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The

# Radioactive Exchange®

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

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## **AMENDED MISSION PLAN TO CONGRESS, DOE AGAIN CHANGES ITS MIND**

The final version of the DOE HLW program Mission Plan forwarded to Congress on June 9 by OCRWM Director Ben Rusche, reflects yet another DOE change in position from the "concurrence draft" circulated for Department management approval a week ago and reported here (See EXCHANGE, Vol. 6, No. 10). DOE has now decided **not** to request Congressional action to extend, by statute, the startup date for the first repository from January 31, 1998 to 2003. The Department apparently decided to rely upon previous advice from legal counsel that because the first round delay does not alter the intent to comply with the Nuclear Waste Policy Act (NWPA) legislative action is not necessary.

As in the "concurrence draft" the final version of the Amended Plan does call on Congress to respond "by furnishing appropriate legislative direction" on a proposed "postponement" timetable for the second HLW repository and the construction of the Monitored Retrievable Storage facility (MRS). (See **Mission Plan in the HLW Focus**)

## **CALIFORNIA ADOPTS FOUR STATE SOUTH- WESTERN COMPACT, INCLUDES ARIZONA**

After three years or so of various attempts at adopting a regional LLRW compact, the California legislature has finally acted to approve a four state compact which includes Arizona and the Dakotas. The Compact measure -- AB 1000 -- was approved by a vote of 35-0 in the Senate, and in the State Assembly by a vote of 72-0. Governor Deukmejian is expected to sign the measure.

Under the agreement California will be the host state for the regional disposal facility for the first thirty years. If California does not extend the obligation, the state which produces the next largest amount of LLRW will host the second disposal facility.

California Assemblyman Steve Peace, supported by able staffer, David Takashima, had been working toward the adoption of the compact for the past three years.

### **Credit Given to AZ Gov., Staff**

Assemblyman Peace stated that "the passage of the compact bill and the (See **California** pg. 2)

(California from pg. 1)

selection of three potential disposal sites in Southern California by US Ecology ...settles nearly a decade of squabbles." He emphasized that the compact "was adopted because of the major concession by Governor Evan Mecham (R-AZ) to support a compact measure wherein Arizona may become a host state after thirty years." He added that the interstate agreement "unlike other measures before the California Legislature, was an agreement which was fair to the citizens of California."

Peace also credited the work of David Takashima, commenting that "the compact bill would not have been adopted without his perseverance to seek out a compromise with Governor Mecham's office, Governor Deukmejian's office, environmentalists, and the generators."

#### **Too Many Compacts Says Staffer**

Though credited with moving the compact toward adoption, Takashima commented to the Exchange that he believes "that the Congressional mandates to form these interstate agreements to dispose of radwaste is bad policy and should be reviewed by Congress. Why is it necessary to have 11 regional disposal facilities? It is not logical nor economically feasible to dispose of our national waste in so many facilities."

He emphasized that the adoption of the compact in California was done "to protect us from being the national host site." He observed that "many officials in Washington and the radwaste community laughed at the proposed California and South Dakota compact," adding "I believe [it makes] more sense than what is happening in most compact states after their particular state is selected a possible host state."

#### **Invitation to Join**

Assemblyman Peace, exuberant over the passage of the bill, invited other states to join California and Arizona remarking that he expects "the Dakotas to come into this compact and a few other states have already

contacted us. We have already settled the most controversial issue of the site of the disposal facility (California). The question for the party states will be who else we will permit into this agreement and on what terms," Peace concluded.

#### **Compact Provisions**

As adopted by the California Legislature, the Southwestern Compact includes the following provisions.

**Compact Membership:** California, Arizona, South Dakota and North Dakota. Other states may enter with approval of the Commission and ratification by all the legislatures. The host state may establish terms and conditions for eligibility.

**Commission Structure:** One member per party state. The host state is allowed additional members in order to compose 51% of the Commission. The host county is to have one member.

**Host State:** California is the host state for the first 30 years. If California does not extend the obligation, the party state which generates the next largest volume of low level radioactive waste besides California will be the second host state.

**Surcharges:** The Commission has the authority to levy surcharges based upon the volume and radioactivity of the waste material. The surcharges will be used to support the commission and its staff, create a third party liability fund and reimburse local government.

The host state (California for 30 years) is authorized to impose state surcharges to ensure the safe disposal of the waste material and the long term care of the disposal facility.

**Import/Export Bans:** The Commission may import radioactive waste only by a 2/3rd vote of Commission. LLRW may be exported only by a 2/3rd vote of the Commission. Party states not permitted to accept non-compact party waste. \*\*

## CAROLINA BILL TO REPEAL SE COMPACT DIES IN LEGISLATURE

House Bill 35, which proposed to repeal North Carolina's membership in the Southeast Compact, sits in the House Water and Air Committee where it is now **ineligible** for further consideration during this legislative session. Under a new rule in the N.C. General Assembly, at least one house had to pass a bill prior to May 28 for it to remain on the legislative calendar for this session. HB 35 did not make the deadline. Only bills pertaining to revenues or appropriations were exempted from this restriction.

### Other "Repeal" Initiatives Possible

The issue is not necessarily dead, however. The rule could be suspended by a two-thirds vote. And the possibility still remains that repeal language could be attached to other legislation during this session. There is also the remote possibility that the adjournment resolution could make the bill eligible for consideration during the 1988 short session.

Other bills relating to low-level waste which are no longer eligible for consideration in this session include:

- HB 66 which would suspend licensing of commercial low-level waste facilities until August 1, 1988;
- HB 1167 which would set conditions to be met before North Carolina would act as a host state for a regional disposal facility;
- HB 1279 which would amend the Southeast Compact to restrict the right of a party state to withdraw; and
- SB 766 which would limit the proximity of low-level waste facilities.

### LLRW Siting Bill Still Alive

Several LLRW related bills did meet the legislative deadline and are still pending in the General Assembly. Probably the most crucial bill effecting the state's ability to develop a waste management facility is House Bill 1277 (SB 848), sponsored by Representative George W. Miller, Jr., who is also a Commissioner in the Southeast

Compact Commission. The bill would create an independent LLRW Management Authority to select suitable sites, acquire sites, select or remove operators, prepare an environmental impact statement, investigate concerns of the host community, and maintain and provide perpetual care for a LLRW disposal facility. The bill also appropriates operating funds to the Authority in the amounts of \$1 million for 1987-88 and \$1-1/2 million for 1988-89.

Currently, no entity within North Carolina has the authority for siting a LLRW disposal facility. HB 1277 is currently assigned to the House Water and Air Committee. Its companion bill (SB 848) has been assigned to the Senate Environment Committee.

Other bills eligible for further consideration which could effect the development of a LLRW disposal facility in North Carolina include:

- o SB 46 which would give N.C.'s Radiation Protection Commission the power to develop criteria and standards for licensing of a LLRW disposal facility. It specifies several factors which must be considered. It is assigned to the House Water and Air Committee.
- o SB 48 which would prohibit shallow land burial and require engineered barriers for near-surface disposal facilities. It is assigned to the House Water and Air Committee.
- o SB 49 which would suspend the issuance of licenses for commercial LLRW facilities until December 1, 1987. It is assigned to the House State Government Committee.
- o SB 359 which authorizes the Legislative Research Commission to study LLRW management in N.C. and report to the General Assembly. It appropriates \$8,000 for 87-88 and \$8,000 for 88-89. It was referred to the Appropriations Committee.

The House Finance Committee is also considering three bills which would tax nuclear facilities:

- o H 1115 which would annually tax all nuclear generating facilities at the rate of one-half of one percent of the appraised value of the system property.
- o H 1114 which would require each county with a nuclear utility but without a LLRW facility to give 25 percent of the nuclear utility's property taxes to the county in which a LLRW facility is located and no nuclear utility is located.
- o H 1087 which authorizes counties to levy a privilege license tax of up to ten percent of the gross receipts of any LLRW or hazardous waste facility located within its borders. \*\*

### **TEXAS LLRW AUTHORITY LOSES OUT ON DISPOSAL SITE**

The Texas Low-Level Radioactive Waste Disposal Authority has been forced to renew its statewide search for a LLRW disposal site. The action is in response to Land Commissioner Garry Mauro's decision not to transfer to the Authority a proposed site in Hudspeth County. Attempts to pass legislation to direct the transfer died in the closing hours of the 70th legislative session when Senator Tati Santiesteban of El Paso threatened a filibuster against the bill.

Site selection studies will now focus on the most promising areas including south Texas, north central Texas, far west Texas, and the Blackland prairies between Austin and Dallas. These are the areas previous studies showed had the most stable geology and deep groundwater.

The Authority has selected a site in McMullen County, 70 miles south of San Antonio in 1985. After intense protests from McMullen County residents, the Legislature directed the Authority to give preference to siting on state-owned land. A site was located on a tract of state land about 50 miles southeast of El Paso in 1986, but Land Commissioner Garry Mauro objected to the plan saying that it was an inappropriate use of permanent school fund land.

### **Costly Site Searches**

According to the law under which the Authority operates, the Authority must now prepare a report for the Governor explaining why a site could not be located on state land. The agency must then look once again at privately-owned land throughout Texas. The site search, the third since the Authority began operating in 1982, will begin immediately and should be completed by the summer of 1989. Each site search costs \$3.5 million and can take up to two years to complete.

### **Alternatives to Disposal**

The two year delay means that Texans will begin paying penalties for the privilege of shipping waste to the three operating disposal sites in South Carolina, Washington, and Nevada. The projected penalties could be as high as \$35 million by 1993.

The Texas Department of Health has prepared an emergency plan to allow radioactive waste generators to store their wastes at hospitals, universities, or commercial warehouses in Dallas, Houston and San Antonio if disposal is prohibited at the three operating facilities. \*\*

### **NO FUNDS FOR WA STATE LLRW REGULATORY PROGRAM**

Despite the concern of the Washington State's Nuclear Waste Board, the Citizens' Advisory Council and the Governor's Office, the State Legislature failed to include funds in the state budget for the state's LLRW site monitoring and surveillance program to make up for the current shortfall in revenues collected for this purpose.

In 1985 the legislature had appropriated funds to cover radiation monitoring, surveillance and emergency response out of monies collected from the disposal fees charged at the Richland LLRW waste disposal site. However, with the decrease in volume of LLRW to the site the fees have not been sufficient to support the program. At this point the collected fee revenues are substantially below state predictions, with LLRW volumes reduced by over 30 percent.

The requested state funds would have made up the difference between anticipated and actual revenues. The program now is some \$622,000 short for the next two-year period. The remaining funds from the collected fees will support only six staff positions, about one-half of the current staff level.

### **More Volume Reduction**

Many predict that when the state's program requiring all shippers to certify that each shipment of LLRW is "RCRA free" (See EXCHANGE, Vol. 6, No. 9) goes into effect on August 1, the LLRW shipped to Richland will be further decreased. Some expect that the volumes may shrink as much as 50 percent below current levels. This would definitely jeopardize the current monitoring and surveillance program.

### **Funding Solution Sought**

The lack of state budget support is in conflict with the mandate of a 1985 state law requiring the development of a statewide radiological baseline, starting with the Hanford reservation and the completion of an independent environmental monitoring program to verify the adequacy and accuracy of the monitoring programs of DOE and of other radioactive materials licensees. The Waste Board has begun to look into a funding solution so that the current program could be maintained if at all possible. \*\*

### **BATTELLE AWARDED ILLINOIS LLRW DISPOSAL SITE SEARCH CONTRACT**

The Illinois Department of Nuclear Safety (IDNS) has awarded a contract to Battelle Columbus for technical assistance in selecting a low-level waste disposal site in Illinois. The site will serve as the regional disposal facility for the two state (Kentucky and Illinois) Central Midwest Compact.

Under the two-year contract, which will be in excess of \$8 million, Battelle will support IDNS in selecting, characterizing and evaluating eight alternative sites, subsequently characterizing four of these sites. Battelle staff is responsible for all the environmental studies and overall project management. Hanson Engineering will be responsible for the geotechnical aspects of the work as a subcontractor to Battelle. The project team will operate from offices in Springfield, IL, where Battelle will station a team of three professionals headed by Mr. Dale Egner.

According to project manager Dale Egner, the Battelle-Hanson team will "assist the State of Illinois with the technical aspects of the site selection process,...identify and monitor regulatory requirements, perform the necessary site characterization activities, and complete the required environmental impact evaluation studies."

Identifying the eight alternative sites will involve three primary steps -- exclusionary statewide screening, regional directive screening, and site identification and selection. \*\*

# LLRW Volume Disposal Update

## LLRW ACCEPTED FOR DISPOSAL AT BARNWELL, BEATTY AND HANFORD

Through April 1987

(Volumes in Cubic Feet)

	<u>April</u>	<u>Year to Date</u>		<u>April</u>	<u>Year to Date</u>
<b>Northeast</b>			<b>Rocky Mountain</b>		
Connecticut	2,202.40	10,502.50	Colorado	630.00	630.00
New Jersey	5,453.20	15,190.40	Nevada	0.00	0.00
	<u>7,655.40</u>	<u>25,692.90</u>	New Mexico	0.00	0.00
			Wyoming	0.00	0.00
				<u>630.00</u>	<u>630.00</u>
<b>Appalachian</b>			<b>Western III</b>		
Pennsylvania	13,616.10	39,756.40	South Dakota	0.00	0.00
West Virginia	0.00	0.00	Arizona	2,368.70	2,822.60
Maryland	3,279.70	4,584.70		<u>2,368.70</u>	<u>2,822.60</u>
Delaware	112.50	457.50			
	<u>17,008.30</u>	<u>44,798.60</u>			
			<b>Northwest</b>		
<b>Southeast</b>			Idaho	1.50	1.50
Georgia	1,400.90	7,897.88	Washington	1,884.30	14,498.30
Florida	2,231.40	20,475.10	Oregon	7,830.60	27,793.40
Tennessee	16,343.30	51,961.30	Utah	0.00	0.00
Alabama	10,021.00	25,004.40	Alaska	0.00	0.00
N. Carolina	9,495.40	28,956.00	Hawaii	886.70	1,460.50
S. Carolina	11,966.40	39,665.60	Montana	0.70	0.70
Mississippi	1,007.70	4,940.70		<u>10,603.80</u>	<u>43,754.40</u>
Virginia	3,045.50	15,817.65			
	<u>55,511.60</u>	<u>194,718.63</u>	<b>Unaligned</b>		
			Rhode Island	80.60	320.30
<b>Central States</b>			Vermont	1,230.40	1,948.90
Arkansas	0.00	0.00	New Hampshire	0.00	367.50
Louisiana	1,445.60	6,924.60	Maine	1,068.50	1,113.50
Nebraska	1,823.40	9,298.40	New York	5,934.60	20,223.20
Kansas	0.00	1,714.50	Massachusetts	4,361.90	15,547.60
Oklahoma	2,808.20	21,078.20	Texas	14,378.60	15,399.60
	<u>6,077.20</u>	<u>39,015.70</u>	North Dakota	11.00	11.00
			California	7,369.10	28,481.40
<b>Central Midwest</b>			Puerto Rico	0.00	0.00
Illinois	12,187.40	58,270.10	D.C.	0.00	0.00
Kentucky	6.50	130.70		<u>34,434.70</u>	<u>83,353.00</u>
	<u>12,193.90</u>	<u>58,400.80</u>			
			<b>TOTAL:</b>	<b>155,558.00</b>	<b>544,997.73</b>
<b>Midwest</b>			(As reported 4/15/87)		
Wisconsin	410.00	2,200.50	APRIL:	136,899.93	389,439.73
Indiana	3.60	1,282.40			
Iowa	3,869.10	7,684.10			
Ohio	827.70	5,829.70			
Michigan	1,472.70	9,503.70			
Minnesota	1,392.50	8,288.80			
Missouri	1,098.80	17,021.90			
	<u>9,074.40</u>	<u>51,811.10</u>			

(Mission Plan from Pg. 1)

## **Timetable Changes for 2nd Round**

The final amended plan moves up some intermediate benchmarks for the proposed "new" second round program from what was specified in the concurrence draft of a week. The final date for startup of operation remains the same, 2023.

The schedule for the second repository is now as follows: 1995 - begin a national survey; 2002 - issue final area recommendation report and identify potential acceptable sites; 2007 - nominate and recommend sites for characterization; 2015 - submit license application to NRC; and, 2023 - begin site operation.

If Congress does not legislatively act to approve the "new" proposed second round, DOE would resume the current program, again according to a slightly faster timetable than that stated in the "concurrence draft". The new proposed schedule would be: recommending sites for characterization in 1994 as opposed to the previously reported date of 1997; submitting an NRC license application in 2002 as opposed to 2006, with operations beginning in 2010, not 2014.

## **Amended Plan Supports Budget**

In the letter transmitting the Amended Plan Mr. Rusche attempts to clear up the current confusion regarding the DOE's FY 88 budget request by explaining that "the Mission Plan Amendment serves also as an adjunct to the Fiscal Year 1988 budget request which is for a program funded at a level of \$725 million."

As stated in the Amended Plan, the allocation of the \$725 million budget request for the repository program for FY 88 is as follows (if the Amended Plan is adopted including authorization of the MRS):

- \$525 million for 1st repository activities, which would include support for activities that would lead to beginning exploratory shaft construction at Yucca Mountain and Hanford in FY 89; and,
- \$24 million for non-site-specific technical studies on alternative geologic media to determine their suitability for hosting a second repository;

## **MRS Budget Request**

The Amended Plan sections on the MRS do not call out the amount in FY 88 that would be committed to the facility but subtracting the first and second round allocation from the \$725 million request leaves \$176 million. According to DOE staff about \$70 million of this amount covers MRS activities and of this total \$15 million is to compensate Tennessee for the impacts of the proposed facility.

## **Dire Consequences if MRS Not Built**

In the supporting appendices to the Amended Plan DOE serves notice that without the MRS the currently planned spent fuel acceptance schedule will be seriously affected.

According to DOE, if the MRS is not approved "the transfer of the waste to DOE facilities may not be able to begin in 1998." And, "even if Congress approves it and it is not

possible to begin operations by 1998 because of the longer design, licensing, or construction times," DOE explains, "the impacts on the utilities would be similar but the extent of mitigating actions would be less." Furthermore, DOE cautions that "a similar situation would occur if the MRS facility is available for spent-fuel acceptance on time, but the construction authorization for the repository is delayed beyond 1998, because the DOE has recommended that the Congress specify that the MRS facility cannot start receiving spent fuel until a construction authorization for the repository is received."

Further warning utilities that even if everything goes right, spent fuel acceptance may still be delayed, DOE adds that "should the MRS facility be available in 1998 and the construction authorization for the repository be received on time, the waste-acceptance schedule may still need to be revised if the repository does not begin operations by 2003. In that event, the MRS receipt rates may need to be reduced to prevent the MRS inventory from exceeding the 15,000-MTU proposed by the DOE." \*\*

#### **DOE GETS CAKE, A SONG ON 1ST ANNIVERSARY OF THE HLW SITE DECISION**

The May 28 quarterly meeting of the States and Indian Tribes with DOE-OCRWM officials was marked by DOE being presented with a "grey frosted" anniversary cake and being serenaded with a song -- an "Ode to Secretary Herrington" -- commemorating the 1st anniversary of DOE's announcement of the first round HLW repository site selections and the indefinite postponement of the second repository program. The song, sung by a woman who ostensibly interrupted the session saying she had a message for Secretary Herrington, went as follows:

It's a lovely day today --  
It's the 28th day of May,  
And a year ago  
You had a lot to say.  
And every since that day in May  
It looks like your program will crumble  
away,

And we only want to say --  
It's a lovely day today,  
It's the 28th day in May,  
A 100 million bucks may come our way.  
I think we'll tell you in a letter,  
A 100 zillion would be better,  
But it's a game we just won't play!  
It's the 28th day of May  
And if you ever come our way,  
Please don't strut your stuff  
On Yucca Mountain Tuff,  
Why can't a better place be found,  
To dig your fancy hole in the ground?  
There is nothing else to say,  
Except it's a lovely, lovely, lovely,  
It's a lovely day.  
And we wish you'd go away.

She followed this ditty with another song dedicated to the DOE representatives present which highlighted the continuing concerns that have been expressed by the States and Tribes in the last 12 months.

Later in the day, Russell Jim, on behalf of the Tribal and State representatives presented a cake to the federal officials saying that "the frosting was intended to be black, but we settled for gray." It was inscribed "May 28, 1987, The Beginning of the End."

#### **Focus on Amended Mission Plan**

Though the agenda for the meeting called for a discussion of the status of the Site Characterization Plans (SCPs), the State and Tribal officials pressed DOE's Steve Kale and Roger Gale on the amended Mission Plan and what would be done if Congress refused to go along with the DOE proposals on the 2nd round program. Kale and Gale responded that the second repository plan would be restarted as stated by DOE in the Amended Plan (See Related Story this issue).

Washington State official Terry Husseman, venting some frustration with DOE responses, said that the "handling of the Mission Plan changes is the ultimate example of why \$79 million was withheld from DOE by Congress." [N.B.: This money was withheld pending a report on DOE activities with the States and Tribes.] He



continued, "If this is consultation, you are looking at a different dictionary than I use." He elaborated that there was no advance consultation on the Amended Plan, DOE didn't seek comments before the publicly available draft, sent it to Congress, locked up on decisions, and largely ignored comments made on the draft. State representatives also badgered DOE for more details on the supplemental DOE budget for \$225 million more than the \$500 million presented to Congress. [N.B.: DOE justified the \$725 million in the Amended Plan sent to Congress.]

### **Changes in C&C Approach**

After a substantial amount of late afternoon discussion, DOE did commit to revising its Amended Mission Plan language on Consultation and Cooperation (C&C). Gale agreed to suggest language looking at setting up a forum for exploring the general concept of C&C. This commitment responded to a long-standing request of States and Tribes for the determination of an acceptable C&C definition and context for interrelationships with DOE on the siting program.

Indeed, the final Mission Plan Amendment does include language committing DOE to work with the States and Tribes "to establish a forum and a format by which operating principles government consultation and cooperation" will be developed. This format will involve joint review of all relevant material designated by the States, Tribes and DOE.

### **DOE Commitments On SCPs**

The status of the Site Characterization Plans (SCP) were discussed. Washington and Oregon representatives requested membership on the BWIP Hydrology Task Force. DOE said that it would consider the request. Ralph Stein then indicated that he would expect that if the States were included on this task force and a consensus was reached by the group, the State members would then accept the task force recommendations. Terry Husseman exclaimed that this requirement was **not** reasonable.

DOE made several commitments to the States

and Tribes relating to the SCP such as: scheduling additional public briefings and hearings in areas suggested by Tribes and States; indicating how changes from the draft SCP were made in the final SCP; taking into consideration a process for coordinating the issuance of directly related documents at the same time as the SCP. All would be part of an integrated program of public review and comment. \*\*

### **CONFRONTATION OVER DOE MRS PROPOSAL BEGINS IN CONGRESS**

On June 3, Senator Bennett Johnston surprised his colleagues in both the House and Senate by filing a "Resolution of Approval" for the construction of an MRS facility at the DOE proposed site in Roane County, Tennessee. The resolution as introduced was referred to his Committee on Energy and Natural Resources.

Prior to this action, on May 29 Tennessee had forwarded petitions for disapproval of the proposed MRS site with both the House and Senate. This despite the fact that on May 26 the U.S. District Court for the District of Columbia had issued an opinion that the Tennessee submission of a "Notice of Disapproval" to Congress was "non justiciable because [Tennessee] lack[ed] standing."

Interestingly, in the U.S. Senate the Tennessee "Notice of Disapproval", as filed, was **not** referred to the Senate Energy and Natural Resources Committee, but to the Committee on Environment and Public Works. Then on June 2, the day prior to Senator Johnston's action, Environment and Public Works Chairman Quentin Burdick, supported by Ranking Minority Committee Member Stafford argued that the Tennessee action "was not a timely notice of disapproval" and therefore he, as Chairman of the Committee to which the notice was referred, was not obligated under the Nuclear Waste Policy Act (NWPA) to introduce a resolution of siting approval. [Editor's Note: Under the NWPA the Committee Chairman to which the MRS notice of disapproval is referred is obligated to introduce a motion of MRS approval the following day.] Senator Johnston, however, thought differently and

filed the "Motion of Approval" on the day following Burdick's declining to do so.

### **Johnston's Motive: Jurisdiction, MRS OK**

In his floor statement Johnston made no mention of Senator Burdick's action and had his resolution referred to his Energy Committee. It is readily apparent that the Louisiana Senator introduced the motion of approval not to give standing to Tennessee's notice of disapproval, but rather to assert his Committee's jurisdiction over the Congressional MRS deliberations. He is, after all, the outstanding Congressional proponent of the facility.

Another factor behind the action is Johnston's interest in hastening the pace of Congressional deliberations on the facility. Under the NWPA once a Notice of Approval is filed in the Senate the responsible committee must make its recommendations to the Senate within 60 days. The resolution of approval is then submitted to the floor for debate under very restricted conditions.

### **House Agreement on "Untimeliness"**

While Senate Environment and Energy Committee chairs seemingly jockeyed for jurisdictional control over MRS deliberations, House Interior Chairman Udall, Commerce Committee Chairman Dingell, Energy Subcommittee Chairman Sharp and their respective Ranking Minority members jointly signed a letter to Speaker Wright taking a position identical to Senators Burdick and Senator Stafford -- that Tennessee's notice of disapproval is "untimely" and, thus, "ineffective" as a notice of disapproval under the NWPA.

The House Committee Chairmen and Ranking Minority Members explain that "the invocation of a state's disapproval rights at this time is not only inconsistent with the plain meaning of Section 141(h) [of the NWPA], but would, if honored, result in premature consideration of the MRS siting question by the Congress." The leaders rightly note that "submittal of a timely state notice of disapproval triggers special expedited procedures for consideration of resolutions of siting approval in both houses. Thus

recognition of the Governor's attempted disapproval at this time would require the Congress to reach a final decision on the suitability of the Tennessee sites before Congress has authorized construction of an MRS facility and indeed before the authorizing committees have even held hearings on the advisability of developing MRS technology."

They concluded that the Tennessee disapproval notice is "premature" and notified the Speaker that their committees "plan no action on it."

### **So What Happens Next on MRS?**

It is clear that the House will take no action on filing on a motion of approval for an MRS until the respective committees are able to have hearings on the MRS proposal. In the Senate, however, there is a committee jurisdictional battle underway.

Senate Environment and Public Works has scheduled hearings on the MRS proposal for June 18. Energy and Natural Resources had considered a hearing prior to that date but now will probably schedule a session sometime in late June.

Meanwhile Senate parliamentarians will try to figure out if Johnston's "Resolution for Approval" sets in motion the NWPA provisions providing that the resolution be submitted to the Senate floor within 60 days and debated under the strict rules outlined in the NWPA. The NWPA, as stated above, allows the expedited schedule of the notice of approval to come into play following its introduction by the Chairman of the Committee to which the state's notice of disapproval had been referred -- in this case that is Senator Burdick, Chairman of the Senate Environment and Public Works Committee, who declined to file a Notice of Approval. \*\*

### **TENNESSEE BACKS MRS DISAPPROVAL NOTICE WITH LENGTHY REPORT**

Though the U.S. District Court of the District of Columbia ruled that the filing of a "Notice of Disapproval" of the MRS was not timely, Tennessee Governor Ned

McWherter and the State Legislature decided to forward the notice anyway. As noted in the previous article, the notice was filed on May 29, 1987. It not only covered the DOE's proposed primary site location in Roane County but the two other alternative sites -- one on the Oak Ridge reservation and the other in Hartsville, TN.

In support of the notice the Governor forwarded a 44+ page report to the House and Senate leadership outlining in detail why his state decided to disapprove the location of the MRS in Tennessee, stating first of all that the "development of an MRS is contrary to the intent of the NWPA."

### **Need Unproven, Costs Outweigh Benefits**

In the report Tennessee makes concludes that:

- o "The national need for the MRS has not been established. The facility is not necessary for the safe and efficient operation of the national waste management system.... Technologies are available to perform the functions of an MRS on-site, at the individual nuclear reactors. Nuclear fuel rods and associated hardware can be consolidated at the reactors and the waste can be stored there until a permanent repository is ready."
- o "The cost of an MRS far outweighs the benefits.... The Department of Energy has failed to justify its estimate of the cost of the project. The state's independent assessment and reviews by other independent investigations, including the U.S. General Accounting Office, have found that MRS will cost far more (\$1 billion or more) than has been stated by the DOE."
- o "Proper planning procedure has been bypassed to move on with the development of MRS. The Department of Energy has not performed a fair comparison between viable alternatives for the waste management system. A waste system without an MRS facility could be enhanced by expanding the use of rail transport of the waste and by encourag-

ing the nuclear utilities to perform the fuel rod consolidation and storage functions at the reactors...."

- o "There was no consultation and cooperation with the State of Tennessee prior to DOE's decision to proceed with an MRS in the state."
- o "Siting of the MRS in Tennessee was the product of a technical and administrative procedure which was flawed both in concept and in application. The final site selection was subjective, arbitrary, and unfair. There was not an adequate effort in the site selection process to find the optimum relationship between system costs and radiation exposure to the public."
- o "If any MRS were sited in Tennessee, the social and economic impacts would extend far beyond the boundaries of the host city and country. Adverse impacts would include, but would not be limited to, potential loss of new business locations and reductions in regional tourism. A further concern is that the current Price-Anderson Act does not adequately provide for all potential claims in the case of a catastrophic nuclear disaster."

The full text of the Tennessee Report is available from the Exchange Reader's Report Service for a copying and handling charge of \$10.00 plus postage. \*\*

### **NAS SUBMITS \$1.5 MILLION PROPOSAL FOR HLW SITE REVIEW ACTIVITIES**

The National Academy of Sciences has submitted a \$1,519,000 proposal to the Department of Energy to cover the first three years of the NAS/NRC Board on Radioactive Waste Management review of the "technical portions of the DOE program for characterization of candidate repository sites."

As had been agreed to during discussions with the DOE over the past several months, the Board would establish three separate panels, one for each of the sites to be characterized. Though the request for

financial support is only for three years, the proposal includes an option for extending the work for up to seven years.

### Structure of Site Panels

The panels to be established for each of the three sites will be comprised of "approximately twelve members" with expertise in the fields of "geological sciences, including rock mechanics, geochemistry and hydrology; environmental science; socio-economic science; radiobiology and health physics; public policy, including law and regulatory practices; systems analysis; and repository engineering (e.g., considerations of corrosion, chemical, and thermo-hydraulic engineering).

Meetings of each panel will be held at the site they are characterizing, to the extent feasible. Invitations to attend the panel meetings "will be sent to the designated technical representative of each affected State and Indian tribe."

### No Review of Confidential Reports

When NAS was asked by DOE to establish the site characterization review activity, one of the many concerns expressed by the affected States and Tribes was that any documents made available for review be available to the public. In the proposal NAS makes it clear to DOE that "Any document submitted as input to a panel will be accepted and considered only if the supplier of the document is willing to make it available without restriction to other interested parties."

The proposal also makes it clear that the panels are not intended to "provide a forum for polemics, nor can they redress wrongs, real or imaginary."

A commitment is made to "strive to maintain active contact with, and participation of, each first round repository State, Indian tribe, or technical review organization set up by such State or Indian tribe.... [The State/tribe] technical representatives [are to] be encouraged to participate in all open sessions of the panels, to comment on materials presented to the panels, and to

provide written and oral comments on panel reports once they are reviewed in the Academy's normal procedures and released to the public."

### Specific Panel Tasks

As listed in the proposal, each panel "will review the scientific and technical adequacy of documentation supporting portions of:

- o The program for site characterization including assessment of key elements of DOE's scientific analysis--particularly the identification of critical uncertainties and limitations in the analytic framework;
- o The performance assessment for the repository and the waste packages including, where necessary, appraisal of the scope and quality of technical judgements leading to major technical decisions;
- o The implementation of the experimental program and subsequent analysis including identification of important scientific and technical issues that deserve greater attention."

According to the NAS the planned review program "should...facilitate the subsequent recommendation by DOE of a single repository site by helping to separate the technical and non-technical aspects of site evaluation."

The proposal makes it clear however that the "results [of the panel reviews] will not...provide independent verification of the accuracy of raw data, assess overall program adequacy, or evaluate site adequacy for repository use."

### State's Reaction

Not all the affected states had time to access the proposal at the time each was contacted by the Exchange, but they did offer some preliminary comments. Bob Loux, the Director of Nevada's Nuclear Projects Office expressed concern over the NAS's intent **not** to review the raw data

accumulated by DOE, or how the data had been obtained. He explained that since 1979 data has been accumulated from approximately 100 boreholes at the Nevada site without the benefit of any quality assurance program. In his view the raw site data and how it was obtained should be the subject of NAS scrutiny "since it forms the basis of all the site environmental assessments." He questions NAS's accepting the raw data "at face value." \*\*

#### **BREAUX CHALLENGES STATES, RUSCHE ON HLW PROGRAM PERSPECTIVES**

After opening his Subcommittee's June 2 hearing with a statement in which he compared reading the witnesses' filed testimony with a Jekyll and Hyde story because of their vastly different perspectives, Chairman John Breaux went on to challenge state officials' criticism of the HLW program and OCRWM Director Rusche's inference that Congress' moratorium on the drilling of any exploratory shafts in FY 87 delayed DOE's preparation of the site characterization plans.

In addition to the newly elected Louisiana Senator's somewhat even-handed criticism of both DOE and its critics, the hearing was marked by:

- o NRC's reiteration that the agency's staff review of the draft EAs found no disqualifying factors for any site and that the questions raised by the staff "can only be resolved through a detailed site characterization program."
- o The first appearance in the Congress of the Union of Concerned Scientists, whose witness called attention to the fact that a consensus reached by the National Academy of Science Waste Board members involved in reviewing the DOE's site selection methodology **did not** agree with the views of their own consultants.
- o Texas' Governor Clements contention in his written statement that the mere drilling of exploratory shafts required for site characterization could result in causing irreparable environmental damage given that the "shafts must

transect two major underground aquifers," and current shaft sealing technology is not proven.

- o Chairman Breaux's reluctance to accept the state's criticism of the HLW program at face value, and his contention that no matter what DOE did, no matter how long the program could be expanded, the results would still not be accepted by the states.
- o OCRWM Director Ben Rusche's revelation that four to four and one-half states have contacted DOE with an interest in the HLW repository since Senator Johnston had introduced his "buy-out" bill offering \$100 million a year to the state willing to host a repository. \*\*

#### **MRS PROPOSAL RECEIVES HARSH TREATMENT AT SHARP HEARING**

The Department of Energy found little support for the MRS proposal at Congressman Sharp's Energy and Power Subcommittee hearing on June 11. A bi-partisan Tennessee delegation of four Representatives -- Science and Technology Subcommittee Chairwoman Marilyn Lloyd, Don Sundquist, Bart Gardon and James Cooper -- emphatically stated that Tennessee's entire Congressional delegation was opposed to the proposal, as were the citizens of Tennessee. They collectively voiced their opposition, not only to an MRS in Tennessee, but an MRS anywhere!

Opposition also came from Congressman Wyden who raised the fact that western utilities would not benefit from the facility and therefore should not be expected to pay for it.

GAO released their highly critical report of DOE's proposal at the hearing (See EXCHANGE, Vol. 6, No. 9) and GAO's Associate Director of Resources, Community and Economic Development, Keith Fultz, found a very receptive audience.

The American Nuclear Energy Council, testifying on behalf of the utilities, supported the proposal but there were no others.

## **Costs of MRS Questioned**

The reoccurring theme throughout most of the opposing witnesses' statements was that DOE had not adequately assessed or provided sufficient information on the costs of the MRS, and had not evaluated its costs relative to the costs of proceeding to develop a waste management system without it.

GAO restated the conclusion of their report that "the MRS proposal does not estimate the full costs of building and operating an MRS facility." Tennessee Congressman Gordon called the proposal a "budget buster," explaining how in 1985 DOE estimated the costs to be between \$1.4 and \$2 billion and now the current estimate is over \$3 billion.

### **Utility Views Missing in Proposal**

Another issue that kept being brought up during the hearing was DOE's lack of including a survey of utility executives on the need for the MRS in the MRS proposal.

GAO's Fultz stated that he recommended that DOE conduct a survey. Rusche in his opening statement severely criticized GAO's 1985 survey cited in the report, saying that it did not reflect the utility perspective because it was targeted at the utility fuel managers. He explained that though DOE had not taken a survey, he had used other means to obtain the views of the chief executive officers of utilities, namely through their representative organizations like EEI, ANEC, and AIF, and he found them fully supportive. From our perspective his explanation did **not** satisfy any of the members.

### **A New Program on the Way**

Following Rusche's testimony and Congressman Gordon's statement, Swift of Oregon semi-announced that a consensus was building for legislation to redo the entire program. He called on the Tennessee delegation to work with the first and second round states to work out an acceptable approach (See **Wrap up (HLW)** in this issue). \*\*

## **GAO'S MRS REPORT RELEASED TO PUBLIC AT SHARP HEARING**

GAO released their report on DOE's MRS proposal titled -- DOE Should Provide More Information On MRS (GAO/RCED-87-92) -- at Congressman Sharp's hearing. A brief synopsis of the report was featured in Volume 6 No. 9 of the Exchange. Request for copies of the report should be sent to: US GAO, PO Box 6015, Gaithersburg, MD 20877 (202) 275-6241. The first five copies are free. Additional copies are \$2.00 each. There is a 25% discount on orders for 100 or more copies mailed to a single address. Orders must be prepaid by cash or by check or money order made out to Superintendent of Documents.

## IN THE CONGRESS

**PRICE-ANDERSON REAUTHORIZATION:** As expected the **Senate Nuclear Regulation Subcommittee** markup of the Price-Anderson Reauthorization Bill scheduled for June 3 was cancelled. Meanwhile the **House Energy and Power Subcommittee**, Chaired by Phil Sharp, successfully reported an amended version of the Interior P-A Authorization bill (HR 1414). The amendments affected liability coverage of nuclear waste-related activities. An amendment covering contractor liability for gross negligence and willful misconduct (GN&WM) that was to be introduced by Congressman Wyden of Oregon was withdrawn, but he and others reserved the right to introduce amendments covering this area at the full committee level.

With respect to the coverage of nuclear waste activities, an amendment introduced by Wyden specifically covering contractor activities was adopted, as was an amendment by Swift of Washington State. The net effect of the amendments is to establish unlimited federal liability for DOE and contractor nuclear waste related activities.

**SPENT FUEL TRANSPORT:** Senator Breaux's **Nuclear Regulation Subcommittee** hearing on the transport of spent fuel and HLW started out with a very strong statement by Congressman Rowland of Connecticut citing the need for Congress to "fish or cut bait" with regard to setting uniform national routing standards under the Hazardous Materials Transportation Act (HMTA). He emphasized that if Congress opts **not** to act then localities would continue to use the current statute "to erect barriers to permitting hazardous materials to be transported across their borders." He called attention to the "ongoing battle between [his] State of Connecticut and the City of New York over the routing of spent nuclear fuel emanating from the Brookhaven National Laboratory."

The Connecticut Congressman described New York City's eleven-year battle with the U.S. DOT over its preemption rights as being motivated by "bald faced politics" exclaim-

ing that "if New York wants all of the benefits which result from the Brookhaven Laboratory, then they must be willing to take some of the responsibilities. And, one of those responsibilities is that the spent nuclear fuel from that facility should be transported via the most direct surface route possible, which means through New York City and not on a circuitous route through my district and the State of Connecticut."

Rowland pointed out that a report by NY City's own paid consultants did not support their arguments, but under the current HMTA law, New York City could "drag this matter out ad infinitum." He warned that if New York succeeds in the courts he will personally see to it that all the towns and cities in his 5th Congressional District file routing applications with DOT similar to New York City's.

DOT spokesman at the hearing, Alan Roberts, similarly cited the need for Congress to act to clear up the uncertainty with regard to state and local preemption on hazardous material transport routing.

NRC's Hugh Thompson informed the Committee that NRC's study "Shipping Container Response to Severe Highway and Railway Accident conditions (NUREG/CR-482)" published in February, 1987, "provides a technical basis for explaining the level of safety provided by packages meeting the standards." In his testimony he revealed that, based on this study and DOE data, one could project an accident occurring during the transport of all the spent fuel now stored at reactors to a repository "that would cause functional cask damage", but "with the risk remaining within the acceptance criteria." Thompson called the Committee members attention to Congress's Office of Technology Assessment 1986 report on Hazardous Material Transport which "points to the fact that NRC's regulatory program provides a high degree of public protection."

The Committee also heard support for the need to allow states and localities a role in routing determination of spent fuel and the

necessity of requiring that DOE spent fuel casks be certified by NRC. A Nevada official expressed support for Senator Hecht's legislation, S. 833, The Nuclear Waste Transportation Prohibition Through Urbanized Areas Act of 1987.

**Senators Proxmire and Chic Hecht** are proceeding to round up cosponsors for their bill to amend HMTA (See EXCHANGE, Vol. 6, No. 10). It would provide urbanized areas the right to select alternate routes for spent fuel transport, require all DOE casks to be NRC certified, mandate full scale cask testing and set forth specific NRC transport licensing requirements. The bill is expected to be introduced in a couple of weeks.

**NEW HLW BILLS: Senators Sasser and Gore**, in concert with their Tennessee colleagues in the House and joined by various Senator and Representatives from first and second round states, have been

working together over the past weeks to develop a consensus bill to completely revamp the HLW program. Drafts of the initiative have been circulated to, and reviewed by, possible cosponsors with the objective of introducing a measure that would have a broad consensus and be structured so that it would have the best possible chance of receiving Committee approval. In the Exchange's view, this would definitely mean that the cosponsors would try to avoid exclusive referral to Senate Energy and Natural Resources where Senator Bennett Johnston, the pre-eminent supporter of the MRS holds court.

Though staff involved in the development of the measure are reluctant to talk about specifics at this time, the Exchange has learned that one provision would allow utilities storing spent fuel on-site a credit against the HLW fee. Senator Evans bill (S. 1266) also proposes such a credit (See EXCHANGE, Vol. 6, No. 10). \*\*

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