

CALIFORNIA'S USERS OF RADIOACTIVE MATERIALS CONTINUE TO PROTECT THEIR INTERESTS: CAL RAD FORUM'S ACTIVITIES 1987-1989

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ABSTRACT

This paper is a follow-on and update of papers presented at Waste Management '85 and Waste Management '87. The two earlier papers described the role of California's users of radioactive materials, working in concert as Cal Rad Forum, initiating and fostering California's program to respond to the requirements of the federal Low-Level Radioactive Waste Policy Act. The paper presented here summarizes Cal Rad Forum's activities since March 1987 and describes current issues of interest to users of radioactive materials related to the development of the Southwestern Compact's disposal facility for low-level radioactive wastes.

BACKGROUND

The California Radioactive Materials Management Forum

The California Radioactive Materials Management Forum (Cal Rad Forum) is an association of over seventy public and private institutions and corporations that use radioactive materials and generate low-level radioactive waste or otherwise have an interest in the safe disposal of these wastes. Among our corporate and institutional members are electric utilities, universities, hospitals, industries, manufacturers of radiopharmaceuticals, biomedical research firms, engineering and nuclear service firms, and medical and engineering professional societies. Following consent to the Southwestern Compact, which occurred in the final minutes of the 100th Congress, Arizona Public Service Company joined Cal Rad Forum, and we look forward to expanding our membership throughout the compact region. Some two hundred individuals engaged in engineering, environmental protection, occupational and public health and safety, and health care professions are also members of Cal Rad. The association's primary objective is the timely development, in California, of a safe, reliable, economical and cost-effective disposal facility for low-level radioactive wastes.

Cal Rad Forum's Activities: 1983-1986

Activities of the Cal Rad Forum in the years 1983 through 1986 were described at Waste Management '85 and Waste Management '87 (1, 2). Cal Rad Forum played the lead role in drafting and sponsoring California's low-level waste disposal siting legislation in 1983 and defended the process which was established in California Senate Bill 342 (1983) from legislative attack in 1984, 1985, and 1986. Since 1983, Cal Rad's public information programs have helped to develop public understanding of the use of radioactive materials and the management and disposal of low-level wastes. In 1984 and 1985, Cal Rad's activities in the legal arena were successful in putting back on track the state's process for selection of a facility developer after misadministration of the process had landed the State in Court and caused a 15-month delay. Completion of the selection process led to the designation of US Ecology, Inc. as the State's license designee in December 1985. Since then, our

public information programs have supported the site evaluation and selection programs.

CAL RAD FORUM'S ACTIVITIES: 1987-1989

During the past two years, Cal Rad has been active on a number of fronts in pursuit of our long range goal of timely development, in California, of a safe, reliable, and economical and cost-effective disposal facility for low-level radioactive wastes. Among Cal Rad's activities and the issues we have had to deal with in the last two years are, presence of the desert tortoise at the selected site, management and disposal of the subset of low-level wastes known as "mixed wastes," escalating costs for development and operation of the disposal facility, proposed state legislation that would have created new crimes and imposed severe criminal penalties for certain practices in the handling of radioactive materials and wastes—including accepted BRC practices organization of a "Radioactive Materials Users Roundtable" for the Department of Energy's Tenth Annual Low-Level Waste Management Conference in Denver, and enactment of the Southwestern Compact by California in June 1987 and by Arizona in July 1988.

The Desert Tortoise

The preferred site in the Ward Valley for California's LLRW disposal facility is located in a crucial habitat of the desert tortoise which has been nominated for state status as a threatened species. Impacts of construction and operation of the disposal facility and mitigation of those impacts have become an important issue. The desert tortoise is found in portions of four state and northern Mexico. The particular habitat in which the Ward Valley is located in the eastern Mojave desert encompasses about 1,500 square miles. In addition, the Ward Valley site is located in a utility corridor designated in the Bureau of Land Management's California Desert Conservation Area Plan. There are a number of existing impacts at the site including Interstate 40 which is one-half mile from the site boundary. The State Department of Health Services has established an Ad Hoc Committee on Desert Tortoise Impact Mitigation with representation from the U.S. Bureau of Land Management, the U.S. Fish and Wildlife Service, the county of San Bernardino, the California Department of Fish and Game, environmental groups, US Ecology, and Cal Rad Forum. Cal Rad is represented by David W. Stevens of Southern California Edison

Company. Mr. Stevens is a qualified herpetologist with extensive experience in wildlife issues associated with construction and operation of projects in the desert environment. Cal Rad has emphasized to both the Bureau of Land Management and the Department of Fish and Game our commitment to reasonable mitigation measures, and, through our participation on the Ad Hoc Committee, we are working for adoption of such measures. Because the tortoise's habitat is very large, and because the selected site is in a designated utility corridor with several existing impacts, we oppose explicit or implicit exclusionary criteria. There are a number of opportunities to mitigate existing impacts and thereby create a net benefit to the tortoise as a result of the LLRW disposal project.

Mixed Waste

Mixed wastes are a subset of low-level wastes, therefore it is Cal Rad's position that the State of California and the facility developer are obligated to provide disposal capacity for mixed wastes at the LLRW disposal facility being developed in California. Citing "regulatory uncertainties," it has been the preference of both the California Department of Health Services and US Ecology to defer action on mixed wastes. This has been an issue on which there has been considerable discussion among Health Services, US Ecology, and Cal Rad. The members of Cal Rad understand fully the problems created by the framework of dual jurisdiction and regulation by the U.S. Nuclear Regulatory Commission and the U.S. Environmental Protection Agency. In 1985, following the lead of Congressmen Udall and McCain, we were among those who urged Congress to place mixed waste under the sole jurisdiction of the NRC. We have brought the issue back to federal government again in 1989. Cal Rad has responded to EPA's Federal Register Notice of September 23, 1988 and called upon EPA and the NRC to find that their regulatory schemes for hazardous waste and low-level radioactive waste respectively are inconsistent. Under Section 1006(a) of the Resource Conservation and Recovery Act, if such a finding were made, the Atomic Energy Act would take precedence in regulating the management and disposal of mixed wastes. We are also working with other users of radioactive materials around the country to persuade the 101st Congress to place mixed waste under the sole jurisdiction of NRC and Agreement State agencies. Our State Administration has indicated its support for this reform. Nevertheless, it is essential that the State and the license designee be prepared to cope with the present regulatory scheme of dual jurisdiction, as complicated and unnecessary as it may be, if Congress chooses not to change it. To protect the interests of users of radioactive materials in the Southwestern Compact, the State's plan for dealing with mixed waste should recognize that these wastes are a subset of low-level waste and therefore a responsibility of state government and the license designee, establish a basis for meeting the January 1990 milestone of the 1985 Amendments Act, and maintain the viability of the LLRW disposal

facility now under development as the site for mixed waste disposal.

Cost of Disposal Facility Development

Projected costs for development of California's low-level waste disposal facility have escalated dramatically. US Ecology's 1984 bid projected development costs at about \$9 million, and the company's latest projection is over \$30 million. Four primary reasons have been offered for this increase: Precautions to protect the desert tortoise, expanded regulatory requirements contained in the NRC's Standard Format and Content Guide and Standard Review Plan, an expanded public involvement program, and field conditions at the site as they affect site characterization. California's siting legislation gave the Department of Health Services a financial oversight function and the authority to control disposal fees. Cal Rad is of course concerned that the Department exercise its oversight and auditing functions vigorously. We have recommended to the Department that it require the license designee to quantify its costs and projected costs on a programmatic basis so the amount and prudence of its expenditures in each of the areas cited as contributing to the increase in development costs can be evaluated. To date, the Department has refused. Cal Rad's Board of Directors believes the requested information is basic to any evaluation of the prudence of the development costs and is determined to pursue this matter.

State Legislation To Establish Criminal Penalties For Illegal Dumping Of Radioactive Wastes

In 1987, the Los Angeles County District Attorney sponsored legislation presumably designed to penalize illegal dumping of radioactive wastes or illegal transportation of radioactive materials by establishing heavy fines and jail terms. The legislation was so poorly drafted that it literally would have made it a felony to deliver nuclear fuel to a nuclear power plant or a radiopharmaceutical to a Veterans Administration hospital. Cal Rad was able to secure amendments that established thresholds of 1) significant risk and 2) actual violations of laws and regulations pertaining to the management of radioactive materials before a felony would be established. We believe these amendments will protect the innocent as well as the regulatory principles of *de minimus* and below regulatory concern.

Radioactive Materials Users' Roundtable

Cal Rad organized and chaired a Radioactive Materials Users Roundtable at the Department of Energy's Tenth Annual Low-Level Waste Management Conference in Denver on August 31, 1988. The Roundtable included a dozen representatives of LLRW generators and users groups. All user sectors (medicine, industry, universities, etc.) were represented as well as most of the regions of the country. Mixed waste was identified as the primary common concern of LLRW generators. The Roundtable participants form the nucleus of a nationwide network of about thirty radioactive materials users and user groups around the country that has

been organized to seek a federal resolution of the mixed waste problem.

Ratification of the Southwestern Compact

Since 1984, Cal Rad has worked hard to persuade the California Legislature to ratify an interstate compact which includes California and Arizona. Our efforts succeeded in 1987 when the Legislature approved Assembly Bill 1000 which ratified the Southwestern Compact. Eligible member states are, California, Arizona, North Dakota, and South Dakota. California will be the first host state for thirty years and may extend that obligation. The compact legislation met two criteria of importance to Cal Rad: 1) Regulation of the siting, design, and operation of the disposal facility is strictly a host state (Agreement State) function and not a matter involving the compact Board, and 2) Arizona is a compact member. (Cal Rad vigorously opposed a proposal first made in 1985 that California enter into a compact with South Dakota instead of Arizona.) Following approval by California, we were surprised when some members of the Arizona Senate balked and sought amendments. Cal Rad was part of a negotiating team organized by the Speaker of the California Assembly to meet with Arizona's representatives. In June, 1988, Arizona ratified the compact without further amendment, and Congressman Udall introduced the Southwestern Compact in the House of Representatives as H.R. 5232. The bill was approved by the House, but in the Senate it became a pawn in the conflict between the Senate and the House over other nuclear legislation involving reorganization of the NRC and uranium purchasing and enrichment. California's Senators Alan Cranston and Pete Wilson went to work to free H.R. 5232 and to allow it to move to the Senate floor. Thanks to their eleventh hour efforts and those of Mr. Udall, the Southwestern Compact was approved by the Senate as the last item of business prior to adjournment of the 100th Congress.

CONCLUSIONS

Following the course charted in siting legislation sponsored by Cal Rad in 1983, development of California's (and

now the Southwestern Compact's) LLRW disposal facility has proceeded to the point where what appears to be a technically suitable site with local public support has been identified. The State's license designee is expected to file an application to develop a LLRW disposal facility at the Ward Valley site later this year. Despite this progress, there remains much for Cal Rad to do to protect the interests of institutions and corporations in the Southwestern Compact that use radioactive materials and generate low-level radioactive waste. At the present stage of the program, we have seen that it cannot be assumed that the interests of the facility developer, radioactive materials users, and the State will converge on every issue. Two such issues, involving State oversight of cost of facility development and the scope of the license designee's responsibilities with respect to mixed waste, have been described. Furthermore, the licensing and environmental review processes still lie ahead. Cal Rad expects to continue to play an active role in promoting the development of California's disposal facility for low-level radioactive wastes.

REFERENCES

1. A. D. PASTERNAK, "California's Response to the Low-Level Radioactive Waste Policy Act of 1980: Policy and Progress," *Waste Management '85*, Tucson, Arizona, March 24-28, 1985, Vol. 2, p. 19, Arizona Board of Regents (1985).
2. PASTERNAK, A. D. and E. N. CRAMER, "Safe, Reliable, Cost-Effective Disposal of Low-Level Radioactive Wastes: Progress in California and the Role of Radioactive Material Users," *Waste Management '87*, Tucson, Arizona, March 1-5, 1987, Vol. 1, p. 149, Arizona Board of Regents (1987).