

MINUTES OF NUCLEAR WASTE ADVISORY COUNCIL MEETING

June 21, 1985

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

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Council Members Present:

- Warren A. Bishop, Chair
- Dr. Jerome Finnigan
- Mr. Gordon Kunz
- Dr. Estella B. Leopold
- Commissioner W.H. Sebero
- Jim Worthington

WM Record File
101.3

WM Project 10
Docket No. 23
PDR ✓
LPDR ✓

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

Mr. Bishop remarked that because of the meeting of the Association of Washington Cities in Spokane, some of the members were unable to attend.

It was moved and seconded the minutes of the meeting of May 17 be approved as published. Motion carried.

Grants Equivalent to Taxes

Jeff Goltz, Assistant Attorney General for the Department of Ecology, summarized the "Grants in Lieu of Taxes" section of the Nuclear Waste Policy Act. With the use of slides he quoted Section 116(c)(3) of the Act which provides a mechanism by which the U.S. Department of Energy grants funds to states and local government entities to offset some of the socioeconomic impact that may occur from both the site characterization activities and construction of a repository:

"The Secretary shall also grant to each State and unit of general local government in which a site for a repository is approved under section 112(c) an amount each fiscal year equal to the amount such State and unit of general local government, respectively, would receive were they authorized to tax site characterization activities at such site, and the development and operation of such repository, as such State and unit of general local government tax the other real property and industrial activities occurring within such State and unit of general local government. Such grants shall continue until such time as all such activities, development, and operation are terminated at such site."

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Mr. Goltz said that since the federal government is immune and cannot be taxed, the Act provides for a grant in an amount equivalent to the taxes which states and localities could receive if they were able to tax the government and its activities. He said the Counties and State could look at a real property tax, but the term industrial tax was a question.

In the case of property taxes, Mr. Goltz said the question became what rates are applicable for which activities, as the language in the Act refers to a "unit of general local government". All states do not tax in the same manner, nor are all activities performed by a County or City. Also, there are many other issues that will have to be addressed: Should special assessment be included?; How should real property be valued?; What "costs" are associated to "improvements" to real property? He said the usual methods of evaluation are not valid in such a unique situation as there are no other repositories in existence for comparison.

Another issue raised, Mr. Goltz said, was the question of the Leasehold Excise Tax levied in the state of Washington. This is a tax on the use of publicly-owned property. He said it is being applied on the Hanford Reservation, but perhaps not so much as it could be, as the state's dealing with the federal government on tax matters is still in the relatively early stages. It might be possible, he continued, that some of the Leasehold Excise Tax could be applied and obtained from the contractors to the U.S. Department of Energy. He added that if that were true and the state would receive a Leasehold Excise Tax, it might be that there would be no grant in lieu of taxes in addition.

Concerning "industrial activities", Mr. Goltz said he did not know the meaning in the context of the statute language, but it sounded to him it would mean application of the Washington State Business and Occupation Tax, and perhaps more. He said there was support for this and referred to an earlier version of the Nuclear Waste Policy Act, in the bill reported from the House Committee, which referred only to industrial activities, and did not include "other real property"; nor did it discuss Counties' involvement.

Mr. Goltz said questions remain on whether sales tax would be collected, as well as that part of the industrial activities the Act contemplates, assuming the Act contemplates a B&O tax, and what the appropriate B&O tax classification would be. The principal questions to be answered would be:

1. Does Section 116(c)(3) contemplate sales as well as B&O taxes?
2. What is appropriate B&O tax classification?
3. What amount of contractors' services is attributable to labor?

Mr. Goltz concluded by saying legislative history researched to date does not give any very clear guidance, but looking back at the purpose of the statute, which is to offset some of the impacts cities and local governments may occur, a certain argument could be made regarding the scope of the two components of a grant in lieu of taxes discussed.

Dr. Brewer commented that mines are taxed as property by local jurisdictions. While they are operating, they can be evaluated, but depletion has to be considered. It seemed to him there are abundant examples of how mines operating and then closed have been handled in other parts of the country and in Washington. Mr. Goltz responded he supposed this could be considered as an alternative, but a decision would have to be made as to what is being taxed--a mine or a warehouse. This would be an issue to be addressed, he said.

Mr. Bishop thought there would be additional dimensions to this question, because if the attempt is being made to compensate local governments for the impact of not only the activity, but also the labor elements, this increases the load on utilities, fire services, police services, maintenance of streets, schools, etc. Mr. Goltz said he thought that was the purpose of the grants-in-lieu-of tax provision.

Commissioner Sebero added that Benton County does not get impact payments from the Hanford Reservation. They do get a portion of the sales tax, he said, but the elements mentioned by Mr. Bishop go far beyond, and the term "unit of local government" would have to be determined. In looking at the impact of the Supply System, they reached out into five counties. He referred to the Leasehold Excise Tax and asked if this could apply to the Hanford Reservation. Mr. Goltz said in discussing this with the Department of Revenue officials the issue was raised. He said the statute refers to real property, but a lot of personal property would be used, which normally the County would gain substantial revenue from, through the personal property tax on the major equipment used on the Reservation. He said the Revenue Department suggested the state might be collecting it now; they are engaged in an effort at this time to make some sort of a determination on this issue under existing law. Should they be successful, he said, then the question arises if that will impact the grant-in-lieu-of-tax. Would the state get both? Or, if one is received, would it be the Leasehold Excise Tax, or the grant? He thought the same concept would apply to local government. He suggested the County people might like to consult with the State Department of Revenue on this issue.

Commissioner Sebero said he felt as time went on a definition of a "unit of local government" would have to come from Mr. Goltz or his department. He said there is currently a standing Construction Impact Group in the Tri-Cities area that involves all the

units of local government, plus. It was formed during the construction of the Supply System project, he said, and has never been dismantled. This group may apply to the repository, he said, from what he had heard today.

Mr. Goltz added that in the case of the repository compared to other forms of impact aid, such as military reservations, this question looks at where the taxing jurisdiction may be, rather than where the impacts are. However, he said, the state is certainly involved, the County would be involved, and the City to a certain extent for those activities within its taxing jurisdiction.

Don Provost ask Mr. Goltz when these major questions have been answered and the taxing structure is in place, when will the grant become effective? Mr. Goltz said the statute says the grant shall come in each fiscal year, and he believed it would be when the site characterization activities commence in that federal fiscal year. He said the first step would be to hear from the U.S. Department of Energy, as they are the ones charged in the first instance to figure this out. Mr. Bishop thought the Board may have to initiate its own panel group to reflect all the interests through the Board. The Department of Revenue and the Attorney General's Office will have a very significant role in this effort. He said he understood the cities and counties are discussing this issue now.

Mr. Kunz added some of the Eastern Washington counties, through the Association of Public Land Counties, worked for years to have the federal government acknowledge it owed the counties in-lieu-of taxes for federal lands. The intention was to begin with a flat tax per acre, he said, but when payments were finally received, they were very erratic. For instance, he said, when he stopped at the Chelan County Treasurer's Office in Wenatchee yesterday, he compared payments which ranged from a high of \$720,000 a year to a low of \$228,000. He cautioned any grants in-lieu-of taxes agreement should be tied down to avoid such fluctuation.

Mr. Worthington asked for clarification on the Leasehold Excise Tax question. He said he wondered what happens to the Leasehold Excise Tax when the government owns the equipment the contractor is using. Mr. Goltz said as he understood that tax, it applies to any publicly-owned property, which is not directly taxable, and the purpose is that a private entity which is using publicly-owned property would have the same burdens on it as its competitor would have using its own property. He said it was only recently the state was allowed to impose a sales tax on the contractors under a Supreme Court decision. Passing on the burden to the government is acceptable, he said, even though the state cannot tax the government.

Mr. Worthington asked if a sales tax could be collected on the labor when the government buys all the major equipment and components. Mr. Goltz said the labor is not taxable. He said the

question was: is that difference in revenue contemplated within the Nuclear Waste Policy Act when it includes "industrial activities"? Is that one of those components, such as our B&O tax, which is contemplated within the industrial activity section of the statute? This would have to be resolved.

In another area of possible loss of revenue to the state that should be examined was the licensing of contractors, Mr. Worthington said. Washington law states that all contractors shall be licensed, with the exception, that concurs with federal law, that says that on federal sites for federally-funded projects these contractors do not have to be licensed. He said there are unlicensed contractors working at Hanford who have presented some problems in not paying their industrial insurance or employment security payments. He thought the state should consider a tracking method in those cases in preparing any grant. It was agreed this issue should be examined.

Review of Public Involvement Activities

Because of the illness of Anita Monoian, Marta Wilder reported on the activities of the Public Involvement Working Group.

Meeting in Richland: The Group met on June 13 with Tom Tinsley and Karen Weelis to discuss the U.S. Department of Energy proposal to include states and tribes in a national public involvement program to provide generic information on different aspects of the program. Consideration was given to utilizing universities in implementing the program. Mr. Tinsley presented a proposal to form a Steering Committee, or peer review group, composed of state and tribal people to guide the USDOE in decisions on their public involvement program. Ms. Wilder said Anita Monoian liked the idea, but felt the Steering Committee should remain independent and contain no USDOE members. Dr. Finnigan added that the feeling was shared that the group should be independent. The plan includes meeting regularly, sharing problems, trying to avoid duplication of material and other tasks listed in Ms. Wilder's printed report to the Council. Tom Tinsley asked for an expression of the Council on their perception of the idea, which he would take back to USDOE Headquarters.

In response to questions, Ms. Wilder said she perceived that the Steering Committee would include a member of the Office or a member of the Council, or an independent person representing the state, with representation from the Indian Nation. She said the idea was in the preliminary stage, and USDOE mainly wanted to know the Council's attitude.

Mr. Worthington said he understood the Council would maintain its own independent group, but would have people meeting with the Indian tribes to coordinate programs, and furnish this information to USDOE. Dr. Finnigan added USDOE indicated they would not be dictating or managing the group, but it would be totally independent to enable them to do a better job.

Ms. Wilder said the USDOE is looking at a national program, and their hope was the Steering Committee would have input to this program. She said Mr. Tinsley did mention he was attending a conference in July and hoped to report the state's response at that time. Mr. Bishop suggested Ms. Wilder proceed, with the advice of the Public Working Group.

Another item of discussion at the June 13 meeting was expanding the public outreach efforts, some of which were listed in her report, such as expanding the use of electronic media, conducting another survey, networking, with continuation and development of publications and materials. She said the Group felt it necessary to develop some ideas for the next grant. Dr. Finnigan said all were agreed not enough was being done that needed to be done to outreach with the resources available. Secondly, he asked if it were reasonable to ask for additional resources, which he thought should be done. Networking, he said, is a very labor-intensive operation and he wanted the reactions of the Council to the idea.

Pat Serie of Envirosphere was asked to explain the idea of networking. Networking would be through use of telephone calls to reach involved citizen groups, news media, and inform them of the program. Effort would be made to get these elements on the mailing list for current and future information. Ms. Serie said it would be similar to the preparation made in setting up the workshops, asking for input and further contacts in an effort to keep building the base.

Mr. Provost commented that networking to him was very valuable when there was a product, such as legislation, workshops, etc., and answers to questions were needed immediately. He wondered if the plan were to network for a public meeting, or just to get information. Ms. Serie said they were thinking more of expanding the exposure and the mailing list, and listening to any concerns of the groups contacted. Mr. Provost pointed out there was some danger in contacting those who did not want to be contacted. He said experience with the booth set up at the Association of Washington Cities showed either people wanted to talk about the issue, or they did not. In all, he said he had a nervous feeling about networking. Ms. Serie said the intent was not go call general citizens, but to let people know there is a program and where they can get information if they are interested.

Dr. Leopold concurred with Mr. Provost's thoughts, and inquired about the possibility of a Hotline where telephone messages could be given on the general issue, with notice of that in the Newsletter. Ms. Wilder said this possibility has been investigated, but after costs are determined, there was still the need for a person to handle the Hotline. Dr. Leopold suggested using a tape, and Mr. Bishop said that may be the ultimate answer, if the inquiries can be matched with the proper response.

Mr. Bishop inquired if USDOE is operating a Hotline, and Ms. Wilder responded not to her knowledge. Mr. Provost said the NRC Hotline is used only for upcoming meetings and even with their resources it has been difficult to update messages to keep it current.

In response to questions it was pointed out the supplemental grant which has been submitted included additional resources for public information. The grant is being processed now, Mr. Provost reported, and he thought it should go through rather quickly.

Mr. Worthington thought the networking term was the wrong terminology. He thought a better method should be developed to get concerns from the citizens and then getting the information back to the citizens. The need is to reach a broader range of citizens and/or interest groups. Ms. Serie again pointed out the plan was not to call individual citizens in their homes, but to contact groups and organizations, local government, and agencies and to inquire what their membership thinks.

Ms. Wilder suggested developing a list of groups to be reached and bringing this back to the Working Group for consideration. Mr. Bishop suggested developing a conceptual paper to present the program to the Council. Ms. Wilder said this would be done.

Newsletter Update: Ms. Serie said the June/July Newsletter is in the typesetting stage. It will focus on commingling and the defense waste at Hanford, with a thorough discussion of the commingling, the decision to commingle and the implications for Washington State. An effort is being made to include a little more technical content than in the past, moving from programmatic newsletters into more detail. Also discussed will be Monitored Retrievable Storage (MRS) in this issue, with a little less detail. Included will be the results of the questionnaire published in February, a list of new publications, and a timeline of the USDOE program.

Ms. Serie said a more detailed timeline was discussed for inclusion in the Newsletter, but the decision was made to use this in a Fact Sheet because of the constant change.

The August/September Newsletter is under discussion. Further information will be given on the storage of wastes at the present, both commercial and defense, and perhaps a contact with a utility showing photographs of storage and plans for packaging waste in a repository; MRS will be discussed more in depth from the standpoint of how it would affect transportation impacts; involvement with other states could be included; and how wastes are currently monitored might also appear. Another message, she said, would be an explanation of how solidification works. Other countries' methods of disposing of wastes might also be included.

Ms. Wilder said the Newsletter mailing list had now grown from 2,000 in October to 6,000. She referred to a report in the packets containing some of the comments she has received from the last two Newsletters. Since a contribution from Dr. Leopold appeared in the paper, she explained she had asked one of her students to respond, and the student's comments arrived over Dr. Leopold's name.

In response to Mr. Bishop's inquiry concerning the discussion of the liability issue and the hearings being conducted in Congress, Ms. Wilder said no decision had been made whether to cover this issue in a Fact Sheet or in a Newsletter item. Mr. Bishop thought it was important enough and it could be addressed as a current event, with perhaps a Fact Sheet to follow in more detail. Mr. Provost added Governor Gardner had presented testimony to Congress on June 5, and will do so again next week, so this might be a framework for an article.

Mr. Sebero asked if the questions posed in the list of comments were given a response as individuals. Ms. Wilder said she had responded to requests for information, but just collecting questions. She said she did send a list of questions to USDOE with a note to the persons posing the questions. She estimated she had about eighteen or twenty questions unanswered and she was making an effort to respond individually. She said she received assistance from Dr. Brewer on technical questions.

Mr. Sebero thought some of these questions could be incorporated into the Newsletter. He cited the person who indicated an interest in one of their members appointed to the Board. It might be a good idea to explain how one does serve on the Board and what are the requirements. Similarly, he quoted, "Why not a surface repository?" and suggested this as a focus without quoting any names. Others may have wondered the same, he said.

Another issue to be added to the list for future articles would be the grants in lieu of taxes, Ms. Serie said. Mr. Bishop agreed and said as soon as some parameters are defined, this issue should be included. Another term that could be explained, Mr. Bishop said, was "characterization". This might be included in Newsletters and Fact Sheets, he thought, as many persons do not understand that term and believe it to be a lead-up to preparation of a repository.

Mr. Worthington thought the Advisory Council should have a little more input into the grant process to enable the Office to conduct more public involvement programs.

Mr. Kunz referred to the Letter to the Editor of the Wenatchee World written by Dr. Brewer in which he said whether the state of Washington turns down the repository or goes for it, backup for either decision is needed.

Association of Washington Cities: On Wednesday and Thursday the Office had an exhibit at the Association of Washington Cities Annual Convention in Spokane. Fact Sheets and Newsletters were distributed and the slide show was presented. While there, Ms. Wilder said she met and talked to a person from the Office of the Superintendent of Public Instruction who was interested in coordinating a program. He offered to speak to the group some time to offer any assistance, as they have Advisory Community Education Committees throughout the state. She said three pages of names from this contact will be added to the mailing list for the Newsletter.

Mr. Provost added that from their experience it was very evident most persons wanted a human being to talk with, and not just a slide show or an automatic display. He felt good contacts were made with a lot of follow-up work to be done. He said it was also a learning experience in logistics and ideas for handling such displays.

Association of Washington Counties: The Association of Washington Counties Annual Meeting will be held in Spokane the following week, and plans call for a display at that meeting also, Ms. Wilder said. Don Provost said a Panel discussion is planned with Warren Bishop as Chair and Mike Lawrence from USDOE, Curt Eschels from the Board and representing the Governor as his Energy Advisor, Senator Williams, and Senator Bentz will make up the panel. This should provide an opportunity for a balanced presentation, he said, and details are being worked out with each panel member describing the program from their perspective. The Panel will be held at 10:30 a.m. on Thursday, June 27, at Cavanaugh's Inn at the Park.

Upcoming Presentations: Ms. Wilder reported twelve presentations have been given since the last Council meeting to approximately 650 people. Future presentations include the Association of Washington Counties, Department of Ecology Regional Office in Spokane, the Yakima Board of Health in July, the Washington State Building Trades Council, and perhaps the Labor Council in September. There may also be another Regional Counties meeting in October. In response to Mr. Kunz's question, Mr. Provost said up to this time staff has been presenting these programs. He said the Office would have to seek the help of Advisory Council and Board members. The slide show is being augmented with a defense waste component and a geology component to appeal to certain groups. The basic slide show could be done by Board or Council members, however. There are five shows on film, with four available for presentations. The other remains with the contractor for updating.

Reference Center Statistics: Marta Wilder called attention to the sheet in the packets showing the use of the Reference Center. Mr. Bishop also noted the updated "Selected New Additions" which Jeanne Rensel prepares each month. Mr. Bishop asked Jeanne Rensel, the Reference Center Librarian to speak. Jeanne commented

she was delayed in arriving at the meeting because of a call from the Environmental Defense Fund in Colorado requesting a reference for an article this person was writing for Environment Magazine. She said she was able to locate the article by date, September 1981, and she gave him the title he needed and the quote. She cited this as one use of the Reference Center. Another request came from Curt Eschels, who wanted some reading material for the Governor, and she received an involved list of subjects with groupings and subgroupings. She will be collecting the requested material for the Governors's use.

Mr. Kunz commented on the small number of requests from private citizens and wondered if there were any trends Mrs. Rensel could detect. She said right after the Draft Environmental Assessment was released there was an increase in requests, and anytime there is publicity in the newspapers the calls seem to increase. She added the breakdown presented is not particularly accurate, and many times a request from a private citizen might fit into one of the other categories. Mrs. Rensel said she did not have as many people from the public sector as she would like.

Litigation Status

Mr. Roe said the most interesting item he could report to the Council deals with the activities of the other states in relation to the lawsuit the state brought last March relating to the challenge to the Guidelines adopted by the U.S. Department of Energy late last year. He said there are now ten states which have challenged the Guidelines. Since the last meeting the following states have filed:

Texas and Mississippi - in the 5th Circuit Court of Appeals in New Orleans

Minnesota - in the 8th Circuit Court of Appeals in St. Louis

Utah - in the 10th Circuit Court of Appeals in Denver

Nevada - in the 9th Circuit Court of Appeals in San Francisco

Vermont - in Boston

No decision has been made by the Justice Department as to what to do to deal with so many Circuits. He thought they would be centralized in one Circuit. In a general sense, he said, they are similar to Washington's case, but states such as Nebraska and Colorado are more interested in the transportation issue than they are in the geology and technical area.

In terms of timing, Mr. Roe said Washington owes a brief on the 10th of July in response to the Motion to Dismiss that was filed by the Justice Department in the Washington case and he is now working on that brief.

With reference to the request for supplemental funding to support litigation, Mr. Roe said no response had been received from the U.S. Department of Energy.

Mr. Bishop added that Mr. Roe had an extra workload the past few weeks because of the hearings being held in Washington, D.C. by several committees on Price-Anderson legislation, or liability as he preferred to call it. He said the statement contained in the Governor's testimony will be the state's approach. Additional testimony in the same vein will be given next week in a Senate Committee.

Environmental Review of the Commercial Low-Level Radioactive Waste Disposal Facility Within the U.S. Department of Energy's Hanford Site

Max Power of the Legislative Joint Science & Technology Committee said in 1984 the Legislature authorized the Joint Science & Technology Committee to contract for an "environmental study" of the low-level commercial radioactive waste site at Hanford. He said the whole program had never been summarized in a way that could be understood, and had not been evaluated in a consistent form. In the meantime, he said the Department of Ecology had been given the responsibility of the long-term management of the state's leasehold at Hanford, consisting of 1,000 acres, including the 100-acre site currently subleased to U.S. Ecology for radioactive waste disposal. The Department wanted to have an environmental baseline to work from in their long-range site planning.

Mr. Power said following a selection process the successful firm, Envirosphere, had produced a study which was a completely separate activity from the work Envirosphere has been doing for the Nuclear Waste Board. Mr. Power distributed copies of the summary (see attached) and said the full draft report was available upon request from the Joint Science & Technology Committee.

Mr. Power walked the Council through the report with the use of overheads. He said the study was based on previously assembled data collected by state agencies, particularly the Department of Social & Health Services and the Department of Ecology, which have responsibilities at the site, and by the U.S. Department of Energy and its contractors. No fresh field research was done. He said the draft is being distributed to organizations, to the state library system for distribution to public libraries around the state, and public review is requested. Notices have also been sent to a large number of interested citizens and organizations, he said. He added they hoped the Advisory Council members who have any interest would encourage people to examine the draft and submit any suggestions or comments.

Mr. Power reminded the body comments would be received on this draft document until July 15. He said the final draft would contain the Appendices; the state's lease of the 1,000 acres from USDOE; the sublease and license under which U.S. Ecology operates;

and all other relevant information. Once the comments are reviewed and the final report is issued, he said they will also include a 10-page Executive Summary describing the significant facts about operating a low-level site.

Dr. Leopold inquired about the geographic base for the report. Does the predicted impact cover the County only, or is it state-wide? Louise Dressen of Envirosphere responded: the impacts that are calculated in each of the scenarios are variable, depending upon the pathway discussed. She said the impacts are calculated at the nearest point where the public can be exposed. Specifically on transportation, Ms. Dressen said the impacts are calculated only for the state of Washington. No impacts were calculated on people residing in Oregon, Idaho, or other states along the transportation corridor.

Mr. Provost said even if the site were closed, there is a potential for groundwater contamination, and he questioned table that showed zero potential. Ms. Dressen said that was a phenomenon of some of the assumptions that were used in the analysis. She said they were looking at iodine-129, which is a very long-lived radionuclide and very mobile in groundwater. They also assumed that it is released as soon as it enters the disposal site. The assumption in this analysis is that inventory would essentially already be gone by the time the site is closed.

Mr. Worthington said he would like to see included some statement of intent and explanation of some of the assumptions.

Dr. Leopold suggested each graph should be clearly labeled Low-Level Waste so each graph stands alone.

Mr. Bishop recommended each member pick up a copy of the series on Hanford which ran in The Oregonian. Copies were available on the back table. The extra copies will be kept in the Office Reference Center and will be available upon request.

Current Activities

Mr. Provost reported testimony was recently prepared for Governor Gardner on the Price-Anderson Act, and Curt Eschels will be testifying next Tuesday before a Senate hearing on the Act. He said it was understood the Mission Plan went to the printer yesterday and should be issued in a couple of weeks. Other schedules are also sliding to a degree, with the Final Environmental Assessment being issued late. Work is being done on the Fiscal Year '86 grants, and will be discussed this afternoon. He said it was planned to work with the Advisory Council on the grant, especially in the public involvement area.

Public Comment

No comment.

Mr. Sebero offered to assist if a committee were formed to study the grants-in-lieu-of taxes situation.

There being no further business, the meeting was adjourned.