



ID# 14334
MJ

Texas Low-Level Radioactive Waste Disposal Authority

RQ-267

November 25, 1991

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Opinion Committee

Ms. Madeline Johnson, Chair
Opinions Committee
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

Dear Ms. Johnson:

At its meeting on November 19, 1991, the Authority's Board of Directors authorized the staff to request an Attorney General's opinion interpreting Subchapter J, Chapter 402, Health and Safety Code as it relates to impact assistance and planning and implementation fees.

The Authority has jurisdiction over the selection, construction, operation, financing, and closing of a low-level radioactive waste disposal site (Section 402.051, Health and Safety Code). The Authority's expenses must be paid from a variety of sources, including waste disposal fees and planning and implementation fees (Section 402.271). Waste disposal fees will be collected from "each person who delivers low-level waste to the authority for disposal" (Section 402.272(a)). Planning and implementation fees must be paid, beginning on January 1, 1992, by persons licensed to possess or use radioactive material or to operate a nuclear power plant in the state (Section 402.2721(a)). At least \$15 million of the planning and implementation fees collected in state fiscal years 1992-1993 must be deposited in the general revenue fund (Section 401.306(b)).

Waste disposal fees must be sufficient to allow the Authority to recover its costs and compensate local political subdivisions for impacts associated with the disposal site (Section 402.273(a)). The amount designated for impact assistance may not be less than 10 percent of the annual gross receipts (Section 402.273(c)).

The Board of Directors has recently adopted rules (enclosed) to implement the planning and implementation fees established by Section 402.2721. Collection of these fees will tend to reduce the amount of expenses that the Authority must recover from disposal fees once a disposal site is opened, and this will in turn reduce the amount of impact assistance that will

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be available to affected political subdivisions. This does not seem to be the overall intent of Chapter 402, Health and Safety Code.

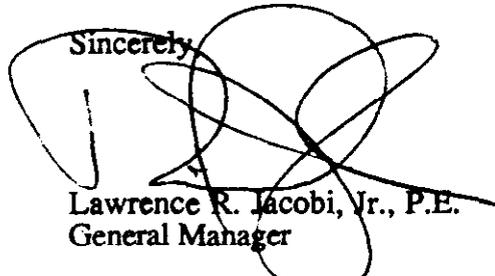
We ask the Attorney General's opinion on the following issues:

(a) Does the Authority's Board of Directors have the statutory authority to order by rule that not less than 10 percent of those planning and implementation fees assessed and deposited to the low-level waste fund be set aside or designated for impact assistance?

(b) If the answer to (a) is yes, when could such assistance funds be paid to affected political subdivisions?

(c) If the answer to (a) is yes, what are the available financial and budgetary mechanisms available to the Authority, the State Comptroller, and the State Treasury to set aside this money?

Sincerely,



Lawrence R. Jacobi, Jr., P.E.
General Manager

LRJ/LHM/rd

Enclosure

Title 31. NATURAL RESOURCES

Part XV. Texas Low-Level Radioactive Waste Disposal Authority

Chapter 450. Planning and

Implementation Fees

§450.1. Purpose. The purpose of this chapter is to adopt, for this state's fiscal years 1992-1993, planning and implementation fees in the amount of:

(1) \$10,000,000 to recover the authority's expenses incurred prior to September 1, 1991, and

(2) \$9,034,098 to recover the authority's estimated legislative appropriations for the period September 1, 1991, through August 31, 1993.

§450.2. Applicability.

(a) This chapter applies to:

(1) persons licensed by the United States Nuclear Regulatory Commission to own or operate a production or utilization facility or other fixed nuclear facility in this state; and

(2) persons required to be licensed by the department to possess or use radioactive material and who generated and shipped or caused to have shipped by others, 7.5 cubic feet or more of radioactive material to a licensed low-level waste disposal facility during the period January 1, 1990 through December 31, 1991.

(b) This chapter does not apply to health care providers or institutions of higher education.

§450.3. Assessed Fees.

(a) Fees shall be assessed to persons subject to §450.2.(a)(1) of this title (relating to Applicability), as follows:

	FY 1992	FY 1993	Totals
Houston Lighting and Power as managing partner of the South Texas Project	\$3,568,893	\$5,948,156	\$9,517,049
Texas Utilities as owner of the Comanche Peak Project	\$3,568,893	\$5,948,156	\$9,517,049
			\$19,034,098

(b) For each year of this state's fiscal years 1992-1993, fees shall be assessed to persons subject to §450.2(a)(2), as follows: \$500 plus an additional \$1.00 for every cubic foot in excess of 7.5 cubic feet of radioactive material generated and shipped.

(c) For purposes of determining shipment volumes under subsection (b) of this section, the board shall rely on the manifest information management system data base maintained by the United States Department of Energy and/or the Texas manifest reporting system maintained by the department, as appropriate, and these records shall be determinative for purposes of assessing fees under subsection (b) of this section.

§450.4. Collection of Fees.

(a) Fees assessed by the board shall be collected by the department and deposited in the state treasury in accordance with the Health and Safety Code, §§401.301, 401.306, and 402.0721.

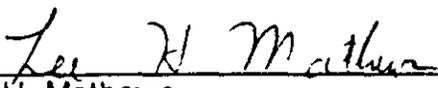
(b) Fees assessed under this chapter shall be payable as follows:

(1) for state fiscal year 1992, equal quarterly installments on or before January 1, 1992; April 1, 1992; and July 1, 1992;

(2) for state fiscal year 1993, one payment on or before October 1, 1992 in an amount equal to a quarterly installment under paragraph (1) of this subsection, and one payment on or before June 1, 1993 in an amount equal to the fee due in fiscal year 1993.

This agency certifies that the section as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas on November 27, 1991.



Lee H. Mathews
Deputy General Manager
and General Counsel