

American Ecology

JACK K. LEMLEY
Chairman and
Chief Executive Officer

October 16, 1998

Dr. Shirley Jackson
Chairman
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852-2738

Subject: Low-Level Radioactive Waste Policy Act Implementation Problems

Dear Chairman Jackson:

We write to share information and encourage your involvement in matters affecting the future of the Low-Level Radioactive Waste Policy Act as amended ("Act").

At the request of Senate Energy and Natural Resources Committee Chairman Frank Murkowski, the General Accounting Office ("GAO") is evaluating progress under the Act (Attachment 1). One purpose of the review, as stated by Senator Murkowski, is to evaluate "whether or not the patchwork system of low-level radioactive waste disposal, which has evolved over the past decade, will ensure the safe and efficient long-term management of all wastes for which the states are responsible." The Senator has also asked the GAO to analyze alternatives including but not limited to restoring a competitive market served by private disposal companies, or shifting responsibility from the states to the Department of Energy. GAO's report is due this coming January.

We believe the GAO study is timely and have pledged our cooperation. We recently provided a tour of our Richland, Washington disposal site and answered questions raised by GAO. In the interest of promoting a broad national dialogue, we are sharing related responses with you and other national stakeholders (Attachment 2), and we invite you to take an active role in the process.

9812300216 981210
PDR WASTE
WM-3

PDR

REC'D BY SECY

OCT 21 1998

*have met &
expect to provide
information*

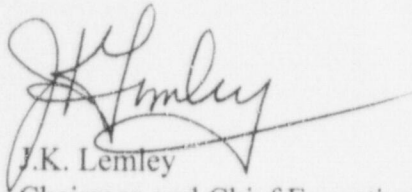
October 16, 1998

Page 2

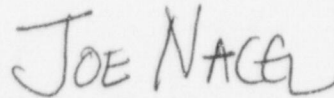
American Ecology recently testified before Congress that repeal of the Policy Act should be considered. We do believe this option bears scrutiny, and that it will become the preferred path if efforts to implement the Policy Act as intended by Congress continue to founder. That said, we are devoting our best efforts to make the existing law work through development of new Compact disposal facilities in Nebraska and California. Our \$100 million investment in these two, well advanced projects demonstrates a singular commitment to the Act which no other private company even approaches.

At this time, we are also inviting Northwest Interstate Compact member states to consider new inter-regional agreements and other measures to help get the Policy Act back on track. Our letter sharing specific ideas, which we encourage you to discuss with your colleagues in the Northwest Compact region, is also enclosed (Attachment 3). We also invite you to share your views by writing to the above address, to our web site at www.americanecology.com, or by calling us at (208) 331-8400.

Sincerely,



J.K. Lemley
Chairman and Chief Executive Officer



Joe Nagel
President and Chief Operating Officer

FRANK H. MURKOWSKI, Alaska, Chairman

PETE V. DOMER, CA, New Mexico
DON NICOLE, TX, Indiana
LARRY S. CRAIG, ND, Idaho
BEN NEITHOMBE CAMPBELL, CO, Colorado
CHAD THORNE, WY, Wyoming
JOE KYL, AZ, Arizona
ROD GRASS, IL, Illinois
GORDON H. SMITH, OR, Oregon
BLAKE GIFFORD, WA, Washington
CONRAD BURNS, MI, Michigan

DYKE BUSHONG, AK, Alaska
WENDELL H. FORD, KY, Kentucky
JEFF BROWN, HI, Hawaii
DANIEL K. AKAKA, HI, Hawaii
BYRON L. DORGAN, ND, North Dakota
BOB BRADMAN, FL, Florida
ROD WYDEN, OR, Oregon
TIM JOHNSON, SD, South Dakota
MARY L. LANDRIEU, LA, Louisiana

ANDREW D. LUNDQUIST, STAFF DIRECTOR
GARY G. ELLSWORTH, CHIEF COUNSEL
THOMAS B. WILLIAMS, STAFF DIRECTOR FOR THE MINORITY
SAM E. FOWLER, CHIEF COUNSEL FOR THE MINORITY

United States Senate

COMMITTEE ON
ENERGY AND NATURAL RESOURCES

WASHINGTON, DC 20510-6150

WWW.SENATE.GOV/ENERGY

September 7, 1998

BY FACSIMILE/
ORIGINAL BY FIRST CLASS MAIL

The Honorable James F. Hinchman
Acting Comptroller General of
the United States
U.S. General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Hinchman:

Assured, long-term availability of environmentally sound facilities for disposing of low-level radioactive wastes produced from civilian sources, such as nuclear power plants, medical facilities, universities, and thousands of businesses, has been a continuing problem for over the past 20 years. The Congress, with the support of state governments, addressed this issue with the adoption of the Low-Level Radioactive Waste Policy Act of 1980 and again in 1985 amendments to the Act.

The Low-Level Radioactive Waste Policy Act, as amended, assigned each state responsibility for making disposal capacity available and stated that low-level radioactive wastes can be most safely and efficiently managed on a regional basis. To implement this policy, the Congress encouraged formation of interstate compacts to meet states' collective disposal needs. Congressional consent was required for a compact to become effective. As an inducement to form compacts and develop regional disposal facilities, the Act stated that compacts could restrict the use of their disposal facilities to wastes generated within their respective regions. Originally, it was expected that new disposal facilities could be developed by 1986. The 1985 amendments extended this target date to January 1, 1993.

By 1995, 41 states had entered 9 compacts. In addition, the states of Maine, Texas and Vermont have entered into a compact that has not yet obtained Congressional approval. However, none of these compacts — or other states acting alone — have successfully developed

a new disposal facility. Moreover, the following recent events, among other developments, raise questions about whether the Act will be successfully implemented in an acceptable time frame.

- The Department of the Interior recently suspended its ongoing activities related to transfer of federal lands in Ward Valley, California to develop the Southwestern Compact's disposal facility. The State of California is seeking a court-ordered completion of the land transfer which they argue should have occurred in 1993.
- South Carolina, which hosts the Barnwell disposal facility, has withdrawn from the Southeast Compact and reopened the once-closed site, subject to a significant surcharge levied on waste disposal. According to press reports, the volume of waste disposed has now decreased to the point where revenues collected by the site's operator are insufficient to meet both the operator's financial requirements and minimum annual payments required to be paid to the state.
- A privately owned, non-Compact disposal facility located in Clive, Utah accepts a subset of the wastes for which the states are responsible. This site reportedly accepts wastes from all states except those belonging to the Northwest Compact (of which Utah is a member) and the Rocky Mountain Compact (served by the Northwest Compact's regional disposal facility near Richland, Washington). If approved, pending license changes at the Utah site would appear to place increased pressure on Barnwell's economic viability.
- In apparent response to the availability of these two non-Compact facilities, a number of Compacts have suspended or completely canceled their efforts to develop their own disposal facilities. Other than California, Texas is the only remaining Compact "host state" still pursuing disposal facility development. Like California, the future of the Texas project is uncertain.
- In effect, it appears that the reopening of Barnwell in 1995 and the emergence of the Clive, Utah facility as an alternative for certain wastes has removed the incentive to proceed with siting work in many states and Compacts, and encouraged the Department of the Interior to avoid a decision on Ward Valley.

Clearly, the nationally comprehensive regional disposal system envisioned by Congress in 1980 and 1985 has not emerged.

In May 1995, the General Accounting Office (GAO) issued a report on the implementation of the Low-Level Radioactive Waste Policy Act — *Radioactive Waste: Status of Commercial Low-Level Waste Facilities* (RCED-95-97). In light of recent developments, as

The Honorable James F. Hinchman
September 7, 1998
Page 3

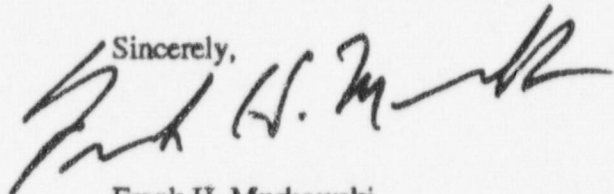
Chairman of the Senate Committee on Energy and Natural Resources, I request GAO to update this report and reexamine the implementation of this statute.

It is appropriate now to ask whether or not the patchwork system of low-level radioactive waste disposal, which has evolved over the past decade, will ensure the safe and efficient long-term management of all wastes for which the states are responsible. Given recent developments, it is also prudent to examine alternatives to the framework set forth in the Low-Level Radioactive Waste Policy Act, as amended. To this end, the Committee requests that the General Accounting Office:

- review and report on the current status of the management and disposal of all low-level radioactive wastes which are a state responsibility under the Act, including current disposal rates at the three existing facilities in South Carolina, Utah and Washington;
- review and report on the current status and projected timing of state and compact efforts to establish new disposal facilities;
- identify any wastes which have the potential to become "orphan wastes" without a disposal home based on recent or unfolding developments;
- identify and analyze potential alternatives to the system created by the Act including, but not limited to, reliance on private sector disposal services, and transfer of disposal responsibility from the states to the Department of Energy.

To assist the Committee in addressing this important issue early in the next Congress, it would be most helpful if the GAO could complete its work by the end of January 1999. If you have questions about this request, please contact Kelly Johnson at 224-3329. Your timely assistance in this matter is appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank H. Murkowski", with a stylized flourish at the end.

Frank H. Murkowski
Chairman

American Ecology

AMERICAN ECOLOGY INPUT TO U.S. GENERAL ACCOUNTING OFFICE

The U.S. General Accounting Office is evaluating implementation of the Low-Level Radioactive Waste Policy Act at the request of Senator Frank Murkowski, Chairman of the Committee on Energy and Natural Resources. At the GAO's request, US Ecology provided a tour of its Richland, Washington disposal site and responded to various questions. The following responses reflect American Ecology's current views on Policy Act implementation problems and the future of the national compact system.

GAO question: What needs to be done on a national level to increase access to LLW disposal sites and to lower disposal fees?

American Ecology Response:

Status Update: Before identifying curative approaches, it is useful to review the current, balkanized situation. There is now no uniform national LLW system, and a receding likelihood that the Compact arrangements envisioned by Congress when the Policy Act was passed in 1980 (and when amended in 1986) will ever be realized. Instead, eight states (Northwest Compact) operate under regulated monopoly conditions, while 39 states operate under free market conditions for certain Class A waste and unregulated monopoly conditions at Barnwell for other wastes. These 39 states, which produce the great majority of the nation's total LLW, now operate outside the economic framework of the LLW Policy Act. The three Rocky Mountain Compact states operate within both systems. The result is significant pricing inequities between different states and generators, and artificial restrictions on both commercial competition and service availability.

Many Compact host states have suspended or completely abandoned earlier site development efforts, including several in the recent past (e.g. Illinois, North Carolina, Ohio, and Pennsylvania). Only the California, Texas and Nebraska siting efforts appear to offer a credible prospect of success. Construction of the Southwestern Compact's Ward Valley site is indefinitely delayed by the U.S. Department of the Interior's steadfast refusal to transfer the project property to California (or even begin the additional studies it claims are needed to reach a decision). Nebraska regulators recently issued a preliminary license rejection decision for the proposed Central States Compact facility. Texas regulators are weighing the recommendation of two administrative law judges that the proposed Texas Compact site be rejected. Neither of these projects can be assumed to succeed.

The response of Compacts to the collective inability to open new disposal sites is also instructive. Unable to secure inter-regional agreements to meet their needs, non-sited Compact regions rely on the use of private, non-Compact disposal facilities (i.e. Envirocare and Barnwell). The sole

exception is an inter-regional Agreement between the Northwest and Rocky Mountain Compacts. This agreement applies to a very small quantity of waste, however, and allows Rocky Mountain Compact generators to use the two non-Compact sites as an alternative to the Hanford site.

In summary, the detailed system of penalties and incentives legislated by Congress in 1985 to assure development of new disposal capacity by states and compacts has not worked. As the Committee on Interior and Insular Affairs noted (see House Report No. 99-314, p. 2993), "The Committee anticipates that establishment of new disposal capacity will be a difficult process for all states and regions." This reality was acknowledged even before the United States Supreme Court ruled on a petition from the State of New York by striking provisions of the LLRW Policy Amendments Act requiring states to take title to the waste. Based on the current situation, the residual effects of eliminating this fundamental sanction warrant careful scrutiny.

A. LLW Policy Act Implementation Solution: One alternative is to implement the LLW Policy Act as intended by Congress. A significant first step requires the good faith support of the federal government itself, which is now blocking transfer of the state-licensed Ward Valley site to California for reasons which White House e-mail traffic confirm are entirely political in nature. Establishment of the Ward Valley site would represent the first concrete evidence that the Policy Act is implementable as envisioned by Congress, and provide impetus to siting efforts in other compact regions.

A second positive step would be proactive efforts by the Northwest Compact to provide incentives to states working within the Compact framework, and disincentives to those who are not. For example, the Northwest Compact could authorize interim access to the Hanford site to non-federal waste generators in the Southwestern Compact region pending completion of the Ward Valley project. (Continuing federal generator restrictions would be appropriate given the federal government's direct responsibility for Ward Valley delays). Similarly, the Central States and Texas Compact regions could be granted interim access to Hanford if Agreement State licenses were issued for the proposed Nebraska and Texas sites. Interim access would presumably terminate at a given date, following a reasonable time period for construction of each new facility.

With respect to disincentives, the Northwest Compact could utilize its existing authority to deny LLW importation from those states and compacts which have canceled or suspended siting efforts.

B. LLW Policy Act Repeal Solution: A second alternative is repeal of the Low-Level Radioactive Waste Policy Act. This would open access to the three existing sites and possibly additional commercial service providers, resulting in greater competition and lower disposal rates nationwide.

A system of open competition among commercial suppliers would also encourage expanded access to specialized, cost-effective disposal services targeted at specific types of waste. This has already occurred in the case of Envirocare, which disposes of a subset of the LLW which states are responsible for under the Policy Act. The development of efficient "niche" services has worked well in the toxic and hazardous waste market, which US Ecology also serves. The toxic and hazardous waste market now offers substantial excess capacity and highly competitive pricing. Given that market sector's prior capacity shortfalls, we suggest that GAO evaluate the different policy models in place for these two comparably controversial waste types.

GAO question: What, in your opinion, are better alternatives to generators' shipping LLW to one of the three current LLW sites?

American Ecology response:

The current inefficient, inequitable situation bears no relationship to the integrated, national system of compact sites envisioned by Congress in 1980 and 1986. The federal government clearly shares responsibility for the current policy drift. We believe the federal government must either approve the Ward Valley project and otherwise help the LLW Policy Act succeed; or recognize that it lacks the political will to support the states, repeal the Act, and allow the private sector to freely compete on a level playing field.

This second course of action, which would essentially restore pre-1980 conditions, is certainly viable. The three existing sites have ample space to safely and economically dispose all of the nation's commercial LLW for many decades into the future. The entry of additional competitors would logically depend on their assessment of market conditions and their ability to obtain the requisite licenses and permits.

GAO question: Are development of new DOE disposal sites or more private sites viable options to the current impasse in opening state compact sites?

American Ecology response:

No new disposal sites are needed from a waste capacity standpoint. While opening new DOE disposal sites (or opening existing DOE sites to commercial generators) would remove the need for new compact sites, such an initiative would confront the very same political problems facing new compact sites. To have any chance of success, DOE would require statutory authorization and the LLW Policy Act would logically be repealed. DOE's failure to make meaningful progress on Greater Than Class C disposal (assigned to DOE by the 1986 LLW Policy Amendments Act) and growing delays in the high-level waste repository program raise justifiable worries that the Department can successfully assume yet another burden.

Even assuming that the political hurdles to new or expanded use DOE facilities were overcome, the pricing advantages of open competition among multiple commercial service suppliers would be lost. Repealing the LLW Policy Act and allowing the free market to operate would be a superior alternative. It would also represent the least change to the market conditions which have evolved for the majority of the nation's waste since passage of the Policy Act.

American Ecology

IDENTICAL LETTER SENT TO EACH NORTHWEST COMPACT COMMISSIONER

October 14, 1998

Mr. David A. Finley, Administrator
Solid and Hazardous Waste
Management Division
Wyoming Department of
Environmental Quality
Herschler Bldg., 4th Floor West
Cheyenne, WY 82002-0001

Dear Mr. Finley :

At the last Northwest Compact meeting, interested parties were invited to submit their suggestions on future compact policies. American Ecology appreciates the opportunity, and would like to offer the following comments and specific recommendations for your consideration.

We believe when Congress adopted the Low Level Radioactive Waste Policy Act in 1980 and major amendments in 1985, the intention was clearly to encourage a national compact *system*. We have invested very heavily financially as a company in efforts to implement the law, and remain committed to it provided our Richland business can operate as part of a larger *national system*. On the other hand, we cannot continue to be constrained by the economic limitations of the law if we are de facto the only operating compact facility in the United States. To do so places our company and its employees and shareholders at risk, and constitutes an unfair disadvantage relative to other companies in the business as the past few years have amply demonstrated.

Given the moribund status of compact siting efforts across the country, we would like to respectfully suggest the Northwest Compact step back and re-examine the need for a compact system. If the compact concludes a national compact system is still the best alternative for managing commercial low level wastes, then we respectfully request the compact develop and adopt specific policies, and an action agenda, to aggressively promote the licensing and construction of other compact facilities. We offer several suggestions consistent with this path.

Early progress that was made in developing low level waste compacts was largely due to the penalties and incentives incorporated in the federal law. Once the Supreme Court invalidated the "take title" provision of the law, and the law's 1993 siting deadline passed unmet with impunity, the law's viability was placed in serious question. The farther we get from the events which prompted the law in the late '70's, and the more states observe they can ignore the law without consequence, the less likely it will ever be implemented as planned. Therefore, we believe the Northwest Compact should address both the adverse consequences of the Supreme Court decision and the lack of meaningful incentives and penalties.

Regarding incentives and penalties, we believe the compact itself should adopt and enforce penalty and incentive policies to force other states to proceed with new site development or interregional agreements necessary to achieve an integrated national system. Specifically, we propose the Northwest Compact allow wastes to be temporarily disposed at Richland from states which are members of any compact which has licensed a compact facility pending timely construction of the facility. We believe such a policy could be particularly beneficial and timely with the Central Interstate Compact right now.

Second, we propose the Northwest Compact exercise its existing authority to immediately ban import of wastes to any disposal facility within the compact region from any state which has not itself, or through compact membership, licensed a low level waste disposal facility. Allowing waste importation from states which have not licensed a disposal facility takes significant political pressure off other such states to site and license compact facilities or enter cooperative interregional agreements. I believe there was discussion of this basic point at the recent Low Level Waste Policy Forum meeting in Annapolis.

In order to counter the effect of the Supreme Court's "take title" ruling, even more forceful action is required. To that end, we recommend the Northwest compact ask Congress to expand its waste import authority to cover the movement of Department of Energy or other federal wastes to federal facilities within the compact region. It is clearly within Congress' prerogative to grant the compact authority to manage waste importation to federal facilities with the compact region and it would send a very strong message that Congress remains committed to the Low Level Radioactive Waste Policy Act. Extension of coverage to hazardous waste could also be considered.

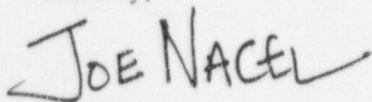
At your last meeting, one of your members pointed out the basic question before the compact is whether it remains committed to the compact system. We agree. We do not believe the Northwest Compact can continue to take comfort in the fact it has the nation's only compact facility and turn a blind eye to actions of the national administration and other states which undermine the law.

As an alternative to pursuing a national compact system, the compact could elect to lift the import restrictions on all disposal facilities within the region and allow the free market to operate. Waste producers would then be able to select among competing disposal service providers based on licensed capabilities, pricing, and other factors.

If the compact and the Governors and other elected officials of the member states are prepared to wage an aggressive campaign to save the law, US Ecology is prepared to join with you. Alternately, we are also prepared to work under a free market system, either authorized by the Northwest Compact or based on repeal of the federal law. We are also open to consider other, new approaches. US Ecology cannot, however, continue to be the only company in the United States which is required to operate under the restrictions of the current law. Given the current state of affairs, we recommend the compact consider sponsoring a workshop at which Northwest Compact members, state policy makers, US Ecology, Envirocare, and other affected parties can come together to help you develop a hard-hitting strategy to get this law back on track or plot a new course.

Thank you for considering our views. We look forward to timely action by the compact.

Sincerely,



Joe Nagel
President & Chief Operating Officer

cc: Mike Garner, Northwest Compact Executive Director
Charles Judd, Envirocare