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# Safe Disposal of Low-level Radioactive Waste

## *Statutory Process Versus Ad Hoc Committees*

By Donna Earley

Health physicists, engineers, physicians, and researchers have a simple, straightforward view about facilities for the safe disposal of low-level radioactive waste. These facilities are necessary infrastructure that enables society to enjoy the benefits of medical, industrial, and research activities that use radioactive materials. Disposal must be safe, and its availability—at reasonable cost—must be assured.

### **The Legislative Path**

The Congress and state legislatures have enacted laws entrusting regulatory oversight of siting, construction, and operation of LLRW disposal facilities to specified federal and state agencies with the necessary technical expertise. The California Radioactive Materials Management Forum (Cal Rad) supports the fair and open implementation of



the regulatory processes, sanctioned by law, for making decisions.

In addition to the statutes and regulations assuring that LLRW will be disposed of safely, Congress took an additional step in 1980 that recognizes the controversial nature of radioactive waste disposal. Congress added regional equity to safety in establishing the legal framework for encouraging the development of new disposal facilities. According to the Low-Level Radioactive Waste Policy Act, no state has to bear the “burden” of being known as the “nuclear dumping ground” for the nation. States can organize themselves into compacts, and a compact can restrict the use of its regional disposal facility to the member states of the compact.

But Congress could not and cannot discourage the use of waste disposal as a surrogate issue by extremists who want to stop society’s use of radioactive materials. (This agenda of opponents is described in an editorial on Cal Rad’s web site at [www.calradforum.org](http://www.calradforum.org).) Nor can Congress provide our elected leaders—state and federal—with the political will necessary to implement the law and open new disposal facilities as anticipated by the Act.

It is often said that the Low-Level Radioactive Waste Policy Act is not working. Those who espouse this view offer as evidence the fact that no new disposal facilities have been created since the law was passed in 1980. But the Act is working for some. It works for organizations that use radioactive materials in the state of Washington and the member states of the Northwest and Rocky Mountain compacts. Similarly, the Act works for South Carolina, New Jersey, and Connecticut. These three states will soon form the Atlantic Compact, use the Barnwell, S.C., disposal facility, and begin to phase-down access by 36 other states that now rely on Barnwell as the only facility to which they can ship their Class B and Class C low-level wastes. All it takes to make the Act work is the political will to open a disposal facility.

California is unique because it is the only state to have actually licensed a new LLRW disposal facility since the passage of the Low-Level Radioactive Waste Policy Act. Not only did the California Department of Health Services issue a license for a facility at the remote Ward Valley site in the Mojave Desert and certify the Environmental Impact Report in 1993, but these decisions were upheld by California's courts in 1996 when challenged by opponents. But Ward Valley is federal land, and, since 1993, the Clinton administration has refused to sell the land to the state of California—despite favorable reviews by the U.S. Bureau of Land Management (joint EIR/EIS in 1991, and a favorable Supplemental EIS in 1993), the U.S. Geological Survey, and the U.S. Fish and Wildlife Service.

### **Can Ad Hoc Committees Point the Way?**

California's Gov. Gray Davis, elected in 1998, has not attempted to persuade his fellow Democrat in the White House to approve the sale of 1000 acres of federal land in Ward Valley to the state. Instead, last June he announced that he would ask the president of the University of California, Richard Atkinson, to chair an advisory group to recommend options for the disposal of California's LLRW consistent with federal law. The advisory group held its first meeting last November. Another committee, the scientific panel, has been appointed to advise the advisory group.

To date, the work of the two committees is not auspicious. They have veered far off course from the announced plan to recommend disposal options consistent with federal law.

In December, Ward Valley was taken off the table. Chairman Atkinson said there was already an extensive record on the proposed Ward Valley project. Cal Rad had been assured by the governor's office that all options, including Ward Valley, would be on the table for the Advisory Group. The scientific panel began its work by considering waste storage instead of permanent disposal.

Also in December, consideration of disposal options to meet the needs of organizations in the other party states to the Southwestern Compact was taken off the table. Contrary to the initial announcement, this

is inconsistent with the requirements of both federal and state law.

By February, it was clear that consideration of disposal sites had been taken off the table.

The scientific panel devoted unnecessary time and effort to waste classification. The alternatives that have been discussed are designed to segregate waste on the basis of either institutional pedigree or half-life—not science and safety. This seems to be an effort to define-down the scope of the state's responsibilities.

By March, the scientific panel was talking about “management” of low-level waste instead of disposal, as though waste generators are unaware of storage for decay or waste processing services. Clearly, the advisory group is moving down the path of least political resistance to avoid controversy.

Meanwhile, Gov. Davis and the administration in Washington blame each other for the impasse on transferring federal land to the state. The governor says, “Ward Valley as a site is a dead issue because the federal government won't sell us the land.” But the Bureau of Land Management blames Sacramento. The Bureau says it stopped the land transfer process because the state shows no interest.

### **Will the Courts Show the Way?**

Cal Rad Forum has urged our political leaders to follow an interim course of action. We have asked for temporary access to U.S. Department of Energy low-level waste disposal facilities until the Ward Valley land sale impasse is resolved. This proposal has the support of the Southwestern Compact Commission and was also endorsed by the California Department of Health Services during the previous state administration.

Meanwhile, users of radioactive materials in the Southwestern Compact region observe with interest litigation in the Central States Compact region. The Central States Compact Commission has sued the state of Nebraska, alleging that the state's decision to deny a license application for a low-level waste disposal facility was politicized. Rulings to date by the federal trial and appellate courts have resulted in an injunction against further regulatory consideration by the state of Nebraska until the charges are resolved.

Compacts are contracts and require good faith performance by all the party states. The federal Low-Level Radioactive Waste Policy Act and the Compact Consent Acts are still on the books. Perhaps the courts will ensure that the laws governing the safe disposal of low-level wastes are implemented. ■

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