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MINUTES OF NUCLEAR WASTE ADVISORY COUNCIL MEETING  
OCTOBER 18, 1985

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EFSEC Hearings Room  
Rowesix - Building #1  
4224 Sixth Avenue S.E.  
Lacey, Washington

WM Record File

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WM Project 10

Docket No.

PDR

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Council Members Present:

Warren A. Bishop, Chair  
Philip Bereano  
Russell Jim, Yakima Indian Nation  
Dr. Estella B. Leopold  
Sam Reed  
Robert Rose  
Commissioner W.H. Sebero  
Jim Worthington

TO: H. Miller  
From: St. of WA

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

Mr. Bishop opened the meeting by introducing the new Council members who were present. He said some of the new members had not yet received their notice of appointment, or agenda and materials, which would account for the fact that all fifteen members were not present. He said there was a possibility that one of the newly-appointed members, Will Smith, would be unable to serve and someone would be named in his place. (A list of the new Council members is attached.)

Curtis Eschels, as Special Assistant for the Governor, welcomed the new members of the Council on behalf of Governor Gardner, as the Governor was currently in Asia. He noted the Advisory Council was counted as one of the keys to the success of the entire effort to expand and improve the public information program. He expressed his pleasure at the caliber of the new appointees and the returning members of the Council. He said he felt the new Council could build on the foundations that the previous Advisory Council members had laid so well. He said one of the key elements looked for is a broadening of the public involvement program. Another was building better bridges with local governments, and a third important element was to build better lines of communications with the academic and other technical institutions within the state. This is an outstanding resource that should be utilized. He cited the valuable contribution by Dr. Filby, a member of the Board, who asked Washington State University and the University of Washington to review and comment on the draft Environmental Assessment. He said the comments received were very valuable and were included in the state's comments to the U.S. Department of Energy. Mr. Eschels added there is

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a great deal of work to be done and the members could look forward to a lot of personal involvement, which should give each the kind of satisfaction that comes from this kind of public service. Mr. Eschels apologized to each member for not receiving the letters of appointment before the news were released to the press.

Mr. Bishop introduced Terry Husseman, recently appointed Program Director of the High-Level Nuclear Waste Management Office and an Assistant Director of the Department of Ecology. Other personnel who were present from the Office introduced were: Dr. William A. Brewer, Engineering Geologist; Marta Wilder, Public Information Officer; Anne Macrae, Administrative Assistant; Kathie Harper, Secretary; and Jeanne Rensel, Librarian in charge of the Reference Center. Ms. Wilder introduced the public information representatives from EnviroSphere, Consultants: Kathy Vick and Ann Croman.

Mr. Bishop called on Fran Barkan of the Washington State Institute for Public Policy, Science and Technology Project, based at the Evergreen State College. They are implementing the Legislature's grant from USDOE on the nuclear waste policy issue. She explained there are five grants in the state. The Yakimas, the Umatilla, and the Nez Perce each have one, and the state has one through the Office of High-Level Nuclear Waste Management and the Nuclear Waste Board, plus the one for the Legislature. The Institute is charged with providing specific information, data, and research to assist Legislators in the ramifications and parameters of the nuclear waste issue. The Institute publishes a series of information reports, a bi-monthly newsletter, and a number of other publications which will be provided to the Council members. Also provided to the Nuclear Waste Board and others is a regular newsclipping service gathered from seven state newspapers and one each from Idaho and Oregon. They can also be provided to the Council, Ms. Barkan said, should they desire. She said she would attend Advisory Council meetings on a regular basis, and offered any assistance the members might need from the Institute.

Mr. Bishop asked Jim Mecca, Manager, Department of Energy Licensing Group, BWIP, to introduce those who regularly attend the Council meetings. He introduced Max Powell, who works for the Basalt Waste Isolation Project (BWIP) in the licensing branch; Brad Erlandson of Rockwell, who works with Mr. Powell; Joe LaRue of Rockwell; and Steve Gano also of Rockwell.

#### Public Involvement Briefing and Orientation Plans

Marta Wilder reviewed the activities of the public information program over the past two years. A Public Information Working Group had been formed composed of members of the Advisory Council to reach as many citizens in the state as possible to distribute unbiased information on the repository program. She said both Dr. Leopold and Jim Worthington were members of that group.

Every other month a newsletter is published, with the next issue to be released the end of October. Articles will include international waste disposal, activities of other states, and EPA Standards. The newsletter is distributed to a mailing list of over 6,000 persons. Also published are Fact Sheets on single areas, such as definition of high-level nuclear waste, finding a repository, repository designs, transportation, geology, as well as general overviews of the state program.

Available for presentation is a slide show, giving an overview of the program, and slide shows on defense waste and site characterization are being completed.

Ms. Wilder said early in the program a survey was conducted to determine what kind of knowledge the citizens had about the nuclear waste repository issue, their attitudes on nuclear power, and their sources of information. Recently the Council had been discussing another survey, and plans were delayed until the new Council was appointed. This will be an item for their discussion, she said.

Mr. Husseman said because of the complexity of the repository siting process and the desire to get the new Council off to a good start, it was considered worthwhile to arrange a two-day program in Richland. He said this would give an opportunity for the members to hear various points of view, hear from those involved in the process, and give an opportunity for members to ask questions. A tour of the facility was also planned. EnviroSphere was asked to assist in putting together an orientation program, and he invited Kathy Vick to explain the proposed agenda. Mr. Husseman added that since this was only a proposed agenda, comments and suggestions for changes would be welcome, but they should be submitted as soon as possible.

Kathy Vick explained the seven-page proposed orientation plan distributed to the members. She said the first day would be devoted to presentation by various people involved in the program, both at USDOE and the Office of High-Level Nuclear Waste Management. The aim, she said, was to bring the members up to speed as quickly as possible on the activities in the area of a proposed repository for the last two years. Legislative history, agency activities, the state's program would all be reviewed, with an evening session planned the first day with interest groups. The second day, she said, would be the tour of Hanford.

Ms. Vick said early December was being considered to hold this orientation. She asked the members to check their agendas and let the staff know the best dates for them.

Sam Reed suggested a mention of how the Council relates to the Board should be included, as he thought this was very critical. Ms. Vick said this was to be covered in the state's presentation.

Russell Jim inquired where it was planned to include the Indian Nations on the agenda. Ms. Vick responded she believed as a representative of the Yakimas, Mr. Jim would be one of those to represent the Indian Nations and she hoped they would come as an interest group as well. He asked if that representation would come during the state's program, and Ms. Vick said that would be fine. Mr. Jim continued he thought the general populace must realize that the Yakima Indian Nation is much more than an interest group--it is a government included in the Act. It was agreed a speaker for the Indian Nations should be included on the agenda and suggested the Chairman of their Nuclear Waste Hazardous Committee, Mr. Mel Sampson.

Dr. Bereano expressed his personal concern about devoting two days to an orientation at this time. He thought the idea was excellent, but the timing was perhaps premature. He said it might be more valuable to set an agenda for the next regular meeting incorporating the issues planned for the first day at Richland to enable the new members to become familiar with the terms and issues before observing the Hanford site. He also questioned the use of a person from Nevada to discuss the federal legislation as he felt there were many qualified people in Washington State who could review it. He thought the members of the Council should define their needs before a formal orientation is set.

Dr. Leopold said she thought these were reasonable points, and agreed the general orientation could be done at a regular meeting, rather than in Richland.

Sam Reed also supported this concept, and agreed it was too early to visit Richland. He thought the Council could define more exactly for those planning this activity what the Council needs and wants after a period of time.

Mr. Bereano suggested some of the introductory material be scheduled on the next agenda. He also thought some of the printed materials would be helpful for the Council members. Marta Wilder pointed out all of the printed material was contained in a separate folder provided the Council.

Mr. Bishop observed because of the varied representation and level of knowledge of the new members, the purpose of an orientation program was to try to provide some basic knowledge about the program. He concluded that after listening to the discussion it was not necessary to hold this introduction over at Richland. Mr. Bereano explained he felt to bring together the sort of resources and experts at this time would be somewhat wasteful for a preliminary briefing. He thought it would be much more helpful to interact with people of that caliber after the members had assimilated some of the information.

Fran Barkan of the Institute reported they are planning a tour of the Hanford site for the Legislators in April. At the same time, the National Conference of State Legislatures' High-Level Waste

Working Group may have its regular quarterly meeting at Hanford. The Institute plans to suggest they do have the meeting at the same time to enable Legislators from other states to tour Hanford with the Washington State Legislators. She suggested the members of the Advisory Council could tour at that time and join this group. In addition, she said, they are hoping to organize a workshop on risk assessment, which would be a day or two following or preceding the tour. She thought perhaps members of the Advisory Council would be interested in participating in that also. She said she would report back to the Council at the November meeting when plans are firmed at the NCSL meeting at the end of October.

Mr. Bishop said all comments would be taken into consideration and an approach would be worked out that would be the most helpful. Mr. Husseman said the Office would be pleased to take some of these items from the orientation program for the next meeting. He asked for input as to how much the members would want in a single meeting. He asked for further comments by phone or by mail to consider in reforming the plans.

Ms. Wilder referred to the last two pages of the orientation materials, and requested the members fill out the biographical information and use the second sheet for any comments and suggestions.

Mr. Bereano wondered if it were the practice of the Council to determine agenda items for the next meeting at the termination of the current meeting. Mr. Bishop said the Program staff with the Chair set the agenda, which is usually pretty well dictated by the events and actions at the previous meeting. Mr. Bereano thought there should be some way for the Council members to offer possible ideas for the agenda. He suggested sending out a proposed agenda, asking for feedback to help shape the agenda.

Mr. Rose commented he personally felt Council members setting the agenda would be somewhere down the road. He said his only contribution right now would be for some kind of orientation, adding it would not be wise to try to cover too much at one meeting. He suggested the staff develop on a step-by-step basis orientation programs for the next two or three meetings.

Dr. Leopold suggested assigning to the members reading or re-reading the Nuclear Waste Policy Act, and any other reading that might be useful for discussion purposes.

Mr. Worthington said in light of the concerns of the members, he thought holding one or more meetings in a month to bring the new members up to speed to avoid a halt in the ongoing activities would be helpful. He said he would like to see the orientations take place in some additional meetings within the next two months.

Mr. Sebero commented he thought Mr. Bereano's concerns were shared by the Advisory Council since its inception in regard to the agenda. He said as a Council member since the beginning he found the staff

does an excellent job with the agenda. He agreed with the suggestion that the tour of the site be delayed until possibly the April date, after the members had an opportunity to be exposed to the issues, the terms, etc.

Mr. Bishop reminded the group that one of the prime responsibilities of the Council is to carry out a public involvement mission. It is a significant challenge, he said, and because of a lapse of two months, it was important to continue with the work already begun. The publications have continued, he said, but there are other elements of the public involvement program that need new ideas from the Council. In addition, it has been determined there is going to be a great need for greater understanding on the part of local governmental units in the states, including cities and counties, as well as other units of local government. He said consideration had been given to establishing two new working groups within the Advisory Council. The plan had been to name a member of the Advisory Council to Chair each one of those working groups: (1) the broadest concept of public involvement; and (2) local governmental entities involvement, with meetings at least once a month in addition to the regular Council meeting. Mr. Bishop asked the members to consider which of those two groups they would like to devote efforts.

Mr. Reed asked specifically how would those two groups accomplish their missions: How will they operate? To whom will they relate and make recommendations? What would be their responsibility and reporting? Mr. Bishop said this is a topic for further discussion and clarification.

Dr. Leopold remembered it had been mentioned there might be some kind of workshop groups, or standing, outside committees formed of persons other than Council members. She thought resource people could be used from such groups as the League of Women Voters, and others from the community. She thought a network of people beyond the persons in the room would definitely involve the public.

Mr. Bishop said he thought there was going to be a great deal of responsibility on the part of the working groups to develop a mission plan of their own. This will be new ground, he said. The last Public Involvement Working Group developed its plan and procedures and methods for carrying that out. In addition, he said, the consultants listed a number of ways in which the program could be carried out, and he was sure they would be willing to contribute.

Mr. Reed asked if it was expected the working group would be advisory to staff, to the Board; would they actually go out and do things, and if so, within what limitations; would they maintain surveillance over staff and other activities aimed at carrying out these missions? He wanted, in other words, to know what they were expected to do.

Terry Husseman advised the Office would usually be mailing to the Council, in advance of the meeting, the materials that will be discussed. Because the appointments were not known in time, this

procedure could not be followed for this meeting, he said. He pointed to a few key areas in the materials in their packets on which to focus:

1. The text of the Radioactive Waste Act, which creates the Council, particularly Section 43.200.050, defining the duties of the Council: to "...provide advice, counsel, and recommendation to the Board on all aspects of the radioactive waste management program. The Council shall particularly advise the Board on maximizing opportunities for public involvement in the program, soliciting public input, and assisting in the need for wide understanding of the issues involved in nuclear waste management".
2. Memorandum of Understanding between the Department of Ecology and the Nuclear Waste Board. This is basically the contract the Department of Ecology has with the Board to provide staff to the Board, which staff is the Office of High-Level Nuclear Waste Management. Contained in the Memorandum of Understanding (8) is the charge of the Office to provide information and support to the Council to enable the Council to develop a recommendation to the Board for a public information program, carry out the program, if approved by the Board. Mr. Husseman said the Office would be going to the Board this afternoon with a proposed staffing plan to prepare for the eventuality of Hanford being named as one of the three finalists, which would take the whole program into a second phase. Currently Marta Wilder is the only person on staff for public information, and the Office relies heavily on Envirosphere for help. He said the proposed staffing plan would add at least three additional people in the public information area. These people will be available to work with the Council to make and take suggestions, with the goal being to develop a long-term plan with some creative new ideas on ways to involve the public. Mr. Husseman said the public involvement program is considered equal to the technical side of the program.

Mr. Husseman assured the Council materials would come to them earlier, and as these committees are formed this will be a team effort.

Mr. Worthington said, as a member of the Public Involvement Group, a lot of time was spent with the staff and the contractor, Envirosphere, and all of that information was brought back to the Council and always presented to the Board. He said it definitely was a joint effort and a big effort. He felt the public information area had come a long way, and it will grow more each day.

Mr. Reed continued he thought it was intended a sub-group of the Council would sit with staff and do some conceptual thinking about how better public involvement could be obtained. Mr. Bishop replied it goes beyond that, as the working groups and the Council will have to somehow implement those plans through the staff. These

recommendations would be brought to the Council for decision, and some would need to be taken to the Board for implementation.

Mr. Bereano asked for clarification as to the make-up of the working groups. He said it had been discussed they would be composed of people from the Council, and another version they would be chaired by a Council member and composed of others not on the Council. Mr. Bishop considered the working groups would develop a plan they felt would be the best way to implement some of their recommendations. Dr. Leopold referred to conversations that were held earlier to consider developing outside panels or groups to create an outreach program involving a greater number of people. This would not make those citizens members of the Advisory Council, Mr. Bishop said, but it would provide a means for carrying out the program. He said this would be only one alternative way to carry out the assignments of the working groups; formation of panels of local governmental officials is another idea which has been suggested. He emphasized that he thought an outreach program is going to have to involve a greater number of organized groups than just the 15-member Advisory Council, and he hoped that would be achieved within a structural approach recommended by the members of the Council. Mr. Bishop added he did conceive of the working groups composed of Council members and staff, and through the staff to the consultants. In response to Mr. Bereano's further question, Mr. Bishop said these groups could recommend the formations of panels or bodies involving Council members and non-Council members to develop and implement the program.

Another item of importance for the Council to consider, Mr. Bishop said, was the proposed survey. It is advisable that the Public Involvement Working Group be formed to continue this endeavor, and it may be their desire to deal with that specific subject.

Mr. Bishop agreed with Mr. Reed this meeting today was for the purpose of clarification and expectation of responsibilities.

#### Scheduling Advisory Council Meetings

Mr. Bishop commented that in the past both the Council and Board meetings have been scheduled on the same day. He said this has placed an enormous burden on the staff, which is not a large one. Discussions had been held on separating those two meetings and consideration has been given to having the Council on one day, with the Board meeting on another. Also suggested was that some of the Council meetings be held in cities other than Olympia.

Mr. Bishop said that should the meeting be held on separate days, the Council members would still be reimbursed for travel to Board meetings. Working group Chairs are always at the Board meeting, he said, as they are called upon for reports.

In the discussion that followed both Sam Reed and Dr. Leopold opposed separating the meetings. Dr. Bereano agreed with them and said the idea of having meeting in other parts of the state was an excellent possibility, and in that case both meetings need not be



scheduled so close together. Mr. Reed thought attendance by Board members at the out-of-town meetings was important and Dr. Bereano thought that might be a recommendation the Council could make to the Board.

Mr. Sebero commented that when the Council and Board were created, the Council met on a different day from the Board. He said that meant a lot of travel involved which created a problem in integrating with the Board. He said that was changed to the present schedule, and in his opinion the Council plays a very key role. He felt there was not good public participation from the people in Eastern Washington, and moving the meetings across the mountains would take the issues to the public over there.

Russell Jim endorsed the concept of meetings around the state. He thanked the Board and others responsible for allowing him to sit again with the Council. He said he was pleased to be with them and to do what he could to educate each community of the state, municipality, Representatives, and Congressmen as to the role the indigenous populace, and perhaps other parts of the country, will play in this very important piece of legislation. The Yakima Indian Nation has been instrumental in contributing to the parent legislation and they have on their reservation a facility which could be made available for holding a joint meeting of the Board and the Council. He said they would be most elated to host the Council there for the tribal acknowledgment of their participation and the general populace of that area. Details could be worked out, he said, and it is perhaps essential for the Council to travel periodically to other parts of the state.

Dr. Leopold seconded this offer with enthusiasm, and said the Toppenish facility would be superb for a combined meeting. Mr. Worthington also agreed the Council meetings should be held in different locations as the general public is not familiar with the Board or the Council and they should have the opportunity to become acquainted with the members and be able to have some direct input through their local members.

Dr. Leopold moved that the Council go on record recommending that the two bodies continue to meet on the same day; that they move together throughout the state periodically; the staff suggest to the Board and Advisory Council locales for these meetings; and they find ways to interact with the populace at these locales. The motion was seconded. The question was called and the motion carried unanimously.

#### Reference Center

Jeanne Rensel, Reference Librarian for the Office, gave a brief overview of her position and the materials available in the Center, located at 5826 Pacific Avenue in Lacey. She said there are approximately 2,000 documents, including federal reports, documents from other states, and materials from sources other than governmental agencies. These are catalogued and are available for public use.

They contain most of the back-up technical material pertaining to the high-level nuclear waste repository project. Mrs. Rensel said some materials are available for loan, and she welcomed telephone calls if people are unable to come into the Center. Photocopying is available, and there is a microfiche reader and printer in the Office with much technical information on microfiche. Mrs. Rensel said each month she compiles a list of new acquisitions which is distributed to the Council and the Board. She added she is able to obtain information that might not be contained in the Reference Center.

Russell Jim offered to send some deliverables from their contractors which might be useful in the Reference Center. Marta Wilder encouraged any of the new Council members to visit the Office and review the Reference Center.

#### Further Introduction

Mr. Bishop noted the presence of Bob Cook, Nuclear Regulatory Commission Resident Licensing person for liaison between USDOE and NRC at the Richland site, and introduced him to the Council. Mr. Cook has filled this position for over two years, and occasionally attends the Council meetings.

#### Expense Vouchers

Mr. Husseman referred to the Expense Voucher furnished each Council members, with an attached explanation on how to fill out the forms for filing with the Office. When completed, these should be returned to Anne Macrae. Should there be questions, he said, feel free to call her ((206) 459-6670). Mr. Husseman pointed out there was also a list of staff members and their areas of responsibility in the packets. He invited the members to call at any time they had a question related to the program.

Marta Wilder commented that in further reference to public involvement, the Working Group on Public Involvement had discussed various ways members could become more involved. Included were the possibility of evening meetings, different workshops, Awareness Days, and members' taking the slide show to present to local groups in their areas.

#### Other Business

Mr. Bishop introduced Charles Roe, Assistant Attorney General for the Department of Ecology, and assigned to the Nuclear Waste Board, the Advisory Council, and the Office. His telephone number is (206) 459-6163. Mr. Roe gave the Council an overview of the status of the current litigation in which the state is involved. Mr. Roe explained the Siting Guidelines contain the fundamental criteria by which the U.S. Department of Energy grades the various proposed sites to be characterized. The Nuclear Waste Board brought an action challenging the validity of those Siting Guidelines earlier this year. Nine other states joined in that effort. In addition,

he said, about five other environmental groups have initiated litigation, and the merits have not yet been discussed as the United States filed a motion to dismiss on the grounds that the 9th Circuit Court, in which the case was filed, has no jurisdiction. Extensive briefs have been filed, Mr. Roe said, and copies are available if requested. A ruling on the motion for dismissal is now being awaited.

(Attached is a copy of Mr. Roe's memorandum of October 9, 1985, to the Board on the current status of litigation.)

Dr. Leopold suggested the previous memos from the Office of Attorney General might be useful to distribute to the Council. She mentioned particularly the August 15 memo. Mr. Bishop believed this would be covered in the materials prepared for the Council briefings.

Mr. Bishop announced the next meeting of the Council and the Board would be held on Friday, November 15, at the usual times. He said staff would restructure the Orientation Plan with consideration given to scheduling a tour of Richland at a later time. He stated the next few meetings of the Council will focus on the educational process for the new members to be presented in careful elements. Mr. Bishop emphasized that he would also like to start to organize the Council at the next meeting by appointing members to serve on sub-groups in the two areas of importance: public involvement and local governmental involvement.

He invited the Council members to remain for the Board meeting that afternoon.

#### Public Comment

David Tarnas of the University of Washington first remarked if Public Comment is not usually on the agenda, he suggested it always appear on the agenda, at least at the end. He welcomed the new members of the Council and commented that the only formal recommendation he recalled the Council had made to the Board was concerning support for the proposed Washington State Well-Logging Study after the U.S. Department of Energy had refused to fund it. He said he was inspired to hear the Council make a recommendation to the Board today.

Mr. Tarnas remarked the Council attendance in the past has been quite poor, and he hoped the attendance record of the new Council would improve on the past. Concerning the discussion about the planned orientation, Mr. Tarnas said it became obvious it was important to consult closely with Council members on organizing any event, as well as establishing the agenda for the next meeting.

Mr. Tarnas said concerning the charge under the legislation for the Council to advise the Board in maximizing opportunities for public involvement in the program, he felt the Council was the means by which the technical and scientific community, members of the public, and the public interest groups can give their input to the Board,

other than by making public comments at the Board meeting. He thought it was imperative that the Council recognize this responsibility and carry it out.

Regarding the membership on the Council, he asked if the representative of the Yakima Indian Nation were an ex-officio members, or a voting member. He said the Act states representative of the Indian Nations "may be" ex-officio or non-voting members of the Council. He welcomed Russell Jim, and asked him if he were a voting member, as well as the other member working for the Yakima Indian Nation as an attorney.

Mr. Bishop responded he had to assume Mr. Jim was appointed as a full member, which he interpreted to be a voting member.

Mr. Reed referred to Mr. Tarnas' statement that the Council had made only one formal recommendation to the Board, and he asked if Mr. Tarnas were chiding the Council to do its job better, to make more formal recommendations to the Board. Mr. Tarnas said Mr. Reed inferred correctly. He said his point was that he felt the Council could be more involved and more effective. Making more formal recommendations to the Board was a way in which they could do that. He thought the staff had done a fine job in informing and advising the Board, but he still felt it was the Council's role to give policy recommendations and advice to the Board.

Mr. Worthington said as one of the original five members from the Tri-Cities, plus Anita Monoian of Yakima, who regularly attended each meeting, they were very conscious of the perceptions and they spent a great deal of time working through the Public Involvement Working Group. Mr. Tarnas said he was sorry he did not acknowledge the tremendous amount of effort those members had expended.

There being no further business, the meeting was adjourned.

1/15/85  
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NUCLEAR WASTE ADVISORY COUNCIL

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## OFFICE OF THE ATTORNEY GENERAL

Inter-office Correspondence

Date: October 9, 1985

To: WARREN BISHOP, Chairman  
Nuclear Waste Board

From: CHARLES ROE *CR*  
Senior Assistant Attorney General

Subject: Litigation Status Report

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

### I. Litigation

#### A. Siting Guideline Litigation

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

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

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

#### B. Funding Litigation

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

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

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

C. "Potentially Acceptable Siting" Litigation

In Texas v. United States Department of Energy, F.2d \_\_\_\_\_ (5th Cir. No. 84-4826, decided June 10, 1985), the federal appellate court in New Orleans granted a motion to dismiss on the grounds that USDOE's designations of sites in Texas as "potentially acceptable sites" for consideration for characterization were not final actions under section 119 of NHPA which are ripe for review. The Attorney General's Office in Texas is evaluating whether it will request review of this ruling by the United States Supreme Court.

4. EPA Standards

In Natural Resources Defense Council, Inc. v. Thomas, U.S.D.C., D.C. No. 85-0518, an environmental group initiated litigation designed to force the Environmental Protection Agency (EPA) to adopt "standards for protection of the general environment from off-site releases from radioactive materials in repositories" as required by section 121 of NHPA. A "consent order" has been agreed to by the parties that requires EPA to adopt such standards by August 15, 1985. Such standards were published in the Federal Register on September 19, 1985.

E. "Monitored Retrievable Storage" (MRS)

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

## II. Potential Areas of Litigation

### A. Water Rights

Earlier today this office received a copy of USDOE's response, signed by Ben Rusche, to Governor Gardner's letter to Secretary Herrington, dated March 4, 1985, pertaining to USDOE's need for the acquiring of water rights relating to site characterization and repository operation at Hanford. In a nutshell, USDOE contends it owns "reserved" water rights, i.e. water rights established under a federal law doctrine; thus, there is no need to acquire a "water right" under state law. However, USDOE states it will submit a water right permit application to the appropriate state agency as a matter of "comity" if Hanford is selected for characterization under the Nuclear Waste Policy Act.

I will be reviewing this matter with Warren Bishop and Terry Husseman with the objective of reporting at the November meeting. One of my primary activities in relation thereto will be to carefully research the base, in law and fact, of USDOE's reserved right claim position.

### B. Other Areas of Evaluation

1. Defense Wastes. This area is one that is in the forefront of my activities in working closely with Terry Husseman. (Earlier this month I met with the USDOE attorney to discuss informally this very important area.)
2. Section 114(f) - Preliminary Determination of Suitability. Prior to the November meeting, I will have prepared for you a discussion of litigation avenues that might be used if USDOE does not modify the interpretation of Section 114(f) of the NWA as set forth in USDOE's Mission Plan.

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

CBR:sc

cc: Terry Husseman  
Jeff Goltz