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WM DOCKET CONTROL CENTER MINUTES OF NUCLEAR WASTE BOARD MEETING
April 19, 1985

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1:30 p.m.
EFSEC Hearings Room
Rowesix, Building #1
4224 Sixth Avenue S.E.
Lacey, Washington 98504

WM Record File

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WM Project 10
Docket No.

PDR

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Board Members Present:

Warren A. Bishop, Chair
Representative Shirley Hankins
Richard H. Watson
Ray Lasmanis, DNR Designee
Dr. Royston H. Filby, Water Research Center Designee
Donald Provost, Ecology Designee
Nancy Kirner, DSHS Alternate Designee

Others Present:

Bob Shirley, representing Senator Goltz
Jim Connolly, representing Curtis Eschels
Ted Hunter, representing Representative Nelson
Max Power, representing Senator Williams
Mary Guay, representing Senator Benitz

The meeting was called to order by Warren A. Bishop, Chair.

Mr. Bishop noted the Legislature was in its final day to consider non-budget items, preventing most of the Legislators serving on the Board from attending. Mr. Bishop asked the staff members representing the Legislators to sit at the table.

The minutes of the March 15, 1985, meeting were approved as published.

Lynda Brothers, Assistant Director, Office of Hazardous Substances and Air Quality, Washington Department of Ecology, gave a progress report on the activities of the Low-Level Waste Program. Ms. Brothers updated the status of the issues as they relate to the Northwest Interstate Compact on Low-Level Radioactive Waste. In 1980 Congress passed the Low-Level Nuclear Waste Policy Act that basically gave the states direction to form regional compacts for the disposal of low-level radioactive waste. Implied in the Act was that regions which did not presently have sites were to develop regional compacts and sites for disposal of their wastes. Part of the Act states that if these Interstate Compacts were consented to by Congress as of January 1, 1986, the Compact regions could exclude wastes from outside their own regions.

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Ms. Brothers said there are presently five Compacts before Congress, representing thirty-three to thirty-five states. However, the major states which have not joined Compacts are from the major waste-producing states--New York, Massachusetts, and California, in particular. With the exclusion date imminent, she said there is a question as to the meaningfulness of the federal Act once that date is passed and the Compacts have not been ratified. Anticipating that, she said, most of the Compact Chairs and some staff from Congress have been meeting for the past six months to try to reach a consensus and evaluate the issues in order to assure those compacts which have been formed will be approved by Congress.

Ms. Brothers said Congressman Udall, primary sponsor of the Act, would like to see the process work. She said that since this was a unique piece of legislation that gave the states responsibility to take care of their own wastes, she would be sorry if the states do not do this. It will be viewed by the Congress as an inability on the states' part to resolve their issues and move forward.

She said the group that has been meeting included representatives from the states of Washington, South Carolina, and Nevada--the three states that have disposal sites--as well as all of the Compacts and the states which are not presently admitted to a Compact, but do have large capacities. Should a consensus be developed, she said it should be a meaningful consensus. That group discussed amendments to the Low-Level Policy Act, which Congressman Udall suggested last fall. He subsequently introduced those amendments in January, held hearings on March 7-8, and intends to have mark-ups on those amendments some time early in June.

Ms. Brothers said she felt the amendments and a consensus were the crux of the national debate on the issue. The amendments, by and large, embody the result of the discussions; the major substantive components including: (1) the reduction of approximately 40% in the volume of low-level radioactive waste being disposed of nationally of the present volume; and (2) on-site storage of Class A, the less active low-level radioactive wastes, at the power plants. The Nuclear Regulatory Commission has stated they could adopt a license amendment that would allow that. Other items laid out in the amendments are some minimum surcharges or price increases that would occur over time at the presently-operating disposal sites to serve as an incentive to other states and regions to develop their own disposal capacity. Based on her observations at the hearings and discussions with other states, Ms. Brothers thought specific time tables for the development of disposal capacity should be added to the amendments. These would include planning activities, geological review, etc. She concluded by saying she thought the Udall amendments would embody the focus of the debate although they need to provide some incentives for the regions without disposal capacity to site a facility and develop a disposal capacity. At the same time, she said, Washington State and the other two states would like to see a reduction of volume coming to their sites and there needs to be some assur-

ances to the unsited states that there will be some disposal capacity available during this interim period. She added the Udall bill would extend the exclusionary date from January 1, 1986 to January 1, 1993.

Dr. Filby inquired if the 40% reduction in wastes would be mandated, or suggested in the amendments. Ms. Brothers said she read it to be mandated. He wondered if the price increases would also be mandated and would they apply only to states outside the Compacts. Ms. Brothers said until the Compact is ratified she thought it was legally, if not practically, impossible to discriminate on basis of membership in the Compact. She said the rates as federally mandated, are real minimums and she expected even before the Compacts are ratified the rates would have to be applied uniformly.

Representative Hankins asked if the Compacts would be ratified with the amendments after the mark-up, or attach the amendments and then ratify the Compacts. Ms. Brothers said in the state's written comments for the hearing, the state added an additional section to the amendments which said the amendments would be part of the Compacts. In the verbal testimony, she said, the state's agreement with the amendments was contingent upon the amendments and the Compacts being treated as an inseparable package. She said that was acceptable to virtually all the states that testified.

Representative Hankins asked what the reduction would be for the state of Washington. Ms. Brothers said as the amendments are written now it would be a 40% reduction at each disposal site. She added there would undoubtedly be much discussion on this issue as a reduction in South Carolina or Washington would require the state of Nevada to take more waste than they have taken in the past. She said Nevada only has the capacity for about one year. Ms. Brothers said she felt a more doable reduction would be 10-15 percent.

Mr. Stevens asked if a base period from which to determine reductions were being calculated, or was it from whenever the bill might pass. Ms. Brothers said that was not actually stated in the amendments, but the discussions and testimony talked about the 1983-84 figures, which were the latest figures available. She said these figures have been fairly stable for the last couple of years.

Representative Hankins observed this would also reduce the tax money received, and Ms. Brothers said this would happen assuming nothing is done to raise the rates, or some other series of alternatives.

Nancy Kirner asked if any price increases would create revenue for the state, to the Compacts, or revenue that would revert to the federal government. Ms. Brothers felt it was clear it would not go to the federal government, and her assumption has been that it

would go to the state or the Compact, although most likely it would go to the Compact, as the state has other mechanisms by which it receives its income. Ms. Kirner inquired if the Board could be afforded copies of the testimony that the state of Washington gave at the Udall hearings, and any other testimony on the Compact issue. Ms. Brothers said that would be furnished and Mr. Bishop said copies would be sent to the Board.

Dr. Filby asked if the impetus for the reduction in wastes comes from the siting states, Washington and South Carolina. He felt that could lead to considerable incineration of radioactive wastes, and he wondered what the rationale was for the reduction and where it was coming from. Ms. Brothers said she thought there were other mechanisms besides incineration that are available, such as compaction and perhaps some work practices which are commercially available. She said to her knowledge there are no commercially available incineration techniques of low-level radioactive waste, although the Department of Energy at its Los Alamos facility does have some experimental facilities that would include incineration. She said their tests indicate there is no release at all so it is in effect a form of volume reduction.

Mr. Bishop said Lynda Brothers will be on the Agenda for a brief report each month.

Public Involvement Report

Ann Croman of Envirosphere reported for Marta Wilder, who was attending the funeral of her father, on the highlights of the items of current interest. At the March meeting of the Working Group copy was completed for the April/May Newsletter, which should be published in about a week and a half. In this issue there will be an interview with Governor Gardner; a short article on the Nuclear Waste Board's comments on the draft EA to the U.S. Department of Energy; a report on the workshops held statewide; a brief article on Washington State's legal actions, with a more detailed report to come in a later issue. Also included will be a brief introduction of the new Nuclear Waste Board members; a thank-you to the League of Women Voters who assisted with the workshops; and a focus on the information currently available to the public, including fact sheets, slide shows, etc.

Ms. Croman said the outline for the June/July Newsletter is being developed and input is welcome. Included will be a time-line on different phases of the program, and a profile of the Advisory Council members will be highlighted. An article is being prepared on defense waste, commingling, and monitored retrievable storage, plus the results of the February/March questionnaire.

Ms. Croman said the Working Group also reviewed the Envirosphere Public Involvement Plan for the next six months. Priority was given to the following for the next three months:

- o six additional Fact Sheets will be written;
- o four Focus Papers will be prepared;
- o interest group networking will be continued and increased;
- o additional Editorial Board meetings will be held; and
- o speeches and presentations will be continued with a desire to augment this outreach, especially with local governments.

The role of the Advisory Council was discussed, Ms. Croman said, with a view toward strengthening it with continued use of the members in public outreach programs.

Mr. Bishop stated that in the morning Advisory Council meeting, the possibility of holding Council meetings in other cities in the state was discussed. It was decided to hold the May meeting in Yakima, but after further reflection, Mr. Bishop said, in light of the possible transition with Council member terms expiring in May, it was decided the May meeting will be held in Olympia, as usual. Plans for the future, however, will include some meetings around the state, perhaps once a quarter.

Litigation Report

Mr. Charles Roe introduced Jeff Goltz, newly appointed senior member of the Attorney General's staff at Ecology. Mr. Roe will continue to work on high-level nuclear waste efforts. Mr. Roe said Chuck Lean has been assigned other duties. The Board welcomed Mr. Goltz, who is the son of Senator Barney Goltz, a Nuclear Waste Board member.

Mr. Roe continued with a report on the status of the current litigation. In the litigation initiated on March 8 against the U.S. Department of Energy, involving the challenge by the state to the validity of the siting guidelines, adopted last December by USDOE, he said two states have taken steps toward intervening as parties in the proceedings: the state of Nevada has filed a motion to intervene, and the state of Colorado has filed a motion for extension of time to consider filing a motion to intervene. Informally, he said, he had been told Colorado would file this week to intervene. Other parties who may become involved are the Environmental Defense Fund, a national environmental protection group which has filed a motion for leave to intervene, and a group of seven utilities--none from the Northwest: Baltimore Gas & Electric Company, Caroline Power and Light Company, Cleveland Electric and Illuminating Company, Pacific Gas and Electric Company, Southern California Edison, Texas Utilities Company, and Wisconsin Electric & Power Company.

Mr. Roe said he assumed the Environmental Defense Fund would be generally in support of the state's view, while the utilities are likely to have a different view. No objection by the state to any of the interventions are planned, he said, because there is a second case, Environmental Policy Institute et al, which initiated a lawsuit in the 9th Circuit in January. These same utilities filed a motion to intervene in that case and the intervention was granted by the 9th Circuit. In regard to this EPI case, Mr. Roe said the state of Wisconsin has been granted leave to intervene.

To clarify the process Mr. Roe explained, this is not a normal lawsuit which would begin in a trial court before a judge where evidence is produced with a decision being handed down, going on to a Court of Appeals and the Supreme Court should that be the decision to act. In the Nuclear Waste Policy Act, the procedure provided is an aberration, although not unique, he said, which allows for a state or private citizen having standing to bring an action directly to the Court of Appeals. The choice of the state was to file in the District of Columbia Court of Appeals, or in the 9th Circuit of Appeals. The state filed in the 9th Circuit.

Since this is not a normal evidentiary type of case, the following steps will be taken: The state petitions the Court to review the actions taken by the Agency with a citation of the jurisdiction the state believes allows the action; the next step is to develop an administrative record, which in this case would be the Department of Energy record developed in the course of establishing the regulations embodying the siting guidelines. Also, because of the Nuclear Regulatory Commissions' concurrence, both agencies backgrounds of actions will incorporate the total of the record. The next stage is the Pre-briefing Conference, the first of which will be held next Tuesday to enable the Court to determine if any party has preliminary motions, such as a motion to dismiss for lack of jurisdiction. Other major areas dealt with in this Conference include determining if there is any possibility of settlement, refinement of issues that will be able to file. The heavy work of writing briefs will follow. The state will be entitled to the opening brief, the United States will be entitled to respond, and the state will be entitled to reply with a shorter brief. Intervenor will have to file their briefs in the schedule on the side they are supporting. After that comes the oral argument, which in this case will probably be before three judges either in San Francisco or Seattle. The normal time would be an hour for oral argument, Mr. Roe said, but in a complex case such as this it could go for two hours.

Finally, after oral argument the case is then on submittal to the Court for final decision, which will be in written form. He said he hesitated to give time of the outcome, but he presumed it would be in the range of a year from the time of filing to the time of a decision. He said the complexity of the case may slow the processing.

Should the parties not agree with the decision, he said the only option would be appeal to the Supreme Court, which he said was not an entitlement.

Concerning the Nevada v. Hodel case in which the state filed an Amicus Brief, Mr. Roe said this case is still in its briefing schedule. The United States, he said, has asked for several extensions, so they have not filed any briefs to his knowledge.

Mr. Lasmanis wondered if there were any cost advantage with relation to sharing expenses with intervenors, or is the cost to the state the same regardless of the number of intervenors. Mr. Roe said the state handles its own case, and the intervenors handle theirs. He said there may be some incidental cost sharing, but there would be no great savings. He added it might even add more work if more minds were against the state. He added he would be meeting with the Justice Department next Friday to check the status of the Administrative Record. Prior to that time, he said, he would be meeting with the Department of Energy attorneys and the EPI attorneys and their associates. He said every effort would be made to try to coordinate and not duplicate. This is all of the basis the 9th Circuit will merge, or consolidate, and two cases for actual processing.

Mr. Bishop referred to a paper in the packets concerning the funding of litigation efforts. He mentioned the efforts of the Board to initiate procedures designed to obtain a formal statement of policy from the Department of Energy on providing funds for litigation. Since no specific response has been received, Mr. Bishop felt the Board should be aware of the fact that if the state is denied the authority to use grant funds for purposes of carrying out the state's litigation, other resources would have to be sought from the Legislature which is now considering the state's budget. Mr. Bishop explained the figures presented should be considered contingency funds, and perhaps considered for the first year, with determination made following experience for the second year level.

Mr. Roe said the Nevada case, which deals with the denial of certain funding to the state of Nevada, has some relevance to this subject. He said their brief does briefly discuss the issue of funding, and it is possible there will be teachings in that case, he said, that will have some relevance to the issue of whether the state is entitled to funds under the Nuclear Waste Policy Act to carry out litigation when it believes the federal government is not carrying out its responsibilities under the Act.

Mr. Roe continued that the question was raised twice over the last few months in the Board meetings, asking if the state would sue with regard to litigation funds, if they are not granted by USDOE. Thus, he said, the letter was sent to learn the exact position of USDOE. In the meantime, he said, it became apparent there would be a need to seriously consider some amount of money to support the litigation. The draft material presented gave an estimate of

the amounts that would be needed for the upcoming biennium, and he pointed out the paper was written in the context of not only the siting guidelines litigation, but other potential litigation, so the figures presented do not center only the the siting guidelines litigation. Secondly, he pointed out these monies would only be used if federal funds were not made available. Also, he said, only amounts necessary would be used, with the remainder reverting back. He also agreed a request should be made for only one year, with subsequent request later, depending upon experience.

Mr. Roe said the numbers were developed through discussions with staff and the Chair, and they were taken through the system at the Office of the Attorney General with representatives of the Executive Branch by Jeff Goltz. The request contemplates staff support, assistance from the consultants, and from attorneys in the development and conduct of the litigation.

Mr. Goltz stated the estimates were of necessity flexible as no one knows for sure the persons who would be involved.

Dr. Filby asked how the Office of the Attorney General had funded the process up to the present time, and would these requested funds, presuming federal funds were not available, be over and above the Attorney General's Office present budget. Mr. Roe said these monies would be expressly allocated by the Legislature for this block of litigation dealing with the Nuclear Waste Policy Act. They would be outside the normal development of the Attorney General's budget or the Nuclear Waste Board's budget, or the Department of Ecology's budget. He said there was at least one precedent that he knew from experience in the mid-70's when he handled the litigation dealing with the ban of supertankers on the inland waters of the state. This case went to the Supreme Court, and he said at that time the Legislature granted the funds to support that litigation.

Mr. Provost inquired if the funds would go to the Attorney General's budget or to the Nuclear Waste Board budget. Mr. Bishop said some of these questions would have to be discussed with the Legislature. He thought the proposal would be to have the money come to the Department of Ecology to be managed in the same manner as the other grant funds. Mr. Goltz said he understood the consensus was that this would be the easiest and most desirable way to handle this appropriation for these purposes, contingent about the ability to secure federal funds. The Attorney General's Office would then, in effect, contract with the Nuclear Waste Board for a portion of this money for the provision of the legal services involved. Mr. Bishop stated this proposal is being reviewed by the Executive Office and Office of Financial Management, and should the Board authorize the action, contact with the appropriate Legislators would have to be made.

Mr. Lasmanis moved to authorize the Chair to proceed to seek funds from the Legislature for litigation as outlined by the Assistant Attorney General. The motion was seconded by Mr. Watson.

Nancy Kirner asked if it would be appropriate to have the motion contain language to ask the 9th Circuit Court to hear the case in Seattle, rather than San Francisco, in an effort to save expenses. Mr. Roe responded by saying the savings would be minimal. He said this would not be a long, extended trial, and there would be an advantage to having it in San Francisco, as the Pre-briefing Conference would draw the other parties to a more central location.

The question was called and the motion was adopted unanimously.

Environmental Assessment Review Comments

Mr. Stevens reported that the Office, as instructed by the Board, is continuing its review of the draft Environmental Assessment. They are looking at the comments to be sure they have been fully expressed, as well as reviewing some supporting documentation that has not been available until recently. Both the staff and the consultants are reviewing some of the issues that were not studied in depth, plus analysis of other relevant documents in order to come to the Board next month with an extension of the comments that need to be forwarded to the U.S. Department of Energy. It will be an augmentation of the original document submitted on March 20.

Mr. Bishop said the Board will finalize the comments at the May meeting to enable the final statement to be sent to USDOE.

Mr. Roe inquired if any word had been received as to the time table for the filing of the final EA and the decision on the final three sites. Mr. Bishop said this would be reported by Mr. Stevens later on the Agenda.

Monitoring Committee

Don Provost reported that the agreement with the Department of Social and Health Services has been signed, and their staff is preparing a detailed workplan. That plan will list their output, their schedule and places of samples, etc. The Department has requested time on next month's Agenda, he said, to present to the Board the workplan, plus presenting a basic grant extension for the next fiscal year. Mr. Bishop said the Agenda for the May 17 meeting will contain this report and presentation by the Department of Social and Health Services.

Defense Waste

Mr. Bishop reported this group had postponed action until a response has been received from USDOE to Governor Gardner's letter regarding funding of this activity. He said the letter that was received by Governor Gardner was contained in the packets. He considered the letter to be of an affirmative tenor, although there is still some ambiguity. A meeting is planned with USDOE representatives to review the remaining questions. He said he hoped this could be clarified before the next Board meeting. He

stated this letter appears to be an affirmative response to the state's concerns and its ability to use the grant funds in those areas of the state's analysis of the defense waste situation.

Mr. Provost said, in reading the letter, he had the feeling the U.S. Department of Energy still feels that the decision on defense waste management and disposal does not fall under the Nuclear Waste Policy Act. He said during the C&C negotiations the position of the state negotiators was that it did fall under the Act, and the state was willing to go to a separate grant because of the eminent nature of the Environmental Impact Statement. He thought that if that were still USDOE's position, the state would still disagree.

Mr. Bishop said a broader interpretation would be sought and he hoped a meeting could be arranged for the week of May 6.

Tom Tinsley of the U.S. Department of Energy Office at Richland said there are specific guidelines in draft now that should clarify the meaning of the third paragraph of the April 12 letter from Ben Rusche. He thought USDOE did not assent to all the state requested, but felt they were very close. He added the letter did not state that there are no other methods to gain funding for the activities the letter disallows. He thought this was a key point that should be pursued.

Mr. Bishop said since this issue was so critical involving correspondence between the Chief Executive of the state and the Secretary of Energy, care would be taken in the manner the clarification is pursued.

Nancy Kirner remarked that she would wish to pick up on other potential sources of revenue, rather than power plant millage which supports the other activities.

Technical Report

Dr. Brewer said that after one year he could report that the Washington State University Well-Logging Geophysics Program is about to proceed. He said he regretted this project could not have begun a year ago for various technical reasons, but the money has now been set aside to handle the project as a subcontract through Rockwell.

Dr. Brewer mentioned that state had already started extensive hydrologic testing in the area of the repository. Using existing holes, this program will begin sampling and geophysics and water-level measuring in primarily the deeper irrigation wells around the eastern side of the Pasco Basin. One of the purposes, he said, is to learn how much communication there is across possible structures (faults) in the vicinity of the Columbia River. This will be important information as the determination is made of deep structure during the site characterization phase.

On April 4 a first status review meeting was held in Richland. These meetings are scheduled, but are not formal meetings, he said. They are meetings where the technical principals can sit down and review on an agreed format of technical issues with a real exchange of information. On April 4 the discussion centered on the Upper Cold Creek hydrologic barrier. The meetings are valuable, he continued, as they are informal, using working papers, working copies of maps, and he felt these unstructured meetings could save as much as six months in knowing essence of contents of scheduled documents. They also provide the opportunity for the state to share its own technical work with Rockwell. He emphasized this was a sharing of general technical information which benefits both parties.

Dr. Brewer continued that Lee Olson had suggested these meetings might be held quarterly, with the next scheduled meeting in late May. Dr. Brewer said the question was asked at the Council meeting if it would be appropriate for other technical people to attend these meeting, and Dr. Brewer felt it advisable to keep the meeting informal with the groups presently attending. He felt outside attendees would constrain the efforts and they should be kept as work sessions.

Dr. Brewer said he and Ray Lasmanis are developing a two-pronged effort on extension of radar mapping by the U.S. Geological Survey to a significant part of the Columbia Basin. Dr. Brewer explained radar mapping is a tool that was first used a number of years ago, and there have been some dramatic improvements over the last ten years in the quality of this mapping. Its value is interpreting geologic structure over large areas at a very low unit cost. He said in one configuration the aircraft flies at 550 miles per hour and covers a swath eleven miles wide. Radar mapping, he said, is uniquely valuable to certain types of geologists in detecting faults and fracture patterns that don't show up well on aerial photography and are almost impossible to find on the ground.

Dr. Brewer said he understood Nevada and Texas are already scheduled for mapping this year. This mapping could be carried out within a couple of days and all of the data collected would be added to the tectonic map project, which has been underway for some time. A status report will be given the Board at the May meeting.

In the geotechnical area, Dr. Brewer reported, further comments on the draft Environmental Assessment technical documents, which did not arrive until late in the comment period, are being reviewed. Analysis of these documents will be incorporated in the final comments to be presented to the Board. He said the inclusion of the MRS concept as a part of the repository system was helpful and he could support this concept. One of the principal advantages from his viewpoint was it takes some of the 1998 pressure off the site characterization work to be done. He could see no negatives in the MRS inclusion in the program, with a number of advantages.

Legislative Report

Mr. Stevens said the most significant bill listed on the Legislative Report issued by the Office each week is Substitute Senate Bill 3468, which has been passed by both houses of the Legislature. This bill describes in more detail the expectations on the part of the Legislature as to the nature of the Board's overall authority as expressed in prior legislation. It instructs the Board to conduct studies in specific areas such as economic, social, public health and safety, and environmental impacts of a repository. He said this was all in line with the proposed action the Board has taken to date in its review of the USDOE program and specific documents that have flowed from that program. He said SSB 3468 still required concurrence in the Senate before final passage. Mr. Hunter added concurrence could happen any time over the next week.

Status of Annual Grant Application

Mr. Stevens reported the grant application is still being refined relative to certain tasks that require fiscal augmentation for the remainder of the grant period. Other concepts are being considered he said, including a desire to work out an arrangement with the state of Oregon to participate in the program. He expected this would be shortly.

Dr. Filby inquired about the article in the newspaper that stated that the state of Oregon was going to use Washington Nuclear Waste Board funds to conduct their review of the draft Environmental Assessment, or words to that effect. Mr. Stevens said the reference was to the desire of the state of Oregon to get more attention as a state that would be affected by the repository program. He said they tried to get an amendment to the Nuclear Waste Policy Act in 1982 while it was being debated. However, Mr. Stevens said, although the amendment seemed to be reasonable it came so late in the process it did not become a part of the decision making. This was a subject of discussion between Governor Gardner and Governor Atiyah when they first met. Agreement was made that there were some common interests that needed to be addressed, but under the current law the only way they could address them if they needed some outside resources would be in conjunction with the state of Washington. He said it was a question the staff is considering, but it is a question the U.S. Department of Energy will ultimately have to answer. Basically, there is no clear-cut authority for any state, other than the potential host states, to be afforded formal review status. He thought it would be entirely appropriate to work out some relationship with Oregon to allow them some role in review activity.

Ray Lasmanis, who is the state geologist, added that in talking to his counterpart in Oregon, Don Hall, he indicated they had gone to their Legislature for the funding of two FTEs, one a geologist, and the other to address Hanford problems and how they may affect the state of Oregon.

Mr. Roe said the Chair had asked him to review SSB 3468 to see if he had any questions, and he inquired of Ted Hunter if Section 2 were a mandate for the Board contingent upon obtaining funds. Mr. Hunter replied the present wording appeared to be softer than the original bill, which "required" federal funding, and he interpreted "to seek funding from the federal government" to mean sending a letter requesting the funds. He thought that should satisfy the provision of those lines.

Another question Mr. Roe raised was Section 3, which contained a number of mandates. He wondered how they synchronized with the federal Nuclear Waste Policy Act sequencing. He asked if there was anything in that Section that would be required to be done in a fashion which would not allow it to be timely in the context of the federal statutory procedures. Mr. Hunter replied this bill is a striking amendment the House prepared in response to a Senate bill and even now the Senate could be looking at doing something different. Therefore, he did not prefer to analyze the current SSB 3468 at this stage. However, he said there are some linkages in the studies. In the transportation study proposal, for example, there are directives setting a completion date to coincide with the need to establish state or local routing alternatives in accordance with the Hazardous Materials Transportation Act. Similarly, he said, there are directives in lines 28 and 29, page 4, concerning potential impacts and financial and technical resources of affected state agencies.

Mr. Roe said his concern that in drafting legislation such as this it was important not to put a burden on the Board which will inhibit its authority under the federal program, prohibiting the Board from timely responses.

Other Business

Mr. Stevens mentioned three Congressional hearings scheduled since the last Board meeting:

1. Congressman Weaver of Oregon, Chairman of the Subcommittee on General Oversight Northwest Power and Forest Management, of the Interior Committee, held a hearing in Portland on April 15. The subject was the general nature of the repository and the investigations at Hanford, as well as the federal/state relationships. Because notice only came the end of the week before the hearing, the state of Washington was unable to appear, but background comments will probably be submitted.

Congressman Weaver's bill would have opened the Nuclear Waste Policy Act to do two things: (1) To provide the state of Oregon host state status; (2) to change the basis of financing, both for Oregon and Washington, to come from the Bonneville Power Administration. A transcript of the hearing will be furnished to the Office at a later date.

2. Congressman Udall of the House Interior Committee scheduled a hearing on April 25-26 on the Price-Anderson Act. Mr. Stevens said he was advised by telephone yesterday that hearing had been postponed for about six weeks, and no other dates have been set.
3. Congressman Edward J. Markey, Chairman of the House Subcommittee on Energy Conservation and Power of the Committee on Energy and Commerce scheduled a hearing on May 1. He has invited the Governors of each of the first repository states and a representative Governor of the second repository states to appear and testify. This will be a general oversight hearing on the conduct of the program by the Department of Energy. (Information was received subsequently that the hearing was postponed.)

Mr. Stevens referred to the current schedule of the Office of Civilian Radioactive Waste Management Short-Term Program Milestones, dated March 28, 1985, issued by the U.S. Department of Energy (see attached schedule). The OCRWM Annual Report is scheduled to be released in the month of April, and when it is received, Mr. Stevens said, it would be made available to the Board, or summaries will be furnished.

Mr. Stevens reported Draft #5 of the EPA Standards had been received, and was being reviewed by staff. He asked Mr. Provost if he had any comments on this draft, and Mr. Provost said EPA made a few significant changes, such as changing the distance to the accessible environment from 10 kilometers to 2 kilometers. This would make it a little more difficult to site a repository, he said. EPA also loosened the listing of radionuclides and the levels that would be released shown on Table II. He said it was difficult to assess the overall effect of the changes, as they tightened up one, loosened another, and it will take a great deal of evaluation to determine the quality of Draft #5 as it relates to the Hanford site. Mr. Roe asked what effect this will have on the EA process. Mr. Provost said he thought the calculations that were in the EA were based on Draft #4 and if they now used the 2 kilometers, recalculations would have to be made. He said there may be other differences. Mr. Stevens added there was a conflict between the EPA and the NRC relative to the assurance requirements, and he said he had heard this conflict has been worked out so that the EPA will feel comfortable in deleting their assurance requirements if the NRC adds them on to their own regulations. The plan right now, he said, is that when EPA issues its final standard, NRC will issue proposed changes in 10 CFR 60. He said a Memorandum of Understanding may be developed between the two agencies covering this issue.

Mr. Stevens reported representatives of the U.S. Department of Energy, including Mr. Tinsley, had visited the Office reviewing the records and activities. When the report of that review is received, it will be reported to the Board.

In another important area of concern to the state back in the news is preliminary determination of suitability decision to be made by the President, which should come after site characterization. From this determination would come selection of the preferred site for filing of a construction authorization with the Nuclear Regulatory Commission. The Department had wanted language in the guidelines reading the preliminary determination of suitability of the three sites would be taken before site characterization. The Commission did not agree and Ben Rusche, Director of the Civilian Radioactive Waste Management Program, agreed to delete any reference to that and mentioned that determination would be made following site characterization. Mr. Stevens said he learned at a recent meeting there had been further changes and a preliminary determination was back on the list to be made at the time site characterization formally started. More will be known about this issue, he said, when the Mission Plan is received next month, and this will be a significant issue for discussion by the Board.

Another item of interest, Mr. Stevens reported, was that the Office of Technology Assessment of Congress has issued a recent report recommending two interesting items. One is that in order to provide some insurance against the potential disqualification of a site during site characterization, instead of characterizing three, they should characterize four sites. There is some support for this from the NRC, he said, although no formal action has been taken. The other suggestion was that instead of taking one suitable site to NRC, take two sites for potential licensing.

Mr. Stevens said the AM/FM Panel Final Report will presumably be submitted to Congress shortly. He said he understood the Department did not have a strong disposition toward the Congressionally-chartered corporation, feeling it was not necessary during the siting process. This might be brought into being during the construction of a repository, he said. Many of the Panel suggestions were administrative in nature, and he understood the Department supports certain ones.

Mr. Stevens referred to the package of correspondence in the packets relating to the state of Wisconsin and its concerns about transportation of spent nuclear fuel. Wisconsin recently petitioned the NRC requesting it carry out formal rule-making to allow state governments and other interested parties a greater opportunity to comment on the need for nuclear waste shipments and the safety and environmental consequences associated with such shipments. The NRC asked for comments on the rule changes proposed and Governor Gardner sent a supporting letter to join with the state of Wisconsin, and Warren Bishop, Chair of the Board, did the same. Mr. Stevens said this petition refers to current shipments of spent fuel.

Max Power, Staff Director of the Joint Committee on Science & Technology of the Legislature, reported on a proposed meeting of the National Conference of State Legislators to be held in Washington State. Mr. Power distributed a tentative agenda for a one-

day meeting at the Tacoma Dome Hotel, planned for June 14, 1985. He said the Working Group on High-Level Nuclear Waste in the NCSL has shown great interest in pursuing the issue of transportation of nuclear waste. Because the national NCSL meeting will be held in Seattle later in the summer, he said, there was some sentiment by some members of the Senate to hold this transportation workshop at that time. Since there is still discussion on this possibility, he said the June 14 date remains tentative. In any case, he added, a workshop will be held which will include on-line demonstration and notice will be given of the exact date. Mr. Power said this workshop would be open to other parties, and not just restricted to Legislators.

Mr. Bishop announced the formation of a Transportation Policy Working Group within the Board. He said the objective would be to analyze transportation issues identified by the state and other parties that impact upon the repository siting and development activity and determine their impact on the state of Washington. He proposed the following membership:

Richard Watson, Chair
Senator Barney Goltz
Representative Louise Miller
Dr. John Beare
Commissioner William Sebero, representing the Advisory Council

Mr. Bishop said in the letter to be sent to these members the Board would encourage the creation of a Transportation Task Force composed of representatives from the State Patrol, Utilities & Transportation Commission, Department of Transportation, and Emergency Management.

A memorandum from Representative Dick Nelson, who was unable to attend the meeting because of legislative business, was circulated to the members. He asked for discussion and/or staff update in five areas, some of which were discussed in the meeting. Mr. Stevens briefly sketched each item.

Status of Economic Damage Analysis. Mr. Stevens said no response has yet been received to the state's letter to USDOE concerning their study of economic damage analysis. He said the response would determine what the Subcommittee would be doing on behalf of the Board to recommend its own scope of work, assuming federal funding could be obtained. Mr. Stevens said in the Board's letter to USDOE not only was inquiry made as to the scope of work the Department is doing, but the suggestion was made in the letter they include in the Environmental Assessment the need for analysis before finalization. He said this suggestion was made in the Boards' general comments on the EA.

Status of Defense Waste Agreement. Mr. Stevens said Representative Nelson's question about the authority of the state under the Resource Conservation Recover Act (RCRA) to enter

upon federal lands to review mixed hazardous/radioactive wastes was a legal question he could not answer. Mr. Provost said if the state inspectors had the appropriate security rating they could enter, and several of the Department of Ecology inspectors have submitted the data required to receive the security clearance. He said the process takes about eighteen months after application.

Regarding the question as to whether the authority of the state has ever been exercised concerning the defense wastes stored at Hanford, Mr. Stevens said he believed it had not. Mr. Provost said high-level defense wastes would not be covered under RCRA, but all other defense-related under RCRA would be covered. He said it was the state's position that any crib that had taken RCRA-type wastes would be covered.

The question on the due date of the EIS on defense waste at Hanford was interesting, Mr. Stevens said, as the EIS was due in January of 1984, then January, 1985, then May, and now the understanding is it will not be available until next year. He said they are doing a substantial re-analysis of the EIS.

On the question of the effect on defense waste at Hanford as a result of the current rulemaking by the NRC and EPA on redefinition of "radioactive waste", Mr. Stevens asked Mr. Provost if he had any comment. Mr. Provost said he thought this was an important issue to follow, and he has been following. However, he thinks this should be monitored more closely at the appropriate time and place as it will become a significant issue.

Strict Liability and Indemnification for any Damages Caused.

Mr. Stevens reported conversations had been carried on with Congressional staff relative to efforts being made to deal with the Price-Anderson Act and any amendments that would treat the state view and position on full responsibility of the federal government. This will continue, he said, and because of the importance of the topic the Governor may attend the hearings to support the legislation that will meet the approval of the Board and all of its members.

Review of MRS Proposals. Mr. Stevens said it was the assumption that the state would be funded sufficiently to examine the MRS proposals as they are advanced. In response to the query about the development of a workplan to review the MRS report due out in June, Mr. Stevens said the June report will probably not be available until January, 1986. He continued, whatever information is made available will be reviewed and comments brought to the Board.

Mr. Roe asked if Mr. Stevens assumed the state would be entitled to funds by integrating the MRS as distinguished from a back-up concept. Mr. Stevens replied in the affirmative, although no official word had been received. He said this is

a pending request for the funding of states for MRS analysis that dates back to fall of last year. There will also be an element in the grant request, he said, dealing with the state's expectations relative to that aspect of the repository program.

Board Implementation of SSB 3468. This bill was discussed earlier, and Mr. Stevens said a workplan would be prepared based on this bill should it become statute. The plan, he said, would be presented to the Board and would be integrated into the overall workplan.

Mr. Bishop stated that some of these issues will continue to be items for specific future discussion when Representative Nelson is able to be present at the meetings.

Mr. Bishop said an invitation from the U.S. Department of Energy to attend the Spring 1985 meeting of the Office of Civilian Radioactive Waste Management in Kansas City, Missouri on May 14-15 had been received. He asked that all members of the Board be advised of the meeting in case they did not receive the notice. He said it would have to be determined what kind of representation the Board should have from those interested. He suggested a representative from each Caucus in the Legislature might be in order, and a mechanism would have to be worked out for non-legislative members who might be interested in attending.

Mr. Bishop announced an award presented to a member of the High-Level Nuclear Waste Management Office. Jeanne Rensel, Reference Librarian, was honored by the Thurston County Chapter of the Washington Business and Professional Women as one of three "Unsung Heroines" chosen from twelve nominees for the award. Jeanne was selected for her continued efforts with the Thurston County Off-Campus Secondary School. She became active four years ago in helping the school, which serves as an alternative for children who have trouble adapting to traditional school structure.

Public Comment

David Tarnas of the University of Washington stated his concern about the availability to the public of the documents contained in the packets of the Board, as well as the Advisory Council. He said not having the material available, except on request, was contrary to the purpose of these bodies to inform the public.

Mr. Bishop said his policy was clear and he would see these items were made available to the public.

Brad Redfearn of WashPIRG said he thought there was still a question about funding under the provisions of SSB 3468. Since it seems likely to pass the Senate, he said, the WashPIRG would like to encourage the Board to request the necessary funds in the grant application. Mr. Bishop responded he believed many of the items were already in the grant request, and Gary Rothwell of the Office said the grant request had been prepared anticipating many of the provisions of SSB 3468. He said the specific language would be studied after final passage of the bill

There being no further business, the meeting was adjourned.

DICK NELSON
32ND DISTRICT
4311 Dayton Avenue N.
Seattle, WA 98103
340 House Office Building
Olympia, WA 98504
RES. TEL.: (206) 632-5295
LEG. TEL.: (206) 766-7826
1-800-562-8000 HOTLINE

State of
Washington
House of
Representatives



Forty-Ninth Legislature
1985-86

Committees
Energy and Utilities, Chair
Higher Education
Natural Resources

MEMORANDUM

APRIL 17, 1985

TO: Warren Bishop, Chair
Nuclear Waste Board

FROM: Representative Dick Nelson *Dick*

SUBJECT: Nuclear Waste Board Meeting - April 19, 1985

I regret I am unable to attend the April 19, 1985 meeting. My responsibilities as a member of the legislature, which will be in session at that time, brings this circumstance. In my absence, and because I have no designee to attend on my behalf, I would appreciate discussion and/or staff update on the following matters.

(1) Status of economic damage analysis.

The Subcommittee on Economic Damage Analysis has reported to the Board that the Board should seek a scope of work and commitment on costs and timeframe from USDOE to undertake an economic damage analysis with respect to the Hanford site. In absence of a USDOE commitment, the Subcommittee recommended that the state undertake its own study of economic damage analysis. What has been the USDOE response to date? Has the Board developed its own scope of work, costs, and timeframe estimates? How long should the Board wait for a response from USDOE before undertaking its own investigation of this critical issue?

(2) Status of defense waste agreement.

What has been the progress of any discussions? What is the authority of the state under the Resource Conservation Recovery Act (RCRA) to enter upon federal lands to review mixed hazardous/radioactive waste? Has the authority of the state ever been exercised vis a vis the defense waste stored at Hanford? When is the Environmental Impact Statement on the defense waste at Hanford due? What efforts has the Board made to undertake its own environmental review? How would the current rulemaking by the NRC and EPA on re-definition of "radioactive waste" effect the defense waste at Hanford? Is the Board involved in these rulemaking processes.

TO: Warren Bishop, Chair - Nuclear Waste Board
FROM: Representative Dick Nelson - April 17, 1985
SUBJECT: Nuclear Waste Board Meeting - April 19, 1985

- (3) Strict Liability and Indemnification for any damages caused.
What has the Board been doing to promote amendments to the Price/-Anderson Act to allow for full indemnification in the event of a repository accident? What is the schedule of Congressional hearings on this topic? Does the Board intend to have a representative present at those hearings to present the state's view?
- (4) Review of MRS proposals.
It now appears that the MRS has become an integral part of any repository plan. If that is true, will the state be properly funded under the Nuclear Waste Policy Act of 1982 to examine the MRS proposals? What work plan has been developed to review the MRS report which is due out in June, 1985?
- (5) Board Implementation of SSB 3468.
Both houses of the legislature have now passed a bill which would direct the Nuclear Waste Board to undertake specific studies related to the transportation impact on economic resources of state and local governments emergency response capabilities and other areas. Is the Board staff preparing a work plan to implement the provisions of SSB 3468? If so, what is that plan? If not, when may we expect to see such a plan?

Thank you for your attention to these matters. Again, I regret I cannot be there personally to discuss these matters with you and members of the Board. Ted Hunter, Legal Counsel to the House Energy and Utilities Committee, will be in attendance and can comment on the issues raised herein.

CC Members, Nuclear Waste Board
David Stevens, Executive Secretary
Nuclear Waste Board



15 APR 1985

Department of Energy
Washington, D.C. 20585

March 28, 1985

CURRENTLY SCHEDULED OCRWM SHORT-TERM PROGRAM MILESTONES

| | |
|---------|--|
| 4/85 | Issue OCRWM Annual Report. |
| 4/85 | Issue Region-to-Area Screening Methodology document for second repository. |
| 5/85 | Issue Mission Plan and Comment Response Document. |
| 5/85 | Conduct second repository Region-to-Area Screening Methodology Weighting Workshop. |
| 6/85 | Issue Draft Project Decision Schedule. |
| 6/85 | Submit MRS Letter Report to Congress. |
| 7/85 | Issue Regional Characterization Report for second repository. |
| 7/85 | Issue Draft Transportation Business Plan. |
| 8/85 29 | Issue EAs for first repository. |
| 9/85 | Issue Repository Site Nomination and Recommendation Decision. |
| 9/85 | Issue Project Decision Schedule. |

OCRWM/PROJECT OFFICE SELECTED EVENTS CALENDAR

- April 3-4 The National Council on Radiation Protection and Measurements Annual Meeting, Washington, D.C., National Academy of Sciences Building. Contact W. Roger Ney (301) 657-2652.
- April 15-19 National Tribal Chairmen's Association Annual Conference, OMNI International Hotel, Miami, FL. Contact Elmer M. Savilla (202) 293-0031.
- April 24-25 Briefing of Second Repository Tribes, Minneapolis, MN. Contact Robert Holden (202) 546-9404.
- April 29 -
May 3 Institute of Environmental Sciences Technical Meeting, Caesar's Palace, Las Vegas, NV. Contact Betty Peterson (312) 255-1561.
- May 4-5 National Conference of State Legislators, Charleston, SC. Contact Julie Jordan (303) 292-6600
- May 7-8 First Repository States and Affected Indian Tribes Meeting, Denver, CO. Contact Neal Duncan (202) 252-5722.
- May 14 - 15 Spring 1985 Meeting of the Office of Civilian Radioactive Waste Management to discuss current issues, including the Mission Plan, the Integrated Systems Concept, and other subjects. Embassy on the Park-Sheraton, Kansas City, MO. Contact Mary Ann Ferguson (202) 252 2277.
- May 15 Bi-monthly Meeting with National Congress of American Indians to review grant status and exchange information. Washington, D.C. Contact Ben Easterling (202) 252-2280.
- July 31 -
August 2 Spent Nuclear Fuel Transportation Seminar sponsored by NRC and DOT. (Chicago area) Contact John Cook (202) 427-9018.
- September
(date to be determined) State of Illinois workshop on experience in monitoring high-level waste shipments. Hilton Hotel, Springfield, IL. Contact Gale Melson, (217) 546-8100.
- September
24-26 International Topical Meeting on High-Level Nuclear Waste Disposal, Technology and Engineering. Red Lion Motor Inn, Pasco, WA. Contact Carol Parks (509) 375-2728.



OFFICE OF THE ATTORNEY GENERAL

Inter-office Correspondence

Date: April 1, 1985

To: ~~DAVID STEVENS~~

From: CHARLES ROE

Subject: Siting Guidelines Litigation

This memorandum sets forth an agenda I would like to use in discussion with your staff in the processing of the subject litigation. The discussion is set for ~~1:30-2:00 p.m.~~ at your office on Pacific Avenue on April 3, 1985. The agenda:

I. Litigation Process

- A. Development of record
- B. Pre-briefing conference (San Francisco)
 - 1. Issues raised
 - 2. Briefing schedule
- C. Brief filing
- D. Oral argument
- E. 9th Circuit decision
- F. Relationship with EPI v. Hodel

II. Invalidity Contentions

- A. Procedural challenges
 - 1. Nuclear Waste Policy Act
 - 2. Administrative Procedure Act
- B. Substantive challenges
 - 1. Lack of specificity, subjectivity
 - 2. Transportation deficiencies
 - 3. Defense waste deficiencies
 - 4. Alternative site omissions
 - 5. Timing of site suitability determinations
 - 6. Ranking methodology omissions
 - 7. "Sequencing" arguments
- C. Amended petition for review - EPA standards and mission plan.

The successful handling of litigation of the subject kind requires a joint, closely coordinated effort between lawyers and those of special expertise in other fields, especially in scientific and technical areas.

cc: Warren Bishop



OFFICE OF THE ATTORNEY GENERAL

M E M O R A N D U M

April 9, 1985

TO: WARREN BISHOP, Chairman
Nuclear Waste Board

FROM: CHARLES ROE
Senior Assistant Attorney General

SUBJECT: State of Washington, Nuclear Waste Board v.
United States Department of Energy, et al.
No. 85-7128

For your information, this is to advise that we have received copies of motions for leave to intervene in the subject case that were filed in the Ninth Circuit by the State of Nebraska and Environmental Defense Fund.

Copies of each are attached for your information.

CBR:bj
Attachment

cc: Dave Stevens
Jeff Goltz
Don Provost

Ref

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

APR 6 9 38 AM '85

OLYMPIA, WA 98504

DEPARTMENT OF AGRICULTURE

STATE OF WASHINGTON, NUCLEAR
WASTE BOARD,

Petitioner,

No. 85-7128

STATE OF NEBRASKA,

Applicant for Intervention,

v.

UNITED STATES DEPARTMENT OF
ENERGY, and JOHN W. HERRINGTON,
Secretary of the U.S.
Department of Energy,

MOTION FOR LEAVE TO INTERVENE
BY THE STATE OF NEBRASKA

Respondents.

MOTION FOR LEAVE TO INTERVENE

The State of Nebraska hereby moves this Court, pursuant to Rule 15(d) of the Federal Rules of Appellate Procedure, for leave to intervene as petitioners in the above-captioned proceeding. In support of this motion, the movant states as follows:

1. The challenged agency action is the issuance of final guidelines, required by section 112(a) of the Nuclear Waste Policy Act of 1982, 42 U.S.C. §§10101-10226, for the recommendation of sites for geologic repositories in which high-level nuclear waste and spent nuclear fuel will be emplaced for permanent disposal. The guidelines which are the subject of this proceeding were issued by the Secretary of the Department of Energy on November 30, 1984, and were published at 49 Fed. Reg. 47714 (December 6, 1984).

RECEIVED

APR 8 1985

ATTORNEY GENERAL
BIOLOGY DIV.
OLYMPIA

2. Section 119 of the Nuclear Waste Police Act, 42 U.S.C. §10139 (1982), provides that the United States Courts of Appeals shall have original and exclusive jurisdiction for judicial review of any final decision or action of the Secretary, and requires that proceedings for review be initiated within 180 days of the decision or action.

3. On March 8, 1985, the State of Washington initiated this proceeding by filing a timely petition for review of the Secretary's final guidelines for recommendation of geologic repositories. The Secretary's guidelines also are the subject of a petition for review filed in this Court on December 18, 1984, by the Environmental Policy Institute, et al. (No. 84-7854).

4. The interests of the State of Nebraska and its citizens are in the failure of the Secretary to adopt final guidelines which adequately address transportation impacts and safety factors involved in moving high-level radioactive waste and spent nuclear fuel through the State of Nebraska.

5. The guidelines at issue in this proceeding establish criteria for recommending sites for repositories for disposal of high-level nuclear waste and spent nuclear fuel. Many citizens of the State of Nebraska live and work along highway and rail routes which, under the Secretary's guidelines, may be used to transport these highly toxic wastes from nuclear reactors at which these wastes were generated or temporarily stored, to a geologic repository for ultimate disposal.

6. Citizens of the State of Nebraska living and traveling along transportation corridors will be adversely affected by the Secretary's failure to adopt guidelines which assure protection of human health, safety, and the environment.

7. The interests of the State of Nebraska are not identical to the interests of, and will not be adequately represented by, the State of Washington.

8. The State of Nebraska will not oppose consolidation of this proceeding with other pending proceedings for review of the Secretary's guidelines, and will comply with any briefing schedules that have so far been set by this Court. Therefore, intervention will neither prejudice other parties nor delay these proceedings.

9. Counsel for the State of Washington has authorized the State of Nebraska to state that it does not oppose this motion.

10. Filing of a separate petition for review in the Eighth Circuit Court of Appeals by the State of Nebraska, along with a motion to transfer such a proceeding to this Court pursuant to the provisions of 28 U.S.C. §2112(a), would be contrary to the interests of judicial economy. Therefore, the State of Nebraska elects to seek leave to intervene in this proceeding rather than to initiate an independent proceeding.

WHEREFORE, the State of Nebraska respectfully requests that this motion for leave to intervene be granted.

Respectfully submitted,

STATE OF NEBRASKA, Applicant for Intervention,

BY ROBERT M. SPIRE
Attorney General

BY

Dale D. Brodkey
Assistant Attorney General
2115 State Capitol
Lincoln, NE 68509
Tel: (402) 471-2682

CERTIFICATE OF SERVICE

I hereby certify that I have served copies of the foregoing Motion for Leave to Intervene by the State of Nebraska by U.S. mail, first class postage prepaid, upon the petitioner, State of Washington, Nuclear Waste Board, addressed to petitioner's attorney, Charles Roe, Department of Ecology, Mail Stop PV-11. Olympia, WA 98504, and upon the respondents, U.S. Department of Energy and John W. Herrington, addressed to their attorney, John A. Bryson, Appellate Section, Lands and National Resources Division, U.S. Department of Justice, Washington, DC 20530, on this 4th day of April, 1985.

Dale D. Brodkey
Assistant Attorney General



ENVIRONMENTAL DEFENSE FUND

April 5, 1985

Re: Re
U.S. DIST. CT. DIST. N. D. CALIF.
OLYMPIA, WA. 98504
APR 6 8 57 AM '85

FEDERAL EXPRESS

Mr. Phillip B. Winberry, Clerk
United States Court of Appeals
for the Ninth Circuit
Room 242 - U.S. Courthouse
7th and Mission Streets
San Francisco, CA 94101

Re: State of Washington, Nuclear Waste
Board v. United States Department of
Energy, et al.

Dear Mr. Winberry;

Enclosed for filing in the above-captioned proceeding are the original and three copies of the Environmental Defense Fund's MOTION FOR LEAVE TO INTERVENE. Copies of this motion have today been served upon all counsel of record.

Also enclosed is the MOTION FOR ADMISSION for Mr. James B. Martin.

Thank you for your attention to these matters.

Respectfully,

James B. Martin
James B. Martin

enclosures (5)

RECEIVED

APR 8 1985

ATTORNEY GENERAL JOHN
ECOLOGICAL DIV.
OLYMPIA

1405 Arapahoe Avenue

Boulder, Colorado 80302



(303) 440-4901

OFFICES IN: NEW YORK, NY (National Headquarters); WASHINGTON, DC; BERKELEY, CA; RICHMOND, VA; BOULDER, CO

IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RECEIVED
APR 8 1985
ATTORNEY GENERAL'S OFFICE
ECOLOGY DIV.
OLYMPIA

STATE OF WASHINGTON, NUCLEAR
WASTE BOARD,

Petitioner,

ENVIRONMENTAL DEFENSE FUND,

Applicant for Intervention,

v.

UNITED STATES DEPARTMENT OF ENERGY,
and JOHN W. HERRINGTON, Secretary
of the U.S. Department of Energy,

Respondents.

No. 85-7128

MOTION FOR LEAVE TO INTERVENE

MOTION FOR LEAVE TO INTERVENE

The Environmental Defense Fund hereby move this Court, pursuant to Rule 15(d) of the Federal Rules of Appellate Procedure, for leave to intervene as a petitioner in the above-captioned proceeding. The reasons for this motion are set out below:

1. The challenged agency action is the issuance of final guidelines, required by section 112(a) of the Nuclear Waste Policy Act of 1982, 42 U.S.C. §§ 10101-10226, for the recommendation of sites for geologic repositories in which high-level nuclear waste and spent nuclear fuel will be emplaced for permanent disposal. The guidelines that are the subject of this proceeding were issued by the Secretary of the Department of Energy on November 30, 1984, and were published at 49 Fed. Reg.

47714 (Dec. 6, 1984).

2. Section 119 of the Nuclear Waste Policy Act, 42 U.S.C. § 10139 (1982), provides that the United States Courts of Appeals shall have original and exclusive jurisdiction for judicial review of any final decision or action of the Secretary, and requires that proceedings for review be initiated within 180 days of the decision or action.

3. On March 8, 1985, the State of Washington initiated this proceeding by filing a timely petition for review of the Secretary's final guidelines for recommendation of geologic repositories (No. 85-7128). The Secretary's guidelines also are the subject of a petition for review filed in this Court on December 18, 1984, by the Environmental Policy Institute, et al. (No. 84-7854).

4. The Environmental Defense Fund, Inc. (EDF) is a charitable, not-for-profit, public membership organization composed of scientists, lawyers, economists, educators, and other concerned citizens dedicated to the protection of human health and the environment through research and education and through judicial, legislative, and administrative action. Organized under the laws of the State of New York, EDF maintains regional offices in Washington, D.C.; Boulder, Colorado; and Berkeley, California. EDF has more than 47,000 members nationwide.

5. EDF and its members have been actively involved in legislative, administrative, and judicial actions involving management and safe disposal of radioactive wastes generated during the nuclear fuel cycle, in an effort to protect the health and safety of EDF's members, the use and enjoyment of the

environment by EDF's members, and the public health and safety, and the environment at large.

6. The guidelines at issue in this proceeding establish criteria for recommending sites for repositories for disposal of high-level nuclear waste and spent nuclear fuel. Many of the members of EDF reside near, or travel to and hike, camp and fish near sites the Secretary may recommend for a geologic repository under his guidelines. Moreover, many of EDF's members live and work along highway and rail routes that, under the Secretary's guidelines, may be used to transport these highly toxic wastes from nuclear reactors at which these wastes were generated, to a geologic repository for ultimate disposal.

7. EDF members living and traveling near potential repository sites and along transportation corridors will be adversely affected by the Secretary's failure to adopt guidelines that assure protection of human health, safety, and the environment.

8. The interests of EDF are not identical to the interests of, and will not be adequately represented by the State of Washington.

9. EDF will not oppose consolidation of this proceeding with other pending proceedings for review of the Secretary's guidelines, and will comply with any briefing schedules that have so far been set by this Court. Therefore, intervention will neither prejudice other parties nor delay these proceedings.

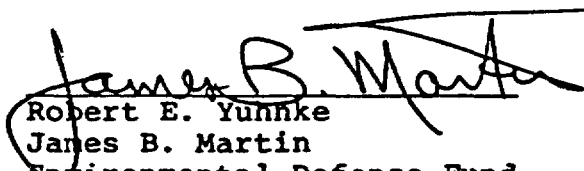
10. Counsel for the State of Washington has authorized us to state that it does not oppose this motion.

11. Filing of a separate petition for review in the Tenth

Circuit Court of Appeals by the Environmental Defense Fund, along with a motion to transfer such a proceeding to this Court pursuant to the provisions of 28 U.S.C. § 2112(a), would be contrary to the interests of judicial economy. Therefore, the Environmental Defense Fund elected to seek leave to intervene in this proceeding rather than to initiate an independent proceeding.

WHEREFORE, the Environmental Defense Fund respectfully requests that this motion for leave to intervene be granted.

Respectfully submitted,


Robert E. Yunnke
James B. Martin
Environmental Defense Fund
1405 Arapahoe Avenue
Boulder, CO 80302
(303)440-4901

Attorneys for Environmental
Defense Fund

DATED: April 5, 1985

CERTIFICATE OF SERVICE

I hereby certify that the original and three copies of the attached MOTION FOR LEAVE TO INTERVENE were forwarded by Federal Express on this 5th day of April, 1985, to the Clerk of the Court at the address shown below, and that copies of same were mailed, first-class postage prepaid on this 5th day of April, 1985, to each of the other persons listed below:

Clerk's Office
United States Court of Appeals
for the Ninth Circuit
7th and Mission Streets
San Francisco, CA 94103

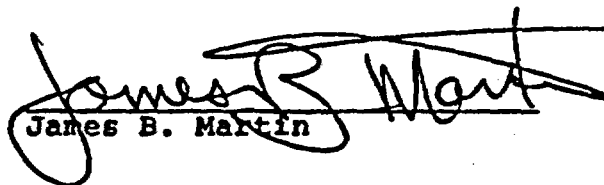
John A. Bryson, Esq.
Appellate Section
Lands and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

Attorney for Department of
Energy and Secretary of Energy

Charles Roe, Esq.
Department of Ecology
Mail Stop PV-11
Olympia, WA 98504

William H. Mellor, III
Office of General Counsel
Department of Energy
Washington, D.C. 20585

Attorney for State
of Washington


James B. Martin



Department of Energy
Washington, D.C. 20585

APR 12 1985

Honorable Booth Gardner
Governor of Washington
Olympia, Washington 98504

Dear Governor Gardner:

Thank you for your letter to Secretary Herrington which was received by the Department on March 13, 1985. I have been asked to respond to your request that the Department provide a clarification of its interpretation of the consultation and cooperation provisions and the financial assistance provisions of the Nuclear Waste Policy Act of 1982 (NHPA) as they pertain to defense wastes that are stored on the Hanford Reservation or as they pertain to the potential effects these wastes may have on a civilian waste repository.

I am aware of the unique situation at the Hanford Reservation in that the potential repository site is in close proximity to facilities for defense waste storage and disposal. At Hanford, there are currently two different efforts underway concerning nuclear waste. First, an analysis is being prepared evaluating the suitability of the Hanford site as a repository under the NHPA. Second, DOE is examining alternatives for the management and disposal of certain wastes at Hanford under the Atomic Energy Act.

The issues you have raised, relating principally to how that proximity might affect pre- and post-closure activities and performance of a repository, are issues that will receive careful consideration by this Department in the process designed by the NHPA to reach a siting decision and are, therefore, proper subjects for consideration during the consultation and cooperation process and financial assistance under the NHPA. Likewise, issues concerning the effect of disposal of defense waste in a repository would also be properly considered since resolution of this issue would be in furtherance of NHPA activities.

Other issues you have raised concerning DOE's potential decision-making under the Atomic Energy Act on defense waste management and disposal at Hanford and other DOE sites are issues which do not directly bear on implementation of the NHPA. Expenditure of Nuclear Waste Fund revenues to support State activities related to those DOE decisions or issues are, therefore, not authorized.

Your modified grant proposal, as currently structured, goes beyond the scope of support that can be provided under the NWPA. Should you wish to submit a revised proposal in accordance with this letter to deal with activities you intend to conduct in furtherance of NWPA activities, we would be pleased to work with you to prepare such a revised proposal.

We have every desire to work closely with you to the maximum extent possible within the NWPA to assure that financial assistance is available on a timely basis to encourage state involvement in the NWPA process.

The Department shares your interest in ensuring that the States are afforded every opportunity to fully participate in activities mandated by the NWPA. I look forward to continued positive interaction with the Washington State Nuclear Waste Board in implementing the provisions of this nationally important program.

Sincerely,


Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management



STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

OLYMPIA
88504-0413

BOOTH GARDNER
GOVERNOR

Honorable John Herrington
Secretary, Department of Energy
James Forrestal Building
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Dear Mr. Secretary:

Nuclear Waste Policy Act (NWP) Implementation - Defense Wastes

Since July, 1983, the Washington State Nuclear Waste Board has been conducting negotiations with your department relating to the consummation of a consultation and cooperation agreement under section 117 of the NWP. These negotiations relate, of course, to the proposed repository site within Washington's Hanford Reservation that is now the subject of "nomination" under the NWP. Likewise, this office has requested (and received) funds from your department pursuant to section 116 of NWP pertaining to said proposed site.

This letter is written for the purpose of obtaining from you, pursuant to section 117(a) of the NWP, "timely and complete information regarding determinations or plans made with respect to site characterization . . ." at the potential repository site within the State of Washington. In this regard, I formally request a definitive statement with regard to your department's interpretations and implementation of both the C&C provisions and the funding provisions of NWP as they pertain to defense wastes that are now temporarily stored on the Hanford Reservation.

It is the state's position that the ultimate disposition of these temporarily stored wastes are within the scope of a C&C agreement relating to any site characterization program conducted by the Department of Energy in relation to the Hanford Reservation. It is further our view that the State of Washington is entitled to funds from the NWP, as a part of the Department of Energy's characterization program at Hanford, for the purpose of evaluating the defense wastes impacts on the suitability of the proposed repository, including evaluations relating to the removal of the wastes from their temporary storage location.

Honorable John Herrington
Page 2

In support of the above position, we bring the following uncontestable facts to your attention.

1. The aforementioned temporarily stored defense wastes are located in such a geographic and geohydrologic relationship to the repository location so as to necessarily require their potential impact to be thoroughly evaluated in the course of site characterization.
2. Because of the "comingling" decision made recently by operation of law by NWPA, section 8, the site characterization at Hanford must evaluate the impacts of moving the wastes from the present location and the impacts on the proposed repository arising from permanently storing said wastes therein.

In sum, the temporarily stored defense wastes, whether they remain stored as they are or are moved, are within the scope of the proposed site characterization program for the Hanford site. This being so the state is entitled to funding to support its program of evaluation of the Department of Energy's site characterization effort which, by statutory definition, relates to the same areas of evaluation as the Department of Energy's effort.

My request, in this light, is as follows. Please formally advise me as to whether you are interpreting and implementing the NWPA in a fashion that (1) precludes the aforementioned defense wastes from being covered within the scope of a C&C agreement or (2) precludes your department from providing funds to the state under the NWPA. (In this regard please note that I have attached an application for funding to support the state's evaluation of the defense wastes as a part of your department's Hanford site characterization activities.)

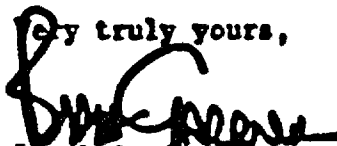
It is my understanding that the NWPA requires that you respond to this request within 30 days of its receipt. In formally responding to me, please expressly approve or reject the state's statutory implementation requests. Rejection of one or both, we should note, shall be understood on our part as a failure to take an action required to be taken by the secretary under the act.

If you or your staff wish to meet with Mr. Warren Bishop, Chairman of the Washington State Nuclear Waste Board to personally discuss any aspect of this correspondence, I am sure such a meeting can be arranged. At the same time, I wish to advise you of our need to obtain your decision of action or inaction at an early date so that we may initiate litigation to resolve the validity of your actions if they are not consistent with our requests.

Honorable John Herrington
Page 3

Thank you for consideration in this very important matter.

Very truly yours,



Booth Gardner
Governor

Attachment

cc: Ben Rusche
Mike Lawrence
Warren Bishop, Chairman, Washington State Nuclear Waste Board
Charles Roe, Senior Assistant Attorney General