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McConnell

**MINUTES OF NUCLEAR WASTE BOARD MEETING**

**November 21, 1986**

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

**Board Members Present:**

- Warren A. Bishop, Chair
- Senator Max Benitz
- Curtis Eschels
- Representative Shirley Hankins
- Phil Johnson, Ecology Designee
- Nancy Kirner, DSHS Designee
- Ray Lasmanis, DNR Designee
- Representative Louise Miller
- Representative Dick Nelson
- Representative Nancy Rust
- Richard H. Watson
- Senator Al Williams

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

A motion was made and seconded to approve the minutes of the Joint Nuclear Waste Board and Advisory Council meeting of October 16, 1986. Motion carried and the minutes were approved. Another motion was made and seconded to approve the regular Board meeting of October 17, 1986. The motion carried and the minutes were approved.

Mr. Bishop introduced a special guest, Kenneth O. Eikenberry, Attorney General of the state of Washington. Mr. Eikenberry said he wished to highlight a letter he had sent to the President of the United States. Mr. Eikenberry pointed out that during President Reagan's visit to Spokane earlier in November, he stated it was his intention that the Nuclear Waste Policy Act of 1982 be carried out to the letter of the law. Copies of the letter were distributed to the Board and the public. In his letter to the President, Mr. Eikenberry brought to his attention what the state believes to be blatant violations of the law. He outlined specific items, including the second repository decision which the state feels is a mandatory requirement of the law.

Additional letters were sent to Attorney General Meese and Secretary Herrington, which Mr. Eikenberry said he hoped to use as a foundation for a personal visit with them during the next month. He said he planned to appeal to them on the basis that a good-faith agreement had been entered into between the states, the Congress, and the federal government in the NWPA. The Act stuck some compromises, he said, and the actions of the Secretary of Energy have breached those basic premises. Based on all material he had reviewed and the record to date, Mr. Eikenberry believed the state is engaging in litigation that will make those points in a court of law. He

emphasized that this is a legal battle, as well as a political battle.

Mr. Eikenberry thanked the other participants in this process for their cooperation and to share his commitment for cooperation as the efforts on both the legal and political sides are reinforced. He acknowledged the work of Dan Meek and Nancy Smith, Congressional staff from Washington, D.C., who were to give a report to the Board later this morning. He said their efforts in determining documents that had been requested by the Congressional Subcommittee received a response from USDOE that the drafts had been destroyed. As a result of that indication, he said, the state then took legal action which resulted in an injunction against this kind of policy on the part of USDOE. Now that the Subcommittee staff has had an opportunity to review the drafts they were able to obtain, which reveal major flaws and manipulation in the decision-making process, this gives further basis for new litigation steps on the part of the state.

Mr. Eikenberry reiterated his intention to cooperate both legally and on the political side of the equation. Mr. Eschels stated his appreciation for the unanimity of purpose and agreed with Mr. Eikenberry's observation that there are technical, legal problems that go beyond the political problems. He complimented Mr. Eikenberry on his direct action in sending the letter to the President, with letters going to Attorney General Meese and Secretary Herrington. He added his compliments for the staff work done by Charlie Roe, Narda Pierce, Jeff Goltz, and those who assisted them.

Mr. Eikenberry responded he had a real sense of urgency, with particular regard to the second round, as there is a danger of Congress changing the rules in the middle of the agreement. He promised to do everything possible to push the issue.

### Correspondence

Mr. Husseman first noted the News Release from the Office of Congressman Morris K. Udall, Chairman of the Committee on Interior and Insular Affairs. As one of the featured speakers at the Atomic Industrial Forum and Atomic Nuclear Society meeting, Congressman Udall cautioned that unless the nuclear waste program is put back on track and public confidence restored other nuclear legislation in the 100th Congress may become irrelevant. He said, "Without a viable high-level waste disposal program, the future of the nuclear option is in doubt." Although Congressman Udall had supported the USDOE and had continued to oppose legislative efforts to derail the first repository program, he could no longer take that position based on the revelations of USDOE manipulation of the waste program for political purposes.

In response to Representative Nelson's query about reference to upcoming legislation in the 100th Congress, Mr. Husseman said Congressman Udall could be referring to the Price-Anderson legislation that will be upcoming, as well as some licensing legislation contemplated.

The second letter, dated October 31, 1986, was sent to Secretary Herrington by Governor Booth Gardner. The basic thrust of the letter asked again for a list of all the activities ongoing at Hanford that are related to site characterization or the repository. This is considered a 30-day letter, which means the department has 30 days in which to respond. Should there be no response, the Governor has certain powers he can exercise, including stopping of any work in progress on the site. No response to this letter has yet been received. Mr. Husseman said that prior efforts of the Board and Office have not yet pro-

duced this list although it was understood the list had been sent to Headquarters from Richland. He emphasized the need to see this list of activities in light of the ongoing litigation and efforts to oversee the work.

Attached to the copy of the Governor's letter was a short list of project activities that had come to the Office, indicating Rockwell had been considering doing some work with radioactive Iodine-131 to use as a tracer in some studies. Under the Act, they are required to deal with the state before any such action is undertaken. Correspondence was initiated with Lee Olson of USDOE Richland and a copy of Mr. Husseman's letter and Lee Olson's response was attached to the 30-day letter.

In response to a letter sent to Secretary Herrington, dated September 18, regarding the National Academy of Sciences' participation and the failure to restore credibility by taking another look at the process of site selection, the reply from Ben Rusche indicated a reply would be forwarded within three weeks. The response was received within the last few days and was distributed to the Board. Mr. Eschels considered the reply of November 13 a weak attempt at justifying the decision the Secretary made in May. He said in close reading it was an abuse of the National Academy of Sciences' reputation, as it implies certain things about the Academy's work that are not borne out by the facts. It underlines the importance, he said, of Attorney General Eikenberry's letter discussed today, earlier letters sent by the Governor to the Academy, and those sent to the Academy by the state of Nevada, and the bill introduced in the 99th Congress by Representative Swift and Morrison to correct the shortcomings in USDOE's implementation of the Act. All of this, he said, underlines the importance of Representative Udall's announcement, as

the letter from the Secretary of Energy indicates the department is unwilling to correct this process.

Mr. Husseman said the next two letters are an invitation from Representative Nelson to Terry Lash, Director of Illinois Department of Nuclear Safety, and his response to appear at a House Energy & Utilities Committee hearings. Representative Nelson reported Mr. Lash gave a good review of the Illinois program, which is obviously different from that of Washington State in that they are dealing with a large number of commercial reactors. Mr. Lash indicated he saw some opportunities for Washington to adopt some of the monitoring activities Illinois conducted in connection with the reactors. They could apply to the N-Reactor as well as WPPSS #2, the Purex Plant, and other major facilities at Hanford.

The following letter to the Chair from Ben Rusche, USDOE, is in response to the Board's Resolution supporting the NARUC Resolution on the cost allocation process. Mr. Rusche indicates that the methodology will be published soon in the Federal Register. Mr. Husseman said he had word recently this would be published within the next month and the state would receive an advance copy. In response to a question from Mr. Eschels, Mr. Husseman said USDOE stated they will fully consider all public comments received in response to the notice. He said it was not clear what this might entail with regard to the work product.

Mr. Husseman referred to a package of letters relating to the National Academy of Sciences. The first was from Governor Gardner to Frank Press, President of the Academy, urging the Academy to go public and clarify the role the Academy played in the site selection process. No response has been received to date. The second letter from Bob Loux, Director of the Nuclear Repos-

itory Program in Nevada, is a follow-up letter to Dr. Kasper of the National Research Council, who made a presentation and answered many questions at the First-Round States and Tribes meeting. The letter documents Dr. Kasper's remarks and lists the concerns discussed at the meeting in Nevada. The next letter is also from Mr. Loux to Mr. Rusche expressed Nevada's strong feelings on the selection process. The next letter from Congressman Weaver of Oregon was sent to all members of the National Academy, asking specific questions and enclosed a copy of the report prepared jointly by the staff of his Subcommittee on General Oversight, Northwest Power and Forest Management, and the staff of the Subcommittee on Energy Conservation and Power.

Another letter to Secretary Herrington concerning the by-product exemption issue relating to mixed waste was signed by seventy members of Congress. Last Year, Mr. Husseman explained, the USDOE issued a By-Product Rule which in effect would exempt all defense liquid waste streams at Hanford from regulation under RCRA, the statutory and regulatory scheme for providing protection from chemical hazards in wastes. The Courts have held that USDOE is subject to RCRA. By amending their own definition of by-products, they are taking themselves out of the scope of RCRA. The state has issued a very strong letter of comment on the By-Product Rule, as has the NRC, EPA, and many others. All have taken exception to the USDOE position. Legislation was introduced last session in Congress to clarify that USDOE is subject to regulations and the By-Product Rules should be withdrawn. The letter to the Secretary urged that the By-Product Rule be withdrawn and USDOE agree to subject themselves to regulation by EPA and the states.

### Report on Congressional Investigations

Mr. Bishop introduced Nancy Smith, staff of the Subcommittee on Energy Conservation and Power, chaired by Congressman Edward Markey. Also introduced was Dan Meek, staff of the Subcommittee on General Oversight, Northwest Power, and Power Management, chaired by Congressman Jim Weaver.

Subcommittee on Energy Conservation and Power. Nancy Smith thanked the Board for inviting her and noted that Representative Al Swift of Washington State and Representative Ron Wyden of Oregon served on their subcommittee and the investigation of the USDOE program has been greatly aided by their active involvement. She pointed out the subcommittee was not in the business of choosing a repository site. Chairman Markey has repeatedly stated the site decision should be based on geologic and not political considerations, although it appears that USDOE had been consulting the political polling data rather than the geologic data. One of the most stunning examples of the insertion of politics into the process has been the documents the subcommittee obtained in July of this year that covered the second-round repository issue. She said the documents listed the options the department was considering, and every option listed was broken down into political pros and cons and the implications of the political process and the results given the choices before the department. This discovery deeply eroded the credibility of the department and ultimately called into question the real motivation behind many of the department's decisions.

Ms. Smith said Chairman Markey assumed the Chairmanship of the subcommittee two years ago, and given the interest of the members it was clear investigation of the program was one of the top priorities. Five hearings on the

waste program were held in the past two years and an ongoing investigation has been sustained. In addition, the subcommittee has asked the General Accounting Office, the investigative arm of Congress, to become involved in various investigations of the waste program.

On August 1, 1985, the subcommittee held a hearing on the site selection process and the methodology used to select the three top sites in the Draft EA. Chairman Markey was deeply alarmed when USDOE revealed at that hearing that all documents relating to the selection of the methodologies had been destroyed. At that time Governor Gardner proposed a pause in the program and a review of the process by an independent panel. Following the hearing, on August 5, 1985, USDOE contacted the National Academy of Sciences about reviewing the ranking of the sites. Over the next six months the NAS continued its review of the new selection methodology. In mid-March USDOE transmitted documents describing the implementation of the methodology to the NAS for its formal review. At that point Chairman Markey requested these documents, as did the states and Indian tribes, but were refused. Contrary to the clear mandate of the Act which requires the USDOE to conduct the program in an open a manner as possible, the USDOE shut and locked the door to the states, tribes, and the U.S. Congress. They claimed that the release of such documents would compromise the integrity of the NAS review, but when the subcommittee contacted the NAS about the likelihood of this possibility, NAS replied that public release of these documents would not compromise their review. USDOE claimed, in addition, that in order to preserve the independence of the NAS review it would be improper for any party to be in contact with the NAS concerning the documents. However, Ms. Smith said, Chairman

Markey and Representative Swift repeatedly pointed out to USDOE it was rather ironic that USDOE was in constant contact with the NAS and yet they were one of the most interested parties in the outcome of the review.

Since then a flurry of letters had gone back and forth between Chairman Markey and the department. Promises were made by the department to deliver documents, and these promises were broken. On May 28 came the surprise announcement by Secretary Herrington that not only was USDOE choosing the last-ranked site, the Hanford site, for characterization, but the department was postponing the second repository program. On that day Chairman Markey announced that the subcommittee would undertake an investigation of the decision to choose the Hanford site and stated that he believed election year politics were leading the USDOE to suspend the second repository program.

On June 5, 1986, Chairman Markey wrote the department asking for all memoranda concerning the decision to select the final sites. In early July the USDOE informed the subcommittee that all drafts of the recommendation report had been destroyed. In response to this revelation, Chairman Markey and Representative Swift submitted a much broader request for documents. Following the second request, the department decided to open their files to the subcommittee. At the end of July, at the specific request of the subcommittee, USDOE turned over the second-round repository option papers.

Ms. Smith said at this point, as they were reviewing the USDOE files, Congressman Weaver's subcommittee became involved and joined them in the review. The investigation is not over, she emphasized. The subcommittees are awaiting a reply from the department to their memoranda. Chairman Markey, Chairman Weaver,

Representatives Swift and Wyden requested on October 20 that the Secretary draw up a plan to restore the credibility of the program and set a schedule for re-ranking the sites. They are awaiting the Secretary's reply. In addition, she said, the subcommittee is yet to resolve the nature of the contacts between the department and the White House. Undersecretary Salgado refused to be interviewed by the subcommittee investigating staff. Finally, Chairman Markey is especially concerned about the future role of the NAS in reviewing USDOE site characterization activities and whether such a review will be undertaken in a full and open manner.

Subcommittee on General Oversight, Northwest Power, and Power Management.

Dan Meek also thanked the Board for the opportunity to appear before it today. He said Congressman Weaver's subcommittee had a slightly different history of events. Back in 1985 their subcommittee held its first hearing in Portland on the selection of Hanford as one of the three sites for characterization following USDOE issuing their Draft Environmental Assessment. That report contained extremely crude methodologies and came in for heavy criticism by the NAS. He said from internal documents they had seen from USDOE indicated that in the spring of 1985 officials of the department and the staff also recognized these methodologies were indefensible. In the summer of 1985 the department agreed to consider doing a multi-attribute analysis, and in the dry run done at that time the result showed Hanford to be in last place. Although concerned, the department decided to do a full-blown multi-attribute analysis and to see to have that reviewed to some degree by the NAS Board on Radioactive Waste which had criticized them earlier.

Mr. Meek said one issue the Board should be cognizant of and look into further was the relationship between the USDOE and the NAS Board on Radioactive Waste in the process. USDOE officials met with that Board in October 1985, January 1986, and March 1986. The public was not invited to these meetings, nor was Congressional staff. He said the committee had since learned that the information the NAS was given was extremely selected and, in fact, the USDOE victimized the NAS and used them unfairly by not presenting the full report before seeking the approval or the imprimatur of the NAS. At the last presentation made by USDOE to the NAS, Hanford was still shown a distant last. It was that methodology the Academy was commenting on in its April 10, 1986 letter to USDOE.

Following this, Mr. Meek said the department completed its report in April and May of 1986. One thing that made the difference between the draft where Hanford placed last and the final where Hanford came into the top three is that the USDOE applied what it called the "rock-type diversity" criterion. It claimed, in essence, to be applying a portfolio analysis to try to pick the best "set" of three sites, rather than simply selecting the best three sites.

Mr. Meek said in the few weeks they spent down at the Department of Energy they looked into basically two things. One, the process the USDOE undertook was questionable, and two the substance of the report they issued from a methodological point of view was highly questionable. He said Nancy Smith would describe the abuses they found in the USDOE's procedure, which concluded with the recommendation that Hanford be included in the top three sites.

Ms. Smith said they first noted that USDOE had misled the subcommittee.

When they had stated there were no drafts of the recommendation decision, they were believed, but in their checking they found numerous drafts in the files. She said in further checking they found USDOE had made no effort to ascertain whether or not they did have drafts. In looking at the drafts, she said, it was very clear there was a systematic editing of the documents, with sideline comments unfavorable about Hanford and favorable to Richton Dome in Mississippi of the Deaf Smith County site, both of which were deleted from the documents. She said a lot of this editing process happened after the NAS review.

Another interesting deletion in the documents, she said, is that there were statements in the documents that said "... according to the NRC requirements for rock-type diversity, those requirements would be satisfied with two salt sites and one federal site". This was deleted from the final documents. Another suspicious aspect of the way USDOE treated these documents was that they were editing the methodology document at the same time they were writing and editing the recommendation document. She said this raised some suspicion that there was some sort of tailoring of the methodology document to reflect the final decision, which was possibly preconceived.

The final aspect of interest was that the department left out the rock-type diversity criteria until the very end. That raised the question as to if that were so important, why was it not included in the multi-attribute utility analysis and given its proper weight. She said in talking with various members of the department and some of the consultants responsible for going through the methodology and the NAS members, all said they did discuss the rock-type diversity issue and whether it should be included in the MUA. Documents also show meetings

were held to discuss this, but the department decided it would take about four weeks to insert this into the analysis, which would be too much time.

Ms. Smith said it was discovered that there really were no memoranda in the files. Apparently a very small group of people within the department made the decisions and were told not to discuss these decisions. There was little or no documents or notes among those eleven people, she said.

Mr. Meek said it had been heard that USDOE in its response to their report, which was due a few days ago, they would state that several of the evaluations of Hanford and Richton Dome were deleted in the methodology report because they were simply redundant. He point out that the deleted statements do not appear in the methodology report, so they could not be redundant. He went on to say that USDOE was inconsistent in claiming certain documents did not exist when they did, while claiming other documents existed when they did not. On July 31, at a hearing chaired by Congressman Udall, Secretary Herrington volunteered that USDOE would not have indefinitely postponed the second repository program unless they had a legal opinion authorizing this. A copy of the legal opinion was requested by Chairman Udall, which Secretary Herrington agreed to send. However, Mr. Meek said a couple of weeks later in a letter to the Chairman, USDOE stated there was no legal opinion but they had no asked their General Counsel to write one. Even that, he said, did not support the department's position.

Concerning the abuses of the process, Mr. Meek said one of the items he considered most abusive was the fact that the department was proceeding on two tracks simultaneously. They had the methodology report that stated Hanford

was last, which was being revised and changed, and concurrently they were working on the recommendation report stating Hanford was in the top three.

Mr. Meek said the department, in order to justify selection of Hanford, used two basic techniques. In addition to the rock-type diversity technique, they also used the cost-exclusion technique. He said when the costs of health and safety, socioeconomic, environmental costs, transportation and repository costs were added up, the analysis showed that about 99% of all equivalent impacts were in the category of repository costs and transportation costs. This put Hanford so far in last place there was no way to take Hanford out of last place without eliminating the costs. He said there were some briefing papers that indicated the department was making mighty efforts to include Hanford in the top three through the sensitivity analysis, but when this did not work, they decided to leave out repository and transportation costs entirely.

Even after this, he said, they had to make Hanford's health and safety impacts look smaller. They did this by excluding injuries and genetic disorders from their compilation of health effects. He thought this was done because of the limited amount of time to do the study. Had these been included, he said, Hanford would not have been in the top three.

The department also claimed they could exclude transportation costs because those were in the category of the least important costs in the USDOE Siting Guidelines. Actually, he said, transportation costs are not even in the category the department claimed they were in. Finally, Mr. Meek said there was very heavy weighting of the socioeconomic and so-called environmental factors where Hanford was expected to perform

the best. The reports consistently referred to environmental factors, but he said they were not the kind of factors one would expect when using the term "environmental". Here it consisted of four items, one being aesthetics, taking into account vistas, or views, and also noise; the other two environmental factors were biological, primarily looking at endangered species; and the final category was historical or archaeological to include endangered historical sites, battle monuments, or archaeological sites.

Mr. Meek indicated the August 1985 draft MUA, the total weighting for all of these categories, including socioeconomics, was \$300 million. In the final analysis, the weighting on those factors boosted it up to \$650 million. He said the most important reason he questions this is because these weighting were being assigned by four USDOE officials, who themselves were involved in the initial selection of the three sites in the Draft EA of December 1984. He elaborated on the details of the weighting decisions under the cost-exclusion technique, and discussed the rock-type diversity technique in more detail.

The department did not choose to do a portfolio analysis to consider whether rock-type diversity, the diversity of hydrogeologic setting or other differences among the sites would lead to the advantageous selection of sites, as suggested by some members of the NAS Board. At the same time, late in 1985 and early in 1986, the USDOE's consultants on decision analysis, Ralph Keeney of the University of Southern California and Lee Merko who is now at Applied Decision Analysis at Menlo Park, California, offered to do this. They said it would take four or five weeks, but the USDOE considered this too long.

Mr. Meek said he received in the mail a few days ago a new report written by

Ralph Keeney, Systems Science Department at the University of Southern California, titled "An Analysis of the Portfolio of Sites to Characterize for Selecting a Nuclear Repository". The report is essentially a first cut at the portfolio analysis that USDOE did not want him to do earlier. His new analysis shows that if one properly weights rock-type diversity and the value of the information that would be provided in a portfolio analysis, that under no circumstances would the suite of the three sites selected by USDOE be justified. Also, under almost all conditions the preferred portfolio would have included the three sites of Yucca Mountain, Deaf Smith, and Richton Dome.

Professor Keeney also had one other interesting analysis in his report, and that is he believes that the sequential characterization of sites, rather than the concurrent characterization of the three sites would be highly advantageous. He concludes that if characterized sequentially, or even if characterized concurrently, that the maximum value of characterizing Hanford, in terms of the additional information provided under any circumstances or assumption--no matter how extreme--would be \$37 million. Thus, Mr. Meek said, what the USDOE would be doing would be investing \$1 billion to characterize Hanford, when the maximum possible value of doing so is \$27 million. And, in most cases, the value of characterizing Hanford, according to Professor Keeney, would be zero. (The full Keeney report was distributed to the members of the Board and a copy may be obtained from the Program Office Reference Center.) Mr. Meek added that a few months ago Professor Keeney offered to perform this analysis for the Department of Energy, but the department declined to support it.

Senator Williams said in the state of Washington there had been an incredible amount of coverage in the press about the process and the information the staff had given the Board today. He asked how much is occurring in the rest of the country and wondered how responsive Congress would be to it. He said he was encouraged by Congressman Markey's interest, and asked if the rest of the Congress shared his concern.

Nancy Smith said she considered the recent appropriations vote and the continuing resolutions vote indicated the interest of Congress. She thought the findings of the staff and the release of the information had been impinging on the members. She said a delay of the program would be temporary and the pressure to continue the program would grow. She thought the hope was that the department would get back on its feet and would reform the process.

Dan Meek added that the vote to continue funding in the House of Representatives was taken before any of the information was released about the department's process or the substantive methodological errors the department made in its reports. He thought it was important for other members of Congress in other more populated areas of the country to understand that there is going to be a second repository unless the Nuclear Waste Policy Act is amended. He said the department has not been forthcoming in telling members of Congress that even under their new assumptions about generation of spent fuel by commercial plants there will be at least 120,000 tons of radioactive waste to be disposed of, including about 16-20,000 tons of defense waste. The first repository, by law, is to include only 70,000 tons until the second repository begins operating. He said if given a free hand to abuse the process and truncate its own analysis, it is likely the depart-

ment will use the same process on a second repository. He thought that might be one method of obtaining more interest on the part of the members in the eastern part of the country.

Senator Williams said he thought the state concurred with the staff's description of the shoddy process that USDOE has conducted. He wondered why this federal agency is operating in this fashion and destroying the credibility of the program. Mr. Meek said he could not say why the administration wants to include Hanford as a potential site, which seems to be the overriding goal. Nancy Smith said in August of 1985 when the subcommittee was reviewing the draft EAs and the methodologies used, it was learned the department had no support for the methodology. During this hearing this was pursued with Mr. Rusche, and Chairman Markey asked if he could replicate his results. Mr. Rusche said "No, on any given day we could come out with a different result". Chairman Markey considered this rather intolerable, and the decision should be able to be replicated.

Mr. Meek added that they asked the officials who were drafting the recommendations report why they had drafted the initial report with Hanford in it when at the same time their own technical analysis showed Hanford to be significantly last. The reply was they just filled in the blanks with Hanford, Yucca and Deaf Smith as they had appeared in the draft EAs. Momentum just seemed to carry them through to the final.

Senator Williams inquired if the staff suspected there were scenarios going on no one was aware of, and Mr. Meek said he suspected there are documents and records that are not being seen. But, he said, the question remains: "Why the fixation on Hanford?" He said his only theory was that USDOE has a prize to give

away, and they would rather give the \$1 billion prize to their friends at Hanford in the nuclear business.

Representative Miller asked why Mr. Meek believed that the National Academy of Sciences was "victimized". She asked for specifics that led him to believe that those Board members could be victimized. Mr. Meek said the Board was not given complete briefings by the department as far as he could tell from the records. He said the last time the department had a meeting with the Academy was March 24-25, 1986. At that time they showed the Board the post-closure analysis, part of the pre-closure analysis, and were not shown the composite analysis nor any recommendation or indication that Hanford would be among the top three. According to the Board members he talked to, information they did have clearly indicated Hanford was out of the running. Mr. Meek said he believed the department had illegitimately given this information to the Board and stated the "must have a letter" from the Board evaluating the department's methodology by April 10. The letter sent back stated the methodology was a vast improvement over that done earlier and appeared to be a sincere attempt to evaluate the sites objectively. Following that the department employed those techniques he had discussed, excluding the part of the analysis that accounted for 99% of the impacts. In its report, USDOE emphasized that the NAS Board had somehow sanctioned their methodology, implying they had sanctioned the methodology after the department removed the subject costs and undertook the techniques they had never shown the NAS. Mr. Meek thought the whole process with the NAS was very questionable.

Representative Hankins inquired if the same investigations and findings were done on the Yucca site and the Deaf Smith County site. Mr. Meek said their

review encompassed the entire process and substance of the USDOE's methodology report and recommendation report. Representative Hankins asked if they were following the NWPAs in their review. Mr. Meek replied they were reviewing the USDOE's documents in choosing the three sites for characterization. Representative Hankins asked if it had occurred to Congressman Markey or Weaver that perhaps the Act was the major portion of the problem, that they may not have been as specific as they could have been in writing their statute. Nancy Smith said that at this point, in terms of the Act, Congressman Markey (who did not vote for the Act) is committed to making sure the Act is implemented properly. She said whether or not the Act is wrong, it is there until something changes. Congressman Markey, who is from a second-round state, is saying there must be an amendment to change the law in order to postpone the second repository site. In response to Representative Hankins comment that she rather resented the fact that they were stating Hanford was the worst possible site, Nancy Smith clarified one point about their investigation. When they speak of unfavorable comments made about Hanford that were deleted, she said they did not do a separate analysis. All they did, she said, was to work with the documents from the USDOE, going through successive drafts of their documents. This was done on all three sites.

Mr. Meek said Representative Weaver also voted against the Act and introduced legislation to amend it in March of 1985 and June of 1986. One idea now in bill form, introduced by Representative Stallings of Idaho near the end of this session, Mr. Meek said, is that no waste generated near or located more than 2,000 miles away from a repository should be placed in the first repository. It also states that space be reserved in the first repository for the waste that exists

now and is expected to be generated closest to the first repository. Assuming that Hanford were selected, space would be reserved for the defense waste stored at Hanford. It also means that the wastes all along the East Coast would not qualify for disposal in the first repository. Representative Hankins suggested Congress might look at the Low-Level Waste Compacts and perhaps follow that pattern.

Representative Hankins inquired if the staff had asked for engineering advice in their review. Mr. Meek said the only engineering advice they obtained was essentially volunteered by the USDOE consultants. He said they had no budget for that kind of assistance.

Attorney General Eikenberry said although he was not a member of the Nuclear Waste Board, prior to the appearance of Mr. Meek and Ms. Smith he had expressed appreciation for the coordination between the work the Congressional staff persons were doing in producing information that was the basis for legal steps the state took. He believed this, in turn, had supplied more information to the staff. He said to the extent the state can supplement those efforts, he believed it was a very positive matter.

Mr. Eikenberry mentioned that just two days ago Secretary Herrington spoke to a group and indicated that he believed the indefinite postponement he had declared in the search for a second site was the best thing that could have been done in the interest of the nuclear industry. Beyond that being a direct contradiction to the law, Mr. Eikenberry asked what significance the staff might draw from that statement, as a tactical matter. Nancy Smith thought the first thing that was obvious in her conversations with the nuclear industry representative in Washington, D.C. was that the second repository was becoming a liability to

them. They indicated they were not at all opposed to the idea of postponing that search. She said she could not speculate on what was in Secretary Herrington's mind, although the staff had looked at and released other documents that show the department has been looking at how to expand these sites. She thought the basic point is one that Chairman Markey keeps repeating, and that if the department is postponing the second round, thinking about expanding the first, the place to do it is in the legislative forum, and not having the USDOE unilaterally making these decisions. Mr. Meek added that he thought the last shoe has not dropped yet on the possibility of placing more waste in the first repository. There could be a move by the USDOE indicating they wish to amend the NWPA to remove the 70,000-ton limitation on the first repository. He said the department contracted for a study from Battelle-Pacific-Northwest Laboratories on the question of whether the three sites to be studied could accommodate more than 70,000 tons of waste. That study concluded that Hanford could conceivably hold 600,000 tons, which is five times more than is expected to be generated through the year 2020 by both the commercial nuclear industry and by the defense nuclear enterprises.

Ms. Smith commented that they had asked Secretary Herrington if he would support any legislative proposals that would lift the cap, and the department replied that they would not.

Ray Lasmanis said having been involved in this process since about 1982, he observed that the basalt-tuff-salt concept was there to begin with and Hanford and Yucca were already chosen and being studied as far back as 1975. He said subsequent, very sophisticated methods in terms of evaluating other various sites really was window dressing and the bottom line still was that there would be a

basalt site and a tuff site and USDOE only looked at one location in each of those geologic environments. He said there are many other places in this country where there are basalt flows, including states back East, but those were never examined in the process. He considered the ranking criteria just more window dressing, so it was no surprise to him USDOE had to juggle a lot of numbers and methods to arrive at the result they wanted. Mr. Meek remarked that what was curious about the process was that the more specific and the more scientific the USDOE became in its studies, the worse off it was. If they can withhold specific treatment on certain issues, it seems to be in their benefit to do so, giving them a trump card to be played later. He said he was a little surprised the department undertook such a detailed analysis in the first place, and they may think twice about doing something like this again.

Nancy Kirner said it was her personal observation that the NAS letter clearly stated the need for an independent review of the application of the methodology, and the only endorsement they gave was the methodology as it was presented to them. She took offense at the staff castigation of the Board of the Academy when the problem may actually with the USDOE proclamation of the NAS statement. Mr. Meek inquired which letter Ms. Kirner referred to as there was a lot of correspondence going back and forth between the USDOE and the Academy. He said the last letter the Academy sent to the USDOE states that .." in response to your August 29, 1985 request that the Board conduct an independent review of the methodology, and in response to your October 30, 1985 specific request that we further undertake an independent review of the application of the methodology, the Board has reviewed portions of the USDOE's draft of the final candidate site recommenda-

tion report, etc." It goes on to state that it is expressing an opinion about the methodology. The initial review that the NAS Board was doing in October 1985 was looking at the methodology in a hypothetical sense. In March of 1986, according to the Academy, they claimed to be reviewing the implementation of the methodology as it was presented to them. Mr. Meek said they definitely stressed that they wanted to have independent experts look at the weighting of the various factors that were provided exclusively by internal USDOE officials. That the USDOE never did. Mr. Meek said as he read the final letter of the Academy was that they claimed to be reviewing the implementation of the methodology as it was presented to them. What they did not know was that USDOE was not quite through implementing it, and there were big changes to come.

Ms. Kirner said another personal opinion referred to funding. She said the nation needs a high-level waste solution and needs it fairly quickly. She felt funds should be adequate to do all the needed studies to allow the scientific determination of suitability of sites. She asked for an explanation of the conclusion of Professor Keeney that the Hanford site had only a value of \$37 million, although it would cost more than \$1 billion to characterize. Mr. Meek responded that essentially what Professor Keeney did was to start with the results of the USDOE's methodology report, prior to the changes the department made, excluding cost, etc. He tried to determine if there is any value to the quality of diversity, looking essentially at three different circumstances. He assumed that various factors at all the sites were totally independent of one another and concentrated on the cost factor. He also recommended the sites be characterized sequentially, with the best site first and the others to follow. Only under extreme and unlikely conditions would Hanford

be characterized, and if it were, the most apparently saved would be \$37 million. Totally foregoing the opportunity to characterize Hanford could not possibly increase the cost of the first repository by \$37 million. At the same time, if Hanford were not characterized, the assumed \$1 billion is automatically saved.

Senator Benitz asked if he was correct in hearing Mr. Meek say the scientific studies at Hanford should not be continued. Mr. Meek said he was not expressing any opinion on that at all. Senator Benitz then inquired if he favored continuation of the scientific studies or does he oppose them. Mr. Meek said he had no personal opinion, and in his statements he was only trying to convey the conclusion of the new report on Portfolio Analysis by Professor Keeney, who was the USDOE Consultant. He is saying the value of characterizing the Hanford Site is extremely low, although he was not making a recommendation. Senator Benitz commented the staff report and the presentation border on the negative, but the problem remains and he saw no positive suggestion for a solution. Mr. Meek said he considered they were making a positive suggestion in that the scientific analysis be done in a reputable way.

Representative Nelson stated he thought it important that there be a fair, objective, and non-political process for selecting a site. It should be seen in the context of the United States' system of government. Unless there is a credible process of sharing risk and responsibility for those things no one seems to want, the whole system is in jeopardy. He said he was concerned as to finding a way to get the interest of people, Legislators, and Congressional Representative in other states, other than going to court. Another course, he said, would be to point out other states might be facing the same concern and would like the support of Washington State. He asked if this

situation were so unique there would be no other kind of national issue where the sharing of responsibility must be a central question.

Mr. Meek said the example that first comes to mind is the second repository site. There has to be one, and unless the law is changed and the first repository can be made larger, that is a prime example. Representative Nelson wondered if it were likely Congress would go along with USDOE and raise the limits for the first repository. Mr. Meek agreed it would be somewhat cheaper, but if the first repository to be expanded were located in the West, it would be more expensive to transport the wastes.

Representative Nelson said, assuming USDOE continues on course, there will still be a process for selecting the final site. He asked how the state could be assured this would be done fairly. Nancy Smith thought this would not be a decision that would be rammed down the throat. She considered this is such a difficult problem that it almost seems USDOE is trying to narrow the sites in contention to gain support for the program. She thought the department has learned they must involve the public, the states, and the Tribes. The Act, she said, is very clear on their roles. She said the states should watch very carefully what USDOE is doing on the Site Characterization Plan and make sure the Congressional delegation is making this a top-priority issue.

Mr. Meek suggested looking at the relationship between the USDOE and its Site Characterization Plan and the NAS Board. He said he understood there is now contact between the department and the Board on arranging some sort of NAS review of the SCP's in the next phase of the process. He said he understood the NAS is Congressionally chartered and is responsible to Congress, not to the

Administration, but so far the Congress and the public have been totally shut out of that process.

Mr. Meek added that another model to look at is the NAS' Panel that has been assembled to review the safety of the USDOE's plutonium production reactors, including the N-Reactor. He said that process seems to be shaping up much differently from the review of the methodology for nuclear waste disposal. He said he had already received a couple of notices and requests to participate in the process, and that review may actually be conducted in public.

Mr. Eschels complimented the Chairmen of the Subcommittees, its members, and certainly the staff. He said he was impressed with the amount of work the staff had done. He commented that the presentation today pointed up a pattern of abuse of the process under the Act, and because of that, abuse of the Act itself, and thereby indirectly the Congress. He believed there had been a victimization of the NAS, which was very unfortunate. He said that was the reason the Governor wrote to the Academy suggesting it clarify its role and to do it before it gets into the study of characterization. He said he was also struck because there had been some abuse of the utilities, and the ratepayers as it is their money going into this process which may result in no solution to a national problem.

Mr. Eschels said that even after all the disclosures had been brought out by all parties, a letter dated November 13 was received from the Secretary attempting to justify the action and stating USDOE was going straight forward. He said he was not convinced this was an optimistic direction to take, and it is time to look to Congress for some positive solutions. To reinforce the necessity for those, the courts and political process should be

used for leverage. He thought the solution would be more drastic the longer it is delayed. He concluded the work the Subcommittees had done was most appreciated, and the state would be looking to the Subcommittees and Congress for support in the future.

Senator Williams said it was very clear the credibility of the program was lacking, and he thought Representative Udall's comments recently to representatives of the nuclear industry were very revealing. He asked if the staff members thought the credibility of the program could survive without some heads rolling.

Nancy Smith said it was not appropriate for them to respond to but she noted when the country has faced other tough political it has sometimes turned to national blue-ribbon independent commissions. It was done on Social Security, and she noted Governor Gardner has proposed such a solution at various times. Also Chairman Markey through Representative Swift floated that idea at a recent hearing. She suggested the Board give thought of what sort of proposals they would like to see in Congress.

Senator Williams responded the state already had a proposal through Congressmen Swift and Morrison which would change some of the responsibility ultimately in the decision making. He said Congressman Foley had recently cautioned the state not to become too shrill in its opposition to the site, and he thought that was advice the state has followed in the past trying to work within the system. He said he was concerned about the pitting of the East against the West and considered it a disastrous course to follow. He thought the state had an important role in trying not to divide the country but to work with Congress to make the process work.

Mr. Meek commented that passage of the Nuclear Waste Policy Act of 1982 was supposed to be the solution that was acceptable to the entire country. This involved sharing of the responsibilities. The debate on that Act in the Congressional Record and the reports makes it quite clear that there was expected to be a sharing of the responsibilities between the East and the West. As it stands now, there are three repositories under consideration in the West, and none in the East, and the department is definitely studying putting all the waste in the West. The compromise of 1982 has already been unravelled.

Mr. Eschels said he sees a comparison between where the country was with low-level waste through the early 1980's and where it is today with high-level waste. Following passage of the Low-Level Waste Act of 1980 there were about four years of something other than the expected progress. There was a mid-course correction, he said, late in 1985. He thought it was time for a mid-course correction in the high-level nuclear waste program without upsetting the underlying philosophy of the earlier Act, but perhaps changing the implementation. He added that those calling for replacement or USDOE or people in the department may be correct.

Mr. Meek wondered if the state were considering using the Low-Level Waste Act as a model for mid-course correction, or using it as a model for a different system, such as requiring the states to dispose of their own waste cooperatively. Mr. Eschels said proposed in the Swift-Morrison bill was, consistent with the 1982 Act, the federal government would have responsibility for the high-level waste. Much of it, he said, belongs to the government in the defense category. But, rather than have the USDOE continue with the process the bill suggests setting up a federal board, including Energy,

EPA, and Interior. Mr. Meek said he had some concern with that concept in that it creates a new board chaired by USDOE and composed of representative of EPA and Interior, with an outside member. He considered EPA a regulator and not a project proponent, which would change its role, rather than having it continue as an independent regulatory agency. In addition, he said, it would do the same with the U.S. Geological Survey in that it would take them into the process. He saw pitfalls, as well as advantages to the plan.

Mr. Eschels said he agreed those were all things to be explored, but he thought it was time to re-open the Act. No progress toward a repository has been made and millions of dollars have been spent.

Representative Hankins commented that she would be opposed to another board at the federal level. She believed Congress should be asked to re-open the Act to clarify many parts to give the department a better guideline. She thought Congress could be asked to have its own Subcommittee track and guide the USDOE. She reminded that billions have been spent, and the ratepayers are paying the bill. Many have forgotten this, and she said Congress and the public should be reminded of this fact. She said proper amounts of money should be appropriated to be sure that safety and public information are the first criteria.

Mr. Husseman remarked that with the amount of money being spent on a national program, it would be better to take a look at the process now than to wait two years until the lawsuit comes to a head. He said with the information coming out of the investigation, the lawsuit is looking more and more like a valid winner.

Mr. Husseman continued by noting that there was a series of drafts by the USDOE, and in all of the early drafts Yucca, Richton Dome, and Deaf Smith County were mentioned, with Hanford named last. On April 25, following a ten-day gap, another draft named Yucca, Hanford, and Deaf Smith. Had there been anything in the records during that 10-day period to indicate the change, Mr. Husseman said he assumed the Congressional staff members would have included it in their documentation. Mr. Husseman asked the staff members if they had asked Ben Rusche and the other decision makers involved why the change between April 15 and April 25, and if there were any documentation. Since there were only four or five people involved, he asked if the staff had talked to all, and if not, would they be talking to them.

Mr. Meek said if there was documentation, they had not seen it. Essentially, Mr. Rusche and his associate, Tom Isaacs, said that they drafted the recommendation report simply as a model and never changed it. They said the discussions among the principal officers of the USDOE were not on the record and were not memorialized in any way. Mr. Rusche said that he thought the methodology report supported the three sites selected because he thought costs should be the least important consideration, so it was justified to exclude, or discard, that and not consider it. Once cost was out, and having failed to consider injuries or genetic disorders, and having USDOE place those rather heavy weights on socioeconomic and aesthetic factors, Mr. Rusche thought the methodology report did support the three sites they selected. He thought there was no contradiction in the two reports.

Concerning Mr. Husseman's query as to whether they talked to everyone and whom they would be talking to later,

Mr. Meek said a couple of the folks who were there are no longer with the USDOE. They have not talked to them, and they would also liked to talk to some of the additional contractors and consultants involved. Also, he said, they had a limited time to work on the project with a disparity of resources. Nancy Smith added that they do plan to talk to those people involved. She said the lists they had included eleven people within the department who were the decision makers. They began with the primary actors, she said, and plan to take up again where they left off.

Mr. Bishop thanked Nancy Smith and Dan Smith for their intense work and for taking the time to brief the Board in detail.

#### Committee Reports

Mr. Bishop announced that since the committee reports had been furnished the Board members, he would limit oral reports at this meeting to any special items of note.

#### Environmental Monitoring

Nancy Kirner announced the committee is changing its normal meeting time and place. The meetings will be held on the second Friday of each month at 10:00 a.m. at the Building 12 Conference Room in the Airdustrial Park.

#### C&C Retreat

Mr. Bishop said announcements and pertinent materials had been sent to Board and Council members advising of the two-day retreat to be held at Alderbrook on December 17 and 18. This will be an intensive meeting limited to the members of the Board and Council to discuss the C&C Agreement. He asked that members make their reservations as soon as possible with Hall & Associates who are coordinating the meeting.

### Oregon Report

Because of the lateness of the hour, Mary Lou Blazek, Hanford Program Coordinator for the Oregon Department of Energy, was excused from the meeting. Her written report is attached to the minutes.

### USDOE BWIP Quality Assurance Program

Mr. Bishop introduced Pierre Saget, Director of the Quality Systems Division, BWIP Project, USDOE Richland.

Mr. Saget defined quality as fitness for intended use, thus quality assurance is a management control system to assure fitness for intended use. Another definition for quality assurance, is prevention or mitigation of discrepancies or deficiencies from requirements. He said both definitions affect the approach that is normally taken to quality assurance.

Mr. Saget related the history of the quality assurance on the BWIP Project with the use of graphic overheads. Quality assurance originated in the automotive industry many years ago, then went into aerospace, and finally into commercial nuclear reactor industry. Throughout the entire process, he said, QA requirements have evolved and changed on a yearly basis. He traced the QA program development at BWIP from 1976 to the present and the graph is available from USDOE Richland, or the Program Reference Center in Olympia. Mr. Saget said all the work that has been performed on BWIP to date has been done to approve quality assurance programs. He said all the requirements have evolved through time, they are changing right now, and will continue to change in the future.

Mr. Saget outlined the sources of Quality Assurance Program Criteria and the applicable Department of Energy Quality

Assurance Plans and Requirements Documents. BWIP has combined these documents and issued a Basalt Quality Assurance Requirements Document (BQARD). He said the BQARD divides the requirements into an 18-criteria format, which is typical of the industry standards to date. It provides a interpretive guidance for the contractors. Mr. Saget then went on to describe how a QA program is developed. There are two broad elements: 1) the quality assurance program development and implementation; and 2) the quality program implementation.

Mr. Saget reviewed the Project Management Organization at BWIP with the use of charts, which are also available upon request. The Quality Systems Division, of which Mr. Saget is the Director, comes under the supervision of John Anttonen, Assistant Manager for Commercial Nuclear Waste. This division is responsible for the development and implementation of the quality assurance program. It includes writing of the procedures and plans, training USDOE personnel who apply the quality assurance requirements, and the development and implementation of a verification program, both of the BWIP Project and the contractors' organizations.

Mr. Saget stated there are five major contractors working on the Project. They include: Rockwell Hanford, Kaiser Engineers/Parsons Brinkerhoff Quade & Douglas, Morrison Knudsen, Westinghouse Hanford, and Battelle Pacific Northwest Laboratory. Mr. Saget said they also use consultants for support in the QA area, the Project Control area, and Licensing. Currently, Management Analysis Company is assisting in this area. All contractors are directly funded by USDOE, and some contractors fund subcontractors of their own.

All contractors are in their second or third revision of upgrading the Quality Assurance Requirements, as they are issued by Headquarters and the NRC. QA Procedures are also being revised, he said, to reflect the latest requirements from Headquarters.

Mr. Saget described in detail the extensive training provided the auditors, the technical people supporting BWIP in each of the audits, and the instructors who provide the training courses. Also, the detailed training and the orientation for the identified job functions is also being done and by the middle of December all of the training will have been completed. He said the Project has a complete qualification and training file for each individual on the Project which documents their training and experience.

Concerning audits, Mr. Saget said they have conducted eight of the planned eight audits for this fiscal year. More had been planned, but following the stop-work order the number was cut as the work was not ongoing. He said they anticipated a large majority of the audit findings will be closed out by the end of the stop-work release. The purpose of the stop-work order was to upgrade the program to clean up all deficiencies.

In the area of surveillances, Mr. Saget said Rockwell has conducted 443 surveillances in this year, with only 300-plus planned. BWIP has conducted 29 out of a planned 44. This, again, reflects a reduction in the amount of work going on, although surveillance is being continued on some of the exempted work.

USDOE currently has 23 people in quality assurance right now. This is a mixture of six USDOE personnel, and seventeen consultants. Major strides in this area have been made as four qualified professionals have been hired to fill some vacancies, and three of the four have

come with a long history of experience with commercial nuclear reactors. Rockwell has 54 people working on the QA staff. The goal is to reduce the dependence on consultants in order to execute the USDOE responsibility.

Mr. Saget produced three separate slides reviewing the history of the stop-work order. Because the audit/surveillance was finding a lack of adequate QA procedures compared with the current requirements, technical procedures, and training/training program, the Stop Work letter was sent to Rockwell on May 1, 1986. This letter asked Rockwell to stop work on all BWIP activities, with the exception of six categories. The six exceptions were: 1) data gathering, for which interruption could result in loss of significant data; 2) management, operating, and QA systems upgrades; 3) safety/maintenance activities; 4) administrative activities; 5) Site Characterization Plan (SCP) preparation activities; 6) essential activities/imprudent to stop.

Mr. Saget said a Readiness Review Board was established, constituted of Branch Chiefs under the BWIP Division, Mr. Saget, the Project Control Specialists, and is chaired by Lee Olson, the Deputy Assistant Manager. Reporting to the Board are Readiness Review Teams which have specific responsibilities for examining certain activities with which Rockwell or the other contractors are involved. Rockwell has completed the appraisals of the other projects Project participants and have started doing appraisals of their own activities. Following completion of this and Rockwell's request to BWIP for release of the Stop Work, BWIP will be doing additional assessments.

Representative Nelson requested that Mr. Saget supply the Board with the 1300 ongoing activities. Mr. Saget said he

believed that request had already been made and the response is in the mail. Mr. Bishop said when received, copies would be made of the list and sent to each member of the Board.

Nancy Kirner asked what the involvement of the NRC had been in the review of the activities. Mr. Saget said Bob Cook, Site Representative for NRC, is involved on a daily basis. The NRC has been involved in a couple of the USDOE audits that were conducted earlier, and meetings with the NRC have been held on a periodic basis, beginning in December of 1984, in which the states and Tribes participated. Following was a series of other meetings on quality assurance to which the public was invited. As the release gets closer more activity is expected. NRC has been provided copies of audits and copies of plans and procedures.

Representative Nelson inquired how important was employee morale, particularly the technical, professional employees, in ensuring that there is high-quality work. Mr. Saget said it was obvious employee morale is very important in whatever endeavor is undertaken. He suggested the scientific community is not used to a very rigorous quality assurance program. Representative Nelson said that were he one of those working on the program, he would be completely demoralized. Mr. Saget said they had tried to address any possible morale problem by trying to orient the scientific workers to the need for the oversight details. Referring to Representative Nelson's comment that their scientific work may be overcome by political decisions, Mr. Saget said there was no way he could address that, and he did not know the degree of any low morale. Representative Nelson suggested some message be relayed to the auditor who works for Rockwell on Purex that his first concern should be job security. He thought reassurance should

come from someone from inside the organization. Mr. Saget replied they are in the process of implementing a procedure whereby if an individual has a quality concern a call can be placed to a number to record his concern anonymously. He could call back at a future time to receive feedback on that concern. This procedure, he said, is just about ready to go into effect, and he has made himself available to people in that context.

Don Provost added that the states, Tribes, and NRC have had many comments on quality assurance, and he felt the attitudes at USDOE headquarters are still bothering them. He suggested there be a work session to discuss issues on organization and basic quality assurance issues. Mr. Saget agreed this was an excellent idea and there was an obvious need to involve Headquarters in such a session. Mr. Bishop said a plan would be considered to work a meeting of this type at some Thursday afternoon session.

Nancy Kirner said she recognized that BWIP organizational activities and those of Rockwell are separate, yet enough issues were found to cause a stop-work order. She asked if a similar situation was happening in non-BWIP activities. Mr. Saget said he could not answer, although he did know USDOE is putting a lot of emphasis on quality assurance on other activities and have hired a number of additional staff within the last few months. They are getting contractor help to assist also, but he could not say the status of specific issues. Ms. Kirner thought the larger quality assurance issues on the reservation should be investigated.

Mr. Husseman said he understood BWIP is requiring their contractors to train their people in established procedures to develop an acceptable QA program. He

asked what happens if the current contractors are not the contractors a year from now. Mr. Saget said in anticipation of that potential they have asked Rockwell and the other contractors to develop an anticipated transition plan. He said BWIP shared a concern and wanted to do as much planning along that line as possible. He said some elements of the consolidation will work to the benefit of the program, such as many of the laboratory activities Westinghouse currently has under its wing will be transferred to Battelle. They have verified procedures of both contractors and Battelle's work will not change, although there will be some transition to the new system. In areas of the principal Rockwell work, the other contractor is not yet known.

Mr. Bishop said the suggested work session will be planned with Richland, and staff would look at the question raised by Ms. Kirner concerning the quality assurance on the entire Reservation.

#### Review of Referendum 40 Results

Senator Williams reported the Referendum passed in the state with a nearly 83% vote. Thirty-one counties gave it 80% or more, with Spokane the highest of 86.5%. King County vote was about 86%, with six counties 75% to 80% passage. Franklin County passed the referendum by 55.8%, and in Benton County it failed with 43.5%.

Also, Senator Williams said, in Benton and Franklin Counties Proposition 1 was on their ballots. It basically asked the voters whether they thought Hanford Site should continue to be studied. The proposition passed by 79% and 67%, respectively. He commented this was similar to the vote pattern in the House and the Senate, and it thought that people do vote their pocketbooks.

Senator Benitz said he would like the opportunity of furnishing the Proposition 1 vote and the other record. Mr. Bishop said he would be glad to see that information is distributed to the Board when received.

#### Status of Socioeconomic Impact Contractor Selection Process

Mr. Eschels said the Selection Subcommittee of the full committee reviewed the seven proposals received in response to the RFP. They met earlier this week and will meet again on December 8 to bring its recommendation to the full committee. Interviews will be held on December 15-16, with recommendation to the Board at its meeting on December 19. Mr. Eschels thanked all of the Subcommittee members for their work on the RFP review.

#### Litigation Status

Narda Pierce referred to the full litigation report in the members' notebooks. Additional highlights included a new suit filed by Clark County PUD, and yesterday the Yakima Indian Nation filed suit. Both of those suits, she said, challenged actions the state of Washington has challenged on the May 28 decisions. The Environmental Defense Fund has filed a suit, including a challenge to the suspension of the second repository.

On a procedural level, the 9th Circuit denied the motion to transfer all the cases to the Washington, D.C. Circuit, and the state will be litigating in the 9th Circuit. This action triggered a deadline for filing some procedural motions on discovery. This relates to what Ms. Smith and Mr. Meek were saying early. It is uncertain right now to what extent the state can request production of documents. The state is seeking to be allowed to do full discovery. In support of the state's motion materials were submitted in legal terms that were developed by the

Congressional Subcommittees to demonstrate the manipulations of the decision-making process. Also submitted were political relief memos that were released earlier on the second round.

Ms. Pierce said the Court on its own consolidated all of the 1986 nuclear waste cases, which leaves a somewhat unmanageable situation, so the state of Washington authored a motion for case management, which all the other participants joined. It asks for the appointment of a Special Master who would oversee the discovery, receive evidence including expert evidence on the issues, and who would manage the case according to groupings of related claims. No word has been received yet on those motions.

A joint reply brief was filed with Nevada, Wisconsin, and Utah on November 14 in the litigation funding case. That case has been fully briefed and date for oral argument is being awaited.

Mr. Roe added that the filing by the Environmental Defense Fund was the first national environmental group that has filed on the side of the state. The rest of them have stayed out of the issue, he said.

Ms. Pierce said that on the second repository issue she said she last reported that the Justice Department was not responding to the merits of the argument, and the new motion is simply to have the Secretary's actions suspending the second round declared unlawful. The state has moved to require them to respond to the merits and anticipate the others parties that have challenged will support the state's motion and also asking the Court to address it promptly.

Representative Nelson asked if it were likely it would take a long time to get to a resolution of the consolidated cases. Ms. Pierce said the state thinks a Special

Master would expedite resolution. She said the state is in a unique situation of being in an original jurisdiction in a Court of Appeals. They are not used to conducting any trial-type proceedings. Also, she said the state has attempted to divide the issues that can be resolved quickly, primarily issues of law, issues that involve limited or no issues of fact, so they could be resolved quickly. Some of them may be dispositive, such as the Guidelines cases. If the cornerstone of the Guidelines fails the whole house of cards fails, she said. The Guidelines cases have not been consolidated with the later 1986 cases, but Justice has asked for a bigger package, a supercase, as they want those consolidated. Today she said she was in the final draft of a memo in opposition that Oregon, Washington, and Idaho will file. One point being made is to decide the Guidelines first, because of the nominations, Environmental Assessments, and recommendations are based on false guidelines, they necessarily fail also.

Representative Nelson inquired if the whole process could continue while these cases are being litigated. Ms. Pierce said the legal mechanism for stopping the process is a preliminary injunction. For a preliminary injunction one of the standards is immediate threat of irreparable harm. The thought efforts being made to find out precisely what is being done at Hanford will let the state know when that threat of immediate harm would be present.

Mr. Eschels inquired about the exact meaning of discovery, and Ms. Pierce replied that discovery is a legal term that includes requesting production of documents, interrogatories are written questions that must be answered under oath, and depositions means testimony taken before a Court reporter. Those are procedures which are available in a trial court, but here the case is in a Court of

Appeals. The state believes that all three of those procedures should be available to the state. A request has been filed for production of documents at the same time the state moved for an injunction on destruction of documents. Justice came back denying that they were required to respond to those because the case is in a Court of Appeals and the Court set up dates for the state to brief entitlement to discovery. Those are the briefs that have been sent out.

### Federal Legislation

Mr. Roe reported that all of the legislation that was before Congress is now dead. He noted that Senator Evans had been with the majority party as a member of the Senate Energy and Natural Resources Committee and may or may not continue to serve on that committee as the Republicans will lose two seats. Also, Mr. Roe said Senator-elect Adams is pursuing a seat on that committee. In discussing the press release of Representative Udall with people in Washington, D.C., Mr. Roe said they seem to think the Congressman was on the verge of entertaining Nuclear Waste Policy Act Amendments. Representative Udall's speech was extemporaneous, but Mr. Roe said he had asked for a copy of his remarks, which is being sent.

### Washington Institute for Public Policy

Max Power reported there is a new edition of their Newsletter available at the back table. It has been mailed to members of the Board and the Legislators. He announced that the Institute is sponsoring a workshop, primarily for Legislators, on nuclear waste perspectives, risks and alternatives, on December 3 on The Evergreen State College campus. He said the way people in our society think about technological risks such as nuclear waste, practical issues involved in dealing with nuclear wastes and the alternatives would

be discussed. They plan to wrap it up with a round-table discussion focusing on what should be thought about strategically in the state of Washington.

Mr. Power said some of the speakers at the workshop will include Hank Schilling formerly with Battelle's Human Affairs Research Center in Seattle, now at U.S. Environmental Protection Agency; Dr. Ruth Weiner, Dr. Paul Slovic from Oregon, a leading figure on psychological dimensions of dealing with risk; Dr. David Willis, eminent on radiological health; Dr. Robert Theobald who will help the group to think about extending issues such as this into the future; Dr. Ross Heath, eminent member of the University of Washington faculty; and Dr. Ted Besmann from the Oak Ridge National Laboratories, who is well versed on MRS and reprocessing of nuclear fuels.

Mr. Power said he considered this would be a quality program and encouraged members of the Board and the Advisory Council to attend if they can.

Dick Watson announced that the Institute had recently hired one of his best staff members, Dan Silver, and the Energy Office's loss was the Institute's gain. Mr. Watson paid Mr. Silver a fine compliment saying he was a super person who would do a very good job for the Institute.

Mr. Bishop stated that the workshop sponsored by the Institute will be considered an authorized meeting for both the members of the Advisory Council and the Nuclear Waste Board.

Representative Nelson announced the House Energy & Utilities Committee, which he chairs, will have a hearing the evening of December 3. The agenda will

focus on environmental management program for defense waste, including current volumes, plans for the cleanup of defense waste and to reduce volumes in the future, funding for those activities, and environmental review and monitoring positions of these wastes. They also plan to look at the alternatives to further production of Plutonium and attendant wastes. Several national figures who have looked at the country's needs for plutonium and tritium will be able to comment on future needs, and should there be a need, how to get it without producing more plutonium. Representative Nelson said the problem connects waste generation and the Board's interest with the realities of Hanford, including converting a WPPSS plant to further production. He invited any and all interested to attend.

Mr. Bishop asked Representative Nelson to check to see that the members of the Advisory Council and the Board were on the mailing list for his committee hearings. Representative Nelson replied he would make sure they were.

#### Public Comment

Curt Eschels said he would like to compliment the Chairman and the staff for putting together another long series of excellent meetings.

There being no further business, the meeting was adjourned.



## Department of Energy

625 MARION ST. NE, SALEM, OREGON 97310 PHONE 378-4040 TOLL FREE 1-800-221-8035

TO: Washington Nuclear Waste Board      DATE: November 19, 1986

FROM: Mary Lou Blazek *MLB*

SUBJECT: Oregon Status Report

### Repository

#### Litigation

The Oregon Attorney General's Office has filed a motion for discovery. The motion was filed in part because of the congressional staff investigation report. The motion asked the court to appoint a special master to set time tables. Also it will allow the Attorney General access to further documents.

US DOE's attempt to move jurisdiction of the litigation to Washington, D.C. failed. The case will be heard in the 9th Circuit Court in San Francisco.

#### Final EA Review

Staff is compiling Review Committee comments on the final EA. The Committee found that most of the comments had been addressed. Many of the comment responses indicated that concerns or comments would be fully addressed by the Site Characterization Plan (SCP). Oregon will review the SCP to confirm that comments have been addressed.

#### Funding

It appears that Oregon will be getting direct funding from US DOE. ODOE has not received confirmation in writing. But the Richland office has assured us that this is the case. The request that was included in the Washington grant application will be approved only if US DOE does not fund Oregon directly. The first Oregon contract with US DOE is to begin January, 1987.

### Repository Decision Methodology

US DOE Headquarters discussed the May 28 Repository decision with the Joint Interim Committee on Hazardous Material earlier this week. The Committee posed many questions to US DOE. The multiattribute utility analysis (M.U.A.) was of particular interest. US DOE said that the M.U.A. was a decision aiding methodology not a decision methodology. Also that the decision was not political.

The staff congressional investigation report was also discussed. US DOE denies that important material was deleted from the recommendation report. They will be responding to the congressional report in the near future.

### Defense Waste

Jerry White, US DOE Richland gave a Defense Waste status report at the Joint Interim Committee on Hazardous Materials meeting. Members of the Hanford Review Committee and the ODOE Hanford Advisory Committee were also present. US DOE is evaluating and preparing responses to over 2,000 public comments. Mr. White described consensus comments from Oregon, Washington and the Citizens forum. I have attached US DOE's position on seven major issues which Mr. White discussed.

### Legislative Update

The DOD authorization bill passed with Congressman Wyden's amendment language preserved. However, additional language exempted US DOE from compliance if the US DOE budget is cut. Congressman Wyden will work to delete this exemption next session.

The environmental compliance bill died. The bill was to give EPA oversight authority over US DOE repository activities. Mr. Wyden will also work on this bill next session.