

IMPACT OF LIABILITY AND SITE CLOSURE AND LONG-TERM CARE ISSUES ON FUTURE SITING EFFORTS

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ABSTRACT

Washington's research in the area of financial responsibility for liability and cleanup for radioactive materials licensees and low-level radioactive waste permittees is offered to assist unsited states and regions in their planning and development of new low-level waste disposal capacity. The state considered the need for third party bodily injury and property damage financial responsibility and determined that the USDOT requirements comprehensively cover transport of wastes. In regard to licensees' facilities, it is the state's opinion that an adequate technical basis for third party requirements has not yet been developed. Also considered was the need for financial assurance for cleanup, which is covered for transportation, but generally not available for facilities. Three options are examined to provide such coverage, and the economic impact on licensees assessed. Finally, the current low-level waste disposal site operator's insurance coverage is analyzed and deficiencies are identified.

Washington is also conducting research into site closure and perpetual care and maintenance requirements for the commercial low-level radioactive waste disposal facility located on the Hanford reservation near Richland, Washington. This research includes a site assessment and identification and formulation of site-specific design elements for closure and long-term care. This paper summarizes the observations, findings and conclusions resulting from the conceptual design phase of the closure and perpetual care study relative to information gaps and knowledge gained at the facility which may be useful to unsited states and regions. This paper discusses from a "lessons learned" perspective, the challenges and problems confronting Washington State relative to environmentally safe and technically sound site closure and long-term care.

INTRODUCTION

The Low-Level Radioactive Waste Program of the Washington State Department of Ecology began its investigation of liability and insurance issues in 1986 with a legislative mandate to assess the adequacy of insurance coverage for general liability, radiological liability, and transportation liability for the commercial low-level radioactive waste disposal facility. In addition, the Department was directed to conduct related studies regarding the potential for bodily injury and property damage in the packaging, shipping, transportation, treatment, storage and disposal of commercial low-level radioactive materials under licenses or permits issued by the state (1). The first purpose of this paper is to share the results of this work with unsited states and regions who may be able to use such information in the development of new disposal facilities and in the state and regional management of radioactive materials.

Financial responsibility for licensees and permittees was addressed in two major areas: financial assurance for liability, or third party bodily injury and property damage, and financial assurance for cleanup. These are addressed in separate sections below. A third section discusses the adequacy of the disposal site operator's insurance coverage. In this paper, the term "licensee" refers to a holder of a license to handle radioactive materials in the state of Washington and the term "permittee" refers to a holder of a site use per-

mit for waste disposal at the Richland, Washington commercial low-level radioactive waste disposal site.

The second purpose of this paper is to provide to unsited states and regions information about Washington's investigations into disposal site closure and perpetual care and maintenance. Study objectives, information gaps, closure design and perpetual care considerations are discussed in separate sections.

BACKGROUND

In 1964, Washington State leased from the United States Government 1,000 acres of land lying within the boundaries of the 570 square mile Hanford reservation near Richland, Washington. In 1965 the state subleased 100 of the 1,000 acres to California Nuclear, Inc., for the purposes of operating a land disposal facility for low-level radioactive waste. The facility began operations in 1965, and in 1968 Nuclear Engineering Company became the site operator. Nuclear Engineering Company changed its name to US Ecology, Inc. in 1981, and continues to operate the site under that name today.

At the facility, radioactive waste has been predominantly disposed of using conventional shallow land burial techniques. However, a few variations have been used over the years. Some of these variations may require special decommissioning, closure, monitoring and/or surveillance techniques. These variations in disposal and site operations

include, but may not be limited to: The caissons, which were reportedly used for highly radioactive waste material and consist of four 30-foot vertical wells, 24 inches in diameter; the chemical trench, which was used for the disposal of hazardous chemicals; the solar evaporation units, also known as "the resin tank farm" which consists of five underground tanks, that flooded in 1984; the buried reactor head located in the special projects area; and the disposal of heavy metals, organic materials, mixed wastes and other hazardous materials which may have occurred during the facility lifetime.

Trench dimensions have varied at the facility with maximum dimensions of 1,000 feet long, 150 feet wide and 45 feet deep. In a typical disposal sequence, unlined trenches are excavated and wastes placed randomly, beginning at one end and progressing toward the other. Finally each trench is backfilled with excavated soils. All filled trenches have as interim covers a minimum of 8 feet of spoils. Currently a total of 18 trenches have been used for waste disposal at the commercial site and contain approximately 10.2 million cubic feet of wastes. Over the years, a variety of chemically hazardous, radiologically toxic and "mixed" waste streams have been disposed of at the facility.

FINANCIAL RESPONSIBILITY

Financial Responsibility for Third Party Injury and Damage

In examining the need for third party bodily injury and property damage financial responsibility for licensees, permittees and carriers, our primary concern with state licensees was with the licensees' facilities, while our primary concern with permittees and carriers was with the transport of waste within Washington.

In regard to the transportation of waste, the state found current U.S. Department of Transportation (USDOT) regulations to be comprehensive in that they address third party bodily injury and property damage, and cleanup. The limits required, \$1,000,000 per occurrence, and \$5,000,000 per occurrence for highway route-controlled shipments, appear reasonable. We recommend, therefore, that licensees and permittees be required to, if transporting materials or waste within a state or compact region maintain full compliance with the financial responsibility requirements of the Motor Carrier Act of 1980 (2), or if hiring a carrier, ensure that such carrier maintains a fully compliant status. While USDOT requirements are already applicable to interstate carriers (3), it may be desirable to require that licensees and permittees provide to the state or regional licensing authority, documentation that either the licensee or permittee, or the carrier employed by the licensee or permittee, is in full compliance with USDOT regulations.

While the above requirement will provide financial assurance for third party bodily injury and property damage

for any waste or materials that are in transit within a state or region, we believe that additional research is necessary before a similar requirement could be applied to licensees' facilities, because, in our opinion, an adequate technical basis for these requirements has not been established. It is, however, generally believed that Washington State licensees currently maintain general liability policies that protect them from claims of third parties for bodily injury and property damage (4). In these policies the handling of radioisotopes in small quantities is usually not excluded but environmental pollution is excluded (5). Without a technical basis it is not possible to determine if current amounts of coverage are adequate. Such a basis could be developed using actual historical third party cost information or by postulating a range of potential accidents and estimating their costs. It is important to note that, at least in Washington, the state will only be required to pay for third party claims if the state is shown to have been negligent.

Financial Responsibility for Cleanup

Because financial responsibility for cleanup is required by the USDOT, as discussed above, we focused our efforts in this area on cleanup at licensees facilities. A number of options by which this type of coverage could be accomplished were identified.

The Nuclear Regulatory Commission (NRC) has been developing financial responsibility requirements for cleanup for its materials licensees and intends to proceed with a rulemaking in 1988 (6). In this case, "cleanup" means on-site and off-site cleanup of accidental or unexpected radiological releases regardless of the cause, for private and public property, and environmental restoration. NRC requirements would apply to most of the nation's radioactive materials licensees and therefore represent one option for assuring financial responsibility for cleanup.

An alternative option would be for a state or region to establish a fund of money to provide for cleanup if a licensee is financially insolvent. A fund would be developed in lieu of requiring licensees to provide individual financial assurance. Such assurance is difficult and expensive to obtain through conventional mechanisms (7). In addition, because in

Washington the probability of the state having to pay for cleanup appears to be low (8), a requirement for all licensees to provide individual assurance may be unnecessarily duplicative. A more efficient use of resources appears to be the establishment of one cleanup fund that would be maintained at a level in accord with historical cleanup costs. It is important to note that in Washington, the state would be required to pay for cleanup only if a licensee is financially unable. A state cleanup fund could be financed with an additional surcharge on license fees or an additional per cubic foot surcharge on waste at the disposal site, or both.

It appears that this mechanism represents a much less expensive alternative for licensees than the purchase of a bond or similar financial assurance.

A third option would be to require individual financial responsibility requirements for all licensees. We considered using a sliding scale requirement developed by Sandia National Laboratories for the Nuclear Regulatory Commission (9). This scale is based on historical cleanup costs and the total licensed quantity of materials a licensee is allowed to possess. By using such a sliding scale the requirements reflect at least in part the potential risk posed by a licensee. The requirements developed by Sandia and adapted for our potential use are as follows:

Total Licensed Quantity of Radioactive Materials (10):	Amount of Financial Responsibility for Cleanup Required:
Less than 0.1 Curie	\$100,000
0.1 to 1.0 Curie	\$250,000
1.0 to 10 Curies	\$500,000
10 to 100 Curies	\$1,000,000
100 to 1000 Curies	\$2,000,000
1000 to 10,000 Curies	\$2,000,000 (11)
Greater than 10,000 Curies	\$2,000,000 (12)

Sandia has not yet developed sliding scale requirements for licensees with total licensed quantities in excess of 1000 curies, i.e. the 1,000 to 10,000 curies and greater than 10,000 curies categories. Sandia believes that these licensees could have incidents that cost in excess of \$2,000,000 to clean up, and intends to develop requirements, which will be greater than \$2,000,000, for these categories by July of 1988.

If requirements for licensees were implemented we would recommend that the following mechanisms be allowed to provide financial responsibility: Insurance from commercial insurer, insurance provided by a captive insurer, risk retention purchasing group, surety bond, standby letter of credit, deposit of securities or cash in trust or escrow account.

If licensees were required to maintain the above coverage for cleanup they would most likely use a surety bond or similar mechanism because, in general, commercial insurance is not available (13). The maximum amount these bonds would cost has been estimated to be \$20 per \$1,000 of coverage (14). This would mean that for a licensee required to have \$100,000 of coverage a bond would cost a maximum of \$2,000 per year while a licensee required to have \$2,000,000 of coverage would be required to purchase a bond costing a maximum of \$40,000 per year. In order to

assess the potential economic impact on state licensees, the Program hired an economist to perform a small business economic impact analysis. This analysis concluded that the added cost of a bond would be insignificant for the average larger firm among Washington's licensees but could threaten the financial viability of small firms.

Disposal Site Operators' Insurance Coverage

Working with the State Office of Risk Management, the Program assessed current insurance coverage of the operator of the commercial low-level radioactive waste disposal site at Richland, Washington. The site operator carries four liability insurance policies. The first is an American Nuclear Insurers (ANI) Facility Form, the second an ANI Suppliers and Transporters Form, the third is a truckers form, and the fourth is a general liability policy. The two policies of most concern to us were the ANI Facility Form and the ANI Suppliers and Transporters Form because these provide nuclear insurance. The truckers form has nuclear and pollution exclusions and the general liability policy has nuclear and limited pollution exclusions. Basically all of the policies address bodily injury and property damage.

The two ANI policies apply strictly to third party damages which are caused by a "nuclear energy hazard" (defined as the radioactive, toxic, explosive or other hazardous properties of nuclear material...). The ANI Facility Form therefore makes a distinction between occurrences on-site and occurrences off-site and is designed for protection of injury or damage off-site. Accordingly, the facility form does not cover on-site cleanup, for example, the decontamination of land on-site (15). While the ANI Facility Form policy is basically designed for off-site protection, on-site injury or damage to a member of the public, or the public's property, for example, would be covered.

The site operator's ANI Facility Form is a claims-made policy with a ten year tail. This means that claims can be made against the policy for a ten year period following the cancellation or non-renewal of the policy. However, if a claim is made during this period, the event that occurred must have taken place during the policy period; in other words, before the policy was cancelled or not renewed.

The current limit on the operator's facility form is ten million dollars. This limit is an aggregate lifetime limit; in other words, no more than ten million dollars can be paid out over the lifetime of the policy (16). If ten million dollars is paid out the policy automatically terminates. The Facility Form limits are inclusive of any legal costs incurred. This means that legal costs will be deducted from the ten million dollar limit. Legal costs are those that would be incurred by ANI (or the insured if authorized by ANI) in defending the site operator. It is important to note that even if there are no legitimate grounds for a suit (for example no damage

actually occurred) monies for legal defense would still be expended and deducted from the 10 million dollar lifetime limit. Because of the high cost of legal defense it is quite conceivable that, in a relatively short period of time or even as the result of one law suit, the policy's limit could be exhausted by legal expenses alone (17). If the Facilities Form were cancelled the facility would have no nuclear insurance coverage. If an event occurs after the policy has been cancelled even though it may be directly related to operations, there would be no insurance coverage for that event. The only recourse would be to file suit against the company and collect a judgment from the company's assets.

The second ANI policy that the site operator carries is the Suppliers and Transporters Form which provides insurance for the company's brokerage and transportation services. This policy cannot be used in response to claims against the facility (18). The aggregate lifetime limit on this policy is fifteen million dollars. Again it is necessary to have damages that are the result of a nuclear energy hazard. The Suppliers and Transporters Form is also a claims-made form with a ten year tail.

The third policy is a truckers form with a limited pollution exclusion (pollution is covered if it is the result of a sudden and accidental event) and a nuclear exclusion. The truckers form is basically a standard truckers policy and is carried by an assigned-risk pool. The limit on this policy is five million dollars. The truckers form is an occurrence type of policy under which claims can be made for an unlimited amount of time after the policy is cancelled. Again, however, the event that occurred must have taken place during the policy period.

The fourth policy is a general liability policy with both a nuclear exclusion and a pollution exclusion. The pollution exclusion is the broader, or complete, pollution exclusion and even excludes sudden and accidental events. The policy is a claims-made policy with no tail which means that it is not possible to make claims after the policy is cancelled. The policy has a limit of one million dollars and the company maintains excess general liability coverage of two million dollars.

We recommend that states and regions developing facilities be aware of the general deficiencies of currently available insurance. Specific to the Washington State site operator's insurance coverage we found the following deficiencies:

1. The site is uninsured for on-site cleanup.
2. The site is uninsured for events involving chemically hazardous waste such as that waste buried in the chemical trench.

3. No claims can be made against the two nuclear insurance policies after a ten year post cancellation period.

4. The provider or the insured can cancel policies with a thirty day notice.

5. Any specific events occurring after a policy is cancelled will not be covered regardless of the events' relationship to activities prior to policy cancellation. For example, if a policy is cancelled on January 1 an event that occurs on January 31 will not be covered.

6. The limits on the nuclear insurance policies appear to be too low and are inclusive of legal fees. For example, the 10 million dollar aggregate lifetime limit of the ANI facility form could be exhausted by legal costs alone. If an 8 million dollar payment were made only the balance of 2 million dollars would be available for the lifetime of the policy and the post cancellation ten year tail period. Similarly, the Supplier and Transporters Form limit of 15 million could be exhausted. The current operator of another of the nation's three commercial low-level waste disposal facilities holds 200 million in nuclear liability insurance (a 100 million dollar ANI Facility Form and a 100 million dollar Suppliers and Transporters Form) compared to the 25 million in nuclear liability insurance held by the site operator in Washington.

In order to increase the limits and scope of coverage for the site, the operator would probably need to use a financial assurance mechanism other than commercial insurance. American Nuclear Insurers has recently announced that, for commercial low-level waste disposal facilities, they will not at this time increase the limits of existing Facility Form coverage. More importantly for currently unsited states and regions, they are offering no new coverage at this time. This change in ANI's policy also applies to Suppliers and Transporters Forms.

The alternative mechanisms that we would recommend as allowable are listed above under Financial Responsibility for Cleanup. Because alternative mechanisms can be more expensive and difficult to obtain, an alternative approach to provide cleanup and/or liability coverage for a site could be the creation of a state or regional cleanup/liability fund. This fund could be the same fund as discussed above for other state or regional licensees or it could be a separate fund earmarked for the disposal site.

SITE CLOSURE AND PERPETUAL CARE

Objectives Considered in the Closure and Perpetual Care Studies

The objectives of closure and perpetual care as perceived in phase one, the conceptual design phase, were: (a) to provide long-term, low-maintenance containment of the

buried waste; (b) to prevent intrusion by plants, animals or humans; (c) to ensure early warning in the event of a release, should containment fail, so that corrective action can be taken in a timely manner to mitigate the problem; and (d) to enable correct identification of the source of a release and thus prevent the misdirection of corrective actions (19). The objectives of phase one were subdivided into the following major tasks:

1. Completion of Site Assessment
2. Identification of Release Pathways and Relative Risks
3. Formulation of Site Specific Design Elements
4. Preparation of Written Reports

In phase one of the studies, A.T. Kearney, Inc. a management consulting firm assisted the Department in performing the research. Phase one resulted in the development of conceptual closure designs and an overview of the necessary requirements for site specific environmental monitoring and long-term care at the facility. Upon successful completion of phase one of these studies, several areas of information gaps crucial to competent site closure and perpetual care at the site were pinpointed.

Information Gaps

First, lack of information and poor documentation continue to inhibit accurate source term development at the facility. Radioactive shipment records in use by the facility prior to 1980 contained ambiguous acronyms, such as MFP (mixed fission products), MCP (mixed corrosion products) and MBP (mixed by-products) to define isotopic waste contents. Furthermore, at the site, no chemical trench manifests were retained by the facility, and therefore the waste contents of the single designated chemical trench are unknown. Additionally, the available waste characterization is based solely on records supplied by the low-level waste generators and brokers and neither independent, complete verification of information nor inspection and sampling of waste contents has been practiced. Since the nature of the wastes buried are not adequately documented and monitoring programs must be designed to sample for critical radionuclides and chemical constituents at the site, this lack of information represents a significant problem for long-term care planning. The absence of complete information and written documentation introduce significant uncertainties regarding potential long-term environmental risks and dictate a more cautious and conservative approach to site closure and perpetual care.

Secondly, no site characterization, comprehensive geohydrologic or geologic modeling of the site was performed prior to the initiation of disposal operations. Site characterization is essential to determine the impact waste disposal activities may have on the environment and the

groundwater system. Furthermore, site characterization provides useful hydrogeologic and geotechnical data to direct and aid facility and environmental monitoring station locations, designs and construction. It is necessary to also gather preliminary information on climatology, soil physics, biogeochemical reactions at the site, seismic conditions, natural resources, site stability and surface water. The lack of this crucial information may result in errors or omissions made during site selection, design, construction and/or operation that may be impossible or expensive to correct during closure and long-term care (20).

Thirdly, environmental monitoring programs were not established at the facility during the initial fifteen years of disposal operations. Furthermore, background radiation levels were not determined at the facility prior to the commencement of disposal operations and are unknown today. These two deficiencies represent a critical lack of environmental data essential for historical baseline development at the facility and currently preclude an accurate assessment of any environmental monitoring trends or anomalies at the site. Groundwater monitoring data at the site are also very sparse, as the wells were installed at the site in 1985, and groundwater data was first gathered in 1986. Furthermore, the groundwater environmental monitoring program at the facility is not currently in compliance with EPA groundwater monitoring requirements. Thus, limitations and obstacles which impede technically accurate collection and interpretation of groundwater monitoring data confront Washington State. It is essential that environmental monitoring programs begin when active disposal operations begin, and continue throughout the closure and long-term periods so that facility performance can be verified.

Fourthly, state inspectors and other regulatory personnel were not present at the site on a regular basis prior to 1979. Furthermore prior to 1979, site inspections were cursory and pre-scheduled on an annual basis only. The daily presence of on-site state inspectors coupled with periodic, in-depth and unannounced site inspections are essential to ensure strict compliance with all applicable state and federal regulations. In addition, the presence of state regulators provides the state with a first-hand working knowledge of and familiarity with the disposal site and routine operating procedures, ready access to knowledge of incidents or accidents at the site, and provides other knowledge gained through impartial oversight.

The above-mentioned four areas of concern indicate that site closure and long-term care will require a conservative approach at the commercial Hanford low-level waste disposal site.

Closure Design Considerations

Site closure at the Hanford facility will be the ultimate field test since final trench cover closure designs have not

yet been selected or approved. Of the various structures associated with closure, the trench cover is the most crucial. However, the field performance of engineered structures such as trench covers is difficult to predict. Further, the use of "average" or "typical" or even "conservative" assumptions for closure and long-term planning fails to consider the local exceptions and anomalies, as yet undiscovered, which will dominate field performance. Therefore, ongoing closure of each trench as disposal operations proceed may provide certain advantages to closure and post closure planning. Installing each trench with a final graded and revegetated trench cap as it is filled would provide in situ practical information concerning cover performance, while minimizing infiltration of water. Early installation of the trench covers would also provide financial data related to long-term cost estimate adjustments while disposal operations continue and fees are still being collected (21).

Long-Term Care Considerations

Of the various activities associated with long-term care, monitoring is the most crucial. At the site, there is an unsaturated or "vadose" zone, approximately 100 meters thick, located between the bottom of the trenches and the water table. Contaminants can reach the water table from the facility only by transport through the unsaturated zone. A conclusion reached during phase one is that the dominant mechanism of contaminant transport would be the leaching of contaminants into solution in water infiltrating through the waste from the land surface (22). Therefore, vadose zone monitoring is an essential component of the long-term environmental monitoring program for two primary reasons: first, vadose zone monitoring can provide early warning of trench containment failure; second, it can provide evidence in identifying the source of contamination. A vadose zone monitoring program should be carefully selected, designed and installed prior to the commencement of disposal operations. Early installation would provide field performance data to substantiate facility performance. Currently there is no vadose zone monitoring at the facility.

CONCLUSIONS

In the interest of assisting compact regions and states the following recommendations are made:

Financial Responsibility

Take measures to ensure that transporters of radioactive materials maintain full compliance with USDOT regulations.

A technical basis for third party financial responsibility requirements should be established, either by using historical third party cost data or by postulating potential accidents and estimating their costs.

Determine a means, whether by federal or state rulemaking, by creation of a dedicated fund, or by other mechanisms, to assure that cleanup associated with licensees' facilities will be covered.

Recognize that no commercial nuclear liability insurance may be available for new facilities when they open.

Become familiar with the deficiencies of any currently available commercial insurance for disposal facilities and plan for alternative means of assuring *financial responsibility*.

Site Closure and Perpetual Care

Monitor low-level waste data closely. Require accurate and complete information on wastes disposed at the site, and dispose of wastes using a grid system to expedite waste identification or retrieval if necessary.

Prior to the site selection, emphasize and require detailed site characterization, using all available information regarding geology, geohydrology, climatology, soil physics, seismic conditions, geotechnical data, natural resources, site stability and surface water.

Determine and document natural background levels prior to operational start-up in order to improve the accuracy of environmental monitoring data analysis.

Ensure the regular presence of state inspectors and other oversight personnel throughout all phases of operations, closure and long-term care at the disposal facility.

Perform final closure on each trench as it is filled to provide in situ data on field performance of the closure and environmental monitoring systems.

Install all environmental monitoring programs during site construction, so that environmental monitoring data can be collected throughout the lifetime of the site.

REFERENCES

1. 1986 Revised Code of Washington; Volume 4: 43.200.190, .200 and .210.
2. Motor Carrier Act of 1980 (U.S.C.10977), 49 CFR 387.9.
3. These requirements are not applicable to intrastate carriers, but USDOT has been addressing the need to apply interstate carrier requirements to intrastate carriers. It is also important to note that many intrastate shipments of radioactive materials are made by interstate carriers.
4. This belief is based on conversations with the insurance industry, licensees and permittees, and on documentation of coverage provided by licensees and permittees to the Department in response to our request for copies of insurance policies.

5. Sommers, Paul, Liability Coverage Requirements: Small Business Impact Statement, Report for Washington State Department of Ecology, December 7, 1987, p.3.
6. See Nuclear Regulatory Commission, "Financial Responsibility Requirements Applicable to NRC Licensees for Cleanup of Accidental and Unexpected Releases of Radioactive Materials," Federal Register Notice, 50 FR 23960, June 7, 1985.
7. Hendrickson, P. L., et.al., Impact of Proposed Financial Assurance Requirements on Nuclear Materials Licensees, Report by Pacific Northwest Laboratory for U.S. Nuclear Regulatory Commission, NUREG/CR-4958, PNL-6233, Richland, Washington, September 1987. See especially Sections 4.0 and 5.0.
8. *Ibid.*, Appendix B. Ostmeyer, Robert M. and Dawn J. Skinner, "A Preliminary Evaluation of the Economic Risk for Cleanup of Nuclear Material Licensee Contamination Incidents," Report by Sandia National Laboratories for the U.S. Nuclear Regulatory Commission, Albuquerque, New Mexico, SAND 86-2108, December 1986, p. 25-28.
9. Ostmeyer and Skinner, *op. cit.*
10. "Total Licensed Quantity" as used by Sandia means the sum of all licensed quantities of materials minus licensed quantities of materials in gaseous form and materials with half lives less than ten days.
11. Note that, as explained in the text, these amounts are considered too low and will be increased once a technical basis is developed.
12. *Ibid.*
13. Hendrickson, *op. cit.*
14. Hendrickson, *op. cit.*, p. 4.14.
15. ANI is currently suing the site operator of the Richland, Washington site in order to obtain a declaratory judgment confirming that its Facility Form and Supplier and Transporters Form do not provide coverage for on-site cleanup, in this case at the closed Maxey Flats site, now a Superfund Site. The site operator in Washington, the former operator of the Maxey Flats site, is contesting this action and has counter-claimed against ANI seeking a declaration of coverage and monetary damages. Other litigation filed by the site operator against ANI deals with another closed disposal site at which cleanup will be required, also formerly operated by the current site operator in Washington.
16. According to ANI, if monies are paid out, the site operator could request a reinstatement of the policy's limits. Such reinstatements, however, are normally granted when small amounts, such as nominal legal expenses, have been paid out. It cannot be assumed that ANI would reinstate a large loss. An example of an aggregate lifetime limit being depleted and not reinstated is the ANI policy limit for the Three Mile Island (TMI) nuclear facility. The policy limit is now approximately 50 million dollars less than that originally held due to the class action suit award paid out in that amount.
17. This conclusion is based on conversations with the insurance industry, including American Nuclear Insurers, and with state risk managers.
18. The Suppliers and Transporters Forms held by generators disposing of waste at the facility in Washington could respond to off-site damage associated with the facility if such generators are sued and found to be liable but only in the generators' interests. In other words, these policies would cover the generators' financial responsibilities but would not cover the site operator's financial responsibilities.
19. A.T. Kearney, Inc., "Commercial Hanford Facility Site Closure/Perpetual Care Phase One Final Report," September 1987.
20. Illinois Department of Nuclear Safety, "DRAFT: Closing a Low-Level Radioactive Waste Disposal Facility," November 1987.
21. *Ibid.*
22. A.T. Kearney, Inc., *op. cit.*