

SOUTHWESTERN LOW-LEVEL RADIOACTIVE WASTE COMMISSION

PO Box 277727 Sacramento CA 95827-7727

Voice: (916) 448-2390 [or (209) 296-3680]

Fax: (815) 361-3848

E-mail: swllrwcc@swllrwcc.org

Website: www.swllrwcc.org



May 11, 2005

The Honorable Arnold Schwarzenegger
Governor of California
State Capitol
Sacramento CA 95814

Dear Governor Schwarzenegger:

This is a follow-up letter to the one I sent you on February 1, 2005 (attached). In that letter I expressed the interest of the Southwestern Low-Level Radioactive Waste Commission (Commission) in learning about your administration's plans regarding meeting California's legal obligation to provide a low-level radioactive waste (LLRW) disposal facility. I have received no response to that letter, nor was the invited State of California representative able to attend our Commission meeting on April 8, 2005 to brief us on those plans. Therefore, the Commission is at a loss as to how to deal with an impending crisis.

On or about July 1, 2008, the LLRW generators in the Southwestern Compact region, i.e., California, Arizona, North Dakota and South Dakota, will lose the ability to dispose of their Classes B and C LLRW. On that date the Barnwell, South Carolina LLRW disposal facility, the only facility in the nation presently accepting such waste, will close its facility to our region's Classes B and C LLRW. Our region's generators of these classes of waste will have no place to go for disposal.

In addition, both Federal law (Public Law 100-712) and California law (Health and Safety Code, sec. 115250 et seq.) mandate that the Commission shall do whatever is reasonably necessary to ensure that LLRW is safely disposed of within the region. Absent a regional LLRW disposal facility, the Commission has, since its inception in 1991, satisfied this mandate by facilitating the export of this region's LLRW to Envirocare of Utah (Class A LLRW) and the Barnwell, South Carolina facility (Classes A, B and C LLRW). With the closure of access to the Barnwell facility, the Commission will be unable to comply with the requirements of the federal and state mandate regarding Classes B and C LLRW. We have no disposal facility in our region where we can dispose of these classes of LLRW and we won't be able to authorize their exportation.

The Commission finds itself in this predicament because of the State of California's failure to comply with the law enacted in 1987. California Health and Safety Code, Section 115255, Article 4, Subdivision(E)(1) mandates California, the host state, shall cause a regional disposal facility to be developed on a timely basis. If one were to apply the reasonable-person test to the phrase "timely basis," surely the passage of 18 years since the statute's enactment with no facility in sight would cause California to fail the test.

Not only will the impending crisis, if not averted, have an impact on the industries, utilities, research institutions, medical facilities and government agencies in our region that generate LLRW and on the ability of the Commission to comply with the law, but it may also have a significant impact on the government of the State of California. Federal law (42 U.S.C. 2021c) mandates that California is responsible for providing for the disposal of Classes A, B, and C LLRW. Arguably, the State of California has satisfied this legal requirement in the past by the Commission's authorizing the export of such waste to the Barnwell facility. But, when exportation is no longer possible, circa July 1, 2008, disposal of Classes B and C LLRW generated in California and Arizona, North Dakota and South Dakota becomes the State of California government's responsibility, by law, including any attendant liability.

It is also important to bring to your attention another related potential problem. At the April 8, 2005 meeting the Commissioners of the States of Arizona, North Dakota and South Dakota (party states) expressed growing concern about California's shortcomings. This brings up the California Compact law which states in part: "Each party state may rely on the good faith performance of the other party states to perform those acts which are required by this compact to provide regional disposal facilities..." (Health & Safety Code, sec. 115255, art. 4, subd. (F)(6)). The party states joined with California in good faith when the Southwestern Compact was formed instead of going elsewhere. The question is raised, has California performed in good faith in return?

The Commission believes that the State of California and the other party states, the generators of LLRW, and the Commission itself have a mutual need to develop LLRW disposal in order to enhance California's ability to support entities that require disposal capability, such as California's biotech industry. Accordingly, the Commission seeks an immediate meeting with you and appropriate members of your administration. The objective of the planned meeting is to develop a joint strategy to meet our mutual requirements for LLRW disposal. Several options exist such as exploring California approaching the Bush administration for access to Department of Energy disposal facilities, explore getting access to other Compacts' disposal facilities, and developing a California disposal facility. Any of these actions would be initiated by your office. It is incumbent upon all who are involved to work together to achieve success. We look forward to working in partnership with you.

Sincerely,

/s/

Kathy A. Davis, Chair

Attachment: February 1, 2005 letter to Governor Schwarzenegger

Appendix: Germane federal and state code excerpts

Cc: Governors of Arizona, North Dakota, and South Dakota
Southwestern Low-Level Radioactive Waste Commission members
California Radioactive Materials Management Forum

Attachment: February 1, 2005 letter to Governor Schwarzenegger

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February 1, 2005

Honorable Arnold Schwarzenegger
Governor of California
State Capitol
Sacramento CA 95814

Dear Governor Schwarzenegger:

The Southwestern Low-Level Radioactive Waste Commission, which governs the Southwestern Low-Level Radioactive Waste Disposal Compact among Arizona, North Dakota and South Dakota as well as California, has been following with interest your administration's progress toward restructuring California's government through the California Performance Review. We are particularly interested in what your administration plans to do to meet California's obligation to its own producers of low-level radioactive waste (medical facilities, educational institutions, industry, utilities, and government agencies) and to those within the other Compact states.

The Commission recognizes the budget difficulties you currently face. However, developing a low-level radioactive waste disposal facility would not result in long-term costs to California. If a private firm is found which is willing to undertake development with its own money, then the license fees paid by that firm would offset California's cost for regulatory actions. If no private firm is found, then the law provides that the Resources Agency become the developer. In that case, disposal fees would pay for the entire program.

The Commission's next meeting is in April. We hope that the State of California representative at the meeting will be able to inform the Commission as to California's plans to meet the needs of low-level radioactive waste producers throughout the Compact states.

The Commission stands ready to work with you and your administration in any way that we can to assist you in your progress toward developing a regional low-level waste disposal facility as required by law. Please contact me via the Commission's office as shown on the letterhead. Thank you.

/s/

Kathy A. Davis
Commission Chair

cc: Southwestern Low-Level Radioactive Waste Commission
Governors of Arizona, North Dakota, and South Dakota

Appendix: Germane federal and state code excerpts

Public Law 100-712 [H.R. 5232]; November 23, 1988

“SOUTHWESTERN LOW-LEVEL RADIOACTIVE WASTE DISPOSAL
COMPACT CONSENT ACT

“

“Article III. -The Commission

“

“(g) The commission has all of the following duties and authority:

(1) The commission shall do, pursuant to the authority granted by this compact, whatever is reasonably necessary to ensure that low-level radioactive wastes are safely disposed of and managed within the region.

“

“Article IV. -Rights, Responsibilities, and Obligations of Party States

“

“(C) (1) Upon the effective date of this compact, the State of California shall serve as the host state and shall comply with the requirements of subdivision (E) for at least 30 years from the date the regional disposal facility begins to accept low-level radioactive waste for disposal.

“

“(E) A host state shall do all of the following:

(1) Cause a regional disposal facility to be developed on a timely basis.

“

“(f) Each party state is subject to the following duties and authority:

“

“(6) Each party state may rely on the good faith performance of the other party states to perform those acts which are required by this compact to provide regional disposal facilities, including the use of the regional disposal facilities in a manner consistent with this compact.

“ ”

California Health and Safety Code

“Section 115255. The provisions of the Southwestern Low-Level Radioactive Waste Disposal Compact are as follows:

“

“Article 3. The Commission

“

“(g) The commission has all of the following duties and authority:

(1) The commission shall do, pursuant to the authority granted by this compact, whatever is reasonably necessary to ensure that low-level radioactive wastes are safely disposed of and managed within the region.

“

“Article 4. Rights, Responsibilities, and Obligations of Party States

“

“(C) (1) Upon the effective date of this compact, the State of California shall serve as the host state and shall comply with the requirements of subdivision (E) for at least 30 years from the date the regional disposal facility begins to accept low-level radioactive waste for disposal.

“

“(E) A host state shall do all of the following:

(1) Cause a regional disposal facility to be developed on a timely basis.

“

“(F) Each party state is subject to the following duties and authority:

“

“(6) Each party state may rely on the good faith performance of the other party states to perform those acts which are required by this compact to provide regional disposal facilities, including the use of the regional disposal facilities in a manner consistent with this compact.

“

Title 42 United States Code

"Sec. 2021c. Responsibilities for disposal of low-level radioactive waste

(a)

(1) Each State shall be responsible for providing, either by itself or in cooperation with other States, for the disposal of -

(A) low-level radioactive waste generated within the State (other than by the Federal Government) that consists of or contains class A, B, or C radioactive waste as defined by section 61.55 of title 10, Code of Federal Regulations, as in effect on January 26, 1983;

(B) low-level radioactive waste described in subparagraph (A) that is generated by the Federal Government except such waste that is -

(i) owned or generated by the Department of Energy;

(ii) owned or generated by the United States Navy as a result of the decommissioning of vessels of the United States Navy; or

(iii) owned or generated as a result of any research, development, testing, or production of any atomic weapon; and

(C) low-level radioactive waste described in subparagraphs (A) and (B) that is generated outside of the State and accepted for disposal in accordance with sections [1] 2021e or 2021f of this title...."