

LLW *notes*

Volume 19, Number 5 November/December 2004

Texas Compact/Texas

Texas Issues Second Notice of Administrative Deficiencies to WCS

On November 17, pursuant to state regulations, the Texas Commission on Environmental Quality (TCEQ) issued to Waste Control Specialists a Second 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 first notice was issued on September 17 of this year. (See *LLW Notes*, September/October 2004, p. 1.) WCS responded to the first notice by letter dated October 17, 2004.

In regard to the second notice, Glenn Lewis of the TCEQ's Radioactive Materials Licensing Team, Waste Permits Division, stated as follows:

This notice is a routine step in the application process. The applicant has met all application deadlines so far. The application process envisions the possibility that a third notice of deficiency may be issued before the agency makes a final decision regarding its administrative completeness.

The Notice

Under Texas regulations, "[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 letter accompanying the second notice states, in part, as follows:

While several issues raised in the initial administrative review have been satisfactorily resolved in terms of administrative completeness, others remain unresolved, or have only been partially resolved. Additionally, two new issues have been identified in this notice. The first involves Sections 2.61 and 2.7.1

(Continued on page 11)

In This Issue

LLW Forum to Meet in Salt Lake City, Utah in March 2005
Envirocare Site-Tour Planned - page 4

Court Grants Temporary Restraining Order
re Implementation of Hanford Initiative - page 13

Federal Appeals Court Overturns Ruling Barring DOE from
Reclassifying Waste - page 17

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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 November/December 2004

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Layout and Design: Rita Houskie, Central Interstate Low-Level Radioactive Waste Compact

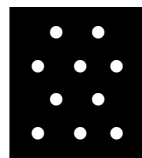
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Table of Contents

| | |
|---|----|
| States and Compacts (Cover Story) | 1 |
| Texas Issues Second Notice of Administrative Deficiencies to WCS | 1 |
| Low-Level Radioactive Waste Forum, Inc | 4 |
| LLW Forum to Meet in Salt Lake City, Utah in March 2005, Envirocare Site-Tour Planned | 4 |
| LLW Forum Continues Work on the National Directory of Brokers and Processors..... | 5 |
| LLW Forum, Inc., March 2005 Meeting | 6 |
| States and Compacts (continued) | 7 |
| Appalachian Commission Holds Annual Meeting | 7 |
| Central Midwest Compact to Poll Generators re Need for Interim Storage..... | 7 |
| Hanford Initiative Passes in Washington State..... | 8 |
| New Waste Treatment Method Being Investigated..... | 8 |
| Utah Makes Late Filing re PFS Project..... | 9 |
| US Ecology Idaho Receives OSHA Safety Recognition | 10 |
| US Ecology Texas Resumes Limited Waste Treatment: Expects New Building to Open in 2005 | 12 |
| NAS Begins Phase II of Report on Low Activity Wastes | 12 |
| Courts | 13 |
| Court Grants Temporary Restraining Order re Implementation of Hanford Initiative | 13 |
| Utah Appeals PFS' Ruling to U.S. Supreme Court | 14 |
| Federal Appeals Court Overturns Ruling Barring DOE from Reclassifying Waste | 17 |
| Federal Agencies and Committees | 18 |
| MIMS Update | 18 |
| License Renewals Continue to Move Forward..... | 18 |
| NRC Approves License Amendment for Blended Low-Enriched Uranium Project..... | 20 |
| NRC Restores Documents to its Web Site | 21 |
| NRC Holds Public Meeting re Fire Hazards at Nuclear Power Plants..... | 22 |
| NRC Upholds Licensing Board Decision Rejecting New Mexico Contentions re Proposed LES Uranium Enrichment Plant..... | 22 |
| NRC Holds Meeting re Import/Export Proposed Rule | 23 |
| NRC Increases Civil Monetary Penalties..... | 23 |
| NRC Seeks Public Comment re Reactor Oversight Process..... | 24 |
| NRC Revises Regs for Plant Structures, Systems and Components..... | 24 |
| NRC Licenses Spent Nuclear Fuel Storage Facility at INEEL | 25 |
| NRC Holds Meeting, Extends Comment Period re Proposed New Mexico Uranium Plant..... | 26 |
| Obtaining Publications | 27 |



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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 |

Low-Level Radioactive Waste Forum, Inc.

LLW Forum to Meet in Salt Lake City, Utah in March 2005 Envirocare Site-Tour Planned

The next meeting of the Low-Level Radioactive Waste Forum will take place on March 14 – 15 in Salt Lake City, Utah. The meeting is being hosted by the State of Utah and sponsored by Envirocare of Utah. A site visit to the Envirocare facility will be held in conjunction with the meeting on the afternoon of the 15th. A meeting bulletin and registration form can be found on the LLW Forum's web site at www.llwforum.org. Persons interested in attending the meeting should download the forms and send them in at their earliest convenience.

Thereafter, the LLW Forum will meet on September 22 – 23 in Las Vegas, Nevada. The meeting is being hosted by the Rocky Mountain Low-Level Radioactive Waste Board and will include a site visit to Yucca Mountain and/or the Nevada Test Site on September 21.

2006 Meetings

The winter 2006 meeting of the LLW Forum will be held in Austin, Texas. The meeting is being hosted by the State of Texas and sponsored by the Midwest Interstate Low-Level Radioactive Waste Commission.

The fall 2006 meeting will be sponsored and hosted by the Southeast Compact Commission for Low-Level Radioactive Waste Management and will be held at a location, to be determined, in the Southeast Compact region.

2007 Meetings

The Southwestern Low-Level Radioactive Waste Commission has recently volunteered to sponsor and host the winter 2007 LLW Forum meeting in San Diego, California at the Bahia Hotel. The meeting will be held on March 19 – 20.

The LLW Forum is still looking for volunteers to host and sponsor its fall 2007 meeting. Interested parties should contact the organization's Executive Director, Todd D. Lovinger, at (202) 265-7990 to discuss hosting said meeting.

LLW Forum Continues Work on the National Directory of Brokers and Processors

www.bpdirectory.com

The Low-Level Radioactive Waste Forum, Inc. continues to improve and expand upon the National Directory of Brokers and Processors—a joint project undertaken in coordination with the Southeast Compact Commission for Low-Level Radioactive Waste Management. In particular, communications were sent out in November 2004 to all currently listed entities asking them to verify and update their information as listed. In addition, communications were sent out to brokers and processors who are not currently included in the directory inviting them once again to participate therein. Such communications will be sent out twice a year in order to keep the directory as up-to-date and comprehensive as possible.

In the coming months, staff will work on converting the directory to new software in order to make it more stable and constant. In addition, several more improvements are planned for the directory in the coming months. In 2004, for instance, a notice was added advising users of the directory to check with the compact of origin and destination regarding import and export policies and procedures prior to transporting waste. In addition, a link was added that takes users to a new page providing contact information for each individual compact. The next hard-copy of the directory is expected to be printed in early 2005.

The directory is intended for use by compacts, states, federal agencies, and users of radioactive materials to provide information about companies that package, transport, process, or otherwise manage radioactive material in preparation for ultimate disposal. Access to the site and listing in the directory are free of charge. The directory may be accessed at www.bpdirectory.com.

Attention Brokers and Processors

To get a free listing in the directory or additional information, go to www.bpdirectory.com or write to Todd Lovinger, Executive Director, Low-Level Radioactive Waste Forum, Inc., 1619 12th Street, NW, Washington, DC 20009 or call (202) 265-7990.

Low-Level Radioactive Waste Forum, Inc. *continued*

LLW FORUM, INC.

March 2005 Meeting

Co-Sponsored by the Utah Department of Environmental Quality and Envirocare of Utah, Inc.

The spring 2005 meeting of the LLW Forum, Inc. will be held in

Salt Lake City, Utah

9:30 a.m. Monday, March 14, 2005 – Tuesday, March 15, 2005, 12:00 noon*

**A meeting of the LLW Forum's Executive Committee will be held on Monday, March 14, from 8:00 a.m. until 9:15 a.m. For those interested, a tour of the Envirocare of Utah, Inc. site is planned for Tuesday afternoon, March 15, after the conclusion of the regular Meeting. The estimated time of arrival back at the hotel after the site tour is 5:00 p.m. Please make your travel arrangements accordingly, if you plan to attend the site tour. For information about the Envirocare of Utah, Inc. site please, go to:
<http://www.envirocareutah.com>*

Location The meeting will be held at:

Salt Lake City Marriott Downtown
75 South West Temple
Salt Lake City, Utah 84101
Phone: (800) 228-9290 or (801) 531-0800
Fax: (801) 532-4127
www.Marriott.com/SLCUT

Reservations: A block of 35 rooms has been reserved for meeting attendees at the special rate of \$80.00 + tax per night for single or double occupancy. These special room rates are available for the weekend before at the same rate. Non-smoking rooms are available. *Please ask for a room in the LLW Forum block.*

Reservations must be made by Monday, February, 21, 2005 to obtain the special rate. Participants must guarantee the first night's rate and tax. Check-in time is 3:00 p.m. Check-out time is 12:00 noon.

Transportation: The hotel is located approximately 6 miles from the Salt Lake International Airport. Parking is available at the hotel at a rate of \$10.00/day. Shuttle service to and from the airport is available through Express Shuttle at \$7 per person, each way. For reservations, call (800) 397-0773 24 hours in advance. Taxi service is also available for approximately \$14 each way.

Registration: The meeting is free for members of the LLW Forum, Inc. Registration for non-members is \$500.00, payable to "LLW Forum, Inc." For information about becoming a member of the LLW Forum, Inc., please contact Todd Lovinger, the LLW Forum's Executive Director, at (202) 265-7990 or go to our website at www.llwforum.org.

Attendees should complete the registration form and forward with payment, if applicable, to:

Bev Rasmussen
Utah Department of Environmental Quality
Salt Lake City, Utah 84116
Phone: (801) 536-4405; Fax: (801) 536-0061
E-mail: bjrasmussen@utah.gov

Appalachian Compact

Appalachian Commission Holds Annual Meeting

The Appalachian States Low-Level Radioactive Waste Compact Commission held its annual meeting on November 3, 2004 in Harrisburg, Pennsylvania. During the course of the meeting, the Commission

- ◆ voted unanimously to elect Kathleen McGinty (the Secretary of the Pennsylvania Department of Environmental Protection) as Chair and Executive Director and to elect Kendl Philbrick (the Secretary of the Maryland Department of the Environment) as Vice-Chair and Secretary-Treasurer;
- ◆ approved the minutes of the previous—October 28, 2003—annual meeting;
- ◆ approved a revised budget and authorized the transfer of money from the Fiscal Stabilization Fund to cover the expenditures and any shortfalls in the interest income; and
- ◆ directed counsel to prepare a summary analysis of proposed legislation requiring shared liability among member states of interstate low-level radioactive waste disposal compacts. (See *LLW Notes*, May/June 2004, pp. 28 – 30.)

In addition to the above actions, the Appalachian Commission reviewed and discussed the independent auditors' report for fiscal year 2003-04; the status of commercial low-level radioactive waste disposal facility and recent developments in other states and compacts; recent national developments including a GAO report, EPA ANPR, and NAS study; proposed legislation to amend the Atomic Energy Act of 1954 to clarify the treatment of accelerator-produced and other radioactive material as byproduct material (S.2763); an update on the Pennsylvania Department of Environmental Protection's (PA DEP) solid waste radioactivity monitoring program; and an update on the PA DEP's agreement state status with the U.S. Nuclear Regulatory Commission.

Central Midwest Compact/State of Illinois

Central Midwest Compact to Poll Generators re Need for Interim Storage

In late October, the Central Midwest Interstate Low-Level Radioactive Waste Commission held a conference for regional generators and other interested parties. As part of the conference, the compact announced plans to—over the course of the coming months—send out a questionnaire to regional generators to determine whether or not there is a need to develop interim storage options for low-level radioactive waste after the Barnwell, South Carolina low-level radioactive waste disposal facility closes in 2008 to out-of-region generators.

The Low-Level Radioactive Waste Forum, Inc. will keep its members abreast of developments in the Central Midwest Commission's work on this topic and expect to provide results from the review at the organization's September 2005 meeting in Las Vegas, Nevada.

For additional information, please contact Marcia Marr of the Central Midwest Compact/ State of Illinois at (217)785-9982.

Northwest Compact/State of Washington

Hanford Initiative Passes in Washington State

By a margin of roughly 2 to 1, voters in the State of Washington on November 2 overwhelmingly approved an initiative 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, initiative 297—which was certified by Washington Secretary of State Sam Reed in early January of this year after lawmakers declined to act on it—seeks to prevent the disposal of waste in unlined trenches and to ensure that contaminated groundwater does not reach the Columbia River. (See *LLW Notes*, January/February 2004, p. 7.) The initiative was scheduled to go into effect 30 days after its passage, but its implementation has been delayed by court order. (See related story, this issue.)

Passage and Legal Challenges

The initiative was sponsored by Heart of America Northwest. It received endorsements from environmental groups, the state Democratic Party and the League of Women Voters. With 97 percent of precincts reporting statewide early Wednesday, the initiative was reportedly approved by 69 percent of the state's voters, with just 31 percent voting against it.

The U.S. Department of Energy took no official position on the measure upon its passage. However, a department spokesperson was quoted in the local press at the time of passage as saying that the department will "be studying the initiative and evaluating its options over the next 30 days." At the time, opponents of the initiative suggested that it is likely to end up in court because of allegations that it is illegal in that it

- ◆ pre-empts the federal government's nuclear waste and interstate commerce policies;
- ◆ imposes an illegal tax on the federal government; and

- ◆ addresses more than one issue in violation of the state constitution.

Subsequently, DOE filed and was granted a motion for a temporary restraining order to prevent implementation of the initiative. (See related story, this issue.)

Background

Cleanup is currently going on at the Hanford reservation. While the state acknowledges that there has been some contamination of the Columbia River, the Department of Health routinely tests the river to make sure it is safe. The agency considers the river to be suitable for all water activities.

Currently, about 75,000 barrels (55 gallons a piece) of radioactive waste are buried at Hanford. The State of Washington and the federal government recently agreed on a long-term schedule for cleaning up the waste. In addition, the federal government ships radioactive waste from other federal sites for packaging before sending it on to the Waste Isolation Pilot Plant (WIPP) in New Mexico for disposal. Initiative 297 would halt such shipments from other states until existing waste at the Hanford site is cleaned up.

New Waste Treatment Method Being Investigated

Hanford contractor CH2M Hill Hanford Group has awarded a \$1.4 million subcontract to Cogema Engineering Corporation to research a proposal for waste treatment that is similar to one used for purifying table salt. The process, called crystallization, could potentially reduce costs and remove some of the burden from the first step at the new vitrification plant being built by DOE for Hanford waste.

DOE is building a \$5.8 billion vitrification plant to turn highly radioactive and chemical waste that is currently stored in huge underground tanks into a stable glass form for permanent disposal. The

vitrification plant, however, was never planned to be big enough to meet the legal deadlines to treat all 53 million gallons of waste left from processing irradiated fuel for production of plutonium at Hanford during World War II and the Cold War. Indeed, the largest complex in the 65-acre vitrification plant will be a pretreatment building to separate waste into low-activity and high-level radioactive streams. Under the current plan, all of the waste will be turned into glass—with the lower activity waste staying at Hanford and the higher activity waste going to Yucca Mountain at a much higher cost.

Under the newly awarded contract, CH2M Hill will conduct research to determine whether 10 percent or more of the waste can skip the pretreatment separation process through use of the new proposed technology. The idea is to use temperature changes and evaporation to selectively precipitate low-activity radiation salts out of the waste. Recent test results on small amounts of radioactive tank waste were promising enough to interest the U.S. Department of Energy.

However, Hanford waste presents some unusual challenges and the process—even if successful—will not work on all tank waste. Waste in more than half of Hanford's 177 tanks might be candidates for the alternate treatment process nonetheless. The fractional crystallization would remove moisture to produce crystals of radioactive sodium nitrates and nitrites. The salts could then be turned into a low-activity glass. Much of it might be turned into glass with another alternate technology, bulk vitrification, which could allow it to bypass the vitrification plant entirely. That would leave about half the waste remaining as a liquid laced with highly radioactive cesium and technetium. The liquid, which would hold more than 99 percent of the radioactive energy, would still need to be sent to the pretreatment plant. It uses primarily ion exchange and filtration to separate waste into low-activity and high-level waste streams.

Cogema has teamed up with other companies on the project, including: Framatome ANP, which has expertise in radioactive materials; Georgia Technical Research Corp., which is associated with Georgia Tech University and a nationally recognized crystallization expert; and Swenson Technology, Inc., which specializes in equipment for the process in nonradioactive environments. Together, they will produce a design concept for the technology and determine the cost of developing a full scale pre-treatment facility.

Northwest Compact/State of Utah

Utah Makes Late Filing re PFS Project

In November, the State of Utah filed a “late contention” with the Atomic Safety Licensing Board concerning a proposal by a consortium of eight nuclear utilities named Private Fuel Storage (PFS) to store up to 44,000 tons of spent fuel in a storage facility on the reservation of the Skull Valley Band of Goshute Indians. In the filing, the state Department of Environmental Quality (DEQ) argues that assurances that the storage facility will be temporary are false because the U.S. Department of Energy recently disclosed that it will not accept the type of waste canister proposed for the PFS facility at its proposed permanent repository at Yucca Mountain, Nevada. According to DEQ, the environmental analyses of the PFS proposed facility never considered that the canisters would not be accepted. The omission raised national concerns about a “dysfunctional national waste management system, and added risks and costs from multiple and unnecessary fuel shipments back and forth across the country,” according to the late contention.

At issue are recent statements to local press by DOE officials that the department can only take

States and Compacts *continued*

nuclear waste at reactor sites that is packed according to a contract offered by DOE. PFS, however, plans to place the waste in its own steel shipping canisters, which would be welded shut and could not be repackaged to DOE specifications. As part of the late contention, DEQ argued that there is no assurance that PFS would have sufficient operating revenue or commitments from its customers to pay to repack or reship the fuel.

DEQ officials were nonetheless quoted in local press as acknowledging that it is a long shot that the board will consider the late filing since it concluded three weeks of closed-door hearings on the license in mid-September. The hearings focused on the risk of a fighter jet crashing into the facility. If the board reverses its earlier decision that the risk of such an occurrence is unacceptable, it could issue a license as early as January and shipments could begin by 2007.

In late October, the State of Utah petitioned the U.S. Supreme Court to review an appeals court ruling that overturned state laws passed in 1998 and in 2001 that were aimed at blocking the project. That petition remains pending.

Northwest Compact/State of Idaho

US Ecology Idaho Receives OSHA Safety Recognition

On November 19, US Ecology Idaho, Inc. was recognized for its safe work practices and effective safety program. At a ceremony at the company's Grand View, Idaho hazardous waste facility, the Regional Administrator of the U.S. Occupational Health and Safety Administration (OSHA) announced that the company has been accepted into OSHA's Safety and Health Achievement Recognition Program (SHARP) based on its exceptional safety record and training programs. US Ecology Idaho is only the second employer in the State of Idaho to qualify for this recognition.

"Safety is a core value at American Ecology," said Stephen Romano, President and Chief Executive Officer of American Ecology Corporation. "I congratulate all 51 employees of our Idaho operation for their commitment to working safely. They've collectively earned this honor." OSHA Region X Administrator Richard Terrill added, "OSHA is pleased to recognize US Ecology Idaho for implementing an effective safety and health program, as demonstrated by the very low injury rate among its employees."

US Ecology Idaho is a hazardous waste treatment and disposal company located 10 miles northwest of Grand View, Idaho. The company is one of Owyhee County's largest employers.

States and Compacts *continued*

(Continued from page 1)

of the license application and requests for isopach maps to aid in the identification of soils and geological features. The second issue involves Section 5.2 of the license application and a request for submittal of a waste analysis plan.

Three attachments accompanied the letter. The first, titled "Administrative Deficiencies," identifies information that must be submitted to make the application administratively complete. The second, titled "Additional Information," notes areas where additional information/clarification will be necessary to further the comparative-merit and technical reviews of the application. According to the letter, these areas are not part of the agency's determination of administrative incompleteness, but the agency is notifying WCS of such areas in advance of subsequent reviews in order to expedite the overall review process. The third attachment, which is labeled "Confidential," includes requests for clarification or additional information on the financial sections of the application that WCS has designated as confidential.

Regulatory Guidelines

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.

State regulations allow for the potential for three ANOD's prior to a determination of administrative completeness by the TCEQ. According to TCEQ staff, a decision on administrative completeness is expected by March 2005. If the application is found complete, then a public meeting will be held in the potential host county. Completion of the merit review and written evaluation is expected in May 2005.

Under the time schedule set out by state regulation, it is anticipated that TCEQ

Commissioners will issue a license or denial in December 2007.

A copy of the Second 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/>.

Additional Information

To date, payments totaling \$7.5 million have been collected from the State of Vermont for its participation in the Texas Low-Level Radioactive Waste Disposal Compact. An additional \$5 million payment is expected within the next year. No payments were collected from the State of Maine, whose withdrawal from the compact became effective earlier this year.

For additional information, please contact Susan Jablonski of the Texas Commission on Environmental Quality at

Texas Compact/State of Texas

US Ecology Texas Resumes Limited Waste Treatment: Expects New Building to Open in 2005

On November 30, Steve Romano—President and Chief Executive Officer of American Ecology Corporation—announced that subsidiary US Ecology Texas has resumed limited hazardous and non-hazardous waste treatment services at its facility in Robstown, Texas. The facility had suspended treatment services—which, at the time, accounted for approximately 50% of its revenue—after a July 1, 2004 fire in the facility’s permitted waste treatment building.

“We are pleased to resume limited treatment services at US Ecology Texas as planned,” said Romano. “Our Texas team is proceeding with plans to open a new waste treatment building in the first half of 2005 . . . The new building will be designed to accommodate our full range of permitted treatment services in addition to more efficient waste throughput.”

According to a press release issued by American Ecology Corporation, the fire is covered by both property and business interruption insurance and claims have been submitted under both policies. “We expect to recognize the economic value of these insurance claims in American Ecology’s year end financial results,” concluded Romano.

National Academies of Sciences

NAS Begins Phase II of Report on Low Activity Wastes

Recently, the National Research Council of the National Academies began phase II of its study on Improving the Regulation and Management of Low-Activity Radioactive Wastes. The study, which is being conducted by a 15-member committee of the Board on Radioactive Waste Management, is being conducted in phases due to funding constraints. It was discontinued after the completion of phase I due to a lack of funds. However, earlier this year, the council received enough funding to continue with the study.

On October 14, 2003, the council released an Interim Report on Current Regulations, Inventories and Practices detailing the work done in phase I of the study. (See *LLW Notes*, September/October 2003, pp. 1, 11-12.) The committee’s final report will assess policy and technical options for improving the current practices for regulating and managing low-activity wastes. According to the interim report, “[t]he assessments will include risk-informed options, and the committee strongly believes that issues of public trust and risk perception will be important considerations in the final report.”

The interim report has been posted on the National Academies website at <http://www.nas.edu/> and may also be obtained from the National Academies Press at <http://www.nap.edu/>.

*For additional background information on the study - including policy issues, technical information, and statement of task - see *LLW Notes*, January/February 2002, pp. 1, 9 - 10.*

U.S. Department of Energy v. State of Washington

Court Grants Temporary Restraining Order re Implementation of Hanford Initiative

On December 2, a judge for the U.S. District Court of the Eastern District of Washington issued a temporary restraining order that prevents the State of Washington from implementing a recently approved voter initiative that would otherwise bar the U.S. Department of Energy from sending any additional waste to the Hanford low-level radioactive waste disposal facility until the department cleans up the nuclear reservation. The court issued the order despite assurances from the state that it would not begin implementation in the next 60 days. In so doing, the court found that “the public interest favors the issuance of a temporary restraining order because of the need to continue the current onsite clean-up activities at Hanford, unimpeded by an initiative, the scope and breadth of which is not fully ascertained at this juncture.”

Legal Issues

Federal government attorneys sought the restraining order on behalf of the U.S. Department of Energy. They argued that it is necessary because there are too many uncertainties about how the state will implement the measure. State attorneys asserted that the order was unnecessary, however, because state officials are still reviewing it and do not have any immediate plans to implement it. Department of Justice attorneys nonetheless contended that some cleanup efforts at the site have already been halted as a result of the initiative. The court

sided with the federal government, finding that there is a possibility that the initiative may be invalid and that DOE will suffer irreparable injury with regard to onsite cleanup at Hanford if it were to immediately become law.

Federal attorneys are seeking to invalidate the initiative on various grounds including that it

- ◆ pre-empts the federal government's nuclear waste and interstate commerce policies;
- ◆ imposes an illegal tax on the federal government; and
- ◆ addresses more than one issue in violation of the state constitution.

DOJ attorneys were quoted in the local press as saying that they believe that regulations in the initiative that call for new permits and that alter definitions of types of waste could slow or stop work on many projects across the Hanford reservation.

The Initiative

By a margin of roughly 2 to 1, voters in the State of Washington on November 2 overwhelmingly approved an initiative 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, initiative 297—which was certified by Washington Secretary of State Sam Reed in early January of this year after lawmakers declined to act on it—seeks to prevent the disposal of waste in unlined trenches and to ensure that contaminated groundwater does not reach the Columbia River. (See *LLW Notes*, January/February 2004, p. 7.) The initiative—which was initially scheduled to go into effect 30 days after its passage—has been certified by the Secretary of State and is now officially known as the “Cleanup Priority Act.”

The initiative was sponsored by Heart of America Northwest. It received endorsements

from environmental groups, the state Democratic Party and the League of Women Voters. With 97 percent of precincts reporting statewide early Wednesday, the initiative was reportedly approved by 69 percent of the state's voters, with just 31 percent voting against it.

Background

Cleanup is currently going on at the Hanford reservation. While the state acknowledges that there has been some contamination of the Columbia River, the Department of Health routinely tests the river to make sure it is safe. The agency considers the river to be suitable for all water activities.

Currently, about 75,000 barrels (55 gallons a piece) of radioactive waste are buried at Hanford. The State of Washington and the federal government recently agreed on a long-term schedule for cleaning up the waste. In addition, the federal government ships radioactive waste from other federal sites for packaging before sending it on to the Waste Isolation Pilot Plant (WIPP) in New Mexico for disposal. Initiative 297 would halt such shipments from other states until existing waste at the Hanford site is cleaned up.

Private Fuel Storage v. State of Utah

Utah Appeals PFS' Ruling to U.S. Supreme Court

On October 31, the State of Utah announced the filing of a petition for a writ of certiorari in the U.S. Supreme Court in a case concerning who has authority over the transportation and storage of nuclear waste. In particular, the state is asking the Court to review an August ruling by the U.S. Court of Appeals for the Tenth Circuit that upheld a lower court decision striking down several state laws erected by the State of Utah in 2001. The challenged laws were an attempt on the part of the state 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. 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.

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.

The Answer and Other Responsive Filings

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."

Prior Court Decisions

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 preempted 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.

The Appellate Court's Ruling In a 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."

Other Issues

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. To date, a decision on this issue has not been reached. NRC is expected to issue a decision about the effects of such damage, as well as other aspects of the project, early next year.

In addition, the Goshute tribe remains locked in a leadership battle that pits Tribal Chair Leon Bear, who signed a lease in 1997 allowing PFS to store up to 44,000 tons of spent fuel on

Goshute land, with opposing factions who say the lease is invalid.

Both major party candidates for Governor—Republican Jon Huntsman, Jr. and Democrat Scott Matheson, Jr.—oppose the facility. Several members of Utah's congressional delegation also oppose it.

For background information on the PFS/Goshute proposal, see [LLW Notes](#), July/August 2000, p. 26.

Natural Resources Defense Council v. U.S. Department of Energy

Federal Appeals Court Overturns Ruling Barring DOE from Reclassifying Waste

On Friday, November 5, a three-judge panel of the U.S. Court of Appeals for the Ninth Circuit overturned a lower court ruling barring the U.S. Department of Energy from reclassifying high-level waste at the Idaho National Engineering and Environmental Laboratory, the Hanford facility in Washington, and the Savannah River Site in South Carolina. In so doing, the court ruled that it is too soon to consider the petitioners' claims and that all parties must adopt a wait-and-see approach. The appellate court sent the case back to the lower court with instructions to dismiss.

The Issues/Procedural Background

The case concerns a 1999 DOE rule, known as Order 435.1, which serves as the department's principal interim regulatory tool for managing its radioactive waste. The rule provides, in part, that the department may reclassify high-level nuclear waste as "incidental" waste suitable for disposition in underground storage tanks, thereby effectively exempting the waste from storage and handling requirements contained in the Nuclear Waste Policy Act of 1982. Under the rule, DOE may reclassify waste as incidental if steps are taken to reduce its radioactivity levels to the extent practicable and if those levels are no higher than the most radioactive waste classified as low-level radioactive waste.

In 2002, a lawsuit was filed against DOE by the Natural Resources Defense Council, the Snake River Alliance, and the Yakama Nation. Subsequently, the states of Washington, Oregon,

Idaho, and South Carolina filed "friend of the court" briefs in support of the plaintiffs. (See *LLW Notes*, November/December 2002, p. 15.) DOE originally responded by requesting that the case be dismissed, but the court denied the department's motion to do so in early August 2002. (See *LLW Notes*, July/August 2002, pp. 18-19.)

In their petition, the plaintiffs argue that the rulemaking violates federal nuclear waste disposal laws and is merely an effort by DOE to save cleanup money. They contend that the rulemaking violates the Nuclear Waste Policy Act, which requires that DOE dispose of all high-level nuclear waste in a federal underground repository. The law defines all waste generated by past nuclear reprocessing operations as high-level, so the plaintiffs argue that all tank wastes must be disposed in an underground repository.

DOE stands by its rulemaking, however, contending that it has "unfettered discretion" in deciding how to dispose of radioactive waste. The department argues that residual amounts of waste can be safely disposed in underground storage tanks using grouting—a procedure which involves filling mostly empty tanks with concrete.

The Lower Court's Ruling

In early July 2003, the U.S. District Court for the District of Idaho struck down DOE Order 435.1 as "invalid." (See *LLW Notes*, July/August 2003, pp. 15-16.) In so doing, the court ruled that the rulemaking directly conflicts with provisions of the Nuclear Waste Policy Act. According to the court, the department "does not have the discretion to dispose of [high-level radioactive waste] somewhere other than a repository established under [the Nuclear Waste Policy Act]."

Despite its findings, the court refused plaintiffs' requests that it issue an order requiring DOE to follow the law, finding that there is no indication that the government will ignore the ruling.

U.S. Department of Energy

MIMS Updates

In November, the U.S. Department of Energy moved the location of its server that houses the department's web pages, including the Manifest Information Management System (MIMS) database. As a result, MIMS was temporarily off-line from November 10 to November 14 while the change is occurring.

In addition, Doug Tonkay of DOE recently sent a communication expressing the department's appreciation to state and compact members of the LLW Forum for their assistance in reviewing the MIMS data and providing comments thereon. In that regard, Tonkay commented that, "the comments are very helpful, and I have contacted several individuals already as we work on them ... We hope to have a new MIMS data set with the corrections made to the Envirocare data on line very soon."

U.S. Nuclear Regulatory Commission

License Renewals Continue to Move Forward

In November, the U.S. Nuclear Regulatory Commission announced that it had renewed the operating licenses of the Dresden Nuclear Power Station, Units 2 and 3, and the Quad Cities Nuclear Power Station, Units 1 and 2, in Illinois for an additional 20 years. The agency also conducted two public meetings in November on the environmental review related to an application to extend the operating licenses for the D.C. Cook 1 and 2 nuclear power plants. In addition, public comment was sought by NRC on a draft environmental impact statement that reaches the preliminary conclusion that there are no environmental impacts that would preclude the

renewal of the operating license for Arkansas Nuclear One, Unit 2. And, in October, the Commission held a meeting with Dominion Nuclear to discuss the results of the NRC's inspections of the company's license renewal program for the Millstone Station. Finally, NRC recently announced that an application for a 20-year renewal of the operating licenses for Units 1 and 2 of the Brunswick Steam Electric Plant is available for public review and the agency announced an opportunity to request a hearing on the application.

Dresden and Quad Cities License Renewals

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. With the renewals, the license for Dresden Unit 2 is extended to December 22, 2029, and the license for Dresden Unit 3 is extended to January 12, 2031.

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. With the renewals, the licenses for both units of the Quad Cities plant are extended to December 14, 2032.

The Dresden renewal application can be found at <http://www.nrc.gov/reactors/operating/>

Federal Agencies and Committees *continued*

licensing/renewal/applications/dresden.html and the Quad Cities application at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications/quad-cities.html>

D.C. Cook Plant Public Meetings

The D.C. Cook Plant—which is located near Benton Harbor, Michigan—is operated by Indian Michigan Power Company. The operating license for Unit 1 is set to expire on October 25, 2014, and for Unit 2 on December 23, 2017. A license renewal application for the plant was submitted to the NRC on November 3, 2003. NRC staff held public meetings on March 8th in Bridgman, Michigan, on the environmental review of the license renewal application.

NRC staff conducted two additional public meetings on November 9 in Bridgman, Michigan, to receive public input on the environmental review related to the plant extension application. Members of the public were invited to attend and comment on the NRC's draft document on the environmental impact of the proposed license renewal.

Copies of the D.C. Cook license renewal application are available electronically on the NRC's Agency-wide Documents Access and Management System (ADAMS) at <http://www.nrc.gov/reading-rm/adams/web-based.html> by entering accession number ML033070179.

Public Comment on Arkansas Nuclear One Renewal

The Arkansas Nuclear One Plant is located near Russellville, Arkansas. The current operating license for Unit 2 at the plant, which is operated by Entergy Operations, is due to expire on July 17, 2018. The Commission unanimously approved a license extension for Unit 1 on June 20, 2001 following a review of staff recommendations. NRC staff held public meetings on February 3 in Russellville to gather comments on environmental issues the public

believes NRC should consider in its review of the license application.

In October, NRC announced that it has reached the preliminary conclusion that there are no environmental impacts that would preclude the renewal of the operating license for Unit 2. The information is contained in a draft environmental impact statement that was open for public comment until November 24.

Copies of the Arkansas One renewal application are available on the NRC web page at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications/ano-2.html>.

Inspections at the Millstone Station

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.

On October 20, NRC staff met with Dominion Nuclear officials to discuss the results of the agency's inspections of the company's license renewal program for the plant. The meeting was open to observation by members of the public and an opportunity was provided to public observers to ask questions prior to adjournment of the meeting.

A "scoping and screening" inspection was conducted to verify that the company's license renewal program is implemented consistent with its application and pertinent regulations. A second inspection was conducted to verify that

Federal Agencies and Committees *continued*

programs are or will be in place to manage the material conditions of the systems, structures and components.

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

Brunswick Steam Electric Plant Application

On October 25, NRC announced that an application for a 20-year renewal of the operating licenses for Units 1 and 2 of the Brunswick Steam Electric Plant is available for review. Subsequently, on December 1, the agency announced the opportunity to request a hearing on the application. The deadline for requesting a hearing is 60 days following publication of a notice in the *Federal Register*, which was done in early December. By that date, petitions must be filed by anyone whose interest may be affected by the license renewal and who wishes to participate as a party in the proceeding. A request for hearing and a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, Attention: Rulemaking and Adjudications Staff. They may also be faxed to (301) 415-1101 or sent via e-mail to HEARINGDOCKET@nrc.gov. A copy should also be submitted to the NRC Office of General Counsel by facsimile to (301) 415-3725 or e-mail to OGCMailCenter@nrc.gov.

The Brunswick Plant is located just north of Southport, N.C., and the current operating licenses for Units 1 and 2 expire on September 8, 2016 and December 27, 2014, respectively. The licensee, Carolina Power and Light Company (now doing business as Progress Energy Carolinas, Inc.) submitted the renewal application on October 20. NRC staff is currently conducting an initial review of the application to determine whether it contains enough information for the required formal review. If the application has sufficient information, NRC will formally “docket,” or file, the application and will

announce an opportunity to request a public hearing. A public meeting was held on November 4 in Southport, N.C. to discuss how the agency will review the application.

A copy of the Brunswick relicensing application is available on the NRC web site at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications.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 30 reactor units. In addition, NRC is currently processing license renewal requests for 16 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 License Amendment for Blended Low-Enriched Uranium Project

The U.S. Nuclear Regulatory Commission has approved a license amendment to authorize Nuclear Fuel Services, Inc. to possess and use special nuclear material (plutonium, uranium-233, or uranium enriched in the isotopes uranium-233 or uranium-235) at two facilities on its complex in Erwin, Tennessee. The amendment—which is the final of three associated with the Blended Low-Enriched Uranium (BLEU) project—allows NFS to begin using the oxide conversion building and effluent processing building for the project. NRC approved the first amendment, for a uranyl nitrite building, in July 2003. A second amendment, for

the blended, low-enriched uranium preparation facility, was approved in January.

NFS also submitted changes to its security plan to address physical protection of the new buildings, as well as changes to its nuclear materials control plan to support the amendment request. These changes were approved in the NRC's safety evaluation report for the license amendment. Notice of the approved license amendment was published on October 12 in the *Federal Register*. Non-proprietary portions of the safety evaluation report are available on the NRC's ADAMS document system at <http://www.nrc.gov/reading-rm/adams/web-based.html> using accession number ML042660436. Help in using ADAMS is available by contacting the NRC Public Document Room staff at (301) 415-4737 or (800) 397-4209.

NRC Restores Documents to its Web Site

The U.S. Nuclear Regulatory Commission has restored various documents that were previously removed from the agency's web site on October 25 for an additional security review. The documents—which were restored in a phased manner based on priorities and feasibility—relate to a possible application for a high-level waste repository, as well as to reactor-related matters and to two nuclear materials cases in the agency's Electronic Hearing Docket.

The October 25 suspension of the documents occurred when documents on the agency's on-line library, ADAMS, were identified that could possibly aid terrorists. The agency concluded that the finding warranted a temporary suspension of public access while NRC conducted a review to determine if other documents were present that contain information such as drawings of site layouts.

Most of the documents that were removed were located on ADAMS, while many other documents on the web site remained available in order to allow the public to participate in the majority of the Commission's ongoing regulatory activities. For instance, access to the majority of rulemaking documents has continued to be available via the Ruleform website, which was not affected by the ADAMS shutdown.

“The Commission is committed to conducting its work in the open to protect public health, safety and security while maintaining appropriate accessibility to its activities,” said NRC Chair Nils Diaz. “However, we will withhold any information that could be useful, or could reasonably be expected to be useful, to a terrorist.”

The restored portion of the Electronic Hearing Docket may now be publicly accessed at <http://www.nrc.gov/reading-rm/ehd.html>. Available at this web site location are Atomic Safety and Licensing Board orders, transcripts, pleadings, and other documents submitted as part of ongoing hearings involving reactors and hearings regarding Sequoyah Fuels and Hydro Resources. References to the NRC staff's document collection has also been restored in the agency's electronic Licensing Support Network (www.lsnnet.gov) for a possible application for the proposed Yucca Mountain high-level radioactive waste repository.

The NRC expects to restore access to additional documents on nuclear reactors, and other documents not related to specific facilities soon, after security reviews are completed. Public web access to additional non-reactor documents (i.e., documents related to nuclear materials licenses) will be restored later, after document reviews are complete. In addition, access has been restricted to the NRC's Sealed (Radioactive) Source and Device registry.

Pending further restorations of the agency web site at www.nrc.gov, time-sensitive documents related to opportunities for hearings or needed for public reviews and comments, on regulatory

matters such as license amendment applications, may be available by contacting the NRC Public Document Room at (800) 397-4209 or (301) 415-4737 or pdr@nrc.gov, as will be announced in appropriate *Federal Registry* notices.

NRC Holds Public Meeting re Fire Hazards at Nuclear Power Plants

On November 22 – 23, the U.S. Nuclear Regulatory Commission held a public meeting at its headquarters in Rockville, Maryland to discuss state-of-the-art methods for performing fire hazard calculations at nuclear power plants. The meeting focused on the NRC's report, NUREG-1805, "Fire Dynamics Tools (FDT) – Quantitative Fire Hazard Analysis Methods for the U.S. Nuclear Regulatory Commission Fire Protection Inspection Program." The report will help agency inspectors perform initial analysis of potential fire scenarios, using principles of fire dynamics. Both NRC inspectors and plant operators can use this report's tools to examine fires capable of damaging the equipment necessary to safely shut down a nuclear power plant. All U.S. nuclear power plants must have fire protection plans that meet NRC requirements for safely dealing with fires.

The NRC issued a draft version of its report in June 2003 for public comment and technical peer review. Stakeholder and reviewer comments were taken into account in preparing the final report, which is available on NRC's web site at <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1805/>.

Technical questions concerning NUREG-1805 should be sent to Naeem Iqbal at nxi@nrc.gov or Marck Salley at mxs3@nrc.gov or faxed to (301) 415-2300 or mailed to U.S. Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Mail Stop 011-A11, Washington, D.C. 20555-0001.

NRC Upholds Licensing Board Decision Rejecting New Mexico Contentions re Proposed LES Uranium Enrichment Plant

In early December, the U.S. Nuclear Regulatory Commission upheld a ruling by the agency's licensing board of earlier this year that rejected contentions raised by the New Mexico Environment Department concerning a planned uranium enrichment plant in the southeastern portion of the state. Louisiana Energy Services (LES), a consortium of largely European backers, is proposing to build the \$1.2 billion facility—which would produce fuel for nuclear reactors—near Eunice, New Mexico. The state Environment Department and attorney general's office had raised concerns about the disposal of waste from the plant and other aspects of its operations. However, the licensing board rejected them earlier this year on the basis that the state agencies failed to follow federal procedures in filing them.

The NRC upheld that decision in August and in early December denied the state's request to reconsider. The December order also denied requests from the two state agencies to participate in contentions raised by citizens' groups that oppose the plant. However, the commission did rule that its licensing board may consider whether to admit late-filed contentions from the state.

"We are disappointed but not surprised by the NRC's decision," said Chris Coppin, special counsel to the Attorney General. Environment Department Secretary Ron Curry also expressed disappointment, saying "Rather than assisting New Mexico in a full and complete review of the environmental issues surrounding the proposed Lea County uranium-enrichment plant, the NRC has instead decided to act as a roadblock."

In November, Governor Bill Richardson said that he will not support the proposed plant until the federal government guarantees that no radioactive waste from it will remain in New Mexico. He said he'd withhold his support until Congress passes language that specifies that the waste will be removed from the state or until the NRC issues LES an operating permit that contains binding language to that effect.

NRC Holds Meeting re Import/Export Proposed Rule

On October 19, the U.S. Nuclear Regulatory Commission held a meeting concerning its proposed rule to tighten licensing requirements for the exportation and importation of high-risk radioactive materials. The meeting was held at the agency's headquarters in Rockville, Maryland. Members of the public were invited to attend.

The NRC published its rule in September. The rule aims to implement recent changes to the policies of the agency and the federal government regarding the security of radioactive materials and reflects guidelines adopted last year by the International Atomic Energy Agency. The proposed rule would require a specific license for the export or import of high-risk radioactive materials. Under current NRC regulations, these materials may be imported or exported under a general license, which does not require filing an application to the NRC or the issuance of licensing documents.

The proposed rule, the regulatory analysis and any public comments received to date are available on the NRC's web site at <http://ruleforum.llnl.gov>. These documents are also available through the NRC's Public Document Room at (301) 415-4737 or (800) 397-4209.

NRC Increases Civil Monetary Penalties

The U.S. Nuclear Regulatory Commission is increasing the civil penalties that it can impose on licensees, effective November 26, 2004. The maximum fine that the NRC can impose per violation per day will be \$130,000 for power reactors and gaseous diffusion plants. This is an increase of \$10,000 over the previous maximum. The penalties for other types of licensees are also being similarly adjusted. The maximum fine for test reactors, for instance, has been increased to \$13,000 and the maximum fine for medical materials users is now \$6,500.

An increase in the fines is mandated by Congress at least once every four years to account for inflation. NRC is not, however, required to issue fines at the maximum level and uses its discretion to determine an appropriate civil penalty on a case-by-case basis for violations identified through inspections and investigations. The last civil penalty increase enacted by the NRC was in November 2000.

In keeping with past practices, when the agency initiates policy changes, the public can provide feedback on the changes. The deadline for comments is December 27, 2004. Instructions on submitting comments are posted in the October 26, 2004 *Federal Register* or can be found through the Enforcement Policy page of the NRC web site at <http://www.nrc.gov/what-we-do/regulatory/enforcement/enforce-pol.html>.

NRC Seeks Public Comment re Reactor Oversight Process

The U.S. Nuclear Regulatory Commission is seeking public comment on the implementation of the Reactor Oversight Process (ROP), which the agency created five years ago to revamp and improve its inspection and enforcement programs for commercial nuclear power plants. Each year the NRC seeks feedback to help the agency to continue to improve its regulatory approach.

In particular, the agency is looking for the public's answers to a list of 20 questions relating to the ROP, including the following:

- ◆ Is the information in the inspection reports useful to you?
- ◆ Is the ROP understandable and meaningful, and are the processes, procedures and products clear and written in plain English?
- ◆ Has the public had enough opportunity to participate in the ROP and provide input and comments?

All 20 questions are contained in a *Federal Register* notice of the request for comment, that was published on November 1. The notice is available through the Government Printing Office's web site at <http://a257.g.akamaitech.net/7/257/2422/06jun20041800/edocket.access.gpo.gov/2004/pdf/04-24304.pdf>.

The comment period on the ROP will expire on December 16. Comments may be e-mailed to nrcprep@nrc.gov or mailed to Chief, Rules and Directives Branch, Office of Administration, Mail Stop T-6D59, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555-0001.

NRC Revises Regs for Plant Structures, Systems and Components

Effective December 22, the U.S. Nuclear Regulatory Commission has amended its regulations that apply certain controls to nuclear power plant structures, systems and components (SSCs) based on their safety significance. Nuclear power plants are required by NRC regulations to have conservative safety margins, strict procedural controls and multiple safety systems to protect public health and safety. Special regulatory controls—rigorous design qualifications, record-keeping, maintenance and testing requirements—are used to ensure that SSCs necessary to safely shut down a nuclear reactor and prevent radioactivity from traveling off-site will function effectively during and after an accident.

These requirements encompass a very broad scope of SSCs—some of which are very important to safety and others of which, according to experience and new analytical techniques, provide only a minimal contribution to safety and thereby focus NRC staff and licensee resources on issues of minor safety significance.

The new regulation can be voluntarily adopted by plant operators as an alternate set of requirements. The changes incorporate up-to-date analytic tools and risk insights to further enhance plant safety by enabling nuclear power plant licensees to more precisely determine the safety significance of SSCs. If licensees adopt the change, some SSCs of “low safety significance” would be subject to less stringent requirements than currently exist, although they must remain capable of performing their safety-related functions. Conversely, some SSCs of greater significance would be subject to new requirements.

“This enables both nuclear power plant licensees and the NRC to more efficiently focus their resources on issues of greater safety significance,”

Federal Agencies and Committees *continued*

said Dave Matthews, Director of the Division of Regulatory Improvement Programs in the NRC's Office of Nuclear Reactor Regulation.

The NRC received about 200 public comments on the changes during the agency's rulemaking process. Each of the comments was reviewed in detail, and were incorporated as appropriate into the revised regulations. The Advisory Committee on Reactor Safeguards reviewed the changes in June 2004 and had no objections to their going into effect.

To ensure that the new regulations are implemented properly, NRC staff has developed (for trial use) Regulatory Guide 1.201, "Guidelines for Categorizing Structures, Systems and Components in Nuclear Power Plants According to Their Safety Significance." The current draft of that guide is available on the NRC's web site at <http://www.nrc.gov/reading-rm/doc-collections/commission/secys/2004/secy2004-0109/attachment5.pdf>.

NRC Licenses Spent Nuclear Fuel Storage Facility at INEEL

On December 1, the U.S. Nuclear Regulatory Commission announced that it has issued a license to the Foster Wheeler Environmental Corporation to construct and operate an independent spent nuclear fuel storage installation at the Idaho National Engineering and Environmental Laboratory (INEEL). The license is valid for 20 years and may be renewed if NRC staff determines that its continued operation provides adequate protection for the public health and safety. The Foster-Wheeler facility—which will be called the Idaho Spent Fuel Facility—will be located adjacent to existing Department of Energy spent fuel storage installations at INEEL, including the NRC-licensed facility storing fuel debris from Three Mile Island Unit 2. It will include a transfer area for repackaging the spent fuel into the new canisters.

The facility will receive, repackage and store spent fuel originally from the Shippingport Atomic Power Station, a decommissioned light-water breeder reactor; the Peach Bottom Unit 1 reactor, a decommissioned high-temperature gas-cooled reactor; and various training and research reactors built by General Atomics (TRIGA reactors). Most of this fuel is currently stored by INEEL in above-ground spent fuel pools or dry underground storage facilities. The new facility will store the spent fuel in sealed stainless steel canisters placed inside steel tubes within a concrete storage vault.

"The issuance of this license culminates a detailed three-year review by NRC staff with our determination that the applicant's plans provide adequate protection for public health and safety, security and the environment," said E. William Branch, director of the NRC's Spent Fuel Project Office. "We will continue our focus on safety as we inspect the facility during its construction and operation."

The NRC issued a notice of opportunity to request a hearing on this application in June 2002, but no requests for a hearing were received. The agency received more than 90 written comments on a draft environmental impact statement that were subsequently addressed in the final environmental impact statement that was issued in January 2004.

The Shippingport Atomic Power Station was the first commercial nuclear power plant in the United States. Co-owned by the Atomic Energy Commission and Duquesne Light Company, it operated from 1958 until 1974. Peach Bottom Unit 1 was an experimental 40-megawatt reactor that provided performance data to the nuclear industry during its operation from 1967 to 1974. The General Atomics TRIGA reactors are a widely used type of research reactor.

NRC Holds Meeting, Extends Comment Period re Proposed New Mexico Uranium Plant

On October 14, the U.S. Nuclear Regulatory Commission held a public meeting in Eunice, New Mexico to discuss the draft findings of a draft environmental impact statement (EIS) for a proposed uranium enrichment plant in Lea County. During the course of the meeting, NRC staff discussed the project in an informal “open house” format and members of the public were invited to comment on the draft EIS. Shortly thereafter, on November 19, NRC extended the public comment period on that draft EIS until December 18 due to the temporary unavailability of the agency’s public document library on its web site. (See related story, this issue.)

Draft EIS on the Proposed Plant

Louisiana Energy Services (LES)—a consortium of international and American energy companies—submitted a license application on December 12, 2003 for a gas centrifuge uranium enrichment plant, to be called the National Enrichment Facility. During the license review process for the application, NRC will conduct two studies: a safety evaluation to determine whether the proposed plant can be operated safely and an analysis of the environmental impacts of the proposed project.

The draft EIS—which presents and compares potential environmental impacts resulting from the proposed project and its alternatives, and identifies mitigation measures that could eliminate or lessen these impacts—is available on the NRC’s web site at <http://www.nrc.gov/materials/fuel-cycle-fac/m1042510184.pdf>.

Extension of the Public Comment Period

The original public comment period began September 17 and was to expire on November 6. However, the NRC initiated a security review on October 25 of publicly available documents to ensure that potentially sensitive information is removed from the agency’s web site. Subsequently, documents were restored in stages as they were screened for sensitive information.

“The NRC remains committed to being an open regulatory agency,” said Daniel M. Gillen, acting director of NRC’s Division of Waste Management and Environmental Protection. “Extending the public comment period is appropriate to allow members of the public to have time for access to relevant documents while developing their comments on the draft environmental impact statement.”

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- 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

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- 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).listserv@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

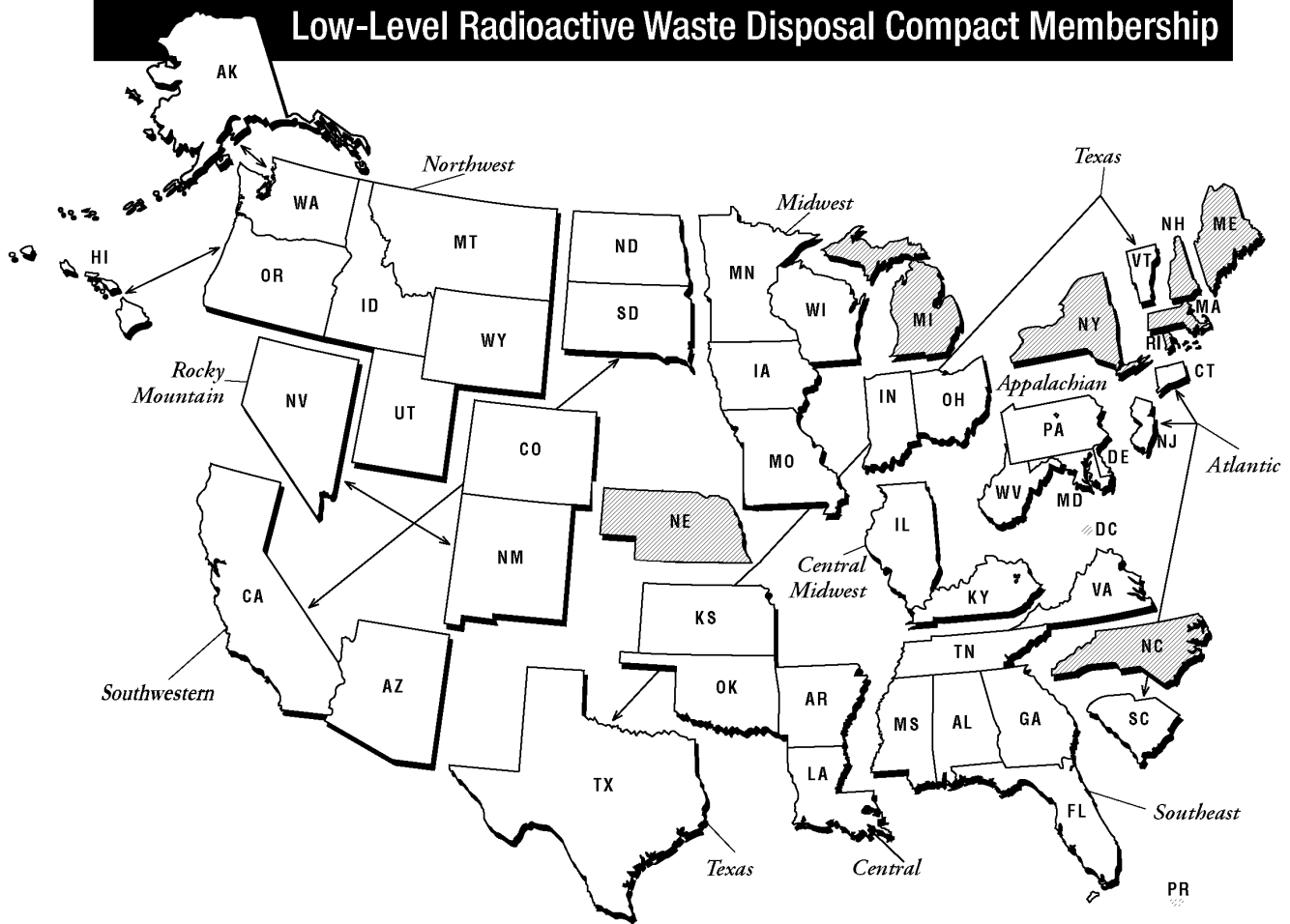
To access a variety of documents through numerous links, visit the web site for the LLW Forum, Inc. at www.llwforum.org

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.

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