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MINUTES OF NUCLEAR WASTE BOARD MEETING
November 15, 1985

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1:30 p.m.
EFSEC Hearings Room
Rowesix, Building #1
4224 Sixth Avenue S.E.
Lacey, Washington 98504

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Board Members Present:

- Warren A. Bishop, Chair
- Senator Max Benitz
- Curtis Eschels
- Dr. Royston Filby, Water Research Center Designee
- Senator H.A. "Barney" Goltz
- Senator Sam Guess
- Representative Dick Nelson
- Representative Nancy Rust
- Nancy Kirner, DSHS Designee
- Richard H. Watson
- Senator Al Williams

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The meeting was called to order by Warren A. Bishop, Chair.

Mr. Bishop announced the restructuring of committees had been done, as discussed at the October meeting. Lists were provided to the members and are available in the Nuclear Waste Management Office. The Mission Plan Review Committee will cease to exist, he said, as their work is completed except for one final report.

The minutes of the October 18, 1985 meeting were approved as published.

Status of Low-Level Compact Process

Lynda Brothers, Assistant Director for Hazardous Substances and Air Quality of the Department of Ecology, reported HR 1083, introduced by Representative Udall, was passed out of the Interior and Insular Affairs Committee at the end of July. After the Bill went through Representative Markey's Energy and Commerce Subcommittee, the full Energy and Commerce Committee chaired by John Dingell, passed out their version on October 29. This bill, she said, is somewhat different from the Interior Committee bill, although it carries the same number. The four areas in which those bills differ are:

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1. The three-state allocation system.
2. The question of mixed waste (hazardous as well as radioactive).
3. The provisions for emergency access.
4. A provision for rebates.

Dr. Brothers said the Energy and Commerce Committee report should be filed within a week. A concurrence bill could go to the Rules Committee within a week or two after Thanksgiving, she thought.

Concerning the differences in the two bills, Dr. Brothers said on the first issue both bills have a cap for the Washington site, as well as the South Carolina site, and both have a limit on the amount of waste generated by each kind of reactor. Unclear is which of the three operating sites would receive those wastes.

On the mixed waste question, the Udall bill basically gave primacy to NRC's regulation of the low-level wastes, whereas the amendment offered by Representative Swift of Washington in the Dingell Committee, stated that both EPA regulations and NRC regulations should be coequal and to the extent there were any inconsistencies, those two agencies should work them out in a year's time.

Concerning emergency access, the Udall bill had a more limited provision, and the Dingell bill seemed to allow access for emergencies that might, in fact, not be so directly related to health and safety or emergency at a single plant, but what might be called an emergency should a region fail to meet a milestone, fail to join a compact, or fail to develop a site.

The rebate provision was an incentive to the states that do not have disposal sites. Both bills provide a surcharge mechanism, giving the surcharges to the compact states in which the disposal sites are now located. This provision was not included in the Udall bill and was added in the Dingell bill, she said, to take those funds and share them with the other regions on the theory that that was more of an incentive to develop sites.

Dr. Brothers said she was optimistic about having the differences resolved to move the bill out of the House.

On the Senate side, S-1517 was passed out of the Energy and Natural Resources Committee November 13, by a vote of 15 to 1. The bill is very brief and different from the House bill, but it has the same provisions. The final hurdle on the Senate side, she said, will be the Environmental and Public Works Committee, which has yet a different Senate bill. The Subcommittee on Nuclear Regulation will have a markup on November 20, on the separate Senate bill. The full Committee is scheduled to mark that up December 4, and should the schedule hold, one or both of those bills will be ready to go to the floor.

Dr. Brothers said she remained optimistic there would be some level of legislation enacted this session. She added the compacts have been passed with each of the mentioned bills.

Dr. Brothers said the Northwest Compact continues to meet and offer whatever assistance it can in the process. The next meeting is scheduled for the first week in December, either in Portland or Seattle.

Dr. Brothers said the Department of Ecology also acts as the leaseholder for the state, and in that capacity it has been working with the Department of Social and Health Services as they have reviewed U.S. Ecology's license for the Hanford disposal site.

Representative Nelson wanted to know if the Compact would need to be modified once the legislation is passed. Dr. Brothers said the Compact is being reviewed now as she was concerned there were some areas where it might be necessary or desirable to make changes. In response to his further question, she said any changes might include enabling legislation and they are looking at this possibility. This would present other problems, she said, as the other states in the Compact adopted identical legislation.

Senator Guess said the Southeast Compact was adopted on Monday. He asked if it varied greatly from the Northwest Compact. Dr. Brothers said that Compact is substantially different.

Concerning the U.S. Ecology contract, Representative Nelson asked whether there were advantages for the state to be the manager and operate the low-level facility. Dr. Brothers said there was a three-page analysis available, which she could furnish. No conclusion had been reached, she said. He asked if there were any figures projecting the flow of low-level waste coming into the state over the next few years. Dr. Brothers said she could only speak on the commercial wastes, and very good estimates were available on power plant waste generation, times of new plants coming on line, scheduled decommissioning of existing plants, and quite good information on medical and research wastes. This is projected well into the next fifteen years. She said that information was the basis of the draft of the legislation that is now going through Congress and was prepared a year and a half ago.

Regarding the radium-contaminated wastes from New Jersey and some that could be coming from Colorado, she said they will be less well quantified primarily because those wastes in some cases, and those who dealt with this felt they would be treated the same way as the fuse wrap formerly-utilized sites' program, which the U.S. Department of Energy runs. This will be investigated, she said. In response to Representative Nelson's request for the projections of low-level wastes, Dr. Brothers said DSHS would be the appropriate agency to supply these. Nancy Kirner said the two agencies will work together to furnish the information requested by Representative Nelson. He said he was interested in the New Jersey radium waste, which he understood was very low-level, and what quantity there

would be. He also wanted to know the state policy in response to the request of the Governor of New Jersey to send that waste to Washington State. Dr. Brothers said she know of no official request, and would defer this request to DSHS. She said the Department is in a position to regulate the waste flow into the site on a daily basis, as it is handled through the license, not through the lease.

Nancy Kirner of the Department of Social and Health Services said the most formal request received by her to take possession of this waste was by the press release from a New Jersey Senator. The request was to go to U.S. Ecology, she said, and it in no way implied the state would take possession. Ms. Kirner said in response to Representative Nelson's inquiry, the process for delivery of low-level radioactive waste to U.S. Ecology was to obtain a site use permit and comply with all the regulations and provisions of the licensing. If it should be a special waste, she said, generally there is some notification to the state inquiring how it would like to handle it. Then DSHS would be involved, if there were a formal request.

Curt Eschels added since the initial comments by the U.S. Senator from New Jersey, some follow-up questions came to two different state officials. The most formal, he said, was just a telephone call from what he believed was the Commissioner of Health in New Jersey. There are two problems: first, this is an unusual kind of material--it is soil that is very slightly contaminated with radium from a radium-processing works back in New Jersey. The material left over was used as landfill and the people in the houses now built there are uneasy about it. As a result, the state has become uneasy about it and have begun physically lifting the houses, excavating beneath them, and putting in new foundations. The slightly-contaminated soil was being stored, he said.

The other unusual aspect, he said, was that Washington, in its efforts with Congress, is no longer interested in taking any more volume of low-level waste. He said the state of Washington is not interested in using up the space at Hanford with this kind of material. Second, the suggestion comes at an entirely inopportune time, as it would put the state in a very inconsistent position. Mr. Eschels said he communicated this to the New Jersey official.

Since that time, Mr. Eschels said, the state has been asked if there is anything that could be done in New Jersey to make this material acceptable. He said he would check that out, looking at two things: (1) the technical aspects; and (2) the policy aspects. Technical information is incomplete, he said, with no firm estimates of the volume, different estimates of the activity level, and questions as to whether there is any sort of chemical contamination--all of which has to be checked out. The decision as to whether this would be consistent with the policy has not yet been made, he said, because of lack of answers on the technical questions. He added that Hanford is not the only place material like this could be placed. Radium is a naturally-occurring radioactive material, and the kind

of contamination in the soil being discussed is similar to what would be found in the tailings pile of an uranium mill.

Representative Nelson asked if this indicated a need for this kind of material for any purpose at the state's three mill-tailing sites. Mr. Eschels said in measuring need he would ask if this slightly-contaminated material could be used as a cover, and then there was the question of the financial resources of the companies who own the mills. All are under obligation to the state to pay into a perpetual care and maintenance fund. Because of a softness in the uranium market, he said, all of the companies have been shut down and are not financially strong as they were.

In response to Representative Nelson's question about the need for the waste material at the mill-tailings mills, Mr. Eschels said there were two questions: (1) Because this waste is less radioactive than the tailings, it could be layered with the mills' wastes as a shield; and (2) the consideration of the financial resources of the mills. Representative Nelson said he understood the mills' wastes had been stabilized and he questioned the need to put more fill on top. Mr. Eschels replied the mills each have a number of tailings piles, some closed, covered, and no longer used, but others were only partially filled. These questions, he said, are being explored on the technical side. In response to Representative Nelson's question, Mr. Eschels said these tailings are not on the list of federal sites being cleaned up now. Nancy Kirner added she understood the Uranium Mill Tailings Radiation Control Act of 1978 Title I Sites were those sites closed in 1978; two of the mills' tailings were AEC tailings, and two were commercial tailings. She said the federal government has the ability to decommission the two AEC sites, but that is not part of their Title I work.

Representative Nelson wondered if Washington's refusal to accept those New Jersey wastes with the suggestion they be stored in New Jersey would send a strong signal to New Jersey and other East Coast states that Washington State had limits to its tolerance about their inaction on the issue of forming compacts and siting low-level repositories. Mr. Eschels said that would be one of the policy/political questions to be answered.

Senator Benitz asked if a study had been done about the state taking over the low-level waste site. Lynda Brothers said the question was raised by Representative Nelson earlier and there was not a complete study made. Some of the alternatives had been laid out in a two-page paper, and Senator Benitz requested a copy. He said if the state found it was not too bad an idea to accept some of the waste from New Jersey, was the tax or rate per cubic foot known for that kind of material. Mr. Eschels said a rate exists, but he hesitated because of the uranium mills on one hand and the low-level site on the other. Given the financial inability of the mills to have adequate clean-up funds, that would be part of the negotiations. He said the amount of revenue would depend on factors, including the volume. He said he first heard the figure of 30,000 cubic feet, then it was 60,000 cubic feet, and the third figure was 370,000

cubic feet. He said now he learned all of those numbers were estimated for a pilot program, and the total number is not known, even by New Jersey.

Senator Benitz inquired how many cubic feet U.S. Ecology received last year. Nancy Kirner replied 1.38 million cubic feet, but she did not know the total income as she did not have the Department of Revenue figures. She added the Department of Social and Health Services had just received a quarterly payment of \$180,000 as a result of SB-3799, which represented a 3% surcharge. This figure does not count the 30% B&O tax.

Representative Nelson referred to the Colorado waste mentioned earlier, and asked what form it would take and how much volume was involved. Lynda Brothers said she had no official contact, but understood Colorado had a similar problem, but not nearly the same volumes. Mr. Eschels said it would be part of the policy question as to what precedent would be established by accepting the New Jersey waste.

Senator Williams asked whether changes in the enabling legislation for the Compacts would require the Compact language to change. Dr. Brothers said she meant both the enabling legislation and the Compact language were being looked at together in very preliminary conversations. Senator Williams said he was concerned about this and thought it should be looked at from two points of view: (1) the state needs to know that the two pieces of legislation are compatible, and (2) the question of Legislature's approving a contract and having the Congress modify it. He recalled the Compact was passed in the Senate by a very narrow margin as there was strong disagreement about specific items in the language, not the concept. Dr. Brothers explained the Compact that is being passed by the Congress is identical to the Compact that was approved by the state. The legislation that is going through the Congress amends the Low-Level Waste Policy Act of 1980, upon which the Compact is based. Such amending may indicate the state should alter the Compact. Senator Williams said as a matter of principal there was a concern about having passed something and then having the rules changed.

Groundwater Meeting

Don Provost reported on the groundwater information meeting presented for the Board and Council on Thursday by Ron Gerton of the U.S. Department of Energy and Paul Eddy of Pacific Northwest Laboratories, Battelle. Each year, he said, Battelle publishes a report on the groundwater monitoring at the Hanford site, describing the work done the previous year with the results. At the meeting a description of the hydrology and geology on the site, sampling collection, quality control, quality assurance, handling of data and the results was presented. He said this is valuable information which will be taken back to the Environmental Monitoring Committee for study. Senator Guess added he thought it was one of the better

meetings, and he has invited Ron Gerton to visit Spokane to make the presentation to a Town Hall meeting Senator Guess planned to organize. Mr. Bishop said a special meeting on this subject would be scheduled on an annual basis.

Ranking Methodology - Implementation - NAS Review

Mr. Eschels referred to Ben Rusche's letter to Frank Press, President of the National Academy of Sciences, in which Mr. Rusche responds to the Academy report of its Board, discussed at the last meeting of the Nuclear Waste Board. Among the Board's comments on the report was the observation that it did not appear USDOE had the time allotted in its schedule to do the methodology in a rigorous way. In the meantime it has been announced that USDOE plans to delay its issuance of the final Environmental Assessments, including the ranking, for sixty days. Mr. Eschels said he thought that was intended to allow the Academy to perform its review. However, in Mr. Rusche's letter to the Academy, the sixty days is not mentioned, but requests the Academy to do that review and take the time that is needed, whatever is appropriate, to do a thorough review of the ranking methodology implementation. He added that was the original suggestion Governor Gardner made back in August, and this was a good development.

Mr. Eschels' suggested that the Board acknowledge the that USDOE has followed the recommendation, not only of the Academy, but also the Governor, and compliment USDOE for doing so and point out the importance of this action. Because it is so important, he said, it should be conveyed that the Board would like to stay involved in a consultative way.

Mr. Bishop referred to the suggested draft of a Resolution, 85-6, distributed to the Board. The Resolution expresses the Board's appreciation to the Department, repeats the desire for inclusion in consultation, and directs the Chair of the Board to distribute the Resolution to the appropriate people.

Senator Guess moved the adoption of the Resolution.

Representative Nelson recalled the recommendation of a consultant to the Board that the review of the methodology implementation should include a sensitivity analysis and an uncertainty analysis. He asked if there were assurances from USDOE they had requested that from the Academy. Mr. Eschels said this was considered and used the wording presented in a draft Resolution in an effort to preserve the responsibility of the U.S. Department of Energy to do this right. He thought the state was not in a position to demand direction. Should the Department not honor the second item, Mr. Eschels said, it would be better to wait to see what action the Department takes. Representative Nelson was concerned the Resolution did not refer to the timing, and wondered if that should be addressed. Mr. Eschels said he thought the consultation item should cover that. Mr.

Husseman referred to the language in the Rusche letter, indicating the Department's willingness "to develop a mutually convenient schedule for the Board's further involvement". He said he felt that, along with the Department's press release announcing an anticipated delay of sixty days, appears to be an invitation to the Academy to take the time that is needed to do the job right. He said the first item of the Resolution also contained the words "ample time", which should accentuate the Board's concern.

Senator Goltz suggested adding the National Academy of Sciences as a recipient under Item 3. It was agreed this change should be made.

Senator Williams referred to Item 2. He wondered if the other states involved should be included. Mr. Eschels thought this would happen, and it was not included because of the reluctance to try to speak for another state or invite them to assume another item of work. He thought as part of the information sharing the states do now, this would be accomplished. Mr. Provost thought Mississippi and Utah might not agree with this reevaluation. Senator Williams thought they would like to be consulted in any event. It was the consensus of the Board the Resolution should speak only for the state of Washington.

The motion was called and passed unanimously as amended.

Public Involvement

Marta Wilder called attention to the display of Newsletters, brochures, and timeline graph through 1985, which she had prepared for presentation to the Advisory Council that morning. The Council will be forming different groups, one to work on public involvement, and a group working on local government issues. The Council will be working with the Science & Technology group of the Washington State Institute on Public Policy on scientific and technological issues.

Ms. Wilder said planning activities would be done during the next month, and she invited any Board members to submit any suggestions or ideas for public involvement to her office. A new general brochure has been published this month. It describes the roles of the Board, Council, and Office. The Semi-Annual Report has been delivered, she said, and the October/November Newsletter has been mailed. Copies were available at the meeting and requests can always be made to the Office. The December Newsletter will be a short four-page review of the year.

Between March of this year and this date, about fifty presentations have been given to approximately 4,000 people. By the end of this month, she said, the Site Characterization and Defense Waste slide shows should be available.

Mr. Bishop acknowledged the presence of Louise Dressen, Project Director for Envirosphere.

Committee Reports

Environmental Monitoring: Nancy Kirner said the meeting yesterday had been covered by Don Provost. A coordination meeting is planned for next week between the Department of Social and Health Services staff and USDOE to again go over areas of mutual concern, such as sampling locations, etc. She said the Notebooks contained a written report of the information presented at the last Nuclear Waste Board meeting.

Socioeconomic Committee: Mr. Eschels reported the November 4 meeting agenda contained three items: (1) Report from the panel on local governments which examined the Grants In-Lieu-of Taxes issues. He referred to the Notebooks which contained samples of letters sent to all governments within Benton County. Lane Bray, a member of the panel, will draft similar letters to governments outside Benton County which may be affected by the socioeconomic impact. (2) Progress report concerning the impact monies. The Department of Revenue needs to identify what the taxes would be, which items are taxable, where taxable, applicable rates, etc. Don Taylor from the Department indicated there were a large number of questions which the Department and the local governments are compiling, and he will report to the Committee at the next meeting. (3) Another item to be considered will be the payments contractors made into the unemployment fund. Contacts are being made with counterparts in the other states that have similar programs to learn their approach.

William Freudenburg, a Professor of Sociology at Washington State University, made a presentation to the Committee. He presented alternatives with schedules on his offer to develop the RFPs, assist in selecting a contractor, and monitor the contractor's work. The three main groups to be examined would be economic-demographic, sociocultural, and socioenvironmental. Most of the meeting was spent with looking at the development of the RFP, and the Committee was pleased to have that resource available from WSU. Mr. Eschels thought it was a good indication of how the state can use the resources available within the academic communities.

Transportation Committee: Mr. Watson reported the Transportation Committee met yesterday afternoon. He said the transportation area in general has proved to be very difficult to embrace, as it involves a number of different agencies with a complex set of issues. The group generally agreed on three overall areas of focus: (1) transportation risk analysis and its role in the major site decisions, (2) issues related to the development of a safe transportation system, and (3) public involvement and information.

Mr. Watson said the primary activities of the group and staff work has been focused on the transportation risk analysis. Following a rather detailed look at this issue, it was essentially decided to put the work of looking at the transportation risk models on hold pending the final Environmental Assessment, or EIS scoping activity.

It was felt that the transportation factors would not alter the overall ranking of a site in the USDOE ranking methodology. A wrap-up of the work done to date will be presented for Committee review in January, Mr. Watson said.

Senator Goltz suggested some of the work USDOE has been doing at Oak Ridge with respect to MRS siting should be reviewed, and the Committee had agreed to do that.

In the area of transportation system development, Mr. Watson said, it was agreed on determining a "safe" transportation system. This is an issue that will be present whether or not Hanford is chosen as a site. At this point, the highest priority issues are routing and emergency response. A work session is scheduled to look at the overall transportation system and the Committee directed staff to develop suggestions for smaller working groups on individual issues. It was emphasized that any recommendations concerning the transportation system need to be reviewed in light of their potential effects on liability.

Concerning public involvement, the importance of this aspect of the Committee's activities was noted, and the group thought the public should be involved in the decision making process. A more concerted effort will be made, Mr. Watson said, to work with Marta Wilder and the Office of High-Level Nuclear Waste Management in the public involvement area.

A review of the U.S. Department of Energy's Transportation Institutional Plan is being done by the Committee. Members of the group have attended a number of meetings related to transportation, including Jim Fouty of the State Patrol who attended an Illinois Spent Fuel Safety Program; Pat Tangora of the Energy Department staff attended a Western Interstate Energy Board meeting concerning nuclear waste energy transportation; Terry Novak of the Advisory Council attended the Spokane Hazardous Materials Conference; Senator Goltz briefed the Committee on the NCSL activities; and Don Ernst of the Department of Transportation gave a briefing on the Multi-Highway Transportation Agreement.

Oregon Report

Mr. Peter Green, Administrator for the Joint Committee on Hazardous materials for the Oregon Legislature reported for David Stewart-Smith. He said they are in the final stages of working out the Oregon contract with the state of Washington. It has been approved by the State Emergency Board and is now under consideration by the Oregon Attorney General and the Washington Office of High-Level Nuclear Waste. The Oregon Program Director and coordinator for that portion of the money has been hired, he said, and will come on board January 1, 1986.

Mr. Green said Bill Dixon has been working with Curt Eschels to come to a successful arrangement with the U.S. Department of Energy on the shipment of spent fuels from Taiwan. Mike Lawrence and John Anttonen of USDOE Richland have been very helpful, he said, and it is believed some satisfactory conclusion would be reached. He said the U.S. Department of Energy is still considering the list of conditions presented by Mr. Dixon.

The Joint Interim Committee on Hazardous Materials spent two days this past week visiting the hazardous waste disposal site at Arlington, and touring the Hanford site in Washington State. They were accompanied by four of the five members of their Environmental Quality Commission of Oregon, the Director of the Department of Energy and his assistant, and the Director of Environmental Quality and his assistant, and the Assistant Director of the State Fire Marshall's Office.

The Oregon Citizens' Advisory Committee will meet in Portland next Monday evening to consider the proposed Oregon contract and joint public information events with the Washington Advisory Council, as well as other issues.

Mr. Green said the Joint Committee is now in the process of arranging a joint meeting with the appropriate Washington State Legislative committees. It is tentatively scheduled for January 8, and representatives of the affected Indian tribes will be included. The Joint Committee will consider other aspects of the possibility of siting a high-level waste repository at Hanford at future meetings, which will be held monthly over the next year. These meetings will be used as a way to understand better the regional public policy dimension of the issue, as well as to work toward a more complete cooperative approach to Oregon's and Washington's involvement in the siting review by inviting Washington State Board members and staff to make presentations at some of the meetings.

Further Committee Reports

Defense Waste: Mr. Husseman stated the Defense Waste Committee did not meet during the month. He asked Don Provost to report on the Defense Waste Focus Paper distributed last month. Comments were received from House staff, other Legislative staff, Institute for Public Policy, and from the U.S. Department of Energy. Another draft of the Focus Paper has been prepared and will be distributed to Committee members. He said the U.S. Department of Energy representative informed him at the meeting the Defense Waste EIS is scheduled for early next year. Some of the concepts are changing and it will be more open ended on the recommendations, he said. Mr. Provost said it was felt the Focus Paper complements the work of the Department and will be an important paper to give the citizens an understanding of the issue.

Mr. Bishop added he had been alerted there was a possibility of a group from USDOE making a presentation to the Board in January to discuss the procedures they intend to follow regarding the hearings, etc. Mr. Calvo of USDOE said the plan was to make the presentation at the December meeting as an item on the Agenda.

Mission Plan Review Committee: Although the Mission Plan Review Committee is phasing out, Mr. Watson reported this Committee is reviewing a draft of the final comments on the Mission Plan. This should be accomplished by the next meeting of the Board.

Advisory Council Recommendation to the Board

Mr. Bishop called to the attention of the Board a Recommendation by the Advisory Council, passed at the October 18 meeting. The Advisory Council recommended the two bodies continue to meet on the same day in the same location; the two bodies periodically meet in cities other than Lacey or Olympia; and the High-Level Nuclear Waste Management Office staff suggest various public involvement options, and with guidance from the Board and Council, find ways for the Council to interact with the local populace.

Representative Rust considered the proposal to have the Board meet in other locations might be impossible for the Legislative members. Senator Guess felt the logistics of moving Board meeting would not be feasible. Mr. Bishop said the recommendation would be an item for consideration, and there would be opportunities for Board members to participate in workshops and hearings in other areas.

Meetings and Trips

Senate Subcommittee on Nuclear Regulation: Terry Husseman reported he presented testimony before the Committee on behalf of Curt Eschels from the Office of the Governor on the Price-Anderson legislation. Senator Williams also testified, as did Mel Sampson representing the Yakima Tribal Council, representatives of other states, and Ben Rusche of USDOE. (Copies of all testimony is available upon request from the Office.)

Basically the states were in support of the four cornerstones of strict federal liability, full compensation, a red-tape-free system, and a hold-harmless clause for the states.

Senator Williams added it was quite interesting to see a panel of six representing the states, four of the six were from the state of Washington. He thought there was interest shown in the state's proposal, especially by Senator Simpson.

Senate Committee on Environmental and Public Works: Warren Bishop testified before this Committee on October 30, and reported it was a most intensive hearing which lasted all day. This was an oversight hearing chaired by Senator Stafford, and Mr. Bishop said the state's concern for the major issues was restated. Both Texas and Washington were represented, as well as the Yakima Indian Nation, he said, but Nevada presented no testimony. Mississippi and Utah were also represented. Ben Rusche of USDOE also testified just prior to the Washington State panel, and chose that particular time and place to verbally make his announcement about the further delay in the issuance of the Environmental Assessment. Mr. Bishop said this caused him to reshape some of his remarks, and he was able to express his appreciation and that of the Governor and Board for making that wise decision to ask the National Academy of Sciences to make a more intensive review of the ranking process.

House Subcommittee on Energy Research & Production: Representative Nelson said this Committee is chaired by a Representative from Tennessee, whose major interest is in the Monitored Retrievable Storage program. Much of the discussion centered on this topic. Congressman Morrison of Washington State was in attendance, and although there was not a full membership present, it was a good discussion, Representative Nelson said. There was an opportunity for Washington State to repeat its position on significant issues. He said one of the questions centered around the schedule. Industry had supported the position that the schedule should be adhered to, and the panel of states composed of Tennessee, Texas, Nevada and Washington testified that the schedule should not be at the expense of doing a good technical job on the characterization of sites. Representative Nelson said he felt the Chair took a little bit of issue with his statement Washington was looking for a safe site, as she thought we do not have that luxury. He said he pointed out this was a unique project, and that there is not an opportunity to fail, then build something better.

Concerning the National Academy of Sciences report, Representative Nelson said the state thought it was a good move, but there was concern about the time and whether the review would be complete and address the uncertainty and sensitivity questions. The Subcommittee was interested in the preliminary determination question, and that he suggested that USDOE consider performing a cost-benefit analysis as to the advisability of making the preliminary determination decision in such a fashion to ensure three licensable sites at the end of the process.

Mr. Bishop added that those going to Washington, D.C. to testify before these Congressional hearings are also charged with contacting and consulting with the state Congressional members and their staffs. This is not only valuable for the Board, but for the members in Congress, to enable them to understand the Board's view.

National Conference of State Legislatures: Senator Williams said the NCSL has a grant from the U.S. Department of Energy and at least twice annually they convene a meeting of representatives from

the first- and second-round states. He said this is the only occasion where Legislators from those states have an opportunity to meet and set their own agenda. A week ago they met in Albuquerque. Also attending were Representative Nelson, Senator Benitz, Elaine Rose of the Senate Energy Committee, and other staff people. The MRS proposal was discussed, he said, with the opportunity to hear from the people from Tennessee and their reaction to the process. Most of all, he said, it was an occasion for the Legislators from the involved states to get together, compare notes, and become more informed on the issues.

Senator Williams added the Senate Energy and Utilities Committee, which he chairs, is holding a hearing in Spokane next week on the nuclear waste and hazardous waste transportation. It will be held Thursday in the downtown office of the Eastern Washington University.

Senator Goltz said he attended another meeting of the NCSL last week in Virginia. One of the issues was the transportation issue, and an engineer from the Oak Ridge Laboratory had a computer program for routing of nuclear waste shipments. In response to Senator Goltz' request, the staff put into the computer the preferred route for shipping nuclear waste from an MRS facility at Oak Ridge to the site at Hanford, either by rail or by highway. Senator Goltz said he had the printout, and of special interest was that the program would take that waste by rail through twelve states, and the highway program would take that waste through eleven states on the way to Hanford. He said there was a great deal of concern about the route of those shipments, as they would have to travel through many states.

Senator Goltz said the principal element of preference was speed. He said the fastest way is the best and they eliminate all tunnels, all cities of over 100,000, and other considerations built in that make the routing sound circuitous, but in reality it responds to a series of concerns. They even have programmed in those states which prohibit nuclear shipments through them, although there is the feeling Congress may soon take that privilege away from those states.

Senator Goltz said he is asking Mr. Joy, the engineer, to give him a copy of the assumptions that were written into the program to give the state some feel as to how these decisions will be made in the future. He said he would share the printout with anyone interested.

Senator Williams said, aside from the liability issue which is before Congress right now, he thought the transportation issue is the one that will take more of the state's and Board's time in the immediate future.

Senator Guess stated he would be attending the meeting in Atlanta next week, and a day and a half would be devoted to the transportation issue.

Dr. Filby asked if a copy of the program were obtained, and Senator Goltz replied they would be able to send the Manual of Assumptions

which produced the program. He said he had written Dr. Joy to see if the state of Washington could use their program for the purpose of making comparative analyses. Dr. Joy implied it was in the public domain and would be available.

Human Health and Hanford: Representative Nelson reported this was a symposium that attracted about four to five hundred people in Spokane last month. It dealt with issues relating to the radiation-handling activities at Hanford and the potential health effects. A number of speakers were invited to present their points of view as to the risks of the operation at Hanford. He said he came away with the strong perception that the state needs to answer questions that can be answered, and even questions that may have obvious answers to technical people. Some of the questions asked related to the operations at Hanford and how they may have contributed to the radiation environment outside the Reservation; whether monitoring techniques are adequate and appropriate; whether standards that have been set by federal agencies, such as the EPA, have been effective and sufficient to protect the public health and safety; whether biological systems have concentrated radionuclides; and the whole area of health effects to the workers and to the "downwinders" population off the Reservation.

Representative Nelson said he left that conference with a strong opinion that those concerns need to be addressed. He said he had talked with several members of the Board, Dr. Beare, and Terry Husseman, and he thought there was shared agreement that somehow the Board needs to address those questions. He said when he was at the NCSL Conference in New Mexico he mentioned this concern to Roger Gale and others in USDOE, and he felt they had a sense that the health questions needed to be addressed as a part of the repository program. He discussed with Dr. Beare the study that had been done by the Center for Disease Control at Savannah River. The local USDOE Office made a request to the Savannah River people to do a health effects study at that facility, and two years ago a technical review committee of epidemiologists was convened to review past studies, current studies, and to recommend which future studies should be conducted that would have some technical merit. This was done, he said, and there is a copy of the report available. Dr. Beare indicated he would follow up on this, as it was agreed this might be a good model to look at.

Representative Nelson recommended to the Board that it look at a similar approach in dealing with the health issues and approach the USDOE to seek their sponsorship of those efforts. This could be done through the Environmental Monitoring Committee, he said. Representative Nelson moved the Environmental Monitoring Committee be requested to review the questions raised and report back to the Board with a recommendation for appropriate procedure for handling those health questions. The motion was seconded by Nancy Kirner.

Nancy Kirner reported Dr. Beare has spoken to Sam Milham, Epidemiologist with the Department of Social and Health Services, who contacted Dr. Vernon Houck, Director of the Center for Environmental

Health at the Center for Disease Control in Atlanta. Dr. Beare has received the report from Savannah River and has sent it to Mike Lawrence, inquiring if USDOE would be interested in pursuing this kind of evaluation for the Hanford group. She said Dr. Houck at the CDC was very much in favor of convening a similar group.

The motion was called and carried unanimously.

Representative Nelson added that there are technical issues, which may not be health issues that arise from time to time in this whole area, and he thought it appropriate if the Board had a mechanism for handling those questions as they arise. He wondered if this could be handled through the Advisory Council by having a panel of experts to respond to these questions. Mr. Bishop observed there have been discussion on this subject, the Council had discussed it this morning, and Max Power of the Institute for Public Policy had some thoughts on the subject.

Savannah River Project Tour

Since Dr. Beare, who had toured the Savannah River Project with Commissioner Brian Boyle and Ray Lasmanis, was not present at the meeting, Nancy Kirner said Dr. Beare had told her he would be glad to give his trip report at the next meeting, if desired. He thoroughly enjoyed the tour, was very impressed technically by the capabilities at Savannah River, and brought back a souvenir, a glassified sample would had gone through the process, she said. It was passed around the table. She said Dr. Beare also reported the Savannah River people spent some of their time addressing the Taiwanese shipment and apologizing once more for the way in which state of Washington heard about the potential shipment.

Litigation Status

Charles Roe referred to his memorandum to the Board of November 7, 1985, and said there was no change in the Siting Guidelines litigation and a date had not yet been set for oral argument.

Regarding the "Potentially Acceptable Siting" litigation, he said Texas has filed a petition with the Supreme Court asking it to review the decision of the 5th Circuit Court of Appeals.

The United States has moved to dismiss the case of Tennessee v. Herrington concerning Monitored Retrievable Storage siting on jurisdictional grounds. No action has yet been taken on this motion. (See attached memorandum.)

Federal Legislation Status

Mr. Roe said a new piece of legislation, S-1761, sponsored by Senator Stafford, was the subject of the hearings at which Terry Husseman testified on October 22 and 23. This bill covers all phases of liability, including high-level wastes. The other major bill is HR-3653, introduced by Representative Udall. Chairman Bishop attended a markup session on this bill on October 29. This bill deals only with reactor issues, and not expressly with high-level waste issues. An amendment dealing with high-level waste is attached to the bill, which may or may not be presented to a second markup committee meeting to be held on November 19. (See attached Status Sheet.)

Mr. Bishop commented on the amendment to the Price-Anderson legislation. At this point, he said, there was no way to tell what the disposition of the amendments might be. He added the proposed amendment did not address defense wastes. The state believes that is essential and was the subject of his discussions with the Congressional delegations and staffs. Work with the Interior Committee will continue, he said, in addition to Senator Stafford's Committee. He said it was understood HR-3653 may have a markup on the 19th on a sequential basis, which would send the bill to a committee of which Congressman Swift is a member. Congressman Swift has assured the Board attention would be paid to have the state's concerns addressed. He said other states are very supportive on this issue.

Environmental Protection Agency Standards

Mr. Husseman recalled the Standards were recently adopted by the EPA for the protection of the general environment from off-site releases from repositories. If there is to be a legal challenge based on the research that Charles Roe has done, there is agreement from the other states that the challenge would need to be commenced in sixty days. For this reason, he said, the issue is being brought before the Board with a staff recommendation that litigation not be commenced.

Mr. Husseman referred to the Chronology of the Development of EPA Rules, contained in a memorandum dated October 22, 1985, to the Program Director. EPA was charged in Section 121 of the Nuclear Waste Policy Act to adopt these Standards in January, 1983. He recalled Dan Egan of the EPA made a three-hour presentation on the Final Standards to the Board about two months ago. He referred to the memorandum of November 8, 1985, from Charles Roe, examining the EPA Standards and responding on the subject of judicial review. (Copies available from the Office upon request.)

Mr. Husseman reviewed the Standards and their application in a presentation similar to the one done by Mr. Egan. Mr. Husseman said the basic, underlying reason for the recommendation for no litigation is that it is the opinion of the staff that these Standards, as adopted by EPA, are conservative and, if met, will provide for the safety of the citizens.

In concluding his presentation, Mr. Husseman said although the staff recommendation was not to bring litigation, there are two or three closely-related items that must be monitored carefully in the future: (1) the NRC adoption of the Assurance Requirements; (2) the implementation of the EPA Standards in that EPA has provided guidelines for implementation, which they say if not followed may reduce the credibility and effectiveness of the Standards; and (3) NRC will in the near future be going through a rule-making process, part of which will be a consideration of an amended definition of high-level waste. This would also need to be closely followed and input from the state would need to be provided, depending upon the new definition.

Representative Rust inquired about Subsection (e) on page 92 of the overview referring to avoiding the siting of a repository "where there has been mining for resources, or where there is a reasonable expectation of exploration for scarce or easily accessible resources, or where there is a significant concentration of any material that is not widely available from other sources...". She pointed out these are all different things and wondered why previous mining would be included in case the resource had been removed. Mr. Provost said one of the reasons for this clause was it had been learned at previous mining efforts there was a possibility there had been exploratory drilling. If no one was aware of them, or there was no good record, this could remove the integrity of the site to contain radionuclides. He added that the wells on the Hanford Reservation were not deep ones and would not be at the level the storage area would be. Representative Rust suggested the conditions might be more explicit, and Mr. Provost said they are in the Siting Guidelines, with reference to explanatory documents.

Mr. Provost continued the presentation with a series of overheads explaining the Standards and how they vary from the NRC regulations and the difference between engineered and geologic barriers.

Nancy Kirner questioned if the NRC had to conform their Standards with the EPA Standards. Mr. Husseman said overall they cannot conflict, but the Siting Guidelines have to be such that they will meet the EPA Standards. Mr. Provost said the USDOE has to meet both the NRC and EPA Standards and NRC Standards were set before the Act was passed so they are only changing their Standards to be consistent with procedural changes in the Act. Substantively the NRC is not changing its Standards.

Extensive discussion followed on technical details of the Standards. Mr. Provost said the major staff concern was that NRC incorporate the EPA language under "Assurance Requirements". He said this

should be monitored very closely to be certain NRC does not cut any corners.

One of the questions raised by Representative Nelson was how the Standards apply to defense wastes at Hanford. Mr. Provost said Part A relates to the radiation received by members of the public at a repository while it is being handled, covered in 191.01(b), and would apply to the high-level waste in tanks and the transuranics. Representative Nelson then questioned the definition of "transuranics", which he understood had been changed which makes less waste at Hanford fall into this category. Mr. Provost said the NRC will soon go to the Federal Register with some proposed regulations that define more closely the high-level and transuranic wastes to determine better delineation based on some actual numbers to define all of these wastes. He said this will be a very major issue to the state of Washington because of the wastes stored there.

There was further discussion in this area. Representative Nelson then inquired if other states planned any action against the Standards, and if so would there be an opportunity to join them. Mr. Roe said a motion could be made to intervene if another state chose to litigate. He said all of the states active in this program were presented with the EPA Standards issue at the National Attorneys General meeting, and as far as he was aware, no state now was proposing to initiate litigation. He said he had also met with representatives of various environmental group, including among others the National Resources Defense Counsel, Environmental Policy Institute, and the Sierra Club Defense Fund, and he knew of no one of this group planning to institute litigation on the substantive aspects. He added that representatives from some of these groups met with Dan Egan of EPA for a fuller explanation to the questions that were raised.

Representative Nelson expressed his reservation about accepting a rule that would apply to an unknown situation, such as the plutonium in the defense wastes at Hanford, since the amount of plutonium in the tanks and cribs is not known. He said he found it hard to believe the U.S. Department of Energy does not know this figure.

Mr. Eschels asked if adoption of the rules by EPA allows more of the defense waste to be left where it is than would be left before the rules were adopted. Mr. Provost said the regulation was actually required under the Atomic Energy Act and the Nuclear Waste Policy Act moved up the timeframe, so it is an issue of how restrictive it is, and not when it will be accepted. The state's concern, he said, is that both the Science Advisory Board and Advisory Committee on Reactor Safety, mandated committees of both NRC and EPA, have stated the regulation is probably too restrictive. In the state's thinking, he said, if a delay is requested, the regulation goes back to those two bodies, there is the possibility of having a looser regulation on the second round.

Mr. Eschels said he understood the staff conclusion was that this Standard meets that condition that the regulation has to protect the general environment, etc.

Representative Nelson recommended that the Board take no action and request the U.S. Department of Energy to give the Board the plutonium levels of the defense waste repositories in order to understand what the regulation does. Mr. Provost said this question was asked at the meeting on the Focus Paper, and inquired what the problems were for getting information on individual tanks. The answer received was USDOE had information on what went into the tanks, but they have pumped out liquids, evaporation has occurred, as well as mixing. Thus, liquids have been removed from these tanks leaving crusts all through them and it is very difficult to get a representative sample from those tanks to be able to tell with any assurance what they contain. He said they had a fairly good knowledge of the totals, but these totals were averaged among the tanks. It is understood now, he said, that the EIS will not recommend a reference case to handle any particular solution like that in the tanks and they feel they have to have time to go back to the individual tanks to get the information, which is a very difficult job of drilling through solids and blending those samples to obtain it.

Mr. Provost said the USDOE recommendation, as he understood it, will be to study the material to get the information so they can make the tank-by-tank decision on it later on. This is a very significant change from the earlier decision to recommend in-place stabilization, he said.

Mr. Roe inserted that the Standards under consideration relate to repositories. The defense wastes presently emplaced at Hanford are not in the repository within the meaning of the statute, as the Standards only relate to a deep, geologic repository.

Representative Nelson continued and asked what the Hanford Isolated Barrier Facility would be called--would it be a repository permanent disposal facility, or what? He understood if a barrier were engineered over these tanks it comprised a permanent disposal. Mr. Provost said they would have to proceed under 191.17 to do that as this section was inserted specifically for defense wastes. This is referred to as the Waiver Process.

Mr. Husseman said on that question in the EPA comments to the rule, there is a specific example in connection with the revisions in 191.17: "Another situation that might lead to suggested revisions would be if additional information were developed regarding the disposal of certain wastes that appeared to make it inappropriate to retain generally applicable standards addressing all of the waste covered by this rule. For example, DOE is considering disposal of some of the defense wastes by stabilizing them in their current storage tanks, rather than relocating them in a mined repository. The agency has not assessed the ramifications of such disposal yet, and it is certainly possible that it could be carried out in compliance with all the provisions of subpart B being promulgated

today. However, it is also possible that there may be benefits associated with such disposal that would warrant changes in subpart B for these types of wastes. If so, 191.17 would govern the consideration."

In other words, Mr. Husseman stated, it is unknown. Mr. Roe said one of the most sensitive issues before the Board was the defense waste issue, and he will continue to study it. However, in talking to experts and others, he thought the question could not be answered in the context of the Standards, as they do not make that determination.

Mr. Provost said this issue has created a great deal of discussion between the federal agencies and the state had reservations about the alternative provisions. That is why the alternative provisions have been proposed for public comment in the Federal Register, together with information described in the costs, risks, and benefits of disposal in accordance with alternative provisions. Basically, he said, the point the Department of Energy was making was that digging out the material from the single-shell tanks with its exposure to the workers and possible spread to the environment may be much greater than just leaving it there. When this was discussed earlier in a meeting with the EPA, it was stated the rules could be changed later on, even if this provision were not included.

Mr. Husseman said in asking the specific question of whether these result in more defense waste escaping the requirement for treatment as high-level waste, Representative Nelson had posed a question that was not answered. Mr. Husseman said during the next week the question would be studied with the goal of coming up with a better answer.

Other Business

U.S. Department of Energy Communication. Mr. Bishop called attention of the Board to a letter signed by John H. Anttonen, Assistant Manager for Commercial Nuclear Waste, Richland Operations Office, U.S. Department of Energy. The letter stated the decision by USDOE to purchase the large-diameter drill rig which has been on the Hanford site since February, 1983. Mr. Anttonen stated the purchase was negotiated on a buy-back basis if Hanford is not chosen as a site for characterization. He emphasized the purchase should not in any way be misconstrued as implying pre-selection of the Hanford site.

Jim Mecca of USDOE, Richland, said the letter to Mr. Husseman of November 4 had an attachment which puts into perspective the situation regarding the drill rig. He said in the view of the USDOE this was a business decision and with the buy-back clauses in it, it becomes a more economical venture than to lease the rig as had been done in the past. He added the transaction is not final yet, and

the negotiated purchase still must be approved by the Court as the parent company is in bankruptcy.

Mr. Bishop said it was planned for future meetings to give USDOE a place on the agenda to give the Board an update of the current events at Richland. Mr. Mecca said this would be appreciated and should Hanford be selected there would be many details of the program which should be discussed with the Board and the Department of Ecology, including compliance monitoring on the site characterization and augmenting all aspects of environmental baseline programs.

Washington State Institute for Public Policy. Max Power of the Institute said in forming a technical review panel working with the Advisory Council, the Institute may have to have a more formal arrangement than was first believed in order to serve everyone well. That would mean coming back to the Board to discuss selection of a steering committee, paneling groups, and going back to the U.S. Department of Energy for a grant amendment to cover some meeting costs.

Mr. Power said the USDOE is being invited to brief the Legislators at the beginning of the session in January. They will give both an overview briefing for any interested Legislators on the Nuclear Waste Policy Act and the site nomination process and a more technical briefing for members of the House and Senate Energy and Utilities committees.

Mr. Power said the Institute is working with a National Conference of State Legislatures' group and the Institute's staff for a site tour and briefing at the Hanford Reservation in the spring.

Foreign Wastes Shipments. Mr. Husseman referred to the letter sent by the Board to the U.S. Department of Energy on September 25, 1985, concerning the news that shipments of spent fuel from Taiwan might be coming through the Port of Tacoma. In the letter the Board stated that if, in fact, these shipments were going to be made the Board expected that the Department would follow the same rules which will in the future be followed under the Nuclear Waste Policy Act. In addition, it requested information concerning ownership of the spent fuel and potential liability responsibility in case of an accident.

A response dated October 30, 1985, to this letter was received by the Chair and distributed to the Board. On the issue of liability, the letter states that USDOE would be the title holder of the fuel from the port of origin to its destination in South Carolina and would assume financial responsibility for liability as provided for under the Price-Anderson Act. Mr. Husseman said the letter was not clear how far this would go, as the money backing the insurance under Price-Anderson is paid by the owners of the nuclear reactors across the country. There is a question, he said, whether or not the industry would agree to having these monies insure against an accident in transporting this foreign waste. Mr. Husseman said he

brought this up for Board consideration of an additional letter to clarify the issue.

Mr. Eschels said this was only a number of questions where there is not a definitive answer. He thought this one needs to be examined by legal counsel in order for the state to know what is meant by the Department "assumes financial responsibility for liability as is provided for under the Price-Anderson Act".

Mr. Eschels continued that at the Transportation Committee meeting yesterday in looking at the near-term shipments, not just the foreign ones, he asked the members of that group to forward to him the concerns and unanswered questions outstanding by next week. These will be put into one document which will be transmitted to the U.S. Department of Energy, he said. Mr. Eschels said a formal way was needed to transmit these questions and the conditions the state is expecting.

Mr. Husseman said this that legal counsel would be asked to provide a legal opinion.

Water Rights. Mr. Eschels pointed out two letters pertaining to the water rights issue distributed to the members. In response to the state's concerns about the water rights on the Hanford Reservation, Secretary Herrington, USDOE, wrote Governor Gardner on October 4, 1985, in response to his letter of March 4. He indicated the Department of Energy would, "in the spirit of cooperation and as a matter of comity", submit the permit application for the use of water for site characterization activities, although the Department remained of the opinion that it had a reserved water right sufficient to conduct site characterization and repository operation activities at Hanford. The second letter from the Governor, dated November 12, acknowledged receipt and advised the Department of the procedure for securing a water right permit, suggesting it be described in the final Environmental Assessment for the Hanford site.

Mr. Eschels said he believed this exchange of correspondence eliminated a need to consider litigation.

Economic Damage. Representative Nelson said in his discussions with Roger Gale of USDOE, Mr. Gale indicated that there would be a willingness to discuss with the state its concerns about economic damage. Representative Nelson recommended that the state engage in these discussions. He thought USDOE would like a letter from the Board to Mr. Rusche, indicating the state's concerns and needs.

Mr. Husseman said the Board had taken a position on this issue previously. Should it so desire, a letter could be composed to follow up on the former Board position, using the material in Representative Nelson's letter to the National Academy of Sciences. Mr. Bishop said such a letter would be prepared in consultation with Representative Nelson.

Public Comment

None

There being no further business, the meeting was adjourned.



OFFICE OF THE ATTORNEY GENERAL

Inter-office Correspondence

Date: November 7, 1985

To: WARREN BISHOP, Chairman
Nuclear Waste Board

From: CHARLES ROE *CR*
Senior Assistant Attorney General

Subject: Litigation Status Report

There have been no significant actions taken since my last report to you. The general status of various litigation areas is presented in the following paragraphs.

I. Litigation

A. Siting Guideline Litigation

State of Washington, Nuclear Waste Board v. United States Department of Energy, 9th Circuit Nos. 85-7128 and 85-7253.

As previously reported, the USDOE moved to dismiss the Board's case on the grounds that the guidelines are not "ripe" for review. All briefing by the parties has been completed. No date has been set for oral argument. It does not appear that time for oral argument will be granted.

Mississippi, Vermont, and Utah filed a motion to intervene in our suit in August for the limited purpose of supporting our position on the United States' motion to dismiss. The motion was denied late in that month.

B. Funding Litigation

1. Nevada v. Hodel, 9th Circuit No. 84-7846. This case involves Nevada's dispute with USDOE over the refusal of the federal agency to fund physical activities proposed for conduct by Nevada. The federal Court of Appeals in San Francisco heard oral argument on August 12, 1985. The next step is for that court to render an opinion.

2. Potential Litigation Funding Litigation. The USDOE has denied Washington's request for funds to support litigation involving the federal government's implementation of the Nuclear Waste Policy

Act. A review with other states indicates many states are interested but no state has immediate plans to initiate litigation. (As reported orally at the August board meeting, the "litigation funding" issue may be decided in Nevada v. Hodel, supra.)

C. "Potentially Acceptable Siting" Litigation

In Texas v. United States Department of Energy, F.2d _____ (5th Cir. No. 84-4826, decided June 10, 1985), the federal appellate court in New Orleans granted a motion to dismiss on the grounds that USDOE's designations of sites in Texas as "potentially acceptable sites" for consideration for characterization were not final actions under section 119 of NWPAA which are ripe for review. Last month, Texas filed a Petition for Writ of Certiorari with the Supreme Court of the United States.

E. "Monitored Retrievable Storage" (MRS)

Tennessee v. Herrington, U.S.D.Ct. M.D. Tenn. No. 385-0959 relates to section 141 of NWPAA. That section directs USDOE to report to Congress its recommendations relating to the establishment of a monitored retrievable storage (MRS) facility for the disposal of high level nuclear waste. In July, 1985, USDOE recommended the location of such a facility in Tennessee. On August 20, 1985, Tennessee challenged USDOE's processing of the MRS provisions of NWPAA contending that USDOE's actions were in conflict with "cooperation and consultation" requirements of NWPAA and that NWPAA, itself, conflicts with the federal constitution, Art. I, sec. 7. The United States has moved to dismiss the case on jurisdictional grounds.

II. Potential Areas of Litigation

A. Water Rights

Last month Ben Rusche responded to Governor Gardner's letter to Secretary Herrington, dated March 4, 1985, pertaining to USDOE's need for the acquiring of water rights relating to site characterization and repository operation at Hanford. In a nutshell, USDOE contends it owns "reserved" water rights, i.e. water rights established under a federal law doctrine; thus, there is no

need to acquire a "water right" under state law. However, USDOE states it will submit a water right permit application to the appropriate state agency as a matter of "comity" if Hanford is selected for characterization under the Nuclear Waste Policy Act.

I continue to work on this matter with Warren Bishop and Terry Husseman on this important subject. One of my primary activities in relation thereto will be to carefully research the base, in law and fact, of USDOE's reserved right claim position. Last month I conducted research at the National Archives.

B. Other Areas of Evaluation

1. Defense Wastes. This area is one that is in the forefront of my activities working closely with Terry Husseman and you.
2. Section 114(f) - Preliminary Determination of Suitability. Since the last meeting, I have discussed the various potential avenues to test USDOE's interpretation of section 114(f) as set forth in USDOE's "mission plan." The discussion is now centered on some USDOE action in the "environmental assessment issuance, nomination" context.

I trust this will assist you in the conduct of your Board's meeting next Friday.

CBR:sc

cc: Terry Husseman
Jeff Goltz

STATE OF WASHINGTON
NUCLEAR WASTE BOARD

RESOLUTION 85-6
November 15, 1985

WHEREAS, the Nuclear Waste Policy Act (NWPA) establishes a process which, if properly followed, is intended to result in selection of the safest site for the first repository from among nine potential sites which were initially identified for consideration; and

WHEREAS, the selection of sites for site characterization is a critical step in the process; and

WHEREAS, the ranking methodology used and the implementation of the method are important components of the site selection process; and

WHEREAS, the state of Washington Nuclear Waste Board in their comments to the U.S. Department of Energy (USDOE) Siting Guidelines, Mission Plan, and Draft Environmental Assessment (DEA) has asked for an opportunity for state and public comment on specific ranking methods and implementation of such methods; and

WHEREAS, on August 1, 1985, Governor Gardner recommended that USDOE pause in the site selection process long enough to allow a team of non-USDOE experts to make an independent comparative evaluation of sites; and

WHEREAS, on August 29, 1985 USDOE requested that the National Academy of Sciences (NAS) review a document titled "A Methodology for Aiding Repository Decisions"; and

WHEREAS, on October 11, 1985, NAS concluded that the concerns which it had earlier expressed regarding the methods used by USDOE for ranking sites had been addressed, but an opportunity was not provided to the Academy to examine the implementation of the proposed methodology; and

WHEREAS, on October 30, 1985 USDOE requested that NAS serve as an independent panel of outside experts to conduct a comprehensive analysis of the implementation of the ranking methodology pursuant to a mutually convenient schedule.

NOW THEREFORE BE IT RESOLVED by the Nuclear Waste Board that:

1. The Board expresses appreciation to USDOE for its decision to fulfill the state of Washington's request for an extension of the Environmental Assessment process to allow ample time for an independent review of the implementation of the ranking methodology by NAS.
2. The Board reiterates its contention that the independent review of the methodology is a critical event which requires consultation with the state of Washington.
3. The Board directs the Nuclear Waste Board Chair to transmit this resolution to appropriate persons in the USDOE, the NAS, and the state of Washington Congressional delegation.

Approved at Olympia this 15th day of November, 1985.



NUCLEAR WASTE BOARD
CHAIR

CONGRESSIONAL PROPOSALS

November 7, 1985-R

ON

FEDERAL LIABILITY FOR HIGH-LEVEL NUCLEAR WASTE ACTIVITIES

Proposals	Amendment to Price-Anderson Act	Expressly Applicable to Waste Program	Strict Liability	Compensation Objective	Funding Source	Congressional Status
A. Senate						
1. S. 1225 (by Senator Dole NOTE: prime sponsors are Senators McClure and Simpson)	Yes	Yes	No--(covers only those injuries relat- ing to "extraordinary nuclear occurrences" as defined by USDOE regulations)	Full compensa- tion as to those covered.	1. First \$2.4 billion from Nuclear Waste Fund of NWP.A. 2. Remainder to be pro- vided from source under expedited procedure requiring Congress to act on compensation plan submitted by President within 60 days.	Hearings held on Oct. 22 and 23, 1985 before Sub- committee on Senate Environment and Public Works, Nuclear Re- sources Subcommittee (chaired by Senator Simpson). The further hearings presently scheduled. (In the near future, a list of questions on policy issues is likely to be sent to the interested states by the Senate Committee.)
2. S. 445 (by Senator Hart)	Yes	No	? (Waiver of defenses applies to all nuclear incidents)	Full compensation.	?	"
3. S. 1761 (by Senator Stafford)	Yes	Yes	? (Waiver of defenses applies to all nuclear incidents)	Full compensation.	? (Nuclear Waste Fund, in part.)	"
B. House of Representatives						
1. H.R. 51 (by Rep. Price)	Yes	No	? (Waiver of defenses applicable to all nuclear incidents)	\$1 billion per incident limitation.	?	Last hearings held on June 6, 1985 by the House Interior and Insular Committee's Subcommittee on Energy and the Environment.
2. H.R. 445 (by Rep. Seiberling)	Yes	No	? (Waiver of defenses applicable to all nuclear incidents)	Full compensation.	?	

Proposals	Amendment to Price-Anderson Act	Expressly Applicable to Waste Program	Strict Liability	Compensation Objective	Funding Source	Congressional Status
3. H.R. 2524 (by Rep. Morrison and Rep. Dicks)	Yes	Yes	Yes(?) (Waiver of defenses applies to all USDOE waste activities)	Full compensation.	1. First \$5 billion from Nuclear Waste Fund of NAWPA. 2. Remainder from general federal revenues.	"
4. H.R. 2665 (by Rep. Weiss)	Yes	No	? (Waiver of defenses applies to all USDOE activities).	Full compensation.	?	"
5. H.R. 3653 (by Rep. Udall)	?	No	? (Waiver of defenses applies to all USDOE activities.)	Full compensation.	?	House "mark-up" session was held by Interior Committee on October 29, 1985. A second "mark-up" session will be held on November 19, 1985.*

*An amendment pertaining expressly to high level nuclear waste by Rep. Vucanovich of Nevada, as attached, may be presented at this mark-up.

STATE OF WASHINGTON
NUCLEAR WASTE ADVISORY COUNCIL

RECOMMENDATION
October 18, 1985

We, the members of the Advisory Council, recommend to the Nuclear Waste Board that:

1. The two bodies continue to meet on the same day (third Friday of each month) in the same location;
2. In the interest of promoting geographic diversity for public outreach, the two bodies periodically meet in cities other than Lacey or Olympia, with special efforts to include Eastern Washington cities; and
3. The High-Level Nuclear Waste Management Office staff should suggest various public involvement options, and with guidance from the Board and Council, find ways for the Council to interact with the local populace.

Approved at Olympia this 18th day of October, 1985.

Sharon C. Bishop a
NUCLEAR WASTE ADVISORY COUNCIL
CHAIR

JOHN SPELLMAN
Governor



WARREN A. BISHOP
Chair

STATE OF WASHINGTON
NUCLEAR WASTE BOARD

Mail Stop PV-11 • Olympia, Washington 98504 • (206) 459-6670

NUCLEAR WASTE BOARD

Regular Meeting

December 20, 1985
1:30 p.m.
EFSEC Hearing Room
Rowesix, Building 1
4224 - 6th Ave. S.E.
Lacey, Washington

AGENDA

- | | |
|--|---------------------|
| 1. Introductory Remarks | Warren Bishop |
| 2. Minutes of November 15, 1985 Meeting | |
| 3. Correspondence | Terry Husseman |
| 4. Status of Low-Level Compact Process | |
| 5. Public Involvement Report | Marta Wilder |
| 6. Status of Ranking Methodology Review Process | Don Provost |
| 7. Committee Reports | |
| a. Environmental Monitoring Committee | Dr. John Beare |
| b. Socioeconomic Committee | Curt Eschels |
| c. Transportation Committee | Dick Watson |
| d. Contractor Assistance Committee | Ray Lasmanis |
| e. Mission Plan Review Committee | Dick Watson |
| 8. Litigation Status | |
| a. Court decision on Nevada lawsuit | Charlie Roe |
| b. Summary report | Charlie Roe |
| 9. Federal Legislation Status | Charlie Roe |
| 10. Richland DOE Report | |
| 11. Washington State Institute for Public Policy | Max Power |
| 12. Oregon Report | David Stewart-Smith |

13. Meeting and Trip Reports

- a. USDOE Quarterly Information Meeting
- b. First Round States/Tribes/USDOE Meeting

14. Other Business

15. Public Comment

16. Adjourn

NOTE: An information meeting on radioactive defense wastes has been scheduled for 1:00 p.m. on December 19 at the Saint Placid Priory East Wing multi-purpose room. USDOE will describe the current Hanford Defense Waste Management Program and describe a soon to be released Environmental Impact Statement which will evaluate potential options. The meeting is open to the public. Please call Don Provost at 459-6718 if you have questions.