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CENTERS OF NUCLEAR WASTE ADVISORY COUNCIL MEETING
December 20, 1985

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9:30 a.m.
EFSEC Hearings Room
Rowesix - Building #1
4224 Sixth Avenue S.E.
Lacey, Washington

- Council Members Present:
- Warren A. Bishop Chair
 - Harry A. Batson
 - Philip Bereano
 - Phyllis Clausen
 - Dr. Estella B. Leopold
 - Terry Novak
 - Sam Reed
 - Robert Rose
 - Commissioner W. H. Sebero
 - Betty Shreve
 - Jim Worthington

WM Record-File
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WM Project 10
 Docket No. _____
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The meeting was called to order by Warren Bishop, Chair.

Marta Wilder, Public Information Officer, asked Kathy Vick of Enviro-sphere to discuss the needs for the January/February Newsletter which will contain a two-page spread of the Council members' biographies and photos. Ms. Vick said several members have not submitted a black and white photo and she was prepared to take them the following meeting. Ms. Vick said in a similar article on the Board members telephone numbers were included, and she asked if the Council members wanted their phone numbers listed in the forthcoming Newsletter. Mr. Bishop asked that any member objecting to a phone number listing advise Ms. Wilder or Ms. Vick.

Phyllis Clausen said she felt there was a need for a second phone and asked what progress had been made on the suggested 800 number. Mr. Bishop said he hoped a toll-free number could be incorporated as a part of the program under the guidance of the Public Involvement Committee. He pointed out it is an expensive operation because of the staffing that is required and that it should be measured against other activities.

Terry Husseman drew attention to the list of Acronyms prepared by staff for the Council. Also furnished the Council and Board were two basic information documents: "The Nuclear Waste Primer", prepared by The League of Women Voters; and "Radioactive Waste Issues and Answers, published by the American Institute of Professional Geologists, both of which contain glossaries. Both of these publications are also available in the Reference Center.

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Defense Waste Presentation

Don Provost briefly outlined the informational meeting held yesterday afternoon. He said Jerry White of the U.S. Department of Energy described their efforts to issue a Draft Environmental Impact Statement on Defense Wastes at Hanford. It will describe current practices and options the USDOE might utilize to handle safe disposal of wastes. The options will consider in-place disposal to glassification to be placed in a geologic repository. The Draft EIS is scheduled for release in late February, Mr. Provost said, but it could be late in March. USDOE has planned a comprehensive outreach program on this issue, with open houses, pre-hearing meetings to receive citizen information, with more formal hearings to receive testimony coming later. The Council and Board will have to decide how to interact with this program, and the entire process will consume a great deal of time.

At the meeting yesterday, Mr. Provost said a final copy of the Focus Paper on the defense waste issue for Washington State produced for the Board and Office by EnviroSphere was distributed and copies given to the Council.

Betty Shreve said in connection with the USDOE public involvement program and the efforts of the Council in that area she was concerned confusion to the general public would result. Mr. Husseman said one of the problems would be if the Environmental Assessment comes out on time, which is where the focus will be even though the state would be commenting on the Draft EIS, would be to maintain the public's understanding between the EA and the Draft EIS, which is a separate issue dealing with the defense waste at Hanford. The Office is in the process of preparing a Request For Proposal (RFP) to review and comment upon the Draft EIS. Mr. Husseman said he thought USDOE was trying to get the Draft EIS on Defense Wastes before the public for their input, but it does not preclude the state from conducting its own public information program.

Mr. Provost added this situation had been faced on other federal documents that were issued. There is bound to be confusion, he said, and the decision will have to be made whether a staff person attends the USDOE meetings, as done in the past, the state holds its own separate hearings, as was done on the draft Environmental Assessment, or a different option is chosen.

Philip Bereano asked if Monitored Retrievable Storage could be considered an option to "deep geologic" disposal of these wastes. Mr. Provost replied the MRS is an option for the commercial program and his understanding of the defense waste situation is similar to what is being done in South Carolina. That state has a lot of defense waste also and they are building a vitrification plant. The U.S. Department of Energy plans to glassify the waste, put it into canisters, and then place it in a storage equivalent to an MRS. This would be a federal MRS. When a repository was ready, this waste would go to a geologic repository. Should a glassification plant be built at Hanford, the wastes would be handled in the same manner, he

thought. However, he said, the Act states defense wastes would be handled separately and not be put into an MRS. In response to a further question, Mr. Provost said in order to make an MRS a permanent storage, it would take an Act of Congress.

Mr. Bishop added that there are two related public information programs planned by USDOE: (1) one related to defense wastes, and (2) one related to commercial wastes. He said arrangements are being made with USDOE for them to make a presentation to the Council on these programs in order for the state to understand the nature and shape of their programs and plan its own to avoid public confusion.

Estella Leopold thought Monitored Retrievable Storage could be underground, as well as above ground and wondered if it could qualify for "deep geologic" disposal. Mr. Provost said the Act defines "disposal" as permanent geological, and "storage" as temporary. Therefore, MRS is considered temporary by definition.

Ms. Clausen referred to a secondary issue of interest to Washington listed in the Focus Paper, if Hanford is selected as a repository:

"Commercial waste could be retrieved from the repository and be reprocessed to extract plutonium for defense purposes. The state wants to know the likelihood of this action."

She wondered how the oversight of the state would be continued since defense takes priority. She wondered what kind of assurances the state could have before the wastes were put in any permanent repository. Mr. Provost said this becomes a current issue because the defense side is looking at some new technology on separation of laser isotopes to make it easier to make fissile material from commercial waste. He said the state's understanding of the situation, on both the commercial and the defense side, is that in the foreseeable future it is probably not economically feasible to reprocess commercial wastes, either for commercial purposes or for defense purposes. Reprocessing of commercial waste at PUREX would take specific legislation from Congress to authorize it and it would become a big public issue in which the state would be very much involved, he said.

Ms. Clausen asked if there were an experimental facility on the laser isotope process that would be coming on line in 1986-87, as has been discussed. Mr. Provost said his understanding is that Lawrence Livermore had done bench scale on this and it will be taken up to a pilot plant scale and are looking at funding for this. If that were done it would mean replacement of some facilities in as it would be experimental material on the defense side. He said he knew it was moving ahead under the defense budget.

Minutes of Previous Meeting

Ms. Clausen called attention to a typographical error on the last page, last line. The word "present" should read "prevent". There

being no other changes, the minutes of the November 15 meeting were approved as corrected.

Further Comment by Chair

Mr. Bishop said at the suggestion of one of the Council members, opportunities for public comment would be offered during the meeting, rather than at the very end. He said this would be done after the major items of business, and this could be done before Council decisions are made.

Ms. Shreve commented that since so many of the Council members come the night before the Council meetings, perhaps the Council meetings could be held Thursday afternoons with the Board meetings Friday morning to assure full attendance when the meetings go late. Mr. Bishop explained that proposal was rejected at the very first Council meeting and asked if Ms. Shreve would like the format and frequency of meetings back on the Agenda for the next meeting. He said there were individual members who could not devote that much time, as the Committees will be meeting at least once between each of the regular meetings.

Bill Sebero said he had no objection to seeking public comment during the meetings, as long as the Chair has the ability to control it. He also believed a Thursday meeting could interfere with subcommittee meetings. Also, he said those coming from Eastern Washington spend three days a month now on the program, and he agreed many people do not have the time to spend two full days once a month in Olympia.

Professor Bereano said in his original suggestion he made the point that the Chair would have to play an active role in facilitating the comment period. He said he would also like the Council to consider a recommendation to the Board that the Board in its meetings also have opportunities for the public and for Council members to offer comments in the course of its deliberations.

Sam Reed suggested that if this recommendation is made it be stipulated that public comment would be invited prior to the final decision on each action item. Dr. Leopold, who had offered to draw up a recommendation, was asked to incorporate this suggestion. Mr. Reed added that he had attended the Council and Board meetings as a member of the public representing an organization for the past two meetings, and always had the opportunity to be heard. He said he felt these first meetings of the Council were not typical as so much of the time was being spent in orientation, rather than business.

Jim Worthington pointed out that recently special presentations had been made on the day prior to the Board meetings. The Council members were always invited to attend, and this meant more time spent in Olympia. He said this was another reason a Thursday Council meeting was rejected.

Working Group Organization

Mr. Bishop announced the formation of the following Working Groups:

Public Involvement

Sam Reed, Olympia - Chair
Betty Shreve, Wenatchee
Jim Worthington, Tri-Cities
Phyllis Clausen, Vancouver
Russell Jim, Yakima

Local Government

Bill Sebero, Prosser - Chair
Bob Rose, Olympia
Terry Novak, Spokane
Nancy Hovis, Yakima
Harry Batson, Millwood

Science and Technology

Philip Bereano, Seattle - Chair
Pam Behring, Spokane
Estella Leopold, Seattle

Mr. Bishop suggested these groups hold a meeting prior to the January 17 Council meeting to begin to draft their programs of public involvement.

Mr. Bishop then referred to the Outline for the Council which was prepared by staff as a guide to developing a process to reach a comprehensive, yet flexible, public information and involvement plan. Also placed before the Council was the Memorandum to Warren Bishop from the Washington State Institute for Public Policy outlining their plans for academic review and technical involvement regarding the nuclear waste repository issue in Washington State.

Mr. Husseman stated the Outline paper was a proposed process prepared for Council discussion. The purpose was to assist them to reach a fully defined set of goals, objectives, and a working plan to achieve them. Ms. Wilder added the plan envisioned was similar to the last public involvement plan in that it will remain flexible.

Max Power of the Institute explained their idea of a review network of academic and other technical people. This idea, he said, germinates from the experience in the State of New Mexico with the Waste Isolation Pilot Project for Defense Transuranic Wastes, and the Institute's links with the academic community in the state of Washington. They would like to create a structure that relies on the expertise which lies primarily within the academic community, but also in government and private sectors where there are no conflicts of interest to evaluate independently the work done by and on behalf of the state in the nuclear waste planning process.

Mr. Power said New Mexico had found this to be a very effective way, both to achieve good work and to develop credibility for its position vis a vis the U.S. Department of Energy or other interested parties. He said it would also drive home the point the state has been making for some time that the USDOE should have independent external review of their work in order to establish some credibility and public confidence. The Institute would basically propose to

establish a core group as a technical and academic review advisory group to the Institute--perhaps eight to ten people from around the state with some balance of view, disciplines, and regions. Then under that, perhaps a half dozen working review panels covering areas of geohydrology and geochemistry, physical geology, design, geoen지니어ing, worker safety, transportation, socioeconomic impacts, and radiological health--and as developments occur, convene those panels to review specific work done on behalf of the state. In order to do that, he said, work would probably have to be done on behalf of the U.S. Department of Energy to which the state is responding. The best early example is likely to be the Site Characterization Plan, which will come in sections and go through a number of revisions on which the state will be asked to comment. It would be expected comments developed by Board staff and contractors would be put to an independent review for additional advice and critique of those comments in order to take them into account to produce a finished set of comments.

Other concerns of this group and its panel would involve specific projects on behalf of the Legislature.

Mr. Power said with the Council's Science and Technology group functioning, the Institute would hope to rely on them to help the Institute with those areas, as they do not view outreach as the primary concern of the Institute. The Institute would like to work with this group to help in identifying people to serve in peer review panels and providing advice on the Institute's projects and workshops or special events. He said it was hoped the Council, Board, and staff would feel the Institute's groups would be a resource they could use to tap independent, good, critical advice.

Dr. Leopold said she thought it was a good concept for the Council to think in terms of working groups, and while the proposed plan sounded like a good way to get state input, it raised the question in her mind if this were the best way to get the needed input. She said she was concerned about scientists already somewhat involved with the BWIP issue not dominating the panels.

Ms. Clausen inquired if the social scientists would be involved, as well as the physical scientists, and Mr. Provost responded in the affirmative.

Professor Bereano pointed out that many of the engineering societies and other professional societies have monthly or periodic meetings. They are always looking for programs, he said, and the possibility exists to arrange with some of these societies to sponsor some of these programs, thus reaching increasing numbers of technical and scientific people, who later might decide to devote some energy and help in other ways. As Chair of the new Science and Technology group, he said he welcomed all input and assistance the Council members might have in dealing with this issue.

Dr. Leopold thought the first question to be answered was how to develop, in an efficient way, a public network of input into the Council proceedings; how can public opinions be surveyed about the issues under the three working groups. A main theme in her Working Paper distributed at the last meeting was the importance of having some kind of structure called a Task Force headed by a public person not sitting on the Council to serve these working groups. She thought those groups representing the different interests in the public, could communicate with the Council through White Papers. This would be an efficient way to give the Council input from different geographic locales on their pertinent concerns. Dr. Leopold continued and said she recognized the serious problem of reimbursing these public people doing this work for the Council.

Mr. Bishop asked how Dr. Leopold envisioned the staff would relate to these individual groups. She presumed that some help would be needed in copying, distributing, but not coordination of meetings, etc. The local Chair, she thought, could make these arrangements.

Mr. Reed commented he considered action on Dr. Leopold's suggestion was a little premature, speaking as Chair of the Public Involvement Group. He said he would like that Group to meet, determine its objectives and how it plans to arrive there, then against that background examine the utility of her proposal. He said he was bothered to some extent by the creation of new special interest groups to focus on this issue. He added he was aware of quite a number of public groups which have a concern with this issue and already have a structure and resources with the ability to work on a problem and develop a comment, a proposal, or a reaction. He thought the Council would want to utilize those groups to the fullest extent, although they might or might not meet the objectives of Dr. Leopold's proposal. He said he would be hesitant about embarking upon a proposal that ignored existing groups with an interest and capability for examination and analysis and intelligent comment.

Dr. Leopold referred to the letter of December 12 to Warren Bishop from David A. Tarnas of the Institute for Marine Studies at the University of Washington, copies of which were distributed. She said he makes the point of the importance of utilizing a variety of these public interest groups, including those who may appear to be anti- or pro-repository siting.

Ms. Clausen felt it was important to have a flow of information from diverse groups and she wanted to see the public involvement going as soon as possible and in as wide a range as possible. All the groups already functioning should be encouraged to continue to do so in their own particular directions. She said from her experience there was often a problem of getting them as everyone has so many other commitments, with time limitations. She wondered if the Council could provide a facilitator role and a personal contact with the different organizations. This might be done by asking the known organizations to appoint a contact person with the Council person in that area making the personal contact, with periodic follow-up. She

offered other ideas which will be considered by the Public Involvement Group, of which she is a member.

Professor Bereano asked the best way a member of the Council could contribute to the plans for the Public Involvement Group. Mr. Reed responded he was encouraged by the offer, and although only four Council members were serving on the Working Group, the entire Council had the responsibility for the Group to do its job well. There is input needed, he said, and the result of the Group's deliberations will be brought back to the Council for its review and comment. He suggested any written comments or ideas be sent directly to Marta Wilder of the staff, who will make the proper distribution to the Group members.

Mr. Husseman then discussed the staffing plan for the near future. The contract with Envirosphere will terminate at the end of the year, and it will not be renewed. The U.S. Department of Energy inserted a new clause in their Request For Proposal, stating successful bidders on an USDOE contract, the contractor and its subcontractors or affiliates, may not be involved in any state projects concerning the high-level waste area. As a result, he said, Envirosphere felt it would prefer not to continue the contract with the state, although they have been working with the Office to close out the work started and will continue to do so, as needed, past the first of the year if necessary.

The Staffing Plan that was approved by the Board, and that portion of the plan that needed approval from the state Personnel Board has also been approved. The divisions under the Plan are the technical team, support staff, and public involvement. The public involvement staff would include a manager of public involvement and policy analysis with four positions under this manager. Three of these would be public involvement persons who would be staffing the Working Groups. He said to the extent that whatever plan the Council develops needs additional staff or contract help, the Office can go back to USDOE with an amended grant request if the need is justified.

At this time, Mr. Husseman said, the Office is in the process of hiring one other person to assist Marta Wilder. This person should be on board some time in January. In response to a question, Mr. Husseman said public involvement work will be carried on by the Office until a need for an outside contractor is identified. On the technical side, plans are being made for contractual help.

Mr. Worthington said he wanted to add that the former Public Involvement Working Group received input from the entire Council and this is the only way a good program would work. Concerning the Task Forces suggested by Dr. Leopold, he said there was a need to be very careful as he thought the Council did not have the authority to delegate its responsibility to others outside the Council. He thought each member had a responsibility in the regional areas to go out in the community and make sure they are getting that involvement from those groups.

Dr. Leopold thought authority would not be delegated as the Council is charged to make recommendations to the Board. She asked Bill Sebero if he thought local government resource people would be able to serve voluntarily, or would there be a need to seek USDOE money to compensate them.

Mr. Sebero said the Association of Cities and the Association of Counties already have a network of people to flow through. Other individuals who have an interest in local government might not, but he agreed with Sam Reed that it was a little premature to comment on this issue. His Local Government Group will meet this noon to make preliminary plans. Some of the resource people available to that Committee are already in groups of their own. He said the Science and Technology Group, along with the Institute, will play a very important role in both of the other two groups. The Local Government Group cannot speak on technical issues and he hoped the Science and Technology Group's expertise will help the Public Involvement and the Local Government groups get this information out.

Mr. Sebero said there will be a little problem forming other Task Force groups, as he feels they already have an avenue to the Council, although they may not recognize it. It will be the working groups' responsibility, he said, to open that avenue to those groups. If this Council is to remain unbiased, he said that input is needed, but whether there should be functioning groups out there would be a problem to him.

Dr. Leopold supported the idea of personal contact that Ms. Clausen had suggested. Mr. Sebero pointed out David Tarnas' letter makes reference to the Hanford Oversight Committee. That is a statewide organization which already has its group and pipeline organized. He said all that was needed was an avenue for them to get to the Council. He said the way he reviews the RCW's there is no financing available for those individuals.

Mr. Husseman commented that he thought an in-depth legal analysis should be done, but as he reads the state law there is a provision in there that allows the Board to set up scientific and technical advisory committees and to reimburse them. He thought prior to the time that language was added it was considered peer review for the Board required and there would be a need for reimbursement. The funding of the peer review group through the Institute may take a legislative change, but this would have to be researched, he said.

Mr. Husseman said that once the Council has decided what programs it wants funded it would have to be determined whether it is feasible.

Ms. Clausen said she was concerned about the practical aspects that would allow people to become involved. They might not wish to become involved, she said, if it takes a tremendous amount of time, effort, and money. If the Council could initiate some personal contacts as she suggested, it could remain independent of the groups. The onus would be on the regional Council member to maintain the

contact to relay the concerns to the Council. She added the suggested process of Task Forces composed of citizens seemed to be something to be considered about four months down the road.

Mr. Husseman reminded the Council work would be continuing on activities already in place.

Mr. Reed said he knew there were many groups that should be involved and with which there had been no significant contact. He thought no inventory of such groups had been made, and suggested this could be an early task of the Public Involvement Group in order to add these names to the Newsletter mailing list as a start. Ms. Wilder said an extensive search around the state was done by staff and EnviroSphere when the Newsletter was first published. In addition, she said, there is a draft networking plan put together, although no action was taken as the Council was in limbo at the time. This would be available for the Working Group, she said.

Professor Bereano said he would not like the possibility of fiscal support for these activities to be put on hold until April. He thought there was a need to know the legal and budgetary situation now. Considering the billions of dollars being spent on the issue and the statute explicitly delineating public involvement as desirable in fashioning a program, he thought there should be no hesitancy to address what might be necessary means to reach those ends. He said public involvement is not the same as public education. He added some groups are well funded to present their interests, while other groups and interest do not have this possibility, and if it is felt the program needs to be open to a whole range of interests the Council must come to grips with this kind of fiscal imbalance. Should the present legal and fiscal situation not include it, he thought the Council should consider making recommendations that would set up the necessary fiscal mechanism. He urged the Office and the legal counsel to look into this set of concerns currently.

Mr. Husseman replied the legal question would be investigated immediately, but until there is a specific plan that might require funding, a grant request to USDOE could not be made.

Mr. Sebero agreed with Professor Bereano. He said this Council from its inception has attempted to get the Council meeting, and the Board meetings, moved throughout the state of Washington in order to have direct access to some of these groups and eliminate the necessity of making long distance phone calls. For this reason he hopes to hold some of his Local Government Group meetings in places other than Lacey. Professor Bereano recalled the recommendation to the Board to consider holding meetings in places other than Lacey and hoped there would be a plan for that in the near future.

Mr. Husseman asked if the Council would be interested in holding meetings in other parts of the state, without the Board. He said there is a problem with the Board moving its meeting place for the reason that during Session the Legislators will never be able to attend a meeting out of Olympia. Although this was discussed

before, and the Council did not want to consider having its meeting outside Olympia without the Board, he was asking again in case there was any reconsideration.

Professor Bereano said he would be pleased to move that the Council would be willing to meet in other geographic locations in the state, even if the Board is not able to accompany it on some reasonable basis, so as to facilitate input by groups that are locating geographically around the state. The motion was seconded.

Mr. Reed said he was bothered to be going over the same thing again. At the first meeting it was decided the Council wanted to meet around the state to the extent possible. It was agreed it was not possible if the Board and Council were meeting on the same day, except when the Legislature was not in session. It was agreed it was desirable to have the Board and Council on the same day. A motion was passed to that effect, it was sent to the Board, and the Board acted on it. He thought it says as soon as the Legislative Session is out of the way, some meetings would start to be held around the state. Now, he said, it is being contemplated the Board and Council meet on separate days, and that is a separate issue he thought had been settled at the last meeting. Mr. Reed said he would be in favor of continuing the way it has been set up to see how it works. He reminded the Council the working groups were not dealt with at the time the decision was made to meet in Olympia. Those can be moved to the extent the members of the group want to, he said.

Dr. Leopold said when a proposal on structure and financing, which is not written yet, the chairs of the working groups should be thinking whether the head of a Task Force could be, as Tarnas says, a non-Council member.

Mr. Bishop asked for a restatement of Professor Bereano's motion: "The Council is willing to schedule meetings in other parts of the state even if the Board is unable to join with it in meeting in the same location on that day." He said this would be done occasionally.

Mr. Bishop called for the question. There were five yeas, and five nays. Mr. Bishop cast the deciding nay vote. He suggested the groups bring the suggestion to the Council in the form fitting with their meetings throughout the state and what they propose for the Council to do.

Public Comment

Andrea Brenneke, Chair of the Board of the Washington Public Interest Group (WashPIRG), stated they are a member of the Hanford Oversight Committee. She commended the Council on its efforts to extend the involvement as they realize there are financial problems getting people to the meetings. She said they had been working extensively on these issues in the last few years. Should there be requests for aid in organizing the outreach program, she advised the Hanford

Oversight Committee can be contacted. She said many of the groups have ideas for developing a program which the Council might want to tap into before making a final decision. She said this offer applied to both WashPIRG and the Hanford Oversight Committee.

Mr. Bishop said it would be expected that objectives of the working groups be presented at the January meeting. He invited the chairs to call the Office for whatever help they might need.

Council Designees to Board Committees

Defense Waste. Mr. Sebero thanked Don Provost for reporting on the Defense Waste Meeting on December 19.

Transportation. Terry Novak, Designee, reported five items were discussed at the meeting yesterday afternoon. The Department of Emergency Management has completed the section of the State Comprehensive Disaster Plan, which relates to chemical and radioactive accidents. They were complimented on their program. On January 8 the Utilities and Transportation Commission (UTC) is holding a hearing on a new rule being promulgated to require trucks carrying radioactive materials to follow the same procedures as those carrying explosives. There would be no allowable public parking of these trucks in public locations or private locations where the owners did not know what they were carrying. A second condition was that the trucks would have to be attended at all times while they are in the state. The Committee was supportive of that rule.

A response to the Draft Transportation Institutional Plan consisted of five pages, which was reduced to one page with the assistance of Senator Barney Goltz. It basically tells the U.S. Department of Energy to "get off the dime", he said.

A bill to be considered by the Washington State Senate Energy and Utilities Committee which provides for permit fee for the transportation of radioactive materials was discussed. The bill is similar to laws in Idaho, Colorado, and other states, and it should be dropped into the hopper the first part of January.

In the United States Senate, Senator Hart has filed S 1162, called the "Nuclear Waste Policy Improvement Act of 1985", on behalf of the state of Colorado which has a major concern about the transportation of high-level nuclear waste. It would require the USDOE to intensify very substantially its research on transportation impacts in the process of making a decision. Mr. Novak said he secured a copy of the bill through the staff of Senator Gorton's office when he was in Washington, D.C. about a month ago. In a call to the cities' lobbyist this morning, Mr. Novak learned the bill was now in Senate Committee with no hearings contemplated, so it is probably dead. It does, however, seem to be the sort of bill the state of Washington should be supporting, Mr. Novak said.

Mr. Novak suggested further action should be pursued, although in Committee those present were reluctant to make a recommendation on a

political question. Mr. Bishop said since there was no recommendation from the Committee, he thought the Council would have to know more about the bill before taking any action. Mr. Novak said since Congress is out of session for the next month, he would make copies of the bill for distribution to the Council. He said he could discuss it with Charlie Roe, Legal Counsel, and perhaps take it up as a full-scale item at the January meeting. Mr. Bishop said he would refer the bill to Dick Watson, Chair of the Transportation Committee.

Mr. Sebero commented that when he served on the Transportation Committee, the issue of security of these vehicles was brought forward. He asked whether in the movement of this material, if there were a disablement of the rig, would the proposed UTC rule deal with the security issue if it should break down in a lane of traffic. Who would furnish security for that vehicle when it is disabled? Mr. Novak said this particular UTC ruling makes no comment on that possibility.

Socioeconomic. Jim Worthington, Designee, reported he had attended two meetings of the Socioeconomic Committee and an RFP is being developed to identify agencies and public bodies that would be involved in the grants in-lieu-of taxes question.

Environmental Monitoring. Sam Reed said the Committee met on December 10, and referred to all the materials relating to that meeting which were contained in the members' notebooks.

The first item considered was a look at the environmental monitoring by the Department of Social and Health Services which has been going on during the last six months under a contract with the Washington Department of Ecology. One of the projects under way is a study to make certain that the results of the Battelle monitoring and that of DSHS are comparable. The attached Annual Report from DSHS gives all the detail of the ongoing monitoring at Hanford. Mr. Reed said that under the contract with the Department of Ecology, the work that the Advisory Council and the Board have contemplated as necessary to establish background for the repository if it should be located here, is well in hand.

Another action of the Committee was the completion of the establishment of a Quality Assurance Group representing a variety of interests in the Northwest which seeks to guarantee that data is accurate, and that the monitoring that should occur on a regional basis is occurring. That group will meet late in January or early February for the first time.

A report by Dr. Milham of the Department of Social and Health Services on cancer mortality "downwind" of Hanford was reviewed. Dr. Milham concluded there is no increase in the total cancer mortality or in specific cancer types in the "downwinder" area of Franklin County. Mr. Reed said this one study does not answer all the questions people have and legitimately and properly someone should do something more about it.

The Committee looked at the work that was done in connection with the Savannah River installation in South Carolina. The operators of the facility turned to the federal Center for Disease Control (CDC), which is the focus of epidemiological confidence and research in this country and asked that group to establish a committee to review all the monitoring that had been done associated with the Savannah River Project, requesting recommendations and comments. The report was contained in the members' notebooks.

The major action of the Environmental Monitoring Committee was to conclude that a similar examination should be made with regard to the Hanford area. A draft Resolution was reviewed and will be submitted to the Nuclear Waste Board, asking USDOE to request CDC to make a similar study in the Hanford area. Mr. Reed said if this Resolution is passed, the Council should give consideration as to how to get the results of that study to the public.

Professor Bereano asked if the transient population of the areas studied by Dr. Milham was considered. Mr. Reed said this was discussed in Committee, but Dr. Milham did what he could do with the time he had and with the information that was there. That was another reason the Committee thought CDC should come in to conduct a more comprehensive study. No one knows for sure how stable the population is, Mr. Reed said, and that is only one of the unanswered questions.

Public Information Survey

Mr. Husseman referred to Marta Wilder's memorandum of December 12 to the Council summarizing the previous Council's reasoning for conducting a new survey at this time. He said the Council may want to make a decision at this point to conduct such a survey or refer it to one of the committees, but the question should be resolved.

Mr. Bishop said if there were no objection, he would like to turn this question over to the three committees and suggested all of them review this issue in terms of the outreach programs in their respective areas. Then, the issue will be brought back before the Council in January and discussed it in light of the committee recommendations.

Dr. Leopold advised the new members of the Council to keep in mind as they reviewed the survey question some of the former members considered the general design and results of the previous survey a complete disaster.

In response to a question, Mr. Husseman said he did not know the cost of the first survey as he was not involved in the program at that time, but the estimate for a similar survey is around \$25,000 to poll 600 people. Ms. Wilder said the original survey was about \$18,000 for 400 people. Mr. Reed stated in evaluating the first survey, the plan for that period should also be examined.

Significant Events

Nevada Court Decision. Charlie Roe, Assistant Attorney General, referred to his memorandum of December 11 to Warren Bishop regarding the Nevada case, which was decided on December 2, 1985, in favor of Nevada (copy attached). The issues decided are (1) the validity of USDOE's refusal to fund certain pre-site characterization activities proposed by Nevada near the repository site at Yucca Mountain, Nevada, and (2) the validity of USDOE's guidelines for funding states after a state has reached the site characterization stage. (A copy of the Opinion on this case is available upon request from the Office of High-Level Nuclear Waste Management.)

The state had supported Nevada in this litigation in an amicus brief filed by the Board in the 9th Circuit, he said.

Mr. Roe said one point that has been raised in the past was that the case would deal implicitly, if not expressly, with the funding of litigation initiated by states. The United States Department of Justice expressly asked the 9th Circuit to answer that question, but the Court of Appeals did not even touch upon that issue.

Ranking Methodology. Mr. Provost said the ranking methodology of the sites has been a concern to the state of Washington and the other states ever since the Nuclear Waste Policy Act was passed in 1982. The state's main concern was how sites would be ranked and chosen, and from the beginning the state felt there should be an opportunity for comment from the state and the public on this issue. Comments to this effect were made all through the Siting Guidelines process, and again during the review of the Mission Plan. When the draft Environmental Assessment was issued, USDOE ranked the sites in Chapter VII using a very simplistic approach. On August 1, 1985, Governor Gardner testified before Congress, requesting USDOE to "pause" and take time to look at the ranking methodology seeking some non-USDOE experts to review the process. USDOE asked the National Academy of Sciences to review the process and in early October the method was sent to the Academy. The Academy responded the proposed method appeared good, but the implementation raised many questions. The state of Washington agreed with the Academy's comments.

The U.S. Department of Energy then agreed to take the second step and review the implementation of the ranking methodology with the Academy. The first meeting was held on December 14. The state of Washington, along with other states, requested permission to observe at this meeting. USDOE advised they preferred to have this a closed meeting, and the state decided not to force the issue by attending the meeting. No information has come to the state on the discussion held at this meeting, Mr. Provost said.

Another meeting has been called for January 14-16 between USDOE and the Academy. Mr. Provost said although the state is pleased to have the USDOE consult with the Academy, the Act clearly states that on key events and major issues the states and tribes have rights of

consultation at a timely period. The state feels consultation with the U.S. Department of Energy on this subject is in order before the method and the implementation are locked in. He said the Board will be considering the issue this afternoon.

Professor Bereano asked what kind of expertise is the state using in terms of evaluating the ranking methodology. Mr. Provost said on the Environmental Assessment the state's contractor, Envirosphere, had experts working on this issue. They have helped the state identify another contractor with a national reputation who is very knowledgeable, who could be called in by the state. The Washington Institute for Public Policy also has a contractor, ECO Northwest, who was consulted at a Board meeting a couple of months ago. Mr. Provost said he was confident the state could secure the expertise at the time of consultation.

Mr. Provost added that one of the concerns of the state is how the decisions are made. In some of their documents, he said, the USDOE speaks of "iterative formal process", and sometimes it is called "collegial process". This means there is a general meeting of consultants and USDOE representatives who "decide" an issue with no record of the proceedings. The state would like to see that the decision-making process is well documented.

Professor Bereano said he hoped the state would request of USDOE the criteria upon which those judgments were based, since it appears it was not a mathematical decision.

Liability Legislation (Price-Anderson). Mr. Roe referred to his two memoranda of December 11 and 12, regarding the "Price-Anderson" Markup in the House Interior Committee on December 10, and the Vucanovich Amendment, respectively.

Price-Anderson. The Subcommittee had three amendments to HR 3653, the Udall Bill: (1) Vucanovich (R. Nevada) amendment supported by the state, (2) the Barton (R. Texas) amendment supported by nuclear utilities and the U.S. Department of Energy, and (3) the Huckaby (D. Louisiana) amendment. The Subcommittee approved the Barton amendment as amended by Huckaby. The Barton approach is that whatever liability policy is developed by HR 3653 for commercial reactors (under long-established Price-Anderson concepts) will apply as well to high-level waste activities. The Barton amendment does not provide strict liability on the federal government directly, no full compensation, and no "hold harmless" of states' provision. It does cover defense wastes.

Vucanovich Amendment. The bill that was worked up through the efforts of the Nuclear Waste Board, other states, Attorney Generals' offices and Governors' offices came out in the form of the Vucanovich Amendment. It was rejected in the Subcommittee, and that issue will be reconsidered.

The amended bill now in the full committee carries a \$2 billion cap for nuclear accidents, Mr. Roe said. There will be no further consideration of this issue until 1986.

Mr. Bishop added Council and Board members are constantly monitoring this situation to determine the state strategy to bring about the kind of amendment the state would like to see in support of its position. The Washington State delegation is also involved in this issue to help achieve the objectives of this state, as well as other affected states.

Defense Waste Background Briefing

Mr. Bishop said in light of the presentation yesterday by USDOE and Mr. Provost's report earlier along with the release of the Defense Waste Focus Paper, he would like to place this item back on the Agenda for the January meeting. Mr. Provost said he would prepare a separate paper on the Board's position on defense waste and transmit it to the members for review before the next meeting.

Other Business

Dr. Leopold offered as a motion the following recommendation from the Council to the Board with reference to the discussion earlier in the meeting:

"Whereas comments from the audience are important as public input, the Council respectfully recommends to the Nuclear Waste Board that the Board Chair invite public comment before Board action on each important issue."

The motion was seconded.

Mr. Sebero questioned who would make the determination what is important or not. Dr. Leopold said the Chair would decide. Professor Bereano considered this recommendation a step in the right direction, and if there were problems in the implementation they would become apparent and another recommendation could be made to the Board. He agreed the Chair should have the discretion to make the decision.

Mr. Novak said he would vote nay, not because he was opposed to public involvement, but because he thought it was not Council business to tell the Board how to operate their procedure.

Mr. Reed disagreed because the Council's area of responsibility is public involvement. He said that means public involvement in the decision-making relative to the repository issue wherever it occurs, particularly in an area the Council can affect. One of the Council's responsibilities, he said, is to advise the Board and a recommendation such as this is appropriate. Mr. Worthington agreed.

Further discussion followed, and the question was called.

The motion was carried.

Public Comment

None

Other Business

Ms. Clausen inquired when the Yakima Indian Nation presentation would be made. Mr. Husseman advised that at the Atlanta meeting there was an opportunity to discuss this presentation with all three affected tribes, the Yakimas, the Nez Perce, and the Umatillas. They were enthusiastic about making such a presentation, and it has been scheduled for Thursday, January 16, at 1:30 p.m. Notices will be sent when the place is determined as the EFSEC Hearings Room will not be available. The meeting will be taped, he said.

Mr. Sebero announced a meeting of the Local Government Group immediately following the Council meeting. Mr. Reed called a short meeting of the Public Involvement Group, also after the meeting.

There being no further business, the meeting was adjourned.



OFFICE OF THE ATTORNEY GENERAL

Inter-office Correspondence

Date: December 11, 1985

To: ~~Warren Bishop~~, Chairman, Nuclear Waste Board

From: Charles Roe, Senior Assistant Attorney General *CR*

Subject: Nevada v. Herrington, ___ F.2d ___, (9th Cir.,
decided December 2, 1985)

Nevada challenged, by a petition to review filed in the United States Court of Appeals in San Francisco, two actions of the United States Department of Energy (USDOE) relating to funding of state activities under the Nuclear Waste Policy Act in the subject case. The Court ruled on December 2, 1985.

The issues decided are (1) the validity of USDOE's refusal to fund certain pre-site characterization activities proposed by Nevada near the repository site at Yucca Mountain, Nevada, and (2) the validity of USDOE's guidelines for funding states after a state has reached the site characterization stage.

The Court ruled in favor of Nevada's position. In doing so, the federal appellate court took a liberal (rather than a crabbed) view of a state's funding entitlements under the NWPA. The spirit of the Court's opinion is captured in the following from pages ⁴2 and ⁵3 of the opinion:

. . . Congress intended the generator-fed Nuclear Waste Fund, not the state, to pay the costs of any state "participation"--such as evaluative testing --in the choice of sites. The independent oversight and peer review which only the states are poised to provide would immeasurably "promote public confidence" in general and among Nevada residents in particular.

These studies would also promote the statutory purpose of "provid[ing] a reasonable assurance that the public and the environment will be adequately protected from the hazards posed by high-level radioactive waste," 42 U.S.C. § 10131(b)(1). When the statute repeatedly states that the protection and confidence of the public are goals of the NWPA, see id.; 42 U.S.C. § 10131(a)(1), (4), (7), we must

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conclude that Congress contemplated funding independent state studies even if they are instituted prior to formal site characterization.

The Court's test for funding pre-site characterization is contained in these words from page 9:

. . . any pre-site characterization activities conducted before a state has entered into a consultation-cooperation agreement must be "reasonable" --scientifically justifiable and performed by demonstrably competent contractors -- and cannot unreasonably interfere with or delay DOE'S own activities.

With regard to USDOE's funding of states during the site characterization stage, the Court held USDOE's guidelines "unduly restrict the state's statutory rights." See page 13 of the Opinion, where the Court's test for funding a state's activities is stated at page 13:

. . . DOE must fund relevant site characterization activities which are reasonable, scientifically justifiable, and performed by demonstrably competent contractors, and which would not unreasonably interfere with or delay DOE's own activities.

A copy of the Opinion in the subject case is attached.

Please contact me if you have any questions.

CBR:gb

Attachment