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WM DOCKET MINUTES OF NUCLEAR WASTE BOARD MEETING
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EFSEC Hearings Room

Rowesix, Building #1

4224 Sixth Avenue S.E.

Lacey, Washington 98504

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Board Members Present:

- Warren A. Bishop, Chair
- Dr. John Beare, DSHS Designee
- Senator Max Benitz
- Curtis Eschels
- Dr. William Funk
- Dr. Royston Filby, Water Research Center Designee
- Senator H.A. "Barney" Goltz
- Senator Sam Guess
- Representative Shirley Hankins
- Representative Dick Nelson
- Representative Nancy Rust

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

Mr. Bishop announced the newly-appointed Advisory Council met this morning. He furnished the Board with a list of the new members, four of the former members were retained: Dr. Estella Leopold, W.H. Sebero, and Jim Worthington, as well as Warren A. Bishop, Chair. Mr. Bishop proposed the Board adopt a Resolution commending the former Council for its efforts over the past three years. It was moved and seconded the suggested Resolution prepared by the staff be adopted. The Board voted unanimously to adopt Resolution 85-4. (Resolution and member list attached.)

The minutes of the September 20, 1985, meeting were approved as published.

Status of Low-Level Compact Process

Lynda Brothers, Assistant Director for Hazardous Substances and Air Quality of the Department of Ecology, reported the Compact held its quarterly meeting on September 24. The main items of discussion were the status of the national legislation on low-level radioactive waste and the procedures for contacting the Northwest Interstate Compact, which were amended slightly to conform to national legislation. The procedures were adopted earlier by the Committee and dealt primarily in matters of administrative approaches to contacting the Committee and content of information to be reviewed by the Committee.

Concerning national legislation, Dr. Brothers said in anticipation of Congress not ratifying the Compact and meeting the January 1, 1986 deadline, she began meeting with representatives of other states over a year ago to draft legislation which has subsequently passed the political tests. That bill, HR-1083, sponsored by Representative Udall, passed out of the Interior and Insular Affairs Committee before the August recess. It has since had a sequential referral to the Energy and Commerce Committee, chaired by Representative Dingell, and to Representative Markey's Subcommittee. Markey's Subcommittee held a markup session the first of October and passed out a substitute version of the bill. To date, she said, no date has been set for a hearing by the full Committee. She said the major provision that changed in the Markey Subcommittee dealt with emergency access. In the original version of the bill this was a very narrow provision, but the Markey version contemplates any kind of public health situation which could conceivably arise if a region is not able to site its own disposal site, with a longer period of time allowed.

Dr. Brothers said on October 8 there was a joint hearing of the Environment and Public Works Committee and the Judiciary Committee on the Senate equivalent of HR-1083. Governor Gardner testified at this hearing.

On Monday, October 7, a meeting called by the National Governor's Association was held to discuss the Markey bill and the remaining issues to be resolved. The consensus of that group, including the representatives from the regions and states without their own disposal sites, was that the proposed emergency provision was much too broad and should probably be limited again. Another notable change from the perspective of the state of Washington, she said, was the Markey bill did not include a provision to deal with the question of mixed wastes, namely those wastes that are radioactive as well as hazardous. The status of that section created a controversy between those subcommittees of the Commerce Committee that dealt with health and environmental effects, and those that dealt with radioactive effects. Dr. Brothers said she understood this is being worked on very actively between the Subcommittee and the full Committee staff and will no doubt reappear when the bill goes to the full Committee.

In response to Senator Guess' inquiry about the emergency provision, Dr. Brothers said the original Udall bill had an emergency provision whereby the state or region could get a one-time declaration of emergency. Once an emergency was declared, they would not be subject to the other provisions of the bill, the timetables and the surcharges. In the Markey version they are now allowed to have a two-time declaration of an emergency, and possibly more, with other broadened provisions. Senator Guess wondered if a bill would be passed by Christmas, and Dr. Brothers replied she was encouraged by the progress and was very optimistic. She felt once the bill cleared the Dingell Committee it would go through the House, and both Senator Strom Thurmond and Senator Edward Kennedy are primary sponsors.

Presentation on Environmental Assessment Comments

Mr. Bishop remarked that on October 17th a long and intensive review of the Washington State comments on the Draft Environmental Assessment was presented by U.S. Department of Energy officials from Washington, D.C. He said USDOE indicated they had made thirteen changes in all, twelve of which resulted in a weaker "report card". One of them, he thought, would have increased the intensity of their recommendations. Mr. Husseman said another subject discussed at length was the ranking methodology. USDOE indicated they had received the report from the National Academy of Sciences, which Mr. Husseman said would be discussed by Mr. Eschels later. They said the NAS basically gave them good marks on the methodology itself, but they were unable to make comments on application of the methodology for the primary reason that USDOE is still in the process of developing the weights and standards upon which the methodology will actually be implemented. He said USDOE also indicated the methodology will be applied only to the five sites they determine will be in the final five, as opposed to utilizing the "decision-aiding" methodology to compare all nine sites.

Public Involvement

Marta Wilder said she looked forward to working with the new Board Advisory Council. She circulated the new Information Flyer which contains a listing of the general information available from the Office, mentions the Reference Center, and gives information about available presentations.

Ms. Wilder said the October/November Newsletter is due for publication on October 28, and will be mailed to approximately 6,000 people. It will contain articles on activities of different states, how waste is handled internationally, and a brief discussion of the Environmental Protection Agency Standards. The December Newsletter will be a quick wrap-up of the year in review and mention of upcoming events. Approximately 3,400 names of groups and individuals will be added to the mailing list in the near future. Some of the new categories would include emergency management agencies, fire and police chiefs, colleges, libraries, etc.

Five presentations have been made in the past month, and the new updated slide show overview is being used. The technical modules are nearly complete, she said, and will include a module on defense wastes and one on site characterization.

Ms. Wilder referred to her memorandum to the Board concerning the contemplated survey. Essentially, she said, it states initial planning has begun, but involvement of the new Advisory Council will be sought and there should be an update for the next Board meeting.

Advisory Council

Mr. Bishop reported that at the first Advisory Council meeting this morning an action was taken, which was a proposal for the Board recommending that some of its meetings be held in other places in the state periodically. He said the proposal would be typed and sent to the Board for consideration at the next Board meeting.

Committee Reports

Transportation. Mr. Watson reported the Transportation Working Group had been primarily involved the last few weeks in preparing for the meeting held on October 17th with representatives of the U.S. Department of Energy and the State Department on the transport of foreign reactor wastes to and through the state of Washington. The meeting was chaired by Curt Eschels, and Mr. Watson asked Mr. Eschels to report on it.

Mr. Eschels said because of the different resources and different responsibilities of the various state agencies, the Nuclear Waste Board's Transportation Committee is the group that includes most of representation from these agencies. At the same time, he said, because of the nature of the foreign shipments, there was uncertainty at that time as to whether the Nuclear Waste Board had the authority and the funding to cover this issue. Therefore, it was decided the meeting would be run under auspices of the Energy Facility Site Evaluation Council, as the Chairman of EFSEC is considered the state liaison officer with the Nuclear Regulatory Commission and the one who is notified of domestic commercial fuel shipments.

Mr. Eschels acknowledged the tremendous amount of support and work of the Transportation Committee and staff. In addition, he said the agencies have already submitted good comments.

Mr. Eschels said the state indicated at the meeting, and prior to it, that the way in which Washington State became aware of the proposed shipment was unacceptable. In addition, other shipments of high-level waste, which also occur under non-NRC jurisdiction, were added to the agenda low because of unacceptable notification. Mr. Eschels reported John Anttonen of USDOE in Richland came with an apology in a very gracious and straight-forward manner, which was appreciated. USDOE wanted to cooperate with the state on the whole range of spent fuel and high-level waste material.

Mr. Eschels said he felt an understanding was reached at the meeting that USDOE will treat all of these shipments more as they would if they were under the NRC regulations. This would include formal, written pre-notification, state inspections, and an uncertain element to work with the state on the question of liability. He said these were the major points, although there is a whole range of additional topics. He added that a complete and thorough understanding was not reached, so continuing meetings will be scheduled to nail down the details. Overall, he said he found the Richland

officials very cooperative and very understanding of the state's responsibilities and priorities the state sets on meeting those responsibilities. He thought the representatives from Savannah River had held an earlier set of priorities that did not match those the state of Washington has in 1985. He said he was optimistic that the view held by the state and the Richland Office will be the one that will prevail as being sensible and reasonable and will protect the citizens of the state better.

Ted Hunter, Counsel for the House Energy and Utilities Committee, said Representative Nelson, who was delayed in arriving, had asked him to raise Representative Nelson's concern with reference to the report of shipments into the Port of Tacoma. He said that concern was regarding the origin of the fuel as there is a different regulatory scheme if it is research reactor fuel or commercial spent fuel. He asked if that were addressed yesterday and was the state given sufficient assurances that it was research and not commercial reactor fuel.

Mr. Eschels said oral representation at the meeting was that all of the foreign shipments under discussion is research reactor fuel--not commercial power plant fuel.

Dr. Beare asked if there were any discussion as to why this material is coming into the Port of Tacoma, rather than going through the Panama Canal and up the East Coast. Mr. Eschels said that was the first question asked, but there was no direct answer. USDOE, backed by a State Department official, said they have not yet made a final decision. Mr. Eschels said the question was then asked as to when that decision would be made, and did not get a firm answer. Bill Dixon of Oregon asked what criteria would go into that decision, and Mr. Eschels thought this presented an opportunity for Washington and Oregon to make certain both states' concerns are addressed in answering that question.

Senator Goltz added he thought the answer he heard was quite direct that they had not made a commitment, but Tacoma would be used. He said the considerations they used were (1) safety, and (2) time and expense. They believe it is much faster to move a shipment from Tacoma to Savannah River by truck than by rail or by boat, and when using \$1 million casks and desiring to keep them in use, time is a very important part of the expense equation. In addition, it was stated that when the Port of Tacoma was contacted the people there indicated they would be very happy to have the business and felt assured the Tacoma Port could handle the shipment safely. Finally, Senator Goltz said, there are considerations of movement of these materials in the waters of countries which have policy prohibiting those shipments. It was not stated that Panama was such a country, nor was it stated that any other country in the South American or Central American area might have such a regulation, but if there were that would have to be followed also.

Mr. Eschels added he had neglected to mention the state of Oregon was well represented at the meeting yesterday. He said they had planned to have a meeting on this subject the 22nd of October and when they learned of Washington's meeting it was decided to pool both states' efforts and speak as partners. Bill Dixon of their Public Utility Commission attended with a state Representative and two others. In addition, members of local government, Port of Tacoma, and the City of Tacoma were also invited to the meeting. Additional state and local officials attended as well, he said, as there was a great deal of interest.

Mr. Bishop asked if a response had been received to the letter the Board authorized be sent to USDOE concerning foreign waste shipments. He wondered if the meeting yesterday was supposed to be a response. Terry Husseman indicated that the Board has not yet received a response to the letter to USDOE.

Socioeconomic. Terry Husseman reported the Socioeconomic Committee met last week and the two main subjects discussed were (1) grants in-lieu-of taxes, and (2) the socioeconomic impact study which needs to be done for the state of Washington.

Concerning the grants in-lieu-of taxes issue, Mr. Husseman said the federal law says each state that is nominated for site characterization is entitled to receive grants in-lieu-of taxes, and the basic test for the amount of the grant is that if this work were being done by private enterprise, how would the private enterprise be taxed. The amount of those taxes would then come in the form of grant money from the U.S. Department of Energy through the Nuclear Waste Fund. If Hanford should be designated as a finalist, from that date the state of Washington would be eligible for these grants. The question before the Committee is how to compute the amount. Don Taylor from the Department of Revenue, who is a member of the Committee, has a basic plan of approach, which is to identify what taxes would apply if this were private enterprise. He will develop a working first draft estimate of how the state would be impacted. Delaying this estimate is a detailed budget to come from the U.S. Department of Energy. It is understood this will be available by next Monday.

Another factor in this issue is to identify which taxes would be picked up at the local level if this were a private enterprise. Each unit of general local government in which a repository site is located is entitled to receive a grant in-lieu-of taxes. A small Subcommittee was formed--consisting of two local officials, Lane Bray, City Councilman from Richland and Ron Jones, Benton County Commissioner--to identify all of the potential local government entities which would be entitled to tax this enterprise if it were taxable. They are to notify them of the effect of the federal law, and to ask each of them to designate a representative to form a panel of local officials. In the meantime, the Department of Revenue is drafting a list of the questions that will need to be answered by these local officials to determine the grants to which they would be entitled.

The Committee discussed a meeting of the Panel in the Tri-Cities area with a briefing from the various involved staff to bring them up to date on the issue.

Representative Rust inquired if the grant money received would be earmarked, or would it go into the General Fund. Mr. Husseman said the law provides that the grants go to the state, or to the local government in which the repository site is to be located. The funds are not earmarked for any specific purpose, he said.

The second subject the Committee discussed, the socioeconomic impact study, relates to what impacts the construction and operation of a repository at Hanford would have on a statewide basis and at the local level. This particular part of the federal law, he said, applies only to the state that is actually selected--the final one in which the repository will be located. However, the report must be ready to be handed to the federal government shortly after the decision is made. Therefore, the study must be started early in the process. Also, Mr. Husseman said, the earlier the baseline data is available, the more meaningful the later data will be. The same process used in preparing the socioeconomic impact report will be useful in the scoping and review of the Environmental Impact Statement, which the USDOE is required to prepare at the time of the final decision.

The Committee decided the best approach would be to go for a very specific Request for Proposals. That is, he said, to determine what exactly the state needs to know in order to determine the socioeconomic impact, rather than to take the more general approach of asking those submitting proposals to indicate how they would go about the process of determining socioeconomic impacts. Being specific, he said, would simplify comparison of proposals. In addition, he said experience of Nevada and Texas, which went the specific, detailed RFP route, indicates good results.

The Committee then decided to retain an outside consultant to draft the RFP. He said Nevada asked for \$1 million over a three-year period to do the study in their grant request, and he thought Texas requested \$2.3 million. The Committee planned to move forward from here.

Mr. Eschels expressed his appreciation of the work done by the Committee during his absence because of illness.

Environmental Monitoring. Dr. John Beare, newly-named Chair of the Environmental Monitoring Committee replacing Don Provost, called attention to House Bill 3, enacted during the last Legislative Session. Under this bill the Department of Social and Health Services was given the responsibility to develop a monitoring program statewide, which exceeds the parameters of the Hanford Reservation. In setting up this program, he said, a Quality Assurance Task Group is being developed to work with the DSHS staff to help the Department in carrying out that responsibility. They are asking for representatives from USDOE and their contractors and subcontractors at the

Hanford Reservation, the Washington Public Power Supply System, the State Public Health Association, Portland General Electric, and the Oregon State Health Division because of their monitoring activities relating to the Trojan facility in Rainier, Oregon. Dr. Beare asked also that the Nuclear Waste Board, either through its staff or through a designated member of the Board, sit with the Quality Assurance Task Group. He said they would like to proceed with the Group some time after the first of November.

Dr. Beare asked Bob Mooney of DSHS staff to give an update on the functions DSHS is undergoing in cooperation with USDOE and others on environmental monitoring of the site and the joint testing of the Columbia River done by the states of Washington and Oregon in cooperation with Greenpeace.

Mr. Mooney said the Department of Social and Health Services has been collecting soil samples and radiation gamma measurements from installed stations, and the water samples discussed were the first of a series collected under the DSHS monitoring contract. The samples were collected last July in cooperation with the state of Oregon, Greenpeace, and the U.S. Department of Energy. Three laboratories were involved--the two state laboratories and the commercial laboratory doing work for the U.S. Energy Department. He said the intent was to look at some of the seepage areas along the Columbia River. This data was to be compared with data contained in the Annual Monitoring reports.

At the meeting the day before the sampling, Greenpeace was given the choice of location to collect the samples covering a distance of about 44 river miles. This was narrowed down to where the main groundwater plume is emerging. One area was the Hanford townsite, another was done in the supply system intake area, and the third was further down in the 300 area. Mr. Mooney said the Environmental Protection Agency provided each laboratory a sample with known activity in it. Greenpeace took samples, the composition of which only they knew, for submission to the three laboratories.

Yesterday, he said, each of the agencies brought their data and exchanged it. In comparison, the results all agreed exceedingly well, he said, and a chart was prepared. All of this data, composed of six different samples and 50 different analyses run by each of the three laboratories, is being compiled for presentation to the Board. Essentially, the samples all agreed within the expected precision of the laboratories. He said they also agreed with the data that exists in the state's Annual Monitoring reports and with the U.S. Department of Energy. He thought this was a good example of the ability to verify the data being received and analyzed.

In response to Mr. Eschels question about the agreement of the results within the expected precision, Mr. Mooney said the charts, when produced, will show the samples will come within the error range.

Mr. Mooney showed slides of the river-sampling trip which gave a good picture of seepage on the Columbia River, which can only be seen when the river drops, he said.

Mr. Provost commented the U.S. Department of Energy is soon to release its Annual Monitoring Report. Discussions have been held with them regarding the possibility of a presentation to the Board, similar to the EPA presentation, if the Board agreed. Mr. Provost said this report covers the major route of radionuclides off the Reservation. It is considered important and would be worthwhile to meet on this subject. The Report is expected fairly soon, he said, and it was agreed notice would be sent and a meeting would be set for Thursday, November 14, at 1:30 p.m. in the EFSEC Hearings Room.

Mr. Lasmanis asked Dr. Beare if there was a plan in place under House Bill 3 to measure uranium contributed in the Columbia River upstream, such as uranium mill tailings or radiogenic granites up in Colville. Dr. Beare referred the question to Bob Mooney who said that would be part of the monitoring. He said the Department had monitoring now at the specific uranium mills, and that data is there. Dr. Beare added House Bill 3 would call for expansion of monitoring in areas where the Department is not currently monitoring.

Mr. Mooney said the Department will release a complete report when all data is in from EPA and the rest of the laboratory tests are received, which should be by the end of November.

Dr. Funk asked if the groundwater flow is masked by the high-river flow. In other words, he said, when the river is up some of these springs cannot be measured, but it would be expected they would be continuous through the water year. Mr. Mooney replied in the affirmative. Senator Guess asked if the water were high enough, would that reverse the pressure back into the spring. Mr. Mooney said it would and that is the reason for enormous fluctuations in the data.

Mr. Provost mentioned the Battelle report issued in November, 1984, concerning the seeps from the Hanford Reservation into the Columbia River. He recalled they sampled 50 stations and discussed many of the issues raised about measuring the river height, etc. He said the report could be made available to those interested.

Committee Membership Changes

Mr. Bishop listed the existing Committees:

- Environmental Monitoring
- Defense Waste
- Transportation Policy
- Socioeconomic
- Mission Plan Review

He said these committees would be retained, using uniform designations, and changing some memberships.

Environmental Monitoring. Dr. Beare would be named Chair of this Committee, with Don Provost, former Chair, becoming a staff person. Curt Eschels would be removed to devote more time to the Socioeconomic Committee, which he chairs. Senator Benitz and Dr. Funk would be invited to be members of the Committee, and an Advisory Council designee would be named.

Defense Wastes. Andrea Beatty Riniker will Chair. Other members will include: Dr. John Beare, Curt Eschels, Dr. Royston Filby, Representative Shirley Hankins, Richard Watson, Senator Al Williams, Senator Goltz, and Senator Sam Guess. Benton County Commissioner Sebero will be the Advisory Council designee.

Transportation Policy. Richard Watson will Chair. Other members will include: Ray Adams of the WA Utilities & Transportation Commission, Dr. John Beare, Don D. Ernst of the Department of Transportation, Senator Goltz, David H. Guier of the Department of Emergency Management, Larry Hart of the Washington State Patrol, Representative Louise Miller, Lora E. Murphy of the Department of Emergency Management. An Advisory Council designee has not yet been named.

Socioeconomic. Curt Eschels will Chair. Members will include: Richland City Councilman Lane Bray, designee for the Association of Washington Cities; Chuck Clarke, Deputy Director, Community Development; Jim Connolly, EFSEC designee; Benton County Commissioner Ron Jones, designee for the Association of County Commissioners; Ray Lasmanis, Department of Natural Resources; Ralph Mackey, Community Services Regional Administrator, DSHS; Representative Nelson; Don Taylor, designee for the Department of Revenue; Jim Worthington, Advisory Council designee.

Mission Plan Review. Richard Watson will Chair. Other members include: Senator Benitz, Curt Eschels, Representative Louise Miller, Representative Dick Nelson, and Senator Al Williams. Robert Rose will be the Advisory Council designee.

He added that should any members of the Board have further thoughts about serving on any particular committee, he would be pleased to consider any changes. Representative Hankins commented that she noted there were three Senators to each Representative on each committee.

Defense Waste Report. Mr. Bishop referred to the draft of the defense waste paper prepared by Envirosphere and staff and sent previously to the Board for comment. Mr. Provost said comments have been received and a request will be made to USDOE to discuss the issue. The proposed final draft of the paper will be reviewed by the Committee.

Mission Plan Review. Mr. Watson reported the Committee had been sent copies of a review of the final Mission Plan, which was prepared by EnviroSphere. The aim of the review was to track the response of the final Plan, particularly with reference to the comments made by the Nuclear Waste Board on the draft Mission Plan. Another meeting of the Committee is planned within the next two weeks to refine the review and forward it to the U.S. Department of Energy.

Mr. Watson mentioned one issue of major importance for the Board's consideration for comment. Section 114(f) of the Nuclear Waste Policy Act requires that the Secretary of Energy prepare an Environmental Impact Statement to accompany any final site recommendation to the President, and that EIS "shall consider as alternate sites three candidate sites with respect to which (1) site characterization has been completed, and (2) the Secretary has made a preliminary determination that such sites are suitable for development as repositories consistent with the guidelines prepared under the Act".

Mr. Watson referred to the Chronology of Events and determinations on the question of preliminary determination of suitability contained in the Board notebook. During the process of concurrence between the U.S. Department of Energy and the Nuclear Regulatory Commission agreement was reached that the preliminary determination of suitability should be done after site characterization is complete for all three sites. Mr. Watson said this was less than clear in the draft Mission Plan and was a primary comment of the state of Washington that the state's understanding of this Section was that the preliminary determination of suitability was to be done after successful characterization of three sites. Other comments were similar and the Mission Plan should make it clear that the preliminary determination would be made after site characterization. The Final Mission Plan, however, states that the preliminary determination of site suitability will be made at the time the Secretary recommends three sites to the President for site characterization on the basis of the evaluation contained in the Final EIS. It further states that USDOE considers that if during or after site characterization a site is found to be unsuitable for further consideration, USDOE can nonetheless proceed with a recommendation to the President of one of the other two sites as the proposed repository.

Mr. Watson says this is an issue of whether or not the selection will be the "best" site from among three viable alternatives; or would be a recommendation of the "only acceptable" site from among as few as one viable alternative. This issue has stirred up a storm of controversy, with conflicting letters being sent from both houses of Congress. Mr. Watson said his conclusion and that of the staff was that the state's position is the correct one. He referred to Draft Resolution 85-3 being presented to the Board addressing this position.

In discussion of the Draft Resolution the wording was changed to read "strongly recommends" in lieu of "insists". It was moved and seconded Resolution 85-3 be adopted as amended. (Resolution 85-3 attached.)

International Topical Meeting on
High-Level Nuclear Waste Disposal--Richland

Senator Guess said the meeting held in Richland on September 25 was the most interesting single meeting he had attended since graduation from the University of Mississippi. He said the power of the participants and the papers were impressive, with about 120 papers being presented. He said these would be compiled and a full report of the meeting will be published. He said at the dinner he attended with Ben Rusche there were thirty-two guests, with twelve department heads or deputies from six countries. These included Switzerland, Belgium, France, Federal Republic of Germany, Sweden, and Japan.

Following the dinner a few remarks were made by Mr. Rusche, and then he invited each guest to make some remarks. In his statements, Senator Guess said he mentioned some of the problems the state encountered with environmentalists.

At the dinner the following evening, Senator Guess said former Governor Dixy Lee Ray was the principal speaker and did an outstanding job. He said he would secure copies of the speech for the members. The following morning, Dr. Margaret Maxie of the University of Texas spoke on the ethics of storage. That speech will appear in the Spokesman Review as a guest editorial, he said, and he would also furnish copies. Senator Guess felt the contacts he made would be valuable should there be a trip planned to visit Europe in the future.

Senator Guess said he learned that Ben Rusche likes the idea of the Educational Committee of the CSG and NCSL. He said that a Primer has been prepared and USDOE will pick up half of the cost, with the states picking up the other half. The initial order will be 100,000 copies, with every Legislator in the United States receiving a copy. He said there was a need for an awareness of the issue as a survey of the 7,300 Legislators with 3,000 responses received, indicated that less than 10% have any comprehension of what nuclear storage is.

In response to Mr. Bishop's question, Senator Guess said they anticipated 300 participants at the meeting, and 475 registered. He considered it a most worthwhile meeting, and he said he felt privileged to be able to attend.

Representative Hankins said she was unable to attend as she was too busy helping with tours for her company and there was a great deal of work to do as clearing foreign nationals is very difficult. Thirty days' notification has to be given, she said. Also, the week before there was a group of about 500 people from all over the world in the Tri-Cities for the Computer Application for Operating

Reactors, which was a first in the history of the nation, in fact in the world, for that kind of meeting. She said the Richland Chapter of the American Nuclear Society had done an exceptionally good job of conducting two very fine workshops.

Representative Hankins added she had just mailed out Chapter 17 of "Understanding Radioactive Waste", a book published by Battelle Press. She said she had permission to copy this Chapter which she sent to the 500 elected Republican women, and she will send the same to the elected Democrat women as soon as she receives the list.

In addition to Senator Guess, Don Provost, Max Power and Ellen Caywood attended this meeting. Don Provost agreed with Senator Guess that the papers were excellent. There is a copy of the Ethics paper in the Reference Center and it should be possible to receive the others before the document is printed.

Future Meetings

Price-Anderson Hearings. Mr. Bishop said the Price-Anderson/Liability hearings will be held on October 22-23 in Washington, D.C. before the Subcommittee on Nuclear Regulation of the Senate Committee on Environmental and Public Works. Curt Eschels will head the state team to appear before that Subcommittee.

Oversight Hearings. Oversight hearings on the repository program will be held on October 29-30 in Washington, D.C. before the Senate Committee on Environment and Public Works. Warren Bishop will testify for the state.

Another Oversight hearing has been scheduled for November 6-7 before the Research and Production Subcommittee of the House Science and Technology Committee. The intent was to ask Representative Nelson, Chair of the state House Energy and Utilities Committee to appear before that Subcommittee, but since that is a scheduled Washington State Legislative Weekend, representation at this hearing will have to be decided later.

First-Round States/Tribes/USDOE. The quarterly meeting of the first-round states/Tribes/USDOE is tentatively scheduled for December 2-3 in Atlanta, Georgia. The major issue will be how to accomplish better consultation between states and tribes and USDOE and interaction with local governments.

Also in Atlanta a Fall Information Meeting has been scheduled for November 18-19. Program information services, resources, and data systems will be the principal topics of discussion. Mr. Provost said these meetings are of a more general nature and prove very useful.

Another meeting scheduled for March 2-6 in Tucson is Waste Management '86, which is similar in nature to the Richland meeting consisting of concurrent sessions, technical papers, and a full agenda.

National Academy of Science Review of Ranking Methodology

Mr. Bishop asked Mr. Eschels to give a progress report and the current status of the National Academy of Science review of the ranking methodology. Mr. Eschels referred to the chronology contained in the notebooks, and the ranking methodology described in the Draft Environmental Assessment by which USDOE would rank sites under consideration. He said there was some healthy criticism of that by this state and other states and bodies. Because of the lack of public confidence, Governor Gardner made the positive suggestion that there be a "pause" in the program to get it back on track and that a panel of non-USDOE experts be assembled to examine all of the aspects of the methodology, including data that went into them and their applicability. He even went so far as to say these non-USDOE experts should redo that ranking methodology.

Distributed to the Board was a copy of the transmittal of the NAS report to the Office of the Governor. Mr. Eschels observed that it has already been noticed that the request the USDOE made to the Academy, although a good step in the right direction, did not cover completely the Governor's recommendation. It is considered a partial implementation of his suggestion. The action that was not taken was the pause and the re-ranking by a set of non-USDOE experts. Mr. Eschels said in consideration of the fact the Board members had not had an opportunity to read the NAS report, he said he wanted to make a few preliminary observations and then give a brief summary.

Mr. Eschels said first, it is a very carefully worded document that must be read in its entirety to catch the tone and content. On balance he thought the main points were: first, the Academy concludes that the methodology itself, on paper, presents an appropriate methodology to be used in ranking sites. It also said, however, that it could not evaluate how well the technique will be applied until that work is completed. In other words, he said, USDOE does not yet have a passing grade for methodology.

Another observation Mr. Eschels made was that the Academy noted that this technique is a very complex one and observed that more time than USDOE now plans may well be needed to do this job right. A third observation was that the Academy recognizes the place that judgment and discretion have in a process such as this. However, it notes in its report that it has concern that USDOE is using only its own experts in making some of these estimates and judgments. It goes on to note that the credibility of those estimates would be substantially enhanced if an independent panel of outside experts were to review the complete analysis prior to the final Environmental Assessments. That is the other half of Governor Gardner's suggestion, he said. In that sense, he said, he is pleased with the Academy's work, it is right in line with what Governor Gardner recommended, and he was unable to go further because the Department still has the document under internal review.

Mr. Eschels added his endorsement of the Academy's work was not made simply because it coincides with the Governor's suggestion, but because it is essential to get the program back on track.

Senator Guess said that this, in the words of Dr. Brewer, shows a marked maturing of the U.S. Department of Energy since Ben Rusche took over in June of 1984. He thought his indication to accept the Governor's recommendation was very positive and should help the state's relations with USDOE.

Mr. Eschels added he thought Ben Rusche and the U.S. Department of Energy had not yet taken the Governor's suggestion, and he thought the Academy of Science had just come back saying "It would be good for you to have a pause, and it would be good for you to get non-USDOE experts to evaluate this before the final EA is issued". This is not done yet, he said, and he hoped Mr. Rusche takes the advice of the Academy. Mr. Bishop said he, too, hoped USDOE would have further review, and he felt it was important to continue to express the Board's and state's concerns.

Representative Nelson asked Ted Hunter, Counsel for the House Energy and Utilities Committee, to present to the Board his concern expressed in his letter of October 10, 1985, addressed to the National Academy of Sciences. Representative Nelson wanted to be sure the issue of economic damage analysis was also raised to the Academy in their review of ranking methodology. He attached the report of March 15, 1985, from the Socioeconomic Committee to the Nuclear Waste Board in which they discussed the issue. The Committee recommended in this report that the Board pursue negotiations on proper methodology to perform an economic damage analysis and funding for that. They also recommended that this analysis should be included in the Environmental Assessment in its ranking methodology and its description of the sites. They also recommended that the Board's legal counsel examine the report and supporting documentation for inclusion in the pending litigation on guidelines. Mr. Hunter said this report from the Committee was forwarded to the U.S. Department of Energy with a letter dated April 10.

Mr. Hunter said Representative Nelson wanted to make sure this item of risk was considered, and he had hoped it could be addressed in the Academy's report, but it appears the timing was too late for consideration.

Representative Nelson arrived at the meeting and added that after the discussion at the meeting yesterday on the subject, it seemed more obvious to him there was a problem. He said he could detect no assurance that economic damage was going to be considered. He thought it differentiates Hanford as a site from at least Nevada, and perhaps Texas. He thought it essential to find a way to convince the U.S. Department of Energy that the guidelines already speak to economic damage, and the guidelines are not being followed when this is not included in the ranking methodology. He said USDOE had not provided a good explanation as to why they have not dealt with this issue.

Washington State Institute for Public Policy

Mr. Bishop remarked Max Power, who was then with the Joint Science and Technology staff of the Legislature, now with the Washington Institute for Public Policy, contracted with ECO Northwest to evaluate the ranking methodology of the Draft Environmental Assessment. That organization was asked to review the final draft EA. Mr. Power said the original analysis of the ranking methodology by ECO Northwest was well regarded by the Board, other states, and apparently by the U.S. Department of Energy. He said the Department went back and came up with a different decision-aiding methodology. ECO Northwest was then asked to review the proposed decision-aiding methodology to see if the problems originally identified had been corrected. He introduced Dr. Arthur Sullivan of ECO Northwest, who is an Assistant Professor of Administration and Economics at the University of California Davis, with degrees in Economics from Princeton University. Mr. Power said Dr. Sullivan had been their back-up expert on ranking methodology.

Dr. Sullivan began with an overview of the decision-aiding method. He said there are three different steps of the process USDOE is proposing to do, the first two of which have already been accomplished.

1. Preliminary Screening. The idea was to start out the process with hundreds of possible sites. For practical purposes not all those could be subject to complete evaluation. Therefore, USDOE looked at hundreds of possible sites and limited the sites for consideration to nine. There were a number of ways in which USDOE did this, and outstanding in their description of it was that often sites were eliminated for consideration on the basis of a single criterion. For example, he said, one of the limitations was that if a site were not greater than, or equal to, 2,000 acres it was excluded from analysis.
2. Secondary Screening. Once USDOE had the nine sites they decided to cut the number to five, based on the notion that only one site of each geohydrological setting should be evaluated.
3. Evaluation of Five "Nominated" Sites. When the secondary screening was accomplished there were five that USDOE called "nominated" sites. The next step was to undertake rigorous analysis of these sites, and the most recent documents from USDOE labeled this technique the "decision-aiding method". This has four or five principal steps, he said, and the first step was that each site was given a score of one to ten on each of a number of siting guidelines, some of which were population density, socioeconomics, radiological safety, etc. Once each site was given a score on each guideline the next step was to assign a weight to each guideline. They then summed up the weighted scores for each site and arranged them in declining order of scores.

Dr. Sullivan said that in appraising this basic ranking method, three basic questions were addressed:

1. External Validity. The question asked, was the screening process the appropriate way to limit the hundreds of sites to five sites for nomination, and does this process designate the five best sites for thorough evaluation. In other words, he said, the question is, has the universe of potential sites been eliminated in the right way?

2. Internal Validity. Given there are these five nominated sites, the question is, does the USDOE decision-aiding method nominate the three best sites for characterization? A theoretical question would be, is the decision-aiding method appropriate for this problem? ECO Northwest's answer, along with the National Academy of Science, is that it is the appropriate methodology given this problem. The second question relating to internal validity is: Will the decision-aiding method be executed properly, and are there any constraints, given this siting problem, that might limit the application of this decision-aiding method?

3. Uncertainty. Dr. Sullivan said given the timeframe and the uncertainty associated with this ranking process, it is important that whatever output comes from the ranking process exposes, rather than obscures, the uncertainty in the decision-making process. He said the uncertainty in individual scores should be reflected in the uncertainty in the final ranking.

Conclusions and Recommendations

1. External Validity Questionable. ECO Northwest's conclusion, he said, is that the USDOE ranking method is questionable for a couple of basic reasons. First, some of the excluded sights may, in fact, be superior to some of the five nominated sites. In the process of going from a hundred sites to five, he said, it is possible USDOE has excluded desirable sites. Therefore, the final ranking may not incorporate the best sites for characterization. A second observation is that even if all the sites that were excluded were inferior to the five nominated, because of the way the decision-aiding method works, it is possible that exclusion of these inferior sites may affect the ranking of the final five. That is a technical question, he said, relating to how the scores were established, but the way the decision-aiding method works is that all these sites are in a sense given relative scores, not absolute scores. Therefore, how many sites considered in reaching the final five will affect the ranking of these final five.

In general, ECO Northwest's observation is that the screening process, unlike the decision-aiding method, was not subject to the rigor that would be expected given the

importance of the problem. Dr. Sullivan said it was considered USDOE has improved dramatically the second step of the process, but had not addressed the real concerns that ECO had regarding the first step.

2. Internal Validity Probable, But Not Certain. On the second issue of internal validity, ECO's conclusion was it is probable, but not certain. On the first issue, the National Academy of Science addressed pretty well the basic idea that it is a proven methodology that has been applied to many applications and there are many examples of both the science and the art of this method. However, he said, internal validity requires that the determination of the guideline scores and the guideline weights must be internally consistent. For reasons described in the original USDOE report there are some external restraints imposed by legislation on the weights assigned to various criteria. For example, he said, the sum of postclosure weights must exceed the sum of weights on preclosure weights. The weight on radiological safety has to exceed the weights placed on socioeconomic and transportation and one other element. Third, socioeconomic and transportation weights must exceed the weights placed on the cost of siting. Therefore, he said, USDOE may execute in the correct professional way, but if those weights are adjusted there would be no faith in the decision-aiding method.

Dr. Sullivan said the question becomes whether or not the external constraints imposed by the legislation will invalidate the procedure. Until the weights and scores are seen, he said, no determination could be made whether they would be invalidated, so the issue cannot be addressed at this point.

3. Exposing the Uncertainty. Dr. Sullivan said there was some ambiguity in the USDOE report as to how they will handle uncertainty, and ECO's recommendation is that they should use two techniques: first, they should do a numerical sensitivity analysis; and second, they should do an expected-utility analysis. They mention both of these techniques in the report he said, but are not explicit which they would choose to utilize. He said they should be using both. The numerical sensitivity analysis would address the issue of uncertainties associated with the weighting factors, and the expected-utility analysis would address the issue concerning the uncertainty about scores.

Recommendations

Dr. Sullivan said the basic recommendations are:

1. The decision-aiding method is a credible method, and if it is applied correctly, it will generate a valid ranking of

the sites, subject to the qualification that the five sites that are subject to evaluation may not be the five best sites.

2. Both numerical-sensitivity analysis and expected-utility analysis should be done.

Ray Lasmanis referred to the requirement that three geologic media should be considered and was concerned that of the hundred sites considered one-third of those were in basalt. He thought only one site in basalt at Hanford was considered, and only one site in tuff was considered in Nevada. Therefore, he thought there was a slight problem at the beginning, and believed USDOE did not look at hundreds of sites. Dr. Sullivan replied he was not sure of the exact number, but they did start out with more than nine.

Senator Guess objected strenuously to the testimony, as Dr. Sullivan had said 100 sites were considered and now stated he was not sure of the exact number. Dr. Sullivan replied part of the preliminary screening might have been the decision to say they would not look at those sites, and that would have been the same as looking at them and eliminating them.

Curt Eschels observed that he found some very strong similarities between ECO's conclusions and those of the National Academy of Sciences. He added he had not studied either report long enough and could not embrace or reject either one, but he did note the strong similarities and felt the report was a valuable input for the Board.

Senator Guess inquired of Dr. Sullivan how many registered engineers were employed by ECO Northwest, and Dr. Sullivan replied there was one registered engineer with an undergraduate degree who was the secondary person on the report.

At this point Senator Guess asked Dr. Sullivan to inform that engineer Senator Guess would be filing charges with the State Licensing Board.

Representative Nelson thought one of the issues the state faces is the problem of who does the selection of the weights that are attached to the parameters. He presumed the National Academy had not dealt with that. Dr. Sullivan replied that in part the decision-aiding method is based on multi-attribute utility analysis, and the weights are determined simultaneously with the scores so that a consistent set of scores and weights will be derived by the panel of experts. He said the weights would not be known until the process is completed. Representative Nelson said he understood this to be an internal process by the USDOE, but asked if those weights should be given some independent consideration and open to scientific peer review. Dr. Sullivan replied that given that these things are determined simultaneously, the review of the overall process would expose those sorts of concerns, not only the weights, but also the scoring on the weights.

In response to Representative Nelson's inquiry if that review were going to be done, Dr. Sullivan said he was not certain of USDOE's plans at this point. He thought that was the point of going through the process of recommending different external reviews and the National Academy of Science suggested that experts from elsewhere would do that review after the weights are assigned and the scores determined.

Senator Goltz asked if the federal law requires that the U.S. Department of Energy find the best site in the nation, or does it simply ask that a satisfactory site be found. He commented that should the process start over, there could be an endless series of re-evaluations of the methodology, as there is a certain amount of subjectivity to it. Max Power said the federal law does not explicitly require finding the best site, but the overall tenor, as he read it and the Congressional Office of Assessment says, is that in order to establish any suitable site, there will have to be a high level of public credibility that this has been a reasonable search. He understood the consultants are not recommending throwing out the process and going back to step 1, but to simply keep in mind there is now a very sophisticated methodology for ranking a relatively small number of sites that were selected from a much larger number with much less sophistication. He continued, while a very sophisticated method is being applied to a small number of sites, it should be clear that is not producing in effect the best site. It seemed to him it was a qualification and not a recommendation and it must be clear. He hoped the public would be clear about it as well, so there will not be misunderstandings down the line.

Mr. Eschels said this is the basic philosophical difference between the states and the federal program. He thought the federal people acknowledged that at the meeting yesterday. They are looking for a site that is licensable, and that includes meeting all of the minimum qualifications. The states, generally, have the view that the process ought to result in the "best" site in the nation. Washington State has always qualified this, he said, as the best site under consideration. The state feels if there are nine under consideration, the top ones should be chosen from those nine. This is the reason, Mr. Eschels said, there is such intense interest in this ranking methodology. The concern is whether it takes the very best three out of the nine, or whether it is constrained by stating there must be at least one tuff site or basalt site.

Mr. Eschels continued by recalling that Ellison Burton said yesterday at the meeting USDOE was concerned about having all three sites of one rock type, because there could be a common mode failure. Later he was asked if that meant they had to have at least two, and he replied, "Yes, it doesn't imply you have to have three". Not being a geologist, Mr. Eschels said he didn't know the likelihood of a common mode failure in two different rock types, but he understood the logic in that argument.

Another point made by Mr. Eschels was the question of whether USDOE should find the best site or just a licensable site is one noted in

the industry report prepared by Creighton and Creighton. The industry consultants' viewpoint on that is flagged as a point that should receive attention as that is holding up the progress of having a repository on line.

Senator Guess suggested Ellison Burton's remarks be excerpted from the tapes for distribution to the Board. Mr. Bishop said this would be examined to see if it would be feasible.

Representative Nelson said he understood the ranking methodologies will be used again when the site characterizations are finished. He asked if there were any views on how the methodology should be improved or would it be adequate with the suggestions made for improvement. Dr. Sullivan said the point is that this sort of an evaluation is both an art and a science, and the specific application of that will be subject to some professional judgment. Depending upon how well that is done, he said, there should be faith in the ranking process. He added the major problems they see is not in the decision-aiding method, but in the screening process.

Representative Nelson continued he had been bothered for some time about the fact that this is a human-devised solution which is one of a kind. Because mistakes can be made and factors are not always seen in the design, he asked if there were any analysis that takes into account the probability of the unforeseen factors. Dr. Sullivan replied to his knowledge there was no such analysis. If it is not known, he said, it is difficult to estimate the effects. However, the decision-aiding method with the uncertainty analysis would incorporate some of the uncertainty of the experts, he said. On the unknown factors, he said, that can be addressed by the numerical sensitivity analysis to a certain extent. One has to look not only at the final ranking, but the relative differences to perhaps incorporate some of these uncertainties.

Mr. Bishop observed these analyses have just been received, they will be reviewed by members of the Board and staff, and this issue will continue to be a matter for discussion. He said because of the importance of this issue in the final Environmental Assessment, which has not yet been received, he felt the state has a responsibility to bring any element of concern to the attention of USDOE. He added, Ellison Burton, yesterday in the presentation, acknowledged they are aware of that and indicated he was not sure if there would be another interruption in the process in order to cause another review of this weighting, or the technical substance, that goes into the weighting process. (A copy of the full ECO Northwest report is available upon request from the Reference Center of the Office of High-Level Nuclear Waste Management.)

Review of Creighton Study

Because of the length of the discussion on the ranking methodology, Mr. Bishop postponed a presentation on this study. He recommended the members study the report and, should there be time on a future agenda, it could be discussed, he said.

Proposed Staffing Plan

Terry Husseman recalled that at the last Board meeting the Contractor Assistance Committee reported that, until a decision was made on the staffing of the Office, it was too soon to reach a specific approach to the contracting method. The staff was directed to bring to the Board a proposed staffing plan, which Mr. Husseman described in detail.

Mr. Husseman said that for the purpose of formulating the plan the Office operated under the assumption that Hanford would be chosen for site characterization. He said no implementation beyond preparation to hire would be taken until the final decision was made naming Hanford as one of the final three sites. Other assumptions were that the decisionmakers, including the Nuclear Waste Board, the Legislature, the Governor, the Office; and the public will need a strong technical, policy and legal basis for decisions on:

Adequacy of USDOE testing;
Site approval or disapproval; and
Licensing interactions.

Also assumed were the following:

1. The Office of High-Level Nuclear Waste Management staff should have expertise in key disciplines.
2. Key employees must have the experience and education to impact immediately on ongoing programs.
3. USDOE will approve and fund the Staffing Plan.
4. Staff will be project employees.

Mr. Husseman said the goal is to be prepared to assemble the entire staff by the time a final decision is made to nominate the Hanford site for characterization, assuming that is the case.

Mr. Husseman said options on staff size versus outside consultants were considered and the Office opted for establishing a medium-sized staff with experts in key areas and using consultants with special expertise in specific areas of need. He continued with graphs illustrating the breakdown into three general areas: Performance Assessment Team, the technical area; the Public Policy Analysis and Public Involvement Team; and Administrative Services. Also being considered was some out-of-area assistance at the Hanford site and in Washington, D.C.

The goal of the Performance Assessment Team, consistent with the charge to the Nuclear Waste Board, is to protect the health and safety of the citizens of the state through independently assessing the work of the U.S. Department of Energy in its effort to establish a repository. Mr. Husseman said the state personnel system is such that many of the positions required can be identified through the

Civil Service System, but some are considered "agency-unique". This means the position has attributes that are not included in any of the Civil Service definitions. Four of these "agency-unique" positions are in the Performance Assessment Team area, including Manager of this Team, Geohydrologist familiar with multi-dimensional modeling of flow in fractured and porous media, Geochemist with expertise in chemical and thermal effects of a high-level nuclear waste repository on the geologic stability at the Basalt Waste Isolation Project, and a Radiation Health Physicist who is expert on potential radiation health impacts from all facets of the proposed nuclear waste disposal program. Other positions planned are in the areas of Transportation, Socioeconomic, Defense Waste and Engineering.

The Public Policy Analysis and Public Involvement Team would require a manager able to convert technical issues into understandable English and raise them to the policy level in the form of issue statements of issues. The manager of this section would also be considered a "agency-unique" position. The Public Involvement Team would include a Policy Analyst and two Public Information Officers with the intent to work with the Advisory Council in a creative capacity. The ultimate goal would be the Team, working with the Council, would come with recommendations to the Board for programs that would result in meaningful citizen participation in policy-making decisions. Also included on this Team would be an Outreach Coordinator and the Librarian in charge of the Reference Center. There is a need to expand the presentations around the state and create new ideas to involve the public as participants in the meetings, which would be the principal function of the Outreach Specialist.

The Administrative Services Team would serve the entire program in the fiscal, word processing, and office management areas.

The On-Site Representative would live in Richland. This person would be reporting on a daily basis, would be in close coordination with the technical team, and would coordinate any meetings held in Richland. Mr. Husseman said it was felt this position was an obvious necessity, and it would also provide a contact person for the U.S. Department of Energy on the site.

The second out-of-area position identified was the Washington D.C. Representative. This person would live in Washington, D.C. and would attend Congressional and agency hearings and coordinate with the state's Congressional delegation on high-level nuclear waste matters. Mr. Husseman said there are four federal agencies that are constantly dealing with matters that affect the state's activities: The Nuclear Regulatory Commission, U.S. Department of Energy, Department of Transportation, and the Environmental Protection Agency. There are also at least six Congressional committees which have begun to have hearings on issues related to the repository program. The entire state Congressional delegation has expressed the desire to become more informed of the state's activities, and it is extremely important to keep them informed. Other states have

representatives in Washington, D.C., he said, and a very knowledgeable and trustworthy person representing Washington State would be of great value acting as eyes and ears. This person would be required to file daily reports on significant events, make monthly reports to the Board, and would not take policy positions. Mr. Husseman cited a long list of meetings of the NRC, many of which were of significance to the state. Flights back and forth to Washington could easily amount to more than the cost of having a full-time representative located in Washington, D.C.

Mr. Provost inserted the fact that at noon today a call had been received from the Nuclear Regulatory Commission advising of a meeting to be held by the Commission on Monday, the 21st. The subject of the meeting will be the EPA Standards. The U.S. Department of Energy, EPA, and the Advisory Council on Reactor Safety will all be testifying before the NRC. He said the ACRS is suggesting that the EPA Standards be loosened, a very significant issue, and the state will be unable to cover this meeting.

Senator Guess objected strongly to the proposal for an On-Site Representative in Washington, D.C. He considered it an overgrowth of the program.

Mr. Husseman said there was the possibility of contracting for a person in Washington, D.C., but the cost would probably exceed the cost of an On-Site Representative. Senator Guess inquired if this would break the budget, and Mr. Bishop replied that it would not break the budget. He said it was a part of the grant proposal that will be submitted to USD OE.

Mr. Watson asked if it were known what New Mexico, for example, had done in this regard with respect to the WIPP project, or other states such as Nevada or Texas. Mr. Provost said each of the states is just getting to this stage, but Texas has submitted a grant application which is over three times the state of Washington proposal. Nevada is looking at an organization similar to Washington, with a budget a little larger. The New Mexico group is smaller, he said, but their technical team is approximately the size of this proposal. However, they are not in the same situation under the Nuclear Waste Policy Act.

Mr. Husseman said once the Board approval is granted for the staffing plan, it would be necessary to meet with the Department of Personnel to prepare the detail of job descriptions, submit the plan to USD OE and at the same time submit the proposal to the State Personnel Board to obtain the "unique" classifications. The next meeting of that Board is November 10, and should the positions be on their agenda, a decision could be reached by December 10. It would slide a month if the positions are not considered on November 10. Unsolicited resumes are already being received at the Office and recruiting, screening, and interviewing would be done through a formal step-by-step process, with Board involvement and assistance in that process. No hires would be made until the time Hanford was actually nominated.

Senator Guess asked why the universities are not being used in some of this work. He said within the state of Washington there is a richness of personnel and expertise with which the Board could contract. Mr. Watson said his personal feeling on reviewing the magnitude of the task is that the plan is a very minimal staffing for the work that would be required. He visualized much of the work overseeing and coordinating contract with people in the state universities and independent contractors, and he would be uncomfortable with much less than the planned staff. Curt Eschels said in response to Senator Guess' proposal to use technical people from the universities that he was sure those persons already had responsibilities assigned. He felt it was very important to use the resources that are already available to the state, which has been done in the assignment to the Nuclear Waste Board. He mentioned the compliments he paid to Dr. Filby in his efforts to tap that tremendous resource in the comments to the Environmental Assessment. Those were funneled, he said, to the Nuclear Waste Board and were included in the Board's comments because that was the responsibility of the Board. He said the Board will be graded on how it meets its responsibility, and in order to do that it must have the authority and resources to do so. He considered the plan very well balanced.

Mr. Bishop remarked there is a Memorandum of Agreement with the Department of Ecology to provide all of the administrative and support services for the Board. He considered it the responsibility of the Department to provide an organizational approach to providing those services. He repeated that the proposal must be taken to the Personnel Board for special authorization for those positions which do not fit the formal state class structure, and the proposal must be submitted as part of the grant to USDOE for their determination of the level of support they will approve for the state. He considered it the Board's responsibility to review and determine the need for that kind of a support service, and that should be the extent of the role of the Board. The authority of the Board is needed today, he said, to proceed to take the remainder of those steps.

Senator Guess raised the question of a quorum. While it was being determined, Dr. Beare asked why the position of a Health Physicist was being classified as "unique" when he had many Health Physicists on his staff which were filling established classes. Mr. Husseman replied he understood to obtain the person with the requisite qualifications, it would have to be indicated that person would be supervising others. Dr. Beare replied they had Health Physicists supervising Health Physicists on staff. Mr. Husseman indicated this will be looked into as the final details of the staffing plan are prepared.

Ray Lasmanis said that at a meeting yesterday at the University of Washington with the Dean of Engineering, Chairman of the Chemistry Department, the Geology Department, Mineral Institute, and several others, he put them on notice that their expertise would be needed if Hanford is nominated. Mr. Lasmanis said he visualized these departments having graduate students, and putting together research

institutes, such as the Water Research Center, to assist the state in evaluating the activities at Hanford. He said he did not visualize a Professor who has a research and teaching responsibility to serve on staff to monitor events at Hanford.

Washington State Institute for Public Policy

Max Power reported the Institute had held five workshops, primarily aimed at those Legislators who have not been heavily briefed or involved in the repository program. The Institute met with twenty Legislators around the state, thirteen of whom had had no previous exposure to the subject. Mr. Power expressed his appreciation for the help from the Board and staff in having Terry Husseman, Bill Brewer, Warren Bishop, and Don Provost attend some of the workshops. He felt the quality of discussion was very good and the workshops were successful.

Mr. Power said they had already contacted some of the universities and have begun to identify a network of university people who are interested and have the expertise. The Institute has begun to look at better ways in which these experts can be utilized, he said, which will be available to the Board. They will continue to expand on this effort.

Mr. Bishop encouraged Mr. Power to continue with the workshops, perhaps even during the Legislative Session. Mr. Power responded they are working with the U.S. Department of Energy and Representative Nelson and Senator Williams to arrange for some briefings in Olympia at the beginning of the Legislative Session. He said these would probably be at two levels: one, a general additional introduction to the Nuclear Waste Policy Act and the issues; and two, a more intense session on some of the site pre-characterization work and plans for characterization, depending upon issuance of the Final Environmental Assessments.

Litigation Status

Charles Roe, Assistant Attorney General, referred to the Litigation Status memorandum in the members' notebooks (see attached memo).

In addition to this information, he reported the state of Texas has advised the Office they will petition for certiorari in their potentially-acceptable site litigation. This deals with the decision of the 5th Circuit Court of Appeals which held that that Court had no jurisdiction to review the decision of the USDOE in selecting potentially-acceptable sites in the state of Texas.

Another item he brought to the attention of the Board was that one new bill, S-1761, pertaining to the Price-Anderson Act, had been introduced by Senator Stafford, Chairman of the Senate Environment and Public Works Committee.

A sixth draft of the proposed federal liability high-level nuclear waste legislation was received today, Mr. Roe said, and copies will

be distributed to the members. Mr. Roe said there was no departure from the four cornerstones contained in the fifth Draft. He said he would classify the last draft as a consensus-building effort. Current efforts of his office are principally concentrated on the evaluation of the EPA Standards. With regard to water rights. Mr. Roe said in spite of the federal view that they had water rights based on the Federal Reserves Rights Doctrine, they will be applying to the state for water rights. Mr. Roe said the statutory mandate will be followed if such an application is filed. Defense wastes continue to occupy time, he said. He added on the issue of Preliminary Determination of Suitability he thought the Board's Resolution supports the better view of the statutory problem.

Mr. Husseman commented that at the next Board meeting the Board will need to make a policy decision as to whether or not litigation should be commenced on the EPA Standards. Mr. Roe has been asked to do the basic research and present his analysis of the law. This will need to be done next month, he said, because of the statute of limitations runs out December 2, and if no action is taken a decision will have been made by inaction.

Mr. Lasmanis asked if it were possible for the members to receive some briefing papers for review before the meeting, and Mr. Husseman said they would be furnished.

Staffing Plan (continued)

Mr. Watson moved that the staffing plan, as presented, be approved by the Board in its general concept and scope, with direction to utilize the resources of the state's institutions of higher learning and research to the greatest extent feasible.

He commented that he stated "general concept and scope" because Ray Lasmanis had pointed inclusion of a mining engineer on the staff should be considered since it would be involved in one of the larger underground mines in the United States. Ray Lasmanis seconded the motion.

Mr. Husseman explained that should the Plan be approved, an amended grant request would have to be submitted to USDOE, which would not necessarily be an overall request for more money. He said the breakdown between staff and contractors would cover a larger staff, with less need for contractors over the life of the program.

Representative Nelson said, although he shared Senator Guess' concern about expansion of bureaucracy, he thought this proposal should be placed in the context of the total program, which is immense. He said the state had to be prepared to respond to the vast number of technical determinations presented by USDOE, and the Act guarantees that. He felt it was a reasonable request that had to be less than 1/10 of one percent of the total budget of the project.

Ray Lasmanis pointed out that the staffing plan follows the recommendation of the Contractor Assistance Group. For the Board to be

informed better on the various technical areas, the public awareness efforts, etc., specialists responsible and accountable to the Board in each of these areas would be needed.

Mr. Bishop noted there was a quorum of the total membership of the Board and called for a vote by those authorized to vote. The motion carried without opposition.

Technical Report

Dr. Brewer reported the issues tracking system is now close to being on line in the Office in Lacey. He said only one more piece of commercial software is being added before the system is operational. There are currently 195 issues in the register.

Contracts

Gary Rothwell reported the Summary of Contracts in the notebooks was simply a list of existing contracts that had to be re-executed because of the new fiscal year starting in September. The only contract not executed is the one with the state of Oregon, as they are still defining the scope of work, which they will propose to the state of Washington. This will come before the Board for consideration when it is in final form, he said.

Other Business

Board Travel. Mr. Husseman referred to the memorandum of October 7, 1985, to the Nuclear Waste Board from the Chairman concerning Board policy on educational travel. The memorandum informs the Board that under the operating grant for 1985-86 there is no money specifically earmarked for travel for educational purposes, such as a trip to the WIPP site in New Mexico, the site in Nevada, or the Savannah River Project. There is travel money for Board functions, meetings, and any program meetings. He said there is always the opportunity to make requests to the U.S. Department of Energy for additional funds to take these kinds of tours, if the Board wants to establish that policy.

Ray Lasmanis said he favored such an allowance being placed in the budget as a supplemental request. He also agrees there should be some control on the number of such trips. He recommended this be included, but with certain controls.

Mr. Bishop commented the Washington State Institute for Public Policy was also concerned with this issue as the educational travel for the legislative members of the Board are included in its grant. It was suggested a policy of one trip for educational purposes, per member, per year, would result in maximum benefit. Mr. Bishop thought the Advisory Council members should have the opportunity to make an educational trip while they serve their three-year term on the Council.

Max Power of the Institute said they are still developing a policy, together with the eight legislative members of the Board. He said they did have a separate category in their grant defining member travel, which he thought should cover member's travel other than on official business of the Board. Within that, he said, come the interstate meetings, program meetings, and educational conferences. He said there was no separate category for site tours, exclusive of other program meetings. He said they would be meeting with the legislative members to come to a policy decision common to that of the Board.

Representative Rust said she thought there should be limits, but they should be flexible. Limiting the trips to one tour per member might be too rigid.

Dr. Beare said he favored establishing a policy, but it should be made clear as to what is meant by "educational" travel. Tours and attendance at informational meetings, he said, are two different matters.

Mr. Bishop said if it were agreeable, a policy of one tour per Board member per year, and one tour per term of an Advisory Council member be established. A supplemental grant request would be submitted to USDOE for funds for these educational trips. He said this should be interpreted as time goes along, and adjustments made as deemed necessary. He asked Max Power to discuss this policy with the legislative members. In the meantime, Mr. Bishop said, the travel requested would be authorized.

Public Comment

Eileen Buller of the Hanford Oversight Committee said a letter of request will be coming to the Board, but she wanted to make a verbal request at this meeting.

The Committee, she said, plans to submit to the U.S. Department of Energy a letter asking them to open public scoping hearings on the Defense Waste and Environmental Impact Statement. She said those scoping hearings were waived back before most of the state was aware there was such a thing as defense waste at Hanford. At the time that decision was made, the Hanford Oversight Committee in the Tri-Cities submitted a letter objecting to that action. Because of the long delay in writing the EIS and the continuing postponement, she felt now is the time for everyone to ask the Department to open those scoping hearings to the public. She felt it would be a favor for the state of Washington and the state should take that opportunity to see if those scoping hearings could be open. She said they feared the document may be very inadequate and citizens groups do not have the funds to pay the legal fees involved in a challenge of the EIS.

Jim Mecca of the U.S. Department of Energy in Richland referred to the proposed staffing plan and said the current grant at this point in time has been conditioned, and it will be necessary to justify

the staffing plan to USDOE. He further observed that activity is increasing and he wanted to remind the Board and the Department of Ecology that logistically his branch is the coordination branch for all meetings, including geoscience or engineering meetings. He referred to the groundwater meeting mentioned by Mr. Provost, and Mr. Provost assured him that was the Groundwater Monitoring meeting planned for the 14th of November, which had already been discussed with Don Elle of USDOE and others, as has been done in the past. Mr. Mecca agreed, but said even that area is going to heat up in the future from the point of view that BWIP is going to have to integrate that program. Mr. Provost asked if such meetings would have to go through Mr. Mecca's office, or should the staff work with the usual monitoring people. Mr. Mecca said he did not mean meetings set by Washington, but basically meetings with USDOE, Richland, within the confines of the state.

Mr. Mecca said there are a series of issues that Max Powell and he could identify that will require meetings, one of which is the grants in-lieu-of taxes program. He asked that the Office contact him during the course of the week to establish some specific meetings and times.

There being no further business, the meeting was adjourned.

NUCLEAR WASTE BOARD

RESOLUTION 85-4

October 18, 1985

WHEREAS, the Radioactive Waste Advisory Council has diligently and wisely advised the Nuclear Waste Board regarding its nuclear waste management and public involvement programs; and

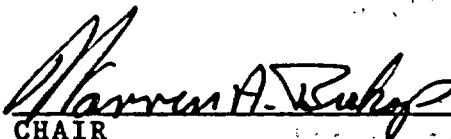
WHEREAS, all members of the original Advisory Council are to be applauded for the countless hours which they contributed to the planning, organization, and implementation of a program to inform the public about issues which have far-reaching state and national implications; and

WHEREAS, thanks to the tremendous effort and thoughtful guidance of the original Advisory Council a successful public information and involvement program has been launched and now serves as a role model for other states and the federal government.

NOW THEREFORE BE IT RESOLVED, that each of us on the Nuclear Waste Board expresses sincere thanks to all members of the original Advisory Council for their substantial and significant contribution to the overall nuclear waste management program; and

BE IT FURTHER RESOLVED, that the Nuclear Waste Board especially recognizes with great appreciation the contribution of Councilman Lane Bray and wishes him the best in his future endeavors.

Approved at Olympia this 22 day of October, 1985.


CHAIR
NUCLEAR WASTE BOARD

NUCLEAR WASTE ADVISORY COUNCIL

Chair:

Mr. Warren Bishop, Chair
E. 541 Pointes Dr. W.
Hartstene Island
Shelton, WA 98584
Work: (206) 459-6670
Home: (206) 426-0270

Members:

Councilman Lane A. Bray
Richland City Council
1414 Westwood Court
Richland, WA 99352
Work: (509) 376-0962
City Hall: (509) 943-9161 ext. 381
Scan City Hall: (509) 526-2328
Home: (509) 943-9005

Dr. Jerome Finnigan,
Dean and Resident Director
Joint Center for Graduate Study
100 Sprout Road
Richland, WA 99352
Work: (509) 375-3176

Mr. Ron Greenen
1500 N.W. 120th St.
Vancouver, WA 98665
Work: (206) 694-1571

Mayor Joe Jackson
Pasco City Council
624 S. Douglas
Pasco, WA 99301
Work: (509) 376-4205

Mayor Fred Jarrett
City of Mercer Island
3446 - 77th Pl. S.E.
Mercer Island, WA 98040
Work: (206) 773-6342

Mr. Gordon Kunz
Route 1, Box 120
Wilbur, WA 99185
Work: (509) 647-5800
Home: Same

Dr. Estella B. Leopold
Professor of Botany
University of Washington
Mail Stop KB-15
Seattle, WA 98195
Work: (206) 545-1960
Home: (206) 545-1151

Ms. Anita Monoian, Executive Director
Yakima Neighborhood Health Services
12 South 8th Street
Yakima, WA 98901
Work: (509) 575-8727
Home: (509) 966-7766

Mr. Melvin Sampson, Tribal Councilman
Yakima Indian Nation
Route 4, P.O. Box 4244
Wapato, WA 98951
(509) 865-5121

Commissioner W. H. Sebero
Board of Benton County Commissioners
P.O. Box 470
Prosser, WA 99350
Work: (509) 783-1409
Work: (509) 786-4278
Scan: 8-526-2496
(Wed.): (509) 545-2038 Kennewick

Mr. Jim Worthington,
Executive Secretary
S.E. Washington Building and
Construction Trades Council
P. O. Box 2381
Pasco, WA 99302
Work: (509) 547-3453

Revised November, 1985

NUCLEAR WASTE ADVISORY COUNCIL

Chair:

Mr. Warren Bishop, Chair
E. 541 Pointes Dr. W.
Hartstene Island
Shelton, WA 98584
Work: (206) 459-6670
Home: (206) 426-0270

Dr. Estella B. Leopold
Professor of Botany
University of Washington
Mail Stop KB-15
Seattle, WA 98195
Work: (206) 545-1151 or 545-1960
Home: (206) 524-3042

Members:

Harry A. Batson
E. 8921 S. Riverway
Millwood, WA 99212
(509) 926-5550

Terry Novak
Spokane City Manager
W. 808 Spokane Falls Blvd.
Spokane, WA 99201
Work: (509) 456-2612

Pam Behring
E. 1418-13th
Spokane, WA 99202
(509) 534-2223

Sam Reed
Washington Health Association
1819 S. Chambers St.
Olympia, WA 98501
(206) 352-9979

Philip Bereano
College of Engineering
University of Washington
Mail Stop FH-40
Seattle, WA 98195
Message: (206) 543-2567
(206) 543-9037

Robert Rose
4514 Green Cove Ct. N.W.
Olympia, WA 98502
(206) 866-0125

Phyllis Clausen
400 Monterey Way
Vancouver, WA 98661
(206) 693-1530

Commissioner W. H. Sebero
Board of Benton County Commissioners
P.O. Box 470
Prosser, WA 99350
Work: (509) 783-1409
Work: (509) 786-4278
Scan: 8-526-2496
(Wed.): (509) 545-2038 Kennewick

Nancy Hovis
1501 W. Yakima, #104
Yakima, WA 98902
(509) 452-8729
Work: (509) 575-1500

Betty Shreve
1710-9th Street
Wenatchee, WA 98801
(509) 663-3238

Russell Jim
Rt. 1, Box 78A
White Swan, WA 98952
(509) 865-5121

Mr. Jim Worthington,
Executive Secretary
S.E. Washington Building and
Construction Trades Council
P. O. Box 2381
Pasco, WA 99302
Work: (509) 547-3453

NUCLEAR WASTE BOARD

RESOLUTION 85-3

October 18, 1985

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

WHEREAS, the process established by the NWPA requires that at the time USDOE recommends a site to the President for development of a repository the recommended site must be selected from three alternative sites with respect to each of which, following substantial completion of site characterization, USDOE has made a preliminary determination of suitability for development as a repository; and

WHEREAS, the National Environmental Policy Act (NEPA) requires consideration of reasonable, viable alternative sites at the time USDOE recommends a site to the President for development of a repository; and

WHEREAS, USDOE's commitment to make the preliminary determination of suitability for development of a repository after substantial completion of site characterization was an important element in the U.S. Nuclear Regulatory Commission's (USNRC) concurrence in the siting guidelines; and

WHEREAS, in the Final Mission Plan and in subsequent public testimony, USDOE has now taken the position that the preliminary determination of suitability for development of a repository can and will be made prior to site characterization; and

WHEREAS, in addition USDOE now takes the position that there is no requirement that there be three alternative, viable sites from which to select at the time USDOE recommends a site to the President for development of a repository; and

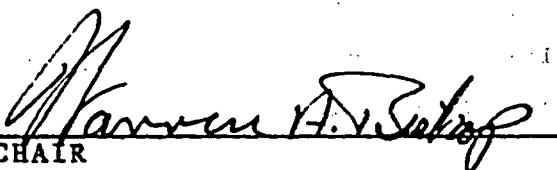
WHEREAS, if USDOE attempts to follow through on its current position concerning the appropriate timing for the preliminary determination of suitability, such action will constitute a significant departure from the NWPA requirements and will certainly result in serious negative impacts on the entire repository siting process; and

WHEREAS, to responsibly fulfill its role as spokesman for the citizens of the state of Washington, it is imperative that the Nuclear Waste Board take all appropriate steps to preserve this aspect of the integrity of the repository siting process as established by Congress in the NWPA.

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

1. The Board strongly recommends that USDOE substantially complete site characterization at a site before making a preliminary determination that the site is suitable for development as a repository.
2. The Board urges USNRC to insist that the preliminary determination after substantial completion of site characterization is a prerequisite for continued USNRC concurrence in the siting guidelines.
3. The Board strongly recommends that both USDOE and USNRC require consideration of at least three reasonable, viable alternatives at the time of site selection.
4. The Board directs the Nuclear Waste Board Chair to transmit this resolution to appropriate persons in USDOE, USNRC commissioners and the state of Washington Congressional delegation.

Approved at Olympia, this 21 day of October, 1985.


CHAIR
NUCLEAR WASTE BOARD

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Department of Energy
Washington, D.C. 20585

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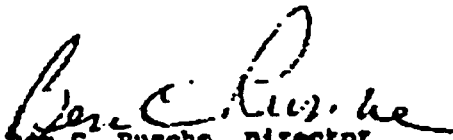
Honorable Booth Gardner
Governor of Washington
Olympia, Washington 98504

Dear Governor Gardner:

On September 24, 1985, we transmitted for your information a copy of the report on the ranking methodology proposed for use in the Department of Energy (DOE) final environmental assessments that we submitted for review by the National Academy of Sciences' Board on Radioactive Waste Management. Enclosed for your information is a copy of the Board's comments on our report.

We are generally pleased with the Board's review comments. The comments indicate that the methodology described in our report is appropriate for the task of selecting sites for characterization. The Board also suggests several areas in which the actual application of the methodology might be strengthened. We are currently analyzing these suggestions and will keep you informed about any decisions we make regarding them.

Sincerely,


Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosure

cc: Mr. Terry Hunsman, Program Director
Department of Ecology
Office of High-Level Nuclear
Waste Management

COMMISSION ON PHYSICAL SCIENCES, MATHEMATICS, AND RESOURCES

**BOILED ON
RADIOACTIVE WASTE MANAGEMENT
OED 24-2M**

OFFICE LOCATION
JOHN F. HENRY BUILDING
247 STREET 4000
PERMANENTLY LOCATED - 10 10

Mr. Ben C. Rusche, Director OCRM
U.S. Department of Energy
Rm-1/Forrestal
Washington, D.C. 20585

In response to your August 29, 1985 request that the Research Council's Board on Radioactive Waste Management conduct "an independent review of the methodology to be used to evaluate sites for consideration as candidate sites for characterization for the first geologic radioactive waste repository" the Board has reviewed the Department of Energy's (DOE) August 1985 document "A Methodology for Aiding Repository Siting Decisions." The document describes work in progress on the application of the multiattribute utility technique to help the Secretary of Energy select three sites to recommend to the President for characterization as candidate sites for a repository for permanent deep geologic disposal of high level radioactive waste as required by the Nuclear Waste Policy Act (Sec 112 (b) (1) (B)).

Nevertheless, the Board commends DOE for its adoption of a rigorous form of this decision-aiding methodology. While recognizing that there is no unique procedure for ranking, the Board believes that the multiattribute utility technique can be an appropriate method by which to integrate technical, economic, environmental, socioeconomic, and health and safety issues to assist DOE in its selection of sites for characterization. Thus we feel that our concern about the appropriateness of the methodology, as expressed in our April 26, 1985 critique of Chapter 7 of the December 1984 Draft Environmental Assessments, has now been addressed.

Mr. Ben C. Rusche
October 10, 1985
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Although the multiattribute utility technique proposed by DOE appears appropriate, the technique must be implemented correctly and accurately to be useful and credible. The adequacy of the application of the technique can only be evaluated after the analysis is complete. In the absence of documentation on how the multiattribute utility technique is being applied by DOE we cannot now determine the extent to which our earlier concerns will be answered about the adequacy of site rankings, the appropriateness of documentation supporting and describing the results, and the potential for bias in applying the technique.

The multiattribute utility technique appears to be a promising approach for stating clearly and systematically the assumptions, judgments, preferences, and tradeoffs that must go into a siting decision. As explained in the Board's letter of April 26, 1985, the "utility estimation" technique used in Chapter 7 of the Draft Environmental Assessments was not adequate, because it treated post-closure factors independently and gave them equal weight for all sites. The Board reiterates that a scientifically defensible method of integrating and weighting the post-closure factors at each site is to conduct a "performance assessment" using quantitative models, as recommended in the National Research Council's report on the Waste Isolation Systems Project.

Were adequate data and validated models available, the results of the performance assessments could provide a direct estimate of post-closure performance, which could be integrated with pre-closure factors by using a multiattribute utility technique analysis to compare sites. When currently available performance assessments are not adequate for reliable direct comparison of the expected post-closure performance of the five sites, judgments of experts may be used to develop subjective estimates of the performance of the post-closure factors at each site. DOE has proposed that its technical experts and those of its contractors use this approach to develop performance measure scales and to score each site on those scales. The Board is concerned that DOE's use of its own technical experts to assess performance by this subjective method may mask the degree of real uncertainty associated with post-closure issues.

The Board believes that particular emphasis must be placed on the analysis and comparison of the post-closure performance of the sites in order to test the validity of the conclusion in the Draft Environmental Assessments that the five sites are essentially indistinguishable with respect to the post-closure measures. The credibility of those estimates would be substantially enhanced if an independent panel of outside experts were to review the complete analysis prior to issuance of the final Environmental Assessments.

DOE proposes to use multiattribute utility technique as a decision-aiding rather than decision-making technique. The Board on Radioactive Waste Management supports this limited approach. As stated in our letters of April 2, 1984 to DOE and the U.S. Nuclear Regulatory Commission, "The combination of

Mr. Ben C. Rusche
October 10, 1985
Page 3

complexity and uncertainty [in the repository siting problem] implies that DOE must be accorded substantial discretion to exercise its best technical judgment in recommending three of the nominated sites according to Sec. 112 (b) (1) (B). Proper implementation of the multiattribute utility technique would illuminate DOE's decision process by presenting a comprehensive and explicit specification of the assumptions, value judgments, and technical estimates used in ranking the sites.

The comprehensive, explicit disclosure made possible by the multiattribute utility technique is both a strength and a weakness. Its strength is that it documents a difficult and controversial decision. Its weakness is that the documentation itself will be, of necessity, complex, lengthy, and burdened with concepts that are themselves formidably technical and hard to explain.

The complexity of the multiattribute utility technique demands scrupulous, methodical implementation, and it is crucial that DOE take time to do the job right. More time than is currently planned by DOE to complete the Environmental Assessments may well be needed, but the importance of the decision on site characterization to the implementation of the Nuclear Waste Policy Act as a whole strongly supports the wisdom of a careful, comprehensive application of the technique. A prompt decision now by DOE to take additional time would also permit internal and external review of the key technical components of the multiattribute utility technique.

A potential difficulty is that the siting guidelines specify a hierarchy of importance between the pre- and post-closure groups of factors and among the three groups of pre-closure factors. While the general intent of specifying an order of priority is clear, there remains the possibility that translating a vaguely worded requirement into precise mathematical constraints on the numerical weights estimated as part of the multiattribute utility technique (as proposed by DOE) may lead to implicit value judgments that DOE is not prepared to defend. An early concern of the analysis should be to determine whether or not this is in fact the case.

The Board recommends that the methodology and assessment portion of Chapter 7, because of its importance in site ranking, be written so that it can stand alone with an introduction that puts the candidate site selection process in perspective. The Board also urges that the theory, data, and methods used in the site recommendation process be presented clearly and understandably so that all uncertainties and judgments are made explicit. The Board recognizes that a major advantage of the multiattribute utility technique approach is that it can facilitate such a presentation.

The Board appreciates the difficulty faced by DOE in responding to all the comments on the Draft Environmental Assessments, in revising the assessments, and in applying a more refined technique to help select the three candidate sites. We compliment DOE on the way in which they have responded with a revised methodology to our concerns and those of others about the Draft

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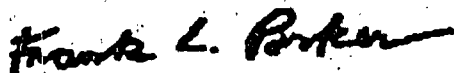
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Mr. Ben C. Rusche
October 10, 1985
Page 4

Environmental Assessments. The Board supports the rigorous application of the new methodology and would be pleased to amplify any of the points raised in this letter or in our meeting of October 1-3, 1985 with the staff of the Office of Civilian Radioactive Waste Management.

Sincerely,



Frank L. Parker
Chairman
Board on Radioactive
Waste Management

FLP/jc



STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

OLYMPIA
98504-0413

BOOTH GARDNER
GOVERNOR

October 11, 1985

Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management
U.S. Department of Energy
1000 Independence Avenue
Washington, D.C. 20858

Dear Mr. Rusche:

Thank you for providing a copy of the report describing ranking methodologies to be used in the final Environmental Assessments (EAs). As you know, we in the state of Washington are closely watching the National Academy of Sciences methodology review.


In light of the schedule for the Academy's producing its review, I am answering your letter for Governor Gardner. He is away from the office on other matters important to our state and the Nation.

In Governor Gardner's August 1 statement to the Subcommittee on Energy Conservation and Power, he specifically requested a pause in the program so a panel of non-USDOE experts could examine the adequacy of EA data, conduct a new evaluation as to whether sites under consideration are suitable for site characterization, and make a new comparative evaluation of the sites still under consideration. The ranking methodology review described in your September 16 letter to Dr. Myers covers only a small portion of his request.

In spite of the limited review, we view the NAS methodology review as a key event requiring consultation with the state of Washington. As a minimum we reserve the right to submit written comments on your August, 1985 report entitled A Methodology for Aiding Repository Siting Decisions. We fully expect our written comments to be taken into consideration while the final Environmental Assessment is being prepared.

Please contact me if you desire further clarification.

Sincerely,


Curtis Eschels
Special Assistant for Policy



OFFICE OF THE ATTORNEY GENERAL

Inter-office Correspondence

Date: October 9, 1985

To: WARREN BISHOP, Chairman
Nuclear Waste Board

From: CHARLES ROE *C. Roe*
Senior Assistant Attorney General

Subject: Litigation Status Report

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

I. Litigation

A. Siting Guideline Litigation

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

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

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

B. Funding Litigation

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

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

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

C. "Potentially Acceptable Siting" Litigation

In Texas v. United States Department of Energy, F.2d _____ (5th Cir. No. 84-4826, decided June 10, 1985), the federal appellate court in New Orleans granted a motion to dismiss on the grounds that USDOE's designations of sites in Texas as "potentially acceptable sites" for consideration for characterization were not final actions under section 119 of NWPAA which are ripe for review. 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 NWPAA. 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 NWPAA. That section directs USDOE to report to Congress its recommendations relating to the establishment of a monitored retrievable storage (MRS) facility for the disposal of high level nuclear waste. In July, 1985, USDOE recommended the location of such a facility in Tennessee. On August 20, 1985, Tennessee challenged USDOE's processing of the MRS provisions of NWPAA contending that USDOE's actions were in conflict with "cooperation and consultation" requirements of NWPAA and that NWPAA, itself, conflicts with the federal constitution, Art. I, sec. 7.

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 NWPA 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