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# Appalachian States Low-Level Radioactive Waste Commission

207 State Street • Harrisburg, Pennsylvania 17101 • (717) 234-6295 • FAX (717) 234-6297

JAMES M. SEIF  
CHAIRMAN

MARC S. TENAN  
EXECUTIVE DIRECTOR

DATE: July 19, 1996  
SUBJECT: June 19, 1996 Commission Meeting Summary  
TO: Interested Parties  
FROM: Marc S. Tenan  
Executive Director

The Appalachian States LLRW Commission held its Annual Meeting on June 19, 1996 in Harrisburg, Pennsylvania. Following is a summary of significant actions taken at the meeting:

- The Commission directed its counsel to file a petition to intervene in the case of Stilp, Epstein, and Linzey v. Baker-Knoll, Ridge and the Commonwealth of Pennsylvania. In this case, the plaintiffs claim that the Pennsylvania General Assembly failed to follow constitutionally mandated procedures when it enacted Act 12 of 1988 (the Low Level Radioactive Waste Disposal Act). The plaintiffs asked the Court to prevent the enforcement of Act 12 and prevent the State Treasurer from making any expenditure under the Act. The plaintiffs also asked the Court to prevent the enforcement of Act 107 of 1990 (the Low-Level Radioactive Waste Disposal Regional Facility Act) and prevent the State Treasurer from making any expenditures under Act 107. In summary, the plaintiffs have asked the Court to stop Pennsylvania from siting a regional LLRW disposal facility for the Appalachian States Compact.

The Pennsylvania Attorney General responded for the State Treasurer, the Governor and the Commonwealth on May 13, 1996. The Attorney General argues that the doctrine of laches bars the plaintiffs in pursuing its claim because Act 12 was enacted more than eight years ago and Act 107 was enacted more than six years ago. According to the Attorney General, the plaintiffs waited an unreasonable time to file its suit and a ruling in their favor would cause great harm and the waste of over \$40 million expended by the Commonwealth.

The Commission voted unanimously to intervene in the Stilp case to provide the Commonwealth Court with a complete explanation of the events surrounding the passage of Act 12 and to heighten the Court's awareness of the Appalachian Compact's reliance on the siting of a regional disposal facility in Pennsylvania.

The Commission filed its Petition to Intervene on July 19, 1996. While supporting the Attorney General's position on the doctrine of laches, the Commission argues that Act 12 and Act 107 were both enacted in accordance with the Pennsylvania Constitution. The Commission also argues that the plaintiffs have no standing because implementation of either law will not adversely affect them. Since the disposal facility will be developed, constructed and operated without taxpayers' funds, the plaintiffs will not be adversely affected as they claim. Funding will come exclusively from assessments on LLRW generators, particularly nuclear power generation facilities. The Commission points out that the plaintiffs will benefit from the implementation of the two acts rather than be adversely affected by their implementation.

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- Chairman Seif announced that the Commission held a notational vote to authorize the executive director to transfer up to \$125,000 from the Commission's Surcharge Fund to the Special Projects line item in the FY 1995-96 budget to increase funding for the Commission's Public Information Grant Program. The Commission voted 9-0 between April 11-30 to transfer the funds. However, the executive director reported that the transfer of funds for FY 1995-96 was unnecessary and will not occur until FY 1996-97.
- The executive director reported that the Third Circuit Court still has not issued an opinion on the US Department of Energy's appeal asking the Court to overturn the Middle District Court's opinion that the USDOE should pay all surcharge funds to the Commission.
- The Commission appropriated \$2,214,500 from its Surcharge Fund to the General Operating Fund for 1996-97. The Commission would pay \$2 million to the Pennsylvania Department of Environmental Protection (PADEP) in quarterly installments beginning January 1, 1997. PADEP would use these funds to continue the Community Partnering Process for 1997. Also, \$76,500 would be used for a public information grant to the Pennsylvania State Association of Township Supervisors and \$100,000 would be used for public information grants to municipalities that are considering volunteering as the host community for the regional disposal facility. Finally, the Commission would use \$38,000 for Commission operating expenses.
- The Commission adopted a revised budget for 1996-97 and a budget for 1997-98. It also hired the certified public accounting firm of Greenawalt and Company to conduct annual audits of the Commission from FY 1995-96 through FY 2000-2001.
- The Commission decided to let the individual states decide whether to provide political support to the Southwestern Compact and California in their effort to pass the Ward Valley transfer legislation in the U.S. Congress to transfer federal land to California for use as that Compact's disposal facility. Also, the Commission decided to let the individual states decide whether to provide political support to the Texas Compact in its effort to get the U.S. Congress to consent to the Texas Compact.
- The Commission re-elected James M. Seif as Chairman and Jane Nishida as Vice-chair.

The meeting's minutes will not be available to the public until they are approved at the Commission's next meeting. Please feel free to contact our office if you have any questions or comments. Minutes for the Commission's July 1995 annual meeting were approved and are available upon request.