

The

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Volume 5 No. 6

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## **FINALLY RELEASED FEE ADEQUACY REPORT INCLUDES ESTIMATE OF DEFENSE FEE!**

Though the Office of Management and Budget has not given final approval to DOE's recommendation for Defense's contribution to the Nuclear Trust Fund (expected to be issued by 4/31/86), the published fee adequacy report, "Nuclear Waste Fund Fee Adequacy: An Assessment," released in the past week, does include the following statement: **"For the purpose of these analyses it is assumed that fees equal to an estimate for costs of handling atomic energy defense wastes of \$3.4 billion (1985\$) will be collected over the life of the program"** Outside of this statement, this released official report is identical to the earlier draft version fully reported in the February 28, EXCHANGE (Vol. 5, No. 3).

The report finds the 1 mil per kwh fee adequate to produce revenues "sufficient to offset total system life-cycle costs for a reasonable range of program costs, nuclear generation, and interest rate forecasts." It recommends "indexing the fee to an inflation or cost index" in order to cover future program cost increases due to general inflation or real price increases.

## **FEDS SUBJECT TO BIPARTISAN FLOGGING AT HOUSE MIXED WASTE HEARING**

At the joint hearing on the regulation and control over mixed waste at DOE facilities convened by Commerce Subcommittee Chairman Edward Markey (Energy, Conservation and Power), and James Florio (Commerce, Transportation and Tourism), on April 10, federal representatives from DOE, NRC and EPA heard the most stinging criticism to date regarding their collective inability to resolve their jurisdictional conflicts over mixed (hazardous and radioactive) waste at federal facilities. For the most part the ire of the Members was directed at DOE.

Following the revelation by Chairman Florio, that EPA was investigating the possibility of filing criminal charges against the DOE Hanford facility, and Chairman Markey's severely critical opening remarks citing DOE's continued attempts to circumvent RCRA regulations, various Members (Wyden [D-OR]; Lent [R-NY]; Oxley [R-OH]; Eckart [D-OH]; Luken [D-OH]) took turns criticizing the Department. They repeatedly questioned DOE's current and past disposal practices at Hanford and Fernald, (See **Mixed Waste** pg. 2)

(Mixed Waste from pg. 1)  
the DOE proposed "by-product" definition, and the collective inability of the federal agencies to resolve the current jurisdictional conflicts.

### **A Needless Confrontation**

Their collective displeasure toward the federal agency representatives was further heightened when personnel from NRC and DOE left the hearing room after repeatedly being asked to remain by Representative Wyden in order to hear the testimony of Washington and Ohio State officials and representatives of environmental groups. DOE, Deputy General Counsel Fygi led the exodus after explaining to Congressman Wyden that they had important work back in the office that required their leaving rather than staying. Mr. Wyden repeatedly questioned Mr. Fygi's reluctance to honor his request to remain by asking "What could be more important than advising the U.S. Congress?" No one volunteered an answer. EPA Assistant Administrator Porter thought better of leaving and remained. He was commended later in the afternoon by Congressman Wyden.

### **Search for a Solution**

Congressman Ed Markey opened the session with an admonition that the intent of the hearing was "not only to ponder the problems at DOE, but to search for a solution." Throughout the following two hours the federal agency representatives would be thoroughly chastised for again coming to Congress espousing their particular concerns about possible Congressional solutions to the jurisdictional dilemma without having any concrete proposals to resolve the problem.

Markey cited instances where DOE personnel took action in direct violation of hazardous waste regulations (Savannah River) or suppressed reports on contamination of well water (Fernald). He exclaimed that DOE's proposed by-product definition was just another renewed attempt by DOE to circumvent RCRA regulations and emphasized the DOE's disastrous record in environment safety and health" was due to

the fact that "unlike commercial companies the Department of Energy is on the honor system -- to regulate itself".

### **Criminal Investigations at Hanford**

The "surprise" announcement at the hearing was Congressman Florio's revelation that the EPA National Enforcement Investigation Center (NEIC) was currently considering criminal action against DOE for refusing to comply with RCRA ground monitoring requirements at the Hanford facility. (See update on this action in this issue) Florio explained that the possible charges were related to DOE "knowingly", submitting "false documents in order to avoid groundwater monitoring requirements".

He called into question the proposed DOE "By-product definition" stating that the proposal would result in all DOE mixed waste being classified as "By-product material", therefore exempting such waste streams from RCRA regulation.

The New Jersey Congressman underlined the seriousness of DOE's actions regarding mixed waste by exclaiming that, "We can never expect private companies to approach our hazardous wastes laws with a serious resolve to comply if we allow our federal agencies to openly defy those same laws. The federal government must learn to play by the same rules it imposes on others." Markey's and Florio's opening statements were followed by statements by Representatives Ron Wyden, Luken, and Lent. The most striking indictment / came from Luken on DOE's lack of action to clean-up and upgrade the Fernald facility.

### **Agencies Lack Cohesive Response**

The federal agency witnesses included: Mary L. Walker, Assistant Secretary for Environment, Safety and Health; Admiral Sylvester R. Foley, Assistant Secretary, Defense Programs; Eric Fygi, Deputy General Counsel from DOE; John G. Davis, Director, Office of Nuclear Material Safety; Bob Browning, Director of the Waste Division, NRC; and J. Winston Porter, Assistant Administrator for Solid Waste and Emergency Response, for the Environmental Protection Agency.

The most active discussions were between Members and EPA's Porter and DOE representatives. Given that the focus of the hearing was limited to regulation of mixed waste at DOE facilities, much of the "discussions" between the Members and the agency officials focused on activities at Hanford, Fernald, with some mention of activities at the Savannah Laboratory. A good deal of the time was spent questioning DOE on the proposed by-product definition.

**On DOE-RCRA Conflicts** In contrast to the legislative initiatives intended to ensure that mixed waste from DOE facilities would be subject to RCRA regulation, that were introduced and strongly supported by Congressmen Wyden and Luken, the DOE and EPA representatives told the members that the problems did not warrant a legislative solution, that they are being worked out administratively. EPA's Porter reported that his agency is working with DOE "on developing a regulatory variance to waive RCRA rules when compliance would cause a net increase in risk". Though DOE did not take a position on the proposed legislation, their responses throughout the session were fairly indicative that they opposed giving EPA blanket jurisdiction over all mixed waste from DOE facilities. Porter emphasized that the Agency was working to get the states more involved in the regulatory scheme but was also striving to ensure that there would be a consistent national approach.

**NRC-EPA Jurisdictional Conflicts** NRC's Davis expressed the staff's view that legislation may be the "only recourse to resolve the mixed waste question". Assistant Administrator Porter proposed the two options presented by Waste Director, Marcia Williams at the Senate hearings (EXCHANGE Vol. 5 No. 5). These options are (1) to legislatively mandate that the jurisdiction over mixed waste be divided into three pieces, with each piece regulated by a single authority. Agency jurisdiction would be "based on primary concern about the stream (i.e. radioactivity or other hazards). (2) to continue to have multiple jurisdiction but to enable delegation of permitting and enforcement authority to one agency. NRC expressed its opposition to

dual regulation, while DOE said it was workable.

**Proposed By-Product Definition** DOE's proposed by-product definition was "raked over the coals" by the committee members for a significant period of time. DOE defended the proposal but was almost "a single voice crying in the wilderness", except for some feeble support from EPA's Porter who said the Agency was participating in the DOE rulemaking. NRC's Davis re-emphasized his staff's opposition to the proposal saying that it would create confusion if NRC retains its by-product definition, and another set of problems if NRC conformed to the DOE proposed definition. The Committee members generally attacked the proposal. Florio questioned as to why DOE viewed itself as having the expertise to determine what waste streams should fall under RCRA when EPA is the agency that indeed has the expertise to make such determinations. The general view was that in proposing this particular manner of definition DOE was trying to avoid RCRA regulation of most of its mixed waste streams.

#### **State and Environmental Witnesses**

The second panel of witnesses included: Tim Connor, Hanford Environmental Action League; Virginia Aveni, Deputy Director Air, Solid and Hazardous Materials, Ohio Environmental Protection Agency; Roger Stanley, Washington State Department of Ecology; Lisa Crawford, Fernald Residents for Environmental Safety and Health; and William F. Lawless, Assistant Professor of Mathematics, Paine College, Georgia.

Their statements and discussions with the members focused primarily on their experience with problems at DOE facilities. All expressed their adamant opposition to DOE's proposed by-product definition, strongly supported dual Agency regulation, and RCRA jurisdiction over DOE mixed-waste; criticized DOE's "self regulatory" efforts with regard to hazardous and mixed waste and saw no reason why nuclear defense facilities could not be subject to independent regulation and oversight by federal and state agencies. They sup-

ported the legislative initiatives of Congressmen Wyden and Luken.

One of the more interesting interchanges, that vividly demonstrated what would result if DOE's proposed by-product definition holds, occurred between Roger Stanley of the State of Washington and Congressman Wyden. Mr. Stanley, in response to an inquiry regarding the high levels of nitrates seeping into the Columbia River from the Hanford facility, explained that these nitrate concentrations arise primarily from liquid chemical process waste streams that originate from the fuel separation facilities in the center of the Hanford reservation. He explained that these waste streams fall under the proposed by-product definition, which is now effectively being used by DOE, and therefore are exempt from RCRA regulation. Wyden then verified that at the point of discharge the nitric acid waste streams did not meet federal drinking water standards. Stanley affirmed his statement.

The Oregon Congressman then went on to state as to how this mixed waste stream initially radioactive, and falling under the by-product definition proposed by DOE, therefore exempt from RCRA regulation, reaches the Columbia River as a hazardous waste stream, with most all of the radioactive components being absorbed by the soil pathway, and is discharged into the river at levels above federal standards, free from any RCRA regulatory jurisdiction. \*\*

#### **EPA DROPS CRIMINAL INVESTIGATION INTO DOE HANFORD RCRA VIOLATIONS**

Though Congressman Florio revealed that EPA's National Enforcement Investigation Center (NEIC) was evaluating the possibility of opening criminal investigations into RCRA violations at DOE's Hanford facility at the joint April 10 subcommittee hearing, he was subsequently informed by letter from EPA on April 15, 1986 that a "criminal investigation" was found not to be "warranted at this time". The letter signed by EPA Assistant Administrator Porter, explains that the Director of NEIC, Thomas P. Gallagher made the decision not

to pursue the criminal investigation "based on presently available information gained from interviews and a review of relevant documents". He offered to provide both Markey and Florio confidential briefings on the findings, adding that if new information becomes available, "EPA may reassess its decision".

He did report that EPA is continuing "to pursue enforcement of administrative complaints and compliance orders issued by EPA's regional office in Seattle and the State of Washington Department of Ecology. These orders require that DOE's Hanford facility fully satisfy RCRA groundwater monitoring requirements."

#### **DOE, State, EPA Agreement?**

In a directly related action, the state of Washington and EPA Region X report that, at an April 15 meeting, DOE presented a specific proposal to upgrade ground water monitoring at Hanford. In addition, during the prior week, a three party agreement between EPA, the state Department of Ecology, and DOE was signed. This "Agreement" states that the three parties will meet on a quarterly basis to discuss issues of mutual concern and move toward developing a "Memorandum of Understanding" (MOU) on how DOE will conduct itself at Hanford and what the state role will be. \*\*

#### **A MULTIPLICITY OF WESTERN LLRW REGIONAL COMPACTS!**

On March 29, two weeks after he signed into law a two-state compact with California, (EXCHANGE Volume 5, No. 4) Governor Janklow repeated the process and signed a bill passed by the South Dakota Legislature that also made the state a member of a three-state "Western" Compact with North Dakota and Arizona.

Arizona Governor Babbit signed identical compact legislation about the same time, putting in place another version of a "Western Compact". This "new" version lists the Dakotas and Arizona as eligible party states not California. It stipulates that Arizona will be the host of the regional

low-level waste disposal facility. This new regional agreement **does not** prohibit shallow land burial (SLB). In fact, state officials report that SLB is the technology of choice, because the suitable climate in the state would allow its use without compromising public health and safety, and at a reasonable cost. \*\*

#### **FIRST SUB REACTOR COMPARTMENT BURIED AT HANFORD**

The Department of Energy has completed the transportation and disposal of the first submarine reactor compartment from the decommissioned nuclear submarine Patrick Henry. The compartment was cut from the submarine at Bremerton, Washington and barged to Hanford where it was then transported to an excavation on the Reservation for permanent disposal. The reactor had been previously removed from the sub. The Department of Energy has dug a hole large enough for the burial of 10 submarine reactor compartments. Nine other decommissioned subs remain at Bremerton. The Navy has not commented on when the others will be cut apart and their reactor compartments moved to Hanford. Apparently additional funds from Congress will be necessary to continue the disposal program.

#### **AEROJET INCINERATORS PROGRESSING TOWARD "OPERATIONAL" STATUS**

Aerojet's mobile incinerator destined for Babcock and Wilcox's regional processing center in Pennsylvania, and the "fixed" incinerators at Commonwealth's Edison Byron plant and Duke's Oconee facility are progressing through various test phases moving toward full operational status.

The first phase of a two phase test of the mobile incinerator was successfully completed at the California firm's plant on April 13. The purpose of the first phase four-day test was to optimize the processing of scrub solution in the incinerator, and try to determine the life of the high-efficiency particulate absolute (HEPA) filters in the system. From what the EXCHANGE has learned the first phase was successfully completed. The second phase of the test

was started around April 15 and its objective was to determine the optimum operational parameters of the unit. After its completion the incinerator should be ready for delivery within three to four weeks.

#### **The Fixed Units**

The Aerojet unit in place at the Commonwealth Edison, Byron facility, has gone through a series of tests to resolve a problem that was occurring in the interface between the incinerator and Stock equipment compactor. The problem that was discovered and now resolved was caused by the large size of some particles (about one-quarter inch in diameter) produced by the incinerator, and fed into the Stock compactor. The problem was solved by using sizing screens.

Acceptance tests at the Oconee facility are expected to be completed sometime in May.

#### **B&W REGIONAL FACILITY IN PA RECEIVES OK FROM NRC**

Babcock and Wilcox reports that the NRC safety evaluation report on the proposed B&W regional facility issued on April 9 concludes that the proposed facility and equipment, pending favorable resolution of issues related to the incinerator, "are adequate to protect the health and minimize danger to life and property. As the licensee, B&W was found to be qualified, by reason of training and experience, to conduct the activities as authorized by the [license] amendment in such a manner as to protect the public health and minimize danger to life and property.

In addition to meeting the NRC requirements Scott explained that the facility must comply with state regulations. One rather unique requirement in that regard is that the state is requiring that an air quality permit be obtained for the site compactor and the incinerator. The site compactor is now in place and check out testing is almost completed. As soon as the licenses and permits are issued the site will be open for business. \*\*

# Wrap-Up (LLRW)

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## IN THE NORTHEAST

The Chairman of the "new" two-state Northeast Compact is Cindy Gordon of New Jersey's Department of Environmental Protection.

## IN NEW YORK

New York Governor Cuomo's bill proposing to put in place a process to site and develop a low-level waste disposal facility continues to languish in the legislature. No action is currently planned. The bill details a comprehensive siting process and prohibits the development of a shallow-land burial facility. In addition, it contains provisions to establish fees on the generators of LLRW to support the development of the state program, and retains the provisions that would require LLRW waste transporters to obtain state permits. From what the EXCHANGE has been able to learn, the fee provisions and the transport permit requirements are opposed by the Senate and, thus, the stalemate.

## IN APPALACHIA

As expected, the Maryland Legislature passed legislation approving the Appalachian Compact and rescinded their membership in the Northeast Compact. Governor Hughes subsequently signed the Compact bill on April 8.

## IN THE CENTRAL STATES

Ray Peery, Executive Director of the Central States Compact Commission reports that their regional management study is underway, as well as the Second Phase of the regional siting study. The Board's annual meeting is planned for the third week in June. For more information contact Ray at (404) 266-0209.

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## IN THE INDUSTRY

**NUS Process Services Corporation (NUSPSC)** has signed a non-exclusive agreement with **London Nuclear Services, Inc.** to provide joint chemical decontamination, waste processing and waste transportation services. Under this agreement, London Nuclear will continue to provide LOMI and CAN-DECON chemical decontamination services and waste volume reduction processes. NUS Process Services will be responsible for solidifying and transporting the generated waste to the designated burial facility.

NUSPSC has also made preliminary application for approval for a family of High Integrity Containers (HICs) approved for burial at all three existing low-level waste burial sites. The new design will comply with all of the requirements of 10 CFR 61. A preliminary submittal has been made to the State of South Carolina and a topical report will be submitted to the USNRC in the near future."

NUSPSC workbooks from their Radwaste Packaging and Shipping Workshops are now available for purchase. The workbook contains information pertaining to DOT (49 CFR), NRC (10 CFR 61), and LSA Type A and Type B regulations (plus all necessary paperwork and forms for waste burial processing). Prices for the workbooks including postage are: 1-5, \$125 each; 6-10, \$115 each; 11-20, \$110 each; over 20, \$105 each. For more information please contact either Walt Hipsher or Pat Jewell (803) 256-4355.

**NAS SUPPORTS HLW SITE EVALUATION  
FAULTS LACK OF OUTSIDE EXPERTISE**

In a letter released by the DOE Office of Civilian Radioactive Waste Management on April 15, the National Academy of Science's (NAS) National Research Council Board on Radioactive Waste Management compliments DOE on its "care and diligence in implementing the [repository] site-ranking methodology," commends the OCRWM for the "high quality" of the chapters of the final Candidate Site Recommendation Report (CSRR) that it reviewed, but again expresses "disappointment" that DOE chose not to use "independent experts" in the performance assessment process. The "letter" report, addressed to OCRWM Director Rusche, is divided into four sections, including a concluding paragraph, which provide separate comments on: the multi attribute utility method, post-closure analyses, and pre-closure analyses.

The introductory paragraph emphasizes that the review conducted by the Panel was "limited to an overview of the decision-aiding methodology, its application to post-closure factors for all five candidate sites, and its application to pre-closure factors at one site." In addition, the letter points out that the Board "chose not to review, and, at its own request, did not have access to DOE's rankings on pre-closure factors, rankings combining post-closure and pre-closure factors using the decision-aiding methodology, or the final recommendation of sites for characterization. Also, because of time limitations, the Board "did not attempt to review the site-specific data in the draft Environmental Assessments (EAs).

**Specific Comments**

**Decision-aiding Methodology** With regard to the use of the multi-attribute utility methodology as an "aid" to site evaluation, the Board gives DOE very high marks. It found the use of the multi-attribute methodology "appropriate," was "impressed by the care and attention to detail with which it [had] been implemented."

DOE's decision to use the methodology "as a decision-aiding tool" as opposed to a decisionmaking tool is endorsed on the basis that "additional factors and judgments are required" to make the final decisions. The additional factors identified by the Board are the "diversity of rock types required by the Nuclear Waste Policy Act (NWPA), judgments about the ability to license successfully a site including considerations of waste packaging performance requirements, and judgments about the best set of sites to choose to assure the highest likelihood of a licensable site emerging from the characterization process."

However, in recognizing the necessity of incorporating such judgmental factors into the final site selection process, the Board emphasizes its disappointment that DOE chose not to involve outside experts in the assessment process. Though the letter states that the Board saw "nothing to indicate bias in the implementation of the method," it cautions that the application of methodology in areas other than post-closure analyses may be sufficiently sensitive to the "judgments" of DOE and DOE contractors that the use of "independent experts in the generation of

those judgments would be important." The Board does recognize that DOE's "sensitivity analysis" applied to post-closure issues "indicates that the rankings on these issues would not change with reasonable or plausible changes in the parameters and judgments."

Outside of expressing regret on the lack of the use of outside expertise, the Board's only other concern regarding use of the multi-attribute methodology is "the need for additional documentation, beyond that included in the March 17, 1986, draft, of the reasoning and judgment involved in the choices of the scores and probabilities associated with the various scenarios."

**Post-Closure Analyses** The Board states that DOE's use of the multi-attribute methodology for post-closure factors provides "useful information" on the "Department's current judgment of the expected performance of sites for the post-closure period." However, the letter points out that the DOE analyses "assesses post-closure performance based on probabilities of [radioactive] releases to an arbitrarily defined and universally applied accessible environment." Even though this is in line with the current HLW siting guidelines, the Board recommends that DOE "take into account the differences among sites in pathways from the EPA accessible environment to the biosphere" as part of the post-closure analysis.

**Preclosure Analyses** With regard to the "preclosure analyses" the Board again emphasized the benefit that would have been gained by using outside experts, cautioning that the final results, as now derived, depend on the "value tradeoffs made by DOE staff." The Board applied the methodology to preclosure factors and found that "the expected total repository and transportation costs will have a major, if not a controlling effect, on the rankings under preclosure factors." Because of this finding -- the heavy dependence on cost that results from the application of the methodology -- the letter emphasizes the Board's "judgment that the principal usefulness of the multi-attribute utility method is to illuminate the factors in a

decision, rather than to make the decision itself."

### **Sound Basis for Site Selection**

In the concluding paragraph of the letter the Board exclaims that "Despite the limitations in the scope of the Board's review, the methods used in the CSRR provide a sound analytical basis for aiding the site characterization decision.... The methodology the Department has selected represents 'state of the art' and is adequate and appropriate...." However, it again cautions that the "lack of external input in technical and value judgments could raise concerns about bias." \*\*

### **FIRST ROUND REPOSITORY SITE EA'S DELAYED UNTIL MID-MAY**

After receiving the National Academy of Science's Radioactive Waste Board review of the first repository site selection methodology, Office of Civilian Radioactive Waste Management (OCRWM) Director Ben Rusche forwarded a letter to all relevant Congressional committee Chairmen informing them that the final repository Environmental Assessments will be issued in mid-May rather than at the end of this month. This delay is to give the staff adequate time to incorporate the NAS Panel's recommendations into the EAs and the site characterization recommendations. No specific day was set for final release. \*\*

### **HLW PROJECT DECISION SCHEDULE RELEASED, MRS SCHEDULE UNSPECIFIED**

The just-released OCRWM "Project Decision Schedule" (PDS) does not include a specified timetable for the Monitored Retrievable Storage Facility (MRS) and is, according to recent announcements regarding issuance of the first round EAs (See story this issue) and the Transportation Institutional Plan, already outdated. The PDS explains that the MRS proposal "will not be submitted until resolution of [the] law suit filed against the Department by the State of Tennessee is achieved." The schedule also has the first round site EAs released in April. Issuance will, however, be delayed until mid-May. The Trans-



portation Institutional Plan scheduled to be issued this April has also been delayed until June.

### **Two Phase Construction, Licensing**

As outlined in previous reports, the PDS schedule projects a two phase construction and licensing program for the first round HLW repository. Phase 1 consists of the construction of the surface and shaft facilities required to allow the Department to begin accepting up to 400 MTU/yr of spent fuel in 1998. Phase 2 consists of the construction of the remaining facilities needed to develop the repository to its full scale capacity. The Department is scheduled to submit the first license application for construction to NRC in December 1991. NRC is to issue a Construction Authorization in March 1994. NRC licensing activities however are not to terminate at this point. Rather they continue during the repository construction and testing phase.

In March 1996, DOE is to submit an updated license application to NRC to receive and possess radioactive waste. NRC is scheduled to complete review of this updated application by December 1997. This covers Phase 1 operation.

The licensing schedule for Phase 2 has DOE submitting application for an amended license in June 1998, with the amendment being issued in January 2001 \*\*.

### **DOE BRIEF CONTESTING TENNESSEE CHARGES ON MRS PROPOSAL FILED**

On April 15, the Department of Justice filed the required written brief, on behalf of the Department of Energy in the U.S. Court of Appeals for the Sixth Circuit, contesting the state of Tennessee challenges to the Departments' Monitored Retrievable Storage Facility proposal and the lower court's ruling supporting Tennessee's claims.

The arguments presented in the brief address the three principal issues that have now been consolidated in this litigation:

- (1) provisions of the Nuclear Waste Policy Act requiring consultation with the state prior to submission of the MRS proposed to Congress;
- (2) the question of which court has primary jurisdiction over the matters at hand
- (3) the issue of whether the District Court can prohibit the Executive Branch from making recommendations to Congress.

### **Highlights Of DOJ-DOE Arguments**

**Prior Consultation** The DOJ Brief contends that the NWPA, section 141 (h), does not require consultation with the state **before** Congressional authorization of an MRS facility. It is argued that "Section 141 (h) plainly states that consultation with states is required for any "authorized " facility", that "Congress intended state consultation requirements to be triggered **after** it had authorized an MRS facility not **before**". Several sections of the Act are cited in this regard, as well as elements of its legislative history.

The brief also argues that given the clear requirements of the NWPA on prior consultation, DOE involved the state "at the earliest possible time even though that involvement is not required".

**Court Jurisdiction** On the issue of which Court has primary jurisdiction over the matters involved in this litigation, the brief cites several sections of the NWPA that vest exclusive jurisdiction in the Court of Appeals. It is pointed out that in two previous cases involving challenges to the DOE-NWPA actions, the "only Court of Appeals to consider the exclusive review provisions of the NWPA twice has found the jurisdiction in the Court of Appeals.

**Infringement Of Executive Powers** DOJ argues that the District Court's injunction preventing the Secretary of Energy from transmitting information to Congress infringes on the power granted to the Executive Branch under the Constitution. In support of the this argument, the brief cites Article II Section 3 of the Constitution "[the President] shall from time to time

give Congress information at the State of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient..." \*\*

#### **CONGRESSMAN MORRISON PROPOSES CLEARINGHOUSE ON HLW ACTIVITIES**

On April 16 ten members of the U. S. House of Representatives and twenty-six of their staff attended a session convened by Congressman Sid Morrison of Washington to discuss the feasibility and desire of creating a "Congressional Clearinghouse" or "Information Center" on HLW program activities.

According to staff, the Congressman's intent is to provide the members a one-stop information service on HLW siting and program activities, to facilitate the coordination of Congressional Committee activities on the program and provide the opportunity to discuss legislative initiatives being proposed. The Center would not act as a vehicle to organize political support for legislation or opposition or support for DOE activities.

The session was co-chaired by Representative Morrison and Swift. Representative Vucanovich from Nevada was in attendance. According to Kathleen Lewis of Morrison's staff, there was general agreement that there was a need for such an information center and she was given the initial responsibility to get it off the ground. Ms. Lewis explained that it would initially serve the Congressional delegations and staff of the first and second round states, and those selected to possibly host the MRS. Delegations from states affected by the transport of HLW to the repository or MRS are also intended to be served as Congressional interest in this aspect of the program grows.

In addition to discussing the concept of the information center and receiving support for going forward with the effort, Congressman Morrison and Swift discussed their proposed legislation to cover liability associated with the HLW repository activities. Congressman Morrison also raised the status of subseabed disposal, expressing his support for this HLW disposal alternative and the need to continue funding for the ongoing R&D program.

#### **TAIWAN SPENT FUEL INJUNCTION DECISION TO BE ISSUED APRIL 21**

As previously reported, (EXCHANGE Vol. 5 No. 4) a suit has been filed in federal court to block Taiwan shipments of spent fuel from stopping in the port of Seattle enroute to Long Beach for unloading and trucking to South Carolina. A court decision on a request for a preliminary injunction against the shipments will be rendered on April 21. The suit contends that the Department of Energy (DOE) failed to prepare an environmental impact statement assessing the risks involved in bringing the spent fuel into Washington waters. DOE maintains that such shipments are covered by a generic environmental impact statement that covers all shipments of this character.

Since the announcement that the spent fuel would be shipped through pacific coast ports, the Washington state Nuclear Waste Board has indicated its concern about the lack of adequate notification to the state and consequently, the lack of opportunity to be able to thoroughly examine the implications of the shipments. The State has formed a Near-Term Transportation Review Committee composed of affected state agencies to explore the development of a possible Memorandum of Understanding with DOE on transportation of spent fuel and high-level waste. \*\*

