LLW notes

Volume 19, Number 4 July/August 2004

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

Central Compact and Nebraska Reach Settlement in LLRW Lawsuit

During an emergency telephone meeting on the morning of August 9, the Central Interstate Low-Level Radioactive Waste Commission voted 3 to 1 to approve a settlement agreement negotiated with the State of Nebraska in regard to efforts to site a regional low-level radioactive waste disposal facility for the Central Compact. (Kansas voted against approving the settlement agreement.) Later in the day, both the Nebraska Governor's Office and the Central Compact Commission issued press releases on the matter. The press releases, as well as an unsigned copy of the settlement agreement, can be found on the commission's web page at www.cillrwcc.org.

Terms of the Settlement Agreement

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 (applying an agreed-upon interest rate, effective August 1, 2004, of 3.75 percent) starting August 1, 2005, each in the amount of $38,489,808.77, 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 parties have agreed, however, to continue to pursue in the near-term a joint and cooperative effort to seek disposal access outside of the region for waste generated within the compact states and Nebraska. In that regard, the parties recently released a proposal to the State of Texas to allow waste generated in the Central Compact region

(Continued on page 12)

In This Issue

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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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LLW Notes
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Directors that serve on the Board of the Low-Level Radioactive Waste Forum, Inc. are appointed by governors and compact commissions. The LLW Forum, Inc. was established to facilitate state and compact implementation of the Low-Level Radioactive Waste Policy Amendments Act of 1985 and to promote the objectives of low-level radioactive waste regional compacts. The LLW Forum, Inc. provides an opportunity for state and compact officials to share information with one another and to exchange views with officials of federal agencies and other interested parties.

Table of Contents

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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 radioactive material	NARM
Naturally-occurring radioactive material	NORM
Code of Federal Regulations	CFR

September 2004 LLW Forum Meeting to be Held in Buffalo, New York

2005 Meetings to be Held in Salt Lake City, UT and Las Vegas, NV

The fall 2004 meeting of the Low-Level Radioactive Waste Forum, Inc. will be held on September 20 - 21 in Buffalo, New York. The meeting, which is being sponsored by the State of New York, will be held at the Hyatt Regency Buffalo. A meeting of the Executive Committee will take place on Monday morning, September 20, just prior to the regularly scheduled meeting. A tour of the West Valley site is planned for Tuesday afternoon, September 21, after the conclusion of the regular meeting.

Registration The meeting is free for members of the LLW Forum, Inc. Registration for non-members is $500.00, payable to "LLW Forum, Inc." Attendees should complete a registration form and forward with payment, if applicable, to: Alyse Peterson, New York State Energy Research and Development Authority, 17 Columbia Circle, Albany, New York 12203-6399 (phone: 518-862-1090 ext. 3274/fax: 518-862-1091). A registration form and meeting bulletin can be found on the LLW Forum's web site at www.llwforum.org.

Deadlines Please note the following deadlines with regard to the upcoming meeting:

- Hotel Reservations: A reservation must be made by August 22 in order to get the discounted rate. (Please ask for a room in the LLW Forum block.)
- West Valley Site Tour: US citizens must send in a registration form by September 8. Non-US citizens should send in a registration form as soon as possible. (Please note that non-US citizens are not guaranteed access to the site.)
- Dinner Event: Please send in a reservation and payment for the dinner event by September 15 in order to ensure a space.

Reservations A block of 40 rooms has been reserved for meeting attendees at the special rate of $78.00 + tax per night for single occupancy and $103.00 for double occupancy. There is room availability for the weekend before the meeting and the day after the meeting at the same rate. Non-smoking rooms are available. To make a reservation, please call (716) 856-1234 or the toll-free reservations line at (800) 233-1234. *Please ask for a room in the LLW Forum block.* Reservations must be made by August 22, 2004 to obtain the special rate.

Site Tour Among the things attendees will see on the West Valley site tour are:

- the former reprocessing facilities, including a converted cell which is now being used to store the vitrified high-level waste;
- the high-level waste tank farm, where the waste in a liquid/sludge form was stored for the last 40 years;
- a brand new remote-handled waste processing facility, where large contaminated items can be cut up and packaged;
- various LLRW handling and storage facilities; and
- the closed commercial LLRW disposal facility, for which NYSERDA is the licensed custodian.

The estimated time of arrival back at the hotel after the tour is 5:00 p.m., so please plan your travel accordingly if you plan to go on the site tour.

(Continued on page 11)

Central Compact/Nebraska

Proposal to Texas for Use of its Planned LLRW Site Released by Nebraska/Central Compact

On July 16, the State of Nebraska released a proposal to the State of Texas that is being made jointly by the state and the Central Interstate Low-Level Radioactive Waste Compact Commission as part of an attempt to settle a $151 million judgment against the state in a lawsuit filed by the compact commission. (See related story, this issue.) The proposal made to Texas, in short, is to allow waste generated in the Central Compact region and Nebraska to be disposed at the planned Texas Compact site in exchange for a one-time $25 million access fee and a $5 million contribution to the Texas Perpetual Care Fund.

Background

The Lawsuit On December 30, 1998, five regional utilities filed a lawsuit against the State of Nebraska and the Central Commission—which subsequently realigned itself as a plaintiff—challenging the state's actions in reviewing US Ecology's license application for a low-level radioactive waste disposal facility in Boyd County. (See *LLW Notes*, January/February 1999, pp. 16-17.) On September 30, 2002, the U.S. District Court for the District of Nebraska ruled in favor of the Central Commission finding, among other things, that the state's license review process was "politically tainted" by former Governor Benjamin Nelson's administration. (See *LLW Notes*, September/October 2002, pp. 1, 15-17.) The court awarded the compact commission over $151 million in damages. The state filed a notice of appeal on October 30, 2002. The Eighth Circuit heard oral arguments on the appeal on June 12, 2003. (See *LLW Notes*, May/June 2003, p. 12.) Following a February 18, 2004 appellate decision affirming the lower court's ruling, Nebraska filed a petition for rehearing en banc on March 2. The Central Commission filed a reply brief opposing rehearing on March 15. On April 22, the appeals court denied the state's request for a rehearing en banc. (See News Flash titled, "Eighth Circuit Denies Nebraska's Petition for Rehearing En Banc," April 24, 2004.) In the meantime, local press reported that Nebraska was seeking to settle the lawsuit.

Texas LLRW Siting Law In late June 2003, Texas Governor Rick Perry (R) signed into law a bill that amends Texas Health and Safety Code provisions dealing with the siting and operation of a commercial low-level radioactive waste disposal facility for the Texas Low-Level Radioactive Waste Disposal Compact. The final amended version of the legislation, H.B. 1567, was approved by both the Texas House and Senate in late May 2003 after a conference was concluded which reconciled differences in versions that were previously passed by both houses. (A copy of the final version of the bill as passed by both the House and Senate can be found at http://www.capitol.state.tx.us/tlo/legislation/bill_status.htm.) The legislation, as approved, allows for the creation of two privately run waste disposal facilities to be licensed as one site by the TCEQ. One facility may dispose of federal facility waste, as defined under the Low-Level Radioactive Waste Policy Act of 1980 and its 1985 amendments, subject to certain specified conditions. The other, adjacent facility, may dispose of commercial low-level radioactive waste. (See *LLW Notes*, March/April 2003, p. 1.)

The Proposal to Texas

The State of Nebraska and Central Compact laid out the terms of their proposal for use of the planned Texas Compact site in a July 2 letter from David Cookson, Special Counsel to the Nebraska Attorney General, and Shawn Renner, Legal Counsel to the Central Commission, to Kathleen Hartnett White, Chair of the Texas Commission on Environmental Quality. According to the letter, Nebraska Governor Mike Johanns first

approached Texas Governor Rick Perry about the issue on May 18, 2004—although members of the Nebraska Attorney General's Office and Governor Perry's staff held more detailed discussions both before and after the Governors' conversation.

The letter outlines the following five basic elements of a long-term contractual relationship between Nebraska, the Central Compact and the Texas Compact to dispose of low-level radioactive waste at the Texas Compact facility.

Part One —

Access: The Texas Compact site will accept for disposal low-level radioactive waste generated in the Central Interstate Compact states and Nebraska on the same terms and conditions and subject to the same restrictions as waste generated within Texas. The agreement shall remain in effect until the Texas Compact site is closed permanently. The life of the Texas Compact facility is contemplated to be no less than thirty years.

Part Two —

Access Fee: In exchange for access to the Texas Compact facility, Nebraska and the Central Interstate Compact will pay to the State of Texas the sum of $25 million as a one-time access fee for the Central Interstate Compact and Nebraska to gain access to the Texas Compact facility. The $25 million access fee would be payable to the State of Texas upon the State of Texas issuing a license to a low-level radioactive waste disposal facility in a form enabling the access proposed here.

Part Three —

Annual Waste Volume Cap & Waste Fees: The Texas Compact site will accept for disposal the actual amount of waste generated in the Central Compact states and Nebraska, subject to an annual cap. Nothing in this agreement will require the Texas Compact site to accept for disposal more than the annual cap. The annual cap shall not be less than 12,000 cubic feet of waste. If the Central Interstate Compact and Nebraska do not utilize all of the disposal capacity to which they are entitled under the agreement they may in any year use up to 2,000 cubic feet per year of the unused capacity. The annual cap may also be adjusted by mutual agreement of the parties. Fees charged for disposal of waste generated in the Central Interstate Compact states and Nebraska would be the same as those charged for disposal of waste generated in Texas.

Part Four —

DecommissioningWaste: Decommissioning waste will not be considered for purposes of computing the volume cap. The parties will agree to a cap for annual waste resulting from decommissioning of a facility but will not be less than 1,000 cubic feet more than the highest estimated decommissioning waste stream of any one facility in the Central Interstate Compact states and Nebraska.

Part Five —

Perpetual Care Fund: Nebraska and the Central Interstate Compact will pay to the State of Texas a total of $5 million to be deposited in the Texas Perpetual Care Fund, as established under Texas law, to provide for any added expense resulting from disposal of waste generated in the Central Interstate Compact states and Nebraska in the Texas Compact facility. The $5 million payment to the Texas Perpetual Care Fund would be payable to the State of Texas upon the State of Texas issuing a license to a low-level radioactive waste disposal facility.

The letter contains the following statement with regard to additional components of the proposal:

"[W]e would also propose that: 1) by agreeing to accept waste for disposal from the Central Interstate Compact and Nebraska, the Texas Compact and the States of Texas and Vermont do not assume any of the liabilities or obligations of the State of Nebraska or of any [of] the Central Interstate Compact states; and 2) the Central Interstate Compact and Nebraska will be provided notice and may send representatives to observe all public meetings held by the Texas Compact Commission. The Central Interstate Compact and Nebraska will be invited to participate as an interested party in any studies or proceedings regarding the rates for the disposal of low-level radioactive waste at the Texas Compact Commission."

The letter concludes by suggesting a meeting between representatives of the State of Texas, the State of Nebraska, and the Central Interstate Compact to discuss the proposal in further detail.

A copy of the Nebraska/Central Compact proposal to Texas may be obtained on the Attorney General's web site at www.ago.state.ne.us.

Northwest Compact/State of Washington

DOE Issues Hanford Record of Decision

On June 23, the U.S. Department of Energy issued Records of Decision for the Solid Waste Program at its Hanford site in Richland, Washington that (1) limits the amount of off-site waste that may be sent to Hanford for disposal to 62,000 cubic meters of low-level radioactive waste and 20,000 cubic meters of mixed low-level radioactive waste and (2) provides that the department will immediately cease the disposal of low-level radioactive waste in unlined trenches. The Records of Decision were signed by DOE Assistant Secretary for Environmental Management Jessie Roberson.

Background

In January 2004, the department completed its Final Hanford Site Solid (Radioactive and Hazardous) Waste Environmental Impact Statement. The EIS analyzed the potential consequences of disposing of up to 220,000 cubic meters of low-level radioactive waste and 140,000 cubic meters of mixed low-level radioactive waste from other DOE sites at the Hanford facility. The EIS found that there would be no significant impacts from such disposal. However, several northwest states, tribes and other stakeholders strongly objected to the plan.

The June 23 Record of Decision limiting off-site disposal was an attempt to address these objections by setting the limits of importation of such waste to 75% less than the amounts previously evaluated. The Record of Decision provides that a new, lined facility for disposal of low-level radioactive and mixed low-level radioactive waste will be constructed. This Integrated Disposal Facility is expected to be operational in 2007. Until that time, DOE will dispose of low-level radioactive and mixed low-level radioactive waste in existing, lined disposal facilities.

Related Issues

In November of this year, Washington voters will cast votes on an initiative that seeks to require the U.S. Department of Energy to clean up the Hanford nuclear reservation before it sends any additional waste to the facility. In addition, the proposed initiative seeks to prevent the disposal of waste in unlined trenches and to ensure that contaminated groundwater does not reach the Columbia River. The initiative, which was certified in late January by Washington Secretary of State Sam Reed, is being sponsored by Heart of America Northwest. It has received endorsements

from environmental groups, the state Democratic Party and the League of Women Voters. (See *LLW Notes*, January/February 2004, p. 7.)

Rocky Mountain Compact/Colorado

Colorado Denies Cotter Maywood Dirt Importation

In early July, the Colorado Department of Public Health and Environment denied a request from Cotter Corporation to allow the initial importation of shipments of an estimated 470,000 tons of radioactive waste from New Jersey to Colorado. The health department turned down the request on grounds that the company had not proved that it could ensure "safe and compliant handling" of the dirt. In addition, the health department's director of disposal programs was quoted in the press as saying that it is unclear whether or not the mill has enough space in its disposal ponds to handle the waste from New Jersey as well as its own waste. Cotter plans to appeal the decision either to a state hearing officer or to a state court.

Cotter is proposing to dispose of contaminated dirt from a Superfund cleanup site in Maywood, New Jersey at its uranium mill just south of Canon City in Fremont County, Colorado. Cotter has been working on the Maywood proposal for more than two years. Cotter proposes to use the dirt to cap impoundment ponds containing radioactive tailings and, in the process, earn substantial revenues for disposing of the dirt. Cotter originally proposed to take 470,000 cubic yards of contaminated soil, but some of it has since been shipped to Envirocare of Utah.

The deal has been stalled since early 2002 when local residents organized to oppose the plan. The legislature and Governor got involved also, with legislation being passed in early 2003 that imposes additional requirements on future applications by Cotter for state licenses, renewals and amendments concerning the processing, storage or disposal of certain radioactive materials at the company's uranium mill. The legislation, HB 1358, represents compromises reached between Cotter Corporation and Colorado Concerned Citizens Against Toxic Waste. It took effect immediately upon the Governor's signature, although most of its requirements do not apply to the company's application to accept contaminated soils from the Maywood, New Jersey Superfund site. (See *LLW Notes*, May/June 2003, p. 6.)

In late December 2003, Cotter filed a lawsuit in the U.S. District Court for the District of Denver against the Colorado Department of Public Health and Environment. The action sought to force the state agency to make an immediate decision on Cotter's proposal to dispose of contaminated dirt from the Maywood, New Jersey site. Cotter filed the action in response to an announcement by the Executive Director of the state health department that the agency had determined to consider the proposal in conjunction with the company's license renewal, a decision that will not be made until late 2004.

Texas Compact/State of Texas

WCS Submits LLRW Disposal License Application

On August 4, Waste Control Specialists, L.L.C. announced that it has filed an application for state approval to operate a low-level radioactive waste disposal facility in Andrews County, Texas. The 4,000-page license application was submitted to the Texas Commission on Environmental Quality pursuant to legislation passed last session by the Texas Legislature. It was accompanied by a $500,000 license application fee.

Background

On December 29, the Texas Commission on Environmental Quality (TCEQ) filed a notice

with the Secretary of State announcing the agency's intention to accept applications from interested parties to license a low-level radioactive waste disposal facility in the state. Pursuant to the notice, applications for near surface land disposal of low-level radioactive waste are currently being accepted for a 30-day period from July 8 through August 6, 2004.

TCEQ filed the notice in accordance with legislation (H.B. 1567) passed in the summer of 2003 that amends Texas Health and Safety Code provisions dealing with the siting and operation of a commercial low-level radioactive waste disposal facility for the Texas Low-Level Radioactive Waste Disposal Compact. The legislation, which was signed into law by Texas Governor Rick Perry (R) in late June, was approved by both the Texas House and Senate in late May after a conference was concluded which reconciled differences in versions that were previously passed by both houses. (A copy of the final version of the bill as passed by both the House and Senate can be found at http://www.capitol.state.tx.us/tlo/legislation/bill_status.htm.)

The legislation, as approved, allows for the creation of two privately run waste disposal facilities to be licensed as one site by the TCEQ. One facility may dispose of federal facility waste, as defined under the Low-Level Radioactive Waste Policy Act of 1980 and its 1985 amendments, subject to certain specified conditions. The other, adjacent facility, may dispose of commercial low-level radioactive waste. (See *LLW Notes*, March/April 2003, p. 1.)

WCS License Application

In announcing the filing of WCS' application, George Dials, President and Chief Operating Officer of the company, stated that "[t]he application demonstrates to the state and its citizens that WCS is committed to providing an environmentally safe and scientifically sound disposal facility and has the financial resources to do so."

Dials continued as follows:

> The application reflects WCS' commitment to operate a low-level radioactive waste disposal site that relies heavily on proven technology, good management and excellent geology to protect public health and the environment . . . Our application goes well beyond the stringent technical requirements set by the TCEQ . . . More than 80 engineers, technicians and scientists spent nearly 30,000 staff-hours putting the document together.

According to a press release issued by WCS, the application and accompanying documentation "covers such diverse issues as engineering and design, operations, closure, geology, archeology, ecology, climatology, hydrology, site characteristics and socio-economic impacts." In this regard, Dials stressed that "part of the strength of WCS' application is its location in Andrews County. There is more than 800 feet of clay beneath the surface which will prevent the percolation of water and will contain any waste far longer than the time needed for it to decay to natural background levels."

WCS, which is a subsidiary of Valhi, Inc., currently holds licenses from the state and federal government for the management and disposal of hazardous waste as well as the storage and processing of low-level radioactive waste.

The full WCS license application will be available on Waste Control Specialists' web page at www.wcstexas.com after the application has been found to be administratively complete by the TCEQ. According to current law, this will happen within 45 days from August 6.

For additional information, please contact George Dials, President of WCS, at (972) 448-1415.

WCS Application Posting and Processing by TCEQ

On August 7, Glenn Lewis of the Texas Commission on Environmental Quality's Radioactive Materials Licensing Team, Waste Permits Division, sent out the following message to interested parties:

"The Texas Commission on Environmental Quality (TCEQ) today posted a link on our website to an Adobe Reader version of the Waste Control Specialist (WCS) Low-Level Radioactive Waste Disposal Facility (LLW) application. The new material is titled 'WCS LLC License Application for LLW Site' and can be found at the following URL on the TCEQ's website:

http://www.tnrcc.state.tx.us/permitting/wasteperm/uicrw/rad/,

or click on the following link:

http://64.224.191.188/wcs

The TCEQ Radioactive Material Licensing Team is in the process of reviewing the application for administrative completeness and will provide a letter to WCS of their findings by September 18, 2004 . . ."

Guidance Information Posted on Texas LLRW Disposal Licensing Project

Glenn Lewis of the Texas Commission on Environmental Quality's Radioactive Materials Licensing Team, Waste Permits Division, sent out the following message on July 28 to persons following the siting efforts of the Texas Low-Level Radioactive Waste Disposal Compact:

"The Texas Commission on Environmental Quality (TCEQ) today posted guidance information for all persons interested in the agency's Low-Level Radioactive Waste disposal licensing project. The guidance addresses site and mineral rights ownership issues affecting potential license applicants. The new material is titled 'LLRW License Application Guidance' and can be found at the following URL on the TCEQ's website:

http://www.tnrcc.state.tx.us/permitting/wasteperm/uicrw/rad/#licenses

The period established by law for receipt of any LLRW disposal facility application extends through August 6, 2004. In addition to copies submitted directly to the TCEQ, all applicant's must post applications on the Internet at a location made known to the TCEQ. A notice of any such location(s) will be posted on the TCEQ website and stakeholders so notified."

Jacobi Appointed to Texas Radiation Advisory Board

Rick Jacobi, a consultant to Dallas-based Waste Control Specialists and a former member of the Low-Level Radioactive Waste Forum, was recently appointed by Texas Governor Rick Perry to the Texas Radiation Advisory Board—an 18 member board that advises state agencies, including the Texas Commission on Environmental Quality, about their proposed rules relating to radiation. The board does not, however, make rules itself.

Jacobi is an engineer and the former general manager of a now-defunct state agency in charge of choosing a location to site a regional low-level radioactive waste disposal facility. Under Texas statute, members of the Radiation Advisory Board must represent specific sectors, such as agriculture or labor. Jacobi is an industry representative.

A spokesperson for Governor Perry said that the Radiation Advisory Board will not make decisions related to the licensing of a low-level radioactive waste disposal facility in the state. The board's role is advisory only. In the coming months, according to the spokesperson, Governor Perry intends to appoint a new six-member commission, called the Texas Low-Level Radioactive Waste Disposal Compact Commission, that will fall under the purview of the Texas Commission on Environmental Quality and will oversee waste disposal issues, including the awarding of a license for a regional facility for the Texas Compact.

(Continued from page 4)

For additional information on West Valley, please go to http://www.nyserda.org/westval.html.

Future Meetings The winter 2005 meeting of the LLW Forum is being sponsored jointly by the State of Utah/Envirocare of Utah and will be held in Salt Lake City from March 14 - 15, 2005 (with a site visit to Envirocare of Utah tentatively planned for March 16). The fall 2005 meeting is being sponsored by the Rocky Mountain Compact and will be held in Las Vegas, Nevada from September 22 - 23, 2005 (with a site visit to Yucca Mountain tentatively planned for September 21).

(Continued from page 1)
and Nebraska to be disposed at the planned Texas Compact site in exchange for a one-time $25 million access fee and a $5 million contribution to the Texas Perpetual Care Fund. (See LLW Forum News Flash titled, "Proposal to Texas for Use of its Planned LLRW Site Released by Nebraska/Central Compact: State Appeals $151 Million Judgment to U.S. Supreme Court," July 20, 2004.) Under the terms of the settlement agreement, Nebraska's financial obligation to the compact commission will be reduced to $130 million if an agreement is reached with the State of Texas to accept waste from Nebraska and the compact states. Moreover, any monies paid to Texas under such an arrangement will come from the money paid to the compact commission by Nebraska under the settlement agreement—i.e., Nebraska will not be required to expend any additional funds. Either party may, pursuant to the agreement, withdraw any unaccepted offers to Texas at any time and to terminate the contingent discount agreement.

The agreement further provides that, beyond the Texas proposal, the parties will for a minimum of nine months jointly explore other potential avenues for long-term disposal of low-level radioactive waste generated within the compact and the state "at potential sites located outside the boundaries of the State of Nebraska." In this regard, the parties agreed that the compact commission will allow Nebraska to rejoin the compact—upon effective re-enactment thereof by the Nebraska Legislature—if "necessary to obtain access to any potential site mutually agreed upon and successfully arranged for." In such case, the use of an outside site would be considered to fulfill Nebraska's host state obligations.

The agreement also states that the compact commission and US Ecology will dismiss, with prejudice, their contested case appeal of the license denial decision made by Nebraska in December 1998 upon the state's complete fulfillment of its obligations under the 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."

Background

The agreement arose, in part, out of two pending lawsuits between the state and the compact commission:

The first suit, which was initiated in December 1998, involved a challenge by the compact commission to the state's actions in reviewing US Ecology's license application for a low-level radioactive waste disposal facility in Boyd County, Nebraska. 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 Benjamin Nelson's administration. (See *LLW Notes*, September/October 2002, pp. 1, 15 – 17.) The state recently filed a petition for a writ of certiorari with the U.S. Supreme Court for review of the judgment. As part of the settlement agreement, however, the state agreed to withdraw its appeal and the compact commission agreed to file a "Satisfaction of Judgment" with the district court upon Nebraska's timely payment of the $140 million plus applicable interest. Moreover, the utility plaintiffs have agreed to voluntarily dismiss their related claims pending in state court.

The other suit involved a challenge by the State of Nebraska to a July 2003 action by the compact commission to revoke Nebraska's membership in the compact after the state had formally notified the compact commission of its intent to withdraw. The state argued that such action by the commission was unjustified and unlawful. The state, as part of the settlement agreement, has agreed to drop the suit.

Statements by Officials

State Officials In announcing the settlement, Nebraska Governor Mike Johanns said as follows: "I am very pleased to bring this lawsuit to a resolution that could save Nebraska anywhere from $26 million to $77 million depending on how we proceed from here … Equally important is the fact that this is a final resolution of all claims against the state by the compact." Attorney General Jon Bruning added the following: "Any way you slice it, this is the best possible result for Nebraska taxpayers. I'm proud of the work we have done which, in the worst case scenario, could have cost the state $207 million and forced us to license a disposal site that would not even accept Nebraska waste."

Company Officials American Ecology, the parent company of US Ecology, put out a press release on the settlement also. "We are very pleased that this longstanding dispute has been settled," said Stephen Romano, President and Chief Executive Officer, adding "we look forward to making arrangements with CIC to receive our pro rata share of the settlement proceeds as payments are made."

In the press release, American Ecology states that it "stands to recover approximately $12 million over four years, subject to certain conditions and a contingent discount on the total $154 million CIC settlement." The company arrives at this figure based on language in the September 2002 district court judgment that identified US Ecology damages of $6.2 million for work performed plus $6.1 million in interest for a total of $12.3 million. Language in that judgment indicated that the Central Compact Commission is responsible for determining how any monies received from Nebraska should be distributed amongst claimants. Compact staff have indicated that the compact commission will take up the matter in the coming months and make such a determination.

Private Fuel Storage, LLC v. State of Utah

Appellate Court Finds Utah Improperly Hindered PFS' Plans

In early August 2004, the U.S. Court of Appeals for the Tenth Circuit in Denver affirmed a lower court decision striking down several state laws erected by the State of Utah in 2001 in an attempt to block plans by a coalition of nuclear utilities (Private Fuel Storage, L.L.C.) seeking to site a spent nuclear fuel storage facility on the Skull Valley Band of Goshute Indians Reservation. In so ruling, the appellate court upheld a finding by the U.S. District Court for Salt Lake City, Utah that the laws are unconstitutional because they violate federal jurisdiction over matters of nuclear safety.

Background

The Complaint The lawsuit, which was originally filed in April 2001, complains that six state laws enacted by the Utah Legislature erect unfair and unconstitutional barriers to the plaintiffs' facility siting plans. In particular, the suit alleges that the laws unlawfully interfere with interstate commerce and infringe upon exclusive federal authority over the regulation of Indian affairs and nuclear power. (See *LLW Notes,* May/June 2001, p. 18.) The plaintiffs allege that, among other things, the contested laws

- seek to block access to the Goshute reservation by closing state roads leading thereto;
- require PFS to post a $2 billion cash bond for the proposed facility;
- assert state regulatory authority over reservation lands;

- create unlimited liability by PFS' officers, directors and shareholders;
- criminalize actions necessary to plan for the possibility of storing spent fuel in the State of Utah;
- require PFS to comply with unfair state permitting requirements, including the payment of a $5 million application fee; and
- bar the storage of spent fuel in the State of Utah and void any private contracts relating to such storage.

Utah's Response On September 20, 2001, the State of Utah filed a motion to dismiss the action. In the motion to dismiss, the state argues that the Nuclear Waste Policy Act of 1982 prohibits high-level radioactive waste from being stored off-site at a facility that is not owned and operated by the federal government. Accordingly, the state claims that the proposed storage facility is unlawful and that there is no basis for the plaintiffs' lawsuit. The motion to dismiss follows a July 2001 counterclaim filed by the state questioning the legitimacy of the siting proposal. (See *LLW Notes*, July/August 2001, pp. 20-21.)

DOJ Filing The Department of Justice, however, filed a motion in early 2002 requesting that the court dismiss claims by the state that the U.S. Nuclear Regulatory Commission has no jurisdiction to license the facility. (See *LLW Notes*, January/February 2002, p. 11.) In so arguing, DOJ cites a federal procedural law called the Hobbs Act to assert that Utah can only dispute NRC's authority after regulators have licensed the facility. In addition, DOJ asserts that the jurisdictional question should be raised before the U.S. Court of Appeals. According to DOJ's brief, the district "court is without jurisdiction to address Utah's counterclaim."

NRC has already rejected the state's jurisdictional claim through its Atomic Safety and Licensing Board. DOJ asserts that Utah may challenge that decision in an appeal to the commission itself. The appeals court only has jurisdiction over appeals of commission rulings. DOJ's brief argues that "[t]he lack of agency action is fatal to Utah's claim" and that the court should therefore dismiss it as "premature."

District Court's Decision On July 30, 2002, the district court struck down the challenged laws. The district court's decision focused largely on its belief that "Congress has pre-empted the entire field of nuclear safety." While the court recognized that state's do have some jurisdiction over nuclear issues—such as a State of California law which suspended the approval of new nuclear power plants—it found that the Utah laws fall squarely within that area reserved for federal oversight by the U.S. Nuclear Regulatory Commission. In particular, the court noted that the licensing scheme put forth by the state "duplicates the NRC licensing procedure in significant ways" and attempts to regulate areas covered by the Atomic Energy Act. Another Utah law, which impacts limited liability protections for PFS officials, was found to also be preempted by federal authority.

The ruling alleviates some difficult obstacles for PFS, including a $5 million license application fee and a requirement that PFS pay a "transaction fee" equal to 75 percent of the value of its contracts. In addition, the court struck down laws banning spent nuclear fuel in the state, requiring a $150 billion bond for the proposed PFS facility, and establishing a $10,000 fine for anyone doing business with PFS. The court, nonetheless, left intact state laws which mandate drug and alcohol testing for project employees and which allow the state to challenge water rights at the site. But, as for the ultimate decision regarding licensing of the facility, the court left that up to the NRC. "The question of whether [PFS has] a right to own and operate a spent nuclear fuel facility will be resolved by the Nuclear Regulatory Commission, with the right of appeal to the appropriate court of appeals, and not by this court," wrote Judge Campbell.

For background information on the PFS/Goshute proposal, see LLW Notes, July/August 2000, p. 26.

The Appellate Court's Ruling

In its 71-page decision, the three-person appeals court agreed with the lower court that it was wrong for the state to enact a package of laws designed to block the PFS project. The court found that the laws "do not denigrate the serious concerns" of Utahns and that it is the federal government, not the states, that Congress designated as the authority on spent nuclear fuel. In this regard, the court wrote that "many of the concerns that Utah has attempted to address through the challenged statutes have been considered in the extensive regulatory proceedings before the NRC, as well as in appeals from the NRC's decisions … We are hopeful that Utah's concerns—and those of any state facing this issue in the future—will receive fair and full consideration there."

One week after the appellate court's ruling, three weeks of closed-door hearings began before a federal licensing board on the sole remaining obstacle still facing the PFS' plan—whether the damage would be too great if a jetfighter crashed into the storage casks from a nearby air base.

Yankee v. U.S. Department of Energy

Trial Begins Over Lack of HLW Repository

In early June, the first of several expected trials over the federal government's failure to open a repository for high-level radioactive waste began in a courtroom in Washington, DC. More than 60 claims have been filed seeking damages from the government on the issue, which could expose taxpayers to billions of dollars in damages. In the case at hand, the owners of the Yankee group of three reactors in New England claim that they are being forced to spend hundreds of millions of dollars building storage facilities and maintaining spent fuel that the government had promised to store via contract six years ago. The case is pending before the U.S. Court of Federal Claims and trial of the matter is expected to last seven weeks.

A number of court cases have previously ruled that the U.S. Department of Energy is liable for the cost to the utilities of maintaining the waste due to the government's breach of contract. At issue, however, is the cost of such liability. Some industry analysts put the number as high as $56 billion.

In the immediate case, the reactor owners argue that they had to build storage facilities because of the government's failure to site a repository or accept the waste in the interim. The government, on the other hand, is arguing that the damage claims are speculative and that, even had a repository been built by the 1998 deadline, the utilities would still have had to build and maintain storage while they awaited their turn to ship waste to the central repository. The utilities are asking for a total of $548 million in damages for costs incurred to keep the spent fuel reactor in dry-cask storage until 2010, the year that the planned Yucca Mountain facility is expected to open.

To date, 65 claims have been filed on this issue, with a flurry of them having been filed at the beginning of the year—just before the six-year statute of limitations for lawsuits expired. In a recent letter to Congress, Energy Secretary Spencer Abraham estimated that utilities will incur $500 million a year in costs for every year that Yucca Mountain is delayed beyond 2010. "Some portion of [that cost] ... the department will be liable for," wrote Abraham.

Nevada v. U.S. Department of Energy

Appellate Court Finds Individual Protection Standard Insufficient in Yucca Mountain Case

On Friday, July 9, the U.S. Court of Appeals for the District of Columbia Circuit issued a 100-page ruling in consolidated lawsuits involving the planned Yucca Mountain high-level radioactive waste repository. Although the court rejected several of the plaintiffs' arguments, including that Congress violated the U.S. Constitution by "ganging up" on Nevada and focusing solely on Yucca Mountain to the exclusion of possible repository sites in other states, the court did find that rules on radiation leaks at the planned repository could not be limited to the site's first 10,000 years, as the U.S. Environmental Protection Agency had decided. The ruling could be a serious set back to the federal government's 17-year effort to open the facility.

Background

On January 14, a three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit heard oral arguments in a proceeding that consolidates six separate cases filed by the State of Nevada and Clark County concerning the planned Yucca Mountain high-level radioactive waste repository. (See *LLW Notes*, January/February 2004, p. 11.) The federal government plans to use Yucca Mountain, which is about 90 miles northwest of Las Vegas, to store 77,000 tons of high-level waste. Defendants in the actions—which allege a variety of Constitutional, statutory and other violations associated with the project—include President George Bush, U.S. Department of Energy Secretary Spencer Abraham, the U.S. Nuclear Regulatory Commission, and the U.S. Environmental Protection Agency, amongst others. Nevada has vowed to pursue the case all the way to the U.S. Supreme Court, if necessary, in an attempt to stop the project.

The broadest challenge that Nevada has raised to the proposed facility is the state's claim that Congress violated the U.S. Constitution by "ganging up" on Nevada and focusing solely on Yucca Mountain to the exclusion of possible repository sites in other states. In addition to the constitutional challenge, Nevada has raised a host of arguments against regulatory and administrative steps taken by the federal government to advance the proposed repository project—including groundwater protection standards established for the site. In that regard, Nevada argues that the U.S. Environmental Protection Agency violated federal law by setting groundwater protection standards that will last only 10,000 years. Congress, asserts the state, required EPA to set its standards consistent with a report issued by the National Academy of Sciences. That report, according to Nevada, called for a much longer time frame for such standards and indicated that the "peak dose risk" from the repository would likely occur well after 10,000 years. Nevada is requesting that the appellate court remand EPA's safety rules, a move that state officials claim will cause years of delay to the project.

The Court's Ruling

Although the appellate court held that the federal government could not limit the rules on radiation leaks at Yucca Mountain to the site's first 10,000 years, the court did not determine what should be the appropriate planning period. The court did, however, quote that NAS report finding that a million years is possible.

The rules developed by EPA and contested in the lawsuit set a maximum permissible radiation dose for persons outside the boundary of the Yucca project and set a second standard for the maximum dose through contamination of well water. The Nuclear Energy Institute and industry members challenged EPA's rules as too restrictive, arguing that there is no basis for a separate water

standard. The court, however, disagreed. The Court found that EPA's authority under the Energy Policy Act was sufficient to support the ground water standards, which were prompted by the need to protect the ground water resource, rather than individuals. NEI had challenged both EPA's authority to set the standards and the science behind them. The science was upheld in a previous Court ruling, City of Waukesha et. al., in which NEI supported the plaintiffs.

The decision gives Nevada the ability to challenge DOE's environmental impact statement related to the site. In this regard, Nevada argues that DOE did not give sufficient attention to the alternative of leaving the waste where it is -- either in spent fuel pools or concrete casks.

Reaction by Nevada Officials

In response to the court's decision, Nevada Senator Harry Reid stated the following:

> Nevadans have won a huge victory today. I've never believed Yucca Mountain would open, and today it could not be more clear that's true. The court's ruling is a significant blow to the Department of Energy and the Yucca Mountain project and I believe enough to effectively kill the project. There is a reason we have fought this project for more than two decades. It is impossible to open this kind of nuclear waste repository and still guarantee the health and safety of Nevadans.

Nevada Senator John Ensign stated as follows:

> Today's court ruling provides Nevada a crucial legal tool to defeat the Yucca Mountain project once and for all. Our state's legal team should be congratulated for this victory against all those forces that would like to turn Nevada into the country's nuclear dumping ground. Our united effort, in which Nevadans of all political affiliations joined, is the reason for this huge victory and our celebration today.

Next Steps

It is not clear what the next step in the case will be, although it could include asking for a rehearing, asking the U.S. Supreme Court to take the case, or going to Congress to ask for a change in the law.

DOE had been planning to file an application for a license for the Yucca Mountain repository later this year. (See *LLW Notes*, January/February 2004, p. 12.) Assuming that DOE met this deadline, NRC had been planning to begin hearings next spring using, in part, the standards set by the EPA that the appellate court has now found to be insufficient.

State of Kentucky v. American Nuclear Insurers

Kentucky Supreme Court Hears Maxey Flats Appeal

The Kentucky Supreme Court heard oral arguments in early June in a case involving a dispute over who should help pay the clean-up costs at the Maxey Flats low-level radioactive waste disposal facility located in Fleming County. The appeal was brought by American Nuclear Insurers, which provided coverage for the site. ANI claims that the policy was not intended to cover clean-up costs and rather was only intended to cover events for unforseen circumstances. ANI claims that the state knew Maxey Flats was a facility that was expected to contaminate the ground. ANI also claims that the insurance policy was not supposed to cover the cost of maintaining the radioactive waste within the facility's bounds.

U.S. Nuclear Regulatory Commission

License Renewals Continue to Move Forward

In June, the U.S. Nuclear Regulatory Commission held two public meetings in Mishicot, Wisconsin on the environmental review related to the application of Nuclear Management Company to renew the operating licenses for the Point Beach Nuclear Plant, Units 1 and 2. Also in June, the NRC's Atomic Safety and Licensing Board (ASLB) held a prehearing conference in New London, Connecticut on the application of Dominion Nuclear Connecticut to renew the operating licenses for its Millstone Nuclear Power Station, Units 2 and 3. And, in July, NRC issued its final environmental impact statements on the proposed renewal of the operating licenses for the Dresden and Quad Cities nuclear power plants finding no environmental impacts that would preclude license renewal for an additional 20 years of operation, as well as held a public meeting to discuss the process that the agency will follow in reviewing the license renewal application for Nine Mile Point Units 1 and 2.

Point Beach Plant

The current operating licenses for Point Beach will expire on October 5, 2010 and March 8, 2013, respectively. Nuclear Management Company submitted its application for license renewal on February 26, 2004.

Members of the public were invited to attend and to provide comment at the June meetings on issues that the NRC should consider in its review of the company's application. The meetings included an overview and NRC staff presentation on the environmental process related to license renewal.

A copy of the Point Beach application is available on the NRC web site at http://www.nrc.gov/reactors/operating/licensing/renewal/applications/point-beach.html.

Millstone Plant

The Millstone Nuclear Power Station is located in Waterford, Connecticut. The current operating licenses for Units 2 and 3 expire on July 31, 2015 and November 25, 2015, respectively. Dominion Nuclear Connecticut, Inc. submitted a license renewal application on January 22, 2004. On March 12, NRC announced the opportunity to request a hearing on the application. The Connecticut Coalition Against Millstone submitted a request for a hearing and a petition to intervene in the hearing. In mid-May, NRC held two public meetings to obtain input on the environmental impact statement prepared for the license application.

Participants in the June 30 conference before the ASLB included the Connecticut Coalition Against Millstone, Dominion and NRC staff. In addition, members of the public were allowed to attend the conference as observers.

A copy of the Millstone relicensing application can be found at http://www.nrc.gov/reactors/operating/licensing/renewal/applications/millstone.html

Dresden and Quad Cities Plants

The Dresden Nuclear Power Plant—which is located in Morris, Illinois—is operated by Exelon Generation Company. A renewal application for Units 2 and 3 at the plant was filed in January of last year. The license for Unit 2 is currently set to expire on December 22, 2009, and the license for Unit 3 is set to expire on January 12, 2011. Unit 1 has been shut down since 1978 and is in decommissioning status. Two public meetings were held on January 14 in Morris, Illinois to discuss NRC staff's preliminary conclusion that there are no environmental impacts that would preclude relicensing.

The Quad Cities Nuclear Power Plant is located in Cordova, Illinois. The plant is operated by Exelon Generation Company, which submitted an application for renewal in January 2003. The

current license is set to expire on December 14, 2021. Two public meetings were held on December 16 in Moline, Illinois to discuss NRC staff's preliminary conclusion that there are no environmental impacts that would preclude renewal of the plant's operating license.

The Dresden renewal application can be found at http://www.nrc.gov/reactors/operating/licensing/renewal/applications/dresden.html and the Quad Cities application at http://www.nrc.gov/reactors/operating/licensing/renewal/applications/quad-cities.html

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. NRC staff is currently reviewing Constellation's application to determine whether it contains enough information to begin the required formal review. If the application has sufficient information, the NRC will formally docket, or file, the application and will announce an opportunity to request a hearing.

The Nine Mile renewal application can be found at http://www.nrc.gov/reactors/operating/licensing/renewal/applications/nine-mile-pt.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 several 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 Approves Transfer of Licenses for R.E. Ginna and Kewaunee Plants

The U.S. Nuclear Regulatory Commission recently approved the transfer of operating licenses for the R. E. Ginna and Kewaunee Nuclear Power Plants. The R. E. Ginna license was transferred effective May 28, contingent on the licensee providing final details of the transaction's close, from Rochester Gas & Electric Corporation (RG&E) to R. E. Ginna Nuclear Power Plant, LLC—an indirect, wholly owned subsidiary of Constellation Generation Group. The Kewaunee license was transferred effective June 10, contingent on the licensee receiving certain regulatory and judicial approvals, from Wisconsin Public Service Corporation, Wisconsin Power and Light Company, and Nuclear Management Company to Dominion Energy Kewaunee—a subsidiary of Dominion Resources.

RG&E and Constellation Generation Group submitted an application to the NRC requesting approval for the license transfer on December 16, 2003. The application was supplemented by letters from RG&E, submitted March 26 and April 30, and from Constellation, submitted February 27 and April 30.

Nuclear Management Company submitted an application on behalf of the other license holders to the NRC requesting approval for the license transfer on December 19, 2003. The application was supplemented by letters submitted February 18 and March 17.

Major issues considered by the NRC in reviewing both applications included financial qualifications and transfer and maintenance of accumulated decommissioning funds.

A copy of the NRC's approval order and accompanying safety evaluation report for both applications can be found on the Agency-wide Documents Access and Management System (ADAMS) at http://www.nrc.gov/reading-rm/adams/web-based.html. The accession number for R. E. Ginna is ML041330540. The accession number for Kewaunee is ML041280012.

ASLB Holds Conference on Early Site Permit Applications

The Atomic Safety and Licensing Board of the U.S. Nuclear Regulatory Commission held a prehearing conference June 21 - 23 in Rockville, Maryland in connection with proceedings involving three applications for early site permits for new nuclear power plants. The early site permit process allows an applicant to resolve site-related issues, such as environmental impacts, before possible future construction and operation of a nuclear power plant. If NRC approves an early site permit request, the applicant can reference it for any time for up to 20 years in an application with NRC for approval to begin construction.

To date, three early site permit applications have been submitted to the NRC:

- Dominion Nuclear North Anna, LLC, for the North Anna power plant site near Mineral, VA;
- Exelon Generation Company, LLC, for the Clinton nuclear power plant site near Clinton, IL; and
- System Energy Resources, Inc. for the Grand Gulf site in Port Gibson, MS.

No applications to build new power plants on these sites have been received, but there are currently operating reactors at each site.

The prehearing conference was open to the public. However, participation was limited to NRC staff, the applicants and individuals and groups that have petitioned to participate in hearings on the permit applications. Such petitioners include the Blue Ridge Environmental Defense League, Nuclear Information and Resource Service, Public Citizen, Environmental Law and Policy Center, the Clairborne County (MS) branch of the National Association for the Advancement of Colored People and the Mississippi Chapter of the Sierra Club. The conference focused on arguments for and against the admissibility to the hearing of several issues or contentions raised by these groups.

ASLB Hears Arguments re Proposed Uranium Enrichment Facility

The Atomic Safety and Licensing Board held a pre-hearing conference in Hobbs, New Mexico on June 15 - 16 in connection with a proceeding involving Louisiana Energy Services' (LES) proposed gas centrifuge uranium enrichment plant—to be known as the National Enrichment Facility—in Eunice, New Mexico. The purpose of the conference was to focus on arguments for and against the admissibility of several contentions raised by the New Mexico Environment Department, the Attorney General of New Mexico, Nuclear Information and Resource Service, and Public Citizen. The contentions involve issues such as waste storage and disposal, radiation protection, foreign ownership and ground/surface water impacts. The petitioners, LES, and NRC staff all were given an opportunity to argue their positions before the Board. Persons who were not a party to the proceeding were given the opportunity to submit comments in writing, known as written limited appearance statements, concerning the contentions that were discussed at the conference. These statements,

which become part of the hearing docket, provide members of the public with an opportunity to make the Board and/or the parties aware of their concerns in connection with the issues.

For more information on uranium enrichment, see an NRC Fact sheet at http://www.nrc.gov/reading-rm/doc-collections/fact-sheets/enrichment.html.

NRC Holds Meeting re Licensing Process for Uranium Enrichment Facility

The U.S. Nuclear Regulatory Commission held a public meeting in Piketon, Ohio on June 23 to discuss the agency's licensing process for the U.S. Enrichment Corporation's (USEC) proposed gas centrifuge uranium enrichment facility. Technical staff from the NRC's headquarters in Rockville, Maryland and its Region II office in Atlanta were on hand to discuss the agency's procedures for reviewing a license application for the plant, developing an environmental impact statement, and inspecting the plant. The public was allowed to ask questions and participate in the meeting.

USEC announced its intention to build a gas centrifuge uranium enrichment plant at the Portsmouth Gas Diffusion Plant site in Piketon in January. The plant, which USEC intends to call the American Centrifuge Plant, will enrich uranium in the isotope U-235 for use in the production of fuel for nuclear power plants. USEC has notified NRC that it intends to submit a license application for the plant in August.

In February, NRC approved a license for USEC to construct and operate a Lead Cascade gas centrifuge facility at the Piketon site. The Lead Cascade will test and demonstrate the technology to be used in the American Centrifuge Plant.

For more information on uranium enrichment, see an NRC Fact sheet at http://www.nrc.gov/reading-rm/doc-collections/fact-sheets/enrichment.html.

NRC Establishes Additional Requirements for Yucca Mountain Electronic Submissions

The U.S. Nuclear Regulatory Commission is changing its regulations on the use of the agency's electronic Licensing Support Network and electronic hearing docket for the expected licensing hearing on the potential disposal of high-level radioactive waste at Yucca Mountain, Nevada. Among other things, the changes specify how large and complex documents should be submitted.

Under the current regulations, all potential participants in the license application hearing are required to make their relevant documents available to other potential participants and the public in electronic form through the Licensing Support Network individual web site at http://www.lsnet.gov. The network provides full text search and retrieval access to the relevant documents of all parties and potential parties to the hearing, beginning in the time period before the U.S. Department of Energy submits a license application for the repository. The changes clarify that Licensing Support Network participants must continue to augment their original information until discovery is completed, but need not provide duplicates of documents provided by other participants, and add a category of material (Congressional correspondence) that may be excluded from the Network.

The current regulations also require that DOE make its material available no later than six months in advance of submitting its license application to the NRC to receive and possess high-level waste at the Yucca Mountain geologic operations area. The NRC must make its material available no later than 30 days after the DOE certification of compliance with the submittal requirement. Other parties must make their material available no later than 90 days after DOE certification.

A proposed rule on this subject was published for public comment on November 26, 2003. Changes made in response to the comments received are described in a new *Federal Register* notice on this issue.

Presiding Officer Named re Yucca Application

The U.S. Nuclear Regulatory Commission has designated G. Paul Bollwerk III, chief of the agency's Atomic Safety and Licensing Board Panel, as Pre-License Application Presiding Officer for Yucca Mountain. The order designating Bollwerk expressly authorizes him to delegate that authority.

The Pre-License Application Presiding Officer will be responsible for resolving any disputes concerning certification of the electronic availability of documents for a future hearing on the Department of Energy's expected high-level waste repository application.

"The Commission is interested in assuring the prompt availability of information, so we quickly established the Pre-License Application Presiding Officer to address and resolve disputes," said NRC Chair Nils J. Diaz.

NRC Receives Awards for Excellence re Performance and Accountability Reporting

The U.S. Nuclear Regulatory Commission recently received two awards recognizing the quality of its Performance and Accountability Report for Fiscal Year 2003. The Association of Government Accountants (AGA) awarded the agency its Certificate of Excellence in Accountability Reporting—marking the third consecutive year that NRC has received this prestigious award. The award is presented to federal agencies whose Performance and Accountability Reports achieve the highest standards by effectively illustrating and assessing agency performance and the cost of that performance. In addition, the Mercatus Center at George Mason University awarded NRC high marks on the 5th Annual Performance Report Scorecard—a tool for rating and ranking the major departments and agencies on the fullness and accuracy of their Performance and Accountability Reports. NRC ranked 7th out of 24 federal agencies.

NRC Publishes Alternative Fire Protection Rule

The U.S. Nuclear Regulatory Commission is amending its fire protection requirements for nuclear power plants in order to allow licensees to voluntarily adopt a new set of requirements that incorporate risk insights. According to the agency, "[t]he new fire protection rule maintains safety and provides flexibility to existing requirements."

Under the new rule, reactor licensees may use the fire protection requirements contained in the National Fire Protection Association (NFPA) Standard 805, "Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants, 2001 Edition."

"Utilities that operate reactors can now adopt the standard as their fire protection program by submitting a request to amend their license," said David Mathews, Director of the Division of Regulatory Improvement Programs in the NRC's Office of Nuclear Reactor Regulation. "After approval by the NRC, the utilities can then modify their fire protection program consistent with the standard, without prior specific NRC review and approval."

The rule is part of an effort by NRC to incorporate risk information into its regulations. For alternatives to compliance with NRPA 805, licensees must submit a license amendment request for NRC review.

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 reports, information digests, and regulatory guides). .....**www.nrc.gov/NRC/reference**

- EPA Listserve Network • Contact Lockheed Martin EPA Technical Support at (800) 334-2405 or e-mail (leave subject blank and type help in body of message). .....**listserver@unixmail.rtpnc.epa.gov**

- EPA • (for program information, publications, laws and regulations) ..... **http://www.epa.gov/**

- U.S. Government Printing Office (GPO) (for the Congressional Record, *Federal Register*, congressional bills and other documents, and access to more than 70 government databases). .....**www.access.gpo.gov**

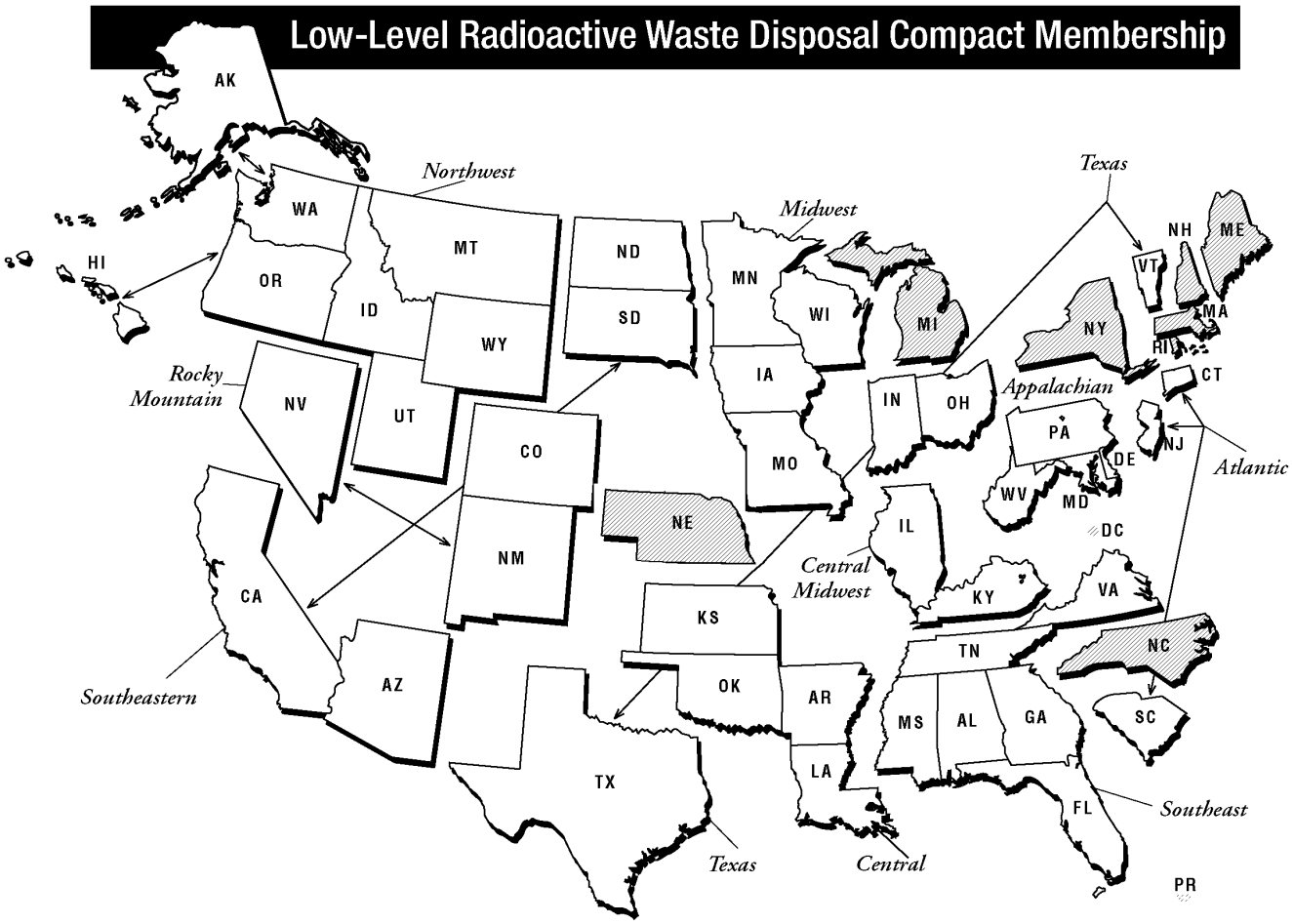
- GAO homepage (access to reports and testimony) .....**www.gao.gov**

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

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 www.llwforum.org. 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

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
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