



## Policy Issues of Pacific Nuclear Waste Disposal--Jon Van Dyke

The goal of this project has been to provide additional information to promote discussion and to assist in the development of a consensus on this topic in the region. Significant questions that need to be addressed are the extent of the risks created by nuclear waste disposal in the ocean, how liability should be determined and assessed for harm that does occur, and what institutional arrangements should be established to regulate this activity if it is to go forward. Current projects are now underway in the following areas:

1. An Overview of the Legal Constraints on the Disposal of Radioactive Wastes in International Waters. This paper will survey and analyze the substantive theories and procedural obstacles that might apply to an attempt to challenge the disposal of nuclear wastes by one nation in international waters. Caselaw from international tribunals and national courts are being examined to determine the types of tort theories that have been accepted. Procedural problems (standing, ripeness, which court, admissibility of evidence, sovereign immunity, act of state doctrine, etc.) are also being surveyed to determine whether such a suit would be possible. This study also looks at the problems of proof, focusing on what types of evidence would currently be admissible, given the disputes within the scientific, medical, and marine biology communities on the harm presented by radioactivity in the ocean environment.

2. A Closer Look at the London Dumping Convention. The paper described above will look at the treaty and caselaw governing ocean disposal of nuclear wastes. This study will take a closer look at the London Dumping Convention of 1972 which is the paramount treaty in this field. This study will look at the negotiating history of the document, as well as the attempts that have been made during the last ten years to flesh out its vague terms by the International Atomic Energy Agency and the Inter-Governmental Maritime Consultative Organization (IMCO). This study is important because a number of the nations in the region are now considering whether they should join the London Dumping Convention or form instead a regional dumping organization for the Pacific.

3. How Should Harm to the Future Be Accommodated in Modern Legal Systems? Nuclear waste apparently presents a new conceptual problem to us--how should an activity that provides a present benefit but will probably impose a harm on future generations be dealt with. We do not have much

experience with this issue, although analogies are emerging in cases involving asbestos, DES, agent orange, and other toxic materials. Radiation injuries appear to be even more complex because of the long time frame that we are dealing with and because of the difficult causation problems. This study will examine the economic literature on benefit-cost analysis as well as the legal literature on related problems and make suggestions on how we should structure our legal systems to internalize the real costs of our present benefits rather than simply pass off these costs to future generations with an "out-of-sight, out-of-mind" approach.

4. Nuclear Energy and the Pacific: A Special Relationship. This paper is being written with Kirk Smith of RSI and Suliana Siwatibau of the Fiji Department of Energy for the workshop on "Nuclear-Electric Power in the Asia-Pacific Region" in January 1983. It examines the contact Pacific islanders have had with nuclear radiation during the past 36 years to determine the basis for the current skepticism and mistrust on this issue.

5. Additional Funding for Work in this Area. A "pre-proposal" has been generated to seek additional funding for further research into the regional concerns on this issue. Because the policy makers of the region do not find agreement in the medical and scientific literature on the nature of the risks of nuclear waste disposal, they have a basis for disagreeing on the approach to take toward this subject. No institutional arrangements can be developed until a greater consensus emerges. If additional funding could be found, then the Center could play a constructive role in providing additional information to policy makers.

This research is currently funded through FY 1983 by the Environment and Policy Institute and the Pacific Islands Development Program. Additional funding has been obtained from the University of Hawaii School of Law, the Sea Grant College Program, and the University of Hawaii-Japan Foundation. Sherry Broder, a Honolulu attorney, is working as a consultant for this research, and three law students and three East-West Center grantees are involved in providing background papers and other research activities.

*November 1982*