court's province.

We emphasize, at the outset, that the determination of the social and economic desirability of the Barnwell landfill is not the issue before this Court. We do not sit as a superlegislature to second guess the wisdom or folly of decisions of the General Assembly. As we must, we follow the law and the decisions heretofore set forth in this state. Doing so, we reach the inevitable conclusion that the "One-Subject" provision of Article III, Section 17 was not violated in this case.

State Constitutional Requirements

According to the court, the purpose of article III, section 17 in the state constitution is to prevent the General Assembly from unknowingly passing

bills containing provisions outside those indicated by their titles, and to notify the public of the subject of proposed legislation, thereby giving them an opportunity to comment. Article III, section 17 does not, however, prohibit the legislature from dealing with several aspects of one particular subject in a single act. "It is complied with if the title of an act expresses a general subject and the body provides the means to facilitate accomplishment of the general purpose." Accordingly, with regard to a general appropriations act, article III, section 17 only requires that legislation be reasonably and inherently related to the raising and spending of tax monies.

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Low-Level Radioactive Waste Forum

LLW Notes

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Editor, Cynthia Norris

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

Materials and Publications: Jean Colsant

Layout and Design: M. A. Shaker

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

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

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Key to Abbreviations

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

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Central Compact/Nebraska

Nebraska LLRW Bill Enacted

On April 16, Governor E. Benjamin Nelson of Nebraska signed legislation that revises state statutory requirements concerning low-level radioactive waste disposal site ownership and liability. The legislation also provides that no waste shall be accepted at the proposed facility in Nebraska until amendments to the Central Interstate Low-Level Radioactive Waste Compact are in effect in the five compact states and have been ratified by Congress.

Site Ownership The law specifies that "[l]ands and appurtenances which are used for the management of low-level radioactive waste shall be acquired and held in fee simple absolute by the licensed facility operator so long as such ownership does not preclude licensure or operation of the facility under federal law and until title to the land and appurtenances is transferred to the state ..." The state is directed to acquire title to the land "after the expiration of both the operational life and closure period of the facility" if certain financial assurance and other conditions are met.

Liability Pursuant to host state law, remedial cleanup costs are assessed first against insurance funds and moneys set aside for this purpose, then against the operator, then against the generators in proportion to disposal volumes, and lastly against the party states based on disposal volumes.

Compact Amendments All compact member states have adopted the amendments, but Kansas provided that its state law would not take effect until issuance of a facility license. Compact staff have been working with member states' congressional delegations to initiate congressional ratification procedures.

For further information, contact A. Eugene Crump of the Central Commission at (402)476-8247 or Steve Moeller of the Nebraska Governor's Policy Research Office at (402)471-2417.

Southeast Compact/North Carolina

NC Regulators, Authority Near Agreement on Licensing Plan

During meetings held on May 6-8, a technical task force approached consensus on what must be accomplished in order for North Carolina regulators to reach a decision on Chem-Nuclear System's application for a license to develop and operate a low-level radioactive waste disposal facility in the state. The task force is composed of staff from the North Carolina Low-Level Radioactive Waste Management Authority and staff of the licensing agency—the state Division of Radiation Protection (DRP).

Following the meetings, revised work scope descriptions for the Authority's contractor and a logic sequence for performance of activities were issued for review by DRP staff, including persons not participating in the task force. Authority staff anticipate that these documents, along with derivative schedule and cost data, will form the basis of a licensing plan.

Authority members will meet in several weeks to receive the plan, which may be used to support a funding request to the Southeast Low-Level Radioactive Waste Compact Commission. The Authority has been deferring site testing and related activities since January, when the Authority voted to seek further funding from the Southeast Compact Commission before authorizing any additional major work. (See *LLW Notes*, January/February 1996, p. 3.)

Funding for the Authority's work has been the subject of recent correspondence between the Chair of the Southeast Compact and North Carolina's Governor. Although salaries for the Authority's immediate staff are provided in the state budget, moneys available for technical work are sufficient to continue the current level of effort only through June 1996.

The next Southeast Compact meeting is scheduled for June 17-18 in Biloxi, Mississippi.

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

Southwestern Compact/California

California County Boards Adopt Resolutions re Ward Valley

Two California county boards took conflicting positions on April 23 regarding the low-level radioactive waste disposal facility planned for Ward Valley, California. Members of the Los Angeles County Board of Supervisors voted 5-2 in opposition to the facility, while the San Diego Supervisors acted 4-0 to support the transfer of federal land needed for the facility's construction. California Governor Pete Wilson (R) subsequently praised the San Diego board for acting "responsibly," but characterized the Los Angeles county officials either as unable to understand the potential health threats from urban on-site storage or as "playing political games with the safety of so many Californians."

L.A. Democrats Prevail in Call for Alternatives

The Los Angeles County Board split along partisan lines, with the democratic majority opposing the Ward Valley facility "as it is proposed today, given the lack of assurances that this facility will not contaminate the County's critical water supply." The board's resolution advocates consideration of above-ground monitored retrievable storage and states that "the Department of Energy should consider developing different strategies for disposing and separating nuclear power plant wastes from medical and academic wastes." The resolution provides for transmittal of the board's views to "the President, the Congressional delegation, and the Governor."

Prior to the board's vote, Carol Marcus—a professor of radiological sciences at the University of California, Los Angeles, and Director of an outpatient clinic that uses nuclear medicine—had written to the board's chair seeking a negative vote on the resolution. Marcus dismissed the alternative disposal methods suggested by the resolution as having been "examined by the California Department of Health Services and rejected as offering less protection than the proposed design which is less consistent with the requirements of the U.S. Nuclear Regulatory Commission."

The board also received a letter from George Thompson, a professor of geophysics at Stanford University and former chair of the National Academy of Sciences' committee that examined technical issues concerning the Ward Valley site, including the potential for contamination of ground water. Thompson stated, "From a purely scientific standpoint, none of the data reviewed by the committee support further delay or opposition to construction of the facility provided the oversight and monitoring recommendations of the committee are put in place." He recommended that the Supervisors "carefully examine the conclusions and recommendations of the committee as contained in the Ward Valley report"; his closing remark was, "The science should be allowed to speak for itself." (See "New Materials and Publications.")

San Diego Board Condemns Delay

San Diego County's Supervisors criticized the U.S. Department of Interior's earlier decision to require additional studies of the Ward Valley site before moving forward with the land transfer (See *LLW Notes*, March 1996, p.14.) The Board of Supervisors called upon DOE Secretary Hazel O'Leary "to comply with the assistance role assigned to her agency by Congress in the [Low-Level Radioactive Waste] Policy Act and decline to participate in this subversion of California's good faith efforts to implement the law." (See related story, this issue.)

The board further resolved to request "the San Diego County Congressional delegation, as well as those Congressional Committees with jurisdiction for oversight of the Department of Interior and implementation of the Low-Level Radioactive Waste Policy Act to take those measures required to effect the immediate and unencumbered transfer of the Ward Valley site to state ownership thereby allowing the State of California to fulfill its federally mandated obligations."

Host State TCC Meets in El Paso

The Host State Technical Coordinating Committee (TCC) met in El Paso, Texas, on April 30. The meeting was followed by

- a May 1 tour of both the Fort Hancock site that the Texas Low-Level Radioactive Waste Disposal Authority was directed to discard in 1991, and the proposed disposal site near Sierra Blanca that replaced it; and
- a tour of the Waste Isolation Pilot Plant (WIPP) facility near Carlsbad, New Mexico, on May 2.

Attendance

The TCC meeting and/or the tours were attended by

- 10 state staff persons,
- one compact staff person,
- two DOE National Low-Level Waste Management Program staff members,
- one DOE-Idaho staff person,
- two NRC staff persons, and
- one Nuclear Energy Institute staff person.

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 DOE-Idaho, NRC, the National Low-Level Waste Management Program, the Nuclear Energy Institute and the LLW Forum;
- a presentation on reasonable assurance;
- an overview of the Sierra Blanca site, including results of a fissure study, progress reports on the trench monitoring system, and natural analogs for trench cap studies;
- a presentation on the design of the Texas low-level radioactive waste disposal facility and waste containers, including a discussion of practical construction and implementation concerns; and
- the election of the Convenor and the TCC Planning Committee.

Ruben Alvarado of Texas was re-elected as TCC Convenor.

Planning Committee members are

- Paul Guichard (North Carolina),
- Steve Jones (Pennsylvania),
- Carl Lischeske (California), and
- Robert Owens (Ohio).

Upcoming Meeting

The TCC plans to meet again on September 30 in Salt Lake City, Utah. The meeting date may change depending upon whether the 1996 DOE Low-Level Radioactive Waste Management Conference is rescheduled.

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

States and Compacts

Midwest Compact/Ohio

☀ As of May 9, the legislatures of all member states of the Midwest Interstate Low-Level Radioactive Waste Compact have enacted amendments to the compact agreement. Missouri's was the final legislature to approve the amendments, which will be forwarded to the Governor for signature. (See *LLW Notes*, July 1995, p. 5.) All other Midwest Compact Governors have already signed the changes into law.

The amendments establish remedial action and long-term care funds, provide for disposal facility capacity limits, address financial and liability issues, clarify the definition of low-level radioactive waste, and set forth a framework for judicial review. They also establish milestones and penalties to ensure timely development of future disposal facilities, and they vest additional decision-making authority with host states.

Texas Compact/Texas

☀ A number of persons have requested a public hearing on the Texas Low-Level Radioactive Waste Disposal Authority's application for a license to construct and operate a disposal facility. (See *LLW Notes*, April 1996, p. 1.) It is anticipated that a hearing on the requests will be held in June.

Massachusetts

☀ Massachusetts's application for Agreement State status was received by NRC in early April and is undergoing review by NRC staff. The Governor of Massachusetts signed the application on March 28.

Federal Agencies and Committees

U.S. Department of Energy

☀ On May 6, Thomas Grumbly was sworn in as DOE Under Secretary, the third-highest-ranking official in the Department. The Senate confirmed Grumbly's appointment on May 2.

Grumbly is the former DOE Assistant Secretary for Environmental Management. As Under Secretary, Grumbly is responsible for the oversight of

DOE's nuclear materials and weapons cleanup program, the civilian radioactive waste program, and safety-related activities in the former nuclear weapons manufacturing complex. *For further information, see "New Materials and Publications."*

☀ On May 6, Alvin Alm was sworn in as DOE Assistant Secretary for Environmental Management. In that position, Alm is responsible for directing environmental management activities in the nuclear weapons complex, including waste management operations, environmental restoration, nuclear material and facility stabilization and technology development.

Since 1989, Alm had held the position of Sector Vice President for the Environmental Business Area at Science Applications International Corporation (SAIC). He has also served in the following federal government positions: first staff director of the Council of Environmental Quality (1970); DOE Assistant Secretary for Policy and Evaluation (1977); Deputy Administrator of EPA (1983-1985); and EPA Assistant Administrator for Planning and Management (no date provided). *For further information, see "New Materials and Publications."*

☀ Marc Chupka has been named DOE Acting Assistant Secretary for Policy. He replaces Dan Reicher, who is now serving as DOE Chief of Staff. (See *LLW Notes*, April 1996, p. 9.) Chupka previously served as a special assistant to DOE Secretary Hazel O'Leary and was Director of Energy Policy Development at DOE. Responsibilities of the Assistant Secretary for Policy are to assure the effective central management of the development of national and departmental energy policy; departmental planning; and integration of departmental policy, program, and budget goals. *For further information, see "New Materials and Publications."*

☀ DOE Secretary Hazel O'Leary appointed Melanie Kenderdine the Deputy Assistant Secretary for House Liaison in DOE's Office of Congressional, Public and Intergovernmental Affairs. In this position, she has primary responsibility for maintaining effective relationships with members of the U.S. House of Representatives and their staffs. Kenderdine joined the Energy Department in 1993 as a Congressional Liaison Officer and is a former Chief of Staff to Representative Bill Richardson of New Mexico. *For further information, see "New Materials and Publications."*

U.S. Department of Transportation

☀ On April 25, the DOT's Research and Special Programs Administration published a *Federal Register* notice requesting public comments on implementation of the radiation protection program requirements of the Hazardous Materials Regulations (40 CFR Parts 171-180). The Hazardous Materials Regulations—which take effect on October 1, 1997—require that persons who offer for transportation, accept for transportation, or transport radioactive materials must develop, implement, and maintain a written radiation protection program. The radiation protection program must meet requirements that are listed in the *Federal Register* notice. The comment period closes May 31, 1996. *For further information, contact Fred Ferate II of DOT's Office of Hazardous Materials Technology at (202)366-4545. See also "New Materials and Publications."*

U.S. Congress

U.S. General Accounting Office

☀ In a January 1996 report entitled *Environmental Management: An Integrated Approach Could Reduce Pollution and Increase Regulatory Efficiency*, the U.S. General Accounting Office reviewed the approaches to environmental management used by Massachusetts, New York, and New Jersey. Environmental agencies in these three states have experimented with integrated approaches to environmental management as alternatives to the traditional approach, under which an agency issues separate permits and conducts separate inspections for pollution released to each medium—air, water, or land. Under an integrated approach, an agency focuses to varying degrees on a whole industrial facility and all of its sources of pollution.

GAO found that "Massachusetts and New York believe that their integrated approaches have proven to be successful and are implementing them statewide. Because permits have only recently been issued as part of New Jersey's integrated approach, officials in that state believe that it is too early to evaluate the success of its pilot." GAO also addressed industry experience with the integrated approaches and EPA's roles in these efforts. *For further information, see "New Materials and Publications."*

Other

☀ On April 16, the Board of Managers of the Mescalero Fuel Storage Corporation—a corporation established in 1995 by the Mescalero Apache Tribe and 11 nuclear utilities—voted to indefinitely suspend additional work on the proposed project to negotiate development of a temporary nuclear spent fuel storage facility on tribal lands in New Mexico. Negotiations reportedly broke down between the utilities and the Mescalero Apache Tribe, leading to the suspension of the project. Tribal representatives stated that they intend to move forward independently to construct a temporary storage facility. The utilities are also reportedly keeping their options open.

National Conference of State Legislatures

State Legislators' LLRW Working Group Meets in Austin

On May 2, the Low-Level Radioactive Waste Working Group of the National Conference of State Legislatures (NCSL) held its third meeting, this time in Austin, Texas. As in October 1995, when the working group last met, the meeting took place in conjunction with NCSL's Assembly on State Issues. (See *LLW Notes*, October 1995, p. 18.)

Agenda

The following topics were addressed during the meeting, which lasted four hours:

- Lawrence Jacobi of the Texas Low-Level Radioactive Waste Disposal Authority presented information about the history of the Texas siting process and about the status of both the license application and the Texas/Maine/Vermont Compact awaiting consent by Congress.
- Don Womeldorf of the Southwestern Low-Level Radioactive Waste Commission discussed the history of the compact and its planned regional disposal site in Ward Valley, and the delay in transfer of federal land in Ward Valley to the State of California.
- Jay Rhoderick of DOE's Office of Planning and Analysis reported on DOE's plans for waste management and disposition of federal low-level radioactive waste.
- Sandra Birk and Philip Wheatley of DOE's National Low-Level Waste Management Program at Idaho National Engineering Laboratory made a presentation based on data collected for a document on the organization of and funding mechanisms for host states and compacts. The presenters' preliminary data suggest that sources of funding for state and compact activities are becoming more limited, which may impact organizational structures.

The meeting concluded with a roundtable discussion concerning options for low-level radioactive waste management, action items, and topics for the upcoming NCSL annual meeting in July 1996. Draft state-specific brochures about low-level radioactive waste management prepared by NCSL staff were also reviewed.

Attendance

State Legislators and Legislative Staff

Florida	Laura Jersey
Idaho	Rep. Jack Barraclough
Minnesota	Sen. Phil Riveness
Nebraska	Sen. Nate Donovan
North Dakota	Rep. Bill Oban
Ohio	Sen. Gary Suhadolnik, <i>Chair, LLRW Working Group</i>
Texas	Rep. Edward Kuempel Rep. Robert Saunders Rep.-elect Norma Chavez Mary Coletti Annette Glass Jeff Horvath Martin Hubert Jamie Mitchell Brian Sledge Ann Walther

Other State Officials

Ohio	Jane Harf, Ohio Low-Level Radioactive Waste Facility Development Authority
Texas	J. A. Lazarus, Texas Natural Resource Conservation Commission

Other Interested Parties

Paul Genoa, Nuclear Energy Institute
Nancy Malleda, Capital Consultants (Austin, TX)
Richard Paton, US Ecology
Kimberly Randle, The Energy Council (Irving, TX)
Tom Richards, Omaha Public Power District
William Riethle, Yankee Atomic Electric Company
Robert Teachent, Bureau of National Affairs
Freddy Warner, Southern States Energy Board

Related NCSL Activities

On May 9 and 10, NCSL's Energy and Transportation Committee met in Washington, D.C., as part of NCSL's Assembly on Federal Issues. Among other things, the committee reviewed and discussed NCSL's policy on radioactive waste management, which address both low-level and high-level waste.

Low-level radioactive waste was discussed during the morning session on May 9, where Jay Rhoderick of DOE and Holmes Brown of Afton Associates were featured speakers.

State legislators in attendance for the low-level radioactive waste discussion included the following persons:

Maryland	Del. Carol Petzold (presiding)
Idaho	Sen. Evan Frasure
Utah	Rep. J. Brent Haymond

Upcoming Activities

The Low-Level Radioactive Waste Working Group plans to meet next on July 29 as part of the NCSL annual meeting in Saint Louis.

For further information, contact L. Cheryl Runyon of NCSL at (303)830-2200.

Envirocare Approved for Ion Exchange Resins

In an information notice dated May 7, the Utah Division of Radiation Control announced that it has approved the disposal of ion exchange resins by Envirocare of Utah. The approval is based on the division's determination that such disposal "will not result in adverse environmental or public health impacts at the licensee's disposal site at Clive, Utah." Envirocare had requested the approval in September 1995.

No amendment to Envirocare's radioactive material license was needed, since the state's technical evaluation indicated that "sufficient conditions exist in the license to adequately control and oversee disposal of ion exchange resins in the embankment; both from a perspective of engineering stability and performance assessment."

For further information, contact Dane Finerfrock of the Division of Radiation Control at (801)536-4250. See also "New Materials and Publications."

Keyserling v. Beasley (continued)

Validity of the Barnwell Proviso

Contrary to the petitioners' assertions, the court found that parts B and D of the Barnwell proviso are reasonably and inherently related to appropriations. (See box on page 10 for language contained in parts B and D.) The court determined that part B—which authorizes the creation of a committee to negotiate a new compact and which gives the compact commission the authority to contract with other states and individual generators—is related to appropriations because it provides for an appropriate host fee to be paid. Part D, which withdraws the State of South Carolina from the Southeast Compact by repealing the compact legislation, is reasonably related to appropriations according to the court because it is a necessary step to allow the continued acceptance of out-of-state waste at Barnwell, thereby generating further revenues.

In reviewing the validity of section 79 of the General Appropriations Act, the court rejected the petitioners' claim that the court should read the provisions in isolation, requiring each provision to relate directly to appropriations. Such a policy, according to the court, is contrary to prior state case law. "In any event, as noted previously, subsections B and D are inherently related to appropriations matters as they are necessary to effectuate the legislative intent in allowing the landfill to remain open to out-of-state waste in order to generate further revenue."

Logrolling/Bobtailing Claim

In a footnote to the opinion, the court explained its rejection of petitioners' claim that the action of the legislature in appending the Barnwell provisions to the Appropriations Act constitutes "logrolling" or "bobtailing"—a practice which involves the attachment of irrelevant items to the budget.

The appendix to Petitioners' reply brief aptly demonstrates that the matter was, in fact, before the General Assembly and that a number of members expressed their opposition to the Barnwell matter. In fact, a number of legislators voted against the appropriations act for that reason. Accordingly, it is apparent the Legislature was well aware of section 79 prior to adopting the Appropriations Act.

The preceding information was distributed to Forum Participants and Alternate Forum Participants, Federal Liaisons and Alternates via facsimile transmission in a News Flash on April 23, 1996.

Challenged Portions of the Proviso

Part B This part replaces previous language restricting continued waste acceptance at the facility.

B. Section 48-48-80 of the 1976 Code, as last amended by Act 497 of 1994, is further amended to read:

Section 48-48-80. (A) The Governor shall appoint a Low-Level Radioactive Waste Compact Negotiating Committee. The committee shall be composed of seven members appointed by the Governor, three who shall be from the State at large, two who shall be members of the South Carolina Senate recommended by the President Pro Tempore of the Senate, and two who shall be members of the South Carolina House of Representatives recommended by the Speaker. The committee shall negotiate with representatives of other states to establish a new low-level radioactive waste management compact, subject to the following requirements:

(1) the committee shall only negotiate with states that have demonstrated a commitment to the compacting process and that have made substantial progress in implementing that process and who have passed an act authorizing representatives to enter compact negotiations;

(2) the State, as the initial host state, must have ultimate authority over access to the Barnwell facility and the terms and conditions for such access;

(3) the Compact Commission, subject to approval by the South Carolina representatives on the commission, must have authority to negotiate contracts with other states and with individual generators directly; and

(4) the compact must provide for an appropriate host fee to be paid to Barnwell County; [and]

(5) the compact must be ratified by a joint resolution of the General Assembly.

(B) In accordance with Section 13-7-30, the State Budget and Control Board, or its designee, is responsible for extended custody and maintenance of the Barnwell site following closure and license transfer from the facility operator. The department is responsible for continued site monitoring.

(C) Nothing in this section must be construed to alter or diminish the existing statutory authority of the department to regulate activities involving radioactive materials and radioactive wastes.

(D) No low-level radioactive waste generated within the State of North Carolina may be disposed of at a facility located in this State.

Part D This part withdraws the state from the Southeast Compact.

D. Chapter 47, Title 48 of the 1976 Code is repealed.

Background: *Keyserling v. Beasley*

Petitioners Former state Representative Harriet Keyserling, the Sierra Club, the League of Women Voters of South Carolina, the South Carolina Wildlife Federation, the South Carolina Coastal Conservative League, the Energy Research Foundation, and a private citizen

Respondents David Beasley, Governor of the State of South Carolina; David Wilkins, Speaker of the House of Representatives; Robert Peeler, Lt. Governor and President of the Senate; and the State of South Carolina

Facts During the 1995 legislative session, the South Carolina General Assembly enacted the General Appropriations Act of 1995. This law makes appropriations to meet the expenses of state government and directs the manner in which the funds are to be expended. The act also includes a proviso—designated as section 79—relevant to the low-level radioactive waste disposal facility at Barnwell. Among other things, the proviso

- imposes a tax of \$235 per cubic foot on low-level radioactive waste disposed of in the state, with most of the tax revenues allocated for the South Carolina Educational Assistance Endowment Fund;
- deletes a requirement that by January 1, 1996, the Barnwell facility cease to accept low-level radioactive waste generated outside the state;
- authorizes the Governor to appoint a committee to negotiate a new compact;
- authorizes the commission for the compact to negotiate contracts with other states and with individual generators directly;

- prohibits disposal within South Carolina of low-level radioactive waste from North Carolina; and
- withdraws the state from the Southeast Compact by repealing the compact legislation (chapter 47, title 48 of the 1976 Code).

(See *LLW Notes*, July 1995, p. 1.)

On September 7, 1995, various parties filed a lawsuit in the Supreme Court of the State of South Carolina—under the South Carolina Uniform Declaratory Judgments Act—challenging the inclusion of certain elements of the Barnwell proviso in the state's General Appropriations Act of 1995. (See *LLW Notes*, August/September 1995, pp. 10-12.)

Issues Article III, section 17, of the state's constitution limits the constitutionally permissible scope of an appropriations bill to "matters reasonably and inherently related to the raising and spending of the tax monies." The petitioners claim that the respondents violated this limitation by including parts B and D of section 79 in the act. (See box on page 11 for language contained in parts B and D.)

The petitioners further assert that article III, section 17 prohibits the General Assembly from substantively amending existing programs or enacting substantive new programs as part of the Appropriations Act. Instead, they assert, the General Assembly is required to amend or enact any such programs in separately titled legislation that is limited to the subject of that particular program. They claim that parts B and D of the Barnwell proviso violate this constitutional prohibition because they fail to relate to the one subject of the act—namely the state budget.

The petitioners complain that parts B and D of the Barnwell proviso have the effect of subjecting the individual petitioners and members of the petitioner organizations to increased environmental risks by increasing the amount of low-level radioactive waste that will be brought into, transported through, and disposed of in the State of South Carolina; by removing the legal protections afforded this state through membership in the Southeast Interstate Low-Level Radioactive Waste Management Compact; and by extending the life of the state's low-level radioactive waste landfill through elimination of the statutory closure deadline of December 31, 1995, and allowing the landfill to operate for the indefinite future.

Seminole Tribe of Florida v. Florida

U.S. Supreme Court Decides Case With Interstate Commerce Clause Implications

On March 27, the U.S. Supreme Court issued an opinion in a lawsuit concerning the ability of an Indian tribe to sue a state in federal court to compel the state to negotiate with the tribe in good faith toward the formation of a compact agreement that would allow the tribe to conduct certain gaming activities. The opinion may be of interest to officials working in the field of low-level radioactive waste disposal because of its implications relevant to the Interstate Commerce Clause. Specifically, the opinion overruled a previously decided case which provided that the Interstate Commerce Clause grants to Congress the power to abrogate unilaterally the states' immunity from suit.

Below is a short summary of the Court's majority opinion. Two separate dissenting opinions were written, although neither is covered here. Persons interested in a more detailed explanation of the case and its implications are directed to the Court's majority opinion and dissenting opinions.

Background

Under the Indian Gaming Regulatory Act, which was passed by Congress pursuant to the Indian Commerce Clause, an Indian tribe may conduct certain gaming activities if done in compliance with a valid compact between the tribe and the state in which the gaming activities take place. The act requires that such a state negotiate in good faith with the tribe toward the formation of a compact. If the state fails to negotiate in good faith, the act authorizes the tribe to sue the state in federal court.

In September 1991, the Seminole Tribe of Indians sued the State of Florida and its Governor, Lawton Chiles, alleging that the respondents had "refused to enter into any negotiation for inclusion of [certain gaming activities] in a tribal-state compact," thereby violating the Indian Gaming Regulatory Act's requirement of good faith negotiation. The respondents moved to dismiss the complaint on the grounds that the action violated the state's sovereign immunity from suit in federal court. The district court denied the motion to dismiss, but the Court of Appeals for the Eleventh Circuit reversed the district court's decision, holding that the Eleventh Amendment barred the petitioner's suit.

Eleventh Amendment

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

Supreme Court Decision

The U.S. Supreme Court, upon review of the lower courts' rulings, held that the Eleventh Amendment prevents Congress from authorizing an Indian tribe to sue a state in federal court to enforce legislation enacted pursuant to the Indian Commerce Clause.

The Court noted that "[t]he Eleventh Amendment presupposes that each State is a sovereign entity in our federal system and that '[i]t is inherent in the nature of sovereignty not to be amenable to the suit of an individual without [a State's] consent.'" However, the Court has previously found that Congress may abrogate the states' sovereign immunity if it has "unequivocally" expressed its intent to do so and if it has acted pursuant to a valid exercise of power.

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Nuclear Metals, Inc. v. Massachusetts Low-Level Radioactive Waste Management Board

Massachusetts Court Rules on Board's Assessment Policy

On October 17, 1995, the Massachusetts Supreme Judicial Court ruled on a lawsuit challenging the manner in which the Low-Level Radioactive Waste Management Board assesses fees on generators of low-level radioactive waste. The court's decision validated the assessment law, but directed the Management Board to review and change its assessment procedures.

Under Massachusetts laws and regulations, the Management Board assesses, in the following manner, persons licensed to receive, use, possess, transfer or acquire radioactive materials:

- a \$75 fee on all NRC licensees and registrants of the Massachusetts Department of Public Health; and
- a proportional fee on all such licensees and registrants based on the volume and activity of low-level radioactive waste that is "shipped for disposal or stored for later disposal."

Prior to the court's ruling, the Management Board assessed fees on stored waste in the year in which it was shipped for disposal so as to use the most accurate measurement of the activity requiring disposal (since low-level radioactive waste decays while being stored). The court, however, ruled that low-level radioactive waste stored for future disposal should be assessed the year in which it is placed into storage.

The Management Board reports that it "has implemented the ... [Supreme Judicial Court's] ruling in calculating the Fiscal Year 1996 (FY 96) assessments, and has conducted a review of waste in storage to determine what volumes and activities are being 'stored for future disposal' and what volumes and activities are not. Waste stored for complete decay is not assessed."

The Management Board used the revised assessment procedure to recalculate Nuclear Metals' Fiscal Year 1992 and 1993 assessments, which had not been paid due to this legal dispute. Nuclear Metals has agreed to pay the revised assessment bills, and is working with the Management Board on a Mutual Release and Stipulations of Dismissal agreement. The Management Board anticipates that the payments (in excess of \$167,000) can be made before the end of this fiscal year.

Seminole Tribe of Florida v. Florida (continued)

In this case, Congress clearly expressed, in the text of the Indian Gaming Regulatory Act, its intent to abrogate the states' sovereign immunity. The Court's inquiry, therefore, turned on whether or not Congress acted pursuant to a valid exercise of power.

In the past, the Court has found that Congress has authority to abrogate states' sovereign immunity under only two constitutional provisions: the Fourteenth

Amendment and the Interstate Commerce Clause. The Court found the Indian Commerce Clause to be indistinguishable from the Interstate Commerce Clause with regard to this issue. However, upon review, the Court rejected its previous rationale for finding authority to abrogate under the Interstate Commerce Clause and overruled the decision that did so. Accordingly, the Interstate Commerce Clause is no longer a valid basis upon which Congress may abrogate the states' sovereign immunity.

Background: *Nuclear Metals Inc. v. Massachusetts Low-Level Radioactive Waste Management Board*

Plaintiff Nuclear Metals, Inc.

Defendants Massachusetts Low-Level Radioactive Waste Management Board and Massachusetts Attorney General (the Attorney General was later voluntarily dismissed)

Facts The lawsuit was originally filed on July 13, 1993, in the Superior Court of the Commonwealth of Massachusetts. It challenged the validity of amendments to Massachusetts' laws and of regulations promulgated by the Management Board pursuant to the amendments. Under the amendments, the Management Board is authorized to levy assessments against persons licensed to receive, use, possess, transfer or acquire radioactive materials. In March 1992, the Management Board levied a \$102,000 assessment against Nuclear Metals, which the company refused to pay. (See *LLW Notes*, October 1992, p. 12.)

Issues Nuclear Metals alleged that the challenged amendments and regulations are invalid and violate the Constitution of Massachusetts as well as the U.S. Constitution. The company also claimed that the Management Board, by levying an assessment on Nuclear Metals and by subsequently refusing to reduce that assessment, failed to comply with the amendments and regulations. (See *LLW Notes*, October 1992, p. 12.)

Lower Court Decision On July 13, 1993, the Superior Court of the Commonwealth of Massachusetts upheld the assessment. The court rejected Nuclear Metals' claim that the assessment violates the Commerce Clause and the Due Process Clause of the U.S. Constitution. The court also held as moot Nuclear Metals' arguments that too much discretion was delegated to the Management Board to set the tax rate and that a federal license is an improper subject for a state tax. (See *LLW Notes*, July/August 1993, p. 17.) Nuclear Metals filed a notice of appeal on August 12, 1993.

In re Three Mile Island

Supreme Court Denies Certiorari in Case re Punitive Damages for Nuclear Reactor Accident

On April 22, the U.S. Supreme Court declined to review a case regarding the ability of persons who claim to have been injured by radiation from a nuclear reactor to recover punitive damages under state law. As a result, the earlier decision by the U.S. Court of Appeals for the Third Circuit in that case is final and binding. The Third Circuit Court had determined that recovery of punitive damages under state law in such cases is permissible and that such recovery does not conflict with the Price-Anderson Act or its 1988 amendments.

Facts

The case arose out of the March 28, 1979 nuclear accident at the Three Mile Island (TMI) nuclear reactor in Dauphin County, Pennsylvania. More than 2,000 individuals who resided in the vicinity of TMI at the time of the accident filed personal injury actions against corporations which owned, operated, or supplied materials or services to TMI—including General Public Utilities Corporation and Metropolitan Edison Company. The legal actions seek to recover both punitive and compensatory damages for illnesses allegedly resulting from exposure to radiation released during the accident. Since the cases seek damages on account of the hazardous properties of special nuclear material, they are "public liability actions" arising under the Price-Anderson Act and its 1988 amendments.

The plaintiffs' claims to punitive damages are based on their assertion that the defendants acted with willful, wanton, and reckless indifference to information concerning faulty plant equipment and design at TMI. The plaintiffs argue that the defendants were aware of such information yet failed to take proper precautions to guard against the potentially dangerous effects of the equipment. The plaintiffs further claim that the defendants falsified leak rate tests and reports submitted to NRC and knowingly operated TMI in violation of technical specifications.

What are

Punitive and Compensatory Damages?

Compensatory Damages: Damages awarded to a person as compensation, indemnity, or restitution for harm sustained by the individual.

Punitive Damages: Damages awarded to the plaintiff over and above that needed to compensate for a loss and which are intended to punish the defendant for wrongful or evil behavior.

Issue

The issue certified for appeal by the district court was:

Whether Pennsylvania's rules of decision relating to punitive damages are inconsistent with the provisions of the federal Price-Anderson Act, as amended, and therefore may not serve as rules of decision to be applied in a "public liability action" under the Price-Anderson Act?

Holding of Appellate Court

In addressing the above-stated issue, the appellate court looked to statutory language, legislative history, and relevant case law.

Statutory Language The defendants argued that the inherently penal nature of punitive damages in Pennsylvania conflicts with the purposes and policies of the public liability action and that the Price-Anderson Act therefore precludes the recovery of such damages.

The appellate court disagreed, finding that the language in the 1988 amendments does indeed specifically prohibit punitive damages, but that the prohibition is very narrow in scope. Specifically, punitive damages are prohibited "in any action with respect to a nuclear incident or precautionary evacuation against a person on behalf of whom the United States is obligated to make payments under an agreement of indemnification covering such incident or evacuation." In addition, this prohibition is limited to nuclear incidents occurring on or after August 20, 1988, while the TMI accident occurred in 1979—long before the effective date of the 1988 amendments.

Accordingly, the court found that the imposition of state remedies in a public liability action does not frustrate the objectives of the Price-Anderson Act. "[A]lthough Congress clearly intended to preempt state regulation of nuclear safety standards when it enacted Price-Anderson, 'the award of punitive damages would not impede the congressional goal of promoting nuclear safety.'"

Legislative History The defendants contended that references in the Price-Anderson Act's legislative history suggest that punitive damages would undermine the compensatory purposes of the legislation, making it unworkable.

The court, however, disagreed. It found that the U.S. House of Representatives Committee on Energy and the Environment considered prohibiting or restricting the award of punitive damages, but chose not to. Moreover, the legislative history in the U.S. Senate indicates an understanding that punitive damages are not entirely prohibited by the act. "Thus, Congress decidedly declined the opportunity to expressly eliminate punitive damages."

Purpose of Punitive Damages The defendants argued that the 1988 amendments created a system of mandatory insurance premiums so as to create a fund from which to compensate individuals injured in a nuclear accident. Under this system, all operators of nuclear reactors collectively shoulder the costs of damages paid to anyone who recovers in a public liability action. Defendants claim that punitive damages cannot be imposed on any particular defendant or group of defendants without violating this collective compensation approach.

The court again disagreed, instead finding that the award of punitive damages is not prohibited in a public liability action. The court recognized the various concerns related to punitive damages, but found that Congress, not the judiciary, is responsible for making policy decisions regarding the benefits and burdens of punitive damages in mass tort cases.

Final Analysis

In recognition of the various conflicting policy arguments associated with the award of punitive damages in an action involving a nuclear incident, the appellate court stated as follows:

We see nothing in the [Price-Anderson] Act that precludes a district court from using its discretion to limit or even preclude punitive damages in accordance with the financial constraints of the fund and the Act's prohibition against punitive damage awards being paid out of the federal layer of insurance. However, we do not express any view as to whether the district court should so exercise its discretion.

Stilp v. Knoll

Project Opponents Challenge Pennsylvania Siting Act

On March 28, 1996, various individuals filed suit in the Commonwealth Court of the Commonwealth of Pennsylvania challenging the passage of Act 12 of 1988, known as the Low-Level Radioactive Waste Regional Disposal Facility Act. According to the plaintiffs, Act 12 was passed using "bait and switch" tactics, in which the legislature replaced an already considered bill with completely new language. Such tactics, the plaintiffs claim, violate the Pennsylvania Constitution. As of press time, no answer to the suit has been filed. The answer is expected to be filed by May 13, 1996.

The Parties

The action was filed by three individuals who serve as officers and staff of Stop the Illegal Low Level Program in Pennsylvania, Inc. The Commonwealth of Pennsylvania was named as a defendant, along with Pennsylvania Governor Thomas Ridge and Treasurer Catherine Baker Knoll, both of whom were sued in their official capacities.

Factual Allegations

According to the plaintiffs, the Pennsylvania Constitution

- prohibits the alteration or amendment of a bill in such a manner as to change its original purpose;
- specifies that a bill should not be considered without first being referred to a committee, printed for use by the committee members, and returned from the committee; and
- requires that all bills be considered on three different days in each house.

The plaintiffs also state that the following sequence of events occurred in passage of the legislation:

Act 12 originated in the Senate as a bill relating to the termination of the spending of certain funds related to the Pennsylvania Conservation Corps. It was referred to committee and considered by the full Senate on three different days and passed by the Senate, as required by the Pennsylvania Constitution.

Next, the bill was introduced in the House of Representatives and referred to committee. After five months, it was reported out of committee and considered on two different days by the full House. The bill was then recommitted to the Appropriations Committee, which amended it and re-reported it to the full House. The bill was considered by the full House on a third day, but was afterward amended such that all of the language in the bill was replaced with provisions dealing with the establishment of a low-level radioactive waste disposal facility for Pennsylvania.

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

Issues

The plaintiffs contend that Act 12 was passed in violation of the Pennsylvania Constitution because

- it was altered or amended during its passage through the General Assembly in such a manner as to change its original purpose;
- neither the House nor the Senate referred the bill to committee after its original purpose was changed; and
- the bill was not considered on three days in either house after its original purpose was changed.

They argue that the State Treasurer cannot legally disburse funds from the State Treasury unless the law is constitutionally passed.

Court Calendar

Case Name	Description	Court	Date	Action
<i>Keyserling v. Beasley</i> (See related story, this issue.)	Challenges the inclusion of certain provisions relating to the Barnwell low-level radioactive waste disposal facility in the state's General Appropriations Act of 1995.	Supreme Court of the State of South Carolina	March 22, 1996	Court issued a ruling, in favor of the state, that the inclusion of the Barnwell proviso was not unconstitutional.
<i>Stilp v. Knoll</i> (See related story, this issue.)	Challenges the legislative procedures used to pass Act 12 of 1988, known as the Low-Level Radioactive Waste Disposal Regional Facility Act, as violative of the Pennsylvania Constitution.	Commonwealth Court of the Commonwealth of Pennsylvania	May 13, 1996 March 28, 1996	Defendants' answers to the complaint are expected to be filed. Plaintiffs filed a complaint in state court.
<i>In re Three Mile Island</i> (See related story, this issue.)	Involves the ability of persons who claim to have been injured by radiation from a nuclear reactor to recover punitive damages under state law.	Supreme Court of the United States of America	April 22, 1996 October 17, 1995	U.S. Supreme Court denied defendants writ for certiorari (i.e., refused to hear defendants' appeal of the lower court's decision). U.S. Court of Appeals for the Third Circuit issued an opinion in the case.

Requested Relief

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

U.S. Department of Energy (DOE)

DOE to Proceed with Ward Valley Testing

In response to questions from members of Congress, the U.S. Department of Energy has indicated that it is working with the U.S. Department of Interior (DOI) to obtain funding and a clearly defined scope of work for the performance of radionuclide migration tests at the planned low-level radioactive waste disposal site in Ward Valley, California.

Background

Interior's Request for Testing Deputy Secretary of the Interior John Garamendi announced in February that he had asked DOE to oversee tritium testing by the Lawrence Livermore National Laboratory at the Ward Valley site to "carry through on the recommendations of the NAS [National Academy of Sciences] panel." (See *LLW Notes*, March 1996, pp. 14-15.) An NAS committee had recommended in May 1995 that additional testing for tritium and sampling for chlorine 36 be done to help resolve questions about data reporting tritium in the unsaturated zone. However, in a press conference to release the NAS report, Stanford University Professor George Thompson, Chair of the NAS committee on Ward Valley, had indicated that the testing could be done "during construction and operation of the site."

California Analysis of Beatty Data On April 8, the California Health and Welfare Agency released a report on data from the closed low-level radioactive waste disposal in Beatty, Nevada, and the relevance of this data to the planned disposal site in Ward Valley. (See *LLW Notes*, April 1996, p. 5.) The report concluded that the migration of tritium and carbon 14 recently detected at Beatty could not recur in Ward Valley.

Grumbly on Ward Valley

On March 5, during DOE Assistant Secretary Thomas Grumbly's confirmation hearings for his appointment as DOE Under Secretary, Senator Frank Murkowski (R-AK), Chair of the Committee on Energy and Natural Resources, questioned him regarding DOE's plans to respond to the DOI request for tritium testing. In addition to responding orally at the hearings, Grumbly subsequently provided written answers.

Excerpts from the written responses follow:

Question: Does the DOE plan to reverse its earlier position (which was a sound one based on the law and policy that low-level radioactive waste is a state responsibility) and agree to perform these studies that are clearly the result of political pressure/election year politics?

The Department does not intend to reverse its prior position that commercial low-level waste is the primary responsibility of the state. Under the Low-Level Radioactive Waste Policy Act of 1985, the Department will respond to requests from states for technical assistance. However, if a request for services originates from a sister agency in the Federal government, the Department of Energy is authorized, in accordance with the Economy Act ... and the Atomic Energy Act of 1954 ... to conduct work for other Federal agencies, as long as certain criteria are satisfied. In general, those statutory provisions require the requesting party to bear the costs of any such work. The Department has received such a request from the Department of the Interior ...

Question: Do you believe that such a study can result in a definitive answer? We've already had a National Academy study that gave a definitive answer, yet Interior chose to ignore it. I see this as a tremendous waste of taxpayer money. What do you think?

I understand that the National Academy of Sciences noted that the techniques used to conduct the previous tritium test at Ward valley were flawed and, as a result, recommended that the tests be repeated. I also understand that the Department of the Interior has decided to have those tests performed while it is preparing a supplemental environmental impact statement. I believe that we would have to see the results of such tests to determine whether the results would be definitive or not. If the Lawrence Livermore Laboratory conducts these tests, I believe that it would be prudent for the contracting officer to properly oversee this contract to make sure that the scope of work is carefully defined and adhered to, and that the taxpayer dollars are properly spent.

Guimond for O'Leary on Ward Valley

In March, members of the House Appropriations Committee queried DOE Secretary Hazel O'Leary regarding Interior's request for radionuclide tests. Questions were submitted by Representatives Brian Bilbray (R-CA), Vic Fazio (D-CA), and Frank Riggs (R-CA). In some cases, more than one representative submitted the same question. The following are excerpts from DOE's responses, which were attributed to Richard Guimond, DOE's Principal Deputy Assistant Secretary for Environmental Management. Guimond is also an Assistant Surgeon General in the Public Health Services.

Question (Riggs): The Department of the Interior has requested further tests on the proposed Ward Valley low-level waste disposal site. Will DOE conduct these tests without concurrence of the State of California, which has licensed the Ward Valley site?

The Department of the Interior has inquired about the availability of DOE's Lawrence Livermore National Laboratory (LLNL) to perform tests. We have advised DOI that we have authority under the Economy Act and the Atomic Energy Act to perform these tests on a reimbursable basis and that LLNL has the capability. We further advised DOI that we need a clearly defined scope of work. DOI has indicated that it is looking for the funding necessary to have the work performed. We would not require the concurrence of the State of California to proceed with the work DOI has discussed with us.

Question (Riggs): Because California opposes the Interior Department's request, doesn't the State's request take precedence?

No. However, we do not see either request as precluding us from providing assistance in response to the other.

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Grumbly to Murkowski re Ward Valley

[U]nder the Economy Act and the Atomic Energy Act, we have concluded that we should approve Interior's request for services pursuant to an appropriate interagency agreement. Such an agreement will include a clear and precise statement of the work to be done by Livermore and provisions for Interior's payment of Livermore's cost for doing the work. At this time, we do not anticipate that Livermore or the Department of Energy will be involved in interpreting the resulting data ...

We understand that the Department of the Interior intends to prepare a Supplemental Environmental Impact Statement (SEIS) on the Ward Valley land transfer. We anticipate that Livermore will complete its work well in advance of the SEIS. Thus, Livermore's analysis should not delay the Ward Valley project beyond the time the Department of the Interior will be using to complete its own analysis ...

[O]n March 14, 1996, the State of California requested that the Department participate on a Ward Valley environmental monitoring committee once the land is transferred to California. We will be discussing with California how we can cooperate in this effort.

Thomas Grumbly, Acting Under Secretary, U.S. Department of Energy, to Senator Frank Murkowski (R-AK). May 2, 1996.

Federal Agencies and Committees *continued*

U.S. Department of Energy (continued)

Question (Riggs): Are such tests the best method to address such questions [moisture and contaminant movement] at desert disposal sites?

The National Academy of Sciences has expressed the view that a more complete knowledge of groundwater and radionuclide movement would be obtained by "additional analysis from tracers such as 36CL [chlorine 36]" than from tritium tests. However, as noted above, we have not discussed with DOI the precise type of testing it wants LLNL to perform.

Question (Riggs): What experts were consulted in arriving at these judgments?

DOE has not made a judgment about the best method of testing moisture and contaminant movement at Ward Valley. DOE is aware that Mr. Jay Davis, Associate Director of Environmental Programs at LLNL, stated that tritium is not a good measure of moisture infiltration in arid regions and that experts from the NAS, the State of California and its contractors have concluded that tritium testing by itself does not provide conclusive results in these matters.

Question (Riggs): Does DOE believe that the National Academy of Sciences erred in concluding that additional tritium tests could be conducted during construction and operation, rather than requiring them prior to a land transfer decision?

We have no technical basis to disagree with the NAS finding, but it is up to DOI to decide what analysis is required before it transfers land under the Federal Land Policy and Management Act.

Question (Bilbray): Legislation has been introduced in both the House and Senate which would transfer the land needed for the disposal facility from the Interior Department to the State of California, contingent upon provision of a written commitment by the State of California to the Nuclear Regulatory Commission to "carry out environmental monitoring and protection measures based on recommendations of the National Academy of Sciences subject to federal oversight by the Nuclear Regulatory Commission."

Given the requirements for this legislation, and the pledge made by the State of California to comply with the NAS recommendations, would such a role for NRC comport with the traditional division of responsibility between the Energy Department, the NRC, and the states relating to low-level radioactive material?

No. The respective roles you describe depart in some respects from what DOE understands to be the traditional division of responsibility between NRC and the States. Under the Agreement State provisions of the Atomic Energy Act, the NRC sets generally applicable requirements and standards for States that choose to maintain their own radiation protection programs. The NRC conducts scheduled audits of the State programs to assure that they comply with these standards. Agreement States are responsible for licensing. In that respect, the proposed legislation would depart from the traditional division of responsibility between the State and NRC under NRC's Agreement State Program. As noted above, DOE's principal role under the Low-Level Radioactive Waste Policy Act is to provide technical assistance to States. That role would not be affected by the proposed legislation.

Question (Fazio): Should the Ward Valley project be terminated as a result of Interior's actions, what practical effect do you believe this would have on implementation of the federal LLRW Policy Act in California and other States?

We hope the Ward Valley project will go forward, and we cannot speculate about the effect if it were terminated.

Question (Fazio): Is DOE willing to accept for disposal commercial LLRW from waste generators in States unable to provide for LLRW disposal due to actions by the Federal government?

No preparations have been made for DOE to accept low-level radioactive waste from waste generators that are unable to provide for state-sponsored disposal. Given the constraints on the Department's budget and facilities and the absence of appropriated funds for that purpose, it would not be possible for DOE to undertake such a task at this point in time.

Question (Fazio): How would DOE seek to involve the Governors of such States in such processes?

Should DOE receive such a request preceded by the necessary statutory changes to make DOE responsible for commercially generated low-level radioactive waste, the same mechanisms established over many years with the Governors of States hosting DOE facilities would be utilized to begin consultation.

Garamendi: BLM to Contract with Lawrence Livermore

In an April 22 letter, John Garamendi, Deputy Secretary of the U.S. Department of Interior (DOI), conveyed his views to Energy Secretary Hazel O'Leary regarding

- the Bureau of Land Management's (BLM) plans to contract with the Lawrence Livermore National Laboratory for radionuclide migration tests at the Ward Valley site (see related story, this issue); and
- DOI's authority to consider the site suitability of Ward Valley.

His letter states

I believe that the Lawrence Livermore Laboratory (LLL) is an outstanding research facility, capable of carrying out tests for tritium at Ward Valley. I suspect that the Bureau of Land Management (BLM) will seek a contract with LLL for the testing in the very near future ...

As to the assertion that the Department of Interior has no authority to consider site suitability, we disagree. The Federal Land Policy and Management Act specifically requires us to determine whether any proposed transfer of Federal land is in the public interest. We cannot legally avoid considering the suitability of the site for its intended use in determining whether the transfer meets this legal standard.

Garamendi also describes discussions that he had with an official from Southern California Edison. The letter was written in reference to a letter to O'Leary from California State Senator Alfred Alquist (D).

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

President Clinton's Position on Ward Valley Land Transfer

On April 22, 1996, President Bill Clinton stated his position on the transfer of federal land located in Ward Valley, California, to the State of California for use in siting a low-level radioactive waste disposal facility. His comments were made in response to a March 22 letter from the American College of Nuclear Physicians, and a March 27 letter from the Midwest Interstate Low-Level Radioactive Waste Compact Commission. Excerpts from the correspondence follow.

Midwest Compact to Clinton

Our six states also are involved in a similar and difficult effort to develop a regional facility for the safe disposal of low-level radioactive waste. This latest decision, coupled with earlier actions by the Department of the Interior, is very disturbing for two reasons:

- 1) It is environmentally irresponsible ...
- 2) It lacks any justifiable scientific basis ...

There simply is no justification for further delay and study. As Governors, both you and Interior Secretary Babbitt led the effort to establish the current compact framework that has been in place since Congress first acted on your recommendations in 1980. Now that California and other states have proceeded in good faith to fulfill their obligation to develop new disposal capacity, it is both ironic and unfortunate that the federal government has become the chief obstacle to successful implementation of your policy.

On behalf of the Midwest Compact Commission, I urge you to direct the Department of the Interior to immediately transfer the Ward Valley land to the State of California. Absent such direction, we have no alternative but to continue to actively support legislation under consideration in Congress that will provide for the land transfer and development of a safe regional disposal facility for low-level radioactive waste in California.

Letter from Teresa Hay, Chair, Midwest Compact Commission, to President Bill Clinton. March 27, 1996.

ACNP to Clinton

The American College of Nuclear Physicians (ACNP) wishes to go on record in staunch opposition to the U.S. Department of Interior's latest move to delay California's urgently needed Ward Valley low-level radioactive waste (LLRW) disposal project; and to register our support for S. 1596 and H.R. 3083 to remedy the serious societal problems created by these repeated and unnecessary delays ...

The law, which assigns the states responsibility for managing these wastes, was sound public policy when Congress passed it in 1980. It remains a good law today, and you can be proud of the role you served as Governor of Arkansas on the National Governors' Association task force chaired by then-Governor Babbitt which framed the measure ...

[M]embers of your Administration have joined in a seriously misguided campaign to prevent California from fulfilling this important federal mandate. Despite an independent National Academy of Sciences (NAS) finding in May, 1995 that project construction and operation need not be delayed for further testing, and despite a California Supreme Court decision upholding the state license approval and related environmental impact studies, the Secretary of the Interior, Bruce Babbitt, refuses to transfer the federal land to the State of California at the Ward Valley site. Instead, Interior has announced plans to delay such a decision pending completion of further tests; tests the NAS recommended be carried out at a future date along with other ongoing studies at the site.

To put this foolishness in perspective, Interior's own Director of the U.S. Geological Survey has flatly stated that the tests are likely to be inconclusive. This path, if followed, will

predictably lead to further controversy and demands for yet further studies by the very groups and individuals who have successfully lobbied Interior to announce the latest delay. While the Ward Valley site remains unused, LLRW will continue to accumulate at biotechnology companies, medical centers, university campuses and industries in urban areas subject to floods, fires, earthquakes and civil disturbance.

For the sake of the millions of Americans relying on medical procedures and future medical advances, we ask you to take whatever actions you deem appropriate to secure the immediate transfer of the Ward Valley site to California.

Letter from David Brill, President ACNP and Carol Marcus, President, ACNP California Chapter, to President Bill Clinton. March 22, 1996.

Clinton to ACNP and Midwest Compact

My Administration believes that the Ward Valley site should be transferred through appropriate, binding agreements with the state of California, following a thorough environmental analysis of the Beatty, Nevada, nuclear waste site. I regret that the state has been unwilling to make these commitments and is pursuing a legislative override of existing environmental and land management law in order to force the transfer. My Administration has strongly and consistently opposed the pending transfer legislation, and I have stated my objections repeatedly to Congress.

Congressional shortcuts on a matter of this importance are wrong. If the Ward Valley site is to be transferred and used as a radioactive waste site, all Californians must be assured that the site will be safe and that their interests—and the interests of their children and grandchildren—will be protected.

My Administration remains committed to ensuring that the public interest, health, and safety are served.

Letter from President Bill Clinton to David Brill, and Carol Marcus, American College of Nuclear Physicians. April 22, 1996. A letter with exactly the same language was sent by Clinton on May 3 to Teresa Hay, Chair, Midwest Compact Commission.

American College of Nuclear Physicians Calls for NRC Review of Ward Valley Land Transfer

... I have concluded that Department of Interior decision-making on the Ward Valley land transfer has progressed from the ill-advised to the irrational. No other conclusion is possible, given Mr. Grumbly's expectation that DOE's role in Interior's planned Ward Valley testing will not include data interpretation ...

Setting aside Interior's decision to ignore the NAS' report and the Agreement State agency's wishes in order to further delay its land conveyance action, it is our position that Interior should have approached the NRC (not DOE) for assistance in undertaking these ill-timed tests. This reflects our interest in ensuring that data are interpreted in the context of applicable regulatory requirements. For Interior to proceed alone (without even the benefit of DOE's radiologic safety and low-level waste management expertise) strikes us as irresponsible and reckless ...

[W]e believe that Interior's continuing intrusion into technical and regulatory matters for which they lack expertise and refuse to accept credentialed recommendations has reached a point where the NRC can no longer look the other way. On behalf of our physician members, our patients, our manufacturers, and our colleagues in medical research, we ask the Commission to review this matter at its earliest convenience.

Letter from Carol Marcus, President, American College of Nuclear Physicians California Chapter, to Shirley Jackson, Chair, U.S. Nuclear Regulatory Commission. May 14, 1996.

U.S. Department of Energy (continued)

Mixed Waste Pilot Project Schedule Tied to DOE Privatization Efforts

At the request of DOE, the Mixed Waste Pilot Project—which is coordinated by the Commercial Mixed Waste Pilot Project Work Group of the Federal Facility Compliance Act (FFCA) Task Force—has been postponed for approximately one year due to ongoing DOE privatization efforts. According to Pilot Project Work Group members, DOE staff believe that privatization efforts now under way may ultimately provide treatment capacity for most, if not all, of the commercial mixed waste for which commercial treatment capacity is not currently available. However, DOE estimates that a year will be needed to get responses to the various privatization initiatives and to analyze the types of mixed wastes that could be treated through these initiatives.

Pilot Project Background In October 1995, the FFCA Task Force agreed to establish a working group to develop procedures necessary for implementation of a commercial mixed waste pilot project. (See *LLW Notes*, October 1995, p. 1.) The pilot project would involve sending a commercial mixed waste for which no commercial treatment capacity is available to an existing DOE facility for treatment. Residual waste would then be either shipped for disposal or returned to the point of origin. The pilot project concept had been endorsed by the LLW Forum's Mixed Waste Working Group during its September 1995 meeting.

Next Steps While DOE pursues privatization initiatives, FFCA Pilot Project Work Group members and LLW Forum Mixed Waste Working Group members will undertake to develop better and more current data on commercial mixed waste streams. Members of both groups will work with mixed waste generators to obtain information on mixed waste streams and to compile it into a format similar to the one in which DOE is accustomed to receiving information on DOE mixed waste streams. The data will then be analyzed in conjunction with an assessment of the DOE privatization efforts.

U.S. Environmental Protection Agency (EPA)

EPA Extends Mixed Waste Enforcement Moratorium

In an April 26 *Federal Register* notice, EPA announced a limited extension of the agency's policy on the civil enforcement of the storage prohibition of the Resource Conservation and Recovery Act (RCRA) at facilities that generate "mixed waste" regulated under both RCRA subtitle C and the Atomic Energy Act. EPA will treat violations of the RCRA hazardous waste storage restrictions involving relatively small volumes of mixed wastes as "reduced priorities among EPA's potential civil enforcement actions." The policy applies to mixed wastes

- that are prohibited from land disposal under the RCRA land disposal restrictions,
- for which there are no options for treatment or disposal, and
- which are being stored in an environmentally safe manner.

The extension expires on April 20, 1998.

Mixed Waste and Land Disposal Restrictions Mixed waste contains both a hazardous waste component regulated under RCRA subtitle C and a radioactive component regulated under the Atomic Energy Act. As a subset of hazardous waste, mixed wastes are subject to the land disposal restrictions contained in 40 CFR Part 268. Mixed wastes are also subject to storage prohibitions, which forbid the storage of a waste that is restricted from land disposal except "for the purpose of the accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment, or disposal."

EPA Establishes Advisory Committee on Research Program Operation

In May 1995, the National Low-Level Waste Management program prepared a report—*Mixed Waste Management Options: 1995 Update*—which concluded that commercial treatment is not available for approximately 118 cubic meters of mixed waste per year. Based on the report, EPA determined that “[c]ommercial generators and many federal government agencies have little option but to store some of these wastes until new technologies become available. Thus, many mixed waste generators may be subject to enforcement action or citizen suits even though it is impossible for them to comply with the law.”

Commercial Treatment and DOE Treatment The *Federal Register* notice states:

Prospects for new mixed waste treatment technology and disposal capacity continue to be driven largely by the treatment needs identified by the DOE, since DOE’s waste volumes dwarf those of the commercial sector. The next few years will be significant for bringing on-line the facilities, the processes, and capacities identified in the site-specific treatment plans required by the Federal Facility Compliance Act for managing DOE’s significant mixed waste inventories. EPA expects that the commercial and governmental generators affected by this policy extension will also be beneficiaries of the statutory and market forces that are currently addressing the treatment capacity issues within the DOE complex. Therefore, a two-year limited extension of this policy should foster greater coordination of the solutions to the treatment capacity shortfall that affects all generators.

For further information, see “New Materials and Publications.”

In a May 10 *Federal Register* notice, EPA announced the establishment of a Federal Advisory Committee—the Board of Scientific Counselors—to provide expert scientific and engineering advice on the operation of the research program of EPA’s Office of Research and Development. The primary functions of the board are

- to evaluate the science and engineering research programs, laboratories, and research-management practices of the Office of Research and Development;
- to recommend actions to improve their quality and/or strengthen their relevance to the mission of EPA; and
- to provide advice concerning the utilization of peer review within the Office of Research and Development in order to sustain and enhance the quality of science in EPA.

Board members will be appointed by the EPA’s Deputy Assistant Administrator from a list of nominations supplied by the Assistant Administrator for Research and Development. Nominations of highly qualified experts in science and engineering were received from the Office of Research and Development’s national centers and laboratories. The first meeting of the Board of Scientific Counselors will be in June 1996.

U.S. Nuclear Regulatory Commission (NRC)

NRC Commissioner On Decommissioning, LLRW Disposal

The following excerpts regarding NRC's proposed decommissioning rule are from a speech by NRC Commissioner Kenneth Rogers at the Regulatory Information Conference on April 10 in Washington, D.C.

Regarding the proposed [decommissioning] rule, it was based on a concept that there are three distinct phases of decommissioning that must be addressed. The first phase covers permanent cessation of power production operations, public notification, early plant modifications, and on-site rearrangement, packaging and removal of components and waste prior to entering SAFSTOR status ... The duration of this phase is probably measured in months, or, in some cases, a few years.

SAFSTOR: An alternative in which the nuclear facility is placed and maintained in a condition that allows the nuclear facility to be safely stored and subsequently decontaminated to the levels that permit release for unrestricted use.

The second phase would be when the facility is in the SAFSTOR mode with little on-site or off-site activity other than monitoring of systems required to maintain SAFSTOR, e.g., Spent Fuel Pool cooling systems. This phase will probably last for years or even decades, and its duration will depend upon the availability of low-level waste sites to accept waste materials from plant dismantlement at a feasible price. If the licensee chooses to proceed to final decontamination and license termination shortly after completion of the first phase, the second phase could be compressed, but would probably still be dependent on the availability of suitable radioactive waste sites.

The third and last phase would cover the period after the licensee commences the final steps to complete decommissioning and would involve radiological decontamination of the facility and site, and termination of the reactor license. This phase is probably measured in months or years.

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

Ward Valley Transfer Bills Introduced in House and Senate—States/Compacts Support Legislation

Identical legislation has been introduced in the U.S. House of Representatives and the U.S. Senate to transfer federal land in Ward Valley, California, to the State of California for use in siting a low-level radioactive waste disposal facility. Several states and compacts have sent correspondence to their elected representatives in an effort to move the bills quickly. To date neither bill has reached the floor.

S. 1596

The Senate bill, S. 1596, was introduced on March 7 and reported out of committee without amendment on March 28. (See *LLW Notes*, March 1996, p. 1.) Senators Frank Murkowski (R-AK) and Bennett Johnston (D-LA) are sponsoring the legislation.

In an April 25 "Dear Colleague" letter seeking cosponsors, Murkowski stated:

The facts are clear. If you want to protect the environment, maintain important medical research and treatment, and get the waste out of schools, hospitals and neighborhoods to the desert where it will be safe, opening Ward Valley is the right thing to do, and this is the time to do it.

H.R. 3083

On March 14, the House Bill, H.R. 3083, was introduced. The bill is sponsored by Representative Brian Bilbray (R-CA) and cosponsored by Representatives Carlos Moorhead (R-CA), Duncan Hunter (R-CA), Randy "Duke" Cunningham (R-CA), Bill Thomas (R-CA), Don Young (R-AK), Dan Schaefer (R-CO), and Joe Barton (R-TX).

Bilbray sought cosponsors among his colleagues in an April 24 letter, in which he wrote:

Sixteen years have passed since Congress delegated this responsibility to the states. It is past time to move forward and implement this broad-based and bipartisan policy. California and the other states in their Compact have complied with congressional intent; the National Academy of Sciences and California's courts have upheld this process. H.R. 3083 is strongly supported and desperately needed by cancer and other patient groups, the medical and academic communities, and the biotechnology community.

Letters from States and Compacts

The Southeast Low-Level Radioactive Waste Compact Commission is among the states and compacts supporting the proposed land transfer. On April 24, the compact commission, which includes representatives from seven states, sent letters to its entire congressional delegation urging them to sign on as cosponsors to the bills. The letters warn:

Further delay of the land transfer could impact the efforts to site new disposal facilities across the nation. California was the first state to issue a new LLRW disposal facility license under the framework established by the Act. There are currently three other license applications pending, including the one in North Carolina. It will become very difficult for the Southeast Compact and other states and compacts to carry out their responsibilities under the provisions of the Act to develop LLRW disposal sites if there is a threat of federal intervention into what is clearly a state responsibility.

Kathryn Haynes, Executive Director of the Southeast Compact Commission, subsequently wrote to Forum Participants and Alternates on April 29 requesting that they take similar action in favor of the land transfer.

Haynes' letter was followed by a letter from Carl Lischeske, Manager of California's Low-Level Radioactive Waste Program, requesting that LLW Forum Participants contact their congressional delegation as soon as possible to request support for the bills. Don Womeldorf, Executive Director of the Southwestern Low-Level Radioactive Waste Commission, also sent letters to Forum Participants and Alternates, on April 23 and 26, seeking support for the legislation.

Various other states and compacts have adopted resolutions or sent correspondence in the past expressing support for transfer of the Ward Valley land to the state.

U.S. House of Representatives

Legislation Introduced to Repeal the Policy Act and to Transfer Disposal Responsibility to Interior Secretary

On May 7, U.S. Representative Jerry Lewis (R-CA) introduced H.R. 3394, the Low-Level Radioactive Waste Federal Responsibility Act of 1996. The legislation seeks to repeal the 1980 Low-level Radioactive Waste Policy Act and to transfer disposal responsibility to the U.S. Interior Secretary for "waste generated within any State outside a sited compact region." As of press time, no action had been taken on the bill.

Introduction of Bill

Lewis cited "emotional political demagoguery by Senator Barbara Boxer and the failure of the Clinton Administration to address a long-term solution to the permanent storage of low-level radioactive waste (LLRW) in California" as the basis for introducing H.R. 3394.

It is now painfully clear, based upon recent words and actions, that the Clinton Administration, like California's junior Senator, believes that the federal government is best suited to act as caretaker of low-level radioactive waste. After a great deal of thought and series of discussions with noted experts, I have decided to grant the Administration its wish. The Low-Level Radioactive Waste Federal Responsibility Act of 1996 provides the Secretary of the Interior—one of the strongest advocates of waste storage and leading opponents of the Ward Valley site—the authority and sole responsibility of disposing of low-level waste. It is time for the Clinton Administration to demonstrate through actions and not empty political rhetoric that it cares more about public health and safety than financial promises made to its presidential campaign by the most extreme environmentalists.

Contents of Legislation

Repeal of the Policy Act and Transfer of Responsibilities to the U.S. Interior Secretary
H.R. 3394 explicitly provides for the repeal of the Low-Level Radioactive Waste Policy Act, under which states are responsible for providing for disposal of commercial low-level radioactive waste. Instead, the bill would make the U.S. Interior Secretary responsible for disposal of such waste generated in most states—including the District of Columbia and Puerto Rico.

The proposed legislation mandates that the Interior Secretary establish a disposal facility on land owned by the federal government. The Secretary is allowed, however, to contract with the U.S. Department of Energy for low-level radioactive waste disposal at a facility established by DOE. Specifically, the act provides as follows:

Not later than January 1, 1997, the [Interior] Secretary shall accept for disposal any low-level radioactive waste generated within any State outside a sited compact region. Notwithstanding any other provision of law, no later than January 1, 1997, the [Interior] Secretary shall contract with the Secretary of Energy for the temporary storage of low-level radioactive waste at any facility established by the Department of Energy for radioactive waste ... and may contract with the Secretary of Energy for disposal of such waste at any such facility or may contract with any State for disposal of such waste at any licensed disposal facility operated to dispose of low-level radioactive waste generated within that State. The [Interior] Secretary shall take physical possession of low-level radioactive waste tendered consistent with this Act by a waste generator or broker or by a State official charged with regulating possession of radioactive materials beginning on January 1, 1997, whether or not a contract with the Secretary of Energy has been executed.

Sited Compact Regions The act defines a sited compact region as "a compact region in which there is located one of the following disposal facilities: Barnwell in the State of South Carolina and Richland in the State of Washington." A region ceases to be a sited compact region if its disposal facility stops accepting waste.

Sited compact regions are required under the act to provide for the disposal of low-level radioactive waste generated within their member states. In addition, any state that is not in a sited compact region may nonetheless provide for the in-state disposal of low-level radioactive waste generated within its borders. A state that chooses to provide such disposal, however, may not be required to accept out-of-state low-level radioactive

waste except under contract with the Interior Secretary.

Rates for Disposal H.R. 3394 provides that the U.S. Interior Secretary shall establish low-level radioactive waste disposal rates by regulation. "The rates shall provide for recovery of the actual costs of disposal and the administrative costs of the [Interior] Secretary to contract with the Secretary of Energy ... Rates may be based upon volume or activity of waste, or a combination of the two, except that the rate shall not exceed an average rate of \$500 per cubic foot of waste disposed."

Congress and President Agree on FY '96 Appropriations; USEC and EPA Provisions Included

In late April, both houses of the U.S. Congress approved H.R. 3019, the \$160-billion omnibus appropriations bill for fiscal year 1996. The bill addresses spending issues for several cabinet departments and other federal agencies that have been without a budget since the end of September 1995. President Bill Clinton signed the bill into law on April 26, 1996. It is Public Law Number 104-134.

U.S. Enrichment Corporation Language

The appropriations bill includes language in Title III, Chapter 1, Subchapter A to privatize the U.S. Enrichment Corporation (USEC). Part of the privatization provisions—namely, section 3113—concerns state and compact liability for the disposal of low-level radioactive waste generated by the USEC. The bill provides as follows:

Sec. 3113 (c) STATE OR INTERSTATE COMPACTS.—Notwithstanding any other provision of law, no State or interstate compact shall be liable for the treatment, storage, or disposal of any low-level radioactive waste (including mixed waste) attributable to the operation, decontamination, and decommissioning of any uranium enrichment facility.

EPA Wetlands Rider

The FY 96 appropriations bill funds the Environmental Protection Agency at about \$6.5 billion. This is \$817 million more than the vetoed conference report (H.R. 2099) and slightly under the final fiscal year 1995 appropriation of \$6.6 billion. Moreover, Congress agreed in the final bill to drop a controversial rider that would have eliminated EPA's veto authority over Army Corps of Engineers' wetlands permitting decisions. (See *LLW Notes*, November/December 1995, p. 18.)

For background information on the USEC privatization, see LLW Notes, January/February 1996, p. 23, and LLW Notes, November/December 1995, pp. 14-15.

Document Distribution Key	
P Forum Participants	N LLW Notes Recipients
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LLW Forum

DM Meeting Packet: LLW Forum meeting May 29-31, 1996.

- *LLW Forum Meeting Agenda.* Afton Associates, Inc. May 1996.
- *LLW Forum Meeting-at-a-Glance Schedule.* Afton Associates, Inc. May 1996.
- *LLW Forum Meeting Preattendance List.* Afton Associates, Inc. May 1996.
- *Status of Technical Assistance.* DOE's National Low-Level Waste Program. May 1996.
- Letter from Michael Weber, Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, NRC, to the EPA Resource Conservation and Recovery Act (RCRA) Docket, commenting on the EPA's proposed Hazardous Waste Identification Rule that appeared in the *Federal Register* on December 21, 1995. Appended to the letter are NRC staff comments on low-level radioactive waste levels and contingent management. April 22, 1996.

- *New Jersey Radioactive Materials Management Group Fact Sheet.* The principle objective is to serve as a central source for obtaining and sharing information specific to the process of siting a low-level radioactive waste facility in New Jersey.

States and Compacts

Northwest Compact/Washington

- D *Division of Radiation Control, Utah Department of Environmental Quality, Envirocare of Utah Mailing List Information Notice* (Radioactive Material License No. UT2300249). The Division of Radiation Control has determined that the disposal of ion exchange resin by Envirocare of Utah will not result in adverse environmental or public health impacts at the licensee's disposal site at Clive, Utah. May 7, 1996.

Southeast Compact/North Carolina

- Letter from Richard Hodes, Chair, Southeast Compact Commission, to the entire Southeast Compact Congressional delegation, urging support of H.R. 3083, which provides for the transfer of federal land in Ward Valley, California, to the State of California. April 24, 1996.

Southwestern Compact/California

- D Letter from George Thompson, Professor of Geophysics and former Chair of the National Academy of Sciences' Ward Valley committee, to Michael Antonovich, Chair, Los Angeles County Board of Supervisors, regarding the Ward Valley disposal facility site and the scientific and technical issues related to it. Thompson states that from a "purely scientific standpoint, none of the data reviewed by the committee support further delay." April 20, 1996.

Federal Agencies and Committees

DOE

- DOE Press Release.* "Thomas Grumbly Sworn in as Under Secretary of Energy." Thomas Grumbly was sworn in as Under Secretary of DOE, the third ranking official at the department. The U.S. Senate confirmed Grumbly's appointment on May 2. His responsibilities will include oversight of the department's nuclear materials and weapons cleanup program, the civilian radioactive waste program and safety-related activities in the former nuclear weapons manufacturing complex. May 6, 1996.

DOE Press Release. "Alvin Alm Advances to Assistant Secretary for Environmental Management." Alvin Alm was sworn in as Assistant Secretary for Environmental Management at DOE. He will be responsible for directing environmental management activities in the nuclear weapons complex, including waste management operations, environmental restoration, nuclear material and facility stabilization and technology development. May 6, 1996.

Letter from Thomas Grumbly, Acting Under Secretary, DOE, to Frank Murkowski, Chair, Committee on Natural Resources, U.S. Senate, responding to a March 13 letter concerning the Department of the Interior's request that the DOE's Lawrence Livermore National Laboratory provide assistance in analyzing the potential tritium transport mechanisms at Ward Valley, California. May 2, 1996.

DOE Press Release. "Chupka Named Acting Assistant Secretary for Policy; Kenderdine Advances to DAS for Congressional Affairs." Marc Chupka has been named Acting Assistant Secretary for Policy at the DOE. He replaces Dan Reicher, who is now serving as Energy Secretary Hazel O'Leary's chief of staff. Melanie Kenderdine has been appointed the Deputy Assistant Secretary for House Liaison in DOE's Office of Congressional, Public and Intergovernmental Affairs. April 18, 1996.

^D Letter from C. Bruce Tarter, Director, Lawrence Livermore National Laboratory, to Alfred Alquist, California State Senator, replying to a March 28, 1996 letter regarding proposed tests to measure radionuclide migration rates for the Ward Valley, California disposal site. Tarter attached responses to questions that Senator Alquist asked in his March 28 letter. April 16, 1996.

Department of the Interior

Letter from John Garamendi, Deputy Secretary, Department of the Interior, to Hazel O'Leary, Secretary, U.S. Department of Energy, regarding an April 8 letter from California State Senator Alfred Alquist to O'Leary, that referenced discussions between Garamendi and California utility executives. April 22, 1996.

DOT

"Guidance for Radiation Protection Programs," 61 *Federal Register* 17349. Research and Special Programs Administration, DOT. April 19, 1996. Action: Request for Comment. The Research and Special Programs Administration is developing guidance for the radioactive material industry to facilitate compliance with the radiation protection program requirements of the Hazardous Materials Regulations that go into effect on October 1, 1997.

EPA

"Extension of the Policy on Enforcement of RCRA Sec. 3004(j); Storage Prohibition at Facilities Generating Mixed Radioactive/Hazardous Waste," 61 *Federal Register* 18588-18592. EPA. April 26, 1996. Action: Policy Statement. Announces a limited extension of its policy on the civil enforcement of the storage prohibition of the Resource Conservation and Recovery Act (RCRA) at the facilities which generate mixed waste regulated under both the RCRA subtitle C hazardous waste program and the Atomic Energy Act.

"Agency Extends Policy on Reduced Enforcement Priority for Storage of Mixed Waste for Which Treatment Technology or Storage Capacity Does not Exist," *Environmental Fact Sheet* (EPA530-F-96-026). Office of Solid Waste and Emergency Response, EPA. April 1996. EPA announces a limited two-year extension of the "Policy on Enforcement of RCRA Section 3004(j) Storage Prohibition at Facilities Generating Mixed Radioactive/Hazardous Wastes," effective April 21, 1996.

NRC

Some Important Emerging Regulatory Issues. Presentation by Kenneth Rogers, Commissioner, NRC, at the Regulatory Information Conference, Washington, DC, on April 10, 1996. The speech covered industry deregulation and restructuring; environmental reviews for license renewal; and power reactor decommissioning.

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NRC (continued)

Radioanalytical Technology for 10 CFR Part 61 and Other Selected Radionuclides. (NUREG/CR-6230, PNL-9444). Literature review. Prepared by C. W. Thomas, V. W. Thomas, and D. E. Robertson, all of the Pacific Northwest National Laboratory. Prepared for the Division of Regulatory Applications, Office of Nuclear Regulatory Research, NRC. March 1996. The literature review and assessment was conducted to identify and evaluate radioanalytical technology and procedures used for measuring 10 CFR Part 61 radionuclides and other long-lived isotopes.

PAFLD Letter from Carol Marcus, President, American College of Nuclear Physicians—California Chapter, to Shirley Jackson, Chair, U.S. Nuclear Regulatory Commission, re the Department of the Interior's actions concerning the planned low-level radioactive waste disposal facility in Ward Valley, California. May 14, 1996.

U. S. Congress

GAO

Environmental Protection: Issues Facing the Energy and Defense Environmental Management Programs (GAO/RCED/NSIAD-96-127). March 1996. Statement of Victor Rezendes, Director, Energy, Resources, and Science Issues; Resources, Community, and Economic Development Division; GAO. Testimony Before the Subcommittees on Military Procurement and Military Readiness, Committee on National Security, House of Representatives.

Environmental Management: An Integrated Approach Could Reduce Pollution and Increase Regulatory Efficiency (GAO/RCED-96-41). Resources, Community, and Economic Development Division; GAO. January 1996. Report to the Ranking Minority Member, Committee on Environment and Public Works, U.S. Senate. The report reviews (1) the approaches to environmental management used in Massachusetts, New York, and New Jersey; (2) state and industry experience with these approaches; and (3) EPA's role in these efforts.

Office of the President

Letter from President Bill Clinton, to David Brill, President, American College of Nuclear Physicians and Carol Marcus, President, American College of Nuclear Physicians—California Chapter, responding to their letter regarding the Ward Valley, California land transfer. April 22, 1996.

Letter from David Brill, President, American College of Nuclear Physicians and Carol Marcus, President, American College of Nuclear Physicians—California Chapter, to President Bill Clinton, regarding the need for immediate completion of the Ward Valley, California land transfer. March 22, 1996.

Other

"Nuclear Waste as a Way to Make Money," The Morning Edition, *National Public Radio* (NPR). March 25, 1996. News segment reporting on Barnwell, South Carolina, and how the low-level radioactive waste disposal facility there is viewed. To order a copy of the transcript, contact NPR at (202)414-3232. The cost is \$11.50 plus postage.

Disposal and Storage of Spent Nuclear Fuel—Finding the Right Balance: A Report to Congress and the Secretary of Energy. Nuclear Waste Technical Review Board. March 1996. To obtain a copy of the report, contact the Review Board at (703)235-4473.

Obtaining Publications

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- DOE Press Office(202)586-5806
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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 Engineering Laboratory (INEL) to be placed on a public information mailing list for copies of *LLW Notes* and the supplemental *Summary Report*. Afton Associates, the LLW Forum's management firm, will provide copies of these publications to INEL. The LLW Forum will monitor distribution of these documents to the general public to ensure that information is equitably distributed throughout the states and compacts.

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

Low-Level Radioactive Waste Disposal Compact Membership

Appalachian Compact

Delaware
Maryland
Pennsylvania *
West Virginia

Central Compact

Arkansas
Kansas
Louisiana
Nebraska *
Oklahoma

Central Midwest Compact

Illinois *
Kentucky

Midwest Compact

Indiana
Iowa
Minnesota
Missouri
Ohio *
Wisconsin

Northwest Compact

Alaska
Hawaii
Idaho
Montana
Oregon
Utah
Washington * •
Wyoming

Rocky Mountain Compact

Colorado
Nevada
New Mexico

Northwest accepts Rocky Mountain waste as agreed between compacts.

Northeast Compact

Connecticut *
New Jersey *

Southeast Compact

Alabama
Florida
Georgia
Mississippi
North Carolina *
Tennessee
Virginia

Southwestern Compact

Arizona
California *
North Dakota
South Dakota

Texas Compact

Maine
Texas *
Vermont

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

Unaffiliated States

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

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