LLWnotes

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House Votes 309 to 107 to Approve Texas Compact Vote Moves to Senate

H.R. 629, a bill to grant congressional approval to the Texas Low-Level Radioactive Waste Disposal Compact was overwhelmingly passed by the U.S. House of Representatives on Tuesday, October 7, by a vote of 309 to 107. The vote followed over two-and-a-half hours of debate on the rule for considering the legislation and on the bill itself.

Amendment

While Representative Henry Bonilla (R-TX), a chief opponent of the legislation, did not offer any amendments to the bill, Representative Lloyd Doggett (D-TX), another outspoken opponent, offered an unprinted amendment. Only point (4) differs from the consent language adopted for the nine compacts previously approved by Congress.

Bill Sponsor Accepts Amendment With Conditions

Representative Joe Barton (R-TX), the sponsor of H.R. 629, accepted the Doggett amendment, but reserved the right to consult about it with the Governors—and possibly legislatures—from the affected states. Any amendment to the Texas Compact itself would require consideration and reratification by the compact's three member states.

continued on page 38

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Sec. 3. CONDITIONS OF CONSENT TO COMPACT.

The consent of the Congress to the compact set forth in section 5—

(1) shall become effective on the date of the enactment of this Act;

(2) is granted subject to the provisions of the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021b et seq.); ~~and~~

(3) is granted only for so long as the regional commission established in the compact complies with all of the provisions of such Act, and

(4) is granted only for so long as no low-level radioactive waste is brought into Texas from any state other than Maine or Vermont.

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MASTER

Low-Level Radioactive Waste Forum

LLW Notes

Volume 12, Number 7 • October 15, 1997

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

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Key to Abbreviations

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
Code of Federal Regulations	CFR

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Central Compact/Nebraska

Nebraska Governor Hosts LLRW Meeting

On August 28, Governor E. Benjamin Nelson of Nebraska held a regional summit to "explore options and alternatives for low-level radioactive waste disposal." Nelson delivered the welcoming and concluding remarks, and Ron Ross of the Western Governors' Association served as moderator for the one-day summit, which was divided into five sessions, with topics and speakers as follows:

Current Status of Siting Activities among Compacts and States

Thor Strong	Michigan Low-Level Radioactive Waste Authority
Teresa Hay	Midwest Interstate Low-Level Radioactive Waste Commission (Hay has since left her position.)
Gene Crump	Central Interstate Low-Level Radioactive Waste Commission
Clark Bullard	Central Midwest Interstate Low-Level Radioactive Waste Commission
Holmes Brown	Afton Associates, Inc.

What Alternatives Are There?

Ed Helminski	Exchange/Monitor Publications
Diane D'Arrigo	Nuclear Information and Resource Service (NIRS)

Citizen Viewpoints and Alternatives

Charles Jones	Kansas Department of Health and Environment
Gary Thompson	Nebraska Public Power District
Loren Sieh	Boyd County Local Monitoring Committee
Ken Reiser	People for Progress in Boyd County
Charles Zidko	Save Boyd County Association
Sen. Merton Dierks	Nebraska Unicameral

Economics of the Current Compact System

Dennis Coates	University of Maryland—Baltimore County
Greg Hayden	University of Nebraska—Lincoln
Robert Burns	National Regulatory Research Institute, Ohio State University
Arjun Makhijani	Institute for Energy and Environmental Research

Views on Disposal Options—Questions and Answer Session

Diane D'Arrigo	Nuclear Information and Resource Service (NIRS)
Terry Plummer	National Low-Level Waste Program, DOE
Clark Bullard	Central Midwest Interstate Low-Level Radioactive Waste Commission

Following the summit, Governor Nelson issued a report summarizing the discussions and drawing several conclusions about waste management. The Governor expressed support for "combining resources and facilities with the federal government so that more land is not contaminated by low-level waste." In the meantime, Nelson suggests that "continued use of existing facilities or on-site storage are viable options, as low-level waste volumes continue to decline."

—CN

For further information, or to receive a copy of Governor Nelson's report, contact Steve Moeller of the Governor's Policy Research Office at (402)471-2417.

Southeast Compact/North Carolina

Southeast Compact Considers Funding Proposal

Generators Offer Loans

A group of generators has offered to cover anticipated funding shortfalls for development of a regional low-level radioactive waste disposal facility in Wake County, North Carolina. The offer was made by the Southeast Compact Utility Generators Group (SEGG) at a meeting of the Southeast Low-Level Radioactive Waste Compact Commission's Policy and Planning Committee on August 20 in Alabama. SEGG comprises Entergy, Florida Power Corporation, Florida Power & Light, Southern Nuclear Operating Company, Tennessee Valley Authority, and Virginia Power. Member utilities have had regular discussions with the compact commission through a working committee established by the commission in 1995.

Under the terms of SEGG's suggested nonbinding Memorandum of Understanding (MOU), participating generators would loan funds to the North Carolina Low-Level Radioactive Waste Management Authority after the compact commission's available funds have been expended. If the Authority's proposed disposal site is licensable, the Authority would repay the loans, with interest, when revenue bonds are issued to finance construction of a disposal facility. If, however, "despite the Authority's best efforts" the site is "unlicensable due to a demonstrable site deficiency found through Licensing Work Plan implementation," the loans would be forgiven. The proposal also offers to guarantee to North Carolina an adequate annual revenue stream during the twenty-year operating term of the facility to assure recovery of the capital, operating, long-term care, and closure costs.

General Preconditions

Various preconditions would have to exist in order for the generators to advance the loans, including the following:

- a sufficient number of generators, including Duke Energy and Carolina Power & Light, would have to volunteer;
- the site would have to be free of known site deficiencies that would "render licensability doubtful";
- the planned facility would have to supply adequate disposal capacity to accommodate projected regional disposal needs during North Carolina's term as host state; and
- North Carolina would have to demonstrate an adequate ability to plan the licensing work and to implement the plan, not exceeding either budget or schedule by more than 10 percent.

Obligations of the Authority

In addition, the North Carolina Authority would have to contractually commit to

- repayment of the generators' loans, as previously noted;
- specified disposal fee formulas that distinguish between participating and nonparticipating generators;
- defined escrow fund accumulation and distribution plans for repayment of bonds and the state's investment and for long-term care funding; and
- "reasonable" generator audit rights.

Requirements for the Southeast Compact

The Southeast Compact, in addition to providing its available funds for facility development, would be required under the agreement to implement a specific export policy. This policy would allow access to out-of-region disposal facilities at all times for generators voluntarily participating in the MOU and, following annual disposal of a predefined amount of waste at the North Carolina facility, for all other generators.

To show support for the potential agreement, the Southeast Compact was asked to agree in principle to the proposed MOU, to empower the North Carolina Authority to use commission funds for legal expenses incurred in becoming a party to an MOU, and to recommend the MOU proposal to North Carolina. These actions were accomplished by the full commission through the passage of resolutions on August 21.

Guarantee Termination Triggering Events

Under the proposed MOU, generators would be released from their obligations if

- taxes above specified levels were imposed on waste disposal;
- the facility was unable to accommodate in-region waste due to gross negligence;
- North Carolina instigated or funded legal action to impede construction or operation of the facility;
- North Carolina breached the funding agreements or the Southeast Compact legislation in a way that materially increased participant costs or liabilities;
- North Carolina withdrew from the compact; or
- North Carolina changed the contract with Chem-Nuclear Systems without participant consent in a way that materially increased participant costs or liabilities.

None of the specified events, however, represent a commitment by North Carolina. Rather, the triggering events define the conditions under which the participating generators' commitments remain binding.

Next Steps

The compact commission has requested the North Carolina Authority to respond to the recommended proposal by December 1, 1997. The Governor of North Carolina and his staff are currently reviewing the proposed MOU and seeking further information.

Although both of North Carolina's representatives on the compact commission voted against the proposal on August 21, an Authority spokesperson later commented that the Authority "appreciates the generators working with the compact. There's a lot of work left to be done."

For further information, contact Ted Buckner of the Southeast Compact Commission at (919)821-0500.

—CN

Available Funds

The Southeast Compact Commission has on hand \$17.7 million that, along with future interest, have been earmarked to fund implementation of the Licensing Work Plan for the regional disposal facility. On August 21, the compact agreed to provide \$1.2 million of these funds to the North Carolina Authority for further work on Decision Point 1 in the Licensing Work Plan. Funding in the amount of \$1.4 million for Authority expenses during August and September had already been authorized in July. (See *LLW Notes*, July 1997, p. 8.)

Release of \$2.9 million more has been authorized by the commission since April 1997, conditional upon "affirmative recommendations from the Authority on Decision Points 1 and 2 that in the reasonable judgment of the Authority it makes senses to proceed with the project ..."

To date, approximately \$105 million has been spent on facility development, of which over \$28 million was provided by North Carolina and \$76.7 million by the Southeast Compact Commission.

Chem-Nuclear Explores Options for Meeting South Carolina Revenue Requirements

Amid concerns that surcharge revenues from low-level radioactive waste disposed of at the Barnwell facility may not meet South Carolina's requirements, Chem-Nuclear Systems, L.L.C. has convened a series of meetings to aid in development of a "success plan" for the facility's continued operation.

Company representatives met with radioactive waste generators for the first of these meetings, which was held in Chicago, Illinois, on July 30-31. A second meeting, this time with brokers and processors, was held on August 26, in Knoxville, Tennessee. Most recently, Chem-Nuclear met with state and compact officials on October 8 in Chicago, Illinois, to present the plan as it had evolved from the earlier discussions.

Revenue Projections under Current Pricing

According to a background paper sent to meeting invitees, disposal volumes of 343,400 cubic feet and 358,300 cubic feet would be needed at Barnwell in FY '97-'98 and FY '98-'99, respectively, in order for the disposal surcharges to meet South Carolina's funding requirements for higher education scholarships. (See related story, this issue.) Estimated volumes for those years, however, are currently less than 275,000 cubic feet. Given the size of the shortfalls already looming in the near term, the paper observes that "as the projected low-level radioactive waste streams continue to diminish, the long-term viability of the Barnwell Facility becomes more questionable."

Key Dates for "Success Plan"

November 1, 1997	initial public offering to current permit holders
December 27, 1997	offering available to parties without permits
January 16, 1998	reservation fee due; public offering closes
October 31, 1998	remainder of advance fees due

Plan to Sell Future Access

Initial Public Offering

To shore up Barnwell's prospects, Chem-Nuclear is promoting a plan to sell units of future disposal capacity. While details about the plan are not currently available from the company, the following information has been learned from other sources. It should be emphasized that the plan is still under development and subject to change.

Beginning November 1, Chem-Nuclear intends to make an initial public offering. For the first eight weeks of the offering, only holders of current disposal permits for Barnwell will be allowed to subscribe for future capacity. The offering will then be opened to all parties for an additional four-week period, terminating on January 15, 1998. By the following day, all subscribers will have to pay a small reservation fee, estimated at \$3 per cubic foot, to reserve their disposal capacity for the remainder of Barnwell's operating life. All subscribers must reserve a minimum of 100 cubic feet, with additional capacity sold in one-cubic-foot units.

Chem-Nuclear hopes to receive subscriptions for 5 million cubic feet of its remaining 7.9 million cubic feet of disposal capacity.

Appeal to State Legislature

Chem-Nuclear is seeking legislative assurances that the facility will be allowed to continue to operate for at least an additional 20 years—or, better yet, until the site has reached its licensed capacity. Any agreement must be reached by the end of the next legislative session in late June 1998.

If agreement is not reached, Chem-Nuclear will still guarantee a special preferred disposal price to all subscribers. Under this scenario, the reservation fees would be used to defray any shortfalls in the state's scholarship fund, and any remaining fees would be refunded to the subscribers.

Establishment of Trust Funds

If Chem-Nuclear succeeds in entering a contract with the State of South Carolina to allow Barnwell's long-term operation, subscribers must pay the remainder of their subscription fees by October 31, 1998. These fees are estimated at \$232 per cubic foot, bringing the total advance charges to approximately \$235 per cubic foot.

For each unit of capacity sold, about \$200 would be deposited in an interest-bearing trust account for the State of South Carolina. The remainder of the subscription fee—or about \$35—would be held in a similar account to pay Chem-Nuclear's costs of operating the facility.

Assuming that Chem-Nuclear met its sales goal of 5 million units, the state's trust fund would initially hold the substantial sum of \$1 billion. Payments from the fund would be made to the state annually.

Additional Fees on Disposal

Because Chem-Nuclear's operating costs would be prepaid, generators would pay only Chem-Nuclear's variable costs at the time of actual disposal.

Secondary Markets

Some speculative purchasing of disposal units is anticipated, and it is expected that a secondary market for disposal capacity will develop after the public offering closes.

Ongoing Issues

Concerns have been raised in some quarters about the needs of small generators incapable of meeting the minimum purchase requirements. It is possible that some special accommodation may be made for these generators before the plan is finalized. Many other details, including the nature of any guarantee by the South Carolina legislature, still remain to be worked out.

—CN

South Carolina

Legislation Sets Revenue Requirements for Barnwell Operator Responsible for Any Shortages in Scholarship Fund

A provision in the South Carolina General Appropriations Act for FY '97-'98 (1997 Act 155) requires the operator of the low-level radioactive waste disposal facility at Barnwell to pay a tax equivalent to any shortfalls in the surcharge money collected to fund a state scholarship program. The Act went into effect on June 14. It is broadly written to apply to "any company" that operates a licensed low-level radioactive waste disposal site in South Carolina, but it currently affects only Chem-Nuclear Systems, L.L.C.

Scholarship Levels Under the new law, if the waste disposal surcharge fees collected in FY '96-'97 for the Higher Education Scholarship Grants portion of the state's Children's Education Endowment Fund had fallen below \$22 million, Chem-Nuclear Systems would have had to pay a contingent annual license tax equal to the difference. Sufficient revenue was collected to avert the tax for FY '96-'97, due in part to waste disposal incentives offered by Chem-Nuclear. However, the prescribed minimum amount for the scholarships rises to \$23 million for FY '97-'98, and to \$24 million for subsequent years. Based on current waste disposal projections, it is not clear whether Chem-Nuclear will be able to avoid the tax in future years. (See related story, this issue.)

Background The waste disposal surcharge, set at \$235 per cubic foot, was established in the FY '95-'96 Appropriations Act (1995 Act 145). Of the funds collected through this surcharge, 28.5 percent are credited to the higher education scholarship grants. The remaining funds are allocated to other educational assistance programs (66.5 percent) and to Barnwell County (5 percent).

For further information, contact Carl Roberts of the South Carolina Department of Health and Environmental Control at (803)734-4910.

—CN

Host State Technical Coordinating Committee (TCC)

Host State TCC Meets; Supports California's Technical Assistance Request

The Host State Technical Coordinating Committee (TCC) met in Buffalo, New York, on September 23, followed by a September 24 tour of the facilities at the Western New York Service Center (West Valley).

TCC Meeting Attendance

The TCC meeting was attended by five state persons; one person from the NRC; one person from the Nuclear Energy Institute (NEI); one person from Los Alamos National Laboratory; one person from the U.S. Geological Survey (USGS); and one person from the National Low-Level Waste Management Program. One staff member from Afton Associates attended to provide a report on recent LLW Forum activities.

Meeting Program

The following items constituted the TCC agenda:

- a status report on the Mobile Low-Level Radioactive Waste Verification System;
- state highlights and reports;
- agency and organizational reports, including reports from NRC, the National Low-Level Waste Management Program, the Nuclear Energy Institute, and the LLW Forum;
- a presentation on the Connecticut Life-Cycle Cost Study, which compares the life-cycle costs of a low-level radioactive waste disposal facility with the life-cycle costs of a low-level radioactive waste assured isolation facility;
- a presentation on a process that strengthens concrete by using supercritical carbon dioxide; and
- a report by the USGS representative regarding the Beatty, Nevada Tritium Study.

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

TCC Supports California's Technical Assistance Request

During the meeting, the TCC adopted the following resolution:

WHEREAS, It is the understanding of the Host State Technical Coordinating Committee that the U.S. Department of Energy's National Low-Level Waste Program has not approved two state-specific requests submitted by California to support California's peer review panel and site analysis of chlorine-36 and hydrogen-3 due to discussions between the Department of Energy and the U.S. Department of the Interior; and

WHEREAS, Such requests would normally have received timely approval under the DOE technical assistance program for compacts and states; and

WHEREAS, The requests from the State of California are legitimate requests for technical support to advance California's siting efforts and are time-sensitive; therefore, be it

RESOLVED That the Host State Technical Coordinating Committee supports the state-specific requests for peer review and analytical support submitted by the State of California.

RESOLVED, That the Host State Technical Coordinating Committee expresses this support in a letter to the Secretary of Energy urging approval of California's two requests and the establishment of work scheduled that provide for the timely completion of the scopes of work involved in each project.

DOE Approves Part of California's Technical Assistance Request

The following excerpt is from an October 10 letter from Ellen Livingston-Behan of the U.S. Department of Energy to Carl Lischeske of the State of California's Department of Health Services.

The purpose of this letter is to follow-up on our discussion of options for addressing the interests of both the State of California and the U.S. Department of the Interior in conducting water infiltration studies at Ward Valley. To assist in this effort, the Department of Energy has offered to make the laboratory support services of the Lawrence Livermore National Laboratory (LLNL) available to both the Department of the Interior and the State of California under terms that would be accepted by both parties. Most recently, the Department of Energy proposed to make LLNL services available to both parties on the condition that they share "split samples" with one another. As we discussed, the Department's objective has been to arrive at a basis for going forward that will be fair to both parties, and avoid post-testing debates over the raw data used by each party.

In your letter of September 23, 1997, you expressed the State's specific concerns with the Department of Energy's "split sample" proposal. Subsequently, in a telephone call on October 6, 1997, you proposed another option, under which the Department of Energy would make the laboratory services of the LLNL available to the State only for analyzing chlorine-36 samples. You also indicated that the State would consider the data generated by the LLNL analysis to be a matter of public record, and that the State would not object to the Department of Energy sharing those data with the Department of the Interior and the public. You also requested that the Department of Energy cover the costs of this laboratory analysis — in the amount of approximately \$60,000—as a form of technical assistance. The Department of Energy accepts this proposal.

In doing so, we have discussed the terms of the State's proposal with the Department of the Interior—and we have reached agreement that, to the extent that the Department of the Interior also uses the laboratory services of LLNL, they will release associated data to the State of California. We further agreed that the Department of Energy and its laboratories will not participate in the evaluation and interpretation of any testing data, nor will the Department of Energy or its laboratories participate in any associated peer review panels.

In our telephone conversation on October 6, 1997, you also noted the State of California's request that the Department of Energy provide a grant in the amount of \$20,000 for peer-review costs associated with the State's testing program. Given the planned direct involvement of our laboratory in the testing program, Department of Energy support for peer review of that testing does not seem appropriate. For this reason, we must decline that request.

National Conference of State Legislatures (NCSL)

State Legislators Discuss LLRW Management for Ohio, Illinois, North Carolina

On August 8, the Low-Level Radioactive Waste Working Group of the National Conference of State Legislatures (NCSL) met in Philadelphia, Pennsylvania, in conjunction with NCSL's annual meeting. Ohio Senator Gary Suhadolnik chaired the nearly two-hour meeting, which focused on developments affecting the low-level radioactive waste programs in the states of Ohio, Illinois, and North Carolina. DOE technical assistance available to state legislators was also discussed.

Ohio

Senator Suhadolnik opened the meeting with a summary of the circumstances involved in the Midwest Compact's recent decision to cease development of a regional disposal facility and to revoke Ohio's designation as host state. (See *LLW Notes*, July 1997, p. 3.) Suhadolnik, who chairs the Ohio Senate's Energy, Natural Resources, and Environment Committee, also commented on state legislation likely to be repealed in response to the compact's action.

North Carolina

Representative George Miller of North Carolina spoke next, offering his perspective both as a legislator and as a member of the Southeast Low-Level Radioactive Waste Compact Commission. He reviewed events in the state and compact from 1985 to the present, stating in summary that "substantial questions of the future of the compact arrangement have been raised from a number of standpoints." He concluded by noting, however, that "low-level waste is still being generated and the disposal problem is here to stay."

Illinois

Louis DelGeorge, Vice President of the Commonwealth Edison Company, the largest generator in Illinois, then provided an overview of factors affecting disposal capacity development both within the state and nationwide. He explained the rationale for the decision to postpone the planned operation of a disposal facility in Illinois until 2012. (See *LLW Notes*, April 1997, p. 3.)

He also presented Commonwealth Edison's "LLW Management Guiding Principles":

- Congress will not change its position on the 1985 LLW Policy Act Amendments. To date, the industry has not developed the political support for doing so.
- ComEd recognizes the current disposal scenario will not change near term. We will continue to be proactive and work to make the best of a tough situation.

DOE's National LLW Management Program

Sandra Birk, Director of DOE's National Low-Level Waste Management Program at Idaho National Engineering and Environmental Laboratory, was the final speaker. Birk discussed the growing importance of economics as a "driver" in waste management. She also described some of the technical assistance currently provided by DOE and gave examples of INEEL services available to state legislators.

Future Activity

The next meeting of the LLRW Working Group is scheduled for November 5, 1997, in conjunction with the Assembly on Federal Issues in Washington, D.C.

For further information, contact L. Cheryl Runyon of NCSL at (303)830-2200 x252.

For information on the LLRW Working Group meeting that preceded this one, see LLW Notes, April 1997, p. 9.

—CN

Northwest Compact/Washington

Washington Governor re Potential New Hanford Role; *Calls for Consideration of State-to-State Equity*

In a July 17 letter to Energy Secretary Federico Peña, Washington Governor Gary Locke commented upon the options being considered by DOE for the future use of the Hanford site. The letter was written to comment upon the scope of DOE's Plutonium Disposition Environmental Impact Statement (EIS). The Hanford site is part of the national nuclear weapons complex and is owned and utilized by DOE. Commercially generated radioactive waste is not stored or disposed of at the Hanford site by DOE.

A 100-acre tract within the DOE reservation is leased to the State of Washington and subleased to US Ecology, which operates a commercial low-level radioactive waste disposal facility on the site. This facility accepts waste from the member states of the Northwest and Rocky Mountain Compact.s.

The following is excerpted from the July 17 letter.

Individually, or collectively, the options being considered for Hanford pose enormous implications for the Northwest. I understand that your department is proposing a role for Hanford in six of the 12 alternatives to be evaluated in the Plutonium Disposition EIS. I am also aware that Hanford is being considered for several major

roles in dealing with radioactive waste from Department of Energy facilities across the nation.

I find it extremely difficult to even consider any new role for Hanford in dealing with nuclear materials or waste. Hanford's existing waste and contamination threaten the health and well-being of the people of the Northwest. The fact that the Department of Energy is struggling to meet existing commitments to clean up the site makes us very concerned that the commitments associated with any future role also may go unfulfilled. The Department of Energy must fulfill its moral and legal obligation to clean the Hanford site. This includes retrieving and vitrifying tank wastes in accordance with the schedule agreed on in the Tri-Party Agreement.

I also believe that the burden of dealing with the department's legacy of nuclear material and waste must be shared equitably among states hosting Department of Energy facilities. Any discussion of equity must take into consideration the tremendous burden Washington already shoulders at Hanford.

See also "New Materials and Publications." —LAS

NCSL LLRW Management Policy

At NCSL's annual meeting, NCSL's policy on radioactive waste management was reenacted without changes by the Environment Committee. This policy, which was about to sunset, urges Congress to take a number of actions with respect to low-level radioactive waste, including clarifying liability issues, allowing tax-exempt financing of disposal facilities, and ensuring cohesive federal policy on NORM/NARM and mixed waste.

Due to time constraints, an amendment concerning federal land transfers that was adopted by the Energy and Transportation Committee in February 1997 was not included in the policy as adopted by the

Environment Committee. The amendment states that "NCSL urges the federal government to expedite needed transfers of federal lands in California and elsewhere for development of low-level waste management facilities." (See *LLW Notes*, February 1997, p. 10.)

Both the Environment Committee and the Energy and Transportation Committee will review and revise the radioactive waste management policy during the Assembly on Federal Issues in November 1997. A radioactive waste briefing is scheduled for November 5; the committees will take action on the policy on November 6.

State and Compact Events

October	Event	Location/Contact
<i>Central Compact/Nebraska</i>	Central Interstate Low-Level Radioactive Waste Commission: telephone conference to complete Commissioners' September 17 meeting	Lincoln, Nebraska Contact: Don Rabbe (402)476-8247
<i>Central Midwest Compact/Illinois</i>	Illinois LLRW Task Group meeting: review and discussion of the Illinois State Geological and Water Survey's state wide screening reports	Bloomington, IL Contact: Helen Adorjan (217)528-0538
<i>Rocky Mountain Compact</i>	Rocky Mountain LLRW Board meeting: volumes approved for disposal in 1997; export applications; status reports on RAMP industries and Thermo NUtech Waste Importation; national compact developments; 1996-97 audit; executive director's report; legal issues	Lake Tahoe, NV Contact: Tracie Archibold (303)825-1912
<i>Northeast Compact/Connecticut/New Jersey</i>	Connecticut Hazardous Waste Management Service Board of Directors meeting: LLRW program updates New Jersey LLRW Disposal Facility Siting Board meeting	Hartford, CT Contact: Ron Gingerich (860)244-2007 Trenton, NJ Contact: John Weingart (609)777-4247
<i>Southwestern Compact/California</i>	Southwestern LLRW Commission meeting: reports; approval of 1998-99 budget; exportation issues; development of the regional LLRW disposal facility; NRC briefing on classification of LLRW; Cal Rad Forum proposal for access to DOE LLRW disposal facilities; commission's authority and responsibility regarding transportation; current legislation; election of officers Southwestern LLRW Commission sponsored workshop produced by the National LLW Program: experts provide instruction on completing the uniform manifest Southwestern LLRW Commission workshop: the uniform manifest workshop will be repeated	Sacramento, CA Contact: Don Womeldorf (916)323-3019 Costa Mesa, CA Contact: Don Womeldorf Concord, CA Contact: Don Womeldorf
<i>Texas Compact/Texas</i>	Maine Advisory Commission on Radioactive Waste meeting	Augusta, ME Contact: Dale Randall (207)287-8404 or e-mail dale.randall@state.me.us
<i>Massachusetts</i>	LLRW Management Board meeting: continued discussion of the Volunteer Sites Program; review of legislative proposals for 1998; action on the Management Board's FY '99 budget	Boston, MA Contact: Carol Amick (617)727-6018

State and Compact Events *continued*

November	Event	Location/Contact
<i>Central Compact/ Nebraska</i>	Facility Review Committee meeting	Lincoln, NE Contact: Don Rabbe (402)476-8247 or e-mail don@cillrwcc.org
<i>Midwest Compact</i>	Midwest Compact Commission meeting	St. Louis, MO Contact: Gregg Larson (612)293-0126
<i>Northeast Compact/ Connecticut/ New Jersey</i>	<p>Northeast Interstate LLRW Commission meeting</p> <p>Connecticut Hazardous Waste Management Service Board of Directors meeting</p> <p>Connecticut LLRW Advisory Committee meeting</p> <p>New Jersey LLRW Disposal Facility Siting Board meeting</p> <p>New Jersey LLRW Disposal Facility Siting Board consulting session: this session is to be held at the New Jersey League of Municipalities Convention</p>	<p>Norwalk, CT Contact: Janice Deshais (860)633-2060</p> <p>Hartford, CT Contact: Ron Gingerich (860)244-2007</p> <p>Hartford, CT Contact: Ron Gingerich</p> <p>Trenton, NJ Contact: John Weingart (609)777-4247</p> <p>Atlantic City, NJ Contact: John Weingart</p>
<i>Northwest Compact/ Washington</i>	Northwest Interstate LLRW Commission meeting: party state reports; US Ecology activities overview; Envirocare issues; summary of LLW Forum meeting; legal issues; public comment; and report on Hanford Commercial Disposal facility	Seattle, WA Contact: Mike Garner (360)407-7102
<i>Southeast Compact/ North Carolina</i>	Southeast Compact Commission meeting: executive director's and treasurer's reports, report on North Carolina siting and license application, state reports; administrative, monitoring, and policy and planning committees meetings the day before the commission meeting	Norfolk, Virginia Contact: Ted Buckner (919)821-0500
<i>Texas Compact/ Texas</i>	Texas LLRW Disposal Authority board meeting Sierra Blanca, TX	Contact: Lee Mathews (512)451-5292

State and Compact Events *continued*

December	Event	Location/Contact
<i>Appalachian Compact/ Pennsylvania</i>	Pennsylvania LLRW Advisory Committee meeting	Harrisburg, PA Contact: Rich Janati (717)787-2163
<i>Northeast Compact/ Connecticut/ New Jersey</i>	Connecticut Hazardous Waste Management Service Board of Directors meeting New Jersey LLRW Disposal Facility Siting Board meeting	Hartford, CT Contact: Ron Gingerich (860)244-2007 Trenton, NJ Contact: John Weingart (609)777-4247
<i>Massachusetts</i>	LLRW Management Board meeting	Boston, MA Contact: Carol Amick (617)727-6018
Jan. 1998	Event	Location/Contact
<i>Northeast Compact/ Connecticut/ New Jersey</i>	New Jersey LLRW Disposal Facility Siting Board meeting	Trenton, NJ Contact: John Weingart (609)777-4247
<p style="text-align: center;">DISCLAIMER</p> <p>This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof.</p>		

Waste Control Specialists, LLC v. U.S. Department of Energy

Federal Court Enjoins DOE from Excluding WCS on New Disposal Contracts

On October 10, in response to a lawsuit filed by Waste Control Specialists (WCS) in the U.S. District Court for the Northern District of Texas, a preliminary injunction was issued against the U.S. Department of Energy concerning the award of new contracts for low-level or mixed radioactive waste disposal services. In a harshly worded order, the court termed as "bogus" DOE's stated reasons for disqualifying a recent bid by WCS to provide waste disposal services for the department's Fernald site in Ohio. The court also found that a "virtual monopoly" exists in the bidding for off-site disposal of DOE low-level and mixed radioactive wastes. The court concluded by rebuking DOE for its "apparent lack of interest ... in allowing other interested parties to compete for the award of such contracts" and questioned whether the department's actions stem from "gross incompetence or ... something far worse."

Background

WCS holds permits from the State of Texas for the disposal of hazardous waste and from the U.S. Environmental Protection Agency for the disposal of toxic waste at its Andrews County facility. WCS is interested, however, in expanding its operations to include the disposal of DOE radioactive waste. Accordingly, in the spring of 1996, WCS officials initiated discussions with officials from DOE and the State of Texas.

Since the disposal of DOE waste is not subject to state regulation, WCS proposed that DOE could either self-regulate the disposal of department waste at the WCS facility or delegate the function by contract to an appropriate oversight body. WCS suggested the Texas Natural Resource Conservation Commission (TNRCC) as an appropriate oversight body.

On September 20, 1996, WCS submitted a contingent bid to dispose of DOE radioactive waste from the department's Fernald site in response to a Request for Proposals (RFP) issued by DOE's Ohio Field Office. The bid set forth the process that would be used, if the contract were awarded to WCS, to obtain the necessary

DOE authorization to dispose of the department's waste at the Andrews County facility—including specific reference to the TNRCC oversight proposal.

Subsequently, in October 1996, TNRCC declined to act as an oversight body for the WCS facility. In its lawsuit, WCS contends that TNRCC's decision was a direct result of actions taken by Envirocare, the only non-governmental disposal facility operator in the United States authorized to dispose of DOE low-level radioactive waste. (See *LLW Notes*, July 1997, pp. 20–22.)

In November 1996, DOE requested additional proposals from WCS for obtaining DOE authorization without TNRCC's involvement. On December 20, WCS provided alternative proposals, including the use of an oversight group consisting of Texas Tech University, Texas A&M University, and Integrated Resources Group (a private consulting firm and DOE contractor). WCS acknowledged that the oversight group could include or substitute DOE's Sandia National Laboratories, the U.S. Nuclear Regulatory Commission, or even an arm of DOE itself. WCS offered to reimburse DOE for all costs associated with DOE's review and oversight.

On May 5, 1997, DOE rejected the WCS proposal, citing concerns regarding DOE's use of regulatory authority under the Atomic Energy Act to approve a privately owned facility for DOE waste disposal before the award of a contract. "Such a sequence raises difficult questions about the extent of DOE's authority, and it may also create an appearance of favoritism toward one potential bidder over another."

On August 12, WCS filed suit in the U.S. District Court for the Northern District of Texas against DOE; Alvin Alm, Assistant Secretary for Environmental Management; and Mary Anne Sullivan, Deputy General Counsel for Environment and Civilian Nuclear Defense Programs. The suit seeks judicial review of DOE's actions concerning the WCS proposal.

continued on page 16

Waste Control Specialists, LLC v. U.S. Department of Energy (continued)

Issues

WCS contends that DOE senior officials have not carefully or reasonably considered the company's proposal and that DOE's alleged concerns regarding delegation of the department's oversight responsibilities to a third party are not genuine. Instead, WCS alleges that the rejection was the result of political considerations and other factors.

WCS argues that DOE's rejection of the company's proposal causes WCS enormous economic damage, stifles competition, and perpetuates an existing monopoly. Moreover, WCS alleges as follows:

If DOE accepted the approach outlined in WCS' proposal of December 20, 1996, real competition for the disposal of DOE radioactive waste would, for the first time ever, occur. Simultaneously, the monopoly of Envirocare, built upon questionable authorizations issued by Larry F. Anderson, would collapse. Other waste disposal companies would likely seek similar DOE authorizations and a genuine marketplace for the disposal of DOE radioactive waste would develop. As a result of natural market forces, real competition would inevitably drive down DOE's cost for disposal of radioactive waste thus saving DOE and U.S. taxpayers millions of dollars in the short term, and hundreds of millions dollars, or perhaps billions of dollars, in the long term.

Unlawful Rejection of WCS Proposal WCS argues that DOE's rejection of the company's proposal is unlawful on the grounds that it is arbitrary, capricious, an abuse of discretion, or not in accordance with law.

Violation of Due Process WCS also contends that DOE's rejection evidences "a fundamental, arbitrary and capricious refusal by DOE to do any of its radioactive waste disposal business with WCS, for no lawful reason, while simultaneously demonstrating a fundamental, arbitrary and capricious eagerness to continue to do business with Envirocare in a manner contrary to law." WCS asserts that the rejection effectively prevents the company from prevailing in any bid for DOE radioactive waste disposal services and is, in legal effect, a de facto debarment. According to WCS, "[t]his de facto debarment constitutes a destruction of the constitutionally protected property and liberty interests of WCS without any lawful basis, without notice, and without an opportunity for hearing, and as a result such action violates the right of WCS to due process of law guaranteed by the Fifth Amendment to the United States Constitution."

Requested Relief

WCS is seeking the following relief from the court:

- a declaratory judgment that DOE's rejection of the WCS proposal is unlawful as arbitrary, capricious, or an abuse of discretion;
- a declaratory judgment that DOE's rejection constitutes a de facto debarment without any lawful basis, without notice, and without an opportunity for hearing in violation of the Fifth Amendment;
- a declaratory judgment that WCS' proposal for oversight of WCS' facilities through contractual delegation of oversight responsibilities to a qualified third party is authorized by applicable law;
- an order remanding the WCS proposal to DOE for reconsideration in accordance with the court's judgments; and
- other relief as the court deems just and proper.

The Preliminary Injunction

Conclusions of Law The court found that although the Atomic Energy Act requires "persons" to obtain a license from NRC (or from a state if such authority has been delegated thereto) as a precondition to the disposal of low-level radioactive waste, the act specifically exempts the activities of DOE and its contractors from this requirement. Accordingly, the court held that "DOE's apparent disqualification of WCS' Fernald bid, and its rejection of the WCS' December 20 proposal on the ground that WCS does not possess (or cannot legally obtain) a Texas or NRC license, is arbitrary, capricious, an abuse of discretion, and unlawful."

In addition, the court determined that WCS is, and at all times has been, willing and able to take title upon receipt of DOE wastes pursuant to the terms of the Request for Proposals issued by DOE's Ohio Field Office, and that the WCS bid made no attempt to alter the RFP's terms relative to title. Accordingly, the court held that "DOE's apparent contemplated denial of Plaintiff's Fernald bid, on the ground that WCS will not take title to the wastes covered by the DOE's RFP, is arbitrary, capricious, an abuse of discretion, and unlawful."

Activities Enjoined In awarding the preliminary injunction, the court wrote as follows:

An award of a DOE contract for disposal of radioactive wastes from the DOE Fernald facility is imminent, and without the injunction herein granted WCS will likely be disqualified from the bidding process on the basis that it lacks a low-level radioactive waste disposal license from the State of Texas, that it lacks an NRC license, or that its bid seeks to alter the provisions of the Fernald RFP relative to title. In fact, a reasonable deduction from the evidence and from the defendant's brief is that the "fix is in" and that the Fernald site is a "done deal" absent this injunction compelling fair consideration and competition. Other DOE radioactive waste disposal contracts may be awarded or RFP's issued during the pendency of this action and, without the preliminary injunction, herein granted, WCS will be unable to compete effectively for them. Once they are gone they are gone. The Court finds that Plaintiff will suffer irreparable injury unless the preliminary injunction herein ordered is issued.

The preliminary injunction bars the defendants, their respective agents, employees, and attorneys, as well as all persons in active concert or participation with the defendants who receive actual notice of the court's order, from

- denying any WCS bid or contract for DOE low-level or mixed radioactive waste disposal services on the ground(s) that WCS lacks a low-level radioactive waste disposal license from the State of Texas, that it lacks an NRC license, or that its bid seeks to alter the provisions of the Fernald RFP relative to title; and
- using the injunction as a cause or justification for the reissuance of any currently outstanding RFP.

Under the terms of the court's order, the preliminary injunction would not become effective until WCS posts a \$10,000 injunction bond for payment of such costs and damages as may be incurred by the defendants in the event that the defendants have been wrongfully enjoined. WCS posted the bond on October 7.

—TDL

The preceding information was distributed to Forum Participants and Alternate Forum Participants, Federal Liaisons and Alternates, via facsimile transmission in a News Flash on October 8, 1997.

Appalachian States Low-Level Radioactive Waste Commission v. Peña

Appellate Court Finds in Favor of DOE in Appalachian Surcharge Rebates Dispute

On September 18, 1997, the United States Court of Appeals for the Third Circuit denied a petition for a panel rehearing requested by the Appalachian States Low-Level Radioactive Waste Commission in its lawsuit against the U.S. Department of Energy over the distribution of surcharge rebates for low-level radioactive waste disposal. Accordingly, the appellate court's prior opinion and judgment in favor of DOE—dated August 20, 1996—remain in effect.

The Issues on Appeal

In its petition, the Appalachian Commission asked the appellate court to remand the case to the district court so that it could consider a fact that arose after the district court's decision—specifically, South Carolina's withdrawal from the Southeast Interstate Low-Level Radioactive Waste Compact Commission and the subsequent reopening of the Barnwell facility in July 1995. In response to these events, the Appalachian Commission amended its policy to authorize and encourage its generators to export low-level radioactive waste to Barnwell. The commission argues that, by so doing, it "provided for" the disposal of all low-level radioactive waste generated in the Appalachian region from July 1995 through January 1996 and is therefore entitled to a proportional rebate of the surcharges for this period. DOE, on the other hand, asserts that the commission only "permitted" its generators to export waste during the latter portion of 1995 and did not actually "provide for" disposal. Since DOE argues that "provide for" does not mean "permit," it asserts that the commission is not entitled to the additional prorated rebates that it is seeking.

The Court's Decision

The Third Circuit Court of Appeals determined that it does not need to remand the case to the district court and that it can decide on its own the limited question raised by the Appalachian Commission since the facts are not in dispute.

After noting that in *Central Midwest Interstate Low-*

Level Radioactive Waste Commission v. O'Leary, a different court of appeals upheld the Secretary's interpretation of "provide for" as reasonable, the appellate court found that the commission did not "provide for" disposal and is therefore not entitled to a proportional rebate for the last six months. (See *LLW Notes*, May/June 1997, pp. 15–17.)

The disputed language in the Act is not ambiguous ... Its plain meaning clearly suggests that, before a state or compact may receive a rebate under the Act, it must take some affirmative step to supply, afford, or furnish means to dispose of its waste. That is not what the Commission did. Here, the Commission took no meaningful affirmative action. It did not construct a disposal facility, take title to its region's low-level radioactive waste, or enter into a disposal contract. The Commission has yet to even select a site for its disposal facility, let alone complete its construction.

The appellate court went on to hold that even if the phrase "provide for" were ambiguous, the court would still have come to the same conclusion because it believes the Secretary's interpretation of that phrase is consistent with the policy statements previously issued by DOE.

We agree with the Secretary's position that to reward the Commission "for simply returning to th[is] prior regime ... would be contrary to the purpose of the statute" ... Under the Secretary's interpretation, a state or compact would be entitled to a rebate if it made "an affirmative effort to arrange for its generators to obtain disposal capacity during [the relevant period]" ... That interpretation of "provide for" is consistent with the purpose of the Act. Simply authorizing generators "to fend for themselves" is not sufficient affirmative effort. Thus, even if the statute were not plain, we would defer to the Secretary's interpretation of "provide for."

—TDL

Background: *Appalachian States Low-Level Radioactive Waste Commission v. Peña*

The Appalachian Commission initially filed suit on June 30, 1994, seeking payment of all surcharge fees in escrow that were collected from generators of low-level radioactive waste in the Appalachian region from 1990 through 1992. (See *LLW Notes*, August/September 1994, p. 15.) The U.S. District Court for the Middle District of Pennsylvania granted summary judgment in favor of the commission on May 22, 1995. (See *LLW Notes*, June 1995, p. 16.)

DOE, however, appealed the district court's decision. On August 20, 1996, the U.S. Court of Appeals for the Third Circuit reversed the lower court's decision, remanding the case to the district court with instructions to enter judgment in favor of the Secretary of DOE. (See *LLW Notes*, August/September 1996, pp. 14-15.)

The Appalachian Commission filed a petition for rehearing of a portion of the court's decision on October 3, 1996. The petition was argued on May 21, 1997.

For a detailed explanation of the case and of the appellate court's earlier decision, see LLW Notes, August/September 1996, pp. 12-15.)

***Department of Interior
Inspector General Investigation
Requested***

On September 10, U.S. Senator Larry Craig (R-ID) sent a letter to Wilma Lewis, Inspector General of the U.S. Department of the Interior, requesting a formal investigation into a contract between the Bureau of Land Management and Martin Mifflin to determine compliance with federal procurement regulations. The procurement relates to studies concerning the proposed transfer of federal land in Ward Valley, California, to the state for use in siting a low-level radioactive waste disposal facility.

In requesting the investigation, Craig wrote as follows:

I am deeply troubled that the Department entered into this contract on a sole source basis despite numerous questions brought to its attention regarding Dr. Mifflin's objectivity on this and other radioactive waste disposal matters. Also troubling are admissions by the BLM California State Office which make clear that office lacks the expertise needed to oversee Dr. Mifflin's work.

Mifflin was a dissenting member of the National Academy of Sciences panel that previously studied Ward Valley and issued a report on its findings.

Craig also expressed concern about Deputy Interior Secretary John Garamendi's "personal role in directing the Mifflin procurement," as well as about questions raised about the Department's actions in a recently released report by the U.S. General Accounting Office.

Craig wrote:

In sum, it appears that the Department has ignored or avoided objective assistance and procured the services of a biased individual to help it justify a preordained political decision to deny the State of California's land transfer request.

—TDL

California Department of Health Services v. Babbitt

Hearing Set for October in Ward Valley Case

Southeast Compact Joins Amici Curiae Brief

Amici Curiae Brief

In mid-August, the Southeast Low-Level Radioactive Waste Compact Commission filed legal documents supporting the State of California in its lawsuit to compel the U.S. Department of Interior to transfer federal land for the planned low-level radioactive waste disposal facility in Ward Valley, California. The suit, which was filed in the U.S. District Court for the District of Columbia on January 31, was initially brought by the California Department of Health Services and its Director, S. Kimberly Belshé, against the U.S. Department of Interior, its Secretary—Bruce Babbitt—and the U.S. Bureau of Land Management. (See *LLW Notes*, March 1997, pp. 1, 16–20.) Specifically, the Southeast Commission joined the amici curiae motion and memorandum previously filed in the case by the Midwest Interstate Low-Level Radioactive Waste Commission and the Southwestern Low Level Radioactive Waste Commission. The Northwest Interstate Compact on Low-Level Radioactive Waste Management had also filed legal documents to join the same amici curiae motion and memorandum in July. The Northeast Interstate Low-Level Radioactive Waste Commission had filed a separate amici curiae motion and memorandum on July 24, 1997. (See *LLW Notes*, July 1997, p. 18.)

Hearing

A hearing is scheduled in the U.S. District Court for the District of Columbia on October 23 on motions filed by the defendants in the action. Two motions will be argued at the hearing—a motion to dismiss the action and a motion to transfer venue to the Northern District of California.

Motion to Dismiss The defendants argue that the action should be dismissed because they allege, among other things, that

- dismissal is warranted under federal rules,
- the Interior Department does not have a legal obligation to sell the site,

- the plaintiffs have failed to state a claim upon which relief can be granted, and
- the plaintiffs cannot prove any set of facts that would justify interference in the ongoing agency review of the site.

The plaintiffs disagree, however, arguing that they have stated claims upon which relief can be granted, including

- a claim for failure to perform a ministerial duty to convey the site upon the satisfaction of all conditions precedent, and
- a claim for actions by the Interior Department in excess of its statutory authority since it does not have jurisdiction to regulate nuclear waste issues.

The plaintiffs also contend that they have raised valid claims for abuse of discretion under both the Federal Land Policy and Management Act and the Nuclear Energy Policy Act. And, contrary to the defendants' claim, the plaintiffs argue that the Interior Department's refusal to issue the patent is a final action that is ripe for judicial review.

Motion to Transfer Venue The defendants argue that transferring venue to the Northern District of California serves the interests of justice because the action might have been brought in California and such a transfer will not prejudice private interests or inconvenience the parties. The plaintiffs contend, on the other hand, that venue is not proper in the Northern District of California. Even if venue is proper, the plaintiffs claim that the defendants have not met their burden of establishing that the case should be transferred to a district "with absolutely no connection to this litigation."

—TDL

US Ecology v. United States of America
California Department of Health Services v. United States of America

Court Rejects Federal Government's Motion to Dismiss Ward Valley Suit

Plaintiff's File Motion for Partial Summary Judgment

Motion to Dismiss

On September 24, the United States Court of Federal Claims rejected a motion by the federal government to dismiss an action filed by US Ecology for breach of contract to sell 1,000 acres of federal land in Ward Valley, California, to the state for use in siting a low-level radioactive waste disposal facility. In the action, US Ecology is seeking reimbursement for its past costs, lost future profits, and lost opportunity costs due to the federal government's alleged breach of contract. (See *LLW Notes*, April 1997, pp. 18-21.)

The court's order reads as follows:

This case cannot be dismissed on the pleadings as defendant suggests. Furthermore, we are not aware of any authority for defendant's assertion that it "declines to search for and produce documents relating to the Ward Valley Facility which may exist at other federal agencies, including the White House." The defendant in this action is the United States of America, not a federal agency. We expect full cooperation from all parties so that this case may be resolved promptly in accordance with Rule 1 of this court. If plaintiff wishes to pursue its motion to compel, contact the court for a hearing.

A hearing was held on October 9 to compel discovery. At the conclusion of the hearing, the court directed the federal government to complete its production of documents by November 3.

Motion for Partial Summary Judgment

On September 15, the plaintiff's filed a joint motion for partial summary judgment on the issue of whether the defendant United States of America—acting through then-Secretary of the Interior Manuel Lujan—entered into a valid contract to sell the Ward Valley site to the State of California in January 1993, and if so, whether the defendant breached the contract by purporting to rescind then-Secretary Lujan's agreement in February 1993 and by refusing to convey the legal title for the site to the state for the past four and a half years. The federal government has until November 10 to file a cross motion for partial summary judgment.

—TDL

Nebraska v. Central Interstate Low-Level Radioactive Waste Commission

Nebraska Sues Commission re Veto Authority Over Export Authorizations

On August 22, the State of Nebraska filed a lawsuit in the U.S. District Court for the District of Nebraska against the Central Interstate Low-Level Radioactive Waste Commission concerning whether or not the state has veto authority over applications to import and export low-level radioactive waste from the region. The suit was amended on September 12. The Central Commission's response to the action is due October 21.

Background

Commission Votes on Applications On June 25, 1997, the Central Commission voted on applications from a number of generators to export low-level radioactive waste for disposal outside the compact region. All applications were approved unanimously except for those of two "major" generators, Cimarron Corporation and the Wolf Creek Nuclear Operating Corporation. Four of the five Commissioners voted to approve these two applications, but the Nebraska Commissioner voted against them, claiming veto power pursuant to Article IV(m)(6) of the compact.

During a July 16 vote on additional export applications—including major generators Entergy River Bend Station, Entergy Arkansas Nuclear One, Entergy Waterford 3, Omaha Public Power District, and Nebraska Public Power District—Nebraska's Alternate Commissioner likewise voted to deny the applications of the major generators and claimed veto power despite affirmative votes by the other four Commissioners.

Opinion by Commission's Legal Counsel After receiving an oral opinion by outside legal counsel that Nebraska's negative vote did not constitute a veto, the commission declared the motions passed and granted permission for all seven applicants to export low-level radioactive waste out of the compact region. (See *LLW Notes*, July 1997, p. 6.) On July 21, the commission's legal counsel provided a written opinion analyzing the validity of the export permits. He determined that the export authorizations are not covered by the language of Article IV(m)(6)—in part because Nebraska did not show how it "may be

affected"—but rather by Article III(g) commission authorization power. This provision, according to the outside legal counsel, "does not provide that any affected host state's affirmative vote is required to authorize an export from the region of waste generated within the region." Such authorization can be granted by a simple majority vote of the Commissioners.

Article IV(m)(6) of the Central Compact

"The Commission shall: ...

6. notwithstanding any other provision of this compact, have the authority to enter into agreements with any person for the importation of waste into the region and for the right of access to facilities outside the region for waste generated within the region. Such authorization to import or export waste requires the approval of the Commission, including the affirmative vote of any host state which may be affected ... (emphasis added)"

Article III(g) of the Central Compact

"Unless authorized by the Commission, it shall be unlawful, after January 1, 1986, for any person:

1. to deposit at a regional facility, waste not generated within the region;
2. to accept, at a regional facility, waste not generated within the region;
3. to export from the region, waste which is generated within the region; and
4. to transport waste from the site at which it is generated, except to a regional facility."

Impact of Legal Counsel's Opinion on Veto Authority over Importation of Out-of-Region Waste Upon the presentation of the oral opinion by the commission's legal counsel, a question was raised as to whether the opinion implied that Nebraska lacks veto authority over the importation of low-level radioactive waste from outside the compact region. The commission's counsel said that it does not, affirming that Nebraska has veto power over the importation of out-of-region waste.

According to the commission's counsel, the veto power contained in Article IV(m)(6) applies to only two situations: (1) agreements with any person for the importation of waste into the region, and (2) agreements with any person for the right of access to facilities outside the region. Export applications are not covered because they do not involve "agreements" with a state, compact, facility operator, or other "person" for the right of access to facilities outside the region, but rather involve only an authorization to export waste from the Central Compact region. On the other hand, the commission's counsel found that there would always have to be an "agreement" with the compact commission to permit importation before out-of-region waste could be deposited in Nebraska. He argues that, at that point, Nebraska's veto power would be activated.

The express provisions of the Compact clearly are designed to and, in fact, grant that power to "any host state affected" by any proposed agreement to allow such an import. Nebraska would always be able to show that such an import "may" have an effect on it, since an import would make this state the host and depository for other states or territories not part of our Compact, thus using up capacity of Nebraska's regional facility.

An attorney for the Boyd County Local Monitoring Committee, however, disagrees. She argues, in a written legal opinion, that if an Article III(g)(3) authorization by the commission to export does not constitute an "agreement" that would trigger Nebraska's veto power, then an Article III(g)(1) and (2) authorization by the commission to import also does not constitute an "agreement" that would trigger the veto power.

If Article III(g)(3) does not require an "agreement" prior to authorization to export, then Article III(g)(1) and (2) do not require an "agreement" prior to authorization to import. In other words, "authorization" to import could be granted without there ever being a vote on an Article IV(m)(6) "agreement," meaning imports could occur without Nebraska ever being allowed to exercise its veto power.

The Complaint

The Issues In its suit, the State of Nebraska alleges that the commission violated the compact by failing to recognize that Nebraska's affirmative vote was required before the generators' applications could be authorized and by allowing the "major" generators to export their waste despite the negative vote by Nebraska's Commissioner.

The Commission, by those actions and contrary to Article IV(m)(6) of the Compact, implicitly denied as well that Nebraska's affirmative vote is required for the approval of all future applications for the [import and] export of low-level radioactive waste [to and] from the region.

Requested Relief Nebraska is seeking a judgment from the court declaring that

- the motions passed by the commission on June 25 and July 16 are contrary to law, without legal authority, and of no binding effect; and
- the affirmative vote of the Nebraska Commissioner is required before the commission may authorize any import or export of low-level radioactive waste into or out of the region.

Demand for Jury Trial The state has filed a motion for jury trial of the issues contained in the complaint.

The Response

On September 22, the Central Commission filed a motion requesting additional time to respond to the amended complaint. The court granted the motion, giving the commission until October 21 to file its response.

—TDL

Byrd v. Raines

U.S. Supreme Court Dismisses Line-Item Veto Challenge

On June 26, the U.S. Supreme Court dismissed an action challenging the constitutionality of the recently enacted Line-Item Veto Act (Pub. L. No. 104-130), which gives the President the authority to cancel in whole, at any time up to five days after signing a bill into law, any dollar amount of appropriation, any item of new deficit spending, or any limited tax benefit contained in the bill. In so doing, the Court determined that the appellees lack standing to file the lawsuit.

This case may be of interest to Forum Participants not only for its impact on federal agency budgetary matters, but also for its potential impact on the President's ability to veto state-sponsored legislation (such as the Ward Valley land transfer) that is attached to appropriations measures.

The following is a brief summary of the case and of the Court's decision. Persons interested in a more detailed explanation are directed to the decision itself.

What is Standing?

Standing is a legal doctrine which provides that a party must have a sufficient stake in an otherwise justiciable controversy to be eligible to bring suit. In order to establish standing in this action, the plaintiffs "must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief."

The Decision

Chief Justice Rehnquist delivered the opinion of the Court, and Justice Souter wrote a concurring opinion, both of which were joined by Justice Ginsburg. Separate dissenting opinions were written by Justices Stevens and Breyer.

In dismissing the action, the Court determined that the appellees failed to allege any injury to themselves as individuals, that the institutional injury that they allege is "wholly abstract and widely dispersed," and that litigation of this dispute at this time and in this form is contrary to historical experience. The Court noted that its decision "neither deprives Members of Congress of an adequate remedy (since they may repeal the Act or exempt appropriations bills from its reach), nor forecloses the Act from constitutional challenge (by someone who suffers judicially cognizable injury as a result of the Act)." The Court stated that it attached some importance to the fact that the appellees have not been authorized to represent their respective branches of Congress in the litigation and that, in fact, both branches actively oppose the action.

President Clinton recently used the line-item veto authority to cancel specific projects without vetoing bills as a whole in connection with the budget and tax-cutting legislation.

Background

The lawsuit was originally filed in the U.S. District Court for the District of Columbia on January 2, 1997, by Senators Byrd (D-WV), Hatfield (R-OR), Levin (D-MI), and Moynihan (D-NY), and by Representatives Skaggs (D-CO) and Waxman (D-CA). Franklin Raines, Director of the Office of Management and Budget, and Robert Rubin, Secretary of the Treasury, were named as defendants to the action. (See *LLW Notes*, February 1997, p. 19.)

The plaintiffs claimed that passage of the Line-Item Veto Act caused direct and concrete injuries to them "by (a) altering the legal and practical effect of all votes they may cast on bills containing such separately vetoable items, (b) divesting the plaintiffs of their

constitutional role in the repeal of legislation, and (c) altering the constitutional balance of powers between the Legislative and Executive Branches, both with respect to measures containing separately vetoable items and with respect to other matters coming before Congress."

On April 10, the district court struck down the act as violative of the separation of powers doctrine of the U.S. Constitution. (See *LLW Notes*, April 1997, p. 25.) The act provides for a direct, expedited appeal to the U.S. Supreme Court, and on April 18—eight days after the district court issued its order—the defendants filed a jurisdictional statement asking the Supreme Court to note probable jurisdiction. The court did so and heard oral arguments on May 27. (See *LLW Notes*, May/June 1997, p. 20.)

—TDL

USEC Privatization Plan Approved

On July 25, President Clinton approved the sale of the U.S. Enrichment Corporation (USEC)—a wholly government-owned entity that is authorized under the Energy Policy Act of 1992 to lease uranium enrichment facilities owned by the U.S. Department of Energy at Paducah, Kentucky, and Piketon, Ohio. Under the terms of the plan, the company may be sold either to another corporation or to the public through a stock offering. However, any sale of the company will have to meet criteria set by Congress, including limitations on foreign ownership and control, safeguards to protect national security interests, and assurances of a continuing domestic source of enriched uranium. Market analysts predict that the company will be sold for \$1 billion to \$2 billion.

Two groups have expressed an interest in purchasing USEC. The first is a consortium composed of Allied Signal, Inc.; Babcock and Wilcox Company; Fluor Daniel, Inc.; General Atomics Aeronautical Systems, Inc.; and Lockheed Martin Corporation. The second is the Pleiades Group, an acquisition company based in New York led by former Commerce Secretary Robert Mossbacher and Alexander Shustorovich, a Russian-American entrepreneur.

Background The U.S. Enrichment Corporation originated under the Energy Policy Act of 1992. Although the corporation was established as a wholly government-owned entity, the law directed that a privatization plan be developed. The corporation may implement the plan upon satisfaction of certain requirements and approval of the President. (See *LLW Notes*, April/May 1995, p. 13.)

Several issues have arisen with regard to privatization of the corporation, including disposal responsibility for the waste it generates. The issue was dealt with in the FY '96 omnibus appropriations bill, which included the following language pertaining to state and compact liability for the disposal of USEC-generated low-level radioactive waste:

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.

(See *LLW Notes*, May 1996, p. 31.)

—TDL

Court Calendar

Case Name	Description	Court	Date	Action
<i>Appalachian States Low-Level Radioactive Waste Commission v. Peña</i> (See <i>LLW Notes</i> , October/November 1996, p. 24.)	Seeks the release of all surcharge fees, collected from Appalachian region generators, being held in an escrow account by the Secretary of the U.S. Department of Energy.	United States Court of Appeals for the Third Circuit	September 18, 1997	The appellate court denied the Appalachian Commission's petition for a panel rehearing, leaving in effect the court's prior opinion and judgment in favor of DOE.
<i>California Department of Health Services v. Babbitt</i> (See <i>LLW Notes</i> , March 1997, pp. 1, 16-20.)	Seeks to compel the U.S. Interior Department to transfer federal land at Ward Valley, California to the state for use in siting a low-level radioactive waste disposal facility and to issue the patent approved by DOI four years ago.	United States District Court for the District of Columbia	mid-August 1997 October 23, 1997	Southeast Commission filed a motion to join amici curiae documents previously filed by the Midwest and Southwestern Commissions. Hearing is scheduled on defendants' motions to dismiss and to transfer venue.
<i>California Department of Health Services v. United States of America</i> and <i>US Ecology v. United States of America</i> (See <i>LLW Notes</i> , April 1997, pp. 18-19.)	Involves a claim of breach of contract for failure to sell 1,000 acres of federal land in Ward Valley to the State of California for use in siting a low-level radioactive waste disposal facility.	United States Court of Federal Claims	September 24, 1997 October 9, 1997 September 15, 1997 November 10, 1997	The court rejected the defendant's motion to dismiss the action. Hearing was held on motion to compel discovery. Plaintiffs' filed a joint motion for partial summary judgment re whether a valid contract to sell the site existed and was properly rescinded. Deadline for defendants to file cross motion for partial summary judgment.

Court Calendar *continued*

Case Name	Description	Court	Date	Action
<i>Nebraska v. Central Interstate Low-Level Radioactive Waste Commission</i> (See related story, this issue.)	Involves whether or not the state has veto authority over applications to import and export low-level radioactive waste from the region.	United States District Court for the District of Nebraska	August 22, 1997 September 12, 1997 October 21, 1997	The State of Nebraska filed its complaint. Nebraska amended its complaint. Central Commission's response to the suit is due.
<i>Nuclear Fuel Services, Inc. v. Semnani</i> (See <i>LLW Notes</i> , April 1997, pp. 22-24.)	Alleges conspiracy and unfair business practices in restraint of trade in the low-level radioactive waste disposal business.	Third District Court of the State of Utah	August 1997	Court denied defendants' motion to dismiss the action.
<i>Waste Control Specialists, LLC v. Envirocare of Texas, Inc.</i> (See <i>LLW Notes</i> , July 1997, pp. 20-22.)	Challenges the actions of Envirocare of Texas and others as constituting antitrust violations, libel, slander, and business disparagement.	District Court of Andrews County, Texas	September 1997	Hearing was held on venue—i.e. whether the trial will be held in Andrews County, Texas, or in Travis County.
<i>Waste Control Specialists, LLC v. U.S. Department of Energy</i> (See related story, this issue.)	Alleges that senior DOE officials have not carefully or reasonably considered a WCS proposal to dispose of DOE radioactive waste at the company's Andrews County site.	United States District Court for the Northern District of Texas	October 10, 1997	The court issued a preliminary injunction against the U.S. Department of Energy concerning the award of new contracts for low-level or mixed radioactive waste disposal services.

U.S. Department of Defense (DOD)

DOD Finalizes LLRW Disposal Charter

On August 21, Deputy Under Secretary of Defense (Environmental Security) Sherri Goodman finalized the Department of Defense Charter for the Low-Level Radioactive Waste Disposal Executive Agent. The charter designates the Army's Executive Agency for Low-Level Radioactive Waste Disposal as the central coordinator for the management of the Department of Defense's (DOD) low-level radioactive waste and authorizes the Executive Agency to continue to provide disposal services for other federal agencies on a cost-reimbursable basis. The charter became effective immediately upon becoming finalized.

Responsibilities of Army's Executive Agency

The Department of Defense (DOD) charged the Army's Executive Agency for Low-Level Radioactive Waste Disposal with the following responsibilities under the charter:

- Assuring the safe, cost effective and compliant disposal of all DoD LLRW.
- Conducting LLRW disposal for other federal agencies on a cost reimbursable basis, when permissible under applicable law and as otherwise appropriate.
- Granting waivers, on a case-by-case basis, from the requirement that the DoD Executive Agency dispose of all LLRW. If it grants a waiver, the Executive Agency retains responsibility for ensuring proper disposal procedures are followed and maintaining historical disposal records. DoD components should forward requests for waiver to the Executive Agency. The request for waiver should include cost and technical information which shows that the DoD component will dispose of the waste in a safe and cost-effective manner and in accordance with all applicable legal requirements. If the Executive Agency denies a waiver, the party seeking the waiver may appeal the denial to the Low-Level Radioactive Waste Disposal Advisory Committee for review.
- Maintaining a liaison with States, compacts and regulators.

- Developing and maintaining procedures for LLRW disposal.
- Drafting and coordinating DoD policy on LLRW.
- Providing requested technical assistance and training to all DoD components.
- Staying abreast of new and emerging LLRW disposal technologies.
- Developing and maintaining a central file of current State, Federal and international regulatory requirements and an awareness program on applicable requirements and procedures.
- Providing an annual update to the Deputy Under Secretary of Defense (Environmental Security) on the status of the LLRW disposal program.
- Negotiating Interservice Support Agreements (ISSAs) with the DoD Components and Interagency Agreements (IAGs) with other federal agencies for the purpose of arranging for disposal of LLRW.

LLW Forum Supports Executive Agency Role

In February 1997, the LLW Forum passed a resolution—DOD Management of Low-Level Radioactive Waste (Number 97.2.1)—endorsing the central coordinating role being performed by the Army's Executive Agency for Low-Level Radioactive Waste Disposal.

Resolved, That the Low-Level Radioactive Waste Forum memorializes the U.S. Department of Defense to maintain a single Executive Agency responsible for management of low-level radioactive waste.

—LAS

For further information, contact Stephen Mapley of the Army's Executive Agency for Low-Level Radioactive Waste Disposal at (309)782-2933. See also "New Materials and Publications."

U.S. Department of Energy

Clinton Nominates Six DOE Appointees

In July, President Clinton nominated six appointees to DOE positions. Each appointment requires confirmation by the U.S. Senate.

Moniz Named Under Secretary

Ernest Moniz, the Director of the Physics Department at the Massachusetts Institute of Technology, was named DOE Under Secretary, the third-highest-ranking position at DOE. Moniz formerly served as Associate Director of Science at the Office of Science and Technology from July 1995 to January 1997. He also chaired the Nuclear Science Advisory Committee of DOE and the National Science Foundation.

The DOE Under Secretary is responsible for a broad spectrum of DOE activities, including DOE's defense programs; security affairs; environmental, safety and health programs; civilian radioactive waste management; environmental restoration and waste management; and nuclear safety.

Congress Moves FUSRAP to Army Corps of Engineers

On September 30, the U.S. House of Representatives and U.S. Senate approved \$15.89 billion in total funding for DOE. In so doing, Congress ordered DOE to transfer its Formerly Utilized Sites Remedial Action Program (FUSRAP) to the Army Corps of Engineers. The Army Corps of Engineers will receive \$140 million to administer both FUSRAP and a similar environmental restoration program, Formerly Used Defense Sites (FUDS), that is already managed by the Army Corps.

FUSRAP was established in 1974 to provide for the cleanup of forty-six sites in fourteen states that are contaminated with low levels of radioactive materials resulting from early nuclear weapons production activities under the Manhattan Project. In the 1940s and 1950s, the federal government contracted with privately owned firms and institutions to develop processes and to perform research on radioactive materials. Twelve FUSRAP sites to date have been remediated.

Reicher Named DOE Assistant Secretary

Dan Reicher was named DOE Assistant Secretary for Energy Efficiency and Renewable Energy. Reicher has been serving as a Senior Policy Advisory to Energy Secretary Federico Peña and had been Chief of Staff and Deputy Chief of Staff under the previous Energy Secretary, Hazel O'Leary. Prior to joining DOE, he was a senior attorney at the Natural Resources Defense Council.

Sullivan Named DOE General Counsel

Mary Anne Sullivan was named General Counsel, the chief legal officer for DOE. Sullivan has been serving stints as the Deputy General Counsel for Energy Resources. Prior to joining DOE, she was a partner at the Washington law firm of Hogan & Hartson.

Other Nominations

In addition, Clinton announced the following nominations:

- Michael Telson was named as the chief financial officer for DOE;
- Robert Gee was named as DOE Assistant Secretary, Policy and International Affairs; and
- John Angell was named as DOE Assistant Secretary, Congressional and Intergovernmental Affairs.

Status

The Senate Energy Committee voted in September to recommend confirmation of all six DOE nominees. As of press time, a full Senate vote on the nominees has not been scheduled.

—LAS, TDL

U.S. Department of the Interior

Schaefer Named Interim Director of USGS

In a press release dated September 24, Interior Secretary Bruce Babbitt announced the selection of Mark Schaefer to serve as Interim Director of the U.S. Geological Survey (USGS). Gordon Eaton, the former USGS Director, retired effective September 30. The position of USGS Director is a presidential appointment subject to confirmation by the U.S. Senate.

The USGS is responsible for the assessment of energy and mineral resources in the national domain and conducts basic and applied research into a wide range of earth science and natural hazard program areas such as earthquakes and volcanic activity. The USGS is located within the Interior Department.

Prior to being named USGS Interim Director, Schaefer served as the Deputy Assistant Secretary for Water and Science, the part of the Interior Secretary's office that oversees the USGS and the Bureau of Reclamation. He will continue to occupy the position of Deputy Assistant Secretary and will return to the position full time when either a new USGS Director is selected or after the 120-day interim appointment expires. Prior to joining the Interior Department in 1995, Schaefer served as Assistant Director for Environment in the Office of Science and Technology Policy (OSTP) within the Executive Office of the President.

The process of selecting a new USGS Director is expected to take several months. According to the September 24 press release, Interior Secretary Babbitt will seek recommendations from the National Academy of Sciences for the position of USGS Director.

For further information, contact John Wright of the U.S. Department of the Interior at (202)208-6416.

Nichols Leaves EPA

On August 15, Mary Nichols, EPA's Assistant Administrator for Air and Radiation, left EPA to join a private foundation. Nichols has been named the Executive Director of Environment Now, a Los Angeles-based foundation dedicated to the protection of the California environment. President Clinton originally nominated Nichols as Assistant Administrator in July 1993, and the U.S. Senate confirmed her in November 1993.

—LAS

NRC Commissioner Rogers' Term Expires

On June 30, Kenneth Rogers' term as NRC Commissioner expired. Currently, there are four NRC Commissioners—Chairman Shirley Ann Jackson, Commissioner Nils Diaz, Commissioner Greta Dicus, and Commissioner Edward McGaffigan—and one open seat.

President Clinton has not yet named a replacement for Rogers. The nomination of an NRC Commissioner requires confirmation by the U.S. Senate. The next NRC Commissioner's term to expire will be Commissioner Greta Dicus' term, which expires June 30, 1998.

—LAS

U.S. Nuclear Regulatory Commission (NRC)

NRC: California "Well-Qualified" to License Ward Valley Facility

In an October 2 letter to Carl Lischeske, Manager of the California Department of Health Services' (DHS) Low-Level Radioactive Waste Program, NRC Chairman Shirley Ann Jackson commented upon NRC's views of California's qualifications pertaining to the licensing of a low-level radioactive waste disposal facility. The letter responds to an August 12 letter to Chairman Jackson from Lischeske.

The August 12 letter included a portion of Deputy Interior Secretary John Garamendi's testimony at the July 22 hearing of the Senate Committee on Energy and Natural Resources. (See *LLW Notes*, July 1997, pp. 30-31.) Based on the testimony, Lischeske expressed concern that the Department of the Interior (DOI) may be preparing to address whether California is capable of monitoring the planned low-level radioactive waste disposal facility at Ward Valley. Such an undertaking by DOI would, Lischeske asserted, encroach into NRC's jurisdiction.

"[W]e have no reason to believe that public health and safety would not be adequately protected by disposal of LLW at the Ward Valley site."

The following is excerpted from the October 2 letter:

As you suggest, NRC has a continuing responsibility under section 274 of the Atomic Energy Act to review an Agreement State's regulatory program to make sure it is compatible with NRC's program for the regulation of similar materials and that it is adequate to protect public health and safety. California has adopted regulations that are compatible with NRC's regulations for land disposal of radioactive waste (10 CFR Part 61). As I indicated in my January 10, 1997, letter to you (copy provided to Secretary Babbitt), the NRC staff has concluded that California has followed NRC licensing guidelines and the standard review plan for acceptance and review of the Ward Valley

application, and that the California staff, advisory committees, and supporting contractual staff are well-qualified. Accordingly, while we have not made detailed findings on all the technical issues in this case, we have no reason to believe that public health and safety would not be adequately protected by disposal of LLW at the Ward Valley site. NRC's most recent review of the California Agreement State program was conducted October 21-25, 1996, and included an assessment of the State's plans for regulating the Ward Valley facility. The NRC staff concluded, as a result of that review, that the California program is adequate to protect public health and safety and is compatible with NRC's program.

Whether Mr. Garamendi's testimony reflects an intent to duplicate any of the work normally undertaken by NRC in the course of reviewing an Agreement State program is unclear. The Commission recognizes that DOI has oversight authority for public lands and may determine that it has certain responsibilities under the National Environmental Policy Act when the use of such lands will be changed. As you know, NRC will actively serve as a "commenting agency" on DOI's SEIS [Supplemental Environmental Impact Statement] and thus will review the draft SEIS and provide comments based on the requirements in Federal law and regulations and our knowledge of policy, technical and legal issues in LLW management. We will also describe our reviews of the California Agreement State program and report our findings, to the extent that this information would address issues raised in the SEIS. Thus, NRC's views with respect to any overlapping issues will be made known to DOI and we have no reason to believe that DOI will not fully consider our views in developing the final SEIS.

—LAS

For further information, contact James Kennedy of NRC's Division of Waste Management at (301)415-6668.

EPA Objects to State Permit for Louisiana Facility

Denies Environmental Justice Claims

under Clean Air Act

In a September 10 letter to Louisiana Department of Environmental Quality (DEQ) Secretary J. Dale Givens, EPA Administrator Carol Browner transmitted EPA's decision regarding citizen petitions filed under Title V of the Clean Air Act. The petitions were filed with EPA to oppose three Clean Air Act Title V operating permits issued by the Louisiana DEQ to Shintech, Inc., for proposed polyvinyl chloride (PVC), vinyl chloride (VCM) and chlor-alkali production plants in Convent, Louisiana. EPA's decision objects to one state-issued permit—the VCM operating permit—on the grounds that it fails to regulate all potential sources of air pollution.

This is the first time that EPA has granted a citizens' petition under Title V of the Clean Air Act.

EPA Dismisses Environmental Justice Assertions

Executive Order on Environmental Justice

The Clean Air Act Title V petition, which raised both technical and environmental justice issues, based its environmental justice contentions upon Executive Order 12898—*Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* or the Executive Order on Environmental Justice.

The executive order states

To the greatest extent practicable and permitted by law ... each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of [federal agency] programs, policies, and activities on minority populations and low-income populations."

EPA's Clean Air Act Title V Decision re Shintech

EPA's Clean Air Act Title V decision states:

Petitioners argue in their petitions that Executive Order 12898 [the Executive Order on Environmental Justice] requires EPA to object under the Clean Air Act to the proposed Shintech Permits on environmental justice grounds. Under section 505 (b) (2) of the Act, however, a petitioner must demonstrate that a permit is not in compliance with applicable requirements of the Act. While there may be authority under the Clean Air Act to consider environmental justice issues in some circumstances, Petitioners have not shown how their particular environmental justice concerns demonstrate that the Shintech Permits do not comply with applicable requirements of the Act. In light of the foregoing, in response to Petitioners' request that EPA object to the Shintech Permits on this basis, their petitions are hereby denied.

This decision addressed the environmental justice contentions contained in the Clean Air Act Title V petition. There is also a Civil Rights Act Title VI petition that has been submitted to EPA. EPA has accepted for investigation the Civil Rights Act Title VI petition, which also alleges that the permitting of the facility constitutes environmental injustice.

Shintech Viewed as Environmental Justice "Test Case"

The controversy regarding the environmental justice allegations pertaining to the permitting of the Shintech facility has attracted national media attention, including articles in the *New York Times* and *Wall Street Journal*. Since EPA, which is the lead federal agency for environmental justice, has to date declined to provide state and local governments with any guidance and/or legal analysis regarding how environmental justice may be addressed in permitting situations, EPA's response to the formal environmental justice allegations regarding Shintech have been characterized by observers as indicative of the Clinton administration's plans for implementation of environmental justice policy.

Background: Title V of the Clean Air Act

General Requirements

Under the Clean Air Act (42 U.S.C. §§ 7401 to 7671q), each state must develop and submit to EPA for approval an operating permit program to administer the provisions of the Clean Air Act. EPA has the authority to impose sanctions upon states if the EPA Administrator finds that a state permitting authority is not adequately enforcing or administering its operating permit program. Sanctions may include withholding of federal highway funds and increasing the emissions offset requirements (the ratio of emissions reduction required for each increase in air emissions).

Under Title V of the Clean Air Act, state permitting authorities must transmit to EPA each permit application, each permit proposed to be issued, and each permit issued as a final permit. If state permitting authorities do not modify a permit in accordance with EPA's recommendations, EPA has the authority to preempt the state on either a program-wide or permit-specific basis. The EPA Administrator may object to an issuance of a permit if a permit "contains provisions that are ... not in compliance with the applicable requirements of [the Clean Air Act], including the requirements of an applicable implementation plan."

Provisions for Citizen Petitions

If EPA does not object in writing to the issuance of a permit, any person may petition EPA to object to a permit under Title V of the Clean Air Act. Under the Act, citizen petitions "shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting agency (unless the petitioner demonstrates in the petition ... that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period)."

EPA has 60 days to grant or deny a Clean Air Act Title V petition once it is filed. If EPA objects to a proposed permit, the state permitting authority may not issue the proposed permit unless it is revised. If a permit to which EPA objects has already been issued, EPA must terminate or revoke the permit, which can then be reissued by the state permitting agency if it is revised. If the state permitting authority does not submit a revised permit to EPA within 90 days after EPA objects, EPA has the authority under Title V of the Act to issue, revoke, terminate or deny the permit.

Background: State Licensing of the Proposed Shintech Facility

In July 1996, Shintech submitted three applications to Louisiana DEQ for Clean Air Act Title V operating permits for a chlor-alkali production plant, a PVC production plant, and a VCM production plant. The plants would be co-located at the Shintech facility in Convent, Louisiana. At the same time, Shintech also submitted an application for a Clean Air Act preconstruction permit—a "Prevention of Significant Deterioration" (PSD) permit—for all three plants.

Louisiana DEQ issued a public notice for a draft permit encompassing the three Clean Air Act Title V permits and the PSD permit in November 1996. The permit was submitted to EPA Region VI in accordance with the Clean Air Act, and EPA submitted written comments on the draft license twice. Louisiana DEQ held a public hearing on the draft permit in December 1996 and twice extended the public comment period, which ultimately ended on January 23, 1997.

In February 1997, Louisiana DEQ issued proposed PSD and operating permits for the Shintech facility. EPA Region VI provided oral comments on the proposed permits, but did not submit written comments. EPA's 45-day review period for the proposed permits under the Clean Air Act expired in April 1997. On May 23, Louisiana DEQ issued a final PSD permit and three final operating permits to Shintech.

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Petitions Submitted to EPA Oppose Shintech Permits

Civil Rights Act Title VI Complaint Still Pending

Title V of the Clean Air Act

On May 22, 1997, the Tulane Environmental Law Clinic petitioned EPA under Title V of the Clean Air Act to object to the three operating permits and the PSD permit. Greenpeace joined the petition, which was filed on behalf of eighteen organizations: St. James Citizens for Jobs and the Environment, Louisiana Environmental Action Network (LEAN), St. John Citizens for Environmental Justice, St. Charles Environmental Coalition, Gulf Coast Tenants Organization, Southern Christian Leadership Conference, Louisiana Citizen Action, Concerned Citizens of Iberville Parish, Action Against Waste and to Restore the Environment, Ascension Parish Residents Against Toxic Pollution, River Area Planning Group, Save Our Selves, North Baton Rouge Environmental Association, Neighbors Assisting Neighbors, Delta Greens, Louisiana Coalition for Tax Justice, League of Women Voters of Louisiana, and the Sierra Club. The May 22 complaint supplemented an earlier complaint. Two subsequent petitions and a supplement to a petition were also filed.

The September 10 EPA decision addressed all of the Clean Air Act Title V petitions received by the agency.

Title VI of the Civil Rights Act (Title VI)

On May 6, the Tulane Environmental Law Clinic submitted a complaint against Louisiana DEQ under Title VI of the Civil Rights Act on behalf of the St. James Citizens for Jobs and the Environment. Title VI of the Civil Rights Act prohibits recipients of federal financial assistance from discriminating on the basis of race, color or national origin. A subsequent amended complaint was filed on behalf of the St. James Citizens for Jobs and the Environment, LEAN, St. John Citizens for Environmental Justice, Ascension Parish Residents Against Toxic Pollution, River Area Planning Group, Gulf Coast Tenants Organization and the Southern Christian Leadership Conference. The Title VI complaint has been accepted for review by EPA's Office of Civil Rights.

To date, the Tulane Environmental Law Clinic has submitted to EPA three Title VI complaints (including the Shintech Title VI complaint) challenging state-issued permits. Two complaints (including the Shintech Title VI complaint) have been accepted by EPA for investigation. The remaining Civil Rights Act Title VI complaint is still under consideration for acceptance by EPA.

EPA's Findings

Clean Air Act Title V Permits

EPA found in favor of one issue asserted regarding the VCM operating permit in the Clean Air Act Title V petition. EPA's decision states:

Petitioners claim that the VCM cracking furnaces are reactors and thus must meet the definition of a process unit in 40 CFR § 63.111 ... Petitioners further claim that as process units, the VCM cracking furnaces are subject to the control and venting requirements of the Hazardous Organic National Emission Standards for Hazardous Air Pollutants (the "HON"), 40 CFR Part 63, Subparts F, G & H, the requirements of which should be set forth in the VCM Title V permit ... These claims are correct.

The permit must be revised to incorporate EPA's findings in order to be issued.

EPA denied approximately 21 other issues, both specific and general, raised in the Clean Air Act Title V petitions, including the environmental justice contentions. Several of the issues raised in the Clean Air Act Title V petitions are identical to issues raised in the Civil Rights Act Title VI complaint. During the most recent review of the Shintech permits, EPA identified 49 technical deficiencies—none raised by the Clean Air Act Title V petitions—that also must be resolved prior to issuance of final permits.

Civil Rights Act Title VI Allegations

EPA's Clean Air Act Title V decision regarding the Shintech facility dismissed the environmental justice contentions raised in the context of the Clean Air Act. However, the Civil Rights Act Title VI complaint regarding the Shintech facility is still pending. In the September 10 letter to Louisiana DEQ Secretary J. Dale Givens, EPA Administrator Browner comments as follows:

We believe it is essential that minority and low income communities not be disproportionately subjected to environmental hazards, and that the concerns of their residents be adequately addressed in the permitting process.

EPA's Office of Civil Rights has accepted the Title VI complaint for further investigation. However, in addition to EPA's review, we believe that it is important for the state to establish a process for

resolving these issues with the full and meaningful involvement of the surrounding community. We acknowledge, as an important first step, the state's pledge to initiate a broad-based process for involving all stakeholders to address these concerns and to develop a mutually acceptable resolution. And we support the state's plans to examine environmental justice issues in the heavily industrialized corridor around the Convent site, as the issues that are presented at Shintech may occur at other nearby facilities and elsewhere in the state.

EPA is committed to continuing its work with the state and the community to resolve the Title VI complaint. However, if there is no resolution of this matter, we will expedite our ongoing Title VI review in order to ensure that the concerns of local residents are fully addressed.

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State Official Comments on Shintech Decision's Significance

Pete Baldridge, a senior staff attorney with the California Department of Health Services, commented

Notwithstanding several strong statements in EPA's letter about the agency's commitment to environmental justice, the Shintech Clean Air Act decision represents one of the first indications to states of EPA's substantive interpretation of environmental justice. Until now, EPA has primarily criticized state and local governmental entities that are actually dealing day-to-day with issues of environmental equity, a concept which protects any population group—whether defined by age, gender, race, income, location, occupation, or disability—and which is more broad than environmental justice. It is time for EPA to start working with state and local governments to devise workable strategies and solutions without sacrificing state and local decisionmaking autonomy.

Nevertheless, states should be pleased with the positive direction contained in EPA's Shintech decision. The decision correctly indicates that, in the absence of a violation of an environmental statute, the Executive Order on Environmental Justice does not provide a basis for EPA to object to a permit. The question now is whether EPA will apply the same concept to environmental justice claims under Title VI of the Civil Rights Act as well. The answer should be yes. To date, legal challenges raised under the rubric of environmental justice to state environmental permits—absent violations of state environmental laws—have consistently failed to withstand judicial scrutiny.

EPA's Shintech Decision Conflicts with Previous NRC Board Decision

EPA's Shintech Clean Air Act decision contrasts with the decision of NRC's Atomic Safety and Licensing Board regarding NRC's issuance of a license for the Louisiana Energy Services (LES) plant in Claiborne, Louisiana. In that decision, the Board found that the Executive Order on Environmental Justice mandated NRC staff to conduct a "thorough and in-depth investigation of [LES'] siting process ... to insure compliance with the President's nondiscrimination directive" prior to issuing an NRC license. The Board cited the Executive Order on Environmental Justice as its authority to deny the LES license based on environmental justice assertions notwithstanding the absence of a violation of applicable environmental standards.

The Board's decision is currently under appeal to the NRC Commissioners.

Next Steps

In a September 8 letter to EPA Region VI Acting Administrator Jerry Clifford, Louisiana DEQ Secretary J. Dale Givens states:

Over the last several weeks the Department's Air Quality permitting staff have been in contact with the [EPA] Region's Air Quality technical staff concerning various technical issues about the permits issued by this agency to Shintech for the proposed new facility in Louisiana. While many of the technical issues can be resolved quite easily, I feel that it would be appropriate for the [Louisiana] DEQ to re-open the appropriate permits to address these issues and others which are not as well defined. In this regard, I am notifying Shintech of our intent under separate cover.

This process will allow the Department to further dialogue with concerned individuals and groups and address issues that may involve the concept of environmental justice and provisions of Title VI of the Civil Rights Act concerning, among other things, possible disparate impact on the surrounding community near where the proposed plant is planning to locate.

For further information pertaining to environmental justice, please see the following issues of LLW Notes:

- *July 1997, pp. 14-17, 36-37;*
- *LLW Notes Supplement: Environmental Justice and Title VI, July 1997;*
- *May/June 1997, p. 31;*
- *April 1997, p. 33; ,*
- *Feb. 1997, pp. 1, 4-9, 23, 28;*
- *LLW Notes Supplement: Background on Environmental Justice, Feb. 1997;*
- *Aug./Sept. 1996, pp. 24-27;*
- *Aug./Sept. 1995, p. 30;*
- *Nov./Dec. 1994, pp. 30-31;*
- *Oct. 1994, p. 11;*
- *July 1994, p. 26; and*
- *April 1994, p. 12.*

—LAS

ECOS Draft Recommendations re Enviro Programs

The Environmental Council of the States (ECOS) is a national, non-profit, non-partisan association representing the state and territorial environmental commissioners. ECOS initiated the Enterprise for the Environment (E4E) Project to identify ways to improve the environmental protection system in the United States. The E4E steering committee, which was led by former EPA Administrator William Ruckelhaus, includes governors, members of congress, the deputy administrator and four former EPA administrators, executives of major corporations, representatives of environmental groups, state environmental agency leaders and others. ECOS members from California, Colorado, Georgia, Indiana, Illinois, North Carolina and Wisconsin have been directly involved in the E4E Project.

An ECOS work group developed a draft E4E report, which contains key recommendations for improving the environmental protection system. The draft report is currently in the concurrence process. The following information is excerpted from the September 1997 edition of Ecostates: The Journal of the Environmental Council of the States.

For information on how to subscribe to Ecostates, contact Lisa Davis of ECOS at (202)624-3660.

—LAS

The following 12 elements, taken together, outline E4E participants' consensus vision of an improved environmental protection system. E4E participants believe the environmental protection system should:

1. maintain basic standards of environmental protection, and effectively and efficiently prevent and control threats to human health and the environment.
2. ensure that all environmental laws and regulations are fairly and consistently enforced.
3. distribute costs and benefits fairly, accounting for impacts on both present and future generations, and address disproportionate impacts on any group in society, especially low-income individuals, people of color, or other disadvantaged groups.
4. set and pursue clear environmental goals and milestones for the nation, States, localities, and tribes, and use understandable indicators to measure progress.
5. be adaptive, adjusting policies, strategies, and systems based on experience and new information.
6. generate, disseminate, and rely on the best available scientific and economic information.
7. offer flexibility of means coupled with clarity of responsibility, accountability for performance, and transparency of results.
8. rely on a broad set of policy tools, including:
 - economic incentives that are aligned with environmental goals, reward superior environmental performance, and stimulate technological innovation.
 - incentives for changes in individual behavior.
 - disclosure of consistent and accurate source-level performance information.
9. place authority, responsibility, and accountability at the appropriate level of government.
10. promote collaborative problem solving and integrated policy making by all branches and levels of government.
11. promote high levels of environmental stewardship and continuous improvement in environmental performance.
12. create decision processes that meaningfully involve affected stakeholders and engage all citizens in protecting the environment.

Legislation to Prohibit Spent Fuel Shipments to the Goshutes is Introduced in Congress

On June 26, U.S. Representative Merrill Cook (R-UT) introduced H.R. 2083—legislation to prohibit the shipment of spent nuclear fuel to a Native American reservation in Utah—in the U.S. House of Representatives. The bill provides that any shipment of spent nuclear fuel in interstate commerce to the reservation of the Skull Valley Band of Goshutes shall be considered to be a shipment of hazardous material in violation of the National Environmental Policy Act (NEPA). It states that any person making such a shipment shall be subject to NEPA penalties. For purposes of setting penalties, the bill provides that each day that a shipment is made shall be considered a separate violation and each cask of spent fuel contained in such shipment shall be considered a separate violation. The bill sets a \$25,000 civil penalty for each violation.

H.R. 2083 has been referred to the House Committee on Transportation and Infrastructure. As of press time, there has been no action by the committee. No similar or companion legislation has been introduced in the U.S. Senate.

Background Private Fuel Storage (PFS) Limited Liability Company applied to the U.S. Nuclear Regulatory Commission for permission to construct an above-ground spent fuel storage facility on the Goshute reservation on June 25, 1997. The application was made in response to the federal government's refusal to take spent fuel by early 1998, as originally contemplated in the Nuclear Waste Policy Act of 1982. (See *LLW Notes*, April 1997, pp. 26–27.)

Utah officials, including Governor Michael Leavitt (R) oppose the facility and have vowed to fight it. In late July, the State of Utah filed a 2.206 petition requesting that NRC reject PFS' application. (See *LLW Notes*, July 1997, pp. 33–34.) To date, NRC has not issued a decision on the application.

—TDL

U.S. House of Representatives (continued from page 1)

Background

H.R. 629 was approved by a voice vote, without objection, by the Subcommittee on Energy and Power of the House Commerce Committee on May 13, 1997. (See *LLW Notes*, May/June 1997, p. 30.) The bill was approved by the full Commerce Committee on June 25, 1997. (See *News Flash*, June 25, 1997.)

Next Step

The Texas Compact consent legislation is expected to be taken up by the Senate during the latter part of October. It is anticipated that the Senate sponsors of the legislation will obtain an agreement for a specific amount of time to debate the legislation. And, while at least one amendment is expected to be offered on the floor of the Senate, bill sponsors are believed to be opposed to any amendment to the legislation.

House-Senate Conference Committee

If the Senate version of the legislation differs from the the House version, it is expected that each chamber will appoint conferees to resolve differences between the two bills. Once the conferees agree on language, the conference report would then be resubmitted to both chambers for approval.

For further information, contact Todd Lovinger, Forum Congressional Liaison, at (202)547-2620.

The preceding information was distributed to Forum Participants and Alternate Forum Participants, Federal Liaisons and Alternates, via facsimile transmission in a News Flash on October 7, 1997.

Excerpts from the U.S. House of Representatives October 7, 1997 Floor Debate on the Texas Compact Consent Act

Joe Barton (R-TX)

The fact of the matter is that we need disposal sites for low-level radioactive nuclear waste. That is a fact. We want to protect human life. We want to do everything we can to give people a quality of human life. Forty-one States currently have developed compacts with other States. Three States today want the same right that those 41 other States have today, Vermont, Texas, and Maine ...

We simply need to accept the reality that States under the law and under the Constitution have the right to enter into a compact. This particular compact is between Texas, Vermont, and Maine. The Governors have supported it on a bipartisan basis, the legislatures of all three states have supported it on a bipartisan basis, and we should support it on a bipartisan basis.

Sam Johnson (D-TX)

Mr. Chairman, I would like to point out that this property is State-owned property. We had a big discussion about that when I was in the State legislature. I know that the gentleman from Texas [Mr. Green] remembers that. And it was picked because of its location and because it was State-owned.

Mr. Chairman, after 30 years, 85 percent of the waste is nonradioactive. That is what we are talking about. We are talking about low-level waste. We are not talking about high-level waste.

The specific site is limited to 30 years, this place. And I would say to the gentleman from Texas [Mr. Reyes] that at that location it takes 20,000 to 40,000 years for anything to seep down to the Rio Grande.

Also, I would ask the question about my colleague from California who has a compact but does not want this one. His State has got a compact with North Dakota, South Dakota, and Arizona. The gentleman had a big, long line that said transportation is a big problem. Guess what? California has not gotten their site ready yet, so where are they sending their waste? South Carolina, all the way across the country. If transportation is a problem, then California has got it.

Ralph Hall (D-TX)

In Texas, the review process has been closely scrutinized by the Texas Natural Resources Conservation Commission, the EPA of the State of Texas, the State held town hall meetings, open debate on the floor of the Texas legislature, and intense negotiation by State leaders.

I agree with the gentleman from Texas [Mr. Doggett] when he says, 'Don't mess with Texas.' Don't mess with Texas. Don't mess with the legislature of Texas that has already decided this thing. Don't mess with Bulloch, who herded it through the State Senate. Don't mess with Speaker Laney, who herded it through the house. Don't mess with the Governors of these three States. Don't mess with the TNN-RCC. Don't mess with the town hall meetings.

Bernard Sanders (I-VT)

And in terms of process, what the Members should understand is that we have three State legislatures, Texas, Vermont and Maine, which overwhelmingly voted to enter this compact. We have three Governors, and I might add one is a Republican, one is a Democrat, and one is an Independent, who today strongly support going forward with the compact. We have six U.S. Senators from Texas, Maine and Vermont strongly in support of the compact. We have the two Members from Maine, the entire Vermont delegation, me, in support of the compact. I know that will carry a lot of weight. We are undivided on this issue, and we have two-thirds of the Texas House delegation in support of this compact.

So for those Members who believe in devolution, in giving power to the States, it seems to me we should treat this compact in the same way we have treated 9 other compacts involving 41 States. Texas, Maine and Vermont want to be treated the same way as 41 other States have been treated.

HLW Legislation Ready for Floor Action

On September 18, the House Commerce Committee approved a substitute to H.R. 1270—the Nuclear Waste Policy Act of 1997—by a vote of 42 to 3. The original bill had been approved overwhelmingly by the Commerce Committee's Subcommittee on Energy and Power on July 3. Both the substitute and the original legislation call for construction of a temporary storage facility for high-level radioactive waste and spent nuclear fuel at Yucca Mountain, Nevada. The legislation was introduced in response to the federal government's refusal to take spent fuel from commercial nuclear power plants beginning in 1998, as provided for in the Nuclear Waste Policy Act of 1982 and in "standard contracts" entered into between the U.S. Department of Energy and the nuclear utilities. Representatives Edward Markey (D-MA), Elizabeth Furse (D-OR), and Karen McCarthy (D-MO) cast the three dissenting votes against the substitute legislation.

Changes to the Bill

The substitute is similar to the original bill, which was introduced by Representative Fred Upton (R-MI) and had more than 60 cosponsors, but includes a few substantive changes—the most notable of which is a change in the mechanism that funds the federal waste disposal program. Basically, the bill converts the current mandatory fee on nuclear ratepayers of 1 mill per kilowatt hour to a user fee based upon what is appropriated for the waste program in a given year. Other changes include moving back the operational date for an interim facility to January 31, 2002; setting the radiation-release standard at 100 millirems and directing the U.S. Environmental Protection Agency not to issue radiation-release standards for the interim repository; adopting transportation procedures; and placing further limits on the facility's capacity.

Additional Committee Action

The original bill was also sent to the House Resources Committee, which had 30 days to consider the measure on a limited basis. The committee's jurisdiction over the bill was limited to issues pertaining to land conveyance, National Environmental Policy Act compliance, and Native American rights.

The Resources Committee—which includes both Representatives from the Nevada delegation—voted the bill out of committee unfavorably after an October 8 hearing. A few changes were made to the legislation, including an amendment that would provide compensation to property owners whose property value diminishes if the bill passes and an amendment designed to prevent the nuclear power industry from seeking private waste storage arrangements on Indian reservations. (See related story, this issue.) Some proposed amendments, however, such as those pertaining to transportation, were ruled to be beyond the committee's jurisdiction and were therefore not taken up by the committee.

Next Step

The Commerce Committee's substitute version of H.R. 1270 is expected to be placed on the House Calendar for a vote shortly. It is anticipated that the full House will vote on the bill in late October.

Senate Version/Veto Threat

Similar legislation, S. 104, passed the full Senate on April 15 by a vote of 65 to 34. Although the bill was amended several times prior to its passage, the final tally was two votes shy of the two-thirds majority needed to override a threatened presidential veto—but two votes higher than last year's tally on similar legislation. (See *LLW Notes*, April 1997, pp. 30–31.)

Related Issue

The U.S. Court of Appeals for the District of Columbia Circuit began a hearing on September 25, 1997, in two related suits filed by several utilities and states against the U.S. Department of Energy. The suits seek to enforce a lower court's ruling that DOE is obligated to begin taking spent fuel from commercial nuclear power plants beginning in 1998 pursuant to the Nuclear Waste Policy Act of 1982 and to "standard contracts" that the department entered into with the nuclear utilities. (See *LLW Notes*, April 1997, pp. 26–27.) Although the department decided not to appeal the lower court's ruling, it subsequently announced that it will not have a facility available to accept the waste by the 1998 deadline.

—TDL

New Materials and Publications

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

DM Meeting Packet: LLW Forum meeting, October 20-22, 1997.

- *LLW Forum Meeting Agenda.* Afton Associates, Inc. October 1997.
- *LLW Forum Meetings-at-a-Glance Schedule.* Afton Associates, Inc. October 1997.
- *LLW Forum Meeting Preattendance List.* Afton Associates, Inc. October 1997.
- *Status of Technical Assistance. DOE's National Low-Level Waste Management Program.* October 1997.
- Letter from Gary Locke, Governor, State of Washington, to Federico Peña, Secretary, U.S. Department of Energy commenting on the scope of the DOE Plutonium Disposition Environmental Impact Statement and stating "I find it extremely difficult to even consider any new role for Hanford in dealing with nuclear materials or waste." July 17, 1997.

States and Compacts

Appalachian Compact/Pennsylvania

The Choice is Yours, Pennsylvania's Community Partnering Process. Video produced by Chem-Nuclear Systems for the Pennsylvania Department of Environmental Protection. September 1997. Describes Pennsylvania's voluntary siting process and discusses the role of radioactive materials in modern society. To obtain a copy, contact John Burk of Chem-Nuclear Systems at (717)561-1522.

Central Compact/Nebraska

Central Interstate Low-Level Radioactive Waste Compact Commission Annual Report—1996-1997. Central Compact Commission. Includes a project status update and financial statements, along with information on commission meetings, details on legislative actions and a summary of litigation. To obtain a copy, contact Don Rabbe of the Central Compact Commission at (402)476-8247.

Northeast Compact/Connecticut/New Jersey

Low-Level Radioactive Waste Management in Connecticut—1996. Draft report for comment. Connecticut Hazardous Waste Management Service (CHWMS). October 1997. Includes names and locations of the state's active and potential generators, as well as information on waste volumes and activity, waste types, radionuclide compositions, results of waste processing, and pathways to processing and ultimate disposal. Comments on the draft report must be received by CHWMS on or before November 14, 1997. To obtain a copy, contact Steve Levine of CHWMS at (860)244-2007.

Texas Compact/Texas

Texas Low-Level Nuclear Waste Program. Video produced by Advocates for Responsible Disposal in Texas (ARDT). For further information or to obtain a copy of the video, contact Eddie Selig of ARDT at (512)452-9872.

continued on page xx

New Materials and Publications *continued*

Unaffiliated States

New York

Made in New York: 1996-'97 Annual Report of the New York State Energy Research and Development Authority. NYSERDA. Includes information on West Valley and on Radioactive Waste Policy and Nuclear Coordination. September 1997. To obtain a copy, contact NYSERDA at (518)862-1090 x3241.

New York State Low-Level Radioactive Waste Status Report for 1996. June 1997. New York State Energy Research and Development Authority (NYSERDA). Summary of data on LLRW generated in New York State based on annual reports from independent generators. To obtain a copy, contact Heidi Voelk of NYSERDA at (518)862-1090 ext. 3304.

Federal Agencies

Department of Defense (DOD)

DOD Charter for the LLRW Disposal Executive Agent. Charter developed and coordinated by the LLRW Committee outlining policy and funding issues for the LLRW Disposal Program. For further information, contact Steve Mapley of the U.S. Department of the Army at (309)782-2933.

Department of Energy (DOE)

Radiation Control and Waste Management Regulations - SMB-09-97. August 1997. National Low-Level Waste Management Program, DOE, Idaho National Engineering and Environmental Laboratory (INEEL). Diskette containing specially prepared versions of regulations frequently used in radiation control and waste management. For further information, contact Ken Henry of INEEL at (208)526-1866.

1996 State-by-State Assessment of Low-Level Radioactive Wastes Received at Commercial Disposal Sites (DOE/LLW-243). DOE's National Low-Level Waste Management Program, Idaho National Engineering and Environmental Laboratory (INEEL). September 1997. Provides national and state-specific disposal data on commercial low-level radioactive waste shipped for disposal within the United States. Information is categorized by disposal site, source, waste class, volume, and activity. To obtain a copy, contact Donna Lake of INEEL at (208)526-6927. The document may also be accessed through the Internet at http://www.inel.gov/state_by_state/sbs-toc.html.

Environmental Protection Agency (EPA)

Summary of the meeting of the National Environmental Justice Advisory Council (NEJAC). May 13-15, 1997. Highlights from NEJAC's ninth meeting held in Wabeno, Wisconsin. For further information, contact EPA's Office of Environmental Justice at (202)564-2515.

"Top EPA Air Official Mary Nichols Leaves Agency." Press release. August 15, 1997. Mary Nichols, EPA's Assistant Administrator for Air and Radiation, is leaving the Agency to pursue other career opportunities. President Clinton nominated Nichols to this position on July 16, 1993. For further information, contact EPA's Information Resources Center.

Nuclear Regulatory Commission (NRC)

Flow and Transport at the Las Cruces Trench Site: Experiment IIb. (NUREG/CR-6437.) July 1997. Report on results of a comprehensive field trench study near Las Cruces, New Mexico to test deterministic and stochastic models of vadose zone flow and transport. To obtain a copy, contact the NRC public document room.

LLW Forum 1997 Calendar

LLW Forum c/o Afton Associates, Inc. • 403 East Capitol Street • Washington, DC 20003
(202)547-2620 • FAX (202)547-1668 • E-MAIL llwforum@afton.com • INTERNET <http://www.afton.com/llwforum>

January	February	March	April
28 - 29 Host State Technical Coordinating Committee (TCC) Meeting Laughlin, NV	1 - 4 National Governors' Association (NGA) Winter Meeting Washington, DC 11 - 14 LLW Forum Meeting San Diego, CA Southwestern Compact/California	2 - 7 Waste Management '97 Tucson, AZ 19 - 20 Nuclear Energy Institute (NEI) LLRW Workshop Salt Lake City, UT	4 National Conference of State Legislatures (NCSL) LLRW Working Group Meeting San Francisco, CA
May	June	July	August
7 - 9 LLW Forum Meeting Chicago, IL Central Midwest Compact/ Illinois 8 - 10 National	9 - 12 Radioactive Exchange LLRW/ Management Decisionmakers' Forum Amelia Island, FL	27 - 30 National Governors' Association (NGA) Annual Meeting Las Vegas, NV	6 - 9 National Conference of State Legislatures (NCSL) Annual Meeting Philadelphia, PA

<p>Conference of State Legislatures (NCSL) Federal Issues Meeting Washington, DC</p> <p>19 Host State TCC Salt Lake City, UT</p> <p>20 -22 DOE LLRW Conference Salt Lake City, UT</p>			<p>Working Group Meeting Philadelphia, PA</p>
September	October	November	December
<p>21 -24 Environmental Council of the States (ECOS) Meeting Burlington, VT</p> <p>23 -24 Host State TCC Meeting Buffalo, NY</p>	<p>20 -22 LLW Forum Meeting Annapolis, MD <i>Appalachian Compact</i></p>	<p>4-6 Nuclear Energy Institute (NEI) LLRW Workshop Charleston, SC</p> <p>5 - 7 National Conference of State Legislatures (NCSL) Assembly on Federal Issues and State Issues Joint Meeting Washington, DC</p>	

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LLW Forum 1998 Calendar

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January	February	March	April
	<p>10 -13 LLW Forum Meeting San Diego, CA <i>Southwestern Compact/California</i></p> <p>17 -19 Department of Defense LLRW Generators Annual Meeting Santa Barbara, CA</p> <p>21 -24 National Governors' Association (NGA) Winter Meeting Washington, DC</p>	<p>1 - 5 Waste Management '98 Tucson, AZ</p>	
May	June	July	August
<p>27 -29 LLW Forum Meeting Jackson, WY <i>Northwest Compact</i></p>	<p>TBD Radioactive Exchange LLRW Management Decisionmakers' Forum TBD</p>	<p>1 - 4 National Governors' Association (NGA) Annual Meeting Milwaukee, WI</p> <p>20 -24 National</p>	

		Conference of State Legislatures (NCSL) Annual Meeting Las Vegas, NV	
September	October	November	December
<i>TBD</i> Host State TCC Meeting <i>TBD</i> 28 -30 LLW Forum Meeting Annapolis, MD <i>Appalachian Compact</i>			

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- U.S. Senate Document Room(202)224-7860

by internet

- EPA Listserve Network • Contact Terri Dickson at (202)260-9581 or e-mail (leave subject blank and type help in body of message)listserv@unixmail.rtpnc.epa.gov
- U.S. Government Printing Office (GPO) (for the *Congressional Record*, *Federal Register*, congressional bills and other documents and access to more than 70 government databases)http://www.gpo.gov/su_docs/
- DOE's National Low-Level Waste Management Program, Document Information<http://199.44.46.229/radwaste/>
- GAO homepage (access to reports and testimony)<http://www.gao.gov/>

To access a variety of documents through numerous links, visit the LLW Forum website at <http://www.afton.com/llwforum>

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.

Members of the public may apply to DOE's National Low-Level Waste Management Program at the Idaho National Engineering and Environmental Laboratory (INEEL) 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 INEEL. 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, INEEL 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.