
The

Radioactive Exchange®

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

Volume 6 No. 21 [Part I]

SPECIAL EXTRA EDITION

November 23, 1987

MOTION TO RECOMMIT JOHNSTON HLW BILL FAILS, BUT SIMPSON TO FIGHT ON

On Wednesday November 18, Senator Johnston marshalled his supporters and, as expected, by a vote of 61 to 34, defeated Senator Breaux's motion to recommit the Appropriations bill which also included a comprehensive amendment that would have significantly changed the HLW legislation included in the Bill. The entire Appropriations package was then approved by a vote of 86-9.

But this victory only signaled the beginning of the next battle. Senator Simpson, during the final debate and in floor discussions with Johnston, made it clear that he would object to the traditional unanimous consent motion to proceed to conference with the House, and the approving of Johnston's recommended conferees, unless the Environmental and Public Works Committee was given equal representation.

Without approval of the unanimous consent request, Johnston faces a separate, fully debatable motion and vote to approve the conferee list. Simpson's move is backed by Breaux, though there are some reports to the contrary. As this edition went to print on Friday afternoon, Johnston had not yet filed an unanimous consent request. Simpson requested a meeting of the principals to resolve the conflict. And, as of Friday noon, this session had not been scheduled. (See **Simpson** pg. 3 the **HLW Focus**)

SE COMPACT, UTILITY OPPOSITION CAUSE CHEM-NUCLEAR TO DROP SE DISPOSAL FEE HIKE

On Friday, November 13, Chem-Nuclear reacting in part to the vehement opposition of its SE customers, and the threat of retaliatory moves by the Southeast Compact Commission, rescinded its recently announced fee increase for the disposal of LLRW from Southeast generators. In a two sentence press release, Victor Barnhart, the company president, explains that:

"Because of concerns expressed by some of our customers that our price increase might damage the compacting process, we are eliminating our price increases announced for Nov. 1 and Jan. 1, and are reinstating our previous price schedule."

In a letter to SE generators mailed on the same day, Barnhart adds that the South Carolina based disposal firm "very frankly did not anticipate the extent of the perception that the rate changes might disrupt the compacting process." He makes it clear that Chem-Nuclear intends to "work within the process" and continue its efforts "to participate in the proposed North Carolina facility."

However, President Barnhart does reiterate that "the need for a price increase is still very real," and that Chem-Nuclear "will continue to explore ways to implement it without compromising the two-tier pricing scheme provided in the compacting process. (See **Chem-Nuclear** pg. 2)

(Chem-Nuclear from pg.1)

Commissioners Voice Threats of Retaliation

From what the Exchange has learned, Chem-Nuclear's decision to rescind the increase in such a precipitous fashion was not due as much to the intense negative reaction of its Southeast-based customers, but as to the threatened actions, both on a legal and non-legal front, of the South Compact Commission.

As a result of a legal opinion offered by Seton Hall Law Professor Eugene Gressman, the Commission was fairly confident that a court challenge to Chem-Nuclear's action had the chance of succeeding. In addition, various members of the Commission let it be known that if Chem-Nuclear maintained the price increase, they would support rescinding the compact ban on exporting LLRW out of the region.

Basis For A Court Challenge

In an October 30 letter, Professor Gressman, responding to a request from Bob Wolle, the SE Commission Executive Director, provided his written opinion which concluded that Chem-Nuclear's action ran "a fowl of the intent and spirit" of provisions in the LLRWPA and was in direct conflict with Congress' intent as expressed in the LLRWPA to that surcharges be established to discriminate against out-of-region generators. He advised that Chem-Nuclear's action "is more of weakening if not destroying a necessary discriminatory feature of the Act." **

US ECOLOGY PERMITTED TO KEEP BEATTY OPEN

The EXCHANGE has learned that in the past week US Ecology requested and was granted permission to accept LLRW for disposal at their Beatty NV Burial Facility beyond the 1987 cap of 300,000+ cubic feet. The new cap would apparently allow the Beatty and Hanford disposal site operator to operate through the end of the year, taking in waste at a rate comparable to the past couple of months. **

CENTRAL STATES SET DATE TO SELECT HOST STATE

The Central States Compact Commission will meet on December 8 in Kansas City, Missouri to set weighting factors on criteria which will govern the host state selection procedures, and then on December 15 in New Orleans to select a host state. The December 8 meeting will be held at the Marriott Hotel, 775 Brasilia Ave., Kansas City, MO. The host state selection session will be held at the Inter-Continental Hotel located near the French Quarter at 444 St. Charles Ave. in New Orleans. For more information contact: Ray Peery (404) 261-7114. **

SURPRISE! APPALACHIAN COMPACT HITS SNAG IN SENATE JUDICIARY

Quite unexpectedly, the Senate Judiciary did not act to report out the Appalachian Compact at their November 19 markup session. Reportedly the Justice Department is objecting to language in the Compact that would allow the Compact Commission to take action to enforce federal transport and packaging regulations. This language if enacted would confer powers on the Commission reserved to the federal government or delegated to the states under specific federal authority (i.e. the NRC Agreement States Program). Officials from Pennsylvania, Maryland and Delaware have discussed the problem with Judiciary Committee staff, and an agreement has been reached to amend the compact to delete this language. There is a distinct possibility that the markup will now proceed on December 4. **

DUAL HOST STATES RECOMMENDED FOR NORTHEAST

When the Northeast Compact (New Jersey, Delaware) Commissioners meet on November 24 to discuss host state selection procedures, their attention will be on the recommendation from their outside technical support contractor, WESTON, that both member states be designated as hosts.

WESTON's recommendations, were included in a report to the Commission.

(Simpson from pg. 1)

Breaux Appeals to Second Round States

The amendment Breaux filed along with his motion to recommit, is based on the legislation put forth by the Environment and Public Works Committee for inclusion in the comprehensive Reconciliation bill (See EXCHANGE Vol. 6, No. 19) with some added attractions to garner support from Senators from second round states and others. It retains the Johnston sequential site selection process along with authorization of the MRS, but would require surface characterization at all three sites prior to selection of the preferred site, and links the MRS authorization to the construction of a repository. The selection of the preferred site would be subject to the NEPA process.

Breaux added provisions to attract support from second round state Senators and Tennesseans in manner not unlike that used by Senator Johnston. He proposed completely eliminating the 70,000 metric ton limit on the first repository, in addition to killing the second round program. This was definitely appealing to some second round state Senators who would have probably supported the proposal had they not already committed to Johnston.

Under the Breaux proposal, the deadline for the preferred site selection is set as January 1, 1991 as opposed to Johnston's date of January 1, 1989.

Studies Not Complete by Selection Date

In arguing for changing the Johnston preferred site selection schedule, Breaux

pointed out that the decision would necessarily be made prior to the completion of DOE's hydrological testing program at Hanford. He asserted that DOE would not have had time to collect data on the Deaf Smith site, since DOE had not yet gained access to the proposed area, nor would the department complete ongoing studies on possible volcanism at the Yucca Mountain.

Johnston described Breaux's initiative as a "killer" amendment. He countered his colleague's arguments by citing a November 13 letter from Acting OCRWM Director Ed Kay which estimated that the Breaux proposal would add \$1 billion dollar plus to his proposed program. Breaux and Simpson questioned the credibility of the DOE analysis. In light of Kay's earlier letter to NRC Chairman Zech, wherein he reveals that DOE has not yet completed its study on surface characterization, it would seem that DOE would not have the necessary data to draw such a conclusion. In this October 30 letter, Kay writes that "DOE is currently restudying the use of surface-based testing to facilitate some important early site evaluations" noting that the study should be completed by the end of this calendar year. (See EXCHANGE Vol. 6, No. 20) **

TEXANS' SUPPORT OF JOHNSTON TYPE HLW BILL KILLS HOUSE ENERGY MARKUP

With lobbyists lined up outside the meeting room, waiting for the start of its HLW markup session on November 17th, the House Energy and Power Subcommittee abruptly cancelled the session. At press time, no new markup date had been announced, and no indication was given as to when one would be held.

The Subcommittee, which had planned to mark up Chairman Phil Sharp's version of H.R. 2967, (See EXCHANGE Vol. 6, No. 20) was beset by internal differences, sparked by Texas Congressman Jack Fields' planned introduction of a substitute amendment that paralleled Senator Johnston's HLW bill, but with added protections to eliminate Texas from selection. Fields' proposal had the support of fellow Texas' Committee member Ralph Hall and other Republicans.

The Texas' Version of Johnston's HLW Bill

Fields' proposal closely follows S. 1668, and includes: selection of a "preferred" site for at-depth characterization by January 1, 1989; immediate suspension of work at the remaining two sites; yearly benefits payments for any state or tribe hosting a repository, with one-third of such payments to go to affected units of local government; limitations on judicial and environmental review; cancellation of the second repository; participation, review, and approval rights for states adjacent to and downstream from any state containing a site selected for characterization; and studies of reprocessing and subseabed disposal. The proposal does not mention the MRS.

The provisions added to keep the repository out of Texas were simple and to-the point. In selecting a "preferred" site for at-depth characterization, DOE would be prohibited from selecting any site "that would result in the repository being located underneath an aquifer or productive agricultural land." In case that might not be enough, Fields added a prohibition against acquiring any land "in which the United States does not hold an interest on the date of enactment of this section," -- read "Texas."

With no fewer than five Texas members on the twenty-three member Subcommittee, the Fields' proposal starts off with a potential core of support. However, keeping Texas out of the program will be tough even if the

proposal gets out of the Subcommittee, which it may not. One staffer noted, "If it starts to look like the Committee is going to end up with the Johnston bill, why should we report anything? The current program or the Udall bill would be a lot better." **

APPROPRIATIONS CONFERENCE WITH HOUSE ON HLW BILL MOVING TOWARD REALITY(?)

Though Senator Bennett Johnston must still move his bill over to conference with House Appropriations, his scenario of how a conference could be structured to involve key leaders from the relevant House authorization committees, such as Mo Udall, who is not a member of Appropriations, is taking shape.

In the Senate debate on Tuesday, November 10, Johnston countered contentions that important House leaders would not be involved in the final negotiations on the HLW bill and therefore would not act on the initiative if it was attached to the Appropriations by informing his colleagues that he had already discussed the matter with House Energy and Appropriations Subcommittee Chairman Beville. He explained that he and Beville agreed to an arrangement wherein Interior Chairman Udall would conduct "a negotiation which would be suitable to him", but, "perhaps not as a formally named conferee." Discussions on how this could be arranged are already underway on the House side with Udall.

In the EXCHANGE's view, Congressman Udall would not be adverse to such an arrangement if assurances were provided that the negotiation on the HLW issues in which he was involved had the effect of fully representing the House side in the Appropriations Conference. Given his past support of Energy Subcommittee Chairman Sharp's and Commerce Committee Chairman Dingell's intent to be involved in the legislation, he may also want their participation. **