

1999 DRAFTING REQUEST

Bill

Received: **09/17/98**

Received By: **champra**

Wanted: **As time permits**

Identical to LRB:

For: **Robert Cowles (608) 266-0484**

By/Representing: **Sean**

This file may be shown to any legislator: **NO**

Drafter: **champra**

May Contact:

Alt. Drafters: **hubliks**

Subject: **Public Util. - misc.**

Extra Copies: **MDK**

Topic:

Disposal of radioactive waste

Instructions:

Redraft 97-5005/1

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	champra 09/17/98	jgeller 09/18/98		_____			State
/1			jfrantze 09/18/98	_____	lrb_docadmin 09/18/98	lrb_docadmin 09/30/98	

FE Sent For:

02-26-99

<END>

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1?	champra	1-9-18-98 KC	6/9/18	9/18			

FE Sent For:

<END>

ROBERT L. COWLES

Wisconsin State Senate - 2nd Senate District

Scott,

2/18

- We would like to do a similar draft.
- The only difference I can see is making the bill effective upon passage.
- Ideally I would like to make it retro-active to Jan 31' 1998. I still need to look into how the funds are currently collected.
- Sean

OFFICE:

State Capitol, 28 South
P.O. Box 7882
Madison, WI 53707-7882
608-266-0484

HOME:

300 W. St. Joseph Street, #23
Green Bay, WI 54301-2328
414-448-5092

Hotline: 1-800-362-9472 • TDD Hotline: 1-800-228-2115

AN ACT

Distributed By
Secretary of the SENATE
Room 231, State Capitol
St. Paul, 296-2343

1

2 relating to nuclear waste; requiring the commissioner
3 of public service to collect and hold in escrow funds
4 for the disposal of high-level radioactive waste.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

6 Section 1. [NUCLEAR WASTE ESCROW ACCOUNT.]

7 Beginning July 1, 1997, the public utilities commission may
8 direct persons in Minnesota that are generating or holding title
9 to high-level radioactive waste or spent nuclear fuel and that
10 are subject to the fee specified under United States Code, title
11 42, section 10222, to remit the proceeds of that fee to the
12 commissioner of public service. The commissioner shall place
13 all revenues collected from this fee into an interest-bearing
14 escrow account. The commissioner shall release the funds in the
15 escrow account to the secretary of the federal Department of
16 Energy upon a showing by the secretary that a federal repository
17 for the long-term storage and permanent disposal of spent
18 nuclear fuel and high-level radioactive waste is operating and
19 currently accepting such materials.

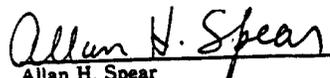
20 This section is intended to enable the state of Minnesota
21 to adopt or implement any appropriate relief granted by a court
22 of competent jurisdiction for the United States Department of
23 Energy breach of its obligations to dispose of commercial spent
24 nuclear fuel not later than January 31, 1998.

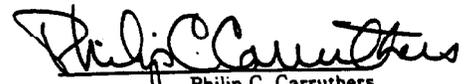
25 Sec. 2. [EFFECTIVE DATE.]

1 Section 1 is effective July 1, 1997.

CHAPTER No. 201
S.F. No. 1646

This bill was passed in conformity to the rules of each house and the joint rules of the two houses as required by the Constitution of the State of Minnesota.


Allan H. Spear
President of the Senate.


Philip C. Carruthers
Speaker of the House of Representatives.

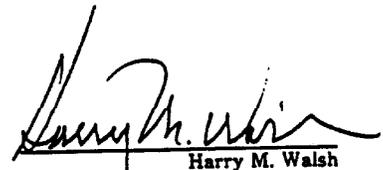
Passed the Senate on April 11, 1997.


Patrick E. Flahaven
Secretary of the Senate.

Passed the House of Representatives on May 16, 1997.


Edward A. Burdick
Chief Clerk, House of Representatives.

This bill is properly enrolled and was presented to the Governor on May 20, 1997.


Harry M. Walsh
Revisor of Statutes.

Approved on May 22, 1997, at 11:55 P. M.

A. M. P.

SJR II - 1555

Indiana Michigan Power Co. v. U.S. Department of Energy

No. 95-1279 (88 F.3d 1272) (D.C. Cir. July 23, 1996)

The court holds that the Nuclear Waste Policy Act (NWPA) requires the U.S. Department of Energy (DOE), by January 31, 1998, to begin disposing of the spent nuclear fuel of parties that paid for such disposal, even if the DOE does not yet have a repository for it. NWPA §302(a)(5)(B) states that "in return for the payment of fees ... [the DOE], beginning not later than January 31, 1998, will dispose of the ... spent nuclear fuel." Although the statute defines "disposal" as "the emplacement in a repository of ... spent nuclear fuel ... with no foreseeable intent of recovery," the fact that Congress defined "disposal" restrictively and did not define "dispose" bears mute testimony to the strong possibility that Congress intended the former as a term of art, the latter as common English. The DOE itself has previously concluded that the statutory definition of "disposal" was not intended to define "dispose of," and Congress used the term "disposal" elsewhere in the statute to encompass more than the emplacement of spent nuclear fuel in a repository. The court holds that §302(a)(5)(A), which requires the DOE to take title to spent nuclear waste after commencement of repository operations, and §302(a)(5)(B) set forth independent requirements. The duties they impose on the DOE are linked to different events and are triggered at different times. In addition, it is not unusual to recognize a division between ownership of materials and other obligations relating to such materials. Also, the fact that a repository does not exist, even though Congress anticipated its existence by 1998, does not make §302(a)(5)(B) illogical. Congress evinced a strong intent that the DOE's various obligations would be performed in a timely manner.

[Briefs in this litigation are digested at ELR BRIEFS & PLEADS. 66450.]

Counsel for Petitioners

Jay E. Silberg
Law Offices of Jay E. Silberg
2300 N St. NW, Washington DC 20037
(202) 663-8063

Counsel for Respondents

John A. Bryson
Environment and Natural Resources Division
U.S. Department of Justice, Washington DC 20530
(202) 514-2000

Before: WILLIAMS, GINSBURG and SENTELLE, *Circuit Judges*.

SENTELLE, *Circuit Judge*: The Nuclear Waste Policy Act ("NWPA") of 1982 authorized the Secretary of Energy ("Secretary") to enter contracts with owners and generators of high-level radioactive waste and spent nuclear fuel ("SNF") under which the private parties were to pay the Secretary statutorily imposed fees in return for which the Secretary, "beginning not later than January 31, 1998, will dispose of the high-level radioactive waste or [SNF] involved...." 42 U.S.C. § 10222(a)(5)(B) (1994). Petitioners are utilities and state commissions who paid fees to the Secretary under the statute. They seek review of the Department of Energy's ("DOE") final interpretation declaring that the Department has no obligation to perform its part of the contractual bargain. We conclude that the Department's interpretation is not valid and we therefore allow the petition for review.

Background

In the NWPA, Congress created a comprehensive scheme for the interim storage and permanent disposal of high-level radioactive waste generated by civilian nuclear power plants. NWPA establishes that, in return for a payment of fees by the utilities, DOE will construct repositories for SNF, with the utilities generating the waste bearing the primary responsibility for interim storage of SNF until DOE accepts the SNF "in accordance with the provisions of this chapter." 42 U.S.C. § 10131(a)(5).

The NWPA requires the utilities to enter into standard

contracts with DOE for the disposal of the waste. According to the statute, the contracts shall provide that:

(A) following commencement of operation of a repository, the Secretary shall take title to the high-level radioactive waste or spent nuclear fuel as expeditiously as practicable upon the request of the generator or owner of such waste or spent fuel; and

(B) in return for the payment of fees established by this section, the Secretary, beginning not later than January 31, 1998, will dispose of the high-level radioactive waste or spent nuclear fuel as provided in this subchapter.

42 U.S.C. § 10222(a)(5). The final standard contract adopted by DOE, following notice and comment, states that "[t]he services to be provided by DOE under this contract shall begin, after commencement of facility operations, not later than January 31, 1998 and shall continue until such time as all SNF ... from the civilian nuclear power reactors specified ... has been disposed of." 10 C.F.R. § 961.11, Art. II (1996).

In 1993, several states and utilities became concerned about DOE's ability to meet its obligations under the NWPA. Therefore, they requested DOE to address its responsibilities under the NWPA, particularly section 302(a)(5), 42 U.S.C. § 10222(a)(5), and the January 31, 1998 deadline. Daniel Dreyfuss, Director of DOE's Office of Civilian Radioactive Waste Management, responded in a letter that DOE "does not have a clear legal obligation under the [NWPA] to accept [SNF] absent an operational repository or other facility." In February 1994, DOE's Secretary, Hazel O'Leary, indicated that, while at the time NWPA was enacted DOE "envisioned that it would have a waste management facility in operation and prepared to begin acceptance of [SNF] in 1998," DOE subsequently concluded it did not have "a clear legal obligation under the [NWPA] to accept [SNF] absent an operational repository or other facility constructed under the [NWPA]."

To address this issue, on May 25, 1994, DOE published a Notice of Inquiry on Waste Acceptance Issues ("NOI"), requesting the views of affected parties on matters relating to the continued storage of SNF at reactor sites beyond 1998. 59 Fed. Reg. 27,007 (1994). DOE presented its preliminary finding that it had "no statutory obligation to accept [SNF] beginning in 1998 in the absence of an operational repository or other facility constructed under the [NWPA]." *Id.* at 27,008. DOE did note, however, that the terms of the Standard Contract may have created such an expectation. *Id.*

On June 20, 1994, utility petitioners ("utilities") and state petitioners ("states") filed petitions for review against DOE. This Court dismissed the petitions, finding that the NOI did not constitute final agency action. *Northern States Power Co. v. DOE*, Nos. 94-1457, 94-1458, 94-1574 (D.C. Cir. July 28, 1995) (order granting motion to dismiss case).

On April 28, 1995, DOE issued its Final Interpretation. *Final Interpretation of Nuclear Waste Acceptance Issues*, 60 Fed. Reg. 21,793 (1995). In the Final Interpretation, DOE stated that it would not be able to begin taking SNF by January 31, 1998, the date established by the NWPA. *Id.* at 21,793-94. DOE concluded that it did not have an unconditional statutory or contractual obligation to accept high-level waste and spent fuel beginning January 31, 1998 in the absence of a repository or interim storage facility constructed under the NWPA. *Id.* The agency also determined that it had no authority under the NWPA to provide interim storage in the absence of a facility that has been authorized, constructed and licensed in accordance with the NWPA. *Id.* at 21,797. Finally, DOE declared that, even if it did have an unconditional obligation under the statute, the Delays Clause

of the Standard Contract would provide an administrative remedy for DOE's failure to satisfy an obligation under the statute. *Id.*

Petitioners and intervenors then filed their petitions for review of the Final Interpretation.

Analysis

In reviewing an agency's construction of a statute entrusted to its administration, we follow the two-step statutory analysis established in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1984). First, we ask whether Congress has spoken unambiguously to the question at hand. If it has, then our duty is clear: "We must follow that language and give it effect." *Wisconsin Elec. Power Co. v. DOE*, 778 F.2d 1, 4 (D.C. Cir. 1985). If not, we consider the agency's action under the second step of *Chevron*, deferring to the agency's interpretation if it is "reasonable and consistent with the statute's purpose." *Nuclear Info. Resource Serv. v. NRC*, 969 F.2d 1169, 1173 (D.C. Cir. 1992) (quoting *Chemical Mfrs. Ass'n v. EPA*, 919 F.2d 158, 162-63 (D.C. Cir. 1990)). We now apply that review to the Department's interpretation of section 302(a)(5)(B).

Section 302(a)(5)(B) states that "in return for the payment of fees . . . [DOE], beginning not later than January 31, 1998, will dispose of the [SNF]. . . ." The states and utilities contend that this provision means what it says: in return for the payment of fees to the utilities, DOE will begin accepting SNF not later than January 31, 1998. DOE argues that this language does not in fact require it to begin to dispose of SNF by January 31, 1998; rather, the agency contends that this obligation is further conditioned on the availability of a repository or other facility authorized, constructed, and licensed in accordance with the NWPA. DOE contends that this is the only interpretation possible when one examines the statute as a whole.

To support this interpretation, the Department first argues that Congress's use of the term "dispose" in section 302(a)(5)(B), which provides that DOE "will dispose of the high-level radioactive waste or spent nuclear fuel involved as provided in this subchapter," presupposes the availability of a repository. Although conceding that the statute does not define "dispose," DOE notes that the statute does define "disposal" as "the emplacement in a repository of . . . spent nuclear fuel . . . with no foreseeable intent of recovery." 42 U.S.C. § 10101(9). DOE contends that "dispose" is simply a different grammatical form of "disposal," and that Congress must have intended the two terms be interpreted consistently. Thus, it argues, section 302 must require a repository be operational before DOE may begin accepting SNF.

We disagree. The phrase "dispose of" is a common term. It has a common meaning. For example, WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY UNABRIDGED 654 (1961) defines it as meaning, among other things, "to get rid of; throw away; discard." Admittedly, that and other dictionaries list other definitions. Each of those definitions, however, is consistent with the one set forth and not consistent with a limitation for placing the object of the phrase "in the disposal." There is no indication in the statute that Congress intended the words to be used in any but their common sense. See *McNally v. United States*, 483 U.S. 350, 358-59 (1987) (interpreting commonly used phrase according to "common understanding" where Congress had "not indicat[ed]" an intent to depart from it). Indeed, the very fact that Congress defined "disposal" restrictively and did not define "dispose" bears mute testimony to the strong possibility that Congress intended the former as a term of art, the latter as common English. Indeed, DOE itself has previously concluded that the statutory definition of "disposal" was not intended to

define "dispose of." In an April 1, 1987 letter, DOE's general counsel, although responding to a different issue, wrote "we doubt that the[se] terms were intended to have identical meanings." Furthermore, if DOE's obligation to dispose of waste was linked exclusively to the Act's definition of "disposal" then that obligation would be conditioned only upon the availability of a repository. However, Article II of the Standard Contract provides that DOE will provide its services after commencement of "facility" operations, 10 C.F.R. 961.11, with "facility" being defined as including both a repository and "such other facilit[ies] to which spent nuclear fuel and/or high-level radioactive waste may be shipped by DOE prior to its transportation to a disposal facility." *Id.* at Article I. It is difficult to see how that paragraph and the Department's interpretation of the statutory section can sensibly coexist.

Perhaps more importantly, we must interpret the section in light of the whole statutory scheme. See *Bailey v. United States*, 116 S. Ct. 501, 506 (1995) (observing that a court must "consider not only the bare meaning of the word but also its placement and purpose in the statutory scheme.") In the scheme before us, indeed in another subsection of the very section under review, Congress used even the elsewhere narrowly defined "disposal" to encompass more than "emplacement in a repository of . . . spent nuclear fuel . . . with no foreseeable intent of recovery." That is, in section 302(d), 42 U.S.C. § 10222(d), Congress authorizes the Secretary to make expenditures "for purposes of radioactive waste disposal activities," and expressly includes within the ambit of authorized "disposal" activities those conducted not only in connection with repositories, but also with "any . . . monitored retrievable storage facility or test and evaluation facility constructed under this chapter." 42 U.S.C. § 10222(d)(1). Therefore, even if we look to Congress's use of "disposal" to enlighten our interpretation of "dispose of," we still find that Congress has not evidenced limited usage for which the Department argues.

DOE next argues that subsections (A) and (B) of 302(a)(5) are not independent provisions, but rather must be read together because taking title to the waste cannot be separated from the disposal activities. To support this proposition, DOE cites section 302(a)(1), which describes the Standard Contract as "for the acceptance of title, subsequent transportation, and disposal of such waste or spent fuel" and section 123, which provides that "[d]elivery and acceptance by the Secretary, of any high-level radioactive waste or spent nuclear fuel for a repository constructed under this part shall constitute a transfer to the Secretary of title to such waste and spent fuel." 42 U.S.C. § 10143. Respondent contends that these provisions evince Congress's intent that DOE take title to the waste before proceeding with disposal. According to DOE, any other interpretation of these sections would result in an anomaly in which one party would have ownership of the SNF while another party would have physical control of it.

We do not find this argument persuasive. Sections 302(a)(5)(A) and (B) clearly set forth two independent requirements. These separate obligations are independent of whether DOE holds title to SNF when it begins to dispose of the material. The duties imposed on DOE under subsections (A) and (B) are linked to different events and are triggered at different times. DOE's duty under subsection (A) to take title to the SNF is linked to the commencement of repository operations and is triggered when a generator or owner of SNF makes a request to DOE. DOE's duty under subsection (B) to dispose of the SNF is conditioned on the payment of fees by the owner and is triggered, at the latest, by the arrival of January 31, 1998. Nowhere, however, does the statute indicate that the obligation established in subsection

(B) is somehow tied to the commencement of repository operations referred to in subsection (A).

This conclusion is reinforced by the placement of the two requirements in the Standard Contract. DOE's obligation to dispose of SNF under section 302(a)(5)(B) is set forth in Article II—Scope, 10 C.F.R. § 961.11, whereas DOE's obligation to take title to SNF under section 302(a)(5)(A) is set forth in Article VII—Title. *Id.* In addition, contrary to DOE's assertions, it is not illogical for DOE to begin to dispose of SNF by the 1998 deadline and yet not take title to the SNF until a later date. As the utilities point out, it is not unusual, particularly in the nuclear area, to recognize a division between ownership of materials and other obligations relating to such materials. For example, the Nuclear Regulatory Commission recognizes a distinction between the ownership of nuclear materials and the right to possess or use such materials. See also 10 C.F.R. § 70.20; 10 C.F.R. § 40.21.

In fact, a comparison of paragraphs (A) and (B) argues against the Department's position. In (A), Congress expressly conditioned the obligation of the Secretary on the commencement of the operation of a repository. In (B), Congress imposed no such condition, but rather directed the beginning of the Secretary's duty as "not later than January 31, 1998," without qualification or condition. The only limitation placed on the Secretary's duties under (B) is that that duty is "in return for the payment of fees established by this section." The Department's treatment of this statute is not an interpretation but a rewrite. It not only blue-pencils out the phrase "not later than January 31, 1998," but destroys the *quid pro quo* created by Congress. It does not survive the first step of the *Chevron* analysis. 467 U.S. at 842-43. Under the plain language of the statute, the utilities anticipated paying fees "in return for [which] the Secretary" had a commensurate duty. She was to begin disposing of the high-level radioactive waste or SNF by a day certain. The Secretary now contends that the payment of fees was for nothing. At oral argument, one of the panel compared the government's position to a Yiddish saying: "Here is air; give me money," and asked counsel for the Department to distinguish the Secretary's position. He found no way to do so, nor have we.

Finally, respondent asserts that reading subsection (B) as creating an unconditional obligation cannot be reconciled with other requirements of the statute, noting that the NWPA provides a complex scheme for the authorization, construction and licensing of a repository or monitored retrieval storage facility. DOE contends that "many contingencies facing the commencement of repository operations strongly undercut the assumption that Congress intended to require disposal by 1998 no matter what the outcome."

Although Congress anticipated the existence of a repository by 1998, the fact that such a repository does not exist does not make subsection (B) illogical; it simply affects the remedy we can provide. We agree with DOE that Congress contemplated a facility would be available by 1998; however, that Congress contemplated such a facility would be available does not mean that Congress conditioned DOE's obligation to begin acceptance of SNF on the availability of a facility. It does not make sense to assert that Congress would express an intent to exempt DOE from the January 31, 1998 deadline by including specific statutory procedures regarding the siting and development of a repository in the NWPA. Rather, these prerequisites evince a strong congressional intent that DOE's various obligations be performed in a timely manner. See, e.g., *Tennessee v. Herrington*, 806 F.2d 642, 648 (6th Cir. 1986) ("[T]he overall structure of the Act does reveal a consistent concern for timely implementation of the disposal provisions."), *cert. denied*, 480 U.S. 946 (1987). DOE's inter-

pretation of the provisions does not harmonize them. Instead, its interpretation reads into section 302(a)(5)(B) language that appears only in section 302(a)(5)(A) and reads out of section 302(a)(5)(B) language that actually appears in that provision.

It is premature to determine the appropriate remedy, particularly as to the interaction between Article XI and Article XVI of the Standard Contracts, as DOE has not yet defaulted upon either its statutory or contractual obligation. We therefore will remand this matter for further proceedings consistent with this opinion.

Conclusion

In conclusion, we hold that the petitioners' reading of the statute comports with the plain language of the measure. In contrast, the agency's interpretation renders the phrase "not later than January 31, 1998" superfluous. Thus, we hold that section 302(a)(5)(B) creates an obligation in DOE, reciprocal to the utilities' obligation to pay, to start disposing of the SNF no later than January 31, 1998. The decision of the Secretary is vacated, and the case is remanded for further proceedings consistent with this opinion.

Citizens for a Better Environment v. Steel Co. No. 96-1136 (7th Cir. July 23, 1996)

The court holds that an environmental organization may bring a citizen suit against a steel manufacturing company under Emergency Planning and Community Right-To-Know Act (EPCRA) §§312 and 313 for failure to timely submit inventory and toxic release forms, even though the company subsequently filed its overdue forms. The court first notes that EPCRA's citizen-suit provision contains no temporal limitation, and its plain language does not point clearly to the present tense. The court then holds that the citizen-suit provision authorizes citizens suits not only for failure to complete and submit forms, but also for failure to complete and submit forms in accordance with the statute's deadline requirements. Further, the language of EPCRA's entire enforcement provision is not cast in the present tense. The court notes that the Federal Water Pollution Control Act's present-tense language shows that Congress knows how to require allegations of an ongoing violation as a condition of a citizen suit when it sees fit. The absence of language in EPCRA limiting citizen suits to ongoing violations, and Congress' choice of language specifically referring to past violations, strongly indicate that a cause-of-action exists under EPCRA for violations that are not ongoing when a citizen suit is filed. The court next holds that recognizing that citizens may sue under EPCRA even after violators have submitted overdue filing does not render the statute's 60-day notice provision gratuitous. Notice gives an alleged violator an opportunity to correct the citizen's information and to limit its exposure by filing late reports, and it preserves the Environmental Protection Agency's enforcement discretion by giving the Agency a chance to take enforcement action if it chooses. Further, if citizen suits could be fully prevented by "completing and submitting" forms, however late, citizens would have no real incentive to incur the costs of learning about EPCRA, investigating suspected violators, and analyzing information.

Counsel for Plaintiff

John Hundley
Hundley & Brusslan
14 E. Jackson Blvd., Ste. 1320, Chicago IL 60604
(312) 427-3777

Counsel for Defendant

Leo P. Dombrowski
Wildman, Harrold, Allen & Dixon
225 W. Wacker Dr., 30th Fl., Chicago IL 60606
(312) 201-2562

Before ESCHBACH, ROVNER, and EVANS, *Circuit Judges*.
EVANS, *Circuit Judge*. In this case we examine for the first time the citizen enforcement provisions of the Emer-



State of Wisconsin
1997 - 1998 LEGISLATURE

LRB-5005/1

KSH.:....

King

1997 BILL

Gen Catalog

D-NOTE

2/24 8 a.m. possible

1 AN ACT relating to: escrowing certain payments to the federal government
2 for the disposal of radioactive waste and making an appropriation.

Analysis by the Legislative Reference Bureau

Under current federal law, the secretary of the federal department of energy is authorized to enter into contracts with persons who generate or hold title to high-level radioactive waste, or spent nuclear fuel. The contracts govern the acceptance of title, subsequent transportation and disposal of the waste or spent fuel by the federal department of energy, in return for the payment of certain specified fees to the federal department of energy. The obligation of the federal department of energy to dispose of the waste or spent fuel is required under federal law to begin not later than January 31, 1998.

Under this bill, if the public service commission (commission) determines that the federal department of energy is not meeting its obligations under these contracts with state agencies or persons in this state, the commission may direct the state agencies or persons to pay to the commission, instead of the federal department of energy, the fees that are due under the contracts for the period during which the contractual obligations are not met. The bill requires the commission to deposit any funds received under the bill in a state segregated fund, the nuclear waste escrow fund, established by the bill. Upon a showing by the secretary of the federal department of energy that it is meeting its obligations under the contract, the commission shall pay, to the secretary of the federal department of energy, all funds contained in the nuclear waste escrow fund and shall cease accepting additional funds under the bill.

BILL

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.155 (1) (r) of the statutes is created to read:

2 20.155 (1) (r) *Nuclear waste escrow fund.* From the nuclear waste escrow fund,
3 a sum sufficient to make the payments under s. 196.497 (11s) (b).

4 **SECTION 2.** 25.17 (1) (k) of the statutes is created to read:

5 25.17 (1) (k) Nuclear waste escrow fund (s. 25.469);

6 **SECTION 3.** 25.17 (3) (dt) of the statutes is created to read:

7 25.17 (3) (dt) Invest the funds of the nuclear waste escrow fund only in
8 investments appropriate for an escrow fund, such as interest-bearing accounts at
9 federally insured banking institutions or short-term direct obligations of the
10 United States government.

11 **SECTION 4.** 25.469 of the statutes is created to read:

12 **25.469 Nuclear waste escrow fund.** There is established a separate
13 nonlapsible trust fund designated as the nuclear waste escrow fund, to consist of all
14 moneys received by the public service commission under s. 196.497 (11s) (a).

15 **SECTION 5.** 196.497 (11s) of the statutes is created to read:

16 196.497 (11s) **ESCROWING OF CERTAIN PAYMENTS TO THE FEDERAL GOVERNMENT.** (a)
17 If the commission determines that the federal department of energy is not meeting
18 its obligations under contracts entered into under 42 USC 10222 with state agencies
19 or with persons in this state, the commission may direct the state agencies or persons
20 to pay to the commission, instead of the federal department of energy, the fees due
21 under 42 USC 10222 for the period during which those contractual obligations are

BILL

1 not met. The commission shall deposit any funds received under this paragraph in
2 the nuclear waste escrow fund.

3 (b) Upon a showing by the secretary of the federal department of energy that
4 it is meeting its obligations under contracts entered into under 42 USC 10222, the
5 commission shall pay to the secretary of the federal department of energy ^gall funds
6 contained in the nuclear waste escrow fund and shall cease accepting additional
7 funds under par. (a).

8 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-5005/1dn

KSH:.....
King

Please review the draft carefully to ensure that it is consistent with your intent. In particular, please consider the following:

✓ 1. Effective date. I did not add a specific effective date and, as a result, the bill will take effect on the day after publication. Under the bill, the commission could then direct the payment of any unpaid funds to the escrow account for the period for which the federal government was not meeting its contractual obligations (going back to the January 31, 1998, date, as long as the utilities hadn't already paid the funds to the federal government by the time the bill takes effect.)

2. Segregated fund. Because of constitutional issues ~~requiring~~ ^{required} the expenditure of state funds only by appropriations, I ~~had~~ ^{required} the escrowed moneys ~~be~~ ^{to} deposited in a newly created state segregated fund and created an appropriation for the commission to pay the federal government from this fund when the federal government starts meeting its obligations under the contracts. Although it may not be constitutionally required to run this money through a state fund and a state appropriation because it is arguably not state money, this was a relatively easy way to accomplish your intent. By having the moneys deposited in a state segregated fund, it makes it clear who has what responsibilities with respect to the funds and how the funds should be accounted for. If you object to having the money deposited in a segregated fund in the state treasury, please let me know and we can discuss possible alternatives.

3. Investment of the funds. Once the funds are deposited in the newly ^{g A} created state segregated fund, the investment board would have control over the investment of the funds. I added language to the bill which allows the investment board to invest the funds of the nuclear waste escrow fund only in investments appropriate for an escrow fund, such as interest-bearing accounts at federally ^{insured} banking institutions or short-term direct obligations of the ~~United States~~ ^{g A} government. Let me know if this investment authority provision is in any way inconsistent with your intent.

4. Trigger for the payment of the escrowed funds. I did not use the Minnesota language for triggering the payment of the escrowed funds to the secretary of energy: "a showing by the secretary [of the federal department of energy] that a federal repository for the long-term storage and permanent disposal of spent nuclear fuel and high-level radioactive waste is operating and currently accepting such materials". Instead, I used more general language: "a showing by the secretary of the federal department of energy that it is meeting its obligations under contracts entered into under 42 USC 10222".

5. PSC review. I have a call in to Susan Stratton of the PSC regarding the bill. I would like to ask her a couple of questions regarding the utilities in this state that have entered into contracts under 42 USC 10222 and regarding the process that I set up in this bill. Apparently, the contracts themselves contain provisions governing default and remedies in case of a breach of contract. I would like to make sure that the escrow approach taken in the bill is consistent with the language governing defaults in the contract. If, as a result of these discussions, changes are necessary to the bill, I will contact you to discuss them and redraft the proposal or draft an amendment to it, as appropriate.

Please do not hesitate to call me if you have any questions on the draft or if any part of it is inconsistent with your intent.

K. Scott Hubli
Legislative Attorney
266-0135

LD-Note

1997 - 1998 LEGISLATURE

LRB-5005/1

KSH:kmg:lp

1999

LRB-0201/1

KSH & RAC: jlg

1997 SENATE BILL 533

March 26, 1998 - Introduced by Senator COWLES, cosponsored by Representative DUFF. Referred to Committee on Agriculture and Environmental Resources.

Reger

- 1 AN ACT to create 20.155 (1) (r), 25.17 (1) (k), 25.17 (3) (dt), 25.469 and 196.497
- 2 (11s) of the statutes; relating to: escrowing certain payments to the federal
- 3 government for the disposal of radioactive waste and making an appropriation.

Analysis by the Legislative Reference Bureau

Under current federal law, the secretary of the federal department of energy is authorized to enter into contracts with persons who generate or hold title to high-level radioactive waste, or spent nuclear fuel. The contracts govern the acceptance of title, subsequent transportation and disposal of the waste or spent fuel by the federal department of energy, in return for the payment of certain specified fees to the federal department of energy. The obligation of the federal department of energy to dispose of the waste or spent fuel is required under federal law to begin not later than January 31, 1998.

Under this bill, if the public service commission (commission) determines that the federal department of energy is not meeting its obligations under these contracts with state agencies or persons in this state, the commission may direct the state agencies or persons to pay to the commission, instead of the federal department of energy, the fees that are due under the contracts for the period during which the contractual obligations are not met. The bill requires the commission to deposit any funds received under the bill in a state segregated fund, the nuclear waste escrow fund, established by the bill. Upon a showing by the secretary of the federal department of energy that it is meeting its obligations under the contract, the commission shall pay, to the secretary of the federal department of energy, all funds

to the federal department of energy

SENATE BILL 533

contained in the nuclear waste escrow fund and shall cease accepting additional funds under the bill.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.155 (1) (r) of the statutes is created to read:

2 20.155 (1) (r) *Nuclear waste escrow fund.* From the nuclear waste escrow fund,
3 a sum sufficient to make the payments under s. 196.497 (11s) (b).

4 **SECTION 2.** 25.17 (1) (k) of the statutes is created to read:

5 25.17 (1) (k) *Nuclear waste escrow fund* (s. 25.469);

6 **SECTION 3.** 25.17 (3) (dt) of the statutes is created to read:

7 25.17 (3) (dt) Invest the funds of the nuclear waste escrow fund only in
8 investments appropriate for an escrow fund, such as interest-bearing accounts at
9 federally insured banking institutions or short-term direct obligations of the U. S.
10 government.

11 **SECTION 4.** 25.469 of the statutes is created to read:

12 **25.469 Nuclear waste escrow fund.** There is established a separate
13 nonlapsible trust fund designated as the nuclear waste escrow fund, to consist of all
14 moneys received by the public service commission under s. 196.497 (11s) (a).

15 **SECTION 5.** 196.497 (11s) of the statutes is created to read:

16 **196.497 (11s) ESCROWING OF CERTAIN PAYMENTS TO THE FEDERAL GOVERNMENT.** (a)
17 If the commission determines that the federal department of energy is not meeting
18 its obligations under contracts entered into under 42 USC 10222 with state agencies
19 or with persons in this state, the commission may direct the state agencies or persons
20 to pay to the commission, instead of the federal department of energy the fees due

SENATE BILL 533

1 under 42 USC 10222 for the period during which those contractual obligations are
2 not met. The commission shall deposit any funds received under this paragraph in
3 the nuclear waste escrow fund.

4 (b) Upon a showing by the secretary of the federal department of energy that
5 ^y it is meeting its obligations under contracts entered into under 42 USC 10222, the
6 commission shall pay to the secretary of the federal department of energy all funds
7 contained in the nuclear waste escrow fund and shall cease accepting additional
8 funds under par. (a). ✓

9 (END) ✓

the federal department of energy ✓

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

0201/ldh
LRB-5005/ldh

KSH/ldh:lp

Jlg
+ RAC

new date } Monday, March 23, 1998

For your review, we are attaching ^{a similar version of} the drafter's note that accompanied 1997 Senate Bill 5033:

Please review the draft carefully to ensure that it is consistent with your intent. In particular, please consider the following:

1. Effective date. I did not add a specific effective date and, as a result, the bill will take effect on the day after publication. Under the bill, the commission could then direct the payment of any unpaid funds to the escrow account for the period for which the federal government was not meeting its contractual obligations (going back to the January 31, 1998, date, as long as the utilities hadn't already paid the funds to the federal government by the time the bill takes effect.)

2. Segregated fund. Because of constitutional issues requiring the expenditure of state funds only by appropriations, I required the escrowed moneys to be deposited in a newly created state segregated fund and created an appropriation for the commission to pay the federal government from this fund when the federal government starts meeting its obligations under the contracts. Although it may not be constitutionally required to run this money through a state fund and a state appropriation because it is arguably not state money, this was a relatively easy way to accomplish your intent. By having the moneys deposited in a state segregated fund, it makes it clear who has what responsibilities with respect to the funds and how the funds should be accounted for. If you object to having the money deposited in a segregated fund in the state treasury, please let me know and we can discuss possible alternatives.

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the federal department of energy

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K. Scott Hubli
Legislative Attorney
266-0135

RAC

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0201/1dn
KSH&RAC;jlg:jf

Friday, September 18, 1998

For your review, we are attaching a similar version of the drafter's note that accompanied 1997 Senate Bill 533:

1. Effective date. I did not add a specific effective date and, as a result, the bill will take effect on the day after publication. Under the bill, the commission could then direct the payment of any unpaid funds to the escrow account for the period for which the federal government was not meeting its contractual obligations (going back to the January 31, 1998, date, as long as the utilities hadn't already paid the funds to the federal government by the time the bill takes effect.)

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K. Scott Hubli
Legislative Attorney
266-0135

Richard A. Champagne
Legislative Attorney
266-9930

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 9/18/98

To: Senator Cowles

Relating to LRB drafting number: LRB-0201

Topic

Disposal of radioactive waste

Subject(s)

Public Util. - misc.

1. **JACKET** the draft for introduction _____

in the **Senate** or the **Assembly** _____ (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____
A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____
If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Richard A. Champagne, Legislative Attorney
Telephone: (608) 266-9930