

Volume 19, Number 5 September/October 2004

Texas Compact/Texas

Texas Issues Notice of Administrative Deficiencies to WCS

On September 17, pursuant to state regulations, the Texas Commission on Environmental Quality issued to Waste Control Specialists an Administrative Notice of Deficiency in regard to the company's August 2004 application to operate a low-level radioactive waste disposal facility in Andrews County, Texas.

The letter notifying WCS of the administrative deficiencies explains that "[t]he test of administrative completeness is a determination whether there is sufficient information to allow a technical review . . . If the administrative review results in a finding that the information presented is a statement of the applicant's belief or conclusion, unsubstantiated by reviewable data, the application does not meet the test of sufficient information and is administratively deficient." A 32-page attachment that details the identified administrative deficiencies in the license application was attached to the letter from TCEQ to WCS. In addition, a second 3-page attachment was included that notes "areas where additional information/clarification will be necessary to further the comparative merit review and technical review of the application." These areas are not part of the agency's determination of administrative incompleteness, but are being

identified in advance of subsequent reviews in an effort to expedite the overall review process.

Pursuant to state regulations, WCS has 30 days from the date of TCEQ's letter to submit the requested information. Failure to timely do so will cause the application to be returned to WCS and removed from further review by the agency.

A copy of the Notice of Administrative Deficiency has been posted on the Texas Commission on Environmental Quality's website at http://www.tnrcc.state.tx.us/ permitting/wasteperm/uicrw/rad/.

For additional information, please contact Susan Jablonski of the Texas Commission on Environmental Quality at (512) 239-6731.

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As part of that mission, the LLW Forum publishes a newsletter, news flashes, and other publications on topics of interest and pertinent developments and activities in the states and compacts, federal agencies, the courts and waste management companies. These publications are available to members and to those who pay a subscription fee.

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Low-Level Radioactive Waste Forum, Inc.

LLW Notes Volume 19, Number 5 September/October 2004 Editor and Writer: Todd D. Lovinger Layout and Design: Rita Houskie, Central Interstate Low-Level Radioactive Waste Compact

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Key to Abbreviations U.S. Department of Energy DOE U.S. Department of Transportation DOT U.S. Environmental Protection Agency EPA U.S. General Accounting Office GAO U.S. Nuclear Regulatory Commission NRC Naturally-occurring and accelerator-produced NARM Naturally-occurring radioactive material NORM Code of Federal Regulations CFR

Low-Level Radioactive Waste Forum, Inc.

LLW Forum Meets in Buffalo, NY and Visits West Valley

The Low-Level Radioactive Waste Forum met in Buffalo, New York on September 20-21, 2004. A site visit to the West Valley facility was held in conjunction with the LLW Forum meeting, as was an Executive Committee meeting and Officers' Meeting.

Attendance

Approximately 51 persons attended the one and one-half day meeting, including 21 members of the Board of Directors representing all nine operating low-level radioactive waste disposal compacts and 10 states, six Federal Associate Members representing four different federal agencies, four Non-Federal Associate Members representing various companies, 10 other state and compact representatives, nine other individuals, and one staff member.

Agenda

The following agenda items were discussed at the Buffalo meeting:

- reports on new developments in states and compacts, including a focus session on the Texas siting process and another focus session on the recent settlement agreement concerning legal issues between the Central Interstate Low-Level Radioactive Waste Compact Commission and the State of Nebraska;
- responses to the U.S. Environmental Protection Agency's advanced notice of proposed rulemaking on alternative disposal options for low-activity and mixed low-level radioactive waste;

- the National Mining Association's white paper on the direct disposal of non-11e.(2) byproduct material in uranium mill tailing impoundments;
- the recently completed U.S. General Accounting Office report on the availability of low-level radioactive waste disposal capacity and future report on the storage of Class B and C and Greater-than-Class C waste;
- the status of the U.S. Department of Energy's Manifest Information Management System (MIMS) and the new Office of Commercial Disposition Options;
- facility status updates by Envirocare of Texas, Waste Control Specialists, US Ecology and Chem-Nuclear;
- the status of proposed legislation, S. 2763, on the treatment of accelerator-produced and other radioactive materials as byproduct material;
- the transportation of spent fuel;
- Yucca Mountain licensing and legal issues; and
- overlapping issues with the National Association of Attorneys General.

Executive Session

During the Executive Session, the Board received a financial report from the Treasurer and received and approved the 2005 budget. Discussion was held regarding the status of the grant from the U.S. Department of Energy and the filing of an application for a new grant. The organization's dues structure was discussed and a motion was approved to maintain the current dues structure except that Non-Federal Associate Membership dues will be reduced to \$5,000 per year, effective January 1, 2005. The

Low-Level Radioactive Waste Forum, Inc. continued

recent report by the U.S. General Accounting Office was also discussed, with no action being taken thereon.

Resolution

During the course of the meeting in Buffalo, attendees were presented an overview of proposed legislation, S.2763, to amend the Atomic Energy Act of 1954 to expand the definition of radioactive "byproduct material" to include: (1) discrete sources of radium-226 from commercial, medical, or research activities; (2) material made radioactive by particle accelerators; and (3) any discrete source of naturally occurring radioactive material (other than source material) that the U.S. Nuclear Regulatory Commission (NRC) determines would pose a threat similar to that posed by discrete radium-226 sources. Following discussion, the Board of Directors then passed a resolution that recognizes that there may be "a legitimate interest in providing for the federal regulation of discrete radium sources, accelerator-produced radioactive material, and similar materials that may pose a threat to homeland security," but which identifies potential unintended adverse consequences of the legislation as introduced including:

- potential elimination of the only disposal outlet for the majority of high-activity discrete radium sources in the nation, and
- potential roll back of Congressionally approved compact regulation of these materials that has provided for the safe disposal for nearly two decades.

In particular, the resolution "encourages the Senate Environment and Public Works Committee to work with the Congressionally approved compacts, states, and federal agencies to refine S. 2763 so that the unintended adverse consequences are avoided." For the full text of the resolution, and additional information on the legislation and responses thereto, see related story in the Congress section of this issue.

Future Meeting and Site Visit Dates

The next meeting of the LLW Forum will take place on March 14 – 15 in Salt Lake City, Utah. A site visit to the Envirocare facility will be held in conjunction with the meeting. Thereafter, the LLW Forum will meet on September 22 – 23 in Las Vegas, Nevada. There will be a site visit to Yucca Mountain and/or the Nevada Test Site on September 21. The 2006 meetings of the LLW Forum will be held at a location, to be determined, in the Southeast Compact region and in Austin, Texas. The Midwest Compact is cosponsoring the Texas meeting.

Northwest Compact/State of Utah

Utah Legislative Task Force Votes Against B/C Waste Ban

The Utah Hazardous Waste Regulation and Tax Policy Legislative Task Force held its final meeting at the state Capitol on October 19 to review its draft report and legislation being proposed by the task force. The 16-member panel of state senators and house members has been meeting for almost two years to study a wide range of nuclear waste issues in the State of Utah.

Task Force Actions

Class B and C Disposal The most contentious issue to be taken up by the task force has been whether or not to allow for the disposal of Class B and C waste in the State of Utah. Envirocare, which operates a low-level radioactive waste disposal facility in Tooele County, was issued a license to dispose of Class B and C waste by the Utah Department of Environmental Quality (DEQ) in July 2001. (See *LLW Notes*, July/ August 2001, pp. 6 - 9.) The license expires in 2006, but may be renewed by the Division of Radiation Control upon request by Envirocare. Under state law, approval from the legislature and Governor are required before the company can begin accepting such waste. To date, Envirocare has not actively solicited such approval.

In May of this year, following a four-hour hearing, the task force adopted a motion recommending that state lawmakers not approve the disposal of Class B and C waste within the state. (See *LLW Notes*, May/June 2004, pp. 8 - 10.) The motion was adopted after the committee had considered a half-dozen different motions and substitutes on the B/C waste disposal issue. One of the earlier motions, which was narrowly defeated, would have prohibited Class B and C waste acceptance permanently. Following passage of the motion, parties on both side of the issue expressed disappointment in the final outcome.

At Tuesday's meeting, the issue was again brought before the task force by State Senator Patrice Arent (D – Salt Lake) who introduced a bill for task force consideration that would have banned an entity from accepting Class B and C low-level radioactive waste. Following discussion, however, the task force voted against the proposed bill. Had the proposal—which lost by a single vote passed, the committee would have sent it to lawmakers for further action. Following the task force meeting, Senator Arent opened a bill titled, "Prohibition Against Class B and C Low-Level Radioactive Waste" and intends to continue to pursue the ban during the upcoming 2005 General Session.

Despite Tuesday's vote, an Envirocare official was quoted in the local press as stating that the company "has no plans" to pursue renewal of the Class B and C waste disposal permit. A poll by the Salt Lake Tribune in January of this year indicated that 86 percent of Utahns oppose higher levels of waste coming in to the state. Both major candidates for Governor also oppose allowing for the disposal of B and C waste within the state.

Other Actions During the course of the meeting, the task force approved its report on radioactive waste issues and determined to forward to the Legislature a proposed bill to address several issues as a result of the audit of the Department of Environmental Quality and to eliminate a tax exemption on mixed waste. (See LLW Notes, May/June 2004, pp. 8 - 10.) The task force approved language in the report that declares that low-level radioactive waste operations in the state "pose a lower risk than many other chemical and mining facilities that currently operate in the state." In addition, the task force included a recommendation in its report that, every five years beginning in 2006, the Radiation Control Board review whether enough money is being set aside to manage the Envirocare site after closure. The bill also contains a similar closure fund review provision for Utah's commercial hazardous waste facilities. However, the task force decided to defer any legislation governing ownership of the

States and Compacts continued

site during the "perpetual care" time period, which begins 100 years after cleanup and closure.

Background

The Hazardous Waste Task force was approved by the Utah legislature in early 2003 in response to a variety of bills introduced on radioactive and hazardous waste disposal issues. (See LLW Notes, March/April 2003, pp. 6-7.) The task force was given 19 months to study a wide range of nuclear waste issues in Utah, including whether Utah should accept more hazardous waste, how Utah facilities compare financially to out-of-state facilities, what obligations Utah has to accept waste based on interstate agreements, how to long-term manage waste facilities, whether to impose additional or higher taxes on certain types of waste management and disposal, and whether to impose a proposed ban on class B and C waste disposal.

During the course of the study, members visited disposal facilities and uranium mills, reviewed tax issues on various types of waste and facilities, and held public hearings and solicited public comment. The task force will report to lawmakers and make recommendations on a variety of issues, including a list of recommendations for waste treatment policies, fees and taxes, as well as proposed legislation during the November 2004 interim committee meetings.

For additional information about the task force members and the draft task force report (including the draft legislation), go to the Utah legislative website at http:// www.le.state.ut.us/asp/interim/ Commit.asp?Year=2003&Com=TSKHWR

For additional information, contact Bill Sinclair, Deputy Director, Utah Department of Environmental Quality, at (801) 536-4255.

Northwest Compact/Washington

Hanford Milestone Reached re Cleanup of Liquid Wastes in Aging Tanks

In late August, workers at the Hanford Nuclear Reservation celebrated the completion of a project to remove millions of gallons of liquid radioactive waste from aging, leak-prone tanks—a major milestone in the decades-long cleanup of Hanford. The project involved liquid waste contained in 149 tanks that had a single-wall construction, making them more susceptible to leaks as they aged.

The tanks, which were built from the 1940's to the 1960's, were designed to last about 20 years. Radioactivity from about 67 of them previously leaked into the soil, contaminating an aquifer and threatening the Columbia River that is less than 10 miles away. In response to complaints from the state, DOE and the state agreed to a courtapproved timetable for removing waste from the 29 remaining tanks, which involved pumping more than 3 million gallons of liquid waste out of the tanks and transferring it to newer, safer double-walled tanks. The deadline for transferring the waste was September 30.

Liquid waste remains in only two of the singleshell tanks—both of which were considered less critical. Plans call for both liquid and solid waste in those tanks to be removed simultaneously. Ninety percent of the waste from one of the tanks has already been removed. Work on the second tank will begin shortly. Thereafter, the focus will shift to removing solid waste from the tanks. DOE is required to have all the wastes removed from the single-walled tanks by 2018.

DOE officials say that they are committed to removing 99 percent of the waste from the tanks—which waste will then be turned into glass logs through a vitrification process for long-term disposal. However, environmental groups and the *(Continued on page 8)*

States and Compacts continued

Rocky Mountain Compact/ New Mexico

New Mexico Gives Preliminary Approval to Increased WIPP Capacity

On September 17, the New Mexico Environment Department preliminarily approved a permit modification request to allow for an increase in the available capacity at the Waste Isolation Pilot Plant (WIPP) from 54,000 cubic meters to 126,000 cubic meters of transuranic waste over a 10-year period. (The U.S. Congress placed a cap on the total amount of waste that may be disposed of at WIPP over the life of the facility at 175,600 cubic meters.) Final approval for the increase cannot become effective, however, until after the close of the public comment period on November 1, 2004.

The permit modification was requested as a result of DOE initiatives to speed-up the schedule for cleanup of the department's old nuclear weapons complex sites. Such initiatives were developed after the WIPP facility's current 10-year hazardous waste facility's permit was issued on October 27, 1999. The amendment request—which is being sought by DOE and its contractor, Washington TRU Solutions—cited a number of accelerated cleanup initiatives by the department including the Advanced Mixed Waste Treatment Project at Idaho National Laboratory, the use of mobile characterization systems at various DOE generator and storage sites, and the development of new shipping containers and the use of rail shipments.

By law, only defense transuranic waste from federal facilities (primarily DOE's own nuclear weapons program sites) may be disposed at WIPP. If DOE does not use the additional disposal capacity requested before the expiration of the current permit term in November 2009, the department can request authorization to use the remaining unused capacity—up to the congressional limit—when it seeks to renew the initial 10-year permit. On January 7, 2004, the department submitted another separate permit modification request that seeks state approval for a variety of "container management improvements," such as additional container types and increased storage capacity.

For additional information, go to <u>http://</u><u>www.nmenv.state.nm.us</u>.

Southwestern Compact/California

California Makes New Appointments to Southwestern Compact Commission

In mid-October, California Governor Arnold Schwarzenegger appointed Donna Earley and James Tripodes to the Southwestern Low-Level Radioactive Waste Compact Commission.

Early is 51 years old and from Playa del Ray. She has served as Director of Environmental Health and Safety for Cedars Sinai Medical Center since 1977. Her political affiliation is not registered.

Tripodes is 50 and from Livermore. He is a scientist at the Price-Anderson Amendments Act Office at the University of California Lawrence Livermore National Laboratory where he evaluates potential non-compliance with the U.S. Department of Energy's nuclear safety rules. He is registered as a Republican.

Both positions require Senate confirmation and are unpaid.

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state are fighting a department proposal to reclassify some of the high-level tank waste as low-level waste so that it can be grouted in place and left on the bottom of the buried tanks.

Courts

Lemmon, Cole and Gunderson v. Envirocare of Utah, Inc.

Federal Judge Dismisses Suit by Former Envirocare Workers

On August 31, 2004, U.S. District Court Judge Bruce Jenkins dismissed a lawsuit filed by three Relators that accused Envirocare of Utah of submitting false claims to the government relating to work performed on disposal contracts – including, primarily, Envirocare's private party contract with the W. R. Grace Company. Judge Jenkins, ruling from the bench, granted two of Envirocare's motions to dismiss all of the Relators' claims without prejudice, allowing the Relators until December 30, 2004 to re-file a complaint that would meet applicable legal standards. Given this ruling, Judge Jenkins found it unnecessary to decide on a third motion to dismiss.

The Relators, one of whom previously worked for Envirocare (the other two worked for Broken Arrow, a former Envirocare subcontractor), filed the lawsuit under seal in August, 2002, on behalf of the federal government under a Civil War Era law called the False Claims Act. The law was originally enacted under President Abraham Lincoln in an attempt to target suppliers who were defrauding the Union. However, lawyers for the U.S. Justice Department, acting for the federal government, declined to intervene in the case. As a result, the case was unsealed in October 2003. Envirocare adamantly denies the health, safety and environmental allegations put forth by the workers. The company points to the federal government's failure to intervene in the case as evidence that the case lacks merit.

Nonetheless, the Relators and their private attorneys are pressing forward. The three individual plaintiffs—Roger Lemmon, now deceased, Patrick Cole, and Kyle Gundersonclaim to have logged various incidents in which the company allegedly failed to comply with the terms of its contract with W. R. Grace, sometimes under what they claim to have been explicit direction from supervisors. Examples of such alleged incidents include the use of sand instead of clay to cover waste layers and not reporting or cleaning up spills promptly.

Envirocare filed three motions to dismiss with the Court, arguing that the case should be dismissed because:

- the Relators put forth no proof that the government would have requested a refund of monies paid to Envirocare under its government contracts even if the alleged violations were proven and even if Envirocare were assessed any fines or penalties as a result of such alleged violations;
- the Relators did not plead fraud with sufficient particularity as required under the statute; and
- Roger Lemmon passed away after being fired by Envirocare for alleged safety violations and, according to Envirocare, his False Claims Act causes of action do not survive his death.

The court granted the first two of these motions and reserved judgment on the third. Relators have until the end of the year to attempt to re-file their case in a way that meets applicable legal standards.

Lemmon's widow, Jolene Maynes, has also filed a motion to substitute herself as a Relator for her deceased husband—a move to which Envirocare objects on the basis that she is not alleged to have any personal knowledge of alleged fraudulent conduct of Envirocare.

According to the web site for Taxpayers Against Fraud, about 4,281 False Claim Act cases have been brought since the False Claims Act was updated under President Ronald Regan in 1986. About \$12 billion has been recovered for the federal government pursuant to such cases, with Relators having shared \$362 million of that.

Courts continued

Central Interstate Low-Level Radioactive Waste Commission v. State of Nebraska

Nelson Says No Regrets in Rejection of Boyd County Facility

In the aftermath of the August settlement agreement negotiated between the Central Interstate Low-Level Radioactive Waste Commission and the State of Nebraska, U.S. Senator Benjamin Nelson said he has no regrets about the state's decision six years ago to deny a license for the proposed low-level radioactive waste facility. Nelson, who was Governor at the time of the denial decision, said in a written statement that he "still believe[s] the decision made by state regulators to deny the license for the Boyd County site was the right decision . . . In the end, scientists determined the site wasn't safe. Not even the federal court is willing to say it was."

Nelson's role in the licensing decision was brought into question when, in December 1998, the compact commission filed a lawsuit challenging the state's actions in reviewing US Ecology's license application. In response to the lawsuit, the U.S. District Court for the District of Nebraska issued a \$151 million judgment in favor of the commission in September 2002. In so doing, the court found—among other things that the state's license review process was "politically tainted" by former Governor Nelson's administration. (See *LLW Notes*, September/ October 2002, pp. 1, 15 – 17.)

The lawsuit, as well as other legal disputes and disagreements between the parties, were resolved by agreement of the parties this past August. Under the terms of the agreement, Nebraska has agreed to pay the compact commission \$140.5 million in principal. The state has an option to divide the monies owed into four annual payments starting August 1, 2005, for a total of \$153,959,235.07. There are no prepayment penalties under the settlement plan. Upon completion of the payments on or before August 1, 2008, all pending lawsuits and claims between the compact commission and the state will be ended amicably. In the meantime, the compact commission has agreed not to pursue the siting of a regional low-level radioactive waste disposal facility in Nebraska unless the state should fail to make the full payments required by the settlement agreement. The agreement provides that its effective date is August 1, 2004. It acknowledges, however, that the Nebraska signatories may lack the legal authority to bind the Nebraska Legislature, but provides that "Nebraska's Governor and Attorney General will seek the necessary legislation to implement this agreement." (For additional information on the settlement agreement, see *LLW Notes*, July/ August 2004, pp. 1, 12—13 or go to the commission's web page at www.cillrwcc.org.)

According to Nelson, the settlement "marks the end of an ugly chapter in Nebraska that has lasted more than two decades and impacted four administrations." Building the proposed facility, according to Nelson, would have required state officials to work around or ignore environmental and geological problems at the site that could have posed a threat to Nebraska's land and water.

In the end, Governor Mike Johanns determined that the agreement is "the best deal he could get, and I accept that," said Nelson. "I have no reason not to take him at his word."

Exelon Corp. v. U.S. Department of Energy

Spent Fuel Settlement May Impact Other Utilities

The recent settlement of a lawsuit filed by Exelon Corporation, parent of Chicago-based ComEd, against the U.S. Department of Energy concerning the government's failure to meet its contractual deadline to begin accepting spent fuel from commercial nuclear reactors could have implications for other utilities in a similar situation. Under the terms of the settlement agreement, Exelon—which is the biggest U.S. operator of nuclear power plants—could receive as much as \$300 million through 2010. Most of the money is expected to be returned to utility customers.

The settlement stems from a 1982 federal law that required nuclear power generators to pay into a fund for the development of a national high-level radioactive waste repository, which the government was supposed to open by 1998. About \$22 billion has been paid into the Nuclear Waste Fund since 1983, but repository development plans have been stalled and the current schedule calls for the repository to open in 2010. Under the terms of the settlement agreement, payments will continue until a repository is opened.

Other utilities have filed suit and may follow Exelon's lead as they are in the same situation.

Feds to Publish "Dirty Bomb" Guidance

The federal government is reportedly preparing to publish advice for state and local governments on how to react in the event of an attack involving a "dirty bomb," including guidance on how much radiation exposure from such an attack is acceptable for the public. The document is intended to assist officials who would oversee public health and safety after such an attack by giving them guidelines to determine when activity could return to normal.

One reason for drafting such a document is to reinforce the idea that a dirty bomb is primarily a psychological weapon that generally distributes radiation in quantities that are too small to make any measurable difference to health. Indeed, the biggest health risk from a dirty bomb would most likely be the blast itself, with doses being quite small outside of the blast area. Nonetheless, public fear of radiation makes it hard to communicate this reality.

The document will initially be published in draft form for public comment, and when completed will still only be advisory. It is currently in the hands of the Federal Emergency Management Agency. It will next be sent to Tom Ridge, the Secretary of Homeland Security, and then to the White House Office of Management and Budget before publication. It is expected to be published before the end of the year.

U.S. Nuclear Regulatory Commission

NRC Amends Utah's Agreement with the Agency

The U.S. Nuclear Regulatory Commission has approved a request from the State of Utah to amend its agreement with the agency, pursuant to Section 274 of the Atomic Energy Act, to allow the state to assume regulatory authority for the licensing, inspection, enforcement and rulemaking activities for 11e.(2) byproduct material, including uranium and thorium milling operations and mill tailings. In addition, the amendment makes an administrative change to Utah's agreement "to reflect the return to the NRC in 1996 of the regulatory authority for the evaluation of sealed sources and devices."

Currently, Utah regulates the medical, academic and industrial uses of radioactive material within the state, as well as commercial disposal of lowlevel radioactive waste. Under the terms of the amendment, however, four existing NRC licenses will be transferred to the state's jurisdiction. Utah will now be the sixth state to assume authority over 11e.(2) byproduct material. The other states having such authority include Colorado, Illinois, Ohio, Texas and Washington.

NRC published an announcement of the proposed amendment in the *Federal Register* earlier this year for public comment. Only one response was received to the announcement. After careful review, NRC determined that the comments contained in the response "did not affect the agency's conclusion that Utah's program for this additional material is adequate to protect public health, safety and [the] environment, and is compatible with the NRC's program."

The above-described amendment to Utah's agreement with NRC became effective August 16 upon signature by the Governor. The amendment and supporting documents may be found on NRC's ADAMS document management system.

Recently, the U.S. Nuclear Regulatory Commission announced the opportunity to request a hearing on an application from Constellation Energy Group Inc. to renew the operating licenses for Units 1 and 2 of the Nine Mile Point nuclear power plant for an additional 20 years. The deadline to request a hearing was September 20. The next day, on September 21, the agency hosted two public meetings in Oswega, New York on the environmental review related to the application.

License Renewals Continue to

In other relicensing news, the NRC recently reached the preliminary conclusion that there are no environmental impacts to preclude renewal of the operating licenses for the Joseph M. Farley Nuclear Power Plant located in Houston Country, Alabama. The information is contained in a draft environmental impact statement (EIS) on the proposed license renewal. The EIS is open for public comment until November 5, 2004 and was the subject of public meetings in Dothan on September 30. Comments on the EIS should be submitted to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop T-6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by e-mail to farleyeis@nrc.gov.

Nine Mile Plant

The Nine Mile Nuclear Power Plant is located in Scriba, New York. Constellation Nuclear submitted a license renewal application for the two units on May 27. The current operating licenses for Units 1 and 2 expire on August 22, 2009 and October 31, 2026, respectively. A public meeting on the renewal application was held on July 8 in Fulton, New York. NRC's presentation included information on how the process works and how the public can participate. Members of the public were invited to ask questions on the license renewal process.

Federal Agencies and Committees continued

The Nine Mile renewal application can be found at http://www.nrc.gov/reactors/operating/ licensing/renewal/applications/nine-mile-pt.html.

Farley Plant

The operating licenses for Units 1 and 2 of the Joseph M. Farley Nuclear Plant—which is operated by Southern Nuclear Operating Company—are set to expire on June 25, 2017, and March 31, 2021, respectively. An application for license renewal was filed on September 15 of this year. Two public meetings were held on January 8 in Dothan, Alabama on NRC's environmental review related to the application. The meetings included an overview and NRC staff presentation on the environmental process related to license renewal, after which members of the public were given the opportunity to present their comments on what environmental issues the NRC should consider during its review.

The Farley renewal application can be found at http://www.nrc.gov/reactors/operating/licensing/renewal/applications/farley.html.

NRC Regulations/Status of Renewals

Under NRC regulations, a nuclear power plant's original operating license may last up to 40 years. License renewal may then be granted for up to an additional 20 years, if NRC requirements are met. To date, NRC has approved license extension requests for 26 reactor units. In addition, NRC is currently processing license renewal requests for 18 other reactors.

For a complete listing of completed renewal applications and those currently under review, go to http:// www.nrc.gov/reactors/operating/licensing/renewal/ applications.html

NRC Revising Guidance Documents for Reviewing License Renewal Applications

The U.S. Nuclear Regulatory Commission is revising its guidance documents for reviewing nuclear power plant license renewal applications. Information on the revision process, including its schedule, correspondence, NRC presentation materials, and meeting information, is available on the NRC's web site at http://www.nrc.gov/ reactors/operating/licensing/renewal/guidance/ updated-guidance.html.

The revision incorporates what NRC has learned during the renewal of 26 reactor licenses since March 2000, and covers NUREG-1800, "Standard Review Plan for License Renewal Applications for Nuclear Power Plants," as well as NUREG-1801, "Generic Aging Lessons Learned (GALL) Report." If the NRC approves industryproposed guidelines for submitting renewal applications, the agency will also revise Regulation Guide 1.188, "Standard Format and Content for Applications to Renew Nuclear Power Plant Operating Licenses."

Preliminary drafts of the revised documents are available for public viewing through the web page above, and the public can officially comment on the documents starting February 1, 2005.

For additional information, please contact Jerry Dozier at 301-415-1014 or Amy Hull at 301-415-4095.

NRC Briefs

The following are some recent or future activities involving the U.S. Nuclear Regulatory Commission. For additional information, go to www.nrc.gov.

- NRC held its final Nuclear Safety Research Conference (NSRC) on October 25 – 27 in Washington, DC. The conference, held annually since 1973, serves as a leading forum for experts to discuss the results and insights of the NRC's research program as well as to preview research activities of the future. This year's session covered technical research in materials aging and degradation, new reactors, fuels, probabilistic risk assessment infrastructure, radiation protection, codes and operating experience.
- Staff from the NRC's Office of Nuclear Reactor Regulation (NRR) met with interested parties in Rockville, Maryland on September 30 to discuss how NRR plans to schedule some of its workload in fiscal year 2005. The discussions were intended to help inform stakeholders as to how resource allocation, scheduling and unanticipated safety efforts can affect three major program areas:

 rulemaking and policy development,
 advanced reactors, and (3) license renewal.
- On August 12, the NRC issued its new Strategic Plan for fiscal years 2004 – 2009, establishing how the agency intends to carry out its mission. The plan includes five goals of safety, security, openness, effectiveness, and management. It also reflects the interrelationship among safety, security and emergency response. Each goal has strategic outcomes, which will provide a general barometer whether the goals are being achieved. There are also strategies that describe actions intended to accomplish the goals.
- NRC has announced that it is revising its enforcement policy to include an interim policy regarding the voluntary use of

alternative dispute resolution (ADR) in addressing discrimination complaints and other allegations of wrongdoing. The revisions aim to use ADR in two potential scenarios: (1) before initiation of an NRC investigation, when the parties would be the whistleblower and the licensee; and (2) after completion of an investigation, when the parties would be the NRC and the licensee. The aim is to reach settlement within 90 days of agreeing to mediation. The interim policy will be effective for about two years, after which time the NRC will decide whether to make it permanent.

- NRC has granted the request of Molycorp, Inc. to terminate its license to possess radioactive material at a former chemical manufacturing plant near York, Pennsylvania, and released the site for unrestricted use. The company used ores containing low levels of radioactive material as feedstock in the chemical manufacturing process. All buildings on the site have been decontaminated and removed, and surface and subsurface soils have been remediated. Based on these actions, the staff's review of the licensee's radiation surveys, and the results of the staff's confirmatory surveys, the NRC concluded that the licensee has completed the decommissioning activities in accordance with its approved decommissioning plan, and the site is suitable for unrestricted release.
- NRC has issued its "Third National Report ٠ for the Convention on Nuclear Safety,' outlining how the U.S. government adheres to the convention's objective of a high level of nuclear safety worldwide. The updated report highlights the NRC's revised strategic goals and the main nuclear safety issues facing the agency and nuclear power plant licensees, including reactor vessel cracking, pressurizedwater reactor containment sump performance, electric grid reliability, emergency preparedness and security. Also in the report are major accomplishments, including amendments to regulatory actions that have been accomplished in the past three years

Federal Agencies and Committees *continued*

concerning operator training, radiation protection, decommissioning funding, partial site release, importing of components, electronic maintenance and submission of information, fire protection and hearing procedures. Every three years countries participating in the convention, currently more than 50, must submit reports on their programs for peer review as an incentive to achieve the highest possible levels of safety. The Third National Report Review Meeting will be held in Vienna, Austria, in April 2005.

- NRC recently unveiled a new web page that ٠ highlights the agency's emergency preparedness and incident response activities, and makes information easily accessible on such topics as how the public should prepare for, and react to, a radiological emergency. The new site includes information on evacuation and sheltering, emergency classification, federal, state and local responsibilities during a radiological emergency, and the NRC's enhanced Operations Center. Highlighted on the site is information about nuclear plants' response to terrorism, emergency exercises, the use of potassium iodide, response to "dirty bombs," and research and test reactor preparedness. The site is located at http://www.nrc.gov/ what-we-do/emerg-preparedness.html.
- NRC recently made available electronically its ٠ documentary material concerning a possible future hearing on a potential application from the U.S. Department of Energy for a highlevel waste repository at Yucca Mountain, Nevada. NRC regulations require all potential participants in the Yucca Mountain proceeding to make their documents available to other potential participants and the public in electronic form. The documents that must be made available consist of the information that a party, potential party or interested government participant intends to rely on in the licensing proceeding and certain other relevant information. The NRC has made more than 24,000 documents available to the agency's on-line Licensing Support Network

(LSN) at www.lsnnet.gov. All but about 100 of those documents have been indexed by the LSN and are available through that network. The remaining documents are available through ADAMS at http://www.nrc.gov/ reading-rm/adams/web-based.html and will be indexed later on the LSN. NRC regulations require that the NRC technical staff make its documents publicly available within 30 days after DOE certifies that it has made its documents available. DOE made that certification on June 30. Other potential parties to a hearing must make their documents available no later than 90 days after the DOE certification.

- NRC has determined that certain security information formerly included in the Reactor Oversight Process will no longer be publicly available and will no longer be updated on the agency's web site due to security concerns. The NRC will continue to inspect and assess physical security of nuclear facilities, but the results will no longer be made publicly available upon issuance. The NRC will continue to provide pertinent information to state officials, local law enforcement agencies and other federal agencies.
- NRC is proposing tougher licensing requirements for the export or import of highrisk radioactive materials that could be used in "dirty bombs" or other terrorist weapons. The proposed rule would implement exportimport provisions of the Code of Conduct on the Safety and Security of Radioactive Sources adopted last year by the International Atomic Energy Agency. The new NRC regulations would require specific licenses for all exports and imports of high-risk radioactive materials (in sealed sources or in bulk) as defined in the proposed rule. Under current regulations, these radioactive materials may be exported or imported under a general license, which does not require filing an application to the NRC or the issuance of licensing documents. The new rule would require that anyone wishing to export or import these materials would be required to apply for NRC approval.

Congress

U.S. Senate

Legislation Introduced to Treat Accelerator-Produced and Other Radioactive Material as Byproduct Material

On July 22, Senator Hillary Rodham Clinton introduced S.2763—legislation that seeks to amend the Atomic Energy Act of 1954 to expand the definition of radioactive "byproduct material." Upon hearing presentations about the proposed legislation at its meeting in Buffalo, New York, the LLW Forum passed a resolution expressing its appreciation to Senator Clinton for her efforts on this important issue, but identifying potential adverse unintended consequences.

The Proposed Legislation

The legislation, as drafted, is intended to address potential homeland security issues. It seeks to expand the definition of radioactive "byproduct material" to include: (1) discrete sources of radium-226 from commercial, medical, or research activities; (2) material made radioactive by particle accelerators; and (3) any discrete source of naturally occurring radioactive material (other than source material) that the U.S. Nuclear Regulatory Commission (NRC) determines would pose a threat similar to that posed by discrete radium-226 sources. Furthermore, the proposed legislation requires the U.S. Nuclear Regulatory Commission, in cooperation with the states, to "promulgate final regulations establishing such requirements and standards as the Commission considers necessary for the acquisition, possession, transfer, use, or disposal of byproduct material . . ."

Upon intoduction, S. 2763 was referred to the Senate Committee on Environment and Public Works.

LLW Forum Resolution

During its fall meeting in Buffalo, New York, the Board of Directors of the LLW Forum heard presentations on S. 2763. Several individuals commented on the proposed legislation, including representatives of various federal agencies, states, compacts and members of the industry. Following discussion, the Board of Directors then passed the following resolution on this issue:

WHEREAS there is a legitimate interest in providing for the federal regulation of discrete radium sources, acceleratorproduced radioactive material, and similar materials that may pose a threat to homeland security;

WHEREAS currently, disposal managed under the low-level radioactive waste compact system provides a safe means of disposing all such materials;

WHEREAS S. 2763 as introduced and referred to the Senate Environment and Public Works Committee would define such material as "by-product material" to initiate federal regulation of these materials; and

WHEREAS S. 2763 as introduced, by changing the definition of such materials, would create unintended adverse consequences including, but not necessarily limited to the following:

• Potential elimination of the only disposal outlet for the majority of high-activity discrete radium sources in the nation; and,

• Potential roll back of Congressionally approved compact regulation of these materials that has provided for the safe disposal for nearly two decades;

THEREFORE the Low-Level Radioactive Waste Forum encourages the Senate Environment and Public Works Committee to work with the Congressionally approved compacts,

Congress *continued*

states, and federal agencies to refine S. 2763 so that the unintended adverse consequences are avoided.

Reaction to LLW Forum Resolution

In late September, letters were sent to the sponsors of the S. 2763, members of the committee of jurisdiction, various federal agencies, and other interested parties notifying them of the LLW Forum's action and transmitting the resolution. In response thereto, the LLW Forum received a letter dated October 5 from Mike Broderick, Director of Emerging Issues and Advocacy of the Organization of Agreement States. The letter states as follows:

Dear Mr. Lovinger:

I am writing on behalf of the Organization of Agreement States (OAS) to thank you and the Forum for providing your comments to us on S.2763. The OAS is very interested in this bill and is also considering development of a Position Statement on this legislation. We support the general emphasis of the bill, but do agree that it is important that any unintended consequences should be carefully investigated, and hopefully any unacceptable ones can be corrected or mitigated.

I will be serving as the OAS contact on this issue, and I hope you will keep us apprised of any new developments or additional issues of concern you and the Forum may identify. Feel free to contact me at any time by email at Mike.Broderick@deq.state.ok.us, or by phone at 405-702-5155.

Sincerely, Mike Broderick Director, Emerging Issues and Advocacy Organization of Agreement States

The OAS Chair, Jared Thompson, is copied on the letter.

The LLW Forum resolution was also recently mentioned in the weekly newsletter of the Economic Council of the States (ECOS).

NRC Issues Environmental Justice Policy Statement

The Nuclear Regulatory Commission recently issued a policy statement to provide its consolidated views on how it will treat environmental justice matters in agency regulatory and licensing actions. In so doing, NRC "recognizes that the impact of the agency's regulatory or licensing actions on certain populations may be different from those on the general population due to a community's distinct cultural characteristics." The policy statement reflects the view that the disproportionately high and adverse impacts of a proposed action that fall heavily on a particular community call for close scrutiny under the National Environmental Policy Act (NEPA).

In February 1994, President Clinton issued to all federal agencies Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," which directed them to make achieving environmental justice part of their mission by identifying and addressing disproportionately high and adverse health human health or environmental effects of their programs, policies and activities on minority and low-income populations. Independent agencies, such as the NRC, were only requested to comply with the order. However, NRC has endeavored to carryout the measures set forth in the order as part of its efforts to comply with NEPA.

Congress continued

U.S. Senate/U.S. General Accounting Office

Senate Energy Committee Holds Hearing on GAO Report re LLRW Disposal Availability

On September 30, the Senate Committee on Energy and Natural Resources held a hearing regarding the recently finished June 2004 U.S. General Accounting Office report on the future availability of low-level radioactive waste disposal capacity, "Low-Level Radioactive Waste, Disposal Availability Adequate in the Short Term, but Oversight Needed to Identify Future Shortfalls." The hearing was very brief—only 40 minutes in length—and only three Senators (Chairman Pete Domenici of New Mexico; Ranking Member Jeff Bingaman of New Mexico; and Larry Craig of Idaho) were present due to legislation pending on the floor. Four witnesses briefly testified, including Christine Gelles of the U.S. Department of Energy; Robin Nazarro of the U.S. General Accounting Office; Alan Pasternak of the California Radioactive Materials Management Forum (CalRad Forum); and Edward McGinnis of the National Nuclear Security Agency. Copies of the Chair's opening remarks and witness' testimony can be found on the committees website at http:// energy.senate.gov/. There were approximately 50 persons in attendance in the audience, including officials of various federal agencies and members of the press.

Some of the issues discussed during the course of the hearing included

- the current status of waste management and disposal in the United States;
- the basic premise of the report--i.e., whether there is adequate disposal capacity available;

- the status of the Manifest Information Management System (MIMS) and efforts to improve the reliability of the data contained therein;
- the U.S. Department of Energy's efforts to recover and safely dispose of sealed sources in the United States;
- proposed legislation, S.1045, on the sealed sources issue and the department's views thereon; and
- recommended actions by the CalRad Forum to deal with what the organization believes to be a pending crisis for future disposal access.

On this last issue, Pasternak stated that the CalRad Forum does not advocate repeal of the Low-Level **Radioactive Waste Policy Act and its 1985** amendments and believes that those states and compacts that have met their obligations under the act (such as those hosting the Barnwell and Richland facilities)—or that in the future develop facilities pursuant to the act—should be allowed to restrict access as allowed by current law. Instead, Pasternak said that the CalRad Forum advocates amending the act to allow for the development of one or two new facilities on federal land, either by the federal government or a commercial entity, and under the regulation and licensing of the U.S. Nuclear Regulatory Commission. (For a more detailed description of Pasternak's recommendations, please refer to his testimony as posted on the committee's website.)

At the conclusion of the hearing, Chair Domenici said that this is an important issue and that the committee will continue looking at it—including the possibility of drafting legislation on the issue—in the future.

To Obtain Federal Government Information

by telephone

DOE Public Affairs/Press Office	. (202)	586-5806
DOE Distribution Center	. (202)	586-9642
• DOE's National Low-Level Waste Management Program Document Center	. (208)	526-6927
EPA Information Resources Center	. (202)	260-5922
GAO Document Room	.(202)	512-6000
• Government Printing Office (to order entire Federal Register notices)	. (202)	512-1800
NRC Public Document Room	. (202)	634-3273
• Legislative Resource Center (to order U.S. House of Representatives documents)	. (202)	226-5200
U.S. Senate Document Room	. (202)	224-7860

by internet

• NRC Reference Library (NRC regulations, technical report and regulatory guides).	
• EPA Listserve Network • Contact Lockheed Martin EPA at (800) 334-2405 or e-mail (leave subject blank and type of message).	help in body
• EPA • (for program information, publications, laws and r	egulations) http://www.epa.gov /
• U.S. Government Printing Office (GPO) (for the Congrecongressional bills and other documents, and access to m databases).	ore than 70 government
• GAO homepage (access to reports and testimony)	www.gao.gov

To access a variety of documents through numerous links, visit the web site for the LLW Forum, Inc. at <u>www.llwforum.org</u>

Accessing LLW Forum, Inc. Documents on the Web

LLW Notes, LLW Forum Meeting Reports and the *Summary Report: Low-Level Radioactive Waste Management Activities in the States and Compacts* are distributed to the Board of Directors of the LLW Forum, Inc. As of March 1998, *LLW Notes* and LLW Forum Meeting Reports are also available on the LLW Forum web site at <u>www.llwforum.org</u>. The *Summary Report* and accompanying Development Chart, as well as LLW Forum News Flashes, have been available on the LLW Forum web site since January 1997.

As of March 1996, back issues of these publications are available from the National Technical Information Service at U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161, or by calling (703) 605-6000.



Appalachian Compact Delaware Maryland Pennsylvania West Virginia

- **Atlantic Compact**
- Connecticut New Jersey South Carolina

Central Compact

Arkansas Kansas Louisiana Oklahoma

Central Midwest Compact Illinois Kentucky

Northwest Compact Alaska Hawaii Idaho

Montana Oregon Utah Washington Wyoming

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Midwest Compact Indiana Iowa Minnesota Missouri Ohio Wisconsin

Rocky Mountain Compact Colorado Nevada New Mexico

Northwest accepts Rocky Mountain waste as agreed between compacts

Southeast Compact

Alabama Florida Georgia Mississippi Tennessee Virginia **Southwestern Compact** Arizona California North Dakota South Dakota

Texas Compact Texas Vermont

Unaffiliated States

District of Columbia Maine Massachusetts Michigan Nebraska New Hampshire New York North Carolina Puerto Rico Rhode Island