

SOUTHWESTERN LOW-LEVEL RADIOACTIVE WASTE COMMISSION

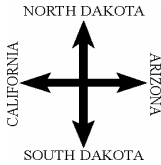
PO Box 277727 Sacramento CA 95827-7727

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

Fax: (815) 361-3848

E-mail: swllrwcc@swllrwcc.org

Website: www.swllrwcc.org



date

Senator Sheila James Kuehl
State Capitol, Room 5108
Sacramento, CA 95814

Dear Senator Kuehl:

On May 6, 2007 you, and Senators Corbett, Ridley-Thomas, Florez, Torlakson, Steinberg, Oropeza, Yee, Negrete, McLeod, Padilla, Lowenthal, and Romero and Assemblymember Hernandez asked the Honorable Nell Soto, Chair, Joint Legislative Audit Committee (Audit Committee) to authorize an audit of the Southwestern Low-Level Radioactive Waste Commission (Commission) and the Department of Public Health's Radiologic Health Branch. You and your colleagues alleged that our Commission was approving the export and disposal of thousands of tons of California low-level radioactive waste (LLRW) to municipal landfills in Tennessee. You alleged that our Commission is engaged in an unauthorized de facto deregulation of the handling and disposal of LLRW. And you further alleged the Commission was approving export petitions using a procedure inconsistent with the law.

This audit was authorized by the Audit Committee and initiated on July 25, 2007. Although our Commission consented to the audit, we did so with reservation. The Commission firmly believes that California lacks the authority to audit our Compact, a multi state organization, and the State Auditor failed to dispel that belief. The audit was completed on June 12, 2008. The Bureau of State Audits report is documented in June 2008 Report 2007-114 (Report). Our Commission recently met (October 16) to review and discuss this Report and the Commissioners recommended I write you.

As to the allegations above, the California State Auditor found that the Commission has never approved a petition that authorizes the shipment of LLRW to municipal landfills in Tennessee. Nor did the Auditor find that the Commission is engaged in an unauthorized de facto deregulation of the handling and disposal of LLRW. This comes as no surprise to the Commission. The Commission has always known there is no truth to these allegations. It would have saved the State and the Commission a lot of money if you had just asked us before you asked for the audit. Incidentally, the Commission hereby requests reimbursement of \$45,000.00 from the State of California for the money expended by the Commission on this survey. As you know, the Commission is not funded by California taxpayer funds but is funded by the Arizona, California, North Dakota and South Dakota low-level radioactive waste generators.

As to the allegation that the Commission was approving export petitions in a manner inconsistent with the law, the Auditor concluded such to be the case. However, our legal counsel disagrees. It is his opinion that the Commission process is legally sufficient. Counsel further emphatically attributes the procedure used by the Commission to California's failure to develop a low-level radioactive waste disposal facility (see Report, Comment 3, page 66 and Comment 13, page 69). The Auditor admits it would take a court of law to decide on the legality of the Commissions approval process (Report, page 28). Despite this disagreement, and as a gesture of respect, the Commission has modified its export petition approval process (see enclosed Commission policy adopted on October 16, 2008 regarding the approval of petitions for exportation).

However, it is important to note, the Auditor did document a major finding, in our opinion, related to the California State's inability to establish a licensed disposal facility in California (Report, page 24). As you know, California has failed to comply with the federal and California law to cause a regional disposal facility to be developed. (Pub.L No. 100-712, sec. 5, art. IV, (E)(1)), Health & Saf. Code, sec.115255, art. 4, (E)(1)). We now ask for your assistance.

What the Auditor wrote on page 24 of the Report bears repeating, The Auditor found that the failure of the State to develop a regional disposal facility for low-level waste has considerable consequences. "In the absence of a regional facility, generators must find other ways to dispose of the waste that they generate or must store it on-site. Of particular concern is the impending closure of the facility in Barnwell, South Carolina, to low-level wastes from California. Following this closure, only one low-level waste disposal facility will remain operational for California generators, and that facility is licensed to accept only the least radioactive of the various classes of low-level waste."

The Auditor goes on to state: "Generators of low-level waste generally must dispose of this waste at a licensed low-level waste disposal facility or through other means specified in federal law, including storage for decay. Presently, three licensed disposal facilities in the nation are authorized to accept low-level waste, and only two of those - Barnwell, South Carolina, and Clive, Utah - accept waste from California. The Barnwell, South Carolina, site accepts classes A, B, and C low-level waste and sealed sources for disposal. The three classes rank waste in order of degree of radioactivity, Class C being the most radioactive. Anything that is greater than Class C must be disposed of in a facility that is licensed to accept high-level radioactive waste. Sealed sources are radioactive materials encased in capsules that prevent leakage or escape. After mid-2008 Barnwell, South Carolina, site will accept only waste from Atlantic Compact generators. The other facility, in Clive, Utah, is licensed to accept only Class A waste and certain other materials."

The Barnwell facility closed to our Compact's generators on July 1, 2008. The impact on our generators of LLRW is significant. For your information, the consequences of this closure were recently reported in a September 25, 2008, Associated Press article (Enclosed) and may be informative. One of our Commissioners, Ms. Donna Earley, of Cedars Sinai Medical Center, informed the Commission of this article and confirmed its veracity.

This letter asks for your assistance in establishing a working group composed of members of the Legislature and our Commission to respond and correct what we think is the major finding of the report. In addition please inform the Commission on what action you are planning to do to meet our future disposal needs. Thank you.

Sincerely,

(Signed)

Aubrey Godwin, Chairman
Southwestern Low-Level Radioactive Waste Commission

Enclosure: Commission policy regarding approval of petitions for exportation.

Enclosure: Nuclear waste piling up at US labs hospitals - By Seanna Adcox, Associated Press

cc: Governors of Arizona, California, North Dakota and South Dakota

Senator Corbett, E.
State Capitol Room 3092
Sacramento, CA 95814

Senator Ridley-Thomas, M.
State Capitol Room 4061
Sacramento, CA 95814

Senator Florez, D.
State Capitol Room 5061
Sacramento, CA 95814

Senator Torlakson, T.
State Capitol Room 5050
Sacramento, CA 95814

Senator Steinberg, D.
State Capitol Room 4035
Sacramento, CA 95814

Senator Oropeza, J.
State Capitol Room 4074
Sacramento, CA 95814

Senator Yee, L.
State Capitol Room 4048
Sacramento, CA 95814

Senator Negrete, G.
State Capitol Room 2059
Sacramento, CA 95814

Senator Padilla, A.
State Capitol Room 4032
Sacramento, CA 95814

Senator Lowenthal, A.
State Capitol Room 2032
Sacramento, CA 95814

Senator Romero, G.
State Capitol Room 313
Sacramento, CA 95814

Assemblyman Hernandez, E.
State Capitol Room 4112
Sacramento, CA 95814

Commissioners
Southwestern Low-Level Radioactive Waste Commission

Counsel
Southwestern Low-Level Radioactive Waste Commission