

Cal Rad Forum's Comments on The Low-Level Waste Forum's
"DISCUSSION OF ISSUES:
Management of Commercial Low-Level Radioactive Waste"

General Comments

The LLW Forum's paper, "DISCUSSION OF ISSUES: Management of Commercial Low-Level Radioactive Waste," appears to be a defense of the status quo. While criticizing constructive remedies offered by others, the paper offers no alternatives to the present failed system, established twenty-five years ago, to assure access to low-level radioactive waste (LLRW) disposal facilities for commercial, institutional, and governmental organizations that use radioactive materials. As such, the paper will not achieve its stated objective to: "...guide decision-makers engaged in taking the steps necessary to serve the nation's need for services to manage low-level radioactive waste produced by industry, utilities, research institutions, medicine, and government."

Specific Comments

"Background" and "The Federal Law" (Pages 1 and 2.)

The LLW Forum's paper extols the "flexibility" in the federal Low-Level Radioactive Waste Policy Act and claims two instances where it believes rearrangement and consolidation of interstate compacts have expanded access to disposal facilities. These are 1) The 1993 agreement between the Northwest and Rocky Mountain Compacts whereby the Northwest Compact grants access to its regional disposal facility at Richland, WA to organizations that use radioactive materials in the Rocky Mountain Compact (Colorado, New Mexico, and Nevada), and 2) The merger of the Northeast Compact (Connecticut and New Jersey) with South Carolina to form the Atlantic Compact. However, as evidence of how compacts have used "flexibility" in the existing law to provide or improve access to low-level radioactive waste disposal facilities, both examples are seriously flawed — as described below.

The Northwest Compact - Rocky Mountain Compact Agreement. Prior to the agreement between the Northwest and Rocky Mountain Compacts, Nevada, Colorado, New Mexico and Wyoming had access to the Rocky Mountain Compact's regional disposal facility at Beatty, Nevada. In 1993, Nevada closed the Beatty facility and the two-compact agreement was made. Result: No additional states have assured access to disposal facilities. The same eleven states that had assured access prior to 1993 (eight in the

Northwest Compact and three in the Rocky Mountain Compact) continue to have access, and there is one less disposal facility in the nation.

Formation of the Atlantic Compact. In 2000, Connecticut and New Jersey (formerly the Northeast Compact) joined with South Carolina to form the Atlantic Compact. These three states have assured access to the regional disposal facility at Barnwell, South Carolina. Under present Atlantic Compact law, they will be the only three states with access to the Barnwell facility after June 30, 2008.* This arrangement came about after South Carolina dropped out of the much larger Southeast Compact because of North Carolina's failure to develop a new disposal facility for the Compact. North Carolina is now unaffiliated and the Southeast Compact doesn't even have a host state, much less a disposal facility! (Facts not mentioned in The LLW Forum's paper.) The six states of the Southeast Compact (Alabama, Florida, Georgia, Mississippi, Tennessee, and Virginia) will lose access to their former regional disposal facility at Barnwell after June 30, 2008. This is hardly an expansion of access for Southeast Compact states!

Other examples cited really prove nothing about "flexibility" leading to solutions. The formation of the Texas compact by three previously unaffiliated states (Texas, Maine, and Vermont) was accomplished by the same mechanisms that led to formation of the original compacts. Maine has since dropped out of this compact, leaving only two states. What is noteworthy about this compact (but significantly not mentioned in the paper) is that the Texas low-level waste disposal program is the only such program in the country still alive. All other states and compacts have ceased efforts to develop new disposal facilities.

It might have been expected that reduced volumes of low-level waste throughout the nation might have led to further consolidation providing access to existing facilities for radioactive materials users in states and compacts now without LLRW disposal facilities of their own, but this has not happened.

The LLW Forum's discussion paper cites the opening of the Envirocare disposal facility in Utah as evidence that one new disposal facility has been developed since passage of the Policy Act (1980). But this important facility is not a compact facility and does not accept all of the wastes specified in the Policy Act; it is licensed only for a subset of Class A waste and, at the present time, does not accept sealed sources or biological wastes. Within the past year, Utah enacted a law barring acceptance of waste classes B and C. It is accurate to say that the Low-Level Waste Policy Act, enacted in 1980, has not led to the development of a single new disposal facility.

* And therefore, along with the member states of the Northwest and Rocky Mountain Compacts, they are among the "Fortunate Fourteen" — the only states with assured access to disposal for their Class B and Class C low-level waste after June 30, 2008.

"Positions and Issues for Consideration"

"Position 1: Commercial low-level radioactive waste is currently well regulated and managed safely." (Page 2.)

Regulation of safety is not a responsibility of the compacts. It is a responsibility of the US NRC and authorized Agreement State agencies. LLRW was managed and disposed of safely prior to the Policy Act. However, to assure continuation of access to disposal facilities, many organizations now agree that modification of the Policy Act is required.

"Position 2: There is not an immediate crisis. The current national waste management system affords flexibility to make adjustments as conditions across the country change; however, it is important to continue working to meet all current and future disposal needs." (Page 3.)

The discussion paper claims, "There is not an immediate crisis." However, on the nation's present course, organizations that use radioactive materials in 34-36 states will have no place to dispose of the more radioactive classes of LLRW (Classes B and C) as of July 1, 2008. Also on July 1, 2008, there will be only one facility (Envirocare) where they can dispose of their Class A waste; thus, there will be monopoly control of disposal of Class A waste. Given the time it takes to develop a new disposal facility, we believe that immediate action is called for.*

The paper does not say how The LLW Forum is "working to meet all current and future disposal needs."

The policy paper deals in uncertainties that it calls "mitigating factors." Two examples:

"The Texas Compact law provides a discretionary option for the compact commission to contract for the disposal of waste from outside of the compact." And,

"If this import restriction [the July 1, 2008 end of access to Barnwell, SC] is not amended and no new disposal capacity is developed, 36 states will lack disposal capacity for Class B and C low-level radioactive waste after 2008."

However, there is no assurance that Texas will allow disposal of waste from outside of the compact. A Compact Commission has not been appointed, so there is no one with whom to even discuss this possibility. Nor

*Only one license for a new disposal facility meeting the requirements of the Policy Act has been issued since the Policy Act was passed in 1980: California's license for the proposed Ward Valley facility. The license was issued ten years after passage of the State's enabling legislation, and litigation took another three years to uphold the license and the certification of the Environmental Impact Report — a total of thirteen years. The facility was never built, and California (the host state for the Southwestern Compact) now has no program to develop a new disposal facility.

is there any reason to believe that South Carolina will amend its statutory import restriction (July 1, 2008) for accepting waste from outside the Atlantic Compact.

The LLW Forum's policy paper relies on the 2004 GAO report to offer waste storage as an alternative option to waste disposal. Among other negatives, this suggestion neglects the fact that industrial users of radioactive materials often change facilities requiring the decommissioning of, and the removal of waste materials from, the previous location. In this situation, on-site storage is clearly not an option. USNRC policy favors permanent disposal over indefinite storage of LLRW.

"Position 3: When evaluating alternatives to the current national waste management system, it is important to take into consideration political realities, economic consequences, and regulatory concerns. Proposals need to be carefully analyzed from the perspectives of all affected parties." (Page 4.)

The discussion of issues paper says, "States and compacts must be allowed to pursue that goal ["...provide safe, environmentally sound, reliable, and permanent access for the disposal of all commercial low-level radioactive waste generated in the nation,"] unfettered, allowing them to identify solutions appropriate to the needs of their generators and their unique political situations." (Emphasis added.) States and compacts should be "unfettered." This seems to be what it's all about. No agency, certainly no government agency, operates "unfettered." We note that states and compacts have developed no new LLRW disposal facilities in the twenty-five years since adoption of the Policy Act in 1980, while a crisis looms in mid-2008.

The LLW Forum criticizes proposals for allowing access to federal facilities for non-DOE waste noting that federal facilities are located in states. Of course there may be local and state concerns about use of DOE facilities just as there are about all siting and disposal proposals. We note however, the very successful DOE Offsite Source Recovery Program (OSRP) for sealed sources and the recent suggestion by the Government Accountability Office (GAO) that DOE and NRC evaluate and report on the feasibility of disposing of commercial non-Greater-Than-Class C (non-GTCC) waste from sealed sources at DOE sites.* Also, as noted in Cal Rad's testimony to the Senate Energy and Natural Resources Committee (9/30/04) (<http://www.access.gpo.gov/congress/senate/senate08ch108.html>), or

* GAO-05-967, "NUCLEAR SECURITY. DOE Needs Better Information to Guide Its Expanded Recovery of Sealed Radiological Sources," September 2005. Page 7.

<http://www.calradforum.org/llrw.html>), a DOE Inspector General's Report states that the Department's own disposal facilities are underutilized.¹

The LLW Forum's discussion of issues paper raises a "straw man" issue when it says, "There has also been discussion about requiring existing or new disposal facilities to allow access to out-of-region generators. However, pressuring states with existing sites or that are developing sites to accept waste from outside their region runs the risk of inviting new restrictions or shutting down those sites altogether." We don't know who has made such suggestions; certainly not Cal Rad. In our testimony to Congress, we say that the States of Washington and South Carolina should be allowed to continue operation of their disposal facilities under the existing provisions of the Act. Why risk making the situation even worse than it is? The LLW Forum goes on to say, "It is important to remember that equity in disposal burden is what originally led to the passage of the Act." But the history of the last twenty-five years demonstrates that the incentive ("carrot") of equity in disposal burden — through the ability to restrict access — has not been sufficient to encourage development of new disposal facilities. The 1980 Act, as amended in 1985, also included a "stick": the "Take Title" provision. But, in 1992, the Supreme Court struck down this provision, which required states to take title to and possession of wastes within their borders lacking access to disposal facilities. This court action represents a significant weakening of the original Act.

"Position 4: The federal government is currently providing several forms of appropriate assistance to states and compacts related to the management of commercial low-level radioactive waste." (Page 5.)

The LLW Forum discussion of issues paper says DOE can help the states and compacts and cites examples. However, the examples mentioned refer only to providing information: The national database (Manifest Information Management System) and DOE financial support of the LLW Forum's issues awareness work for states and compacts. We believe that there is a much larger role for DOE employing its existing disposal facilities -- perhaps on a near-term basis.

"Conclusions" (Page 5.)

The LLW Forum's paper again notes "the scheduled closure of the Barnwell disposal facility to out-of-region waste" and says, "it remains important that disposal capacity for all classes of low-level waste be preserved and developed." However, no alternative approaches for assuring access to disposal capacity are suggested.

¹ "Utilization of the Department's Low-Level Waste Disposal Facilities," DOE/IG-05-5, May 25, 2001.

Cal Rad Forum's Conclusions

In addition to Cal Rad Forum, a number of organizations, including the Health Physics Society, the American Nuclear Society, and the Council on Radionuclides and Radiopharmaceuticals (CORAR) have recently called for changes in the Low-Level Waste Policy Act. The U.S. Nuclear Regulatory Commission's comments on the GAO report of June 2004 (Appendix V of the Report)* are on point and are probably the most valuable part of the report:

"The current report is a sequel to GAO's 1999 report, 'Low-Level Radioactive Wastes: States Are Not Developing Disposal Facilities' (GAO/RCED-99-238). That report concluded that none of the States' or compacts' efforts to develop new disposal capacity had been successful and the state efforts to do so had 'essentially stopped.' This earlier report also examined alternatives to the current system for development of new disposal capacity in the U.S., but did not recommend any of them. Appendix II of the current report updates these alternatives. We believe that it is now time for GAO to explore these alternatives further because 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. We acknowledge that the potential approval for Envirocare to accept Class B and C wastes and licensing of a LLRW disposal facility in Texas could significantly improve the current LLRW disposal system in the U.S. 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 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 the alternatives identified in Appendix II that would potentially provide a better legal and policy framework for new disposal facilities for commercial generators of LLRW." (Emphasis added.)

As noted above, the "Take Title" provision of the Policy Act is gone. Without it, development of new disposal facilities for low-level radioactive waste has been stymied by lack of political will at the state level. Example: the federal courts found the State of Nebraska acted in bad faith in rejecting a LLRW disposal facility license application, and the State was willing to pay the Central Interstate Compact Commission about \$140 million dollars in damages rather than allow development of a new disposal facility.

The nation's low-level waste disposal infrastructure is inadequate and, without action by Congress, will become much worse. Beneficial uses of radioactive materials by industries, research and medical institutions, utilities, and agencies of

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

state and federal governments are jeopardized by the current and projected future inadequate disposal infrastructure. Lack of disposal capacity could stop or impede some research, medical, and industrial uses of radioactive materials and have a detrimental impact on the economy and the quality of life and health.

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