
The

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To promote the exchange of views and information on radioactive waste management

TO OUR READERS:

This issue was initially delayed because of what appeared to be fast-moving actions in Congress regarding the HLW program. Then the pace slowed and we waited a bit more. However it got to where we couldn't wait any more! Here is the latest action as occurred on Monday, August 11, and our guess as to what may happen in the four days prior to the August 15 recess. Though the EXCHANGE is not published in August, Congressional action warrants this issue and one more extra issue which will include a lengthy interview with Ben Rusche. Hopefully you are not on vacation and are able to read this in a timely manner!

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**SENATE ELECTION POLITICS, DOE DECISION TO "INDEFINITELY POSTPONE"
SECOND REPOSITORY SELECTION LEAD TO MAJOR PROGRAM CRISIS**

**...Possible outcome...program stalled, NWPA scuttled, or ???
...Our perspectives**

Within the past two weeks the ongoing Congressional efforts severely criticizing DOE's HLW site selection process, and the decision to delay selection of the second repository, have taken on the aura of an honest-to-goodness effort to find ways to kill the program, not just new words to criticize. And practical ways at that, not just introducing new legislation that will play well back home, or filing a court suit, but working towards getting support to kill the program's appropriations. Thus far the effort has not succeeded in severely cutting funds, but has created an "affinity cult" of Senate and House leaders, former supporters of the program, who have the necessary collective clout to achieve major program changes.

Politics Played No Role?

The Secretary and Mr. Rusche have attempted to counter the charges that the second round decision was politically motivated, but for the most part have ended up "digging a deeper hole". Staff documents turned over to Congressman Markey revealed a healthy appreciation of the political ramifications of the decision. In addition DOE has yet to support the second round deferral with any technical analysis of the implications of having only one repository loading at 3,000 metric tons per year instead of two, with each loading at that rate. Reactor discharges are projected to be from 2,000 to 3,300 tons per year until about 2015 even in the no new orders case. If only one repository is available for loading, there would be at most about 1,000 tons per year of excess loading capacity available for working off the 40,000 tons of spent fuel expected to be stored at reactors and/or an MRS by the time the repository is operating at full scale. Thus having only one repository, or simply deferring the second for

(See HLW Program in the HLW Focus)

Wrap Up (LLRW)

AT THE DISPOSAL SITES

The volume of LLRW delivered for disposal at **Hanford and Beatty** remains well below previous years levels. According to Washington State officials the volume being delivered to Hanford is running approximately 40-50 percent below last year's rate.

Waste delivered to **Barnwell** is also down but only about 16 percent overall. However, the rate of delivery for out-of-region waste to the South Carolina facility is such that the reserved capacity for out-of-region waste will be exceeded by almost 200,000 cubic feet if the current rate of delivery and acceptance is maintained. The Southeast Commission, in action taken earlier in the year, directed that Chem-Nuclear, the site operator, reserve approximately 770,000 cubic feet of capacity for in-region waste, thereby setting a 428,000 cubic feet site cap for out-of-region waste. South Carolina officials are looking into the situation.

IN THE NORTHEAST

Cindy Gordon, Chair of the **Northeast Compact Commission**, reports that the Commission now has an office in Princeton, New Jersey. Correspondence should be addressed to: Denise Drace, Executive Director, NE Compact Commission, P. O. Box 3363, Princeton, NJ 08543. Ms. Gordon informed The EXCHANGE that a scope of work to develop a regional management is near completion. A Request for Proposals from outside contractors to develop the plan should be released in the Fall. The Commission intends to set a timetable in order to designate a host state by November 1987.

The **New Jersey** Environmental Protection Policy Chief reported that the **District of Columbia** did not attend the last Commission meeting and has not forwarded any formal notice that action has been taken to join the Compact.

The **New Jersey Legislature** is expected to hold hearings sometime this Fall on the LLRW disposal facility siting legislation

submitted earlier this year.

IN APPALACHIA

The **Appalachian Compact** has been introduced in the U.S. Senate and House, and action in the Senate Judiciary Committee could be completed prior to the August recess, but depends on other Committee business. There was initially some concern within the Judiciary Committee staff about the membership of **Delaware** and **Maryland**. Both ratified the Northeast Compact, but in the following year their respective legislature rescinded their membership and enacted legislation ratifying the Appalachian Compact. Under the Appalachian regional agreement, for all practical purposes, neither would be required to host a disposal facility. However, under the provisions of the Northeast Compact the withdrawal of a party state does not "take effect until five years after the Governor of the withdrawing state has given notice in writing of such withdrawal." Furthermore, the withdrawing state remains liable for "any liability incurred by or chargeable" to the state at the time of the withdrawal.

Maryland and Delaware contend that neither state was a "formal" member of the NE Compact and therefore maintain that they are not obligated by these withdrawal provisions. Neither state paid their membership fee which is one of requirements for becoming a party state according to the provision of the NE Compact. The legislation to rescind their membership in the Northeast and to ratify the Appalachian was enacted by their respective state legislatures after Congress ratified the Northeast Compact into law.

According to **Pennsylvania** officials the long-awaited state LLRW disposal facility siting bill should be introduced into the legislature by September. Any further action during this legislative session is highly unlikely. Within the past couple of weeks the staff of the state's Department of Environmental Resources met with the specially designated Public Advisory Committee to discuss the nth draft of the proposed legislation and agreed to allow

members the opportunity to provide final comments on the proposal until mid-August.

The site-selection program being proposed in the legislation by the State DER is patterned after the operator license-designee process adopted in California. The first phase is a regional screening effort to identify potential areas suitable for a disposal site. This is to be carried out by an outside contractor. In the second stage a disposal facility operator license-designee is to be selected through an open Request-for-Proposal (RFP) process. The operator license-designee is then to proceed to select four possible sites for location of the disposal facility. The Secretary of the DER will then select the final site. The legislation is expected to include a "rebuttable presumption" provision that will hold the site operator liable for radioactive contamination within one quarter-mile of the perimeter of the disposal site, unless the operator can prove that the contamination existed before the disposal site was put in operation, or that the previous landowner refused to allow a preoperation survey, or, finally, that the contamination occurred as a result of other nearby activities.

IN THE SOUTHEAST

Governors of the **Southeast Compact states** will meet in a closed "summit" conference at the **Southern Governors' Association meeting in Charlotte, N.C. (Aug. 10-12)**, to discuss the selection process to determine which SE state will host the second regional LLRW disposal facility. The meeting is scheduled for Monday, August 11. Legislators from North Carolina (the top ranked candidate state) have made moves to rescind the state's membership in the compact if it is designated by the Commission as the host state. Host state designation should have been completed by July 21 but has been delayed in order to address concerns raised by North Carolina (See EXCHANGE, Vol. 5, No. 12).

IN THE MIDWEST

At their August 18-19 session the **Midwest Compact Commission** is expected to approve

a host state incentives package intended to entice a member state to accept or volunteer to host the region's LLRW facility. Gregg Larson, formerly Director of the Minnesota HLW Program, is now Executive Director of the Commission.

IN THE ROCKY MOUNTAIN WEST

At their July 31 meeting the Rocky Mountain Board opted to completely eliminate the Compact rule requiring that out-of-region LLRW generators and-or brokers apply for a "Compact" permit in order to dispose of LLRW at the Beatty Facility. Those desiring to dispose of waste at the Beatty site now have only to meet the State of Nevada's requirements, which are: obtaining a site use permit, and, meeting the revised third party inspection requirement (See EXCHANGE, Vol. 5, No. 9). Compact officials report that the volume of waste accepted for disposal at Beatty is still lower than the past year "but is picking up."

AT FEDERAL NUCLEAR FACILITIES (Mixed and LLRW)

Within the past few weeks the Department of Energy has successfully executed compliance agreements with EPA regarding the management of hazardous, mixed and radioactive waste at the Colorado Rocky Flats Facility and the Fernald Facility in Ohio. The Rocky Flats agreement includes the State of Colorado but Ohio is not a cosignor of the Fernald agreement. The Attorney General of Ohio has filed suit in Federal Court against DOE and the former contractor who managed the facility.

The Rocky Flats Agreement is the most interesting of the two agreements because it involves jurisdiction over mixed-waste. According to DOE and Colorado officials, provisions of the final agreement regarding the regulation of mixed-waste streams are based upon DOE's proposed-but-not-yet-finalized "by-product" definition which places "process" mixed-waste streams under the jurisdiction of the Atomic Energy Act (AEA) rather than the Resource Conservation and Recovery Act (RCRA) (See EXCHANGE, Vol. 5, Nos. 5,6,8). Because of this aspect of the agreement the State of

Colorado successfully inserted language that would not allow DOE to "mix" a "process" radioactive waste stream with a hazardous waste stream to produce a mixed waste stream that would fall under the proposed by-product definition and thus not be within the jurisdiction of RCRA and EPA, or the state.

According to the agreement, a process waste stream containing transuranic waste and hazardous waste, which is destined for permanent disposal at the Waste Isolation Pilot Plant in New Mexico, falls under jurisdiction of the AEA. A transuranic waste stream "mixed" with a hazardous waste stream but not a "mixed" stream directly from a processing operation would fall under RCRA.

Overall the compliance agreement lays out a technical action plan, with timetables, which will ensure that the Rocky Flats plant is in compliance with the RCRA, the Comprehensive Environmental Response (CERCLA) and the Colorado Hazardous Waste Act.

Under the agreement DOE is to submit a revised permit application to EPA and Colorado; inactive waste sites at the plant are to be investigated, and required corrective actions consistent with the requirements of RCRA and CERCLA are to be completed.

IN THE DOE

The Department of Energy (DOE) is inviting small business firms to submit proposals under its fifth annual solicitation for the Small Business Innovation Research (SBIR) program. The SBIR program's objective is to strengthen the role of small, innovative firms in areas of research and development which are federally funded. It is also intended to use federal R&D as a base for technological innovation, to meet agency needs, and to contribute to the growth and strength of the nation's economy. The program implements the Small Business Innovation Development Act of 1982.

Successful proposals (approximately 100) may receive up to \$50,000 to explore the

feasibility of their ideas, with up to \$500,000 available in a second phase for those ideas with the highest potential to meet the SBIR program objectives.

Firms with strong research capabilities in science and engineering in any of 28 technical topics are encouraged to participate. Included in the list are several nuclear waste related topics: nuclear medicine, health and environmental effects methodologies, robotics and remote systems technology for nuclear facilities, fuel cycle technology, advanced technologies for decontamination and decommissioning of nuclear facilities, and industrial separation and recovery processes.

The Department will issue its fiscal year 1987 Program Solicitation on August 15, 1986. The closing date for receipt of proposals is November 3, 1986. For a copy of this solicitation, small businesses (500 employees or less) are invited to write to the following address: SBIR Program Manager, U.S. Department of Energy, Washington, D.C. 20545, or telephone (301) 353-5707.

IN THE INDUSTRY

In mid-July DOE selected 45 projects to receive financial support under Phase II of the Department's Small Business Innovation Research (SBIR) Program. One award was to **Nuclear Consulting Services, Inc.**, 7000 Huntley Road, Worthington, OH 43229-1035, to support a project entitled "Reduction of LLRW Disposal in Water Clean-up Systems by use of Magnetite."

ON THE MOVE

David Berick the Environmental Policy Institute's very capable legislative liaison on nuclear waste matters is moving over to the Union of Concerned Scientists to take over responsibility for their legislative efforts on nuclear issues. According to Mr. Berick's agent the trade was accomplished to the overall benefit of all concerned. "David is a tough utility player, a good infielder. USC recognized his talents and contacted us about joining their team earlier this year."

the HLW Focus

of the Radioactive Exchange®

(HLW Program from pg. 1)
an extended period, appears likely to mean that large quantities of spent fuel will stay in storage at reactor sites or an MRS for considerably longer than had been anticipated.

Making "Enemies" out of Friends

The most damning charges of political maneuvering are coming from "supporters" of the program like Interior Chairman Morris K. Udall, who eloquently defended the program and the Nuclear Waste Policy Act during the House debate on Oregon Congressman Weaver's amendment to kill appropriations for further site selection activities for the first repository. Last week at his own hurriedly called hearing on July 31, he made the following statement regarding the second round postponement: "Evidently the hunger for a Senate seat overwhelmed the Administration's ability to think clearly and protect the Act. In the coming weeks and months we will see if the Administration can get a grip on itself and help put this program back together."

Other powerful past supporters like Senator McClure, Chairman of Senate Energy and Natural Resource Committee, who supported and voted for a budget reconciliation recommendation to cut funds for all DOE site selection activities, continue to publicly state that DOE's second round decision "seriously jeopardizes" the program and has "destroyed the program creditability." Even Senator Bennett Johnston, who was chiefly responsible for defeating Evans' budget reconciliation amendment, signed the letter charging that DOE violated the Act in delaying the second

HLW site selection. (See EXCHANGE Vol.5 No. 10)

On DOE's behalf it can be said that three attempted initiatives to cut first round funds have failed:

- Congressman Weaver's Amendment to cut all site selection funding support was defeated on the floor of the House 351 to 68.
- Senator Evans' Budget Reconciliation recommendation to kill funding for site selection activities for the first and second round was defeated on a tie vote in the Senate Energy and Natural Resources Committee. Senator Warner, voting with the Democrats, provided the margin of victory.
- An amendment to kill all site selection activities in the Senate Subcommittee on Appropriations was never introduced, discussion being deferred to full committee.

Winning but Losing

These "wins", however, have nothing to do with Congress expressing support for the program. For example, the House Appropriation's Committee approved cutting funds for the MRS and the second round site selection activities. The full House defeated Weaver's amendment but ratified the Committee's action. But what else would one expect in the House, where the Midwest and Eastern Congressmen far outnumber Western representatives. What about the Senate Energy Committee, where Western states predominate and where

Senator Metzenbaum is a member and a forever DOE critic. Here is where Democratic election politics took hold. With tough races in Washington and Nevada and chances of a Democratic takeover, Senator Johnston, as ranking minority leader, wasn't about to give the Republicans the opportunity to take credit for killing the HLW program. And so it goes. Democrats vote the party line, including Senator Metzenbaum, and bring in Virginia Senator Warner who most assuredly doesn't want the second round program to be resumed.

Election Politics Dominates

You can rest assured the eyes and ears of the Republican Party were tuned in on that Senate Energy outcome. Republican incumbents were being denied the use of an issue that could help in their re-election. The big question (with the obvious answer) was whether the DOE would be allowed to continue to fight to uphold HLW funding while possibly jeopardizing Western Senate races. Not for long. Hill activity between utility lobbyists and other DOE supporters and DOE Congressional liaison staff (very visible at the Senate Energy Committee session), was practically non-existent at the Appropriations Subcommittee markup. Utility representatives continued to work in support of the program, as well they should.

It's All Over But For the Wake?

The next assault on the program will be on Tuesday, August 12 in the full Senate Appropriations Committee. The Subcommittee deferred action on specific language regarding HLW funding, approving a cut from DOE's request of somewhere around \$160 million without any specific recommendations. At the Subcommittee session Senator Sasser did attempt to gain approval for report language prohibiting the use of funds for MRS, but was rebuffed. Senator Kasten of Wisconsin rose to speak in support of funding first round site selection activities. A proposed amendment to kill all DOE site selection activities spearheaded by Senator Laxalt, with the support of Evans, Hecht, Hatfield, Gorton, Symms, Packwood, Gramm, Bentsen and Simpson was

not introduced but most assuredly will be at the full Committee level on Tuesday, August 12.

The outcome is not at all clear cut but favors DOE maintaining funding for the first round and being allowed to delay the second round activities. This will be the outcome if the Democrats maintain the "solid line" in order not to give any advantage on the nuclear waste issue to Western Senators running in November (Jake Garn, Utah; Santini, Nev.; Packwood, Oregon; Symms, Idaho) and gain the votes of satisfied "second round state" Senators Denton, AL; Broyhill, NC; Kasten, WI; Leahy, VT; Mattingly, GA; and Rudman, NH. The vote getting discussions on either side are most assuredly not on the merits of the program but Senate races and the possibility of gaining or losing control of the Senate. You can bet the Republican leadership is going to try to convince their second round state Senators to vote against all site selection activities to counter the Democratic move. A meeting of Senators from second round and first round states has been called by Senator Proxmire for Monday. Proxmire has been a DOE critic but he comes from a second round state where Republican Kasten is up for reelection.

Nobody Wins

The political environment facing the Republicans and the political opportunity for the Democrats relegates the substantive issues regarding the DOE HLW program activities to a very poor last place. There are solutions that are within the realm of possibility within this charged political atmosphere that will not destroy the fabric of the NWSA, but all would require DOE to retrench, to open up for a thorough reexamination of their decisions --

One could be patterned after Senator Evans' and Governor Gardner's recommendation to call a halt to program activities for six months and have an NAS panel of experts review not only site selection methodology, but the site selection itself.

Another would be to continue investiga-

tive field work of the top ranked first round states at a much slower pace while conducting a renewed national screening program on crystalline geological formations.

A third option would be for the Congress and the Administration to propose to amend the NWPA with realistic schedules for repository operation and a "national" screening program.

A Change of Administration?

These options speak to possible weaknesses in the DOE effort. There is another option that some political operatives may consider: A possible management change. But this would be disastrous for the program and the Nation. Those contemplating such a maneuver are probably the same "politicos" whose short-sightedness saw a political advantage to be gained from killing the second round program, but figured it wouldn't effect Western state races. (ASIDE: For those, including the EXCHANGE, who have implied "political maneuvering" on the second round decision, it is worth noting that if it was such an -adroit political maneuver, then why is the program in such deep political trouble with its own Administration?)

An Absolute Necessity - Amend NWPA

Regardless of the outcome of the Congressional shenanigans during this session, it is critical that Congress act in the next session to amend the law to set out a program that can be met. OCRWM Director Ben Rusche is correct in saying that he had made unilateral decisions in the past to delay completion of NWPA milestones, and by in large was supported for the actions and therefore does not view the decision on the second round as in violation of the Act. Mr. Bob Loux, Nevada's HLW Project Office Director, made the point very clearly at the July 31 Interior hearing that Congress has allowed DOE to violate provisions of the Act without retribution and it must reassert its authority over the program. **

A WATERSHED OF CRITICISM.. THE JULY 22 MARKEY HEARING...

In some of the harshest language used to date (since surpassed by remarks made by Congressman Udall, Weaver, Senator McClure, etc.), representatives of Western states and tribes attacked DOE's implementation of the Nuclear Waste Policy Act (NWPA) at a July 22 hearing before the Subcommittee on Energy Research and Production of the House Committee on Science and Technology. Both DOE's decision to characterize sites in Texas, Nevada, and Washington, and its decision to indefinitely defer site-selection activities for the second repository were criticized sharply by all the witnesses except the spokesman for the nuclear industry.

Decision Called Unsupported

Witnesses from Nevada, Oregon, Texas, Washington, and the Nez Perce Tribe criticized DOE's choice of sites for characterization as being inconsistent with DOE's multiattribute utility analysis of the sites. Ron White, spokesman for the Nez Perce Tribe, noted that inclusion of Hanford, ranked fifth by the multiattribute analysis, meant that the three best sites were not selected for characterization. Questioning the inclusion of Hanford, Representative Jim Weaver (D-OR) asked, "How did a site ranked fifth make it into the final three?" He went on to observe that in the Interior Committee's deliberations on the Nuclear Waste Policy Act, geologic diversity -- an important factor cited by DOE as a reason for including Hanford -- was rated as only a minor consideration. Grant Sawyer, former governor of Nevada and now chairman of the state's new Commission on Nuclear Projects, argued that DOE had already prejudged the Yucca Mountain site and that its work since the Act was passed had been designed to protect the site. Steve Frishman of Texas also criticized the selection of the three sites as not clearly supportable by the application of the multiattribute methodology. He criticized DOE for not allowing the states to participate in or review the application of the methodology, and said that Texas has undertaken its own

independent analysis of the screening methodology. "(W)e are not satisfied that there is a professional consensus on its merit in assisting the types of decisions to which it was applied by DOE," said Frishman, and "DOE's application of the methodology did not fully adhere to the professionally accepted principles...."

Second Round Decision Decried as Political

The criticism of the first round decision sounded almost charitable compared to the attacks on DOE's decision to defer site selection activities for the second repository. The Western representatives generally rejected DOE's arguments justifying the action and concluded that it was a politically motivated step that exceeded DOE's legal authority. (Recent stories published by the popular press include similar charges.) "It's a nice election year ploy, but it's not following the law," said Congressman Harry Reid (D-NV). The "blatantly political" second round decision was "made with arrogant disregard of the Act," said Washington State Senator Al Williams, and "destroyed whatever credibility DOE had left." Subcommittee member Sid Morrison (R-WA) agreed that the decision was politically motivated and said that it violated trust and confidence in the program. (Statements of similar nature continued to be made in various deliberative sessions in the House and Senate regarding the HLW budget and FY87 appropriations by the likes of Senators McClure, Laxalt and Evans.)

Delicate Balance of NWPA Violated

At his press conference on May 28, DOE Secretary Herrington explicitly denied that the second round decision was an East vs. West issue. The witnesses from the West made it very clear that they think otherwise. In a statement delivered by State Senator Al Williams, Governor Booth Gardner of Washington questioned DOE's decision to "eliminate all sites located in the Eastern half of the nation, where 85% of the spent reactor fuel is generated." Ron White, of the Nez Perce Tribe, said that the decision "places an extraordinary burden on the western states and the affected tribes."

Many witnesses expressed concern that the deferral of the second round upset the delicate balance of interests and compromises embodied in the Nuclear Waste Policy Act. According to Grant Sawyer, "The unilateral decision to drop the second repository program is the last straw" in a series of steps by which "DOE has systematically unravelled the finely crafted fabric of the Nuclear Waste Policy Act." Sawyer argued that DOE had just repeated a past mistake that had been one of the reasons for including the second round in the Act. "Just 10 years ago, DOE's predecessor agency, ERDA, informed 36 governors that their states contained potential sites," said Sawyer. "After cries of concern from nearly every one of these governors, the ERDA promptly removed the most politically powerful states from further consideration, leaving only states such as Nevada. Now DOE has just repeated this exercise, despite the safeguards built into the Act to avoid such an occurrence."

First Round Resistance Stiffening

Statements throughout the hearing indicated that DOE's May 28 decisions may have given additional political impetus to resistance to the first round program. Sawyer of Nevada stated that "Nevada cannot be complacent while a reckless, out-of-control DOE attempts to railroad a nuclear waste dump into our state." The statement of Washington's Governor Gardner, who has generally taken the most neutral position of any of the affected governors, said flatly that "if the site selection process is allowed to proceed in the direction and manner it is now headed, there is no way that I could approve a decision to locate a repository at Hanford. The citizens of the state of Washington will overwhelmingly demand that such a decision be fought in every possible way until it is overturned." Specifically addressing the effects of the second round decision, Representative Richard Stallings (D-ID) predicted that it would lead to unnecessary delays in the program.

Congressman Morrison asked the panel of state and tribal representatives how they

