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INSIDE: Bill to Repeal SE Dies. pg. 3
Texas Starts New Site Search.... pg. 4
WA State Money Problems..... pg. 4
Battelle Wins IL LLRW Award..... pg. 5
LLRW Volume Disposal Update..... pg. 6

the HLW Focus..... pg. 7
DOE Gets 1st Anniversary Party.. pg. 8
Battle Over MRS Starts..... pg. 9
TN Files MRS Disapproval..... pg. 10
NAS HLW Review Proposal..... pg. 11
Breux HLW Hearing..... pg. 13
Wrap Up (HLW)..... pg. 14

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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 state-wide 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>
Northeast			Rocky Mountain		
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>
Appalachian			Western III		
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>			
Southeast			Northwest		
Georgia	1,400.90	7,897.88	Idaho	1.50	1.50
Florida	2,231.40	20,475.10	Washington	1,884.30	14,498.30
Tennessee	16,343.30	51,961.30	Oregon	7,830.60	27,793.40
Alabama	10,021.00	25,004.40	Utah	0.00	0.00
N. Carolina	9,495.40	28,956.00	Alaska	0.00	0.00
S. Carolina	11,966.40	39,665.60	Hawaii	886.70	1,460.50
Mississippi	1,007.70	4,940.70	Montana	0.70	0.70
Virginia	3,045.50	15,817.65		<u>10,603.80</u>	<u>43,754.40</u>
	<u>55,511.60</u>	<u>194,718.63</u>			
Central States			Unaligned		
Arkansas	0.00	0.00	Rhode Island	80.60	320.30
Louisiana	1,445.60	6,924.60	Vermont	1,230.40	1,948.90
Nebraska	1,823.40	9,298.40	New Hampshire	0.00	367.50
Kansas	0.00	1,714.50	Maine	1,068.50	1,113.50
Oklahoma	2,808.20	21,078.20	New York	5,934.60	20,223.20
	<u>6,077.20</u>	<u>39,015.70</u>	Massachusetts	4,361.90	15,547.60
			Texas	14,378.60	15,399.60
Central Midwest			North Dakota	11.00	11.00
Illinois	12,187.40	58,270.10	California	7,369.10	28,481.40
Kentucky	6.50	130.70	Puerto Rico	0.00	0.00
	<u>12,193.90</u>	<u>58,400.80</u>	D.C.	0.00	0.00
				<u>34,434.70</u>	<u>83,353.00</u>
Midwest			TOTAL:	155,558.00	544,997.73
Wisconsin	410.00	2,200.50	(As reported 4/15/87)		
Indiana	3.60	1,282.40	APRIL:	136,899.93	389,439.73
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

