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FINAL REPLY:

Alan Pasternak  
California Radioactive Materials  
Management Forum

TO:

Chairman Klein

FOR SIGNATURE OF :

\*\* GRN \*\*

CRC NO: 07-0230

Chairman Klein

DESC:

ROUTING:

Urges the Commission to Recommend to Congress to  
Revisit and Amend the Low-Level Radioactive  
Waste Policy Amendments Act of 1985 (EDATS: OEDO-  
2007-0134)

Reyes  
Virgilio  
Kane  
Silber  
Johnson  
Cyr/Burns  
Kock, OEDO

DATE: 04/10/07

ASSIGNED TO:

CONTACT:

FSME

Miller

SPECIAL INSTRUCTIONS OR REMARKS:

Coordinate with OGC.

OFFICE OF THE SECRETARY  
CORRESPONDENCE CONTROL TICKET

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ACTION OFFICE:

EDO / OGC

AUTHOR:

Alan Pasternak

AFFILIATION:

CA

ADDRESSEE:

Dale Klein

SUBJECT:

Urges the Commission to recommend to Congress to revisit and amend the Low-Level Radioactive Waste Policy Amendments Act of 1985....

ACTION:

Signature of Chairman

DISTRIBUTION:

RF

LETTER DATE:

04/03/2007

ACKNOWLEDGED

No

SPECIAL HANDLING:

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NOTES:

EDO should coordinate response with the Office of the General Counsel...

FILE LOCATION:

ADAMS

DATE DUE:

04/24/2007

DATE SIGNED:

EDO --G20070232

# CALIFORNIA RADIOACTIVE MATERIALS MANAGEMENT FORUM

**Lawrence M. Gibbs, Chair**  
Associate Vice Provost  
Environmental Health and Safety  
Stanford University  
EH&S – 480 Oak Road  
Stanford, California 94305-8007  
(650) 723-7403, Fax (650) 725-3468  
E-mail: LGibbs@stanford.edu

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**Gary Stimmell**  
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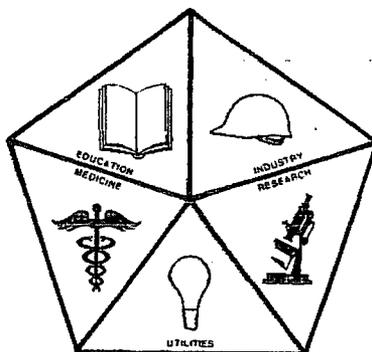
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Santa Susana Field Laboratory  
The Boeing Company  
5800 Woolsey Canyon Road  
Canoga Park, California 91304-1148  
(818) 466-8840, Fax (818) 466-8746  
E-mail: philip.d.rutherford@boeing.com

**TECHNICAL DIRECTOR**  
**Alan Pasternak, Ph.D.**  
P.O. Box 1638, Lafayette, CA 94549-1638  
(925) 283-5210, Fax (925) 283-5219  
E-mail: APasConst@aol.com

April 3, 2007

## Assuring Access to Disposal Facilities For Low-Level Radioactive Waste

*"...the low-level waste siting program in this country is not working. Moreover, barring Congressional action, which is unlikely in the near term, the situation is unlikely to change."*

Richard Meserve, Chairman, USNRC, May 14, 2002.

Chairman Dale E. Klein and Members  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Dear Chairman Klein and  
Commissioners Edward McGaffigan, Jr.,  
Jeffrey S. Merrifield, Gregory B. Jaczko, and  
Peter B. Lyons:

Cal Rad Forum understands that, from time-to-time, the U.S. Nuclear Regulatory Commission makes recommendations to Congress concerning legislation. We are writing to ask that the Commission urge the committees of jurisdiction in the Senate and House to revisit and amend the Low-Level Radioactive Waste Policy Amendments Act of 1985 (PL 99-240) (Act) to assure access to disposal facilities for organizations that use radioactive materials and generate low-level radioactive waste (LLRW), especially waste classes B and C.

As you know, on July 1, 2008 — pursuant to provisions of the Act, Atlantic Compact law, and South Carolina law — access to the Barnwell, South Carolina disposal facility will be restricted to the three member states of that compact: South Carolina, New Jersey, and Connecticut. At that time, public and private institutions and corporations and all federal and state government agencies, except the U.S. Department of Energy, that use radioactive materials in thirty-four to

thirty-six states,<sup>1</sup> the District of Columbia, and Puerto Rico will have no place to dispose of their Class B and Class C LLRW. (Access to the only other commercial disposal facility accepting waste classes B and C — the Richland, Washington facility — has been restricted to the states of the Northwest and Rocky Mountain Compacts since 1993.) In addition, there will be only one facility, the EnergySolutions disposal facility at Clive, Utah, to which organizations that use radioactive materials in these same 34-36 states will be able to send their Class A waste — not including biological wastes or sealed sources. (Please see comments under “Recent Developments” concerning uncertainties in access to the Clive disposal facility.)

The post-July 1, 2008 problem and some suggested solutions are discussed in Cal Rad’s “Response to: Request for Comments on the Nuclear Regulatory Commission’s Low-Level Radioactive Waste Program. Federal Register / Vol. 71, No. 130 / July 7, 2006,” dated August 31, 2006, a copy of which is enclosed. Our recommendations focus on a role for the federal government including use of Department of Energy disposal facilities for the disposal of non-DOE Class B and C LLRW. Our response cites a 2001 DOE Inspector General’s report that notes there is excess capacity at DOE disposal facilities (page 1 of Cal Rad’s Response) and a 2005 GAO report that anticipates interest in using DOE sites for disposal of non-Greater-Than-Class C (non-GTCC) waste (page 2 of the Response).

Loss of access to the Barnwell disposal facility in 2008 for LLRW generated by organizations that use radioactive materials in the 34 states not in the Atlantic, Northwest, Texas, or Atlantic Compacts is a serious matter. These wastes are significant. In 2006, the activity (curies) in LLRW sent to Barnwell from these 34 states accounted for 90 percent of all the activity sent to all three commercial disposal facilities (Barnwell, SC; Richland, WA; and Clive, UT) by non-USDOE users of radioactive materials in all states.

The U.S. Nuclear Regulatory Commission has Commented on the post-July 1, 2008 Class B and C Disposal Problem.

1. May 14, 2002. Speech by Richard Meserve, Chairman, US Nuclear Regulatory Commission, “Providing Certainty in Low-Level Radioactive Waste Disposal: The Continuing Challenge.” Please note the importance Chairman Meserve places on Congressional action. Also, Mr. Meserve was hopeful — as we were — that Envirocare (now known as EnergySolutions) would obtain approval from the State of Utah for disposal of Class B and C wastes. However, a state law, enacted in 2005, prohibits the acceptance of Class B and C wastes for disposal.

Page 4 of speech.

*“I will now turn to the central focus of this meeting -- low-level radioactive waste disposal. It will not be news to any one here that the low-level waste siting program in this country is not working. Moreover, barring Congressional action, which is unlikely in the near term, the situation is unlikely to change. Access to low-level waste disposal sites*

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<sup>1</sup> Texas is developing a LLRW disposal facility for the Texas-Vermont Compact. This is the only LLRW disposal facility under development in the U.S.

*affects many classes of licensees, including nuclear power plant licensees intending to decommission their plants."*

Pages 4 and 5 of speech.

*"Sufficient disposal capacity currently exists to handle today's disposal needs, particularly in light of the trend towards license renewal of civilian nuclear power plants. (License renewal delays decommissioning and hence postpones the need to dispose of the waste associated with decommissioning.) In addition, waste minimization, volume reduction, and decay-in-place strategies reduce the overall volume of material. Nonetheless, the disposal situation is increasingly uncertain. With the eventual closure of the Barnwell disposal facility to states outside the Atlantic Compact, the absence of progress in other Compacts to site low-level waste disposal facilities, and few other disposal options, access to facilities for the disposal of low-level waste is increasingly constrained. Although Envirocare of Utah may eventually obtain state approval for disposal of Class B and C wastes, the limited options for disposal are likely to keep disposal costs high. There is thus the potential that the decommissioning process for many sites and the medical use of radionuclides will be affected adversely."*

2. June 2004. Comments by the U.S. Nuclear Regulatory Commission on the GAO Report, GAO-04-604, page 49.

*"At the same time, the nearly 20 years of experience under the Low-Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPA) has demonstrated the difficulties in siting and licensing a LLRW disposal facility. Not one new facility has been developed in this time under the LLRWPA. Therefore we believe it is in the national interest to begin exploring alternatives identified in Appendix II that would potentially provide a better legal and policy framework for new disposal options for commercial generators of LLRW." (Quoted in part; emphasis added.)*

3. January 11, 2006. Meeting of the Commission with Members of the Advisory Committee on Nuclear Waste.

Please see meeting transcript for comments on the post-July 1, 2008 disposal problem by Commissioners Jaczko (pages 44-45), and Lyons (pages 48-49) and by Commissioner Merrifield on the failure of the Low-Level Waste Policy Act (pages 59-60).

### Recent Developments

**Disposal of Waste Classes B and C. South Carolina Legislature Rejects Proposal for Barnwell Extension.** On February 15, a bill was introduced in the South Carolina Legislature (H. 3545) that would have allowed continued disposal of out-of- [Atlantic] compact waste at the Barnwell disposal facility until 2023, fifteen years beyond the current cut-off date. However, on March 28, the bill was killed by an overwhelming vote in the House Agriculture, Natural Resources and Environmental Affairs Committee.

In evaluating the level of assurance the proposed measure might have provided users of radioactive materials, had it been enacted, it is useful to review the history of operations at the Barnwell disposal facility. Barnwell was closed to waste from outside the Southeast Compact region from July 1, 1994 through June 30, 1995 pursuant to the Policy Act and South Carolina law. At the urging of then-Governor David Beasley, legislation was enacted in South Carolina allowing the facility to accept waste from across the nation beginning July 1, 1995. Beasley was a one-term Governor, defeated by Jim Hodges who made an issue of the reopening of Barnwell in the gubernatorial election campaign. In 1999, then-Governor Hodges announced the formation of a task force whose work led to the current phase-down of volumes accepted for disposal and the banning of waste from outside the Atlantic Compact region as of July 1, 2008. The recently proposed — and defeated — South Carolina legislation is a reminder that users of radioactive materials are subject to political decisions about waste disposal made in other states and therefore lack the necessary assurance of access to disposal facilities. As noted by the NRC in its comments on the GAO report cited above: “...the future availability of disposal capacity and the costs of disposal under the current system remain highly uncertain and LLRW generators need predictability and stability in the national disposal system.” (Emphasis added.)

**Disposal of Class A Waste.** Earlier this month, the Governor of Utah announced an agreement with EnergySolutions, the operator of the disposal facility at Clive, Utah, which will reduce the total volume of waste that can be disposed of at that facility. This will shorten the years of availability of the facility to users of radioactive materials in 34-36 states for disposal of their Class A waste.

### Conclusions

Cal Rad agrees with former Chairman Richard Meserve that “...barring Congressional action...the situation is unlikely to change.” Almost five years have passed since his observation, and the July 1, 2008 cut-off for disposal of Class B and C wastes at Barnwell, SC is less than fifteen months away. Only existing facilities can provide the needed disposal capacity by that date.

We respectfully ask the Commission to recommend to the Congress that it fashion a solution as outlined above and in our August 31, 2006 Response to the Commission’s Request for Comments. In particular, allowing non-Department of Energy organizations to dispose of their low-level waste at existing facilities operated by the USDOE for its own waste should be considered either on a long-term or short-term basis.

Sincerely,

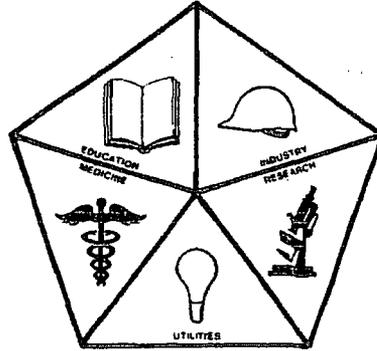


Alan Pasternak

Encl.: Cal Rad Forum, August 31, 2006. “Response to: Request for Comments on the Nuclear Regulatory Commission’s Low-Level Radioactive Waste Program. Federal Register / Vol. 71, No. 130 / July 7, 2006.

# CALIFORNIA RADIOACTIVE MATERIALS MANAGEMENT FORUM

**Eric Goldin, Ph.D., Chair**  
Southern California Edison Co.  
Post Office Box 128  
San Clemente, CA 92674-128  
(949) 368-7532, Fax (949) 368-6049  
E-mail: goldinem@songs.sce.com



**Lawrence M. Gibbs, Chair-Elect**  
Associate Vice Provost  
Environmental Health and Safety  
Stanford University  
EH&S - 480 Oak Road  
Stanford, California 94305-8007  
(650) 723-7403, Fax (650) 725-3468  
E-mail: LGibbs@stanford.edu

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Cedars-Sinai Medical Center

**TECHNICAL DIRECTOR**  
**Alan Pasternak, Ph.D.**  
P.O. Box 1638, Lafayette, CA 94549-1638  
(925) 283-5210, Fax (925) 283-5219  
E-mail: APasConst@aol.com

August 31, 2006

Chief, Rules and Directives Branch  
Mail Stop T6-D59  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
Attn: Ryan Whited

### Response to: Request for Comments on the Nuclear Regula- tory Commission's Low Level Radioactive Waste Program. Federal Register / Vol. 71, No. 130 / July 7, 2006.

The attached comments are submitted on behalf of the California Radioactive Materials Management Forum (Cal Rad Forum). Cal Rad Forum is an association of public and private organizations that use radioactive materials in the four states of the Southwestern Compact region: California (Host State), Arizona, North Dakota, and South Dakota. Our members include universities, electric utilities with nuclear power plants, industries including biotechnical and pharmaceutical companies, medical centers, and local sections of professional societies.

We appreciate the opportunities to participate in the Advisory Committee on Nuclear Waste's workshop on May 24 at NRC headquarters and to submit these written comments.

Cal Rad would be happy to respond to any questions concerning the attached comments or to provide further information.

Sincerely,

Alan Pasternak  
Technical Director

cc: Cal Rad Forum Corporate and Institutional Members  
Cal Rad Forum Board of Directors

**Response of The California Radioactive Materials Management Forum to NRC's "Request for Comments on the Nuclear Regulatory Commission's Low Level Radioactive Waste Program." Federal Register / Vol 71, No. 130 / July 7, 2006.**

***What are your key safety and cost drivers and/or concerns relative to LLW disposal?***

Cal Rad Forum's overriding concern is lack of assured access to disposal facilities for low-level radioactive waste (LLRW) Classes B and C and some of Class A. Another concern is lack of a competitive pricing environment for disposal of those categories of Class A waste for which there may be access to disposal. Organizations affected are public and private corporations and institutions and all federal and state government agencies, except the U.S. Department of Energy, that use radioactive materials in thirty-four to thirty-six states, the District of Columbia, and Puerto Rico.

The interstate compact framework for LLRW disposal under the Low-Level Waste Policy Act (P.L. 99-240) has failed to produce a single new disposal facility. Because of existing federal and state laws and the fragile status of the compact framework, organizations that use radioactive materials in thirty-four to thirty-six states will have no place to dispose of their Class B and C LLRW as of July 1, 2008 when access to the Barnwell, SC disposal facility will be restricted to the three member states of the Atlantic Compact: South Carolina, New Jersey, and Connecticut. At the same time, there will be only one facility — EnergySolutions in Clive, Utah — to which these organizations will be able to send Class A waste, not including sealed sources or biological materials. This is not the outcome envisioned when the Policy Act was passed in 1980 or when it was amended in 1985. The only states with assured access are the member states of the Northwest, Rocky Mountain, and Atlantic Compacts. Texas is the only state with an active program to develop a new disposal facility (Texas and Vermont Compact).

***Can the Future Be Altered?***

Yes. According to a Department of Energy Inspector General's report, there is excess capacity at disposal facilities operated by the Department of Energy for its own LLRW.\* Given the short time until the July 1, 2008 deadline, Cal Rad recommends that these disposal facilities be made available to organizations that lack access to other facilities. We recognize that this may require action by Congress. But there are important roles for the NRC and other federal agencies to achieve the goal of assured access to safe disposal facilities for those organizations without access to the Richland, WA or Barnwell, SC disposal facilities.

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\* "Utilization of the Department's Low-Level Waste Disposal Facilities," DOE/IG-05-5, May 25, 2001.

With respect to this recommendation, it is worth noting that a recent report of the Government Accountability Office (GAO)<sup>†</sup> recommends that DOE and NRC evaluate the feasibility of using DOE facilities for disposal of non-Greater-Than-Class-C waste from sealed radiological sources gathered in the DOE's Offsite Source Recovery Program (OSRP). This proposal exemplifies the concept of a federal solution to a problem that most states lack the political will to address. However, there is clearly a need for a comprehensive solution that would go beyond waste from sealed sources only. Indeed, the same GAO report cites the mid-2008 Barnwell access cut-off and anticipates that "The increasing quantities of non-GTCC waste that will not have a commercial disposal pathway could heighten interest in using DOE sites for the disposal of this waste."

### ***What Can the U.S. Nuclear Regulatory Commission Do To Promote Assured Access to Disposal Facilities for LLRW?***

We believe there are two important roles for the NRC: 1) clearing possible — if any — regulatory hurdles to access to DOE disposal facilities for LLRW generated by NRC and Agreement State licensees, and 2) informing Congress and the Executive Branch about the impending problems beginning July 1, 2008 and making clear the need for timely action on a federal solution to this national problem.

- 1) We respectfully recommend that the NRC determine if there are any regulatory hurdles to use of DOE low-level waste disposal facilities by NRC and Agreement State licensees, and, if so, initiate timely actions to overcome such hurdles.
- 2) We are pleased to note the Commission's comments on the June 2004 report of the U.S. General Accounting Office.\* These comments address the serious policy issues related to the nation's LLRW disposal framework:

"At the same time, the nearly 20 years of experience under the Low-Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPA) has demonstrated the difficulties in siting and licensing a LLRW disposal facility. Not one new facility has been developed in this time under the LLRWPA. Therefore we believe it is in the national interest to begin exploring alternatives identified in Appendix II that would potentially provide a better legal and policy framework for new disposal options for commercial generators of LLRW." (Quoted in part; emphasis added.)

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<sup>†</sup> "NUCLEAR SECURITY: DOE Needs Better Information to Guide Its Expanded Recovery of Sealed Radiological Sources," GAO-05-967, September 2005, pp. 7, 28, 30,31, 38.

\* "LOW-LEVEL RADIOACTIVE WASTE. Disposal Availability Adequate in the Short Term, but Oversight Needed to Identify Any Future Shortfalls." GAO-04-604, June 2004, Page 49.

We were also pleased that several Commissioners specifically mentioned the July 1, 2008 deadline for access to Barnwell during a public meeting of the Commission with its Advisory Committee on Nuclear Waste (ACNW) on January 11, 2006. Now is the time for the Commission to support a long-term resolution to the ongoing disposal dilemma and move forward with the actions noted above.

***Other Issues: Expanding Disposal Options for Disposal of Low Activity Waste***

Cal Rad respectfully encourages the Commission to continue working with the Environmental Protection Agency to expand options for disposal of low activity waste that might not require disposal at an NRC-licensed facility to protect the public health and safety. This activity and proposed solution would continue to assure protection of the public health and safety while facilitating disposal of these wastes.

With the above exception, we believe that the regulations at 10CFR61, as they apply to disposal of Class A, B, and C waste and the classifications of these wastes are good regulations.